

MANISTEE CITY PLANNING COMMISSION

70 Maple Street
P.O. Box 358
Manistee, Michigan 49660

MEETING OF MAY 2, 1996

There will be a meeting of the Manistee City Planning Commission to be held on Thursday, May 2, 1996 at 7:00 P.M. in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan.

AGENDA

- I. Roll Call
- II. Matters Pertaining to the General Citizenry:
 - A. Public Hearing:
 - 1.
 - B. Site Plan Reviews:
 - 1.
 - 2.
 - C. Questions, Concerns and Consideration of Matters:
 - 1. Robert Mikula
 - 2.
- III. Business Session:
 - A. Approval of Minutes from Last Meeting (4/4/96)
 - B. Unfinished Business:
 - 1.
 - 2.
 - C. Other Communications:
 - 1. City Update
 - 2.
 - D. Reports:
 - 1. D.D.A. Update
 - 2. Zoning Board of Appeals
 - 3. Site Plan Review/Historic Overlay Committees
 - 4. Joint City Review/Ordinance Committee
 - 5. Pre-Manufactured Homes - Adult Foster Care
 - E. New Business:
 - 1. Set time for May 17, 1996 Worksession
 - 2.
- IV. Work/Study Session:
- V. Adjournment

cc: Planning Commission Members
City Council
R. Ben Bifoss, City Manager
Jon Rose, City Code Administrator
Kurt Schindler, County Planner
Manistee News Advocate
Manistee Observer
WMTE Radio
WXYQ Radio
Jeff Mikula, Abonmarche
Dale Picardat, Community Development Officer
Julie Beardslee, Assessor

**CODE ADMINISTRATOR
CITY OF MANISTEE**

MEMORANDUM

TO: Planning Commission Members
FROM: Jon R. Rose 
DATE: April 26, 1996
RE: May 2, 1996 Meeting

Enclosed for your review is a copy of a Public Law Advisory from Varnum, Riddering, Schmidt & Howlett. As of today we have a light agenda for the May 2, 1996 meeting. This may give us time to continue our discussion on the Master Plan.

We will see you at the meeting.

JRR:djm

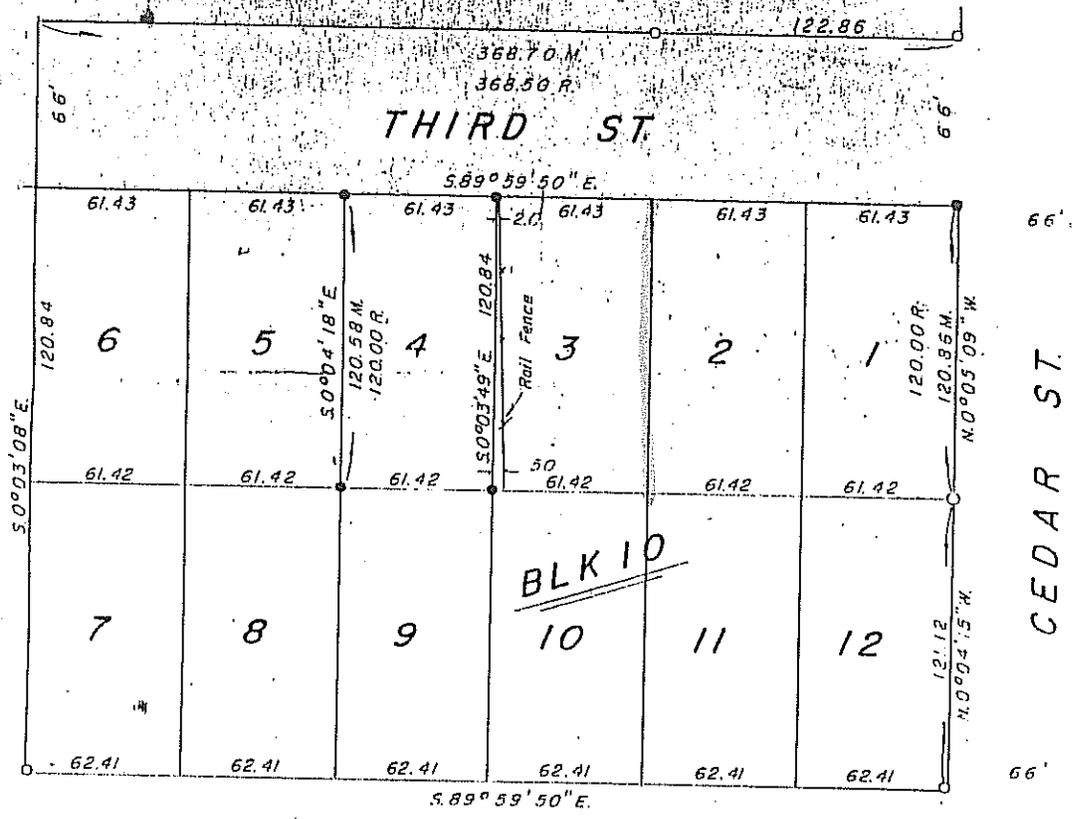
Enclosures

FROM THE DESK OF...

Jon R. Rose
Code Administrator
City of Manistee
P.O. Box 358
Manistee, MI 49660

(616) 723-2558
FAX: (616) 723-1546

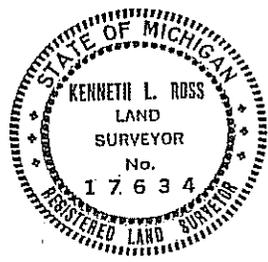
CERTIFICATE OF SURVEY



FOURTH ST.

Survey of Lots 1,2,3, & 4 Block 10 of
G.E. MARSH ADDITION Manistee, Mi 49660

For: Robert Allen Mikula
306 Cedar St.
Manistee, Mi. 49660



● = Set 1/2" Iron
○ = Ex. Survey Iron



SCALE: 1" = 40 ft.

ROSS SURVEYS
348 W. HANSEN RD.
SCOTTVILLE, MI. 49454
(616) 757-2878

SURVEY BY: KEN ROSS	COMPLETED: APRIL 30, 1984
DRAWING BY: WES THOMPSON	JOB NO.
Sheet of	FILE

I HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE LAND ABOVE DESCRIBED ON April 30 1984, AND THAT THE RATIO OF CLOSURE ON THE UNADJUSTED FIELD OBSERVATIONS OF SUCH SURVEY WAS 1/5000 AND THAT ALL OF THE REQUIREMENTS OF P. A. 132 OF 1970 HAVE BEEN COMPLIED WITH.

Kenneth L. Ross
KENNETH L. ROSS, RLS 17634

APR 8 1996

TOM
FVI
B

PUBLIC
LAW
ADVISORY

PUBLIC LAW ADVISORY

FCC RULE EXPANDS PREEMPTION OF
LOCAL ZONING REGULATION OF
SATELLITE DISH ANTENNAS.

report on important
regulatory developments
under public law

On February 29, 1996, the Federal Communications Commission (FCC) issued a rule which significantly expands the Federal preemption of zoning and building regulations applicable to satellite dish antennas effective mid-April 1996. The new FCC rule undermines local control of satellite dish antennas through zoning and building regulations.

PRIOR RULE: LIMITED PREEMPTION

Prior to the new rule, the FCC had adopted a "limited preemption" of local zoning ordinances. This prior rule preempted local regulation of satellite dish antennas that differentiated between satellite receive-only antennas and other types of antennas unless the regulations (a) had a reasonable and clearly defined health, safety, or aesthetic objective and (b) did not put unreasonable limitations on, or prevent, reception or impose unreasonable costs on users. In general terms, the limited preemption allowed zoning regulation of satellite dish antennas as long as the regulations did not unreasonably prevent a property owner from placing a dish at a location that was necessary to receive the satellite signal.

NEW RULE: EXPANDED PREEMPTION

The new FCC rule, however, greatly expands the Federal preemption of local regulation of satellite dish antennas. The rule now provides that all local zoning land use, building or similar regulations that materially limit transmission or reception by satellite dish antennas or impose more than minimal costs on users, are preempted unless the local unit of government can demonstrate that the regulation is reasonable. To be "reasonable," a local regulation must 1) have a clearly defined health, safety, or aesthetic objective stated in the text of the regulation itself (i.e., an explanation of these objectives is not sufficient if they are not included in the text of the regulation), and 2) further the stated objective without unnecessarily burdening access to satellite services and promoting fair and effective competition among service providers. A local unit of government may apply to the FCC for a waiver of the rule which will be granted only if the local unit shows that it has local concerns of a "highly specialized or unusual nature." It is likely that a waiver will be difficult for local units of government to obtain. The rule also makes it easier for satellite dish antenna owners to petition the FCC for a determination that the local regulation is preempted by not requiring a complete exhaustion of all legal remedies before requesting FCC review.

ARNUM
RIDDERING
SCHMIDT &
HOWLETT LLP
ATTORNEYS AT LAW

300 W. WATER PLACE
SUITE 300 OFFICE BOX 332
ANDRAPIDS, MICHIGAN 49501-0352
TELEPHONE 616 / 336-6000 · FAX 616 / 336-7000

ANDRAPIDS · LANSING
LANSING · GRAND HAVEN
DETROIT

NEW RULE: PREEMPTION OF SMALL ANTENNA REGULATION

In addition to the general provisions described above, the new rule has essentially preempted all local regulation of small dish antennas. Specifically, the new FCC rule provides that all local zoning, land use, building or similar regulations that affect satellite dish antennas two meters or less in diameter in a commercial or industrial district and one meter or less in any area are presumed unreasonable and are therefore preempted. This preemption applies in all cases unless the local unit of government has obtained a waiver from the FCC (as described earlier) or a final declaration from the FCC or a court that the presumption of unreasonableness has been rebutted. This presumption can be rebutted only if the local unit of government shows that the regulation 1) is necessary to accomplish a clearly defined health or safety objective stated in the text of the regulation, and 2) is no more burdensome to users than necessary to achieve the health or safety objective, and 3) is specifically applicable on its face to small dish antennas. The rule further provides that absent a waiver from the FCC or a declaration from the FCC or a court that the presumption has been rebutted, a local unit of government is prohibited from taking any action to enforce a regulation applicable to small dish antennas. As a result, local units of government will soon be precluded from enforcing local regulations applicable to satellite dish antennas two meters or less in commercial and industrial areas and one meter or less in other areas without first obtaining a waiver or declaration as described above.

TELECOMMUNICATIONS ACT: FCC AUTHORITY

With respect to satellite dish antennas in non-residential areas, the new Federal Telecommunications Act confers exclusive authority on the FCC to regulate "direct to home" satellite services. The new Act does not extend the FCC's authority to satellite dish antennas used for commercial purposes although the FCC claims to the contrary. Whether the FCC's preemption of commercial satellite dish antenna regulation is permitted by the new Act may be decided only by litigation.

We wanted to advise municipalities of the FCC's expanded preemption of local regulation of satellite dish antennas to become effective soon. If you have any questions regarding the regulation of satellite dish antennas, please contact John W. Pestle, Richard W. Butler, Jr., or Randall W. Kraker at (616) 336-6000.