

MANISTEE CITY PLANNING COMMISSION

Meeting of Thursday, November 1, 2012
7:00 p.m. - Council Chambers, City Hall, 70 Maple Street,
Manistee, Michigan

AGENDA

I Call to Order

II Roll Call

III Approval of Agenda

At this time the Planning Commission can take action to approve the November 1, 2012 Agenda.

IV Approval of Minutes

At this time Planning Commission can take action to approve the September 6, 2012 meeting Minutes.

V Public Hearing

None

VI Public Comment on Agenda Related items

VII New Business

PC-2012-08 Barry & Carmen Luedke/Mark & Dawn Wittlief – Parcel Split and Combination

A request has been received from Barry & Carmen Luedke owner of parcel 51-670-717-01 to split the east 35 feet off the parcel which would then be combined with parcel 51-670-715-15 owned by Mark and Dawn Wittlief. Review of the request shows that the requirements of the Zoning Ordinance would be met if the split were approved.

At this time the Planning Commission could recommend to City Council to approve the request from Barry & Carmen Luedke and Mark and Dawn Wittlief to split the east 35 feet off from Parcel 51-670-717-01 and combine it with parcel 51-670-715-15.

Meeting/Worksession Dates 2013

Staff has prepared a list of Meeting/Worksession dates for 2013 for the Commission to review.

At this time the Planning Commission could take action to schedule their Meeting and Worksession dates for 2013.

Chapter 1220 Planning Commission – Code of Ordinance

The Michigan Planning Enabling Act of 2008 allowed City Planning Commissions to consist of 5, 7 or 9 members. There are currently two expired terms on the Commission and staff will discuss with the Commission if they would like to recommend to City Council to reduce the number of members from nine to seven.

At this time the Planning Commission could take action to recommend to City Council to reduce the number of Planning Commissioners from nine to seven or to maintain the status quo of nine members.

Number of Alternate Members – Zoning Board of Appeals

Staff reviewed the Zoning Ordinance relating to the membership for the Zoning Board of Appeals and noted a conflict with the language in the Zoning Enabling Act.

METRO Act Permit Application

The City Clerk has forwarded a copy of a METRO Act Application from Lynx Network Group as required by ordinance. There is no requirement that the Commission approve the application.

Tasks for 2013

There are several projects for the Planning Commission to begin work on including the Master Plan Update. The Commission will discuss and prioritize projects that need to be worked on.

VIII Old Business

None

IX Public Comments and Communications

At this time the Chair will ask if there are any public comments.

X Correspondence

At this time the Chair will ask if any correspondence has been received to be read into the record.

XI Staff/Sub-Committee Reports

At this time the Chair will ask Staff for their report.

At this time the Chair will ask if any of the Sub-Committees have anything to report.

XII Members Discussion

At this time the Chair will ask members of the Planning Commission if they have any items they want to discuss.

XIII Adjournment

CITY OF MANISTEE PLANNING COMMISSION

70 Maple Street
Manistee, MI 49660

MEETING MINUTES

September 6, 2012

A meeting of the Manistee City Planning Commission was held on Thursday, September 6, 2012 at 7pm in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan.

Meeting was called to order at 7:00 pm by Chair Yoder

Roll Call:

Members Present: Linda Albee, Maureen Barry, David Crockett, Bill Dean, Ray Fortier, Eric Gustad, Marlene McBride, Mark Wittlief, Roger Yoder

Members Absent: None

Others: Jon R. Rose (Community Development Director), Denise Blakeslee (Planning & Zoning)

APPROVAL OF AGENDA

Motion by Ray Fortier, seconded by Mark Wittlief that the agenda be approved as prepared.

With a Roll Call vote this motion passed 9 to 0.

Yes: Albee, Barry, Crockett, Dean, Fortier, Gustad, McBride, Wittlief, Yoder
No: None

APPROVAL OF MINUTES

Motion by Ray Fortier, seconded by Marlene McBride that the minutes of the August 2, 2012 Planning Commission Meeting be approved as prepared.

With a Roll Call vote this motion passed 9 to 0.

Yes: Dean, Fortier, Albee, Barry, Crockett, Gustad, McBride, Wittlief, Yoder
No: None

PUBLIC HEARING

Chair Yoder opened the Public Hearing at 7:04pm

Z12-06 – Proposed Zoning Amendment Section 1813 Bed and Breakfast, Item B.1.h

The City of Manistee Planning Commission has reviewed Section 1813 Bed and Breakfast, Item B.1.h which establishes the number of sleeping rooms by Zoning District. The Commission has determined that this section should be deleted from the ordinance.

Denise Blakeslee, Planning & Zoning – The Planning Commission has been working on the proposed Zoning Amendment since their June Worksession. The proposed amendment eliminates item B.1.h of Section 1813 of the Bed and Breakfast Special Use Permit Standards.

A component of the Planning Commission review of the proposed amendment was that the size of the building and the ability to provide parking for customers would determine the number of rooms available at a Bed and Breakfast, resulting in the deleting item B.1.h which reads:

- h. The number of sleeping rooms rented to transient guests within a Bed and Breakfast Establishment shall not exceed the following standards:*
 - Within the R-1: 4 sleeping rooms*
 - Within the R-2, R-3: 5 sleeping rooms*
 - Within the C-2, C-3 District: 6 sleeping rooms*

Chair Yoder opened the hearing for public comments.

None

Chair Yoder asked if any correspondence had been received in response to the request.

None

There were no more additional comments; the Public Hearing was closed at 7:05 pm.

Chair Yoder opened the Public Hearing at 7:05 pm

Z12-07 – Proposed Zoning Amendment Article 2 Definitions (add definition for Outdoor Playset and Porch) Amend Section 502 Spatial and Physical Requirements Item D.

The City of Manistee Planning Commission has drafted language that defines Outdoor Playset and Porch that would be added to Article 2 Definitions; and drafted language that would amend Section 502 Spatial and Physical Requirements, Item D.

Denise Blakeslee, Planning & Zoning – The Planning Commission has been working on the proposed Zoning Amendment since their June Worksession. The proposed amendment provides definitions for Outdoor Playset and Porch in Article 2.

The change to Article 5, Section 502 Spatial and Physical Requirements allows people to construct porches on the front of their home in the front yard setback where they would have previously needed to obtain a variance from the Zoning Board of Appeals. During the Planning Commission review of the request the commission noted that it is important to establish a feeling of neighborhood and that a home with a front porch encourages interaction in a neighborhood.

The addition of language for outdoor playsets was added because of the size and height of the new “kits” that are available at many stores.

The Commission discussed item 502.1.b.

b. Porches built no closer than three (3) feet from the property line, subject to the provisions of Section 513 pertaining to clear vision areas. Provided that they cannot be enclosed into living area, permanently screened (creating a screened porch) or glassed (creating a sunroom), the use of screen curtains is permissible.

Consensus was to leave item 502.1.b as written.

Chair Yoder opened the hearing for public comments.

None

Chair Yoder asked if any correspondence had been received in response to the request.

None

There were no more additional comments; the Public Hearing was closed at 7:15 pm.

Chair Yoder opened the Public Hearing at 7:15 pm

Z12-08 – Proposed Zoning Amendment to carry over the Peninsula District standards to sections of Article 5 General Provisions, Article 18 Standards and Requirements for Special Uses and Article 21 Signs

Staff discovered that when the Peninsula District was established the new district was not applied to sections of Article 5 General Provisions, Article 18 Standards and Requirements for Special Uses and Article 21 Signs.

Denise Blakeslee, Planning & Zoning - The following Zoning Amendment has been prepared to address General Regulations, Special Use Permit Standards and Signage in the new Peninsula District (P-D) in the following sections of the Ordinance:

Article 5: General Regulations ADD P-D to Section 505 Water Protection, Item B; Section 511 Driveways and Curb Cuts, Item A and 515 Accessory Buildings and Structures, Item G.3.a

Article 18: Standards and Requirements for Special Uses - ADD P-D to Section 1807 Adaptive Reuse, Item C.2 and Section 1861 Motel, Item B.10

Article 21: Signs - ADD – P-D to Section 2102.A.7.a; Section 2102.A.7.b; Section 2102.A.7.c; Section 2103.H; Section 2106 Use Type 1, Low Intensity and Residential; Section 2007 Use Type 2, Commercial and Office and Section 2018 Use Type 3, Industrial

Chair Yoder opened the hearing for public comments.

None

Chair Yoder asked if any correspondence had been received in response to the request.

None

There were no more additional comments; the Public Hearing was closed at 7:18 pm.

PUBLIC COMMENT ON AGENDA RELATED ITEMS

Chair Yoder asked if anyone in attendance had any comments on Agenda Related Items.

None

NEW BUSINESS

Z12-06 – Proposed Zoning Amendment Section 1813 Bed and Breakfast, Item B.1.h

A public hearing was held earlier for a proposed Zoning Amendment to Section 1813 Bed and Breakfast, Item B.1.h. of the Zoning Ordinance.

MOTION by Ray Fortier, seconded by Eric Gustad that the Planning Commission recommends to City Council the adoption of the Proposed Zoning Amendment Z12-06.

With a Roll Call vote this motion passed 9 to 0.

Yes: Gustad, McBride, Wittlief, Dean, Fortier, Albee, Barry, Crockett, Yoder
No: None

Z12-07 – Proposed Zoning Amendment Article 2 Definitions (add a definition for Outdoor Playset and Porch) Amend Section 502 Spatial and Physical Requirements Item D.

A public hearing was held earlier for a proposed Zoning Amendment to add a definition for Outdoor Playset and Porch to Article 2 Definitions and amend Section 502 Spatial and Physical Requirements Item D.

MOTION by Ray Fortier, seconded by Marlene McBride that the Planning Commission recommends to City Council the adoption of the Proposed Zoning Amendment Z12-07.

With a Roll Call vote this motion passed 9 to 0.

Yes: Wittlief, Dean, Fortier, Albee, Barry, Crockett, Gustad, McBride, Yoder
No: None

Z12-08 – Proposed Zoning Amendment to carry over the Peninsula District standards to sections of Article 5 General Provisions, Article 18 Standards and Requirements for Special Uses and Article 21 Signs

A public hearing was held earlier for a proposed Zoning Amendment to apply the Peninsula District standards to uses in sections of Article 5 General Provisions, Article 18 Standards and

Requirements for Special Uses and Article 21 Signs.

MOTION by Maureen Barry, seconded by Ray Fortier that the Planning Commission recommends to City Council the adoption of the Proposed Zoning Amendment Z12-08.

With a Roll Call vote this motion passed 9 to 0.

Yes: Wittlief, Dean, Fortier, Albee, Barry, Crockett, Gustad, McBride, Yoder
No: None

OLD BUSINESS

None

PUBLIC COMMENTS AND COMMUNICATIONS

None

CORRESPONDENCE

None

STAFF/SUB-COMMITTEE REPORTS

Jon Rose, Community Development Director – Reported on MDOT Construction projects on U.S. 31.

Denise Blakeslee, Planning & Zoning – Both Mr. Rose and herself will be attending the Michigan Association of Planning Conference October 17 – 19. The Commissioners were asked if they wanted to cancel or reschedule the October Worksession.

MOTION by Ray Fortier, seconded by Mark Wittlief that the October 18, 2012 Worksession be cancelled.

With a Roll Call vote this motion passed 9 to 0.

Yes: Albee, Barry, Crockett, Dean, Fortier, Gustad, McBride, Wittlief, Yoder

No: None

Ms. Blakeslee spoke of the September Worksession; the Commission will take a walking tour of the Peninsula District. Discussed changing the starting time to 6pm since the days are getting shorter

MOTION by Maureen Barry, Seconded by Linda Albee that the September 20, 2012 Worksession start time be changed to 6pm.

With a voice vote MOTION passed unanimously.

MEMBERS DISCUSSION

Commissioner Gustad announced that he is running for City Council.

Commissioner Crocket asked Jon Rose for an update on the First Street Beach Project. Mr. Rose gave an update on the project.

The Planning Commission will hold a Worksession on Thursday, September 20, 2012

The next regular meeting of the Planning Commission will be held on Thursday, October 4, 2012

ADJOURNMENT

Motion by Ray Fortier, seconded by Maureen Barry that the meeting be adjourned. MOTION PASSED UNANIMOUSLY.

Meeting adjourned at 7:40 pm

MANISTEE PLANNING COMMISSION

Denise J. Blakeslee, Recording Secretary

CITY OF MANISTEE PLANNING COMMISSION WORKSESSION

70 Maple Street, Manistee, MI 49660

September 20, 2012

NOTES

A Worksession of the Manistee City Planning Commission was held on Thursday, September 20, 2012 at 6pm.

Worksession was called to order at 6pm by Chair Yoder

Roll Call:

Members Present: Linda Albee, Dave Crockett, Bill Dean, Ray Fortier, Eric Gustad, Marlene McBride, Mark Wittlief, Roger Yoder

Members Absent: Maureen Barry (excused)

Others: Jon R. Rose (Community Development Director), Denise Blakeslee (Planning & Zoning) and others

Tour of Peninsula District

Members of the Planning Commission left City Hall to tour the Peninsula District. Jeff Seng gave the Commissioners a tour of Seng's Marina. The members then walked through the District and discussed the Manistee Peninsula Brownfield Plan and Development Framework Plan that was done for the area by Wade Trim and NTH Consultants.

The members then took a tour of the new Marina Building before returning to City Hall when the Worksession was adjourned.

ADJOURNMENT

The Worksession adjourned at 7:30 pm

MANISTEE PLANNING COMMISSION

Denise J. Blakeslee, Recording Secretary



Planning & Zoning
Community Development
231.398.2805
Fax 231.723-1546
www.mansiteemi.gov

MEMORANDUM

TO: Planning Commissioners

FROM:  Jon Rose
Community Development Director

DATE: October 16, 2012

RE: Luedke/Wittlief Parcel Split and Combination Request

Commissioners, a request has been received from Barry & Carmen Luedke owner of parcel 51-670-717-01 to split the east 35 feet off the parcel which would then be combined with parcel 51-670-715-15 owned by Mark and Dawn Wittlief.

Since Mark is a member of the Planning Commission he will declare a conflict of interest and remove himself to the audience while the Commission deliberates on the request.

Review of the request shows the request meets the requirements of the ordinance.

JRR:djb



Planning & Zoning, City Hall
 70 Maple Street, P.O. Box 358,
 Manistee, MI 49660
 231.398.2806 (phone)
 231.723.1546 (fax)

Parcel Split Request Form

Please Print

Parcel Combination Requirements	
<p>Any Split of a Parcel within the City of Manistee requires review and approval of the Planning Commission and City Council. Even if the Parcel contains platted lots approval is still required. Requests are reviewed for compliance with the Zoning Ordinance. If a request meets all of the requirements of the Zoning Ordinance it will be forwarded to the City Planning Commission. The Planning Commission reviews the request and makes recommendation to the City Council. Notification will be mailed to applicants regarding City Council's determination. Requests must include the fee of \$100.00 for the first split and \$50.00 for each additional split. Incomplete requests will be returned to the applicant. <i>Must be submitted 15 days prior to the Planning Commission meeting to be placed on the agenda.</i></p>	
<p>To update their property taxes the property owner should send a copy of the determination to:</p> <p style="text-align: center;">Equalization Department County Courthouse 415 Third Street Manistee, MI 49660</p>	
<p>If the parcel involves a principal residence or homestead it is up to the applicant to notify the City Assessor at (231) 398-2802 to update their Homestead Exemption.</p>	
Property Information	
Address: 381 Tenth Street	Parcel # 51-51-670-717-01
Applicant Information	
Name of Owner: Barry & Carmen Luedke	
Address: 1019 Maple Street	
Phone #: 231-723-5639	Cell#: _____ e-mail: <u>bluedke@charter.net</u>
Project Information	
<p>Reason for Request: To split parcel 51-51-670-717-01 split off east 35 feet and combine with parcel 51-51-670-751-01 ⁷¹⁵⁻¹⁵</p>	
Site Plan Requirements	
<p>The applicant is responsible to provide a survey and legal descriptions of the proposed parcels (unless waived by the Zoning Administrator). If buildings or structures are located on a parcel a site plan showing set-backs is required. Requests are reviewed for compliance with the Zoning Ordinance. The Zoning Administrator reserves the right to require additional information necessary to meet the requirements of the Zoning Ordinance.</p>	
Authorization	
<p>By signing the application the applicant is authorizing City Staff permission to make site inspections as necessary. The undersigned affirms that the information included in this application is correct.</p>	
<p>Signature: <u>Barry & Carmen Luedke</u> Date: <u>10-1-2012</u></p>	
<p><input type="checkbox"/> Fee of \$100.00 for the first split and \$50.00 for each additional split enclosed and Site Plan for project attached (permit cannot be issued without site plan)</p>	
Office Use Only	
Fee: <input checked="" type="checkbox"/> \$50.00 <u>\$100.00</u>	Receipt # <u>26952</u>
Notes:	
Signature: _____	Date: _____

Handwritten signatures and date:
 Mark Whittlesey 10-1-12
 Dawn Whittlesey

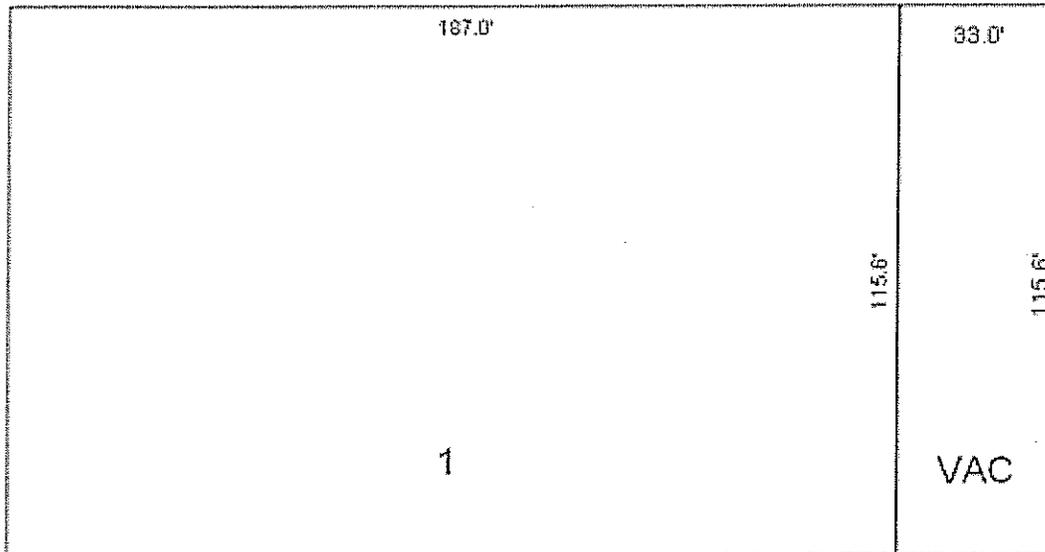
Image/Sketch for Parcel: 51-670-717-01

City of Manistee

[Back to Non-Printer Friendly Version] [Send To Printer]

Caption: No caption found

10TH STREET



Sketch by Apex Medina™

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[Privacy Policy](#)

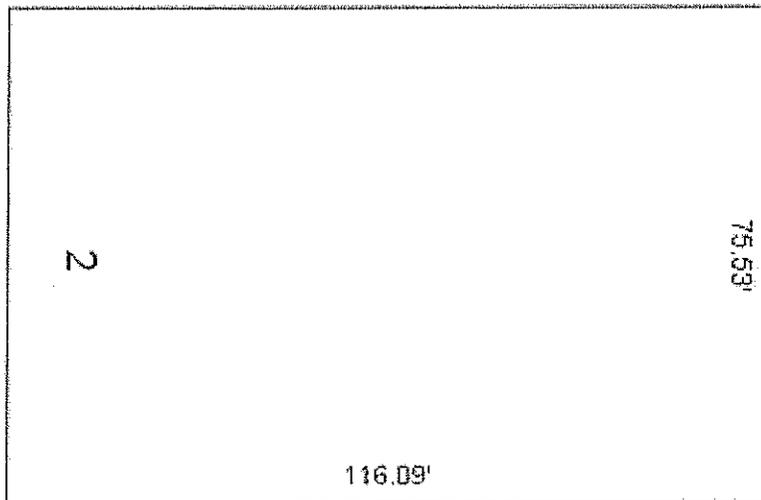
Image/Sketch for Parcel: 51-670-715-15

City of Manistee

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Sketch by Apex Mapping™



10TH STREET

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Luedke/Wittlief Split and Combination



Aerial Photo Date: Apr., 2008
© City of Manistee 2011



1 inch = 50 feet

PUBLIC NOTICE

CITY OF MANISTEE PLANNING COMMISSION
MEETING/WORKSESSION DATES

2013

The Manistee City Planning Commission generally hold their regular business meetings on the first Thursday of each month. These meetings and worksessions will be held in Council Chambers, City Hall, 70 Maple Street, Manistee Michigan at 7:00 p.m.

MEETINGS 7:00 P.M.

January 3, 2013
February 7, 2013
March 7, 2013
April 4, 2013
May 2, 2013
June 6, 2013
July 11, 2013*
August 1, 2013
September 5, 2013
October 3, 2013
November 7, 2013
December 5, 2013

WORKSESSIONS 7:00 P.M.

January 17, 2013
February 21, 2013
March 21, 2013
April 18, 2013
May 16, 2013
No Worksession
No Worksession
No Worksession
September 19, 2013
October 17, 2013
November 21, 2013
No Worksession

*Changed due to holiday

Jon R. Rose, Community Development Director

Box Ad - Classified Page

Run: Manistee News Advocate - December 1, 2012

Run: Next issue of The West Shore Shoppers Guide

Please send an affidavit to:

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



MEMORANDUM

Planning & Zoning
Community Development
231.398.2805
Fax 231.723-1546
www.mansiteemi.gov

TO: Planning Commissioners

FROM:  Jon Rose
Community Development Director

DATE: October 22, 2012

RE: Chapter 1220 Planning Commission – Code of Ordinance

Commissioners, we currently have two vacancies on the Planning Commission. Linda Albee decided not to reapply and Eric Gustad is running for City Council. Prior to the change in the Michigan Planning Enabling Act of 2008 cities with populations of more than 5,000 were required to have nine members on their Planning Commissions. Now municipalities can chose to have five, seven or nine members on their Commissions.

We will be discussing the increase in cost for training, budgeting for members to maintain their Citizen Planner Certification and if we should recommend to City Council to reduce the number of Commissioners from nine to seven.

JRR:djb

125.3815. Planning commission; membership; appointment; terms; vacancy; representation; qualifications; ex-officio members; board serving as planning commission; removal of member; conditions; conflict of interest; additional requirements.

Sec. 15. (1) In a municipality, the chief elected official shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving. In a county, the county board of commissioners shall determine the method of appointment of members of the planning commission by resolution of a majority of the full membership of the county board.

(2) A city, village, or township planning commission shall consist of 5, 7, or 9 members. A county planning commission shall consist of 5, 7, 9, or 11 members. Members of a planning commission other than ex officio members under subsection (5) shall be appointed for 3-year terms. However, of the members of the planning commission, other than ex officio members, first appointed, a number shall be appointed to 1-year or 2-year terms such that, as nearly as possible, the terms of 1/3 of all the planning commission members will expire each year. If a vacancy occurs on a planning commission, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment. A member shall hold office until his or her successor is appointed.

(3) The membership of a planning commission shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the local unit of government, in accordance with the major interests as they exist in the local unit of government, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire territory of the local unit of government to the extent practicable.

(4) Members of a planning commission shall be qualified electors of the local unit of government, except that the following number of planning commission members may be individuals who are not qualified electors of the local unit of government but are qualified electors of another local unit of government:

- (a) 3, in a city that on September 1, 2008 had a population of more than 2,700 but less than 2,800.
- (b) 2, in a city or village that has, or on September 1, 2008 had, a population of less than 5,000, except as provided in subdivision (a).
- (c) 1, in local units of government other than those described in subdivision (a) or (b).

(5) In a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, 1 member of the legislative body or the chief elected official, or both, may be appointed to the planning commission, as ex officio members. In any other township, 1 member of the legislative body shall be appointed to the planning commission, as an ex officio member. In a city, village, or



MEMORANDUM

Planning & Zoning
Community Development
231.398.2805
Fax 231.723-1546
www.mansiteemi.gov

TO: Planning Commissioners

FROM:  Jon Rose
Community Development Director

DATE: October 22, 2012

RE: Zoning Board of Appeals - Alternate Members

Commissioners, the two alternate positions on the Zoning Board of Appeals are currently vacant. The Zoning Enabling Act of 2006 says that the legislative body may appoint to the Zoning Board of Appeals not more than 2 alternate members for the same term as regular members...

While reviewing Article 25 Zoning Board of Appeals, Section 2501 Membership, Terms of Office we found that the ordinance reads:

...With approval of Council, the Mayor shall appoint at least (2) alternate members, who shall serve for three (3) years.

This is in conflict with the Zoning Enabling Act and would not allow City Council the opportunity to reduce the number of alternate members from two to one.

JRR:djb

Denise Blakeslee

From: Michelle Wright
Sent: Wednesday, October 03, 2012 11:45 AM
To: Denise Blakeslee; Jon Rose
Cc: Julie Beardslee
Subject: Lynx METRO Act application & permit
Attachments: Lynx Metro Application - Manistee MI.DOC; Lynx Project.pdf; Lynx - Blank Certificate (2012-2013).pdf; bilateral_permit_69920_7.doc

Follow Up Flag: Follow up
Flag Status: Completed

Per the City Attorney's instructions, I am forwarding a copy of this METRO Act application from Lynx Network Group to the Planning Commission and the City Assessor as required by our ordinance. Please note that there is no requirement for your approval of the application, just an FYI.

Michelle Wright

Michelle Wright MMC /CPFA, MiCPT
City Clerk/Deputy Treasurer
70 Maple Street
Manistee MI 49660-0358
(231) 398-2803
(231) 723-5410 fax
mwright@manisteemi.gov

www.facebook.com/cityofmanistee

**METRO Act Permit Application Form
Revised 12/06/02**

**City of Manistee
Name of Local Unit of Government**

**APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS
UNDER
METROPOLITAN EXTENSION TELECOMMUNICATIONS
RIGHTS-OF-WAY OVERSIGHT ACT
2002 PA 48
MCLA SECTIONS 484.3101 TO 484.3120**

BY

**Lynx Network Group, Inc.
("APPLICANT")**

Unfamiliar with METRO Act?--Assistance: Municipalities unfamiliar with Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("METRO Act") permits for telecommunications providers should seek assistance, such as by contacting the Telecommunications Division of the Michigan Public Service Commission at 517-241-6200 or via its web site at http://www.michigan.gov/mpsc/0,1607,7-159-16372_22707---,00.html.

45 Days to Act—Fines for Failure to Act: The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCLA 484.3115(3). The Michigan Public Service Commission can impose fines of up to \$40,000 per day for violations of the METRO Act. It has imposed fines under the Michigan Telecommunications Act where it found providers or municipalities violated the statute.

Where to File: Applicants should file copies as follows [municipalities should adapt as appropriate—unless otherwise specified service should be as follows]:

- Three (3) copies (one of which shall be marked and designated as the master copy) with the Clerk at 70 Maple St. Manistee, MI 49660. PO Box 358
-

City of Manistee
Name of local unit of government

**APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS**

By
**LYNX Network Group, Inc
("APPLICANT")**

This is an application pursuant to Sections 5 and 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 (the "METRO Act") for access to and ongoing usage of the public right-of-way, including public roadways, highways, streets, alleys, easements, and waterways ("Public Ways") in the Municipality for a telecommunications system. The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCLA 484.3115(3).

This application must be accompanied by a one-time application fee of \$500, unless the applicant is exempt from this requirement under Section 5(3) of the METRO Act, MCLA 484.3105(3).

1 GENERAL INFORMATION:

- 1.1 Date August 21, 2012
- 1.2 Applicant's legal name: Lynx Network Group, Inc
Mailing Address: PO Box 237
Kalamazoo, MI 49004-0237
Telephone Number: 269-585-1000
Fax Number: 269-585-5902
Corporate website: http://www.lynxnetworkgroup.com/

Name and title of Applicant's local manager (and if different) contact person regarding this application:

Chris Barber - President
Mailing Address: Same as above
Telephone Number: 269-585-1000
Fax Number: Same as above
E-mail Address: cbarber@lynxnetworkgroup.com

1.3 Type of Entity: (Check one of the following)

- Corporation
- General Partnership
- Limited Partnership
- Limited Liability Company
- Individual
- Other, please describe:

1.4 Assumed name for doing business, if any: Lynx Network Group, Inc.

1.5 Description of Entity:

1.5.1 Jurisdiction of incorporation/formation; Michigan

1.5.2 Date of incorporation/formation; June 1, 2003

1.5.3 If a subsidiary, name of ultimate parent company; N/A

1.5.4 Chairperson, President/CEO, Secretary and Treasurer (and equivalent officials for non-corporate entities).

Co-Founder/President: Chris Barber

Co-Founder/EVP/Secretary: Gregg Rutgers

Co-Founder/EVP/Treasurer: Gerald Philipp

1.6 Attach copies of Applicant's most recent annual report (with state ID number) filed with the Michigan Department of Consumer and Industry Services and certificate of good standing with the State of Michigan. For entities in existence for less than one year and for non-corporate entities, provide equivalent information. **State ID: 03918L – Exhibit A**

Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe: **No**

1.7 In the past three (3) years, has Applicant had a permit to install telecommunications facilities in the public right of way revoked by any Michigan municipality?

Circle: Yes **No**

If "yes," please describe the circumstances.

1.8 In the past three (3) years, has an adverse finding been made or an adverse final action been taken by any Michigan court or administrative body against Applicant under any law or regulation related to the following:

1.8.1 A felony; or

1.8.2 A revocation or suspension of any authorization (including cable franchises) to provide telecommunications or video programming services?

Circle: Yes **No**

If "yes," please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.

If Applicant has been granted and currently holds a license to provide basic local exchange service, no financial information needs to be supplied. If publicly held, provide Applicant's most recent financial statements. If financial statements of a parent company of Applicant (or other affiliate of Applicant) are provided in lieu of those of Applicant, please explain. Applicant is registered in the State of Michigan as local exchange provider

1.8.3 If privately held, and if Municipality requests the information within 10 days of the date of this Application, the Applicant and the Municipality should make arrangements for the Municipality to review the financial statements.

If no financial statements are provided, please explain and provide particulars.

2 DESCRIPTION OF PROJECT:

2.1 Provide a copy of authorizations, if applicable, Applicant holds to provide telecommunications services in Municipality. If no authorizations are applicable, please explain.

No authorizations are applicable. Lynx Network Group is only offering data services for schools, government organizations, health care organizations, businesses, and households.

2.2 Describe in plain English how Municipality should describe to the public the telecommunications services to be provided by Applicant and the telecommunications facilities to be installed by Applicant in the Public Ways.

A fiber optic network working to improve broadband in the State of Michigan.

2.3 Attach route maps showing the location (including whether overhead or underground) of Applicant's existing and proposed facilities in the public right-of-way. To the extent known, please identify the side of the street on which the facilities will be located. (If construction approval is sought at this time, provide engineering drawings, if available, showing location and depth, if applicable, of facilities to be installed in the public right-of-way).

See Exhibit B

2.4 Please provide an anticipated or actual construction schedule.

The project is scheduled for completion by November 2012

Please list all organizations and entities which will have any ownership interest in the facilities proposed to be installed in the Public Ways.

LYNX Network Group, Inc.

2.5 Who will be responsible for maintaining the facilities Applicant places in the Public Ways and how are they to be promptly contacted? If Applicant's facilities are to be installed on or in existing facilities in the Public Ways of existing public utilities or incumbent telecommunications providers, describe the facilities to be used, and provide verification of their consent to such usage by Applicant.

Lynx Network Group, Inc.

See Exhibit C for Emergency call out list.

Construction will primarily be underground. Lynx Network Group. will provide copies of joint use agreements upon request.

3 TELECOMMUNICATION PROVIDER ADMINISTRATIVE MATTERS:

Please provide the following or attach an appropriate exhibit.

- 3.1 Address of Applicant's nearest local office;
Lynx Network Group, Inc
5455 W View Rdg
Glen Arbor, MI 49636
- 3.2 Location of all records and engineering drawings, if not at local office;
Local office will have a copy of all records and engineering drawings.
- 3.3 Names, titles, addresses, e-mail addresses and telephone numbers of contact person(s) for Applicant's engineer or engineers and their responsibilities for the telecommunications system;
see local contact information above
- 3.4 Provide evidence of self-insurance or a certificate of insurance showing Applicant's insurance coverage, carrier and limits of liability for the following:
See Exhibit D
 - 3.4.1 Worker's compensation;
See Exhibit E.,
 - 3.4.2 Commercial general liability, including at least:

- 3.4.2.1 Combined overall limits;
 - 3.4.2.2 Combined single limit for each occurrence of bodily injury;
 - 3.4.2.3 Personal injury;
 - 3.4.2.4 Property damage;
 - 3.4.2.5 Blanket contractual liability for written contracts, products, and completed operations;
 - 3.4.2.6 Independent contractor liability;
 - 3.4.2.7 For any non-aerial installations, coverage for property damage from perils of explosives, collapse, or damage to underground utilities (known as XCU coverage);
 - 3.4.2.8 Environmental contamination;
- 3.4.3 Automobile liability covering all owned, hired, and non-owned vehicles used by Applicant, its employee, or agents.

No Lynx vehicles will be used.

- 3.5 Names of all anticipated contractors and subcontractors involved in the construction, maintenance and operation of Applicant's facilities in the Public Ways.

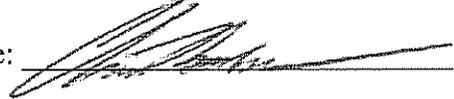
EarthComm.

4 CERTIFICATION:

All the statements made in the application and attached exhibits are true and correct to the best of my knowledge and belief.

Lynx Network Group, Inc.

Signature: _____



Print: Chris Barber

Title: President

Date: _____

___8/21/2012_____

DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
 LIMITED LIABILITY COMPANY ANNUAL STATEMENT
 2011

File Online at www.michigan.gov/legonline

Identification Number B4181J	Registered Company Name LYNK NETWORK GROUP, LLC	MAR 07 2011
1. Contact person and mailing address of the registered office CHRISTOPHER J BARBER P.O. BOX 237 KALAMAZOO MI 49004		If different from Bureau of Commercial Services mailing address of registered office in Michigan Trac Info#7 16587095-1 02/14/11 CRA#: 10769 Amt: \$25.00 ID: B4181J
2. The address of the principal office 6455 WILSON RIDGE CLEVINGTON MI 48826		If different from 2, complete address of registered office (number, street, city, state, zip) in Michigan
3. Signature of authorized member, manager or agent	Title ITS : mca mb llc	Date 12/8/10
		Phone Number 269 585-1099

Filing Fee: \$25.00
 Annual Statement must be received by agency on or before February 15, 2011.

Annual Statement Must Be Signed

Domestic: Signature of a manager if management is vested in managers, by at least 1 member if management vests in the members or by an authorized agent of the domestic limited liability company.
Foreign: Signature of a person with authority to do so under the laws of the foreign limited liability company's jurisdiction of organization.

Make your check or money order payable to the State of Michigan. Include amount of financial interest attached to this check/money order.

Return to: Department of Energy, Labor & Economic Growth
 Bureau of Commercial Services
 Corporation Division
 P.O. Box 30762
 Lansing MI 48900
 (517) 242-6470

Required by Section 207, Act 20, Public Act of 1993

Do not staple any forms to this statement

DO NOT DETACH THIS STUB

Identification Number: B4181J
 Limited Liability Company Name: LYNK NETWORK GROUP, LLC

Return this form with payment to:
 Department of Energy, Labor & Economic Growth
 Bureau of Commercial Services
 Corporation Division
 P.O. Box 30762
 Lansing, MI 48909

77 7703 21004516 006023 000002500

Exhibit B

Route Furnished By Earthcom

Exhibit C

Emergency Call Out List:

1st Level for Repair:

866-819-5969(LYNX)

2nd Level for Repair:

Brian Spry (269)585-1006 Office
 (269)330-1171 Mobile
 bspry@Lynxnetworkgroup.com

3rd Level for Repair:

Chris Literski (269)585-1013 Office
 (517)812-0323 Cell
 cliterski@Lynxnetworkgroup.com

Executive Level Escalations for Repair:

Gregg Rutgers (269)585-1004 Office
 (269)217-2696 Mobile
 grutgers@Lynxnetworkgroup.com

Gerald Philipp (269)585-1002 Office
 (616)437-1325 Mobile
 gphilipp@Lynxnetworkgroup.com

Chris Barber (269)585-1003 Office
 (231)590-5989 Mobile
 cbarber@Lynxnetworkgroup.com

Exhibit D
Insurance Certification



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/19/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Daly Merritt Inc. 100 Maple Wyandotte MI 48192 INSURED LYNX NETWORK GROUP INC LYNX FIBER ONE LLC P.O. BOX 297 KALAMAZOO MI 49004		CONTACT NAME Cathy Stannis PHONE (734) 263-1400 FAX (734) 263-1197 E-MAIL ADDRESS Cathy.Stannis@dalymeritt.com PRODUCER CUSTOMER ID # 00017930	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A Sentinel Ins Company NAIC # 11000 INSURER B Hartford Accident & Indemnity 22357 INSURER C INSURER D INSURER E INSURER F	

COVERAGES CERTIFICATE NUMBER: CL1271903971 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR USE VWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		359BAPM5448	7/10/2012	7/10/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea Occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GENL AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC					
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		359BAPM5448	7/10/2012	7/10/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000		359BAPM5448	7/10/2012	7/10/2013	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe below DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	359BAPM5448	7/10/2012	7/10/2013	NO STATUTORY LIMITS OTH ER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - FA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
A	Technology E&O		359BAPM5448	7/10/2012	7/10/2013	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER FOR INFORMATION PURPOSES ONLY	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Kyle O'Malley/STANNI

METRO Act Permit
Bilateral Form
Revised 12/06/02

**RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT**

TERMS AND CONDITIONS

1 Definitions

- 1.1 Company shall mean a corporation organized under the laws of the State of Michigan whose address is PO Box 237, Kalamazoo MI 49004-0237.
- 1.2 Effective Date shall mean the date set forth in Part 13.
- 1.3 Manager shall mean Municipality's Manager or his designee.
- 1.4 METRO Act shall mean the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.5 Municipality shall mean the City of Manistee, a Michigan municipal corporation.
- 1.6 Permit shall mean this document.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public right-of-way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunication Facilities or Facilities shall mean the Company's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

- 2.1 Municipality hereby grants a permit under the METRO Act to Company for access to and ongoing use of the Public Right-of-Way to construct, install and maintain Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A on the terms set forth herein.
 - 2.1.1 Exhibit A may be modified by written request by Company and approval by Manager.
 - 2.1.2 Manager shall not unreasonably condition or deny any request for a modification of Exhibit A. Any decision of Manager on a request for a modification may be appealed by Company to Municipality's legislative body.
- 2.2 Overlapping. Company shall not allow the wires or any other facilities of a third party to be overlapped to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.
- 2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

- 3.1 Company Contacts. The names, addresses and the like for engineering and construction related information for Company and its Telecommunication Facilities are as follows:
 - 3.1.1 The address, e-mail address, phone number and contact person (title or name) at Company's local office (in or near Municipality) is Lynx Network Group, Inc., Chris Barber, President, PO Box 237, Kalamazoo MI 49004-0237. E-mail: cbarber@lynxnetworkgroup.com Phone #: (269) 585-1000
 - 3.1.2 If Company's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is 5455 W. View Rd., Glen Arbor MI 49636.

- 3.1.3 The name, title, address, e-mail address and telephone numbers of Company's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is Lynx Network Group, Inc., Chris Barber, President, PO Box 237, Kalamazoo MI 49004-0237. E-mail: cbarber@lynxnetworkgroup.com Phone #: (269) 585-1000
- 3.1.4 The address, phone number and contact person (title or department) at Company's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is Lynx Network Group, Inc., Chris Barber, President, PO Box 237, Kalamazoo MI 49004-0237. E-mail: cbarber@lynxnetworkgroup.com Phone #: (269) 585-1000
- 3.1.5 Company shall at all times provide Manager with the phone number at which a live representative of Company (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.
- 3.1.6 The preceding information is accurate as of the Effective Date. Company shall notify Municipality in writing as set forth in Part 12 of any changes in the preceding information.

3.2 Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

3.3 As-Built Records. Company, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Company shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

4.1 No Burden on Public Right-of-Way. Company, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Company's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Company, at its sole

expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Company shall do so within a reasonable time period. Municipality shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Company over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Company's option, better) condition as that which existed prior to the disturbance. In the event that Company, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Company shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Company shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Company's lines on alternate poles which shall state Company's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Company's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Company's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Company, shall be marked at its entrance into and exit from each manhole and handhole with Company's name and a toll-free telephone number.

- 4.5 Tree Trimming. Company may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Company shall dispose of all trimmed materials. Company shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.
- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Company shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Company's use, or the facilities of all users of the poles are required to go underground then Company shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Company may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Company shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.
- 4.7 Pavement Cut Coordination. Company shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1 The goals of such coordination shall be to encourage Company to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.
- 4.8 Compliance with Laws. Company shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Company shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Municipality shall not unreasonably delay or deny issuance of any such permits, licenses or approvals. Company shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and

the National Electric Code (latest edition). Company shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended. This section does not constitute a waiver of Company's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.

- 4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Company's Facilities in the vacated Public Right-of-Way, Company shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Company shall relocate its Facilities to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards.
- 4.10 Relocation. If Municipality requests Company to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Company shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality shall attempt to provide notice to Company. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Company shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Company shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Company has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Company shall relocate its Facilities underground in the same location at Company's sole cost and expense.

4.14 Identification. All personnel of Company and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Company's name, their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Company's name and telephone number.

5 Indemnification

5.1 Indemnity. Company shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Company, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Company's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Company, its officers, agents, employees, contractors, successors and assigns.

5.2 Notice, Cooperation. Municipality shall notify Company promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality shall cooperate with Company in every reasonable way to facilitate the defense of any such claim. Municipality shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.

5.3 Settlement. Municipality shall not settle any claim subject to indemnification under this Part 5 without the advance written consent of Company, which consent shall not be unreasonably withheld. Company shall have the right to defend or settle, at its own expense, any claim against Municipality for which Company is responsible hereunder.

6 Insurance

6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Company shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Company may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).
 - 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
 - 6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
 - 6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
 - 6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Company shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Company shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Company's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company's policies).
- 6.6 Insurance Primary. Company's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Company's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:
- 7.1.1 Fifteen years (15) from the Effective Date; provided, however, that following such initial term there shall be three subsequent renewal terms of five (5) years. Each renewal term shall be automatic unless Municipality notifies Company in writing, at least twelve (12) months prior to the end of any term then in effect, that due to changed circumstances a need exists to negotiate the subsequent renewal with Company. Municipality shall not unreasonably deny a renewal term; or
- 7.1.2 When the Telecommunication Facilities have not been used to provide telecommunications services for a period of one hundred and eighty (180) days by the Company or a successor of an assign of the Company; or
- 7.1.3 When Company, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or

- 7.1.4 Upon either Company or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
- 7.1.5 Unless Manager grants a written extension, one year from the Effective Date if prior thereto Company has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Effective Date if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

- 8.1 Municipal Requirement. Municipality may require Company to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)].

9 Fees

- 9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

- 10.1 Removal; Underground. As soon as practicable after the Term, Company or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Company shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Company's sole cost and expense.

- 10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

- 10.2 Removal; Above Ground. As soon as practicable after the Term, Company, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of

its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Company as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Company may assign or transfer its rights under this Permit, or the persons or entities controlling Company may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Company's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Company shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Company must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Company's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Company shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Company may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

- 12.1 Notices. All notices under this Permit shall be given as follows:
- 12.1.1 If to Municipality, to City of Manistee, Attn: City Manager, 70 Maple Street, Manistee MI 49660-0358.
- 12.1.2 If to Company, to Lynx Network Group, Inc., Attn: Chris Barber, President, PO Box 237, Kalamazoo MI 49004-0237.
- 12.2 Change of Address. Company and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

- 13.1 No Cable, OVS. This Permit does not authorize Company to provide commercial cable type services to the public, such as “cable service” or the services of an “open video system operator” (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).
- 13.2 Duties. Company shall faithfully perform all duties required by this Permit.
- 13.3 Effective Date. This Permit shall become effective when issued by Municipality and Company has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acceptance of the Permit.
- 13.4 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].
- 13.5 Amendment. Except as set forth in Section 2.1 this Permit may be amended by the written agreement of Municipality and Company.
- 13.6 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Company and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.
- 13.7 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

CITY OF MANISTEE

Attest:

By: _____
Michelle Wright, City Clerk

By: _____
Its: Mitch Deisch, City Manager
Date: _____

“Company accepts the Permit granted by Municipality upon the terms and conditions contained therein.”

LYNX NETWORK GROUP, INC.

By: _____
Its: _____
Date: _____

::ODMA\PCDOCS\GRR\759319\6

Exhibit A

Public Right-of-Way to be Used by Telecommunication Facilities

Lynx Project: Manistee, MI

Purple Line is existing fiber, Lynx is constructing an a couple hundred foot span (blue line) to connect the Existing fiber to the existing ATT Manhole 6. Permit is pending with ATT. Lynx anticipates utilizing Earthcom for the project.

