## SUPERIOR CHARTER TOWNSHIP

ZONING BOARD OF APPEALS 3040 N. PROSPECT RD., YPSILANTI, MI 48198

WEDNESDAY
OCTOBER 19, 2022
7:00 P.M.
AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. ADOPTION OF AGENDA
4. APPROVAL OF MINUTES
A. Approval of the August 03, 2022 minutes
5. CITIZEN PARTICIPATION
6. COMMUNICATIONS
7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS
A. ZBA \#22-04 Schuster Appeal

Appeal of the decision of the former Township Zoning Official; regarding 5766 Geddes Road.
8. OLD BUSINESS
9. OTHER BUSINESS AS NECESSARY
10. ADJOURNMENT

# SUPERIOR CHARTER TOWNSHIP 

ZONING BOARD OF APPEALS
DRAFT MINUTES
AUGUST 3, 2022
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## 1. CALL TO ORDER

The meeting of the Superior Charter Township Zoning Board of Appeals was called to order by Vice-Chairperson Craigmile at 7:00 p.m.

## 2. ROLL CALL

The Zoning Board of Appeals members present were Brennan, Craigmile, Deeds, Lewis, and Parm. Dail and Heningburg were absent. Laura Bennett, Planning \& Zoning Administrator, was also in attendance. A quorum was present.

## 3. ADOPTION OF AGENDA

A motion was made by Member Parm and supported by Member Deeds to adopt the agenda as presented. The motion carried.

## 4. APPROVAL OF MINUTES

A motion was made by Member Brennan and supported by Member Parm to approve the minutes of March 30, 2022. The motion carried.

## 5. CITIZEN PARTICIPATION

None.

## 6. COMMUNICATIONS

None.

## 7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS

## A. ZBA 22-04 Schuster Appeal

Appeal of the decision of the former Township Zoning Official; regarding 5766 Geddes Road.

A motion was made by Member Deeds and supported by Member Brennan to remove ZBA 22-04 Schuster Appeal from the agenda.

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Roll Call:
Yes: Brennan, Craigmile, Deeds, Lewis, Parm
No: None.
Absent: Dail. Heningburg.
Abstain: None.
The motion carried.

## B. ZBA 22-03 3728 N. Dixboro Road

Variance from Section 6.03(2)(b) (Accessory Structures) for the construction of hoop houses/high tunnels in the front yard of the proposed single-family dwelling

A motion was made by Member Deeds and supported by Member Lewis to open the public hearing. The motion carried.

Ms. Bennett explained that the property at address 3728 N. Dixboro Rd is seven acres and is situated within a residential district. According to Section 6.03(2)(b), the township allows accessory structures on land over 10 acres. It is also required that the situated home has at least 300 ft of land in the front yard.

Timothy Risk, representing the property's homeowners, described the owner's proposal to the ZBA via a PowerPoint presentation. He explained that the homeowners wish to establish a farm on their property. The property is currently registered in the State of Michigan as a farm and the owners intend to provide produce to local farmers markets. To accomplish this, they would like to place a maximum of three, 16 ft wide by 11.5 ft tall, hoop houses in an area that would be the most optimal for sunlight on the property.

The hoop houses would be temporary structures. Though they would be considered accessory structures, they would not have a permanent foundation. When asked about the material used for the structures, Mr. Risk stated that they would be made from a heavy plastic which fits over a metal frame and sits on top of dirt. As concerns over the effect of weather were raised, the homeowners clarified that they would be able to use heavy bags to weigh down the sides of the hoop houses. They offered hoop houses that can be seen on Pontiac Trail as examples for what their structures would look like and stated that all hoop houses in the area come from one major carrier.

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Mr. Risk informed the board that the proposed hoop houses would have a fence between them and the neighboring residence to the south. The M-14 expressway sits at the north side of the property with no residential properties between. Residential properties to the east are separated by a dense area of trees which block the view of the home. Located to the west of the property is a nature preserve.

A motion was made by Member Deeds and supported by Member Parm to close the public hearing. The motion carried.

Vice-Chairperson Craigmile presented the applicable Standards of Review the proposal must meet for approval, set forth in Section 13.08B of the Superior Township Zoning Ordinance.

A motion was made by Member Deeds and supported by Member Parm to approve ZBA 22-03 3728 N. Dixboro Road, a variance from Section 6.03(2)(b) (Accessory Structures) for the construction of hoop houses/high tunnels in the front yard of the proposed single-family dwelling.

Roll Call:
Yes: Brennan, Craigmile, Deeds, Lewis, Parm
No: None.
Absent: Dail. Heningburg.
Abstain: None.
The motion carried.

## C. ZBA 22-05 8541 Cherry Hill Road

Variance from Section 3.101 (Dimensional Standards) for the construction of a new single-family dwelling in the 75 ' private road setback.

A motion was made by Member Deeds and supported by Member Brennan to open the public hearing. The motion carried.

Ms. Bennett explained that the property is located on Cherry Hill and was originally split into six parcels in the year 2000. In 2003, Lots 3 and 4 were split further, with 8541 Cherry Hill being Lot 4A.

Patrick Sieloff, the owner's father, spoke to the board and explained that the proposed home would be situated toward the front of the land in an area he believes would cause the least amount of impact on the property's drain. He

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also stated that the private road is actually on the property itself and should be moved about 40 ft to the east, which is also a factor in the limited amount of land the owners have to build on.

Mr. Seiloff stated that he and the owners have already spoken with the county who did not have any objections to the proposed placement of the home, and the property's neighbors have given their approval of the proposed location as well.

Looking at a drawing of the proposal, Member Deeds questioned if it was possible to place the home between the 75 ft setback from the road and the 50 ft setback from the drain as outlined. Mr. Seiloff stated that this would not be possible as the proposed home would not have enough room; the home's garage would be approaching the drain.

A motion was made by Member Deeds and supported by Member Brennan to close the public hearing. The motion carried.

Vice-Chairperson Craigmile presented the applicable Standards of Review the proposal must meet for approval, set forth in Section 13.08B of the Superior Township Zoning Ordinance.

A motion was made by Member Deeds and supported by Member Lewis to approve ZBA 22-05 8541 Cherry Hill Road, a variance from Section 3.101 (Dimensional Standards) for the construction of a new single-family dwelling in the 75' private road setback.

Roll Call:
Yes: Brennan, Craigmile, Deeds, Lewis, Parm
No: None.
Absent: Dail. Heningburg.
Abstain: None.
The motion carried.

## 8. OLD BUSINESS

None.

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## 9. OTHER BUSINESS AS NECESSARY

A. Election of Officers for 2022

A motion was made by Member Brennan and supported by Member Craigmile to nominate Member Dail as Chairperson of the ZBA.

The motion was carried by voice-vote.
A motion was made by Member Brennan and supported by Member Parm to nominate Member Craigmile as Vice-Chairperson of the ZBA.

The motion was carried by voice-vote.
A motion was made by Member Lewis and supported by Member Parm to nominate Member Deeds as Secretary of the ZBA.

The motion was carried by voice-vote.

## 10. ADJOURNMENT

A motion was made by Vice-Chairperson Craigmile and supported by Member Brennan to adjourn the meeting at 7:45 p.m.

Respectfully submitted,
Rebecca Craigmile, Vice-Chairperson Zoning Board of Appeals
Jasmin Bogdanski, Recording Secretary
Superior Charter Township
3040 N. Prospect, Ypsilanti, MI 48198

## ZONING BOARD OF APPEALS APPLICATION

(This application must be typewritten or printed. All questions must be answered.)
Request is hereby made for one of the following:
$\square$ Variance from the requirements of the following Zoning Ordinance Section(s):

■ Appeal of the decision of the Township Zoning Official

## APPLICANT INFORMATION

NameMatthew Schuster and Alyssa Cairo
Address 5766 Geddes Road, Ann Arbor, MI 48104
Phone Number(248) 790-5650 Email mattaschuster@yahoo.com

Is the property owned by the applicant? $\square$ YES XNO
If "NO", what is the applicant's interest in the property? Easement Holder/Adjacent/Shared |
Name, address and telephone number of owner(s): Jean-Marie \& Ingrid Mouliere

## 2107 Hill Street, Ann Arbor, MI 48104; (734) 545-4840

## DESCRIPTION OF THE PROPERTY

Address 5728 Geddes Road, Ann Arbor, MI 48105
Parcel ID\#J-10-30-400-061
Parcel size 4.66 acres
Size of the proposed building or addition, if any $11,712 \mathrm{sq} \mathrm{ft}$
Use of existing building (if any) and property existing boardwalk, home and road under cons Zoning classification of property R-1

If a new building is proposed, has the Building Inspection department examined the plans for the proposed building? XYES $\square$ NO
Has the department refused a permit? XYES XNO
Has there been any previous land use application involving this property? YES NO If "YES", state the date of filing, the character of appeal and the disposition.

Approved Certificate of Zoning Compliance on 4/18/22. Application date unclear (multipl

## DESCRIBE THE REASONS FOR YOUR APPEAL

Note: The Zoning Board of Appeals is required to use the standards listed in Section 13.08(B) of the Zoning Ordinance when considering an appeal. It is recommended that applicants review these standards and consider than in preparing a description of why the variance is needed. A copy of the standards is attached to the application.
The application for Certificate of Zoning Compliance was incomplete, misleading, and re|
2 separate building plans. The zoning approval was issued to building plans dated 12/15
but these plans DID NOT RECEIVE APPROVAL from Washtenaw County Environmenti
The county plans were extensively modified in 2/22 and $3 / 22$ to remove a room and $\overline{\text { relocate septic location and provisons into ROW. These revised plans were not submitt }}$ and ZBA for approval. Neither plan complies with ordinance and ROW for approved roa

YOU MAY WISH TO ASK YOUR NEIGHBORS TO SIGN THE FOLLOWING SECTION IF THEY HAVE NO OBJECTION TO THE APPEAL YOU ARE MAKING.

We the undersigned, as owners of property any part of which is located within 300 feet if any part of the property involved in this appeal, have no objections to the granting of the request made in this appeal:

NAME (PLEASE PRINT)
SIGNATURE
STREET ADDRESS
$\qquad$
$\qquad$
$\qquad$
$\qquad$
$\qquad$
$\qquad$
$\qquad$

## INFORMATION REQUIRED TO BE SUBMITTED WITH APPEAL

Theifollowing must attached and submitted with the application:

- Ten (10) sets of drawings, all on sheets $81 / 2$ inches by 11 inches or $81 / 2$ inches by 14 inches, drawn to scale and showing all measurements, features and structures, including the general location of all natural features on the property, measurements to show distances between structures, measurements between structures and property lines, measurements for lot width and lot area, and height of structures. Rights-of-way and easements must also be shown.
*: A letter of authority, or power of attorney, in the event the appeal is being made by a person other than the actual owner of the property.
- A complete legal description of the premises (as stated on the property deed or property tax bill.)

APPLICANT'S DEPOSITION - Must be completed by applicant.
I hereby state that all of the statements and information contained in this application and the supporting documents herewith fare tiff e and correct.
Signature of applicant


NOTARY PUBLIC - Applicant's signature must be notarized.


DEBORAH JURIGA
NOTARY PUBLIC STATE OF MICHIGAN
COUNTY OF WASHTENAW My Commission Expires October 04, 2027 Acting in the County of wash fer cow

Sworn to before me this 8 day of June 2022
My commission expires $\frac{\text { October 4,2027 Cont }}{\text { (Notary Public, Washtenaw County, Michigan) }}$

To be filled in by Township Clerk (or designated Township Officer/Personnel)
I hereby state that this petition was properly received and filed on $\qquad$ (date)

Signature of Clerk (or designee)
'Fee paid $\qquad$

# Notice to Applicants for the Zoning Board of Appeals 

## Filing Applications

You must call and schedule an appointment with the Township Zoning Official Richard
Mayernik to file an application. He may be reached at the Township Office at (734) 482-6099.

## Meeting Schedule

The Zoning Board of Appeals does not have a regular meeting schedule. Meetings are called whenever there is an application for a variance. Because variance requests require a public hearing, it generally takes four (4) weeks from the date an application is received until a meeting of Zoning Board of Appeals can be held. This time is needed to schedule the meeting date and to mail out notices of the public hearing.

## Reasons for the Appeal

The Zoning Board of Appeals is required to use the standards listed in Section 13.08 of the Zoning Ordinance when considering the appeals. It is recommended that applicants review these standards and consider them in preparing a description of why the variance is needed.

## Site Visits

Filing an application gives the implied consent for Township officials and/or consultants to visit the subject site.

## Application Fees

An application fee must be paid when you file your application. The fees are as follows:

1. Appeals brought by the owner of a single-family dwelling for a variance from density and height regulations of the Zoning Ordinance $=\mathbf{\$ 1 7 5 . 0 0}$
2. Any other appeal $=\mathbf{\$ 5 0 0 . 0 0}$

## Applicant's Acknowledgement

I hereby acknowledge that I have read and agree to the above and that I have been given a copy of this notice.


Signature
$6 / 8 / 22$

## Date

Ypsilanti, MI 48198

## RE: Appeal of Certificate of Zoning Compliance Issued for 5728 Geddes Road, Ann Arbor, MI

Dear Zoning Board of Appeals:
This letter and the attached Zoning Board of Appeals Application serves as Matthew A. Schuster and Alyssa L. Cairo's ("Schusters") appeal of Superior Township's ("Township") April 18, 2022 approval of a Certificate of Zoning Compliance ("Certificate") for real property commonly known as: 5728 Geddes Road, Ann Arbor, MI (the "Mouliere Property").

## I Description of Appeal

The Schusters seek revocation of the Certificate and resulting Building Permit issued on April 18, 2022 on grounds, among other things, that they were obtained based on material misrepresentations and omissions in the approved 12/15/21 building plans (the "12/15/21 Plans") which significantly impact the Private Road Safety and the Schuster parcel, including:

- The $12 / 15 / 21$ Plans show no encroachment on the Schuster parcel outside the alleged access easement. In fact, the plans encroached on the Schuster parcel, and the applicants are now revising the plans to remove the encroachment on the Schuster parcel which may result in encroachment into the wetland setback (see Gibb Randal deposition Exhibit D)
- The new plans must be subject to new review and approval.
- The $12 / 15 / 21$ Plans show no construction in the right of way. In fact, a significant portion of the septic field and the house are being constructed in the right-of-way. New plans must be submitted showing the actual location of construction. See Exhibit C for Engineer, Architect, and Surveyor confirmation of ROW infringement.
- The $12 / 15 / 21$ Plans were not accepted by the County Health Department and were revised specifically to obtain approval. The revised plans approved by the County materially differ from the 12/15/21 Plans approved by the Township by moving the septic field into the right-of-way and removing a cantilevered room in the house which is perched over the well in the 12/15/21 Plans. These revised plans have not been reviewed or approved by the Township to our knowledge.
- The applicants already had a ZBA variance granting a zero (0) ft setback from the ROW based on the erroneous drawings when the plans were further altered to obtain county approval. The material alterations to the structure and the new, dangerous ROW encroachment immediately adjacent to the Private Road were reviewed by the ZBA or the Fire Marshal to our knowledge.
- The Building Plans do not document the right-of-way or any approved public road or private street, which is required to determine zoning compliance. The omission of right-of-way or approved road designations from the Plans masks the fact that construction is being planned within the right-of-way (again Exhibit C).
- The Building Official denied the original permit request on November 2, 2021 stating: "In fact, while not illustrated on the submitted drawings, it appears the subject home is located in the right-of-way." In response, the owners submitted a revised plan sheet with a line labeled " 60 '-0" Easement Setback." The Township relied on this revised plan sheet in approving the $12 / 15 / 21$ Plans. In fact, the line does not show a setback from right-ofway and masks the fact that construction is being planned within the right-of-way (see Exhibit C).
- The revised plans approved by the County - but not approved by the Township - show a new undocumented retaining wall with a new 8 -foot drop within the right-of-way and immediately adjacent to the only emergency access route to the new home. This new retaining wall was not approved by the Township and has not been engineered to show that it can handle anticipated loads.

The Schusters' additional claims are set forth below (and detailed in Exhibit B).

These claims are the result of professional reports investigating the safe access over the Schuster Parcel. Attached in Exhibit C is the report of Clif Seiber PE dated 6/7/22 which finds no ability to confirm compliance of the plans with the entirety of ordinance 3.207

Further, the actual location of the ROW and Private road boundaries have been called into question based upon the plot plans and submissions of the Mouliere team by reports generated by an Architect and Surveyor (See Exhibit C for reports from Susan Bowers, RA and Kevin Gingras, P.S.). Both assessments demonstrate that construction of the residence AND the septic field are taking place within the ROW. This encroachment violates the ZBA variance and endangers all access to the parcel.

## II. BACKGROUND OF THE DISPUTE AND STANDING/ AGGRIEVED STATUS

By way of background, the Schusters have resided at 5766 Geddes Road, Ann Arbor, Michigan, 48105 ("Schuster Property") since 2005. In 2018, Jean-Marie L. Mouliere and Ingrid D. Mouliere's (the "Moulieres"), purchased a landlocked parcel, the Mouliere Property, located behind the Schuster Property with the intent to develop an $11,000+$ sqft structure on the property. Both properties are burdened by ROW as established by the land division approved by the township in 1996. This ROW is the central element to the Appeal before you as it is located on both parcels. The ROW is a required element of the required 'Private Road" which must be
constructed in advance of any C of O for a residence of 5728 Geddes, and is to be constructed on both parcels ROWs as established in 1996. The ROW existence was the premise for exemption from the private road ordinance, which we believe needs to be followed given the scale of changes to the ROW. The requirement of the proposed plans to build a private road capable of safely servicing both parcels on the Schuster Property clearly establishes the Schusters as an aggrieved party for any appeal of the site development - especially relating to access which cannot be accomplished without Schuster Property impact.

There is an underlying case in the Washtenaw County Circuit Court, Case No. 20-001274-CH, where the Schusters and Moulieres are litigating, among other things, the Moulieres' excessive and unreasonable development of the Driveway Easement (ROW) AND the location of an existing pedestrian easement on the Mouliere parcel benefitting the Schusters parcel. This pedestrian easement location in the center of the Mouliere parcel has been attempted to relocated using a conditioned clause of their predecessors title, but the final location of the pedestrian easement is uncertain due to contested claims in the litigation. The approved building plans, location of the shared access on the Schusters parcel, and certificate of zoning compliance are based upon infringements within the contested easement, giving the Schusters standing. It is simply not possible to develop the site without clear use of contested easements impacting soils owned by the Schusters and no other township resident. Any unsafe conditions within the ROW will cause circulation limitations and will impact the Schuster parcel.

It is important to note that retaining walls purported to be approved by the Certificate of Zoning Compliance are located upon and immediately adjacent to the Schuster property. The ability of these retaining walls to both retain the Schuster parcel soils and loads connected with Schuster Use of their own parcel outside of any rightful claim or use by the Moulieres is at issue in the engineering prints and calculations - also indicates Schuster standing. OHM, the engineers to the township, have repeatedly questioned the 5728 applicants ability to construct these retaining walls without interfering with the Schuster property in writing to the township. Further, the supposed relocated pedestrian easement was placed into township protected wetlands using a contested wetland permit which was not built in accordance with EGLE approved plans and its use is endangered by increased discharge of stormwaters in violation of Zoning Ordinance section 14.05 and wetland ordinance 178 - reinforcing the standing of the Schusters to development issues on the Mouliere parcel.

See Exhibit A for additional standing discussion.

## III BASIS OF THE APPEAL

1) The application for Certificate of Zoning Compliance (and resulting building permit) is incomplete and misleading. The building prints dated 12/15/21 DID NOT RECEIVE APPROVAL from Washtenaw County Environmental Health for the septic field or entire house.
2) The applicant extensively modified the plans in order to obtain the Septic Approval in 2022. These Changes include: Removing an entire cantilevered room from the county approved plan, relocating the septic field away from the onsite wetlands and INTO the ROW which is part of the only 'approved road' ever reviewed for the parcels, creating a new undocumented and NOT engineering reviewed retaining wall at a new 8' drop WITHIN the ROW and immediately adjacent to the only emergency access route to the home - a safety hazard.
3) The applicant had possession of these approved revised prints from the county which include the ROW line the septic field is within but withheld the plans from OHM review in knowledge that the 12/15/21 plans were unbuildable and new revised plans without the room where septic and retaining wall were within the ROW as detailed by R. Mayernik.
4) The county plans (through applicant engineer ATWELL) also confirm what this ZBA applicant has proven - that the residence proposed is actually WITHIN the same ROW that the ZBA was considering granting setback relief from.
5) The revised home plans without the "treehouse" and ROW septic location were not submitted for new township review including OHM review.
6) The newly located ROW encroachment of an $8^{\prime}$ excavated drop, retaining walls and septic field immediately adjacent to the emergency access was not reviewed by the ZBA. The ZBA original review utilized the materially deficient 12/15/21 plans.

This ZBA Appeal is needed to place material detail on the record by the ZBA (which is lacking in the applications). These questions must be answered with competent material on the record.

1) Where is the approved road (if any) and is it exempt from Ordinance 163? Only the 1996 lot split is of record before private road ordinance was implemented.
2) Where is the ROW boundary to that road? NONE is listed ANYWHERE in the approved 12/15/21 prints.
3) What is the design setbacks from the ROW and from the protected wetlands to the Mouliere Residence?
4) Where is the engineering review of the septic field retaining wall design calculations to confirm state building code compliance (as plans approved by Washtenaw County Health Department IS NOT as drawn and approved in 12/15/21 township prints)
5) Where exactly are the retaining walls placed at the lot line between 5766 Geddes Rd and 5728 Geddes Rd.
6) Where is the required emergency vehicle access turnaround, what is its distance from the Washtenaw county approved septic field retaining wall ( 8 ' drop) and has it been approved by Fire Marshal, especially since it is within the ROW and adjacent to the emergency access route?

It is important to note that the primary requirement of the Plot Plan needed for approval by the township for certificate of zoning compliance is an accurate representation of the proposed plans.

Certificates of Zoning Compliance Section 1.07 J 3 specifies plot plans must include:
Dimensioned location, outline, and dimensions of all existing and proposed structures and the location and extent of all uses not involving structures.

## Further, section 1.07H states

Revocation of Certificate.
If any false statement or misrepresentation of fact is made in the application or on the plans on which the Certificate was based, the Zoning Inspector may revoke the Certificate of Zoning Compliances

## IV Misstatements of Facts

It is important to note that the entire submission of the plans for 5728 Geddes Rd are hinged on misrepresentations to the Zoning Department and ZBA about the ROW.

## 1) Misrepresentation of 'Approved Road’ / Private Road / ROW

-R. Mayernik DENIED the October Building permit listing due to his assessment that the building is in the ROW. The architect replied, inaccurately, denying building in the ROW and added a meaningless line to the prints claiming to be a ' 60 ' easement setback' which dimensioned WITHIN (not out from) the 66' easement on the Schuster property and part of the ROW on 5728 Geddes (again, unlabelled). The setback line literally crosses and touches the easement on the Schuster parcel at multiple points- which is the opposite of a 60 ' setback (which should never touch). We have provided a surveyor review and architect letter identifying the ACTUAL encroachments known to the 5728 Geddes applicant agents in exhibit C. We also provided an engineers review letter which concludes the same meaningless status of the ' 60 ' easement setback')
-The applicant at 5728 Geddes applied to the ZBA for a variance for a Zero ft setback from ROW according to $12 / 15 / 21$ prints, knowing that ROW was on the Mouliere parcel but was unwilling to label it, and never labelled the ROW on any print which would have disclosed the misstatement. There is no shown ROW anywhere on the drawings, and the setback is undocumented.
-The denial handed out by R. Mayernik on 11/2/21 was appropriate, correct to the facts, and the facts HAVE NOT CHANGED. The house is proposed to be constructed within the ROW that R.

Mayernik determined was created in 1996, and the applicant misled and documented a false artifice on the drawings which is meaningless to seek an approval.
-The actual improvements needed to construct the Mouliere residence (the home and the septic field) and both located within the actual ROW for the only 'approved road' ever to gain an approval prior to the 2004 Private Road Ordinance, which could be conceivably exempted from its permit requirements. If the 'approved road' were altered AFTER 2004 adoption of the private Road Ordinance, it is fully subject to a new Private Road permit requirement. Surveyor and Architect reviews of the Building Improvements proposed is attached (in Exhibit C)

## 2) Withholding of Location of Approved Septic Field

-The applicant received Septic system approval from Washtenaw County on 3/21/21 which included a relocated septic field and requiring an 8 ' retaining wall. This county approved location was materially different from the $12 / 15 / 21$ prints already under ZBA variance appeal for ROW setback. Both elements are BETWEEN THE HOUSE AND THE LOT LINE within the ROW that they were already seeking a 0 ' setback from. This further encroachment to the ROW is immediately adjacent to emergency vehicle access and wasn't disclosed to the ZBA during their deliberations AT ALL. It is not clear that the 60 ' setback requirement variance would have been granted to the applicant if it was known that an 8 ft drop was being engineered directly adjacent to the proposed access and within the ROW. An amended ZBA appeal should have been filed and published prior to Certificate Zoning Compliance and building permit approval. The ability of this location to allow safe emergency access to the 5728 site and the rear of the Schuster Parcel is significantly in question and endangers the community.
-The applicant DID NOT provide engineering or detail to the township for the required retaining wall at the septic field AT ALL to satisfy emergency access concerns or the ability to meet State Building Code at the time of the issuance of a Certificate of Zoning Compliance (and a building Permit) for the outdated, unbuildable $12 / 15 / 21$ plans. The septic retaining wall is a structure requiring a permit under the Michigan State Building Code. This retaining wall was not engineered and reviewed by OHM for the SIGNIFICANT surcharge loads it will experience posing a safety hazard, especially for emergency vehicle access. There was no review by the fire marshal for this significant hazard up to 5/19/22 (date of FOIA). This represents a safety hazard to the residents of 5766 Geddes, 5728 Geddes, emergency personnel, and all guests.

## 3) Location of planned Site Improvements

-The applicant presented (and received approval for and variances with) prints marked 12/15/21. In fact, the drawn retaining walls located across the Mouliere property and access on the Schuster property are not represented in those drawings accurately. The actual walls intended to be built were not engineered (as revealed upon questioning by OHM 2/28/22) until March 2022. Upon actual design, the walls are larger than presented in the stylized prints by OX studio or Insite. As drawn on $12 / 15 / 21$, the retaining walls are unbuildable (despite representations to OHM to the contrary) and the entire designed assemblage had to be moved due to an encroachment onto the Schuster property by at least 8 ". Under sworn deposition, the principal for Insite design acknowledge issues relating to the designed walls necessitating moving both the
walls and the residence by at least 8 " (See Exhibit D). None of these revisions were disclosed to the Zoning/Buidling Official nor the ZBA during the variance request hearing. The approval for a setback variance was conditioned upon the $12 / 15 / 21$ drawings and it is unclear if revised (accurate) drawings would qualify for a variance.

## 4) Buildability of $\mathbf{1 2} / 15 / 21$ Site Plan (beyond retaining walls and septic field)

-The applicant for the 5728 Certificate of Zoning Compliance and Building Permits knowingly removed a room/element from the $12 / 15 / 21$ designs in order to gain Washtenaw County Health Department Septic Approvals of the property. The 'treehouse' or 'nest' shown in the 12/15/21 plot plans and prints is NOT BUILDABLE with the currently existing county health approvals. This fact appears to not have been shared with either the Superior Township Zoning Administrator or the Zoning Board of Appeals, who approved the $12 / 15 / 21$ plans without corrections to remove the structure component to meet existing county approvals. It is documented in emails in February 2022 that the room must be removed for Steve Aguinaga approval and is shown as removed in the Septic Permit approved drawing dated $3 / 21 / 22$. Email proof of willful alteration of the submitted prints and knowledge of the material building revision is included in Exhibit C. It is especially material information to the validity of the ZBA granted variance for setback reduction that the actual ROW was encroached and revised plans further limited circulation in the ROW and reduced access security.

## V Requested Relief - (Action 1)

## Based on the above (and reports included in Exhibit C), it is clear that R. Mayernik was correct to deny the permit on $11 / 2 / 21$ due to building in the ROW and Setback. The setback variance granted by the ZBA to false plans does not alleviate the construction INSIDE the ROW.

Based on these misstatements of fact indicating that the $12 / 15 / 21$ plans are NOT an accurate representation of the location and nature of material components of the proposed construction, we request that the ZBA overturn the issuance of the certificate of zoning compliance (due to an incomplete, in-accurate plan submitted which does not meet the requirements of 1.07 J 3 ). It is clear that there is NO Septic Approval granted to the plans as drawn for $12 / 15 / 21$. The application for Certificate of Zoning Compliance is therefore incomplete and should be overturned until plans are submitted for review with "Dimensioned location, outline, and dimensions of all existing and proposed structures and the location and extent of all uses not involving structures" are submitted.

We ask that the ZBA overturn the issued certificate of zoning compliance for 5728 Geddes Rd to allow for proper documentation and permitting in accordance with the full Zoning

Ordinance. In the interim, we ask the ZBA, planning, and building department to place a stop work order to cease all excavations (particularly in the ROW) and to eliminate the undermining of steep slopes and risking of the protected wetlands on the project site, for the reasons cited in the OHM construction review dated $11 / 2 / 21$ and the Tetra Tech report dated 5/16/22.

## Alternatively,

If the ZBA would prefer to attempt to decipher the multiple submitted plans to the various regulatory body and attempt to discern whether the assemblage of the different details meets the standards of the Zoning Ordinance, below and attached are a summary of the reasons to overturn the certificate of zoning compliance based upon the ordinance. It is tremendously unfair to this ZBA applicant and Due Process of zoning enabling act procedures to be working from incomplete plans, representing only stylized retaining walls and generalized locations. The mere fact that the ROW is not shown on any print makes detailing of setbacks and frontages accurately impossible (why the arbitrary assertion above was made) - but below is the best summary available from the incomplete plans that were approved relying on the mistatements of facts. Much relating to 3.207 is confirmed in the Engineer Letter located in Exhibit C

Significant to this direct appeal of the certification of zoning approval, the Moulieres have failed to comply with the Township Ordinance, as follows (and detailed in Exhibit B):
A. The Moulieres‘ plot plan and documents do not comply with Ordinance 3.207 as the proposed plans do not list ANY Right of Way (ROW) or an 'approved road' or its boundaries.
B. The 5728 Plot plan and documents do not comply with 3.207A by abutting a private street by the entire width of the lot. The entire width of the lot abuts a parcel lot line (not a private road) and only a small fraction of the frontage is ingress/egress.
C. The Moulieres' Plot plan and documents do not comply with Ordinance 3.207(B) as the Mouliere Property does not provide for safe and convenient access for emergency purposes and fire protection vehicles.
D. The Mouleire plot plan and documents violate the ZBA variance granted for a ZERO ft setback from the ROW by building within the ROW.
E. The Moulieres have not obtained a private road permit under Ordinance 163 despite requiring encroachment into the original ROW and violating the exemption.
F. Failure to conform to 6.08 and $6.03(2)$ - All pavement in a required yard must be less than 18 " above grade to be exempted from being a structure. The retaining walls, driveway, and septic terrace wall are in excess of 18 " in various locations in the required yards (and therefore structures per 6.08. All accessory structures must be more than 5 ' from a rear lot line per 6.03(2).
G. Violation of $\mathbf{1 4 . 0 5 B}$ Watercourses and Wetlands. The failure to pursue and confirm compliance with wetland use requirements in Ordinance 178, maintain vegetative areas with setback demarkations, and placing cobble fill in setbacks. Plans neglect to create a unified stormwater management plan in keeping with Ordinance 178

Notwithstanding the above ordinance violations and forgoing lack of details in the prints or disclosures, on April 18, 2022, the Township issued a Certificate of Zoning Compliance ("Certificate") to the Moulieres to proceed with their construction project on the Driveway Easement and the Mouliere Property. The Moulieres' plan violation of the Ordinance and the Township's failure to enforce the Ordinance has caused significant harm to the Schusters and the Schuster Property, and poses significant health the safety risks to the Schusters, emergency responders, the public, and the natural features in the township.

## VI CONCLUSION AND RELIEF REQUESTED (Action 2)

Consistent with the forgoing, we request that the ZBA revoke the Township's approval of the Moulieres' Certificate (and therefore Building Permit). It is simply NOT possible to rely on the outdated $12 / 15 / 21$ prints - shown and acknowledged by the designer to not reflect actual location of proposed improvements, inconsistent with the Washtenaw County Health Plans and septic location..

The approval of a certificate of zoning compliance without accurate plot plans and prints at 5728 Geddes Rd, plans without ANY demarkation of ROW or an approved road boundary, is Arbitrary and Capricious. All setback measurements, frontage requirements, and emergency access confirmations are Arbitrary and Undocumented - posing a significant safety risk to the
community, emergency services personnel, and the Schuster parcel in particular as the dangerous conditions for the access already causes site visitors to make dangerous turnarounds and maneuvers in the proximity of steep grades and septic fields without a culdesac.

The absence of an Approved Road abutting the Mouliere Parcel by it entire lot width per the EXPRESS requirements of 3.207A is a material defect that must be independently reviewed for safety and possible variances. Ignoring this requirement is arbitrary and Capricious and poses a danger to all parcels on the Private Road.

Addition of retaining wall elements which 6.08 and 6.03(2) makes clear ARE structures when more than 18 " above grade in a required yard (despite the generic structure exemption for paving in Article 17) and placing them at lot lines with assumed and unenforceable loading limits on neighbor parcels to determine safety is arbitrary and capricious, contrary to the law, and dangerous - especially in connection to emergency access routes.

We ask that the ZBA overturn the certificate of zoning compliance for 5728 Geddes Rd to allow for proper documentation and permitting in accordance with the full Zoning Ordinance. In the interim, we ask the ZBA and building department to place a stop work order to cease all excavations (particularly in the ROW) and to eliminate the undermining of steep slopes and risking of the protected wetlands on the project site, for the reasons cited in the OHM construction review dated $11 / 2 / 21$ and the Tetra Tech report dated 5/16/22.

Very truly yours,

## Matt Schuster

5766 Geddes Rd
Ann Arbor, MI 48105

## Exhibit A

## LEGAL DISCUSSION AND APPEAL

## A. The Schusters are an aggrieved party as a result of the Township's failure to enforce the Ordinance, which has caused harm to the Schusters and the Schuster Property.

Preliminary, it is necessary to address the Schusters as an aggrieved party. Under Ordinance 13.06(1), appeals may be taken to the Board of Appeals by a person, firm or corporation aggrieved by the order, requirement, decision or determination; or by an officer, department, board, commission or bureau of the Township, county, state, or federal governments. Such appeals shall be filed within 60 calendar days of the order, requirement, decision or determination in question.

Under Michigan law, the term "standing" generally refers to the right of a plaintiff initially to invoke the power of a trial court to adjudicate a claimed injury. Olsen v Chikaming Township, 325 Mich App 170, 180; 924 NW2d 889 (2018). For zoning appeal purposes, a party aggrieved by a final decision from a zoning board may appeal to the circuit court for the county in which the property is located as provided under section 606. Id.; MCL 125.3605. The aggrieved party must allege and prove that he has suffered some special damages not common to other property owners similarly situated. Id. at 183.

It is undisputed that the access to 5728 Geddes Rd requires a Private Road. It is also undisputed that the Private Road must pass through and over the Schuster Parcel. It is disputed where the ROW and boundaries of the Private Road are located. The township has asserted that the ROW was established in 1996 with the land division approval of the property split (shown in Exhibit D). That split included easements (and therefore ROW) to support parcel C. The only access available to the Mouliere parcel is an easement for ingress and egress through the Schuster Parcel that does not specify Private Road Construction.

In this case, the Schusters have proffered substantial evidence to show that the Moulieres are developing the Driveway Easement in a manner that does not comply with the Ordinance and that is posing significant health and safety risks to the Schusters. The access has been designated a Private Road by the township serving both parcels. There are shown improvements placed onto the Schuster property within and near an access easement. This includes retaining walls, fences, swales, and grading. No other township resident is subject to these actions by the proposed development
a. $4^{\prime}+$ retaining walls are being built on the subject property that are incapable of supporting living activities on the Schuster Property;
b. 4'+ retaining walls are being built on the Schuster Property without any approval from Schuster, the fee owner of the land;
c. Schuster is the fee owner of the Driveway Easement where a private road is being constructed without Ordinance compliance or design as a private road;
d. The issuance of the Building Permit and Certificate was given to the Moulieres without a designated right of way and emergency turnaround for the Driveway Easement - this is an issue because the Driveway Easement does not accommodate fire rescue to the Schuster Property through the Driveway Easement.
e. The Schusters are dominant easement holders over the Mouliere parcel in either the direct placement of the Mouliere home (original easement) or within protected wetlands impacted by stormwater runoff from the proposed development (contested easement location will ultimately be determined by the courts)
f. The Schuster parcel is being dimished in value by the excessive excavation, grade alteration, and wetland impacts undertaken in the proposed development (by way of the above easements) that no other township resident is impacted by.

These are special damages under Olsen, supra, qualifying the Schusters as an aggrieved party. Accordingly, it is indisputable that the Schusters are an aggrieved party and this appeal must be heard by the ZBA.

## Exhibit B

## Details of Zoning Technical Ordinance Violations

A. The Moulieres‘ plot plan does not comply with Ordinance 3.207 as the proposed plans do not list ANY Right of Way (ROW) or an 'approved road' geometry or boundaries.
a. It is the premise of the township that the 'approved road' from the land division in 1996 is in effect since the ROW was dedicated at that time. The ZBA confirmed this interpretation, and the township board exempted the parcel from the Private Road Ordinance instituted in 2004. However - the proposed development is building the home and the septic field WITHIN the ROW as approved in 1996 and the applicant misled the zoning official about the home location. Surveyor and Architect confirmation of placement is attached in exhibit $\mathbf{C}$
b. The violation of the ROW is also shown in their approved septic plan (environmental health $3 / 21$ ), which similarly was not disclosed as existing (after relocation from submitted plans) within the 'approved road' and its ROW
c. The plot plan construction clearly infringes into the contested pedestrian easement location.
d. The applicant at 5728 Geddes did NOT disclose the septic location to the ZBA in seeking a zero (0) ft setback from the ROW (which again is NOT dimensioned or labelled) and it is in violation of the granted variance

### 3.207 States

Section 3.207 Access to Streets.
No dwelling shall be built on any lot that does not abut and have direct frontage on an approved road. Access to streets shall be subject to the following:

According to the ZBA interpretations of the Superior township zoning ordinance (3/30/22):
For existing lots, rights-of-way, easements and drives created prior to the 2004 enactment of Ordinance \#163, "approved road" shall mean an easement, right-of-way or drive created in accordance with the provisions of the Zoning Ordinance in effect at the time of creation or division of property. Examples of the 1997 and the 1978 Zoning Ordinance provisions are attached. Approval would generally be evidenced by the Zoning Officials
review and approval of the plot plans showing the lots and easement width. The roadway would not need to have been constructed to be considered "approved". Prior to the issuance of a Certificate of Occupancy for a home, the roadway shall be constructed, and that construction shall be approved by the Building Official and/or the Fire Chief.

The only zoning approval for plot plans on record with superior township for the division of property was issued in 1996 (attached). The plans indicate a ROW on the Mouliere parcel dimensioned as $65^{\prime} \times 132.85^{\prime} \times 105.74^{\prime}$. In 2018, the parcels were approved for consolidation, but the ROW was continued upon the approved drawing on parcel B as shown from 1996 without changes. If the ROW was to be considered altered by the 2018 consolidation, then 2004 private road ordinance would immediately be in effect and require a private road permit approval.

This ROW is not labelled or dimensioned on the $12 / 15 / 21$ prints at all. Setbacks are not calculated from this ROW at all. Frontage is not calculated from this ROW at all. In fact, the 5728 residence is designed to be within the 'approved road' as shown in the attached analyses (exhibit C) conducted by an architect and surveyor using a CAD file obtained from the property owners agents through their litigation.

This infringement upon the ROW is in violation of ordinance and and means that there is no shown 'approved road' warranting approval of the prints as presented.

It is obvious from the plan drawings that the residence is being sited at the 50 setback demarkation despite the ROW reaching 65' into the center of the Mouliere Parcel at 5728 Geddes.

If the "Approved Road" is being modified, a private road permit is required under private road ordinance 163 (which we strongly advocate for) and the definition of "Approved Road" adopted by the ZBA at the request of the zoning administrator. This private road ordinance was enacted to promote public safety and protection of natural resources - it is not a burden, and has provisions specifically to protect resident of challenging sites, such as a stormwater management plan provisions
B. The 5766 Plot plan does not comply with 3.207 A by abutting a private street by the entire width of the lot.
a. The entire frontage of the Mouliere parcel is abutting the Schusters parcel, not a private road running perpendicular to the frontage. Only a subset of the Schusters parcel frontage could be considered ROW, and there is NO culdesac present fitting the terms of the current zoning ordinance ordinance. This entire width deficiency is material as it was added in the current 2008 zoning ordinance as a requirement for establishing any principal use OR structure (even if a lot is grandfathered). The calculation of the frontage if the ROW on Parcel B is included in the Private Road (as determined by R. Mayernik and ZBA) would be determined by the turning radius of the vehicle turning circle (not documented or labelled) per 3.202A

Ordinace 3.207A states:

## A. Access to Public or Private Streets

In any district, every lot created and every principal use or structure which is established after the effective date of adoption or amendment of this Ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of the lot. Such street shall have a right-of-way at least 66 feet wide unless a lesser width has been established and recorded prior to the effective date of this Ordinance.

As above,
This ROW on the 5728 Geddes Parcel is not labelled or dimensioned on the 12/15/21 prints at all. Setbacks are not calculated from this ROW at all. Frontage is not calculated from this ROW at all. In fact, the 5728 residence is designed to be within the 'approved road' as shown in the attached analyses (exhibit C) conducted by an architect and surveyor using a CAD file obtained from the property owners agents through their litigation.

Without frontage calculations shown or listed, it is IMPOSSIBLE to ascertain compliance with 3.207A. The drawing makes plain that the 'private road' involves the frontage to the Schuster parcel. However, the entire width of the Mouliere parcel fronts the entire width of the Schuster parcel and only a subset of the Schuster parcel is arguably ROW. It does not appear possible for the Mouliere parcel to meet 3.207A without a variance (which has not been requested). If there
is considered to be a cul-de-sac (despite clearly not being present to the definition in ordinance 174), it would need to be labelled, dimensioned, and setback from for safety.

Further, to eventually obtain a certificate of occupancy of the home at 5728 Geddes, "the roadway shall be constructed"(according to ZBA approve definition of approved road in the case of exempted Ordinance 163 lots, $3 / 30 / 22$, interpretation \#4, article 3). The $12 / 15 / 21$ plans DO NOT DEMONSTRATE construction of a road. Per their designer, Shannon Gibb-Randall principal of Insite, under sworn deposition, the shown drive is ONLY a driveway and DOES NOT meet the design standards for a Road. (See attached Deposition Transcript at p. 30).

It is not possible to 'grandfather' the home development and use from the frontage requirement when it was created in 1996. Similar language existed as to the lot only. The adoption of Ordinance 174 in 2008 added the requirements for "Full Lot Width" abutment to 'every principal use or structure which is established after the effective date of adoption or amendment of this Ordinance'. While the Lot at 5728 Geddes rd may be grandfathered in its existence as a legal non-conforming lot, new uses and structures are bound by its full width frontage requirement (for safe access) to a private ROAD. The Schuster parcel has submitted plans to the township which clearly indicated there will be another driveway on this private road, and a driveway may not meet the requirements for access, posing a safety concerns for all road parcels,

The approval of the plans for 5728 Geddes rd with a certificate of zoning compliance is arbitrary and contrary to the law and must be reversed for further documentation and variances.
C. The Moulieres' Site Plan does not comply with Ordinance 3.207(B) as the Mouliere Property does not provide for safe and convenient access for emergency purposes and fire protection vehicles.
a. The presence in the ROW of the house, steep retaining walls, and a septic field presents a dangerous site for emergency vehicle access, which have no maneuvering space consistent with the required 66ft wide actual easement. Through May 17, there is NO RECORD of a fire marshal approval of the plot plan. The presence of an 8 ' drop at a turn within the 'approved road' (1996) and ROW presents a unique danger to ingress.

### 3.207B states

## B. Access for Emergency Services and Parking and Loading Areas.

Every building and structure located or relocated after the effective date of adoption or amendment of this Ordinance shall be so located on lots as to provide safe and convenient access for emergency purposes and fire protection vehicles, and for required off-street parking and loading areas.

As of $5 / 17 / 22$, there is no record of a Superior Township Emergency Access review or approval by the Fire Marshal for the plans at 5728 Geddes. The lack of a labelled ROW and the lack of approved plans documenting the construction and location of retaining walls within the ROW pose a significant hazard. The lack of ANY township approval for the septic field placed in the path of incoming traffic at a turn with an $8^{\prime}$ drop inside the ROW is a clear public safety hazard. Further witholding this fact from the ZBA as it considered a variance from the ROW setback did not allow the ZBA to consider the hazards and a variance may well have been denied for this reason. The ZBA may have followed neighbor expressed concerns and limited the size of the variance to limit the home size - which could have allowed the home and septic to be placed outside the ROW entirely for safety concerns.

As stated above, the plans do not meet standards for a Private Road according to the designer, and it is simply not possible to ensure safe and convenient access without accurate plans (which deviate materially depending on the public body they were submitted to.

The approval of the plans for 5728 Geddes rd with a certificate of zoning compliance is arbitrary and contrary to the law and must be reversed for further documentation and variances.
D. The Mouleire plot plan violates the ZBA variance granted for a ZERO ft setback from the ROW
a. The presence of the home and septic field in the ROW as shown indicates the lack of conforming to a ZERO ft setback. The crossing of the ROW boundary invalidates the Variance and requires new ZBA consideration.
b. The relocation of the ROW and relocation of the Septic location within the path of emergency vehicles was NOT presented to the ZBA despite being made available to Moulieres. The ZBA granted a variance for an earlier plan without knowledge of the ROW encroachments clearly shown in the Atwell drawing approved by Environmental Health and witheld from the ZBAs review. A smaller structure footprint would NOT infringe in the ROW and would require smaller Septic fields which would NOT encroach into the ROW (or would encroach less). This is a classic self created hardship, if a hardship at all.

The variance granted on $1 / 12 / 22$ is under court appeal. The revelation that the applicant withheld disclosure of the septic field relocation and further wall requirement voids any conceivable variance validity. The ZBA was requested to approve the Zero ft setback by the Zoning Administrator who relied upon the representations of the applicant that it was NOT building within the ROW.

Attached are analyses by a surveyor and architect using the applicants own CAD files that shows the home construction and septic field are both within the ONLY approved road ROW, which was not labelled.

That the applicant applied for a 0 ' setback. It is possible that a smaller footprint home and its resulting smaller septic field requirements, could have avoided the further infringement in the ROW. As ALL neighbors to the subject documented in advance of the $1 / 12 / 22$ hearing - the large footprint of the proposed home is a self created hardship which had created the conformance burdens on a challenging lot with natural features worth protecting.

The approval of the plans for 5728 Geddes rd with a certificate of zoning compliance is arbitrary and contrary to the law and must be reversed for further documentation and variances.
E. The Moulieres have not obtained a private road permit under Ordinance 163.
a. If the ROW and private road dedicated in 1996 is not to be observed (building house and septic within the private road section on the Mouliere parcel), it is not exempted and requires a new private road permit. The requirement of Washtenaw Environmental health that the septic field be placed 50 ' from a wetland precludes maintenance of the exempted 'private road' and requires fresh private road vetting for approval.

The Schusters have long advocated that a private road permit was required by the operation of land division act in 2018, the plain language of the Private Road Ordinance, and in the interests of public safety, protection of first responders, and the protection of natural resources.

The revelation that (despite assurances to the contrary) the 5728 Development was placing building improvements including a residence, a septic field, and numerous retaining walls directly within the ROW of the only approved road demonstrates that the 'exemption' of this ROW is lost. This ROW had been repeatedly exempted from conforming to the Private Road ordinance, and these misrepresentations and encroachments highlight an attempt to evade an ordinance that was adopted more than 15 years ago ONLY to promote cooperation between neighbors and protect public safety, welfare, and the environment.

It appears that the required septic location (per Washtenaw County Health Department requirements) precludes further exemption of the private road ordinance. In addition, the township holds proof that another lot was added to the Private road by granting an easement on 11/9/21 recorded on liber 5455 page 242 (attached). Per the terms of the private road ordinance, this new lot eliminated exemption of the private road from permit requirements.

The approval of the plans for 5728 Geddes rd with a certificate of zoning compliance is arbitrary and contrary to the law and must be reversed for further documentation and variances.
F. Failure to conform to 6.08 and 6.03(2) - Retaining Walls and terraces encroaching in required yards as part of required emergency vehicle access deviating from 'approved road' and created by grade alterations
a. The Zoning Administrator arbitrarily exempted all retaining walls from being considered structures (due to being 'akin' to pavement) without conformance to 6.08 (access through yard)any walk, terrace, or other pavement serving a like function is limited to 18 " above adjacent grade to be not considered a structure.
b. The township attorney (F. Lucas) and Zoning Administrator documented in 2021 that retaining walls bordering the 2 parcels would be considered structures and accessory (letter attached). Since they are more than 18 " tall and in a required yard - they are no longer exempted due to the stricter ordinance limitation in 6.08 and $6.03(2)$ states 'In the Rural, Rural Residential, and Urban Residential Districts, detached accessory structures shall be set back behind the rear line of the principal building, and shall be set back a minimum of five (5) feet from interior side or rear property lines"
c. In particular, the driveway in the required rear yard at 5728 Geddes (near the garage) is elevated more than 18 " above grade and serves a similar purpose - in violation of 6.08.
d. The entire access has retaining walls (pavement per the ZA) and paving on the 5728 Geddes Parcel as a terrace on the hillside (paving up the hill) 4.5 ' above paved drive and septic field 8 ' below grade of paved drive. These retaining walls are either walls (and therefore structures) or paving more than 18', above adjacent grade (and therefor structures losing the 18 " exemption per 6.08 in required yards) and violate 6.03(2) as accessory structures within 5 ft of a rear lot line
e. Further - the approved prints dated $12 / 15 / 21$ comprehend retaining walls that encroach on the neighboring parcel (Schuster Parcel) by at least 8" by print design per sworn deposition of Insite principal Shannon Gibb-Randall. (See attached Deposition Transcript at p. 31).

The ZBA adopted a general interpretation on 3/30/22 that retaining walls are not structures under the definition 17.02.207 and permitted encroachments in certain circumstances under 3.203(G)
(1). Despite these general allowances (which this applicant is appealing to circuit court) the zoning ordinance carries additional tests for location of paving, paved surfaces, and structures. The ordinance is constructed to use the most restrictive.

### 1.04(1) states:

Minimum requirements. The provisions of this Ordinance shall be held to be the minimum required for promoting and protecting the public health, safety, and general welfare, and shall be uniform for each class of land, buildings, structures, or uses throughout each zoning district. Wherever the requirements of this Ordinance are at variance with the requirements of any other adopted rules, regulations, or ordinances, the most restrictive or those imposing the higher standards shall govern.

### 6.08 states - Access Through Yards.

For the purpose of this Ordinance, access drives may be placed in the required front or side yards so as to provide access to rear yards or accessory or attached structures. Any walk, terrace or other pavement serving a like function and not in excess of 18 inches above grade shall be permitted in any required yard and not be considered to be a structure.

### 6.03(2) states

In the Rural, Rural Residential, and Urban Residential Districts, detached accessory structures shall be set back behind the rear line of the principal building, and shall be set back a minimum of five (5) feet from interior side or rear property lines, except as follows:
6.08 states a maximum limit on exempted structures, particular to those related to access and pavement. That EXPRESS limit for not being considered a structure is 18 " above adjacent grade.

This secondary requirement in the ordinance is specific to access in required yards. Based upon the plans submitted to the township for 5728 Rd (and indeed some portions of 5766 Geddes Rd) parts of the access to 5728 and retaining walls on both parcels EXCEED 18 " above adjacent grade. According to 6.08 - they must specifically be considered structures if they are located within a required yard. This is a clarification of the general definition in section 17 (and subsequent ZBA interpretation) which specifically regulates access and paving within required yards.

This ordinance section (6.08) is more specific than the generalize structure definition exemption. It makes clear that any paving related to access within a required yard is limited to 18 " above grade to be exempt. It is not dependent on the height definition of a retaining wall. If it is $+18^{\prime \prime}$ above grade (any grade) - it is a structure - especially if its associated with access. Given that retaining walls related to access in this development are therefore structures, this plan violates
the site plan exemption for single family residences by placing retaining walls (that 5766 Geddes does not want and are not accessory to our parcel use) on multiple parcels in violation of the exemption under $10.02 \mathrm{~A}(3) 1$. The decision to split the retaining wall into 3 sections is a matter of form over function. It is clearly retaining more than 10 ft of earth over 3 sections. It is an arbitrary allowance to permit this as an exemption at $4^{\prime}$ when the upper walls are clearly load bearing on the lower wall. The engineering analysis was conducted as a single unitized structure, at the request of OHM (who has stated concerns on this wall).

Even if the tortured justification for exempting retaining walls from the requirement of 3.203(G) (1) is maintained, 6.03 (2) makes a specific prohibition from placing the structures (above 18 " elements) within 5 ft of a property line. THIS IS A SEPARATE TEST from 3.203(G)(1). The ordinance was NOT contemplating allowing 10+ ft walls without a variance in the close proximity of a lot line. This same consideration is found in the township engineering standards, which specifically precludes retaining walls within 2 ft of a lot line

Significant retaining walls are contemplated by the 5728 plans that are within 5' from the property line and severely undermine structural integrity of the parcels. This specific prohibition of structures at the lot line in 6.03(2) is an explicit acknowledgement that the owner of one parcel does not control the loading of weight or use on the opposing side of the lot line. I have attached an engineering review taking issue with the design weight bearing capability of the retaining walls proposed upon the lot line (Clif Sieber, exhibit C). The township engineers (OHM) have similarly cited numerous times about concern over retaining wall collapse and/or inability to properly and safely construct. The walls as currently listed appear to only be designed to 50 lbs per sq ft load bearing despite no ability to restrict the use opposite the wall to that (artificially low) limit. I disclosed plans to the township to develop parts of my parcel impacted by these walls at weights exceeding 50 lbs per sq ft . The walls as designed are not satisfactorily safe to preclude failure due to norm use indications.

As a confirmation that the township has longstanding previously considered retaining walls to be accessory and structures, I have attached a letter from Fred Lucas in 2021 specifically stating such. If the township were truly interested in exempting retaining walls from ordinance regulation - It would pursue an ordinance update, not waiving requirements.

The approval of the plans for 5728 Geddes rd with a certificate of zoning compliance is arbitrary and contrary to the law and must be reversed for further documentation and variances. I request that the ZBA overturn the certificate of zoning compliance and remand this application to the planning and zoning department for a site plan review under the ordinance to protect all involved residents due to the significant retaining walls crossing lot lines and requiring CLEAR maintenance requirements (again OHM concern). This development is ANYTHING but a standard SFR with minor needed review.

Stated purposes of the zoning ordinance is:

1. Promoting and protecting the public health, safety, and general welfare;
2. Regulating the intensity of land use; and determining lot areas and open spaces necessary to surround buildings to provide adequate light and air;
3. Providing adequate light, air, privacy and convenience of access to property, and promoting healthful surroundings for family life in residential and rural areas;
4. Preventing the overcrowding of land and undue concentration of buildings so far as is possible and appropriate in each zoning district by regulating the use, height, location, and bulk of buildings in relation to the surrounding land;

Given the complexity of the Access Road, Retaining Walls, and Wetlands onsite impacting the entire community, following a Site Plan process is the only way to ensure long term viability of the development.
G. Violation of $14.05 B$ Watercourses and Wetlands. The failure to pursue the private road permit (Ordinance 163) and and confirm compliance with wetland use requirements in Ordinance 178 NEGLECTS to create a unified stormwater management plan
a. The plot plan indicates fill (swales and riprap) within the $\mathbf{2 5 f t}$ setback of 14.05B4f2
b. placing of perforated drain pipe in violation of $14.05 B 4 f 1$
c. removal of vegetation in violation of 14.05 B 4 e 1
d. failure to complete plans approved under ordinance 178 and replacement with full contact foot paths
e. All the above impacts alter the wetlands and infringe upon the Schusters quiet enjoyment of the pedestrian easement within the proposed relocated easement.

Attached is a report from a wetland consultant which identifies failures of the existing site conditions and develop plans to confirm to the required elements of 14.05B and Ordinance 178 permit conditions. The 5728 property owner has made a choice to relocated a pedestrian use easement at the center of their parcel arbitrarily in a wetland (per sworn deposition). Approval of a wetland use permit is dependent on the land use approval, and requires a stormwater management plan (just as the private road ordinance does). The failure to abate stormwater runoff into the wetland (threatened to further flood the relocated easement) is a violation of the wetland permit land use conditions, as is relocating a use into the wetlands where the applicant has an alternative.

The presence of an issued wetland permit in advance of a land decision use is an allowed condition that the wetland permit specifies is entirely dependent on the eventual approved land development use (178-06 f.1). This application is deficient for a finding of zoning compliance in section 14.05B (as a project requiring a certificate of zoning compliance) due to the reasons cited in the attached reports from Tetra-Tech. The Carlisle Wortman Report dated 11/2/21 Cites similar concerns over wetland impacts.

The approval of the plans for 5728 Geddes rd with a certificate of zoning compliance is arbitrary and contrary to the law and must be reversed for further documentation and variances.

## Exhibit C

Professional Reports Supporting ROW Infringement and Material Misrepresentation
1)
2)
3)
4)
5)

Clif Seiber Report
Architect Analysis of Building Placement
Surveyor Analysis of Building Placement 1996 Approved Split (showing ROW) 2018 Approved Consolidation (showing ROW)
-Mayernik Denial of Plans due to ROW building
-Architect representing building location in response to denial of plans and misleading statements
-12/15/21 G-201 (Annotated)
-Email confirming Changes to 12/15/21 Plans to obtain Septic Permit -Washtenaw County Environmental Health Approved Drawing -Above Drawing with annotations

## Exhibit D

# Professional Reports supporting Exhibit B technicals 

6) 

Clif Seiber Report
7) OHM Report citing construction/infringement concerns
8) Carlisle Wortman Report citing construction and Wetland Concerns
9)
10)

Tetra Tech Report
Tetra Tech Report
11) Deposition Excerpt of Shannan Gibb-Randall

Richard Mayemik<br>Township Hall<br>3040 North Prospect Streer<br>Ypsilanti, Michigan 48798<br>(734) 482-6099

RE:
Building Permit Application 5728 Geddes Road
Dear Mr. Mayernik.
Please lind belaw our response to the review comments and requested information for the Mauliere Residence at 5728 Geddes Road. The responses below are numbered to match the comments we received from the review process.

| No. | Comments or Requested Information |
| :---: | :---: |
| 7 | Sethacks from private road rights-of-way are required to be equal to the zoning district front yard setback. The subject parcel is zoned $R$-Tand a EO' setback is required per section 3.107. In fact, while nor illustrated on the submitted drawings. it appears the subject home is located in the right-of-way. |
|  | Sheet G-201 shows the private road easement and the required 60' setback. The proposed bullding does not encroach into the setback. |
| 2 | The submitted site plan [sheet $G$-201] is not adequate. The private road easement is not illustrated. The limits of the wellands are not illustrated. Grading elevations and storm water management elements are not shown. Specific locations, heights and des/gns of site retaining walls are not shown on the site plan nar elsewhere on the plans. |
|  | Additional information was added to sheet G-201. Sheets G-200 (Existing Site Plan) and L-2 [Grading Plar) were added to show the existing site including the private road easement and extents of wetland. Sheet L-2 shows grading on the site and storm water management elements. |
| 3 | Sheets G-100 and G-201 indicate canflicting hame and garage square footage - which is correct? |
|  | Square footage has been confirmed and corrected between sheets. |
| 4 | Notes on sheet S-072 indicated "construction surcharge an retaining wall to be determined. "Wha will be determining the surcharge if not the engineer? |
|  | Sheet S-012 has been updated with the construction surcharge information. |
| 5 | plans do not indicate specific steel beam sizing, footing sizing and foundation wall sizing and reinforcement fother than "typical" details) for the home or for site retaining walls. |



| From: | Daniel Snyder [tdsnydercontracting@gmail.com](mailto:tdsnydercontracting@gmail.com) |
| :---: | :---: |
| Sent: | Tuesday, March 1, 2022 12:39 PM |
| To: | lodd Pascoe < 1Pascoe(a)atwell-group.com> |
| Subject | Re: revised Mouliere |

Hey Todd,
Just checking in again. Sorry to push you I believe Steve's sign off is my last piece to this two year long puzzle for permits.

Thanks
Dan Snyder
Sent from my iPhone
On Feb 25, 2022, at 1:13 PM, Daniel Snyder [tdsnydercontracting@gmail.com](mailto:tdsnydercontracting@gmail.com) wrote:

Thank you sir!
On Fri, Feb 25, 2022 at 1:06 PM Todd Pascoe [TPascoe@atwell-group.com](mailto:TPascoe@atwell-group.com) wrote:
We'll make Steve's revisions and remove the treehouse.
I'll email a plan to Steve for approval prior to having final prints dropped off
Sent from my iPhone
On Feb 24, 2022, at 12:11 PM, Daniel Snyder [idsnvdercontracing@agmail.com](mailto:idsnvdercontracing@agmail.com) wrote:

Hey Todd
I left vou a VM as well. Steve said he was going to talk to vou. But want to make sure it's cleared up. For now we are going to remove the tree house that is over top of the existing well. So I Steve requested you remove the tree house overlay portion of the house so we can keep the existing well until I find water elsewhere. If you haven't already done this can you send it to him ASAP. Thank you.

Dan
On Fri, Feb 11, 2022 at 3:50 PM Todd Pascoe [TPascoe@atwell-groun.com](mailto:TPascoe@atwell-groun.com) wrote:
Dan,
Should I go ahead and submit septic design back to Steve at WCHD?

Todd Pascoe, PE
ATWELL, LLC



## EXHIBIT D

# SEIBER ENGINEERING, PLLC <br> CONSULTING ENGINEER 

CLIF SEIBER, P.E.
8145 BENNY LANE
WHITE LAKE, MI 48386-3507
Phone No. 248.231.9036
E-mail: cs@seibereng.com
March 26, 2022
Mr. Matthew A. Schuster
5766 Geddes Road
Ann Arbor, MI 48105-9331
Re: Mouliere v Schuster

Dear Mr. Schuster:
As you requested I have conducted a review of the architectural drawings for the Mouliere Residence submitted to the Superior Township Building Department on January 19, 2022. Those plans included sheet L-2 by the Insight Design Studio, Inc. (IDS) entitled Grading Plan, bearing a most recent revision dated of 12-15-21, and sheets G200 and G201. Also included in my review was the letter issued by OHM, the consulting engineers for Superior Township, dated February 28, 2022. The following are the comments generated by my review for your consideration.

## Retaining Walls

The IDS plan proposes a series of retaining walls in a terraced configuration. The separation between the 3 walls is not provided on the plan, however, they scale approximately 3 feet between the back of a wall to the face of the wall behind it. Proposed elevations indicate the top of the highest wall at 827.0 while the driveway is 815.2 , for a total retaining height of 11.8 feet (See photograph below.)

The retaining wall system being proposed is a Redi-Rock gravity wall. Such a wall relies on the sheer weight of the blocks to retain the earth loading behind them. Three wall sections were provided that included an 8 -block wall (11' high), a 3-block wall (4' high), and a typical gravity wall detail. Due to the use of a gravity wall system, no tie-backs or spread footings are proposed that would encroach onto your property. Please note that both the 3-block and 8-block high sections shown as "Load Condition A", state that no live load surcharge is included. Accordingly, it does not provide for loading such as tractors, riding mowers or any vehicles that may be used in your back yard.

The highest wall noted on the Grading Plan is 4.5 feet ( $821 \mathrm{TW} / 816.5 \mathrm{~B} / \mathrm{W}$ ). At the highest point on the wall, the height is $11.8^{\prime}$ while the horizontal distance is scaled at 8 feet between the face of the highest wall to the driveway surface. The plan also shows a distance of only 3 feet from the face of the top wall to the property line. Since the top retaining wall shows a maximum height of 3 feet, it is assumed that the 3-block high wall will be utilized at that location. The design calls for a $28^{\prime \prime}$ block plus 12 " of stone placed behind it, for a total of 40 ", plus $1-5 / 8^{\prime \prime}$ for
the batter angle. Therefore, the proposed wall construction would encroach onto your property during construction and upon completion of construction.


Existing 12-foot high excavation along property line.
Note 3 under General Comments in the OHM letter states that "The retaining wall design and calculations should be prepared by a licensed professional engineer (PE) in the State of Michigan." This design requires a structural engineer for the wall, but also the review of a geotechnical engineer to determine earth loading based on the existing soils. I note that the G2 Consulting Group provided the Report on the Geotechnical Investigation and they could provide earth loading information to the structural engineer.

The IDS plan calls for a Guard Rail that runs along the back of the retaining walls and along your property line. No detail is provided for the Guard Rail on the plan. Such a railing system must meet Building codes for height and strength, and should be shown on the plan.

I understand that no permit has been applied for or granted to build retaining walls under the 2015 Michigan Residential Code or the Township Zoning Ordinance despite the limitation of the permit exemption in R 408.30505 to "[a] retaining wall that is not more than 4 feet ( 1219 mm ) in height measured from the bottom of the footing to the top of the wall, unless supporting a
surcharge." The proposed retaining walls will exceed 4 feet in height measured from the footing to the top of the wall and will bear a surcharge. Therefore, a permit should be required under the Residential Code for the retaining walls proposed within the easement as well as for the walls located on Mouliere property.

The excavation that has occurred in preparation for the retaining walls has left a near vertical embankment (see above photograph). The Executive Summary prepared by the geotechnical engineers, G2 Consulting Group, states:
"Where sloped excavations can be made, we recommend a maximum slope of 2 horizontal units to 1 vertical unit (2H:1V). Where sloped excavations are not possible, shoring will be required to support vertical cuts."

They further recommend that the design of the shoring be developed by a registered professional engineer with substantial experience in geotechnical engineering. Although that paragraph refers to the main and lower level house construction, the need for shoring remains the same for the retaining wall systems.

Leaving exposed excavations steeper than the slopes described by G2 Consulting Group, present dangerous and hazardous conditions to the workers and you, the adjacent land owner, due to the possible collapse of the earthen embankment. This issue should be addressed as soon as possible.

Based on the above comments, I recommend the following:

1. That detailed retaining wall design and calculations be provided by a structural and geotechnical engineer licensed in the State of Michigan.
2. That live loading be included in the design calculations.
3. That the wall be sufficiently moved away from the property line so as not to encroach on your property during and after construction.
4. A detail of the Guard Rail should be provided that complies with Building Code requirements.
5. A building permit for construction of the retaining walls should be secured in accordance with the 2015 Residential Building Code.
6. Shoring of the exposed retaining wall excavation should be installed in accordance with the recommendations of the G2 Consulting Group.

## Proposed Driveway

The driveway grading proposed on the IDS plan indicates a maximum driveway slope by scaling at $3.3 \%$ ( 1 foot of drop in 30 feet). Maximum driveway slopes by industry standard is 8 to 10 percent or 8 to 10 feet of elevation drop in a 100 -foot distance. The driveway elevations next to the house are proposed at 814 and 815 resulting in a $2.5 \%$ slope. If that slope is increased to $4 \%$, and the next 80 feet of driveway would be sloped at $8 \%$, the elevation shown as 817 would be raised to 821.4 . This would eliminate 50 feet of retaining wall along the easement line and reduce the height of roughly half of the remaining walls. The amount of grading and cut on your property within the easement would be greatly reduced.

A second alternative is to simply raise the finish grade of the proposed Mouliere house. Such an adjustment would reduce the height of the retaining wall system.

Thirdly, as described in my affidavit, the existing access road contained within the 15 -foot wide easement, is sufficient and adequate for providing vehicular access to the Mouliere parcel. The width of the currently proposed driveway is 14 feet wide and would fit within the 15 -foot wide easement.

At a distance of approximately 90 feet from Geddes Road, an existing depression exists east of the proposed driveway. The overflow route from this depression is to the west, across the proposed driveway. Additional grades should be provided to ensure that the driveway is not raised above the existing ground elevations. If the ground elevations were raised, it would result in additional ponding on your property. In the alternative, a culvert should be placed under the driveway to ensure an outlet is maintained from this low area.

In conclusion, there are several alternatives available that provide less impact on your property than what is being proposed.

## Boardwalk

As stated in my previous affidavit, the boardwalk construction did not comply with the approved plans. That affidavit read:

## 32. "Based upon my observations of the boardwalk as currently constructed, there is a significant likelihood that it is not adequately supported and will sink into the wetland to the point of not being traversable with the next few years.

During my visit yesterday, March 21, 2022, I noted that the easterly side of the deck, approximately one-third of the distance from its southerly end, had sunk 1-1/4" during the winter months. Due to the existing unstable soils that the deck was built on, I expect this movement to continue. See photograph below.


## Emergency Access

Section 3.207 B. Access for Emergency Services and Parking and Loading Areas of the Superior Township Zoning Ordinance states:
"Every building and structure located or relocated after the effective date of adoption or amendment of this Ordinance shall be so located on lots as to provide safe and convenient access or emergency purposes and fire protection vehicles..."

The plan should demonstrate that emergency services including fire truck access can be achieved as required by the Township Fire Marshall.

Mr. Matthew A. Schuster
March 26, 2022
Page 6

## Access to Public or Private Streets

Section 3.207 Access to Streets, of the Superior Township Zoning Ordinance states:
"In any district, every lot created and every principal use or structure which is established after the effective date of adoption or amendment of this Ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of the lot. Such street shall have a right-of-way at least 66 feet wide unless a lesser width has been established and recorded prior to the effective date of this Ordinance".

It appears that the Mouliere Parcel does not meet the requirement that the "entire width of the lot" abuts a "public or private street" necessary to establish a principal use or structure. The right-of-way and all pertinent dimensions must be shown on the plans as required so that the exact calculations can be reviewed and confirmed.

I hope this provides the information that you were looking for. If you have any questions regarding the items contained in this letter, please contact me.

Sincerely,
SEIBER ENGINEERING, PLLC


Clif Seiber, P.E.

# OHM 

February 28, 2022

Mr. Richard Mayernik
Chief Building Official
Superior Charter Township
3040 N. Prospect Rd
Ypsilanti, MI 48198
RE: 5728 Geddes Road site
Civil Plan Review No. 1

## Dear Mayernik:

At the request of Superior Township, we have provided a review of the plot plan/grading plan related documents that were provided to us on January 21, 2022. Our review is focused on various aspects of the site work to construct a new single-family house at 5728 Geddes Road, which include site grading, drainage, and landscape retaining walls. Our comments are based on our knowledge of typical civil engineering practice and industry criteria, and are outlined below:

## General Comments

1. We assume that soil erosion control aspects of the site work are under the jurisdiction of Washtenaw County Water Resources Commissioner's (WCWRC) Office, Soil Erosion Division, therefore our comments related to soil erosion are recommendations based on engineering principles to minimize erosion.
2. As we understand, Township Engineering Standards only apply to formal site plan submittals, and the Township Private Road Ordinance does not apply to this scenario. Therefore, our technical review comments are based on standard engineering practice and the technical expertise of our staff, not on published local or County engineering standards.
3. Although retaining wall material sheets were provided to our office on February 23, 2022, for Redi-wall material and related typical details and data sheets, for our office to perform a cursory review of the retaining wall an engineexing design and related structural calculations are necessary. This retaining well design and calculations should be prepared by a licensed professional engineer (PE) in the State of Michigan.

## Sheet G-200 Existing Site Plan (Page 6)

4. Show and label all existing ditches on the plan sheet.
5. It is not clear if the boathouse is proposed or existing. Applicant's engineer should clarify this on the plan.
6. There is a label "Proposed Footpath", but no footpath shown on the plan sheet. Applicant's engineer should clarify and update as necessary.
7. There is a label "Path to Boathouse", but no path shown on drawings. Applicant's engineer should clarify and update as necessary.
8. There is a label for a $30^{\prime}$ wide easement running north/south through the property. Is this an access easement for the parcel to the north? Is this an existing easement that needs to be shown on the plans or should it be vacated? We ask the Applicant's engineer to clarify these questions on the next plan submittal.
9. There is a label for a 15 ' wide easement running north to southwest next to the proposed drive. The Applicant's Engineer should clarify if this easement is existing or proposed and label on the plans accordingly.

## Sheet L-2 Grading Plan (Page 9)

10. Items 4-9 listed above under Sheet G-200 may also apply to this sheet for modifications.
11. The Applicant's Engineer should show all proposed swales on the plan sheet with appropriate grading and labels.
12. The Applicant's Engineer should provide check dams along proposed and existing ditches (outside wetland areas) to minimize stomwater runoff velocities and reduce long term erosion impact.
13. We question if it is possible for the Applicant's Contractor to construct retaining walls without encroaching the property to the north. We request the Applicant's Engineer or Contractor provide a narrative regarding construction of the retaining wall and how they intend to maintain construction impact on this propetty only during construction.
14. There is a label "Guard Rail" at beginning of curb and gutter on the northeast side of the driveway. We question whether this guard rail is necessary at this location. The Applicant's Engineer should clarify if this is based on interpretation of an engineering standard or for another reason. If required, clearly show the extent of the proposed guardrail, as well as its type and length on the plans for further evaluation.
15. The proposed catch basin/inlet east of the parking area with Rim 803 would not collect the entire drainage area upgrade of the retaining wall. We recommend modifying the grading plan by creating a low point at the catch basin to collect as much runoff in the immediate area as possible before sheeting over the wall.
16. Provide typical detail for the Cobble Swales. We recommend designing them as wide and shallow as practical with existing constraints.
17. We recommend installing riprap at the outlet of the 4" perforated pipe (located south of broken foundation south of proposed house).
18. We recommend placing a drainage inlet on the south gutter line of the driveway to the northwest of the entrance of the house to help control drainage run-off in this vicinity.
19. Depending on the depth of permanent water in the pool area, it may be optimal to submerge the proposed inlet pipe to further dissipate energy at the pipe outlet into this area while reducing downstream velocity and erosion concerns. We ask the Applicant's Engineer to evaluate this option further.
20. Assuming there will be one $3 / 4$ inch orifice at each level of the pool outlet as labeled on the plan sheet, that discharge rate may not be adequate to avoid stormwater runoff quickly overflowing the concrete wall, and therefore minimizing the benefit of the restriction. We ask that stormwater calculations be provided to identify the proposed discharge rate of the orifice control that has been designed at this location. Would larger orifices be more beneficial to reducing the time to overflow the pool cap during small to moderate rain events? What size notch is recommended at the top of the pool cap as an overflow?
21. We recommend that silt fence or other erosion control methods be implemented around all excavation limits and to note this requirement on the plans. Ultimately methodology and implementation will be per jurisdiction of WCWRC SESC division.

If you have any questions regarding our review comments outlined above, please do not hesitate to contact me at 734-466-4439. If requested by the Township, we can review an updated version of the relevant plan sheets upon resubmittal by Applicant.

Sincerely,
OHM Advisors

George Tsakoff, PE
Principal
cc: file

# Carlisle |Wortman 

ASSOCIATES, INC.

To: Rick Mayernik, Superior Township Building and Zoning Official<br>From: Chris Nordstrom, Township Wetland Consultant<br>Ben Carlisle, Township Planner<br>Date: November 2, 2021<br>RE: Construction Impact Inspection for 5728 Geddes Road

As requested by the Township, Chris Nordstrom of CWA completed a site inspection on Tuesday, October 26,2021 , to evaluate the environmental impact of construction on wetlands on the site and on the Huron River. Chris was accompanied by Mr. Mayernik.

The contractors have properly installed silt erosion fencing throughout the site to help mitigate the erosion, both at the point of the construction and near the wetland edge at the bottom of the slope. Delays in completing the construction, combined with heavy rains throughout the summer, have led to significant erosion. In some spots, the silt fencing is in danger of complete failure, with silt runoff at or near the top of the fence. Erosion is evident throughout the site and unless remediation measures are implemented quickly, complete failure of the upper retaining wall area seems appears possible.

The site is challenging, with slopes of around $37 \%$ at the steepest points. It may be possible to construct a retaining wall system that would both hold the existing soil in place and control stormwater runoff. To the best of our knowledge, the Township has not received any engineering drawings showing the configuration of the proposed retaining wall and stormwater control system. Lacking any engineering plans, we agree that concerns about the environmental impact of construction on this site are warranted.

Please let me know if you have any questions.



Photo 1: Silt fence failure at bottom of slope


Photo 2: Erosion along slope (typical)


Photo 3: Erosion along slope


Photo 4: Runoff undercutting silt fencing

W. Daniel Troyka<br>Conlin, McKenney \& Philbrick, P.C.<br>350 S. Main Street, Suite 400<br>Ann Arbor, Michigan 48104<br>Re: $\quad 5766$ Geddes Rd, Ann Arbor, Michigan 48105

Dear Mr. Troyka:

Per your request, Tetra Tech, Inc. (Tetra Tech) has reviewed the following documents and completed a site evaluation on March $3^{\text {rd }}$ and $30^{\text {th }}$ at 5766 Geddes Road to assess the boardwalk and Wetland 1 :

1. The permit and design drawings issued by Michigan Department of Environment, Great Lakes and Energy (EGLE) Water Resources Division, under the Natural Resources and Environmental Protection 1994 Public Act 451 as amended, Part 303 Wetlands Protection Permit WRP023919 v1.2, issued on July 31, 2020. This permit was issued to construct an 8 -foot wide, 105 -foot long elevated boardwalk.
2. Wetland Delineation and Threated and Endangered Species Habitat Letter, completed by Atwell and dated April 17, 2019.
3. Superior Charter Township Ordinance No. 178 Wetlands and Watercourse Protection and Restoration.
4. Superior Charter Township Wetlands Permit No: PW20-0003
5. OHM letter dated February 28,2022 regarding review of the plot plan/grading plan at 5728 Geddes Road.

EGLE has been authorized to administer Section 404 of the Clean Water Act in the majority of the state under an agreement with the United States Environmental Protection Agency; and jointly with United States Army Corps of Engineers, primarily in coastal regions. Jurisdiction on the project site is solely with EGLE. Any impact to regulated wetlands requires a permit application and review by EGLE Water Resources Division to determine if impacts to the wetlands have been avoided and minimized to the extent practicable and that the project is permittable. If EGLE issues a permit for the project, several conditions are included that must be followed.

Superior Charter Township, having understood that '...wetlands and watercourses are indispensable and fragile resources that provide many public benefits...' has enacted Wetland Ordinance No. 178 that provides regulation by the township for wetlands that would not be regulated by the State of Michigan. A wetland use permit is required by the Superior Charter Township for impacts to wetlands.

Based on the Atwell Wetland Delineation report, the location of the boardwalk that was installed in April 2021, is in Wetland 1. As described by Atwell, this is an EGLE regulated and likely Township regulated, wetland. The conclusion of the report was that a permit was required from both entities. In addition, the site is located in Tier 1 habitat for the eastern massasauga rattlesnake (EMR), a federally threatened and state special concern species. Atwell's opinion of the site is that it contains suitable habitat for the species.

There are numerous deviations from the wetland permit and design drawings that have increased the impact on the state regulated wetlands. The wetland delineation is not in question for the purposes of this evaluation and Tetra Tech did not evaluate Atwell's wetland line or complete a wetland delineation. Instead, the wetland delineation is assumed accurate; and both the EGLE and Superior Charter Township permits, and site conditions were evaluated. .

During the site walks, personnel observed the following:

1. The soils in the boardwalk area that intersect the wetland are not capable of supporting foot traffic. It would not be easily accessible for most people because of the mucky soils. Additionally, walking through the area repeatedly would be destructive to the wetland by compressing the soils over time and potentially liberating the topsoil in the area.
2. The posts of the boardwalk were installed directly into the wetland soils and not secured in a concrete foundation. The boardwalk has visibly shifted and is twisting over time (see Attachment A - Site Photos), because the underlying wetland soil is not suitable for the load without the concrete foundation.
3. The permit application indicates that the boardwalk would be constructed 4 -feet off the ground to ensure that the wetland underneath would not be impacted. This is not the case for much of the boardwalk within the wetland. In some sections, the boardwalk is flush with the ground, impacting the wetland. This is considered fill of a regulated wetland and a violation of the state permit (conditions 3 and 4) and Township Ordinance 178-05.1 (A).
4. Only the northern portion of the boardwalk is constructed, and it ends abruptly at a tree surrounded by a mound of soil that appears to have been moved during the construction of the boardwalk. Exiting the boardwalk has to occur on the east side, making the area immediately south unwalkable. In addition the path to the Huron River is not easily accessible or easily traversed due to uneven terrain, a depressional wetland near the River's edge and the existing vegetation.
5. The portion of the boardwalk that was permitted to be built along the Huron River does not exist, reducing the homeowner's access.
6. Pea gravel is located to the east of the boardwalk near the southern end. It appears to be lying on geotechnical fabric and within the wetland. This is considered fill of a regulated wetland and a violation of the state permit and Township Ordinance 178-05.1 (A).
7. There is soil, felled trees and vegetative debris located to the west of the southern end of the boardwalk. The exact wetland boundary was not discernible, but it appears that the material is located in the wetland. This is considered fill of a regulated wetland and a violation of the state permit (conditions 3 and 4) and Township Ordinance 178-05.1 (A).
8. What appears to be a new stream has formed and potentially merged with what Atwell identified as watercourse 3. Additionally, the watercourse appears very incised as it continues to the south. The area may have been manipulated during the boardwalk construction to keep water flowing away from the boardwalk and to the south. If available, photos taken before installation of the boardwalk would need to be reviewed to determine the pre-existing conditions. If the drainage and existing watercourse were manipulated, it has the potentially to alter the success of that portion of the wetland to the east. Alternation of this watercourse has the potential to liberate sediment to the south and it is also a violation of the state permit and Township Ordinance 178-05.1 ( D and potentially I).
9. Superior Charter Township Ordinance 178-06.C requires 'Soil Drainage and stormwater management plans' with the wetland application. A stormwater management plan does not appear to have been included in the application for review.
10. Tetra Tech agrees with OHM's request that stormwater calculations be provided to support the use of the pool outlet, as identified in the OHM February 28, 2022 letter report. Any quickly overflowing
water from the concrete wall has the potential to liberate soil, fill the wetlands and enter Huron River.
11. Section 178-08.1 B of the Superior Charter Township Ordinance indicates 'To ensure no net loss of wetlands in the Township, mitigation shall be required in instances where there are losses of wetlands resources...' Current site conditions would indicate that there are greater impacts to the wetlands than those permitted by EGLE and Superior Charter Township. As such mitigation requirements appear to be prudent and consistent with the Superior Township Ordinance, or removal of the fill and restoration of the wetlands. Additionally, these were not permitted under EGLE permit WRP023919 v1.2 and are a violation.

Based on the current site conditions, it appears more wetland impact has occurred than was permitted by EGLE based on the pea gravel and sediment surrounding the southern end of the boardwalk, as well as the flush portions of the boardwalk in the wetland. The walkability of the path from the end of the boardwalk to the Huron River is in question. One cannot walk off the boardwalk because of the tree in the center of the boardwalk where it ends, and the soil piled up around the tree to the west. The area between the boardwalk and the Huron River is not easily traversed on foot and the second portion of the boardwalk at the Huron River was not built. These call into question the accessibility of the river to your client.

Finally, during the site walk on March $3^{\text {rd }}$, Tetra Tech observed the retaining wall and discussed the stormwater plan with your client. The stormwater plan at the site will be crucial to ensure that sediment and erosion are minimized given the large topographical relief onsite and the newly constructed retaining wall. Stormwater calculations and an understanding of the water budget onsite by a licensed Professional Engineer are highly recommended. Ensuring that the existing wetlands and the site in general do not receive increased siltation and flooding from the northern upland areas are critical to the preservation of the wetlands and the habitat of the federally threatened EMR.

Sincerely,


Patti J. McCall, CPG, PWS
Principal Hydrogeologist

## Enclosures: Attachment A - Site Photos

Attachment A - Site Photos

5766 Geddes Road Boardwalk Inspection


Photo 1: boardwalk posts installed directly into wetland soil without concrete foundations.


Photo 2 facing north: visible shifting of boardwalk section.


Photo 3 facing northwest: boardwalk clearance: permit application indicates construction of boardwalk with 4-feet of clearance to ensure underlying wetland would not be impacted.

Attachment A - Site Photos


Photo 4 facing south: southern extent of boardwalk ends abruptly at base of tree. Mounds of soil and felled trees to the west of the landing.


Photo 6 facing southwest: potential new watercourse connected to watercourse 3, appears to be incised.


Photo 5 facing west: pea gravel over geotechnical fabric within wetland, to the east of boardwalk.


Photo 7: potentially trenched watercourse to move water away from the boardwalk.

W. Daniel Troyka<br>Conlin, McKenney \& Philbrick, P.C.<br>350 S. Main Street, Suite 400<br>Ann Arbor, Michigan 48104<br>Re: $\quad$ Geddes Rd, Ann Arbor, Michigan 48105<br>\section*{Dear Mr. Troyka:}

Per your request, Tetra Tech, Inc. (Tetra Tech) has reviewed the following documents and completed a site evaluation on May 18, 2022 from 5766 Geddes Road to assess if wetland setbacks are in place at 5728 Geddes Road:

1. Wetland Delineation and Threatened and Endangered Species Habitat Letter, completed by Atwell and dated April 17, 2019.
2. Superior Charter Township Ordinance No. 178 Wetlands and Watercourse Protection and Restoration.
3. InSite Design Studio, Inc. Grading Plan Sheet L-2, dated 3/18/2022.
4. OX Studio, Architectural Site Plan Sheet G-200 and G-201, dated 12/15/2021 and approved by Superior Building Department on April 18, 2022.
5. OHM letter dated April 11, 2022 and February 28, 2022 regarding review of the plot plan/grading plan at 5728 Geddes Road.
6. Septic plan approved by Washtenaw County Environmental Health on March 2022.

It is my understanding that Superior Charter Township has enacted and requires adherence to Article 14 Special Development Provisions, Section 14.05(B) Natural Features Protection: Watercourses and Wetlands for 'any construction project requiring a certificate of zoning compliance', including the development at 5728 Geddes Road. Review of $14.05(\mathrm{~B})$ requires setbacks from wetlands. Specifically ' a minimum open space setback of 25 feet shall be maintained from the boundary or edge of any wetland, as defined and regulated in the Township Wetlands Ordinance' and that 'individual single-family residential lots shall be located entirely outside of required wetland setback areas.'

Further limitations are prohibited within the open space setback as defined in 14.05(B)(4)(e)(f) and (g) and specifically in $14.05(\mathrm{~B})(4)(\mathrm{e})(1)$ 'Removal of trees and other vegetation shall be limited to removal of invasive or poisonous species and dead or diseased trees...' Sheet G-201 of the Architectural Site Plan created by OX Studio identifies that the residential home is adjacent to the 25 -foot open space buffer in much of the southern facing portion of the home. The open space setback is intended to be a natural buffer, without 'deposition of any materials, including soil, compost, gravel, garbage, concrete or asphalt debris, and other fill materials.' The ability to occupy the residence without using this space for seemingly normal homeowner enjoyment appears unlikely because of the adjacency of the buffer.

A site visit was completed on May $18^{\text {th }}$ and it appears that the silt fence is adjacent to the wetland without open space setbacks in place, at least in part if not in whole. The property and silt fence line were not
walked, and access was only from 5766 Geddes Road. However, wetland vegetation appeared to be adjacent to the silt fence and in the location that Atwell identified in their wetland delineation. This would violate the requirement for maintaining a 25 -foot open space setback and potentially the requirement that vegetation removal be limited to '...invasive or poisonous species and dead or diseased trees...' Additionally, fill remains in the wetland, as documented in my letter of opinion dated April 1, 2022 and site visit completed on March 3, 2022.

Section $14.05(B)(4)(f)(1)$ requires that 'drainage by ditching, underdrains or other systems' be prohibited. As indicated on Sheet L-2 of the Grading Plan, there is a 12 -inch perforated pipe that discharges into the former swimming pool. The drainage pipe is located inside the 25 -foot setback boundary, based on the OX Design Sheet G-200. There is a cobble swale proposed at the downgradient discharge of the pool that abuts the wetland and is entirely within the open space setback, in violation of this section. Understandably, the cobble swale is intended to slow the discharge to the wetland, however the open space setback is an added later of protection to protect the wetland that is not included.

In reviewing the design plans, it appears Superior Township Building Department and Washtenaw County Environmental Health Department may have approved septic plans that are not consistent. The Superior Township set of drawings created by OX Design Sheet G-200 encroaches into the wetland buffer on the southeast end. The Washtenaw County Environmental Health Department plans approved under permit No. SEW2019-00016 is located further to the north. It's not clear if the earlier septic approval by the County has been re-submitted and approved. There are also easements indicated on the drawings that are unclear as documented in OHM's April 11, 2022 letter. It appears the septic field may be within these easements but it's unclear what the restrictions to the easements are.

It appears that the Superior Township Wetland Permit PW20-0003 was requested by your client to be reopened or appealed and it was denied by the wetland administrator. It appears there are violations of Superior Township's Wetlands Ordinance 178 as documented here and in my previous April 1, 2022 letter of opinion. Additionally, there remain violations to the Michigan Department of Environment, Great Lakes and Energy Water Resources Division, Part 303 Wetlands Protection Permit WRP023919 v1.2, issued on July 31, 2020; also previously documented. As previously stated in my April 1, 2022 letter of opinion, ensuring that the existing wetlands and the site in general do not receive increased siltation and flooding from the northern upland areas are critical to the preservation of the wetlands and the habitat of the federally threatened eastern massassauga rattlesnake (EMR). Adhering to the regulations and the authority afforded both EGLE and Superior Township will reduce the likelihood degradation to the wetlands and the EMR habitat.

Sincerely,


Patti J. McCall, CPG, PWS
Principal Hydrogeologist

Enclosures: Attachment A - Site Photos


the septic tanks.
Q Okay.
A There's some -- it's all part of the survey. It's kind of the gobbly gook underneath.

Q Okay. So going back to the point that -- I want you to assume that I'm correct that that's a private road that's exempt from the ordinance.

A Okay.
Q What are you going to do to change your design plan?
A To be able to accommodate him if he wants to use it?
Q No, no, no. To be able to accommodate the other issues that you've discussed about having to be wider. It affects waterflow.

A We could -- we could make it wider if we need to.
Q And what about the water issue?
A The water issue -- that's what I'd have to look up to see what the township regulations are. If it's exempt from it, then $I$ would imagine that it doesn't have to follow the stormwater regulations of the county.

Q Couldn't that become a health and safety issue?
A If -- if it doesn't have water control?
Q Yes.
A No. All the water has been accounted for so that does not go to his septic field.

Q Well, then what's the point of even having to change
the design to accommodate waterflow between a driveway and a private road if it doesn't have any effect?

A Well, again, I wasn't aware of the facts --
Q That's not my question. I'm asking what's the point of it? Why do they require a different waterflow for a private road compared to a driveway?

A My understanding -- and I don't design private roads. I design driveways, okay. Usually that's an engineer that would design a driveway. My understanding is that for a private road you need a larger regulatory agency reviewing it, but I haven't designed -- I haven't designed private roads so much so --

Q Can we just agree that you didn't design that to be a private road, correct?

A I designed this to be a driveway.
Q Okay. Did any engineer -- did you consult any engineers about this?

A About this -- the layout of this road?
Q Yes.
A No.
Q Okay.
MR. BEHRENDT: You said driveway, right?
THE WITNESS: I'm sorry, driveway. Like of this driveway, no.

BY MR. MACKENZIE:

Q If that roadway or driveway -- whatever we're gonna call it -- has to be made wider won't that push the retaining walls out farther?

A We would push them in the direction that is not towards the Schuster property.

Q Do you know, as you sit here today, whether the retaining walls do and will encroach this --

A So this requires a little bit of explanation because we put the layout on here, then the materials were picked after I did this. The materials that were picked were thicker than what I anticipated when I drew this on. Once I read the report, I said, crap, it's encroaching. I have since talked with the builder, and we can scoot the house in the portion where it would encroach -- we can move that easily. It's an 8 inch difference.

Q So you're gonna move the house back to not encroach --
A We're going to --
Q -- let me finish -- to not encroach the Schuster property; is that accurate?

A Correct.
Q Is there any other areas of concern that are encroaching?

A No, not that I'm aware of.
Q Have you ever designed a private road before?
A A private road?

Q Yes.
A No.
Q Never in your career?
A Nope.
Q Okay. Have you ever designed a project with retaining walls?

A Lots of them.
Q Have you ever had an issue where retaining walls have failed?

A No.
Q What's the purpose of a retaining wall?
A To hold back the earth that would otherwise be -- how do I describe this. When you're cutting into topography and you need to maintain the topography on the high side, you need a wall to be able to hold it back.

Q So does the retaining walls that you've designed provide a lateral support for the Schuster property?

A They provide -- I mean, lateral support is specific. Yes, they -- they provide support of the landforms that are here to be able to -- for this Schuster property, yes.

Q So retaining walls are supporting the Schuster property?

A Yes.

## SUPPLEMENT TO APPEAL OF CERTIFICATE OF ZONING COMPLIANCE

## 5728 GEDDES ROAD, ANN ARBOR, MICHIGAN

On June 8, 2022, Matthew Schuster and Dr. Alyssa Cairo (the "Schusters") submitted an appeal of the issuance by Superior Township (the "Township") of the Certificate of Zoning Compliance dated April 18, 2022 (the "Certificate") and resulting Building Permit No. PB22-0070 (the "Permit") in connection with the development of a new residence at 5728 Geddes Road, Ann Arbor, Michigan. Copies of the Certificate and the Permit are attached hereto as Exhibit A.

As discussed herein, the development of the residence (a new use and principle structure under Superior Township Ordinance No. 174), including drives, retaining walls, septic systems, and other improvements related thereto (collectively, the "Project"), violates Township ordinances and Township approvals. The Township's decision to issue the Certificate constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and erroneous interpretations of the Superior Township Ordinances. As a result, the Certificate should be revoked and all work should stop until the Project is brought into compliance with the Township ordinances and Township approvals.

## SUMMARY OF ARGUMENTS

This dispute centers on a driveway being built on an easement over the Schuster Property. The Township has, at various points, referred to the easement area as a drive, a driveway, an easement, a right-of-way, and a private road. When used herein, these terms shall mean the 66-foot-wide private easement over the Schuster Property.
I. Section 3.207(A) requires that, as of 2008, a dwelling may be built only on a lot that fronts along its entire length or width on a public or private road. The Mouliere Property does not front along its entire length or width on a public or private road; therefore, a new dwelling may not be built on the lot.
a. The Mouliere Property does not touch a public road.
b. Even if the drive within the easement area can be considered a "private road," the entire width or length of the Mouliere Property does not front along that road.
c. Even assuming that the Mouliere Property constitutes a legal nonconforming lot, the proposed dwelling is a new principal structure and a new use, which cannot be built on a lot that does not abut a public or private road by the entire width of the lot.
II. Section 1.07 requires building plans to show the location, outline, and dimensions of all existing and proposed structures and the location and extent of all uses not involving structures. The building plans approved by the Township violated Section 1.07 as they do not show all of the required elements.
a. The approved building plans, dated December 15, 2021, do not show the right-of-way.
i. The permit application was first denied because construction was proposed in the right-of-way.
ii. The approved plans now simply omit the right-of-way from the drawings.
iii. Some of the retaining walls, the house, and the septic field are in the actual right-of-way, as discussed below.
b. The approved building plans do not show the actual location of the retaining walls as they are now being constructed.
i. The approved plans conceal the encroachment of certain retaining walls onto the Schuster Property.
ii. The actual walls, including their final dimensions, were not engineered until March 2022.
iii. The Schusters cannot ascertain whether engineering designs were submitted to the Township for the retaining walls being constructed.
c. The approved plans do not show the private road representing the "approved road" or the frontage along that private road.
i. As noted above, the entire width of the Mouliere Property does not front along a road.
III. The Township must approve building plans. The Township did not approve the revised building plans that the Washtenaw County Environmental Health Division (the "Health Department") approved.
a. The Township approved plans dated December 15, 2021.
b. The Health Department rejected those plans.
c. The Moulieres submitted revised plans to the Health Department.
i. The revised plans removed a room, moved key structures such as the septic field, and created a new retaining wall (located within the right-of-way).
d. The Health Department approved the revised plans.
e. To the Schusters' knowledge, the Township has not reviewed the revised building plans.
IV. The Township determined that a right-of-way was established in 1996 along the Driveway Easement from Geddes Road to the Mouliere Property. The variance obtained by the Moulieres bars construction within the right-of-way. The septic field, house, and retaining walls are in the right-of-way in violation of the variance.
a. This body previously granted a setback variance to the Moulieres, allowing construction up to, but not in, the right-of-way.
b. The building plans now have construction of the home within the right-of-way, which is the only "approved road."
c. The building plans now have construction of the septic system within the right-of-way, the only "approved road."
d. As noted above, the right-of-way is not shown on the approved plans.
V. The plans submitted by the Moulieres call for construction on the Schuster Property (which includes the easement area). No permit exists for construction on any portion of the Schuster

Property. Construction without a building permit violates Section 1.08 of the Zoning Ordinance.
a. The Moulieres have built retaining walls on the Schuster Property.
b. Under the Construction Code, the retaining walls are structures requiring a permit because of their size and configuration.
c. No building permit exists that would permit the construction of such structures on the Schuster Property.
d. The Washtenaw County Construction Board reviewed this issue and confirmed that there was no permit for construction on the Schuster Property.
VI. The retaining walls on the Schuster Property must have building permits and be properly sited. The Zoning Ordinance calls for compliance with the Michigan Residential Building Code.
The Township's failure to require building permits for the retaining walls on the Schuster Property violates the Michigan Residential Building Code and thus requires revocation of the Certificate.
a. Under the Michigan Residential Building Code, retaining walls over four feet tall require a permit.
b. The construction contains multiple retaining walls over four feet tall.
c. There is no building permit for these retaining walls.
VII. Other Issues:
a. Any building or structure located on the Mouliere Property must provide safe and convenient access for emergency vehicles. The approved plans do not provide for a place for emergency vehicles to turn around. Without a turnaround, fire trucks do not have safe and convenient access, in violation of Section 3.207(B).
b. The easement is a private road because it serves three residential properties. The Township has not required the issuance of a private road permit for construction on the easement, which violates the Private Road Ordinance.
c. The Schusters are an aggrieved party entitled to appeal the Township's decision.

## FACTUAL BACKGROUND

The Schusters have owned and resided on the real property located at 5766 Geddes Road, Ann Arbor, Michigan, 48105 (the "Schuster Property") since 2005. In 2018, Jean-Marie L. Mouliere and Ingrid D. Mouliere (the "Moulieres"), bought the landlocked parcel behind the Schuster Property at 5728 Geddes Road, Ann Arbor, Michigan 48105 (the "Mouliere Property"), with the intent to develop a structure over 11,000 square feet.

The Mouliere Property consists of the two parcels identified as Parcels B and C in the Moulieres' Warranty Deed. Parcels B and C were combined into a single parcel before the sale to the Moulieres. The Warranty Deeds for both the Schuster Property and the Mouliere Property reference a non-exclusive 66 -foot-wide private easement (the "Driveway Easement") over the Schuster Property solely for "ingress, egress, and public utilities" that benefits both Parcels B and C of the Mouliere Property and burdens the Schuster Property.

In 2021, the Moulieres, through their agent Snyder Contracting, applied to the Superior Charter Township Building and Zoning Department (the "Township Building Department") for a permit to construct a new single-family dwelling on the Mouliere Property. On or around November 23, 2021, Richard Mayernik, the Township Building and Zoning Official, rejected the Moulieres' application, citing many concerns, including:

1. Setbacks from private road rights-of-way are required to be equal to the zoning district front yard setback. The subject parcel is zoned R-1 and a 60 ' setback is required per section 3.101. "In fact, while not illustrated on the submitted drawings, it appears the subject home is located in the right-of-way."
2. The submitted site plan (sheet G-201) is not adequate. The private road easement is not illustrated. The limits of the wetlands are not illustrated. Grading elevations and storm water management elements are not shown. Specific locations, heights and designs of site retaining walls are not shown on the site plan nor elsewhere on the plans.

On January 19, 2022, the Moulieres submitted additional building plans, dated December 15, 2021, to the Township Building Department in connection with their application for a building permit to construct a three-level single family dwelling with attached garage and retaining walls (the "Approved Plans"). Exhibit B, December 15, 2021 Building Plans.

On April 18, 2022, the Township Building Department issued the Certificate and the Permit to the Moulieres, for the construction of a three-level single family dwelling with attached garage and retaining walls.

As discussed herein, the Township violated, or failed to enforce, its own ordinances and the terms of its approvals. The Township's failures have also created or condoned dangerous conditions on the Schuster Property.

There is a pending case between the Schusters and the Moulieres in the Washtenaw County Circuit Court, Case No. 20-001274-CH, involving, among other things, the Moulieres' excessive and unreasonable development of the Driveway Easement (the "Litigation"). The Litigation is not relevant to this appeal. This appeal stems from the failure of the Township to comply with, or enforce, its ordinances and approvals. If the appeal is unsuccessful, the Schusters would be able to pursue a legal action against the Township for its failure to comply with its ordinances.

## LAW AND ANALYSIS

I. THE PROJECT OVERTLY AND OBJECTIVELY VIOLATES SECTION 3.207(A) OF

## THE TOWNSHIP ZONING ORDINANCE

The Township should not have issued the Certificate because the Project violates Section $3.207(A)$ of Superior Township Ordinance No. 174 (the "Zoning Ordinance"), which provides:

No dwelling shall be built on any lot that does not abut and have direct frontage on an approved road . . . In any district, every lot created and every principal use or structure which is established after the effective date of adoption or amendment of this Ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of the lot. Such street shall have a right-of-way at least 66 feet wide unless a lesser width has been established and recorded prior to the effective date of this Ordinance.

Superior Township Ordinance No. 174, § 3.207(A) (emphasis added). Under Section 3.207(A), every lot and every principal use or structure established after August 14, 2018, must be on a lot or parcel which abuts a public or private street by the entire width of the lot.

In 2004, the Mouliere Property consisted of two separate parcels: Parcel B and Parcel C. On July 12, 2018, the previous owners combined Parcel B and Parcel C into a single parcel, creating a new parcel (the "Combined Parcel"). The Township required the prior owners to conduct a survey identifying the boundary of the Combined Parcel, as well as submit a Land Division Application and a New Address Application. The Land Division Application explicitly provides that "zoning, local Ordinances and state Acts change from time to time, and if changed the divisions made here must comply with the new requirements[.]" Exhibit C, Notice of Approval on Land Division at 4. The Township treated the Combined Parcel as a new parcel for tax and plat purposes. Because the Combined Parcel was created after August 14, 2008, the effective date of the Zoning Ordinance, the Combined Parcel and any structure built on the Combined Parcel are subject to the Zoning Ordinance.

The Combined Parcel does not meet the requirement of frontage "by the entire width of the lot." Id. The entirety of the Mouliere Property frontage adjoins the Schuster Property, and the vast majority of the Combined Parcel does not front a required 66-foot-wide right-of-way, here the Driveway Easement. Thus, any principal use, dwelling or structure built on the Mouliere Property after the 2008 adoption of the Zoning Ordinance violates Section 3.207(A). The Township cannot now contend that the Combined Parcel is not a new parcel after treating it as a new parcel in 2018. In any event, a new principal use and new structure cannot be established and built upon the Mouliere Property because: (1) the parcel does not meet the full width frontage standard and (2) both the new use and construction began after the adoption of the Zoning Ordinance.

The Township also violated its ordinance by failing to list this as a legal nonconformity in the Certificate, as required under Section 1.07 (d)(1) of the Zoning Ordinance. Superior Township Ordinance No. 174, § 1.07(d)(1) ("If one (1) or more nonconformities exist, all of which are legal nonconformities . . . the Certificate of Zoning Compliance shall clearly list each verified legal nonconformity.").

Moreover, any encroachment into the right-of-way would necessarily reduce the Mouliere Property's frontage to the right-of-way. As explained below, the retaining walls will encroach onto the Driveway Easement. Because of this encroachment, the right-of-way will no longer meet the 66 -foot-width requirement. This reduction in size of the Mouliere Property's frontage to the
right-of-way expands the existing legal nonconformity, exacerbates the already-existing violation of Section 3.207(A), and further violates the Michigan Zoning Enabling Act, MCL 125.3101, et seq.

The Township's decision to issue the Certificate for construction of a dwelling on the Mouliere Property, which does not meet the frontage required under Section 3.207(A), constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and an erroneous interpretation of the Zoning Ordinance. The Township violated Section 3.207(A) when it issued the Certificate based on the deficient Approved Plans. These violations continue because of the Township's failure to compel compliance with the Zoning Ordinance and the terms of its own approvals. As a result, the Certificate must be revoked.

## II. THE APPROVED PLANS WERE DEFICIENT AND SHOULD NOT HAVE BEEN APPROVED

The Township should not have issued the Certificate because the Approved Plans were deficient. The Approved Plans lack "[d]imensioned location, outline, and dimensions of all existing and proposed structures and the location and extent of all uses not involving structures" as required under Section $1.07(\mathrm{~J})(3)$ of the Zoning Ordinance. Superior Township Ordinance No. 174, § 1.07(J)(3).

First, the Approved Plans do not indicate the dimensioned location of the right-ofway or the boundaries of any approved private road. Mr. Mayernik first denied the Moulieres' permit application based on his assessment that there was construction in the right-of-way. The Approved Plans do not show or dimension the right-of-way area or setbacks from the right-ofway, nor do they indicate any construction in the right-of-way. In reality, much of the septic field and the residence are being constructed in the right-of-way. See Exhibit D, May 28, 2022 Letter (attaching PDF of CAD file showing built element in the Driveway Easement). In response to Mr. Mayernik's concerns, the applicants submitted additional plan sheets incorporating a line labeled " 60 '- 0 " Easement Setback." This setback line crosses and touches the right-of-way on the Schuster Property at multiple points-the opposite of a 60 -foot setback (which should never touch). An engineer reviewed the added plan sheet and confirmed specifically that the line labeled " 60 '- 0 " Easement Setback." was "meaningless" and did not represent the right-of-way. See Exhibit E, June 7, 2022 Seiber Engineering Report at 4. The Township relied on this additional plan sheet when it approved the Approved Plans. But the line does not show a setback from the right-of-way and thus still conceals that construction is being planned within the right-of-way.

The Moulieres' plot plans and submissions cast doubt on the actual location of the right-of-way and private road boundaries. Construction of the residence and the septic field are taking place within the right-of-way, in violation of the ZBA variance and endangering all safe access to the parcel. The omission of right-of-way or approved road designations from the Approved Plans masks the planned construction within the right-of-way. The Township must require the submission of new plans showing the actual location of construction, the location of the right-of-way, and the boundaries of any approved public road or private street.

Second, the Approved Plans do not depict the dimensioned location of the retaining walls. The Approved Plans show no encroachment on the Schuster Property. But the Approved Plans would encroach on the Schuster Property: the series of retaining walls in a terraced configuration would encroach onto the Schuster Property by at least eight feet during construction and upon completion of construction. And the actual walls being constructed were not engineered until March 2022. The retaining walls will be larger than presented in the Approved Plans, because the retaining walls in the Approved Plans were not buildable. ${ }^{1}$

Third, the Approved Plans do not show the calculated frontage on the right-of-way. The encroachment of the retaining walls into the right-of-way will reduce the Mouliere Property's frontage to the right-of-way, in some areas by at least eight feet. But the effect of this encroachment on the Mouliere Property's frontage on the right-of-way is not dimensioned or otherwise depicted in the Approved Plans.

Finally, the Approved Plans do not indicate how the Project will provide safe and convenient emergency vehicle access (which also violates Section 3.207(B)).

The Township's decision to approve plans that lacked the dimensioned locations required under Section $1.07(\mathrm{~J})(3)$ constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and an erroneous interpretation of the Zoning Ordinance. The Township violated Section 1.07(J)(3) when it issued the Certificate based on the deficient Approved Plans. These violations continue because of the Township's failure to compel compliance with the Zoning Ordinance and the terms of its own approvals. As a result, the Certificate must be revoked.

## III. THE TOWNSHIP HAS NOT REVIEWED OR APPROVED THE ACTUAL BUILDING PLANS

Worse still, the Project plans changed several times after the Township approved the Approved Plans. After the changes were required by other governmental authorities, the Township violated the Township ordinances, and the terms of the variance approval, by failing to require new, or updated, approvals of the modified plans.

Despite obtaining the Township's approval of the Approved Plans, the Moulieres were unable to obtain the Health Department's approval of those plans. The Moulieres then submitted revised plans to the Health Department only (the "Revised Plans"). See Exhibit F, Septic Permit No. SEW2019-00016 at 3 (containing excerpts of the Revised Plans). The Revised Plans drastically differed from the Approved Plans, by:

- Removing an entire cantilevered room from the Approved Plans;
- Relocating the septic field away from the onsite wetlands and into the Driveway Easement; and

[^0]- Creating a new, undocumented retaining wall, that has not been engineered to show that it can handle anticipated loads, at a new eight-foot drop within the Driveway Easement and immediately next to the only emergency access route to the home.

The Revised Plans also confirm that the proposed residence is within the same right-ofway from which the ZBA was considering granting setback relief.

The Health Department approved the Revised Plans. To the Schusters' knowledge, the Township has not reviewed or reconciled the Revised Plans against the Approved Plans.

## IV. THE PROJECT ENCROACHES INTO THE RIGHT-OF-WAY AND THEREFORE OVERTLY AND OBJECTIVELY VIOLATES THE GRANTED VARIANCE

The Zoning Ordinance requires a 60 -foot setback from rights of way. The Moulieres obtained a variance, based on the Approved Plans, permitting construction up to the right-of-way line, but not within the right-of-way. Under the Revised Plans, the residence, the septic system, and the septic field are now partially located within the right-of-way in violation of the ZBA variance, which prohibited encroachment within the right-of-way. See Exhibit D, May 28, 2022 Letter. To the Schusters' knowledge, neither the ZBA nor the Fire Marshal has reviewed the material alterations to the structure and the new, dangerous encroachment onto the right-of-way.

The Township knew that construction was not permitted within the right-of-way, and approved the Approved Plans anyway. The right-of-way was not even documented in the plans. Mr. Mayernik testified that if he was still the building official for the Township, he would have required submission of revised plans showing that the encroachment was eliminated. See Exhibit G, Mayernik Deposition Transcript Excerpts at 89:19-90:4. Yet the Township did not require submission of revised plans for its approval, or approval by the ZBA.

The Township thus failed to refer the Revised Plans back to the Zoning Board of Appeals when the plans changed and violated the clear restrictions in the variance. The failure to refer the Revised Plans back to the ZBA for a new review violated the terms of the variance and the Zoning Ordinance. The Township's failure constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and an erroneous interpretation of the Zoning Ordinance. These violations continue because of the Township's failure to compel compliance with the Zoning Ordinance and the terms of the variance. As a result, the Certificate must be revoked.

## V. THE SCHUSTERS DID NOT APPROVE THE CONSTRUCTION OF RETAINING WALLS AND NO BUILDING PERMIT WAS ISSUED FOR CONSTRUCTION ON THE SCHUSTER PROPERTY (INCLUDING THE DRIVEWAY EASEMENT)

On August 17, 2022, the Washtenaw County Construction Board of Appeals determined that the Permit is for construction activity on the Mouliere Property only. As a result, the Permit does not apply to construction activity on the Schuster Property, including within the Driveway Easement.

Under the Stille-DeRossett-Hale single state construction code act (the "Construction Code"), before beginning construction of a building or structure ${ }^{2}$ the fee title owner or their representative must apply to the appropriate enforcing agency for a building permit. MCL 125.1510(1). The application for a building permit must comply with these requirements:
[C]ontain a detailed statement in writing, verified by affidavit of the individual making it, of the specifications for the building or structure, and full and complete copies of the plans drawn to scale of the proposed work. A site plan showing the dimensions, and the location of the proposed building or structure and other buildings or structures on the same premises, shall be submitted with the application. The application shall state in full the name and residence, by street and number, of the owner in fee of the land on which the building or structure will be constructed, and the purposes for which it will be used.

MCL 125.1510(1) (emphasis added).
If the construction of a building or structure is proposed by a person other than the fee owner of the land, the applicant must comply with additional requirements:
[T]he statement shall contain the full name and residence, by street and number, of the owner [in fee of the land] and also of the person proposing the construction. The affidavit shall state that the specifications and plans are true and complete and contain a correct description of the building or structure, lot or parcel, and proposed work. The statements and affidavits may be made by an owner, or the owner's attorney, agent, engineer, architect, or builder, by the person who proposes to make the construction or alteration, or by that person's agent, engineer, architect, or builder.

MCL 125.1510(2).
The Township ignored the requirements set forth above when it approved the Permit on land that the Schusters owned in fee. This violation was confirmed by the decision of the Construction Board of Appeals. As a result, the Permit does not, and never did, apply to the Schuster Property.

Looking forward, any construction activity on the Schuster Property must have its own separate building permit. The Township did not require a separate building permit for construction of retaining walls on the Driveway Easement. The Township did not issue a building permit to construct retaining walls on the Driveway Easement, yet there is construction in process on the

[^1]Schuster Property. The Township has allowed construction of retaining walls on the Driveway Easement without a valid building permit and in violation of MCL 125.1510.

Section 1.08 of the Zoning Ordinance provides that " $[\mathrm{n}]$ o structure shall be erected, moved, added to, or structurally altered unless a building permit shall have been issued by the Building Inspector per the State Construction Code." Superior Township Ordinance No. 174, § 1.08.

The Township's failure to require a permit for construction on the Schuster Property constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and an erroneous interpretation of the Zoning Ordinance. The Township violated Section 1.08 when it failed to require a permit for the retaining walls being constructed on the Driveway Easement.

## VI. THE RETAINING WALLS REQUIRED AN INDEPENDENT PERMIT BECAUSE OF THEIR SIZE AND HEIGHT

The Township violated the Michigan Residential Building Code by failing to require issuance of an independent permit for the retaining walls.

The provisions of the Michigan Residential Building Code "apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached 1- and 2-family dwellings and townhouses not more than 3 stories above grade plane in height with a separate means of egress and their accessory structures." Michigan Residential Building Code, R 101.2. The provisions of the Michigan Residential Building Code thus apply to the Moulieres' construction of a three-level single family dwelling with attached garage and retaining walls.

Under the Michigan Residential Building Code, a building permit is required to construct a retaining wall more than 4 feet in height, measured from the bottom of the footing to the top of the wall. Michigan Residential Building Code, R 105.2.a.iii; see also Michigan Residential Building Code, R 105.1. The retaining walls being constructed on the Driveway Easement and the Mouliere Property will exceed four feet in height and therefore require their own building permit. Michigan Residential Building Code, R 105.2.a.iii.

As stated above, the Permit does not apply to construction activity on the Schuster Property and the Township did not require the Moulieres to apply for or obtain a separate building permit for the retaining walls on either the Schuster Property or the Mouliere Property. The Township's failure to require an independent permit for the retaining walls violates Michigan Residential Building Code, R 105.1 and R 105.2.a.iii.

Retaining walls present notable safety risks of both fall injuries and wall collapse, which is why Michigan regulatory agencies specify construction standards and protective measures, including the regulations contained within the Michigan Residential Building Code. Retaining walls over four feet in height must comply with the engineering specifications set forth in the Michigan Residential Building Code.

The Moulieres have not submitted proper construction documents as to the retaining walls on the Driveway Easement and the Mouliere Property, in accordance with Michigan Residential Building Code, R 106.1. Michigan Residential Building Code, R 404.4 provides:

Retaining walls that are not laterally supported at the top and that retain in excess of 48 inches ( 1219 mm ) of unbalanced fill, or retaining walls exceeding 24 inches ( 610 mm ) in height that resist lateral loads in addition to soil, shall be designed in accordance with accepted engineering practice to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning. This section shall not apply to foundation walls supporting buildings.

Michigan Residential Building Code, R 404.4.
The revised building plans the Moulieres provided to the Township Building Department on January 19, 2022 included no specified safety factors or loading allowance for the top of grade for the proposed retaining walls, and accordingly did not provide for loading for any vehicles that may be used on the Mouliere Property or the Schuster Property. The engineering prints and calculations provided to and purportedly approved by the Township Building Department cast doubt on the retaining walls' ability to both to retain the Schuster Property soil and loads connected with the Schusters' use of the Schuster Property. The Moulieres' building plans for the retaining walls on the Driveway Easement and the Mouliere Property do not document whether the retaining walls are designed for a safety factor of 1.5 against lateral sliding and overturning, as required under Michigan Residential Building Code, R 404.4. Further, the retaining walls the Moulieres are constructing do not safely meet the load bearing requirements of the Schuster Property. See generally Exhibit E, June 7, 2022 Seiber Engineering Report.

Importantly, the Moulieres have not updated, and the Township has failed to require them to update, their construction documents as to the retaining wall on the Schuster Property in accordance with Michigan Residential Building Code, R 106.4. The retaining walls the Moulieres have proceeded to construct follow designs that were not engineered until March 2022. The actual design of the retaining walls is much larger than previously presented. To the Schusters' knowledge, none of these revisions were disclosed to the Township Building Department and, even worse, the Township does not appear to have required them.

Moreover, the Township arbitrarily refused to consider the proposed retaining walls as structures because they are "akin" to pavement, in violation of the Zoning Ordinance. Under Section 6.08 of the Zoning Ordinance, pavement on a front or side yard cannot exceed 18 inches above grade to avoid being considered a structure. Superior Township Ordinance No. 174, § 6.08. The retaining walls, driveway, and septic terrace wall exceed 18 inches above grade in various
locations in the yards and are therefore specifically considered structures under Section 6.08 and the Construction Code. ${ }^{3,4}$

And the Township confirmed, in July 2021, that retaining walls are structures considered accessory to the lot: "structures such as retaining walls can be constructed on either lot and those structures would be considered accessory to each individual lot[.]" Exhibit H, July 6, 2021 Letter from F. Lucas to D. Troyka at 3.

Under Section 6.03(2) of the Zoning Ordinance, all detached accessory structures must be set back "a minimum of five (5) feet from interior side or rear property lines[.]" Superior Township Ordinance No. 174, § 6.03(2). This applies to the retaining walls located on both the Mouliere Property and the Schuster Property. As a result, no detached accessory structures may be located within five feet of the property line on either the Mouliere Property or the Schuster Property. But the retaining walls, and driveway, are placed within five feet of the property lines, in violation of Section 6.03(2).

The placement of the retaining walls, driveway, and septic terrace wall near or on the property lines, within the right-of-way, and with assumedly unenforceable loading limits on the neighboring parcels is dangerous and unsafe.

## The Township has approved the construction of retaining walls that not properly

 engineered, designed, or constructed. This poses a significant health and safety risk to any person traversing the Schuster Property as well as severe risks to the Schuster Property itself.The Township's decision to issue the Certificate without requiring an independent permit for the retaining walls based on plans that place accessory structures within five feet of the property lines constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and an erroneous interpretation of the Zoning Ordinance. The Township violated the Michigan Residential Building Code as well as Sections 6.03(2) and 6.08 when it issued the Certificate based on the deficient Approved Plans. These violations continue because of the Township's failure to compel compliance with the Zoning Ordinance and the terms of its own approvals. As a result, the Certificate must be revoked.

[^2]
## VII. OTHER ISSUES

A. The Project Does Not Provide Safe and Convenient Access for Emergency Vehicles, in Violation of Section 3.207(B)

The Township should not have issued the Certificate because the Project violates Section 3.207(B), which provides:

Every building and structure located or relocated after the effective date of adoption or amendment of this Ordinance shall be so located on lots as to provide safe and convenient access for emergency purposes and fire protection vehicles, and for required off-street parking and loading areas.

Superior Township Ordinance No. 174, § 3.207(B).
The Project does not identify a designated turnaround able to accommodate fire and emergency rescue. The encroachment into the ROW with steep retaining walls, the residence, and septic field offer no maneuvering space, as would be available on a private road developed under the private road ordinance. This is particularly significant because the Driveway Easement is not exclusive to the Moulieres. The Schusters, and any person trying to access the Schuster Property, may use the Driveway Easement. In an emergency, the Fire Department could try to access the Schuster Property and become stuck in the Driveway Easement because of the Moulieres' failure to create an emergency turn around. Without the designated turnaround area, the Driveway Easement cannot provide "safe and convenient access for emergency purposes and fire protection vehicles" and therefore, violates Section 3.207(B). This poses a significant health and safety risk to the Schusters and others, including emergency responders.

The Township's decision to issue the Certificate based on plans that do not identify safe and convenient access for emergency purposes and fire protection vehicles constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and an erroneous interpretation of the Zoning Ordinance. The Township violated Section 3.207(B) when it issued the Certificate based on the deficient Approved Plans. These violations continue because of the Township's failure to compel compliance with the Zoning Ordinance and the terms of its own approvals. As a result, the Certificate must be revoked.

## B. The Township Did Not Require Issuance of a Private Road Permit for the Driveway Easement, in Violation of the Private Road Ordinance

The Township violated Superior Township Ordinance No. 163 (the "Private Road Ordinance") by failing to require a private road permit.

The Private Road Ordinance defines a private road as:
A road, street or driveway serving two or more residential properties under private ownership which has been constructed for the purpose of providing access to adjoining property which has not been
accepted as a public road by the Washtenaw County Road Commission.

Superior Township Ordinance No. 163, § 163.02. The Township is empowered to enforce compliance with the Private Road Ordinance when "necessary to protect and promote the public health, safety and welfare in accordance with the purposes of this Ordinance or [if] additional lots are connected to the private road." Superior Township Ordinance No. 163, § 163.03 (emphasis added).

The Driveway Easement is a private road under the Private Road Ordinance because it serves three residential properties after another lot was connected by an ingress easement and noticed to the Township in November 2021: the Mouliere Property, the Schuster Property, and the parcel to the west of the Schuster Property. Under Section 163.04(B), "[n]o person shall construct, alter, or extend a private road without compliance with this ordinance and without obtaining a permit." Superior Township Ordinance No. 163, § 163.04(B). The Moulieres have neither sought nor obtained a permit for the private road they are constructing, which violates the Private Road Ordinance.

The Township was aware of this issue before issuing the Certificate. On March 28, 2022, the Schusters applied for a permit covering the new lot access, which Township officials reviewed before April 8, 2022 and thus before erroneously issuing the Certificate on April 18, 2022.

The Township contends that the Mouliere Property, and the drive that serves it, are "exempt" from the Township's Private Road Ordinance because they existed prior to the enactment of the Private Road Ordinance. "Exempt" is not a legitimate status under the Zoning Ordinance or the Michigan Zoning Enabling Act. The drive is either legal, legal non-conforming or in violation of the ordinance. Assuming it is legal non-conforming, the modification, expansion, and increase in intensity could not have occurred without complying with the currently applicable requirements. The Township simply declared the drive "exempt" and ignored the requirements of its Private Road Ordinance. Any alterations or prohibitive encroachments of the "Approved Road" would void the approval.

The Township also violated the Private Road Ordinance when it ignored the fact that a third property received an easement to use the drive. Thus, the drive must comply with the Private Road Ordinance before a new residence can be constructed or material improvements or changes are made to the drive.

The Township's decision not to require a private road permit constituted an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact and an erroneous interpretation of the Private Road Ordinance. By issuing the Certificate, the Township violated Sections 163.02, 163.03, and 163.04. These violations continue because of the Township's failure to compel compliance with the Private Road Ordinance. As a result, the Certificate must be revoked.

## C. The Schusters Are Aggrieved Parties to the Township's Decision to Issue the Certificate

The issues raised in this appeal are of particular importance to the Schusters, who have suffered harm stemming from the Township's issuance of the Certificate. For the reasons explained in Mr. Troyka's July 27, 2022 letter to Mr. Lucas, attached as Exhibit I, the Schusters are aggrieved parties entitled to appeal the Township's decision.

## CONCLUSION

The Township, acting through its staff, overtly and objectively violated the Superior Township Ordinances, the variance approval, and other approvals of the Project plans, when it issued a building permit for the Project and issued a Zoning Compliance Certificate. The Township's issuance of the Certificate constitutes an abuse of discretion, was arbitrary and capricious, and was based on erroneous findings of material fact as well as erroneous interpretations of the Zoning Ordinance and the Private Road Ordinance. Superior Township Ordinance No. 174, § 13.06(6).

The Schusters have suffered harm because of the Township's actions, including diminution in value of the Schuster Property, damage to the Schuster Property, loss of lateral adjacent support, loss of use and enjoyment of the Schuster Property, and other damages. The Township's failure to require approval of updated plans that have not been sufficiently design-tested, and the subsequent construction based on those unapproved plans, poses a significant health and safety risk to any person traversing the Schuster Property as well as severe risks to the Schuster Property itself.

## REQUEST FOR RELIEF

The Schusters respectfully request that the ZBA reverse the Township's decision to issue the Certificate, revoke the Certificate, and issue a stop work order until the Project is brought into compliance. Superior Township Ordinance No. 174, § 13.06(6)(a).

SUPPLEMENT TO APPEAL OF CERTIFICATE OF ZONING COMPLIANCE INDEX OF EXHIBITS

| Exhibit | Description |
| :---: | :--- |
| A | April 18, 2022 Building Permit No. PB22-0070 and Certificate of Zoning <br> Compliance |
| B | December 15, 2021 Building Plans |
| C | July 12, 2018 Notice of Approval on Land Division |
| D | May 28, 2022 Letter from Bowers and Associates to Mr. Schuster |
| E | June 7, 2022 Seiber Engineering Report |
| F | Septic Permit No. SEW2019-00016 |
| G | Excerpts from Transcript of July 19, 2022 Deposition of Richard J. Mayernik |
| H | July 6, 2021 Letter from F. Lucas to D. Troyka |
| I | July 27, 2022 Letter from D. Troyka to F. Lucas |

EXHIBIT A

3040 North Prospect
Fax: (734) 482-3842

Ypsilanti, Michigan 48198
Hours: Monday-Friday 8:30 am - 4:30 pm

| 5728 GEDDES RD Location <br> $J-10-30-400-061$  | MOULIERE JEAN-MARIE L \& INGRID D 2107 HILL ST |  |  |  | Owner |
| :---: | :---: | :---: | :---: | :---: | :---: |
| Issued: 04/18/22 |  |  |  |  |  |
| PLEASE CALL (734) 482-6099 FOR AN INSPECTION 24 HOURS IN ADVANCE. | Snyder Contra 8650 Huron R Dexter |  | 48130 |  | Contractor |

Work Description: 3 level SFD with attached garage and retaining walls.
Deferred submittals to include pool construction drawings and responses to OHM 4-1122 civil review letter items $7,10,11,12$, and 13.
Relating to OHM's review \#2 letter, item \#9, be advised that "guards" per the Michigan Residential Code shall be installed where prescribed by Section R312 of the code. \$1500 allowance for engineering review included in permit fee. Additional billing or refunds will occur after final bills come in.

Permit Item
Work Type
No. of Items
Item Total

| Permit Fee | Standard Item | 1.00 | $\$ 8,371.00$ |
| :--- | :--- | :--- | ---: |
| Plan Review | Standard Item | 1.00 | $\$ 50.00$ |
| OHM Plan Review | Standard Item | 1.00 | $\$ 1,500.00$ |
| C.W. Wetland | Standard Item | 1.00 | $\$ 713.00$ |

## Richard Mayernik - Building Official

Fee Total: \$10,634.00
I agree this permit is only for the work described, and does not grant permission for additional or related work which requires separate permits. I understand that this permit will expire, and become null and void if work is not started within 180 days, or if work is suspended or abandoned for a period of 180 days at any time after work has commenced, and, that I am responsible for assuring all required inspections are requested in conformance with the applicable code. I hereby certify that the proposed work is authorized by the owner, and that I am authorized by the owner to make this application as his authorized agent. I agree to conform to all applicable laws of the State of Michigan and the local jurisdiction. All information on the permit application is accurate to the best of my knowledge.

3040 NORTH PROSPECT, YPSILANTI, MI 48198
TELEPHONE (734) 482-6099 FAX (734) 482-3842
Certificate of Zoning Compliance

This application must be accompanied by a site plan which is drawn to scale and contains the following information: 1) scale, date and north point. 2) location, shape and dimensions of the lot. 3) dimensioned location, outline and dimensions of all existing and proposed structures, and location and extent of uses not involving structures.

Address of Property: $\qquad$ 5728 Geddes RJ

Applicant Name: $\qquad$ Daniel Snyder Snyder Contracting LLC Address: $\qquad$ 8650 Aron River Dr

City, State, Zip Code: $\qquad$ MI 42130

Phone Number: $\qquad$ $7341545-4840$ Alternate Number: $\qquad$ N/A

Provide a complete description of existing and intended uses of the property and structures, existing and proposed:
Build) of custom home. Hone is to be a due story structure with full basement. Gorge to be 3 car. Pad in basement. 8,134 say if an main two floors.
Per O.X. Studio plans dehuc $12 / 15 / 21$ Project No. SCM-MRP21


Township Use Only
Parcel Number: $V-10-30-400-061$


Zoning Administrator:


$$
\text { Zoning Compliance Approved } 4 / 18 / 22
$$

$\qquad$

## EXHIBIT B

## Mouliere Residence

5728 Geddes Road, Ann Arbor, MI 48105

## Released For: Revised Permit

Release Date: 12/15/2021
O|X Project Number: SCN-MRP21




SUPERIOR BUUNDI
DEPARTMEN.

SUPERIOR TOWNSHIP BUILDING DEPT REVIEWED FOR CODE COMPLIANCE The granting of this permit does not relieve the permit holder or
owner from compliance with all owner from compliance with all
applicable codes and ordinances.

Permit Authorized $4-18-22$ Building official $R$.MATLRNN

Address 5728 GEPDES RP Parcel $\mathrm{Na}=10-30-400-061$ Permit No. PB22-0070

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## ART 1: GENERAL

1.1 SCOPE
 1.2 Reference standards

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ASTM C1372 SEGMENTAL RETANNG WALL UNIT
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C. NON-WOVEN GEOTEXTLLE SEPEARATOR SHAII RF PLACED BEHIND THE

2.3 drainage
A. External. drainage shall be evaluated by the prouect civil

## PART 3: CONSTRUCTION OF WALL SYSTE

3.1 Excavation

CONTRACTOR SHALL EXCAVATE TO THE LINES AND GRAAES SHOWN ON THE
CONSTRUCTION DRAWINGS, SUBJECT OF FIELO MEASUREMENTS ANO Construction DRAWNGS, SUBJECT Of FIELD MEASUREMENTS AND/OR EXISTINC
SITE CONDTIONS ENCOUNTERED DURNG EXCAVAION 3.2 FOUNDATION SOIL PREPARATION
A. Existing unsutable sols, if encountered, must be removed from below





 3.3 LEVELING LAYER PLACEMENT
A. Levawinges. layer shall be placed as shown on the construction
B. LEVELING LAYER SHALL CONSIST OF MIN. 6" TO 12 "' OF MDOT 21 IAA OR 6A



3.4 Unit installation
A. THE FIRST COURSE OF WALL UNTS SHALL BE PLACED ON THE PREPARED











E. INSTALL EACH SUBSEQUENT COURSE IN LIKE MANNER. REPEAT Proceoure to

 3.5 QUALITY CONTROL

AUNER MUST RETAN SERVICES OR A QUALIFED PROFESSIONAL TO PERFORM
QUALTY ASSURANCE CHECKS OF INSTALATIONAS WORK
3.6 DESIGN OF WALLS BASED ON THE "GGADING PLAN" (SHEET L-2), PREPARED BY INSITE
DESIGN STUDOO, INC., DATED O2-07-2022. 3.8 DESIGN PARAMETERS
3.8.1 DESIGN OF WALL BASED ON THE FOLLOWING PARaMETERS

RETANE SOLL
FOUNDAION SOLL
$\begin{array}{ll}\text { 3.8.2 DESIIGN SURCHARGE LOADS: } & 50 \text { PSF LIVE LOAD (CONSTRUCTION/ NAINTENANCE), } \\ \text { 150 PSF } \\ \text { 15NE LOAD (TRAFFIC). }\end{array}$ 2,000 PSF DEAD LOAD SURCHARGE (TER WALL) ( Late bearng pressure: 2,500 PSF. 3.8.4 SOLL PARAMETERS ARE BASED ON GEOTECHNCAL EXPLORATION REPORT PREPARED BY
G2 CONSULTING GROUP (G2 PROUECT NO. 213714), DATED $10-27-2021$. Part 4: AVALLABILITY

## LIVINGSTON CONCRETE AND REDI-WALL COMPANY 550


$\xrightarrow{1-810-632-3030}$

EXHIBIT C

## NOTICE OF APPROVAL ON LAND DIVISION

Date: July 12, 2018
To: Ray Reilly
155 Laurin Court
Ann Arbor, MI 48105
Re: Land Combination Approval for parcels J-10-30-400-053 (2.54 acres) and J-10-30-400-054 (2.12 acres)
Legal Description for J $10-30-400-053$ (2.54 Acres)
W.D. L3143 P713****FROM 1030400023 08/17/95SU 30-19 PCL "B" COM AT CEN OF SEC 30, TH S 02-14-15 E 977.43 FT, TH N 82-19-48 E 810.92 FT, TH N 79-28-21 E 94.00 FT, TH S 02-06-24 E $265.00 \mathrm{FT}, \mathrm{TH}$ S 82-45-16 E 210.74 FT TO POB, TH N $82-45-16$ W 210.74 FT, TH S 02-06-24 E 585' TO WATERS EDGE, TH N'ELY TO PT BRG S 02-08-35 E FROM POB, TH N 02-08-35 W 470' TO POB. PT OF SE $1 / 4$ SEC 30 , T2S-R7E. 2.54 AC.

COMBINED ON 07/16/2018 WITH J-10-30-400-054 INTO J -10-30-400-061;
And
Legal Description for J -10-30-400-054 (2.12 Acres)
W.D. L3143 P713 ****FROM 1030400023 08/17/95SU 30-19 PCL "C" COM AT CEN OF SEC 30, TH S 02-14-15 E 977.43 FT, TH N 82-19-48 E 810.92 FT, TH N 79-28-21 E 94.00 FT, TH S 02-08-24 E $265.00 \mathrm{FT}, \mathrm{TH}$ S 82-45-16 E 210.74 FT, TH N 87-23-32 E 217.01 FT TO POB, TH S 87-23-32 W 217.01 FT , TH S 02-08-35 E 470' TO WATERS EDGE, TH N'ELY TO PT BRG S 02-08-35 EFROM POB, TH N 02-08-35 W 360 ' TO POB, PT OF SE $1 / 4$ SEC 30, T2S-R7E. 2.12 AC .

COMBINED ON 07/16/2018 WITH J -10-30-400-053 INTO J -10-30-400-061;
Your land combination has been completed by the Assessing Department. The 2018 summer and winter tax bills will show the original two parcel numbers, legal descriptions and acreage amounts as noted above.

Below is the new legal description, parcel number, and acreage amount that will take effect for the 2019 tax year and will reflect on the 2019 tax bill.

5728
Legal Description for J-10-30-400-061 (4.66 Aeres) 5278 Geddes Road
OWNER REQUEST SU 30-19A PCLS " B \& C " COM AT CEN OF SEC 30, TH S 02-14-15 E 977.43 FT , TH N 82-19-48 E 810.92 FT, TH N 79-28-21 E 94.00 FT, TH S 02-08-24 E 265.00 FT, TH S 82-45-16 E 210.74 FT, TH N 87-23-32 E 217.01 FT TO POB, TH S 87-23-32 W 217.01 FT, TH N 82-45-16 W 210.74 FT, TH S 02-06-24 E 585 FT +/- TO WATERS EDGE, TH N'ELY ALNG WATERS EDGE TO PT S 02-08-35 E 360 FT +/- FROM POB, TH N 02-08-35 W $360 \mathrm{FT}+/ /$ TO POB. PT OF SE $1 / 4$ SEC 30, T2S-R7E. 4.66 AC.

COMBINED ON 07/16/2018 FROM J-10-30-400-054, J-10-30-400-053;
If you have any questions please feel free to contact me at your convenience.
Thank you,
Paula Calopisis, Superior Township Assessor

## SUPERIOR CHARTER TOWNSHIP LAND DIVISION APPLICATION

You MUST answer all questions and include all attachments or this application will be returned to you as incomplete. Bring or mail the completed application to: 3040 N. Prospect, Ypsilanti, $M I$ 48198, for the municipal reviewing agent.

Division of land within the Township requires prior Township approval whenever a proposed division is less than 40 acres and is not otherwise exempt from the requirement by the Township's Land Division Ordinance. NOTE: Approval of a proposed land division is not a determination that any resulting parcel complies with other Township Land Use Ordinances and/or regulations, or that a building permit can or will be issued for any resulting parcel in the future.

Applicant Information.

Nane: Ray Reilly
Address: 155 Laurith $C t$
City, state, zip: Anw Anbor, mi 48105
Phone: 734 130-8529 Fax: $\ldots \ldots \ldots$.
combinod

1. LOCATION OF PARENT PARCEL TO BE SRLIT:

This form is designed to comply with section 109 of the Michigan Land Division Act (formerly the subdivision control act), P.A. 288 of 1967, as amended, and the Township's Land. Division Ordinance. RoadName:
parent parcel number: $51030400053 / 254$
Legal description of parent Parcel (attach extra sheets if needed).
2. PRORERTY OFNER INFORMATION:

Name: Sanie as applitant.
Address: Sane as applicanl. City, state $\qquad$ ——zip:
3. DESCRIBE THE DIVISION(S) BEING PROPOSED;
A. Is the proposed division from a parent parcel (parcel created on or before March 31, 1997)? (Yes or no)
B. Is the proposed division from an exempt split or other parcel created subsequent to Karch 31, 19977 (yes or no) If yes, what is the recording date of the parcel being divided?
C. Total acreage of the parcel or tract being divided.
a. D. Number of proposed new Parcels
E. Intended use (residential, commercial, etc.)
$\therefore F$. Is the parcel to be divided a. lot or outlot in a platted subdivision? (yes or no)
G. Are all proposed new parcels greater than or equal to 40 acres? (yes or no). If so, is each resulting parcel accessible as defined by the Township's Land Division Ordinance? (yes, or no).

* H. . ${ }^{\text {P }}$ Does each proposed parcel have a depth to width ratio of 4 to 1 or less? (yes or no).
N. Does each parcel have a width not less than required by the
J. Township's Land Division and/or Zoning Ordinance? (yes or no).
J. Does each parcel have an area not less than required by the Township's Iand Division and/or Zoning Ordinance? (yes or no).
酸K. Does each resulting parcel of the proposed division provide access to an existing or proyosed public road? (yes or no).
I. Does each resulting parcel that is a development site have adequate easements for public utilities from the parcel to existing public utility facilities? (yes or no).

4. RIGHT TO MARE FUTURE DIVISIONS EXEMPT FROX PLATTING:

The owner or proprietor of a parent parcel may transfer the right to make divisions exempt from platting. If the proposed division includes the transfer of future division rights, you must include a statement in the deed in substantially the following form: "The grantor grants to the grantee the right to make $\qquad$ division(s) under section 108 of the Land Division Act."
A. Is the proposed division being made from a parent parcel? (Yes or no)
B. Does the proposed division include a transfer of the right to make future divisions exempt from platting under the Act? (yes or no). If yes, provide the following information:
8. AFFIDAVIT and permission for municipal, county and state officials to enter the property for inspections:

I agree that the statements made above are true, and if found not to be true, this application and any approval will be void. Further, $I$ agree to comply with the conditions and regulations provided with parent parcel division. Further, I agree to give permission for officials of the municipality, county and the state of Michigan to enter the property where this parcel division is proposed for purposes of inspection to verify that the information on the application is correct at a time mutually agreeable with the applicant. I understand that the Township's approval of the proposed division is not a determination that the resulting parcels comply with the Township's zoning ordinance and does not include any representation that a building permit can or will be issued for any resulting parcel, nor does approval of a proposed division convey rights under any other statute, building code, zoning ordinance, deed restriction or other property rights.

Finally even if this division is approved, I understand that zoning, local Ordinances and state Acts change from time to time, and if changed the divisions made here must comply with the new requirements (apply for division approval again) unless deeds, land contracts, leases or surveys representing the approved divisions are recorded with the Register of Deeds or the division is built upon divisions are recorded with the Register

Property Owner's Signature


Date:


DO NOT WRITE BELOW THIS LINE

Reviewer's action
Total \$
Receipt \# $\qquad$
Approved: Conditions, if any: Denied: Reasons (cite):

Signature:
Date: $\qquad$

EXHIBIT D

Date: May 28, 2022
Matt Schuster
5766 Geddes Road
Ann Arbor, MI

Re: 66' wide easement
5728 Geddes Road
Ann Arbor , MI

Mr. Schuster,
Attached is a PDF of the CAD file DS01295.dwg with the $66^{\prime}$ wide easement/private drive shaded. Mr. Schuster provided the CAD file for our opinion. The file was (DS01295.dwg, file size of 748 K ). In this PDF there appears to be an built element in the 66 ' wide private easement for ingress and public utilities. Attached is the original survey dated 2-17-95, where the easement is indicated.

Please let me know if you have any questions.

Sincerely,



legal description - parcel "a"
COMMENCING AT THE CENTER OF SECTION 3O, TOWNSHIP 2 SOUTH, RANGE 7
EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN;
THENCE S $02^{\circ} 14^{115} 5^{\prime \prime}$ E 977.43 FEET ALONG THE NORTH AND SOUTH $1 / 4$ LUNE OF SAD SECTON AND CENTERLNE OF GALE ROAD AS SHOHN ON PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N $82^{4} 19^{\prime} 48^{\circ} \mathrm{E}$ 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAL); THENCE CONTNUING ALONG SANO CENTERUNE N $79^{\circ} 28^{\prime} 21^{\circ}$ E 94.00 FEET FOR A PLACE OF BEGINNING; THENCE
CONTINUING ALONG SANO CENTERLNE N $79^{*} 28^{\prime} 21^{\prime \prime} E 429.31$ FEET TO A FOUND IRON AT THE INTERSECTION OF SADD GEDDES ROAD ANO HICKMAN ROAD; THENCE S $02^{\circ} 08^{\circ} 35^{\prime \prime}$ E 360.22 FEET; THENCE $S 8^{\circ} 7^{\circ} 23^{\prime} 32^{\prime \prime}$ W 217.01 FEET: THENCE N $82^{\circ} 45^{\prime} 16^{*}$ W 210.74 FEET; THENCE N O2" $06^{\prime} 24^{\prime \prime} \mathrm{W} 265.00$ FEET TO THE PLACE OF BEGNNING. BENG A PART OF THE S.E $1 / 4$ OF SAN SECTION 30 ANO CONTAINING 3.13 ACRES ( 2.29 acres net) of land, More or less. subject to the northerly 33.00 FEET THEREOF AS OCCUPIED BY GEODES ROAD. ALSO SUBJECT TO A 66 FEET HDE PRIVATE EASEMENT FOR INGRESS, EGRESS, AND PUBUC UTLITES OESCRIGED AS FOLOWS:
COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIDR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S $02^{\circ} 14^{11} 15^{\circ} \mathrm{E} 977.43$ FEET ALONG THE NORTH AND SOUTH $1 / 4$ LINE OF SAID SECTION AND CENTERLINE OF GALE RDAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVSION AS RECORDED IN LIEER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N $82^{\circ} 19^{\circ} 48^{\prime \prime}$ E BIO.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOME TRAL): THENCE CONTINUING ALONG SAID CENTERLUNE N $79^{\circ} 28^{\prime} 21^{\prime \prime} \mathrm{E} 224.00$ FEET FOR A PLACE OF GEGINNING; THENCE CONTINUING ALONG SAID CENTERLNE N 79 $28^{\circ} 28^{\prime \prime}$ E 67.78 FEET;
THENCE S $02^{\circ} 38^{\prime} 18^{\prime \prime} \mathrm{W} 282.09$ FEET; THENCE S $53^{\circ} 53^{\prime} 29^{\circ}$ E 75.78
FEET; THENCE S $87^{\circ} 23^{\prime} 32^{\circ} \mathrm{W} 23.91$ FEET; THENCE $N 82^{\circ} 45^{\prime} 16^{\prime \prime} \mathrm{W}$
105.74 FEET; THENCE $N$ 02* $38^{\prime} 18^{\prime \prime}$ E 302.14 FEET TO THE PLACE OF BEGINING.
ALSO SUBJECT TO A 15 FEET MDE PRIVATE EASEMENT FOR INGRESS, EGRESS, AND PUELLC UTILITES DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER OF SECTION 3O, TOWNSHIP 2 SDUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S $02^{\circ} 14^{\prime} 15^{\circ}$ E 977.43 FEET ALONG THE NORTH AND SOUTH $1 / 4$ UNE OF SAD SECTION AND CENTERLNE OF GALE ROAD AS 23 OF PLATS, PLAT DF "BURR OAK" SUBDIUSION AS RECORDED IN LIEER 23 ${ }^{\circ}{ }^{\circ}{ }^{+}$ 8 PAGES 5I-54, WASH TENA CENTERLUE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRALL): THENCE CONTINUING ALONG SAID CENTERLNE N $79^{\circ}-28^{\prime} 21^{\prime \prime}$ E 224.00 FEET; THENCE S $02^{\circ} 38^{\prime} 18^{\prime \prime} \mathrm{W} 120.4 \mathrm{~B}$ FEET FOR A PLACE OF BEGNNING; THENCE $S 45^{\circ} 08^{\prime} 37^{\circ} \mathrm{W} 6280$ FEET; THENCE S $34^{\circ} 36^{\circ} 03^{\prime \prime}$ W 43.30 FEET; THENCE S $01^{\circ} 00^{\circ} 00^{\circ} \mathrm{W} 93.61$ FEET; THENCE S $82^{\circ} 45^{\prime} 16^{*}$. E 15.09 FEET; THENCE N $01^{\circ} 000^{\circ} 00^{\prime \prime} E$ 90.72 FEET; THENCE N $34^{\circ} 36^{\prime} 03^{\prime \prime}$ E 37.39 FEET; THENCE N $45^{\circ} 08^{\circ}$
$37^{\prime \prime}$ E 45.05 FEET; THENCE N $02^{\circ} 38^{\prime} 18^{\circ}$ E 22.20 FEET TO THE PLACE of gegnning.

WITNESSESS TO CENTER OF SECTION 30, SUPERIOR TWP FOUND $1^{\prime \prime}$ IRON PIPE $1.0^{\prime}$ DEEP IN GRAVEL ROAD

| $N 17^{\circ} \mathrm{E}$ | $52.52^{\prime}$ | FD. P.K. NAIL IN W. SIDE OF $18^{\prime \prime}$ OAK |
| :--- | :--- | :--- | :--- |
| $\mathrm{N} 35^{\circ} \mathrm{E}$ | $28.80^{\prime}$ | FD. P.K. NAIL IN N.W. SIDE OF $24^{\prime \prime}$ OAK |
| $\mathrm{S} 26^{\circ} \mathrm{E}$ | $56.27^{\prime}$ | SET P.K. NAIL IN W. SIDE OF $30^{\prime \prime}$ OAK |
| $\mathrm{S} 67^{\circ} \mathrm{W}$ | $16.55^{\prime}$ | FD. P.K. NAIL IN N. SIDE OF $12^{\prime \prime}$ OAK |
| $\mathrm{N} 13^{\circ} \mathrm{W}$ | $69.75^{\prime}$ | FD. P.K. NAIL IN E. SIDE OF $14^{\prime \prime}$ CHERRY |

I HEREBY STATE THAT I HAVE SURVEYED AND MAPPED THE LAND abOVE PLATTED AND/OR DESCRIBED ON FEBRUARY 17, 1995, AND THAT ALL OF THE REQUIREMENTS OF PA 132 OF 1970, AS AMENDED, HAVE BEEN MET.


COMMENCING AT THE CENTER OF SECTION 30, TOUNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S $02^{\circ} 14^{\prime} 15^{\prime \prime}$ E 977.43 FEET ALONG THE NORTH AND SOUTH $1 / 4$ LUNE OF SAID SECTION AND CENTERUNE OF GALE ROAD AS SHOHN ON PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N $82^{\circ} 19^{\prime} 48^{\circ}$ E 810.92 FEET ALONG THE CENTERUNE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTNUING ALONG SAID CENTERLINE N $79^{\circ} 28^{\prime} 21^{* \prime}$ E 94.00 FEET; THENCE S $02^{\circ} 06^{\prime} 24^{\circ}$ E 265.00 FEET; THENCE S $82^{\circ} 45^{\circ} 16^{\circ}$ E 210.74 FEET FOR A PLACE OF BEGINNING; THENCE N $82^{\circ} 45^{\prime} 16^{\circ}{ }^{\circ} 210.74$ FEET; THENCE S THE HURON RIVER; THENCE NORTHEASTERLY ALONG SAID WATER'S EOGE TO A POINT BEARING S $02^{\circ}$ 08'35" E FROM THE PONT OF BEGINNING; THENCE N O2"O8'35' W 470 FEET MORE OR LESS TO THE PLACE OF GEGINNING. BEING A PART OF THE S.E. $1 / 4$ OF SAN SECTION 30 ANO CONTAINING 2.54 ACRES (2.28 ACRES NET) OF LAND, MORE DR LESS. SUBJECT TO AND INCLUDING A 66 HOE PRIVATE EASEMENT FOR iNGRESS, EGRESS, AND PUELUC UTILTIES DESCRIBED AS FOLLOWS:
CONMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S $02^{\circ} 14^{\prime} 15^{\prime \prime}$ E 977.43 FEET ALONG THE NORTH AND SOUTH $1 / 4$ LINE OF SAND SECTION AND CENTERUNE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVSION AS RECORDED IN LEER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N $82^{\circ} 19^{\circ} 48^{\circ "} \mathrm{E}$ 810.92 FEET ALONG THE CENTERLNE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRALL); THENCE CONTINUING ALONG SADD CENTERUNE N $79^{\circ} 28^{\prime} 21^{\prime \prime}$ E 224.00 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING ALONG SAD CENTERUNE N 79²8'21" E 67.78 FEET; THENCE S $02^{\circ} 38^{\prime} 18^{*}$ W 282.09 FEET; THENCE S $53^{\circ} 53^{\prime 2} 29^{\prime \prime}$ E 75.78 FEET; THENCE S $87^{\circ} 23^{\prime} 32^{\circ}$ W 23.91 FEET; THENCE S $02^{\circ} 08^{\circ} 35^{\prime \prime} \mathrm{E}$ 65.DO FEET: THENCE N $53^{\circ} 53^{\prime 2} 29^{\prime \prime} \mathrm{W} 132.85$ FEET; THENCE N 02 ${ }^{\circ} 38^{\circ}$ 18 E 302.14 FEET TD THE PLACE OF BEGNNING.
ALSO INCLUDING RIGHT OF INGRESS, EGRESS, AND PUBUC UTILTIES OVER A 15' FEET WDE PRIVATE EASEMENT DESCRIBED AS FOLLOWS: COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S $02^{\prime} 14^{\prime} 15^{*}$ E 977.43 FEET ALONG THE NORTH AND SOUTH $1 / 4$ UNE OF SAD SECTION AND CENTERUNE OF GALE ROAD AS SHOHN ON THE PLAT OF "BURR OAK" SUBDIVSION AS RECORDED IN UBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N $82^{\circ} 99^{\prime 4} 48^{\prime \prime}$ E 810.92 FEET ALONG THE CENTERLNE OF GEDDES ROAD (FORMERLY POTAWATONIE TRAL); THENCE CONTNUING ALONG SAID CENTERLNE N $79^{\circ} 28^{\prime} 21^{\prime \prime}$ E 224.00 FEET; THENCE $S ~ 02^{\circ} 38^{\prime} 18^{* \prime}$ W 120.48 FEET
 THENCE $\mathrm{S} 34^{\circ} 36^{\prime} 03^{\prime \prime} \mathrm{W} 43.30$ FEET; THENCE $S 01^{\circ} 00^{\prime} 00^{\circ} \mathrm{W} 93.61$ FEET; THENCE S $82^{*} 45^{\prime} 16^{\prime \prime} \mathrm{E} 15.09$ FEET; THENCE N $01^{\circ} 00^{\circ} 00^{\circ} \mathrm{E}$, 90.72 FEET; THENCE N $34^{*} 36^{\prime} 03^{\circ}$ E 37.39 FEET; THENCE N $45^{\circ} 08^{\circ}$ $37^{\prime \prime} \mathrm{E} 45.05 \mathrm{FEET}$; THENCE N $02^{\circ} 38^{\prime} 18^{\prime \prime} \mathrm{E} 22.20$ FEET TO THE PLACE OF BEGNNING.
ALSO SUBVECT TO AND INCLUOING A 30 FEET MDE PEDESTRIAN EASEMENT LYNG 20 FEET WESTERLY AND 10 FEET EASTERLY OF THE FOLLOMNG DESCRIEED LNE:
COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S D2* $\mathbf{1 4}^{\prime \prime} 15^{\prime \prime} \mathrm{E} 977.43$ FEET ALONG THE NORTH AND SOUTH $1 / 4$ UNE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHON ON THE PLAT OF "EURR OAK" SUEDIVSION AS RECORDED IN LEER 23 PI PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N $82^{\circ} 19^{\circ} 48^{\circ} \mathrm{E}$ 810.92 FEET ALONG THE CENTERUNE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRALL); THENCE CONTINUING ALONG SAID CENTERLNE N $79^{\circ} 28^{\circ} 21^{\circ} \mathrm{E} 94.00$ FEET; THENCE S $02^{\circ} 06^{\circ} 24^{\circ} \mathrm{E} 265.00$ FEET; THENCE S $82^{\circ} 45^{\prime} 16^{\circ}$ E 210.74 FEET FOR A PLACE OF EEGINNING; THENCE S $02^{\circ} 08^{\prime} 35^{\prime \prime}$ E 470 FEET MORE OR LESS TO THE WATER'S EDGE OF THE HURON RIVER FOR A PLACE OF ENDING.


## Liber 03370 P933 0904

LEGAL DESCRIPTION - PARCEL "C"
COMMENCING AT THE CENTER OF SECTION 30, TOHNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE $S 02^{\circ} 44^{\prime} 15^{\circ}$ E 977.43 FEET ALONG THE NORTH AND SOUTH $1 / 4$ UNE OF SAD SECTION AND CENTERUNE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVSION AS RECORDED IN UEER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N $8241948^{-}$E 810.92 FEET ALONG THE CENTERUNE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRALL); THENCE CONTINUING ALONG SADD CENTERLNE N 79²8'21" E 94.00 FEET: THENCE S $02^{\circ} 06^{\circ} 24^{\circ}$ E 265.00 FEET;
THENCE S $82^{\circ} 45^{\prime} 16^{\circ}$ E 210.74 FEET; THENCE N $87^{\circ} 23^{\prime} 32^{\prime \prime}$ E 217.01
THENEES A PLACE OF BEGNNING. TMENCE S $87^{\circ} 23^{\prime} 32^{\prime \prime} \mathrm{W} 217.01$ FEET:
THENCE S O2'08' $35^{\circ}$ E 470 FEET MORE OR LESS TO THE WATER'S EDGE THENCE S O2 O RIVER: THENCE NORTHEASTERLY ALONG SAID WATER'S EDGE Of THE HINT BEARING'S $02^{\circ} 08^{\circ} 35^{\prime \prime}$ E FROM THE PLACE OF BEGNNING: THENCE N $02^{\circ} 08^{\prime} 35^{\prime \prime}$ W 360 FEET MORE OR LESS TO THE PLACE OF BEGINNING. BEING A PART OF THE S.E. $1 / 4$ OF SAID SECTION 30 AND CONTANING 2.12 ACRES ( 201 ACRES NET) OF LAND, MORE OR LESS INCLUDING A 66 FEET HIOE PRIVATE EASEMENT FOR INGRESS, EGRESS, AND PUEUC UTILTES DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP. WASHTENAW COUNTY, STATE OF MICHIGAN; EAST, SUPERLO ${ }^{\prime} 15^{\prime \prime}$ E $977^{4} 43$ FEFT AL ONG THE NORTH AND SOUTH $1 / 4$ THENCE S $02^{\circ} 4^{\prime} 15^{\circ}$ E 977.43 FEET. ALONG THE NORTH AND SHOWN ON THE UNE OF SAAD SECTION AND CENTERUNE OF GALE ROAD AS SHOMN ON THE PLAT OF "BURR OAK" SUBDIGSION AS RECORDED IN LBER 23 OF PLAT PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 824948 810.92 FEET ALONG THE CENTERUNE OF GEDDES ROAD (FORMERLY N $79^{\circ} 28^{\prime} 21^{\prime \prime} \mathrm{E} 224.00 \mathrm{FEET}$ FOR A PLACE OF BEGINNING; THENCE CONTINUING ALONG SADD CENTERLNE N $79^{\circ} 28^{\prime} 21^{\circ}$ E 67.78 FEET;
THENCE S O2 $88^{\circ} 18^{\circ}{ }^{\circ} \mathrm{W} 28209$ FEET; THENCE $S 53^{\circ} 53^{\prime} 29^{\circ}$ E 75.78 FEET: THENCE $S 87^{\circ} 23^{\prime} 32^{\prime \prime}$ W $23.91^{\prime}$ FEET; THENCE S $02^{\circ} 08^{\prime} 35^{\prime \prime} \mathrm{E}$ FEET: THENCE SENCE N $53^{\circ} 5^{\prime} 3^{\prime 2} 29^{\circ} \mathrm{W} 132.85$ FEET; THENCE N 02${ }^{\circ} 33^{\prime}$ O5.00 FEET 14 FETT TO THE PLACE OF BEGNNING.
AISO SUBJECT TO AND INCLUDING A 30 FEET WDE PEDESTRIAN EASEMENT ALSO SURJECT TO AND INCLUDNG AEET EASTERLY OF THE FOLOWNG described LiNe:
COMMENCING AT THE CENTER OF SECTION 3O, TOWNSHIP 2 SOUTH, RANGE 7
EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN;
THENCE S $02^{\circ} 14^{\prime} 15^{\prime \prime}$ E 977.43 FEET ALONG THE NORTH AND SOUTH $1 / 4$ UNE OF SAD SECTION AND CENTERLNE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK SUBDIVSION AS RECORDED IN LIEER 23 OF PLATS, LACES 51-54 HASHTENAY COUNTY RECORDS. THENCE N 8219'48" E PAGES 51-54. WASHTENAW COUNTY RECORDS; IHENCE N (FORMERLY 810.92 FEET ALONG THE CENTERLNE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAL): THENCE CONTNUING ALONG SAID CENTERUN
N $79^{*} 28^{\prime} 21^{\prime \prime} E \quad 94.00$ FEET; THENCE $S 02^{\circ} 06^{\prime} 24^{\prime \prime} E 265.00$ FEET; $N 79^{\circ} 28^{\prime} 21^{\circ} \mathrm{E} 94.00$ FEET; THENCE S 02 $06^{\circ} 24^{\prime \prime}$ E 265.00 FEET; THENCE S $82^{\circ} 45^{\prime} 16^{\circ}$ E 210.74 FEET FOR A PLACE OF BEGINNING; OF THE HURON RIVER FOR A PLACE OF ENDING.

CLIENT: MURRAY/DURBIN BUILDERS

| m H $\sim$ $N$ | SURVEY AND DESCRIPTION OF 3 PARCELS OF LAND, LOCATED IN THE S.E. $1 / 4$ OF SECTION 30, T2S, R7E, SUPERIOR TWP, WASHTENAW COUNTY, MICHIGAN |
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|  |  |
|  | ISTERED LAND SURVEYOR NO. 24618 |

PROJECT NO. 83482-01


Ayres, Lewis, Norris \& May, Inc. 3959 research park drive ann arbor, michigan 48108 Enginears - Planners - Survayors (313) 761-1010

## EXHIBIT E

# SEIBER ENGINEERING, PLLC <br> CONSULTING ENGINEER 

CLIF SEIBER, P.E.

June 7, 2022
Mr. Matthew A. Schuster
5766 Geddes Road
Ann Arbor, MI 48105-9331

## Re: Mouliere v Schuster

Dear Mr. Schuster:
As you recently requested, I have further reviewed the architectural drawings for the Mouliere Residence submitted to Superior Township on January 19, 2022, and approved by the Superior Township Building Department on April 18, 2022. This plan set included a 5 -sheet retaining wall design by Redi-Rock dated 3-21-2022. I have also received a revised sheet L-2 by the Insight Design Studio, Inc. (IDS) entitled Grading Plan, bearing a revision date of 03-16-2022, and a Plot Plan designed by Atwell containing a most recent revision date of February 24, 2022. In addition, my review included a letter issued by OHM, the consulting engineers for Superior Township, dated April 11, 2022, and a letter from Kevin Gingras, P.S. President of Arbor Land Consultants dated May 26, 2022.

Upon completion of my review, I offer the following comments for your consideration:

## Section 3.207 of the Superior Township Zoning Ordinance

Just for your reference, Section 3.207 states:
"No dwelling shall be built on any lot that does not abut and have direct frontage on an approved road."

Section 3.207 A. states:
"In any district, every lot created and every principal use or structure which is established after the effective date of adoption or amendment of this Ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of the lot."

Section 3.207 B. states:
"Every building and structure located or relocated after the effective date of adoption or amendment of this Ordinance shall be so located on lots as to provide safe and convenient access for emergency purposes and fire protection vehicles, and for required off-street parking and loading areas."

## Is any "right-of-way", "approved road", or "public or private street" identified on the plans?

Upon examination of the plan set, I could find no reference to "right-of-way", "approved road", or "public or private street".

Accordingly, I cannot confirm that the house meets the parcel width requirement, setback requirements from the right-of-way, or complies with the zero foot setback variance from the road right-of-way.

In his letter of November 23, 2021, Richard J. Mayernik, the Building and Zoning Official for Superior Township, states that the "application for a building permit at the above address (5728 Geddes Road) has been rejected for the following reasons:

1. Setback from private road rights-of-way are required to be equal to the zoning district front yard setback. The subject parcel is zoned R-1 and a 60 ' setback is required per Section 3.101. In fact, while not illustrated on the submitted drawings, it appears the subject home is located in the right-of-way."

Kevin Gingras, P.S. of Arbor Land Consultants, wrote a letter dated May 26, 2022, indicating that the CAD files that he received on May 6, 2022, included proposed improvements such as the residence, driveway, retaining walls, septic system and other features. He confirmed that these proposed improvements are located within the 66' wide easement as Mr. Mayernik correctly pointed out in the case of the proposed home.

The recently approved plans continue to show the encroachment of the home and the septic field within the easement area. The building plans should be revised to clearly show the right-of-way and the setbacks measured therefrom. This information should be documented, drawn and dimensioned prior to the issuance of the Certification of Zoning Compliance.

Do the approved building plans for the Mouliere residence propose construction of the house and drain field within the recorded ingress and egress easements?

The revised sheet L-2 by the Insight Design Studio, Inc. (IDS) entitled Grading Plan, bearing a revision dated of 03-16-2022, and the Plot Plan prepared by Atwell with a revision on February 24, 2022, Septic Revision, both show approximately one-half of the proposed active septic field and a portion of the house located within the 66 -foot wide ingress/egress and public utility easement. Furthermore, as noted above, Kevin Gingras, P.S. of Arbor Land Consultants has confirmed that the house and septic field continue to be shown within the easement area as initially identified by the Township Building and Zoning Official.

However, the approved Architectural Building Plans containing sheets G-201 and the IDS plan bearing a most recent revision date of December 15, 2021, do not identify the ingress/egress easement and, therefore, do not show the septic field or house inside the ingress/egress easement.

The more recent Atwell and IDS plans conflict with the approved plan set and show a different design. The plans should be revised so that the correct information is documented, drawn and dimensioned prior to the issuance of the Certification of Zoning Compliance.

## Was the 8-foot high retaining wall that separates the proposed driveway from the septic field designed for fire truck live loads?

The Redi-Rock retaining wall plan set included in the approved architectural plans, only provide wall elevations for retaining walls 1,2 and 3 . The wall between the driveway and the septic field is Wall Number 7. The IDS Grading Plan shows the bottom of the northeast corner of the wall at an elevation of 808.0 while the top of the wall is 816.0 , for a height of 8 feet. Fire truck loading is typically 25 tons. The approved plans contain no wall profile for Wall No. 7. Therefore, it is not possible to determine if the retaining wall, which is subject to the State of Michigan Building Code, complies with code safety requirements and is adequate to support emergency vehicles prior to the issuance of the Certification of Zoning Compliance.

## Will the retaining wall construction encroach onto the Schuster property?

No dimensions between the face of the retaining walls and the geotextile fabric that will line the excavation are shown on the Redi-Rock plan set. In addition, there is no dimension shown between the face of wall and the property line. Upon scaling the plan set, it appears that encroachment will take place during and upon completion of construction.

The OHM review letter of April 11, 2022, stated in paragraph 8 on page 2 the following:
"We question if it is possible for the Applicant's Contractor to construct retaining walls without encroaching the property to the north. We request the Applicant's Contractor to provide a narrative regarding construction of the retaining wall and how they intend to maintain construction impact on this property only during construction. It may also be beneficial for the Applicant to have their geotechnical engineering and structural engineering consultants for the project provide input on the best practices to construct the tiered retaining wall without encroaching the property line to the north without a temporary grading easement."

Based on scaled dimensions from the plans, it appears that encroachment into your property will occur during and after construction of the tiered retaining wall. Therefore, based on the lack of information on the building plans, it is not possible to determine if the retaining wall, which is subject to the State of Michigan Building Code, encroaches onto your property. This possible encroachment should be documented prior to the issuance of the Certification of Zoning Compliance.

## Did the Redi-Rock design of the retaining wall along the Schuster property line and easement line include sufficient live loading?

I received no structural calculations indicating the design loading for the tiered retaining wall. However, paragraph number 14 of the OHM review letter stated the following:
"...Per the Applicant's Structural Engineer, the portion of the exposed block wall to the east of the driveway is not intended to act as a vehicle barrier, only as a pedestrian barrier. Also, a 50 PSF (pounds per square foot) load surcharge was applied to the walls in the calculations at the top of the wall for general maintenance and pedestrian loads. We take no exception to the structural calculations provided for the landscape retaining wall."

Prior to the excavation and removal of the earth supporting the your property, you could use whatever vehicles and live loading along your south property line as you saw fit with no restriction. This ability to use your property should not be diminished because your neighbor's engineer elected to use a pedestrian loading rate. The Redi-Rock plan set contains a chart for live loading that indicates that traffic loading should be 150 PSF . In order to reduce the risk of retaining wall failure due to your unrestricted use of your back yard, the design should be revised to include the higher loading factor.

The loading rate currently proposed by the Mouliere design engineer diminishes the full use of your back yard. Inasmuch as their design engineer has no control over the imposed loading at the property line, the under design of the wall could result in wall failure and a dangerous condition for both parties. Therefore, the load rating for the wall should be increased from 50 to 150 PSF, subject to the State of Michigan Building Code requirements, and should comply with code safety requirements and be adequate to support vehicle live loading and/or material storage prior to the issuance of the Certification of Zoning Compliance.

## What does the notation " 60 '-0" Easement Setback" mean on Sheet G-201 of the approved plan set?

The dimension from the edges of the ingress/egress easement indicates a 60'- 0 " Easement Setback. This dimension is meaningless because it dimensions a portion of the 66 -foot ingress/egress easement width within the easement (mostly in the original Parcel B), not the setback from the easement. The " 60 ' -0 " Easement Setback" line does not show a setback of any type. This notation makes no sense and is of no value.

If you have any questions regarding my response to your questions, please contact me.
Sincerely,

## SEIBER ENGINEERING, PLLC



Clif Seiber, P.E.

EXHIBIT F

Washtenaw County<br>Environmental Health Division<br>705 N. Zeeb Rd. PO Box 8645 Ann Arbor, Michigan 48107-8645<br>Phone (734)222-3800 Fax (734)222-3930

Location Address

| 5728 GEDDES RD, ANN ARBOR, MI 48105 | Parcel Number | Township / District |
| :--- | :--- | :--- |
| Contacts | $J-10-30-400-054$ | Superior Township |
| JEAN-MARIE \& INGRID MOULIERE   <br> 5123 BUCKLEY DR, YPSILANTI, MI 48197 Owner DAN SNYDER <br> 8650 HURON RIVER DR, DEXTER, MI 48130 <br> (734)545-4840 | TDSNYDERCONTRACTING@GMAIL.CO |  |

## Description: SEWAGE PERMIT ISSUED FOR NEW 5 BEDROOM 7 BATH SFR

Inspection Requests:
(734) 222-3800

Please note that it is the responsibility of the contractor or owner to contact the Miss Dig notification system at 811 or 800-482-7171 and comply with all requirements of the Miss Dig Underground Facility Damage Prevention and Safety Act before starting any excavation work!

Number of Employees: 0<br>Est Peak Daily Flow: 0<br>Type of disposal system: Standard Bed<br>Bed Size: 28 Feet By 65 Feet<br>Bed Area: 1820<br>Time of Sale Related: No<br>Effluent Filter: Required<br>2 - New Septic Tank(s) totaling: 3000 gallons<br>0 - Existing Septic Tank(s) totaling: 0 gallons<br>Engineered: No<br>Pump Chamber - Pump System: Yes<br>Pump Chamber - Chamber Capacity: 1500<br>Number of lines: 7<br>Header: Single

Number of Bedrooms: 5 Baths: 7.0
Pre Treatment: None
Drainfield Elevation: At Grade
Tank Tightness Test: Required
Type of Parcel: Metes and Bounds
Type of Water Supply: Residential
Number of Trenches: 0

This system is to be constructed in accordance with the permit condition below, the approved plot plan, the General Construction Requirements, and the Engineering Guidelines for Onsite Sewage Systems. This permit must be posted on-site in the vicinity of the septic system installation. No changes to this permit may be made unless authorized by the Health Officer. The system must be installed by a Washtenaw County Certified Contractor.

## Permit Conditions

- Pre Construction Meeting
- 00 Master Sewage Pump System Conditions

Call to schedule pre-construction meeting OR to discuss permit conditions prior to beginning any construction. VERIFY SEPTIC, Benchmark, Elevations \& Requirements.

1. Maintain at least 100 feet of isolation from the new drainfield to all wells and 50 feet from septic tank(s) to all wells.
2. Excavate to Med/ Coarse sand at 4 to 6 feet. Bottom of excavation is to be roughed up with bucket teeth to allow for better drainage.
3. Call 734-222-3800 for an excavation inspection prior to backfilling. (Any wet excavations need to be de-watered to allow for inspection. Call the area sanitarian to schedule an inspection appointment. For wet excavations, have approved backfill sand stockpiled on site. Upon excavation approval, immediately backfill the excavation with approved sand.)
4. Install drainfield with a header invert at/above 805.5 feet based on a benchmark \#2 Set Bench Tie in South Face of Utility Pole on the North Side of Geddes Road Elevation 826.6 feet.
5. Connect all sanitary wastewater lines into the new sewage disposal system. Remove all clear-water wastes such as footing drains, water softener, water treatment back-wash, and condensate drain lines from the new sewage disposal system.

## Washtenaw County Environmental Health Division

705 N. Zeeb Rd. PO Box 8645 Ann Arbor,
Michigan 48107-8645
Phone (734)222-3800 Fax (734)222-3930

6. Provide a minimum: 45 GPM sewage pump capable of dosing 299 gallons per pump cycle, with a 7 minute dose/run time.
7. Control panel / alarm must be on a separate electric circuit from the pump(s) and located outside the house in a visible location.
8. The junction box for pump power supply / float controls must be located externally from the pump chamber / riser. The junction box must be watertight.
9. Pump on, pump off, high alarm, and dose volume are to be set according to the attached approved plans. The design dose should be 299 to 300 gallons per dose.
10. Pump is to be installed on a $2^{\prime \prime}$ minimum riser with a disconnect union within $18^{\prime \prime}$ of the riser cover for ease of pump replacement. Dose pump must be installed under removable manhole cover. Control panel shall be equipped with an event counter.
11. Seal Pump chamber to be watertight inside and out.
12. Install an effluent filter in the outlet of the second septic tank capable of handling three times the daily flow at 2250 gallons per day.
13. Install a split header if installing 8 or more tile lines ( $32^{\prime}$ or wider field). Complete the installation of the septic system and call for inspection prior to covering any portion.
14. The septic tanks and pump chamber must be watertight. Tightness tests are required for ALL tanks AFTER installation. Provide written testing certification documentation OR call for a water pressure test inspection.
15. Call for pressure line inspection. Pressure line to be at least 42 inches below grade OR sloped to drain back to the pump chamber.
16. Call for pump test inspection. Do not allow sewage to enter the system or backfill a pressure line until after inspection and approval. Pump test must be done with clean water filled to the pump on level in the presence of Department personnel and the system designer.
17. Call for final grading inspection. Grade area around the septic tanks and drainfield to divert surface water away and support slopes with 4:1 ratio. Cover drainfield with a sandy loam topsoil. Additional inspection fee $\$ 129.00$ must be paid prior to inspection.
18. Provide a minimum 4:1 ratio berm/slope around drainfield to existing grade. It will be necessary to install a RETAINING WALL ALONG MULITIPAL SIDES OF DRAINFIELD.
19. The pumped wastewater disposal system's electrical system must be approved by electrical inspector before final approval of system.
20. Submit engineer's/designer's certification, noting any approved deviations from the permitted plan.
21. Additional inspections may be necessary. If required, the appropriate inspection fee must be paid prior to inspection.
22. Provide/ encase the Neighboring ( 5766 Geddes Rd) Effluent Line with a minimum 6" schedule 40 sleeve under driveway and seal both ends.
23. Septic system maintenance is important. A licensed septic tank pumper should pump septic tanks every 3-5 years. Also, it advisable to prevent grease, medications, and strong cleaners from entering the system.



operation of this system. Seeding of final treatment area must be done without compaction of soils.

6 Discharge of non-sewage wastewater (eave trough, water softener, sump pump, etc.) shall be done away from the proposed septic system. No sprinkler system shall operate in the septic area. No non-sewage wastewater shall enter the septic system.

## 

7 Install Effluent filter capable of handling 3 times the maximum daily flow, Zabel A-100 Effluent Filter (or similar)


## EXHIBIT G

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JEAN-MARIE L. MOULIERE and INGRID D. MOULIERE,

Plaintiffs/Counter-Defendants, Case No. 20-001274-CH
-vs-
HON. ARCHIE C. BROWN
MATTHEW A. SCHUSTER and
ALYSSA L. CAIRO,
Defendants/Counter-Plaintiffs.

DEPOSITION OF
RICHARD J. MAYERNIK
Taken by the Defendants/Counter-Plaintiffs, on the 19 th day of July, 2022, at 7577 US Highway 12, Suite A, Onsted, Michigan, at 12:03 p.m.

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                                    STATE OF MICHIGAN
    IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
JEAN-MARIE L. MOULIERE and
INGRID D. MOULIERE,
            Plaintiffs/Counter-Defendants, Case No. 20-001274-CH
    -vs-
                                    HON. ARCHIE C. BROWN
MATTHEW A. SCHUSTER and
ALYSSA L. CAIRO,
    Defendants/Counter-Plaintiffs.
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$\qquad$

``` DEPOSITION OF RICHARD J. MAYERNIK
```

Taken by the Defendants/Counter-Plaintiffs, on the 19th day of July, 2022, at 7577 US Highway 12, Suite A, Onsted, Michigan, at 12:03 p.m.


A Yes.
Q Okay. So --
A Well, in ' 95 -- in '95, this was all one parcel.
Q It was one parcel at that point?
A Right, yeah. Because the division didn't occur until '96.
Q Okay. So when the division occurred in ' 96 , would the right-of-way have to continue to Parcel C, then?
A No. It's existing right-of-way.
Q Well, then how would you ever get to Parcel C?
A Well, it abuts right up against it right there.
Q So that -- so this -- all right. So it would stay like this even after the split?
A Yes. Well, I mean, this right-of-way was created at the same time as these two parcels. The right-of-way was created to accommodate these parcels.
Q Okay. Now, I want you to look at Exhibit 2 and keep them side-by-side. This is the Moulieres' site plan.
A Uh-huh.
Q Can you mark where the right-of-way is on this plan?
A Yeah, this drawing is a mess. That's -- I can see portions of it, but it's so small.
Q Please mark it where you can see it.

A Yeah, I'll mark it where I can see it here. Page 63
see it here.
I can't determine the rest of that. It's too small and too close together.
Q This is the only drawings that we have, Mr. Mayernik. This is what we were given.
A Yeah. No, I get it.
Q And that's our issue, too, is that we can't determine where the right-of-way is, either.

So do you know where the right-of-way is on Parcel B?
A Not on this drawing. I mean, it's -- there's a legal description for it and an engineer or surveyor could go out and plot it exactly.
Q Well, when you approved the site -- the Mouliere site plan -- well, let me back up.

Did you have to approve the Mouliere site plan?
A Yes.
Q Did you use this survey from '95 or did you use their recent plan?
A I used the plans that came with the construction drawings. And to be honest with you, I had several different plans, site plans, that came through my office. And I don't know if the plan I'm looking at here as Exhibit 2 is a reduced version of the plan

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that I approved or not.
Q What I can tell you with certainty is, this is what I've received from the Moulieres' counsel as the most up-to-date site plan. So I'm going to ask you one more time to be clear. Can you tell me where the right-of-way is on Parcel B, if you see it on there?
A The lines are too close together. I can't determine exactly where it is on the exhibit that you've given me.
Q Do you see where it says, "front yard setback"?
I'm looking at it upside down, but it would be this line right here.
A Right. Uh-huh.
Q Do you know where that line came from?
A Well, their engineers drew it in there.
Q What is the purpose of it?
A Well, first of all, that's not a front yard.
Q Okay.
A So on river properties, the front yard setback applies to the river side. So the property line, the Moulieres' property line, that abuts the Schusters' property to the north is the rear yard. The rear yard has a 50 -foot setback.
Q And have the Moulieres been granted a variance to
build within that setback?
A The Moulieres were granted a variance as relates to the setback requirement from the private road easement. So the private road easement itself creates front yard setbacks just the same as Geddes Road would or any other road would.

The home location that the Moulieres chose encroached not in the rear yard setback, but rather in the front yard -- in the setback that was required from the private road easement, and that's what variance they were granted was.
Q The Moulieres are prohibited from building within the right-of-way; correct? That's not allowed under the ordinance?
A Correct.
Q How were you able to determine -- if you can't tell me where the right-of-way is on Parcel B, how do you know that they're not building within the right-of-way?
A I can't tell where the easement is on the drawing that's in front of me.
Q Well, did you ever see a drawing where you were able to confirm that they weren't building within the right-of-way?
A I can't recall.

Q Then $\quad$ Page 66
A I said I can't recall if I saw the drawing. The variance was granted by the ZBA for setback.
Q I understand that. I'm not talking about the setback.
A Okay.
Q I'm talking about if they're building in the right-of-way, which we believe they are, what have you looked at to determine that they're not? Because the ordinance prohibits it.
A Let me go back to clarify. I don't believe -- and this is memory. I don't believe that there's sections of the ordinance that prohibit construction within the right-of-way.
Q Okay.
A There are setbacks from the right-of-way, and the variance that was granted was granted relating to those setbacks.
Q So you believe the ordinance allows the Moulieres to build in the right-of-way?
A I don't think it's prohibited in this particular case.
Q So is that why you didn't consider it when you approved the building permit?
A I don't know if I considered it or didn't consider

Page 67
it.
Q Does the ordinance require the Moulieres' entire parcel, the frontage, to abut to a private or public road?
A The way the ordinance is -- current ordinance is written, it says that a new parcel is created, it should abut a public or private road for the frontage of the property. The exception to that is cul-de-sac lots.
Q So does the Moulieres' parcel comply with that?
A The land division was approved in 1996. I've got no knowledge of what was considered in 1996. I know that there was several memos back and forth, which I believe you've got copies of, relating to the creation of a cul-de-sac, and I believe this division was held up for a little while relating to that, but ultimately it was approved. I can't say why it was approved. And, you know, for looking at it now, you know, 20-some years later, what factors played into the approval at that time, I can't say.
Q Okay. But when you look at this map, the one in front of you, you see Geddes Road?
A Right.
Q Is it pronounced Geddes or Geddes?
A Geddes.
Q -- correct?
So the entire frontage of the Mouliere
parcel does not abut a public or a private road. Do
you agree or disagree?
A I agree.
Q Then what -- you mentioned an exception for the
cul-de-sac. Can you help me understand that?
A So if a cul-de-sac was created. Basically a
turnaround. You understand what a cul-de-sac is?
Q Yeah.
A So a cul-de-sac lot would not be required to have
the whole entire frontage.
Q Is the Moulieres' parcel considered a cul-de-sac
lot?
A No.
Q Then how are they in compliance with the ordinance?
A As I mentioned before, I've got no idea what was
considered for approval in 1996.
Q Okay. So for your purposes, you're just relying on
what was approved in $1996 ?$
A Yes.

Q You have the ability to revisit that issue when you issue a building permit?
A I don't believe I do. I've got no reason to.
Q What's the process for obtaining a building permit from Superior Township?
A You would make application --
Q And what's --
A -- and submit your drawings, plus approvals, from outside agencies.
Q What is the most critical consideration for you? What do you need to see to issue a permit?
A I don't think anything is more critical than anything else. There's a lot of things that go into it. I mean, we review the site plan. We review the construction documents for structural of the house. There's outside agencies, Health Department, possibly the Road Commission Soil Erosion Division, that all come into play as far as well permits, septic permits, things of that nature.
Q To your knowledge and understanding, did the Moulieres follow the permitting process and procedures?
A Yes.

|  | Page 74 |  | Page 76 |
| :---: | :---: | :---: | :---: |
| 1 | n objection and instruct him not to answer. | 1 | answer to that question? |
| 2 | I'll be right back. In fact, I'm thinking maybe we | 2 | MR. MACKENZIE: This is just utter |
| 3 | should get the judge on the phone, if we can, and | 3 | nonsense. |
| 4 | ask him. | 4 | MR. LUCAS: Well, you know what? I'm going |
| 5 | MR. MACKENZIE: You'd have to leave him on | 5 | to stop it. Because if you don't even have the |
| 6 | the line for the entire deposition. What, is he | 6 | courtesy to acknowledge the fact that there is a |
| 7 | going to sit here and listen to each question? We | 7 | legitimate dispute as to what is beyond the scope of |
| 8 | can read the order. | 8 | the order -- |
| 9 | MR. LUCAS: Well, if you can read the order | 9 | MR. MACKENZIE: Fred, I'm asking him about |
| 10 | -- if you can tell me how this question relates to | 10 | how many site inspections he went to a construction |
| 11 | the construction of the driveway -- | 11 | project. The private road is part of the fricking |
| 12 | MR. MACKENZIE: I just told you. I'm | 12 | project. What do you mean? I want to know how many |
| 13 | talking about the entire site plan. | 13 | times he's inspected it. |
| 14 | MR. LUCAS: Well, except that this doesn't | 14 | MR. LUCAS: Are you talking about the |
| 15 | talk about the entire site plan. You didn't ask him | 15 | private road? If you want to ask him about the |
| 16 | about the entire site plan. You didn't ask him -- | 16 | private road part, I don't -- if you want to limit |
| 17 | MR. MACKENZIE: We've been talking about | 17 | it to that -- |
| 18 | the site plan for, like, a half hour. | 18 | BY MR. MACKENZIE: |
| 19 | MR. LUCAS: Read the last question, if you | 19 | Q Sir, how many site inspections did you conduct where |
| 20 | would, please. | 20 | you looked at the private road? |
| 21 | MR. MACKENZIE: What you guys need to do is | 21 | A I was out on the site several different times and |
| 22 | read the court rule on conduct and candor during | 22 | portions of the private road were partially |
| 23 | depositions. | 23 | constructed. I was not there doing formal |
| 24 | MR. LUCAS: I appreciate that. After | 24 | inspections of the private road. So the answer |
| 25 | 40-some years, I think l've got -- | 25 | would be zero inspections. I was out looking at |
| 1 | MR. MACKENZIE: After 40-some years, I Page 75 | 1 | other issues on the property. Page 77 |
| 2 | don't expect to see this. | 2 | Q Now, Mr. Mayernik, because of vigorous objections |
| 3 | MR. LUCAS: Well, I don't expect to see you | 3 | from your counsel, is the right-of-way part of the |
| 4 | going beyond the terms of the order, either. | 4 | private road? |
| 5 | MR. MACKENZIE: I'm not beyond the terms of | 5 | A The 66 -foot wide right-of-way is part of the private |
| 6 | the order. That's why I said let's move on and keep | 6 | road, yes. |
| 7 | it moving. You can take the transcript to the judge | 7 | MR. MACKENZIE: So, Mr. Lucas, please |
| 8 | and strike what you don't like. The problem is, you | 8 | explain to me how my questions deviated from the |
| 9 | guys don't want it in the transcript. | 9 | order when we just spent the last majority of this |
| 10 | MR. LUCAS: Read the last question. | 10 | dep going over the right-of-way. |
| 11 | (Whereupon, the following questions and | 11 | MR. LUCAS: Well, first of all, you didn't |
| 12 | answers were read by the reporter: "Q Do you know | 12 | ask him about relating -- how many site inspections |
| 13 | how many site inspections you've conducted? A How | 13 | he made to the private road. Now you did in the |
| 14 | many l've conducted? Q Yes. A Zero.") | 14 | second -- when you asked it again -- |
| 15 | MR. LUCAS: All right. Based on that -- | 15 | MR. MACKENZIE: The whole conversation has |
| 16 | MR. MACKENZIE: How is that not part of the | 16 | been about the right-of-way. |
| 17 | order? | 17 | MR. LUCAS: You didn't ask that question. |
| 18 | MR. LUCAS: Because I don't know where it | 18 | MR. MACKENZIE: Okay. |
| 19 | says in here how many site inspections you can -- | 19 | MR. LUCAS: It may be, but the scope of |
| 20 | that you can ask him about the number of site | 20 | your question was beyond that. |
| 21 | inspections he conducted on the property. | 21 | BY MR. MACKENZIE: |
| 22 | MR. MACKENZIE: This is ridiculous. Place | 22 | Q Have you met with any of the design engineers for |
| 23 | your objection. | 23 | the Mouliere project? |
| 24 | BY MR. MACKENZIE: | 24 | MR. BEHRENDT: Related to the road? |
| 25 | Q Sir, can you -- how many -- did you give me an | 25 | MR. MACKENZIE: The entire project. |


|  | Page 78 |  | Page 80 |
| :---: | :---: | :---: | :---: |
| 1 | THE DEPONENT: No. |  | scrutiny is required by the ordinance. |
| 2 | BY MR. MACKENZIE: | 2 | Q But that scrutiny was not given to the private road |
|  | Q Have you ever met Ms. Gibb-Randall? | 3 | in this case; correct? |
| 4 | A I don't believe so. | 4 | A Correct. Because the private road ordinance did not |
| 5 | Q Have you ever talked to Dan Schneider before? | 5 | apply to this property. |
| 6 | A Yes. | 6 | Q In your opinion? |
| 7 | Q In relation to the Moulieres' project? | 7 | A In my opinion, yes. |
| 8 | A Yes. | 8 | Q How were the Moulieres able to begin construction in |
| 9 | Q In relation to the private road? | 9 | the right-of-way, in the easement, without a permit? |
| 10 | A Yes. | 10 | A What kind of construction? |
| 11 | Q What did you and Mr. Schneider discuss about the | 11 | Q The excavation that they've done out there within |
| 12 | private road? | 12 | the last year. |
| 13 | A I believe our discussions initially was related to | 13 | A Okay. All right. So there's not a permit that's |
| 14 | any requirements from the township relating to the | 14 | required by the township for excavation or for earth |
| 15 | private road. And I indicated that he would need a | 15 | moving. Those permits are obtained through the Soil |
| 16 | permit from the Road Commission for the access to | 16 | Erosion Division in Washtenaw County, which I |
| 17 | Geddes Road, soil erosion permits from the county. | 17 | believe your client objected to their issuance of |
| 18 | And that was about the size of it. I've had several | 18 | the permit, appealed, and I think his appeal was not |
| 19 | conversations with him relating to construction, | 19 | upheld. |
| 20 | drawings, when can one get a permit, all those types | 20 | Q So the building permit that was recently issued for |
| 21 | of things. | 21 | the Moulieres' project, does that apply to the |
| 22 | Q Have you ever spoken with the Moulieres before? | 22 | private road at all or it only applies to the home? |
| 23 | A No. | 23 | A It applies to the home and any other portions of the |
| 24 | Q Have you ever spoken with anybody from Atwell in | 24 | property that would be subject to permit. |
| 25 | regards to this project? | 25 | Q Can you identify those portions for me sol am |
|  | A Page 79 |  | Page 81 |
|  | A I can't recall. I don't think so. | 1 | clear? |
| 2 | $Q$ Is there a difference between a private road and a | 2 | A Retaining walls, some retaining walls, probably most |
| 3 | driveway? | 3 | of the retaining walls in this case would be subject |
| 4 | A I would say yes. | 4 | to a building permit as well. |
| 5 | Q What's the difference? | 5 | Q What about the boardwalk, is that subject to the |
| 6 | A By our ordinance, a private road would -- no, that's | 6 | building permit? |
| 7 | not correct, either. | 7 | A Yes. |
| 8 | A private road would be accessing parcels | 8 | MR. MACKENZIE: Does that satisfy the |
| 9 | that are not directly accessible from a public road. | 9 | order, Mr. Lucas? |
| 10 | A driveway would simply be an access to a single | 10 | MR. LUCAS: Yeah. As long -- |
| 11 | home or business. | 11 | MR. MACKENZIE: So I can ask about the |
| 12 | Q Is there a difference in the design or | 12 | building permit? |
| 13 | specifications between a driveway and a private | 13 | MR. LUCAS: As long as it relates to the |
| 14 | road? | 14 | private road, I have no problem. |
| 15 | A The township ordinances -- none of the township | 15 | BY MR. MACKENZIE: |
| 16 | ordinances, including the private road ordinance, | 16 | Q So under the building permit, we have retaining |
| 17 | give specifications for how wide or what materials a | 17 | walls, the boardwalk. What else? |
| 18 | driveway or a private road shall be constructed of. | 18 | A The building permit, the most recent building permit |
| 19 | Q So there is no governance to a driveway; correct? | 19 | that I issued, was for the home and the retaining |
| 20 | A Correct. | 20 | walls associated with it. There was a separate |
| 21 | Q Why is there governance for a private road but not a | 21 | permit that was issued for the boardwalk. |
| 22 | driveway, if you know? | 22 | Q Okay. What is the triggering event for the |
| 23 | A A private road would be presumably accessing | 23 | retaining walls to require a permit? |
| 24 | multiple lots or homes and to perform the same | 24 | A When they start constructing the retaining walls. |
| 25 | function as a roadway; therefore, additional | 25 | Q I'm going to mark as Exhibit 3 some photos from the |


|  | construction site, the private road specifically. Page 82 |
| :---: | :---: |
| 2 | Are those retaining walls that you see there, those |
| 3 | walls? |
| 4 | (A document was marked Exhibit No. 3 by the |
| 5 | reporter.) |
| 6 | A No. |
| 7 | Q Why not? |
| 8 | A Because there's nothing retaining anything. That's |
| 9 | an excavation. It's not a retaining wall. |
| 10 | Q Okay. So what -- I want to go back to my original |
| 11 | question. When would these walls -- I'm calling |
| 12 | them walls -- in this picture become a retaining |
| 13 | wall that required a permit? |
| 14 | A Yeah, I understand that you're calling them walls. |
| 15 | Your client calls them walls. I do not call these |
| 16 | walls. This is an excavation that's created a drop |
| 17 | off in grade there. There's not a wall. It's not a |
| 18 | retaining wall. They haven't started on any |
| 19 | footings or anything else. So I just disagree with |
| 20 | the whole concept that excavating and removing dirt |
| 21 | then creates a retaining wall. |
| 22 | Q If a private road permit was required in this case, |
| 23 | which it was not, in your opinion, but if it was, |
| 24 | how would that have -- how would that have affected |
| 25 | the construction process differently? |

construction site, the private road specifically.
Are those retaining walls that you see there, those walls?
(A document was marked Exhibit No. 3 by the reporter.)
A No.
Q Why not?
A Because there's nothing retaining anything. That's an excavation. It's not a retaining wall.
Q Okay. So what -- I want to go back to my original question. When would these walls -- I'm calling them walls -- in this picture become a retaining wall that required a permit?
A Yeah, I understand that you're calling them walls. Your client calls them walis. I do not call these walls. This is an excavation that's created a drop retaining wall. They haven't started on any footings or anything else. So I just disagree with the whole concept that excavating and removing dirt then creates a retaining wall.
Q If a private road permit was required in this case, which it was not, in your opinion, but if it was, the construction process differently?

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A If a private road permit was required, then drawings indicating all the construction that was going to go on related to the easement would have come to my office with an application. It would then be my choice at that time if I chose to additionally, in addition to myself, have those drawings reviewed by the township engineers or the township fire chief.
Q How is that different than what's been done so far?
A I don't understand your question.
Q So you reviewed the site plan that has the drawings for the private road; correct?
A Uh-huh.
Q And the fire chief has; right?
A Uh-huh.
Q So what's the difference if there was a permit or not?
A Well, the difference is, is whether a permit was required or not. And as we said before, in my opinion a permit is not required.
Q But would the process have been different than what's occurred thus far?
A If this was a private road, then the construction would not have commenced prior to the obtaining a private road permit.
Q Would you have approved a permit based on the plans

1
that you've seen?
A Approved what kind of permit?
Q A private road permit.
A Based on the plans that I saw and the site conditions, I would have required my township engineers to review the drawings.
Q And when you look through these photos in Exhibit 3, do you see the dirt falling and some of the erosion that's occurred here when you flip through them?
A Yeah, these are old pictures.
Q Would a permit have prevented any of this?
A So a permit was issued and it was issued by the Washtenaw County Soil Erosion Division, and complaints were filed with them, and the conditions that you're seeing here were inspected by them because they have jurisdiction. And the contractor was required to remedy the situation that you see in these drawings.

So there's been soil erosion measures put in place that the county has approved at this portion of excavation that you're showing me. Ultimately once the retaining walls are built, then naturally those things would go away.
Q Do you know if the retaining walls impede the Schuster parcel at all?

A "Impede the Schuster parcel." What do you mean by that?
Q Do they encroach his property line?
A Not to my knowledge, no.
Q Where does the easement allow retaining walls to be built, if you know?
A The -- could you repeat the question, please?
Q Have you seen the easement itself?
A Uh-huh.
MR. LUCAS: Is that a yes?
THE DEPONENT: Yes. Sorry.
BY MR. MACKENZIE:
Q In your opinion, how does the easement allow for retaining walls to be built?
A I imagine that's probably the basis of your lawsuit here as far as -- is my understanding, is trying to figure out who's got legal rights to what relating to this. In my opinion, and I believe my opinion was also upheld by the Zoning Board of Appeals in their interpretations, that retaining walls or other elements necessary for the construction of a private road are permitted within the easement.
Q So as part of your approval process, do you consider language in deeds and easements or you just look at the plan?

A llook at the plans. Ilook at our ordinances. Deed restrictions, homeowners association rules --
Q Do you --
A -- all those -- just one second.
Q Go ahead.
A All those other types of things, I do not consider that. That's beyond my jurisdiction to withhold permits based on other people's private agreements.
Q So you don't look at the scope or intent of an easement when you're making your decisions as far as issuing permits and things like that. Is that true?
A I mean, I look at that the easement is created, in this case, for access to these parcels and it complies with the ordinance as far as 66 -foot right-of-way width. And, you know, to me, that's the intent of that easement is to create access to these parcels.
Q Are you aware that Ms. Gibb-Randall testified at a deposition that the house needed to be moved because with the current plan in place, or at least the plan as of the date of her deposition, the walls were impeding -- the walls would impede Schusters' property line? Did you know that?
A No, I didn't know that.
Q Have you received an updated site plan that showed
the house being moved so that the walls did not impede the Schuster property?

MR. BEHRENDT: I'm going to object. Walls of the house are not the driveway.

MR. MACKENZIE: That's my client's property.

MR. BEHRENDT: But there's a court order.
MR. MACKENZIE: Okay. Your objection is
noted.
BY MR. MACKENZIE:
Q Have you seen a plan that shows the house being moved so that the retaining walls do not impede the property? MR. MACKENZIE: For your information, Adam, the walls are in the right-of-way, which is a continuation of the 66 -foot wide easement.
BY MR. MACKENZIE:
Q So can you answer the question?
A l've seen several different site plans. I don't know if -- after I approved and issued the building permit, I don't know if additional drawings came in after that or not.
Q Okay. So you don't know if the walls are impeding the property or not, the Schuster property?
A To my knowledge, the walls of the house are not

Page 87
impeding the Schuster property.
Q But that's what I'm getting at is, that Ms.
Gibb-Randall told me the house has to be moved so that the walls do not impede the Schuster property.
I think you already answered. You have not seen a plan that shows the house being moved since her deposition?
A No, I haven't seen any other plans other than the ones that I stamped up and approved and issued the permit for.
Q If the walls are going to impede the Schuster property, does that impact your approval of the building permit?
A When we're saying "walls" here, you're talking about retaining walls --
Q Yes.
A -- or house walls?
Q Retaining walls.
A Okay. So, yes, the retaining walls should not impede or go outside of the right-of-way.
Q So if I send you her transcript where she says this, would you suspend the permit until a plan is submitted showing you that the house has been moved and the walls will not impede the property?

MR. LUCAS: I would note an objection.

First of all, he has no authority to suspend anything. He doesn't work for the township anymore.

MR. MACKENZIE: Please, no speaking objections.

MR. LUCAS: That's not --
MR. MACKENZIE: You can object to form.
You object to form. That's all I need.
MR. LUCAS: It's not as --
BY MR. MACKENZIE:
Q Your counsel objects to form. That's all he's allowed to do under the court rule. So --
A So, no, I would not suspend any permits, because those decisions, they'll all be made by the new building official and zoning official at the township.
Q Okay. So my client would need to send that information to the new building official. But should the permit be suspended under those facts?
A I guess, if I was in a position where I was making that decision, if I was still the building official and I was able to look at it and make a judgment on whether how much encroachment that there was, if there is any, and determine what would happen to mitigate that, what would need to happen to mitigate that, then I would likely -- as long as the

## EXHIBIT H

# 回LUCAS LAW PC 

July 6, 2021

Mr. W. Daniel Troyka

Attorney at Law
Conlin, McKenney \& Philbrick, PC
350 South Main Street
Ann Arbor, MI 48104

## Re: Schuster

Dear Mr. Troyka:
The following is the Township's response to your letter of June 28, 2021 regarding your request for interpretation of the work performed by the Schusters' neighbors, the Moulieres' on their property located at 5728 Geddes in Superior Charter Township.

## REQUEST FOR INTERPRETATION \# 1: The 10' wall is a retaining wall / fence requiring a permit, variances, and owner approval.

Response: Section 6.01(B)(6) indicates that retaining walls shall be considered fences "...if the wall extends more than 30 inches above the adjacent ground level." Section 6.01(C) clarifies how fence height is to be measured. "....except that the height of a retaining wall, or fence on top of a retaining wall, shall be measured from the ground level at the higher side of the wall...". In my opinion, the intent of this section is to impose limitations that would prevent someone (for example) from building a 25 -foot high wall that retained only 5 foot of soil resulting in a wall that would be 20 foot higher that the adjoining high side grade. The Zoning Ordinance ties the height of the wall (at the high side) to the height limitations of fences. To interpret the ordinance as suggested by Mr. Schuster's attorneys would have the result in prohibiting walls retaining more than 6 foot in rear yards and also, 3 foot in front yards as that is the fence height limitation in most zoning districts. If the Schusters disagree with the Township's interpretation, they can appeal the decision to the ZBA.

In response to the assertion that permits and variances are required because grading has begun for the construction of the retaining walls. The Township agrees that significant grading has occurred on the property, however we disagree that the work is the commencement of construction of the retaining wall. The contractor has obtained a soil erosion permit from the County to construct the driveway/private road on the property. Mr. Schuster appealed the County decision to issue the permit and his appeal was denied.

The grading work for the drive from Geddes Road included a turnaround area at the south end of Mr. Schuster's property which resulted in the large grade differential. The Township does not have any ordinance regulating or requiring permits for the construction of driveways or private roads that are exempt from the Private Road Ordinance. As such, the Township only reviewed the site plan to verify the contractor was not encroaching into the wetland setback. There has been no excavation commenced for retaining wall foundations. In the Township's opinion, the construction of the driveway is not the commencement of construction of the retaining wall. Having said that, the Township agrees that the Moulieres are running a risk by not having obtained a permit for construction before starting the excavation work and creating the large drop off. If Mr . Schuster is aggrieved by the decision that a building permit is not required at this time, they can appeal to the Building Board of Appeal. The Township uses the County Board of Appeals.

## REQUEST FOR INTERPRETATION \# 2: The access road is a Private Road requiring a permit.

Response: Mr. Troyka asserts that a private road permit complying with Ordinance 163 is required for the construction of the drive/private road. Mr. Troyka suggests that the 66 foot wide easement may have been a requirement of some previous ordinance. There were no previous private road ordinances prior to the enactment of Ordinance \#163. The current and previous zoning ordinances requires that all new lots created need to front on a public or private road with a right of way width of 66 foot. Providing a 66 foot wide easement for the purposes of land division has historically been accepted as providing a private road prior to the enactment of Ordinance \#163.

Section 163.03(B) discusses exemptions from the requirements of the Private Road Ordinance. In part, it states: "Existing lots, rights-of-way, and drives in existence prior to the enactment of this ordinance shall be exempt from the provisions of this ordinance......or unless additional lots are connected to the private road." The private road easement was created with a land division in 1996 and the Private Road Ordinance was adopted in 2004 and therefore, the existing private road easement is exempt from Ordinance 163. Mr. Troyka argues that since the original division in 1996 created two riverfront lots and that those two lots were combined into one single lot in 2018 a "new lot" has been created that then triggers the requirement for the Private Road Ordinance to be enforced. The Township disagrees with this position as it is the clear intent for existing private road easements to be exempt unless additional lots are added. Adding additional lots would create more traffic on the road and it would make sense to apply the ordinance at that time. In this case, the combination of the two parcels into one single parcel will reduce the amount of traffic and use of the road. If the Schusters disagree with the Township's interpretation, they can appeal the decision to the Township Board as indicated in Section 163.08.

## REQUEST FOR INTERPRETATION \# 3: Site plan review is required.

Response: Section 10.02(A)(3)(a) indicates the following is excepted from Planning Commission site plan review: "One (1) single-family detached dwelling and customary accessory structures on an existing lot of record." The Mouliere parcel is an existing residential lot of record. The Schuster parcel is an existing residential lot of record. As such, structures such as retaining walls can be constructed on either lot and those structures would be considered accessory to each individual lot and would be exempt from Planning Commission site plan review. If the Schusters disagree with the Township's interpretation, they can appeal the decision to the ZBA.

As a side note, in conversation with the Moulieres' builder, he indicated they expect to submit complete drawings and permit applications in a couple of weeks. Without drawings, I do not know the exact location or construction methods proposed for the proposed home, retaining walls etc. At this point, the Township's review (other than the boardwalk construction) has been limited to determining that the limits of site work will not encroach into the wetland setback. While the Township would have preferred that the contractor have approached this project differently and can understand the Schuster's concern regarding the excavation on site which is substantial, the Township does not believe that its ordinances have been violated at this time. This could of course change as the project progresses.

Sincerely,


Frederick Lucas
Attorney at Law
cc: Rick Mayernik

## EXHIBIT I

Conlin, McKenney \& Philbrick, P.C.
350 SOUTH MAIN STREET, SUITE 400
AnN Arbor, Michigan
48104-2131

July 27, 2022
MATTHEW C. RETTIG
MICHAEL C. CROWLEY ROBERT M. O'REILLY HANNAH R. MULLER ARMINIA DUENAS CHRISTOPHER J. WALLAKER CURTISS D. FLEXTER

## By Email Only

Frederick Lucas, Esq.
Lucas Law PC
7577 US Highway 12, Suite A
Onsted, MI 49265

Re: Aggrieved party status for ZBA \#22-04 ("ZBA Appeal") Matthew Schuster and Alyssa L. Cairo ("Schusters")

Dear Mr. Lucas:
I am writing regarding the above-referenced ZBA Appeal scheduled for hearing at 7 pm on Wednesday, August 3, 2022. This letter establishes that the Schusters are aggrieved parties for purposes of the appeal. Photographs depicting the work and substantial impairment of the Schuster parcel are attached as Exhibit 1.

A portion of the approved construction encroaches onto the Schuster parcel outside of any easement and, if built, would constitute a permanent trespass approved by the Township. Much of the approved construction is located on the Schuster parcel and would permanently impair its utility. The approved work presents safety risks to the Schuster parcel (including fall hazards and inadequate emergency vehicle access) and imposes monetary costs including loss of market value, cost of safety measures made necessary by defective and inadequate construction, and increased costs of utilizing their own property as fee simple owners. These facts plainly establish "aggrieved party" standing for the Schusters.

## Aggrieved Party Standing

The Michigan Supreme Court has just clarified the test for determining whether an appellant is a "person aggrieved" for purposes of a ZBA appeal pursuant to MCL 125.3604(1). As stated by the Court in Saugatuck Dunes Coastal Alliance v Saugatuck Township et al., Case No. 160358-9 Slip. Op. at 2-3 (Mich. Sup. Ct. July 22, 2022):

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to be a "party aggrieved" under MCL 125.3605 and MCL 125.3606, the appellant must meet three criteria. First, the appellant must have participated in the challenged proceedings by taking a position on the contested proposal or decision. Second, the appellant must claim some protected interest or protected personal, pecuniary, or property right that will be or is likely to be affected by the challenged decision. Third, the appellant must provide some evidence of special damages arising from the challenged decision in the form of an actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community. We agree with the parties' arguments that "aggrieved" has the same meaning in MCL 125.3604(1) and MCL 125.3605.

## Criterion No. 1-Participation

The Schusters have "participated in the challenged proceedings" by filing this appeal of the Certificate of Zoning Compliance and resulting Building Permit issued on April 18, 2022. They have filed other appeals and have generally opposed the construction on their property and the adjacent property on grounds, among other things, that the Township is not enforcing its Ordinances. They have objected to construction of driveway access across their property without obtaining a private road permit to establish safe access for residents, emergency vehicle access, and general public welfare.

The Schusters have appealed the refusal to require a private road permit to the Board of Trustees, they have appealed issuance of the Building Permit to the Construction Board of Appeals, and they have appealed permitted work to the Wetland Board of Appeals. These appeals are in the possession of the Township and are hereby incorporated by reference into the record for this ZBA Appeal.

The Schusters are also actively defending a lawsuit filed by the neighbors in the Circuit Court and pursuing counterclaims relating to, among other things, construction of the access road, validity and scope of alleged easements, the burden placed on the Schuster parcel by the construction, unauthorized removal of earth from their property, improper relocation and faulty reconstruction of their pedestrian easement to the Huron Rive, and other issues. These appeals and litigation meet the "participation" element for standing under Saugatuck Dunes.

## Criterion No. 2 - Protected Interest

The Schusters own their property in fee simple. ""A person having all possible rights incident to ownership of a parcel of property has the entire bundle of sticks or a fee simple title to the property." Eastbrook Homes, Inc. v. Treasury Dept., 296 Mich. App. 336, 348; 820 N.W.2d 242 (2012). The ZBA Appeal concerns issuance of a Certificate of Zoning Compliance to authorize

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a new use and construct a new principal structure on the neighboring parcel as well as approving construction on the Schuster parcel.

The Schusters' rights as fee simple owner of their property are compromised by the approved 12/15/21 plans (the "Approved Plans") including improvements that encroach onto the Schuster parcel and will constitute a permanent trespass, thereby depriving them of use of the occupied property. The construction alters the topography of the Schuster parcel and creates a significant vertical discontinuity preventing use of their property and posing a safety hazard. These impacts substantially impair the Schusters' protected fee simple property interests within the meaning of Saugatuck Dunes.

The work approved in the 12/15/21 Approved Plans includes retaining walls that encroach onto the Schuster parcel not within any alleged easement. As stated by the neighbors' design professional in a deposition on May 25, 2022, the retaining walls approved by the Township encroach eight inches onto the Schuster parcel. Exhibit 2 (Transcript of Deposition of Shannon Gibb-Randall). The neighbors claim that they will "scoot the house in the portion where it would encroach." Id. The Schusters requested that new plans be submitted eliminating the encroachment. The Township refused to require new plans and instead approves the encroachment contained in the Approved Plans.

The Township's engineering consultant predicted this problem in their report dated April 11, 2022. Exhibit 3 (OHM Review). Item No. 8 of that report states: "We question if it is possible for the Applicant's Contractor to construct retaining walls without encroaching the property to the north." Rather than require the plans to eliminate encroachment, the Township approved the encroachment on April 18, 2022.

As can be seen in the Approved Plans and photos attached in Exhibit 1, the approved work includes stacked retaining walls in excess of ten feet in height in an alleged easement on the Schuster property. These walls create discontinuity in the Schuster parcel, prevent vehicular access to the rear of the parcel, and create a fall hazard rendering much of the yard unusable. The plans adopt lax loading standards for the retaining walls that will prevent the Schusters from safely using their property, including property outside of any alleged easement, in proximity to the walls, as described in the report of Clif Seiber, P.E., attached as Exhibit 4.

As detailed in the ZBA Appeal, the Approved Plans fail to designate any approved "public or private street" which is a precondition to occupancy. Sec. 3.207.A of the Zoning Ordinance states:

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## A. Access to Public or Private Streets

In any district, every lot created and every principal use or structure which established after the effective date of adoption or amendment of this Ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of lot. Such street shall have a right-of-way at least 66 feet wide unless a lesser width has been established and recorded prior to the effective date of this Ordinance.

The Building Official noted that the proposed construction appears to be taking place inside the right-of-way, to the extent right-of-way can be determined, in his permit denial issued on November 23, 2021. Exhibit 5. Although this issue was never corrected, the Township approved the plans on April 18, 2022 without any designated "public or private street." At his deposition on July 19, 2022, the Building Official (former) admitted that he could not locate right-of-way on the Approved Plans. Exhibit 6. The neighbors' design professional admits that they are not actually building a private road as required under the Ordinance and instead are building a "driveway." Exhibit 1 .

The failure to require compliance with Sec. 3.207.A presents a safety issue. There is no designated "public or private street" for emergency vehicle access as required by Sec. 3.207.B, and apparently no documented review of the safety of the design. One unattended fire has already occurred on the neighbors' property resulting in visible flame on the neighbors' property and embers and ash on the Schuster parcel. Exhibit 7. The fire department first responder could not access the neighbors' parcel and had to call in a second smaller vehicle (shown in the last photo of Exhibit 1), resulting in delay and heightened risk. With no approved public road, private street, or right-of-way for emergency vehicle access, the safety of the Schuster parcel will be compromised.

## Criterion No. 3 - Special Damages

The Approved Plans will result in special damages to the Schusters within the meaning of Saugatuck Dunes: "actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community."

The Approved Plans literally approve a permanent trespass onto the Schuster parcel in the form of encroaching retaining walls. The inadequate loading specification of the walls will prevent the Schusters from using their own property, including areas outside any alleged easement, close to the walls. The Plans also approve stacked retaining walls in excess of ten feet within an alleged easement on the Schuster parcel, inadequate retaining walls that threaten lateral support along the property boundary, and failure to designate any approved road or right-of-way for emergency vehicle access.

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July 27, 2022
Page 5

No other property will suffer these harms which are unique to, and concentrated on, the Schuster parcel. The Schusters will suffer monetary damages substantially in excess of $\$ 100,000$, in addition to physical damage to and loss of use of their property, in the form of reduced market value of their property, costs of safety measures to address risks created by the unsafe construction, and increased costs of exercising their rights as property owners including, for example, the now much higher cost of providing vehicular access to the rear of their property or connecting their existing driveway to the new access road.

Therefore, the Schusters meet the test for "aggrieved party" standing under Saugatuck Dunes and this appeal must be heard on the merits. Thank you for your attention.

Very truly yours,

W. Daniel Troyka

Direct Dial: (734) 997-2153
Email: troyka@cmplaw.com

WDT/dmw
H: \BJM\Schuster\LETTERS\Lucas 7.27.22.docx

## EXHIBIT 1



## .

1






## EXHIBIT 2

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                    STATE OF MICHIGAN
    IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
JEAN-MARIE L. MOULIERE
and INGRID D. MOULIERE,
    Plaintiffs/Counter-Defendants,
                                    Case No. 20-001274-CH
vs
                            Hon. Archie C. Brown
MATTHEW A. SCHUSTER
and ALYSSA L. CAIRO,
    Defendants/Counter-Plaintiffs.
DEPOSITION OF SHANNAN GIBB-RANDALL, taken on Wednesday, May 25, 2022, at 201 South Division Street, Suite 400, Ann Arbor, Michigan, at 12:00 p.m., pursuant to Notice.
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Reported by DEBORAH LINEHAN, CER 7251
the septic tanks.
Q Okay.
A There's some -- it's all part of the survey. It's kind of the gobbly gook underneath.

Q Okay. So going back to the point that -- I want you to assume that I'm correct that that's a private road that's exempt from the ordinance.

A Okay.
Q What are you going to do to change your design plan?
A To be able to accommodate him if he wants to use it?
Q No, no, no. To be able to accommodate the other issues that you've discussed about having to be wider. It affects waterflow.

A We could -- we could make it wider if we need to.
Q And what about the water issue?
A The water issue -- that's what I'd have to look up to see what the township regulations are. If it's exempt from it, then $I$ would imagine that it doesn't have to follow the stormwater regulations of the county.

Q Couldn't that become a health and safety issue?
A If -- if it doesn't have water control?
Q Yes.
A No. All the water has been accounted for so that does not go to his septic field.

Q Well, then what's the point of even having to change
the design to accommodate waterflow between a driveway and a private road if it doesn't have any effect?

A Well, again, I wasn't aware of the facts --
Q That's not my question. I'm asking what's the point of it? Why do they require a different waterflow for a private road compared to a driveway?

A My understanding -- and I don't design private roads. I design driveways, okay. Usually that's an engineer that would design a driveway. My understanding is that for a private road you need a larger regulatory agency reviewing it, but I haven't designed -- I haven't designed private roads so much so --

Q Can we just agree that you didn't design that to be a private road, correct?

A I designed this to be a driveway.
Q Okay. Did any engineer -- did you consult any engineers about this?

A About this -- the layout of this road?
Q Yes.
A No.
Q Okay.
MR. BEHRENDT: You said driveway, right?
THE WITNESS: I'm sorry, driveway. Like of this driveway, no.

BY MR. MACKENZIE:

Q If that roadway or driveway -- whatever we're gonna call it -- has to be made wider won't that push the retaining walls out farther?

A We would push them in the direction that is not towards the Schuster property.

Q Do you know, as you sit here today, whether the retaining walls do and will encroach this --

A So this requires a little bit of explanation because we put the layout on here, then the materials were picked after I did this. The materials that were picked were thicker than what I anticipated when I drew this on. Once I read the report, I said, crap, it's encroaching. I have since talked with the builder, and we can scoot the house in the portion where it would encroach -- we can move that easily. It's an 8 inch difference.

Q So you're gonna move the house back to not encroach --
A We're going to --
Q -- let me finish -- to not encroach the Schuster property; is that accurate?

A Correct.
Q Is there any other areas of concern that are encroaching?

A No, not that I'm aware of.
Q Have you ever designed a private road before?
A A private road?

Q Yes.
A No.
Q Never in your career?
A Nope.
Q Okay. Have you ever designed a project with retaining walls?

A Lots of them.
Q Have you ever had an issue where retaining walls have failed?

A No.
Q What's the purpose of a retaining wall?
A To hold back the earth that would otherwise be -- how do I describe this. When you're cutting into topography and you need to maintain the topography on the high side, you need a wall to be able to hold it back.

Q So does the retaining walls that you've designed provide a lateral support for the Schuster property?

A They provide -- I mean, lateral support is specific. Yes, they -- they provide support of the landforms that are here to be able to -- for this Schuster property, yes.

Q So retaining walls are supporting the Schuster property?

A Yes.

## EXHIBIT 3

Advancing Communities:

April 11, 2022

Mr. Richard Mayernik Chief Building Official Superior Charter Township 3040 N. Prospect Rd<br>Ypsilanti, MI 48198

## RE: 5728 Geddes Road site Civil Plan Review No. 2

## Dear Mr. Mayernik:

At the request of Superior Township, we have provided a second review of the revised plot plan/grading plan related documents that were provided to us on March 22, 2022. Additionally, we have provided review related to an initial submittal of structural engineering calculations that were provided to us for landscape retaining walls on the subject site. Our review is focused on various aspects of the site work to construct a new single-family house at 5728 Geddes Road, which include site grading, drainage, and landscape retaining wall. Our comments are based on our knowledge of typical civil engineering practice and industry criteria, and are outlined below:

## General Comments \& Clarifications

1. We assume that soil erosion control aspects of the site work are under the jurisdiction of Washtenaw County Water Resources Commissioner's (WCWRC) Office, Soil Erosion Division, therefore our comments related to soil erosion are recommendations based on engineering principles to minimize erosion.
2. As we understand, Township Engineering Standards only apply to formal site plan submittals, and the Township Private Road Ordinance does not apply to this scenario. Therefore, our technical review comments are based on standard engineering practice and the technical expertise of our staff, not on published local or County engineering standards. Our comments should be regarded as a professional opinion in this regard, and consistent with the existing constraints of the single-family home site.
3. Since the initial submittal of retaining wall material sheets provided to our office on February 23,2022 , for Redi-wall material and related typical details and data sheets, the Applicant's structural engineer has now provided structural calculations for the landscape retaining wall design prepared by a licensed professional engineer (PE) in the State of Michigan. We provide further comment on this in Item \#14 below.

## Sheet G-200 Existing Site Plan (Page 6)

4. There is a label for a 30 ' wide easement running north/south through the property. Is this an access easement for the parcel to the north? 1s this an existing easement that needs to be shown on the plans? Are there restrictions on the use of this easement? The Applicant's landscape architect that prepared the grading and drainage plan indicated to us that the Applicant's Surveyor, Atwell Inc. may be able to provide clarification on this comment.
5. There is a label for a $15^{\prime}$ wide easement running north to southwest next to the proposed drive. The Applicant's Engineer should clarify if this easement is existing or proposed and label on the plans accordingly and provide background on restrictions that may apply to the use of the easement. The Applicant's landscape architect that prepared the grading and drainage plan indicated that the Applicant's Surveyor, Atwell Inc. may be able to provide clarification on this comment.

## Sheet L-2 Grading Plan (Page 9)

6. Items 4 and 5 listed above under Sheet G-200 may also apply to this sheet for future clarification of easements shown.
7. The Applicant's Engineer should provide check dams along proposed and existing ditches (outside wetland and wetland setback areas) to minimize stormwater runoff velocities and reduce long term erosion impact. Through discussion with the landscape architect for the site, optimal locations for these additional check dams were discussed and would be placed on the resubmittal.
8. We question if it is possible for the Applicant's Contractor to construct retaining walls without encroaching the property to the north. We request the Applicant's Contractor provide a narrative regarding construction of the retaining wall and how they intend to maintain construction impact on this property only during construction. It may also be beneficial for the Applicant to have their geotechnical engineering and structural engineering consultants for the project provide input on the best practices to construct the tiered retaining wall without encroaching the property line to the north without a temporary grading easement.
9. The Applicant's landscape architect has indicated they would revise the label for "guard rail" to note "safety fence" where it is provided along the top of the tiered wall for pedestrian safety purposes. We also request a typical detail for the "safety fence" be placed on the plans for the contractor.
10. We recommend placing a drainage inlet on the south gutter line of the driveway to the northwest of the entrance of the house to help control drainage run-off in this vicinity. We have clarified with the Applicant's landscape architect that this inlet should be along the curb of the driveway, near the end of the radius between the 814 and 815 contours. The landscape architect will then determine if the recently added inlet in the greenbelt area to the south of the driveway is still necessary or if grading can be modified in that area.
11. Depending on the depth of permanent water in the pool area, it may be optimal to submerge the proposed inlet pipe to further dissipate energy at the pipe outlet into this area while reducing downstream velocity and erosion concerns. We ask the Applicant to provide a civil engineers opinion on this recommendation from their design team prior to resubmittal of the plans.
12. The Applicant's landscape architect has clanified in a follow up email to us that the design storm for the orifices at the downstream face of the pool area is a 2 year / 24 -hour storm event based on reference to WCWRC rules. It's our opinion that it is reasonable to maintain the existing orifices at the downstream face of the pool area. It should be noted that this single-family house site is not required to be designed to meet WCWRC or other jurisdictional stormwater quantity control, so this level of stormwater quantity control provided on the site would be beneficial and is encouraged.
13. We recommend that silt fence or other etosion control methods be implemented around all excavation limits and to note this requirement on the plans. Ultimately methodology and implementation will be per jurisdiction of WCWRC SESC division.

## Structural Calculations for I andscape Retaining Walls

14. The Applicant's structural engineer provided detailed structural calculations for the landscape retaining wall including a global stability analysis for the stacked wall system. Per the Applicant's Structural Engineer, the portion of the exposed block wall to the east of the driveway is not intended to act as a vehicle barrier, only has a pedestrian barrier. Also, a 50 PSF (pound per square foot) load surcharge was applied to the walls in the calculations at the top of the wall for general maintenance and pedestrian loads. We take no exception to the structural calculations provided for the landscape retaining wall.

If you have any questions regarding our review comments outlined above, please do not hesitate to contact me at $734-$ 466-4439. If requested by the Township, we can review an updated version of the relevant plan sheets upon resubmittal by Applicant.

Sincerely,
OHM Advisors


George Tsakoff, PE
Principal
cc: file

## EXHIBIT 4

# SEIBER ENGINEERING, PLLC <br> CONSULTING ENGINEER 

CLIF SEIBER, P.E.

June 7, 2022
Mr. Matthew A. Schuster
5766 Geddes Road
Ann Arbor, MI 48105-9331

## Re: Mouliere v Schuster

Dear Mr. Schuster:
As you recently requested, I have further reviewed the architectural drawings for the Mouliere Residence submitted to Superior Township on January 19, 2022, and approved by the Superior Township Building Department on April 18, 2022. This plan set included a 5 -sheet retaining wall design by Redi-Rock dated 3-21-2022. I have also received a revised sheet L-2 by the Insight Design Studio, Inc. (IDS) entitled Grading Plan, bearing a revision date of 03-16-2022, and a Plot Plan designed by Atwell containing a most recent revision date of February 24, 2022. In addition, my review included a letter issued by OHM, the consulting engineers for Superior Township, dated April 11, 2022, and a letter from Kevin Gingras, P.S. President of Arbor Land Consultants dated May 26, 2022.

Upon completion of my review, I offer the following comments for your consideration:

## Section 3.207 of the Superior Township Zoning Ordinance

Just for your reference, Section 3.207 states:
"No dwelling shall be built on any lot that does not abut and have direct frontage on an approved road."

Section 3.207 A. states:
"In any district, every lot created and every principal use or structure which is established after the effective date of adoption or amendment of this Ordinance shall be on a lot or parcel which abuts a public or private street by the entire width of the lot."

Section 3.207 B. states:
"Every building and structure located or relocated after the effective date of adoption or amendment of this Ordinance shall be so located on lots as to provide safe and convenient access for emergency purposes and fire protection vehicles, and for required off-street parking and loading areas."

## Is any "right-of-way", "approved road", or "public or private street" identified on the plans?

Upon examination of the plan set, I could find no reference to "right-of-way", "approved road", or "public or private street".

Accordingly, I cannot confirm that the house meets the parcel width requirement, setback requirements from the right-of-way, or complies with the zero foot setback variance from the road right-of-way.

In his letter of November 23, 2021, Richard J. Mayernik, the Building and Zoning Official for Superior Township, states that the "application for a building permit at the above address (5728 Geddes Road) has been rejected for the following reasons:

1. Setback from private road rights-of-way are required to be equal to the zoning district front yard setback. The subject parcel is zoned R-1 and a 60 ' setback is required per Section 3.101. In fact, while not illustrated on the submitted drawings, it appears the subject home is located in the right-of-way."

Kevin Gingras, P.S. of Arbor Land Consultants, wrote a letter dated May 26, 2022, indicating that the CAD files that he received on May 6, 2022, included proposed improvements such as the residence, driveway, retaining walls, septic system and other features. He confirmed that these proposed improvements are located within the 66' wide easement as Mr. Mayernik correctly pointed out in the case of the proposed home.

The recently approved plans continue to show the encroachment of the home and the septic field within the easement area. The building plans should be revised to clearly show the right-of-way and the setbacks measured therefrom. This information should be documented, drawn and dimensioned prior to the issuance of the Certification of Zoning Compliance.

Do the approved building plans for the Mouliere residence propose construction of the house and drain field within the recorded ingress and egress easements?

The revised sheet L-2 by the Insight Design Studio, Inc. (IDS) entitled Grading Plan, bearing a revision dated of 03-16-2022, and the Plot Plan prepared by Atwell with a revision on February 24, 2022, Septic Revision, both show approximately one-half of the proposed active septic field and a portion of the house located within the 66 -foot wide ingress/egress and public utility easement. Furthermore, as noted above, Kevin Gingras, P.S. of Arbor Land Consultants has confirmed that the house and septic field continue to be shown within the easement area as initially identified by the Township Building and Zoning Official.

However, the approved Architectural Building Plans containing sheets G-201 and the IDS plan bearing a most recent revision date of December 15, 2021, do not identify the ingress/egress easement and, therefore, do not show the septic field or house inside the ingress/egress easement.

The more recent Atwell and IDS plans conflict with the approved plan set and show a different design. The plans should be revised so that the correct information is documented, drawn and dimensioned prior to the issuance of the Certification of Zoning Compliance.

## Was the 8-foot high retaining wall that separates the proposed driveway from the septic field designed for fire truck live loads?

The Redi-Rock retaining wall plan set included in the approved architectural plans, only provide wall elevations for retaining walls 1,2 and 3 . The wall between the driveway and the septic field is Wall Number 7. The IDS Grading Plan shows the bottom of the northeast corner of the wall at an elevation of 808.0 while the top of the wall is 816.0 , for a height of 8 feet. Fire truck loading is typically 25 tons. The approved plans contain no wall profile for Wall No. 7. Therefore, it is not possible to determine if the retaining wall, which is subject to the State of Michigan Building Code, complies with code safety requirements and is adequate to support emergency vehicles prior to the issuance of the Certification of Zoning Compliance.

## Will the retaining wall construction encroach onto the Schuster property?

No dimensions between the face of the retaining walls and the geotextile fabric that will line the excavation are shown on the Redi-Rock plan set. In addition, there is no dimension shown between the face of wall and the property line. Upon scaling the plan set, it appears that encroachment will take place during and upon completion of construction.

The OHM review letter of April 11, 2022, stated in paragraph 8 on page 2 the following:
"We question if it is possible for the Applicant's Contractor to construct retaining walls without encroaching the property to the north. We request the Applicant's Contractor to provide a narrative regarding construction of the retaining wall and how they intend to maintain construction impact on this property only during construction. It may also be beneficial for the Applicant to have their geotechnical engineering and structural engineering consultants for the project provide input on the best practices to construct the tiered retaining wall without encroaching the property line to the north without a temporary grading easement."

Based on scaled dimensions from the plans, it appears that encroachment into your property will occur during and after construction of the tiered retaining wall. Therefore, based on the lack of information on the building plans, it is not possible to determine if the retaining wall, which is subject to the State of Michigan Building Code, encroaches onto your property. This possible encroachment should be documented prior to the issuance of the Certification of Zoning Compliance.

## Did the Redi-Rock design of the retaining wall along the Schuster property line and easement line include sufficient live loading?

I received no structural calculations indicating the design loading for the tiered retaining wall. However, paragraph number 14 of the OHM review letter stated the following:
"...Per the Applicant's Structural Engineer, the portion of the exposed block wall to the east of the driveway is not intended to act as a vehicle barrier, only as a pedestrian barrier. Also, a 50 PSF (pounds per square foot) load surcharge was applied to the walls in the calculations at the top of the wall for general maintenance and pedestrian loads. We take no exception to the structural calculations provided for the landscape retaining wall."

Prior to the excavation and removal of the earth supporting the your property, you could use whatever vehicles and live loading along your south property line as you saw fit with no restriction. This ability to use your property should not be diminished because your neighbor's engineer elected to use a pedestrian loading rate. The Redi-Rock plan set contains a chart for live loading that indicates that traffic loading should be 150 PSF . In order to reduce the risk of retaining wall failure due to your unrestricted use of your back yard, the design should be revised to include the higher loading factor.

The loading rate currently proposed by the Mouliere design engineer diminishes the full use of your back yard. Inasmuch as their design engineer has no control over the imposed loading at the property line, the under design of the wall could result in wall failure and a dangerous condition for both parties. Therefore, the load rating for the wall should be increased from 50 to 150 PSF, subject to the State of Michigan Building Code requirements, and should comply with code safety requirements and be adequate to support vehicle live loading and/or material storage prior to the issuance of the Certification of Zoning Compliance.

## What does the notation " 60 '-0" Easement Setback" mean on Sheet G-201 of the approved plan set?

The dimension from the edges of the ingress/egress easement indicates a 60'- 0 " Easement Setback. This dimension is meaningless because it dimensions a portion of the 66 -foot ingress/egress easement width within the easement (mostly in the original Parcel B), not the setback from the easement. The " 60 ' -0 " Easement Setback" line does not show a setback of any type. This notation makes no sense and is of no value.

If you have any questions regarding my response to your questions, please contact me.
Sincerely,

## SEIBER ENGINEERING, PLLC



Clif Seiber, P.E.

## EXHIBIT 5

# CHARTER TOWNSHIP OF SUPERIOR WASHTENAW COUNTY, MICHIGAN 

November 23, 2021

## Snyder Contracting

8650 Huron Rive Drive
Dexter, MI 48130
RE: Building Permit Application 5728 Geddes Road
Mr. Snyder,
In accordance with Section R105.3.I of the 2015 Michigan Residential Code, your application for a building permit at the above address has been rejected for the following reasons:

1. Setbacks from private road rights-of-way are required to be equal to the zoning district front yard setback. The subject parcel is zoned $\mathrm{R}-1$ and a 60 ' setback is required per section 3.101 . In fact, while not illustrated on the submitted drawings, it appears the subject home is located in the right-of-way.
2. The submitted site plan (sheet G-201) is not adequate. The private road easement is not illustrated. The limits of the wetlands are not illustrated. Grading elevations and storm water management elements are not shown. Specific locations, heights and designs of site retaining walls are not shown on the site plan nor elsewhere on the plans.
3. Sheets G-100 and G-201 indicate conflicting home and garage square footage - which is correct?
4. Notes on sheet S-012 indicate "construction surcharge on retaining wall to be determined." Who will be determining the surcharge if not the engineer?
5. Plans do not indicate specific steel beam sizing, footing sizing and foundation wall sizing and reinforcement (other than "typical" details) for the home or for site retaining walls.
6. Where are the shear walls located?
7. Several references to compacted engineered fill are indicated on the plans. Who be the lesting engineers on this project?
8. "Typical" details have no dimensions such as sheet S-025 and others.
9. The indoor pool is generally illustrated with a note "pool design by others." Provide specific design, size, depth and details for the pool.
10. Provide a copy of the County Soil Erosion Permit which includes the house construction.

## 11. Provide copies of the County Well and Septic Permits.

12. Provide a copy of the County Driveway Permit for the construction to Geddes Road. Once the information requested in items $1-12$ is submitted, the plans will be forwarded to Township Engineers for detailed review. Please contact me if you have any questions relating to this review.

Richard J. Mayernik, Building \& Zoning Official

## EXHIBIT 6

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JEAN-MARIE L. MOULIERE and INGRID D. MOULIERE,

Plaintiffs/Counter-Defendants, Case No. 20-001274-CH
-vs-
HON. ARCHIE C. BROWN
MATTHEW A. SCHUSTER and
ALYSSA L. CAIRO,
Defendants/Counter-Plaintiffs.

Taken by the Defendants/Counter-Plaintiffs, on the 19th day of July, 2022, at 7577 US Highway 12, Suite A, Onsted, Michigan, at 12:03 p.m.

A Yes.
Q Okay. So --
A Well, in '95 -- in '95, this was all one parcel.
Q It was one parcel at that point?
A Right, yeah. Because the division didn't occur until '96.

Q Okay. So when the division occurred in '96, would the right-of-way have to continue to Parcel $C$, then?

A No. It's existing right-of-way.
Q Well, then how would you ever get to Parcel C?
A Well, it abuts right up against it right there.
Q So that -- so this -- all right. So it would stay like this even after the split?

A Yes. Well, I mean, this right-of-way was created at the same time as these two parcels. The right-of-way was created to accommodate these parcels.

Q Okay. Now, I want you to look at Exhibit 2 and keep them side-by-side. This is the Moulieres' site plan.

A Uh-huh.
Q Can you mark where the right-of-way is on this plan?
A Yeah, this drawing is a mess. That's -- I can see portions of it, but it's so small.

Q Please mark it where you can see it.

A Yeah, I'll mark it where I can see it here.
I can't determine the rest of that. It's too small and too close together.

Q This is the only drawings that we have, Mr . Mayernik. This is what we were given.

A Yeah. No, I get it.
Q And that's our issue, too, is that we can't determine where the right-of-way is, either.

So do you know where the right-of-way is on Parcel B ?

A Not on this drawing. I mean, it's -- there's a legal description for it and an engineer or surveyor could go out and plot it exactly.

Q Well, when you approved the site -- the Mouliere site plan -- well, let me back up.

Did you have to approve the Mouliere site plan?

A Yes.
Q Did you use this survey from '95 or did you use their recent plan?

A I used the plans that came with the construction drawings. And to be honest with you, I had several different plans, site plans, that came through my office. And I don't know if the plan I'm looking at here as Exhibit 2 is a reduced version of the plan
that I approved or not.
Q What $I$ can tell you with certainty is, this is what I've received from the Moulieres' counsel as the most up-to-date site plan. So I'm going to ask you one more time to be clear. Can you tell me where the right-of-way is on Parcel B, if you see it on there?

A The lines are too close together. I can't determine exactly where it is on the exhibit that you've given me.

Q Do you see where it says, "front yard setback"? I'm looking at it upside down, but it would be this line right here.

A Right. Uh-huh.
Q Do you know where that line came from?
A Well, their engineers drew it in there.
Q What is the purpose of it?
A Well, first of all, that's not a front yard.
Q Okay.
A So on river properties, the front yard setback applies to the river side. So the property line, the Moulieres' property line, that abuts the Schusters' property to the north is the rear yard. The rear yard has a 50-foot setback.

Q And have the Moulieres been granted a variance to

## EXHIBIT 7

To: Michelle C. Harrell
Date: 14 May 2021
Maddin Mauser Attorneys
28400 Northwestern Hwy
Second Floor
Southfield, MI 48034-1839
Ms. Harrell,
Attached are the documents requested from your FOIA dated May 6, 2021. This is the only interaction the Superior Fire Department has had with the listed addresses. If you need any further assistance, please contact me at 734-484-1996 ext. 1.

Respectfully


Victor G. Chevrette
Fire Chief



K1 Person/Entity involved


More people involved? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary.


## $\square$

## NICHOLAS ROBSON <br> April 22,2021 23:37:58

FD was contacted by resident at 5766 Geddes Rd for an unattended fire at a construction site. Regident that called gtated that ashes were falling on his home and he could see flames. Ell-2 responded from ztation two. Fo arrived to find a construction gite where land clearing was being done, and there was a pile of wood burning in between two excavators. $110-3$ had station one toned for the utility to respond to extinguish the fire. FD extinguished the fire. FD cleared soene.
. More remarks? Check this box and attach Supplemental Forms (NFIRS-1S) as necessary.



[^0]:    ${ }^{1}$ To the Schusters' knowledge, the Moulieres are revising these plans to remove the encroachment on the Schuster Property, which will likely produce an encroachment into the wetland setback.

[^1]:    ${ }^{2}$ The Construction Code defines a "structure" as "that which is built or constructed, an edifice or building of any kind, or a piece of work artificially built up or composed of parts joined together in some definite manner." MCL $125.1502 \mathrm{a}(\mathrm{bb})$. Retaining walls constitute a "structure" for purposes of the Construction Code.

[^2]:    ${ }^{3}$ The Schusters further contend that the Moulieres' retaining walls also constitute a "structure" under Section 17.03 of the Zoning Ordinance. See Superior Township Ordinance No. 174, §§ 17.03(4) and 17.03(207).
    ${ }^{4}$ The Zoning Ordinance states: "[w]herever the requirements of this Ordinance are at variance with the requirements of any other adopted rules, regulations, or ordinances, the most restrictive or those imposing the higher standards shall govern." Superior Township Ordinance No. 174, § 1.04. Section 6.08 establishes a test of grade that is differential and distinct from any retaining wall height standard, and thus governs.

