

**SUPERIOR CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
3040 N. PROSPECT RD., YPSILANTI, MI 48198**

***MEETING BEING HELD AT SUPERIOR TOWNSHIP FIRE STATION #1
7999 FORD ROAD, ANN ARBOR, MI 48105***

**THURSDAY
NOVEMBER 03, 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 October 19, 2022 minutes
5. CITIZEN PARTICIPATION
6. COMMUNICATIONS
7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS
8. OLD BUSINESS
 - A. **ZBA #22-04 Schuster Appeal**
Appeal of the decision of the former Township Zoning Official;
regarding 5766 Geddes Road.
9. OTHER BUSINESS AS NECESSARY
10. ADJOURNMENT

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1. CALL TO ORDER

The meeting of the Superior Charter Township Zoning Board of Appeals was called to order by Member Dail at 7:00 p.m.

2. ROLL CALL

The Zoning Board of Appeals members present were Parm, Deeds, Dail, Lewis, and Brennan. Henningburg and Craigmile were absent. Laura Bennett, Planning & Zoning Administrator; Bill Balmes, Building Official; and Fred Lucas, Township Attorney, were also in attendance. A quorum was present.

3. ADOPTION OF AGENDA

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

4. APPROVAL OF MINUTES

A motion was made by Member Lewis and supported by Member Brennan to approve the minutes of August 3, 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 Brennan and supported by Member Parm to open the public hearing.

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The first to speak on the proposed appeal was Pat Lennon, an attorney at the Honigman law firm representing the homeowners at 5766 Geddes Rd, Matt Schuster and Dr. Alyssa Cairo.

On behalf of Mr. Schuster and Dr. Cairo, Mr. Lennon requested that the Building Permit issued for his client's neighboring property at 5728 Geddes Rd be revoked. Mr. Lennon argued that the Township's previous Building Official, Rick Mayernik, did not comply with the Zoning Ordinance in his issuance of the property's Certificate of Zoning Compliance. Mr. Lennon asserted that the failure to revoke this permit would result in unsafe and dangerous conditions for both aforementioned properties, outlining potential fall hazards, landslides, shifting or collapsing retaining walls, draining risks, and inadequate access for emergency vehicles.

Mr. Lennon presented multiple exhibits demonstrating what he and his clients believe illustrate the violations committed by the issuance of the Certificate of Zoning Compliance at 5728 Geddes Rd. He argued that the documents submitted to the Township for the property contained errors that did not comply with zoning ordinances nor did it adequately present features of the property. For example, in Exhibit One, Mr. Lennon stated that the originally submitted site plan did not illustrate the easement, the limits of the wetlands, or the grading elevations. Along with this missing information, the plans displayed that the proposed home would be built, Mr. Lennon argued, in violation of Zoning Ordinances as the construction would not comply with the Ordinance's requirement of a 60ft setback. Mr. Lennon asserted that the proposed home would be built within the property's required 66ft easement.

On November 23rd, 2021, Mr. Mayernik denied the Building Permit for 5728 Geddes Rd. On or about December 15, 2021, new plans were submitted that addressed many of the errors identified by the original site plans, however, Mr. Lennon maintained in his presentation that the issue of the proposed home's placement within the required easement was not resolved, and the 60ft setback was either miscalculated or misrepresented on the submitted site plans. He argued that the setback had been measured from the boundary line of the homeowner's property, placing it 60ft within the 66ft easement, thereby making the easement short of its required length.

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In January of 2022, the Washtenaw County Health Department required multiple changes to the 5728 Geddes Rd site plans, including the relocation of the septic field away from the onsite wetlands and toward the right-of-way, placing the septic field inside the easement area, according to Mr. Lennon.

Mr. Lennon claimed that the demands of the Washtenaw County Health Department led to discrepancies between the plans eventually approved by the Washtenaw County Health Department and the plans that were submitted to and approved by the Township, including the creation of a new, undocumented retaining wall.

Though Mr. Mayernik approved a variance to the setback for the construction on 5728 Geddes Rd, Mr. Lennon argued that the current plans are in violation of Zoning Ordinances since the issued permit for the site was based on the submitted plans from December 15, 2021, and these plans do not accurately portray the property's currently scheduled construction and do not display a properly configured right-of-way.

Mr. Lennon states that the failure to comply with the requirement of a 66ft easement could create hazardous conditions for first responders that may need to access both properties' rights-of-way.

After Mr. Lennon finished his presentation, another attorney of the Honigman law firm, Mike Hindelang, continued to argue on behalf of Mr. Schuster and Dr. Cairo.

In his presentation, Mr. Hindelang argued that the errors present on the site plans approved by the Township put the construction on 5728 Geddes in violation of Section 1.07(J) of the Zoning Ordinance, which states, "An application for a Certificate of Zoning Compliance shall be accompanied by a site plan as required under Article 7.0 (Special District Regulations) or Article 10.0 (Site Plan Review)." The scheduled construction, he stated, also violates section 3.207 as the current plans do not include a right-of-way at least 66ft wide and, as Section 3.207(A) states, the standards set forth by the Ordinance must be applied equally for all new structures that did not have a lesser width established and recorded prior to the effective date of the Ordinance. Mr. Hindelang then maintained that under Section 1.07(D)1, any nonconformities must be identified in the Certificate of Zoning Compliance and stated that the

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previously outlined nonconformities were never presented to the Township prior to the approval of the construction plans.

Mr. Hindelang also added that the retaining walls being built on the property are unpermitted structures that were approved without an application. He said that Wall Seven, as outlined in some of the retaining wall plans, is the wall that is holding up the road for emergency vehicle access despite never having had its Profile Engineering submitted. Some of the walls as outlined, Mr. Hindelang stated, were encroaching on the Schuster property, prompting the site plans to be changed. This, he argued, highlights another reason that the Certificate of Zoning Compliance should be revoked as the Township has not approved the current plans for construction.

Upon Mr. Hindelang opening his presentation up for questions, Member Deeds inquired as to who can speak for the Schuster Appeal application as written. He first directed attention to a question on the application asking, "Has the department refused the permit?" Both options, "Yes" and "No" as exhibited on the application were marked in response to this. Mr. Hindelang explained that the box marking "Yes" was related to a permit for a garage that Mr. Schuster had been denied on his own property, for which there is an administrative appeal filed in the Washtenaw County Court.

Member Deeds also found some errors within the text of the application. These errors included a bullet point within the Description of Appeal in which the word "not" was mistakenly omitted from the sentence, "Material alterations to the structure and the new dangerous right-of-way encroachment median adjacent to the private road were [not] reviewed by the ZBA." Member Deeds also found an error in the recorded date for the septic field relocation as this was indicated to have taken place in December of 2022, a date which has yet to arrive, instead of December of 2021. Mr. Hindelang explained that these were merely typographical errors but could not speak as to who specifically had drafted the application. Ms. Bennett clarified that the application had been submitted by Mr. Schuster toward the end of July of 2022, prior to Mr. Hindelang, Mr. Lennon, or anyone from the Honigman law firm beginning their participation in this matter. Though Member Deeds stated that the typographical errors in the application's text did prompt him to question the attorneys' credibility, he said that the misstatements did not impact "90% of [the] presentation." Mr. Hindelang said that he understood these

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concerns and finished his presentation requesting that the Board take the accuracy of the paperwork submitted for the 5728 Geddes Rd property into consideration as well.

Member Dail then called on those representing the opposing party in this matter to speak to the statements and requests made by Mr. Hindelang and Mr. Lennon.

The first to speak on this was Adam Barendt, an attorney at Bodman PLC representing the homeowners at 5728 Geddes Rd, Jean-Marie and Ingrid Mouliere.

Mr. Barendt began his argument by emphasizing the number of times he and his partner had been before the Board in regards to this issue, saying, "Here we are for the fifth or sixth time..." This acted as an example for the overall theme of Mr. Barendt's presentation. He stated that the construction at 5728 Geddes Rd had been inspected by Mr. Mayernik and the Township "countless times." He also mentioned that the Township hired OHM to do an investigation as well. He stated that he 7 had never seen such a measure being taken in this kind of dispute.

Mr. Barendt maintained that there was nothing wrong with the plans submitted for the property, saying that the contractors had been granted a variance and were building to those plans. He further emphasized that Mr. Mayernik, while acting as the Township's Building Official, had looked at the plans, spoken with the project's builder, and "put his hands in the dirt" upon visiting the site, ultimately determining that the planned construction on the land was in compliance with all Township Ordinances.

Mr. Barendt then stated that Mr. Lennon and Mr. Hindelang are the fourth set of attorneys Mr. Shuster has had working on his behalf during this dispute and said that each time Mr. Shuster gains new legal counsel, the claims "feel a little bit more outlandish." He then stated, "The Moulieres bought this property to build a home," and spoke to the work that had already been done on the project, saying, "We continue to build. We will build. The Township has given us the permits to build. The plans that we've used have been approved." He asserted that there was "no duplicity" involved in the project's construction, maintaining that if there ever had been, it would have been discovered sometime during "the 17

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various site visits” on the property from individuals such as Mr. Mayernik or Ms. Bennett.

Mr. Barendt assured the Board that the property is accessible to emergency vehicles in compliance with the Township’s and the County’s Ordinances, but said “they [Mr. Shuster and his counsel] aren’t satisfied” and “[will] never be satisfied.”

Mr. Barendt further stated that he had “heard nothing” from Mr. Lennon and Mr. Hindelang to suggest that Mr. Mayernik had granted the variance for the 5728 Geddes Rd construction in error. He stated that in their exhibits, Mr. Shuster’s counsel “wanted [the Board] to conclude” that a section of the site plans submitted to the Township display a private road rather than an easement, however Mr. Barendt stated that “those rules don’t apply.” He claimed that the project’s builder could have any questions about the site plans answered for the Board as well as submit pictures and “point to the drawings” for the construction plans, but maintained that this was not necessary. He argued, “The standard here is whether or not [the Township’s officials] used their reasonable discretion and they did.”

Member Dail then addressed Dan Snyder, owner of Snyder Contracting, who has been the contractor working on the property at 5728 Geddes Rd. Member Dail inquired into the footings for the project that he had observed during a site visit about two weeks prior. Mr. Snyder informed Member Dail and the Board that he had five sets of the eight-tiered footings poured.

Mr. Snyder continued by asserting that “nothing has changed” in the site plans “whatsoever.” He claimed that Mr. Mayernik received the Washtenaw County Health Department’s approval upon issuing the site’s Building Permit, saying the process of approval was “clear-cut,” “simple” and characteristic of how “every building plan ever gets done.”

Mr. Synder then echoed the claims of Mr. Barendt, arguing that the ongoing conflict with Mr. Shuster and his counsel has put a hindrance on the project’s construction that is “ridiculous.” He further claimed that the continued impedance on the progress for the property has caused the project to become “incredibly expensive” and “incredibly monotonous,” calling the process an “endless cycle of nonsense” that was costing the construction “a significant amount of money and time.” He said that the

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property's homeowners were spending millions of dollars extra to cover the cost of delays and increases in expenses.

Mr. Snyder then maintained that there was "nothing sneaky" happening on the property and said that everything for the project was up to code and had been reviewed by appropriate parties. He said, "We can't do anything more to comply with [the Ordinances] for this house."

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

Member Dail led the Board in deliberation. He began by clarifying the role of the ZBA in this matter, saying they were tasked with deciding whether or not it would be the Board's responsibility to reverse the decision made by Mr. Mayernik in his issuance of the Building Permit and Certificate of Zoning Compliance at 5728 Geddes Rd.

Member Dail brought the Board's attention to Section 13.06(6)a of the Zoning Ordinance which states, "The Board of Appeals shall reverse an administrative decision only upon determining that the order, requirement, decision or determination constituted an abuse of discretion; was arbitrary or capricious; or was based upon an erroneous finding of a material fact or an erroneous interpretation of the Zoning Ordinance."

Based on the definition of the words used within the Ordinance, Member Dail concluded that Mr. Mayernik's issuance of the Building Permit and Certificate of Zoning Compliance did not constitute an abuse of discretion, nor were the decisions made on arbitrary or capricious grounds.

Member Dail then raised the question about whether or not Mr. Mayernik's decision had been based upon erroneous findings of material facts. While he stated that the Board would not have the authority to make a decision about the property's septic field, Member Dail did voice concerns about the construction's encroachment on the property's right-of-way boundaries. Since the report the Board received for the property was not based upon field measurements, Member Dail questioned if it would be possible to physically measure the distance between the construction and the right-of-way's borders as Mr. Snyder confirmed that the footings for the home had already been poured. This

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then raised the issue of how the problem could be corrected if the home was, in fact, encroaching upon the right-of-way. Member Dail concluded that the two potential solutions he sees are to either alter the site plans to place the construction further away from the right-of-way, or to change the legal description of the right-of-way.

Mr. Lucas stated that changing the legal definition of the right-of-way would not be possible. He inquired, however, as to if the easement on the property would still be in existence due to the merger of Parcels B and C at 5728 Geddes Rd. Since such a dispute has never arisen in the Township prior, Mr. Lucas stated that he would have to do more research to answer this question and requested that counsel on both sides of the disagreement provide their own research at a future date.

Mr. Lucas suggested that a Stop Order be placed on any work within the easement until he obtains more information about the merger on the property.

Alex Dieck, an attorney at Bodman PLC representing Mr. and Ms. Mouliere, asserted that the issue regarding the merger is a legal concern between two private parties and stated that the issue brought before the ZBA was regarding Mr. Mayernik's decision to grant contractors for the property at 5728 Geddes Rd a setback variance. She maintained that Mr. Mayernik decided, according to the Zoning Ordinances, that the right-of-way being discussed is a driveway that divided property and provided access to a road. She said that Mr. Schuster and his counsel can bring claims against her clients if they feel that the construction at 5728 Geddes Rd is building within the easement improperly and maintained that the Township is not a party to that. Ms. Dieck said that her clients have followed Township Ordinances and had the variance granted to build in the area that they are building.

Mr. Lennon then retorted, asserting that the easement is still in existence and is an area shared and used by both properties, regardless of a merger. He challenged the power of the Township to approve of a variance regarding such an easement.

Mr. Snyder responded, stating that they had been granted the variance for relief from the setback. He said, "It was not just a setback from the Schuster property, it was the setback from that easement setback

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because it's not necessary. We were granted the variance... it's already been approved."

Mr. Lennon argued that the approval of the variance was made prior to various changes that were then made on the property and said that all of those changes prompt a new assessment from the Township.

Member Dail spoke on the practicality involved in the need of a 66ft right-of-way. He explained that the 66ft requirement originated from the measurement of the length of a surveyor's chain used in the 1800s. He argued that the 66ft requirement is not strictly necessary for practical usage at the 5728 Geddes Rd property as the right-of-way is not protecting the storm drains or underground utilities that other right-of-ways may require a 66ft measurement to accommodate. For this, Member Dail did not see a practical problem in the right-of-way holding a different measurement so long as it contained all the necessary features and was proven capable of accommodating emergency vehicles.

Member Deeds then stated that the right-of-way lines established in 1996 were still in existence and expressed that Mr. Mayernik may have granted the variance for the 5728 Geddes Rd property based upon erroneous findings.

Mr. Lucas suggested that the Board reach out to Mr. Mayernik so that he may speak on his previous decision himself.

Mr. Lennon asserted that there should not be any continued construction work at the 5728 Geddes Rd property until the Board makes a decision. Mr. Snyder did not agree to this, however it was established that the nature of his work on the property would not involve any new pouring of concrete within the easement area for about three weeks. It was then decided that, since the current Building Official, Mr. Balmes, would need to approve of the concrete pour, he will not sign-off on that work until after the Board's next meeting.

The Board agreed to reconvene and continue discussing this matter prior to the time Mr. Snyder believed he would begin work within the easement.

A follow-up meeting was scheduled for November 3rd, 2022 at 7pm.

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A motion was made by Member Deeds and supported by Member Dail to table the discussion.

Roll Call:

Yes: Brennan, Dail, Deeds, Lewis, Parm
No: None.
Absent: Heningburg, Craigmile
Abstain: None.

The motion carried.

8. OLD BUSINESS

None.

9. OTHER BUSINESS AS NECESSARY

None

10. ADJOURNMENT

A motion was made by Member Lewis and supported by Member Brennan to adjourn the meeting at 8:51 p.m.

Respectfully submitted,

Doug Dail, Chair Zoning Board of Appeals

Jasmin Bogdanski, Recording Secretary
Superior Charter Township
3040 N. Prospect, Ypsilanti, MI 48198



MEMORANDUM

TO: Superior Township Zoning Board of Appeals; Superior Township Attorney

FROM: Bodman PLC on behalf of Jean Marie and Ingrid Mouliere, owners of property located at 5728 Geddes Road, Ann Arbor 48104 (the "Moulieres")

DATE: October 26, 2022

SUBJECT: Response to Appeal by Matthew Schuster and Alyssa Cairo, owners of property located at 5766 Geddes Road, Ann Arbor, Michigan 48104 (the "Schusters")

BACKGROUND

On November 23, 2021, the Moulieres submitted an application for a variance from the Superior Township Zoning Ordinance ("Zoning Ordinance") relating to required set-backs from a private road right-of-way ("ROW"). The Moulieres requested a variance from the table of dimensional standards contained in Article 3 of the Zoning Ordinance after the Township Zoning Official, Rick Mayernik ("Mayernik"), stated that a variance was required. Absent a variance, set-backs from a private road ROW are required to be equal to the zoning district front yard set-back in Section 3.101. The subject parcel is zoned R-1, which requires a 60' set-back from the private road ROW.

In support of the requested variance, the Moulieres submitted a certified application and a full set of plans stating that the Moulieres were proposing to:

[B]uild a residential structure and related improvements as described in the drawings and plans attached as Attachment C to this Application. As shown on Sheet-G-201 of the Plan Drawings attached as Attachment C, Applicant is proposing to construct a driveway, retaining wall, and portions of the residential structure within the required 60-foot minimum front yard set-back required by Township Zoning Ordinance.

The following documents reflect the Moulieres' request for a variance to build within the private road ROW set-back:

1. The Application for Variance submitted by the Moulieres on November 23, 2021 which included an application and site plan depicting such improvements;
2. The Notice of Public Hearing published by the Township in The Ann Arbor News and sent to all property owners within 300 feet of the Mouliere property;
3. The January 12, 2022 published minutes of the Zoning Board of Appeals; and

4. The Action Letter (“Action Letter”) dated January 19, 2022 from the Zoning Board of Appeals (“ZBA”), which states that the Moulieres were granted a variance *“for setbacks from the private road right-of-way, having found that it complies with the standards set forth in section 13.08B of the Superior Township Zoning Code.”*

After the ZBA granted the requested variance in the Action Letter, Mayernik issued to the Moulieres (i) a Certificate of Zoning Compliance, and (ii) all subsequent building permits. The Schusters now appeal Mayernik’s decision to issue those documents. Specifically, the Schusters argue that the Certificate of Zoning Compliance was based on plans that were subsequently revised to change the location of the septic field.

REVIEW OF APPEAL STANDARDS FOR ZONING BOARD OF APPEALS

Under the Zoning Ordinance, the ZBA may only reverse an administrative decision upon “determining that the order, requirement, decision or determination constituted an abuse of discretion; was arbitrary or capricious; or was based upon an erroneous finding of a material fact or an erroneous interpretation of the Zoning Ordinance.” That standard is not met here.

After the ZBA granted the variance, Mayernik was well within his discretion to issue a certificate of zoning compliance and the building permits. The Schusters now claim that Mayernik’s decision was improper because the Moulieres made revisions to the building plans to move the septic field. Movement of the septic field, however, is not within the purview of the Township’s review of a certificate of zoning compliance. Further, understanding that building plans are constantly revised, the Zoning Ordinance explicitly allows for plans to be amended up until the date that a final certificate of occupancy is issued.

Moreover, as noted above, Mayernik considered appropriate private road ROW set-backs when reviewing the Moulieres’ plans, and he required the Moulieres to obtain a variance to build within the private ROW set-back. It was only after the Moulieres obtained a variance from the ZBA that he issued the Certificate of Zoning Compliance and the building permits.

Thus, Mayernik’s conduct was not an abuse of discretion, was not arbitrary or capricious, and was not based upon an erroneous finding of a material fact or an erroneous interpretation of the Zoning Ordinance. In fact, the Moulieres’ application has undergone more scrutiny and review than most similar applications in the Township.

MICHIGAN LAW REGARDING MERGER

At the October 19, 2022 ZBA hearing, the ZBA and the Township’s attorney requested a summary of Michigan case law regarding merger to determine if a portion of the private easement that benefits the Moulieres’ property has been extinguished. However, as expressed at the hearing, this issue should have no bearing on the ZBA’s consideration of the Schusters appeal because the Moulieres did not argue to the Township that the easement had been merged or extinguished, and Mayernik also did not rely on the easement being merged or extinguished in granting the Certificate of Zoning Compliance or building permits. Instead, the Moulieres requested a variance

to build within the private ROW set-back, which the ZBA granted. Thereafter, Mayernik issued the Certificate of Zoning Compliance and building permits, and his decision to do so was within his discretion.

Notwithstanding the above, even if the merger doctrine were relevant, it would not change Mayernik's decision (in fact it would reinforce the decision to issue permits). Under the doctrine of merger, the portion of the private easement crossing the Moulieres' property was extinguished when the Moulieres became the owners of both the dominant and servient estates. As a result, the portion of the easement that now is on the Moulieres' property no longer exists, and there is no need to have a set-back from that easement.

The Moulieres' property alone benefits from the easement at issue. The legal description for the Moulieres' property states that the property is "subject to and including" a 66-foot wide private easement for ingress, egress, and public utilities. In contrast, the legal description for the Schuster property states only that the property is "subject to" that same easement. The Schusters, therefore, cannot claim to benefit from this easement.

The easement runs from Geddes Road across the Schusters' property, providing access to the Moulieres' property, which is comprised of two adjacent parcels (B and C) that were formerly under different ownership. A portion of the easement crosses Parcel B, historically providing access to Parcel C. *See Exhibit A*, Survey. That portion of the easement has been extinguished under the doctrine of merger.

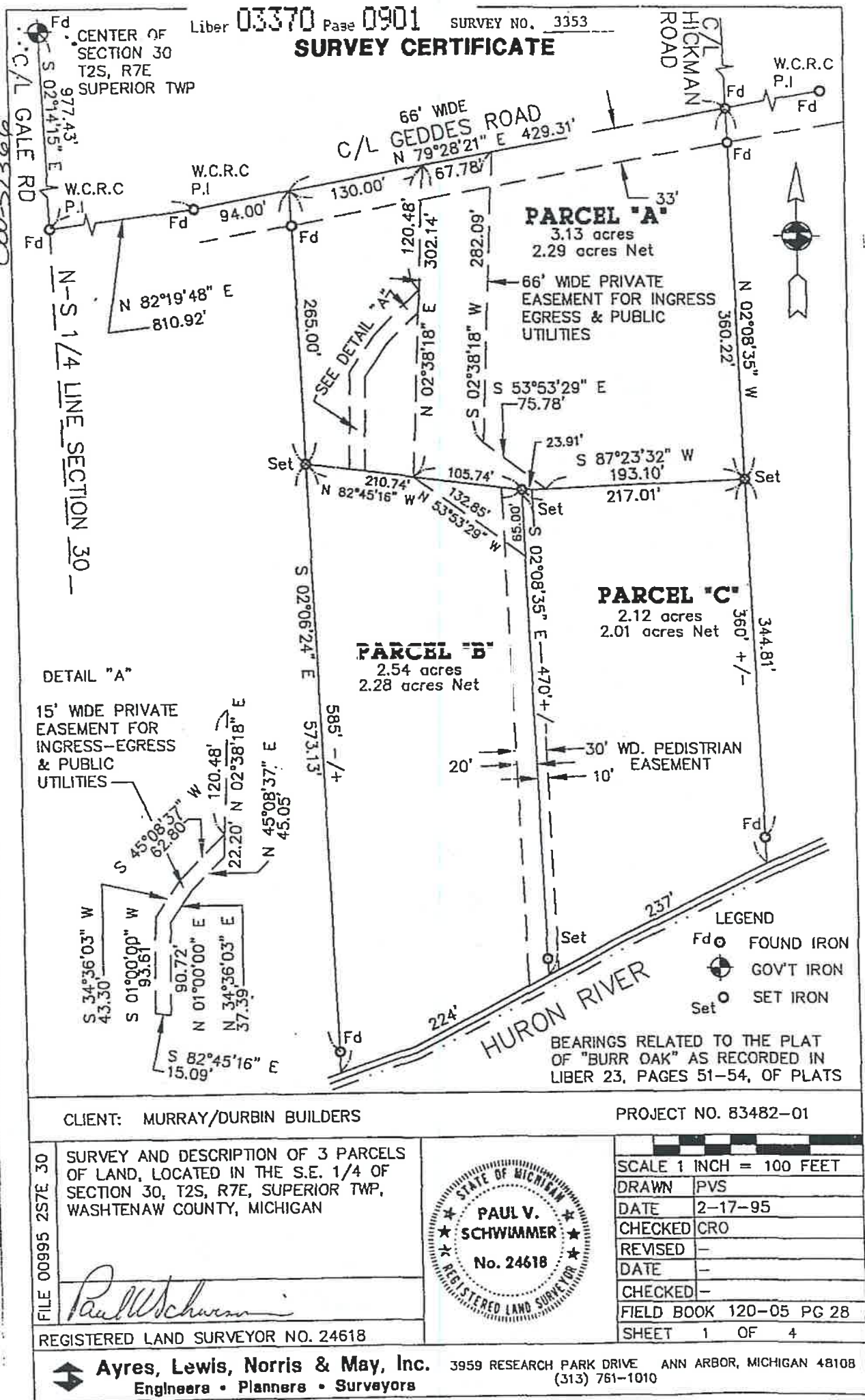
Michigan law is clear that a property owner cannot hold an easement across his or her own land. "The union of dominant and servient estates in the same owners extinguishes prior easements. One cannot have an easement in one's own land." *Dimoff v Laboroff*, 296 Mich 325, 328 (1941) (citing *Bricault v Cavanaugh*, 261 Mich 70, 70 (1932) and *Morgan v Meuth*, 60 Mich 238, 245 (1886)). Indeed, Michigan courts have held that, when a portion of real property subject to an easement comes under common ownership, that portion of an easement is extinguished via merger. *See, e.g., Cook v Sellers*, No. 351125, 2021 Mich. App. LEXIS 614, at *1 (Ct. App. Jan. 28, 2021). In *Affeldt v Lake Court Beach Association*, the Michigan Court of Appeals rejected an argument asserting that "complete merger" of the dominant and servient estates was necessary to extinguish an easement. No. 315277, 2015 Mich. App. LEXIS 156, at *1 (Ct. App. Jan. 29, 2015).

Here, because Parcel B (which would have been the servient estate when the parcels were under different ownership) and Parcel C (the dominant estate) both now are owned by the Moulieres, the doctrine of merger has extinguished the portion of the easement crossing Parcel B to Parcel C. Thus, no set-back from this former easement is required. Nonetheless, neither the Moulieres or Mayernik relied on this reasoning, and both parties took the extra step to comply with the Township Zoning Ordinance.

CONCLUSION

Under either analysis, the Moulieres have the right to build on their property as planned. First, the ZBA properly granted the Moulieres a variance of the set-back requirement, and Mayernik's decision to grant the Certificate of Zoning Compliance and building permits met the standards in

the Zoning Ordinance. Second, the Moulieres are entitled to build within this area regardless of the set-back because that portion of the easement no longer exists under the doctrine of merger.



LEGAL DESCRIPTION -- PARCEL "A"

COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S 02°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 94.00 FEET FOR A PLACE OF BEGINNING; THENCE CONTINLING ALONG SAID CENTERLINE N 79°28'21" E 429.31 FEET TO A FOUND IRON AT THE INTERSECTION OF SAID GEDDES ROAD AND HICKMAN ROAD; THENCE S 02°08'35" E 360.22 FEET; THENCE S 87°23'32" W 217.01 FEET; THENCE N 82°45'16" W 210.74 FEET; THENCE N 02°06'24" W 265.00 FEET TO THE PLACE OF BEGINNING. BEING A PART OF THE S.E. 1/4 OF SAID SECTION 30 AND CONTAINING 3.13 ACRES (2.29 ACRES NET) OF LAND, MORE OR LESS. SUBJECT TO THE NORTHERLY 33.00 FEET THEREOF AS OCCUPIED BY GEDDES ROAD. ALSO SUBJECT TO A 66 FEET WIDE PRIVATE EASEMENT FOR INGRESS, EGRESS, AND PUBLIC UTILITIES 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°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT CF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 224.00 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 67.78 FEET; THENCE S 02°38'18" W 282.09 FEET; THENCE S 53°53'29" E 75.78 FEET; THENCE S 87°23'32" W 23.91 FEET; THENCE N 82°45'16" W 105.74 FEET; THENCE N 02°38'18" E 302.14 FEET TO THE PLACE OF BEGINNING.

ALSO SUBJECT TO A 15 FEET WIDE PRIVATE EASEMENT FOR INGRESS, EGRESS, AND PUBLIC UTILITIES 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°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 224.00 FEET; THENCE S 02°38'18" W 120.48 FEET FOR A PLACE OF BEGINNING; THENCE S 45°08'37" W 62.80 FEET; THENCE S 34°36'03" W 43.30 FEET; THENCE S 01°00'00" W 93.61 FEET; THENCE S 82°45'16" E 15.09 FEET; THENCE N 01°00'00" E 90.72 FEET; THENCE N 34°36'03" E 37.39 FEET; THENCE N 45°08'37" E 45.05 FEET; THENCE N 02°38'18" E 22.20 FEET TO THE PLACE OF BEGINNING.

WITNESSESS TO CENTER OF SECTION 30, SUPERIOR TWP
FOUND 1" IRON PIPE 1.0' DEEP IN GRAVEL ROAD
N 17° E 52.52' FD. P.K. NAIL IN W. SIDE OF 18" OAK
N 35° E 28.80' FD. P.K. NAIL IN N.W. SIDE OF 24" OAK
S 26° E 56.27' SET P.K. NAIL IN W. SIDE OF 30" OAK
S 67° W 16.55' FD. P.K. NAIL IN N. SIDE OF 12" OAK
N 13° W 69.75' FD. P.K. NAIL IN E. SIDE OF 14" 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.

CLIENT: MURRAY/DURBIN BUILDERS

PROJECT NO. 83482-01

FILE 00995 257E 30

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

Paul V. Schwimmer

REGISTERED LAND SURVEYOR NO. 24618



SCALE 1 INCH = - FEET

DRAWN PVS

DATE 2-17-95

CHECKED CRO

REVISED -

DATE -

CHECKED -

FIELD BOOK 120-05 PG 28

SHEET 2 OF 4



Ayres, Lewis, Norris & May, Inc.
Engineers • Planners • Surveyors

3959 RESEARCH PARK DRIVE
(313) 761-1010

ANN ARBOR, MICHIGAN 48108

COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S 02°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 94.00 FEET; THENCE S 02°06'24" E 265.00 FEET; THENCE S 82°45'16" E 210.74 FEET FOR A PLACE OF BEGINNING; THENCE N 82°45'16" W 210.74 FEET; THENCE S 02°06'24" E 585 FEET MORE OR LESS TO THE WATER'S EDGE OF THE HURON RIVER; THENCE NORTHEASTERLY ALONG SAID WATER'S EDGE TO A POINT BEARING S 02°08'35" E FROM THE POINT OF BEGINNING; THENCE N 02°08'35" W 470 FEET MORE OR LESS TO THE PLACE OF BEGINNING, BEING A PART OF THE S.E. 1/4 OF SAID SECTION 30 AND CONTAINING 2.54 ACRES (2.28 ACRES NET) OF LAND, MORE OR LESS. SUBJECT TO AND INCLUDING A 66' WIDE PRIVATE EASEMENT FOR INGRESS, EGRESS, AND PUBLIC UTILITIES 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°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 224.00 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 67.78 FEET; THENCE S 02°38'18" W 282.09 FEET; THENCE S 53°53'29" E 75.78 FEET; THENCE S 87°23'32" W 23.91 FEET; THENCE S 02°08'35" E 65.00 FEET; THENCE N 53°53'29" W 132.85 FEET; THENCE N 02°38'18" E 302.14 FEET TO THE PLACE OF BEGINNING.

ALSO INCLUDING RIGHT OF INGRESS, EGRESS, AND PUBLIC UTILITIES OVER A 15' FEET WIDE 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°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 224.00 FEET; THENCE S 02°38'18" W 120.48 FEET FOR A PLACE OF BEGINNING; THENCE S 45°08'37" W 62.80 FEET; THENCE S 34°36'03" W 43.30 FEET; THENCE S 01°00'00" W 93.61 FEET; THENCE S 82°45'16" E 15.09 FEET; THENCE N 01°00'00" E 90.72 FEET; THENCE N 34°36'03" E 37.39 FEET; THENCE N 45°08'37" E 45.05 FEET; THENCE N 02°38'18" E 22.20 FEET TO THE PLACE OF BEGINNING.

ALSO SUBJECT TO AND INCLUDING A 30 FEET WIDE PEDESTRIAN EASEMENT LYING 20 FEET WESTERLY AND 10 FEET EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S 02°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 94.00 FEET; THENCE S 02°06'24" E 265.00 FEET; THENCE S 82°45'16" E 210.74 FEET FOR A PLACE OF BEGINNING; THENCE S 02°08'35" E 470 FEET MORE OR LESS TO THE WATER'S EDGE OF THE HURON RIVER FOR A PLACE OF ENDING.

CLIENT: MURRAY/DURBIN BUILDERS

PROJECT NO. 83482-01

FILE 00995 257E 30

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



REGISTERED LAND SURVEYOR NO. 24618



SCALE 1 INCH = - FEET

DRAWN PVS

DATE 2-17-95

CHECKED CRO

REVISED -

DATE -

CHECKED -

FIELD BOOK 120-05 PG 28

SHEET 3 OF 4



Ayres, Lewis, Norris & May, Inc.
Engineers • Planners • Surveyors

3959 RESEARCH PARK DRIVE ANN ARBOR, MICHIGAN 48108
(313) 761-1010

LEGAL DESCRIPTION - PARCEL "C"

COMMENCING AT THE CENTER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 7 EAST, SUPERIOR TOWNSHIP, WASHTENAW COUNTY, STATE OF MICHIGAN; THENCE S 02°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 94.00 FEET; THENCE S 02°06'24" E 265.00 FEET; THENCE S 82°45'16" E 210.74 FEET; THENCE N 87°23'32" E 217.01 FEET FOR A PLACE OF BEGINNING; THENCE S 87°23'32" W 217.01 FEET; THENCE S 02°08'35" E 470 FEET MORE OR LESS TO THE WATER'S EDGE OF THE HURON RIVER; THENCE NORTHEASTERLY ALONG SAID WATER'S EDGE TO A POINT BEARING S 02°08'35" E FROM THE PLACE OF BEGINNING; THENCE N 02°08'35" 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 CONTAINING 2.12 ACRES (2.01 ACRES NET) OF LAND, MORE OR LESS, INCLUDING A 66 FEET WIDE PRIVATE EASEMENT FOR INGRESS, EGRESS, AND PUBLIC UTILITIES 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°14'15" E 977.43 FEET ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION AND CENTERLINE OF GALE ROAD AS SHOWN ON THE PLAT OF "BURR OAK" SUBDIVISION AS RECORDED IN LIBER 23 OF PLATS, PAGES 51-54, WASHTENAW COUNTY RECORDS; THENCE N 82°19'48" E 810.92 FEET ALONG THE CENTERLINE OF GEDDES ROAD (FORMERLY POTAWATOMIE TRAIL); THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 224.00 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING ALONG SAID CENTERLINE N 79°28'21" E 67.78 FEET; THENCE S 02°38'18" W 282.09 FEET; THENCE S 53°53'29" E 75.78 FEET; THENCE S 87°23'32" W 23.91 FEET; THENCE S 02°08'35" E 65.00 FEET; THENCE N 53°53'29" W 132.85 FEET; THENCE N 02°38'18" E 302.14 FEET TO THE PLACE OF BEGINNING.
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RECORDED
WASHTENAW COUNTY, MI
JAN 14 9 00 AM '97
PEGGY M. HAINES
COUNTY CLERK/REGISTER

CLIENT: MURRAY/DURBIN BUILDERS

PROJECT NO. 83482-01

FILE 00995 257E 30

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

Paul V. Schwimmer

REGISTERED LAND SURVEYOR NO. 24618



SCALE	1 INCH = - FEET
DRAWN	PVS
DATE	2-17-95
CHECKED	CRO
REVISED	-
DATE	-
CHECKED	-
FIELD BOOK	120-05 PG 28
SHEET	4 OF 4

 **Ayres, Lewis, Norris & May, Inc.** 3959 RESEARCH PARK DRIVE ANN ARBOR, MICHIGAN 48108
Engineers • Planners • Surveyors (313) 761-1010

November 2, 2022

Superior Charter Township Zoning Board of Appeals
Attention: Lynette Findley and Laura Bennett
3040 North Prospect
Ypsilanti, Michigan 48198
lynettefindley@superior-twp.org
planning@superior-twp.org

Fred Lucas
Lucas Law, PC
7577 US Highway 12, Suite A
Onsted, Michigan 49265
lucas@lucaslawpc.com

Re: Appeal of Certificate of Zoning Compliance Issued for 5728 Geddes Road

Dear Ms. Findley, Ms. Bennett, and Mr. Lucas:

As requested during the October 19, 2022, Zoning Board of Appeals (“ZBA”) meeting, this letter provides further support of Mr. Matthew Schuster’s and Dr. Alyssa Cairo’s appeal of the of the Certificate of Zoning Compliance (the “Certificate”) in connection with the development of a new residence at 5728 Geddes Road.

The ZBA asked whether the 66 foot wide right-of-way was terminated by merger. It was not. However, even if the ZBA determines that it was terminated, the termination would trigger other ordinance violations and the Certificate should still be revoked.

A Right-of-Way Cannot Be Terminated by Merger

The 66-foot-wide area is a right-of-way. It was established in 1996 by a dedication of the 66-foot-wide area. **The area is a right-of-way because it was intended to be occupied or used for a public road and/or for public utilities. Superior Township Ordinance No. 174, § 17.03(184) (defining right-of-way as “[a] strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied, or occupied by, a road, utility, and other similar uses”).** When it was established a 66 foot width was, and continues to be, the standard for a public road.

There is a public interest in rights-of-way (which can be future interests). The termination of a right-of-way requires the Township to formally vacate the right-of-way or otherwise properly

November 2, 2022

Page 2

terminate it. The Schusters have been unable to locate any resolution that vacates the right-of-way or other evidence of termination. Until that occurs, the right-of-way continues to exist and improvements cannot be established within it.

If the Right-of-Way is an Easement, the Easement was Not Terminated by Merger

Even if the right-of-way is not a formal right-of-way, but rather is only a private easement that could be terminated by merger, this one was not terminated. First, the notion that common ownership “automatically” terminates an easement is without merit. This argument ignores the fact that Parcels B and C were under common ownership long before the Parcels were purchased by the Moulieres and the right-of-way always existed during that time. If common ownership was the only requirement, then the right-of-way would have terminated long before the Parcels were combined in 2018.

Similarly, the right-of-way/easement over Parcel B *was not* terminated by merger when Parcels B and C were combined in 2018. The facts related to this matter, and the Township’s position throughout, make that conclusion clear:

- When the Parcels were combined there was never a document or other instrument that terminated any portion of the right-of-way.
- The survey used for the approval of the consolidation of Parcels B and C shows the full 66’ right-of-way and did not alter or change it in any way. (See Exhibit A, Superior Township Land Division Approval dated 7-12-18 and Certified Survey of Kem-Tec & Associates dated March 24, 2017)
- In October 2021, Richard Mayernik reiterated that the right-of-way on the 66-foot-wide easement still exists over Parcel B (“*Since the original land division occurred in 1996 and, no additional lots are being created, it is my determination that the 66’ easement is exempt from the 2004 Private Road Ordinance*” and attached the 1995 Survey Certificate that includes the full 66’ right-of-way). (Exhibit B, Mayernik Dep. Ex. 1.)
- In January 2022, the ZBA relied on Mr. Mayernik’s determination when it granted a variance to the Moulieres from Section 3.101 for setbacks from the right-of-way. (Exhibit C, January 12, 2022 ZBA Approved Minutes.)
- During his July 2022 deposition, Mr. Mayernik further confirmed the continued existence of the right-of-way in his deposition (Ex. D, Mayernik Dep. Tran. at various pages attached) and also wrote ROW in what he described as the right-of-way area (See Exhibit E which is also part of Ex. 1 to Mayernik Dep)
- There has never been any approved plot plan that shows the right-of-way merged out of existence or terminated.

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At all times prior to the ZBA meeting on October 19, 2022, neither the Township (either acting through Mr. Mayernik or the ZBA) nor the Moulieres, ever took the position that the right-of-way was terminated by merger. To the contrary, the right-of-way was, and continues to be, shown on their submissions and there has never been any indication that it was terminated. **The specific location of the right-of-way may be in question due to the inaccuracies in the various drawings, but the fact that the right-of-way exists and that it is on Parcel B has never been in dispute.**

The Township has taken the position that the right-of-way was established in 1996 when Parcels B and C were created. The Township, and the ZBA, have used this as the basis for determining that the drive and the right-of-way area do not have to comply with newer ordinances since they consider them to be legal non-conforming uses¹. **The legal non-conforming use ordinance does not permit a shift in the boundaries of the right-of-way area without also requiring compliance with other applicable provisions of the ordinance.** See Superior Township Ordinance No. 174, §§ 16.06, 16.08. As such, by determining that the existing right-of-way is protected, the ZBA and the Township are also concluding that the right-of-way has not changed.

Moreover, the right-of-way could only have been terminated if a new lot was created when Parcels B and C were combined in 2018. As mentioned above, the ZBA determined that a new lot was NOT created² in 2018 when it did not require the combined Parcels to comply with current ordinances (including the requirement that the lot front on a private or public by its entire width). **Again, since a new lot was not created, the right-of-way could not have been terminated.**

The Township and the ZBA further confirmed the existence of the right-of-way in September of 2021 when it upheld the denial of a building permit on Mr. Schuster's property because it was located within the setback from the right-of-way. Again, as part of that discussion, the location of the right-of-way was based on the original location that has always been used and shown.

**If the Easement Was Terminated By Merger, the Termination would
Result in Other Ordinance Violations**

On the other hand, if the ZBA and the Township change their position and decide that the right-of-way is actually an easement **and** that it was terminated, then the existing private road

¹ The Schusters disagree with this conclusion and continue to contend that the Private Road ordinance, lot frontage and other applicable ordinances should apply and the Township improperly failed to enforce those ordinances.

² The Schusters disagree with this conclusion as well, and believe it is directly contrary to the 2018 issuance by the Township of a new lot identification number and subsequent actions.

November 2, 2022

Page 4

would no longer be protected based on the reasoning set forth above. In that case, the private road would be required to comply with the Private Road Ordinance (which it cannot) and a Private Road permit must be issued (which could not be). Ironically, this would produce the very result that the Schusters contend is correct and the very result the Moulieres have fought so hard to avoid.

The Township Lacked the Information Required to Issue the Certificate

As discussed in the appeal and in other presentations to the ZBA and the Township Board, inaccuracies, material omissions, inconsistent plans and a lack of a comprehensive and accurate drawing make it nearly impossible to understand what is being built and exactly where it will be. **The very fact that the ZBA has to question, at this late point in the process and after construction has begun, where the right-of-way is and whether part of it may have been terminated, make it clear that the proper and correct information and drawings were never provided.** Mr. Mayernik reinforces this point for us in his deposition when he acknowledged that he did not locate or review the right-of-way on the plot plan. This shows that neither the Township nor the ZBA had the information that was required when the Certificate was issued and that is why they still cannot confirm where the right-of-way is and are now compelled to ask if it even exists.

Conclusion

In the end, the Moulieres never claimed the right-of-way was terminated until the Schusters showed that they were constructing improvements directly within it and they sensed that the ZBA might enforce its ordinance to their detriment. Now, in a transparent and self-serving effort to continue their project, they are asking the ZBA and the Township to ignore the very drawings that they previously submitted and to ignore the Township's long history of relying on the location of the right-of-way in its previous interpretations and reviews of the plans.


In short, if the right-of-way was not terminated, then the dwelling and related infrastructure encroach into the right-of-way and must be removed. If the right-of-way was terminated, (notwithstanding previous interpretations to the contrary), then the ZBA must require production of new plans that show the location of the right-of-way, the Moulieres must comply with the Private Road ordinance, must comply with other dimensional ordinance requirements based on the new calculations without the right-of-way and applications must be submitted for new variances made necessary by the change in the dimensions of the right-of-way and the changes to the Moulriere's property.

Either way, the Certificate must be revoked.

November 2, 2022
Page 5

Very truly yours,

HONIGMAN LLP

By: 
J. Patrick Lennon

cc: Matt Schuster
Michael Hindelang

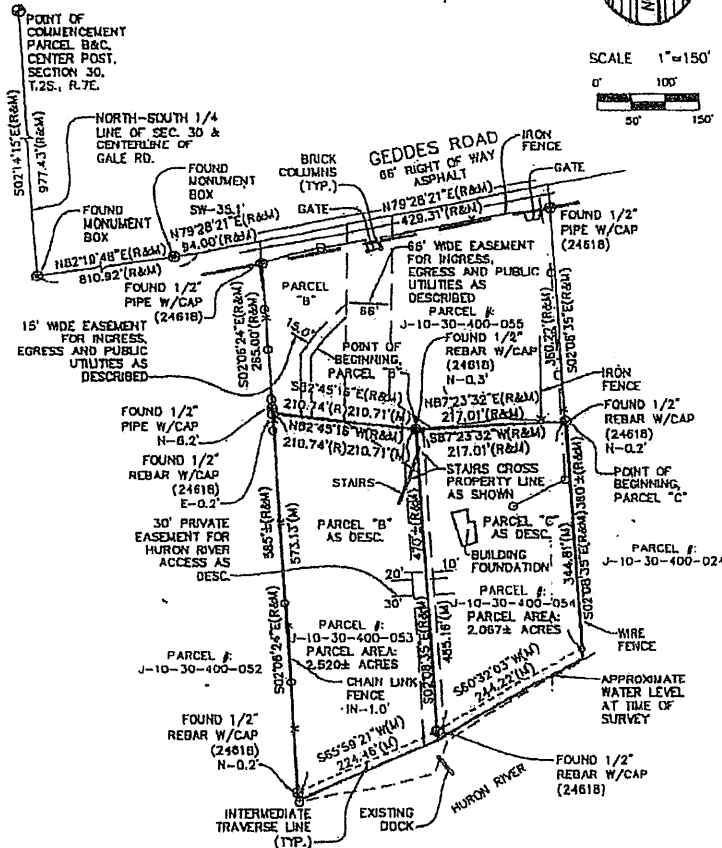
EXHIBIT A

CERTIFIED SURVEY

PROPERTY DESCRIPTION:
SEE SHEETS 2 & 3 OF 3



SCALE 1"=150'
0' 100' 150'



NOTE:
A CURRENT TITLE POLICY HAS NOT BEEN
FURNISHED AT TIME OF SURVEY, THEREFORE
EASEMENTS AND/OR ENCUMBRANCES
AFFECTING SUBJECT PARCEL MAY NOT BE
SHOWN.

LEGEND

- SET 1/2" REBAR WITH CAP, #32341
- ⊙ FOUND MONUMENT (AS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORD DIMENSION

I HEREBY CERTIFY THAT I HAVE SURVEYED THE LAND
HEREIN PLATTED AND DESCRIBED AND THAT THE
RATIO OF CLOSURE MEETS THE REQUIREMENTS OF
PUBLIC ACT 132 OF 1970.

THOMAS G. SMITH, P.S. NO. 32341

KEM-TEC & ASSOCIATES
22550 GRATIOT AVE. EASTPOINTE, MI 48021
PROFESSIONAL SURVEYORS - PROFESSIONAL ENGINEERS
(586) 772-2222 • FAX (586) 772-4048

CERTIFIED TO: RAYMOND REILLY	
FIELD SURVEY: TS MR	DATE: MARCH 24, 2017
DRAWN BY: DLD	SHEET: 1 OF 3
SCALE: 1" = 100'	JOB NO.: 17-00913

SUPERIOR CHARTER TOWNSHIP ZONING COMPLIANCE

R. MAYER-NUK (R)
(Zoning Inspector)

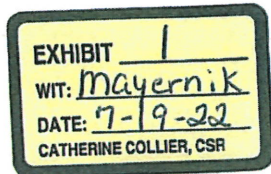
7-12-18

(Date)

R-1 DISTRICT
COMBINE PARCEL 'B' AND 'C'

003

EXHIBIT B



MEMO

DATE: October 13, 2021

TO: Charter Township of Superior Board of Trustees

FROM: Richard Mayernik, Building/Zoning Official

RE: Appeal of Building Official's decision- Private Road Ordinance #163

Mr. Schuster is appealing my determination that a Private Road Permit is not required for the construction of the access road/drive at 5728 and 5766 Geddes. I have attached the following documents for your review:

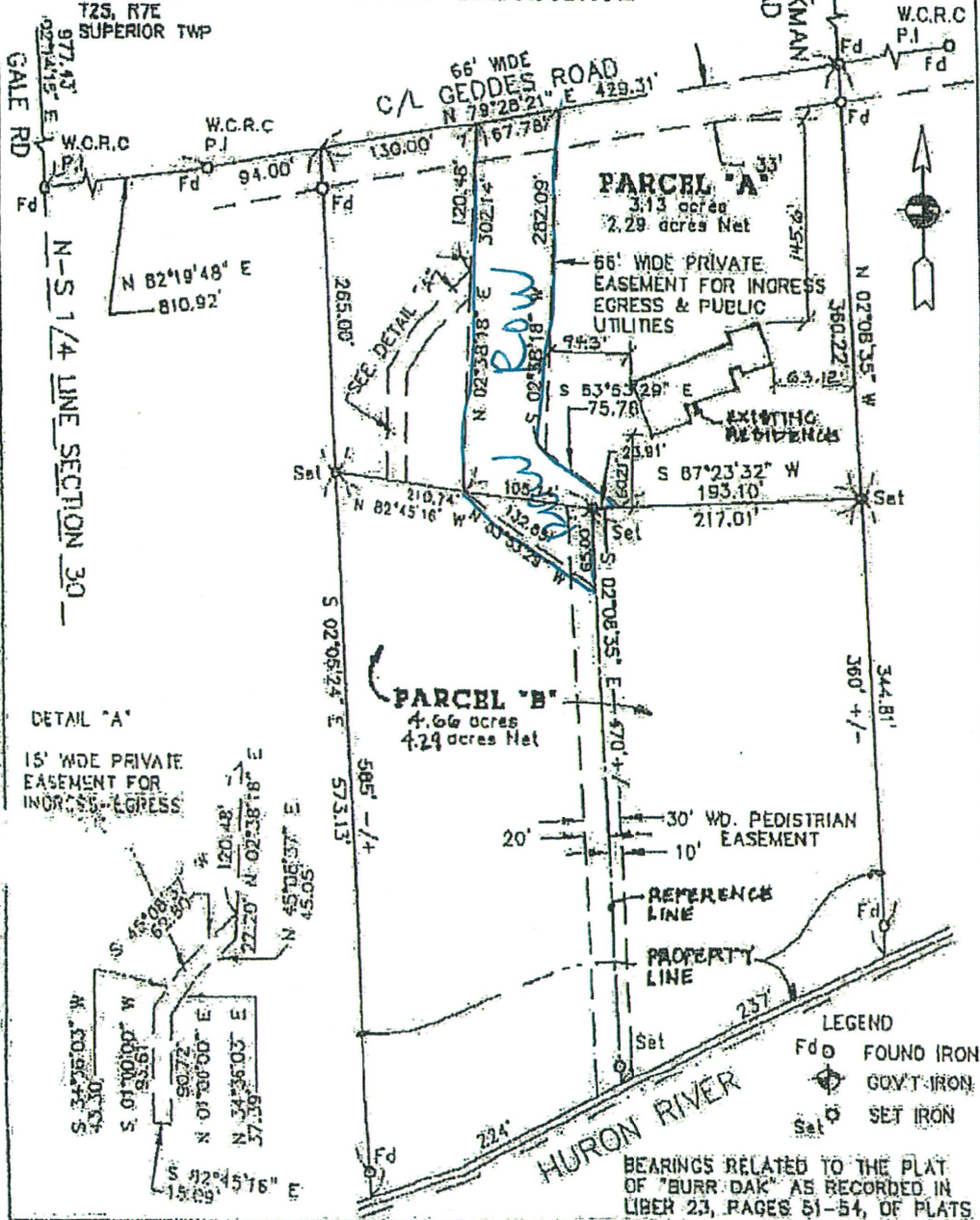
- Ayres, Lewis, Norris & May, Inc. survey dated 2-17-95. This survey indicates the division of the original parcel into three parcels (A, B, and C) and the creation of a 66' foot wide easement for ingress and egress. This land division was stamped approved by the Building/Zoning Official on 8-26-96.
- Kem-Tec & Associated survey dated 3-24-17. This document was stamped approved by me on 7-12-18 for the combination of parcels 'B' and 'C'.
- Washtenaw County GIS map showing the current configuration of parcels 055 and 061.
- Page #2 of the Private Road Ordinance (Ord. #163) which was effective in October of 2004.
- Page #2 of a letter from Township Attorney Lucas responding to questions from Schuster attorney Troyka relating to the private road.

Section 163.03B of the Private Road Ordinance clearly indicates that *"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.... unless additional lots are connected to the private road."* Since the original land division occurred in 1996 and, no additional lots are being created, it is my determination that the existing 66' easement is exempt from the 2004 Private Road Ordinance. There is no reference in the Ordinance requiring the private road to have been constructed in order to be exempt.

Mr. Schuster contends that the combination of parcels 'B' and 'C' creates a "new" parcel which triggers the requirement for a Private Road Permit. I believe the clear intent of the Ordinance is to require a permit for new additional lots. It would be illogical for the Township to enact an Ordinance that would not require a permit for an existing easement serving two homes but would require a permit if the two lots were combined so that only one home was served.

For the above stated reasons, I would ask the Board to uphold my determinations and deny Mr. Schuster's appeal.

SURVEY CERTIFICATE

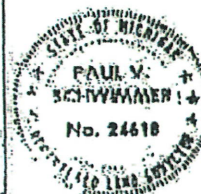


CLIENT: MURRAY/DURBIN BUILDERS

PROJECT NO. B3482-01

FILE 30
TELE 56600

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



SCALE 1 INCH = 100 FEET

DRAWN PVS

DATE 2-17-95

CHECKED CRO

REVISED

DATE

CHECKED

FIELD BOOK 120-05 PG 28

SHEET 1 OF 4

REGISTERED LAND SURVEYOR NO. 24618

Ayres, Lewis, Norris & May, Inc.
Engineers • Planners • Surveyors

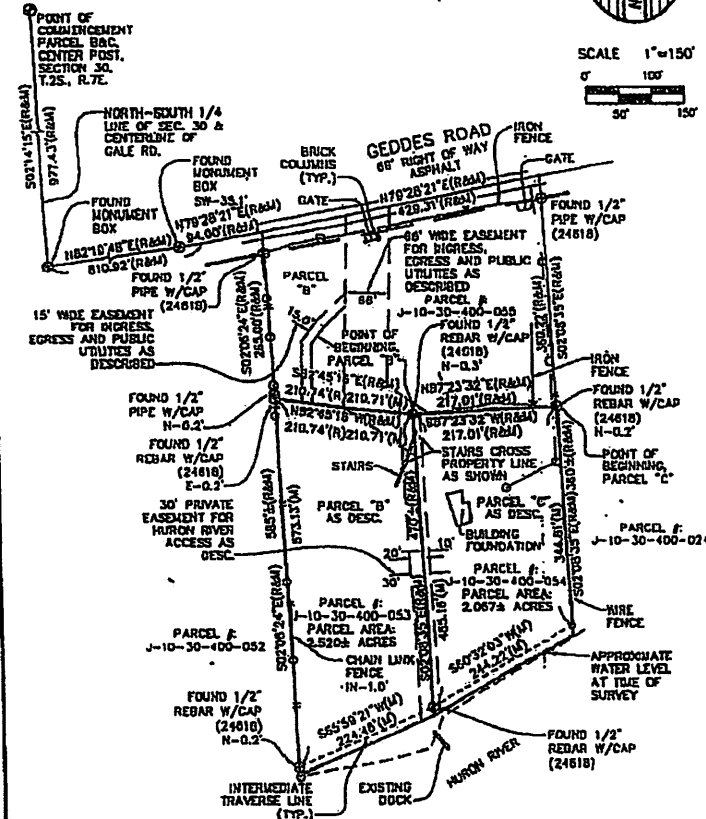
3999 RESEARCH PARK DRIVE ANN ARBOR, MICHIGAN 48108
(313) 761-1010

CERTIFIED SURVEY

PROPERTY DESCRIPTION:
SEE SHEETS 2 & 3 OF 3



SCALE 1"=150'
0' 100' 150'



NOTE:
A CURRENT TITLE POLICY HAS NOT BEEN FURNISHED AT TIME OF SURVEY, THEREFORE EASEMENTS AND/OR ENCUMBRANCES AFFECTING SUBJECT PARCEL MAY NOT BE SHOWN.

LEGEND

- SET 1/2" REBAR WITH CAP, #32341
- ⊙ FOUND MONUMENT (AS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORD DIMENSION

I HEREBY CERTIFY THAT I HAVE SURVEYED THE LAND HEREIN PLATTED AND DESCRIBED AND THAT THE RATIO OF CLOSURE MEETS THE REQUIREMENTS OF PUBLIC ACT 132 OF 1970.

THOMAS G. SMITH, P.S. NO. 32341

KEM-TEC & ASSOCIATES	
22855 GRATIOT AVE. EASTPONTE, MI 48021	
PROFESSIONAL SURVEYORS - PROFESSIONAL ENGINEERS	
(586)772-2222 • FAX (586)772-4048	
CERTIFIED TO: RAYMOND KELLY	
FIELD SURVEY: TS MR	DATE: MARCH 24, 2017
DRAWN BY: OLD	SHEET: 1 OF 3
SCALE: 1" = 100'	JOB NO.: 17-00913

SUPERIOR CHARTER TOWNSHIP ZONING COMPLIANCE

R. MAYERNIK (R)
(Zoning Inspector)

7-12-18

(Date)

R-1 DISTRICT
COMBINE PARCEL 'B' AND 'C'

003

EXHIBIT C

**SUPERIOR CHARTER TOWNSHIP
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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-Chairman Dail at 7:00 p.m.

2. ROLL CALL

The Zoning Board of Appeals members present were Brennan, Craigmile, Dail, Parm. Deeds and Heningburg were absent. Rick Mayernik, Building and Zoning Official, was also in attendance. A quorum was present.

3. ADOPTION OF AGENDA

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

4. APPROVAL OF MINUTES

A motion was made by Member Parm and supported by Member Brennan to approve the minutes of September 29, 2021. The motion carried.

5. CITIZEN PARTICIPATION

None.

6. COMMUNICATIONS

Public comment from Aneel Kanani and Ruth Langs in opposition to ZBA 21-06.

A four-page letter dated January 12, 2022 along with several attachments addressed to the ZBA members from Mr. Schuster.

Motion by Member Brennan, supported by Member Parm to receive and file the communications.

7. PUBLIC HEARINGS AND CONSIDERATION OF APPEALS

- A. ZBA #21-05 – 5766 Geddes Road - Schuster
Request for seven separate Zoning Ordinance interpretations and an appeal of the decision of the Township Zoning Administrator.

Motion by Member and supported by Member to open the public hearing.
The motion carried.

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Mr. Schuster provided the ZBA members with a printout of PowerPoint Slides regarding his appeal. He then gave background information on his previous ZBA submittals and interpretation requests.

Mr. Schuster explained that he is asking the Zoning Board of Appeals to interpret seven portions of the Zoning Ordinance as well as appealing the decision of Mr. Mayernik as Zoning Official. Mr. Schuster briefly explained the seven interpretations and why he is requesting an interpretation of the parts of the Zoning Ordinance.

Mr. Schuster stated he does not want the Zoning Ordinance to be amended, he wants an interpretation of items of the ordinance. The goal is to protect the community, residents, and the environment. He also noted concerns with impact of the project on the Huron River Watershed.

He is also requesting to overturn the building permit that was issued. He noted that he feels unsafe due to the undercuts and steep grades surrounding the parcel.

Member Dail stated that the ZBA gets authority from the Zoning Ordinance and operates within the confines of the authority granted here. He continued to read through section 13.07 of the Zoning Ordinance as well as the purpose of the R-1 Zoning District.

Member Dail stated that when it comes to development in the Township, there are several different controlling factors: the Zoning Ordinance, Building Code, and Township Engineering Standards.

Member Dail informed Mr. Schuster that as the ZBA looks at the requested interpretations, he'd like Mr. Schuster to tell the Board why each is necessary and why it is a subject of the Zoning Ordinance and not the Building Code.

Mr. Schuster stated that placement of guard rails and fences generally cannot be on the lot line or on the neighbor's lot. He went on to state that a fence has been installed on his property due to the retaining wall, and a fence cannot be placed on someone else's property. He questioned if a fence is synonymous with a guard rail or if it is an interchangeable term. He also noted that a Certificate of Zoning Compliance is required for fences in the Township.

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Mr. Schuster spoke to his second interpretation request regarding retaining walls. He shared concerns that the retaining walls can impact wetlands and the runoff by creating landings. He continued to explain that heights of walls are specified, and the question is: is a retaining wall a "wall" and does it observe setbacks?

Member Dail stated that Mr. Schuster mentioned mass grading. As a Civil Engineer, Member Dail understands mass grading to be taking a large area and reshaping a surface to be compatible with plans you're trying to develop. He has never heard of mass grading applied to a single lot.

Mr. Schuster replied that the term is in the Zoning Ordinance as construction. The term construction includes the mass grading in preparation for a new use, and that term is not found in the Ordinance definitions. He stated he is trying to figure out the reason that term is specifically in the Ordinance. If it doesn't have any practical meaning, that is functionally cutting it out of the Ordinance without amending it. That is why he is asking for an interpretation of mass grading.

Mr. Schuster detailed his third interpretation request – retaining wall height. He explained that wall height is a term defined in the Zoning Ordinance and there is a section on fence height that overlapped with retaining wall. He questioned from which side the retaining wall would be measured. He feels that in theory, a retaining wall height could be limitless because it is not regulated.

Member Dail stated that anyone can develop hypothetical situations of any issue they want to. He questioned if the ZBA was trying to address a hypothetical problem that doesn't exist, and if it could have unintended consequences.

Mr. Schuster replied that there is a ten-foot unsupported earthen wall on his property that it is real, and happened.

Member Dail acknowledged that what is happening at the site is a "real mess". He went on to question, if the ZBA had the interpretation that Mr. Schuster seeks, would that have prevented the ten-foot wall? Or, would it still be there? He went on to say that it (the construction) is a work in progress that needs to be resolved.

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Mr. Schuster replied that it sounds like it would be subject to a variance request.

Regarding his fourth interpretation request, Mr. Schuster asked "what does an approved road mean?" He questioned if you could build on a lot that has a grandfathered road, or if it must be reviewed.

Mr. Schuster stated that his fifth interpretation request goes back to other uses on a parcel and goes back to whether a retaining wall is an accessory structure. And are accessory structures allowed in the setback?

Member Dail explained that accessory structure matters come before the Zoning Board of Appeals frequently. He continued to state that it is usually a small shed or barn involving the property lines and the principal structure. It's always in the form of an actual structure, not in the form of a linear structure.

Mr. Schuster explained that when he wanted to add an accessory structure it needed to be 60 feet away from the property line, but the retaining wall could be right at the property line. He is questioning if a retaining wall is an accessory structure and if it is allowed in the setback.

The sixth interpretation Mr. Schuster is requesting comes back to construction in the easements, and if a building permit is needed for a structure that is not relating to the parcel it is on. He continued to explain that a private road generally has an operating agreement, but in this case, there isn't one. If you need a structure on a second parcel, you're impacting the stormwater and grading over two lots.

Member Dail replied that if the interpretation was made the way Mr. Schuster is requesting, anyone involved in this would need to go through the site plan process with the Planning Commission, which is a fairly involved, lengthy, expensive process.

Mr. Schuster responded he believes it would protect the natural resources in the district. If you're paving and constructing over two or more parcels, who is bearing cost for maintenance and what happens if there's a failure? He added it is not a simple item that should be glossed over.

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The seventh interpretation is regarding mass grading. Mr. Schuster stated this involves what can be permitted and allowed. He continued that mass grading is construction, and if it needs a permit, is it conforming with the intent of the ordinance?

Mr. Mayernik stated he reviewed the interpretation requests and provided a lengthy response. He also included a letter from the Township Attorney. He reiterated that the Zoning Official is charged with interpreting the provisions of the Ordinance, while the ZBA has the authority to interpret the text of the ordinance. He explained Mr. Schuster is asking for the interpretation of a retaining wall, improved road, mass grading, and a method of retaining wall height calculations. Mr. Mayernik asked if these are requests that the ZBA has the authority to interpret, or if these matters should be in front of the Planning Commission and the BOT to amend the Zoning Ordinance. He noted it seems like we are creating text and not interpreting text in some of these cases.

Mr. Mayernik went on to state these issues are relating to a single-family lot and a 66-foot-wide easement. He stated that Mr. Schuster made comments about the Rock properties and Eyde properties, but he does not see the similarities between a proposed 2,000 home development and a single-family lot.

In response to the first interpretation request, Mr. Mayernik explained that the Zoning Ordinance defines what a fence is, but not a guard. The building code defines a guard, but the building code specifically prohibits any jurisdiction from creating anything that overrides any provision of the building code. He continued that guards are a safety device, and the building code tells you where a guard must be located, whereas fences are not meant for safety. He added that clearly fences and guards are not the same thing, and he would like the ZBA to interpret that guards required by the building code are not fences and cannot be regulated by the Zoning Ordinance.

In response to the second interpretation request, Mr. Mayernik explained that accessory structures are not allowed to be in the front yard of any residential lot. To call a retaining wall an accessory structure would prohibit anyone from having a retaining wall in their front yard. He believes the definition should be akin to what is discussed in the Zoning Ordinance as it is creating a separation between differential grades.

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In response to the third interpretation request, Mr. Mayernik stated that being that retaining walls are not a defined term, if the Zoning Ordinance did not relate the height of retaining walls to fences, theoretically, one could create a retaining wall that retained two feet of dirt on one side and that retaining wall could go thirty feet in the air, and it would be unregulated by the Township Zoning Ordinance. He stated that is why within the Zoning Ordinance there is a correlation between retaining walls height above the upper grade and fences. Mr. Mayernik went on to state that the idea of a retaining wall that would be placed within a right-of-way that was necessary for the construction of a roadway or a driveway seems perfectly normal to him. Mr. Mayernik asked the ZBA to affirm that retaining wall heights from the lowest to the highest elevations are unregulated and find that retaining wall heights above the higher elevation of the grade be regulated as fences as described within Article 6 of the Township Zoning Ordinance.

Member Dail stated that a retaining wall is a very expensive engineered structure that serves a purpose, whereas a fence serves a decorative purpose. He cannot imagine anyone building a retaining wall higher than absolutely necessary.

In response to the fourth interpretation request, Mr. Mayernik explained that he looked at three separate situations to how he'd interpret an improved road. Public and private roads are approved by the Planning Commission and the Washtenaw County Road Commission. Private roads are applied for and constructed in accordance with the private road ordinance. Lastly, prior to the enactment of the Private Road Ordinance, the requirement of land divisions and lots to be on a public or private street. Up until it was adopted, the applicant showed the lots to be divided and the 66-foot right-of-way. Whether the road was constructed or not, the easement is there. Also, prior to the issuance of the Certificate of Occupancy of the house, the construction of that road is reviewed by the Building Official and the Fire Chief.

In response to the fifth interpretation request, Mr. Mayernik explained that the applicant is asking that accessory structures be placed only on the lot relating to the construction at hand. Mr. Mayernik believes Mr. Schuster's thought is that a retaining wall is an accessory structure, and the point he may be asking for is that the person whose land the easement goes through would have controlling say over whether the retaining wall could be placed within the right-of-way. Mr. Mayernik went on to state that he does not agree with that interpretation. He believes

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the retaining wall is necessary for the construction of the road for grades and keep the road safe and level. He thinks the terms of whatever easement was granted may dictate different things, but those are legal battles to be fought elsewhere. As far as Mr. Mayernik's interpretation, he stated retaining walls or other structures necessary for construction of private drives or roads located in a right-of-way should be exempt.

In response to the sixth interpretation request, Mr. Mayernik stated that Mr. Schuster believes that because the Mouliere's would have to traverse across Mr. Schuster's property to get to their property, the construction affects two lots and not one. As such, should come before the Planning Commission for review. Mr. Mayernik disagrees on several levels. He explained that there are many metes and bounds divisions across the township where the property line of each lot goes to the center of the road. Therefore, the person at the end of a cul-de-sac goes across several lots to get to their house. He does not believe making every one of those homeowners come before the ZBA would be the intent of the Zoning Ordinance. He went on to state that throughout many of the rural roads in the township, many of the parcel boundaries go to the center of the public road. Mr. Mayernik believes that single family lots should be exempt from going to the Planning Commission.

In response to the seventh interpretation request, Mr. Mayernik stated that he has not heard of mass grading applied to a single-family lot. He explained that at one time the Township adopted a soil movement and deposit ordinance, but it was rescinded. Currently, filling, grading and other earthwork is regulated by the Soil Erosion Division of Washtenaw County. Given that the Township doesn't regulate soil movement and deposit, there is no need to create a definition of mass grading.

Lastly, Mr. Mayernik spoke regarding the appeal of his decision not to issue a Certificate of Zoning Compliance for the building permit relating to the roadway. He explained that permits are not required for the construction of driveways. He noted that the State has chosen to modify the language from the International Code Council and completely exempts driveways and sidewalks from Building Code. The Building Code has no language identifying materials or methods to construct a driveway or road. He explained about steep slopes and differential of grade, noting that if the differential of grade is over 30 inches a permit is needed. He explained that statement is included in the Building Code because in other areas of the code, any differential of grade 30 inches or more, adjacent to a walking surface would require a guard.

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Mr. Mayernik described that in this case, grading was created, and the driveway is next to steep slopes in several areas. From a technical standpoint, the steep slopes exceed some of the dimensions required by the Building Code at the portions exceeding 30 inches. Mr. Schuster first sent Mr. Mayernik emails stating he found these sections and wanted Mr. Mayernik to look at them because he thought a permit was required. At first, Mr. Mayernik thought it was too technical and not necessarily totally applicable, but he could see Mr. Schuster's point and he issued the permit. Now Mr. Schuster is requesting that same permit be rescinded because Mr. Mayernik did not issue a Certificate of Zoning Compliance for what would be the installation of safety guard rails.

Mr. Mayernik went on to discuss that in the Zoning Ordinance where it says if you're issuing a Building Permit you need a Certificate of Zoning Compliance. He believes this relates to houses, sheds, and fences, and interprets that a Certificate of Zoning Compliance is required to issues germane to the Zoning Ordinance. He does not see the point in issuing one for a guard rail of this nature.

Member Dail stated that the ZBA has 180 days to make a decision and he would like to take more time as it is a lot of information to take in.

Motion by Member Brennan, supported by Member Parm, to postpone action on ZBA 21-05 5766 Geddes Road – Schuster, a request for eight separate Zoning Ordinance interpretations and an appeal of the decision of the Township Zoning Administrator.

Roll Call:

Yes: Brennan, Craigmile, Dail, Parm.
No: None.
Abstain: None.
Absent: Deeds, Heningburg.

The motion carried.

- B. ZBA #21-06 5728 Geddes Road - Mouliere
Variance from Section 3.101 (Dimensional Standards) for setbacks from the private road right-of-way.

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Motion by Member Parm, supported by Member Brennan to open the public hearing.

Adam Behrendt, attorney for the homeowners of 5728 Geddes Road from Bodman Law, stated that the applicant is requesting a variance to permit a 60-foot relaxation of the setback requirement that will allow the Mouliere's to construct their home. He added that the reasons for the request are set forth in their statement included in the packet. Mr. Behrendt went on to explain that the property is enveloped in wetlands and steep grade and the location shown on the site plan is the only place the home structure can be erected and it will be within that 60-feet. He added that the ultimate use is to make a single-family home, and the variance request is not due to an issue of the applicant's own creation.

Member Dail explained that there are standards of review that the ZBA must affirm in order to grant the variance. He added that he fully understands the frustration of Mr. Schuster.

Mr. Behrendt stated that this is the last step before starting construction and getting it wrapped up is very important to the process.

Mr. Mayernik explained he prepared a short memo for ZBA members and also provided a copy of the building permit denial letter and a copy of the land division from 1996. He explained that Mr. Schuster's parcel is labeled Parcel A and the Mouliere's parcel is B and C. Also attached was a drawing from Atwell showing approximately where the house is located.

Mr. Schuster submitted additional paperwork and it was given to the ZBA members the evening of the meeting. He also provided a copy of alternative locations for the home that wouldn't infringe on the Zoning Ordinance.

Member Dail stated that he looked at the location sketch provided by Mr. Schuster and recalled it showed a footprint for an 8,000 square foot structure, which would fit at the site. He added that based on the drawing provided by Mr. Schuster, he effectively moved that structure to the east almost directly in front of his own home.

Mr. Schuster replied that his concern is for the topography of the land, the wetlands and the Huron River Watershed. He acknowledged that it is not in his personal best interest, but there are natural features that are worth protecting. He feels that the application hasn't addressed the

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environmental concerns that would be needed in order to grant a variance.

Mr. Behrendt replied that the applicant has full soil erosion for the site, and they have taken that very seriously.

Member Dail reviewed the Standards of Review set forth in Section 13.08B of the Zoning Ordinance:

1. Special conditions and circumstances exist that are unique to the land, structures, or buildings involved, and are not applicable to other lands, structures, or buildings in the same district, subject to the following:
 - a. The existence of nonconforming dwellings, lots of record, structures, uses, or sites on neighboring lands in the same zoning district or other zoning districts shall not be considered grounds for a variance.
 - b. The special conditions and circumstances on which the variance request is based do not result from the actions of the applicant.
2. Literal interpretation of this Ordinance would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this Ordinance.
3. Granting the variance requested would not confer upon the applicant any special privilege that is denied by the Ordinance to other lands, structures, or buildings in the same district.
4. A variance granted shall be the minimum that will make possible a reasonable use of the land, building, or structure. The Board of Appeals may consider lesser variances than that requested by an applicant.
5. The variance granted shall be in harmony with the intent of this Ordinance and will not be injurious to the environment, neighborhood, or otherwise detrimental to the public interest.

The ZBA found the variance met all five Standards of Review set forth in Section 13.08B of the Zoning Ordinance.

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Ms. Dieck, Bodman Law, stated that the applicant and builder looked at many places for the house to be situated. She explained that the septic field can only be in certain places based on the soils in the area.

Motion by Member Brennan, supported by Member Parm to approve ZBA 21-06 5728 Geddes Road – Mouliere, variance from section 3.101 for setbacks from the private road right-of-way, having found that it complies with the standards set forth in section 13.08B of the Superior Township Zoning Ordinance.

Roll Call:

Yes: Brennan, Craigmile, Dail, Parm.
No: None.
Abstain: None.
Absent: Deeds, Henningburg.

The motion carried.

8. OLD BUSINESS

None.

9. OTHER BUSINESS AS NECESSARY

A. Election of Officers

It was determined by the present ZBA members that election of officers would wait until all members of the ZBA were present.

Motion by Member Parm, supported by Member Brennan to postpone the Election of Officers for 2022.

The motion carried.

10. ADJOURNMENT

A motion was made by Member Brennan and supported by Member Craigmile to adjourn the meeting at 9:01 p.m.

Respectfully submitted,

Doug Dail, Chairman Zoning Board of Appeals

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Laura Bennett, Recording Secretary
Superior Charter Township
3040 N. Prospect, Ypsilanti, MI 48198

EXHIBIT D

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 19th day of
July, 2022, at 7577 US Highway 12, Suite A, Onsted, Michigan,
at 12:03 p.m.

Fortz Legal Support

www.FortzLegal.com

844.730.4066

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

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

5 Plaintiffs/Counter-Defendants,

Case No. 20-001274-CH

6 -vs-

HON. ARCHIE C. BROWN

7 MATTHEW A. SCHUSTER and
8 ALYSSA L. CAIRO,

9 Defendants/Counter-Plaintiffs.
10 _____ /

11
12
13 DEPOSITION OF

14 RICHARD J. MAYERNIK

15 Taken by the Defendants/Counter-Plaintiffs, on the 19th day of
16 July, 2022, at 7577 US Highway 12, Suite A, Onsted, Michigan,
17 at 12:03 p.m.
18
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Toll Free: 844.730.4066

<p style="text-align: right;">Page 58</p> <p>1 two lots were combined so that only one home was 2 served." 3 How did you come to that conclusion? What 4 did you rely on? 5 A So, I guess, for what I relied on was -- I guess, as 6 best I can say is, that's my interpretation based on 7 commonsense. As I explained earlier, the intent of 8 the ordinance in my interpretation is to enact it 9 and enforce it when additional traffic is going to 10 occur on the road. In this case, that's -- the 11 combination creates less traffic, not more traffic. 12 Q But that language -- you're not able to cite to any 13 part of the ordinance that says that, are you? 14 A That's my interpretation. 15 Q Does the ordinance say that, those words? 16 A That's my interpretation. No, the ordinance doesn't 17 say those words. That's my interpretation, which 18 was then also upheld by the township board. 19 Q And I understand your interpretation. I'm not 20 trying to be difficult with you. Even if it seems 21 like I am, I'm not. 22 What I'm asking you is, are those words -- 23 is that language that you took -- 24 MR. LUCAS: I think he answered. He said 25 no.</p>	<p style="text-align: right;">Page 60</p> <p>1 assessor and required a permit, but you chose not 2 to. Is that accurate? 3 A I chose not to because it would be illogical, as I 4 mentioned in my memo, to do otherwise. 5 Q So why is it -- with no permit, there's no 6 governance over the construction; correct? 7 A In the most part, yes. 8 Q So why is it illogical to enforce health, safety, 9 and welfare, which is the purpose of the ordinance? 10 A It's illogical to try to take the words out of the 11 private road ordinance and then to try to construe 12 them to mean that the ordinance should apply when no 13 new parcels, no additional parcels, were created. 14 Less parcels were created. And as I stated before, 15 less traffic would exist on this road with one 16 parcel and one home as opposed to what could have 17 been two parcels and two homes. 18 So the combination of these two, in my 19 opinion, does not trigger the -- does not trigger 20 Ordinance 163 irrespective of whatever the assessing 21 department assigns as parcel IDs. 22 Q And I'm going to move on after this. I'm not trying 23 to argue. Because you think it's illogical to do 24 so, you're not considering the health and safety 25 purpose of the ordinance that it says right here;</p>
<p style="text-align: right;">Page 59</p> <p>1 BY MR. MACKENZIE: 2 Q -- from the ordinance? 3 MR. LUCAS: If you heard his answer, he 4 said no. 5 MR. MACKENZIE: Okay. I just want to be 6 clear, Fred. 7 BY MR. MACKENZIE: 8 Q No? 9 A No. 10 Q So my question to you, Mr. Mayernik, is when the 11 Moulieres -- I'm sorry. When the prior owner split 12 the parcel, it's considered a new parcel; correct? 13 A In '96, two new parcels were created, yes. 14 Q Okay. Then when the Moulieres combined the parcels, 15 the tax assessor determined it to be a new parcel; 16 correct? 17 A I believe so, yeah. A new parcel ID was assigned, 18 yes. 19 Q And then when we look at the purpose of the 20 ordinance and it says the purpose is to promote and 21 protect health, safety, and welfare, wouldn't you 22 agree that requiring a permit achieves that purpose? 23 A Yeah, obtaining a permit would achieve that purpose 24 if a permit was required. 25 Q So you could have been consistent with the tax</p>	<p style="text-align: right;">Page 61</p> <p>1 right? 2 A I'm considering the entire ordinance. 3 Q All right. Let's look at -- if you flip to page two 4 of your memo, have you ever seen this survey before? 5 A Yes. 6 Q This is dated February 17th of 1995; correct? 7 A Yeah. 8 Q Do you have a pen, sir? 9 A No. 10 Q Do you have -- I'll give you one. 11 Can you please mark for me on this survey 12 where the right-of-way is to Parcel B? 13 A So this is the extent of the 66-foot wide easement 14 there. 15 Q So can you write ROW in there? 16 A Sure. 17 Q And can you write it -- is this still part of the 18 right-of-way here? 19 A Yes. 20 Q Can you write it right there, too, just so I 21 understand? 22 A (Indicating.) 23 Q And does the right-of-way continue onto Parcel C? 24 A In this case, no, it appears not. 25 Q In '95, those were two separate parcels still or no?</p>

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

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1 A Yeah, I'll mark it where I can see it here.
2 I can't determine the rest of that. It's
3 too small and too close together.
4 Q This is the only drawings that we have, Mr.
5 Mayernik. This is what we were given.
6 A Yeah. No, I get it.
7 Q And that's our issue, too, is that we can't
8 determine where the right-of-way is, either.
9 So do you know where the right-of-way is on
10 Parcel B?
11 A Not on this drawing. I mean, it's -- there's a
12 legal description for it and an engineer or surveyor
13 could go out and plot it exactly.
14 Q Well, when you approved the site -- the Moulriere
15 site plan -- well, let me back up.
16 Did you have to approve the Moulriere site
17 plan?
18 A Yes.
19 Q Did you use this survey from '95 or did you use
20 their recent plan?
21 A I used the plans that came with the construction
22 drawings. And to be honest with you, I had several
23 different plans, site plans, that came through my
24 office. And I don't know if the plan I'm looking at
25 here as Exhibit 2 is a reduced version of the plan

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1 that I approved or not.
2 Q What I can tell you with certainty is, this is what
3 I've received from the Moulieres' counsel as the
4 most up-to-date site plan. So I'm going to ask you
5 one more time to be clear. Can you tell me where
6 the right-of-way is on Parcel B, if you see it on
7 there?
8 A The lines are too close together. I can't determine
9 exactly where it is on the exhibit that you've given
10 me.
11 Q Do you see where it says, "front yard setback"?
12 I'm looking at it upside down, but it would
13 be this line right here.
14 A Right. Uh-huh.
15 Q Do you know where that line came from?
16 A Well, their engineers drew it in there.
17 Q What is the purpose of it?
18 A Well, first of all, that's not a front yard.
19 Q Okay.
20 A So on river properties, the front yard setback
21 applies to the river side. So the property line,
22 the Moulieres' property line, that abuts the
23 Schusters' property to the north is the rear yard.
24 The rear yard has a 50-foot setback.
25 Q And have the Moulieres been granted a variance to

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1 build within that setback?
2 A The Moulieres were granted a variance as relates to
3 the setback requirement from the private road
4 easement. So the private road easement itself
5 creates front yard setbacks just the same as Geddes
6 Road would or any other road would.
7 The home location that the Moulieres chose
8 encroached not in the rear yard setback, but rather
9 in the front yard -- in the setback that was
10 required from the private road easement, and that's
11 what variance they were granted was.
12 Q The Moulieres are prohibited from building within
13 the right-of-way; correct? That's not allowed under
14 the ordinance?
15 A Correct.
16 Q How were you able to determine -- if you can't tell
17 me where the right-of-way is on Parcel B, how do you
18 know that they're not building within the
19 right-of-way?
20 A I can't tell where the easement is on the drawing
21 that's in front of me.
22 Q Well, did you ever see a drawing where you were able
23 to confirm that they weren't building within the
24 right-of-way?
25 A I can't recall.

<p style="text-align: right;">Page 66</p> <p>1 Q Then how can you issue a building permit?</p> <p>2 A I said I can't recall if I saw the drawing. The</p> <p>3 variance was granted by the ZBA for setback.</p> <p>4 Q I understand that. I'm not talking about the</p> <p>5 setback.</p> <p>6 A Okay.</p> <p>7 Q I'm talking about if they're building in the</p> <p>8 right-of-way, which we believe they are, what have</p> <p>9 you looked at to determine that they're not?</p> <p>10 Because the ordinance prohibits it.</p> <p>11 A Let me go back to clarify. I don't believe -- and</p> <p>12 this is memory. I don't believe that there's</p> <p>13 sections of the ordinance that prohibit construction</p> <p>14 within the right-of-way.</p> <p>15 Q Okay.</p> <p>16 A There are setbacks from the right-of-way, and the</p> <p>17 variance that was granted was granted relating to</p> <p>18 those setbacks.</p> <p>19 Q So you believe the ordinance allows the Moulieres to</p> <p>20 build in the right-of-way?</p> <p>21 A I don't think it's prohibited in this particular</p> <p>22 case.</p> <p>23 Q So is that why you didn't consider it when you</p> <p>24 approved the building permit?</p> <p>25 A I don't know if I considered it or didn't consider</p>	<p style="text-align: right;">Page 68</p> <p>1 Q So you have Geddes Road. That is a public road;</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 Q And then you have the 66-foot wide easement, which</p> <p>5 is a private road --</p> <p>6 A Yes.</p> <p>7 Q -- correct?</p> <p>8 So the entire frontage of the Moulriere</p> <p>9 parcel does not abut a public or a private road. Do</p> <p>10 you agree or disagree?</p> <p>11 A I agree.</p> <p>12 Q Then what -- you mentioned an exception for the</p> <p>13 cul-de-sac. Can you help me understand that?</p> <p>14 A So if a cul-de-sac was created. Basically a</p> <p>15 turnaround. You understand what a cul-de-sac is?</p> <p>16 Q Yeah.</p> <p>17 A So a cul-de-sac lot would not be required to have</p> <p>18 the whole entire frontage.</p> <p>19 Q Is the Moulieres' parcel considered a cul-de-sac</p> <p>20 lot?</p> <p>21 A No.</p> <p>22 Q Then how are they in compliance with the ordinance?</p> <p>23 A As I mentioned before, I've got no idea what was</p> <p>24 considered for approval in 1996.</p> <p>25 Q Okay. So for your purposes, you're just relying on</p>
<p style="text-align: right;">Page 67</p> <p>1 it.</p> <p>2 Q Does the ordinance require the Moulieres' entire</p> <p>3 parcel, the frontage, to abut to a private or public</p> <p>4 road?</p> <p>5 A The way the ordinance is -- current ordinance is</p> <p>6 written, it says that a new parcel is created, it</p> <p>7 should abut a public or private road for the</p> <p>8 frontage of the property. The exception to that is</p> <p>9 cul-de-sac lots.</p> <p>10 Q So does the Moulieres' parcel comply with that?</p> <p>11 A The land division was approved in 1996. I've got no</p> <p>12 knowledge of what was considered in 1996. I know</p> <p>13 that there was several memos back and forth, which I</p> <p>14 believe you've got copies of, relating to the</p> <p>15 creation of a cul-de-sac, and I believe this</p> <p>16 division was held up for a little while relating to</p> <p>17 that, but ultimately it was approved. I can't say</p> <p>18 why it was approved. And, you know, for looking at</p> <p>19 it now, you know, 20-some years later, what factors</p> <p>20 played into the approval at that time, I can't say.</p> <p>21 Q Okay. But when you look at this map, the one in</p> <p>22 front of you, you see Geddes Road?</p> <p>23 A Right.</p> <p>24 Q Is it pronounced Geddes or Geddes?</p> <p>25 A Geddes.</p>	<p style="text-align: right;">Page 69</p> <p>1 what was approved in 1996?</p> <p>2 A Yes.</p> <p>3 Q You have the ability to revisit that issue when you</p> <p>4 issue a building permit?</p> <p>5 A I don't believe I do. I've got no reason to.</p> <p>6 Q What's the process for obtaining a building permit</p> <p>7 from Superior Township?</p> <p>8 A You would make application --</p> <p>9 Q And what's --</p> <p>10 A -- and submit your drawings, plus approvals, from</p> <p>11 outside agencies.</p> <p>12 Q What is the most critical consideration for you?</p> <p>13 What do you need to see to issue a permit?</p> <p>14 A I don't think anything is more critical than</p> <p>15 anything else. There's a lot of things that go into</p> <p>16 it. I mean, we review the site plan. We review the</p> <p>17 construction documents for structural of the house.</p> <p>18 There's outside agencies, Health Department,</p> <p>19 possibly the Road Commission Soil Erosion Division,</p> <p>20 that all come into play as far as well permits,</p> <p>21 septic permits, things of that nature.</p> <p>22 Q To your knowledge and understanding, did the</p> <p>23 Moulieres follow the permitting process and</p> <p>24 procedures?</p> <p>25 A Yes.</p>

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

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

<p style="text-align: right;">Page 82</p> <p>1 construction site, the private road specifically. 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?</p>	<p style="text-align: right;">Page 84</p> <p>1 that you've seen? 2 A Approved what kind of permit? 3 Q A private road permit. 4 A Based on the plans that I saw and the site 5 conditions, I would have required my township 6 engineers to review the drawings. 7 Q And when you look through these photos in Exhibit 3, 8 do you see the dirt falling and some of the erosion 9 that's occurred here when you flip through them? 10 A Yeah, these are old pictures. 11 Q Would a permit have prevented any of this? 12 A So a permit was issued and it was issued by the 13 Washtenaw County Soil Erosion Division, and 14 complaints were filed with them, and the conditions 15 that you're seeing here were inspected by them 16 because they have jurisdiction. And the contractor 17 was required to remedy the situation that you see in 18 these drawings. 19 So there's been soil erosion measures put 20 in place that the county has approved at this 21 portion of excavation that you're showing me. 22 Ultimately once the retaining walls are built, then 23 naturally those things would go away. 24 Q Do you know if the retaining walls impede the 25 Schuster parcel at all?</p>
<p style="text-align: right;">Page 83</p> <p>1 A If a private road permit was required, then drawings 2 indicating all the construction that was going to go 3 on related to the easement would have come to my 4 office with an application. It would then be my 5 choice at that time if I chose to additionally, in 6 addition to myself, have those drawings reviewed by 7 the township engineers or the township fire chief. 8 Q How is that different than what's been done so far? 9 A I don't understand your question. 10 Q So you reviewed the site plan that has the drawings 11 for the private road; correct? 12 A Uh-huh. 13 Q And the fire chief has; right? 14 A Uh-huh. 15 Q So what's the difference if there was a permit or 16 not? 17 A Well, the difference is, is whether a permit was 18 required or not. And as we said before, in my 19 opinion a permit is not required. 20 Q But would the process have been different than 21 what's occurred thus far? 22 A If this was a private road, then the construction 23 would not have commenced prior to the obtaining a 24 private road permit. 25 Q Would you have approved a permit based on the plans</p>	<p style="text-align: right;">Page 85</p> <p>1 A "Impede the Schuster parcel." What do you mean by 2 that? 3 Q Do they encroach his property line? 4 A Not to my knowledge, no. 5 Q Where does the easement allow retaining walls to be 6 built, if you know? 7 A The -- could you repeat the question, please? 8 Q Have you seen the easement itself? 9 A Uh-huh. 10 MR. LUCAS: Is that a yes? 11 THE DEPONENT: Yes. Sorry. 12 BY MR. MACKENZIE: 13 Q In your opinion, how does the easement allow for 14 retaining walls to be built? 15 A I imagine that's probably the basis of your lawsuit 16 here as far as -- is my understanding, is trying to 17 figure out who's got legal rights to what relating 18 to this. In my opinion, and I believe my opinion 19 was also upheld by the Zoning Board of Appeals in 20 their interpretations, that retaining walls or other 21 elements necessary for the construction of a private 22 road are permitted within the easement. 23 Q So as part of your approval process, do you consider 24 language in deeds and easements or you just look at 25 the plan?</p>

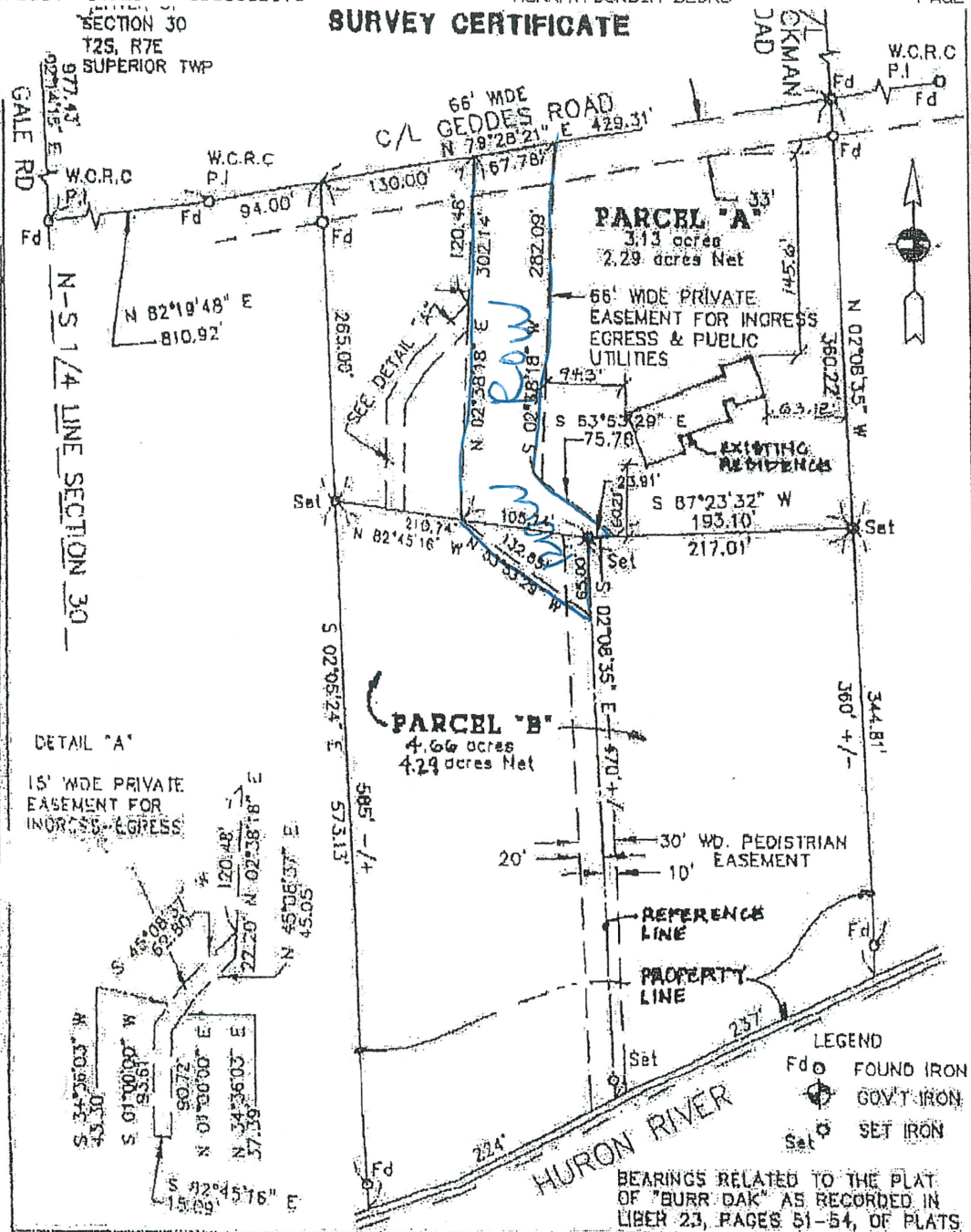
<p style="text-align: right;">Page 86</p> <p>1 A I look at the plans. I look at our ordinances.</p> <p>2 Deed restrictions, homeowners association rules --</p> <p>3 Q Do you --</p> <p>4 A -- all those -- just one second.</p> <p>5 Q Go ahead.</p> <p>6 A All those other types of things, I do not consider</p> <p>7 that. That's beyond my jurisdiction to withhold</p> <p>8 permits based on other people's private agreements.</p> <p>9 Q So you don't look at the scope or intent of an</p> <p>10 easement when you're making your decisions as far as</p> <p>11 issuing permits and things like that. Is that true?</p> <p>12 A I mean, I look at that the easement is created, in</p> <p>13 this case, for access to these parcels and it</p> <p>14 complies with the ordinance as far as 66-foot</p> <p>15 right-of-way width. And, you know, to me, that's</p> <p>16 the intent of that easement is to create access to</p> <p>17 these parcels.</p> <p>18 Q Are you aware that Ms. Gibb-Randall testified at a</p> <p>19 deposition that the house needed to be moved because</p> <p>20 with the current plan in place, or at least the plan</p> <p>21 as of the date of her deposition, the walls were</p> <p>22 impeding -- the walls would impede Schusters'</p> <p>23 property line? Did you know that?</p> <p>24 A No, I didn't know that.</p> <p>25 Q Have you received an updated site plan that showed</p>	<p style="text-align: right;">Page 88</p> <p>1 impeding the Schuster property.</p> <p>2 Q But that's what I'm getting at is, that Ms.</p> <p>3 Gibb-Randall told me the house has to be moved so</p> <p>4 that the walls do not impede the Schuster property.</p> <p>5 I think you already answered. You have not seen a</p> <p>6 plan that shows the house being moved since her</p> <p>7 deposition?</p> <p>8 A No, I haven't seen any other plans other than the</p> <p>9 ones that I stamped up and approved and issued the</p> <p>10 permit for.</p> <p>11 Q If the walls are going to impede the Schuster</p> <p>12 property, does that impact your approval of the</p> <p>13 building permit?</p> <p>14 A When we're saying "walls" here, you're talking about</p> <p>15 retaining walls --</p> <p>16 Q Yes.</p> <p>17 A -- or house walls?</p> <p>18 Q Retaining walls.</p> <p>19 A Okay. So, yes, the retaining walls should not</p> <p>20 impede or go outside of the right-of-way.</p> <p>21 Q So if I send you her transcript where she says this,</p> <p>22 would you suspend the permit until a plan is</p> <p>23 submitted showing you that the house has been moved</p> <p>24 and the walls will not impede the property?</p> <p>25 MR. LUCAS: I would note an objection.</p>
<p style="text-align: right;">Page 87</p> <p>1 the house being moved so that the walls did not</p> <p>2 impede the Schuster property?</p> <p>3 MR. BEHRENDT: I'm going to object. Walls</p> <p>4 of the house are not the driveway.</p> <p>5 MR. MACKENZIE: That's my client's</p> <p>6 property.</p> <p>7 MR. BEHRENDT: But there's a court order.</p> <p>8 MR. MACKENZIE: Okay. Your objection is</p> <p>9 noted.</p> <p>10 BY MR. MACKENZIE:</p> <p>11 Q Have you seen a plan that shows the house being</p> <p>12 moved so that the retaining walls do not impede the</p> <p>13 property?</p> <p>14 MR. MACKENZIE: For your information, Adam,</p> <p>15 the walls are in the right-of-way, which is a</p> <p>16 continuation of the 66-foot wide easement.</p> <p>17 BY MR. MACKENZIE:</p> <p>18 Q So can you answer the question?</p> <p>19 A I've seen several different site plans. I don't</p> <p>20 know if -- after I approved and issued the building</p> <p>21 permit, I don't know if additional drawings came in</p> <p>22 after that or not.</p> <p>23 Q Okay. So you don't know if the walls are impeding</p> <p>24 the property or not, the Schuster property?</p> <p>25 A To my knowledge, the walls of the house are not</p>	<p style="text-align: right;">Page 89</p> <p>1 First of all, he has no authority to suspend</p> <p>2 anything. He doesn't work for the township anymore.</p> <p>3 MR. MACKENZIE: Please, no speaking</p> <p>4 objections.</p> <p>5 MR. LUCAS: That's not --</p> <p>6 MR. MACKENZIE: You can object to form.</p> <p>7 You object to form. That's all I need.</p> <p>8 MR. LUCAS: It's not as --</p> <p>9 BY MR. MACKENZIE:</p> <p>10 Q Your counsel objects to form. That's all he's</p> <p>11 allowed to do under the court rule. So --</p> <p>12 A So, no, I would not suspend any permits, because</p> <p>13 those decisions, they'll all be made by the new</p> <p>14 building official and zoning official at the</p> <p>15 township.</p> <p>16 Q Okay. So my client would need to send that</p> <p>17 information to the new building official. But</p> <p>18 should the permit be suspended under those facts?</p> <p>19 A I guess, if I was in a position where I was making</p> <p>20 that decision, if I was still the building official</p> <p>21 and I was able to look at it and make a judgment on</p> <p>22 whether how much encroachment that there was, if</p> <p>23 there is any, and determine what would happen to</p> <p>24 mitigate that, what would need to happen to mitigate</p> <p>25 that, then I would likely -- as long as the</p>

<p style="text-align: right;">Page 90</p> <p>1 Moulieres or whoever was in charge was cooperating, 2 I would likely not suspend the permit, but rather 3 require revised drawings to show that whatever 4 encroachment was eliminated. 5 Q Did your retirement from the township have anything 6 to do with this case or that was a preplanned thing 7 that had nothing to do with this case? 8 A No, I enjoyed this case very much. 9 Q I'm sure you did. 10 A Yeah, it had nothing to do with it. 11 Q Is it true that an appeal suspends a permit? 12 A Not in my opinion, no. 13 Q Okay. 14 A Now, an appeal of the -- an appeal related to, I 15 think, the wetlands ordinance would suspend that 16 permit, which I think occurred on this property. 17 Q So that applies to wetlands only, not a building 18 permit. 19 A Right. 20 Q Is that true? 21 A Yeah. Yeah. 22 I mean, there's -- there's procedures at 23 the Planning Commission. If there was some type of 24 a development that came through the Planning 25 Commission to where if they needed some variances,</p>	<p style="text-align: right;">Page 92</p> <p>1 consultants were looking at the design of the 2 retaining walls as far as load and things of that 3 nature. 4 Q Did you or anyone from the township, to your 5 knowledge, discuss with Mr. Schuster his plans for 6 his property? 7 A Did I discuss with who now? 8 Q Mr. Schuster. 9 Any plans for his property as far as 10 development? 11 A Mr. Schuster submitted an application for a garage 12 that he wanted to place directly adjacent to the 13 right-of-way. He also submitted some plans for some 14 retaining walls that he wanted to build. But as far 15 as other development of his property, I don't recall 16 anything else other than that. 17 Q So what information do you look at or factors do you 18 consider when you approve -- let me back up. 19 When you approve the retaining -- when you 20 approve the building permit, that includes the 21 retaining walls; correct? 22 A Correct. 23 Q So focusing on the retaining walls, what factors do 24 you look at or consider to determine that it's 25 adequate to approve the building permit as far as</p>
<p style="text-align: right;">Page 91</p> <p>1 you know, the Planning Commission would not proceed 2 with their approval process until the ZBA acted. 3 But, no, I don't believe an appeal suspends a permit 4 otherwise. 5 Q Before you retired, did you have any communication 6 with a firm called GES, an engineering firm? 7 A I don't recall that. 8 But, of course, I didn't recall Bodman, 9 either. So sorry. 10 Q Did you see any plans from GES? They're the 11 engineering firm that I've been told is engineering 12 the retaining walls. 13 A Yeah. I mean, I can't recall whose plans -- what I 14 could say is this, is I had -- I did have sealed 15 plan submissions from a designer relating to the 16 retaining walls that were submitted. Whether it was 17 GES or somebody else, frankly -- 18 Q When you received those plans, do you recall if it 19 told you what load it would be able to handle in 20 pounds? 21 A I think the additional plans were not very specific. 22 Then more specific drawings were submitted. Those 23 were reviewed by OHM. They asked for additional 24 information, which was also submitted. And so 25 Orchard, Hiltz & McCliment as our engineering</p>	<p style="text-align: right;">Page 93</p> <p>1 the retaining walls? 2 A I'm relying on the professional opinion of our 3 licensed engineers and also the fact that licensed 4 engineers did the design work. 5 Q And you would agree that the retaining walls provide 6 lateral support to the Schuster parcel; correct? 7 A Yes. 8 Q That's the purpose of them; right? 9 A Right. 10 Q So if nobody talked to Schuster about his plans to 11 develop his parcel or the use of his parcel, how can 12 the permit be approved? 13 A I don't know how to answer your question. 14 Q If the township doesn't know what Schuster is going 15 to do with his parcel, how can the walls be 16 engineered to support the parcel? 17 A I presume that they were based on the load of the 18 dirt that's being retained. I imagine there's 19 safety factors figured into that. And beyond that, 20 I don't know what our engineers considered. 21 Q So you just rely on the township engineer in this 22 case? 23 A Yeah. Yeah. Yeah. They're licensed engineers. 24 They're professionals. 25 MR. LUCAS: Let's take a 10-minute break --</p>

EXHIBIT E

SECTION 30
T2S, R7E
SUPERIOR TWP

SURVEY CERTIFICATE



CLIENT: MURRAY/DURBIN BUILDERS

PROJECT NO. B3482-01

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



REGISTERED LAND SURVEYOR NO. 24618

SCALE 1 INCH = 100 FEET	
DRAWN	PVS
DATE	2-17-95
CHECKED	CRO
REVISED	-
DATE	-
CHECKED	-
FIELD BOOK	120-05 PG 28
SHEET	1 OF 4

Ayres, Lewis, Norris & May, Inc.
Engineers • Planners • Surveyors

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(313) 761-1010