

7:00 p.m. Call to Order.

Invocation.

Pledge of Allegiance.

Roll Call.

Proclamations:

1. Small Business Saturday

A. Consent Agenda: *To hear about items included on the Consent Agenda, visit: www.portagemi.gov/544/Podcasts*

1. Approval of City Council Meeting Minutes:

- a. Regular Meeting of October 15, 2019.
- b. Pre-Council Meeting of November 4, 2019.

2. Approval of the Accounts Payable Register of November 5, 2019 as presented.

3. Amend the General Appropriations Act (budget) for the fiscal year ending June 30, 2020.

4. Accept Rezoning Application #19/20-2, 1730 East Centre Avenue for first reading and set a public hearing for December 3, 2019; and subsequent to the public hearing, consider approving Rezoning Application #19/20-2, changing the zoning designation of 1730 East Centre Avenue from R-1B, one-family residential, to OS-1, office service.

5. Minutes of Boards & Commissions:

- a. Youth Advisory Committee of August 19, 2019.
- b. Senior Citizen Advisory Board of September 18, 2019.
- c. Portage Public Schools Board of Education Meeting of September 23, 2019.
- d. Planning Commission of October 3, 2019.

6. Materials Transmitted from October 1 and October 15.

B. Petitions and Statements of Citizens:

C. Communications:

1. Calendar of Meetings:

- Historic District Commission, Wednesday, November 6, 2019 at 8:15 a.m., City Hall Room #2.
- Park Board, Wednesday, November 6, 2019 at 6:30 p.m., Stuart Manor.
- Human Services Board, Thursday, November 7, 2019 - CANCELLED.
- Planning Commission, Thursday, November 7, 2019 at 7:00 p.m., Council Chambers.
- Youth Advisory Committee, Monday, November 11, 2019 at 6:00 p.m., City Hall Room #1.
- Zoning Board of Appeals, Monday, November 11, 2019 at 7:00 p.m., Council Chambers.
- Environmental Board, Wednesday, November 13, 2019 at 7:00 p.m., City Hall Room #1.

D. Public Hearings:

1. Subsequent to the public hearing, adopt Resolution No. 5 confirming the Special Assessment Roll for the West Lake Management Program #020-Q.

E. Regular Business Agenda:

F. Unfinished Business:

1. Adopt the Resolution to Sell the Excess City Property in the amount of \$314,500 located along the south side of Gladys Street, east of 6405 South Westnedge Avenue and authorize the City Manager to sign all documents related to the real estate transaction on behalf of the city.

G. Council Committee Reports:

H. New Business:

I. Statements of Citizens:

J. Statements of City Council and City Manager.

Adjournment.



CITY OF PORTAGE PROCLAMATION

Small Business Saturday

- WHEREAS,** The government of Portage, MI, celebrates our local small businesses and the contributions they make to our local economy and community; according to the United States Small Business Administration, there are currently 30.2 million small businesses in the United States, they represent 99.7 percent of all businesses with employees in the United States, are responsible for 65.9 percent of net new jobs created from 2000 to 2017; and
- WHEREAS,** Small businesses employ 47.5 percent of the employees in the private sector in the United States; and
- WHEREAS,** 94% of consumers in the United States value the contributions small businesses make in their community; and
- WHEREAS,** 96% of consumers who plan to shop on Small Business Saturday said the day inspires them to go to small, independently-owned retailers or restaurants that they have not been to before, or would not have otherwise tried; and
- WHEREAS,** 92% of companies planning promotions on Small Business Saturday said the day helps their business stand out during the busy holiday shopping season; and
- WHEREAS,** 59% of small business owners said Small Business Saturday contributes significantly to their holiday sales each year; and
- WHEREAS,** Portage, MI, supports our local businesses that create jobs, boost our local economy and preserve our communities; and
- WHEREAS,** advocacy groups, as well as public and private organizations, across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

NOW, THEREFORE, BE IT RESOLVED THAT I, Patricia M. Randall, Mayor of the City of Portage, do hereby proclaim November 30, 2019, as SMALL BUSINESS SATURDAY and urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

Signed this 5th day of November, 2019.

Patricia M. Randall, Mayor

CITY COUNCIL MEETING MINUTES FROM OCTOBER 15, 2019

The Regular Meeting was called to order by Mayor Patricia Randall at 7:00 p.m. The following members were present: Councilmembers Chris Burns, Richard Ford, Lori Knapp, Claudette Reid, Terry Urban, Mayor Pro Tem Jim Pearson and Mayor Patricia Randall. Also in attendance were City Manager Larry Shaffer, City Attorney Randy Brown and City Clerk Adam Herringa.

At the request of Mayor Randall, the audience observed a moment of silence to honor all religions and personal beliefs and in gratitude and recognition for the leadership, dedication and service of City Manager Larry Shaffer to the City of Portage.

Following the moment of silence, City Council and the audience recited the Pledge of Allegiance.

PROCLAMATION: Mayor Randall issued a proclamation recognizing “Red Ribbon Week.” Ms. Fiorella Spalvieri, Human Services Board Vice-Chair, was present with schoolchildren from the Kalamazoo Country Day School and Moorsbridge Elementary who assisted in reading the proclamation.

Mayor Randall issued a proclamation recognizing “Air Zoo Day” in the City of Portage. Mr. Troy Thrash, President and CEO of the Air Zoo, was present to read and receive the proclamation. Mr. Thrash reviewed the success of the Air Zoo, increasing attendance and commitment to community and education. He thanked the Mayor, City Council and community for their support.

CONSENT AGENDA: Mayor Randall shared where the public can access the meeting agenda and asked if any Councilmember or anyone in the audience would like an item removed from the Consent Agenda. Councilmember Reid removed items A.6 and A.9. Councilmember Burns removed Item A.8. Motion by Pearson, seconded by Knapp, to approve the Consent Agenda. Upon a roll call vote, motion carried 7 to 0.

APPROVAL OF MINUTES: Motion by Pearson, seconded by Knapp, to approve the Special and Regular Meeting Minutes of October 1 and Pre-Council Meeting Minutes of October 14, 2019. Upon a roll call vote, motion carried 7 to 0.

APPROVAL OF ACCOUNTS PAYABLE REGISTER OF OCTOBER 15, 2019: Motion by Pearson, seconded by Knapp, to approve the Accounts Payable Register of October 15, 2019. Upon a roll call vote, motion carried 7 to 0.

ELIASON PHASE II TRAIL CONNECTION PROJECT: Motion by Pearson, seconded by Knapp, to award a contract in the amount of \$634,531.50 to TJM Services for Construction Services for the Eliason Nature Reserve Phase II Trail Connection project and authorize the City Manager to execute all documents related to this action on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

ENGINEERING SERVICES FOR RECONSTRUCTION OF EAST MILHAM: Motion by Pearson, seconded by Knapp, to award a contract to perform engineering services for the reconstruction of East Milham Avenue from South Westnedge Avenue to Portage Road to Abonmarche Consultants, Ltd., in an amount not to exceed \$218,250 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

PURCHASE OF TRAFFIC SIGNAL POLES, MAST ARMS AND ASSEMBLIES: Motion by Pearson, seconded by Knapp, to award a contract for the purchase of traffic signal poles, mast arms and

assemblies for the traffic signal upgrade on South Westnedge Avenue at Centre Avenue to Carrier & Gable, Inc. of Farmington Hills, Michigan, in the not to exceed amount of \$56,747 and authorize the City Manager to sign all other documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

WEST LAKE WEED MANAGEMENT RESOLUTION NO. 4: Motion by Pearson, seconded by Knapp, to adopt Resolution No. 4 for the West Lake Management Program #020-Q, setting a public hearing on the Assessment Roll for November 5, 2019. Upon a roll call vote, motion carried 7 to 0.

MINUTES OF BOARDS AND COMMISSIONS: Motion by Pearson, seconded by Knapp, to receive the minutes of the Human Services Board of September 5, Portage Public Schools Board of Education Committee of the Whole Work Session of September 9, Historic District Commission of September 11, and Planning Commission of September 19, 2019. Upon a roll call vote, motion carried 7 to 0.

PETITIONS AND STATEMENTS OF CITIZENS: Mr. Dave Campbell, Kalamazoo Regional Educational Service Agency (KRESA) Superintendent, spoke and discussed the rationale behind a proposed millage focused on enhancing career and technical education. He discussed how the increased tax dollars would be used and reviewed the core components of the proposal. Councilmember Reid inquired as to outreach efforts and public forums regarding the proposed millage and Mr. Campbell reviewed efforts undertaken by KRESA to educate the public about the proposal. Mayor Pro Tem Pearson inquired as to how what is being proposed regarding career and technical education differs from that which is provided by Kalamazoo Valley Community College. Mr. Campbell explained the differences and changing focus and attitudes surrounding career and technical education. In response to another question from Mayor Pro Tem Pearson, Mr. Campbell shared that private sector construction of a new career/technical education center is not “etched in stone” and that public dollars may be needed to construct such a facility.

Dr. Monifa Jumanne, 6156 Independence Drive, thanked City Manager Shaffer for his service and for working with her over the years. She continued by mentioning that she spoke to City Council 8 months prior to today regarding African American Culture and asked City Council what has been done to promote this culture in the interim. Mr. Shaffer shared the work that has been done to make an event regarding Martin Luther King, Jr., an annual occurrence and Mayor Randall discussed an upcoming event/concert that she will be attending. Dr. Jumanne stated that she would be at this event as well and shared that she looks forward to continuing to work with the Mayor and City Council to promote events involving and celebrating African American Culture.

Michigan State Representative Brandt Iden spoke and read a proclamation signed by himself, State Senator Sean McCann, Lieutenant Governor Garlin Gilchrist and Governor Gretchen Whitmer honoring and recognizing the career and public service of Larry Shaffer. Representative Iden thanked Mr. Shaffer for working with him over the years, commended Mr. Shaffer for his work to improve both Portage and Kalamazoo County and wished Mr. Shaffer only the best in retirement. Mr. Nate Henschel, on behalf of U.S. Congressman Fred Upton, congratulated Mr. Shaffer on his retirement and played a video of the Congressman in which Mr. Upton thanked Mr. Shaffer for his service and wished him the best in retirement.

Mr. James Hudson, 9001 West End Drive and former city employee, congratulated Mr. Shaffer on his retirement and thanked him for all the work done on behalf of Portage residents and for being a quintessential manager and leading the organization through difficult times.

COMMUNICATIONS:

CALENDAR OF MEETINGS: Motion by Pearson, seconded by Knapp, to receive the Calendar of Meetings. Upon a roll call vote, motion carried 7 to 0.

PUBLIC HEARINGS:

ORDINANCE AMENDMENT 18/19-B, RESIDENTIAL AMENDMENTS: Mayor Randall opened the public hearing and invited City Manager Shaffer to speak regarding the proposed amendments. Mr. Shaffer summarized the proposed amendments, shared that they had been reviewed at length, reviewed the history of the proposal, focused on a proposed increase in permitted lot coverage in single-family residential zoning districts and asked Acting Community Development Director Chris Forth to provide additional details regarding the proposal. Mr. Forth reviewed more specific details of the proposed ordinance and shared that the proposed increase in lot coverage from 25% to 30% is consistent with surrounding communities.

Councilmember Reid noted that at the Committee of the Whole Meeting about this topic there was significant discussion regarding non-conforming lakefront lots and stormwater management. She inquired as to efforts such as grading and storm sewer structures that could be utilized/implemented on lakefront lots to help address stormwater runoff. Mr. Forth explained that such structures and efforts have been and are being looked at closely by his department and the Department of Transportation and Utilities and that added scrutiny will be given to those structures wishing to exceed 25% lot coverage.

Mayor Randall shared that she had received three letters of support for increasing the lot coverage from 25% to 30%. The letters were received from Mr. Jon DeHaan who resides and operates a business in Portage, Mr. Kurosh Nahavandi who resides at 9121 West End Drive and Mr. Mark Vickery who resides at 5247 Hickory Hill Lane, Kalamazoo, is a local realtor and owns six rental properties in Portage. Mr. James Hudson, 9001 West End Drive, shared that he was pleased to learn staff had researched the stormwater issue but noted there is work to be done citing standing water issues on his street despite the presence of catch basins. Mr. William Fries, 9007 West End Drive, congratulated Mr. Shaffer on his retirement and expressed support for the increase in lot coverage for non-conforming lots. Mr. Scott DeLoof, 1824 Vanderbilt and local builder, Mr. Joe Agostinelli, 1906 Forest Drive, Mr. Kirk Schieman, 9125 West End Drive and Mr. Mark Caley, 9033 West End Drive, spoke in favor of the proposed increase in lot coverage from 25% to 30%.

Mayor Pro Tem Pearson shared his own prior experience with the 25% lot coverage requirement, sympathized with those who spoke at the hearing and expressed support for the changes being proposed by the Department of Community Development. Motion by Pearson, seconded by Reid, to close the public hearing. Upon a voice vote, motion carried 7 to 0.

Councilmember Reid noted the proposed increase to 30% in lot coverage while at the Committee of the Whole Meeting discussion centered on concerns with stormwater management and impermeable surfaces. She commented that there are many ways a property owner can increase the amount of impermeable surface on a property without increasing the size of the home. Mayor Pro Tem Pearson concurred with Councilmember Reid and noted that according to a staff memo drainage plans will be required and staff will provide increased scrutiny to any project that exceeds 25% lot coverage. Mayor Randall commented that she frequently hears complaints from residents that the 25% lot coverage is too restrictive and thanked those who spoke at the hearing. Motion by Pearson, seconded by Burns, to adopt Ordinance Amendment #18/19-B, Residential Amendments, subject to the percent of lot cover for all lots (conforming and nonconforming) be

increased from 25% to 30% in the single-family residential zoning districts. Upon a roll call vote, motion carried 7 to 0.

REGULAR BUSINESS:

PURCHASE OF 8509 PORTAGE ROAD: Mayor Randall deferred to Councilmember Reid who spoke and noted that this is a blighted property located on Portage Road that the city is planning to purchase and turn into a green space. She asked for confirmation that the city does not have a policy in place to purchase blighted properties and turn them into parks or green spaces. Mr. Shaffer confirmed that no such policy exists and reviewed the rationale for purchasing this particular parcel. Councilmember Ford asked for clarification on deed restrictions and Mr. Shaffer reviewed the restrictions such as the property cannot be sold to a business that would compete with the nearby Speedway convenience store. Mr. Shaffer noted that Speedway is not a motivated seller but the purchase of this property in spite of the deed restrictions will be of significant public benefit. Councilmember Ford inquired as to the future possibility of dividing this property and selling a portion for development. Mr. Shaffer responded that while this may be a possibility he noted the blighted nature of the property and overall depressed real estate market in this corridor. Mayor Pro Tem Pearson noted the property was a former gas station and inquired about contamination. Mr. Shaffer stated that the property had been remediated and inspected by the Department of Energy, Great Lakes and the Environment. However, additional and currently unknown contaminants are a possibility.

Councilmember Urban mentioned the reference to putting in a park at this location and asked if the intent is to add this parcel to the park system. City Attorney Brown noted that “park” has been used in the discussion as a general term but there is no plan to add this parcel to the official park system. He suggested using the term “green space” or “open space” instead of park when referring to this property. Mayor Randall shared her understanding that this parcel will be transformed into a green space similar to those along Oakland Drive. Councilmember Urban shared that, in addition to reasons provided by city staff, the green spaces on Oakland Drive were instituted at prime intersections to prevent businesses such as gas stations from encroaching upon nearby neighborhoods. Motion by Knapp, seconded by Reid, to approve the purchase of property addressed as 8509 Portage Road in the amount of \$147,000 and authorize the City Manager to execute all documents on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

KALAMAZOO COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY BROWNFIELD PLAN AND DEVELOPMENT AGREEMENT: Mayor Randall asked City Manager Shaffer to begin discussion. Mr. Shaffer reviewed the details of the project, number of jobs and size of the distribution center. He continued by reviewing the purpose of the Development Agreement and shared that, as part of the arrangement with the Kalamazoo County Brownfield Redevelopment Authority, the City of Portage would receive approximately \$3,000,000 for the reconstruction of Portage Road.

Councilmember Burns inquired as to the impact on traffic and traffic projections. Acting Director of Community Development Chris Forth shared that the traffic projections came from the design engineer and were evaluated by the Department of Transportation and Utilities. Portage Road, he stated, would be able to handle the increased volume and stated that most traffic would be between the facility and I-94. In response to an inquiry, Mr. Forth also noted that the intersection of the distribution center is signalized.

Councilmember Burns asked Mr. Forth to review noise implications and Mr. Forth explained that the building was situated such that most noise would occur in the direction of the airport and most of the noise would be associated with vehicular traffic. Mr. Forth invited a representative of

Scannell Properties, Shaun Cofer, 8801 River Crossing Boulevard, Indianapolis, IN, if he wished to contribute to the discussion and Mr. Cofer reviewed measures such as landscaping and a soundwall that were being installed to assist with noise management. Regarding sound, Mayor Pro Tem Pearson inquired as to increased air traffic at the Fed Ex Distribution Center and Mr. Cofer explained that this would be a Fed Ex Ground facility only involving vans and trucks. Mr. Shaffer shared that he spoke with the airport director, Amanda Woodin, and learned that Fed Ex does have some small shipments that move through the airport and is hopeful the new distribution center will boost air traffic.

Mayor Randall inquired as to transportation for potential employees and public transit. Mr. Cofer noted that this will be examined more closely as the project moves forward. Mr. Shaffer stated that bus stops can be coordinated with the signalized intersection to help accommodate employees.

Councilmember Burns inquired as to the building façade and Mr. Cofer stated that the plan is for the building to fit in with surrounding aesthetics and will involve attractive pre-cast panels. Councilmember Ford noted the future rebuilding of the I-94/Portage Road interchange and what impact this may have on the project and truck traffic. He then noted that traffic planning will need to happen in advance of the interchange closing as the Fed Ex trucks will need to seek alternate routes. In response to an inquiry from Councilmember Reid, Mr. Cofer stated that the distribution center is on the fast track and should be complete next September whereas the interchange project is still a couple of years away.

Councilmember Burns expressed concern with the wage level of the jobs that will be created and estimated they will be in the \$13 - \$18 per hour range. Joe Agostinelli, representing Southwest Michigan First, stated that he has not heard specific salary levels for the jobs related to this development. He continued by stating that while these jobs may not be high paying, jobs need to be available at every level of the workforce. Councilmember Burns provided some rough calculations about annual income for the distribution center jobs and expressed dismay that workers would likely not be able to afford to live in Portage due to the lack of affordable housing.

Councilmember Reid commented that this will be a project that draws a workforce from the region and will provide income for area residents. City Manager Shaffer distributed a handout regarding Fed Ex Distribution Center jobs that he found on the website [payscale.com](https://www.payscale.com). He reviewed the salary levels and noted that many of the jobs will be entry level and attractive to younger people looking to start their careers. He also commented that these jobs could be a stepping stone to greater opportunities.

Mayor Pro Tem Pearson thanked Councilmember Burns for his research and noted that many of the workers will commute to Portage from other areas. He emphasized the importance of public transit. Mayor Randall thanked Councilmember Burns as well and asked Mr. Cofer why Portage was selected for the facility. Mr. Cofer emphasized the proximity to I-94 as a major factor. Mr. Cofer continued by complimenting city staff as being good to work with and shared that his employer, Scannell Properties, has found Portage to be welcoming and willing to work to get things done.

Councilmember Knapp thanked Councilmember Burns for his contributions to the discussion. She noted her belief that the project is a good one but concerns about affordable housing are valid and need to be addressed. Councilmember Burns shared that he intends to be supportive of employees of this distribution center but would not be voting in favor of the project especially since it involves Brownfield incentives. Mayor Randall stated that she would work with Mr. Burns on the matter of affordable housing.

Motion by Ford, seconded by Knapp, to approve the resolution for the Kalamazoo County Brownfield Redevelopment Authority (KCBRA) Brownfield Plan for Project Spartan, 6701 Portage

Road, and approve the Brownfield Plan Development Agreement between the KCBRA and City of Portage. Upon a roll call vote, motion carried 6 to 1 with Councilmember Burns voting no.

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF PORTAGE AND MICHIGAN DEPARTMENT OF NATURAL RESOURCES: Mayor Randall deferred to Councilmember Reid who asked City Manager Shaffer to provide additional detail regarding the proposed Memorandum of Understanding (MOU). Mr. Shaffer reviewed the current accessibility and recreational availability of Michigan Department of Natural Resources (DNR) property in the City of Portage. He explained that the DNR is proposing to work with the City of Portage to improve accessibility and recreational development of their property in Portage. Councilmember Reid noted the one-year length of the MOU and inquired as to who is the lead person in working with the DNR. Mr. Shaffer explained that the Parks Department would be the lead and Councilmember Reid expressed concern with the DNR property being developed commercially. Mr. Shaffer stated that the goal is to preserve the land in question as open space and mentioned DNR grant funding that may help in recreational development.

Councilmember Urban noted that the entire State Game Area is not being proposed for enhancement. He stated that the land in question is designated hunting grounds and expressed concern with the inclusion of trails and recreational opportunities in hunting grounds. Mr. Urban stated his support for the MOU but expressed his desire that this land be preserved for hunting. Mr. Shaffer commented that the DNR has raised the concern regarding hunting as well. He continued by mentioning the urbanization of the DNR land as Portage grows and more residents frequent the property even though it is difficult to access. Mr. Shaffer expressed his opinion that the use of the land for hunting purposes will decrease over time. Mayor Randall shared that the City of Portage has been discussing acquiring this property for several years in order to keep it from being developed. She expressed optimism that the proposed arrangement with the DNR will help to preserve this land while making it more accessible to the public.

Motion by Reid, seconded by Burns, to approve the Memorandum of Understanding between the City of Portage and the Michigan Department of Natural Resources as the first step toward the development of an annual Memoranda of Agreement, and authorize the City Manager to execute all documents related to these actions on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

COUNCIL COMMITTEE REPORTS: Councilmember Burns reported on a meeting of the Central County Transportation Authority (CCTA) that he and Mayor Pro Tem Pearson attended. Councilmember Burns shared that discussions were held regarding a millage proposal in 2020. Councilmember Burns responded to questions from fellow Councilmembers regarding ridership, possible millage rates, services for “opt-out” communities and bus stops/routes in Portage.

Mayor Pro Tem Pearson reported on a meeting of the Kalamazoo County Consolidated Dispatch Authority (KCCDA) that he recently attended along with City Manager Shaffer. He shared that at this meeting members of the KCCDA thanked and praised Mr. Shaffer for the work he did to help make the KCCDA a reality. Mr. Pearson shared that a possible millage, phone tax or combination of the two were also discussed at the meeting. A vote, he stated, would likely occur next year. In response to an inquiry, Mayor Pro Tem Pearson stated that the level of the proposed millage has not yet been finalized but would likely be in the .6 mill range.

Councilmember Reid reported on a meeting of the Environmental Health Advisory Committee (EHAC). She shared that the topic of groundwater use restrictions in the area of the Borroughs Corporation manufacturing facility in Kalamazoo Township was discussed and the matter is heading to the Kalamazoo County Commission. Councilmember Reid stated that the topic of

Eastern Equine Encephalitis (EEE) was discussed with an emphasis on how information-sharing and communication can be improved as evidenced by recent experiences.

Motion by Reid, seconded by Ford, to receive the Council Committee Reports. Upon a voice vote, motion carried 7 to 0.

STATEMENTS OF CITY COUNCIL AND CITY MANAGER: Councilmember Burns congratulated and thanked Mr. Shaffer for his service and shared that he has learned a great deal from Mr. Shaffer.

Councilmember Ford thanked all those who attended the meeting and for the discussion that occurred. He thanked Mr. Shaffer for his bold leadership and for all he's done in the areas of technology, communications, branding and finance.

Councilmember Urban wished Mr. Shaffer well in retirement.

Councilmember Reid thanked Mr. Shaffer for the work that he's done for the City of Portage, wished him a wonderful retirement and thanked him for helping in the transition to a new City Manager.

Councilmember Knapp shared that she, along with a few other members of City Council and the incoming City Manager Joe La Margo attended an event sponsored by the Kalamazoo County Substance Abuse Task Force at which the legal framework surrounding adult marihuana use was discussed. She stated that the presentation was timely and informative. Ms. Knapp then thanked Mr. Shaffer for his leadership and abilities to be incisive and pragmatic while maintaining a sense of irony and humor. She thanked him for being willing to say when he did not know the answer and that she learned a tremendous amount from him.

City Manager Shaffer stated that any success he had during his tenure as City Manager was a result of a team effort and dedicated employees. He thanked staff for their advice and willingness to push forward on tough issues. Mr. Shaffer thanked City Council for their wisdom, patience and understanding. He concluded by stating that he has been blessed to work in the City of Portage.

Mayor Pro Tem Pearson recalled that five years ago while reviewing applications for the position of "Acting City Manager," he saw many applicants listing their number of hours worked per week in the 10 to 20 range but that Mr. Shaffer indicated he worked 60. Mr. Pearson stated that it is obvious Mr. Shaffer loves the job and that the feeling from the community is mutual. Mayor Pro Tem Pearson thanked Mr. Shaffer and wished him well.

Mayor Randall thanked City Council for what she believes is the best meeting held during her tenure. With regard to Mr. Shaffer's retirement, Mayor Randall stated that she was feeling bittersweet. She noted that he has been a strong supporter and a professional who was hired to bring about change. She stated that Mr. Shaffer has rejected the status quo and made Portage a better place as a result. She recalled his "Be Bold" statement in the interview process and that he embodied that statement. Next, she thanked him for his eloquence and commitment to working with everyone and for helping to lift others up. Mayor Randall concluded by congratulating Mr. Shaffer on his retirement and thanked him for helping with transition to a new City Manager.

ADJOURNMENT: Mayor Randall adjourned the meeting at 9:46 p.m.

Adam Herringa, City Clerk

**MINUTES FROM THE PRE-MEETING
OF THE PORTAGE CITY COUNCIL
OF NOVEMBER 4, 2019**

Mayor Patricia Randall called the meeting to order at 8:00 a.m. Councilmembers Chris Burns, Lori Knapp, Claudette Reid and Mayor Pro Tem Jim Pearson joined via the conference phone line. Councilmembers Richard Ford and Terry Urban were absent with excuse. Also in attendance were City Manager Joe La Margo, Deputy City Manager Rob Boulis and City Clerk Adam Herringa.

With regard to proclamations, City Clerk Herringa confirmed that Ms. Polly Kragt, owner of ChocolaTea and The Pantry On Tap, would be present to receive the proclamation.

With regard to Item A.3, General Appropriations Act Amendment, Mayor Pro Tem Pearson asked for clarification regarding the \$30,000 identified as being for the "Cable Television Fund Agreement." Mayor Pro Tem Pearson also asked for information related to the names of those businesses offering cable television services in Portage for both residential and commercial sectors citing the construction of a new Comcast facility on Lovers Lane.

With regard to Item D.1, West Lake Weed Management, Mayor Randall inquired if this is the final step in the assessment process. City Clerk Herringa confirmed this was the case and the program would be in effect for the next five years.

With regard to Item F.1, Sale of Excess City Property, Councilmember Reid inquired as to the origin and legal nature of the term "Excess City Property." Deputy City Manager Boulis explained that the term is simply used by city staff to identify property for which the city does not have a designated use or potential plan. Mr. Boulis confirmed that the city is responsible for routine maintenance of excess city property. Councilmember Burns inquired if funds from the sale of this property would be deposited into the General Fund. Mr. Boulis confirmed this was the case and City Manager La Margo stated that City Council could designate the funds for a particular use. Mayor Pro Tem Pearson inquired if the funds could be set aside for improvements in the Lake Center Business District. Councilmember Reid inquired if setting aside the funding had to occur at the meeting tomorrow night or if this could happen at a later date. Mr. La Margo confirmed that this could be done at a later date and Mr. Boulis confirmed that there were no specific plans for this funding. Mr. Boulis continued by stating that the funding would, in all likelihood, end up as surplus at the end of the current fiscal year. Mayor Pro Tem Pearson indicated his support for discussing usage of these funds at a later date.

Mayor Randall summarized the meeting.

ADJOURNMENT: Mayor Randall adjourned the meeting at 8:09 a.m.

Adam Herringa, City Clerk

TO: Honorable Mayor and City Council

FROM: Joseph La Margo, City Manager



SUBJECT: Accounts Payable Register

SUPPORTING PERSONNEL: William Furry, Director of Finance

ACTION RECOMMENDED: Approval of Accounts Payable Register of November 5, 2019 as presented.

The City Council reviews and approves the bi-weekly Accounts Payable Register which includes automated clearing house payments, paper checks and auto-pay payments. The attached Accounts Payable Register covers the period October 6, 2019 through October 25, 2019 and notes \$926,777.22 in automated clearing house payments, \$1,591,121.06 in paper checks and \$74,357.59 in auto-pay payments for a grand total of \$2,592,255.87.

FUNDING: N/A

Attachments: 1. Accounts Payable Register of 11-5-19

ACCOUNTS PAYABLE REGISTER
Check Dates From: 10/6/19 to 10/25/19

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Check Type: ACH Transaction

Check Date	Check	Vendor Name	Description	Amount
10/11/2019	12004(A)	BLUESTONE PSYCH	POST COND OFFER PSYCH EVAL	465.00
10/11/2019	12005(A)	BROWNELL'S INCORPORATED	MISC POLICE SUPPLIES	416.97
10/11/2019	12006(A)	BYHOLT INC.	2NS SAND DELIVERY	373.04
10/11/2019	12007(A)	C M P DISTRIBUTORS, INC.	MISC POLICE SUPPLIES 19/20	850.00
10/11/2019	12008(A)	C T S TELECOM, INC.	MONTHLY FIBER SERVICES - TS (CITY)	718.90
10/11/2019	12009(A)	ENGINEERED PROTECTION SYSTEMS, INC.	VIDEO SURVEILLANCE SYS - CFVC	4,350.00
10/11/2019	12010(A)	FERGUSON WATERWORKS #3386	METER READING EQUIPMENT	2,739.73
10/11/2019	12011(A)	GORDON WATER SYSTEMS	WATER COOLER 2019-2020	70.81
10/11/2019	12012(A)	INDUSCO SUPPLY CO., INC.	FIRE MAINT SUPPLIES	185.28
10/11/2019	12013(A)	IRISH AYRES ENTERPRISES, LLC	MOWING, TRIM, LANDSCAPE MAINT	12,899.88
10/11/2019	12014(A)	KUSHNER & COMPANY, INC.	COBRA & FSA ADMINISTRATION	298.94
10/11/2019	12015(A)	NYE UNIFORMS	UNIFORMS	265.00
10/11/2019	12016(A)	ONSTAFF USA INC	TEMPORARY EMPLOYEE SVC-FLEET & FACILITY	3,568.78
10/11/2019	12017(A)	PEOPLEFACTS, LLC	EMPLOYEE BACKGROUND CHECKS	48.23
10/11/2019	12018(A)	PLM LAKE & LAND MANAGEMENT	AQUATIC WEED MANAGEMENT	230.00
10/11/2019	12019(A)	REPUBLIC SERVICES OF WEST MICHIGAN	WASTE SERVICES	1,026.47
10/11/2019	12020(A)	RIDDERMAN & SONS OIL CO. INC.	GASOLINE	24,368.47
10/18/2019	12021(A)	ABONMARCHE CONSULTANTS, INC	ENGINEERING SERVICES	500.00
10/18/2019	12022(A)	ALL CITY MANAGEMENT SERVICES, INC.	CROSSING GUARD CONTRACT 19/20	3,520.53
10/18/2019	12023(A)	BANDS GALORE ENTERPRISES INC.	MONSTER MASH VENTRILOQUIST	450.00
10/18/2019	12024(A)	BEST WAY DISPOSAL, INC.	19/20 CURBSIDE RECYCLING PROG	54,960.48
10/18/2019	12025(A)	BLUE CARE NETWORK-GREAT LAKES	BCNA INSURANCE-2019-2020	124,805.75
10/18/2019	12026(A)	CHARTER COMMUNICATIONS	CABLE TV	634.05
10/18/2019	12027(A)	COMPLETE LANDSCAPING SOLUTIONS	CONTRACT MOWING-TALL GRASS/WEEDS	68.40
10/18/2019	12028(A)	CONSOLIDATED ELECTRICAL DIST INC	LIGHT POLE	134.28
10/18/2019	12029(A)	DEER CONTRACTING & LANDSCAPE	CURB REPAIR	17,940.00
10/18/2019	12030(A)	DELTA DENTAL PLAN OF MICHIGAN	DELTA DENTAL INSURANCE	19,034.23
10/18/2019	12031(A)	DIAMOND CONCRETE SAWING	CURB CUTTING	350.00
10/18/2019	12032(A)	ENGINEERED PROTECTION SYSTEMS, INC.	ADDITIONAL CAMERA/TREASURY COUNTER	1,500.00
10/18/2019	12033(A)	EVERETT, CHIP	FIRE TRAINING	285.00
10/18/2019	12034(A)	GAIL ANDRUS TRAVEL	TRIP VENDOR PMT 190926 W.MICH.PIKE	6,083.25

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10/18/2019	12035(A)	GORDON WATER SYSTEMS	GORDON WATER 2019 - 2020	373.40
10/18/2019	12036(A)	GRIFFIN PEST SOLUTIONS, INC.	PEST CONTROL SERVICES	341.00
10/18/2019	12037(A)	INDUSCO SUPPLY CO., INC.	RESTROOM SUPPLIES FOR CITY HALL	161.08
10/18/2019	12038(A)	J & J LAWN SERVICE, INC.	MOWING SERVICES	300.00
10/18/2019	12039(A)	KENDALL ELECTRIC, INC.	LIGHT BULBS	263.49
10/18/2019	12040(A)	LEXISNEXIS RISK SOLUTIONS	LEXIS NEXIS IYETEK MAIN FEE	2,718.90
10/18/2019	12041(A)	MAIL MANAGEMENT, INC.	INK CARTRIDGE FOR NEOPOST MACH	262.90
10/18/2019	12042(A)	MAPLE HILL SPRINKLING, INC.	IRRIGATION SYSTEM MAINTENANCE	3,378.00
10/18/2019	12043(A)	MARANA GROUP	METER SERVICE	273.00
10/18/2019	12044(A)	MATERIALS RESOURCES	MAINTENANCE SUPPLIES	616.83
10/18/2019	12045(A)	MCNALLY ELEVATOR CO.	ELEVATOR MAINTENANCE	138.50
10/18/2019	12046(A)	MEJEUR ELECTRIC LLC	ELECTRICAL SERVICES	412.00
10/18/2019	12047(A)	MICHIGAN OFFICE ENVIRONMENTS	MULTI-PURPOSE ROOM - POLICE	28,548.47
10/18/2019	12048(A)	MICHIGAN PAVING & MATERIALS CO.	ANGLING RD & MEREDITH ST RECONSTRUCTION	440,480.61
10/18/2019	12049(A)	MICHIGAN PAVING & MATERIALS CO.	HYDRANT METER DEPOSIT REFUND	63.37
10/18/2019	12050(A)	NEW FRESH CLEANING SERVICE	JANITORIAL SERVICES - POLICE DIVISION	1,485.00
10/18/2019	12051(A)	NYE UNIFORMS	UNIFORMS	580.47
10/18/2019	12052(A)	OFF THE CUFF CATERING	COUNCIL MID-YR RETREAT \$155, KCFCA MTG \$770	925.00
10/18/2019	12053(A)	ONE WAY PRODUCTS	CAN LINERS AND SUPPLIES	490.80
10/18/2019	12054(A)	ONSTAFF USA INC	TEMPORARY EMPLOYEE SVC-FLEET & FACILITY	3,434.61
10/18/2019	12055(A)	PARIS CLEANERS	19/20 LAUNDRY CONTRACT	1,036.49
10/18/2019	12056(A)	PETERS CONSTRUCTION CO.	CATCH BASIN REPAIR	9,089.00
10/18/2019	12057(A)	PRINTING SERVICES INC	SENIOR CENTER CAMPAIGN PROJECT SIGN	2,642.00
10/18/2019	12058(A)	R W LAPINE INC.	HVAC MAINTENANCE SERVICES	3,737.76
10/18/2019	12059(A)	RECYCLE AWAY, LLC	RECYCLE BINS	3,500.25
10/18/2019	12060(A)	RIDDERMAN & SONS OIL CO. INC.	GASOLINE	11,909.75
10/18/2019	12061(A)	RIDGE AUTO NAPA	FIRE APPARATUS MAINT.	2.88
10/18/2019	12062(A)	S B F ENTERPRISES, INC.	PRINTING, PROCESSING QTLY WATER	718.46
10/18/2019	12063(A)	SAFETY SERVICES, INC.	HI-VIZ CLOTHING	3,063.69
10/18/2019	12064(A)	SEVERANCE ELECTRIC COMPANY, INC	TRAFFIC SIGNAL MAINTENANCE	6,942.81
10/18/2019	12065(A)	SUEZ WATER ENVIRONMENTAL SERVICES	HYDRANT REPLACEMENT	14,431.01
10/18/2019	12066(A)	THE WRIGHT FENCE	FENCE INSTALLATION	2,485.00
10/18/2019	12067(A)	WARNER NORCROSS & JUDD LLP	LEGAL FEES & RETAINER FEES	4,281.67

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10/18/2019	12068(A)	XEROX CORPORATION	SEPTEMBER XEROX FEE	215.67
10/18/2019	12069(A)	XYLEM DEWATERING SOLUTIONS, INC.	HOSE RENTAL	10,481.56
10/25/2019	12070(A)	A NEW LEAF	SIX MONTHS OF PLANT CARE/CITY HALL	85.00
10/25/2019	12071(A)	AIRGAS USA LLC	WELDING SUPPLIES	79.76
10/25/2019	12072(A)	AMERICAN SAFETY & FIRST AID	SAFETY AND FIRST AID	380.34
10/25/2019	12073(A)	ANIMAL REMOVAL SERVICE, LLC	ANIMAL REMOVAL SERVICES	3,105.00
10/25/2019	12074(A)	APPLIED IMAGING	SERVICE CALL FOR MICROFILM READER	285.00
10/25/2019	12075(A)	AUMACK, MICHAEL	UMPIRE PAYROLL 2019 & BONUS	300.00
10/25/2019	12076(A)	BEEBE, RONALD E.	UMPIRE PAYROLL 2019 & BONUS	300.00
10/25/2019	12077(A)	CARLETON EQUIPMENT CO.	MAINTENANCE SUPPLIES	772.01
10/25/2019	12078(A)	CHARTER COMMUNICATIONS	CABLE TV	227.19
10/25/2019	12079(A)	CIVICPLUS	ANNUAL CIVICCLERK RENEWAL	11,968.00
10/25/2019	12080(A)	ENGINEERED PROTECTION SYSTEMS, INC.	FIRE FACILITY MAINT.	884.62
10/25/2019	12081(A)	ESCAPE FIRE & SAFETY SERVICES, INC.	FABRICATION SERVICES	2,131.89
10/25/2019	12082(A)	FARM N GARDEN	GATE REPAIRS	5,496.00
10/25/2019	12083(A)	FORSHEE, MARK	UMPIRE PAYROLL 2019 & BONUS	325.00
10/25/2019	12084(A)	GORDON WATER SYSTEMS	BOTTLED WATER - CITY CLERK	31.80
10/25/2019	12085(A)	GREATER KALAMAZOO UNITED WAY	UNITED WAY CONTRIBUTIONS-OCT 2019	360.00
10/25/2019	12086(A)	J & J LAWN SERVICE, INC.	MOWING SERVICES - UTILITIES	7,585.00
10/25/2019	12087(A)	J-AD GRAPHICS, INC	NEWSLETTER OCT/NOV ISSUE	4,109.00
10/25/2019	12088(A)	JACK DOHENY SUPPLIES INC.	VACTOR PUMP	11,680.30
10/25/2019	12089(A)	JONS TO GO PORTABLE RESTROOM	MONSTER MASH PORTAJOHNS	230.00
10/25/2019	12090(A)	KAHN, WILMA	CLASS INSTRUCTOR PAYMENT	286.00
10/25/2019	12091(A)	KENDALL ELECTRIC, INC.	LIGHT BULBS FOR CITY HALL	89.80
10/25/2019	12092(A)	LEWIS PAPER PLACE, INC.	PAPER FOR DELINQUENT/SHUT OFF NOTICES	122.15
10/25/2019	12093(A)	MATTAWAN YOGA LLC	CLASS INSTRUCTOR PAYMENT	300.00
10/25/2019	12094(A)	MCCULLIN, LARRY W.	UMPIRE BONUS 2019	200.00
10/25/2019	12095(A)	MEEKHOF TIRE SALES & SERVICE INC.	FIRE APPARATUS MAINT	726.40
10/25/2019	12096(A)	ONSTAFF USA INC	TEMPORARY EMPLOYEE SVCS-FLEET & FA	3,545.16
10/25/2019	12097(A)	PORTAGE FIREFIGHTERS	IAFF UNION DUES FOR OCTOBER 2019	1,860.00
10/25/2019	12098(A)	PORTAGE ON-CALL FIREFIGHTERS	ON CALL FF DUES FOR OCTOBER 2019	30.00
10/25/2019	12099(A)	PORTAGE POLICE OFFICERS ASSOC	PPOA DUES FOR OCTOBER 2019	651.00
10/25/2019	12100(A)	PRINTING SERVICES INC	MONSTER MASH PRINTING 2019	539.73

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10/25/2019	12101(A)	R W LAPINE INC.	HVAC ON-CALL SERVICES AND PARTS	1,175.66
10/25/2019	12102(A)	RHODES, KEVIN	UMPIRE PAYROLL & BONUS 2019	298.00
10/25/2019	12103(A)	SNELL, DEBRA	CLASS INSTRUCTOR PAYMENT	612.00
10/25/2019	12104(A)	SUEZ WATER ENVIRONMENTAL SERVICES	HYDRANT REPAIR	355.92
10/25/2019	12105(A)	TRUCK & TRAILER SPECIALTIES	VEHICLE MAINTENANCE	1,133.24
10/25/2019	12106(A)	UNITED AUTO. IMPLEMENT WORKERS 2290	UAW UNION DUES FOR OCTOBER 2019	497.74
10/25/2019	12107(A)	VANCE OUTDOORS, INC.	AMMO	5,400.00
10/25/2019	12108(A)	WIGHTMAN	ENGINEERING SERVICES	15,691.61
Total ACH Transactions:				926,777.22

Check Type: Paper Check

10/11/2019	311360	A T & T	ELECTRONIC COMMUNICATIONS	12,287.20
10/11/2019	311361	A-1 ASPHALT SEALING & REPAIR, INC.	PARKING LOT REPAIR	3,995.00
10/11/2019	311362	ALLEGRA PRINT & IMAGING	FUNDS TO RECEIVE PRINTING JOBS	156.00
10/11/2019	311363	BLOCK, GAYLE	TRIP REFUND 190926 WEST MI PIKE	55.00
10/11/2019	311364	BONAMEGO, LOUIS	REIMBURSEMENT FOR SNAP DUP WIC SPF	47.00
10/11/2019	311365	CARTRIDGE WORLD	PRINTER SERVICES 2019/2020	1,948.84
10/11/2019	311366	CASINO TOURS AND CHARTERS, INC.	ACTIVITIES VENDOR PAYMENT	105.00
10/11/2019	311367	CINTAS CORP.	UNIFORM RENTAL SERVICES	644.92
10/11/2019	311368	CITY OF KALAMAZOO TREASURER	SANITARY SEWER CHARGES	209,242.48
10/11/2019	311369	COSTAR REALTY INFORMATION, INC.	COSTAR REALTY	351.42
10/11/2019	311370	ED & TED'S EXCELLENT ADVENTURES	TRIP VENDOR PAYMENT	15,760.00
10/11/2019	311371	EMERGENCY VEHICLE PRODUCTS	POLICE VEHICLE REPAIRS	290.00
10/11/2019	311372	GALL'S, LLC	RANGER UNIFORMS	182.62
10/11/2019	311373	HUNTER EVALUATION & ANALYTICS, LLC	EVALUATION CONSULTINGS	958.75
10/11/2019	311374	IRONS, MARTHA	TRIP REFUND 190926 WEST MI PIKE	55.00
10/11/2019	311375	KIESLER POLICE SUPPLY	RIFLE ACCESSORIES	424.84
10/11/2019	311376	LAMARGO, JOSEPH	TRAVEL REIMBURSEMENT CMO CANDIDATE	457.45
10/11/2019	311377	MICHIGAN HISTORIC	MEMBERSHIP RENEWAL	45.00
10/11/2019	311378	MICHIGAN PAVEMENT MARKINGS LLC	LINE STRIPING SERVICES	1,528.75
10/11/2019	311379	MILLER, CANFIELD, PADDOCK & STONE	AUSTIN LAKE TRAIL LEGAL SERVICES	10,325.00
10/11/2019	311380	NAPIER, PEGGY	EVENT REIMB 2019	1,334.53

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10/11/2019	311381	OFFICE DEPOT, INC.	OFFICE SUPPLIES	300.50
10/11/2019	311382	OUTDOOR ENVIRONMENTS	IRRIGATION REPAIRS	493.00
10/11/2019	311383	QUADMED, INC.	FIRE TRNG SUPPLIES	1,673.31
10/11/2019	311384	ROWLEY BROTHERS, INC.	HYDRAULIC OIL	1,196.73
10/11/2019	311385	SARKOZY BAKERY LLC	SNAB/EBT REIMBURSEMENT	38.00
10/11/2019	311386	SBH MEDICAL LLC	FIRE OPS SUPPLIES	127.00
10/11/2019	311387	SITEONE LANDSCAPE SUPPLY LLC	IRRIGATION REPAIR SUPPLIES	45.64
10/11/2019	311388	STATE OF MICHIGAN (DOT)	ROMENCE; PORTAGE/LAKEVIEW; W MILHAM	755,216.09
10/11/2019	311389	STATE SYSTEMS RADIO, INC	MISC RADIO REPAIRS 19/20	273.10
10/11/2019	311390	SWENSON, CONNIE	TRIP REFUND 190926 WEST MI PIKE	50.00
10/11/2019	311391	UNITED PARCEL SERVICE	UPS WEEKLY	30.01
10/11/2019	311392	VERIZON WIRELESS	CELLULAR TELEPHONES	3,408.43
10/15/2019	311393	LINCOLN CROCKER	REIMB-RETENTION POND WORK	5,990.00
10/18/2019	311394	AMERICAN CANCER SOCIETY PERRINO	GRAIN ELEVATOR DEPOSIT REFUND	150.00
10/18/2019	311395	BAKER, MADELINE	HAYLOFT THEATRE DEPOSIT REFUND	150.00
10/18/2019	311396	BOURGEOIS, MARY	ART HOP ENTRY DEPOSIT REFUND	50.00
10/18/2019	311397	BROWNYARD, ANNA	STUART MANOR DEPOSIT REFUND	150.00
10/18/2019	311398	CASTILLO, ARIANA	ART HOP ENTRY DEPOSIT REFUND	50.00
10/18/2019	311399	CHICAGO TITLE OF MICHIGAN	OVERPAYMENT FINAL WATER BILL	118.97
10/18/2019	311400	CLAPP, ERIC WILLIAM	ALCOHOL/TOBACCO AGENT SERVICE	63.00
10/18/2019	311401	COFFINGER, CARTER	ALCOHOL/TOBACCO AGENT - 1.5 HRS	15.75
10/18/2019	311402	DAZEY, PAM	WEBSITE SERVICES	147.80
10/18/2019	311403	DODSON, JOANN	TRIP REFUND 191025 ENJOY D	115.00
10/18/2019	311404	FORCE, KATI	SCHRIER PARK DEPOSIT REFUND	150.00
10/18/2019	311405	GILCHRIST, PAMELA	TRIP REFUND 191018 ENJOY THE D	115.00
10/18/2019	311406	GISH, JUSTIN	ART HOP ENTRY DEPOSIT REFUND	50.00
10/18/2019	311407	GRANDSTAFF, ANNE	TRIP REFUND-CHRISTMAS GRACELAND	40.00
10/18/2019	311408	HIGLEY, SARAH	SCHRIER PARK DEPOSIT REFUND	150.00
10/18/2019	311409	HOUSE, DEANNA	TRIP REFUND 191018 ENJOY DETROIT II	115.00
10/18/2019	311410	INSTITUTE OF TRANSPORTATION	ITE MEMBERSHIP FOR ARIF FOR 2020	303.50
10/18/2019	311411	J. RETTENMAIER USA LP	REFUND OF HYDRANT METER DEPOSIT	150.00
10/18/2019	311412	JONES, ALEXIA	RENTAL DAMAGE DEPOSIT RETURN	100.00
10/18/2019	311413	JOSHI, SARAH	GRAIN ELEVATOR DEPOSIT REFUND	150.00

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10/18/2019	311414	K & R EXCAVATING	HYDRANT METER DEPOSIT REFUND	63.37
10/18/2019	311415	KINGDOM INDOOR CENTER	RAMONA SOCCER TOURN DEPOSIT REF	100.00
10/18/2019	311416	KLINE, MICHAEL	STRAW BALES FOR MONSTER MASH 2019	240.00
10/18/2019	311417	KRISTA HAMMOND	REFUND OF HYDRANT METER DEPOSIT	150.00
10/18/2019	311418	LYLES, PAMELA	ART HOP ENTRY DEPOSIT REFUND	50.00
10/18/2019	311419	MAHMOOD, PARKHA	RENTAL DAMAGE DEPOSIT RETURN	100.00
10/18/2019	311420	MEHNE, JEFF	GRAIN ELEVATOR DEPOSIT REFUND	150.00
10/18/2019	311421	METTY, KIM	EIMO SOFTBALL CHALLENGE DEPOSIT REFUND	100.00
10/18/2019	311422	MICHIGAN STATE POLICE	SURVEILLANCE SCHOOL 9/9-9/13/19	700.00
10/18/2019	311423	MILLS, KIRK	ART HOP ENTRY DEPOSIT REFUND	50.00
10/18/2019	311424	MMTA	2020 MMTA MEMBERSHIP DUES	75.00
10/18/2019	311425	MORALES, STEVEN	RETURN OF FORFEITURE	1,626.00
10/18/2019	311426	MYERS, CHASE ALBERT	ALCOHOL/TOBACCO AGENT - 2 HRS	21.00
10/18/2019	311427	ONEILL, REMI JEAN	ALCOHOL/TOBACCO AGENT - 1.5 HRS	15.75
10/18/2019	311428	PATROITS POWER WASHING	HYDRANT METER	100.00
10/18/2019	311429	PETERS, PATRICIA	TRIP REFUND 200805 MINN. MANSIONS	45.00
10/18/2019	311430	PHILLIPS, JAZMIN KAY-LYNN	ALCOHOL/TOBACCO AGENT SERVICES	63.00
10/18/2019	311431	PORTAGE PUBLIC SCHOOLS	RECYCLED ART 2019 PRIZE WINNER	150.00
10/18/2019	311432	ROBERT BAILEY CONTRACTORS, INC	REFUND OF HYDRANT METER DEPOSIT	150.00
10/18/2019	311433	SAHR, PHYLLIS	TRIP REFUND 200805 MINNESOTA	45.00
10/18/2019	311434	SCHABERG, ISAAC	LAKEVIEW SOFTBALL PRACTICE REFUND	50.00
10/18/2019	311435	SCHULTZ, GREG	ROUND ROBIN TOURN. DEPOSIT REFUND	100.00
10/18/2019	311436	SHAUMAN, WILLIAM	OP FINAL WATER BILL 1305 COBBLE	57.29
10/18/2019	311437	SHEPARD, SCOTT & CHRISTINA	EASEMENT - 5040 MEREDITH STREET	3,752.00
10/18/2019	311438	SMITH, LARRY	CLASS INSTRUCTOR REIMB. FOR SUP.	51.54
10/18/2019	311439	SOFTBALL NATION INC	ONE DAY AT THE ZOO TOURN DEPOSIT REFUND	100.00
10/18/2019	311440	SPEEDWAY, LLC	PROPERTY ACQUISITION 8509 PORTAGE RD	3,000.00
10/18/2019	311441	ST JOSEPH FAMILY COURT	HAYES, JOSEPH BOND FOR CHILD NEGLECT	400.00
10/18/2019	311442	STAFFORD, FLORENCE	TRIP REFUND 191016 AUTUMN II	184.00
10/18/2019	311443	SZIEDE, HILARY	GRAIN ELEVATOR DEPOSIT REFUND	150.00
10/18/2019	311444	VALLIER, HANNAH LYNN	ALCOHOL/TOBACCO AGENT - 1.5 HRS	15.75
10/18/2019	311445	WALKER, STEPHANIE	GRAIN ELEVATOR DEPOSIT REFUND	150.00
10/18/2019	311446	WALLACE, LUCHARA	HAYLOFT THEATRE DEPOSIT REFUND	150.00

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10/18/2019	311447	WESA, CAROL	FARM TO TABLE CLASS REFUND	60.00
10/18/2019	311448	WHITNEY, BEN	RECYCLED ART 2019 PRIZE WINNER	250.00
10/18/2019	311449	WOLZ, MARI-CLARE	RECYCLED ART 2019 PRIZE WINNER	800.00
10/18/2019	311450	WYND, RAVEN	RECYCLED ART 2019 PRIZE WINNER	350.00
10/18/2019	311451	4 SEASONS TREE SERVICES, LLC	TREE REMOVALS/TRIM	1,195.00
10/18/2019	311452	A T & T	ELECTRONIC COMMUNICATIONS	3,489.26
10/18/2019	311453	ACTIVE911, INC.	FIRE ACTIVE 911 RENEWAL	1,250.00
10/18/2019	311454	ADP, INC.	PAYROLL/ETIME SERVICES- JULY-DEC	4,482.45
10/18/2019	311455	ADVANCE II LLC	NOVEMBER 2019 ELECTION TEMP	1,570.45
10/18/2019	311456	AIR SCIENCE USA, LLC	FUMING CHAMBER	11,631.00
10/18/2019	311457	ALLEGRA PRINT & IMAGING	ENVELOPES	640.45
10/18/2019	311458	ARROWHEAD SCIENTIFIC, INC.	MISC LAB SUPPLIES 19/20	119.83
10/18/2019	311459	ARTWEAR APPAREL GRAPHICS, INC.	GRAPHITE L/S DRI-FIT T'S	69.00
10/18/2019	311460	ASCENSION MICH OCCUPATIONAL HEALTH	POST OFFER PHYSICALS	559.00
10/18/2019	311461	BINDER PARK ZOOLOGICAL SOCIETY, INC	OCTOBER BINDER PARK PROGRAM	200.00
10/18/2019	311462	BLOOM SLUGGETT, PC	LEGAL SERVICES	1,961.48
10/18/2019	311463	BLUE CROSS/BLUE SHIELD OF MICH	BCBSM INSURANCE	67,893.42
10/18/2019	311464	BONAMEGO, LOUIS	SNAP/DU/SPF REIMBURSEMENT	102.00
10/18/2019	311465	CADWELL APPARELL	HATS	720.00
10/18/2019	311466	CHEESE PEOPLE OF GRAND RAPIDS	SNAP/EBT REIMBURSEMENT	21.00
10/18/2019	311467	CINTAS CORP.	UNIFORM RENTAL SERVICES	357.95
10/18/2019	311468	CITY SERVICES, INC.	CONSTRUCTION SERVICES	3,400.00
10/18/2019	311469	CLEAN HARBORS ENVIRONMENTAL SERVICE	BLOCK STATION MAINTENANCE	3,607.50
10/18/2019	311470	D L GALLIVAN INC.	CONTRACT FEE PRINTER/COPIER	282.15
10/18/2019	311471	EMERGENCY VEHICLE PRODUCTS	POLICE VEHICLE REPAIRS	3,523.36
10/18/2019	311472	ENGINEERING SUPPLY & IMAGING	PLOTTER INK CARTRIDGES	312.31
10/18/2019	311473	FIBERS OF KALAMAZOO INC	ICE MELT	1,367.10
10/18/2019	311474	FIDLAR COMPANIES	MINUTE BOOKS AND FILLER PAPER	594.08
10/18/2019	311475	FORMAN GLASS LLC	RELEASE RETAINAGE PAY 4	37,134.26
10/18/2019	311476	FULL CIRCLE FARM	SNAP/DU/WIC/SPF REIMBURSEMENT	70.00
10/18/2019	311477	GOLDEN WEST INDUSTRIAL SUPPLY, INC.	MISC POLICE SUPPLIES	704.23
10/18/2019	311478	GOVERNMENT FINANCE OFFICERS ASSOC	GFOA MEMBERSHIP, CITY & 2 IN-BASE MEMBERS	305.00
10/18/2019	311479	HOME DEPOT	HARDWARE NEEDS	359.11

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Check Date	Check	Vendor Name	Description	Amount
10/18/2019	311480	VOID		0.00
10/18/2019	311481	HUNTER EVALUATION & ANALYTICS, LLC	EVALUATION CONSULTINGS	1,917.50
10/18/2019	311482	I.T. RIGHT	ASSESS APP	2,300.00
10/18/2019	311483	ICE CREATIONS	MONSTER MASH PUMPKIN CARVING	425.00
10/18/2019	311484	IMAGESTREAM, INC.	PROF CABLECASTING/VIDEOGRAPH	27,563.00
10/18/2019	311485	INSTITUTE FOR DEMOCRATIC EDUCATION	RESPECTING DIFF. SPEAKER APRIL 2020	2,500.00
10/18/2019	311486	J & B PROFESSIONAL TREE SERVIC	TREE REMOVAL SERVICES	1,100.00
10/18/2019	311487	J & J LOCKSMITHS	LOCKS AND KEYS	1,119.20
10/18/2019	311488	J & J PAINT AND GLASS	FIRE FACILITY MAINT	924.64
10/18/2019	311489	JASON VEEDER	DJ FOR LUAU AND MONSTER MASH	800.00
10/18/2019	311490	JEFFREY HILLMAN: HUMAN CORE EVALUAT	EVALUATION CONSULTING	1,917.50
10/18/2019	311491	KALAMAZOO COUNTY HAZMAT	FIRE MEMBERSHIP	1,400.00
10/18/2019	311492	KALAMAZOO COUNTY TREASURER	OAKBROOK OCT 2019 MOBILE HOME TAXES	870.18
10/18/2019	311493	KALAMAZOO GAZETTE	KALAMAZOO GAZETTE SUBSCRIPTION	92.00
10/18/2019	311494	KALAMAZOO LANDSCAPE SUPPLIES	RESTORATIONS	2,091.00
10/18/2019	311495	KALAMAZOO OIL COMPANY	FUEL FOR SMALL EQUIPMENT	163.13
10/18/2019	311496	KALAMAZOO SPORTSWEAR	SCREEN PRINTING SERVICES	141.25
10/18/2019	311497	KIESER & ASSOCIATES, LLC	ADMIN RAMONA BEACH SWIM AREA SAND	945.00
10/18/2019	311498	KIESLER POLICE SUPPLY	FLASHLIGHTS/HOLSTERS	2,339.69
10/18/2019	311499	KREITNER, JAMES	SNAB/EBT REIMBURSEMENT	55.00
10/18/2019	311500	KZOO TIRE COMPANY	TIRES	386.00
10/18/2019	311501	LANGUAGE LINE, INC	19/20 LANGUAGE SERVICES	112.69
10/18/2019	311502	LEADS ONLINE LLC	TOTAL TRACK INVEST PKG RENEWAL	3,688.00
10/18/2019	311503	MCDONALD'S TOWING & RESCUE, INC.	FIRE APPARATUS MAINT.	518.00
10/18/2019	311504	MICH MUNICIPAL POLICE & FIRE REPAIR	POLICE VEHICLE REPAIR/MAINTENANCE	4,758.93
10/18/2019	311505	VOID		0.00
10/18/2019	311506	MICHIGAN SECURITY & LOCK	MISC LOCK AND KEY SERVICES 19/20	143.00
10/18/2019	311507	MID-AMERICA APPRAISAL CO.	PROPERTY APPRAISAL	760.00
10/18/2019	311508	MLIVE MEDIA GROUP	SEPTEMBER LEGAL NOTICES	1,245.02
10/18/2019	311509	MML UNEMPLOYMENT FUND	QUARTERLY CONTR UNEMPLOYMENT COMP	532.10
10/18/2019	311510	MORGAN COMPOSTING	COMPOST - FLOWER BEDS	4,937.60
10/18/2019	311511	NIEBOER HEATING & COOLING, INC.	OP ON INVOICE # 01007851	5.00
10/18/2019	311512	OFFICE DEPOT, INC.	MISC OFFICE SUPPLIES	3,558.86

ACCOUNTS PAYABLE REGISTER
Check Dates From: 10/6/19 to 10/25/19

Check Date	Check	Vendor Name	Description	Amount
10/18/2019	311513	VOID		0.00
10/18/2019	311514	PETTY CASH-JANET GATES	REPLENISHMENT CHECK	769.10
10/18/2019	311515	PRESTON EAKINS	BALLOONS FOR MONSTER MASH	500.00
10/18/2019	311516	QUADMED, INC.	FIRE TRAINING SUPPLIES	897.60
10/18/2019	311517	RATHCO SAFETY SUPPLY, INC.	SIGNS AND SIGN MATERIALS	183.00
10/18/2019	311518	RENEWED EARTH, INC.	LEAF AND BRUSH REMOVAL-COMPOST	9,083.33
10/18/2019	311519	ROSE, MESHIA	REIMB FOR 2019 MAA FALL SESSION	534.14
10/18/2019	311520	RTC AGILITY TEST	PHYSICAL AGILITY TESTS	400.00
10/18/2019	311521	SAFEUILT MICHIGAN, LLC	FILL IN INSPECTIONS FOR BUILDING SERVICES	8,880.00
10/18/2019	311522	SERVPRO OF WEST KALAMAZO ALF IX LLC	CLEANING SERVICES	775.00
10/18/2019	311523	SPC SPECIALTY PRODUCTS, LLC	AQUAPHALT	3,500.00
10/18/2019	311524	STAP BROS LAWN & LANDSCAPE, INC	WEED REMOVAL	75.00
10/18/2019	311525	STATE OF MICHIGAN	SOR REGISTRATION FEE	30.00
10/18/2019	311526	STATE SYSTEMS RADIO, INC	ANNUAL TOWER LEASE CONTRACT	1,940.07
10/18/2019	311527	SUITS U TAILOR SHOP INC	MISC UNIFORM TAILORING	463.00
10/18/2019	311528	ULINE, INC.	PET SAFE ICE MELT	1,187.48
10/18/2019	311529	USPS	NOV/DEC PORTAGER POSTAGE	8,000.00
10/18/2019	311530	VARNUM, RIDDERING, SCHMIDT & H	LEGAL SERVICES	607.50
10/18/2019	311531	VICKSBURG HARDWARE	LEAF BLOWER MAINTENANCE	918.77
10/18/2019	311532	WASTE MANAGEMENT	DISPOSAL SERVICES	256.50
10/18/2019	311533	WILLIAMS ASSOCIATES ARCHITECTS, LTD	FIRE-NEW STATION 2	22,497.54
10/18/2019	311534	PRINCIPAL FINANCIAL GROUP	DB PENSION ACTUARIALLY RECOM. CONTRIB.	88,775.00
10/25/2019	311535	4TH DISTRICT COURT	BOND/BARRY HARASIM	500.00
10/25/2019	311536	ACE PARKING LOT STRIPING, INC.	STRIPING SERVICES	500.00
10/25/2019	311537	ALLEGRA PRINT & IMAGING	PRINTING-BROCHURES FOR COM DEV	662.00
10/25/2019	311538	AMERICAN WATER WORKS ASSOC.	AWWA STANDARD REVISIONS	790.00
10/25/2019	311539	BARNES, KATHY	GRAIN ELEVATOR DEPOSIT REFUND	150.00
10/25/2019	311540	BEAVER RESEARCH COMPANY	CLEANING SUPPLIES	234.75
10/25/2019	311541	BRONSON HEALTHCARE GROUP	LEGAL BLOOD DRAWS	400.00
10/25/2019	311542	CARTRIDGE WORLD	PRINTER SERVICES	1,733.78
10/25/2019	311543	COLUMBUS CITY ADVENTURES	TRIP VENDOR PMT 191106 HONORING OUR	200.00
10/25/2019	311544	DAVE'S CONCRETE PRODUCTS, INC.	ROMENCE PROJECT	4,297.50
10/25/2019	311545	DETROIT SALT CO.	ICE CONTROL SALT	119,882.45

ACCOUNTS PAYABLE REGISTER
Check Dates From: 10/6/19 to 10/25/19

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Check Date	Check	Vendor Name	Description	Amount
10/25/2019	311546	FADER EQUIPMENT, INC.	MAINTENANCE SUPPLIES	125.00
10/25/2019	311547	FAWLEY OVERHEAD DOOR, INC.	FIRE FACILITY MAINT.	90.00
10/25/2019	311548	FRED PRYOR SEMINARS	PRYOR SEMINARS CANCELLATION FEE	70.00
10/25/2019	311549	GRACEY, LARRY	PMT FOR HOSES LAID FOR PUMPING	6,300.00
10/25/2019	311550	GREATER KALAMAZOO FOP LODGE 98	FOP PORTION OF PPOA DUES OCT 2019	3,102.98
10/25/2019	311551	GUARDIAN TRACKING, LLC	ANNUAL SUBSCRIPTION	3,536.00
10/25/2019	311552	J & J LOCKSMITHS	BUILDING KEY COPIES	45.00
10/25/2019	311553	JOSHI, SARAH	GRAIN ELEVATOR DEPOSIT REFUND	150.00
10/25/2019	311554	KIESLER POLICE SUPPLY	AMMO	4,949.50
10/25/2019	311555	MIDWEST CUSTOM EMBROIDERY COMPANY	SHIRTS	1,244.00
10/25/2019	311556	MILLER ROAD TRANSFER STATION	DISPOSAL SERVICES	380.00
10/25/2019	311557	PETTY CASH-BARBARA GARLOW	REPLENISHMENT CHECK	556.99
10/25/2019	311558	PETTY CASH-JANET GATES	REPLENISHMENT CHECK	219.13
10/25/2019	311559	QUADMED, INC.	FIRE TRNG SUPPLIES	235.36
10/25/2019	311560	QUALITY PRECAST, INC.	DRAINAGE SUPPLIES	1,534.94
10/25/2019	311561	RENEWED EARTH, INC.	LEAF AND BRUSH REMOVAL-COMPOST	9,083.33
10/25/2019	311562	SANDERSON DEHAAN IRRIGATION	IRRIGATION REPAIRS	927.47
10/25/2019	311563	SHI INTERNATIONAL CORP.	PRINTER	2,911.00
10/25/2019	311564	SLAVIN MANAGEMENT CONSULTANTS	SLAVIN MANAGEMENT CONSULTANTS	4,944.90
10/25/2019	311565	THE CANOPEUM, INC.	ART HOP TENT RENTAL 2019	760.00
10/25/2019	311566	TODD ARBANAS ENTERPRISES INC.	TREE REMOVAL SERVICES	2,500.00
10/25/2019	311567	UNION STREET HYDRAULICS	FLEET CYLINDER REPAIRS	1,171.90
10/25/2019	311568	USA TODAY	LOBBY SUBSCRIPTION	29.00
10/25/2019	311569	USABLUEBOOK	METER	370.26
10/25/2019	311570	VERIZON CONNECT NWF, INC.	FLEET GPS SERVICES	600.97
10/25/2019	311571	VERIZON WIRELESS	WIRELESS CARDS	3,043.81
10/25/2019	311572	WASHCO, LLC	GRAFFITI REMOVAL	250.00
10/25/2019	311573	WRIGHT, AARON	PAYMENT FOR MUSICAL SVCS	50.00
10/25/2019	311574	ZUNIGA, MARIA	TRIP REFUND 200220 GULF COAST	100.00
Total Paper Checks:				1,591,121.06

ACCOUNTS PAYABLE REGISTER
Check Dates From: 10/6/19 to 10/25/19

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Check Date	Check	Vendor Name	Description	Amount
Check Type: Auto-Pay Payment				
10/07/2019		CONSUMERS ENERGY	GAS-ELECTRIC	58.70
10/08/2019		CONSUMERS ENERGY	GAS-ELECTRIC	16,344.48
10/10/2019		CONSUMERS ENERGY	GAS-ELECTRIC	1,046.96
10/11/2019		CONSUMERS ENERGY	GAS-ELECTRIC	5,643.46
10/15/2019		RANDALL BROWN & ASSOC	RETAINER FEES	18,810.00
10/15/2019		CONSUMERS ENERGY	GAS-ELECTRIC	22,609.34
10/16/2019		CONSUMERS ENERGY	GAS-ELECTRIC	1,628.18
10/17/2019		CONSUMERS ENERGY	GAS-ELECTRIC	6,971.89
10/25/2019		CONSUMERS ENERGY	GAS-ELECTRIC	1,244.58
			Total Auto-Pay Payments:	74,357.59
			Grand Total:	2,592,255.87

TO: Honorable Mayor and City Council

FROM: Joseph La Margo, City Manager



SUBJECT: Amendment to the General Appropriations Act

SUPPORTING PERSONNEL: William Furry, Director of Finance

ACTION RECOMMENDED: Amend the General Appropriations Act (budget) for the fiscal year ending June 30, 2020.

The normal government procurement process involves issuance of purchase orders to obtain goods and services necessary to provide service to citizens. Purchase orders specify description, quantity and price of the required goods. With each purchase order, an encumbrance is entered into the city accounting system to reserve budgeted funds to pay for the goods. As goods are received and the related invoices paid, the encumbrances are relieved. At the end of each fiscal year, open purchase orders (encumbrances) are carried forward to the next fiscal year to reserve funds required to pay for goods and services already ordered. This is completed by adding the encumbered funds to the annual budget of the next fiscal year. The “encumbrance carry forward” process is a standard practice in governmental accounting. The City of Portage Charter, Section 7.6(d), requires the production of this listing for approval by City Council.

For Fiscal Year 2018-2019, the amount recommended to be rolled forward is \$732,198. This total consists of:

Street projects	\$382,678
Utility projects	\$180,500
General Fund programs & projects	\$99,120
Fleet & Facilities Fund equipment	\$39,900
Cable Television Fund agreement	\$30,000
Total	\$732,198

A significant portion of the funds to be rolled forward for street projects includes approximately \$172,000 for mill and fill services provided by Rieth-Riley and Michigan Paving & Materials, \$48,000 for line-stripping services provided by Michigan Pavement Markings, and \$40,000 for the purchase of mast arms from Carrier & Gable for the Lovers Lane and Romence Road intersection project. The utility project amount primarily consists of \$175,000 for the work to be performed by Hall Builders on Retention Basin No. 5 at Fire Station No. 2.

The amount rolled forward from Fiscal Year 2017-2018 was \$160,546, consisting of \$116,007 for street projects and \$44,539 for programs and projects in the General Fund.

The attached list shows the dollar value of open purchase orders as of June 30, 2019, all of which are for necessary supplies and services. Receipt of these goods and services will require subsequent payment by the city. Council action to amend the Fiscal Year 2019-2020 budget will allow payment for goods and services ordered in Fiscal Year 2018-2019 from the Fiscal Year 2019-2020 budget. Therefore, it is recommended that City Council amend the General Appropriations Act (budget) for the fiscal year ending June 30, 2020.

FUNDING: N/A

Attachments: 1. FY 2018-2019 Purchase Orders to Roll Into the FY 2019-2020 Budget

2018-2019 Purchase Orders to Roll into 2019-2020 Budget

	PO Number	Vendor Name	Carry-Forward Amount
1	79155	Soil & Materials Engineers	5,500
2	79621	Hopkins Fundraising Consulting	18,750
3	79699	Rieth-Riley Construction	171,972
4	81316	Kalamazoo Area Transportation Study	6,933
5	81483	Capitol Strategies	9,570
6	81611	Slavin Management Consultants	9,758
7	81671	J. Allen & Co. Inc.	5,800
8	81700	Election Systems & Software	7,150
9	81834	PredPol	14,800
10	81835	Air Science USA, LLC	11,631
11	81837	Michigan Pavement Markings	48,284
12	82033	Caporossi Construction	13,200
13	82181	Carleton Equipment	39,900
14	82364	Carrier & Gable	39,930
15	82391	Shetler Construction	25,159
16	82392	Dave's Concrete	6,499
17	82395	Michigan Paving & Materials	90,060
18	82403	Portage Public Schools	30,000
19	82482	Hall Builders	175,000
20	82676	West Michigan Office Interiors	2,302
Total			<u><u>732,198</u></u>

TO: Honorable Mayor and City Council

FROM: Joseph La Margo, City Manager



SUBJECT: Rezoning Application #19/20-2, 1730 East Centre Avenue

SUPPORTING PERSONNEL: Chris Forth, Acting Director, Department of Community Development

ACTION RECOMMENDED: Accept Rezoning Application #19/20-2, 1730 East Centre Avenue for first reading and set a public hearing for December 3, 2019; and subsequent to the public hearing, consider approving Rezoning Application #19/20-2, changing the zoning designation of 1730 East Centre Avenue from R-1B, one-family residential, to OS-1, office service.

An application requesting the rezoning of 1730 East Centre Avenue from R-1B, one-family residential to OS-1, office service has been received from Mr. Auville Krause. The zoning change is being requested to facilitate an office redevelopment project at this location.

In a report dated September 27, 2019, the Department of Community Development concluded the proposed OS-1, office services zoning district is consistent with the Comprehensive Plan, Future Land Use Map and surrounding land use/zoning pattern. For these reasons, staff is supportive of the proposed OS-1, office service district.

The Planning Commission convened public hearings on September 19 and October 3, 2019 to consider the request. David Keyte of Callander Commercial (applicant representative) was present to support the zoning change. One citizen spoke during the September 19 hearing but did not oppose the zoning change. No additional citizens spoke during the public hearing and no written communications have been received.

After careful consideration, the Planning Commission voted 9-0 to recommend City Council consider approving Rezoning Application #19/20-2, changing 1730 East Centre Avenue from R-1B, one-family residential, to OS-1, office service. The Planning Commission found that the OS-1 district is appropriate in this area of the city and is consistent with the Comprehensive Plan, Future Land Use Map and surrounding land use/zoning pattern along East Centre Avenue.

Attached are the Planning Commission transmittal, Department of Community Development report and related materials for review.

FUNDING: Not applicable

- Attachments:**
1. Planning Commission transmittal dated October 23, 2019
 2. Planning Commission meeting minutes dated September 19 and October 3, 2019
 3. Community Development staff report dated September 27, 2019
 4. Ordinance Amendment

TO: Honorable Mayor and City Council

FROM: Planning Commission

DATE: October 23, 2019

SUBJECT: Rezoning Application #19/20-2, 1730 East Centre Avenue

The Planning Commission convened a public hearing during the September 19th and October 3rd, 2019 meetings to consider the rezoning application submitted by Auville Krause to rezone 1730 East Centre Avenue from R-1B, one family residential to OS-1, office service. David Keyte of Callander Commercial (applicant representative) was present during both meetings to support of the rezoning request. One citizen spoke during the September 19th meeting not objecting to the rezoning, but requesting a screening fence be installed and any outdoor lighting be minimized to provide privacy to his adjacent residence to the south. No additional citizens spoke during the public hearings and no written communications have been received.

After careful consideration, a motion was made by Commissioner Patterson, seconded by Commissioner Harrell-Page, to recommend to City Council that Rezoning Application #19/20-2 be approved and 1730 East Centre Avenue be rezoned from R-1B, one family residential to OS-1, office service. The motion included a finding that the OS-1 district is appropriate in this area of the City and is consistent with the Comprehensive Plan, Future Land Use Map and surrounding land use/zoning pattern along East Centre Avenue. The motion was unanimously approved 9-0.

Sincerely,


Dan Corradini
Chairman

PLANNING COMMISSION

September 19, 2019

The City of Portage Planning Commission meeting of September 19, 2019 was called to order by Chairman Corradini at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Six citizens were in attendance.

PLEDGE OF ALLEGIANCE:

Chairman Corradini led the Commission, staff and citizens in the Pledge of Allegiance.

IN ATTENDANCE:

Christopher Forth, Deputy Director of Planning, Development & Neighborhood Services; Michael West, Senior City Planner and Randy Brown, City Attorney.

ROLL CALL:

Mr. Forth called the role: Myer (yes); Pezzoli (yes); Harrell-Page (arrived at 7:02 p.m.); Baldwin (yes); Corradini (yes); Joshi (yes) and Patterson (yes). A motion was then made by Commissioner Baldwin, seconded by Commissioner Joshi, to approve the role excusing Commissioners Fries and Schimmel. The motion was unanimously approved 6-0.

APPROVAL OF MINUTES:

Chairman Corradini referred the Commission to the September 5, 2019 meeting minutes contained in the agenda. A motion was made by Commissioner Patterson, seconded by Commissioner Baldwin, to approve the minutes as submitted. The motion was unanimously approved 7-0.

SITE/FINAL PLANS:

None.

PUBLIC HEARING:

1. **Preliminary Report: Rezoning Application #19/20-2, 1730 East Centre Avenue.** Mr. Forth summarized the September 13, 2019 preliminary staff report regarding a request from Auville Krause to rezone property located at 1730 East Centre Avenue from R-1B, one family residential to OS-1, office service. Mr. Forth stated the property is currently occupied by a single family residence and the applicant has indicated plans to demolish the residence and construct a new office building at the site. Mr. Forth discussed the recent rezoning of the adjacent parcel at 1700 East Centre Avenue and the new office building that was under construction. Mr. Forth then briefly summarized the preliminary analysis of the rezoning request including consistency with the Comprehensive Plan/Future Land Use Map and evolving office zoning/land use pattern along East Centre Avenue, suitability of existing R-1B district and impacts of proposed OS-1 district.

David Keyte of Callander Commercial (applicant representative) was present to support the rezoning application. The public hearing was opened by Chairman Corradini. One citizen (Bill McNally, 1727 Pleasant Drive) spoke in regards to the proposed rezoning. Mr. McNally stated he did not object to the rezoning, however, requested that a screening fence be installed and any outdoor lighting be minimized to provide privacy to his home. Mr. Forth and Mr. West discussed the outdoor lighting standards and conflicting land use screening requirements between office and residential land uses. No additional citizens spoke regarding the proposed rezoning.

After a brief conversation, a motion was made by Commissioner Myer, seconded by Commissioner Harrell-Page, to adjourn the public hearing for Rezoning Application #19/20-2, 1730 East Centre Avenue, to the October 3, 2019 meeting. The motion was unanimously approved 7-0.

NEW BUSINESS:

1. Accessory Building (Smoots), 2934 Woodhams Avenue. Mr. West summarized the September 13, 2019 staff report regarding a request from Ryan and Karen Smoots to construct a 2,068 square foot detached accessory building along the northeast portion of their residential property located at 2934 Woodhams Avenue. Mr. West indicated the accessory building will be of pole barn construction with siding and roofing materials that will match the existing residential structures and will be utilized for storage of a large RV, antique vehicles, quads, trailers and other personal items, and will not be utilized for any business related purpose. Mr. West stated the Zoning Board of Appeals on September 9, 2019 approved a variance to allow the accessory building to be constructed to a height of 17-feet. Mr. West indicated the 5.3-acre parcel is currently occupied by a 1,505 square foot ranch style home, a 462 square foot attached garage, a 768 square foot detached garage and a small storage shed (10-foot by 10-foot) that was proposed to be removed with construction of the proposed pole barn. If the proposed pole barn was approved, Mr. West indicated the total ground floor area of all accessory buildings would exceed the ground floor area of the main residence by 1,793 square feet.

Mr. West referred the Commission to a revised site sketch and letter provided by the applicant. Mr. West indicated the revised site sketch now proposed a 20-foot setback from the north/side property line (30-foot setback originally proposed), a 240-foot setback from the east/rear property line and a 275-foot setback from the south/side property line. Mr. West further indicated the proposed pole barn would be situated in excess of 300-feet from the nearest adjacent single family residence. Mr. West stated the size and configuration of the parcel, combined with the setback distances from adjacent property lines and residences, would mitigate impacts on adjacent properties and the proposed pole barn was recommended for approval subject to removal of the existing storage shed (approximately 10-foot by 10-foot) upon completion of the proposed pole barn.

Ms. Karen Smoots (applicant) was present to support the request. Ms. Smoots discussed the relocation of the pole barn location in order to address the slope of the land and minimize the need for fill material. Ms. Smoots discussed the construction quality of the proposed pole barn and the nature of the personal items that would stored within the building. Ms. Smoots also confirmed that the existing 10-foot by 10-foot storage shed would be removed upon construction of the new pole barn. One citizen (Jim Moiles, 10828 Autumn View Lane) spoke regarding the proposed accessory building. Mr. Moiles stated he had no objection to the accessory building, however, asked for clarification on the proposed location and whether the large open area and tree line within the rear of the property would be preserved. Ms. Smoots stated the open area and tree line would be retained.

After a short discussion, a motion was made by Commissioner Patterson, seconded by Commissioner Baldwin, to approve the 2,068 square foot accessory building for Ryan and Karen Smoots, 2934 Woodhams Avenue, subject to removal of the existing storage shed (approximately 10-foot by 10-foot) upon completion of the proposed pole barn. The motion included a finding that the size and configuration of the parcel combined with the setback distances from adjacent residences and property lines will mitigate visual impacts on adjacent properties. The motion was unanimously approved 7-0.

PLANNING COMMISSION

October 3, 2019

The City of Portage Planning Commission meeting of October 3, 2019 was called to order by Chairman Corradini at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. One citizen was in attendance.

PLEDGE OF ALLEGIANCE:

Chairman Corradini led the Commission, staff and citizens in the Pledge of Allegiance.

IN ATTENDANCE:

Michael West, Senior City Planner and Matt Quardokus, Assistant City Attorney.

ROLL CALL:

Mr. Forth called the role: Myer (yes); Pezzoli (yes); Baldwin (yes); Fries (yes); Schimmel (yes); Corradini (yes); Joshi (yes), Patterson (yes) and Harrell-Page (arrived at 7:02 p.m.).

APPROVAL OF MINUTES:

Chairman Corradini referred the Commission to the September 19, 2019 meeting minutes contained in the agenda. A motion was made by Commissioner Patterson, seconded by Commissioner Joshi, to approve the minutes as submitted. The motion was unanimously approved 9-0.

SITE/FINAL PLANS:

None.

PUBLIC HEARING:

1. **Final Report: Rezoning Application #19/20-2, 1730 East Centre Avenue.** Mr. West summarized the September 27, 2019 final staff report regarding a request from Auville Krause to rezone property located at 1730 East Centre Avenue from R-1B, one family residential to OS-1, office service. Mr. West stated the rezoning would be requested to facilitate an office redevelopment project. Mr. West next summarized the final analysis of the rezoning request including consistency with the Comprehensive Plan/Future Land Use Map and evolving office zoning/land use pattern along East Centre Avenue, suitability of existing R-1B district and impacts of proposed OS-1 district.

David Keyte of Callander Commercial (applicant representative) was present to support the rezoning application. The public hearing was opened by Chairman Corradini. No citizen spoke regarding the proposed rezoning. A motion was then made by Commissioner Schimmel, seconded by Commissioner Harrell-Page. The motion was unanimously approved 9-0. After a brief discussion, a motion was made by Commissioner Patterson, seconded by Commissioner Harrell-Page, to recommend to City Council that Rezoning Application #19/20-2 be approved and 1730 East Centre Avenue be rezoned from R-1B, one family residential to OS-1, office service. The motion included a finding that the OS-1 district is appropriate in this area of the City and is consistent with the Comprehensive Plan, Future Land Use Map and surrounding land use/zoning pattern along East Centre Avenue. The motion was unanimously approved 9-0.

NEW BUSINESS:

None.

TO: Planning Commission

DATE: September 27, 2019

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: Final Report: Rezoning Application #19/20-2, 1730 East Centre Avenue

I. INTRODUCTION:

An application has been received from Auville Krause requesting that 1730 East Centre Avenue be rezoned from R-1B, one family residential to OS-1, office service. According to the applicant, the rezoning is being requested to facilitate an office redevelopment project.

Applicant	Property Address	Parcel Number	Zoning	
			Existing	Proposed
Auville Krause	1730 East Centre Avenue	08820-004-O	R-1B	OS-1
One parcel – 1.35 acres (198-feet by 297-feet)				

II. EXISTING CONDITIONS:

Land Use/Zoning	<u>Rezoning Site:</u> The subject property at 1730 East Centre Avenue is currently occupied by a 1,336 square foot one-story single family dwelling and a 384 square foot detached garage. <u>East/South:</u> Single family residences zoned R-1B, one family residential. <u>West:</u> Office building (currently under construction) zoned OS-1, office service. <u>North (across East Centre Avenue):</u> Greenhouses zoned R-1B, one family residential.
Zoning/Development History	There have been several rezoning considerations in the past 10 years along East Centre Avenue, west of the subject property: - In April 2019, City Council rezoned 1700 East Centre Avenue from R-1B, one family residential to OS-1, office service. This rezoning facilitated the Dr. Sage Orthodontic Clinic redevelopment project, which is currently under construction. - In 2015, City Council rezoned 710 and 732 East Centre Avenue from B-1, local business and R-1A, one family residential, to OS-1, office service. This rezoning facilitated the Beacon Point Memory Care facility at the southeast corner of East Centre Avenue and Lakewood Drive. - In 2014, City Council rezoned several properties in the 700-900 block of East Centre Avenue, along the south side of East Centre Avenue between Lakewood Drive and Lovers Lane, from B-3, general business and R-1A, one family residential, to B-1, local business. This rezoning was initiated by the Planning Commission to facilitate office/local business redevelopment consistent with the Comprehensive Plan and Future Land Use Map designations. - In 2012, City Council approved several properties in the 700-900 block of East Centre Avenue, along the north side of East Centre Avenue between Lakewood Drive and Garden Lane, from R-1A and R-1B, one family residential, to OS-1, office service. This rezoning was initiated by property owners, then expanded by the Planning Commission, to facilitate office redevelopment consistent with the Comprehensive Plan and Future Land Use Map designations.

	In 2011, City Council rezoned 1302, 1306, 1316 and 1330 East Centre Avenue from R-1B, one family residential and OS-1, office service, to B-1, local business and OS-1, office services. This rezoning was initiated by property owners facilitate future office/local business redevelopment at the southeast corner of East Centre Avenue and Lovers Lane.
Historic District/ Structures	The subject site is not located within a historic district and does not contain any historic structures.
Public Streets	East Centre Avenue is designated a 5-lane major arterial roadway with 18,054 vehicles per day (2015) and a capacity of 37,100 vehicles per day (level of service "D").
Public Utilities	Municipal water and sanitary sewer are available along East Centre Avenue.
Environmental	The City of Portage Natural Resources Map does not identify any potential wetland area, floodplains or other environmentally sensitive areas on the subject site.

III. PUBLIC HEARING/COMMENTS:

The Planning Commission convened a public hearing to consider the rezoning request at the September 19, 2019 meeting. David Keyte of Callander Commercial (applicant representative) was present to support the rezoning application. One citizen (Bill McNally, 1727 Pleasant Drive) spoke in regards to the proposed rezoning. Mr. McNally stated he did not object to the rezoning, however, requested that a screening fence be installed and any outdoor lighting be minimized to provide privacy to his home. No additional citizens spoke during the public hearing and no written communications have been received regarding the proposed rezoning.

IV. FINAL ANALYSIS:

The following analysis has been prepared based on general land use considerations, the Comprehensive Plan, traffic conditions and surrounding development patterns.

Comprehensive Plan/Future Land Use Map Consistency. The Future Land Use Map component of the Comprehensive Plan identifies the rezoning parcel, as well as properties located to the east and west along East Centre Avenue, as appropriate for Office Service land use. The Comprehensive Plan also identifies East Centre Avenue as an office corridor. The proposed OS-1, office service zoning district is consistent with these Plan designations.

While these designations are intended to serve as a general guide for future development and rezoning considerations, specific zoning district boundaries need to be determined on a case-by-case basis considering overall consistency with the Comprehensive Plan/Future Land Use Map, surrounding land use/zoning pattern, development/redevelopment potential, impacts on adjacent properties and other factors.

Development Guidelines. The Development Guidelines are intended to be used by the Commission and staff when reviewing private development proposals, infrastructure improvement programs (i.e. public expenditures on streets, sewers and water mains that influence the location, intensity and timing of development) and public programs that affect the physical environment. The proposed rezoning is consistent with applicable Development Guidelines contained in the Comprehensive Plan (see attached Development Guidelines Table).

Suitability of Existing R-1B Zone/Impacts of Proposed OS-1 Zone. The suitability of the existing residence and R-1B zoning is somewhat diminished considering the increasing traffic volumes along East Centre Avenue and the existing/planned office zoning and land use pattern along this major street corridor. The proposed OS-1 zone is consistent with the land use/zoning pattern along East Centre Avenue and the Comprehensive Plan designations. Allowable uses in the OS-1 district include executive, administrative and professional offices, medical offices and clinics, banks and credit unions, art and photographic studios, personal service establishments, along with institutional uses, trade and business schools, and funeral homes. Since the rezoning site abuts single family residential land use/zoning, any future office building construction would be limited to one-story and 25-feet in height. Additional Zoning Code requirements for screening, buffering, lighting and noise designed to mitigate adverse impacts on adjacent residential properties would also be applicable with any office redevelopment project.

A change in zoning to OS-1 would cause the existing single-family residential use to become legally nonconforming. Section 42-133 of the Zoning Code provides regulations for nonconforming lots, buildings, structures and uses. Under these regulations, a nonconforming use may continue until it is removed, changed to a conforming use or intentionally abandoned. In particular, a property and/or building with a nonconforming use can have a change of tenancy, ownership or management without losing its nonconforming status. General maintenance and repair of the property and/or building in which the nonconforming use is located is also permitted by the Zoning Code. Additionally, if a nonconforming use is abandoned for any reason described in Section 42-133.C.5, any subsequent use of the land must be conforming to the underlying zoning district. Finally, if the building in which a nonconforming use is located were destroyed by fire, tornado or other act of God, the building could be reconstructed to its original location within 18 months.

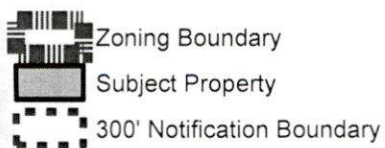
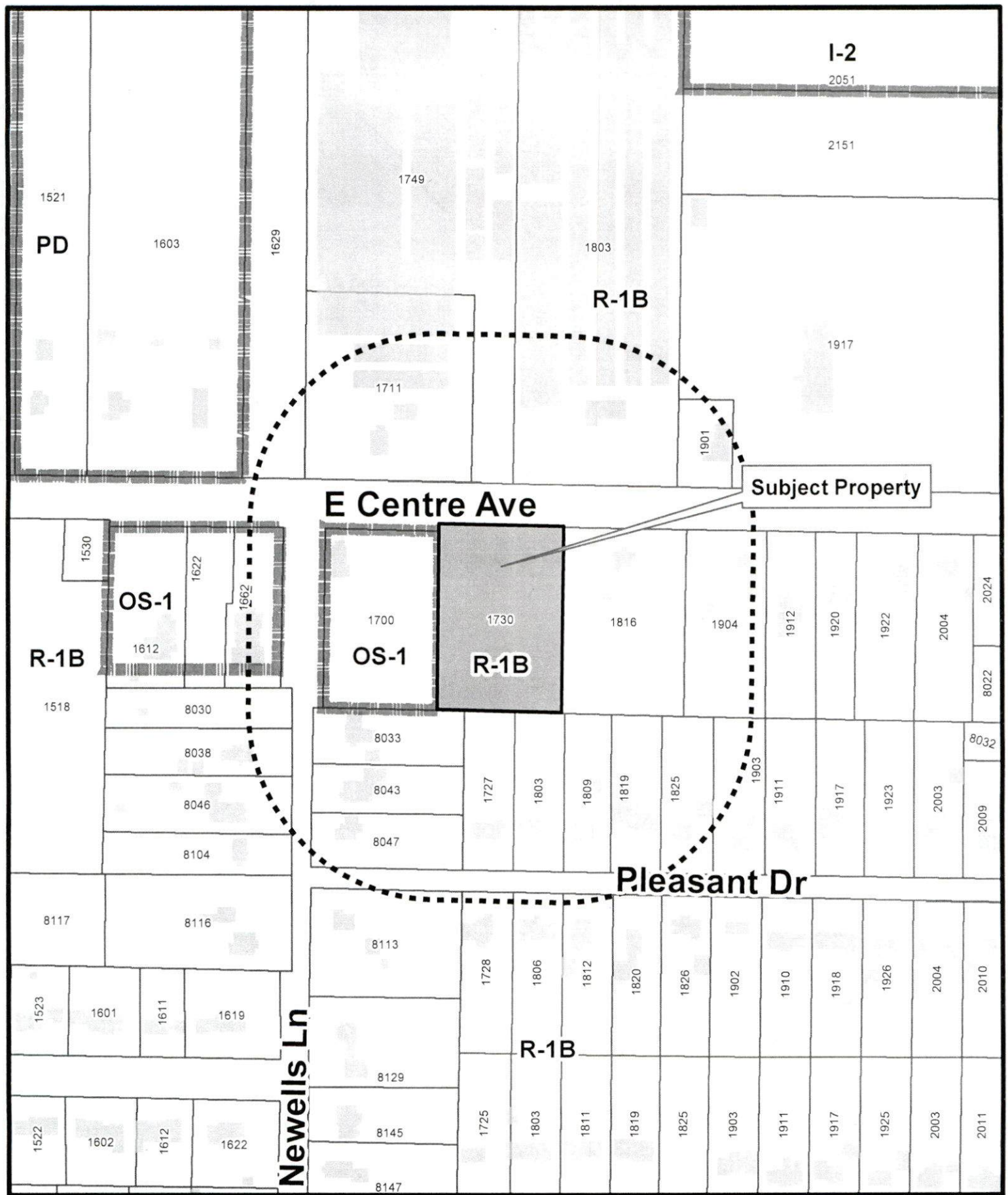
Traffic Considerations. Rezoning the subject properties from R-1B to OS-1 would result in an increase in traffic generation dependent upon the type of office use that would be established at the site. However, this additional traffic generation can be accommodated by the adjacent roadway network. Specific access related issues including driveway location, shared/cross access would be reviewed at the site plan stage of development/redevelopment.

V. RECOMMENDATION:

Subject to any additional comments that may be received during the public hearing, staff advises the Planning Commission to recommend to City Council that Rezoning Application #19/20-2 be approved and 1730 East Centre Avenue be rezoned from R-1B, one family residential to OS-1, office service. The OS-1 district is appropriate in this area of the City and is consistent with the Comprehensive Plan, Future Land Use Map and surrounding land use/zoning pattern along East Centre Avenue.

Attachments: Zoning/Vicinity Map
Aerial Photo Map
Future Land Use Map
Development Guidelines Table (OS-1)
Rezoning Application and Supporting Materials

T:\COMMDEV\2019-2020 Department Files\Board Files\Planning Commission\PC Reports\Rezoning\2019 09 27 Rezoning Application 19-20-2, 1730 East Centre Avenue (final).doc



Rezoning: #19/20 - 2 1730 East Centre Avenue



1 inch = 200 feet

High Density Residential

Office

Subject Property

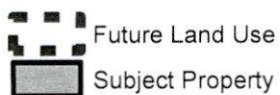
E Centre Ave

Newells Ln

Low Density Residential

Pleasant Dr

Applecroft Ave



Future Land Use Map 1700 East Centre Avenue



1 inch = 200 feet



Aerial Photography
1730 East Centre Avenue

 Subject Property



1 inch = 100 feet
(38)

DEVELOPMENT GUIDELINES
Rezoning Application #19/20-2, 1730 East Centre Avenue
(OS-1, Office Service)

Guideline	Description	Consistent	Comments
Rezoning Request – Z-1	Consistency with Future Land Use Plan	Yes	Future Land Use Map designates the subject property and other properties along the north and south sides of East Centre Avenue as appropriate for office land use. The Comprehensive Plan also designates Centre Avenue as an office corridor. The proposed OS-1 zone is consistent with these designations.
Commercial – 1	Coordinated Development	Yes	Properties located along the Centre Avenue corridor are either zoned or planned for office land use. The proposed OS-1 zone is consistent and compatible with existing and transitioning land uses.
Commercial – 2	Commercial/Office Uses in General	Yes	Rezoning site is located within the Centre Avenue Office Corridor within a mixture of office, institutional and residential land uses. East Centre Avenue is a major arterial roadway and traffic related issues can be accommodated. The size, intensity and character of the proposed use is compatible with adjacent areas.
Commercial – 3	Local Business Uses	N/A	Guideline is not applicable to rezoning request.
Commercial – 4	Regional and General Commercial Uses	N/A	Guideline is not applicable to rezoning request.
Commercial – 5	Portage Commerce Square	N/A	Guideline is not applicable to rezoning request.
Natural & Historic Resources - 1	Environmental Protection	Yes	Rezoning site is not characterized by environmentally sensitive areas (wetlands, floodplain, lakes/streams, etc).
Natural & Historic Resources - 2	Floodplain	Yes	Rezoning site is not situated within the 100-year floodplain.
Natural & Historic Resources - 3	Water Quality	Yes	Reviewed at site plan stage of development.
Natural & Historic Resources – 4	Noise	Yes	Reviewed at site plan stage of development.
Natural & Historic Resources – 5	Historic Resource Preservation	N/A	Rezoning site is not situated within a designated historic preservation area and does not contain any historic structures.
Natural & Historic Resources – 6	Open Space Protection	Yes	Reviewed at site plan stage of development.
Transportation – 1	Transportation Systems	Yes	East Centre Avenue is a 5-lane major arterial roadway with 18,054 vehicles per day (2015) and a capacity of 38,700 vehicles per day (level of service “D”). Additional traffic generation associated with the proposed zoning change can be accommodated by the surrounding roadway network.
Transportation – 2	Street Design	Yes	Reviewed at site plan stage of development.
Transportation – 3	Access Management	Yes	See Transportation – 1 and Transportation – 2 above.
Transportation – 4	Non Motorized Travel	Yes	Reviewed at site plan stage of development.
Transportation – 5	Right-of-Way Preservation	Yes	Reviewed at site plan stage of development.

Guideline	Description	Consistent	Comments
Transportation – 6	Parking	Yes	Reviewed at site plan stage of development.
Municipal Facilities & Services – 1	Sound Fiscal Growth	Yes	Existing infrastructure is adequate to accommodate future development and growth.
Municipal Facilities & Services – 2	Sanitary Service	Yes	Sanitary sewer is available.
Municipal Facilities & Services – 3	Underground Utilities	Yes	Reviewed at site plan stage of development.

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Rezoning Application
#19/20-2



Form Center

RECEIVED
AUG 13 2019
COMMUNITY DEVELOPMENT

Zoning Amendment Application

Applicant Information

First Name*

Avuille
~~Barbara Van Tulpen~~

Last Name*

Krassse

Address*

606 Lower Lane

City*

Portage

State*

MI

Zip Code*

49002

Email Address*

Krassse.dentistry@gmail.com

Phone Number*

269-419-9629

Fax Number

Property Owner Information

Required if property owner is different than the Applicant

First Name

Barbara Van Tulpen

Last Name

Address

1730 East Centre

Portage 49002

[Enable Google Translate](#)

City

State

Zip Code

Phone Number

Fax Number

269-998-7688

Email Address

Willie49002@yahoo.com

Zoning Map Amendment

Property Address*

1730 E. Centre

Parcel ID No.

Plat Name

08820-0040

Current Zoning*

R-1B

Proposed Zoning*

OS-1

Comprehensive Plan Designation

Office

Site Area (acreage)

1.35

Current Land Use*

Residential

Proposed Land Use*

Office

~~Zoning Code Text Amendment~~

~~Zoning Code section proposed to be modified and/or Proposed language to be considered.~~

~~Proposed Amendment*~~

~~Explain proposed amendment~~

~~upload file attachment if needed~~

~~Choose File No file chosen~~

~~Applicant/Property Owner Certification~~

~~Included is a statement indicating why, in my opinion, the change requested is necessary and why such amendment will advance the public health, safety and welfare. An assessment of the impact of the proposed zoning amendment on the community or property of other persons in the vicinity of the amendment or affected by the amendment is also included.~~

~~ Enable Google Translate~~

Electronic Signature Agreement*

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☐ I agree.

Electronic Signature

First M. Last

David Kaye Agent For
Aville Frouse

Date*

8-13-2019

* indicates a required field

The City of Portage | A Natural Place to
Move

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**FIRST READING
CITY OF PORTAGE, MICHIGAN
NOTICE**

TO: THE RESIDENTS AND PROPERTY OWNERS OF THE CITY OF PORTAGE AND ALL OTHER INTERESTED PERSONS.

NOTICE IS HEREBY GIVEN, that an Ordinance to amend Article 4 (Zoning) of Chapter 42 of the Codified Ordinances of Portage, Michigan, was introduced for first reading at a regular meeting of the City Council held on November 5, 2019, and that the Council will hold a public hearing on the proposed amendment at the Portage City Hall in said City on _____, 2019, at 7:00 p.m. or as soon thereafter as may be heard.

NOTICE IS FURTHER GIVEN that the proposed amendment to Article 4 (Zoning) of Chapter 42, of the Codified Ordinances of Portage, Michigan reads as follows:

THE CITY OF PORTAGE ORDAINS:

That Article 4 (Zoning) of Chapter 42, of the Codified Ordinances of Portage, Michigan, Official Zoning Map, be amended as follows:

<u>Street Address</u>	<u>Parcel ID Numbers</u>
1730 East Centre Avenue	08820-004-O

From R-1B, one family residential to OS-1, office service or any other classification permitted by law.

PLEASE TAKE FURTHER NOTICE that if the owners of at least twenty percent (20%) of the area of land included in the proposed zoning change, or if the owners of at least twenty percent (20%) of the area of land included within an area extending outward one hundred feet (100') from any point on the boundary of the land included in the proposed change, excluding public right-of-way or other publicly owned land, file a written protest petition against the proposed amendment presented to the City Council before final legislative action on the amendment, a two-thirds vote of the City Council will be required to pass the amendment.

Dated: _____

Adam Herringa, City Clerk

(App #19/20-2)

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF
PORTAGE, MICHIGAN BY AMENDING ARTICLE 4 OF CHAPTER 42,
LAND DEVELOPMENT REGULATIONS OF THE CODIFIED ORDINANCES
OF PORTAGE, MICHIGAN**

THE CITY OF PORTAGE ORDAINS:

That Article 4 (Zoning) of Chapter 42, of the Codified Ordinances of Portage, Michigan, Official Zoning Map, be amended as follows:

Street Address

Parcel ID Numbers

1730 East Centre Avenue

08820-004-O

From R-1B, one family residential to OS-1, office service.

FIRST READING:

SECOND READING:

EFFECTIVE DATE:

Patricia M. Randall, Mayor

STATE OF MICHIGAN)
) SS
COUNTY OF KALAMAZOO)

I do hereby certify that I am the duly appointed and acting City Clerk of the City of Portage and that the foregoing Ordinance was adopted by the City of Portage on the _____ day of _____, 2019.

Adam Herringa, City Clerk

(App #19/20-2)

Approved as to Form:

Date: 7/9/2019

By: [Signature]

City Attorney

Minutes of Boards & Commissions

Youth Advisory Committee Meeting Minutes

August 19, 2019, 6:00 p.m.

- I. Call to order
- II. Introductions and Attendance
- III. Approval of the July meeting minutes
- IV. Report from Liaisons
- V. Fire Department introduction – Fire Marshal Larry Moore
 - a. Answered any questions we had
- VI. Environmental / Climate Discussion – Deirdre Courtney Nieves
 - a. Does YAC want to help local organizations or schools to join the Schools for Climate Action by creating a resolution? Or by ourselves to get others started?
 - b. What is Schools for Climate Action and what do they do?
 - i. Energize the education sector to speak up about climate justice (campaign)
 - School boards, student leaderships, youth organizations
 - Help pass resolutions that drive paradigm shift (so people can recognize climate change) and build political will for members of Congress to act
- VII. Summer Movie Night Review
 - a. 324 attended
 - b. Good/keep
 - i. Prizes, volunteers were more engaged this year, good amount of jobs
 - c. Bad/lose
 - i. Need more volunteers to stay till the end to clean up
- VIII. Ramona Park Luau review (outside event)
 - a. Three volunteers signed up, one volunteer showed up: Janelle (Volunteer just sat there for many hours)
- IX. Local Government
 - a. History of Portage
 - i. Overpopulation in Kalamazoo because of jobs at Upjohn and the people spilled into other parts around Kalamazoo – Township of Portage became the City of Portage
 - b. Responsibilities of Local Government
 - i. Went through and explained the jobs in the city
 - c. Organization of City Government
- X. Social Media (FB, IG, Twitter, Snapchat)
 - a. Subcommittee is working on it
- XI. Volunteering Opportunities
 - a. Public Safety Alcohol/Tobacco compliance checks (Two 16 year olds and Two 18 year olds)
 - i. Haven't heard from any volunteers
 - b. "Pig Out" at Public Safety Dept. on August 24th
 - i. Volunteers
- XII. Goals
 - a. What do you want to gain from this experience?
- XIII. YAC hats

- a. Riya sent the designs in
 - b. Not in the budget but there are individual prices
- XIV. Election of Officers (October / November)
- XV. Mark Your Calendars – YAC Events!!
 - a. Snow Party – Saturday, February 1 @ Oakland Drive Park
 - b. Green-A-Thon – Saturday, April 18 @ Celery Flats (TBD)
- XVI. Next Meeting
 - a. Monday, October 21st at 6:00 p.m. in City Hall

Portage Senior Citizens Advisory Board

Minutes: September 2019

ATTENDANCE:

Bill Wieringa, Sharon White, Larry Smith, Art Roberts, Trudy Riker, Douglas Gilchrist, Linda Zoeller, Mary Lou Petrulio, John Lobo

Absent Excused: Tony Lorentz

Absent Un-excused:

Guests: Monifa Jumanne

Staff: Kim Phillips

Call to order time: 2:30 PM

The minutes for August were approved without correction with Larry Smith moving and Sharon White seconding.

Special Events, Sharon White:

A list of upcoming events was distributed by Sharon White, including the History of the Underground Railroad on Thursday, October 7 at 1:30, The Skinny on Food Labels on Tuesday, October 8, How to Cook with Hands On Demo, October 19 at 1:15, a Financial Exploitation Workshop Thursday, October 22 at 3:00 and a Halloween Lunch on Thursday, October 31 at 11:30. A Meet the Author event on Friday, November 8 at 2:00 will be held for Shirley Burton who authored The History of the Orphan Train and a one-hour presentation on Tuesday the 19th will take place called Insights on History Novels. Mark your calendars now for the New Member Breakfast to be held on December 22nd at 9:00 AM. Don't forget the purse sale this Saturday!

Travel Program, Trudy Riker:

In the last month there have been five trips, the most popular seems to be the trip to the Grand Hotel. The trip committee has exceeded their fundraising goal with a \$56,000 total for the fiscal year. The fall trip preview will be held open-house style on Saturday, September 28, from 9-1:00.

Friends of PSC Board Update, Trudy Riker:

The Friends board met just prior to the Capital Campaign event. They committed to a \$50,000 gift over the next two years in addition to the \$35,000 pledge to operational expenses given annually. The Friends are hoping to sponsor a donor event for those who have made donations. They confirmed Monday, May 18th will be the date for next year's golf outing. All volunteers are welcome.

During the meeting there was discussion regarding a 'donor wall' in the new facility.

Legislative Update, Art Roberts:

KASCI, this past Monday Rick and Lisa Fuller talked about fraud against seniors and next month will discuss the trend of home sharing. These meetings are the third Monday of every month at 1:15. All are welcome.

Managers Report, Kim Phillips:

Kim reviewed the public kick-off of the capital campaign siting that 5.5 million was committed by the City of Portage, privately 3.5 million has been raised, including a commitment from Charles and Lynn Zhang. One of the things talked about is a vehicle to get member input in some of the physical aspects of the new facility such as furnishings. To be the Gold Standard for senior centers is Kim's goal. There is a "wall of names" concept in the works currently to honor donors with seven levels beginning at \$500. The Betty Lee Ongley challenge was underwritten by an anonymous donor who will match any gift in honor of Betty Lee up to \$40,000. The name of the new facility will be the Charles and Lynn Zhang Portage Community Senior Center. Kim underscored the name commits to the expansion of everything we already do, including community service events and activities, but we will always be a senior focused entity.

Kim appeared on 8-West WOOD TV to promote the senior center, and 8-West will continue to run this as advertising for the senior center.

Thursday afternoon from 3-5:00 PM at the shopping plaza where Advance Health Pharmacy is, there will be a big radio promotion program by WKZR with the senior center selected as the beneficiary of this event. Lots of giveaways will be available as incentives to participate.

The Senior Expo is on October 1st. The PSC is a sponsor of this event and will have table/booths and Kim is looking for volunteers to staff these.

Program Needs Assessment, Kim Phillips:

The focus group and surveys are done and some preliminary information should be available by the next Advisory Board meeting.

Financial Report, Kim Phillips:

There was discussion on the report and various aspects of funding. The senior center is unique in the city as the department is revenue-tied.

Looking to the bottom line on the report showing last fiscal year which ended June 30 board members can see that the goal of 60-70% self-supporting was exceeded. The net of revenue at the last line that appears to be negative is the amount the city subsidizes. The city's subsidy was \$161,000 which put us at 79% self-supporting. From a financial standpoint as a center, we've done a great job and revenue from travel was a huge part of that success.

There was a question regarding solar units on the new facility and general energy efficiencies. Kim answered that the building will be as energy efficient as possible within the budget we are given to work with.

Old Business:

None

New Business:

None

Activities Reminders:

Caesar Chavez movie screening in September

Advisory Board Comments:

Bill Wieringa related to the board his hip is healed after a prayer was made over him while attending church.

Kim Phillips thanked all present for their support these past few months and updated the group on her progress asking that if she owes an answer or task to please remind her.

Art Roberts had cataract surgery on one eye, and will miss the next meeting while he has the second eye done.

Citizen comments:

Monifa Jumanne expressed appreciation for having a seat there and thanked Dawn for attending the Library workshop. Monifa indicated that she was asked by the city to develop a proposal for a memorial to honor Dr. Martin Luther King which she has completed. Three concepts were proposed, a fountain, a garden, or lighthouse or 'beacon of light.' Monifa offered to initiate a Kwanzaa celebration, opened it to the board and asked it be added to the PSC calendar. Also offered was a workshop called, "Grandma Gets a Reboot; Grandparenting in the Digital Age," consisting of a panel of grandparents in different mindsets ranging from the digital age to very old fashioned.

Time Adjourned: 3:30 PM

Next meeting: Wednesday, October 16, 2:30 PM

**PORTAGE PUBLIC SCHOOLS
BOARD OF EDUCATION
POLICY GOVERNANCE RETREAT AND
REGULAR BUSINESS MEETING**

September 23, 2019

POLICY GOVERNANCE RETREAT

The Policy Governance Retreat of the Board of Education of Portage Public Schools held on Monday, September 23, 2019, was called to order at 4:00 p.m. by President Van Antwerp in the Superintendent's Conference Room of the Administration Building, 8107 Mustang Drive, Portage.

Board Trustees Present: Kurt Droppers, Terri Novaria, Rusty Rathburn, Celeste Shelton-Harris, Bo Snyder, Randy Van Antwerp, Joanne Willson

Board Trustees Absent: None

Administration Present: Mark Bielang

Others Present: Gary Goscenski of Perspectives Consulting

REVISIONS/APPROVAL OF AGENDA

Motion offered by Mr. Droppers, seconded by Mrs. Novaria, that the Board of Education approve the agenda as printed.

The motion carried unanimously.

COMMENTS OR COMMUNICATIONS

There were no comments or communications.

DISCUSSION ITEMS

Mr. Goscenski facilitated this portion of the meeting. The Board discussed middle school enrollment, owner linkage, board member succession, board education topics, the Board's role in elementary facility planning, and board meeting agenda format.

The Policy Governance Retreat adjourned at 6:22 p.m.

REGULAR BUSINESS MEETING

The Regular Business Meeting of the Board of Education of Portage Public Schools held on Monday, September 23, 2019, was called to order at 6:31 p.m. by President Van Antwerp in Conference Room #1 of the Administration Building, 8107 Mustang Drive, Portage. He welcomed the audience and the Pledge of Allegiance was recited.

Board Trustees Present: Kurt Droppers, Terri Novaria, Rusty Rathburn, Celeste Shelton-Harris, Bo Snyder, Randy Van Antwerp, Joanne Willson

Board Trustees Absent: None

REVISIONS/APPROVAL OF AGENDA

Motion offered by Mr. Droppers, seconded by Mrs. Novaria, that the Board of Education approve the agenda as printed.

The motion carried unanimously.

REPORTS

Superintendent's Report

Bond Project Update

Mr. Ron Herron, Assistant Superintendent of Operations, provided an update on the status of bond work. At Central Middle School, mechanical/electrical/plumbing work continues; classroom drywall work begins tomorrow; music Area B will be enclosed by mid-October; cafeteria glasswork and metal siding work begins in two weeks. At West Middle School, Phase 1 (future gym) concrete flooring is poured, rough in of electrical and plumbing is ongoing, and interior masonry work starts tomorrow. On Phase 2 (future Steam Area – old shop and music areas) demolition is wrapping up with structural steel work to begin on Friday; plumbing/electrical rough in work is ongoing. At the Northern Natatorium earthwork has begun. At North Middle School, work continues on punch list items. At PCEC, punch list work is complete. At Central AEF, baseball field fencing and concrete work is complete; throw area work is in progress; punch list items are nearing completion. Mr. Herron addressed questions from Trustees.

Change Order Summary / Bond Budget Update

Mr. Herron briefly reviewed the bond financial update noting there is no change in variances as shown on the financial update handout.

Mr. Dan Rathburn, OAK Project Manager, reviewed work committed through Bond Change Order #23 and detailed Change Orders by Construction Change Directives for North Middle School, Central AEF, and West Middle School. Mr. Rathburn responded to questions from Trustees.

State Budget Update

Ms. Paula Johnson, Director of Finance, provided an update on the state's budget development. Last week the budget for school aid went through both the House and Senate and passed. It includes a fund-balance increase of \$120-\$240 per-pupil using the 2x formula and a slight uptick for special education funding. It is now off to Governor Whitmer for her consideration. Ms. Johnson responded to questions from Trustees.

Ms. Johnson added that count day is Wednesday, October 2, 2019. Our preliminary enrollment numbers are favorable.

Other

Mr. Bielang shared items of interest. Trustees were reminded of a tour for board members of PCEC on October 8, 2019 at 8:00 a.m. and a KCSOA meeting at the Fetzer Center on October 9, 2019 at 5:30 p.m. Mr. Bielang shared the Michigan Department of Education will be in the District on October 11, 2019 to conduct an OCR review. They will look at both high schools and the

Administration Building, review policies, procedures, and access. At the MASA Conference last week Mr. Bielang, Dr. Michael Pascoe and our Studer Coach, KK Owen, gave a presentation on continuous improvement, sharing information on our journey, tools we use, and practical applications. Many questions were addressed. Mr. Bielang extended a thank you to all who came out for the North Middle School dedication last week. Mr. Bielang acknowledged concerns from parents regarding the student lockers at North Middle School. Corrections will be made over the summer when it will be the least disruptive. Mr. Bielang added adjustments to the locker plans for the new Central Middle School will be made.

COMMENTS OR COMMUNICATIONS

President Van Antwerp opened the comments and communications portion of the meeting. Dr. Shelton-Harris read the guidelines for public participation.

Laurel Burrows addressed the Board regarding student lockers at North Middle School.

Mary Beckley Clark addressed Trustees regarding student lockers at North Middle School.

Steve Clark addressed Trustees regarding student lockers at North Middle School, use of Chromebooks and textbooks, and backpack use related to school safety.

President Van Antwerp thanked the public for their comments and opened the floor to Trustee comments.

Mrs. Willson shared information regarding a recently held backpack program to feed children in need.

Mr. Snyder shared positive comments regarding the Board's Policy Governance Retreat held earlier today.

President Van Antwerp thanked Trustees for their comments.

CONSENT AGENDA

President Van Antwerp presented the following Consent Agenda items for approval by the Board of Education: approve the September 9, 2019 Committee of the Whole Work Session Minutes; approve the purchase of versatile decking that can be used in the North Middle School Blackbox Theater for stage set up or chair risers for a cost of \$24,578.00, the funds for which will come from the 2019 Bond Fund, Proposal #1, as presented.

There being no objection to the item, the motion carried unanimously.

ACTION ITEMS

National School Lunch Week Proclamation

Motion offered by Mrs. Willson, seconded by Mr. Droppers, that the Board of Education approve the National School Lunch Week Proclamation as presented. Mrs. Willson read the proclamation aloud.

The motion carried unanimously.

Approve New Teacher Appointments

Motion offered by Mrs. Novaria, seconded by Mr. Droppers, that the Board of Education approve the appointment of the following teacher for Portage Public Schools, Lisa Fausey.

Mr. Brad Galin, Director of Human Resources, commented that Ms. Fausey is a welcome addition to our shared-time program.

The motion carried unanimously.

DISCUSSION ITEMS

Delegates for MASB Delegate Assembly

President Van Antwerp confirmed that no Trustees will serve as voting delegates at the 2019 MASB Delegate Assembly.

Approve WMS Water Main Changes

Mr. Ron Herron shared this is a change order item that results from City of Portage requirements. Because it exceeds the \$100,000 administrative approval threshold, it requires Board approval. Mr. Herron detailed the recommendation, and responded to questions from Trustees.

With no further business to come before the Board, the meeting was adjourned at 7:11 p.m.

Respectfully submitted,

Barb Atkinson
Recording Secretary

**PROCLAMATION
NATIONAL SCHOOL LUNCH WEEK
October 14-18, 2019**

WHEREAS, it is with great respect for the accomplishments of Portage's school food service leads, servers, cashiers and driver personnel and substitutes that we commemorate October 14-18, 2019 as National School Lunch Week. During this special observance, we encourage all citizens to recognize the dedication and skill of our school food service employees; and

WHEREAS, each day, food service employees prepare and serve thousands of lunches. This is in addition to ordering, storing, and expediting each menu item to each location, adhering to food safety, sanitation, and nutritional guidelines as well as giving each customer the time and consideration to listen, hear and deliver what they are looking for each day. Fortunately, we have exemplary professionals who have devoted their careers to providing high quality service to our children and staff; and

WHEREAS, on behalf of our students and staff, it is a pleasure to commend the women and men who accept and meet the challenges of school food service. The observance of School Lunch Week is a welcome opportunity to thank these patient, caring, skilled public servants. Those involved in this pursuit should be very proud of their contribution to education. Now, therefore, be it

RESOLVED BY THE BOARD OF EDUCATION that we proudly commemorate October 14-18, 2019 as National School Lunch Week, and we commend everyone who has contributed to the successful operation of our lunch program. By working together, we can make a difference in every student's life.

Proclaimed this 23rd day of September, 2019
Portage Public Schools Board Of Education

PLANNING COMMISSION

October 3, 2019

The City of Portage Planning Commission meeting of October 3, 2019 was called to order by Chairman Corradini at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. One citizen was in attendance.

PLEDGE OF ALLEGIANCE:

Chairman Corradini led the Commission, staff and citizens in the Pledge of Allegiance.

IN ATTENDANCE:

Michael West, Senior City Planner and Matt Quardokus, Assistant City Attorney.

ROLL CALL:

Mr. Forth called the role: Myer (yes); Pezzoli (yes); Baldwin (yes); Fries (yes); Schimmel (yes); Corradini (yes); Joshi (yes), Patterson (yes) and Harrell-Page (arrived at 7:02 p.m.).

APPROVAL OF MINUTES:

Chairman Corradini referred the Commission to the September 19, 2019 meeting minutes contained in the agenda. A motion was made by Commissioner Patterson, seconded by Commissioner Joshi, to approve the minutes as submitted. The motion was unanimously approved 9-0.

SITE/FINAL PLANS:

None.

PUBLIC HEARING:

1. Final Report: Rezoning Application #19/20-2, 1730 East Centre Avenue. Mr. West summarized the September 27, 2019 final staff report regarding a request from Auville Krause to rezone property located at 1730 East Centre Avenue from R-1B, one family residential to OS-1, office service. Mr. West stated the rezoning would be requested to facilitate an office redevelopment project. Mr. West next summarized the final analysis of the rezoning request including consistency with the Comprehensive Plan/Future Land Use Map and evolving office zoning/land use pattern along East Centre Avenue, suitability of existing R-1B district and impacts of proposed OS-1 district.

David Keyte of Callander Commercial (applicant representative) was present to support the rezoning application. The public hearing was opened by Chairman Corradini. No citizen spoke regarding the proposed rezoning. A motion was then made by Commissioner Schimmel, seconded by Commissioner Harrell-Page. The motion was unanimously approved 9-0. After a brief discussion, a motion was made by Commissioner Patterson, seconded by Commissioner Harrell-Page, to recommend to City Council that Rezoning Application #19/20-2 be approved and 1730 East Centre Avenue be rezoned from R-1B, one family residential to OS-1, office service. The motion included a finding that the OS-1 district is appropriate in this area of the City and is consistent with the Comprehensive Plan, Future Land Use Map and surrounding land use/zoning pattern along East Centre Avenue. The motion was unanimously approved 9-0.

NEW BUSINESS:

None.

OLD BUSINESS:

None.

STATEMENT OF CITIZENS/COMMISSIONERS:

Chairman Corradini asked each Commissioner if they had any closing statements or comments:

- Commissioner Patterson stated he would not be present at the October 17, 2019 meeting.
- Commissioner Fries thanked the city for allowing him and other Commissioners to attend the Michigan Association of Planning conference in downtown Kalamazoo last week. Commissioner Fries stated the conference sessions were very informative.
- Chairman Corradini thanked city staff for the excellent job hosting the Capital Improvement Program Open House this past Monday and indicated the event was well attended.

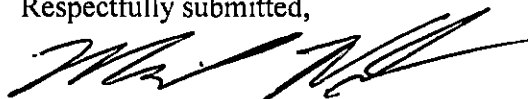
NEW BUSINESS:

None.

ADJOURNMENT:

There being no further business to come before the Commission, the regularly scheduled meeting was adjourned at 7:07pm.

Respectfully submitted,

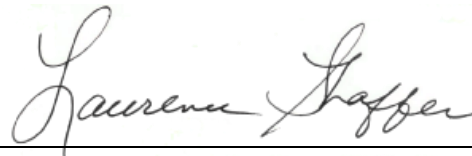


Michael West, AICP
Senior City Planner

MATERIALS TRANSMITTED

Tuesday, October 1, 2019

1. Communication from the City Manager regarding Kalamazoo County Consolidated Dispatch Authority Resignation – **Information Only**

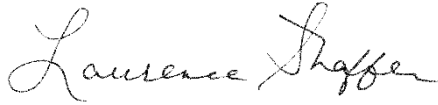


Laurence Shaffer, City Manager

cc: Rob Boulis, Deputy City Manager

TO: Honorable Mayor and City Council

FROM: Laurence Shaffer, City Manager



SUBJECT: City Manager Laurence Shaffer KCCDA Resignation

SUPPORTING PERSONNEL: Laurence Shaffer, City Manager

A copy of City Manager Laurence Shaffer's resignation letter to the Kalamazoo County Consolidated Dispatch Authority is attached.

Attachments: KCCDA Resignation Letter

September 26, 2019

Jan Van Der Kley, Chair
Kalamazoo County Consolidated Dispatch Authority
7040 Stadium Drive
Kalamazoo, MI 49009

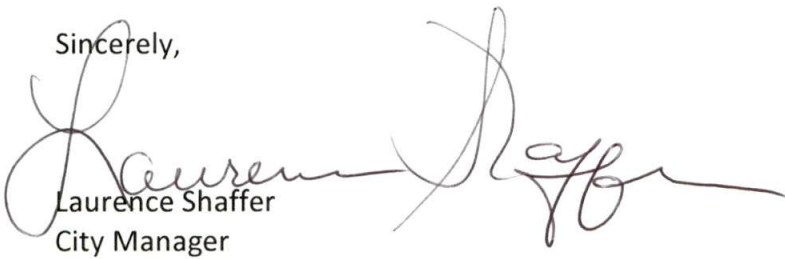
Re: Resignation

Dear Chair Van Der Kley,

This letter is to inform you that I plan to resign my position as a member of the Kalamazoo County Consolidated Dispatch Authority effective November 1, 2019. I am proud of all that the organization has accomplished.

If I can be of any assistance during the time it will take to fill the position, please do not hesitate to ask.

Sincerely,



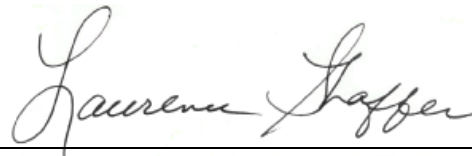
Laurence Shaffer
City Manager

cc Patricia M. Randall, City of Portage Mayor
Portage City Council

MATERIALS TRANSMITTED

Tuesday, October 15, 2019

1. Communication from the City Manager regarding the September 2019 Monthly Financial Report – Information Only
2. Communication from the City Manager regarding the Brownfield Plan Development Agreement – **Agenda Item A.8.** – Information Only

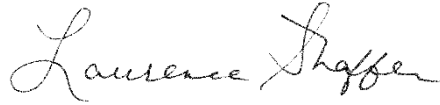


Laurence Shaffer, City Manager

cc: Rob Boulis, Deputy City Manager

TO: Honorable Mayor and City Council

FROM: Laurence Shaffer, City Manager



SUBJECT: Monthly Financial Report

SUPPORTING PERSONNEL: Bill Furry, Finance Director

Prudent practices require that the governing body be periodically apprised of the ongoing financial status of city operations. Attached is a report of revenue and expenditure levels as compared to budget for the most recently completed month.

Attachments:

1. September 2019 Financial Report

10/09/2019

BUDGET REPORT FOR CITY OF PORTAGE

Calculations as of 09/30/2019

FUND	DESCRIPTION	2019-20 ORIGINAL BUDGET	2019-20 AMENDED BUDGET	2019-20 ACTIVITY	Percent of Amended Collected/Used
REVENUES					
Totals for dept 0000 -		24,360,004	24,360,004	16,136,786	66%
Totals for dept 1720 - City Manager		500	500	0	0%
Totals for dept 2053 - Finance Treasury		1,000	1,000	306	31%
Totals for dept 2110 - Technology Services		0	0	0	0%
Totals for dept 2415 - City Clerk		64,550	64,550	34,801	54%
Totals for dept 2491 - City Clerk Elections		23,000	23,000	950	4%
Totals for dept 2865 - Parks Maintenance		1,500	1,500	1,400	93%
Totals for dept 2876 - Cemeteries		59,400	59,400	10,519	18%
Totals for dept 2877 - Parks & Rec - Parks		65,500	65,500	16,180	25%
Totals for dept 2878 - Parks & Rec - Kalamazoo In Bloom		0	0	0	0%
Totals for dept 2882 - Parks & Rec - Team Sports		140,540	144,236	28,722	20%
Totals for dept 2885 - Parks & Rec - Programs		19,000	13,000	6,193	48%
Totals for dept 2886 - Parks & Rec - Ramona Park		54,450	54,450	38,753	71%
Totals for dept 2887 - Parks & Rec - Special Events		12,000	12,000	2,297	19%
Totals for dept 2888 - Parks & Rec - Millennium Park		45,000	45,000	0	0%
Totals for dept 3005 - Police Administration		155,000	155,000	48,505	31%
Totals for dept 3010 - Police Patrol		1,000	1,000	3,580	358%
Totals for dept 3021 - Police Training-Grant Funded		9,000	9,000	0	0%
Totals for dept 3030 - Police Public Safety Dispatch/ts		19,209	19,209	9,589	50%
Totals for dept 3050 - Police Drug Law Enforcement		1,000	1,000	0	0%
Totals for dept 3310 - Fire Admin		160	160	0	0%
Totals for dept 3340 - Fire Prevention		900	900	420	47%
Totals for dept 3710 - Comm Dev Building Services		750,000	750,000	163,621	22%
Totals for dept 3720 - Comm Dev Planning & Development		55,000	55,000	18,470	34%
Totals for dept 3730 - Comm Dev Neighborhood Services		177,500	177,500	174,597	98%
Totals for dept 6720 - Senior Center		158,700	158,700	28,944	18%
Totals for dept 6721 - Senior Center Trips		375,000	375,000	0	0%
Totals for dept 6722 - Senior Center Activities		15,000	15,000	0	0%
Totals for dept 6725 - Aging Mastery Program		1,200	1,200	270	23%
TOTAL REVENUES - GENERAL FUND		26,635,113	26,632,809	16,759,903	63%

10/09/2019

BUDGET REPORT FOR CITY OF PORTAGE

Calculations as of 09/30/2019

FUND	DESCRIPTION	2019-20 ORIGINAL BUDGET	2019-20 AMENDED BUDGET	2019-20 ACTIVITY	Percent of Amended Collected/Used
EXPENDITURES					
Totals for dept 1001-City Council		88,000	88,000	15,251	17%
Totals for dept 1085-City Council-Human Services		169,740	169,740	22,110	13%
Totals for dept 1720-City Manager		654,587	654,587	120,173	18%
Totals for dept 2001-Finance Accounting		449,430	449,430	83,706	19%
Totals for dept 2002-Finance & Budget		301,790	301,790	44,303	15%
Totals for dept 2053-Finance Treasury		140,391	140,391	33,705	24%
Totals for dept 2110-MIS		852,278	852,278	262,693	31%
Totals for dept 2133-MIS Public Information		57,563	57,563	11,012	19%
Totals for dept 2209-Assessor		445,695	445,695	77,126	17%
Totals for dept 2247-Assessor Board Of Review		35,174	35,174	3,769	11%
Totals for dept 2310-Attorney		226,728	226,728	56,430	25%
Totals for dept 2415-City Clerk		167,958	167,958	25,082	15%
Totals for dept 2416-City Clerk Records Management		67,256	67,256	13,291	20%
Totals for dept 2491-City Clerk Elections		233,631	233,631	23,555	10%
Totals for dept 2610-Human Resources		473,940	473,940	77,489	16%
Totals for dept 2733-Purchasing		85,594	85,594	14,978	17%
Totals for dept 2734-Purchasing Risk Management		25,958	25,958	5,363	21%
Totals for dept 2865-Parks Maintenance		1,332,081	1,332,081	221,370	17%
Totals for dept 2876-Cemeteries		66,855	66,855	9,081	14%
Totals for dept 2877-Parks & Rec - Parks		649,905	649,905	109,090	17%
Totals for dept 2878-Parks & Rec - Kalamazoo In Bloom		15,000	15,000	0	0%
Totals for dept 2880-Parks & Rec Rec - Admin		204,852	204,852	33,662	16%
Totals for dept 2882-Parks & Rec Rec - Team Sports		70,650	74,346	25,616	34%
Totals for dept 2885-Parks & Rec - Programs		53,670	34,150	3,366	10%
Totals for dept 2886-Parks & Rec Rec - Ramona Park		132,532	132,532	51,111	39%
Totals for dept 2887-Parks & Rec Rec - Special Events		111,379	111,379	32,068	29%
Totals for dept 2888-Parks & Rec - Ice Rink		88,603	88,603	5,261	6%
Totals for dept 3005-Police Administration		1,228,159	1,228,159	279,784	23%
Totals for dept 3006-Police Youth Services		517,905	517,905	79,143	15%
Totals for dept 3007-Police Investigation		708,861	708,861	125,877	18%
Totals for dept 3010-Police Patrol		5,692,511	5,692,511	1,225,950	22%
Totals for dept 3020-Police Training		266,790	266,790	35,728	13%
Totals for dept 3021-Police Training-Grant Funded		9,000	9,000	1,524	17%
Totals for dept 3030-Police Public Safety Dispatch/its		69,619	69,619	10,092	14%
Totals for dept 3031-Police Emergency Sirens		23,676	23,676	0	0%
Totals for dept 3040-Police Records & PST		640,074	640,074	114,435	18%
Totals for dept 3050-Police Drug Law Enforcement		248,286	248,286	47,026	19%

10/09/2019

BUDGET REPORT FOR CITY OF PORTAGE

Calculations as of 09/30/2019

FUND	DESCRIPTION	2019-20	2019-20	2019-20	Percent of
		ORIGINAL BUDGET	AMENDED BUDGET	ACTIVITY	Amended Collected/Used
Totals for dept 3065-Police Facility Management		196,420	196,420	55,443	28%
Totals for dept 3090-Police KCCDA support		756,793	756,793	378,397	50%
Totals for dept 3310-Fire Admin		713,282	713,282	126,760	18%
Totals for dept 3320-Fire Operations		4,209,123	4,209,123	868,558	21%
Totals for dept 3330-Fire On Call Firefighters		83,527	83,527	12,758	15%
Totals for dept 3340-Fire Emergency Operations		4,900	4,900	50	1%
Totals for dept 3340-Fire Prevention		139,291	139,291	29,991	22%
Totals for dept 3350-Fire Training		191,552	191,552	36,993	19%
Totals for dept 3365-Fire Facility Management		238,050	238,050	4,322	2%
Totals for dept 3710-Comm Dev Building Services		591,069	591,069	101,866	17%
Totals for dept 3720-Comm Dev Planning & Development		326,307	326,307	64,447	20%
Totals for dept 3730-Comm Dev Neighborhood Services		238,145	238,145	41,077	17%
Totals for dept 3765-Comm Dev Building Maintenance		257,817	257,817	52,046	20%
Totals for dept 4210-General Public Services		510,650	510,650	139,051	27%
Totals for dept 6720-Senior Center		401,901	401,901	66,186	16%
Totals for dept 6721-Senior Center Trips		387,246	387,246	5,871	2%
Totals for dept 6725-Aging Mastery Program		1,500	1,500	0	0%
Totals for dept 6740-Fundraising		0	0	24,518	0%
Totals for dept 9610-Transfers Out		781,419	781,419	0	0%
TOTAL EXPENDITURES - GENERAL FUND		26,635,113	26,619,289	5,308,554	20%
202	Major Street Fund - Revenues	4,412,852	4,412,852	806,293	18%
	Major Street Fund - Expenditures	4,390,769	4,390,769	187,979	4%
203	Local Streets Fund - Revenues	1,661,784	1,661,784	249,276	15%
	Local Streets Fund - Expenditures	1,649,992	1,649,992	9,585	1%
204	Municipal Streets Fund - Revenues	1,563,000	1,563,000	1,330,024	85%
	Municipal Streets Fund - Expenditures	1,563,000	1,563,000	0	0%
223	Curbside Recycling - Revenues	698,885	698,885	590,247	84%
	Curbside Recycling - Expenditures	698,312	698,312	110,597	16%
226	Leaf Pickup/Spring Cleanup - Revenues	803,400	803,400	676,810	84%
	Leaf Pickup/Spring Cleanup - Expenditures	833,692	833,692	34,386	4%
230	CDBG Program Income Fund - Revenues	125,000	125,000	57,058	46%
	CDBG Program Income Fund - Expenditures	125,000	125,000	7,791	6%

10/09/2019

BUDGET REPORT FOR CITY OF PORTAGE
 Calculations as of 09/30/2019

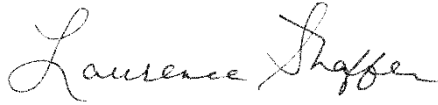
FUND	DESCRIPTION	2019-20	2019-20	2019-20	Percent of
		ORIGINAL BUDGET	AMENDED BUDGET	ACTIVITY	Amended Collected/Used
252	West Lake Weed Mgmt - Revenues	32,500	32,500	81	0%
	West Lake Weed Mgmt - Expenditures	32,120	32,120	3,250	10%
296	Community Development Block Grant - Rev	229,105	223,110	72,063	32%
	Community Development Block Grant - Exp	229,105	223,110	0	0%
298	Cable Television Fund - Revenues	784,522	784,522	0	0%
	Cable Television Fund - Expenditures	989,038	989,038	85,576	9%
400	Capital Improvement General - Revenues*	19,365,418	27,959,717	3,934,969	14%
	Capital Improvement General - Expenditures*	19,365,418	36,388,339	4,227,526	12%
490	Capital Improvement Sewer - Revenues*	900,000	4,905,000	0	0%
	Capital Improvement Sewer - Expenditures*	900,000	3,648,608	202,039	6%
491	Capital Improvement Water - Revenues*	2,350,000	8,563,775	0	0%
	Capital Improvement Water - Expenditures*	2,350,000	7,186,185	857,433	12%
590	Sewer Fund - Revenues	8,936,142	8,936,142	2,985,346	33%
	Sewer Fund - Expenditures	8,903,057	8,903,057	994,124	11%
591	Water Fund - Revenues	6,557,387	6,557,387	2,349,120	36%
	Water Fund - Expenditures	6,498,171	6,498,171	1,273,436	20%
TOTAL REVENUES - ALL FUNDS **		75,055,108	93,859,883	29,811,190	32%
TOTAL EXPENDITURE - ALL FUNDS **		75,162,787	99,748,682	13,302,276	13%

* The Capital Improvement Program uses project-length budgets, original is current fiscal year, amended includes budgets of prior year projects continued.

** Debt Service and Internal Service Funds not included.

TO: Honorable Mayor and City Council

FROM: Laurence Shaffer, City Manager



SUBJECT: Brownfield Plan Development Agreement

SUPPORTING PERSONNEL: Adam Herringa, City Clerk/Deputy City Manager I

Attached is a redline copy of the Brownfield Plan Development Agreement for Scannell Properties which highlights minor changes made to the document on Monday, October 14, 2019.

Attachments: Brownfield Plan Development Agreement – Redline

BROWNFIELD PLAN DEVELOPMENT AGREEMENT

(City of Portage)

THIS BROWNFIELD PLAN DEVELOPMENT AGREEMENT (the "Agreement"), is entered into between the **KALAMAZOO COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY**, a Michigan public body corporate established pursuant to Act 381 of the Public Acts of 1996, as amended, MCL 125.2651 et seq. ("Act 381"), whose address is 201 W. Kalamazoo Avenue, Room 101, Kalamazoo, Michigan 49007 (the "Authority"), and the **CITY OF PORTAGE**, Michigan, (the "City"), as of the latest date of signature below.

RECITALS

WHEREAS, the Authority, the City, and Kalamazoo County (the "County") have determined that brownfield redevelopment constitutes the performance of an essential public purpose which protects and promotes the public health, safety and welfare;

WHEREAS, Kalamazoo County has established a Brownfield Redevelopment Authority and the Authority and the County have adopted a Brownfield Plan (the "Plan"), pursuant to the provisions of Act 381;

WHEREAS, the Authority and the County have designated certain properties that have conditions of environmental contamination, blight or obsolescence as appropriate sites for creating a Plan;

WHEREAS, Act 381 permits the use of the real and personal property tax revenues generated from the increase in value (the "Increment") to brownfield sites constituting Eligible Property under Act 381 resulting from their redevelopment to pay or reimburse the payment of costs of conducting Eligible Activities (these costs are referred to as "Eligible Costs") and, unless Developer is a liable party for the site contamination, permits the reimbursement to Developer of Eligible Costs it has incurred;

WHEREAS, Scannell Properties #397, LLC, an Indiana limited liability company ("Developer"), owns 37.4 acres of land in the City of Portage in Kalamazoo County located at 6701 Portage Road (the "Property") and legally described on the attached Exhibit A;

WHEREAS, the Property has been included in the Plan, and the Authority has determined that the Property qualifies as "Eligible Property" under the terms of Act 381;

WHEREAS, Developer intends to redevelop the Property, by constructing a 321,000 square foot distribution center (the "Project"), with: total investment in the Project expected over \$25 million, including new building construction, asphalt parking and drives, two stormwater detention basins, and other improvements; total job creation at the Property location is expected to be at least 766 full time jobs, and a potential of 158 additional contract employees, resulting in an increase of the property tax base within the City and County;

WHEREAS, the Project will require the Developer to incur Eligible Costs associated with certain Eligible Activities which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals ("Developer Eligible Costs"), (the Developer's Eligible Costs not to exceed \$2,158,414, plus contingencies and together with interest thereon as specified in the Plan);

WHEREAS, the Authority and the Developer intend to enter into a Brownfield Plan Development Agreement (the "Scannell Development Agreement") to establish the procedure for reimbursement of Developer's Eligible Costs from Tax Increment Revenues under Act 381 as amended;

WHEREAS, the City will incur Eligible Costs in connection with the Project, consisting of public infrastructure which is expected to include reconstruction and related traffic signal improvements for two sections of Portage Road ("City Eligible Costs") (the City Eligible Costs not to exceed \$2,750,000, plus contingencies) as provided in Section 4;

WHEREAS, the Authority will incur Administrative Costs in connection with the Project and intends to capture an additional amount not to exceed \$1,500,000 (the "Additional Authority Amount"), such Additional Authority Amount to be designated for the Local Brownfield Revolving Fund ("Local Fund");

WHEREAS, the Authority and City are entering into this Agreement to establish the procedure for the reimbursement of the City Eligible Costs, Administrative Costs, and the Additional Authority Amount from Tax Increment Revenues under Act 381 as amended,

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements set forth herein, the parties agree as follows:

- 1. Recitals.** The above recitals are acknowledged as true and correct, and are incorporated by reference into this Paragraph.
- 2. The Plan.** The Plan, approved by the Authority and the Commission of the County, concurred by the City, is attached as Exhibit B and incorporated as part of this Agreement. To the extent provisions of the Plan or this Agreement conflict with Act 381, Act 381 controls.
- 3. Term of Agreement.** Pursuant to the Plan, the Authority shall capture that amount of Tax Increment Revenues generated from real and personal property taxes allowed by law on the Eligible Property. The Authority intends for capture to begin in the second year after the year of the establishment of the Plan and will continue until the earlier of:

3.1 Full reimbursement to the Authority of its Administrative Costs, plus full reimbursement to the Developer of its Developer Eligible Costs together with interest thereon as provided in the Scannell Development Agreement, plus full reimbursement to the City of its City Eligible Costs together with Interest thereon as provided in Section 4, plus full payment to the Local Fund of the Additional Authority Amount; or

3.2 the last day of the 30th year of capture (the "End Date").

4. **Reimbursement Source.** During the term of this Agreement and except as otherwise set forth in this Agreement, the Authority shall reimburse the City for its City Eligible Costs, as limited under and set forth in this Agreement, from all available Tax Increment Revenues collected from the real and personal property taxes on the Property.

5. **Reimbursement Process.**

5.1 **Cost Reimbursement Request.** The City will provide sufficient documentation of the City Eligible Costs incurred, including the dates of each Eligible Activity, a complete description of the work, proof of payment, detailed invoices for the costs involved for each Eligible Activity, sworn statements, lien waivers and other back up documentation reasonably requested by the Authority, and a written statement certifying to the Authority that all such costs are "Eligible Costs". The information submitted by the City shall itemize and provide detail including amounts paid to the contractors and subcontractors who actually conducted the work related to the Eligible Activities, plus the reasonable cost of oversight of those contractors and subcontractors by the general contractor. The City may not request reimbursement prior to substantial completion of all of its Eligible Activities, and the City must submit all requests within twelve (12) months following substantial completion of all of its Eligible Activities. Failure to provide the above noted information with a request, or within the twelve-month period following substantial completion of all of its Eligible Activities or within the time permitted by the Authority under Paragraph 5.2, may result in foregone reimbursement. The Authority shall not reimburse any additional amounts to the City once the Authority begins paying the Additional Authority Amount to the Local Fund.

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5.2 **Authority Staff Review.** The Authority Staff shall review each reimbursement request within 30 days after receiving it. If Authority Staff determines that the documentation submitted by the City is not complete, then City shall cooperate in the Authority's review by providing, within 30 days of the Authority's request, any additional documentation of the Eligible Costs as deemed reasonable and necessary by the Authority in order to complete its review. Within 45 days following the receipt of such supplemental information, the Authority shall make the determination of whether the costs are eligible for reimbursement. If the City wishes to challenge that determination, it shall provide written notice to the Authority within 15 days of the determination, and the issue shall be brought to the Authority within 45 days thereafter for a final determination. The City shall not have any further appeal rights to challenge the final determination of the Authority and shall not be entitled to any claim or cause of action against Kalamazoo County or the Authority as a result of any determinations made in good faith regarding whether or not any cost submitted by the City constitutes an "Eligible Cost," and hereby grants the County and the Authority and their respective officers, agents and employees, a complete release and waiver of any claims or causes of action as a result of the foregoing.

5.3 Reimbursement. After both the summer and winter taxes are captured and collected on the Property, the Authority shall use such Tax Increment Revenue (TIR) to make payments in the following order of payment and priority:

- a. 100% to the Authority until reimbursement in full of all of its Administrative Costs; then
- b. 100% of the available remaining TIR to pay approved Developer Eligible Costs plus interest, if any, to the Developer in accordance with the Plan and Scannell Development Agreement, except that, once the City has completed the City Project Work, then 75% of the available remaining TIR shall be paid to Developer and 25% of the available remaining TIR shall be paid to the City until the Developer has been paid in full; then
- c. 100% of the available remaining TIR to the City until payment in full of all City Eligible Costs; and then
- d. 100% to the Local Fund until payment in full of the Additional Authority Amount.

Notwithstanding the foregoing: Reimbursement payments shall be made only to the extent that taxes have been captured and TIR is available in that fiscal year; and in no event shall any party other than the Authority receive TIR after the 25th year of capture.

5.4 Method of Reimbursement. The Authority will reimburse the City for City Eligible Costs as follows:

Checks shall be payable to: "City of Portage"

Delivered by U.S. Mail to the following address:

Treasury Office
7900 South Westnedge Avenue
Portage, Michigan 49002

6. Adjustments. The parties acknowledge that adjustments regarding the amount of Tax Increment Revenue paid to the City may occur under any of the following circumstances:

6.1 Audit or Court Ruling: In the event that a state agency of competent jurisdiction conducting an audit of payments made to the City under this Agreement or a court of competent jurisdiction determines that any portion of the payments made to the City under this Agreement is unlawful, the City shall pay back to the Authority that portion of the payments made to the City within 30 days of the determination made by a state agency or the court as the case may be. However, the City shall have the right, before any such repayment is made, to appeal any such determination made by a state agency or court as the case may be. If the City is unsuccessful in

such an appeal, the City shall repay the portion of payments found to be unlawful to the Authority within thirty (30) days of the date when the final determination is made on the appeal. The City shall be responsible for payment of all of the County's and Authority's reasonable legal fees associated with any determination of whether a City Eligible Cost for which reimbursement is requested constitutes an "Eligible Cost".

6.2 Property Tax Appeal: In the event the Developer, or any other owner of any portion of the Property, files an appeal with the Michigan Tax Tribunal, related to the taxable value of parcels of property included in the Brownfield Plan, the Authority shall do the following:

- a. The Authority will remit Tax Increment Financing Reimbursement payments based upon the lowest taxable value being sought pursuant to the appeal;
- b. Any Tax Increment Revenue that is collected but not remitted as a result of a tax appeal shall be held in a separate account of the Authority until the pending appeal is adjudicated;
- c. Once any tax appeals are adjudicated, the Authority will either return the escrowed funds to the local unit in compliance with any tax appeal rulings, or will make payments pursuant to Section 5 of this agreement.

7. Cooperation. The City shall assist and cooperate with the Authority in providing information that the Authority may require in providing necessary reports to governmental or other agencies, including, but not limited to, information regarding the amount of City expenditures and capital investments with respect to the Project.

8. City's Representations, Warranties and Covenants. The City hereby makes the following representations, warranties and covenants:

8.1 Eligible Costs. The City will only submit for reimbursement under Paragraph 5 hereof such costs that it has reasonably determined are "Eligible Costs" within the meaning of Act 381.

8.2 Due Authorization. The representatives signing this Agreement are duly authorized by the City to enter into this Agreement.

9. Events of Default. Each of the following shall constitute an event of default:

9.1 Any representation or warranty made by the City in this Agreement proves to have been incorrect or incomplete in any material respect when made or deemed to be made.

9.2 The City fails to submit requests within the time periods required by the Agreement or otherwise fails to observe or perform any covenant or agreement contained in this

Agreement for 30 days after written notice thereof shall have been given to the City by the Authority.

9.3 Any material provision of this Agreement shall cease to be valid and binding on the City or shall be declared null and void; the validity or enforceability of such provision shall be contested or denied by the City; or the City denies that it is bound by this Agreement.

10. Remedies upon Default. It is the intent of the parties to work cooperatively to allow the City to receive reimbursement of City Eligible Costs plus Interest in accordance with the terms of this Agreement. However, if any event of default as defined above shall occur and be continuing for 30 days after written notice of default from the Authority, the Authority shall have the right, but not the obligation, to terminate this Agreement effective immediately upon notice to City, and exercise all other remedies available at law or in equity.

11. Legislative Authorization. This Agreement is governed by and subject to the restrictions set forth in the Act. In the event that there is legislation enacted in the future which alters or affects the amount of Tax Increment Revenues subject to capture, Eligible Properties, or Eligible Activities, then the City's rights and the Authority's obligations under this Agreement may be modified accordingly by agreement of the parties.

12. Plan Modification. The Plan and this Agreement may be modified to the extent allowed under the Act by mutual agreement of the parties.

13. Notices. All notices and other communications required or permitted under this Agreement shall be in writing, shall be deemed given when delivered, and shall be sent by personal delivery, overnight courier, or registered mail, return receipt requested, to the following addresses (or any other address that is specified in writing by either party):

If to City: City of Portage
Department of Community Development
7900 South Westnedge Avenue
Portage, Michigan 49002
Attn: Christopher Forth, Acting Director

If to the Authority: Kalamazoo County Brownfield Redevelopment Authority
201 W. Kalamazoo Avenue, Room 207
Kalamazoo, Michigan 49007
Attention: Rachael A. Grover, Brownfield Coordinator

With copy to: Fred Schubkegel
Varnum, LLP
211 East Water Street, Ste. 400
Kalamazoo, MI 49007

14. Indemnification. To the extent permitted by Michigan law, City shall defend, indemnify and hold harmless the Authority and the County ("Indemnified Parties"), and any of their respective past, present and future members, officials, employees, agents or representatives from all Losses, demands, claims, judgments, suits, costs and expenses (including without limitation the reasonable costs and fees of attorneys or other consultants) (collectively "Losses") arising from or related to (i) the capture and use of Tax Increment Revenue paid to City as a reimbursable payment under this Agreement made in excess of the amount of tax increment revenues the Authority is determined by the State or court to be allowed by law to use for that reimbursement, (ii) any negligence, intentional acts, errors or omissions of the City or its employees, contractors or agents related to the Project, or (iii) any breach of this Agreement by the City, provided however that City shall not be required to indemnify Indemnitees for Losses (including injury or death) caused by the negligence or intentional misconduct of any Indemnatee. In providing the indemnifications set forth above, the City is not waiving any defenses otherwise available to it by law.

15. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

16. Binding Effect/Third Parties. This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors, but it may not be assigned by any party without the prior written consent of the other party. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement other than the County.

17. Waiver. No failure of either party to complain of any act or omission on the part of the other party, no matter how long this same may continue, is considered as a waiver by that party to any of its rights hereunder. No waiver by either party, expressed or implied, of any breach of any provision of this Agreement is considered a waiver or a consent to any subsequent breach of this same or other provision.

18. Authorization. Each of the parties represents and warrants to the other that this Agreement and its execution by the individual on its behalf are authorized by the governing body of that party.

19. Entire Agreement. This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.

20. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

21. Definitions. The following capitalized terms are used in this Agreement with the following meanings:

"Administrative Costs" means the Authority's out-of-pocket costs associated with the Project (including reasonable attorney fees and costs, environmental consulting fees and costs, and similar fees and costs) as well as the Authority's indirect costs associated with the Project (including allocation of the fixed costs of the Authority staff.)

"Brownfield Plan" is defined by Section 2(e) of Act 381;

"Due Care Activities" is defined by Section 2(m) of Act 381;

"Eligible Activities" is defined by Section 2(o) of Act 381;

"Eligible Property or Properties" is defined by Section 2(p) Act 381;

"Tax Increment Revenues" is defined by Section 2(ss) of Act 381, and, for purposes of this Agreement, includes school taxes and local (non-school) taxes.

22. Unavoidable Delays (Force Majeure). Each party shall diligently perform its respective duties as set forth herein. However, notwithstanding anything to the contrary in this Agreement, no party shall be deemed to be in default in the performance of such duties including failure to complete any obligations by specific deadline dates, if and so long as nonperformance of such duty shall be directly caused by fire or other casualty, national emergency, condemnations, enemy action, civil commotion, labor disputes, strikes, lockouts, war or national defense preemptions, acts of God, action or non-action by public utilities or of local city, state or federal governments, changes in law, litigation, environmental conditions on the Project not discovered during any due diligence period or any other similar cause beyond the reasonable control of such party (herein referred to as an "Unavoidable Delay"), and the time limit for such performance shall be extended for a period equal to the time period of such Unavoidable Delay; provided, however, that the party unable to perform (the "Non-Performing Party") shall provide written notice to the other party to which duty is owed within ten (10) days after notice to such Non-Performing Party of its failure to perform or within ten (10) days after the Non-Performing Party otherwise becomes aware that an Unavoidable Delay with respect to one of its duties has occurred or will likely occur, whichever shall first occur, of the existence and nature of such Unavoidable Delay. Thereafter, the Non-Performing Party shall work diligently in good faith to overcome such Unavoidable Delay and shall, from time to time, keep the other party to which such duty is owed reasonably informed of all developments concerning the Unavoidable Delay and the nonperformance of such duty or duties.

23. Freedom of Information Act. The parties stipulate that all requests and documentation submitted by them shall be open to the public under the Freedom of Information Act, Act No. 442 of the Public Acts of 1976, being Sections 15.231 et seq. of the Michigan Compiled Laws.

[SIGNATURES APPEAR ON NEXT PAGE]

REDLINE

Varnum draft 10-11-2019 5:30pm

Marked to show changes from City-Modified draft 10-11-2019

In witness of their intent to be legally bound by the terms of this Agreement, each of the parties has set forth its signature below by its duly authorized representative.

KALAMAZOO COUNTY BROWNFIELD
REDEVELOPMENT AUTHORITY

By _____

Title _____

Date _____

CITY OF PORTAGE

By _____

Title _____

Date _____

EXHIBITS:

A (Legal Description of Property)

B (Copy of Brownfield Plan)

REDLINE

Varnum draft 10-11-2019 5:30pm

Marked to show changes from City-Modified draft 10-11-2019

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REDLINE

Varnum draft 10-11-2019 5:30pm

Marked to show changes from City-Modified draft 10-11-2019

EXHIBIT B

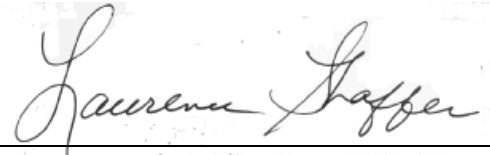
BROWNFIELD PLAN

15485254v1

MATERIALS TRANSMITTED

Friday, October 11, 2019

1. SUPPLEMENTARY INFORMATION REGARDING ITEM D.1 FROM THE OCTOBER 15, 2019 CITY COUNCIL AGENDA: Communication from the City Manager regarding Ordinance Amendment #18/19-B, Residential Amendments – Information Only

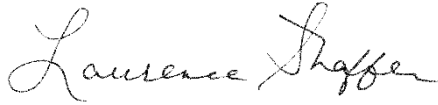


Laurence Shaffer, City Manager

cc: Rob Boulis, Deputy City Manager

TO: Honorable Mayor and City Council

FROM: Laurence Shaffer, City Manager



SUBJECT: Ordinance Amendment #18/19-B, Residential Amendments

SUPPORTING PERSONNEL: Chris Forth, Acting Director, Community Development

Attached are the responses to questions posed by Council at the September 16, 2019 Committee of the Whole meeting regarding the proposed Residential Amendments.

Attachments: September 16, 2019 Committee of the Whole – Information

CITY OF PORTAGE

COMMUNICATION



Department of Community Development

TO: Laurence Shaffer, City Manager

DATE: October 2, 2019

FROM: Vicki Georgeau, Director of Community Development

SUBJECT: September 16, 2019 Committee of the Whole – Information

Please find attached information that was assembled in response to the discussion at the September 16th Committee of the Whole meeting. This information was assembled and provided to the City Attorney on September 23rd for review, and a legal opinion was requested in regard to a December 2010 Michigan Supreme Court decision regarding riparian property rights.

While receipt of the opinion from the City Attorney is pending, the attached information is provided to convey to the City Council as information for the October 15, 2019 public hearing on the residential amendments.

Cc: Rob Boulis, Deputy City Manager
Adam Herringa, City Clerk/Deputy City Manager I
Chris Forth, Deputy Director of Planning, Development and Neighborhood Services
Randall Brown, City Attorney

Attachment: September 23, 2019 communication, with attachments, to City Attorney Brown

September 23, 2019

Randy Brown, City Attorney
1662 East Centre Avenue
Portage, MI 49002

RE: September 16th Council Committee of the Whole Follow-up

Dear Randy:

During the September 16, 2019 Council Committee of the Whole (COW) meeting, there was considerable discussion regarding several issues affecting the development of lakefront lots. Discussed was the location of promenades, determination of lakeside boundaries, Zoning Board of Appeals decisions, case law involving riparian rights, and location and maintenance of public access points. As a follow-up to this discussion and to assist you with preparation of the information requested by Mayor Pro-Tem Pearson, the following is provided:

In 1997, Mayor Pro-Tem Pearson requested building setback variances from the Zoning Board of Appeals to facilitate a building addition project at his property located 3004 East Shore Drive. Attached is a copy of the variance application and Zoning Board of Appeals meeting minutes. During the September 16, 2019 COW meeting, Mayor Pro-Tem Pearson stated the presence of a promenade reduced the size of the building envelope, which necessitated seeking the variances.

As you may recall, city staff and staff from your office previously researched this matter in the late 1990's. There are four lakeside plats that include a promenade along the shoreline, which include two on West Lake (Burr's West Lake Resort and Pleasant View Beach) and two on Austin Lake (Pleasant Oaks and Gilbert and Matteson Subdivision Beach). Attached is a map that shows these plat locations. Also attached is a plat map of each. Finally, attached is a map of Mayor Pro-Tem Pearson's plat, Highland View No. 1, which shows there is not promenade along the shoreline of Austin Lake.

Although Mayor Pro-Tem Pearson's property is not encumbered by a promenade, his recollection that the riparian portion of his property (area between the platted property lien and water's edge) was excluded from lot coverage and setback measurements was correct. As you may recall, prior to 2000, staff measured the building setback from the plat boundary that ran parallel to the shoreline. The area between the plat boundary and shoreline was excluded from building setbacks and lot coverage calculations. After considerable research and discussions with your office, it was determined that the area between the platted line and the water's edge can be included for setback and lot coverage purposes IF the plat dedication does not specifically indicate that the area between the lots and shoreline is reserved for a beach, promenade or other use by the public.

Also discussed during the September 16, 2019 COW meeting was a Michigan Supreme Court case regarding riparian rights when there is a public road that separates lots fronting on a lake from the water. Attached is a copy of the December 29, 2010 opinion. Does this opinion change where the setback measurement is taken from if there is an intervening beach, promenade or other use by the public between the plat boundary and water? Currently, the measurement is taken from the plat boundary and not the water's edge or shoreline. Also, should staff include the area encumbered by beach, promenade or other use by the public in determining the percent lot coverage? And finally, does this opinion provide an answer, at least in part, to Mayor Pro-Tem Pearson's suggestion that property owners may have an adverse possession claim to the area between the platted boundary and shoreline? Another option discussed was amending the plats to remove the beach, promenade or other use by the public designation through Circuit Court.

The issue of the city maintaining road ends and/or walkways that end at the shoreline and were included on the recorded plat was also a topic of discussion during the COW meeting. Attached is information provided to the Council in August 2015 following adoption of several amendments to PA 451 of 1994 that prohibit certain activities at public road ends. Included with this information is a 2008 opinion from you that restates the city's position regarding whether or not the city has accepted these road ends and why the city should still take a "hands-off" approach.

Finally, Mayor Pro-Tem Pearson requested: 1) prior opinions from your office regarding lakefront properties, and 2) Zoning Board of Appeals information related to the ten lot cover variance applications involving lakefront property, and. With regard to item 1), attached are materials on lakefront property opinions provided previously to ZBA in October 2010. With regard to item 2) copies of the ZBA meeting minutes and staff reports are attached for information purposes only.

If you have any questions, please contact me in the Department Community Development at 269-329-4477.

Sincerely,


Vicki Georgeau
Director

Attachments: ZBA 97-26, 3004 East Shore Drive – minutes and agenda materials
Lake front plats with beach or promenades
Maps of substandard lakefront lots, lake walkways and road ends, and plats with dedicated beach walks
Lake road ends and walkways – August 21, 2015 communication to City Council
Michigan Supreme Court Opinion – December 29, 2010
Lakefront Boundary Lines – City Attorney Legal Opinions – October 25, 2010
ZBA lake front substandard lot – variance requests from maximum building lot cover requirement

Cc: Laurence Shaffer, City Manager
Rob Boulis, Deputy City Manager
Adam Herringa, City Clerk/Deputy City Manager
Chris Forth, Deputy Director of Planning, Development and Neighborhood Services

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Larry Schimmel (alt), and Henry Kerr (alt).

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Richard Yonke.

IN ATTENDANCE:

John Kneas, Assistant City Attorney and Tom Adams, Zoning & Codes Administrator.

APPROVAL OF MINUTES:

A motion was made by Frandsen, seconded by Flora to approve the minutes from the February 9, 1998 meeting as submitted. The motion to approve passed 7-0.

OLD BUSINESS:

1. ZBA #97-26, Jim Pearson, 3004 East Shore. Pearson stepped down to explain his request and Kerr voted in his absence. Mr. Pearson was present to explain his request for a) a variance to expand a nonconforming building into the required 40 foot rear yard setback (8 feet); b) a variance to expand a nonconforming building into the required 27 foot front yard setback (5 feet); and c) a 5 foot variance from the required 10 foot building separation distance in order to construct a house/garage addition to a legally nonconforming structure. The applicant and the Board discussed conforming alternatives with regard to the variance for the building separation. The applicant indicated that the hardship for the separation distance was that snow would accumulate on the driveway with 10 feet between the buildings and for a more aesthetic look to the house.

The public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Lamble, seconded by Seeber to grant a) as stated above. The practical difficulty/unnecessary hardship being the irregular shape of the lot and the existing location of the structures on the lot. Upon a roll call vote the motion passed 7-0.

A motion was made by Frandsen, seconded by Lamble to deny c) as stated above due to conforming alternatives being available. Upon a roll call vote: Seeber - yes, Flora - yes, Frandsen - yes, Hotchkiss - no, Lamble - yes, Schimmel - yes, Kerr - yes. The motion to deny passed 6-1.

A motion was made by Lamble, seconded by Flora to grant b) as stated above. The practical difficulty/unnecessary hardship being the irregular shape of the lot and the location of the existing structures on the lot. Upon a roll call vote the motion passed 7-0.

NEW BUSINESS:

1. ZBA #97-29, Roy Martin, 9110 Portage Road. Roy Martin was present to explain his request for a variance to rebuild a nonconforming structure, 9110 Portage Road, to its original dimensions after 18 months. The Building Division indicated that the building had been destroyed greater than 60% of its replacement cost. The applicant indicated he had a buyer for the property.



Department of Community Development

December 24, 1997

Zoning Board of Appeals
City of Portage

Re: 3004 East Shore Drive

We would like to remodel our 1,162 square foot, two bedroom, one bath home located at 3004 East Shore Drive. Our plans are to add 1) a front hall entryway; 2) a one-car attached garage and second bathroom; and 3) a partial second story over a portion of the house located on the road side.

The following four variances are required:

- a) An 8 foot variance from the 40 foot lake setback requirement in order to enlarge a small house.
- b) A 5 foot variance from the 10 foot distance requirement between an existing nonconforming detached garage and a proposed addition.
- c) A 5 foot variance from the 27 foot road setback requirement in order to add to an existing nonconforming structure.
- d) A 2% variance from the requirement that a dwelling and detached garage not cover more than 25% of the total area of the property. 27% is requested.

NOT
NEEDED →

The practical difficulties are caused by the age and location of the house. It was built in 1953, prior to the existence of the current Zoning Code. Although the legal lot area (9,728 square feet) is adequate for a moderately sized dwelling the existing house is small (1,162 square feet) and only 42 square feet more than the current minimum allowed by the Code. Conforming improvements are severely restrictive when the Zoning Code is applied to this legally nonconforming dwelling and parcel. As shown in the attached illustration, the odd lot dimensions and dwelling location call for multiple variances to make improvements. Another hardship is that a significant swath of land adjacent to the lake is not included in the property description. Our lake set back is defined by the City by a staked "lot line" rather than by the "meandering waters edge" as used for other lake front properties in the City. A practical hardship of this designation is that the waters edge has been a constant border for decades as defined by the concrete seawalls along our plat. On the other hand, the staked "lot lines" for properties along the plat (Supervisor's

TO: Zoning Board of Appeals

FROM: Jeffrey M. Erickson, Director of Community Development

DATE: December 29, 1997

SUBJECT: ZBA #97-26; James Pearson, 3004 East Shore Drive; R-1A, Single-family Residential.

CODE SECTION: 1284.04, Nonconforming structures, p. 121.
1278.01, Schedule of Regulations, p. 99.

APPEAL: Requesting a) a variance to expand a nonconforming building into the required 40 foot rear yard setback; b) a variance to expand a nonconforming building into the required 27 foot front yard setback; and c) a five foot variance from the required 10 foot building separation distance in order to construct a house/garage addition to a legally nonconforming structure.

STAFF RECOMMENDATION:

The applicant is requesting the variances noted above per the enclosed application, letter of request and site plan. The proposed site plan calls for a 649 square foot addition, as follows: a 254 square foot addition to the rear of the main floor of the house (living space), a 58 square foot addition to the front of the main floor (living space), a 337 square foot garage addition and a second story over a portion of the main floor. The parcel has 111 feet of frontage, with an average lot depth of only 92 feet.

With regard to request a), the proposed addition will be located 32 feet from the rear property line where 40 feet is required. It should be noted that the existing house is also located 32 feet from the rear property line and is legally nonconforming (built in 1953). The Highland View Plat describes each lot to a specific rear property line and not to the waters edge, therefore, the land from the rear property line to the waters edge is not owned by the residents of the plat and cannot be used for setback purposes. If the Board determines that the hardships noted by the applicant justify the request, the variance can be granted.

With regard to request b), the proposed addition and second story will project five feet into the required 27 foot front setback. It should be noted that portions of the existing house are currently nonconforming with respect to the front yard setback. The proposed construction should not have any negative effects on East Shore Drive traffic, nor should it look out of character in the neighborhood. If the Board determines that the hardships noted by the applicant justify the request the variance can be granted.

With regard to c), the proposed addition will be five feet from the existing detached garage. Staff cannot support this request as the conforming alternative of constructing the addition 10 feet from the existing detached garage is available, resulting in only a slightly smaller addition for the garage (12 feet by 23 feet).

PRACTICAL DIFFICULTY/

UNNECESSARY HARDSHIP: Irregular shape of lot, existing location of house and detached garage on lot.

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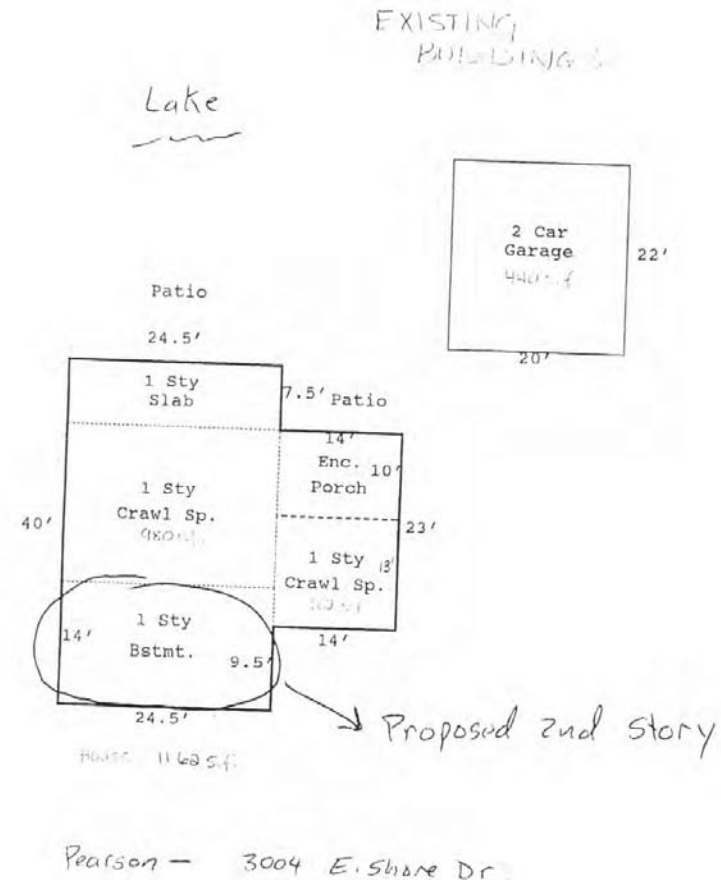
7900 South Westnedge Avenue • Portage, Michigan 49002 • (616) 329-4477 • Fax (616) 329-4506

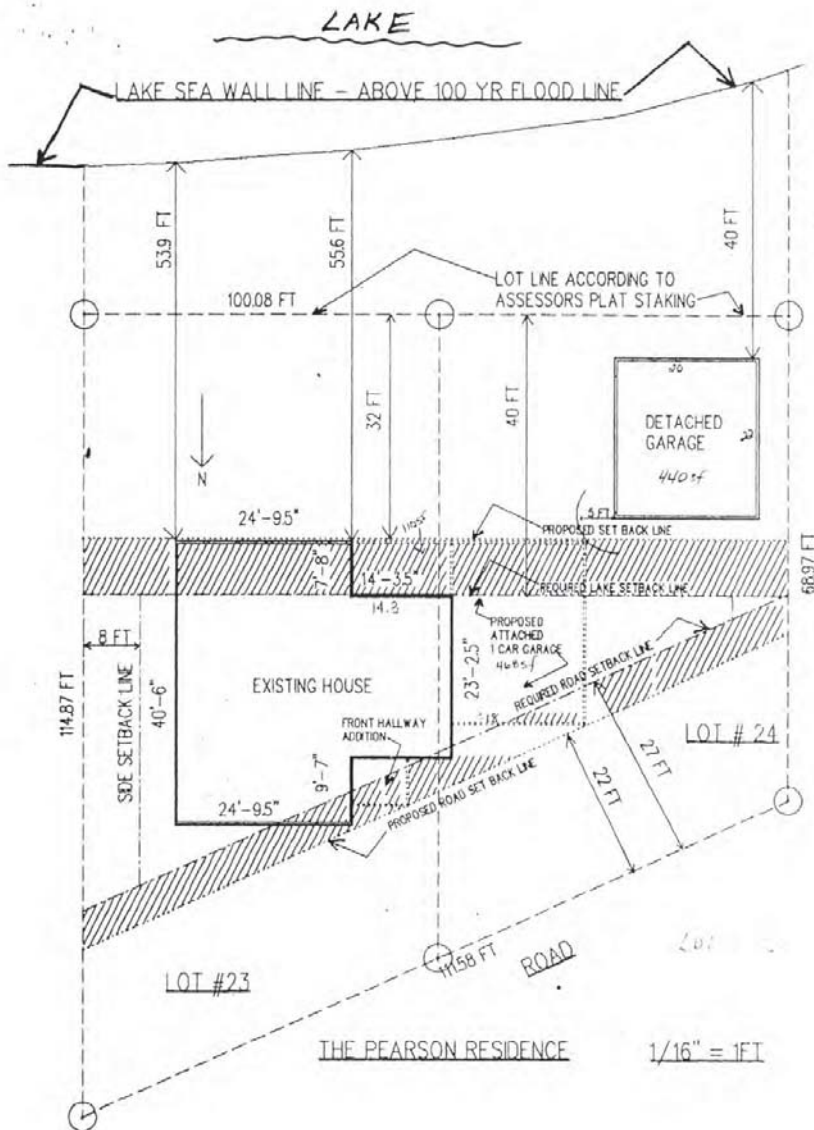
Plat of Highland View) vanished long ago. This lake set back definition has eliminated our plans for new construction and severely reduced our options for conforming structural work.

Specific practical difficulties and hardships for the requested four variances:

- a) The requested 8 foot variance from the lake side 40 foot set back requirement will not increase the current degree of nonconformity. The southern most edge of the present house is already 8 feet in noncompliance. The definition of the lake side setback versus the actual location of the waters edge presents a practical hardship. The proposed new addition will physically be at least 55 feet from the waters edge although not conforming to the 40 foot set back requirement as defined by the "lot lines."
- b) The location of the legally nonconforming detached garage is a practical difficulty. It can not be moved to a conforming location to satisfy the 10 foot distance requirement from a dwelling. Removal of this nonconforming garage would be a hardship since the proposed remodelled home will have only enough square footage for a shorter, one-car attached garage. In addition, removing the current garage and building a two-car attached garage would require either an even greater road-side set back variance than that requested in "c" or more square footage of nonconforming lake set back construction than that requested in "a".
- c) The 27 foot road set back requirement presents a hardship based on the location of the home and the narrowness of platted lot #24. A variance of 5 feet is requested, only 1.7 feet more than the current noncompliance. The house existed prior the Zoning Code and as such two corners are now considered in noncompliance with the road side set back requirement. Without a variance adding a partial second story is not practical because it would look aesthetically odd. The corner with the greatest noncompliance was recently surveyed and determined to have a 23.7 foot set back. The practical hardship of working with the current 27 foot road set back Code is that every foot of road side set back has a major impact on the overall dimensions of what can be built on this legally nonconforming parcel. Every effort was made to accurately survey and limit this variance extension request to a modest 1.7 feet beyond the current 3.3 foot noncompliance.
- d) There is a considerable difference in the physical square

NOT
NEEDED





footage of the property located at 3004 East Shore Dr. (approx. 12,700 sq.ft.) compared to the legal definition of this nonconforming parcel (9,728 sq.ft.). This presents a practical hardship when the current Zoning Code is applied. (Dwelling and detached garage can not cover more than 25% of the total square footage). The proposed home with improvements and existing detached garage will cover 21% of the land on site, although according to the legal definition it will cover 27% and therefore not be in compliance with current Code. The physical hardship is that the proposed construction is visually within the standard set by the current Zoning Code.

Thank you for your time and consideration,

Jim Pearson
Connie Pearson

Jim and Connie Pearson
 3004 East Shore Drive
 Portage, MI 49002



**RESOLUTION NO. 2
CITY OF PORTAGE, MICHIGAN
RESOLUTION TO VACATE ALLEY**

Minutes of a regular meeting of the City Council for the City of Portage, Michigan
held on November 5, 1996, at 7:30 p.m. local time at City Hall in the City of Portage,
Michigan.

PRESENT: Councilmembers Brown, Bashaw, Locke, Phillips, Sutter, Vliek, Zull

ABSENT: None

The following resolution was offered by:

COUNCILMEMBER: Vliek and supported by COUNCILMEMBER
Bashaw

WHEREAS, the City of Portage vacated a portion of an alley by resolution recorded
at Liber 807, Page 1265, Kalamazoo County Records.

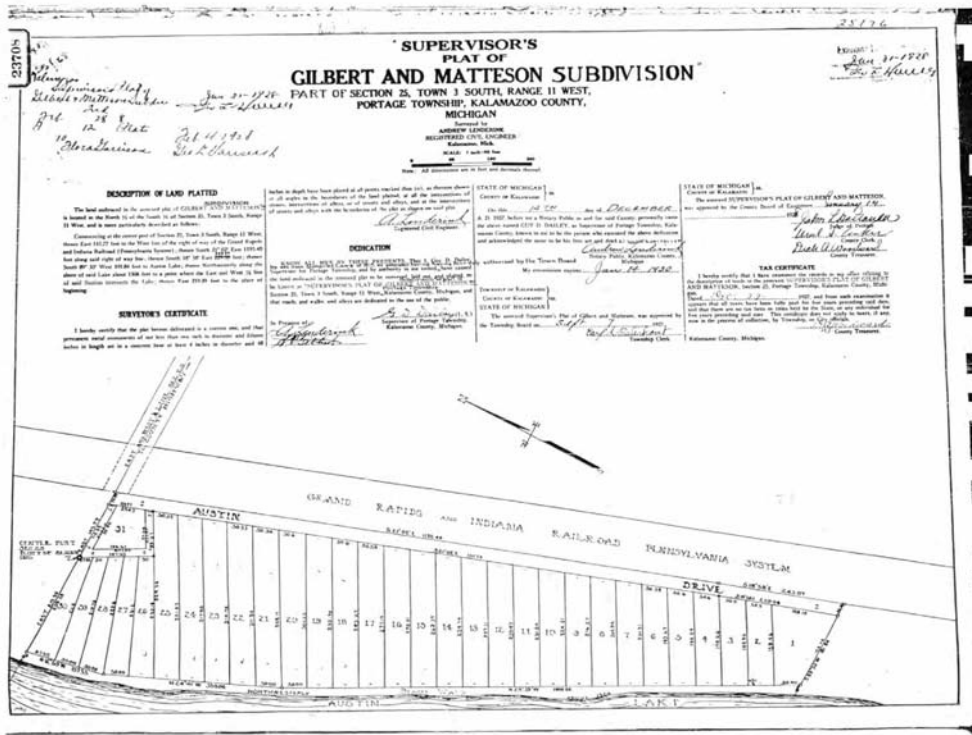
WHEREAS, it now appears necessary and desirable to vacate the remainder of the
alley located adjacent to Lots 28, 29, 30 and 31 of Supervisor's Plat of Gilbert and
Matteson Subdivision since there is no present public use of the alley and no future use
planned.

WHEREAS, a public hearing was held on November 5, 1996 to give interested
persons the opportunity to be heard.

NOW, THEREFORE, BE IT RESOLVED that the City of Portage shall vacate the
alley described below:

City of Portage, County of Kalamazoo, State of Michigan:

The alley located adjacent to lots 28, 29, 30 and 31 so dedicated
in the Supervisor's Plat of Gilbert and Matteson Subdivision as
recorded in Liber 12 of Plats, Page 10, of Kalamazoo County
Records, and adjacent to Lot 1 of Pleasant Oaks Plat as recorded
in Liber 12, Page 12, Kalamazoo County Records.



BE IT FURTHER RESOLVED, that the City Clerk shall cause a certified copy of this resolution to be recorded in the office of the Register of Deeds for Kalamazoo County, and another certified copy of this resolution to be sent to the Department of Commerce and State Treasurer, State of Michigan, and that until so recorded, this resolution is to have no force or effect.

Mayor Brown, Mayor Pro Tem Sutter, Councilmembers
 ADOPTED: AYES: Councilmember Bashaw, Locke, Phillips, Vliek & Zull

NAYS: Councilmember None

ABSENT: Councilmember None

A. Joyce Kuzmitowicz
 A. Joyce Kuzmitowicz, Deputy City Clerk

CERTIFICATION

STATE OF MICHIGAN)
) SS
 COUNTY OF KALAMAZOO)

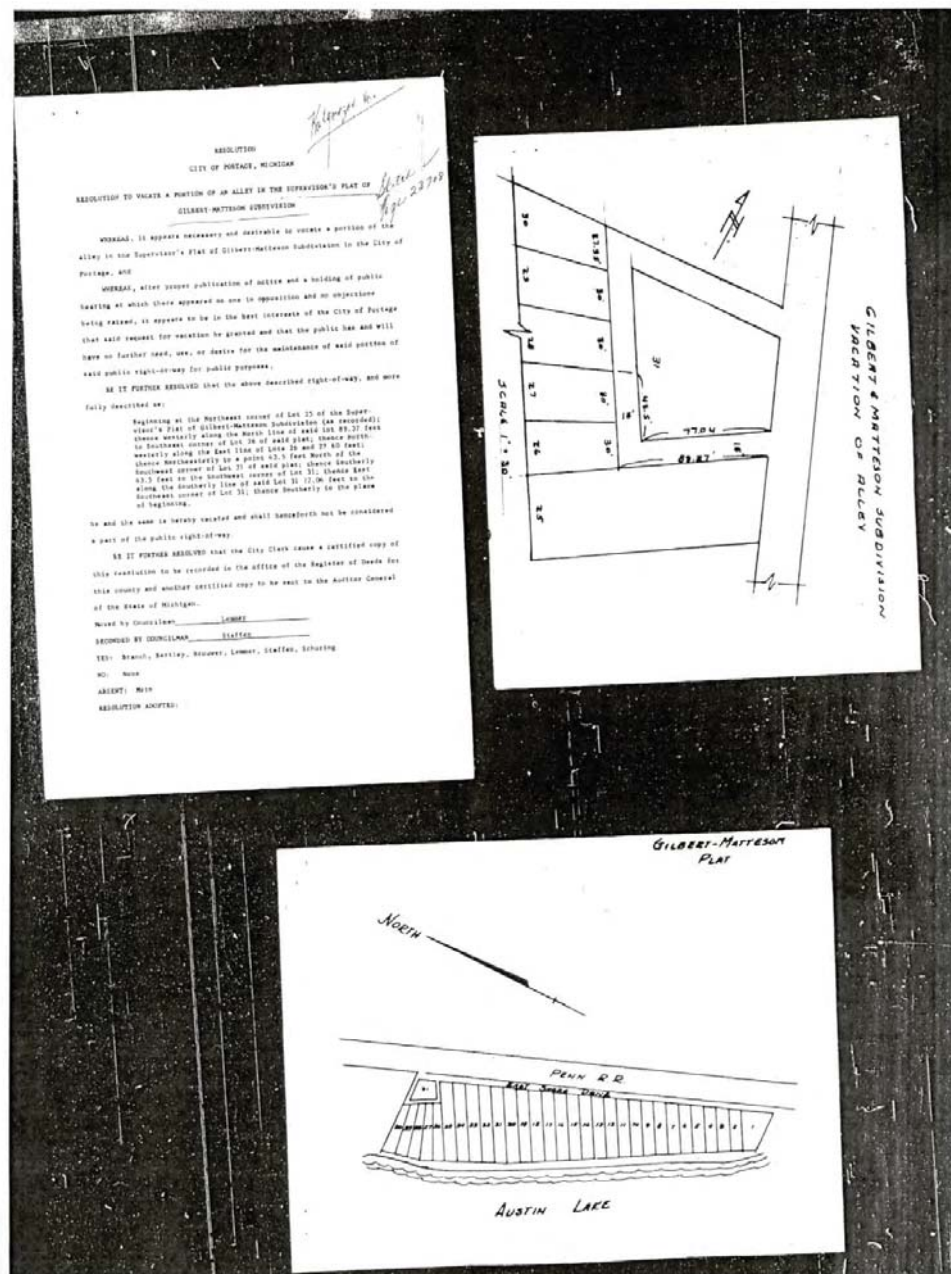
I, the undersigned, the duly qualified and acting City Clerk of the City of Portage, Kalamazoo County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the City Council of said City, held on the 5th day of November, 1996, the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this 5th day of November, 1996.

A. Joyce Kuzmitowicz
 A. Joyce Kuzmitowicz, Deputy City Clerk

APPROVED AS TO FORM
 DATE 8/16/96
RLJ
 CITY ATTORNEY

c2\portage\meen\gilbert.vac



TO: Honorable Mayor and City Council**FROM:** Laurence Shaffer, City Manager**SUBJECT:** Lake Road Ends and Walkways – Information Only**SUPPORTING PERSONNEL:** Vicki Georgeau, Director of Community Development

In 2012 and 2014, amendments were made to the Natural Resources and Environmental Protection Act (PA 451 of 1994) concerning public roads that terminate at a lake. In summary, the amendments to PA 451 prohibit the following activities at a public road ends unless a recorded deed, recorded easement, or other recorded dedication expressly provides otherwise:

- Construction, installation, maintenance, or use of boat hoists or boat anchorage devices;
 - Mooring or docking of a vessel between midnight and sunrise;
 - Any activity that obstructs ingress to or egress from an inland lake or stream; and
 - Construction, installation, maintenance, or use of a dock or wharf other than a single seasonal public dock or wharf that is authorized by the county, township, city, or village that has jurisdiction over the public road.
- The amendments also provide a definition of a public road end and indicate the role of a local unit of government regarding enforcement activities.

In May 2015, the West Lake Improvement Association distributed a letter (attached) advising certain individuals of the changes to the law concerning lake use at road ends. A copy of this letter was also provided to the City Administration. In addition, a member of the West Lake Improvement Association, Mr. Jim Weessies, 1411 Lakeview Drive, has requested the city enforce the provisions of the new sections to PA 451 when necessary.

Attached for Council reference are maps of the city lakes that show the location of road ends and walkways. As background information, each recorded plat that contains a road end or walkway that terminates at a lake typically includes a public dedication statement. However, the mere fact that something is dedicated to public use, including an access point to a lake, does not make it public. There must be an acceptance by the City of Portage. The City Attorney has opined that acceptance of the offer to dedicate must be by an official resolution, or informally through use or expenditures of public money for the repair, improvement and control. For many years, the City Administration and the Office of the City Attorney have taken the position that road ends and walkways have not been formally or informally accepted by the city and, as a result, the city has no responsibility to maintain or control access to the lakes. The unintended consequences of the City of Portage formally accepting these access points to the lakes has been explained to many different lake front property owners over the years. If the city were to accept some or all of these lake access points as public right-of-way, access by the general public would be afforded and the city would be faced with many problems that accompany the control and regulation of these areas (e.g. on-street parking, noise, increased lake usage, among others).

The City Administration and City Attorney have discussed the applicability of the recent amendments to Portage road ends. The amendments include, among others, a definition of public road end, which means "the terminus at an inland lake or stream of a road that is lawfully opened for use by the public." Since the City of Portage has not accepted the road ends, they are not considered lawfully opened for use by the public. Consequently, the city has no authority or responsibility to maintain or control these access points to the lake and not obligated to enforce the new PA 451 restrictions.

Based on the foregoing, it is recommended the city continue with the longstanding policy that it has not accepted these road ends and has no authority or responsibility to maintain or control these access points to the lake.

Attachments: Letter from the West Lake Improvement Association
July 17, 2015 City Attorney opinion
Road end/walkway location maps

Dear Neighbor,

We are writing this letter to inform people around the lake about the new road end law in Michigan. It clarifies several issues. First it is unlawful to place any dock, boatlift, or other type structures in the lake at a road end. The only exception to this is a city municipality. The city may place and maintain a public dock at a road end. No private individual is allowed to do this at a public road end. Secondly the law states no one shall keep a boat in the water over night (the law states midnight to sunrise) at a road end. No matter if anchored off or on shore. A boat may be moored at a road end if during of hours of sunrise and midnight, but the boat can not be left unattended.

The new law is MCL 324.30111b. The law gives authority to any police agency to enforce this law. Violation of the law is a criminal misdemeanor. This is a much more serious offence, compared to a municipal civil infraction like a speeding ticket. Fines are \$500 per day for persons found in violation of the law.

This new law is an attempt by the Michigan legislature to clarify use of road ends in Michigan. Until now the legal use of road ends has been a bit unclear and has caused issues regarding their use around the state. This new law should help clarify any questions about the proper and now legal use of road ends.

Since this law is relatively new, many people around the lake who are in violation may not be aware. We are sending letters to people who have been reported to the board as being in violation of the new law. You have been reported as potentially being one of these individuals. We would like to inform people and give everyone an opportunity to become familiar with the new law and correct any violations. Uncorrected violations would then be forwarded to the authorities. Please take time to familiarize yourself with the new law and correct any violations.

This new legislation should clarify, for all parties involved, the legal use of road ends around the state of Michigan including West Lake.

Respectfully,

West Lake Improvement Association

RANDALL L. BROWN
& ASSOCIATES, PLC

ATTORNEYS AND COUNSELLORS AT LAW

RANDALL L. BROWN
CHARLES R. BEAR
JULIE A. BRADFIELD

DENNIS E. KORDISH (1996-2008)

July 17, 2015

1662 EAST CENTRE AVENUE
PORTAGE, MICHIGAN 49002

TELEPHONE (269) 323-8812
FACSIMILE (269) 323-0055
brownandassociates@att.net

PERSONAL & CONFIDENTIAL
ATTORNEY/CLIENT PRIVILEGE

Ms. Vicki Georgeau, Director
Department of Community Development
City of Portage
7900 South Westnedge Avenue
Portage, MI 49002

Via Email

Re: Road Ends on Lakes

Dear Vicki:

You have asked how the recent amendments to MCLA 324.30111(b) of the Natural Resources Environmental Protection Act (PA 451 of 1994) will impact the City's long standing position that it has no responsibility to maintain or control road ends.

Your specific question is answered by the definition of "public road ends" in MCLA 324.30111(b)(6)(b). The definition states that public road end "means the terminus at an inland lake or stream of a road that is lawfully opened for use by the public". Therefore, none of the restrictions, conditions and penalties of the statute would apply to any road end which has not been opened for public use. The phrase "lawfully opened for use by the public" necessarily means that the City has somehow, either by express act, implication, or statutory presumptions, accepted the offer to dedicate the public road end.

Of course, the answer above is quite simplistic. The more difficult question is whether a particular public road has actually been accepted by the City. If it has, then it has been "lawfully opened" and is then subject to the conditions and restrictions imposed by the above statute. Also, it would be the responsibility of the City to maintain and control such road end within the scope of the dedication and the statute.

As you know, for over 30 years the City has taken the position that it has not accepted the offer to dedicate road ends. My office has written numerous opinions stating that acceptance of the offer to dedicate is needed to transform the road end into a public road or access.¹ These opinions, however, also caution that whether acceptance has occurred depends on the facts, circumstances and history of each road end. The City has chosen to not take control over any road end (even if acceptance of the offer to dedicate might exist) because this may "open the door" to a review of each and every road end within the City providing access to a lake.² Such review may result in further openings, disagreements among riparians, and possible lawsuits.

I have enclosed my September 22, 2008 opinion to then Director, Jeffrey Erickson, which I believe best addresses the issues you have raised concerning the legal issues. If the City decides to examine all road ends to determine those which a court may find that acceptance occurred, the following issues (among others) need to be analyzed:

1. When was the plat recorded?
2. Was there an offer to dedicate the road end?
3. Was there acceptance?
 - A. Was there a formal acceptance by resolution or otherwise?
 - B. Was there informal acceptance through City use (or permission for use) or perhaps expenditures of public money to repair or improve the road end?
 - C. Generally, what actions were taken by the City, and its agents, with regard to the road end from the time the plat was recorded to the present?
4. If the facts do not support an acceptance, then was there a withdrawal of the offer to dedicate?
 - A. A finding of a withdrawal would overcome the "presumption of acceptance" set forth in the Land Division Act and discussed in my September 22, 2008 opinion.
 - B. An offer to dedicate may have "lapsed" before an acceptance occurs if 68 years or more have passed since the offer to dedicate.³

¹ A presumption of acceptance may arise as well which has been discussed in my opinions

² The use of a road end which has not been accepted by the City may still be determined by private property rights.

³ A Michigan case found that an offer to dedicate had lapsed 68 years after the offer to dedicate was made. See Marx v. D.O.C., 220 Mich App 66 (1996). However, 37 years is not enough to cause a lapse. See Ackerman v. Sprink Lake Township, 12 Mich App 498 (1968)

- C. Have landowners used the road end in a way inconsistent with public ownership, e.g., fences, plantings, other improvements?

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


Randall L. Brown
City Attorney

RLB/jat
Enclosure

cc: Larry Shaffer (w/encl.)
Rob Boulis (w/encl.)

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RANDALL L. BROWN
& ASSOCIATES, PLC
ATTORNEYS AND COUNSEL AT LAW

RANDALL L. BROWN
CHARLES J. BROWN
EDDIE A. BROWN

PHONE: 313.963.1100 (TOLL FREE)

September 22, 2008

DR. JEFF ECKSON
DIRECTOR OF COMMUNITY DEVELOPMENT

TELEPHONE: 313.963.1100
FAX: 313.963.1101
WWW.RLBROWN.COM

Mr. Jeffrey Erickson, Director
Department of Community Development
7900 South Westnedge Avenue
Portage, MI 49002

Via Facsimile

Re: Road Ends and Walkways on Lakes

Dear Jeff,

I received the email from Councilperson O'Brien which you forwarded to me. She has stated some general issues of concern. The first is labeled "enforcement" and states that environmental contamination, permanent docks being installed and litter are problems associated with the road ends and walkways. Representatives from lakes associations have concerns about the "lack of enforcement of the laws". The second concern deals with the "ownership" of road ends and walkways. The lake associations have expressed interest in obtaining ownership of certain road ends to eliminate and/or minimize contamination in the lake and to control and maintain access points for riparian owners and back lot users.

The ownership of road ends on lakes has been an issue addressed by my office over the years.¹ As you know, the City Administration has always taken the position that the road ends have not been accepted by the City and, therefore, the City has no responsibility to maintain or control these access points to the lakes. Acceptance of the offer to dedicate must be by official resolution or "informally by the public through user or expenditures of public money for the repair, improvement and control of the highway". See *Hooker v. Grosse Pointe*, 328 Mich 621 (1950). The City has not accepted, either formally or informally, most road ends in the City. It is possible that some road ends are being used by the City for utilities, or have involved City maintenance, but the issue of whether these actions constitute acceptance has not been raised by any property owner.

Considering that there may be hundreds of road ends on City lakes, City control of road ends would require a multitude of City responsibilities. The City may also be involved in conflicts between riparian property owners, backlot owners, the public at large, border disputes, fencing issues, boat launch and dock issues, ordinance enforcement and, quite likely, litigation involving these matters and others. I believe this is why the Administration has been extremely hesitant to become involved.

¹I have addressed the issue many times with your department in the past 25 years and, before that, my predecessor, John Peters, also addressed this issue.

Mr. Jeffrey Erickson, Director
Department of Community Development
September 23, 2008
Page 3

Further, each road end may have a different history with regard to how the access has been used and whether improvements have been made by the property owners. These differences could quite likely result in different legal conclusions with regard to the ability of the City at this point to assume jurisdiction. The offer to dedicate cannot be accepted by the City when the land has been put to a use which is inconsistent with the idea that the offer is still open. See *Lee v. Lake*, 14 Mich 12 (1865); *Vivian v. Roscommon Road Commissioners*, 433 Mich 511 (1989).

Further, the analysis of issues such as the offer to dedicate, acceptance of the offer and withdrawal of offers by conduct of property owners is further complicated by the 1978 amendment to the Land Division Act which provides, in part, that:

"Ten years after the date the plat is first recorded, and dedicated to the use of the public in or upon the plat shall be presumed to have been accepted on behalf of the public by the municipality within whose boundaries the land lies."

This presumption, of course, can be overcome by the conduct of property owners taken over the years with regard to the road end. It is my understanding that most, if not all, of the road ends at issue involve plats recorded in the early 1900's and, therefore, involve long histories. The Supreme Court in *Vivian* supra, held that a withdrawal of the "offer" (meaning use of the property inconsistent with continuation of the offer) before "acceptance" (meaning by formal action of the governing body, by user, or maintenance and repair) prior to December 22, 1978 rebuts the presumption of acceptance set forth in the statute. In essence, actions taken by property owners even before December 22, 1978 which are inconsistent with the offer to dedicate could result in the preclusion of the City taking any control of the road end.

With regard to walkways, the public has no interest in walkways and, therefore, the City does not become involved in private disputes between riparians and non-riparians regarding their use.

I assume City Administration desires to maintain the existing policy. If so, the lake associations could seek legal counsel and take court action to resolve ownership of road ends if that is their desire. With respect to a court action to require the City to take control of road ends, in most cases, the City might overcome the presumption of acceptance or show that a withdrawal of the offer has been made by conduct inconsistent with the offer. There may be other road ends, however, where a different result would be obtained. Again, each situation will depend on the facts and history of that road end. However, once the City begins to accept the responsibility for road ends on a case by case basis, no matter what the reason, it will "open the door" to accepting all of them if legally possible.

Mr. Jeffrey Erickson, Director
 Department of Community Development
 September 23, 2008
 Page 3

Also, please keep in mind that once the City assumes jurisdiction and "opens" a right-of-way to the public, the entire public has a right to use the access point whether those persons are citizens of Portage, citizens of Kalamazoo or any other city. From this perspective, it is to the riparian's advantage that these access points do not become "public" and the City does not assume responsibility and control.

If you have any additional questions regarding this matter please contact me.

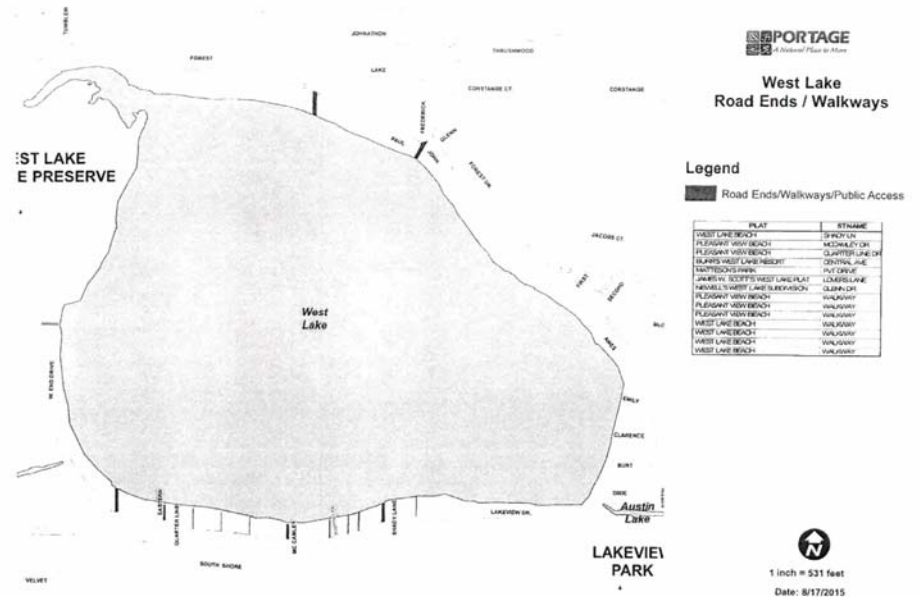
Sincerely,

Randall L. Brown
 Randall L. Brown
 City Attorney

RLB/jat

cc: Maurice S. Evans

2 U:\City\PORTAGE\PIN ONS\2008\2008-31.wpd



Opinion

Michigan Supreme Court
Lansing, Michigan

Chief Justice:
Marilyn Kelly

Justices:
Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis

FILED DECEMBER 29, 2010

STATE OF MICHIGAN

SUPREME COURT

2000 BAUM FAMILY TRUST, BAUM
FAMILY TRUST, JOSEPH BEAUDOIN,
SANDRA BEAUDOIN, ADELE
MEGDALL REVOCABLE TRUST, PAUL
NOWAK & JOAN NOWAK TRUST,
MARILYN ORMSBEE, MARK
SCHWARTZ, WENDY SCHWARTZ, and
THOMAS THOMASON,

Plaintiffs/Counterdefendants-
Appellants,

v

No. 139617

WILLIAM BABEL, JUDY BABEL,
JAMES CAHILL, GLORIA CAHILL,
DANIEL ENGSTROM, PENNY
ENGSTROM, ARTHUR A RANGER
TRUST, PATRICIA L RANGER TRUST,
and CHARLEVOIX COUNTY ROAD
COMMISSION,

Defendants/Counterplaintiffs-
Appellees,

and

AL GOOCH, ELIZABETH GOOCH, JESSE
HALSTEAD, and LINDA HALSTEAD,

Intervening Defendants/
Counterplaintiffs-Appellees,

and

CHARLEVOIX TOWNSHIP,

Defendant-Appellee.

BEFORE THE ENTIRE BENCH

MARKMAN, J.

This case involves riparian rights.¹ Specifically, the parties ask us to decide an issue that was treated as unsettled by the lower courts: who possesses riparian rights to a portion of a lake, persons who are owners of property fronting the lake but separated from the water by a public road or a county road commission that has accepted a statutory dedication of the road and maintains it as such? The trial court ruled that the property owners (plaintiffs) did not possess riparian rights, and the Court of Appeals affirmed, further holding that the road commission (defendant) was in “no way” limited in the type of use it could make of the public road. *2000 Baum Family Trust v Babel*, 284 Mich App 544, 561; 773 NW2d 44 (2009). We reverse.

The road at issue, along Lake Charlevoix, was dedicated under the 1887 plat act. Many lots alongside Michigan’s some 11,000 inland lakes were platted during this period and are separated from the water by a public road running parallel to the shoreline. The

¹ As others have done, we observe that “[s]trictly speaking, land which includes or abuts a river is defined as riparian, while land which includes or abuts a lake is defined as littoral.” *Thies v Howland*, 424 Mich 282, 288 n 2; 380 NW2d 463 (1985). However, “the term ‘riparian’ is often used to describe both types of land,” *id.*, and will be used in such a manner in this opinion.

term of art that Michigan courts have long used to describe the property interest in dispute is a statutory “base fee.” *Patrick v Young Men’s Christian Ass’n of Kalamazoo*, 120 Mich 185, 191; 79 NW 208 (1899). Decisions of this Court dating back well over a century illuminate the nature of this property interest and the corresponding rights the county receives through a statutory dedication. *Bay Co v Bradley*, 39 Mich 163, 166 (1878) (stating that the county “acquire[d] no beneficial ownership of the land”); *Wayne Co v Miller*, 31 Mich 447, 448-449 (1875) (stating that the county did not receive “title in the nature of a private ownership”); *Backus v Detroit*, 49 Mich 110, 115; 13 NW 380 (1882) (stating that the county did not receive “the usual rights of a proprietor,” but took title to the extent that it could “preclude questions which might arise respecting the public uses, other than those of mere passage”). Consistent with these holdings, the Court of Appeals has held that a statutory base fee does not divest front-lot² property owners of their riparian rights. *Mich Central Park Ass’n v Roscommon Co Rd Comm*, 2 Mich App 192; 139 NW2d 333 (1966); *Sheridan Drive Ass’n v Woodland Backproperty Owners Ass’n*, 29 Mich App 64; 185 NW2d 107 (1970); *Kempf v Ellixson*, 69 Mich App 339; 244 NW2d 476 (1976); *McCardel v Smolen*, 71 Mich App 560; 250 NW2d 496 (1976), vacated in part on other grounds in 404 Mich 89 (1978).

On the authority of this caselaw, and mindful that the imperatives of stare decisis are particularly strong in the area of property law, we hold that plaintiffs in this case have riparian rights, as similarly situated persons have always had in Michigan.

² “Front-lot” properties are in the first row of lots on the landward side of the disputed road. “Back-lot” properties are one or more rows further removed from the road and the lake.

I. FACTS AND HISTORY

Plaintiffs own front lots in a platted subdivision on the northern shore of Lake Charlevoix. Their lots do not touch the shoreline. Rather, Beach Drive, which runs east to west and parallel to the lake, abuts the shoreline and separates plaintiffs’ lots from the lake. In other words, plaintiffs’ lots extend to the edge of the road, not to the water’s edge. In addition to the Charlevoix County Road Commission (CCRC), defendants include back-lot owners and Charlevoix Township.

The plat includes six named streets, including Beach Drive. All these streets run parallel to the lake, except for Central Avenue, which cuts through the center of the plat and runs perpendicular to, and terminates at, the lake. The plat depicts a single dock extending into the lake at the end of Central Avenue, but there is no indication in the record whether this dock was ever built, or, if it did exist, how it was used.

The Charlevoix County Board of Supervisors accepted the plat and the dedication of the streets on August 7, 1911.³ Concerning the roadways in the plat, the dedication includes the following language: “[T]he streets and alleys as shown on said plat are hereby dedicated to the use of the public.” It is undisputed that the public has continued

³ The record does not contain information about the identity of the original plat proprietor. The minutes of the August 7, 1911, meeting at which the plat was accepted state that “Mr. D. C. Littleton presented the plat of North Charlevoix,” although the plat itself indicates that its proprietor was “D. C. Nettleton.” However, as we will discuss, the plat proprietor’s identity is not material. All that is necessary to know for the purposes of this case is that the original plat proprietor completely parted with his interest in the land by conveying the lots without reserve. See *Turner v Holland*, 65 Mich 453, 463; 33 NW 283 (1887) (“[I]f there was no reservation, riparian rights would attach to lots bounded by navigable waters or natural water-courses.”).

since that time to accept the dedication of the roadways, including Beach Drive. Today, the CCRC maintains Beach Drive, which is now paved.⁴

From the time it accepted the dedication in 1911 until the instant lawsuit, the CCRC had never asserted a claim to riparian rights as a necessary incident to its interest in Beach Drive. The CCRC has never installed a dock along the lakeshore or otherwise engaged in riparian activities. Over the years, however, plaintiffs have used the lake in front of their lots and have built seasonal docks extending into the lake in order to moor boats and other water-related equipment. Furthermore, it is undisputed that there is neither a reservation nor a grant of riparian rights in plaintiffs' deeds and that their lots are taxed as "water view" properties rather than "waterfront" properties.

Allegedly, various back-lot owners began using the waterfront in front of plaintiffs' homes to maintain docks and store boats. In response, plaintiffs filed a complaint against defendants alleging claims of trespass and nuisance and seeking injunctive and equitable relief. The CCRC counterclaimed, alleging that plaintiffs had trespassed on Beach Drive by maintaining encroachments on the drive, including docks. The individually named back-lot defendants also counterclaimed, asserting claims of

⁴ The CCRC did not exist at the time of the dedication. 1931 PA 130 transferred to the county road commissions the responsibility for the laying out and construction, improvement, and maintenance of township roads. *Robinson Twp v Ottawa Co Bd of Co Rd Comm'rs*, 114 Mich App 405, 410; 319 NW2d 589 (1982). As with all county road commissions, the CCRC is a statutorily created entity charged with the duty to construct and improve roads. MCL 224.19. As this Court has made clear, it is "only a governmental agency in the hands of the State highway commissioner used in the discharge of certain governmental duties, *i. e.* the repair and maintenance of State highways." *Johnson v Ontonagon Co Bd of Rd Comm'rs*, 253 Mich 465, 470; 235 NW 221 (1931).

adverse possession or, alternatively, seeking a declaration that they possess easements, either by acquiescence or by prescription.

Plaintiffs moved for partial summary disposition against the CCRC alone, claiming that there is no issue of material fact regarding which party is entitled to riparian rights. Plaintiffs argued that because their lots were separated from the water by a roadway parallel to the water, their lots were riparian. In plaintiffs' view, the CCRC has a right to the use of Beach Drive as a roadway only. In response, the CCRC argued that plaintiffs did not possess riparian rights because the public holds Beach Drive in fee pursuant to the statutory dedication under the plat act, which means that plaintiffs' lots are not riparian. The back-lot defendants also filed a motion in response, arguing that plaintiffs did not possess riparian rights because, as shown on the plat, none of their properties abuts the lake.

The trial court denied plaintiffs' motion, ruling that they did not possess riparian rights. The court framed the issue as "whether Beach Drive is an easement with the fee title residing in the front lot owners or whether the public holds fee title." It ruled that the effect of a dedication is to "vest fee title in the local unit of government" It followed, in the court's view, that because plaintiffs "do not hold fee title to the waterfront land in front of their respective lots, they do not possess riparian rights."

The Court of Appeals granted plaintiffs' interlocutory application for leave to appeal and affirmed. *Baum*, 284 Mich App at 546, 549. That Court applied a "two-tier analysis: First, whether a valid statutory dedication was created under the 1887 plat act and, second, if so, what type of fee interest has been vested in the public." *Id.* at 562. On the first question, the Court concluded that the act was "unambiguous" and that it clearly

vested in the public a fee for public uses of the road. *Id.* at 557-559. The second question, the Court reasoned, required discerning the intent of the plat proprietor by examining the dedication.⁵ The Court concluded that the “language of the dedication in no way limits what type of use may occur on the depicted streets or alleys or who may use them.” *Id.* at 561.

We granted leave to appeal, including among the issues to be argued (1) whether the fee title resulting from the dedication of land for public uses in a plat under the 1887 plat act in land that runs along the shore of a lake conveys the riparian rights to the lake to the county or whether the conveyance is limited to public uses of the road as a road and (2) whether caselaw stating that front-tier lots adjacent to a road running along a waterway have riparian rights, unless such rights are expressly excluded, remains valid. *2000 Baum Family Trust v Babel*, 485 Mich 1051 (2010).

II. STANDARD OF REVIEW

The question presented on appeal is a question of law: Whether plaintiffs have riparian rights in this context in which their lots abut a roadway that runs parallel to the lakeshore and was dedicated under the 1887 plat act. We review issues of statutory interpretation and other questions of law de novo. *Eggleston v Bio-Med Applications of Detroit, Inc.*, 468 Mich 29, 32; 658 NW2d 139 (2003).

⁵ Plat proprietors are also known as “plattors.”

III. LAW OF DEDICATION

The lower courts held that the nature of the property interest conveyed to the CCRC in the dedication of Beach Drive under the applicable plat act is such that it divested front-lot plaintiffs of their riparian rights. In addition, the Court of Appeals interpreted the dedication language as granting the CCRC unlimited use of the streets and alleys within the plat. Analysis of these conclusions requires an understanding of several aspects of Michigan property law. Therefore, before turning to the central questions at issue-- (a) what is the nature of the property interest conveyed by the plat act and (b) how does this property interest affect riparian rights-- some general legal background is necessary. In particular, we survey the law of dedication and consider the creation of public roads by dedication and the rights of landowners abutting such roads.

A. BACKGROUND

A “dedication” of land is an “appropriation of land to some public use, accepted for such use by or in behalf of the public.” *Clark v Grand Rapids*, 334 Mich 646, 656-657; 55 NW2d 137 (1952). The essence of a dedication is that the covered land will be for the use of the public at large. See *Patrick*, 120 Mich at 191. From its earliest days, this Court has frequently considered disputes involving the dedication of land to the public. See, e.g., *People v Beaubien*, 2 Doug 256 (Mich, 1846); *Wanzer v Blanchard & Buckland*, 3 Mich 11 (1853); *Lee v Lake*, 14 Mich 12 (1865). These early decisions drew on a well-established body of law that had developed in federal, state, and English courts. See *Beaubien*, 2 Doug at 272-282, noting that the doctrine of dedication had been “of late much considered” and surveying the leading cases of the day, including *City of*

Cincinnati v White's Lessee, 31 US (6 Pet) 431; 8 L Ed 452 (1832); *Wyman v New York Mayor*, 11 Wend 486 (NY, 1834); *Hobbs v Town of Lowell*, 36 Mass (19 Pick) 405 (1837); and numerous English cases on the subject.

This realm of law was said to be “anomalous,” in that “[u]nder it, rights are parted with and acquired in modes and by means unusual and peculiar.” *Patrick*, 120 Mich at 193 (citations and quotation marks omitted). First, although ordinarily some conveyance or written instrument is required to transmit a right to real property, a “dedication may be made without writing, by act *in pais* [an act performed outside of legal proceedings], as well as by deed.” *Id.* (citation and quotation marks omitted). In other words, the statute of frauds is not applicable to the dedication of land to the public. See *Baker v Johnston*, 21 Mich 319, 348 (1870). Second, like a charitable trust, there need be no grantee in being at the time of the dedication to give it effect. *Patrick*, 120 Mich at 190. Third, and most significant to the instant case,

[i]t is not at all necessary that the owner should part with the title which he has, for dedication has respect to the possession, and not the permanent estate. Its effect is not to deprive a party of title to his land, but to estop him, while the dedication continues in force, from asserting that right of exclusive possession and enjoyment which the owner of property ordinarily has. [*Id.* at 193 (citation and quotation marks omitted).]

The enforcement of dedications was left to the law of estoppel. See *White's Lessee*, 31 US at 438 (holding that the original owner was estopped from revoking a dedication). But see *Lee*, 14 Mich at 17 (holding that “[n]o estoppel . . . could spring” unless the “circumstances in the case . . . make it inequitable” for the owner to revoke the dedication). This Court in *Patrick*, 120 Mich at 193, gave this straightforward explanation of the “principle upon which the estoppel rests”:

[I]t would be dishonest, immoral, or indecent, and in some instances even sacrilegious, to reclaim at pleasure property which has been solemnly devoted to the use of the public, or in furtherance of some charitable or pious object. The law therefore will not permit any one thus to break his own plighted faith; to disappoint honest expectations thus excited, and upon which reliance has been placed. The principle is one of sound morals and of most obvious equity, and is in the strictest sense a part of the law of the land. It is known in all courts, and may as well be enforced at law as in equity. [Citation and quotation marks omitted.]

The law will give effect to a dedication of land that has been “solemnly devoted to the use of the public” for as long as the land continues to be exercised in accordance with its dedicated public use. *Id.* (citation and quotation marks omitted); see also *White's Lessee*, 31 US at 438.⁶

In sum, the rules of property governing dedications of land to the public are distinct, yet deeply rooted in the Anglo-American legal tradition. These rules have developed to accommodate the coexisting rights of the dedicator of land, his or her grantees, and the public. In balancing these rights, the use to which the dedication was made has always been at the fore. See *White's Lessee*, 31 US at 438 (“All public dedications must be considered with reference to the use for which they are made[.]”). We are guided in the instant case by this first principle, and reaffirm the precept that we

⁶ Quoting the New York case of *Hunter v Village of Sandy Hill Trustees*, 6 Hill 407, 414-415 (NY, 1844), which concerned a dedication of a public graveyard, *Patrick*, 120 Mich at 194, provided this description of how long one is bound by a public dedication:

“When these graves shall have worn away, when they who now weep over them shall have found kindred resting places for themselves, when nothing shall remain to distinguish this spot from the common earth around, and it shall be wholly unknown as a graveyard, it may be that someone who can establish a good ‘paper title’ will have a right to its possession, for it will then have lost its identity as a burial ground, and with that all right founded on the dedication must necessarily become extinct.”

articulated well over a century ago in resolving a dedication dispute: “This being a case to which the law of dedication applies, the use for which the dedication was made must determine the extent of the right parted with by the owner of the land and acquired by the public.” *Patrick*, 120 Mich at 193 (citation and quotation marks omitted).

B. PUBLIC ROADS BY DEDICATION

For a road to become public property, there must be (a) a statutory dedication and an acceptance on behalf of the public, (b) a common-law dedication and acceptance, or (c) a finding of highway by public user. *Village of Grandville v Jenison*, 84 Mich 54, 65-68; 47 NW 600 (1890) (discussing these three modes). Although it is undisputed that the road at issue here was dedicated by statute and accepted on behalf of the public, we will consider aspects of both common law and statutory dedications to gain insight into the similarities and differences between these modes of dedication.

1. COMMON-LAW DEDICATION

A valid common-law dedication of land requires (a) intent by the property owner to offer the land for public use, (b) an acceptance by, and maintenance of the road by, public officials, and (c) use by the public generally. *Bain v Fry*, 352 Mich 299, 305; 89 NW2d 485 (1958). If these are present, the dedication is sufficient regardless of form. *Badeaux v Ryerson*, 213 Mich 642, 647; 182 NW 22 (1921).

With regard to an intention to dedicate, all facts and circumstances bearing on the question are considered. See *Lee*, 14 Mich at 18. Acceptance is similarly fact-specific. It “may be either formal, by resolution or ordinance, or informal ‘through user or expenditures of public money for the repair, improvement and control of the highway.’” *Rice v Clare Co Rd Comm*, 346 Mich 658, 665; 78 NW2d 651 (1956) (citation omitted).

“A dedication must be accepted within a reasonable time or the offer will be considered as withdrawn.” *Cass Co Bd of Supervisors v Banks*, 44 Mich 467, 476; 7 NW 49 (1880). Offers to dedicate are considered withdrawn when the owners of property use it in a way that is inconsistent with public ownership. *Lee*, 14 Mich at 18. What qualifies as an inconsistent use depends on the circumstances of each case. See *Field v Village of Manchester*, 32 Mich 279, 280 (1875), in which the Court considered the fact that the landowner had erected buildings, fenced in an enclosure, and planted fruit trees in a portion of a disputed street as evidence of use inconsistent with dedication and public ownership.

“Common-law dedications do not ordinarily convey the fee. In fact, under the strict rule they never do.” *Patrick*, 120 Mich at 211. “By the common law, the fee in the soil remains in the original owner, where a public road is established over it; but the use of the road is in the public. The owner parts with this use only.” *People, ex rel Dep’t of Conservation Dir v LaDuc*, 329 Mich 716, 719; 46 NW2d 442 (1951), quoting *Barclay v Howell’s Lessee*, 31 US (6 Pet) 498, 513; 8 L Ed 477 (1832). Accordingly, as this Court stated in *Loud v Brooks*, 241 Mich 452, 456; 217 NW 34 (1928):

We hold the correct rule to be that a conveyance of land bounded on a highway, street, or alley carries with it the fee to the center thereof, subject to the easement of public way, provided the grantor at the time of conveyance owned to the center and there are no words in the deed showing a contrary intent . . .

2. STATUTORY DEDICATION

To create a public road by statutory dedication, two elements are required: (a) “a recorded plat designating the areas for public use, evidencing a clear intent by the plat

proprietor to dedicate those areas to public use, and [b] acceptance by the proper public authority.” *Kraus v Dep’t of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996).

While this Court has stated that the “acknowledgment and recording of the plat had all the force and effect of an express grant,” *Kirchen v Remenga*, 291 Mich 94, 109; 288 NW 344 (1939), public acceptance is always required, *Miller*, 31 Mich at 448-449. In *Miller*, Justice COOLEY explained why public acceptance is necessary regardless of whether a recorded plat is considered a grant or offer to dedicate:

Without venturing to express any definite opinion whether such a plat should be regarded as a grant or as a mere offer to dedicate, it is very clear to our minds that it is one or the other, or perhaps partakes of the nature of both, and that some action by competent public authority is essential before it can have the intended effect. If the plat is only an offer to dedicate, the offer must be accepted or it may be withdrawn, and after any considerable lapse of time must be regarded as no longer open for acceptance, unless the circumstances are such as to make the offer continuous. On this subject our own decisions have been full and explicit.

But if the plat is regarded as a grant, it is equally necessary that there should be acceptance. No one can thrust a grant upon another without his assent. It is true, acceptance of a grant may be presumed when it is beneficial, but there can be no conclusive presumption that a grant of land for a public way is so. [*Id.* at 449-450 (citations omitted).]

Under any other rule, duties and financial responsibilities would be imposed on the government for dedicated roads that it never knowingly or intentionally accepted.

Equally undesirably, land would become waste property, owned or developed by no one.

These concerns were addressed in *Miller*, 31 Mich at 449:

As the execution and recording of the plat is wholly a private matter, subject to no public supervision whatever, this view would enable proprietors of lands to lay out so many streets and avenues as they might see fit, and wherever their private interests should determine; and whether the streets were desired by the public or not, the private ownership would

be displaced. Either one of two consequences must then follow: the public must be under some obligations to treat the land as constituting a street, and be subject to such liabilities as that fact would impose, or the land must remain waste property, in the hands of an owner who cannot use it for the purposes of profit, and who at the same time refuses to put it to the purposes contemplated in making the plat.

For this reason, a statutory dedication requires the same acceptance by the public as a dedication at common law.

As in a common-law dedication, before acceptance, an offer to dedicate may be withdrawn formally,⁷ or informally by using “the property in a way that is inconsistent with public ownership.”⁸ If a platted roadway is never accepted, the public acquires no rights in the roadway, and “the owners of the lands fronting thereon, may again take possession of the property, and treat it as though, in all respects, no offer of dedication had ever been made.” *Field*, 32 Mich at 281.

This overview of common-law and statutory dedications illuminates the principal similarities and differences between these modes of dedication. To create a public road at common law or by statute, there must be a clear intent on the part of the owner to dedicate, along with an acceptance by the public within a reasonable time. By either

⁷ An offer may be formally withdrawn by vacating the plat, *Gregory v Ann Arbor*, 127 Mich 454, 458; 86 NW 1013 (1901), or by formal resolution of a governmental body vacating the street, *Plumer v Johnston*, 63 Mich 165, 172; 29 NW 687 (1886), overruled on other grounds by *Loud*, 241 Mich at 456. See MCL 560.255b for the requirements for withdrawals by plat proprietors in a statutory dedication under the current platting statute, the Land Division Act (LDA), MCL 560.101 *et seq.*

⁸ *Kraus*, 451 Mich at 431, citing *Lee*, 14 Mich at 18. Now, under the LDA, lands dedicated to public purposes in recorded subdivision plats are presumed by statute to be accepted, absent timely and proper withdrawal by the plat proprietor within 10 years after the plat is first recorded. MCL 560.255b; *Kraus*, 451 Mich at 426 n 2.

mode, “the question of dedication is one largely of intention . . .” *Weihe v Macatawa Resort Co*, 198 Mich 334, 341; 164 NW 510 (1917). The difference is how the requisite intent-- the *animus dedicandi* (the intent to dedicate)⁹-- is made manifest. In a statutory dedication, “the intent of the owner is clear, and has been formally manifested in the plat recorded.” *Rice*, 346 Mich at 664. By contrast, in a common-law dedication, the intent of the owner is implied from “all such acts connected with, or relating to the premises, tending to show the design and object of the dedication which is alleged . . .” *Beaubien*, 2 Doug at 276. In this way, the intent to dedicate in a statutory dedication is easier to prove and the dedicator is estopped from denying the dedication by virtue of the requirement that the plat be recorded. Simply put, the landowner either did or did not properly record a plat and, if the former, is bound by this act. A clear and prescribed method of evidencing intent is especially important in this area of the law, because other aspects of public dedication-- namely, public acceptance and questions of withdrawal-- are highly fact-specific.¹⁰

⁹ See *Beaubien*, 2 Doug at 276.

¹⁰ See *Alton v Meeuwenberg*, 108 Mich 629, 634-636; 66 NW 571 (1896), in which the Court included an illustrative excerpt of the fact-intensive jury instructions required to determine the intent of the parties with respect to a putative highway:

“How did [the putative dedicator] act, at the time and afterwards? What use did he make of the lands, as showing an intent upon his part of dedicating the land? How was the land treated by the public authorities, with reference to its being a highway? Did they open a highway all along the line? Or what portion of it did they open? . . . These are questions for you to determine, from the evidence in the case; and, unless you believe, from the evidence, that they did, then that certain portion never became a public highway.”

C. RIGHTS OF ABUTTING LANDOWNERS

The owner of property abutting upon a street “sustains a threefold relation to the street”:

1. As one of the general public.
2. As owner of the reversionary interest to the center of the street.
3. As owner of a lot, possessed of the right of ingress and egress to and from the street. [*Detroit City R Co v Mills*, 85 Mich 634, 653; 48 NW 1007 (1891) (opinion by GRANT, J.).]

First, the abutting landowner “has the right, in common with every other member of the public, to the use of the street.” *Id.* As *Mills* stated in this respect, “[f]ree passage is all the law gives him.” *Id.* “A highway is a public passage for all,” *Beaubien*, 2 Doug at 285, and thus every person-- including the abutting landowner-- is entitled to use public ways for travel.

However, in addition to right of public travel, other public uses may be implied from the dedication of land as a public way. For instance, in *Mills*, this Court considered whether the city of Detroit could authorize the construction of a new system of electric street cars on a city street. A plurality concluded that this use was implied by the dedication and did not impose a new burden on the abutting landowners. *Id.* at 654. “It may now be considered the well-settled rule that the streets of a city may be used for any purpose which is a necessary public one, and the abutting owner will not be entitled to a new compensation, in the absence of a statute giving it.” *Id.* This “extension of the public rights in the streets” includes uses necessitated by “increased needs for heating,

lighting, draining, sewerage, water, etc. . . .” *Id.* at 653. The rationale for this rule is that

[t]he dedication of land . . . must be understood as made and accepted with the expectation that it may be required for other public purposes than those of passage and travel merely, and that under the direction and control of the public authorities it is subject to be appropriated to all the uses to which village and city streets are usually devoted, as the wants or convenience of the people may render necessary or important[.] [*Warren v Grand Haven*, 30 Mich 24, 28 (1874) (holding that the municipality had the right to construct sewer lines beneath land dedicated for a public road).]

As this makes plain, the extension of public rights in the streets set forth in *Mills* has not been thought to be contrary in any way to the central principle of dedication, i.e., that the use of land dedicated to the public depends on the dedicator’s intention and may not be appropriated to an entirely different use. See *White’s Lessee*, 31 US at 438; *Weihe*, 198 Mich at 341. Rather, the rule in *Mills* is grounded on the premise that, in dedicating a street, the dedicator’s intention was to appropriate the land to all uses to which public streets are usually devoted, including all uses incidental to public travel.

Mills respects the municipality’s “exclusive control” over a roadway in accordance with the use to which it was dedicated. *In re O’Brien*, 119 Mich 540, 541; 79 NW 1070 (1899). However, this Court’s precedent also recognizes that

“if a dedication is made for a specific or defined purpose, neither the legislature, a municipality or its successor, nor the general public has any power to use the property for any other purpose than the one designated, whether such use be public or private, and whether the dedication is a common-law or a statutory dedication[.]” [*Baldwin Manor, Inc v City of Birmingham*, 341 Mich 423, 430-431; 67 NW2d 812 (1954) (citation omitted).]

Following this fundamental proposition, this Court held in *Baldwin Manor* that the city was prohibited from putting a road across land dedicated for use as a park because that use was inconsistent with the purpose of the dedication. *Id.* at 434. Similarly, in *Village of Kalkaska v Shell Oil Co (After Remand)*, 433 Mich 348, 358; 446 NW2d 91 (1989), we held that the village’s property interest in streets dedicated under the 1887 plat act did not include mineral rights because those rights were not necessary to the use and purpose for which the street was dedicated. Our caselaw is clear that a public entity’s use of land dedicated to the public is limited to the purpose of the dedication. And in the case of a public road, “[w]hether the fee is nominally in county, city, or private owners, the public control is only in trust to secure to the public those rights of a public nature that exist in public ways of that kind.” *Detroit v Detroit City R Co*, 76 Mich 421, 425; 43 NW 447 (1889).

Second, the abutting landowner possesses a reversionary interest to the center of the street. “It is elementary that upon the vacation of a street or alley the land reverts to the abutting owner or owners.” *Mich Central R Co v Miller*, 172 Mich 201, 208; 137 NW 555 (1912). This rule applies to common-law and statutory dedications alike. As we have explained: “We see no reason to distinguish between the two types of dedication for the purposes of the law of abandonment. It is clear that the need for certainty of title exists equally in both instances.” *Clark*, 334 Mich at 657. In a common-law dedication, unencumbered title to the property is restored in the abutting landowners when the street becomes free of the public easement. See 12 Michigan Civil Jurisprudence, Highways & Streets, § 224, p 260 (“Upon a vacation or abandonment of the street by the public, the fee of the abutting owners becomes free of the easement,

which is thereby extinguished and terminated.”). In a statutory dedication, title “vest[s] in the rightful proprietors of the lots, within the subdivision covered by the plat, abutting the street or alley.” MCL 560.227a(1).¹¹ And while there are statutorily defined mechanisms by which a road may be abandoned,¹² as well as particular procedures applicable to roads adjacent to a lake,¹³ by either mode of dedication, and without regard to the road’s location, title to a street that is vacated or abandoned vests in the owners of the lots abutting the street. MCL 560.227a(1); *Clark*, 334 Mich at 657.

¹¹ MCL 560.227a(1), governing the vesting of title upon vacation of plat, street, or alley, provides:

Title to any part of the plat vacated by the court’s judgment, other than a street or alley, shall vest in the rightful proprietor of that part. Title to a street or alley the full width of which is vacated by the court’s judgment shall vest in the rightful proprietors of the lots, within the subdivision covered by the plat, abutting the street or alley. Title to a public highway or portion of a public highway that borders on, is adjacent to, or ends at a lake or the general course of a stream may vest in the state subject to [MCL 560.226].

MCL 560.226(2) specifies particular rules for discontinuing highways adjacent to a lake or stream, specifically requiring the circuit court to determine if vacating the plat “would result in a loss of public access,” and, if so, to “allow the state and, if the subdivision is located in a township, the township to decide whether it wants to maintain the property as an ingress and egress point.” Accordingly, before a road commission abandons a road bordering a lake or stream, the Department of Natural Resources and Environment and the township in which the road is located may elect to maintain the road. If the township and the department decline to exercise their “priority to obtain the property or control of the property as an ingress and egress point,” the property reverts to the abutting landowners. MCL 560.226(2); MCL 560.227a(1); see also MCL 224.18(5) and (8).

¹² Abandonment of a highway is subject to extensive statutory procedures and must be approved by the circuit court in the county where the road is located. See MCL 224.18; MCL 560.222; MCL 560.223; MCL 560.224a.

¹³ See MCL 560.226, MCL 247.41, and n 11 of this opinion.

This rule appears beyond reproach. In considering a predecessor of the current vacation statute, this Court explained in *Loud*, 241 Mich at 455, that “[t]he vacation statute . . . reveals legislative recognition of the propriety and justice of the rule that gives the owner of a lot bordering on a street or alley, opened or unopened, title to the center.” See also *Patrick*, 120 Mich at 198, stating that the “plainest principles of justice require that the original holder’s claim should be recognized.” Indeed, in *In re Albers’ Petition*, 113 Mich 640; 71 NW 1110 (1897), we held that the power of the courts to vacate a city street upon petition of the abutting land owners is not necessarily subject to the acquiescence of the city authorities. *Albers*, 113 Mich at 641, stated:

Our understanding is that the city has no proprietary interest in the land, all of its authority over it growing out of its legal duty to maintain the public ways, which are placed in its charge. Such interest in the land is in the abutting proprietors ordinarily . . . [Citation omitted.]

Third, the abutting landowner’s relationship to the street includes a right of access to his or her own property. This right is considered a natural easement and one of the incidents of ownership or occupancy of land. See *Kirchen*, 291 Mich at 108, in which we stated:

The purchasers of lots in the original plat took not only the interest of the grantor in the land described in their respective deeds, but, as an incorporeal hereditament appurtenant to it, took an easement in the streets, parks and public grounds mentioned and designated in the plat as an implied covenant that subsequent purchasers should be entitled to the same rights. [Citation omitted.]

This “right of access” is considered a “private right” that flows from a deed that refers to a plat, and is distinct from the public’s rights in the road. See *id.* (explaining that “[t]he lot owners have a peculiar interest in the street which neither the local nor general public

can pretend to claim; a private right in the nature of an incorporeal hereditament””) (citation omitted). And it is well settled that this right of access constitutes a property right that adds value to the land. See *State Hwy Comm v Sandberg*, 383 Mich 144, 149; 174 NW2d 761 (1970) (“That right of access ordinarily attaches to property abutting a public highway and that this constitutes a property right is not disputed . . . and must be accepted as long having been the law in Michigan.”); *Kirchen*, 291 Mich at 108 (“The grantors could not recall this easement and covenant any more than they could recall other parts of the consideration. They added materially to the value of every lot purchased.”).

In summary, our caselaw has long recognized a landowner’s multi-faceted relationship to a public street abutting his property. This Court’s decision in *Mills* not only provides insight into the nature of these rights, but also the extent to which Michigan courts have traditionally protected them. *Mills* appears to have been a difficult decision for the Court. The case was argued twice; the lead opinion was signed by only two justices; and the opinion issued over two lengthy and emphatic dissents, an unusual occurrence in an era in which there were relatively few separate opinions. One of the dissenters in *Mills* articulated the rights of the abutting owner slightly differently from the lead opinion, simply stating that an abutting owner “is entitled to every use which is not inconsistent with the public use” *Mills*, 85 Mich at 661-662 (McGRATH, J., dissenting). Under either articulation of the landowner’s legal rights, however, our precedent is clear that abutting owners “have special interests . . . which courts . . . are bound to respect.” *Id.* at 670.

IV. ANALYSIS

With this legal background of the law of dedication, we may now turn to the central questions in this appeal: the nature of the property interest conveyed by the 1887 plat act, and how that property interest affects riparian rights.

A. PLAT ACT OF 1887

The North Charlevoix plat was properly recorded, the Charlevoix County Board of Supervisors accepted the dedication of streets in 1911, and the CCRC has continued to maintain the streets. It is undisputed that the elements of a statutory dedication of a public road were satisfied for the road at issue. The dedication is controlled by the plat act in effect at the time the plat was recorded, 1887 PA 309. Section 2 of that act provided, in relevant part:

The map so made and recorded in compliance with the provisions of this act shall be deemed a sufficient conveyance *to vest the fee* of such parcels of land as may be therein designated for public uses in the city or village within the incorporate limits of which the land platted is included, or if not included within the limits of any incorporated city or village, then in the township within the limits of which it is included *in trust to and for the uses and purposes therein designated, and for no other use or purpose whatever.* [Emphasis added.]

The emphasized language is virtually identical to that of the first plat act of 1839, as well as to that of each successive platting statute until 1967. The 1967 statute, originally titled the Subdivision Control Act and now titled the Land Division Act, refers to the vested

interest as a “fee simple” instead of a “fee,” but is substantially similar in all other respects. MCL 560.253(1).¹⁴

The operative language makes clear that the statute conveys a “fee” that is expressly limited by the terms of the dedication. That is, the fee is held “in trust to and for the uses and purposes *therein designated*, and for *no other use or purpose whatever*.” Accordingly, we first observe that the language used in the dedication of the plat is significant, indeed controlling, because no rights vest in the grantee beyond those that are “therein designed,” and the land shall be used for “no other use or purpose whatever.” Furthermore, we observe that, under this statute, a dedication is not presumed to be broad, requiring express words in the dedication to limit its scope. Rather, in all its versions, the statute has taken the opposite approach. The scope of the dedication is strictly limited to the words expressly conveyed, i.e., the purposes “therein designated” and “no other use or purpose whatever.” Finally, we note that the property interest conveyed by the statute is also limited in duration. Because the fee may be used for the purposes therein designated and for no other use or purpose whatever, duration is coterminous with continued use for the designated purpose.

¹⁴ It has been suggested that the Legislature’s use of “fee simple” to describe the county’s interest in the 1967 plat statute, rather than “fee,” as it used in all the predecessor statutes, is significant. While this may evidence some intention on the part of the drafters of the Land Division Act to emphasize the nature of the interest, the instant case does not require us to examine the significance of this difference. As discussed later, the language of the pre-1967 plat acts and the caselaw interpreting these statutes afford sufficient guidance.

There is further evidence from the plat act that the property interest conveyed by the statute is a “fee . . . in trust” that is limited in scope and duration. Early decisions of this Court shed light on the original understanding of this interest. In the first case in which we considered the platting statute, *People v Beaubien*, we described its purpose as follows:

This statute, as is apparent on its face, was designed to provide an explicit mode for the dedication of streets and other grounds designed for public uses, upon the laying out of towns by individual proprietors, and to render the rights of purchasers, and the public generally, in grounds thus dedicated, definite and certain. It also obviated the difficulty met with in some of the cases in the application of common law principles of dedication, in regard to ownership of the fee, by providing that, upon compliance with the provisions of the act, this should vest in the county, in trust for the designed uses. [*Beaubien*, 2 Doug at 270.]

Beaubien was cited favorably several years later in *Wanzer*, in which the Court explained how a statutory dedication operates in conjunction with the rule that the government retains its interest only as long as it uses the road as a road. *Wanzer*, 3 Mich at 16, reiterated that the under the statute, the “fee . . . vest[s] in the county, in trust for the designed use” and then stated that when the governmental entity abandons the road, “such discontinuance operate[s] to revest the fee in the original proprietor, or his grantee—in other words, . . . the property revert[s]”¹⁵

¹⁵ The dissent states that *Wanzer* “clearly concluded that a statutory dedication conveyed real, ordinary fee title.” We respectfully believe that the dissent misreads *Wanzer*. The words “real, ordinary fee title” appear nowhere in that case, or in any other in which this Court has considered the property interest conveyed under a statutory dedication. Furthermore, nothing in *Wanzer*, or in any other case, supports the dissent’s reading. Rather, from the start, this Court has interpreted the property interest conveyed by a statutory dedication in a manner consistent with the language of the early platting statutes as conveying a “fee . . . in trust to and for uses and purposes designated” See

Then, in a series of cases dating from 1875-1899, this Court repeatedly considered the property interest conveyed by the platting statutes and further defined its nature. Arguably the most instructive articulation was by Justice COOLEY in *Miller*, 31 Mich at 448-49, in which he stated:

It is not very clear what sort of title the act of 1839 designed to vest in the county, whether a fee simple, or only a conditional fee, or possibly a perpetual easement. There are some questions which suggest themselves here which we should be quite indisposed to encounter until it should become absolutely essential. Unquestionably the purpose was to vest in the county such a title as would enable the public authorities to devote the lands to all the public uses contemplated in making the plan, and to charge them with corresponding obligations when the title should vest. It is very clear that no purpose existed to give a title in the nature of a private ownership. This is all we deem it necessary to say on this point in the present case, and further questions must be dealt with when they arise.

Then, in *Bay Co v Bradley*, we explicitly posed a question that is central to the instant case. That is, “what is the position of the county as respects a strip of land dedicated to public use as a street under the statute?” *Bradley*, 39 Mich at 166. In clear and certain terms, the Court answered:

[The county] acquires no beneficial ownership of the land, and exercises no volition about the transfer. Willing or unwilling, the law vests it with nominal title. It does not accept and cannot refuse. It cannot grant or otherwise dispose of the premises, and has no voice concerning the use. It is powerless to shorten the continuance of the easement, but other agencies may at any time bring it to an end, and in case of that the law does not allow even this figment of ownership to remain. In such event what was in the county vests in others. [*Id.* at 166.]

Wanzer, 3 Mich at 16; *Beaubien*, 2 Doug at 270. This is a particular and limited fee, not a “real, ordinary fee,” if by that term the dissent means a common-law fee.

In another seminal plat act case, *Backus v Detroit*, the Court concluded that the city could build a wharf in the Detroit River at the end of a street dedicated in a plat governed by the platting statute. *Backus*, 49 Mich at 120.¹⁶ Consistent with *Miller* and *Bradley*, *Backus* concluded that “[t]he purpose of the statute is not to give the county the usual rights of a proprietor, but to preclude questions which might arise respecting the public uses, other than those of mere passage” *Id.* at 115. Significantly, *Backus* declared that it “attach[ed] no special importance to the fact that the title passed instead of a mere easement” because the question of the city’s right to construct a wharf did not depend on the nature of its property interest created by the plat act. *Id.* Rather, on the basis of the fundamental principle of the law of dedication, *Backus* concluded that the scope of the dedication controlled, asserting that “the city derives its authority from the dedication of the public way” and may not appropriate the end of the street “to any uses inconsistent with the dedication.” *Id.* at 120. *Backus* determined that “the construction of a wharf which shall give the means of access from the highway by land to the highway by water, is not inconsistent with the gift.” *Id.*

And finally, in *Patrick v Young Men’s Christian Ass’n of Kalamazoo*, the Court once again addressed a dedication under a plat act and settled on this descriptive term of art for the property interest at issue: “A plat conforming to the statute . . . operates as a conveyance of a fee, though probably it is a *base fee*.” *Patrick*, 120 Mich at 191

¹⁶ As discussed further below, *Backus* is the source of the rule in Michigan that a dedicated road that runs perpendicular to, and terminates at, the water conveys riparian rights to the receiving governmental entity. The rule from *Backus* governing perpendicular roads has always been considered distinct from the rule for roads parallel to the water. See *Thies*, 424 Mich at 295.

(emphasis added). *Patrick* subsequently explained there was “no apparent reason” for requiring the dedicator to completely part with his fee because “if the fee were conveyed, it would be but a *base fee*, determinable on the happening of a collateral event.” *Id.* (emphasis added).

Thus, by the turn of the last century, this Court had provided ample direction on the nature of the property interest created by the early plat acts. Through a conveyance by a platting statute, the county does not receive “title in the nature of a private ownership,” *Miller*, 31 Mich at 449; it “acquires no beneficial ownership of the land” and “has no voice concerning the use,” *Bradley*, 39 Mich at 166; and it does not possess “the usual rights of a proprietor,” but rather takes title only to the extent that it could “preclude questions which might arise respecting the public uses, other than those of mere passage” *Backus*, 49 Mich at 115. Simply put, “the law vests [the governmental entity] with *nominal* title.” *Bradley*, 39 Mich at 166; see also *Detroit City R Co*, 76 Mich at 425 (reasoning that “whether the fee is *nominally* in county, city, or private owners, the public control is only in trust to secure to the public those rights of a public nature that exist in public ways of that kind”) (emphasis added).

We pause at this word “nominal” to emphasize the obvious, i.e., that the property interest conveyed by these early platting statutes is a fee *in name only*. The nomenclature used to describe this particular property interest in the state of Michigan for over a century has been a “base fee.” *Patrick*, 120 Mich at 191; see also *Kirchen*, 291 Mich at 112 (stating that “the term ‘base fee’ which the court in [*Patrick*] said was probably meant by the statute, was used in the sense of a fee which has a qualification annexed to it”), citing 1 Bouvier’s Law Dictionary (Rawle’s 3d rev); *Village of Kalkaska*, 433 Mich

at 351-352 (referring to the county’s interest as a “base fee” since it is “‘debased because its duration depends upon collateral circumstances which qualify it’”), quoting Black’s Law Dictionary (5th ed); *Jonkers v Summit Twp*, 278 Mich App 263, 278; 747 NW2d 901 (2008) (stating that “platted public roads convey either a mere public easement or, at most, a ‘base fee’ that amounts to little more than nominal title and no beneficial ownership whatsoever”).¹⁷

We find these interpretations of the property interest at issue to be faithful to the text of the 1887 plat act. As discussed, the text of the statute limits the interest conveyed in both scope and duration: the “fee . . . [is conveyed] in trust to and for the uses and purposes therein designated, and for no other use or purpose whatever.” 1887 PA 309. This language evidences a legislative intent to *limit* the nature and extent of the government’s interest to what was explicitly intended by the dedicator and to what was necessary to secure the parties’ rights and responsibilities.

¹⁷ The dissent quotes further from Bouvier’s Law Dictionary (Rawle’s rev) a portion of the definition of “base fee” that *Kirchen* did *not* include, which states that “[t]he proprietor of such a fee has all the rights of the owner of a fee-simple until his estate is determined.” We find the dissent’s discovery significant, but for a different reason than the dissent does. The portions of this definition that *Kirchen* did, and did not, choose to include lends further support for the proposition that this Court has always viewed a statutory “base fee” as a property interest distinct from a common-law fee simple. That is precisely *why Kirchen* did not include the portion of the definition quoted by the dissent in its discussion. We are similarly unpersuaded by the dissent’s reference to a definition of “base fee” in Black’s Law Dictionary (8th ed), which, to the best of our knowledge, has never been cited by a court of this state in defining a statutory “base fee” created in Michigan by the plat act of 1887, which conveys a “fee . . . in trust to and for the uses and purposes therein designated, and for no other use or purpose whatever.” 1887 PA 309 (emphasis added). In summary, this Court has (a) never cited *these* definitions in describing a “base fee” in Michigan, and (b) has without exception articulated a specific *contrary* definition.

Thus, both the text and precedent support two inferences about the nature of the property interest conveyed under the 1887 act. First, the principal purpose at which the early plat acts was directed was “to render the rights of purchasers, and the public generally, . . . definite and certain” and to “obviate[] the difficulty met with in some” common-law dedications. *Beaubien*, 2 Doug at 270. As *Patrick* explained,

[t]he statute in question provides in express terms that the plat shall have the effect to convey the fee of land dedicated to public uses to the county. . . [There are] sufficient reasons for a statute which should give to a formal offer of dedication of public ground by a plat the effect of a conveyance by way of grant to uses, and providing a grantee. [*Patrick*, 120 Mich at 191.]

Second, just as it is clear that the statute was designed to render private and public property rights more certain than at common law, it is equally clear that the statute was *not* designed to expand the rights in dedicated lands that the government had traditionally enjoyed at common law. On this point, our early caselaw is emphatic and unequivocal. *Miller*, 31 Mich at 449; *Bradley*, 39 Mich at 166; *Backus*, 49 Mich at 115; *Detroit City R Co*, 76 Mich at 425; *Patrick*, 120 Mich at 191.¹⁸ These decisions make plain that, just as under common law, the government’s relationship to land dedicated to the public is primarily defined by the obligations that flow from the gift. See *Miller*, 31 Mich at 450 (explaining that “there can be no conclusive presumption that a grant of land for a public way is [beneficial]”). Just as under common law, the government “acquires no beneficial

¹⁸ Because the dissent provides no contrary analysis of these cases, we simply do not understand how it justifies its assertion that “long-settled precedent established that a statutory ‘base fee’ is a fee ownership title capable of cutting off riparian rights . . .” (Quotation marks omitted.) We do not understand which cases are the subject of this reference, because the cases cited above could not more forcefully and straightforwardly define and limit the rights conveyed in a statutory dedication to a governmental entity.

ownership of the land,” *Bradley*, 39 Mich at 166; nor does it possess “the usual rights of a proprietor,” *Backus*, 49 Mich at 115.

B. RIPARIAN RIGHTS

Riparian rights are property rights. *Peterman v Dep’t of Natural Resources*, 446 Mich 177, 191-192; 521 NW2d 499 (1994). “‘Riparian land’ is defined as a parcel of land which includes therein a part of or is bounded by a natural water course,” *Thompson v Enz*, 379 Mich 667, 677; 154 NW2d 473 (1967), and the owners of such land enjoy certain exclusive rights, *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). These rights include the right to erect and maintain docks, as well as to permanently anchor boats off the shore. *Id.*

Generally, it is an “indispensable requisite” that riparian land actually touch the water. *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). Normally, “the interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner.” *Id.* However, the circumstances of this case illustrate an exception to this general rule. In *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935), front-lot plaintiffs claimed riparian rights to a lake that was separated from their property by a highway. The highway was one “established by user.” *Id.* at 339.¹⁹ The Court surveyed foreign state authorities, including the New York case of *Johnson v Grenell*, 188 NY 407; 81 NE 161 (1907), and the Illinois case of *Illinois & Mich Canal Bd of Trustees v Haven*, 11 Ill 554 (1850), and asserted the following rule:

¹⁹ Like a common-law dedication, a “highway by user” creates a public easement. *Eyde Bros Dev Co v Eaton Co Drain Comm’r*, 427 Mich 271, 282; 398 NW2d 297 (1986).

[I]n the absence of an intention of the parties appearing to the contrary, the conveyance of a parcel of land bordering on a highway contiguous to a lake shore conveys the appurtenant riparian rights. [*Croucher*, 271 Mich at 344.]²⁰

Thus, *Croucher* held that the plaintiff front-lot owners, whose land was separated from the water by a public road, possessed riparian rights.

Croucher's rule should not be thought to be made up out of whole cloth. Rather, we know from a review of the rights of landowners abutting a public road that such landowners retained a possessory interest in the road that is recognized at common law and by statute. See *Clark*, 334 Mich at 657 (finding "no reason to distinguish between the 2 types of dedication for the purposes of the law of abandonment"); see also *Village of Kalkaska*, 433 Mich at 354-358 (concurring in the view that platting statutes convey "only the surface and so much of the subsurface as is necessary for street construction and municipal services") (citation and quotation marks omitted).

Between 1966 and 1976, *Croucher* was followed in four published Court of Appeals decisions. *Mich Central Park*, 2 Mich App at 197; *Sheridan*, 29 Mich App at

²⁰ *Croucher* thus recognized that a different result would obtain if the parties had evidenced an alternative intent, such as if a proprietor had reserved riparian rights. As Justice COOLEY explained in *Watson v Peters*, 26 Mich 508, 517-518 (1873):

If, on the face of the plat, by reference to which the defendant bought, there was anything which distinctly indicated an intent on the part of the proprietors to make this case exceptional, and to reserve to themselves any rights in front of the water lots marked on it, after they should have been sold, the case would be different.

Consistent with this understanding, *Croucher* requires an express reservation by the plat proprietor in order for riparian rights not to attach to lots in the plat.

69-70; *Kempf*, 69 Mich App at 342; *McCardel*, 71 Mich App at 564-565. Whereas the road in *Croucher* was a "highway by user," the roads at issue in these cases were all statutorily dedicated under the 1887 plat act, the same act that applies in this case. The earliest of these cases, *Mich Central Park*, did not find this difference to be of any significance. Rather, it concluded that the holding that the front-lot owners had riparian rights was "squarely supported by *Croucher* . . . and the New York case of *Johnson* . . . cited therein," explaining: "In both of those cases, the lots involved were part of a plat: the road in the Michigan case had been established by user, while that in the New York case had been dedicated by the plat." *Mich Central Park*, 2 Mich App at 197-198. The Court of Appeals emphasized that "[t]he only exception" to this rule "is where there is land in private ownership lying between" the road and the waterway. *Id.* at 198.

When the Court of Appeals next considered the issue in *Sheridan*, 29 Mich App at 67, it framed the question as whether the front-lot plaintiffs had riparian rights, "such rights being derived from the common law as judicially construed by the courts of this state." *Sheridan* answered that question affirmatively, stating that "[i]t is seemingly settled in Michigan that one whose property is separated from a navigable lake solely by a public street or highway has riparian rights in that lake." *Id.* at 70. *Kempf* also treated this rule as settled, emphasizing that "*Croucher* requires an *express limitation* to prevent riparian rights from attaching to lots abutting a waterfront highway." *Kempf*, 69 Mich App at 342. Finally, in *McCardel*, 71 Mich App at 564, the Court of Appeals posed the exact question that is presented in this case-- "[w]ho owns the riparian rights" in property that is separated from a lake solely by a public street-- and once again answered in favor

of the front-lot plaintiffs. Furthermore, *McCardel* addressed the issue of the nature of the title conveyed to the county pursuant to the 1887 act:

The defendants ask us to distinguish *Croucher* because the government in that case had only a highway easement, whereas Roscommon County is said to have a fee simple title to the boulevard property involved in this case under the terms of the plat act in effect when the subdivision plat was recorded. 1887 PA 309. Actually, that statute provided that the government would take a fee “in trust to and for the uses and purposes therein [the plat] designated, and for no other use or purpose whatever”. Even if a distinction is possible we will not adopt it. There are problems with the *Croucher* rule, but an exception vesting the riparian rights in the public would create problems of its own—including the need to precisely define the underlying title in every case. *Croucher* at least offers uniformity, a more attractive feature than any offered by the defendants’ proposed distinction. [*Id.* at 564-565.]

We granted leave in *McCardel* and affirmed in part and vacated in part. *McCardel*, 404 Mich at 94. While we did not disturb the ruling that the front-lot plaintiffs had riparian rights, we did redirect the focus of the case, explaining:

Assuming, *arguendo*, that the plaintiffs own the riparian or littoral rights as an incident of front lot ownership, it does not follow necessarily that the public does not have the right to enter and leave the water from the boulevard. The question to which the parties have devoted most of their attention in this litigation (ownership of the riparian or littoral rights) is, again, not dispositive. The question whether the public has the right to enter and leave the water from the boulevard, like the question whether they may lounge and picnic on the boulevard, depends, rather, on the scope of the dedication. [*Id.* at 97.]

With the benefit of *McCardel*, we again addressed a riparian dispute involving front-lot owners in *Thies*. *Thies* concerned a privately platted walk running parallel to the shore. Although the back-lot defendants argued that the case should be distinguished from *Croucher* because of this fact, we disagreed. Citing *Croucher* and its progeny approvingly, *Thies* explained:

The cases which have applied *Croucher* only involved ways dedicated to public use. [Citing, among other cases, *McCardel*, 71 Mich App at 560; *Kempf*, 69 Mich App at 339; *Sheridan*, 29 Mich App at 64; *Michigan Central Park*, 2 Mich App at 192.] Nevertheless, we believe that *Croucher* is equally applicable to ways dedicated to the private use of a finite number of persons. [*Thies*, 424 Mich at 290.]

Thies then stated that the question of who owns the appurtenant riparian rights as between “the plattors, the ‘front lot’ owners, or the persons to whom the way is dedicated” was “settled in this state by *Croucher*,” *id.* at 291, and reiterated *Croucher*’s holding:

Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way, subject to the easement. Since the owner’s property is deemed to run to the water, it is riparian property. [*Id.* at 293.]

Consistent with *McCardel*’s focus on the scope of the dedication, the analysis in *Thies* did not end here. Citing *McCardel*, *Thies* stated:

Even if we conclude that defendants merely have an easement interest in the walk and alleys, they may still prevail. Plaintiffs cannot prevent defendants from erecting a dock or permanently anchoring their boats if these activities are within the scope of the plat’s dedication, and do not unreasonably interfere with plaintiff’s use and enjoyment of their property. The ownership of the walk and alleys and the scope of the dedication of these lands are interrelated, but distinct inquiries. [*Id.* at 289 (citation omitted).]

In summary, Michigan’s jurisprudence governing the riparian rights of front-lot owners provides several constant and guiding principles. First, front-lot owners whose property is separated by a public road running parallel to the water are deemed to have riparian rights, “such rights being derived from the common law as judicially construed by the courts of this state.” *Sheridan*, 29 Mich App at 67; see also *Croucher*, 271 Mich at 345; *Thies*, 424 Mich at 291-293; *Mich Central Park*, 2 Mich App at 197; *Kempf*, 69 Mich App at 341-342; *McCardel*, 71 Mich App at 564-565; *Jonkers*, 278 Mich App at

269. Second, “[t]he ownership of the walk and alleys and the scope of the dedication of these lands are interrelated, but distinct inquiries.” *Thies*, 424 Mich at 289. As we have seen throughout our law, all cases involving the public dedication of land “must be considered with reference to the use for which they are made” *White’s Lessee*, 31 US at 438.

C. STARE DECISIS

In approaching any case, “[s]tare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v Tenn*, 501 US 808, 827; 111 S Ct 2597; 115 L Ed 2d 720 (1991). However, if there is any realm within which the values served by stare decisis-- stability, predictability, and continuity-- must be most certainly maintained, it must be within the realm of property law. For this reason, “[t]his Court has previously declared that stare decisis is to be strictly observed where past decisions establish ‘rules of property’ that induce extensive reliance.” *Bott v Natural Resources Comm*, 415 Mich 45, 77-78; 327 NW2d 838 (1982), citing *Lewis v Sheldon*, 103 Mich 102; 61 NW 269 (1894); *Hilt*, 252 Mich at 198. As we explained in *Bott*:

The justification for this rule is not to be found in rigid fidelity to precedent, but conscience. The judiciary must accept responsibility for its actions. Judicial “rules of property” create value, and the passage of time induces a belief in their stability that generates commitments of human energy and capital. [*Bott*, 415 Mich at 78.]

We need not expound on this principle, but we nonetheless remain mindful of the respect due to judicial rules of property as we decide this case.

D. APPLICATION

We now turn to the lower courts’ ruling that plaintiffs are not deemed riparian under Michigan law. Specifically, the Court of Appeals concluded that because “the 1887 plat act vests in the public a fee title interest,” plaintiffs did not have riparian rights. *Baum*, 284 Mich App at 559. That court further concluded that “the language of the dedication in no way limits what type of use may occur on the depicted streets or alleys or who may use them.” *Id.* at 562. As we believe is now quite evident, the law of this state leads inexorably to the opposite conclusions.

The lower courts’ fundamental error was in their understanding of the property interest conveyed to the CCRC by the 1887 plat act. We are not left to analogy or intimation in ascertaining the law of this state governing the nature of this interest. The statute and our precedents dating back well over a century tell us all we need to know to decide this case. We know that the “fee” conveyed by the statute is held “in trust to and for the uses and purposes therein designated, and for no other use or purpose whatever.” 1887 PA 309. We know this fee conveys only “nominal title.” *Bradley*, 39 Mich at 166. We know that the statute does not convey “title in the nature of a private ownership.” *Miller*, 31 Mich at 449. We know that the CCRC was not conveyed any rights that were not necessary to the use and purpose for which the street was dedicated. *Kalkaska*, 433 Mich at 348; *Baldwin Manor*, 341 Mich at 430-431. And we know that the nomenclature to describe this interest is a “base fee.” See, e.g., *Patrick*, 120 Mich at 191. No Michigan decision has ever held that a dedication of a parallel road conveys riparian rights to the

receiving governmental entity,²¹ and every Michigan decision that has addressed this exact issue has held that a dedication of a parallel road does *not* divest front-lot owners of riparian rights.

Conspicuously absent from the lower courts' decisions is any significant discussion of the cases cited above, including this Court's seminal cases interpreting the early platting statutes, such as *Miller*, *Bradley*, and *Backus*, and the Court of Appeals own indistinguishable decisions, *Mich Central Park*, *Sheridan*, *Kempf*, and *McCardel*. The "judicial rule of property" reaffirmed in this opinion is so engrained in property law that it is explicitly embodied in the Michigan Land Title Standards (5th ed), Comment B in Standard No. 24.5 ("A parcel of land separated from a natural watercourse by a highway or walkway, where the highway or walkway is contiguous to the watercourse, is riparian, unless a contrary intention appears in the chain of title."). This Court is not writing on a blank slate in this case, any more than was the Court of Appeals in *McCardel* when it held on identical facts that front-lot owners are deemed riparian; or was this Court in *Croucher*, 271 Mich at 344, when it offered that "the conveyance of a parcel of land bordering on a highway contiguous to a lake shore conveys the appurtenant riparian rights"; or was Justice COOLEY in *Miller*, 31 Mich at 449, when he stated that the early

²¹ If such a case existed, it would certainly offer support for the dissent's position. However, neither our research nor that of the parties and amici curiae-- nor that of the dissent-- has identified such a case. Given the history of the statute at issue, as well as the frequency with which this Court once considered disputes regarding statutory dedications, we find the absence of any authority for the proposition that a "base fee" conveys riparian rights to be highly significant.

plat acts do not convey "title in the nature of a private ownership." The law of dedication is deeply rooted in the legal traditions, and in the caselaw, of this State.²²

E. RESPONSES TO DEFENDANT

For the benefit of the bench and bar, and the parties, we will briefly consider the principal arguments of the parties, none of which, in our judgment, is sufficient to overcome the clear and longstanding law of this state. First, defendant contends, and the lower courts agreed, that the 1887 plat act "plainly" and "unambiguously" conveyed to the county a "fee" title to Beach Drive. As the trial court reasoned: "The conveyance of the fee for the Beach Drive property to the public is significant. . . . Because [plaintiffs] do not hold fee title to the waterfront land in front of their respective lots, they do not possess riparian rights." The lower courts were, of course, correct that the statute conveys a "fee." The lower courts were also correct that our goal when interpreting a statute is "to ascertain and give effect to the intent of the Legislature" as reflected in the language of the statute, and if such language is "clear and unambiguous," we need go no further. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003). However, our duty in construing a statute requires us to consider the "meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999) (emphasis added), quoting *Bailey v*

²² Because the dissent "decline[s] to address whether the [majority's] misreading . . . should be upheld today," while also recognizing that "this may be one of those cases in which the incorrect but, apparently, extensively relied-upon rule . . . should be allowed to stand [as a matter of stare decisis]," we do not understand why the dissent characterizes itself as a "dissent," when, based upon some actual resolution of these matters, it might just as well turn out to be a "concurrence."

United States, 516 US 137, 145; 116 S Ct 501; 133 L Ed 2d 472 (1995). That is, all words and phrases must be considered in statutory context. The 1887 plat act does not convey a “fee,” period. Rather, it conveyed a “fee . . . in trust to and for the uses and purposes therein designated, and for no other use or purpose whatever.” By the statute’s terms, *this* “fee,” this particular fee, which is strictly limited in scope and duration, bears little relation to a common-law fee, which is “the broadest property interest allowed by law” Black’s Law Dictionary (8th ed). And, as discussed, our caselaw provides ample guidance on the nature of this particular property interest-- this “base fee”-- as a well as its purpose in the statutory scheme. The early plat acts were not designed to expand the rights that the government had traditionally enjoyed at common law in dedicated lands, see, e.g., *Miller*, 31 Mich at 449; rather, they were designed to render private and public property rights more certain than at common law, see, e.g., *Beaubien*, 2 Doug at 270; *Wanzer*, 3 Mich at 16.

Accordingly, when we apply the fundamental riparian doctrine by which “the interposition of a fee title between upland and water destroys riparian rights,” *Hilt*, 252 Mich at 218, with the correct understanding of this fee interest, we reach a different conclusion than the lower courts did. We find it quite clear that a statutory “base fee” is *not* the type of “fee title” capable of “destroy[ing] riparian rights.” *Id.* The “fee title” capable of destroying riparian rights is a common-law fee title, a distinct property interest.²³ Again, we need not speculate about this conclusion because our precedent

²³ This appears to be the crux of our disagreement with the dissent. While we agree with the proposition that a common-law fee title cuts off riparian rights, we see a clear

unequivocally dictates that the statute did not convey “title in the nature of a private ownership.” *Miller*, 31 Mich at 449. That is, it did not convey title in the nature of a common-law fee. Recognizing this distinction, the first decision of the Court of Appeals to address the precise issue before us properly applied the riparian doctrine when it stated that “[t]he only exception” to the rule deeming front-lot owners riparian “is where there is land in private ownership lying between” the road and the waterway. *Mich Central Park*, 2 Mich App at 198.²⁴ By failing to give proper weight to context and purpose, and by failing to fully consider precedents, the lower courts misconstrued the “fee” interest conveyed to the CCRC under the 1887 plat act when they held that this particular property interest was capable of divesting front-lot owners of their riparian rights.

Second, defendant criticizes decisions of the Court of Appeals that have deemed front-lot plaintiffs riparian in the instant circumstances, arguing that the Court in *McCardel* misread and erroneously relied on *Croucher* because *Croucher* concerned an easement created by a highway by user and *McCardel*, like the instant case, concerned a

distinction between a common-law fee and a statutory “base fee,” as that interest has long been defined in Michigan.

²⁴ As discussed earlier, the other consideration in applying this rule is whether the plat proprietor has conveyed the lots “without reserve.” *Turner*, 65 Mich at 462. In Michigan, such reservation is never presumed. As Justice COOLEY stated in *Watson*, 26 Mich at 517 (1873), when a proprietor “conveys with the water as a boundary, it will never be presumed that he reserves to himself proprietary rights in front of the land conveyed” In other words, an express reservation of rights is necessary. For this reason, the fact that plaintiffs’ deeds do not contain specific language granting riparian rights is inconsequential. Under the law of this state, it would have taken an express reservation of rights by the proprietor to affect their riparian rights. No such reservation exists in plaintiffs’ deeds, nor is there a suggestion of the existence of any such reservation in the chain of title.

“fee” created by a statutory dedication. For reasons already discussed, we find *McCardel*’s decision that front-lot owners were riparian to be the only decision that the Court could have made that would have been faithful to the statute and consonant with Michigan’s longstanding jurisprudence. We have found *no* authority on which the court in *McCardel* could have located riparian rights anywhere else than it did.

Furthermore, we do not think it necessary or helpful to focus on the distinction between an easement and a fee, as defendant urges.²⁵ We need not frame the issue in this

²⁵ This is not to suggest, however, that a base fee and an easement are indistinguishable. Our survey of the law of dedication reveals several differences. First, when an easement is created by a common-law dedication, the fee in the soil remains in the proprietor. The same is not the case when the government holds a base fee. Second, because of the fact that the proprietor never parts with the fee when the government holds an easement, the owner of land abutting a public easement automatically takes free title when the road is abandoned and the easement is extinguished. By contrast, an owner of land that abuts a base fee holds a reversionary interest and takes title upon abandonment by prescribed and detailed statutory procedures. See, e.g., MCL 224.18. Third, and perhaps most importantly, our discussion of common-law and statutory dedications indicates that the rights of the receiving governmental entity in possession of a base fee are more secure and stable than those of an entity possessing a mere easement. This is because the intent to dedicate in a statutory dedication is clear and the dedicator is estopped from denying the dedication by virtue of the requirement that the plat be actually recorded. It may be difficult today to appreciate the significance of this, because disputes regarding public dedications are now relatively rare-- largely, in our judgment, because of the constancy of our law in this realm since well before the previous century-- but our early caselaw makes clear that this change in the common law was significant. *Beaubien*, 2 Doug at 270 (explaining that the plat act “obviated the difficulty met with in some” common-law dedications); *Patrick*, 120 Mich at 191 (stating that there are “sufficient reasons for a statute which should give to a formal offer of dedication of public ground by a plat the effect of a conveyance by way of grant to uses”). In sum, a base fee describes a property interest that is relatively secure and stable and that gives a governmental body using the base fee in a manner consistent with its scope full control over the estate. By contrast, a public easement created by a common-law dedication was perceived as a more vulnerable property interest open to challenge, which rendered the rights of purchasers and the public somewhat less certain.

way because Michigan law is replete with decisions that define the *precise* property interest in dispute, and we see no grounds for redefining it. Furthermore, our discussion of the law of abandonment demonstrates that the distinction between an easement created by a common-law dedication and a base fee created by a statutory dedication has never been thought to be dispositive in this regard. By common law, upon abandonment, the title of the abutting landowner, who owns the soil in the land under a public road, is freed of the easement. By statute, upon abandonment, title “vest[s] in the rightful proprietors of the lots, within the subdivision covered by the plat, abutting the street or alley.” MCL 560.227a. In light of these principles, to decide that front-lot plaintiffs are not to be deemed riparian because they do not own the *soil*, as they would if the road were an easement, would be a distortion of well-established law recognizing that plaintiffs and similarly situated property owners have a multifaceted legal relationship to a public road that includes a specifically defined possessory interest. It is beyond dispute that Michigan courts “are bound to respect” these “special interests” in such roads. *Mills*, 85 Mich at 670 (McGRATH, J., dissenting on other grounds).

On this point, we find relevant the words of Justice McGRATH in *Mills*:

“Of what does property practically consist, but of the incidents which the law has recognized as attached to the title or right of property? Is not the idea of property in or title to lands, apart from and stripped of all its incidents, a purely metaphysical abstraction, as immaterial and useless to the owner as ‘the stuff that dreams are made of?’ . . . Property does not consist merely of the right to the ultimate particles of matter of which it may be composed,—of which we know nothing,—but of those properties of matter which can be rendered manifest to our senses, and made to contribute to our wants or our enjoyments.” [*Id.* at 667-668, quoting *Grand Rapids Booming Co v Jarvis*, 30 Mich 308, 320-321 (1874).]

The riparian rights that plaintiffs and similarly situated property owners enjoy in Michigan are an “incident[] which the law has recognized as attached to the title or right of property.” *Id.* at 667. These rights are just as real as the soil under the street and, to these citizens, at least as valuable. Accordingly, we find defendant’s analysis of *Croucher* and *McCardel* to be unpersuasive. By failing to recognize that the rule of these cases is both correct and well settled, defendant’s analysis would upset the altogether reasonable expectations of front-lot owners, title insurers, and prospective front-lot purchasers throughout the state.²⁶

²⁶ Defendant posits two additional arguments in an attempt to undermine the authority of *McCardel* and *Croucher*. First, it argues that an 1850 Illinois case cited in *Croucher*, *Haven*, 11 Ill 554, suggests that *Croucher* would not have deemed front-lot plaintiffs riparian if the road had been dedicated by statute. As a threshold matter, it is unclear why we would focus on this out-of-state case when our *own* caselaw on this subject is more than adequate. Clearly, it better behooves us to look to the significant number of Michigan decisions from this era that illuminate the nature of a “base fee” in this state. Moreover, we are not convinced that defendant’s understanding of the citation of *Haven* in *Croucher* is correct. In surveying the persuasive law on this issue, *Croucher* cited *Haven* as contradictory authority, explaining that *Haven* “was determined by the law of Illinois by which the fee of the land under a dedicated street is held to be in the municipal corporation. *Confessedly that would not be true in the instant case.*” *Croucher*, 271 Mich at 344 (emphasis added).

Defendant contends that the emphasized language demonstrates that *Croucher* saw the distinction between an easement and a “fee” as determinative. This conclusion, however, is belied by the fact that *Croucher* also cited *Johnson*, 81 NE 161, a New York case that concerned a statutory dedication and in which the court deemed the front-lot owners riparian. It is further belied by a reasonable reading of the emphasized sentence. In this sentence, we think it more likely that *Croucher* was simply recognizing that the law in Michigan was well established by the time of its decision in 1935. That is, some states treat a statutory dedication as conveying a common-law fee title. But “[c]onfessedly that would not be true in the instant case,” because Michigan does not. In Michigan, a statutory dedication creates a “base fee.” For these reasons, we believe this Illinois case would constitute a shaky foundation on which to ground a critical rule of

Third, defendant contends that *Thies* somehow changed or even impliedly overruled the rule of *Croucher* and *McCardel*, under which front-lot plaintiffs are deemed riparian. When viewed in its entirety, we find it impossible to read *Thies* as overruling or in any way altering this rule. Rather, as seen throughout the opinion, *Thies* cited *Croucher* and its progeny, including *McCardel*, in a fully approving manner, and, indeed, extended the rule of *Croucher* to the facts before it, which involved a privately platted walkway. *Thies*, 424 Mich at 291-294. Defendant’s interpretation of *Thies* focuses on its statement that “[t]he relevant inquiry is . . . whether the abutting landowner owns the fee in the way which separates his property from the water[.]” *Id.* at 290. Neither this sentence nor the treatise quotation that follows takes Michigan property law in any new direction. Rather, *Thies* was simply setting forth the uncontested riparian

property in Michigan, and one that would not satisfactorily explain to citizens of this state why their reasonable expectations should be upset.

By the same token, we are not persuaded by defendant’s reliance on MCR 7.215(C)(2) and (J)(1), governing the precedential effect of published Court of Appeals opinions under the rule of stare decisis, and do not think that this court rule provides an adequate explanation to these citizens. While the Court of Appeals may not have been bound to follow *McCardel* and other pre-1990 decisions, it was bound to follow *Miller*, 31 Mich at 449; *Bradley*, 39 Mich at 166; *Backus*, 49 Mich at 115; *Kirchen*, 291 Mich at 112; *Village of Kalkaska*, 433 Mich at 353-358; and *Jonkers*, 278 Mich App at 278, all of which held that a statutory base fee conveys only nominal title. Further, as we have emphasized, in the area of property law, important prudential considerations favored the Court of Appeals following its own pre-1990 precedents. That is, the longer a judicial rule of property has endured, and the more time has elapsed since its establishment, the greater the public’s reliance. Under either the standard set forth in *Robinson v Detroit*, 462 Mich 439, 464-466; 613 NW2d 307 (2000), or the standard articulated by the Chief Justice in *Petersen v Magna Corp.*, 484 Mich 300, 338-339; 773 NW2d 564 (2009) (opinion by KELLY, C.J.), these are highly relevant considerations in assessing the merits of stare decisis.

doctrine that “the interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner.” *Hilt*, 252 Mich at 218. There is no question that this is the *general* rule, and in articulating this, *Thies* can hardly be said to have overruled the *exception* to the general rule that is involved in *Croucher* and its progeny, as well as in this case-- that a statutory “base fee” constitutes a distinctive property interest, wholly distinct from a common law “fee title,” that does not “transfer [riparian rights] to the interposing owner.” *Id.* We do not see how this could have been communicated any more forcefully in *Thies* than by citing approvingly the critical authority on which this exception was grounded and extended. *Thies*, 424 Mich at 290-294, citing *Croucher*, *McCardel*, *Kempf*, *Sheridan Drive*, *Mich Central Park*, and *Johnson*.

Fourth, defendant argues, and the lower courts agreed, that the fact that plaintiffs’ property is taxed as “water view” and not “waterfront” property is significant in the determination of whether the law of this state deems them riparian. We respectfully disagree. As a threshold matter, with the law presented to us, it is not clear why we would venture from our area of principal responsibility-- interpreting the law-- to decide this matter on the basis of practices that we may not fully understand and that have not been significantly briefed, such as the premises of a township’s property tax assessment system. It is true that plaintiffs’ properties are assessed as “water view” property and thus are taxed at a lower rate than properties assessed as “waterfront.”²⁷ However, this

²⁷ An assessor for defendant township provided an affidavit explaining that as “water view” property, plaintiffs’ properties were assessed using a figure of \$2,000 a front foot

distinction is likely based-- we do not know for certain-- on the traditional real estate proposition that property value is a function of “location, location, location.” That is, while plaintiffs’ riparian rights certainly add value to their property, such property is likely to be *less* valuable than property that is spared a road separating it from the lake.²⁸ We do not think that plaintiffs’ property tax assessment rate lends support, one way or the other, for the conclusion that they do not hold riparian rights.

We must address one last issue that was unanswered in the lower courts’ decisions. That is, if the lower courts were correct that plaintiffs do not own the riparian rights to Beach Drive, *who does?* Neither lower court answered this question, an omission that would, if their decisions were left intact, introduce obvious uncertainty into the property law of this state and engender unnecessary litigation. Indirectly, however, the Court of Appeals intimated that the *county* owned such rights because, the Court concluded, the county was in “no way” limited to the type of use it may make of the road. *Baum*, 284 Mich App at 561. This conclusion is clearly erroneous and cannot stand. The first principle of the law of dedication is that all cases “must be considered with reference to the use for which they are made.” *White’s Lessee*, 31 US at 438. Accordingly, for over a century, this Court has consistently held that the scope of the dedication controls the resolution of this question. *Backus*, 49 Mich at 120; *Baldwin Manor*, 341 Mich at

along Beach Drive. Had the properties been assessed as “waterfront” property, the front-foot assessment figure would have been \$6,000.

²⁸ As plaintiffs’ counsel explained at oral argument: “[T]here is a road that goes between the platted front lot line and [plaintiffs’] riparian property, that makes that property less valuable to a third-party buyer than [sic] if no road were there.”

430-431; *McCardel*, 404 Mich at 97; *Thies*, 424 Mich at 289. The CCRC simply cannot use the road for purposes not contemplated by the dedication itself, just as no public entity has ever been held to have “any power to use the property for any other purpose than the one designated . . .” *Baldwin Manor*, 341 Mich at 430 (citation omitted).

Thus, the scope of the dedication is central to this case. The dedication includes the following language: “[T]he streets and alleys as shown on said plat are hereby dedicated to the use of the public.” Read in context, the dedication grants to the public “use” that is consistent with the understood uses of “streets and alleys” at the time of the dedication. As a contemporary decision of this Court stated, “the public control [of the street] is only in trust to secure to the public those rights of a public nature that exist in public ways of that kind.” *Detroit City R Co*, 76 Mich at 425. We are convinced that riparian rights were not among those “rights of a public nature” thought to “exist in public ways of [this] kind.” No Michigan decision of that era, or any other, has held that a dedication of a road running parallel to the water conveys riparian rights.²⁹ Indeed, the CCRC itself never claimed to possess riparian rights until *after* the trial court’s decision.³⁰ This conclusion is confirmed by the related, but converse, rule in Michigan

²⁹ Despite this absence of authority, the dissent would substantially redefine the property interest at stake and conclude that a base fee cuts off the riparian rights of a private landowner and conveys such rights to the county.

³⁰ When the CCRC filed its counterclaim, it did not assert any claim to riparian rights. Rather, its counterclaim was directed at the alleged encroachments to its property interests. It was only after the trial court ruled that plaintiffs were not deemed riparian that the CCRC changed its position. Even so, its position has continued to evolve. In its brief in opposition to plaintiffs’ motion for reconsideration, it argued:

by which “public ways which terminate at the edge of navigable waters *are* generally deemed to provide public access to the water.” *Thies*, 424 Mich at 295. This rule distinguishing between parallel and perpendicular roads in this context derives from *Backus*, a decision contemporaneous with the plat act of 1887.³¹ *Backus* expressly recognized that the scope of the dedication controls and thus determined that when a roadway terminates at the water “the platlor intended to give access to the water . . .” *Id.* at 296, citing *Backus*, 49 Mich at 119-120. It is significant in the instant case that the plat proprietor’s intent to give access to the water at the one road in the plat that terminates at the lake was further clarified by a depiction of a dock extending into the lake at the end of this road.

As a practical matter, the rule of *Backus* is as compelling today as it was in 1882. A road running parallel to the water is very different conceptually from a road that

Just because the public, under current law, cannot fully use the water adjacent to its fee ownership does not mean that the riparian rights rest or remain with someone else. It just means that such rights are not fully exercisable by anyone associated with a particular parcel of property.

In its brief in this Court, the CCRC now claims that it is entitled to use the roadway to provide public access to the water and maintain a public dock for temporary mooring while coming to and from the lake, both of which activities are inherently riparian.

³¹ We further note that since 1895, the distinct rule applying to roadways terminating at the water has also been recognized by statute. MCL 67.35, the current version of 1895 PA 3, provides in relevant part:

The council of any village located upon or adjacent to any of the navigable waters of the state shall have the power to establish, construct, maintain, and control public wharves, docks, piers, landing places, and levees, upon any lands or property belonging to or under the control of the village, including property at the foot or end of public streets . . .

terminates at the water. The former may provide the public access to the water *consistently with* the primary purpose of a public roadway-- "public passage for all." *Beaubien*, 2 Doug at 285. The latter cannot. It is untenable to say that the CCRC could exercise riparian rights to Beach Drive, a paved road running parallel to the lake that undisputedly is used for year-round vehicular travel, consistently with the understood purpose of the dedication of the streets in the plat, which is to provide "public passage for all." Accordingly, we come full circle to the precept with which we began: "This being a case to which the law of dedication applies, the use for which the dedication was made must determine the extent of the right parted with by the owner of the land and acquired by the public." *Patrick*, 120 Mich at 193. We hold that, contrary to the lower courts' rulings, the CCRC cannot exercise riparian rights to Beach Drive, including granting public access to the water, because such uses are incompatible with the underlying dedication.

V. CONCLUSION

The "fee" conveyed by the 1887 plat act is held "in trust to and for the uses and purposes therein designated, and for no other use or purpose whatsoever." 1887 PA 309. The particular property interest created by the statute, a "base fee," conveys to the receiving governmental entity only "nominal title." *Bradley*, 39 Mich at 166. A base fee in a public road running parallel to the water has never been thought to divest front-lot property owners of their riparian rights, much less convey riparian rights to the county. In the history of Michigan property law, *no* Michigan decision has ever suggested these propositions, and *every* Michigan decision that has addressed the exact issue before us

has concluded as we do, that riparian rights rest with the front-lot owners. On the authority of our longstanding caselaw, and mindful of the particularly compelling mandates of stare decisis in the realm of property law, we hold that plaintiffs have riparian rights, as similarly situated persons have *always* had in this state. Accordingly, we reverse and remand the case to the trial court for proceedings not inconsistent with this opinion.

Stephen J. Markman
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.

STATE OF MICHIGAN

SUPREME COURT

2000 BAUM FAMILY TRUST, BAUM
FAMILY TRUST, JOSEPH BEAUDOIN,
SANDRA BEAUDOIN, ADELE
MEGDALL REVOCABLE TRUST, PAUL
NOWACK & JOAN NOWACK TRUST,
MARILYN ORMSBEE, MARK
SCHWARTZ, WENDY SCHWARTZ, and
THOMAS THOMASON,

Plaintiffs/Counterdefendants-
Appellants,

v

No. 139617

WILLIAM BABEL, JUDY BABEL,
JAMES CAHILL, GLORIA CAHILL,
DANIEL ENGSTROM, PENNY
ENGSTROM, ARTHUR A. RANGER
TRUST, PATRICIA L. RANGER TRUST,
and CHARLEVOIX COUNTY ROAD
COMMISSION,

Defendants/Counterplaintiffs-
Appellees,

and

AL GOOCH, ELIZABETH GOOCH, JESSE
HALSTEAD, and LINDA HALSTEAD,

Intervening
Defendants/Counterplaintiffs-
Appellees,

and

CHARLEVOIX TOWNSHIP,

Defendant-Appellee.

DAVIS, J. (*dissenting*).

I respectfully dissent, because I conclude that long-settled precedent establishes that a “statutory ‘base fee’” is a fee ownership title capable of cutting off riparian rights and no precedent from this Court has established a contrary rule.

“At the common law, when the owner of land has laid it out into village lots, intersected with roads and public squares, such roads and squares are dedicated to the public use. But it is not the fee of the land which passes in such cases; the public have only an easement in the land, the fee itself for all other purposes remains in the owner.” *Wanzer v Blanchard & Buckland*, 3 Mich 11, 16 (1853). However, under a *statutory* dedication pursuant to the 1887 plat act, ownership in fee actually passes to the county, and if all statutory requirements are complied with, “the title, having become vested in the county thereby, remains there still, unless such discontinuance operated to *revest the fee* in the original proprietor, or his grantee” *Id.* (emphasis added).

This Court has explained that the “statutory ‘base fee’” conveyed by the plat act is “a fee which has a qualification annexed to it.” *Kirchen v Remenga*, 291 Mich 94, 112; 288 NW 344 (1939). This is hardly a clarification, and even Justice COOLEY regarded it as unclear whether a statutory dedication conveyed rights that were more in the nature of a fee or an easement. *Wayne Co v Miller*, 31 Mich 447, 448-449 (1875).¹ However, 22

¹ A few years later, Justice COOLEY would explain that the interest passed *was* fee title, but that this was of “no special importance” because the governmental entity nevertheless held that title “only in trust for street purposes.” *Backus v Detroit*, 49 Mich 110, 115; 13

years earlier, this Court had clearly concluded that a statutory dedication conveyed a real, ordinary fee title. See *Wanzer*, 3 Mich at 16. And 15 years later, this Court equally clearly concluded that a statutory dedication vested the fee of the dedicated land in the county. *Village of Grandville v Jenison*, 84 Mich 54, 65-66; 47 NW 600 (1890).² By the 1930s, it was settled that although a “base fee” carried with it conditions and limitations, it was not qualitatively a different *kind* of ownership interest. *Rathbun v Michigan*, 284 Mich 521, 534-536; 280 NW 35 (1938).

This Court’s explanation in *Kirchen* that the term “base fee” was “used in the sense of a fee which has a qualification annexed to it” relied on 1 Bouvier’s Law Dictionary (Rawle’s 3d rev), p 329. *Kirchen*, 291 Mich at 112. The *rest* of the definition of “base fee” in Bouvier’s Law Dictionary explains that the “qualification” to which it refers “must be determined whenever the annexed qualification requires” and that “[t]he proprietor of such a fee has all the rights of the owner of a fee-simple until his estate is determined.” See 1 Bouvier’s Law Dictionary (1897). In this context, “determination” is essentially a synonym for termination, or something coming to an end. See *id.* Therefore, *Kirchen* never held that a “base fee” is not a fee interest; quite the contrary, it held that it *is* a fee interest—just one that could be terminated pursuant to an attached restriction.

NW 380 (1882). Of course, *Backus* is only of marginal relevance because the street at issue there terminated at a river; it did not run parallel to the river.

² *Village of Grandville* has been cited more recently for the proposition that a statutory road dedication does indeed vest actual fee title in the county, albeit to be held in trust. *Village of Kalkaska v Shell Oil Co (After Remand)*, 433 Mich 348, 354 n 11; 446 NW2d 91 (1989); *Little v Hirschman*, 469 Mich 553, 557 n 4; 677 NW2d 319 (2004).

This is consistent with the definition of a “base fee” in Black’s Law Dictionary (8th ed). Black’s Law Dictionary treats “base fee” as a synonym for “fee simple determinable,” meaning either “[a]n estate that will automatically end and revert to the grantor if some specified event occurs” or “an estate in fee simple subject to a special limitation.” Black’s Law Dictionary (8th ed), p 649. So the definitions relied on by *Kirchen* and present in Black’s Law Dictionary both indicate that the actual estate held by the owner of a “statutory ‘base fee’” is indistinguishable from that of a fee simple other than the possibility of the estate terminating at some point.

Riparian rights attach to land that actually touches water, but “interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner.” *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). Because a base fee *is* a fee title, interposition thereof between a property owner’s lot and the edge of water will cut off the lot owner’s riparian rights.³

This Court has seemingly held to the contrary, but a careful reading of that precedent reveals that this Court actually reached no such contrary conclusion. In *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935), the plaintiffs claimed to own property between a road and Gull Lake. According to the plat map, the defendants’ lots were separated from the edge of the lake only by the road, and, as with the lots in the instant case, the property descriptions terminated at the road. The plat map showed no

³ Of course, the overriding consideration is always the intent of the plat proprietor, so if the lot is described as having riparian rights or touching the water, that is effectively a reservation of rights by the plat proprietor—specifically, a reservation of riparian rights for the lot. In the instant case, the lot descriptions in the plat very clearly did not extend to the water’s edge.

property between the road and the water. This Court concluded that in the absence of an expressed contrary intent, if a lot was bounded by a road that itself was not separated from the water by any land, the owners of that lot possessed riparian rights in the water across the road from the lot.

Superficially, this *appears* to create a bright-line rule, and, indeed, panels of the Court of Appeals believed that it did. See *McCardel v Smolen*, 71 Mich App 560, 564-565; 250 NW2d 496 (1976), and the cases cited therein. But the Court of Appeals did not analyze *Croucher*; it simply concluded that *Croucher* had settled the issue. However, the roadway under discussion in *Croucher* had been established by user and apparently had already been in existence before the plat was created, so it was a common-law road and therefore an easement, not a “base fee” road created pursuant to the plat act.⁴ *Croucher* distinguished an Illinois case in which the opposite result was reached because of a state law “by which the fee of the land under a dedicated street is held to be in the municipal corporation,” establishing that the abutting lot did *not* extend under the road. *Croucher*, 271 Mich at 344, citing *Illinois & Michigan Canal Bd of Trustees v Haven*, 11 Ill 554 (1850). *Croucher* observed that “[c]onfessedly that would not be true in the instant case.” *Croucher*, 271 Mich at 344. It is true in the case at bar.

This Court later explicitly clarified that the relevant inquiry is “whether the abutting landowner owns the fee in the way which separates his property from the water . . .” *Thies v Howland*, 424 Mich 282, 290; 380 NW2d 463 (1985). If the

⁴ This would have been the situation for most public ways that predate the first plat act. See *Baker v Johnston*, 21 Mich 319, 340 (1870).

roadway is an easement, the owners of land abutting it actually own the land under the easement in fee all the way to the water, so their property is riparian. In *Thies*, this Court explicitly held that the public way was an easement. *Id.* at 293. And in *Croucher*, it was clear from the context that the public way was an easement. So in both *Croucher* and *Thies*, the holdings that the property owners had riparian rights naturally resulted from the fact that no fee title interposed itself between the lots and the water.

It appears that in *McCardel* and the cases cited therein, the Court of Appeals simply assumed that *Croucher* had established a bright-line rule, when, in fact, it had not. It is undisputed that an easement is not fee ownership. And well-settled Michigan precedent establishes that a statutory “base fee” under the plat act *is* fee ownership.⁵ Therefore, absent a contrary intent expressed by the plat proprietor, a public road created under the plat act will cut off the riparian rights of abutting landowners. *McCardel* and its predecessors were incorrectly decided.

Nonetheless, I recognize that there are cases in which the soundest and most pragmatic application of stare decisis would have this Court decline to overrule incorrectly decided precedent. This Court should, after all, consider such issues as the practical workability of the rule, the extent of reliance thereon, whether chaos or other harm would ensue from overruling it, and whether a change in facts, jurisprudence, or perspective has altered the rule’s significance. See *Planned Parenthood of Southeastern Pennsylvania v Casey*, 505 US 833, 854-855; 112 S Ct 2791; 120 L Ed 2d 674 (1992).

⁵ In other words, as this Court has so often explained, when the Legislature used the word “fee,” the Legislature meant exactly what it said.

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Court rulings nix riparian rights for some

by Brooke Meier

September 09, 2009

A century of Michigan case law has ensured that those who own property on the opposite side of a platted roadway running parallel to a lake shoreline have the right to install docks, moor boats, swim and otherwise use the water situated across the street from their lots. If recent rulings by a pair of lower courts aren't overturned, the owners of those properties won't retain those riparian rights.

The Michigan Supreme Court is expected to be asked to reinstate the riparian rights of an estimated 10,000 Michigan property owners by reversing the controversial rulings. At press time, no appeal had been filed.

According to the Michigan Lake and Stream Associations (MLSA), Michigan courts have historically concluded that where a public road runs parallel to a lake and there is no significant intervening property between the road right-of-way and a shoreline, the "first tier" properties across the street are riparian properties. Both the Charlevoix County Circuit Court and Michigan Court of Appeals have reversed such findings in a case involving a dispute on Lake Charlevoix.

As a result, owners of first tier lots can no longer have exclusive rights to dockage, boat mooring and other riparian activities from the land across the street from their property. Because the first tier lots are no longer riparian properties under the recent lower court decisions, property assessments will have to be adjusted to reflect that the lots are no longer lakefront lots. That could cause a drastic change in tax revenues collected by municipalities and other taxing authorities.

If the case goes to the Supreme Court and the lower court rulings are upheld, county road commissions could legally remove any docks placed off plat-dedicated road rights-of-way along the water.

The plaintiffs in the case — the Baum Family Trust, among others — are owners of lots fronting Lake Charlevoix but separated from the water by Beach Drive, a plat-dedicated road for public use running parallel and immediately adjacent to the lake.

According to documents obtained from the Michigan Court of Appeals, the plaintiffs, over the years, used the lakefront property in front of their lots and built docks extending into the lake in order to moor boats and other water-related equipment.

The plaintiffs reportedly obtained permits from the U.S. Army Corps of Engineers to maintain their docks in front of their properties. The owners of other properties in the plat not fronting the water also began using the waterfront area across the street from the plaintiffs' homes.

The plaintiffs argued that the back lot owners' use of the water violated their riparian rights. According to court documents, some of the back lot owners were unable to obtain permits from the U.S. Army Corps of Engineers and, as a result, allegedly threatened to sue the plaintiffs for permission to maintain seasonal docks on the lakefront strips.

The plaintiffs filed a four-count complaint against the back lot owners, as well as the Charlevoix County Road Commission (CCRC) and Charlevoix Township. The complaint included claims of trespassing and nuisance, and sought injunctive and equitable relief.

In September 2007 the road commission counterclaimed, alleging the plaintiffs trespassed on the lakefront side of Beach Drive by maintaining encroachments on the drive, including docks, fencing, landscaping, rocks and rock walls, septic drain fields and a flag pole, among other intrusions.

This may be one of those cases in which the incorrect but, apparently, extensively relied-upon rule from *McCardel* and its predecessors should be allowed to stand. It may be so notwithstanding the fact that the abutting property owners may not have been taxed for riparian property and may reap a windfall at the expense of the public's right of access to the water, even though plain statutory language indicates that those landowners should have no such rights. However, under the circumstances, I decline to address that possibility.

I state only that the *McCardel* line of cases from the Court of Appeals and the majority today misread the precedent of this Court. I decline to address whether the misreading of *Croucher* should be upheld today, because I am of the view that it is not possible to draw reliable conclusions about what the law should be without first understanding what the law is and how it came to be that way. From the majority's conclusion that a "statutory 'base fee'" is not true fee ownership, I respectfully dissent.

Alton Thomas Davis
Michael F. Cavanagh
Diane M. Hathaway

The individually-named back lot owners also counterclaimed, stating a claim of adverse possession and seeking a declaration that they have easements to the lakefront either by acquiescence or by prescription.

Additional back lot owners were allowed to intervene and also counterclaimed, also alleging easements.

The plaintiffs moved for a partial summary disposition against the road commission alone, alleging there is no issue of material fact regarding which party is entitled to riparian rights.

"The plaintiffs argued that because their lots were separated from the water by a roadway contiguous to the water, that their lots were riparian," court documents state. "In plaintiffs' view, the CCRC has a right to the use of Beach Drive as a roadway only. In response, the CCRC argued that plaintiffs did not have riparian rights because the public holds Beach Drive in fee pursuant to the statutory dedication under the applicable plat act, which means that plaintiffs' lands are not riparian."

The township adopted the CCRC and back lot owners' arguments. In addition, the township argued that it could be defeated of Beach Drive only pursuant to the Land Division Act.

The circuit court denied the plaintiffs' motion and ruled that they didn't have any riparian rights because they don't hold fee title to the waterfront land in front of their respective lots. As a result, the plaintiffs appealed the circuit court decision to the state Court of Appeals which sided with the lower courts.

Cliff Bloom of the Law, Weathers and Richardson, P.C. law firm in Grand Rapids, an attorney who writes on legal issues important to riparians for the MLSA, said the case has the potential of turning a half-century or more of legal precedent on its head.

"The outcome of the case could have far-reaching consequence for thousands, if not tens of thousands of lakeside lots throughout Michigan," he said.

The platted roads in question are very common in Michigan, according to Bloom.

"Until June of this year there were no fewer than four published Court of Appeals decisions in similar cases that said the first tier lot owners are riparian," Bloom said. "Essentially the road right-of-way was like an easement and even though it didn't show it on the plat, the property for the first tier lots extended under the road right-of-way and into the lake. This has been the case law for a hundred years. Now we have this case up in Charlevoix that says no, based on the 1887 plat statute the first tier lot owners are not riparian and the local road commission owns the road. Magically thousands, if not tens of thousands of lake lots throughout Michigan are no longer riparian."

The change would cause first tier property values to plummet. In addition, first tier property owners would be required to remove their docks and boats, and county road commissions could start installing public docks, according to Bloom. While the Court of Appeals opinion stated first tier lot owners are not riparians, it never stated who is the riparian owner in such cases.

"This will make the road ends war look like child's play," Bloom said. "I bet you there isn't a county in this state that doesn't have dozens and dozens of these platted roads."

According to Bloom, if the Michigan Supreme Court refuses to hear the case, the case will be remanded back to the circuit court.

If the decision to deny riparian rights to first tier property owners is upheld, Bloom said he predicts there will be huge battles involving county road commissions allowing public docks to be installed. It would also result in a loss of tax revenue for municipalities.

Joel Wurster of Joel D. Wurster, PLC is the attorney representing the Charlevoix County Road Commission in the case.

"The decision is a very simple, straight-forward decision," he said. "The plat act in Michigan says if you dedicate property to the public it is a dedication in fee. The Michigan Supreme Court has also said that if somebody else has property between you and the lake in which they own the fee, then you aren't a riparian owner. We believe that the decision of the circuit court and Court of Appeals is consistent with that law."

The previous court decisions in the case only affect land adjacent to plat-dedicated roads, not all county-maintained roads.

Craig Bryson, spokesperson for the Road Commission for Oakland County (RCOC), said the agency has been monitoring the case, though not closely.

Bryson said he defines a plat-dedicated roadway as a road specified in a plat for subdivided land, such as a road in a subdivision or a main county road that abuts a subdivision.

"Any primary road that abuts a platted subdivision, like Elizabeth and Cass-Elizabeth roads (in Waterford Township) are examples if they abut a platted subdivision," Bryson said.

"We feel there are tens of thousands of lakefront residences in Michigan that could be negatively impacted by this case — including a lot in Oakland County," said Scott Brown, executive director of the MLSA.

"From what we understand now, the Charlevoix County Road Commission is going to make those riparians pull those docks, and the county is supposedly looking into renting dock space to the public on the very land that they've taken from the riparians in this case. This is very scary business."

Should the case be accepted by the Supreme Court, the MLSA and Michigan Waterfront Alliance will be filing an amicus curiae brief with the court in support of the first tier property owners.

STATE OF MICHIGAN
COURT OF APPEALS

2000 BAUM FAMILY TRUST, BAUM FAMILY TRUST, JOSEPH BEAUDOIN, SANDRA BEAUDOIN, ADELE MEGDALL REVOCABLE TRUST, PAUL NOWAK & JOAN NOWAK TRUST, MARILYN ORMSBEE, MARK SCHWARTZ, WENDY SCHWARTZ, and THOMAS THOMASON,

Plaintiffs/ Counter Defendants-Appellants,

v

WILLIAM BABEL, JUDY BABEL, JAMES CAHILL, GLORIA CAHILL, DANIEL ENGSTROM, PENNY ENGSTROM, ARTHUR A RANGER TRUST, PATRICIA L RANGER TRUST, and CHARLEVOIX COUNTY ROAD COMMISSION,

Defendants/ Counter Plaintiffs-Appellees,

and

AL GOOCH, ELIZABETH GOOCH, JESSE HALSTEAD, and LINDA HALSTEAD,

Intervening Defendants/ Counter Plaintiffs-Appellees,

and

CHARLEVOIX TOWNSHIP,

Defendant-Appellee.

FOR PUBLICATION
June 23, 2009
9:05 a.m.

No. 284547
Charlevoix Circuit Court
LC No. 07-061121-CH

Before: Fort Hood, P.J., and Cavanagh and K. F. Kelly

-1-

PER CURIAM.

This appeal involves a dispute over riparian rights on Lake Charlevoix, formerly known as Pine Lake. Plaintiffs are owners of lots fronting Lake Charlevoix, but separated from the water by Beach Drive, a road dedicated to the use of the public that runs parallel and immediately adjacent to the lake. The trial court denied plaintiffs' motion for partial summary disposition, ruling that plaintiffs' lots were not riparian because a statutory dedication vested a fee in the public thereby destroying plaintiffs' claim to riparian rights. Plaintiffs now appeal and we affirm.

I. Background and Procedural History

The property at issue is riparian land on the northern shore of Lake Charlevoix in Charlevoix County, Michigan. On July 15, 1911, the North Charlevoix Company, a Michigan corporation, executed a dedication of the plat of North Charlevoix, the subject riparian land. The plat includes 49 roughly rectangular enclosed numbered lots. The exact dimensions of each of these lots are included in the plat, as well as the inland coordinates. The plat also includes six named streets, including Western Avenue, Central Avenue, Park Avenue, Cottage Avenue, Lake Avenue, and Beach Drive. All of these streets run parallel to the lake except for Central Avenue, which cuts through the center of the plat and is perpendicular to the lake. While the plat shows a single dock extending into the lake at the road end of Central Avenue, there is no indication in the record whether this dock was ever built, or how, if it did exist, it was used. With respect to these roadways, the dedication includes the following language: "the streets and alleys as shown on said plat are hereby dedicated to the use of the public." Significantly, none of the platted lots touch the shoreline. Rather, Beach Drive, which runs east to west, abuts the shoreline and separates the eleven platted lots closest to the water, or the front tier lots, from Lake Charlevoix. In other words, these eleven lots extend to the edge of the road, not to the water's edge.

The Charlevoix County Board of Supervisors accepted the plat and the dedication of streets on August 7, 1911. There is no dispute that the public has continued to accept the dedication of the roadways, including Beach Drive. Today, the Charlevoix County Road Commission (CCRC) maintains Beach Drive, which is now paved. A recent aerial photograph not included in the lower court record, shows that Beach Drive does not actually touch the water's edge. Rather, it appears that a small strip of land and some trees have come into being between the water's edge and the roadway. In addition, multiple docks extend into the lake from Beach Drive.

The eight plaintiffs in this dispute all own front tier lots abutting Beach Drive. The legal descriptions of their properties do not extend to the lake's edge, nor is there a grant of riparian rights to these plaintiffs in their deeds of record.¹ The lots are taxed as "lake view" properties,

¹ The lower court record does not include plaintiffs' deeds. Rather, the CCRC below provided a description of each of plaintiffs' deeds. No reference to lot numbers was made in the (continued...)

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rather than lakefront properties. Nonetheless, over the years these plaintiffs have used the lake in front of their lots and, in some instances, have built docks extending into the lake in order to moor their boats and other water related equipment. According to plaintiffs, the Army Corps of Engineers issued each of them permits to maintain their docks in front of their properties.² Various other owners of properties in the plat not fronting the water, however, also allegedly began using the waterfront in front of plaintiffs' homes. According to plaintiffs, these back lot owners used the waterfront inconsistent with plaintiffs' riparian rights by installing their own docks or using a dock, and by docking and storing their boats and other water related equipment on the waterfront. Allegedly, some of these back lot owners were unable to obtain permits to maintain their docks from the Army Corps of Engineers and consequently threatened to sue plaintiffs for permission to maintain their seasonal docks.³

On March 20, 2007, as a result of this overcrowding, plaintiffs filed a four-count complaint against these back lot owners, as well as the CCRC, and Charlevoix Township alleging claims of trespass and nuisance and seeking injunctive and equitable relief. Subsequently, on September 9, 2007, the CCRC counterclaimed, alleging that plaintiffs had trespassed on Beach Drive by maintaining encroachments on the drive, including docks, fencing, landscaping, rocks and rock walls, septic drain fields, and a flagpole amongst various other intrusions. The individually named back lot defendants also counterclaimed, asserting a claim of adverse possession or alternatively seeking a declaration that they have easements, either by acquiescence or by prescription.

On October 4, 2007, additional back lot owners who use the lakefront moved to intervene in the action. The trial court granted the motion on October 25, 2007. On November 1, 2007, these intervenor defendants filed a counterclaim also alleging a claim of adverse possession or alternatively for a declaration that they have easements, either by acquiescence or by prescription.

On November 1, 2007, plaintiffs moved for partial summary disposition against the CCRC alone, alleging that there is no issue of material fact regarding which party is entitled to riparian rights. Plaintiffs argued that because their lots were separated from the water by a roadway contiguous to the water, that their lots were riparian. In plaintiffs' view, the CCRC has a right to the use of Beach Drive as a roadway only. In response, the CCRC argued that plaintiffs did not have riparian rights because the public holds Beach Drive in fee pursuant to the statutory dedication under the applicable plat act, which means that plaintiffs' lands are not riparian. The back lot defendants also filed a motion in response, arguing that plaintiffs did not have riparian rights because, as shown on the plat, none of their properties abut the lake. In its response, Charlevoix Township adopted both the arguments of the CCRC and the back lot

(...continued)

description. Plaintiffs never sought to introduce their deeds in the motion for summary disposition. However, in their brief on appeal, plaintiffs concede that there is no grant or express limitation of riparian rights in their deeds of record.

² There is no documentation in the lower court record reflecting these facts.

³ Again, there is no documentation in the lower court record reflecting these facts.

defendants. In addition, Charlevoix Township argued that the township could be defeated of Beach Drive only pursuant to the Land Division Act.

Subsequently, the trial court denied plaintiffs' motion, ruling that plaintiffs did not have any riparian rights. The trial court framed the issue as "whether Beach Drive is an easement with the fee title residing in the front lot owners or whether the public holds fee title." The court, relying on a Michigan property law treatise, found that the statutory dedication resulted in the "fee of this property [being] vested in the public." It followed, in the trial court's view, that because plaintiffs "do not hold fee title to the waterfront land in front of their respective lots, they do not possess riparian rights." The trial court cited a portion of *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1985), citing American Jurisprudence, in support of its determination. Subsequently, plaintiffs moved for reconsideration, but the trial court denied the motion. This interlocutory appeal followed.⁴

II. Standards of Review

We review de novo a trial court's determination on a motion for summary disposition. *Klein v Kik*, 264 Mich App 682, 684; 692 NW2d 854 (2005). In reviewing such a motion, we must review all the pleadings, admissions, and other admissible evidence presented below in the light most favorable to the non-moving party. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007). Summary disposition under MCR 2.116(C)(10) is properly granted if no genuine factual dispute exists and the moving party is entitled to judgment or partial judgment as a matter of law. *Klein, supra* at 685. Further, plaintiffs' claim to establish title as sole riparian owners, or to quiet title, is equitable in nature and is reviewed de novo by this Court. *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998). And, to the extent that we must address issues of statutory interpretation or other questions of law, our review is de novo. *Martin v Beldean*, 469 Mich 541, 546; 677 NW2d 312 (2004).

III. Applicable Law

At the outset, we note that the material facts of this matter do not appear to be in dispute. Rather, the main question presented on appeal is a question of law: Whether plaintiffs have riparian rights where their lots abut a roadway that runs contiguous to the lakeshore and which was created pursuant to a dedication in an approved plat. Plaintiffs argue that the trial court erred in finding that the dedication of Beach Drive to the public conveyed an absolute fee interest in the land on which the road is maintained. According to plaintiffs, the dedication merely transferred a limited fee for the sole purpose of maintaining the road, and had no effect on plaintiffs' riparian rights because the dedicatory language limited the public's interest in the alleys and streets to maintaining those roadways. We disagree. Because resolution of this dispute requires an understanding of several different aspects of Michigan property law, we first discuss these concepts before addressing plaintiffs' arguments.

⁴ This Court granted interlocutory leave to appeal on September 10, 2008. See *2000 Baum Family Trust v Babel*, unpublished order of the Court of Appeals, issued September 10, 2008 (Docket No. 284547).

A. Water Rights

Riparian rights⁵ are property rights. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 191; 521 NW2d 499 (1994). Land that includes, borders, or is bound by water is considered riparian land. *Dobie, supra* at 538. Generally, it is an "indispensable requisite" that riparian land actually touch the water. *Hilt v Weber*, 252 Mich 198, 218; 233 NW2d 159 (1930). Owners of such land enjoy certain exclusive rights. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). These rights include the right to the natural flow of the waters with "no burden or hindrance imposed by artificial means." *Peterman, supra* at 192 (citation and quotation marks omitted). The riparian owner also has the right to exclusive use of the bank and the shore, including the right to erect and maintain docks, as well as to permanently anchor their boats off the shore. *Id.*; *Thies, supra* at 288. Normally, "the interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner." *Hilt, supra* at 218.

B. Subdivision Plats and Dedicated Property

Development of real estate in Michigan is, in many instances, subject to mandatory statutory control under the Land Division Act (LDA) and its predecessor statutes. See MCL 560.101 *et seq.* Whenever a subdivision occurs it must be platted in accordance with the requirements of the LDA. The purpose of these requirements is to promote the orderly layout of lands and provide for proper ingress and egress to lots and parcels. *Tomecek v Bavas*, 276 Mich App 252, 260; 740 NW2d 323 (2007), *rev'd in part and vac'd in part on different grounds* 482 Mich 484 (2008). To meet this end, it is often necessary to establish public roadways or other areas for public use, which are accomplished through dedications recorded in the plat. "[A] dedication is 'an appropriation of land to some public use, accepted for such use by or in behalf of the public.'" *Minerva Partners, Ltd v First Passage, LLC*, 274 Mich App 207, 213; 731 NW2d 472 (2007) (citation omitted). Generally, a valid statutory dedication of land for a public purpose requires a recorded plat designating the areas for public use and acceptance by the proper public authority. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 112; 662 NW2d 387 (2003).

C. Plats and Water Rights

"Where land is disposed of by reference to an official plat, the boundary lines shown on the plat control." *Mumaugh v McCarley*, 219 Mich App 641, 649; 558 NW2d 433 (1996). And, it is also true, as we have already noted, that property bordering or bound by a waterway is riparian land. *Hilt, supra* at 218; *Dobie, supra* at 538. The inference to be drawn is that the boundary lines of lots in an approved subdivision plat must touch the water's edge in order for the lot to be riparian land. However, this is not always the case. In some instances, a platted lot may be riparian even though it does not touch the water's edge, but touches instead, the edge of a

⁵ Land bordering on a river is considered riparian, whereas land bordering on a lake is littoral. *Thies v Howland*, 424 Mich 282, 287-288, n 2; 380 NW2d 463 (1985). This opinion uses the term riparian rights interchangeably.

roadway, which, in turn, abuts the water's edge. See *Croucher v Wooster*, 271 Mich 337, 341-345; 260 NW 739 (1935) (intervening roadway); *Thies, supra* at 293 (intervening walkway); *Dobie, supra* at 540 (intervening park). Whether an owner of a lot that does not touch the water, but abuts a dedicated roadway that touches a shoreline, has riparian rights depends upon the effect of the dedication as "not all dedications of land result in a similar interest being passed to the public authority." *Minerva Partners, Ltd, supra* at 214; see also *Thies, supra* at 290. As this Court explained in *Minerva Partners, Ltd, supra* at 214:

The nature of the real property interest passing from the grantor to the government unit depends on the method of dedication. *Kalkaska v Shell Oil Co (After Remand)*, 433 Mich 348, 354 n 11; 446 NW2d 91 (1989). "The effect of a dedication under the statute has been to vest the fee in the county, in trust for the municipality intended to be benefited, whereas, at common law, the act of dedication created only an easement in the public." *Id.*, quoting *Village of Grandville v Jenison*, 84 Mich 54, 65; 47 NW 600 (1890). [(Emphasis added); see also *Thies, supra* at 290 (acknowledging this same general rule).]

i. Common Law Dedications

If the dedication is created at common law, then the front lot owners have riparian rights. This is because a common law dedication merely creates an easement, meaning that the grantor retains fee title to the land abutting the shore and parts with the property's use only. *People ex rel Dir of Dep't of Conservation v La Duc*, 329 Mich 716, 719; 46 NW2d 442 (1951); *Minerva Partners, Ltd, supra* at 215 ("Easements do not carry title to the land over which they are exercised and do not dispossess the landowner of its property."). A common law dedication occurs where there is:

(1) an intent by the owners of the property to offer it to the public for use; (2) [an] acceptance of this offer by the public officials and maintenance of the alley, street or highway by the public officials;[and] (3) . . . use by the public generally. [*Bain v Fry*, 352 Mich 299, 305; 89 NW2d 485 (1958).]

Significantly, there is no requirement that the dedication be recorded in a plat. "Neither a grant nor written words are necessary to render the act of dedicating land to public uses effectual at common law; intent to dedicate can be gathered from the circumstances [alone]." *De Witt v Roscommon Co Rd Comm'n*, 45 Mich App 579, 581; 207 NW2d 209 (1973). In the absence of a formal grant or written words, the facts and circumstances must unequivocally show that the dedication was intended. *Littell v Knorr*, 24 Mich App 446, 452; 180 NW2d 446 (1970).

ii. Statutory Dedications

Conversely, and as already noted, if the dedication is statutory, then under the statute, the public owns the fee. *Thies, supra* at 290; *Minerva Partners Ltd, supra* at 214. A statutory dedication is accomplished where two elements are met: there is (1) "a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use, and [(2)] acceptance by the proper public authority." *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm'n*, 236 Mich App 546, 554; 600

NW2d 698 (1999). In determining intent, the courts are to look to language used in the dedication, as well as the surrounding circumstances. *Thies*, *supra* at 293.

For example, in *Thies*, the recorded plat's dedication stated, "that the Driveways, Walks and Alleys shown on said plat are hereby dedicated to the joint use of all the owners of the plat." *Id.* at 286. At issue was a walkway recorded on the plat that abutted Gun Lake and separated the front lot owners from the shoreline. *Id.* Our Supreme Court framed the issue as whether the dedicatory language was intended to grant a fee in the walkway to all subdivision owners or whether it merely granted them an easement along the lakeshore. *Id.* at 293. After reviewing the dedicatory language used, the fact that the front lot landowners used the land as their own, that no walk ever existed, and that no evidence was presented showing that back lot owners paid any consideration for riparian access, the Court affirmed the trial court's finding that the platters did not intend to create a fee vested in the public and that the back lot owners had no riparian rights. *Id.* at 293-294 and n 8. The Court stated that "[t]he phrase 'joint use' does not ordinarily denote the passing of a fee interest in land." *Id.* at 293. Consequently, the back lot owners merely had an easement and the front lot owners retained their riparian rights. *Id.* With this result in mind, the import of *Thies* is this: Although a dedication may appear to meet the requirements of a statutory dedication, as it appears to in *Thies*, it does not necessarily follow that a fee title interest is vested in the public; rather, the pertinent inquiry is whether the platters intended a fee to vest in the public, i.e., what is the dedication's effect.⁶ The effect of the dedication in *Thies* was synonymous with the effect of a common law dedication.

IV. The Plat Act of 1887

Turning to plaintiffs' arguments on appeal, plaintiffs posit that the 1887 plat act creates a "base fee" as opposed to a fee simple or fee simple absolute, as the trial court found. While we agree that the statute does not create a fee simple absolute, we see no need to reach the question of whether the statute creates a "base fee," as that term is defined in a legal sense, because, as we will explain, the language of the statute is clear and unambiguous.⁷ Further, we also disagree with plaintiffs' characterization of the trial court's opinion. Nothing in the opinion and order indicates that the trial court interpreted the 1887 plat act as granting the public fee simple absolute ownership of the dedicated areas.

The North Charlevoix plat was recorded in 1911 and, accordingly, the subdivision is controlled by the plat act in effect at the time, 1887 PA 309. That provision provides, in relevant part:

⁶ Often times, where a statutory dedication fails it creates a common law dedication, *De Flyer v Bd of Co Road Comm'rs*, 374 Mich 397, 402; 132 NW2d 92 (1965). The result is the creation of an easement.

⁷ Plaintiffs do not define base fee in their brief on appeal. The Black's Law Dictionary (8th ed) defines base fee as "A fee that has some qualification connected to it and that terminates whenever the qualification terminates." Base fees include determinable fees, conditional fees, fees simple subject to a condition subsequent, as well as other types of limited fees. *Id.*

The map so made and recorded in compliance with the provisions of this act shall be deemed a sufficient conveyance to vest the fee of such parcels of land as may be therein designated for public uses in the city or village within the incorporate limits of which the land platted is included, or if not included within the limits of any incorporate city or village, then in the township within the limits of which it is included in trust to and for the uses and purposes therein designated, and for no other use or purpose whatsoever. [Emphasis added.]

Today, when land is platted, the LDA controls. It contains substantially similar language, and provides in relevant part:

(1) When a plat is certified, signed, acknowledged and recorded as prescribed in this act, every dedication, gift or grant to the public or any person, society or corporation marked or noted as such on the plat shall be deemed sufficient conveyance to vest the fee simple of all parcels of land so marked and noted, and shall be considered a general warranty against the donors, their heirs and assigns to the donees for their use for the purposes therein expressed and no other.

(2) The land intended for the streets, alleys, commons, parks or other public uses as designated on the plat shall be held by the municipality in which the plat is situated in trust to and for such uses and purposes. [MCL 560.253 (emphasis added).]

When interpreting a statute, this Court must discern and give effect to the Legislature's intent. *Oneida Twp v City of Grand Ledge*, 282 Mich App 435, 442; ___ NW2d ___ (2009). The first step in determining intent is to look to the language used. *Tyson Foods, Inc v Dep't of Treasury*, 276 Mich App 678, 684; 741 NW2d 579 (2007). It is presumed that the Legislature intended the meaning it plainly expressed. *City of Warren v Detroit*, 261 Mich App 165, 169; 680 NW2d 57 (2004). If the language is plain and unambiguous, then this Court must apply the statute as written, and judicial construction is neither necessary nor permitted. *Keifer v Markley*, ___ Mich App ___; ___ NW2d ___ (2009); *Oneida Twp*, *supra* at 442. The Court may consult dictionary definitions in order to discern the plain meaning. *Alvan Motor Freight, Inc v Dep't of Treasury*, 281 Mich App 35, 43; 761 NW2d 269 (2008); MCL 8.3a. Only if a provision is ambiguous, meaning reasonable minds could differ as to the provision's interpretation, is judicial construction permitted. *Tyson Foods, Inc*, *supra* at 684.

Here, the language of the 1887 plat act is plain and unambiguous. The provision vests a "fee" for public uses in the city, village, or township "in trust to and for the uses and purposes therein designated, and for no other use or purpose whatsoever." In our opinion, there is no ambiguity here. A conveyance under this provision grants fee title in the public limited to the uses and purposes designated in the plat. A fee is defined as "an inheritable interest in land" and denotes an interest that is "the broadest property interest allowed by law . . ." See Black's Law Dictionary (8th ed). Obviously, however, in the context of the statute, the term "fee" does not indicate a fee interest that is indefinite or infinite in duration, as in a fee simple absolute. Rather, the provision contains language that explicitly limits the public's ownership interest to the "uses and purposes" designated in the plat, and for "no other use or purpose whatsoever." Given this plain language, it is clear that the Legislature did not intend to give the public title in the nature of private and absolute ownership, but it did intend to give fee title for a use and purpose as

designated in the plat by the plattors.

Consistent with this interpretation, the Michigan Supreme Court has regularly interpreted various plat acts, containing substantially similar language, as conveying only nominal title that is not coterminous with the rights of a proprietor owning lands in fee simple absolute. See *Wayne Co v Miller*, 31 Mich 447, 448-449 (1875) (“[The] purpose [of the plat act] was to vest in the county such a title as would enable the public authorities to devote the lands to all the public uses contemplated in making the plan”); *Bay Co v Bradley*, 39 Mich 163, 166 (1878) (“[The applicable plat act] vests [the public] with nominal title”); *Backus v Detroit*, 49 Mich 110, 115; 13 NW 380 (1882) (“The purpose of the statute is not to give the county the usual rights of a proprietor, but to preclude questions which might arise respecting the public uses . . . to which the land might be devoted.”). More recently, the Supreme Court construed the language in the LDA to mean that the public becomes fee simple owners of the dedicated lands, but only for the qualified purpose stated in the dedication and not for any other purpose. *Martin*, *supra* at 549 n 19.

Accordingly, we conclude that the 1887 plat act vests in the public a fee title interest limited to the uses and purposes stated in the dedication.

V. The Dedication's Language

Plaintiffs next argue that the dedication of the roadways had no effect on their riparian rights. In plaintiffs' view, even if the public has fee title to Beach Drive, that title does not sever their riparian rights because the dedication is only for maintaining the alleys and streets of the plat. We cannot agree.

At the outset, we note that the parties do not dispute that the dedication is statutory and we see no reason to disagree. The dedication in the North Charlevoix Plat states: “the streets and alleys as shown on said plat are hereby dedicated to the use of the public.” This language unequivocally states a clear intention to dedicate the areas delineated as streets and alleys to the public's use. *Beulah Hoagland Appleton Qualified Personal Residence Trust*, *supra* at 554. Accordingly, and assuming without deciding that the dedication has been accepted as the matter is not at issue, we conclude that the North Charlevoix plat created a statutory dedication vesting fee title of the streets and alleys depicted on the plat in the public consistent with the 1887 plat act.

Having concluded that the public holds fee title to the dedicated alleys and streets in the North Charlevoix plat pursuant to a statutory dedication, the next question becomes whether plaintiffs have riparian rights, i.e., whether the plattors intended to reserve riparian rights in the general public or in the front lot owners alone. We could conclude, as the trial court did, that because the public holds fee title in Beach Drive pursuant to a statutory dedication, that the public's intervening fee title cuts off plaintiffs' riparian rights. However, it is our opinion that the trial court's analysis concluded prematurely. Whether plaintiffs have riparian rights turns on the nature and scope of the fee interest arising out of the title transferred by the dedicatory language in the plat consistent with the 1887 plat act, i.e., the plat act only transfers fee title inasmuch as the plattors intended to do so by the words of their dedication. Thus, we must look to the language of the dedication with the goal of effectuating the plattors' intent. See *Tomecek v Bavas*, 482 Mich 484, 490-491; 759 NW2d 178 (2008).

Here, and as already noted, the dedication stated, “the streets and alleys as shown on said plat are hereby dedicated to the use of the public.” When discerning the intent of the plattors, we look to the express language used in the dedication in connection with the surrounding facts and circumstances. *Thies*, *supra* at 293; *Dobie*, *supra* at 540. In doing so, we view the plat as a whole, harmonizing, if possible, all the language as to make it meaningful. Cf. *City of Huntington Woods v Detroit*, 279 Mich App 603, 620; 761 NW2d 127 (2008). If the language is clear and unambiguous from the four corners of the plat, it must be given effect. See *Jacobs v Lyon Twp*, 444 Mich 914, 920-921; 512 NW2d 834 (1994) (LEVIN, J, dissenting); see also cf. *Minerva Partners, Ltd*, *supra* at 216.

In the present matter, the dedicatory language is unambiguous. It is clear that all the depicted streets and alleys are for the public's “use.” Use is defined as “to employ for some purpose; to put into service.” *Random House Webster's College Dictionary* (1997). Public is defined as “the people constituting a community, state, or nation.” *Random House Webster's College Dictionary* (1997). The language of the dedication in no way limits what type of use may occur on the depicted streets or alleys or whom may use it. Rather, the streets and alleys, which include Beach Drive, are dedicated “to the use of the public,” which includes by definition use of riparian rights. Significantly, the plattors did not dedicate these areas to just the lot owners of the subdivision or to any other limited community, like in *Thies*, but to the general public. Equally significant is that nothing in the depiction of the plat itself functions to cloud the clear intent of the language. It is plain on the face of the plat that plaintiffs' properties do not extend to the water's edge. Rather, each front-lot property is a rectangular-shaped and numbered lot, the northern and southern boundaries of which run parallel to one another, and the dimensions of which are included. The northern boundaries of each these lots abuts Beach Drive, not Lake Charlevoix. Further, Beach Drive runs all the way to the water's edge, indicating that the plattors intended the public, including all lot owners, to have access to Lake Charlevoix. This depiction does not support the position that plaintiffs have riparian rights, but rather is entirely consistent with the stated purpose of the dedication. In addition, plaintiffs' properties are not taxed as riparian properties, but as properties with a view. Nothing in the record demonstrates that plaintiffs paid any consideration for the enjoyment of riparian rights and plaintiffs concede that their deeds do not convey them such rights. And, although plaintiffs have set-up and maintained docks on the shoreline as if they owned the portions of waterfront in front of their properties, this fact alone considered in light of the dedication's clear language and other surrounding circumstances does not serve to vest riparian rights in plaintiffs. Accordingly, given the language of the dedication, the depiction of the plat, as well as the surrounding circumstances, we conclude that plaintiffs do not have riparian rights.

There is no merit to plaintiffs' contrary argument that the alleys and streets must be used for the limited purpose of maintaining streets and alleys. Plaintiffs' interpretation of the dedicatory language reads a limited usage into the dedication that does not exist. In construing language, this Court will not inject additional requirements not included by the drafters. See *People v Zujko*, 282 Mich App 520, 523; ___ NW2d ___ (2009). Further, if we were to adopt plaintiffs' interpretation of the dedication, it would fail to have an effect consistent with its meaning, and as a result the dedication would be rendered nugatory. We decline to adopt such an interpretation. *Apsey v Memorial Hosp*, 477 Mich 120, 131; 730 NW2d 695 (2007).

VI. Conclusion

Our decision makes clear that a statutory dedication under the 1887 plat act vests a fee title interest in the public limited to the uses and purposes delineated by the plattors. After reviewing the language of the statutory dedication in this matter, we have concluded that the plattors did not intend to vest any riparian rights in plaintiffs' properties. This inquiry has required a two-tier analysis: First, whether a valid statutory dedication was created under the 1887 plat act and, second, if so, what type of fee interest has been vested in the public. This latter inquiry requires an interpretation of the plattors' intent. Conversely, had the dedication been one at common law, then it would merely have created an easement in Beach Drive, and plaintiffs would retain riparian rights to Lake Charlevoix. *People ex rel Dir of Dep't of Conservation, supra* at 719.

Here, the trial court's analysis concluded prematurely. It ruled that the plat created a statutory dedication thereby creating a fee interest that cut-off plaintiffs' riparian rights. This will not always be the case. It is easy to imagine scenarios where a statutory dedication creates a fee interest that is somehow limited by the language of the dedication. The trial court's failure to specifically analyze the language of the dedication constitutes legal error, albeit harmless error. We will not reverse a trial court's decision if the right result was reached, even if for the wrong reason. *Coates v Bastian Brothers, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007). In the instant matter, because the language of the statutory dedication indicates an intent to grant to the public an unlimited use in fee of the alleys and roadways, we conclude that plaintiffs have no riparian rights by way of the dedication.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly



Department of Community Development

TO: Zoning Board of Appeals
FROM: Jeffrey M. Erickson, Director of Community Development
SUBJECT: Lakeside Boundary Lines - City Attorney Legal Opinions (Confidential Correspondence)

DATE: October 25, 2010

INFORMATION/

UPDATE: During the October 11, 2010 Zoning Board of Appeals meeting, Board member Rhodus requested additional information from the City Attorney regarding the manner in which the city determines lakeside boundary lines. Given the discussion there appeared to be a consensus by the Board that the information would be helpful.

Staff has researched the matter and discussed the material with the City Attorney. Attached for each Zoning Board of Appeals member are the several opinions from the City Attorney regarding lakeside boundary lines. Please be advised that the correspondence has been conveyed by the Office of the City Attorney and treated as **Confidential Attorney/Client Correspondence** and are provided for Zoning Board of Appeals member information and review only.

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March 8, 2004

COPY

Mr. Jeffery Erickson, Director
Community Development
City of Portage
7900 S. Westnedge Ave.
Portage, MI 49002

Re: Lakeside Boundaries for Sunny Heights and Baulieria's Cove Plats

Dear Jeff:

You have asked for my opinion in regard to the status of the land area between a line established by the legal description of a plat and the water's edge for lake front lots located in the above-referenced plats. The description of both plats does not state that property is owned to the water's edge, nor does the plat dedicate the property between the lakeside plat boundary and the water's edge to the public or for the use of owner's lots within the plat.

Under these circumstances, I agree with John Kneas' prior opinions that the owners of lake front lots are presumed to own the property to the water's edge. The rear lot line, being defined as the lot line on the lake side of the property by the Portage Code of Ordinances, would be the water's edge.

If you should have any questions or concerns in this regard, do not hesitate to contact me.

Very truly yours,

Charles R. Bear
Attorney at Law

CRB/jat

cc: Mr. Michael L. Stampfler
Ms. Vicki Georgeau
Mr. Michael J. Clark

**KNEAS
& BROWN, PLC**
ATTORNEYS AND COUNSELORS AT LAW

JOHN W. KNEAS
RANDALL L. BROWN

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COMMUNITY DEVELOPMENT
December 13, 2000

1125 EAST MILHAM ROAD • SUITE 3
PORTAGE, MICHIGAN 49002-3013

TELEPHONE (616) 323-8812
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VIA FACSIMILE
ORIGINAL FORWARDED U. S. FIRST-CLASS MAIL

Confidential Attorney/
Client Correspondence

Mr. Jeffery M. Erickson
Director, Department of Community Development
City of Portage
7900 S. Westnedge Avenue
Portage, Michigan 49002

Re: Lakeside Boundary Lines

Dear Jeff:

In accordance with my letter of November 29, 2000, I met with Pete Eldridge and reviewed the legal descriptions for plats which do not run to the shoreline or waters edge of the lake abutting those plats. A compilation of all plats bordering lakes in the City was done some time ago when these issues were previously discussed. This list is a good starting point for review. However, to update the list and for guidance in addressing the lakeside property line issues the following points are made:

- **Plats marked "none":** Of the 36 plats listed on the current list, 10 fit into this category. Two additional plats, not previously listed, should be added and both fall within this category. Highland View #1 and Ramona Acres #1 are separate plats from Highland View and Ramona Acres.¹ Of these 12 plats, it appears 10 were created prior to the Plat Act of 1929, six of them being a supervisor's plat. Although supervisor's plats were not covered under the Subdivision Control Act or current Land Division Act, one overriding theme in development of plats is that a specific intent to dedicate an area within the plat for public use or use by all lot owners in the plat is required. Given this principle rule of construction, none of the plats in this category specifically dedicated the area shown between the shoreline and the boundary line of the lot as a private beach walk, promenade or other dedicated use. While most of these plats have a narrow walk, designated as such that ran periodically between some lots in the plat, this alone does not establish the area between the lot line and shorelines as intended for public use.²

¹Therefore, it may be necessary to review the entire list to make sure other plats were not inadvertently overlooked.

²Whether these walkways are still in use raises another question. Should any of the lot owners raise a question with side yard set backs, a previous case involving Oakland Beach plat

- **Plats with a dedicated beach walk:** Three plats have a specific dedicated beach walk for use either by the public or by the lot owners within the plat. Burr's West Lake Resort, Gilbert Matteson Plat and Pleasant Oaks Plat were the only ones found with this type of dedication.³ Under these circumstances, a lakeside lot line is the one depicted on the plat. If a lot owner in any of these three plats argues that the beach walk was abandoned, the lot owner should provide your department with a recorded instrument. I am aware this can happen since I have reviewed an older plat on Gull Lake with a dedicated promenade, but which was abandoned when all the lot owners within the plat signed an instrument to that effect and thus the promenade reverted to the individual lot owners.

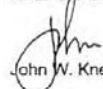
- **Plats along shoreline/to water's edge:** As noted in previous opinions, the lakeside lots in these plats will run to the shoreline of the lakes which they abut. The starting point to calculate the setback for the lakeside yard may follow the standards noted in the next paragraph.

Your files reflect court orders from either the 1920's or 1930's which established the normal lake level for Austin Lake and Long Lake at 856 feet. (The procedure for establishing the normal lake level is controlled by statute and noted in my opinion of May 11, 1998.) However, if a particular lot owner asserts that the rear yard is larger than the City calculates, that lot owner should provide the supporting documents; i.e., deed, plat/deed restrictions, court orders, previous resolutions by the City (or as a Township) that indicate an abandonment of any of the walkways, drives or alleys, or the lakeside property line is at a different lake level elevation.

If you have any further questions, do not hesitate to call.

Sincerely,

KNEAS & BROWN


John W. Kneas

JWK/ slj
cc: Michael L. Stampfer
Peter Eldridge
Randall Brown

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resulted in a determination that the 4-foot walkway by lot 1 belonged to owners of lot 1. *Harmeyer v. City of Portage, et al.* File No. 89C-3112 Kalamazoo County Circuit Court.

³These three plats, nevertheless, ran to the shoreline.

Attachment to Dec 13, 2000 opinion Sheet 1

Plat Name	Lake	Zoning	Section	Plat Year	Legal Description	Walkways	Beach, Driveway, Access and Alley Dedication	Private
Burr's West Lake Park	West	R-1B	25, 26	1927	Along shoreline		x	
Austin Grove	Austin	R-1A	35	1925	Subsequent four lot	x	x	
Burr's Beach	Austin	R-1A	26	1928	None	x	x	
Hammer's Cove	Long	R-1B	34	1923	None		x	
Burr's West Lake Resort	West	R-1A	27	1949	Along shoreline	Private (Beachwalk)	x	
Circle Lake Park	West/Austin	R-1A	36	1937	None		x	
East Side Park	Austin	R-1A	25	1933	Along shoreline		x	
Palmerston	West	R-1B	22	1958	To Water and Beyond		x	
Gilbert Matteson	Austin	R-1A	25	1927	Along shoreline	Public Walks and Private (Beachwalk)	x	
Goodrich Lake Resort	Goodrich	R-1A	31	1934	Along shoreline		x	
Goodrich Terrace	Goodrich	R-1B	34	1950	Along shoreline		x	
Greenway Apartments	Hampton	RM-1	19	Ongoing	Extends into lake		Private	
Highland View	Austin	R-1A	24	1928	None	x	x	
Hillman's Flat	West	R-1A	20	1920	Along shoreline		x	
James W. Scott	West	R-1A	22	1917	Along shoreline		x	
Kentler Acres	Goodrich	R-1A	34	1947	All land to water's edge		x	Private Drives
Marionette Park	West	R-1A	22, 27	1917	Along shoreline		x	
McCamley Beach	Austin	R-1A	26	1930	None		x	
McCamley Manor	Austin	R-1B	26	1960	Along shoreline		x	
Shawley's West Lake Park	West	R-1A	22, 23, 26	1934	Along shoreline		x	
Oakland Beach	Austin	R-1A	36	1923	None	x	x	
Pleasant Oaks	Austin	R-1A	25	1928	Along shoreline	x (includes Beach Walk)	x	Private Drives (Later Dedicated in city)
Pleasant View Beach	West	R-1A	27	1921	None	Private (Walkway)	x	
Samson Park	Long	R-1A	24	1951	Along shoreline		x	
Sidle Plat	West	R-1A	22	1937	Along shoreline		x	
Sherris N Dale Shores	Austin	R-1B	35	1958	To Waterline		x	
Sugar Island Estates	Sugar Loaf	R-1C	NA	NA	Schoolcraft Township		x	
Summer Home Park	Long	R-1A/R-1B	25	1914	Along shoreline		x	
Sunny Heights	Austin	R-1A	36	1925	None	x	x	
Sunset View	Austin	R-1A	27	1956	Intermediate Traverse Line	Orange Easement	x	
Twilight View	Austin	R-1A			To Water's Edge (Egg)		x	
West Lake Beach	West	R-1A	27	1925	None	x	x	
Wheatfield Shores	Goodrich	R-1A	34	1939	Along shoreline		Some Private Drives	
Wine Acres	Austin	R-1A/R-1B	35	1925	None		x	
Woodcraft Plat	Austin	R-1A	23	1958	Along shoreline Intermediate Traverse		x	
Woody Knoll	Austin	R-1B	35	1981	Line		x	

Highland View #1 - some
Ramonson Acres #1 - some

Page 1

**KNEAS
& BROWN, PLC**

ATTORNEYS AND COUNSELORS AT LAW

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RANDALL L. BROWN

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November 29, 2000

**VIA FACSIMILE
ORIGINAL FORWARDED U. S. FIRST-CLASS MAIL**

**Confidential Attorney/
Client Correspondence**

Mr. Jeffrey M. Erickson
Director, Department of Community Development
City of Portage
7900 S. Westnedge Avenue
Portage, Michigan 49002

**Re: Property Boundaries at 3028 East Shore Drive
Supervisors Plat of Highland View**

Dear Jeff:

I have reviewed the issue raised in your letter of November 27, 2000 for purposes of identification of the lakeside (rear) property lines for Lots 15 through 17 of Supervisors Plat of Highland View (3028 East Shore Drive). The description of the plat does not make any reference as running to the water's edge or along the shoreline of Austin Lake, and the dedication does not specifically indicate that the area between the lots and shoreline is reserved for a beach, promenade, or other use by the public. The lack of a specific dedication provides the owners of 3028 East Shore Drive with the presumption and, therefore, a strong argument to support the position that the lots along Austin Lake in Highland View Plat include the area between the boundary line of each lot in the plat and the shore line.

Since these questions periodically arise (e.g., my letters of April 11, 2000 and April 13, 2000 concerning other plats), I have arranged to meet with Pete Eldridge on December 7, 2000 to review all the plats which abut any of the lakes within the City limits and to develop a "master" letter as a reference for your department in answering future questions of this nature.

If you have any further questions, do not hesitate to call.

Sincerely,

KNEAS & BROWN



John W. Kneas

JWK/slj

cc: Michael L. Stampfer
Peter Eldridge

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4-11-00 TUE 5:02 PM KNEAS & BROWN

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FAX NO. 6163230055 P. 2

**KNEAS
& BROWN**

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April 11, 2000

**VIA FACSIMILE
ORIGINAL FORWARDED U. S. FIRST-CLASS MAIL**

**Confidential Attorney/
Client Correspondence**

Mr. Jeffrey M. Erickson
Director, Department of Community Development
City of Portage
7900 S. Westnedge Avenue
Portage, Michigan 49002

Re: Property Boundaries at 9105 Austin Drive, Dixie-Mac Plat

Dear Jeff:

I have reviewed the issue raised in your letter of March 1, 2000 for purposes of determining the rear yard set back for Lot 79 and a portion of Lot 78 of Dixie-Mac Plat (9105 Austin Drive). Although the description and dedication do not contain the "magic" language to describe the parcel as running to the water's edge or along the shoreline of Austin Lake, or make reference to an intermediate traverse line, there is also no specific dedication for public use of the area between the lots and shoreline. The lack of a specific dedication provides the owners of 9105 Austin Drive with the presumption and, therefore, a strong argument to support the position that the lots along Austin Lake in Dixie-Mac Plat include the area between the boundary line of each lot in the plat and the shore line. This is consistent with my opinions of November 3, 1995 and May 11, 1998, copies of which are enclosed for your convenience.

If you have any further questions, do not hesitate to call.

Sincerely,

KNEAS & BROWN



John W. Kneas

JWK/slj

cc: Michael L. Stampfer
Peter C. Eldridge
Randall Brown

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May 11, 1998

**Confidential Attorney/
Client Correspondence**

Zoning Board of Appeals
City of Portage
7900 S. Westnedge Avenue
Portage, Michigan 49002

Re: **Legal Descriptions/Parcels Abutting Water**

Dear ZBA Members:

I have reviewed the question raised by Jim Pearson regarding the application of the setback regulations for parcels abutting lakes. To assist the board in reviewing this opinion, the following definitions are noted:

1. **Accretion:** An addition to realty through the gradual and imperceptible accumulation of land by natural causes.
2. **Erosion:** The cutting away of a shore.
3. **Reliction:** The withdrawal of water from the shoreline.
4. **Meander Line:** The traverse line for a boundary along the shore line of a lake parcel connecting to the side boundaries of the parcel. (Not a boundary line)
5. **Water Mark:** A mark indicating the highest point to which water rises (high water mark), or the lowest point to which it sinks (low water mark).
6. **Normal Level:** The level of water of an inland lake that provides the most benefit to the public.....A normal level shall be measured and described as an elevation based on national geodetic vertical datum.

For purposes of this opinion, the legal descriptions most commonly reviewed fall into two categories. First, parcels which describe the lake side boundary as running along the shore line or are part of a plat, the dedication for which gives rise to a conclusion that each lake side parcel was to run to the water's edge; and, second, parcels which describe the lake side boundary over a set course and direction (assuming there is no reference to the water's edge or shore line), or are part of a plat, the dedication for which shows the area along the shore line is intended to be used by all lot owners in the plat (e.g. promenade or beach). In the first instance, a parcel was created with the presumption that the owner of the land intended to transfer riparian rights as well as the shore land; therefore, the owner technically owns to the center of the lake. (If there is an express reservation in the deed, the presumption may be overcome). In the second instance, a parcel does not generally include riparian rights; therefore, the owner owns no more than the area contained within the legal description.

Having identified lake lots into two categories, the next component of the analysis involves changes in the size of the parcels due to changes in the levels of the lake or other natural phenomenon. A parcel will increase or decrease in size by either accretion (gradual deposit of soil/sediment) or reliction (the lowering of the lake level). Conversely, if the land is gradually washed away by erosion, the parcel is reduced in size. The water marks for a lake have little bearing on the question at hand, since they primarily provide a historical perspective of how the lake has changed - either by rising or lowering over a set period of time. The meander line is not a boundary line or the line denoting the average between the high and low water marks. Rather, the meander line is statutorily mandated for surveyors and is primarily intended to mathematically confirm the survey and area involved (for plats, this line is depicted by a dashed versus a solid line). Normal lake levels may be determined under the provisions of MCL §324.30307 et seq. However, given the responsibility for this determination lies with the County Board of Commissioners, this approach is not practical. (The Board may request the petitioners, a minimum of 2/3 of the lake owners, to pay the lesser of the cost of the preliminary study or \$10,000.00). The parcels under the first category are much more likely to be affected by the above than the second category.

To determine the setback requirements for these parcels, the City's zoning code does not per se address the effects of accretion, reliction or erosion. The only benchmark in the ordinance (other than the schedule of regulations) which applies, is the definition of the rear lot line under 1240.08(53)(B). For parcels in category two, the regulations and this definition will generally suffice; for parcels in category one, the exact location of the rear lot line (shore line boundary) may change because of accretion, reliction or erosion. Since these changes by definition are usually very gradual, any problem in determining the necessary setback is minimal. The meander line in this instance, when viewed in conjunction with the definition of the rear lot line, will provide guidance in determining if the setback requirements are satisfied. Thus, the first approach is to review the legal

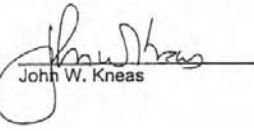
description for the parcel, and if a lot within a plat, the dedication for the plat, in order to determine if the boundary line is at the water's edge or at some other point.

After you have had the opportunity to review this opinion, I would be happy to answer any of your questions.

Sincerely,

KNEAS & BROWN

By:


John W. Kneas

JWK/ekk
cc: Michael L. Stampfer
Jeffrey M. Erickson
Randall L. Brown

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**KNEAS
& BROWN**

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November 3, 1995

Mr. Jeffrey Erickson, Director
Department of Community Development
City of Portage
7900 S. Westnedge Avenue
Portage, MI 49002

Re: Lake Property - Lakeside Property Lines

Dear Jeff:

This letter will address the question raised by a recent variance request regarding how to identify lakeside property lines in order to assist your department in determining issues of lot coverage, setback requirements, and the like. As your letter and attachments reveal, a meander line, while not a boundary line, is of some significance since these meander lines regarding bodies of water are noted in many government surveys. The importance of government surveys is apparent since they form the basis for all property descriptions in Michigan. Thus, albeit rare, there is the potential that a question may arise requiring a review of the government survey in order to clarify a lakeside property line. Otherwise, as a guide to assist your department when a question arises, each lakeside lot in Portage should fit within one of the three categories set forth below.

1. *Lots established through subdivision control.* MCLA 560.125 establishes the survey requirements for final plat approval and includes:

All lot corners shall be monumented in the field by iron or steel bars or iron pipes at least 18 inches long and one-half inch in diameter, or other approved marker.

However, for a lakeside lot in a plat, the common practice for surveyors is to establish a shoreline traverse line as representative of the property line closest to the lake rather than setting the iron monuments at the shoreline to represent true boundary line. This traverse line has in the past been interpreted as the property line when these issues have arisen. Consequently, since the Subdivision Control Act requires any plat to include all land to the water's edge, a review of the plat is necessary to ascertain if the area between the traverse line and the shoreline is, in fact, part of each lot or was reserved for the use of the entire plat or affected by some other limitation. Presumptively, each lake lot runs to the lake; therefore, the previous approach in considering the traverse line does not apply. If the plat document is silent as to this area, the presumption must be followed. Only if there is a clear dedication that this

Mr. Jeffrey Erickson
November 3, 1995
Page -2-

area is intended for use by other owners in the plat does this traverse line represent the actual property line.

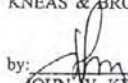
2. *Assessor's plat.* MCLA 560.201-.213 establishes what steps are necessary in order to create an assessor's plat. Because of the Subdivision Control Act and corresponding City ordinances, any new plats which abut inland lakes will fall into the first category and not this category. However, since the lot which raised this issue was one in an assessor's plat, it is necessary to review the documents under which the plat was established to ascertain if the lakeside lots were intended to run to the shoreline or, as often is depicted, set back from the shoreline. The area between the shoreline and the lakeside property line is often reserved for the common use of lot owners within the plat. Designations such as a promenade, beach, walkway or park signal that the proprietor of the plat has dedicated the use of this shoreline area beyond the individual lot owners. (Plats developed under the old Plat Act fit into this category and not the first category.)

3. *Unplatted lots - metes and bounds.* This third category, I suspect, involves a minimum number of lakeside lots in Portage. However, it warrants mentioning since the general rule that the owner of land which borders an inland lake has title to the middle of the lake has its origins from ownership of the lands in the United States and thereafter traced through the chain of title. If the issue arises for a lot which fits into this category, the key element throughout the chain of title is whether the property was conveyed in a legal description which includes a reference to property running along the shore of a particular lake. If the most recent legal description of the lot does not reveal a boundary as running along the shoreline of the lake, then before it is presumed that the lot line does not run to the shoreline boundary, the chain of title should be reviewed. This review may include the government survey, if a question about the lakeside property line remains. The importance of a government survey is that it may control any further discrepancies.

The underlying point raised in this opinion, regardless into which category a lot may fall, is the potential need to review other documents than just the lot for which the question arises. If there are any additional questions or if I can be of further assistance, do not hesitate to call.

Very truly yours,

KNEAS & BROWN

by: 
JOHN W. KNEAS
Assistant City Attorney

JWK/sb
cc: Michael Stampfler
c2:portageinlines95-40



Department of Community Development

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – June 11, 2018

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Schau at 7:00 p.m. in the Council Chambers. Seven people were in the audience.

MEMBERS PRESENT: John Byrnes, Alexander Philipp, Jay Eichstaedt, Jeff Wettig (alt), Natalie Rowe, Randall Schau, Linda Finch, Linda Fry, Stu Bernhardt (alt)

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator and Charlie Bear, Assistant City Attorney.

MEMBERS EXCUSED: None.

APPROVAL OF THE MINUTES: Byrnes moved and Fry seconded a motion to approve the May 14, 2018 minutes as submitted. Upon voice vote, the motion was approved 7-0.

OLD BUSINESS:

ZBA #17-24: 3070 West Centre Avenue: Eichstaedt and Schau stated they had a conflict of interest and both adjourned from chambers during this item. Mais responded to the Board's earlier request for more information and provided copies of the applicable section of Code as it was written prior to the 1989 amendment that listed jewelry stores expressly as a permitted in B-1 district. Mais also stated the Board has not previously considered a similar request and, therefore, no precedent to report. Mais concluded jewelry stores have always been permitted as a retail use in business districts, not personal service establishments. Consequently, no jewelry stores are located in an OS-1 zone in the City.

The public hearing was reopened. Diane Morrison and Rob Peterson were present to speak. Ms. Morrison stated they have looked exhaustively at other locations, but this location was the only thus far to meet their needs. The applicant explained the nature of their business is changing and an increasing amount of their time and resources have been directed towards providing consulting, repairs, and other services that they feel falls more along the lines of being a 'personal service establishment' rather than a retail store. Attorney Bear reminded the Board they should narrowly interpret the language of the Code and in rendering a decision, should consider how the Code has been applied historically by city staff. Bear stated the Board may not make a decision that has the effect of rewriting the Code. Rob Peterson stated if there was concern about creating a precedent he thought the Board could make an interpretation that this specific business is a personal service establishment and any other jewelry store would have to make their own argument that they are a personal service establishment.

Following additional discussion, a motion was made by Phillip, seconded by Byrnes, to deny a favorable interpretation that a jewelry store is a permitted use in an OS-1 zone as a sales and personal service establishment. Upon roll call vote: Byrnes-Yes, Rowe-No, Phillip-Yes, Finch-Yes, Bernhardt-Yes, Wettig-No, Fry-No. Motion passed 4-3.

NEW BUSINESS:

ZBA #17-31: 1321 Lakeview Drive: Mais summarized the request for a 45 square-foot variance to erect a 64-square-foot covered front porch that would result in a total lot coverage of 1,980 square feet where a maximum 1,935 square feet is permitted. The builder, Mike Burke, was present to answer questions. Schau noted it was possible to build a very small 19 square-foot covered porch. Mr. Burke agreed it was possible but no builder wants to do the job. Mr. Burke stated one of the reasons for creating the 64 square-foot covered porch was to provide adequate space to accommodate a wheelchair. Eichstaedt inquired if the porch would be ADA compliant. Mr. Burke responded yes.

A public hearing was opened. No one spoke for or against the request. The public hearing was closed.

TO: Zoning Board of Appeals **DATE:** June 1, 2018
FROM: Christopher Horn, Acting Director of Community Development
SUBJECT: ZBA #17-31, Michael Burk, 1321 Lakeview Drive; R-1A, One Family Residential.

CODE SECTION: 42-350 Schedule of Regulations; p. CD42:84.

APPEAL: Requesting a 45 square-foot variance to erect a 64 square-foot covered front porch that would result in a total lot coverage of 1,980 square feet where a maximum 1,935 square feet is permitted.

STAFF RECOMMENDATION: The applicant is requesting the variances per the enclosed application, and related materials. The subject lakefront property is improved with a 1,120 square-foot dwelling with a 224 square foot covered porch located in the north (lakeside yard) and 330 square-foot detached garage with an attached 242 square-foot carport constructed in 1950. The property is zoned R-1A, one family residential and is in a residential neighborhood.

The subject lot is substandard with regard to lot width and area and measures 44 feet wide by 165 feet deep. An additional 480 square feet of riparian area is available, thereby allowing a maximum 1,935 square feet of lot coverage. The combined square footage of the house, covered porch, and garage/carport result in a current lot coverage of 1,916 square feet. The proposed 64 square-foot porch would exceed the maximum permitted lot coverage by 45 square feet. A variance is therefore requested.

Although a conforming alternative is available that involves construction of a smaller covered porch (e.g. 6-foot by 4-foot) using roof supports attached to the wall instead of the ground (this design does not count towards lot coverage), this alternative presents some design challenges and aesthetic issues. Additionally, the proposed covered porch is an open air structure and, as a result, visual impacts on adjacent properties would be minimal, if any. If the Board finds a practical difficulty, the variance may be authorized.

PRACTICAL DIFFICULTY: None noted by staff. Applicant cites substandard lot.

T:\COMMENTS\2017-2018 Departmental Files\Board Files\ZBA\17-31, 1321 Lakeview Drive 06-01-18 ZBA 17-31 Lakeview 1321 (staff)pgs.docx

After a brief discussion, a motion was made by Rowe, seconded by Finch, to grant a variance to erect a 64-square-foot covered front porch that would result in a total lot coverage of 1,980 square feet where a maximum 1,935 square feet is permitted, for the following reasons: there are exceptional or extraordinary circumstances applying to the property that do not generally apply to other properties in the zoning district which include the substandard lot width; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to access one's home safely, which is similar to that possessed by other properties in the same zoning district and in the vicinity; the immediate practical difficulty causing the need for the variance was not created by the applicant; will not be detrimental to adjacent property and will not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Wettig-Yes, Byrnes-Yes, Philipp-Yes, Finch-Yes, Schau-Yes, Eichstaedt-Yes, Bernhardt-Yes. The motion passed 7-0.

ZBA #17-: 10028 Harris Drive: Mais summarized the request to retain a nonconforming shed in the rear lakeside yard that is: a) 1.5 feet from the side (north) property line where a minimum 10 feet is required and b) 128 square-feet where a maximum 80 square feet is permitted. Schau requested clarification how the structure's legal nonconforming status had been affected. Mais stated Section 42-133(D) states that if a nonconforming structure is moved it must be moved to a conforming location, and also states that if a portion of a nonconforming structure is removed or modified, it results in the loss of that structure's legal nonconforming status. Because the shed had been both moved and modified by the applicant the structure could no longer be considered legal nonconforming and a variance was needed for it to remain.

The applicant, James Brayton, stated their property had been damaged by a storm some time ago and they lost several trees. Last year they attempted to improve the lakeside yard by installing approximately \$15,000 worth of landscaping and moved the shed to accommodate those improvements, not realizing the minimum setback distance. Later, after being advised by the building official the shed had been enlarged, he thought it would be a good idea to correct that situation and reduce the shed to its original dimensions. Mr. Brayton stated the neighbors did not object to the shed and the only people complaining about were the builders on the adjacent property.

A public hearing was opened. A letter from the owner of 10036 Harris Drive stating no objection to the request was read into the record. Jessica Garcia, 10024 Harris Drive, said they did not object to the shed and if they had to move the shed, their landscaping would need to be modified. The public hearing was closed.

Eichstaedt inquired if the applicant received any estimates to move the shed. Mais summarized Section 42-622(B)(1)(b) regarding the possibility that compliance with the code may prove to be more expensive cannot be considered by the Board. Schau stated it was clear that the need for the variance was a result of the applicant's own actions. A motion was made by Schau, seconded by Phillip, to deny the request to retain a nonconforming shed in the rear lakeside yard that is: a) 1.5 feet from the (north) side property line and b) 128 square-feet where a maximum 80 square feet is permitted for the following reasons; there are no exceptional or extraordinary circumstances or conditions applying to the property that do not generally apply to other properties in the same zoning district; the variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the vicinity because there are conforming alternative locations; the immediate practical difficulty causing the need for the variance was created by the applicant; and the variance would materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Wettig-Yes, Byrnes-Yes, Philipp-Yes, Finch-Yes, Schau-Yes, Eichstaedt-Yes, Bernhardt-Yes. The motion passed 7-0.



Department of Community Development

TO: Zoning Board of Appeals **DATE:** March 31, 2017
FROM: Vicki Georgeau, Director of Community Development
SUBJECT: ZBA #16-17, Jelene Van Dyk, 1725 Lakeview Drive; R-1A, One Family Residential
CODE SECTION: 42-350, Schedule of Regulations; p. CD42:84.

APPEAL: Requesting variances to replace a nonconforming 80 square-foot accessory structure located a) six feet from the (south) front property line where a minimum 27-foot front yard setback is required; b) six inches from the (east) side property line where a minimum five-foot setback is required; and c) exceeds the maximum permitted 25% lot coverage by 42 square feet.

STAFF RECOMMENDATION: The applicant is requesting the variances per the enclosed application, plot plan and letter of explanation. The substandard lake front lot is 49 feet wide by 132 feet deep (plus an additional 644 square feet of riparian area) and is zoned R-1A, one family residential. The property is improved with a nonconforming 1,404 square-foot dwelling (with no basement) and 336 square-foot attached garage constructed in 1944. The dwelling is nonconforming as it is approximately three feet from the (west) side property line. The property is adjacent to single family residences to the east and west and undeveloped residential property across the street to the south. To the north is West Lake.

Based on aerial photographs, a nonconforming 80 square-foot metal shed was placed in the front yard at some point between 1974 and 1981 (no permit is on file). The shed is nonconforming because it is located five feet eight inches from the (south) front property line and six inches from the (east) side property line. In addition, the 80 square-foot shed exceeds the maximum permitted 25% lot coverage by 42 square feet. The shed is used for storing yard equipment, bicycles, and other items, but is showing signs of age and the applicant proposes to replace the shed with one of the same dimensions in the same location. Variances are therefore requested.

Concerning requests a) and b) it is noted conforming alternatives are available. The proposed shed could be placed in a conforming location in the rear (lakeside) yard, however, the applicant and both adjacent neighbors have expressed opposition to placing a shed in the lakeside yard, as it would interfere with their view of the lake. Another alternative is applicant may expand the garage to provide additional storage space. Because conforming alternatives are available, staff does not recommend variances a) and b). However, with regard to request c) the lack of basement and one stall garage area can be considered a practical difficulty. Staff can recommend the Board grant variance c) permitting an 80 square-foot shed in a conforming lake side location that exceeds the permitted lot coverage by 42 square feet.

PRACTICAL DIFFICULTY: Concerning a) and b) applicant notes viewshed obstructed in conforming location; concerning c) lack of storage space. See suggested motion form.

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – April 10, 2017

The City of Portage Zoning Board of Appeals meeting was called to order by Vice Chair Schau at 7:00 p.m. in the Council Chambers. Six people were in the audience.

MEMBERS PRESENT: John Byrnes, Alexander Philipp, Jay Eichstaedt, Randall Schau, Scott Chu, Veronica Demaio, Natalie Rowe.

MEMBERS EXCUSED: Lowell Seyburn

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator and Charlie Bear, Assistant City Attorney.

APPROVAL OF THE MINUTES: Byrnes moved and Eichstaedt seconded a motion to approve the March 13, 2017 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #16-18, Jeff Kraft, 813 Lakeview Drive: Mais summarized the request for a height variance to construct a 616 square-foot detached garage up to 19 feet in height where the maximum permitted accessory building height is 14 feet. Mr. Kraft was present to answer questions. Schau inquired what would be located in the lower level of the garage. Mr. Kraft responded storage area. In response to an inquiry from Byrnes, Mais clarified how building height is calculated using average grade on all four sides to the mid-roof.

The public hearing was opened. Dave Vandyk, 1725 Lakeview Drive, spoke in support. A letter of support from Barry and Jen Williams, 821 Lakeview Drive was read into the record. The public hearing was closed.

Demaio inquired if the proposed garage would be the same height as the garage on the neighboring property to the west. Mr. Kraft stated it would be very close. A motion was made by Eichstaedt, seconded by Rowe, to grant a variance construct a 616 square-foot detached garage up to 19 feet in height where the maximum permitted accessory building height is 14 feet for the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district which include the topography; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to construct a detached accessory building; the immediate practical difficulty causing the need for the variance was not created by the applicant; the variance will not be detrimental to adjacent property; and the variance will not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing be incorporated into the record of this hearing and that action of the Board be final and effective immediately. Upon roll call vote: Byrnes-Yes, Philipp-Yes, Schau-Yes, Chu-Yes, Rowe-Yes, Eichstaedt-Yes, Demaio-Yes. The motion passed 7-0.

ZBA #16-19, Adrienne Wiltzer, 6000 Oakland Drive: Mais summarized the request for a variance to allow an additional freestanding sign near the southwest corner of the intersection of Oakland Drive and West Milham Avenue, where one sign per vehicular entrance is permitted. Ms. Wiltzer was present to answer questions. Demaio requested clarification of who owned the current signs on the zoning lot. Mais explained the history of the zoning lot's development and that currently Milham Meadows Apartments had a sign at each of the vehicular entrances and owned both the land and the signs. The sign currently near the southwest corner of West Milham and Oakland Drive with Oakland Drive Apartments name on it (now Mallard Cove Apartments) is a real estate sign, not a freestanding identification sign. Ms. Wiltzer confirmed they are willing to remove the real estate sign if the variance is approved.

A public hearing was opened. A letter from Elizabeth Edgerton, on behalf of Zhang Financial, 5931 Oakland Drive, was read into the record. Ms. Edgerton stated they did not object to a new sign being erected so long as it was understood the sign would be replacing the existing real estate sign and met all other code requirements. The public hearing was closed.



Department of Community Development

TO: Zoning Board of Appeals **DATE:** April 29, 2016
FROM: Vicki Georgeau, Director of Community Development
SUBJECT: ZBA #15-25, Kathleen Kline, 4622 Deep Point Drive; R-1A, One Family Residential.
CODE SECTION: 42-350 Schedule of Regulations; p. CD42:84.

APPEAL: Requesting variances to: a) construct a second story addition above the existing garage located two feet from the front (west) property line where a 25-foot front setback is required; b) retain the existing dwelling and attached garage that have 26% lot coverage where a maximum 25% is permitted; and c) construct a 10-foot by 7-foot master bathroom addition that will result in 27% lot coverage where a maximum 25% lot coverage is permitted.

STAFF RECOMMENDATION: The applicant is requesting the variances per the enclosed application, survey, floor plan, plot plan, and related materials. The 40-foot wide by 80-foot deep lakeside lot (3,200 square feet) has an additional 2,780 square feet of 'riparian area,' is zoned R-1A, one-family residential, and is improved with a nonconforming 981 square-foot dwelling constructed in 1925, a (non-permitted) 75 square-foot metal garden shed, and a nonconforming 573 square-foot attached garage constructed in 1992. The property is adjacent to single family residences to the north and south and to a 62 acre agricultural property, zoned R-1B, one family residential, across the street to the west.

As background for the Board, a variance was granted to a previous owner in 1992 (ZBA #92-02) permitting construction of the existing attached garage seven feet from the front property line. This measurement was apparently based upon a sewer as-built drawing and previous owner's site sketch. The current owner recently had a boundary survey conducted, which found the property is not as deep as originally represented to the Board in 1992. Consequently, the garage was constructed approximately two feet from the front (west) property line, and also less riparian area is available to count towards total lot size. The house, attached garage and shed total 1,630 square feet and represent a 27% lot coverage.

Concerning request a) the applicant proposes to construct additional living space and a laundry room above the existing garage to accommodate an aging parent. The proposed addition will not alter the footprint of the dwelling, but because it adds additional usable living space (vertically) within the required front setback, a variance is necessary. Compliance with the code is generally encouraged, however, in this instance there are no apparent conforming options available. The dwelling is nonconforming in size and cannot be expanded in the manner proposed without further exceeding the maximum lot cover. Additionally, the builder indicates a second story addition above the house is not feasible due to structural limitations. There are exceptional circumstances applying to the property

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which do not apply generally to other properties within the zoning district which include the narrow lot width and substandard lot area. The immediate practical difficulty was not caused by the applicant. The front setback is not out of character with the area, and aligns with several other dwellings and/or garages in the immediate vicinity. Finally, construction of the proposed addition on the street side, as opposed to the lake side, should minimize impacts on adjacent property and the surrounding neighborhood, and the variance will not materially impair the intent and purpose of the Zoning Ordinance. For the reasons noted above the variance can be recommended.

Concerning request b), the existing lot coverage has existed in its current state for the past 24 years with no reported complaints. The applicant purchased the property earlier this year in its current condition, and the practical difficulty causing the need for the variance was not created by the applicant. In addition, the applicant has agreed to remove the 75 square-foot shed, which will reduce the lot coverage to 26%. The lot's substandard dimensions are an exceptional circumstance, the variance will not be detrimental to adjacent property and the surrounding neighborhood, and will not materially impair the intent and purpose of the Zoning Ordinance. For these reasons the variance can be recommended with the condition that the shed be removed.

With regard to request c), the applicant's desire to have a third bathroom is acknowledged, but this desire does not in itself constitute a practical difficulty. The applicant has not demonstrated why a third bathroom is the minimum necessary to reasonably use the property. The lot coverage already exceeds the maximum allowed, and, therefore staff does not recommend the variance.

PRACTICAL

DIFFICULTY: Size and shape of substandard lot. See suggested motion form.

44 spaces are required, and depending on the parking requirements of any future change of use, it was possible another variance may be needed.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

A motion was made by Philipp, seconded by Eichstaedt, to grant a variance from the parking requirements to provide 23 off-street parking spaces where a minimum of 44 spaces is required for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district which include the unique business operational characteristics and parking demand with similar stores; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to develop property with reasonable off-street parking; the immediate practical difficulty causing the need for the variance was not caused by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Eichstaedt-Yes, Bright-Yes, Byrnes-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-25: Kathleen Kline, 4622 Deep Point Drive: Mais summarized the variance requests to: a) construct a second story addition above the existing garage located two feet from the front (west) property line where a 25-foot front setback is required; b) retain the existing dwelling and attached garage that have 26% lot coverage where a maximum 25% is permitted; and c) construct a 10-foot by 7-foot master bathroom addition that will result in 27% lot coverage where a maximum 25% lot coverage is permitted. Ms. Kline stated she mostly agreed with the staff report but stated variance c) was due to an occupant's medical condition requiring access to the bathroom from the bedroom very quickly. A letter to this effect from Dr. Petra Toutanji was read into the record.

A public hearing was opened. No one spoke for or against the request and the public hearing was then closed.

A motion was made by Eichstaedt, seconded by Phillip, to grant variances to: a) construct a second story addition above the existing garage located two feet from the front (west) property line where a 25-foot front setback is required; b) retain the existing dwelling and attached garage that have 26% lot coverage where a maximum 25% is permitted; and c) construct a 10-foot by 7-foot master bathroom addition that will result in 27% lot coverage where a maximum 25% lot coverage is permitted, conditioned upon removal of the 75 square-foot shed, for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district which include size and shape of the substandard lot; the variance is necessary for the preservation of a substantial property right, the right to develop the property in manner similar to other properties in the vicinity; the immediate practical difficulty causing the need for the variance was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and action of the Board be final and effective immediately. Upon roll call vote: Philipp-yes, Learned-yes, Eichstaedt-Yes, Bright-Yes, Byrnes-yes, Schau-yes, Schaefer-Yes. The motion passed 7-0.



Department of Community Development

TO: Zoning Board of Appeals

FROM: Jeffrey M. Erickson, Director of Community Development

DATE: December 1, 2000

SUBJECT: ZBA #00-19; Donald and Margaret Garthe, 1123 Lakeview Drive, R-1A, One-Family Residential.

CODE SECTION: 1278.01 Schedule of Regulations, p. 99.
1280.01 Accessory Buildings and Uses, p. 106A

APPEAL: Requesting:

- a) A 487 square foot variance from the 25 percent maximum lot coverage with structures requirement to allow 32 percent of the lot to be covered with structures;
- b) A 3-foot variance from required 5-foot side yard setback and a 19-foot variance from the required 27-foot front yard setback, to retain a 200 square foot carport constructed without a permit in the southeast corner of the lot;
- c) A 3-foot variance from required 5-foot side yard setback and a 20-foot variance from the required 27-foot front yard setback, to retain a 240 square foot carport constructed without a permit in the southwest corner of the lot;
- d) A 9-foot variance from the required 10-foot separation distance between structures from the 200 square foot carport in the southeast corner of the lot to the shed;
- e) A 4-foot variance from the required 10-foot separation distance between structures from the attached garage, to retain an 80 square foot storage shed constructed without a permit;
- f) A variance of 16 square feet from the requirement that the total square footage of all accessory buildings cannot exceed the groundfloor living space of the dwelling.

STAFF RECOMMENDATION: The applicant requests the above-referenced variances per the enclosed application, site sketch, and letter of explanation. The property averages 45 feet in width and 160 feet in depth, and is improved with an 1128 square foot dwelling with a 624 square foot attached garage. A 200 square foot carport and a 240 square foot carport are located along the frontage of the property along with an 80 square foot shed. A building permit was recently applied for, however, the structures do not comply with several requirements of the ordinance.

The applicant has indicated that the wooden shed located next to the carport replaced a metal shed constructed in 1975. The 200 square foot east carport was constructed in 1994 and the 240 square foot west carport was constructed in 1998 without permits. The applicant has indicated he was not aware permits were required for carports at the time each was installed. The applicant is seeking to retain both carports and the shed.

In regard to request c), staff recommends approval because the shed appears to be a legally nonconforming structure. In regard to the all other requests, staff cannot recommend granting these variances as the lot contains an adequate attached garage for parking/storage, and structures located in close proximity to the public right-of-way are uncharacteristic, incompatible, and an aesthetic detraction within the neighborhood. The carports should be promptly removed from the property. If so, the setback and separation violations would then be resolved. The lot coverage would be reduced from 32 percent to approximately 25 (25.67) percent.

**PRACTICAL DIFFICULTY/
UNNECESSARY HARDSHIP:** None noted

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this residence and no application has been filed for the rezoning yet this year. Seeber inquired as to the existing screening. Mr. Schley indicated to the south there is a wood fence and to the east fairly developed landscaping. Stoffer inquired if additional screening would be required in the future for additional development. Staff explained that if the rezoning were to be approved the site plan review process would have to be repeated by Mr. Sharma before commercial improvements could be made to 122 Boston Avenue, which would again trigger the screening requirements.

A public hearing was opened. No one was present to speak for or against the request. One letter was read into record from Leo Stevenson of 225 East VanHoesen Avenue, not supporting the request. The public hearing was closed.

A motion was made by Pearson, seconded by Flora, to grant a variance from the required six-foot high opaque screening and from the tree planting requirements within the 10-foot greenstrip along the east property line. Condition upon removal of the dwelling and garage within six months and installation of screening per city code if existing fence and natural vegetation are removed. Practical difficulty/unnecessary hardship being that opaque screening currently exists and the imminent rezoning is consistent with the master plan. Upon roll call vote motion passed 6-0.

2. ZBA #00-19; Donald and Margaret Garthe, 1123 Lakeview Drive. Donald Garthe was present to explain the request for:

- a) A 487 square foot variance from the 25 percent maximum lot coverage with structures requirement to allow 32 percent of the lot to be covered with structures;
- b) A 3 foot variance from required 5-foot side yard setback and a 19-foot variance from the required 27-foot front yard setback, to retain a 200 square foot carport constructed without a permit in the southeast corner of the lot;
- c) A 3 foot variance from required 5-foot side yard setback and a 20-foot variance from the required 27-foot front yard setback, to retain a 240 square foot carport constructed without a permit in the southwest corner of the lot;
- d) A 9-foot variance from the required 10-foot separation distance between structures from the 200 square foot carport in the southeast corner of the lot to the shed;
- e) A 4-foot variance from the required 10-foot separation distance between structures from the attached garage, to retain an 80 square foot storage shed constructed without a permit;
- f) A variance of 16 square feet from the requirement that the total square footage of all accessory buildings cannot exceed the ground floor living space of the dwelling.

Seeber inquired about the unique circumstance. Mr. Garthe explained the lot is very small and narrow. Yonke inquired as to what was in the attached garage. Mr. Garthe explained that this was his hobby shop. Pearson inquired as to the definition of a structure. Staff responded that a structure is defined by having location on the ground with roof and/or walls. Seeber inquired of staff as to the need to require a firewall. Staff responded that there is most likely already a firewall between the house and attached garage.

A public hearing was opened. Gordon Newman, 1128 Lakeview Drive; Jay Hartgerink, 1121 Lakeview Drive; Mike Granchi, 1103 Lakeview Drive; and Harry Semenczuk, 1205 Lakeview Drive spoke in favor of the request. A petition was also submitted signed by the following residents supporting the request: Melissa J. Johns, 1210 Lakeview Drive; Grant and Jane Johnson, 1225 Lakeview Drive; Sharon Jones, 1209 Lakeview Drive; Bob McKinney, 1107 South Shore Drive; Mike Granchi, 1103 Lakeview Drive; Dolores Sigler, 1230 South Shore Drive; Dave Harvey, 1111 Lakeview Drive; Will Grindall, 1124 Lakeview Drive, Jay and Ruth Hartgerink; Mr. and Mrs. Hugh Hall; Rick VanKlaverin, 1127 Lakeview Drive; and Harry J. Semenczuk. The public hearing was closed.

A motion was made by Pearson, seconded by Seeber, to grant e) a 4-foot variance from the required 10-foot separation distance between structures from the attached garage, to retain an 80 square foot storage shed constructed without a permit. Conditioned upon installation of a firewall in the garage if one does not already exist. The practical difficulty/unnecessary hardship being moving the shed would block the entrance to the garage. Upon roll call vote: Yonke-no, Pearson-yes, Seeber-yes, Schimmel-yes, Flora-yes, and Stoffer-no. Motion passed 4-2.

A motion was made by Pearson, seconded by Yonke, to deny a), b), c), d), and f) due to lack of practical difficulty/unnecessary hardship. Motion to deny passed 6-0.

3. ZBA #00-21; Susan L. Morrow, 410 Burrwood Avenue. Susan Morrow and Jim Piechocki were present to explain the request for a variance from one of the home occupation requirements to permit a home occupation to be located in a detached garage rather than the principal dwelling. Seeber inquired if any modifications would be made to the garage to accommodate the home occupation. Ms. Morrow indicated that no modification were necessary. Seeber inquired as to the hardship. Ms. Morrow indicated the entrance to the basement is at the back of the house, which is a long way from the driveway. Pearson inquired as to how large the ice machine was. Mr. Piechocki indicated it is approximately four by five feet. Stoffer expressed concern about setting precedent by allowing a home occupation in a detached garage.

A public hearing was opened. No one was present to speak for or against the request. Two letters were read into record requesting denial of the variance: Richard Wibur, 324 Burrwood Avenue and Roy Girard, 325 Burrwood Avenue.

A motion was made by Yonke, seconded by Pearson, to deny a variance from one of the home occupation requirements to permit a home occupation to be located in a detached garage rather than the principal dwelling, due to lack of practical difficulty/hardship and conforming alternatives exist. Upon roll call vote, motion to deny passed 6-0.

4. ZBA #00-22; Norm Collins, 8538 Shaver Road. Larry Gephart from Lillich Sign Co., was present to explain the request for a variance to change the sign face of an existing nonconforming freestanding nonaccessory sign. Staff explained that the replacement sign proposed would be the same size as the existing sign face.



Department of Community Development

TO: Zoning Board of Appeals

FROM: Jeffrey M. Erickson, Director of Community Development *[Signature]*

DATE: July 1, 1999

SUBJECT: ZBA #98-63; William J. Eichelberg Builders Inc. on behalf of Elizabeth Simonds, 3380 East Shore Drive; R1-A One Family Residential District.

CODE SECTION: 1278.01, Schedule of Regulations, p. 99.

APPEAL: Requesting a variance to allow 26% lot coverage where the Zoning Code establishes a 25% maximum lot coverage, in order to construct a 1186 square foot dwelling and a 400 square foot garage.

STAFF RECOMMENDATION: The applicant is requesting the variance per the enclosed application, letter of request and site sketch. The subject property is approximately 44 feet in width and 139 feet in depth. The lot area is 6116 square feet and is substandard with regard to lot area and lot width for the R1-A district. The lot is vacant and was previously joined with 3408 East Shore Drive. A legal opinion issued on April 22, 1998 found the five foot walkway easement between the lots constituted non-continuous frontage, therefore each lot was considered a substandard buildable lot.

The proposed dwelling and attached garage for this substandard buildable lot exceeds the maximum 25% lot coverage by 1% (57 square feet). The applicant is requesting the variance due to the substandard size of the lot. The applicant will receive a reduction in the side and rear yard setback due to the substandard size of the lot. While conforming alternatives exist to conform to the lot coverage requirements such as a smaller dwelling or a two-story dwelling, the area is not considered significant and the minimal variance can be recommended.

PRACTICAL DIFFICULTY/ UNNECESSARY HARDSHIP: Substandard lot width and area noted by applicant.

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the intended storage of the facility and plat restrictions for enclosed storage, by the plat restrictions do not permit expanding the parcel to 2 acres. Upon roll call vote motion passed 7-0.

5. ZBA #98-63; William J. Eichelberg Builders Inc., on behalf of Elizabeth Simonds, 3380 East Shore Drive. William Eichelberg was present to explain the request for a variance to allow 26% total coverage where the Zoning Code establishes a 25% maximum lot coverage, in order to construct a 1186 square foot dwelling and a 400 square foot garage. Mr. Eichelberg inquired of staff regarding where the property line on the lake side is calculated from. Staff and Mr. Kneas indicated time was needed to consult the plat map. A five minute recessed was called. Roxanne Seeber concluded the recess. Mr. Kneas referenced the plat map and said the language was not specific enough to make a determination without further research. The applicant stated he would like to move forward with the variance request. Roxanne Seeber inquired as to the hardship. Mr. Eichelberg cited the substandard lot width and area. Bruce Frandsen inquired as to what is going to be in the lower level of the dwelling. Mr. Eichelberg responded it would be unfinished at this point in time, possibly a future walkout.

A public hearing was opened. No one was present to speak for or against the request. One written message of support was read into record from Mr. and Mrs. VanGorp at 3326 East Shore Drive. The public hearing was closed.

A motion was made by Richard Yonke, seconded by Clyde Flora, to grant a variance to allow 26% of coverage where the Zoning Code establishes a 25% maximum lot coverage, in order to construct a 1186 square foot dwelling and a 400 square foot garage. This variance request is based on the lot size (44 foot by 139 foot) referenced in this request. The practical difficulty/unnecessary hardship being the substandard lot width and area. Upon roll call vote motion passed 7-0.

OTHER BUSINESS:

None

STATEMENT OF CITIZENS:

None

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 8:52 PM.

Respectfully submitted,

Peter C. Eldridge

Peter C. Eldridge
Zoning & Codes Administrator

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Department of Community Development

TO: Zoning Board of Appeals

FROM: Jeffrey M. Erickson, Director of Community Development

DATE: June 4, 1999

SUBJECT: ZBA #98-55; Terry and Karen Smith, 9809 Woodlawn Drive; R1-A One Family Residential District.

CODE SECTION: 1278.01, Schedule of Regulations, p. 99.

APPEAL: Requesting a variance to allow 28% lot coverage where the Zoning Code establishes a 25% maximum lot coverage, in order to construct a 238 square foot addition to the existing dwelling.

STAFF RECOMMENDATION: The applicant is requesting the variance per the enclosed application, letter of request and site sketch. The subject property is approximately 44 feet in width and 165 feet in depth. The lot area is 7411 square feet and is substandard in lot area and lot width for the R1-A zone. The lot is improved with a 1202 square foot dwelling, 484 square foot detached garage, and a 64 square foot shed.

The house was originally constructed for use as a cottage with one bedroom. Due to health concerns the Smith's would like to add another bedroom on the ground floor level to make it easily accessible. All required setbacks will be met with this proposed addition and the 64 square foot shed will be removed if the addition is permitted (which would reduce the overall lot coverage with the addition from 29 percent to 28 percent lot coverage).

With regard to the request, conforming alternatives include redesigning the existing floor area to accommodate another bedroom or constructing a second floor on the existing dwelling. If the Board finds the substandard lot size and area and/or the existing layout of the house substantial a hardship, the variance may be granted.

**PRACTICAL DIFFICULTY/
UNNECESSARY HARDSHIP:** Substandard lot width and area, existing layout of the dwelling

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MEMBERS ABSENT:

None

MEMBERS EXCUSED:

Jim Pearson, Clyde Flora, Jacob Hoogendyk, Jr.(alt.), and Larry Schimmel

IN ATTENDANCE:

John Kneas, Assistant City Attorney and Peter C. Eldridge, Zoning & Codes Administrator

APPROVAL OF MINUTES:

A motion was made by Bruce Frandsen, seconded by Henry Kerr, to approve the minutes from the May 10, 1999, meeting. The motion passed 5-0.

OLD BUSINESS:

None

NEW BUSINESS

1. ZBA #98-54; Kalamazoo County Road Commission on behalf of Michael J. Pickert Living Trust, 8314 Portage Road. No representative was present to explain the request.

A motion was made by Bruce Frandsen, seconded by Henry Kerr, to move this agenda item to the end of new business. Upon voice vote motion passed 5-0.

2. ZBA #98-55; Terry and Karen Smith, 9809 Woodlawn Drive. Terry and Karen Smith were both present to explain the request for a variance to allow 28% lot coverage where the Zoning Code establishes a 25% maximum lot coverage, in order to construct a 238 square foot addition to the existing dwelling. Richard Yonke inquired of the applicants if they had considered redesigning the interior of the dwelling. Mr. Smith responded that this option has been explored, but the location of the kitchen and the utilities under the kitchen area would hinder redesigning the interior to add an additional bedroom and bath. Richard Yonke also inquired of the applicant if a constructing a second story on the home had been explored. Mr. and Mrs. Smith mentioned their concern regarding accessibility and a second story would further obscure the view of the lake from the dwelling behind them on Woodlawn Drive. Roxanne Seeber inquired if the 64 square foot shed would be removed if this variance was granted. Mr. and Mrs. Smith responded affirmatively.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Bruce Frandsen, seconded by David Cooper, to grant a variance to allow 28% lot coverage where the Zoning Code establishes a 25% maximum lot coverage, in order to construct a 238 square foot addition to the existing dwelling, conditioned upon removal of the existing 64 square foot shed. The practical difficulty/unnecessary hardship being substandard lot area and the existing layout of the dwelling prohibits conforming alternatives. Upon roll call vote: Yonke no, Seeber, no, Frandsen yes, Kerr no, and Cooper yes. The motion failed 3-2.



Department of Community Development

TO: Zoning Board of Appeals

FROM: Jeffrey M. Erickson, Director of Community Development

DATE: July 6, 1998

SUBJECT: ZBA #98-01; William Furgason, 1709 Lakeview Drive; R-1A, One-Family Residential.

CODE SECTION: 1278.01, Schedule of Regulations, p.99.

APPEAL: Requesting a 129 square foot variance (to allow 38 % lot coverage) where only 35% lot coverage has been authorized in a previous variance.

STAFF RECOMMENDATION: The applicant is requesting the variance per the attached site sketch, letter of explanation and application. This substandard lot covers approximately 5,490 square feet and is approximately 100 feet wide. The setbacks required of this substandard lot are as follows: 25 feet in the front yard, five feet in the side yards and three feet in the rear yard. The property is improved with a 1,944 square foot house and attached garage, which covers 35% of the lot area. A variance was approved in 1994 to allow the structure to exceed lot coverage requirements.

The applicant is requesting an additional 129 square foot variance to enclose an existing porch. The proposed porch enclosure will increase the lot coverage to 2,073 square feet or 38%. Consistent with the recommendation in 1994, in the opinion of staff the amount of improvements on this small lot is excessive and represents over-development.

PRACTICAL DIFFICULTY/ UNNECESSARY HARDSHIP: Substandard lot width and the irregular shape of the lot area noted by applicant; none noted by staff.

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James Pearson, Richard Yonke, Roxanne Seeber, Kathryn Hotchkiss, Bruce Frandsen, Clyde Flora, Larry Schimmel (alt.) and Henry Kerr (alt.).

MEMBERS ABSENT:

None

MEMBERS EXCUSED:

None

IN ATTENDANCE:

John Kneas, Assistant City Attorney, Peter C. Eldridge, Zoning & Codes Administrator and Debra H. Miller, Deputy Director of Neighborhood Services.

APPROVAL OF MINUTES:

A motion was made by Bruce Frandsen, seconded by Clyde Flora to approve the minutes from the June 8, 1998 meeting and the special meeting on June 16, 1998. The motion to approve passed 7-0.

OLD BUSINESS:

A motion was made to move elections to the end of the meeting. The motion passed 7-0.

NEW BUSINESS:

1. ZBA #98-01, William Furgason, 1709 Lakeview Drive. William Furgason was present to explain his request for a 129 square foot variance (to allow 36 % lot coverage) where 37% had been previously authorized in 1994, but not utilized. The hardships included both the substandard width of the lot and the location of the house. Staff clarified that the house was never built as large as the previous variance allowed and the exact lot coverage currently was only 33%. Richard Yonke asked for clarification of the actual square footage of the house. Staff indicated the house and garage were 1832 square feet and that the applicant is actually requesting a 1% less lot coverage than what was previously approved on October 10, 1994.

The public hearing was opened. Ellen Martin, 1713 Lakeview Drive, spoke in support of the request. A letter of support was read into the record from Margaret K. VanderWoude at 1721 Lakeview. The public hearing was closed.

A motion was made by Roxanne Seeber, second by Clyde Flora, to approve a 129 square foot variance (to allow 36% lot coverage) where 37% lot coverage has been authorized in a previous variance. The hardships being the substandard lot with and the expiration of the previous variance. Upon roll call vote the motion to approve passed 7-0.

2. ZBA #98-02, Thomas and Susan Kramer, 4716 Westfield Avenue. Thomas Kramer was present to explain the request for a 2 foot variance from the 8 foot side yard setback requirement to allow the construction of a 420 square foot addition to the house. Staff clarified that the second variance mentioned in the staff report was unnecessary and that an error in the lot dimension had created this lot coverage discrepancy. Mr. Kramer would like to line-up the addition to the house with the existing house, which also impacts the alignment



Department of Community Development

TO: Zoning Board of Appeals

FROM: Jeffrey M. Erickson, Director of Community Development

DATE: February 27, 1998

SUBJECT: ZBA #97-32; Tom Postula, 9825 Woodlawn; R-1A, one-family residential.

CODE SECTION: 1278.01, Schedule of Regulations, p. 99.

APPEAL: Requesting a) an 18 foot variance from the front property line setback where 27 feet is required and b) a 275 square foot variance from the 25% maximum lot coverage requirement, in order to construct an attached accessory building (garage) in front of the existing house.

STAFF RECOMMENDATION: The applicant is requesting the variances per the enclosed application letter of request and site sketch. This lake lot is 45 feet by 132 feet and is substantially oversized to lot width and area. It is improved with a 1040 square foot house, a 1040 square foot detached garage and a 63 square foot shed.

The applicant is planning to demolish the existing detached garage, which is dilapidated, and construct a 24 foot by 30 foot attached garage in front of the existing house. The north wall of the existing garage is less than a foot from the side (north) property line and approximately 6 feet from the front property line (Woodlawn). The proposed garage will be constructed approximately 8 feet from the north property line and 18 feet from the front property line, which is more in conformance with the Zoning Code. A lot coverage of 1485 is permitted per the Zoning Code; the proposed garage and existing house and shed will exceed this requirement by 275 square feet.

Although the garage will not be out of character for this lakeside neighborhood, as several attached and detached garages are located in the required front yard, it should be noted that a more conforming alternative exists to construct a smaller (in depth) garage, requiring lesser variances. However, if the Board determines that there is a hardship or practical difficulty, the variances can be authorized.

PRACTICAL DIFFICULTY/
UNNECESSARY HARDSHIP: Substandard lot width and area.

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Zoning Board of Appeals
February 9, 1998
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A motion was made by Frandsen, seconded by Lambie to deny c) as stated above due to conforming alternatives being available. Upon a roll call vote: Seeber - yes, Flora - yes, Frandsen - yes, Hotchkiss - no, Lambie - yes, Schimmel - yes, Kerr - yes. The motion to deny passed 6-1.

A motion was made by Lambie, seconded by Flora to grant b) as stated above. The practical difficulty/unnecessary hardship being the irregular shape of the lot and the location of the existing structures on the lot. Upon a roll call vote the motion passed 7-0.

NEW BUSINESS:

1. **ZBA #97-29, Roy Martin, 9110 Portage Road.** Roy Martin was present to explain his request for a variance to rebuild a nonconforming structure, 9110 Portage Road, to its original dimensions after 18 months. The Building Division indicated that the building had been destroyed greater than 60% of its replacement cost. The applicant indicated he had a buyer for the property.

The public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Lambie, seconded by Flora to grant the variance as stated above, conditioned upon a building permit being obtained within 60 days of the date of Board approval and work completed by July 31, 1998. The practical difficulty/unnecessary hardship being the several attempts made by the owner to market/sell the property. Upon a roll call vote the motion passed 7-0.

2. **ZBA #97-30, Leslie Priebe on behalf of Holle Orchards, 6355 South Westnedge Avenue.** The applicant requested that this item be tabled until the April meeting.
3. **ZBA #97-31, Steve Nieuwoonder, 10316 South Westnedge Avenue.** Steve and Bill Nieuwoonder were present to explain the request for a) a 1,710 square foot variance from the requirement that any single detached accessory building may not exceed 20% of the required rear yard; and either a 2,074 square foot variance from the requirement that the total floor area of all accessory buildings may not exceed the ground floor area of the house or a .53 acre variance from the requirement stating that the total floor area of all accessory buildings may exceed the ground floor area of the house if the property is two acres or greater and unplatted, in order to allow an illegal 2,760 square foot detached garage to remain. The applicant indicated that the garage was used to house helicopters. The applicant was asked why permits were not obtained for the construction of the detached garage. The applicant did not answer the question. Staff informed the Board that this issue was brought to staff's attention via a complaint and that the take-off/landing of helicopters was "grand-fathered" as this use predated the heliport ordinance. The applicant and the Board discussed possible conforming alternatives. The applicant requested this issue be tabled until the May meeting in order to resolve this issue without the need of a variance.

A motion was made by Frandsen, seconded by Lambie to table this request until the May meeting in order to pursue other options. Upon a voice vote the motion passed 7-0.

4. **ZBA #97-32, Tom Postula, 9825 Woodlawn.** Tom Postula, Mrs. Postula and Mr. Campbell were present to explain their request for a 9 foot variance from the front property line setback where 27 feet is required; and b) a 275 square foot variance from the 25% maximum lot coverage requirement, in order to construct an attached accessory building (garage) and mud-room in front of the existing house. The applicants passed a letter signed by the neighbors supporting the request. The applicants indicated that a drainage problem required that the garage be attached to the house, which would take away their front door. The Board and applicants discussed alternatives requiring a lesser variance. The applicants indicated that the interior layout of the house limited the location of the new front door.

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The public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Frandsen, seconded by Flora to grant the request as noted above. The practical difficulty/unnecessary hardship being the substandard lot width and area and drainage problems and interior layout of the house make conforming alternatives impractical. Upon a roll call vote: Seeber - no, Flora - yes, Frandsen - yes, Hotchkiss - yes, Lamble - no, Pearson - no, Schimmel - yes. The motion passed 4-3.

5. **ZBA #97-33. Sign Art on behalf of Borgess Health Alliance, 3810 West Centre Avenue.** The applicant requested this item be tabled until the April meeting.

6. **ZBA #97-34. John Diamond on behalf of Betty King, 1727 Byrd.** Geraldine King was present on behalf of the applicant to explain the request for a variance to allow an illegal and nonconforming carport which is approximately 8 feet from the side (east) property line to remain. Staff informed the Board that this issue was initiated by staff and the work was already completed when the violation was identified. Staff also explained the present and past permit procedures.

The public hearing was opened. Clyde Adams, 1811 Byrd, was present to speak in favor of the request. The public hearing was closed.

A motion was made by Frandsen, seconded by Seeber to grant the request as stated above. The practical difficulty/unnecessary hardship being the location of existing garage on the lot. Upon a roll call vote the motion passed 7-0.

7. **ZBA #97-35. Ben Folkers, 1913 Byrd.** Ben Folkers was present to request a) a 12 foot variance from the required 30 foot front yard setback and b) a variance to expand a nonconforming structure at 1913 Byrd. Mr. Folkers requested that this item be tabled until the April meeting in order to clarify the measurements of the proposed construction from property lines. No motion was made as the applicant requested that it be tabled.

OTHER BUSINESS:

Pearson requested that the Assistant City Attorney research how "waters edge" is defined given the fact that the waters edge may vary.

The Board welcomed Henry Kerr as the new alternate and Mr. Pearson as the new permanent member.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Tom Adams
Zoning & Codes Administrator

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Department of Community Development

TO: Zoning Board of Appeals
FROM: Jeffrey M. Erickson, Director of Community Development
DATE: January 28, 1997
SUBJECT: ZBA #96-2, Raymond Beach and Janet Miller, 9917 Woodlawn; R-1A, One Family Residential.

CODE SECTION: 1278.01, Schedule of Regulations, p. 99.

APPEAL: Requesting a) a four foot variance from the side yard setback in order to construct a carport within one foot of the side (south) property line where 5 feet is required; and b) a 393 square foot variance from the 1944 square feet of lot coverage (31%) where only 1551 square feet is required.

STAFF RECOMMENDATION: The applicant is requesting the variance noted above per the attached application, letter of explanation and site sketch.

The property has approximately 47 feet of width and 132 feet of depth, and is substandard with regard to both lot width and lot area. The property is developed with a 1392 square foot house; there is no garage. The applicant is proposing a 11.5 foot by 48 foot carport adjacent to the house, covering the existing blacktop drive area. The carport will be located one foot from the south property line.

The lot width is substandard by 18 feet. The carport will provide parking for two vehicles, and at 48 feet in depth, extra covered storage area. Although there is a six foot wooden screening fence between the drive and the adjacent house, the carport will come extremely close to the south property line. Additionally, the size of the proposed carport requires a significant (393 square foot) variance from total lot coverage. No variance for lot coverage would be required to build a 160 square foot carport (approximately 8 feet by 20 feet; or 10 feet by 16 feet; or 11.5 feet by 13.8 feet).

The size of the proposed carport appears to be excessive, and due to the proximity to the south property line, the variance cannot be recommended as proposed.

PRACTICAL DIFFICULTY/
UNNECESSARY HARDSHIP: Substandard lot width and area.

zba report 96-28.doc 2900 South Westnedge Avenue • Portage, Michigan 49002 • (616) 329-4477

MEMBERS ABSENT:

Sally Pyne.

MEMBERS EXCUSED:

Terry Urban.

IN ATTENDANCE:

John Kneas, Assistant City Attorney; Debra Miller, Deputy Director of Neighborhood Services; and Tom Adams, Ordinance Administrator.

APPROVAL OF MINUTES:

A motion was made by Lamble, seconded by Frandsen, to approve the minutes from the January 13, 1997 meeting. The motion to approve passed 7-0.

OLD BUSINESS:

None.

NEW BUSINESS:

1. ZBA #96-25, Bill Hiatt, 4770 Briarhill Drive. Mr. Hiatt was present to explain his request for a variance to construct a garage addition within 5 feet of the side (north) property line where 10 feet is required. The applicant indicated the space would be used to store a vehicle. The Board indicated to the applicant that he could build a 7 foot addition which would permit ample storage without a variance. The applicant indicated this would not meet his needs. The Board inquired what would be stored in this addition. The applicant indicated he has a Corvette which he would store in the addition. The Board stated that most houses in Portage do not have a 3 car garage and cannot justify the need for third stall when there is ample room to construct an addition without a variance.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Seeber, seconded by Lamble, to deny the request as stated above. Upon a roll call vote the motion to deny was approved 7-0.

2. ZBA # 96-26, Raymond Beach and Janet Miller, 9917 Woodlawn. Ray Beach and Janet Miller were present to explain their request for a) a four foot variance from the side yard setback in order to construct a carport within one foot of the side (south) property line where five feet is required; and b) a 393 square foot variance to allow 1944 square feet of lot coverage (31%) where only 25% is permitted. Staff informed the Board that the applicants have a (22' x 24') garage on lot 38 of Bacons Beach Plat which was built in the 1960's. Lamble offered a smaller carport which would reduce the overall lot coverage request. The applicant stated that they were agreeable to this reduction, but would prefer to have their request approved as is.

A public hearing was opened. Eric Guerin was present to speak in favor of the request. A letter was read by Hotchkiss from Linda Townsend and Barbara Shields who opposed the request as there are some unresolved drainage/soil erosion issues at their common property line. The applicant indicated

that the lakeside is where the erosion was and that they would place the carport flush with the front of the existing house. The public hearing was closed.

A motion was made by Lamble, seconded by Seeber, to deny variance request b) as stated above. Upon a roll call vote the motion passed 7-0.

A motion was made by Lamble, seconded by Seeber, that the applicant be granted an 11.5' x 24' (276 square feet) carport to allow 1668 square feet of lot coverage (26%) where only 25% is permitted. The practical difficulty/unnecessary hardship being the substandard lot width and area. Upon a roll call vote the motion passed 7-0.

A motion was made by Lamble, seconded by Seeber, to grant variance request a) as stated above, conditioned upon the carport begin flush with the street side of the house and that gutters are installed so drainage from the subject property does not run onto neighboring properties. Upon a roll call vote the motion passed 7-0.

3. ZBA #96-27, Christopher Morris, 9830 East Shore Drive. Mr. Morris was present to explain his request for a one year extension of a variance granted February 12, 1996 for: a) an 8 foot variance from the required 27 foot front yard setback to enclose an existing carport; and b) a 1% variance from the maximum 25% lot coverage in order to add a 64 square foot addition to the house. Mr. Morris explained that the plans for the addition were delayed due to the illness of the architect.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Frandsen, seconded by Yonke, to grant the request as stated above. The practical difficulty/unnecessary hardship being the irregular shape of the lot; placement and age of the house. Upon a roll call vote the motion passed 7-0.

4. ZBA #96-28, Marlene, Christopher and Denise Tyler, 7426 Gregg Court. Christopher and Denise Tyler were present to explain their request for a) a variance to create a buildable parcel which does not have 66 feet of frontage on a public street in order to construct a single family dwelling; and b) a 1 foot variance from the 5 foot required side yard setback to authorize an existing dwelling to remain on the original parcel. The Board made it public knowledge that the Fire Marshall reviewed the request and determined that emergency access is not a problem for these lots. The applicant and Board reviewed the history of the purchase of the parcels, construction of buildings on the parcels, combination of the lots and applicable zoning codes.

A public hearing was opened. A phone message from Clyde Leonard, 7418 Gregg Court, who supports the request, was read by Hotchkiss. The public hearing was closed.

A motion was made by Frandsen, seconded by Lamble, to grant variance request a) as stated above. The practical difficulty/unnecessary hardship being that a legally buildable lot existed prior to ordinance amendment requiring 66 feet of frontage on a public street. Upon a roll call vote the motion passed 7-0.

A motion was made by Flora, seconded by Lamble, to grant variance request b) as stated above. The practical difficulty/unnecessary hardship being that a legally buildable lot existed prior to ordinance amendment requiring setbacks. Upon a roll call vote the motion passed 7-0.

5. ZBA #96-29, Greg Erb, 8342 Portage Road. Greg Erb was present to explain his request for a variance to replace the sign face in a nonconforming freestanding sign. Mr. Erb explained the reason he was changing the name of the business from Roma's to Erbelli's



Department of Community Development

TO: Zoning Board of Appeals

FROM: Jeffrey M. Erickson, Director of Community Development *JME*

DATE: January 31, 1996

SUBJECT: ZBA #95-28; Chris and Jeannine Morris, 9830 East Shore, R-1A, Single-family residential.

CODE SECTION: 1278.01, Schedule of Regulation, p. 99.

APPEAL: Requesting a) an 8 foot variance from the required 27 foot front yard setback to enclose an existing carport and b) a variance from the maximum 25% lot coverage in order to add a 64 square foot addition to the house.

STAFF RECOMMENDATION: The applicant is proposing variances noted above per the explanation, site sketch and application.

The subject property is approximately 6788 square feet in area and is substandard with respect to width. The house was built in 1960 with 1104 square feet of area, 462 square foot carport and 80 square foot storage area. The original East Side Park Plat describes the properties to the waters edge.

With regard to a) the carport is legally nonconforming. The proposed garage will be no larger than the existing carport, which according to the Assessor's Office, is 21' x 22'.

With regard to b) the applicant is proposing a lot coverage of 1710 square feet where 1697 square feet is permitted. The proposed addition is very small, in terms of lot coverage.

Should the Board determine that the hardships noted below are sufficient the Board may approve these variances.

PRACTICAL DIFFICULTY/
UNNECESSARY HARSHIP: Irregular shape of lot; placement and age of the house.

ZBA95-28 DEV ZBA

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2. ZBA #95-28, Chris and Jeannine Morris, 9830 East Shore Drive. Chris Morris was present to explain his request for a) an 8 foot variance from the required 27 foot front yard setback to enclose an existing carport and b) a variance from the maximum 25% lot coverage (to allow 26%) in order to add a 64 square foot addition to the house. Lamble inquired if the addition would meet the 5 foot side yard setback; the applicant indicated that it would be approximately 7 feet.

The public hearing was opened. No one was present to speak for or against the request. A letter from John and Diana Skiba, 9832 East Shore, in support of the request was read by the Secretary. The public hearing was closed. A motion was made by Frandsen, seconded by Hotchkiss, to grant variance a) as noted above, the practical difficulty/unnecessary hardship being the irregular shape of the lot and placement of the house on the lot. Upon a roll call vote the motion passed 7-0. A motion was made by Frandsen, seconded by Yonke, to grant variance b) as noted above, the practical difficulty/unnecessary hardship being the irregular shape of the lot and placement of the house on the lot. Upon a roll call vote the motion passed 7-0.

3. ZBA #95-26, Leroy Klose. Urban gave a brief history of the issue and defined to the Board, applicant and audience the basis of discussion for this request. Mr. Klose then presented his request for an appeal of a decision made by the Administration regarding St. Catherine's Church, 1150 West Centre Avenue. Klose elaborated on the Zoning Board of Appeals' duties and responsibilities as outlined by state statutes and local ordinances. He indicated that the north driveway is in violation of the zoning code. He stated it is the responsibility of the Director of Inspection and Code Enforcement to remove any such violation. It is the opinion of staff that no zoning violation exists with regard to the north driveway at St. Catherine's. John Kneas was then given an opportunity to give his opinion on this matter. He stated that his opinion today is identical to his December 4, 1995 letter which was part of the agenda packet. Kneas indicated that the Planning Commission would be reviewing this issue again in April or May and that this matter was not an issue on which Zoning Board of Appeals had the authority to rule. The Board and the Assistant City Attorney then engaged in several hypothetical situations in order to determine when the Zoning Board of Appeals had the authority to get involved in an issue where there is a zoning violation in a site plan.

The public hearing was opened. John Curry, 7724 Hampton Oaks, spoke in favor of Mr. Klose's appeal. Earl Borr, 7714 Hampton Oaks, spoke in favor of the appeal and also thanked the Board for their interest and discussion. Kim Nagengast spoke in favor of the appeal and again thanked the Board. The Secretary read a letter from Dan Conklin, President of St. Catherine's Parish Council. The public hearing was closed. Urban asked what would happen if the Board chose to hear this request. Kneas stated that a written report outlining the findings of the Board and their recommendation should be given to Council.

A motion was made by Lamble, seconded by Yonke that the Zoning Board of Appeals hear the applicants request that a zoning violation exists at 1150 West Centre Avenue. During discussion Seebert stated that she had concerns about the motion and would not be supporting the motion due to procedural concerns. She stated that a 'final decision' by the Planning Commission is appealable to the Circuit Court and not to the Zoning Board of Appeals. Frandsen made a motion, seconded

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October 10, 2019

PERSONAL & CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATION

Patricia M. Randall, Mayor and members of City Council
City of Portage
7900 S. Westnedge Avenue
Portage, MI 49002

RE: Road ends and walks on lakes

Dear Mayor Randall and Council Members:

Questions were raised at the September 16, 2019 COW meeting concerning dedication of roads terminating at the water ("road ends") and ownership of dedicated promenades ("walks") located along the shore of a lake. As the materials submitted by staff to Council with regard to these issues illustrate, ownership and use of road ends have been addressed for many years and on many occasions. Walks, on the other hand, only appear as dedications in three plats¹ and issues usually arise with regard to setback and lot coverage.

Dedicated Road Ends

In summary, without specific acceptance of the road end by resolution of Council or expenditure of public money for repair, improvement and control, acceptance of the dedication will not be found and the City does not have jurisdiction over the road end. Even if the City wanted to assume jurisdiction over the road end, given the age of the lake plats and issues such as lapse and withdrawal of the dedication, acceptance may be precluded. This was discussed in our July 17, 2015 and September 22, 2008 Opinions included in the materials.

It has been the longstanding policy of the City, for the reasons discussed in the materials and written opinions from our office, that the matter is between private property owners. Whether the City can assert jurisdiction over a road end or is forced to do so by a court, is dependent upon the facts and circumstances surrounding the history and use of each particular road end.

Assuming no change in longstanding City policy, the City should continue to take the position that the use of the road end is a private property matter between riparian owners, back lot owners, and perhaps lake associations. If litigation does ensue over a road end, the City may

¹ They are: Burr's West Lake Resort, Pleasant Oaks and Gilbert & Matteson Sub.

Patricia M. Randall, Mayor and Council
October 10, 2019
Page 2 of 3

be named as a party and included in the lawsuit, and will at that point examine the actual circumstances. Further, it is recommended that the use of road ends not be regulated by ordinance.

Dedicated Walks

The next question raised concerns the ownership of dedicated walks along and parallel to the water's edge. First, it should be noted that courts have distinguished between road ends discussed above and walks which run parallel to the shore as being conceptually different. The road end provides access to the lake, whereas a walk running parallel to the shore does not, unless so stated in the dedication. See Meridian Township v. Palmer, 279 Mich 586 (1937).

A lot in a plat separated from the water by a dedicated walkway still maintains all aspects of riparian rights. See Jacobs v. Lyon Township (1989). Riparian rights include access to the water, installation of a dock, anchorage of a boat, and reasonable use of the water. See Croucher v. Wooster, 271 Mich 337 (1935). Such uses must be reasonable and cannot interfere with the rights of the public to use the water. Generally riparian land is defined as a parcel of land which touches a natural water course, but there are exceptions to this rule as discussed below.

The law took some time to develop, but it is now settled that any roadway, as well as any walk which separates the water from the abutting owner will not deprive that owner of riparian rights, subject to any rights provided in a dedication². In Thies v. Howland, 424 Mich 282 (1985) and in Baum Family Trust v. Babel, 488 Mich 136 (2010), the rule is as follows:

"Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way, subject to the easement. Since the owner's property is deemed to run to the water, it is riparian property." See Thies at 293.

The phrase in the above quote, "subject to the easement" means that the riparian owner must not interfere with the uses described in a dedicated walk, road or written easement. Therefore, the scope of the dedication is determinative of the rights granted and as a result is the subject of many lawsuits.

Although not referred to by name, several Council members noted a Michigan Supreme Court ruling concerning cutting off riparian rights. In actuality, the Supreme Court in Baum Family Trust v. Babel, 488 Mich 136 (2010) dealt with a county road commission exercising rights over a public highway located between the water and the fronting lots. Previously it was thought that the road commission or other municipal entities own all the riparian rights of such public highways and could restrict and/or eliminate the riparian rights of the fronting owners³. After a long discussion of the legal history in Michigan, the court held that the front lot owners whose property is separated by a public road running parallel to the water are deemed to have riparian rights. The "fee" held by the road commission is only nominal title held in trust only for the uses so designated in the dedication. The lot owners therefore had a right to erect docks and anchor boats as part of their riparian ownership.

² Rights included in a dedicated walk are not riparian and are presumptively minimal.

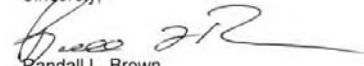
³ The Supreme Court overruled the lower courts which found that the road commission held the fee to the road which would indeed eliminate riparian rights.

Another question asked at the Council meeting was who owns the walks along the water's edge. Council may have believed at the meeting that if a plat showed a dedicated walk, the area of that walk in front of the riparian lot would not be included for purposes of lot coverage and setback. However, unless a contrary intention appears in the dedication (which it rarely does), the riparian lot owner owns the fee to the walk, subject to the rights provided in the dedication. Therefore, a walk situated between the water's edge and the boundary of the lot is included in the lot for purposes of lot coverage and setback. This applies also where there is a "gap" between the water's edge and the boundary of the lot where there is no indication of any easement or dedication whatsoever.

Dedicated walks however, are likely to be unused and probably never were used in the first place. Further, if dedicated to the public, the City certainly has not accepted them. Since any land between the boundary line of the fronting lot and the water is considered for lot coverage and setback, there would be little reason for any lot owner to take the time and expense to attempt to extinguish the dedicated walk⁴. If, however, a riparian owner desired to terminate the use of the walk dedicated in a plat, the Land Division Act contains a procedure by which plat owners can amend the plat and obtain a court order eliminating or terminating the rights granted for a walk. Further, riparian owners who have treated the walk property in question as their own for over 15 years may have a claim for adverse possession if the facts and circumstances of their use of the property can be shown. The evidence needed in these cases is fact driven, including the actions and inactions of not only the owner and predecessor in title but also other owners in the plat and members of the public. Before the City accepts such claim of an owner, a court order deciding the adverse possession issue should be provided.

Should you have any questions please let me know.

Sincerely,



Randall L. Brown
City Attorney

RLB/slb

cc Laurence Schaffer, City Manager
Rob Boulis, Deputy City Manager
Adam Herringa, City Clerk
Christopher Forth, Acting Director, Community Development

Z:\JODY\PORTAGE\OPINIONS\2019\2019-17 Road Ends.docx

⁴ Some purchasers may be uncomfortable with the walk as shown on the plat, but apparently this fact has not prevented those lots from being sold.

TO: Honorable Mayor and City Council

FROM: Joseph La Margo, City Manager



SUBJECT: West Lake Special Assessment Program - Resolution No. 5

SUPPORTING PERSONNEL: Adam Herringa, City Clerk

ACTION RECOMMENDED: Subsequent to the public hearing, adopt Resolution No. 5 confirming the Special Assessment Roll for the West Lake Management Program #020-Q.

Attached is Special Assessment Resolution No. 5 for the West Lake Management Program #020-Q. Previous City Council action relating to this project includes:

- On September 3, 2019, City Council adopted Resolution No. 1, accepted the City Manager Report, and requested preparation of Resolution No. 2.
- On September 17, 2019, City Council adopted Resolution No. 2 on this project, setting a public hearing of necessity on October 1, 2019.
- On October 1, 2019, City Council adopted Resolution No. 3, on the necessity of the project, directing preparation of the Assessment Roll.
- On October 15, 2019, City Council adopted Resolution No. 4, setting a public hearing on the Assessment Roll for November 5, 2019.

Therefore, it is recommended that City Council adopt Resolution No. 5 confirming the Special Assessment Roll for the West Lake Management Program #020-Q.

FUNDING: N/A

Attachments:

1. West Lake Weed Management - Resolution No. 5
2. West Lake Assessment Roll 2019

CITY OF PORTAGE
SPECIAL ASSESSMENT RESOLUTION NO. 5
WEST LAKE MANAGEMENT PROGRAM SPECIAL ASSESSMENT, DISTRICT #020-Q

At a regular meeting of the Council of the City of Portage, Kalamazoo County, Michigan held at the City Hall in said City on the _____ day of _____, 2019 at 7:00 p.m., local time.

PRESENT: _____

ABSENT: _____

The following resolution was offered by:

Councilmember: _____, and seconded by:

Councilmember: _____.

WHEREAS, the City Council of the City of Portage, Kalamazoo County, Michigan, after due and legal notice has reviewed the Special Assessment Roll No. 020-Q prepared for the purpose of defraying the costs of the following described public improvement:

WHEREAS, the cost of said improvement is \$176,000.00, the share of the Special Assessment District is \$115,000.00, and the share of the City-at-Large is \$35,200.00. Further the existing project account containing \$31,095.00 shall also to used towards the cost of the improvement.

WHEREAS, the City Council deems said Special Assessment Roll to be fair and equitable, and the assessments recorded therein to be in proportion to the benefits derived or to be derived;

NOW THEREFORE, BE IT RESOLVED:

1. That the City's share of said improvement, in the amount of \$35,200.00, is hereby confirmed and payment of the same shall be determined at a later date.

2. That said Special Assessment Roll No. 020-Q in the amount of \$115,000.00, as prepared, filed and presented to the City Council, may be and the same hereby is confirmed.

3. That said Special Assessment Roll shall be divided into five (5) equal installments, the first installment to be due August 1, 2020 to August 31, 2020, inclusive. The remaining four (4)

installments, with accrued interest thereon, shall be due and payable August 1st to August 31st each year thereafter and shall be spread upon the City tax roll for the year in which the same becomes due and payable.

4. The assessments made in said Special Assessment Roll are hereby ordered and directed to be collected and the City Clerk shall deliver said Special Assessment Roll to the City Treasurer with his warrant attached commanding the Treasurer to collect the assessments therein in accordance with the direction of this resolution with respect thereto, and the Treasurer is directed to collect the amounts assessed as the same become due.

5. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution are hereby rescinded.

YEAS: Councilmember: _____

NAYS: Councilmember: _____

ABSENT: Councilmember: _____

RESOLUTION DECLARED ADOPTED:

Adam Herringa, City Clerk

STATE OF MICHIGAN)
)ss
COUNTY OF KALAMAZOO)

I, the undersigned duly qualified and acting City Clerk of the City of Portage, Kalamazoo County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the City Council of said City, held on the ____ day of _____, 2019, the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereto affixed my official signature this ____ day of _____, 2019.

Adam Herringa, City Clerk

APPROVED AS TO FORM
DATE 8/24/2019

CITY ATTORNEY

West Lake Improvement Association

Water Quality Projects Special Assessment Roll - Dist. No. 020-Q

2020-2024

Tentative Roll

Owner	Address	Parcel No.	Class	Zoning	Frontage	Flat Rate	Total Assessment
VLEIK, DOUGLAS M & JUDY L TRUST	820 FOREST DR	00022-220-O	401	R-1B	55.0000	100.00	500.00
GEIGER, EVELYN	812 BARBERRY AVE	00022-225-O	401	R-1B	132.0600	100.00	500.00
MAIN, LYLE B TRUST	734 BARBERRY AVE	00022-230-O	401	R-1B	131.4200	100.00	500.00
DOERR, MICHAEL J	1241 LAKEVIEW DR	00027-001-O	401	R-1A	41.0000	100.00	500.00
COLWELL, MATTHEW E & ROBIN G	1233 LAKEVIEW DR	00027-005-O	401	R-1A	54.2000	100.00	500.00
JOHNSON, GRANT A & J M	1225 LAKEVIEW DR	00027-010-O	401	R-1A	70.0000	100.00	500.00
YU, SONG YOL & CHUNG, SANG	1724 FOREST DR	00340-008-O	401	R-1A	40.5000	100.00	500.00
POCHYLA FAMILY TRUST	1726 FOREST DR	00340-009-O	401	R-1A	46.0000	100.00	500.00
KIPP, WALTER F & KRISTINE A	1728 FOREST DR	00340-010-O	401	R-1A	49.0000	100.00	500.00
PHILLIPS, THOMAS B & L P	1730 FOREST DR	00340-011-O	401	R-1A	44.0000	100.00	500.00
LITTLE, DAVID E & JULIE A	1804 FOREST DR	00340-012-O	401	R-1A	48.0000	100.00	500.00
SUSAN, JUSTIN W & AMY A	1806 FOREST DR	00340-013-O	401	R-1A	46.0000	100.00	500.00
HORNEV, MICHAEL O & ALLISON L	1808 FOREST DR	00340-014-O	401	R-1A	43.1000	100.00	500.00
DUGGAN, PATRICK & KELLY	1810 FOREST DR	00340-015-O	401	R-1A	52.7500	100.00	500.00
CLANCY, MICHAEL C & JULIE P	1812 FOREST DR	00340-016-O	401	R-1A	75.7550	100.00	500.00
ENSFIELD, KATHERINE A TRUST	1818 FOREST DR	00340-018-O	401	R-1A	73.3250	100.00	500.00
DEHAAN, JONATHAN & CHRISTINA	1820 FOREST DR	00340-019-O	401	R-1A	39.0700	100.00	500.00
TAYLOR, DANIEL J & B E	1822 FOREST DR	00340-020-O	401	R-1A	52.6000	100.00	500.00
GROSSER, DAVID A & DIANE L	1824 FOREST DR	00340-021-O	401	R-1A	52.0000	100.00	500.00
LAPORTE, JUDITH M TRUST	1826 FOREST DR	00340-022-O	401	R-1A	53.7000	100.00	500.00
STILLMAN, LAWRENCE A & MARY A	1830 FOREST DR	00340-023-O	401	R-1A	44.3000	100.00	500.00
STRICKLAND, TIMOTHY R	1902 FOREST DR	00340-024-O	401	R-1A	43.0000	100.00	500.00
AGOSTINELLI, JOSEPH & SUSAN	1906 FOREST DR	00340-025-O	401	R-1A	44.0000	100.00	500.00
SCHURING, RONALD J	1910 FOREST DR	00340-026-O	401	R-1A	43.0000	100.00	500.00
BATES TRUST	1912 FOREST DR	00340-027-O	401	R-1A	40.0000	100.00	500.00
PLACE, MEREDITH & TAYLOR, JOHN	1914 FOREST DR	00340-028-A	401	R-1A	64.0600	100.00	500.00
MANNING, GREGORY, MARY & RYAN	1916 FOREST DR	00340-028-B	401	R-1A	18.4400	100.00	500.00
GILBERT, PAUL & HADDOCK, CHRISTIAN	1918 FOREST DR	00340-029-O	401	R-1A	45.1000	100.00	500.00
PERRY, CATHERINE	1924 AMES DR	00340-030-A	401	R-1A	84.0000	100.00	500.00
NAGLE, NANCY A	2002 AMES DR	00340-032-A	401	R-1A	70.0000	100.00	500.00
LAGER, DAVID & MARY	2008 AMES DR	00340-034-B	401	R-1A	53.6900	100.00	500.00
SEIM, RYAN M & ALISON A TRUST	2012 AMES DR	00340-035-B	401	R-1A	46.3000	100.00	500.00
STRAZDAS, PETER J & SHARON L	2016 AMES DR	00340-036-O	402	R-1A	52.0000	100.00	500.00
CROWE, MATTHEW J & DEBRA K	2020 AMES DR	00340-037-O	401	R-1A	42.0000	100.00	500.00
ZOELLER, DOUGLAS A & MARY C	2024 AMES DR	00340-038-O	401	R-1A	42.0000	100.00	500.00
MARTIN, THOMAS JR & K	2028 AMES DR	00340-039-O	401	R-1A	33.0000	100.00	500.00
SCHINCARIOL, LISA A	2104 AMES DR	00340-040-O	401	R-1A	40.0000	100.00	500.00
SIMPSON, REX & HEATHER C	2106 AMES DR	00340-041-O	401	R-1A	40.0000	100.00	500.00
BRAVATA, TINA M	2110 AMES DR	00340-042-O	401	R-1A	40.0000	100.00	500.00
MATTHEWS, KRISTA	2114 AMES DR	00340-043-O	401	R-1A	40.0000	100.00	500.00
BOGATSCHOW, HELEN L TRUST	2122 AMES DR	00340-044-O	401	R-1A	40.0000	100.00	500.00
STEPHENS, MICHAEL J TRUST	2126 AMES DR	00340-045-O	401	R-1A	80.0000	100.00	500.00
WALTON, GARRY L & D L	2130 AMES DR	00340-047-O	401	R-1A	48.0000	100.00	500.00
BLOSTEIN, PAUL A TRUST	2134 AMES DR	00340-048-O	401	R-1A	50.0000	100.00	500.00
BRAY, JAMES R	2136 AMES DR	00340-049-O	401	R-1A	52.0000	100.00	500.00
OVER & OVER PROPERTY RENEWAL, LLC	2138 AMES DR	00340-050-O	402	R-1A	51.0000	100.00	500.00
BARTON, MICHAEL F & A	2142 AMES DR	00340-051-O	401	R-1A	50.0000	100.00	500.00
JOHNSON, CHRISTINE E	2144 AMES DR	00340-052-O	401	R-1A	46.0000	100.00	500.00
WEDEL, JAMES C	2204 AMES DR	00340-053-O	401	R-1A	46.0000	100.00	500.00
MURRAY, DOUGLAS D & JANICE L	2206 AMES DR	00340-054-O	401	R-1A	48.0000	100.00	500.00
VISSER, JASON T & MELISSA L	2210 AMES DR	00340-055-O	401	R-1A	40.0000	100.00	500.00
LANG, CLARK	2214 AMES DR	00340-056-O	401	R-1A	32.0000	100.00	500.00
BREWER, DOUGLAS & AIMEE	829 LAKEVIEW DR	01180-001-O	401	R-1A	44.4900	100.00	500.00
COLLINS, KEVIN P & PATRICIA T	825 LAKEVIEW DR	01180-002-O	401	R-1A	44.4900	100.00	500.00

West Lake Improvement Association

Water Quality Projects Special Assessment Roll - Dist. No. 020-Q

2020-2024

Tentative Roll

Owner	Address	Parcel No.	Class	Zoning	Frontage	Flat Rate	Total Assessment
WILLIAMS, BARRY & JENNIFER	821 LAKEVIEW DR	01180-003-A	401	R-1A	54.3100	100.00	500.00
KRAFT, JEFFREY & KIM	813 LAKEVIEW DR	01180-004-A	401	R-1A	65.0000	100.00	500.00
LIBY, JILL D	809 LAKEVIEW DR	01180-005-O	401	R-1A	45.2500	100.00	500.00
WHITMAN HOLDINGS III, LLC	803 LAKEVIEW DR	01180-006-O	401	R-1A	90.5000	100.00	500.00
HANCHAR, A & HALSTEAD, M & S	723 LAKEVIEW DR	01180-008-O	401	R-1A	95.2400	100.00	500.00
MOON, VICTOR J & AMY L	715 LAKEVIEW DR	01180-010-A	401	R-1A	80.7300	100.00	500.00
DRAKE, JEFFREY L & J L	707 LAKEVIEW DR	01180-012-A	401	R-1A	12.0900	100.00	500.00
WLHI, LLC	9110 PORTAGE RD	02140-001-A	201	B-3	441.8800	100.00	500.00
NEEB, KIM M & SHERYL L	9138 PORTAGE RD	02140-005-O	201	B-3	200.0000	100.00	500.00
NEWLAND, MARK & S J	9200 PORTAGE RD	02140-009-A	401	R-1A	121.0000	100.00	500.00
MILLER, PHILLIP B	9212 PORTAGE RD	02140-011-O	401	R-1A	109.8100	100.00	500.00
JOSEPH, JESSICA	9220 PORTAGE RD	02140-012-O	401	R-1A	130.3200	100.00	500.00
HEMSTREET, KEVIN	9230 PORTAGE RD	02140-014-O	401	R-1A	55.1400	100.00	500.00
KANGAS, JUDY A	9240 PORTAGE RD	02140-015-O	401	R-1A	111.6800	100.00	500.00
ZULL, JOHN W & ARLENE L - ET AL	416 BARBERRY AVE	02442-129-O	401	R-1B	116.1000	100.00	500.00
MALZ, DONALD J JR & D	422 BARBERRY AVE	02442-130-O	401	R-1B	116.1000	100.00	500.00
NUYEN, ERIC B	430 BARBERRY AVE	02442-131-O	401	R-1B	123.6900	100.00	500.00
DUNCAN, ROBERT	504 BARBERRY AVE	02442-132-O	401	R-1B	109.3300	100.00	500.00
SMITH, ORVILLE E & L R	506 BARBERRY AVE	02442-133-O	401	R-1B	92.7500	100.00	500.00
BECK, CASEY & SYBIL TRUST	512 BARBERRY AVE	02442-134-O	401	R-1B	92.2400	100.00	500.00
TAVERNIT, PAUL & COURTNEY	522 BARBERRY AVE	02442-135-O	401	R-1B	93.2600	100.00	500.00
COLBURN, JOHN T & N A - TRUSTE	606 BARBERRY AVE	02442-136-O	401	R-1B	88.1400	100.00	500.00
FOSS, ENOS & TERESA TRUST	614 BARBERRY AVE	02442-137-O	401	R-1B	77.5300	100.00	500.00
DRAGOO, JOHN L & L A	622 BARBERRY AVE	02442-138-O	401	R-1B	85.0000	100.00	500.00
BAREITHER, CHAD A & RACHEL M	706 BARBERRY AVE	02442-139-O	401	R-1B	108.0000	100.00	500.00
VANDERMAY, WILLIAM J & J A TRUST	716 BARBERRY AVE	02442-140-O	401	R-1B	108.0000	100.00	500.00
BOWMAN, JOHN & RENEE TRUST	1701 LAKEVIEW DR	03520-001-A	401	R-1A	119.9000	100.00	500.00
FURGASON, ESTHER M TRUST	1709 LAKEVIEW DR	03520-003-A	401	R-1A	47.9250	100.00	500.00
SPEESE, PATRICK & DAWN	1713 LAKEVIEW DR	03520-004-O	401	R-1A	75.9300	100.00	500.00
VANDERWOUDE, STEVEN J &	1721 LAKEVIEW DR	03520-005-O	401	R-1A	49.0000	100.00	500.00
VANDYK, JELENE TRUST	1725 LAKEVIEW DR	03520-006-O	401	R-1A	49.0000	100.00	500.00
KILBURN, CHRIS & TAMARA	1729 LAKEVIEW DR	03520-007-O	401	R-1A	49.0000	100.00	500.00
VANDERMEER, DANIA L & RONALD J	1803 LAKEVIEW DR	03520-008-O	401	R-1A	49.0000	100.00	500.00
OHLMANN, DANIEL & CHRISTY	1807 LAKEVIEW DR	03520-009-O	401	R-1A	49.0000	100.00	500.00
THOMAS, DAVID S & JUDITH E	1811 LAKEVIEW DR	03520-010-O	401	R-1A	98.0000	100.00	500.00
TULLOCK, JONATHAN & ROBIN	1821 LAKEVIEW DR	03520-012-O	401	R-1A	49.0000	100.00	500.00
HAINES, BRETT D & AMY E MCCONNELL-	1849 LAKEVIEW DR	03520-013-A	401	R-1A	65.0000	100.00	500.00
KOSS, LEYNA & O'CONNELL, BRIAN	1877 LAKEVIEW DR	03520-013-B	401	R-1A	65.0000	100.00	500.00
REDER, BRUCE E	1905 LAKEVIEW DR	03520-015-A	401	R-1A	66.0000	100.00	500.00
MURRAY, JOSEPH P	1913 LAKEVIEW DR	03520-017-O	401	R-1A	45.0000	100.00	500.00
CAPORAL, MARY LOUISE	1917 LAKEVIEW DR	03520-018-O	401	R-1A	45.0000	100.00	500.00
THE CRODEN FAMILY TRUST	1925 LAKEVIEW DR	03520-019-O	401	R-1A	106.0000	100.00	500.00
ROTH, PETER G	2001 LAKEVIEW DR	03520-021-O	401	R-1A	65.0000	100.00	500.00
KNAPP, KEIR D & CYNTHIA A	2007 LAKEVIEW DR	03520-022-O	401	R-1A	82.0000	100.00	500.00
FORD, TODD B & FORD, JOSEPH	2015 LAKEVIEW DR	03520-024-O	401	R-1A	49.7000	100.00	500.00
WATERHOUSE, HELEN TRUST NO. 1	2019 LAKEVIEW DR	03520-025-O	401	R-1A	50.0000	100.00	500.00
SLAGER, DOUGLAS P & D L	9310 PORTAGE RD	03520-026-O	401	R-1A	105.1500	100.00	500.00
YOUNG, DENISE A	1228 FOREST DR	03760-001-O	401	R-1A	50.0000	100.00	500.00
VANDERBOR, TODD A & A M	1222 FOREST DR	03760-002-O	401	R-1A	50.0000	100.00	500.00
O'BRIEN, NICK & MARGARET	1220 FOREST DR	03760-003-O	401	R-1A	50.0000	100.00	500.00
BETHELL, KRISTEN & LANCE	1216 FOREST DR	03760-004-O	401	R-1A	50.0000	100.00	500.00
PATERNOSTER, JAMES M & A C	1210 FOREST DR	03760-005-O	401	R-1A	100.0000	100.00	500.00
THOMPSON, LOWELL B & S G	1202 FOREST DR	03760-007-O	401	R-1A	100.0000	100.00	500.00
LINDSAY FAMILY TURST	1122 FOREST DR	03760-009-O	401	R-1A	90.0000	100.00	500.00

West Lake Improvement Association

Water Quality Projects Special Assessment Roll - Dist. No. 020-Q

2020-2024

Tentative Roll

Owner	Address	Parcel No.	Class	Zoning	Frontage	Flat Rate	Total Assessment
SCOTT, JAMES ET AL	1120 FOREST DR	03760-010-O	402	R-1A	10.0000	100.00	500.00
KAMINSKI, LINDA A	1116 FOREST DR	03760-011-O	401	R-1A	50.0000	100.00	500.00
SMITH, ELISABETH J	1110 FOREST DR	03760-012-O	401	R-1A	50.0000	100.00	500.00
ROHLWING, THOMAS & WENDY TRUSTS	1106 FOREST DR	03760-013-O	401	R-1A	50.0000	100.00	500.00
BAUER, DAVID & SNEATH, BARBARA	1102 FOREST DR	03760-014-A	401	R-1A	50.0000	100.00	500.00
LEMMER FAMILY TRUST	8941 WEST END DR	04980-003-O	401	R-1A	115.0000	100.00	500.00
HUDSON, JAMES R & KARIN K	9001 WEST END DR	04980-005-O	401	R-1A	50.0000	100.00	500.00
FRIES JR, WILLIAM & GLEASON, CATHER	9007 WEST END DR	04980-006-O	401	R-1A	50.0000	100.00	500.00
VANDERHORST, TOM & J L	9011 WEST END DR	04980-007-O	401	R-1A	50.0000	100.00	500.00
KUIPER, DONALD L & J	9015 WEST END DR	04980-008-O	401	R-1A	46.7000	100.00	500.00
WARNER, CAROL L	9019 WEST END DR	04980-009-O	401	R-1A	50.0000	100.00	500.00
PELC, DIANE B	9025 WEST END DR	04980-010-O	401	R-1A	50.0000	100.00	500.00
BASTIAN, JODIE L	9029 WEST END DR	04980-011-O	401	R-1A	50.0800	100.00	500.00
CALEY, MARK	9033 WEST END DR	04980-012-A	401	R-1A	50.0800	100.00	500.00
PAYNE, CHRISTOPHER W	9039 WEST END DR	04980-012-B	401	R-1A	100.1600	100.00	500.00
LUTZ, LARRY & PATRICIA	9103 WEST END DR	04980-016-A	401	R-1A	50.0800	100.00	500.00
LUTZ JR, LARRY J & PATRICIA J	9107 WEST END DR	04980-017-O	401	R-1A	50.6300	100.00	500.00
BEERY, RICHARD L & GLORIA B	9111 WEST END DR	04980-018-O	401	R-1A	50.6300	100.00	500.00
NAHAVANDI, KUROSH & ELIZABETH TRUST	9121 WEST END DR	04980-019-O	401	R-1A	46.5000	100.00	500.00
SCHIEMAN, KIRK & KAREN	9125 WEST END DR	04980-020-A	401	R-1A	66.0000	100.00	500.00
TODD, DONALD W & LINDA D	9133 WEST END DR	04980-022-A	401	R-1A	66.0000	100.00	500.00
BLAGA, D, STEELE, A & ALBRECHT, L	9135 WEST END DR	04980-023-O	402	R-1A	8.0000	100.00	500.00
HESSSEN, STEPHEN J	521 SOUTH SHORE DR	04980-024-O	401	R-1A	80.0000	100.00	500.00
LONGJOHN, JEANNINE M TRUST	527 SOUTH SHORE DR	04980-025-O	401	R-1A	50.0000	100.00	500.00
JACKEL, JONATHAN P	603 SOUTH SHORE DR	04980-026-O	401	R-1A	50.0000	100.00	500.00
NEEB, KIM M & SHERYL L	607 SOUTH SHORE DR	04980-027-O	401	R-1A	50.0000	100.00	500.00
SIMMERING, BRETT C & MARY A	611 SOUTH SHORE DR	04980-028-O	401	R-1A	100.0000	100.00	500.00
KIME, CHAD L & JENNIFER L	619 SOUTH SHORE DR	04980-030-O	401	R-1A	50.0000	100.00	500.00
BEUKER, STEVEN K & PAMELA S	623 SOUTH SHORE DR	04980-031-O	401	R-1A	75.0000	100.00	500.00
ROLFFS, PHILIP C & G	629 SOUTH SHORE DR	04980-033-O	401	R-1A	75.0000	100.00	500.00
NIEDZWIECKI, TODD & J A	633 SOUTH SHORE DR	04980-034-O	401	R-1A	44.0000	100.00	500.00
KAEMPF, CLAUDIO R	637 SOUTH SHORE DR	04980-035-O	401	R-1A	44.0000	100.00	500.00
LINDSEY, GAIL R TRUST	641 SOUTH SHORE DR	04980-036-O	401	R-1A	44.0000	100.00	500.00
PEDRAZA, GABRIEL E & PRISCILLA A	645 SOUTH SHORE DR	04980-037-A	401	R-1A	49.0000	100.00	500.00
KLOOSTERMAN, TERESA L	1720 FOREST DR	05640-001-A	401	R-1A	77.0000	100.00	500.00
ELY, RANDY L & JANE M	1716 FOREST DR	05640-002-A	401	R-1A	56.1000	100.00	500.00
LKS RENTALS LLC	1712 FOREST DR	05640-004-A	401	R-1A	50.0000	100.00	500.00
BOEHRER, GREGORY & COURTNEY	1710 FOREST DR	05640-005-O	401	R-1A	38.0400	100.00	500.00
GRUBKA, DEBORAH	1706 FOREST DR	05640-006-O	401	R-1A	34.9100	100.00	500.00
BASCH, MARTIN C & M K	1638 FOREST DR	05640-007-O	401	R-1A	49.5000	100.00	500.00
KROPF, ROBERT C & J L	1634 JOHN ST	05640-008-O	401	R-1A	49.5000	100.00	500.00
WOODS, THOMAS R & SHARON K TRUST	1630 JOHN ST	05640-009-O	401	R-1A	49.5000	100.00	500.00
SPERLING, JACQUELINE M & BRUCE	1626 JOHN ST	05640-010-O	401	R-1A	49.5000	100.00	500.00
GOODCHILD, GARY L & DEBORAH	1624 JOHN ST	05640-011-O	401	R-1A	54.0000	100.00	500.00
VANWALBECK, CRAIG & P	1618 JOHN ST	05640-012-O	401	R-1A	51.5000	100.00	500.00
CORNELL JR, WILLIAM D & SHELLEY L	1616 JOHN ST	05640-013-O	401	R-1A	22.5400	100.00	500.00
MUELLER, AMY	1534 PAUL CT	05640-026-O	401	R-1A	43.0100	100.00	500.00
BURGOS, MICHAEL & THERESA	1530 PAUL CT	05640-027-O	401	R-1A	49.5000	100.00	500.00
FIGORE, JOHN J & KRISTEN A	1524 PAUL CT	05640-030-O	401	R-1A	36.0000	100.00	500.00
TARVER, DONALD E & TAMMY L	1530 FOREST DR	05640-031-O	401	R-1A	49.5000	100.00	500.00
KEMERLING, RONALD B & ANNE E	1524 FOREST DR	05640-032-O	401	R-1A	44.5300	100.00	500.00
HALL, ANDREW L & EVELYN V TRUST	1520 FOREST DR	05640-033-A	401	R-1A	74.2500	100.00	500.00
WHEATLEY, THOMAS C & T A	1510 FOREST DR	05640-035-O	401	R-1A	74.2500	100.00	500.00
BODEN, STEVEN F	1504 FOREST DR	05640-036-O	401	R-1A	90.2600	100.00	500.00

West Lake Improvement Association

Water Quality Projects Special Assessment Roll - Dist. No. 020-Q

2020-2024

Tentative Roll

Owner	Address	Parcel No.	Class	Zoning	Frontage	Flat Rate	Total Assessment
AUSTIN, ROBERT J & JEAN M	1428 FOREST DR	05640-037-O	401	R-1A	49.5000	100.00	500.00
BERNER, KEVIN J & MICHELLE E	1424 FOREST DR	05640-038-O	401	R-1A	49.5000	100.00	500.00
SPRAGUE, ALAN D & SHIRLEY A	1416 FOREST DR	05640-039-O	401	R-1A	49.5000	100.00	500.00
SHONOIKI, ABAYOMI & SHOUA	1412 FOREST DR	05640-040-O	401	R-1A	49.5000	100.00	500.00
OSGOOD, MICHAEL	1408 FOREST DR	05640-041-O	401	R-1A	49.5000	100.00	500.00
SWARD, NICHOLAS E & HEIDI	1402 FOREST DR	05640-042-A	401	R-1A	99.0000	100.00	500.00
VELEZ, LUIS F & LINARES, SILVIA T	1318 FOREST DR	05640-044-A	401	R-1A	63.5000	100.00	500.00
BOERMA, SCOTT & AMY	1322 FOREST DR	05640-044-B	401	R-1A	55.0000	100.00	500.00
WITHERS, DEBRA TRUSTEE	1314 FOREST DR	05640-045-O	401	R-1A	40.0000	100.00	500.00
HELMICK, CHAD A & TAMAR R	1308 FOREST DR	05640-046-A	401	R-1A	20.8300	100.00	500.00
REDA, VINCENTO J	1312 FOREST DR	05640-046-B	401	R-1A	20.8200	100.00	500.00
MARSHBURN, MICHAEL & JANET TRUST	903 LAKEVIEW DR	06360-001-O	401	R-1A	86.1600	100.00	500.00
FLEMING, ANNE MARIE	911 LAKEVIEW DR	06360-003-O	401	R-1A	43.0800	100.00	500.00
GUERNSEY, WILLIAM & DOROTHY	915 LAKEVIEW DR	06360-004-O	401	R-1A	43.0800	100.00	500.00
COMER, ERIC T	919 LAKEVIEW DR	06360-005-O	401	R-1A	43.0800	100.00	500.00
KAKABEEKE, NICK	923 LAKEVIEW DR	06360-006-O	401	R-1A	43.0800	100.00	500.00
BUSH, ROBERT J & RITA R TRUST	927 LAKEVIEW DR	06360-007-O	401	R-1A	43.0800	100.00	500.00
MEYERS, FREDERICK & JUDY TRUST	1001 LAKEVIEW DR	06360-008-O	401	R-1A	43.0800	100.00	500.00
SMITH, MAGGI D	1005 LAKEVIEW DR	06360-009-O	401	R-1A	43.0800	100.00	500.00
WAHL, WILLIAM N TRUST	1009 LAKEVIEW DR	06360-010-O	401	R-1A	43.0800	100.00	500.00
SIMONTON, JULIA E TRUST	1013 LAKEVIEW DR	06360-011-A	401	R-1A	86.1600	100.00	500.00
TEMPLE, JOHN R, AMY F & SARA E	1021 LAKEVIEW DR	06360-013-O	401	R-1A	43.4300	100.00	500.00
KNUE, THADDEUS & GRACE TRUST	1029 LAKEVIEW DR	06360-014-O	401	R-1A	86.8600	100.00	500.00
GRANCHI, MICHAEL G & D A	1103 LAKEVIEW DR	06360-016-O	401	R-1A	65.1450	100.00	500.00
NEWMAN, JASON E	1111 LAKEVIEW DR	06360-018-O	401	R-1A	65.1450	100.00	500.00
HARTGERINK, JAY P	1121 LAKEVIEW DR	06360-019-O	401	R-1A	86.8600	100.00	500.00
STERMER TRUST	1123 LAKEVIEW DR	06360-021-O	401	R-1A	43.4300	100.00	500.00
CARTIER, JULIE E TRUST	1127 LAKEVIEW DR	06360-022-O	401	R-1A	86.8600	100.00	500.00
BURKE, MICHAEL L	1205 LAKEVIEW DR	06360-024-O	401	R-1A	43.4300	100.00	500.00
JONES, GERALD L & SHARON J TRUST	1209 LAKEVIEW DR	06360-025-O	401	R-1A	43.4300	100.00	500.00
STAMANN, DWIGHT SPENCER	1213 LAKEVIEW DR	06360-026-O	401	R-1A	43.4300	100.00	500.00
TERBERG, JOYCE TRUSTEE	1028 FOREST DR	06960-001-O	401	R-1A	50.0000	100.00	500.00
SOSVILLE, WENDY H TRUST &	1024 FOREST DR	06960-002-O	401	R-1A	50.0000	100.00	500.00
MITCHELL, RONALD L & V L	1020 FOREST DR	06960-003-O	401	R-1A	50.0000	100.00	500.00
JARVIS, RANDALL L & SHERRY A	1014 FOREST DR	06960-004-O	401	R-1A	50.0000	100.00	500.00
WELSER, FREDERICK R & SANDRA K	1010 FOREST DR	06960-005-O	401	R-1A	50.0000	100.00	500.00
CLIFFORD, EDWARD A & HELEN J	1006 FOREST DR	06960-006-B	401	R-1A	50.0000	100.00	500.00
DEHAAN, GRACE E TRUST	930 FOREST DR	06960-007-B	401	R-1A	65.6200	100.00	500.00
VAINAVICZ, JEREMY	922 FOREST DR	06960-008-O	401	R-1A	74.1100	100.00	500.00
YELSMA, PHILIP D & PAMELA A	916 FOREST DR	06960-009-O	401	R-1A	66.1000	100.00	500.00
EDLEFSON, ADAM & MELANIE	912 FOREST DR	06960-010-O	401	R-1A	44.0700	100.00	500.00
GREEN, RODNEY R & A E	908 FOREST DR	06960-011-O	401	R-1A	44.0700	100.00	500.00
STUUT JR, DAVID & MARYETTE TRUST	902 FOREST DR	06960-012-O	401	R-1A	70.1300	100.00	500.00
VANDERMAY, JACK T TRUST	824 FOREST DR	06960-014-O	401	R-1A	73.0900	100.00	500.00
BOWER, TODD L & MARY R	1623 LAKEVIEW DR	08880-002-O	401	R-1A	44.0000	100.00	500.00
STREHL, NORA & STRAZDAS, MICHAEL	1619 LAKEVIEW DR	08880-003-O	401	R-1A	44.0000	100.00	500.00
MARTIN, CAROL & UFKES-HENSLEY, P	1617 LAKEVIEW DR	08880-004-O	401	R-1A	44.0000	100.00	500.00
HAKKEN, RICHARD A & JULIE M	1611 LAKEVIEW DR	08880-005-O	401	R-1A	44.0000	100.00	500.00
BAUER, GEORGE	1607 LAKEVIEW DR	08880-006-O	401	R-1A	44.0000	100.00	500.00
ALLEN, LARRY & BOWDEN, IRMA	1603 LAKEVIEW DR	08880-007-O	401	R-1A	42.0000	100.00	500.00
VANDERMAY, BRIAN F	1529 LAKEVIEW DR	08880-008-O	401	R-1A	86.0000	100.00	500.00
NETTLES, KATHLEEN & KOON, LINDA	1523 LAKEVIEW DR	08880-010-O	401	R-1A	44.0000	100.00	500.00
OSBORN, JACK K & KAY I	1515 LAKEVIEW DR	08880-011-O	401	R-1A	88.0000	100.00	500.00
GRUBKA, JUSTIN & MCKENZIE, ASHLEY	1511 LAKEVIEW DR	08880-013-O	401	R-1A	44.0000	100.00	500.00

West Lake Improvement Association
Water Quality Projects Special Assessment Roll - Dist. No. 020-Q
2020-2024

Tentative Roll

Owner	Address	Parcel No.	Class	Zoning	Frontage	Flat Rate	Total Assessment
FILIPUTTI, L & DOORLAG, S H TRUST	1507 LAKEVIEW DR	08880-014-O	401	R-1A	44.0000	100.00	500.00
HOZER, CHARLES II	1501 LAKEVIEW DR	08880-015-O	401	R-1A	46.0000	100.00	500.00
CAMP, WILLIAM T & S J	1423 LAKEVIEW DR	08880-016-O	401	R-1A	92.0000	100.00	500.00
WYLIE, JACQUELINE L	1417 LAKEVIEW DR	08880-018-O	401	R-1A	88.0000	100.00	500.00
WEESSIES, JAMES N	1411 LAKEVIEW DR	08880-020-O	401	R-1A	44.0000	100.00	500.00
HARRIS, JUDITH M	1407 LAKEVIEW DR	08880-021-O	401	R-1A	48.0000	100.00	500.00
YASSAY II, MARK S	1401 LAKEVIEW DR	08880-022-O	401	R-1A	80.0000	100.00	500.00
BRINK, KENNETH W & J	1325 LAKEVIEW DR	08880-024-O	401	R-1A	44.0000	100.00	500.00
YASSAY, MARK S & CINDY S	1321 LAKEVIEW DR	08880-025-O	401	R-1A	44.0000	100.00	500.00
EMANUEL, JANE M TRUST	1317 LAKEVIEW DR	08880-026-O	401	R-1A	44.0000	100.00	500.00
HUNT, DAVID H & BROKUS, DEBORAH	1313 LAKEVIEW DR	08880-027-O	401	R-1A	44.0000	100.00	500.00
CUMMINGS, RENAE L & REX W	1309 LAKEVIEW DR	08880-028-O	401	R-1A	66.0000	100.00	500.00
SCHIAVONE, LOUISE A	1303 LAKEVIEW DR	08880-030-O	401	R-1A	66.4000	100.00	500.00
KENDALL, ELAINE - TRUSTEE	1400 LAKEVIEW DR	08880-049-O	401	R-1A	88.0000	100.00	500.00
230 Properties					14,174.52		115,000.00

Exempt

CITY OF PORTAGE BLDG AUTHORITY	600 BARBERRY AVE	00022-238-O	702	R-1B	0.0000	0.00	0.00
CITY OF PORTAGE BLDG AUTHORITY	8651 S WESTNEDGE AVE	00022-260-O	702	R-1B	660.0000	0.00	0.00
CITY OF PORTAGE BLDG AUTHORITY	8721 S WESTNEDGE AVE	00022-265-O	702	R-1B	0.0000	0.00	0.00

Updated 10-10-2019 MRR

TO: Honorable Mayor and City Council

FROM: Joseph La Margo, City Manager



SUBJECT: Sale of Excess City Property - Gladys Street Right-of-Way

SUPPORTING PERSONNEL: Chris Forth, Acting Director, Department of Community Development

ACTION RECOMMENDED: Adopt the Resolution to Sell the Excess City Property in the amount of \$314,500 located along the south side of Gladys Street, east of 6405 South Westnedge Avenue and authorize the City Manager to sign all documents related to the real estate transaction on behalf of the city.

The City Administration and Plazacorp have been discussing the sale of the excess city right-of-way on Gladys Street, east of 6405 South Westnedge Avenue to Plazacorp. Plazacorp recently purchased the former Mercantile Bank property at 6405 South Westnedge Avenue, which has been vacant since the spring of 2018, and has been determined functionally obsolete by the City Assessor. Plazacorp is proposing to redevelop the corner of South Westnedge Avenue and Gladys Street, and desires to purchase the city-owned Gladys Street excess right-of-way to combine it with the corner lot for a larger, more viable development project.

The city property was purchased to facilitate the Gladys Street/Mall Drive realignment project completed in 1994. Prior to the realignment, Gladys Street extended to South Westnedge Avenue between Burger King (6415 South Westnedge Avenue) along the south side and the former Mercantile Bank property to the north. As shown on the attached vicinity map, a portion of the former Gladys Street was retained to provide access to both of these businesses via a new Gladys Street Service Drive, whereas the main thoroughfare of Gladys Street was relocated to align with the Mall Drive/South Westnedge Avenue intersection. This current access to the Gladys Street Service Drive off South Westnedge Avenue can be confusing to motorists.

As shown on the concept plan proposed by Plazacorp, the westerly portion of the Gladys Street Service Drive will be eliminated and the easterly end will be modified to provide a safer 90-degree alignment with Gladys Street. The property at 218 Gladys Street will be provided with a modified access drive to Gladys Street. In addition, Plazacorp will provide public utility and sidewalk easements to the city as appropriate within the redevelopment project, which will be documented prior to the final sale of the property.

Two appraisals of the subject property have been completed. The first appraisal was completed by Plazacorp in October 2018, and the value of the property was evaluated as a stand-alone development parcel with frontage on Gladys Street. The second appraisal was completed for the city in December 2018, with the property value based on the property as an assemblage parcel with the former bank

property, which has frontage on both South Westnedge Avenue and Gladys Street. The Plazacorp appraisal estimated the value as \$220,000 whereas the appraisal conducted for the city estimated the value at \$409,000.

After discussions with Plazacorp representatives, and considering the importance of facilitating redevelopment of this vacant building located at an important corner within the South Westnedge Avenue retail corridor, the City Administration recommends approval of the Plazacorp offer to purchase the Gladys Street property for \$314,500, which is the average of the two appraisals.

The City Assessor determination of the former Mercantile Bank building as functionally obsolete, makes the property an eligible facility for a Brownfield Redevelopment Plan Amendment. As such, Plazacorp intends to prepare a Brownfield Redevelopment Plan Amendment application which would cover the cost of demolition and site clearing necessary to remove the functionally obsolete building, removal and/or modifications to portions of the Gladys Street Service Drive and other eligible activities. If the plan amendment is approved by City Council, these costs would be reimbursed to Plazacorp through the capture of tax increment revenue generated by the redevelopment project. The additional use of brownfield redevelopment incentive would further assist with bringing this project to fruition, as well as lay the groundwork for future redevelopment in the vicinity.

The City Administration has reviewed the offer and the conceptual plan submitted by Plazacorp and recommends approval of the attached Real Estate Purchase Agreement prepared by the City Attorney and signed by Plazacorp as noted above. The Purchase Agreement was first introduced to City Council on October 1, 2019 and was placed on file in the Office of City Clerk for 28 days for public comment. Subsequently, no public input or comment has been received in regard to this matter. It is recommended that City Council adopt the resolution to sell the excess city property located along the south side of Gladys Street, east of 6405 South Westnedge Avenue, and authorize the City Manager to sign all documents related to the real estate transaction on behalf of the city.

FUNDING: Proceeds from the sale of the Gladys Street property to Plazacorp will be deposited into the General Fund.

Attachments:

1. Purchase Sale Agreement Gladys
2. Gladys Street Excess ROW Vicinity Map
3. Resolution 19-2 Gladys Street

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made and entered into as of _____, 2019 ("**Execution Date**") by and between CITY OF PORTAGE, a Michigan municipal corporation, whose address is 7719 South Westnedge Avenue, Portage, Michigan 49002 (the "**City**") and 6405 SW, LLC, a Michigan limited liability company, whose address is 200 West Michigan Avenue, Suite 201, Kalamazoo, Michigan 49007 (the "**Developer**"). Notwithstanding the Execution Date, the Effective Date of this Agreement shall be determined in accordance with Section 14(K), below.

RECITALS

A. Developer owns the real property in City of Portage, Michigan commonly known as 6405 S. Westnedge Avenue, Portage, Michigan ("**Developer's Premises**").

B. City owns the real property in City of Portage, Michigan, located adjacent to the East of Developer's Premises, and approximately shown on **Exhibit A** (the "**Property**").

C. Developer desires to purchase the Property from City, and to redevelop Developer's Premises and the Property (collectively, the "**Development Site**") for commercial and/or retail use, pursuant to plans which are generally consistent with the concept drawings attached as **Exhibit B**.

NOW THEREFORE, in consideration of the mutual representations and covenants of the parties hereinafter expressed, it is hereby agreed as follows:

1. **Purchase and Sale.** City agrees to sell to Developer, and Developer agrees to purchase from City, the Property for the sum of Three Hundred Fourteen Thousand Five Hundred Dollars (\$314,500) (the "**Purchase Price**"), subject to adjustments and prorations set forth herein. Within five (5) days after the Effective Date, Developer shall deposit the sum of Five Thousand Dollars (\$5,000) (the "**Earnest Money**") with Devon Title Agency (the "**Title Company**"), 3250 Centre Ave., Suite 2, Portage, Michigan, which shall be held by the Title Company pursuant to this Agreement, and which shall be applicable to the Purchase Price.

2. **Property Information.** Within five (5) days after the Effective Date, City shall provide to Developer with copies of the following with respect to the Property, if existing and within City's possession or control: (i) any title insurance policies, surveys, and environmental reports with respect to the Property; and (ii) all documents, agreements, and pleadings, relating to City's acquisition of the Property by eminent domain and/or the relocation, abandonment and/or vacation of Gladys Street (collectively, the "**Eminent Domain Documents**"). Further, during this Agreement City will cooperate with and assist Developer in obtaining copies of any Eminent Domain Documents that are not within City's immediate possession (e.g., documents which are in possession of any outside counsel).

3. **Evidence of Title.**

(A) During the Inspection Period (defined below), Developer, at its expense, may obtain a staked survey of the Property. Such survey shall be prepared in accordance with the ALTA minimum survey standards and contain the certification and other matters required by such standards and the legal description prepared by the surveyor may be used, at Developer's option, in the deed delivered to Developer at Closing (defined below).

(B) During the Inspection Period (defined below), Developer, at its expense, will order from Title Company, a commitment for an ALTA owner's policy of title insurance for the Property with standard exceptions deleted (the "**Title Commitment**"). Developer shall have until the expiration of the Inspection Period (defined below) to notify City in writing of any objections to title and survey ("**Title Objections**") otherwise Developer shall be deemed to have accepted the title as shown by Title Commitment

and the survey. If City, at its option, does not remove any such Title Objections within ten (10) days from the date of such notice, then Developer, at its option, may terminate this Agreement (and be refunded the Earnest Money) by written notice to City within five (5) days after the end of the ten (10) days. If Developer does not provide such written termination notice, Developer shall be deemed to have waived such Title Objections. All defects approved by Developer, or Title Objections subsequently waived, shall be the **"Permitted Exceptions."**

(C) At Closing, City shall furnish Developer with an owner's policy of title insurance (or a marked-up Title Commitment, binding the Title Company to issue its owner's policy of title insurance) (the **"Title Policy"**) consistent with the Title Commitment as approved by the Developer by the delivery of its Notice to Proceed (or as otherwise modified by Title Company and approved by Developer before the Closing Date). City shall provide the Title Company with an owner's affidavit reasonably acceptable to the City and the Title Company which shall be sufficient for the Title Company to issue its Title Policy without the standard exceptions which can be removed by receipt of an owner's affidavit.

4. Due Diligence Investigation.

(A) Developer shall have until one hundred twenty (120) days after the Effective Date (the **"Inspection Period"**) to complete all inspections (including without limitation, economic feasibility studies, title, survey, physical, and environmental) as it deems necessary. Developer shall have the right to extend the Inspection Period for an additional forty-five (45) days, by written notice to City before the expiration of the Inspection Period. Developer's access to, and inspections of, the Property shall be at Developer's sole risk and expense and City shall have no responsibility therefor. Developer shall repair any loss or damage to the Property caused by the acts or omissions of Developer in connection with its inspections. During such periods of time as Developer is allowed to enter the Property pursuant to the terms of this Agreement, Developer shall make commercially reasonable efforts to protect the Property from damage caused by the acts or omissions of Developer, and Developer shall promptly restore or cause to be restored that portion of the Property so damaged by Developer to the condition existing prior to such damage. Developer shall not permit a construction, mechanic's, material or other lien to be filed against any of the Property as a result of any work, labor, service or materials performed or furnished by, for, or to Developer, its employees, agents and/or contractors. If any such lien shall at any time be filed against the Property, Developer shall, without expense to City cause the lien to be discharged within 30 days of the filing thereof.

(B) During the Inspection Period, Developer, at its expense, may obtain a Phase I Environmental Assessment, and if recommended by Developer's environmental consultant, a Phase II Environmental Assessment. Developer will not file a Baseline Environmental Assessment before Closing without City's express prior written consent.

(C) During the Inspection Period, Developer may provide to City written notice that Developer is prepared to proceed to close (the **"Notice to Proceed"**). Before the expiration of the Inspection Period, Developer may terminate this Agreement for any reason by delivery of written notice to City (the **"Termination Notice"**). If Developer (in its discretion) delivers a Termination Notice or fails to give a Notice to Proceed before the expiration of the Inspection Period, the Earnest Money shall be immediately returned to Developer, this Agreement shall terminate, and neither party shall have any further obligation to the other. If Developer delivers a Notice to Proceed, the Earnest Money shall become non-refundable to Developer except in the event of a material change in the condition of the Property or as otherwise expressly provided herein.

5. Instruments of Conveyance. At Closing:

(A) City shall execute and deliver to Developer a good and sufficient Warranty Deed in recordable form, conveying marketable fee simple title to the Property to Developer, subject only to any Permitted Exceptions.

(B) City shall provide whatever documentation which may be reasonably required by the title insurer to warrant that there are no unpaid claims which have created or could lead to the creation of liens

on the Property, including evidence that all contractors, subcontractors, and supplies have been paid in full and released all liens.

(C) Each party shall execute a closing statement to evidence the transaction.

(D) The parties shall furnish to each other such other documents as are necessary and appropriate for the consummation of this transaction (provided that such documents do not have the effect of amending this Agreement or modifying the parties' obligations under this Agreement), and shall indicate that the parties executing the documents have the authority to enter into this Agreement, consummate the sale contemplated hereby, and execute and perform all documents hereunder.

6. **Prorations.** It is contemplated that the Property is currently not subject to *ad valorem* property taxes. If any *ad valorem* property taxes are levied against the Property before the Closing Date, such taxes shall be paid by City; Developer shall pay all *ad valorem* property taxes levied after the Closing Date. All assessments, if any, on the Property due before the Closing Date shall be paid at or before the Closing Date by City and assessments, if any, due on and after the Closing Date shall be the responsibility of Developer.

7. **Property "As Is".** Developer agrees that it has inspected and will continue to inspect and assess the Property and that Developer will rely solely upon such inspection and assessment in electing whether or not to purchase the Property. **IT IS UNDERSTOOD AND AGREED BY CITY AND DEVELOPER THAT DEVELOPER IS PURCHASING THE PROPERTY "AS IS" AND "WHERE IS", AND WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE, AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, CITY IS MAKING NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO THE QUALITY, PHYSICAL CONDITION OR VALUE OF THE PROPERTY, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE PROPERTY, THE ZONING CLASSIFICATION OF THE PROPERTY OR THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAW. IN ADDITION TO AND NOT IN LIMITATION OF THE FOREGOING, IT IS UNDERSTOOD AND AGREED BY CITY AND DEVELOPER THAT CITY MAKES NO WARRANTY OF HABITABILITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR ANY PURPOSE WITH REGARD TO THE PROPERTY.** Developer agrees that the provisions of this paragraph are a material inducement to City in connection with the execution of this Agreement and the consummation of the transaction contemplated hereby and that, but for the provisions of this paragraph, City would not have executed this Agreement or agree to sell the Property on the terms and conditions contained herein.

8. Closing.

(A) Closing for this transaction (the "**Closing**") shall occur at the office of the title company at 9:00 AM on the date (the "**Closing Date**") that is thirty (30) days after the delivery of Developer's Notice to Proceed or such earlier mutually agreeable time, date or location. At or before the Closing, City shall pay all applicable real estate transfer taxes, and one-half of the closing fee charged by Title Company. At or before the Closing, Developer shall pay the premium for the Title Policy, the cost to record the deed, and one-half of the closing fee charged by Title Company.

(B) Developer and City shall each pay their own costs incurred incident to the preparation, execution and delivery of this Agreement and the performance of their obligations hereunder including without limitation the fees of counsel, accountants and consultants, real estates, brokers and finders whether or not the transactions contemplated by this Agreement shall be consummated.

9. **Default.** If Developer defaults under this Agreement and such default continues for seven (7) days after written notice from City (except that no notice shall be required if Developer's default is a failure to close), then City may terminate this Agreement in which case the Developer shall promptly reimburse City for

its actual third-party costs incurred in good-faith in connection with the transaction contemplated by this Agreement, and retain the Earnest Money as liquidated damages and as its sole and exclusive remedy, the parties agreeing that actual damages to City would be difficult, if not impossible, to ascertain. If City defaults under this Agreement and such default continues for seven (7) days after written notice from Developer (except that no notice shall be required if City's default is a failure to close), the Earnest Money shall be returned to Developer, and as its exclusive remedies, Developer shall have the right to (i) terminate this Agreement in which case City shall promptly reimburse Developer for its actual third-party costs incurred in good-faith in connection with the transaction contemplated by this Agreement, or (ii) seek specific performance of this Agreement. Title Company is directed to accept a certification from Developer or City (with a copy provide to the other) certifying that this Agreement has been terminated, in which case Title Company will disburse the Earnest Money pursuant to the certification not less than five (5) days and not more than ten (10) days after receipt of the same, without further consent or approval the other party.

10. Brokerage Commissions. Developer and City represent and warrant to each other that neither party has been in contact with any realtor or broker concerning the purchase of the Property and that no person is entitled to a fee or commission as a result of the transaction contemplated in this Agreement. Each party shall defend and indemnify the other against and hold the other harmless from commissions claimed through such party.

11. Notices. Any notice required by this Agreement shall be in writing and either delivered personally or by certified mail, postage prepaid, return receipt requested, or by an overnight commercial carrier and delivered or mailed to the parties at their addresses specified on the first page. Notice shall be deemed to have been given on the earlier of (a) the date when received, or (b) one (1) day after deposit with an overnight commercial carrier, or (c) two (2) days after deposit in the United States mail in accordance with this paragraph. A copy of any notice given to Developer shall also be given to Aaron M. Smith, McShane & Bowie, P.L.C., 99 Monroe Avenue, NW, Suite 1100, Grand Rapids, Michigan 49503.

12. Conditions to Closing. Developer's obligations under this Agreement are contingent on Developer's satisfaction of the following conditions, any of which may be waived by Developer in its sole discretion:

(A) The Title Company shall be ready, willing and able to issue the Title Policy (and, at Developer's election, provide Developer at Closing a pro forma Title Policy) in form and substance approved by Developer in accordance with Section 3(B) on the Closing Date.

(B) An Amendment to the City of Portage Brownfield Redevelopment Plan (the "**Plan**") to add the Development Site (as generally shown on **Exhibit B**) to the Plan so as to allow for the capture of tax increment revenues to fund and/or reimburse Developer for the cost of eligible activities. City agrees to support an amendment to the Plan to include the Development Site (reserving the right to negotiate in good faith any new or amended Development and Reimbursement Agreement or any other plan document with the Developer) and to work, within legal and policy constraints, with Developer in obtaining any other financing or development incentives for which either Developer or the Development Site is eligible. Notwithstanding anything herein to the contrary, City does not represent or warrant that the Development Site will be added to the Plan or that Developer will obtain any other financing or development incentives.

(C) The City shall cause the abandonment of that portion of former Gladys Street and the street running through the Property all as approximately shown on **Exhibit A**, and that potion of platted Gladys Street located adjacent to the South of the Developer's Premises shall be vacated by a final non-appealable court order.

13. Utility Easement. At Closing, the Developer shall grant the City an easement, with terms and provisions reasonably acceptable to Developer and City (and subject to City Attorney's approval), for public utilities over the routes approximately shown on **Exhibit C** or such other location/routes mutually agreeable between the parties, which easement shall provide for the relocation of such utilities in connection with the Development Site.

14. Miscellaneous.

(A) **Assignment.** Except as expressly permitted under this paragraph, Developer shall not assign this Agreement without City's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Developer may, without City's consent, assign this Agreement to any entity owned or controlled by Jeffrey A. Nicholson. This Agreement shall inure to the benefit of and bind the parties hereto and their successors, heirs, and assigns.

(B) **Severability.** In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If any provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(C) **Waiver, Modification or Cancellation.** Any alteration or modification of any of the provisions of this Agreement, or cancellation (except as expressly permitted hereunder) or replacement of this Agreement, shall not be valid unless in writing and executed by the parties with the same formality as this Agreement. Any waiver of any of the provisions of this Agreement shall not be valid unless in writing and executed by the party benefitting from the provision waived. The failure of any party to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Agreement by another party shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect.

(D) **Relationship of Parties.** Nothing contained in this Agreement nor any act of the parties shall be deemed or construed by any party or by any third party to create the relationship of principal and agent, of partnership, of joint venture, of joint enterprise, or of any association between the parties hereto, nor shall anything contained in this Agreement or any act of the parties be construed to render any party liable for the debts or obligations of any other party.

(E) **Cumulative Remedies.** All rights, remedies and resources available within this Agreement are separate and cumulative and may be pursued separately, successively or concurrently, and are nonexclusive, and the exercise of any one of them shall in no way limit the exercise of any other which any party may be entitled under the express terms of this Agreement. The prevailing party in any dispute under this Agreement shall be entitled to recover its reasonable attorneys' fees.

(F) **Further Assurances.** Each of the parties shall execute and deliver to the other parties any documents as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, and shall do all other things necessary to this end, all without charge therefor; provided, however, that such documents or things do not have the effect of amending this Agreement or modifying the parties' obligations under this Agreement. If any party shall fail to comply with the provisions of this section, this Agreement shall constitute an actual grant, assignment and conveyance of property and rights in such manner, and with such force and effect, as shall be necessary to effectuate the terms of this Agreement.

(G) **Duplicate Originals, Counterparts.** This Agreement and any originals of exhibits referred to herein may be executed by electronic media and in any number of duplicate originals or counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

(H) **Disclosure.** This Agreement is subject to the Michigan Freedom of Information Act.

(I) **Fax/Electronic Delivery.** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be delivered by use of a fax or PDF transmitted by email and the signatures, initials and modifications shall be deemed to be valid and binding upon the parties as if the original signatures, initials and modifications were present on the documents in the handwriting of each party. Neither party shall assert the Statute of Frauds or non-enforceability or invalidity of the Agreement because of fax or PDF copies being used, and both parties specifically waive and relinquish any such defense. Each party agrees to provide an original signed document to the other upon request.

(J) **Time of the Essence.** Time is of the essence for all terms and conditions of this Agreement. Should a date for performance hereunder fall on a Saturday, Sunday or holiday, the date for performance shall be extended to the next business day. "**Business day(s)**" shall mean the days Monday through Friday, excluding bank holidays.

(K) **Contingency.** Developer acknowledges that this Agreement shall be contingent upon final approval from Portage City Council (the "**Council**") and the date of such approval shall be deemed the "**Effective Date**" of this Agreement. Developer agrees that City has made no representations or warranties with regard to the Council's final decision. If the Council decides not to approve this Agreement within sixty (60) days after the Execution Date, this Agreement shall automatically terminate and Developer shall have return of the Earnest Money deposit and each party shall assume the responsibility for all costs expended with regard to this Agreement without further liability to each other and neither party will have any obligation of liability under this Agreement.

(L) **No-Shop.** Notwithstanding anything herein to the contrary, from Execution Date and continuing so long as this Agreement is in effect, City shall terminate all negotiations with any other parties concerning the sale or lease of the Property, and shall not negotiate or enter into any contracts, leases or agreements to sell, lease or otherwise convey possession of the Property, or any portion thereof or interest therein, to any other party.

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

CITY:

DEVELOPER:

CITY OF PORTAGE, a Michigan municipal corporation

6405 SW, LLC, a Michigan limited liability company

By: _____
Name: _____
Title: _____
Date: _____, 2019

By: 
Name: Andrew Wenzel
Title: Authorized Agent
Date: 9/26/19, 2019

PORTAGE CITY COUNCIL APPROVAL:

APPROVED AS TO FORM
DATE 9/25/2019

CITY ATTORNEY

By: _____
Name: _____
Title: _____

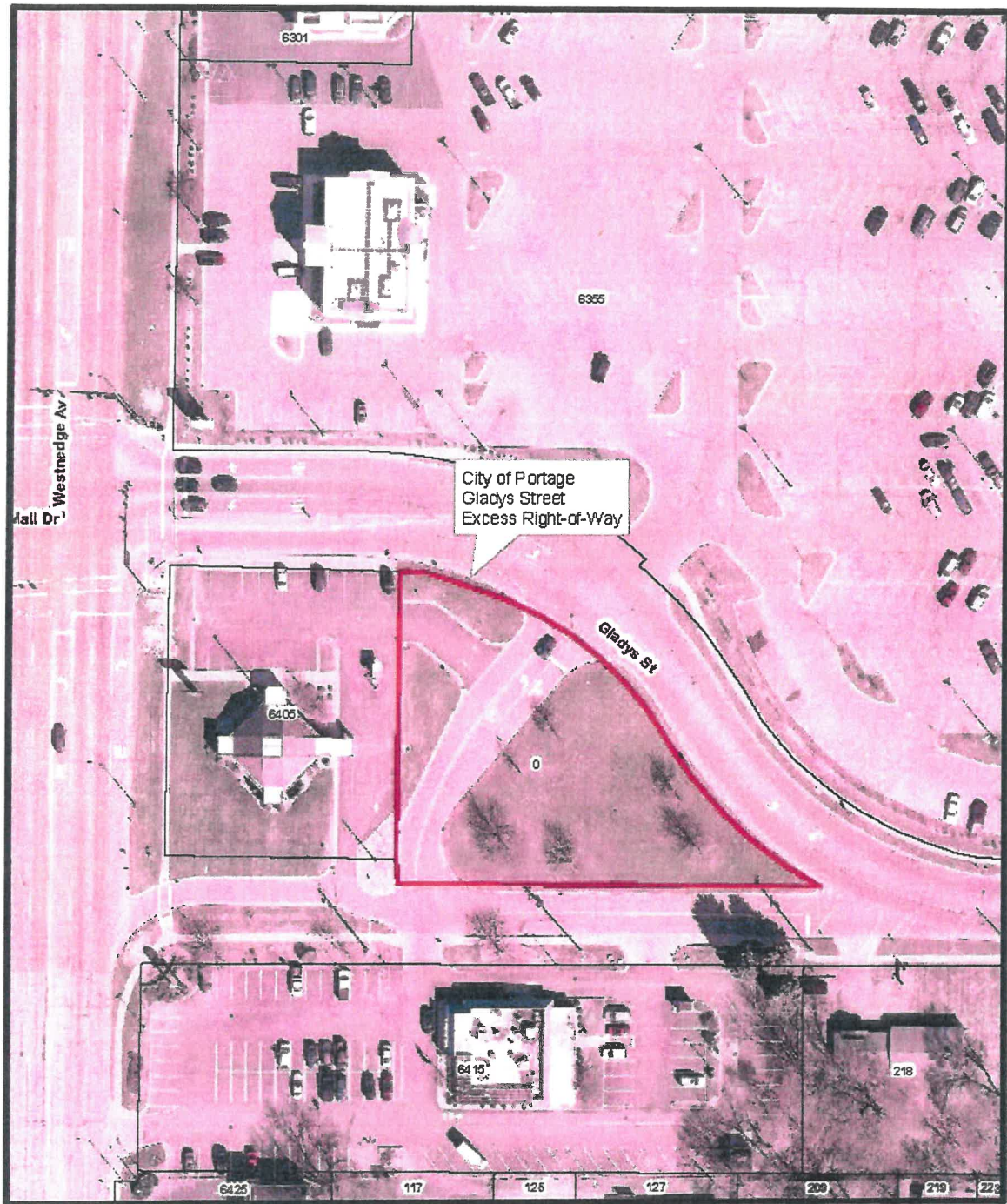
Effective Date: _____, 2019

EXHIBIT A

Legal Description and Vicinity Map

LAND SITUATED IN THE CITY OF PORTAGE, COUNTY OF KALAMAZOO, STATE OF MI,
DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 10; THENCE SOUTH ON THE WEST LINE OF SAID SECTION 10 A DISTANCE OF 1994.90 FEET; THENCE EAST 60.00 FEET TO THE EAST RIGHT OF WAY LINE OF WESTNEDGE AVENUE AND THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE CONTINUING EAST, 141.00 FEET; THENCE SOUTH, 176.50 FEET TO THE NORTH LINE OF GLADYS STREET; THENCE EAST ON SAID NORTH LINE, 356.73 FEET; THENCE NORTHWESTERLY, 188.71 FEET ON A 214.50 FOOT RADIUS CURVE TO THE RIGHT WHOSE CHORD BEARS NORTH 55°12'11" WEST 182.68 FEET; THENCE NORTHWESTERLY, 95.65 FEET ON A 274.50 FOOT RADIUS CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 39°59'16" WEST 95.17 FEET; THENCE NORTH 40°01'46" EAST 5.00 FEET; THENCE NORTHWESTERLY 195.27 FEET ON A 279.50 FOOT RADIUS CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 69°59'06" WEST, 191.32 FEET; THENCE WEST, 110.01 FEET TO THE EAST RIGHT OF WAY LINE OF WESTNEDGE AVENUE; THENCE SOUTH ON SAID EAST RIGHT OF WAY LINE, 70.00 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPT GLADYS STREET.



 Gladys Excess ROW

Gladys Street Excess Right-of-Way



1 inch = 75 feet

EXHIBIT B

[See five (5) pages attached]

The attached concept drawings are for illustrative purposes only, the number, size and configuration of tenant suites are subject to change. The attached concept drawings are not a representation as to any specific tenants or occupants of the Development Site.

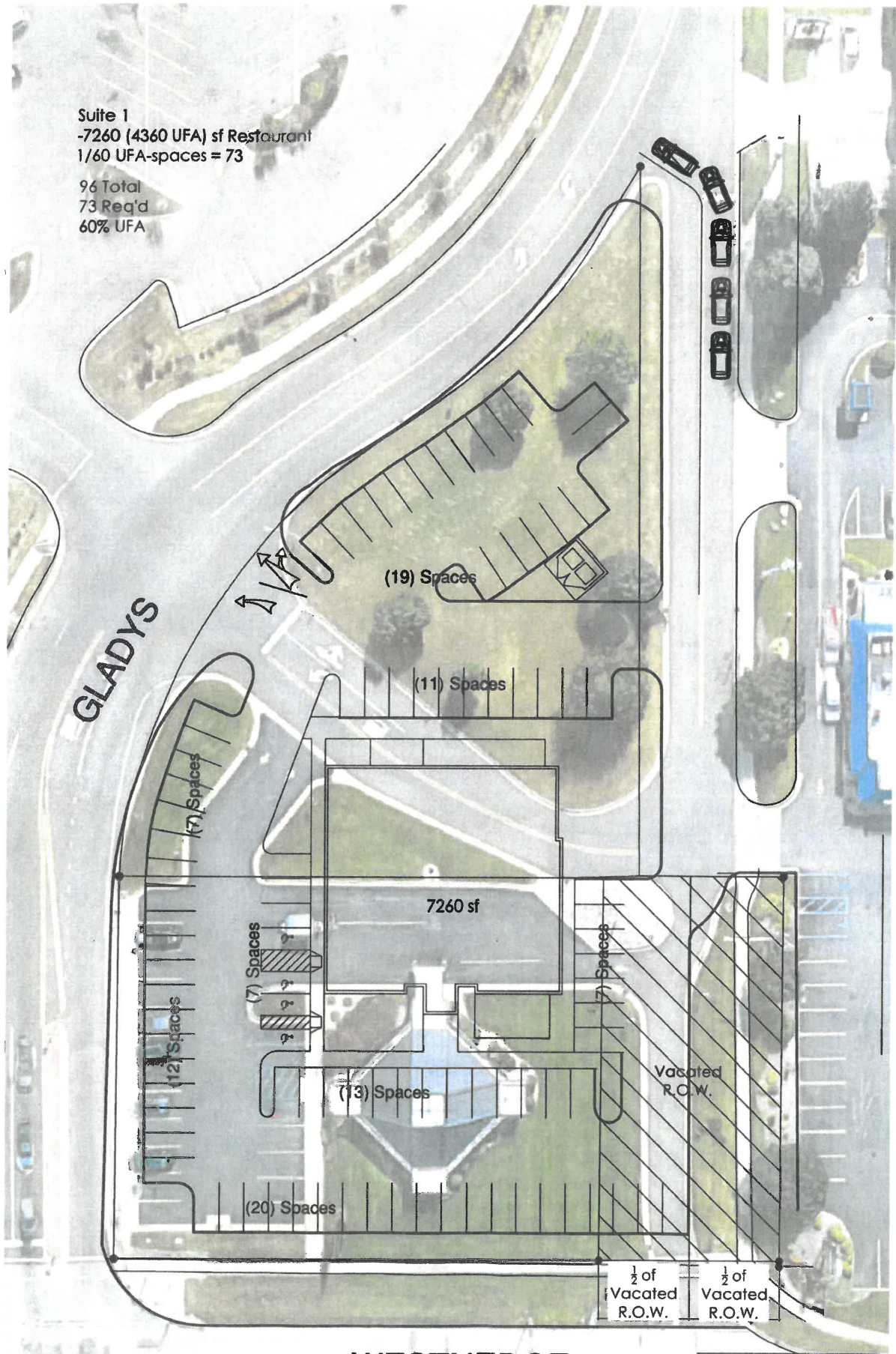






Suite 1
 -7260 (4360 UFA) sf Restaurant
 1/60 UFA-spaces = 73

96 Total
 73 Req'd
 60% UFA

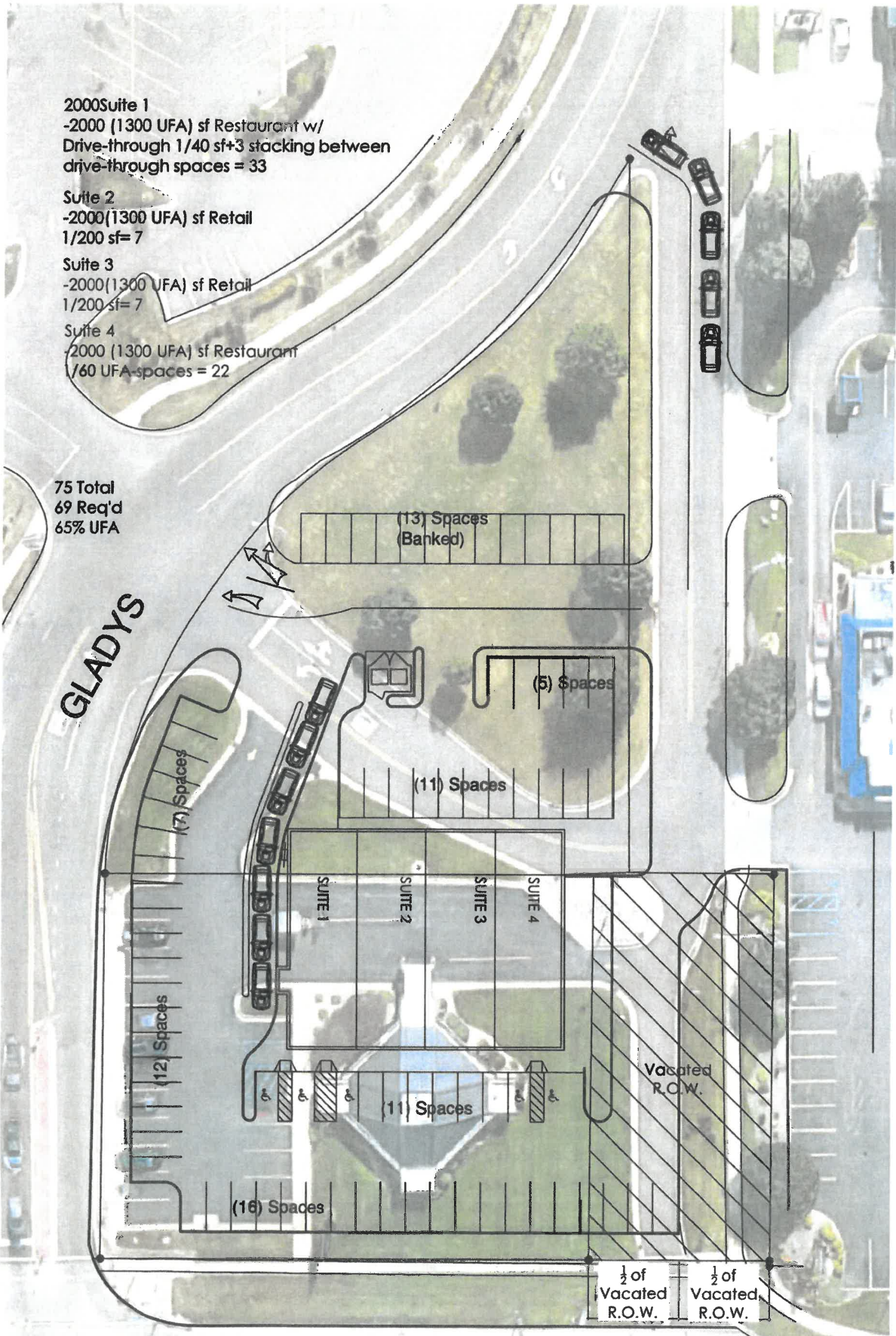


A2

WESTNEDGE
6405 WESTNEDGE
SITE LAYOUT

PLAZACORP

211 E. MAIN STREET, SUITE 200
 KALAMAZOO, MI 49007
 269.343.3775



A2

WESTNEDGE
6405 WESTNEDGE
SITE LAYOUT

PLAZACORP

211 E. WATER STREET, SUITE 201
 KALAMAZOO, MI 49007
 269.383.5773

EXHIBIT C



566629_8



Gladys Street Excess Right-of-Way

 Gladys Excess ROW



1 inch = 75 feet
(180)

**CITY OF PORTAGE, MICHIGAN
RESOLUTION OF INTENT TO SELL REAL ESTATE
19-2**

Minutes of a regular meeting of the City Council for the City of Portage, Michigan held on _____, 20____ at 7:00 p.m. local time at City Hall in the City of Portage, Michigan.

PRESENT: _____

ABSENT: _____

The following resolution was offered by:

COUNCILMEMBER: _____ and supported by

COUNCILMEMBER: _____

WHEREAS, the City of Portage ("City") owns real estate on Gladys Street which metes and bounds is described below ("Property");

WHEREAS, the Property was acquired by the City in 1993 when Gladys Street was moved north to align with Mall Drive.

WHEREAS, the Property is not needed for future right-of-way;

WHEREAS, the Property is vacant. However there are public utilities located thereon which are to be reserved and remain in their present location unless relocated by written easements;

WHEREAS, 6405 SW, LLC, a Michigan Limited Liability Company, ("Purchaser") the owner of the adjacent property at 6405 South Westnedge Avenue, Portage, Michigan, desires to purchase the Property;

WHEREAS, the Property has value as an assemblage property with the abutting property owned by Purchaser.

BE IT RESOLVED that the City of Portage sell the following described Property to Purchaser for the sum of THREE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED DOLLARS (\$314,500.00):

All that certain parcel of real estate situated in the City of Portage, County of Kalamazoo and State of Michigan, to-wit:

SEE EXHIBIT A

BE IT FURTHER RESOLVED that the Purchase and Sale Agreement reserve all public utilities on the property in their present location unless relocated with written easements to the City approved by the City Attorney and recorded with the Kalamazoo County Register of Deeds.

BE IT FURTHER RESOLVED that the Resolution of Intent to Sell Real Estate and the Purchase and Sale Agreement have remained on file with the City Clerk for at least twenty-eight (28) days and the City's intent to sell the real estate has been published not less than twenty (20) days before final action.

CERTIFICATION

STATE OF MICHIGAN)
)
COUNTY OF KALAMAZOO)

I, the undersigned, the duly qualified City Clerk of the City of Portage, Kalamazoo County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the City Council of said City, held on the ____ day of _____, 2019, the original of which resolution is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this ____ day of _____, 2019.

Adam Herringa, City Clerk

Prepared by:
RANDALL L. BROWN
City Attorney
1662 East Centre Avenue
Portage, Michigan 49002
Phone: (269) 323-8812

Approved as to form
Date: 10/3/2019

City Attorney

EXHIBIT A

Legal Description and Vicinity Map

LAND SITUATED IN THE CITY OF PORTAGE, COUNTY OF KALAMAZOO, STATE OF MI, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 11 WEST, CITY OF PORTAGE, KALAMAZOO COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 10; THENCE SOUTH ON THE WEST LINE OF SAID SECTION 10 A DISTANCE OF 1994.90 FEET; THENCE EAST 60.00 FEET TO THE EAST RIGHT OF WAY LINE OF WESTNEDGE AVENUE AND THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED; THENCE CONTINUING EAST, 141.00 FEET; THENCE SOUTH, 176.50 FEET TO THE NORTH LINE OF GLADYS STREET; THENCE EAST ON SAID NORTH LINE, 356.73 FEET; THENCE NORTHWESTERLY, 188.71 FEET ON A 214.50 FOOT RADIUS CURVE TO THE RIGHT WHOSE CHORD BEARS NORTH 55°12'11" WEST 182.68 FEET; THENCE NORTHWESTERLY, 95.65 FEET ON A 274.50 FOOT RADIUS CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 39°59'16" WEST 95.17 FEET; THENCE NORTH 40°01'46" EAST 5.00 FEET; THENCE NORTHWESTERLY 195.27 FEET ON A 279.50 FOOT RADIUS CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 69°59'06" WEST, 191.32 FEET; THENCE WEST, 110.01 FEET TO THE EAST RIGHT OF WAY LINE OF WESTNEDGE AVENUE; THENCE SOUTH ON SAID EAST RIGHT OF WAY LINE, 70.00 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPT GLADYS STREET.



 Gladys Excess ROW

Gladys Street Excess Right-of-Way



1 inch = 75 feet