STATE OF MICHIGAN
IN THE 44th CIRCUIT COURT
FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
A Michigan Limited Liability Company,

Plaintiff,

v.

HOWELL TOWNSHIP,
A Michigan General Law Township,

Defendant.

Case No. 24-32242-CZ

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PLAINTIFF, HOWELL-MASON, LLC'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

Plaintiff, Howell-Mason, LLC, by and through its counsel of record, for its Brief in support of its Motion for Summary Disposition, states:

I. STATEMENT OF FACTS

Plaintiff, HOWELL-MASON, LLC, is a Michigan Limited Liability Company with a principal place of business in Howell, Livingston County, Michigan. Plaintiff is in the business of developing and operating gasoline service stations with attached restaurants. Defendant, HOWELL TOWNSHIP, is a Michigan General Law Township with offices located at 3525 Byon Road, Howell, Livingston County, Michigan 48855.

Plaintiff owns three contiguous parcels of real property located at and near the corner of Mason Road and Burkart Road in Howell Township (the "Property"). Exhibit A. The Property includes two parcels (Tax ID Nos. 4706-33-300-001 and 4706-33-300-108) that are currently zoned Neighborhood Service Commercial (NSC), in which gasoline service stations are permitted as a special land use. The third parcel is currently zoned residential, master planned commercial, and is not at issue in this matter. All three of Plaintiff's parcels are master planned for commercial use and sit within the commercial corridor contemplated by the Defendant's master plan. The immediate vicinity of the Property has been tapped as an area of significant development in the township, with approximately one thousand (1,000) residential homes approved to be built across the street from the commercial corridor in which the Property is located. Plaintiff purchased the Property specifically because of the current and future zoning designations, as well as the significant residential and commercial development in the area.

The Property is located at the far edge of a large wellhead protection area and Section 16.11(C)(8) of the Howell Township Zoning Ordinance states: "No gasoline service station shall be permitted within three hundred (300) feet of a wellhead protection area". Exhibit B, pp 5-6.

On August 7, 2019, Plaintiff met with Joe Daus, Howell Township Zoning Administrator, to discuss seeking a variance to develop a gasoline service station and drive through restaurant on

the Property. Plaintiff was advised that if he could get the approval of "Greg" at the Marion, Oceola, Genoa Water Authority (MHOG), then Defendant would approve a variance. Plaintiff later learned Greg was Greg Tatara. *See* Exhibit C. At the meeting, Mr. Daus then told Plaintiff that once he had MHOG's approval, to submit the request for variance to the Zoning Board of Appeals, then to the Planning Commission, then to the Township Board of Trustees. *See* Exhibit C.

Plaintiff contacted Mr. Tatara, provided the plans for the gasoline service station, and on February 1, 2021, and February 23, 2023, MHOG issued two separate letters to Plaintiff approving the proposed project with conditions. Exhibit D. On March 16, 2021, the Howell Township ZBA then held a hearing and denied Plaintiff's use variance application. Exhibit E. Next, Plaintiff requested Defendant amend §16.11 of its zoning ordinance to allow for gasoline service stations within the wellhead protection as long as the plans are approved by MHOG. Without giving Plaintiff notice, the Howell Township Board of Trustees held two public meetings, on March 20, 2023, and May 8, 2023, at which Plaintiff's proposed zoning ordinance amendment, Plaintiff's property, and Plaintiff's Special Land Use Permit (SLUP) application, were discussed. Exhibits E and F (Agendas and Materials). Defendant ultimately denied Plaintiff's request to change the language of Ordinance 16.11 and approved submission of a new wellhead protection ordinance to go to Township Planning Committee, specifically requesting a complete prohibition of gasoline service stations. Exhibit G, p. 3 and Exhibit H, p. 2 (Minutes and Summary).

Plaintiff regrouped, applied, and received permits and approvals for the project from the State of Michigan Department of Licensing and Regulatory Affairs Bureau of Fire Services (BFS); Department of Environment, Great Lakes, and Environment ("EGLE"); (3) State of Michigan Fire Marshal; and (4) local fire Marshal.

On or around June 26, 2023, Plaintiff submitted a SLUP application and site plan to develop a new gasoline service station and drive-through restaurant on land owned by Plaintiff in Howell Township, currently zoned Neighborhood Service Commercial (NSC), in which gasoline service stations are permitted as a special land use. The application was supplemented on or around October 17, 2023. Exhibit I.

In conjunction with Plaintiff's SLUP application and site plan submission, the Township required Plaintiff to sign an agreement to reimburse the Township for "all expenses at actual cost for professional services related to the application required by the Township for the issuance of any permits, approvals, reviews, and attendance at meetings, by the Township's Planner, Landscape Architects, Legal Counsel, Engineering and Administrative Staff, over and above the fees listed in the Howell Township Fee Schedule." Exhibit I, p. 5-6. Unbeknownst to Plaintiff, MHOG director Tatara drafted a third letter on May 19, 2023, revoking MHOG's prior approval of the site plan and openly objecting to Plaintiff's plan to build a gasoline service center at the Property and on November 19, 2023, the MHOG Board resolved to submit a formal objection to the Township Trustees. Exhibits M and N. Plaintiff was not given notice of the MHOG public meeting and Plaintiff was not provided a copy of the resolution by MHOG nor Defendant.

On November 21, 2023, the Howell Township Planning Commission conducted a public hearing on Plaintiff's SLUP application. A copy of the meeting minutes is attached as Exhibit J. The transcript of the meeting is attached as Exhibit K. At the outset of the meeting, the Planning Commission stated that it lacks authority to grant the application.

> MR. WILLIAMS: Just so I understand you correctly, Paul, that we don't have the authority to approve a gas station that violates that ordinance of not being within 300 feet of a wellhead protection area.
>
> MR. MONTAGNO: That is correct

Exhibit K, p. 56, lines 14 – 19.

The Howell Township Planning Commission voted unanimously to recommend denial of the SLUP based on the prohibitive language in §16.11(C)(8) of its Zoning Ordinance. Exhibit K, pp. 97-98. On December 11, 2023, the Howell Township Board of Trustees held a regular meeting at which they voted to deny the SLUP. Exhibit L, pp 2, 18-19.

Following the Township Board's denial of Plaintiff's SLUP application, Plaintiff submitted its application to the Zoning Board of Appeals to appeal the Board decision and to request dimensional and use variances. The appeal was denied. Plaintiff filed a circuit court claim of appeal of the December 11, 2023, Board denial on January 23, 2024, which was assigned to Judge McGivney as Case No. 24-350-AA. This lawsuit followed.

II. LAW & ARGUMENT

A. MCR §2.116(C)(10) SUMMARY DISPOSITION STANDARD.

A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual basis for a plaintiff's claim. *Skinner v Square D Co*., 445 Mich 153, 161, 516 NW2d 475 (1994). Summary disposition under this rule is available when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." *Haliw v City of Sterling Heights*, 464 Mich 297 627 NW2d 581 (2001); *Veenstra v Washtenaw County Club*, 466 Mich 155, 645 NW2d 458 (2000); *Rossow v Brentwood Farms Dev, Inc.,* 251 Mich App 652, 651 NW2d 458 (2002). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Attorney Ge. v PowerPick Players' Club of Michigan, LLC*, 287 Mich App 13, 26-27, 783 NW2d 515 (2010) (citing *West v GMC,* 469 Mich 177, 183, 665 NW2d 468 (2003)).

B. PLAINTIFF WAS DENIED SUBSTANTIVE DUE PROCESS BECAUSE DEFENDANT'S ORDINANCE BANNING ALL GASOLINE SERVICE STATIONS FROM BEING PERMITTED WITHIN 300 FEET OF A WELLHEAD PROTECTION AREA IS UNCONSTITUTIONAL

Article I §17 of the State of Michigan Constitution guarantees that the state shall not deprive any person of "life, liberty or property, without due process of law." *People v. Sierb*, 456 Mich. 519, 522, 581 N.W.2d 219, 221 (1998). **Governmental regulation that impacts these rights must be reasonably tailored and non-arbitrary**. *West Coast Hotel Co. v. Parrish,* 300 U.S. 379, 392; 57 S.Ct. 578, 582 (1937)(**emphasis added**), See also *16A Am. Jur. 2d Constitutional Law § 403*, 812–818, pp 124–128, 967–996.

The Ordinance at issue in this case is Section 16.11(C)(8) of the Howell Township Code of Ordinances, which states "No gasoline service station shall be permitted within three hundred (300) feet of a wellhead protection area".

Plaintiff argues that ordinance 16.11(C)(8)'s ban against gas stations while permitting uses such as automotive repair, drycleaning, junk yards, excavation and mining, within the wellhead protection area is arbitrary and, although it may seek to advance a governmental interest, it does so unreasonably.

1. Section 16.11(C)(8) facially denies substantive due process.

"A facial challenge alleges that the mere existence and threatened enforcement of the ordinance materially and adversely affects values and curtails opportunities of all property regulated in the market." *Paragon Props. Co. v. City of Novi*, 452 Mich. 568, 576, 550 N.W.2d 772, 775 (1996). "[A] facial challenge must establish that no set of circumstances exists under which the law would be valid or show that the law lacks a plainly legitimate sweep. *Ams. for Prosperity Found. v. Bonta,* 141 S. Ct. 2373, 2387 (2021).

In this case, ordinance 16.11(C)(8) allegedly carries out the compelling governmental interest of protecting the township's wellhead from contaminants; however, on its face, the ordinance only protects the wellhead from gasoline service stations. A report prepared by expert land use planner Paul LeBlanc of PLB Planning Group[1] reviewed the zoning ordinance, as well as technical findings from State regulatory agencies, local and state fire marshals, and geological professionals. Paul LeBlanc concluded that where these professionals "find the proposed development to be acceptable in this location, I question what legitimate governmental interest is served by prohibiting this single use from locating within the wellhead protection area plus another 300 feet". Exhibit P, p. 2.

During his deposition, Mr. LeBlanc testified:

Q. If we can go to the second page. In the first paragraph after the numbered paragraphs, there's a line, and I'll quote, where you say I question what legitimate government interest is served by prohibiting this single use from locating within the wellhead protection area, plus another 300 feet?

A. Correct.

Q. What did you mean by question?

A. Well, I didn't see any purpose to it. Again, it goes back to not restricting uses in the wellhead protection district. It was why are you picking on one use when you allow any number of other uses that could be similar to this in terms of potential danger with no justification given?

Q. So, but you use the word question. That's different that saying there is no legitimate government interest, correct?

A. Well, I said I question what that legitimate interest is.

Q. Is protecting drinking water a legitimate government interest?

A. Yes.· Sure.

[1] Paul LeBlanc has served a total of 8 years on the board of two different municipal planning commissions, drafted multiple municipal comprehensive and master plans, and more than a dozen zoning and land development regulations.

Q. Is maintaining public confidence in the safety of the community's drinking water a legitimate public interest?

A. Sure.

Q. Could those interests be the ones that served that prohibition of gas stations in wellhead protection areas?

A. They could be, but not singling out just one use to serve those purposes.· That was my concern.

Q. So in your letter you identified several uses that are permitted in or near wellhead protection areas without the same restrictions that pertain to gas stations, correct?

A. Correct.

Q. You identify vehicle service and repair shops and dry cleaning establishments as uses that are allowed in preparing this, correct?

A. Correct.

Q. What's the basis in which you compared [vehicle service and repair shops] land uses to gas service stations?

A. Well, because vehicle repair, for example, as I said in my memo, it doesn't define what that is.· The only limitation is they don't permit body shops as part of vehicle repair.· So it could be transmission repairs, engine rebuilding, oil changes, virtually anything that involves repair of a vehicle, which generally means fluids leaking out and storing oils and so on on site.· Really no different.· In fact, in this case, potentially more dangerous than the service station that was proposed, because they're not doing any repair work.· They're just pumping gas.

Exhibit Q, p. 24, line 4 – p. 25, line 24.

Banning gasoline service stations from the area surrounding a wellhead protection area while still allowing multiple other businesses that use and store contaminants above ground and underground "has no foundation in reason and is a mere arbitrary or irrational exercise of power". *Paterek v. Vill. of Armada, Michigan*, 801 F.3d 630, 648 (6th Cir. 2015). The Supreme Court's reasoning in *Bonner v. City of Brighton* held facially constitutional a zoning ordinance that

disallows homeowners from repairing unsafe structures where the cost of repair exceeds the value of the structure, is instructive:

> The unreasonable-to-repair presumption in BCO § 18–59 is not arbitrary because it does not represent a total prohibition on a property owner's opportunity to repair an unsafe structure, and the ordinance applies ***uniformly*** to all structures that have repair costs in excess of 100 percent of the structure's value before it became unsafe, except those structures that BCO § 18–59 expressly exempts.

Bonner v. City of Brighton, 495 Mich. 209, 233–34, 848 N.W.2d 380, 395 (2014)(***emphasis added***).

Inapposite to the ordinance at issue in *Bonner*, ordinance 16.11 does not apply uniformly to all property uses that pose a risk of contamination to the wellhead and it does not apply evenly to those uses which traditionally store contaminants in underground storage or that pose a threat of surface run off, such as automotive repair centers and drycleaners. It only applies to gasoline service stations.

2. §16.11(C)(8) facially violates the equal protection clause.

The total ban of gas stations also facially violates the equal protection clause. The Michigan Supreme Court provided a succinct primer on equal protection in *Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp*., 486 Mich. 311, 783 N.W.2d 695 (2010):

> The Equal Protection Clause requires that all persons similarly situated be treated alike under the law. When reviewing the validity of state legislation or other official action that is challenged as denying equal protection, the threshold inquiry is whether plaintiff was treated differently from a similarly situated entity. [T]he classification drawn by the legislation is rationally related to a legitimate state interest. Under this deferential standard, "the burden of showing a statute to be unconstitutional is on the challenging party, not on the party defending the statute[.]"

Here, one singular industry was arbitrarily selected without any rationale for disparate treatment under the law. Thus, there is no application of the ordinance that would not deny an entire industry equal protection of the law, and as such the ordinance is facially unconstitutional.

3. Ordinance 10.16 is Unconstitutional as Applied.

"Even if an act does not seem on its face to be unconstitutional, it may be unconstitutional as applied." *In re Advisory Op. Re Constitutionality of P.A. 1975 No. 301,* 400 Mich. 270, 296, 254 N.W.2d 528, 538 (1977) "An 'as applied' challenge alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution." *Paragon Props. Co. v. City of Novi*, 452 Mich. 568, 576, 550 N.W.2d 772, 775 (1996).

In the present case, disparate enforcement of the unconstitutional ordinance is not speculative. The Howell Township's local airport which is located inside of a provisional wellhead protection area contains multiple underground storage tanks. Exhibit R. MHOG, which is located in the five-year capture zone of the wellhead protection area, presents a much higher risk of contamination to the wellhead, because it stores multiple above ground fuel tanks:

Q. MHOG, you guys have aboveground fuel tanks?

A. Yes.

Q. And how large is your above ground fuel tank?

A. I have a 500 gallon gasoline and a 1,000 gallon diesel and I have a 700 gallon tank that my one big generator sits on. And then I have a couple other, couple other hundred gallon tanks that my generators sit on.

Q. All within a – all within the wellhead protection area?

A. Yes.

Q. All within the five-year capture zone?

A. They're within, yes. Yes.

Exhibit S, p. 87, line 25 – p.88, line 13, Deposition of Doug Tartara.

MHOG stores thousands of gallons of gasoline in above ground storage tanks, exposed to the elements, directly at the location of the wellhead. Yet, MHOG, after initially approving the gas

station twice, then reversed course and publicly opposed Plaintiff's solid fiberglass, anticorrosive, double layered, underground storage tanks, wrapped in a third nonpermeable layer that contains leakage sensors, to be installed 3,800 feet away from the wellhead, and which have already been approved and permitted by the Department of Environment, Great Lakes, and Energy and Department of Licensing and Regulatory Affairs Bureau of Fire Services.

Mich. Admin. Code R. 325.10812 provides "[t]he department [LARA] may require an increase or approve a decrease in the 2,000 foot distance for type I or type IIa public water supplies or the 800 foot distance for type IIb or type III public water supplies based on a study of hydrogeological conditions or other methods approved by the department for identifying the capture zone of a well".

Consistent with the requirements of section 812 above, Plaintiff retained Mannik & Smith Group to investigate and prepare a report regarding the hydrogeological conditions surrounding the wellhead and the proposed site. The report provides that the Marshall Sandstone aquifer is a confined aquifer surrounded by interbedded layers of sandstone and limestone approximately 160 to 165 feet in thickness with protection provided by the overlying shale layers and depth of the wells (391 to 418 feet) located hydraulically up-gradient (south-southeast), approximately 3,800 feet southeast and 5,800 feet southeast, respectively, of the proposed Howell-Mason LLC site. Exhibit T, pp. 1-3.

The conclusion was that when a well field completed in a confined aquifer is positioned up gradient from the proposed station, the geology acts as a protective barrier, reducing the likelihood of potential pollutants reaching and adversely impacting the aquifer. A gasoline service station[s] typically poses no significant environmental harm to a well field completed in

an up-gradient confined aquifer due to its location relative to the aquifer and groundwater flow. Exhibit T, p. 3.

In his deposition, Greg Buhoveckey, an author of the Mannik & Smith Group Hydrogeological report expanded on the importance of having a confined aquifer, surrounded by shale and limestone. Buhoveckey testified that the aquifer is confined and faces no threat of contamination from the underground storage tank at issue in this case, regardless of the engineering safety measures in place on and about the storage tank; because a confined aquifer is hydraulically separate from and does not interact with surface or shallow underground water.

A. Because that aquifer is confined. And that's the big issue here. And if you look at those cross sections, I mean, just from a natural standpoint, without getting into the engineered controls, which I'm familiar with the engineered controls and what they do out there, and not getting into the technical of how much does it leak or what could possibly happen there.

We were focusing just on the natural conditions of that site, where it is and what's under it. And after reviewing all of that information, we could make these opinions without going to the engineered controls. Now, we did go to the engineered controls, it does mention those in the letter, the multimillion dollar leak detection, double wall, all those things there you'll notice, page three, are listed. And that's in addition to.

But the fact is, is that aquifer, the natural conditions provide enough protection for it that the engineered controls that we're talking about and the rules that govern those are just kind of like the thin layer of frosting on a much larger cake, which is that aquifer is confined.

Q. I'm trying to understand what you're saying. Are you saying it almost doesn't matter if the storage tanks leak because of the aquifer?

A. The natural conditions make it that 90 percent of what we're talking about or a large percentage of the potential for anything to happen to that aquifer hinges on the natural conditions, not necessarily the controls at the site.

Exhibit U, p. 34, line 2 – p. 35, line 4.

This is a confined aquifer. It's very far below the surface. It does not interact with the surface water in that area. It does not interact with the shallow ground water, which would be the ground water above the confining layer. It's separate. It's

> hydraulically separate. The definition of a confined aquifer is that it's hydraulically separated from the surface and shallow ground water.

Exhibit U, p. 35, line 23 – p. 36, line 4.

Buhoveckey testified further that in the event of a leak, its distance from the wellhead becomes important because responders need time to react and remediate before any spill reaches a wellhead. For this specific wellhead, this specific gasoline service station, and these specific USTs, with multimillion-dollar leak protection systems, responders would be put on notice before the leak made it outside the tanks triple layer protection system and then the responders would have nine hundred (900) years to locate and remediate any contaminants before they could reach the wellhead.

> [t]he double walled, corrosion resistant USTs are also equipped with a nonpermeable third layer of protection containing sensors that alert responders of a leak, so it can be found quickly before the gas can get out and even interact with the shallow ground water.

Exhibit U, p. 77, line 9 - 18.

> It would take "about 20 to 30 years probably to go through three feet" of the clay, limestone, shale, and hardpan that make up the ground layer between the site and the wellhead, but "in the end it doesn't really matter, because we know the aquifer is confined…"

Exhibit U, p. 90, line 8 – p. 91, line 1.

> There are 30-40 feet of combined layers of clay, limestone, shale, and hardpan which provides an approximate 900 years before gasoline could make its way from the site to the aquifer.

Exhibit U, p. 93, lines 3-11.

> It is all just a risk assessment. If you want to put a potential pollution source in the time of travel zones, within the wellhead protection area, you need follow regulations, maintain safe distances from certain wells, and obtain a permit. In this case, since the proposal was closer than the codified distance to the well at Angelo's; however, because the Marshall Sandstone is a confined aquifer, the risk assessment supported the variance request and BFS approved the permit.

Exhibit U, p. 114, line 12 – p. 115, line 24.

Consistent with the requirements of Rule 812, Plaintiff provided hydrogeological data to the department and obtained approval for a variance. With the variance in hand, Plaintiff presented undisputed evidence to the Township to demonstrate the installation of the underground storage tanks to be used in connection with the proposed gasoline service stations is safe and appropriate.

The Ordinance is unconstitutional as applied and the Township's decision must be reversed.

C. SECTION 16.11(C)(8) OF THE TOWNSHIP'S ZONING ORDINANCE IS IN DIRECT CONFLICT WITH, AND PREEMPTED BY, STATE STATUTORY AND REGULATORY SCHEMES FULLY ADMINISTERED BY STATE AGENCIES.

State law preempts a municipal ordinance where the ordinance directly conflicts with a state statute or where the statute completely occupies the field that the ordinance attempts to regulate. *Rental Prop Owners Ass'n of Kent Co. v. Grand Rapids,* 455 Mich. 246, 257, 566 N.W.2d 514 (1997). A direct conflict exists when the ordinance permits what the statute prohibits or the ordinance prohibits what the statute permits. *People v. Llewellyn (City of East Detroit v. Llewellyn),* 401 Mich. 314, 322 n. 4, 257 N.W.2d 902 (1977).

A. Regulation of Underground Storage Tanks.

In 1994, Governor John Engler created the underground storage tank division within the Department of Natural Resources for, among other reasons, "activities related to the underground storage tank programs can be performed more efficiently by one agency". Exhibit V, Executive Reorganization Order 1994-4, p. 1; codified at MCL 299.901. The underground storage tank division is divided between Environment, Great Lakes, and Energy ("EGLE") successor of the Department of Environmental Quality ("DEQ"), and the Department of Licensing and Regulatory Affairs Bureau of Fire Services ("BFS"). Together, EGLE and BFS regulate the licensing, inspection, and installation of active underground storage tanks as well as the cleanup

and closure of leaking underground storage tanks. The design, construction, installation and maintenance of underground storage tanks that store regulated substances are licensed under Part 211, Underground Storage Tank Regulations ("USTR"), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

The USTR governs, among other things, the minimum safe distances of USTs to wells, to reduce the risk of contamination, and provides a framework for the licensing, inspection, and installation of active underground storage tanks. MCL 324.21102 states:

> A person that is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

Buttressing Governor Engler's Executive Order and in conformity with the federal equivalent, Michigan's legislature saw fit to prohibit local municipalities from enacting legislation inconsistent with NREPA and the USTR while establishing a process whereby a municipality can propose and BFS may approve a plan implementing heightened safety measures with respect to USTs. The specific section of PA 451 of 1994, specifically preempting local municipalities from legislating in the area of Underground Storage Tanks is MCL 324.21109, which states**:**

> (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, or welfare, or the environment is endangered.
>
> (2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.
>
> (3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or

> tax for the installation, use, closure, or removal of an underground storage tank system.

Further evidence of the legislative intent behind MCL 324.21109 is found in the attached State Budget Office Regulatory Impact Statement. Exhibit W. The State Budget Office, Office of Regulatory Reinvention, pursuant to the authority of the Administrative Procedures Act, issued a Regulatory Impact Statement to the BFS Storage Tank Division which provides insight into the legislature's intent:

> Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

Exhibit W, March 10, 2017, SBO Regulatory Impact Statement, p. 3.

The BFS responded:

> These rules adopt 2015 federal rules regulating all underground storage tank facilities storing and/or handling flammable and combustible liquids. PA 451 of 1994 states that the regulated authority over these facilities is with the State, and notes that local units of government cannot be more restrictive than State regulations.

Exhibit W, March 10, 2017, SBO Regulatory Impact Statement, p. 3.

B. Regulation of Wellhead Protection Areas.

The State of Michigan Wellhead Protection Program was created following amendments to the Federal Safe Drinking Water Act adopted in 1986 to regulate wellhead protection areas. Under the State Wellhead Protection Program ("WHPP"), EGLE has instituted certain rules that provide, among other things, a municipality may propose a wellhead protection area ("WHPA") with heightened protections for EGLE to review. The rules provide that EGLE may approve the proposed WHPA in a process similar to that regarding USTs, outlined in MCL 324.2119,

discussed *Supra*. Important to the present case, the WHPP makes it clear that no business or activity may be excluded from operating in the WHPA:

> The WHPA is determined and is submitted to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) for approval. Once approved, the WHPA receives a higher level of environmental monitoring at the state level for certain activities which are permitted through the state. For example, an underground storage tank must have an extra layer of protection around the tank (secondary containment), or businesses with groundwater discharge permits may need to perform more frequent monitoring. **As stated previously, the WHPP does not exclude any businesses or activities from your WHPA .**

Exhibit X, p. 7 (**emphasis added)**

Michigan Courts have repeatedly recognized that

> [t]he Legislature vested in the DEQ, the important job of preserving our state's valuable water supply with the imperative that the DEQ control the pollution of *all* the waters of the state and the Great Lakes…[including] ground waters, lakes, rivers and streams and all other watercourses and waters within the jurisdiction of this state.

City of Brighton v. Twp. of Hamburg, 260 Mich. App. 345, 355–56, 677 N.W.2d 349, 355 (2004); MCL 324.3103.[2]

> Consistently with the fact that our state's waters are connected and flow through many and varied localities, the Legislature invested in one agency, the DEQ, the public trust of protecting "all" our state's waters, which protection can only be accomplished by a statewide, consistent, and coherent uniform policy.
>
> …
>
> The subject matter of the regulation, the control of pollution entering the state's inter-connected waterways, clearly calls for a statewide, uniform system of regulation. The state's ability to control water pollution statewide would be substantially undermined by a Balkanized patchwork of inconsistent local regulations

City of Brighton v. Twp. of Hamburg, at 355–56; MCL 324.3106.

[2] See also See also, *Southeastern Oakland Co. Incinerator Auth. v. Avon Twp.,* 144 Mich.App. 39, 372 N.W.2d 678 (1985) and *Cascade Twp. v. Cascade Resource Recovery, Inc.,* 118 Mich.App. 580, 325 N.W.2d 500 (1982).

Moreover, any person, including a city or township, that is aggrieved by the DEQ's issuance of a permit may, as here, request and have a contested hearing under the APA. MCL 324.3112(3). This procedure for local input by way of contested hearings and the ultimate adoption or rejection by the head of the DEQ ensures uniformity and coherence of a statewide policy to protect our state's water resources. *Id.* EGLE replaced the DEQ on April 22, 2019.

D. IN RELYING ON § 16.11(C)(8) TO DENY PLAINTIFF'S SLUP THE TOWNSHIP DEPRIVED PLAINTIFF OF PROCEUDRAL DUE PROCESS CAUSING PLAINTIFF TO INCUR SIGNIFICNT FINCIAL DAMAGES.

1. Procedural due process, generally.

"[A]t a minimum, due process of law requires that deprivation of life, liberty or property by adjudication must be preceded by notice and an opportunity to be heard. To comport with these procedural safeguards, the opportunity to be at a hearing must be granted at a meaningful time and in a meaningful manner." *Bonner v. City of Brighton,* 495 Mich 209, 235, 848 NW2d 380 (2014).

In the present case, Defendant conducted several public hearings affecting Plaintiff's Property and the proposed variance without giving Plaintiff notice and an opportunity to be heard; specifically, the March 20, 2023 hearing where the Township voted to deny Plaintiff's request to reform the ordinance language to read "No gasoline service station shall be permitted within three hundred (300) feet of a wellhead protection area unless it receives approval from MHOG"; and the May 8, 2023 hearing when the Trustees voted to submit a wellhead protection area proposal to the Planning Committee for approval, that specifically excluded gasoline service stations from the wellhead protection area. Exhibit E, p. 3 and Exhibit F, p. 3. Failure to notify Plaintiff and provide an opportunity to be heard constitutes a procedural due process violation.

2. EGLE-Approved plan for development of a gasoline service station creates a protected property right.

In this case, EGLE, which has full regulatory control over drinking water quality and underground storage tanks, conditionally approved Plaintiff's proposed gas station on the Property. As such, Plaintiff has a constitutionally protected property interest in the conditional approvals.

3. Plaintiff was not afforded procedural due process where Defendant relied on an unconstitutional and preempted Ordinance banning gasoline service stations.

While granting a SLUP is a discretionary act, section 504 of the Zoning Enabling Act states that [i]f the zoning ordinance authorizes the consideration and approval of special land uses…under section 502…or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance. MCL §125.3504(1). "A request for approval of a land use or activity *shall* be approved if the request is in compliance with the standards stated in the zoning ordinance…." *Id*.

In this case, the Township relied only upon the unconstitutional and otherwise preempted gas station ban of §16.11(c)(8) and assumptions without support in the record in denying Plaintiff's SLUP application. The Township ignored Plaintiff's permits and approvals from the State, along with Plaintiff's expert hydrogeological, engineering, tank technology, and planning presentations and written materials. As the application met all SLUP standards in the Township Zoning Ordinance, the Township's denial violated Plaintiff's due process rights.

E. THE TOWNSHIP HAS REPEATEDLY VIOLATED THE OPEN MEETINGS ACT.

The Open meetings act provides that all meetings of a public body must be open to the public and must be held in a place available to the general public. MCL 15.263. Although there are some exceptions, none apply to the present case. MCL 15.267.

Considering the totality of the circumstances, the outcome of the December 11, 2023, Township Board Meeting and vote was predetermined by the board outside of a public meeting and communicated to the public in advance of the purely performative meeting**.** Exhibit L and Exhibit Y. (Text Messages).

Defendant and/or its agents colluded with and/or goaded MHOG into violating the OMA by taking a vote explicitly against Plaintiff's Properties without the required notice to Plaintiff or the public of the purpose of the meetings on both March 20, 2023, and on May 8, 2023. Exhibits E, p. 2 and F, p. 2.

F. THE TOWNSHIP'S UNREASONABLE AND UNLAWFUL DENIAL OF PLAINTIFF'S SLUP APPLICATION RESULTS IN A REGULATORY TAKING.

The Fifth Amendment's Takings Clause provides that "private property" shall not "be taken for public use, without just compensation." U.S. Const. Amend. V.

The U.S. Supreme Court recognized that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." A taking can be established when, after analysis of (1) the degree to which a regulation disrupts the "reasonable investment-backed expectations," (2) the "economic effect" of the regulation on the landowner, and (3) the "character of the government action," it is demonstrated that the government is "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Penn Cent Transp Co v New York City*, 438 US 104, 124 (1978); *K&K,* 217 Mich App 56.

"The term 'taking' can encompass governmental interference with rights to both tangible and intangible property." *AFT Mich. V. State*, 497 Mich. 197, 218, 866 N.W.2d 782, 794 (2015). "A business owner's right to engage in and continue their business has long been recognized as a property right." *Dept of Transp v Gilling*, 289 Mich App 219, 240; 796 NW2d 476 (2010).

Here, Plaintiffs purchased the property based on its current zoning and master plan. Plaintiff then applied to and received conditional approval from the State of Michigan to develop a gasoline service station on the Property. The Township denied Plaintiff's application based almost entirely on an unconstitutional, preempted, arbitrary and capricious ordinance banning gas stations within 300-feet of a wellhead protection area inappropriately and illegally purporting to trump State-granted entitlements. Thus, Plaintiff has been deprived of the purchase price along with significant loss of profitability based on an arbitrary *ipse dixit.*

The taking in this case is similar to that in *Pennsylvania Coal.* As described by the Supreme Court of the United States in *Penn Central:*

> *Pennsylvania Coal Co*. v. *Mahon*, 260 U.S. 393 (1922), is the leading case for the proposition that a state statute that substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a "taking." There the claimant had sold the surface rights to particular parcels of property, but expressly reserved the right to remove the coal thereunder. A Pennsylvania statute, enacted after the transactions, forbade any mining of coal that caused the subsidence of any house, unless the house was the property of the owner of the underlying coal and was more than 150 feet from the improved property of another. Because the statute made it commercially impracticable to mine the coal, *id*., at 414, and thus had nearly the same effect as the complete destruction of rights claimant had reserved from the owners of the surface land, see *id*., at 414-415, the Court held that the statute was invalid as effecting a "taking" without just compensation. See also *Armstrong* v. *United States*, 364 U.S. 40 (1960) (Government's complete destruction of a materialman's lien in certain property held a "taking").

Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 127-28, 98 S. Ct. 2646, 2661 (1978).

WHEREFORE, Plaintiff respectfully requests this court enter an order granting Plaintiff's motion for summary disposition on all counts, setting trial for a determination of damages, awarding Plaintiff its reasonable attorney fees, and granting such other relief as this Court deems just and equitable.

Respectfully submitted.

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Dated: April 1, 2026

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
a Michigan Limited Liability Company,

Plaintiff,

v

HOWELL TOWNSHIP,
a Michigan General Law Township,

Defendant.
_____/

Case No. 24-32242-CZ

HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION ON COUNTS I, II, III, AND IX PURSUANT TO MCR 2.116(C)(7) AND (C)(10)

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HOWELL TOWNSHIP'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION ON COUNTS I, II, III, AND IX PURSUANT TO MCR 2.116(C)(7) AND (C)(10)

INTRODUCTION

Howell-Mason purchased property within a designated wellhead protection area in Howell Township with the hope of operating a "Mugg-N-Bopps" gasoline service station with a drive-thru. That expectation, however, was never grounded in the governing law. The Property is located in the Neighborhood Services Commercial District, where gasoline service stations and drive-thru facilities may be considered only through the Township's special land use process. Critically, prior to Howell-Mason's purchase of the property, the Zoning Ordinance flatly prohibits gasoline service stations within wellhead protection areas. That remains true today. Howell-Mason's proposed gas station could not be approved at this location. Further making clear the irony in suing the Township after the Township's obligated denial of their proposed-unauthorized gas station, Howell-Mason has admitted it purchased the Property knowing the "current and future zoning designations," including that a gas station could not be approved.

Nonetheless, Howell-Mason invested what it claims to be "millions" of dollars preparing to operate a gas station on the Property by seeking other regulatory approvals to operate a gas station before submitting for zoning approval before the Township. Unsurprisingly, Howell-Mason subsequently applied for and was denied a special land use permit. Howell Township does not allow gasoline service stations in wellhead protection areas, and the proposed gas station did not satisfy three additional special land use standards.

Howell-Mason appealed the Township Board's decision to the Livingston County Circuit Court, advancing the theory that it could effectively override local zoning authority by securing approvals from separate and unrelated state agencies. That argument failed. In a thorough and well-reasoned fifteen-page opinion, Judge McGivney rejected each of Howell-Mason's claims—

including allegations of substantive and procedural due process violations, equal protection violations, and state-law preemption—and affirmed the Township Board's denial as authorized by law and supported by the record. Howell-Mason then sought leave to appeal to the Michigan Court of Appeals, which denied review for a "lack of merit in the grounds presented" which is language that constitutes a merits-based adjudication of the arguments advanced. *Pioneer State Mut Ins Co v Michalek*, 330 Mich App 138, 145; 946 NW2d 812 (2019). Howell-Mason thereafter sought review in the Michigan Supreme Court, which likewise declined to disturb the Circuit Court's ruling. With appeals exhausted, the Township Board's denial of Howell-Mason's special land use permit is final and conclusive.

The claims subject to this motion are an impermissible collateral attack on the zoning appeal rulings issued by the Circuit Court, Michigan Court of Appeals, and Michigan Supreme Court. Howell-Mason reasserts the same legal theories and issues that were fully raised, litigated, and resolved against it in the zoning appeal. At this stage, Howell-Mason cannot prevail. The Court need not—and should not—reach the merits of Count I (Substantive Due Process), Count II (Procedural Due Process), Count III (Equal Protection), or Count IX (Preemption) because each is barred by the doctrines of res judicata and collateral estoppel. Howell-Mason had a full and fair opportunity to litigate these claims, pursued appellate review through the Michigan Supreme Court, and lost.

Even apart from preclusion, dismissal is independently required. Discovery is closed, the material facts are undisputed, and each of these claims fails as a matter of law. The depositions of Howell-Mason's own experts confirm as much. Howell-Mason's land use planning expert, Paul LeBlanc testified that the special land use application was "futile" because the Township Board could not have lawfully approved it, that special land use approval is discretionary, that protecting

drinking water is a legitimate government interest, and that the process afforded to Howell-Mason was consistent with the Michigan Zoning Enabling Act.[1] Howell-Mason's hydrogeological expert, Gregory Buhoveckey, PE, admitted that no site-specific testing of water impacts was performed, no analysis on nearby residences' wells, and acknowledged that the state approvals Howell-Mason obtained expressly do not override local ordinances.[2]

Collectively, each claim subject to this motion is independently foreclosed by multiple dispositive barriers to relief. For these reasons, and as set forth more fully below, Howell Township respectfully requests that the Court grant summary disposition in its favor on Counts I, II, III, and IX.

STATEMENT OF FACTS/PROCEDURAL HISTORY

A. Howell-Mason Purchases Property in Howell Township Subject to Existing Zoning Regulations.

Over the course of several years starting in 2017, Howell-Mason purchased three parcels of real property located in Howell Township after conducting due diligence regarding the zoning status and permitted uses of the Property. Howell-Mason has confirmed that it reviewed the applicable zoning regulations before acquisition and specifically bargained to ensure it was comfortable with the zoning designations governing the Property at the time of purchase (Exhibits C, D, and E).

The Property is located within Howell Township's Neighborhood Services Commercial District. Under the Howell Township Zoning Ordinance, that district permits certain commercial

[1] All of the relevant excerpts of Mr. LeBlanc's deposition are attached in Exhibit A. Throughout this filing, specific references made to his testimony are provided with the appropriate citations.

[2] All of the relevant excerpts of Mr. Buhoveckey's deposition are attached in Exhibit B. Throughout this filing, specific references made to his testimony are provided with the appropriate citations.

uses by right, while other uses—including gasoline service stations and drive-through facilities—are permitted only upon approval of a special land use permit pursuant to Article XVI of the Zoning Ordinance. Zoning Ordinance §16.02.[3]

Special land uses are not permitted as of right. Rather, an applicant bears the burden of demonstrating compliance with each of the mandatory approval standards set forth in the Zoning Ordinance, and approval is vested in the discretion of the Township Board. Zoning Ordinance §§16.02, 16.06. The Zoning Ordinance requires that a proposed special land use satisfy multiple substantive criteria. Those criteria include the general special land use standards set forth in Sections 16.06(A)–(F), which address compatibility with surrounding land uses, impacts on public health, safety, and welfare, and effects on the environment and natural resources. Zoning Ordinance §16.06(A)–(F).

In addition to the general standards of Section 16.06, the Zoning Ordinance expressly incorporates use-specific standards applicable to certain other special land uses. For gasoline service stations, those additional requirements are set forth in Section 16.11, which applies "[i]n addition to all applicable regulations in effect in the district in which [the use is] located." Zoning Ordinance §16.11. The Township Board is prohibited from approving a special land use unless all applicable standards—both general and use-specific—are satisfied, and the failure to meet any single required standard independently requires denial. Zoning Ordinance §§16.06, 16.11. This is important because the Property is located within 300 feet of a designated wellhead protection area. At all relevant times, the Zoning Ordinance expressly prohibited gasoline service stations within

[3] All relevant excerpts of the Howell Township Zoning Ordinance are attached as Exhibit F. Throughout this filing, specific references made to the Zoning Ordinance are provided with the appropriate citations.

that buffer. Zoning Ordinance §16.11(C)(8). Howell-Mason does not dispute that this prohibition was in effect when it purchased the Property and that it applied to the Property as zoned.

B. Howell-Mason Applies for a Special Land Use Permit to Operate a Gas Station with a Drive-Thru, Which the Township Board Unanimously Denies Based on Multiple Independent Standards.

In 2023, Howell-Mason submitted an application for a special land use permit seeking approval to operate a gasoline service station, convenience store, and drive-thru restaurant on the Property (Exhibits G and H). Because the proposed use constituted a special land use, the application was subject to the general special land use standards set forth in Zoning Ordinance §16.06(A)–(F), as well as the use-specific standards applicable to gasoline service stations set forth in Zoning Ordinance §16.11.

The application for a special land use permit proceeded through the review process required by the Zoning Ordinance. The Howell Township Planning Commission conducted a duly noticed public hearing on November 21, 2023, at which Howell-Mason was present and afforded the opportunity to present materials, expert opinions, and arguments in support of its application. The Planning Commission also received substantial written and oral public comments and considered input from the Marion-Howell-Oceola-Genoa Sewer and Water Authority ("MHOG"). As part of its review, the Planning Commission considered both the general special land use standards of Zoning Ordinance §16.06 and the use-specific standards applicable to gasoline service stations, including the prohibition on gasoline service stations within 300 feet of a wellhead protection area set forth in Zoning Ordinance §16.11(C)(8). Following the public hearing, the Planning Commission recommended denial of the application based on the applicable Zoning Ordinance standards. Zoning Ordinance §§16.02, 16.06, 16.11; (Exhibit I).

On December 11, 2023, the Howell Township Board held a duly noticed public meeting to consider the application for a special land use permit. Howell-Mason again appeared and was afforded the opportunity to present its position to the Township Board. After reviewing the administrative record, the Planning Commission's recommendation, and the applicable Zoning Ordinance standards, the Township Board unanimously denied the application (Exhibit J).

The Township Board determined that Howell-Mason failed to satisfy multiple independent and mandatory approval standards, including findings that the proposed use was not harmonious with the surrounding area, would be hazardous or disturbing to existing or future neighboring uses, would adversely impact natural resources and the environment, and was prohibited due to the Property's location within 300 feet of a designated wellhead protection area. Zoning Ordinance §§16.06(A), 16.06(D), 16.06(F), 16.11(C)(8). Each of these findings independently required denial of the application for a special land use permit under the Zoning Ordinance. Zoning Ordinance §§16.06, 16.11.

C. Howell-Mason Appeals the Denial, and the Township Board's Decision Is Affirmed at Every Level of Appellate Review.

Following the Township Board's unanimous denial of the application for a special land use permit, Howell-Mason pursued appellate review of that decision through the Michigan courts. At each stage of review, Howell-Mason challenged the Township Board's decision because, in its opinion, it was not supported by competent, material, and substantial evidence and was not authorized by law. Howell-Mason also raised constitutional and statutory challenges to the Zoning Ordinance and its application to the Property. Those challenges were fully litigated and rejected at every level of appellate review, as explained immediately below.

1. The Livingston County Circuit Court affirmed the decision of the Township Board through a 15-page opinion.

Howell-Mason timely filed an appeal of the Township Board's decision to deny its application for a special land use permit (Exhibit K). The parties fully briefed the appeal, and the Circuit Court heard extensive oral argument on August 15, 2024, at which both parties appeared through counsel and presented argument on the administrative record. On September 16, 2024, the Honorable Matthew J. McGivney issued a written fifteen-page Opinion and Order affirming the Township Board's decision in all respects (Exhibit L). Applying the governing standard of review under Const 1963, art 6, § 28, Judge McGivney emphasized that its role was not to reweigh evidence or substitute its judgment for that of the Township Board, but to determine whether the Township Board's decision was authorized by law and supported by competent, material, and substantial evidence on the whole record. Judge McGivney recognized (as does Howell-Mason's expert) that Howell Township's Zoning Ordinance requires denial of a special land use permit if any mandatory approval standard is not satisfied, and that the Township Board found Howell-Mason failed to satisfy multiple independent standards. (Exhibit L, pp 9, 15).

2. The Michigan Court of Appeals denied leave for "lack of merit in the grounds presented" and the Michigan Supreme Court declines further review.

Following Judge McGivney's September 16, 2024 Opinion and Order affirming the Township Board's decision, Howell-Mason sought appellate review in the Michigan Court of Appeals. Howell-Mason filed an application for leave to appeal, again challenging the Township Board's denial of the application for a special land use permit and Judge McGivney's affirmance of that decision. On April 11, 2025, the Michigan Court of Appeals entered an order denying leave to appeal, expressly concluding that the application should be denied "for lack of merit in the grounds presented." Order, Court of Appeals Docket No. 372773 (Exhibit M).

Howell-Mason sought further review in the Michigan Supreme Court. On August 29, 2025, the Michigan Supreme Court denied the application for leave to appeal, stating that it was "not persuaded that the questions presented should be reviewed by this Court." Order, Michigan Supreme Court Docket No. 168460 (Exhibit N). With the Michigan Supreme Court's denial of leave to appeal, the Township Board's December 11, 2023 decision denying the application for a special land use permit became final.

D. Procedural History of this Action.

After Judge McGivney issued his September 16, 2024 Opinion and Order affirming the Township Board's decision in the zoning appeal, the Township moved for summary disposition in this action under MCR 2.116(C)(7), (C)(8), and (C)(10). The Township argued that Howell-Mason failed to state viable claims as a matter of law and that several claims were barred by principles of preclusion. At that time, however, the zoning appeal had not yet reached final resolution through the appellate process, and the Township had not yet amended its affirmative defenses to expressly assert res judicata or collateral estoppel (defenses that were not yet available when the Township answered).

Judge McGivney heard oral argument on the Township's motion on January 16, 2025. That same day, Judge McGivney entered a written order granting the motion in part and denying it in part (Exhibit O). Judge McGivney dismissed Counts IV, VII, and VIII with prejudice for failure to state a claim. Judge McGivney denied summary disposition under MCR 2.116(C)(7) without prejudice, characterizing the Township's preclusion arguments as premature at that stage of the case and explaining that those defenses would need to be formally asserted before they could be adjudicated. Judge McGivney also denied the Township's remaining arguments without prejudice while discovery remained open.

The Township thereafter moved for leave to amend its affirmative defenses to expressly assert res judicata and collateral estoppel, explaining that it had not previously asserted those defenses because the zoning appeal had not yet reached final resolution. On February 27, 2025, Judge McGivney granted the Township's motion and allowed the Township to file its amended affirmative defenses, which it did (Exhibit P).

Following those rulings, the parties engaged in discovery. The Township served written discovery, including interrogatories, requests to admit, and requests for production, directed at the factual bases for Howell-Mason's remaining claims. Howell-Mason initially asserted wholesale objections to a substantial portion of the Township's written discovery, necessitating Court intervention. The parties addressed the discovery dispute through mediation with retired Judge Michael P. Hatty, as ordered by Judge McGivney (Exhibit Q).

Discovery in this action has now closed. The Township's amended affirmative defenses remain on file, and the zoning appeal has been fully and finally resolved through denial of leave to appeal by both the Michigan Court of Appeals and the Michigan Supreme Court. The Township now moves for summary disposition on all remaining claims through two separate filings.

STANDARD OF REVIEW

Pursuant to MCR 2.116(C)(7), summary disposition is appropriate when "[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of . . . prior judgment . . . statute of limitations." *Duncan v State*, 300 Mich App 176, 194; 832 NW2d 761 (2013); *King v Munro*, 329 Mich App 594, 599; 944 NW2d 198 (2019). Pursuant to MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine issue of material fact that the moving party is entitled to judgment as a matter of law. The motion is appropriately granted when a party is entitled

to judgment as a matter of law. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012).

ARGUMENT

I. COUNTS I, II, III, AND IX ARE BARRED BY RES JUDICATA AND COLLATERAL ESTOPPEL UNDER MCR 2.116(C)(7) AND, IN ANY EVENT, FAIL AS A MATTER OF LAW UNDER MCR 2.116(C)(10).

"Michigan employs a broad approach to the doctrine of res judicata." *Duncan v State*, 300 Mich App 176, 194; 832 NW2d 761 (2013). The doctrine "precludes relitigation of a claim when it is predicated on the same underlying transaction that was litigated in a prior case." *Id.* The doctrinal purpose is to "prevent inconsistent decisions, conserve judicial resources, and protect vindicated parties from vexatious litigation." *Id.* There are four elements:

> (1) the prior action was decided on the merits, (2) the prior decision resulted in a final judgment, (3) both actions involved the same parties or those in privity with the parties, and (4) the issues presented in the subsequent case were or could have been decided in the prior case. [*Id.*]

A similar but slightly different doctrine is that of collateral estoppel, which "precludes relitigation of an issue in a subsequent, different cause of action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined." *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990); see also *Barrow v Pritchard*, 235 Mich App 478, 480-81; 597 NW2d 853 (1999). Together, these doctrines promote finality and judicial economy by preventing the relitigation of claims and issues that have already been resolved; they serve the fundamental purpose of promoting judicial economy as well. See *Wilcox v Sealey*, 132 Mich App 38; 346 NW2d 889 (1984).

Four of Howell-Mason's remaining claims—Counts I (Substantive Due Process), II (Procedural Due Process), III (Equal Protection), and IX (Preemption)—are foreclosed by settled principles of claim and issue preclusion. Each was raised and litigated in the zoning appeal before

this Court. Judge McGivney expressly addressed and rejected Howell-Mason's arguments in the written decision on the merits (Exhibit L). Judge McGivney's legal conclusion that the appeal was devoid of merit was then left undisturbed after Howell-Mason sought relief in the Michigan Court of Appeals and the Michigan Supreme Court.

Alternatively, even if the Court were to conclude that preclusion does not apply, dismissal is still compelled under MCR 2.116(C)(10). Discovery is closed, the material facts are undisputed, and Howell-Mason cannot establish a legally cognizable entitlement to relief on any of these claims. Moreover, even apart from preclusive effect, Judge McGivney's reasoned decision constitutes persuasive authority that this Court may properly adopt in resolving the identical legal issues presented here. *People v Good*, 346 Mich App 275, 284; 12 NW3d 79 (2023).

The subsections that follow address each of these grounds—res judicata, collateral estoppel, and judgment as a matter of law—in turn and explain why each independently requires dismissal of Counts I, II, III, and IX.

A. Counts I (Substantive Due Process) and II (Procedural Due Process) are Barred by Res Judicata and Collateral Estoppel Under MCR 2.116(C)(7) and, Alternatively, Fail as a Matter of Law Under MCR 2.116(C)(10).

"The federal due process provision guarantees that no person shall be deprived of 'life, liberty, or property, without due process of law.'" *Bonner v City of Brighton*, 495 Mich 209, 225; 848 NW2d 380 (2014) (citations omitted). There are "two separate types of protections—substantive and procedural[.]" *Id.* at 226. "The first and most essential" inquiry that must be made by courts reviewing due process challenges is to determine "whether the interest allegedly infringed by the challenged government action … comes within the definition of 'life, liberty, or property.'" *Id.* at 225. "If it does not, the Due Process Clause affords no protection." *Id.* If there is a protected interest, then a challenger can show a regulation is substantively invalid by proving

"that there is no reasonable government interest being advanced" or that the regulation is "purely arbitrary [or] capricious." *Id.* at 228. A challenger can also show a regulation is procedurally invalid if there was deprivation of the protected interest without a meaningful opportunity to be heard pursuant to law. *Id.* at 236.

Howell-Mason argued—at length—through the zoning appeal that the zoning regulations were violative of both substantive and procedural due process (both facially and as applied). This Court provided an extensive review of the arguments. The result:

> A challenge to a zoning ordinance as unconstitutional as applied, to be distinguished from a facial challenge, alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution of government action … Since there is no reasonable dispute based on the record that the business of a gas station is not totally banned in the Township or even in the [Neighborhood Commercial Service District], any as applied challenge arising from a claim of exclusionary zoning must fail … **Section 16.11(C)(8) is not unconstitutional as applied.**
>
> …
>
> Howell Township has a legitimate interest in protecting the general welfare of the community and in locating land uses in compatible locations to other land uses. That legitimate interest of the municipal government is enshrined in the MZEA itself … [Howell-Mason] has been unable to show that the ordinance is not rationally related to a legitimate government interest in every scenario. **[The facial] challenge must be rejected.** [(Exhibit L, pp 6-8, 13 (emphasis supplied)).]

Howell-Mason may not now use this original action to relitigate those same due process challenges. Res judicata bars the reassertion of claims predicated on the same underlying transaction that were actually litigated in a prior action, as well as claims that could have been litigated. *Duncan*, 300 Mich App at 194; see also *Krohn v Saginaw*, 175 Mich App 193, 198; 437 NW2d 260 (1988). Collateral estoppel independently precludes Howell-Mason from relitigating the same constitutional issues, even if recast under different theories. *Barrow*, 235 Mich App at 480-81.

Apart from preclusion, Howell-Mason's due process claims fail as a matter of law for the same reasons identified in the zoning appeal. Howell-Mason lacks a protected property interest in

a discretionary decision concerning a special land use permit; the Township's zoning regulations advance legitimate governmental interests as Howell-Mason's land-use expert conceded; and the application of those regulations is not unconstitutional in every circumstance. *Richardson v Twp of Brady*, 218 F3d 508 (6th Cir 2000) (explaining there can be "no legitimate claim of entitlement to a discretionary decision" of local government); *Mettler Wallon, LLC v Melrose Twp*, 281 Mich App 184; 761 NW2d 293 (2008). Howell-Mason's own land use expert confirmed the Township had the discretion to determine if the applicable standards were satisfied and opined the Township was without authority to grant the special land use application as presented, describing the entire application process by Howell-Mason as "futile":

> Q. So is it your opinion that Howell Township had the discretion to determine whether or not this standard was satisfied?
> A. They do.
> Q. If a standard is not met through the special land use permit application process, does the township board have the authority to grant it?
> A. I would say if they find that it's not met, no, they would not grant the special use.
>
> …
>
> Q. So the special land use application was futile?
> A. **Yes.** [(Exhibit A, pp 34-35, 41 (emphasis supplied).]

Mr. LeBlanc also testified that the Township provided Howell-Mason with exactly the type of process that Michigan land use law requires:

> Q. So you sent a letter to the planning commission?
> A. Yes.
> Q. There was two public hearings held, one in front of the planning commission, and another in front of the township board, correct?
> A. Yes.
> Q. You had an opportunity to present?
> A. Yes.
> Q. And other individuals, as part of Howell-Mason, had an opportunity to present, correct?
> A. Correct.
> Q. Is that typical with the process that you see afforded to special land use applicants the (sic) throughout the state?

A. I think for any applicant it's typical. I mean, the applicant has the right to present their project, and if they have consultants involved, they're going to explain different aspects of the project, and then the public hearing is opened.

…

Q. Was the process that Howell Township went through reviewing the special land use application, in your view, consistent with what is required under the Michigan Zoning Enabling Act?

A. **Yeah. I think so.** [(Exhibit A, p 31 (emphasis supplied).]

In other words, Howell-Mason's own expert conceded that special land use approval is discretionary, that the Township Board lacked authority to approve the application as presented, that the entire application process was "futile," and yet the Township Board provided them with the exact process that is required under Michigan law. Where the applicant's own expert cannot identify a protected property interest or specify an error in the process, the claim is without arguable legal merit.

In summary, Counts I and II are barred by res judicata and must be dismissed under MCR 2.116(C)(7). Alternatively, even if preclusion did not apply, Counts I and II fail as a matter of law and are properly dismissed under MCR 2.116(C)(10) because no genuine issue of material fact exists.

B. Count III (Equal Protection) is Barred by Res Judicata and Collateral Estoppel Under MCR 2.116(C)(7) and, Alternatively, Fails as a Matter of Law Under MCR 2.116(C)(10).

Michigan law recognizes that "[t]he test to determine whether a statute comports with substantive due process or equal protection principles is essentially the same." *Andary v USAA Cas Ins Co*, 512 Mich 207, 264; 1 NW3d 186 (2023). "For equal protection purposes, when no fundamental right or suspect class is involved, 'a legislative classification must be sustained, if the classification itself is rationally related to a legitimate government interest.'" *Id*. at 265. And the Michigan Supreme Court recently reiterated that there is not a "fundamental right to continue a particular business model free from government regulation." *Id.* at 268.

Howell-Mason pleads an equal protection claim that does not allege the existence of any similarly situated comparators, does not assert a viable "class of one" theory, and does not implicate a suspect classification or fundamental right. As pled, the claim fails to satisfy the threshold requirements for an equal protection violation. Moreover, because the claim does not involve a suspect class or fundamental right, the governing analysis mirrors the substantive due process analysis addressed above.

Judge McGivney expressly considered and rejected Howell-Mason's equal protection arguments in resolving the zoning appeal:

> [Howell-Mason] cannot show that it had a protected property or liberty interest that was curtailed or impugned by the Board's decision to deny the SLUP application exactly because it was a SLUP application.
>
> …
>
> Since [Howell-Mason] lacks any legitimate entitlement to develop the parcels into a gas station, when such use is only permitted by special permit and the standard in 16.02 remains discretionary, **[Howell Mason's] claims of lack of due process and lack of equal protection under the law are without merit.** [(Exhibit L, pp 13, 15 (emphasis supplied)).]

Howell-Mason may not relitigate that same equal protection claim in this action where it arises from the same operative facts presented in the zoning appeal. *Duncan*, 300 Mich App at 194. Moreover, collateral estoppel independently bars Howell-Mason from relitigating the same constitutional issues, even if recast under different theories. *Barrow*, 235 Mich App at 480-81.

The equal protection claim also fails as a matter of law under MCR 2.116(C)(10). This is because—now that discovery has closed—Howell-Mason has been completely unable to substantiate the claim. In fact, when asked in interrogatories to "identify all landowners who are similarly situated as to your equal protection claim" Howell-Mason responded with "Unknown" (Exhibit R). A party that, more than two years into litigation, cannot identify any similarly situated comparator cannot sustain an equal protection claim as a matter of law.

Moreover, Mr. LeBlanc explained that under Michigan's permissive zoning framework categorical restrictions on land uses is inherent in every zoning scheme:

> Q. Is it common to see categories of land uses not allowed within specific districts?
> A. No. Not really, because what's permitted is what's listed in the district. Anything that's not listed is not permitted. So I've never seen or had occasion to prepare an ordinance that says, but you can't do this and this and this, because that's assumed, if it's not permitted.
> Q. So under the permissive zoning framework, essentially, in every district there are a ton of categorically prohibited land uses, correct?
> A. **Based on what I just said, yes.** [(Exhibit A, p 15 (emphasis supplied)).]

In the simplest terms, Howell-Mason cannot claim it was unconstitutionally singled out when its own land use expert confirms that singling out uses is the fundamental mechanism by which all zoning operates.

Count III is barred by res judicata and collateral estoppel and must be dismissed under MCR 2.116(C)(7). Alternatively, Count III must be dismissed under MCR 2.116(C)(10) because no genuine issue of material fact exists and the claim fails as a matter of law.

C. Count IX (Preemption/Conflict with State Law) is Barred by Res Judicata and Collateral Estoppel Under MCR 2.116(C)(7) and, Alternatively, Fails as a Matter of Law Under MCR 2.116(C)(10).

The Michigan Supreme Court recognizes there are four factors in determining whether a state law preempts a local ordinance: "(1) [whether] the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive," (2) "[whether] preemption of a field of regulation may be implied upon an examination of legislative history," (3) "[whether] the pervasiveness of the state regulatory scheme may support a finding of preemption," and (4) "[whether the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." *People v Llewellyn*, 401 Mich 314, 323-24; 257 NW2d 902 (1977). A zoning ordinance regulation is preempted by state law only if "(1) the statute completely occupies the field that the ordinance attempts to regulate,

or (2) the ordinance directly conflicts with a state statute." *Rental Prop Owners Ass'n of Kent Co v City of Grand Rapids*, 455 Mich 246, 257; 566 NW2d 514 (2014).

Howell-Mason advanced this precise preemption argument in its zoning appeal of the Township Board's decision, contending that the prohibition on gasoline service stations within wellhead protection areas was preempted by state law. Judge McGivney squarely rejected that argument after extensive analysis, explaining:

> Appellant challenges Section 16.11(C)(8) as being preempted by State law or in conflict with State law, but then selectively defines the field of regulation to be those areas of State law that regulate drinking water and wellhead protection – areas of law which are notoriously comprehensively regulated by the State. Appellant's definition of "field" is erroneous at best or deliberately misleading at worst. The Zoning Ordinance does not seek to regulate [either of these fields] …Appellant's unwritten underlying premise – that any municipal regulation that arises from a concern for environmental protection is itself an environmental regulation – is fundamentally flawed, and it renders their entire analysis faulty. [(Exhibit L, p 9).]

Howell-Mason may not relitigate that same preemption challenge in this action. Res judicata bars the reassertion of claims arising from the same underlying transaction that were actually litigated or could have been litigated in a prior proceeding. *Duncan v State*, 300 Mich App at 194. Collateral estoppel independently precludes Howell-Mason from relitigating the same preemption issue that was necessarily decided in the zoning appeal. *Barrow*, 235 Mich App at 480-81.

Even if Howell-Mason were permitted to advance its preemption arguments again, the claim would still fail as a matter of law. Judge McGivney's analysis demonstrates that the Township's zoning ordinance regulates land use—not drinking water or environmental protection—and neither occupies a field preempted by state law nor directly conflicts with any state statute. That reasoning applies with equal force here, which the Michigan Court of Appeals agreed with in denying Howell-Mason's appeal "for lack of merit in the grounds presented." *Pioneer State Mut Ins Co v Michalek*, 330 Mich App 138, 145; 946 NW2d 812 (2019) (explaining

the phrasing of "lack of merit in the grounds presented" is a review of the merits and an adjudication of the same). Further, Howell-Mason has done nothing within discovery (on this legal issue, no less) to create a material question of fact.

Count IX is barred by res judicata and collateral estoppel and must be dismissed under MCR 2.116(C)(7). Alternatively, Count IX must be dismissed under MCR 2.116(C)(10) because no genuine issue of material fact exists and the preemption claim fails as a matter of law.

II. HOWELL-MASON'S ANTICIPATED JURISDICTIONAL ARGUMENT IS CONTRARY TO THE LAW AND THE APPELLATE HISTORY OF THIS CASE.

Howell-Mason has repeatedly attempted—and will undoubtedly attempt again—to avoid the preclusive effect of the zoning appeal by advancing the assertion that Judge McGivney lacked jurisdiction to resolve certain arguments raised in that zoning appeal. Howell-Mason has framed this contention as a jurisdictional limitation, arguing that the zoning appeal could challenge only the Township Board's decision to deny the special land use permit, while this lawsuit is purportedly the sole forum in which Howell-Mason may attack the validity of the underlying zoning regulations themselves.

This self-serving argument is not merely wrong; it is irreconcilable with the record Howell-Mason itself created in the zoning appeal. In the zoning appeal, Howell-Mason expressly invoked the Circuit Court's constitutional review authority and argued—at length—that the Township Board's decision was not "authorized by law" because it allegedly violated statutory and constitutional provisions, including substantive due process, procedural due process, equal protection, and state-law preemption principles. Howell-Mason urged Judge McGivney to reverse the Township Board's decision on precisely those grounds. Judge McGivney accepted Howell-Mason's invitation, addressed the arguments presented, and resolved them on the merits. When Howell-Mason later attempted to retreat from the scope of review it had demanded, Judge

McGivney accurately characterized the maneuver for what it was: **"***The argument that this Court lacked jurisdiction … constitutes the most flamboyant manufactured appellate parachute this Court has ever seen***"** (Exhibit S, p 7 (emphasis supplied)).

The governing law confirms that Judge McGivney had full authority to do exactly what Howell-Mason asked him to do. Where, as here, a township zoning ordinance does not provide for review of a special land use permit decision by a zoning board of appeals, the township board's decision is final and subject to direct appellate review by the circuit court pursuant to Const 1963, art 6, § 28. That constitutional provision establishes a *minimum* scope of judicial review—not a ceiling—and expressly includes review of whether the administrative decision was authorized by law.

The appellate history of this case further underscores the hollowness of Howell-Mason's jurisdictional theory. Howell-Mason raised the same arguments to the Michigan Court of Appeals, which denied leave to appeal "for lack of merit in the grounds presented," which is a merits-based reject of the arguments. *Pioneer*, 330 Mich App at 145. Had Howell-Mason been correct that Judge McGivney lacked jurisdiction to decide the issues he addressed, the Court of Appeals would not have disposed of the application in that manner.

CONCLUSION

Howell-Mason fully litigated these claims in the zoning appeal, pursued appellate review through the Michigan Court of Appeals and the Michigan Supreme Court, and lost at every stage. Michigan law does not permit a disappointed litigant to relabel rejected arguments or pursue a collateral action in hopes of obtaining a different result. Furthermore, discovery has revealed the meritless nature of these claims. These counts are appropriately dismissed because the challenged claims are barred by res judicata and collateral estoppel and fail as a matter of law on the record.

Respectfully submitted,

Fahey Schultz Burzych Rhodes PLC
Attorneys for Defendant

Dated: April 3, 2026

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STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
a Michigan Limited Liability Company,

Plaintiff,

v

HOWELL TOWNSHIP,
a Michigan General Law Township,

Defendant.
_____/

Case No. 24-32242-CZ

HON. SUSAN LONGSWORTH

INDEX OF EXHIBITS

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EXHIBIT B	02/20/2026 Deposition of Gregory Buhoveckey Excerpts
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EXHIBIT D	Purchase Agreement – 70 N Burkhart Road
EXHIBIT E	Purchase Agreement – 3598 Mason Road
EXHIBIT F	Howell Township Zoning Ordinance Excerpts
EXHIBIT G	06/26/2023 Howell-Mason Initial SUP Application
EXHIBIT H	10/17/2023 Howell-Mason Supplemental Application
EXHIBIT I	11/21/2023 Howell Township Planning Commission Meeting Minutes
EXHIBIT J	12/11/2023 Howell Township Board Meeting Minutes
EXHIBIT K	01/29/2024 Howell Mason's Claim of Appeal (Case No. 24-350-AA)
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EXHIBIT R	08/14/2025 Plaintiff's Discovery Answers
EXHIBIT S	05/07/2025 Opinion and Order on Plaintiff's Motions for Reconsideration

Respectfully submitted,

Fahey Schultz Burzych Rhodes PLC
Attorneys for Defendant

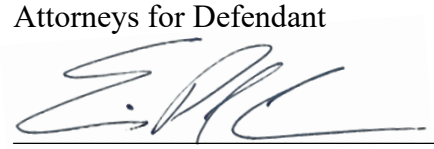

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EXHIBIT A

STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC, a Michigan
Limited Liability Company,

Plaintiff, CASE NO. 24-32242-CZ

vs HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP, a Michigan
General Law Township,

Defendant.
_____/

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DEPOSITION OF PAUL LEBLANC, AICP,

Taken by the Defendant before Debra M. Cummings, Court Reporter (CSR-6037) and Notary Public for the County of Livingston, acting in the County of Livingston, Michigan, on Friday, February 20, 2026 at 133 West Grand River Road, Brighton, Michigan at 12:45 p.m.

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STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC, a Michigan Limited Liability Company,

Plaintiff, CASE NO. 24-32242-CZ

vs HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP, a Michigan General Law Township,

Defendant.
_____/

PAGES 1 THROUGH 51

DEPOSITION OF PAUL LEBLANC, AICP,

Taken by the Defendant before Debra M. Cummings, Court Reporter (CSR-6037) and Notary Public for the County of Livingston, acting in the County of Livingston, Michigan, on Friday, February 20, 2026 at 133 West Grand River Road, Brighton, Michigan at 12:45 p.m.

APPEARANCES:

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DEBRA M. CUMMINGS, CSR 6037
Certified Shorthand Reporter

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(Exhibits attached to Transcript)

Brighton, Michigan
Friday, February 20, 2026
at or about 12:45 p.m.

PAUL LEBLANC, AICP,
having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. SZYMANSKI:

Q. This is the time and place agreed upon for the expert deposition of Paul LeBlanc, and you were identified as an expert by Howell-Mason in the ongoing litigation. Now, today their technical name is Howell-Mason, but I may refer to them as Mugg & Bopps, you may as well, but we're talking about the same person. Do you understand that?

A. Right.

Q. The transcript of this deposition will be used for all purposes allowed under the Michigan Court Rules. And I know that you've had your deposition taken before. So I'll go over just a couple of the ground rules, but I'm sure you're familiar. If you need a break, just say the word.

A. Sure.

Q. But the ground rules I want to cover are that when I ask you a question today, I'm going to expect, if you answer, that you understood the question, is that fair?

A. Yes.

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A. I wouldn't say I've specifically advised them. I mean, the law requires that a public hearing be held on any special use, so that's just standard practice. And it comes down more to the deliberations. Usually, if we have a number of people at the public hearing, the decision making body is going to refer to some of the public comments. I mean, typically, it's traffic and property values and drainage and things like that that are almost universal in every public hearing.

Q. Are those valid concerns?

A. Well, they can be, but more often than not, in my experience, they're not. They're emotional. Public hearings tend to be very emotional. A lot of the comments that are presented are hyperbole. They're not based in fact. No matter what kind of evidence the applicant presents, it rarely convinces the public opposition.

You know, I've seen numerous traffic studies come in and say the traffic will not deteriorate or we recommend that this improvement be made to mitigate the traffic impact and yet the same comments about traffic will come up time and time again at the hearing.

Q. In your experience of drafting ordinances and reviewing them, do zoning ordinances sometimes include categorical restrictions on land uses within specific districts?

A. I'm not sure I understand what you mean.

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Q. Specific zoning districts?

A. Yeah.

Q. Is it common to see categories of land uses not allowed within specific districts?

A. No. Not really, because what's permitted is what's listed in the district. Anything that's not listed is not permitted. So I've never seen or had occasion to prepare an ordinance that says, but you can't do this and this and this, because that's assumed, if it's not permitted.

Q. So under the permissive zoning framework, essentially, in every district there are a ton of categorically prohibited land uses, correct?

A. Based on what I just said, yes.

Q. So turning to the project here with Howell-Mason --

A. Yes.

Q. -- do you remember when you were first asked to participate in Howell-Mason's process?

A. I think it was January of last year, if I remember correctly. I can't honestly say for sure.

Q. Okay. Do you know who asked you to do the work?

A. Mr. Burns.

Q. Have you worked on other cases with Mr. Burns?

A. Yes.

Q. Do you know what the names of those cases would be?

A. This is the most recent, so several others have been years

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ago.

MR. SZYMANSKI: Mr. Burns, do you think you could get me a list of that after?

MR. BURNS: Yeah. I'll give it a whirl. It's been a while.

BY MR. SZYMANSKI:

Q. Okay. What were you asked to do?

A. In this case? I was asked to review the file and provide an opinion, and that's pretty much what I did.

Q. Any sort of opinion?

A. Well, yeah. You know, I make it clear, whenever I'm retained, whether it's Mr. Burns or any other attorney, that the first step is if they want me to review the file, I will review the file, but I will give them an objective opinion. I'm not a gun for hire. I'm not agreeing to testify without believing in what the case is.

Q. And by that, if there were certain aspects of the process that you did not provide an opinion on, is that because you chose not to or were told not to?

A. Well, I wasn't not to do anything, but I tried to focus just on the zoning aspect.

Q. Okay. What's your hourly rate?

A. 250 an hour.

Q. Okay. I'm going to show you what we'll mark as Exhibit 2.

DEPOSITION EXHIBIT NUMBER 2 WAS MARKED BY THE

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REPORTER FOR IDENTIFICATION.

BY MR. SZYMANSKI:

Q. Did you prepare this letter?

A. Yes.

Q. And what materials did you review when you were preparing this letter?

A. I reviewed the file materials on the Complaint, zoning ordinance, the master plan, correspondence from EGLE and state fire marshal, site plan, comments from the township's planner and engineering consultants, letters from the applicant's engineering firm, some of the specifications from their -- I don't know what you'd call them -- their engineering consultant that designed the tanks for the use. I think that's probably it.

Q. You said attached to Complaint, what did you mean by that?

A. Well, the Complaint that was filed.

Q. So that would have been after this letter was sent?

A. Oh, yeah. Yeah.

Q. So at the time when this letter was sent, a couple of those things that you listed were after?

A. Yeah. The Complaint would have been after.

Q. Okay. So you drafted this letter, and then you did you attend both of the public hearings?

MR. CONN: Let's go off the record for just a second.

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Q. And that's what we were just talking about and what prompted kind of your curiosity into why is this a regulation?
A. Yes.
Q. Is it common for zoning ordinances on their face to state the purpose for their regulations?
A. I'm sorry, the purpose?
Q. Is it common in zoning ordinances for specific regulations to have a purpose statement?
A. Well, it's common to have a purpose statement for the zoning districts themselves. It's common for special use chapter to have a purpose statement of why special uses are different than permitted uses. It wouldn't necessarily be common to have a purpose statement of why they were specifically targeting gas stations.
Q. Well, you say that there's no rationale offered, but is it common for rationales to be offered for these kinds of individual restrictions in a zoning ordinance?
A. Not the individual ones, but like I said, for special uses in general, but the reason that I was struck that there was no rationale was that the ordinance that they use to deny this was that there was no wellhead overlay district, and that's where a purpose statement would have been appropriate.
Q. Well, when you say there's no rationale offered. Could a rationale have been offered at the time the zoning was drafted?

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A. It could have been, but it was never put down in writing.
Q. Did you look back through, when this zoning ordinance provision was enacted, whether or not any of the township board meeting minutes discussed the need for this?
A. No. I didn't.
Q. Could that have happened?
A. It could have happened, but it wasn't part of the ordinance.
Q. Could it have been part of their wellhead protection planning as a community back when they adopted that?
A. Possibly, but again, there was no evidence of that in the ordinance.
Q. In the ordinance, but you could have looked elsewhere, correct?
A. But to me that's meaningless. It doesn't carry any weight if they discussed it, but never used that in the legal document to justify why they were selecting one use over all others.
Q. So it's your professional planning opinion, that when you decide to enact a restriction for a specific land use that ought to memorialize your reason within the zoning ordinance?
A. For a category of uses, yes, special uses.
Q. But not for one specific use, like a gas service station?
A. Yeah. And that's what was strange about this because they targeted one specific use for that one requirement that it couldn't be located been the overhead wellhead protection district. If there were numerous uses that were subject to

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that provision, then I might have said, well, if I had been writing the ordinance, I would have done it differently, but they're not singling out one use, but in this case they did.
Q. If we can go to the second page. In the first paragraph after the numbered paragraphs, there's a line, and I'll quote, where you say I question what legitimate government interest is served by prohibiting this single use from locating within the wellhead protection area, plus another 300 feet?
A. Correct.
Q. What did you mean by question?
A. Well, I didn't see any purpose to it. Again, it goes back to not restricting uses in the wellhead protection district. It was why are you picking on one use when you allow any number of other uses that could be similar to this in terms of potential danger with no justification given?
Q. So, but you use the word question. That's different than saying there is no legitimate government interest, correct?
A. Well, I said I question what that legitimate interest is.
Q. Is protecting drinking water a legitimate government interest?
A. Yes. Sure.
Q. Is maintaining public confidence in the safety of the community's drinking water a legitimate public interest?
A. Sure.

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Q. Could those interests be the ones that served that prohibition of gas stations in wellhead protection areas?
A. They could be, but not singling out just one use to serve those purposes. That was my concern.
Q. So in your letter you identified several uses that are permitted in or near wellhead protection areas without the same restrictions that pertain to gas stations, correct?
A. Correct.
Q. You identify vehicle service and repair shops and dry cleaning establishments as uses that are allowed in preparing this, correct?
A. Yes.
Q. What's the basis in which you compared those land uses to gas service stations?
A. Well, because vehicle repair, for example, as I said in my memo, it doesn't define what that is. The only limitation is they don't permit body shops as part of vehicle repair. So it could be transmission repairs, engine rebuilding, oil changes, virtually anything that involves repair of a vehicle, which generally means fluids leaking out and storing oils and so on on site. Really no different. In fact, in this case, potentially more dangerous than the service station that was proposed, because they're not doing any repair work. They're just pumping gas.
Q. How do you arrive at that conclusion? How do you know that

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change?
A. Well, sure they can change, but the plan was only adopted I think two years ago. Maybe 2025 even.
Q. The same members of public that were concerned about increased commercial activity at this property could show up and ultimately persuade the board not to go forward with those plans, correct?
A. They could, and that's one of the problems is when the board doesn't do their job and they advocate their responsibility to the vocal few at a public hearing. The zoning act requires that zoning be based on a plan, and the new master plan for the township shows the whole west side of that corridor as commercial.
Q. Did you speak to any of the residents who expressed concerns at the meetings?
A. No.
Q. Do you think that would have helped inform you at all for the opinions that you're giving in this case?
A. No.
Q. Why?
A. Because the comments were nothing I haven't heard before. I mean, I get what the concern is, but it's not what's reality.
Q. Whose reality? Those people who live there or --
A. The township.
Q. -- your view?

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A. I mean, the master plan says what the master plan says. It was adopted by the planning commission and the township board. They approved commercial along that whole corridor.
Q. So you sent a letter to the planning commission?
A. Yes.
Q. There was two public hearings held, one in front of the planning commission, and another in front of the township board, correct?
A. Yes.
Q. You had an opportunity to present?
A. Yes.
Q. And other individuals, as part of Howell-Mason, had an opportunity to present, correct?
A. Correct.
Q. Is that typical with the process that you see afforded to special land use applicants the throughout the state?
A. I think for any applicant it's typical. I mean, the applicant has the right to present their project, and if they have consultants involved, they're going to explain different aspects of the project, and then the public hearing is opened.
Q. Was the process that Howell Township went through reviewing the special land use application, in your view, consistent with what is required under the Michigan Zoning Enabling Act?
A. Yeah. I think so.

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Q. Do you think that there's any other process that the township board should have afforded to Howell-Mason?
A. Well, the only thing is, as I pointed out in my memo, which has since been changed in the new 2025 ordinance, there was no appeal process available to the applicant once they were denied by the township board. The zoning ordinance specifically says the board of appeals can't hear appeals of special use decisions. The new wellhead overlay district does appear to contain language that allows for appeal of a denial.
Q. Okay. But that's not required under the Michigan Zoning Enabling Act?
A. No. It's not.
MR. SZYMANSKI: Could you mark this as Exhibit 3. And we can just call it Howell Township Zoning Ordinance.
DEPOSITION EXHIBIT NUMBER 3 WAS MARKED BY THE REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. Now, I know you said beforehand that you reviewed the zoning ordinance in preparation for today, correct?
A. Yes.
Q. So I don't know that we need to go through it piece by piece, but I just want to confirm that you would agree Howell-Mason's special land use application was subject to the special land use standards in section 16.06 and section

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16.11, correct?
A. Yes.
Q. Now, under the Howell Township Zoning Ordinance, the authorities who approve or deny special land use permits rest with the township board, correct?
A. Yes.
Q. Do you understand, in this case, that the Howell Township Board decided to deny the special land use application based on four different standards not being satisfied?
A. I don't recall, specifically, the four. But yeah, there was more than just being located in the wellhead protection zone.
MR. SZYMANSKI: Okay. Let's just mark these meeting minutes as Exhibit 4.
DEPOSITION EXHIBIT NUMBER 4 WAS MARKED BY THE REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. I just gave you the minutes in Exhibit 4, in case you want to look at which specific standards weren't met, but if we can turn our attention in Exhibit 3 to section 16.06 A. And I'll just give you an opportunity to read that section.
A. All right.
Q. Is that a common special land use standard?
A. Yes.
Q. Do you understand that the township board unanimously concluded that the proposed use did not satisfy this

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standard?
A. Yes.
Q. That conclusion was based, at least in part, on comments from members of the public, correct?
A. I assume so. Yes.
Q. And we were talking about this earlier, but you'd agree that public comments regarding traffic, noise, lighting, neighborhood character are relevant consideration for the township board to make when they're reviewing a special land use application, correct?
A. They can be, yes.
Q. Now, your September 22nd, 2023 letter, you did not analyze this standard, correct?
A. No. I did not.
Q. And earlier you said that there are standards that are subjective --
A. Yes.
Q. -- in the special land use permit process?
A. Yes.
Q. Is subsection A one of those subjective standards?
A. Yes.
Q. So is it your opinion that Howell Township had the discretion to determine whether or not this standard was satisfied?
A. They do.
Q. If a standard is not met through the special land use permit

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application process, does the township board have the authority to grant it?
A. I would say if they find that it's not met, no, they would not grant the special use.
Q. Okay. Now, I want to go to subsection D.
A. All right.
Q. Is this a common special land use standard?
A. Yeah. Similar. Yes.
Q. Do you understand the township board also unanimously found that this standard was not met?
A. Yes.
Q. Now, this standard, because we've talked about the one -- the prohibition of gas stations in wellhead protection areas?
A. Yes.
Q. This is a different standard than that, correct?
A. Correct. Well, it could relate to it, but it's a different standard. Yes.
Q. Are you aware of whether or not there are private domestic wells in the vicinity of the proposed setting?
A. I believe there are.
Q. Did you have any discussions with anyone related to private domestic wells near the area?
A. No.
Q. If there are private domestic wells in the area near the site that draw from the shallow nonconfined aquifer, would the

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potential impact on those wells be a relevant consideration under subsection D?
A. I would say it depends on how the use is designed. Again, from everything I saw, and I'm not an expert in this, but based on the drawings and the testimony from the plaintiff's engineer and the people that supply the tanks, and again, approval from the state fire commissioner, EGLE, it seems like there was no concern from them regarding those potential hazards.
Q. Did you review anyone who looked at the potential impact on the nonconfined aquifer?
A. I didn't. No.
Q. Do you think that that would be helpful in analyzing this standard?
A. I don't believe so, because the technology was approved by everybody.
Q. Are there concerns outside of just the underground storage tank with gas stations from an environmental prospective that you're aware of?
A. The only one I can think of is there's concern that there may be a spill at the pumps if somebody hits the fuel pump or the handle is left on and the fuel flows, but I don't know what mitigation measures were taken or what would be taken. I know they did talk about an alarm system and automatic shutoff and things like that, but that's beyond my expertise.

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Q. Who did you rely on to provide that expertise as to whether or not it was safe or there were concerns with the gas station and the environment?
A. Well, I think the owner, because they have a number of gas stations, they've been in this business a long time, and the people that design the systems.
Q. One of the reasons that was cited by the township board with reference to this specific standard was that the proposed use could jeopardize the placement of a future municipal well. Do you think that's a valid concern, if true?
A. Personally, I don't believe that's a legitimate concern, because they've talked about a future well, but there's no assurance that that would ever happen, and they're imposing a restriction on a property owner based on a supposition that maybe someday there might be something there. It's not like they have a specific plan that in five years we're going to put a new well there.
Q. If they did have plans for the contingent wellhead, would that change your opinion?
A. It might. Again, it would depend on the proximity and the geology.
Q. So if that's the area that's designated as a contingent wellhead in case of failure for other wellhead areas or that they dry up, would that change your opinion?
A. Again, it's based on supposition that maybe some day it

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might.
Q. And you didn't analyze this standard in your letter, correct?
A. No.
Q. Why not?
A. Because I was focused on the wellhead restriction.
Q. Okay. The next standard is subsection F. I'll give you an opportunity to read that.
A. All right.
Q. Do you know that the township board also unanimously found that this standard was not met by the applicant?
A. That's my understanding. Yes.
Q. And this standard was not addressed in your letter, correct?
A. Correct.
Q. So let's go to section 16.11. And this was the focus of your letter, correct?
A. Yes.
Q. This section provides that no gasoline service station shall be permitted within 300 feet of a wellhead protection area, correct?
A. Correct.
Q. Do you have any basis to dispute that the gas station as proposed was within the wellhead protection area?
A. No.
Q. This is a discretionary or an objective standard?
A. This is an objective standard.

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Q. Is there any exception built into the zoning ordinance for this standard?
A. No. And that's something I pointed out in my report.
Q. And the township board determined unanimously that this requirement was not satisfied, correct?
A. Correct.
Q. Could the township board have lawfully approved this special land use application as present in the light of this prohibition?
A. I don't believe so.
Q. Now, under the Howell Township zoning ordinance, relief from strict application of an ordinance can be obtained by seeking a variance from the Zoning Board of Appeals, correct?
A. Yes, but not in this case.
Q. Why not in this case?
A. Because number one, the Zoning Act says that the board of appeals may not hear an appeal of a plan unit development or a special use request unless the ordinance specifically provides for it.
Q. I'm not talking about appeal from the township board decision. I'm talking about a variance from their requirements of section C 8.
A. I don't think the board of appeals would have authority to grant a variance from a standard, because then they're changing the ordinance. There's no -- based on the typical

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standards for variances, I don't see how they could justify negating any standard.
Q. I've got a community I'm working with where there is a accessory structure, there's actually a special land use in the zoning ordinance. Now, accessory structures are limited to just two per property. So that applicant wanted a third accessory structure on the property. So they sought a variance to allow for a third, but then they also had to seek special land use approval. Do you get that process?
A. Yeah. And I wouldn't -- if they granted the variance, I think they were not following proper procedure.
Q. So you're saying it would have been a use variance that the Zoning Board of Appeals would have essentially been considering?
A. Well, not even that, because the use variance, the main criteria is the existing zoning doesn't provide a reasonable use of the property. So that's, you know, I'm zoned residential, but I'm at the intersection of two arterial streets, and nobody in his right mind is going to build a single family home there, so I'd like to put an office building there, and I've been denied office zoning, so I asked for a use variance.
Q. So I want to go back, because you said that you don't think that, as presented, the application, that the township board had the authority to approve it, correct?

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A. Yes.
Q. So the special land use application was futile?
A. Yes.
Q. Okay. I want to show you a document --
MR. SZYMANSKI: Can we mark that as Exhibit 5.
DEPOSITION EXHIBIT NUMBER 5 WAS MARKED BY THE REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. Do you recognize this document?
A. From five years, six years ago. Oh, yeah. I do.
Q. Did you prepare this document?
A. Yes.
Q. Was it for Cannon Township?
A. Yes.
Q. Where is Cannon Township?
A. It's north of Grand Rapids. It's a suburban community, maybe 20 miles north of Grand Rapids.
Q. And this was concerning a special land use application for a Top Stop Motor Vehicle Service Station, correct?
A. Correct.
Q. Now, in this review, you analyzed every applicable general land use standard under the Cannon Township Ordinance, correct?
A. Correct.
Q. You analyzed whether or not the proposed use was harmoniously

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compatible with the existing character of the community?
A. Yes.
Q. And you analyzed whether or not it would be detrimental by the reason of noise, traffic, smoke, fumes, glare, odors, correct?
A. Yes.
Q. And you analyzed whether or not it would be compatible with the natural environment, correct?
A. Correct.
Q. And you analyzed whether or not it would be consistent with the intent and purposes of the ordinance and master plan, correct?
A. Yes.
Q. Your analysis here would represent your professional opinion in how to interpret zoning ordinance standards, correct?
A. Yes.
Q. Now, in this case there were additional use specific standards for motor vehicle services in section 23.26, correct? And if you need to take an opportunity to review it, please.
MR. LULGJURAJ: It's on page four.
THE WITNESS: Yes.
BY MR. SZYMANSKI:
Q. And for each standard you analyzed as to whether or not it appeared to be met, correct?

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A. Correct.
Q. Why did you not perform that type of comprehensive analysis for the Howell-Mason application?
A. Well, again, the issue for me was the prohibition, because it's in a wellhead protection district. I mean, I wasn't -- if I had been the township's consultant, I would have done a review like this, but I was more focused on just that part of the zoning issue.
Q. In talking about that with the other standards in the Howell Township zoning ordinance, you agree that the failure to satisfy even one of the conditions required denial of the special land use application?
A. Yes.
Q. And in this case, there was four requirements that were deemed not satisfied, correct?
A. Correct.
Q. So each one of those would be an independent basis to deny the special land use application?
A. Because they found that they weren't met, I wouldn't agree with their findings. But yes, based on their action, that's justification to turn it down.
Q. Okay. Now, I want to show you Judge McGivney's opinion. Did I already give you those?
MR. SZYMANSKI: We can mark that as Exhibit 6.
DEPOSITION EXHIBIT NUMBER 6 WAS MARKED BY THE

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REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. I'm happy to give you the time to read the entire thing or I can show you what I'd like to discuss.
A. Just show me.
Q. Okay. Page 13. I'm looking at the second paragraph where it says, here in this case Howell Township has a legitimate interest in protecting the general welfare of the community in locating land uses compatible locations to other land uses. That legitimate interest of the municipal government isn't shrined in the MZEA itself. The regulation of the location of gas stations, which involve gasoline runoff and gasoline storage tanks in relation to the community ground water aquifer is reasonably related to the MZEA's stated goal of allowing municipalities to establish zoning ordinances to protect the general public safety, health, and welfare.
Does the Court's identification of a legitimate government interest change your view that there's no rationale for section 1611 C8?
A. Well, I don't disagree with what the zoning act says, but I don't think the judge's finding takes in the full context of where the property is and what's proposed. Again, going back to what I said earlier, the new master plan shows the entire corridor on the west side of the street as intensive commercial. So to me, that changes things with respect to

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whether that's a compatible use or not and the extent to which it would have an impact.
Now, the concerns about ground water aquifer are certainly reasonable, but again, I think substantial evidence has been provided to the township that that's not an issue, and the state agrees with it, and the local fire marshal agreed with it, and MHOG even didn't protest it in their initial review of the request.
Q. Are you aware that Judge McGivney reviewed all of that, the evidentiary support by Mannik Smith, the letters from MHOG, your letter, and still found to the contrary?
A. And that's why he's a judge and I'm not.
Q. So I want to take you to page eight, just one more section.
A. Page?
Q. Eight.
A. Eight. Okay.
Q. The section or -- Judge McGivney writes that the prohibition of gas stations in wellhead protection areas is rationally related to protecting human health and the environment, including the drinking water in the community aquifer, as well as preventing noise and light pollution and great traffic jams. What basis do you have to disagree with that?
A. I'm sorry, I don't have the right page, I guess.
Q. Page eight.
A. Eight?

A. Yes.
Q. Did you rely on anyone else to formulate your opinions in the case?
A. No.
Q. And have you been asked to do any additional work that we have not talked about today?
A. No.
Q. Is there anything you want to add to your testimony today?
A. I don't believe so.
Q. Anything about your opinions that you care to clarify or correct?
A. No.

MR. SZYMANSKI: Okay. I don't have any further questions, guys.

MR. LULGJURAJ: We don't have any questions.

THE REPORTER: Can I have your orders.

MR. LULGJURAJ: PDF or e-trans.

MR. CONN: PDF is fine.

THE REPORTER: Okay. Thank you.

(The deposition was concluded at 2:30 p.m.)

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON)

I Debra M. Cummings, CSR 6037, and Notary Public, certify that this transcript, consisting of 51 pages, is a complete, true, and correct record of the testimony of PAUL LEBLANC, held in this case on Friday, February 20, 2026.

I also certify that prior to taking this deposition, PAUL LEBLANC was duly sworn to tell the truth.

I also certify that I am not a relative or employee of or an attorney for the party; or a relative or employee of an attorney for a party; or financially interested in the action.

Debra Cummings

Debra M. Cummings CSR 6037
Notary Public: Livingston County, Michigan
My Commission expires: 7-18-2026
DATED: February 25, 2026

EXHIBIT B

STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC, a Michigan Limited Liability Company,

Plaintiff, CASE NO. 24-32242-CZ

vs HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP, a Michigan General Law Township,

Defendant.
_____/

PAGES 1 THROUGH 144

DEPOSITION OF GREGORY BUHOVECKEY, PE,

Taken by the Defendant before Debra M. Cummings, Court Reporter (CSR-6037) and Notary Public for the County of Livingston, acting in the County of Livingston, Michigan, on Friday, February 20, 2026 at 133 West Grand River Road, Brighton, Michigan at 8:00 a.m.

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STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

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Plaintiff, CASE NO. 24-32242-CZ

vs HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP, a Michigan General Law Township,

Defendant.
_____/

PAGES 1 THROUGH 144

DEPOSITION OF GREGORY BUHOVECKEY, PE,

Taken by the Defendant before Debra M. Cummings, Court Reporter (CSR-6037) and Notary Public for the County of Livingston, acting in the County of Livingston, Michigan, on Friday, February 20, 2026 at 133 West Grand River Road, Brighton, Michigan at 8:00 a.m.

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DEBRA M. CUMMINGS, CSR 6037
Certified Shorthand Reporter

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(Exhibits attached to Transcript)

Brighton, Michigan
Friday, February 20, 2026
at or about 8:00 a.m.

GREGORY BUHOVECKEY, PE,
having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. SZYMANSKI:

Q. This is the date and time for the deposition of Greg Buhoveckey identified as an expert witness in this case by Howell-Mason, LLC. Now, today I'll refer to them as Howell-Mason. At times it may be Mugg & Bopps, but it will be the same person. Do you understand that?

A. Um-hum.

Q. This deposition will be used for all purposes that are allowed under the Michigan Court Rules and will have the same effect as if you're testifying in front of a Court. Do you understand that?

A. Yes.

Q. As we go on throughout today, just a couple of ground rules here at the start. I'll ask questions, and I'll expect you to give a verbal response, so that Debbie here is able to record it. Do you understand that?

A. Yes.

Q. Now, when I'm asking a question, at times you may think that

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Q. Why?
A. Because that aquifer is confined. And that's the big issue here. And if you look at those cross sections, I mean, just from a natural standpoint, without getting into the engineered controls, which I'm familiar with the engineered controls and what they do out there, and not getting into the technical of how much does it leak or what could possibly happen there.
We were focusing just on the natural conditions of that site, where it is and what's under it. And after reviewing all of that information, we could make these opinions without going to the engineered controls. Now, we did go to the engineered controls, it does mention those in the letter, the multimillion dollar leak detection, double wall, all those things there you'll notice, page three, are listed. And that's in addition to.
But the fact is, is that aquifer, the natural conditions provide enough protection for it that the engineered controls that we're talking about and the rules that govern those are just kind of like the thin layer of frosting on a much larger cake, which is that aquifer is confined.
Q. I'm trying to understand what you're saying. Are you saying it almost doesn't matter if the storage tanks leak because of the aquifer?

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A. The natural conditions make it that 90 percent of what we're talking about or a large percentage of the potential for anything to happen to that aquifer hinges on the natural conditions, not necessarily the controls at the site.
Q. So it doesn't matter, in your opinion, how likely or unlikely the tank would be to leak?
A. It matters, I mean, because there's other environmental consequence and things of that nature.
Q. What do you mean by that?
A. Okay. Say, for example, the tank did leak, that's a problem. You know, if we have release at the site, that is a problem. It's a problem for, you know, safety, for an explosion, for a fire. It's a problem for shallow ground water contamination right there. It's a problem for surface water runoff, contamination.
Q. What do you mean by shallow ground water?
A. Shallow ground water would be the ground water that's right at the site, right under the site that interacts with the surface. You have a direct interaction with the surface, with the surface water, and with what's going on at the surface. That is what shallow ground water, purged ground water would be, direct interaction.
This is a confined aquifer. It's very far below the surface. It does not interact with the surface water in that area. It does not interact with the shallow ground

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water, which would be the ground water above the confining layer. It's separate. It's hydraulically separate. The definition of a confined aquifer is that it's hydraulically separated from the surface and shallow ground water.
Q. So why do you think it would not be necessary to review EPA data on the frequency of leaks from underground storage tanks in preparing this letter?
A. Because the aquifer is confined.
Q. Could it matter for other environmental concerns?
A. It could matter for other environmental concerns like, say, for instance, surface water contamination, but our letter did not deal with surface water contamination. We were specifically looking at the confined aquifer. We were specifically looking at it's relation to those time of travel zones for the municipal wells, which get their water from the confined aquifer. We weren't looking at any of those other factors.
So in that regard, the tanks leaking or not leaking didn't really play a role in what we were looking at. It's a good thing. It's in addition to -- it's an additional risk reducer, but it's not a huge contributing factor here. If we were looking at surface water, it would be.
Q. So what depth are we talking about for the shallow water that you're referring to?
A. At this site, shallow ground water could be anywhere from a

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foot beneath the surface to five, ten feet, would be my guess. We didn't do shallow surface or ground water studies out here. We specifically looked at the Marshall Sandstone Aquifer.
Q. Could you go to Exhibit 1 of your letter. What are the green dots?
A. Those are domestic wells.
Q. Could you tell me what a domestic potable well is?
A. A domestic well would be like, say, for example, for a house or residence.
Q. How many green dots do you see on this diagram?
A. Looks like five. I want to grab mine. Mine's a bigger print. Here we go. Actually, I looks like four, because that one is blue. So I think we're talking about four.
Q. Okay. And are those all close to the proposed site?
A. Yeah.
Q. Did you analyze any potential impact to those domestic potable wells?
A. No.
Q. Would the EPA on storage tank leaks be relevant for those?
A. In this case, yeah. They probably would.
Q. Why?
A. Because those are shallow, most likely shallow wells. Now, I know the one across the street, which is that blue dot is not. That's why it's a blue dot, because it's a type two,

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you'll notice. The type one shallow wells there are within that shallow ground water zone. They're not -- if you go back and look.

Q. So you're not offering an opinion that the underground storage tanks would be safe for those wells, correct?

A. No. We were, specifically, looking at confined aquifer. We were, specifically, looking at that time of travel zone that we were within for the municipal wells, which are to the south and west of the site.

Q. Okay. Now, can we go to Exhibit 2 and 3. We're going to talk about both of the cross sectionals. First, did anyone from Mannik Smith visit the proposed site?

A. Yes.

Q. Who?

A. Walt went out there. He's been in that area, actually wanted to go out there last night, but it was dark, so it didn't make a point to go over there.

Q. Walt went out there. What did Walt do there?

A. He just -- I mean, just observed the sites. I mean, just drive down the streets. There's really not much to see.

Q. And in terms of site testing, did Mannik Smith get any soil borings?

A. No.

Q. Ground water sampling?

A. No.

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Q. Monitor any well installation at the site?

A. No.

Q. So where does Mannik Smith get it's data to create these cross sectionals from?

A. Our data came from, one, the sources we listed. There's a lot of data in there. We pulled that out. And then that EGLE site. Those sources that are listed is where this came from.

Q. Okay. And when we say that these cross sectionals are generalized, what does that mean?

A. Generalized will be, okay, for example, let's look at Exhibit 2. We have the record for the well at Angelo's Party Store right across the street, and we have the well records for the other well shown. Those are connected with the different layers between, as shown, based on the geologic maps and what we know from the data that we got.

So it's generalized in that -- if you went, for example, in the roadway Burkhart Road. See where we're at right there? So we're between the Mason Road side and the party store right there where we don't have a well, we don't have actual subsurface data showing what that is. A lot of that is generalized between the two points that we do know.

Q. Would site specific data give you a more accurate depiction of the ground?

A. Site like -- expand on that.

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Q. Well, Mannik Smith didn't go on the site and perform any testing, correct?

A. No.

MR. CONN: Is that correct?

THE WITNESS: Yes. We did not go to the site and collect additional data.

BY MR. SZYMANSKI:

Q. Okay. Could Mannik Smith have done that?

A. Do we have the capability to do that? Yes. We do have the capability to go collect additional data.

Q. So for a project like this, if money were not an object, what type of data would you want Mannik Smith to collect to create these cross sections?

A. The data that we reviewed, right, I mean this is a huge area we're talking about, huge, and the cost to go out and define this area down to the tee would be astronomical, right? We rely on published data, which is essentially a work in progress. As people drill wells, that well site that we talked about, that information is there, and these sections, the data that's available is then updated.

So over time it becomes more detailed, right? So even though we could go out and collect data, I don't know that we would need to, because I think it's irrelevant, and it's irrelevant because the aquifer is confined. So it doesn't matter whether that hard pan layer that you see here

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that intersects Angelo's Party Store, right, that we know is there, because we drilled through it and observed it at those depths, peters out say at, you know, that thousand foot or so, see how it peters out, because we did not see it in the next well, so we know it's not here, and we know it's here, and it's interpreted --

MR. LULGJURAJ: When you say here and there, indicate where you're pointing.

THE WITNESS: Okay. So Angelo's Party Store, it's there. We see it.

MR LULGJURAJ: When you're pointing to the left side of the exhibit?

THE WITNESS: Right. It was towards --

MR. CONN: What exhibit?

THE WITNESS: Left of center. Exhibit 2 --

MR. LULGJURAJ: Exhibit 2.

THE WITNESS: -- just left of center you'll see Angelo's Party Store, that well right there, and you'll see it intersects the hard pan. So Angelo's Party Store, you'll see that there. The next well log over to the right, which is at 1100 on the scale bar, it doesn't have a name, but it has that 470012883. Do you see it?

BY MR. SZYMANSKI:

Q. Um-hum.

A. When we drilled that well or when that well was drilled, that

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A. No.
Q. Okay. Let's talk about the confined aquifer now. So we can go back to the cross sectionals.
A. Wait. Can we hit on that, though? We didn't do that risk assessment for this site, because we didn't have to. If you look through, and we included it, this letter right here --
MR. LULGJURAJ: What exhibit are you referring to?
THE WITNESS: Exhibit 6.
MR. LULGJURAJ: Of Exhibit 1 -- of Exhibit 2?
THE WITNESS: Yes. Exhibit 6 of Exhibit 2. So in this case, right, so let's just talk about this one, because I don't want to get off track. Like you said, they're putting their underground tank into this unconfined aquifer. It's within our time of travel zone. It's on the edge of the five and ten year. We know where it is. So there's risk here, right? So they had to submit this and fill out the permit applications to have that risk assessed with the state agencies.
So we don't do the risk assessment. The agency does. And they approved it. This letter here, Exhibit 6, approves those tanks to be installed at that site. Now, it does give a variance. They even approved a variance to have it closer to one of these wells than would be typically allowed by these offset distances that we talked about because of what they know and what we know about the aquifer

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in that it's confined.
So not only did the State of Michigan do this risk assessment, per their rules, per all of their rules and setbacks that they set, this is our acceptable amount of risk, they actually then approved this to be closer to one of those wells than would necessarily be allowed, because of the confined nature of that aquifer. And this letter right here tells them that. You know, the isolation distance is not a risk of impact from operation of this system.
So we didn't have to do this risk assessment. They did it for us. The owner --
Q. Did they look at the risk assessment for the private domestic laws?
A. They looked at the risk assessment for the confined aquifer, which is the one we are talking about.
Q. So they did not do a risk assessment for the unconfined aquifer?
A. I'm not sure if they did, because we are specifically looking at this aquifer for the municipal wells and the wells that are within that confined aquifer. Now --
Q. Well, you just said that you didn't do an analysis of the unconfined aquifer, because they did, but then you just said that they did -- they didn't do an analysis of the unconfined aquifer?
A. They approved it for the application that was given, and

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their approval letter here says that it is not at risk for installation, and they approved it. So as part of their approval --
Q. And who was this, who was giving the approval?
A. I'm getting confused here.
MR. LULGJURAJ: You're talking about Exhibit 6?
THE WITNESS: Yes. It's Exhibit 6 of Exhibit 2. Let's see who signed it, State Fire Marshall Director Kevin, looks like, Kevin Sehlmeher.
BY MR. SZYMANSKI:
Q. And he's with the Michigan Department of Licensing and Regulatory Affairs, correct?
A. Correct.
Q. Okay. Can we go to the page that -- this was the page that we thought wasn't included as an attachment to your report?
A. I thought it was the last page.
Q. It's in the middle.
A. Because Exhibit 6 is repeated.
Q. Correct.
A. Right here.
Q. So I'm looking at the page that is titled Underground Storage Tank Plan Review Report. Are you looking at that?
A. Um-hum.
MR. CONN: Yes?
THE WITNESS: Yes. Sorry.

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BY MR. SZYMANSKI:
Q. This is the same agency that provided in what you classified was an approval of the underground storage tank, correct?
A. Wait a minute. Repeat that, please.
Q. This is from the same agency that provided what you classified as an approval of the underground storage tank, correct?
A. It appears that way.
Q. I want to go to the second to last paragraph, that's bolded, and I'll just read it. This review is based upon submitted information. It is not considered a permit. Approval of a tank installation plan by the Department of Licensing and Regulatory Affairs does not relieve an owner/installer from having to meet the requirements of other state and local government laws, including zoning laws. The hazardous material storage inspector may find additional deficiencies during site inspections. Did I read that correctly?
A. Yes.
Q. So when you say that they did a risk analysis of the unconfined aquifer, it would be fair to say that's not a complete risk assessment, because there are still other agencies that may have to review the project, correct?
A. They reviewed it, and per their rules, they approved it, right? And they approved it with a variance. So in that regard, yes, it met their acceptable level of risk for what

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it was.

But they do say, yes, per this, that it does not relieve the installer to meet the requirements of other local governments -- you know what I mean -- including zoning laws and things as such, which is understood, and that is why those site plan approvals that the owner went through, had to be then approved by the local zoning board and things like that. And the local zoning board also has a set of rules and --

Q. And you presented to the planning commission and the township board, correct?

A. We did present to them, and I do have their rules for these different stations, right? So now, again, we're stepping out of my realm of expertise, right? So when we would do a project like this, our site engineers, our site civil guys, they're in charge of the site design, right? And they need to follow the zoning rules, the zoning -- every zoning board has, you know, they're kind of the same, but they'll have little things that are different.

They need to design their site to comply with the zoning, the local zoning board rules, so that they can get their permit -- you know what I mean -- to build the site. For example, like Howell, Michigan may say, okay, for a gas station you have to have a 30 foot wide driveway, you know, whereas in Maumee, Ohio they might be like you have to have a

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20 foot wide ones. So those are the different rules that you need to follow, but as part of those rules, there could be other limitations in there, and a lot of that, too, is with the way the sites are zoned.

Now, we're getting outside of what I know, but I'm going to tell you what I do know about the site. The site is zoned commercial, which means there's a certain set of rules that you have to follow to have a commercial site that's zoned commercial. And they did follow those rules, and I know, by what triggered our response here, was a letter from the utility director of MHOG to the local zoning board about rules governing this. And there is a rule in their zoning now, that my understanding was, was added that says you cannot have a gasoline service station within 300 feet of a wellhead protection zone.

So we're talking all the state rules say you can't have a potential pollution source. They don't specifically define what that is, because there's any number of things that can be a potential pollution source within --

Q. I think this is just getting a little nonresponsive here, if we can --

A. What I'm saying is, yes, there are rules, but there is that rule that was added that we can't comply with. So in that regard, their risk assessment of the site doesn't allow it to be installed, because it's too risky.

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Q. Right. That's their risk assessment?

A. That's their risk assessment from that board from their opinion of -- and it's for a gasoline station. Reading the rule, a gasoline station cannot be within 300 feet of a wellhead protection zone. So if you look at the wellhead protection areas on the map, per their rule, right, we cannot have and cannot put in a gasoline service station per their rules -- and let's look at the area.

MR. CONN: Make sure you refer to the exhibit number.

THE WITNESS: Exhibit 5 of Exhibit 2, within 300 feet of a well -- so this outer circle right here, this yellow blob is the ten year -- so extend that out 300 feet, you can't put a gas station in that area.

BY MR. SZYMANSKI:

Q. Correct. So you sent this -- this was a letter to the planning commission, correct?

A. This letter, yes.

Q. And you attended two public meetings related to the special land use application, correct?

A. Yes.

Q. And did you present at both of those meetings?

A. I presented at one.

Q. Okay. Your letter and presentation dealt with your opinion as to the confined aquifer, correct?

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A. Correct.

Q. You were not offering any information to them as to the safety of the underground storage tank in the unconfined aquifer, correct?

A. We focus totally on the confined aquifer. The municipal wells, the confined aquifer, and the gas station located at that site is what we focused on.

Q. So, yes or no, you didn't provide any information related to the safety of the underground storage tanks and gasoline service station to the unconfined aquifer?

A. I provided no information is what you said. Yes. I provided no information.

Q. Great. Let's --

MR. CONN: We do that to ourselves all the time as attorneys.

BY MR. SZYMANSKI:

Q. Let's talk about now the confined aquifer. So Exhibits 2 and 3, the cross sectionals to your letter, can you just describe what the confining layer is. I know we were talking about that earlier, but if you could just try to clearly describe what it is in Exhibits 2 and 3.

A. The confined layer is the clay, hard pan, limestone, and shale layers.

Q. Which of those materials is the best buffer?

A. They're all very good. It would be hard to say, with the

we're not identifying anything else. Like we've got a leaking underground storage tank, which I'm not sure what's in it, it's gasoline, diesel, it's something. It's leaking. It's identified as leaking. It's within our wellhead protection zone. But it's not a gas station. So what about that one?

Q. Are you saying that because there's one leaking underground storage tank that Howell Township should allow other underground storage tanks?

A. I'm not saying that. It says that the gas station would read it again, you know, that it would -- we're singling out a gas station, and to me, it's not so much the gas station and prohibiting it, because we have other identified potential sources right there. Okay. You said, well, not in Howell Township, there's not a gas station. Well, there's a leaking underground storage tank. What about that? That's not a gas station.

So we'll prohibit gas stations, but I'm a car repair shop, and I can put tanks in, too. I'm doing the same thing. I'm just not a gas station.

Q. Are you aware that Howell Township has enacted a wellhead protection ordinance since this litigation began?

A. I just learned that about a minute ago that they've enacted an ordinance for a zone, and I don't know what it is, I haven't reviewed it, I know that -- I've just learned that,

yes, that there is some ordinance that they've enacted, and that they've changed this one a bit, but I don't know what exactly that's about.

Q. Are you aware that Judge McGivney upheld the decision of the township board to deny Howell-Mason a special land use permit for a gas station?

A. That judge denied that. Yeah. I think I was aware of that.

Q. Does any of that change the opinion that you provided in your letter?

A. No.

Q. Does it change any of your other opinions?

A. No.

MR. SZYMANSKI: Okay. I don't have any further questions.

MR. LULGJURAJ: I don't have any questions.

(The deposition was concluded at 12:30 p.m.)

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON)

I Debra M. Cummings, CSR 6037, and Notary Public, certify that this transcript, consisting of 144 pages, is a complete, true, and correct record of the testimony of GREGORY BUHOVECKEY, held in this case on Friday, February 20, 2026.

I also certify that prior to taking this deposition, GREGORY BUHOVECKEY was duly sworn to tell the truth.

I also certify that I am not a relative or employee of or an attorney for the party; or a relative or employee of an attorney for a party; or financially interested in the action.

Debra Cummings

Debra M. Cummings CSR 6037
Notary Public: Livingston County, Michigan
My Commission expires: 7-18-2026
DATED: February 25, 2026

EXHIBIT C

Disclosure Regarding Real Estate Agency Relationships

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee. A real estate transaction is a transaction involving the sale or lease of any legal or equitable interest in real estate consisting of not less than 1 or not more than 4 residential dwelling units or consisting of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

(1) An agent providing services under any service provision agreement owes, at a minimum, the following *duties* to the client:

(a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.

(b) The performance of the terms of the service provision agreement.

(c) Loyalty to the interest of the client.

(d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.

(e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the licensed agent. **A real estate licensee does not act as an attorney, tax advisor, surveyor, appraiser, environmental expert, or structural or mechanical engineer and you should contact professionals on these matters.**

(f) An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.

(g) Confidentiality of all information obtained within the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.

(2) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall provide the following *services* to his or her client:

(a) When the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.

(b) Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.

(c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.

(d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.

(e) For a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction, furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party.

Michigan law requires real estate licensees who are acting as agents of sellers or buyers of real property to advise the potential sellers or buyers with whom they work of the nature of their agency relationship.

SELLER'S AGENTS

A seller's agent, under a listing agreement with the seller, acts solely on behalf of the seller. A seller can authorize a seller's agent to work with subagents, buyer's agents and/or transaction coordinators. A subagent of the seller is one who has agreed to work with the listing agent, and who, like the listing agent, acts solely on behalf of the seller. Seller's agents and their subagents will disclose to the seller known information about the buyer which may be used to the benefit of the seller.

Individual services may be waived by the seller through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

BUYER'S AGENTS

A buyer's agent, under a buyer's agency agreement with the buyer, acts solely on behalf of the buyer. A subagent of the buyer is one who has agreed to work with the buyer's agent with who, like the buyer's agent, acts solely on behalf of the buyer. Buyer's agents and their subagents will disclose to the buyer known information about the seller which may be used to benefit the buyer.

Individual services may be waived by the buyer through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

DUAL AGENTS

A real estate licensee can be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent, in writing, of both the seller and the buyer.

In such a dual agency situation, the licensee will not be able to disclose all known information to either the seller or the buyer. As a dual agent, the licensee will not be able to provide the full range of fiduciary duties to the seller or the buyer.

The obligations of a dual agent are subject to any specific provisions set forth in any agreement between the dual agent, the seller and the buyer.

TRANSACTION COORDINATOR

A transaction coordinator is a licensee who is not acting as an agent of either the seller or the buyer, yet is providing services to complete a real estate transaction. The transaction coordinator is not an agent for either party and therefore owes no fiduciary duty to either party.

DESIGNATED AGENCY

A buyer or seller with a designated agency agreement is represented only by agents specifically named in the agreement. Any agents of the firm not named in the agreement do not represent the buyer or seller. The named "designated" agent acts solely on behalf of his or her client and may only share confidential information about the client with the agent's supervisory broker who is also named in the agreement. Other agents in the firm have no duties to the buyer or seller and may act solely on behalf of another party in the transaction.

LICENSEE DISCLOSURE (Check one)

I hereby disclose that the agency status of the licensee named below is:

_____ Seller's agent

_____ Seller's agent – limited service agreement

_____ Buyer's agent

_____ Buyer's agent – limited service agreement

✔ Dual agent

_____ Transaction coordinator (A licensee who is not acting as an agent of either the seller or the buyer.)

_____ None of the above

AFFILIATED LICENSEE DISCLOSURE (Check one)

_____ Check here if acting as a designated agent. Only the licensee's broker and a named supervisor broker have the same agency relationship as the licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee's broker and all named supervisory brokers shall be considered disclosed consensual dual agents.

_____ Check here if not acting as a designated agent. All affiliated licensees have the same agency relationship as the licensee named below.

Further, this form was provided to the buyer or seller before disclosure of any confidential information.

Gary T. McCririe 57aee62

Licensee Selling Agent Gary McCririe — Date 11-29-2022

Licensee — Date

ACKNOWLEDGMENT

By signing below, the parties acknowledge that they have received and read the information in this agency disclosure statement and acknowledge that this form was provided to them before the disclosure of any confidential information. **THIS IS NOT A CONTRACT.**

The undersigned _____DOES ✔ ____DOES NOT have an agency relationship with any other real estate licensee. If an agency relationship exists, the undersigned is represented as _____ SELLER _____ BUYER.

330ed96

Potential Buyer/Seller (circle one) Howell Mason LLC **by TJ Lekander, member** — Date 11-24-2022

DAVID ALLRED 4038f06 — LAURA ALLRED 5147edf

Potential Buyer/Seller (circle one) DAVID ALLRED LAURA ALLRED — Date 12-01-2022

Disclaimer This form is provided as a service of Michigan Realtors®. Please review both the form and details of the particular transaction to ensure that each section is appropriate for the transaction. Michigan Realtors® is not responsible for use or misuse of the form, for misrepresentation, or for warranties made in connection with the form.

LIVINGSTON COUNTY ASSOCIATION OF REALTORS® STANDARD PURCHASE AGREEMENT

PURCHASER (legal name) Howell Mason LLC By TJ Lekander, member Marital Status _____

PURCHASER (legal name) _____ Marital Status _____

PURCHASER'S Current Address 627 Dearborn, Howell, MI 48843

SELLING OFFICE GTM Realty Phone (810) 201-4848 Office ID 412209

SELLING AGENT Gary McCririe Phone (810) 343-0951 License# 209002

LISTING OFFICE GTM Realty Phone (810) 201-4848 Office ID 412209

LISTING AGENT Gary McCririe Phone (810) 343-0951 License# 209002

1. THE PURCHASER hereby offers and agrees to purchase, subject to easements and restrictive covenants of record, the following property in the

☐CITY ☐VILLAGE ☑TOWNSHIP of HOWELL, County of Livingston County, Michigan described as follows: PART OF THE WEST 1/2 OF THE SW 1/4 OF SEC 33, T3N4E, TWP OF HOWELL, LIVINGSTON COUNTY, MICHIGAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SW CORNER OF SAID SEC 33; THENCE DUE NORTH ALONG THE WEST LINE OF SAID SEC 33, 660.00 FT; THENCE S 89° 48 MINUTES 00 SECONDS EAST 15.64 FT TO THE POB OF LAND TO BE DESCRIBED; AND CL OF BURKHART also known as 160 BURKHART RD Tax ID# 06-33-300-019 together with all fixtures and appurtenances in or on the premises (unless specifically excluded herein) including, if any, lighting fixtures, shades, blinds, drapery/curtain and drapery/curtain hardware and rods, attached mirrors and all bathroom mirrors, attached generators, attached humidifier, ventilating fixtures, screens, storm doors and windows, garage door openers and transmitters, water softener (rental units excepted) and water treatment systems, built in appliances, heating unit including wood stove and fireplace gas logs, mail box, awnings, all TV antennae, landscaping, flagpole, all hardwired audio/security systems and related equipment, central vacuum and attachments, as well as the following personal property for which a bill of sale shall be given.

Included: range,, refrigerator, dishwasher, microwave, washer, dryer

Excluded: _____

and to pay therefore the sum of ~~Three Hundred Thousand Dollars~~ **Three Hundred and Eight Thousand, Five Hundred Dollars** DOLLARS ($~~300,000.00~~ **$308,500.00**)

DA bc09b71 LA 61a0d0d b806db9

Unless otherwise noted, Seller shall deliver a warranty deed conveying marketable title to Purchaser at closing.

2. THIS OFFER IS MADE SUBJECT TO FINANCING TERMS AND SATISFACTORY COMPLETION OF THE FOLLOWING CONDITIONS AS MARKED

a) ☐CASH SALE: Payment of purchase money to be made by wire transfer or equivalent funds.

b) ☑CASH SALE WITH NEW MORTGAGE: This Purchase Agreement is contingent upon Purchaser being able to secure a

☐Conventional ☐FHA ☐203K ☐VA ☐Rural Development ☐Seller Financed/Other (See attached LCAR Financing Addendum)

mortgage in the amount of $_____ **OR** 80 % of sale price for a term of nego years and pay

$_____ **OR** 20 % of sale price down, plus mortgage costs, prepaid items and adjustments in cash.

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Purchaser further agrees to apply for such mortgage within 10 calendar days from acceptance of this Purchase Agreement at Purchaser's own expense and shall comply with all requirements of said lending institution in a timely manner. If a loan approval from the lending institution cannot be obtained at no fault of the Purchaser within 90 days from the date of acceptance of this Purchase Agreement, this Purchase Agreement may be declared null and void by the Seller and Deposit shall be returned to Purchaser. Receipt of loan approval from the Purchaser's lending institution within time limit will eliminate this contingency.

3. EARNEST MONEY DEPOSIT The Broker is hereby authorized to present this offer and the Deposit of $5,000.00:

☐CASH ☐CHECK # _____ ☑OTHER upon acceptance by seller.

To be held by ☐Selling Broker OR ☑Fidelity National Title, which Deposit shall be applied to the purchase price at closing.

If held by Selling Broker, Broker shall comply with the Michigan Occupational Code and related rules.

If the sale is not consummated, any release of the Purchaser's Deposit will require a mutual release of the Purchase Agreement signed by all parties.

4. **OCCUPANCY** The property is ☐Owner occupied ☑Tenant occupied ☐Vacant.
(Check one box below)

☐To be given at closing.

☑Seller shall deliver and Purchaser shall accept possession of said property subject to rights of present tenants, if any. If Seller occupies property, it shall be vacated and keys surrendered _____ calendar days after closing per the terms of an occupancy disbursement form. From the day after closing through the day of vacating the property as agreed, Seller shall pay as indicated _____ per day. The Escrow Agent shall retain from the amount due to Seller at closing the amount equal to_____ days of said occupancy charge, paying to Purchaser the amount due and returning to Seller the unused portion as determined by date property is vacated and keys surrendered. The parties acknowledge that the Brokers and/or Escrow Agent have no obligation implied or otherwise for seeing that the property is vacated on the date specified or for the condition of the property, and may be acting only as an Escrow Agent holding the occupancy deposit. From the date of closing, Purchaser will maintain hazard insurance on the property and Seller will maintain insurance for liability and Seller's personal property. Purchaser is not responsible for damage or injury to Seller or Seller's personal property. Seller will not be required to pay for losses covered by Purchaser's hazard insurance policy. However, Seller will pay the deductible on Purchaser's hazard insurance for any claims made while Seller is in possession which are attributable to Seller's acts or omissions.

☐See attached LCAR Occupancy Addendum

5. PROPERTY INSPECTION(S) Purchaser shall have the option to inspect and examine the property at Purchaser's expense. This contingency expires on or before 30 days after acceptance of this Purchase Agreement. In the event Purchaser neither expressly waives this contingency nor provides notice pursuant to subparagraphs (a) or (b) below, this contingency shall be deemed waived. Purchaser's examination may include, but is not limited to, inspections and tests relating to building structure, mechanical systems, environmental items, water, septic, pest or any other matter Purchaser may deem necessary for Purchaser's intended use. Purchaser shall restore the property to its prior condition after examination. If Purchaser is not satisfied with the results of any examination for any reason during the inspection period, Purchaser will notify Seller in writing that Purchaser:

(a) Declares this Purchase Agreement null and void and Deposit will be returned to Purchaser

OR

(b) Purchaser proposes an amendment to this Purchase Agreement. Purchaser and Seller have 10 days to mutually agree upon an amendment, or this Purchase Agreement may be declared null and void by either party and the Deposit will be returned to the Purchaser.

PURCHASER ACKNOWLEDGES THAT BROKER/AGENT HAS RECOMMENDED PURCHASER OBTAIN AN INSPECTION OF THE PROPERTY.

☐**Purchaser does not choose to inspect or examine the property and accepts the property AS IS.**

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6. **TITLE INSURANCE** Seller shall provide Purchaser at Seller's expense an owner's policy of title insurance from a title company of Seller's choice in the amount of the purchase price. Said policy to be: (Check one box below)

☐With Standard Exceptions

☑Without Standard Exceptions (if chosen owner's policy is unavailable then a With Standard Exceptions Policy shall be issued)

☐Expanded Coverage (if chosen owner's policy is not available then a Without Standard Exceptions Policy shall be issued)

(Check one box below)

☐Seller ☑Purchaser to pay cost of survey if required to obtain chosen owner's policy.

Seller will apply for a commitment for title insurance within 7 calendar days after the date of acceptance of this Purchase Agreement. Upon receipt of the commitment, Purchaser shall have 7 calendar days to provide Seller with written notice of any objections. Seller will then have 30 days after receiving written notice to remedy the claimed defects. If the Seller is unable or unwilling to remedy the defects within 30 days, this Purchase Agreement shall terminate and the Deposit shall be returned to Purchaser or the Purchaser may waive the defect and complete this transaction.

When applicable, Purchaser may obtain a loan policy from a title company of Purchaser's choice.

7. **DEFAULT** Failure to perform any obligation of this Purchase Agreement by Seller or Purchaser shall constitute default. If Purchaser defaults, Seller may, at Seller's option, terminate the Purchase Agreement and pursue all available legal and equitable remedies or seek forfeiture of the Deposit as liquidated damages. If Seller defaults, Purchaser may pursue all available legal and equitable remedies and may also terminate the Purchase Agreement and seek a refund of the Deposit.

8. CLOSING COSTS Unless otherwise provided in this Purchase Agreement, it is agreed that Seller shall pay all state and county transfer taxes and costs required to convey marketable title. Unless otherwise provided in this Purchase Agreement, Purchaser shall pay the cost of recording the deed and/or security interest, all mortgage closing costs required by lender, and any purchaser closing fee charged by the title insurance company/agency that issues the loan policy in a lender financed sale. Seller and Purchaser shall split equally any closing fees charged by the title insurance company/agency in a cash or seller financed sale. Any transfer or status letter fees charged by the homeowners or condominium association shall be split equally between Purchaser and Seller.

At closing, Seller agrees to contribute up to $ 0.00 **or** 0 **% of the purchase price toward Purchaser's closing costs, prepaid items, property tax prorations, escrows, insurance and/or any other fees allowable by lender.**

9. PRORATED ITEMS Seller shall be responsible for all real estate taxes for years prior to the year in which the closing occurs and the Purchaser shall be responsible for all real estate taxes for years after the year in which the closing occurs. Taxes for the year in which the closing occurs shall be prorated such that Seller is responsible for that portion of the taxes through and including the date of closing. For purposes of this paragraph, taxes shall be deemed paid in advance based on due date of July 1 for summer taxes (covering the period July 1 through the following June 30) and December 1 for winter taxes (covering the period December 1 through the following November 30).

Purchaser shall assume the balance of all assessments which have been assessed or levied against the property by any public agency, taxing unit, homeowner's association, or condominium association. Any rent, homeowner's association dues, condominium dues, or assessment installment payments not otherwise included in the tax bills shall be prorated and adjusted to the date of closing.

☐In lieu of the tax proration method set forth in paragraph 9 above, see attached Specific Contingencies/Terms Addendum.

10. FEES OR CONSIDERATIONS Purchaser and Seller hereby acknowledge that Broker(s) may accept a fee or consideration with regard to listing agreement, buyer broker contract, placement of a home warranty, or any other ancillary products or services arising from this transaction.

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11. CONDITION Until possession is delivered, Seller agrees to keep the property in substantially the same condition as of the date of this Purchase Agreement and agrees to maintain heating, well, septic, plumbing, electrical system, landscape irrigation system and other equipment in normal working order; to keep the roof watertight and maintain the grounds. Seller agrees to keep all utility services operating until possession is delivered. Upon vacating the property, Seller agrees to remove all debris and leave the property in "broom clean" condition. In the event the property herein has been winterized, it shall be the obligation and expense of Seller to de-winterize the property prior to closing. Purchaser has a right to a walk-through inspection of the property within 72 hours prior to closing. This walk-through will provide Purchaser with an opportunity to confirm that this paragraph has been complied with and should not be deemed an opportunity to renegotiate the terms and conditions of this Purchase Agreement.

12. HEIRS, SUCCESSORS AND ASSIGNS This Purchase Agreement binds Seller, Seller's personal representatives, heirs, and anyone succeeding to Seller's interest in the property. Purchaser shall not assign this Purchase Agreement without Seller's prior written consent.

13. RELEASE Purchaser and Seller acknowledge that the Broker(s), their respective agents, employees and representatives have made no representations concerning the condition of the property covered by this Purchase Agreement or marketability of title. Purchaser and Seller release, indemnify and hold harmless the Brokers, their respective agents, employees and representatives, with respect to all claims arising out of or related to this Purchase Agreement, addenda and/or counter-offers. This release also includes, but is not limited to, all claims arising from any purported representations as to the physical and environmental condition of the property or marketability of title and special assessments covered by this Purchase Agreement. Purchaser and Seller acknowledge that Broker(s), their respective agents, employees and representatives are not acting as appraisers, builders, accountants, environmentalists, engineers, surveyors, inspectors, tax advisors or attorneys.

14. LIMITATION Purchaser and Seller agree any and all claims and/or lawsuits which they may have against the Brokers, their respective agents, employees and representatives relating to their services must be filed no more than 6 months after the date of closing of the transaction described in this Purchase Agreement. Purchaser and Seller waive any statute of limitations to the contrary.

15. ELECTRONIC SIGNATURES/COMMUNICATION Purchaser and Seller acknowledge and agree that this Purchase Agreement, any amendment or modification of this Purchase Agreement and/or any written notice or communication in connection with this Purchase Agreement may be delivered to Seller in care of Listing Broker and Purchaser in the care of the Selling Broker via electronic mail or by facsimile. Any such communication shall be deemed delivered at the time it is sent or transmitted. The parties agree that the electronic signatures and initials shall be deemed to be valid and binding upon the parties as if the original signatures or initials were present in the documents in the handwriting of each party. Seller represents and warrants an electronic email address has been provided to the Listing Broker from which Seller may receive electronic mail. Purchaser represents and warrants an electronic email address has been provided to Selling Broker from which Purchaser may receive email.

STIPULATION FOR ELECTRONIC STORAGE OF INSTRUMENTS AND DOCUMENTS The undersigned Seller hereby stipulates and acknowledges that all documents relating to this Agreement and all records and correspondence relating thereto, whether now existing or created hereafter, may be stored as electronic images and the originals of the electronically stored documents may be destroyed. The electronic images shall be deemed to serve as the original documents thereafter.

16. COUNTERPARTS This Purchase Agreement may be signed in any number of counterparts with the same effect as if the signature of each counterpart were upon the same instrument.

17. GENERAL PROVISIONS

a. **This is a legally binding contract and all parties acknowledge that they have been advised to have an attorney review the transaction on their behalf.**

b. Principal Residence Exemption(PRE):

The Seller represents the PRE ☐**IS IN EFFECT** for this property and taxes will be prorated accordingly **OR**

☑**IS NOT IN EFFECT** for this property and taxes will be prorated accordingly.

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18. ADDITIONAL TERMS/CONDITIONS (Check if applicable)

☑Agency Disclosure Form attached.

☑Seller's Disclosure Form received.

☑Lead-Based Paint Disclosure received and is a part of this Agreement.

☐Fuel in tank(s) ☐ Is included in the sale price ☐ Is not included in the sale price and fuel shall be prorated at time of Possession.

☐Escrow Agent shall retain $300.00 from Seller at closing for water/sewer charges to date of occupancy, if applicable. When the final bill is paid any unused portion will be returned to Seller.

☐Contingency on sale and closing of Purchaser's property (no offer pending) (See attached LCAR Contingent on Sale and Closing of Purchaser's Property Addendum).

☐Contingency on closing of sale on Purchaser's property (sale pending) (See attached LCAR Contingent on Sale and Closing of Purchaser's Property Addendum).

☐This is a back-up offer (See attached Specific Contingencies/Terms Addendum).

☑Appraisal – This Purchase Agreement is subject to the property appraising at purchase price or higher. Said appraisal to be paid for by Purchaser. If property does not appraise at purchase price or higher, Purchaser shall have the option to declare this Purchase Agreement null and void and Deposit shall be returned to Purchaser.

☐Subject property abuts a private road which has not been accepted as a public road and is not required to be maintained by the County Road Commission or other public or municipal body.

☐Offer is void if not accepted by **Date**_____ **Time** _____ Eastern Time.

☑Closing of this purchase to be on or before 2/17/2023 at Listing Broker's office or location of Seller's choice.

☐Home Warranty ☐Excluded ☐ Included ☐To be paid for by_____.

☐Attorney package of the closing documents required at least 3 days prior to closing.

☐FHA or VA Financing Addendum required (See attached addendum).

☐Arbitration Addendum attached

☐Other addendum(s) attached _____.

19. LAND DIVISION ACT (For unplatted land only) Seller and Purchaser agree that the following statements shall be included in the deed at the time of delivery:

(a) The grantor grants to the grantee the right to make all (insert "All", "Zero" or a specific number, as appropriate) division(s) under section 108 of the Land Division Act, MCL 560.108.

(b) This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

CAUTION: If the space contained in subparagraph (a) above is left blank on the deed, the deed will NOT grant Purchaser the right to any divisions.

20. OTHER TERMS/CONDITIONS

a) Real estate commissions will be paid by the purchaser. b) This offer is contingent upon purchasers review of the existing lease on the property. Seller shall provide the lease to purchaser within 5 days of acceptance of this offer. Purchaser shall have 10 days to review lease. If purchaser does not object to lease within 5 days of receipt it shall be assumed purchaser accepts said lease. If purchaser is not satisfied with said review,they may declare this offer null and void and be entitled to a full and immediate refund of their deposit in full termination of this agreement. c) rents shall be prorated at closing and any security deposit will be credited to the purchaser at closing. d) Seller will assign the lease to purchaser at closing. e) Purchaser will be seeking a commercial loan.

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21. ENTIRE AGREEMENT Purchaser and Seller agree to the following: the term "Purchase Agreement" as used herein includes any counter-offers made by the parties to which there has been mutual and final acceptance; this Purchase Agreement and any addenda constitutes the entire agreement between the parties; there are no other written or oral understandings between the parties; this Purchase Agreement supersedes any and all prior purchase agreements, understandings or representations made by the parties or their agents. **TIME IS OF THE ESSENCE**.

b7be82d

11/24/2022

Purchaser Date

Purchaser Date

Howell Mason LLC By TJ Lekander, member

Print name

Print name

SELLER ACCEPTANCE ☐**As Written-No Changes** ☐**See Counter Offer Addendum**

dc12c42

DAVID ALLRED 11-30-2022

Seller Date

4e274a6

LAURA ALLRED 12-01-2022

Seller Date

DAVID ALLRED

Print name

LAURA ALLRED

Print name

Seller Address 320 S. First, Brighton, MI 48116

0f21020

(Initials) Notice has been given of acceptance of this Purchase Agreement by delivery of a copy of a fully executed agreement to Purchaser. (Purchaser or Purchaser's Broker/Agent may initial)

Disclaimer: This form is provided as a service of the Livingston County Association of Realtors®. Please review both the form and details of the particular transaction to ensure that each section is appropriate for the transaction. The Livingston County Association of Realtors® is not responsible for use or misuse of the form, for misrepresentation or for warranties made in connection with the forms.

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LEAD-BASED PAINT SELLER'S DISCLOSURE FORM

Property Address 160 BURKHART RD
Street

HOWELL MICHIGAN 48843
City, Village, Township

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may reproduce permanent neurological damage, including learning disabilities, reduced intelligent quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any know lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

I. Seller's Disclosure (initial)

LA DA 3f212cd 86fd0fe (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

_____

_____

☑ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in housing.

LA DA 5deb2d2 2ceb713 (b) Records and reports available to the seller (check one below):

☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

_____

_____

☑ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Seller certifies that to the best of his/her knowledge, the Seller's statement above are true and accurate.

Date: 11-30-2022 Seller(s) DAVID ALLRED 709855b9

Date: 12-01-2022 LAURA ALLRED fdbeec2

II. Agent's Acknowledgment (initial)

GTM 8ab8385 Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852 d and is aware of his/her responsibility to ensure compliance.

Agent certifies that to the best of his/her knowledge, the Agent's statement above is true and accurate.

Agent

Date: November 29th, 2022 Gary T. McCririe 5278e31

III. Purchaser's Acknowledgment (initial)

41dbc53 _____ (a) Purchaser has received copies of all information listed above.

cc956a3 _____ (b) Purchaser has received the federally approved pamphlet *Protect Your Family From Lead In Your Home.*

900d8f3 _____ (c) Purchaser has (check one below):

- ☑ Received a 10-day opportunity (or other mutually agreed upon period) to conduct a risk assessment or inspection of the presence of lead-based paint or lead-based paint hazards; or
- ☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Purchaser certifies to the best of his/her knowledge, the Purchaser's statements above are true and accurate.

Purchaser(s)

Date: November 24th, 2022 02dd55d

Date: _____

Seller's Disclosure Statement

Property Address: 160 BURKHART RD (Street) HOWELL (City, Village or Township) MICHIGAN 48843

Purpose of Statement: This statement is a disclosure of the condition of the property in compliance with the Seller Disclosure Act. This statement is a disclosure of the condition and information concerning the property, known by the Seller. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. **This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction, and is not a substitution for any inspections or warranties the Buyer may wish to obtain.**

Seller's Disclosure: The Seller discloses the following information with the knowledge that even though this is not a warranty, the Seller specifically makes the following representations based on the Seller's knowledge at the signing of this document. Upon receiving this statement from the Seller, the Seller's Agent is required to provide a copy to the Buyer or the Agent of the Buyer. The Seller authorizes its Agent(s) to provide a copy of this statement to any prospective Buyer in connection with any actual or anticipated sale of property. The following are representations made solely by the Seller and are not the representations of the Seller's Agent(s), if any. **THIS INFORMATION IS A DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY CONTRACT BETWEEN BUYER AND SELLER.**

Instructions to the Seller. (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Attach additional pages with your signature if additional space is required. (4) Complete this form yourself. (5) If some items do not apply to your property, check NOT AVAILABLE. If you do not know the facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT.

Appliances/Systems/Services: The items below are in working order. (The items listed below are included in the sale of the property only if the purchase agreement so provides.)

	Yes	No	Unknown	Not Available		Yes	No	Unknown	Not Available
Range/oven	✔				Lawn sprinkler system				✔
Dishwasher	✔				Water heater	✔			
Refrigerator	✔				Plumbing system	✔			
Hood/fan	✔								
Disposal				✔	Water softener/conditioner	✔			
					Well & pump	✔			
TV antenna, TV rotor controls	✔				Septic tank & drainfield				✔
					Sump pump	✔			
Electric system	✔								
Garage door opener & remote	✔				City water system				✔
Alarm System				✔	City sewer system	✔			
Intercom				✔	Central air conditioning	✔			
Central vacuum				✔	Central heating system	✔			
Attic fan				✔	Wall furnace				✔
Pool heater, wall liner & equipment				✔	Humidifier	✔			
					Electronic air filter				✔
Microwave	✔				Solar heating system				✔
Trash compactor				✔					
					Fireplace & chimney	✔			
Ceiling fan	✔				Wood burning system				✔
Sauna/hot tub				✔	Dryer	✔			
Washer	✔								

Explanations (attach additional sheets if necessary):

UNLESS OTHERWISE AGREED, ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED WITHOUT WARRANTY BEYOND DATE OF CLOSING.

Property conditions, improvements & additional information:

1. **Basement/Crawlspace:** Has there been evidence of water? yes ____ no ✔
   If yes, please explain: ____
2. **Insulation:** Describe, if known: ____
   Urea Formaldehyde Foam Insulation (UFFI) is installed? unknown ✔ yes ____ no ____
3. **Roof:** Leaks? yes ____ no ✔
   Approximate age if known: Approx. age 12 years. Roof leak in 2020, inside above front door and stairs going up to top level. Repaired.
4. **Well:** Type of well (depth/diameter, age and repair history, if known): Well pump replaced June 2019.
   Has the water been tested? yes ✔ no ____
   If yes, date of last report/results: 5/17/18

BUYER'S INITIALS ____
SELLER'S INITIALS [illegible] LA

Seller's Disclosure Statement

Property Address: 160 BURKHART RD Street HOWELL City, Village or Township MI

5. **Septic tanks/drain fields:** Condition, if known: n/a
6. **Heating system:** Type/approximate age: Gas forced air furnace. Approx. age 15 years
7. **Plumbing system:** Type: copper ✔ galvanized _____ other _____
   Any known problems? No known issues.
8. **Electrical system:** Any known problems? No known issues.
9. **History of Infestation,** if any: (termites, carpenter ants, etc.) No known issues.
10. **Environmental problems:** Are you aware of any substances, materials or products that may be an environmental hazard such as, but not limited to, asbestos, radon gas, formaldehyde, lead-based paint, fuel or chemical storage tanks and contaminated soil on property.

Unknown ✔ yes _____ no _____

If yes, please explain: _____

11. **Flood Insurance:** Do you have flood insurance on the property?	unknown _____	yes _____	no ✔
12. **Mineral Rights:** Do you own the mineral rights?	unknown ✔	yes _____	no _____

Other Items: Are you aware of any of the following:

1. Features of property shared in common with the adjoining landowners, such as walls, fences, roads and driveways, or other features whose use or responsibility for maintenance may have an effect on the property?	unknown ✔	yes _____	no _____
2. Any encroachments, easements, zoning violations or nonconforming uses?	unknown ✔	yes _____	no _____
3. Any "common areas" (facilities like pools, tennis courts, walkways, or other areas co-owned with others) or a homeowners' association that has any authority over the property?	unknown _____	yes _____	no ✔
4. Structural modifications, alterations, or repairs made without necessary permits or licensed contractors?	unknown ✔	yes _____	no _____
5. Settling, flooding, drainage, structural, or grading problems?	unknown ✔	yes _____	no _____
6. Major damage to the property from fire, wind, floods, or landslides?	unknown _____	yes _____	no ✔
7. Any underground storage tanks?	unknown _____	yes _____	no ✔
8. Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.?	unknown _____	yes _____	no ✔
9. Any outstanding utility assessments or fees, including any natural gas main extension surcharge?	unknown ✔	yes _____	no _____
10. Any outstanding municipal assessments or fees?	unknown ✔	yes _____	no _____
11. Any pending litigation that could affect the property or the Seller's right to convey the property?	unknown _____	yes _____	no ✔

If the answer to any of these questions is yes, please explain. Attach additional sheets, if necessary: _____

The Seller has lived in the residence on the property from May 25th, 2018 (date) to July 16th, 2022 (date).
The Seller has owned the property since May 25th, 2018 (date).
The Seller has indicated above the conditions of all the items based on information known to the Seller. If any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, Seller will immediately disclose the changes to Buyer. In no event shall the parties hold the Broker liable for any representations not directly made by the Broker or Broker's Agent.

Seller certifies that the information in this statement is true and correct to the best of Seller's knowledge as of the date of Seller's signature.

BUYER SHOULD OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY. THESE INSPECTIONS SHOULD TAKE INDOOR AIR AND WATER QUALITY INTO ACCOUNT, AS WELL AS ANY EVIDENCE OF UNUSUALLY HIGH LEVELS OF POTENTIAL ALLERGENS INCLUDING, BUT NOT LIMITED TO, HOUSEHOLD MOLD, MILDEW AND BACTERIA.

BUYERS ARE ADVISED THAT CERTAIN INFORMATION COMPILED PURSUANT TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28,721 TO 28.732 IS AVAILABLE TO THE PUBLIC BUYERS SEEKING SUCH INFORMATION SHOULD CONTACT THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY OR SHERIFF'S DEPARTMENT DIRECTLY.

BUYER IS ADVISED THAT THE STATE EQUALIZED VALUE OF THE PROPERTY, PRINCIPAL RESIDENCE EXEMPTION INFORMATION, AND OTHER REAL PROPERTY TAX INFORMATION IS AVAILABLE FROM THE APPROPRIATE LOCAL ASSESSOR'S OFFICE. **BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE TAX BILLS ON THE PROPERTY WILL BE THE SAME AS THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN LAW, REAL PROPERTY TAX OBLIGATIONS CAN CHANGE SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.**

Seller DAVID ALLRED acc1fda Date: November 18th, 2022

Seller LAURA ALLRED d4de6ff Date: November 19th, 2022

Buyer has read and acknowledges receipt of this statement.

Buyer 4790df4 Date: November 24th, 2022 Time 09:09 p.m.

Buyer _____ Date: _____ Time _____

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EXHIBIT D

COMMERCIAL PURCHASE AGREEMENT

THIS COMMERCIAL PURCHASE AGREEMENT is made and entered into this 19th day of June, 20 20, ("Effective Date") by and between Larry Horton, a _____ *[entity type and state organized]* ("Seller"), whose address is 70 N. Burkhart Rd., Howell *[municipality]*, Michigan, 48843 *[zip]*, and Todd Lekander for an entity to be formed, a _____ *[entity type and state organized]*, ("Purchaser"), whose address is 627 Dearborn St., Howell *[municipality]*, MI *[State]*, 48843 *[zip code]*, in the manner following:

1. **PROPERTY DESCRIPTION.** Purchaser offers and agrees to purchase the real property located in the ☐ City or ☒ Township or ☐ Village of Howell, County of Livingston, Michigan, commonly known as 70 Burkhart RD, tax parcel identification number(s) 0633300018 and further described as: SEC 33, T3N,R4E COM AT SW COR OF SEC 33, TH N 330 FT, S 89* 48'E 29.44 FT TO BEG, TH N 5*05'59*E 118, or ☐ see attached legal description as **Exhibit A**, together with Seller's interest in all easements, appurtenances, land division rights, timber, air, oil, gas and mineral, subsurface, riparian, and all other rights and interests pertaining to such property, and together with all buildings, structures and other physical improvements situated on such property (collectively, the "Real Property").

Place an "X" in the appropriate box(es) below:

☐ Check here if sale includes any equipment or personal property and attach list as **Exhibit B**. A bill of sale will be executed at closing.

☐ Check here if sale includes any tenant leases and attach list and current rent roll as **Exhibit C**. An assignment of leases will be executed at closing.

☐ Check here if sale includes any licenses, permits or other intangible property and attach list as **Exhibit D**. An assignment will be executed at closing.

The Real Property, together with any of the foregoing are collectively the "Property."

2. **PURCHASE PRICE.** The purchase price ("Purchase Price") for the Property shall be Three Hundred ~~Eleven~~ Seventeen Thousand Five Hundred ($ ~~311,500.00~~ 317,500) Dollars.

T.J.L.

3. **PAYMENT OF PURCHASE PRICE.** The Purchase Price shall be paid as indicated by an "X" placed in the appropriate box below, with initials of Seller and Purchaser acknowledging Purchaser's method of payment, while the other unmarked terms of purchase shall not apply.

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InstanetFORMS

☐ **Cash.** Purchaser shall pay the full Purchase Price, including any adjustments and/or prorations contained herein, to Seller at closing by certified check or wire transfer of immediately available funds or another method acceptable to Seller and title company.

☒ **New Mortgage.** Purchaser shall obtain a mortgage from a financial institution to help finance the purchase and pay Seller at Closing the full Purchase Price, including any adjustments and/or prorations contained herein.

☐ **Land Contract.** Purchaser shall pay the full Purchase Price, including any adjustments and/or prorations contained herein, to Seller at Closing pursuant to a mutually acceptable Land Contract. The Land Contract shall provide for a down payment of $_____ at closing and payment of the balance of $_____ in monthly installments of $_____, or more, at Purchaser's option, including interest at the rate of _____ percent (____%) per annum, amortized over _____ (_____) years, with interest to start on the closing date. A final "balloon payment" consisting of the entire unpaid principal balance and all accrued and unpaid interest will become due and payable _____ (____) months after closing.

4. **EARNEST MONEY DEPOSIT.** Within three (3) calendar days following the Effective Date of this Agreement, Purchaser shall deposit with Fidelity National Title, Title Insurance Company (the "Title Company" or "Escrow Agent"), Purchaser's earnest money deposit in the amount of Five Thousand ($ 5,000.00) Dollars (the "Deposit"). If Purchaser fails to deliver the Deposit timely, Purchaser shall be in default and Seller may terminate this Agreement upon notice to Purchaser. The Deposit shall be refunded to Purchaser in the event this Agreement is properly terminated by Purchaser under the terms and conditions provided for herein; retained by Seller; or applied to the Purchase Price at Closing.

5. **DUE DILIGENCE CONTINGENCY.** Purchaser shall have 120 days after receipt of fully accepted copy of this Agreement executed by Seller ("Inspection Period") to inspect and obtain the following items (place an "X" next to all that apply):

☒ Purchaser's ability to obtain acceptable financing from a financial institution of its choice.

☒ Purchaser's physical inspection of all aspects of the Property which shall include but not be limited to: plumbing, electrical and HVAC systems, roof and any other portions of the Property.

☒ Purchaser's satisfaction with the results of an environmental site assessment.

☒ Purchaser making soil tests, borings and any other engineer and architectural tests Purchaser desires.

☒ Purchaser's satisfaction that the Property is properly zoned or can be rezoned to permit Purchaser's proposed development and use.

☐ Purchaser receiving preliminary site plan approval.

☒ Purchaser obtaining a survey of the Property ("Survey").

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☐ Purchaser receiving and approving all leases and obtaining a satisfactory estoppel certificate from each tenant.

☒ Purchasing conducting any other due diligence desired by Purchaser.

☐ Purchaser obtaining any federal, state or other governmental approval or quasi-governmental environmental or tax incentives, inducements, allowances or similar benefits (by way of example, and not in limitation of the foregoing, any Brownfield classification or any Brownfield tax and/or grant reimbursements) with respect to the Property.

All due diligence shall be performed by Purchaser at Purchaser's sole expense. Prior to expiration of the Inspection Period, if Purchaser notifies Seller that, in Purchaser's sole discretion, the Property is unsuitable for Purchaser's intended purposes, then Seller and the Escrow Agent shall return the Deposit to Purchaser , and neither party shall have any further rights or obligations under this Agreement, except for any obligations which, by the terms of this Agreement are intended to survive termination. In the event Purchaser does not provide Seller with written notice of termination prior to the expiration of the Inspection Period, then the Deposit shall be non-refundable (unless Seller defaults), Purchaser shall be deemed to be satisfied with its inspections of the Property and this contingency shall be deemed fulfilled. Seller, at no expense to Seller, shall cooperate with Purchaser in providing reasonable access to the Property for Purchaser to perform its due diligence, and in obtaining all approvals desired or required from any federal, state or local government ("Governmental Approvals"), provided that no Governmental Approvals shall be binding upon Seller or the Property if Purchaser fails to close. Said Governmental Approvals shall be obtained during the Inspection Period unless the parties hereafter agree in writing that additional time is required to obtain them. Purchaser shall repair any damage to the Property caused by Purchaser or its agents, and Purchaser shall defend and indemnify and hold Seller harmless against any liability, loss, damage, cost or expense arising from any of Purchaser's due diligence activities; and these obligations of Purchaser shall survive termination of this Agreement. Within 5 business days after execution of this Agreement, Seller will provide Purchaser with copies of all title policies, surveys, leases, environmental reports, studies, site plans, certificates of occupancy and other documentation in the possession or control of Seller, which is material to Purchaser's decision whether to purchase the Property.

6. TITLE INSURANCE.

(a) **Title Insurance**: Owner Policy of Title Insurance to be furnished hereunder, to be paid for by ☒ Seller or ❑ Purchaser. Within 10 days of the Effective Date of this Agreement, Seller shall order a commitment for an ALTA Owner's Policy of Title Insurance, ❑ with Standard Exceptions; or ☒ without Standard Exceptions (the " Title Commitment"), from the Title Company, and shall provide a copy of the same to Purchaser upon receipt. Purchaser in its sole and absolute discretion shall determine whether all matters of title and survey are satisfactory. The Title Commitment shall be accompanied by copies of all recorded exceptions to title referred to therein. At Closing, the Title Company shall deliver to Purchaser a satisfactorily "marked up" Title Commitment. The Title Insurance Policy to be issued pursuant to the marked up Title Commitment shall contain such endorsements as Purchaser may reasonably require, provided, however Purchaser shall be responsible for the cost of such endorsements.

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(b) **Objections to Title and Survey**. If Purchaser objects to any matters of title or survey and Purchaser so notifies Seller in writing of such objection(s) ("Objection Notice") before expiration of the Inspection Period, then Seller shall have 30 days from the date Seller receives the Objection Notice to either: (i) remedy the title and survey defects described in Purchaser's Objection Notice and obtain and deliver to Purchaser a revised Title Commitment and/or survey which reflects that all such defects have been remedied; or (ii) notify Purchaser and Escrow Agent that Seller is unable or unwilling to remedy the defects, in which event Purchaser shall, at its option, within five (5) business days after receipt of such notice from Seller, either terminate this Agreement and receive a full refund of the Deposit (subject to those obligations which by their terms survive termination) or waive Purchaser's title and survey objections, and proceed to Closing, subject to satisfaction or waiver of Purchaser's other pre-Closing contingencies. If Purchaser proceeds to Closing, all exceptions set forth in the Title Commitment, and all objectionable matters set forth in the Survey, shall be deemed "Permitted Exceptions."

7. **ENVIRONMENTAL.**

(a) **Environmental.** To the best of Seller's knowledge, there are no areas of the Property where hazardous substances or hazardous wastes, as such terms are defined by applicable Federal, State and local statutes and regulations, are present in quantities in violation of applicable law. No claim has been made against Seller with regard to hazardous substances or wastes with respect to the Property.

(b) **Due Diligence.** Purchaser shall have the right at Purchaser's expense to conduct a Phase I environmental site assessment during the Inspection Period. If any Phase II subsurface investigation is required or recommended, Purchaser and Seller shall attempt to agree upon the nature and extent of any Phase II activities and which party shall bear the cost. If Purchaser and Seller are unable to agree within 10 days, then either party may, upon notice to the other, terminate the Agreement, in which event the Deposit shall be refunded to Purchaser and neither party shall have any further liability thereunder (except for those obligations which, by their terms, survive termination). Purchaser agrees to repair and restore any damage to the Property caused by Purchaser's investigations or testing, at Purchaser's sole expense. Purchaser shall defend, indemnify and hold Seller harmless from all costs, expenses and liabilities arising out of Purchaser's inspection of the Property, including that of Purchaser's employees, agents, consultants, or contractors performing said inspection.

8. **CLOSING AND CLOSING ADJUSTMENTS.** Closing shall take place at the offices of the Title Company or another mutually acceptable location at the earlier of: (i) 10 days following the expiration of the Inspection Period ; or (ii) upon Purchaser's written notification to Seller that all of the Purchaser's conditions precedent and contingencies have been satisfied or waived;

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provided, however, in no event shall Closing occur later than December 18th, 2020 (such date for Closing and performance being hereinafter sometimes referred to as the "Closing" or "Closing Date").

At Closing, Seller shall deliver to Purchaser a Warranty Deed conveying good and marketable fee simple title to the Property, subject to the Permitted Exceptions, and the lien of real estate taxes not yet due and payable, along with Seller's right to make any land divisions of the Property permitted to Seller, under the Michigan Land Division Act, MCL 560.101 *et seq*. Should any financial liens or encumbrances of a definite or ascertainable amount (such as a mortgage) be recorded against the Property, Seller shall pay and/or satisfy any such encumbrance prior to or simultaneously with the Closing. In addition, at Closing, Seller shall pay the base owner's title insurance policy premium, all state or county real estate transfer taxes, all outstanding water and sewer bills, and any other outstanding obligations which, if unpaid, may become a lien against the Property. The parties shall share equally all Title Company fees and expenses. Current real estate taxes (i.e. the most recent summer and winter tax bills issued) shall be prorated as of the date of the Closing on a "due date" basis as if paid in advance, with Seller receiving a credit for any prepaid taxes. All assessments, including, but not limited to any special assessments which have become a lien upon the land shall be paid in full by Seller. Each party shall pay their own attorney fees. At Closing, the Title Company may establish a water escrow, pending receipt of a final paid water bill for water and sewer charges incurred through Closing.

9. **SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** Seller warrants, represents and covenants to Purchaser, as follows:

(a) **Authority**. Seller: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Michigan or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Purchaser in accordance with the terms and provisions of this Agreement. Before Closing, Seller shall provide the Title Company and Purchaser with satisfactory written evidence that all necessary and appropriate action has been taken by Seller authorizing and approving the execution, delivery and performance by Seller of this Agreement and all closing documents, and the performance by Seller of all other acts necessary or appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

(b) **Title.** Seller owns the Property in fee simple and has marketable and good title to the Property. Seller will not further encumber title to the Property before Closing without Purchaser's prior written consent, which consent shall not be unreasonably withheld.

(c) **Conflicts.** The execution and entry into this Agreement by Seller, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of

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Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, will not violate any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller or the Property is bound.

(d) **Litigation**. There is no action, suit or proceeding pending or, to the best of Seller's knowledge, threatened by or against or affecting Seller or the Property which does or will involve or affect the Property or title thereto. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Purchaser written notice thereof.

(e) **No Violations**. To the best of Seller's knowledge, Seller has not received notice of any existing violations of state or federal laws, **municipal**, or county ordinances, or other legal requirements with respect to the Property. In the event Seller receives notice of any such violation affecting the Property prior to the Closing, Seller shall promptly notify Purchaser thereof.

(f) **Foreign Ownership**. Seller is not a "foreign person" as that term is defined in the U. S. Internal Revenue Code of 1986, as amended, and the regulations **promulgated** pursuant thereto, and Purchaser has no obligation under Section 1445 of the U. S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U. S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445). Seller shall furnish Purchaser with a non-foreign person affidavit at Closing.

(g) **Construction Liens**. On the Closing Date, Seller will not be indebted to any contractor, laborer, materialmen, architect, or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the **Property** for which any person could claim a lien against the Property and shall execute a standard title company affidavit to this effect at Closing.

10. PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.

(a) **Authority.** Purchaser: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Michigan or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Seller in accordance with the terms and provisions of this Agreement. Before

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Closing, Purchaser shall provide the Title Company and Seller with satisfactory written evidence that all necessary and appropriate action has been taken by Purchaser authorizing and approving the execution, delivery and performance by Purchaser of this Agreement, and all closing documents and the performance by Purchaser of all other acts necessary or as appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

(b) **Conflicts.** The execution and entry into this Agreement by Purchaser, the execution and delivery of the documents and instruments to be executed and delivered by Purchaser on the Closing Date, and the performance by Purchaser of Purchaser's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, will not violate any contract, agreement or other instrument to which Purchaser is a party, or any judicial order or judgment of any nature by which Purchaser is bound.

11. **DAMAGE TO PROPERTY.** If between the Effective Date of this Agreement and the Closing Date, all or any part of the Property is damaged by fire or natural elements or other causes beyond the Seller's control, which Seller does not repair or agree to repair prior to the Closing Date, or any part of the Property is taken pursuant to any power of eminent domain, Seller shall immediately notify Purchaser of such occurrence, and Purchaser may terminate this Agreement with written notice to Seller within 15 days after the date Purchaser learns of such damage or taking, and receive a refund of the Deposit without further liability, except for those obligations of Purchaser which are intended to survive termination. If Purchaser does not elect to terminate this Agreement, there shall be no reduction of the purchase price and Seller shall assign to Purchaser whatever rights Seller may have with respect to any insurance proceeds or eminent domain award at Closing.

12. **AS IS.** Neither Seller nor any broker, nor any of their officers, directors, managers, members, employees or agents have made any representation, warranty or disclosure with respect to the Property, upon which Purchaser may rely, except as may be set forth in writing in this Agreement. By Closing, Purchaser agrees to accept the Property in "As Is" condition to the fullest extent permitted by law.

13. **SELLER'S CLOSING OBLIGATIONS.** At Closing, Seller shall execute and deliver the Warranty Deed, closing statement, standard title company owner's affidavit and all other usual and customary Title Company and other closing documents necessary or appropriate to consummate the sale.

14. **PURCHASER'S CLOSING OBLIGATIONS.** At closing, Purchaser shall pay to Seller the Purchase Price in the manner specified in Section 3 above, subject to agreed pro rations and adjustments, and execute and deliver a closing statement and all other usual and customary Title Company and other closing documents necessary or appropriate to consummate the sale.

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15. **SECTION 1031 TAX-DEFERRED EXCHANGES.** Upon either party's request, the other party shall cooperate and reasonably assist the requesting party in structuring the purchase and sale contemplated by this Agreement as part of a tax deferred, like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended; provided, however, that in connection therewith, the non-requesting party shall not be required to: (a) incur any additional costs or expenses; (b) take legal title to additional real property (i.e., the requesting parties' "replacement property" or "relinquished property"); or (c) agree to delay the Closing. However, should both parties wish to complete a tax-deferred exchange, the parties will each incur their own additional expenses related to their exchange and shall split any common costs which will benefit both parties by such a division.

16. **NOTICES.** Unless otherwise stated in this Agreement, a notice required or permitted by this Agreement shall be sufficient if in writing and either delivered personally or sent via Federal Express, UPS or a similar nationally recognized overnight delivery service, or by certified mail, return receipt requested, addressed to the parties at their addresses specified below or by email. Any notices given by personal service shall be below or by e-mail effective upon delivery. Any notice given by Federal Express or UPS shall be deemed effective one business day after sending. Any notice given by certified mail, return receipt requested, shall be deemed given three business days after mailing, and any notice given by email shall be deemed effective upon receipt. Copies of all notices shall be made as follows:

☒ If to Purchaser:

Name:	Todd Lekander
Address:	627 Dearborn St.
Address:	Howell MI 48843
Telephone:	
Facsimile:	
Email:	

With copy to:

Name:	GTM Realty
Address:	4337 E Grand River Ste 209

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Address:	Howell MI 48843
Telephone:	(810) 201-4848
Facsimile:	
Email:	

☒ If to Seller:

Name:	Larry Horton
Address:	70 N. Burkhart Rd.
Address:	Howell 48843
Telephone:	
Facsimile:	
Email:	

With copy to:

Name:	
Address:	
Address:	
Telephone:	
Facsimile:	
Email:	

17. **ADDITIONAL ACTS.** Purchaser and Seller agree to execute and deliver such additional documents and perform such additional acts as may become necessary or appropriate to effectuate the transfers contemplated by this Agreement.

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18. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties with respect to the sale of the Property. All contemporaneous or prior oral and written negotiations and agreements have been merged into this Agreement.

19. **MICHIGAN LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles.

20. **AMENDMENTS.** This Agreement may be modified or amended only by written instrument signed by the Purchaser and Seller.

21. **EFFECTIVE DATE.** For purposes of this Agreement, the phrase "Effective Date" shall be the last date upon which this Agreement becomes fully executed, and delivered by both parties including any counter proposals or amendments counter-signed by the opposing party.

22. **BROKER.** Purchaser and Seller each acknowledge that: (i) Purchaser's real estate agent is Gary McCririe and is acting as: ☒ an agent of the Purchaser; or ☐ an agent of the Seller; or ☐ as a disclosed transaction coordinator, with written, informed consent of both Purchaser and Seller; and (ii) Seller's real estate agent is _____ and is acting as: ☐ an agent of the Seller; or ☐ an agent of the Purchaser; or ☐ as a disclosed transaction coordinator, with written, informed consent of both Purchaser and Seller. Seller agrees to pay the real estate broker(s) involved in this transaction a combined brokerage fee of $_____, with $_____ paid to _____ and $_____ paid to Gary McCririe at Closing. The parties acknowledge that other than the parties' real estate agents disclosed herein, no other real estate brokers, salespersons, or agents are involved in this transaction and the parties hereby indemnify and hold each other harmless from any and all such claims for brokerage fees. All brokers and their agents specifically disclaim responsibility for the condition of the Property and performance of this Agreement. The parties each hereby, and by closing shall be deemed to, waive and release any and all claims and causes of action against all named brokers, their officers, directors, managers, members, employees and agents. The parties each hereby grant all named brokers the right to record a lien against the Property to secure payment of their commission including, without limitation, the right to record a lien under Michigan's Commercial Real Estate Broker Lien Act. All named brokers are third party beneficiaries of this Agreement.

23. **BROKER ENVIRONMENTAL DISCLAIMER.** The Purchaser and Seller agree that each broker and real estate agent has fully disclosed any knowledge that such broker and/or real estate agent has concerning possible toxic or hazardous material or substances or other adverse environmental conditions on or about the Property and the Purchaser acknowledges that Purchaser shall be given the opportunity to make a competent environmental inspection, and the Purchaser and Seller each do

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hereby release each broker and real estate agent from any liability concerning toxic and hazardous material or substance or other adverse environmental conditions on or about the Property. The Purchaser and Seller each hereby expressly waive any claim whatsoever against each broker and real estate agent before or after the closing of this transaction arising out of or in connection with any of the foregoing.

24. **DEFAULT.**

(a) **Seller's Default**. If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default or failure to perform hereunder, Purchaser shall as its sole remedy, elect to either: (i) specifically enforce the terms hereof; or (ii) demand and be entitled to an immediate refund of the Deposit, in which case this Agreement shall terminate in full, except for any provisions which by their terms, are intended to survive termination.

(b) **Purchaser's Default**. If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Purchaser's default hereunder, Seller shall as its sole and exclusive remedy retain the Deposit amount as full and complete liquidated damages for such default of Purchaser. The parties hereby acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default of this Agreement or any duty arising in connection or relating herewith. Seller's entitlement to and receipt of the Deposit is intended not as a penalty, but as full and complete liquidated damages. The right to retain such sums as full liquidated damages as Seller's sole and exclusive remedy in the event of default or failure to perform hereunder by Purchaser, is in addition to any liability of Purchaser with respect to its repair and indemnity obligations set forth above, which are intended to survive termination of this Agreement

25. **WAIVER**. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

26. **DATE FOR PERFORMANCE**. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next following business day.

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27. **FURTHER ASSURANCES.** The parties agree that they will each take such steps and execute such documents as may be reasonably required by the other party or parties to carry out the intent and purposes of this Agreement.

28. **SEVERABILITY.** In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

29. **SUCCESSORS AND ASSIGNS.** The designation Seller and Purchaser as used herein shall include said parties, their heirs, successors, and assigns; provided, however, Purchaser may not assign its interest in this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld..

30. **CONTACT WITH THIRD PARTIES.** During the pendency of this Agreement, Seller may discuss with, or receive the submission of written back up offers or letters of intent from any third party or entity relating to the purchase of the Property. Seller shall promptly notify Purchaser in the event Seller should receive a written offer or letter of intent, and Seller shall advise any such third party or entity of the existence and priority of this Agreement.

31. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties and shall become a binding and enforceable Agreement among the parties upon full and complete execution and delivery of this Agreement. No prior verbal or written Agreement shall survive the execution of this Agreement.

32. **AMENDMENT.** Any amendment to this Agreement shall be in writing and signed by all the parties in order to be binding and enforceable against the parties.

33. **RELATIONSHIP OF THE PARTIES.** Nothing contained herein shall be construed or interpreted as creating a partnership or joint venture between the parties. It is understood that the relationship is of arm's length and shall at all times be and remain that of Purchaser and Seller.

34. **NO RECORDING.** Neither this Agreement nor a memorandum hereof shall be recorded by either party or any of their representatives.

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35. **CONFIDENTIALITY.** Subject to all other terms of this Agreement, each party agrees to maintain this Agreement, the information in this Agreement and all information delivered pursuant to this Agreement, as confidential, and each will not disclose any such information to any other person without the prior written consent of the other party. However, a party may disclose such confidential information to its legal counsel, to such party's lender, accountant, real estate broker, salesperson, or agent, to other professional advisors or agents of the party, provided the recipients of such information agree to keep such information confidential, and as required by law or legal process.

36. **35. COUNTERPARTS; ELECTRONIC TRANSMISSIONS.** This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument. This Agreement may be executed and delivered by facsimile or electronic PDF signatures.

37. **OFFER.** This Agreement constitutes an offer by Purchaser to purchaser the Property. The offer shall remain valid until 12 :00 pm. on 06/24/20 and shall be deemed revoked if not accepted by Seller before such time and date.

38. **OTHER PROVISIONS.** In addition to the provisions outlined above, the following additional provisions shall apply to the transaction as contemplated herein.

a) Legal description: SEC 33, T3N,R4E COM AT SW COR OF SEC 33, TH N 330 FT, S 89* 48'E 29.44 FT TO BEG, TH N 5*05'59"E 118.79 FT ALONG BURKHART RD, TH N 6*33'45"W 213.12 FT, S 89*48'E 314.36 FT, S 330 FT, N 89*48'W 300.56 FT TO BEG 2.3A M/L
The following terms are additional terms and also shall supersede the printed terms herein to the extent that they are inconsistent:
b) Selling Broker's commission shall be paid by the purchaser.
c) Brokers and agents must release any lien for commission at closing.
d) Purchaser shall give Seller notice of any title defect within 7 days of receipt of title commitment. Seller must give notice of intent to cure any such defect or Seller's decision to decline to cure such defect within 14 days after receipt of notice of such defect.
f) Purchaser's due diligence period shall commence 7 days after receipt of the title commitment if no notice of defect is given, or upon receipt of Seller's response to such notice of defect if one is given.
g) Purchaser shall have the right to conduct a Phase II environmental inspection upon notice to seller, but Seller's consent shall not be required.
h) Purchaser may assign this agreement to any entity in which Todd Lekander is a direct or an indirect owner in whole or in part.
i) Seller shall provide a completed seller's disclosure and lead paint form within 5 days of acceptance of this offer.
j) Stove, refrigerator, all window treatments and built in fixtures are included.

39. **ADVICE OF COUNSEL.** All parties are encouraged to seek the advice of independent legal counsel before executing this Agreement. Such independent counsel may help to determine the marketability of title; understand possible tax consequences; ascertain that the terms of the sale are adhered to before the transaction is closed; and provide advice with respect to all notices and other important matters related to this Agreement. Purchaser and Seller acknowledge the importance of obtaining advice from independent counsel and acknowledge that no broker and/or real estate agent is acting as an attorney or providing legal advice and no broker and/or real estate agent shall be responsible for any loss or damage resulting from the preparation of this Agreement or any addenda thereto.

Purchaser's Acknowledgement of Offer:

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By signing below, Purchaser acknowledges having read and received a copy of this Purchase Agreement.

For Purchaser:

Witnesses:

By: _____
Todd Lekander for an entity to be formed

_____

Its: _____

By: _____

_____

Its: _____

Seller's Acceptance:

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Seller accepts this Agreement on this 23 day of June, 20 21, at 2:45 (AM/PM) ☐ with the following conditions:

; or ☑ without qualification.

By signing below, Seller acknowledges having read and received a copy of this Agreement. If this Agreement is signed by Seller without any modification, the acceptance date stated herein shall be the Effective Date of the Agreement.

If additional conditions are stipulated herein, Seller gives Purchaser until the 23 of June, 20 21 at 2:45 (AM/PM) to provide its written acceptance of the counter conditions stated herein.

For Seller:

Witnesses:

By: _____

_____

Its: _____

By: _____

_____

Its: _____

By: _____

_____

Its: _____

Purchaser's Acknowledgment of Seller's Acceptance:

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Purchaser acknowledges receipt of Seller's acceptance of Purchaser's offer. If the acceptance was subject to changes from Purchaser's offer, Purchaser agrees to accept those changes, with all other terms and conditions remaining unchanged. If this Agreement is signed by Purchaser without any modification, then the date stated as Purchase's Receipt of Acceptance shall then become the Effective Date of this Agreement.

Seller has accepted this Agreement on this 23 day of June, 2020, at 2:45 (AM/PM)

For Purchaser:

Witnesses:

By: _____
Todd Lekander for an entity to be formed

_____

Its: _____

By: _____

_____

Its: _____

Exhibits:

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The following exhibits are attached hereto and shall become part of this Agreement by reference

Exhibit Name	Exhibit Description	Provided By *(Purchaser or Seller)*	Attached By *(Date)*
Exhibit A	Property Survey and/or Legal Description	Seller	
Exhibit B	Personal Property	Seller	
Exhibit C			
Exhibit D			
Exhibit E			
Exhibit F			
Exhibit G			

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EXHIBIT E

AuthentiSign ID: 8AAFCC03-9F09-4A73-BA0A-F1F92C58AFBF

PURCHASER (legal name) T. J. Lekander (for an entity to be formed prior to closing)

PURCHASER (legal name) _____

PURCHASER(S) Current Address _____

SELLING OFFICE Laurex Residential Real Estate Phone (810) 201-4848 Office ID 365878

SELLING AGENT Gary McCririe Phone 810-201-4848 License# 209002

LISTING OFFICE RE/MAX Commercial Phone _____ Office ID _____

LISTING AGENT Ron Kirk Phone 313-790-6229 License# _____

1. THE UNDERSIGNED hereby offers and agrees to purchase, subject to easements and restrictive covenants of record, the following property in the CITY VILLAGE TOWNSHIP of Howell, County of Livingston, Michigan described as follows: SEC 33 T3N R4E BEG SW COR OF SEC, TH N5* E 331.21 FT ALONG CL BURKHART RD, TH S89 also known as 3958 MASON RD
Tax Code# 0633300001 together with all fixtures and appurtenances in or on the premises (unless specifically excluded herein) including, if any, lighting fixtures, shades, venetian blinds, drapery hardware, curtain rods, attached mirrors, ventilating fixtures, screens, storm doors and windows, garage door openers (including transmitter(s), water softener (rental units excepted), built in kitchen equipment, heating unit including wood stove, attached humidifier, mail box, awnings, all TV antennae including rotor equipment, landscaping, wall to wall carpet, as well as the following personal property for which a bill of sale shall be given.
Included: _____.
Excluded: _____ and to pay therefore the sum of Three Hundred Fifty-Five Thousand Eighteen DOLLARS ($355,018.29).

2. THIS OFFER IS MADE SUBJECT TO FINANCING TERMS AND SATISFACTORY COMPLETION OF THE FOLLOWING CONDITIONS AS MARKED
(X) CASH SALE Delivery of the statutory Warranty Deed conveying a marketable title. Payment of purchase money to be made by cashier's check or money order.
(____) CASH SALE OR NEW MORTGAGE Delivery of a statutory warranty deed conveying a marketable title. This agreement is contingent upon the Purchaser(s) being able to secure a _____ mortgage in the amount of $_____ for a term of _____ years and pay $_____down plus mortgage costs, prepaid items and adjustments in cash. Purchaser further agrees to apply for such mortgage within _____ calendar days from acceptance of this offer at his/her own expense and shall comply with all requirements of said lending institution in a timely manner. Purchaser shall deliver to Seller a copy of a non-contingent commitment from the lending institution within _____ calendar days from the date of acceptance of this offer. If a commitment from the lending institution is not obtained within the time limits set forth above, this offer may be declared void by either party and, provided that the failure to obtain a commitment is due to no fault of Purchaser, the deposit shall be returned to Purchaser.
(____) SALE TO EXISTING MORTGAGE – MORTGAGE ASSUMPTION WITH RELEASE OF LIABILITY (See Attached Addendum)
(____) SALE TO EXISTING MORTGAGE – MORTGAGE ASSUMPTION WITHOUT RELEASE OF LIABILITY (See Attached Addendum)
(____) SALE ON LAND CONTRACT/PURCHASE MONEY MORTGAGE (See attached addendum)
(____) LAND CONTRACT ASSUMPTION (See Attached Addendum)
(____) CASH SALE WITH BRIDGE LOAN/INTERIM FINANCING (See Attached Addendum)
(____) CONTINGENCY ON SALE AND CLOSING OF PURCHASER'S PROPERTY (No offer pending) (See Attached Addendum)
(____) CONTINGENCY ON CLOSING OF SALE ON PURCHASER'S PROPERTY (Sale Pending) (See Attached Addendum)
(____) OTHER (See Attached Addendum)

3. EARNEST MONEY The Broker is hereby authorized to present this offer and the deposit of $10,000.00 as indicated (CASH _____) (CHECK# _____) or (OTHER upon acceptance) to be held by the Selling Broker under the rules promulgated under the Michigan Real Estate License Law.

BROKER'S ACKNOWLEDGMENT OF EARNEST MONEY DEPOSIT Received from the above named Purchaser the deposit money mentioned above which will be applied to the purchase price at closing or will be refunded if the foregoing offer and deposit are declined. If deposit is by check, it will be refunded to Purchaser within 10 business days after deposit into Broker's account. Broker _____ By to be paid to seller
This is a cooperative sale with RE/MAX Commercial and commission will be paid to the Selling Broker as offered by Listing Broker in MLS# _____.

4. POSSESSION to be given on or before 0 days after closing subject to the rights of tenants, if any. From the day after closing through the day of vacating the property as agreed, Seller shall pay as indicated 0 per day. The Listing Broker shall retain from the amount due Seller at closing the amount equal to 0 days of said occupancy charge, paying to Purchaser the amount due and returning to Seller the unused portion as determined by date property is vacated and keys surrendered to Listing Broker. The parties acknowledge that the Broker has no obligation implied or otherwise for seeing that the premises are vacated on the date specified or for the condition of the premises, etc., but is acting only as an escrow agent for holding the occupancy deposit.

5. ADDITIONAL CONDITIONS (Mark If Applicable)
___ Agency Disclosure Form attached
___ Subject property abuts a private road which has not be accepted as a public road and is not required to be maintained by the County Road Commission or other public or municipal body.
___ Listing Broker shall retain $300.00 from the Seller at closing for water/sewer charges to date of occupancy. When the final bill is paid any unused portion will be returned to the Seller.
___ (Association Dues_____) (Condominium Fees _____) (Other_____) shall be prorated and adjusted to date of closing.
___ The closing of this sale shall take place as provided in the general conditions after removal of all financing contingencies, but in no event later than _____.
___ FHA or VA Financing Addendum required (See addendum)
___ Seller's Disclosure Form received
___ Lead-based Paint Disclosure received
___ Home Warranty (___ excluded) (___ included) (to be paid for by _____)
X Attorney package of the closing documents required at least 3 days prior to closing.
___ Fuel in tank(s) (___ is included in the sale price) (___ is not included in the sale price and fuel shall be prorated at time of possession)
___ This offer is Void if not accepted by _____
___ This is a Back-up offer (See attached Addendum)
X Other Addendum(s) attached addendum A
X Electronic signatures acceptable.
X Facsimile signatures acceptable.

6. PROPERTY INSPECTION(S) Purchaser shall have the option for 60 calendar days after acceptance of this agreement to have the property inspected and tested by inspector(s) of the Purchaser's choice and at the Purchaser's expense. Purchaser (X DOES) _____DOES NOT) choose to have the Property inspected at Purchaser's expense. The inspection(s) and test(s) may include, but are not limited to, building structure, mechanical systems, environmental items, water, septic and pest. If Purchaser is not satisfied with the result of any inspection, Purchaser shall notify Seller, in writing within 3 days following inspections that Purchaser (a) declares this agreement null and void and the deposit shall be returned or (b) requests Seller to make specific repairs to remedy claimed defect(s). Failure to notify Seller of a defect within this time period shall constitute a waiver of this paragraph by the Purchaser and he shall accept the property AS IS. If the Seller is timely notified of a defect, he shall notify Purchaser, in writing, within 3 days, that Seller (a) will make the requested repairs(s) or (b) is unwilling to make the requested repair(s). If the seller declares his unwillingness to make the requested repair(s), Purchaser may (a) accept the property AS IS or (b) declare this Agreement null and void and the deposit shall be returned to Purchaser.

7. TITLE INSURANCE Seller shall provide Purchaser, at Seller's expense, an owner's policy of title insurance (X with standard exceptions) (___ without standard exceptions. (____Seller ____Purchaser) to pay cost of a staked/mortgage survey, if required. ____ALTA 1998 Expanded Coverage (____Seller ____ Purchaser to pay additional cost) in the amount of the purchase price. Seller will apply for a commitment for title insurance within 7 days after the date of this agreement. Upon receipt of the commitment, Purchaser shall have 7 days to provide Seller with written notice of any objections. Seller will then have 30 days after receiving written notice to remedy the claimed defects. If the Seller is unable to remedy the defects within 30 days, this agreement shall terminate and the earnest money deposit shall be returned to Purchaser.

Purchasers Initials _____ Sellers Initials _____

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PURCHASE AGREEMENT - GENERAL CONDITIONS (Continued from page # 1)

8. DEFAULT Purchaser agrees to close within 10 days after all contingencies are removed and title commitment has been issued, unless otherwise agreed in writing by all parties hereto. In the event of default by Purchaser, all deposits made hereunder may be forfeited as liquidated damages at Seller's election or alternatively, Seller may retain such deposits as partial payment on the purchase price and pursue his or her legal or equitable remedies hereunder against Purchaser. Likewise, in the event of default by Seller, Purchaser may pursue his or her legal or equitable remedies against Seller.

9. CLOSING COSTS Unless otherwise provided in this agreement, it is agreed that Seller shall pay all State and county transfer taxes and costs required to convey clear title. Unless otherwise provided in this agreement, Purchaser shall pay the cost of recording the deed and/or security interest and all mortgage closing costs required by mortgagee. In addition, Purchaser shall pay any closing fee that may be charged in the event the title insurance company prepares closing documents and/or closes the sale.

10. PRORATED ITEMS Seller shall be responsible for all real estate taxes for years prior to the year in which the closing occurs and the Purchaser shall be responsible for all real estate taxes for years after the year in which the closing occurs. Taxes for the year in which the closing occurs shall be prorated such that Seller is responsible for that portion of the taxes through and including the date of closing. For purposes of this paragraph, taxes shall be deemed paid in advance based on the due date of the municipality or taxing unit in which the property is located. _____ **Seller shall pay** _X_ **Buyer shall assume** all assessments which are or become a lien on or before the date of closing. Rent (including deposits), insurance, if assigned, interest on any existing land contract and mortgage or other lien assumed and/or to be paid by the Purchaser., shall be adjusted to the date of closing of the sale. Listing Broker may retain from the amount due Seller(s) at closing, amounts required to cover any charges where applicable. When the final charge, bill, or reading is received, the unused portion shall be returned to Seller. Seller agrees to pay for any prorated fees where applicable to the date vacating. Any deficiency in the amount withheld shall be paid by the Seller.

_____ **In lieu of the proration method set forth in paragraph 10 above, see attached Addendum A**

11. FEES OR CONSIDERATIONS Purchaser and Seller hereby acknowledge notice of the fact that Broker may accept a fee or consideration with regard to the placement of an abstract, home warranty, loan, mortgage, life, fire, theft, title insurance or other casualty or hazard insurance arising from this transaction and expressly consent thereto as required by the provisions of rules promulgated under the Michigan Real Estate Licensing Law.

12. ENTIRE AGREEMENT This agreement supersedes any and all understandings and agreements, and both parties agree that neither party has relied on any representation of the Broker(s), his/her salesperson(s) or Broker's agents concerning the fitness and condition of the property. The Broker and his/her agents assume no responsibility for the condition of the property and for the performance of the contract, and hold harmless the real estate offices and agents for any adverse conditions. We further state that there are no oral agreements other than those stated in the offer. We acknowledge that Brokers are not acting as appraisers, builders, accountants, environmentalists, inspectors, tax advisors, or lawyers.

13. CONDITION Until possession is delivered, Seller agrees to keep the property in substantially the same condition as of the date of this agreement and agrees to maintain heating, well, septic, plumbing, electrical system and other equipment in normal working order, to keep the roof watertight and maintain the grounds. Seller further agrees to keep all utility services operating until property is delivered and, upon vacating the premises, to remove all debris and leave the property in "broom clean" condition. In the event the property herein has been winterized, it shall be the obligation and expense of the Seller to de-winterize the property prior to closing. The Purchaser has a right to a walk-through inspection of the premises within 72 hours prior to closing

14. PARTIES BOUND The covenants herein shall bind and inure to the benefits of the executors, administrators, successors and assigns of the respective parties.

15. ADDITIONAL CONDITIONS:

a) See attached Addendum "A"

TIME IS OF THE ESSENCE

THIS IS A LEGALLY BINDING CONTRACT AND ALL PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED TO HAVE AN ATTORNEY REVIEW THE TRANSACTION ON THEIR BEHALF. PURCHASERS HEREBY ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED TO HAVE A CONTRACTOR(S) INSPECTION IF THERE ARE ANY QUESTIONS RELATING TO THE CONDITION OF THE PROPERTY.

WITNESS **PURCHASERS**

X _____ X T. J. Lekander for an entity to be formed
Print name (legal signature)

DATED 3/7/2016 X _____
Print name (legal signature)

ACCEPTANCE - TO THE ABOVE NAMED PURCHASER(S) AND BROKER : The forgoing offer is accepted and the undersigned agree to sell the described premises on the terms stated. The earnest money deposit first recited above and all other deposits paid to Selling Broker by Buyer, shall be considered and used as earnest money, and shall be held by the Selling Broker under the terms of this Agreement and according to regulation of the Michigan Department of Commerce. The undersigned agree that on consummation of the sale, or if the sale is not consummated by reason of the failure, inability or refusal of the undersigned to perform the conditions of this Agreement to pay Selling Broker and/or Listing Broker for services rendered, a total commission as set forth in the listing agreement or as herein set forth, for the sale of the property. If the deposit money is forfeited for non-performance by Purchaser(s), one half of such deposit, but not more than the amount specified (as commission) shall be paid to the Selling and or Listing Broker for such services rendered to be shared between them according to the terms of the listing agreement and the remainder paid to the Seller.

WITNESS **SELLERS**

X _____ X _____
Print name (legal signature)

Date _____ X _____
Print name (legal signature)

Home Address _____

THE UNDERSIGNED PURCHASER(S) HEREBY ACKNOWLEDGES RECEIPT OF THE SELLER'S SIGNED ACCEPTANCE OF THE FOREGOING PURCHASE AGREEMENT.

DATED _____ X _____ X _____

COUNTER OFFER AND TIME LIMIT Counter Offer made by Seller(s) shall be valid until _____ at _____ If said counter offer is not accepted and written notice given to Listing Agent within said date and time, this offer will be null and void and all deposit moneys may be refunded.

Counter Offer made by Purchaser(s) shall be valid until _____ at _____ if said counter offer is not accepted and written notice given to Listing Agent within said date and time, this offer will be null and void and all deposit moneys may be refunded.

Disclaimer: This form is provided as a service of the Livingston Association of REALTORS®. Please review both the form and details of the particular transaction to ensure that each section is appropriate for the transaction. The Livingston Association of REALTORS® is not responsible for use or misuse of the form for misrepresentation or for warranties made in connection with the form.
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ADDENDUM

In reference to the ☒ PURCHASE AGREEMENT, ☐ EXCHANGE AGREEMENT, ☐ LEASE, ☐ COUNTER OFFER- covering the ☒ real property, ☐ business, ☐ premises - commonly known as 3958 MASON RD

Howell MI 48843

dated 03/07/16, between

T.J. Lekander (on behalf of an entity to be formed prior to closing)

and , Sheila Aldrige

the undersigned parties hereby agree as follows:
Addendum A

This offer is contingent upon purchaser having the property approved (buyer's site plan) within 180 days of seller's acceptance of this offer. Purchaser will pay all costs associated with said site plan approval. Seller will cooperate with purchaser by providing all information available to seller including, but not limited to, survey's, environmental reports, past rezoning requests, etc. Additionally, seller shall cooperate by executing any and all forms required by Howell Township to accomplish said site plan and attending meetings at the township, if required. Additionally, during the approval period, seller shall allow full access to the property by purchaser, and purchaser's agents to conduct any and all survey's, reports, studies, etc to accomplish said approval. Purchaser agrees to restore the property to the condition as existed prior to any and all tests or inspections and to not commit waste to said property. Purchaser agrees to submit a site plan application to Howell Township on or before June 6, 2016.

Purchaser agrees to close within 20 days of township granting site plan approval. If purchaser is unable to have the site plan approved within the time specified, this offer will be declared null and void, and any monies paid by purchaser to seller shall be retained by the seller in full termination of this agreement.

Purchaser agrees to pay the following non-refundable, but applicable, deposits to seller;

1. At the time of acceptance of this offer, the sum of $10,000, referenced as earnest money deposit in paragraph 3 of the offer to purchase.

2, If the purchaser requires more than 180 days to receive site plan approval, seller shall grant additional 60 day extensions upon the payment of $5,000.00 per extension. Buyer may request up to 2 extensions and pay $5,000.00 each. These monies shall be non-refundable, but applicable to the purchase price.

Any documents requested by Purchaser from Seller as part of Purchaser's due diligence will be delivered to the Seller to the extent that the Purchaser has those documents. To the extent that those documents are not in Seller's possession, the Seller will pay for the cost of acquiring them.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement of Sale.

DATED: 3/7/2016 TIME: 6:16 DATED: _____ TIME: _____

_____ Purchaser _____ Seller

_____ Purchaser _____ Seller

Witness Gary McCririe Agent Witness _____ Agent

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ADDENDUM

In reference to the [X] PURCHASE AGREEMENT, [ ] EXCHANGE AGREEMENT, [ ] LEASE, [ ] COUNTER OFFER- covering the [X] real property, [ ] business, [ ] premises - commonly known as 3950 HASKI RD

Howell, MI 48843

dated 03/07/16, between

T.J. Lekandos (on behalf of an entity to be formed prior to closing)

and Sheila Aldrige

the undersigned parties hereby agree as follows:
Addendum A

This offer is contingent upon purchaser having the property approved (buyer's site plan) within 180 days of seller's acceptance of this offer. Purchaser will pay all costs associated with said site plan approval. Seller will cooperate with purchaser by providing all information available to seller including, but not limited to, survey's, environmental reports, past rezoning requests, etc. Additionally, seller shall cooperate by executing any and all forms required by Howell Township to accomplish said site plan and attending meetings at the township, if required. Additionally, during the approval period, seller shall allow full access to the property by purchaser, and purchaser's agents to conduct any and all survey's, reports, studies, etc to accomplish said approval. Purchaser agrees to restore the property to the condition as existed prior to any and all tests or inspections and to not commit waste to said property. Purchaser agrees to submit a site plan application to Howell Township on or before June 6, 2016.

THAT SELLER HAS INTENDED POSSESSION AT PURCHASERS EXPENSE

Purchaser agrees to close within 20 days of township granting site plan approval. If purchaser is unable to have the site plan approved within the time specified, this offer will be declared null and void, and any monies paid by purchaser to seller shall be retained by the seller in full termination of this agreement. INCLUDING EARNEST MONEY

Purchaser agrees to pay the following non-refundable, but applicable, deposits to seller;

1. At the time of acceptance of this offer, the sum of $10,000, referenced as earnest money deposit in paragraph 3 of the offer to purchase.

2. If the purchaser requires more than 180 days to receive site plan approval, seller shall grant additional 60 day extensions upon the payment of $5,000.00 per extension. Buyer may request up to 2 extensions and pay $5,000.00 each. These monies shall be non-refundable, but applicable to the purchase price.

AND PAID DIRECTLY TO SELLER

Any documents requested by Purchaser from Seller as part of Purchaser's due diligence will be delivered to the Seller to the extent that the Purchaser has those documents. To the extent that those documents are not in Seller's possession, the ~~Seller~~ Purchaser will pay for the cost of acquiring them.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement of Sale.

DATED: 3/7/2016 TIME: 6:11 DATED: May 14, 2016 TIME: 3:31 PM.

Purchaser Sheila K. Aldridge Seller

Purchaser Sheila K. Aldridge Seller

Witness Authentisign Gary T McCririe Gary McCririe 3/7/2018 3:45:29 PM EST Agent Witness Ron Kirk Agent

2/05

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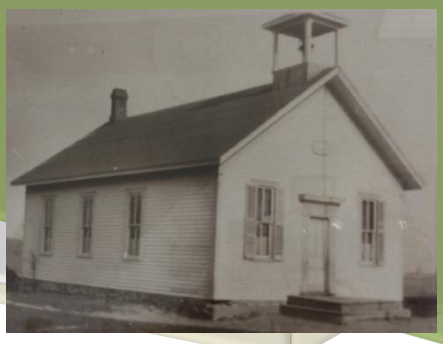
EXHIBIT F

ZONING ORDINANCE

Howell Township

Updated: November 2025



ARTICLE IX
NSC NEIGHBORHOOD SERVICE COMMERCIAL DISTRICT

Section 9.01 PURPOSE.

This District has the intent of providing areas wherein retail trade and service outlets can be located in order to satisfy the day to day needs of the residents in the immediate neighborhood.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 9.02 PERMITTED PRINCIPAL USES.

The following uses are permitted as long as the use is conducted completely within an enclosed building unless stated otherwise:

A. Retail establishments; including those selling groceries, meats, bakery products, fruits, vegetables, delicatessen foods, drugs and sundries, hardware goods, gifts, dry goods, notions, clothing, wearing apparel, shoes and boots.

B. Restaurants; except that food is not permitted to be consumed in parked vehicles on premises.

C. Service establishments; including medical, dental, veterinary, financial, hair cutting and hair dressing, millinery, dressmaking, tailoring, shoe repairing, fine arts studios, laundry and dry cleaning and household and personal equipment repair shops.

D. Vehicle service and repair facilities for automobile and light trucks, however specifically excluding body shops.

E. Offices and shops for local contractors and service providers such as those in the plumbing, electrical, construction, HVAC, appliance, gardening, and landscaping trades, including retail sales of parts, equipment, and supplies, and outdoor storage subject to the standards in Section 14.46.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986)

Section 9.03 PERMITTED PRINCIPAL SPECIAL USES WITH CONDITIONS.

A. Automotive gasoline and service stations in accordance with the provisions of Article XVI, "Special Uses" for this use. See Section 16.11.

B. Drive-in retail and service establishments in accordance with the provisions of Article XVI, "Special Uses" for these uses.

C. Neighborhood Shopping Centers in accordance with the provisions of Article XVI, "Special Uses" for a collective grouping of two (2) or more of the uses permitted in this District.

D. (Deleted by Ordinance #107).

E. Not for profit shelters for temporary housing of small animal domestic pets in accordance with the provisions of Article XVI, "Special Uses", and also in compliance with the terms and conditions of Section 16.16 of said Article XVI.

F. Commercial Kennels subject to Section 14.42.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 13 eff. Mar. 6, 1987; further amend. by Ord. No. 19 eff. Aug. 3, 1988; Ord. No. 31 eff. Oct. 3, 1991; Ord. No. 62 eff. Oct. 8, 1997, further amend. by Ord. No. 107, eff. May 24, 2000; further amend. by Ord. 271 eff. Oct. 3, 2017)

Section 9.04 PERMITTED ACCESSORY USES.

A. Normal accessory uses to all "Permitted Principal Uses."

B. Normal accessory uses to all "Permitted Principal Special Uses."

C. See Section 14.34.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 9.05 PERMITTED ACCESSORY USES WITH CONDITIONS.

A. Cargo Containers, as an accessory structure, subject to Section 14.07.I

1) No more than one cargo container is permitted per acre, with a maximum of two (2) containers per parcel.

Section 9.06 DIMENSIONAL REQUIREMENTS, EXCEPT AS OTHERWISE SPECIFIED IN THIS ORDINANCE.

A. Lot area. Minimum of one (1) acre, except where a lot or parcel is served by a public or common water supply system and a public wastewater sewer and treatment system, in which use of the lot or parcel may have a minimum area of 10,000 square feet. Neighborhood Shopping Centers shall meet the requirements of Article XVI, "Special Uses" for a collective grouping of two (2) or more of the uses permitted in this District.

B. Lot width. Minimum of 150 feet at building setback line when on-site well water supply and septic tank wastewater disposal systems are used or a minimum of 80 feet at building setback line when public or common water supply and wastewater sewerage and treatment systems are directly accessible to the lot or parcel.

C. Lot coverage. Maximum of 60%.

D. Yard and setback requirements.

1) Front yard. Minimum of thirty-five (35) feet from the road or highway right-of-way line, or as specified Section 26.05, whichever is greater.

2) Side yards. Minimum of ten (10) feet for one (1) side yard, but a minimum total of twenty-five (25) feet for both side yards.

3) Rear yard. Minimum of fifty (50) feet.

E. Height limitations. Maximum of two (2) stories or thirty (30) feet, except that a detached accessory structure shall not exceed 20 feet.

F. Locational and other requirements.

1) The site shall have at least one (1) property line abutting a major road or highway arterial.

2) All vehicular access shall be from a Livingston County Road Commission or Michigan Department of Transportation approved driveway intersection with a road or highway, which may include the use of acceleration and/or deceleration lanes, tapered lanes, or a frontage access road located parallel and adjacent to a major road or highway arterial in conformance with Section 26.04.

3) The storage of goods or materials is not permitted outside of the principal structure unless otherwise specified in Section 9.02.

(Ord. No. 1 eff. Jan. 8, 1983; amend. Ord. No. 75 eff. Sept. 30, 1998; further amend. Ord. No. 97 eff. Feb. 23, 2000; Ord. No. 98 eff. Feb. 23, 2000; further amend. Ord. No. 119 eff. Dec. 27, 2000)

ARTICLE XVI
SPECIAL USES

Section 16.01 PURPOSE.

The formulation and enactment of this Zoning Ordinance is based upon the division of the Township into zoning districts, each of which include permitted uses which are mutually compatible. In addition to such permitted uses in districts, however, it is recognized that there are certain specific or unique uses which may be necessary or desirable to allow in definable locations in certain districts; but, which on account of their actual or potential impact on neighboring uses or public facilities, need to be carefully regulated with respect to their location for the protection of the permitted uses in a district. Such uses, on account of their peculiar locational need or the nature of the service offered, may have to be established in a district in which they cannot be reasonably allowed as an unrestricted permitted use.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.02 AUTHORITY TO GRANT PERMITS.

The Township Board, after review and recommendation by the Planning Commission, shall have the authority to grant special use permits, subject to such conditions of design and operations, safeguards and time limitations as it may determine for all special uses conditionally allowed in the various district provisions of this Ordinance.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.03 APPLICATION AND FEE.

All applications and fees for special uses shall meet the requirements of Article XX, "Site Plan Review Procedures".

Section 16.04 DATA, EXHIBITS AND INFORMATION REQUIRED IN APPLICATIONS.

All data, exhibits and information required in applications for Special Uses shall meet the requirements of Article XX, "Site Plan Review Procedures".

Section 16.05 PUBLIC HEARING.

A. NOTICE REQUIREMENTS

1) The Planning Commission must hold a public hearing on the application for a special use permit and give notice as set forth below.

2) Notice must be given as follows:

a) The Township must publish notice in a newspaper of general circulation in the Township; and

b) The Township must also send notice by mail or personal delivery to the owners of property for which approval is being considered; and

c) The Township must also send notice to all persons to whom real property is assessed within 300 feet of the property, and to the occupant of all structures within 300 feet of the property regardless of whether the property or occupant is located in the Township.

3) The notice must be given not less than 15 days before the date the applicant will be considered for approval. If the name of the occupant is not known, the term "occupant" may be used in making notification.

B. CONTENTS OF NOTICE. The notice must do all the following:

1) Describe the nature of the special use permit request.

2) Indicate the property that is the subject of the request. The notice must include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

3) State when and where the request will be considered;

4) Indicate when and where written comments will be received considering the request.

Ord. No. 1 eff. Jan. 8, 1983; amend. By Ord. No. 11 eff. Apr. 4, 1986 and further amended by Ord. No. 202 eff. Dec. 21, 2006)

Section 16.06 REQUIRED STANDARDS AND FINDINGS FOR MAKING DETERMINATIONS.

The Township Board shall review the particular circumstances and facts of each proposed special use in terms of the following standards and required findings, and shall find and record adequate data, information and evidence showing that such a special use on the proposed site, lot, or parcel:

A. Will be harmonious with and in accordance with the general objectives, intent and purposes of this Ordinance in terms of their uses, activities, processes, materials, equipment and conditions of operation, that will be detrimental to any persons, property, or the general welfare of the surrounding area in which it is located due to excessive production of traffic, noise, smoke, fumes, glare, or odors.

B. Will be designed, constructed, operated, maintained and managed so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity.

C. Will be served adequately by essential public facilities and services; such as, highways, roads, water supply systems, wastewater disposal systems, police and fire protection, storm water drainage systems, refuse disposal, or that the persons or agencies responsible for the establishment of the proposed special use shall be able to provide adequately any such service.

D. Will not be hazardous or disturbing to existing or future neighboring uses.

E. Will not create excessive additional requirements at public cost for public facilities, utilities and services.

F. Will not have a substantial adverse impact upon the natural resources and environment of the lot or parcel upon which it is to be located and adjacent areas, including, but not limited to prime agricultural areas, forest and woodlot areas, lakes, rivers, streams, watersheds, water recharge areas, flood ways, and wildlife areas.

(Ord. No. 1 eff. Jan. 8, 1983; amend. by Ord. No. 11 eff. Apr. 4, 1986; further amend. by Ord. No. 97 eff. Feb. 23, 2000)

Section 16.07 SITE PLAN REVIEW.

If a site plan is disapproved, the applicant is required to wait one (1) year before resubmittal of the same or similar site plan for review and approval consideration by the Planning Commission on the same or approximately the same parcel of land. The applicant has the right to request the review of a disapproved site plan on matters of interpretation of the provisions of this zoning Ordinance, but not of land, building or structural use. Also, refer to Section 22.06.

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.08 JUNK YARDS.

In addition to and as an integral part of development, the following provisions shall apply:

A. Junk yards shall be established and maintained in accordance with all applicable Statutes of the State of Michigan, and are only permitted in the I District, and shall be located on sites which are completely screened by opaque fences, walls or screen plantings from adjacent properties and public view.

B. An opaque fence or wall at least seven (7) feet in height and not less in height than the height of the junk or salvageable materials, equipment, parts or supplies located within the fenced or walled area of the lots or parcel on which the junk yard is located shall screen the salvage or junk yard from public view. The fence or wall shall be located no closer to the property lines of the lot or parcel than the required yard setbacks for buildings. All gates, doors and access ways through said fence or wall shall be solid, like the fence or wall, and closed when not in use as an access way. No junk or salvageable materials, equipment, parts or supplies shall be located outside the fence or wall between the property line and the fence or wall.

1) Salvage and Junk Yards shall meet the landscaping requirements specified in Section 28.03A and other appropriate Sections of Article XXVIII, Landscaping Requirements.

C. All traffic ingress or egress shall be on major roads, as defined in Section 14.15, 14.16, 14.18, 14.20 and 14.24, and there shall be not more than one (1) entrance way to the lot on which a junk yard shall be operated from each public road on which said lot abuts.

D. On the lot on which a junkyard shall be operated, all roads, driveways, parking lots, and loading and unloading areas within any yard shall have their surfaces paved or treated so as to limit on adjoining lots and public roads the nuisance caused by windborne dust.

B. All fenced-in areas shall be set back at least 100 feet from any front road or property line.

C. Side or rear yards shall be at least 100 feet in depth from all adjacent lots or parcels.

D. All traffic ingress or egress shall be on major roads and all local traffic movement shall be accommodated within the site so that entering and exiting vehicles will make normal and uncomplicated movements onto or off from public roads. All points of entrance or exit for motor vehicles shall be located no closer than 200 feet from the intersection of any two (2) roads or highways.(Ord. No. 1 eff. Jan. 8, 1983)

E. Refer to Ordinance No. 6 Assembly Ordinance for additional regulations.

Section 16.11 GASOLINE SERVICE STATIONS.

All gasoline service stations or filling stations shall conform to the following regulations in addition to all applicable regulations in effect in the District in which they are to be located:

A. Frontage and area. Every gasoline service station shall have a minimum frontage of 200 feet and a minimum area of 30,000 square feet.

B. Setbacks. Every structure, including gasoline pumps and other equipment, erected or installed for use as a gasoline service station shall have a minimum setback from the road right-of-way as required by the regulations in the zone in which they are to be located, and a minimum setback from all property lines of twenty-five (25) feet.

C. Construction standards. All vehicle service areas shall be constructed to conform to the following standards:

1) Suitable separation shall be made between the pedestrian sidewalk and vehicular parking or moving area with the use of appropriate bumper, wheel guards or traffic islands.

2) The entire area used for vehicle service shall be paved with a hard surface, except for such unpaved area as is landscaped and protected from vehicle use by a low barrier.

3) Hydraulic hoist, lubricating, greasing, washing, and repair equipment shall be entirely within a building. Tire and battery service and minor automobile repair, excluding automobile body repair and painting, are permitted if conducted entirely within a building.

4) The maximum widths of all driveways at the public sidewalk crossing or street line shall be no more than twenty-four (24) feet.

5) Minimum angle or driveway intersection with the roadway from the curb line to lot line shall be no less than sixty (60) degrees.

6) The minimum distance of any driveway from any property line shall be at least twenty (20) feet.

7) The minimum distance between roadway curb cuts shall be no less than forty (40) feet.

8) No gasoline service station shall be permitted within three hundred (300) feet of a wellhead protection area.

D. Lighting. All lighting shall be installed in a manner so that no illumination source is visible beyond all property lines. See Section 14.22.

E. The following accessory uses are permitted:

1) Car washes.

2) Sale of retail convenience store items.

3) Sale of food for stand-up or take-out consumption, but not including sit-down dining tables and chairs for the purpose of serving to or consuming food by customers.

(Ord. No. 1 eff. Jan. 8, 1983; Amend. by Ord. No. 76 eff. Sept. 30, 1998)

Section 16.12 SANITARY LANDFILLS.

Sanitary landfills shall (1) only be located in the AR District, (2) only if planned to be located in Livingston County, including Howell Township, in accordance with Public Act 641 of 1978, "The Solid Waste Management Act" and (3) with access only permitted from a hard surface paved all-weather year-around road as defined by the Livingston County Road Commission, "Road Standards".

(Ord. No. 1 eff. Jan. 8, 1983)

Section 16.13 EXTRACTION OF NATURAL RESOURCES.

A. Permitted uses. The following special uses will be permitted only in the AR District

1) The excavation or mining of sand and gravel.

2) The processing, storage, loading, and transportation of sand and gravel, incidental to its marketing.

3) The mining of clay.

4) The extraction of peat or marl.

5) The quarrying of stone.

6) The operation of transit-mix concrete plant or an asphalt, oil, or tar-macadam batching plant.

7) The operation of a concrete products plant.

8) The excavation of topsoil, excluding soil attached to sod harvesting, the latter of which shall not be considered mining.

EXHIBIT G

HOWELL TOWNSHIP

Application for Special Use Permit

3525 Byron Road Howell, MI 48855
Phone: 517-546-2817 ext. 108
Email: inspector@howelltownshipmi.org

Fee: $750.00 File No. PC2023-05

Parcel ID #: 4706-33-300-001 Date 6/ /2023

Applicant Name Howell-Mason, LLC Applicant Address PO Box 708, Howell, MI 48844

Phone 517 202 0232 Fax _____ Email todd@cdo10.com

Applicant is: [✓] Owner [ ] Lessee [ ] Land Contract Vendee

[ ] Other: _____

Complete and Attach: **Application for Land Use Permit** and **Application for Site Plan Review**

Current Zoning Classification Regional Service Commercial Proposed Use Convenience Store/Gas Station/ Drive-Thru

Legal Description (attach copy if necessary):

Please see attached.

Designate Ordinance Section Number Authorizing Special Use Requested: Sec 10.01, 10.02, 10.03, et. seq.

Attach supporting material, exhibits and information that will support a finding of the following criteria: (Section 16.06)

1. Use will be harmonious with and in accordance with the general objectives, intent, and purposes of this ordinance.
2. The use will be designed, constructed, operated, maintained, and managed so as to be harmonious and appropriate in appearance with the existing or the intended character of the general vicinity.
3. The use will be served adequately by essential public facilities, such as highways, police, and fire protection, drainage, and refuse disposal.
4. That the use will not be hazardous or disturbing to existing or future neighboring uses.
5. That the use will create excessive additional requirements of public costs for public facilities, utilities, and services.
6. That this use will not have substantial adverse impact upon the natural resources and environment of the lot or parcel upon which it is to be located and adjacent areas, including,

but not limited to prime agricultural areas, forest and woodlot areas, lakes, rivers, streams, watersheds, water recharge areas, flood ways, and wildlife areas.

I hereby depose and say that all the above statements and information contained in this application and any attachments submitted herewith are true and accurate.

Applicant Signature Howell-Mason, LLC

Print Name T.J. Lekander, Member

Date 6/ /2023

Subscribed to and sworn to before me
This 26 day of June,
2023.

Mary Macdonald
Notary Public
Livingston County, MI
My Commission Expires: 12/02/2026

Mary Macdonald
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF Livingston
My Commission Expires 12/02/2026
Acting in the County of Livingston

EXHIBIT H

LAW OFFICE OF PAUL E. BURNS

Attorneys at Law

PAUL E. BURNS
burns@peblaw.net
(517) 861-9547

OF COUNSEL:

JEFFREY D. ALBER
alber@peblaw.net
(734) 369-1009

October 17, 2023

HAND DELIVERED

Howell Township Planning Commission
c/o Howell Township Clerk
3525 Byron Rd
Howell, MI 48855

RE: HOWELL-MASON, LLC – SUPPLEMENT TO SPECIAL LAND USE APPLICATION

Dear Commissioners,

Enclosed herewith please find supplemental materials regarding the Howell-Mason, LLC Special Land Use Permit Application. Supplemental materials include, but are not limited to: (1) letter from Boss Engineering in response to Township engineering and planning reviews, including drawings, figures, and necessary exhibits; (2) an environmental opinion letter prepared by Mannik & Smith Group, including drawings, figures, and necessary exhibits; (3) a review letter prepared by expert planner Paul LeBlanc of PLB Planning Group; and (4) materials from Oscar Larson Co. regarding storage tank technology and safety.

Howell-Mason, LLC respectfully requests that its application, as supplemented, be reviewed and placed on the agenda for the Planning Commission meeting of Tuesday, November 21, 2023.

Please do not hesitate to contact our office should you have any questions.

Very truly yours,

Paul E. Burns

Jeffrey D. Alber

Cc:

TJ Lekander – Howell- Mason, LLC; Paul LeBlanc, PLB Planning Group; Chris Baker, Esq., Varnum, LLP; Brent LaVanway, Boss Engineering; Kevin Larr, Mannick & Smith Group

BOSS Engineering

3121 E. Grand River Howell, MI 48843
517.546.4836 fax 517.548.1670
www.bosseng.com

October 17, 2023

Mr. Joe Daus, Zoning Administrator
Howell Township
3525 Byron Road
Howell, MI 48855

RE: Howell-Mason, LLC Site Plan Submittal

Mr. Daus,

We have received your review of the Howell-Mason LLC. The reviews are dated August 14th and 16th, 2023 and offer the following comments in response.

Carlisle Wortman Review

1. Parcels 4706-33-300-001 and 4706-33-300-018 will be combined upon site plan approval. This has been noted on sheet 4. Parcel 4706-33-300-019 is not part of this project and will not be part of the parcel combination.
2. See letter provided by Mannick & Smith Group and Paul LeBlanc of PLB Planning Group.
3. The northernmost parcel will be excluded from the proposed project and thus does not need rezoning from SFR.
4. The location where no curb is provided is primarily for snow removal. A curbed landscape island is not required there to meet the landscape ordinance.
5. A driveway width of 24 feet would not allow an exit and dedicated left turn and right turn exit lanes. We are working with the Livingston County Road Commission on the approval of location and entry drive geometrics. We will defer to the LCRC process for approvable entry drive geometrics.
6. Architectural plans have been added to the set that indicate the building and canopy height. The east property line has been revised to be a 25' setback.
7. The dumpster and eastern curb line has been shifted to not be within the setback line of 25'.
8. A concept showing the location, width, height, and other relevant details about signage in compliance with Article 19 of the Howell Township Zoning Ordinance is attached.
9. The northmost row of 6 spaces is to provide additional site parking to meet ordinance requirements and will be used as employee parking.
10. The drive-thru lane configuration is a successful configuration utilized on other sites. The space that crosses the drive aisle is not counted towards the drive-thru stacking spaces. Additionally, a sign has been added and noted at this location to indicate for cars to not block the drive. The site circulation has not produced issue at other existing sites with identical uses as what is being proposed.
11. The dumpster enclosure has been relocated to the norther edge of the proposed site development.
12. Sidewalks have been added along the two frontages as requested.
13. The purpose of the northernmost driveway is to provide a secondary means of access to and from the site at a point further from the Mason/Burkhart intersection in an instance where cars are queuing at the intersection.
14. The second access point on Burkhart Road is to provide a second means of access further from the Mason Burkhart intersection.
15. We are currently working through the review/permitting process with LCRC.
16. Floor plans and elevation plans have been included with this submittal.
17. Additional detail has been provided for the parking calculations. Primarily, there are no seats for restaurant use, it is only a drive-thru which negates the use for sit-down customer parking. Additionally, the square footage for the retail sales area has been updated.
18. A loading space is shown on the east side of the site.
19. A concept plan showing the location, width, height, and other relevant details about signage in compliance with Article 19 of the Howell Township Zoning Ordinance is attached.
20. A detailed landscape plan is provided on sheet 8.

BOSS
BE
Engineering

3121 E. Grand River Howell, MI 48843
517.546.4836 fax 517.548.1670
www.bosseng.com

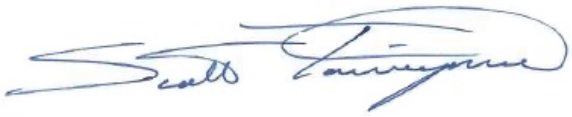
Spicer Group Review

1. Acknowledged. All approvals and permits will be obtained as required and copies of approvals and permits received to date are attached.
2. Revised drawings submitted herewith meet the dimension requirements of the ordinance.
3. A driveway width of 24 feet would not allow an exit and dedicated left turn and right turn exit lanes. We are working with the Livingston County Road Commission on the approval of location and entry drive geometrics. We will defer to the LCRC process for approvable entry drive geometrics.
4. The storm sewer easement has been revised to be indicated as a proposed easement. However, as all parcels are owned by a common entity an easement is not strictly necessary to meet the requirements of the ordinance.
5. An easement for ingress/egress is now shown and noted on sheet 4 and encompasses the acceleration taper from the new approach.
6. The parcels will be combined upon site plan approval. This has been noted on sheet 4.
7. Additional topographic conditions beyond the site extents are shown as requested.
8. The requested documentation is attached.
9. We will be working with the adjacent property owner to the north and working through the Livingston County Drain Commissioners office on the storm water detention outlet.
10. A legend has been provided on sheet 2 of the plans.
11. The sewer and water service connections have been shifted southerly to a greenspace to facilitate an easier connection.

Should you have any additional questions or comments, don't hesitate to give me a call.

Sincerely,

BOSS ENGINEERING COMPANY



Scott Tousignant, PE
Project Manager

October 11, 2023

Howell Township Planning Commission
3525 Byron Road
Howell, MI 48855

RE: May 19, 2023, Howell Township Board Correspondence
Marion, Howell, Oceola, and Genoa (MHOG)

Dear Commissioners,

In response to the above referenced correspondence between the Howell Township Board and Mr. Greg Tatara, (Utility Director) of the Marion, Howell, Oceola, and Genoa (MHOG) Sewer and Water Authority, The Mannik & Smith Group, Inc. (MSG), has reviewed the available documentation from the State of Michigan, Livingston County, and MHOG, related to the MHOG Wellhead Protection Area. These documents included:

- *Delineation of the Wellhead Protection Area for Two Municipal Well Fields in Marion Township, Howell, Michigan. C.J. Linck & Associates, Inc*. dated October 28, 1996.
- *Final MHOG – SWATH Wellhead Protection Program Plan*. Fleis & Vandenbrink Engineering, Inc. dated September 2001.
- *Final Wellhead Protection Plan.* AMEC Environment & Infrastructure, Inc. dated September 2012.
- Draft Wellhead Protection Area Delineation Report. AMEC Environment & Infrastructure, Inc. dated July 2013.
- *MHOG Wellhead Protection Report*. Wood Environment & Infrastructure Solutions, Inc. dated September 2018.
- *MHOG Wellhead Protection Report (update)*. WSP USA Environment & Infrastructure, Inc. dated August 2023.
- EGLE Water Well Records Retrieval System (Wellogic).

Hydrogeology

MHOG and the City of Howell obtain their potable drinking water from the Marshall Sandstone bedrock aquifer. Lithology of the Marshall Sandstone in the vicinity of MHOG's wellfield consists of sandstone and limestone interbedded layers approximately 160 to 165 feet in thickness. According to the State of Michigan Department of Environmental Quality-Office of Drinking Water and Municipal Assistance letter dated October 4, 2013,

> *"MHOG's production wells #1 through #6 are completed in a confined bedrock aquifer, composed primarily of sandstone and limestone, with an excellent ability to yield groundwater to wells. Hydrogeologic information from the delineation report has been reviewed to establish a geologic sensitivity for the MHOG wells. Geologic sensitivity may be considered a "qualitative" characterization of the protection provided to the aquifer by the overlying lithology. The three categories of geologic sensitivity most often identified are low, moderate, and high, with the order reflecting a decreasing level of protection. As mentioned, these MHOG municipal wells are apparently completed in an aquifer described as "confined." With protection provided to the aquifer by the overlying shale layers and depth of the wells (391 to 418 feet). Confined aquifers can be geologically characterized as having* ***"low"*** *geologic sensitivity.*

Please refer to Exhibit 1 – Cross Section Trace Map, Exhibit 2- Generalized Geological Cross-Section A-A' and Exhibit 3 – Generalized Geological Cross-Sectional Diagram B-B'. These generalized cross sectional diagrams depict the lithology, well depths through the area of interest, and confirm the presence of the overlying shales above the "confined" Marshall Sandstone aquifer.

Based upon the data provided in the MHOG Wellhead Protection Plan (August 2023), the interpolated natural horizontal direction of groundwater flow within the confined aquifer is in a northerly direction. See Exhibit 4 – Generalized Regional Groundwater Elevation Contour Map. The nearest MHOG and City of Howell Type I potable wells are located hydraulically up-gradient (south-southeast), approximately 3,800 feet southeast and 5,800 feet southeast, respectively, of the proposed Howell-Mason LLC site.

All the petroleum products sold at the proposed Howell-Mason LLC gasoline station will be light, non-aqueous phase liquids (LNAPL) and will "float" on water. Gasoline and other petroleum products, if leaked or spilled, tend follow the path of least resistance. Therefore, LNAPL and dissolved petroleum products will "float" at the groundwater surface typically moving in the direction of groundwater flow (down gradient). A modern station generally poses no environmental threat to a wellfield located hydraulically up gradient from the proposed station's location. Horizontally, the natural flow of groundwater within the confined aquifer travels away from the wellfield and towards the station.

The confining layer provides a natural, low-permeability, barrier that further mitigates the risk of contamination. Gasoline and other petroleum products, if leaked or spilled, tend to follow the path of least resistance, typically moving in the direction of groundwater flow. Therefore, when a well field completed in a confined aquifer is positioned up gradient from the proposed station, the geology acts as a protective barrier, reducing the likelihood of potential pollutants reaching and adversely impacting the aquifer.

Prior to the development of the proposed of the Site, Howell-Mason LLC, were in communication and worked closely with the MHOG Utility Director to develop a safe and effective monitoring plan. Howell-Mason LLC., have agreed to meeting the listed requirements outlined in the February 3 and 23, 2023 letters of correspondence as the proposed site will be located within the 5- and 10-year capture area as defined in MHOG Wellhead Protection Area Plan (See Exhibit 5, Proposed Well Head Protection Area Zones of Contribution). In accordance with Rule 9, Section 280.20 (d)(1)(ii) of the Michigan Underground Storage Tank Regulations (MUSTR) Howell-Mason LLC., initiated the UST installation process by requesting approval from the Michigan Department of Licensing and Regulatory Affairs (LARA). The UST installation request process proceeded as follows:

- LARA UST installation process
    - Completed the form BFS-3820 (Notice of Proposed Installation of Underground Storage Tanks) and submitted to the Department of Licensing and Regulatory Affairs (LARA).
        - The form contained a list of proposed equipment (USTs, product piping, dispensers, leak detection equipment, and backfill materials).
        - LARA reviewed with respect to equipment/location and vicinity to potable water wells.
            - Issued either an approval or denial letter requesting additional information if potable wells are within the minimum standard isolation distances (300-feet residential, 800-feet Type IIb and/or 2,000-feet Type I).
        - Following the completion of a Hydrogeological Study, which is developed with available information from EGLE, and local units of Government), a request for variance is submitted to LARA along with Hydrogeological Report for review.
        - LARA submitted a variance request to EGLE Source Water Unit (SWU) for review and comment.
        - EGLE SWU made a determination/recommendation to potential impacts to potable wells and groundwater.

- LARA issue approval with conditions or denial. On August 1, 2023, Howell – Mason LLC., was granted an approval for the installation of the UST system. (See Exhibit 6 – Approval Letter).

On May 19, 2023, MHOG submitted a correspondence to the Howell Township board, related to the acquisition of a 20-acre parcel of land located west of the proposed Howell-Mason LLC., Site, which would serve as a future growth, and emergency backup, or contingent location for future groundwater productions wells. MHOG, has expressed concern regarding the location of the Howell- Mason LLC., site based upon the following: *"The Michigan Department of Environment, Great Lakes & Energy (EGLE) has many established rules and regulations (Part 127 of Act 368 and Act 399) for permitting of Type I municipal wells such as those MHOG currently operates in Marion Township and future wells that would be installed at our contingent we**ll** site location on Mason Road in Howell Township. One of these established rules requires that a 2,000 feet isolation distance from the proposed we**ll** be established to "known and potential" sources of contamination to a**ll**ow a Type I municipal we**ll** to be permitted. With that said, if a gasoline fueling station that includes underground storage tanks (USTs) containing petroleum products, or any other development with potential contamination source(s) be constructed within 2,000 of MHOG's contingent/future we**ll** site, it may prohibit MHOG from getting future well**s** permitted at that location".* Based upon the information provided in the 2023 MHOG Wellhead Protection Plan, there are known and potential sources of contamination within the 2,000-foot radius of the proposed contingence wellhead parcel and within the current Wellhead Protection Area. (See Exhibit 7 – Known and Potential Sources of Contamination and associated Table).

In addition, to the above referenced Part 127, Rule 325.10808 states: "*The standard isolation areas from any existing or potential sources of contamination, including, but not limited to, storm and sanitary sewers, pipelines, septic tanks, drain fields, dry wells, cesspools, seepage pits, leaching beds, barnyards, or **any surface water**, other area or facility from which contamination of the groundwater may occur, are established for public water supplies as follows: (a) **For Type I and Type IIa public water supplies, the standard isolation area is an area measured with a radius of 200 feet in all directions from the well."***

Exhibit 8 depicts the current location of the proposed UST system in relation to the potential contingence Type I potable well referenced in the May 2023 letter. Based upon the above referenced Rule 808, a 200-foot radius is required surrounding the proposed well location, in addition the well must be located 200 feet from the nearest surface body of water. The presence of the surface water bodies in the form of a drainage creek to the east and the low marshland to the south, therefore, placing the proposed contingence well approximately 2,123 feet west of the proposed Howell – Mason LLC., and outside the 2,000-foot radius and in compliance with Rule 325.10812.

As noted above, a gasoline service station typically poses no significant environmental harm to a well field completed in an up gradient confined aquifer due to its location relative to the aquifer and groundwater flow. What's more, modern gasoline service stations are designed and built with robust million-dollar fuel systems that include modern containment measures, such as overfill protection, double-walled piping, electronic line leak detection, double-walled underground storage tanks with multiple layers of protection to prevent leaks. Automated alarm systems are linked directly to the station fuel control system and it will automatically shut the fuel system down and alert the operator in the unlikely event of a leak. Modern double wall underground fuel tanks are made of materials that are highly resistant to corrosion and can withstand harsh conditions, minimizing the risk of groundwater contamination. Additionally, gasoline service stations are subject to strict regulatory oversight and regular inspections, ensuring potential issues are promptly identified and addressed. Furthermore, advancements in spill prevention and remediation technologies have significantly reduced the chances of hazardous substances reaching aquifers – let alone a confined aquifer located up gradient from the location of the proposed Howell-Mason LLC gasoline station. When managed in compliance with environmental regulations, gasoline stations can coexist safely with confined aquifers, preserving these vital water resources while meeting the needs of the community. For these reasons, all appropriate State and county agencies issued permits allowing the proposed Howell-Mason, LLC station to be constructed in its proposed location. In this instance, the Howell Township Ordinance prohibiting a gasoline service at the proposed location is overly prescriptive with no consideration given to the actual geology of the wellhead and the applicants' use of engineering controls.

It is our opinion that the location of the proposed Howell-Mason LLC gasoline station equipped with a state-of-the-art modern containment system poses an extremely low to no chance of risk to the health, safety, and welfare of MHOGs existing and proposed wells. As such, we believe the Township can safely approve the gasoline fueling system as proposed.

Respectfully submitted,

The Mannik & Smith Group, Inc.

Walter J. Bolt, MS, CPG, PMP
Principal/Senior Vice President

Gary Blinkiewicz, MS, CPG
Senior Hydrogeologist

Eric M. Van Heyde, MS
Senior Hydrogeologist

Greg A. Buhoveckey, MS, PE
Senior Hydrogeologist

B'

47000012822

GEOTEST 93-1

47000012865

47000024197

47000018854

47000038839
BRP-3

B

A

A'

47000012865

Legend

- Cross Section Line A-A'
- Cross Section Line B-B'
- Proposed UST Location
- Domestic Potable Well
- Type I Potable Well
- Type II Potable Well
- Exploratory Well
- 3958 Mason Road Site

0 2,500 5,000

Scale: 1" = 2,500'

MSG

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TECHNICAL SKILL. CREATIVE SPIRIT.
www.MannikSmithGroup.com

EXHIBIT 1

CROSS SECTION TRACE MAP

Howell-Mason, LLC
3958 Mason Road
Howell, Michigan

DATE	DRAWN BY	DESIGNED BY	PROJECT NO.
10/13/2023	CJB	KLL	401.2300181

Date Saved: 10/13/2023 10:38:36 AM
Path: W:\Projects\2023\401.2300001-00199\401.2300181.000\ENGAPPS\401.2300181_FigX_Cross_Section_Line_Map.mxd

LEGEND: CLAY | SHALE | LIMESTONE | SANDSTONE | SAND | HARD PAN | CLAY/GRAVEL | SCREEN | STATIC WATER LEVEL | 5" CASING | One Year Zone of Contribution | Five Year Zone of Contribution | Ten Year Zone of Contribution

WEST A — A' EAST

47000038422 — 47000012865 Angelo's Party Store — Burkhart Road — 3958 Mason Road Site — 47000012883 — 47000044822

ELEVATION (FEET AMSL)

DISTANCE ALONG PROFILE (FEET)

NOTES:
1. THIS PROFILE IS GENERALIZED. SOIL CONTACTS BETWEEN BORINGS ARE INFERRED. FOR ACTUAL CONDITIONS, REFER TO ORIGINAL SOIL BORING LOGS.
2. SURFACE ELEVATIONS ARE REFERENCED TO MEAN SEA LEVEL.
3. SURFACE ELEVATIONS FOR SOIL BORING LOGS HAVE BEEN ESTIMATED BASED ON USGS TOPOGRAPHIC DATA.
4. EOB = END OF BORING.
5. BEDROCK AQUIFER IS FULLY CONFINED.
6. NO HYDRAULIC CONNECTION BETWEEN UPPER UNCONFINED AND LOWER CONFINED BEDROCK AQUIFER.
7. ZONES OF CONTRIBUTION REPRESENT THE TIME PERIODS CONTAMINENTS ARE REASONABLY LIKELY TO MOVE TOWARD AND REACH A WATER WELL WITHIN A ONE, FIVE, OR TEN YEAR TIME PERIOD.

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EXHIBIT 2

GENERALIZED GEOLOGICAL CROSS-SECTION DIAGRAM (A-A')

Howell-Mason, LLC
3958 Mason Road
Howell, Michigan

DATE	DRAWN BY	DESIGNED BY	PROJECT NO.
10/13/2023	CJB	KLL	401.2300181

10/13/2023 11:29:01 AM
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LEGEND: CLAY | SHALE | LIMESTONE | SANDSTONE | SAND | HARD PAN | CLAY/GRAVEL | SCREEN | STATIC WATER LEVEL | 5" CASING | One Year Zone of Contribution | Five Year Zone of Contribution | Ten Year Zone of Contribution

SOUTH B — B' NORTH

Cedar Lake Road; Cedar Lake Road; Norton Road; Mason Road; 3958 MASON ROAD SITE; Interstate 96

47000038839 BRP-3; 47000018854; 47000024197; 47000012865 Angelo's Party Store; GeoTest-93-1; 47000012822; 47000012821

CLAY; SAND/GRAVEL; SHALE; LIMESTONE; SANDSTONE; HARD PAN; GRAVEL/CLAY; SANDSTONE WITH SHALE STRINGER

460' TD; 403' TD; 420' TD; 125' TD; 422' TD; 100' TD; 110' TD

ELEVATION (FEET AMSL)

960; 900; 840; 780; 720; 660; 600; 540; 480

0; 1,250; 2,500; 3,750; 5,000; 6,250; 7,500; 8,750; 10,000; 11,250; 12,500; 13,750; 15,000; 16,250

DISTANCE ALONG PROFILE (FEET)

NOTES:
1. THIS PROFILE IS GENERALIZED. SOIL CONTACTS BETWEEN BORINGS ARE INFERRED. FOR ACTUAL CONDITIONS, REFER TO ORIGINAL SOIL BORING LOGS.
2. SURFACE ELEVATIONS ARE REFERENCED TO MEAN SEA LEVEL.
3. SURFACE ELEVATIONS FOR SOIL BORING LOGS HAVE BEEN ESTIMATED BASED ON USGS TOPOGRAPHIC DATA.
4. EOB = END OF BORING.
5. BEDROCK AQUIFER IS FULLY CONFINED.
6. NO HYDRAULIC CONNECTION BETWEEN UPPER UNCONFINED AND LOWER CONFINED BEDROCK AQUIFER.
7. ZONES OF CONTRIBUTION REPRESENT THE TIME PERIODS CONTAMINENTS ARE REASONABLY LIKELY TO MOVE TOWARD AND REACH A WATER WELL WITHIN A ONE, FIVE, OR TEN YEAR TIME PERIOD.

Mannik Smith GROUP — TECHNICAL SKILL. CREATIVE SPIRIT.
www.MannikSmithGroup.com

EXHIBIT 3

GENERALIZED GEOLOGICAL CROSS-SECTION DIAGRAM (B-B')

Howell-Mason, LLC
3958 Mason Road
Howell, Michigan

DATE	DRAWN BY	DESIGNED BY	PROJECT NO.
10/13/2023	CJB	KLL	401.2300181

10/13/2023 11:34:25 AM
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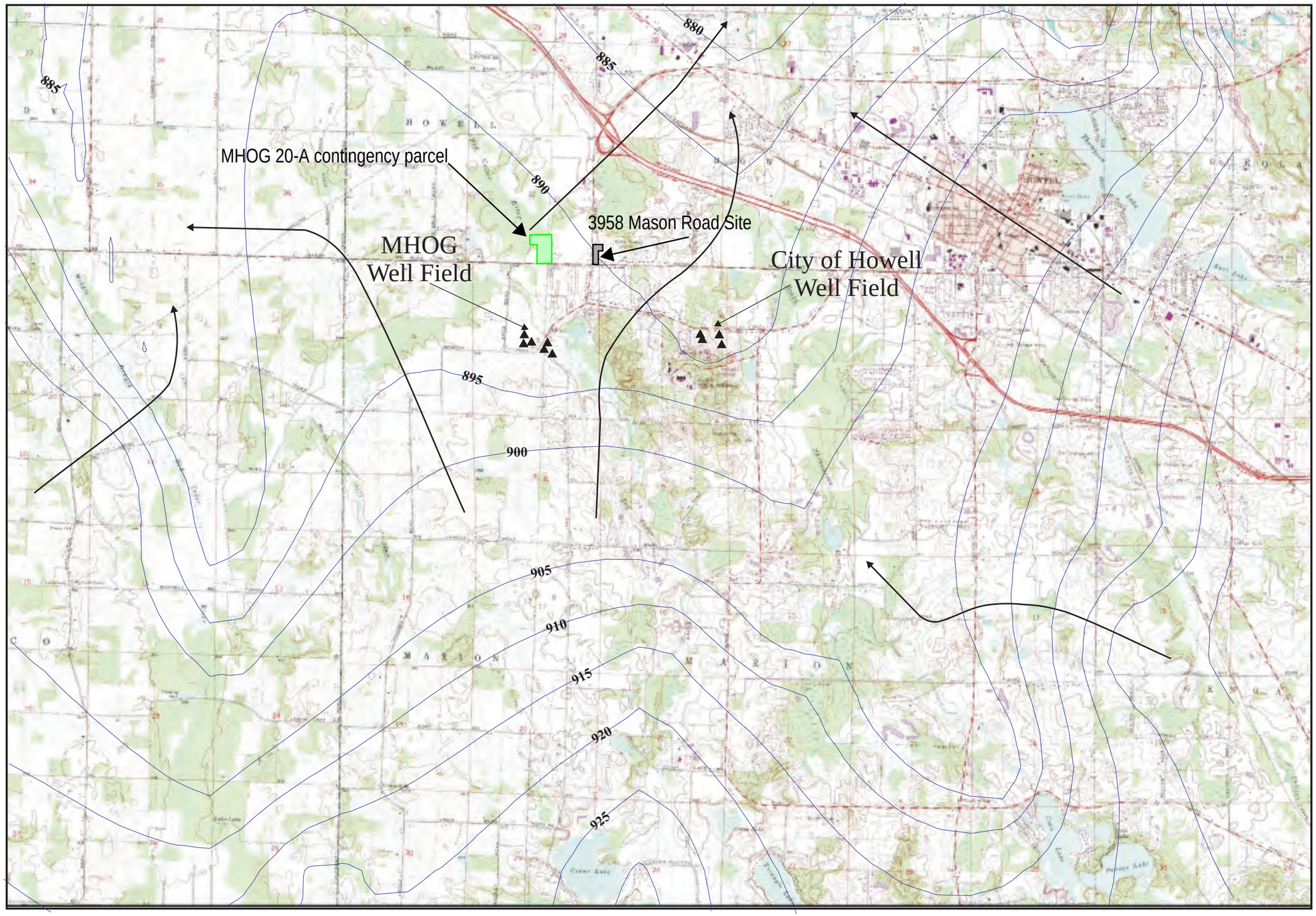


Generalized Regional Groundwater Elevation Contour Map

Well Head Protection Area Delineations
Howell & MHOG Water Supply Fields

N

Scale:

1-inch = 50,000-inches

0’ 4,167’

Legend

- Groundwater Flow Direction
- Groundwater Iso-Elevation Contour
- **895** Elevation of Contour
- ▲ Production Well Location
- 3958 Mason Road Site

MHOG & Howell Water Supply
Marion Township, Michigan
500016

Figure obtained from 2023 MHOG Wellhead Protection Plan through the Freedom of Information Act (FOIA)

EXHIBIT 4

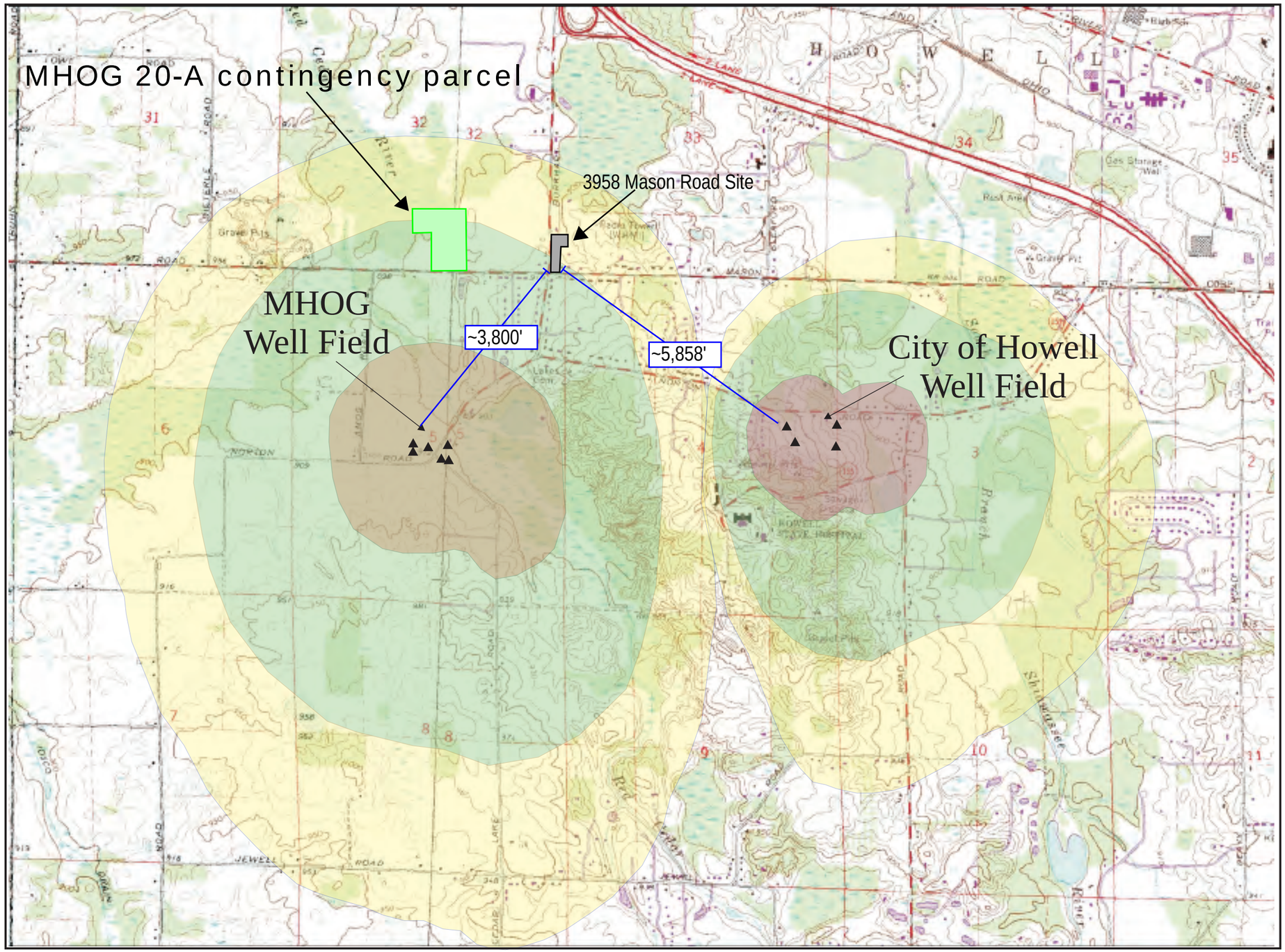


EXHIBIT 5

Proposed Well Head Protection Area
Zones of Contribution

Well Head Protection Area Delineations
Howell & MHOG Water Supply Well Fields

N

Scale:

1-inch = 2,000-feet

0’ 2,000’

Areas of Contribution:

One Year Zone of Contribution

Five Year Zone of Contribution

Ten Year Zone of Contribution

3958 Mason Road Site

Municipal Well Location

Figure obtained from 2023 MHOG Wellhead Protection Plan
through the Freedom of Information Act (FOIA)

EXHIBIT 6

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

August 1, 2023

Attn: Kevin L. Larr, CPG
Mannik Smith Group
1345 Monroe Avenue NW, Suite 269,
Grand Rapids, MI 49505

SUBJECT: #23-22 Variance Request to the Michigan Underground Storage Tank Rules (MUSTR); 2018 AACS R 29.2101 et seq.; Mugg & Bopps Burkhart – 3958 W. Mason Rd., Howell, Livingston County, Facility ID #10000629

Mr. Larr:

I am writing in response to your request for a variance to Rule 9, Section 280.20(d)(1)(ii), of the MUSTR to operate an underground storage tank (UST) system near type II community drinking water well. In your request you indicate that the system consist of (1) 30,000-gallon 2-compartment & (1) 20,000 gallon 5-compartment double-wall gasoline & diesel UST systems with double-wall pressurized underground fuel lines, automatic line leak detector installed, utilizing secondary containment and interstitial monitoring.

Your request for variance to locate the UST system less than 800 feet from a type II public water supply well based on hydrogeological data concludes that the type II water supply well located within the 800-foot minimum isolation distance is not at risk of impact from operation of the UST system.

Following a review of all documentation submitted, the applicable rules, and correspondence with the Department of Environmental, Great Lakes, and Energy, as well as assigned Storage Tank Section (STS) staff, the variance request to allow the UST to operate within the minimum isolation distance to the existing type II public water well & household water well per 2022 PA 160, is granted contingent upon:

1. Approved electronic sump sensors must be installed in every sump in accordance with manufacturer installation requirements.
2. Sumps must be maintained liquid free.
3. Sensors alert the owner/operator of an alarm and shut down the pumps/dispensers when liquid is detected within the sumps in addition to requirement of 280.44(a) – Automatic Line Leak Detector.
4. A Class B operator must conduct monthly visual inspection of the sensors to make sure they are properly located within the sumps.
5. Documentation of the Class B operator's visual sump sensor inspection must be retained at facility.

6. Sensors must be tested annually for operability requirements in accordance with manufacturer's specifications.
7. UST system operational requirements must be maintained. Annual sensor report shall be retained on site and immediately made available for review by the AHJ.

BFS Hazardous Materials Storage Inspector (HMSI) Dan Shuck will verify that the UST installation is in accordance with the applicable rules and the requirements of this variance approval. He can be reached by telephone at (517) 604-8955. Also, please contact – Fire Marshal Jamil Czubenko with the Howell Area Fire Authority with regards to an inspection of the system and the development of a pre-incident plan by telephone at (517) 546-0560 or email jczubenko@howellfire.net.

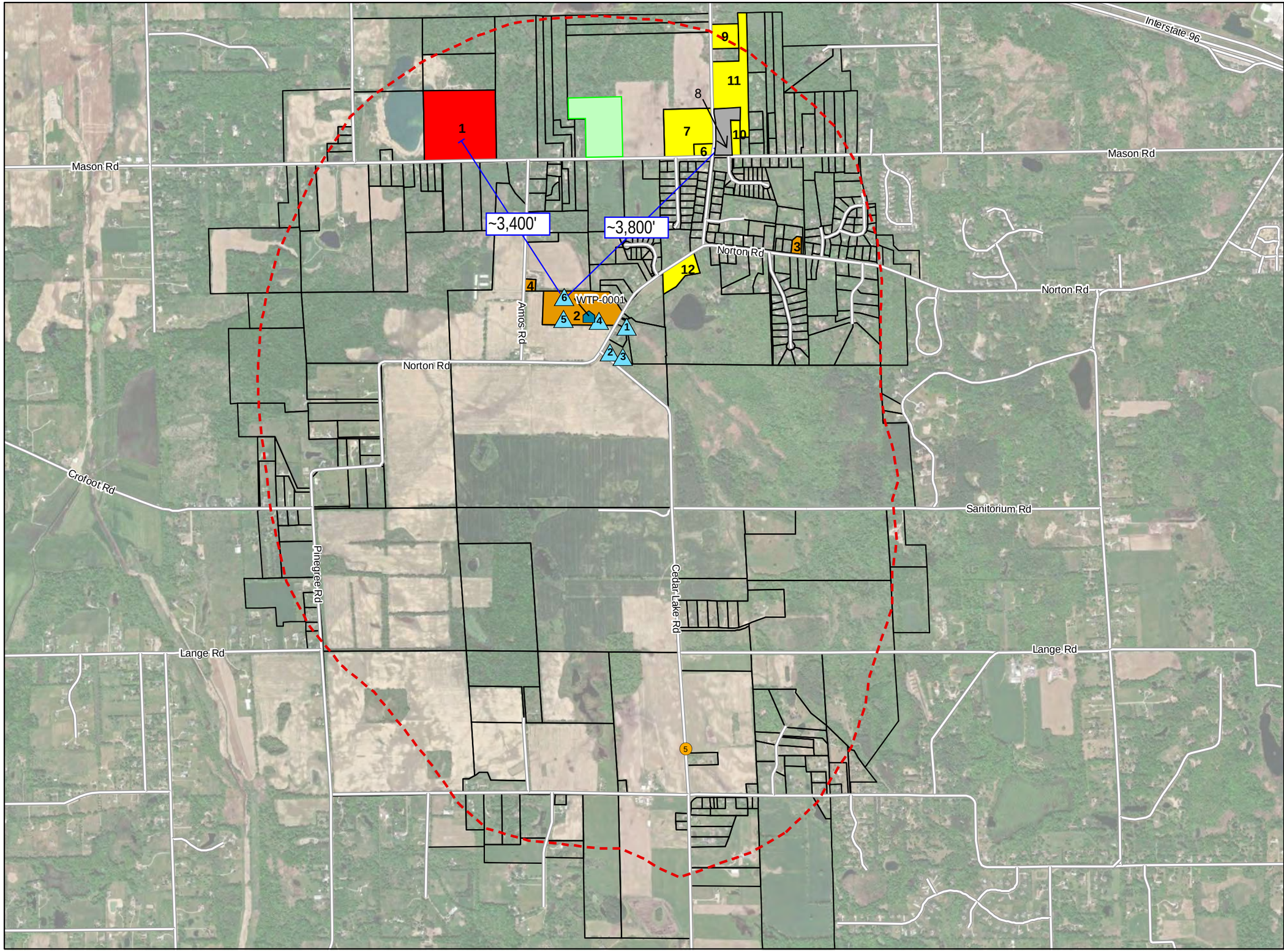
The Bureau of Fire Services, Storage Tank Section reserves the right to revoke this variance if facility maintenance or operation creates a hazard to life, property, or the environment.

If you have questions concerning this variance, please contact Jeremy Britten, Storage Tank Section Manager, Bureau of Fire Service by telephone at 517-242-7901, or by e-mail brittenJ2@michigan.gov.

Regards,

Kevin J. Sehlmeyer
State Fire Marshal, Director
Bureau of Fire Services

cc: Joseph Forro, LARA/BFS, Operations Chief
Jeremy Britten, LARA/BFS, Storage Tank Section Manager
Michael Charbonneau, LARA/BFS, Storage Tank Section Region 1 Supervisor
Daniel Shuck, LARA/BFS, Storage Tank Section HMSI



- Water Treatment Plant
- MHOG Municipal Well Location
- Wellhead Protection Area
- Parcel Boundary (Parcels Inside WHPAs)
- Known Properties of Contamination
- Potential Sources of Contamination (Based on Environmental Database Listings)
- Potential Sources of Contamination (Based on Zoning)
- 5 — Map ID # (Refer to Table 5)
- 3958 Mason Road Site

Figure obtained from 2023 MHOG Wellhead Protection Plan through the Freedom of Information Act (FOIA)

Notes:
1) GIS data provided by MHOG,
2) Parcel data provided by Livingston County
3) Refer to Table 2 for additional information regarding known/potential sources of contamination

N

0 425 850 1,700
Feet

Service Layer Credits: Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community
Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

EXHIBIT 7

Known and Potential Sources of Contamination

MHOG Wellhead Protection Plan
Howell, Michigan

Prepared By: MSC	Checked By: JA
Environment & Infrastructure 46850 Magellan Dr #190 Novi, MI 48377 248 926 4008	
Proj: 500150X3.03	Date: 3/14/2023

EXHIBIT 7

TABLE 2
SUMMARY OF KNOWN & POTENTIAL SOURCES OF CONTAMINATION
MHOG WELLHEAD PROTECTION PLAN (2023)

MAP ID #	PARCEL ID #	SITE NAME and/or OWNER NAME	STREET #	STREET DIR.	STREET	ZONING CODE	ZONING DESCRIPTION	EDR LISTINGS[1]	DATA SOURCE
1	06-32-300-003	BEDROCK VENTURES, LLC, D&J GRAVEL, AMERICAN CONCRETE	4944		MASON RD	201	Commercial-Improved	NPDES, LUST, UST, WDS, SPILLS, US MINES, MINES MRDS, RGA LUST, INVENTORY	EDR/GIS
2	10-05-100-021	MHOG WATER TREATMENT PLANT	4288		NORTON RD	201	Commercial-Improved	NPDES, WDS, FINDS, RCRA-VSQG, ECHO	EDR/GIS
3	10-04-101-039	KRISTEN & CAMERON COUCH	3720		NORTON RD	401	Residential-Improved	ASBESTOS	EDR/GIS
4	10-05-100-009	ESPER'S AUTO REPAIR	305		AMOS RD	401	Residential-Improved	FINDS	EDR/GIS
5	UNKNOWN	N/A	1999		CEDAR LAKE RD	N/A	N/A	CDL	EDR/GIS
6	06-32-400-002	GHELANI PRITI	4040		MASON RD	201	Commercial-Improved		GIS
7	06-32-400-012	CHESTNUT CROSSING LLC	0	N	BURKHART - VARIOUS	201	Commercial-Improved		GIS
8	06-33-300-001	HOWELL MASON LLC	3958		MASON RD	201	Commercial-Improved		GIS
9	06-33-300-016	HASLOCK ENTERPRISES LLC	396	N	BURKHART RD	201	Commercial-Improved		GIS
10	06-33-300-017	LOLLIO MARCO T AND SHARON K	3910		MASON RD	201	Commercial-Improved		GIS
11	06-33-300-042	HEART OF THE SHEPHERD	228	N	BURKHART RD	201	Commercial-Improved		GIS
12	10-05-200-048	MARION TOWNSHIP CEMETERY	4063		NORTON RD	202	Commercial (vacant)		GIS

NOTES:

[1]: Environmental Data Resources (EDR), Inc.- The Radius Map Report, MHOG Wellhead Protection Plan, Marion Township, Howell, MI (January 31, 2023).
Parcel Data provided by Livingston County

EDR ENVIRONMENTAL DATABASES:

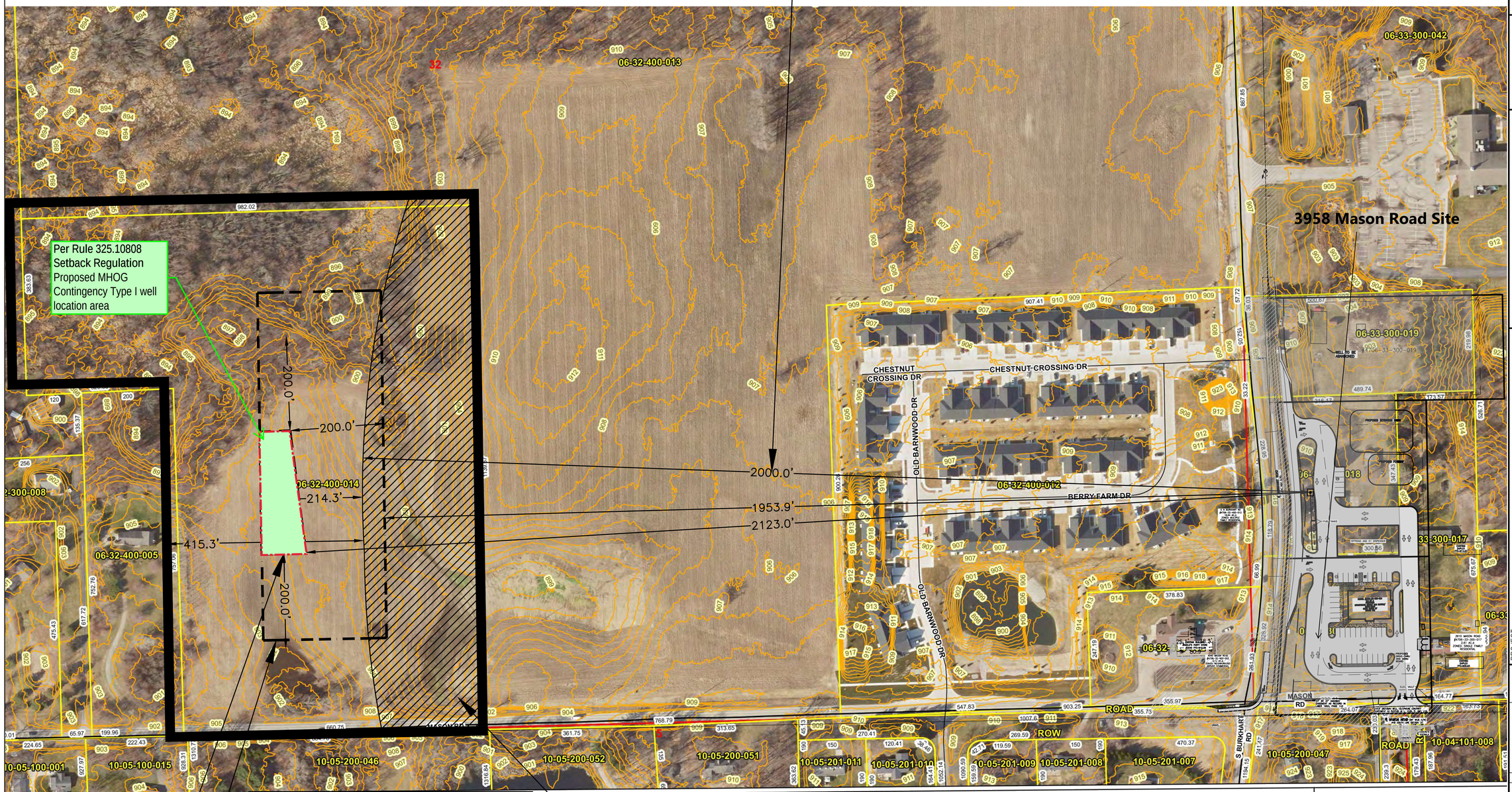
ASBESTOS: Asbestos Notification Listing
CDL: Clandestine drug lab locations
DEL PART 201: Delisted State of Michigan Part 201 Sites of Contamination (no longer meets criteria specified in the Part 201 rules)
ECHO: Enforcement & Compliance History Information
FINDS: Facility Index System/Facility Registry System
INVENTORY: Inventory of facilities from three data sources (Facilities under Part 201, 213, and BEAs)
LUST: Leaking Underground Storage Tank site
MINES MRDS: Mines-Mineral Resources Data System
NPDES: National Pollutant Discharge Elimination System and NPDES Storm Water Permits
RCRA-VSQG: Resource Conservation and Recovery Act - Very Small Quantity Generator
RGA LUST: Recovered Government Archive Leaking Underground Storage Tank
SPILLS: Environmental pollution emergencies reported to EGLE (such as tanker accidents, pipeline breaks, an releases of reportable quantities of hazardous substances)
US MINES: Mines Master Indes File-Dept. of Labor, Mine Safety and Health Administration
UST: Registered Underground Storage Tank site
WDS: Waste Data System

MSG - edit for correctness. (#6 & 7) 9/6/23

Figure obtained from 2023 MHOG Wellhead Protection Plan

through the Freedom of Information Act (FOIA)

EXHIBIT 8



THE LOCATION AND ELEVATION OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THESE DRAWINGS ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THEIR COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT LOCATION OF ALL EXISTING UTILITIES AND PROPOSED UTILITY CROSSINGS IN THE FIELD PRIOR TO EXCAVATION AND SHALL PROTECT THE UTILITIES FROM DAMAGE IF ANY CONFLICTS ARE APPARENT OR IF THE LOCATION OR DEPTH DIFFERS SIGNIFICANTLY FROM THAT SHOWN.

3 WORKING DAYS BEFORE YOU DIG CALL MISS DIG 1-800-482-7171 It's the law in Michigan

BE BOSS Engineering
Engineers Surveyors Planners Landscape Architects
3121 E. GRAND RIVER AVE.
HOWELL, MI. 48843
517.546.4836 FAX 517.548.1670

PROJECT
MUGG & BOPPS MASON & BURKHART RD.

PREPARED FOR
HOWELL-MASON, LLC
PO BOX 708
HOWELL, MI 48844
(517) 202-0232

TITLE
WELL ISOLATION PLAN - AERIAL

NO	BY	REVISION PER	DATE
1	ST	OPEN WATER SETBACK	9-11-23

DESIGNED BY:
DRAWN BY: ST
CHECKED BY:
SCALE 1" = 100'
JOB NO. 20-205
DATE 08/11/2023
SHEET NO. 1

BOSS Engineering

PLB Planning Group

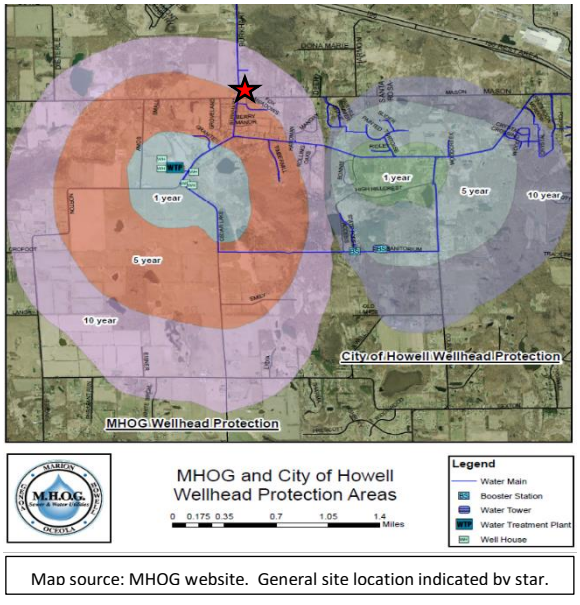
September 22, 2023

Howell Township Planning Commission
3525 Byron Road
Howell, MI 48855

Dear Commissioners:

I have been asked to review the Howell Township zoning ordinance and master plan with respect to the reasonableness of allowing the proposed Howell-Mason gas station at the northeast corner of Mason and Burkhart in Howell Township. My findings are as follows:

1. The subject property is zoned NSC, Neighborhood Service Commercial and is planned for Local Commercial in the Township master plan.
2. "Automotive gasoline and service stations" are allowed in the NSC District as a special use, subject to the requirements of Section 16.11 of the ordinance.
3. The special use requirements of Section 16.11 mainly specify dimensional standards for the site, building, and access points. However, Subsection C.8. states "No gasoline service station shall be permitted within three hundred (300) feet of a wellhead protection area."
4. The subject property is, according to the Marion Howell Oceola Genoa (MHOG) wellhead protection area map, located on the outer fringe of the designated wellhead protection area. There is no rationale presented in the ordinance or master plan for delineating the boundary as shown on the map. Likewise, there is no apparent basis for the additional 300 feet beyond the limits of the boundary, as required by the Township.
5. Based on my review of the zoning ordinance, automotive gasoline and service station is the only land use in Howell Township subject to this location prohibition. There is no rationale offered in the ordinance for excluding this one use, among all other potential uses, from locating within the wellhead protection area.
6. In fact, the NSC District allows, by right, "Vehicle service and repair" without limitation (except it may not include body shops). While there is no definition in the ordinance, typically the broad heading of vehicle service and repair would include oil change, transmission repair, engine rebuilding, and a range of other activities that generally involve the removal and replacement of motor fluids. Likewise, dry cleaning establishments which may employ a variety of chemicals and solvents in their cleaning process are also permitted without restriction.
7. In addition to encompassing the small area zoned NSC, the Howell Township wellhead protection area contains a much larger area zoned AR, Agricultural Residential, which allows many uses that are not subject to the same strict environmental regulation as vehicle service stations but can pose



Map source: MHOG website. General site location indicated by star.

environmental threats. These include general farming, livestock and poultry production, stables, fruit and field crop production, confined animal feedlots, and extraction of natural resources. Within the broad category of extraction, the zoning ordinance also includes processing; transit-mix concrete plant; asphalt, oil, and tar batching plants; and concrete production plants.

8. No mention of wellhead protection is made in the Township master plan, except for a recommendation on page 52 relative to "establishing a wellhead protection plan".

After reviewing the zoning ordinance, as well as technical findings from state regulatory agencies, local and state fire marshals, and geological professionals that find the proposed development to be acceptable in this location, I question what legitimate governmental interest is served by prohibiting this single use from locating within the wellhead protection area plus another 300 feet. Clearly, there are numerous commercial, industrial, and agricultural uses (some allowed by right) that have similar operational characteristics and potential impacts to that of an automotive gasoline and service station but are not prohibited from locating in or near a wellhead protection area.

The zoning ordinance doesn't even allow for the applicant to present evidence to demonstrate that existing environmental/geological conditions and proposed technical safeguards make the restriction unnecessary. While the selective application of a wellhead area prohibition to automotive gasoline and service stations appears to be arbitrary, the applicant's only recourse (other than litigation) would likely be requesting an amendment to the zoning ordinance to either remove Section 16.11 C.8. as a special use requirement or to provide for a Township waiver of the requirement upon receipt of documentary evidence showing that the use would not be harmful to the water table.

Unlike most other requirements in the zoning ordinance, the limitation posed by Section 16.11 C.8. is not subject to Zoning Board of Appeals review. The Michigan Zoning Enabling Act at MCL125.3603(1) states: "For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance." The Howell Township ordinance not only does not provide for such an appeal, Section 22.06 C. specifically states: "The ZBA may not hear an appeal from a Township decision regarding a special land use or PUD."

Likewise, a use variance would not be an appropriate remedy in this situation. Even if it was, Section 22.07 F. does not permit the ZBA to consider use variances.

Please let me know if you have questions.

Sincerely,
PLB PLANNING GROUP, LLC

Paul M. LeBlanc, AICP
Principal

Oscar W. Larson Co.

10100 Dixie Hwy. * Clarkston, MI 48348
Phone: (248) 620-0070 * (248) 549-3610
Fax: (248) 620-0071 * (248) 620-0072

1946-2022 Celebrating Over 76 Years of Excellence

Department of Licensing and Regulatory Affairs
Bureau of Fire Services
Storage Tank Division
3101 Technology Blvd, Suite H
Lansing, MI 48910

Attention: Storage Tank Division

RE: **45 Day Site Plan Review**
Howell-Mason LLC
70 N. Burkhart Road
Howell, MI 48843
(Macomb County)

Overview

The Oscar W. Larson Company proposes to supply and install one (1) 30,000 gallon compartment tank, and one (1) 20,000 gallon compartment tank. All tanks are double wall fiberglass underground storage tanks. Tanks are to be manufactured by Xerxes Corp.

The water is supplied by the City of Howell and there are no wells within 2,000 feet of the proposed installation.

Please acknowledge receipt of this application if possible. Should you have any questions or concerns please feel free to contact me at (248) 660-1048. Thank you for you consideration.

Sincerely,

OSCAR W. LARSON COMPANY

Conor Ottman
Project Coordinator

Department of Licensing and Regulatory Affairs, Bureau of Fire Services, Storage Tank Division
P.O. Box 30033, Lansing, MI 48909

NOTICE OF PROPOSED INSTALLATION OF UNDERGROUND STORAGE TANKS

Pre-Registration for Underground Storage Tanks

This information is required under Part 211, Underground Storage Tank Regulations, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being Sections 324.21101 through 324.21113 of the Michigan Compiled Laws Annotated. A person who violates Part 211 or a rule promulgated under Part 211, or who knowingly submits false information shall be subject to a misdemeanor and/or civil penalties not to exceed $5,000 per violation.

INSTRUCTIONS:
This form must be completed and submitted to the Bureau of Fire Services a minimum of 45 days PRIOR to installation of the underground storage tank system. Complete the required information in accordance with the Michigan Underground Storage Tank Rules, R 29.2101 et seq. and the Storage and Handling of Flammable and Combustible Liquids Rules, R 29.5601 et seq. Parts 2 and 3 for underground installations as cited below. The manufacturer and part number must be indicated next to the appropriate item. The item numbers correspond to the Typical Underground Storage Tank Installation diagram on page 3. This form is not intended to list all of the requirements that may be applicable. Mail the completed form to the address at the bottom of page 2. **THE UST SYSTEM SHALL NOT BE BROUGHT INTO USE UNTIL FORM BFS-3821, REGISTRATION FOR UNDERGROUND STORAGE TANKS, IS COMPLETED AND SUBMITTED TO THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS.**
Please direct any questions to the Bureau of Fire Services, Storage Tank Division, at 517-241-8847.

FACILITY NAME Howell - Mason LLC	NEW ASSIGNED TANK NUMBER(S)	FACILITY ID NUMBER
FACILITY STREET ADDRESS (PO BOX NOT ACCEPTABLE) 70 N. Burkhart Road	CONTACT PERSON (AT LOCATION) Todd Lekander	AREA CODE & TELEPHONE NUMBER (517) 202-0232
CITY Howell	COUNTY Livingston / STATE MI	ZIP CODE 48843
SUBMITTER'S NAME Oscar W. Larson Company	STREET ADDRESS 10100 Dixie Highway	AREA CODE & TELEPHONE NUMBER (248) 660-1048
CITY Clarkston	STATE Michigan	ZIP CODE 48348

Item No.	DESCRIPTION	MANUFACTURER & PART NO.	ITEM NO.	DESCRIPTION	MANUFACTURER & PART NO.
1.	**TANK DESIGN AND CONSTRUCTION:** Section 280.20(a), 280.20(d), 280.32 & Section 21.4.2 of FL/CL Part 2. Concrete; Steel - UL58; Fiberglass – UL 1316. Corrosion protection - ACT 100. Dimension, Capacity & Contents.	One (1) 30,000 gallon 10' dia. tank (24,000/6,000)(Reg/Diesel) Brine interstitial. Xerxes UL 1316 UST. One (1) 20,000 gallon 8' dia tank. (4k/4k/4k/4k/4k)(Off Road/kero/rec diesel/DEF)	5.	**ANCHORING OF TANK:** Section 23.14 of FL/CL Part 2. In areas subject to flooding or high water table. NOTE: Tie-down straps.	If site conditions require deadmen type anchoring per manufacturer's requirements.
2.	**BURIAL DEPTH COVER:** Section 23.5.2.1 of FL/CL Part 2. Minimum 2-foot or 1-foot earth & 4-inch reinforced concrete with no vehicular traffic. Minimum 3-foot or 18-inch earth & 6-inch concrete or 8-inch asphalt with vehicular traffic.	With vehicle traffic. Minimum 36" backfill with 8" slab of concrete over USTs.	6.	**CORROSION PROTECTION FOR TANK:** Section 280.20(a) & Section 23.3.5 of FL/CL Part 2. Fiberglass tanks, steel tanks with cathodic protection, composite steel tanks, are acceptable.	Fiberglass
3.	**BACKFILL MATERIAL SURROUNDING TANK:** Section 23.5.1 of FL/CL Part 2. Per tank manufacturer.	Peastone minimum 12" tank bedding and backfill extending 12" around and above tank and placed per manufacturers requirement.	7.	**MONITORING OF CATHODIC PROTECTION:** Section 280.31. Test station-wires to ground surface for access.	N/A
4.	**TANK LOCATION:** Section 280.20(d) & Section 23.4 of FL/CL Part 2. 10' from building. 3' for class I or 1' for class II to pit or property line; also to avoid loads transmitted by building foundation-tank outside 45 degree angle. Include site map. (#21)	See attached drawing. Greater than 10' from building, greater than 3' (class I) and 1'-10" (Class II & III) from pits or property lines. No basement.	8.	**PIPING MATERIAL:** Section 280.20(b), 280.20(d), 280.32 & Section 27.6.5 of FL/CL Part 2. Double-walled steel, fiberglass, or other approved material. Metallic piping shall be cathodically protected and dielectrically isolated.	OPW Loop System Flexpipe

NOTICE OF PROPOSED INSTALLATION OF UNDERGROUND STORAGE TANKS (continued)

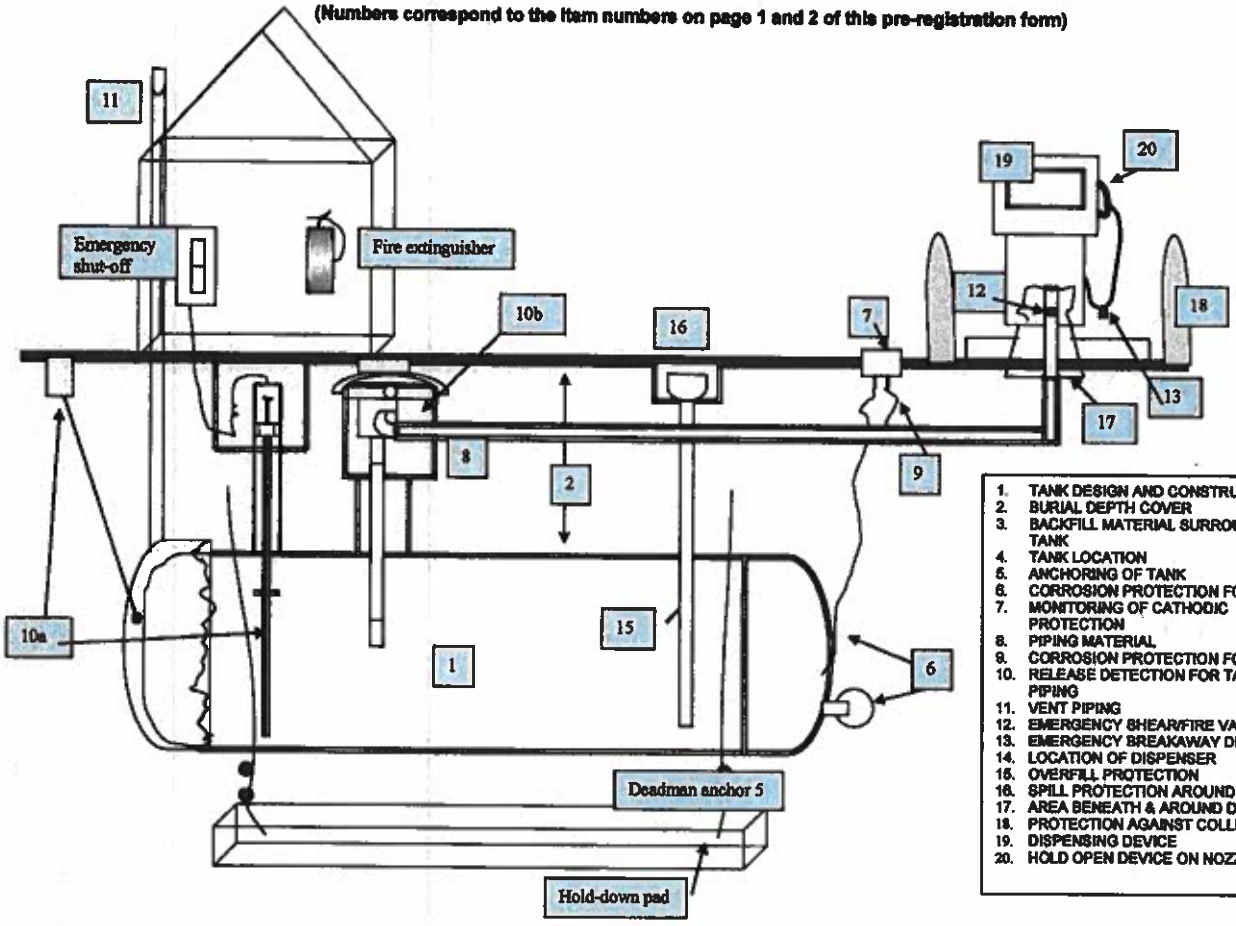
Pre-Registration for Underground Storage Tanks

Item No.	DESCRIPTION	MANUFACTURER & PART NO.	ITEM NO.	DESCRIPTION	MANUFACTURER & PART NO.
9.	**CORROSION PROTECTION FOR PIPING:** Section 280.20(b). Metallic piping (including flexible connectors) requires cathodic protection; and dielectric couplings at tank and dispenser to isolate the piping.	OPW Loop System Flexpipe Non-metallic material	15.	**OVERFILL PROTECTION:** Section 280.20(c) (1) (ii). Audible alarm or flow restricted when tank is 90% full, or an automatic shutoff of flow into the tank when the tank is 95% full.	Veeder-Root external overfill alarm #790091-001
10.	**RELEASE DETECTION FOR TANK & PIPING:** Section 280.40(a), Section 280.41 & Section 280.42. Must be able to detect a release from any portion of the tank and piping.	a) **TANK:** Veeder Root TLS-450 console/printer #860091-301 Inter. sensor 794390-409, probe #84691-109, float kit #846400-004 Diesel float #846400-001, containment sensor 794380-631 b) **PIPING:** Dispenser pan sensor #794380-321 F.E. Petro Mechanical leak detector STP-MLD F.E. Petro Mechanical leak detector STP-MLD-D	16.	**SPILL PROTECTION AROUND FILL PIPE:** Section 280.20(c). Equipment to prevent release of product to the environment when the transfer hose is detached from the fill pipe. Sealed to prevent entry of product into the ground.	OPW 2200 Series five gallon spill containers.
11.	**VENT PIPING:** Section 27.8.2 of FL/CL Part 2. Steel above ground; outlet above snow level, minimum 12 feet above grade for class I.	Ameron Dualy 3000/L singlewall FRP	17.	**AREA BENEATH & AROUND DISPENSER:** Section 28.9 of FL/CL Part 2. Prevent leaks and spills from reaching groundwater, surface water, and subsurface soils.	OPW Loop System dispenser sumps.
12.	**EMERGENCY SHEAR/FIRE VALVE:** Section 6.3.9 and 6.3.10 of FL/CL Part 3. Required on submerged pumping systems, rigidly anchored. Suction systems require check valve or pressure regulating valve under the dispenser.	OPW 10R Series Fire Valves	18.	**PROTECTION AGAINST COLLISION:** Section 6.3.4 of FL/CL Part 3. Raised concrete island or crash posts. NOTE: Local ordinances may be more stringent.	Raised concrete fueling islands with U-shaped bollards at both ends.
13.	**EMERGENCY BREAKAWAY DEVICE:** Section 6.5.2 of FL/CL Part 3. Installed on each hose that dispenses a liquid. Designed to retain liquid on both sides of the breakaway point.	OPW #66-0075 breakaways	19.	**DISPENSING DEVICE and NOZZLE:** Section 6.6 of FL/CL Part 3. Must be listed and identified as to product it dispenses. Self-service needs special feature of nozzle that prevents resumption of flow once pump is stopped	Wayne Ovation2 Series dispensers OPW 11BP nozzle OPW 7HB nozzle
14.	**LOCATION OF DISPENSER:** Section 6.2.1, 6.3.4, 6.3.5 & 9-4 of FL/CL Part 3. 10 feet from property lines, combustible building walls, and building openings. In clear view of attendant. Within 100 feet of emergency shutoff switch for self-serve.	See attached site plan. Dispenser located greater than 10' from property line and building, nozzle fully extended will not reach within 5' of building openings.	20.	**SAFETY:** Section 6.7 of FL/CL Part 3. Dispensing devices shall have one or more identified emergency shutoff devices. Section 9.2.6.2 Each motor fuel dispensing facility shall be provided with fire extinguishers per NFPA 10.	Electric emergency shutoff switch near attendant station less than 100' from disp. or greater than 20' building. One (1) 4A:BC greater than 20' and less than 100' from disp.

21. A plot plan showing structures, roads, railroads, property lines, and easements within 25 feet of the UST system. Section 280.22 - attach to this form.
22. The location of all applicable drinking water wells and surface water intakes within 2000 feet of the UST system. Section 280.22 - attach to this form.
23. A diagram of the UST system. Section 280.22 - attach to this form.

TYPICAL UNDERGROUND STORAGE TANK INSTALLATION

(Numbers correspond to the item numbers on page 1 and 2 of this pre-registration form)



1. TANK DESIGN AND CONSTRUCTION
2. BURIAL DEPTH COVER
3. BACKFILL MATERIAL SURROUNDING TANK
4. TANK LOCATION
5. ANCHORING OF TANK
6. CORROSION PROTECTION FOR TANK
7. MONITORING OF CATHODIC PROTECTION
8. PIPING MATERIAL
9. CORROSION PROTECTION FOR PIPING
10. RELEASE DETECTION FOR TANK & PIPING
11. VENT PIPING
12. EMERGENCY SHEAR/FIRE VALVE
13. EMERGENCY BREAKAWAY DEVICE
14. LOCATION OF DISPENSER
15. OVERFILL PROTECTION
16. SPILL PROTECTION AROUND FILL PIPE
17. AREA BENEATH & AROUND DISPENSER
18. PROTECTION AGAINST COLLISION
19. DISPENSING DEVICE
20. HOLD OPEN DEVICE ON NOZZLE

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS – BUREAU OF FIRE SERVICES – STORAGE TANK DIVISION

UNDERGROUND STORAGE TANK PLAN REVIEW REPORT

This information is required under Part 211, Underground Storage Tank Regulations, of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994 as amended, being Sections 324.21101 to 324.21113 of the Michigan Compiled Laws Annotated. Any owner who knowingly fails to notify or submits false information shall be subject to a misdemeanor and/or civil penalties not to exceed $5000 per day for each tank which notification is not given or for which false information is submitted.

Status:	DATE	TANK NUMBERS	FACILITY NUMBER	REFERENCE#
Plan Approved with Conditions	3/7/2022	1 & 2	10000517	PR-0037-22

SUBMITTER		
Conor Ottman Oscar W. Larson Co. 10100 Dixie Hwy. Clarkston, MI, 48348	PROJECT: ADDRESS: COUNTY:	Howell - Manson LLC 70 N BURKHART RD N HOWELL MI 48843 LIVINGSTON

Following a review of the submitted underground storage tank installation – pre-registration information, no major deficiencies were noted. However, please be sure the following requirement are met;

- A hydrogeological study may be required by another state or local agency due to the new proposed UST system(s) proximity to a Type I, IIa, IIb or III type drinking water well or located in a Wellhead Protection Area (WHPA).
- All new UST systems are to be located in compliance with Section 12701 of Part 127 of 1978 PA 368 MCL 333.12701 (Water Supply & Sewer Systems) rules promulgated under 1978 PA 368 and Section 1001 of 1976 PA 399, MCL 325.1001 to 325.1023 (Safe Drinking Water Act) and rules promulgated under 1976 PA 399. Before final inspection (unless the new UST system is installed at an ACTIVE location since 1/3/91), provide BFS-Storage Tank Section any approval or "Deviation" in writing from authority having jurisdiction (AHJ), the Michigan Department of Environmental, Great Lakes & Energy (EGLE), Drinking Water & Environmental Health Division, or delegate, the Local Health Department.
- Approved plan review is not for a "FLEX FUEL" type system. Prior approval will be required to convert tank system to a "Bio FUEL" type system (>15% ethanol blend or >20% biodiesel blend) at a later date.
- The dispensing area shall at all times be in clear view of the attendant. If the Attendant station is located where vehicles can park in front and block view of dispensing area, additional equipment (mirrors or camera) may be required.
- Overfill prevention equipment utilizing an alarm shall sound the audible alarm when the tank is not more than 90 percent full or one full minute prior to overfill. The alarm shall be located such that the individual filling the tank will hear it.

Hazardous Materials Storage Inspector Dan Shuck of the Department of Licensing and Regulatory Affairs, Fire Service Bureau, Storage Tank Division, telephone number 517-604-8955, must be notified to schedule inspections NOT LESS THAN SEVEN CALENDAR DAYS BEFORE INSTALLATION of the UST system as required in the Michigan Underground Storage Tank Rules.
This installation may not be placed into service until Department of Licensing and Regulatory Affairs personnel have conducted a final inspection, or if the inspection is not made within two working days of the scheduled installation date, excluding Saturdays, Sundays and holidays, the UST system may be covered from the sight and a notarized affidavit shall be submitted by the owner to this office attesting to the face that the installation complies with applicable rules.

The Michigan Underground Storage Tank Rules, 2008 AACS R 29.2101 et seq., Rule 63, Section 280.93, requires owners or operators of petroleum underground storage tanks to provide evidence of financial responsibility at the time of inspection.

Provide certification of compliance with the National Electrical Code at final inspection.

If this system is not installed within one year, please contact this office for possible resubmittal of plans.

Pursuant to Part 211, Underground Storage Tank Regulations, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), it is the owner's responsibility that a Registration for Underground Storage Tanks (Form BFS 3821) be forwarded to this office after the tank has been installed and prior to use.

This review is based upon submitted information, and is not considered a permit. Approval of a tank installation plan by the Department of Licensing and Regulatory Affairs, does not relieve an owner or installer from having to meet the requirements of the other state and local government laws, including zoning laws. The Hazardous Materials Storage Inspector may find additional deficiencies during site inspections.

If you have any questions concerning this matter, please contact the Storage Tank Division at (517) 241-8847.

Jerry Arnold

Jerry Arnold

Engineer
Storage Tank Division

Cc: Dan Shuck

BFS 3830 (REV 12/12)

Underground Storage Tank Equipment

EBW
697
SAFETY
SEVER

EBW
662
EMERGENCY SHUT
OFF VALVE

INCON
TS-5000

EBW
802
PRESSURE / VACUUM
VENT

EBW
810
MONITORING WELL
MANHOLE

EBW
42" SAFELITE
MANHOLE ASSEMBLY

Phil-Tite Field
Replaceable
GRADE LEVEL
SPILL
CONTAINER

Phil-Tite Swivel
Fill ADAPTOR

EBW
777
TOP SEAL
FILL CAP

CAP & ADAPTOR
KIT

EBW
304
VAPOR CAP

Phil-Tite Swivel
Vapor ADAPTOR

EBW
781
12" MANHOLE
ASSEMBLY

EBW
772
WELL CAP

APT
DISPENSOR
SUMP

APT
TANK
SUMP

EBW
818
WATERTITE
MANHOLE

TS-DTS
DISCRIMINATING
TURBINE SUMP
SENSOR

APT
SWIVEL
FITTING

FLEXIBLE
ENTRY BOOT

APT
FLEXIBLE
PIPE

APT
AIR TEST
BOOT

APT
SWIVEL
FITTING

APT
TANK FITTING
ADAPTER

TS-ULS
LIQUID
SENSOR

TS-LL2
PROBE

EBW
310
EXTRACTOR
VENT VALVE

EBW
708
AUTO LIMITER II

EBW
308 FLOAT
VENT VALVE

EBW
773
SLOTTED
WELL SCREEN

PRODUCT
FLOAT

WATER FLOAT

BOSS
BE
Engineering

3121 E. Grand River Howell, MI 48843
517.546.4836 fax 517.548.1670
www.bosseng.com

September 12, 2023

Howell Township

Re: Site Investigation – Wetlands
Howell-Mason LLC

To Whom It May Concern:

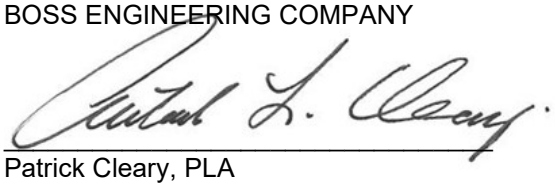
A site investigation was completed on September 12, 2023, for the purpose of determining if there were any wetlands on two parcels (4706-33-300-001 & -018) located at the northeast corner of Mason and Burkhart Roads in the Township. No wetlands were identified on either of the parcels.

In preparation for the site visit, various references were consulted including historical aerials, National Wetland Inventory Maps, and the Web Soil Survey from the USDA NRCS website. The soil survey map indicated the possibility of Brookston Loam (By), a known possible hydric/wetland soil, in the northeast corner of the north parcel. This area was specifically reviewed. It is near the bottom of an existing swale generally forming from Mason Road, but no wetland vegetation was observed in this area. The remainder of the site was walked, and no other areas were identified that could support wetland vegetation, soils, or hydrology per U.S. Army Corps of Engineers standards. As an example, general tree vegetation on the sites included White Pine, White Spruce, Black Walnut, Sugar Maple, Honeysuckle, and other dominant upland plant species.

There were no indications that wetland conditions exist on the two parcels.

Sincerely,

BOSS ENGINEERING COMPANY



Patrick Cleary, PLA
Professional Landscape Architect, wetland specialist
patrickc@besseng.com

SITE PLAN
FOR
HOWELL-MASON, LLC
PART OF SW QUARTER OF SECTION 33
HOWELL TOWNSHIP, LIVINGSTON COUNTY, MICHIGAN

PROPERTY DESCRIPTION:

PARCEL #4706-33-300-001
PER BOSS JOB NO. 2980:

Land situated in the Township of Howell, County of Livingston, State of Michigan, described as follows:

Part of the SW 1/4 of the SW 1/4 of the SW 1/4 of the SW 1/4 of Sec. 33 T3N-R4E, Howell Township, Livingston County, Michigan described as beginning at the SW corner of said sec. 33, thence N05°05'59"E 331.21 feet along the centerline of Burkhart Road; thence S89°48'00"E 300.56 feet; thence due South 330.00 feet; thence N89°48'00"W 330.00 feet along the centerline of Mason Road to the point of beginning containing 2.4 acres more or less and subject to road easements for Burkhart and Mason Road.

PARCEL #4706-33-300-018
PER BOSS JOB NO. 1523 A:

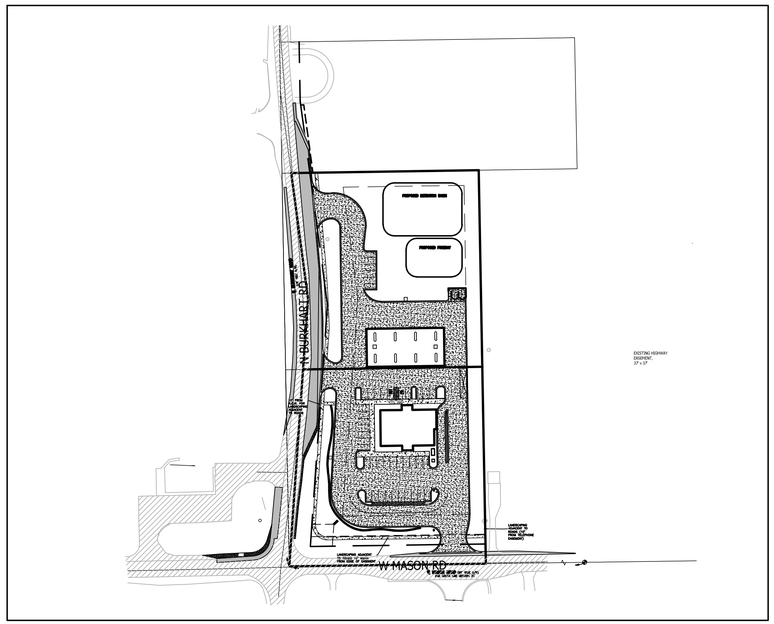
Land situated in the Township of Howell, County of Livingston, State of Michigan, described as follows:

Part of the W 1/2 of the SW 1/4 of Sec. 33 T3N-R4E, Howell Township, Livingston County, Michigan described as follows; Commencing at the SW corner of said sec. 33; thence Due North along the West line of Sec. 33, 330.00 feet; thence S89°48'00"E 29.44 feet to the point of beginning of the land to be described thence N05°05'59"E 118.79 feet along Burkhart Road; thence N06°33'45"W 213.12 feet along Burkhart Road; thence S89°48'00"E 314.36 feet; thence Due South 330.00 feet; thence N89°48'00"W 300.56 feet to the point of beginning containing 2.3 acres more or less and subject to easements for Burkhart Road.

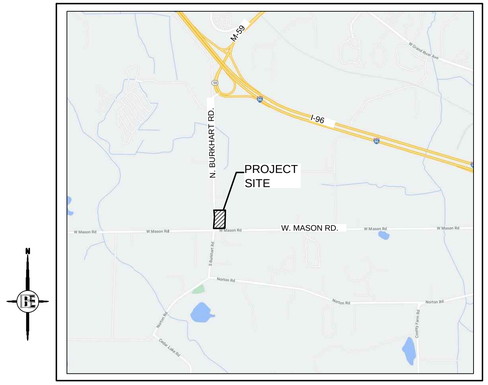
PROPERTY DESCRIPTION PARCEL #4706-33-300-019
PER FIDELITY NATIONAL TITLE INSURANCE COMPANY, COMMITMENT NO. A0787769, REVISION 1, WITH A COMMITMENT DATE OF DECEMBER 2, 2022 AT 8:00 AM:

Land situated in the Township of Howell, County of Livingston, State of Michigan, described as follows:

Part of the West 1/2 of the Southwest 1/4 of Section 33, Town 3 North, Range 4 East, described as commencing at the Southwest corner of said Section 33; thence due North along the West line of Section 33, 660.00 feet; thence South 89 degrees 48'00" East 15.64 feet to the point of beginning of the land to be described; thence North 6 degrees 33'45" West 136.88 feet along the centerline of Burkhart Road; thence due North along the West section line of said Section 33, 84.07 feet and the centerline of Burkhart Road; thence South 89 degrees 48'00" East 495.00 feet; thence due South 220.00 feet; thence North 89 degrees 48'00" West 479.36 feet to the point of beginning.



OVERALL SITE MAP
NO SCALE



LOCATION MAP
NO SCALE

SHEET INDEX

SHEET NO.	DESCRIPTION
1	COVER SHEET
2	GENERAL NOTES & LEGEND
3	EXISTING CONDITION TREE SURVEY & DEMOLITION PLAN
4	SITE PLAN
5	GRADING & DRAINAGE PLAN
6	SOIL EROSION CONTROL PLAN
7	UTILITY PLAN
8	LANDSCAPE PLAN
9A-9B	MHOG WATER DETAILS

PLANS BY OTHERS

A 2-1	SIGNAGE SITE PLAN
A 2-2	SIGN DETAILS
A 3-1	FLOOR PLAN
A 4-1	EXTERIOR ELEVATIONS
A 4-2	EXTERIOR ELEVATIONS

INDEMNIFICATION STATEMENT

THE CONTRACTOR SHALL HOLD HARMLESS THE DESIGN PROFESSIONAL, MUNICIPALITY, COUNTY, STATE AND ALL OF ITS SUB CONSULTANTS, PUBLIC AND PRIVATE UTILITY COMPANIES, AND LANDOWNERS FOR DAMAGES TO INDIVIDUALS AND PROPERTY, REAL OR OTHERWISE, DUE TO THE OPERATIONS OF THE CONTRACTOR AND/OR THEIR SUBCONTRACTORS.

PREPARED FOR:

HOWELL-MASON, LLC
PO BOX 708
HOWELL, MI 48844
CONTACT: TODD LEKANDER
PHONE: (517)-202-0232

PREPARED BY:

BOSS Engineering
Engineers Surveyors Planners Landscape Architects
3121 E. GRAND RIVER AVE.
HOWELL, MI. 48843
517.546.4836 FAX 517.548.1670
CONTACT: SCOTT TOUSIGNANT

FOR SITE PLAN APPROVAL ONLY!
NOT FOR CONSTRUCTION

NO	BY	CK	REVISION	DATE	JOB NO: 20-205
1	ST	ST	PER TWP REVIEW	9/11/23	DATE: 6/28/2023

1

G:\20-205\dwg\SP\20-205 SHEETS SP.dwg, 9/26/2023 11:04:44 AM, AutoCAD PDF (Smallest File).pc3

GENERAL NOTES

1. THE CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL REQUIRED TOWNSHIP, COUNTY, AND STATE OF MICHIGAN PERMITS.
2. A GRADING PERMIT FOR SOIL EROSION–SEDIMENTATION CONTROL SHALL BE OBTAINED FROM THE GOVERNING AGENCY PRIOR TO THE START OF CONSTRUCTION.
3. IF DUST PROBLEM OCCURS DURING CONSTRUCTION, CONTROL WILL BE PROVIDED BY AN APPLICATION OF WATER, EITHER BY SPRINKLER OR TANK TRUCK.
4. ALL CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH LOCAL MUNICIPAL STANDARDS AND SPECIFICATIONS.
5. PAVED SURFACES, WALKWAYS, SIGNS, LIGHTING AND OTHER STRUCTURES SHALL BE MAINTAINED IN A SAFE, ATTRACTIVE CONDITION AS ORIGINALLY DESIGNED AND CONSTRUCTED.
6. ALL BARRIER–FREE FEATURES SHALL BE CONSTRUCTED TO MEET ALL LOCAL, STATE AND A.D.A. REQUIREMENTS. WHERE EXISTING CONDITIONS AND/OR THE REQUIREMENTS OF THE PLANS WILL RESULT IN FINISHED CONDITIONS THAT DO NOT MEET ADA REQUIREMENTS, THE CONTRACTOR SHALL NOTIFY THE DESIGN ENGINEER PRIOR TO WORK COMMENCING.
7. ANY DISCREPANCY IN THIS PLAN AND ACTUAL FIELD CONDITIONS SHALL BE REPORTED TO THE DESIGN ENGINEER PRIOR TO THE START OF CONSTRUCTION. CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFICATION OF ALL SETBACKS, EASEMENTS AND DIMENSIONS SHOWN HEREON PRIOR TO BEGINNING CONSTRUCTION.
8. THE CONTRACTOR SHALL CONTACT ALL OWNERS OF EASEMENTS, UTILITIES AND RIGHT–OF–WAY, PUBLIC OR PRIVATE, PRIOR TO THE START OF CONSTRUCTION.
9. THE CONTRACTOR SHALL COORDINATE WITH ALL OWNERS TO DETERMINE THE LOCATION OF EXISTING LANDSCAPING, IRRIGATION LINES & PRIVATE UTILITY LINES. THE CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGE TO EXISTING LANDSCAPING, IRRIGATION LINES, AND PRIVATE UTILITY LINES.
10. THE CONTRACTOR SHALL REMOVE ALL TRASH AND DEBRIS FROM THE SITE UPON COMPLETION OF THE PROJECT.
11. THE CONTRACTOR SHALL MAINTAIN THE SITE IN A MANNER SO THAT WORKMEN AND PUBLIC SHALL BE PROTECTED FROM INJURY, AND ADJOINING PROPERTY PROTECTED FROM DAMAGE.
12. THE CONTRACTOR SHALL KEEP THE AREA OUTSIDE THE "CONSTRUCTION LIMITS" BROOM CLEAN AT ALL TIMES.
13. THE CONTRACTOR SHALL CALL MISS DIG A MINIMUM OF 72 HOURS PRIOR TO THE START OF CONSTRUCTION.
14. ALL PAVEMENT REPLACEMENT AND OTHER WORKS COVERED BY THESE PLANS SHALL BE DONE IN ACCORDANCE WITH THE REQUIREMENTS OF THE TOWNSHIP, INCLUDING THE LATEST MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT) SPECIFICATIONS FOR HIGHWAY CONSTRUCTION.
15. THE CONTRACTOR IS RESPONSIBLE FOR ALL DAMAGE TO EXISTING UTILITIES.
16. NO ADDITIONAL COMPENSATION WILL BE PAID TO THE CONTRACTOR FOR ANY DELAY OR INCONVENIENCE DUE TO THE MATERIAL SHORTAGES OR RESPONSIBLE DELAYS DUE TO THE OPERATIONS OF SUCH OTHER PARTIES DOING WORK INDICATED OR SHOWN ON THE PLANS OR IN THE SPECIFICATION OR FOR ANY REASONABLE DELAYS IN CONSTRUCTION DUE TO THE ENCOUNTERING OR EXISTING UTILITIES THAT MAY OR MAY NOT BE SHOWN ON THE PLANS.
17. DURING THE CONSTRUCTION OPERATIONS, THE CONTRACTOR SHALL NOT PERFORM WORK BY PRIVATE AGREEMENT WITH PROPERTY OWNERS ADJACENT TO THE PROJECT.
18. IF WORK EXTENDS BEYOND NOVEMBER 15, NO COMPENSATION WILL BE DUE TO THE CONTRACTOR FOR ANY WINTER PROTECTION MEASURES THAT MAY BE REQUIRED BY THE ENGINEER.
19. NO TREES ARE TO BE REMOVED UNTIL MARKED IN THE FIELD BY THE ENGINEER.
20. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO THE PROPERTY BEYOND THE CONSTRUCTION LIMITS INCLUDING BUT NOT LIMITED TO EXISTING FENCE, LAWN, TREES AND SHRUBBERY.
21. TRAFFIC SHALL BE MAINTAINED DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING ALL SIGNS AND TRAFFIC CONTROL DEVICES. FLAG PERSONS SHALL BE PROVIDED BY THE CONTRACTOR IF DETERMINED NECESSARY BY THE ENGINEER. ALL SIGNS SHALL CONFORM TO THE MICHIGAN MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES AT NO COST TO THE TOWNSHIP. NO WORK SHALL BE DONE UNLESS THE APPROPRIATE TRAFFIC CONTROL DEVICES ARE IN PLACE.
22. ALL DEMOLISHED MATERIALS AND SOIL SPOILS SHALL BE REMOVED FROM THE SITE AT NO ADDITIONAL COST, AND DISPOSED OF IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL REGULATIONS.
23. ANY EXISTING APPURTENANCES SUCH AS MANHOLES, GATE VALVES, ETC. SHALL BE ADJUSTED TO THE PROPOSED GRADE AND SHALL BE CONSIDERED INCIDENTAL TO THE CONTRACT.
24. ALL PERMANENT SIGNS AND PAVEMENT MARKINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST REVISION OF THE MICHIGAN MUTCD MANUAL AND SHALL BE INCIDENTAL TO THE CONTRACT.
25. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO ENSURE THAT ALL ITEMS REQUIRED FOR CONSTRUCTION OF THE PROJECT ARE INCLUDED IN THE CONTRACT. ANY ITEMS NOT SPECIFICALLY DESIGNATED IN THE PLANS SHALL BE CONSIDERED INCIDENTAL TO THE CONTRACT.
26. THE CONTRACTOR IS RESPONSIBLE FOR HAVING A SET OF APPROVED CONSTRUCTION PLANS, WITH THE LATEST REVISION DATE, ON SITE PRIOR TO THE START OF CONSTRUCTION. IN THE EVENT OF ANY QUESTIONS PERTAINING TO THE INTENT OF THE CONSTRUCTION PLANS OR SPECIFICATIONS, THE CONTRACTOR SHALL CONTACT THE DESIGN ENGINEER FOR A FINAL DETERMINATION FROM THE DESIGN ENGINEER.
27. THE CONTRACTOR, NOT THE OWNER OR THE ENGINEER, ARE RESPONSIBLE FOR THE MEANS, METHODS, AND SEQUENCE OF CONSTRUCTION. THE CONTRACTOR IS RESPONSIBLE FOR SAFE EXECUTION OF THE PROJECT SCOPE IN ACCORDANCE WITH THE APPROVED CONSTRUCTION PLANS.
28. THE CONTRACTOR IS RESPONSIBLE FOR PRESERVING CONSTRUCTION STAKING AS NECESSARY. CONTRACTOR TO NOTIFY CONSTRUCTION SURVEYOR OF REPLACEMENT STAKES NEEDED WHICH SHALL BE AT THE CONTRACTORS EXPENSE.
29. THE OWNER AND/OR CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING FRANCHISE UTILITY SERVICES (CABLE, ELECTRIC, GAS, ETC.) OWNER AND/OR CONTRACTOR SHALL WORK WITH UTILITY COMPANIES ON FURNISHING SITE UTILITY LAYOUTS AND PROVIDING CONDUIT CROSSINGS AS REQUIRED.
30. DAMAGE TO ANY EXISTING UTILITIES OR INFRASTRUCTURE (INCLUDING PAVEMENT, CURB, SIDEWALK, ETC.) SHALL PROMPTLY BE REPLACED IN KIND AND SHALL BE AT THE CONTRACTORS EXPENSE.
31. COORDINATION OF TESTING SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR AND PER ALL CITY/TOWNSHIP/COUNTY REQUIREMENTS. COPIES OF ALL TEST REPORTS SHALL BE FURNISHED TO THE DESIGN ENGINEER.
32. PRIOR TO THE START OF CONSTRUCTION, PROTECTION FENCING SHALL BE ERECTED AROUND THE TREE DRIPLINE OF ANY TREES INDICATED TO BE SAVED WITHIN THE LIMITS OF DISTURBANCE.
33. THE CONTRACTOR SHALL MAINTAIN DRAINAGE OF THE PROJECT AREA AND ADJACENT AREAS. WHERE EXISTING DRAINAGE FACILITIES ARE IMPACTED/DISTURBED DUE TO CONSTRUCTION, THE CONTRACTOR SHALL PROVIDE ANY NECESSARY TEMPORARY DRAINAGE PROVISIONS.
34. SOIL BORING LOGS ARE REPRESENTATIVE OF SPECIFIC POINTS ON THE PROJECT SITE, AND IF PROVIDED TO THE CONTRACTOR ARE FOR INFORMATIONAL PURPOSES ONLY.
35. WHERE CITY/TOWNSHIP STANDARD CONSTRUCTION DETAILS/SPECIFICATIONS ARE PROVIDED AND ARE IN CONFLICT WITH NOTES AND SPECIFICATIONS HEREIN, THE CITY/TOWNSHIP STANDARD SHALL GOVERN.

INDEMNIFICATION STATEMENT

THE CONTRACTOR SHALL HOLD HARMLESS THE DESIGN PROFESSIONAL, MUNICIPALITY, COUNTY, STATE, AND ALL OF ITS SUB CONSULTANTS, PUBLIC AND PRIVATE UTILITY COMPANIES, AND LANDOWNERS FOR DAMAGES TO INDIVIDUALS AND PROPERTY, REAL OR OTHERWISE, DUE TO THE OPERATIONS OF THE CONTRACTOR AND/OR THEIR SUBCONTRACTORS.

GENERAL GRADING & SESC NOTES

1. THE CONTRACTOR SHALL HAVE IN PLACE ALL REQUIRED EROSION CONTROL METHODS AS INDICATED ON THE CONSTRUCTION PLANS AND AS REQUIRED BY GENERAL PRACTICE. SPECIFIC MEANS, METHODS AND SEQUENCES OF CONSTRUCTION MAY DICTATE ADDITIONAL SOIL EROSION CONTROL MEASURES BE NEEDED. THE CONTRACTOR SHALL COORDINATE WITH THE DESIGN ENGINEER ON THESE ANTICIPATED METHODS. ADDITIONAL SOIL EROSION CONTROL METHODS SHALL BE INCIDENTAL TO THE SCOPE OF WORK.
2. ACTUAL FIELD CONDITIONS MAY DICTATE ADDITIONAL OR ALTERNATE SOIL EROSION CONTROL MEASURES BE UTILIZED. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DEFICIENCIES OR FIELD CONDITIONS THAT WARRANT ADDITIONAL AND/OR ALTERNATIVE SESC MEASURES BE UTILIZED.
3. AT THE CLOSE OF EACH DAY, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING ALL CONSTRUCTION OPERATIONS, MATERIALS, DEBRIS, ETC ARE CONTAINED ON–SITE.
4. AT THE CLOSE OF EACH WORKING DAY, ALL DRAINAGE STRUCTURES SHALL BE FREE OF DIRT AND DEBRIS AT THE FLOW LINE.
5. ALL SOIL EROSION CONTROL MEASURES SHALL BE INSTALLED IN ACCORDANCE PER MDEGLE REGULATIONS AND BEST PRACTICES, ALL SOIL EROSION CONTROL MEASURES SHALL BE MAINTAINED BY THE CONTRACTOR.
6. THE SOIL EROSION CONTROL MEASURES SHALL BE KEPT IN PLACE UNTIL SUCH A TIME THAT THE SITE IS DETERMINED TO BE ESTABLISHED WITH ACCEPTABLE AMOUNT OF VEGETATIVE GROUND COVER.
7. ALL AREAS DISTURBED BY THE CONTRACTOR BEYOND THE NORMAL CONSTRUCTION LIMITS OF THE PROJECT SHALL BE SODDED OR SEEDED AS SPECIFIED OR DIRECTED BY THE ENGINEER.
8. AFTER REMOVAL OF TOPSOIL, THE SUBGRADE SHALL BE COMPACTED TO 95% OF ITS UNIT WEIGHT.
9. ALL GRADING IN THE PLANS SHALL BE DONE AS PART OF THIS CONTRACT. ALL DELETERIOUS MATERIAL SHALL BE REMOVED FROM THE SUBGRADE PRIOR TO COMPACTING.
10. ALL ROOTS, STUMPS AND OTHER OBJECTIONABLE MATERIALS SHALL BE REMOVED AND THE HOLE BACKFILLED WITH SUITABLE MATERIAL. WHERE GRADE CORRECTION IS REQUIRED, THE SUBGRADE SHALL BE CUT TO CONFORM TO THE CROSS–SECTION AS SHOWN IN THE PLANS.
11. ALL EXCAVATION UNDER OR WITHIN 3 FEET OF PUBLIC PAVEMENT, EXISTING OR PROPOSED SHALL BE BACKFILLED AND COMPACTED WITH SAND (MDOT CLASS II).

GENERAL LANDSCAPE NOTES

1. ALL PLANT MATERIAL SHALL CONFORM TO THE REQUIREMENTS AND SPECIFICATIONS OF THE GOVERNING MUNICIPALITY. ALL STOCK SHALL BE NURSERY GROWN, CONFORMING TO ANSI Z60.1 "AMERICAN STANDARD FOR NURSERY STOCK", AND IN ACCORDANCE WITH GOOD HORTICULTURAL PRACTICE. STOCK SHALL EXHIBIT NORMAL GROWTH HABIT AND BE FREE OF DISEASE, INSECTS, EGGS, LARVAE, & DEFECTS SUCH AS KNOTS, SUN–SCALD, INJURIES, ABRASIONS, OR DISFIGUREMENT. ALL PLANT MATERIAL SHALL BE SUBJECT TO THE APPROVAL OF THE LANDSCAPE ARCHITECT.
2. ALL PLANT MATERIALS SHALL BE BALLED AND BURLAPPED OR CONTAINER STOCK. NO BARE ROOT STOCK IS PERMITTED. ALL PLANT BALLS SHALL BE FIRM, INTACT, AND SECURELY WRAPPED AND BOUND.
3. ALL PLANT BED MATERIALS SHALL BE EXCAVATED OF ALL BUILDING MATERIALS, OTHER EXTRANEOUS OBJECTS, AND POOR SOILS TO A MINIMUM DEPTH OF 12–INCHES AND BACKFILLED TO GRADE WITH SPECIFIED PLANTING MIX (SEE BELOW).
4. PLANTING MIXTURE SHALL CONSIST OF 5 PARTS TOPSOIL FROM ON–SITE (AS APPROVED), 4 PARTS COARSE SAND, 1 PART SPHAGNUM PEAT MOSS (OR APPROVED COMPOST), AND 5 LBS OF SUPERPHOSPHATE FERTILIZER PER CU. YD. OF MIX. INGREDIENTS SHALL BE THOROUGHLY BLENDED FOR UNIFORM CONSISTENCY.
5. ALL PLANT BEDS AND INDIVIDUAL PLANTS, NOT OTHERWISE NOTED SHALL BE MULCHED WITH A 4–INCH LAYER OF SHREDDED BARK MULCH. EDGE OF MULCH BEDS AS SHOWN. DECIDUOUS TREES IN LAWN AREAS SHALL RECEIVE A 5–FT DIAMETER CIRCLE OF MULCH AND CONIFER TREES 8–FT (PLANTED CROWN OF TREE) UNLESS OTHERWISE NOTED.
6. LANDSCAPE STONE SHALL BE INSTALLED WHERE NOTED OR INDICATED (HATCHED). STONE SHALL BE 3/4"–1–1/4" WASHED RIVER GRAVEL OR AS SELECTED AND SHALL BE INSTALLED TO A MINIMUM DEPTH OF 3–INCHES.
7. ALL LANDSCAPE BEDS, UNLESS OTHERWISE NOTED SHALL BE INSTALLED OVER WEED BARRIER FABRIC – WATER PERMEABLE FILTRATION FABRIC OF NON–WOVEN POLYPROPYLENE OR POLYESTER FABRIC. FABRIC SHALL BE OF SUITABLE THICKNESS FOR APPLICATION.
8. ALL PLANTS AND PLANT BEDS SHALL BE THOROUGHLY WATERED UPON COMPLETION OF PLANTING AND STAKING OPERATIONS.
9. THE CONTRACTOR SHALL GUARANTEE ALL PLANT MATERIALS FOR A PERIOD OF 1 YEAR FROM THE DATE THE WORK IS ACCEPTED, IN WRITING, BY THE LANDSCAPE ARCHITECT. THE CONTRACTOR SHALL REPLACE, WITHOUT COST TO THE OWNER, WITHIN A SPECIFIED PERIOD OF TIME, ALL DEAD PLANTS, AND ALL PLANTS NOT IN A VIGOROUS, THRIVING CONDITION, AS DETERMINED BY THE LANDSCAPE ARCHITECT, DURING AND AT THE END OF THE GUARANTEE PERIOD. REPLACEMENT STOCK SHALL CONFORM TO THE ORIGINAL SPECIFICATIONS.
10. EDGING SHALL BE PROVIDED FOR ALL LANDSCAPE BEDS NOT ADJACENT TO CONCRETE PAVEMENT. EDGING SHALL BE BLACK ALUMINUM EDGING, 3/16–INCH X 4–INCH. INSTALL PER MANUFACTURER'S INSTRUCTIONS, ALL EDGING SHALL BE INSTALLED IN STRAIGHT LINES OR SMOOTH CURVES WITHOUT IRREGULARITIES.
11. SOD SHALL BE DENSE, WELL ROOTED TURF, FREE OF WEEDS. IT SHALL BE COMPRISED OF A BLEND OF AT LEAST TWO KENTUCKY BLUE GRASSES AND ONE FESCUE. IT SHALL HAVE A UNIFORM THICKNESS OF 3/4–INCH AT TIME OF PLANTING, AND CUT IN UNIFORM STRIPS NOT LESS THAN 10–INCHES BY 18–INCHES. SOD SHALL BE KEPT MOIST AND LAID WITHIN 36–HOURS AFTER CUTTING.

    IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO ESTABLISH A DENSE LAWN OF PERMANENT GRASSES, FREE OF LUMPS AND DEPRESSIONS. ALL SODDED AREAS THAT BROWN–OUT OR HAVE NOT FIRMLY KNITTED TO THE SOIL BASE WITHIN A PERIOD OF 1 MONTH SHALL BE REPLACED BY THE CONTRACTOR, AT NO COST TO THE OWNER.
12. ALL AREAS OF THE SITE THAT BECOME DISTURBED DURING CONSTRUCTION AND ARE NOT TO BE PAVED, STONED, LANDSCAPED, OR SODDED SHALL BE SEEDED AND MULCHED.

    SEED MIXTURE SHALL BE AS FOLLOWS:

KENTUCKY BLUEGRASS (CHOOSE 3 VARIETIES –	
ADELPHI, RUGBY, GLADE, OR PARADE)	30%
RUBY RED OR DAWSON RED FINE FESCUE	30%
ATLANTA RED FESCUE	20%
PENNFINE PERENNIAL RYE	20%

    THE ABOVE SEED MIXTURE SHALL BE SOWN AT A RATE OF 250 LBS PER ACRE. PRIOR TO SEEDING, THE TOPSOIL SHALL BE FERTILIZED WITH A COMMERCIAL FERTILIZER WITH A 10–0–10 ANALYSIS:

    10% NITROGEN – MIN 25% FROM A UREA FORMALDEHYDE SOURCE
    0 % PHOSPHATE
    10% POTASH – SOURCE POTASSIUM SULFATE OR POTASSIUM NITRATE

    THE FIRST FERTILIZER APPLICATION SHALL BE AT A RATE OF 10 LBS PER 1000 SQ FT OF BULK FERTILIZER.

    IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO ESTABLISH A DENSE LAWN OF PERMANENT GRASSES, FREE OF LUMPS AND DEPRESSIONS. ANY PART OF THE AREA THAT FAILS TO SHOW A UNIFORM GERMINATION SHALL BE RE–SEEDED AND SUCH RE–SEEDING SHALL CONTINUE UNTIL A DENSE LAWN IS ESTABLISHED. DAMAGE TO SEEDED AREAS RESULTING FROM EROSION SHALL BE REPAIRED BY THE CONTRACTOR.
13. ALL AREAS OF THE SITE SCHEDULED FOR SEEDING OR SODDING SHALL FIRST RECEIVE A 6–INCH LAYER OF CLEAN, FRIABLE TOPSOIL. THE SOIL SHALL BE DISCED AND SHALL BE GRADED IN CONFORMANCE WITH THE GRADING PLAN.
14. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATION OF ALL UTILITIES AND TO INFORM THE LANDSCAPE ARCHITECT OF ANY CONFLICTS PRIOR TO COMMENCING LANDSCAPING.

GENERAL UTILITY NOTES

1. BEDDING SHALL EXTEND A MINIMUM OF 4" BELOW THE PIPE, UNLESS OTHERWISE NOTED ON THE PLANS. BEDDING SHALL BE OF UNIFORM GRADATION MDOT 6AA STONE OR MDOT CLASS II GRANULAR MATERIAL FOR SANITARY AND STORM PIPE AND MDOT CLASS II GRANULAR MATERIAL ONLY FOR WATERMAIN.
2. WHERE UNSTABLE GROUND CONDITIONS ARE ENCOUNTERED, STONE BEDDING SHALL BE USED AS DIRECTED BY THE ENGINEER.
3. BACKFILL SHALL BE OF A SUITABLE MATERIAL AND SHALL BE FREE OF ANY ORGANIC MATERIALS AND ROCKS.
4. BACKFILL ABOVE THE PIPE SHALL BE OF GRANULAR MATERIAL MDOT CLASS II TO A POINT 12" ABOVE THE TOP OF THE PIPE. WHERE THE TRENCH IS NOT WITHIN THE INFLUENCE OF THE ROAD, SUITABLE SITE MATERIAL MAY BE COMPACTED AND UTILIZED FROM A POINT 12" ABOVE THE PIPE TO GRADE. WHERE THE TRENCH IS WITHIN A 1:1 INFLUENCE OF THE ROAD, GRANULAR MATERIAL, MDOT CLASS II OR III, IS TO BE PLACED AND COMPACTED IN LAYERS NOT EXCEEDING 12" IN THICKNESS. COMPACTION SHALL BE 95% AS DETERMINED BY AASHTO T99.
5. 18" MINIMUM VERTICAL SEPARATION AND 10' HORIZONTAL SEPARATION IS TO BE MAINTAINED BETWEEN WATERMAIN AND SANITARY/STORM SEWER TO THE MAXIMUM EXTENT POSSIBLE.

GENERAL STORM NOTES

1. ALL STORM PIPE LENGTHS ARE SHOWN FROM C/L TO C/L OF STRUCTURE OR FROM C/L OF STRUCTURE TO DISCHARGE END OF FLARED END SECTION.
2. STORM PIPE MATERIALS SHALL BE AS FOLLOWS:
   2.1. RCP(REINFORCED CONCRETE PIPE): SHALL MEET THE REQUIREMENTS OF ASTM C76 WITH MODIFIED GROOVED TONGUE AND RUBBER GASKETS MEETING THE REQUIREMENTS OF ASTM C443. RCP TO BE EITHER CLASS IV OR V AS CALLED OUT ON THE PLANS.
   2.2. HDPE(HIGH DENSITY POLYETHYLENE): SHALL MEET THE REQUIREMENTS OF ASTM F2648.
   2.3. PPI(POLYPROPYLENE): SHALL MEET THE REQUIREMENTS OF ASTM F2881.
   2.4. PVC(POLYVINYL CHLORIDE): SHALL MEET THE REQUIREMENTS OF ASTM D3034.
3. STORM PIPE JOINTS SHALL MEET THE REQUIREMENTS OF ASTM D3212. HDPE AND PP PIPE GASKETS SHALL MEET THE REQUIREMENTS OF ASTM F477.
4. ALL STORM PIPE TO HAVE WATERTIGHT PREMIUM JOINTS, UNLESS OTHERWISE NOTED ON THE PLANS.
5. STORM DRAINAGE STRUCTURES SHALL BE FURNISHED WITH STEPS WHICH SHALL BE STEEL ENCASED WITH POLYPROPYLENE PLASTIC OR EQUIVALENT. STEPS SHALL BE SET AT 16" CENTER TO CENTER.
6. ALL FLARED END SECTIONS 15" AND LARGER SHALL BE FURNISHED WITH AN ANIMAL GRATE.
7. FLARED END SECTIONS DISCHARGING STORM WATER SHALL RECEIVE A MINIMUM OF 10 SQ YDS OF PLAIN COBBLESTONE RIP RAP WITH A MINIMUM STONE SIZE OF 6" AND SHALL BE PLACED ON A GEOTEXTILE FABRIC WRAP.
8. ALL CATCH BASINS WITHIN THE ROADWAY SHALL INCLUDE INSTALLATION OF 6" DIAMETER PERFORATED PIPE SUBDRAIN.
9. STORM DRAINAGE STRUCTURE COVERS SHALL BE OF THE FOLLOWING (OR APPROVED EQUAL):

COVER	USE	FRAME	GRATE/BACK
'A'	MANHOLE	1040	TYPE 'B'
'B'	TYPE B2 CURB	7085	TYPE 'M1'
'C'	VALLEY CURB	7065	7045 TYPE 'M1' GRATE/7060 TYPE 'T1' BACK
'D'	PARKING LOTS	1040/5100	TYPE 'M1' GRATE OR 5105 TYPE 'M1' GRATE
'E'	LAWN	1040	TYPE 'O2' GRATE
'K'	TYPE C & F CURB	7045	TYPE 'M1' GRATE/7050 TYPE 'T1' BACK

GENERAL SANITARY NOTES

1. ALL SANITARY PIPE LENGTHS ARE SHOWN FROM C/L OF STRUCTURE TO C/L OF STRUCTURE.
2. SANITARY PIPE MATERIALS SHALL BE AS FOLLOWS:
   2.1. PVC SDR–26 (SANITARY MAIN)
   2.2. PVC SDR–23.5 (SANITARY LEADS)
   2.3. HDPE DR–11 (SANITARY FORCEMAIN)
3. ALL PVC SDR SANITARY SEWER PIPE SHALL MEET THE REQUIREMENTS OF ASTM D3034 AND D2241. PVC SCHD 40 PIPE SHALL MEET THE REQUIREMENTS OF ASTM D1785. GASKET JOINTS FOR SANITARY PIPE SHALL MEET THE REQUIREMENTS OF ASTM D3139 AND D3212.
4. SANITARY STRUCTURES SHALL BE FURNISHED WITH STEPS WHICH SHALL BE STEEL ENCASED WITH POLYPROPYLENE PLASTIC OR EQUIVALENT. STEPS SHALL BE SET AT 16" CENTER TO CENTER.
5. ALL NEW MANHOLES SHALL BE MINIMUM 4' DIAMETER, PRECAST MANHOLE SECTIONS AND AN ECCENTRIC CONE. PRECAST MANHOLE JOINTS SHALL BE INSTALLED WITH BUTYL ROPE MEETING THE REQUIREMENTS OF ASTM C990.
6. MANHOLES SHALL BE CONSTRUCTED WITH FLOW CHANNEL WALLS THAT ARE FORMER, AT A MINIMUM, TO THE SPRINGLINE OF THE PIPE.
7. ALL NEW MANHOLES SHALL HAVE AN APPROVED FLEXIBLE, WATERTIGHT SEALS WHERE PIPES PASS THROUGH MANHOLE WALLS.
8. WHEREVER AN EXISTING MANHOLE IS TO BE TAPPED, THE STRUCTURE SHALL BE CORED AND A KOR–N–SEAL BOOT UTILIZED FOR THE PIPE CONNECTION.
9. ALL MANHOLES SHALL BE PROVIDED WITH WATERTIGHT COVERS. COVERS TO BE EJCO 1040 TYPE 'A' SOLID COVER.
10. A MAXIMUM OF 12" OF GRADE ADJUSTMENT RINGS SHALL BE USED TO ADJUST THE FRAME ELEVATION. BUTYL ROPE SHALL BE USED BETWEEN EACH ADJUSTMENT RING.
11. SANITARY SEWER LATERALS SHALL HAVE A MINIMUM SLOPE OF 1.0%.
12. CLEANOUTS SHALL BE INSTALLED EVERY 100', AT ALL BENDS AND STUBS.
13. PUBLIC SANITARY SEWER SHALL BE CENTERED WITHIN A XX FOOT WIDE SANITARY SEWER EASEMENT.

GENERAL WATERMAIN NOTES

1. WATERMAIN PIPE MATERIALS SHALL BE AS FOLLOWS:
   1.1. D.I.P. CL.52 (WATERMAIN)
   1.2. TYPE 'K' COPPER (WATER LATERAL – MAIN TO CURB STOP)
   1.3. HDPE DR–9 (WATER LATERAL – CURB STOP TO STUB)
2. WATERMAIN FITTINGS SHALL BE OF DUCTILE IRON WITH CEMENT MORTAR LINING AND MECHANICAL JOINTS CONFORMING TO AWWA C110.
3. WATERMAINS SHALL BE DISINFECTED IN ACCORDANCE WITH AWWA C651. BAC–T SAMPLES SHALL BE TAKEN IN ACCORDANCE WITH R235.11110 OF THE ADMINISTRATIVE RULES PROMULGATED UNDER MICHIGAN SAFE DRINKING WATER ACT, 1976 PA 399, AS AMENDED.
4. ALLOWABLE LEAKAGE OR HYDROSTATIC PRESSURE TESTING SHALL BE IN ACCORDANCE WITH AWWA C600 AND C605.
5. MAXIMUM DEFLECTION AT PIPE JOINTS SHALL BE IN ACCORDANCE WITH PIPE MANUFACTURERS CURRENT RECOMMENDATIONS AND AWWA SPECIFICATIONS.
6. A FULL STICK OF PIPE SHALL BE LAID CENTERED AT A PIPE CROSSING IN ORDER TO MAINTAIN THE MAXIMUM SEPARATION OF WATERMAIN JOINT TO THE CROSSING PIPE.
7. WATERMAIN SHALL BE INSTALLED WITH A MINIMUM OF 5.5' OF COVER FROM FINISHED GRADE TO TOP OF PIPE AND NO MORE THAN 8' OF COVER, UNLESS SPECIAL CONDITIONS WARRANT.
8. WATERMAIN VALVES SHALL BE IRON BODY RESILIENT WEDGE GATE VALVES, NON–RISING STEMS, COUNTERCLOCKWISE OPEN, AWWA C509.
9. FIRE HYDRANTS SHALL BE INSTALLED WITH AN AUXILIARY VALVE WITH CAST IRON VALVE BOX. THE HYDRANT PUMPER HOSE CONNECTION SHALL FACE THE ROADWAY.
10. THE BREAKAWAY FLANGE AND ALL BELOW GRADE FITTINGS SHALL HAVE STAINLESS STEEL NUTS AND BOLTS.
11. PUBLIC WATERMAIN SHALL BE CENTERED WITHIN A XX FOOT WIDE WATERMAIN EASEMENT.

LINES & HATCHES LEGEND

PROPOSED (PR)	EXISTING (EX)	
900	900	CONTOUR
	+ 922.08	SPOT ELEVATION
SN	SN	SANITARY SEWER
SL	SL	SANITARY LEAD
FM	FM	FORCE MAIN
PS	PS	PRESSURE SEWER
ST	ST	STORM SEWER
WM	WM	WATER MAIN
WL	WL	WATER LEAD
FO	FO	FIBER OPTIC
OH	OH	OVERHEAD WIRE
C	C	CABLE
E	E	ELECTRIC
G	G	GAS
T	T	TELEPHONE
X	X	FENCE
		SILT FENCE
		WETLAND BOUNDARY
		LIMITS OF GRADING/CLEARING
		LIMITS OF DRAINAGE
		MODIFIED CURB
		CONCRETE
		HIGH STRENGTH CONCRETE
		ASPHALT
		HIGH STRENGTH ASPHALT
		WETLAND
SAN 1"		SANITARY SEWER LABEL
SD 01		STORM SEWER LABEL
GV 12		WATER MAIN LABEL
541		SOIL EROSION CONTROL MEASURE (P=PERMANENT, T=TEMPORARY)

LIGHTING LEGEND

PROPOSED (PR)	EXISTING (EX)	
		DOUBLE FIXTURE LIGHT POLE
		SINGLE FIXTURE LIGHT FIXTURE
		WALL MOUNTED LIGHT FIXTURE
		GROUND LIGHT FIXTURE
.01		FOOT CANDLES ON SITE
.2.5		FOOT CANDLES OFF SITE
5		FOOT CANDLES CONTOURS
		CANOPY MOUNTED LIGHT FIXTURE

LANDSCAPE LEGEND

- EXISTING CONIFER TREE
- EXISTING DECIDUOUS TREE
- PROPOSED CONIFER TREE
- PROPOSED DECIDUOUS TREE
- PROPOSED TREE PROTECTION
- PROPOSED ORNAMENTAL TREE
- PROPOSED DECIDUOUS SHRUBS
- SOD
- PROPOSED GRASSES & PERENNIALS
- SEED
- PROPOSED LANDSCAPE BOULDER
- MULCH

SYMBOL LEGEND

- STORM DRAINAGE FLOW
- GUY WIRE
- POWER POLE
- TRANSFORMER PAD
- ELECTRICAL RISER
- U.G. ELECTRIC MARKER
- ELECTRICAL METER
- AIR CONDITIONING UNIT
- TELEPHONE RISER
- U.G. TELEPHONE MARKER
- GAS RISER
- U.G. GAS MARKER
- GAS METER
- CABLE TV RISER
- U.G. CABLE TV MARKER
- MAILBOX
- WELL
- WATER MANHOLE
- GATE VALVE (EXISTING)
- GATE VALVE (PROPOSED)
- HYDRANT (EXISTING)
- HYDRANT (PROPOSED)
- CATCH BASIN (EXISTING)
- YARD CATCH BASIN (EXISTING)
- CATCH BASIN (PROPOSED)
- STORM MANHOLE (EXISTING)
- STORM MANHOLE (PROPOSED)
- END SECTION (EXISTING)
- END SECTION (PROPOSED)
- SANITARY MANHOLE (EXISTING)
- SANITARY MANHOLE (PROPOSED)
- PUMP CHAMBER
- TRAFFIC SIGN
- SIGN (EXISTING)
- SIGN (PROPOSED)
- SOIL BORING
- STEEL ROD SET
- STEEL ROD OR PIPE FOUND
- WOOD LATH SET
- HUB SET
- MONUMENT FOUND
- SECTION CORNER
- GAS PUMP
- ANTENNA
- SATELLITE DISH
- NEWSPAPER BOX
- PARKING METER
- PHONE BOOTH
- HANDICAP SYMBOL
- BENCHMARK
- LIGHT POLE

ABBREVIATIONS

FFE	FINISHED FLOOR ELEVATION
BFE	BASEMENT FLOOR ELEVATION
GFE	GARAGE FLOOR ELEVATION
FG	FINISHED GRADE
T/A	TOP OF ASPHALT
T/C	TOP OF CONCRETE/CURB
T/W	TOP OF WALK
T/P	TOP OF PIPE
B/P	BOTTOM OF PIPE
F/L	FLOW LINE
RIM	RIM ELEVATION (AT FLOW LINE)
INV	INVERT ELEVATION
MH	MANHOLE
CB	CATCH BASIN
RY	REAR YARD
YD	YARD DRAIN
RD	ROOF DRAIN
FES	FLARED END SECTION
CMP	CORRUGATED METAL PIPE
CPP	CORRUGATED PLASTIC PIPE
RCP	REINFORCED CONCRETE PIPE
HDPE	HIGH DENSITY POLYETHYLENE
PVC	POLYVINYL CHLORIDE
DIP	DUCTILE IRON PIPE
GV	GATE VALVE
GVW	GATE VALVE IN WELL
GVB	GATE VALVE IN BOX
HYD

N

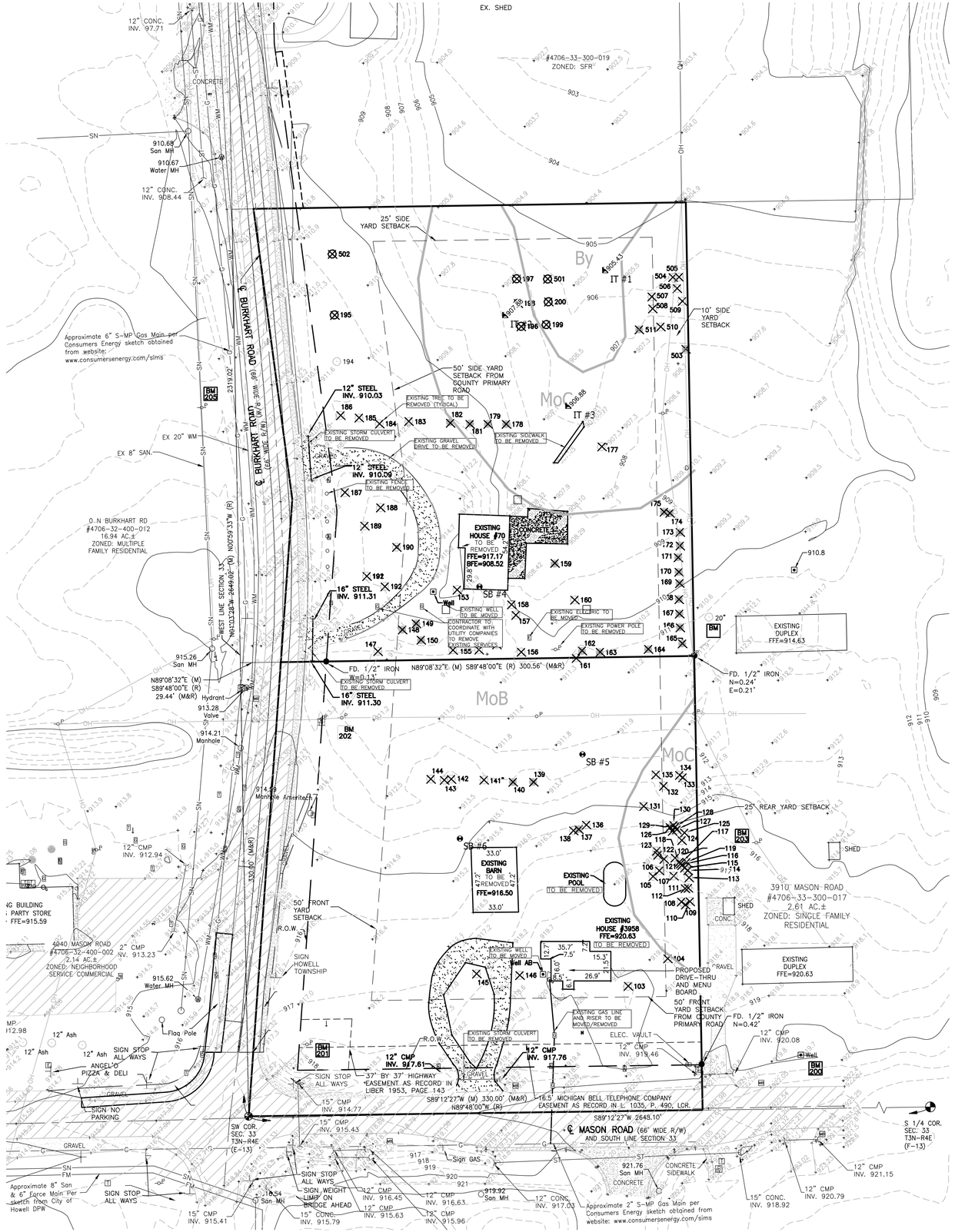
SCALE: 1 INCH = 40 FEET

LEGEND

- 900 — EXISTING CONTOUR
- 922.00 — EXISTING SPOT ELEVATION
- POWER POLE
- GUY WIRE
- TRANSFORMER PAD
- ELECTRICAL RISER
- U.G. ELECTRIC MARKER
- WELL
- HYDRANT
- WATER GATE VALVE
- WATER MANHOLE
- MANHOLE
- STORM INVERT
- TELEPHONE RISER
- U.G. TELEPHONE MARKER
- GAS METER
- GAS RISER
- U.G. GAS MARKER
- CABLE TV RISER
- U.G. CABLE TV MARKER
- MB — MAILBOX
- SIGN
- DECIDUOUS TREE
- CONIFEROUS TREE
- STEEL ROD OR PIPE FOUND
- SECTION CORNER
- —SN— SANITARY SEWER
- —WM— WATER MAIN
- —ST— STORM SEWER
- —OH— OVERHEAD WIRES
- (M&R) MEASURED AND RECORD
- P.O.B. POINT OF BEGINNING
- FFE FINISHED FIRST FLOOR ELEVATION
- GFE GARAGE FLOOR ELEVATION
- BFE BASEMENT FLOOR ELEVATION
- CMP CORRUGATED METAL PIPE
- CPP CORRUGATED PLASTIC PIPE

TREE LIST

Tag #	Botanical Name	Common Name	Size	Condition	TBR
101	Morus alba	White mulberry	6,7.5	Good	
102	Picea spp.	Spruce	20	Poor	
103	Acer saccharum ssp. Nigrum	Black maple	33	Good	X
104	Malus spp.	Malus Apple	6.5, 6	Good	X
105	Acer saccharum	Sugar maple	23	Good	X
106	Robinia pseudoacacia	Black locust	18.5	Good	X
107	Robinia pseudoacacia	Black locust	12	Good	X
108	Robinia pseudoacacia	Black locust	9.5, 12.5	Good	X
109	Robinia pseudoacacia	Black locust	15, 12	Good	X
110	Robinia pseudoacacia	Black locust	17	Good	X
111	Robinia pseudoacacia	Black locust	9	Dead	X
112	Robinia pseudoacacia	Black locust	18	Poor	X
113	Robinia pseudoacacia	Black locust	19	Good	X
114	Robinia pseudoacacia	Black locust	15	Good	X
115	Acer saccharum	Sugar maple	8	Good	X
116	Robinia pseudoacacia	Locust	8	Fair	X
117	Acer saccharum	Sugar maple	9	Fair	X
118	Robinia pseudoacacia	Black locust	9	Good	X
119	Robinia pseudoacacia	Black locust	16	Good	X
120	Robinia pseudoacacia	Black locust	15	Good	X
121	Robinia pseudoacacia	Black locust	10.5	Dead	X
122	Acer saccharum	Sugar maple	6	Good	X
123	Robinia pseudoacacia	Black locust	15	Good	X
124	Robinia pseudoacacia	Black locust	20,14	Fair	X
125	Acer saccharum	Sugar maple	18	Good	X
126	Robinia pseudoacacia	Black locust	14.5	Fair	X
127	Robinia pseudoacacia	Black locust	7.5	Dead	X
128	Robinia pseudoacacia	Black locust	16.5	Fair	X
129	Robinia pseudoacacia	Black locust	16	Fair	X
130	Robinia pseudoacacia	Black locust	11	Good	X
131	Robinia pseudoacacia	Black locust	11.5	Good	X
132	Acer spp.	Maple species	37.5	Good	X
133	Acer saccharum	Sugar maple	13.5	Good	X
134	Acer saccharum	Sugar maple	11	Good	X
135	Acer saccharum	Sugar maple	15	Good	X
136	Morus alba	White mulberry	8	Good	X
137	Pinus strobus	White pine	27	Good	X
138	Morus alba	White mulberry	11	Fair	X
139	Pinus strobus	White pine	25	Good	X
140	Pinus strobus	White pine	32	Good	X
141	Pinus strobus	White pine	21	Good	X
142	Pinus strobus	White pine	32	Good	X
143	Pinus strobus	White pine	24	Good	X
144	Pinus strobus	White pine	17	Good	X
145	Acer saccharum ssp. Nigrum	Black maple	19.5	Good	X
146	Acer platanoides	Norway Maple	34	Good	X
147	Acer saccharum	Sugar maple	19.5	Good	X
148	Picea spp.	Spruce species	15.5	Fair	X
149	Picea abies	Norway Spruce	19	Fair	X
150	Picea glauca	White Spruce	19	Fair	X
151	Acer saccharum	Sugar maple	21	Good	X
152	Acer saccharum	Sugar maple	23	Good	X
153	Prunus avium	Wild cherry	6	Good	X
154	Juglans nigra	Black walnut	17.5	Good	X
155	Ulmus americana	American elm	14	Good	X
156	Morus alba	White mulberry	6.5,9,12,13	Fair	X
157	Ulmus pumila	Siberian elm	10,11	Poor	X
158	Robinia pseudoacacia	Black locust	15	Good	X
159	Picea spp.	Spruce spp.	14	Fair	X
160	Acer saccharum	Sugar maple	21	Good	X
162	Picea glauca	White spruce	15	Poor	X
163	Picea glauca	White spruce	24	Poor	X
161	Picea glauca	White mulberry	9	Fair	X
164	Picea glauca	White spruce	19	Poor	X
165	Picea glauca	White spruce	15	Poor	X
166	Picea glauca	White spruce	14	Poor	X
167	Picea glauca	White spruce	13	Poor	X
168	Picea glauca	White spruce	14	Poor	X
169	Picea glauca	White spruce	15	Poor	X
170	Picea glauca	White spruce	16	Poor	X
171	Picea glauca	White spruce	11	Poor	X
172	Picea glauca	White spruce	14	Poor	X
173	Picea glauca	White spruce	19	Poor	X
174	Picea glauca	White spruce	16	Poor	X
175	Picea glauca	White spruce	16	Poor	X
176	Thuja occidentalis	White cedar	21	Fair	
177	Tilia americana	American basswood	26	Good	X
178	Picea glauca	White spruce	17	Poor	X
179	Picea glauca	White spruce	15	Poor	X
180	Acer saccharum	Sugar maple	19	Good	
181	Picea glauca	White spruce	17	Poor	X
182	Picea glauca	White spruce	20	Poor	X
183	Picea glauca	White spruce	8	Poor	X
184	Picea glauca	White spruce	13,10	Fair	X
185	Picea abies	Norway Spruce	12	Good	X
186	Acer saccharum	Sugar maple	18	Good	X
187	Acer saccharum	Sugar maple	19	Good	
188	Acer rubrum	Red maple	36	Good	X
189	Picea spp.	Spruce spp.	12	Poor	X
190	Picea abies	Norway spruce	18	Poor	X
191	Acer saccharum	Sugar maple	22	Good	X
192	Picea spp.	Spruce spp.	14	Poor	X
193	Acer platanoides	Norway maple	13	Good	
194	Acer saccharum	Sugar maple	25	Good	
195	Acer saccharum	Sugar maple	22	Good	X
502	Acer saccharum	Sugar Maple	26	Good	X
197	Malus spp.	Apple spp.	16,7	Poor	X
198	Malus spp.	Apple	10,8,6,7	Fair	X
199	Malus spp.	Apple	8,10,9	Fair	X
200	Malus spp.	Apple	11	Poor	X
196	Malus spp.	Apple	11,8	Fair	X
501	Malus spp.	Apple	11	Poor	X
503	Pinus strobus	White pine	17	Good	X
504	Acer negundo	Boxelder	17	Poor	X
505	dead				X
506	Picea spp.	Spruce species	7	Poor	X
507	Morus alba	White mulberry	7	Poor	X
508	Morus alba	White mulberry	6,5	Fair	X
509	Pinus resinosa	Red pine	9	Poor	X
510	Pinus resinosa	Red pine	10	Dead	X
511	Pinus resinosa	Red pine	10,10	Poor	X



SOIL NOTES:

THE PROJECT SITE IS COMPRISED OF THE FOLLOWING SOIL TYPES ACCORDING TO THE USDA NATURAL RESOURCES CONSERVATION SERVICE:
By -- BROOKSTON LOAM, 0 TO 2 % SLOPES
MoB -- WAWASEE LOAM, 2 TO 6 % SLOPES
MoC -- WAWASEE LOAM, 6 TO 12 % SLOPES

GENERAL SURVEY NOTES:

1. BEARINGS ARE BASED ON MICHIGAN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE. PER BOSS JOB NO. 19-252.
2. SUBSURFACE UTILITIES NOT LOCATED FOR THIS SURVEY MAY EXIST. IT IS THE RESPONSIBILITY OF THE OWNER OF THE RESPECTIVE UTILITY TO ACCURATELY LOCATE SUCH UTILITIES.
3. EASEMENTS OR RESTRICTIONS OF RECORD NOT DEPICTED ON THIS DRAWING MAY EXIST.
4. ELEVATIONS WERE ESTABLISHED WITH GPS USING OPUS GPS POST-PROCESSING. (NAVD88 DATUM)
5. CONTOURS ARE SHOWN AT 1 FOOT INTERVALS.
6. THE LOCATIONS OF STORM SEWER, SANITARY SEWER & WATERMAIN, AS SHOWN ON THIS DRAWING ARE APPROXIMATE. THE LOCATIONS ARE BASED ON PHYSICAL FIELD LOCATIONS OF STRUCTURES ALONG WITH DRAWINGS SUPPLIED BY CITY OF HOWELL DPW.
7. ALL WORK SHALL BE IN ACCORDANCE WITH THE STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY, THE COUNTY, AND THE STATE OF MICHIGAN.
8. ALLOW THREE WORKING DAYS BEFORE YOU DIG, CALL MISS DIG TOLL FREE 1-800-482-7171.

SITE BENCHMARKS (NAVD88 DATUM):
- **BM #200** = "X" ON TOP WELL INFRONT OF DUPLEX NO. 3910 & 3912. ELEV.=920.95
- **BM #201** = BOSS NAIL/TAG E/S P.POLE @ NE QUAD OF INTERSECTION OF BURKHART RD. & MASON Rd.. ELEV.=919.02
- **BM #202** = BOSS NAIL/TAG SW/S 2ND P.POLE EAST OF BURKHART RD. & 41'± SOUTH OF NORTH PROPERTY LINE OF SOUTH PARCEL. ELEV.=912.98
- **BM #203** = BOSS NAIL/TAG E/S P.POLE 77'± NORTH OF 1ST. DUPLEX NORTH OF MASON RD. ELEV.=916.55
- **BM #204** = BOSS NAIL/TAG NE/S 20" MAPLE TREE 20'± NORTH OF 2ND DUPLEX NORTH OF MASON RD. ELEV.=912.87
- **BM #205** = BOSS NAIL/TAG E/S 2ND P.POLE SOUTH OF CHESTNUT CROSSING ENTRINCE W/S OF BURKHART RD. ELEV.=912.78

PROPERTY DESCRIPTION PARCEL #4706-33-300-001 PER BOSS JOB NO. 2980:

Land situated in the Township of Howell, County of Livingston, State of Michigan, described as follows:

Part of the SW 1/4 of the SW 1/4 of the SW 1/4 of the SW 1/4 of Sec. 33 T3N-R4E, Howell Township, Livingston County, Michigan described as beginning at the SW corner of said sec. 33, thence N05°05'59"E 331.21 feet along the centerline of Burkhart Road; thence S89°48'00"E 300.56 feet; thence due South 330.00 feet; thence N89°48'00"W 330.00 feet along the centerline of Mason Road to the point of beginning containing 2.4 acres more or less and subject to road easements for Burkhart and Mason Road.

PROPERTY DESCRIPTION PARCEL #4706-33-300-018 PER BOSS JOB NO. 1523 A:

Land situated in the Township of Howell, County of Livingston, State of Michigan, described as follows:

Part of the W 1/2 of the SW 1/4 of Sec. 33 T3N-R4E, Howell Township, Livingston County, Michigan described as follows; Commencing at the SW corner of said sec. 33; thence Due North along the West line of Sec. 33, 330.00 feet; thence S89°48'00"E 29.44 feet to the point of beginning of the land to be described thence N05°05'59"E 118.79 feet along Burkhart Road; thence N06°33'45"W 213.12 feet along Burkhart Road; thence S89°48'00"E 314.36 feet; thence Due South 330.00 feet; thence N89°48'00"W 300.56 feet to the point of beginning containing 2.3 acres more or less and subject to easements for Burkhart Road.

THE LOCATION AND ELEVATION OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THESE DRAWINGS ARE ONLY APPROXIMATE. NO GUARANTEE IS EXPRESSED OR IMPLIED AS TO THE ACCURACY OR COMPLETENESS THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR ESTABLISHING THE EXACT LOCATION AND ELEVATION OF ALL EXISTING AND PROPOSED UTILITY CROSSINGS IN THE FIELD PRIOR TO CONSTRUCTION AND SHALL NOTIFY THE ENGINEER IMMEDIATELY IF ANY CONFLICTS ARE APPARENT OR IF THE LOCATION OR DEPTH DIFFERS SIGNIFICANTLY FROM THAT SHOWN.

3 WORKING DAYS BEFORE YOU DIG MISS DIG 1-800-482-7171 It is now a state law

BOSS Engineering
Engineers Surveyors Planners Landscape Architects
3121 E. GRAND RIVER AVE.
HOWELL, MI. 48843
517.546.4836 FAX 517.548.1670

PROJECT: HOWELL-MASON, LLC

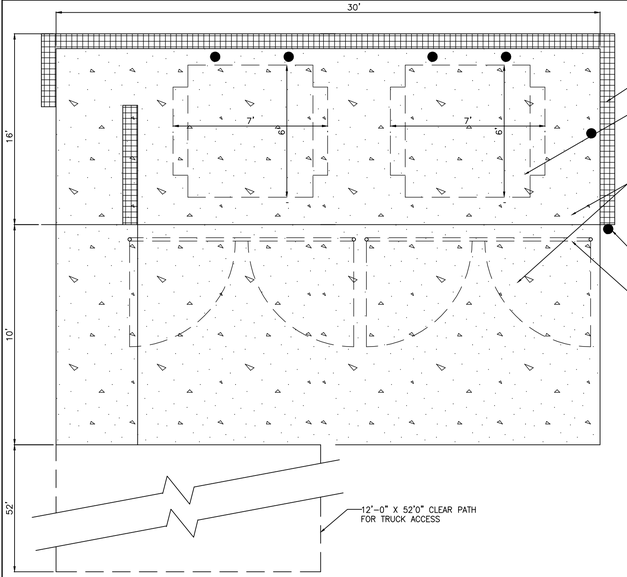
PREPARED FOR: HOWELL-MASON, LLC
PO BOX 708
HOWELL, MI 48844
(517) 202-0232

TITLE: EXISTING CONDITIONS, TREE SURVEY & DEMOLITION PLAN

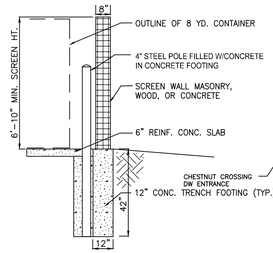
NO	BY	REVISION PER	DATE
1	ST	PER TWP REVIEW	9/11/23

DESIGNED BY:
DRAWN BY: KJ
CHECKED BY:
SCALE 1" = 40'
JOB NO. 20-205
DATE 6/28/2023
SHEET NO. 3

BOSS Engineering



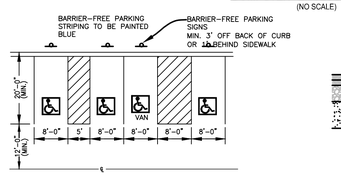
PLAN

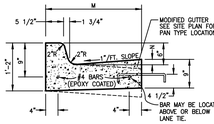


SECTION

DUMPSTER ENCLOSURE DETAIL

(NO SCALE)

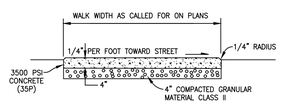




DETAIL	DIMENSIONS M	N	LANE TIES	CONCRETE CU.YD/LIN.FT.
F1	1'-6"	7/8"	AS SHOWN	0.0484
F2	1'-6"	7/8"	OMITTED	0.0484
F3	2'-0"	1 3/8"	AS SHOWN	0.0610
F4	2'-0"	1 3/8"	OMITTED	0.0610
F5	2'-6"	1 7/8"	AS SHOWN	0.0737
F6	2'-6"	1 7/8"	OMITTED	0.0737

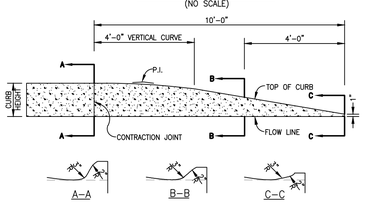
CONCRETE CURB & GUTTER TYPE F

(NO SCALE)



4" CONCRETE SIDEWALK

(NO SCALE)



CONCRETE CURB AND GUTTER ENDINGS

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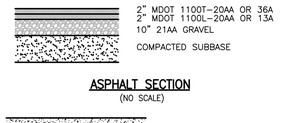
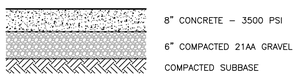


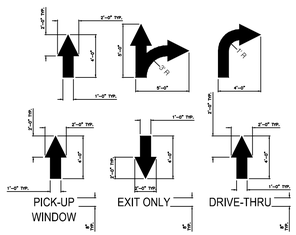
ASPHALT SECTION

(NO SCALE)



CONCRETE PAVEMENT CROSS SECTION

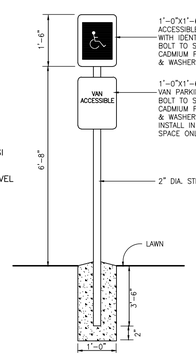
(NO SCALE)



ALL PAVEMENT MARKINGS TO BE WHITE PAVEMENT PAINT, UNLESS STATED OTHERWISE.

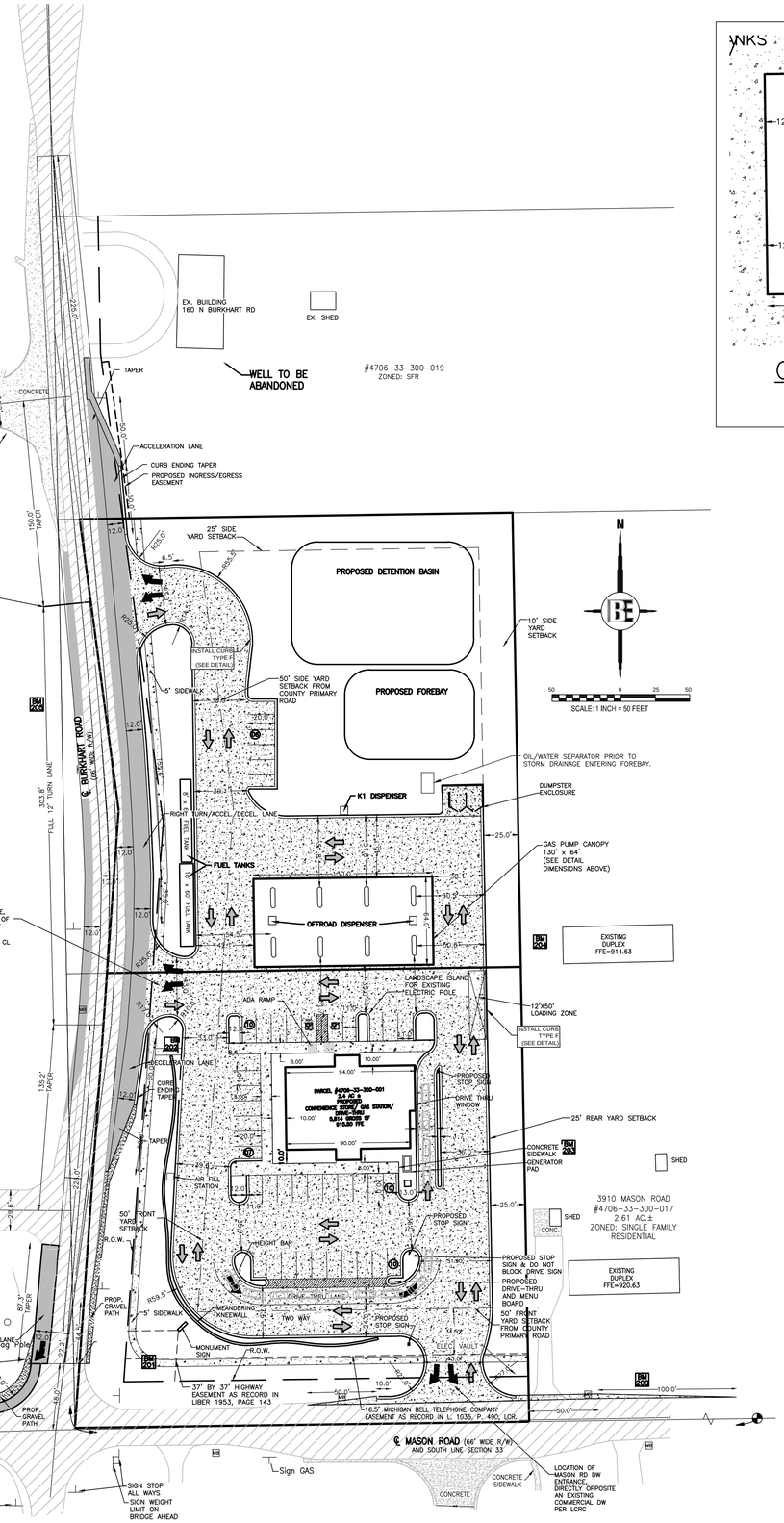
PAVEMENT MARKINGS

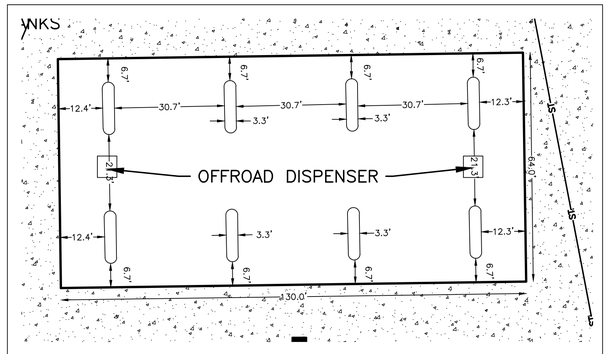
(NO SCALE)



HANDICAP PARKING SIGN DETAIL

(NO SCALE)





GAS PUMP CANOPY DIMENSIONS

SCALE: 1"=20'

SITE DATA

PARCEL: #4706-33-300-001
3958 MASON ROAD
HOWELL TOWNSHIP
LOT SIZE: 2.38 AC; MIN. LOT AREA REQUIRED: 1 ACRE
ZONING: NEIGHBORHOOD SERVICE COMMERCIAL DISTRICT (NSC)
EXISTING USE: RESIDENTIAL

AND

PARCEL: # 4706-33-300-018
70 N. BURKHART ROAD
HOWELL TOWNSHIP
LOT SIZE: 2.39 AC
ZONING: NEIGHBORHOOD SERVICE COMMERCIAL DISTRICT (NSC)
EXISTING USE: RESIDENTIAL

PARCELS TO BE COMBINED AFTER SITE PLAN APPROVAL.

PROPOSED SPECIAL USE: GAS STATION WITH CONVENIENCE STORE, AND DELI WITH DRIVE THRU
EMPLOYEES WORKING DURING MAXIMUM EMPLOYMENT HOURS: 5
PROPOSED GROSS FLOOR AREA: 5,814 SF,
PROPOSED SALES FLOOR AREA: 3,016 SF

REQUIRED/EXISTING (NSC ZONING)		PROPOSED (NSC ZONING)	
BUILDING SETBACKS:			
-FRONT:	50 FEET FROM PRIMARY COUNTY ROAD RIGHT-OF-WAY LINES (MASON RD IS A PRIMARY COUNTY ROAD)	SAME	
-SIDE:	10 FEET (MIN.) FOR ONE SIDE, 25 FEET (MIN. TOTAL) BOTH (WEST SIDE YARD IS ON BURKHART RD WHICH IS A PRIMARY COUNTY ROAD REQUIRING 50 FOOT SETBACK)	10 FEET EAST SIDE YARD 50 FEET WEST SIDE YARD	
-REAR:	50 FEET (MIN.)	SAME	
MAX. BUILDING HEIGHT: 2 STORIES OR 30 FEET (MAX.),		23'-4" (BLDG)	22'-6.5" (CANOPY)
MAX. LOT COVERAGE:	60%	47% (207,863 SF +/- /98,712 SF)	
MIN. LOT WIDTH: 150 FEET AT BUILDING SITE		291.94 FT	

ARTICLE XVI. SECTION 26.05 SETBACK REQUIREMENTS ALONG M-59, GRAND RIVER ROAD, OAK GROVE ROAD AND COUNTY PRIMARY ROADS:
THE FOLLOWING SETBACK REQUIREMENTS SHALL SUPERSEDE THE SETBACK REQUIREMENTS AS SPECIFIED IN INDIVIDUAL ZONING DISTRICTS. THE SETBACK SHALL BE FIFTY (50) FEET FROM ALL BUILDINGS AND TWENTY (20) FEET FOR ALL OTHER STRUCTURES FROM THE HIGHWAY OR ROAD RIGHT-OF-WAY LINE OF M-59, I-96, GRAND RIVER ROAD, OAK GROVE ROAD AND ALL COUNTY PRIMARY ROADS.

OFF-STREET PARKING (PER ZONING ORDINANCE ARTICLE XVIII OFF-STREET PARKING, LOADING AND UNLOADING REQUIREMENTS SECTION 18.02:
EACH OFF-STREET PARKING SPACE FOR AUTOMOBILES SHALL NOT BE LESS THAN 200 SQUARE FEET IN AREA, EXCLUSIVE OF ACCESS DRIVES OR PARKING SPACE ACCESS AISLE, AND SHALL BE OF USABLE SHAPE AND CONDITION.

ALL OFF-STREET PARKING SPACES SHALL NOT BE CLOSER THAN THE REQUIRED FRONT, SIDE AND REAR YARD SETBACKS IN THE ZONING DISTRICT IN WHICH THEY ARE LOCATED TO ANY PROPERTY LINE.

FOR GASOLINE FILLING AND SERVICE STATIONS - ONE PARKING SPACE FOR EACH REPAIR AND SERVICE STALL, PLUS ONE SPACE FOR EACH EMPLOYEE WORKING DURING MAXIMUM EMPLOYMENT HOURS. NO SPACES FOR REPAIR AND SERVICE NEEDED. (EMPLOYEE COUNT IS INDICATED BELOW)
RESTAURANTS - TEN PARKING SPACES PLUS ONE PARKING SPACE FOR EACH FOUR CUSTOMER SEATS, PLUS ONE PARKING SPACE FOR EACH EMPLOYEE WORKING DURING MAXIMUM EMPLOYMENT HOURS. 0 CUSTOMER SEATS PLANNED -- 10 PARKING SPACES REQUIRED. (EMPLOYEE COUNT IS INDICATED BELOW)
RETAIL - ONE PARKING SPACE FOR EACH 150 SF OF USEABLE FLOOR AREA (3,016 SF), PLUS ONE SPACE FOR EACH EMPLOYEE WORKING DURING MAXIMUM EMPLOYMENT HOURS.
(3,016 / 150 = 20.1 SPACES) ~ 20 SPACES (EMPLOYEE COUNT INDICATED BELOW)
EMPLOYEES - 10 EMPLOYEES ON MAXIMUM SHIFT

LOADING/UNLOADING - OVER 5,000 SF OF GROSS FLOOR AREA = ONE 10' X 55' OFF-STREET LOADING/UNLOADING SPACE, NOT IN THE FRONT YARD.

TOTAL PARKING REQUIRED: 40 SPACES -
10 SPACES FOR TOTAL EMPLOYEES DURING MAXIMUM EMPLOYMENT HOURS FOR ALL USES,
10 SPACES FOR RESTAURANT USE,
20 SPACES FOR RETAIL,
1 LOADING/UNLOADING SPACE.

TOTAL SPACES PROVIDED: 43 SPACES PLUS 1 LOADING SPACE.

...PER SECTION 16.11 C.4) THE MAXIMUM WIDTHS OF ALL DRIVEWAYS AT THE PUBLIC SIDEWALK CROSSING OR STREET LINE SHALL BE NO MORE THAN TWENTY-FOUR (24) FEET.

THE LOCATION AND ELEVATION OF EXISTING UNDERGROUND UTILITIES AS SHOWN HEREON ARE APPROXIMATE AND NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT LOCATION AND ELEVATION OF EXISTING UTILITIES AND PROPOSED UTILITY CROSSINGS PRIOR TO CONSTRUCTION. IN ADDITION, THE CONTRACTOR SHALL NOTIFY THE ENGINEER IF ANY CONFLICTS ARE FROM THE PLANS AS TO THE LOCATION OR DEPTH DIFFERS SIGNIFICANTLY

3 WORKING DAYS BEFORE YOU DIG CALL MISS DIG 1-800-482-7171
MISS DIG SYSTEM, INC. NOT A MEMBER OF THIS UTILITY

BE BOSS Engineering
Engineers Surveyors Planners Landscape Architects
3121 E. GRAND RIVER AVE.
HOWELL, MI. 48843
517.546.4836 FAX 517.548.1670

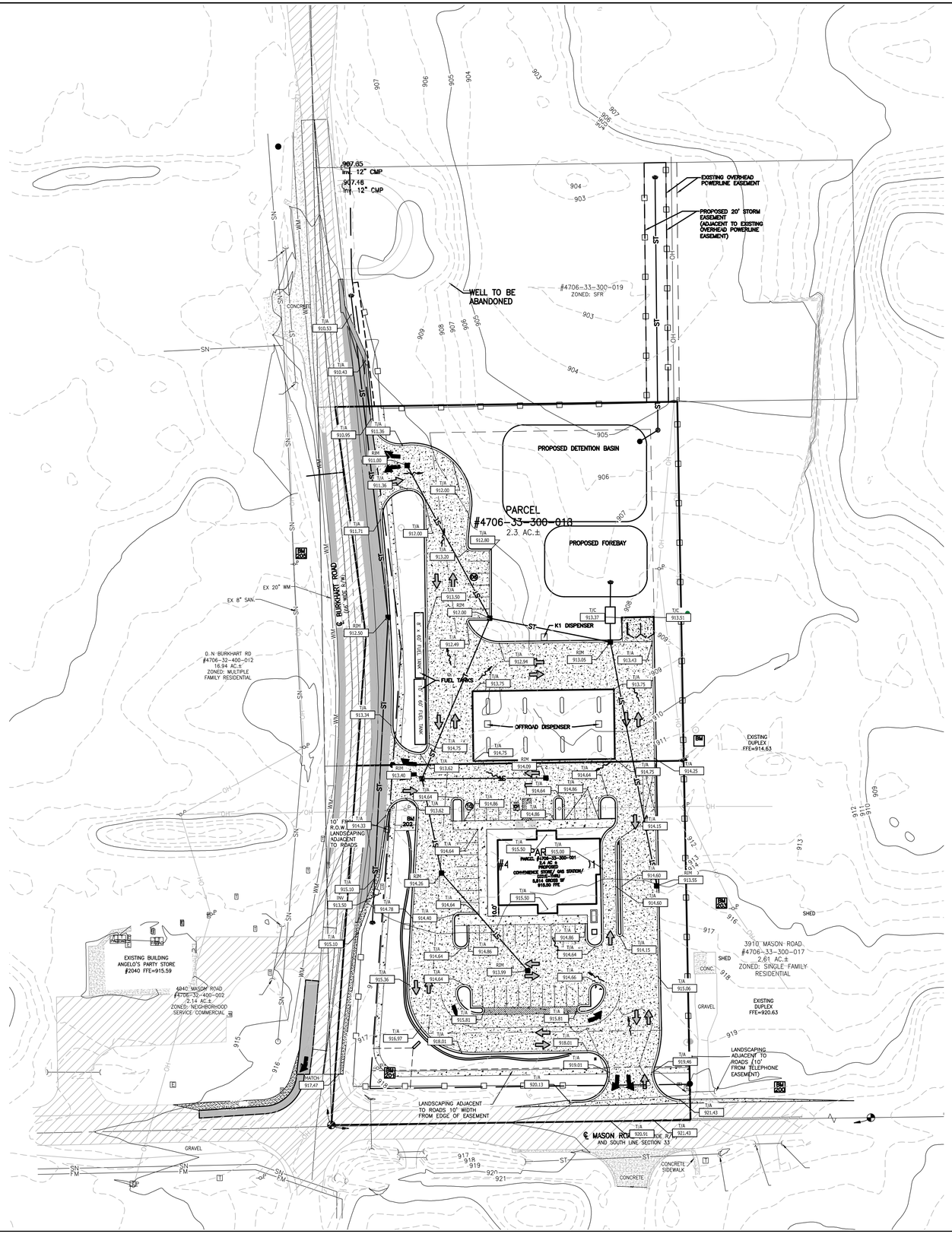
PROJECT
HOWELL - MASON, LLC
HOWELL-MASON, LLC
PO BOX 788
HOWELL, MI 48844
(517) 202-0232
PREPARED FOR

TITLE
SITE PLAN

NO	BY	REVISION PER	DATE
1	ST	PER TWP REVIEW	9/11/23

DESIGNED BY: ST
DRAWN BY: DH/JS
CHECKED BY:
SCALE: 1"=50'
JOB NO: 20-205
DATE: 6/28/2023
SHEET NO. 4

BOSS Engineering



SITE BENCHMARKS (NAVD88 DATUM):

–BM #200 = "X" ON TOP WELL INFRONT OF DUPLEX NO. 3910 & 3912. ELEV.=920.95

–BM #201 = BOSS NAIL/TAG E/S P.POLE @ NE QUAD OF INTERSECTION OF BURKHART RD. & MASON Rd. ELEV.=919.02

–BM #202 = BOSS NAIL/TAG SW/S 2ND P.POLE EAST OF BURKHART RD. & 41'± SOUTH OF NORTH PROPERTY LINE OF SOUTH PARCEL. ELEV.=912.98

–BM #203 = BOSS NAIL/TAG E/S P.POLE 77'± NORTH OF 1ST. DUPLEX NORTH OF MASON RD. ELEV.=916.55

–BM #204 = BOSS NAIL/TAG NE/S 20" MAPLE TREE 20'± NORTH OF 2ND DUPLEX NORTH OF MASON RD. ELEV.=912.87

–BM #205 = BOSS NAIL/TAG E/S 2ND P.POLE SOUTH OF CHESTNUT CROSSING ENTRINCE W/S OF BURKHART RD. ELEV.=912.78

THE LOCATION AND ELEVATION OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THESE PLANS ARE APPROXIMATE AND NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT LOCATION AND ELEVATION OF EXISTING UTILITIES AND PROPOSED UTILITY CONNECTIONS AS REQUIRED FOR CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IF ANY CONFLICTS ARE FROM THE PLANS. IF THE LOCATION OR DEPTH DIFFERS SIGNIFICANTLY

3 WORKING DAYS BEFORE YOU DIG CALL MISS DIG 1-800-482-7171
IT'S THE LAW!! PA 53 OF 2013 MEMBERS INCLUDE

BE BOSS Engineering
Engineers Surveyors Planners Landscape Architects
3121 E. GRAND RIVER AVE.
HOWELL, MI. 48843
517.546.4836 FAX 517.548.1670

PROJECT
HOWELL - MASON, LLC

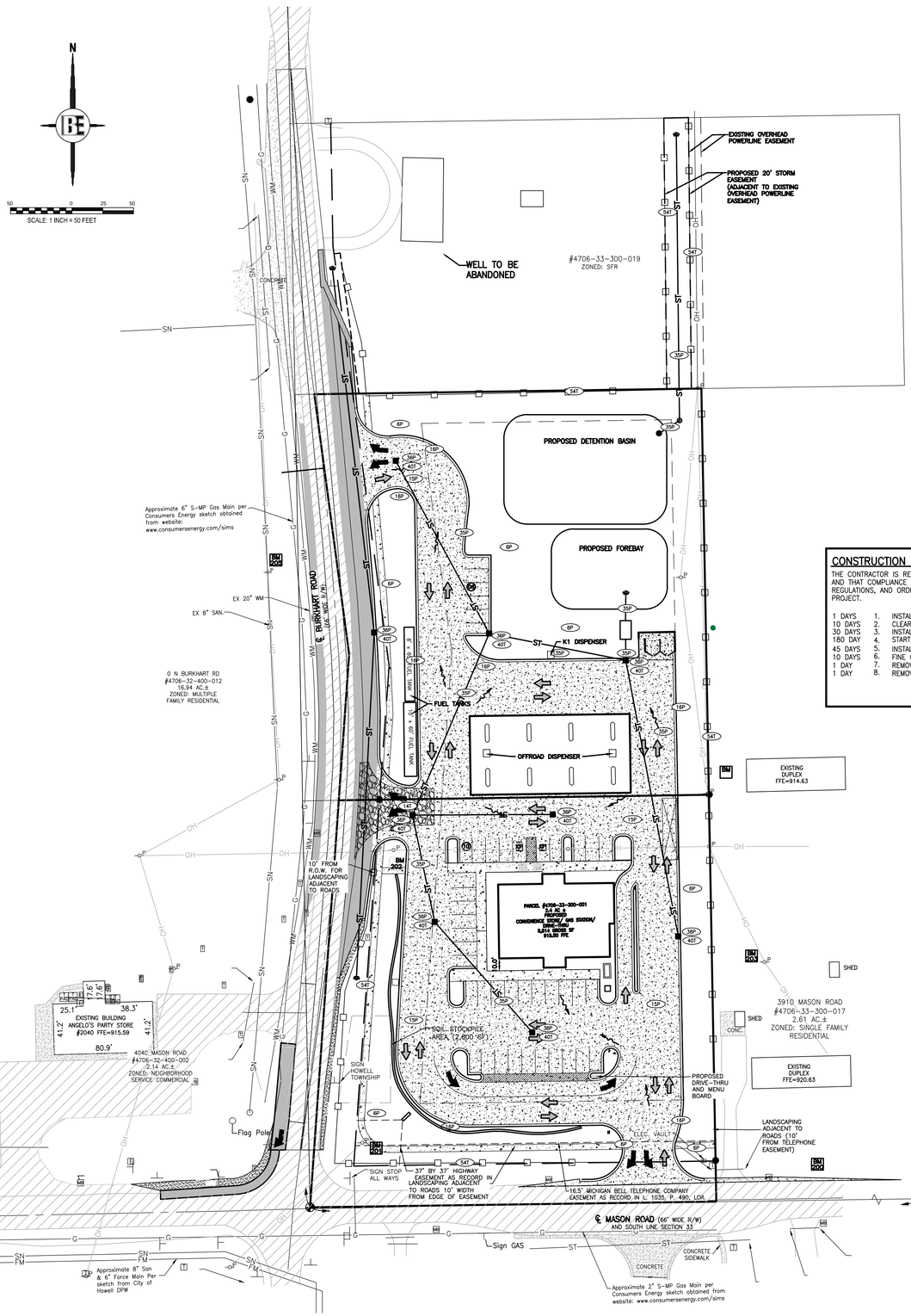
PREPARED FOR
HOWELL-MASON, LLC
PO BOX 708
HOWELL, MI 48844
(517) 202-0323

TITLE
GRADING & DRAINAGE PLAN

NO	BY	REVISION PER	DATE
1	ST	PER TWP REVIEW	9/11/23

DESIGNED BY: ST
DRAWN BY: DH/JS
CHECKED BY:
SCALE: 1"=50'
JOB NO: 20-205
DATE: 6/28/2023
SHEET NO. 5

BOSS Engineering



LIVINGSTON COUNTY SOIL EROSION PERMIT TEMPLATE
TEMPORARY CONTROLS AND SEQUENCE

1. NOTIFY LIVINGSTON COUNTY DRAIN COMMISSIONER'S OFFICE 24 HOURS PRIOR TO START OF GRADE WORK.
2. IN ACCORDANCE WITH PUBLIC ACT NO. 53, OF 1974 THE PERMIT HOLDER SHALL CALL MISS DIG FOR STAKING AND LOCATING OF UTILITIES, AT LEAST 72 HOURS IN ADVANCE OF THE START OF ANY WORK.

PERMITTING STANDARDS

4. 36" M.D.O.T SPECIFICATION TYPE SILT FABRIC FENCE AS SHOWN ON PLANS SHALL BE PLACED AND MAINTAINED ALONG PERIMETER ON ALL LOW LYING AREAS OF THE CONSTRUCTION SITE TO FILTER RUNOFF BEFORE LEAVING PROJECT SITE.
5. ALL TEMPORARY EROSION CONTROL DEVICES AS NOTED ON PLANS SHALL BE INSTALLED PRIOR TO THE START OF MASSIVE EARTH DISRUPTION.

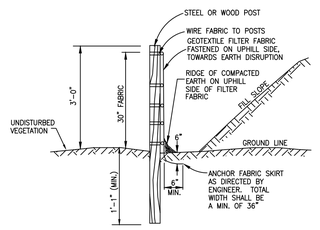
STABILIZATION

29. ALL UNIMPROVED DISTURBED AREAS SHALL BE RE-TOP SOILED, WITH A MINIMUM OF 3" OF MATERIAL, SEEDED, MULCHED AND TACKED WITHIN 15 DAYS OF THE COMPLETION OF THE MASSIVE EARTH DISRUPTION. IN THE NON-GROWING SEASON STRAW MATTING WILL SUFFICE. HYDROSEEDING WILL BE AN ACCEPTABLE ALTERNATE FOR MULCHING. EXTREME CARE SHOULD BE EXERCISED IN SPRING AND FALL PERIODS AS A FROST WILL BREAK THE BIND OF THE HYDROSEEDING, WHICH WILL AFFECT THE EFFECTIVENESS OF THIS PROCEDURE.
30. IN THE NON-GROWING SEASON, TEMPORARY STABILIZATION OF MASSIVELY EXPOSED AREAS FOR WINTER STABILIZATION SHALL BE DONE WITH STRAW MATTING.
31. PERIODIC INSPECTIONS WILL BE MADE THROUGHOUT THE COURSE OF THE PROJECT. IT WILL BE THE RESPONSIBILITY OF THE MANAGERS OF THE PROJECT TO CONTACT THIS OFFICE FOR THE FINAL INSPECTION AT THE END OF THE PROJECT.
32. THIS COMMERCIAL PERMIT IS VALID FOR THE MASS EARTH MOVEMENT, THE INSTALLATION OF ROADS, DRAINS, AND UTILITIES AND IS NOT FOR ANY SINGLE FAMILY RESIDENCE. ALL RESIDENTIAL BUILDERS WILL NEED TO SECURE WAIVERS AND OR PERMITS AS NECESSARY FOR EACH LOT IN THIS DEVELOPMENT AT THE TIME APPLICATION FOR SINGLE FAMILY RESIDENCE IS MADE.
33. THE ISSUING BUILDING DEPARTMENT SHALL NOT ISSUE THE CERTIFICATE OF OCCUPANCY UNTIL THE FINAL INSPECTION LETTER FROM THE LIVINGSTON COUNTY DRAIN COMMISSIONER'S OFFICE HAS BEEN OBTAINED.
34. PER THE LIVINGSTON COUNTY DRAIN COMMISSIONER THE SEEDING, FERTILIZER AND MULCH MINIMUM QUANTITIES SHALL BE AS FOLLOWS:

TOP-SOIL	3" IN DEPTH
GRASS SEED	210 LBS. PER ACRE
FERTILIZER	150 LBS. PER ACRE
STRAW MULCH	3" IN DEPTH 1.5 TO 2 TONS PER ACRE (ALL MULCHING MUST HAVE A TIE DOWN, SUCH AS TACKIFIER, NET BINDING, ETC.)
HYDRO-SEEDING	HYDRO-SEEDING IS NOT ACCEPTABLE FOR SLOPES EXCEEDING 1%, IN SUCH CASES STABILIZATION SHALL BE DONE WITH SEED AND STRAW MULCH WITH A TACKIFIER.

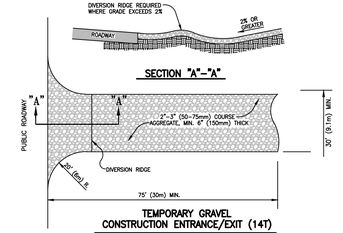
MAINTENANCE SCHEDULE FOR SOIL EROSION CONTROLS

1. SILT FENCE SHALL BE INSPECTED WEEKLY AND AFTER EACH MAJOR STORM EVENT. MAINTENANCE SHALL INCLUDE REMOVAL OF ACCUMULATED SILT AND REPLACEMENT OF TORN SECTIONS. SILT FENCE SHALL BE REMOVED WHEN ALL CONTRIBUTING AREAS HAVE BEEN STABILIZED.



SILT FENCE DETAIL
NO SCALE

SILT FENCE SHALL BE A MINIMUM 36".



TEMPORARY GRAVEL CONSTRUCTION ENTRANCE/EXIT (14T)
NO SCALE

CONSTRUCTION SEQUENCE

THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THAT EROSION IS MINIMIZED AND THAT COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES IS MAINTAINED THROUGHOUT EXECUTION OF THIS PROJECT.

1 DAYS	1.	INSTALL SILT FENCE & INLET PROTECTION AS SHOWN ON PLANS.
10 DAYS	2.	CLEAR VEGETATION, STRIP TOPSOIL, HAUL EXCESS DIRT
30 DAYS	3.	INSTALL STORM SEWER & BLDG WATER/SEWER LEADS
180 DAY	4.	START BLDG. CONSTRUCTION & RETAINING WALL CONSTRUCTION
45 DAYS	5.	INSTALL CURB AND PAVEMENT
10 DAYS	6.	FINE GRADE AROUND BUILDING, SPREAD TOPSOIL, SEED OR SOD AS APPLICABLE.
1 DAY	7.	REMOVE ALL EROSION CONTROL STRUCTURES.
1 DAY	8.	REMOVE ACCUMULATED SILT FROM ALL EXISTING DRAINAGE.

PROPOSED CONST. SCHEDULE FOR THE YEAR 2023

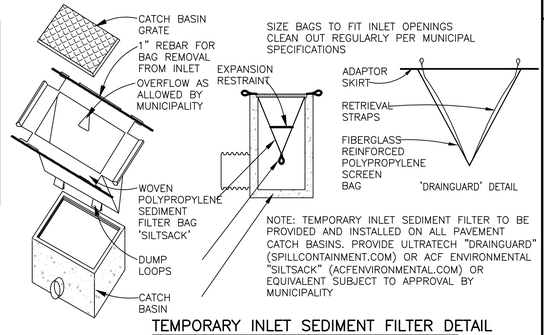
ACTIVITY	SEPT	OCT	NOV	APRIL	MAY
CLEAR, GRUB	—				
MASS GRADING	—				
UNDERGROUND UTILITY		—			
BLDG CONSTR.		—	—		
FINAL GRADING			—		
CURB & PAVING				—	
SEED & MULCH					—

CONTROLS & MEASURES NARRATIVE

ACTIVITY	DESCRIPTION
MAINTAIN LANDSCAPING, REPLACE MULCH	COLLECT GRASS, TREE, AND SHRUB CLIPPINGS. DISPOSE IN APPROVED CONTAINER. REPLACE DEAD SOD, TREES AND SHRUBS.
CLEAN INLETS	REMOVE LITTER, SEDIMENT, AND DEBRIS. DISPOSE OF IN APPROVED LANDFILL.
COLLECT LITTER	DISPOSE OF WITH INLET DEBRIS.
SWEEP PARKING LOT	REMOVE MUD, DIRT, GREASE AND OIL WITH PERIODIC SWEEPING
DUST CONTROL	SPRINKLE WATER AS NEEDED

CONTROLS & MEASURES POST CONSTRUCTION SEQUENCE

ACTIVITY	WEEKLY	MONTHLY	AS REQUIRED
MAINTAIN LANDSCAPING, REPLACE MULCH	X	X	X
CLEAN INLETS		X	X
COLLECT LITTER	X		X
SWEEP PARKING LOT		X	X



TEMPORARY INLET SEDIMENT FILTER DETAIL
(NO SCALE)

SURFACE WATER & COUNTY DRAINS

WETLAND – APPROXIMATELY ¼ MILE EAST (ACCORDING TO NATIONAL WETLANDS INVENTORY WETLANDS MAPPER)
LAKES – APPROXIMATELY 3.35 MILES NW (AT N. FLEMMING RD & WARNER RD)
STREAMS – APPROXIMATELY 0.7 MILES TO THE WEST AT RED CEDAR RIVER
BASINS – ON SITE
DRAINS – APPROXIMATELY 2,765 FT N TO EAST CEDAR RIVER DRAIN

SOIL EROSION CONTROL MEASURES

P=PERMANENT T=TEMPORARY
TOTAL AREA OF DISTURBANCE = 4.61 AC (177,636.50 SF)

6	SEEDING WITH MULCH AND/OR MATTING	FACILITATES ESTABLISHMENT OF VEGETATIVE COVER EFFECTIVE FOR DRAINAGEWAYS WITH LOW VELOCITY EASILY PLACED IN SMALL QUANTITIES BY INDEPENCED PERSONNEL SHOULD INCLUDE PREPARED TOPSOIL BED
14	AGGREGATE COVER	STABILIZES SOIL SURFACE, THUS MINIMIZING EROSION PERMITS CONSTRUCTION TRAFFIC IN ADVERSE WEATHER MAY BE USED AS PART OF PERMANENT BASE CONSTRUCTION OF PAVED AREAS
15	PAVING	PROTECTS AREAS WHICH CANNOT OTHERWISE BE PROTECTED, BUT INCREASES RUNOFF VELOCITY IRREGULAR SURFACE WILL HELP SLOW VELOCITY
16	CURB & GUTTER	KEEPS HIGH VELOCITY RUNOFF ON PAVED AREAS FROM LEAVING PAVED SURFACE COLLECTS AND CONDUCTS RUNOFF TO ENCLOSED DRAINAGE SYSTEM OR PREPARED DRAINAGEWAY
35	STORM SEWER	SYSTEM REMOVES COLLECTED RUNOFF FROM SITE, PARTICULARLY FROM PAVED AREAS CAN ACCEPT LARGE CONCENTRATIONS OF RUNOFF CONDUCTS RUNOFF TO MUNICIPAL SEWER SYSTEM OR STABILIZED OUTFALL LOCATION USE CATCH BASINS TO COLLECT RUNOFF
36	CATCH BASIN, DRAIN INLET	COLLECTS HIGH VELOCITY CONCENTRATED RUNOFF MAY USE FILTER CLOTH OVER INLET
40	INLET SEDIMENT FILTER	EASY TO SHAPE COLLECTS SEDIMENT MAY BE CLEANED AND EXPANDED AS NEEDED
54	SILT FENCE	USES GEOTEXTILE FABRIC AND POST OR POLES. EASY TO CONSTRUCT AND LOCATE AS NECESSARY. (SEE DETAIL THIS SHEET)

THE LOCATION AND ELEVATION OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THESE PLANS IS APPROXIMATE AND NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO DETERMINE THE EXACT LOCATION AND ELEVATION OF EXISTING UTILITIES AND PROPOSED UTILITIES CROSSINGS AHEAD OF EXCAVATION. THE CONTRACTOR SHALL CONTACT ALL APPROPRIATE UTILITY COMPANIES AND NOTIFY THE ENGINEER IF ANY CONFLICTS ARE FOUND TO EXIST BETWEEN THE PLANS AND THE LOCATION OR DEPTH OF UTILITIES. IF THE CONTRACTOR FINDS THAT THE LOCATION OR DEPTH DIFFERS SIGNIFICANTLY FROM THE PLANS, HE SHALL NOTIFY THE ENGINEER IMMEDIATELY.

3 WORKING DAYS BEFORE YOU DIG CALL MISS DIG 1-800-482-7171
IT'S THE LAW!! PER MI PUBLIC ACT 53 OF 1974 AS AMENDED

BE BOSS Engineering
Engineers Surveyors Planners Landscape Architects
3121 E. GRAND RIVER AVE.
HOWELL, MI. 48843
517.546.4836 FAX 517.548.1670

PROJECT
HOWELL - MASON, LLC

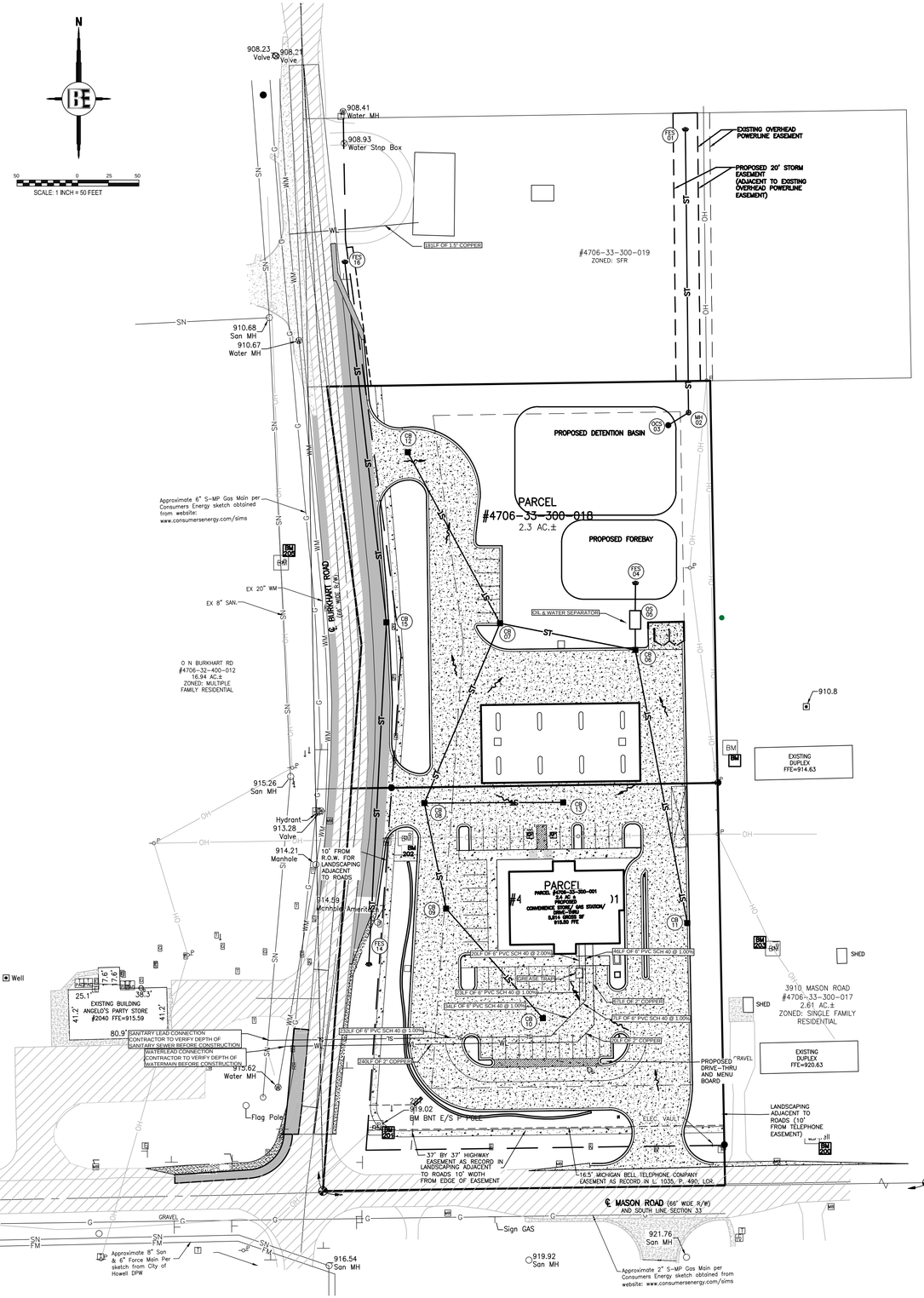
PREPARED FOR
HOWELL-MASON, LLC
PO BOX 788
HOWELL, MI 48844
(517) 202-6232

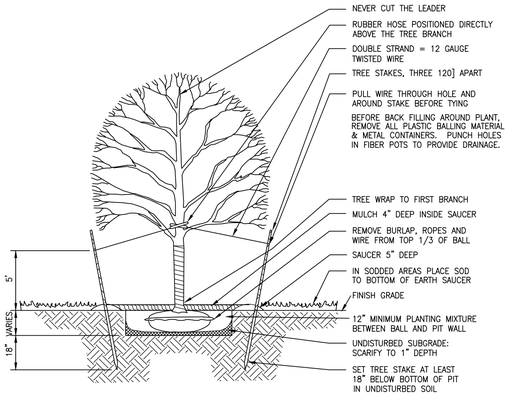
TITLE
SOIL EROSION CONTROL PLAN

NO	BY	REVISION PER	DATE
1	ST	PER TWP REVIEW	9/11/23

DESIGNED BY: ST
DRAWN BY: DH/JS
CHECKED BY:
SCALE: 1"=50'
JOB NO: 20-205
DATE: 6/28/2023
SHEET NO. 6

BOSS Engineering


N
SCALE: 1 INCH = 50 FEET
908.23 Valve
908.23 Valve
908.41 Water MH
908.93 Water Stop Box
(E)1/2 OF 1.5" COPPER
EXISTING OVERHEAD POWERLINE EASEMENT
PROPOSED 20' STORM EASEMENT (ADJACENT TO EXISTING OVERHEAD POWERLINE EASEMENT)
#4706-33-300-019
ZONED: SFR
910.68 San MH
910.67 Water MH
PROPOSED DETENTION BASIN
PARCEL
#4706-33-300-018
2.3 AC.±
PROPOSED FOREBAY
OIL & WATER SEPARATOR
Approximate 6" S-MP Gas Main per Consumers Energy sketch obtained from website: www.consumersenergy.com/sims
EX 20" WM
EX 8" SAN.
E. BURKHART ROAD (66' WIDE R/W)
O N BURKHART RD
#4706-32-400-012
16.94 AC.±
ZONED: MULTIPLE FAMILY RESIDENTIAL
915.26 San MH
Hydrant
913.28 Valve
914.21 Manhole
10' FROM R.O.W. FOR LANDSCAPING ADJACENT TO ROADS
914.59 Manhole
Well
25.1'
EXISTING BUILDING
ANGELO'S PARTY STORE
#2040 FFE=915.59
38.3'
41.2'
41.2'
80.9'
SANITARY LEAD CONNECTION CONTRACTOR TO VERIFY DEPTH OF SANITARY SEWER BEFORE CONSTRUCTION
WATERLEAD CONNECTION CONTRACTOR TO VERIFY DEPTH OF WATERMAIN BEFORE CONSTRUCTION
915.62 Water MH
Flag Pole
919.02 BM BNT E/S P.POLE
37' BY 37' HIGHWAY EASEMENT AS RECORD IN LANDSCAPING ADJACENT TO ROADS 10' WIDTH FROM EDGE OF EASEMENT
16.5' MICHIGAN BELL TELEPHONE COMPANY EASEMENT AS RECORD IN L. 1035, P. 490, LCR.
℄ MASON ROAD (66' WIDE R/W) AND SOUTH LINE SECTION 33
GRAVEL
Sign GAS
921.76 San MH
919.92 San MH
916.54 San MH
Approximate 8" San & 6" Force Main Per sketch from City of Howell DPW
Approximate 2" S-MP Gas Main per Consumers Energy sketch obtained from website: www.consumersenergy.com/sims
910.8
EXISTING DUPLEX FFE=914.63
EXISTING DUPLEX FFE=920.63
3910 MASON ROAD
#4706-33-300-017
2.61 AC.±
ZONED: SINGLE FAMILY RESIDENTIAL
SHED
SHED
PROPOSED DRIVE-THRU AND MENU BOARD
LANDSCAPING ADJACENT TO ROADS (10' FROM TELEPHONE EASEMENT)
ELEC. VAULT
GREASE TRAP
(E)OLF OF 6" PVC SCH 40 @ 2.00%
(E)OLF OF 6" PVC SCH 40 @ 1.00%
(E)OLF OF 4" COPPER
(E)OLF OF 8" PVC SCH 40 @ 1.00%
(E)OLF OF 8" CONCRETE
(E)OLF OF 6" PVC SCH 40 @ 1.00%
(E)OLF OF 6" PVC SCH 40 @ 1.00%
(E)OLF OF 4" COPPER
(E)OLF OF 8" CONCRETE
(E)OLF OF 8" PVC SCH 40 @ 1.00%
(E)OLF OF 8" CONCRETE
(E)OLF OF 6" PVC SCH 40 @ 1.00%
(E)OLF OF 8" CONCRETE
(E)OLF OF 8" CONCRETE
(E)OLF OF 8" CONCRETE



DECIDUOUS TREE PLANTING DETAIL
(NO SCALE)

LANDSCAPE ADJACENT TO ROADS PLANT LIST

KEY	QUAN.	BOTANICAL NAME	COMMON NAME	SIZE	REMARK
SHRUBS					
EA	08	Euonymous alatus 'Compactus'	Dwarf Burning Bush	36" ht.	Cont.
JP	77	Juniperus x pfitzeriana 'Aurea Improved'	Gold Coast Juniper	24" ht.	Cont.
SM	32	Syringa meyeri 'Palibin'	Dwarf Korean Lilac	36" ht.	Cont.
SP	45	Spiraea japonica 'Magic Carpet'	Magic Carpet Spirea	24" ht.	Cont.
ORNAMENTAL TREES					
CC	09	Cercis canadensis	Eastern redbud	1.5" cal.	B & B
DECIDUOUS TREES					
AF	06	Acer freemanii 'Jeffersred'	Autumn Blaze Red Maple	2.5" cal.	B & B
GT	12	Gleditsia triacanthos f. inermis 'Skycole'	Skyline Honey locust (Thornless)	2.5" cal.	B & B

PARKING LOT PLANT LIST

KEY	QUAN.	BOTANICAL NAME	COMMON NAME	SIZE	REMARK
SHRUBS					
JP	16	Juniperus x pfitzeriana 'Aurea Improved'	Gold Coast Juniper	24 ht.	Cont.
TM	07	Taxus x media 'Densiformis'	Dense Japanese Yew	24" ht.	Cont.
PERENNIALS					
CA	10	Calamagrostis x acutiflora 'Karl Foerster'	Feather Reed Grass 'Karl Foerster'	1 gal.	Cont.
HE	06	Hemerocallis 'Happy Returns'	Happy Returns Daylily	1 gal.	Cont.
PE	03	Pennisetum alopecuroides 'Hameln'	Dwarf Fountain Grass	1 gal.	Cont.

OPEN AREA SITE LANDSCAPE PLANT LIST

KEY	QUAN.	BOTANICAL NAME	COMMON NAME	SIZE	REMARK
EVERGREEN TREES					
AF	11	Acer freemanii 'Jeffersred'	Autumn Blaze Red Maple	2.5" cal.	B & B

STORMWATER BASIN PLANT LIST

KEY	QUAN.	BOTANICAL NAME	COMMON NAME	SIZE	REMARK
SHRUBS					
CS	40	Cornus sericea	Red Twig Dogwood	36" ht.	Cont.
CP	30	Cephalanthus occidentalis	Buttonbush	24" ht.	Cont.
TREES					
AM	08	Amelanchier canadensis	Serviceberry	1.5" cal.	B & B

PROTECTIVE SCREENING PLANT LIST

KEY	QUAN.	BOTANICAL NAME	COMMON NAME	SIZE	REMARK
EVERGREEN TREES					
TO	203	Thuja Occidentalis 'Smaragd'	Emerald Arborvitae	4' ht.	Cont.
PERENNIALS					
CA	10	Calamagrostis x acutiflora 'Karl Foerster'	Feather Reed Grass 'Karl Foerster'	1 gal.	Cont.

LANDSCAPE CALCULATIONS:
PER HOWELL TOWNSHIP ZONING ORDINANCE

LANDSCAPE REQUIRED:
SECTION 28.02 GENERAL SITE REQUIREMENTS

A.2) A MIXTURE OF EVERGREEN AND DECIDUOUS TREES SHALL BE PLANTED ON NONRESIDENTIAL PARCELS AT THE RATE OF ONE (1) TREE PER 3,000 SQUARE FEET OR PORTIONS THEREOF OF ANY UNPAVED OPEN AREA FOR WHICH SPECIFIC LANDSCAPING REQUIREMENTS DO NOT APPEAR LATER IN THIS ARTICLE. REQUIRED TREES MAY BE PLANTED AT UNIFORM INTERVALS, AT RANDOM, OR IN GROUPINGS OR CLUSTERS.
REQUIRED & PROVIDED FOR 30,227 SF OF REMAINING OPEN AREA: (11) EVERGREENS

SECTION 28.03 A, REQUIREMENTS FOR COMMERCIAL AND INDUSTRIAL DISTRICTS
IN ADDITION TO THE GENERAL LANDSCAPING REQUIREMENTS SET FORTH IN SECTION 28.02, ALL LOTS OR PARCELS OF LAND LOCATED IN MFR, OS, NSC, RSC, RT, HSC, HC AND I ZONING DISTRICTS SHALL COMPLY WITH THE FOLLOWING LANDSCAPING REQUIREMENTS:

1) PROTECTIVE SCREENING REQUIREMENTS: PROTECTIVE SCREENING IN THE FORM OF A BERM AND PLANTINGS SHALL BE REQUIRED WHEREVER A NONRESIDENTIAL USE IN A COMMERCIAL, OFFICE, RESEARCH OR INDUSTRIAL DISTRICT ABUTS DIRECTLY UPON LAND ZONED FOR RESIDENTIAL PURPOSES. AN ALTERNATE METHOD OF SCREENING MAY BE CONSIDERED BY THE PLANNING COMMISSION BASED ON SPECIFIC SITE CHARACTERISTICS AND COMPATIBILITY WITH THE CHARACTER OF THE SURROUNDING AREA.
REQUIRED & PROVIDED FOR 567 LF EAST PROPERTY LINE: (176) THUJA OCCIDENTALIS 'SMARAGD' (EMERALD ARBORVITAE) FOUR FEET TALL (MIN.) AT PLANTING IN 25' WIDE GREENBELT, AND (12) FEATHER REED GRASS AROUND GENERATOR.

2) LANDSCAPING ADJACENT TO ROADS AND HIGHWAYS: ALL FRONT, SIDE, OR REAR YARDS IN ADDITION TO BERMS, SHALL BE LANDSCAPED IN ACCORDANCE WITH THE FOLLOWING STANDARDS:
– A MINIMUM OF ONE (1) DECIDUOUS SHADE OR EVERGREEN TREE SHALL BE PLANTED FOR EACH FORTY (40) LINEAL FEET OR PORTION THEREOF OF ROAD FRONTAGE (808/40=21), PLUS
– A MINIMUM OF ONE (1) ORNAMENTAL TREE SHALL BE PLANTED FOR EACH ONE HUNDRED (100) LINEAL FEET OR PORTION THEREOF OF ROAD FRONTAGE (808/100=9), PLUS
– A MINIMUM OF EIGHT (8) SHRUBS SHALL BE PLANTED FOR EACH FORTY (40) LINEAL FEET OR PORTION THEREOF OF ROAD FRONTAGE. (808/40=20.2 * 8=162 SHRUBS). FOR THE PURPOSES OF COMPUTING LENGTH OF ROAD FRONTAGE, OPENINGS FOR DRIVEWAYS AND SIDEWALKS SHALL NOT BE COUNTED. TREES AND SHRUBS MAY BE PLANTED AT UNIFORM INTERVALS, AT RANDOM, AND/OR GROUPINGS.

REQUIRED & PROVIDED FOR 924 LF FRONTAGE ON MASON AND BURKHART ROADS – 116 LF DRIVEWAY OPENINGS = 808 LF OF FRONTAGE / 40 LF: (19) NEW SHADE TREES & (1) EXISTING 26" SUGAR MAPLE TREE TO REMAIN, (9) ORNAMENTAL TREES AND (162) SHRUBS.

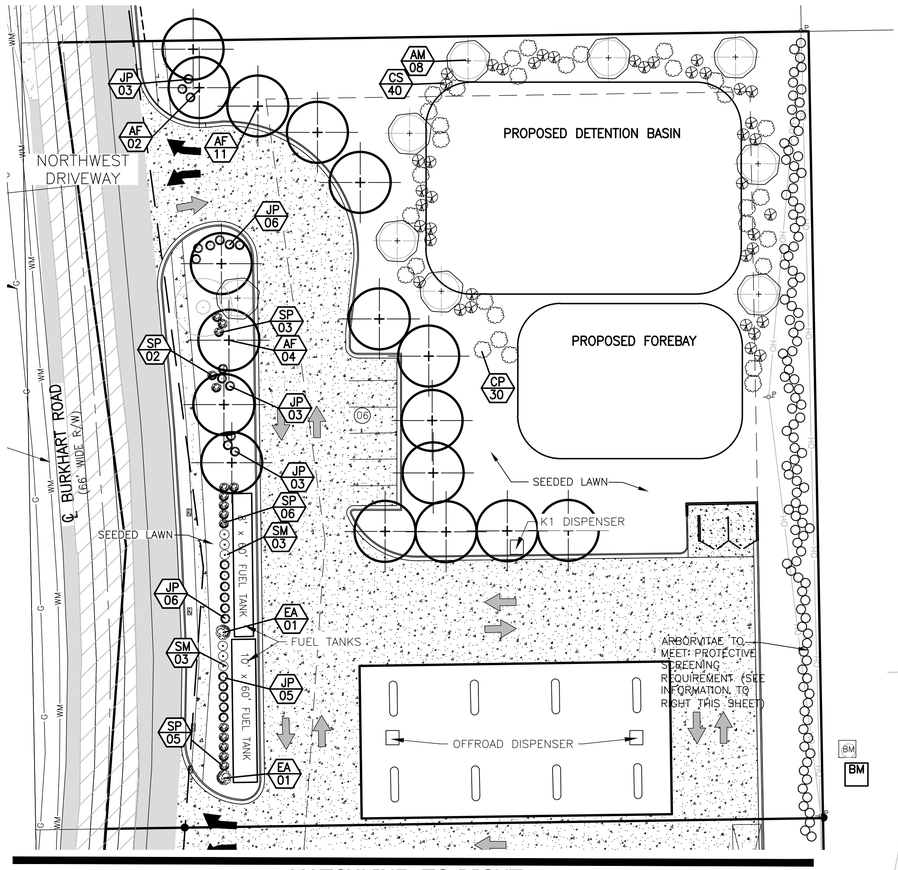
3) FOUNDATION LANDSCAPING: FOUNDATION PLANTINGS SHALL BE PROVIDED ALONG THE FRONT OR SIDES OF ANY BUILDINGS WHICH FACES A ROAD, IS ADJACENT TO A PARKING LOT OR OTHER AREA WHICH PROVIDES ACCESS TO THE BUILDING(S) BY THE GENERAL PUBLIC. FOUNDATION PLANTING AREAS SHALL CONTAIN AT A MINIMUM,
– ONE (1) ORNAMENTAL TREE AND FIVE (5) SHRUBS PER THIRTY–FIVE (35) LINEAL FEET OF APPLICABLE BUILDING FRONTAGE.
– INDIVIDUAL PLANTING AREAS SHALL BE AT LEAST EIGHT (8) FEET IN ANY SINGLE DIMENSION AND NOT LESS THAN ONE HUNDRED FIFTY SQUARE FEET IN AREA.
– PLANTING AREAS LOCATED DIRECTLY ADJACENT TO A BUILDING WALL SHALL BE AT LEAST TEN (10) FEET IN DEPTH FROM THE BUILDING.

REQUIRED FOR 204 LF OF APPLICABLE BUILDING FRONTAGE: (6) ORNAMENTAL TREES AND (30) SHRUBS. PROVIDED: (7) ORNAMENTAL TREES, (30) SHRUBS, (37) PERENNIALS.

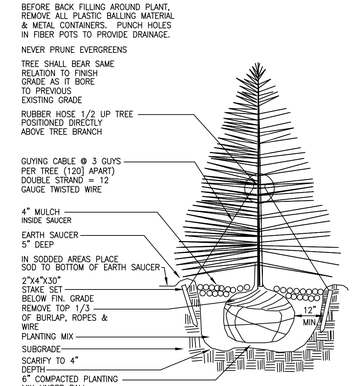
4) PARKING LOT LANDSCAPING: OFF–STREET PARKING AREAS CONTAINING GREATER THAN FIFTEEN (15) SPACES SHALL BE PROVIDED WITH AT LEAST TWENTY–FIVE (25) SQUARE FEET OF INTERIOR LANDSCAPING PER PARKING SPACE.
REQUIRED & PROVIDED FOR 37 PARKING SPACES * 25 SF = 925 SF OF INTERIOR LANDSCAPING REQUIRED. 1,247 SF INTERIOR LANDSCAPE PROVIDED (13) SHRUBS AND (48) PERENNIALS

5) STORM WATER DETENTION AREAS AND RETENTION PONDS GENERAL LANDSCAPING: ALL PROPOSED DETENTION AREAS AND RETENTION PONDS SHALL BE LANDSCAPED IN ACCORDANE WITH THE FOLLOWING STANDARDS: ONE (1) DECIDUOUS SHADE OR EVERGREEN TREE AND TEN (10) SHRUBS SHALL BE PLANTED FOR EVERY FIFTY (50) LINEAL FEET OF THE DETENTION AREA/RETENTION POND PERIMETER AS MEASURED ALONG THE TOP OF BANK, OR AS OTHERWISE APPROVED BY THE PLANNING COMMISSION. THE REQUIRED TREES AND SHRUBS SHALL BE PLANTED IN RANDOM PATTERN OR IN GROUPINGS.
REQUIRED & PROVIDED LANDSCAPED FOR 365 LF OF DETENTION/RETENTION AREA PERIMETER: 365 / 50 = (8) TREES AND (73) SHRUBS

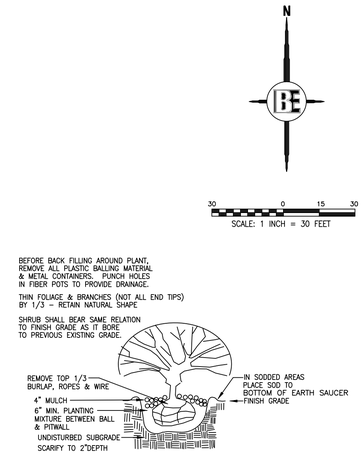
SECTION 28.07 VISIBILITY AT INTERSECTIONS:
NO FENCE, WALL, HEDGE, SCREEN, SIGN, STRUCTURE, VEGETATION OR PLANTING SHALL BE HIGHER THAN THREE (3) FEET ABOVE A ROAD GRADE ON ANY CORNER LOT OR PARCEL IN ANY ZONING DISTRICT REQUIRING FRONT AND SIDE YARDS WITHIN THE TRIANGULAR AREA FORMED BY THE INTERSECTING ROAD RIGHT–OF–WAY LINES AND A STRAIGHT LINE JOINING THE TWO ROAD LINES AT POINTS WHICH ARE THIRTY (30) FEET DISTANT FROM THE POINT OF INTERSECTION, MEASURED ALONG THE ROAD RIGHT–OF–WAY LINES. (ORD. NO. 1 EFF. JAN. 8, 1983)



MATCHLINE: TO RIGHT

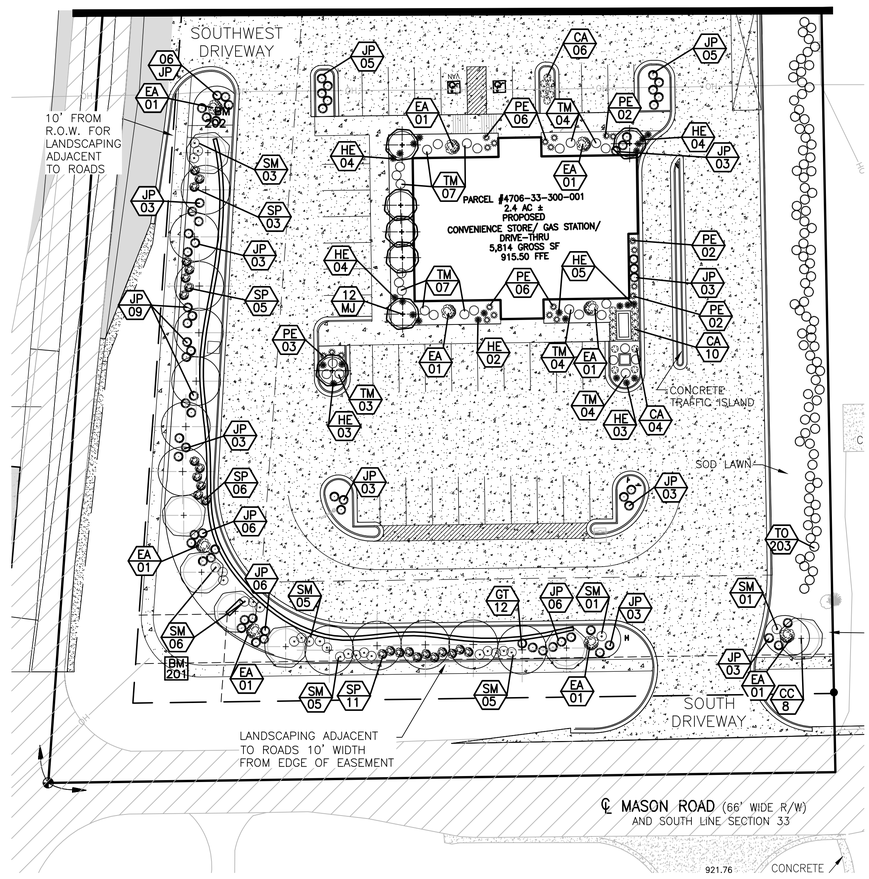


EVERGREEN TREE PLANTING DETAIL
(NO SCALE)



SHRUB PLANTING DETAIL
(NO SCALE)

MATCHLINE: TO LEFT



THE LOCATION AND ELEVATION OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THESE DRAWINGS ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AND PROPOSED UTILITY CROSSINGS IN THE FIELD PRIOR TO CONSTRUCTION AND SHALL NOTIFY THE ENGINEER IMMEDIATELY IF ANY CONFLICTS ARE APPARENT OR IF THE LOCATION OR DEPTH DIFFERS SIGNIFICANTLY FROM PLANS.
3 WORKING DAYS BEFORE YOU DIG MISS DIG 1-800-482-7171
It's not only courteous, it's the law

BE BOSS Engineering
Engineers Surveyors Planners Landscape Architects
3121 E. GRAND RIVER AVE.
HOWELL, MI. 48843
517.546.4836 FAX 517.548.1670

PROJECT
HOWELL–MASON, LLC

PREPARED FOR
HOWELL–MASON, LLC
PO BOX 708
HOWELL MI 48844
(517) 202–0232

TITLE
LANDSCAPE PLAN

NO	BY	REVISION PER	DATE
1	ST	PER TWP REVIEW	9/11/23

DESIGNED BY: JA
DRAWN BY: KJ
CHECKED BY:
SCALE 1" = 30'
JOB NO. 20–205
DATE 6/28/2023
SHEET NO. 8

PIPE RESTRAINT SCHEDULE

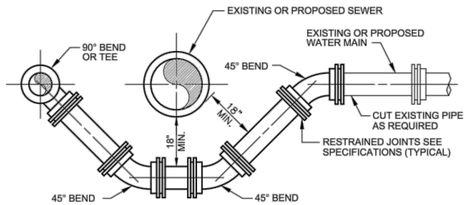
GROUND BURIED PRESSURE PIPE - POLYETHYLENE ENCASED DUCTILE IRON PIPE

PIPE DIAMETER	TEES, 90° BENDS	45° BENDS	22-1/2° BENDS	11-1/4° BENDS	DEAD ENDS	REDUCERS (ONE SIZE REDUCTION)*	REDUCERS (TWO SIZE REDUCTIION)*
4	13	5	3	1	40	--	--
6	19	8	4	2	58	31	--
8	24	10	5	2	75	30	70
12	34	14	7	3	107	57	116
16	43	18	9	4	139	59	137
20	52	22	10	5	169	59	134
24	61	25	12	6	199	60	132
30	73	30	15	7	242	85	168
36	84	35	17	8	281	84	168

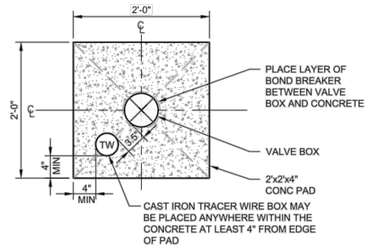
1. LENGTHS OF PIPE RESTRAINT ARE GIVEN IN FEET.
2. IF REQUIRED PIPE DIAMETER IS NOT LISTED IN THIS TABLE, THE NEXT LARGEST PIPE DIAMETER SHALL BE USED.
3. THIS TABLE IS BASED ON A TEST PRESSURE OF 180 PSI (OPERATING PRESSURE PLUS WATER HAMMER. FOR OTHER TEST PRESSURES, ALL VALUES TO BE INCREASED OR DECREASED PROPORTIONALLY.
4. THE VALUES PROVIDED OF RESTRAINT LENGTH ARE IN EACH DIRECTION FROM THE POINT OF DEFLECTION OR TERMINATION EXCEPT FOR TEES, AT WHICH ONLY THE BRANCH IN THE DIRECTION OF THE STEM.
5. IF TIE RODS ARE USED, USE FOUR RODS MINIMUM AND ADD 1/8-INCH TO BAR DIAMETER AS CORROSION ALLOWANCE.

* SIZE REDUCTION IS BASED UPON THE PIPE DIAMETER SHOWN IN THIS TABLE.

BASED UPON: INTERNAL PRESSURE: 180
PIPE DEPTH: 5
BEDDING CLASS: TYPE 4
SOIL TYPE: GOOD SAND
SAFETY FACTOR: 2

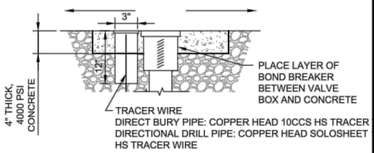


WATER MAIN UTILITY OFFSET



NOTE: ALL BOXES & ADJOINING TW BOXES SHALL BE ENCASED IN A CONC. PAD UNLESS OTHERWISE DETERMINED BY MHOG.

PLAN

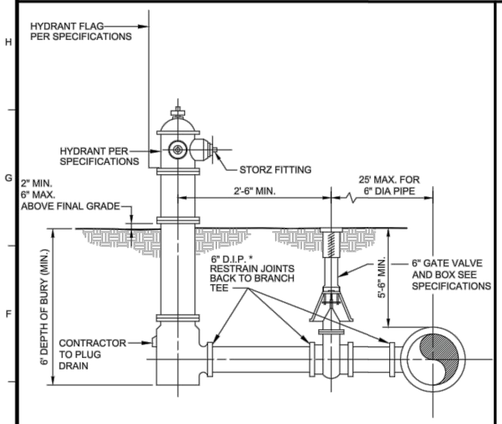


NOTE:
1. TRACER WIRE BOXES LOCATED WITHOUT A VALVE BOX ONLY REQUIRE AN 18" X 18" CONCRETE PAD.
2. TRACER WIRE BOX SHALL HAVE A LOCKING LID W/STANDARD AWWA PENTAGON KEY.
3. TRACER WIRE BOX SHALL BE COPPERHEAD RB14"TP IN ASPHALT INSTALLATIONS AND CD14"TP FOR ALL OTHER INSTALLATIONS.

SECTION

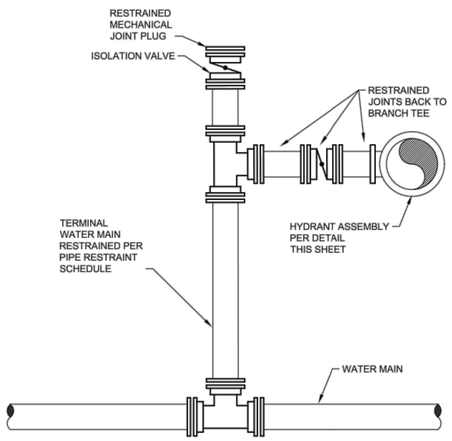
VALVE/TRACER WIRE BOX IN CONCRETE DETAIL

NO SCALE

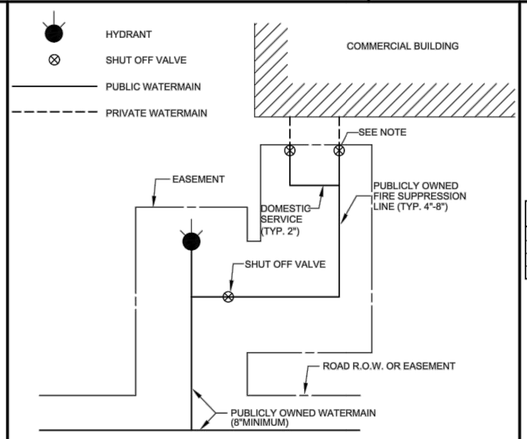


* THE LENGTH OF 6" PIPE FROM THE MAIN TO THE HYDRANT ASSEMBLY CANNOT EXCEED 25'. ANY PIPE OVER 25 FEET SHALL BE 8" DIAMETER MINIMUM AND DESIGNED PER MHOG SPECIFICATIONS.

FIRE HYDRANT ASSEMBLY

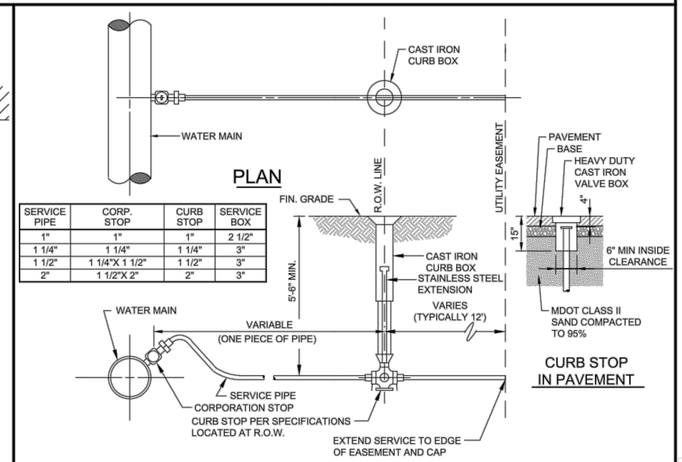


TERMINAL HYDRANT DETAIL



NOTE: FIRE SUPPRESSION LINE AND DOMESTIC SERVICE TO BE LOCATED WITHIN EASEMENT UP TO SHUTOFF VALVES OUTSIDE OF BUILDING.

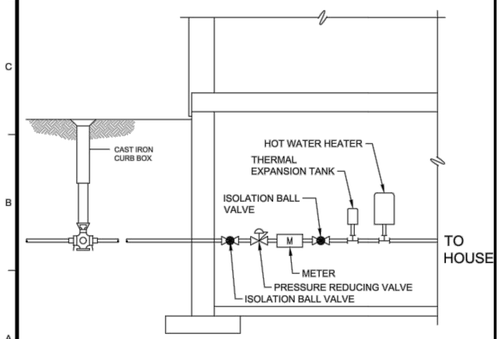
COMMERCIAL BUILDING WATER SERVICE LAYOUT



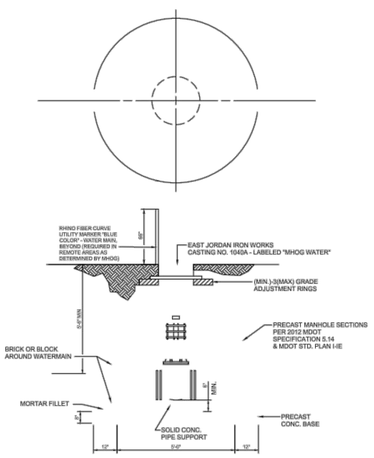
SERVICE PIPE	CORP. STOP	CURB STOP	SERVICE BOX
1"	1"	1"	2 1/2"
1 1/4"	1 1/4"	1 1/4"	3"
1 1/2"	1 1/4"X 1 1/2"	1 1/2"	3"
2"	1 1/2"X 2"	2"	3"

CURB STOP IN PAVEMENT

SECTION
WATER SERVICE LATERAL

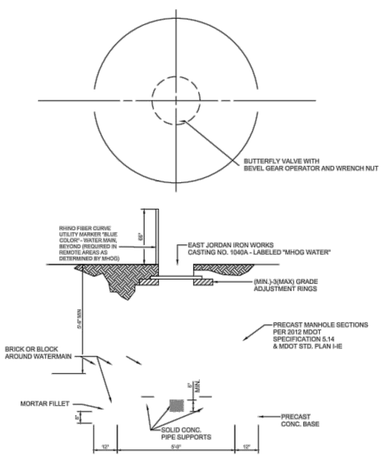


PRIVATE RESIDENCE
PRESSURE REDUCING VALVE (PRV)



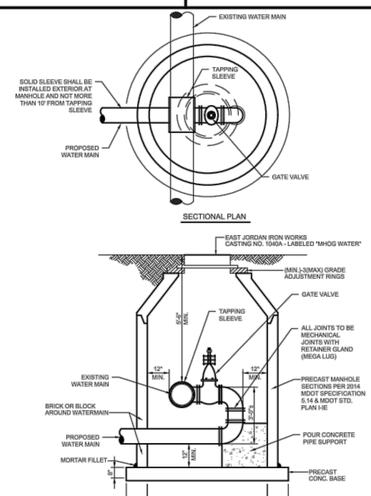
NOTES:
1. ALL LIFT HOLES AND JOINTS SHALL BE MORTARED BOTH INSIDE AND OUTSIDE.
2. BLOCK MANHOLES TO BE USED ONLY WITH ENGINEERS PERMISSION.
3. NO STEPS PERMITTED.

VALVE AND GATE WELL



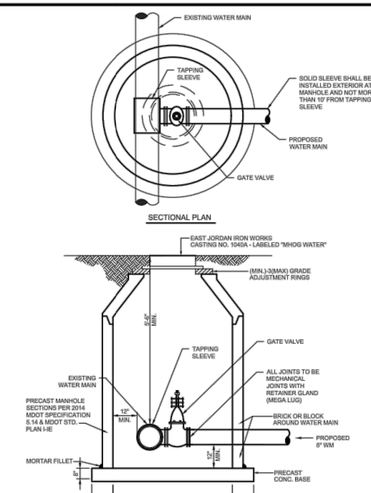
NOTES:
1. ALL LIFT HOLES AND JOINTS SHALL BE MORTARED BOTH INSIDE AND OUTSIDE.
2. BLOCK MANHOLES TO BE USED ONLY WITH ENGINEERS PERMISSION.
3. NO STEPS PERMITTED.

BUTTERFLY VALVE AND WELL



NOTES:
1. ALL LIFT HOLES AND JOINTS SHALL BE MORTARED BOTH INSIDE AND OUTSIDE.
2. BLOCK MANHOLES TO BE USED ONLY WITH ENGINEERS PERMISSION.
3. TAPPING SLEEVES ONLY PERMITTED FOR CONNECTIONS SMALLER THAN MAIN LINE.
4. NO STEPS PERMITTED.

REVERSE TAP GATE WELL



NOTES:
1. ALL LIFT HOLES AND JOINTS SHALL BE MORTARED BOTH INSIDE AND OUTSIDE.
2. BLOCK MANHOLES TO BE USED ONLY WITH ENGINEERS PERMISSION.
3. TAPPING SLEEVES ONLY PERMITTED FOR CONNECTIONS SMALLER THAN MAIN LINE.
4. NO STEPS PERMITTED.

REGULAR TAP GATE WELL

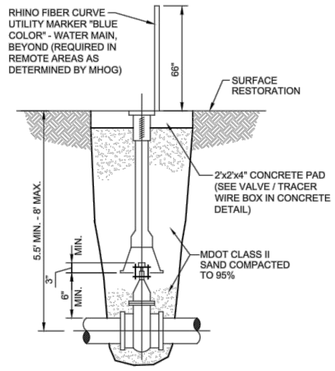
MARION HOWELL OCEOLA GENOA
Sewer and Water Authority

STANDARD DETAILS

Scale: NONE
Issued Date JANUARY - 2014
UPDATED: MAY 2015
UPDATED: FEBRUARY 2016
UPDATED: APRIL 2016
UPDATED: OCTOBER 2017
UPDATED: FEBRUARY 2019
UPDATED: NOVEMBER 2022

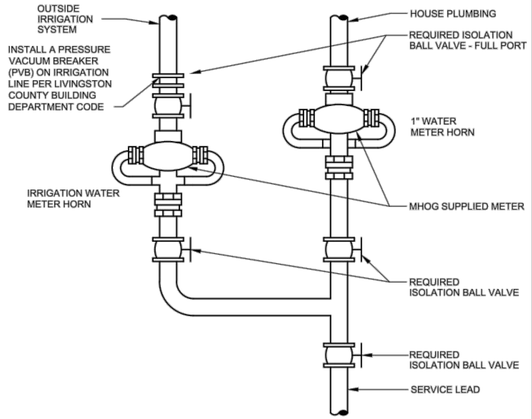
Tuesday, November 8, 2022 1:46:40 PM DRAWING: O:\Projects\Lansing\IER\12719\200-12719-00-000\CAD\SheetFiles\Mhog-std.DWG

g:\20-205\dwg\SP\20-205 SHEETS SP.dwg, 9/11/2023 2:06:51 PM, AutoCAD PDF (Smallest File).pc3



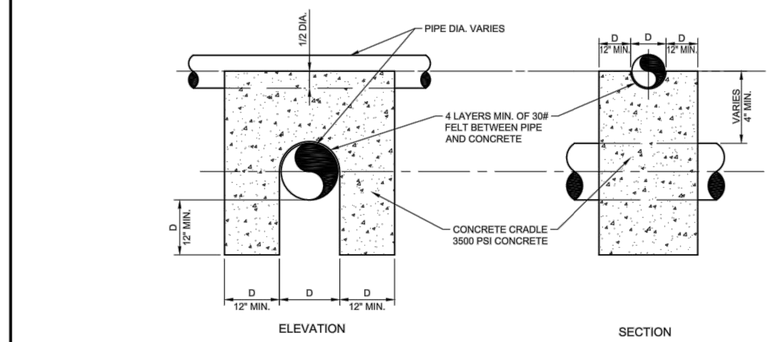
NOTES:
1. VALVE BOX SHALL NOT REST ON VALVE OR MAIN LINE PIPE.
2. A VALVE STEM EXTENSION WITH CENTERING RING IS REQUIRED FOR VALVES BURIED DEEPER THAN 6'.

GATE VALVE AND BOX



NOTES:
1. ALL METERS ARE TO BE INSTALLED HORIZONTALLY IN A DRY, CLEAN, SANITARY LOCATION THAT IS READILY ACCESSIBLE. THIS DRAWING IS NOT TO SCALE & IS ONLY A REPRESENTATION OF HOW THE VALVES AND METERS SHOULD BE INSTALLED. THE SECOND METER IS OPTIONAL FOR IRRIGATION USAGE. METERS SHOULD NOT BE INSTALLED IN LINE (ONE RIGHT AFTER THE OTHER).
2. PROPERTIES DESIGNATED "HIGH HAZARD" PER THE MHOG CROSS CONNECTION RULES MANUAL WILL REQUIRE THE INSTALLATION OF A REDUCED PRESSURE ZONE (RPZ) BACK FLOW PREVENTION DEVICE.

TYPICAL METER HORN INSTALLATION



ELEVATION SECTION

CONCRETE CRADLE DETAIL

SCALE: NONE

MHOG CASTING DETAIL

NO SCALE

MARION HOWELL OCEOLA GENOA
Sewer and Water Authority

STANDARD DETAILS

Scale: NONE

Issued Date JANUARY - 2014

UPDATED: MAY 2015
UPDATED: FEBRUARY 2016
UPDATED: APRIL 2016
UPDATED: OCTOBER 2017
UPDATED: FEBRUARY 2019
UPDATED: NOVEMBER 2022

Tuesday, November 8, 2022 1:47:13 PM DRAWING: C:\Projects\Lansing\LER\12719\20D-12719-00-000\CAD\SheetFiles\Mhog-std.DWG

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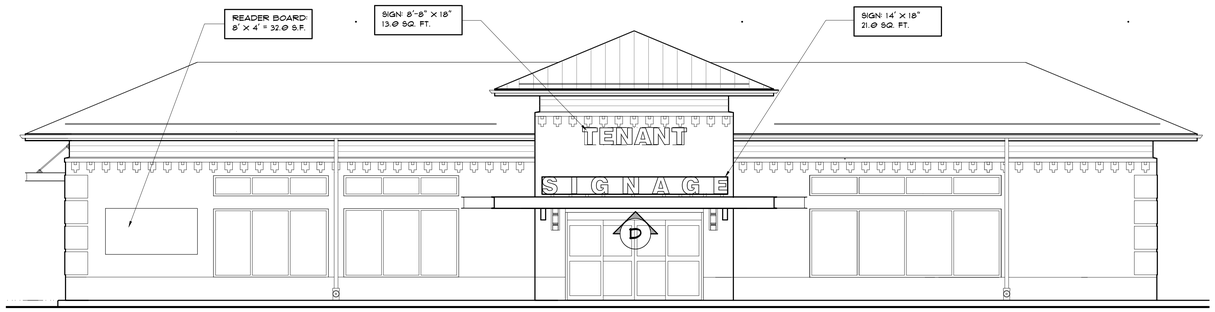
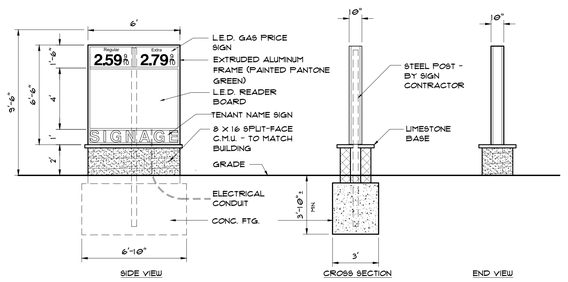
DO NOT SCALE DRAWINGS



SOUTH ELEVATION

SCALE: 3/16" = 1'-0"

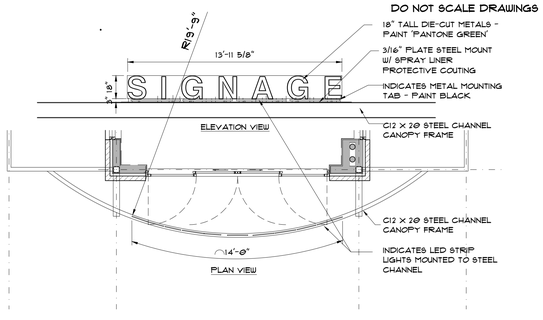
A



GASOLINE PRICE / MONUMENT @ S W CORNER

SCALE: 1/4" = 1'-0"

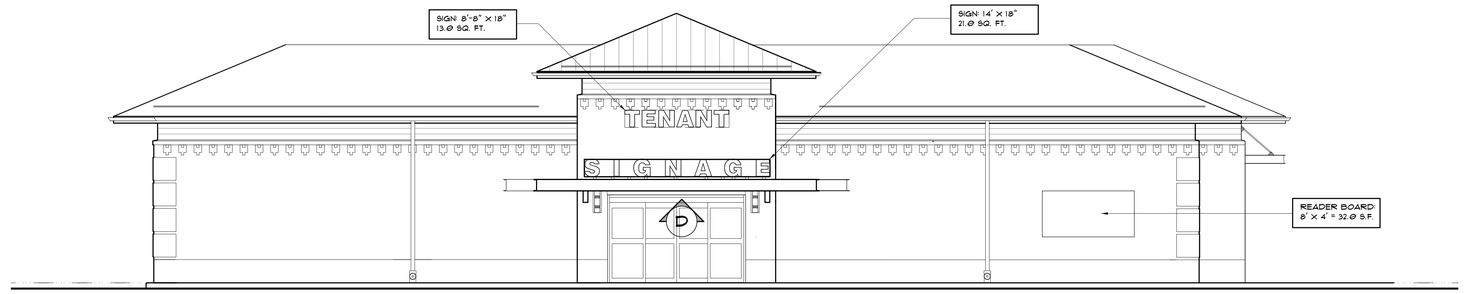
E



BUILDING SIGN - 21 SQ. FT.

SCALE: 1/4" = 1'-0"

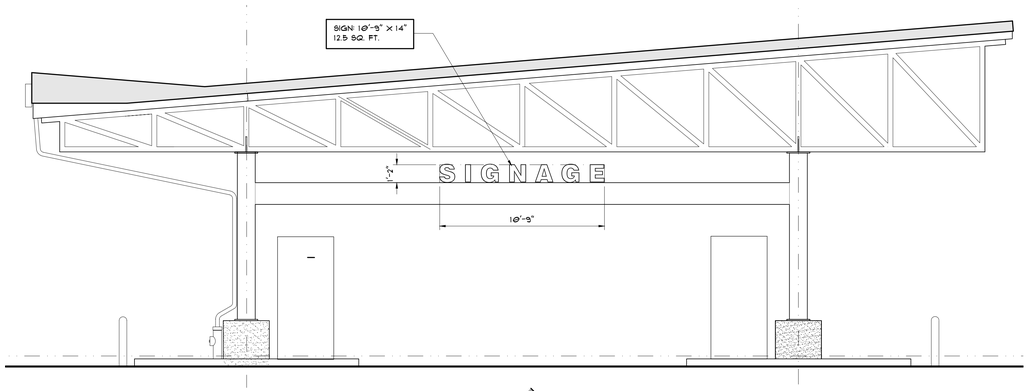
D



NOIRTH ELEVATION

SCALE: 3/16" = 1'-0"

B



GAS CANOPY TRANSOM SIGN - 12.5 SQ. FT.

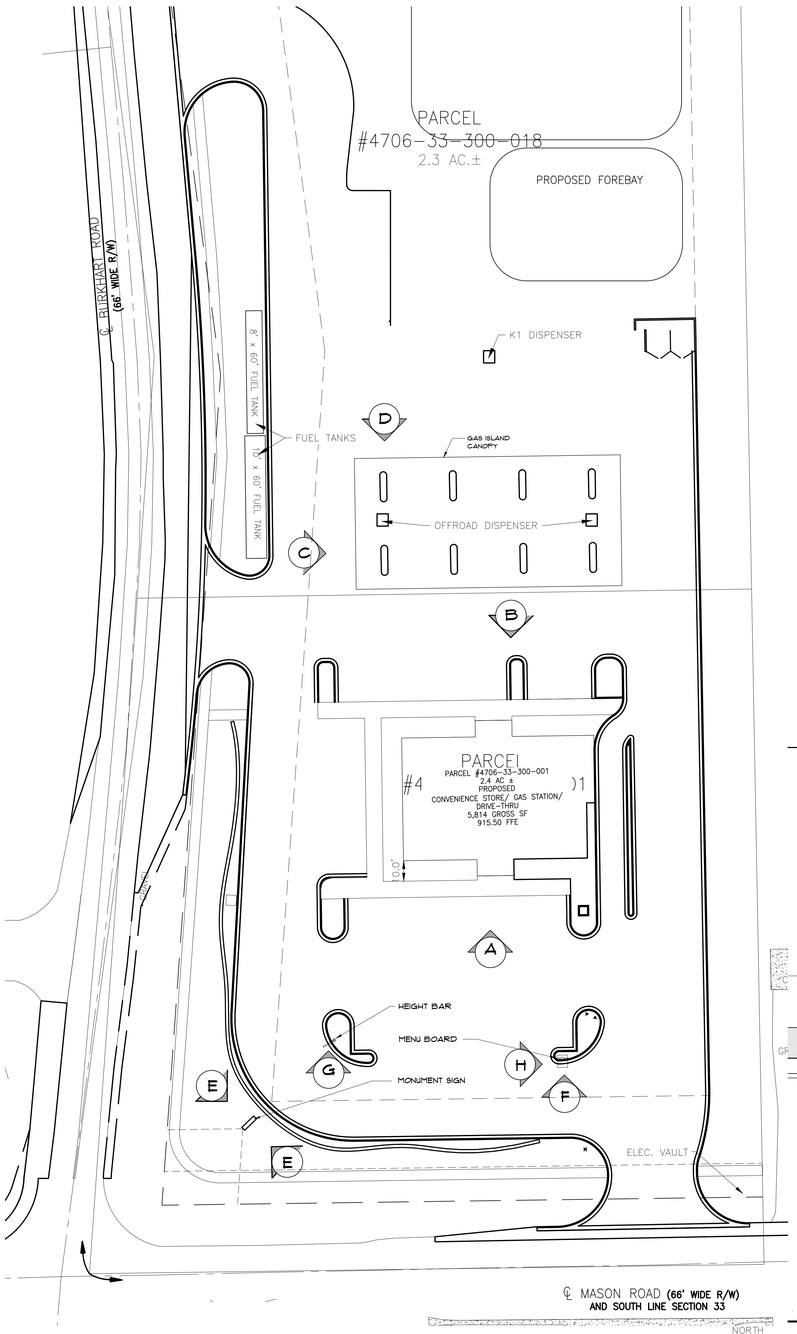
SCALE: 1/4" = 1'-0"

C

SOUTH (FRONT) ELEVATION		
PROPRIETOR BUILDING SIGN	21.0 SQ. FT.	
TENANT WALL SIGN:	13.0 SQ. FT.	
READER BOARD:	32.0 SQ. FT.	
TOTAL SOUTH ELEVATION		66.0 SQ. FT.
NORTH ELEVATION		
PROPRIETOR BUILDING SIGN	21.0 SQ. FT.	
TENANT WALL SIGN:	13.0 SQ. FT.	
READER BOARD:	32.0 SQ.FT.	
TOTAL NORTH ELEVATION		66.0 SQ. FT.
GAS CANOPY		
NORTH FASCIA PROPRIETOR SIGN	21.0 SQ. FT.	
WEST END TRANSOM SIGN	21.0 SQ. FT.	
TOTAL GAS CANOPY SIGNS:		42.0 SQ. FT.
MONUMENT / GAS PRICE SIGNS (1 SIDE)		
AT SW CORNER	39.00 SQ. FT.	
TOTAL MONUMENT SIGN:		39.0 SQ. FT.
TOTAL SIGN AREA		213.0 SQ. FT.

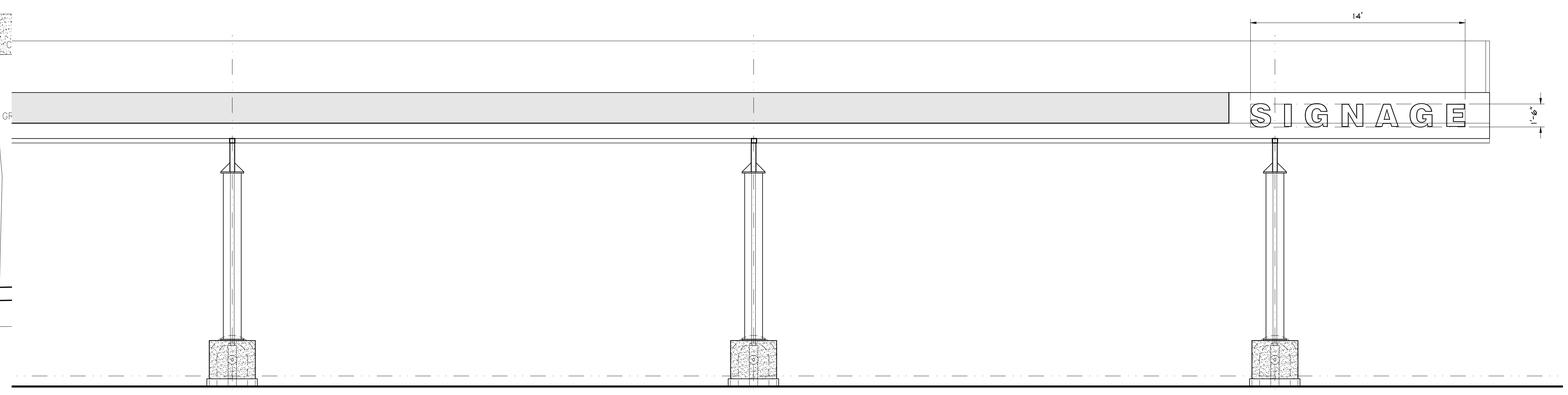
SIGN AREA CALCS

NOTE:
THIS STORE IS BEING BUILT TO INCLUDE DRIVE-THRU FOOD SERVICE.
THE SIGNS SHOWN ON THESE PLANS ARE TO ILLUSTRATE THE LOCATION AND SIZE OF THE SIGNS NEEDED FOR FOOD SERVICE. THE FINAL BRAND OF FOOD OFFERED FROM THIS SITE REQUIRES BRAND APPROVAL



PARTIAL SIGNAGE SITE PLAN

SCALE: 1" 30'



GAS CANOPY FASCIA SIGN NORTH SIDE - 21.0 SQ. FT.

SCALE: 1/4" = 1'-0"

D

F. MATTHEW RAY ARCHITECT

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WATERFORD
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CLIENT:
HOWELL-MASON, LLC

PROJECT PROPOSED:
HOWELL-MASON COMMERCIAL DEVELOPMENT

NE CORNER
MASON & BURKHART ROADS
HOWELL TWP, MI

PRELIMINARY ☒

ISSUED/DATE
SITE REVIEW
09-25-2023

SEAL:

STATE OF MICHIGAN
F. MATTHEW RAY
ARCHITECT
No. 1301035202
LICENSED ARCHITECT

CHECKED BY: FMR
DRAWN BY: FMR
09-25-2023

PROJECT NO.
22-21

TITLE:
SIGNAGE SITE PLAN

SHEET NO.
A-2.1

D:\22-21\22-21 DRWGS\22-21 A 2-1.dwg, 9/26/2023 9:49:26 AM, AutoCAD PDF (General Documentation).pc3

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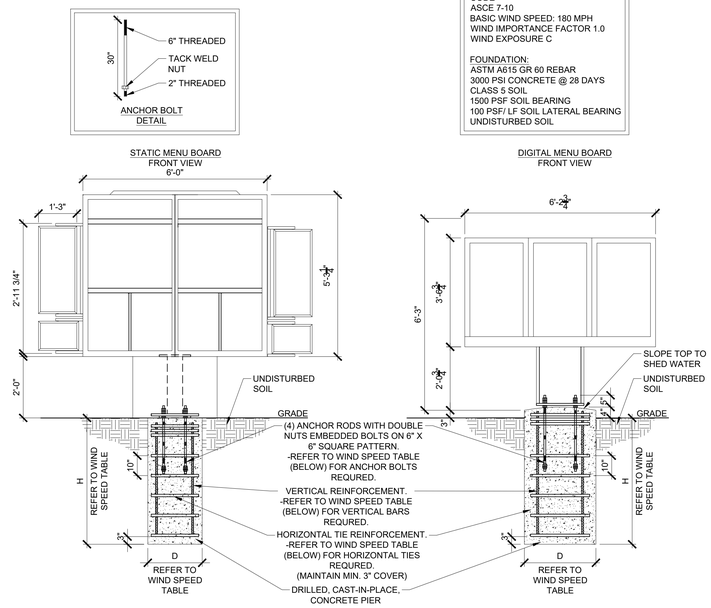
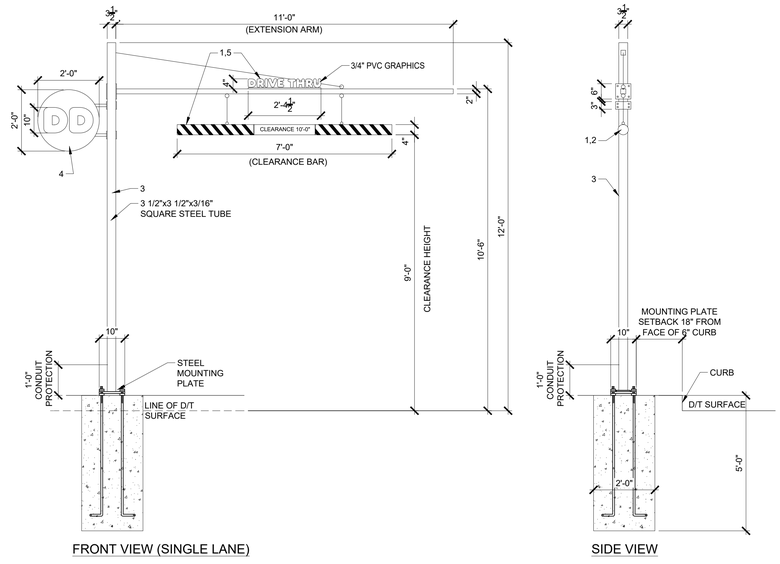
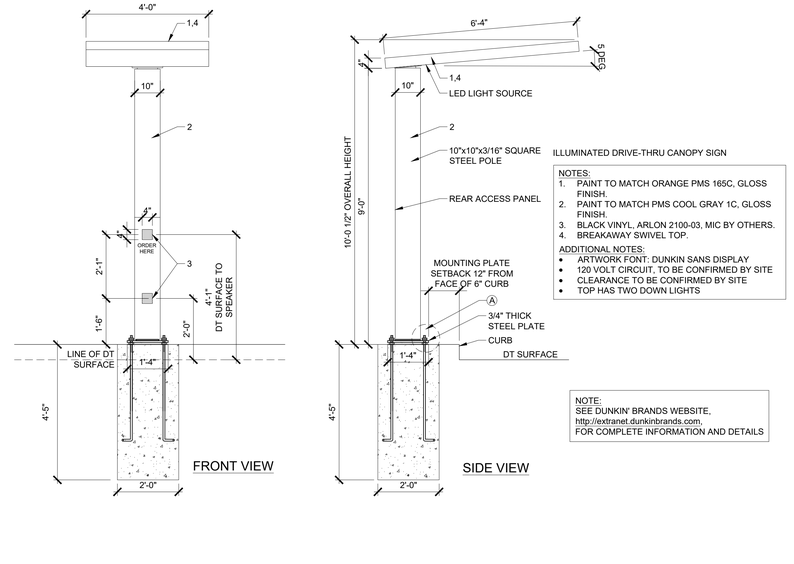


F DRIVE-THRU MENU BOARD / PREVIEW MENU BOARD FOOTING DETAIL



G DRIVE THRU HEIGHT BAR



H DRIVE THRU SPEAKER POST & CANOPY

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ARCHITECT

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MASON & BURKHART ROADS
HOWELL TWP, MI

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SITE REVIEW
09-25-2023

SEAL:

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09-25-2023

PROJECT NO.
22-21

TITLE:
SIGN DETAILS

SHEET NO.
A-2.2

D:\22-21\22-21 DRWGS\22-21 A 2-2.dwg, 9/26/2023 9:50:03 AM, AutoCAD PDF (General Documentation).pc3

DO NOT SCALE DRAWINGS

FLOOR PLAN KEY NOTES

(01) EXTERIOR WALL: MASONRY VENEER ON AIR SPACE ON R-3.8 RIGID INSULATION ON MOISTURE RESISTANT BARRIER (M.R.B.) ON 1/2" PLYWOOD SHEATHING ON 2X6 LVL STUDS @ 16" O.C. W/ R-20 CAVITY INSULATION, 5/8" GYPSUM BOARD INTERIOR FINISH.

(2A) INTERIOR PARTITION: 5/8" PLYWOOD (@-8' A.F.F.); 5/8" GYPSUM BOARD (8'-@" TO TOP OF STUD) ON 2X6 LVL WOOD STUDS @ 24" O.C. FLOOR TO U/S TRUSS BOTTOM CHORD.

(2B) ALTERNATE: SAME AS #2, ONLY 3-5/8", 20 GAGE METAL STUDS @ 24" ON CENTER.

(03) EXPOSED STEEL COLUMN - PAINT.

(04) INDICATES STAINLESS STEEL CORNER GUARD.

(05) STOREFRONT WINDOW FRAMING: 4 1/2" X 2" THERMALLY BROKEN FRAMING W/ 1" INSULATED CLEAR, LOW-E, GLASS.

(06) DRIVE-THRU WINDOW.

(07) TILE FLOORING - THROUGHOUT

(08) FLOOR DRAIN OR FLOOR SINK, REFER TO PLUMBING PLAN.

(09) INDICATES OUTLINE OF EXHAUST HOOD, REFER TO MECHANICAL DRAWINGS.

(10) HOOD WALL: 6", 18 GA METAL STUDS @ 16" O.C. W/ 1/2" CEMENT BOARD ON HOOD SIDE & 5/8" GYP. BD. ON OPPOSITE SIDE. FLOOR TO ROOF DECK.

(11) INDICATES VERTICAL STORM CONDUCTORS; REFER TO PLUMBING DRAWINGS.

(12) GALVANIZED STEEL CHANNEL SIGN HEADER & OUTRIGGERS - PAINT - SEE STRUCTURAL DRAWINGS.

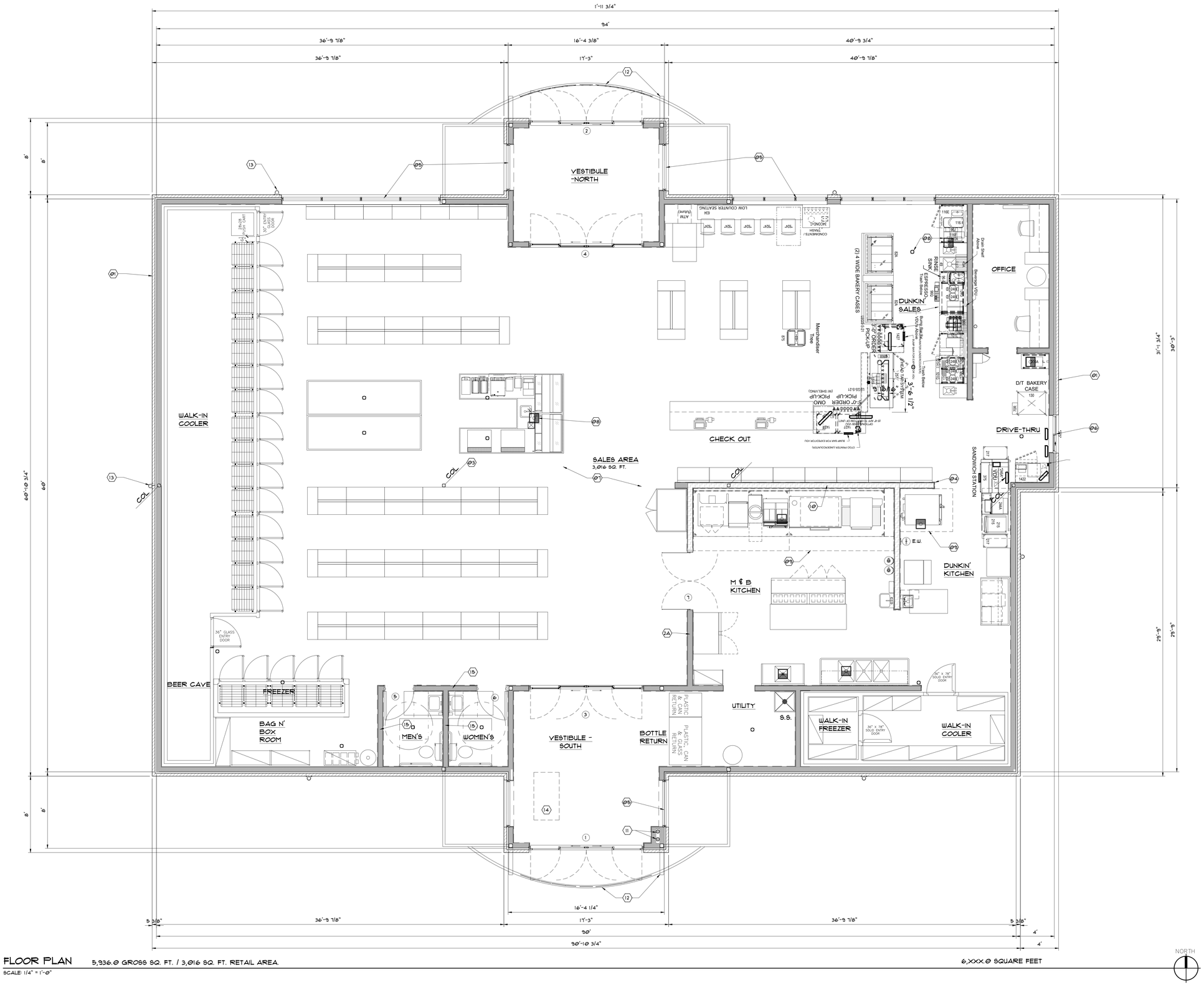
(13) PRE-FINISHED METAL DOWNSPOUT

(14) PULL DOWN STAIR TO EQUIPMENT PLATFORM. FACRO, MODEL #LMS-5, OR APPROVED EQUAL

(15) TOILET ROOM WALLS TO EXTEND TO BOTTOM OF ROOF DECK.

GENERAL NOTES

1. EXTERIOR DIMENSIONS ARE FROM FACE OF SHEATHING TO FACE OF SHEATHING OR FACE OF BRICK TO FACE OF BRICK. GLAZING OPENING ARE TO FACE OF JAMB STUD & FACE OF BRICK.
2. INTERIOR DIMENSIONS ARE FROM FACE OF STUD TO FACE OF STUD.



FLOOR PLAN

SCALE: 1/4" = 1'-0"

5,936.0 GROSS SQ. FT. / 3,016 SQ. FT. RETAIL AREA.

6,XXX.0 SQUARE FEET

NORTH

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PROJECT
PROPOSED:
HOWELL-MASON COMMERCIAL DEVELOPMENT

NE CORNER
MASON & BURKHART ROADS
HOWELL TWP, MI

PRELIMINARY ☒

ISSUED/DATE
SITE REVIEW
03-25-2023

SEAL:

STATE OF MICHIGAN
F. MATTHEW RAY
ARCHITECT
No. 1301033322
LICENSED ARCHITECT

CHECKED BY: FMR
DRAWN BY: FMR
03-25-2023

PROJECT NO.
22-21

TITLE:
FLOOR PLAN

SHEET NO.
A-3.1

D:\22-21\22-21 DRWGS\22-21 A 3-1.dwg 9/25/2023 11:19:37 AM, AutoCAD PDF (General Documentation).pc3

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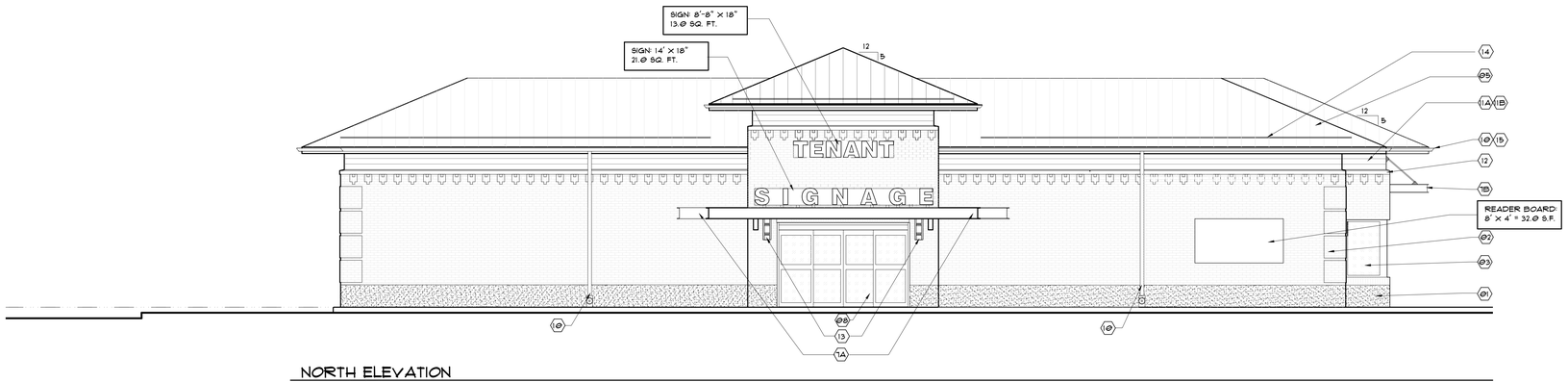
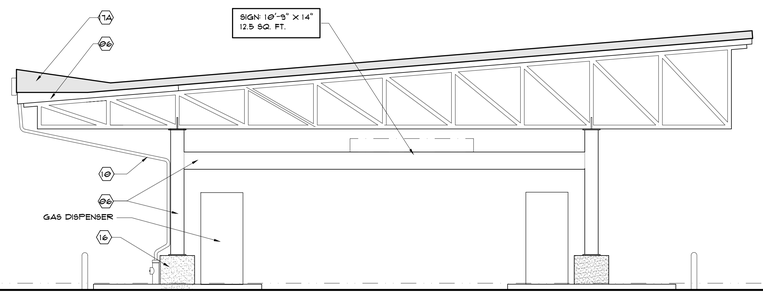


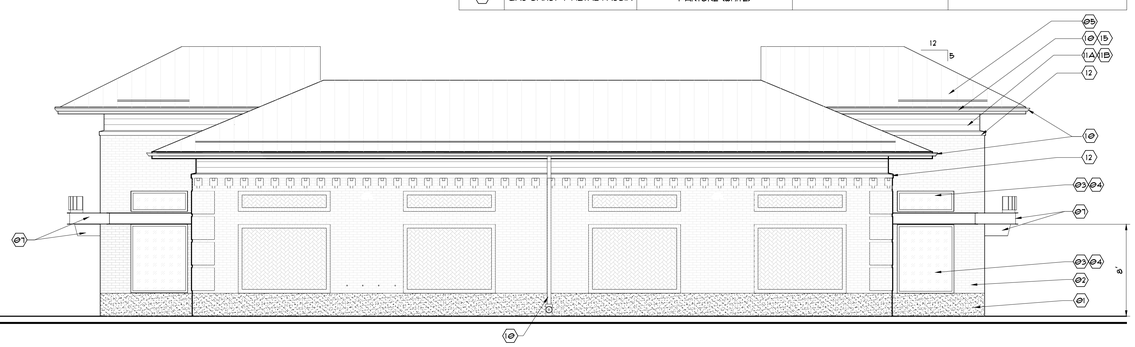
NORTH ELEVATION
SCALE: 3/16" = 1'-0"

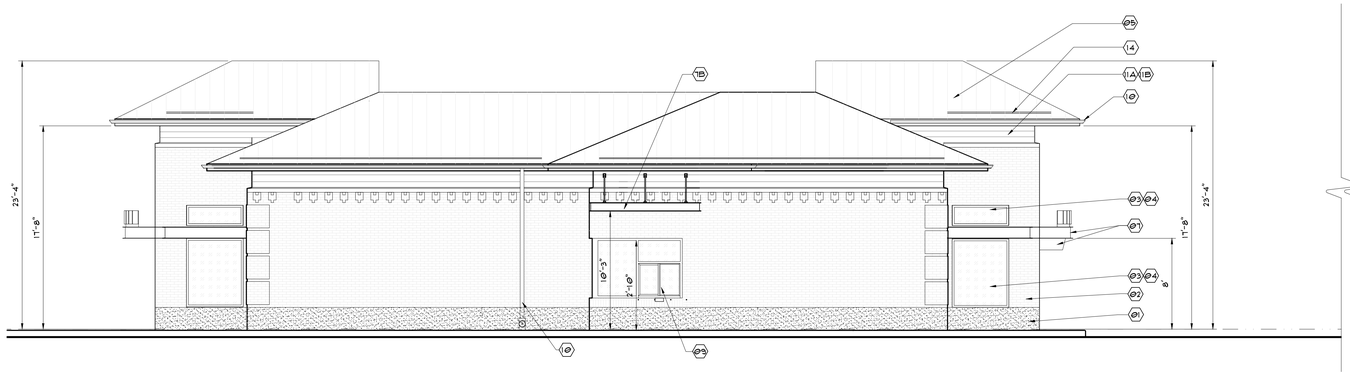
EXTERIOR MATERIALS

MARK	ITEM	COLOR / TEXTURE	SIZE	MANUFACTURER
Ø1	CONCRETE BLOCK	"TECUMSEH" / SPLIT FACE	NOM. 16" X 8" X 4" THICK	GRAND BLANC CEMENT PRODUCTS
Ø2	BRICK	"HARVEST FLASHED" / STANDARD MODULAR, VELOUR FACE, CLAY BRICK	7-5/8" X 2-1/4" X 3-5/8"	HM BRICK CO.
	MORTAR	NATURAL	3/8" MORTAR JOINT	LAFARGE OR EQUAL
Ø3	ALUMINUM STOREFRONT	MEDIUM BRONZE	2" X 4 1/2"	KAWNEER OR EQUAL
Ø4	GLASS	CLEAR / INSULATED	PER PRINT	LIBBY OR PPG
Ø5	METAL ROOFING	"SIERRA TAN"	15" STANDING SEAM	ATAS ALUMINUM CORP. OR EQUAL
Ø6	EXPOSED STRUCTURAL STEEL (GALVANIZED)	GALVANIZED	PER PRINT	ANY STEEL MANUFACTURER
1A	EXPOSED STRUCTURAL STEEL (GALVANIZED)	PAINT: PANTONE #355 (GREEN)	PER PRINT	ANY STEEL MANUFACTURER
1B	EXPOSED STRUCTURAL STEEL (GALVANIZED)	PAINT: PANTONE #3564 C (ORANGE)	PER PRINT	DUNKIN' DRIVE THRU CANOPY
Ø8	AUTOMATIC SLIDING DOORS	MEDIUM BRONZE		BESAM OR STANLEY
Ø9	DRIVE-THRU WINDOW	DARK BRONZE	PER PRINT	READY ACCESS
10	METAL GUTTER & DOWNSPOUT	PAINT TO MATCH BACKGROUND	PER PRINT	RUTLAND GUTTER SUPPLY CO.
11A	CEMENT FIBER SHIPLAP SIDING	CEDAR / SHIPLAP	18" WALL PANEL	NICHIHA
11B	ALT: CEMENT FIBER LAP SIDING	CEDARMILL	6" EXPOSURE	HARDI
12	STONE SILL	LIMESTONE / NATURAL	5" X 5" W/ WASH	INDIANA LIMESTONE
13	WALL SCONCE LIGHT FIXTURE	TYPE 'E' BRONZE	8.83 X 23.69"	ARCHITECTURAL AREA LIGHTING
14	SNOW GUARD	'SNOW FENCE' STAINLESS STEEL		SS
15	FASCIA BOARD	AS SELECTED / SMOOTH	4" X 7 1/4"	HARDI TRIM
16	EXPOSED CONCRETE	CLEAR SEALER	PER PRINT	ANY CONCRETE SUPPLIER
17A	GAS CANOPY METAL FASCIA	PANTONE #355 (GREEN)		
17B	GAS CANOPY METAL FASCIA	PANTONE (WHITE)		

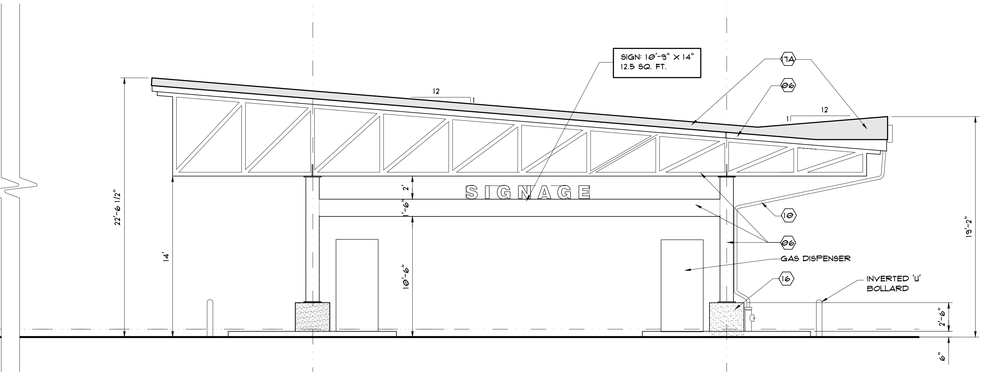


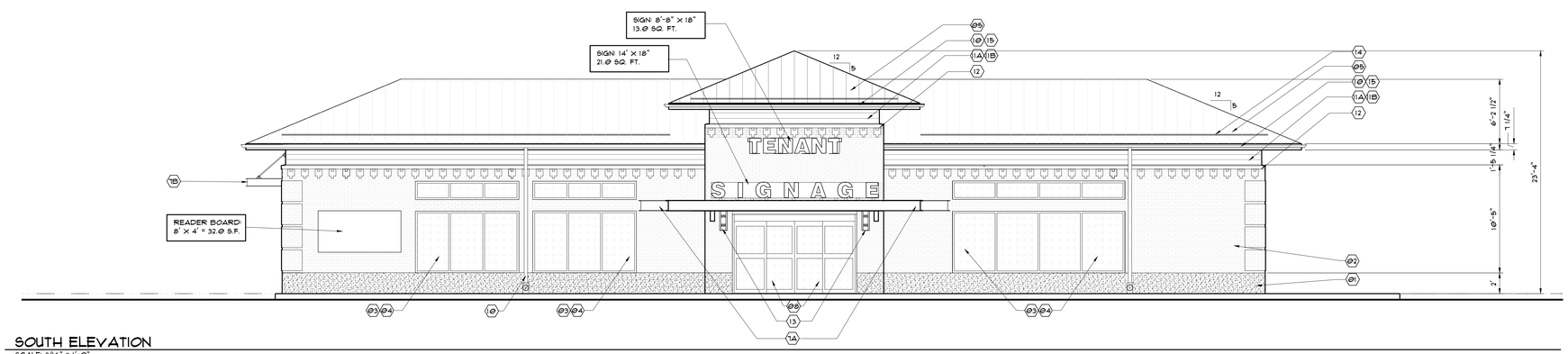
EAST ELEVATION
SCALE: 3/16" = 1'-0"





WEST ELEVATION
SCALE: 3/16" = 1'-0"





SOUTH ELEVATION
SCALE: 3/16" = 1'-0"

F. MATTHEW RAY ARCHITECT

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CLIENT:
HOWELL-MASON, LLC

PROJECT
PROPOSED:
HOWELL-MASON COMMERCIAL DEVELOPMENT

NE CORNER
MASON & BURKHART ROADS
HOWELL TWP, MI

PRELIMINARY ☐

ISSUED/DATE
SITE REVIEW
09-25-2023

SEAL:

STATE OF MICHIGAN
F. MATTHEW RAY
ARCHITECT
No. 1301033822
LICENSED ARCHITECT

CHECKED BY: FMR
DRAWN BY: FMR
09-25-2023

PROJECT NO.
22-21

TITLE:
EXTERIOR ELEVATIONS

SHEET NO.
A-4.1

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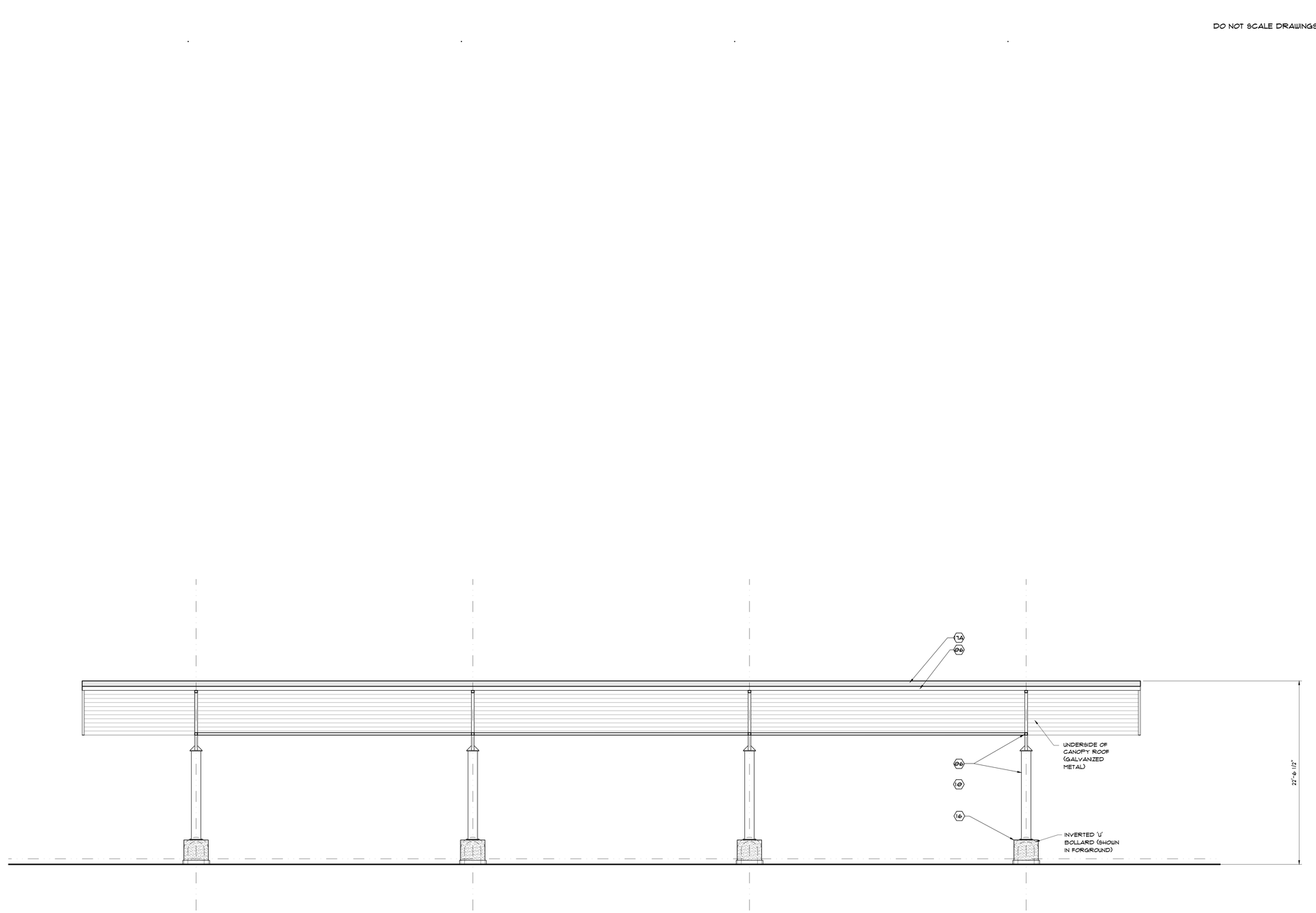
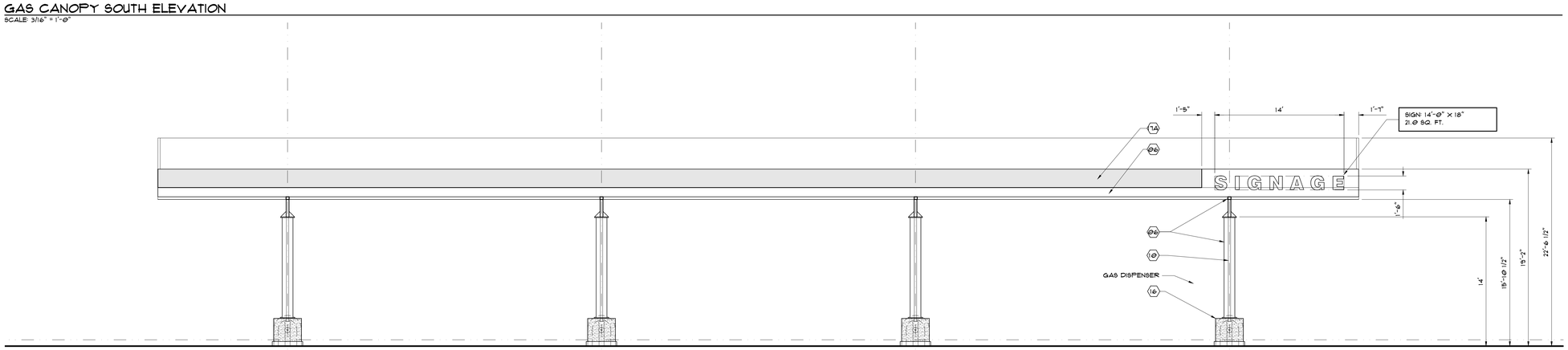


GAS CANOPY SOUTH ELEVATION

SCALE: 3/16" = 1'-0"



GAS CANOPY NORTH ELEVATION

SCALE: 3/16" = 1'-0"

F.
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ARCHITECT

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CLIENT:

HOWELL-MASON, LLC

PROJECT

PROPOSED:

HOWELL-MASON COMMERCIAL DEVELOPMENT

NE CORNER
MASON & BURKHART ROADS
HOWELL TWP, MI

PRELIMINARY ☒

ISSUED/DATE

SITE REVIEW
03-25-2023

SEAL:

STATE OF MICHIGAN
F. MATTHEW RAY
ARCHITECT
No. 1001038822
LICENSED ARCHITECT

CHECKED BY: FMR
DRAWN BY: FMR
03-25-2023

PROJECT NO.

22-21

TITLE:

EXTERIOR ELEVATIONS

SHEET NO.

A-4.2

D:\22-21\22-21 DRWGS\22-21 A 4-2.dwg, 9/26/2023 10:17:03 AM, AutoCAD PDF (General Documentation).pc3

EXHIBIT I

HOWELL TOWNSHIP PLANNING COMMISSION
APPROVED MINUTES NOVEMBER 21, 2023, 6:30 P.M.
400 WRIGHT RD. PARKER MIDDLE SCHOOL, HOWELL MI 48843

MEMBERS PRESENT:		**MEMBERS ABSENT:**	
Wayne Williams	Chairman	Denise Markham	Commissioner
Robert Spaulding	Vice-Chair		
Matthew Counts	Board Rep		
Paul Pominville	Commissioner		
Mike Newstead	Commissioner		
Tim Boal	Commissioner		

Also in attendance: Zoning Administrator Joe Daus, Township Planner's Paul Montagno & Anna Wysocki

The meeting was called to order at 6:30 p.m. The roll was called.

APPROVAL OF AGENDA: MOTION by Spaulding, second by Boal, ***"To* approve the November 21, 2023 Planning Commission Agenda"** Motion carried.

APPROVAL OF MINUTES: No action taken.

TOWNSHIP BOARD REPORT: Matt reported that they had a financial up date from the Deputy Supervisor that the township is in good financial standing, that there was no change to the sewer and water fees for 2024, the ZBA and Planning Commission member who's terms were up had been reappointed, and that the rezoning request from Michigan Storage Barn had been approved.

ZONNING BOARD OF APPEALS REPORT: No Meeting.

ZONING ADMINISTRATOR REPORT: Monthly Permit list is attached.

OLD BUSINESS:

A. Schmucks Brewing Company, File# PC2023-07, 4944 Mason Rd. Howell, Parcel ID# 4706-32-300-003. Final Site Plan.

Township Planner Anna Wysocki reviewed her report on the proposed site plan. The applicant's engineer David LeClair addressed the planners concerns, and the Fire Department concerns with the building sprinkler system. There were no questions for the applicant.

Motion by Newstead, second by Counts **"To approve the final site plan for Schmucks Brewing, file# PC2023-07, 4944 Mason Rd. Howell, parcel 4706-32-300-003 on the condition that they satisfy all of the findings in the planners report dated November 16, 2023 and the engineers report dated November 10, 2023, and specify on the site plan where the gate and the fence are located.** Motion carried, 6 yes, 0 no.

B. Public Hearing for Mason & Burkhart, LLC. Request to amend Heritage Square approved Preliminary/PUD site plan, file# PC2023-04, Parcel #4706-32-400-013, vacant land on Mason Road and Burkhart Road.

Township Planner Paul Montagno reviewed his current report, stated that their current proposal is very similar to an earlier design that had been approved.

Motion by Counts, second by Newstead **"To open the Public Hearing for Mason & Burkhart LLC, amendment to Heritage Square, file PC2023-13, parcel 4706-32-400-013"** Motion carried, 6 yes, 0 no.

Chairman Williams invited comments from the audience. Gary Maher 3670 Mason Rd had questions on the location of the development, the number of homes and improvements to roads, Julie Mullens 3885 Mason Rd. commented on the current traffic at the intersection of Burkhart and Mason. The engineer for the applicant Kevin McDevitt gave an overview of the proposed project, and the need for a temporary access. There were comments to the engineer from the public. Jake Rossco talked about the drainage problem at Chestnut Crossing. The public ask questions of the engineer. Jeff smith 3762 Mason Rd. had questions on the direction of the water flow.

Motion by Spaulding second by Pominville **"To close the Public Hearing"** Motion carried, 6 yes, 0 no.

Planning commission members had questions for the Planner. Discussion followed.

Motion by Boal second by Pominville **"To postpone the approval subject to an environmental impact statement concerning tree cutting."** Discussion followed. Pominville – Yes, Newstead – Yes, Counts – Yes, Boal – Yes, Williams – Yes, Spaulding –Yes, Motion carried, 6 yes, 0 no.

NEW BUSINESS:

A. Public Hearing for Howell-Mason LLC. Request for a special use permit to allow for a gas station.

Township Planner Paul Montagno presented his report on the project.

Motion by Spaulding second by Counts **"To open the public hearing."** Motion carried, 6 yes, 0 no.

Chairman Williams invited comments. Jeff Ross 3872 Mason Rd, He does not want a gas station in the neighborhood. Julie Mullens 3885 Mason Rd. is concerned that a gas leak would contaminate the wells in the area, and with the added traffic. Jenni Johnson, 273 S Burkhart, was asking the Board to deny this request. Jeff Smith 3762 Mason Rd. he does not want the gas station at that corner do to lights, noise, the drainage water, and the possible contamination of the well water. Savannah Mullens 1605 Elliott Rd. concerned with increase in traffic and traffic accidents, increase in crime and ask that they deny this request. Shelby Frasier 146 Fox Meadows Ct. ask that we look out for the neighborhood. Curt Hamilton 1367 Crestwood Ln. concerned with contamination. Richard Everly 3769 Mason Rd. concerned with contamination. Roger Holden 4383 Mason Rd. just does not want a gas station here. The applicant Todd Lekander spoke about his business. Engineer Brent LaVanway addressed the concerns in the planners review, and took question from the planning commission and the public. Evelyn Anderson 122 Fox Meadows Ct, spoke in opposition to the gas station in a residential area. Debra Luczowski 3800 Mason Rd. ask if the gas station does go in that safety equipment be installed. James Roscoe 3809 Mason Rd. Jeff Ross 3872 Mason Rd. concerned with contamination of well water.

The applicant addressed the board, ask them to review all of the safety standards that they are proposing and give consideration to them. Bedly Bigelow 3880 Mason Rd. concerned with the health effects of the gasoline on children.

Motion by Counts second by Newstead **"To close the Public Hearing"** Motion carried, 6 yes, 0 no.

Planning Commission member had question and a short discussion.

Motion by Counts second by Newstead **"To recommend to the Township Board to deny the Special Use Permit for Howell-Mason LLC base on the planners report dated August 16, 2023, and the engineers report dated August 14, 2023 also based on the fact the Zoning Ordinance for Howell Township prohibits a gas station within 300 feet of a well head protection area."** Newstead – yes, Spaulding – yes, Counts – yes, Pominville – yes, Boal – yes, Williams – yes, Motion carried, 6 yes, 0 no.

Motion by Spaulding, second by Newstead **"To postpone action on Preliminary site Plan for Howell-Mason LLC, file #PC2023-04"** Motion carried, 6 yes, 0 no.

OTHER BUSINESS:

CALL TO THE PUBLIC: Question was ask about when the site plan was postponed to.

ADJOURNMENT: Meeting adjourned at 8:55 P.M.

Approved: XXXXXXXXX_____ Mike Newstead, Secretary Michael Newstead

As Presented: XXXXXXXXX_____ Dated: __12-19-2023_____

As Amended: _____

As Corrected: _____

EXHIBIT
J

HOWELL TOWNSHIP REGULAR BOARD
MEETING MINUTES
3525 Byron Road Howell, MI 48855
December 11, 2023
6:30 P.M.

MEMBERS PRESENT:

Mike Coddington	Supervisor
Jonathan Hohenstein	Treasurer
Jeff Smith	Trustee
Harold Melton	Trustee
Bob Wilson	Trustee

MEMBERS ABSENT:

Sue Daus	Clerk
Matthew Counts	Trustee

Also in Attendance:
Jacob Witte - Township Attorney
Tom Landa – Township Attorney
Eighteen people were in the audience.

Supervisor Coddington called the meeting to order at 6:30 p.m. The roll was called. Supervisor Coddington requested members rise for the Pledge of Allegiance.

CALL TO THE BOARD:
No additions

APPROVAL OF THE AGENDA:
December 11, 2023
Motion by Melton, **Second** by Hohenstein, **"To accept the agenda."** Motion carried.

APPROVAL OF BOARD MEETING MINUTES:
November 13, 2023
REGULAR BOARD MEETING MINUTES
Motion by Hohenstein, **Second** by Melton, **"To accept the minutes from November 13th as presented."** Motion carried.

CLOSED SESSION MEETING MINUTES
Motion by Hohenstein, **Second** by Melton, **"To accept the closed session minutes as presented."** Motion carried.

CORRESPONDENCE:
One addition was placed on the board table. No questions.

CALL TO THE PUBLIC:
None

NEW BUSINESS:

A. Special Use Permit Request, PC-2023-04
Howell-Mason, LLC. 4706-33-300-001, 4706-33-300-018
Todd Leekander gave an overview of Mugg and Bopps and the proposed site plan. Brent LaVanway from Boss Engineering gave an overview of the site plan. Greg Buchoveckey from Mannakin Smith gave an overview of the geological conditions in the area. Charlie Burns from Oscar W. Larson gave an overview of the proposed 20,000 gallon tank, piping and pumping system. Paul LeBlanc from PLB Planning gave an overview of the previous Planning Commission meeting and the Township's ordinances. Discussion followed. Clarification from Treasurer Hohenstein regarding the Planning Commission's action on the Special Use Permit request for a gas station in the NSC zoning district and that no action was taken by the Planning Commission on the Special Use Permit required for a drive-thru restaurant nor was the site plan itself sent to the Board for a decision.
Motion by Hohenstein, **Second** by Smith, "**To accept the Planning Commission's recommendation and deny the application for a special use permit in the NSC zoning district based upon the following:**
1. Section 16.11 (C-8) of the zoning ordinance prohibits the establishment of a gas service station within 300 feet of a wellhead protection area and the property is located in the MHOG wellhead protection area. 2. The proposed use violates section 16.06 (A) as an establishment of a gas station in the area would not be harmonious with the general objectives, purpose, and intent of the zoning ordinance, as the dispensing of gasoline can create noise, smoke, fumes, and odors – which can negatively impact persons and the general welfare of the surrounding area. 3. The proposed use violates section 16.06 (D) and (F) of the zoning ordinance, as the state has designated the area in which the gas station is located as a wellhead protection area. Because a wellhead protection area constitutes an area which supplies a public water supply as deemed by EGLE, placement of a gas station within that area has the potential to be hazardous to existing or future neighboring uses and have a substantial adverse impact to natural resources in the area, including wells and watersheds. 4. Permitting a gasoline station in the wellhead protection area does not conform to the Master Plan, which seeks to protect existing natural resources and preserve the quality of the Township's water resources. 5. Information contained in the Township Planner's Report. 6. Comments from the Publlic and, 7. Information provided by the Planning Commission as reflected in their minutes." Roll call vote: Hohenstein – yes, Melton – yes, Coddington – yes, Wilson – yes, Smith – yes. Motion carried 5-0.

Motion by Hohenstein, **Second** by Smith, "**To deviate to agenda item 13. Closed session for Burkhart Road Associates v. Howell Township.**" Motion carried.

B. Griffith Realty – Contract Renewal
Treasurer Hohenstein discussed the current contract with Griffith Realty and his opinion of the quality of service being provided by Scott Griffith. **Motion** by Smith, **Second** by Hohenstein, "**To approve the listing extension agreement as presented to extend Griffith Realty as the Howell Township realtor, term ending no later than January 31st 2026.** Motion carried.

C. Property Sale – 8.08 Ac. Bowen Rd., 4706-22-300-047

Treasurer Hohenstein discussed the offer for the property. Discussion followed. **Motion** by Hohenstein, **Second** by Smith, "**To accept resolution 12.23.533 for sale of property 4706-22-300-047 as presented.**" Roll call vote: Wilson – yes, Hohenstein – yes, Melton – yes, Smith – yes, Coddington – yes. Motion carried 5-0.

PUBLIC HEARING:

Park and Recreation Master Plan

Motion by Hohenstein, **Second** by Smith, "**To open the public hearing for the Park and Recreation Master Plan.**" Roll call vote: Coddington – yes, Melton – yes, Smith – yes, Hohenstein – yes, Wilson – yes. Motion carried 5-0.

Treasurer Hohenstein discussed the Recreation Master Plan prepared by Carlisle and Wortman. Park and Recreation Committee member Martha Haglund discussed the survey results.

Motion by Hohenstein, **Second** by Melton, "**To close the public hearing.**" Motion carried.

Motion by Hohenstein, **Second** by Smith, "**To approve the Township Park and Recreation Master Plan as presented.**" Motion carried.

UNFINISHED BUSINESS:

A. Guardian Alarm

Treasurer Hohenstein discussed the revised quote from Guardian Alarm. Discussion followed. It was the consensus of the Board to take no action at this time.

CALL TO THE PUBLIC:

None

REPORTS:

A. SUPERVISOR:

B. TREASURER:

Reported on Tribar's delinquent taxes and past due water payments. Treasurer Hohenstein reported on Tribar's delinquent IFT bills and that he is moving forward with sending a demand letter for payment of the IFT, which if not paid within 60 days the IFT will automatically terminate on December 31st, 2024. It was the consensus of the Board to send the IFT demand letter, stay on top of Tribar's water bills, and use the water shut-off process as necessary.

C. CLERK:

Treasurer Hohenstein reported on Sue's request for education for the Clerk and Deputy Clerk. **Motion** by Hohenstein, **Second** by Smith, "**To approve the Clerk and Deputy Clerk to attend the MAMC Institute in March of 2024 plus accommodations as presented.**" Disucssion followed. Motion was amended "**To approve the Clerk and Deputy Clerk to attend the MAMC Institute in March of 2024 plus accommodations not to exceed $3,600.00 as presented.**" Motion carried.

Treasurer Hohenstein discussed the changes to the voting precincts allowed due to the change in state voting laws and that Resolution 12.23.534 was approved by the Election Commission reducing Howell Township from 3 voting precincts to 2 voting precincts.

D. ZONING:

No zoning report was included from Zoning Administrator Joe Daus. Treasurer Hohenstein discussed education opportunities for the Planning Commission and ZBA. **Motion** by Hohenstein, **Second** by Melton, **"To approve Planning Commission members and ZBA members to attend the class, The Roles and Responsibilities of a Planning Commission, put on by Michigan State University Extension as presented."** Motion carried.

E. ASSESSING:
See Assessor Kilpela's report

F. FIRE AUTHORITY:
Supervisor Coddington reported on the Fire Authority

G. MHOG:
Supervisor Coddington reported on MHOG

H. PLANNING COMMISSION:
Supervisor Coddington reported on the Planning Commission

I. ZONING BOARD OF APPEALS (ZBA):
No meeting to report

J. WWTP:
See Treasurer Hohenstein's report

K. HAPRA:
See Clerk Daus's report

L. PROPERTY COMMITTEE:
Treasurer Hohenstein reported on the Property Committee. **Motion** by Hohenstein, **Second** by Melton, **"To accept the recommendation from the Property Committee and deny the request for an extension of the investigation period."** Motion carried.

M. PARK & RECREATION COMMITTEE:
No report

CLOSED SESSION:

Motion by Hohenstein, **Second** by Melton, **"To go into closed session to discuss Burkhart Road Associates v. Howell Township."** Roll call vote: Melton – yes, Wilson – yes, Smith – yes, Coddington – yes, Hohenstein – yes. Motion carried 5-0.

Motion by Hohenstein, **Second** by Melton, **"To enter back into regular session."** Motion carried.

Motion by Hohenstein, **Second** by Melton, **"To approve the non-binding term sheet as presented in closed session for the Burkhart Road Associates v. Howell Township litigation and authorize counsel to finalize the settlement agreement."** Motion carried.

DISBURSEMENTS: REGULAR PAYMENTS AND CHECK REGISTER:
Motion by Hohenstein, **Second** by Melton, **"To accept the disbursements as presented and any normal and customary payments for the month."** Motion carried.

ADJOURNMENT: Motion by Melton, **Second** by Smith, **"To adjourn."** Motion carried. The meeting was adjourned at 9:01pm.

Sue Daus, Howell Township Clerk

Mike Coddington, Howell Township Supervisor

Tanya Davidson, Recording Secretary

EXHIBIT K

STATE OF MICHIGAN
IN THE 44th CIRCUIT COURT
FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
A Michigan Limited Liability Company,

Appellant,

v.

HOWELL TOWNSHIP,
A Michigan General Law Township,

Appellee.

Case No. 24-350-AA

Hon. Matthew J. McGivney

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AMENDED CLAIM OF APPEAL

Appellant, HOWELL-MASON, LLC, claims an appeal from the decision certified on January 8, 2024, by the Howell Township Board of Trustees (the "Board of Trustees"), and, in support, states:

1. Appellant, HOWELL-MASON, LLC, is a Michigan Limited Liability Company with a principal place of business in Howell, Livingston County, Michigan.
2. Appellee, HOWELL TOWNSHIP, is a Michigan General Law Township with offices located at 3525 Byon Road, Howell, Livingston County, Michigan 48855.
3. On December 11, 2023, the Board of Trustees voted to deny Appellant's Special Land Use Application. The Board of Trustees certified the minutes from the December 11, 2023 meeting on January 8, 2024. The minutes from the December 11, 2023, meeting are attached here as **Exhibit A**. The minutes from the January 8, 2024, meeting, which certified the December 11, 2023, minutes, are not yet available, but will be included in the record on appeal. *See* MCR § 7.122(C)(4).
4. The statute authorizing the Board of Trustees' proceedings and determination is the Michigan Zoning Enabling Act, MCL 125.3101, *et seq*, and in particular MCL 125.3502. Furthermore, under the Howell Township Zoning Ordinance, the Township Board, after review and recommendation by the Planning Commission, has the authority to grant special land use permits. See Howell Twp Zoning Ord § 16.02.
5. On or around June 26, 2023, Appellant submitted a special land use permit application (SLUP) to develop a new gasoline service station and drive-through restaurant on land owned by Appellant in Howell Township zoned Neighborhood Service Commercial (NSC), in which gasoline service stations are permitted as a special land use. The

application was supplemented on or around October 17, 2023. The subject property is located at the far edge of a large wellhead protection area.

6. Section 16.11(C)(8) of the Howell Township Zoning Ordinance states: "No gasoline service station shall be permitted within three hundred (300) feet of a wellhead protection area" without any explanation, reasoning, or tests for which evidence could be submitted to determine the reasonableness of the ban on a case-by-case basis. The ordinance is not based on reasonable concerns related to the health, safety, or welfare of the people, and is an arbitrary and capricious ban.
7. On November 21, 2023, the Howell Township Planning Commission conducted a public hearing on Appellant's SLUP. At the conclusion of the hearing, the Planning Commission voted unanimously to recommend denial of the SLUP. A copy of the meeting minutes is attached as **Exhibit B**. Additionally, video of the meeting and a written transcript were taken of the meeting and will be provided to Appellee and the court when available.
8. On December 11, 2023, the Howell Township Board of Trustees held a regular meeting at which they voted to deny the SLUP. The Township Board ignored evidence and/or did not adequately account for evidence in favor of the SLUP, including evidence presented by qualified experts regarding the nature of the local family-owned business by company ownership, the site plan by Boss Engineering, favorable hydrogeological conditions by Mannik & Smith Group, planning issues by PLB Planning Group, and safety of cutting edge gasoline storage and dispensing technology by Oscar Larson Co. Additionally, video of the meeting and a written transcript were taken of the meeting and will be provided to Appellee and the court when available.

9. The Howell Township Board of Trustees held two (2) public meetings at which Appellant's property and SLUP application were agenda items, but Appellant was given no notice of these meetings or opportunity to be heard. Audio recordings of those meetings were provided to Appellant by the Appellee via Freedom of Information Act request, which will be made available to Appellee and the Court. Transcripts of the audio recordings are attached as **Exhibit C.**
10. The Marion, Howell, Oceola, Genoa Water and Sewer Authority (MHOG), originally approved Appellant's project within the wellhead protection area. In May 2023, however, MHOG sent a letter retracting its prior approval. Then, on November 15, 2023, MHOG held a public meeting at which it passed a resolution regarding the inappropriateness of Appellant's proposed project, a copy of which was provided to Appellee and was part of its Board packet for the December 11, 2023, meeting vote. Appellant was not given notice of the MHOG public meeting and was not provided a copy of the resolution by MHOG nor Appellee. MHOG's approval letter with Appellant's response is attached as **Exhibit D**. MHOG's retraction of its approval is attached as **Exhibit E**. MHOG's covert resolution regarding Appellant's property is attached as **Exhibit F**.
11. The Howell Township Zoning Board of Appeals lacks jurisdiction to hear appeals of SLUP decisions. Howell Twp Zoning Ord § 22.06(C) ("The ZBA may not change the zoning district classification of any property, may not change any of the terms of the Ordinance, and may not take any actions that result in the making of legislative changes to this Ordinance. The ZBA may not hear an appeal from a Township decision regarding a special land use or PUD.").

12. The Howell Township Zoning Board of Appeals lacks jurisdiction to grant use variances. Howell Twp. Zoning Ord. § 22.06(F) ("Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the zoning district in which the variance is to be located.").
13. Nevertheless, on December 16, 2023, out of an abundance of caution, Appellant submitted a ZBA application (with an explanatory letter from its counsel) specifically to ensure the finality of the Board of Trustees' decision, as required by *Paragon v. City of Novi*, 452 Mich 568, 550 NW2d 772 (1996). Appellant's ZBA application is attached as **Exhibit G**.
14. Appellee has taken the position that "jurisdiction" and "authority" are different terms, and as such the ZBA has "jurisdiction" to hear Appellant's appeal, which includes a necessary use variance, and is therefore obligation to hold a hearing. However, the ZBA lacks "authority" to grant any relief. **Exhibit H**. Thus, Appellee has already acknowledged that any appeal or request for a use variance to the ZBA would be denied, and thus futile.
15. Appellant appeals the decision of the Township Board pursuant to MCR § 7.122 and the Michigan Constitution, Article 6, Section 28. MCL § 125.3606, and § 22.09 of the Howell Township Zoning Ordinance.
16. Venue in this court is based on (1) MCR § 7.122, MCL § 125.3606, authorizing appeals to the circuit court from adverse zoning decisions, and (2) the property at issue being located in Howell Township, Livingston County, Michigan.
17. Attached as **Exhibit I** is Appellant's written request for the record to be sent to the Circuit Court.
18. The grounds on which Appellant seeks relief are:

a. The actions of the Howell Township Planning Commission and Howell Township Board were not authorized by law, including but not limited to, reliance upon § 16.11 of the Howell Township Zoning Ordinance, which is unconstitutional both on its face and as applied. MCR §7.122(G)(2), Const. 1963, art 6, § 28. For example, Section 16.11(C)(8) is unconstitutional, both as applied and on its face, because it is arbitrary and capricious and not rationally related to a legitimate government objective.

b. The findings of the Planning Commission and Township Board were not supported by competent, material, and substantial evidence on the whole record. MCR § 7.122(G)(2), Const. 1963, art 6, § 28.

c. Section 16.11 of the Howell Township Zoning Ordinance or portions thereof relied upon to deny the SLUP is unconstitutional both on its face and as applied. MCL § 125.3606(1)(a).

d. Section 16.11 of the Howell Township Zoning Ordinance, both as applied and facially, is contrary to MCL 125.3504.

e. The decisions of the Planning Commission and Township Board were based upon improper procedure. MCL § 125.3606(1)(b).

f. The decisions of the Planning Commission and Township Board are not supported by competent, material, and substantial evidence on the record. MCL § 125.3606(1)(c).

g. The decisions of the Planning Commission and Township Board do not represent the reasonable exercise of discretion granted by law. MCL § 125.3606(1)(d).

h. Section 16.11(C)(8) of the Zoning Ordinance is preempted by other laws, including state law.

WHEREFORE, Appellant, HOWELL-MASON, LLC, respectfully requests that this Honorable Court REVERSE Appellee's decision denying Appellant's SLUP, and enter an order accordingly, including granting Appellant's SLUP, together with such other and further relief as may be warranted under the circumstances, including an award of costs and attorney fees to Appellants.

Respectfully submitted,

LAW OFFICE OF PAUL E. BURNS
Attorneys for Appellant

BY: _____

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Dated: January 29, 2024

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Dated: January 29, 2024

EXHIBIT L

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON LLC,

Appellant,

v.

Case No. 2024-350-AA
Hon. Matthew J. McGivney

HOWELL TOWNSHIP,

Appellee.
_____/

OPINION AND ORDER ON APPEAL

At a session of said Court held in the Courthouse,
City of Howell, County of Livingston,
State of Michigan, on the 16th day of September, 2024.

PRESENT: HONORABLE MATTHEW J. McGIVNEY
CHIEF CIRCUIT COURT JUDGE

THIS MATTER HAVING COME BEFORE THE COURT on August 15, 2024 for oral arguments on Appellant's claim of appeal, and the parties having appeared by and through their respective counsel, and the parties having presented their respective oral arguments, and the Court having reviewed the filings and having thoroughly reviewed the record from the lower tribunal, and the Court being otherwise fully advised in the premises, the Court now issues this Opinion and Order AFFIRMING the lower tribunal for the reasons set forth in detail below.

I. BACKGROUND

Appellant owns three parcels in Howell Township, out at the corner of Burkhart and Mason Rd. Two are zoned Neighborhood Services Commercial (NSC). The third parcel is not at issue in this case.

In 2017, Appellant bought up these lots, intending to build a Mugg & Bopp's gas station, convenience store, and drive-thru fast-food restaurant on the two lots zoned NSC (with the third parcel being used for the in/out ramp and accessory structures). However, while the Howell Township Ordinance allows convenience stores by right in the NSC District, the gas station and the drive-thru are only allowed by special permit. In addition, the lots are located within 300 feet of the Marion Howell Oceola Genoa Township (hereinafter "MHOG") wellhead protection area, and the Zoning Ordinance does not permit gas stations within 300 feet of the wellhead protection area.

Appellant argues that in 2020, Appellant had some initial talks with the Township about putting

the gas station/convenience store/drive thru at that location, and that some unidentified person told them verbally it could be done, but Appellant would need a use variance. Appellant applied for the use variance, but the use variance was denied. Appellant asked for the Zoning Ordinance to be amended to allow gas stations in the wellhead protected area with MHOG's approval, but the Township denied the request.

The Township later sent a proposed amended ordinance drafted by MHOG (patterned on Marion Township's ordinance) to the Planning Commission, but the record does not show if it was adopted or not.

Appellant tried again in June 2023, submitting a special land use permit (hereinafter "SLUP") to the Planning Commission. It was bare bones, consisting of two or three pages, so Appellant hired counsel and sent in a hefty supplement in mid-October 2023. Back in February 2023, MHOG had approved of the application with numerous conditions, but then in May 2023, it retracted its approval. On November 15, 2023, MHOG also held a public meeting and determined that the SLUP/site plan proposed by Appellant was inappropriate.

On November 21, 2023, the Planning Commission held a public meeting on the SLUP application, and the Planning Commission found itself faced with significant community opposition at the meeting. The citizens of the township and surrounding area also made their opposition known to the Planning Commission by submitting emails and letters prior to the meeting, beseeching the Commission to deny the SLUP application. The Planning Commission recommended denial of the application based on several findings, on the MHOG report, on public comment, on documentary evidence submitted by Appellant, and considering the prohibition in the Ordinance for gas stations within 300 feet of a protected wellhead area.

On December 11, 2023, the Township Board of Trustees (hereinafter "the Board" or "the Township Board") held a meeting and voted to deny the SLUP application and site plan proposal.

On December 16, 2023, Appellant submitted an appeal to the ZBA to make sure it met the finality requirements to appeal to this Court. However, the ZBA lacked authority to grant the use variance, and the ZBA eventually returned the application fee.

The Township Board certified the minutes of the December 11, 2023 meeting on January 8, 2024. Appellant timely filed this appeal on January 26, 2024.

On March 27, 2024, Appellant also filed an Original Complaint in Case No 24-32242-CZ, which involves substantially the same nucleus of operative facts and questions of law as the above-captioned appeal (plus a regulatory takings claim). A summary disposition motion has been filed by Howell-Mason LLC, and the hearing is pending October 3, 2024.

II. ARGUMENTS

Plaintiff raises five main arguments on which to reverse the Township Board's denial of the SLUP application, summarized as follows:

I. The denial of the SLUP application was based primarily on Ordinance 16.11(C)(8), which completely bans gas stations within 300 feet of a protected wellhead area, and that Section is unconstitutional as applied to Appellant's application because there was ample evidence in the record that the proposed gas station was safe and would not impact the environment/water quality of the community, and the other agencies had approved of the proposal, but there was no evidence in the record to support that the gas station was unsafe or would have a detrimental impact on the environment, but the Township applied a total ban of that type of business anyway (without factual support).

II. The denial of the SLUP application is not supported by substantial, material, and competent evidence in the record --- the Appellant provided a plethora of supporting documents from hired experts to say the gas station proposal was safe and the experts also presented at the meeting, but the public did not appear at the Township Board meeting to oppose the SLUP (only at the Planning Commission meeting) and the public's fears were not based on documentary support.

III. The Township Ordinance is preempted (field/implied preemption) or otherwise in direct conflict with State Regulations, and is therefore invalid

> The Safe Drinking Water Act and the Wellhead Protection Program administered by the Michigan Department of Environment, Great Lakes, and Energy (hereinafter "EGLE") provides comprehensive regulation that addresses all the concerns that might be underlying the Zoning Ordinance's prohibition on gas stations within 300 feet of a wellhead protection area, so the field is preempted and there is no room for a local Ordinance to ban the gas station.
>
> Similarly, the regulations under the Natural Resources and Environmental Protection Act (hereinafter "NREPA") regarding underground storage tanks provide robust regulation of gas station storage and prevention of wellhead contamination, and where the State would allow Appellant's SLUP, the Township cannot pass a conflicting Ordinance to prohibit it.

IV. Ordinance 16.11(C)(8) is facially unconstitutional because it completely bans one type of industry from the wellhead protection area, and not other industries that carry contamination risk, and the ban is not reasonably / rationally related to a legitimate government interest.

V. Appellant was denied equal protection because

> A. the gas station industry was totally banned from the wellhead protection area and similarly situated industries were not banned
>
> B. the Planning Commission and the Township Board never had authority to issue the SLUP but they required Appellant to attend hearings and pay application and review fees anyway.

Appellee responds with five arguments, but defines the questions before the Court in a slightly different manner, summarized as follows:

I.A-B. the Michigan Zoning Enabling Act (hereinafter "MZEA") allows the Township to pass ordinances governing the special use land permit application process, and the Township's ordinance (16.02) sets forth six criteria for the Township to evaluate whether the proposed SLUP should be granted --- and in this case, the Appellant's SLUP application failed four of the six

criteria, and there was sufficient evidence in the record to support the Board's findings on the four factors where the SLUP failed, including extensive public opposition to the gas station and MHOG's opinion that the gas station could be a hazard to the wellhead protected area.

> The Township also raises the argument that Appellant only addressed one of the factors on appeal, and so it has waived appeal of the Board's findings on the other factors.

I.C.1.a. State Law does not preempt the Zoning Ordinance, where the field of zoning is delegated to the municipal governments by the MZEA, and there is no comprehensive state legislation or regulation that governs gas station location in relation to wellhead protection areas --- the Safe Drinking Water Act, NREPA, and the Wellhead Protection Program regulate other things (related things) but do not occupy the same field as the Zoning Ordinance.

I.C.1.b. The Zoning Ordinance does not conflict with State Law --- just because a State Agency finds that the gas station would satisfy its regulations, the Township is not prevented from passing Zoning Ordinances that add some requirements.

I.C.2.a-b. Appellant does not have any protected property interest in having its SLUP granted because the gas station use was always only by special permit in that zoning district, and whether to grant a SLUP is discretionary --- ergo, Appellant cannot maintain any due process or equal protection claim. Even if Appellant had a protected property interest in the SLUP application, the Zoning Ordinance is rationally related to a legitimate government interest: maintaining the welfare of the community and ensuring compatible land uses near each other. The Appellant's expert reports that the gas station is low risk only makes the wisdom of Township's policy fairly debatable, and when that is the case, the policy should not be disturbed by the Court.

I.C.2.c. Appellant was afforded due process because the MZEA allows the municipal government to set forth the process for SLUP application, and the Zoning Ordinance 16.05-16.06 describing the process applicable here entitles an applicant to a hearing before the Planning Commission and a hearing before the Township Board. Appellant received both of those hearings and was given ample opportunity to present its experts and documentary support and answer questions at both hearings.

III. APPLICABLE LAW – Standard of Review

Appeals from determinations made by the Zoning Board of Appeals (hereinafter "ZBA") are governed by MCR 7.122. Subsection A(1) states:

> (1) This rule governs appeals to the circuit court from a determination under a zoning ordinance by any officer, agency, board, commission, or zoning board of appeals, and by any legislative body of a city, village, township, or county authorized to enact zoning ordinances.

All parties in this appeal agree that this is the applicable rule. While there was a pre-suit dispute about whether an appeal to the ZBA was required to meet the ripeness requirements, the ZBA later refunded Appellant the appeal fee, essentially admitting the ZBA did not have authority over the appeal from the Township Board's decision. All parties agree that the appeal is properly before this Court and there are no ripeness or finality issues that would preclude the Court hearing the appeal without a ZBA decision.

A local government's decision granting or denying a variance from the zoning ordinance is considered "administrative" in nature and subject to appeal in the circuit court. MCL 125.3606; *see also Sun Communities v Leroy Twp*, 241 Mich App 665, 669 (2000); *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 201 (1996). An appeal of an administrative decision is limited to the record made before the municipal body and nothing else. MCL 125.3606(1). New proofs will not be permitted on appeal. MCL 125.3606(2). In reviewing the record, the court does not review the evidence *de novo*, make credibility determinations, or weigh the evidence. *Brainard v Secretary of Health & Human Servs*, 889 F2d 679, 681 (6th Cir 1989).

Const 1963, art 6, § 28 provides in pertinent part:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

Therefore, the proper standard of review to be applied in the circuit court is whether the Planning Commission's decision was authorized by law and the findings were supported by competent, material, and substantial evidence on the whole record.

Whether a decision was "authorized by law" under the constitutional standard has been interpreted by this Court to mean "allowed, permitted, or empowered by law." *Northwestern Nat'l Cas Co v. Comm'r of Ins*, 231 Mich App 483, 488 (1998). An agency decision that is in violation of a statute or the constitution, is in excess of the statutory authority or jurisdiction of the agency, is made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious is a decision that is not authorized by law. *Northwestern Nat'l Cas, supra* at 488.

The meaning of "supported by competent, material, and substantial evidence on the whole record is discussed *infra.*

IV. ANALYSIS

A. General Authority and Requirements for Zoning Ordinances

The power of Michigan municipalities to exercise zoning authority is conferred exclusively by state zoning enabling legislation. *See, e.g., Sun Cmtys v Leroy Twp*, 241 Mich App 665, 669 (2000). The MZEA grants municipal governments broad authority to create master plans and zoning districts, with restrictions on development and land use in each. The legitimate zoning objectives as set forth in the MZEA include:

- regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land,
- to ensure that use of the land is situated in appropriate locations and relationships,
- to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities,

- to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and
- to promote public health, safety, and welfare.

See MCL 125.3201(1).

There is substantial discretion on the part of local governments in the establishment of the zoning ordinance. *Kyser v Kasson Twp*, 486 Mich 514, 541 (2010), emphasizes this point, saying that the MZEA provisions "empower localities to plan for, and regulate, a broad array of land uses, taking into consideration the full range of planning concerns that affect the public health, safety, and welfare of the community." This discretion includes, without limitation, important decisions involving:

- the nature, size, number, and location of use districts established as part of the zoning map;
- the uses permitted as of right in each district;
- the uses in each district authorized as special land uses, i.e., uses permitted subject to review and approval of standards specified in the ordinance, MCL 125.3502, and
- whether to authorize planned unit developments (PUDs) and, if so, the types of uses and/or combinations of uses permitted in such developments and the procedure and regulations applicable for their review and approval

See MCL 125.3503.

The MZEA allows the legislative body to provide for these uses as special land uses in a zoning district. MCL 125.3502(1). The ordinance must specify what standards must be met to qualify for the special use. MCL 125.3502. All special use standards, both specific and general, must be met if a permit is to be approved. *Florka v Detroit*, 369 Mich 568 (1963); *see also Whittaker & Gooding Co v Scio Twp,* 122 Mich App 538 (1983).

The standards contained in the zoning ordinance for special land uses must be consistent with and promote the intent and purpose of the zoning ordinance and ensure that the land use or activity authorized is compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards must also ensure that the land use or activity is consistent with the public health, safety, and welfare of the local unit of government. *See* MCL 125.3504(2).

B. Unconstitutional as Applied

Appellant first argues that the prohibition on gas stations within 300 feet of the wellhead protected area contained in Section 16.11(C)(8) is unconstitutional as applied. Appellant asserts that the evidence in the record before the Board demonstrated the gas station was safe to install in the wellhead protected area, but the ordinance zoned them out based on no evidence. Therefore, the ordinance is arbitrary and capricious.

A party may establish that a land use regulation is unconstitutional, either on its face or "as applied," by demonstrating "(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question." *Frericks v Highland Twp.*, 228 Mich App 575, 594 (1998). A challenge to a zoning

ordinance as unconstitutional as applied, to be distinguished from a facial challenge, alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution of government action. *See Bonner v City of Brighton, infra.*

As discussed in Section IV.E., *infra*, the record evidence is clear that there are numerous other gas stations in the surrounding area that service the community. In addition, the plain language of the Ordinance allows gas stations by special use permit in the NSC District, just not within 300 feet of the wellhead protection area. Since there is no reasonable dispute based on the record that the business of gas stations is not totally banned in the Township or even in that District, any as applied challenge arising from a claim of exclusion zoning must fail. *See Houdek v Centerville Twp*, 276 Mich App 568 (2007) (holding that when the owner of a septage facility was denied several special use permits to establish more septage facility sites in the township, his claim of exclusionary zoning automatically failed because there were other septage facilities in the Township that had been established by either SLUP or grandfathered in, and further the business owner had failed to demonstrate any community need for another septage facility).

To the extent Appellant's challenge is based on a claim that there was no record evidence to support the limitation on gas stations contained in Section 16.11(C)(8), that argument is addressed in Section IV.C., *infra.*

To the extent that Appellant's challenge is based on a claim that the ordinance is arbitrary and not rationally related to a government purpose, that is essentially a due process claim. Substantive due process requires that an ordinance "be rationally related to a legitimate governmental interest." *Landon Holdings, Inc. v Grattan Twp.*, 257 Mich App 154, 173, 177 (2003). "The essence of a claim of violation of substantive due process is that the government may not deprive a person of liberty or property by an arbitrary exercise of power." *Id.* at 173.

In *Conlin v Scio Twp*, 262 Mich App 379 (2004), the Court of Appeals cited *TIG Ins., Inc. v. Dep't of Treasury*, 464 Mich. 548, 557–558 (2001), to explain what constitutes arbitrary restriction on property use, stating:

> Rational basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Crego v. Coleman*, 463 Mich. 248, 260 (2000). Rather, it tests only whether the legislation is reasonably related to a legitimate governmental purpose. The legislation will pass "constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Id.* at 259–260.

The *Houdek v Centerville Twp* Court readily identified protecting the health, safety, and welfare of the community as a legitimate government interest, and viable basis for a zoning ordinance. In that particular case, the Court of Appeals found that the local ordinance regarding septage facilities was rationally related to a legitimate government interest of protecting human health and the environment.

This case is much the same. Section 16.11(C)(8) is rationally related to protecting human health and the environment – including the drinking water in the community aquifer, as well as preventing noise and light pollution, and great traffic jams. The record supports that these were the concerns underlying Section 16.11(C)(8) --- see TWP000327-330, TWP000253-265. MHOG's May 19, 2023 report also supports that the maintenance of health in the community was a concern in this particular SLUP application. TWP000331-332. Like in *Houdek*, the regulation of placement of gas stations is rationally related to the legitimate government interest of protecting the community's health, and there were facts in this particular SLUP application that were presented to the Board that supported the ordinance. Therefore, 16.11(C)(8) was not arbitrary or capricious. It did not violate any due process rights of Appellant. Section 16.11(C)(8) is not unconstitutional as applied.

C. Not Supported by Material, Competent, and Substantial Evidence on the Whole Record

The standard of review in appeals from a township zoning decision requires that the decision be supported by competent, material, and substantial evidence on the record as a whole. *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195 (1996). Substantial evidence is evidence that a reasonable person would accept as sufficient to support a conclusion. It is "more than a scintilla" but can be substantially less than a preponderance. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 72 (1998).

On appeal, the factual findings of the lower tribunal are to be accorded deference. *Great Lakes Society v. Georgetown Charter Twp.*, 281 Mich App 396, 408 (2008); *see also Norman Corp. v. East Tawas*, 263 Mich App 194, 198 (2004). When there is substantial evidence in the record to support the lower tribunal's decision, the Circuit Court may not substitute its discretion for that of the administrative agency. *See e.g., Black v. Dep't of Social Services*, 195 Mich App 27, 30 (1992). The court should not "set aside findings merely because alternative findings also could have been supported by substantial evidence on the record." *In re Payne*, 444 Mich 679, 692 (1994).

It is true that the Appellant did all they could to place into the record below evidence from their hired experts opining that the gas station was safe and posed no risk to the aquifer. Appellant offered, *inter alia,* the report of its hydrogeology expert from Mannik Smith Group. See TWP000394-402. Appellant also submitted a letter from PLB Planning Group, opining that the gas station prohibition in Section 16.11(C)(8) was unreasonable. TWP000368-69. Appellant brought experts to the Board meeting to present about the technical aspects of the underground storage tanks and the hydrogeological conditions of the area. TWP000788-807. The Board had a large amount of evidence before it that the proposed gas station would not negatively impact the wellhead or water safety.

However, the Board was also presented with some twenty-five letters from members of the community opposing the gas station --- citing a plethora of concerns for water safety, as well as light and noise pollution, and increased traffic at an already high-traffic location. See TWP000342-357, 361-365. Many members of the public appeared at the Planning Commission meeting and spoke out against the gas station. TWP000708-725, 741-745, 747-748. One member of the community even cited to a gas leak that occurred at a Mugg & Bopp's gas station in the last few years, leaking some 1000 gallons of gas into the ground. MHOG also submitted a report that disapproved of the gas station, citing potential hazards to the aquifer and citing potential negative impact of an additional wellhead site in the reserve area. See TWP000331-332. The Planner's Report from 8/16/23 and the Engineer Report form 8/14/23 were also considered by the Planning

Commission and included in the recommendation the Planning Commission made to the Board.

Looking at the entire record, there was clearly evidence in the record in support of the Board's findings that the gas station was not harmonious with the future use of the District and not harmonious with the surrounding community. There is also record evidence that granting the SLUP application would be hazardous or would adversely impact the surrounding community. There is evidence that weighs in favor of the opposite conclusion as well. But the Court does not review the factual findings of the Board *de novo*, and the Court may not substitute its own judgment based on its own weighing of the evidence. The record contains far more than a scintilla of evidence supporting the Board's findings. Substantial, material, and competent evidence appears in the record to support the findings of the Board. Therefore, the Court must affirm the lower tribunal.

D. Preempted by State Law / Conflicting with State Law

Appellant challenges Section 16.11(C)(8) as being preempted by State Law or in conflict with State Law, but then selectively defines the field of regulation to be those areas of State Law that regulate drinking water and wellhead protection --- areas of law in which are notoriously comprehensively regulated by the State. Appellant's definition of the "field" is erroneous at best or deliberately misleading at worst. The Zoning Ordinance does not seek to regulate water safety standards. It does not seek to regulate where wellhead protection areas are established or how they are protected. The Zoning Ordinance seeks to regulate where certain commercial uses can be operated in the Districts. Appellant's unwritten underlying premise – that any municipal regulation that arises from a concern for environmental protection is itself an environmental regulation – is fundamentally flawed, and it renders their entire analysis faulty.

A municipality is precluded from enacting an ordinance if 1) the ordinance is in direct conflict with the state statutory scheme, or 2) if the state statutory scheme preempts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation. *People v Llewellyn*, 401 Mich 314 (1977). *See also Addison Twp v Gout*, 435 Mich 809 (1990) (holding that the DEQ's Supervisor of Wells did not have exclusive authority over the entire oil and gas production process, just the drilling, completion, and operation of oil and gas wells, and so the Township's ordinance about where the company that operated the gas line could build its pipeline was not preempted by the state regulations).

The *Llewellyn* Court looked at four factors to determine whether local government action is preempted:

> First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is preempted.
>
> Second, preemption of a field of regulation may be implied upon an examination of legislative history.
>
> Third, the pervasiveness of the state regulatory scheme may support a finding of preemption. While the pervasiveness of the state regulatory scheme is not generally

> sufficient by itself to infer preemption, it is a factor which should be considered as evidence of preemption.
>
> Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest.
>
> As to this last point, examination of relevant Michigan cases indicates that where the nature of the regulated subject matter calls for regulation adapted to local conditions, and the local regulation does not interfere with the state regulatory scheme, supplementary local regulation has generally been upheld.
>
> However, where the Court has found that the nature of the subject matter regulated called for a uniform state regulatory scheme, supplementary local regulation has been held preempted.

Here, the Safe Drinking Water Act, NREPA, and the Wellhead Protection Program do not explicitly provide that the State's authority to regulate land use is exclusive. Indeed, the MZEA entrusts land use regulation to the municipalities.

No legislative history has been provided or argued.

The Safe Drinking Water Act specifies that the EGLE must "promulgate and enforce rules to carry out this act pursuant to the administrative procedures act of 1969, 1969 PA 306, [MCL 24.201–.328]. The rules, at a minimum, shall include … [s]tate drinking water standards and associated monitoring requirements, the attainment and maintenance of which are necessary to protect the public health." MCL 325.1005(1)(b).

NREPA is an aggressively extensive statute with even more extensive regulations promulgated by EGLE. NREPA includes standards of conduct for environmental issues ranging from underground tanks (Parts 211 and 213) to air emissions (Part 55) to wetlands filling and dredging, development in and certain uses of inland lakes, MCL 324.30101 *et seq.*; the use and preservation of wetlands, MCL 324.30301 *et seq.*; point source pollution control relating to water resources, MCL 324.3101 *et seq.*; construction and operation of facilities for the disposal of solid waste, MCL 324.11115 *et seq.;* generation, disposal, storage, treatment, and transportation of hazardous waste, MCL 324.11101 *et seq.*; and sand dune protection and management, MCL 324.35301 *et seq*. While the Safe Drinking Water Act and NREPA have extensive regulations promulgated and administered by the agency, the Acts do not regulate land use so pervasively that it dominates the field. *See also Houdek, supra*, which upheld a local government land use regulation of an industry that was pervasively regulated by the MDEQ (and the MDEQ had approved the application in Houdek as well); *see also Divergilio v Charter Twp v West Bloomfield*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2006 (Docket No. 261766) (holding that NREPA did not preempt a local ordinance regarding filling of wetlands). While *Divergilio* is an unpublished opinion and thus not binding on this Court, the Court does find that the Court of Appeals' reasoning about NREPA not preempting the field to be persuasive.

As to the fourth factor, in the *Llewellyn* case, the Court found that the regulation of what constitutes indecent behavior or obscene material for purposes of criminal penalties was the type of regulation that called for uniformity across the state, so local ordinances were preempted. However, in this case, the land use regulations are meant to be, and demand to be, tailored to the local conditions. *See City of Detroit v Qualls*, 434 Mich 340 (1990) (holding the local ordinance fireworks regulation were not preempted by the state law, even though the state law was pervasive, when the location and number of retailers of fireworks was a local concern that required local tailoring of conditions). Hence MZEA leaving that zone of authority to the local governments. Therefore, none of the *Llewellyn* factors support a finding of preemption.

***1. Fonda Island & Briggs Lake Joint Water Authority v Green Oak Twp*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2005 (Docket Nos. 248592 and 248621)**

Appellant argues under Section D (preemption/conflict with state law) that *Fonda Island & Briggs Lake Joint Water Authority v Green Oak Twp* is right on point, and it provides the "perfect outline for how the court should analyze this case."

Appellant would struggle to be more incorrect. In *Fonda Island*, the planning commission approved the SLUP for a gas station right across the street from the water authority and their wellhead, over the water authority's vehement objection. But it's only the type of land use that was being requested and the proximity to the wellhead that are similar to this case.

All the legal analysis is completely distinguishable from this case.

The primary issue in the *Fonda Island* case was whether the water authority was denied due process because it was not noticed for the initial planning commission hearing, and it was not allowed to present its case again to new members of the commission at a subsequent hearing. The Court of Appeals found the water authority was not entitled to the initial notice and was not entitled to have equal time to speak as other presenters at the planning commission hearing, so the water authority was not denied due process.

The water authority also challenged that the planning commission granting the SLUP violated regulations under the Safe Drinking Water Act and the Underground Storage Tank regulations. The Court of Appeals declined to decide the substantive issue, instead finding the water authority did not have standing to bring challenges to violations of the regs. In a footnote, the Court of Appeals found that the planning commission's approval of the SLUP did not violate the regs, but still preemption was never addressed.

Finally, the Court of Appeals found that the planning commission's decision was supported by substantial evidence on the whole record, giving a cursory summary of the evidence presented and finding it was sufficient.

The legal analysis in *Fonda Island* has nothing to do with the challenges Appellant raises in this appeal. *Fonda Island* is an unpublished case, so it is not binding, and because it is so wildly distinguishable in terms of the legal issues raised and the analysis conducted, it

is not persuasive in the least.

E. Facially Unconstitutional

Appellant tries to frame this argument in terms of exclusionary zoning. The MZEA prohibits a municipality from enacting an ordinance or making a zoning decision that has the effect of totally prohibiting a lawful land use where there is a demonstrated need for the use in the municipality or its surrounding area, unless there is no appropriate location for the use in the community. MCL 125.3207. *See also English v Augusta Twp*, 204 Mich App 33 (1994) (excluding mobile home parks in practical effect even in if not letter of the ordinance).

While exclusionary zoning is unconstitutional on its face, the Zoning Ordinance at issue in this case does not completely ban gas stations from the Township. It does not even ban gas stations from the Neighborhood Services Commercial District. It only carves out an area around the wellhead where gas stations cannot be built. Since the Zoning Ordinance does not completely exclude gas stations, it cannot be facially unconstitutional for exclusionary zoning.

The landowner in an exclusionary zoning case must establish the specific public need for the particular land use in the area. Need may be negated if the use is available in the surrounding area (not merely within the specific municipality). And the landowner must also establish that the particular parcel is suitable for the use. *See Adams Outdoor Adver, Inc v City of Holland*, 234 Mich App 681, 698 (1999), aff'd, 463 Mich 675 (2001) clarified that need is not the landowner's desire for a particular use, but instead a "public need." *See also Outdoor Sys, Inc v Oakland Circuit Court Clawson*, 262 Mich App 716, 721 (2004).

The record supports that there are several other gas stations in the surrounding area. Indeed, there are two Mugg & Bopp's locations within driving distance of the Appellant's parcels at Burkhart and Mason. Since there are other gas stations in the community – indeed other Mugg & Bopp's locations in the community – the Appellant cannot sustain its implied claim that there is a public need for a gas station and drive thru within 300 feet of the wellhead.

Stripped of its thin veneer of exclusionary zoning, Appellant's argument is just a facial challenge to Section 16.11(C)(8), which leaves Appellant with a heavy burden to carry. When faced with several challenges to an ordinance, the trial courts have been cautioned by the Michigan Supreme Court to steer away from overturning the ordinance on grounds of it being facially unconstitutional unless the particular facts of the render that decision necessary. *See Bonner v City of Brighton*, 495 Mich 209, 221 (2014). Similarly, every reasonable presumption of constitutional validity should be applied, and the ordinance should only be invalidated where there is no reasonable doubt it is unconstitutional in every situation. *Id.*

A party challenging the facial constitutionality of an ordinance "faces an extremely rigorous standard." *Judicial Attorneys Ass'n v Michigan,* 459 Mich 291, 310 (1998). To prevail, plaintiffs must establish that " 'no set of circumstances exists under which the [ordinance] would be valid' " and " '[t]he fact that the ... [ordinance] might operate unconstitutionally under some conceivable set of circumstances is insufficient' " to render it invalid. *Council of Orgs & Others for Ed. About Parochiaid Inc v Governor*, 455 Mich 557, 568 (1997). Indeed, " 'if any state of facts reasonably

can be conceived that would sustain [the ordinance], the existence of the state of facts at the time the law was enacted must be assumed' " and the ordinance upheld. *Id* at 568-69.

Here in this case, Howell Township has a legitimate interest in protecting the general welfare of the community and in locating land uses in compatible locations to other land uses. That legitimate interest of the municipal government is enshrined in the MZEA itself. MCL 125.3201(1). The regulation of the location of gas stations, which involve gasoline run off and gasoline storage tanks, in relation to the community groundwater aquifer is reasonably related to the MZEA's stated goal of allowing municipalities to establish zoning ordinances to protect the general public safety, health, and welfare. Appellant even seems to acknowledge this in its brief. Furthermore, the record supports that the Board had before it a report from MHOG disapproving of Appellant's proposal, citing potential hazards to the aquifer and a possible other wellhead site in the reserve area. Since the government interest the Township acted under in denying the SLUP application was a legitimate government interest, and the record supports that there was some connection between the interest sought to be protected and the ban on gas stations in the wellhead reserve area, the ordinance cannot be facially unconstitutional.

A party raising a facially unconstitutional argument to a zoning ordinance bears a heavy burden to show the ordinance should be invalidated. Here, Appellant has certainly not carried that burden. In fact, Appellant has only made broad sweeping statements that the ordinance is unconstitutional, and the Court should overturn it because the particular expert report the Appellant presented to the Board was more persuasive than the other evidence presented to the Board. Appellant has been unable to show that the ordinance is not rationally related to a legitimate government interest in every scenario. This challenge must be rejected.

F. Equal Protection and Due Process

Appellant's claim that it was denied equal protection under the law and was not afforded due process also fails. Appellee is exactly correct that in order to sustain a claim for violation of the 14th Amendment or for other deprivation of due process, the Appellant must demonstrate that the Appellant has some property right or liberty interest that is protected by the 14th Amendment. *See Mettler Walloon LLC v Melrose Township*, 281 Mich App 184 (2008); *see also Kyser v Township*, 486 Mich 514 (2010). Without that threshold showing of a constitutionally protected right held by the party, the claim that deprivation of the interest violates some constitutional mandate evaporates.

Here, Appellant cannot show that it had a protected property or liberty interest that was curtailed or impugned by the Board's decision to deny the SLUP application exactly because it was a SLUP application. A property owner does not have any protected property right to have a discretionary application of land use variance or special permit granted. *See Mettler Walloon LLC supra; see also Triomphe Investors v City of Northwood*, 49 F3d 198 (1995); *see also Silver v Franklin Twp Bd of Zoning Appeals*, 966 F2d 1031 (1992); *see also GM Engineers and Associates Inc v West Bloomfield Twp*, 922 F2d 328 (1990). The plain language of the Zoning Ordinance makes the granting of a SLUP application discretionary.

In *Green Genie Inc v City of Detroit*, 599 F. Supp 3d 544 (2022), the US District Court for the

Eastern District of Michigan held:

> First, the plaintiffs had no protected property interest in obtaining a special land use permit, because it is clear from the undisputed record that they never had any legitimate entitlement to such a use, which expressly is prohibited by the City's zoning ordinance. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire" and "more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Town of Castle Rock, Colo. v. Gonzales,* 545 U.S. 748, 756, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005) "[A] pending application for a building permit does not create a property interest where the zoning authorities have discretion to deny the application or limit the use of property." *Tuscola Wind III, LLC v. Almer Charter Twp.*, 327 F. Supp. 3d 1028, 1042 (E.D. Mich. 2018). "[A] protectible property right exists only if a plaintiff has a legitimate claim of entitlement or a justifiable expectation in the approval of his [p]lan" for use of the property, and the Court "must look to state zoning laws to determine whether a legitimate claim of entitlement or a justifiable expectation exists." *Andreano v. City of Westlake*, 136 F. App'x 865, 871 (6th Cir. 2005). "Such a property interest would exist [ ] if the board's discretion were so circumscribed that approval of the plaintiff's proposed use of the property became mandatory once he complied with the minimal requirements imposed on him." *Brown v. City of Ecorse*, 322 F. App'x 443, 445-46 (6th Cir. 2009).

The District Court went on to hold that the applicant was seeking a special use permit to build and operate a marijuana dispensary site on his parcel, but his parcel was within 1000 feet of a school. The application zoning ordinance specifically forbade marijuana dispensaries within 1000 feet of a school, so not only did the applicant not have a justifiable expectation that his application for special permit would be granted, he in fact could never have had any reasonable expectation it would have been granted. The ordinance mandated the denial of the application.

While federal District Court opinions are not binding precedent on this Court, the *Green Genie Inc* decision is highly persuasive because the facts are so analogous to the case now before this Court. Here, the use that Appellant sought to have granted by the SLUP was specifically prohibited by the Ordinance where the Appellant's property is located. Applying the same reasoning, Appellant could have never had any reasonable expectation that the SLUP would be granted.

In *Bosscher v Township of Algoma*, 246 F Supp 2d 791 (2003), the federal court held that the property owner had no justifiable expectation that his special use permit for a 180-foot tall radio tower would be granted, when the ordinance gave discretion to the planning commission to grant or deny requests from property owners seeking a 50+ foot tall radio tower. That discretionary standard remained even when the applicant met all the specific conditions in the ordinance, because the ordinance contained general conditions as well. Because he had no justifiable expectation or claim of entitlement to have his special permit granted (because the ordinance contained a discretionary standard), he could not maintain either his substantive, nor his procedural due process claim.

Looking at the established law, and the persuasive law, and the record below, there is no other

conclusion that can be reached than that Appellant did not have a justifiable expectation that the SLUP application would be granted. Since Appellant lacks any legitimate entitlement to develop the parcels into a gas station, when such use is only permitted by special permit and the standard in 16.02 remains discretionary, Appellant's claims of lack of due process and lack of equal protection under the law are without merit.

V. CONCLUSION

For all the reasons set forth above, and after review of the filings by both parties, and review of the entire record from the lower tribunal, and after hearing oral arguments, and the Court being fully advised in the premises, the Court concludes the following:

1. Zoning Ordinance Section 16.11(C)(8) was not arbitrary or capricious. It did not violate any due process rights of Appellant. Section 16.11(C)(8) is not unconstitutional as applied. The decision was authorized by law, and was supported by material, competent, and substantial evidence on the whole record.
2. There was sufficient evidence in the record in support of the Board's findings that the gas station was not harmonious with the future use of the District and not harmonious with the surrounding community. There is also sufficient record evidence that granting the SLUP application would be hazardous or would adversely impact the surrounding community. Substantial, material, and competent evidence appears in the whole record to support the findings of the Board.
3. The Howell Township Zoning Ordinance is not preempted by State Law and the Zoning Ordinance is not in conflict with the State Law.
4. Appellant has failed to carry the heavy burden of showing a zoning ordinance is facially unconstitutional. Appellant has been unable to show that the ordinance is not rationally related to a legitimate government interest in every scenario. The challenge to the Zoning Ordinance Section 16.11(C)(8) that it is facially unconstitutional is rejected as without merit.
5. Appellant did not have a justifiable expectation that the SLUP application would be granted. Since Appellant lacks any legitimate entitlement to develop the parcels into a gas station, Appellant's claims of lack of due process and lack of equal protection are rejected without merit.

Therefore, the arguments on appeal are rejected. The decision of the Township Board is AFFIRMED.

This Court does not retain jurisdiction. *This is a final order that closes the case.*

IT IS SO ORDERED.

9-16-2024

Hon. Matthew J. McGivney (P63325)
Chief Circuit Court Judge

EXHIBIT M

Court of Appeals, State of Michigan

ORDER

HOWELL-MASON L.L.C. V HOWELL TOWNSHIP

Docket No. 372773

LC No. 24-000350-AA

Stephen L. Borrello
Presiding Judge

Colleen A. O'Brien

Christopher P. Yates
Judges

The motion to file a late answer is GRANTED and the answer filed on November 25, 2024, is accepted.

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 11, 2025
Date

Chief Clerk

EXHIBIT N

Order

Michigan Supreme Court
Lansing, Michigan

August 29, 2025

168460

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

HOWELL-MASON, LLC,
Plaintiff-Appellant,

v

SC: 168460
COA: 372773
Livingston CC: 24-000350-AA

HOWELL TOWNSHIP,
Defendant-Appellee.

_____/

On order of the Court, the application for leave to appeal the April 11, 2025 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

b0825

I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 29, 2025

Clerk

EXHIBIT O

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON LLC,

Plaintiff,

v.

Case No. 2024-32242-CZ
Hon. Matthew J. McGivney

HOWELL TOWNSHIP,

Defendant.
_____/

ORDER RE: DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the Courthouse,
City of Howell, County of Livingston,
State of Michigan, on the 16th day of January, 2025.

PRESENT: HONORABLE MATTHEW J. McGIVNEY
CHIEF CIRCUIT COURT JUDGE

THIS MATTER HAVING COME BEFORE THE COURT on January 16, 2025 for a hearing on Defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8), and the Plaintiff having filed a response brief, and Defense having filed a reply brief, and the Court having reviewed the filings and all relevant portions of the record, and the parties having appeared before the Court for the hearing and having presented oral arguments, and the Court being otherwise fully advised in the premises;

NOW THEREFORE IT IS ORDERED that for the reasons set forth on the record, Defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) is dismissed without prejudice.

IT IS FURTHER ORDERED that for the reasons set forth on the record, Defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) is GRANTED IN PART – specifically as to Counts IV, VII, and VIII – and accordingly Counts IV, VII, and VIII are DISMISSED with prejudice.

IT IS FURTHER ORDERED that for the reasons set forth on the record, Defendant's remaining arguments for summary disposition as to Counts I, II, III, V, VI, and IX, being actually C(10) arguments and summary disposition under C(10) being premature at this time, are DENIED without prejudice.

IT IS FURTHER ORDERED that for the reasons set forth on the record, any relief sought by the motion, the response, and/or the reply which has not been specifically granted in

this Order is DENIED.

IT IS SO ORDERED.

This is not a final order and does not close the case.

1-16-2025

Honorable Matthew J. McGivney (P63325)
Chief Circuit Court Judge

EXHIBIT P

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON LLC,

Plaintiff,

v.

HOWELL TOWNSHIP,

Defendant.
_____/

Case No. 2024-32242-CZ
Hon. Matthew J. McGivney

ORDER RE: DEFENDANT'S MOTION FOR LEAVE TO FILE FIRST AMENDED AFFIRMATIVE DEFENSES

At a session of said Court held in the Courthouse,
City of Howell, County of Livingston,
State of Michigan, on the 27th day of February, 2025.

PRESENT: HONORABLE MATTHEW J. McGIVNEY
CHIEF CIRCUIT COURT JUDGE

THIS MATTER HAVING COME BEFORE THE COURT on February 27, 2025 for a hearing on Defendant's motion for leave to file first amended affirmative defenses, and the Plaintiff having filed a response brief, and the Court having reviewed the filings and all relevant portions of the record, and the parties having appeared before the Court for the hearing and having presented oral arguments, and the Court being otherwise fully advised in the premises;

NOW THEREFORE IT IS ORDERED that for the reasons set forth on the record, Defendant's motion for leave to file first amended affirmative defenses is GRANTED, and that Defendant shall so file within seven (7) calendar days of the date of this Order.

IT IS FURTHER ORDERED that for the reasons set forth on the record, any and all relief requested in the motion and/or in the response that is not expressly granted by this Order is DENIED.

IT IS SO ORDERED.

This is not a final order and does not close the case.

2-27-2025

Honorable Matthew J. McGivney (P63325)
Chief Circuit Court Judge

EXHIBIT Q

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
a Michigan Limited Liability Company,

Plaintiff,

v

HOWELL TOWNSHIP,
a Michigan General Law Township,

Defendant.
/

Case No. 24-32242-CZ

HON. MATTHEW J. McGIVNEY

REPORT AND RECOMMENDATION

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REPORT AND RECOMMENDATION

Attendees	Representing
Hon. Michael P. Hatty (ret)	Mediator
Eric P. Conn	Howell Township
David J. Szymanski	Howell Township
Jonathan Hohennstein	Howell Township
Paul E. Burns	Howell-Mason, LLC
Jeffrey D. Alber	Howell-Mason, LLC
Todd Lekander	Howell-Mason, LLC
T.J. Lekander	Howell-Mason, LLC
Lekander	Howell-Mason, LLC

This matter having come before Mediator Honorable Michael P. Hatty (ret) by Order of the Court for Mediation for a Report and Recommendation regarding outstanding discovery issues, and the parties having met on two occasions for mediation:

1. The parties reached an agreement to resolve the outstanding written discovery issues and Plaintiff Howell-Mason, LLC, provided sufficient written discovery responses to Defendant Howell Township with respect to those issues; and,
2. Defendant Howell Township shall have the right to notice the depositions of Todd Lekander, Paul LeBlanc, and Greg Buhoveckey at a mutually agreeable time, and Defendant Howell Township shall be responsible for the expert fees associated with expert depositions consistent with the Michigan Court Rules.

Paul E. Burns (P31596)
Jeffrey D. Alber (P76530) 9/22/25
Nik Lulgjuraj (P48879)
Attorneys for Plaintiff

Eric P. Conn (P64500)
David J. Szymanski (P86525) 9/22/25
Attorneys for Defendant

Mediator Honorable Michael P. Hatty (Retired) 9-22-25

EXHIBIT R

STATE OF MICHIGAN
IN THE 44th CIRCUIT COURT
FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
A Michigan Limited Liability Company,

Plaintiff,

v.

HOWELL TOWNSHIP,
A Michigan General Law Township,

Defendant.

Case No. 24-32242-CZ

Hon. Matthew J. McGivney

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PLAINTIFF's ANSWERS TO DISCOVERY REQUESTS PER MEDIATED AGREEMENT

1. Profit and loss statements for the last five years for Mugg and Bopp;

    a. **Answer: Please see attached. Mugg&Bopps historical financial information prepared by Patrick Hanniford, CPA, using data from locations with like market conditions to our proposed Howell township location. This is part of trial prep which is not yet complete. A forensic**

7. Regarding interrogatory number 12, identify all landowners who are similarly situation as to your equal protection claim;

Answer: Unknown.

8. Regarding interrogatory number 15, provide the basis that the open meeting action remains on-going; and

Answer: Based on Defendant's conduct at meetings of various boards it is reasonable to infer said conduct persists.

9. Regarding interrogatory number 16, identify when Plaintiff made each of its investments in the subject property.

Answer:

1. **3958 Mason Road: February 2, 2017**
2. **70 Burkhart Road: November 11, 2021**
3. **160 Burkhart Road: February 15, 2023**

[Signature to follow]

TODD J. LEKANDER, II

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON)

Sworn and signed before me by TODD J. LEKANDER, II, in his capacity as member of HOWELL-MASON, LLC, on August 14, 2025.

Mary Macdonald

Mary Macdonald, Notary Public
Livingston, County, Michigan
My commission expires: 12/02/2026
Acting in the County of Livingston

Mary Macdonald
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF Livingston
My Commission Expires 12/02/2026
Acting In the County of Livingston

EXHIBIT S

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON LLC,

Plaintiff,

v.

Case No. 2024-32242-CZ
Hon. Matthew J. McGivney

HOWELL TOWNSHIP,

Defendant.
_____/

OPINION AND ORDER RE: PLAINTIFF'S MOTION FOR RECONSIDERATION OF THIS COURT'S DECISION ON SUMMARY DISPOSITION
AND
RE: PLAINTIFF'S MOTION FOR RECONSIDERATION OF THIS COURT'S DECISION ON DEFENDANT'S MOTION FOR LEAVE TO AMEND

At a session of said Court held in the Courthouse,
City of Howell, County of Livingston,
State of Michigan, on the 7th day of May, 2025.

PRESENT: HONORABLE MATTHEW J. McGIVNEY
CHIEF CIRCUIT COURT JUDGE

THIS MATTER HAVING COME BEFORE THE COURT upon Plaintiff's motion for reconsideration of this Court's January 16, 2025 decision granting summary disposition in favor of Defendant on Counts IV, VII, and VIII, and upon Plaintiff's motion for reconsideration of this Court's February 27, 2025 decision granting Defendant's motion for leave to file first amended affirmative defenses, and the Court having reviewed the motions and briefs in support, along with the attached exhibits to the respective motions, and the Court having reviewed the record, and the Court being otherwise fully advised in the premises, the Court now issues this Opinion and Order DENYING Plaintiff's motion for reconsideration of this Court's order granting partial summary disposition and DENYING Plaintiff's motion for reconsideration of this Court's order granting leave to amend the Defendant's affirmative defenses, for all the reasons set forth in detail below.

I. BACKGROUND

Plaintiff owns three parcels in Howell Township, out at the corner of Burkhart and Mason Rd. Two of the parcels are zoned Neighborhood Services Commercial (NSC) and one is zoned rural/low density residential (but that parcel is not at issue in this case).

In 2017, Plaintiff bought up these lots, intending to build a Mugg & Bopps gas station, convenience store, and drive-thru fast-food restaurant on the two lots zoned NCS (with the

residential lot being used for the in/out ramp). However, while the NCS zone allows convenience stores by right, the gas station and the drive-thru are only permitted by special permit. In addition, the lots are located within 300 feet of the MHOG wellhead, and the Zoning Ordinance does not permit gas stations within 300 feet of the wellhead.

In 2020, Plaintiff had some initial talks with the Township about putting the gas station/convenience store/drive thru at that location, and some unidentified person told them verbally it could be done, but Plaintiff would need a use variance. Plaintiff applied for the use variance and was denied. Plaintiff asked for the Zoning Ordinance to be amended to allow gas stations in the wellhead protected area with MHOG's approval, but the Township denied the request. The record from the Township meeting shows that there was significant community opposition to the variance request and/or the request to amend the Ordinance.

The Township later sent an amended Ordinance drafted by MHOG to the Planning Commission. Eventually a version of the ordinance was adopted, but with modifications that were not favorable to Plaintiff (i.e. the Commission did not adopt the proposed language to allow gas stations in the wellhead protection area).

Plaintiff tried again in June 2023, submitting a special land use permit (hereinafter "SLUP") to the Planning Commission. It was bare bones, so Plaintiff hired counsel and sent in a hefty supplement in mid-October 2023. Back in February 2023, MHOG had approved of the application with conditions, but then in May 2023, it retracted its approval. On November 15, 2023, MHOG also held a public meeting and determined that the SLUP/site plan proposed by Plaintiff was inappropriate.

On November 21, 2023, the Planning Commission held a public meeting on the SLUP application, and there was *substantial* community opposition both at the meeting and submitted in writing beforehand. The Planning Commission recommended denial of the application based on the prohibition in the Ordinance for gas stations within 300 feet of a protected wellhead area.

On December 11, 2023, the Township Board held a meeting and voted to deny the SLUP application and site plan proposal.

On December 16, 2023, Plaintiff submitted an appeal to the Zoning Board of Appeals (ZBA) to ensure that it met the finality requirements to appeal to this Court. However, the ZBA lacked authority to grant the use variance, and the ZBA eventually returned the application fee.

The Township Board certified the minutes of the December 11, 2023 meeting on January 8, 2024. Plaintiff timely filed an appeal on January 26, 2024. *See* Case No. 24-350-AA. The Court held oral argument on August 15, 2024, and issued a written opinion denying the appeal on September 16, 2024. Howell-Mason LLC filed a delayed application for leave to appeal in the Court of Appeals (Docket No. 372773), and the appellate court denied leave on April 11, 2025. Howell-Mason LLC is presently seeking application for leave to appeal in the Michigan Supreme Court (Docket No. 168460).

On March 27, 2024, Plaintiff also filed an Original Action in Case No. 24-32242-CZ, based

upon the same underlying transaction/occurrence as the appeal from the Township Board decision. Plaintiff even acknowledges this in its pleadings. The Original Action arises from and involves all the same facts and legal arguments as the Appeal from the Township Board, plus a regulatory takings claim and a claim for violation of the Open Meetings Act. Summary disposition in the Original Action was filed in the end of July of 2024, and originally set for hearing on October 3, 2024, but then the Defense withdrew the first dispositive motion so it could re-brief the issues, based on the Court's opinion in the Appeal case. A new summary disposition motion was filed November 13, 2024. Plaintiff answered on January 9, 2025. Defendant filed a reply on January 13, 2025, but failed to provide a Judge's Copy.

This Court heard oral arguments on January 16, 2025, and ruled from the bench that the summary disposition motion was granted in part and denied in part. The Court found that the C(7) argument was premature, and denied it without prejudice, specifically noting that Plaintiff had argued waiver of the res judicata argument in the response to Defendant's dispositive motion, but since Defendant's motion to amend its affirmative defenses was pending, a finding was waiver was inappropriate. The Court granted C(8) summary disposition on Counts IV, VII, and VIII. The Court also denied the C(8) portion of the dispositive motion on Counts I, II, III, V, VI, and IX on the grounds that those arguments were really C(10) arguments wearing C(8) clothing, and thus the arguments were premature while discovery remained open.

Plaintiff Howell-Mason LLC filed a timely motion for reconsideration on February 5, 2025, and the Court took it under advisement. In its motion for reconsideration, Plaintiff re-argues many of the same arguments it made to oppose the original dispositive motion --- namely that Defendant cannot prove the elements of res judicata or collateral estoppel because the claims in this Original Action *should not*[1] have been decided on the merits by the Court in the Appeal. Plaintiff continues that this Court focused too much on the headings in the First Amended Complaint when it struck Count VIII (permanent injunction) for not stating a cause of action because the substance of Count VIII pleaded the required statutory language for a permanent injunction. As to Count IV, Plaintiff asserts that the Court should have allowed Plaintiff to maintain a non-existent cause of action because Defendant engaged in some conspiracy by writing their agenda items "in code" in order to avoid the requirements of MZEA. Plaintiff asks the Court to deny Defendant's C(7) arguments with prejudice, and to reinstate Counts IV, VII, and VIII.

Before the dispositive motion was even heard, Defendant filed a motion for leave to amend its pleadings, seeking specifically to add a res judicata and collateral estoppel defense to its affirmative defenses. Due to docket congestion, a hearing on such motion was not able to be held until February 27, 2025. The parties appeared for the hearing on Defendant's motion for leave to amend and placed their oral arguments on the record. After hearing the arguments and having already reviewed all the briefing, this Court ruled from the bench to grant Defendant's motion for

[1] Plaintiff repeatedly argues that the claims in the Original Action cannot have been decided on the merits in Case No. 24-350-AA, but that is a misstatement, because the majority of the claims were actually fully litigated and adjudicated in the Appeal from the Township Board. Plaintiff's position that the claims litigated and adjudicated in the Appeal "cannot" have been adjudicated in the Appeal is based upon one sentence in *Houdini Properties LLC v City of Romulus*, 480 Mich 1022 (2008) which suggests several of the issues raised by Howell-Mason LLC in the Appeal were beyond the scope of what a Circuit Court *should* typically review in an appeal from a lower tribunal. Plaintiff extrapolates from *Houdini Properties LLC* that it is entitled to a second bite at the proverbial apple now in this Original Action, raising the same claims again and seeking a different disposition.

leave to file first amended affirmative defenses. Alson on February 27, 2025, this Court entered a short written order to memorialize its ruling on the motion from the bench, and further directing Defendant to file those amended affirmative defenses within seven (7) calendar days of the date of the Order. Defendant did file those amended affirmative defenses on March 6, 2025.

On March 18, 2025, Plaintiff filed a motion for reconsideration of the Court's February 27, 2025 decision to allow Defendant to amend its affirmative defenses, asserting that the amendment is futile because the elements of res judicata cannot be met since the Counts were not fully litigated to judgment in the AA case. Plaintiff further argues that the Court could not render a decision on the merits regarding Defendant's res judicata argument, because the doctrine of res judicata asks the Court to avoid a decision on the merits in the second case. Plaintiff goes on that the Court made a mistake of law in holding it would reach a decision on the res judicata/collateral estoppel defenses on the merits, because the time to decide whether an argument is futile is at the motion to amend. Finally, Plaintiff argues that the deposition of Greg Tatara, the Director of MHOG, has revealed Plaintiff's claims on Counts IV, VII, and VIII to be meritorious. For all those reasons, Plaintiff asks this Court to rescind its order allowing Defendant to amend its affirmative defenses, and allow the case to proceed to dispositive motions.

Pursuant to MCR 2.119(F)(1), both of Plaintiff's motions for reconsideration were timely filed, having been filed 20 and 19 days, respectively, after the Court issued orders on the Defendant's motion for summary disposition and on Defendant's motion for leave to amend. Pursuant to MCR 2.119(F)(2), no responses are permitted, and no oral arguments are scheduled, unless the Court directs otherwise. After review of the motions and briefs and attached exhibits, the Court finds that no response from Defendant, nor any oral argument, on either motion is justified.

II. STANDARD

A motion for reconsideration under MCR 2.119(F)(3) requires the moving party to "demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." "Palpable" is defined as "[e]asily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." *Stamp v Mill Street Inn*, 152 Mich App 290, 294 (1986), quoting Black's Law Dictionary (5th ed.), p. 1000. Responses and oral arguments are not permitted unless ordered by the Court. *See* MCR 2.119(F)(2). The purpose of this subrule is "to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a matter, which would otherwise be subject to correction on appeal, but at a much greater expense to the parties." *Bers v Bers*, 161 Mich App 457, 462 (1987). Though a Court may reconsider a motion it previously denied in the absence of the movant showing palpable error, a Court is far from required to do so. *See Kokx v Bylenga*, 241 Mich App 655, 658-59 (2000). Under the applicable court rule, MCR 2.119(F), a court need only grant a motion for reconsideration when palpable error is shown. When the movant simply raises the same arguments it raised before the court previously, such motion "will not be granted." MCR 2.119(F)(3).

After review of the file and the record, the Court finds that the decision to grant summary disposition in favor of Defendant on Counts IV, VII, and VIII, along with the decision to allow

Defendant to amend its pleadings, does not contain, nor is it based upon, any error, much less a palpable error. Plaintiff's motion for reconsideration of the February 27, 2025 decision allowing Defendant to amend its pleadings is primarily based on Plaintiff deliberately twisting this Court's colloquy from the bench into something the Court did not rule, and then holding that Straw Man up as an error of law.

III. ANALYSIS

At the time of the original dispositive motion, Defendant asked this Court for dismissal of Plaintiff's First Amended Complaint under MCR 2.116(C)(7) and (C)(8), arguing that most of the Counts raised in the First Amended Complaint were already argued and adjudicated in Case No. 24-350-AA (hereinafter "the Appeal"), and so Plaintiff should be estopped from re-litigating those issues again here in this CZ action (hereinafter "the Original Action"). Defendant also argued that all of the Counts in the First Amended Complaint fail to state a cause of action or fail to entitle Plaintiff to relief, even if all the well-pled allegations in the First Amended Complaint are taken as true. As to Count V, the claim for violation of the Open Meetings Act, Defendant argued that the allegations in the First Amended Complaint are bare conclusions and cannot overcome the presumption that the officials acted in good faith. Defendant then attached a whole slew of documents outside of the pleadings, effectively turning the dispositive motion into a C(10) motion.

Plaintiff responded to the original dispositive motion by arguing that Defendant waived any (C)(7)/res judicata argument it may have had by failing to raise that defense in its first responsive pleading. Res judicata is an affirmative defense, and it is waived if not made in the first pleading. In addition, the claims of violation of due process, equal protection, and State law preemption were not actually litigated and decided on the merits in the appeal. Even though Plaintiff raised those arguments in the Appeal itself, Plaintiff challenged that it was error for the Court to decide those arguments. Plaintiff asserted that the Court lacked jurisdiction to decide those claims in the Appeal, and it was entirely proper (indeed it was "best practices") for Plaintiff to bring those constitutional claims in the original action. As to the violation of MZEA claim, Plaintiff entreated the Court to look at the substance of the entire complaint and read beyond the labels of the Counts.

Now in this motion for reconsideration, Plaintiff raises many of the same arguments it already briefed extensively at the time of the original dispositive motion. Plaintiff also seeks for the Court to dismiss Defendant's C(7) arguments with prejudice, rather than without prejudice.

A motion for summary disposition may be brought under MCR 2.116(C)(7) on the ground that entry of judgment, dismissal of the action, or other relief is appropriate "because of release, payment, prior judgment, immunity granted by law..." C(7) motions included those brought on the basis of res judicata or collateral estoppel. *King v Munro*, 329 Mich App 594 (2019). Evidentiary support is only required for a motion brought under MCR 2.116(C)(7) "when the grounds asserted do not appear on the face of the pleadings." MCR 2.116(G)(3)(a). The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant."). Notwithstanding, a party may wish to submit affidavits, depositions, admissions, or other documentary evidence in support of a motion seeking dismissal on one of the grounds listed in MCR 2.116(C)(7). MCR 2.116(G)(2). Affidavits and other documentary evidence offered in

support of or in opposition to such a motion may be considered only to the extent that its content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. MCR 2.116(G)(6).

MCR 2.116(C)(8) tests the legal sufficiency of the plaintiff's claim and results in a determination whether the plaintiff's allegations are sufficient to establish a prima facie case. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). The motion should be granted if the claim is so clearly unenforceable that no factual development could justify the plaintiff's claim for relief. *Maiden*, 461 Mich at 119. A motion brought under MCR 2.116(C)(8) is decided on the pleadings alone; no other evidence may be considered. MCR 2.116(G)(5). However, in an action based on a contract, the court may examine the contract. *Woody v Tamer*, 158 Mich App 764, 770 (1987). When deciding a motion under MCR 2.116(C)(8), the court must accept as true all factual allegations contained in the complaint as well as any reasonable inferences that may be drawn from those allegations. *Singerman v Municipal Serv Bureau*, 455 Mich 135, 139 (1997). The court may not consider the merits of the plaintiff's factual allegations, *Mieras v DeBona*, 452 Mich 278, 291 (1996), and it must construe those allegations in the plaintiff's favor. *Wortelboer v Benzie Cty*, 212 Mich App 208, 217 (1995). Mere conclusory statements, however, without supporting allegations of fact are insufficient to state a cause of action.

Defendant argued in the original dispositive motion that Counts I, II, III, and IX were already raised, argued, litigated, and adjudicated in the Appeal from the Township Board decision denying the Special Land Use Permit. Defense asserted that because those arguments have already been adjudicated on the merits in Case No. 24-350-AA, the Plaintiff should be barred from relitigating those claims again in this separate action by the doctrine of res judicata.[2] Res judicata bars a second, subsequent action when all of the following conditions exist:

(1) the prior action was decided on the merits,

(2) both actions involve the same parties or their privies, and

(3) the matter in the second case was, or could have been, resolved in the first.

Washington v Sinai Hosp, 478 Mich 412, 418 (2007) (quoting *Adair v State*, 470 Mich 105, 121 (2004)). Michigan courts take a broad approach to res judicata, barring claims already litigated as well as every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Id.* In determining whether a claim could have been brought in a prior action, the Michigan Supreme Court has accepted the broad "same transaction" test, which simply asks whether the claim "arose as part of the same transaction" as did the claims in the prior action. *Adair*, 470 Mich at 125.

---

[2] Defense primarily argued res judicata, with only a little collateral estoppel sprinkled in. Collateral estoppel precludes relitigation of an issue in a subsequent cause of action. Collateral estoppel requires that

(1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment,

(2) the same parties had a full and fair opportunity to litigate the issue, and

(3) mutuality of estoppel.

See Estes v Titus, 481 Mich 573, 585 (2008). For collateral estoppel to apply, "the ultimate issue to be concluded in the second action must be the same as that involved in the first." *Board of Cty Rd Comm'rs v Schultz*, 205 Mich App 371, 376 (1994). The estoppel doctrine requires that the issues in the two actions be identical, not merely similar. However, unlike res judicata, collateral estoppel may apply where the parties are not identical in a subsequent lawsuit, so long as both litigants in the second suit are bound by the judgment rendered in the first suit. *See Wilcox v Sealey*, 132 Mich App 38 (1984).

The Court has reviewed the First Amended Complaint, the extensive briefing in this case, as well as the extensive briefing in Case No. 24-350-AA. Counts I, II, III, and IX in this case are nearly identical in substance to arguments raised, argued, litigated, and ruled upon in the Appeal case. Both this case and the Appeal case involve the exact same parties. The two cases arise from the same underlying nucleus of operative facts. Plaintiff also argued that those issues of State law preemption, takings, and constitutionality of the zoning ordinance could not be "adjudicated on the merits" in the Appeal case because the Circuit Court lacked jurisdiction to decide those issues on appeal from the Township's decision. The appeal from the Township's decision was limited to the record, and the Township could not decide the constitutional issues, so the Circuit Court could not take up those questions on appeal. The Plaintiff cites extensively to *Houdini Properties LLC v City of Romulus*, 480 Mich 1022 (2008), which is a 1 and ½ page cursory reversal by the Michigan Supreme Court of a 2006 Court of Appeals opinion regarding a Zoning Board of Appeals decision.

Plaintiff's argument that this Court lacked jurisdiction to decide those issues in the Appeal (see pages 12-19 of the Response Brief to the dispositive motion), constitutes the most flamboyant manufactured appellate parachute this Court has ever seen. Plaintiff raised those constitutional arguments in the Appeal case. Plaintiff briefed and argued those matters in the filings and at the time of oral arguments. Plaintiff could have, as Plaintiff now claims, pleaded those claims out of an abundance of caution in the Appeal case, and then, once the original action was also filed and was proceeding towards summary disposition (in July 2024), dismissed or withdrawn the constitutional arguments from the Appeal case. Plaintiff could have even argued at the Appeal hearing that this Court lacked jurisdiction over those claims, and to please dismiss them without prejudice for lack of jurisdiction. Plaintiff did none of those things. Plaintiff put those claims before the Court and asked the Court to render a decision on them. Now when Plaintiff does not like the result on those claims, Plaintiff claims it was error for this Court to give Plaintiff exactly what it asked for: a decision on issues Plaintiff raised.

Whether Plaintiff dislikes this Court's adjudication of the claims in the Appeal that are the same as in Counts I, II, III, and IX in the Original Action does not change the fact that the parties briefed up and litigated those issues on the merits, and this Court rendered a detailed decision addressing the merits of those issues. Plaintiff's argument now on reconsideration, the same as its argument at the time of the original dispositive motion, that somehow the claims litigated in the Appeal are immune from disposition under C(7) in this Original Action because Plaintiff asked the Court to decide matters that it now contends were outside the scope of the Appeal is nothing more than bad faith tactics designed to increase the costs of litigation, waste judicial resources, and help Plaintiff skirt around a plain application of the law to their claims.

It is true that the doctrine of res judicata is an affirmative defense. "An affirmative defense is a defense that does not controvert the plaintiff's establishing a prima facie case, but that otherwise denies relief to the plaintiff." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 312, (1993).[3] "[A]n affirmative defense includes any defense that seeks to foreclose a plaintiff from continuing a civil action for reasons unrelated to the plaintiff's prima facie case." *Kelly-Nevils v Detroit Receiving Hosp*, 207 Mich App 410, 420 (1994). Plaintiff has argued that

[3] *See also Citizens Ins Co of America v Juno Lighting, Inc,* 247 Mich App 236 (2001); *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1 (2000).

Defendant should be estopped *with prejudice* from raising the doctrine of res judicata in any stage of this Original Action because Defendant has failed to plead the affirmative defense in the first responsive pleading. Defendant concedes that it failed to raise res judicata as an affirmative defense in the Answer and Affirmative Defenses.

The failure to timely assert an affirmative defense results in a waiver of that defense. *Stanke v State Farm Mut Auto Ins Co, supra.*[4] Defendant has filed a motion seeking to amend the affirmative defenses, and this Court found that the circumstances justifying permitting such amendment. On March 6, 2025, Defendant did actually include in its First Amended Affirmative Defenses a defense based on res judicata and/or collateral estoppel. However, on January 16, 2025, at the time of the original dispositive motion, the res judicata defense had not been properly pleaded, so this Court dismissed those arguments.

In allowing Defendant to amend those affirmative defenses, this Court reasoned that MCR 2.118(A)(2) grants the trial courts broad discretion to freely grant a party leave to amend its pleadings when justice so requires, unless leave would result in undue delay or prejudice to nonmoving party, moving party had bad faith or dilatory reasons, moving party repeatedly failed to cure deficiencies by previously permitted amendments, or if amendment would be futile. *See Sands Appliance Servs v Wilson*, 463 Mich 231 (2000). Delay, without more, does not mandate denial of motion to amend. *Traver Lakes Cmty Maintenance Ass'n v Douglas Co*, 224 Mich App 335 (1997).

In the case at bar, the Defendant's Answer and Affirmative defenses to Plaintiff's First Amended Complaint was filed on June 10, 2024, which was 262 days prior to the hearing on Defendant's motion to amend. However, the res judicata defense could only have possibly arisen after September 16, 2024, because that is when this Court issued the written opinion denying the appeal in the Appeal case. The ruling on the Appeal case was issued 162 days prior to the February 27, 2025 hearing on Defendant's motion to amend. In addition, the motion for summary disposition, out of which this motion to amend was born, was heard only 42 days prior to the hearing on Defendant's motion to amend. Defendant did actually file the motion to amend on January 9, 2025, before the dispositive motion was heard. Given all the circumstances, and how the Appeal and this Original Action have progressed, the delay in filing the motion to amend was not an undue delay. The delay is also not the kind that creates undue prejudice to Plaintiff. The kind of undue prejudice that would have to exist to justify denial of a motion to amend is the kind of prejudice that would work to prevent the opposing party from receiving a fair trial – such as when a party adds a claim or theory of recovery after discovery closes or after trial has already begun. *See Knauff v Oscoda County Drain Commissioner*, 240 Mich App 485, 493-94 (2000).[5] In this case, with discovery having really only just begun in February of 2025 and trial dates not yet

[4] *See also Kemerko Clawson, LLC v RxIV Inc*, 269 Mich App 347, 349–352 (2006) (defendant who failed to assert release as affirmative defense in pleadings waived defense, and it was within trial court's discretion to bar defendant from asserting that defense at trial).

[5] *See also Muilenberg v The Upjohn Co.*, 169 Mich App 636, 645 (1988) (holding that it would have unduly prejudiced defendants to permit plaintiff to amend on the third day of the second trial by adding a theory that a prescribed drug aggravated a preexisting condition because such late amendment did not give defendants adequate notice and time to investigate that theory and prepare a defense).

being scheduled, there is no undue prejudice to Plaintiff in allowing amendment.

Plaintiff complains in its motion for reconsideration that the Court is wasting its time by allowing the amendment, and in that way, Plaintiff has been prejudiced. It weighs heavily to this Court that at the time of the February 27, 2025 hearing, the case was only in its infancy in terms of progression towards being ready for adjudication. The Pretrial Conference --- at which the trial date would be set, and deadlines for motions in limine and exchange of exhibit binders would be established --- is not until June 6, 2025. That was 99 days (or 3 months) from the time of hearing the Defendant's motion to amend. Discovery was only getting off the ground. More to the point, the defense which Defendant added to its pleadings was not one on which discovery is needed. It is a purely legal defense. If this Court had denied Defendant the opportunity to amend its pleadings when the case had made so little progress towards completion, this Court almost certainly would have been reversed. *See Traver Lakes Cmty Maintenance Ass'n v Douglas Co*, 224 Mich App 335 (1997) (in which the Court of Appeals reversed the trial court for denying a party's request to amend pleadings when there were several more months until trial).

In their response to the Defendant's motion to amend, Plaintiff further argued that the amendment would be futile. "An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face." *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355 (1998). A proposed amendment is also futile if summary disposition would be appropriately granted regarding the new claims, either when a party has not established a genuine issue of material fact regarding an element, *Ormsby v Capital Welding, Inc*, 471 Mich 59-60 (2004), or when the undisputed facts establish that summary disposition would be appropriate, *Nowacki v State Employees' Retirement Sys*, 485 Mich 1037, 1037 (2010). An amendment may also be futile if it merely restates allegations already made; or it adds a claim over which the court lacks jurisdiction. *See Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 697 (1998). Specifically, Plaintiff re-argued (now on this second reconsideration motion, for the fourth time) that allowing Defendant to add a res judicata defense was futile because this Court *should not* have addressed the issues of State law preemption, takings, and constitutionality of the zoning ordinance in the Appeal. For all the reasons set forth above, Plaintiff's disagreement with this Court's ruling on the issues Plaintiff raised, briefed, and fully litigated to completion in the Appeal does not equate to complete immunity from a res judicata defense. Since it was Plaintiff, in its role as Appellant, that raised and argued those issues in the Appeal case, it would be an absurd result to deny Defendant the opportunity to even argue that the issues were actually adjudicated. Holding the res judicata defense futile at this point would reward and promote the gamesmanship employed by Plaintiff --- arguing those claims and getting a ruling, not liking the ruling so making every bad faith attempt at a second bite at the apple based on one line in the *Houdini Properties LLC* case, *supra*, and now trying to estop Defense from even asserting a res judicata defense when all parties to this Original Action actually fully litigated those claims and received a substantive ruling on them. The Court previously found, on February 27, 2025, that based on all the unique circumstances of the case, especially the interplay between the Appeal and the Original Action, it could not be said that Defendant's res judicata defense is defective or legally insufficient on its face. After review of the record and Plaintiff's argument on the motion for reconsideration, this Court finds the same way. This Court finds in its February 27, 2025 ruling granting Howell Township permission to amend the affirmative defenses, no palpable error that would have changed the result of the motion to

amend. The amendment is certainly not futile, as either a C(7) or C(6) motion certainly appears to fit the fact pattern presented by these two cases that involve all the same parties and arise from the same transaction or occurrence. The Court DENIES Plaintiff's motion for reconsideration of the February 27, 2025 Order allowing Defendant to amend its pleadings.

In its original dispositive motion, Defendant also sought disposition of all the Counts of the First Amended Complaint pursuant to MCR 2.116(C)(8), asserting that all of Plaintiff's claims failed as a matter of law. However, the substance of most of Defendant's arguments asked the Court to look outside of the pleadings, which effectively would have forced the Court to analyze the motion as a C(10) motion. The Court is only permitted to look to the pleadings in a C(8) motion, making a determination as to their legal sufficiency. If the Court had delved into the exhibits outside the pleadings attached by both parties and reached a determination whether the attached evidence left any genuine issue of material fact, any determination this Court reached would have been reviewed by the Court of Appeals under the rubric of C(10). The Court determined that conducting a C(10) analysis was not what Defendant had said it was asking for, and it would have been unfair to the Plaintiff to suddenly, at the time of the hearing, require Plaintiff to respond to a C(10) motion when only a C(7)/C(8) motion had been noticed up by Defendant. Finding that the majority of Defendant's arguments were C(10) arguments wearing the thin gloss of C(8) motion, and considering that the parties both concede that discovery is ongoing in this case. Plaintiff specified in the Response that depositions of EGLE and LARA employees were in the process of being arranged. Summary disposition on C(10) grounds is generally premature when discovery has not been completed on the material facts at issue. *See e.g., Village of Dimondale v Grable*, 240 Mich App 553, 564 (2000). It cannot be said that further discovery would not stand a fair chance of uncovering factual support for Plaintiff's claims in this case. *See Village of Edmore v Crystal Automation Systems Inc*, 322 Mich App 244 (2017). Accordingly, the Court dismissed Defendant's remaining dispositive arguments without prejudice, because they have the substance of C(10) motions, which were premature at that time. After review of the record, this Court still finds that the Defendant's dispositive arguments asking the Court to render a decision based upon the attached exhibits was premature.

Defendant did make a few purely C(8) arguments in its original dispositive motion – particularly with regards to Counts IV, VII, and VIII. Reading the First Amended Complaint side-by-side with the briefs in the original dispositive motion, the Court found that Counts IV and VIII fail to state a valid cause of action on which relief could be granted. Count IV claims a violation of the Michigan Zoning Enabling Act. Defendant remains correct that no such private cause of action exists. The Act empowers municipalities to establish a system of administrative appeals regarding local zoning decisions, and then ultimately appeal the highest municipal body to the local circuit court. *See e.g., Saugatuck Dunes Coastal Alliance v Saugatuck Township,* 509 Mich 561 (2022). The Act does not contain any remedy for a private landowner to pursue to enforce the Act. Plaintiff seems to concede this in its Response in Section III.E (page 11), entreating the Court to instead look beyond the labels of the First Amended Complaint and consider the content as a whole. The Court has considered the content as a whole, and the allegations that comprise Count IV are duplicated to support Counts I, II, and III. Plaintiff has stated several valid causes of action with the same basic allegations, thus rendering Count IV entirely duplicative (or entirely subsumed by other Counts). Plaintiff cannot get around the fact that there simply is no such cause of action as a private claim for violation of MZEA by asserting the municipal bodies were speaking in code

in their agendas. The Court has endorsed no activity by the municipality. The Court has merely declined to create a cause of action where the Legislature did not create one. Plaintiff's feelings of inequity do not create sufficient justification to "Legislate from the bench." This Court concludes that it committed no palpable error in dismissing Count IV.

Similarly, Count VIII is a count for injunctive relief. There is no such cause of action as "injunctive relief." Injunctive relief is a remedy, not a cause. The substance of that Count asks the Court to stop the Township from violating the Plaintiff's constitutional rights. That is a remedy that is also sought or will necessarily flow from the relief requested in Counts I, II, and III. As with Count IV, VIII is a cause of action that does not exist, and it is entirely duplicative. If Plaintiff chose not to include elsewhere in the First Amended Complaint the statutory language that must be included in seeking a permanent injunction as a form of relief, that is Plaintiff's pleading error, and not this Court's error in declining to create a cause of action where Michigan law does not recognize such independent cause. This Court finds that it committed no palpable error in dismissing Count VIII under C(8).

Finally, Count VII of the First Amended Complaint attempted to state a claim for unjust enrichment. It is a well-established maxim of law that a contract will be implied only if there is no express contract covering the same subject matter. *Morris Pumps v Centerline Piping Inc,* 273 Mich App 187, 195 (2006). Plaintiff's First Amended Complaint affirmatively alleges that the parties to this case signed an agreement regarding the fees and costs for review and evaluation of the plans and application for the gas station on the Subject Property. Since the Plaintiff has alleged the parties had an express contract covering the same subject matter as the claim for unjust enrichment, the claim for unjust enrichment cannot stand.

Plaintiff now argues on this motion for reconsideration of the dispositive ruling that Plaintiff's position is that the contract was invalid and therefore unenforceable, with the unwritten premise being that the Court should declare it void, and then allow Plaintiff to pursue quasi-contract remedies (i.e., a claim for unjust enrichment). However, those allegations are new and novel in this motion for reconsideration, having never been pleaded in the Complaint nor First Amended Complaint. The only paragraphs of the First Amended Complaint that address the contract are paragraphs 22, 23, 77, 92-96. Paragraph 49 could be read as referring to the contract obliquely. Reading the entire First Amended Complaint, focusing on the substance of the allegations, no allegation was ever made nor any argument ever raised that the contract was void or otherwise unenforceable. All Plaintiff alleged in its pleadings regarding the contract was that it existed, it was required as part of the SLUP application process, it was not specified by the Ordinance, Plaintiff paid a great deal of money based on the contract, and the ZBA lacked authority to grant the SLUP. Where Plaintiff failed to plead a single allegation challenging the validity or enforceability of the contract, and instead pleaded that the parties had a contract that governed their relationship, there was no basis for the Court to allow the quasi-contract claim to remain when a plain application of Michigan law to the facts as alleged by Plaintiff in the First Amended Complaint resulted in a clear preclusion of quasi-contract claims. Plaintiff cannot now fix its own pleading error by shoehorning in additional allegations via this motion for reconsideration. In reviewing the entire record, the Court's prior ruling, and Plaintiff's motion for reconsideration, this Court finds that it committed no palpable error in dismissing Count VII (unjust enrichment) pursuant to MCR 2.116(C)(8), as the First Amended Complaint stated the parties had a contract

that governed the review process and payment of fees, and thus a quasi-contract claim arising from the same obligations created by the contract is precluded as a matter of law. The allegations that Plaintiff wishes it had made in its First Amended Complaint, but failed to make, cannot retroactively create error in the Court's ruling.

IV. CONCLUSION

After review of the Plaintiff's two motions (and briefs) for reconsideration – one for the Court's January 16, 2025 decision on Defendant's dispositive motion, and another one for the Court's February 27, 2025 decision on Defendant's motion for leave to amend – and after review of the filings on the original summary disposition motion and motion for leave to amend, and after review of all other relevant portions of the file, the Court being otherwise fully advised in the premises, and for all the reasons set forth in detail above, the Court finds that the law and the pleadings support summary disposition in favor of Defendant on Counts IV, VII, and VIII. The Court further finds that the particular circumstances and posture of the Original Action, and its intersection with the Appeal, justified permitting Defendant to amend its affirmative defenses to add a defense that the Original Action is at least partially barred by the doctrines of res judicata and/or collateral estoppel. The amendment was not futile because all the elements of res judicata appear to be present on several Counts of the First Amended Complaint, and the Court seeks to resolve the legal question posed by *Houdini Properties LLC v City of Romulus*, 480 Mich 1022 (2008) on the merits and after proper briefing by both parties. Finally, the Court finds that dismissal of Defendant's C(7) arguments from the dispositive motion without prejudice was warranted by the law and the facts. The Court finds that no palpable error was committed in ruling in favor of Defendant on the dispositive motion and on the motion to amend. Many of the arguments that Plaintiff makes in its motions for reconsideration are simply reiterations of arguments already raised before this Court and rejected. The Court finds those arguments no more meritorious than it did the first time around. Accordingly, both of Plaintiff's motions for reconsideration are DENIED.

IT IS SO ORDERED.

5-7-2025

Hon. Matthew J. McGivney (P63325)
Chief Circuit Court Judge

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
a Michigan Limited Liability Company,

Plaintiff,

v

HOWELL TOWNSHIP,
a Michigan General Law Township,

Defendant.
_____/

Case No. 24-32242-CZ

HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION ON COUNTS V AND VI PURSUANT TO MCR 2.116(C)(10)

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HOWELL TOWNSHIP'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION ON COUNTS V AND VI PURSUANT TO MCR 2.116(C)(10)

INTRODUCTION

Howell-Mason's special land use permit was unanimously denied by the Township Board based on four independent grounds, and that denial has been affirmed at every level of judicial review by Judge McGivney, the Michigan Court of Appeals, and the Michigan Supreme Court. The Township Board's decision is final, and the Township has moved contemporaneously herewith for summary disposition on all duplicative claims decided on the merits in the zoning appeal, with the full procedural history set forth in that companion filing.

What remains subject to this motion are Counts V (Open Meetings Act) and VI (Regulatory Takings). This Court allowed Howell-Mason the opportunity to discover whether evidence existed to support allegations that were, at best, speculative at the pleading stage. Discovery has now closed, Howell-Mason engaged in no discovery of its own, and the result is unequivocal: neither claim can survive as a matter of law.

The Open Meetings Act claim (Count V) fails because discovery produced no evidence of secret deliberations, improper decision-making, collusion, or any ongoing violations. Howell-Mason's own land use planning expert, Paul LeBlanc, confirmed that Howell-Mason was afforded two public hearings, had the opportunity to present at both, and that the process was consistent with what is required under the Michigan Zoning Enabling Act.[1] *The Open Meetings Act does not permit relief where the plaintiff's own expert confirms the process was lawful.*

[1] All of the relevant excerpts of Mr. LeBlanc's deposition are attached as Exhibit A. Throughout this filing, specific references made to his testimony are provided with the appropriate citations. Similarly, the relevant excerpts of Mr. Buhoveckey's deposition are attached as Exhibit B.

The regulatory takings claim (Count VI) fails for an even more fundamental reason. Howell-Mason seeks compensation for the denial of a discretionary land-use approval that was reviewed and affirmed as lawful at every level of judicial scrutiny through the zoning appeal and that left the Property with multiple economically viable uses. Takings law does not recognize such a theory; a landowner cannot suffer a compensable taking of an interest it never possessed, through a decision that was upheld as authorized by law, and that imposed no deprivation of all economic use. Mr. LeBlanc even testified that the special land use application was "futile," that the Township Board could not have lawfully approved it, and that he would have "absolutely" flagged the prohibition had he been involved at the outset, opining that Howell-Mason's engineers had been providing "zoning advice that was incorrect." *A landowner cannot manufacture a compensable takings claim by investing millions of dollars in reliance on bad zoning advice from its own consultants, in pursuit of a use that was prohibited on the face of the ordinance, and then blame the Township when the inevitable denial occurs.*

In short, these two claims, which in theory could be brought as an original action notwithstanding the zoning appeal, were allowed to proceed solely to determine whether discovery would reveal something more than conjecture. It did not. With discovery closed and the zoning appeal settled, there is no genuine issue of material fact for a jury to resolve and no viable legal theory upon which Howell-Mason can recover. For these reasons, Howell Township properly seeks summary disposition of Counts V and VI pursuant to MCR 2.116(C)(10).

STATEMENT OF FACTS/PROCEDURAL HISTORY

The factual and procedural background of this case is set forth in detail in the Township's contemporaneously filed Brief in Support of Its Motion for Summary Disposition Pursuant to

MCR 2.116(C)(7) and (C)(10) and is incorporated by reference here. The following additional facts are specific to the claims addressed in this motion.

A. The Howell Township Board Considered Howell Mason's Special Land Use Application Consistent with the Michigan Open Meetings Act.

Howell-Mason's Open Meetings Act claim rests on three allegations. First, that "the outcome of the December 11, 2023, Township Board Meeting and vote was predetermined by the board outside of a public meeting[.]" First Amended Complaint, ¶ 80. Second, that "Defendant and/or its agents colluded with and/or goaded MHOG into violating the OMA by taking a vote explicitly against Plaintiff's properties without required notice to Plaintiff." First Amended Complaint, ¶ 81. Third, that "Defendant has demonstrated a pattern of manipulating legal requirements regarding notice and conduct of public meetings[.]" First Amended Complaint, ¶ 82. Judge McGivney characterized these allegations as "largely conclusory" but allowed the claim to proceed past the pleading stage, concluding that "further discovery" might stand a "fair chance of uncovering factual support" (Exhibit C, p 17).

The Township attempted through discovery to identify what, specifically, Howell-Mason was alleging. In response to interrogatories seeking the factual basis for its OMA claim, Howell-Mason provided nothing beyond a restatement of its original vague allegations, asserting only that its support consisted of "board member statements during public meetings and board member statements when out in public," without identifying a single Township Board member, a single statement, or a single meeting (Exhibit D, pp 3–4). Howell-Mason conducted no discovery of its own in support of this claim. Discovery is now closed. What the undisputed record does establish is the following:

- The Howell Township Planning Commission conducted a duly noticed public hearing on November 21, 2023, at which Howell-Mason appeared and was afforded the opportunity

to present materials, expert opinions, and arguments in support of its application (Exhibit E, p 3).

- The Howell Township Board held a duly noticed public meeting on December 11, 2023, at which Howell-Mason again appeared and was afforded the opportunity to present its position (Exhibit E, p 4).
- Howell-Mason has admitted it received proper notice of both meetings (Exhibit E, pp 3-4).
- Howell-Mason's own land use expert, Paul LeBlanc, confirmed that the process was "typical" of what is afforded to special land use applicants throughout Michigan and that it was consistent with what is required under the Michigan Zoning Enabling Act. When asked whether any additional process should have been afforded to Howell-Mason, the only item Mr. LeBlanc identified was a ZBA appeal from the Township Board's denial, which is not required under Michigan law (Exhibit A, pp 31–32).
- Howell Township Treasurer Jonathan Hohenstein, who served on the Township Board at all relevant times and continues to serve today, avers based on his personal knowledge that the consideration of Howell-Mason's application was reviewed "in compliance with the Michigan Open Meetings Act" (Exhibit F).

In short, Howell-Mason's own expert confirmed the process was lawful, its own discovery responses identified no evidence of a violation, and the only sworn testimony in the record affirmatively refutes each of its allegations.

B. Howell-Mason Purchased the Property with Full Knowledge of the Zoning Restrictions, Its Own Expert Confirmed the Application Was "Futile" and Based on Incorrect Zoning Advice, and Alternative Land Uses Remain Available.

Howell-Mason began purchasing the parcels comprising the Property in 2017. It has never disputed that it was aware of the applicable zoning restrictions at the time of purchase. First Amended Complaint, ¶ 8. To the contrary, Howell-Mason has admitted that it "conducted due diligence regarding the zoning restrictions on the Property before purchasing it" and that it "knew the zoning restrictions applicable to the Property when [it] purchased it" (Exhibit E, p 6). In the Commercial Purchase Agreement for a portion of the Property, Howell-Mason negotiated a 120-

day due-diligence period specifically to determine whether the "Property is properly zoned or can be rezoned to permit Purchaser's proposed development and use" (Exhibits G, H, I).

The Property is located in the Neighborhood Services Commercial District and sits within a designated wellhead protection area. First Amended Complaint, ¶¶ 5, 9. There are domestic potable wells in the immediate vicinity of the proposed site, a fact that Howell-Mason's own hydrogeological expert, Gregory Buhoveckey, PE, confirmed but did not analyze (Exhibit B, pp 37–38). At all relevant times, the Zoning Ordinance has prohibited gasoline service stations within 300 feet of a wellhead protection area. Zoning Ordinance §16.11(C)(8). That prohibition has been upheld by Judge McGivney, the Michigan Court of Appeals, and the Michigan Supreme Court.

Howell-Mason purchased the Property with the subjective desire to operate a gasoline service station. First Amended Complaint, ¶ 8. It is unclear why Howell-Mason believed it could do so given the plain language of the prohibition. Its own land use expert, Paul LeBlanc, AICP, testified that the Township Board could not have lawfully approved the application in light of §16.11(C)(8) and described the entire application as "futile" (Exhibit A, pp 39, 41). When asked how it did not surprise him that Howell-Mason invested $1.4 million in a use that was prohibited on the face of the ordinance, Mr. LeBlanc responded: "Frankly, I think they had their engineers giving them zoning advice that was incorrect." He added that had he been involved at the outset, he would have "absolutely" flagged the prohibition (Exhibit A, p 48). Mr. LeBlanc further confirmed that a special land use permit is "not guaranteed to be approved" and that there is "no guarantee" an applicant will see a return on pre-approval investments (Exhibit A, p 47).

Howell-Mason now contends that the denial of its application constitutes a regulatory taking. But the Zoning Ordinance does not strip the Property of all economically viable use. The Neighborhood Services Commercial District permits multiple uses as of right, including retail

establishments, restaurants, and service uses. Zoning Ordinance §9.02. Mr. LeBlanc confirmed that "the commercial district allows other uses by right and some by special use" and that the uses by right could be pursued so long as Howell-Mason "submitted a site plan and met the objective criteria" (Exhibit A, p 49). When asked whether he had discussed any of those alternative uses with Howell-Mason, Mr. LeBlanc answered "No" (Exhibit A, p 49). Howell-Mason's own interrogatory response confirms this self-imposed limitation: when asked to identify "all alternative developments for the Subject Property Plaintiff has considered," Howell-Mason responded: "None. Plaintiff does not develop and operate businesses other than gasoline service stations with auxiliary food service" (Exhibit D). Mr. LeBlanc was not asked to offer any opinions on damages, lost profits, or the value of the Property, and confirmed he would offer none at trial (Exhibit A, p 20).

STANDARD OF REVIEW

Pursuant to MCR 2.116(C)(10), summary disposition is appropriate when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." The motion is appropriately granted when a party is entitled to judgment as a matter of law. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012).

ARGUMENT

I. SUMMARY DISPOSITION IS PROPER UNDER MCR 2.116(C)(10) BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO HOWELL-MASON'S OPEN MEETINGS ACT CLAIM.

The Michigan Open Meetings Act ("OMA"), MCL 15.261 *et seq.*, imposes several requirements on public bodies. All meetings of a public body must be "open to the public" and "held in a place available to the general public." MCL 15.263(1). All decisions of a public body

must be "made at a meeting open to the public." MCL 15.263(2). All deliberations of a public body "constituting a quorum of its members must take place at a meeting open to the public." MCL 15.263(3). Public bodies must provide public notice of meetings, MCL 15.265, and must keep minutes of each meeting showing, among other things, "the date, time, place, members present, members absent, any decisions made at a meeting open to the public." MCL 15.269(1).

The Legislature has provided limited remedies for violations of these requirements, and those remedies are important to understand here because they define the legal standard Howell-Mason must satisfy to survive summary disposition. The OMA authorizes four categories of relief: invalidation of a decision made in violation of the Act, MCL 15.270; injunctive relief to compel compliance or enjoin further noncompliance, MCL 15.271; criminal prosecution of a public official for intentional violations, MCL 15.272; and personal liability of a public official for intentional violations, MCL 15.273.

As a matter of law, three of these four remedies are categorically unavailable to Howell-Mason in this action. Invalidation of the Township Board's decision under MCL 15.270 is time-barred, as any such action must be commenced "within 60 days after the approved minutes are made available to the public." MCL 15.270(3)(a). Criminal prosecution under MCL 15.272 is not a remedy available in a civil action. And personal liability for damages under MCL 15.273 runs only against a "public official who intentionally violates this act," not against the Township as an entity, which is the sole defendant in this case. MCL 15.273(1). The only remaining remedy is injunctive relief under MCL 15.271 to compel compliance or enjoin further noncompliance with the Act.

That remedy, however, carries a demanding legal standard. To obtain injunctive relief based on an alleged OMA violation, a plaintiff must demonstrate an "ongoing violation" and that

the "public body is not complying with the OMA." *Citizens for a Better Algonac Cmty Schs v Algonac Cmty Schs*, 317 Mich App 171, 181; 894 NW2d 645 (2016). This requires more than allegations concerning a single meeting or isolated conduct; rather, the plaintiff must show "a regular pattern of conduct during a pertinent timeframe such that it could be said that there was an ongoing OMA violation." *Id.* at 184. In *Citizens for a Better Algonac Community Schools*, the Michigan Court of Appeals addressed whether evidence of a practice of mass group email communications, offered as proof of OMA violations, was sufficient to establish an ongoing violation. *Id.* at 182–183. The Court concluded that it was not, explaining that the emails "were inadequate to establish a regular pattern of conduct during a pertinent timeframe such that it could be said that there was an ongoing OMA violation, assuming the past conduct even violated the OMA." *Id.* at 184.

The dispositive question at this stage is whether the evidentiary record presents a genuine issue of material fact that Howell Township is continuing to violate the OMA through a regular pattern of conduct. In the operative Complaint, Howell-Mason advanced allegations that Judge McGivney characterized as "largely conclusory" (Exhibit C, p 17). Judge McGivney nonetheless recognized that Michigan is a notice-pleading state and concluded that "further discovery" might stand a "fair chance of uncovering factual support" for the OMA claim (Exhibit C, p 17). Howell-Mason was therefore afforded the opportunity to substantiate its allegations through discovery. *Discovery is now closed, and the fundamental defect in Howell-Mason's Open Meetings Act claim is clear: discovery produced no evidence to substantiate any of the "largely conclusory" allegations identified above.*

In fact, rather than developing factual support, Howell-Mason doubled down on vagueness when required to provide specifics. For instance, in response to an interrogatory seeking the factual

basis for its OMA claim, Howell-Mason asserted that its support consisted of "board member statements during public meetings and board member statements when out in public," without identifying a single Township Board member, a single statement, or a single meeting (Exhibit D, pp 3-4). Howell-Mason likewise asserted—without evidentiary support—that legal counsel's review of the project caused the Township Board to disregard "the actual facts surrounding [the] development" because a gasoline service station is not permitted within a wellhead protection area (Exhibit D, p 4). That assertion is not evidence of an Open Meetings Act violation; it is a disagreement with the Township's legal conclusion (a conclusion that multiple courts have upheld). Finally, Howell-Mason alleged that a Township Board member "engages with Facebook group(s) opposing" the project, without identifying any deliberation, decision-making, or closed-session conduct prohibited by the OMA (Exhibit D, p 4).

The salient point is that none of these assertions—individually or collectively—establishes an ongoing violation of the Open Meetings Act or a regular pattern of noncompliance. They do not describe closed deliberations, secret decision-making, or any conduct that the OMA regulates.

While it could, the Township is also not merely resting on the lack of discovery pursued by Howell-Mason. In support of this filing, the Township provides an affidavit from Treasurer Jonathan Hohenstein that directly refutes the claims by Howell-Mason (Exhibit F). Specifically, Treasurer Hohenstein, who was a Township Board member at all relevant times, avers that he made independent decisions regarding the project, did not collude and/or goad MHOG to violate the OMA, and is not aware of any notice defects to Howell-Mason.[2] Moreover, Treasurer Hohenstein says, based on his personal knowledge, the Township Board acted consistent with the

[2] The alleged notice defects seem to have been entirely unsupported as Howell-Mason admitted they received notice of both the Planning Commission Meeting on November 21, 2023 and the Township Board Meeting on December 11, 2023 (Exhibit E, pp 3-4).

OMA. It is also highly relevant in this posture for this Court to recognize and apply the longstanding presumption under Michigan law that municipal officials are presumed to have "acted in good faith and have correctly and faithfully exercised the discretion reposed in them." *Graham v Grand Rapids*, 179 Mich 378, 387; 146 NW 248 (1913).[3]

Finally, the Township also points out that Howell-Mason's own land use expert, Mr. LeBlanc, testified the Township Board provided process consistent with Michigan law:

> Q. Was the process that Howell Township went through reviewing the special land use application, in your view, consistent with what is required under the Michigan Zoning Enabling Act?
> A. **Yeah.** [(Exhibit A, p 31 (emphasis supplied)).]

Mr. LeBlanc, who testified he has handled the review of many special land use applications, did not identify any issue with process.

On this record, no reasonable factfinder could conclude that Howell Township violated the OMA, much less that it is engaged in an ongoing violation. Summary disposition is appropriate.

II. SUMMARY DISPOSITION IS REQUIRED UNDER MCR 2.116(C)(10) BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO HOWELL-MASON'S REGULATORY TAKINGS CLAIM.

"Both the state and federal constitutions prohibit the taking of private property for public use without just compensation." *Shepard Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 340; 675 NW2d 271 (2003).[4] A land use regulation may effectuate a regulatory taking in one of two ways: "(1) [if] the regulation fails to advance a legitimate state interest, or (2)

[3] It is also worth noting that the Township's publicly accessible website demonstrates the Township posts notice of each meeting along with agenda information that is available to the public: https://www.howelltownshipmi.org/government/boards/board.

[4] Howell-Mason pled its takings claim under the state constitution. However, "the Takings Clause of the state constitution is substantially similar to that of the federal constitution," *Tolksdorf v Griffith*, 464 Mich 1, 2; 626 NW2d 163 (2001), and so it is appropriate to look at authorities from both federal and state courts to analyze the claim.

[if] the regulation denies an owner economically viable use of his land." *K&K Const, Inc v Dep't of Natural Resources*, 456 Mich 570, 585; 575 NW2d 531 (1998). To establish that a regulation fails to advance a legitimate governmental interest, a property owner must demonstrate that there is "no reasonable governmental interest being advanced" or that the regulation is "purely arbitrary, capricious, and unfounded." *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998). To establish a categorical taking, the owner must show that the regulation denies "all economically beneficial or productive use of the land." *K&K Const, Inc*, 456 Mich at 585. Even where a regulation does not amount to a categorical taking, it may nevertheless be so "burdensome to rise to the level of a taking" under a multi-factor analysis. *Id.* citing *Penn Central Transportation Co v New York City*, 438 US 104 (1978).

No viable regulatory taking claim can be maintained by Howell-Mason for the reasons explained below, and summary disposition is therefore required under MCR 2.116(C)(10).

A. No Genuine Issue of Material Fact Exists Because the Township's Denial Advanced Legitimate Governmental Interests as a Matter of Law, Entitling the Township to Judgment.

Howell-Mason initially couches its regulatory taking claim in terms of the Zoning Ordinance failing to advance a legitimate interest with respect operating a gas station "within wellhead protection areas." First Amended Complaint, ¶¶ 83-91. But Judge McGivney—as well as the Michigan Court of Appeals and the Michigan Supreme Court—have already recognized the interests underlying the relevant zoning regulation. This Court cannot now reverse course and hold to the contrary. *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990) (explaining collateral estoppel binds a party from relitigating an issue they already had the opportunity to litigate).

There is also a fundamental defect in Howell-Mason's takings theory. Howell-Mason narrowly asserts that Zoning Ordinance § 16.11(C)(8) caused a "severe economic impact" because

it allegedly prevented the operation of an "operational business." First Amended Complaint, ¶¶ 87, 90. That assertion fails because it rests on the false premise that § 16.11(C)(8) was the but-for cause of the denial. It was not. The Township Board denied Howell-Mason's special land use application on its failure to meet four independent and mandatory approval standards, including not only § 16.11(C)(8), but also §§ 16.06(A), (D), and (F) of the Zoning Ordinance. Each of those provisions independently required denial, and Howell-Mason does not dispute—nor has it ever challenged—that those additional standards advance legitimate land-use interests. And its own expert agrees:

> Q. In talking about that with the other standards in the Howell Township zoning ordinance, you agree that the failure to satisfy even one of the conditions required denial of the special land use application?
> A. Yes.
> Q. And in this case, there was (sic) four requirements that were deemed not satisfied, correct?
> A. Correct.
> Q. So each one of those would be an independent basis to deny the special land use application?
> A. Because they found that they weren't met[.] [(Exhibit A, p 43).]

In other words, there were four reasons why Howell-Mason's land use was not allowed, and Howell-Mason challenges only one of those reasons. As a result, even if this Court were to assume, contrary to Judge McGivney and the Michigan appellate courts, that § 16.11(C)(8) failed to advance a legitimate governmental interest, Howell-Mason still could not have obtained approval for its proposed use.

This is dispositive under settled takings jurisprudence: no taking can occur where the asserted interest was "not part of [the owner's] title to begin with." *Lucas v SC Coastal Council*, 505 US 1003, 1027 (1992). Likewise, there can be no compensable taking where a plaintiff lacks any legally protected entitlement to a discretionary governmental approval. *Richardson v Twp of*

Brady, 218 F3d 508 (6th Cir 2000); *Triomphe Investors v City of Northwood*, 49 F3d 198 (6th Cir 1995).

As to whether a legitimate government interest was being served, this Court need to only consider Howell-Mason's hydrogeologist testimony that confirmed the concerns for the immediate environment:

> A. ...if we have release at the site, that is a problem. It's problem for, you know, safety, for an explosion, for a fire. It's a problem for shallow ground water contamination right there. It's a problem for surface water runoff, contamination.
>
> …
>
> Q. Did you analyze any potential impact to those domestic potable wells?
> A. No.
>
> …
>
> Q. ...underground storage tanks do leak, correct?
> A. They do leak. Yes. [(Exhibit B, pp 35, 37, 67).]

In other words, while this Court need not get into the specifics of the dispute, Howell-Mason's own expert confirmed underground storage tanks leak, and that when they leak at the proposed site, environmental harm would result.

Simply put, because Howell-Mason never possessed a legally protected right to operate a gas station on the Property under any set of circumstances, no taking occurred as a matter of law. *Lucas*, 505 US at 1027.

B. No Genuine Issue of Material Fact Exists Because the Township's Decision Did Not Deprive Howell-Mason of All Economically Viable Use of the Property, Entitling the Township to Judgment as a Matter of Law.

The next step in the takings analysis requires this Court to determine whether Howell-Mason can demonstrate that the challenged regulation denies it **"**all economically beneficial or productive use of the land.**"** *K&K Constr*, 456 Mich at 585 (1998); see also *Gackler Land Co v Yankee Springs Twp*, 427 Mich 562, 572; 398 NW2d 393 (1986).

Howell-Mason cannot meet its burden of demonstrating a denial of all economically viable use. This is because the Township's Zoning Ordinance does not categorically preclude all economically beneficial or productive use of the Property. The Property is located in the Neighborhood Services Commercial District, which permits multiple principal uses as of right, including retail establishments, restaurants, and service uses such as laundry or dry-cleaning operations. Zoning Ordinance § 9.02. Howell-Mason cannot dispute these potential land uses.

Instead, Howell-Mason has affirmatively admitted that it has chosen not to consider any alternative development of the Property. Howell-Mason was asked to explain "all alternative developments for the Subject Property Plaintiff has considered," and answered: **"None. Plaintiff does not develop and operate businesses other than gasoline service stations with auxiliary food service"** (Exhibit D, p 5). That admission is dispositive. A voluntary business decision to pursue only a preferred use does not establish a denial of all economically beneficial or productive use; it reflects a self-imposed limitation, not a regulatory taking.

This principle is well settled. A regulation does not affect a taking merely because it prevents the "most beneficial use of the property." *Penn Central*, 438 US at 125. Nor does a diminution in profitability render a zoning ordinance unconstitutional. *Sun Oil Co v City of Madison Heights*, 41 Mich App 47, 56; 199 NW2d 525 (1972). Because economically viable alternatives plainly exist under the Zoning Ordinance—and because Howell-Mason has voluntarily elected not to pursue them—it cannot, as a matter of law, establish a categorical taking based on an alleged deprivation of all economically viable use. *Dorman v Twp of Clinton*, 269 Mich App 638, 647; 714 NW2d 350 (2006).

C. No Genuine Issue of Material Fact Exists Because the Township's Decision Did Not Interfere with Any Legally Cognizable Investment-Backed Expectations, Entitling the Township to Judgment as a Matter of Law.

Howell-Mason's final avenue to proceed with a regulatory taking claim is if the regulation is so "burdensome to rise to the level of a taking" under a multi-factor analysis (known as the "*Penn Central* factors"): (1) the character of the governmental action, (2) the economic effect of the regulation on the claimant, and (3) the extent to which the regulation interfered with distinct investment-backed expectations. *Penn Central Transportation Co v New York City*, 438 US 104 (1978). Howell-Mason's cause of action fails under consideration of *Penn Central* factors, as is explained in more detail below.

First, as it relates to the character of the government action, it is well established that zoning regulations are a "classic example" of governmental action that affect land and are a permissible exercise of authority. *Grand/Sakwa of Northfield, LLC v Twp of Northfield*, 304 Mich App 137, 146-47; 851 NW2d 574 (2014). Courts have time and time again upheld land use regulations as a lawful exercise of authority under the Michigan Zoning Enabling Act. See, e.g., *Gym 24/7 Fitness, LLC v State*, 341 Mich App 238; 989 NW2d 844 (2022).

Second, as it relates to the economic effect of the regulation on the claimant, the question is "whether the plaintiff was denied all use of even those ***preexisting*** property rights, those being under the zoning classification the plaintiff purchased the property at." *Id.* at 148 (emphasis supplied). **There was no "preexisting" property right to operate a gas station**—such a land use has always been subject to the special land use process, which Howell-Mason knew (and was charged with the knowledge of)[5] when it purchased the Property. Moreover, an impact in property value is insufficient to maintain a cause of action for a takings claim. *Bevan v Brandon Twp*, 438

[5] Although it is clear Howell-Mason had actual knowledge of the zoning regulations, it is black letter law in Michigan that "everyone dealing with [municipalities] … [are] charged with knowledge of the … provisions of lawfully adopted ordinances." *Hughes v Almena Twp*, 284 Mich App 50, 78; 771 NW2d 453 (2009).

Mich 385, 402-403; 475 NW2d 37 (1991) ("a mere diminution in property value … does not amount to a taking")

Third, with respect to interference with investment-backed expectations, Michigan law is crystal clear: a property owner who purchases land subject to existing zoning restrictions "with the intent to seek a modification of those limitations accepts the business risk that the limitations will remain in place or be only partially modified." *Grand/Sakwa*, 304 Mich App at 146–47. The record confirms that Howell-Mason knowingly accepted this business risk because Howell-Mason's own purchase documents expressly contemplated the existing zoning framework. In fact, in the Commercial Purchase Agreement for one parcel of the Property Howell-Mason obtained, it negotiated a 120-day due-diligence period specifically to allow it to determine whether it was satisfied that the "Property is properly zoned or can be rezoned to permit Purchaser's proposed development and use." See also Exhibit E ("Admit that your conducted due diligence regarding the zoning restrictions on the Property before purchasing it … ANSWER: Admitted that due diligence was conducted …; Admit that you knew the zoning restrictions applicable to the Property when you purchased it … ANSWER: Admitted…").[6] Having bargained for the opportunity to do due diligence into the zoning regulations and proceeding with the purchase nonetheless, Howell-Mason cannot now recast the continued enforcement of the zoning regulations as a compensable taking.

[6] It is highly relevant to point out that while Howell-Mason claims they were informally told that they could develop a gas station on the Property by some unidentified individual, such reliance is forbidden by Michigan law. *Hughes v Almena Twp*, 284 Mich App 50, 78; 771 NW2d 453 (2009) ("Casual private advice or assurances of success from township officials does not constitute exceptional circumstances.").

The clearest way to illustrate the absurdity of Howell-Mason's takings claim actually comes from the testimony of Howell-Mason's land use expert who was asked if he was surprised at how Howell-Mason had invested in the property:

> Q. You said that the special land application was futile because the township board could not approve it with the prohibition?
> A. Right.
> Q. How does it not surprise you that they invested 1.4 million dollars in a land use that was prohibited on the face of the ordinance?
> A. Well, I wasn't involved at that early stage of the project. Frankly, I think they had their engineers giving them zoning advice that was incorrect. Whether they knew about the prohibition of the wellhead area, I don't know if they knew that upfront or not.
> Q. If you were involved at the outset, would that have been something that you would have flagged in your professional review?
> A. Absolutely. [Exhibit A, p 48).]

It is not possible for Howell-Mason to claim a taking when their own land use expert testified they relied on bad "zoning advice" from their engineers and that they should have recognized the issue.

CONCLUSION

These claims were permitted to proceed only to determine whether discovery would reveal facts capable of supporting them. It did not. With discovery closed and the governing law settled, Howell-Mason cannot establish an Open Meetings Act violation or a compensable regulatory taking, and Howell Township is therefore entitled to summary disposition on Counts V and VI as a matter of law pursuant to MCR 2.116(C)(10).

Respectfully submitted,

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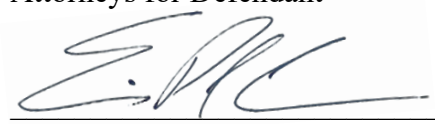
Attorneys for Defendant



Dated: April 3, 2026

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STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
a Michigan Limited Liability Company,

Plaintiff,

v

HOWELL TOWNSHIP,
a Michigan General Law Township,

Defendant.
_____/

Case No. 24-32242-CZ

HON. SUSAN LONGSWORTH

INDEX OF EXHIBITS

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INDEX OF EXHIBITS

EXHIBIT LETTER	DESCRIPTION
EXHIBIT A	02/20/2026 Deposition of Paul LeBlanc Excerpts
EXHIBIT B	02/20/2026 Deposition of Gregory Buhoveckey Excerpts
EXHIBIT C	01/16/2025 Hearing on Defendant's Motion for Summary Disposition Transcript
EXHIBIT D	08/15/2025 Plaintiff's Answers to Discovery
EXHIBIT E	02/26/2025 Plaintiff's Answers to Requests to Admit
EXHIBIT F	Affidavit of Howell Township Treasurer Jonathan Hohenstein
EXHIBIT G	Purchase Agreement – 160 Burkhart Road
EXHIBIT H	Purchase Agreement – 70 N Burkhart Road
EXHIBIT I	Purchase Agreement – 3598 Mason Road

Respectfully submitted,

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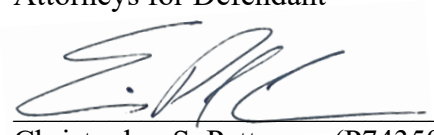

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EXHIBIT
A

STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC, a Michigan
Limited Liability Company,

Plaintiff, CASE NO. 24-32242-CZ

vs HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP, a Michigan
General Law Township,

Defendant.
_____/

PAGES 1 THROUGH 51

DEPOSITION OF PAUL LEBLANC, AICP,

Taken by the Defendant before Debra M. Cummings, Court Reporter (CSR-6037) and Notary Public for the County of Livingston, acting in the County of Livingston, Michigan, on Friday, February 20, 2026 at 133 West Grand River Road, Brighton, Michigan at 12:45 p.m.

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STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC, a Michigan Limited Liability Company,

Plaintiff, CASE NO. 24-32242-CZ

vs HON. SUSAN LONGSWORTH

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(An off the record discussion was held).
(Short Break).
BY MR. SZYMANSKI:
Q. We were talking about what you reviewed in preparing this letter to the planning commission. I think I understand. Obviously, anything that is dated after this letter that you listed, you couldn't have reviewed --
A. Right.
Q. -- when you prepared the letter, but now, in preparing the letter, did you personally visit the property?
A. Yes.
Q. When was that?
A. Before I prepared the letter. I don't recall the date.
Q. Did you go there alone?
A. Yes.
Q. And what was the purpose of going to the property?
A. Well, I just wanted to see where it was located, what was going on around it. I, typically, won't render an opinion without looking at the property.
Q. Did you have any communication with MHOG before preparing this letter?
A. No.
Q. Did you review any hydrogeological data before preparing this letter?

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A. I did review the materials that the plaintiff's consultant had prepared showing the cross section of the soils and their opinion about clay layers and all of that. Yes.
Q. Would you still have that in your file?
A. Yes.
Q. Did you speak with anyone at Mannik Smith?
A. Not directly. I was in meetings where they attended, but I didn't have any one-on-one conversations.
Q. Did they send you the materials via e-mail or did you get them from --
A. I think I got everything from Mr. Burns.
Q. What did you review in anticipation of your deposition today?
A. What did I review?
Q. Yeah. For today's deposition?
A. My opinion. I went back and looked at ordinance, the master plan, some of the correspondence that I had reviewed previously.
Q. Did you speak to anyone?
A. No.
Q. Did you review Judge McGivney's ruling in the appeal?
A. No.
Q. Do you understand that he denied the appeal from the township board denying the special land use permit?
A. That's my understanding, but I didn't review it.
Q. What's your understanding of what remains in this lawsuit

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now?
A. I can't answer that. I don't know.
Q. Is the September 2022 letter the only written expert opinion by you in this case?
A. Yes.
Q. Have you been asked to prepare a formal expert report for trial?
A. No.
Q. Do you intend to offer any opinions at trial beyond what is contained in this letter?
A. I don't believe so. No.
Q. So you're not going to offer any opinions related to damages?
A. No.
Q. Or lost profits?
A. No.
Q. Or the value of the property?
A. No.
Q. Okay. Could you explain to me what the purpose of this letter in your view was that you sent to the Howell Township Planning Commission?
A. Well, like I say, I was asked to review the file and give an opinion, and this just summarizes my findings. I understand what the ordinance says, but it seemed to me that the -- well, it was clear that only ordinance, the only use that was prohibited from being located in the wellhead protection area

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was gas station, which struck me as very odd. The ordinance did not contain wellhead protection overlay district, which they now do since November of '25.
So at first, I was struck by the fact they were picking on a one use and wondered why they had chosen that when they allow, by right, a number of other uses that could generate toxic chemicals and whatnot.
Q. The letter, specifically, addressed that section you're talking about which is section 16.11 C8 of the zoning ordinance, correct?
A. Yes.
Q. Now, it didn't analyze the other special land use standards, correct?
A. My letter didn't? That's correct.
Q. You could have analyzed those other standards, correct?
A. I could have, but the other standards specific to the service station were all setback related and things that they could easily comply with that weren't really part of what I was being asked to do.
Q. Okay. In your letter -- and this is going to be on page one, I think it's bullet point number five, the last sentence -- where you state there's no rationale offered in the ordinance for excluding this one use among all other potential uses from locating within the wellhead protection area, correct?
A. Correct.

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Q. And that's what we were just talking about and what prompted kind of your curiosity into why is this a regulation?
A. Yes.
Q. Is it common for zoning ordinances on their face to state the purpose for their regulations?
A. I'm sorry, the purpose?
Q. Is it common in zoning ordinances for specific regulations to have a purpose statement?
A. Well, it's common to have a purpose statement for the zoning districts themselves. It's common for special use chapter to have a purpose statement of why special uses are different than permitted uses. It wouldn't necessarily be common to have a purpose statement of why they were specifically targeting gas stations.
Q. Well, you say that there's no rationale offered, but is it common for rationales to be offered for these kinds of individual restrictions in a zoning ordinance?
A. Not the individual ones, but like I said, for special uses in general, but the reason that I was struck that there was no rationale was that the ordinance that they use to deny this was that there was no wellhead overlay district, and that's where a purpose statement would have been appropriate.
Q. Well, when you say there's no rationale offered. Could a rationale have been offered at the time the zoning was drafted?

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A. It could have been, but it was never put down in writing.
Q. Did you look back through, when this zoning ordinance provision was enacted, whether or not any of the township board meeting minutes discussed the need for this?
A. No. I didn't.
Q. Could that have happened?
A. It could have happened, but it wasn't part of the ordinance.
Q. Could it have been part of their wellhead protection planning as a community back when they adopted that?
A. Possibly, but again, there was no evidence of that in the ordinance.
Q. In the ordinance, but you could have looked elsewhere, correct?
A. But to me that's meaningless. It doesn't carry any weight if they discussed it, but never used that in the legal document to justify why they were selecting one use over all others.
Q. So it's your professional planning opinion, that when you decide to enact a restriction for a specific land use that ought to memorialize your reason within the zoning ordinance?
A. For a category of uses, yes, special uses.
Q. But not for one specific use, like a gas service station?
A. Yeah. And that's what was strange about this because they targeted one specific use for that one requirement that it couldn't be located been the overhead wellhead protection district. If there were numerous uses that were subject to

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that provision, then I might have said, well, if I had been writing the ordinance, I would have done it differently, but they're not singling out one use, but in this case they did.
Q. If we can go to the second page. In the first paragraph after the numbered paragraphs, there's a line, and I'll quote, where you say I question what legitimate government interest is served by prohibiting this single use from locating within the wellhead protection area, plus another 300 feet?
A. Correct.
Q. What did you mean by question?
A. Well, I didn't see any purpose to it. Again, it goes back to not restricting uses in the wellhead protection district. It was why are you picking on one use when you allow any number of other uses that could be similar to this in terms of potential danger with no justification given?
Q. So, but you use the word question. That's different than saying there is no legitimate government interest, correct?
A. Well, I said I question what that legitimate interest is.
Q. Is protecting drinking water a legitimate government interest?
A. Yes. Sure.
Q. Is maintaining public confidence in the safety of the community's drinking water a legitimate public interest?
A. Sure.

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Q. Could those interests be the ones that served that prohibition of gas stations in wellhead protection areas?
A. They could be, but not singling out just one use to serve those purposes. That was my concern.
Q. So in your letter you identified several uses that are permitted in or near wellhead protection areas without the same restrictions that pertain to gas stations, correct?
A. Correct.
Q. You identify vehicle service and repair shops and dry cleaning establishments as uses that are allowed in preparing this, correct?
A. Yes.
Q. What's the basis in which you compared those land uses to gas service stations?
A. Well, because vehicle repair, for example, as I said in my memo, it doesn't define what that is. The only limitation is they don't permit body shops as part of vehicle repair. So it could be transmission repairs, engine rebuilding, oil changes, virtually anything that involves repair of a vehicle, which generally means fluids leaking out and storing oils and so on on site. Really no different. In fact, in this case, potentially more dangerous than the service station that was proposed, because they're not doing any repair work. They're just pumping gas.
Q. How do you arrive at that conclusion? How do you know that

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change?
A. Well, sure they can change, but the plan was only adopted I think two years ago. Maybe 2025 even.
Q. The same members of public that were concerned about increased commercial activity at this property could show up and ultimately persuade the board not to go forward with those plans, correct?
A. They could, and that's one of the problems is when the board doesn't do their job and they advocate their responsibility to the vocal few at a public hearing. The zoning act requires that zoning be based on a plan, and the new master plan for the township shows the whole west side of that corridor as commercial.
Q. Did you speak to any of the residents who expressed concerns at the meetings?
A. No.
Q. Do you think that would have helped inform you at all for the opinions that you're giving in this case?
A. No.
Q. Why?
A. Because the comments were nothing I haven't heard before. I mean, I get what the concern is, but it's not what's reality.
Q. Whose reality? Those people who live there or --
A. The township.
Q. -- your view?

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A. I mean, the master plan says what the master plan says. It was adopted by the planning commission and the township board. They approved commercial along that whole corridor.
Q. So you sent a letter to the planning commission?
A. Yes.
Q. There was two public hearings held, one in front of the planning commission, and another in front of the township board, correct?
A. Yes.
Q. You had an opportunity to present?
A. Yes.
Q. And other individuals, as part of Howell-Mason, had an opportunity to present, correct?
A. Correct.
Q. Is that typical with the process that you see afforded to special land use applicants the throughout the state?
A. I think for any applicant it's typical. I mean, the applicant has the right to present their project, and if they have consultants involved, they're going to explain different aspects of the project, and then the public hearing is opened.
Q. Was the process that Howell Township went through reviewing the special land use application, in your view, consistent with what is required under the Michigan Zoning Enabling Act?
A. Yeah. I think so.

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Q. Do you think that there's any other process that the township board should have afforded to Howell-Mason?
A. Well, the only thing is, as I pointed out in my memo, which has since been changed in the new 2025 ordinance, there was no appeal process available to the applicant once they were denied by the township board. The zoning ordinance specifically says the board of appeals can't hear appeals of special use decisions. The new wellhead overlay district does appear to contain language that allows for appeal of a denial.
Q. Okay. But that's not required under the Michigan Zoning Enabling Act?
A. No. It's not.
MR. SZYMANSKI: Could you mark this as Exhibit 3. And we can just call it Howell Township Zoning Ordinance.
DEPOSITION EXHIBIT NUMBER 3 WAS MARKED BY THE REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. Now, I know you said beforehand that you reviewed the zoning ordinance in preparation for today, correct?
A. Yes.
Q. So I don't know that we need to go through it piece by piece, but I just want to confirm that you would agree Howell-Mason's special land use application was subject to the special land use standards in section 16.06 and section

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16.11, correct?
A. Yes.
Q. Now, under the Howell Township Zoning Ordinance, the authorities who approve or deny special land use permits rest with the township board, correct?
A. Yes.
Q. Do you understand, in this case, that the Howell Township Board decided to deny the special land use application based on four different standards not being satisfied?
A. I don't recall, specifically, the four. But yeah, there was more than just being located in the wellhead protection zone.
MR. SZYMANSKI: Okay. Let's just mark these meeting minutes as Exhibit 4.
DEPOSITION EXHIBIT NUMBER 4 WAS MARKED BY THE REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. I just gave you the minutes in Exhibit 4, in case you want to look at which specific standards weren't met, but if we can turn our attention in Exhibit 3 to section 16.06 A. And I'll just give you an opportunity to read that section.
A. All right.
Q. Is that a common special land use standard?
A. Yes.
Q. Do you understand that the township board unanimously concluded that the proposed use did not satisfy this

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standard?
A. Yes.
Q. That conclusion was based, at least in part, on comments from members of the public, correct?
A. I assume so. Yes.
Q. And we were talking about this earlier, but you'd agree that public comments regarding traffic, noise, lighting, neighborhood character are relevant consideration for the township board to make when they're reviewing a special land use application, correct?
A. They can be, yes.
Q. Now, your September 22nd, 2023 letter, you did not analyze this standard, correct?
A. No. I did not.
Q. And earlier you said that there are standards that are subjective --
A. Yes.
Q. -- in the special land use permit process?
A. Yes.
Q. Is subsection A one of those subjective standards?
A. Yes.
Q. So is it your opinion that Howell Township had the discretion to determine whether or not this standard was satisfied?
A. They do.
Q. If a standard is not met through the special land use permit

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application process, does the township board have the authority to grant it?
A. I would say if they find that it's not met, no, they would not grant the special use.
Q. Okay. Now, I want to go to subsection D.
A. All right.
Q. Is this a common special land use standard?
A. Yeah. Similar. Yes.
Q. Do you understand the township board also unanimously found that this standard was not met?
A. Yes.
Q. Now, this standard, because we've talked about the one -- the prohibition of gas stations in wellhead protection areas?
A. Yes.
Q. This is a different standard than that, correct?
A. Correct. Well, it could relate to it, but it's a different standard. Yes.
Q. Are you aware of whether or not there are private domestic wells in the vicinity of the proposed setting?
A. I believe there are.
Q. Did you have any discussions with anyone related to private domestic wells near the area?
A. No.
Q. If there are private domestic wells in the area near the site that draw from the shallow nonconfined aquifer, would the

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potential impact on those wells be a relevant consideration under subsection D?
A. I would say it depends on how the use is designed. Again, from everything I saw, and I'm not an expert in this, but based on the drawings and the testimony from the plaintiff's engineer and the people that supply the tanks, and again, approval from the state fire commissioner, EGLE, it seems like there was no concern from them regarding those potential hazards.
Q. Did you review anyone who looked at the potential impact on the nonconfined aquifer?
A. I didn't. No.
Q. Do you think that that would be helpful in analyzing this standard?
A. I don't believe so, because the technology was approved by everybody.
Q. Are there concerns outside of just the underground storage tank with gas stations from an environmental prospective that you're aware of?
A. The only one I can think of is there's concern that there may be a spill at the pumps if somebody hits the fuel pump or the handle is left on and the fuel flows, but I don't know what mitigation measures were taken or what would be taken. I know they did talk about an alarm system and automatic shutoff and things like that, but that's beyond my expertise.

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Q. Who did you rely on to provide that expertise as to whether or not it was safe or there were concerns with the gas station and the environment?
A. Well, I think the owner, because they have a number of gas stations, they've been in this business a long time, and the people that design the systems.
Q. One of the reasons that was cited by the township board with reference to this specific standard was that the proposed use could jeopardize the placement of a future municipal well. Do you think that's a valid concern, if true?
A. Personally, I don't believe that's a legitimate concern, because they've talked about a future well, but there's no assurance that that would ever happen, and they're imposing a restriction on a property owner based on a supposition that maybe someday there might be something there. It's not like they have a specific plan that in five years we're going to put a new well there.
Q. If they did have plans for the contingent wellhead, would that change your opinion?
A. It might. Again, it would depend on the proximity and the geology.
Q. So if that's the area that's designated as a contingent wellhead in case of failure for other wellhead areas or that they dry up, would that change your opinion?
A. Again, it's based on supposition that maybe some day it

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might.
Q. And you didn't analyze this standard in your letter, correct?
A. No.
Q. Why not?
A. Because I was focused on the wellhead restriction.
Q. Okay. The next standard is subsection F. I'll give you an opportunity to read that.
A. All right.
Q. Do you know that the township board also unanimously found that this standard was not met by the applicant?
A. That's my understanding. Yes.
Q. And this standard was not addressed in your letter, correct?
A. Correct.
Q. So let's go to section 16.11. And this was the focus of your letter, correct?
A. Yes.
Q. This section provides that no gasoline service station shall be permitted within 300 feet of a wellhead protection area, correct?
A. Correct.
Q. Do you have any basis to dispute that the gas station as proposed was within the wellhead protection area?
A. No.
Q. This is a discretionary or an objective standard?
A. This is an objective standard.

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Q. Is there any exception built into the zoning ordinance for this standard?
A. No. And that's something I pointed out in my report.
Q. And the township board determined unanimously that this requirement was not satisfied, correct?
A. Correct.
Q. Could the township board have lawfully approved this special land use application as present in the light of this prohibition?
A. I don't believe so.
Q. Now, under the Howell Township zoning ordinance, relief from strict application of an ordinance can be obtained by seeking a variance from the Zoning Board of Appeals, correct?
A. Yes, but not in this case.
Q. Why not in this case?
A. Because number one, the Zoning Act says that the board of appeals may not hear an appeal of a plan unit development or a special use request unless the ordinance specifically provides for it.
Q. I'm not talking about appeal from the township board decision. I'm talking about a variance from their requirements of section C 8.
A. I don't think the board of appeals would have authority to grant a variance from a standard, because then they're changing the ordinance. There's no -- based on the typical

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standards for variances, I don't see how they could justify negating any standard.
Q. I've got a community I'm working with where there is a accessory structure, there's actually a special land use in the zoning ordinance. Now, accessory structures are limited to just two per property. So that applicant wanted a third accessory structure on the property. So they sought a variance to allow for a third, but then they also had to seek special land use approval. Do you get that process?
A. Yeah. And I wouldn't -- if they granted the variance, I think they were not following proper procedure.
Q. So you're saying it would have been a use variance that the Zoning Board of Appeals would have essentially been considering?
A. Well, not even that, because the use variance, the main criteria is the existing zoning doesn't provide a reasonable use of the property. So that's, you know, I'm zoned residential, but I'm at the intersection of two arterial streets, and nobody in his right mind is going to build a single family home there, so I'd like to put an office building there, and I've been denied office zoning, so I asked for a use variance.
Q. So I want to go back, because you said that you don't think that, as presented, the application, that the township board had the authority to approve it, correct?

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A. Yes.
Q. So the special land use application was futile?
A. Yes.
Q. Okay. I want to show you a document --
MR. SZYMANSKI: Can we mark that as Exhibit 5.
DEPOSITION EXHIBIT NUMBER 5 WAS MARKED BY THE REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. Do you recognize this document?
A. From five years, six years ago. Oh, yeah. I do.
Q. Did you prepare this document?
A. Yes.
Q. Was it for Cannon Township?
A. Yes.
Q. Where is Cannon Township?
A. It's north of Grand Rapids. It's a suburban community, maybe 20 miles north of Grand Rapids.
Q. And this was concerning a special land use application for a Top Stop Motor Vehicle Service Station, correct?
A. Correct.
Q. Now, in this review, you analyzed every applicable general land use standard under the Cannon Township Ordinance, correct?
A. Correct.
Q. You analyzed whether or not the proposed use was harmoniously

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compatible with the existing character of the community?
A. Yes.
Q. And you analyzed whether or not it would be detrimental by the reason of noise, traffic, smoke, fumes, glare, odors, correct?
A. Yes.
Q. And you analyzed whether or not it would be compatible with the natural environment, correct?
A. Correct.
Q. And you analyzed whether or not it would be consistent with the intent and purposes of the ordinance and master plan, correct?
A. Yes.
Q. Your analysis here would represent your professional opinion in how to interpret zoning ordinance standards, correct?
A. Yes.
Q. Now, in this case there were additional use specific standards for motor vehicle services in section 23.26, correct? And if you need to take an opportunity to review it, please.
MR. LULGJURAJ: It's on page four.
THE WITNESS: Yes.
BY MR. SZYMANSKI:
Q. And for each standard you analyzed as to whether or not it appeared to be met, correct?

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A. Correct.
Q. Why did you not perform that type of comprehensive analysis for the Howell-Mason application?
A. Well, again, the issue for me was the prohibition, because it's in a wellhead protection district. I mean, I wasn't -- if I had been the township's consultant, I would have done a review like this, but I was more focused on just that part of the zoning issue.
Q. In talking about that with the other standards in the Howell Township zoning ordinance, you agree that the failure to satisfy even one of the conditions required denial of the special land use application?
A. Yes.
Q. And in this case, there was four requirements that were deemed not satisfied, correct?
A. Correct.
Q. So each one of those would be an independent basis to deny the special land use application?
A. Because they found that they weren't met, I wouldn't agree with their findings. But yes, based on their action, that's justification to turn it down.
Q. Okay. Now, I want to show you Judge McGivney's opinion. Did I already give you those?
MR. SZYMANSKI: We can mark that as Exhibit 6.
DEPOSITION EXHIBIT NUMBER 6 WAS MARKED BY THE

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REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. I'm happy to give you the time to read the entire thing or I can show you what I'd like to discuss.
A. Just show me.
Q. Okay. Page 13. I'm looking at the second paragraph where it says, here in this case Howell Township has a legitimate interest in protecting the general welfare of the community in locating land uses compatible locations to other land uses. That legitimate interest of the municipal government isn't shrined in the MZEA itself. The regulation of the location of gas stations, which involve gasoline runoff and gasoline storage tanks in relation to the community ground water aquifer is reasonably related to the MZEA's stated goal of allowing municipalities to establish zoning ordinances to protect the general public safety, health, and welfare.
Does the Court's identification of a legitimate government interest change your view that there's no rationale for section 1611 C8?
A. Well, I don't disagree with what the zoning act says, but I don't think the judge's finding takes in the full context of where the property is and what's proposed. Again, going back to what I said earlier, the new master plan shows the entire corridor on the west side of the street as intensive commercial. So to me, that changes things with respect to

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whether that's a compatible use or not and the extent to which it would have an impact.
Now, the concerns about ground water aquifer are certainly reasonable, but again, I think substantial evidence has been provided to the township that that's not an issue, and the state agrees with it, and the local fire marshal agreed with it, and MHOG even didn't protest it in their initial review of the request.
Q. Are you aware that Judge McGivney reviewed all of that, the evidentiary support by Mannik Smith, the letters from MHOG, your letter, and still found to the contrary?
A. And that's why he's a judge and I'm not.
Q. So I want to take you to page eight, just one more section.
A. Page?
Q. Eight.
A. Eight. Okay.
Q. The section or -- Judge McGivney writes that the prohibition of gas stations in wellhead protection areas is rationally related to protecting human health and the environment, including the drinking water in the community aquifer, as well as preventing noise and light pollution and great traffic jams. What basis do you have to disagree with that?
A. I'm sorry, I don't have the right page, I guess.
Q. Page eight.
A. Eight?

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Q. Yeah. Eight. And it's at the very top, the second sentence.
A. Oh, I do have the right page.
Q. Sorry. I should have specified that. So just that second sentence there, Judge McGivney is saying that the prohibition of gas stations in wellhead protection areas is rationally related to protecting human health and the environment. And I want to know what your professional basis is to disagree with that?
A. Well, what I said earlier, I think there's ample professional documentation that says it's not a risk, and as far as noise and light pollution and traffic, it goes back to the master plan for that whole corridor.
Q. And earlier you said you questioned the legitimate government interest. This doesn't answer that question for you?
A. No.
Q. As a professional planner, how would you advise someone who's purchasing property and wants to engage in a use that is only permitted as a special land use? So if you had a private developer, who is looking to purchase land, and they wanted to put a business there, but it was only permitted by special use, what would you tell them?
A. Well, I would point out that, and I would point out what the standards are for the special use for that particular use, and then from there, it's up to them whether they want to pursue it or not.

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Q. Are there risks in pursuing a special land use?
A. Sure there are.
Q. What they?
A. Well, as we've discussed here, some of the standards are subjective, and in some communities, much more weight is given to public opinion than should be, and in some communities, frankly, they don't really pay much attention to the standards.
Q. Is it fair to say that special land use permit is not guaranteed to be approved?
A. Yes.
Q. Would you advise a client to invest substantial sums of money in preparing to operate a special land use before approval?
A. Well, like I said, I would point out what the requirements are and what the risks are. Beyond that, it's up to them.
Q. If they did make investments into preparing for special land use, do you think there's any guarantee that they'll see the fruits of those investments?
A. There's no guarantee.
Q. Would it surprise you to learn that Howell-Mason claims in this litigation to have invested more than 1.4 million dollars in preparation for operating a gas station on the property?
A. No.
Q. Why?

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A. Why? Well, they had to buy the property, they had to hire consultants, they did a lot of site plans, they attended a lot of meetings. I understand in the development business there are a lot of front end costs.
Q. You said that the application was futile, correct?
A. Pardon?
Q. You said that the special land application was futile because the township board could not approve it with the prohibition?
A. Right.
Q. How does it not surprise you that they invested 1.4 million dollars in a land use that was prohibited on the face of the ordinance?
A. Well, I wasn't involved at that early stage of the project. Frankly, I think they had their engineers giving them zoning advice that was incorrect. Whether they knew about the prohibition of the wellhead area, I don't know if they knew that upfront or not.
Q. If you were involved at the outset, would that have been something that you would have flagged in your professional review?
A. Absolutely.
MR. SZYMANSKI: Let's take a quick break.
(Short Break).
BY MR. SZYMANSKI:
Q. Okay. Back on the record after a break, and I wanted to talk

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to you about whether or not there are alternative uses that could be engaged by Howell-Mason on the property. Are there?
A. Presumably, yeah. That commercial district allows other uses by right and some by special use.
Q. And the uses by right, they could engage in so long as they submitted a site plan and met the objective criteria the township ordered be required --
A. Correct.
Q. Have you discussed any of those with Howell-Mason?
A. No.
Q. What did you bring with you to the deposition today?
A. Just the things that I had hard copies of, which isn't much, the township consultants review memo, my memo, a few notes, zoning map and master plan for land use map, township board agenda, planning commission agenda, Boss Engineering's response to the Carlisle work men review comments, and memo from Spicer Group.
Q. Could I see that.
MR. SZYMANSKI: Could we mark this as Exhibit 7.
DEPOSITION EXHIBIT NUMBER 7 WAS MARKED BY THE REPORTER FOR IDENTIFICATION.
BY MR. SZYMANSKI:
Q. Was there anything else that you had? Do you have any handwritten notes or -- have we talked about all of the opinions that you intend to offer in this case today?

A. Yes.
Q. Did you rely on anyone else to formulate your opinions in the case?
A. No.
Q. And have you been asked to do any additional work that we have not talked about today?
A. No.
Q. Is there anything you want to add to your testimony today?
A. I don't believe so.
Q. Anything about your opinions that you care to clarify or correct?
A. No.

MR. SZYMANSKI: Okay. I don't have any further questions, guys.

MR. LULGJURAJ: We don't have any questions.

THE REPORTER: Can I have your orders.

MR. LULGJURAJ: PDF or e-trans.

MR. CONN: PDF is fine.

THE REPORTER: Okay. Thank you.

(The deposition was concluded at 2:30 p.m.)

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON)

I Debra M. Cummings, CSR 6037, and Notary Public, certify that this transcript, consisting of 51 pages, is a complete, true, and correct record of the testimony of PAUL LEBLANC, held in this case on Friday, February 20, 2026.

I also certify that prior to taking this deposition, PAUL LEBLANC was duly sworn to tell the truth.

I also certify that I am not a relative or employee of or an attorney for the party; or a relative or employee of an attorney for a party; or financially interested in the action.

Debra Cummings

Debra M. Cummings CSR 6037
Notary Public: Livingston County, Michigan
My Commission expires: 7-18-2026
DATED: February 25, 2026

EXHIBIT B

STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC, a Michigan Limited Liability Company,

Plaintiff, CASE NO. 24-32242-CZ

vs HON. SUSAN LONGSWORTH

HOWELL TOWNSHIP, a Michigan General Law Township,

Defendant.
_____/

PAGES 1 THROUGH 144

DEPOSITION OF GREGORY BUHOVECKEY, PE,

Taken by the Defendant before Debra M. Cummings, Court Reporter (CSR-6037) and Notary Public for the County of Livingston, acting in the County of Livingston, Michigan, on Friday, February 20, 2026 at 133 West Grand River Road, Brighton, Michigan at 8:00 a.m.

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STATE OF MICHIGAN

IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

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HOWELL TOWNSHIP, a Michigan General Law Township,

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_____/

PAGES 1 THROUGH 144

DEPOSITION OF GREGORY BUHOVECKEY, PE,

Taken by the Defendant before Debra M. Cummings, Court Reporter (CSR-6037) and Notary Public for the County of Livingston, acting in the County of Livingston, Michigan, on Friday, February 20, 2026 at 133 West Grand River Road, Brighton, Michigan at 8:00 a.m.

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Q. Why?
A. Because that aquifer is confined. And that's the big issue here. And if you look at those cross sections, I mean, just from a natural standpoint, without getting into the engineered controls, which I'm familiar with the engineered controls and what they do out there, and not getting into the technical of how much does it leak or what could possibly happen there.
We were focusing just on the natural conditions of that site, where it is and what's under it. And after reviewing all of that information, we could make these opinions without going to the engineered controls. Now, we did go to the engineered controls, it does mention those in the letter, the multimillion dollar leak detection, double wall, all those things there you'll notice, page three, are listed. And that's in addition to.
But the fact is, is that aquifer, the natural conditions provide enough protection for it that the engineered controls that we're talking about and the rules that govern those are just kind of like the thin layer of frosting on a much larger cake, which is that aquifer is confined.
Q. I'm trying to understand what you're saying. Are you saying it almost doesn't matter if the storage tanks leak because of the aquifer?

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A. The natural conditions make it that 90 percent of what we're talking about or a large percentage of the potential for anything to happen to that aquifer hinges on the natural conditions, not necessarily the controls at the site.
Q. So it doesn't matter, in your opinion, how likely or unlikely the tank would be to leak?
A. It matters, I mean, because there's other environmental consequence and things of that nature.
Q. What do you mean by that?
A. Okay. Say, for example, the tank did leak, that's a problem. You know, if we have release at the site, that is a problem. It's a problem for, you know, safety, for an explosion, for a fire. It's a problem for shallow ground water contamination right there. It's a problem for surface water runoff, contamination.
Q. What do you mean by shallow ground water?
A. Shallow ground water would be the ground water that's right at the site, right under the site that interacts with the surface. You have a direct interaction with the surface, with the surface water, and with what's going on at the surface. That is what shallow ground water, purged ground water would be, direct interaction.
This is a confined aquifer. It's very far below the surface. It does not interact with the surface water in that area. It does not interact with the shallow ground

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water, which would be the ground water above the confining layer. It's separate. It's hydraulically separate. The definition of a confined aquifer is that it's hydraulically separated from the surface and shallow ground water.
Q. So why do you think it would not be necessary to review EPA data on the frequency of leaks from underground storage tanks in preparing this letter?
A. Because the aquifer is confined.
Q. Could it matter for other environmental concerns?
A. It could matter for other environmental concerns like, say, for instance, surface water contamination, but our letter did not deal with surface water contamination. We were specifically looking at the confined aquifer. We were specifically looking at it's relation to those time of travel zones for the municipal wells, which get their water from the confined aquifer. We weren't looking at any of those other factors.
So in that regard, the tanks leaking or not leaking didn't really play a role in what we were looking at. It's a good thing. It's in addition to -- it's an additional risk reducer, but it's not a huge contributing factor here. If we were looking at surface water, it would be.
Q. So what depth are we talking about for the shallow water that you're referring to?
A. At this site, shallow ground water could be anywhere from a

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foot beneath the surface to five, ten feet, would be my guess. We didn't do shallow surface or ground water studies out here. We specifically looked at the Marshall Sandstone Aquifer.
Q. Could you go to Exhibit 1 of your letter. What are the green dots?
A. Those are domestic wells.
Q. Could you tell me what a domestic potable well is?
A. A domestic well would be like, say, for example, for a house or residence.
Q. How many green dots do you see on this diagram?
A. Looks like five. I want to grab mine. Mine's a bigger print. Here we go. Actually, I looks like four, because that one is blue. So I think we're talking about four.
Q. Okay. And are those all close to the proposed site?
A. Yeah.
Q. Did you analyze any potential impact to those domestic potable wells?
A. No.
Q. Would the EPA on storage tank leaks be relevant for those?
A. In this case, yeah. They probably would.
Q. Why?
A. Because those are shallow, most likely shallow wells. Now, I know the one across the street, which is that blue dot is not. That's why it's a blue dot, because it's a type two,

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you'll notice. The type one shallow wells there are within that shallow ground water zone. They're not -- if you go back and look.

Q. So you're not offering an opinion that the underground storage tanks would be safe for those wells, correct?

A. No. We were, specifically, looking at confined aquifer. We were, specifically, looking at that time of travel zone that we were within for the municipal wells, which are to the south and west of the site.

Q. Okay. Now, can we go to Exhibit 2 and 3. We're going to talk about both of the cross sectionals. First, did anyone from Mannik Smith visit the proposed site?

A. Yes.

Q. Who?

A. Walt went out there. He's been in that area, actually wanted to go out there last night, but it was dark, so it didn't make a point to go over there.

Q. Walt went out there. What did Walt do there?

A. He just -- I mean, just observed the sites. I mean, just drive down the streets. There's really not much to see.

Q. And in terms of site testing, did Mannik Smith get any soil borings?

A. No.

Q. Ground water sampling?

A. No.

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Q. Monitor any well installation at the site?

A. No.

Q. So where does Mannik Smith get it's data to create these cross sectionals from?

A. Our data came from, one, the sources we listed. There's a lot of data in there. We pulled that out. And then that EGLE site. Those sources that are listed is where this came from.

Q. Okay. And when we say that these cross sectionals are generalized, what does that mean?

A. Generalized will be, okay, for example, let's look at Exhibit 2. We have the record for the well at Angelo's Party Store right across the street, and we have the well records for the other well shown. Those are connected with the different layers between, as shown, based on the geologic maps and what we know from the data that we got.

So it's generalized in that -- if you went, for example, in the roadway Burkhart Road. See where we're at right there? So we're between the Mason Road side and the party store right there where we don't have a well, we don't have actual subsurface data showing what that is. A lot of that is generalized between the two points that we do know.

Q. Would site specific data give you a more accurate depiction of the ground?

A. Site like -- expand on that.

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Q. Well, Mannik Smith didn't go on the site and perform any testing, correct?

A. No.

MR. CONN: Is that correct?

THE WITNESS: Yes. We did not go to the site and collect additional data.

BY MR. SZYMANSKI:

Q. Okay. Could Mannik Smith have done that?

A. Do we have the capability to do that? Yes. We do have the capability to go collect additional data.

Q. So for a project like this, if money were not an object, what type of data would you want Mannik Smith to collect to create these cross sections?

A. The data that we reviewed, right, I mean this is a huge area we're talking about, huge, and the cost to go out and define this area down to the tee would be astronomical, right? We rely on published data, which is essentially a work in progress. As people drill wells, that well site that we talked about, that information is there, and these sections, the data that's available is then updated.

So over time it becomes more detailed, right? So even though we could go out and collect data, I don't know that we would need to, because I think it's irrelevant, and it's irrelevant because the aquifer is confined. So it doesn't matter whether that hard pan layer that you see here

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that intersects Angelo's Party Store, right, that we know is there, because we drilled through it and observed it at those depths, peters out say at, you know, that thousand foot or so, see how it peters out, because we did not see it in the next well, so we know it's not here, and we know it's here, and it's interpreted --

MR. LULGJURAJ: When you say here and there, indicate where you're pointing.

THE WITNESS: Okay. So Angelo's Party Store, it's there. We see it.

MR LULGJURAJ: When you're pointing to the left side of the exhibit?

THE WITNESS: Right. It was towards --

MR. CONN: What exhibit?

THE WITNESS: Left of center. Exhibit 2 --

MR. LULGJURAJ: Exhibit 2.

THE WITNESS: -- just left of center you'll see Angelo's Party Store, that well right there, and you'll see it intersects the hard pan. So Angelo's Party Store, you'll see that there. The next well log over to the right, which is at 1100 on the scale bar, it doesn't have a name, but it has that 470012883. Do you see it?

BY MR. SZYMANSKI:

Q. Um-hum.

A. When we drilled that well or when that well was drilled, that

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Q. Did anyone who signed that letter, do they have any experience as a chemical engineer?
A. We are not chemical engineers.
Q. Okay. Would it surprise you to learn that peer-reviewed research establishes that BTEX compounds can begin dissolving into ground water immediately with contact?
A. It doesn't surprise me, because that process would start immediately. I mean, you have contact, by definition, it starts immediately, right? But it's such a small amount that, okay, how long does it take until you get enough, right, to be able to detect it.
Q. So, and that gets to the five parts per billion discussion?
A. Right.
Q. That's an extremely low threshold, correct?
A. It is very low.
Q. Okay. I want to talk about, with the underground storage tanks here, describe the process by which BTEX from a leaking underground storage tank would get into the ground water?
A. Which ground water, shallow or the confined?
Q. Shallow. The nonconfined aquifer.
A. The process by which it would happen is, first, it would have to get past -- it would have to get past all the engineer controls at the site, which we've listed some of those, and there's a lot. And then you would have to get past -- you would have to have many engineering failures happen. You'd

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have to have many administration failures happen, administration controls, which I'm going to call people watching the alarm and reporting those things. You'd have to have many other like governmental administration failures.
Q. We talked about that earlier, and you said with the EPA data that you didn't review, but that underground storage tanks do leak, correct?
A. They do leak. Yes.
Q. Okay. So if it leaks, how would BTEX interact with the ground water in the nonconfined aquifer?
A. It would have to get out first, and getting out would constitute many failures along the way of both the engineered controls and the administration controls. And administration controls would have to be the people on the site watching the alarms and making the reports, and the people at the state reviewing those, because that gasoline would then have to escape all those controls, and then come in contact with the ground water, right?
So then, once it's out, it would have to make it's way through the unconfined aquifer, and come in contact with the ground water. And how long that could take could be a while, too, and that could be, in some circumstances, nearly impossible. But let's just say, okay, it makes it's way through the soil then. It comes in contact with the ground water. Now you've got your time and all of our chemistry

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that we're talking about, right?
So as soon as it comes in contact, okay, your process of dissolving it starts, but it's so low, because by definition, it's nonaqueous phase, which means it doesn't like water, the two aren't going to mix readily. So it's going to need a lot of time, conditions, blah, blah, blah.
Q. But if it would leak, it would interact with the unconfined aquifer?
A. It would, eventually, have to make it's way to the water to then interact, yes, and that timeframe, you know, would be different for any different circumstances.
Q. Do you know how many identified leaking underground storage tanks there in Michigan currently?
A. I don't know how many there are in Michigan, but if we look at Exhibit 4, we've identified -- if you look at the part 211 or part 213 on our list here, on our figure is the underground storage tanks, right? In this area, let's just talk about this area, because this is what we know, we've identified, if you look at the part 211s, all of these leaking tanks, and I can tell you, you know, I didn't research each one of these, but a lot of your problematic leaking tanks, based on our experience at our office with finding these and removing them, are the older tanks.
Q. Right. But you're not aware of how many underground storage tanks there are currently identified as leaking in Michigan,

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correct?
A. I don't know, but here on my map I've got plenty of them to look at.
Q. Do you know how many of those are in Howell Township?
A. Howell Township? I didn't draw the boundary here.
Q. Okay.
A. I wasn't looking at township boundaries. I was looking at our area of our -- I mean, our study area, which includes Howell, the city here, and I've got the township, I've got Marion Township over here, I think Howell Township is here.
Q. Can we go back to your letter here, page two, and that third paragraph. This is where you discuss the light nonaqueous phase liquids, correct?
A. Uh-hum.
MR. LULGJURAJ: Say yes or no.
THE WITNESS: Yes. Sorry.
BY MR. SZYMANSKI:
Q. Your letter did not discuss BTEX, correct?
A. I did not discuss BTEX, no.
Q. And your letter does not discuss dissolved phased contamination at all?
A. It does not. And there's a reason for that. The reason for that would be, again, we're talking about the confined aquifer. Any spill that may potentially happen, whether it's from one of these identified slides that we've already

we're not identifying anything else. Like we've got a leaking underground storage tank, which I'm not sure what's in it, it's gasoline, diesel, it's something. It's leaking. It's identified as leaking. It's within our wellhead protection zone. But it's not a gas station. So what about that one?

Q. Are you saying that because there's one leaking underground storage tank that Howell Township should allow other underground storage tanks?

A. I'm not saying that. It says that the gas station would read it again, you know, that it would -- we're singling out a gas station, and to me, it's not so much the gas station and prohibiting it, because we have other identified potential sources right there. Okay. You said, well, not in Howell Township, there's not a gas station. Well, there's a leaking underground storage tank. What about that? That's not a gas station.

So we'll prohibit gas stations, but I'm a car repair shop, and I can put tanks in, too. I'm doing the same thing. I'm just not a gas station.

Q. Are you aware that Howell Township has enacted a wellhead protection ordinance since this litigation began?

A. I just learned that about a minute ago that they've enacted an ordinance for a zone, and I don't know what it is, I haven't reviewed it, I know that -- I've just learned that,

yes, that there is some ordinance that they've enacted, and that they've changed this one a bit, but I don't know what exactly that's about.

Q. Are you aware that Judge McGivney upheld the decision of the township board to deny Howell-Mason a special land use permit for a gas station?

A. That judge denied that. Yeah. I think I was aware of that.

Q. Does any of that change the opinion that you provided in your letter?

A. No.

Q. Does it change any of your other opinions?

A. No.

MR. SZYMANSKI: Okay. I don't have any further questions.

MR. LULGJURAJ: I don't have any questions.

(The deposition was concluded at 12:30 p.m.)

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON)

I Debra M. Cummings, CSR 6037, and Notary Public, certify that this transcript, consisting of 144 pages, is a complete, true, and correct record of the testimony of GREGORY BUHOVECKEY, held in this case on Friday, February 20, 2026.

I also certify that prior to taking this deposition, GREGORY BUHOVECKEY was duly sworn to tell the truth.

I also certify that I am not a relative or employee of or an attorney for the party; or a relative or employee of an attorney for a party; or financially interested in the action.

Debra Cummings

Debra M. Cummings CSR 6037
Notary Public: Livingston County, Michigan
My Commission expires: 7-18-2026
DATED: February 25, 2026

EXHIBIT C

STATE OF MICHIGAN

IN THE 44th JUDICIAL CIRCUIT (LIVINGSTON COUNTY)

HOWELL-MASON, LLC,

Plaintiff,

v Case Number: 24-32242-CZ

HOWELL TOWNSHIP,

Defendant.
_____/

HEARING

BEFORE THE HONORABLE MATTHEW J. McGIVNEY, CIRCUIT JUDGE

Howell, Michigan – Thursday, January 16, 2025

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WITNESSES:

NONE

EXHIBITS:

NONE

Howell, Michigan

Thursday, January 16, 2025 - 2:19 p.m.

COURT CLERK: Calling the matter of Howell Mason, LLC versus Howell Township, file number 24-32242-CZ.

THE COURT: Good afternoon. Appearances for the record starting with Plaintiff's counsel.

MR. LULGJURAJ: Yes, good afternoon everyone, your Honor. Nik Lulgjuraj on behalf of the plaintiff.

MR. ALBER: And Jeffrey Alber on behalf of the plaintiff.

THE COURT: Welcome.

MR. SZYMANSKI: Good afternoon, your Honor. David Szymanski on behalf of Howell Township.

THE COURT: Welcome.

MR. BEYEA: Good afternoon, Wayne Beyea on behalf of Howell Township.

THE COURT: Welcome. This is Howell Township's motion under (C)(7) and (C)(8). I've had the opportunity to review the same. We'll be conducting this hearing in a bifurcated manner with the plaintiff's being via Zoom and the defendants being here in the 44th Circuit Court. Any objection to doing so from Plaintiff's counsel?

MR. LULGJURAJ: Your Honor, I'm sorry. I missed the question. I had to turn up my volume. I apologize.

THE COURT: Any objection to handling this matter

in a bifurcated fashion with you on Zoom and the defendants –

MR. LULGJURAJ: No, your Honor.

THE COURT: -- Howell Township being here in person?

MR. LULGJURAJ: No, your Honor. No, your Honor.

THE COURT: Any objection from Howell Township?

MR. SZYMANSKI: No, your Honor.

THE COURT: I've read the briefs. I understand the matter. The Court also had the appeal of the matter, as well. Mr. Szymanski, what would you like me to know?

MR. SZYMANSKI: Good afternoon, your Honor, again. As you stated, I'm before you on the township's motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8) seeking dismissal of the entirety of the remaining lawsuit here on the basis that it presents duplicative litigation or claims that are legally insufficient to proceed forward to discover. I want to address each count that's in the complaint. I know that there are nine of them. For the sake of efficiency, I'd like to address counts one, two, and three collectively and then address the rest in turn.

Starting with counts one, two, and three where Howell-Mason alleges, just as it did in the appeal, that the decision related to the special land use permit violated substantive due process, procedural due process, and equal protection as it relates to the decision concerning the

special land use permit. These claims all fail for similar reasons, as I think that this Court recognized in its appeal. And I want to address three salient reasons for this Court today.

First, these claims, as applied to Howell-Mason, all fail because Howell-Mason is unable to establish a protected property interest in the subjective desire for a special land use permit. And this Court recognized that exact issue through the course of the appeal on the bottom of page 13. Second, facially, the same challenges that were presented in the appeal fail because, as this Court recognized at the top of page 13 in its opinion, that there are legitimate interests for the township to situate compatible land uses near each other and for it to protect the general welfare of the community. And then third, and maybe more fundamentally, Howell-Mason's precluded to continue to litigate these claims under res judicata and (C)(7). And that's consistent with *Tron* and *Salesco* (phonetic), as we said in our briefing, because this Court did address those claims through the appeal.

Now, I anticipate Howell-Mason, as they did in their briefing, will argue that the Court could not have addressed those claims through the appeal, and it hasn't actually resolved those on the merits. I think that that argument, as we explained in our reply brief, stretches

Houdini (phonetic) beyond what the actual one paragraph provides. The Michigan Supreme Court there narrowly held that a circuit court could not resolve a takings claim based on the record that was before a ZBA related to a variance request, which is just not on all fours with exactly how this Court resolved a decision of the township board related to a special land use permit where everything was in the record, and these facial challenges were argued by counsel and resolved. But I'm not certain that these procedural arguments are even overly important to this Court's disposition of these three counts. As we explained in our reply brief, to the extent that this Court were to have any concern related to applying res judicata on those arguments, it can merely adopt its opinion from the appeal related to these claims here as persuasive authority and dismiss them. So I think that that handles counts one through three.

Now I want to turn to count four, which is the alleged violation of the MZEA. This claim is legally deficient because there's no cause of action that's been identified under the MZEA for Howell-Mason to proceed. We pointed this Court toward the *Sandstone* case where the Michigan Court of Appeals looked at a statutory scheme, that was the MPEA, and looked at if there was a remedy provided in the statute, and there wasn't, and determined that they could not proceed forward where a statute provided no cause of

action. That's the same thing that's here under the MZEA. But I do want to unpack the allegations related to the MZEA here a little bit more.

In paragraphs 75 through 77 of the complaint, Howell-Mason alleges that the township failed to give them required notice of meetings where their project was discussed. But if we look carefully at what's actually alleged, the complaint does not specify in any manner what type of notice was required under the MZEA, or why Howell-Mason was entitled to any notice beyond that that the general public received. I understand that as they had submitted their special land use application and before it was decided, that the township board may have considered it either through board comment or at public comment, but it wasn't on the agenda. And there was really no basis for them to be entitled to notice of any of those discussions. In our experience, when developers do have a special land use permit going before a township, it's regularly discussed before the actual decision is made, and a lot of times developers will routinely go to those meetings to be heard. But simply put here, there's no identified required notice that Howell-Mason has pled, and there's no cause of action under the MZEA.

Turning to count five, which is the allegation that the Open Meetings Act has been violated, I think here, as we explain in our brief, you've got to start with the requested

relief, because they cannot seek to invalidate the decision of the township board based on the timing of this lawsuit. That had to be filed within 60 days of the minutes being approved, and so all that they're requesting is a declaratory action or injunctive relief.

The Michigan Supreme Court said in *Spiker* that declaratory relief is not available for an Open Meetings Act violation. So all we're left with is their request for this Court to enjoin future violations of the Open Meetings Act. To be entitled to that relief, Howell-Mason has to demonstrate, and their allegations, if accepted as true, have to establish two elements: first, an ongoing violation and proof that the public body is continuing not to comply. The claim is legally deficient here because no allegations, if accepted as true, establish that or meet that threshold. Howell-Mason alleges that the township board in some way made a predetermined decision, colluded with MHOG, or manipulated notice requirements that we haven't been provided.

Those claims, even if they're true, don't establish an ongoing violation, and so the cause of action under the Open Meetings Act fails as a matter of law. And I think that the allegations here related to these Open Meetings Act violations face one more hurdle in Michigan law, and that's that Michigan law presumes township officials act in good faith, and vague claims of past misconduct simply cannot

overcome that presumption as plain. So I think there the Open Meetings Act is just on its face legally deficient.

Moving to count six, this is the regulatory taking claim. And here it's in paragraphs 84 to 91 of the complaint. And I think that the immediate problem here is that all of the factual allegations really look at the township having relied on unconstitutional ordinance. Now we know that's not true because of this Court's opinion in the appeal and upholding the zoning regulations. And so what we're left with is some idea that the township in some way through its review process interfered with investment-backed expectations. But these subjective expectations that Howell-Mason may have had to operate a gas station on this specific property fail for two pretty straightforward reasons - first, Howell-Mason purchased the property knowing that the zoning regulations were in place; and second, Howell-Mason demonstrated knowledge of this when they sought a text amendment to the zoning ordinance in 2021.

So you have a developer who clearly knows that these regulations are in place when they sought a text amendment, and that's in the complaint. And then they say that they invested millions of dollars preparing for a land use that they knew was subject to discretionary approval from the township. That runs directly into black-letter law and Michigan zoning law that provides that when someone buys a

property that they know will require discretionary zoning approval for their intended use, Michigan law provides that they accept the business risks associated with that. This is no different than anyone else purchasing a property that they desire to use for some specific purpose that's subject to local zoning approval. You cannot prepare for that land use. You don't have a vested right in that land use. So the takings claim must fail and be dismissed under (C)(8).

Now, count 7 is Howell-Mason's unjust enrichment claim. And they allege that the township has been unjustly enriched in the amount of $8,900 because they charge for zoning review. Now, this fails for two basic reasons. First, the township is authorized to charge for zoning review under Michigan law, so there's no unjust enrichment. That was a just charge. But second, and more fundamentally, Michigan law for over 100 years has held you cannot have an implied contract claim when you have a written contract. They attach the contract to the complaint, they talk about it in their allegations, and so they cannot proceed with an unjust enrichment claim.

Now, count 8 is the request for injunctive relief. I think that that requires the least analysis, as injunctive relief is not a cause of action under Michigan law, and there's no cause of action here that would entitle Howell-Mason to injunctive relief.

Now, the last claim is count 9, and those are the arguments concerning preemption and that somehow state law preempts the township's zoning regulations here. And as your Honor is well aware, they vigorously argued through the appeal that the regulations here were preempted by state law, and this Court provided a thorough analysis of the arguments going through all of the factors on preemption. And on page 11 of its opinion, decided that none of the allowed factors supported a finding of preemption here. And I would just ask this court to either dismiss that claim on the basis of res judicata and (C)(7) or to just adopt that analysis and dismiss it for failing as a matter of law pursuant to (C)(8).

Now, I know that part of the argument raised in respect to our dismissal under (C)(7) for counts one, two, three, and nine, was that we had waived that. I believe that we preserved our rights. To the extent that we didn't actually properly preserve that affirmative defense when we filed them, we did mention (C)(7) as it related to their variance request from 2021. But at that time, obviously, this Court hadn't issued its opinion in the appeal and so we hadn't specifically addressed res judicata on that basis, but we have filed a motion for leave to amend those affirmative defenses. That's scheduled to be heard in February, and I believe that to the extent that this Court were to be concerned whether or not we preserved that, it would be cured

then. I'm happy to answer any of the Court's questions at this time.

THE COURT: I have no questions for you, sir.

MR. SZYMANSKI: Thank you.

THE COURT: Howell-Mason's turn.

MR. LULGJURAJ: Your Honor? I'm sorry, Your Honor.

THE COURT: Go ahead.

MR. LULGJURAJ: Your Honor, we rely on our brief. We feel we briefed it appropriately and fully. So unless you have some specific questions, I'm not going to reiterate what's in our responsive brief.

THE COURT: I don't have any additional questions. I'm familiar with this circumstance here as the Court presided over the appeal, as well.

The defendant has brought this motion arguing that (C)(7). We'll address that issue first, specifically arguing that counts one, two, three, and nine were already raised, argued, litigated, and adjudicated in the appeal from the Township Board decision denying the special land use permit.

Defense asserts that because those arguments have already been adjudicated on the merits, in case number 24-350-AA in this Court, the plaintiff is barred from relitigating those claims again in this separate action by the doctrine of res judicata. Res judicata bars the second subsequent action when all the following: one, the prior

action was decided on the merits; two, both actions involve the same parties or their privies; and three, the matter in the second case was or could have been resolved in the first. Michigan courts take a broad approach to res judicata, barring claims already litigated as well as every claim arising from the same transaction that the parties exercising reasonable diligence could have raised but did not, and determining whether a claim could have been brought in a prior action. The Supreme Court has accepted the broad same transaction test, which simply asks whether the claim arose as part of the same transaction as did the claims in the prior action.

The Court has reviewed the first amended complaint in this case, the extensive briefing in this case, as well as the extensive briefing in case number 24-350-AA. Counts one, two, three, and nine in this case are nearly identical in substance to the arguments raised, argued, litigated, and ruled upon in the AA case or the appellate case. Both this case and the appellate case involve the exact same parties. The two cases arise from the same underlying nucleus of operative facts.

However, the doctrine of res judicata is an affirmative defense. An affirmative defense is a defense that does not controvert the plaintiff's establishing a prima facie case, but that otherwise denies relief to the

plaintiff. The plaintiff has argued that the defendant should be estopped from raising the doctrine of res judicata in the summary disposition motion because the defendant has failed to plead the affirmative defense in its first responsive pleading. The defendant concedes that it failed to raise res judicata as an affirmative defense, and the answer and affirmative defense or defenses. The defendant has, in fact, filed a motion for leave to amend the affirmative defenses and it is scheduled for a hearing before this Court on February 27th of 2025.

The failure to timely assert an affirmative defense results in a waiver of that defense. The defendant has filed a motion seeking to amend the affirmative defenses, so the Court is not inclined to find complete waiver of the res judicata defense at this time. However, the defendant cannot rest the summary disposition motion on res judicata without first amending the affirmative defenses. To allow the defendant to move forward with the (C)(7) motion at this time may prejudice the plaintiff. So at this time the Court will deny the defendant's motion under MCR 2.116(C)(7) without prejudice.

The defendant has also brought this motion under MCR 2.116(C)(8) as to all counts, asserting that all claims fail as a matter of law. However, the substance of most of the defendant's arguments asks the Court to look outside of

the pleadings, which is in effect a (C)(10). The Court only looks to the pleadings in a (C)(8), making a determination as to their legal sufficiency. Reading the first amended complaint side-by-side with the briefs in this matter, the court finds that counts four and count eight fail to state valid cause of action on which relief could be granted.

Count four claims a violation of the Michigan Zoning Enabling Act. The defendant is correct that no such private cause of action exists. The act empowers municipalities to establish a system of administrative appeals regarding local zoning decisions and then ultimately appeal the highest municipal body to the local circuit court. The act does not contain any remedy for a private landowner to pursue to enforce the act.

The plaintiff seems to concede this in its response, entreating the Court to instead look beyond the labels of the first amended complaint and consider the content as a whole. The Court has considered the content as a whole and the allegations that comprise count four are duplicated to support counts one, two, and three.

The plaintiff has stated several valid causes of action with the same basic allegations, thus rendering count four entirely duplicative or entirely subsumed by the other counts. Similarly, count eight is for a count for injunctive relief. There is no such cause of action as injunctive

relief. Injunctive relief is a remedy, not a cause.

The substance of that count asks the Court to stop the township from violating the plaintiff's constitutional rights. That is a remedy that is also sought or will necessarily flow from the relief requested in counts one, two, and three. As with count four, count eight is a cause of action that does not exist and is entirely duplicative. Counts four and eight will be dismissed on defendant's motion under MCR 2.116(C)(8).

Count seven is for unjust enrichment. It is a well-established maximum of law that a contract will be implied only if there is no express contract covering the same subject matter. The plaintiff's first amended complaint affirmatively alleges that the parties to this case signed an agreement regarding the fees and costs for review and evaluation of the plans and application for the gas station on the subject property. Since the plaintiff has alleged the parties had an express contract covering the same subject matter as a claim for unjust enrichment, the claim for unjust enrichment cannot stand. Count seven is dismissed under defendant's motion for summary disposition under MCR 2.116(C)(8).

After review of the first amended complaint, the court finds that the plaintiff has adequately applied all basic elements of counts one, two, three, five, six, and

nine. The factual allegations are, in some counts such as three and five, thin on the ground and largely conclusory. But Michigan is a notice pleading statute (sic). The primary function of pleading in Michigan is to give notice of the nature of the claim to permit the opposite party to take a responsive position.

Reading the first amended complaint as a whole, the Court finds that the plaintiff has pled enough factual allegations to allow the defendant to adequately prepare a defense. Most of the defendant's arguments as to counts one, two, three, five, six, and nine are either (C)(7) arguments or (C)(10) arguments.

Defense asks the Court to look to the exhibits attached to the motion. While those exhibits are often pulled from the record in the appellate case, the parties both concede that discovery is ongoing in this case. The plaintiff specifies in the response that depositions of EAGLE and LARA employees are being arranged. Summary disposition on (C)(10) grounds is generally premature when discovery has not been completed on the material facts at issue.

It cannot be said that further discovery would not stand a fair chance of uncovering factual support for plaintiff's claims in this case. Accordingly, the Court will dismiss defendant's remaining dispositive arguments without prejudice because they have a substance of a (C)(10) motion

which are premature at this junction.

For all those reasons, defendant's motion for summary disposition as to counts four, seven, and eight is granted and those counts are dismissed with prejudice. Defendant's motion for summary disposition under (C)(8) is denied. Defendant's remaining dispositive arguments are generally (C)(10) arguments and are dismissed without prejudice as they are premature. The Court will prepare the necessary order regarding its ruling today.

Thank you, gentlemen, for appearing via Zoom and in person.

MR. LULGJURAJ: Thank you, your Honor.

MR. SZYMANSKI: Thank you.

(At 2:40 p.m., proceedings concluded)

****

STATE OF MICHIGAN)
)
COUNTY OF LIVINGSTON)

I certify that this transcript, consisting of 19 pages, is a complete, true, and correct transcript, of the proceedings and testimony taken in this case on January 16, 2025.

Kristi Cox

Kristi Cox, CER5451
Certified Electronic Recorder
204 South Highlander Way
Howell, MI 48843
(517) 540-7532

Dated: January 28, 2025.

EXHIBIT D

STATE OF MICHIGAN
IN THE 44th CIRCUIT COURT
FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
A Michigan Limited Liability Company,

Plaintiff,

v.

HOWELL TOWNSHIP,
A Michigan General Law Township,

Defendant.

Case No. 24-32242-CZ

Hon. Matthew J. McGivney

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PLAINTIFF's ANSWERS TO DISCOVERY REQUESTS PER MEDIATED AGREEMENT

1. Profit and loss statements for the last five years for Mugg and Bopp;

    a. **Answer: Please see attached. Mugg&Bopps historical financial information prepared by Patrick Hanniford, CPA, using data from locations with like market conditions to our proposed Howell township location. This is part of trial prep which is not yet complete. A forensic**

accountant and other expert witnesses will be retained to prepare a full damage calculation. Damages are ongoing.

2. Pre-purchase negotiation papers, correspondence, etc., for the property that is the subject of the litigation ("subject Property");

   Answer: Please see attached.

3. Business plans prepared by Plaintiff for the subject Property;

   Answer: There are no formal written business plans. Plaintiff has decades of industry experience that enable us to easily identify new viable sites for development. The process is thus:

   1. **Identify a site that is being underserved.**
   2. **Discuss level of interest in area.**
   3. **Review available site data. Traffic counts - patterns, municipal services.**
   4. **Compare available site data to existing operations.**
   5. **Decide whether to pursue.**

4. Communications with third parties regarding development of the subject Property;

   Answer: Other than documents already in the court file, please see attached.

5. For any and all other Mugg and Bopp locations, the identification of the approval process for any special land use permits that were granted;

   Answer: See attached correspondence for last four projects. Three SLUPS issued for fuel and drive thru. One project in Cohoctah Twp. was approved via consent judgment by the original owner, Vern Brockway. In general, the process is application for SLUP and site plan review, planning commission, municipal board, permit.

6. For Paul Leblanc and Greg Buhoveckey, MS, PE, an updated and complete CV, if available, and any all information for work performed for wellhead protection areas, gas stations, or work done with municipalities related to wellhead protection areas;

   Answer: See attached.

7. Documents that support any and all of Plaintiff's damages claims, e.g., experts, bills, taxes, etc.; and

   Answer: Please see attached. Mugg&Bopps historical financial information prepared by Patrick Hanniford, CPA, using data from locations with like market conditions to our proposed Howell township location. This is part of trial prep which is not yet complete. A forensic accountant and other expert witnesses will be retained to prepare a full damage calculation. Damages are ongoing.

8. Documents related to any and all efforts to mitigate damages, e.g., exploring other uses.

   Answer: Plaintiff does not develop and operate businesses other than gasoline service stations with auxiliary food service.

The Parties further agree on or before August 15, 2025, Plaintiff shall provide responses to the following interrogatories propounded by Defendant:

1. Regarding interrogatories 1-3, provide information related to the alleged open meetings act Plaintiff refers to in its complaint, including:
   a. The dates of the alleged meetings;
   b. What board members were and were not present;
   c. The result of said meetings;
   d. The basis to believe there was a violation; and
   e. The basis Plaintiff claims there was improper notice.

Answer: This assertion is based on board member statements during public meetings and board member statements when out in public. The Planning commission meeting

started by saying essentially, "our legal counsel told us we cannot act on your project" so no consideration to the actual facts surrounding our development request we considered. Immediately preceding the presentation of our project to the Howell Township Board, the Board instructed us to be brief because they'd already talked about it.

Audio tapes of Board meetings included discussions about us and action was then taken to impact this project without our being invited to contribute input. The audio tapes also include Board members stating their objections are personal and not based on consideration of facts. It is publicly known that recently censured Howell Township Board member Wilson engages with Facebook group(s) opposing Plaintiff's project.

The facts show fair and open review and consideration of our project is lacking. They demonstrate that deliberations had occurred outside the public forum and prior to the official vote. These details point to a predetermined outcome.

2. Regarding interrogatory number 4, identify the factual basis for Plaintiff's claim that the Township and MHOG colluded;

Answer: Greg Tatara, acting on behalf of MHOG, twice approved Plaintiff's project with stated conditions. At a subsequent Township Board Meeting, Tatara publicly asserted that it would be "better for MHOG" if the project were located *inside* the wellhead protection area rather than outside of it. Shortly thereafter, MHOG abruptly reversed its position and issued a rescission letter—addressed not to Plaintiff, but to the Township. The Township then deliberately withheld this letter from Plaintiff for nearly ninety (90) days. The fact that the same legal counsel represents both the Township and Greg Tatara/MHOG heightens the appearance of

coordinated conduct and procedural impropriety, evidencing a concerted effort to undermine Plaintiff's project outside the bounds of fair administrative process.

3. Regarding interrogatory number 5, explain regulatory taking claim in detail;

Answer: The Township's unconstitutional ordinance has taken the value of Plaintiff's business that it is entitled to develop and run on the subject property.

4. Regarding interrogatory number 6, identify the total investment in the subject Property either through the production of documents as outlined above, or if no such documents exist, provide a detailed answer as to the total investment of the property Plaintiff has made;

Answer: See attached cost spreadsheet. This is part of trial prep which is not yet complete. A forensic accountant and other expert witnesses will be retained to prepare a full damage calculation. Damages are ongoing.

5. Regarding interrogatory number 7, explain all alternative developments for the subject Property Plaintiff has considered;

Answer: None. Plaintiff does not develop and operate businesses other than gasoline service stations with auxiliary food service.

6. Regarding interrogatory number 9, explain the basis for Plaintiff's claim that it has a protected property interest in the Special Land Use Permit;

Answer: Plaintiff has received all necessary State approvals to install USTs on the site. The Township's ordinance at issue is unconstitutional on its face and as applied and the Township has no legal authority to regulate groundwater or USTs.

7. Regarding interrogatory number 12, identify all landowners who are similarly situation as to your equal protection claim;

Answer: Unknown.

8. Regarding interrogatory number 15, provide the basis that the open meeting action remains on-going; and

Answer: Based on Defendant's conduct at meetings of various boards it is reasonable to infer said conduct persists.

9. Regarding interrogatory number 16, identify when Plaintiff made each of its investments in the subject property.

Answer:

1. **3958 Mason Road: February 2, 2017**
2. **70 Burkhart Road: November 11, 2021**
3. **160 Burkhart Road: February 15, 2023**

[Signature to follow]

TODD J. LEKANDER, II

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON)

Sworn and signed before me by TODD J. LEKANDER, II, in his capacity as member of HOWELL-MASON, LLC, on August 14, 2025.

Mary Macdonald

Mary Macdonald, Notary Public
Livingston, County, Michigan
My commission expires: 12/02/2026
Acting in the County of Livingston

Mary Macdonald
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF Livingston
My Commission Expires 12/02/2026
Acting In the County of Livingston

EXHIBIT E

STATE OF MICHIGAN
IN THE 44th CIRCUIT COURT
FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
A Michigan Limited Liability Company,

Plaintiff,

v.

HOWELL TOWNSHIP,
A Michigan General Law Township,

Defendant.

Case No. 24-32242-CZ

Hon. Matthew J. McGivney

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PLAINTIFF'S RESPONSES
TO DEFENDANT'S FIRST REQUEST TO ADMIT TO PLAINTIFF

DEFINITIONS

1. The terms "You," "Your," or "Plaintiff(s)" shall mean Howell-Mason, LLC, including all predecessors, successors, parents, subsidiaries, divisions, affiliates, and their respective

current and former officers, directors, members, employees, agents, representatives, attorneys, and all other persons acting or purporting to act on their behalf.

2. The term "Any" shall include the collective, as well as the singular, and shall mean "each," "all," and "every," and these terms shall be interchangeable.
3. The term "Person" means any natural person, corporation, partnership, proprietorship, association, joint venture, government entity, or other form of legal entity, including all present and former agents, employees, representatives, and all other persons acting on behalf of the person.
4. The terms "and" and "or" shall be construed both conjunctively and disjunctively to bring within the scope of these discovery requests all information that might otherwise be excluded.
5. The term "Complaint" means the initial Complaint filed in this action and any amendments thereto, including all exhibits and documents referenced therein.
6. The term "Property" means the parcels of real property that are the subject of this litigation, including all improvements, easements, rights and interests therein.
7. "Township" means Howell Township, including all departments, elected officials, employees, board members, planning commissioners, agents, and representatives acting on its behalf.

REQUESTS FOR ADMISSION

1. Admit that gasoline service stations are permitted by special land use permits in areas of the Township's Neighborhood Services Commercial District that are not within 300 feet of a wellhead protection area.

   ANSWER: Denied. Plaintiff contends that §16.11(8) is unlawful, and thus unenforceable, as set forth in Plaintiff's Complaint and other filings herein. Furthermore, Plaintiff objects as this question requests a legal conclusion.

2. Admit that you have not been completely excluded from operating a gasoline service station within Howell Township.

   ANSWER: Denied. For all intents and purposes Plaintiff has been excluded. Plaintiff objects as this request to admit is irrelevant and immaterial to the issues involved herein and calls for speculation.

3. Admit that you have gasoline service stations within Howell Township.

   ANSWER Admitted.

4. Admit that you received notice of and attended the November 21, 2023, Planning Commission meeting.

   ANSWER: Admitted.

5. Admit that you were allowed to present evidence at the November 21, 2023, Planning Commission meeting.

   ANSWER: Admitted that we were present at the meeting and a transcript of the meeting is part of the record. However, for the reasons set forth in Plaintiff's Complaint and every other pleading and brief filed with the Court in this matter and the companion appeal (Case No. 24-350-AA), and the appeal therefrom, Plaintiff contends that § 16.11(C)(8) of the Howell Township Zoning Ordinance is unlawful and unenforceable. At the outset of the hearing, the Planning Commission stated that it had no authority to grant any request being made by Plaintiff at the meeting given the existence of § 16.11(C)(8) of the Howell Township Zoning Ordinance. This statement was made at the outset of the hearing prior to Plaintiff being able to address the Commission, rendering any request and/or presentation made by Plaintiff futile. In making this statement, and in choosing to apply § 16.11(C)(8) over the objection of Plaintiff, and despite evidence of the ordinance's multifaceted unlawfulness, the Planning Commission unlawfully withheld approval to which Plaintiff was entitled. By way of further answer, Defendant held multiple meetings that involved substantive rights of the Plaintiff without giving notice to Plaintiff, including but not limited Monday, February 10, 2025. Additionally, the

Defendant withheld material information from Plaintiff, including, but not limited to, the May 19, 2023, MHOG letter, and November 15, 2023, MHOG resolution. The issue was pre-decided and therefore Plaintiff was denied due process.

6. Admit that you received notice of and attended the December 11, 2023, Township Board meeting.

ANSWER: Admitted.

7. Admit that you were allowed to present evidence at the December 11, 2023, Township Board meeting.

ANSWER: Admitted that we were present at the meeting and a transcript of the meeting is part of the record. However, Plaintiff was denied due process as the Howell Township Board Chairman's verbal statement immediately prior to the Plaintiff's presentation, demonstrated the Boards decision was pre-decided. For the reasons set forth in Plaintiff's Complaint and every other pleading filed with the Court in this matter and the companion appeal (Case No. 24-350-AA), and the appeal therefrom, Plaintiff contends that § 16.11(C)(8) of the Howell Township Zoning Ordinance is unlawful and unenforceable. In choosing to rely on § 16.11(C)(8) over the objection of Plaintiff and despite evidence of its multifaceted unlawfulness, the Township Board unlawfully withheld approval to which Plaintiff was entitled. By way of further answer, Defendant held multiple meetings that involved substantive rights of the Plaintiff without giving notice to Plaintiff, including but not limited Monday, February 10, 2025. Additionally, the Defendant has withheld material information from Plaintiff, including, but not limited to, the Mary 19, 2023 MHOG letter, and November 15, 2023, MHOG resolution.

8. Admit that the Township's public meeting schedule is publicly available.

ANSWER: Admitted.

9. Admit that you cannot identify any gasoline service stations that have been permitted to operate in Howell Township within 300 feet of a wellhead protection area since Section 16.11(C)(8) was enacted.

ANSWER: Denied. Plaintiff objects as this requests to admit is irrelevant and immaterial to the issues involved herein. However, once more, this lawsuit contends that said ordinance is unlawful and unenforceable.

10. Admit that you applied for a variance request from Section 16.11(C)(8) in or around 2021.

ANSWER: Admitted. On Aug 7, 2019, Plaintiff was told by Howell Township zoning department to obtain MHOG water authority approval then request a use variance..

11. Admit that you were denied a variance request from Section 16.11(C)(8) in or around 2021.

ANSWER: Admitted. However, by its own admission in a letter dated January 31, 2024, the Township Zoning Board of Appeals has no authority to grant use variances. See attached letter.

12. Admit that you took no actions to appeal the decision denying you a variance request from Section 16.11(C)(8) in or around 2021.

ANSWER: Denied. The Township unilaterally required a fictitious procedure in which the ZBA had no authority to grant any request and thus no viable appeal was available. See attached letter from Township Zoning Administrator.

13. Admit that the Township has not granted any variances from Section 16.11(C)(8) to other applicants.

ANSWER: This question is objectively outside of the Plaintiff's knowledge and fully within the knowledge of Defendant. As a result, Plaintiff objects to request to admit no. 13 as overbroad and unduly burdensome, and irrelevant. The only way for Plaintiff to know this information is to review all ZBA minutes since § 16.11(C)(8) was adopted. What's more, the ZBA has no authority to grant use variances. Therefore, Defendant should not have granted any use variance. To the extent any use variances have been granted, by Defendant's own admission those variances are unlawful.

14. Admit that you can still develop the Property for any by-right use permitted in the Neighborhood Services Commercial District.

ANSWER: Admitted., assuming the Township does not rely upon unlawful ordinances and/or findings of fact without evidence to deny said requests. The ordinance speaks for itself.

15. Admit that the Property can be used for other special land uses permitted in the Neighborhood Services Commercial District.

ANSWER: Admitted, assuming that the Township does not rely upon unlawful ordinances or findings of fact without evidence to deny said requests.

16. Admit that there are other commercially viable uses for the Property besides a gasoline service station.

ANSWER: Denied. It is not commercially viable for Plaintiff to operate a business other than its primary business. Plaintiff objects to request to admit No. 16 as overbroad and unduly burdensome. Plaintiff has no way of knowing the commercial viability of business pursuits in which it does not operate at this or any other location.

17. Admit that you conducted due diligence regarding the zoning restrictions on the Property before purchasing it.

ANSWER: Admitted that due diligence was conducted. The Howell Township zoning department told Plaintiff in 2017 the subject parcel could be used for a gasoline facility prior to the purchase of the original parcel. Upon further review, the zoning restrictions were and are unlawful.

18. Admit that you knew the zoning restrictions applicable to the Property when you purchased it.

ANSWER: Admitted. The zoning restrictions were reviewed. Prior to the 2017 purchase, Plaintiff was told by the Howell Township zoning department we could operate a gasoline facility. On August 7, 2019, the Howell Township Zoning Department told us with MHOG approval, we would be granted the right to use the property for a gasoline facility. Upon further review, the zoning restrictions were and are unlawful.

19. Admit that you knew the Township's Master Plan identified the Property as being zoned "Commercial-Local" on the future land use map.

ANSWER: Denied.

20. Admit that you knew the zoning restrictions applicable to the Property when you sought amendment of the Township's zoning regulations in 2021.

ANSWER: Denied. Plaintiff made no application for revision of the zoning regulations.

21. Admit that you knew the zoning restrictions applicable to the Property when you invested

in using the Property for a gasoline service station.

ANSWER: Admitted. Verbal discussions did take place with Howell Township Zoning officials prior to and after investment that outlined a path forward to approval. Said zoning restrictions were and are unlawful.

22. Admit that you do not have a constitutionally protected property interest in special land use

on the Property.

ANSWER: Denied for the reason that EGLE and the Department of Licensing and Regulatory Affairs, which have full regulatory control over drinking water quality and underground storage tanks, conditionally approved Appellant's proposed gas station on the Subject Property. The Township lacks regulatory authority in these areas. As such, Appellant has a constitutionally protected property interest in the conditional approvals granted by the State.

23. Admit that you took no legal action to challenge the Township's zoning regulations prior to investing in the Property for the operation of a special land use.

ANSWER: Admitted that there was no legal action but there is no legal duty to take any such action. As Plaintiff did not own property in Howell Township prior to purchasing the Subject Property, Plaintiff lacked standing to challenge the zoning ordinance, and more practically had no concern with Howell Township's ordinances.

24. Admit that you operate businesses other than gasoline service stations throughout the State of Michigan.

ANSWER: Denied. Plaintiff currently operates one (1) convenience store on land being developed for primary use as a gasoline services station, which is Plaintiff's primary business. Said business would not have been purchased but for the redevelopment into gasoline service station-ancillary uses. Plaintiff objects to relevance.

25. Admit that you invested in the Property to operate a gasoline service station before the Township granted you any approvals for a special land use permit.

ANSWER: Admitted. Verbal discussions did take place with Howell Township Zoning officials prior to investment.

[Signatures to follow]

HOWELL-MASON, LLC
Plaintiff

BY: _____
TODD J. LEKANDER, II
Member

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON)

Sworn to and signed in my presence by TODD J. LEKANDER, II, in his capacity as Member of HOWELL-MASON, LLC, on February 26, 2025.

Mary Macdonald

Mary Macdonald, Notary Public
Livingston County, Michigan
My Commission expires: 12/02/2026
Acting in the County of Livingston

Mary Macdonald
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF Livingston
My Commission Expires 12/02/2026
Acting in the County of Livingston

As to objections, only:

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Co-Counsel for Howell-Mason, LLC

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Dated: February 26, 2025

LAW OFFICE OF PAUL E. BURNS
Attorneys for Howell-Mason, LLC

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Dated: February 26, 2025

BY: _____
JEFFREY D. ALBER (P76530)
Alber Ph: (734) 369-1009
alber@peblaw.net

Dated: February 26, 2025

EXHIBIT F

STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

HOWELL-MASON, LLC,
a Michigan Limited Liability Company,

Howell-Mason,

v

HOWELL TOWNSHIP,
a Michigan General Law Township,

Defendant.
_____/

Case No. 24-32242-CZ

HON. SUSAN LONGSWORTH

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AFFIDAVIT OF JONATHAN HOHENSTEIN

STATE OF MICHIGAN)
) ss
COUNTY OF LIVINGSTON)

Jonathan Hohenstein, being first duly sworn and deposed, states under oath as follows:

1. I serve as the Treasurer of Howell Township, a position I have held at all times relevant to this action and continue to hold. As Treasurer, I am a member of the Howell Township Board. I am over eighteen (18) years of age and competent to testify to the matters set forth in this affidavit based upon my personal knowledge and experience.
2. At all times relevant to Howell-Mason's application for a special land use permit and the Township Board's consideration of that application, I conducted Township business—including deliberation and decision-making—in compliance with the Michigan Open Meetings Act.
3. I did not participate in, attend, or engage in any closed, secret, or informal meetings of a quorum of the Howell Township Board concerning Howell-Mason's application outside of properly noticed public meetings.
4. Any discussions in which I participated regarding Howell-Mason's application occurred during properly noticed public meetings of the Township Board or in circumstances expressly permitted by the Michigan Open Meetings Act.
5. I did not engage in any regular pattern or practice of deliberating Township Board business outside of public meetings, nor am I aware of any such conduct by the Howell Township Board.
6. I listened to and considered all evidence, testimony, and materials presented to the Township Board regarding Howell-Mason's application during properly noticed public meetings, including materials submitted by Howell-Mason and comments from members of the public.
7. My decision regarding Howell-Mason's application was my own independent decision. I reached that decision after considering the applicable zoning regulations, the standards governing special land use permits, and the evidence presented in the public record. I was

also aware of legal counsel's review and advice regarding the application, but my decision was ultimately my own.

8. All votes and decisions of the Howell Township Board concerning Howell-Mason's application were made during open public meetings.
9. The facts set forth in this affidavit are true and accurate to the best of my knowledge, information, and belief.

Further Affiant sayeth not.

Jonathan Hohenstein

Subscribed and sworn to before me by Jonathan Hohenstein on this 1st day of April 2026, in Livingston County, Michigan.

Sabrina L. Campbell, Notary Public
State of Michigan, County of Livingston
My Commission Expires: Aug. 12, 2026
Acting in the County of Livingston

SABRINA L. CAMPBELL
Notary Public – State of Michigan
County of Livingston
My Commission Expires August 12, 2026
Acting in the County of Livingston

EXHIBIT G

Disclosure Regarding Real Estate Agency Relationships

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee. A real estate transaction is a transaction involving the sale or lease of any legal or equitable interest in real estate consisting of not less than 1 or not more than 4 residential dwelling units or consisting of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

(1) An agent providing services under any service provision agreement owes, at a minimum, the following *duties* to the client:

(a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.

(b) The performance of the terms of the service provision agreement.

(c) Loyalty to the interest of the client.

(d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.

(e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the licensed agent. **A real estate licensee does not act as an attorney, tax advisor, surveyor, appraiser, environmental expert, or structural or mechanical engineer and you should contact professionals on these matters.**

(f) An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.

(g) Confidentiality of all information obtained within the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.

(2) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall provide the following *services* to his or her client:

(a) When the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.

(b) Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.

(c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.

(d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.

(e) For a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction, furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party.

Michigan law requires real estate licensees who are acting as agents of sellers or buyers of real property to advise the potential sellers or buyers with whom they work of the nature of their agency relationship.

SELLER'S AGENTS

A seller's agent, under a listing agreement with the seller, acts solely on behalf of the seller. A seller can authorize a seller's agent to work with subagents, buyer's agents and/or transaction coordinators. A subagent of the seller is one who has agreed to work with the listing agent, and who, like the listing agent, acts solely on behalf of the seller. Seller's agents and their subagents will disclose to the seller known information about the buyer which may be used to the benefit of the seller.

Individual services may be waived by the seller through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

BUYER'S AGENTS

A buyer's agent, under a buyer's agency agreement with the buyer, acts solely on behalf of the buyer. A subagent of the buyer is one who has agreed to work with the buyer's agent with who, like the buyer's agent, acts solely on behalf of the buyer. Buyer's agents and their subagents will disclose to the buyer known information about the seller which may be used to benefit the buyer.

Individual services may be waived by the buyer through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

DUAL AGENTS

A real estate licensee can be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent, in writing, of both the seller and the buyer.

In such a dual agency situation, the licensee will not be able to disclose all known information to either the seller or the buyer. As a dual agent, the licensee will not be able to provide the full range of fiduciary duties to the seller or the buyer.

The obligations of a dual agent are subject to any specific provisions set forth in any agreement between the dual agent, the seller and the buyer.

TRANSACTION COORDINATOR

A transaction coordinator is a licensee who is not acting as an agent of either the seller or the buyer, yet is providing services to complete a real estate transaction. The transaction coordinator is not an agent for either party and therefore owes no fiduciary duty to either party.

DESIGNATED AGENCY

A buyer or seller with a designated agency agreement is represented only by agents specifically named in the agreement. Any agents of the firm not named in the agreement do not represent the buyer or seller. The named "designated" agent acts solely on behalf of his or her client and may only share confidential information about the client with the agent's supervisory broker who is also named in the agreement. Other agents in the firm have no duties to the buyer or seller and may act solely on behalf of another party in the transaction.

LICENSEE DISCLOSURE (Check one)

I hereby disclose that the agency status of the licensee named below is:

_____ Seller's agent

_____ Seller's agent – limited service agreement

_____ Buyer's agent

_____ Buyer's agent – limited service agreement

✔ Dual agent

_____ Transaction coordinator (A licensee who is not acting as an agent of either the seller or the buyer.)

_____ None of the above

AFFILIATED LICENSEE DISCLOSURE (Check one)

_____ Check here if acting as a designated agent. Only the licensee's broker and a named supervisor broker have the same agency relationship as the licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee's broker and all named supervisory brokers shall be considered disclosed consensual dual agents.

_____ Check here if not acting as a designated agent. All affiliated licensees have the same agency relationship as the licensee named below.

Further, this form was provided to the buyer or seller before disclosure of any confidential information.

Gary T. McCririe 57aee62

Licensee Selling Agent Gary McCririe — Date 11-29-2022

Licensee — Date

ACKNOWLEDGMENT

By signing below, the parties acknowledge that they have received and read the information in this agency disclosure statement and acknowledge that this form was provided to them before the disclosure of any confidential information. **THIS IS NOT A CONTRACT.**

The undersigned _____DOES ✔ ____DOES NOT have an agency relationship with any other real estate licensee. If an agency relationship exists, the undersigned is represented as _____ SELLER _____ BUYER.

330ed96

Potential Buyer/Seller (circle one) Howell Mason LLC **by TJ Lekander, member** — Date 11-24-2022

DAVID ALLRED 4038f06 — LAURA ALLRED 5147edf

Potential Buyer/Seller (circle one) DAVID ALLRED LAURA ALLRED — Date 12-01-2022

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LIVINGSTON COUNTY ASSOCIATION OF REALTORS® STANDARD PURCHASE AGREEMENT

PURCHASER (legal name) Howell Mason LLC By TJ Lekander, member Marital Status _____

PURCHASER (legal name) _____ Marital Status _____

PURCHASER'S Current Address 627 Dearborn, Howell, MI 48843

SELLING OFFICE GTM Realty Phone (810) 201-4848 Office ID 412209

SELLING AGENT Gary McCririe Phone (810) 343-0951 License# 209002

LISTING OFFICE GTM Realty Phone (810) 201-4848 Office ID 412209

LISTING AGENT Gary McCririe Phone (810) 343-0951 License# 209002

1. THE PURCHASER hereby offers and agrees to purchase, subject to easements and restrictive covenants of record, the following property in the

☐CITY ☐VILLAGE ☑TOWNSHIP of HOWELL, County of Livingston County, Michigan described as follows: PART OF THE WEST 1/2 OF THE SW 1/4 OF SEC 33, T3N4E, TWP OF HOWELL, LIVINGSTON COUNTY, MICHIGAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SW CORNER OF SAID SEC 33; THENCE DUE NORTH ALONG THE WEST LINE OF SAID SEC 33, 660.00 FT; THENCE S 89° 48 MINUTES 00 SECONDS EAST 15.64 FT TO THE POB OF LAND TO BE DESCRIBED; AND CL OF BURKHART also known as 160 BURKHART RD Tax ID# 06-33-300-019 together with all fixtures and appurtenances in or on the premises (unless specifically excluded herein) including, if any, lighting fixtures, shades, blinds, drapery/curtain and drapery/curtain hardware and rods, attached mirrors and all bathroom mirrors, attached generators, attached humidifier, ventilating fixtures, screens, storm doors and windows, garage door openers and transmitters, water softener (rental units excepted) and water treatment systems, built in appliances, heating unit including wood stove and fireplace gas logs, mail box, awnings, all TV antennae, landscaping, flagpole, all hardwired audio/security systems and related equipment, central vacuum and attachments, as well as the following personal property for which a bill of sale shall be given.

Included: range,, refrigerator, dishwasher, microwave, washer, dryer

Excluded: _____

and to pay therefore the sum of ~~Three Hundred Thousand Dollars~~ **Three Hundred and Eight Thousand, Five Hundred Dollars** DOLLARS ($~~300,000.00~~ **$308,500.00**)

DA bc09b71 LA 61a0d0d b806db9

Unless otherwise noted, Seller shall deliver a warranty deed conveying marketable title to Purchaser at closing.

2. THIS OFFER IS MADE SUBJECT TO FINANCING TERMS AND SATISFACTORY COMPLETION OF THE FOLLOWING CONDITIONS AS MARKED

a) ☐CASH SALE: Payment of purchase money to be made by wire transfer or equivalent funds.

b) ☑CASH SALE WITH NEW MORTGAGE: This Purchase Agreement is contingent upon Purchaser being able to secure a

☐Conventional ☐FHA ☐203K ☐VA ☐Rural Development ☐Seller Financed/Other (See attached LCAR Financing Addendum)

mortgage in the amount of $_____ **OR** 80 % of sale price for a term of nego years and pay

$_____ **OR** 20 % of sale price down, plus mortgage costs, prepaid items and adjustments in cash.

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Purchaser further agrees to apply for such mortgage within 10 calendar days from acceptance of this Purchase Agreement at Purchaser's own expense and shall comply with all requirements of said lending institution in a timely manner. If a loan approval from the lending institution cannot be obtained at no fault of the Purchaser within 90 days from the date of acceptance of this Purchase Agreement, this Purchase Agreement may be declared null and void by the Seller and Deposit shall be returned to Purchaser. Receipt of loan approval from the Purchaser's lending institution within time limit will eliminate this contingency.

3. EARNEST MONEY DEPOSIT The Broker is hereby authorized to present this offer and the Deposit of $5,000.00:

☐CASH ☐CHECK # _____ ☑OTHER upon acceptance by seller.

To be held by ☐Selling Broker OR ☑Fidelity National Title, which Deposit shall be applied to the purchase price at closing.

If held by Selling Broker, Broker shall comply with the Michigan Occupational Code and related rules.

If the sale is not consummated, any release of the Purchaser's Deposit will require a mutual release of the Purchase Agreement signed by all parties.

4. **OCCUPANCY** The property is ☐Owner occupied ☑Tenant occupied ☐Vacant.
(Check one box below)

☐To be given at closing.

☑Seller shall deliver and Purchaser shall accept possession of said property subject to rights of present tenants, if any. If Seller occupies property, it shall be vacated and keys surrendered _____ calendar days after closing per the terms of an occupancy disbursement form. From the day after closing through the day of vacating the property as agreed, Seller shall pay as indicated _____ per day. The Escrow Agent shall retain from the amount due to Seller at closing the amount equal to_____ days of said occupancy charge, paying to Purchaser the amount due and returning to Seller the unused portion as determined by date property is vacated and keys surrendered. The parties acknowledge that the Brokers and/or Escrow Agent have no obligation implied or otherwise for seeing that the property is vacated on the date specified or for the condition of the property, and may be acting only as an Escrow Agent holding the occupancy deposit. From the date of closing, Purchaser will maintain hazard insurance on the property and Seller will maintain insurance for liability and Seller's personal property. Purchaser is not responsible for damage or injury to Seller or Seller's personal property. Seller will not be required to pay for losses covered by Purchaser's hazard insurance policy. However, Seller will pay the deductible on Purchaser's hazard insurance for any claims made while Seller is in possession which are attributable to Seller's acts or omissions.

☐See attached LCAR Occupancy Addendum

5. PROPERTY INSPECTION(S) Purchaser shall have the option to inspect and examine the property at Purchaser's expense. This contingency expires on or before 30 days after acceptance of this Purchase Agreement. In the event Purchaser neither expressly waives this contingency nor provides notice pursuant to subparagraphs (a) or (b) below, this contingency shall be deemed waived. Purchaser's examination may include, but is not limited to, inspections and tests relating to building structure, mechanical systems, environmental items, water, septic, pest or any other matter Purchaser may deem necessary for Purchaser's intended use. Purchaser shall restore the property to its prior condition after examination. If Purchaser is not satisfied with the results of any examination for any reason during the inspection period, Purchaser will notify Seller in writing that Purchaser:

(a) Declares this Purchase Agreement null and void and Deposit will be returned to Purchaser

OR

(b) Purchaser proposes an amendment to this Purchase Agreement. Purchaser and Seller have 10 days to mutually agree upon an amendment, or this Purchase Agreement may be declared null and void by either party and the Deposit will be returned to the Purchaser.

PURCHASER ACKNOWLEDGES THAT BROKER/AGENT HAS RECOMMENDED PURCHASER OBTAIN AN INSPECTION OF THE PROPERTY.

☐**Purchaser does not choose to inspect or examine the property and accepts the property AS IS.**

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6. **TITLE INSURANCE** Seller shall provide Purchaser at Seller's expense an owner's policy of title insurance from a title company of Seller's choice in the amount of the purchase price. Said policy to be: (Check one box below)

☐With Standard Exceptions

☑Without Standard Exceptions (if chosen owner's policy is unavailable then a With Standard Exceptions Policy shall be issued)

☐Expanded Coverage (if chosen owner's policy is not available then a Without Standard Exceptions Policy shall be issued)

(Check one box below)

☐Seller ☑Purchaser to pay cost of survey if required to obtain chosen owner's policy.

Seller will apply for a commitment for title insurance within 7 calendar days after the date of acceptance of this Purchase Agreement. Upon receipt of the commitment, Purchaser shall have 7 calendar days to provide Seller with written notice of any objections. Seller will then have 30 days after receiving written notice to remedy the claimed defects. If the Seller is unable or unwilling to remedy the defects within 30 days, this Purchase Agreement shall terminate and the Deposit shall be returned to Purchaser or the Purchaser may waive the defect and complete this transaction.

When applicable, Purchaser may obtain a loan policy from a title company of Purchaser's choice.

7. **DEFAULT** Failure to perform any obligation of this Purchase Agreement by Seller or Purchaser shall constitute default. If Purchaser defaults, Seller may, at Seller's option, terminate the Purchase Agreement and pursue all available legal and equitable remedies or seek forfeiture of the Deposit as liquidated damages. If Seller defaults, Purchaser may pursue all available legal and equitable remedies and may also terminate the Purchase Agreement and seek a refund of the Deposit.

8. CLOSING COSTS Unless otherwise provided in this Purchase Agreement, it is agreed that Seller shall pay all state and county transfer taxes and costs required to convey marketable title. Unless otherwise provided in this Purchase Agreement, Purchaser shall pay the cost of recording the deed and/or security interest, all mortgage closing costs required by lender, and any purchaser closing fee charged by the title insurance company/agency that issues the loan policy in a lender financed sale. Seller and Purchaser shall split equally any closing fees charged by the title insurance company/agency in a cash or seller financed sale. Any transfer or status letter fees charged by the homeowners or condominium association shall be split equally between Purchaser and Seller.

At closing, Seller agrees to contribute up to $ 0.00 **or** 0 **% of the purchase price toward Purchaser's closing costs, prepaid items, property tax prorations, escrows, insurance and/or any other fees allowable by lender.**

9. PRORATED ITEMS Seller shall be responsible for all real estate taxes for years prior to the year in which the closing occurs and the Purchaser shall be responsible for all real estate taxes for years after the year in which the closing occurs. Taxes for the year in which the closing occurs shall be prorated such that Seller is responsible for that portion of the taxes through and including the date of closing. For purposes of this paragraph, taxes shall be deemed paid in advance based on due date of July 1 for summer taxes (covering the period July 1 through the following June 30) and December 1 for winter taxes (covering the period December 1 through the following November 30).

Purchaser shall assume the balance of all assessments which have been assessed or levied against the property by any public agency, taxing unit, homeowner's association, or condominium association. Any rent, homeowner's association dues, condominium dues, or assessment installment payments not otherwise included in the tax bills shall be prorated and adjusted to the date of closing.

☐In lieu of the tax proration method set forth in paragraph 9 above, see attached Specific Contingencies/Terms Addendum.

10. FEES OR CONSIDERATIONS Purchaser and Seller hereby acknowledge that Broker(s) may accept a fee or consideration with regard to listing agreement, buyer broker contract, placement of a home warranty, or any other ancillary products or services arising from this transaction.

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11. CONDITION Until possession is delivered, Seller agrees to keep the property in substantially the same condition as of the date of this Purchase Agreement and agrees to maintain heating, well, septic, plumbing, electrical system, landscape irrigation system and other equipment in normal working order; to keep the roof watertight and maintain the grounds. Seller agrees to keep all utility services operating until possession is delivered. Upon vacating the property, Seller agrees to remove all debris and leave the property in "broom clean" condition. In the event the property herein has been winterized, it shall be the obligation and expense of Seller to de-winterize the property prior to closing. Purchaser has a right to a walk-through inspection of the property within 72 hours prior to closing. This walk-through will provide Purchaser with an opportunity to confirm that this paragraph has been complied with and should not be deemed an opportunity to renegotiate the terms and conditions of this Purchase Agreement.

12. HEIRS, SUCCESSORS AND ASSIGNS This Purchase Agreement binds Seller, Seller's personal representatives, heirs, and anyone succeeding to Seller's interest in the property. Purchaser shall not assign this Purchase Agreement without Seller's prior written consent.

13. RELEASE Purchaser and Seller acknowledge that the Broker(s), their respective agents, employees and representatives have made no representations concerning the condition of the property covered by this Purchase Agreement or marketability of title. Purchaser and Seller release, indemnify and hold harmless the Brokers, their respective agents, employees and representatives, with respect to all claims arising out of or related to this Purchase Agreement, addenda and/or counter-offers. This release also includes, but is not limited to, all claims arising from any purported representations as to the physical and environmental condition of the property or marketability of title and special assessments covered by this Purchase Agreement. Purchaser and Seller acknowledge that Broker(s), their respective agents, employees and representatives are not acting as appraisers, builders, accountants, environmentalists, engineers, surveyors, inspectors, tax advisors or attorneys.

14. LIMITATION Purchaser and Seller agree any and all claims and/or lawsuits which they may have against the Brokers, their respective agents, employees and representatives relating to their services must be filed no more than 6 months after the date of closing of the transaction described in this Purchase Agreement. Purchaser and Seller waive any statute of limitations to the contrary.

15. ELECTRONIC SIGNATURES/COMMUNICATION Purchaser and Seller acknowledge and agree that this Purchase Agreement, any amendment or modification of this Purchase Agreement and/or any written notice or communication in connection with this Purchase Agreement may be delivered to Seller in care of Listing Broker and Purchaser in the care of the Selling Broker via electronic mail or by facsimile. Any such communication shall be deemed delivered at the time it is sent or transmitted. The parties agree that the electronic signatures and initials shall be deemed to be valid and binding upon the parties as if the original signatures or initials were present in the documents in the handwriting of each party. Seller represents and warrants an electronic email address has been provided to the Listing Broker from which Seller may receive electronic mail. Purchaser represents and warrants an electronic email address has been provided to Selling Broker from which Purchaser may receive email.

STIPULATION FOR ELECTRONIC STORAGE OF INSTRUMENTS AND DOCUMENTS The undersigned Seller hereby stipulates and acknowledges that all documents relating to this Agreement and all records and correspondence relating thereto, whether now existing or created hereafter, may be stored as electronic images and the originals of the electronically stored documents may be destroyed. The electronic images shall be deemed to serve as the original documents thereafter.

16. COUNTERPARTS This Purchase Agreement may be signed in any number of counterparts with the same effect as if the signature of each counterpart were upon the same instrument.

17. GENERAL PROVISIONS

a. **This is a legally binding contract and all parties acknowledge that they have been advised to have an attorney review the transaction on their behalf.**

b. Principal Residence Exemption(PRE):

The Seller represents the PRE ☐**IS IN EFFECT** for this property and taxes will be prorated accordingly **OR**

☑**IS NOT IN EFFECT** for this property and taxes will be prorated accordingly.

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18. ADDITIONAL TERMS/CONDITIONS (Check if applicable)

☑Agency Disclosure Form attached.

☑Seller's Disclosure Form received.

☑Lead-Based Paint Disclosure received and is a part of this Agreement.

☐Fuel in tank(s) ☐ Is included in the sale price ☐ Is not included in the sale price and fuel shall be prorated at time of Possession.

☐Escrow Agent shall retain $300.00 from Seller at closing for water/sewer charges to date of occupancy, if applicable. When the final bill is paid any unused portion will be returned to Seller.

☐Contingency on sale and closing of Purchaser's property (no offer pending) (See attached LCAR Contingent on Sale and Closing of Purchaser's Property Addendum).

☐Contingency on closing of sale on Purchaser's property (sale pending) (See attached LCAR Contingent on Sale and Closing of Purchaser's Property Addendum).

☐This is a back-up offer (See attached Specific Contingencies/Terms Addendum).

☑Appraisal – This Purchase Agreement is subject to the property appraising at purchase price or higher. Said appraisal to be paid for by Purchaser. If property does not appraise at purchase price or higher, Purchaser shall have the option to declare this Purchase Agreement null and void and Deposit shall be returned to Purchaser.

☐Subject property abuts a private road which has not been accepted as a public road and is not required to be maintained by the County Road Commission or other public or municipal body.

☐Offer is void if not accepted by **Date**_____ **Time** _____ Eastern Time.

☑Closing of this purchase to be on or before 2/17/2023 at Listing Broker's office or location of Seller's choice.

☐Home Warranty ☐Excluded ☐ Included ☐To be paid for by_____.

☐Attorney package of the closing documents required at least 3 days prior to closing.

☐FHA or VA Financing Addendum required (See attached addendum).

☐Arbitration Addendum attached

☐Other addendum(s) attached _____.

19. LAND DIVISION ACT (For unplatted land only) Seller and Purchaser agree that the following statements shall be included in the deed at the time of delivery:

(a) The grantor grants to the grantee the right to make all (insert "All", "Zero" or a specific number, as appropriate) division(s) under section 108 of the Land Division Act, MCL 560.108.

(b) This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

CAUTION: If the space contained in subparagraph (a) above is left blank on the deed, the deed will NOT grant Purchaser the right to any divisions.

20. OTHER TERMS/CONDITIONS

a) Real estate commissions will be paid by the purchaser. b) This offer is contingent upon purchasers review of the existing lease on the property. Seller shall provide the lease to purchaser within 5 days of acceptance of this offer. Purchaser shall have 10 days to review lease. If purchaser does not object to lease within 5 days of receipt it shall be assumed purchaser accepts said lease. If purchaser is not satisfied with said review,they may declare this offer null and void and be entitled to a full and immediate refund of their deposit in full termination of this agreement. c) rents shall be prorated at closing and any security deposit will be credited to the purchaser at closing. d) Seller will assign the lease to purchaser at closing. e) Purchaser will be seeking a commercial loan.

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21. ENTIRE AGREEMENT Purchaser and Seller agree to the following: the term "Purchase Agreement" as used herein includes any counter-offers made by the parties to which there has been mutual and final acceptance; this Purchase Agreement and any addenda constitutes the entire agreement between the parties; there are no other written or oral understandings between the parties; this Purchase Agreement supersedes any and all prior purchase agreements, understandings or representations made by the parties or their agents. **TIME IS OF THE ESSENCE**.

b7be82d

11/24/2022

Purchaser Date

Purchaser Date

Howell Mason LLC By TJ Lekander, member

Print name

Print name

SELLER ACCEPTANCE ☐**As Written-No Changes** ☐**See Counter Offer Addendum**

dc12c42

DAVID ALLRED 11-30-2022

Seller Date

4e274a6

LAURA ALLRED 12-01-2022

Seller Date

DAVID ALLRED

Print name

LAURA ALLRED

Print name

Seller Address 320 S. First, Brighton, MI 48116

0f21020

(Initials) Notice has been given of acceptance of this Purchase Agreement by delivery of a copy of a fully executed agreement to Purchaser. (Purchaser or Purchaser's Broker/Agent may initial)

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LEAD-BASED PAINT SELLER'S DISCLOSURE FORM

Property Address 160 BURKHART RD
Street

HOWELL MICHIGAN 48843
City, Village, Township

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may reproduce permanent neurological damage, including learning disabilities, reduced intelligent quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any know lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

I. Seller's Disclosure (initial)

LA DA 3f212cd 86fd0fe (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

_____

_____

☑ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in housing.

LA DA 5deb2d2 2ceb713 (b) Records and reports available to the seller (check one below):

☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

_____

_____

☑ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Seller certifies that to the best of his/her knowledge, the Seller's statement above are true and accurate.

Date: 11-30-2022 Seller(s) DAVID ALLRED 709855b9

Date: 12-01-2022 LAURA ALLRED fdbeec2

II. Agent's Acknowledgment (initial)

GTM 8ab8385 Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852 d and is aware of his/her responsibility to ensure compliance.

Agent certifies that to the best of his/her knowledge, the Agent's statement above is true and accurate.

Agent

Date: November 29th, 2022 Gary T. McCririe 5278e31

III. Purchaser's Acknowledgment (initial)

41dbc53 _____ (a) Purchaser has received copies of all information listed above.

cc956a3 _____ (b) Purchaser has received the federally approved pamphlet *Protect Your Family From Lead In Your Home.*

900d8f3 _____ (c) Purchaser has (check one below):

- ☑ Received a 10-day opportunity (or other mutually agreed upon period) to conduct a risk assessment or inspection of the presence of lead-based paint or lead-based paint hazards; or
- ☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Purchaser certifies to the best of his/her knowledge, the Purchaser's statements above are true and accurate.

Purchaser(s)

Date: November 24th, 2022 02dd55d

Date: _____

Seller's Disclosure Statement

Property Address: 160 BURKHART RD (Street) HOWELL (City, Village or Township) MICHIGAN 48843

Purpose of Statement: This statement is a disclosure of the condition of the property in compliance with the Seller Disclosure Act. This statement is a disclosure of the condition and information concerning the property, known by the Seller. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. **This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction, and is not a substitution for any inspections or warranties the Buyer may wish to obtain.**

Seller's Disclosure: The Seller discloses the following information with the knowledge that even though this is not a warranty, the Seller specifically makes the following representations based on the Seller's knowledge at the signing of this document. Upon receiving this statement from the Seller, the Seller's Agent is required to provide a copy to the Buyer or the Agent of the Buyer. The Seller authorizes its Agent(s) to provide a copy of this statement to any prospective Buyer in connection with any actual or anticipated sale of property. The following are representations made solely by the Seller and are not the representations of the Seller's Agent(s), if any. **THIS INFORMATION IS A DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY CONTRACT BETWEEN BUYER AND SELLER.**

Instructions to the Seller. (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Attach additional pages with your signature if additional space is required. (4) Complete this form yourself. (5) If some items do not apply to your property, check NOT AVAILABLE. If you do not know the facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT.

Appliances/Systems/Services: The items below are in working order. (The items listed below are included in the sale of the property only if the purchase agreement so provides.)

	Yes	No	Unknown	Not Available		Yes	No	Unknown	Not Available
Range/oven	✔				Lawn sprinkler system				✔
Dishwasher	✔				Water heater	✔			
Refrigerator	✔				Plumbing system	✔			
Hood/fan	✔								
Disposal				✔	Water softener/conditioner	✔			
					Well & pump	✔			
TV antenna, TV rotor controls	✔				Septic tank & drainfield				✔
					Sump pump	✔			
Electric system	✔								
Garage door opener & remote	✔				City water system				✔
Alarm System				✔	City sewer system	✔			
Intercom				✔	Central air conditioning	✔			
Central vacuum				✔	Central heating system	✔			
Attic fan				✔	Wall furnace				✔
Pool heater, wall liner & equipment				✔	Humidifier	✔			
					Electronic air filter				✔
Microwave	✔				Solar heating system				✔
Trash compactor				✔					
					Fireplace & chimney	✔			
Ceiling fan	✔				Wood burning system				✔
Sauna/hot tub				✔	Dryer	✔			
Washer	✔								

Explanations (attach additional sheets if necessary):

UNLESS OTHERWISE AGREED, ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED WITHOUT WARRANTY BEYOND DATE OF CLOSING.

Property conditions, improvements & additional information:

1. **Basement/Crawlspace:** Has there been evidence of water? yes ____ no ✔
   If yes, please explain: ____
2. **Insulation:** Describe, if known: ____
   Urea Formaldehyde Foam Insulation (UFFI) is installed? unknown ✔ yes ____ no ____
3. **Roof:** Leaks? yes ____ no ✔
   Approximate age if known: Approx. age 12 years. Roof leak in 2020, inside above front door and stairs going up to top level. Repaired.
4. **Well:** Type of well (depth/diameter, age and repair history, if known): Well pump replaced June 2019.
   Has the water been tested? yes ✔ no ____
   If yes, date of last report/results: 5/17/18

BUYER'S INITIALS ____
SELLER'S INITIALS [illegible] LA

Seller's Disclosure Statement

Property Address: 160 BURKHART RD Street HOWELL City, Village or Township MI

5. **Septic tanks/drain fields:** Condition, if known: n/a
6. **Heating system:** Type/approximate age: Gas forced air furnace. Approx. age 15 years
7. **Plumbing system:** Type: copper ✔ galvanized _____ other _____
   Any known problems? No known issues.
8. **Electrical system:** Any known problems? No known issues.
9. **History of Infestation,** if any: (termites, carpenter ants, etc.) No known issues.
10. **Environmental problems:** Are you aware of any substances, materials or products that may be an environmental hazard such as, but not limited to, asbestos, radon gas, formaldehyde, lead-based paint, fuel or chemical storage tanks and contaminated soil on property.

Unknown ✔ yes _____ no _____

If yes, please explain: _____

11. **Flood Insurance:** Do you have flood insurance on the property?	unknown _____	yes _____	no ✔
12. **Mineral Rights:** Do you own the mineral rights?	unknown ✔	yes _____	no _____

Other Items: Are you aware of any of the following:

1. Features of property shared in common with the adjoining landowners, such as walls, fences, roads and driveways, or other features whose use or responsibility for maintenance may have an effect on the property?	unknown ✔	yes _____	no _____
2. Any encroachments, easements, zoning violations or nonconforming uses?	unknown ✔	yes _____	no _____
3. Any "common areas" (facilities like pools, tennis courts, walkways, or other areas co-owned with others) or a homeowners' association that has any authority over the property?	unknown _____	yes _____	no ✔
4. Structural modifications, alterations, or repairs made without necessary permits or licensed contractors?	unknown ✔	yes _____	no _____
5. Settling, flooding, drainage, structural, or grading problems?	unknown ✔	yes _____	no _____
6. Major damage to the property from fire, wind, floods, or landslides?	unknown _____	yes _____	no ✔
7. Any underground storage tanks?	unknown _____	yes _____	no ✔
8. Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.?	unknown _____	yes _____	no ✔
9. Any outstanding utility assessments or fees, including any natural gas main extension surcharge?	unknown ✔	yes _____	no _____
10. Any outstanding municipal assessments or fees?	unknown ✔	yes _____	no _____
11. Any pending litigation that could affect the property or the Seller's right to convey the property?	unknown _____	yes _____	no ✔

If the answer to any of these questions is yes, please explain. Attach additional sheets, if necessary: _____

The Seller has lived in the residence on the property from May 25th, 2018 (date) to July 16th, 2022 (date).
The Seller has owned the property since May 25th, 2018 (date).
The Seller has indicated above the conditions of all the items based on information known to the Seller. If any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, Seller will immediately disclose the changes to Buyer. In no event shall the parties hold the Broker liable for any representations not directly made by the Broker or Broker's Agent.

Seller certifies that the information in this statement is true and correct to the best of Seller's knowledge as of the date of Seller's signature.

BUYER SHOULD OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY. THESE INSPECTIONS SHOULD TAKE INDOOR AIR AND WATER QUALITY INTO ACCOUNT, AS WELL AS ANY EVIDENCE OF UNUSUALLY HIGH LEVELS OF POTENTIAL ALLERGENS INCLUDING, BUT NOT LIMITED TO, HOUSEHOLD MOLD, MILDEW AND BACTERIA.

BUYERS ARE ADVISED THAT CERTAIN INFORMATION COMPILED PURSUANT TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28,721 TO 28.732 IS AVAILABLE TO THE PUBLIC BUYERS SEEKING SUCH INFORMATION SHOULD CONTACT THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY OR SHERIFF'S DEPARTMENT DIRECTLY.

BUYER IS ADVISED THAT THE STATE EQUALIZED VALUE OF THE PROPERTY, PRINCIPAL RESIDENCE EXEMPTION INFORMATION, AND OTHER REAL PROPERTY TAX INFORMATION IS AVAILABLE FROM THE APPROPRIATE LOCAL ASSESSOR'S OFFICE. **BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE TAX BILLS ON THE PROPERTY WILL BE THE SAME AS THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN LAW, REAL PROPERTY TAX OBLIGATIONS CAN CHANGE SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.**

Seller DAVID ALLRED acc1fda Date: November 18th, 2022

Seller LAURA ALLRED d4de6ff Date: November 19th, 2022

Buyer has read and acknowledges receipt of this statement.

Buyer 4790df4 Date: November 24th, 2022 Time 09:09 p.m.

Buyer _____ Date: _____ Time _____

Disclaimer: This form is provided as a service of Michigan Realtors®. Please review both the form and details of the particular transaction to ensure that each section is appropriate for the transaction. Michigan Realtors® is not responsible for use or misuse of form for misrepresentation or for warranties made in connection with the form.

EXHIBIT H

COMMERCIAL PURCHASE AGREEMENT

THIS COMMERCIAL PURCHASE AGREEMENT is made and entered into this 19th day of June, 20 20, ("Effective Date") by and between Larry Horton, a _____ *[entity type and state organized]* ("Seller"), whose address is 70 N. Burkhart Rd., Howell *[municipality]*, Michigan, 48843 *[zip]*, and Todd Lekander for an entity to be formed, a _____ *[entity type and state organized]*, ("Purchaser"), whose address is 627 Dearborn St., Howell *[municipality]*, MI *[State]*, 48843 *[zip code]*, in the manner following:

1. **PROPERTY DESCRIPTION.** Purchaser offers and agrees to purchase the real property located in the ☐ City or ☒ Township or ☐ Village of Howell, County of Livingston, Michigan, commonly known as 70 Burkhart RD, tax parcel identification number(s) 0633300018 and further described as: SEC 33, T3N,R4E COM AT SW COR OF SEC 33, TH N 330 FT, S 89* 48'E 29.44 FT TO BEG, TH N 5*05'59*E 118, or ☐ see attached legal description as **Exhibit A**, together with Seller's interest in all easements, appurtenances, land division rights, timber, air, oil, gas and mineral, subsurface, riparian, and all other rights and interests pertaining to such property, and together with all buildings, structures and other physical improvements situated on such property (collectively, the "Real Property").

Place an "X" in the appropriate box(es) below:

☐ Check here if sale includes any equipment or personal property and attach list as **Exhibit B**. A bill of sale will be executed at closing.

☐ Check here if sale includes any tenant leases and attach list and current rent roll as **Exhibit C**. An assignment of leases will be executed at closing.

☐ Check here if sale includes any licenses, permits or other intangible property and attach list as **Exhibit D**. An assignment will be executed at closing.

The Real Property, together with any of the foregoing are collectively the "Property."

2. **PURCHASE PRICE.** The purchase price ("Purchase Price") for the Property shall be Three Hundred ~~Eleven~~ Seventeen Thousand Five Hundred ($ ~~311,500.00~~ 317,500) Dollars.

T.J.L.

3. **PAYMENT OF PURCHASE PRICE.** The Purchase Price shall be paid as indicated by an "X" placed in the appropriate box below, with initials of Seller and Purchaser acknowledging Purchaser's method of payment, while the other unmarked terms of purchase shall not apply.

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☐ **Cash.** Purchaser shall pay the full Purchase Price, including any adjustments and/or prorations contained herein, to Seller at closing by certified check or wire transfer of immediately available funds or another method acceptable to Seller and title company.

☒ **New Mortgage.** Purchaser shall obtain a mortgage from a financial institution to help finance the purchase and pay Seller at Closing the full Purchase Price, including any adjustments and/or prorations contained herein.

☐ **Land Contract.** Purchaser shall pay the full Purchase Price, including any adjustments and/or prorations contained herein, to Seller at Closing pursuant to a mutually acceptable Land Contract. The Land Contract shall provide for a down payment of $_____ at closing and payment of the balance of $_____ in monthly installments of $_____, or more, at Purchaser's option, including interest at the rate of _____ percent (____%) per annum, amortized over _____ (_____) years, with interest to start on the closing date. A final "balloon payment" consisting of the entire unpaid principal balance and all accrued and unpaid interest will become due and payable _____ (____) months after closing.

4. **EARNEST MONEY DEPOSIT.** Within three (3) calendar days following the Effective Date of this Agreement, Purchaser shall deposit with Fidelity National Title, Title Insurance Company (the "Title Company" or "Escrow Agent"), Purchaser's earnest money deposit in the amount of Five Thousand ($ 5,000.00) Dollars (the "Deposit"). If Purchaser fails to deliver the Deposit timely, Purchaser shall be in default and Seller may terminate this Agreement upon notice to Purchaser. The Deposit shall be refunded to Purchaser in the event this Agreement is properly terminated by Purchaser under the terms and conditions provided for herein; retained by Seller; or applied to the Purchase Price at Closing.

5. **DUE DILIGENCE CONTINGENCY.** Purchaser shall have 120 days after receipt of fully accepted copy of this Agreement executed by Seller ("Inspection Period") to inspect and obtain the following items (place an "X" next to all that apply):

☒ Purchaser's ability to obtain acceptable financing from a financial institution of its choice.

☒ Purchaser's physical inspection of all aspects of the Property which shall include but not be limited to: plumbing, electrical and HVAC systems, roof and any other portions of the Property.

☒ Purchaser's satisfaction with the results of an environmental site assessment.

☒ Purchaser making soil tests, borings and any other engineer and architectural tests Purchaser desires.

☒ Purchaser's satisfaction that the Property is properly zoned or can be rezoned to permit Purchaser's proposed development and use.

☐ Purchaser receiving preliminary site plan approval.

☒ Purchaser obtaining a survey of the Property ("Survey").

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☐ Purchaser receiving and approving all leases and obtaining a satisfactory estoppel certificate from each tenant.

☒ Purchasing conducting any other due diligence desired by Purchaser.

☐ Purchaser obtaining any federal, state or other governmental approval or quasi-governmental environmental or tax incentives, inducements, allowances or similar benefits (by way of example, and not in limitation of the foregoing, any Brownfield classification or any Brownfield tax and/or grant reimbursements) with respect to the Property.

All due diligence shall be performed by Purchaser at Purchaser's sole expense. Prior to expiration of the Inspection Period, if Purchaser notifies Seller that, in Purchaser's sole discretion, the Property is unsuitable for Purchaser's intended purposes, then Seller and the Escrow Agent shall return the Deposit to Purchaser , and neither party shall have any further rights or obligations under this Agreement, except for any obligations which, by the terms of this Agreement are intended to survive termination. In the event Purchaser does not provide Seller with written notice of termination prior to the expiration of the Inspection Period, then the Deposit shall be non-refundable (unless Seller defaults), Purchaser shall be deemed to be satisfied with its inspections of the Property and this contingency shall be deemed fulfilled. Seller, at no expense to Seller, shall cooperate with Purchaser in providing reasonable access to the Property for Purchaser to perform its due diligence, and in obtaining all approvals desired or required from any federal, state or local government ("Governmental Approvals"), provided that no Governmental Approvals shall be binding upon Seller or the Property if Purchaser fails to close. Said Governmental Approvals shall be obtained during the Inspection Period unless the parties hereafter agree in writing that additional time is required to obtain them. Purchaser shall repair any damage to the Property caused by Purchaser or its agents, and Purchaser shall defend and indemnify and hold Seller harmless against any liability, loss, damage, cost or expense arising from any of Purchaser's due diligence activities; and these obligations of Purchaser shall survive termination of this Agreement. Within 5 business days after execution of this Agreement, Seller will provide Purchaser with copies of all title policies, surveys, leases, environmental reports, studies, site plans, certificates of occupancy and other documentation in the possession or control of Seller, which is material to Purchaser's decision whether to purchase the Property.

6. TITLE INSURANCE.

(a) **Title Insurance**: Owner Policy of Title Insurance to be furnished hereunder, to be paid for by ☒ Seller or ❑ Purchaser. Within 10 days of the Effective Date of this Agreement, Seller shall order a commitment for an ALTA Owner's Policy of Title Insurance, ❑ with Standard Exceptions; or ☒ without Standard Exceptions (the " Title Commitment"), from the Title Company, and shall provide a copy of the same to Purchaser upon receipt. Purchaser in its sole and absolute discretion shall determine whether all matters of title and survey are satisfactory. The Title Commitment shall be accompanied by copies of all recorded exceptions to title referred to therein. At Closing, the Title Company shall deliver to Purchaser a satisfactorily "marked up" Title Commitment. The Title Insurance Policy to be issued pursuant to the marked up Title Commitment shall contain such endorsements as Purchaser may reasonably require, provided, however Purchaser shall be responsible for the cost of such endorsements.

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(b) **Objections to Title and Survey**. If Purchaser objects to any matters of title or survey and Purchaser so notifies Seller in writing of such objection(s) ("Objection Notice") before expiration of the Inspection Period, then Seller shall have 30 days from the date Seller receives the Objection Notice to either: (i) remedy the title and survey defects described in Purchaser's Objection Notice and obtain and deliver to Purchaser a revised Title Commitment and/or survey which reflects that all such defects have been remedied; or (ii) notify Purchaser and Escrow Agent that Seller is unable or unwilling to remedy the defects, in which event Purchaser shall, at its option, within five (5) business days after receipt of such notice from Seller, either terminate this Agreement and receive a full refund of the Deposit (subject to those obligations which by their terms survive termination) or waive Purchaser's title and survey objections, and proceed to Closing, subject to satisfaction or waiver of Purchaser's other pre-Closing contingencies. If Purchaser proceeds to Closing, all exceptions set forth in the Title Commitment, and all objectionable matters set forth in the Survey, shall be deemed "Permitted Exceptions."

7. **ENVIRONMENTAL.**

(a) **Environmental.** To the best of Seller's knowledge, there are no areas of the Property where hazardous substances or hazardous wastes, as such terms are defined by applicable Federal, State and local statutes and regulations, are present in quantities in violation of applicable law. No claim has been made against Seller with regard to hazardous substances or wastes with respect to the Property.

(b) **Due Diligence.** Purchaser shall have the right at Purchaser's expense to conduct a Phase I environmental site assessment during the Inspection Period. If any Phase II subsurface investigation is required or recommended, Purchaser and Seller shall attempt to agree upon the nature and extent of any Phase II activities and which party shall bear the cost. If Purchaser and Seller are unable to agree within 10 days, then either party may, upon notice to the other, terminate the Agreement, in which event the Deposit shall be refunded to Purchaser and neither party shall have any further liability thereunder (except for those obligations which, by their terms, survive termination). Purchaser agrees to repair and restore any damage to the Property caused by Purchaser's investigations or testing, at Purchaser's sole expense. Purchaser shall defend, indemnify and hold Seller harmless from all costs, expenses and liabilities arising out of Purchaser's inspection of the Property, including that of Purchaser's employees, agents, consultants, or contractors performing said inspection.

8. **CLOSING AND CLOSING ADJUSTMENTS.** Closing shall take place at the offices of the Title Company or another mutually acceptable location at the earlier of: (i) 10 days following the expiration of the Inspection Period ; or (ii) upon Purchaser's written notification to Seller that all of the Purchaser's conditions precedent and contingencies have been satisfied or waived;

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provided, however, in no event shall Closing occur later than December 18th, 2020 (such date for Closing and performance being hereinafter sometimes referred to as the "Closing" or "Closing Date").

At Closing, Seller shall deliver to Purchaser a Warranty Deed conveying good and marketable fee simple title to the Property, subject to the Permitted Exceptions, and the lien of real estate taxes not yet due and payable, along with Seller's right to make any land divisions of the Property permitted to Seller, under the Michigan Land Division Act, MCL 560.101 *et seq*. Should any financial liens or encumbrances of a definite or ascertainable amount (such as a mortgage) be recorded against the Property, Seller shall pay and/or satisfy any such encumbrance prior to or simultaneously with the Closing. In addition, at Closing, Seller shall pay the base owner's title insurance policy premium, all state or county real estate transfer taxes, all outstanding water and sewer bills, and any other outstanding obligations which, if unpaid, may become a lien against the Property. The parties shall share equally all Title Company fees and expenses. Current real estate taxes (i.e. the most recent summer and winter tax bills issued) shall be prorated as of the date of the Closing on a "due date" basis as if paid in advance, with Seller receiving a credit for any prepaid taxes. All assessments, including, but not limited to any special assessments which have become a lien upon the land shall be paid in full by Seller. Each party shall pay their own attorney fees. At Closing, the Title Company may establish a water escrow, pending receipt of a final paid water bill for water and sewer charges incurred through Closing.

9. **SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.** Seller warrants, represents and covenants to Purchaser, as follows:

(a) **Authority**. Seller: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Michigan or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Purchaser in accordance with the terms and provisions of this Agreement. Before Closing, Seller shall provide the Title Company and Purchaser with satisfactory written evidence that all necessary and appropriate action has been taken by Seller authorizing and approving the execution, delivery and performance by Seller of this Agreement and all closing documents, and the performance by Seller of all other acts necessary or appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

(b) **Title.** Seller owns the Property in fee simple and has marketable and good title to the Property. Seller will not further encumber title to the Property before Closing without Purchaser's prior written consent, which consent shall not be unreasonably withheld.

(c) **Conflicts.** The execution and entry into this Agreement by Seller, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of

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Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, will not violate any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller or the Property is bound.

(d) **Litigation**. There is no action, suit or proceeding pending or, to the best of Seller's knowledge, threatened by or against or affecting Seller or the Property which does or will involve or affect the Property or title thereto. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Purchaser written notice thereof.

(e) **No Violations**. To the best of Seller's knowledge, Seller has not received notice of any existing violations of state or federal laws, **municipal**, or county ordinances, or other legal requirements with respect to the Property. In the event Seller receives notice of any such violation affecting the Property prior to the Closing, Seller shall promptly notify Purchaser thereof.

(f) **Foreign Ownership**. Seller is not a "foreign person" as that term is defined in the U. S. Internal Revenue Code of 1986, as amended, and the regulations **promulgated** pursuant thereto, and Purchaser has no obligation under Section 1445 of the U. S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U. S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445). Seller shall furnish Purchaser with a non-foreign person affidavit at Closing.

(g) **Construction Liens**. On the Closing Date, Seller will not be indebted to any contractor, laborer, materialmen, architect, or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the **Property** for which any person could claim a lien against the Property and shall execute a standard title company affidavit to this effect at Closing.

10. PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.

(a) **Authority.** Purchaser: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Michigan or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Seller in accordance with the terms and provisions of this Agreement. Before

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Closing, Purchaser shall provide the Title Company and Seller with satisfactory written evidence that all necessary and appropriate action has been taken by Purchaser authorizing and approving the execution, delivery and performance by Purchaser of this Agreement, and all closing documents and the performance by Purchaser of all other acts necessary or as appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

(b) **Conflicts.** The execution and entry into this Agreement by Purchaser, the execution and delivery of the documents and instruments to be executed and delivered by Purchaser on the Closing Date, and the performance by Purchaser of Purchaser's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, will not violate any contract, agreement or other instrument to which Purchaser is a party, or any judicial order or judgment of any nature by which Purchaser is bound.

11. **DAMAGE TO PROPERTY.** If between the Effective Date of this Agreement and the Closing Date, all or any part of the Property is damaged by fire or natural elements or other causes beyond the Seller's control, which Seller does not repair or agree to repair prior to the Closing Date, or any part of the Property is taken pursuant to any power of eminent domain, Seller shall immediately notify Purchaser of such occurrence, and Purchaser may terminate this Agreement with written notice to Seller within 15 days after the date Purchaser learns of such damage or taking, and receive a refund of the Deposit without further liability, except for those obligations of Purchaser which are intended to survive termination. If Purchaser does not elect to terminate this Agreement, there shall be no reduction of the purchase price and Seller shall assign to Purchaser whatever rights Seller may have with respect to any insurance proceeds or eminent domain award at Closing.

12. **AS IS.** Neither Seller nor any broker, nor any of their officers, directors, managers, members, employees or agents have made any representation, warranty or disclosure with respect to the Property, upon which Purchaser may rely, except as may be set forth in writing in this Agreement. By Closing, Purchaser agrees to accept the Property in "As Is" condition to the fullest extent permitted by law.

13. **SELLER'S CLOSING OBLIGATIONS.** At Closing, Seller shall execute and deliver the Warranty Deed, closing statement, standard title company owner's affidavit and all other usual and customary Title Company and other closing documents necessary or appropriate to consummate the sale.

14. **PURCHASER'S CLOSING OBLIGATIONS.** At closing, Purchaser shall pay to Seller the Purchase Price in the manner specified in Section 3 above, subject to agreed pro rations and adjustments, and execute and deliver a closing statement and all other usual and customary Title Company and other closing documents necessary or appropriate to consummate the sale.

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15. **SECTION 1031 TAX-DEFERRED EXCHANGES.** Upon either party's request, the other party shall cooperate and reasonably assist the requesting party in structuring the purchase and sale contemplated by this Agreement as part of a tax deferred, like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended; provided, however, that in connection therewith, the non-requesting party shall not be required to: (a) incur any additional costs or expenses; (b) take legal title to additional real property (i.e., the requesting parties' "replacement property" or "relinquished property"); or (c) agree to delay the Closing. However, should both parties wish to complete a tax-deferred exchange, the parties will each incur their own additional expenses related to their exchange and shall split any common costs which will benefit both parties by such a division.

16. **NOTICES.** Unless otherwise stated in this Agreement, a notice required or permitted by this Agreement shall be sufficient if in writing and either delivered personally or sent via Federal Express, UPS or a similar nationally recognized overnight delivery service, or by certified mail, return receipt requested, addressed to the parties at their addresses specified below or by email. Any notices given by personal service shall be below or by e-mail effective upon delivery. Any notice given by Federal Express or UPS shall be deemed effective one business day after sending. Any notice given by certified mail, return receipt requested, shall be deemed given three business days after mailing, and any notice given by email shall be deemed effective upon receipt. Copies of all notices shall be made as follows:

☒ If to Purchaser:

Name:	Todd Lekander
Address:	627 Dearborn St.
Address:	Howell MI 48843
Telephone:	
Facsimile:	
Email:	

With copy to:

Name:	GTM Realty
Address:	4337 E Grand River Ste 209

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Address:	Howell MI 48843
Telephone:	(810) 201-4848
Facsimile:	
Email:	

☒ If to Seller:

Name:	Larry Horton
Address:	70 N. Burkhart Rd.
Address:	Howell 48843
Telephone:	
Facsimile:	
Email:	

With copy to:

Name:	
Address:	
Address:	
Telephone:	
Facsimile:	
Email:	

17. **ADDITIONAL ACTS.** Purchaser and Seller agree to execute and deliver such additional documents and perform such additional acts as may become necessary or appropriate to effectuate the transfers contemplated by this Agreement.

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18. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties with respect to the sale of the Property. All contemporaneous or prior oral and written negotiations and agreements have been merged into this Agreement.

19. **MICHIGAN LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles.

20. **AMENDMENTS.** This Agreement may be modified or amended only by written instrument signed by the Purchaser and Seller.

21. **EFFECTIVE DATE.** For purposes of this Agreement, the phrase "Effective Date" shall be the last date upon which this Agreement becomes fully executed, and delivered by both parties including any counter proposals or amendments counter-signed by the opposing party.

22. **BROKER.** Purchaser and Seller each acknowledge that: (i) Purchaser's real estate agent is Gary McCririe and is acting as: ☒ an agent of the Purchaser; or ☐ an agent of the Seller; or ☐ as a disclosed transaction coordinator, with written, informed consent of both Purchaser and Seller; and (ii) Seller's real estate agent is _____ and is acting as: ☐ an agent of the Seller; or ☐ an agent of the Purchaser; or ☐ as a disclosed transaction coordinator, with written, informed consent of both Purchaser and Seller. Seller agrees to pay the real estate broker(s) involved in this transaction a combined brokerage fee of $_____, with $_____ paid to _____ and $_____ paid to Gary McCririe at Closing. The parties acknowledge that other than the parties' real estate agents disclosed herein, no other real estate brokers, salespersons, or agents are involved in this transaction and the parties hereby indemnify and hold each other harmless from any and all such claims for brokerage fees. All brokers and their agents specifically disclaim responsibility for the condition of the Property and performance of this Agreement. The parties each hereby, and by closing shall be deemed to, waive and release any and all claims and causes of action against all named brokers, their officers, directors, managers, members, employees and agents. The parties each hereby grant all named brokers the right to record a lien against the Property to secure payment of their commission including, without limitation, the right to record a lien under Michigan's Commercial Real Estate Broker Lien Act. All named brokers are third party beneficiaries of this Agreement.

23. **BROKER ENVIRONMENTAL DISCLAIMER.** The Purchaser and Seller agree that each broker and real estate agent has fully disclosed any knowledge that such broker and/or real estate agent has concerning possible toxic or hazardous material or substances or other adverse environmental conditions on or about the Property and the Purchaser acknowledges that Purchaser shall be given the opportunity to make a competent environmental inspection, and the Purchaser and Seller each do

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hereby release each broker and real estate agent from any liability concerning toxic and hazardous material or substance or other adverse environmental conditions on or about the Property. The Purchaser and Seller each hereby expressly waive any claim whatsoever against each broker and real estate agent before or after the closing of this transaction arising out of or in connection with any of the foregoing.

24. **DEFAULT.**

(a) **Seller's Default**. If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default or failure to perform hereunder, Purchaser shall as its sole remedy, elect to either: (i) specifically enforce the terms hereof; or (ii) demand and be entitled to an immediate refund of the Deposit, in which case this Agreement shall terminate in full, except for any provisions which by their terms, are intended to survive termination.

(b) **Purchaser's Default**. If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Purchaser's default hereunder, Seller shall as its sole and exclusive remedy retain the Deposit amount as full and complete liquidated damages for such default of Purchaser. The parties hereby acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default of this Agreement or any duty arising in connection or relating herewith. Seller's entitlement to and receipt of the Deposit is intended not as a penalty, but as full and complete liquidated damages. The right to retain such sums as full liquidated damages as Seller's sole and exclusive remedy in the event of default or failure to perform hereunder by Purchaser, is in addition to any liability of Purchaser with respect to its repair and indemnity obligations set forth above, which are intended to survive termination of this Agreement

25. **WAIVER**. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

26. **DATE FOR PERFORMANCE**. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next following business day.

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27. **FURTHER ASSURANCES.** The parties agree that they will each take such steps and execute such documents as may be reasonably required by the other party or parties to carry out the intent and purposes of this Agreement.

28. **SEVERABILITY.** In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

29. **SUCCESSORS AND ASSIGNS.** The designation Seller and Purchaser as used herein shall include said parties, their heirs, successors, and assigns; provided, however, Purchaser may not assign its interest in this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld..

30. **CONTACT WITH THIRD PARTIES.** During the pendency of this Agreement, Seller may discuss with, or receive the submission of written back up offers or letters of intent from any third party or entity relating to the purchase of the Property. Seller shall promptly notify Purchaser in the event Seller should receive a written offer or letter of intent, and Seller shall advise any such third party or entity of the existence and priority of this Agreement.

31. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties and shall become a binding and enforceable Agreement among the parties upon full and complete execution and delivery of this Agreement. No prior verbal or written Agreement shall survive the execution of this Agreement.

32. **AMENDMENT.** Any amendment to this Agreement shall be in writing and signed by all the parties in order to be binding and enforceable against the parties.

33. **RELATIONSHIP OF THE PARTIES.** Nothing contained herein shall be construed or interpreted as creating a partnership or joint venture between the parties. It is understood that the relationship is of arm's length and shall at all times be and remain that of Purchaser and Seller.

34. **NO RECORDING.** Neither this Agreement nor a memorandum hereof shall be recorded by either party or any of their representatives.

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35. **CONFIDENTIALITY.** Subject to all other terms of this Agreement, each party agrees to maintain this Agreement, the information in this Agreement and all information delivered pursuant to this Agreement, as confidential, and each will not disclose any such information to any other person without the prior written consent of the other party. However, a party may disclose such confidential information to its legal counsel, to such party's lender, accountant, real estate broker, salesperson, or agent, to other professional advisors or agents of the party, provided the recipients of such information agree to keep such information confidential, and as required by law or legal process.

36. **35. COUNTERPARTS; ELECTRONIC TRANSMISSIONS.** This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument. This Agreement may be executed and delivered by facsimile or electronic PDF signatures.

37. **OFFER.** This Agreement constitutes an offer by Purchaser to purchaser the Property. The offer shall remain valid until 12 :00 pm. on 06/24/20 and shall be deemed revoked if not accepted by Seller before such time and date.

38. **OTHER PROVISIONS.** In addition to the provisions outlined above, the following additional provisions shall apply to the transaction as contemplated herein.

a) Legal description: SEC 33, T3N,R4E COM AT SW COR OF SEC 33, TH N 330 FT, S 89* 48'E 29.44 FT TO BEG, TH N 5*05'59"E 118.79 FT ALONG BURKHART RD, TH N 6*33'45"W 213.12 FT, S 89*48'E 314.36 FT, S 330 FT, N 89*48'W 300.56 FT TO BEG 2.3A M/L
The following terms are additional terms and also shall supersede the printed terms herein to the extent that they are inconsistent:
b) Selling Broker's commission shall be paid by the purchaser.
c) Brokers and agents must release any lien for commission at closing.
d) Purchaser shall give Seller notice of any title defect within 7 days of receipt of title commitment. Seller must give notice of intent to cure any such defect or Seller's decision to decline to cure such defect within 14 days after receipt of notice of such defect.
f) Purchaser's due diligence period shall commence 7 days after receipt of the title commitment if no notice of defect is given, or upon receipt of Seller's response to such notice of defect if one is given.
g) Purchaser shall have the right to conduct a Phase II environmental inspection upon notice to seller, but Seller's consent shall not be required.
h) Purchaser may assign this agreement to any entity in which Todd Lekander is a direct or an indirect owner in whole or in part.
i) Seller shall provide a completed seller's disclosure and lead paint form within 5 days of acceptance of this offer.
j) Stove, refrigerator, all window treatments and built in fixtures are included.

39. **ADVICE OF COUNSEL.** All parties are encouraged to seek the advice of independent legal counsel before executing this Agreement. Such independent counsel may help to determine the marketability of title; understand possible tax consequences; ascertain that the terms of the sale are adhered to before the transaction is closed; and provide advice with respect to all notices and other important matters related to this Agreement. Purchaser and Seller acknowledge the importance of obtaining advice from independent counsel and acknowledge that no broker and/or real estate agent is acting as an attorney or providing legal advice and no broker and/or real estate agent shall be responsible for any loss or damage resulting from the preparation of this Agreement or any addenda thereto.

Purchaser's Acknowledgement of Offer:

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By signing below, Purchaser acknowledges having read and received a copy of this Purchase Agreement.

For Purchaser:

Witnesses:

By: _____
Todd Lekander for an entity to be formed

_____

Its: _____

By: _____

_____

Its: _____

Seller's Acceptance:

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Seller accepts this Agreement on this 23 day of June, 20 21, at 2:45 (AM/PM) ☐ with the following conditions:

; or ☑ without qualification.

By signing below, Seller acknowledges having read and received a copy of this Agreement. If this Agreement is signed by Seller without any modification, the acceptance date stated herein shall be the Effective Date of the Agreement.

If additional conditions are stipulated herein, Seller gives Purchaser until the 23 of June, 20 21 at 2:45 (AM/PM) to provide its written acceptance of the counter conditions stated herein.

For Seller:

Witnesses:

By: _____

_____

Its: _____

By: _____

_____

Its: _____

By: _____

_____

Its: _____

Purchaser's Acknowledgment of Seller's Acceptance:

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Purchaser acknowledges receipt of Seller's acceptance of Purchaser's offer. If the acceptance was subject to changes from Purchaser's offer, Purchaser agrees to accept those changes, with all other terms and conditions remaining unchanged. If this Agreement is signed by Purchaser without any modification, then the date stated as Purchase's Receipt of Acceptance shall then become the Effective Date of this Agreement.

Seller has accepted this Agreement on this 23 day of June, 2020, at 2:45 (AM/PM)

For Purchaser:

Witnesses:

By: _____
Todd Lekander for an entity to be formed

_____

Its: _____

By: _____

_____

Its: _____

Exhibits:

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The following exhibits are attached hereto and shall become part of this Agreement by reference

Exhibit Name	Exhibit Description	Provided By *(Purchaser or Seller)*	Attached By *(Date)*
Exhibit A	Property Survey and/or Legal Description	Seller	
Exhibit B	Personal Property	Seller	
Exhibit C			
Exhibit D			
Exhibit E			
Exhibit F			
Exhibit G			

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EXHIBIT I

AuthentiSign ID: 8AAFCC03-9F09-4A73-BA0A-F1F92C58AFBF

PURCHASER (legal name) T. J. Lekander (for an entity to be formed prior to closing)

PURCHASER (legal name) _____

PURCHASER(S) Current Address _____

SELLING OFFICE Laurex Residential Real Estate Phone (810) 201-4848 Office ID 365878

SELLING AGENT Gary McCririe Phone 810-201-4848 License# 209002

LISTING OFFICE RE/MAX Commercial Phone _____ Office ID _____

LISTING AGENT Ron Kirk Phone 313-790-6229 License# _____

1. THE UNDERSIGNED hereby offers and agrees to purchase, subject to easements and restrictive covenants of record, the following property in the CITY VILLAGE TOWNSHIP of Howell, County of Livingston, Michigan described as follows: SEC 33 T3N R4E BEG SW COR OF SEC, TH N5* E 331.21 FT ALONG CL BURKHART RD, TH S89 also known as 3958 MASON RD
Tax Code# 0633300001 together with all fixtures and appurtenances in or on the premises (unless specifically excluded herein) including, if any, lighting fixtures, shades, venetian blinds, drapery hardware, curtain rods, attached mirrors, ventilating fixtures, screens, storm doors and windows, garage door openers (including transmitter(s), water softener (rental units excepted), built in kitchen equipment, heating unit including wood stove, attached humidifier, mail box, awnings, all TV antennae including rotor equipment, landscaping, wall to wall carpet, as well as the following personal property for which a bill of sale shall be given.
Included: _____.
Excluded: _____ and to pay therefore the sum of Three Hundred Fifty-Five Thousand Eighteen DOLLARS ($355,018.29).

2. THIS OFFER IS MADE SUBJECT TO FINANCING TERMS AND SATISFACTORY COMPLETION OF THE FOLLOWING CONDITIONS AS MARKED
(X) CASH SALE Delivery of the statutory Warranty Deed conveying a marketable title. Payment of purchase money to be made by cashier's check or money order.
(____) CASH SALE OR NEW MORTGAGE Delivery of a statutory warranty deed conveying a marketable title. This agreement is contingent upon the Purchaser(s) being able to secure a _____ mortgage in the amount of $_____ for a term of _____ years and pay $_____down plus mortgage costs, prepaid items and adjustments in cash. Purchaser further agrees to apply for such mortgage within _____ calendar days from acceptance of this offer at his/her own expense and shall comply with all requirements of said lending institution in a timely manner. Purchaser shall deliver to Seller a copy of a non-contingent commitment from the lending institution within _____ calendar days from the date of acceptance of this offer. If a commitment from the lending institution is not obtained within the time limits set forth above, this offer may be declared void by either party and, provided that the failure to obtain a commitment is due to no fault of Purchaser, the deposit shall be returned to Purchaser.
(____) SALE TO EXISTING MORTGAGE – MORTGAGE ASSUMPTION WITH RELEASE OF LIABILITY (See Attached Addendum)
(____) SALE TO EXISTING MORTGAGE – MORTGAGE ASSUMPTION WITHOUT RELEASE OF LIABILITY (See Attached Addendum)
(____) SALE ON LAND CONTRACT/PURCHASE MONEY MORTGAGE (See attached addendum)
(____) LAND CONTRACT ASSUMPTION (See Attached Addendum)
(____) CASH SALE WITH BRIDGE LOAN/INTERIM FINANCING (See Attached Addendum)
(____) CONTINGENCY ON SALE AND CLOSING OF PURCHASER'S PROPERTY (No offer pending) (See Attached Addendum)
(____) CONTINGENCY ON CLOSING OF SALE ON PURCHASER'S PROPERTY (Sale Pending) (See Attached Addendum)
(____) OTHER (See Attached Addendum)

3. EARNEST MONEY The Broker is hereby authorized to present this offer and the deposit of $10,000.00 as indicated (CASH _____) (CHECK# _____) or (OTHER upon acceptance) to be held by the Selling Broker under the rules promulgated under the Michigan Real Estate License Law.

BROKER'S ACKNOWLEDGMENT OF EARNEST MONEY DEPOSIT Received from the above named Purchaser the deposit money mentioned above which will be applied to the purchase price at closing or will be refunded if the foregoing offer and deposit are declined. If deposit is by check, it will be refunded to Purchaser within 10 business days after deposit into Broker's account. Broker _____ By to be paid to seller
This is a cooperative sale with RE/MAX Commercial and commission will be paid to the Selling Broker as offered by Listing Broker in MLS# _____.

4. POSSESSION to be given on or before 0 days after closing subject to the rights of tenants, if any. From the day after closing through the day of vacating the property as agreed, Seller shall pay as indicated 0 per day. The Listing Broker shall retain from the amount due Seller at closing the amount equal to 0 days of said occupancy charge, paying to Purchaser the amount due and returning to Seller the unused portion as determined by date property is vacated and keys surrendered to Listing Broker. The parties acknowledge that the Broker has no obligation implied or otherwise for seeing that the premises are vacated on the date specified or for the condition of the premises, etc., but is acting only as an escrow agent for holding the occupancy deposit.

5. ADDITIONAL CONDITIONS (Mark If Applicable)
___ Agency Disclosure Form attached
___ Subject property abuts a private road which has not be accepted as a public road and is not required to be maintained by the County Road Commission or other public or municipal body.
___ Listing Broker shall retain $300.00 from the Seller at closing for water/sewer charges to date of occupancy. When the final bill is paid any unused portion will be returned to the Seller.
___ (Association Dues_____) (Condominium Fees _____) (Other_____) shall be prorated and adjusted to date of closing.
___ The closing of this sale shall take place as provided in the general conditions after removal of all financing contingencies, but in no event later than _____.
___ FHA or VA Financing Addendum required (See addendum)
___ Seller's Disclosure Form received
___ Lead-based Paint Disclosure received
___ Home Warranty (___ excluded) (___ included) (to be paid for by _____)
X Attorney package of the closing documents required at least 3 days prior to closing.
___ Fuel in tank(s) (___ is included in the sale price) (___ is not included in the sale price and fuel shall be prorated at time of possession)
___ This offer is Void if not accepted by _____
___ This is a Back-up offer (See attached Addendum)
X Other Addendum(s) attached addendum A
X Electronic signatures acceptable.
X Facsimile signatures acceptable.

6. PROPERTY INSPECTION(S) Purchaser shall have the option for 60 calendar days after acceptance of this agreement to have the property inspected and tested by inspector(s) of the Purchaser's choice and at the Purchaser's expense. Purchaser (X DOES) _____DOES NOT) choose to have the Property inspected at Purchaser's expense. The inspection(s) and test(s) may include, but are not limited to, building structure, mechanical systems, environmental items, water, septic and pest. If Purchaser is not satisfied with the result of any inspection, Purchaser shall notify Seller, in writing within 3 days following inspections that Purchaser (a) declares this agreement null and void and the deposit shall be returned or (b) requests Seller to make specific repairs to remedy claimed defect(s). Failure to notify Seller of a defect within this time period shall constitute a waiver of this paragraph by the Purchaser and he shall accept the property AS IS. If the Seller is timely notified of a defect, he shall notify Purchaser, in writing, within 3 days, that Seller (a) will make the requested repairs(s) or (b) is unwilling to make the requested repair(s). If the seller declares his unwillingness to make the requested repair(s), Purchaser may (a) accept the property AS IS or (b) declare this Agreement null and void and the deposit shall be returned to Purchaser.

7. TITLE INSURANCE Seller shall provide Purchaser, at Seller's expense, an owner's policy of title insurance (X with standard exceptions) (___ without standard exceptions. (____Seller ____Purchaser) to pay cost of a staked/mortgage survey, if required. ____ALTA 1998 Expanded Coverage (____Seller ____ Purchaser to pay additional cost) in the amount of the purchase price. Seller will apply for a commitment for title insurance within 7 days after the date of this agreement. Upon receipt of the commitment, Purchaser shall have 7 days to provide Seller with written notice of any objections. Seller will then have 30 days after receiving written notice to remedy the claimed defects. If the Seller is unable to remedy the defects within 30 days, this agreement shall terminate and the earnest money deposit shall be returned to Purchaser.

Purchasers Initials _____ Sellers Initials _____

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PURCHASE AGREEMENT - GENERAL CONDITIONS (Continued from page # 1)

8. DEFAULT Purchaser agrees to close within 10 days after all contingencies are removed and title commitment has been issued, unless otherwise agreed in writing by all parties hereto. In the event of default by Purchaser, all deposits made hereunder may be forfeited as liquidated damages at Seller's election or alternatively, Seller may retain such deposits as partial payment on the purchase price and pursue his or her legal or equitable remedies hereunder against Purchaser. Likewise, in the event of default by Seller, Purchaser may pursue his or her legal or equitable remedies against Seller.

9. CLOSING COSTS Unless otherwise provided in this agreement, it is agreed that Seller shall pay all State and county transfer taxes and costs required to convey clear title. Unless otherwise provided in this agreement, Purchaser shall pay the cost of recording the deed and/or security interest and all mortgage closing costs required by mortgagee. In addition, Purchaser shall pay any closing fee that may be charged in the event the title insurance company prepares closing documents and/or closes the sale.

10. PRORATED ITEMS Seller shall be responsible for all real estate taxes for years prior to the year in which the closing occurs and the Purchaser shall be responsible for all real estate taxes for years after the year in which the closing occurs. Taxes for the year in which the closing occurs shall be prorated such that Seller is responsible for that portion of the taxes through and including the date of closing. For purposes of this paragraph, taxes shall be deemed paid in advance based on the due date of the municipality or taxing unit in which the property is located. _____ **Seller shall pay** _X_ **Buyer shall assume** all assessments which are or become a lien on or before the date of closing. Rent (including deposits), insurance, if assigned, interest on any existing land contract and mortgage or other lien assumed and/or to be paid by the Purchaser., shall be adjusted to the date of closing of the sale. Listing Broker may retain from the amount due Seller(s) at closing, amounts required to cover any charges where applicable. When the final charge, bill, or reading is received, the unused portion shall be returned to Seller. Seller agrees to pay for any prorated fees where applicable to the date vacating. Any deficiency in the amount withheld shall be paid by the Seller.

_____ **In lieu of the proration method set forth in paragraph 10 above, see attached Addendum A**

11. FEES OR CONSIDERATIONS Purchaser and Seller hereby acknowledge notice of the fact that Broker may accept a fee or consideration with regard to the placement of an abstract, home warranty, loan, mortgage, life, fire, theft, title insurance or other casualty or hazard insurance arising from this transaction and expressly consent thereto as required by the provisions of rules promulgated under the Michigan Real Estate Licensing Law.

12. ENTIRE AGREEMENT This agreement supersedes any and all understandings and agreements, and both parties agree that neither party has relied on any representation of the Broker(s), his/her salesperson(s) or Broker's agents concerning the fitness and condition of the property. The Broker and his/her agents assume no responsibility for the condition of the property and for the performance of the contract, and hold harmless the real estate offices and agents for any adverse conditions. We further state that there are no oral agreements other than those stated in the offer. We acknowledge that Brokers are not acting as appraisers, builders, accountants, environmentalists, inspectors, tax advisors, or lawyers.

13. CONDITION Until possession is delivered, Seller agrees to keep the property in substantially the same condition as of the date of this agreement and agrees to maintain heating, well, septic, plumbing, electrical system and other equipment in normal working order, to keep the roof watertight and maintain the grounds. Seller further agrees to keep all utility services operating until property is delivered and, upon vacating the premises, to remove all debris and leave the property in "broom clean" condition. In the event the property herein has been winterized, it shall be the obligation and expense of the Seller to de-winterize the property prior to closing. The Purchaser has a right to a walk-through inspection of the premises within 72 hours prior to closing

14. PARTIES BOUND The covenants herein shall bind and inure to the benefits of the executors, administrators, successors and assigns of the respective parties.

15. ADDITIONAL CONDITIONS:

a) See attached Addendum "A"

TIME IS OF THE ESSENCE

THIS IS A LEGALLY BINDING CONTRACT AND ALL PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED TO HAVE AN ATTORNEY REVIEW THE TRANSACTION ON THEIR BEHALF. PURCHASERS HEREBY ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED TO HAVE A CONTRACTOR(S) INSPECTION IF THERE ARE ANY QUESTIONS RELATING TO THE CONDITION OF THE PROPERTY.

WITNESS **PURCHASERS**

X _____ X T. J. Lekander for an entity to be formed
Print name (legal signature)

DATED 3/7/2016 X _____
Print name (legal signature)

ACCEPTANCE - TO THE ABOVE NAMED PURCHASER(S) AND BROKER : The forgoing offer is accepted and the undersigned agree to sell the described premises on the terms stated. The earnest money deposit first recited above and all other deposits paid to Selling Broker by Buyer, shall be considered and used as earnest money, and shall be held by the Selling Broker under the terms of this Agreement and according to regulation of the Michigan Department of Commerce. The undersigned agree that on consummation of the sale, or if the sale is not consummated by reason of the failure, inability or refusal of the undersigned to perform the conditions of this Agreement to pay Selling Broker and/or Listing Broker for services rendered, a total commission as set forth in the listing agreement or as herein set forth, for the sale of the property. If the deposit money is forfeited for non-performance by Purchaser(s), one half of such deposit, but not more than the amount specified (as commission) shall be paid to the Selling and or Listing Broker for such services rendered to be shared between them according to the terms of the listing agreement and the remainder paid to the Seller.

WITNESS **SELLERS**

X _____ X _____
Print name (legal signature)

Date _____ X _____
Print name (legal signature)

Home Address _____

THE UNDERSIGNED PURCHASER(S) HEREBY ACKNOWLEDGES RECEIPT OF THE SELLER'S SIGNED ACCEPTANCE OF THE FOREGOING PURCHASE AGREEMENT.

DATED _____ X _____ X _____

COUNTER OFFER AND TIME LIMIT Counter Offer made by Seller(s) shall be valid until _____ at _____ If said counter offer is not accepted and written notice given to Listing Agent within said date and time, this offer will be null and void and all deposit moneys may be refunded.

Counter Offer made by Purchaser(s) shall be valid until _____ at _____ if said counter offer is not accepted and written notice given to Listing Agent within said date and time, this offer will be null and void and all deposit moneys may be refunded.

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ADDENDUM

In reference to the ☒ PURCHASE AGREEMENT, ☐ EXCHANGE AGREEMENT, ☐ LEASE, ☐ COUNTER OFFER- covering the ☒ real property, ☐ business, ☐ premises - commonly known as 3958 MASON RD

Howell MI 48843

dated 03/07/16, between

T.J. Lekander (on behalf of an entity to be formed prior to closing)

and , Sheila Aldrige

the undersigned parties hereby agree as follows:
Addendum A

This offer is contingent upon purchaser having the property approved (buyer's site plan) within 180 days of seller's acceptance of this offer. Purchaser will pay all costs associated with said site plan approval. Seller will cooperate with purchaser by providing all information available to seller including, but not limited to, survey's, environmental reports, past rezoning requests, etc. Additionally, seller shall cooperate by executing any and all forms required by Howell Township to accomplish said site plan and attending meetings at the township, if required. Additionally, during the approval period, seller shall allow full access to the property by purchaser, and purchaser's agents to conduct any and all survey's, reports, studies, etc to accomplish said approval. Purchaser agrees to restore the property to the condition as existed prior to any and all tests or inspections and to not commit waste to said property. Purchaser agrees to submit a site plan application to Howell Township on or before June 6, 2016.

Purchaser agrees to close within 20 days of township granting site plan approval. If purchaser is unable to have the site plan approved within the time specified, this offer will be declared null and void, and any monies paid by purchaser to seller shall be retained by the seller in full termination of this agreement.

Purchaser agrees to pay the following non-refundable, but applicable, deposits to seller;

1. At the time of acceptance of this offer, the sum of $10,000, referenced as earnest money deposit in paragraph 3 of the offer to purchase.

2, If the purchaser requires more than 180 days to receive site plan approval, seller shall grant additional 60 day extensions upon the payment of $5,000.00 per extension. Buyer may request up to 2 extensions and pay $5,000.00 each. These monies shall be non-refundable, but applicable to the purchase price.

Any documents requested by Purchaser from Seller as part of Purchaser's due diligence will be delivered to the Seller to the extent that the Purchaser has those documents. To the extent that those documents are not in Seller's possession, the Seller will pay for the cost of acquiring them.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement of Sale.

DATED: 3/7/2016 TIME: 6:16 DATED: _____ TIME: _____

_____ Purchaser _____ Seller

_____ Purchaser _____ Seller

Witness Gary McCririe Agent Witness _____ Agent

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ADDENDUM

In reference to the [X] PURCHASE AGREEMENT, [ ] EXCHANGE AGREEMENT, [ ] LEASE, [ ] COUNTER OFFER- covering the [X] real property, [ ] business, [ ] premises - commonly known as 3950 HASKI RD

Howell, MI 48843

dated 03/07/16, between

T.J. Lekandos (on behalf of an entity to be formed prior to closing)

and Sheila Aldrige

the undersigned parties hereby agree as follows:
Addendum A

This offer is contingent upon purchaser having the property approved (buyer's site plan) within 180 days of seller's acceptance of this offer. Purchaser will pay all costs associated with said site plan approval. Seller will cooperate with purchaser by providing all information available to seller including, but not limited to, survey's, environmental reports, past rezoning requests, etc. Additionally, seller shall cooperate by executing any and all forms required by Howell Township to accomplish said site plan and attending meetings at the township, if required. Additionally, during the approval period, seller shall allow full access to the property by purchaser, and purchaser's agents to conduct any and all survey's, reports, studies, etc to accomplish said approval. Purchaser agrees to restore the property to the condition as existed prior to any and all tests or inspections and to not commit waste to said property. Purchaser agrees to submit a site plan application to Howell Township on or before June 6, 2016.

THAT SELLER HAS INTENDED POSSESSION AT PURCHASERS EXPENSE

Purchaser agrees to close within 20 days of township granting site plan approval. If purchaser is unable to have the site plan approved within the time specified, this offer will be declared null and void, and any monies paid by purchaser to seller shall be retained by the seller in full termination of this agreement. INCLUDING EARNEST MONEY

Purchaser agrees to pay the following non-refundable, but applicable, deposits to seller;

1. At the time of acceptance of this offer, the sum of $10,000, referenced as earnest money deposit in paragraph 3 of the offer to purchase.

2. If the purchaser requires more than 180 days to receive site plan approval, seller shall grant additional 60 day extensions upon the payment of $5,000.00 per extension. Buyer may request up to 2 extensions and pay $5,000.00 each. These monies shall be non-refundable, but applicable to the purchase price.

AND PAID DIRECTLY TO SELLER

Any documents requested by Purchaser from Seller as part of Purchaser's due diligence will be delivered to the Seller to the extent that the Purchaser has those documents. To the extent that those documents are not in Seller's possession, the ~~Seller~~ Purchaser will pay for the cost of acquiring them.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement of Sale.

DATED: 3/7/2016 TIME: 6:11 DATED: May 14, 2016 TIME: 3:31 PM.

Purchaser Sheila K. Aldridge Seller

Purchaser Sheila K. Aldridge Seller

Witness Authentisign Gary T McCririe Gary McCririe 3/7/2018 3:45:29 PM EST Agent Witness Ron Kirk Agent

2/05

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