

CHARTER TOWNSHIP OF FENTON
Ordinance No. 778
Adopted: May 18, 2015

An ordinance to amend ordinance No. 594 of the Township of Fenton, commonly known as the Fenton Township Zoning Ordinance, to change the zoning of a certain parcel of land, 06-28-200-043, owned by Lee Churchill, from R-3, Single Family Residential to AG, Agriculture, with the attached statement of conditions, and to amend the Township Zoning Map to reflect the zoning change.

THE CHARTER TOWNSHIP OF FENTON, COUNTY OF GENESEE, MICHIGAN
ORDAINS:

After public hearing and publication of notice thereof as required by the statutes of the State of Michigan, Section 3.05 of the Fenton Township Zoning Ordinance (Ordinance No. 594) is hereby amended as follows:

SECTION 3.05

A PARCEL OF LAND BEG S 89 DEG 27 MIN 25 SEC E 1234.39 FT & S 0 DEG 23 MIN W 677.07 FT FROM N 1/4 COR OF SEC TH CONT S 0 DEG 23 MIN W 906.91 FT TH N 75 DEG 34 MIN 15 SEC W 531.64 FT TH N 0 DEG 04 MIN E 86.92 FT & N 15 DEG 21 MIN 30 SEC E 525 FT TH N 74 DEG 38 MIN 30 SEC E 684.32 FT TO PL OF BEG SEC 28 T5N R6E (05) 10.01 A FR 06-28-200-017

The Township Zoning Map is hereby amended to reflect the change in zoning from R-3 to AG with the attached conditions.

This amendatory ordinance is hereby declared to have been enacted by the Fenton Township Board of Trustees at a regular meeting thereof held on the 18th day of May 2015 and is ordered to be given publication in the manner prescribed by law. It shall become effective seven (7) days after adoption and publication.

Bonnie K. Mathis, Supervisor

Robert E. Krug, Clerk

CONDITIONAL ZONING AGREEMENT

This Conditional Zoning Agreement dated as of _____, 2015, by and between Phillip R. Hagerman ("Hagerman"), as Trustee of the JH GST Trust under Agreement dated June 1, 2007 (the "Hagerman Trust"), and the Charter Township of Fenton, a Michigan municipal corporation (the "Township").

RECITALS:

- A. The Hagerman Trust has entered into a certain Purchase Agreement dated January 23, 2015, as amended by First Amendment to Purchase Agreement dated February 20, 2015 (as so amended, the "Purchase Agreement") with Lee Churchill ("Churchill"), Trustee of the Lee Churchill Revocable Living Trust dated 11/21/1979 (the "Churchill Trust"), covering certain real property within the Township which is more particularly described on the ALTA Survey by DPS, Inc., dated 2-15-2015 (the "Survey"), a copy of which is attached hereto as Exhibit "A" ; Tax Parcels 06-28-200-043 and 06-28-200-035; ;commonly known as 15135 Pinewood Trail (the "Overall Property").
- B. Tax Parcel 06-28-200-035, identified on the Survey as Parcel 1 (the "North Parcel") is presently zoned AG under the Township's Zoning Ordinance, and Tax Parcel 06-28-200-043, identified on the Survey as Parcel 2 (the "South Parcel") is presently zoned R-3 under the Township's Zoning Ordinance.
- C. The Churchill Trust is the fee owner of the Overall Property, and has consented in writing to the Hagerman Trust's application under Section 14.03 of the Zoning Ordinance for conditional rezoning of the South Parcel to AG—Agricultural District.
- D. The North Parcel is presently vacant, while the South Parcel is improved with an approximately 24,010 square foot wood barn constructed in the 1980s as a horse stable, together with certain accessory improvements related to and used in connection with the horse stable, and located contiguous to Tax Parcel 06-28-200-044 to the South, which is owned by the Churchill Trust and occupied for residential purposes by Churchill.
- E. The Hagerman Trust owns the property known as 15171 Pinewood Trail, being Tax Parcel 06-28-200-034, located immediately across Pinewood Trail to the West of the South Parcel, which is occupied for residential purposes by Hagerman.
- F. In order to permit the continued use and development of the South Parcel for horse stable and related purposes, and to make the South Parcel consistent with the zoning classification and permitted uses of the North Parcel, the Hagerman Trust desires to have the South Parcel conditionally zoned AG—Agricultural District under the Township Zoning Ordinance.

G. The Hagerman Trust has freely and voluntarily offered to enter into this Conditional Zoning Agreement consistent with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, and in particular Section 405 thereof (MCL 125.3405).

H. The Township, by action of its Township Board at its meeting of _____, 2015, acting pursuant to the Michigan Zoning Enabling Act and Section 14.03 of the Township Zoning Ordinance, has accepted the offer of the Hagerman Trust to enter into this Conditional Zoning Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants and other provisions set forth herein, the parties agree as follows:

1. Rezoning. Upon approval by the Township, and execution of this Agreement by the parties hereto, the South Parcel shall be conditionally rezoned to AG—Agricultural District subject to the uses and restrictions contained in this Agreement.

2. Permitted Uses. Upon such rezoning, the South Parcel may only be used for all equine and equine-related and accessory uses, activities and purposes, including without limitation horse stables, riding corrals and turn-out areas, owner and third party riding, riding lessons/academy, boarding, breeding and all other equine activities as defined in Act 351 of 1994, being MCL 691.1661 *et seq.* Not more than fifty (50) horses shall be housed on the South Parcel at any time. No other uses shall be permitted on the South Parcel.

3. Use Restrictions. Hagerman Trust agrees that, although rezoned to the AG—Agricultural District, the South Parcel shall not be used for any agricultural uses outside those uses specifically permitted in Section 2 of this Agreement. Without limiting the generality of the foregoing, the South Parcel shall not be used for any of the following:

- a. Adult foster care family homes
- b. Adult foster care small group homes
- c. Day care, adult
- d. Day care homes, family
- e. Foster family group homes
- f. Foster family homes

4. Further Development and Improvement. The parties further acknowledge that any further development and improvement of or on the South Parcel shall be subject to any applicable site plan, dimensional set-backs and requirements and approvals that would be required of any such activities under the Township Zoning Ordinance within the AG—Agricultural District.

5. Time Period for Establishing Use; Reversion of Zoning. The approved use of the land and building within the South Parcel as contemplated herein shall commence within one (1) year after the effective date of the rezoning hereunder. If such use does not occur within such one (1) year period, then the South Parcel shall revert to its former zoning classification as set forth in MCL 125.3405 and Section 14.03 of the Township Zoning Ordinance.

6. Statement of Conditions. In accordance with Section 14.03 of the Township Zoning Ordinance, the Township and the Hagerman Trust have prepared, and the Hagerman Trust shall execute, a Statement of Conditions for the South Parcel in the form attached hereto as Exhibit B, which shall be recorded with the Genesee County Register of Deeds. The rezoning for the South Parcel will not become effective until the Statement of Conditions has been executed and recorded by the fee simple owner of the South Parcel within one hundred twenty (120) days after the expiration of the seven day period under MCL 125.3042(1); and if the fee simple owner of the South Parcel has not recorded such Statement of Conditions within that one hundred twenty (120) day period, then the rezoning shall not take place, the South Parcel shall not be rezoned to AG, and such rezoning shall not be effective or binding on the South Parcel.

7. Township's Representations and Warranties. The Township represents and warrants the following to the Hagerman Trust:

- a. Authority. The Township, by action of its Board at its meeting on _____, 2015, has accepted the offer of the Hagerman Trust to enter into this Agreement. The Township has the authority to enter into this Agreement and to perform and carry out all obligations, covenants and provisions hereof. The Township's authority shall be evidenced by appropriate resolutions. In addition, the person executing this Agreement on behalf of the Township has all due authority, approvals and authorizations.
- b. Compliance. This Agreement, and the approvals granted herein, comply with the requirements of the Township Zoning Ordinance, the Michigan Zoning Enabling Act, as amended, including without limitation MCL 125.3405, and all applicable statutes, laws, rules and regulations. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, or any agreement to which the Township is a party or by which it is bound. Upon execution and delivery of this Agreement, it shall be enforceable against the Township in accordance with its terms.
- c. Validity of Uses. In the event the Township Zoning Ordinance is amended such that the uses provided for in this Agreement for the South Parcel are no longer permitted uses, the uses provided for in this Agreement shall be considered legal prior non-conforming uses.
- d. Litigation. The Township has no notice of any pending or threatened litigation, administrative action or examination, claim or demand before any court or any federal, state or municipal governmental department, commission, board, bureau,

agency or instrumentality thereof which would prevent the Township from carrying out the covenants and promises made herein.

8. Hagerman Trust's Representations and Warranties. The Hagerman Trust represents and warrants the following to the Township:

- a. Authority. The Hagerman Trust has the authority to enter into this Agreement and to perform and carry out all of its obligations, covenants and provisions herein. In addition, Hagerman has all due authority, approvals and authorizations to execute this Agreement, as Trustee, on behalf of the Hagerman Trust.
- b. Compliance. This Agreement, and the approvals granted herein, comply with all contracts, agreements, covenants, easements and restrictions to which the Hagerman Trust is subject. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated herein is in violation of any provision of any existing law or regulation, order or decree of any court or governmental entity, applicable to the Hagerman Trust. Upon execution and delivery of this Agreement, it shall be enforceable against the Hagerman Trust in accordance with its terms.

9. Running With The Land. This Agreement, including the conditions and approvals granted herein, and all other rights and obligations, shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, assigns and transferees. The provisions of this Agreement shall be deemed benefits and burdens which shall run with the South Parcel property.

10. Miscellaneous.

- a. Complete Agreement. This Agreement, together with any agreements and the Zoning Ordinance referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and it may not be amended or its terms varied except in writing and signed by the required parties.
- b. Conflicts. In the event of conflict between the provisions of this Agreement and the provisions of the Township Zoning Ordinance, or any enabling authority of the Township, the provisions of this Agreement shall prevail.
- c. Severability. The invalidity of any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof, which shall remain valid and enforceable to the fullest extent permitted by law.
- d. Waiver of Breach. A party to this Agreement does not waive any default, condition, promise, obligation or requirement applicable to any other party hereunder, unless such waiver is in writing, signed by an authorized representative of that party, and expressly stated to constitute such waiver. Any such waiver shall only apply to the extent given and shall not be deemed or construed to waive any such or other default, condition, promise, obligation or requirement in any past or future instance. No

failure of a party to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to the exercise of any right or remedy in the event of a default shall constitute a waiver of any such default in such covenant, agreement, term or condition.

- e. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan. The parties agree, consent and submit to the personal jurisdiction of any competent court of jurisdiction in Genesee County, Michigan, for any action brought against it arising out of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

WITNESSES:

“THE HAGERMAN TRUST”

Philip R. Hagerman, as Trustee of the JH
GST Trust under Agreement dated June 1,
2007, and not otherwise

“THE TOWNSHIP”

CHARTER TOWNSHIP OF FENTON,
a Michigan municipal corporation

By: _____
Printed: _____
Its: _____

EXHIBIT A
ALTA SURVEY

[see following page]

EXHIBIT B

STATEMENT OF CONDITIONS UNDER MCL 125.3405

This instrument is executed as of _____, 2015, by Phillip R. Hagerman, as Trustee of the JH GST Trust under Agreement dated June 1, 2007 and not otherwise ("Declarant"), whose address is 15171 Pinewood Trail, Linden, Michigan 48451.

RECITALS

1. On _____, 2015, pursuant to the request and offer of the Declarant, the Fenton Township Board of Trustees amended the zoning map of the Charter Township of Fenton to rezone the "Property" (defined below) to Agricultural (AG) District (GC) subject to conditions.
2. The amendment of the zoning map and the impositions of the conditions on the rezoning were made pursuant to an offer of Declarant under MCL 125.3405, which provides for rezoning of property and imposition of conditions related to the use and development of the land in connection with that rezoning, all as evidence by a certain unrecorded Conditional Zoning Agreement of even date herewith.
3. Section 14.03 of the Fenton Township Zoning Ordinance requires that a formal written Statement of Conditions imposed by the Fenton Township Board of Trustees contain certain information and be recorded in the office of the Genesee County Register of Deeds by the Township Clerk.
4. The Declarant has prepared and executed this statement as the Statement of Conditions required by Section 14.03 of the Fenton Township Zoning Ordinance.

The Declarant states:

1. The "Property" is that parcel of land located in Fenton Township, Genesee County, Michigan, legally described as:

PARCEL 2:

PART OF THE NORTHEAST 1/4 OF SECTION 28, T5N-R6E, TOWNSHIP OF FENTON, GENESEE COUNTY MICHIGAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 28 S89°27'25"E ALONG THE NORTH LINE OF SAID SECTION 1235.93 FEET AND S00°23'00"W 675.56 FEET (PREVIOUSLY DESCRIBED AS S89°27'25"E 1234.39 FEET AND S00°23'00"W 677.07 FEET) TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE CONTINUING S00°23'00"W 906.91 FEET; THENCE N75°34'15"W 534.87 FEET (PREVIOUSLY DESCRIBED 531.54 FEET) TO THE EAST LINE OF PINWOOD TRAIL: THENCE CONTINUING ALONG SAID EAST LINE N00°33'21"E 71.54 FEET (PREVIOUSLY DESCRIBED AS N00°04'00"E 86.92 FEET); THENCE CONTINUING ALONG SAID EAST LINE N15°21'30"E 538.39 FEET (PREVIOUSLY DESCRIBED AS 525.00 FEET) THENCE N74°38'30"E PERPENDICULAR TO PINWOOD TRAIL 690.63 FEET (PREVIOUSLY DESCRIBED AS 684.32 FEET) TO THE POINT OF BEGINNING.

CONTAINING 10.09 ACRES OF LAND AND SUBJECT TO THE EASEMENT FOR
PINEWOOD TRAIL.

TOGETHER WITH A 66 FOOT WIDE EASEMENT FOR INGRESS AND EGRESS UNTIL
SUCH TIME AS A PUBLIC ROAD ABUTS SAID PROPERTY THE CENTER OF WHICH IS
DESCRIBED AS FOLLOWS: PART OF THE NORTHEAST 1/4 SECTION 28, T5N-R6E,
TOWNSHIP OF FENTON, GENESEE COUNTY MICHIGAN. BEGINNING AT A POINT ON
THE EAST AND WEST 1/4 LINE OF SAID SECTION 28, S89°53'12"E 643.58 FEET
(PREVIOUSLY DESCRIBED AS EAST ALONG THE EAST AND WEST 1/4 LINE 644.60
FEET); THENCE N18°33'00"W 465.00 FEET; THENCE N26°07'30"E 412.50 FEET; THENCE
N00°33'21"E 471.12 FEET (PREVIOUSLY DESCRIBED AS N00°04'00"E 473.70 FEET);
THENCE N15°21'30"W 740.90 FEET; THENCE N54°12'30"W 327.00 FEET; THENCE
N00°32'00"E 485.90 FEET TO THE NORTH LINE OF SAID SECTION AND THE POINT OF
ENDING SAID EASEMENT. POINT BEING S89°27'25"E 218.00 FEET FROM THE NORTH
1/4 CORNER OF SAID SECTION (PREVIOUSLY DESCRIBED AS EAST 218.00 FEET
FROM THE NORTH 1/4 CORNER).

2. The conditions imposed upon the use and development of the Property are as follows:
 - a. Permitted Uses. The Property may only be used for all equine and equine-related and accessory uses, activities and purposes, including without limitation horse stables, riding corrals and turn-out areas, owner and third party riding, riding lessons/academy, boarding, breeding and all other equine activities as defined in Act 351 of 1994, being MCL 691.1661 et seq. Not more than fifty (50) horses shall be housed on the Property at any time. No other uses shall be permitted on the Property.
 - b. Use Restrictions. The Property shall not be used for any agricultural uses outside those uses specifically permitted in Section 2 a. of this Statement. Without limiting the generality of the foregoing, the Property shall not be used for any of the following
 - i. Adult foster care family homes
 - ii. Adult foster care small group homes
 - iii. Day care, adult
 - iv. Day care homes, family
 - v. Foster family group homes
 - vi. Foster family homes
3. Upon the date that the rezoning of the Property to Agricultural District takes effect under the Michigan Zoning Enabling Act, 2006 PA 110, as amended, the use and development of the Property shall thereafter conform to all of the all of the requirements regulating use and development within the Agricultural (AC) zoning district, as set forth in the Fenton Township Zoning Ordinance, as modified by this Statement of Conditions.
4. The terms, conditions, provisions, and restrictions set forth in this Statement of Conditions constitute building and use restrictions that run with the land, are binding upon all successor

owners of title to all or any part of the Property, and may be modified, amended or terminated only pursuant to a written instrument executed by the then-fee simple owner of the Property and Fenton Township. Any person who establishes a development or commences a use upon all or any part of the Property shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in this Statement of Conditions.

- 5. Failure to comply with any of the conditions set forth in this Statement of Conditions shall constitute a violation of the Fenton Township Township Zoning Ordinance and shall be punishable accordingly.
- 6. The Declarant is the sole owner of the Property as of the date of this instrument, and has voluntarily offered and consented to the provisions contained within this instrument.

Philip R. Hagerman, as Trustee of the JH
GST Trust under Agreement dated June 1, 2007,
and not otherwise

STATE OF MICHIGAN)
 :SS
COUNTY OF GENESEE)

The foregoing Statement of Conditions was acknowledged before me this __ day of _____, 2015, by Philip R. Hagerman, Trustee of the JH GST Trust under Agreement dated June 1, 2007, on behalf of the Trust.

Notary Public
_____ County, Michigan
Acting in _____ County
My commission expires: _____

Prepared by and when recorded return to:
James C. Adams, Esq.
Butzel Long, a professional corporation
301 East Liberty Street, Suite 500
Ann Arbor, Michigan 48104