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**STATE OF MICHIGAN**

**IN THE SUPREME COURT**

MSC No. 165770
COA No. 362635
Lapeer CC No. 21-054778-AA

**RONALD A. JOSTOCK and SUSAN J. JOSTOCK,**
Plaintiffs-Appellees
v

**MAYFIELD TOWNSHIP, and MAYFIELD TOWNSHIP BOARD OF TRUSTEES,**
Defendants,

and

**A2B PROPERTIES, LLC, a Michigan Limited Liability Company,**
Defendant-Appellant

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# AMICUS CURIAE BRIEF SUBMITTED BY THE MICHIGAN MUNICIPAL LEAGUE AND THE GOVERNMENT LAW SECTION PURSUANT TO THE ORDER INVITING AMICUS BRIEFS

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## STATEMENT OF BASIS OF JURISDICTION

The Amici Michigan Municipal League (MML) and Government Law Section (GLS) take no position on the basis of jurisdiction of the Supreme Court.

## STATEMENT OF AMICUS CURIAE INTEREST[1]

The Michigan Municipal League (MML) is a non-profit Michigan corporation and is an association representing political subdivisions, predominantly cities and villages. MML's purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of approximately 566 Michigan cities and villages, many of which are also members of the Michigan Municipal League Legal Defense Fund. The purpose of the MML-Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance. The Michigan Municipal League operates the Legal Defense Fund through a board of directors, whose membership includes the president and executive director of MML, and the officers and directors of the Michigan Association of Municipal Attorneys: Lauren Trible-Laucht, city attorney, Traverse City; Steven D. Mann, city attorney, Milan; Jill H. Steele, city attorney, Battle Creek; Ebony L. Duff, city attorney, Oak Park; Rhonda Stowers, city attorney, Davidson; Nick Curcio, city attorney, multiple Southwest Michigan municipalities; Thomas R. Schultz, city attorney, Farmington and Novi; Amy Lusk, city attorney,

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[1] No party in this case made any monetary contribution to the Michigan Municipal League or the Government Law Section in exchange for authoring this brief. Neither the Appellees nor the Appellant or any other party involved in this case made a monetary contribution to the MML or GLS. MCR 7.312(H)(2).

Saginaw; Suzanne Curry Larsen, city attorney, Marquette; Laurie Schmidt, city attorney, Saint Joseph; Christopher Johnson, general counsel of the MML; Robert Clark, mayor, Monroe, president of MML; and Daniel P. Gilmartin, CEO and executive director of MML.

The Government Law Section of the State Bar of Michigan (GLS) is a voluntary membership section of the State Bar of Michigan, comprising in excess of 1,000 attorneys who generally represent the interests of government corporations, including cities, villages, townships and counties, board and commissions, and special authorities. Although the Section is open to all members of the State Bar, its focus is centered on the laws, regulations, and procedures relating to public law. The Government Law Section provides education, information, and analysis about issues of concern to its membership and the public through meetings, seminars, the State Bar of Michigan website, public service programs, and publications. The Government Law Section is committed to promoting the fair and just administration of public law. In furtherance of this purpose, the Government Law Section participates in cases that are significant to governmental entities throughout the State of Michigan. The Section has filed numerous *amicus curiae* briefs in state and federal courts. The position expressed in this *amicus curiae* brief is that of the Government Law Section only and is not the position of the State Bar of Michigan.

The governing bodies of the MML and GLS have authorized the attorneys appearing on this brief to file an *amicus curiae* brief in response to the invitation by the Supreme Court expressed in its Order granting the Application for Leave to Appeal dated October 18, 2023, and the Order Granting the Joint Motion of the GLS and MML to File



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an Amicus Curiae Brief, dated February 7, 2024. The Section Council of the GLS voted 17-0 at a regular meeting on January 6, 2024, to authorize the amicus curiae brief, with Gerald Fisher and Eric Williams abstaining.

## STATEMENT OF QUESTIONS PRESENTED

**I. WHETHER MCL 125.3405 ALLOWS FOR THE CONDITIONAL REZONING APPROVAL OF USES NOT OTHERWISE AUTHORIZED IN A PARTICULAR ZONE?**

| | |
|---|---|
| TRIAL COURT SAID: | "NO" |
| COURT OF APPEALS SAID: | "NO" |
| APPELLEES SAY: | "NO" |
| APPELLANT A2B SAYS: | "YES" |
| AMICI MML AND GLS SAY: | "NO" |

**II. WHAT MECHANISM WAS USED TO AUTHORIZE THE CURRENT [LONG-EXISTING] USE AS A DRAGWAY?**

| | |
|---|---|
| TRIAL COURT SAID: | "NONCONFORMING USE AND CONDITIONAL REZONING AGREEMENT" |
| COURT OF APPEALS SAID: | "NONCONFORMING USE AND CONDITIONAL REZONING AGREEMENT" |
| APPELLEES SAY: | "NONCONFORMING USE AND CONDITIONAL REZONING AGREEMENT" |
| APPELLANT A2B SAYS: | "NONCONFORMING USE AND CONDITIONAL REZONING AGREEMENT" |
| AMICI MML AND GLS SAYS: | "NONCONFORMING USE AND CONDITIONAL REZONING AGREEMENT" |



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**WHETHER THAT MECHANISM IS AVAILABLE TO AUTHORIZE OR EXPAND THE USE OF THE APPELLANT'S PROPERTY?**

TRIAL COURT SAID: "NO"

COURT OF APPEALS SAID: "NO"

APPELLEES SAY: "NO"

APPELLANT A2B SAYS: "YES"

AMICI MML AND GLS SAY: "NO"

**III. WHETHER OPERATION OF A DRAGWAY IS AN AUTHORIZED USE UNDER C-2, OR IF THE EXISTING C-2 DISTRICT REGULATIONS WERE INTERPRETED BY MAYFIELD TOWNSHIP TO AUTHORIZE THE DRAGWAY USE?**

TRIAL COURT SAID: "NO"
[THE CONDITIONAL REZONING IS INVALID]

COURT OF APPEALS SAID: "NO"
[THE CONDITIONAL REZONING IS INVALID]

APPELLEES SAY: "NO"
[THE CONDITIONAL REZONING IS INVALID]

APPELLANT A2B SAYS: "YES"
[THE CONDITIONAL REZONING IS VALID]

AMICI MML AND GLS SAY: "YES"
[VALIDITY SHOULD BE DETERMINED BY THE TOWNSHIP ZONING BOARD OF APPEALS]



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**IV. WHETHER THE TOWNSHIP'S CONDITIONAL REZONING OF THE APPELLANT'S PROPERTY IS VALID UNDER MCL 125.3405 TO PERMIT THE PROPOSED NEW DRAGWAY?**

| | |
|---|---|
| TRIAL COURT SAID: | "NO" |
| COURT OF APPEALS SAID: | "NO" |
| APPELLEES SAY: | "NO" |
| APPELLANT A2B SAYS: | "YES" |
| AMICI MML AND GLS SAY: (subject to Issue III) | "NO" |



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## INTRODUCTION

The Amici Michigan Municipal League and Government Law Section accepted the Court's invitation to file an amicus brief in this case to address the issues outlined by the Court in its October 18, 2024 Order granting leave to appeal. In general terms, Amici have focused on the importance of construing section MCL 125.3405 in the context of the MZEA as a whole, and to attempt a clarification on the operation of the this statutory section for the benefit of property owners, developers, planners, and local governmental officials, as well as the bench and bar.

If MCL 125.3405 is construed to permit the local unit of government to authorize by condition a use not otherwise permitted in the zoning district, the effect would be to authorize a second and materially different means of amending important terms or map designations in the zoning ordinance - with no requirement for planning commission or public involvement. Such a construction creates a serious tension with the extensive and long-effective procedure for enacting and amending a zoning ordinance, and a serious conflict between MCL 125.3405 and the traditional zoning process for rezoning which is detailed in the numerous sections of the MZEA.

## STATEMENT OF FACTS

The amici MML and GLS accept the "Statement of Facts" presented by the Plaintiffs-Appellees.



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## ARGUMENT

### I. MCL 125.3405 DOES NOT ALLOW FOR THE CONDITIONAL REZONING APPROVAL OF USES NOT OTHERWISE AUTHORIZED IN A PARTICULAR ZONE.

#### Standard of Review

The Court reviews de novo questions of statutory interpretation.[2]

#### A. Introduction

Subsection (1) of MCL 125.3405, authorizes the approval of a certain use and development of the land as a *condition* to a rezoning of the land or an amendment to a zoning map. The first issue presented in this case is whether the legislature intended to enable a "condition" to a rezoning or zoning ordinance amendment to change the zoning ordinance by permitting a use of land not otherwise authorized in the relevant zoning district; or, did the legislature intend the "condition" to be solely a *limitation* or *restriction* on the uses and development already authorized in the zoning district.

This issue must be resolved by an exercise of statutory construction, an exercise having as its frequently clarified goal of ascertaining legislative intent.[3] The rules of construction dictate that, if legislative intent can be gleaned by reading the words of the statute, the analysis ends there. Unfortunately, in spite of urgings to the contrary by some in this case, it is the view of the Amici that there is insufficient clarity in the language

[2] *Fraser Township v Haney*, 509 Mich 18, 23, 983 NW2d 309 (2022).
[3] *People v Koonce*, 466 Mich 515, 518, 648 NW2d 153 (2002).

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employed in the statute to discern a clear meaning on whether a "condition" may include the authorization of a use of land not otherwise permitted in the relevant zoning district.

With insufficient clarity in the statute, the cavalry must be summoned to employ the *rules of statutory construction,* to be applied for the purpose of ascertaining legislative intent. In carrying out its traditional function of attempting to assist the Court in cases such as this, the Amici will offer several considerations that apply in this zoning context, and recommend that the "condition" referenced in MCL 125.3405 should be interpreted to permit the property owner and local unit of government to agree on a *limitation* or *restriction* on the uses and development already authorized in the zoning district, but not to permit an agreement on an expansion of the uses and development authorized in the district.

**B. Reading MCL 125.3405 in the Context of the Michigan Zoning Enabling Act as a Whole**

Reading one section of a legislative act in the context of the *act as a whole* is an important and recognized methodology for gleaning the meaning of an otherwise unclear statute.[4] MCL 125.3405 is by no means a statutory island. Rather, it is a relatively terse part of the lengthy and complex Michigan Zoning Enabling Act, MCL 125.3101, *et seq,* ("MZEA"), which is one of the most powerful state land use laws, adopted approximately one hundred years ago as part of a national effort to grant local governments the authority to establish and maintain land-use order and protect the public health, safety,

[4] *Honigman v City of Detroit,* 505 Mich 284, 295, 952 NW2d 358 (2020).

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and welfare.[5] The MZEA, along with the Michigan Planning Enabling Act, MCL 125.3801, *et seq* ("Planning Act"), provide numerous provisions which seek to establish and maintain good planning and methodical land-use organization in communities.[6]

These two comprehensive zoning and planning acts make provision for, among many other things: the creation of a "planning commission" in the local government,[7] the adoption of a "master plan" to guide development throughout the community,[8] the detailed process, including public hearing, for the planning commission to prepare and recommend a zoning ordinance, complete with text and maps, to establish and amend the permitted uses of private land within the community,[9] and for the local legislative

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[5] *See Village of Euclid v Ambler Realty Co,* 272 US 365, 386-387, 47 S Ct 114, 54 ALR 1016, 71 LEd 303 (1926). (Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.); parenthetical language cited in *Cady v City of Detroit,* 289 Mich 499, 286 NW 805 (1939).

[6] For example, MCL 125.3201(1) provides: A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

[7] Planning Commission creation, MCL 125.3811, et seq.

[8] Adoption of Master Plan, MCL 125.3831, et seq.

[9] Preparation of Zoning Ordinance and amendments, MCL 125.3305, et seq.

body of the community (such as the township board or city council) to adopt the zoning ordinance and amendments.[10]

The lengthy and deliberative process of zoning ordinance and map adoption and amendment is mandated to be well publicized, and provide property owners with considerable opportunity to study the zoning map(s) and ordinance provisions, and to be heard before both the planning commission and legislative body before the zoning ordinance and amendments are adopted. Changes in zoning regulations applicable to individual properties may be initiated by a property owner, and are processed by employing the same detailed and deliberative process described above.

This planning and adoption procedure was utilized for the better part of the twentieth century, and continues to govern into the twenty-first century. In 2006, the Michigan Legislature enacted Act 110 of that year which comprehensively reorganized zoning regulations in Michigan, with only a few substantive amendments. Until 2006, zoning enabling regulations had been provided in three separate zoning acts for cities and villages, townships, and counties. The 2006 comprehensive act unified the regulations for all of these local governments, and in the process created MCL 125.3405, which is the subject of this case.

MCL 125.3405 does not apply to the initial creation of a zoning ordinance or map within a community, or for the establishment of the regulations applicable within and across the several zoning districts. Nor is it applicable when the local government itself

[10] Enactment of Zoning Ordinance and amendments, MCL 125.3401, et seq.



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initiates a change of zoning. Rather, it becomes relevant only when *a property owner* seeks a rezoning or amendment to the zoning map. It is in the latter process that the property owner may "voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map." MCL 125.3405(1).

In light of the long-established and utilized deliberative procedure for establishing and amending new zoning provisions, if a "condition" approved under MCL 125.3405 could authorize a use of land *not otherwise permitted* in the zoning district, this would create *two separate procedures for amending the uses and developments under a zoning ordinance* for a particular property: **(1)** The traditional procedure established and utilized for establishing and amending the zoning ordinance, with a planning commission public hearing and recommendation to the legislative body, public notice and participation in the process, and ultimate enactment by the legislative body; and **(2)** The single-step procedure referenced in MCL 125.3405, in which "[a]n owner of land may voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map."

The MZEA makes no mention of two procedures for amending a zoning ordinance to authorize a *new* land use permissible on a property. For such purposes, the only *clearly expressed* authorization is meticulously organized and detailed in several sections of both the MZEA and Planning Act for amending the zoning ordinance to authorize a land use



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within a district.[11] Again, these two acts mandate a lengthy process of planning commission hearing and recommendation, public notice, public participation, and legislative body adoption.

This traditional, lengthy process *requires* a recommendation of the planning commission, and notice and an opportunity for public participation, yet the process under MCL 125.3405 *requires* neither. In other words, if it were determined that a new land use could be approved as part of the process under MCL 125.3405, not only would it create a *duplicative process* for rezoning, it would serve as a means for an *end around* the deliberative and very transparent planning and zoning process otherwise required under the MZEA and Planning Act. This would allow abrupt decision making without the necessity of employing all of the safeguards for the public, and without the careful deliberation of the planning commission. An example of the potential for such an abrupt process is illustrated in the hypothetical stated below.

This hypothetical demonstrates the shortcomings that could befall the property rights of neighbors, and undermine planning in the community at large. It is not suggested that the facts presented in this hypothetical precisely track the Mayfield Township conditional rezoning. However, it contains facts that may well unfold under the terms of MCL 125.3405 – facts similar to procedures which are likely to have already occurred since 2006 in the absence of appropriate guardrails stated in the statute.

> Assume there are two residential zoning districts in Clarkston Township: R-1, which restricts properties to single family homes, and R-2, which allows multi-family residential buildings. R-2 is the only zoning district in

[11] See generally, MCL 125.3306 through MCL 125.3403.



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Clarkston that permits structures to exceed two stories in height, allowing apartment buildings to be as high as 5 stories.

Brent owns a 15-acre parcel on the edge of an R-1 zoning district., This parcel abuts an R-2 district. Brent's 15 acres is full of trees and wetlands, and has a pristine stream running through it.

Brent desires to use the 15 acres to construct three five-story apartment buildings. Since his property is located in the R-1 zoning district, such development is not permitted. So Brent has filed an application to rezone his property to the R-2 classification. The zoning application is scheduled for hearing before the Clarkston Planning Commission, and 300 nearby residents from the R-1 and R-2 districts appear and fervently object to the development of Brent's property with three five-story apartments, objecting to the height as well as the anticipated destruction and impairment of the trees, wetlands, and stream, particularly considering the extensive paved parking lots that would be needed to serve the apartments. The Planning Commission then studies the likely impact of the proposed development on the natural resources, utilizing the services of an expert. At the conclusion of the hearing, the Planning Commission votes to recommend to the Township Board a denial of the rezoning, citing the impact on the natural resources.

Consideration by the Township Board does not require a public hearing under MZEA, but all of the residents are satisfied with the Planning Commission's recommendation.

In the next thirty days, Brent meets with the Township Supervisor and two other influential Township Board members (less than a quorum of the seven-member board, and thus not an open meetings act violation), and suggests as a compromise a development that would allow only a single, 15-story apartment building to be built on his property. This would significantly reduce the area of land that would be disturbed. The three Board members agree that this would be a good compromise, and would preserve considerable natural resources. A consensus is reached that Brent should offer a *conditional rezoning* proposal under MCL 125.3405 with the single 15-story apartment, to be considered by the Township Board along with the traditional rezoning application to change the 15 acres to an R-2 zoning classification.

Upon receiving Brent's conditional rezoning proposal, believing that a good compromise has been worked out, the Supervisor places the rezoning proposal on the agenda of the Township Board with no notice to local



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> residents. None of the residents from the two zoning districts attend the meeting at which this agenda item involving Brent's proposal is scheduled. At the meeting, the Supervisor carefully explains to the rest of the Board that a rezoning of Brent's property to permit three five-story apartment buildings would be totally unacceptable, but that Brent has submitted a proposed compromise under MCL 125.3405 which the Board is able to immediately approve. After the Supervisor explains the proposal for a 15-story building that would preserve natural resources, with no further fanfare, one of the three Board members who had met with Brent makes a motion to approve the rezoning in accordance with the conditional rezoning proposal, and the motion is seconded by the other Board member who had attended the meeting with Brent. The Supervisor then calls for a vote, and the motion is approved on a 4-3 vote.

Of course, this hypothetical presents a scenario with details which would not frequently occur. However, as a practical matter, the property owner seeking a rezoning may be become aware of public dissatisfaction with a proposed rezoning, and an adverse planning commission reaction – thus giving rise to the thought of a conditional rezoning proposal under MCL 125.3405 – until after the planning commission conducts a public hearing and makes its recommendation to the legislative body. Certainly, conditional rezoning under MCL 125.3405 could be undertaken in accordance with all of the substantive and procedural requirements in the MZEA for rezoning property and amending the zoning ordinance. However, conditional rezoning under MCL 125.3405, on its own, does not *require* compliance with all of the notice and hearing rules in the MZEA, even where, as in the present case, a conditional rezoning of property was approved to authorize a use not otherwise permitted in the zoning District.

There is little evidence that the legislature had any intent to permit an amendment of the zoning ordinance or map by conditional rezoning under MCL 125.3405. Also, compliance with the detailed and transparent process as traditionally required has been



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deemed to be important "Indeed, this Court has consistently held that the procedures outlined in the Zoning Enabling Act must be strictly adhered to."[12] Conditional rezoning under MCL 125.3405 should not be construed to obviate, and essentially create a conflict with, the detailed rules in the MZEA traditionally applicable to a "rezoning" of property.

If conditional rezoning under MCL 125.3405 is construed to include and authorize the approval of a use or development not otherwise permitted in the zoning district, such new use or development could be approved in the absence of a full planning commission process and public participation. MCL 125.3405 creates the concept of 'offer and acceptance' with regard to the certain use or development being proposed by the property owner. In other words, as it was treated by the Court of Appeals, MCL 125.3405 calls for the creation of an "agreement."[13] This is critical because the "rezoning" can be *procedurally isolated* from the "agreement" portion of the overall process. Thus, although the agreement must be approved as part of a traditional "rezoning" under the MZEA, analyzing the requirements for entering into the "agreement," there is no requirement on the *timing* of the offer made by the property owner. If the offer is made to the township board after planning commission review and recommendation, and after the required public hearing on the traditional rezoning, as in the hypothetical above, MCL 125.3405 permits the offer and acceptance process *without the protections mandated as part of the traditional rezoning component of the process*. Thus, there is nothing in MCL 125.3405 that triggers new planning commission review and recommendation on the "agreement"

[12] *Korash v. City of Livonia*, 388 Mich. 737, 746, 202 N.W.2d 803 (1972).
[13] E.g., Court of Appeals Slip Opinion, p 6.



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component, or triggers a new public hearing at which the public could be educated and have input, and there is no prohibition on adding the "agreement" at the eleventh hour of the local government's consideration – after the traditional rezoning process has been conducted on a conventional application for rezoning. Of course, the Court is not able to amend the statute to require these protections, so the statute must be scrutinized and construed as the legislature enacted and intended it.

In construing the statute, it is appropriate to consider the history of the MZEA, with an eye toward maintaining a practice consistent with common sense.[14] Examining the application of MCL 125.3405 in the context of the MZEA as a whole, the absence of an express statement of a legislative intent to create a second, *duplicative,* but potentially *untransparent*, process for creating a new use authorization in a zoning district, and the conflict between the traditional ordinance amendment process and the conditional rezoning approval process, would suggest the absence of legislative intent to permit the authorization of a new use of land as a "condition" to a rezoning or zoning map amendment.

All of these considerations lead to the conclusion that the appropriate construction of MCL 125.3405 in the context of the MZEA as a whole, consistent with gleaned legislative intent, is that this statute authorizes a local unit of government to impose a *limitation* or *restriction* on the use and development of property permitted in the district

[14] *Honigman v City of Detroit,* 505 Mich 284, 295, 952 NW2d 358 (2020).



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as part of a rezoning, but does not authorized the approval of a new use not otherwise permitted in the zoning district.

### C. Discerning the Purpose for the Relatively Recent Addition of MCL 125.3405 to the MZEA.

The Mayfield Township's Professional Planner provided an insight on the scope of the land use authorization when a property is rezoned without condition to a particular classification - characterized by the Planner as a "straight rezoning." Explaining her general practice, the Planner pointed out that:

> Straight rezoning to C-2, if granted, opens the site up to all uses allowed in the C-2 district, such as a boarding house, restaurant, and adult uses, even if the applicant promises a different use. I advise municipal clients who are entertaining a straight rezoning request not to consider if the particular proposed use makes sense at that location, but whether any of the uses in that zoning district make sense, because once property is rezoned, the owner can use it for any of the uses allowed in that district.[15]

This insight is critical, and parallels other available evidence on the purpose for which MCL 125.3405 was enacted. The caution expressed by the Mayfield Professional Planner was confirmed in the 2009 edition of the text on Michigan Zoning, Planning, and Land Use, published three years following the enactment of MCL 125.3405 by the Institute of Continuing Legal Education ("ICLE").[16] Tracking the same point expressed in the quoted affidavit of the Township's Planner, above, the ICLE text states that, ". . .

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[15] Affidavit of Carmine Avantini, Defendant-Appellant's Appendix, Tab 12, p 55, ¶ 5. Planner Avantini also expressed her opinion that "Conditional rezoning potentially allows a use that might not otherwise be allowed in the current zoning district . . .". Id, at p 55, ¶ 8.

[16] Michigan Zoning, Planning, and Land Use, 2009 Edition, Chapter 4, §4.8, Conditional Rezoning, attached to this brief as Exhibit A. This chapter was written by one of the co-authors of this Amicus brief, obviously long before the present case arose.

leading up to the enactment of what is now MCL 125.3405, communities in recent years, barring exceptional circumstances, generally took the conservative view that, if granted, a rezoning entitled a property owner to all uses permitted in the zoning classification . . . This circumstance proved frustrating in many instances, particularly where both the property owner and the community were in full agreement that, if the development could be *restricted* to only specified uses or particular improvements, perhaps with a site plan, the rezoning would be in the public interest . . . The permission granted in MCL 125.3405 represents one means of attempting to avoid some of the frustration caused by the total void of authority to create binding conditions upon a rezoning."[17] The ICLE text on this subject ends by clarifying that the short time following the statute's enactment had not yet allowed judicial guidance on the issue, but it would appear that:

> [T]he conditional rezoning provisions are intended to allow the imposition of a *restriction* upon the uses and development to be permitted, and not intended to authorize uses or development not otherwise permitted. (Emphasis in original text).[18]

Clearly, the ICLE text does not represent binding precedent. However, coupled with the opinion of the Township's Professional Planner, quoted above, this text provides a rational explanation that the legislature's motivation and intent in enacting MCL 125.3405 was solely to allow the establishment of a condition on a rezoning that would *limit* or *restrict* development to a certain approved use already permitted in the zoning district.

**D. <u>Achieving Internal Harmony Between MCL 125.3405 and the MZEA.</u>**

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[17] Id, at pp 124-125. (Emphasis supplied).
[18] Id.



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An important rule of construction is attempting to harmonize the language of a statutory section with balance of the Act in which it appears. "[P]rovisions of a statute that could be in conflict must, if possible, be read harmoniously."[19] Stated in other words, "[w]e construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature."[20]

If MCL 125.3405 is construed to permit the local unit of government to authorize by condition a use not otherwise permitted in the zoning district, the effect would be to authorize a second and materially different means of amending important terms or map designations in the zoning ordinance – with no requirement for planning commission or public involvement. Such a construction creates a serious tension with the extensive and long-effective procedure for enacting and amending a zoning ordinance, and a serious conflict between MCL 125.3405 and the traditional zoning process for rezoning which is detailed in the numerous sections of the MZEA.

The most straightforward measure for harmonizing MCL 125.3405 with the MZEA is to construe the conditional zoning section in a manner that makes it clear that a "condition" may only establish a *limitation* or *restriction* on the use or development of land being rezoned, and may not authorize a use or development which is not otherwise permitted in the zoning district.

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[19] *Nowell v Titan Ins Co*, 466 Mich 478, 482, 648 NW2d 157 (2002). The Court went on to state that, "In . . . case of tension, or even conflict, between sections of a statute, it is our duty to, if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them. Id, at 483.

[20] *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159, 627 NW2d 247 (2001).



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### E. Examining the Potential Adverse Impact on Rights Traditionally Relied on by Property Owners.

In the purchase of property, consumers materially rely on zoning, both in terms of value and quality of life. They assume a stable continuation of the existence of the zoning restrictions on *neighboring properties*. This point was recognized in an often-quoted dissenting opinion of Justice William Rehnquist, written in a case alleging that a zoning regulation amounted to a taking of private property without just compensation. The important insight provided by Justice Rehnquist was stated as follows:

> [t]ypical zoning restrictions may, it is true, so limit the prospective uses of a piece of property as to diminish the value of that property in the abstract because it may not be used for the forbidden purposes. But any such abstract decrease in value will more than likely be at least partially offset by ***an increase in value which flows from similar restrictions as to use on neighboring properties.*** All property owners in a designated area are placed under the same restrictions, not only for the benefit of the municipality as a whole but also for the common benefit of one another.[21]

The essential point is that individuals seriously rely on stable zoning regulation to justify their acquiescence to restrictions on their own properties, and to otherwise protect their property interests. They are willing to be restricted in the use of their property based on the assumption of a reciprocal obligation of neighbors to be subject to the same restrictions. All owners benefit on a reciprocal basis.

Traditional zoning is, of course, subject to change. However, such change is rare and, for present purposes, is guarded by important protective mechanisms, including involvement of the community's planning commission, as well as the obligation of the

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[21] *Penn Central Transp Co v New York City*, 438 US 104, 139-140, 98 S Ct 2646, 57 LEd2d 631 (1978) (Rehnquist, J., dissenting). (Emphasis supplied).

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community to provide notice to, and allow participation of, members of the public in any consideration of a change of a zoning regulation. These important protections are not required as part of the process of conditional rezoning under MCL 125.3405. Citing a national municipal law treatise, the Court has had the opportunity to consider zoning as a stabilizing force which should not be changed without due care:

> Amendment or repeal of zoning laws should be just as carefully considered and prepared, perhaps more so, since private arrangements, property purchases and uses, the location of business in commercial or industrial zones, and the making of homes in residential districts, occur with reasonable anticipation of the stability of existing zones. Consequently, procedure in the amendment of zoning ordinances ordinarily embraces safeguards similar to or greater than those of the original zoning, against unreasonable, capricious, needless and harmful rezoning or changes of use classification, including petitions, notices, protests, hearings, study by commissions or committees, and initiative and referendum of amending measures. *** Since the purpose of zoning is stabilization of existing conditions subject to an orderly development and improvement of a zoned area and since property may be purchased and uses undertaken in reliance on an existing zoning ordinance, an amendatory, subsequent or repealing zoning ordinance must clearly be related to the accomplishment of a proper purpose within the police power. Amendments should be made with utmost caution and only when required by changing conditions; otherwise, the very purpose of zoning will be destroyed. In short, a zoning ordinance can be amended only to subserve the public interest.[22]

In some cases, a conditional zoning agreement will be processed concurrent with the traditional zoning request, and due care, deliberation, and transparency may be afforded. However, as the hypothetical presented in Part B of this Argument reveals, there is no requirement in MCL 125.3405 to process a conditional rezoning request in a manner that includes all of these safeguards. Indeed, MCL 125.3405 should be construed

[22] *Raabe v City of Walker*, 383 Mich 165, 177-178, 174 NW2d 789 (1970).

to *require*, rather than *avoid*, compliance with all of the statutorily prescribed procedures in the MZEA for rezoning property and amending a zoning ordinance. By not including these protections in MCL 125.3405, the legislature implicitly expressed its intent that this section of the statute should be employed for the establishment of limitations and restrictions, and not as a shortcut to authorize new land uses otherwise prohibited in the zoning district. The plain language of MCL 125.3405(1) authorizes a local unit of government to "approve certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map" without any express modification of the MZEA provisions on rezoning land or amending a zoning map.

Clearly, permitting the authorization of a certain land use and development not otherwise permitted in the zoning district under MCL 125.3405 creates an important tension, indeed the potential for a significant conflict with, and undermining of, the safeguards, including planning commission recommendation and public participation, mandated as part of traditional rezoning. The most appropriate means of resolving this tension and conflict is to construe MCL 125.3405 as being intended by the legislature to authorize the local governmental body to conditionally rezone property by imposing a *limitation* or *restriction*, and not an *expansion*, of the use or development otherwise permitted in the district.

## II. THE MECHANISM USED TO AUTHORIZE THE CURRENT [LONG-EXISTING] USE AS A DRAGWAY WAS THE RECOGNITION OF A PRIOR NONCONFORMING USE, WHICH CANNOT BE EXPANDED

The mechanism used to authorize the current use as a dragway "since 1968" was



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"a nonconforming use permit" which the appellant "attempted to expand" without success. Mayfield Township considered the expansion "an unlawful enlargement of the permitted nonconforming use."[23]

> An existing nonconforming use is a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date.[24]

However, "[n]onconforming uses may not generally be expanded, and one of the goals of local zoning is the gradual elimination of nonconforming uses."[25]

These principles are stated in the MZEA and the Mayfield Township Zoning Ordinance. "If the [dragway] use of a dwelling, building, or structure of the land is lawful at the time of the enactment of a zoning ordinance or as amendment to a zoning ordinance, then that [dragway] use may be continued although the use does not conform to the zoning ordinance or amendment."[26] "Except as otherwise provided in the Section, any nonconforming lot, use, sign, or structure lawfully existing on the effective date of the Ordinance or subsequent amendment thereto may be continued so long as it remains otherwise lawful."[27]

"The elimination of nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use."[28] "It is necessary and consistent

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[23] Court of Appeals Slip Opinion, p 2.
[24] *Edw C Levy Co v Marine City Zoning Bd of Appeals*, 293 Mich App 333, 341-342, 810 NW2d 621 (2011).
[25] Id.
[26] MCL 125.3208(1).
[27] Mayfield Township Zoning Ordinance, Section 1502(2); See attached Exhibit B.
[28] MCL 125.3208(4).



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with the regulations prescribed by this Ordinance that those nonconformities which adversely affect orderly development and the value of nearby property not be permitted to continue without restriction."[29]

"The continued existence of nonconformities is frequently inconsistent with the purposes of which such regulations are established, and thus the gradual elimination of such nonconformities is generally desirable."[30] "No [nonconforming] structure or use shall be changed unless the new structure or use conforms to the regulations for the district in which such structure or use is located."[31] "No nonconforming use or structure shall be enlarged upon, expanded, or extended, including extension of hours of operation."[32]

The Mayfield Township Zoning Ordinance prohibition against enlarging or expanding a nonconforming use, "including the extension of hours of operation," follows well settled Michigan zoning law.

> Expansion of a nonconforming use is severely restricted. One of the goals of zoning is the eventual elimination of nonconforming uses, so the growth and development sought by ordinance can be achieved. Generally speaking, therefore, nonconforming uses may not expand. The policy of the law is against the extension or enlargement of nonconforming uses, and zoning regulation should be strictly construed with respect to expansion. The continuation of a nonconforming use must be substantially of the same size and the same essential nature as the use existing at the time of passage of a valid zoning ordinance.[33]

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[29] Mayfield Township Zoning Ordinance, Section 1502(1). See Exhibit B.
[30] Id.
[31] Id, Section 1502(3)(b). See attached Exhibit B.
[32] Id, Section 1502(d)(1). See attached Exhibit B.
[33] *Norton Shores v Carr*, 81 Mich App 715, 720, 265 NW2d 802 (1978).



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"It is the law of Michigan that the continuation of a nonconforming use must be substantially of the same size and same essential nature as the use existing at the time of passage of a valid zoning ordinance."[34]

The proposed dragway use described in the conditional rezoning would have to be substantially the same size and essential nature as the dragway use in 1968 for Mayfield Township to approve it as a continuation or "resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the zoning ordinance."[35]

Attempts to expand nonconforming uses contrary to the public policy against nonconforming uses do not fare well in the courts because there is no countervailing public policy that favors or authorizes the expansion, enlargement, or governmental authorization of an otherwise illegal and unauthorized commercial land use in a [residential] zoning district.

The very small legal window of opportunity in MCL 125.3208(2) to extend or substitute a nonconforming use according to a local zoning ordinance is closed by the terms of the Mayfield Township Zoning Ordinance, Section 1502(3)(d)(1).

> d. Enlarging a Nonconforming Use
>
> (1) No nonconforming use or structure shall be enlarged upon, expanded, or extended, including hours of operation.

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[34] *White Lake Twp v Lustig*, 10 Mich App 665, 673 (1968).
[35] MCL 125.3208(2).



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This explicit restriction on the expansion or enlargement of a nonconforming use is not unique to Mayfield Township. In 1979 the Court of Appeals found that the extension of hours of a grocery store constituted an expansion of the nonconforming use that could be restricted by the township.[36]

In *Norton Shores v Carr*,[37] the Court of Appeals ruled against a junkyard operation that expanded its prior nonconforming use that existed in 1955, holding that the property owner "had no right to expand that nonconforming use beyond its 1955 scope."

The prior nonconforming use permit for the dragway is limited by law and fact to the continuation of substantially the same size and nature as the dragway use that existed in 1968. Apart from amending or interpreting the zoning ordinance to permit the "dragway" use, there is no legal mechanism by which Mayfield Township can authorize the expansion or enlargement of the prior nonconforming dragway use.[38]

## III. MAYFIELD TOWNSHIP'S APPROVAL OF THE "DRAGWAY" USE BY CONDITIONAL REZONING COULD BE VALID IF THE EXISTING C-2 DISTRICT REGULATIONS ARE INTERPRETED TO PERMIT THE DRAGWAY USE

It is the position of the Amici that the intent of the legislature in MCL 125.3405 is to permit a party seeking a rezoning of property or an amendment to a zoning map to offer, and for the local unit of government to approve, a specific use that represents a

[36] *Garb-Ko v Carrollton Twp*, 86 Mich App 350, 272 NW2d 654 (1978)).
[37] *Norton Shores v Carr*, 81 Mich App 715, NW2d 802 (1978)
[38] Conditional rezoning under MCL 125.3405 is not an alternative procedure for granting a variance, which must be obtained from the Zoning Board of Appeals, not the legislative body.



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*limitation* or *restriction* upon the uses and development permitted in the zoning district; and it is not the intent of the legislature to permit an *expansion* beyond the uses or developments authorized and otherwise permitted in the district. [See discussion in Argument I].

In this case, the property owner sought to rezone its property to a C-2 District. However, consistent with the opinion expressed by its Professional Planning Consultant in her affidavit filed in this case, the Township was unwilling to approve a broad rezoning that would authorize all uses listed in the C-2 District.

The Township was willing to approve a conditional rezoning to permit the dragway use requested by the applicant, which would authorize only that singular use. In order to achieve that result, and remain within the parameter that a conditional rezoning under MCL 125.3405 permits only the uses or developments already permitted in the C-2 District, the Township could conceivably authorize the "dragway" use requested by the property owner if the C-2 District regulations were interpreted by the Township to *already permit the "dragway" use.*

### A. Uses Authorized in the C-2 District

A dragway is not listed in the Mayfield Township Zoning Ordinance as an expressly permitted use. Whether the dragway is a use permitted in the C-2 district because it is "similar to the above uses" is a matter for Mayfield Township to decide in the first instance by administrative order or a ZBA decision at the request of the property



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owner. This type of interpretation of the zoning ordinance should be decided by the Mayfield Township Zoning Board of Appeals.[39]

Determining whether the "dragway" use was already included among the permitted uses in the C-2 District requires an interpretation of the use authorizations in the C-2 District. The District authorizes Principal Uses Permitted as stated in Section 1101[40], as well as the Principal Uses Permitted stated in Section 1001 of the C-1 District which are incorporated by reference as part of the C-2 District:

**ARTICLE XI**
**C-2, GENERAL COMMERCIAL DISTRICT**

**SECTION 1100. INTENT.**

The C-2, General Commercial District is designed to provide sites for more diversified business types which would often be incompatible with the pedestrian movement in a central business district and which are oriented to serving the needs of "passer-by" traffic and locations for planned shopping centers. Many of the business types permitted also generate greater volumes of traffic and activities which must be specially considered to minimize adverse effects on adjacent properties.

**SECTION 1101. PRINCIPAL USES PERMITTED.**

In a General Commercial District, no building or land shall be used and no building shall be erected except for one or more of the following uses unless otherwise provided in this Ordinance:

1. All uses in the C-1, Local Commercial District as permitted and regulated under Section 1001.
2. Bowling alley, billiard hall, indoor archery range, indoor tennis courts, indoor skating rink, or similar forms of indoor commercial recreation

[39] MCL 125.3603(1).
[40] Section 1101 of the Mayfield Twp Zoning Ordinance, Exhibit H, and p 76 of Appellee's Appendix.



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when located at least one hundred (100) feet from any front, rear or side yard of any residential lot in an adjacent residential district.

3. Plant material nursery, including greenhouses, and other open-air business uses.
4. Automotive service facilities providing: tire (but not recapping), battery, muffler, undercoating, auto glass, reupholstering, wheel balancing, shock absorbers, wheel alignments, and minor motor tune-ups only.
5. Veterinary hospitals and clinics having interior boarding facilities.
6. Veterinary clinics (animal hospitals) and Kennels.
7. Boarding house.
8. Other uses similar to the above uses.
9. Accessory structures and uses customarily incidental to the above permitted uses.

## ARTICLE X
## C-1, LOCAL COMMERCIAL DISTRICT

### SECTION 1001. PRINCIPAL USES PERMITTED.

No building or structure, or part thereof shall be erected, altered, or used, and no land shall be used except for one or more of the following:

1. All Uses Permitted as a matter of right in the OS-1 District.
2. Generally recognized retail businesses which supply commodities on the premises, such as but not limited to: groceries, meats, dairy products, baked goods or other foods, drugs, dry goods, clothing and notions or hardware.
3. Personal service establishments which perform services on the premises, such as but not limited to: repair shops (watches, radio, television, shoe and etc.), tailor shops, beauty parlors or barber shops, photographic studios, and self-service laundries and dry cleaners.
4. Dry cleaning establishments, or pick-up stations, dealing directly with the consumer. Central dry cleaning plants serving more than one retail outlet shall be prohibited.
5. Eating and drinking establishments (standard restaurant), except for drive-in/drive-through restaurants.
6. Other uses similar to the above uses.



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7. Accessory structures and uses customarily incidental to the above permitted uses.[41]

It is plain that the C-2 District does not specifically and expressly authorize "dragway" use. Yet, the C-2 District does authorize certain *automotive-related uses*, and subsection 8 of Section 1101 also permits "other uses similar to those" expressly permitted in the Section.

**B. Is the C-2 District Sufficiently Ambiguous to Be Amenable to Interpretation?**

Based on a reading of the C-2 District regulations, the Court could conclude that the ordinance is sufficiently clear to find that the C-2 District does *not* include an authorization for "dragway" use. Such a conclusion would, *as a matter of ordinance interpretation*,[42] end the case with an affirmance of the lower courts.

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[41] Zoning regulations taken from Township ordinance online. http://www.mayfieldtownship.com/Forms_and_Publications/Mayfield%20Township%20Zoning%20Ordinance.pdf (Accessed 2-17-2024).

[42] The Court of Appeal held the following: "When the agreed rezoning anticipates a use excluded by the zoning district in question, it is fatal to the operation of the conditional zoning agreement. Thus, the conditional zoning agreement was void according to Mayfield Ordinance § 1101, and as the trial court held, 'there is no reasonable governmental interest being advanced' by the agreement." This conclusion by the Court of Appeals implicitly represents a *constitutional determination that applies to zoning ordinances* found to violate substantive due process. *See Kropf v City of Sterling Heights*, 391 Mich 139, 158, 215 NW2d 179 (1974). ("A plaintiff citizen may be denied substantive due process by the City or municipality by the enactment of legislation, in this case a zoning ordinance, which has, in the final analysis, no reasonable basis for its very existence . . . In looking at [the] 'reasonableness' requirement for a zoning ordinance, this Court will bear in mind that a challenge on due process grounds contains a two-fold argument; first, that there is *no reasonable governmental interest being advanced* by the present zoning classification itself, here a single family residential classification . . .").



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However, while "dragway" use is not expressly permitted, a review of the use authorization in the C-2 District could lead the Court to the conclusion that this ordinance provision is *ambiguous* on whether it permits the automotive-related "dragway" use, thus requiring a determination of the *intent of the ordinance*.

C. **The MZEA and the Township Zoning Ordinance Provide for Interpretation**

The MZEA makes provision for circumstances calling for an interpretation of a zoning ordinance: "The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance," MCL 125.3603(1), and "[if] the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request." MCL 125.3604(5). Consistent with this statutory direction, the Mayfield Township Zoning Ordinance, Section 1707.2(a), confers upon the zoning board of appeals the power to hear and decide "Appeals for the interpretation of the provisions of the Ordinance."[43]

Clearly, the zoning board of appeals may not arbitrarily or whimsically decide what uses are permitted in a zoning district. However, if and to the extent the Court concludes that the ordinance is *ambiguous* on whether a dragway is permitted in the C-2 District, the Court could hold that the decision of the Court of Appeals is affirmed on the ground that that the intent of the legislature in MCL 125.3405 is to permit a party seeking a rezoning of property or an amendment to a zoning map to offer, and for the local unit

[43] See attached Exhibit C.

of government to approve, a specific use that represents a *limitation* or *restriction* upon the uses and development already permitted in the zoning district; and that it is not the intent of that statute to permit an *expansion* of the use or development authorization otherwise permitted in the district.[44] This holding could be made with the *proviso* that, if the Township determines, based on the process authorized in the MZEA and Township Zoning Ordinance, that the C-2 District permits a "dragway" use, then the conditional rezoning granted by Mayfield Township would not be overturned, and the result reached by the Court of Appeals would be reversed.

## IV. THE TOWNSHIP'S CONDITIONAL REZONING OF THE APPELLANT'S PROPERTY AS DESCRIBED IN THE RECORD WAS NOT VALID TO PERMIT THE NEW DRAGWAY.[45]

In this case the property owner offered a "certain use and development of the land" and the Township Board accepted the offer as reflected in the Conditional Rezoning Agreement.[46] This part of the Amicus brief will serve as a *summary* in response to part IV of the Court's four-part direction in its Order of October 18, 2023 to address whether the Township's action in approving appellant's proposed conditional zoning was valid.

### A. The Conditional Rezoning Exceeded the Authority Granted Under MCL 125.3405.

For the reasons outlined in part I of this Amicus Brief, appellant's attempt to propose a "certain use and development of the land," and the Township's approval of

[44] See footnote 36, above.
[45] Invalidity is subject to whether there is a subsequent determination under the process referenced in Part III of this Amicus Brief.
[46] Exhibit G of Appellee's Appendix; and see attached Exhibit D.



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that proposal, involved a significant increase and expansion of the use and development permitted in the C-2 District, and therefore exceeded the authority granted under MCL 125.3405.

**B. The Valid Nonconforming Use Could Not Be Expanded By the Action Taken.**

The dragway use approved by the Township amounted to a significant increase and expansion of the valid nonconforming use on the property. While MCL 125.3208(2) enables a zoning ordinance to provide for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the zoning ordinance," the Mayfield Township Zoning Ordinance does contain a relevant application of such enabling authority. Accordingly, there is no basis under statute, Township Ordinance, or under the extensive case law outlined in part II of this Amicus Brief, to permit the expansion of the nonconforming dragway at issue.

**C. The Record Does Not Reflect an Amendment of the Zoning Ordinance to Authorize the Proposed Dragway.**

Because the record does not reflect that Mayfield Township adopted and published an amendment of the C-2 District of the Zoning Ordinance under the traditional procedure provided in the MZEA to allow the expanded dragway, no legislative action of the Township has been enacted to permit the Appellant's expanded dragway use of the property. An agreement to enact or amend an ordinance in the future is not the legal equivalent of a legislative act, and no currently existing amendment is reflected in the record of this case.



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### D. Conclusion

An analysis of all the actions which appear to have been taken in this case leads to the conclusion that the conditional rezoning of appellant's property under MCL 125.3405 was not valid to authorize the expanded dragway.

## CONCLUSION AND RELIEF SOUGHT

Based on the foregoing, Amici Michigan Municipal League and State Bar Government Law Section pray the Court will conclude the following:

A. MCL 123.3405 authorizes the owner of property to propose a "condition" incidental to an application for a rezoning, and the local unit of government may approve such condition, if it represents a limitation or restriction on the use of the property which is already permitted in the zoning district to which the property is rezoned, and does not authorize a land use which is not otherwise permitted in the district.

B. Within the parameters stated in 'A,' if the use authorization in a zoning district is ambiguous, the local unit of government may apply the process authorized in the MZEA to determine whether the condition proposed by a property owner incidental to a rezoning or amendment of the zoning map represents a limitation or restriction on a use otherwise permitted in the district to which the property is to be classified, and would thus amount to a valid operation of MCL 125.3405.



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C. Michigan permits a nonconforming use to be continued in the face of a new zoning regulation which does permit such use, however, apart from an amendment of the zoning ordinance, the State does not permit the expansion of a prior nonconforming use.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this document complies with the formatting rules in MCR 7.212. I certify that this document contains 9,118 countable words (including footnotes) as calculated by the word process program used in its creation. The document is set in Book Antiqua, and the text is 12-point 2.0 spaced type.

Dated: February 26, 2024



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**INDEX OF EXHIBITS**


EXHIBIT A. Michigan Zoning, Planning, and Land Use, ICLE, 2009 Edition, Chapter 4, §4.8, Conditional Rezoning.

EXHIBIT B. Mayfield Township Zoning Ordinance, Section 1502. Nonconforming Uses and Buildings.

EXHIBIT C. Mayfield Township Zoning Ordinance, Section 1707, Zoning Board of Appeals Authority for Interpreting Zoning Ordinance.

EXHIBIT D. Conditional Rezoning Agreement Between Mayfield Township and Appellant, A2B Propeties, LLC.




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Jostock vs. Mayfield Township

**EXHIBIT A**

Michigan Zoning, Planning, and Land Use, ICLE, 2009 Edition
Chapter 4, §4.8, Conditional Rezoning.



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# Michigan Zoning, Planning, and Land Use

*April 2009 Update*

BY

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# 4
# Flexible Land Use Approvals

*Gerald A. Fisher*

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  3. Security for Improvements §4.6

II. Other Methods to Achieve Flexible Land Use Approval
- A. Special Programs to Achieve Land Management Objectives §4.7
- B. Conditional Rezoning §4.8
- C. Contract Zoning §4.9

III. Trends—New Urbanism and Smart Growth §4.10

Forms
- 4.1 Sample Planned Development District Review Application
- 4.2 Planned Unit Development (PUD) Agreement

## I. Planned Unit Development

### A. In General

**§4.1** *Planned unit development* (PUD) is defined in the Zoning Enabling Act (ZEA) to include "such terms as cluster zoning, planned development, community unit plan, and planned residential development and other terminology denoting zoning requirements designed to … achieve integration of the proposed land development project with the characteristics of the project area." MCL 125.3503(1). For Michigan property owners and local governments who seek land use creativity and desire to pursue and authorize uses and improvements that deviate from the customary requirements of the zoning ordinance (even in the absence of unnecessary hardship or practical difficulties), the statutory permission for PUD is an essential resource. There is, however, a caveat with regard to the practical application of this resource. While there is no question that PUD is extremely valuable and effective in its provision of authority for development that is creative, enhancing, and in the public interest, as a practical matter, application of PUD has been limited. Due in good part to its unique and flexible nature, ordinance provisions enabling PUD generally require extensive planning and engi-

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## B. Conditional Rezoning

§4.8 Of the several tools available to achieve flexible land use approvals, the authorization for conditional rezoning is the most recent addition to the ZEA. This authorization became effective in January of 2005 and is now set forth in MCL 125.3405. This provision provides permissible authority for community approval of a rezoning that permits development subject to specified conditions concerning the "use and development of the land." MCL 125.3405(1). This authority is activated only if an owner of land makes a voluntary offer in writing and the community determines as a matter of policy to be receptive to such offers.

In the years prior to the enactment of this conditional rezoning authorization, property owners would submit rezoning petitions and often accompany them with drawings or plans reflecting particular developments of the properties proposed to be rezoned. Such drawings and plans were frequently brandished at the public hearings held on the rezoning petitions. The purpose of submitting such drawings and plans varied. In some instances, the property owner would express an intent to improve the land consistent with the drawing or plan if the rezoning were granted; in other cases, the drawing or plan merely reflected what would be feasible if the rezoning were granted.

In 1959 (long before the enactment of the conditional zoning authorization), the Michigan Supreme Court's opinion in *McClain v Hazel Park*, 357 Mich 459, 460, 98 NW2d 560 (1959), reports that the circuit court refused to prevent the enforcement of the terms and conditions contained in the following rezoning motion:

> "That the area between John R and West End streets and between Eight Mile (Baseline) road and West Muir street, be rezoned from residence district 'B' and 'C' to business 'D', with the provision that 30 feet next to Muir street be reserved and required to be beautified and landscaped."

On appeal, the property owner questioned whether the circuit judge should have allowed such a provision to be enforced. Considering the facts of the particular case, but not undertaking an analysis of conditional rezoning, the supreme court's reaction was: "We believe he should have." *Id.* at 461. *See also Genesee Land Corp v Leon Allen & Assocs*, 50 Mich App 296, 298–299, 213 NW2d 283 (1973) (rezoning "restricted, however, to construction of and use as a warehouse for wholesale grocery purposes" was treated as void on the parties' stipulation (emphasis omitted)).

Astute legal counsel for zoning petitioners, over the years, sought to avoid the uncertainties of conditional rezoning by making use-restricting arrangements with surrounding property owners. If the community was satisfied with such an arrangement, direct confrontation with regard to the validity of conditional zoning was unnecessary. However, this type of side arrangement has also been subjected to the uncertainties of litigation. *See, e.g., Larson v Foster*, 346 Mich 1, 77 NW2d 356 (1956).

In all events, leading up to the enactment of what is now MCL 125.3405, communities in recent years, barring exceptional circumstances, generally took the

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conservative view that, if granted, a rezoning entitled a property owner to all uses permitted in the zoning classification, regardless of the presentation of drawings or plans during the rezoning process. That is, even if a property owner had presented such a drawing or plan and had every good intention of developing the property accordingly, that owner or a successor owner would not be bound by the drawing or plan. The rezoning would either be granted or denied with the recognition that, if granted, all development permitted in the new district classification would be authorized.

This circumstance proved frustrating in many instances, particularly where both the property owner and the community were in full agreement that, if the development could be restricted to specified uses or particular improvements only, perhaps with a site plan, the rezoning would be in the public interest. The frustration arose due to the fact that, in the absence of the ability to restrict the development, many communities were unwilling to grant the rezonings and take the risk that other uses or developments permitted in the proposed zoning districts—deemed unacceptable to planning officials or legislative bodies—would become a reality. The permission granted in MCL 125.3405 represents one means of attempting to avoid some of the frustration caused by the total void of authority to create binding conditions upon a rezoning. As noted, however, this tool remains somewhat limited, taking into consideration that only the property owner is permitted to offer and dictate the terms of a conditional rezoning. The community is prohibited from initiating, altering, or adding to a proposal for a condition to a rezoning, MCL 125.3405(3), and caution must be very carefully exercised in this regard during proceedings initiated under this statute.

The language of this provision of the ZEA, like the PUD provisions, reflects an intent on the part of the legislature to leave it to the property owner (in determining whether to offer) and community (in determining whether to exercise this authority in general and, if so, whether to approve) to establish parameters on the details of the application of this authorization for "certain use and development of the land as a condition to a rezoning." MCL 125.3405(1). Depending on the nature and complexity of the particular offer made by a property owner, an approval of conditions could consist of something as simple as a specification of one or more uses that would be permitted—or not permitted—if the rezoning were granted. Likewise, an approval may merely specify such things as a minimum setback or a maximum building height that might be deemed necessary to ensure compatibility with adjoining property. On the other extreme, the offer and approval might encompass a detailed site plan accompanied by a comprehensive set of use restrictions.

Although it is too early to have judicial guidance on this issue, it would appear that the conditional rezoning authorization is intended to allow the conditional approval of a use or development that is permitted in the zoning district. That is, the conditional rezoning provisions are intended to allow the imposition of a *restriction* on the uses and development permitted in the district and not intended to authorize uses or development not otherwise permitted.

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Nor has it been settled whether it would be in the best interest of a community to provide regulations for conditional rezoning in its zoning ordinance. Many would take the position that the statute, on its face, is clearly self-executing and no reference in the statute would suggest the need for an ordinance for any purpose. On the other hand, some are of the view that the requirements of due process and equal protection are always applicable and that, in the absence of standards provided by ordinance, the decision whether to grant or deny each of a succession of "offers" made under this statute would be arbitrary, perhaps contradictory, and, therefore, potentially unconstitutional. In addition to providing standards for review and approval, there are other objectives that might be achieved by an ordinance to implement this statute, including the following:

- Establishing a process for application and review
- Clarifying whether the approval of a condition would supersede the grant of special land use or variance approval that might otherwise be required
- Providing a mechanism to clarify that, upon approval, the property owner concurs that the conditions established were voluntarily offered by the property owner
- Specifying whether and how the community will document the terms of the conditional rezoning on the zoning map, at the register of deeds, or otherwise in order to provide notice to all interested parties
- Specifying the period of effectiveness of an approved conditional rezoning and the terms under which an extension may be granted
- Making provision for the event that the property is not developed or the conditions imposed have not been satisfied within the period of effectiveness (MCL 125.3405(2) states that if the conditions are not satisfied, "the land shall revert to its former zoning classification"; does this require that legislative action be taken by the community?)
- Making provision for a mutually agreeable means of terminating a conditional rezoning

Until the courts have addressed whether zoning ordinance standards or other ordinance provisions are needed within this context, each community must decide on its own whether to enact, and how to take actions under, such provisions.

## C. Contract Zoning

§4.9 Contract zoning has been described as bilateral in nature, rather than having terms unilaterally "offered" by the property owner, as provided in Michigan's conditional rezoning statute, MCL 125.3405 (see §4.8), or terms unilaterally imposed by the community upon approval of a rezoning. Daniel R. Mandelker, *Land Use Law* §6.62 (5th ed 2003). In this type of arrangement, the property owner and the community execute a bilateral contract in which the community promises to rezone in return for the property owner's promise to record a document that contains the restrictions the municipality requires. *Id.*

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**EXHIBIT B**

Mayfield Township Zoning Ordinance,
Section 1502. Nonconforming Uses and Buildings.

5. One Lot, One Building

In all single-family districts, only one (1) dwelling shall be placed on a single lot of record.

**SECTION 1502. NONCONFORMING USES AND BUILDINGS.**

1. Intent

It is the intent of this Section to provide for the regulation of legally nonconforming structures, lots of record, uses and signs, and to specify those circumstances and conditions under which such nonconformities shall be permitted to continue. It is necessary and consistent with the regulations prescribed by this Ordinance that those nonconformities which adversely affect orderly development and the value of nearby property not be permitted to continue without restriction.

The zoning regulations established by this Ordinance are designed to guide the future use of land by encouraging appropriate groupings of compatible and related uses and thus to promote and protect the public health, safety, and general welfare. The continued existence of nonconformities is frequently inconsistent with the purposes of which such regulations are established, and thus the gradual elimination of such nonconformities is generally desirable. The regulations of this Section permit such nonconformities to continue without specific limitation of time but are intended to restrict further investments which would make them more permanent.

2. Authority to Continue

Except as otherwise provided in this Section, any nonconforming lot, use, sign, or structure lawfully existing on the effective date of this Ordinance or subsequent amendment thereto may be continued so long as it remains otherwise lawful. There may be a change of tenancy, ownership, or management of any existing nonconforming uses of land, structure and land in combination.

All nonconformities shall be encouraged to convert to conformity wherever possible and shall be required to convert to conforming status as required by this Section.

3. Nonconforming Uses or Structures

A nonconforming use or structure is considered to be any nonresidential use or structure in a residential district, industrial use in a commercial/business district, or any residential use in a nonresidential district.

a. Termination by Damage or Destruction

In the event a nonconforming structure or use is destroyed by any means to the extent of more than fifty (50) percent of the cost of replacement of such structure or use as determined by the Zoning Administrator, same shall not be rebuilt, restored, or reoccupied for any use unless it shall thereafter conform to all regulations of this Ordinance. When such a nonconforming structure or use is damaged or destroyed to the extent of fifty (50) percent or less of the replacement cost, no repairs or rebuilding shall be permitted except in conformity with Section 1502, 2 above and other applicable regulations of this Ordinance.

b. Changing Nonconforming Uses

No structure or use shall be changed unless the new structure or use conforms to the regulations for the district in which such structure or use is located.



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c. Discontinuance of Use

When a nonconforming use of a structure or structures and land in combination, is discontinued or ceases to exist for six (6) consecutive months, or for eighteen (18) months during any three year period, the structure, or structures and land in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.

d. Enlarging a Nonconforming Use

(1) No nonconforming use or structure shall be enlarged upon, expanded, or extended, including extension of hours of operation. Normal maintenance and incidental repair of a nonconforming use shall be permitted, provided that this does not violate any other section of this Ordinance.

(2) A nonconforming residence may construct an accessory building in accordance with Section 1503, Accessory Buildings.

(3) Nothing in this Section shall be deemed to prevent an extension for the exclusive purpose of providing required off-street parking or loading spaces in accordance with other applicable provisions, and involving no structural alteration or enlargement of such structure.

(4) No nonconforming use or structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

(5) Notwithstanding any other provision of this Section to the contrary, no use, structure, or sign which is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it shall thereafter conform to all regulations of the Ordinance.

4. Nonconforming Lots

In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance provided the width, depth, and area is not less than sixty-six and two-thirds (66 2/3) percent of that required by this Ordinance. Yard requirement variances may be requested of the Board of Zoning Appeals.

5. Nonconforming Site Requirements

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on lot area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

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a. Expansion

No such structure may be enlarged or altered in a way which increases its nonconformity. Such structures may be enlarged or altered in a way which does not increase its nonconformity.

b. Termination

Should such structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement costs, exclusive of the foundation, it shall be reconstructed in the absence of a prior variance only in conformity with the provisions of this Ordinance and with the requirements of the prevailing structural building codes.

c. Relocation

Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

6. Conditional Use Interpretation

Any conditional use as provided for in this Ordinance shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use in such district.

**SECTION 1503. ACCESSORY BUILDINGS AND STRUCTURES.**

Accessory buildings or structures, except as otherwise permitted in this Ordinance, shall be subject to the following regulations:

1. Where the accessory building is structurally attached to a main building, it shall be subject to, and must conform to, all regulations of this Ordinance applicable to the main building.

2. Accessory buildings and structures shall not be erected in any front yard.

4. An accessory building shall not occupy more than twenty-five (25) percent of a required rear yard.

4. No detached accessory building shall be located closer than three (3) feet to any side or rear lot line. No detached accessory building shall be located closer than ten (10) feet to any main building except for garages upon meeting the following conditions.

   (a) The foundation shall not be less than the minimum required by local Building Code for frost protection (42 inches); and,

   (b) On those portions of garages located within ten (10) feet of the main building, a fire separation of not less than 1 hour fire resistance rating shall be provided on the garage building side.

5. No detached accessory building in the R-2, RT, and RM Districts shall exceed one (1) story or fifteen (15) feet in height.

   Accessory buildings in all other districts may be constructed to equal the permitted maximum height of structure in said districts.

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**EXHIBIT C**

Mayfield Township Zoning Ordinance,
Section 1707. Nonconforming Uses and Buildings.

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# ARTICLE XVII

# BOARD OF APPEALS

* * *

## SECTION 1707. POWERS AND DUTIES.

The ZBA shall have the following specified powers and duties:

1. Administrative Review

    To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision, or refusal made by the Building Official or any other administrative official in carrying out, or enforcing, any provisions of this Ordinance.

2. Interpretation

    To hear and decide in accordance with the provisions of this Ordinance:

    a. Appeals for the interpretation of the provisions of the Ordinance.

    c. Requests to determine the precise location of the boundary lines between the zoning districts as they are displayed on the Zoning Map, when there is dissatisfaction with the decision on such subject.

Jostock vs. Mayfield Township

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**EXHIBIT D**

Conditional Rezoning Agreement
Between Mayfield Township and Appellant, A2B Propeties, LLC..

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**Voluntarily Proposed May 12, 2021**
**CONDITIONAL REZONING AGREEMENT**

**THIS AGREEMENT** made this 16 day of ~~May,~~ June 2021, by and between **Mayfield Township** ("Township"), a Michigan Municipal Corporation, whose offices are located at 1900 N. Saginaw Road, Lapeer, MI 48446 and **A2B Properties, LLC**, a Michigan Limited Liability Company ("A2B"), whose address is 459 Maple Grove Road, Lapeer, Michigan 48446.

**WITNESSETH:**

**WHEREAS**, A2B is the fee title holder of certain real property ("Property") located at 2691 Roods Lake Road, Lapeer, MI 48446 with a Parcel Number of 014-015-009-00 in Mayfield Township, State of Michigan with the following Legal Description:

**LEGAL DESCRIPTION**

**PART OF THE S ½ OF SEC 15 & SEC 16 T8NR10E DESC AS BEG AT A PT ON THE N-S ¼ LINE THAT IS N 0DEG 14'16" E 1307.74 FT FROM THE S ¼ COR OF SEC 15 TH S 75DEG 45'40" W 1792.86 FT TH N 0DEG 01'20" W 200 FT TH S 71DEG 00'45" W 2333.32 FT THN 300 FT TH N 71 DEG 0'45" E 2609.8 FT TH N 17 DEG 39'02" W 219.2 FT TH N 81 DEG 26'52" E 235.4 FT TH N 0DEG 01'20" W 599.09 FT TH S 89DEG 54'47" E 1314.44 FT TO THEN-S ¼ LINE TH S 0DEG 14'16" W 990 FT ALONG THE N-S ¼ LINE TO THE POB. 56.09 A.**

**WHEREAS**, A2B submitted an application to rezone the Property from the zoning classification of R-1 to C-2 pursuant to the Mayfield Township Zoning Ordinance; and

**WHEREAS**, A2B voluntarily, and by its choice and discretion, offered to limit its use of the **Property** as a condition of the rezoning; and

**WHEREAS**, on 6-10, 2021, the Mayfield Township Planning Commission voted to recommend approval of A2B's request to rezone the Property and to accept A2B's proposed limitations on the use of the Property as more specifically set forth in this Conditional Rezoning Agreement ("Agreement"); and

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**WHEREAS**, on 6-16-21 the Mayfield Township Board of Trustees considered and reviewed the recommendation of the Planning Commission and voted to approve A2B's requested rezoning, accept A2B's proposed limitations on the use of the Property and approve the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, Mayfield Township and A2B agree as follows:

1. **Conditional Rezoning**

Pursuant to Section 405 of the Michigan Zoning Enabling Act, MCL 125.3405, A2B agrees to limit the use of the Property as set forth in this Agreement. Upon Execution of this Agreement by the parties, Mayfield Township shall effectuate the rezoning of the Property from zoning classification R-1 to C-2 and this Agreement shall be recorded against the Property and shall run with the Property for all legal purposes.

2. **Rezoning Conditions**

A2B agrees that the development of the Property will proceed in accordance with the following conditions which have been voluntarily offered by A2B as a condition of rezoning the Property:

a) A2B's use of the Property shall be limited to those uses identified on **Exhibit 1** which is attached hereto and incorporated fully herein by reference. The Property shall not be used for other permitted or special land uses otherwise allowed in the C-2 zoning category.

b) The existing structures will remain and be used in accordance with **Exhibit 1**.

c) Development of the Property shall be in strict compliance with the site plan and specifications contained in **Exhibit 2** attached hereto and incorporated by reference. The parties agree that minor revisions to **Exhibit 2** that do not significantly modify the development plans may be considered and approved by the Mayfield Township administratively and without the

necessity of approval by the Township Board and/or without amendment to this Agreement.

d) Development of the Property shall otherwise comply with all applicable Mayfield Township Ordinances and regulations, including all permitting and inspection processes.

3. **Future Development**

The rezoning conditions set forth in Paragraph 2 above shall apply only to the development of the Property. All future development of the Property shall be in strict compliance with all applicable Township Ordinances and regulations.

4. **Entire Agreement**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements or understandings with respect hereto shall be deemed merged into this Agreement.

5. **No Oral Amendments or Modifications**

No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing and executed by the parties hereto.

6. **Severability**

If any provision of this Agreement shall be declared invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and this Agreement shall be construed as if those provisions were not contained in this Agreement.

7. **Applicable Law.**

This Agreement shall be interpreted and enforced according to the laws of the State of Michigan.



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8. <u>Recordation</u>

This Agreement shall be deemed to be in recordable form and shall be recorded with the Lapeer County Register of Deeds immediately after execution.

9. <u>Violation and Enforcement</u>

The failure of any party to complain or enforce any act or omission on the part of another party, no matter how long the same may continue, shall not be deemed to be an acquiescence or wavier by such party of any of its rights hereunder. No waiver by any party at any time, express or implied, or any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or any consent to any subsequent breach of the same or any other provision of this Agreement. If any action by any party shall require the consent or approval of another party, such consent or approval of such action shall not be deemed a consent to or approval of any other provision of this Agreement.

10. <u>Violation of Zoning Ordinance</u>

Any failure by A2B to comply with the terms and conditions of this Agreement shall constitute a violation of the Mayfield Township Zoning Ordinance and subject A2B to the applicable penalties and remedies provided by law, including equitable relief.

11. <u>Binding Effect; Assignment</u>

This Agreement shall bind and inure to the benefit of the Township and the successors and assigns of A2B.

12. <u>Effective date.</u>

The conditional rezoning approved by the Township Board shall be effective upon the date after the enactment by the Township of an amendment to the Zoning Ordinance and Zoning Map, rezoning the Property from R-1 to C-2, and the expiration of the time period within which

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# EXHIBIT 1
# PROPERTY USES

**Monday:** 8:00 a.m. to 8:00 p.m.

Track Rental.
Vehicle Testing.
Test and Tune.

**Tuesday:** 8:00 a.m. to 8:00 p.m.

Track Rental.
Vehicle Testing.
Test and Tune.

**Wednesday:** 8:00 a.m. to 10:00 p.m.

Track Rental.
Vehicle Testing.
Test and Tune.

**Thursday:** 8:00 a.m. to 10:00 p.m.

Track Rental.
Vehicle Testing.
Test and Tune.

**Friday:** 10:00 a.m. to Midnight

Track Rental.
Vehicle Testing.
Test and Tune.
Organized Racing Events.

**Saturday:** 10:00 a.m. to Midnight

Track Rental.
Vehicle Testing.
Test and Tune.
Organized Racing Events

**Sunday:** 10:00 a.m. to 8:00 p.m.

Organized Racing Events.

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## EXHIBIT 1
## PROPERTY USES CONTINUED

**Lighting:** No lighting shall be directed off of the Property or off of the Property uses.

**Sound:** Decibel measurements at the Property line shall not exceed 85 which is a level consistent with heavy city traffic.

**Site Plan:** The Property shall be developed consistent with the Site Plan attached as Exhibit 2 to the Agreement.

**Miscellaneous Events:** These events shall include concerts, fireworks, car shows, car swaps and weddings. These events shall comply with any and all special event permit processes.

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**A2B Properties, LLC**

Dated: ____________________ By:

____________________
**William Jennings**

Its: Member and Authorized Representative

**STATE OF MICHIGAN )**
**COUNTY of LAPEER )**

On this _____ day of May, 2021, before me a Notary Public in and for the County, personally appeared **William Jemmings**, to me personally known, who, being by me duly sworn, did say that he is a Member of A2B Properties, LLC and that he signed this Agreement on behalf of A2B Properties, LLC by authority of its members; and acknowledged the instrument to be the free act and deed of A2B Properties, LLC, a Michigan Limited Liability Company.

____________________ Notary public,
____________ County, State of Michigan

Acting in ____________ County, Michigan

My commission expires: ____________________

referendum on the Zoning Ordinance amendment may be petitioned for under the Michigan Zoning Enabling Act has expired without a referendum petition having been filed, or, if a referendum election is held on the Zoning Ordinance amendment, the date after which such amendment has been certified as having been approved by the electors.

The rezoning shall be a conditional rezoning and subject to the terms and conditions set forth in this Agreement. In the event A2B fails to meet the conditions of this Agreement, then the approval of the site plan for the proposed developments shall terminate. In such an event, A2B may thereafter develop the Property only in accordance with a site plan that is approved by the Planning Commission and complies with all Township zoning, engineering, building and fire codes, as well as Ordinances in effect that time.

Dated: JULY 9TH, 2021

**Mayfield Township**

By: [signature]
**Dan Engelman**
Its: Supervisor following a vote of the Mayfield Township Board
On the 16TH day of JUNE, 2021.

**STATE OF MICHIGAN )**
**COUNTY of LAPEER )**

On this 9 day of ~~May~~ July, 2021, before me a Notary Public in and for the County, personally appeared **Dan Engelman**, to me personally known, who, being by me duly sworn, did say that he is the Supervisor of Mayfield Township and that he signed this Agreement on behalf of the municipal corporation by authority of its Board of Trustees; and acknowledged the instrument to be the free act and deed of Mayfield Township, a Michigan Municipal Corporation.

[signature]
Notary public,
Lapeer County, State of Michigan
Acting in Lapeer County, Michigan
My commission expires: 8-2-25

JULIE A. SCHLAUD
NOTARY PUBLIC, STATE OF MI
COUNTY OF LAPEER
MY COMMISSION EXPIRES Aug 2, 2025
ACTING IN COUNTY OF Lapeer



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Organized Racing Events.

**Saturday:** 10:00 a.m. to Midnight

Track Rental.
Vehicle Testing.
Test and Tune.
Organized Racing Events

**Sunday:** 10:00 a.m. to 8:00 p.m.

Organized Racing Events.

APPROVED
MAYFIELD TOWNSHIP
PLANNING COMMISSION
BY
DATE 6-10-21