

**ARTICLE XII  
SPECIAL LAND USES**

**Section 12.1 General Requirements**

Act 110 of 2006 as amended, permits the legislative body to provide for special land uses in a zoning district as long as the following requirements are specified in the Ordinance:

- A. A listing of the special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval.
- B. The requirements and standards for approving a request for a special land use.
- C. The procedures and supporting material required for the application, review, and approval of a special land use.

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

Public notification shall be provided as specified in Section 103 of Act 110 of 2006, as amended, and as outlined in Article XIV, Section 14.13 of this ordinance.

**Section 12.2 Review and Approval**

The special land uses and activities eligible in a respective zoning district may be permitted only after review and approval by the Planning Commission. Such special uses shall also be subject to site plan review and approval as provided for in Article XIII of this ordinance.

A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in this ordinance, the conditions imposed under the ordinance, other applicable ordinances, and state and federal statutes.

**Section 12.3 Permit Procedure**

Request for a special use permit shall be made by filing with the Zoning Administrator the following:

- A. A permit fee as specified in Article XIV, Section 14.4 of this ordinance.
- B. A copy of the completed application form for special use permit which shall contain at a minimum the following information:
  - 1. The applicant name, address and phone number in full.
  - 2. Proof of ownership of the property, and whether there are operations on the

property and any easements that limit its use, and any leasehold interest in the property.

3. The name and address of the owners(s) of record if the applicant is not the owner of record, or the firm or corporation having a legal or equitable interest in the property, and if that firm or corporation is a subsidiary of another firm or corporation, and the signatures, in legible form, of all of the owners having equitable interest in the land.
4. Legal description, property parcel number and street address of the subject parcel of land.
5. Area of the subject parcel of land stated in acres, or if less than one acre, in square feet.
6. Present zoning classification on parcel.
7. Present and proposed land use.
8. Applicant's statement, as appropriate, of the expected effect on emergency service requirements, schools, storm water systems and automobile and truck circulation patterns and local traffic volume.
9. Any additional information necessary to consider the impact of the project upon adjacent properties and the general public as may be requested by the Zoning Administrator or the Townships.

#### **Section 12.4 Standards for Decisions**

In considering special land uses as a discretionary decision under this Article, the statute requires that the ordinance shall specify the regulations and standards upon which those decisions are made. The standards shall be consistent with and promote the intent and purpose of the zoning ordinance and insure that the land use activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall also insure that the land use or activity is consistent with the public health, safety, and welfare of the townships.

Standards - Special approvals shall be based on the determination that the proposal complies with all applicable requirements of this Ordinance, including site plan review criteria set forth in Article XII, applicable site development standards for specific uses set forth in Article XII, and the following standards:

##### General Standards

The Planning Commission shall approve, or approve with conditions, an application for a special land use permit only upon a finding that the proposed special land use complies with all of the following general standards:

- A. The property subject to the application is located in a zoning district in which the proposed special land use is allowed.
- B. The proposed special land use will not involve uses, activities, processes materials, or equipment that will create a substantially negative impact on the natural resources of the township or the natural environment as a whole.
- C. The proposed special land use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on other conforming properties in the area by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap material that can be seen from any public highway or seen from any adjoining land owned by another person.
- D. The proposed special land use will be designed, constructed, operated, and maintained so as not to diminish the opportunity for surrounding properties to be used and developed as zoned.
- E. The proposed special land use will not place demands on fire, police, or other public resources in excess of current capacity.
- F. The proposed special land use will be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services.
- G. The proposed special land use complies with all specific standards required under this Ordinance applicable to it.

**Section 12.5 Conditions of Approval**

The Planning Commission may attach conditions when granting special use approval. These conditions may include those necessary to insure the adequacy of public services and facilities affected by a proposed land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:

- A. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
- B. Be related to the valid exercise of the police power which are affected by the proposed use or activity.
- C. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the ordinance for the land use activity under

consideration, and be necessary to insure compliance with those standards.

The conditions imposed as part of an approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon mutual consent of the approving authority and the landowner. The approving body shall maintain a record of conditions which are changed.

The Zoning Administrator, or designee, shall have the right to periodically inspect any special approvals, to ensure continued compliance with the conditions of the special approvals.

### **Section 12.6 Minor and Major Amendments to a Special Land Use**

Amendments to an approved special use permit shall be permitted only under the following circumstances:

- A. The owner of property for which a special land use has been approved shall notify the Zoning Administrator for any desired change to the approved special use permit. Minor changes may be approved by the zoning administrator upon determining that the proposed revision(s) will not alter the basic design and character of the special land use, nor any specified conditions imposed as part of the original approval. Minor changes shall include the following:
  1. Reduction in size of any building and/or sign.
  2. Movement of buildings and/or signs by no more than ten (10) feet.
  3. Landscaping approved in the special use permit that is replaced by similar landscaping to an equal or greater extent.
  4. Changes in floor plans that do not exceed five (5%) percent of the total floor area and which do not alter the character of the uses or increase the amount of required parking.
  5. Internal re-arrangement of a parking lot which does not affect the number of parking spaces or alter access locations or design.
  6. Changes related to items 1 through 5 above, required or requested by the Townships, Benzie County, or other state or federal regulatory agencies in order to conform with other laws or regulations; provided the extent of such changes does not alter the basic design and character of the special land use, nor any specified conditions imposed as part of the original approval.
- B. All amendments to a special land use permit approved by the Zoning Administrator shall be in writing. After approval by the Zoning Administrator, the applicant shall prepare a revised site plan showing the approved amendment. The revised site plan shall contain a list of all approved amendments and a place for the Zoning Administrator to sign and date all approved amendments.

C. An amendment to an approved special use permit that cannot be processed by the Zoning Administrator under subsection A above shall be processed in the same manner as the original special use permit application.

## **Section 12.7 Supplemental Site Development Standards**

In addition to meeting the standards specified in Section 12.04, those permitted uses and uses allowed by special use enumerated in any zoning district, if included below, shall be subject to the following conditions and requirements:

### **A. Sexually Oriented Business – General Requirements**

1. No sexually oriented business shall be permitted in a location in which any principal or accessory structure, including signs, is within one thousand (1,000) feet of any principal or accessory structure of another sexually oriented business.
2. No sexually oriented business shall be established on a parcel which is within one thousand (1,000) feet of any parcel residential zone.
3. No sexually oriented business shall be established on a parcel within one thousand (1,000) feet of any residence, park, school, child care organization, or place of worship, or other sexually oriented business. This distance shall be measured in a straight line from the nearest property line upon which the proposed sexually oriented business is to be located to the nearest property line of the residence, school, child care organization, place of worship, or other sexually oriented business.
4. The proposed use shall conform to all lot size and setback regulations of the zoning district in which it is located.
5. The proposed use must meet all applicable written and duly promulgated standards of the townships and other governments or governmental agencies having jurisdiction, and that to the extent required, the approval of these governments and/or governmental agencies has been obtained or is reasonably assured.
6. The outdoor storage of garbage and refuse shall be contained, screened from view and located so as not be visible from neighboring properties or adjacent roadways.
7. Any sign or signs proposed for the sexually oriented business must comply with the provisions of this Ordinance, and shall not otherwise include photographs, silhouettes, drawings, or pictorial representations of any type, or include animated or flashing illumination.

8. Entrances to the proposed sexually oriented business must be posted on both the exterior and interior walls, in a location clearly visible to those entering and exiting the business, and using lettering no less than four (4) inches in height that: 1) "Persons under the age of 18 are not permitted to enter the premises", and 2) "No alcoholic beverages of any type are permitted within the premises unless specifically allowed pursuant to a license duly issued by the Michigan Liquor Control Commission."
9. No product or service for sale or gift, or any picture or other representation of any product or service for sale or gift, shall be displayed so as to be visible from the nearest adjoining roadway or a neighboring property.
10. Hours of operation shall be limited to 8:00 AM to 12:00 AM.
11. All off-street parking areas shall be illuminated during all hours of operation of the sexually oriented business, and until one hour after the business closes.
12. Any booth, room or cubicle available in any sexually oriented business, excepting an adult motel, used by patrons for the viewing of any entertainment characterized by the showing of Specified Anatomical Areas or Specified Sexual Activities:
  - a. Is handicap accessible to the extent required by the Americans with Disabilities Act;
  - b. Is unobstructed by any door, lock or other entrance and exit control device;
  - c. Has at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times from the adjoining aisle of any occupant;
  - d. Is illuminated by a light bulb of wattage of no less than 25 watts;
  - e. Has no holes or openings in any side or rear walls.
13. Not have detrimental effect on property values.

#### **B. Review Procedures for Sexually Oriented Businesses**

The Planning Commission shall adhere to the following procedures when reviewing a special use application for a sexually oriented business:

1. If the Planning Commission determines that a special approval application for a sexually oriented business is not complete when it is first presented to the Planning Commission, it shall provide written notice by first class mail within three (3) business days of said determination detailing the items required to complete the application.

Upon payment of a new filing fee, the applicant may resubmit the amended application for review by the Planning Commission for completeness.

2. If the Planning Commission determines that the application is complete, it shall within sixty (60) days of said determination make and adopt specific findings with respect to whether the proposed sexually oriented business is in compliance with the standards designated in Sections 12.04 and 12.06 A and B. If the Planning Commission has not made and adopted findings of fact with respect to a proposed sexually oriented business and either approved or denied the issuance of a special approval for the same within sixty (60) days of its determination that a completed application has been filed, then the special approval shall be deemed to have been approved. Only upon approval, whether by the Planning Commission or upon automatic approval after the lapse of 60 days as provided herein may a special use permit be issued by the Zoning Administrator.
3. Prompt judicial review of adverse determination: If the Planning Commission denies a special use application for a sexually oriented business pursuant to the above paragraphs, then the applicant shall be entitled to prompt judicial review by submitting a written request to the Zoning Administrator, or designee. The townships shall within three (3) business days of the receipt of such written notice do the following:
  - a. File a petition in the Circuit Court for the County of Benzie seeking a judicial determination with respect to the validity of such denial and, in conjunction therewith, apply for a preliminary and permanent injunction restraining the applicant from operating the sexually oriented business in violation of the Zoning Ordinance;
  - b. Request that the application for issuance of a preliminary injunction be set for a show-cause hearing within five (5) business days or as soon thereafter as is possible after the filing of such petition. In the event the applicant appears at or before the time of such show-cause hearing, waives the notice otherwise provided by Michigan Court Rules, and requests that at the time set for such hearing the Court proceed to hear the case under applicable rules of civil procedure for the issuance of such permanent injunction on its merits, the township shall be required to waive its application for preliminary injunction and shall join in such request.

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

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

## **C. Telecommunication Towers and Alternative Tower Structures**

### **1. Purpose**

The purpose of this section is to establish general guidelines for the location of wireless telecommunications, alternative tower structures and antennas. The townships recognize that it is in the public interest to permit the location of wireless telecommunication towers, alternative tower structures and antennas within the townships. The townships also recognizes the need to protect scenic beauty of the townships from unnecessary and unreasonable visual interference, and that wireless telecommunication towers, alternative tower structures and antennas may have negative aesthetic impacts upon adjoining and neighboring uses. As such, this ordinance seeks to:

- a. Protect residential areas from potential adverse impacts from towers and Antennas;
- b. Encourage the location of towers in nonresidential areas;
- c. Minimize the total number of towers throughout the community;
- d. Encourage the joint use of new and existing tower sites rather than the construction of additional towers;
- e. Encourage developers of towers and antennas to configure them in a way that minimizes their adverse visual impact.
- f. Enhance the ability of providers of telecommunication services to provide such services to the community quickly, effectively, and efficiently.
- g. Consider the public health and safety of telecommunication towers and alternative tower structures; and
- h. Avoid potential damage to adjacent property from tower failure.

## 2. Application

The applicant must demonstrate that no existing tower, alternative tower, alternative tower structure or alternative technology not requiring the use of towers or alternative tower structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other alternative towers or alternative technology. Evidence submitted to demonstrate that no existing tower, or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- a. No existing towers or alternative structures are located within the geographic area which meets the applicant's engineering requirements.
- b. Existing towers or alternative tower structures are not of sufficient height to meet applicant's engineering requirements.
- c. Existing towers or alternative tower structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or alternative tower structures, or the antenna on the existing towers or alternative tower structures would cause interference with the applicant's proposed antenna.
- e. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or alternative tower structure or to adapt an existing tower or alternative tower structure for sharing are unreasonable. Cost exceeding new tower development are presumed to be unreasonable.
- f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
- g. The applicant demonstrates that an alternative technology that does not require the use of towers or alternative tower structures, such as a cable micro cell network using multiple low-powered transmitters/receivers attached to a wire line system is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
- h. The applicant will provide availability for emergency services communication antenna and equipment at no cost to the community.

### 3. Setbacks

The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the Planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served thereby:

- a. Towers must be setback a distance equal to at least one hundred point twenty five fifty (1.25) times the height of the tower from all property lines and the easements of public and private roads and private drives.
- b. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

### 4. Security Fencing

Towers and attendant accessory structures shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Planning Commission may waive any such requirements, as it deems appropriate.

### 5. Landscaping

The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however that the Planning Commission may waive such requirements if the goals of this ordinance would be better served thereby.

- a. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide and six (6) feet high outside the perimeter of the compound.
- b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
- c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

### 6. State or Federal Requirements

All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to

regulate towers and antennas. If such standards and regulations are changed, the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower and antenna at the owner's expense.

## 7. Aesthetics

Towers and antennas shall meet the following requirements:

- a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
- b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- d. Where a feasible alternative exists, towers, alternative tower structures and supporting structures shall not utilize a power source which generates noise able to be heard by a person of normal aural acuity at adjoining property lines or public property; however this section shall not be construed as limiting the use of temporary generators or similar devices used to create power during period of interruption of the primary power source.

## 8. Lighting

Towers shall not be artificially lighted unless required by the FAA or other applicable authority. If lighting is required, the lighting alternative and design chosen must cause the least disturbance to the surrounding views.

## 9. Compliance with Codes

Antenna and metal towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical connections and wiring and as to

structural integrity with all applicable state and local building codes and the applicable standards for towers published by the Electronic Industries Association, as amended from time to time.

10. Interference with Residential Reception

Towers shall be located so that they do not interfere with television and radio reception to neighboring residential areas.

11. Signs

No signs other than signs required pursuant to federal, state, or local law or ordinance shall be allowed on an antenna or tower.

12. Spacing-Towers

Towers shall be located no closer than five (5) miles from an existing telecommunication tower or alternative tower structure, as measured in a straight line between the base of the existing tower and proposed base of the proposed tower.

13. Spacing-Residences

A tower shall not be located within two hundred (200) feet or three hundred (300) percent of the height of the tower, whichever is greater, of a single family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons. Distance for the purpose of this section shall be measured from the base of the tower structure to the lot line of the single family or multiple family dwelling unit, church, school or other structure normally used and actually used for the congregation of persons.

14. Removal of Abandoned Antennas and Towers

Any antenna or tower that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety days of receipt of notice from the township notifying the owner of such abandonment. Along with removal, the owner shall restore the site of the antenna or tower to its original condition prior to location of the antenna or tower subject to reasonable wear and tear. Failure to remove an abandoned antenna or tower within ninety (90) days shall be grounds to remove the tower and antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not be effective until all users cease using the tower. The Planning Commission may require the applicant to file a bond equal to the reasonable cost of removing the tower, antenna, alternative tower structure or other supporting structure(s) as a condition of a special approval given pursuant to this section.

## **D. Commercial Wind Energy Conversion Systems (WECS)**

### **1. Intent**

It is the intent of this section to allow Commercial WECS, as defined in Article III, Section 3.34, General Provisions, in all Land Use Districts as a special use. An application for a Commercial WECS shall contain the following requirements:

- a. Documentation establishing the legal mechanism for siting the WECS, that is, by easement, license, lease or by virtue of ownership of the parcel.
- b. A site plan showing the locations of all existing overhead electrical transmission wires or distribution lines whether utilized or not, and the location of each WECS with its specific dimensions.
- c. A project description showing for each WECS its height above grade, diameter of the rotor and tower type.
- d. Construction plans and specification for each proposed WECS and its anchoring system certified as structurally safe by a manufacturer registered with the State of Michigan.
- e. A statement of the survival wind speed for each WECS.
- f. In the case of an interconnected WECS, proof of written notice to the local electric utility company of the proposed interconnection and the utilities response.

### **2. Size and Setbacks**

- a. The minimum parcel size shall be two (2) acres for each WECS. This minimum size requirement shall supersede all other parcel size requirements for the land use district within which the WECS is proposed.
- b. A WECS shall be setback a distance equal to at least one hundred point twenty five (1.25) times the height of each WECS, measured from all property lines and the easements of public and private roads and private drives.

### **3. Accessory Structures**

- a. All electrical lines or wires extending substantially horizontally above the ground between a WECS and an accessory building or structure or

between two or more WECS shall be at least eight (8) feet above the ground at all points unless buried underground.

#### 4. Construction Standards

- a. A Commercial WECS shall be a free-standing structure without guy wires, cables or anchoring mechanisms extending beyond the mounting foundation of the WECS.
- b. The maximum level of noise generated by any WECS shall not exceed 55 dB(A) as measured on the dB(A) scale measured at the lot line. The owner<sup>3</sup> and operator shall provide certification after construction and upon request of the townships, re-certification that such decibel is being maintained.
- c. All WECS must comply with all state construction and electrical codes. Interconnected WECS shall comply with the applicable utility, Michigan Public Service Commission and Federal Energy Regulatory Commission interconnection standards.
- d. The WECS rotor shall be located on the tower or support such that the minimum blade clearance above the ground level at the tower location is not less than twenty (20) feet.
- e. Each WECS shall comply with all uniform or national building, electrical, mechanical and fire codes.
- f. Vibration due to the WECS at the parcel boundaries shall not be perceptible.
- g. Towers shall be designed and constructed in such a manner that Climbing devices are only accessible with a separate ladder to a height of twelve (12) feet.
- h. The entire WECS including turbines, alternators, generators and interconnect systems shall be filtered and/or shielded to prevent the emission of generated radio frequency energy which would cause any interference with radio and/or television broadcasting or reception or which would cause unreasonable interference with the operation of cell phones or other wireless devices and shall comply with Federal Communication Commission rules 47 CFR, parts 15 and 18 including all relevant parts thereof.
- i. No WECS shall be installed in a location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television or wireless phone or other personal communication systems

would produce interference to electromagnetic transmission or reception. No WECS shall be installed along the major axis of an existing microwave, UHF or VHF communication link where its operation is likely to produce interference with the electromagnetic transmission or reception of signals.

- j. No displays, advertising signs or other identification of any kind intended to be visible from the ground or other structures shall be permitted except as required for emergency purposes.
- k. Each WECS shall be painted with non-reflective paint of an unobtrusive color designed to minimize off-site visibility of the WECS.
- l. Lighting for each WECS shall comply with the legal minimums established by the Federal Aviation Administration (FAA), the Michigan Aeronautical Commission (MAC) or their successor agencies.
- m. All new power transmission lines shall be installed underground from The base of the WECS to a point within 50 feet of the nearest overhead utility distribution circuit. Only one (1) utility connection exit shall be permitted for a Commercial WECS. Further, setbacks from any existing overhead electrical lines shall be equal to and not less than the height of the WECS unless the local utility requirements are more restrictive, then they shall apply.
- n. Existing site vegetation shall be preserved to the maximum extent practical.

#### 5. Use Standards

- a. A WECS shall be removed by the owner or operator or the property owner within six (6) months of being abandoned. For the purposes of this paragraph, abandonment is defined as continuous and uninterrupted non-use for a period of six (6) months or more, without cause attributable to damage, repairs, maintenance or upgrades.
- b. A removal bond or other performance guarantee for the maintenance or removal of each WECS and all accessory structures may be recommended by the Planning Commission and approved by the Township Boards.
- c. The Special Use application shall be signed by both the owner and operator of the WECS, who shall also be responsible jointly for the operation and maintenance of the WECS.