

**NOTICE OF PUBLIC MEETING
COUNCIL CHAMBERS-VILLAGE HALL
102 South Huron Avenue
Phone: 231-436-5351**

October 06, 2016

7:00 PM

**VILLAGE OF MACKINAW CITY
ZONING BOARD OF APPEALS**

- I. Call to Order
- II. Closed Session
 - A. To review a confidential legal opinion from the Village attorney pursuant to Section 8(h) of the Open Meetings Act
- III. Public Hearing
 - A. Appeal of Village Zoning Administration Decision
726 Lakeside Drive, Mackinaw City, MI 49701 Parcel #42-03-12-476-207
Applicant of Appeal: Ms. Miriam Hiser, 2015-AA-001
- VI. Public Comments

**AGENDA-REGULAR MEETING
MACKINAW CITY VILLAGE COUNCIL**

- I. Roll Call
- II. Pledge of Allegiance
- III. Agenda Approval
- IV. Public Comments
- V. Consent Agenda:
 - A. Correction and Approval of Minutes: Regular Meeting of September 15, 2016
Closed Session of September 01, 2016
 - B. Mackinaw Area Visitors Bureau-Concern Letter
- VI. Managers Report:
 - Press Release Enbridge Grant for Fire Department
- VII. President's Report
- VIII. Committee Reports:
 - Parks and Recreation Sub Committee Report-Trustee S. Newman (Chair)
- XI. Old Business:
 - A. Old Airport Property Discussion
- X. New Business:
 - A. Village of Mackinaw City Employee Health Benefit Renewal
 - B. Proclamation for Arbor Day 2016
 - C. Resolution-Medical Marihuana Dispensation
 - D. Official Ballot-MML Liability & Property Pool Board
 - E. Planning Commission Reappointments
 - F. Closed Session
 - 1. To consult with the Village attorney regarding trial and settlement strategy in relation to specific pending litigation pursuant to Section 8(e) of the Open Meetings Act
- XI. Scheduling of Committee Meetings
- XII. Accounts Payable
- X. Adjourn

FINANCE AND HUMAN RESOURCE SUBCOMMITTEE-REVIEW BILLS @ 6:45 PM

Village of Mackinaw City

102 South Huron Avenue, P.O. Box 580, Mackinaw City, Michigan 49701
Telephone: (231) 436-5351 Fax: (231) 436-4166
www.mackinawcity.org village@mackinawcity.org

VILLAGE OF MACKINAW CITY ZONING BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

APPEAL OF VILLAGE ZONING ADMINISTRATOR DECISION

PLEASE TAKE NOTICE that an Application of Appeal has been made by Ms. Miriam Hiser, 2015-AA-001 appealing the decision of the Zoning Administrator of the Village of Mackinaw City for Zoning Permit # 2014-ZP-010 on September 2, 2014 for construction of a new garage addition for Parcel #42-03-12-476-207. In accordance with Section 24-104 of the Village Zoning Ordinance #138, the applicant is requesting that a hearing can take place on said issue.

The subject property is located at **726 Lakeside Dr., Mackinaw City, MI 49701.**

A public hearing followed by a Zoning Board of Appeals hearing will be held on **October 06, 2016 at 7:00 P.M.**, within the VILLAGE COUNCIL CHAMBERS located at 102 S. Huron Avenue, Mackinaw City, MI 49701, to receive public comments.

Written comments will be received at the Village Hall or by mail at the Village of Mackinaw City, Post Office Box 580, 102 S. Huron Avenue, Mackinaw City, MI 49701.

Additional information regarding this application may be obtained at the Village Hall at the above address.

Please be prepared to present your case in detail and with all evidence at these hearings.

Respectfully,
Lana Jaggi
Village Clerk



2015- AA-001

Mackinaw City Zoning Administrator OCTOBER 14, 2015

APPLICATION OF APPEAL

Attached please find my Application of Appeal with respect to the work on the public right of way between 800 Lakeside—my property—and 726 Lakeside. I am submitting \$200 along with this Application of Appeal. If any other fees are required please notify me immediately.

In accordance with Mackinaw City Zoning Ordinance 24-104, this appeal stays all proceedings in furtherance of the action appealed until a noticed hearing can be heard on the issue.

Miriam Higer
owner - 800 Lakeside

RECEIVED
10-14-15

8:10 PM

2015- AA-001

①

VILLAGE OF MACKINAW CITY
102 S. Huron Avenue, PO Box 580, Mackinaw City, MI 49701
231-436-5351

APPLICATION OF APPEAL

Date: 10/14/15

Name: Miriam Higer

Address: 800 Lakeside Drive Mackinaw City 4970
3330 Divisadero San Francisco CA 94102

Phone Number: 415-345-9234 Cell # 415-269-0189

Property Location: PUBLIC RIGHT OF WAY
BETWEEN 800 + 750
Lake side

Exact Appeal of Zoning Administrators Decision;

please see attached
2 pages

Signature: Miriam Higer

The fee for Appeals is \$200.00 plus any professional service fees and must be remitted with this application.

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10-14-15

1:10 PM

2015-AA-001 (2) 10/14/15
Application of
Appeal -
Miriam Hise

EXACT APPEAL OF ZONING ADMINISTRATOR'S DECISION:

- (1) Permit itself not provided to me as adjoining landowner despite FOIA request to City.
- (2) No ordinance authorizes permanent construction on public right of way.
- (3) The design of the proposed work—so far as known to me because no permit has been shown to me—alters and adversely affects the draining of the public right of way and its subgrade, and does not conform to the slope of the street as required by Mackinaw Zoning Ordinance (MZO) 4-110-F. It also adversely affects my property because of the change in grade.
- (4) There is a direct conflict with the public interest. Creation of a private driveway across the entire width and much of the length of this public right of way blocks public access to Lake Michigan along this entire stretch of beach. Violation of MZO 4-110 E.
- (5) Permit applicant did not submit "detailed construction plans and specifications" as required by the Village of Mackinaw City Right of Way Permit Application. The "design" shown to me by contractor was "something he just sketched out" for the landowner.
- (6) No bond or cash deposit submitted "in an amount not less than estimated cost to totally restore right of way." No certificate of insurance on file.
- (7) The Plan did not include "complete explanation of any potential for conflict with any existing use of the right-of way." There is a direct conflict with public interest in access to the beach and granting this permit sets the precedent that public rights of way can simply be taken for private use.
- (8) The permit, if granted, was based on contradictory plans submitted to Emmet County and the Village of Mackinaw City. Different designs were submitted to each of these authorities.
- (9) The work can be done on the owner's property—violation of Permit Requirement that the permit be supported by "findings of fact that private property installation is not feasible."
- (10) The permitting process described in "right of way permit applications" is for temporary—not permanent—use.

10-14-15

1:10 PM

2015-AA-001

10/14/15
Application of Anne
Miriam Elise

- (11) Because I have yet to be given a copy of the Permit, I reserve the right to add additional challenges when and if that permit is produced.

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10-14-15

1:10 PM



VILLAGE OF MACKINAW CITY
 PO BOX 580
 102 S HURON AVE
 MACKINAW CITY, MI 49701

RECEIPT

Receipt 11823
 10/14/15

Cashier: JANELLE
 Received Of: MIRIAM HISER
 The sum of \$200.00

BUSINESS	BUSINESS PERMITS			\$200.00
		101-000-450.000	200.00	
		TENDERED:	CASH	\$200.00



VILLAGE OF MACKINAW CITY
 PO BOX 580
 102 S HURON AVE
 MACKINAW CITY, MI 49701

RECEIPT

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Cashier: JANELLE
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 The sum of \$200.00

BUSINESS	BUSINESS PERMITS			\$200.00
		101-000-450.000	200.00	
		TENDERED:	CASH	\$200.00

OLSON, BZDOK & HOWARD

September 29, 2016

Village of Mackinaw City
Zoning Board of Appeals
P.O. Box 580
Mackinaw City, MI 49701

Via Email to attorney Kenneth P. Lane:
klane@clarkhill.com

Re: *Hiser v. Village of Mackinaw City and Village of Mackinaw City Zoning Board of Appeals*
Circuit Court File No. 16-105218-AA

Dear Zoning Board of Appeals Members:

My firm represents Miriam Hiser concerning the above noted appeal of Village of Mackinaw City Zoning Permit #2014-ZP-010. The Circuit Court has reversed the January 2016 decision of the Zoning Board of Appeals to affirm the issuance of that Permit. Pursuant to the Court's September 2, 2016 Opinion, the ZBA is to "decide the appeal with findings of fact and conclusions of law that specifically address and resolve each issue of zoning ordinance compliance" raised by Hiser.

Pursuant to the Village of Mackinaw City Zoning Ordinance ("MZO") and the Michigan Zoning Enabling Act, the following are the ways in which the Permit violates the MZO. Hiser again requests that the ZBA reverse the approval of Zoning Permit #2014-ZP-010 and require that the property located at 726 Lakeside Drive be ordered to come into complete compliance with the MZO.

1. The Permit violates requirements for a corner lot. 726 Lakeside is a corner lot because the property between 726 Lakeside and 800 Lakeside that runs from Lake Michigan to Central Avenue ("the ROW") is a street by deed restriction and by usage and definition under the MZO.

The ROW is a street by deed restriction. On the original map/plat of Wawatam Beach, which was developed by Vine Harding, the property lying between what is now Hiser's property (Lot 57) and the property owned by the Paquets is designated as "**11th Street.**" The ROW is this same thirty foot wide property. It lies on the eastern boundary of Hiser's property from Lake Michigan to Central Avenue. This property is clearly designated as "**11th Street**" on the map. (See Exhibit 1- September 1, 2016 Affidavit of Miriam Hiser, Exhibit A, map of Wawatam Beach).

The ROW was quitclaimed by Bishop Leete to the Village of Mackinaw City for use "as a street only" under the following circumstances. The ROW was the eastern most thirty feet of Lot 57, which is now owned by Hiser. On September 5, 1911, Bishop Leete recorded the deed reflecting his purchase of Lots 57, 58, 59 and 60 from Vine Harding. (See Exhibit 2- August 16, 2016 Affidavit of Miriam Hiser, Deed, Exhibit A). The Lot 57 as purchased by Bishop Leete was 80 feet wide.

On September 7, 1911, Vine Harding sent a letter to Bishop Leete stating: "Just discovered a mistake in the deed I gave you of deeding you the whole of lot 57 which is 80 feet wide and **takes in the 30 foot street** and your 50 foot lot that I should have deeded should read the west 50 feet of lot 57 instead..." (emphasis added). Vine Harding goes on to say that if the deed from Vine Harding to Bishop Leete had already been recorded, "I will make a deed from you to the Village of Mackinaw...". (See Exhibit 3- August 16 Affidavit, Ex. B, September 7, 1911 letter). On October 3, 1911, Vine Harding wrote Bishop Leete again, stating "**Lot 57 on the original plat is 80 feet the East 30 feet is layed (sic) off for street** so you have no chance of less than 50 feet." (emphasis added). (See Exhibit 4-August 16 Affidavit, Ex. C, October 3, 1911 letter).

Bishop Leete was under no legal requirement to respond to the specific request that part of his platted property be made a street, because his legal right to the entirety of the platted property was duly paid for and recorded. (See Exhibit 2- Ex. A to August 16, 2016 Hiser Affidavit, Deed to Bishop Leete from Vine Harding; See Exhibit 5-Title History) Nevertheless, he responded to the request and on October 27, 1911, Bishop Leete executed the Quitclaim Deed at issue in this case which states: "**Said property to be improved by second party [Village of Mackinaw City] and used as a street only.**" (emphasis added). The intent is clear that the only reason that he was agreeing to quitclaim his legal right to the thirty feet of lake front property was that it was platted for a street and would be used as a street only. Absent the request that the land be given over to the Village of Mackinaw City for use "as a street only" it would have remained part of Lot 57.

The ROW is a street by definition under the MZO because of the Paquets use of it to access their property. Under Section 2-102, the MZO defines "Road or Street, Public" as: "Any public right-of-way which provides vehicular access to adjacent properties." In this case, it is undisputed that the ROW provides vehicular access for the Paquets' property and that it was always intended to do so. The "Site Plan" submitted with the Zoning Permit Application, while simple at best, appears to have the "new garage addition" facing the ROW, not Lakeside. (See Exhibit 6- Zoning Permit Application). It is common sense that the only reason for orienting a garage, for which vehicular traffic is expected, towards the ROW is that the Paquets themselves considered this a public street right of way. The Paquets' use of the ROW for vehicular access confirmed their assumption that it is a street, and it therefore must be considered a street under the MZO at the time of the Zoning Board's consideration of the matter. The Zoning Administrator had the duty then enforce the MZO with the knowledge that the

ROW would be a street as defined under the MZO.

The ROW is a street or road by admission of the Paquets. Further to the above relating to the Paquets making plans based on the Right of Way being a road, John Paquet himself in his October 29, 2014 email to Fred Thompson considered the property at issue as a road. In that email, he requested to cut down trees on the east side of the access road..." (See Exhibit 7-October 29, 2014 email from John Paquet).

The ROW is a street by definition under the MZO according to historical use of it. The ROW also has historically provided access to other properties adjacent to it, those owned by Marigold and James Hiser and by Mark Sellers. Both the Hisers—via Central Avenue—and Mark Sellers—via Lakeside, use the ROW for vehicular access to their properties at 801/803 Lakeside and 725 Lakeside. Thus, based on the historical use of the ROW by the Sellers and the Hisers to access their adjacent properties, the ROW is a street. The prior owners of 726 Lakeside tried to purchase the ROW from the City and were told that they could not do so because City utilities ran underneath it. (See Exhibit 8- Affidavit of Sam Coburn; See Exhibit 9- letter from James and Marigold Hiser). As the Hiser letter establishes, the ROW was also used historically to launch boats into Lake Michigan, a process that required a car or trailer to drive down the ROW to the lake.

The City itself is treating the ROW as a street, and in fact has placed "No Parking" signs halfway down the street, affirming that they acknowledge and expect vehicular access and affirming that the ROW is for vehicular access

Because the ROW is a street, 726 Lakeside sits at the junction of two streets, Lakeside Drive and the ROW and thus is a corner lot. Section 2-102 of the MZO defines "Lot, Corner" as: "A lot whose lot lines form an interior angle of less than one hundred thirty-five (135) degrees at the intersection of two (2) street lines." Here there exists an intersection of two street lines – Lakeside Drive and the ROW. Therefore, 726 Lakeside Drive is a corner lot.

a. The Permit violates the ten foot setback from the ROW.

MZO Section 4-108(C) Corner Lots states that corner lots in the R1 district still have 2 side yards even though they face two streets. The property owner elects and designates the front yard on the permit. Under the Notes and Special Conditions of Permit on the approval page, the applicants apparently chose Lakeside Drive as the front property line as indicated by the handwritten note. (See Exhibit 6- Zoning Permit Application, p. 6) Had the Paquets themselves not acknowledged that the lot was on a corner lot there would have been no need to designate which yard was the front yard on their permit application.

On corner lots, garages must be set back 10 feet from the side street line. MZO Section 5-101(E)(3) states that: "No garage shall be less than ten (10) feet from any front or rear lot line nor within any required side yard, *and if located on a corner lot it shall not be less than ten (10) feet from the side street lot line.*" Section 22-102(B), which is a footnote to Section 22-101 Table No 4.'s minimum yard setback requirements states: "The minimum side yard width on a corner lot shall be ten (10) feet measured from the side street lot line. As can be seen on the Permit site plan, the garage is only set back 7 feet from the lot line adjoining the ROW. (See Exhibit 6- Site Plan, p. 1 and pg. 7 of Zoning Permit Application)

b. The Permit violates the seventy foot driveway setback requirement.

On corner lots, driveways must be at least 70 feet away from the pavement at the intersection. ZO Section 4-110(D) states that where a driveway is adjacent to an intersection, "[i]f the intersection is uncurbed, the distance from edge of street pavement to edge of driveway pavement shall not be less than seventy (70) feet. Although there is no dimension given on the Permit site plan for the distance between the intersection and the new driveway, it would be very close to the 10 foot setback called out from the south property line. What is certain is that the driveway is not 70 feet from the intersection.

2. The Permit was granted in violation of MZO Section 5 – 101 (E)(3) and Section 22 – 102 Table No. 6.

The Paquets' Application is for a "New Garage Addition." Garages in the R-1 District may not exceed 21 feet in height. MZO Section 5-101(E)(3) states: "Maximum height shall be twenty-one (21) feet. ZO Section 22-102(N) is the schedule for "Height and Setback for Accessory Buildings" which are set out in Table No. 6. Table 6 states that garages in the R-1 District have a maximum height of 21 feet. According to the Permit, the garage was approved and built 25 feet in height. The garage is 4 feet over the maximum height allowed in the R-1 District and must be brought into compliance with the MZO.

3. The Permit was granted in violation of MZO 22-102, Table 6.

Section 22-102 Table 6 of the Zoning Ordinance states that a garage cannot exceed 864 square feet. The Paquets stated that the garage was to be 928 square feet, in clear violation of these requirements. In fact, according to the drawings submitted by the Paquets to Emmet County for this very same structure, the square footage is over 1600, well more than even the 928 listed. (See Exhibit 10- Paquets' Submission to Emmet County, Labelled "Two Story Residence" Architectural Drawings, in use group "SINGLE FAMILY DWELLING").

4. The Permit was granted in Violation of MZO 24-109(f), which required the Paquets to submit plans that “clearly and fully indicate the nature of the contemplated work.”

a. The Zoning Application does not describe any work at all on a second story even though under “# of stories” it states “2”. This is a clear violation of Section 24-109(f). Section 24-109 states that the applicant for a Zoning Permit is to submit plans that “clearly and fully indicate the nature of the contemplated work.”

The applicant for a permit must file with his request a set of plans and written specifications sufficient to clearly and fully indicate the nature of the contemplated work and the kind and quality of materials to be used therein, together with an estimate of the cost. Drawings shall be made to scale not less than one-eighth (1/8) inch to one (1) foot, and shall clearly indicate the size of structural members, walls, and openings, the position of the building on the site with reference to property and street lines and adjacent buildings, and such other information as may be required by this Ordinance or necessary to provide for the enforcement of this regulation. It shall be the duty of all lot owners to have accurately located all corners and boundaries of their properties prior to building thereon.
MZO 24-109.

Because the Paquets made no reference at all to any work to be done on their second story, the Permit should not have been granted. And Section 24-109(f) states that where work is done due to a “false statement or misrepresentation of condition” it can be revoked.

Cathy Paquet has admitted the following facts, by her own sworn affidavit:

- She submitted her Zoning Permit Application in September 2014 for a “garage” when her “plans were not finalized” [Exhibit 11 Affidavit of Cathy Paquet in support of Motion for Summary Disposition, ¶ 11].
- She anticipated in September 2014 that she would be building “guest quarters” above the garage [*Id.* at ¶ 10], yet the Zoning Permit Application contains no description of these “guest quarters.” She anticipated that the “guest quarters” would be used by “visiting family and friends.” [*Id.* at ¶¶

9-10].¹

- By April 2015, she had “finalized” the design plans “to include guest quarters” and “changed the footprint of the garage to 29 x 34”. [*Id.* at ¶ 14].
- In April, 2015, she submitted a separate application to Emmet County for a building permit. As her affidavit states: “the permit application was to build “A two storied garage with **guest quarters above. Garage is 986 sq feet with 700 sq. ft on second floor.**” [*Id.* ¶ 16].
- Cathy Paquet also admits that she made “changes to the size of the footprint and orientation of the garage doors” after she obtained the permit. [*Id.* ¶ 18].
- She states that she told Fred Thompson about these changes and about her intent to live on the second floor of the “garage” when the “existing home was demolished and when the new home would be built.” [*Id.* ¶ 18].

b. The Zoning Application does not list the correct footprint of the garage.

Again, as Cathy Paquet has admitted, she changed the footprint of the garage from the listed 31 X 30 to 29 X 34 (*see above*), which means that she did not “clearly and fully indicate the nature of the contemplated work” on her Application. This failure provides a second ground upon which the Application violated MZO Section 24-109 . since this 986 square feet further modified and exceeded allowable size per the ZO and was not approved nor permitted.

c. The Zoning Application does not list an accurate “estimate of the cost.”

Again, by her own sworn declaration, Cathy Paquet estimated the original project cost of the “new garage addition” at \$100,000 but changed it to an incorrect amount [\$15,000] for what she knew would be two-story new construction, claiming it was done at Fred Thompson’s request. [*See Exhibit 11- Cathy Paquet Affidavit* ¶ 11, ¶ 14]. The true cost of the construction was \$210,000, again by Cathy Paquet’s sworn statement. Stating the cost at a fraction of what she knew it to be is misleading. A cost estimate indicates the scope of the construction project: a \$15,000 project is an entirely different project from a \$210,000 project. This is yet a third means by which the permit violated MZO 24-109.

¹ Paquet’s property is zoned R-1 single family. It does not allow “guest quarters.”

d. The Zoning Application does not include drawings indicating the construction contemplated.

MZO 24-109 requires submission of drawings “made to scale not less than one-eighth (1/8) inch to one (1) foot, [which] clearly indicate the size of structural members, walls, and openings, the position of the building on the site with reference to property and street lines and adjacent buildings.” The only drawing submitted with the Application is a simple square with the word “new garage” inside—nothing else, and was shown oriented parallel to Lakeside Drive, when in fact the building was constructed not built in this orientation, but instead was parallel to the adjacent 11th Street. The approved and permitted position of the building was not built as permitted and therefore violates the ZO requirements. Again, Cathy Paquet has admitted in a sworn statement that these changes were made.

5. The Permit was granted in violation of MZO Section 4 – 106 (C) and Section 5 -101(A).

MZO Section 4 – 106 (C) of the MZO states that “*No single-family detached residential structure shall be erected upon a lot with another single-family detached residential structure.*” MZO Section 5 – 101 (A) of the MZO limits lots in the R1 District to one single-family detached dwelling. **The applicant’s “garage” is built as a single family residential dwelling which is further recognized by the Paquets in the application they submitted to Emmet County for their building permit. (See Exhibit 10-Paquets Submission to Emmet County, Architectural Drawings of “Two Story Residence” in use group “SINGLE FAMILY DWELLING”)**

The Paquets have admitted that they built the “garage” for use by their family and friends as guest quarters. [Declaration of Cathy Paquet ¶¶ 9-10]. Cathy Paquet has also stated that she intends to live in the “garage” when the next phase of construction begins. [*Id.* at ¶ 10 (“*If we decided to include guest quarters above the garage addition, that would permit me to live at the property during construction of the new home (after the existing original structure was torn down)*”).

Thus there are now two single family detached residential structures on the same lot. Obviously, then, what has been constructed under the auspices of the Zoning Permit Application is a separate “single family detached residential structure.”

That this is so is confirmed by the architectural drawings submitted by the Paquets to Emmet County. Those drawings reflect what was constructed: a garage on the first floor with a utility room; on the second floor a living room, kitchen, bedroom, closet, laundry, full bathroom and several closets. This is clearly a “single family dwelling”/”Two Story Residence.”

6. If the “new garage addition” is “attached” to the original structure, it still is built in violation of the MZO because it violates the 25 foot setback for main buildings, is a separate second structure and is on a corner lot as discussed below in 6(a)-(c).

Hiser maintains that the “new garage addition” is a detached accessory building. A review of the Zoning Permit Application Permit leads to the conclusion that the applicant and the Zoning Administrator considered the garage an accessory building when looking at the 10 foot front yard setback. Furthermore, there exists no evidence or record to indicate that the garage is attached so it must be considered a detached accessory building and as such violates the MZO as above described. The Paquets own architectural drawings indicate that it does not share a foundation with the existing structure; it has no connection at the roof level; it has no access at the garage or second story level.

Finally, there is no definition in the MZO of what is required for a building to be “attached.” Because the Paquets have clearly stated that they will be tearing down the original structure, it appears they are arguing that the two structures are somehow “attached” solely for the purposes of defending the ZBA appeal.

a. If attached, the “new garage addition” violates the 25 foot front yard setback.

However, even if the “new garage addition” is determined to be “attached” to the existing structure, it violates the required front yard setback. In the R-1 District the front yard setback is 25 feet. On the Zoning Permit Application, “Lakeside Drive Front Property Line” is stated and the “new garage addition” is only ten feet back from Lakeside. Obviously, this is much closer to Lakeside than twenty five feet. **On the site plan the Paquets submitted to Emmet County, the “garage” is well less than twenty five feet from Lakeside. (See Exhibit 10- Site Plan attached to Paquets’ Submission to Emmet County). In this Site Plan, the “garage” encroaches well into the twenty five foot required front yard setback. Furthermore, on this site plan the twenty five foot front yard setback is marked, as is the encroachment by the “garage” in to that setback.** As best as plaintiff can establish, the “garage” is approximately eighteen feet or so back from the paved portion of Lakeside Drive. (See Affidavit of Mark Sellers-submitted directly to the Village of Mackinaw City on September 30, 2016). However, Lakeside Drive is fifteen feet wide and the paved portion only ten feet, meaning that Lakeside Drive extends approximately two and a half feet both north and south of the paved portion. This means that the “garage” is closer to approximately 16 feet or so from Lakeside, again encroaching significantly into the twenty five foot required set back if it is “attached.”

The only exception to the 25 foot front yard setback is found in Section 22-102(N) which is the schedule for "Height and Setback for Accessory Buildings" and set out in Table No. 6. According to Table No. 6, which again is limited to *accessory buildings*, the setback for garages in the R-1 District is 10 feet for lakefront lots. The Permit shows a 10 foot setback on the site plan drawing and it also calls out a 10 foot setback on the application. Thus, if the argument is that the garage is attached, the "garage" is no longer an accessory building and must be twenty five feet back from Lakeside. As it is clearly stated in plans and is in actual construction only 10 foot back, the "garage" construction remains in violation of the ZO.

b. If attached to the original structure, the "new garage addition" still has a separate dwelling unit from the original structure, which is not allowed in the R-1 Zoning District.

If a single structure has two separate dwelling units then it is considered a 2-Family Dwelling. MZO Section 2-102 defines "Dwelling, 2- Family" as "A 2-family dwelling" is a detached building designed for or occupied exclusively by two (2) families, living independent of each other." Here, since the Paquet's "new garage addition" has living space on the upper level, including a bedroom, bathroom, kitchen, closets, living room—everything that is needed for a family to live there independently.

There is no way to get from the new structure to the old structure without exiting the new structure and entering the old from separate entrances. It is a separate dwelling unit from the original structure, giving the Paquets two separate dwelling units on the same property, the "new garage addition" and the original structure [apparently a three bedroom two bath home].

A 2-Family Dwelling is not allowed in the R-1 District. While the ZBA may only consider the evidence before it now, which is that there are two separate dwelling units on a lot zoned for one, Cathy Paquet has stated that she intends to live independently in this structure when the original structure is torn down and that she intends even in the future that there be two separate units, and she intends for friends and family to use her new building as "guest quarters," clear evidence that the "new garage addition" is its own "separate dwelling unit." It is also clear evidence against her claim that the building is "attached," since common sense and construction practices dictate that you do not attach a new construction to a building you are intending to tear down, as this would compromise the new construction when the old structure is removed. It is also clear that the foundations of the new construction and the old building are not at the same elevation, making so-called connection unlikely.

c. If attached, the “new garage addition” is still on a corner lot and is in violation of the ten foot side set back and 70 foot setbacks described above.

As discussed above, whether attached or detached, the “new garage addition” violates the ten foot side set back and 70 foot setbacks described above.

7. The Permit was granted in violation of MZO Section 22 – 101

The second note of MZO 22-101 states that “*Parking areas, maneuvering lanes and driveways other than for immediate ingress and egress will not be permitted within a minimum yard setback...*” The applicant’s constructed drive way and garage create both parking areas and maneuvering lanes all within the minimum yard setback. In an October 29, 2014 email, John Paquet asked for permission to remove trees [which he had already removed] “on the east side of the access road between Lakeside Drive and the white brick grill. *As it stands, these trees will not allow us the needed turn ratio for entrance into and exit from the planned garage.*” (See Exhibit 7- October 29, 2014 email). What the Paquets then did in order to access all three bays of their garage (particularly the bay closest to Lakeside) was extend their 31' wide concrete driveway eleven (11) feet into and perpendicular to the public gravel ROW (where these trees had been)to enlarge their private driveway that is only 7 feet within their own property, creating an 18 foot long driveway that is now mostly in the public ROW. This driveway is not used solely for “immediate ingress and egress.” Even the “immediate ingress and egress” poses a danger to the public as there is no room for maneuvering safely within their own property – because the garage is too close to the property line – the Paquets and their visitors must use the public ROW for maneuvering – not merely access – and in violation of the ZO.

Furthermore, The Paquets park on the extended 11 feet of concrete driveway constructed in the public ROW, because the portion of the driveway that is on their own property is only seven feet. The Paquets (and their friends and family members) park on this driveway routinely, even though the City has put “no parking signs” on the northern part of the street, inhibiting public access to the water and effectively claiming the public ROW as their own property and visually indicating it as their own. They will on occasion park parallel to the ROW as well; regardless, they park on the driveway, on the seven feet that is in the minimum set back and on the additional 11 feet of concrete they constructed within the public ROW .

As can be seen on the Permit site plan and the County site plan, the building construction built too close to the gravel ROW simply left no room on the driveway for parking or maneuvering outside of the setback. Furthermore, the Paquets have used the ROW for parking and Defendant City has been forced to erect a sign as a result. *Exhibit 12 (Photos of parking and sign)*. The driveway’s construction solely within the setback means that maneuvering will place within the setback which is strictly prohibited.

8. The Permit was granted in violation of MZO Section 4 – 110 (F)

The applicant's driveway must not alter or adversely affect the drainage and the stability of the street, and also must conform to the slope of the street between the edge of the pavement and the shoulder as required by Section 4 – 110 (F). As indicated by the applicant's ROW permit, which is attached as *Exhibit 13*, the driveway does not meet this requirement. The driveway must be brought into compliance with the MZO.

Further, because the new driveway extension into the ROW is concrete, rather than matching the gravel/natural surface material of the existing road, differential changes can be anticipated at the point of connection due to erosion, tire ruts, debris build-up, frost heaving, and differential shifting between base materials. Because the Paquets have constructed significantly into the public ROW, it is unclear as to whose responsibility it is to provide the additional gravel road maintenance and maintenance of the new concrete in the ROW. It is also unclear if the new concrete or base preparation in the street ROW even meets the MC engineering standard for street construction, since it was not permitted nor inspected by the town inspector/engineer.

9. The Permit was granted in violation of MZO Section 4 – 101

MZO Section 4 – 101 states: *"In no case shall any building, structure, sign or site amenity (i.e. light poles, planter box, flagpole, site furniture, etc.) be allowed to be placed over, under, into or on any public street right – of – way within the corporate limits of the Village of Mackinaw City."* MZO Section 2 – 102 defines structure to include a wall, fence, parking area, and landscaping. The applicant's new concrete driveway extends 11 feet into the gravel/natural surface street ROW and new landscaping is also within the ROW which runs from Lakeside Drive to Lake Michigan as can be seen by the photographs in *Exhibit 14*. The concrete pavement, parking area and landscaping included must be removed and be brought into compliance with the MZO.

Here, it is imperative that the ZBA **understand and apply the definition of a "Road or Street, Public" as defined by the MZO, which is different from the definition of "Right of Way" under the separate Mackinaw City Right of Way Ordinance.** Under the ZO, a Road or street – public is "public right-of-way which provides vehicular access to adjacent properties". As noted above, the City itself has treated the right of way as giving vehicular access to adjacent properties; it is also implied that the access to the water for the public also makes it a street. To be clear, the Right of Way Ordinance, including any of its definitions, does not apply to this ZBA Appeal. Nothing in the MZO under consideration now allows any "building, structure" etc to be on a public street right of way. The landscaping and concrete pavement parking area that the Paquets have are in violation of the MZO Section 4-101 regardless of any other ordinance determination

10. The Paquets did not build what was permitted.

Finally, the Paquets admit that they made significant changes to their Site Plan after obtaining their permit. They rotated their “new garage addition” clockwise and by doing so moved it closer to the ROW, so that as constructed it is now parallel to the ROW at apparently a seven foot setback; the Site Plan had the building seven feet back from the ROW at its northwest corner but twelve feet or so from the ROW at its southwest corner. As Cathy Paquet admitted, this was done after the permit was obtained. MZO Section 24-109(F) allows revocation where violation of the ordinance exists, including “whenever it is found that work is not being performed in accordance with the application, plans and specifications on which the permit is based.”

The above MZO violations certainly are not minor field or administrative revisions, but significantly modify basic and numerous requirements of the ZO – without approval – related to the position, orientation, square footage, height, setbacks, building use, and basic maneuverability for access to the property – and therefore, require the ZBA to reverse the permit and order compliance with the MZO. The Paquets obtained a permit for a “new garage addition” and built a Two Story Residence with full living facilities. This cannot be allowed.

Thank you for your time and consideration of this appeal.

Sincerely,



Jeffrey L. Jocks
jeff@envlaw.com

JLJ/klg
xc: Village of Mackinaw City (via US First Class Mail)

Exhibit 1

AFFIDAVIT OF MIRIAM HISER

Miriam Hiser, being sworn, states the following:

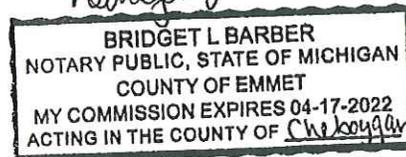
1. I am Miriam Hiser. The following is within my personal knowledge and if called as a witness I would competently testify thereto.
2. My address is 3330 Divisadero St., San Francisco, California.
3. Attached hereto as Exhibit A is a true and correct copy of a document I found this weekend at the cottages owned by my parents Marigold and James Hiser at 801 and 803 Lakeside Drive, Mackinaw City, Michigan. The document was in a folder of Wawatam Beach Association materials apparently collected by my mother's brother and ^{my}uncle and given to my mom after my uncle's death.
4. On Exhibit A, the property at issue in this litigation is described as "11th Street." 11th Street is directly east of my lot 57 and runs from Central Avenue to Lake Michigan. The property that is described as 11th Street is the property that was quitclaimed by my great grandfather Bishop Leete to Mackinaw City for use "as a street only," This map is on the back side of what appears to be a Wawatam Beach Association advertisement.

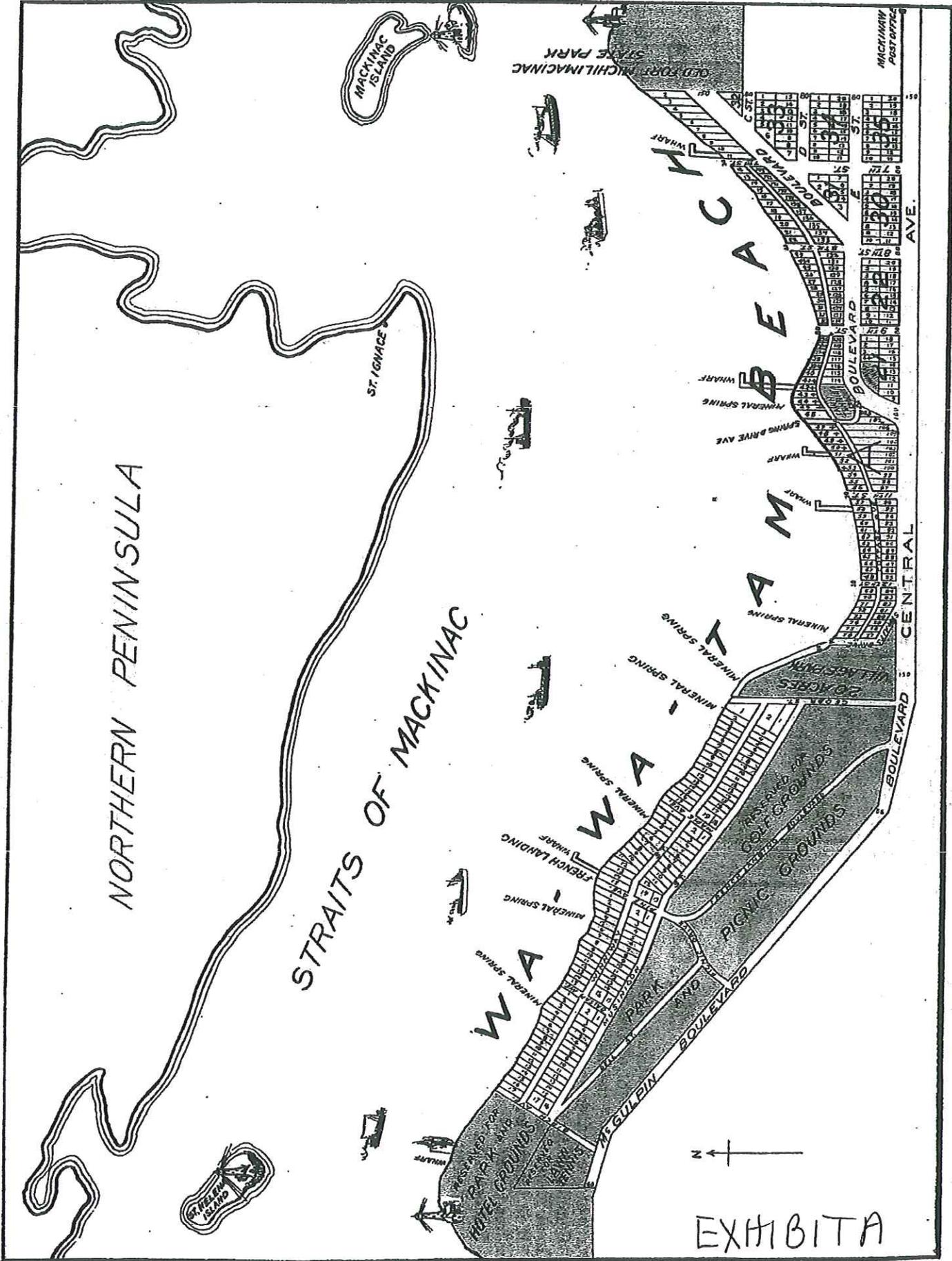
Date: September 1, 2016.

Miriam Hiser

Miriam Hiser

Signed by Miriam Hiser on
September 2nd 2016.





NORTHERN PENINSULA

STRAITS OF MACKINAC

MACKINAC ISLAND

ST. IGNACE

ST. IGNACE ISLAND

OLD FORT MICHELIMACKINAC

MACKINAW POST OFFICE

WAWA

FRENCH LANDING

MINERAL SPRING

BOULEVARD

BOULEVARD

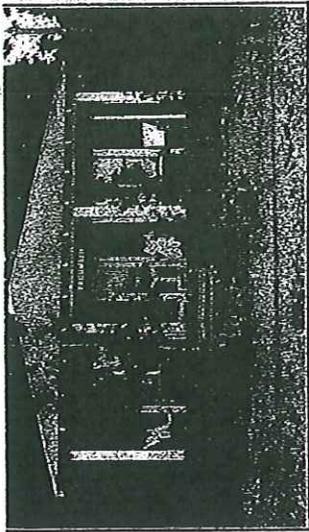
BOULEVARD

BOULEVARD

BOULEVARD

ST. IGNACE

EXHIBITA



FIVE-ROOM BUNGALOW FOR \$475.00

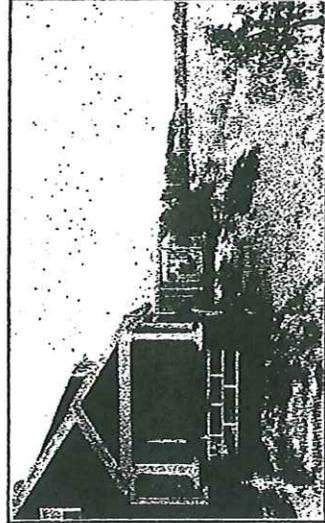
WAWATAM BEACH

Is beautifully situated on the Straits of Mackinaw at the sight of Old Fort Mackinaw, the scene of the historic Indian Massacre of the British Garrison in 1768.

Commands finest view of islands and all Great Lakes craft passing thru the Straits. It is located within easy reach of three railroads and numerous steamboat lines.

For beautiful scenery Wawatam Beach is not surpassed, and the thick growth of pine woods and the wonderful bubbling springs make it a place where Hay Fever and kindred complaints are unknown.

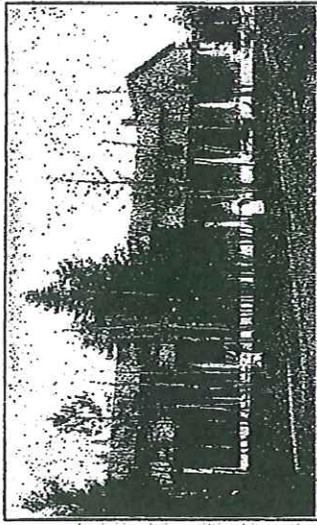
Wawatam Beach is in the vicinity of the best fishing grounds in Michigan, which, combined with its excellent bathing and boating facilities leaves nothing to be desired by the lover of outdoor life.



LOOKING WEST ON WAWATAM BEACH

Board at WAWATAM INN

A newly built and furnished hotel in which every comfort and convenience of the guest has been provided for.



WAWATAM INN

Every room is equipped with electric lights and running water. The large, airy dining room is 24x50 feet and a screened-in porch 12 feet wide by 90 feet long extends around a part of the building.

The table is furnished with fresh farm products, while excellent facilities have been provided for bathing, fishing, boating, lawn tennis and croquet.

RATES

BOARD \$8.00 PER WEEK

Running Water

With Electrically Lighted Rooms

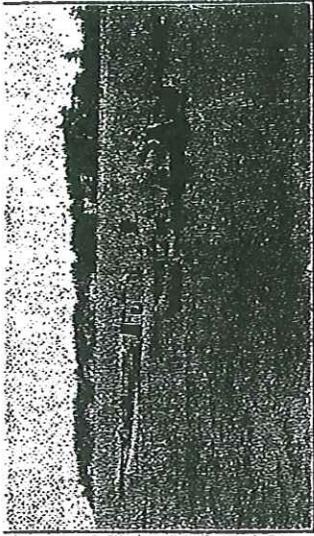
\$2.00 AND \$2.50 PER DAY

For further particulars and information address—

VINE HARDING

Mackinaw City, Michigan

or 706 W. Amelia Ave., Orlando, Florida, in Winter



CANOEING AND BOATING A FAVORITE PASTIME AT WAWATAM

FURNISHED COTTAGES

Located along the water front may be rented by the month or season at very reasonable rates:—

**\$100.00 to \$200.00 the season, or
\$40.00 to \$75.00 per month.**

The longest cement walk of any resort in the state (over three miles along the water front) extends to all cottages and lots on Wawatam Beach.

LOTS and COTTAGES FOR SALE

Fine shady beach lots 50x150 feet as low as \$75.00. Any location or any size lot desired at equally reasonable prices.

Cottages built to order and sold for \$100.00 down, the balance at the rate of \$50.00 per year if desired.

All lots face the north, making the outlook upon the waters easy and restful to the eye.



VIEW ON NEW ADDITION SHOWING CEMENT WALK WHICH EXTENDS 3 MILES ALONG THE WATER FRONT

EXHIBIT A

Exhibit 2

STATE OF MICHIGAN
EMMET COUNTY CIRCUIT COURT

MIRIAM HISER,

Plaintiff,

Case N^o. 2015- 105141-CH
Hon. Charles W. Johnson

v
EDWARD and CATHY L. PAQUET,
and
VILLAGE OF MACKINAW CITY,
a Michigan municipality,

Defendants.

Jeffrey L. Jocks (P67468)
OLSON, BZDOK & HOWARD, P.C.
Attorneys for Plaintiff
420 East Front Street
Traverse City, MI 49686
(231) 946-0044
jeff@envlaw.com

Gregory N. Longworth (P49249)
CLARK HILL, PLC
Attorneys for Defendant Village of
Mackinaw City
200 Ottawa NW, Suite 500
Grand Rapids, MI 49503
(616) 608-1100

Michael A. Stack (P25327)
Sandra L. Jasinski (P37430)
BODMAN PLC
Attorneys for Defendants Paquet
229 Court Street
PO Box 405
Cheboygan, MI 49721
(231) 627-8000

AFFIDAVIT OF MIRIAM HISER

Miriam Hiser, being sworn, states the following:

1. I am Miriam Hiser. The following is within my personal knowledge and if called as a witness I would competently testify thereto.
2. My address is 3330 Divisadero St., San Francisco, California.
3. In response to the City's argument at the hearing on August 9, 2016 that it purchased the property at issue here "for valuable consideration," I

searched for documents that would show what price Bishop Leete paid for the lots he purchased in 1911. I had no such documents in my possession but was told by my mother Marigold Hiser that whatever documents she had would be found in the cabins she owns on Lakeside Drive in Mackinaw City. Our caretaker searched those cabins and found the two letters described herein on August 10, which he sent me by Express Mail.

4. On September 5, 1911, Bishop Leete recorded the deed reflecting his purchase of lots 57, 58, 59 and 60 from Vine Harding, the original developer of Wawatam Beach. That original deed is attached as Exhibit A.
5. On September 7, 1911, Vine Harding sent the attached Exhibit B, one of the two letters I just located, to Bishop Leete. In that letter, Vine Harding states: "Just discovered a mistake in the deed I gave you of deeding you the whole of lot 57 which is 80 feet wide and **takes in the 30 foot street** and your 50 foot lot that I should have deeded should read the west 50 feet of lot 57 instead..." (emphasis added). Vine Harding goes on to say that if the deed from Vine Harding to Bishop Leete had already been recorded, "I will make a deed from you to the Village of Mackinaw....".
6. Exhibit C is an October 3, 1911 letter also from Vine Harding to Bishop Leete that states at page two: "**Lot 57 on the original plat is 80 feet the East 30 feet is layed (sic) off for street** so you have no chance of less than 50 feet." (emphasis added).
7. On October 27, 1911, Bishop Leete executed the Quitclaim Deed at issue in this case which states: "**Said property to be improved by second party [Village of Mackinaw City] and used as a street only.**" (emphasis added). The consideration was one dollar.
8. Exhibit A also states the purchase price for the four lots at \$710, or \$177 per lot in 1911. Bishop Leete quitclaimed 3/8 of one of these lots for one dollar when 3/8 of a lot would have had a then current market price of approximately \$65. [I refer to 8 lots in my Complaint because

Lakeside Drive did not exist when Bishop Leete purchased them. The lots have since been split from four to eight, those portions of lots 57, 58, 59 and 60 north and those south of Lakeside.]

Date: August 16, 2016.

Miriam Hiser
Miriam Hiser

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

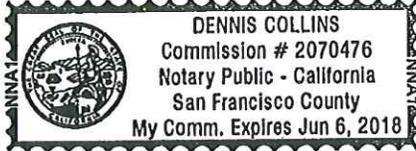
State of California)
County of SAN FRANCISCO)
On August 16, 2016 before me, DENNIS COLLINS, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Miriam Hiser
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer -- Title(s): _____ Corporate Officer -- Title(s): _____
 Partner -- Limited General Partner -- Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer Is Representing: _____ Signer Is Representing: _____

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EXHIBIT A
[Bottom HALF ENLARGED]

Exhibit 3

EXHIBIT B

VINE HARDING
PROP.
MACKINAW CITY
MICHIGAN



WA-WAT-AM BEACH

Sept 7/11

Rev F. W. Seete
Detroit, Mich.

Dear Mr Seete

Suppose this will find you just getting away for conference after getting settled back in your Detroit home.

Just discovered a mistake in the deed I gave you of deeding you the whole of lot 57 which is 80 feet wide & takes in the 30 foot street & your 30 foot lot that I should have deeded

should read the West 50 feet of lot 57 instead of if you have not recorded it return it & will make a new one & if you have sent it far ahead you might write as they may not have it recorded as they are so often behind. If they have I will make a deed from you to the Village of Mackinaw

Its wonderful Springs and Health giving pine woods.

At the site of the Historic Indian Massacre A. D. 1763.

Finest views of the Straits and passing ships.

Where Hay fever and kindred complaints are unknown.

Cottages built to order and sold on easy terms, Lots very Reasonable.

then I will pay for yours + Mrs Lute
 acknowledgments, as you will
 see I have the Ins policy fixed + will
 remit the \$5.76 as I have to write him again.
 And I am wondering how we
 made a miscount on our deal.
 The Sale + Cottage \$710, you paid \$25, bal 685;
 you gave me a check for 765, I gave you
 one back for \$25, = 740, you paid
 which only leaves me \$53, for the
 furniture, insurance + the \$10, for
 our work. Kindly return the list
 + figures I gave you so I can
 get straightened out on it as I
 kept no figures + when you gave
 me the figures on settling day I had
 more faith in your memory of
 the amt because you had them
 last + I made the list hurriedly.
 Dave + Robuck have returned the
 bills now but you suggested we stay
 by my list so have not looked them
 over. I got the keys to your cottage P. H.
 I want to suggest before you get about
 putting a night lock on your front door
 so one can not get in so easily
 with a skeleton key the rest either
 have done that or put up a blind

3
and the front door & some do bath
I have not taken the time to
figure out the addition for
you yet but will now soon
as I remember you wished to run
West towards your line 10 feet.

Wishing you success at the
conference, and with best
regards to you all,

Had some rain this a.m. & it is
quite cool this p.m.

Yours very truly,

Jim Hartman

P.S. I owe you for the couch, cot & mat.
I did not get the big lamp.
Presume I will not be able to get
full price out of the couch as
it shows use. Yours Ed
J.G.

Exhibit 4

VINE HARDING
PROP.

MACKINAW CITY
MICHIGAN



EXHIBIT C

WA-WAT-AM BEACH

Oct. 3/11.

Rev. F. D. Seale

Dear Friend:-

yours of 9-29 at hand.

Think I have discovered
the mistake of deducting
the \$60.00 & then the \$25. you
paid beside. Kindly look

over the enclosed figures
& let me know what
you think of them.

About the front door I

make them all the same
then they have a chance
to pick the kind of night
lock they prefer or have
a door blind as they prefer

I can furnish & put on either
for \$1.00 I have both on mine
& think there are two on the
beach that has neither, just
as you prefer. Quite a peculiar
circumstance happened to your
front yard today. Rev. Gardner

made a bargain with Charles
Walters to grade from where
the walk will come down to
his cottage for \$3.00 Walters looked

it over. I went down about 11 A.M. &
found him grading yours instead and

Its wonderful Springs and
Health giving pine woods.

At the site of the Historic
Indian Massacre A. D. 1763.

Finest views of the Straits
and passing ships.

Where Hay fever and kin-
dred complaints are unknown.

Cottages built to order and
sold on easy terms, Lots very
Reasonable.

It makes no sense now
told him he better finish it that I
thought you would be glad to pay
the \$300 and I will say this that if you
do not think it well worth it will
pay you back the 300 after you recit.
you can send it direct to him, I will
hand it to him. yes I see now how
the Lampouch & screens figure out.

Lot 57 on the original plat is 50 feet
the East 30 feet is loped off for
street so you run no chance of loss
than 50 feet. Will not get at the
sidewalk this fall but will try it
the first thing in the spring after
I get here.

Exhibit 5

BAYVIEW TITLE - AGENCY

Timothy B. Murphy
616 Petoskey Street, Suite 400, Petoskey, Michigan 49770
231-347-3212 (FAX: 231-347-3565)

**SEARCH OF TITLE
BVT # 19435**

Prepared for: MIRIAM HISER
550 Montgomery St Ste 650
San Francisco, CA 94111

Your Reference No: **LEETE**

From examination of the records in the Register of Deeds Office, Emmet County, Michigan:

FROM: September 29, 1884

TO: September 25, 2009 AT: 08:00 AM

For property described as follows:

Land situated in the Village of Mackinaw City, Emmet County, Michigan:

All that portion of Lot 57, Block A, VILLAGE OF MACKINAW CITY, according to the recorded Plat thereof, as lies North of the 15 foot alley or service roadway bisecting said lot.

WE FIND THE FOLLOWING RECORDED DOCUMENTS AND UNDISCHARGED MORTGAGES/LIENS AFFECTING TITLE:

1. United States Circuit Court Indenture dated September 29, 1884 and recorded November 24, 1885 in Liber V, Page 52, Emmet County Records.
2. Quit Claim Deed executed by WILLIAM R. SHELBY and MARY S. SHELBY, his wife, to JOSEPH S. ROBERTS, dated October 23, 1890 and recorded October 29, 1890 in Liber Z, Page 395, Emmet County Records.
3. Quit Claim Deed executed by JOSEPH L. ROBERTS, ALICE J. NEWHALL, CLARA B. SKAATS and FANNY F. GRIFFITH, to VINE HARDING and STELLA HARDING, dated January 18, 1909 and recorded February 17, 1909 in Liber 42, page 466, Emmet County Records.
4. Warranty Deed executed by VINE HARDING and STELLA HARDING, his wife, to FREDERICK DeLAND LEETE and JEANETTE FULLER LEETE, dated August 25, 1911 and recorded September 5, 1911 in Liber 52, Page 561, Emmet County Records.
5. Quit Claim Deed executed by FREDERICK DeLAND LEETE and JEANETTE FULLER LEETE, his wife, to THE VILLAGE OF MACKINAW CITY, MICHIGAN, dated October 27, 1911 and recorded July 24, 1924 in Liber 77, Page 103, Emmet County Records.
6. Warranty Deed executed by FREDERICK D. LEETE and JEANETTE FULLER LEETE, his wife, to FREDERICK D. LEETE, JUNIOR, dated August 26, 1932 and recorded August 29, 1932, in Liber 89, Page 534, Emmet County Records.
7. Order Admitting Will to Probate and Appointing Personal Representative dated June 26, 1984 and recorded July 5, 1984 in Liber 340, Page 770, Emmet County Records.
8. Order Allowing Final Account and Assigning Residue dated January 8, 1985 and recorded March 15, 1985 in Liber 348, Page 186, Emmet County Records.
9. Deed executed by FRANCIS M. HUGHES, Michigan Ancillary Personal Representative of the Estate of FREDERICK D. LEETE, JR., DECEASED, to HENRIETTA S. LEETE, dated January 11, 1985 and recorded March 15, 1985 in Liber 348, Page 188, Emmet County Records.
10. Deed of Independent Personal Representative executed by DAVID B. HUGHES, as Independent Personal Representative of the Estate of HENRIETTA S. LEETE, DECEASED, Emmet County, Michigan Probate File No. 93-009783-IE, to FREDERICK D. LEETE III and MARIGOLD LEETE HISER, as tenants in common, each taking an undivided one-half interest, dated September 18, 1995 and recorded October 3, 1995 in Liber 557, Page 415, Emmet County Records, with Affidavit recorded October 19, 1995 in Liber 558, Page 457 and deed re-recorded October 19, 1995 in Liber 558, Page 460, Emmet County Records.
11. Warranty Deed executed by FREDERICK D. LEETE, III and BARBARA LEETE, husband and wife, as to an undivided one half interest, to MIRIAM HISER, dated November 28, 2005 and recorded December 2, 2005 in Liber 1073, Page 60, Emmet County Records.
12. Affidavit of Interest in Real Estate recorded October 14, 2008 in Liber 1106, Page 708, Emmet County Records.
13. Rights, title and interest of the United States of America, the State of Michigan, riparian owners and the public in the bed and waters of STRAITS OF MACKINAW, including land which was formerly the bed of STRAITS OF MACKINAW and was created by fill or artificial accretion.
14. TAXES: Tax Roll No. 42-03-12-476-220

BAYVIEW TITLE COMPANY

BVT Number: 19435

SEARCH OF TITLE

(Continued)

2009 Summer, Village and Prior Taxes paid.
2008 Winter Taxes PAID in the amount of \$566.33.
2009 Village Taxes PAID in the amount of \$1,247.23.
2009 Summer Taxes PAID in the amount of \$2,240.53.
2009 Taxable Value: \$73,627.00 (0.00% PRE)

15. Assessments, special or general, unless the roll is open for payment in the office of the County Treasurer.
16. Rights of the public and of any governmental unit in any part thereof taken, used, or deeded for street, road, or highway purposes.

This search does not cover matters of survey nor any items determinable only by inspection of the premises.

Under this form of Search, this Company is not an insurer of the above title, nor does it guarantee the title or any evidence thereto.

Instruments (however designated) filed in the office of the Register of Deeds as "Financing Statements" pursuant to the Uniform Commercial Code PA 1962, No. 174, effective January 1, 1964, are not included in the matters covered by this Certificate.

BAYVIEW TITLE - AGENCY

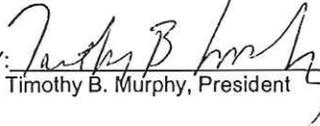
BY: 
Timothy B. Murphy, President

Exhibit 6

2014-ZP-010

ZONING PERMIT APPLICATION
VILLAGE OF MACKINAW CITY

Applicant: JOHN & CATHY PAQUET Date Submitted: 9-2-14

Owner: <u>JOHN & CATHY PAQUET</u>	Contractor: <u>NONE</u>
Address: 726 LAKESIDE DR <u>189 COVERED BRIDGE DR</u> <u>FORT WORTH, TEXAS 76108</u>	Address: _____
Phone: <u>770-596-4633</u>	Phone: _____
Cell Phone: <u>SOME</u>	Fax: _____

All questions must be answered completely. If additional space is needed, number and attach additional sheets. Applicants are encouraged to contact the Zoning Administrator to discuss the proposed project and seek assistance in completing this form.

NOTE: If professionally prepared site plans are not being submitted as part of this application, complete a ZONING AND SITE PLAN grid form available from Village Hall. All site plans must include at a minimum: property lines and their dimensions, building location and size, drives and parking areas, watercourses, road Right Of Way, and greenspace areas (if commercial) and utility access or utility easements.

Address of Property: 726 LAKESIDE DR

Property ID #: 42-03-12-476-207 Property Zoning District R-1

Legal Description/Dimensions of Property: SEE ATTACHED

Brief description of proposed improvement: NEW GARAGE ADDITION

Proposed Use: RESIDENTIAL
(residential, commercial, industrial, parking, etc.)

Existing Use: RESIDENTIAL Total Cost of Project: \$ 15,000⁰⁰

Setbacks:	Front yard	10	Side yard	7
	Rear yard	10	Side yard	7

Building(s) Size:	Height	Length	Width	# of Stories	Total Sq. Ft.
	25	31	30	2	928

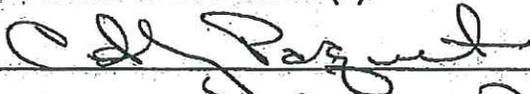
Applicant/Project Name: PAQUET RESIDENCE GARAGE

Describe any special conditions or considerations associated with this proposed activity:

ANYONE MAKING CHANGES TO AN APPROVED SITE PLAN DURING CONSTRUCTION WITHOUT PRIOR WRITTEN APPROVAL FROM THE VILLAGE WILL BE FINED AND/OR PENALIZED. THOSE COMMERCIAL PROPERTIES HAVING CONSTRUCTED A PORTION OR PORTIONS WITHOUT PRIOR APPROVAL FROM THE VILLAGE WILL NOT BE PERMITTED TO OPEN TO THE PUBLIC OR SERVE THE PUBLIC IN ANY WAY UNTIL SUCH APPROVAL HAS BEEN GRANTED BY THE APPROPRIATE VILLAGE STAFF.

The UNDERSIGNED affirms that he/she/they is (are) the owner of subject property or are properly authorized to represent the interest of all property owners involved in this application and that the answers and statements herein contained and all maps, plans, and other information herewith submitted and attached are in all respects true to the best of his/her/their knowledge and belief.

SIGNATURE OF APPLICANT(S):



Print Name of Applicant: CATHY PAQUET

Print Name of Applicant: _____

DATE: 9-2-14

As of 2-19-2013
I hereby certify that I have examined the records
in my office and it appears that the taxes on the
within description have been paid for the five year
period preceding the date of this document.

Marilyn May
Emmet County Treasurer, Petoskey, MI

RECEIVED
EMMET COUNTY
REGISTER OF DEEDS
2013 FEB 19 A 10:10



OFFICIAL SEAL Emmet Register of Deeds
Michele E. Stine 02/19/2013 12:59:38 PM

L: 1153 P: 671

Space above this line for recording information

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT, **THOMAS S. MOSER**, a single man, herein referred to as Grantor, whose address is 726 Lakeside Dr., Mackinaw City, MI 49701, Conveys and Warrants to **JOHN EDWARD PAQUET and CATHY L. PAQUET**, husband and wife, hereinafter referred to as Grantee, whose address is 775 Registry Run NW, Kennesaw, GA 30152; the following described property:

Land situated in the Village of Mackinaw City, Emmet County, Michigan, described as:

Part of Lots 55 and 56, Block A, VILLAGE OF MACKINAW CITY, according to the Plat thereof recorded in Liber A of Deeds, Page 52, Emmet County Records, described as follows:

Beginning at the Southeast corner of Lot 55, proceeding thence North 00°59'34" East along the East line of Lot 55 a distance of 279.84 feet to the Northerly line of Lake Shore Drive and Point of Beginning; continuing thence North 00°59'34" East 121.70 feet to the shore of the Straits of Mackinac; thence South 72°59'30" West along said shore 105.31 feet to the West line of Lot 56; thence South 00°59'34" West along said West line 120.08 feet to the Northerly line of Lake Shore Drive; thence North 73°46'30" East 105.85 feet to the Point of Beginning.

(REAL ESTATE TRANSFER TAX VALUATION AFFIDAVIT FILED HEREWITH)

SUBJECT TO building and use restrictions, easements and reservations of record.

**REAL ESTATE VALUATION
AFFIDAVIT FILED**

Dated this 6th day of February, 2013.

Signed, Sealed and Delivered:

Thomas S. Moser
THOMAS S. MOSER

STATE OF MICHIGAN
COUNTY OF EMMET

On this 6th day of February, 2013, before me personally appeared **THOMAS S. MOSER**, to me known to be the within named Grantor who executed the foregoing Instrument and acknowledged that he executed the same as his free act and deed.

Timothy B. Murphy
Notary Public for Emmet
My Commission Expires:
Acting in the County of _____

TIMOTHY B. MURPHY
NOTARY PUBLIC, EMMET COUNTY, MI
MY COMMISSION EXPIRES APRIL 30, 2013
ACTING IN EMMET COUNTY

TAX PARCEL # 42-03-12-476-207

DOC # 5106346 L: 1153 P: 671
02/19/2013 12:59:38 PM Page 1 of 2
Rec Fee: \$18.00 Doc Type: DW
Emmet, Michigan, Michele E. Stine



ZONING ORDINANCE #138
As amended, construction timelines

11. A site construction and improvement timeline that includes specific development benchmarks from the commencement of construction through completion.

- J. Except where an extension is granted by the Village Council after a recommendation from the Planning Commission due to an unforeseen circumstance which shall not include economic changes or financial hardships, all approved Site Plans not in compliance with the site construction and improvement timeline required by Section 4-117 D 11 above shall be valid no longer than one (1) year from the date that the Site Plan is approved by the Village Council. For those Site Plans approved prior to the adoption of the amendments to this Section 4-117 requiring the submission of a site construction and improvement timeline, such Site Plan approvals shall be valid no longer than one (1) year from the effective date of such amendment unless an extension is granted by the Village Council after a recommendation from the Planning Commission.

RESIDENTIAL FEE: 50⁰⁰
SEE @ 100ft = 928⁰⁰ 46⁰⁰
#96⁴⁰

2014-ZP-010

FOR OFFICE USE ONLY

Permit Number: 2014-ZP-010 Date Received: 9-2-14
Permit Fee: 96⁴⁰ Receipt Number: 7942
Check No: 8611 Amount Paid: \$96.40

Zoning Board of Appeals action, if any: _____

Action Taken:

- Permit Issued
 Permit Issued upon Zoning Board of Appeals Approval
 Permit Denied - reason(s) listed below

The applicant agrees that the permit applied for, if granted, is issued on the representations made herein as well as approved site plans and the that any permit may be revoked without notice on any breach of representations or conditions. The applicant agrees to notify the appropriate zoning administrative personnel of the Village of Mackinaw City when construction reaches the stages for inspection indicated below, if any.

- Footing Inspection (call 24 hours prior to pouring) *OK by [signature]*
 Drainage Inspection (call 24 hours prior to paving, drains must be in)

Various inspections will be performed at our discretion during construction.

- Final Inspection (call 48 hours prior to desired occupancy date)

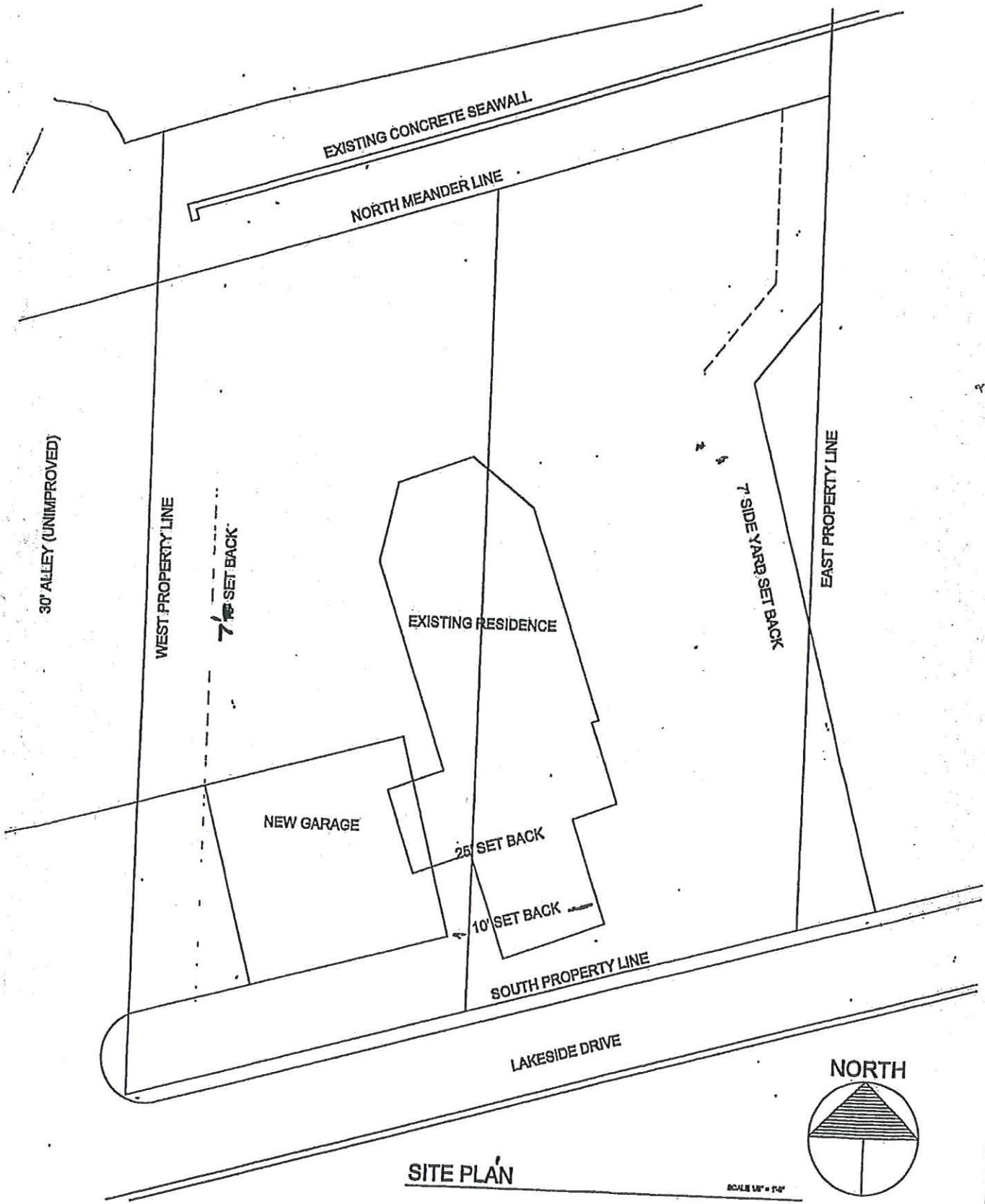
Note: This is not a sign permit. Applicant is hereby notified that a separate permit must be obtained from the Village prior to the construction and/or placement of any signs in accordance with the sign ordinance.

Notes and Special Conditions of Permit: LAKESIDE DRIVE Front Property Line
CALL for Footing Inspection.

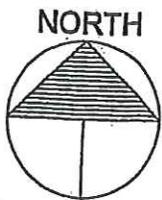
Date: 9-2-2014 Authorizing Signature: [Signature]

Form/Zoning Permit App.10

Title of Official: CDD



SITE PLAN



SCALE 1/8" = 1'-0"

CERTIFICATE OF SURVEY

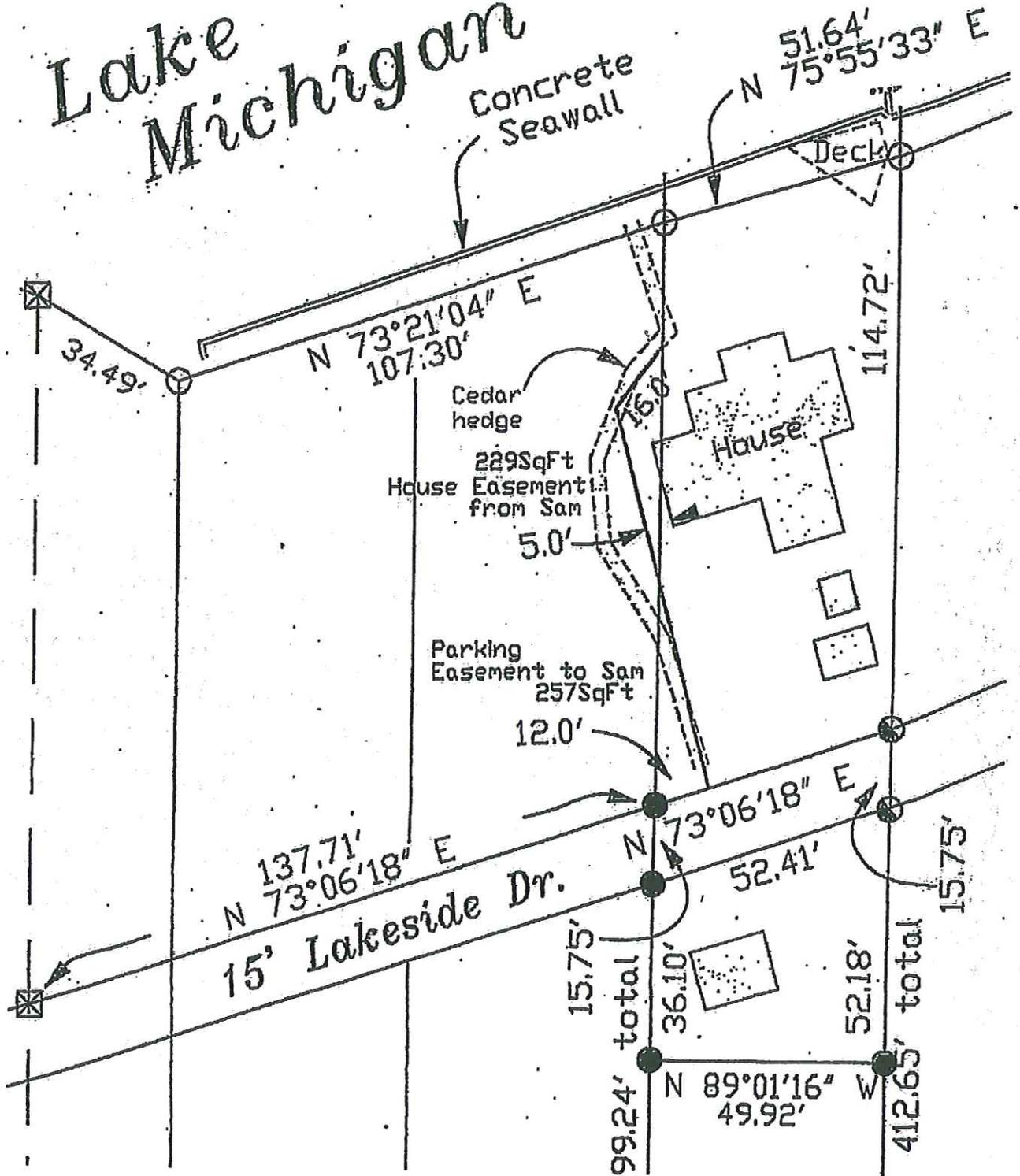
LEGAL DESCRIPTION

Situated in the Village of Mackinaw City, Emmet County, Michigan, described as follows:

PLAT OF MACKINAW CITY Block A, part of lots 55 and 56, commencing at the Southeast corner of Lot 55, thence 279.84 feet to the North line of Lakeside Dr. and POINT OF BEGINNING; thence continuing North 121.7 feet to the shore of the Straits of Mackinac thence South 72° 59' 30" West along said shore 185.91 feet to the West line of Lot 56; thence South 120.08 feet to the North line of road; thence North 73° 46' 30" East 105.85 to the POINT OF BEGINNING.

Proposal A

Lake Michigan



CERTIFICATE OF SURVEY

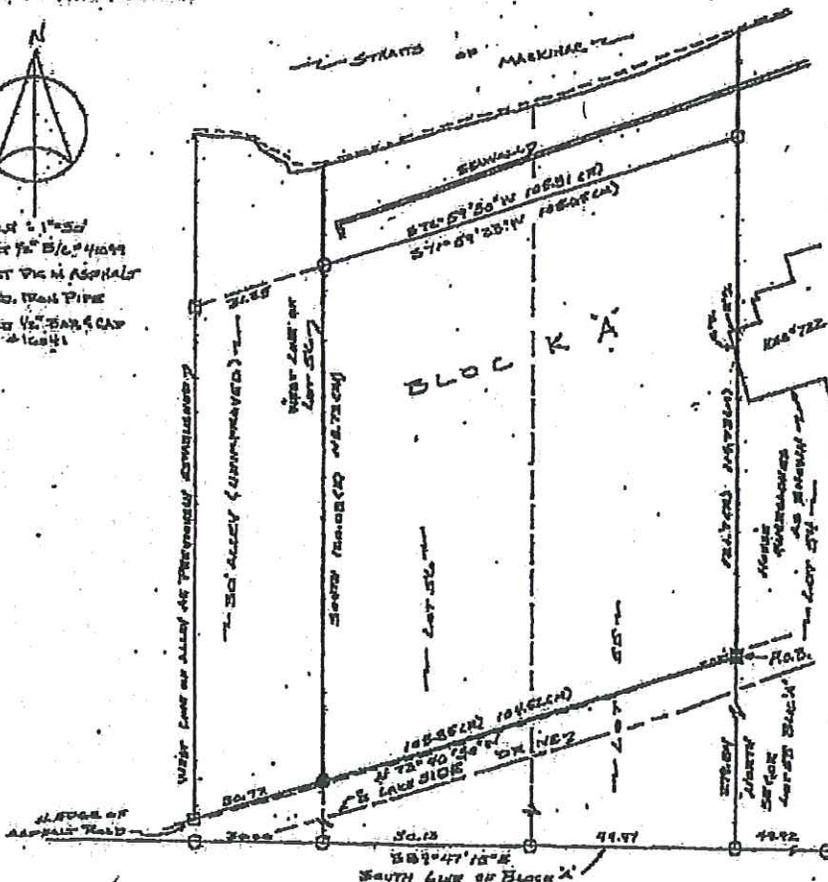
LEGAL DESCRIPTION

Situated in the Village of Mackinaw City, Emmet County, Michigan, described as follows:

PLAT OF MACKINAW CITY Block A, part of lots 55 and 56, commencing at the Southeast corner of Lot 55, thence 279.84 feet to the North line of Lakeside Dr. and **POINT OF BEGINNING**; thence continuing North 121.7 feet to the shore of the Straits of Mackinac thence South 72° 58' 30" West along said shore 104.91 feet to the West line of Lot 56; thence South 120.08 feet to the North line of road; thence North 78° 46' 30" East 105.85 to the **POINT OF BEGINNING**.



- SCALE 1" = 50'
- = SET IN B.L. 4/10/77
 - = SET IN N. SIGNALS
 - = PUB. IRON PIPE
 - = SET IN B.L. 4/10/77



CERTIFICATE OF SURVEY

This survey was performed with an unadjusted error of closure of no greater than a ratio of 1 in 5,000.

B. K. Fullford
 Brian K. Fullford, PS #41089

3/11/98
 Date



FOR:
 Thomas Moser

Wade-Trim, Inc.
 5557 Sturgeon Rd., P.O. Box 179
 Indian River, MI 49749 • 810-235-8800

SEC. 12, T. 37N., R. 6W
 DRAWN 1/2 SHEET 1 OF 1
 COMPUTED JOE RSU 2764-
 NO. 111D

Exhibit 7

Fred Thompson

From: paquetf@comcast.net
Sent: Wednesday, October 29, 2014 10:33 PM
To: Fred Thompson
Cc: John.e.paquet@mca.com; amoldm48@gmail.com
Subject: Tree Removal - Access area adjacent to 725 Lakeside Drive

Mr. Thompson,

We would like to request that the trees adjacent to our property be removed per the approved plans that were submitted during our zoning permit application (2014-ZP-010). These trees are located on the east side of the access road between Lakeside Drive and the white brick grill. As it stands, these trees will not allow us the needed turn ratio for entrance into and exit from the planned garage.

We appreciate your assistance in this matter, if you have any questions please contact us at 770-596-4633.

Thank you,

/s/ John and Cathy Paquet

Exhibit 8

AFFIDAVIT OF SAMUEL COBURN

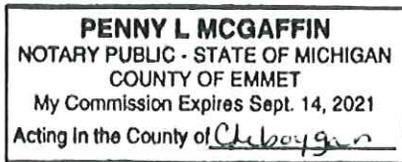
Samuel Coburn, being sworn, states the following:

1. I am Samuel Coburn.
2. My address is 8024 Edgewater Beach Trail, Mackinaw City, Michigan.
3. I am the prior owner of 726 Lakeside Drive, Mackinaw City, Michigan. Tom Moser and I purchased the property in 1998.
4. Several years ago, while we still owned 726 Lakeside, I approached the prior City Manager of the Village of Mackinaw City and asked we could purchase the thirty foot piece of property that is at issue in this litigation, which we referred to locally as "the fire road." I was told that we could not purchase it because there were City utilities that ran underneath the property.
5. The foregoing is within my personal knowledge and if called as a witness I would competently testify thereto.

STATE OF MICHIGAN

COUNTY OF CHEYBOYGAN

Signed and sworn to before me on 8/11, 2016 by Samuel Coburn (name).



Samuel Coburn
Penny L McGaffin Notary Public
Emmet County, Michigan
 Commission Expires: 9-14-2021
 Acting in Cheyboygan County, Michigan

Exhibit 9

September 28, 2016

Village of Mackinaw City
Zoning Board of Appeals
P.O. Box 580
Mackinaw City, MI 49701

Re: *Hiser v. Village of Mackinaw City and Village of Mackinaw City Zoning Board of Appeals*
Circuit Court File No. 16-105218-AA

Dear Zoning Board of Appeals Members:

My name is Marigold Hiser and my husband James Hiser and I own the property located at 801 and 803 Lakeside Drive, Mackinaw City, Michigan. Our property consists of those portions of Lots 57, 58, 59 and 60 lying directly south of Lakeside Drive. My grandfather Bishop Leete purchased the entirety of Lots 57, 58, 59 and 60 in 1911 and the properties I own have been in our family since that time and I have spent many summers there since I was a child.

Directly east of our lots is a thirty foot piece of property that was conveyed by Bishop Leete to the Village of Mackinaw City for use "as a street only" ("the ROW"). The ROW runs from Lake Michigan to Central Avenue and was originally the eastern most thirty foot portion of Lot 57, which was originally eighty feet wide.

Since my childhood, my family has accessed the properties at 801 and 803 Lakeside by driving across the portion of the ROW that fronts on Central Avenue. Since I inherited the properties in 1995, there has been no other way to access our lots other than by driving across a portion of the ROW. The ROW thus provides the only vehicular access to our properties. We have never altered, changed, added to or removed anything from this ROW, simply used it to drive across.

The portion of the ROW that lies between 800 Lakeside and 726 Lakeside is called "the fire road." It got that name because it was used by the local fire department for access to Michigan to pull water for fighting fires. Since my childhood, this portion of the ROW has also been used for boat access to Lake Michigan. My brother Fred Leete, my Uncle Lester and other friends and family members would take their boats down the fire road for launching. The ROW has also been used as lake access by me and my family members.

Marigold Leete Hiser
James W. Hiser

Exhibit 10

TWO STORY RESIDENCE PLAT OF MACKINAW CITY BLOCK "A" PART OF LOTS 55 AND 56 EMMET COUNTY MACKINAW CITY, MICHIGAN 49701

DATE: 10/15/2010
DRAWN BY: JAC
CHECKED BY: JAC
SCALE: AS SHOWN
SHEET NO: 1 OF 1

STRUCTURAL LOADS
ROOF LIVE LOAD: 10 PSF
ROOF DEAD LOAD: 10 PSF
TOTAL ROOF LOAD: 20 PSF
FLOOR LIVE LOAD: 10 PSF
FLOOR DEAD LOAD: 10 PSF
TOTAL FLOOR LOAD: 20 PSF

EARTHQUAKE DESIGN DATA
PEAK VELOCITY (A): 0.1
PEAK ACCELERATION (A): 0.1
SEISMIC HAZARD EXPOSURE CATEGORY: 1
SEISMIC PERFORMANCE CATEGORY: A-1
SOIL PROFILE TYPE: S1
SEISMIC COEFFICIENT: 0.1

NOTES
1. THE OWNER REPRESENTS AND WARRANTS THAT ALL INFORMATION PROVIDED IS TRUE AND CORRECT.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE.

PHASE OF PROJECT
FOUNDATION
FLOOR PLAN
ROOF PLAN
ELECTRICAL AND MECHANICAL PLANS

REVISIONS
NO. DESCRIPTION
1. CORRECTED DRAWING

RESPONSE MODIFICATION FACTOR (R)
1.0
SEISMIC DESIGN CATEGORY (SDC)
A-1

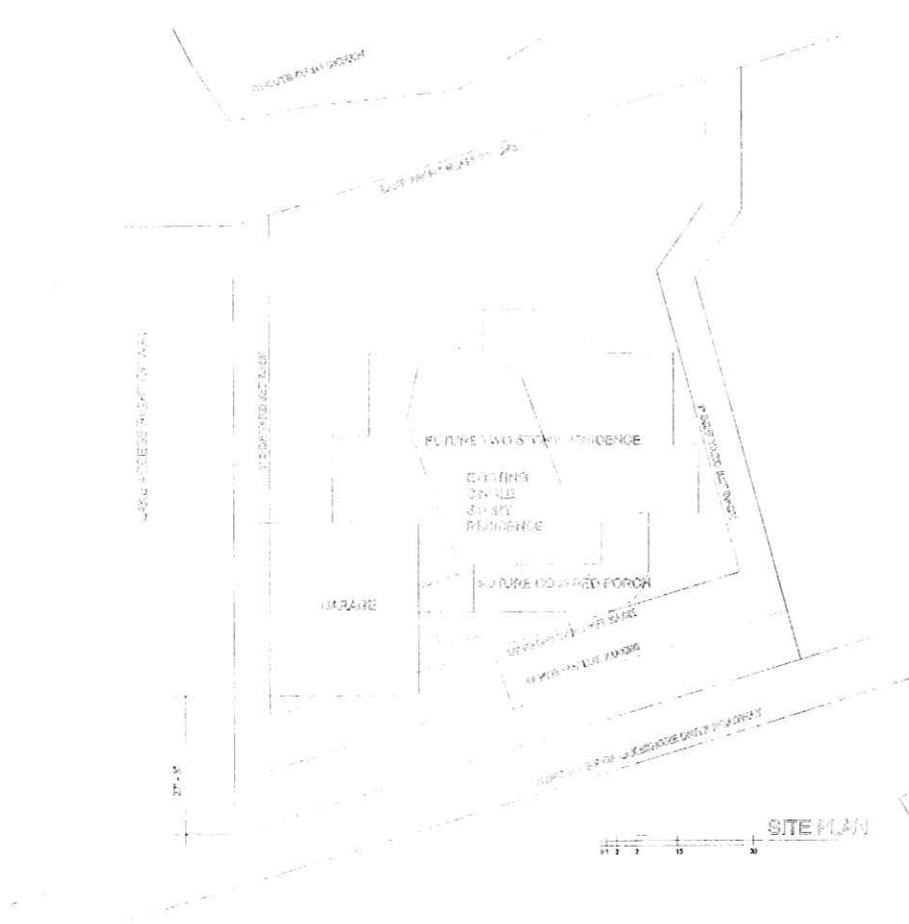
CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE.

PDS

PROFESSIONAL DESIGN SERVICES
1000 W. HURON ST., SUITE 100
MACKINAW CITY, MICHIGAN 49701
PHONE: 517.753.1234
FAX: 517.753.1235
WWW.PDSDESIGN.COM

MACKINAW CITY RESIDENCE
EMMET COUNTY
MACKINAW CITY, MICHIGAN 49701

REVISIONS	



SITE PLAN



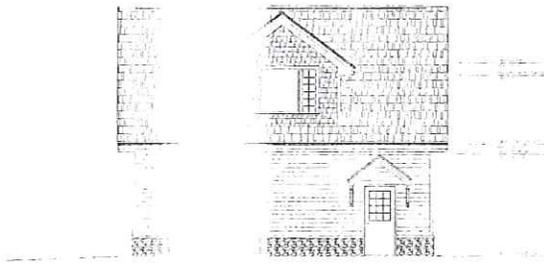
PROFESSIONAL DESIGN SOLUTIONS
 101 WEST HARRIS STREET, TAPSCOTT, MI 48066
 PHONE: 248.222.1100

PDS

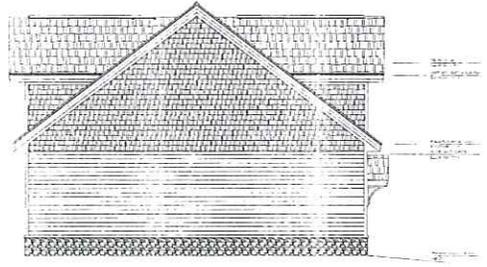
101 WEST HARRIS STREET TAPSCOTT, MI 48066 PHONE: 248.222.1100

PROJECT: PRIVATE RESIDENCE SITE PLAN DATE: 08/15/2011 DRAWN BY: J. B. BROWN CHECKED BY: J. B. BROWN APPROVED BY: J. B. BROWN MACKINAW CITY, MICHIGAN 49751
--

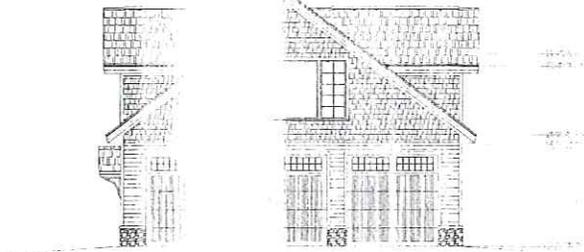
REVISIONS NO. DESCRIPTION 1. 08/15/2011



NORTH ELEVATION



EAST ELEVATION



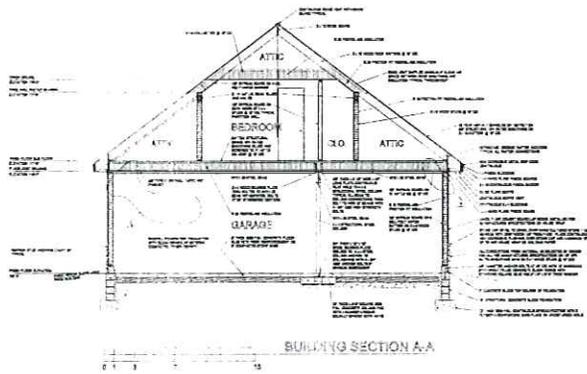
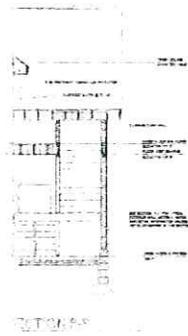
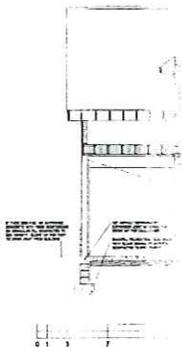
WEST ELEVATION

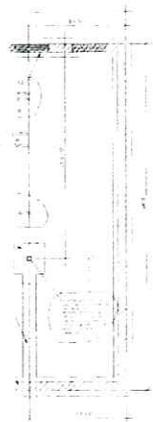


SOUTH ELEVATION

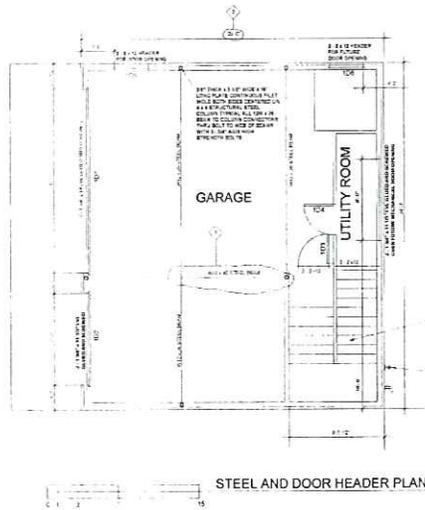
TWO STORY PRIVATE RESIDENCE - PHASE I GARAGE
 ELEVATIONS
 SINGLE FAMILY RESIDENCE
 SHERIDAN COUNTY
 SACRAMENTO CITY, SACRAMENTO 95791

REVISION





FOUNDATION PLAN



STEEL AND DOOR HEADER PLAN

GENERAL NOTES

- 1. ALL INTERIOR WOOD FRAMED WALLS SHALL BE 2x4 WOOD STUDS.
- 2. ALL INTERIOR WOOD PARTITION WALLS SHALL BE 2x4 WOOD STUDS.
- 3. ALL EXTERIOR WALLS TO BE 8" CMU.
- 4. ALL EXTERIOR WALLS TO BE 8" CMU.
- 5. ALL EXTERIOR WALLS TO BE 8" CMU.
- 6. ALL EXTERIOR WALLS TO BE 8" CMU.
- 7. ALL EXTERIOR WALLS TO BE 8" CMU.
- 8. ALL EXTERIOR WALLS TO BE 8" CMU.
- 9. ALL EXTERIOR WALLS TO BE 8" CMU.
- 10. ALL EXTERIOR WALLS TO BE 8" CMU.

FOR THE ARCHITECT: JAMES W. HARRIS, ARCHITECT
 100 WEST GARDNER STREET, TAPPAHANNOK, VA 22560
 PHONE: 540-338-7000

FOR THE ENGINEER: JAMES W. HARRIS, ARCHITECT
 100 WEST GARDNER STREET, TAPPAHANNOK, VA 22560
 PHONE: 540-338-7000

FOR THE CONTRACTOR: JAMES W. HARRIS, ARCHITECT
 100 WEST GARDNER STREET, TAPPAHANNOK, VA 22560
 PHONE: 540-338-7000

NO.	DATE	DESCRIPTION

Exhibit 11

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF EMMET

MIRIAM HISER,

Plaintiff,

v

EDWARD AND CATHY L. PAQUET AND
VILLAGE OF MACKINAW CITY,

Defendants.

Case No. 15-105141-CH

Hon. Charles W. Johnson

**AFFIDAVIT OF CATHY L. PAQUET
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
DISPOSITION**

OLSON, BZDOK & HOWARD, P.C.
By: Jeffrey L. Jocks (P67468)
420 East Front Street
Traverse City, Michigan 49686
Attorneys for Plaintiff
(231) 946-0044

CLARK HILL PLC
By: Kenneth P. Lane (P68617)
Gregory N. Longworth (P49249)
200 Ottawa NW, Suite 500
Grand Rapids, Michigan 49503
(616) 608-1100
Attorneys for Defendant Village of
Mackinaw City

BODMAN PLC
By: Michael A. Stack (P25327)
Sandra L. Jasinski (P37430)
229 Court Street, P.O. Box 405
Cheboygan, Michigan 49721
(231) 627-8000
Attorneys for Defendants Paquet

STATE OF MICHIGAN)
)ss.
COUNTY OF CHEBOYGAN)

Cathy L. Paquet, being first duly sworn states:

1. I am one of the named Defendants and am submitting this Affidavit in support of Defendants Paquets' ("Paquets") Motion for Summary Disposition. This Affidavit is based on my personal knowledge and the documents described in this Affidavit. If called, I am competent to testify to the facts in this Affidavit.

2. Defendant John Edward Paquet (incorrectly identified by Plaintiff as "Edward Paquet") and I have been married for almost 25 years. In 2014, I retired as an engineer with Lockheed Martin Aeronautics Company, where I worked for 22 years. Prior to working for Lockheed Martin, I worked for four years as an engineer at McDonald Douglas Corporation. John received his engineering degree from Michigan Technological University and is currently a director at Lockheed Martin, where, among other things, he leads large engineering teams in the development of F-16, F-22 and F-35 fighter aircraft. John was recently recognized for his 30-year anniversary with Lockheed Martin.

3. Although we currently live in Texas, my husband was born and raised in Mackinaw City and has many family members and friends who live in Northern Michigan. John's family has been full time residents of Mackinaw City since the 1880's and have been business owners and teachers. Prior to purchasing the home that is the subject of the lawsuit filed by Plaintiff, we spent as much time in Northern Michigan as possible to visit our friends and family. We planned to retire here and build our dream home.

4. In February 2013, after looking for property for our retirement home, we finally purchased 726 Lakeside Drive, Mackinaw City in the Wawatam Beach area. The property is

comprised of two lots and an existing home. Immediately west of our property is a small cottage owned by Plaintiff. Between our two properties is a 30 foot strip of land ("the Village Land") that runs from Lakeside Drive to Lake Michigan which is owned by the Village of Mackinaw City ("the Village").

5. In her Complaint, Plaintiff describes the Village Land as a "tree-lined dirt path." That description is not completely accurate. At the time my husband and I purchased our property, the Village Land was overgrown with trees, primarily so-called "swamp cedar." Based on the survey of our property, there was (and is) an old flagpole that has been on the ground for years, there was (and is) an old railroad tie that has been on the grounds for years, someone built a brick "grill" on the Village Land which from its condition, appears to have been done at least 50 years ago, and other property owners in the Wawatam Beach area routinely leave their kayaks on the Village Land rather than transport them back and forth from their homes.

6. Since my husband and I purchased the house, I have spent the late Spring, Summer and early Fall months at the property. Generally, I arrive in April or May and leave in September or October. My husband and other family members spend time at the property as well during these months. Our families have also used the home during the Thanksgiving and Christmas holidays.

7. Based on my observations, there is a low volume of pedestrian and vehicle traffic on Lakeside Drive, which is extremely narrow. During the time I have lived at the home, the only members of the public whom I have observed using the Village Land are 3 couples (all of whom reside in Wawatam Beach) who routinely use the Village Land to walk their dogs. This use has not decreased since the Village allowed my husband and me to make the improvements to the Village Land to which Plaintiff objects in this lawsuit and in the appeal she had filed from

the issuance of a Right of Way permit allowing those changes. One of those couples is Mark Sellers and his wife who own 725 Lakeside Drive, the house located directly across Lakeside drive from our property. Mark and his wife take their dog on daily walks on the Village Land, a practice that has not changed since my husband and I made the improvements to the Village Land.

8. During my son's 2013 and 2014 visits, he routinely parked his vehicle on the Village Land without any objection by Plaintiff or any other property owner in Wawatam Beach. Additionally, during 2013 and 2014, while hosting family barbeques during the summer, a couple of guests parked on the Village Land for a few hours without any objection by Plaintiff or other property owner in Wawatam Beach. Based on my observations, individuals routinely park their cars on Village Land throughout Mackinaw City, but especially along Wawatam Beach in the busy Summer season, where many family and friends are visiting Wawatam Beach homeowners.

9. After purchasing the property, my husband and I retained Michael Arnold, a licensed architect from Ohio and a former Village resident, to develop the plans and specifications for our retirement home. Because I would be on the property full time during what is the construction season in Northern Michigan, I took on the responsibility of meeting with municipal officials concerning the permits needed for the garage construction project, dealing with our contractors and otherwise monitoring the work.

10. My husband and I decided the construction would be in two phases. The first phase would involve the construction of a garage that would be attached to a new home that would be built at a later date and designed in anticipation of the later construction, such as building the framing required for the entry door between the garage and the future home and

designing and building mechanical and utility services to facilitate the later construction. If we decided to include guest quarters above the garage addition, that would permit me to live at the property during the construction of the new home to supervise and monitor the work progress. We decided to obtain a Zoning Permit in the Fall of 2014 so that we could immediately begin site preparation and then start construction of the attached garage in the Spring of 2015.

11. On September 2, 2014, Mr. Arnold and I met with the Village Zoning Administrator, Fred Thompson, to obtain a zoning permit for the new garage addition. Mr. Arnold and I provided Mr. Thompson with a site plan and other information showing we planned to build a two story 31' x 30' attached garage. During the meeting, I emphasized that the building plans were not finalized and my husband and I had not retained a builder and I was estimating what the construction costs would be. Mr. Thompson suggested I change the \$100,000.00 cost estimate on the permit application to \$15,000.00 because, in his experience, that is what most applicants identified as the cost of a garage project. A true and accurate copy of the application is attached to the Motion as Exhibit 3. Because, as I understand it, the permit fee is not calculated based on the expected cost of the project, it never occurred to me this change would somehow be considered inappropriate or construed as misleading.

12. Originally, the site plan identified a 10-foot side yard setback from the Village Land, with the south wall of the garage running parallel to Lakeside Drive. Mr. Thompson advised that the Zoning Ordinance only required a 7 foot side yard setback, so I made a handwritten change at that time. I asked Mr. Thompson if my husband and I would be permitted to have the garage doors face the Village Land rather than Lakeside Drive and he agreed. We briefly discussed how it would be necessary to remove trees from the Village Land for ingress and egress and eventually do work on the Village Land after construction. Mr. Thompson then

approved the zoning permit, a true and accurate copy of which is attached to the Motion as Exhibit 4.

13. In addition to removing nearly 20 trees on our property in the Fall of 2014, the site preparation for the construction of the garage required removal of approximately 6 trees on Village Land, including a dangerously listing white pine. Rather than having the Village remove the trees, my husband and I agreed to do so at our own expense during September and October of 2014. However, removal of the pine required a specific piece of equipment that was not available in the Fall of 2014. I arranged to have the pine removed in April 2015 when I returned to the property to monitor the construction of the attached garage. Later, on October 15, 2016, I attended a meeting of the Village's recently formed Tree Board and received unanimous approval to remove two additional trees from the Village Land. The minutes from the Tree Board meeting are attached to the Motion as Exhibit 6.

14. By April 2015, Mr. Arnold had finalized the design plans to include guest quarters on the second floor, and changed the footprint of the garage to 29' x 34'. We hired Marshall Builders, a St. Ignace company, they estimated the cost of the construction would be \$210,000.00.

15. Wade Marshall, of Marshall Builders, reviewed Mr. Arnold's plans at the property and determined the location of the garage and how it would attach to the existing and future home would not work as depicted on the site plan provided to Mr. Thompson in September 2014. Rather than being parallel to Lakeside Drive, the south wall of the garage would have to be slightly rotated resulting in the garage doors being completely parallel with the Village Land.

16. On April 23, 2015, Mr. Marshall and I signed and submitted a "Building Permit Application" to Emmet County Building and Inspection Department. A true and accurate copy of the Application is attached to the Motion as Exhibit 7. In addition to providing the address and location of the project, the permit application describes the "Description of the Work" as "To build A two storied garage with guest quarters above. Garage is 986 Sq. Ft. with 700 Sq. ft. on second floor."

17. On May 5, 2015, Emmet County issued a Building Permit. A true and accurate copy of this permit is attached to the Motion as Exhibit 8.

18. The Village's Zoning Permit required that we contact the Zoning Administrator for a footing inspection. Even before the footings were built, I contacted Mr. Thompson and he came to the property to see where the footings had been staked. At that time, I told Mr. Thompson of the changes to the size of the footprint and the orientation of the garage doors that would now be fully parallel with the Village Land. I also informed Mr. Thompson that the 700 square feet on the second floor of the garage included guest quarters where I would live when the existing home was demolished and when the new home would be built. Mr. Thompson had no objections. He did not request that my husband and I submit any written changes to the original site plan or suggest that those changes invalidated his prior approval of the Zoning Permit. Rather, he commented that front yard setback was now more than required by the Zoning Ordinance. Mr. Thompson subsequently came to the property after the footings were framed and measured and inspected the setbacks for compliance. At no time, did Mr. Thompson voice any objection to the revisions to the site plan from that he reviewed on September 2, 2014.

19. Over the course of the construction, I took several photographs. There is no doubt that the garage is attached to the existing house. In addition to being attached to the foundation

of the existing house, it was necessary to remove a portion of the roof on the existing house to accommodate the garage addition and it is less than 2 inches from the existing home and attached by trim. True and accurate copies of photograph reflecting these facts are attached as Exhibit 10.

20. All during the construction beginning in May 2015, I observed Mark Sellers carefully observing the construction and constantly taking photographs, to the point that it feels as if I am being stalked and harassed. Plaintiff only occupies her cottage for 10 days each year, generally during the Summer. She was present during July 2015 and was certainly aware of the construction, at one point during the construction argued with an employee of Consumers Power Company who was extending an electrical line from a utility pole on the Village Land near her cottage to our property.

21. On September 28, 2015, Mr. Marshall submitted applications to the Village to obtain a Right of Way permit under the Village's recently enacted Right of Way Ordinance. I have read the Affidavit of the Village's Superintendent of the Department of Public Works submitted in the administrative appeal filed by Plaintiff, attached as Exhibit 1 to the Motion, and it accurately reflects the actions taken by Mr. Marshall and Darrow Bros. Excavating, the other contractors retained by us, to make the approved changes to the Village Land.

22. On December 18, 2015, after the satisfactory completion of all required inspections, Emmet County issued a Certificate of Occupancy, a true and accurate copy of which is attached to the Motion as Exhibit 11.

23. There are several critical paragraphs of Plaintiff's Complaint that are false. For example, in paragraph 28, Plaintiff claims "the Paquets landscaped approximately eleven feet into and half of the length of the Public ROW. They added a garden/lawn and sprinkler system for that landscaping on the Public ROW." These allegations are false. My husband and I were

extremely careful in determining the location of our property lines. All of the landscaping plants and the sprinkler system are located and/or installed on our property, not the Village Land. At the Village's request, when the work on the Village Land was completed, we planted grass seed to prevent erosion of the Village Land.

24. Another false statement is found at paragraph 42 of her Complaint where Plaintiff alleges the "improvement and use of the Public ROW interferes with, and prevents, the public from using the Public ROW to access Lake Michigan." Since returning to the property on a full time basis in May 2016, the use of the Village Land now is exactly the same as it has been since my husband and I purchased the property in February 2013. The same three couples who were the only ones to use the Village Land before the construction to walk their dogs are the same three couples who still use the Village Land to walk their dogs. In an effort to allay Plaintiff's concerns that improvements would lead members of the public to believe the Village Land was our private property, the Village offered to erect a "public access" sign. While my husband and I had no objection to such signage, according to Village officials, Plaintiff objected.

25. At paragraph 69, Plaintiff alleges that "The Paquets' driveway on the Public ROW will direct and drain surface water runoff and snowmelt onto Hiser's property." Since completion of the permitted work on the Village Land, my husband and I have been at the property during the Christmas holidays and, as noted above, I have been at the property on a full time basis since May, 2016. I have yet to see any evidence of water migrating from the Village Land to Plaintiff's property. In fact, as recently as July 7, 2016, during a particularly strong storm, I videotaped the rainfall on the Village Land. It was not migrating toward Plaintiff's property, but toward our property and Lake Michigan as it was designed to do. Indeed, Plaintiff's property sits below grade of Lakeside Drive and, based on the condition of the Village

Land before we were allowed to remove any trees or undertake any work, I suspect surface water did migrate from the Village Land on to Plaintiff's property. That is not the case now.

26. Plaintiff's professed concern over the use of Village Land by private homeowners does not apply to everyone on Lakeside Drive. From the discovery produced by Plaintiff, Mark Sellers, the owner of 725 Lakeside Drive, first notified Plaintiff (who lives in San Francisco where she practices law), of the tree removal and has kept in close communication with her and others about our construction plans and the actual construction taking so many photographs and being so intrusive that it is practically harassment. Nevertheless, Mr. Sellers' ingress and egress to his home uses Village Land directly across the Lakeside Drive from the Village Land involved here which he has improved with a private garden and an outdoor clothesline. Yet, Plaintiff has not demanded that the Village take actions to remove those improvements.

FURTHER AFFIANT SAITH NOT.

By: 
Cathy L. Paquet

STATE OF MICHIGAN)
)ss.
COUNTY OF CHEBOYGAN)

The foregoing instrument was subscribed and sworn to before me this 14th day of July, 2016 by Cathy L. Paquet.

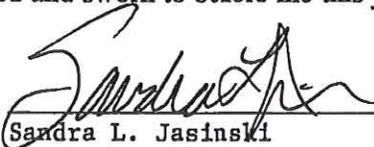

Sandra L. Jasinski, Notary Public
Otsego Co, acting in ChebCounty, Michigan
My Commission Expires: 2/24/2021

Exhibit 12









Exhibit 13

VILLAGE OF MACKINAW CITY RIGHT OF WAY PERMIT APPLICATION

Application Fee: \$ 50.⁰⁰

Applicant: Darrow Bros Excavating Inc

Contact: Darby Darrow

Address: Po Box 3 Mackinaw City MI 49701

Phones (office and cell): 231-436-5475 - cell= 231-758-0146

Email: Sarah @ DarrowBrothersExcavating.com

Emergency (24 hr) contact person with contact information:

Darby Darrow

231-758-0146

Proposed activity and location:

Crossing City Row & Fire Lane W. of 726 Lakeside Drive

Explanation of potential conflict, if any, with current use of right-of-way:

None

Date activity will begin: To be determined

Date Activity will be complete: TBD

Pedestrian and Traffic Safety Plan submission date:

Signage & Cones

Subcontractor(s): Attach additional sheets if more than one subcontractor

Contact:

Address:

Phones (office and cell):

Email:

RECEIVED
7/16/15

Red # 9884
CK # 10950

~~Estimated cost of installation:~~

N/A

Estimated cost to restore right-of-way:

0

Bond submitted:

NO

Insurance Certification and Type on file:

YES

I, the undersigned, hereby certify that the above information is accurate and that I have read and understand the permit requirements attached hereto:

Applicant signature

Date:

4-3-15

FOR VILLAGE STAFF ONLY: PLAN SUBMITTAL CHECKLIST

- Application form/fee
- Scale plan view drawings of existing topography and proposed work
- Cross section details for pavement/walk repairs
- Technical specifications
- Photographs of location
- Explanation of activities and impacts
- Traffic safety/control plan
- Pedestrian safety/control plan
- Schedule of activities
- Project Bond/Deposit

Permit requirements (including, but not limited to):

1. No street, sidewalk, apron or any public property shall be disturbed in any way without first obtaining a permit signed by the Director of Public Works.
2. All permits applications must include detailed construction plans and specifications in a form acceptable to the Director of Public Works.
3. Above ground, permanent installations to be located in the public right-of-way or on any public property shall be subject to the following additional requirements:
 - a. All plans, including photographs of proposed installations, to be submitted to the Director of Public Works for review and comment,
 - b. Plans shall be accompanied by specific explanation of need for above ground installation, options considered and supported finding of fact that below ground or private property installation is not feasible,
 - c. Following preliminary plan approval by the Director of Public Works, plans shall be forwarded to the Village Manager for final review and approval.
4. Applicant shall submit or have on file at the Village Clerk's office current certificate of insurance providing minimum insurance requirements.
5. Bond or cash deposit with Village Treasurer required in an amount not less than estimated cost to totally restore right of way plus any amounts deemed reasonable by the Director of Public Works to cover any exposure to the use and function of all public installations within or adjacent to work area.
6. Contractor/subcontractor to include complete pedestrian and traffic safety plan which shall include a complete explanation of all activities that may cause interruption of pedestrian, bicycle, vehicular or other traffic flow and their expected duration. Plans to include detour signing, barricade installation and all other necessary precautions to ensure the protection of the public safety.
7. Plans to include complete explanation of any potential for conflict with any existing use of the right-of-way.
8. Contractor and/or subcontractor to notify Director of Public Works 5 business days in advance of mobilization.
9. The Village Manager to be notified 3 business days in advance of proposed final pouring of concrete, placing of asphalt or placement of any permanent installation and preparations must be inspected and approved by the department of public works or the designated representative before final application of materials.
10. Violations of permit conditions subject to citation and fines imposed pursuant to section 34.008 of the Village of Mackinaw City Code of Ordinances.
11. Unless otherwise specified or shown on the plans, all areas disturbed by construction operations shall be restored to original condition as determined by the department of public works.



VILLAGE OF MACKINAW CITY
 PO BOX 580
 102 S HURON AVE
 MACKINAW CITY, MI 49701

RECEIPT

Receipt 9884
 04/03/15

Cashier: JANELLE
 Received Of: DARROW BROS
 The sum of \$50.00

PMTS	PERMITS				\$50.00
			101-000-450.000		50.00
		TENDERED:	CHECK	10950	\$50.00



VILLAGE OF MACKINAW CITY
 PO BOX 580
 102 S HURON AVE
 MACKINAW CITY, MI 49701

RECEIPT

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		TENDERED:	CHECK	10950	\$50.00

VILLAGE OF MACKINAW CITY RIGHT OF WAY PERMIT APPLICATION

Application Fee: \$ 50⁰⁰

Applicant: Darrow Bros Excavating - Inc

Contact: Darby Darrow

Address: PO Box 3 Mackinaw City MI 49701

Phones (office and cell): 231-436-5475- 231-758-0146-cell

Email: Sarah (at) DarrowBrothersExcavating.com

Emergency (24 hr) contact person with contact information:

Darby Darrow
231-758-0146

John Parvett - 726 Lakeside Dr
Proposed activity and location:

2. Connect New Building to Existing sewer
Lead.

1. Tap Watermain for 1" service to new building - @

Explanation of potential conflict, if any, with current use of right-of-way:

Water main is near Edge of Asphalt Road

Will be closed to Thru Traffic - Asphalt repair will likely be needed

Date activity will begin: April - 28 - 2015

Date Activity will be complete: April - 29 - 2015

Pedestrian and Traffic Safety Plan submission date:

Block Thru Traffic with signs & cones & Barricades Approx 50ft Area

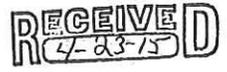
Subcontractor(s): Attach additional sheets if more than one subcontractor

Contact:

Address:

Phones (office and cell):

Email:



Estimated cost of installation:

\$ 1500.00

Estimated cost to restore right-of-way:

\$ 1500.00

Bond submitted:

Home Owner Insurance

Insurance Certification and Type on file:

YES

I, the undersigned, hereby certify that the above information is accurate and that I have read and understand the permit requirements attached hereto:



Applicant signature

Date:

4-23-15

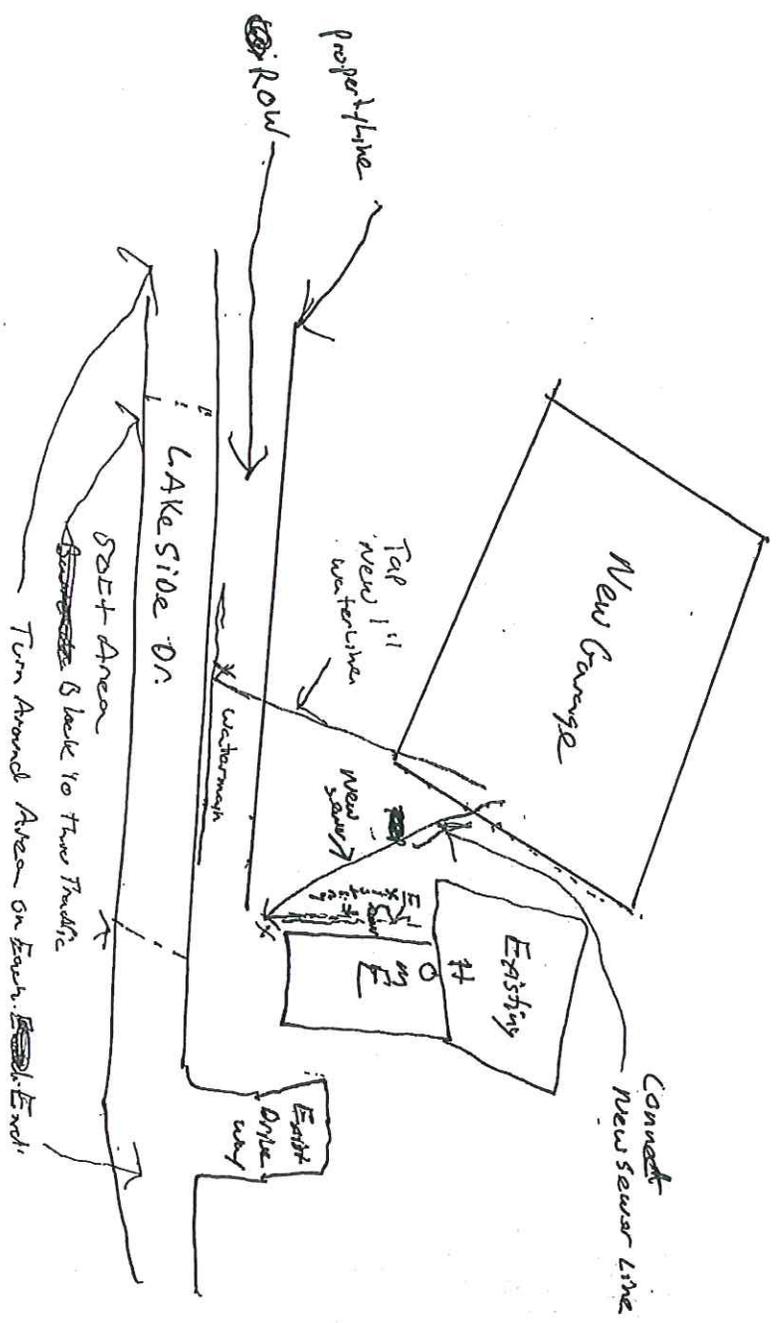
FOR VILLAGE STAFF ONLY: PLAN SUBMITTAL CHECKLIST

- Application form/fee
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- Technical specifications
- Photographs of location
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- Traffic safety/control plan
- Pedestrian safety/control plan
- Schedule of activities
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Permit requirements (including, but not limited to):

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10. Violations of permit conditions subject to citation and fines imposed pursuant to section 34.008 of the Village of Mackinaw City Code of Ordinances.
11. Unless otherwise specified or shown on the plans, all areas disturbed by construction operations shall be restored to original condition as determined by the department of public works.

John Paget
726 Lakeside Dr
↑
N



Bond No. 92-88-4378-0

FB-8008.1

LICENSE AND PERMIT BOND

State Farm



STATE FARM FIRE AND CASUALTY COMPANY

BLOOMINGTON, ILLINOIS

KNOW ALL PERSONS BY THESE PRESENTS, That we, CATHY PAQUET

of MACKINAW CITY as Principal,
and STATE FARM FIRE AND CASUALTY COMPANY, a corporation organized under the laws of the State of Illinois,
having its principal office in the city of Bloomington, Illinois, as Surety, are held and firmly bound unto
VILLAGE OF MACKINAW CITY MICHIGAN
in the full and aggregate sum of ONE THOUSAND FIVE HUNDRED Dollars (\$1,500)
lawful money of the United States, for which payment well and truly to be made; we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the said Principal has been granted a
LICENSE PERMIT BOND FOR REPAIR OF STREET

for a term beginning APRIL 24, 2015 and ending APRIL 24, 2016

NOW, THEREFORE, if the above Principal shall indemnify and save harmless the Oblige, against loss by reason of
said Principal's breach of any ordinance, rule or regulation relating to the above described license or permit, then this
obligation shall be null and void, otherwise to remain in full force and effect.

Provided, that if the Surety shall so elect, this bond may be cancelled by giving thirty (30) days notice in writing to
the said Oblige and this bond shall be deemed cancelled at the expiration of said thirty (30) days; but said Surety so filing
said notice shall not be discharged from any liability already incurred under this bond or which shall accrue hereunder
before the expiration of said thirty (30) day period.

This bond may be continued from year to year by means of a continuation certificate.

Signed, sealed and dated this 24 day of APRIL, 2015.

Cathy Paquet
Principal

By: Cathy Paquet

STATE FARM FIRE AND CASUALTY COMPANY

By: [Signature]
Attorney-in-Fact





**POWER OF ATTORNEY
STATE FARM FIRE AND CASUALTY COMPANY**

KNOW ALL PERSONS BY THESE PRESENTS: That STATE FARM FIRE AND CASUALTY COMPANY, an Illinois corporation, with its principal office in Bloomington, Illinois, does hereby constitute and appoint: David Lord

of Cheboygan Michig its true and lawful Attorney(s)-In-Fact, to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in the nature of a bond as follows:
\$ 2,500 - License, Permit or Indemnity— Financial Guarantee \$100,000 - Administrator, Executor, or Trustee of a decedent's estate
\$25,000 Licenses & Permit Code Compliance \$50,000 - Guardian, Conservator, or Committee
\$25,000 - Public Official \$25,000 Receiver
\$ 2,500 - Judicial

THIS POWER OF ATTORNEY IS NOT VALID FOR THE EXECUTION OF ANY CONTRACT (CONSTRUCTION OR SUPPLY) BOND - BID, PERFORMANCE OR PAYMENT.

This appointment is made under and by the authority of a resolution which was passed by the Executive Committee of the Board of Directors of State Farm Fire and Casualty Company on the 10th day of September, 2013, as is duly authorized by the Board of Directors in Article II, Section 8 of the By-Laws of the Company, which resolution is:

WHEREAS, the Board desires to delegate the authority to appoint persons as Attorneys-In-Fact for certain bonds, undertakings, or other writings obligatory in the nature of a bond.

RESOLVED, that any Officer of the Company who works regularly with surety bonds is hereby authorized to appoint and empower any representative of the Company as Attorney-in-Fact to execute on behalf of the Company any bonds, undertakings, or other writings obligatory in the nature of a bond, which the Company might execute through its officers. Any said execution of such documents by an Attorney-in-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected or appointed officers of the Company. Any Attorney-in-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

IN WITNESS THEREOF, STATE FARM FIRE AND CASUALTY COMPANY has caused this instrument to be signed by its Officer, and its Corporate Seal to be affixed this 10th day of September, 2013.

This APPOINTMENT SHALL CEASE AND TERMINATE AUTOMATICALLY AS OF DECEMBER 31, 2017, UNLESS SOONER REVOKED AS PROVIDED.



STATE FARM FIRE AND CASUALTY COMPANY

By: John R. Horton
John R. Horton - Assistant Secretary Treasurer

STATE OF ILLINOIS
COUNTY OF McLEAN

On this 10th day of September, 2013, before me personally came John R. Horton to me known, who being duly sworn, did depose and say that he is Assistant Secretary Treasurer of STATE FARM FIRE AND CASUALTY COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such Corporate Seal; and that he executed said instrument on behalf of the corporation by authority of his office under the By-Laws of said corporation.

"OFFICIAL SEAL"
Patricia Chancellor
Notary Public, State of Illinois
My Commission Expires August 22, 2017

Patricia Chancellor
Notary Public
My commission expires August 22, 2017

CERTIFICATE

I, the undersigned Assistant Secretary Treasurer of STATE FARM FIRE AND CASUALTY COMPANY, do hereby certify that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and sealed at Bloomington, Illinois. Dated this 24 day of APRIL, 2015



Susan K. Johnson
Susan K. Johnson - Assistant Secretary Treasurer

If you have a question concerning the validity of this Power of Attorney, call 309-766-2090.

2015- Row - 054

VILLAGE OF MACKINAW CITY RIGHT OF WAY PERMIT APPLICATION

Application Fee: \$10.00

Applicant: Marshall Builders

Contact: Dad Marshall

Address: W-1004 Old Portage Trail, St. Ignace mi. 49781

Phones (office and cell): 906-643-7410 / 906-430-1558

Email: W.Marshall@att.net

Emergency (24 hr) contact person with contact information:

Proposed activity and location: Cement apron @ 726 Lake Side Dr.
Cathy Paquet

Explanation of potential conflict, if any, with current use of right-of-way:

Date activity will begin: 10/19/2015

Date Activity will be complete: 10/23/2015

Pedestrian and Traffic Safety Plan submission date:

Subcontractor(s): Attach additional sheets if more than one subcontractor

Contact: Great Lakes Masonry (Jim)

Address: 1810 Slater Rd. Cheboygan mi. 49721

Phones (office and cell): 231-627-9752 / 231-290-2420

Email:

RECEIVED
9-28-15

\$ 1500.00

Estimated cost of installation:

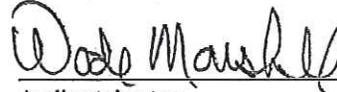
\$600, add crushed limestone

Estimated cost to restore right-of-way:

Bond submitted:

Insurance Certification and Type on file:

I, the undersigned, hereby certify that the above information is accurate and that I have read and understand the permit requirements attached hereto:



Applicant signature

Date: 9-28-2015

FOR VILLAGE STAFF ONLY: PLAN SUBMITTAL CHECKLIST

- Application form/fee
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- Traffic safety/control plan
- Pedestrian safety/control plan
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11. Unless otherwise specified or shown on the plans, all areas disturbed by construction operations shall be restored to original condition as determined by the department of public works.

PERMIT TO USE PUBLIC RIGHT OF WAY
VILLAGE OF MACKINAW CITY
102 S. Huron Avenue, Mackinaw City, MI 49701

PROPOSED USE

- Curb cut/driveway
- Sidewalk
- Parking
- Construction Dumpster
- Storm Sewer
- Sanitary Sewer
- Water Tap
- Fire Suppression/Water Supply
- Irrigation System
- Tree Planting
- Phone Cable
- Cable T.V.
- Natural Gas
- Sign/Awning

Other apron for access to Garage

BEFORE YOU DIG, CALL MISS DIG 1-800-482-7171

Description of work: 34x18 apron on Garage

Start Date of Proposed Work: 10/19/2015 Completion End Date: 10/23/2015 Plans attached

APPLICANT INFORMATION

Owner: Cathy Paquet Phone: Home/Work _____
Address: 726 Lake Side
Contractor Name: Marshall Builders Contact Person: Wade Marshall
Address: W-1020 Old Fortage Trail St Ignace
Subcontractor Name: Great Lakes Masonry Contact Person: JIM
Address: _____

LOCATION

Street Address: 726 Lake Side Tax Parcel Id No: 42-03-12-476-207
Cross Streets: Perrot St. and Farley St.

INDEMNIFICATION: By signing this permit, the Applicant agrees to assume all risk and responsibility for, and agrees to indemnify and hold harmless, the Village, and its elected and appointed officials, against any and all claims or losses, damages, injuries, liabilities, costs and expenses of any kind or nature, caused by, resulting from or arising out of the use, occupation or access of the public right-of-way pursuant to this permit.

APPLICANT SIGNATURE

Signature: [Signature] Date: 9-28-2015

*****OFFICE USE*****

Zoning Permit Issued: Yes No N/A Connection Fee Paid: Yes No N/A
Council Approval: Yes No N/A Date: _____, 20____
Staff Analysis and Report: _____

Permit Approved Approved by: [Signature]
 Permit approved subject to: _____ Fee \$10.00 No Fee Req'd
Additional tree removal in ROW will require Tree Board approval. Date Paid: 9-28-15, 20____
 Deposit: _____ No Deposit Req'd
 Permit Denied Date Refunded: _____

FINAL
10-7-15
Ret # 11538

FINAL

VILLAGE OF MACKINAW CITY RIGHT OF WAY PERMIT APPLICATION

Application Fee: \$ No Fee - change of

2015-Row-054
per Mike

Applicant: Marshall Builders

Contact: Wade Marshall

Address: W1024 Old Portage Trail

Phones (office and cell): 906-643-7410 / 906-430-1558

Email: W.Marshall@att.net

Emergency (24 hr) contact person with contact information:

Proposed activity and location: Cement apron at 726 Lake Side Drive for Cathy Paquet See Plans Page dated 10-10-15

Explanation of potential conflict, if any, with current use of right-of-way:

Date activity will begin: 10-19-2015

Date Activity will be complete: 11-15-2015

Pedestrian and Traffic Safety Plan submission date:

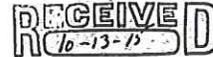
Subcontractor(s): Attach additional sheets if more than one subcontractor

Contact: Great Lakes Masonry (Jim)

Address: 1816 Slater Rd, Cheboygan MI 49721

Phones (office and cell): 231-627-9752 / 231-290-2420

Email:



\$1200.

Estimated cost of installation:

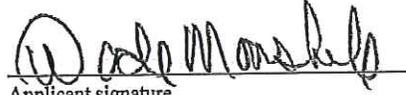
\$600. Crushed Limestone

Estimated cost to restore right-of-way:

Bond submitted:

Insurance Certification and Type on file:

I, the undersigned, hereby certify that the above information is accurate and that I have read and understand the permit requirements attached hereto:


Applicant signature

Date: 10-13-2015

FOR VILLAGE STAFF ONLY: PLAN SUBMITTAL CHECKLIST

- Application form/fee
- Scale plan view drawings of existing topography and proposed work
- Cross section details for pavement/walk repairs
- Technical specifications
- Photographs of location
- Explanation of activities and impacts
- Traffic safety/control plan
- Pedestrian safety/control plan
- Schedule of activities
- Project Bond/Deposit

Permit requirements (including, but not limited to):

1. No street, sidewalk, apron or any public property shall be disturbed in any way without first obtaining a permit signed by the Director of Public Works.
2. All permits applications must include detailed construction plans and specifications in a form acceptable to the Director of Public Works.
3. Above ground, permanent installations to be located in the public right-of-way or on any public property shall be subject to the following additional requirements:
 - a. All plans, including photographs of proposed installations, to be submitted to the Director of Public Works for review and comment,
 - b. Plans shall be accompanied by specific explanation of need for above ground installation, options considered and supported finding of fact that below ground or private property installation is not feasible,
 - c. Following preliminary plan approval by the Director of Public Works, plans shall be forwarded to the Village Manager for final review and approval.
4. Applicant shall submit or have on file at the Village Clerk's office current certificate of insurance providing minimum insurance requirements.
5. Bond or cash deposit with Village Treasurer required in an amount not less than estimated cost to totally restore right of way plus any amounts deemed reasonable by the Director of Public Works to cover any exposure to the use and function of all public installations within or adjacent to work area.
6. Contractor/subcontractor to include complete pedestrian and traffic safety plan which shall include a complete explanation of all activities that may cause interruption of pedestrian, bicycle, vehicular or other traffic flow and their expected duration. Plans to include detour signing, barricade installation and all other necessary precautions to ensure the protection of the public safety.
7. Plans to include complete explanation of any potential for conflict with any existing use of the right-of-way.
8. Contractor and/or subcontractor to notify Director of Public Works 5 business days in advance of mobilization.
9. The Village Manager to be notified 3 business days in advance of proposed final pouring of concrete, placing of asphalt or placement of any permanent installation and preparations must be inspected and approved by the department of public works or the designated representative before final application of materials.
10. Violations of permit conditions subject to citation and fines imposed pursuant to section 34.008 of the Village of Mackinaw City Code of Ordinances.
11. Unless otherwise specified or shown on the plans, all areas disturbed by construction operations shall be restored to original condition as determined by the department of public works.

PERMIT TO USE PUBLIC RIGHT OF WAY
VILLAGE OF MACKINAW CITY
102 S. Huron Avenue, Mackinaw City, MI 49701

PROPOSED USE

- Curb cut/driveway
- Storm Sewer
- Irrigation System
- Cable T.V.
- Sidewalk
- Sanitary Sewer
- Tree Planting
- Natural Gas
- Parking
- Water Tap
- Phone Cable
- Sign/Awning
- Construction Dumpster
- Fire Suppression/Water Supply

Other apron for access to Garage

BEFORE YOU DIG, CALL MISS DIG 1-800-482-7171

Description of work: 34x18' apron on West side of Garage
Depth of Excavation: _____

Start Date of Proposed Work: 10/14/2015 Completion End Date: 11/15/2015 Plans attached

APPLICANT INFORMATION

Owner: Cathy Paquet Phone: Home/Work _____

Address: 726 Lakeside

Contractor Name: Marshall Builders Contact Person: Wade Marshall

Address: 11-1024 Old Portage Trail

Subcontractor Name: Great Lakes Masonry Contact Person: Jim

Address: _____

LOCATION

Street Address: 726 Lakeside Tax Parcel Id No 42-03-12-476-207

Cross Streets: Perrot St and Fairway St

INDEMNIFICATION: By signing this permit, the Applicant agrees to assume all risk and responsibility for, and agrees to indemnify and hold harmless, the Village, and its elected and appointed officials, against any and all claims or losses, damages, injuries, liabilities, costs and expenses of any kind or nature, caused by, resulting from or arising out of the use, occupation or access of the public right-of-way pursuant to this permit.

APPLICANT SIGNATURE

Signature: Wade Marshall Date: 10-13-2015

*****OFFICE USE*****

Zoning Permit Issued: Yes No N/A Connection Fee Paid: Yes No N/A

Council Approval: Yes No N/A Date: _____, 20__

Staff Analysis and Report: _____

Permit Approved Approved by: MMarshall

Permit approved subject to: _____ Fee: _____ No Fee Req'd

_____ Date Paid: _____, 20__

See 9/28/15 Deposit: _____ No Deposit Req'd

Permit Denied Date Refunded: _____

10-16-2015

4" Perforated Drain Pipe

Improved with Crushed Limestone

LAKE ACCESS RIGHT OF WAY

Line

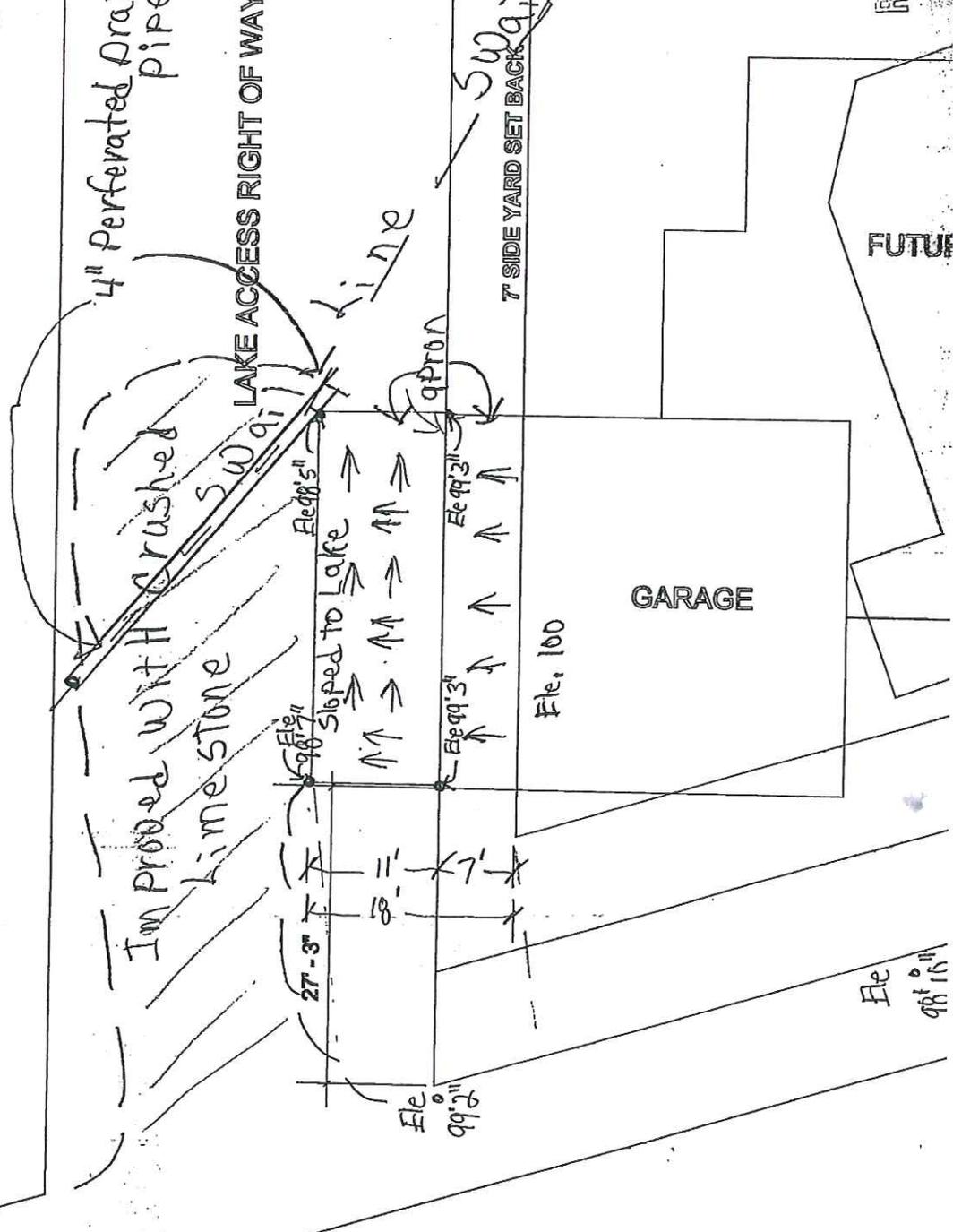
7' SIDE YARD SET BACK

File 100

GARAGE

FUTURE

RECEIVED
RC 2-7-2015



Elev 99'7"

Elev 99'5"

Elev 99'3"

27'-3"

18'

11'

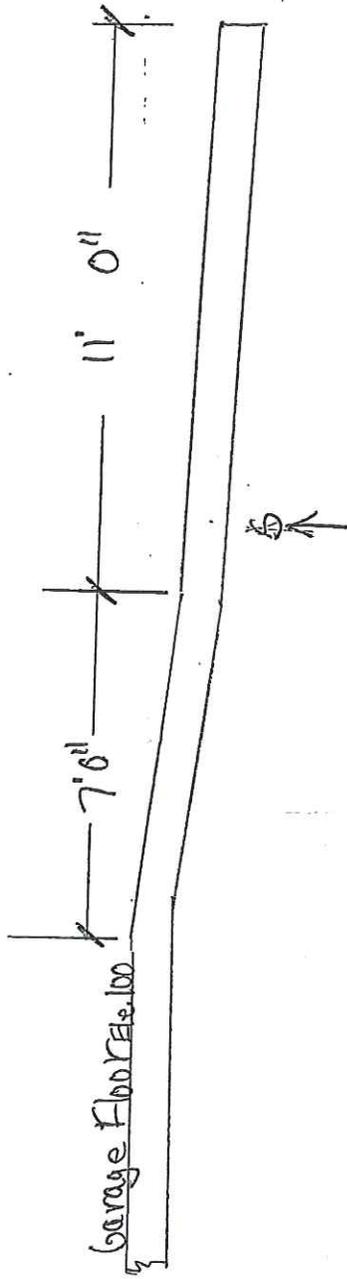
7'

File 99'2"

99'2"

Elev 98'10"

16-10-2015



RECEIVED
16-10-2015

2015- R04-055

VILLAGE OF MACKINAW CITY RIGHT OF WAY PERMIT APPLICATION

Application Fee: \$ 10.00

Applicant: Darrow Brothers Excavating Inc.
Contact: Darby Darrow
Address: PO Box 3
Phones (office and cell): 231-436-5475 231-758-0146
Email: Darby@darrowbrothersexcavating.com

Emergency (24 hr) contact person with contact information:

Darby Darrow
231-758-0146

Proposed activity and location: 726 Lakeside for Cathy Paquet
Improving Drive/Area with Crushed Limestone
*Improve right of way

Explanation of potential conflict, if any, with current use of right-of-way:

N/A

Date activity will begin: 10/27/15

Date Activity will be complete: 10/15/15

Pedestrian and Traffic Safety Plan submission date:

Subcontractor(s): Attach additional sheets if more than one subcontractor

Contact:

Address:

Phones (office and cell):

Email:

RECEIVED
10-27-15

Rel #
11938
ck #
11355

Estimated cost of installation:

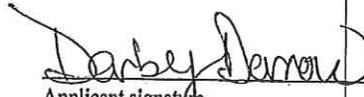
1800 Crushed Limestone

Estimated cost to restore right-of-way:

Bond submitted:

Insurance Certification and Type on file:

I, the undersigned, hereby certify that the above information is accurate and that I have read and understand the permit requirements attached hereto:


Applicant signature

Date: 10/27/15

FOR VILLAGE STAFF ONLY: PLAN SUBMITTAL CHECKLIST

- Application form/fee
- Scale plan view drawings of existing topography and proposed work
- Cross section details for pavement/walk repairs
- Technical specifications
- Photographs of location
- Explanation of activities and impacts
- Traffic safety/control plan
- Pedestrian safety/control plan
- Schedule of activities
- Project Bond/Deposit

PERMIT TO USE PUBLIC RIGHT OF WAY
VILLAGE OF MACKINAW CITY
102 S. Huron Avenue, Mackinaw City, MI 49701

PROPOSED USE

- Curb cut/driveway
- Storm Sewer
- Irrigation System
- Cable T.V.
- Sidewalk
- Sanitary Sewer
- Tree Planting
- Natural Gas
- Parking
- Water Tap
- Phone Cable
- Sign/Awning
- Construction Dumpster
- Fire Suppression/Water Supply

Other Improve the Right away
BEFORE YOU DIG, CALL MISS DIG 1-800-482-7171
Description of work: Improve the right of way

Start Date of Proposed Work: 10/29/15 Completion End Date: Nov 1 2015 Plans attached

APPLICANT INFORMATION

Owner: John Daquet Phone: Home/Work _____
Address: 726 Lakeside
Contractor Name: Narrow Brothers Excavating Contact Person: Darby Darrow
Address: PO Box 3
Subcontractor Name: _____ Contact Person: _____
Address: _____

LOCATION

Street Address: 726 Lakeside Tax Parcel Id No _____
Cross Streets: Perott and Nakomis

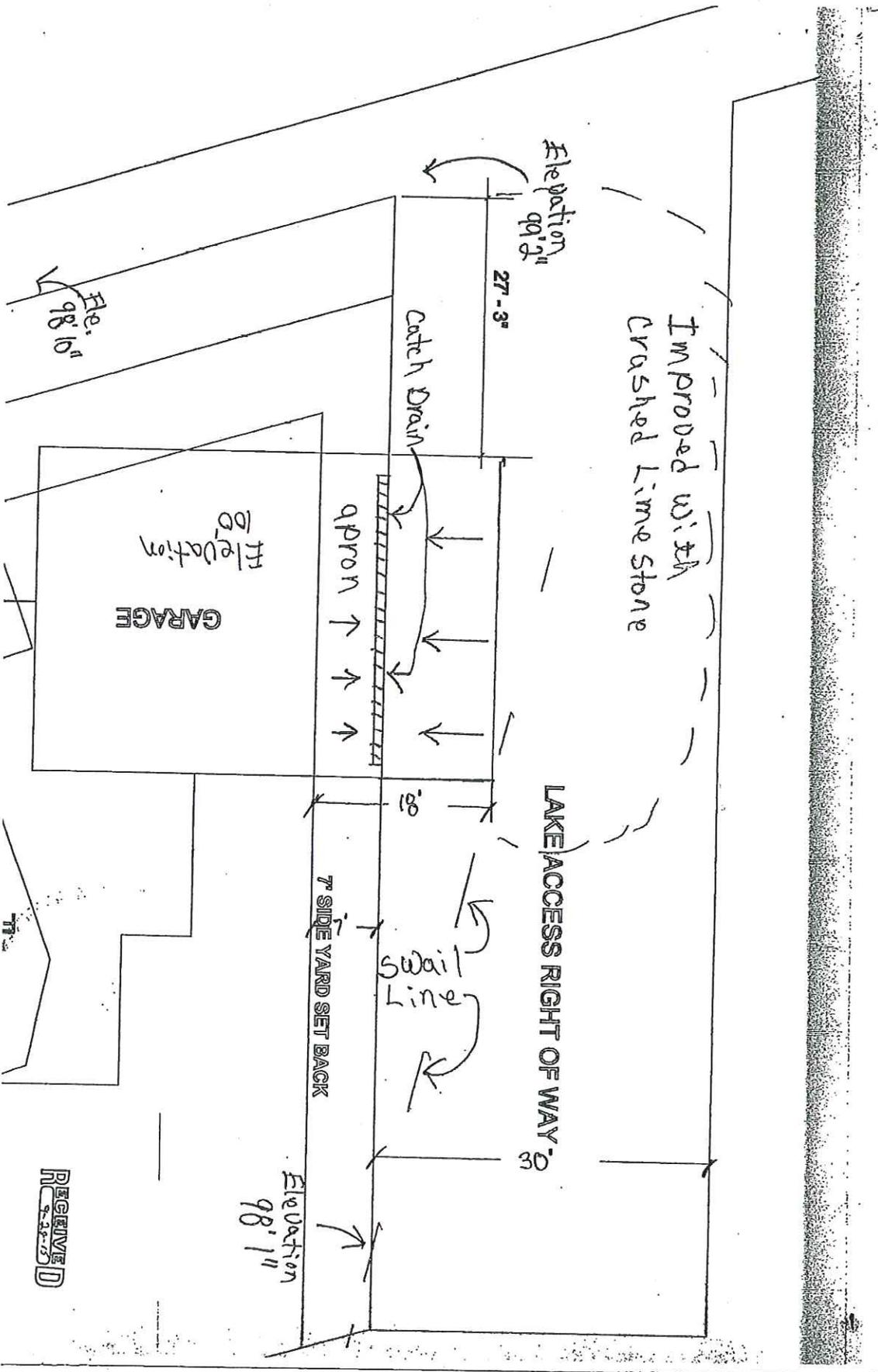
INDEMNIFICATION: By signing this permit, the Applicant agrees to assume all risk and responsibility for, and agrees to indemnify and hold harmless, the Village, and its elected and appointed officials, against any and all claims or losses, damages, injuries, liabilities, costs and expenses of any kind or nature, caused by, resulting from or arising out of the use, occupation or access of the public right-of-way pursuant to this permit.

APPLICANT SIGNATURE

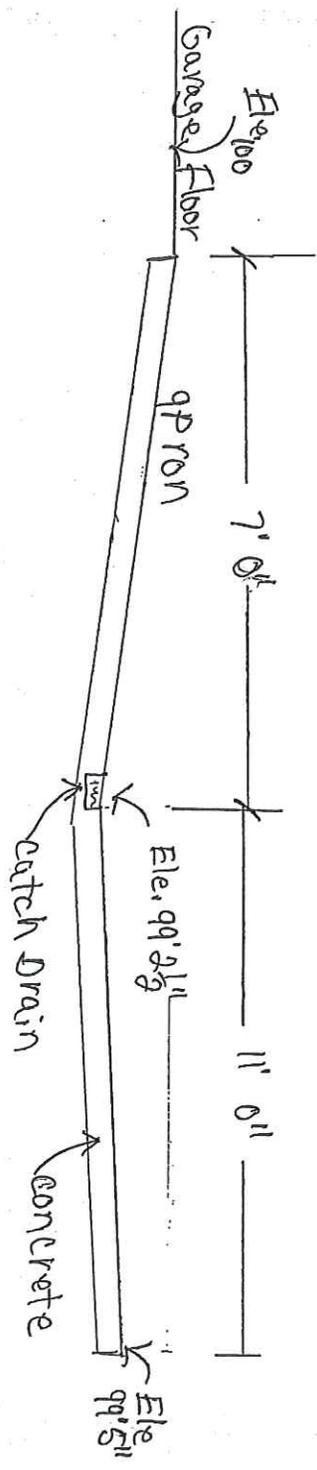
Signature: [Signature] Date: 10/29/15
*****OFFICE USE*****

Zoning Permit Issued: Yes No N/A Connection Fee Paid: Yes No N/A
Council Approval: Yes No N/A Date: _____, 20____
Staff Analysis and Report: _____

Permit Approved Approved by: [Signature]
 Permit approved subject to: _____ Fee \$10.00 No Fee Req'd
Date Paid: 10-27-15, 20____
 Deposit: _____ No Deposit Req'd
 Permit Denied Date Refunded: _____

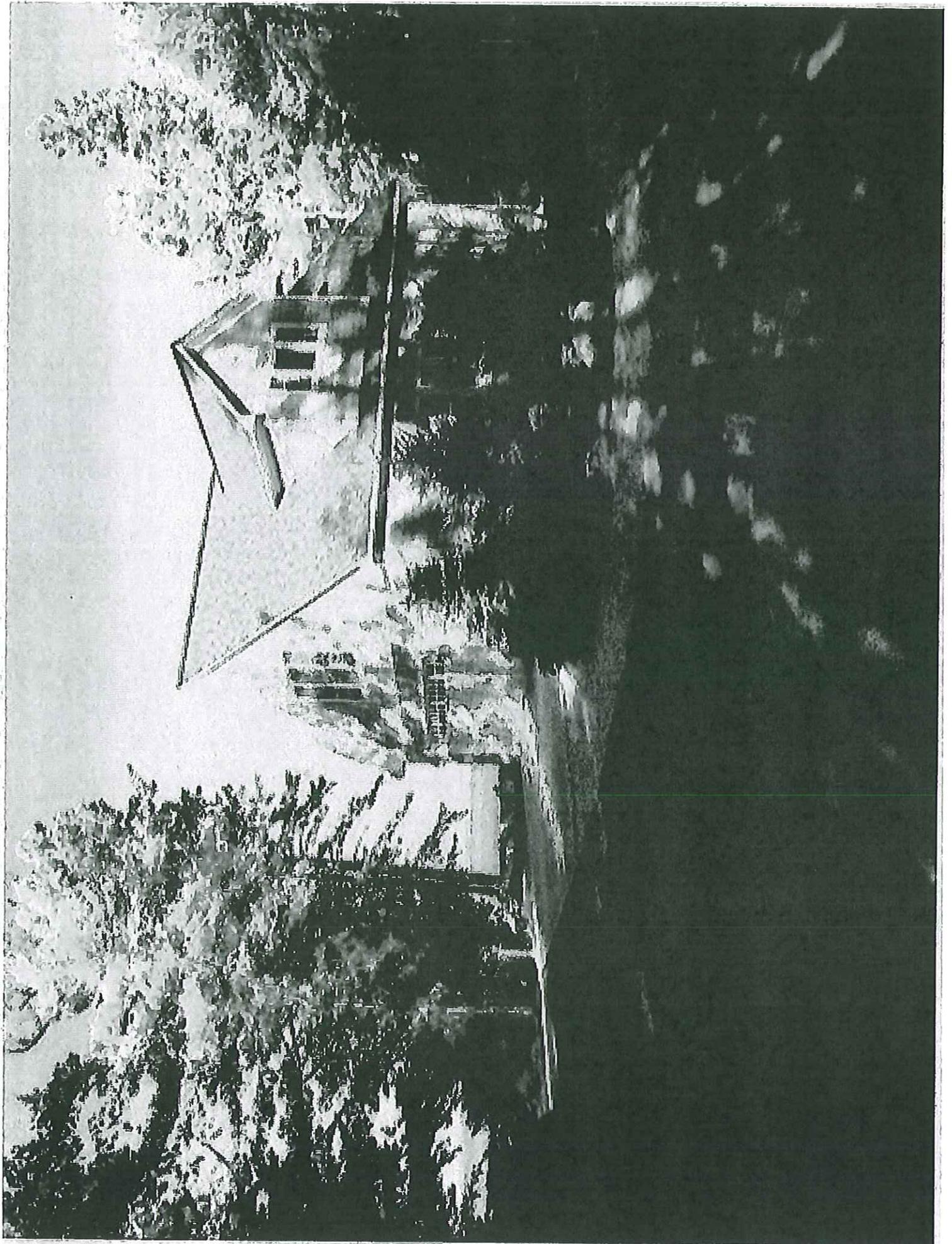


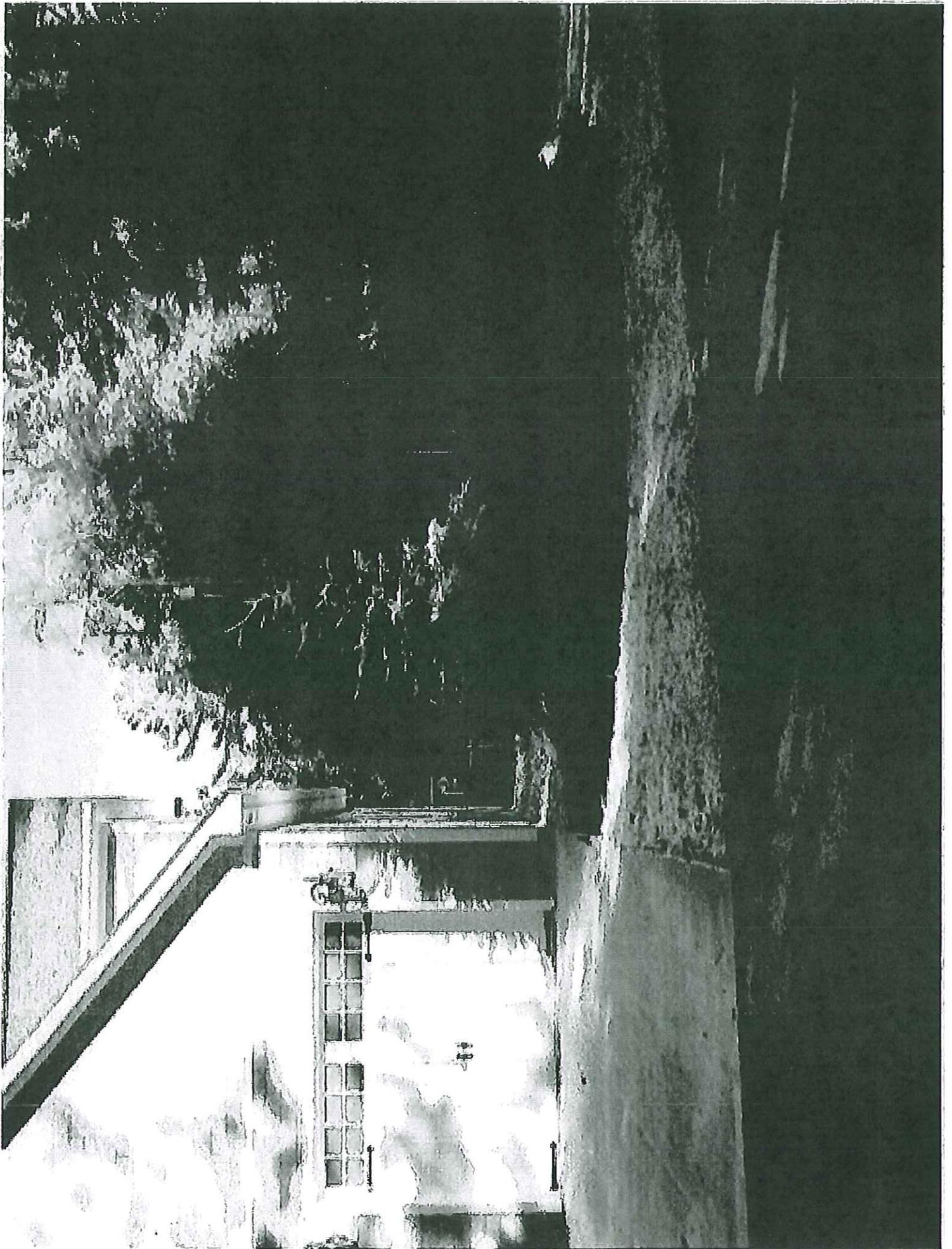
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5-2-25



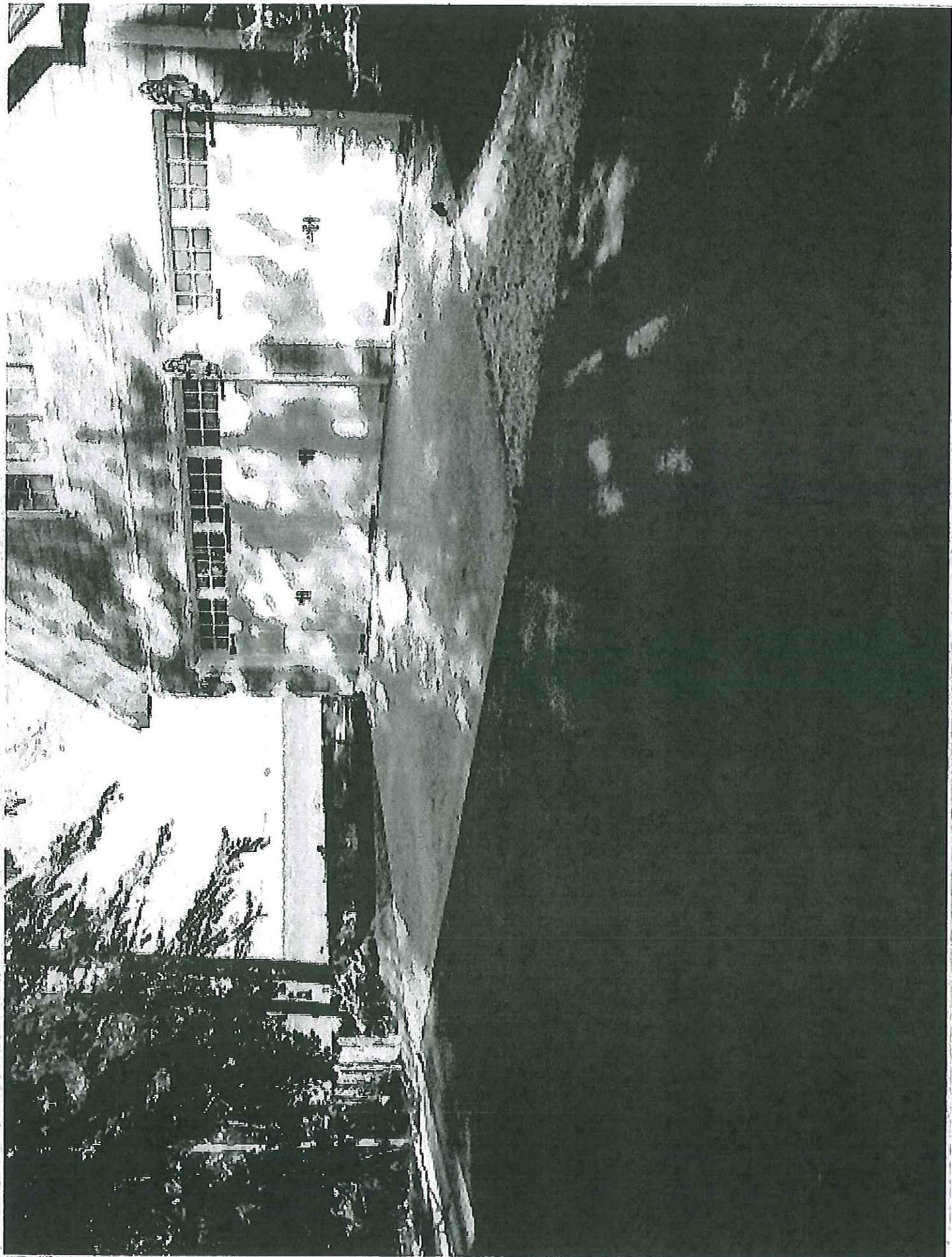
RECEIVED
R 9-28-15

Exhibit 14









OLSON, BZDOK & HOWARD

September 30, 2016

Village of Mackinaw City
Zoning Board of Appeals
P.O. Box 580
Mackinaw City, MI 49701

Via Email to attorney Kenneth P. Lane:
klane@clarkhill.com

Re: *Hiser v. Village of Mackinaw City and Village of Mackinaw City Zoning Board of Appeals*
Circuit Court File No. 16-105218-AA
Supplement

Dear Zoning Board of Appeals Members:

Attached is a letter from Jura A. Leete dated September 28, 2016 and an affidavit from Mark Sellers dated September 30, 2016. Please add them to my comments dated September 29, 2016 as a supplement.

Again, thank you for your time and consideration of this appeal.

Sincerely,



Jeffrey L. Jocks
jeff@envlaw.com

JLJ/klg
xc: Village of Mackinaw City (via US First Class Mail)

September 28, 2016

Village of Mackinaw City
Zoning Board of Appeals
P.O. Box 580
Mackinaw City, MI 49701

Re: *Hiser v. Village of Mackinaw City and Village of Mackinaw
City Zoning Board of Appeals*
Circuit Court File No. 16-105218-AA

Dear Zoning Board of Appeals Members:

I am one of the great-grandchildren of the original owner of the properties on and about 808 Lakeside Drive in Mackinaw City, Michigan. My grandfather inherited the properties shortly before my birth, and of his eight grandchildren, I was the one privileged by proximity to spend significantly more time there than any of the others. My family lived full time in Mackinaw and attended school there from 1964 to 1967, and summered on Wawatam beach every year until my father's death in 2007. The little access road behind my grandfather's "big garage" was called "the fire road" or sometimes "fire lane" by everyone in the neighborhood. Its purpose was for the fire trucks (or wagons) to be able to get down to the lake to pump water for extinguishing fires. Fires were a very frequent and destructive force in the early years, and my father and grandfather continued the tradition of respecting the intended right-of-way.

I can recall many times when my very outspoken father would reprimand the neighbors for storing watercraft or having a load of mulch delivered on that strip of land. Even long after fire hydrants were installed, he would insist that the original intent of the fire roads should be honored as public rights-of-way and that they could not be claimed to belong to any one property owner.

Sincerely,

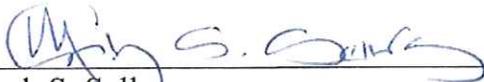

Jura A. Leete Finn

AFFIDAVIT OF MARK SELLERS

Mark Sellers, being sworn, states the following:

1. I am Mark S. Sellers. The following is within my personal knowledge and if called as a witness I would competently testify thereto.
2. My address is 725 Lakeside Drive, Mackinaw City, Michigan.
3. On September 29, 2016, using a BOSCH "Laser Measure," Model GLM 15, I measured the distance from the paved edge of Lakeside Drive to the southeast corner of the "new garage addition" constructed by John and Cathy Paquet at 726 Lakeside Drive. By my best estimates, using the "Laser Measure," that distance is approximately eighteen feet. However, the paved portion of Lakeside Drive is only ten feet wide; Lakeside Drive itself is fifteen feet wide, such that the Lakeside Drive right of way extends approximately two and one-half feet north and south of the paved portion. Thus, the distance from the actual Lakeside Drive right of way and the southeast corner of the "new garage addition" is approximately fifteen and one-half feet.
4. I took the measurements stated above while standing on Lakeside Drive itself.

Date: September 30, 2016.



 Mark S. Sellers

STATE OF MICHIGAN

COUNTY OF CHEBOYGAN

Signed and sworn to before me on 30th of September, 2016 by Mark S. Sellers (name).

BRIDGET L BARBER
 NOTARY PUBLIC, STATE OF MICHIGAN
 COUNTY OF EMMET
 MY COMMISSION EXPIRES 04-17-2022
 ACTING IN THE COUNTY OF Cheboygan



 Bridget L. Barber Notary Public
 For Emmet County, Michigan
 Commission Expires: 4-17-2022
 Acting in Cheboygan County, Michigan



SANDRA L. JASINSKI
ALSO ADMITTED IN TEXAS
S.JASINSKI@BODMANLAW.COM
231-627-8012

BODMAN PLC
P.O. BOX 405
229 COURT STREET
CHEBOYGAN, MICHIGAN 49721
231-627-2802 FAX
231-627-8000



September 29, 2016

Village of Mackinaw City
Zoning Board of Appeals
P.O. Box 580
Mackinaw City, Michigan 49701

Email to attorney Kenneth P. Lane:
klane@clarkhill.com

Re: *Miriam Hiser v Village of Mackinaw City*
Zoning Board of Appeals No. 2015-AA-001
Emmet County Case No: 2016-105218-AA

Dear Members of the Village of Mackinaw City Zoning Board of Appeals:

Bodman PLC represents John and Cathy Paquet, the owners of 726 Lakeside Drive. Appellant Miriam Hiser ("Hiser") owns a cottage located at 800 Lakeside Drive. The Village of Mackinaw City owns a 30 foot wide strip of land lying between the Paquets' property and the cottage owned by Appellant that runs from Lakeside Drive to Lake Michigan ("the Village Land").

The chain of events leading up to this hearing began in September 2, 2014 when the Zoning Administrator for the Village of Mackinaw City ("the Village") issued a zoning permit to Mr. and Mrs. Paquet to allow them to construct a new garage addition to their existing home. The construction of this garage was and is the first phase of the Paquets' plan to build a full-time home.

Shortly after receiving a Zoning Permit, Mr. and Mrs. Paquet removed 6 trees from the Village Land to facilitate ingress and egress from their planned addition. Documents produced by Hiser in the civil complaint filed against the Village and Mr. and Mrs. Paquet reflect her outrage at the Village's actions which fueled letter writing campaigns directed at the 100 plus residents of Wawatam Beach, the filing of a related pending administrative appeal challenging the issuance of a permit under the Village's Right of Way Ordinance, this administrative appeal challenging the issuance of the Zoning Permit and the civil complaint in which she seeks an order that Mr. and Mrs. Paquet demolish the garage addition and "restore" the Village Land to the unimproved, densely wooded, overgrown dirt path it was prior to September 2014.

Recently, in an opinion dated September 21, 2016, the Emmet County Circuit Court issued an Opinion affirming the Village's issuance of permits under its Right of Way Ordinance to Mr. and Mrs. Paquet. Relying on the Affidavit of the Village's Superintendent of Public Works that the Village Land was "unimproved, densely wooded and overgrown making it unusable by any motorized vehicle," the Circuit Court wrote, "it appears that the subject property

qualifies as a public right-of-way only as being ‘real estate owned by the Village, located within the Village.’” The Circuit Court affirmed the issuance of the Right of Way permits to Mr. and Mrs. Paquet.

This matter has come back before the ZBA not because its denial of Hiser’s appeal from issuance of the approved Zoning Permit was incorrect, but because the Emmet County Circuit Court ruled the reasons for the findings made on the record are not detailed enough to allow the Court to properly review the denial pursuant to standards set forth in MCL 125.606. Mr. and Mrs. Paquet submit there is no reason for the ZBA to modify its denial of Ms. Hiser’s appeal. The ZBA made the correct decision in January 2016 and there was more than substantial evidence to support its decision. It needs only set out the reasons for those findings.

Five of the seven challenges Hiser made in her December 2, 2015 appeal are all based on the assumption that the Village Land is a “street” within the meaning of the Mackinaw City Zoning Ordinance (“MZO”). The MZO defines a “street” as as “Any public right-of-way which provides vehicular access to adjacent properties.” MZO 2-102 “Road or Street, Public.”

Hiser first claims that Mr. and Mrs. Paquet’s driveway violates MZO Section 4-110(F) which provides, in part, “The applicants driveway must not alter or adversely affect and drainage and the stability of the street.” (emphasis supplied). The ZBA’s decision rejecting this argument is correct and based on substantial evidence. If the Village Land is not a street, this section does not apply. Further, even if it did apply, Hiser has offered nothing to this day to support of the claim that the driveway adversely affected drainage and stability of the Village Land. To the contrary, there is abundant evidence the driveway and ancillary improvements to the Village Land made by Mr. and Mrs. Paquet, with Village approval, have improved drainage and have prevented surface water from migrating on to Hiser’s property.

Hiser then asserts that the Zoning Permit violated MZO Section 4-101 which precludes placing improvements in a “public street right-of-way.” Again, there is substantial evidence to support the ZBA’s determination that the Village Land is not a “public street right-of-way.” Even if it were a “public street right-of-way,” pursuant to the Right of Way Ordinance, all of the work done of which Hiser complains was pursuant to permits, the proper issuance of which has been affirmed by the Emmet County Circuit Court.

Building on the assumption that the Village Land is a “street,” Hiser argues that Mr. and Mrs. Paquet’s property is a “corner lot,” as defined by MZO 2-102 and where Lakeside Drive and the Village Land meet is therefore an “intersection.” Then, Hiser contends Section 5-101 of the MZO requires a 10 foot setback for

the garage addition, not the 7 feet identified in the Zoning Permit. Hiser also argues that the driveway and “maneuvering lanes” are not a sufficient distance from the “intersection” as required by MZO 4-110 D. Risking repetition, there is substantial evidence to support the ZBA’s conclusion that the Village Land is not a street and, as a consequence, these arguments fail.

Likewise, the Village correctly concluded that the attached garage is not a “separate detached residential structure” within the meaning of the MZO. Section 4-106(C) of the MZO provides that, “No single family **detached residential structure** shall be erected upon a lot with another single family **detached residential structure.**” (emphasis supplied). The garage addition constructed by Mr. and Mrs. Paquet is not a single family detached structure, but an attached garage per Section 5-103.E.6, with guest quarters on the second floor. The garage addition is attached to the existing home at the foundation and attached to the structure of the existing home and will likewise be attached to the future home built on the property. Thus the garage addition and the existing home are properly considered to be one “single family detached residential structure” for purposes of the Zoning Ordinance. There is nothing in the Zoning Ordinance that limits or otherwise prohibits a single detached residential structure in Mr. and Mrs. Paquet's zoning district from having separate guest quarters throughout the structure as long as the “detached building is designed for or occupied exclusively by one family” and the rooms are not rented. *See* Zoning Ordinance, Section 2-102 “Dwelling, 1-Family,” and “Family.”

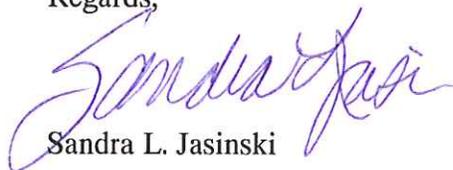
The Village authorities also correctly concluded the height of the attached garage addition does not violate the MZO because the maximum height restriction of 21 feet set forth in Section 5-103E(1) only applies to a “detached garage” which is defined as having a “minimum distance from the main” building of 6 feet. Section 5-103(E)(6). There is no dispute in this case that the distance between the garage addition is far less than 6 feet; it is physically attached. As a consequence, pursuant to Section 5-103(B)(2), the maximum building height is 35 feet. The garage addition involved in this case has a height of 25 feet.

Mr. and Mrs. Paquet, their builder and their subcontractors have worked closely, openly and honestly with Village authorities in connection with their plans to construct the garage addition. Nothing has been done without the Village’s knowledge, consent and/or approval. The Village Zoning Administrator was kept fully informed of the construction, not only approving the footings for the garage addition, but visiting the construction site several times thereafter. On December 18, 2015, Mr. and Mrs. Paquet received a certificate of occupancy for the attached garage addition.

September 29, 2016
Page 4

The ZBA had full knowledge of the underlying facts when it denied Hiser's appeal. Nothing has changed that should result in a modification or reversal of its denial of Ms. Hiser's appeal.

Regards,



Sandra L. Jasinski

UNAPPROVED
MINUTES REGULAR COUNCIL MEETING
MACKINAW CITY

7:00 PM

September 15, 2016

I. Roll Call:

President Robert R. Heilman called the meeting to order and with the following Trustees present—Belinda Mollen, Scott Newman, Mario Rodriguez, Robert Glenn, Tom Chastain and Paul Michalak. Also present- David White-Village Manager, Kenneth Lane-Village Attorney and Lana Jaggi-Clerk

Visitors List Attached

II Pledge of Allegiance

III. Agenda Approval

Motion Newman seconded Chastain to approve the agenda deleting Old Business: A. Shepler's Dock Lease, and adding New Business C. 2015 Debt Service Bank Account, D. Wawatam Township Letter, Local Street Paving. Voice vote, motion carried unanimously.

IV. Public Comment:

Vince Rogala-Owner, The Mackinaw Club Golf Course

V. Consent Agenda

Motion Newman seconded Mollen to approve consent agenda without the Closed Session minutes of 0 9/01/2016 as presented. Voice vote, motion carried unanimously.

A. Correction and Approval of Minutes: Regular Meeting of September 01, 2016

B. Department Reports *Closed Session of September 01, 2016*

VI. Managers Report as presented and submitted for file.

-Submitted several communication letter's pro and anti short term letters

VII. President's Report-

Pres. Heilman reported on his attendance at the 3 day 2016 Fall MML Conference held on Mackinac Island and submitted the MML 2015-2016 Annual State of the League Report for each trustee to review.

VIII. Committee Reports were presented and submitted for file.

Finance and Human Resource Subcommittee Report, Trustee Newman, Chair

IX. Old Business:

A. Capital Improvement Plan 2016/2017 thru 2021/2022

Motion Newman seconded Glenn to approve the Capital Improvement Plan 2016/2017 thru 2021/2022 as presented. Roll call: Yeas-Mollen, Newman, Rodriguez, Heilman, Glenn, Chastain, Michalak. Motion carried.

B. Old Airport Property Discussion

Manage White submitted memo regarding the steps in which the Village would need to take in order to sell the Village held Old Airport Property. Council consented to ask attorney Lane if the motion from the August 4, 2016 meeting could be brought up again.

UNAPPROVED
MINUTES REGULAR COUNCIL MEETING
MACKINAW CITY

7:00 PM

September 15, 2016

Page 2

X. New Business:

A. Emmet County - 2016 Jaws of Life Agreement

Motion Mollen seconded Newman to waive the reading of the Resolution to accept the 2016 Jaws of Life Agreement with Emmet County. Voice vote, motion carried unanimously.

Motion Michalak seconded Newman to approve the agreement between Emmet County and the Village of Mackinaw City for the 2016 Jaws of Life service. Roll call: Yeas-Newman, Rodriguez, Heilman, Glenn, Chastain, Michalak, Mollen. Motion carried.

B. NEMCOG-Zoning Code Proposal Update

Motion Mollen seconded Newman to approve the NEMCOG Proposal to update the Village Zoning Code in the amount of \$16,560.00, to be spread over two budget years. Roll call: Yeas-Rodriguez, Heilman, Glenn, Chastain, Michalak, Mollen, Newman. Motion carried.

C. 2015 Debt Service Checking Account Creation

Motion Newman seconded Mollen to approve opening a new checking account at Straits Area Credit Union to be called 2015 Debt Service. Roll call: Yeas-Heilman, Glenn, Chastain, Michalak, Mollen, Newman, Rodriguez. Motion carried.

D. Wawatam Township Letter -Paving Street Ends

Motion Newman seconded Chastain to accept the Wawatam Township Paving Plan for the paving of Cadillac, Pond and Cadotte street ends. Contracted by Team Elmer's and Payne and Dolan the amount is not to exceed \$56, 578.35. Roll call: Yeas- Glenn, Chastain, Michalak, Mollen, Newman, Rodriguez, Heilman. Motion carried.

Council requested Manager White send Thank You to Wawatam Township.

XI. Scheduling of Subcommittee meetings:

*Friday October 07, 2016

Ordinance & Policy, 8:30 am Short Term Rental

*Thursday, September 22, 2016,

Finance & Human Resource 8:30 am- Shepler Dock Lease

Parks & Rec 9:00 am -Wawatam Township, Rec Center

*Monday, October 03, 2016

Marina-Review Proposals for Grant Work

XII. Accounts Payable

Motion Newman seconded Glenn to pay accounts payable for September 01, 2016 in the amount of \$56,578.35. Roll call: Yeas-Chastain, Michalak, Mollen, Newman, Rodriguez, Heilman, Glenn. Motion carried.

XIII. Adjournment: 8:25 PM

Respectfully submitted,

Robert R. Heilman; President

Lana Jaggi; Clerk



Mackinaw City
USA's #1 Vacation Destination

Robert Heilman, Dave White and Village Trustees,

The Mackinaw Area Visitors Bureau Board of Directors and Members, have some concerns with the level of lighting on Central Ave and South Huron Ave. We have had a number of visitors express concerns of the safety of walking after dark in downtown Mackinaw City. Foot traffic in Mackinaw City after dark has declined dramatically in 2016 compared to years past, lighting being the main concern to our visitors.

We are asking the Village Council to look into this matter and see if there is an efficient solution that would make our visitors feel secure and safe during evening hours. We do understand that there are budget constraints and the Mackinaw Area Visitors Bureau is willing to work with you to find a solution.

Please feel free to contact us at any time.

Mackinaw Area Visitors Bureau Board of Directors

Deb Spence
Executive Director
Mackinaw Area Visitors Bureau
1-231-436-5664
deb@mackinawcity.com

To: Mackinaw City Council
From: David M. White, Village Manager
Date: September 30, 2016
Re: Manager Report for October 6, 2016, Council Meeting

VII. Committee Report: Parks and Recreation Sub Committee- At the Parks and Recreation Sub Committee the repurposing of the Recreation Center was discussed. The size of the arena (over 20,000 sq. feet) allows for many different daily activities as we continue marketing the facility for events, shows and conventions. Attached is a list put together by Chris West, Mike Karll and Greg Vieau of items which could be purchased and room reconfiguration that could be done to allow more usage of the facility. One item Security Cameras have already been ordered because of recent activity at the Center. Sub Committee chair Newman will have more to add during his report about the attached list. I feel it is a great first start if it is our goal to bring back usage of the Rec Center if the Council wishes to pursue other options that needs to be discussed also. Should the Council agree with the attached list as a starting point for new life at the Recreation Center I would ask for a motion to move forward with the concept plan.

XI. Old Business:

A. Old Airport Property Discussion- In discussion with Emmet County regarding the Village acquiring the vacant County owned lot behind the new EMS building for a new Village Police/Fire building. A new proposal has been discussed but I do not want to pursue further discussion with Emmet County should the Council not wish to move forward. The proposal is for the Village to trade to Emmet County the old Airport property on US 31 in Carp Lake Township for the undeveloped County owned lot behind the EMS building. The Village would also agree to lease to the County, Village owned property on Headlands drive across from the Headlands entrance for Headlands events. The lease would require close coordination with the Historical Village so no party is adversely affected. Should both the Village and the County wish to move forward with the proposal formal documents would be presented at the October 20th Council meeting. I would be happy to answer any questions that Council members may have.

X. New Business:

- A. Village of Mackinaw City Employee Health Benefit Renewal-** For Council consideration is the renewal of the Employee Health Plan for 2017. The increase is 6.38% from last year with no reduction of benefits to the employee. I would recommend approval of the renewal as the percentage is in line with what other groups are size are experiencing. I would be happy to address any questions Council members may have.
- B. Proclamation for Arbor Day 2016-** Each year we must have a proclamation on file designating a certain date and on which was held an Arbor Day ceremony with students from the Mackinaw City Schools. This year June 2nd was that day and a ceremony was conducted with students and council members in attendance. Adoption of this proclamation allows the Village to meet all the requirements to continue as a Tree City, USA member.
- C. Resolution-Medical Marihuana Resolution-** For Council consideration is a resolution to impose a moratorium on the Issuance of Permits, Licenses or Approvals for the Sale or Dispensation of Medical Marihuana within the Village of Mackinaw City. Village Attorney Lane is in attendance at the meeting and can discuss this resolution further.
- D. Official Ballot-MML Liability & Property Pool Board-** A motion is needed from the Village Council to authorize the voting for the two board candidates presented on the ballot.

Items not on the Agenda:

For your information is a copy of a Press Release that was sent out regarding two grants from Enbridge for Public Safety. I wish to thank Enbridge for the funds that will improve our Public Safety response to our Citizens.

Revenue Generating

- Coin Operated Pool Table- \$1500
- Coin Operated Foosball Table- \$1300
- Coin Operated Arcade Games- 3 @ \$1000= \$3000
- Coin Operated Dart Board- \$1200
- Change Machine- \$500
- Indoor Golf Range (estimated 20ft wide 100ft long)- \$3150
- Golf Ball Dispensing Machine- Obtaining Pricing

Other Activities

- Shuffle Board Set- \$125
- Ping Pong- \$500
- Indoor Archery- \$1200
- Make Ice on Outdoor Rink for the Winter Months
- Indoor Play Scape for Younger Children
- Remove 2 Frisbee Golf Goals From Golf Course and Install in Recreation Building

We have also looked at ways to improve the look and usefulness for portions of the building.

- Open up the south side of the outdoor hockey rink and place picnic tables under the covered area.
- Move the weight room to the old Zamboni room.
- Use current weight room as a conference room.
- Purchase chair lift to make upstairs conference room ADA compliant.
- Renovate a portion of the locker rooms into classrooms to for local residents to have classes, ie art, pottery, yoga etc. or lease out to local community colleges or universities for satellite classrooms.
- Security Cameras- \$400

Contact: David M. White
VILLAGE OF MACKINAW CITY
Phone 231-436-5351
Fax 231-436-4166
dwhite@mackinawcity.org

102 S. Huron Avenue
Mackinaw City, MI 49701

**VILLAGE OF
MACKINAW CITY**

Press Release

Village Receives Enbridge Grant Awards

Small communities all across Canada and the U.S. rely on fire departments, police services, and other emergency responders to keep them safe. Money is perennially tight in rural municipalities with a small tax base. Equipment that could enhance the capabilities of these first responders, in a resource-constrained environment, is a luxury for some communities. Unfortunately, budgetary decisions such as these are made to the detriment of the communities, and add extra burdens and risks for first responders.

Recognizing that, Enbridge in 2002 launched its Safe Community program for towns along the company's project corridor rights-of-way.

The Safe Community program awards grants to local first-response emergency services, including fire fighters and rescue services, Emergency Medical Services, and ambulance organizations, in rural communities across North America. Enbridge's Safe Community program has existed in the U.S. since 2002, and in Canada since 2009, and has invested nearly \$8.5 million in North American emergency responder organizations since its inception.

Due to the efforts of Sgt. Todd Woods, Mackinaw City Police Department, Mackinaw City Fire Department was awarded \$3250.00 to purchase public safety equipment along with \$10,200.00 awarded to the Mackinaw City Police Department for the purchase of three 800 mhz base radios for each patrol car.

The Village is extremely appreciative to be allowed to submit for this amazing program and will value any continued support from Enbridge.

Village of Watkinaw City

Renewal by Line of Business - December 2016

Group: 007015341

Division 0000

Plan Name	Medical	Dental	Vision	HRA	Total Premium
In Network Deductible	Simply Blue HRA PPO Platinum	Blue Dental PPO Plus SG	Blue Vision SG	44N Second Submit HRA	
In Network Coinsurance	\$5000/\$10,000	\$25/\$75 Deductible	VSP Choice, 12-12-12	\$250/\$500	
Office Visit, Chiro*, Specialist, Urgent Care, ER Copays	30% to \$1350/\$2700	100/80/50 \$1000 Max	\$5/\$10	20% up to \$1850/\$3700	
In Network TROOP**	\$30/\$30 (30)/\$50	50% OS \$1000 Max		\$30/\$30 (30)/\$50	
Out of Network Deductible	\$60/\$150	EHB-Compliant, \$350/\$700 OOP Max		\$60/\$150	
Out of Network Coinsurance	\$6350/\$12,700			\$6350/\$12,700	
Out of Network TROOP Riders	\$10,000/\$20,000			\$10,000/\$20,000	
Prescription Drugs***	50% to \$2700/\$5400			50% to \$2700/\$5400	
Single	\$12,700/\$25,400		\$5.79	\$12,700/\$25,400	
Two Person	EA		\$13.90	EA	
Family	\$20/\$60/50%/20%/25% MOPD3X-\$10		\$17.38	\$20/\$60/50%/20%/25% MOPD3X-\$10	
Monthly Total	\$412.56	\$37.44	\$216.63	\$73.57	\$529.36
Annual Total	\$990.14	\$89.86	\$2,599.56	\$165.43	\$1,259.34
	\$1,237.67	\$112.33		\$204.80	\$1,572.18
	\$15,429.67	\$1,400.39		\$2,565.37	\$19,612.06
	\$185,156.04	\$16,804.68		\$30,784.44	\$235,344.72

Division 0001

Plan Name	Medical	Dental	Vision	Total Premium
In Network Deductible	Simply Blue HRA PPO Platinum	Blue Dental PPO Plus SG	Blue Vision SG	
In Network Coinsurance	\$5000/\$10,000	\$25/\$75 Deductible	VSP Choice, 12-12-12	
Office Visit, Chiro*, Specialist, Urgent Care, ER Copays	30% to \$1350/\$2700	100/80/50 \$1000 Max	\$5/\$10	
In Network TROOP**	\$30/\$30 (30)/\$50	50% OS \$1000 Max		
Out of Network Deductible	\$60/\$150	EHB-Compliant, \$350/\$700 OOP Max		
Out of Network Coinsurance	\$6350/\$12,700			
Out of Network TROOP Riders	\$10,000/\$20,000			
Prescription Drugs***	50% to \$2700/\$5400			
Single	\$12,700/\$25,400			
Two Person	EA			
Family	\$20/\$60/50%/20%/25% MOPD3X-\$10			
Monthly Total	No Current Enrollment	\$0.00	\$0.00	\$0.00
Annual Total	\$0.00	\$0.00	\$0.00	\$0.00

Rates include estimated federal and state taxes, fees and assessments. Census based on most current BCBSM invoice. Aggregated rates vary with census changes. Member level rates available upon request.

*Chiropractic visit limits combined with physical, occupational and osteopathic manipulative therapy.

**TROOP includes deductible, percent coinsurance and all fixed copays (office visits, ER visits, prescriptions etc.)

***5 Tier Rx: generic / preferred brand name / nonpreferred brand name / generic & preferred brand name specialty / nonpreferred brand name specialty

HRA Illustrative rates are based on actual deductible/coinsurance utilization for December 2015 through August 2016 annualized at 26.65% and \$7.95 Second Submit fee PPM. \$495 annual fee is not included. This is not a guarantee of performance. Results may vary. Retiree Division 0001 not eligible for the HRA.

All carriers reserve the right to adjust rates if any of the assumptions or calculations used in the quoting process are incorrect. Final rates are determined by the underwriting carrier based on actual group enrollment and participation. This is only a brief summary of benefits, it is not a contract. Additional limitations and exclusions may apply. If there is a discrepancy between this document and any applicable plan document, the plan document will control.

Jennifer L. Michelin, LIC, AHIC (Ciara/cdj)



6.38% Increase

8.17.16

**VILLAGE OF MACKINAW CITY
PROCLAMATION**

**WHEREAS, the Village of Mackinaw City is the northern most
Community in Michigan's Lower Peninsula; and**

**WHEREAS, the Village of Mackinaw City is surrounded by The Great
Lakes and pristine natural forests; and**

**WHEREAS, the Village of Mackinaw City has endeavored to become
and continue with the standards as set by the National
Arbor Day Foundation's Tree City USA Program for
Twenty three years; and**

**NOW, THEREFORE BE IT PROCLAIMED that the Village of
Mackinaw City does hereby recognize and support the
effective community management of our sacred natural
resources; and**

**BE IT FURTHER RESOLVED, that June 02, 2016 be designated as
Arbor Day in the Village of Mackinaw City and that an
observance of this day took place in a ceremony at
The Mackinaw City Public Schools where students
planted trees in the Recreational Area adjacent to the
school.**

DATED: October 01, 2016

**Robert Heilman
President
Village of Mackinaw City**

VILLAGE COUNCIL
VILLAGE OF MACKINAW CITY
Cheboygan and Emmet Counties, Michigan

Trustee _____, supported by Trustee _____, moved the adoption of the following resolution:

A RESOLUTION TO IMPOSE A MORATORIUM ON THE ISSUANCE OF
PERMITS, LICENSES OR APPROVALS FOR THE SALE OR
DISPENSATION OF MEDICAL MARIHUANA WITHIN THE VILLAGE OF
MACKINAW CITY

WHEREAS, the sale or dispensing of medical marihuana was not envisioned when the current Village of Mackinaw City Zoning Ordinance was adopted and is not locally regulated in any way; and

WHEREAS, allowing the sale or dispensation of medical marihuana prior to the amendment of the Zoning Ordinance would be contrary to the goals of the ordinance and the Village Master Plan, as amended; and

WHEREAS, the Village wishes to (i) provide qualifying patients access to medical marihuana, (ii) ensure the safety of qualifying patients, primary caregivers, and the general public, (iii) minimize adverse effects, if any, from the dispensing of medical marihuana, and (iv) comply with the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.*, all in order to protect and enhance the public health, safety, and welfare; and

WHEREAS, the Village Council determines that it is desirable to immediately prohibit the sale or dispensing of medical marihuana from a dispensary, provisioning center, or similar establishment, until an amendment to the Village code of ordinances becomes effective and an appropriate process is established.

Now, therefore, the Village Council resolves as follows:

1. For the reasons stated above, the Village Council hereby imposes a moratorium on the issuance of any zoning, building or other licenses, permits, or other approvals to any person, entity or premises, for the sale or dispensing of marihuana for a minimum period of 6 months or until any needed or desirable amendment(s) to the Village code of ordinances are adopted to provide for such land uses in a manner consistent with the Zoning Ordinance, the Master Plan and with the best interests of the public health, safety and general welfare.
2. All resolutions and parts of resolutions are, to the extent of any conflict with this resolution, rescinded.

YEAS: Trustee(s) _____

NAYS: Trustee(s) _____

ABSTAIN: Trustee(s) _____

ABSENT: Trustee(s) _____

RESOLUTION DECLARED ADOPTED.

CERTIFICATION

I certify that this is a true and complete copy of a resolution adopted at a regular meeting of the Village Council of the Village of Mackinaw City held on _____, 2016.

Date: _____, 2016

Lana Jaggi, Clerk



michigan municipal league

Liability & Property Pool

1675 Green Road
Ann Arbor, MI 48105

TEL 734.662.3246 800.653.2483
FAX 734.662.8083
WEB www.mml.org

to	Members of the MML Liability and Property Pool	from	Michael J. Forster, Pool Administrator
cc		date	September 12, 2016
		subject	2017 Pool Director Election

Dear Pool Member:

Enclosed is your ballot for this year's Board of Directors election. Two (2) incumbent Directors have agreed to seek re-election. You also may write in one or more candidates if you wish.

A brief biographical sketch of each candidate is provided for your review.

I hope you will affirm the work of the Nominating Committee by returning your completed ballot in the enclosed return envelope, no later than November 8. You may also submit your ballot online by going to www.mml.org. Click on *Insurance*, then *Liability and Property Pool*; the official ballot is located in the left navigation bar under *Online Forms*.

The MML Liability & Property Pool is owned and controlled by its members. Your comments and suggestions on how we can serve you better are very much appreciated. Thank you again for your membership in the Pool, and for participating in the election of your governing board.

Sincerely,

Michael J. Forster
Pool Administrator

mforster@mml.org

THE CANDIDATES

Three-year terms beginning January 1, 2017



Penny Hill, Assistant City Manager, Traverse City

Penny has been a municipal government official since 1988, serving at various times as Clerk, Treasurer, and Manager. She currently serves as Traverse City's Assistant Manager. Penny is an active member of the Michigan Municipal League, having served on its Board of Directors, and as Vice-Chairperson of Region 6. Penny is also an active member of the Michigan Municipal Executives (formerly Michigan Local Government Manager's Association), serving as its President in 2013. She is a member of the Board of Directors for the Grand Traverse Regional Community Foundation. Penny is seeking re-election to her fourth term as director.



Jean Stegeman, Mayor, City of Menominee

Jean has more than six years of experience as a municipal official, currently serving as Mayor in the City of Menominee. She was a member of and served as chair of the Menominee planning commission for several years prior to becoming mayor. She is also active in several local civic organizations. Jean is seeking re-election to her second term as director.

Michigan Municipal League
Liability & Property Pool

OFFICIAL BALLOT - 2016

Vote for two Directors by marking the line to the left of the name for three year terms beginning January 1, 2017.

___ Penny Hill, Incumbent
Assistant City Manager, Traverse City

___ Jean Stegeman, Incumbent
Mayor, City of Menominee

Write-in Candidate

I hereby certify that:

(Municipality/Agency)

by action of its governing body, has authorized its vote to be cast for the above persons to serve as Director of the Michigan Municipal League Liability and Property Pool.

Official Signature

Date:

**Ballot deadline:
November 8, 2016**