

VILLAGE OF PENTWATER

65 South Hancock Street, P.O. Box 622, Pentwater, Michigan 49449
(231) 869-8301 - FAX (231) 869-5120
www.pentwatervillage.org

**Planning Commission Regular Meeting
November 29, 2022 - 6:00 P.M. – In Person
Park Place Event Center – 310 N. Rush Street, Pentwater, MI**

Agenda

1. **Opening** – Welcome, Call to Order, and Pledge of Allegiance
2. **Roll Call**
3. **Approval of Agenda and Minutes.**
 - A. Approval of Agenda.
 - B. Approval of Minutes of November 1, 2022.
4. **Public Comments - For items on the agenda.**
5. **Public Hearing: None**
6. **Old Business: None**
7. **New Business:**
 - A. Planning Commission Meeting Date Resolution 2022-11-22
 - B. Consideration for Expansion on Nonconforming House – 294 E. Lake Street
 - C. Greg VanBoxel & Larry Doran – Wire Factory Property Introduction
 - D. August 1, 2022 Correspondence – Cottages at Lites Woods
8. **Department/Committee Reports**
 - A. Zoning Administrator – See Attached Report
 - B. Zoning Board of Appeals – No Meeting, No Report
 - C. Master Plan Update
9. **Public Comments**
10. **Communications from Planning Commission Members**
11. **Adjournment**

Next Scheduled Planning Commission Meeting – December 19, 2022 at Park Place.



VILLAGE OF PENTWATER

Planning Commission

ON PENTWATER LAKE AND LAKE MICHIGAN
65 N Hancock Street, P.O. Box 622, Pentwater, Michigan 49449
(231) 869-8301 – FAX (231) 869-5120

Special Meeting Minutes – November 1, 2022

Chairperson Bruce Koorndyk called the Special Meeting of the Village Planning Commission Meeting to order at 6:00 pm, at Park Place, 310 N. Rush Street, with the Pledge of Allegiance.

ROLL CALL

Present: Bruce Koorndyk, Chris Conroy, Mary Temple, Amy Roberson, Paul Anderson and Ron Stoneman.

Absent: Michelle Angell-Powell.

Staff Present: Katie Anderson, Zoning Administrator.

APPROVAL OF AGENDA

Motion by Paul Anderson, second by Ron Stoneman to approve the agenda as presented.

Voice Vote: Aye: 6 Nay: 0 Absent: 1 Motion passed.

APPROVAL OF REGULAR MEETING MINUTES

Motion by Mary Temple, second by Paul Anderson to approve the September 27, 2022, regular meeting minutes as presented.

Voice Vote: Aye: 6 Nay: 0 Absent: 1 Motion passed.

PUBLIC COMMENTS FOR ITEMS ON THE AGENDA - None.

PUBLIC HEARING – None.

OLD BUSINESS – None.

NEW BUSINESS

- A. 18 N. Beach Street – Parcel ID No. 64-044-403-003-00 Review of Proposed Loft Addition to Nonconforming Building.

Motion by Chris Conroy, second by Ron Stoneman to approve the proposed loft addition to the nonconforming home at 18 N. Beach Street.

Roll Call Vote: Yes: Conroy, Stoneman, Koorndyk, P. Anderson, Roberson, and Temple

No: 0

Absent: 1

Motion passed.

Discussion was held during the Commission Member Communications about November and December's Meeting Dates.

Motion by Chris Conroy, second by Amy Roberson to approve changing November's regularly scheduled meeting from November 22nd to November 29th and December's regularly scheduled meeting from December 27th to December 19th.

Roll Call Vote: Yes: Conroy, Roberson, Koorndyk, P. Anderson, Stoneman and Temple

No: 0

Absent: 1

COMMITTEE/DEPARTMENT REPORTS

A. **Zoning Administrator** – Ms. K. Anderson's written report was accepted by the Planning Commission.

B. **Zoning Board of Appeals** – The Zoning Board of Appeals did not meet in October, 2022.

PUBLIC COMMENTS – None.

COMMUNICATIONS FROM PLANNING COMMISSION MEMBERS – Discussion was held about November and December's Meeting dates.

ADJOURNMENT

Motion by Paul Anderson, second by Ron Stoneman to adjourn the meeting at 6:43 pm.

Voice Vote: Aye: 6 Nay: 0 Absent: 1 Motion passed.

Respectfully Submitted,

Katie Anderson, Zoning Administrator

November 2, 2022

Approved by the Village of Pentwater Planning Commission on_____.

Village Planning Commission
2023 Open Meetings
Resolution No. 2022-11-22

Moved by _____ supported by _____, that the following Resolution be adopted.

BE IT RESOLVED that the meetings of the Village Planning Commission during 2023 will be held according to the schedule below. The meetings will begin at 6:00 P.M. and will be held at Park Place at 310 North Rush Street.

Meetings shall be held on the following dates:

January 24
February 28
March 28
April 25
May 23
June 27
July 25
August 22
September 26
October 24
November 28
December 26

This Resolution was adopted pursuant to Public Act 267 of 1976 at a regular meeting of the Village Planning Commission on November 29, 2022 by a vote of _____. This Resolution was posted at the Village Office on _____ - _____.

Village of Pentwater
65 S. Hancock St.
Pentwater, MI 49449

Rande Listerman, MiCPT, CPFA, CPFIM
Village Clerk/Treasurer

MEMORANDUM

To: Village of Pentwater Planning Commission

From: Katie Anderson, Zoning Administrator

Date: October 27, 2022

**Subject: Proposed Porch Addition- Nonconforming Building
294 E. Lake Street, Village of Pentwater – 64-044-396-011-00**

Introduction

Dave Peterhans the owner of 294 E. Lake Street, seeks to construct a porch addition to the existing home. The Peterhans residence is located on the north side of E. Lake Street, west of Judd Street.

Background

The existing home is situated on the north side of E. Lake Street, and is located in the R-2, Single Family Residential Zoning District.

According to the survey and drawings submitted, the existing house is located approximately 5 feet from the front property line. Seventeen (17) feet is the required setback to the front property line. Thus, the existing house is nonconforming with respect to the front setback.

At this time, the applicant seeks to construct a porch addition to the west side of the house. (See attached plans)

The requirement of no more than 50% lot coverage will be met at 13% on this large property. Additionally, the remaining requirements of the Zoning Ordinance such as the required front, rear and south side setbacks, building height and impervious surface area are met with the proposed addition.

Details of the Nonconformity

The required front setback is 17 ft., **existing is 5 ft., proposed remains at 5 ft.**

The residential use of the property as a single-family residential use conforms to the permitted uses within the R-2, Single Family Residential Zoning District requirements of Chapter 6 of the Zoning Ordinance. The proposed expansion of the existing house does not change the permitted uses of the property. Thus, the Planning Commission should direct its focus to Section 3.24.B.1 et seq. and 3.24.B.8 of the Zoning Ordinance to consider the following conditions for approval:

Section 3.24.B - Nonconforming Buildings or Structures

1. Nonconforming building(s) or structures may only be extended, enlarged, altered, remodeled or modernized when the Planning Commission determines that the following conditions are met:

a. The building or structure shall comply with all height, area, and/or parking and loading provisions with respect to such extension, enlargement, alteration, remodeling or modernization.

This condition has been met in accordance with the applicant's proposal.

b. The enlargement or extension is limited to the same parcel the nonconforming building or structure was located on at the time of the adoption of this Ordinance.

This condition has been met in accordance with the applicant's proposal.

c. The enlargement or extension will not interfere with the use of other properties in the vicinity.

This condition has been met in accordance with the applicant's proposal.

d. The enlargement or extension shall not exceed fifty percent (50%) of the GFA of the original building or structure when it became nonconforming; except that the Planning Commission may permit a greater percentage where all yard setbacks for the district in which the building is located are met without need of a variance to such setback(s).

This condition has been met in accordance with the applicant's proposal.

8. Where a building or structure is nonconforming for setback by a distance equal to or less than one-half of the distance required by this ordinance, the nonconforming setback (may) be extended along the same plane as the existing nonconforming setback, provided that in so doing, the setback itself is not further reduced and all other required setbacks are met.

This requirement is met since the proposed addition does not further encroach upon the front setback.

Recommendation

At this time, Staff recommends the Planning Commission consider approval of the requested porch addition to 294 E. Lake Street in accordance with Section 3.24.B, paragraph 1.a. through 1.d, and paragraph 8.

Village of Pentwater

65 S. Hancock St. P.O. Box 622 Pentwater, MI 49449
Phone: 231-869-8301 Fax: 231-869-5120

Website: pentwatervillage.org

Email: zoning@pentwatervillage.org

APPLICATION FOR ZONING PERMIT

Date Application Prepared: Oct. 14, 2022 Application Fee \$ 40.00

Date Application Received: October 17, 2022 Receipt No. _____

Property Location Information

Parcel ID: 64 - 044 - 396-010-00 Property Address 294 E. Lake St.

Property Location Pentwater

Section No. _____ Subdivision Name Mears (?)

Applicant Information

Applicant (circle one):

Contractor _____ Property Owner David Peterhans Other _____

Jim Brink _____
(Applicant)

1401 Woodglen Lane
(Address)

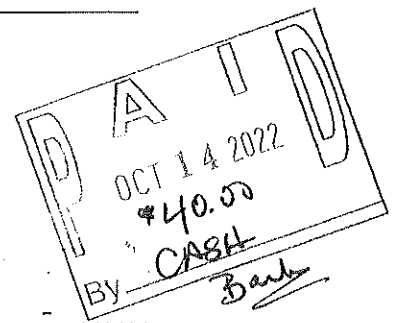
Bloomfield Hills MI 48304
(City, State, Zip Code)

248-217-3974
(Telephone, Home, Cell and/or Business)

dave.peterhans@gmail.com
(Email Address)

Property owner's name and address (if not the applicant)

Phone (____) _____



Land Use and Zoning Information

Proposed Land Use (i.e., Single, Duplex or Multiple Family Residential, Commercial or Industrial Use)

Small additions to existing structures

Zoning Map Classification of Property: Residential (?)

Lot Area: 17160 sq. ft. or acres. Lot width: 132 ft. Waterfront? Yes ___ No X

Size(s) and Type(s) of building, addition, accessory building, deck, fence or other structure,

Garden Shed = 110 sq. ft. Fence = 24 sq. ft.
Porch = 180 sq. ft.

Minimum setbacks (Minimum 8 1/2 x 11-inch Plot Plan or Sketch Required):

(Setbacks for accessory buildings are measured from lot lines to the drip edge or eave of the building)

Waterfront Setback Required = ___ ft. Proposed = ___ ft.

Front Setback: Required = ___ ft. Proposed = ___ ft.

Corner Lot? Yes ___ No ___ Side Street Front Setback: Req. = ___ ft. Prop. = ___ ft.

Side Setback: Required = (N or E) ___ ft. Proposed = ___ ft.

Side Setback: Required = (S or W) ___ ft. Proposed = ___ ft.

Rear Setback: Required = ___ ft. Proposed = ___ ft.

Other Zoning Requirements:

Percent (%) Lot Coverage (Impervious Surface): Existing = ___ % Proposed = ___ %

Principal Building Area Required = ___ sq. ft. Proposed = ___ sq. ft.

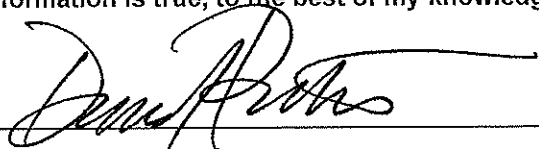
Principal Building Height: Allowed = ___ ft. from grade to peak. Proposed = ___ ft. from grade to peak.

Acc. Building Area: Allowed = ___ sq. ft. Proposed = ___ sq. ft.

Acc. Building Height: Allowed = ___ ft. from grade to peak. Proposed = ___ ft. from grade to peak.

Zoning Variance Required? Yes ___ No ___

I Attest that the above information is true, to the best of my knowledge:

Applicant's Signature 

Date: Oct. 14, 2022

Miscellaneous

Check all attached information:

- Plot Plan or Sketch of property and setbacks. Survey (if available).
- Building Elevation Drawings.
- Critical Dune Area, High-Risk Erosion Area or Wetlands? Yes ___ No ___
- MDEQ, MDNR or USACE Permit Required? Yes ___ No ___
- Septic System – Requires DHD #10 Approval
- Sanitary Sewer? – Requires Pentwater Village Manager Approval
- Well – Requires DHD #10 Approval
- Municipal Water? – Requires Pentwater Village Manager Approval
- Soil Erosion Permit May be Required from Oceana County Drain Commissioner's Office
- Date of Zoning Board of Appeals (ZBA) Meeting/Hearing _____
- ZBA Decision _____

Authorization for On-Site Inspection

By signing below, the Applicant and/or Property Owner authorize Village of Pentwater Staff, Elected or Appointed Officials permission to enter the property for the purposes of investigating any question that they may have relative to this Zoning Permit Application.

Applicant Signature  Date: Oct. 14, 2022

Property Owner Signature _____ Date: _____

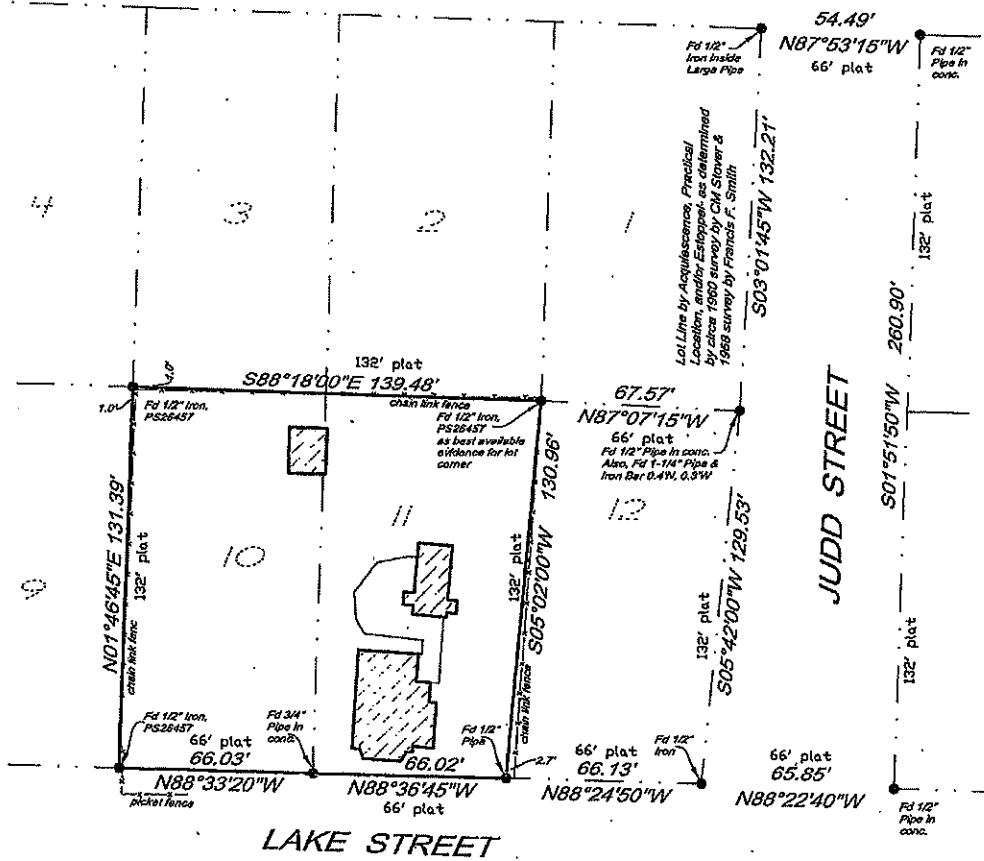
Zoning Permit Approval

Zoning Permit No. _____ Date: _____ Expiration Date: _____

Signed: _____
Zoning Administrator

CERTIFICATE OF SURVEY

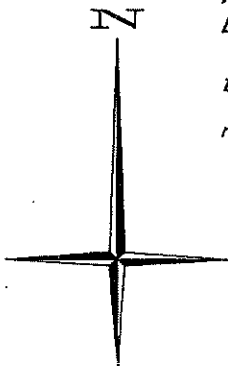
SIXTH STREET



PP# 64-044-396-010-00

Lots 10 and 11 of Block 6 of MEARS ADDITION TO THE VILLAGE OF PENTWATER, according to the recorded plat thereof, Village of Pentwater, Oceana County, Michigan.

re: 294 Lake Street, Pentwater MI 49449



BEARING BASIS - MICHIGAN STATE PLANE GRID, SOUTH ZONE

- = SET 1/2" X 24" IRON
- = FOUND IRON AS SHOWN

SCALE: 1" = 50 FEET

To David Peterhans :

I hereby certify that to the best of my knowledge, information and belief I have surveyed and mapped the property as described and platted herein; that the ratio of closure of such survey was less than one part in 5000; and that I have substantially complied with the requirements of PA 132 of 1970 as amended.

Furthermore, if the Surveyor's signature is not purple colored, the plan is a copy that should be assumed to contain unauthorized alterations. This certification shall not apply to any copies.

J. Randolph Hepworth, PS 26457



FOR:
DAVID PETERHANS

DWN: JRH CHK

HEPWORTH LAND SURVEYING, LLC

5774 WAYNE AVE
PENTWATER, MI 49449

TEL 231-869-2391

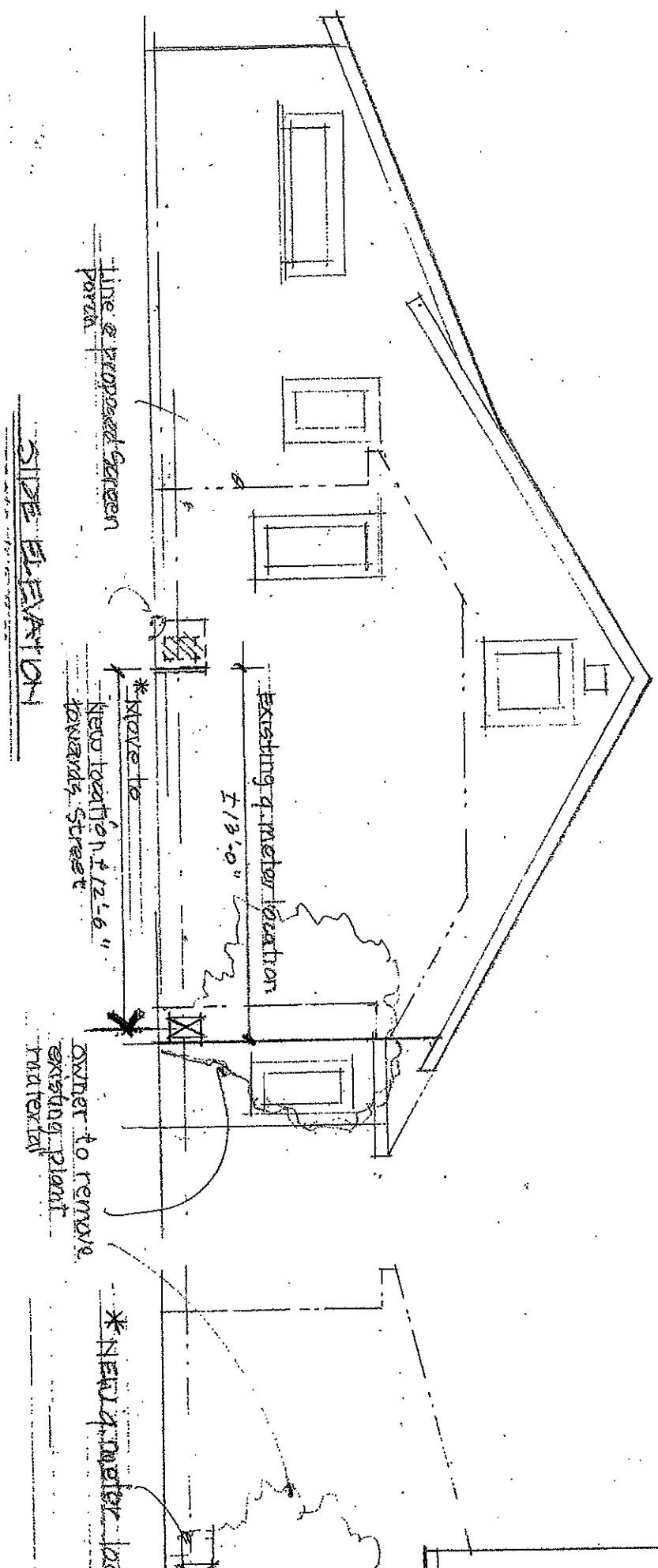
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SCR: 315199

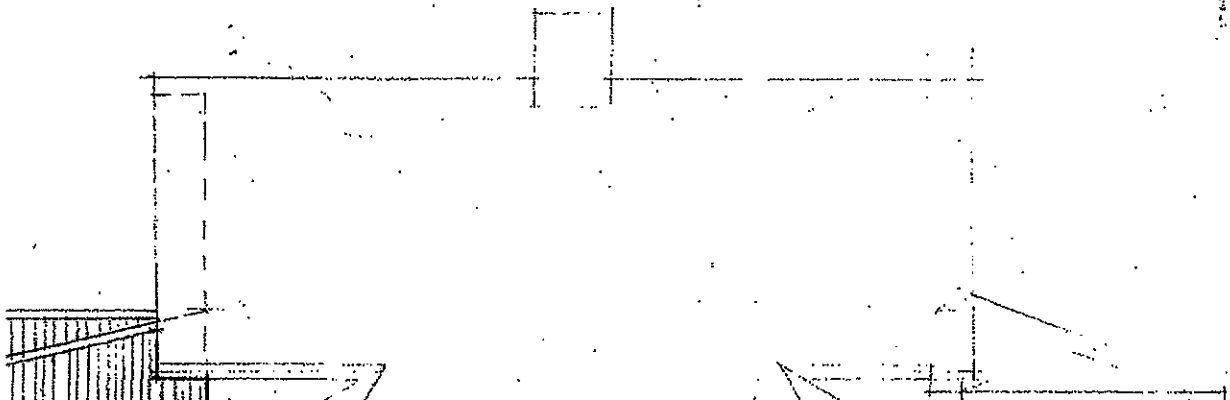
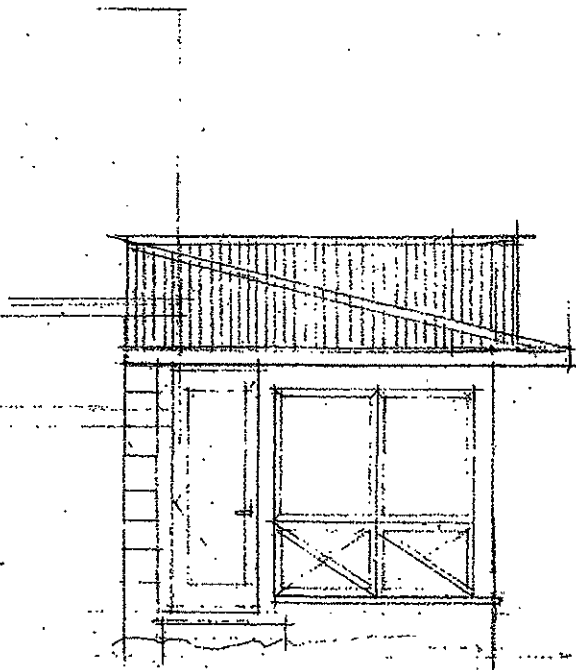
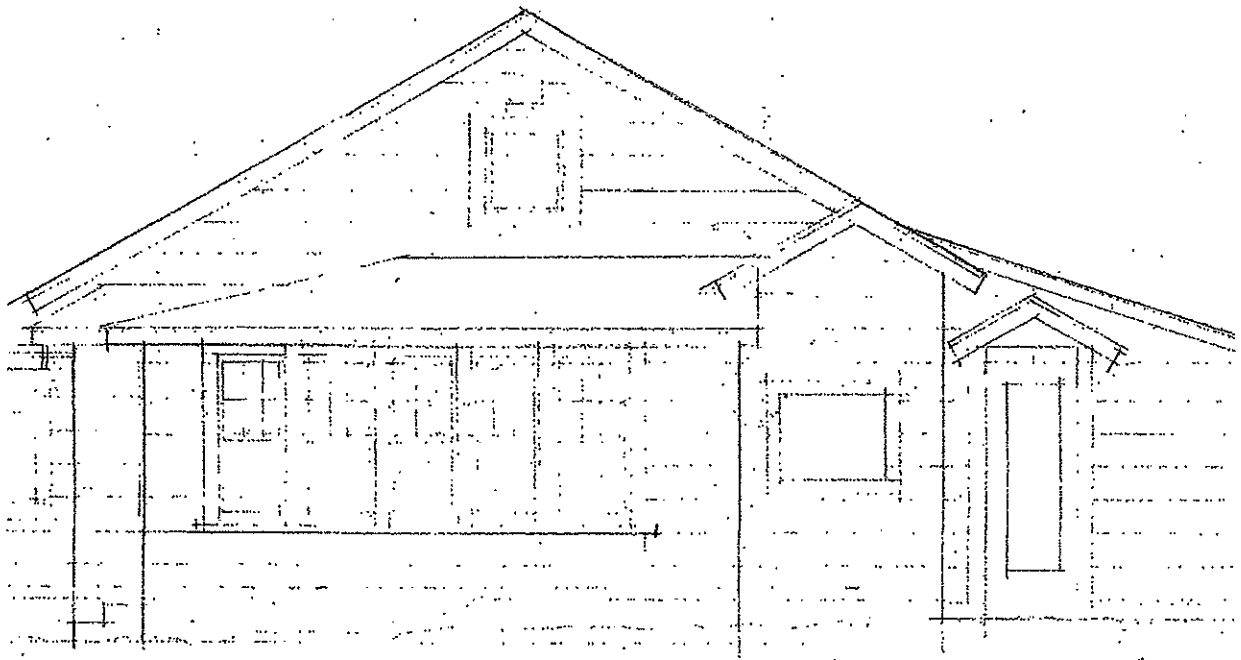
DATE: DECEMBER 29, 2015

JOB NO.: 15199

SHEET 1 of 1



SIDE ELEVATION



MEMORANDUM

To: Village of Pentwater Planning Commission

From: Katie Anderson, Zoning Administrator

Date: October 11, 2022

Subject: **Cottages at Lites Woods – a Planned Unit Development (PUD)
Proposal for Amending the PUD
Proposal to change the Zoning Map (Rezoning)**

Introduction

I have received the enclosed information regarding the removal of property from the Lites Woods Planned Unit Development (PUD), known as the Cottages, from Nederveld, a Planning, Surveying and Engineering firm in Grand Rapids, Michigan.

In order to remove the property from the PUD, an amendment to the originally approved PUD is required as well as rezoning of the property from PUD to something else. At this time, please refer to the letter from the property owner's attorney Thomas Amon at Warner Norcorss + Judd LLP dated August 1, 2022.

Mr. Amon has detailed three proposals for consideration by the Planning Commission, the applicant has suggested rezoning from PUD to R2.

Background

At the regular meeting of March 23, 2021, the Planning Commission meeting was held by Zoom, where Mr. Amon, presented his applications to both amend the Lites Woods PUD and rezone the property from PUD to R-2, Single Family Residential. Staff asked the Planning Commission to determine whether the proposed amendment to the PUD was a major or minor change in accordance with Section 14.F et seq. of the Zoning Ordinance. During this meeting, the Planning Commission determined that the proposed change to the PUD, to remove the vacant land from the developed portion of the PUD is a major change. Please see the attached minutes of March 23, 2021. It was also determined that a reduction in the size of the PUD to less than 20 acres does not meet the requirements of Section 14.06.B.1 of the Zoning Ordinance, for Residential Cluster Developments, which was originally stated as Section 14.04.A.5.a.

Subsequently, on September 28, 2021, the Planning Commission, this time meeting in person at Park Place at 310 N. Rush Street in Pentwater, the discussion centered around a sketch plan for

amending the PUD, as proposed by Mr. Amon and the property owner's engineer, Jack Barr from Nederveld. The applicant offered a response to Staff's letter dated September 16, 2021 in a letter dated September 28, 2021. The sketch plan offered to reduce the total acreage of the PUD proposed to remain to 20.33 acres and illustrated rezoning the remainder of the property to R2, Single Family Residential. The Planning Commission discussed many land use concerns with the applicant (see the attached minutes of September 28, 2021), which are nonbinding in accordance with Section 14.03.B, paragraph 6 of the Zoning Ordinance.

At this time, the applicant has provided a new letter of correspondence dated August 1, 2022 (see attachment) for Planning Commission review, and Staff has provided a synopsis of the process for which each proposal should be considered below.

Discussion

The Planning Commission should keep in mind the following when considering the proposals offered by Mr. Amon, the property owner's attorney:

- The third paragraph of the Fourth Amendment to the Master Deed of the Cottages at Lites Woods states that "The conversion of any convertible area must occur, if ever, not later than six (6) years from the date of recording of the Fourth Amendment to this Master Deed." The recording date of the Fourth Amendment to the Master Deed was August 19, 2019. Therefore, the expansion option for the condominium does not appear to have expired as Mr. Amon states in the second paragraph of Page 1 of his August 1, 2022 letter. (See attachment).
- The driveway on Exhibit 1, to the east of Unit 52, is no longer "temporary" in accordance with the Attorney's proposals and must be included within the existing condominium, or included within an access easement, in order to be maintained by the Cottages at Lites Woods Association. Only the proposal shown in Exhibit 5 appears to take this into account.
- When considering an amendment to the PUD, addressed in Mr. Amon's Proposal 3 (including Exhibit 5), A new condominium may be formed over this area subject to the PUD amendment submittal requirements of Section 14.03, Paragraph F, subparagraph 3, and Section 3.28 et. seq., of the Village of Pentwater Zoning Ordinance.

Proposal 1

According to Mr. Amon's letter, the Whitcomb Trust Property prefers to remove all of the vacant property on both side of Victoria Street from the approved PUD and rezone the property to R2, Single Family Residential. As mentioned earlier, this proposal reduces what would remain within the PUD Zoning District to less than 20 acres and is prohibited by Section 14.06.B.1a of the Zoning Ordinance. Major amendments to a PUD must follow the submittal and review

procedures of Section 14.03.F.3 which requires a review process in the same manner as the original PUD application, including a public hearing as stated in Section 14.03.C.4 et seq. Similarly, a request for rezoning must include a public hearing by the Planning Commission and a recommendation from the Planning Commission to be considered by Village Council.

The Planning Commission may suggest an ordinance amendment to the required 20 acre minimum at any time. The process is the same as amending the Zoning Map; introduce the change, hold a public hearing, and make a recommendation to the Village Council.

Proposal 2

This alternative proposal seeks to leave 20 acres in the original PUD and rezone the remainder of the property to R2, Single Family Residential. The processes are the same as stated earlier. Submit the required information and consider a PUD amendment in accordance with Chapter 14 of the Zoning Ordinance and consider rezoning the remainder of the property by holding a public hearing and making a recommendation to the Village Council.

Proposal 3

While it does not appear that the original condominium expansion (conversion) area has yet expired in accordance with the Fourth Amendment to the Cottages at Lites Woods Condominium individual building sites may be larger than those originally approved within the PUD. The applicant may amend the original PUD in accordance with the provisions of Chapter 14 of the Zoning Ordinance and included in a different condominium master deed as long as the provisions of Section 3.28 et seq. of the Zoning Ordinance are followed, subject to Site Plan Review by the Planning Commission.

Conclusion

After discussion with the Planning Commission in consideration of the proposals described in Mr. Amon's letter dated August 1, 2022, the applicant should choose one avenue to pursue, submit the required information as stated in Chapter 14 – Planned Unit Development, and the Village will process such a request according to the procedures outlined in the Zoning Ordinance and in accordance with the Michigan Zoning Enabling Act.



VILLAGE OF PENTWATER

Planning Commission

ON PENTWATER LAKE AND LAKE MICHIGAN
65 N Hancock Street, P.O. Box 622, Pentwater, Michigan 49449
(231) 869-8301 – FAX (231) 869-5120

Regular Meeting Minutes – March 23, 2021

Chairperson Bruce Koorndyk called the regular meeting of the Pentwater Village Planning Commission Meeting to order at 6:00 pm, via Zoom, with the Pledge of Allegiance.

ROLL CALL

Present: Bruce Koorndyk, Paul Anderson, Mary Temple, Chris Conroy, Amy Roberson, and Ron Stoneman (joined at 6:12 pm).

Absent: Michelle Angell-Powell.

Staff Present: Keith Edwards, Zoning Administrator.

APPROVAL OF AGENDA

Motion by Temple, second by Conroy to approve the Agenda as presented.

Voice Vote: Aye: 5 Nay: 0 Absent: 2 Motion passed.

APPROVAL OF REGULAR MEETING MINUTES

Motion by Temple, second by Roberson to approve the February 23, 2021 regular meeting minutes.

Voice Vote: Aye: 5 Nay: 0 Absent: 2 Motion passed.

PUBLIC COMMENTS - None

PUBLIC HEARING - Proposed Zoning Ordinance Amendments to Sections 6.04.E and 7.04.E for waterfront setbacks.

Chairperson Bruce Koorndyk opened the public hearing at 6:05 pm. No member of the audience wanted to speak on the proposed amendment. Chairperson Koorndyk closed the public hearing at 6:06 pm.

OLD BUSINESS:

- A. **Consideration for Zoning Ordinance Amendments to Sections 6.04.E and 7.04.E for waterfront setbacks.**

The Zoning Ordinance amendment prepared by the Village Zoning Attorney Mark Van Allsburg seeks to reiterate the required waterfront setback as given in Section 3. within the R2, Single Family Residential District (Section 6.04.E) Regulations, and R3, Multiple Family Residential District (Section 7.04.E) Regulations for the purpose of providing clarity within the Zoning Ordinance. Page 2 of 4

Motion by Conroy, second by Anderson to recommend the Village Council consider adoption of the proposed amendment to Section 6.04.E and 7.04.E for waterfront setbacks.

Voice Vote: Aye: 5 Nay: 0 Absent: 2 Motion passed.

NEW BUSINESS:

A. Discussion Only – Cottages at Lites Woods PUD – Proposed Amendment to the PUD.

The current owner of the property encompassed by the Cottages of Lites Woods PUD seeks to remove vacant property from the PUD and rezone the vacant property from PUD to R2, Single Family Residential. Finding that the Zoning Ordinance is somewhat vague with respect to whether the proposed change is major or minor according to proposal to the Planning Commission for discussion purposes only. The intent is to allow the Planning Commission to inform the Zoning Administrator as to whether the proposal to remove property from the PUD, reducing the area within the PUD to less than 20 acres, is major or minor.

The property owner is represented by Thomas Amon of Warner Norcross and Judd PC of Grand Rapids and Jack Barr, P.E. of Nederveld, an architectural and engineering firm also in Grand Rapids, Michigan.

Jack Barr informed the Planning Commission that Nederveld was the applicant for the original Lites Woods PUD, which was approved as a Residential Cluster Development, whereby all open space requirements and amenities such as the clubhouse and pool have already been constructed. The vacant property left and proposed to be removed from the PUD are on both sides of the unimproved Victoria Street, east of the Cottages of Lites Woods Condominium that contains the developed portion of the Lites Woods PUD.

Comments from Planning Commissioners:

Chris Conroy finds that because the area proposed to be removed from the PUD is significant that the change is major and should not be allowed to reduce the size of the PUD to less than 20 acres according to Section 14.04.5.a.

Mary Temple asked why the proposed change is requested, and the response from Thomas Amon is that the property was no longer marketable.

Bruce Koorndyk asked about the property where Consumer's Power has easements for powerlines, and Jack Barr commented that the area encompassed by the powerlines can be made smaller across those properties now that the work is completed. Bruce agreed that the proposal to remove area from the PUD is major.

Paul Anderson agreed that the proposed change is major rather than minor, as did Amy Roberson and Ron Stoneman. (Ron Stoneman arrived at the meeting at 6:12 pm).

Planning Commissioners also made comments regarding the on-going master plan process and the needs identified by the Community such as affordable housing for aged young families and seasonal workers.

Mary Temple identified that there is a lack of affordable housing within the community where perhaps development with duplexes or fourplexes may help meet community needs for attainable housing.

Chris Conroy commented that the goal to the aged may include the ability to age in place and continuum of care facilities for the community's aging population. Paul Anderson agreed.

Ron Stoneman would like to see school aged children walking to school.

Bruce Koorndyk commented that the Planning Commission would be willing to work collaboratively with the applicants toward an improved design for the vacant property that would contribute to more diverse housing opportunities on the site and for the community.

COMMITTEE/DEPARTMENT REPORTS

- A. Zoning Administrator** – Mr. Edwards' written report was accepted by the Planning Commission.
- B. Zoning Board of Appeals** – No ZBA meeting was held in February 2021.
- C. Master Plan Steering Committee** – Chris Conroy stated that progress was being made on the Master Plan document and some of the identified issues. The Committee is looking forward to discussing the maps, land use and placemaking opportunities.

COMMUNICATIONS FROM PLANNING COMMISSION MEMBERS – None.

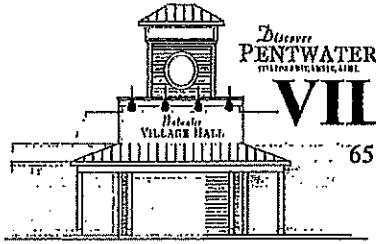
PUBLIC COMMENTS - None.

ADJOURNMENT - The meeting was adjourned by Chairperson Bruce Koorndyk at 6:56 PM.

Respectfully Submitted,
Keith Edwards, Zoning Administrator

March 30, 2021

Approved by the Village of Pentwater Planning Commission on April 27, 2021.



VILLAGE OF PENTWATER

65 South Hancock Street, P.O. Box 622, Pentwater, Michigan 49449

(231) 869-8301 - FAX (231) 869-5120

www.PentwaterVillage.org

September 16, 2021

Mr. Richard Whitcomb
The Richard A. Whitcomb Revocable Trust
2787 Hawthorne Drive NE
Atlanta, Georgia 30345

**Subject: Proposed PUD Amendment and Rezoning Request
The Cottages at Lites Woods PUD
Parcel ID Nos. 64-044-362-000-00, 64-044-620-126-20 &
64-044-620-125-00
A Residential Cluster Development**

Dear Mr. Whitcomb:

I am in receipt of a revised drawing prepared by Nederveld of Grand Rapids, Michigan that pertains to your request to amend the exiting Planned Unit Development (PUD), known as the Cottages of Lites Woods, by removing property from the PUD and your request to rezone a portion of the property from PUD to R-2, Single Family Residential.

On March 23, 2021, during the Planning Commission meeting that was held via the medium known as Zoom, the consensus of the Planning Commission was that removal of property from a PUD is a major change and that they could not reduce the area to less than 20 acres as required by Section 14.06, paragraph B, subparagraph 1. Please refer to the enclosed minutes of the Planning Commission which were approved on April 27, 2021. Thus, the requested changes to the PUD are considered major, and in accordance with Section 14.03, paragraph F, subparagraph 3, "...an amendment to the PUD...shall be reviewed in the same manner as the original PUD application.

The revised drawing that I received from Nederveld on August 27, 2021 appears to change the original request to retain more land within the confines of the originally approved PUD than the area depicted within the proposed drawing reviewed by the Planning Commission on March 23, 2021. However, there are some unanswered questions that remain based on the information contained on drawing such as:

- What is the amount of land now proposed to remain in the PUD?
- Missing labels – Which of the two "remainder parcels" as described in the legal description, is "Remainder Parcel 1 or Remainder Parcel 2"?
- What is the proposed use of the now vacant land to remain within the PUD?

- If the vacant property to remain in the PUD is to be developed, what is the proposed development scheme?
- Are there any impediments or restrictions to development of the vacant area such as significant natural features, wetlands, floodplains, steep slopes, bodies of water or other impediments or restrictions (Section 14.03, paragraph B, subparagraph 4 et seq.)?
- No topographic information was provided (Section 14.03 paragraph B, subparagraph 4 letter 'd').
- In accordance with Section 14.03, paragraph B, subparagraph 5, letter 'e', the applicant must provide a general indication of conformance with the Pentwater Village Master Plan.

At this time, I am forwarding the recent drawing submitted to the Planning Commission along with a copy of this letter. In doing so, the Planning Commission is asked to provide the applicant with any (non-binding) comments regarding the general acceptability of the proposed plan (See Section 14.03, paragraph B, Subparagraph 6), and I anticipate they will do so at their next meeting on September 28, 2021. After you receive the Planning Commission's comments, you may submit the Final PUD Plan in accordance with Section 14.03 paragraph C, et seq.

Should you have any questions or require additional information, please feel free to contact me by US mail, phone at (231) 869-6231 or via email to zoning@pentwatervillage.org.

Sincerely,

Keith Edwards
Zoning Administrator
Village of Pentwater

cc: Thomas Amon, Warner Norcross
Jack Barr, Nederveld
Brian Monton, Village Attorney, Prince & Monton



Warner Norcross + Judd LLP

September 28, 2021

Via Email to Zoning@pentwatervillage.org

Village of Pentwater Planning Commission
C/O Keith Edwards, Zoning Administrator
327 S. Hancock Street – PO Box 622
Pentwater, MI 49449

Re: Rezoning Request – Cottages at Lites Woods PUD

Dear Planning Commission Members:

This letter is sent in advance of the meeting on September 28, regarding my client, Dick Whitcomb's, request to rezone certain property to remove it from PUD Zoning. The Cottages at Lites Woods is a condominium development that was established by a Master Deed in 2004, as GR 2004/36719. It was originally established by Lites Development Company, as an expandable condominium project. The right to expand the condominium project expired six years after the condominium was established, in 2010. Generally speaking, the original condominium project, as expanded, is parcel 044-362-031-00 (the "Original Condominium Parcel"). The unused expansion property that was never developed as part of the condominium consists of the property along Victoria avenue, parcel nos. 044-620-126-20 & 044-620-125-00. (the "Whitcomb Trust Property").

All of the property relating to the Cottages at Lites Woods (including the Original Condominium Parcel and the Whitcomb Trust Parcel) was originally designated as a Planned Unit Development ("PUD") for zoning purposes. It is the only PUD in the Village of Pentwater.

Mr. Whitcomb obtained the developer's interest in Lites Woods and the Whitcomb Trust Property several years ago. The present difficulty is that the current zoning the Village has designated for the Whitcomb Trust Property renders it undevelopable and unsaleable, because it has not been (and cannot be) built out as expansion area under the Master Deed, and the PUD zoning designation only authorizes its use as expansion area of the condominium.

Because the current zoning regulations render Mr. Whitcomb's property unsaleable and unbuildable, Mr. Whitcomb seeks to remove the Whitcomb Trust Property from the PUD. In the Spring of 2021, Mr. Whitcomb proposed the most straightforward resolution: to have the Whitcomb Trust Property rezoned, with the Original Condominium Parcel remaining in the PUD. The Planning Commission and Zoning Administrator indicated that this would be a problem, because it would result in the Original Condominium Parcel being less than 20 acres. The Planning Commission also suggested that Mr. Whitcomb explore whether a third party charitable

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organization would be interested in the Whitcomb Trust Property, and some members expressed their view that multifamily housing may be a more appropriate zoning classification than PUD.

Following that meeting, Mr. Whitcomb diligently investigated each issue raised by the Planning Commission. He was put into contact with an organization with some potential interest in the Whitcomb Trust Property, but that presented no viable path forward. He also looked into the possibility of developing multifamily homes along Victoria Avenue, but unfortunately the market demand simply is not there, and no developer is interested in developing such a project along Victoria Avenue.

The Whitcomb Trust Property as presently situated simply must be rezoned by the Village, because the current PUD zoning the Village has placed on it has rendered the property completely unsaleable. Accordingly, Mr. Whitcomb resubmitted his rezoning proposal, with additional acreage carved out from the Whitcomb Trust Property and added to the Original Condominium Parcel, to ensure that the 20-acre minimum was satisfied. In response, in a letter to Mr. Whitcomb dated September 16, 2021, Mr. Edwards requested some additional information regarding the revised plan. The questions, with Mr. Whitcomb's responses in bold, are as follows:

1. What is the amount of land now proposed to remain in the PUD? **The proposed amended PUD will be 20.33 acres. The legal description on sheet C-101 of the PUD plan includes the acreage at the bottom.**
2. Missing labels – which of the two “remainder parcels” as described in the legal description is “Remainder Parcel 1 or Remainder Parcel 2?” **Because the remainder property is separated by Victoria Street, there are two remainders. One on the east side of Victoria and one on the west side of Victoria.**
3. What is the proposed use of the now vacant land to remain within the PUD? **The now vacant land to remain in the PUD will be open/green space within the PUD and treated as a General Common Element within the condominium. There is no proposed use planned for this land at this time, as it is unusable under the current PUD zoning.**
4. If the vacant property to remain in the PUD is to be developed, what is the proposed development scheme? **See the response to question no. 3.**
5. Are there any impediments or restrictions to development of the vacant area? **See the response to question no. 3. There are no proposed uses for this vacant land at this time (which is and will remain unusable under PUD zoning), so topography, wetlands, etc. are irrelevant.**
6. No topographic information was provided (section 14.03 paragraph B, subparagraph 4 letter “d”). **The requirements set forth in this section of the ordinance may be waived by the zoning administrator if they are not needed or appropriate. We request consideration to not be required to provide topographic data for the already completed portions of the PUD. That doesn't serve a purpose, particularly here where we are simply removing vacant land from PUD zoning. And providing topographic data for the vacant land that will remain in the PUD where it cannot be developed doesn't seem to serve any purpose in any event.**
7. The applicant must provide a general indication of conformance with the Pentwater Village Master Plan. **We understand that the Village of Pentwater is currently updating its master plan. However, Michigan's Master Planning Enabling Act, MCL**

128.3801 et. seq., provides that the general purpose of master planning is to promote "good civic design and arrangement," "the use of resources in accordance with their character and adaptability," and a plan that is "harmonious, efficient, and economical." Additionally, Michigan has long recognized that a property owner is entitled to reasonable use of their property, and governmental regulations that prohibit viable use or development of property may constitute a regulatory taking. With these in mind, Mr. Whitcomb's proposal satisfies these interests, because it seeks to address the present situation, where PUD zoning of the Whitcomb Trust Parcel has rendered that property unusable and unbuildable.

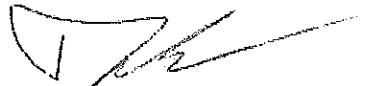
Request for Rezoning

With all of this in mind, Mr. Whitcomb respectfully requests that the Planning Commission approve each of the following alternative routes to addressing the PUD zoning issue:

1. Recommend the approval of Mr. Whitcomb's rezoning request as originally drafted and submitted in the spring of 2020, as follows:
 - a. the Original Condominium Parcel will remain in the PUD;
 - b. the entirety of the Whitcomb Trust Property will be removed from the PUD And rezoned as R2 Residential; and,
 - c. recommend a text amendment to Section 14.04 of the Zoning Ordinance, as follows:

Replace 14.04(A)(5)(a) to state "a. The total site of the PUD is at least one (1) contiguous acre."
2. Also recommend in the alternative the approval of Mr. Whitcomb's rezoning request as recently submitted, without a text amendment at this time, to keep the Original Condominium Parcel and the portion of the Whitcomb Trust Property set forth in Mr. Whitcomb's submittals in the PUD, and rezone the remaining Whitcomb Trust Property as R2 Residential.

Sincerely,



Thomas M. Amon

TMA/tma
22389061-1



VILLAGE OF PENTWATER

Planning Commission

ON PENTWATER LAKE AND LAKE MICHIGAN
65 N Hancock Street, P.O. Box 622, Pentwater, Michigan 49449
(231) 869-8301 – FAX (231) 869-5120

Regular Meeting Minutes – September 28, 2021

Vice-Chairperson Michelle Angell-Powell called the regular meeting of the Pentwater Village Planning Commission Meeting to order at 6:00 pm, in-person at Park Place, 310 N. Rush Street, Pentwater, with the Pledge of Allegiance.

ROLL CALL

Present: Paul Anderson, Chris Conroy, Mary Temple, Amy Roberson, and Michelle Angell-Powell.

Absent: Bruce Koorndyk and Ron Stoneman.

Staff Present: Keith Edwards, Zoning Administrator, and Brian Monton, Village Attorney.

APPROVAL OF AGENDA

Motion by Anderson, second by Temple to approve the agenda as presented.

Voice Vote: Aye: 5 Nay: 0 Absent: 2 Motion passed.

APPROVAL OF REGULAR MEETING MINUTES

Motion by Anderson, second by Roberson to approve the August 24, 2021, regular meeting minutes.

Voice Vote: Aye: 5 Nay: 0 Absent: 2 Motion passed.

PUBLIC COMMENTS FOR ITEMS ON THE AGENDA: None

PUBLIC HEARING – None.

OLD BUSINESS:

A. Proposed Amendment to the Cottages and Lites Woods PUD – Sketch Plan Review

Richard Whitcomb, of the Richard A. Whitcomb Revocable Trust has submitted a request to amend the Lites Woods Planned Unit Development (PUD) to remove vacant property from the existing PUD and rezone the vacant property from PUD to R-2, Single Family Residential. Mr. Whitcomb's request is represented by Thomas Amon of Warner, Norcross & Judd in Grand Rapids, as well as Jack Barr, Civil Engineer for Nederveld, Inc., also of Grand Rapids.

Based upon previous conversations with the Planning Commission and Zoning Administrator, the Nederveld prepared a sketch plan illustrating the property to be

removed from the PUD and the vacant property to remain such that the existing PUD would retain a total of approximately 20.33 acres. The total area among two parcels to be removed from the PUD was not provided on the sketch plan. Thomas Amon explained that the existing condominium which contains the developed portion of the Cottages at Lites Woods can no longer be expanded to include the vacant property. Mr. Amon referred to Jack Barr who thought that the remaining vacant land could be divided into 8 parcels. Mike McKee, a member of the audience and realtor for Mr. Whitcomb was called upon by the Chairperson for more information explained that only 7 parcel divisions were left, and that Mr. Whitcomb did not understand the Zoning of the property when he purchased it. Mr. Amon explained that his client (Mr. Whitcomb) is not a developer and seeks to sell the vacant property, claiming that the property is not buildable with PUD zoning and is why his client is seeking rezoning to R2, Single Family Residential.

The applicant's representatives discussed the proposed PUD amendment with the Planning Commission and the Planning Commission provided the following comments, which are non-binding upon the Planning Commission in accordance with Section 14.03.B paragraph 6.

The Village of Pentwater and Pentwater Township are collaborating on a combined Master Plan for the Pentwater Community. The three events/opportunities for public input at the beginning of the Master Plan process voiced concerns that residential property is not attainable for young families and for older residents to remain in the community when they can no longer maintain their single family residential property and would like to see the community provide opportunities for greater residential density for these groups. Planning Commissioners Chris Conroy, Michelle Angell-Powell, Paul Anderson and Mary Temple expressed that the existing PUD Zoning allows for greater flexibility including increased density, thereby providing the desired housing options expressed by the public.

Mr. Edwards asked Mr. Amon if they had considered putting together a Site Condominium for the vacant portion of the property because the clause allowing the expansion of the existing Unit Condominium (Cottages at Lites Woods Condominium) had expired. Mr. Amon stated that no they had not considered that option.

Planning Commissioners, talking with Mr. Amon wondered why the property cannot be sold to a developer who would finish the project per the original design or slight modification that the Planning Commission might consider. Mr. Amon stated that he had a conversation with a nonprofit corporation but that the nonprofit wanted his client to donate the property, but that the donation was not palatable to his client.

In a letter submitted to the Planning Commission dated September 28, 2021, Mr. Amon also suggested that the Planning Commission could consider a reduction in the number of required acres for a PUD from 20 acres to 1 acre. Such an option seemed to appeal to the Planning Commission.

NEW BUSINESS

A. Discussion of the Future Land Use Map – Part of the Master Plan Discussion.

Zoning Administrator, Keith Edwards, expanding on his last presentation to the Planning Commission, explained that he would soon devise a workshop where Planning Commission could review the Future Land Use Maps of the Village and Township in order to put together the draft Future Land Use Map for the Master Plan. Such a workshop could also include a joint meeting with the Township Planning Commission.

B. Discussion of the future of Housing – Part of the Master Plan Discussion.

Zoning Administrator, Keith Edwards, shared a PowerPoint presentation that he had prepared which summarized the public visioning process at the beginning of the Master Plan process; he also reviewed the demographics of the Pentwater Community; and some ideas to plan for attainable housing by considering the “Missing Middle Housing” whereby the community currently contains “high end” multi-story condominiums and large detached single family houses and few subsidized apartment, yet nothing is available for housing within the community between these extremes. Mr. Edwards reviewed some of the opportunities to create duplexes, triplexes, quadplexes or stacked units, townhouses, and live/work units that could be designed to fit within the context of the primarily single-family detached development at market rates to provide additional housing opportunities.

C. Consideration for rescheduling the next Planning Commission meeting.

Planning Commissioners arrived at consensus to move the scheduled October 28, 2021 regular meeting to November 9, 2021, at 6 pm at Park Place and cancel the scheduled November 23 meeting which occurs during the week of Thanksgiving.

COMMITTEE/DEPARTMENT REPORTS

- A. Zoning Administrator –** Mr. Edwards’ written report was submitted to the Planning Commission.
- B. Zoning Board of Appeals –** The Zoning Board of Appeals did not meet in August, 2021.

PUBLIC COMMENTS:

Nick Kassanos of 50 S. Wheeler St.– commented that he was troubled with the Planning Commission that they were in disagreement with the attorney representing the Cottages at Lites Woods PUD property owner Mr. Whitcomb. Further he commented that perhaps the former Village/Township Hall could be used for residential uses.

Dan Filius of 513 W. Lowell – voiced concerns about the lack of sound (microphones and speakers) that would allow the public to better hear the discussion at Park Place.

Bill Maxwell of 670 E. Fifth Street – commented that he thinks that the Lites Woods property owner should find a developer to develop the property as it is currently zoned.

Laura Kassanos of 50 Wheeler Street – expressed her thoughts that the proposal to remove the remaining property Lites Woods property from the PUD would reduce the cost burden to the Village to provide utility and other services.

COMMUNICATIONS FROM PLANNING COMMISSION MEMBERS: None

ADJOURNMENT

Vice-Chairperson Michelle Angell-Powell adjourned the meeting at 7:33 pm.

Respectfully Submitted,
Keith Edwards, Zoning Administrator

October 7, 2021

Approved by the Village of Pentwater Planning Commission on November 9, 2021.



Warner Norcross + Judd LLP

August 1, 2022

Via Email to Zoning@pentwatervillage.org

Village of Pentwater Planning Commission
c/o Keith Edwards, Zoning Administrator
327 S. Hancock Street – PO Box 622
Pentwater, MI 49449

Re: **Request for PUD Amendment or Alternatively Rezoning – Cottages at Lites Woods PUD**

Dear Planning Commission Members:

As you know, my client, Dick Whitcomb, has for many years owned vacant property that is situated along Victoria Avenue, parcel nos. 044-620-126-20 & 044-620-125-00. (the “Whitcomb Trust Property”). The Cottages at Lites Woods is a condominium development that was established by a Master Deed in 2004, as GR 2004/36719. It was originally established by Lites Development Company, as an expandable condominium project. The Whitcomb Trust Property consists of the vacant land that was designated as expansion property, but was never developed as part of the original condominium. As a result, the right to expand the condominium project expired six years after the condominium was established, in 2010, and as it sits, the Whitcomb Property cannot be developed as part of the original condominium project. The original condominium project as it is situated today is parcel 044-362-000-00 (the “Original Condominium Parcel”).

Background

The PUD zoning on the property only allows the Whitcomb Trust Property to be used as expansion area of the original condominium. **Exhibit 1**, Original Site Plan. Because the expansion option expired over a decade ago, **Exhibit 2**, Mr. Whitcomb cannot develop the Whitcomb Trust Property as originally contemplated by the original Master Deed and PUD zoning designation. The result is that the current PUD zoning placed on the Whitcomb Trust Property by the Village has rendered it undevelopable and unsaleable, as it cannot be built out as zoned.

Mr. Whitcomb has brought proposals to rezone to the planning commission several times, but they have been tabled multiple times by the planning commission. In the Spring of 2021, Mr. Whitcomb proposed the most straightforward resolution: to have the Whitcomb Trust Property rezoned, with the Original Condominium Parcel remaining in the PUD. The Planning Commission and Zoning Administrator indicated that this would be a problem because it would result in the Original Condominium Parcel being less than 20 acres. The Planning Commission also suggested that Mr. Whitcomb explore whether a third party charitable organization would be interested in

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the Whitcomb Trust Property, and some members expressed their view that changing the Whitcomb Trust Property to multifamily housing (which would essentially be a spot zoning surrounded by single family use), may be a more appropriate zoning classification than PUD.

Following that meeting, Mr. Whitcomb diligently investigated each issue raised by the Planning Commission. He was put into contact with an organization with some potential interest in the Whitcomb Trust Property, but that organization was essentially seeking donation of the property. He has also looked into the possibility of developing multifamily homes along Victoria Avenue, but the market demand simply is not there, and no developer is interested in developing such a project along Victoria Avenue. He also spoke to a developer, but the current zoning limbo the Village has stuck the property in is deterring any interest in that regard. Simply put, the zoning on the property needs to change, and it needs to be changed to a viable classification that is consistent with neighboring properties.

The Village's present PUD zoning renders the property vacant, unbuildable and unsaleable, and of no economic value or practical use whatsoever to the owner. To address this problem, Mr. Whitcomb requests that the Village of Pentwater modify the existing PUD zoning either by removing the Whitcomb Trust Property from PUD zoning and reverting it back to its original R-2 residential zoning, or by amending the PUD to facilitate sale of the Whitcomb Trust Property as site condominiums. Mr. Whitcomb's primary request is "proposal 1," below, with the other two proposals being requested in the alternative.

Primary request: Rezone the Entire Whitcomb Trust Property to R-2 (Proposal 1)¹

Mr. Whitcomb's first proposal (attached as **Exhibit 3**) is his original rezoning request. That is, to rezone the Whitcomb Trust Property to R-2, leaving the Original Condominium Parcel in PUD zoning.

This is the most common sense, practical approach. It will allow the Whitcomb Trust Property to be sold and improved, and will benefit the Village by providing additional potential housing sites. Furthermore, the proposed rezoning satisfies the criteria of Section 20.04 of the Zoning Ordinance, as follows:

- 20.04(A): The 2015 Master Plan states the statutory goals of "encourage[ing] the use of resources in accordance with their character," "avoid[ing] the overcrowding of land by buildings or people," and "lessen[ing] congestion on public roads and streets." It generally indicates a medium density residential use, with "Maximum density ... not exceed[ing] 5 units per acre." Mr. Whitcomb's proposed rezoning to R-2 satisfies these requirements. The Whitcomb Trust Property presently cannot be developed or used for any purpose – it is simply vacant land. The proposed rezoning would allow homes to be constructed on seven vacant lots that are going unused. R-2 is the most appropriate zoning designation. R-2 is the original zoning of the property (before it was placed in a PUD), and Page 32 of the Master Plan reflects that the Whitcomb Trust Property is surrounded by R-2 zoning on

¹ The application and fees relating to the Whitcomb Trust's rezoning requests have already been previously submitted.

all sides. The rezoning will further the stated goal of the R-2 district to allow the development of “housing that is affordable for the present and future residents of Pentwater.” Zoning Ordinance, Section 6.01. Furthermore, recent development trends in the area support R-2 as the most appropriate and only viable residential zoning designation. The Future Land Use Discussion, dated September 28, 2021, stated that the Village had a shortage of year-round housing, a lack of affordable housing, and a lack of single-family homes that was pushing young families out of the housing market. In the over two years during which Mr. Whitcomb has sought to rezone the property, he has marketed the properties for sale with the assistance of real estate professionals. He has not had any interest expressed in purchasing any of the property for multifamily use, but has had interest and multiple offers by buyers intending to use the property for single family use. There is no demand for the property to be developed as multifamily, but there is clear, expressed demand for single family development. Rezoning the Whitcomb Trust Property to R-2 will provide new housing supply that has sufficient demand. Keeping it in the PUD, or rezoning it to a more dense residential designation, would be inconsistent with neighboring zoning, would prevent *any* development, and would amount to a taking of the Whitcomb Property without just compensation, by imposing zoning that renders the property useless.

- 20.04(B): The proposed rezoning is most appropriate given the physical characteristics of the land. The land includes wetlands on the southern portion along the west side of Victoria, which are unbuildable (this is why proposed lot “5” is larger than the other lots). Furthermore, this land is on the edge of the village along a dirt road, and the lots are not suitable or desirable for denser development (for which there is, demonstrably, no demand).
- 20.04(C): The applicant cannot receive *any* return on investment by developing the property under the PUD, because it simply is not legally possible. The area was originally designated as a potential expansion area in the approved PUD (see Exhibit 1), and the Master Deed for the Lites Woods Condominium specifies that the ability to expand the condominium per the original plan expired in 2010 (while reserving the right of the developer to use the expansion area for any other development). (Exhibit 2.) Thus, Mr. Whitcomb cannot obtain any return on his investment under the current PUD zoning. Furthermore, he cannot obtain any return on his investment under a multifamily zoning, because the demand simply is not there.
- 20.04(D). Mr. Whitcomb’s proposal is the only potential use compatible with the surrounding uses. The land was originally zoned R2, is surrounded by R2, and is adjacent to Lites Woods, which is primarily single family homes. The Village agrees that it should be developed as residential, and rezoning will allow it to be developed, increase housing supply, and in turn increase property values and the tax base.
- 20.04(E): There is sufficient electricity and facilities available along Victoria Avenue for the proposed lots.

- 20.04(F) & (G): as discussed above, the demand for the proposed use under the R-2 zoning is the only tangible and demonstrated demand for the property, and a more dense zoning designation (such as R-3) would be inappropriate. There is no demand for R-3, multifamily housing for this location. In fact, even under the existing PUD, the Cottages at Lites Woods – which has been in development as a “denser than typical” development since 2004—has not been completely built out, and was not able to expand by the expansion deadline.

For all of these reasons, Mr. Whitcomb’s proposal to revert the zoning of the Whitcomb Trust Property to R-2 satisfies all of the rezoning criteria. If the property is not appropriately rezoned, then Mr. Whitcomb will have little choice but to either pursue a takings claim (based on prohibitive zoning that does not allow any beneficial use), or other appropriate measures.

Potential Text Amendment Regarding 20-Acre Minimum

In discussions with the Village, the Zoning Administrator has suggested that if the proposed rezoning would adjust the minimum acreage for the Original Condominium Parcel to slightly under 20 acres, then it would violate a 20-acre minimum in the ordinance. This is not true.

The PUD provisions in Chapter 14 only have two 20-acre minimum requirements. They do not apply *generally* to *every* PUD, but rather are specific to two different scenarios. The first 20-acre minimum is Section 14.04(A)(5)(a). But that provision, by its plain terms, does not apply to this PUD, because it merely states as a permitted PUD use “any permitted use within the C-1 District ... provided that the total site of the PUD is at least twenty (20) contiguous acres.” Here, none of the PUD is being used for commercial uses. Section 14.04(A)(1) expressly and separately permits single-family, two-family, and multiple family dwellings, with no minimum acre requirement. Accordingly, the 20-acre minimum in Section 14.04(A)(5)(a) does not apply by its plain terms.

The other 20-acre minimum provision is in Section 14.06, under the qualifying conditions for “residential cluster developments” set forth at 14.06(B)(1). But by its plain terms, Section 14.06 *only* applies to cluster developments. The PUD here is not a residential cluster development. Furthermore, nothing in Chapter 14 requires that the portion of a PUD *remaining after rezoning a portion to non-PUD use* must meet or exceed 20 contiguous acres. Accordingly, no text amendment is required because nothing the Whitcomb Trust is requesting would violate any 20-acre minimum in Chapter 14 of the Ordinance.

However, to the extent that the Village interprets Chapter 14 as imposing a 20-acre minimum here, then it should pass a text amendment to reduce the 20-acre minimum. It is outdated and does not reflect the realities of zoning in the village. A text amendment reducing any applicable 20-acre minimum in the PUD regulations to 5 acres would satisfy the criteria for text amendment under Section 20.05:

- 20.05(A): the original 20-acre minimum was far too large. There are few, if any, parcels that exceed this acreage in the Village, and adjusting the PUD regulations to more accurately reflect the realistic size of “larger” lots in the village is appropriate. Indeed, the cottages is the only PUD ever, in the history of the Village.

- 20.05(B): reducing the acreage requirements satisfies the goals of the Master Plan, for the same reasons discussed above. It will also make the PUD procedure more viable, so the Village can consider this flexible procedure to advance its goals.
- 20.05(C): Amendment would correct an error and/or ambiguity in the Ordinance. Experience has shown that the 20-acre minimum is far too large, and effectively renders the PUD procedure a nullity in the Village.
- 20.05(D): The requested amendment will resolve an inequitable situation by facilitating the above request, and by providing more realistic acreage minimums for PUDs.
- 20.05(E): The requested amendment will not result in unlawful exclusionary zoning; to the contrary, it makes the ordinance more reasonable and fair.
- 20.05(F): The zoning administrator has indicated in the past that the PUD procedures need to be revised, and that a 20 acre minimum is too large.
- 20.05(G): The requested amendment will address changes to the existing PUD, as requested above.
- 20.05(H): The requested amendment will also address potential legal issues with the ordinance. Specifically, it will facilitate removal of the expansion area from the existing PUD. If left in its current state, the present PUD zoning on the Whitcomb Trust Property presents major takings and constitutional concerns, because it renders that property unbuildable.

Accordingly, Mr. Whitcomb respectfully requests that the Planning Commission recommend the approval of Mr. Whitcomb's rezoning request as shown on Exhibit 3, wherein:

- the Original Condominium Parcel will remain in the PUD;
- the entirety of the Whitcomb Trust Property will be removed from the PUD and rezoned as R2 Residential; and,
- To the extent the Village deems it necessary to facilitate Mr. Whitcomb's rezoning request, that the Village adopt a text amendment to Section 14.04(A)(5)(a) and/or Section 14.06(B)(1), to reduce the minimum acreage from 20 to 5 contiguous acres.

Proposal 2: Alternatively, Rezone a Smaller Portion of Whitcomb Trust Property to R-2.

Alternatively, if the Village refuses to amend the minimum acreage in the PUD and will not approve a rezoning that leaves the original PUD with less than 20 acres, then Mr. Whitcomb requests that the alternative plan (Exhibit 4) be approved, which would have most of the Whitcomb Trust Property rezoned as R-2, while leaving at least 20 acres in the existing PUD with the Original Condominium Parcel. This is not ideal, because it would irrationally leave PUD zoning on certain Whitcomb land simply, to satisfy a 20 acre minimum that (1) does not apply here by its plain terms,

and (2) is arbitrary and too high. All of the same reasons stated above support this alternative rezoning request, which satisfies the criteria under Section 20.04 of the Ordinance.

Proposal 3: Amend the PUD to Allow a New, Limited Site Condominium Development on the Whitcomb Property.

Finally, if the Village is not inclined to revert the property's zoning back to its original R-2 designation, then, in the alternative, the Whitcomb Trust requests that the Village amend the PUD consistent with the Sketch Plan attached as Exhibit 5. This amendment would preserve the original PUD for Lites Woods, while amending the Whitcomb portion to allow the expired former expansion area of the condominium to be developed as 7 individual sites along Victoria, which would be sold as individual lots or site condominiums. If condominiums, then each lot would consist of limited common elements to be used by the unit owner(s) on each respective lot. The area on Lot 53 that is to the south of the northern boundary of the Consumers Easement is not buildable, and would be subject to either a restrictive covenant to limit construction thereon, or designated a common element. An easement would be reserved and established to provide and preserve access from Kenneth Street to Victoria.

The PUD would be intended to complement the nearby residential uses as well as the existing, previously built out cottages at Lites Woods. Additionally, pursuant to Section 14.03(B)(5):

- The proposed amendment would meet the objectives of Section 14.02 of the PUD regulations, by preserving the natural assets along Victoria. It would preserve the wooded nature of these lots by providing an appropriate density along this road. It will also preserve the natural area at the corner of Sixth Street and Victoria, which is the most visible part of the Whitcomb Trust Property to the general public as it travels to and from Pentwater.
- The project would proceed forward promptly upon approval of the amendment. The easement, restriction and/or condominium documents would be drafted for the Whitcomb Trust Property and put in place, and units or lots would be sited and built as each lot is sold. Mr. Whitcomb already has several buyers lined up, so this would proceed with all deliberate speed upon receiving approvals. The proposed single family use is expressly permitted under Section 14.04, and will comply with the development, setback, and other standards set forth in Section 14.05.
- The Whitcomb Trust owns the property in the area of the PUD to be amended.
- The proposed amendment satisfies the PUD requirements and qualifying conditions set forth at Section 14.03(C)(4):
 - The amendment conforms with the Pentwater Village Master Plan for all of the same reasons stated above under applicant's Proposal 1.
 - As discussed, it advances the PUD objectives stated in Section 14.02.

- The proposed amendment complies with the permitted uses for a PUD. Section 14.04(A)(1) expressly permits single-family detached dwellings in the PUD.
- Finally, the proposed PUD amendment is consistent with existing and proposed development of the surrounding area, all of which is single family housing.
- Finally, the public interest will be preserved, because it will facilitate the development of the former expansion area and address an issue that currently deprives the owner of the Whitcomb Trust Property of any economic value from the property, giving rise to major takings and constitutional concerns.

Conclusion and Request for Rezoning

For all of the reasons stated above, Mr. Whitcomb respectfully requests that the Planning Commission approve Mr. Whitcomb's request to Rezone the Whitcomb Trust Property to revert it to its original R-2 zoning, to resolve the longstanding zoning problem at this property, and remove the zoning that currently deprives the Whitcomb Trust Property of all economic value. If the Village refuses to act on this, then Mr. Whitcomb may have little choice but to initiate litigation to vindicate his property rights.

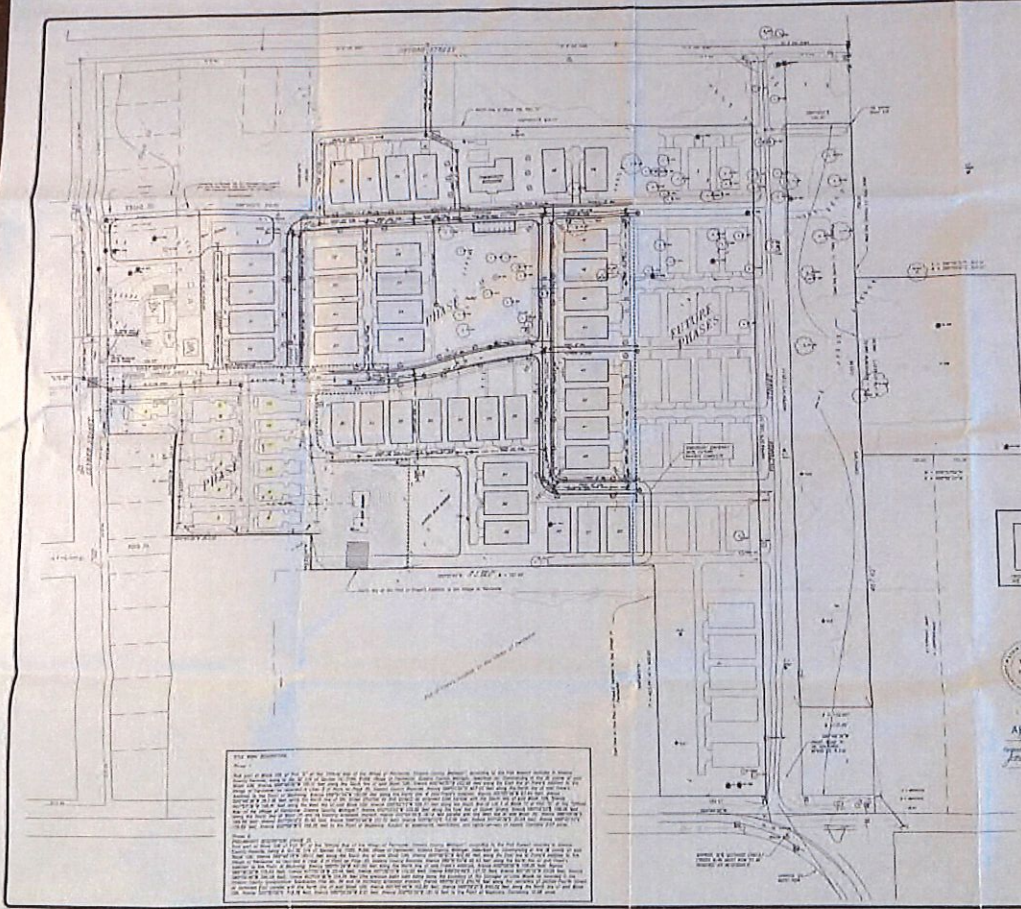
Sincerely,



Thomas M. Amon

TMA/tma
26904076

EXHIBIT 1



THE NEW DEVELOPMENT

THIS PLAN IS A PART OF THE PLAN OF THE CITY OF... (text is small and partially illegible)

THE CITY OF... (text is small and partially illegible)

THE CITY OF... (text is small and partially illegible)



LEGEND

[Symbol]	LOT BOUNDARIES
[Symbol]	STREET BOUNDARIES
[Symbol]	PROPOSED LOT FRONT
[Symbol]	PROPOSED LOT DEPTH
[Symbol]	PROPOSED LOT AREA
[Symbol]	PROPOSED LOT PERMITS
[Symbol]	PROPOSED LOT PERMITS
[Symbol]	PROPOSED LOT PERMITS

GENERAL NOTES

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2. THE CITY OF... (text is small and partially illegible)
3. THE CITY OF... (text is small and partially illegible)
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9. THE CITY OF... (text is small and partially illegible)
10. THE CITY OF... (text is small and partially illegible)



SCALE: 1" = 60'

THE COTTAGES AT LITES' WOODS

APPROVED

[Signature]

PLAT OF SECTION 14, T10N, R10E, W12E, OF RANGE 10, COUNTY OF DEKALB, STATE OF GEORGIA

NO.	DATE	REVISIONS
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2		
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5		
6		
7		
8		
9		
10		

redwood associates, inc.
Engineering & Surveying

LP10

EXHIBIT 2

DEC - 2 2004

HANT, MICH.

I HEREBY CERTIFY THAT THERE ARE NO TAX LIENS OR
TITLES HELD BY THE STATE OR ANY INDIVIDUAL AGAINST
THE WITHIN DESCRIPTION, AND ALL TAXES ON SAME ARE
PAID FOR FIVE YEARS PREVIOUS TO THE DATE OF THIS
INSTRUMENT, AS APPEARS BY THE RECORDS IN MY

Debra A. Hart
OFFICE
CO. TREASURER

**MASTER DEED
THE COTTAGES AT LITES' WOODS**

THIS MASTER DEED has been signed on November 24, 2004, by LITES DEVELOPMENT COMPANY, a Michigan corporation, c/o Roger J. MacLeod, P.O. Box 822, 15 Channel Lane, Pentwater, Michigan 49449 ("Developer"), pursuant to the provisions of the Act (as defined below), based on the following facts:

A. The Developer desires to establish the real property described in Article III below, together with all improvements located and to be located on it, and all appurtenances to them, as a condominium project under the provisions of the Act.

B. The Developer has prepared and signed this Master Deed, together with the Condominium Bylaws attached to this Master Deed as Exhibit A, and the Condominium Subdivision Plan attached to this Master Deed as Exhibit B, to accomplish these purposes.

ARTICLE I

DEFINITIONS

When used in any of the Condominium Documents (as defined below), or in any contract, deed, mortgage, lien, easement or other instrument affecting the Condominium Project or the establishment or transfer of any interest in it, the following terms shall carry the definitions which follow them unless the context clearly indicates to the contrary:

(a) "Act" means the Michigan Condominium Act, being Act 59 of the Public Acts of 1978, as amended.

(b) "Adjacent Garage" means each individual garage stall which may be attached or detached to the Condominium unit to which it is assigned as a limited common element, as set forth in the Condominium Subdivision Plan.

That part of Block 126 of Plat "D" of the "Official Map of the Village of Pentwater, Oceana County, Michigan", according to the Plat thereof recorded in Oceana County Records, being in the SE 1/4 of Section 14, T16N, R18W, Village of Pentwater, Oceana County, Michigan, described as: Commencing at the SE corner of said Block 126; thence S89°48'38"W 195.11 feet along the South line of said Block 126; thence N00°48'51" W 422.99 feet along the East line of Frank's Addition to the Village of Pentwater as recorded in Liber 3 of Plats on page 35, Oceana County Records; thence S89°51'54"W 467.43 feet along the North line of said Frank's Addition to the Point of Beginning; thence N00°08'06"W 198.26 feet; thence S88°30'33"W 179.85 feet; thence N11°30'39"W 33.44 feet; thence N01°30'12"W 112.05 feet; thence N88°29'48"E 137.72 feet; thence N01°30'12"W 55.00 feet; thence S88°29'48"W 346.68 feet; thence N03°04'56"W 314.34 feet parallel with the West line of said Block 70; thence N89°59'21"E 210.70 feet along the centerline of platted Fourth Street as extended East parallel with the North line of said Block 126; thence N01°05'48"W 162.60 feet; thence N89°59'21"E 879.77 feet along the North line of said Block 126; thence S00°04'34"W 1285.72 feet along the East line of said Block 126 to the Point of Beginning.

Also, that part of Block 125, of Plat "D" of the "Official Map of the Village of Pentwater, Oceana County, Michigan", according to the Plat thereof recorded in Oceana County Records, being in the SE 1/4 of Section 14, T16N, R18W, Village of Pentwater, Oceana County, Michigan, described as: Beginning at the NE corner said Block 125; thence S00°10'38"E 1123.18 feet along the East line of said Section 14; thence S89°48'38"W 131.26 feet along the North line of the South 159.58 feet of said Block 125; thence N00°04'34"E 1125.13 feet along the West line of said Block 125; thence S89°18'41"E 126.30 feet along the North line of said Block 125 to the Point of Beginning.

("Expansion Property").

B. Restrictions Upon Expansion. Expansion of the Condominium Project shall occur without restrictions under the following conditions:

- (1) The Developer's right to elect to expand the Condominium Project shall expire six (6) years from the date of recording of this Master Deed.
- (2) All or any portion of the Expansion Property may be added, but none of it must be added.
- (3) There is no limitation as to what portion of the Expansion Property may be added first, and any portions added may or may not be contiguous to each other or to the Condominium Project as it exists at the time of any expansion.

(4) Portions of the Expansion Property may be added to the Condominium Project at different times.

(5) The order in which portions of the Expansion Property may be added is not restricted, nor are there any restrictions fixing the boundaries of those portions of the Expansion Property that may be added.

(6) There is no restriction as to the location of any improvements that may be made on any portions of the Expansion Property.

(7) The maximum number of condominium units that may be created on the Expansion Property is one hundred twenty-seven (127).

(8) There is no restriction upon the number of condominium units that may be placed on any portion of the Expansion Property.

(9) All condominium units that may be created on the Expansion Property must be restricted exclusively to residential use.

(10) While the Developer presently intends to retain the basic architectural style of the Condominium Project, the nature, appearance and location of all additional units, if any, placed upon the Expansion Property will be as may be determined by the Developer in its sole judgment without any restrictions whatsoever.

(11) There are no restrictions as to what improvements may be made on the Expansion Property.

(12) The Developer reserves the right in its sole discretion to create convertible and contractible areas and limited common elements within any portion of the additional land added to the Condominium Project and to designate general common elements which may subsequently be assigned as limited common elements.

(13) The Condominium Project shall be expanded by a series of successive amendments to this initial Master Deed, each adding additional land to the Condominium Project as then constituted.

(14) By this Master Deed the Developer has also reserved the right to create easements within any portion of the original Condominium Project for the benefit of the Expansion Property, whether or not it is ever added to the Condominium Project. A description of this right is set forth in Article VII above.

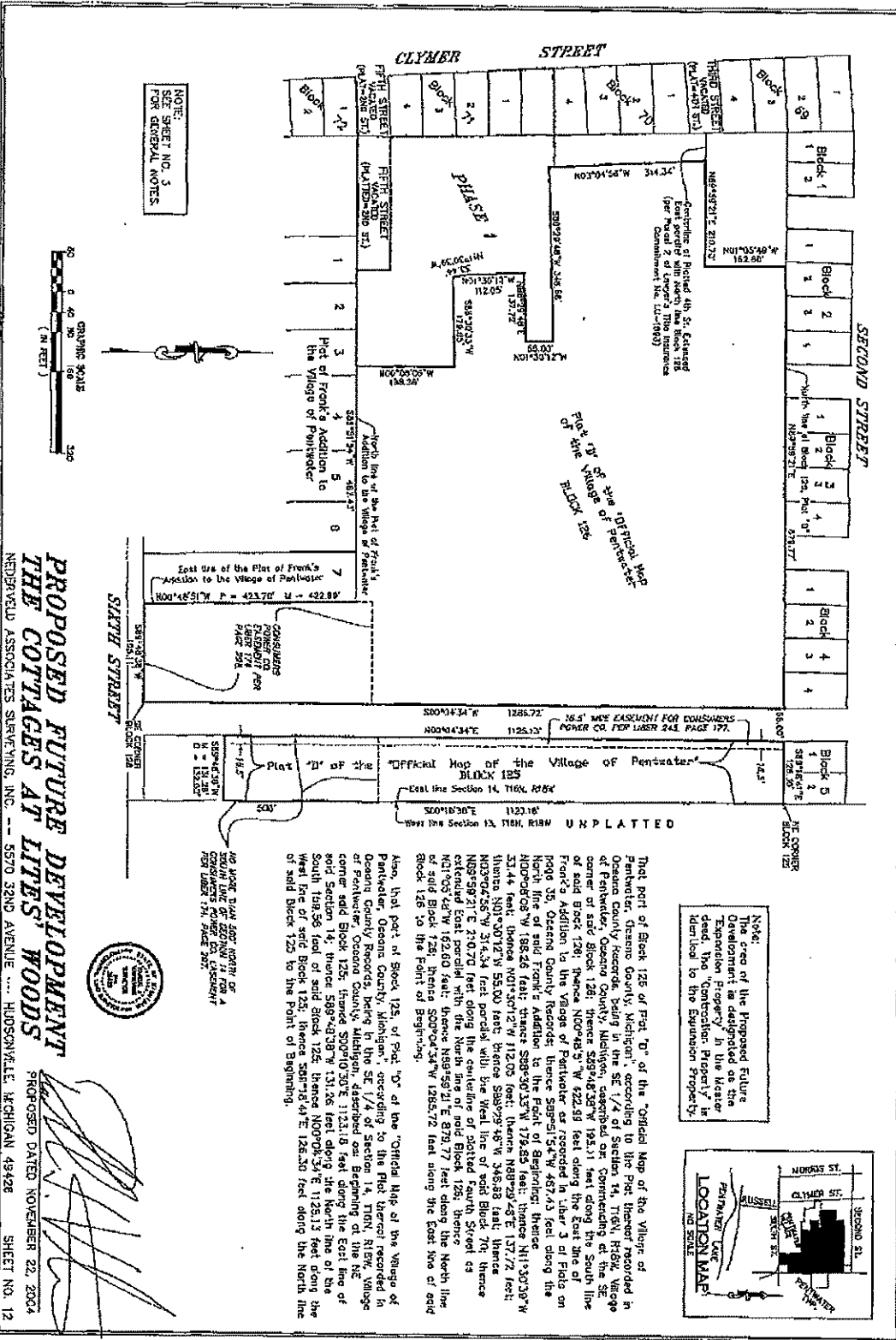
(15) All expansion must be carried out in accordance with the provisions of the Act.

C. **Procedure for Expansion.** Pursuant to the foregoing, and any other provisions of this Master Deed to the contrary notwithstanding, the number of units and the amount of real property in the Condominium Project may, at the sole option of the Developer or its successors or assigns, from time to time, within a period ending no later than six (6) years from the date of recording of this Master Deed, be increased by the addition to this Condominium Project of all or any portion of the Expansion Property and the construction of Condominium units on it. Such increase in size of this Condominium Project shall be given effect by an appropriate amendment or amendments to this Master Deed in the manner provided by law, which amendment or amendments shall be prepared by and at the discretion of the Developer or its successors or assigns. The percentages of value set forth in Article VI of this Master Deed shall be adjusted proportionately in the event of such expansion in order to preserve a total value of one hundred percent (100%) for the entire project resulting from such amendment or amendments to this Master Deed. The precise determination of the readjustments in percentages of value shall be made within the sole judgment of Developer. Such readjustments, however, shall reflect a continuing reasonable relationship among percentages of value based upon the formula set forth in Article VI.B. above. Such amendment or amendments to the Master Deed shall also contain such further definitions or modifications of general or limited common elements as may be necessary to adequately describe the additional property being added to the Condominium Project by such amendment. Such amendment or amendments to the Master Deed shall also contain such further definitions and redefinitions of general or limited common elements as may be necessary to adequately serve the additional units being added to the Condominium Project by such amendment. All of the co-owners and mortgagees of units and other persons interested or to become interested in the Condominium Project from time to time shall be deemed to have irrevocably and unanimously consented to such amendment or amendments of this Master Deed to effectuate the foregoing and, subject to the limitations set forth in this Master Deed, to any proportionate reallocation of percentages of value of existing units which Developer or its successors may determine to be necessary in conjunction with such amendment or amendments. All such interested persons irrevocably appoint Developer or its successors and assigns as agent and attorney for the purpose of execution of such amendment or amendments to the Master Deed and all other documents necessary to effectuate the foregoing. Such amendments may be effected without the necessity of rerecording an entire Master Deed or the Exhibits to it and may incorporate by reference all or any pertinent portions of this Master Deed and the Exhibits to this Master Deed; but a Consolidating Master Deed, when recorded, shall supersede the previously recorded Master Deed and all amendments to it. Nothing contained in this Master Deed, however, shall in any way obligate Developer to enlarge the Condominium Project beyond the phase established by this Master Deed, and Developer (or its successors and assigns) may, in its discretion, establish all or a portion of the Expansion Property as a rental development, a separate condominium project (or projects), or any other form of development.

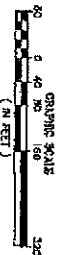
ARTICLE IX

ALTERATIONS

A. **Boundary Relocations.**



NOTE:
SEE SHEET NO. 3
FOR GENERAL NOTES.



SIXTH STREET

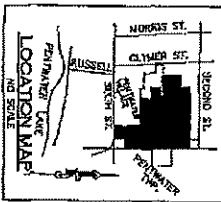
**PROPOSED FUTURE DEVELOPMENT
THE COTTAGES AT LITES WOODS**

NEEDHAMFIELD ASSOCIATES SURVEYING, INC. -- 5570 32ND AVENUE -- HUDSONVILLE, MICHIGAN 49428 SHEET NO. 12



PROPOSED DATED NOVEMBER 22, 2004

Note:
The area of the Proposed Future Development is designated as the Expansion Property in the Master Deed. The Construction Priority is identified to the Expansion Property.



That part of Block 125 of Plat "D" of the "Official Map of the Village of Pentwater, Oceana County, Michigan," according to the Plat thereof recorded in Oceana County Records, being in the SE 1/4 of Section 14, T16N, R18W, Village of Pentwater, Oceana County, Michigan, described as: Commencing at the SE corner of said Block 125; thence S89°48'28"W 193.31 feet along the South line of said Block 125; thence N00°48'29"W 422.59 feet along the East line of Front's Addition to the Village of Pentwater as recorded in Liber 3 of Plats on page 35, Oceana County Records; thence S89°51'54"W 467.63 feet along the North line of said Front's Addition to the Point of Beginning; thence N11°30'39"W 31.44 feet; thence N01°30'12"W 112.05 feet; thence N88°29'48"E 137.72 feet; thence N03°04'26"W 314.34 feet parcel with the West line of said Block 70; thence N89°59'21"E 210.70 feet along the easterly end of dotted Fourth Street 43 extended East parallel with the North line of said Block 125; thence N1°03'42"W 192.60 feet; thence N89°59'21"E 679.77 feet along the North line of said Block 125; thence S00°04'34"W 1285.72 feet along the East line of said Block 125 to the Point of Beginning.

Also, that part of Block 125 of Plat "D" of the "Official Map of the Village of Pentwater, Oceana County, Michigan," according to the Plat thereof recorded in Oceana County Records, being in the SE 1/4 of Section 14, T16N, R18W, Village of Pentwater, Oceana County, Michigan, described as: Beginning at the NE corner of said Block 125; thence S90°10'30"E 1123.15 feet along the East line of said Section 14; thence S89°42'38"W 131.26 feet along the North line of the South 1/2 of said Block 125; thence N00°08'34"E 1125.13 feet down the West line of said Block 125; thence S81°18'44"E 128.30 feet along the North line of said Block 125 to the Point of Beginning.

NO MORE THAN 500' NORTH OF
SOUTH LINE OF 220' HIGH 1/2" HIGH
CONCRETE CURB TO BE SET
FOR 18" HIGH 18" WIDE 20' LONG

Plat "D" of the

Official Map of the Village of Pentwater

Block 125

East line Section 14, T16N, R18W

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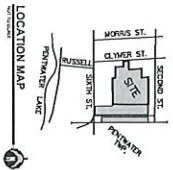
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EXHIBIT 3



PREPARED FOR:
 THE RICHARD J. WHITCOMB
 RITA WHITCOMB
 103 FULTONVILLE ROAD
 ST. LOUIS, MO 63104

REVISIONS:
 1. [REDACTED]
 2. [REDACTED]



PROPOSED PUD DESCRIPTION
 The proposed PUD description is as follows: [REDACTED]

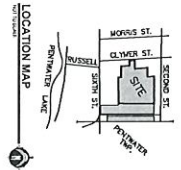
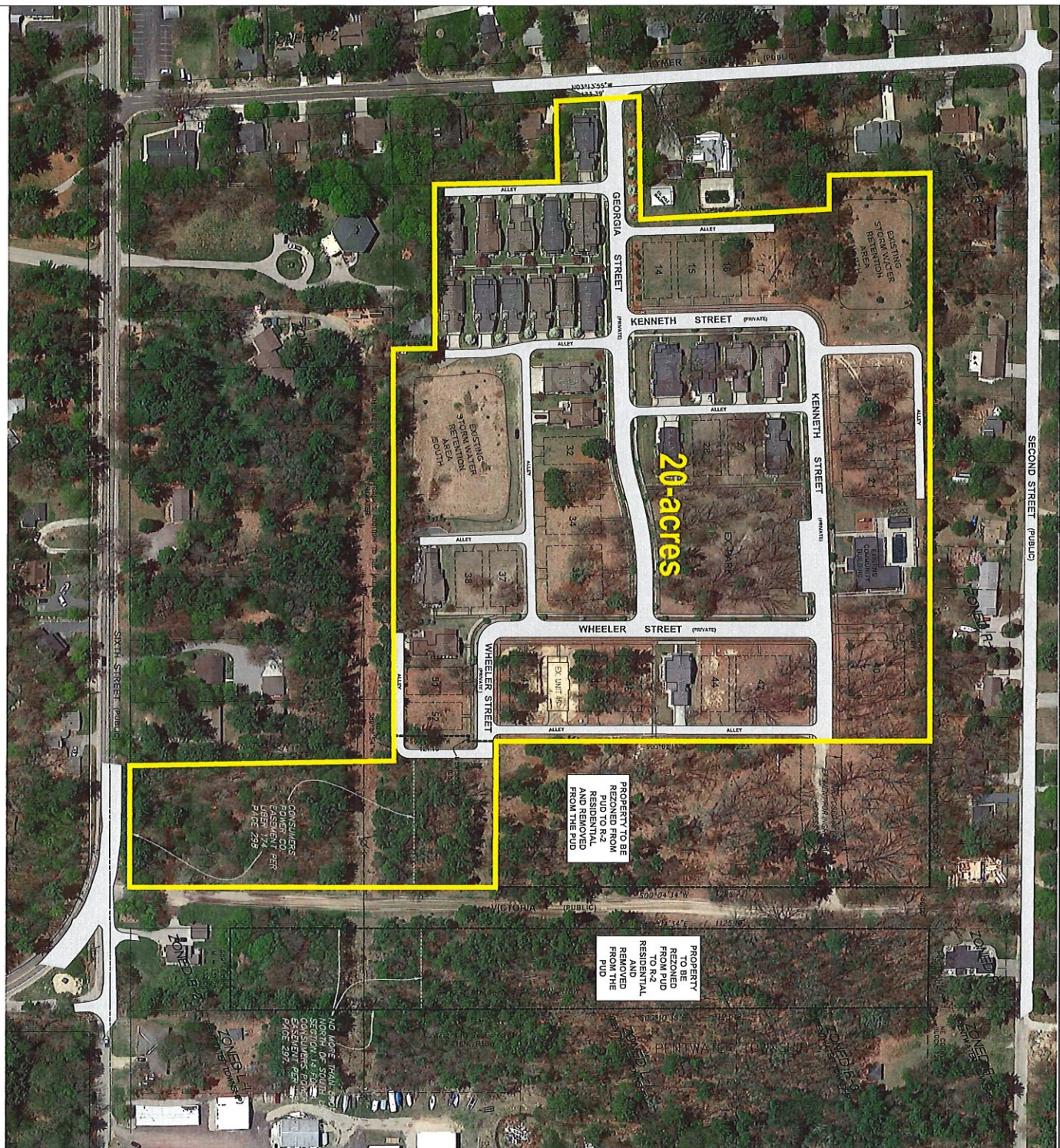
THE COTTAGES AT LITES' WOODS
 FINAL PUD PLAN AMENDMENT

PART OF SECTION 16, T10N, R10W,
 VILLAGE OF PENTWATER, OCEAN COUNTY, MICHIGAN



STAMP:
 PROJECT NO: 21300072
 SHEET NO: C-101

EXHIBIT 4

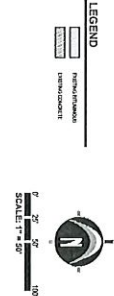


LOCATION MAP

NEDERVELD
 www.nederveld.com
 602.222.1828
GRAND RAPIDS
 JANA AREBON
 CHEN-CHAO
 COLLEEN BUS
 HOLLAND
 MIDLANDVILLE
 ST. LOUIS

PREPARED FOR:
 THE RICHARD A. WHITCOMB
 REVOCABLE TRUST
 A. WHITCOMB
 1837 FLORES BLVD
 TOLSON, MICHIGAN
 49084

REVISIONS:
 1. 11/15/2017
 2. 11/15/2017



PROPOSED PUD DESCRIPTION
 The proposed PUD is located on the east side of the 20-acre site, bounded by Georgia Street to the north, Wheeler Street to the south, and Victoria Street to the east. The proposed PUD consists of 20 lots, each containing a single-family detached residence. The proposed PUD is shown in yellow on the map. The existing PUD is shown in white on the map. The existing residential is shown in green on the map.

THE COTTAGES AT LITES' WOODS
 FINAL PUD PLAN AMENDMENT

STAMP:
 MICHIGAN LAND SURVEYORS
 1998
 2000
 2002
 2004
 2006
 2008
 2010
 2012
 2014
 2016
 2018
 2020

PROJECT NO:
 21200012
 SHEET NO:
C-101

EXHIBIT 5

VILLAGE OF PENTWATER

ON PENTWATER LAKE AND LAKE MICHIGAN
65 South Hancock Street, P.O. Box 622, Pentwater, Michigan 49449
(231) 869-8301 FAX (231) 869-5120
www.pentwatervillage.org

ZONING ADMINISTRATOR'S REPORT

October 5, 2022

The following is a summary of activity conducted by the Zoning Administrator in September 2022.

Code Enforcement – Nothing significant to report at this time.

Planning Commission - The Planning Commission met on September 27th, to:

1. Review Proposed Porch Addition for 540 N. Hancock St.
2. Site Plan Review for Proposed Two-Family Building at 721 E. Concord St.
3. Review Correspondence from Attorney for Cottages at Lites Woods.

Zoning Board of Appeals - The Zoning Board of Appeals met on September 20th, to:

1. Conduct a Public Hearing for 540 N. Hancock St.
2. Variance Requestion Discussion for 540 N. Hancock St.

Zoning Permits – The following Zoning Permits were issued in September of 2022:

1. ZP 22-32 was issue to Apex Renovation & Remodeling for 314 S. Rutledge St. to construct a 616 sq. ft. deck.
2. ZP 22-33 was issued to Melissa & Ryan Williams for 540 N. Hancock St. to construct a 37' by 10' deck with a 4' wide connecting ramp.
3. ZP 22-34 was issued to Melissa & Ryan Williams for 540 N. Hancock St. to construct a 9' by 42' covered porch with a 1.5' overhang.

Other

None.

Sincerely,

Katie Anderson

Katie Anderson
Zoning Administrator