

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CHARTER TOWNSHIP OF CANTON,

Plaintiff/Counter-Defendant/Appellant/
Cross-Appellee,

Docket No. 354309

Circuit Court No. 18-014569-CE

v

44650, INC., a Michigan corporation,

Defendant/Counter-Plaintiff/Appellee/
Cross-Appellant.

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
Marcelyn A. Stepanski (P44302)
Anne McClorey McLaughlin (P40455)
Attorneys for Plaintiff/Appellant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
mstepanski@rsjalaw.com

Kristin Bricker Kolb (P59496)
Charter Township of Canton
Co-Counsel for Plaintiff
1150 S. Canton Center Road
Canton, Michigan 48188
(734) 394-5199
kristin.kolb@canton-mi.org

CLARK HILL PLC
Ronald A. King (P45088)
Stephon B. Bagne (P54042)
Michael J. Pattwell (P72419)
Attorneys for Defendant/Appellee
212 E. Cesar Chavez Avenue
Lansing, MI 48906
(517) 318-3100
rking@clarkhill.com
sbagne@clarkhill.com
mpattwell@clarkhill.com

TEXAS PUBLIC POLICY FOUNDATION
CENTER FOR THE AMERICAN FUTURE
Robert Henneke (MI-HENNR)
Chance Weldon (MI-WELDC)
Co-Counsel for Defendant/Appellee
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700
rhenneke@texaspolicy.com
cweldon@texaspolicy.com

CHARTER TOWNSHIP OF CANTON'S APPEAL BRIEF

*** ORAL ARGUMENT REQUESTED ***

RECEIVED by MCOA 2/2/2022 11:58:19 PM

TABLE OF CONTENTS

INDEX OF AUTHORITIES	ii
JURISDICTIONAL STATEMENT	iii
STATEMENT OF FACTS.....	1
STANDARD OF REVIEW	8
ARGUMENT	9
I. RELITIGATION OF WHETHER APPLICATION OF THE TREE ORDINANCE CONSTITUTED AN UNLAWFUL SEIZURE UNDER THE 4 TH AMENDMENT IS BARRED BY COLLATERAL ESTOPPEL AND THE REASONING OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.....	9
II. THE LOWER COURT ERRED IN GRANTING SUMMARY DISPOSITION TO DEFENDANT ON ITS CLAIM THAT THE TREE ORDINANCE IMPOSED AN UNCONSTITUTIONAL CONDITION ON DEFENDANT’S USE OF THE PROPERTY.....	10
III. THE LOWER COURT ERRED IN GRANTING SUMMARY DISPOSITION TO DEFENDANT ON A REGULATORY TAKINGS ANALYSIS UNDER <i>HORNE</i> AND <i>PENN CENTRAL</i>	12
CONCLUSION AND REQUESTED RELIEF.....	15

INDEX OF AUTHORITIES

CASES

<i>Andrus v Allard</i> , 444 US 51, 65 (1979)	13
<i>Armstrong v United States</i> , 364 US 40, 48 (1960)	13
<i>Baraga Co. v State Tax Comm.</i> , 466 Mich 264, 269-270 (2002)	10
<i>Barnard Mfg Co, Inc v Gates Performance Engineering, Inc</i> , 285 Mich App 362, 369–370; 775 NW2d 618 (2009)	8
<i>Dolan v City of Tigard</i> , 512 US 374 (1994)	10
<i>Georgia Outdoor Network, Inc. v Marion County, Ga</i> , 652 FSupp2d 1355 (MD Ga 2009)	13
<i>Horne v Dept of Agriculture</i> , 135 S Ct 2419 (2015)	12
<i>K & K Construction, Inc v Department of Environmental Quality</i> , 267 Mich App 523, 553 (2005)	14
<i>Keystone Bituminous Coal Ass’n v DeBenedictis</i> , 480 US 470, 497 (1987)	13
<i>Koontz v St. John’s River Water Mgmt. Dist.</i> , 570 US 595, 612 (2013)	11
<i>Leahy v Orion Twp.</i> , 269 Mich App 527, 530; 711 NW2d 438 (2006)	9
<i>Lichon v American Universal Ins Co</i> , 435 Mich 408, 428 n16; 459 NW2d 288 (1990)	9
<i>Lingle v Chevron USA, Inc</i> , 544 US 528, 539 (2005)	14
<i>Maiden v Rozwood</i> , 461 Mich 109, 119-120; 597 NW2d 817 (1999)	8
<i>Meyer v Center Line</i> , 242 Mich App 560, 575; 619 NW2d 182 (2000)	8
<i>Minicuci v Scientific Data Mgt, Inc</i> , 243 Mich App 28, 34; 620 NW2d 657 (2000)	9
<i>Monat v State Farm Ins Co</i> , 469 Mich 679, 692-693; 677 NW2d 843 (2004)	9
<i>Nollan v California Coastal Com’n</i> , 483 US 825 (1987)	10
<i>Penn Central Transp Co v New York City</i> , 438 US 104 (1978)	13
<i>People v Gates</i> , 434 Mich 146, 154; 452 NW2d 627 (1990)	9
<i>Quinto v Cross & Peters Co</i> , 451 Mich 358; 547 NW2d 314 (1996)	8
<i>Ransburg v Wayne Co</i> , 170 Mich App 358, 360; 427 NW2d 906 (1988)	8
<i>SSC Associates Limited Partnership v General Retirement System of the City of Detroit</i> , 192 Mich App 360, 363-364; 480 NW2d 275 (1992)	8

OTHER AUTHORITIES

Canton Township Forest Preservation and Tree Clearing Ordinance, §5A.05(A.)	4
---	---

RULES

7.203(A)(1).	iv
MCR 2.116(G)(4)	8
MCR 2.116[C][10])	8
MCR 7.202(6)(A)(i)	iv

JURISDICTIONAL STATEMENT

Plaintiff timely appeals from a final order entered on July 17, 2020, thereby vesting this Court with jurisdiction pursuant to MCR 7.202(6)(A)(i) and 7.203(A)(1).

RECEIVED by MCOA 2/2/2022 11:58:19 PM

STATEMENT OF FACTS

Introduction

This case addresses the constitutionality of Canton Township's Forest Preservation and Tree Clearing Ordinance following Defendant's obliteration of well over 1,000 trees on the subject property, including 100 landmark trees. (Canton Charter Township Ord. Art. 5A.00, et seq.) Defendant contended that the Township's ordinance was invalid based on four arguments raised in its Motion for Partial Summary Disposition, styled as follows: 'A – a 5th Amendment regulatory taking; B – a 4th Amendment seizure; C – unconstitutional conditions on use of property; and D – excessive fines under the 8th Amendment.' (See Defendant's MPSP.) The lower court granted summary disposition to the Defendant with respect to the first three issues but found the 8th Amendment inapplicable. Meanwhile, a related federal case, considering the same ordinance, culminated in a published Opinion by the United States Court of Appeals for the Sixth Circuit, deciding some of the same issues raised by Defendant here. The within appeal was held in abeyance pending the outcome of that matter, with the intention of streamlining analysis of some of the issues before this Court. For the reasons detailed hereinafter, the lower court improperly granted summary disposition in favor of the Defendant, and its decision should be reversed.

Factual Background

Defendant, 44650, Inc., is a Michigan corporation located at 5601 Belleville Road in Canton Township, Michigan, whose resident agent is Gary Percy. At issue in this case are the actions taken by Defendant with respect to a roughly 16-acre vacant parcel of property located east of Belleville Road and north of Yost Road, parcel identification number 71-135-99-0001-709.

On or about October 27, 2016, Canton Township's Planning Services Division received an application for a lot split of a 40-acre parcel owned by FP Development LLC. The original 40-acre parcel ("Parent Parcel") was proposed to be divided into two child parcels, 28.4 acre Parcel A to the north and 16.1 acre Parcel B to the south. (Exhibit A.)¹ The owner for the 16-acre split parcel ("the Property") was identified in the lot split application as Defendant, 44650, Inc. (Id.)

Notably, in April 2017, the Property was still fully treed and no work had commenced on the Property, as evidenced by aerial photograph. (Exhibit B.) On July 14, 2017, the Township notified Ginger Michalski-Wallace, the engineer for FP Development and Defendant, that the split application was tentatively approved. (Exhibit C.) The letter noted, *inter alia*, that the Property was zoned LI, Light Industrial, that site plan approval must be obtained for *any activities* or development on the property, and that a *tree removal permit must be obtained from Planning Services prior to any tree removal activity taking place on the site*. (Emphasis added.)

On August 1, 2017, FP Development by Martin F. Powelson signed a Deed conveying the 16-acre parcel to Defendant. (Exhibit A.) Unbeknownst to the Township, before the lot split was complete, Defendant hired Kilanski Excavating in approximately October 2017 to clear-cut all trees from the Property. (Exhibit E; Exhibit 4, Percy dep., pp. 28-29.) Defendant also bulldozed the acreage and removed the existing stumps – all in an effort to hide the extent of destruction. On November 27, 2017, the Township Planner again notified Ms.

¹ The Township's Complaint, as verified by Leigh Thurston, the Township's Landscape Architect and Planner, is attached as Exhibit 3. Exhibits referenced alphabetically are attached to the Verified Complaint.

Michalski-Wallace that the documents were required, and reminded her, as the agent for the parties, that site plan approval was required before *any activities* or development on the parcel, and *any tree removal required a prior tree removal permit*. (Exhibit F.) The property split was completed thereafter.

In late April of 2018, Township landscape architect and planner Leigh Thurston received a phone call from an individual owning land adjacent to the Property, inquiring why so many trees were permitted to be removed. This was the first notification that the Township had that any trees had been removed from the Property. After viewing the Property from a neighboring parcel, Ms. Thurston observed several ordinance violations and a woodchipping operation on the Property. Ms. Thurston then contacted Gary Percy, the resident agent for Defendant, to advise him of the violations. Despite a history of violating the Township's ordinances in the past, Mr. Percy disingenuously denied knowledge that a permit was required to remove trees from the Property. (See e.g., Exhibit 8, 1994 notice of violation.)

The Canton Township Zoning Ordinance, Code of Ordinances, governs land use in the Township. The Property in question is zoned LI, Light Industrial. (Exhibit 4, p. 20.) The intent of the LI District is to provide locations for planned industrial development, including planned industrial park subdivisions. (Exhibit N.) Agricultural uses are not a permitted use as of right or a special land use in the LI zoning district. An agricultural use requires a minimum of 40 acres; the subject property is only 16 acres.

Unless governed by one of the noted exemptions, the Township's Zoning Ordinance requires a *permit* for tree removal pursuant to §5A.05(A), specifically pertaining to removal or relocation of trees with a DBH (diameter at breast height, as defined by the Ordinance) of six inches or greater; removal, damage or destruction of any landmark tree; removal, damage or destruction of any tree located within a forest; and clearcutting or grubbing within the drip

line of a forest. (Exhibit H, Forest Preservation and Tree Clearing Ordinance, §5A.05(A).) The stated purpose of the Ordinance is to promote an increased quality of life through the regulation, maintenance and protection of trees, forests and other natural resources. (Id., §5A.02.) It is elemental that trees are a precious natural resource in that they absorb carbon dioxide, produce oxygen, prevent soil erosion and flooding (which has become an obvious issue in many urban and suburban areas), provide natural habitats for animals, inhibit mosquito infestations, and innumerable other benefits.

Under the Ordinance, a “regulated tree” is “any tree with a DBH of six inches or greater” and a “landmark tree” is defined as “any tree which stands apart from neighboring trees by size, form or species, as specified in the landmark tree list in section 94-36, or any tree, except box elder, catalpa, poplar, silver maple, tree of heaven, elm or willow, which has a DBH of 24 inches or more.” (Exhibit H, §§5A.05 and 5A.01.)

Section 5A.08(B) governs relocation or replacement of trees and provides in pertinent part: “Whenever a tree removal permit is issued for the removal of trees, other than landmark/historic trees, with a DBH of six inches or greater ... such trees shall be *relocated or replaced* by the permit grantee *if more than 25 percent of the total inventory of regulated trees is removed.*” (Id.) It soon became clear that Defendant removed all trees on the Property. Despite numerous requests from Township employees and public officials, staff was denied access to the Property by Gary Percy to analyze the extent of the tree removal.

The parties, through counsel, eventually agreed on a date for inspection. On August 22, 2018, Canton Township’s deputy planner and landscape architect, Leigh Thurston, along with its Code Enforcement officer and a consulting arborist met representatives of Defendant to walk the Property and the Parent Parcel to conduct a scientific analysis of how many – and what types – of trees had been removed from the Property. The analysis included, among

other things, identifying six representative plots on the “still treed” Parent Parcel and then counting and identifying the species of the regulated trees within those plots. Using the numbers and types of trees that were identified in the representative plots and taking into consideration soil conditions and topography of the Property, a scientific estimate was made of the number and types of trees that were removed. The analysis concluded that 1,385 “regulated trees” and 100 “landmark” trees had been destroyed. (Exhibit M.) Based upon the analysis and requirements in the Ordinance, Defendant was required to plant 1,685 trees in replacement of the 1,485 trees that were removed. (Exhibit H, §5A.08(E).) The Township’s ordinance requires replacement of regulated trees on a 1:1 ratio, and replacement of landmark trees on a 3:1 ratio. (Id., §5A.08.) On August 29, 2018, Ms. Thurston issued a Notice of Violation. (Exhibit 5.)

The Ordinance further provides that wherever possible, replacement trees must be located on the same parcel of land on which activity is to be conducted. (Exhibit H, §5A.08(E).) Where tree relocation or replacement is not possible on the same property on which the activity is to be conducted, the permit grantee can plant the required trees off site. (Id.) In lieu of planting replacement trees, Defendant also has the option of replacing the market value of the destroyed trees in accordance with § 5A.08(E). Current market values for the types of trees required to replace the 1,385 regulated trees removed average between \$225 and \$300 per tree, and market value of the trees required to replace the 100 landmark trees average \$450 per tree. (Exhibit 6.)

Rather than attempt to resolve the violation in any meaningful way, Defendant claimed that it was now starting a “Christmas tree farm,” which the Township learned on October 22, 2018, through a news media report initiated by Defendant, and that Defendant had planted some 1,000 Norway Spruce trees on the Property. As noted above, the Property is zoned LI,

Light Industrial, and a Christmas tree farm is not a permitted use. To use the Property for agricultural purposes, Defendant would have to file an application to rezone the Property to RA, Rural Agricultural, and a request for a variance to allow the agricultural use on property smaller than 40 acres. No applications for either were submitted to the Township.

Defendant repeatedly ignored and disregarded Township ordinance requirements, even doubling down on the tree removal violation by planting evergreen trees for a "Christmas tree farm" in violation of the Township Code. Canton Township filed this action, seeking a declaratory judgment that Defendant violated the Zoning Ordinance and was responsible for a nuisance *per se* under the Michigan Zoning Enabling Act, MCL 125.3407, injunctive relief preventing Defendant from its continued violations of the ordinance, and a judgment that Defendant was responsible to mitigate its violation of the Ordinance in a manner consistent with the Zoning Ordinance.

On November 12, 2018, the lower court granted the Township an Ex-Parte Temporary Restraining Order halting any further Christmas tree plantings on the Property, and an Order to Show Cause requiring Defendant to appear and show why a preliminary injunction should not issue restraining Defendant from conducting any further activities on the Property in violation of the Township's ordinances. The Court modified that Order on November 20, 2018 per Stipulation. The Court then entered an Order Maintaining Status Quo on December 4, 2018. (Exhibit 6.) Meanwhile, Defendant filed a Counter-Complaint, which was subsequently amended, purporting that the Ordinance constituted a regulatory taking under the 5th Amendment, an unlawful seizure under the 4th Amendment, imposed unconstitutional conditions of use of the Property, and imposed excessive fines under the 8th Amendment. The Township filed a Motion for Summary Disposition but withdrew it so the constitutional issues could be determined first. Defendant filed a Motion for Partial Summary Disposition, to which

the Township responded and requested summary disposition in its favor pursuant to MCR 2.116(I)(2).

On July 17, 2020, the lower court held that the Township's Ordinance, as applied to Defendant, constituted a regulatory taking. (Exhibit 1, Opinion, p. 24.) The court further held that the 4th Amendment applied to the extent it was a "meaningful interference" with Defendant's "possessory interests" in the Property. Next, it opined that the Ordinance placed unconstitutional conditions on the use of the Property. Lastly, the lower court determined that the 8th Amendment's "excessive fines" clause is inapplicable. (Id.)

In 2018, a related case, *F.P. Dev., LLC v Charter Township of Canton*, was brought in the United States District Court for the Eastern District of Michigan by the owners of the aforementioned Parent Parcel raising a number of the same issues pertaining to the Township's tree Ordinance that are asserted herein. That case recently culminated in a published decision by the United States Court of Appeals for the Sixth Circuit. There, the Court of Appeals held that neither the 4th nor the 8th Amendments applied. (Exhibit 2, USCOA Opinion, pp. 12-14.) With respect to the regulatory taking claim, the Court noted that there was an interesting question as to whether Canton's application of the Tree Ordinance to F.P. even falls into the category of government action covered by the 'unconstitutional conditions doctrine' under *Nollan/Dolan/Koontz*, but declined to address it, finding that it was not raised on appeal. (Id., p. 9.) Instead, the Court determined that the showing made in that case was insufficient to constitute an individualized impact assessment. (Id., p. 11.)

For the reasons detailed herein, collateral estoppel precludes relitigation of Defendant's issues under the 4th Amendment, and the lower court erred in granting summary disposition on Defendant's regulatory takings and unconstitutional conditions arguments, thereby warranting reversal.

STANDARD OF REVIEW

A motion pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the Complaint. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). A motion under this subrule must *specifically* identify the issues as to which the moving party believes there is no genuine issue as to any material fact. MCR 2.116(G)(4). The initial burden on a motion for summary disposition is on the moving party to properly support its motion. The burden shifts to the nonmoving party only after the moving party has met this burden. MCR 2.116(G)(5); *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369–370; 775 NW2d 618 (2009). If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4); *Id.* at 370, citing *Meyer v Center Line*, 242 Mich App 560, 575; 619 NW2d 182 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116[C][10]).

Affidavits supplied in support of a motion for summary disposition must be based upon personal knowledge and must set forth with particularity such *facts* as would be admissible as evidence to establish or deny the grounds stated in the motion. *SSC Associates Limited Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360, 363-364; 480 NW2d 275 (1992)(citation omitted)(emphasis added). Opinions, conclusionary denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule; disputed fact (or the lack of it) must be established by *admissible evidence*. *Id.* at 364 (emphasis added). Allegations unsupported by some basis in fact may be viewed as sheer speculation and conjecture and, therefore, ripe for summary disposition. *Id.* citing *Ransburg v Wayne Co*, 170 Mich App 358, 360; 427 NW2d 906 (1988).

ARGUMENT

I. RELITIGATION OF WHETHER APPLICATION OF THE TREE ORDINANCE CONSTITUTED AN UNLAWFUL SEIZURE UNDER THE 4TH AMENDMENT IS BARRED BY COLLATERAL ESTOPPEL AND THE REASONING OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

The applicability of collateral estoppel is a question of law. *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000). Collateral estoppel is intended to relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication by preventing inconsistent decisions. *Monat v State Farm Ins Co*, 469 Mich 679, 692-693; 677 NW2d 843 (2004).

Collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent, different cause of action between the same parties or their privies where the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. *Leahy v Orion Twp.*, 269 Mich App 527, 530; 711 NW2d 438 (2006); *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990). See also, *Lichon v American Universal Ins Co*, 435 Mich 408, 428 n16; 459 NW2d 288 (1990). A decision is final when all appeals have been exhausted or when the time available for an appeal has passed. *Leahy, supra* at 530.

Here, both the federal district court and the United States Court of Appeals for the Sixth Circuit agreed that the 4th Amendment's prohibition against unlawful seizures did not apply to the Township's tree Ordinance. Whether there was "meaningful interference with possessory interests" was actually and necessarily determined in that prior matter, which resulted in a final valid judgment. (Exhibit 2, USCOA Opinion, pp. 12-13.) Defendant, though not a party to the federal court action, is in privity with the Plaintiff, F.P. Development. To be

in privity is to be so identified in interest with another party that the prior litigant represents the same legal right that the subsequent litigant is trying to assert. *Baraga Co. v State Tax Comm.*, 466 Mich 264, 269-270 (2002). Both 44650 and F.P. Dev. are represented by the same counsel, both have raised the same claims and issues with respect to application of the Township's tree Ordinance to their property, and F.P. owned the parent parcel before the lot split and deeding of the child parcel to Defendant. Given this substantial identity of interests, that were adequately presented and protected by F.P. in the federal matter, privity is established and collateral estoppel applies.

Even if this Court were to somehow find that collateral estoppel does not apply, the reasoning of the federal Court of Appeals in its published decision rejecting the 4th Amendment arguments advanced by F.P. there apply equally here. (Exhibit 2, pp. 12-13.) Further, like F.P., there is no dispute that Defendant here also was able to sell the timber it removed from the Property, nor is timber included within the protections afforded by the 4th Amendment to houses, persons, papers, or effects. (*Id.*) The lower court erred in granting summary disposition to Defendant under the 4th Amendment, warranting reversal and disposition in the Township's favor.

II. THE LOWER COURT ERRED IN GRANTING SUMMARY DISPOSITION TO DEFENDANT ON ITS CLAIM THAT THE TREE ORDINANCE IMPOSED AN UNCONSTITUTIONAL CONDITION ON DEFENDANT'S USE OF THE PROPERTY.

The lower court erred in finding the exaction test established in *Nollan v California Coastal Com'n*, 483 US 825 (1987) and *Dolan v City of Tigard*, 512 US 374 (1994) applicable. Exaction cases involve a government demand that an applicant give up a portion of their property as a condition of the government entity's issuance of a land use permit. In *Nollan*, the government permit required the property owners to provide an easement across their

property. *Id.*, 483 US at 827-829. Similarly, the government in *Dolan* required a property owner to provide easements to obtain a development permit. *Id.*, at 379-380. Both cases demanded *property* from a land use permit applicant and thus triggered a determination as to whether an unlawful exaction occurred. The Township's tree Ordinance operates as a development permit only and in no form requires the applicant to give property to the Township. It is not a demand for part of the Defendant's property. A requirement of a property owner to replace certain trees is not an exaction. Further the alternate payment into a tree replacement fund for the removal of trees is not an unlawful payment in lieu of exaction as there is no underlying exaction. See *Koontz v St. John's River Water Mgmt. Dist.*, 570 US 595, 612 (2013). As the Township's tree regulations are not a demand for property from the property owner, there is no exaction and the *Nollan/Dolan* analysis is inapplicable. The burdens a property owner bears are not conditional dedications or 'monetary exactions' demanded via a discretionary permitting or 'adjudicatory' process in exchange for a permit, but rather akin to the burdens a property owner normally bears when he must provide, for example, proper infrastructure, subterranean support, landscaping, or stormwater control as a nondiscretionary requirement to build. As such, the *Koontz* holding, that land use permits premised on the *conditional* demand for an *easement* or a *monetary* exaction in lieu of such a dedication, implicate the unconstitutional conditions doctrine, does not apply here because neither of those demands were made.

Before *Koontz*, the Supreme Court had held that the unconstitutional conditions doctrine did not apply where payment of money was concerned. But recognizing that "so-called 'in lieu of' fees are utterly commonplace," *Koontz* expressly overruled that holding: "[S]o-called 'monetary exactions' must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*." *Koontz*, at 612. However, *Koontz* did not extend this test to just any

payment required as a condition for a permit to engage in a desired use of property; it specifically addressed fees *in lieu of a grant of a title interest or a dedication of property to the government*. *Id.* In *Koontz*, the condition imposed was payment of fees in lieu of an easement. The Township did not require a dedication. It merely sought to require Defendant to mitigate the destruction it caused to a natural resource. While regulatory takings analysis still applies as discussed *infra*, the purported exaction analysis does not. The lower court erred in applying it and its decision should be reversed.

III. THE LOWER COURT ERRED IN GRANTING SUMMARY DISPOSITION TO DEFENDANT ON A REGULATORY TAKINGS ANALYSIS UNDER HORNE AND PENN CENTRAL.

The lower court erroneously relied on *Horne v Dept of Agriculture*, 135 S Ct 2419 (2015), to conclude that the tree Ordinance worked a regulatory taking. In *Horne*, raisin farmers were required to set aside a percentage of their raisin crop and turn them over to the Agricultural Committee formed by the U.S.D.A. The Committee there actually required that title (*i.e.*, ownership) of the raisins be transferred to it, and then *the federal Government* would sell or otherwise dispose of the raisins as it pleased. *Id.*, at 2424.

Conversely, the Township did not require that Defendant relinquish title to its trees to the Township. Rather, it required a permit to remove trees so that it could mitigate damage caused by the destruction of a natural resource, here well over 1,000 trees, including landmark trees. In the context of the permit, Defendant can either replace trees on its own site or, if not feasible, it can plant trees on other property, or pay into the tree fund such that the Township could replace the trees at another location. 25% of the Defendant's tree inventory was exempt from the requirement.

Horne is also distinct where the Township did not take, nor seek to take Defendant's

trees for its own use. The Township did not prevent Defendant from selling the timber produced as a result of the unpermitted tree removal. In *Georgia Outdoor Network, Inc. v Marion County, Ga*, 652 FSupp2d 1355 (MD Ga 2009), a county regulation required "All trees, shrubs[,] plants, and/or other natural buffers around an Outdoor Recreation Camp shall be preserved for a minimum width of fifty (50) feet. However, brush cutting is allowed to reduce a fire hazard." *Id.* at 1363. In that case, there was no permit process to allow removal of *any* trees within the buffer zone, except brush that would create a fire hazard. Even so, the District Court there held that the regulation did not amount to a taking requiring compensation.

Government regulation often "curtails some potential for the use or economic exploitation of private property." *Andrus v Allard*, 444 US 51, 65 (1979). Therefore, "not every destruction or injury to property by government action has been held to be a taking in the constitutional sense." *Armstrong v United States*, 364 US 40, 48 (1960). The process for evaluating a regulation's constitutionality involves an examination of the "justice and fairness" of the governmental action. *Andrus*, 444 US at 65. The Supreme Court has provided several factors to consider to determine whether "justice and fairness" require an economic injury caused by public action to be compensated by the government: "the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the government action." *Penn Central Transp Co v New York City*, 438 US 104 (1978); *Kaiser Aetna v United States*, 444 US 164, 175 (1979).

The economic impact of the regulation factor simply compares the value that has been taken from the property with the value that remains in the property. *Keystone Bituminous Coal Ass'n v DeBenedictis*, 480 US 470, 497 (1987). As to the character of the government action, courts look at "whether it amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to

promote the common good” to determine whether a taking has occurred. *Lingle v Chevron USA, Inc*, 544 US 528, 539 (2005). If the regulation serves a public interest and is ubiquitous, then a party challenging the regulation must show that the regulation’s economic impact and its effect on investment-backed expectations is the equivalent of a physical invasion upon the property. *K & K Construction, Inc v Department of Environmental Quality*, 267 Mich App 523, 553 (2005).

The lower court erred in applying this analysis. First, zoning regulations are ubiquitous in nature and all property owners bear some burden and some benefit under these schemes. *Id.*, at 527 n. 3. As noted earlier, the purpose of the Township’s Tree Ordinance is “to promote an increased quality of life through the regulation, maintenance and protection of trees, forests and other natural resources.” This is without question a public interest that is ubiquitous to all residents of the Township.

The evidence here does not demonstrate an economic impact or effect on Defendant’s investment-backed expectations because of the regulation. This regulation had been in effect before Defendant purchased this property, and no more restrictive changes have been made to the Ordinance since Defendant’s original purchase/investment. Before purchasing the property, Defendant knew of the tree ordinance requirements, as demonstrated by Exhibit 8. When the lot split occurred in 2016, nearly two years before Defendant undertook any work here, Defendant was expressly reminded of the ordinance requirements *to submit a site plan as a pre-condition to any activities on the Property and to obtain a tree removal permit prior to the removal of any trees from the Property. Id.* Thus, Defendant’s investment-backed expectations could not have changed because of this Ordinance and the lower court erred in determining otherwise.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for all of the foregoing reasons, the lower court improperly granted summary disposition to Defendant and its decision should be reversed.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

/s/ Marcelyn A. Stepanski
Attorneys for Canton Township
27555 Executive Drive, Ste. 250
Farmington Hills, MI 48331
(248) 489-4100
mstepanski@jrsjlaw.com
(P44302)

DATED: February 2, 2022

PROOF OF SERVICE

I certify that on February 2, 2022, the foregoing document was served on all parties or their counsel of record through the Court's efile system.

/s/Marcelyn A. Stepanski

RECEIVED by MCOA 2/2/2022 11:58:19 PM

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CHARTER TOWNSHIP OF CANTON,

Plaintiff/Counter-Defendant/Appellant,

COA No. 354309

-vs-

Lower Court No.18-014569-CE

44650, INC., a Michigan corporation,

Defendant/Counter-Plaintiff/Appellee,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
Anne McClorey McLaughlin (P40455)
Marcelyn A. Stepanski (P44302)
Attorneys for Plaintiff/Counter-Defendant/
Appellant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
mstepanski@rsjalaw.com

Kristin Bricker Kolb (P59496)
Charter Township of Canton
Co-Counsel for Plaintiff
1150 S. Canton Center Road
Canton, Michigan 48188
(734) 394-5199
kristin.kolb@canton-mi.org

CLARK HILL PLC
Ronald A. King (P45088)
Stephon B. Bagne (P54042)
Michael J. Pattwell (P72419)
Attorneys for Defendant/Counter-Plaintiff/
Appellee
212 E. Cesar Chavez Avenue
Lansing, MI 48906
(517) 318-3100
rking@clarkhill.com
sbagne@clarkhill.com
mpattwell@clarkhill.com

TEXAS PUBLIC POLICY FOUNDATION
CENTER FOR THE AMERICAN FUTURE
Robert Henneke (MI-HENNR)
Chance Weldon (MI-WELDC)
Theodore Hadzi-Antich (MI-HADZT)
Co-Counsel for Defendant/Counter-
Plaintiff/Appellee
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700
rhenneke@texaspolicy.com
cweldon@texaspolicy.com

CHARTER TOWNSHIP OF CANTON'S APPEAL BRIEF
APPENDIX VOLUME I

RECEIVED by MCOA 2/2/2022 11:58:19 PM

1. WCCC Opinion and Order
2. United States Court Of Appeal Opinion
3. Verified Complaint
 - A. Property Split/Combination Application
 - B. Tree Clearing Map, Dated 4/18/17
 - C. Canton Township Planning Service Letter, Dated 7/14/2017
 - D. Warranty Deed
 - E. Tree Clearing Map, Dated 10/20/17
 - F. Canton Township Planning Services Letter, Dated 11/27/17
 - G. Canton Township Planning Services Letter, Dated 1/22/18
 - H. Article 5A.00 – 5A.08
 - I. Southeast Michigan District Water Resource Division Letter, Dated 6/11/18
 - J. Wayne County Dept. of Public Services Letter, Dated 7/26/18
 - K. Wayne County Drain Commissioner Letter, Dated 7/31/18
 - L. Fisher and Lenge Drain – F008 Map
 - M. AD Transport Tree Clearing Analysis
 - N. Canton Code of Ordinances Article 22.00 – 22.03
 - O. Canton Code of Ordinances Article 9.00 – 9.03
 - P. Email Chain, Dated 10/22/18 – 10/23/18
 - Q. January 2017 MI Dept of Agriculture & Rural Development Generally accepted Agricultural and Management Practices for Farm Markets
 - R. 10/12/18 News Article and Email Chain, Dated 10/23/18
 - S. Canton Code of Ordinances Article 27.09
 - T. 2.01 Administrative Regulations

EXHIBIT 1

18-014569-CE FILED IN MY OFFICE	Cathy M. Garrett	WAYNE COUNTY CLERK	7/17/2020 11:47 AM	Clara Rector
---------------------------------	------------------	--------------------	--------------------	--------------

Case No. 18-014569-CE

Hon. Susan L. Hubbard

44650, INC, a Michigan corporation,

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,
on this: 7/17/2020

PRESENT: Hon.Susan Hubbard
Circuit Judge

RECEIVED by MCOA 2/2/2022 11:58:19 PM

Defendant/Counter-Plaintiff, 44650, Inc. (“44650”), is a Michigan corporation located at 5601 Belleville Road in Canton Township, Michigan. Gary Percy is resident agent of 44650 and is also the President of AD Transport, Inc., which is owned by him and his brother, Matt Percy.

AD Transport, Inc. occupies a nearby property. Martin F. Powelson, owner of F.P. Development, LLC (“F.P.”), wished to sell 16.17 acres (“the subject property”) of a 46-acre parcel¹ to 44650. Powelson’s 46-acre parcel was zoned industrial. The 16.17 acre parcel, which is vacant, is located east of Belleville Road and north of Yost Road in Canton Township, Wayne County Michigan. On October 27, 2016, F.P.’s representative and engineer, Ginger Michaelski-Wallace, submitted an application for a property split to Plaintiff Charter Township of Canton (“the township” or “Canton”). On July 14, 2017, the application was tentatively approved subject to certain conditions. The conditions included: (1) submission of a copy of the recorded deed for the newly created parcel that includes the liber and page number assigned by Wayne County Register of Deeds; (2) submission of a completed Land Division Form; and (3) submission of a completed Property Transfer Affidavit. The 16.17-acre parcel is referred to as “Parcel B” and F.P.’s remaining 29.83-acre parcel is referred to as “Parcel A.” A deed was executed by Powelson conveying Parcel B to 44650 on August 1, 2017. On January 22, 2018, Ms. Michaelski-Wallace was notified by the township of the assignment of new parcel numbers for each parcel and of a revised assessment record with a change of ownership of each parcel as well as each parcel’s new legal description.

After the property split, both F.P. and 44650, Inc. removed many trees from their adjacent properties without first obtaining tree permits. According to 44650, the subject property was overgrown with brush, fallen trees, and invasive species. These species include ash trees, which were killed by the ash borer in recent years. It also contends that flooding caused by a clogged ditch on an adjacent property had caused some trees on the property to die or rot. It also

¹ The parties refer to the properties as 40-acre and 16-acre parcels. However, the township’s notice of the approved split with new parcel identification numbers and new legal descriptions for tax assessment records indicates that the F.P.’s original parcel was, in fact, 46 acres and the split parcel is 16.17 acres. F.P.’s new remaining acreage is 29.83 acres.

states that the property was full of trash due to dumping. The Percy brothers then planted approximately 1,000 Norway spruce trees because they intended to start a Christmas tree farm.

In April 2018, Leigh Thurston, the township's Planner and Architect, notified Gary Percy that she believed that 44650 had violated the township "Tree Ordinance." On August 29, 2018, the township issued a violation to Gary Percy. Ms. Thurston also noted that several ordinance violations included the following:

- Clear-cutting approximately 16 acres of trees without a Township permit;
- Cutting of trees and other work within a County drain and drain easement under the jurisdiction of Wayne County;
- Cutting trees and other work within wetlands regulated by the Michigan Department of Environmental Quality;
- Performing underground work adjacent to a public water main under the jurisdiction of Canton Township; and
- Parking vehicles within the Yost Road public right-of-way.

Ms. Thurston advised Gary Percy of these violations. On June 11, 2018, the Michigan Department of Environmental Quality ("the DEQ") issued a violation notice to Gary Percy indicating that, within 30 days of the notice, he must bring the property into compliance by taking the following actions:

- Remove all unauthorized fill material (e.g. woodchips) as generally shown on the Preliminary Wetland Map;
- Restore all ditches as shown on the Preliminary Wetland Map to original grade utilizing adjacent side-cast spoil material;
- Seed the wetland areas with a DEQ approved native wetland seed mix and allow the existing vegetation to continue reestablish (sic);

- Refrain from all farming activities (e.g. plowing, seeding, minor drainage, cultivation) within the wetland areas identified on the map.

On July 26, 2018, the Wayne County Department of Public Services Land Resource Management Division notified Gary Percy that activities on the subject property violated Wayne County Soil Erosion and Sedimentation Control Ordinance by removing vegetation and constructing trench drains on the subject property without a permit. On July 31, 2018, the Wayne County Drain Commissioner notified Percy of a violation by interfering with the drainage easement held by the Fisher and Lenge Drain Drainage District, which was established by the Michigan Drain Code.

Notwithstanding the DEQ and Wayne County notices of violations, the issue before this Court is the constitutionality of Article 5A.00. - Forest Preservation and Tree Clearing of Canton's Zoning Ordinance, otherwise known as the "Tree Ordinance." The Tree Ordinance provides in relevant part:

5A.02. - Purpose.

The purpose of this article is to promote an increased quality of life through the regulation, maintenance and protection of trees, forests and other natural resources.

5A.05. - Tree removal permit.

A. Required.

1. The removal or relocation of any tree with a DBH² of six inches or greater on any property without first obtaining a tree removal permit shall be prohibited.

²

"Diameter at breast height (DBH)" means the diameter in inches of the tree measured at four feet above the existing grade." Article 5A §5A.01.

2. The removal, damage or destruction of any landmark tree without first obtaining a tree removal permit shall be prohibited.
3. The removal, damage or destruction of any tree located within a forest without first obtaining a tree removal permit is prohibited.
4. Clear cutting or grubbing within the dripline of a forest without first obtaining a tree removal permit is prohibited.

B. Exemptions. All agricultural/farming operations, commercial nursery/tree farm operations and occupied lots of less than two acres in size, including utility companies and public tree trimming agencies, shall be exempt from all permit requirements of this article.

...

F. Review standards. The following standards shall be used to review the applications for tree removal permits:

...

4. The removal or relocation of trees within the affected areas shall be limited to instances:
 - a. Where necessary for the location of a structure or site improvement and when no reasonable or prudent alternative location for such structure or improvement can be had without causing undue hardship.
 - b. Where the tree is dead, diseased, injured and in danger of falling too close to proposed or existing structures, or interferes with existing utility service, interferes with safe vision clearances or conflicts with other ordinances or regulations.
 - c. Where removal or relocation of the tree is consistent with good forestry practices or if it will enhance the health of remaining trees.

6. Tree removal shall not commence prior to approval of a site plan, final site plan for site condominiums or final preliminary plat for the subject property.

5A.08. - Relocation or replacement of trees.

...

E. [Location of replacement trees.] Wherever possible, replacement trees must be located on the same parcel of land on which the activity is to be conducted. Where tree relocation or replacement is not possible on the same property on which the activity is to be conducted, the permit grantee shall either:

1. Pay monies into the township tree fund for tree replacement within the township. These monies shall be equal to the per-tree amount representing the current market value for the tree replacement that would have been otherwise required.

2. Plant the required trees off site. If the grantee chooses to replace trees offsite the following must be submitted prior to approval of the permit:

- a. A landscape plan, prepared by a registered landscape architect, indicating the sizes, species and proposed locations for the replacement trees on the parcel.

- b. Written permission from the property owner to plant the replacement trees on the site.

- c. Written agreement to permit the grantee to inspect, maintain and replace the replacement trees or assumption of that responsibility by the owner of the property where the trees are to be planted.

- d. Written agreement to permit township personnel access to inspect the replacements as required.

There is no dispute that 44650 failed to obtain a permit for clearing the subject property.

On August 22, 2018, Ms. Thurston, along with a code enforcement officer and a consulting arborist met with Defendant/Counter-Plaintiff's representatives to walk the property and conduct an analysis of the number of trees removed from the property. Using the numbers and types of trees that were identified in the representative plots and taking into consideration soil conditions and topography of the subject property, an estimate was made of the number and types of trees that were removed. The analysis concluded that 1,385 "regulated trees" and 100 "landmark" trees were removed. "*Landmark/historic tree* means any tree which stands apart

from neighboring trees by size, form or species, as specified in the landmark tree list in section 94-36, or any tree, except box elder, catalpa, poplar, silver maple, tree of heaven, elm or willow, which has a DBH of 24 inches or more.” Article 5A, §5A.01.³ There is no definition of “regulated tree” provided in the ordinance, but it appears that a “regulated tree” may be “any *tree*,” except for a landmark tree “with a DBH of six inches or greater.” § 5A.05(A)(1). A permit is required for removal of a regulated tree.

According to the township’s analysis, under the ordinance, 44650 is required to plant 1,685 trees in replacement of the alleged 1,485 trees that were removed. Zoning Ordinance, § 5A.08(E). Defendant has the option, in lieu of planting replacement trees, of paying into the township Tree Fund an amount calculated based on the market value of the number of required replacement trees. *Id.* The current market value for the 1,385 regulated trees is between \$225 and \$300 per tree, and the market value of the 100 landmark trees averaging \$450 per tree. In addition, a property owner may be subject to criminal penalties of up to \$500.00 and 90 days imprisonment.

On September 13, 2018, the township issued a letter to 44650’s counsel stating that the total due to the township for payment into the Tree Fund was \$446,625.00. The letter also made an offer to settle the matter in the amount of \$342,750.00 to avoid litigation. The township then filed a complaint in this Court alleging the following: (1) violation of the zoning ordinance constituting a nuisance per se based on the failure to obtain a tree removal permit; (2) violation of the zoning ordinance constituting a nuisance per se based on failure to erect a protective barrier around a Landmark Tree; (3) violation of the zoning ordinance constituting a nuisance per se based on failure to observe setback from wetland areas and watercourses; and (4) violation of the zoning ordinance constituting a nuisance per se by using the subject property for a use that is

³ §5a.06 provides a list of the trees specified as “landmark/historic trees.”

not permitted on a property zoned as light industrial in an LI District. In its complaint, the township also requests a declaratory judgment deeming that the actions taken by 44650 violate the zoning ordinance and constitute a nuisance per se such that the township is entitled to immediate injunctive relief and abatement. Defendant/Counter-Plaintiff filed an answer along with a counter-complaint alleging essentially the same constitutional claims upon which it bases the instant motion as well as claims arising out of the Michigan Right to Farm Act, MCL 286.471, *et seq.*

Now before the Court is Defendant/Counter-Plaintiff's motion for summary disposition. In addition, the Court ordered that the parties brief the issue of res judicata and collateral estoppel relative to an "Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment (ECF No. 29) and Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment (ECF No. 26)," entered by the U.S. District Court for the Eastern District of Michigan - Southern Division. Case No. 2:18-cv-13690-GCS-EAS. As indicated above, F.P. had also cleared its property and was issued a violation by the township. F.P. filed a complaint in federal court alleging various constitutional violations, which the District Court addressed in its order. In addition to the instant motion, this Court will address below the issues of res judicata and collateral estoppel with respect to the District Court's order.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

Defendant/Counter-Plaintiff bases its motion on MCR 2.116(C)(10). In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). "A motion under MCR 2.116(C)(10), tests the *factual sufficiency* of a claim." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019), citing *Johnson v VanderKooi*, 502 Mich 751,

761; 918 NW2d 785 (2018)[Emphasis in original]. If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The moving party has the initial burden of supporting its position through documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the opposing party to establish the existence of a genuine issue of material fact. *Id*. The non-moving party “...may not rest on the mere allegations or denials of his or her pleadings, but must, by affidavit or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial.” MCR 2.116 (G)(4). If the opposing party fails to do so, the motion for summary disposition is properly granted. *Id*, *Quinto, supra* at 363. Finally, a “reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules.” *Maiden, supra* at 121.

III. ANALYSIS

A. 44650’s Motion

1. Regulatory “Taking”

In support of its motion, 44650 first argues that Canton’s tree ordinance is an unconstitutional regulatory taking under both the Michigan and United States Constitutions. In response, Canton argues that the cases cited by 44650 are distinguishable. However, Canton does not address the issue directly.

“Both our federal and state constitutions mandate that when private property is taken for public use, its owner must receive just compensation. U.S. Const., Am. V; Const. 1963, art. 10, § 2. In the regulatory context, a compensable taking occurs when the government uses its power to so restrict the use of property that its owner has been deprived of all economically viable use.”

Miller Bros v Dept of Nat. Res, 203 Mich App 674, 679; 513 NW2d 217 (1994).

A regulatory taking claim may be framed as either a Fifth Amendment taking or as a Fourteenth Amendment due process type of taking. *Electro-Tech, Inc v Campbell Co*, 433 Mich 57, 68; 445 NW2d 61 (1989). The latter type of taking is based on a denial of substantive due process, *Bevan v Brandon Twp*, 438 Mich 385, 391; 475 NW2d 37 (1991), for which a plaintiff may establish that a land use regulation is unconstitutional as applied by showing “(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question.” *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998).

“The United States Supreme Court has recognized that the government may effectively ‘take’ a person's property by overburdening that property with regulations.” *K & K Const, Inc v Dept of Nat. Res*, 456 Mich 570, 576; 575 NW2d 531 (1998). “The second type of taking, where the regulation denies an owner of economically viable use of land, is further subdivided into two situations: (a) a “categorical” taking, where the owner is deprived of “all economically beneficial or productive use of land” or (b) a taking recognized on the basis of the application of the traditional “balancing test” established in *Penn Central Transportation Co v New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978).” *Id* at 576-577, quoting *Lucas v South Carolina Coastal Council*, 505 US 1003, 1015; 112 S Ct 2886, 2893; 120 L Ed 2d 798 (1992). The *Penn Central* balancing test involves an analysis “centering on three factors: (1) the character of the

government's action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations.” *Id* at 577, citing *Penn Central*, *supra* at 124.

Here, the stated purpose of the “Tree Ordinance” “is to promote an increased quality of life through the regulation, maintenance and protection of trees, forests and other natural resources.” Zoning Ordinance, § 5A.02. In the Court’s view, the “character” of the action here is to effectively require that any entity pay for removal of trees such that it imposes an unreasonable economic effect on any “investment-backed expectations.” *Id*. Moreover, in the situation of a property that is zoned for industrial or light industrial activity, the question arises whether the ordinance serves its stated purpose to preserve trees, forest, and natural resources. It requires an entity to preserve another’s, i.e., Canton’s, property by making the owner pay into a tree fund if it chooses to remove unwanted objects from a property, with or without a permit.

In support of its argument, 44650 cites various U.S. Supreme Court cases and other lower federal court decisions. The most relevant cases are summarized as follows:

- *Horne v Dept of Agric*, 576 US 350; 135 S Ct 2419; 192 L Ed 2d 388 (2015)

Farmers brought an action for judicial review of imposition of civil penalties for failure to comply with United States Department of Agriculture (USDA) raisin marketing order. The Raisin Administrative Committee pursuant to the Agricultural Marketing Agreement Act required that growers set aside a certain percentage of the raisin crop for the government. The *Horne* holding relevant to the instant case is that: (1) the regulatory reserve requirement was a physical taking; (2) the failure to pay growers and handlers violated the Fifth Amendment Takings Clause; (3) the retention of contingent interest in portion of raisins' value did not negate government's duty to pay just compensation; and (4) the mandate to reserve raisins as condition to engage in the market was a per se taking.

- *Pennsylvania Coal Co v Mahon*, 260 US 393, 412; 43 S Ct 158, 159; 67 L Ed 322 (1922)

The defendants appealed to prevent the Pennsylvania Coal Company from mining under their property in such way as to remove the supports and cause a subsidence of the surface and of their house. “What makes the right to mine coal valuable is that it can be exercised with profit. To make it commercially impracticable to mine certain coal has

very nearly the same effect for constitutional purposes as appropriating or destroying it. This we think that we are warranted in assuming that the statute does.” *Id* at 414-415. The court stated: “We assume, of course, that the statute was passed upon the conviction that an exigency existed that would warrant it, and we assume that an exigency exists that would warrant the exercise of eminent domain. But the question at bottom is upon whom the loss of the changes desired should fall.” *Id* at 416.

- *Loretto v Teleprompter Manhattan CATV Corp*, 458 US 419; 102 S Ct 3164; 73 L Ed 2d 868 (1982)

A New York City landlord sued cable television company claiming that the defendant's installation of its facilities on plaintiff's property pursuant to New York law requiring a landlord to permit installation of such facilities on rental properties constituted a constitutionally compensable taking.

The court held that: (1) the physical occupation of plaintiff's rental property which occurred in connection with cable television company's installation of “crossover” and “noncrossover” cables on plaintiff's apartment building constituted a “taking” notwithstanding that the statute might be within state's police power as authorizing rapid development and maximum penetration by means of communication having important educational and community aspects; (2) allegedly minimal size of the physical installation was not determinative; (3) the fact that statute applied only to rental property did not make it simply a regulation of use of real property; and (4) the statute could not be construed as merely granting a tenant a property right as an appurtenance to his leasehold.

- *Hendler v United States*, 952 F2d 1364 (Fed Cir, 1991)

Property owners brought action against the federal Environmental Protection Agency (EPA) alleging that EPA's entry onto property owners' land to install groundwater monitoring wells and to conduct monitoring activities of groundwater constituted a “taking” of property under the Fifth Amendment.

The EPA's actions in placing groundwater wells on private property, as part of its efforts to combat groundwater pollution from adjacent hazardous waste site, effected a “taking” under traditional physical occupation theory; (2) activities of state officials in pursuance of state's formal cooperative agreement with federal Government to assist in carrying out superfund activities were properly attributable to federal Government, for purpose of plaintiffs' takings claim; and (3) dismissal of plaintiffs' action as sanction for alleged inadequacy of discovery responses was abuse of discretion.

- *Palazzolo v Rhode Island*, 533 US 606; 121 S Ct 2448; 150 L Ed 2d 592 (2001)

A landowner brought an inverse condemnation action against the Rhode Island Coastal Resources Management Council (CRMC), alleging that the CRMC's denial of his application to fill 18 acres of coastal wetlands and to construct a beach club constituted a taking for which he was entitled to compensation. After a bench trial, the Rhode Island

Superior Court, Washington County, entered judgment for CRMC. The Rhode Island Supreme Court, 746 A2d 707, affirmed, and landowner petitioned for certiorari. The United States Supreme Court, held that: (1) the claims were ripe for adjudication; (2) the acquisition of title after the effective date of the regulations did not bar regulatory takings claims; and (3) the *Lucas* claim for deprivation of all economic use was precluded by undisputed value of the portion of the tract for construction of a residence.

- *Keystone Bituminous Coal Ass'n v DeBenedictis*, 480 US 470; 107 S Ct 1232; 94 L Ed 2d 472 (1987)

Coal companies brought action challenging Pennsylvania Subsidence Act which requires that 50 percent of the coal beneath certain structures be kept in place to provide surface support. held that: (1) there was public purpose for the Act; (2) there was no showing of the diminution of value in land resulting from the Act; (3) Act did not work an unconstitutional taking on its face; (4) there was no showing of an unconstitutional taking of the separate support estate recognized by Pennsylvania law; and (5) public interests in the legislation were adequate to justify impact of the Act on coal companies' contractual agreements.

A taking may be more readily found when an interference with a property can be characterized as a physical invasion by the government rather than when the interference arises from some public program adjusting benefits and burdens of economic life to promote a common good. *Id* at 488.

- *Maritrans Inc v United States*, 342 F3d 1344, 1356 (Fed Cir 2003) Owners of a tank barge fleet brought a Tucker Act suit against the United States alleging that double hull requirement of Oil Pollution Act of 1990 effected a regulatory taking of single hull tank barges.

The Court of Appeals, held that: (1) the owners had cognizable property interest in single hull barges; (2) the United States did not effect a categorical taking of eight single hull barges by enacting double hull requirement; (3) double hull requirement did not effect regulatory taking; and (4) claim that double hull requirement constituted taking of seven single hull barges that had not been sold, retrofitted, or scrapped was ripe for review.

Canton's response to Defendant/Counter-Plaintiff's reliance on the *Horne* case is that Canton does not require Defendant to relinquish title to its trees, but must obtain a permit to remove them. If removed, the trees must either be replaced or payment must be made into the tree fund. The trees may also be planted in another location. Canton also argues that it did not take the trees for its own use. This Court disagrees. The value of the trees has been claimed for Canton's use to fund the tree fund.

Canton next argues that *Loretto* is inapplicable and distinguishable because “Defendant has not alleged facts to demonstrate that the Township has directly, physically invaded its property ... a requirement for the application of *Loretto*.” It cites *Southview Associates, Ltd v Bongartz*, 980 F2d 84, 95; 36 Env’t Rep Cas (BNA) 1024, 23 Env’t L Rep 20132 (CA 2 1992), in which a developer was denied the right to remove trees by the Vermont Environmental Board in an area serving as a winter habitat for white-tailed deer. That court stated that “Southview has not lost the right to possess the allegedly occupied land that forms part of the deeryard” and “no absolute, exclusive physical occupation exists.” In response, 44650 maintains that the ordinance forces it to keep unwanted objects on its property. However, as Canton argues, the trees may be removed, but at a cost. This Court agrees that *Loretto* is inapplicable to the case at bar, but does find *Horne* instructive because, in *Horne*, the growers were required to provide an economic reserve of raisins for the government’s benefit.

Canton further argues that the economic impact of the regulation factor compares the value that has been taken from the property with the value that remains in the property. *Keystone, supra*. Here, Defendant/Counter-Plaintiff paid \$404,250.00 for the 16-acre parcel and is now expected to pay \$446,625.00 into the tree fund in order to use the property. The amount required to use the property “goes too far,” *K & K Const, Inc, supra* at 576, quoting *Pennsylvania Coal Co, supra* at 415, and precipitates an unreasonable economic effect on any “investment-backed expectations,” *Lucas, supra*. Canton argues that that the investment back expectations could not have changed from the time it purchased the property and the time it cleared the property because 44650 knew of the “Tree Ordinance” and that it should have submitted a site plan before proceeding with any work on the property. Even if 44650 were aware of the ordinance, its awareness does not make the ordinance constitutionally valid. *Palazzolo, supra* at 627.

Hence, this Court finds that the “Tree Ordinance” as applied to 44650 is a constitutionally invalid regulatory taking of 44650’s property and it does not serve a legitimate public purpose as to an industrially zoned parcel. The economic effect of the ordinance creates an unreasonable economic effect on 44650’s “investment-backed expectations.”

2. Fourth Amendment and “Unreasonable Seizure”

Defendant/Counter-Plaintiff next argues that the ordinance is a property regulation, which constitutes an unreasonable seizure violating the Fourth Amendment’s prohibition against unreasonable seizures. It contends that the ordinance creates a “meaningful interference with an individual’s possessory interests in that property.” *United States v Jacobsen*, 466 US 109; 104 S Ct 1652; 80 L Ed 2d 85 (1984). “A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” *Id* at 113.

Canton counters by asserting that the Fourth Amendment “does not protect possessory interests in all kinds of property.” *Solda v Cook Cnty, Ill.*, 506 US 56, 62, fn 7; 113 S Ct 538, 544; 121 L Ed 2d 450 (1992), citing *Oliver v US*, 466 US 170, 176-177; 104 S Ct 1735; 80 L Ed 2d 214 (1984). Canton contends that the protection does not extend to open fields.

In *Solda*, mobile home owners brought a §1983 suit against deputy sheriffs and the owner and manager of a trailer park arising from a trailer park employee being observed by deputies disconnecting a trailer from the utilities and towing the trailer off the park premises. The *Solda* court held that the complaint by mobile home owners alleging that deputy sheriffs and the owner and the manager of mobile home park dispossessed the owners of their mobile home by physically tearing it from foundation and towing it to another lot sufficiently alleged “seizure” within meaning of Fourth Amendment.

44650 cites *Presley v City Of Charlottesville*, 464 F3d 480 (CA 4, 2006) to support its Fourth Amendment seizure claim. The *Presley* court stated:

The Fourth Amendment's protections against unreasonable seizures clearly extend to real property. *See, e.g., United States v. James Daniel Good Real Property*, 510 US 43, 52; 114 S Ct 492; 126 L Ed 2d 490 (1993) (noting that the Fourth Amendment applies to the seizure of a four-acre parcel of land with a house); *Freeman v. City of Dallas*, 242 F 3d 642, 647 (5th Cir.2001) (en banc) (“[T]he City seized the Freemans' real property for demolition.”).

Id at 483-484.

As Canton argues, open fields are not “‘effects’ within the meaning of the Fourth Amendment.” *Oliver v United States*, 466 US 170, 176; 104 S Ct 1735, 1740; 80 L Ed 2d 214 (1984). “[T]he government's intrusion upon the open fields is not one of those ‘unreasonable searches’ proscribed by the text of the Fourth Amendment.” *Id* at 177.⁴

In the instant case, however, the claim is not a claim for unreasonable search, but is one for unreasonable seizure of property. In the Court’s view, given the facts of this case where the owner is forced to pay for tree removal at an unreasonable cost, the Fourth Amendment claim is applicable as to a seizure of property to the extent that it is a “meaningful interference” with 44650’s “possessory interests” in its property. *Jacobsen, supra*.

3. Imposition of Unconstitutional Conditions

44650’s third contention is that the ordinance “places unconstitutional conditions on the use of private property by requiring the Percys to either plant trees or pay fees as mitigation well in excess of any injury caused by the Percys’ removal of their own trees.” In support of this argument, 44650 cites *Nollan v California Coastal Com’n*, 483 US 825; 107 S Ct 3141; 97 L Ed 2d 677 (1987) and *Dolan v City of Tigard*, 512 US 374; 114 S Ct 2309; 129 L Ed 2d 304 (1994).

In *Nollan*, property owners brought an action against the California Coastal Commission seeking a writ of mandate. The Commission had imposed as a condition to approval of

⁴ “[N]o expectation of privacy legitimately attaches to open fields.” *Oliver v United States*, 466 US 170, 180; 104 S Ct 1735; 80 L Ed 2d 214 (1984).

rebuilding a permit requirement that owners provide lateral access to the public to pass and re-pass across the property. The *Nollan* court found “that the Commission's imposition of the permit condition cannot be treated as an exercise of its land-use power for any of these purposes.” *Id* at 836. “California is free to advance its “comprehensive program,” if it wishes, by using its power of eminent domain for this ‘public purpose,’ see US Const, Amdt 5; but if it wants an easement across the Nollans' property, it must pay for it.” *Id* at 841-842.

Although the purpose of Canton’s ordinance may be laudable and admirable, the permit condition of requirement of tree replacement or payment into the tree fund for a “public purpose,” Canton must itself pay for the condition instead of requiring the property owner to pay for the privilege of removing its own trees.

In *Dolan*, a landowner petitioned for judicial review of a decision of Oregon Land Use Board of Appeals, affirming the conditions placed by the city on the development of commercial property. The Supreme Court held that: (1) city's requirement that the landowner dedicate a portion of her property lying within flood plain for improvement of a storm drainage system and property adjacent to the flood plain as a bicycle/pedestrian pathway, as condition for building permit allowing expansion of landowner's commercial property, had a nexus with legitimate public purposes; (2) the findings relied upon by city to require the landowner to dedicate a portion of her property in the flood plain as a public greenway, did not show the required reasonable relationship necessary to satisfy the requirements of the Fifth Amendment; and (3) the city failed to meet its burden of demonstrating that the additional number of vehicle and bicycle trips generated by proposed commercial development reasonably related to city's requirement of dedication of pedestrian/bicycle pathway easement. The *Dolan* court explained:

We think a term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required

dedication is related both in nature and extent to the impact of the proposed development.

Id at 391.

Canton argues that its ordinance advances a legitimate governmental interest of preservation of aesthetics and that aesthetics is among the governmental interests recognized by courts as legitimate and significant. However, there still must be some reasonable relationship between the “penalty” for removal and the impact on aesthetics. Here, the removal of trees requires replacement of trees on the property, replacement of trees somewhere else, or payment into the tree fund. In the Court’s estimation, the placement of this condition on a property zoned industrial or light industrial bears no relationship to the aesthetics of the subject property, but only provides a benefit to Canton in the form of payment or planting of trees in Canton’s tree farm. These are unconstitutional conditions on the use of the subject property.

4. Eighth Amendment “Excessive Fines” Clause

44650’s final argument is the “Tree Ordinance” violates the Eighth Amendment’s prohibition against the imposition of excessive fines. It further asserts that that the amount Canton is seeking from 44650 is grossly disproportionate to any public harm caused by tree removal. Canton argues that the “excessive fines” clause does not apply in this case because it is applicable only to criminal or punitive ordinances. Canton also states that monies paid into the tree fund are not fines. Instead, Canton argues that the only fine is a \$500.00 fine for criminal violation of the zoning ordinance. Ordinance §1.7(c). Canton contends that payment into the tree fund is not a fine or even penal in nature, but is “valid mitigation for costs that the Township would incur to undertake the replacement of removed trees.”

The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” US Const, Am VIII; *United States v. Bajakajian*, 524 US 321, 327; 118 S Ct 2028, 2033; 141 L Ed 2d 314 (1998). To determine if an

excessive fine exists, the Court must first determine if the fine is a punishment. *Id* at 328. Although the Eighth Amendment “excessive fines” clause may be applicable in both civil and criminal contexts, the civil contexts generally involve in rem forfeiture proceedings or personal property forfeiture in connection with the commission of some crime or use or sale of contraband.. *Austin v United States*, 509 US 602, 604; 113 S Ct 2801; 125 L Ed 2d 488 (1993). Hence, the determinative question is whether the fine is punishment for some offense. *Id* at 610.

In the instant case, the amounts sought by Canton are part of a land use regulatory scheme and are not intended to be punishment for some offense. On the other hand, the criminal fine for violation of the ordinance is \$500.00. Ordinance §1.7(c). Although the Court finds that the amounts sought by Canton are unreasonably excessive, grossly disproportionate, and they appear to be punitive, the amounts are not punishment for an offense, but are part of Canton’s aesthetic objective in land use regulation. Therefore, the Eighth Amendment “excessive fines” clause is inapplicable to the case at bar.

B. Res Judicata

As indicated above, this Court ordered the parties to brief the issues of res judicata and collateral estoppel relative to the decision of the U.S. District Court for the Eastern District of Michigan – Southern Division in Case No. 2:18-cv-13690-GCS-EAS.

By way of background, F.P., the vendor 44650’s property and neighbor of 44650, filed suit in federal district court after the township issued a stop work order. F.P. had removed approximately 200 trees from its property and Canton sought \$47,898.00 for removal of the trees. F.P.’s lawsuit alleged the same constitutional challenges as asserted in Defendant/Counter-Plaintiff’s motion and counter-complaint in the instant case. The District Court concluded that the Fourth Amendment unreasonable seizure claim and the Eighth Amendment “excessive fines” claim was not applicable to F.P.’s case and dismissed those claims. The court, however, did

conclude that, as applied to F.P., “the Tree Ordinance goes too far and is an unconstitutional regulatory taking.” [District Court Order, p. 39].

The question addressed in the parties’ briefs is whether the District Court’s decision constitutes res judicata in the case before this Court. Res judicata comprises two concepts: claim preclusion and issue preclusion also known as collateral estoppel.

Within the general doctrine of res judicata, there are two principal categories or branches: (1) claim preclusion also known as res judicata; and (2) issue preclusion also known as collateral estoppel.

Res judicata (or claim preclusion) and collateral estoppel (or issue preclusion) are related but independent preclusion concepts that involve distinct questions of law.

Fundamentally, under both res judicata and collateral estoppel, a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies. More specifically, "res judicata" or "claim preclusion" refers to the effect of a prior judgment in preventing a litigant from reasserting or relitigating a claim that has already been decided on the merits by a court of competent jurisdiction, whether relitigation of the claim raises the same issues as the earlier suit. "Collateral estoppel" or "issue preclusion," on the other hand, generally refers to the effect of a prior judgment in limiting or precluding relitigation of issues that were actually litigated in the previous action, regardless of whether the previous action was based on the same cause of action as the second suit.

The principle underlying the rule of claim preclusion is that a party who once has had a chance to litigate a claim...usually ought not to have another chance to do so. A related but narrower principle -- that one who has actually litigated an issue should not be allowed to relitigate it -- underlies the rule of issue preclusion.

47 AmJur 2d, Judgments, §464, p 20-21 [Footnotes omitted][Emphasis added].

Res judicata, also known as claim preclusion, bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those that were necessary in a

prior action. *Begin v Michigan Bell Tel Co*, 284 Mich App 581, 599; 773 NW2d 271 (2009); *Pierson Sand and Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999).

In the instant case, the applicable concept is issue preclusion. The question is whether collateral estoppel applies to bar Canton's suit against 44650. Generally, to constitute collateral estoppel, three conditions must exist:

(1) "a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment"; (2) "the same parties must have had a full [and fair] opportunity to litigate the issue"; and (3) "there must be mutuality of estoppel." *Storey v Meijer, Inc*, 431 Mich 368, 373 n 3, 429 NW2d 169 (1988). "[M]utuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privity to a party, in the previous action. In other words, '[t]he estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him.' " *Lichon v. American Universal Ins. Co.*, 435 Mich. 408, 427, 459 N.W.2d 288 (1990), quoting *Howell v. Vito's Trucking & Excavating Co.*, 386 Mich. 37, 43, 191 N.W.2d 313 (1971).

Monat v State Farm Ins Co, 469 Mich 679, 682-85; 677 NW2d 843 (2004) [Footnotes omitted].

The *Monat* court expressly explained that, when collateral estoppel is used defensively, mutuality of estoppel is not required as long as the opposing party had a full and fair opportunity to litigate the issue or issues in a prior proceeding. Here, Canton litigated the identical constitutional issues in District Court as are before this Court. The court stated:

...we believe that the lack of mutuality of estoppel should not preclude the use of collateral estoppel when it is asserted defensively to prevent a party from relitigating an issue that such party has already had a full and fair opportunity to litigate in a prior suit. Such a belief is supported by the Restatement of Judgments. "A party precluded from relitigating an issue with an opposing party ... is also precluded from doing so with another person unless ... he lacked full and fair opportunity to litigate the issue in the first action...." 1 Restatement Judgments, 2d, ch 3, § 29, p. 291. "A party who has had a full and fair opportunity to litigate an issue has been accorded the elements of due process.

Id at 691-692.

Thus, collateral estoppel may be used defensively in this case because the identical issues were litigated by Canton, albeit against a party different from 44650

The District Court held that the Tree Ordinance is an uncompensated taking as to F.P. and is an unconstitutional condition on the use of the property. Canton argues that collateral estoppel cannot be applied to the issues in this case because the District Court's ruling was based on an "as-applied" challenge to the ordinance as opposed to a facial challenge.

A facial challenge alleges that an ordinance is unconstitutional "on its face" because to make a successful facial challenge to the constitutionality of a statute, the challenger must establish that no set of circumstances exists under which the act would be valid. *Bonner v City of Brighton*, 495 Mich 209, 223; 848 NW2d 380 (2014). An as-applied challenge, to be distinguished from a facial challenge, alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution of government action. *Id*, fn 27, quoting *Village of Euclid, Ohio v Ambler Realty Co*, 272 US 365, 395; 47 S Ct 114; 71 L Ed 303 (1926).

Canton contends that the language in the District Court's order confirms its assertion that F.P.'s challenge was an "as-applied" challenge because it analyzed the ordinance under the the *Penn Central* balancing test.

The District Court noted that "Counts I and II allege facial and as applied regulatory takings in violation of the Fifth Amendment." [District Court Order, p. 17][Emphasis added].

The District Court also stated:

It is not reasonable for F.P. to be required to keep his wooded Property undeveloped, or pay an exorbitant price to replace trees, when he purchased property which was zoned industrial with the expectation that he could expand his adjacent sign business on that Property.

[*Id* at 22].

With respect to Canton's argument, the District Court did state that after "[h]aving considered the three *Penn Central* factors to be balanced, the court finds that as applied to this Plaintiff the Tree Ordinance goes too far and is an unconstitutional regulatory taking." [Id at 39]. Although the District Court does state that it "has found that the Ordinance is an unconstitutional takings as applied to F.P. under the Penn Central balancing test and the *Nollan/Dolan* rough proportionality test," the court also opined that the ordinance requiring replacement of trees or payment into the tree places an unconstitutional per se condition on any tree removal permit. More specifically, the court stated:

It is undisputed that the Tree Ordinance requires property owners to pay the market value of any removed tree into the tree fund or plant a preset number of replacement trees, without any analysis of the impact of tree removal on neighbors, on aesthetics of the site and the surrounding area, on air quality, noise abatement, or any other site specific consideration. The tree replacement requirement is a per se condition of any tree removal permit. The mandatory nature of the tree replacement fees set forth in Ordinance, without any site specific analysis, renders the Ordinance invalid under *Nollan/Dolan* as there is no method to ensure that the permit requirement is roughly proportionate to the environmental and economic impact of tree removal on the Township and its residents.

[Id at 33-34].

Hence, as to the "unconstitutional conditions" argument, the District Court appears to imply that no matter what the circumstances are or who the parties are, the ordinance is facially invalid because there is no method by which the permit requirement would be applied to insure that the requirement is roughly proportionate to the environmental or economic impact. In other words, the ordinance applies no matter the impact and is not case or fact specific. Therefore, this Court finds that collateral estoppel may be applied to 44650's argument that the ordinance places unconstitutional conditions on the use of the subject property. It also applies to the Fourth Amendment argument only to the extent that the amendment applies only to "unreasonable

“intrusions” on a property. As to the unreasonable seizure argument, the District Court did not address whether the ordinance effected a “meaningful interference” with 44650’s “possessory interests” in its property. *Jacobsen, supra*. This Court also agrees that collateral estoppel applies to the Eighth Amendment argument because the District Court’s analysis is essentially the same as this Court’s analysis.

To summarize, collateral estoppel does not apply the “regulatory takings” challenge because it requires an “as-applied” analysis and application of the *Penn Central* balancing test. As to the “unconstitutional conditions” contention, collateral estoppel does apply. Because the District Court did not undertake an examination of the ordinance’s “meaningful interference” that would constitute an unreasonable seizure of the property, collateral estoppel is inapplicable. Finally, collateral estoppel also applies to the Eighth Amendment “excessive fines” claim.

IV. CONCLUSION

The “Tree Ordinance” as applied to 44650 is a constitutionally invalid regulatory taking of the subject property. The Fourth Amendment claim is applicable as to a seizure of property to the extent that it is a “meaningful interference” with 44650’s “possessory interests” in its property. *Jacobsen, supra*. The “Tree Ordinance” places unconstitutional conditions on the use of the subject property. Finally, the Eighth Amendment “excessive fines” clause is inapplicable to the case at bar. Accordingly, the Court grants 44650’s motion, except with respect to the Eighth Amendment “excessive fines” claim.

On the basis of the foregoing opinion,

IT IS ORDERED that the motion for summary disposition filed by Defendant/Counter-Plaintiff 44650, Inc. is hereby **GRANTED**;

IT IS FURTHER ORDERED that the complaint filed by Plaintiff/Counter-Defendant Charter Township of Canton is hereby **DISMISSED**.

IT IS SO ORDERED.

DATED: 7/17/2020

/s/ Susan Hubbard 7/17/2020
Circuit Judge

EXHIBIT 2

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 21a0240p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

F.P. DEVELOPMENT, LLC,
Plaintiff-Appellee/Cross-Appellant,

v.

CHARTER TOWNSHIP OF CANTON, MICHIGAN,
Defendant-Appellant/Cross-Appellee.

Nos. 20-1447/1466

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:18-cv-13690—George Caram Steeh, III, District Judge.

Argued: June 10, 2021

Decided and Filed: October 13, 2021

Before: COLE, BUSH, and NALBANDIAN, Circuit Judges.

COUNSEL

ARGUED: Anne McClorey McLaughlin, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., Farmington Hills, Michigan, for Appellant/Cross-Appellee. Chance Weldon, TEXAS PUBLIC POLICY FOUNDATION, Austin, Texas, for Appellee/Cross-Appellant. Richard K. Norton, UNIVERSITY OF MICHIGAN, Ann Arbor, Michigan, Ilya Shapiro, CATO INSTITUTE, Washington, D.C., for Amici Curiae. **ON BRIEF:** Anne McClorey McLaughlin, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., Farmington Hills, Michigan, for Appellant/Cross-Appellee. Chance Weldon, Robert Henneke, Theodore Hadzi-Antich, TEXAS PUBLIC POLICY FOUNDATION, Austin, Texas, Michael J. Pattwell, CLARK HILL PLC, Lansing, Michigan, for Appellee/Cross-Appellant. Richard K. Norton, UNIVERSITY OF MICHIGAN, Ann Arbor, Michigan, Sean Hammond, MICHIGAN ENVIRONMENTAL COUNCIL, Lansing, Michigan, Ilya Shapiro, CATO INSTITUTE, Washington, D.C., Robert E. Thall, BAUCKHAM, SPARKS, THALL, SEEBER & KAUFMAN, P.C., Portage, Michigan, Kathryn D. Valois, PACIFIC LEGAL FOUNDATION, Palm Beach Gardens, Florida, Kimberly S. Hermann, SOUTHEASTERN LEGAL FOUNDATION, Roswell, Georgia, Braden Boucek, THE BEACON CENTER OF

RECEIVED by MCOA 2/2/2022 11:58:19 PM

TENNESSEE, Nashville, Tennessee, Brian K. Kelsey, LIBERTY JUSTICE CENTER, Chicago, Illinois, for Amici Curiae.

OPINION

JOHN K. BUSH, Circuit Judge. American history teems with stories and myths of trees. Johnny Appleseed’s apple trees and George Washington’s cherry tree are but a few of those timber tales that inspire and teach. Whether to plant or cut down a tree can be, for better or worse, an individual choice. But sometimes the government gets involved. For example, it can reward those who plant, *see, e.g.*, Timber Culture Act of 1873, ch. 277, 17 Stat. 605 (granting additional land to homesteaders who planted seedlings), or compensate for land taken to conserve, *see, e.g.*, Migratory Bird Conservation Act of 1929, 16 U.S.C. § 715 *et seq.* Those “carrot” measures serve to further the public interest in tree cultivation and management while compensating private parties for their property and efforts.

Here, however, the government used what F.P. Development portrays as the “stick” approach. Intending to help preserve its greenery, the Charter Township of Canton, Michigan, passed an ordinance that prohibits F.P. from removing certain trees on its land without a permit and requires F.P. to mitigate the removal. F.P. challenges the regulation, claiming that it constitutes a taking of its property without just compensation, an unreasonable seizure, and an excessive fine. The district court granted summary judgment to F.P. on the takings claim and to Canton on the others. We affirm.

I.

Around July 2006, Canton passed an ordinance, which the parties refer to as the Tree Ordinance, addressing forest preservation and tree clearing. The township’s aim was to improve its community and protect its natural resources. Accordingly, the Tree Ordinance requires tree owners in Canton to get a permit before removing certain trees or undergrowth from their properties. Specifically, the ordinance deals with four categories of tree-related clearing. It prohibits the unpermitted removal, damage, or destruction of (1) any tree with a diameter at

breast height of six inches or greater, (2) any landmark or historic tree,¹ (3) any tree located within a forest and with a diameter at breast height of three inches or more, and (4) any under-canopy vegetation within the dripline of a forest. There are, however, numerous exceptions. For example, agricultural and farming operations, commercial nurseries, tree farms, and occupied lots of fewer than two acres are not subject to the permitting requirement.

The unlucky tree owner who does not fall into one of those exceptions has to submit a tree-removal-permit application to Canton before commissioning an arborist. Among other requirements, the application must describe the area affected by the tree removal, each tree to be removed and its location, and what the affected area will look like after the proposed removal. The ordinance also lists review procedures and standards that Canton must follow when reviewing applications. Those procedures require the township to evaluate the effect of the proposed development on the quality of the surrounding area.

If Canton issues a permit, a tree owner must agree to mitigate the tree removal. The Tree Ordinance lists three standardized mitigation options: a tree owner can replace removed trees on its own property, replace them on someone else's property, or pay a designated amount into Canton's tree fund so the township can replace them elsewhere. For every landmark tree cut down, a tree owner must replant three trees or pay about \$450 into the tree fund. For every non-landmark tree cut down as part of a larger-scale tree removal, a tree owner must replant one tree or pay about \$300 into the tree fund. If a tree owner fails to comply with those requirements, Canton sends a notice of violation and requires that the tree owner submit a permit application or face an enforcement lawsuit.²

F.P. Development, a real-estate holding company owned by Martin F. Powelson, is one of those non-complying tree owners. In 2007, F.P. purchased a 62-acre parcel of undeveloped land from Canton for \$550,000. The plan was to use the land to expand Powelson's traffic-

¹A "landmark" or "historic" tree means "any tree which stands apart from neighboring trees by size, form or species, as specified in the [township's] landmark tree list . . . or any tree, except box elder, catalpa, poplar, silver maple, tree of heaven, elm or willow, which has a [diameter at breast height] of 24 inches or more."

²Canton also has the authority to impose criminal penalties on violators in the form of a \$500 fine and up to 90 days' imprisonment.

control sign business, POCO, which occupied the lot adjacent to the 62-acre parcel. F.P. left the land undeveloped until 2016, when it filed a property split application with Canton, requesting permission to split 44 acres of the property roughly in two: a 28-acre plot for F.P. to keep and a 16-acre plot to sell. Canton tentatively approved the separation and noted that any development involving tree removal would require the proper permitting. By 2017, F.P. completed the split.

But, unfortunately for F.P., the two parcels were bisected by a county drainage ditch that had become clogged with fallen trees and other debris. After the county refused to clear the ditch, F.P. contracted with a timber company to remove the trees and debris and to clear several other trees from the property. As to that removal, F.P. did not apply for or receive a permit. Nor did it receive permission from Canton to proceed without a permit.

Soon after, someone tipped off Canton's Landscape Architect and Planner to F.P.'s unpermitted tree removal. The township investigated and confirmed the tip. It then posted a "Stop Work" order on F.P.'s property and issued a "Notice of Violation." The notice made clear that a survey of the property was required to determine the number and species of trees removed so that Canton could enforce the Tree Ordinance.

From that survey, Canton determined that F.P. had removed 159 trees—14 landmark trees and 145 non-landmark trees. To comply with the ordinance, F.P. had to either replant 187 trees (three for every landmark tree removed and one for every non-landmark tree) on its or another's property or deposit \$47,898 into Canton's tree fund.

F.P. chose neither option. Instead, it filed a lawsuit, seeking declaratory and injunctive relief under 42 U.S.C. § 1983. It claimed that Canton's Tree Ordinance constituted (1) a facial and as-applied unconstitutional taking, in violation of the Fifth and Fourteenth Amendments; (2) an unreasonable seizure, in violation of the Fourth and Fourteenth Amendments; and (3) an excessive fine, in violation of the Eighth and Fourteenth Amendments. The Township filed a counterclaim seeking \$47,898 in damages.

After several months of discovery, F.P. moved for summary judgment. Canton moved to dismiss the case on ripeness grounds, for judgment on the pleadings, or for summary judgment in its favor. The district court denied Canton's motion to dismiss on ripeness grounds. The court

then granted F.P. summary judgment on its as-applied Fifth Amendment claim. It reasoned that although the ordinance, as applied to F.P., was not unconstitutional as a per se physical taking, it was unconstitutional as a regulatory taking and as an unconstitutional condition. The court did not decide F.P.’s facial challenge. Finally, the court granted Canton summary judgment on F.P.’s Fourth and Eighth Amendment claims. Both parties appeal.

II.

We review a district court’s decision on summary judgment de novo. *Jackson v. City of Cleveland*, 925 F.3d 793, 806 (6th Cir. 2019). Summary judgment is appropriate when there is “no genuine dispute as to any material fact” and the moving party “is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We construe the evidence and draw all reasonable inferences in favor of the nonmoving party. *Jackson*, 925 F.3d at 806.

III.

A. RIPENESS

We begin with the questions about our jurisdiction. The doctrine of ripeness prevents courts from deciding cases or controversies prematurely. *See Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807–08 (2003). It is “drawn both from Article III limitations on judicial power and from prudential” concerns. *Id.* at 808 (quoting *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993)). Issues of ripeness rooted in Article III are jurisdictional; those based on prudence are not. *See Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 670 n.2 (2010); *see also Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1012–13 (1992).

Amici Michigan Township Association and Michigan Municipal League argue on appeal that F.P.’s as-applied challenge to the Canton Tree Ordinance is not ripe for review, citing prudential ripeness concerns. But Canton did not raise those concerns in its briefing before us. So the argument is forfeited. *See Self-Ins. Inst. of Am., Inc. v. Snyder*, 761 F.3d 631, 641 (6th Cir. 2014) (“[W]hile an amicus may offer assistance in resolving issues properly before a court, it may not raise additional issues or arguments not raised by the parties.” (quoting *Cellnet*

Commc'ns Inc. v. FCC, 149 F.3d 429, 443 (6th Cir. 1998)); *see also Stolt-Nielsen*, 559 U.S. at 670 n.2 (holding that a prudential ripeness argument was waived).

What's more, "we do not think it prudent to apply" the doctrine of prudential ripeness sua sponte here. F.P. has standing under Article III, and the status of the prudential ripeness doctrine is uncertain. *See Lucas*, 505 U.S. at 1013; *see also, e.g., Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–27 (2014) (questioning the vitality of the doctrine of prudential ripeness); *Miller v. City of Wickliffe*, 852 F.3d 497, 503 & n.2 (6th Cir. 2017) (declining to address prudential ripeness because plaintiff lacked standing under Article III and because of the questioned vitality of the doctrine). We thus proceed to the merits.

B. TAKING WITHOUT JUST COMPENSATION

F.P.'s first claim is that Canton's Tree Ordinance constitutes a taking of its trees in violation of the Takings Clause of the Fifth Amendment, as incorporated by the Fourteenth Amendment. The Takings Clause states that "private property" shall not "be taken for public use, without just compensation." U.S. Const. amend. V. In F.P.'s view, Canton's Ordinance violates that prohibition in three ways: the ordinance imposes (1) a per se taking under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) and *Horne v. Department of Agriculture*, 576 U.S. 350 (2015); (2) a regulatory taking under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978); and (3) an unconstitutional condition under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 604 (2013). For reasons discussed below, we agree with F.P. that the ordinance violates the Fifth Amendment, through the Fourteenth Amendment, based on the unconstitutional-conditions doctrine, so we need not consider the other two theories for relief. *See Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 575 n.6 (9th Cir. 2020); *Phillip Morris, Inc. v. Harshbarger*, 159 F.3d 670, 674 n.4 (1st Cir. 1998). Before addressing pertinent legal issues below, however, we provide some background on what began as a highly contentious subject in American history.

1. Historical Background

On April 13, 1772, almost two years before the Boston Tea Party, and three years before an American Patriot fired the shot heard 'round the world, a group of colonists revolted against the Crown's longstanding Pine Tree Act. The act prohibited colonists from cutting down white pine trees on their own land without first obtaining a royal license and subjected violators to fines that grew with the size of the tree felled. *See An Act Giving Further Encouragement for the Importation of Naval Stores, and for the Purposes Therein Mentioned, 1721, 5 Geo I., c. 12* (Eng.). The colonists ignored the act, and a large group of disgruntled tree owners captured the British representatives, beat them with switches (one lashing for every tree the Crown claimed), maimed and shaved their horses, and ran them out of town. *See William Little, History of Weare, New Hampshire 1735–1888*, 189 (S.W. Huse & Co., 1888).

F.P. suggests that the Founders adopted and ratified the Takings Clause of the Fifth Amendment, in part, to prevent the type of tree restrictions imposed by both the British Crown and the Township of Canton. It is true that “[t]he Founders recognized that the protection of private property [would be] indispensable to the promotion of individual freedom.” *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021). So, as part of the Bill of Rights, they included the Takings Clause in the Fifth Amendment. But that constitutional guarantee does not, as a matter of original meaning, obviously invalidate Canton's property regulation.

Indeed, history presents a more complicated picture of land-use regulation in the Founding Era than F.P. suggests. The Takings Clause may not have even extended to regulations of private property like the one at issue in this case. *See id.* at 2071 (noting that the Takings Clause was originally “limited to physical appropriations of property”). In fact, despite the early colonists' frustration with the Crown's Pine Tree Act, general land regulation was commonplace in colonial America. *See Act of May 12, 1724, 7 The Public Records of the Colony of Connecticut 10* (Charles J. Hoadly ed., Hartford, Conn. Cass, Lockwood & Brainard Co. 1876) (requiring removal of barberry bushes to prevent wheat blight).³ Indeed, the author of

³*See also, e.g.*, Ordinance of Feb. 23, 1656, Laws and Ordinances of New Netherland, 1638–1674, 361, 361 (E.B. O'Callaghan, trans., Albany, N.Y., Weed, Parsons and Co. 1868) (requiring installation of fences to support the “cultivation of the soil”); Act of Nov. 27, 1700, ch. LIII, sec. III, 2 The Statutes at Large of Pennsylvania

the Takings Clause, James Madison, seemed to view the constitutional text as limiting only the government's power to take property physically for public use. *See* James Madison, *Property*, Nat'l Gazette, Mar. 27, 1792, in 14 *The Papers of James Madison*, 266–68 (Robert A. Rutland et al. eds., 1983) (invoking the Takings Clause and distinguishing between “direct” and “indirect[.]” violations of property). Madison's interpretation finds support in common law and statutes that allowed certain government land-use regulations without requiring compensation to other land owners. *See* 1 *Blackstone's Commentaries* editor's app., 305–06 (St. George Tucker ed., Philadelphia, Birch & Small 1803).⁴

Of course, questions abound regarding whether the ratification of the Fourteenth Amendment placed greater limits on state-government regulation of private property than did the Fifth Amendment. *See, e.g., Murr v. Wisconsin*, 137 S. Ct. 1933, 1957 (2017) (Thomas, J. dissenting). But, as a court of middle management, we have no occasion or authority to answer those questions here. Regardless, the Supreme Court made clear in 1922 that the rights guaranteed by the Takings Clause of the Fifth Amendment, as applied to the states through the Fourteenth Amendment, limit all regulations of private property that go “too far.” *See Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). And later, the Court held that certain permitting schemes should be subject to analysis under the unconstitutional-conditions doctrine. *See Nollan*, 483 U.S. at 835–37; *Dolan*, 512 U.S. at 386–88; *Koontz*, 570 U.S. at 604. Our analysis begins and ends there.⁵

2. Unconstitutional Conditions

Under the unconstitutional-conditions doctrine, “the government may not deny a benefit to a person because he exercises a constitutional right.” *Koontz*, 570 U.S. at 604 (quoting *Regan*

65, 66–67 (James T. Mitchell & Harry Flanders eds., Pa., Clarence M. Busch 1896) (requiring planting and maintenance of certain trees).

⁴*See also, e.g.,* Michael B. Rappaport, *Originalism and Regulatory Takings: Why the Fifth Amendment May Not Protect Against Regulatory Takings but the Fourteenth Amendment May*, 45 San Diego L. Rev. 729, 736 (2008); *see generally* William Michael Treanor, *The Original Understanding of the Takings Clause and the Political Process*, 95 Colum. L. Rev. 782, 798–859 (1995).

⁵The briefing on appeal concluded before the Supreme Court issued its opinion in *Cedar Point Nursery*—the Court's most recent case involving the Takings Clause. 141 S. Ct. at 2063. But nothing in that case demands that we review F.P.'s challenge to Canton's ordinance under a per se or regulatory takings approach.

v. Taxation with Representation of Wash., 461 U.S. 540, 545 (1983)). In practice, the doctrine “vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up.” *Id.*

F.P. argues that Canton’s Tree Ordinance places an unconstitutional condition on its Fifth Amendment rights by coercing it into giving up its right to just compensation for the township’s taking of trees in exchange for a permit. As noted, F.P. points to *Nollan*, *Dolan*, and *Koontz* for support.

Those cases “‘involve a special application’ of” the unconstitutional-conditions doctrine “that protects the Fifth Amendment right to just compensation” when the government demands property in exchange for land-use permits. *Koontz*, 570 U.S. at 604 (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 547 (2005)). In particular, they hold that “the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.” *Id.* at 606.

There is an interesting question whether Canton’s application of the Tree Ordinance to F.P. falls into the category of government action covered by *Nollan*, *Dolan*, and *Koontz*. But the parties do not raise it. And we decline to do so on our own accord. So we proceed, as the parties request, and apply the essential nexus and rough proportionality test provided in those cases.

3. Essential Nexus and Rough Proportionality

The parties agree that there is an “essential nexus” between Canton’s “legitimate” interest in forest and natural resource preservation and the permit conditions. See *Dolan*, 512 U.S. at 386. Therefore, we need only address the “rough proportionality” prong of *Nollan* and *Dolan*.

That prong “requires us to determine whether the degree of the exactions demanded by the [township’s] permit conditions bears the required relationship to the projected impact of [F.P.’s] proposed development.” *Dolan*, 512 U.S. at 388. The “required relationship” does not have to be “exacting,” but it cannot be “generalized.” *Id.* at 389–90. It must be “rough[ly] proportional[.]” *Id.* at 391. Of course, “[n]o precise mathematical calculation is required, but the

[township] must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” *Id.*

Canton fails to carry its burden to show that it made the required individualized determination. Under the Tree Ordinance, F.P. must replant one tree for every non-landmark tree removed and three trees for every felled landmark tree. The township also requires F.P. to bear the associated costs, whether F.P. does the replanting and relocation itself or outsources the task to the township. Of course, Canton’s mitigation options could offset F.P.’s tree removal, and they arguably involve some individualized assessment given that Canton must determine the number and type of trees cut. But *Dolan* requires more.

In *Dolan*, the government argued that its exaction of an easement for a bicycle pathway was necessary to reduce traffic congestion that the property owner’s proposed development might cause. 512 U.S. at 395. The Court held that the government’s assertion that the conditioned path “‘*could* offset some of the traffic demand’ is a far cry from a finding that the bicycle pathway system *will*, or is *likely to*, offset some of the traffic demand.” *Id.* (quoting *Dolan v. City of Tigard*, 845 P.2d 437, 447 (Ore. 1993) (en banc) (Peterson, J., dissenting)). Here, the township provides us with little information about its replacement or relocation requirements. Like the government in *Dolan*, it seems to assume that its mitigation requirements are appropriate. And the information it presents concerning the amount of money F.P. must spend to satisfy those requirements is based on tree replacement costs calculated fifteen years ago, in 2006. That limited and arguably stale information does not suffice.

Canton has pointed to nothing indicating, for example, that F.P.’s tree removal effects a certain level of environmental degradation on the surrounding area. Nor does it demonstrate whether it considered that F.P.’s clearing of the clogged ditch on its property or its removal of dead trees may have improved the surrounding environment. The only evidence on that point suggests that even if F.P. offset its tree removal in a manner not contemplated by the township, Canton would still demand its pre-set mitigation. At bottom, Canton’s support fails to get it over the bar set by *Nollan* and *Dolan*. See *id.* at 395–96 (noting that “the city must make some effort to quantify its findings in support” of its exactions); see also *Goss v. City of Little Rock*, 151 F.3d 861, 863 (8th Cir. 1998) (holding that local traffic mitigation requirements did not satisfy

Dolan's rough-proportionality test because they were based on pre-set assumptions, rather than an individualized impact assessment).

That a representative from Canton went to F.P.'s property to count and categorize the trees F.P. cut down does not alter our conclusion. And the "individualized assessment" that Canton points to in the ordinance relates to the initial review of a permit application, not to the proportionality of the mitigation requirements. *See* Canton Code of Ordinances Art. § 5A.05(F). According to Canton's own representative, F.P.'s removal of regulated trees triggers the mitigation requirements, regardless of the specific impact caused by their removal. Canton has not made the necessary individualized determination here.

Finally, our conclusion accords with analogous decisions handed down by state courts. *See Dolan*, 512 U.S. at 389 (recognizing the importance of state court decisions in this context given that they have dealt with the question "a good deal longer than we have").

For example, in *Mira Mar Development Corp. v. City of Coppell*, a state court in Texas similarly concluded that the government's lack of evidence sank its ability to demonstrate rough proportionality. 421 S.W.3d 74, 95–96 (Tex. Ct. App. 2013). There, a property owner applied to the City of Coppell for a development permit. *Id.* at 95. Like Canton, the city in part conditioned its granting of the permit on the owner's agreeing to pay thousands of dollars in "tree mitigation fees" for trees it planned to remove from its property. *Id.* The Texas court first determined that the fees were exactions subject to the nexus and rough proportionality requirements of *Nollan* and *Dolan*. *Id.* Then, it noted the government's lack of evidence to support a finding of rough proportionality: the city did "not show that the removal of trees in the development would harm the air quality, increase noise and glare, remove ecosystems, bring down property values, or reduce the other benefits of trees described in the ordinance." *Id.* at 96. As we do here, the Texas court held that, based on the record before it, the ordinance could not meet the evidentiary bar set for rough proportionality in *Dolan*. *Id.*; *see also, e.g., Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 135 S.W.3d 620, 644–45 (Tex. 2004) (holding that the Town's monetary exaction was not roughly proportional because the rationale for it was too abstract and because the town provided no real evidence of impact).

In other state court cases, like those the Supreme Court cited positively in *Koontz*, the government generally satisfies the nexus and rough proportionality test with ease by introducing some evidence relating to the “methodology and functioning” of its exactions. *See, e.g., Home Builders Ass’n of Dayton & the Miami Valley v. Beavercreek*, 729 N.E.2d 349, 357–59 (Ohio 2000); *see also, e.g., Sparks v. Douglas Cnty.*, 904 P.2d 738, 745 (Wash. 1995) (“In this case, the findings made by the County were more than mere conclusory statements of general impact.”); *Hallmark Inns & Resorts, Inc. v. City of Lake Oswego*, 88 P.3d 284, 291 (Or. Ct. App. 2004) (same). That is not the case here. On the record before us, Canton’s Tree Ordinance, as applied to F.P., fails rough proportionality and is thus an unconstitutional condition under *Nollan*, *Dolan*, and *Koontz*.

C. UNREASONABLE SEIZURE

F.P.’s next claim involves the same trees, but a different right. The Fourth Amendment, as incorporated through the Fourteenth, preserves the right of the people “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “[F]rom the time of the founding to the present,” when speaking of property, “the word ‘seizure’ has meant a ‘taking possession.’” *Torres v. Madrid*, 141 S. Ct. 989, 995 (2021) (quoting *California v. Hodari D.*, 499 U.S. 621, 624 (1991)). So, “a ‘seizure’ of property . . . occurs when ‘there is some meaningful interference with an individual’s possessory interests in that property.’” *Fox v. Van Oosterum*, 176 F.3d 342, 350 (6th Cir. 1999) (quoting *Soldal v. Cook County*, 506 U.S. 56, 61 (1992)).

F.P. argues that the Tree Ordinance meaningfully interferes with its possessory interest in its trees and is therefore an unreasonable seizure. But the ordinance here does not enable Canton to take actual possession of F.P.’s trees. Nor does it meaningfully interfere with F.P.’s possession of its trees. F.P. was able to sell its trees to the timber company that removed them. In short, F.P. has full control over the trees it removes from its property. Canton therefore has not seized them.

The most that can be said of the ordinance in this context is that it might interfere with F.P.’s control over some of its standing trees by limiting its ability to cut them down. But that does not mean that the ordinance should be subject to Fourth Amendment scrutiny.

The ordinance requires a permit for F.P.’s removal of its standing trees—real property, not located on or anywhere near a house or its curtilage. See *Kerschensteiner v. N. Mich. Land Co.*, 221 N.W. 322, 327 (Mich. 1928) (“Standing timber is real estate. It is a part of the realty the same as the soil from which it grows.”). And the trees themselves are obviously not houses, persons, or papers. So the trees, if they are covered by the Fourth Amendment, must be effects. But the Supreme Court has told us that real property is not an “effect” within the meaning of the Fourth Amendment. *Oliver v. United States*, 466 U.S. 170, 177 n.7 (1984) (“The Framers would have understood the term ‘effects’ to be limited to personal, rather than real, property.”); see also *Soldal*, 506 U.S. at 62 n.7 (“[T]he [Fourth] Amendment does not protect possessory interests in all kinds of property.”). Therefore, as applied to F.P., Canton’s Tree Ordinance is not subject to the limitations of the Fourth Amendment.

D. EXCESSIVE FINE

In its final claim, F.P. looks to the Eighth Amendment. The Excessive Fines Clause of that Amendment, as applied to localities through the Fourteenth, dictates that “excessive fines” shall not be “imposed.” U.S. Const. amend. VIII. As is clear from its language, the clause “limits the government’s power to extract payments, whether in cash or in kind, ‘as *punishment* for some offense.’” *Austin v. United States*, 509 U.S. 602, 609–10 (1993) (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989)). It guards only “against abuses of [the] government’s punitive or criminal-law-enforcement authority.” *Timbs v. Indiana*, 139 S. Ct. 682, 686 (2019). So a monetary demand that is retributive or deterrent and thus intended to punish, even in part, is subject to the limitations of the Excessive Fines Clause. *Austin*, 509 U.S. at 621 (quoting *United States v. Ward*, 448 U.S. 242, 254 (1980)). But a demand that is related only to “damages sustained by society or to the cost of enforcing the law,” and thus wholly remedial, is not. *Ward*, 448 U.S. at 254.

F.P. argues that the ordinance violates the Excessive Fines Clause because Canton's demand for payment in accordance with the Tree Ordinance is punishment that is grossly disproportionate to its tree removal. But that law is designed to remedy the harm that removing trees causes, and it purports to estimate the monetary demands it makes based on the cost it expects to incur replacing them. That purpose is remedial, not punitive, so it does not implicate the Eighth Amendment.⁶

IV.

Canton's Tree Ordinance, as applied to F.P., is not an unreasonable seizure or an excessive fine. But it does represent an unconstitutional taking. Accordingly, we affirm.

⁶There is a form of punishment under Michigan law for F.P.'s violation of the ordinance: a \$500 fine and up to 90 days' imprisonment. But Canton has not levied that fine, nor has it attempted to arrest any representative of F.P. And F.P. does not challenge either of those penalties.

EXHIBIT 3

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

CHARTER TOWNSHIP OF CANTON,

Plaintiff,

Case No. 18-
Hon.

-CE

v

44650, INC., a Michigan corporation,

Defendant.

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
Anne McClorey McLaughlin (P40455)
Stephanie Simon Morita (P53864)
Attorneys for Plaintiff
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

Kristin Bricker Kolb (P59496)
Charter Township of Canton
Co-Counsel for Plaintiff
1150 S. Canton Center Road
Canton, Michigan 48188
(734) 394-5199
kristin.kolb@canton-mi.org

There is no other pending or resolved civil action arising
out of the transaction or occurrence as alleged in this
verified complaint.

VERIFIED COMPLAINT

Plaintiff, CHARTER TOWNSHIP OF CANTON, by and through its counsel, for its
Complaint states as follows:

1. Plaintiff, Charter Township of Canton, is a Michigan charter township with
its principal place of business located at 1150 South Canton Center, Canton Township,
Wayne County, Michigan.
2. Defendant, 44560, Inc., is a Michigan corporation, with its principal place
of business located at 5601 Belleville Road, Canton Township, Wayne County, Michigan.

3. According to records on file with the state of Michigan, the resident agent for Defendant is Gary Percy. Gary Percy is also the President of AD Transport, Inc., which business occupies the nearby property.

4. At issue in this action is a 16-acre vacant parcel of property located east of Belleville Road and north of Yost Road in Canton Township, Wayne County Michigan, Parcel ID# 71-135-99-0001-709; therefore, venue is proper in this Court.

5. This Complaint seeks declaratory and injunctive relief, and the amount in dispute is in excess of \$25,000; therefore, jurisdiction is proper in this Court.

COMMON ALLEGATIONS

6. On or about October 27, 2016, Canton Township's Planning Services Division received an application to split off a 16-acre parcel (the "Property") from a 40-acre parcel (the "Parent Parcel") owned by F. P. Development, LLC; the owner for the 16-acre split parcel was identified as Defendant 44650, Inc. (The Property Split/Combination Application is attached as Exhibit A.)

7. On December 22, 2016, the Township responded with some comments on items that needed to be addressed prior to finalizing the split request.

8. In April of 2017, the Property was still fully treed, and no work had commenced on the Property, as evidenced by the attached aerial photograph, which the Township purchased from NearMap. (Exhibit B).

9. In correspondence dated July 14, 2017, Ginger Michaelski-Wallace, the engineer for F. P. Development and Defendant, was notified in writing that the split

application was tentatively approved, subject to the submission of certain, enumerated documents. (Exhibit C).

10. The letter further noted some pertinent information about use of the Property, including, but not limited to, the requirements to submit a site plan as a pre-condition to development and the requirement to obtain a tree removal permit prior to the removal of any trees from the Property.

11. On or about August 1, 2017, a deed was signed by F. P. Development's manager and sole member, Martin F. Powelson, conveying the 16-acre split parcel to Defendant. (Exhibit D).

12. Unbeknownst to the Township until more than six months later, at some point during this time, Defendant and/or its agent had every single tree removed from the Property, as evidenced by the attached aerial photograph dated October 20, 2017, which the Township purchased from NearMap. (Exhibit E). In addition, Defendant bulldozed the acreage and removed the existing stumps.

13. On November 27, 2017, correspondence was again sent to the Property and Parent Parcel representative, reiterating the requirements to complete the parcel split. (Exhibit F).

14. On January 22, 2018, following receipt of the documents identified in the July 14, 2017 and November 27, 2017 letters, Ms. Michalski-Wallace was notified the property split was complete and the new parcel identification numbers had been issued. (Exhibit G).

15. In late April of 2018, Township Landscape Architect and Planner Leigh Thurston received a phone call from an individual owning property adjacent to the Property, inquiring why so many trees were permitted to be removed.

16. This was the first notification to the Township that any trees had been removed from the Property.

17. The Canton Township Zoning Ordinance requires a permit for tree removal as set forth in Article 5A, § 5A.05(A) for:

1. The removal or relocation of any tree with a DBH of six inches or greater on any property without first obtaining a tree removal permit shall be prohibited.
2. The removal, damage or destruction of any landmark tree without first obtaining a tree removal permit shall be prohibited.
3. The removal, damage or destruction of any tree located within a forest without first obtaining a tree removal permit is prohibited.
4. Clear cutting or grubbing within the dripline of a forest without first obtaining a tree removal permit is prohibited. (Exhibit H, Canton Township Forest Preservation and Tree Clearing Ordinance).

18. At no time was a site plan submitted and/or a tree removal permit applied for or obtained by Defendant and/or anyone acting on behalf of Defendant.

19. After viewing the Property from a neighboring parcel, Ms. Thurston noted the following ordinance violations:

- a. Clear cutting of approximately 16 acres of trees without a Township permit;
- b. Cutting of trees and other work within a county drain and drain easement under the jurisdiction of Wayne County;

- c. Cutting of trees and other work within wetlands regulated by the Michigan Department of Environmental Quality;
- d. Performing underground work adjacent to a public water main under the jurisdiction of Canton Township; and
- e. Parking vehicles within the Yost Road public right of way.

20. Furthermore, Ms. Thurston saw evidence of a woodchipping operation on the Property.

21. Ms. Thurston immediately contacted Gary Percy to advise him of the violation, in response to which he admitted cutting the trees and asked "what do I have to do now?"

22. Mr. Percy then stated that he had no knowledge that a permit was required to remove trees from the Property.

23. Based on the possible impact to the rights of other public agencies having an interest in the Property, Ms. Thurston notified the Michigan Department of Environmental Quality, Wayne County and the Wayne County Drain Commissioner's Office of the tree removal and impacts to regulated areas.

24. Through subsequent communications with the Township Supervisor, Mr. Percy reiterated his intention to plant corn on the Property.

25. On or about June 11, 2018, the Michigan Department of Environmental Quality issued a Violation Notice and Order to Restore to Gary Percy, requiring him to complete certain actions to bring the Property into compliance with the Natural Resources and Environmental Protection Act, including (among others), to "refrain from all farming activities (e.g. plowing, seeding, minor drainage, cultivation) within the wetland areas..." (Exhibit I).

26. Mr. Percy was also required to "remove all unauthorized fill material (e.g. woodchips)..." from the Property.

27. On or about July 26, 2018, Wayne County issued its Notice of Determination to Gary Percy, notifying him that the Wayne County Department of Public Services had found that a violation of the County's Soil Erosion and Sedimentation Control Ordinance had occurred on the Property. (Exhibit J).

28. On or about July 31, 2018, the Wayne County Drain Commissioner's Office sent correspondence to Gary Percy advising him that actions taken on the Property may have negatively impacted the Fisher and Lenge Drainage District, an established county drain under the Michigan Drain Code, 40 PA 1956. (See Exhibit K, July 31, 2018 correspondence and Exhibit L, Drainage District Map.)

29. The Wayne County Drain Commissioner's office's letter also indicated that a notice of violation had been issued for the unauthorized work.

30. Despite requests from Township representatives, up to and including the Township Supervisor, staff was continuously denied access to the Property by Gary Percy to analyze the Property to determine the extent of the tree removal.

31. On July 24, 2018, the Township's in-house counsel was contacted by counsel for Defendant, indicating all communication concerning the Property was to be directed to him.

32. After much back and forth, a date was agreed upon to conduct an inspection of the Property.

33. On August 22, 2018, representatives of the Township—including the Landscape Architect/Planner, an Ordinance Officer and a consulting Arborist—met representatives of Defendant to walk the Property and the Parent Parcel to conduct a scientific analysis to come up with an estimate of how many trees and what types of trees may have been removed from the Property.

34. The analysis included, among other things, identifying six representative plots on the (still treed) Parent Parcel directly adjacent to the Property, and then counting and identifying the species of the regulated trees within those plots.

35. Using the number and types of trees that were identified in the representative plots and taking into consideration soil conditions and topography of the Property, a scientific estimate was made of the number and types of trees that were removed.

36. As set forth in the attached spreadsheets, the analysis concluded that 1,385 “regulated trees” and 100 “landmark” trees were removed. (Exhibit M).

37. Under Canton Township ordinance, a “regulated tree” is “...any tree with a DBH [diameter breast height] of six inches or greater, ” and a “landmark tree” is defined as “...any tree which stands apart from neighboring trees by size, form or species, ..., which has a DBH of 24 inches or more.” (Exhibit H, Canton Township Forest Preservation and Tree Clearing Ordinance, §§ 5A.05 and 5A.01.)

38. The Township Ordinance requires replacement of regulated trees on a 1:1 ratio, and replacement of landmark trees on a 3:1 ratio. (Exhibit H, § 5A.08.)

39. In total, based on the Township's analysis, Defendant is required under Township Ordinance to replace in the above ratios the 1,485 trees that were removed.

40. In lieu of planting replacement trees, Defendant has the option of paying into the Township's tree fund the market value of the trees that were removed, in the ratios of required replacement, accordance with § 5A.08(E).

41. With current market values for the types of trees required to replace the regulated trees removed running between \$225 and \$300 per tree, and market value of the trees required to replace the landmark trees averaging \$450 per tree, the total amount Defendant is responsible for paying into the tree fund for the unlawfully removed trees is between \$412,000 and \$446,625.

42. At the request of Defendant's counsel, a proposal was sent to resolve the dispute between the Township and Defendant on September 13, 2018, and as of the date of the filing of this Complaint, no real response has been received.

43. Rather, the Township learned on October 22, 2018 through a news media report that Defendant was now claiming it was starting a "Christmas tree farm" and had planted some 1,000 Norway spruce trees on the Property. Defendant has indicated that it intends to continue to plant Christmas trees.

44. The Property is zoned LI—Light Industrial. The intent of the LI district is to provide locations for planned industrial development, including planned industrial park subdivision. (Exhibit N, Article 22 of Appendix A of the Canton Code of Ordinances.) Agricultural uses are not allowed as a principal permitted or special land use on property zoned LI.

45. Furthermore, an agricultural use requires a minimum of 40 acres; as stated above, the Property is only 16 acres.

46. To use the Property for agricultural purposes, Defendant must file an application to rezone the Property to RA-Rural Agricultural (Exhibit O, Article 9 of Appendix A of the Canton Code of Ordinances), and a request for a variance to allow the agricultural use on property smaller than 40 acres.

47. No applications for either have been submitted to the Township for the Property.

48. Additionally, because the Property contains regulated wetlands, Defendant is required to obtain a permit from the MDEQ to plant trees; in an email dated October 23, 2018, a MDEQ representative confirmed that no such permit had been obtained. (Exhibit P).

49. Defendant does not have any protection under the Michigan Right to Farm Act, MCL 286.471 *et seq*, because Defendant does not comply with the Generally Accepted Agricultural and Management practices for Farm Markets (GAAMPS). A Christmas tree farm falls under these GAAMPS. The GAAMPS require, among other things, that "... the market must be located on property where local land use zoning allows for agriculture and its related activities." (Exhibit Q).

50. Agricultural uses, including a Christmas tree farm, are not permitted or special land uses in the LI District. (Exhibit N).

51. Plaintiff is fearful that if there is no immediate intervention by this Court, Defendant will continue to violate the Township Code, and will continue to plant Norway spruce trees on the Property.

52. This is not Mr. Percy's first rodeo. AD Transport, Inc. has, in the past, violated the Township Code resulting in litigation, including expanding a building on its industrial site and constructing a parking lot, all without prior approvals and permits required by ordinance, and tampering with the Township's water meter resulting in the industrial use receiving free water for a period of time.

53. Plaintiff's requests for ordinance compliance by Defendant have been repeatedly ignored, Defendant continues to thumb its nose at the ordinance requirements, and Defendant continues to take actions in violation of the Township Code of Ordinances.

54. Indeed, Defendant has chosen to disseminate incomplete or inaccurate statements to the press in an attempt to enlist support from the public to place pressure on the Township to ignore the blatant ordinance violations. (For example, Exhibit R).

COUNT I – VIOLATION OF THE ZONING ORDINANCE
NUISANCE PER SE
§ 5A.05-Failure to Obtain a Tree Removal Permit

55. Plaintiff hereby incorporates Paragraphs 1 - 55 as though fully set forth herein.

56. As set forth in detail above in Paragraph 18, Article 5A of the Canton Township Code of Ordinances, § 5A.05(A) requires a permit to remove trees from property in the following situations:

- a. Removal or relocation of any tree with a diameter breast height of 6" or greater;
- b. Removal of any landmark tree;
- c. Removal of any tree within a forest;
- d. Clear cutting or grubbing within the dripline of a forest. (Exhibit H).

57. It is undisputed that neither Defendant nor any representative on behalf of Defendant obtained a permit, yet Defendant was required to do so as it performed activities on the Property that require a permit under the Zoning Ordinance.

58. Defendant clear cut the 16-acre parcel without first obtaining a permit.

59. The failure to obtain a tree permit prior to clear-cutting the Property – including the removal of 1,385 "regulated trees" and 100 "landmark" trees - is a violation of § 5A.05 of the Zoning Ordinance.

60. Although § 5A.08(C) of the Zoning Ordinance contains an exemption for "agricultural/farming operations" and "commercial nursery/tree farm operations", those uses are not permitted in the LI District, the Property's zoning classification, and are limited to the RA, Rural Agricultural District, under the Zoning Ordinance. Thus, Defendant cannot claim any exemption from the provisions of the Zoning Ordinance.

61. A violation of the Zoning Ordinance is a nuisance per se that shall be abated by the Court.

62. Plaintiff is not required to show a nuisance in fact under the MZEA and existing law.

63. Pursuant to MCL 600.2940, a nuisance is abated through order of the Court and is done so at the expense of the Defendants.

64. Plaintiff has incurred and will continue to incur costs in attempting to enforce the provisions of Appendix A, Zoning, of the Code of Ordinances to abate the nuisances per se, including attorney fees, because of Defendant's continued violations pertaining to the Property.

COUNT II – VIOLATION OF THE ZONING ORDINANCE
NUISANCE PER SE
§ 5A.07 – Failure to Erect a Protective Barrier Around a Landmark Tree

65. Plaintiff hereby incorporates Paragraphs 1 – 65 as though fully set forth herein.

66. The Zoning Ordinance requires a protective barrier be erected around a landmark tree:

Sec. 5A.07. – Protective barriers.

It shall be unlawful to develop, clear, fill or commence any activity for which a use permit is required in or around a landmark/historic tree or forest without first erecting a continuous protective barrier around the perimeter dripline.

67. It is undisputed that neither Defendant nor any representative on behalf of Defendant erected any barrier around a landmark tree, but instead, in callous disregard of the Township Ordinance, removed all the landmark trees.

68. Defendant clear cut the 16-acre parcel without erecting a protective barrier around the landmark trees.

69. The failure to obtain erect a barrier around the landmark trees is a violation of § 5A.07 of the Zoning Ordinance.

70. Although § 5A.08(C) of the Zoning Ordinance contains an exemption for "agricultural/farming operations" and "commercial nursery/tree farm operations", those

uses are not permitted in the LI District, the Property's zoning classification, and are limited to the RA, Rural Agricultural District, under the Zoning Ordinance. Thus, Defendant cannot claim any exempt from the provisions of the Zoning Ordinance.

71. A violation of the Zoning Ordinance is a nuisance per se that shall be abated by the Court. MCL 125.3407.

72. Plaintiff is not required to show a nuisance in fact under the MZEA and existing law.

73. Pursuant to MCL 600.2940, a nuisance is abated through order of the Court and is done so at the expense of the Defendants.

74. Plaintiff has incurred and will continue to incur costs in attempting to enforce the provisions of Appendix A, Zoning, of the Code of Ordinances to abate the nuisances per se, including attorney fees, because of Defendant's continued violations pertaining to the Property.

COUNT III-VIOLATION OF THE ZONING ORDINANCE
NUISANCE PER SE

§ 2.24 – Failure to Observe Setback from Wetland Areas and Watercourses

75. Plaintiff hereby incorporates Paragraphs 1 - 75 as though fully set forth herein.

76. The Canton Township Zoning Ordinance prohibits and "earth movement, excavation, land balancing or earth disruption of any kind" within 25 feet from of any wetland. (Exhibit S).

77. As verified by the inspection by the Michigan Department of Environmental Quality and confirmed in a letter date June 11, 2018 from the Michigan Department of

Environmental Quality issuing a Violation Notice and Order to Restore, Defendant not only excavated, moved and disrupted the grade and soil within 25 feet of a wetland on the Property, but also removed earth within the wetland itself.

78. The movement of the earth during the clear-cutting of the Property within 25 feet of the wetland is a violation of § 2.24 of the Zoning Ordinance.

79. A violation of the Zoning Ordinance is a nuisance per se that shall be abated by the Court. MCL 125.3407.

80. Plaintiff is not required to show a nuisance in fact under the MZEA and existing law.

81. Pursuant to MCL 600.2940, a nuisance is abated through order of the Court and is done so at the expense of the Defendants.

82. Plaintiff has incurred and will continue to incur costs in attempting to enforce the provisions of Appendix A, Zoning, of the Code of Ordinances to abate the nuisances per se, including attorney fees, because of Defendant's continued violations pertaining to the Property.

COUNT IV –VIOLATION OF THE ZONING ORDINANCE
NUSANCE PER SE
Article 22.00 – LI, Light Industrial District

83. Plaintiff hereby incorporates Paragraphs 1 - 83 as though fully set forth herein.

84. Section 27.09(1) of the Zoning Ordinance declares that any uses "...carried on in violation of this ordinance are hereby declared to be a nuisance per se, and shall

be subject to abatement or other action by a court of appropriate jurisdiction.” (See attached Exhibit S.)

85. The language contained in § 27.09 was adopted pursuant to the Michigan Zoning Enabling Act (P.A. 110 of 2006) (“MZEA”).

86. Section 407 of the MZEA provides the following in relevant part:

Sec. 407. Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se... (Emphasis added.)

MCL 125.3407.

87. Pursuant to § 2.01A of the Zoning Ordinance, no land can be used except in conformity with the regulations specified for the zoning district in which the land is located. (Exhibit T).

88. As set forth above, Defendant is using the Property for a use not permitted under the LI District, the zoning classification applicable to the Property.

89. Agricultural uses, farming operations, and commercial nursery/tree farm operations are only permitted in the RA, Rural Agricultural District, under the Zoning Ordinance, and are prohibited in the LI District.

90. Pursuant to MCL 125.3407, a violation of the Zoning Ordinance is a nuisance per se that shall be abated by the Court.

91. Plaintiff is not required to show a nuisance in fact under the MZEA and existing law.

92. Pursuant to MCL 600.2940, a nuisance is abated through order of the Court and is done so at the expense of the Defendants.

93. Plaintiff has incurred and will continue to incur costs in attempting to enforce the provisions of Appendix A, Zoning, of the Code of Ordinances to abate the nuisances per se, including attorney fees, because of Defendant's continued violations pertaining to the Property.

**REQUEST FOR DECLARATORY JUDGMENT, TEMPORARY RESTRAINING
ORDER AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF,
AND PAYMENT TO TREE FUND**

Based upon the foregoing, Plaintiff requests this Honorable Court grant the following relief:

(A) Issue a Temporary Restraining Order pursuant to MCR 3.310(B) to prevent the further planting of Norway Spruce or any other type of evergreen trees for the purported use as a commercial Christmas tree farm and to maintain the status quo pending a Show Cause Hearing.

(B) Issue an Order to Show Cause pursuant to MCL 3.310 compelling Defendant to appear before this Court to demonstrate why Defendant should not be immediately enjoined from attempting to establish a commercial Christmas tree farm on the Property, or for taking any further action on the Property in violation of the Township Code of Ordinances, and why the monetary, equitable and injunctive relief requested herein should not be immediately granted.

(C) Declare and determine that the actions taken by Defendant to date in violating the provisions of the Zoning Ordinance are a nuisance per se entitled to immediate injunctive relief and abatement;

(D) Authorize the Township, through its agents and employees, to enter onto the Property and post notice of the Court's order.

(E) Order Defendant to immediately correct all ordinance violations and grant the Township permission to enter onto the Property to determine compliance with the Court's order.

(F) Order Defendant to pay the amount of between \$412,000 and \$446,625 to the Township's tree fund for the clear cutting of the Property within sixty (60) days of enter of the Order;

(G) Alternatively, appoint a receiver pursuant to MCL 125.535 to monitor the rehabilitation of the Property and the correction of the violations, with all costs related thereto to be paid by Defendant.

(H) Enter judgment in favor of the Township against Defendant for all costs, expenses, and attorney fees incurred by the Township in these proceedings and abating or being able to abate the nuisance per se and authorize an order that, in the event of Defendant's failure to pay such amount within 30 days of being invoiced, or the payment to the tree fund within 60 days, a lien in favor of the Township, in the amount of such costs, expenses and attorney fees be placed on the Property with the amount thereof to be assessed on the tax roll, for collection in the same manner provided by law for real property taxes.

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

(I) Grant such other relief as is appropriate in law and/or equity under the facts and law present.

VERIFICATION

I declare that the statements and code provisions contained in or attached to this Complaint are true and accurate to the best of my information, knowledge and belief.

Leigh Thurston
Leigh Thurston

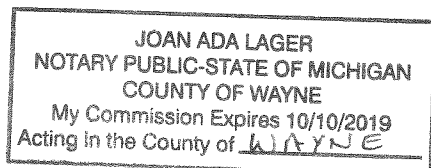
Subscribed and sworn to before me this

2ND day of NOVEMBER 2018

Joan Ada Lager 11-2-18

Notary Public, Wayne County, MI

My Commission Expires: 10/10/19



ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

/s/ Anne McClorey McLaughlin (P40455)
Attorney for Plaintiff
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com

EXHIBIT A

Property Split / Combination Application

CHARTER TOWNSHIP OF CANTON
DEPARTMENT OF MUNICIPAL SERVICES
PLANNING SERVICES DIVISION
1150 Canton Center Road, Canton, MI 48188 • 734/394-5170

Instructions: This completed application, when filed with the necessary supporting materials outlined below, will serve to initiate processing of a property split/combination in accordance with the provisions of the Zoning and Subdivision Control Ordinances. Be sure to complete each applicable section and to provide all requested materials. Incomplete applications will delay the review process.

DATE: 10/27/16

PURPOSE OF APPLICATION: (check one) ☒ PROPERTY SPLIT ☐ COMBINATION ☐ BOTH

PROPERTY IDENTIFICATION NUMBER(S): (of all properties effected)
71-135-99-0001-707

ZONING CLASSIFICATION: Industrial NET ACREAGE: 44.7 Total
Parcel A - 28.6 & Parcel B - 16.1

CURRENT LEGAL PROPERTY OWNER(S):

NAME: Frank'o Real Estate Holdings LLC NAME: _____
STREET: 2390 E Camelback Road, Suite 325 STREET: _____
CITY: Phoenix CITY: _____
STATE/ZIP: AZ, 85016 STATE/ZIP: _____
PHONE: 734-397-1677 PHONE: _____

NEW PROPERTY OWNER(S):

NAME: 44650, Inc. NAME: _____
STREET: 5601 Belleville Road STREET: _____
CITY: Canton CITY: _____
STATE/ZIP: MI, 48188 STATE/ZIP: _____
PHONE: 734-397-7100 PHONE: _____

PROJECT REPRESENTATIVE:

NAME: Ginger Michalski-Wallace
STREET: 46892 West Rd, Suite 109
CITY: Novi
STATE/ZIP: MI 48377
EMAIL: Ginger@alpine-inc.net
PHONE: 248-906-3701
FAX: 248-926-3765



RECEIVED by MCOA 2/2/2022 11:58:19 PM

Property Split / Combination Application

DESCRIBE WHAT YOU WISH TO ACCOMPLISH IN AS MUCH DETAIL AS POSSIBLE ON THE LINES BELOW:

We wish to split this parcel into 2 parcels for the sale of the southerly parcel.

The legal owner(s) and project representative indicated above must sign this application. All correspondence and notices regarding the application will be transmitted to the project representative. by signing this application, the project representative is indicating that all information contained in this application, all accompanying plans and all attachments are complete and accurate to the best of his or her knowledge. This application is not valid unless it is accompanied by a processing and review fee in accordance with the fee schedule as adopted by the Board of Trustees and the completed information as described in the Subdivision Control Ordinance.

SIGNATURE(S) OF LEGAL OWNER(S):
Martin S. Powelson

SIGNATURE OF PROJECT REPRESENTATIVE:
[Signature]

For Township Use
File Number: 135-PB-3887 Sec. 34 Date Received: 12/14/16
Fee Paid: \$1,350.⁰⁰ Receipt Number: 2016081415
Ownership verified by computer - matches current owner(s) _____

RECEIVED by MCOA 2/2/2022 11:58:19 PM

Property Transfer Affidavit

This form is issued under authority of P.A. 415 of 1994. Filing is mandatory.

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). The Affidavit must be filed by the new owner with the assessor for the city or township where the property is located within 45 days of the transfer. The information on this form is NOT CONFIDENTIAL.

1. Street Address of Property V/L Yost Rd, Parcel B	2. County Wayne	3. Date of Transfer (or land contract signed) August 3, 2017
4. Location of Real Estate (Check appropriate field and enter name in the space below.) <input type="checkbox"/> City <input checked="" type="checkbox"/> Township <input type="checkbox"/> Village Canton		5. Purchase Price of Real Estate \$404,250.00
7. Property Identification Number (PIN). If you don't have a PIN, attach legal description. PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice. 71-135-99-0001-707, cml		6. Seller's (Transferor) Name F.P. Development, LLC
		8. Buyer's (Transferee) Name and Mailing Address 44650, Inc. 5601 Belleville Rd Canton, MI 48188
		9. Buyer's (Transferee) Telephone Number

Items 10-15 are optional. However, by completing them you may avoid further correspondence.

10. Type of Transfer. **Transfers** include deeds, land contracts, transfers involving trusts or wills, certain long-term leases and interest in a business. See Page 2 for list.☐ Land Contract ☐ Lease ☐ Deed ☐ Other (specify) _____

11. Was property purchased from a financial institution?

☐ Yes ☐ No

12. Is the transfer between related persons?

☐ Yes ☐ No

13. Amount of Down Payment

14. If you financed the purchase, did you pay market rate of interest?

☐ Yes ☐ No

15. Amount Financed (Borrowed)

EXEMPTIONS

Certain types of transfers are exempt from uncapping. If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.

- ☐ Transfer from one spouse to the other spouse.
- ☐ Change in ownership solely to exclude or include a spouse.
- ☐ Transfer between certain family members *(see page 2).
- ☐ Transfer of that portion of a property subject to a life lease or life estate (until the life lease or life estate expires).
- ☐ Transfer to effect the foreclosure or forfeiture of real property.
- ☐ Transfer by redemption from a tax sale.
- ☐ Transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust.
- ☐ Transfer resulting from a court order unless the order specifies a monetary payment.
- ☐ Transfer creating or ending a joint tenancy if at least one person is an original owner of the property (or his/her spouse).
- ☐ Transfer to establish or release a security interest (collateral).
- ☐ Transfer of real estate through normal public trading of stocks.
- ☐ Transfer between entities under common control or among members of an affiliated group.
- ☐ Transfer resulting from transactions that qualify as a tax-free reorganization.
- ☐ Transfer of qualified agricultural property when the property remains qualified agricultural property and affidavit has been filed.
- ☐ Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.
- ☐ Transfer of land with qualified conservation easement (land only - not improvements).
- ☐ Other, specify: _____

CERTIFICATION

I certify that the information above is true and complete to the best of my knowledge.

Printed Name

Signature

Date

August 3, 2017

Name and title, if signer is other than the owner

Daytime Phone Number

E-mail Address

734-744-9956

80603@HOTMAIL.COM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

2017 AUG 25 AM 9:42

Bernard J. Youngblood
Wayne County Register of Deeds
2017287280 L: 53912 P: 57
08/25/2017 09:42 AM WD Total Pages: 3

MICHIGAN REAL ESTATE TRANSFER TAX
Wayne County Tax Stamp #454224
08/25/2017
Receipt# 17-246629 L: 53912 P: 57
State Tax: \$3033.75 County Tax: \$444.95



WARRANTY DEED

The Grantor, **F.P. DEVELOPMENT, LLC**, a Michigan limited company (the "Grantor"),
whose address is **4850 S. Sheldon Road, Canton, MI 48188**
Conveys and Warrants to **44650, INC.**, a Michigan corporation (the "Grantee"),
whose address is **5601 Belleville Road, Canton, MI 48188**

the premises situated in the Township of Canton, County of Wayne, State of Michigan, described in Exhibit A attached hereto, together with all and singular tenements, hereditaments, appurtenances and easements benefiting the said premises and all improvements located thereon (collectively, the "Premises"), for the sum of Four Hundred Four Thousand Two Hundred Fifty and No/100 (\$404,250.00), the receipt of which is hereby acknowledged.

Grantor grants the Grantee the right to make all permitted divisions under Section 108 of the Land Divisions Act, Act No. 288 of the Public Acts of 1967.

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

Effective as of August 1, 2017.

GRANTOR:

F.P. DEVELOPMENT, LLC, a Michigan limited liability company

BY: Martin F. Powelson
MARTIN F. POWLESON, a/k/a
Frank Powelson

ITS: Manager and Sole Member

[Notary Page Follows]

SELECT TITLE COMPANY
6870 GRAND RIVER
BRIGLTON, MI 48114
82-1710N-B

5
21
3,478.70
WO 3p. 20 u

RECEIVED by MCOA 2/2/2022 11:58:19 PM

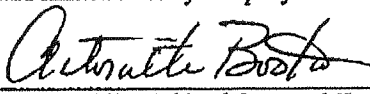
2017287260 Page 2 of 3

[Notary Page to Warranty Deed]

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 1st day of August, 2017, by Martin F. Powelson, also known as Frank Powelson, the Manager and Sole Member of F.P. DEVELOPMENT, LLC, a Michigan limited liability company, on behalf of said limited liability company.

Antoinette Bostice
Notary Public, State of Michigan
County of Oakland
My Commission Expires 12/10/2018



Notary Public, Oakland County, MI
My Commission Expires: 12/10/2018

When recorded return to and send
subsequent tax bills to:

F.P. Development, LLC
Attn: Martin F. Powelson
4850 S. Sheldon Road
Canton, MI 48188

Drafted by:

Sullivan Ward Asher & Patton, P.C.
A. Stuart Tompkins, Esq.
25800 Northwestern Highway
Suite 1000
Southfield, Michigan 48075

EXHIBIT A

Legal Description

Parcel B

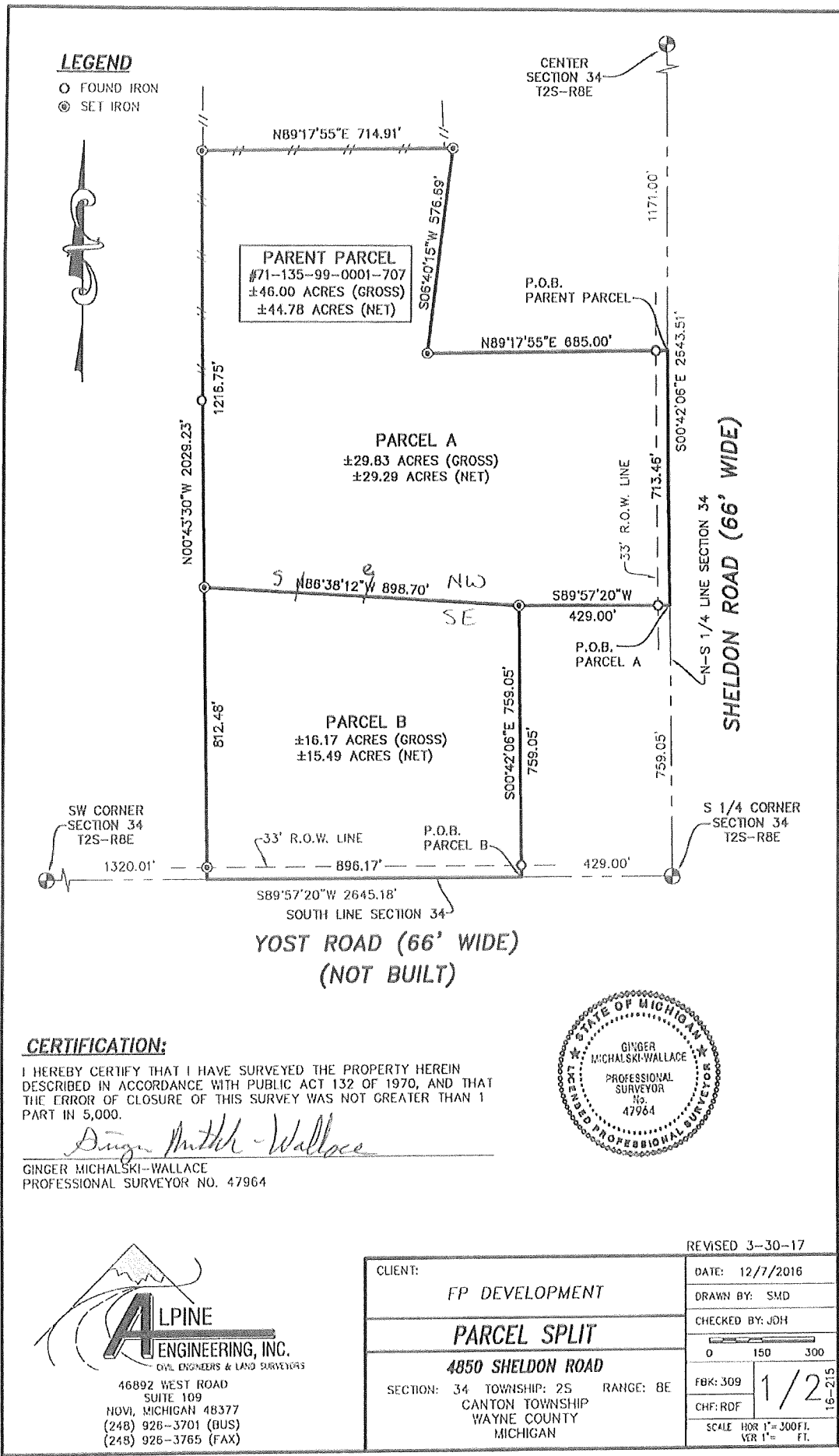
PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 34, T2S-R8E,
CANTON TOWNSHIP, WAYNE COUNTY, MICHIGAN,
DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH $\frac{1}{4}$
CORNER OF SECTION 34, SAID POINT BEARING
S00°42'06"E 2643.51 FEET FROM THE CENTER OF SAID
SECTION 34; THENCE S89°57'20"W 429.00 FEET ALONG
THE SOUTH LINE OF SAID SECTION 34 TO THE POINT OF
BEGINNING; THENCE CONTINUING S89°57'20"W 896.17
FEET ALONG THE SOUTH LINE OF SAID SECTION 34;
THENCE N00°43'30"W 812.48 FEET; THENCE N89
44°47'E 896.47 FEET; THENCE S00°42'06"E 815.74
FEET TO THE POINT OF BEGINNING, CONTAINING 16.75
ACRES, MORE OR LESS, SUBJECT TO THE RIGHTS OF THE
PUBLIC OVER THE EASTERLY 33.00 FEET FOR SHELDON
ROAD

71-135-99-0001-707 (PART OF)
Vacant Ypst Rd Parcel B

This is to certify that there are no delinquent property taxes owed to our office on
this property for five years prior to the date of this instrument. No representation
is made as to the status of any tax liens or taxes owed to any other entities.

No. 17913 Eric Sheldon Not Examined
Date 8/17 WAYNE COUNTY TREASURER Clerk [Signature]

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson



RECEIVED by MCOA 2/2/2022 11:58:19 PM

PARENT PARCEL:

PART OF THE SOUTHWEST 1/4 OF SECTION 34, T2S-R8E, CANTON TOWNSHIP, WAYNE COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE CENTER OF SECTION 34; THENCE ALONG THE NORTH-SOUTH 1/4 LINE OF SAID SECTION 34, S00°42'06"E 1171.00 FEET TO THE POINT OF BEGINNING; THENCE S00°42'06"E 713.46 FEET; THENCE S89°57'20"W 429.00 FEET; THENCE S00°42'06"E 759.05 FEET; THENCE S89°57'20"W 896.17 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE N00°43'30"W 2029.23 FEET; THENCE N89°17'55"E 714.91 FEET; THENCE S06°40'15"W 576.69 FEET; THENCE N89°17'55"E 685.00 FEET TO THE POINT OF BEGINNING, CONTAINING 46.00 ACRES, MORE OR LESS, SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE SOUTHERLY 33.00 FEET FOR YOST ROAD AND THE EASTERLY 33.00 FEET FOR SHELTON ROAD.

PARCEL A:

PART OF THE SOUTHWEST 1/4 OF SECTION 34, T2S-R8E, CANTON TOWNSHIP, WAYNE COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH 1/4 CORNER OF SECTION 34, SAID POINT BEARING S00°42'06"E 2643.51 FEET FROM THE CENTER OF SAID SECTION 34; THENCE N00°42'06"W 759.05 FEET ALONG THE NORTH-SOUTH 1/4 LINE OF SAID SECTION 34 TO THE POINT OF BEGINNING; THENCE S89°57'20"W 429.00 FEET; THENCE N86°38'12"W 898.70 FEET; THENCE N00°43'30"W 1216.75 FEET; THENCE N89°17'55"E 714.91 FEET; THENCE S06°40'15"W 576.69 FEET; THENCE N89°17'55"E 685.00 FEET; THENCE S00°42'06"E 713.46 FEET ALONG THE NORTH-SOUTH 1/4 LINE OF SAID SECTION 34 TO THE POINT OF BEGINNING, CONTAINING 29.83 ACRES, MORE OR LESS, SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE EASTERLY 33.00 FEET FOR SHELTON ROAD.

PARCEL B:

PART OF THE SOUTHWEST 1/4 OF SECTION 34, T2S-R8E, CANTON TOWNSHIP, WAYNE COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH 1/4 CORNER OF SECTION 34, SAID POINT BEARING S00°42'06"E 2643.51 FEET FROM THE CENTER OF SAID SECTION 34; THENCE S89°57'20"W 429.00 FEET ALONG THE SOUTH LINE OF SAID SECTION 34 TO THE POINT OF BEGINNING; THENCE CONTINUING S89°57'20"W 896.17 FEET ALONG THE SOUTH LINE OF SAID SECTION 34; THENCE N00°43'30"W 812.48 FEET; THENCE S86°38'12"E 898.70 FEET; THENCE S00°42'08"E 759.05 FEET TO THE POINT OF BEGINNING, CONTAINING 16.17 ACRES, MORE OR LESS, SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE SOUTHERLY 33.00 FEET FOR YOST ROAD.

BEARINGS:

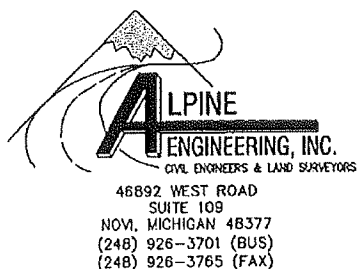
BEARINGS ARE BASED ON PREVIOUS SURVEYS OF RECORD.

SECTION CORNER WITNESSES:

CENTER - SECTION 34, T2S-R8E
FOUND PER L.C.R.C. RECORDED IN L. 49256, PP. 1047-1048

S 1/4 CORNER - SECTION 34, T2S-R8E
FOUND PER L.C.R.C. RECORDED IN L. 43380, PP. 56-57

SW CORNER - SECTION 34, T2S-R8E
FOUND PER L.C.R.C. RECORDED IN L. 27797, PP. 630-631



CLIENT:		DATE: 12/7/2016	
FP DEVELOPMENT		DRAWN BY: SMD	
PARCEL SPLIT		CHECKED BY: JDH	
4850 SHELTON ROAD			
SECTION: 34 TOWNSHIP: 2S RANGE: 8E			
CANTON TOWNSHIP		FBK: 309	
WAYNE COUNTY		CHF: RDF	
MICHIGAN		SCALE HOR 1"=300 FT. VER 1"= FT.	

EXHIBIT B

Notes: Tree Clearing

EXHIBIT C

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson



July 14, 2017

Ms. Ginger Michalski-Wallace
Alpine Engineering
46892 West Rd Ste 109
Novi, MI 48377

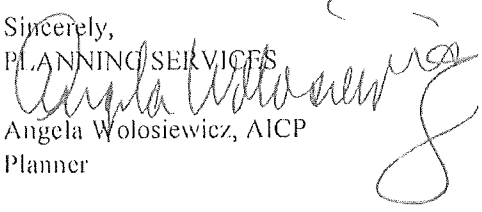
Re: Frank O' Real Estate Holdings Property Split
File No: File: 135-PS-3887 Section 34

Dear Ms. Wallace:

The above mentioned property split was reviewed by Planning Services. This is to inform you that the property split has been tentatively approved. Prior to assignment and release of the parcel identification numbers Planning Services must receive a copy of the recorded deed for the newly created parcel that includes the liber and page number assigned by Wayne County Register of Deeds, the completed Land Division Form and Property Transfer Affidavit. The following should be noted:

- The subject property is zoned LI, Light Industrial. Permitted uses do not include truck terminals.
- Site plan approval must be obtained for any activities or development on the parcel.
- A tree removal permit must be obtained from Planning Services prior to any tree removal activity taking place on the site.
- Approval of a Land Division is not a determination that the Land Division complies with other Ordinances of Canton Township or laws of the State of Michigan.
- Parcel identification numbers are not active until the tax rolls are set in February of each year.

Upon receipt of the aforementioned documents the property split will be finalized and parcel identification numbers assigned. Please feel free to contact this office with any questions.

Sincerely,
PLANNING SERVICES

Angela Wolosiewicz, AICP
Planner

Aw/cw

cc: P. Williams
T. Faas
file

Tim Faas, Director
734/394-5160
Building & Inspection Services
734/394-5200

DEPARTMENT OF MUNICIPAL SERVICES
1150 Canton Center S.
Canton, MI 48188-1699
www.canton-mi.org

Planning Services
734/394-5170
Public Works
734/394-5150

RECEIVED by MCOA 2/2/2022 11:58:19 PM

EXHIBIT D

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

2017 AUG 25 AM 9:42

Bernard J. Youngblood
Wayne County Register of Deeds
2017287260 L: 53912 P: 57
08/25/2017 09:42 AM WD Total Pages: 3

MSD-Peray tree cutting violation

MICHIGAN REAL ESTATE TRANSFER TAX
Wayne County Tax Stamp #454224
08/25/2017

Receipt# 17-246629 L: 53912 P: 57
State Tax: \$3033.75 County Tax: \$444.95



WARRANTY DEED

The Grantor, **F.P. DEVELOPMENT, LLC**, a Michigan limited company (the "Grantor"),
whose address is 4850 S. Sheldon Road, Canton, MI 48188
Conveys and Warrants to **44650, INC.**, a Michigan corporation (the "Grantee"),
whose address is 5601 Belleville Road, Canton, MI 48188

the premises situated in the Township of Canton, County of Wayne, State of Michigan, described in Exhibit A attached hereto, together with all and singular tenements, hereditaments, appurtenances and easements benefiting the said premises and all improvements located thereon (collectively, the "Premises"), for the sum of Four Hundred Four Thousand Two Hundred Fifty and No/100 (\$404,250.00), the receipt of which is hereby acknowledged.

Grantor grants the Grantee the right to make all permitted divisions under Section 108 of the Land Divisions Act, Act No. 288 of the Public Acts of 1967.

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

Effective as of August 1, 2017.

GRANTOR:

F.P. DEVELOPMENT, LLC, a Michigan limited liability company

BY: Martin F. Powelson
MARTIN F. POWLESON, a/k/a
Frank Powelson

ITS: Manager and Sole Member

[Notary Page Follows]

SELECT TITLE COMPANY
6870 GRAND RIVER
BRIGHTON, MI 48114
82-171014-B

RECEIVED by MCOA 2/2/2022 11:58:19 PM

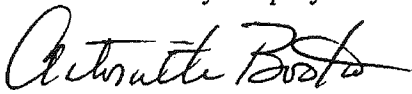
5-
21-
3,478.20
WD 3p. RD u

[Notary Page to Warranty Deed]

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 1st day of August, 2017, by Martin F. Powelson, also known as Frank Powelson, the Manager and Sole Member of **F.P. DEVELOPMENT, LLC**, a Michigan limited liability company, on behalf of said limited liability company.

Antoinette Bostice
Notary Public, State of Michigan
County of Oakland
My Commission Expires 12/10/2018



Notary Public, Oakland County, MI
My Commission Expires: 12/10/2018

When recorded return to and send
subsequent tax bills to:

F.P. Development, LLC
Attn: Martin F. Powelson
4850 S. Sheldon Road
Canton, MI 48188

Drafted by:

Sullivan Ward Asher & Patton, P.C.
A. Stuart Tompkins, Esq.
25800 Northwestern Highway
Suite 1000
Southfield, Michigan 48075

EXHIBIT A

Legal Description

Parcel B

PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 34, T2S-R8E,
 CANTON TOWNSHIP, WAYNE COUNTY, MICHIGAN,
 DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH $\frac{1}{4}$
 CORNER OF SECTION 34, SAID POINT BEARING
 S00°42'06"E 2643.51 FEET FROM THE CENTER OF SAID
 SECTION 34; THENCE S89°57'20"W 429.00 FEET ALONG
 THE SOUTH LINE OF SAID SECTION 34 TO THE POINT OF
 BEGINNING; THENCE CONTINUING S89°57'20"W 896.17
 FEET ALONG THE SOUTH LINE OF SAID SECTION 34;
 THENCE N00°43'30"W 812.48 FEET; THENCE N89
 44°47"E 896.47 FEET; THENCE S00°42'06"E 815.74
 FEET TO THE POINT OF BEGINNING, CONTAINING 16.75
 ACRES, MORE OR LESS, SUBJECT TO THE RIGHTS OF THE
 PUBLIC OVER THE EASTERLY 33.00 FEET FOR SHELDON
 ROAD

71-135-99-0001-707 (PART OF)
 Vacant Yprt Rd Parcel B

This is to certify that there are no delinquent property taxes owed to our office on
 this property for five years prior to the date of this instrument. No representation
 is made as to the status of any tax liens or taxes owed to any other entities.

No. 17913

Date 8/7/17

Eric R. Shelton
 WAYNE COUNTY TREASURER Clerk

Not Examined

EXHIBIT E

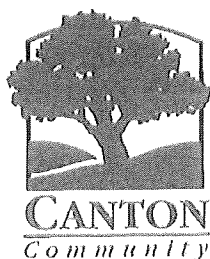
RECEIVED by MCOA 2/2/2022 11:58:19 PM

Date: Fri, 20 Oct 2017

Notes: Tree Clearing



EXHIBIT F



November 27, 2017

Ms. Ginger Michalski-Wallace
Alpine Engineering
46892 West Rd. Ste. 109
Novi, MI 48377

RE: Frank O' Real Estate Holdings Property Split
FILE: 135-PS-3887 Section 34

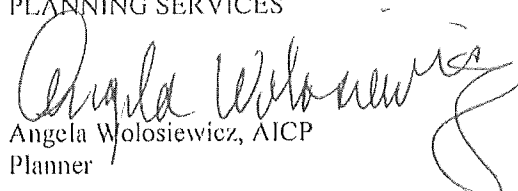
Dear Ms. Michalski-Wallace:

The above mentioned property split was tentatively approved by Planning Services. Prior to assignment and release of the parcel identification numbers, Planning Services must receive a copy of the recorded deed for the newly created parcel that includes the liber and page number assigned by Wayne County Register of Deeds, the completed Land Division Form and Property Transfer Affidavit. The following should be noted:

- The subject property is currently zoned LI, Light Industrial. Permitted uses do not include truck terminals.
- Site plan approval must be obtained for any activities or development on the parcel.
- A tree removal permit must be obtained from Planning Services prior to any tree removal activity taking place on the site.
- Approval of a Land Division is not a determination that the Land Division complies with other Ordinances of Canton Township or laws of the State of Michigan.
- Parcel identification numbers are not active until the tax rolls are set in February of each year.


Upon receipt of the aforementioned documents, the property split will be finalized and parcel identification numbers assigned. Documents must be received by December 28, 2017 to be included on the 2018 tax rolls. Please feel free to contact this office with any questions.

Sincerely,
PLANNING SERVICES


Angela Wolosiewicz, AICP
Planner

AW/lc

cc: file


Tim Faas, Director
734/394-5160
Building & Inspection Services
734/394-5200

DEPARTMENT OF MUNICIPAL SERVICES
1150 Canton Center S.
Canton, MI 48188-1699
www.canton-mi.org

Planning Services
734/394-5170
Public Works
734/394-5150

RECEIVED by MCOA 2/2/2022 11:58:19 PM

EXHIBIT G

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson



January 22, 2018

Ms. Ginger Michalski-Wallace
Alpine Engineering
46892 West Rd. Ste. 109
Novi, MI 48377

RE: Frank O' Real Estate Holdings Property Split
FILE: 135-PS-3887 Section 34

Dear Ms. Michalski-Wallace:

Please find the attached, revised copies of the assessment record change for parcels 135-99-0001-708 and 135-99-0001-709. There is a correction to the owners name and address.

<u>New Parcel Numbers:</u>	<u>Owner</u>	<u>Acreage</u>
135-99-0001-708	F.P. Development, LLC	29.83
135-99-0001-709	44650, Inc.	16.17

If you have any questions, please do not hesitate in contacting me.

Sincerely,
PLANNING SERVICES

Nicole Borsh
GIS Mapping Specialist

NB/lc

Enc.

Tim Faas, Director
734/394-5160
Building & Inspection Services
734/394-5200

DEPARTMENT OF MUNICIPAL SERVICES
1150 Canton Center S.
Canton, MI 48188-1699
www.canton-mi.org

Planning Services
734/394-5170
Public Works
734/394-5150



RECEIVED by MCOA 2/2/2022 11:58:19 PM

Map	Sub/Ac	Lot/Parcel	Split
135-99-0001-708			

ASSESSMENT RECORD CHANGE	YEAR	2018	-----	CANTON	UNIT NO.: 71
	SHEET	1	OF 2		

NEW Electronic Data Processing Number(Child)

MAP	SUB	LOT	SPLIT
135-99-0001-708			

DELETE Electronic Data Proc. Number(Parent)

MAP	SUB	LOT	SPLIT
135-99-0001-707			

ACTION: PER: REMARKS

Assess	Assessor	<p>File No. 135-PS-3887</p> <p>Parcel A on survey</p>
Exempt	Supervisor	
Split	X	
Combine	Appraiser	
Revise	Letter/Memo	
Name	Application	
Road	Owner	
Alley	Other	
Vacate	WD	
Other	QCD	

Change Slip Activated	X	1/17/2018
Change Slip Mailed		
Department email notice		
Documents scanned	X	1/17/2018
Parcel Data Entry	X	1/18/2018
GIS Data Entry/Map Rev.		
PTA Received	X	12/19/2017
Taxes Current	X	12/17/2016
Project File Complete		

Assigned Address:

--	--

Name (Last)	First
F.P. Development, LLC	
4850 S. Sheldon	Canton MI 48188
Street	City State Zip Code

<p><i>See attached legal description</i></p>	
29.83 Ac.	

Parent/Parents
135-99-0001-707

Child/Children
135-99-0001-708
135-99-0001-709

Child/Children

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

ACREAGE DESCRIPTION SHEET

NEW Electronic Data Processing Number				YEAR	2018		CANTON	UNIT NO.:
MAP	SUB	LOT	SPLIT	SHEET	1 OF 1	TWP		71
135-99-0001-708				Change Slip		Remarks		
				1-17-18 - nb				
NAME						File No. 135-PS-3887		
F.P. Development, LLC								

PART OF THE SW 1/4 OF SEC 34, T2S R8E, CANTON TOWNSHIP,
WAYNE COUNTY, MICHIGAN
DESC AS FOLLOWS:
COMMENCING AT THE S ¼ CORNER OF SEC 34
TH S 00DEG 42M 06S E 2643.51 FT
TH N 00DEG 42M 06S W 759.05 FT TO POB
TH S 89DEG 57M 20S W 429.00 FT
TH N 86DEG 38M 12S W 898.70 FT
TH N 00DEG 43M 30S W 1216.75 FT
TH N 89DEG 17M 55S E 714.91 FT
TH S 06DEG 40M 15S W 576.69 FT
TH N 89DEG 17M 55S E 685.00 FT
TH S 00DEG 42M 06S E 713.46 FT TO POB
CONTAINING 29.83 ACRES MORE OR LESS.
SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE E'LY 33 FT FOR SHELDON RD.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

Map	Sub/Ac	Lot/Parcel	Split
135-99-0001-709			

ASSESSMENT RECORD CHANGE	YEAR	2018	----	CANTON	UNIT NO.: 71
	SHEET	2	OF		

NEW Electronic Data Processing Number(Chld)

MAP	SUB	LOT	SPLIT
135-99-0001-709			

DELETE Electronic Data Proc. Number(Parent)

MAP	SUB	LOT	SPLIT
135-99-0001-707			

--

--

--

--

ACTION: PER: REMARKS

Assess	Assessor	File No. 135-PS-3887 Parcel B on survey
Exempt	Supervisor	
Split	X	
Combine	Appraiser	
Revise	Letter/Memo	
Name	Application	
Road	Owner	
Alley	Other	
Vacate	WD	
Other	QCD	
EXC	REC	L
		P

Change Slip Activated	X	1/17/2018
Change Slip Mailed		
Department email notice		
Documents scanned	X	1/17/2018
Parcel Data Entry	X	1/18/2018
GIS Data Entry/Map Rev.		
PTA Received	X	12/19/2017
Taxes Current	X	12/17/2016
Project File Complete		

Assigned Address:

--

--

Name (Last)	First
44650, INC	
5601 Belleville Rd	Canton MI 48188
Street	City State Zip Code

See attached legal description	
16.17 Ac.	

Parent/Parents
135-99-0001-707

Child/Children
135-99-0001-708
135-99-0001-709

Child/Children

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

ACREAGE DESCRIPTION SHEET

NEW Electronic Data Processing Number				YEAR	2018		CANTON	UNIT NO.:
MAP	SUB	LOT	SPLIT	SHEET	1 OF 1	TWP		71
135-99-0001-709				Change Slip		Remarks	File No. 135-PS-3887	
				1-17-18 - nb				
NAME								
44650, INC								

PART OF THE SW 1/4 OF SEC 34, T2S R8E, CANTON TOWNSHIP,
WAYNE COUNTY, MICHIGAN
DESC AS FOLLOWS:
COMMENCING AT THE S 1/4 CORNER OF SEC 34
TH S 00DEG 42M 06S E 2643.51 FT
TH S 89DEG 57M 20S W 429.00 FT TO POB
TH S 89DEG 57M 20S W 896.17 FT
TH N 00DEG 43M 30S W 812.48 FT
TH S 86DEG 38M 12S E 898.70 FT
TH S 00DEG 42M 06S E 759.05 FT TO POB
CONTAINING 16.17 ACRES MORE OR LESS.
SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE S'LY 33 FT FOR YOST RD.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

EXHIBIT H

ARTICLE 5A.00. - FOREST PRESERVATION AND TREE CLEARING

5A.01. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agriculture/farming means any land in which the principal use is to derive income from the growing of plants and trees, including but not limited to land used principally for fruit and timber production.

Caliper means the diameter of a tree trunk measured six inches (15 cm) above ground level for trees up to four-inch caliper and 12 inches above the ground for larger sizes.

Clear cutting means the complete clearing, cutting or removal of trees and vegetation.

Commercial nursery/tree farm means any commercial establishment which is licensed by the state or federal government for the planting, growing and sale of live trees, shrubs, plants and plant materials for gardening and landscaping purposes.

Developed property means any land which is either currently used for residential, commercial, industrial, or agricultural purposes or is under construction of a new building, reconstruction of an existing building or improvement of a structure on a parcel or lot, the relocation of an existing building to another lot, or the improvement of open land for a new use.

Diameter at breast height (DBH) means the diameter in inches of the tree measured at four feet above the existing grade.

Dripline means an imaginary vertical line that extends downward from the outermost tips of the tree branches to the ground.

Forest means any treed area of one-half acre or more, containing at least 28 trees with a DBH of six inches or more.

Grade means the ground elevation.

Grubbing means the effective removal of under-canopy vegetation from a site. This shall not include the removal of any trees.

Landmark/historic tree means any tree which stands apart from neighboring trees by size, form or species, as specified in the landmark tree list in section 94-36, ⁽⁴⁾ or any tree, except box elder, catalpa, poplar, silver maple, tree of heaven, elm or willow, which has a DBH of 24 inches or more.

Single-family lot means any piece of land under single ownership and control that is two acres or more in size and used for residential purposes.

Township tree fund means a fund established for maintenance and preservation of forest areas and the planting and maintenance of trees within the township.

Tree means any woody plant with at least one well-defined stem and having a minimum DBH of three inches.

Undeveloped property means any property in its natural state that is neither being used for residential, commercial, industrial or agricultural purposes nor under construction.

(Amend. of 7-11-2006(2); Amend. of 10-20-2009)

Footnotes:

--- (4) ---

Note— Section 94-36 was repealed by an ordinance adopted July 10, 2006.

5A.02. - Purpose.

The purpose of this article is to promote an increased quality of life through the regulation, maintenance and protection of trees, forests and other natural resources.

(Amend. of 7-11-2006(2))

5A.03. - Interpretation; conflicts with other ordinances.

The provisions of this article shall be construed, if possible, in such a manner as to make such provisions compatible and consistent with the provisions of all existing and future zoning and other ordinances of the township and all amendments thereto. If there is believed to be a conflict between the stated intent and any specific provision of this article, the township board may, in accordance with established zoning ordinance procedures, permit modification of such specific provisions while retaining the intent in such appealed instance.

(Amend. of 7-11-2006(2))

5A.04. - Notice of violation; issuance of appearance ticket.

If a violation of this article is noted, the ordinance inspector will notify the owner of record and the occupant of the property of the violation. Such notice shall specify the violation and the time within which corrective action must be completed. This notice may be served personally or by mail. If the property is not in compliance with this article at the end of the period specified in the notice of violation, an appearance ticket may be issued.

(Amend. of 7-11-2006(2))

5A.05. - Tree removal permit.

A. *Required.*

1. The removal or relocation of any tree with a DBH of six inches or greater on any property without first obtaining a tree removal permit shall be prohibited.
2. The removal, damage or destruction of any landmark tree without first obtaining a tree removal permit shall be prohibited.
3. The removal, damage or destruction of any tree located within a forest without first obtaining a tree removal permit is prohibited.
4. Clear cutting or grubbing within the dripline of a forest without first obtaining a tree removal permit is prohibited.

B. *Exemptions.* All agricultural/farming operations, commercial nursery/tree farm operations and occupied lots of less than two acres in size, including utility companies and public tree trimming agencies, shall be exempt from all permit requirements of this article.

C. *Display* . Tree removal permits shall be continuously displayed for the entire period while the trees are being removed.

D. *Application* . Permits shall be obtained by submitting a tree removal permit application in a form provided by the municipal services department. The application shall *include a tree survey conducted not more than two years prior to the date of application* and contain the following information:

1. The owner and/or occupant of the land on which the tree is located.

2. The legal description of the property on which the tree is located.
 3. A description of the area affected by the tree removal, including tree species mixture, sampling of tree size and the notation of unusual, scarce or endangered trees.
 4. A description of each tree to be removed, including diseased or damaged trees, and the location thereof.
 5. A general description of the affected area after the proposed tree removal.
- E. *Review procedures* . Municipal services shall review the applications for tree removal permits and may impose such conditions on the manner and extent of the proposed activity as are necessary to ensure that the activity or use will be conducted in such a manner as will cause the least possible damage, encroachment or interference with natural resources and natural processes within the affected area.
- F. *Review standards* . The following standards shall be used to review the applications for tree removal permits:
1. The protection and conservation of irreplaceable natural resources from pollution, impairment or destruction is of paramount concern. The preservation of landmark/historic trees, forest trees, similar woody vegetation and related natural resources shall have priority over development when there are other on-site location alternatives.
 2. The tree shall be evaluated for effect on the quality of the area of location, including tree species, habitat quality, health and vigor of tree, tree size and density. Consideration must be given to scenic assets, wind blocks and noise buffers.
 3. The trees and surrounding area shall be evaluated for the quality of the involved area by considering the following:
 - a. Soil quality as it relates to potential tree disruption.
 - b. Habitat quality.
 - c. Tree species (including diversity of tree species).
 - d. Tree size and density.
 - e. Health and vigor of tree stand.
 - f. Understory species and quality.
 - g. Other factors such as value of the trees as an environmental asset (i.e., cooling effect, etc.).
 4. The removal or relocation of trees within the affected areas shall be limited to instances:
 - a. Where necessary for the location of a structure or site improvement and when no reasonable or prudent alternative location for such structure or improvement can be had without causing undue hardship.
 - b. Where the tree is dead, diseased, injured and in danger of falling too close to proposed or existing structures, or interferes with existing utility service, interferes with safe vision clearances or conflicts with other ordinances or regulations.
 - c. Where removal or relocation of the tree is consistent with good forestry practices or if it will enhance the health of remaining trees.
 5. The burden of demonstrating that no feasible or prudent alternative location or improvement without undue hardship shall be upon the applicant.
 6. Tree removal shall not commence prior to approval of a site plan, final site plan for site condominiums or final preliminary plat for the subject property.

(Amend. of 7-11-2006(2); Amend. of 10-20-2009)

Sec. 5a.06. - List of landmark/historic trees.

Landmark/historic trees are as follows:

Common Name	Species	DBH
Arborvitae	Thuja occidentalis	18"
American Basswood	Tilia americana	24"
American Beech	Fagus grandifolia	18"
American Chestnut	Castanea	8"
Birch	Betula spp.	18"
Black Alder	Alnus glutinosa	12"
Black Tupelo	Nyssa sylvatica	12"
Black Walnut	Juglans nigra	20"
White Walnut	Juglans cinerea	20"
Buckeye (Horse Chestnut)	Aesculus spp.	18"
Cedar, Red	Juniperus spp.	12"
Crabapple (cultivar)	Malus spp.	12"
Douglas Fir	Pseudotsuga menziesii	18"
Eastern Hemlock	Tsuga canadensis	12"
Fir	Abies spp.	18"
Flowering Dogwood	Cornus florida	8"
Ginkgo	Ginkgo biloba	18"

Hackberry	Celtis occidentalis	18"
Hickory	Carya spp.	18"
Honey Locust	Gleditsia triacanthos	24"
Kentucky Coffeetree	Gymnocladus dioicus	18"
Larch/tamarack	Larix laricina (Eastern)	12"
Sycamore/London Planetree	Platanus spp.	18"
Maple	Acer spp.(except negundo and saccharinum)	18"
Oak	Quercus spp.	20"
Pine	Pinus spp.	18"
Sassafras	Sassafras albidum	15"
Spruce	Picea spp.	18"
Tuliptree	Liriodendron tulipifera	18"
Cherry	Prunus spp.	18"

(Amend. of 7-11-2006(2); Amend. of 10-20-2009)

5A.07. - Protective barriers.

It shall be unlawful to develop, clear, fill or commence any activity for which a use permit is required in or around a landmark/historic tree or forest without first erecting a continuous protective barrier around the perimeter dripline.

(Amend. of 7-11-2006(2))

5A.08. - Relocation or replacement of trees.

- A. *Landmark tree replacement* . Whenever a tree removal permit is issued for the removal of any landmark tree with a DBH of six inches or greater, such trees shall be relocated or replaced by the

permit grantee. Every landmark/historic tree that is removed shall be replaced by three trees with a minimum caliper of four inches. Such trees will be of the species from section 5b.06.

- B. *Replacement of other trees.* Whenever a tree removal permit is issued for the removal of trees, other than landmark/historic trees, with a DBH of six inches or greater (excluding boxelder (acer negundo), ash(fraxinus spp) and cottonwood (populus spp)), such trees shall be relocated or replaced by the permit grantee if more than 25 percent of the total inventory of regulated trees is removed. Tree replacement shall be done in accordance with the following: If the replacement trees are of at least two-inch caliper at six inches above the ground or eight-foot height for evergreens, but less than three inches measured at six inches above the ground or nine-foot height for evergreens, the permit grantee shall be given credit for replacing one tree. If the replacement trees are of at least three-inch caliper at six inches above the ground or nine-foot height for evergreens, but less than four inches measured at 12 inches above the ground or ten-foot height for evergreens, the permit grantee shall be given credit for replacing 1½ trees. If the replacement trees are of at least four-inch caliper at 12 inches above the ground or ten-foot height for evergreens, the permit grantee shall be given credit for replacing two trees.
- C. *Exemptions .* All agricultural/farming operations, commercial nursery/tree farm operations and occupied lots of less than two acres shall not be required to replace or relocate removed trees.
- D. *Replacement tree standards .* All replacement trees shall:
1. Meet both the American Association of Nurserymen Standards and the requirements of the state department of agriculture.
 2. Be nursery grown.
 3. Be guaranteed for two years, including labor to remove and dispose of dead material.
 4. Be replaced immediately after the removal of the existing tree, in accordance with the American Association of Nurserymen standards.
 5. Be of the same species or plant community as the removed trees. When replacement trees of the same species are not available from Michigan nurseries, the applicant may substitute any species listed in section 5a.06 provided that shade trees are substituted with shade trees and evergreen trees with evergreen species. Ornamental trees need not necessarily be replaced with ornamental trees, but this shall be encouraged where feasible.
- E. *[Location of replacement trees.]* Wherever possible, replacement trees must be located on the same parcel of land on which the activity is to be conducted. Where tree relocation or replacement is not possible on the same property on which the activity is to be conducted, the permit grantee shall either:
1. Pay monies into the township tree fund for tree replacement within the township. These monies shall be equal to the per-tree amount representing the current market value for the tree replacement that would have been otherwise required.
 2. Plant the required trees off site. If the grantee chooses to replace trees offsite the following must be submitted prior to approval of the permit:
 - a. A landscape plan, prepared by a registered landscape architect, indicating the sizes, species and proposed locations for the replacement trees on the parcel.
 - b. Written permission from the property owner to plant the replacement trees on the site.
 - c. Written agreement to permit the grantee to inspect, maintain and replace the replacement trees or assumption of that responsibility by the owner of the property where the trees are to be planted.
 - d. Written agreement to permit township personnel access to inspect the replacements as required.

(Amend. of 7-11-2006(2); Amend. of 10-20-2009)

EXHIBIT I

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHEAST MICHIGAN DISTRICT OFFICE



C. HEIDI GRETHOR
DIRECTOR

June 11, 2018

CERTIFIED MAIL:

Mr. Gary Percy
AD Transport
5601 Belleville Road
Canton Township, MI 48188

Dear Mr. Percy:

SUBJECT: Violation Notice
Order-to-Restore
Complaint Submission No. HND-NSG0-DQ5BD
Site Name: 82-Yost Road-Canton Township
Property Location: Yost Road, Canton Township, Wayne County, MI 48188
T02S, R8E, Section 34

VIOLATION NOTICE:

VN No. CC-0001103

The Department of Environmental Quality's (DEQ) Water Resources Division (WRD) conducted inspections of the property on May 21, 2018 and June 8, 2018, at the above referenced parcel of property. The purpose of these inspections was to evaluate the property for compliance with Part 303 Wetlands Protection (Part 303) and Part 301 Inland Lakes and Streams (Part 301), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the administrative rules for Part 303 and Part 301. At the time of the inspections, WRD staff observed mechanized land clearing, the placement of fill material, and the construction of several drainage ditches within wetland regulated under the authority of Part 303. The recently constructed or improved ditches observed on the property ultimately outlet to a stream (McKinstry Drain) regulated under the authority of Part 301. This letter is being sent because you have been identified as the property owner responsible for the property and/or the unauthorized activities.

Section 30304 of Part 303 prohibits, among other activities, the placement of fill material within wetland and the draining of surface water from a wetland without first obtaining a permit from the DEQ. In addition, Section 30102 of Part 301 prohibits, among other activities, the construction of a ditch or similar waterway where the purpose is ultimately connection with an existing inland lake or stream. A review of WRD files indicates that no permits have been issued for this activity at the property. Therefore, it appears that this activity was conducted in violation of Part 301 and Part 303.

It is our understanding based on our on-site discussion on June 8, 2018, that the purpose of the project is to prepare the land for agricultural use. In consideration of your stated project purpose and the requirements of Part 303, the WRD has determined that a permit would not have been approved for the project. Therefore, within 30 days of the date of this letter, or a

RECEIVED by MCOA 2/2/2022 11:58:19 PM

82-Yost Road-Canton Township
Page 2
June 11, 2018

mutually agreed upon schedule, you must bring the property into compliance with the requirements of Part 303. To comply with Part 303, you must complete the following actions:

1. Remove all unauthorized fill material (e.g. woodchips) as generally shown on the enclosed Preliminary Wetland Map.
2. Restore all ditches as shown on the enclosed Preliminary Wetland Map to original grade utilizing adjacent side-cast spoil material.
3. Seed the wetland areas with a DEQ approved native wetland seed mix and allow the existing vegetation to continue re-establish.
4. Refrain from all farming activities (e.g. plowing, seeding, minor drainage, cultivation) within the wetland areas identified on the enclosed map.

Please contact this office immediately upon completion of the above restoration requirements in order that a WRD inspection can be conducted.

We anticipate your cooperation in resolving this matter. If you have any questions, you may contact me at 586-753-3860; richardsonj1@michigan.gov; or DEQ, Southeast Michigan District Office, 27700 Donald Court, Warren, MI, 48092-2793, Warren, Michigan 48092-2793.

Sincerely,



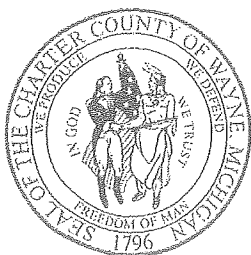
Jeremy Richardson
Southeast Michigan District Office
Water Resources Division

cc: Wayne County Drain Office
Wayne County DPS Engineering Office
Wayne County CEA
Canton Township Clerk
Leigh Thurston, Canton Township Planning Services
Justin Smith, MDEQ-WRD, Lansing
Andrew Hartz, MDEQ-WRD, SEMI District Office

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

EXHIBIT J



Warren C. Evans
Wayne County Executive

July 26, 2018

Mr. Gary Percy
A.D. Transport
5601 Belleville Road
Canton Township, MI 48188

CERTIFIED MAIL

Subject: NOTICE OF DETERMINATION
A.D. Transport
5601 Belleville Road
Canton Township, MI – Wayne County

Dear Mr. Percy:

Wayne County Department of Public Services Land Resource Management Division (LRMD) staff has conducted investigations in response to concerns raised by Canton Township officials regarding earth change activities that have taken place on your property. LRMD staff observed violations of the Wayne County Soil Erosion and Sedimentation Control Ordinance (WCSESCO), Title V, Chapter 94; and Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451 (Part 91) as a result of these earth change activities.

LRMD has determined that you are in violation of the following Part 91 administrative rules and the Wayne County Soil Erosion and Sedimentation Control Ordinance:

WCSESCO Sec. 94-2; Part 91 MCL 324.9112; Part 91 MCL 324.9108; Part 91 MCL 324.9116; Part 91 R 323.1702; Part 91 R 323.1703 and Part 91 R 323.1704.

LRMD staff observed the removal of vegetative cover and the construction of trench drains on approximately 16 acres of undeveloped property adjacent to A.D. Transport at 5601 Belleville Road in Canton Township, MI. These earth change activities disturbed more than 1 acre of land and were within 500 feet of the Fisher and Lenge Drain. The earth change activities were conducted without obtaining a Soil Erosion and Sedimentation Control Permit; without a deposit as condition for issuance; without implementing and maintaining soil erosion and sedimentation control measures; and without the preparation of soil erosion and sedimentation control plans as required the WCSESCO and Part 91.

Wayne County LRMD is working with the Michigan Department of Environmental Quality, Wayne County Drain Commissioner, Wayne County Construction Permit Office and Canton Township on escalated enforcement measures which may include the imposition of civil fines and penalties. This notice of determination does not preclude nor limit LRMD's ability to initiate any other enforcement action under state or county law, as deemed appropriate.

DEPARTMENT OF PUBLIC SERVICES
LAND RESOURCE MANAGEMENT DIVISION/WATER QUALITY MANAGEMENT DIVISION
3600 COMMERCE COURT, BUILDING E, WAYNE, MICHIGAN 48184
(734) 326-3936 • FAX (734) 326-4421



Mr. Gary Percy
July 26, 2018
Page 2

Please contact me at 734-326-4437 or by e-mail at pcullen@waynecounty.com to discuss your options in resolving these violations.

Sincerely,



Patrick C. Cullen, Division Director
Wayne County Department of Public Services
Land Resource Management Division

cc: Jeremy Richardson, MDEQ
Cheryl Petroski-Wilson, MDEQ
Ali Aljawad, Wayne County DPS
Elmeka Steele, Wayne County DPS-ESG
Patricia Moore, Wayne County Corporation Counsel
Tim Faas, Canton Township

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

EXHIBIT K



WAYNE COUNTY DRAIN COMMISSIONER
400 Monroe Street, Suite 400
Detroit, Michigan 48226
(313) 224-3620

July 31, 2018

Mr. Gary Percy
A.D. Transport
5601 Belleville Road
Canton Township, MI 48188

Re: Fisher and Lenge Drain

Dear Mr. Percy:

The Office of the Wayne County Drain Commissioner received information concerning the performance of certain activities on A.D. Transport's property located at Yost Road, Canton Township, MI 48188 ("Property"). The Property is located within the Fisher and Lenge Drain Drainage District ("Drainage District") and the activities undertaken by A.D. Transport may have negatively impacted the portion of the Fisher and Lenge Drain ("Drain") on the Property. The Fisher and Lenge Drain is an established county drain pursuant to the Michigan Drain Code, Public Act 40 of 1956, as amended ("Drain Code").

It is the Drainage District's understanding that A.D. Transport recently performed clearing and other work on the Property and that the Michigan Department of Environmental Quality ("MDEQ") issued a notice of violation as a result of that work. The Drainage District needs to inspect the Drain located on the Property to examine and identify any negative impact the work likely caused on the Drain. As you know, engineers for the Drainage District recently attempted to perform a drain inspection on the portion of the Drain located on the Property. The Drainage District was, however, denied entry to the Property to inspect the Drain. This letter is written to give notice of the Drainage District's right of access to the Drain located on the Property.

The Drainage District holds an easement since 1894 on the Property for the Drain, with a width listed as "sufficient width" to allow for maintenance and other lawful activity. As a result of the Property being completely enclosed with fencing, the Drainage District is currently unable to access its easement to perform such necessary inspection and maintenance on the Drain. *

Under Michigan law, an easement holder, such as the Drainage District in this instance, has a legal right to access the easement area. A property owner who owns land subject to an easement must not block the easement holder's right of access. As a property owner whose land is subject to an easement, A.D. Transport may not interfere with the Drainage District's right of access to the Drain located on the Property. The fence that A.D. Transport has placed in the easement area violates that right of access.

The Drainage District would like to work with A.D. Transport to resolve this matter as opposed to seeking relief in court. A.D. Transport may grant access to the easement area over the Property so that the fence may be maintained; otherwise, the fence must be removed so that access may be had through the Drainage District's easement. The Drainage District is agreeable

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

Mr. Gary Percy
July 31, 2018
Page 2

to having an escort of A.D. Transport's choosing to accompany the Drainage District's engineer at all times while the Drain is inspected.

In the event A.D. Transport fails to comply with the Drainage District's request, please be advised the Drainage District may seek legal action to enforce its legal rights under the Drain easement, if necessary.

Our drains staff and consultants would be pleased to meet with you and other representatives of A.D. Transport to discuss this matter, but the situation needs to be resolved promptly. Please contact me at (313) 224-3620 to discuss a resolution to this matter.

Sincerely,



Elmeka N. Steele, Esq.
Interim Wayne County Drain Commissioner

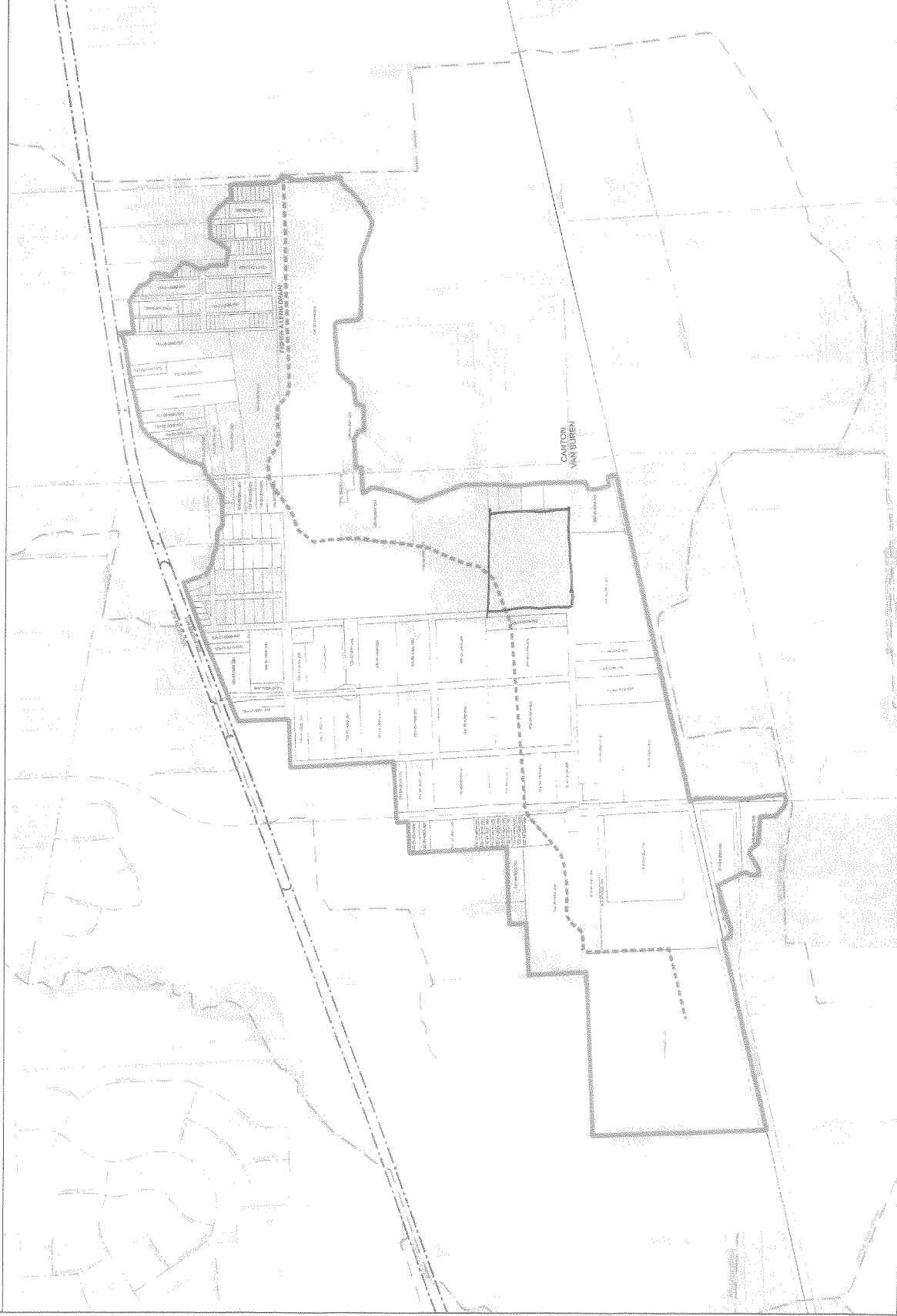
cc: Robert Daiuto, Wayne County Department of Public Services
Patricia Moore, Esq., Wayne County Corporation Counsel
Tim Faas, Canton Township
Jeremy Richardson, MDEQ

RECEIVED by MCOA 2/2/2022 11:58:19 PM



FISHER & LENGE DRAIN - F008

WAYNE COUNTY DRAIN COMMISSIONER
KENNETH M. KUCEL, P.E.



LEGEND

- DRAINAGE DISTRICT 1
- BOUNDARY
- APPROXIMATE LOCATION OF
FISHER & LENGE DRAIN - F008
- OTHER WATER COURSES
- STATE ROADS
- COUNTY ROADS
- LOCAL ROADS
- RAILROAD
- MUNICIPALITIES
- FISHER & LENGE DRAIN
- PARCELS

DAY OF REVIEW OF DRAINAGE
DISTRICT BOUNDARY
DATE
APPROVED

KENNETH M. KUCEL, P.E.
WAYNE COUNTY DRAIN COMMISSIONER

FISHER & LENGE DRAIN - F008
WAYNE COUNTY, MICHIGAN

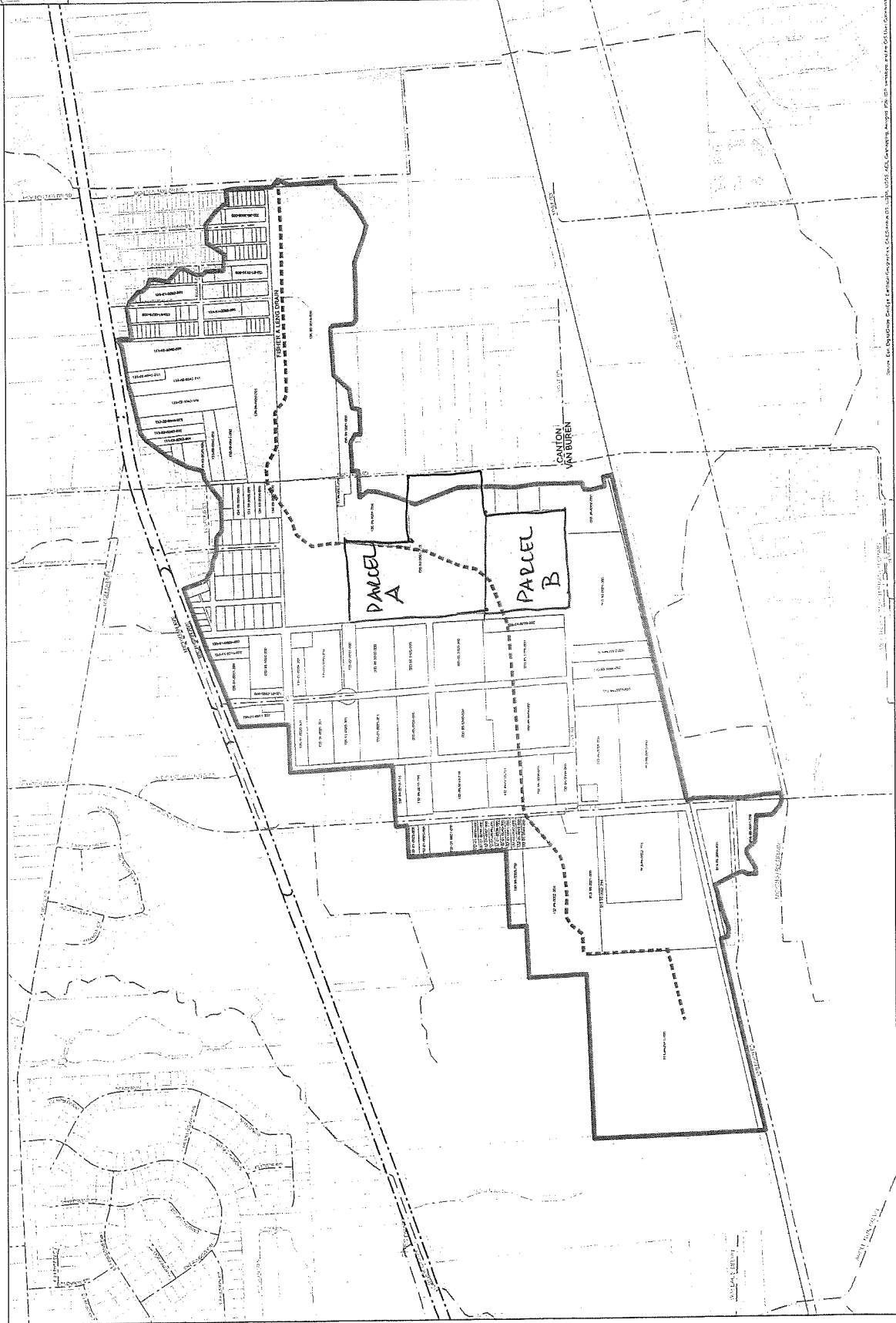
DRAINAGE DISTRICT MAP



DATE	SCALE	SHEET	OF	DR
11/9/2018	1" = 1 MI	1	1	1
PROJECT NO.	PROJECT NAME	PROJECT LOCATION	PROJECT DATE	PROJECT BY
F008	FISHER & LENGE DRAIN	WAYNE COUNTY, MICHIGAN	11/9/2018	KENNETH M. KUCEL, P.E.

EXHIBIT L

WAYNE COUNTY DRAIN COMMISSIONER
KENNETH M. KUCEL, P.E.



DAY OF REVIEW OF DRAINAGE
DISTRICT BOUNDARY:

DATE: 4/14/2015

APPROVED: _____

Ernst H. Liss

BY		MARK	REVISIONS	DATE
<p>THE WORK SUBMITTED BY THE DRAWING WAS REWORKED BY THE CONTRACTOR FOR THIS SPECIFIC APPLICATION AND SPECIFIC LOCATION. REWORKED DRAWING IS ACCORDANCE WITH THE CONTRACT DOCUMENTS. THE CONTRACTOR HAS BEEN ADVISED THAT THE CONTRACTOR DOES NOT GUARANTEE AND WILL NOT BE LIABLE FOR ANY LOCAL TOWN CONDITIONS. PLEASE BE ADVISED.</p>				

DRAINAGE DISTRICT MAP

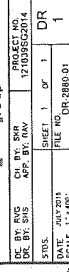


EXHIBIT M

[illegible]

EXHIBIT N

ARTICLE 22.00. - LI, LIGHT INDUSTRIAL DISTRICT^[10]

22.01. - Statement of intent.

The intent of the LI, light industrial district is to provide locations for planned industrial development, including planned industrial park subdivisions. It is intended that permitted activities or operations produce no external impacts that are detrimental in any way to other uses in the district or to surrounding agricultural, residential or commercial uses.

Light industrial, manufacturing, distribution and warehousing, research, and related office uses permitted in this district should be fully contained within well-designed buildings on amply-landscaped sites, with adequate off-street parking and loading areas, and proper screening around outside storage areas. Heavy industrial uses, such as those involving the processing of raw material for shipment in bulk form to be used at another location, shall not be permitted in this district.

Planned development may be permitted as a means to achieve the basic intent of this district, in accordance with the guidelines in section 27.04.

(Ord. of 5-25-2010)

22.02. - Permitted uses and structures.

- A. *Principal uses and structures.* In all areas zoned LI, light industrial district, no building or part of a building shall be erected, used, or structurally altered, nor shall the land or premises be used in whole or in part, except for one or more of the following principal permitted uses:
1. Light manufacturing, assembly, research, packaging, testing and repair of the following:
 - a. Life science products, including, but not limited to: bio-technology, biopharmaceutical, biomedical products, pharmaceuticals, medical instruments, appliances, and diagnostic equipment.
 - b. Material science products, including but not limited to: plastics, polymers; laser technology, and robotics.
 - c. Information technology products, including, but not limited to telecommunications, computer parts and equipment, and electronics.
 - d. Instrumentation products, including, but not limited to scientific instruments, measuring, controlling, testing, and metering equipment; and optical instruments.
 - e. Automotive parts and accessories.
 - f. Food products and beverage products, but not including rendering or refining of fats and oils.
 - g. Apparel including, but not limited to, clothing, jewelry, shoes and accessories.
 - h. Miscellaneous products made from wood, paper, ceramics, metal, glass, and stone.
 - i. Electrical components and products and electrical appliances.
 2. Research and design centers and testing laboratories.
 3. Film production studios, indoor sound stages, and related activities.
 4. Printing, lithography, blueprinting, and similar uses.
 5. Tool, die, gauge, metal polishing, and machine shops.
 6. Contractors establishments, such as the facilities of a building contractor, carpenter, roofing contractor,

plumber, electrician, caterer, exterminator, decorator, or similar business or trade. Any outside storage is subject to the development standards in Section 22.03 below.

7. Office buildings for any of the following occupations: administrative services, executive, professional, accounting, writing, clerical, stenographic, and drafting.
 8. Computer programming, software development and data processing and computer centers.
 9. Plastic injection molding.
 10. Warehousing and material distribution centers.
 11. Vocational training schools, such as trade schools and training centers, subject to the property fronting onto a primary County road.
 12. Secondary retail and service uses, which are accessory to the principal permitted use. Such uses shall not be permitted in a separate building. Such secondary uses shall have at least one separate customer entrance or a service window in a lobby area.
 13. Private indoor recreation uses such as bowling establishments, gymnasiums, ice skating rinks, tennis clubs, roller skating rinks, court sports facilities, and similar recreation' uses. Arcades shall be permitted only where accessory to other private indoor recreation uses.
 14. Dance, gymnastics, martial arts schools, and similar types of studios.
 15. Canine training facility and/or pet day care facility with no outdoor runs, or indoor pet boarding facility.
 16. Other uses similar to the above.
 17. Uses and structures accessory to the above, subject to the provisions in section 2.03.
 18. Essential services, subject to the provisions in section 2.16, subsection A.
- B. *Special land uses.* The following uses may be permitted by the township board, subject to the conditions specified for each use; review and approval of the site plan and application by the planning commission and township board; the imposition of special conditions which, in the opinion of the planning commission, township board, are necessary to fulfill the purposes of this ordinance; and, the provisions set forth in section 27.03.
1. Financial institutions, including banks, credit unions, and savings and loan associations, subject to the property fronting onto a county primary road.
 2. Medical and dental clinics, offices, laboratories, subject to the property fronting onto a primary County road.
 3. Hospitals, subject to the provisions in Section 6.02, subsection L.
 4. Automobile service stations and automobile repair garages, subject to the provisions in section 6.02, subsection C.
 5. Motels and hotels, subject to the provisions in section 6.02, subsection N, subject to the property fronting onto a primary county road.
 6. Assembly halls, display halls, convention centers, banquet halls, and similar places of assembly, including assembly halls for industrial worker organizations.
 7. Religious institutions, subject to the provisions of section 6.02, subsection U.
 8. Private outdoor recreation uses, such as archery ranges, baseball, football or soccer fields, bicycle motocross (BMX) tracks, court sports facilities, golf driving ranges, swimming pools, and similar outdoor recreation uses, subject to the provisions in section 6.02, subsection R.
 9. Rental yards for the temporary storage of recreation vehicles, subject to the following conditions:

- No vehicles, equipment shall be stored within 40 feet of a public right-of-way.
 - The area adjacent to the right-of-way shall be screened with a landscaped berm in accordance with section 5.02, subsection B.
10. Building material sales, including establishments which sell hardware, glass, paint, and lumber, and which may require outdoor retail or wholesale display or sales area. Outdoor storage of materials and equipment shall comply with the development standards in section 22.03 below.
 11. Outdoor display and sales of garages, swimming pools, and similar structures or equipment, subject to the provisions in section 6.02, subsection Q.
 12. New and used automobile sales and rental including customary and incidental uses, subject to the provisions of section 6.02, subsection Q.
 13. Commercial kennels, subject to the provisions in section 6.02, subsection K.
 14. Standard restaurants, under either of the following conditions:
 - The restaurant shall be located at the intersection of two (2) major thoroughfares, the intersection of a major thoroughfare and a street serving an industrial area; or
 - A standard restaurant may be permitted as an accessory use to a private outdoor recreation use, provided that the restaurant and its required parking do not occupy more than 50 percent of the primary use of the site.
 15. Radio, television and cellular telephone towers, subject to provisions of section 6.02, subsection S.
 16. Wholesale facility for sale of unprocessed agricultural products by fanners and producers in a central marketing facility.
 17. Mini-warehouses, subject to the provisions in section 6.02, subsection M.

(Ord. of 5-25-2010; Ord. of 7-11-2017(1), § 1)

22.03. - Development standards.

A. *Required conditions.* Except as otherwise noted for specific uses, buildings and uses in the light industrial district shall comply with the following required conditions:

1. Light manufacturing, assembly, research, packaging, testing and repair or other industrial or business activity shall comply with the performance standards set forth in Article 7.00.
2. Light manufacturing, assembly, research, packaging, testing and repair or other industrial or business activity shall be conducted within a completely enclosed building.
3. Outdoor storage of materials, supplies, and/or finished or semi-finished products may be permitted, subject to the following conditions:

Such storage shall be screened with fencing in accordance with Section 5.08. Where visible from any public or private road, the screen and access gates shall be opaque and be composed of a material compatible with the design and materials of the primary building.

No materials shall be stored above the height of the screening.

Proper access to all parts of the storage areas shall be provided for fire and emergency services.

Any materials, supplies, or products must be located behind the front building line and meet all side and rear setback requirements of the district.

In no case shall any materials, supplies and/or products be stored on properly fronting onto I-275.

Vehicles may be stored in conjunction with special land use approval for new and used automobile sales, subject to the provisions of section 6.02, subsection Q.

Use of trailers and/or shipping containers for storage is prohibited.

4. Parking - proposed uses within multiple-tenant industrial buildings shall demonstrate that there is adequate parking to support the use.
 5. For the purposes of determining landscaping and architectural design requirements, the yard adjacent to the freeway shall be consider the front yard for sites adjacent to I-275.
 6. Truck and trailer parking shall be screened from exposure to I-275 in accordance with the requirements for evergreen screening set forth in section 5.02, subsection D.
- B. *Site plan review.* Site plan review and approval is required for all uses in the Light Industrial district in accordance with section 27.02.
- C. *Area, height, bulk, and placement requirements.* Buildings and uses in the light industrial district are subject to the area, height, bulk, and placement requirements in article 26.00, schedule of regulations.
- D. *Planned development.* Planned development may be permitted in the light industrial district, subject to the standards and approval requirements set forth in section 27.04.
- E. *General development standards.* Buildings and uses in the light industrial district shall be subject to all applicable standards and requirements set forth in this ordinance, as specified below and more generally in section 8.06.

Article	Topic
<u>Article 2.00</u>	General Provisions
<u>Article 4.00</u>	Off-Street Parking and Loading
<u>Article 5.00</u>	Landscaping, Screening and Walls
<u>Article 6.00</u>	Site Development Standards
<u>Article 7.00</u>	Performance Standards
<u>Article 26.00</u>	Schedule of Regulations

(Ord. of 5-25-2010)

EXHIBIT O

ARTICLE 9.00. - RA, RURAL AGRICULTURAL DISTRICT

9.01. - Statement of intent.

The intent of the rural agricultural district is to preserve suitable lands for continued agricultural use, prevent random conversion of agricultural land to urban uses, and provide the basis for property tax assessments which reflect existing and continued agricultural use of the land. Planned development may be permitted as a means to achieve the basic intent of this district in accordance with the guidelines in section 27.04.

9.02. - Permitted uses and structures.

A. *Principal uses and structures.* In all areas zoned RA, rural agricultural, no building or part of a building shall be erected, used, or structurally altered, nor shall the land or premises be used in whole or in part, except for one or more of the following principal permitted uses:

1. Single-family dwellings or single-family farm dwelling for the farm operator or farm owner, provided that not more than one dwelling unit shall be permitted on each 40-acre lot (minimum lot area); except that farm dwellings existing on the effective date of this ordinance and related farm structures remaining after farm consolidation may be separated from the overall farm lot, provided that the parcel created with the structures shall not be less than two acres in size.
2. General and specialized farming and agricultural activities, including the raising or growing of crops, livestock, poultry, bees, and other farm animals, farm products, and foodstuffs, including activities related to the definition of "farm" as stated in section 1.03.
3. Farm buildings, as defined in article [section] 1.03.
4. Idle cropland, provided that such land is maintained so as to prevent the erosion of soil by wind or water.
5. Raising or growing of plants, trees, shrubs, and nursery stock, including any buildings or structures used for such activities or for the storage of equipment and materials necessary for such activities.
6. The sale of retail produce, plants, trees, shrubs, and firewood when such retail activity is conducted in conjunction with an additional farm-related use permitted in this section, and when such retail activity is clearly incidental to the principal use on the property. A substantial portion of the products offered for sale must have been raised or produced on the same premises by the proprietor. Where applicable, such retail sales activity shall be subject to the provisions concerning roadside stands (section 6.02, subsection V) and open air businesses (section 6.02, subsection Q).
7. The growing, stripping, and removal of sod, provided that all stripped land shall be reseeded by fall of the year in which it was stripped so as to prevent the erosion of soil by wind or water.
8. Roadside stands for the display and sale of produce in accordance with section 6.02, subsection V.
9. Private kennels, subject to the provisions in section 6.02, subsection K.
10. Private stables, subject to the provisions in section 6.02, subsection X.
11. Class A mobile homes, subject to the provisions in section 2.05, subsection B.
12. Uses and structures accessory to the above, subject to the provisions in section 2.03.

B. *Special land uses.* The following uses may be permitted by the township board, subject to the conditions specified for each use; review and approval of the site plan and application by the planning commission and township board; the imposition of special conditions which, in the opinion of the planning commission or

township board, are necessary to fulfill the purposes of this ordinance; and, the provisions set forth in section 27.03.

1. Accessory apartments, as defined in section 1.03, subject to the following conditions:
 - Minimum lot size: Two acres.
 - Design characteristics: The design of the accessory apartment shall not detract from the single-family character and appearance of the principal residence or the surrounding neighborhood.
 - Floor area: The accessory apartment shall be clearly incidental to the principal residence on the parcel. Accordingly, the total floor area of the accessory apartment shall not exceed 600 square feet.
 - Parking: In addition to the parking required for the principal residence, one additional off-street parking space shall be provided for the accessory apartment.
2. A guesthouse, as defined in section 1.03.
3. Cemeteries on parcels ten acres or larger, except that pet cemeteries may be established on parcels six acres or larger.
4. Public or private golf courses, subject to the provisions in section 6.02, subsection I.
5. Feedlots and similar operations involving the concentrated feeding of farm animals within a confined area, subject to the following:
 - Any portion of a parcel used for raising of fowl or operating of a hatchery shall be located a minimum of 1,000 feet from any other parcel zoned for residential use. The killing and dressing of fowl are permitted, provided that all such activity is conducted within a fully enclosed building and that all waste parts and offal are immediately disposed of in a proper manner. No outdoor storage of offal shall be permitted.
 - Any pen, corral, or structure used as a feedlot where farm animals are kept shall be located a minimum of 1,000 feet from any other parcel zoned for residential use. All feedlots shall be located a minimum of 150 feet from any residence on adjacent property.
 - The owner of any animal feedlot shall be responsible for the storage, transportation and disposal of all animal manure generated in a manner consistent with the provisions which follow.
 - All manure from confinement manure storage pits or holding areas, when removed, shall be incorporated, knifed in, or disposed of in a reasonable manner, taking into account the season of the year and wind direction. Each feedlot shall have sufficient area to permit proper incorporation or disposal of manure.
 - No animal manure shall be disposed of within the right-of-way of any public road or street.
 - All vehicles used to transport animal manure on roads shall be leakproof.
6. Essential services, subject to the provisions in section 2.16, subsection A.
7. Agricultural sales and service establishments when located adjacent to a major thoroughfare with a right-of-way of 204 feet or greater, and provided further that such establishments are engaged primarily in the performance of agricultural, animal husbandry, or horticultural services on a fee or contract basis, including any of the following services: corn shelling; hay baling and thrashing; sorting, grading, and packing of fruits and vegetables for growers; agricultural product storage; milling and processing; crop dusting; fruit picking; grain cleaning; land grading; harvesting and plowing; farm equipment sales and service; and veterinary services.
8. Retail sales of unprocessed agricultural products by farmers/growers in a central marketing facility.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

10/30/2018
11/9/2018 4:20 PM
WAYNE COUNTY CLERK
Cathy M. Garrett
FILED IN MY OFFICE
18-014569-CE

10/30/2018

Canton Charter Township, (Wayne Co.), MI Code of Ordinances

9. Commercial kennels, subject to the provisions in section 6.02, subsection K.
10. Commercial stables and riding academies, subject to the provisions in section 6.02, subsection X.
11. Gardens, and buildings for storage of gardening equipment on parcels where no principal residential use has been established, provided that the following conditions are met:
- Such facilities shall be for the private use of the owner of the property only.
 - Buildings or structures shall be maintained in good condition and shall be monitored at least once per week.
12. Private outdoor recreation uses, such as archery ranges, baseball, football or soccer fields, motorcross (BMX) tracks, court sports facilities, golf driving ranges, swimming pools, and similar outdoor recreation uses, subject to the provisions in section 6.02, subsection R.
13. Bed and breakfast establishments, subject to provisions in section 6.02, subsection D.1.

(Amend. of 10-20-2009)

9.03. - Development standards.

- A. *Site plan review.* Site plan review and approval is required for all special land uses specified in section 9.02.B in the RA district. Further, site plan review and approval will be required for all uses permitted under section 9.02.A.6. It is the intention of these requirements to permit normal agriculture activities to occur without the need for site plan review or approval.
- B. *Area, height, bulk, and placement requirements.* Buildings and uses in the rural agricultural district are subject to the area, height, bulk, and placement requirements in article 26.00, Schedule of Regulations.
- C. *Planned development.* Planned development may be permitted in the rural agricultural district, subject to the standards and approval requirements set forth in section 27.04.
- D. *General development standards.* Buildings and uses in the rural agricultural district shall be subject to all applicable standards and requirements set forth in this ordinance, as specified below and more generally in section 8.06.

Article	Topic
<u>Article 2.00</u>	General Provisions
<u>Article 4.00</u>	Off-Street Parking Requirements
<u>Article 5.00</u>	Fences and Walls
<u>Article 6.00</u>	Site Development Standards
<u>Article 26.00</u>	Schedule of Regulations

RECEIVED by MCOA 2/2/2022 11:58:19 PM

EXHIBIT P

Jacquetta Parkinson
11/9/2018 4:20 PM
WAYNE COUNTY CLERK
Cathy M. Garrett
FILED IN MY OFFICE
18-014569-CE

Kristin Kolb

From: Leigh Thurston
Sent: Tuesday, October 23, 2018 10:04 AM
To: Kristin Kolb; Tim Faas; Jeff Goulet; Mark Hook
Subject: FW: MLive article--Percys
Attachments: VN-Order to Restore.pdf

From: Richardson, Jeremy (DEQ) [mailto:RICHARDSONJ1@michigan.gov]
Sent: Tuesday, October 23, 2018 10:01 AM
To: Leigh Thurston <leigh.thurston@canton-mi.org>; Hartz, Andrew (DEQ) <HARTZA@michigan.gov>
Cc: Smith, Justin (DEQ) <SMITHJ8@michigan.gov>
Subject: RE: MLive article--Percys

Hi Leigh:

A copy of our Violation Notice (VN) is attached. We are anticipating confirmation that the site has been restored in accordance with the conditions of the VN and will provide a file closure letter upon receiving this confirmation.

Tree farm activities in wetland would be regulated under Part 303, Wetlands Protection of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended and a permit would be needed before completing the activity in wetland areas at the site.

Feel free to contact with any questions or concerns. Thank you,

Jeremy Richardson
MDEQ-WRD, SEMI District Office
27700 Donald Court
Warren, MI 48092-2793
586 753-3860

From: Leigh Thurston <leigh.thurston@canton-mi.org>
Sent: Monday, October 22, 2018 9:16 AM
To: Richardson, Jeremy (DEQ) <RICHARDSONJ1@michigan.gov>; Hartz, Andrew (DEQ) <HARTZA@michigan.gov>
Subject: FW: MLive article--Percys

Jeremy and Andy,

Please see the MLive article on the Percy property in Canton at
https://www.mlive.com/news/detroit/index.ssf/2018/10/brothers_could_pay_nearly_half.html.

I don't believe there are any Christmas Trees planted on this site yet. Is MDEQ going to permit evergreen plantings? It does not meet our ordinance.

Canton issued a violation to Gary Percy on August 29th. Nothing has been resolved yet.

While investigating clearing on the adjacent site to the north, POCO, a week ago we noticed part of the Percy site had been graded and a bridge installed across the drain. Their attorney explained that was done as part of the resolution to satisfy the MDEQ violation.

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

We are very interested in hearing an update on your case with Gary Percy.

Thank you,
Leigh Thurston
Planning Services
(734) 394-5170

From: Kristin Kolb
Sent: Monday, October 22, 2018 8:40 AM
To: Patrick Williams <patrick.williams@canton-mi.org>; Tim Faas <tim.faas@canton-mi.org>; Jeff Goulet <jeff.goulet@canton-mi.org>; Leigh Thurston <leigh.thurston@canton-mi.org>
Cc: Carol Rosati <crosati@rsjalaw.com>
Subject: MLive article--Percys

This article keep the fallacy of the fine/penalty going...

https://www.mlive.com/news/detroit/index.ssf/2018/10/brothers_could_pay_nearly_half.html

Kristin Bricker Kolb
Corporation Counsel
Charter Township of Canton
1150 S. Canton Center Road
Canton, Michigan 48188
TEL: 734.394.5198
FAX: 734.394.5234
kristin.kolb@canton-mi.org
www.canton-mi.org

The information contained in this email message may be privileged, confidential and protected from disclosure, and no waiver of any privilege is intended. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this e-mail message in error, please e-mail the sender and delete all copies.

EXHIBIT Q

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson



Michigan Department of **AGRICULTURE** & Rural Development

Generally Accepted Agricultural and Management Practices for Farm Markets

January 2017

Michigan Commission of Agriculture
& Rural Development
PO Box 30017
Lansing, MI 48909

PH: (877) 632-1783
www.michigan.gov/mdard

RECEIVED by MCOA 2/2/2022 11:58:19 PM

In the event of an agricultural pollution emergency such as a chemical/fertilizer spill, manure lagoon breach, etc., the Michigan Department of Agriculture & Rural Development and/or the Michigan Department of Environmental Quality should be contacted at the following emergency telephone numbers:

Michigan Department of Agriculture & Rural Development: (800) 405-0101
Michigan Department of Environmental Quality: (800) 292-4706

If there is not an emergency, but you have questions on the Michigan Right to Farm Act or items concerning a farm operation, please contact the:

Michigan Department of Agriculture & Rural Development (MDARD)
Right to Farm Program (RTF)
P.O. Box 30017
Lansing, Michigan 48909
(517) 284-5619
(517) 335-3329 FAX
(877) 632-1783

TABLE OF CONTENTS

Prefaceii

Introduction 1

Definitions 2

Physical Characteristics of an On-Farm Market 3

 Use of Space 3

 Buildings 3

 Parking & Driveways 3

 Vehicle Access and Egress 3

 Signage 4

Marketing Characteristics of an On-Farm Market 4

Table of Activities Regulated by Other Authorities.....5

References 6

Review Committee 7

PREFACE

The Michigan legislature passed into law the Michigan Right to Farm Act, (Act 93 of 1981, as amended), which requires the establishment of Generally Accepted Agricultural and Management Practices (GAAMPs). These practices are written to provide uniform, statewide standards and acceptable management practices based on sound science. These practices can serve producers in the various sectors of the industry to compare or improve their own managerial routines. New scientific discoveries and changing economic conditions may require revision of the practices. The GAAMPs are reviewed annually and revised as considered necessary.

The GAAMPs that have been developed are as follows:

- 1) 1988 - Manure Management and Utilization
- 2) 1991 - Pesticide Utilization and Pest Control
- 3) 1993 - Nutrient Utilization
- 4) 1995 - Care of Farm Animals
- 5) 1996 - Cranberry Production
- 6) 2000 - Site Selection and Odor Control for New and Expanding Livestock Facilities
- 7) 2003 - Irrigation Water Use
- 8) 2010 - Farm Markets

These practices were developed with industry, university and multi-governmental agency input. As agricultural operations continue to change, new practices may be developed to address the concerns of the neighboring community. Agricultural producers who voluntarily follow these practices are provided protection from public or private nuisance litigation under the Right to Farm Act.

This GAAMP does not apply in municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for agriculture provided that the ordinance designates existing agricultural operations present prior to the ordinance's adoption as legal non-conforming uses as identified by the Right to Farm Act for purposes of scale and type of agricultural use.

The website for the GAAMPs is <http://www.michigan.gov/gaamps>.

INTRODUCTION

Over the past 20 years farmers have increasingly developed value-added products as a means to maintain or increase profits. One aspect of this trend has been direct marketing of farm products to consumers resulting in an expansion in agricultural tourism (agritourism), including farm markets. As farm operations engage in more on-site retail activity, conflicts have arisen regarding oversight of these emerging on-farm businesses.

Since the mid-20th century, farmers sold commodities in bulk to wholesale buyers. As farming returns declined, some farms were not situated to continue operations selling exclusively into wholesale markets. Many farmers sought a means to capture more value from their production through activities that included providing transportation to deliver their commodities to wholesale buyers, installing packing operations to provide more retail-ready produce to wholesale buyers, etc. Some farmers recognized the financial opportunities of selling directly to consumers. In doing so, they were able to maintain their farming operations and the benefits of those operations to local communities, including economic activity, provision of jobs, open space, carbon sequestration, water filtration, fresh produce, plants, etc. As the consumer trend toward buying locally produced products continues, so does the importance of direct marketing to local communities. Farm markets and roadside stands are an important component of direct marketing, adding value by offering customers a visit to the farm and the opportunity to purchase products from the people who grew them.

The Michigan Right to Farm (RTF) Act defines a "farm operation" as meaning the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products. This definition includes, but is not limited to, marketing produce at roadside stands or farm markets.

Although the RTF Act includes farm markets in the definition of a farm operation, this definition does not define a farm market or describe specific marketing activities. These GAAMPs for Farm Markets were developed to provide guidance as to what constitutes an on-farm market and farm market activities.

Definitions

Farm Market - A "farm market" is a place or an area where transactions between a farm market operator and customers take place. This includes roadside stands. It does not necessarily mean a physical structure such as a building and is considered part of a farm operation. At least 50 percent of the products marketed and offered for sale at a farm market (measured as an average over the farm market's marketing season or up to a five-year timeframe) must be produced on and by the affiliated farm. Farm products may be processed more extensively into a form that adds value and makes them more marketable for direct customer sales in accordance with Michigan laws, and then sold at the affiliated farm market, as long as allowed by local, state and federal regulations. A farm market may operate seasonally or year-round. Farm markets may include marketing activities and services to attract and entertain customers and facilitate retail trade business transactions, when allowed by applicable local, state, and federal regulations.

50 Percent of the Products Marketed - For purposes of determining the percentage of products being marketed, the primary measure will be 50 percent of the retail space used to display products offered for retail sale during the affiliated farm's marketing season. If measurement of retail space during the marketing season is not feasible, then the percent of the gross sales dollars of the farm market will be used.

At least 50 percent of the gross sales dollars of products sold at the farm market need to be from products produced on and by the affiliated farm. For processed products, at least 50 percent of the products' main 'namesake' ingredient must be produced on and by the affiliated farm. For example, the apples used in apple pie, maple sap in maple syrup, strawberries in strawberry jam, etc.

Affiliated – "Affiliated" means a farm under the same ownership or control (e.g. leased) as the farm market whether or not the farm market is located on the property where production occurs. However, the market must be located on land where local land use zoning allows for agriculture and its related activities.

Processed – A farm product or commodity may be processed, in accordance with state and federal laws, to convert it into a value-added product that is more marketable for direct sales. Processing may include packing, washing, cleaning, grading, sorting, pitting, pressing, fermenting, distilling, packaging, cooling, storage, canning, drying, freezing, or otherwise preparing the product for sale. These activities can be used to extend a farm market's marketing season beyond its production season.

Farm - A "farm" means the land, plants, animals, buildings, structures, (including ponds used for agricultural or aquacultural activities), machinery, equipment, and other appurtenances used in the commercial production of farm products.

Farm Product - A "farm product" means those plants and animals useful to humans produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products,

cervidae, livestock (including breeding and grazing), equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur as determined by the Michigan Commission of Agriculture & Rural Development.

Community Supported Agriculture or CSA – A CSA is a marketing strategy in which a farm produces farm products for a group of farm members or subscribers who pay in advance for their share of the harvest. Typically the farm members receive their share once a week, sometimes coming to the farm to pick up their share; other farms deliver to a central point.

U-Pick Operation – A U-pick operation is a farm that provides the opportunity for customers to harvest their own farm products directly from the plant. Also known as pick your own or PYO, these are forms of marketing farm products to customers who go to the farm and pick the products they wish to buy.

Physical Characteristics of a Farm Market

Use of space

A farm market may be a physical structure such as a building or tent, or simply an area where a transaction between a customer and a farmer is made. The farm market must be located on property owned or controlled (e.g. leased) by the producer of the products offered for sale at the market. The property on which the farm market is located does not have to be the land on which the products offered for sale are produced. For example, a farmer with a farm located far from normal traffic patterns may acquire control of land near a more heavily travelled road on which to locate the market. However, the market must be located on property where local land use zoning allows for agriculture and its related activities.

Buildings

If the farm market is housed in a physical structure such as a building or structure as defined and regulated by the Stille-Derossett-Hale Single State Construction Code Act (Act 230 of 1972), the structure must comply with the Stille-Derossett-Hale Single State Construction Code Act (Act 230 of 1972). The placement of the structure must comply with local zoning ordinances, including set-backs from property lines and road right-of-way areas.

Parking and Driveways

Parking and driveway surfaces may be vegetative, ground, pavement, or other suitable material. However, other parking and driveway requirements must comply with all applicable local, state, and federal regulations.

Vehicle Access and Egress

If access and egress to the parking areas is from roads that are under the jurisdiction of the Michigan Department of Transportation (MDOT), a permit from MDOT must be obtained. Examples of these roadways include U.S. Routes (US 127, US 10, etc.),

State of Michigan routes (M-57, M-66, etc.), or interstate business connections (BR I-94, BR US 31, etc.). Information about permits can be obtained from any one of the many MDOT Transportation Service Centers. Likewise, farm markets located adjacent to county or local roads must comply with the access and egress requirements for the appropriate governmental agency.

MDOT issues an "Individual Application and Permit For Use of State Trunkline Right of Way", Form 2205. Further information regarding the general driveway permit process can be found at the following website:

http://www.michigan.gov/mdot/0,1607,7-151-9623_26662_26679_27267_48606-182161--,00.htm

Signage

The operator of the farm market is responsible for contacting the Michigan Department of Transportation (MDOT), county, and/or township government regulatory authority to determine applicable sign regulations and must comply with all applicable local, state and federal regulations for signs.

Marketing Characteristics of a Farm Market

At least 50 percent of the products offered for sale at a farm market must be produced by the farm that is owned or controlled by the person who owns and controls the farm market. The sale of non-farm products at a farm market may be regulated by other governmental bodies. This means that 50 percent or more of the retail space during the marketing season must be devoted to products produced on and by the farm. If measurement of retail space during the marketing season is not feasible, then the determination will be based on 50 percent of the gross sales of products at the farm market. The farm market operator is responsible for collecting and maintaining documentation of products produced on and by his/her farm operation, and the percentage of the retail space used to display products offered for retail sale within their farm market; and when applicable, maintain records of gross sales for products sold at their market.

The determination of retail space used to display products offered for retail sale and/or gross sales of products should be made during the usual marketing season for the farming operation. The marketing season is typically during the production season, and may be extended by the sale of farm processed products.

Farm markets may utilize CSA's and U-pick operations as a marketing strategy.

The operators of farm markets often conduct other activities and services designed to attract and entertain customers while they are at the farm market, and broaden goods and services offered for sale to the public. The activities in the table below are beyond the scope of these management practices, and may be regulated by other governmental bodies.

Farmers who plan to conduct these activities are responsible for obtaining and maintaining regulatory approval from appropriate government agencies. This is not considered an all-inclusive list.

<u>On Farm Activity</u>	<u>On Farm Activity typically regulated by:</u>		
	<u>Federal</u>	<u>State</u>	<u>Local</u>
Bakery		MDARD if selling only	Health Dept. if on-site food consumption
Bed & Breakfasts (B & B)			Health Dept. for on-site food consumption, local regulation
Beer Breweries	ATTB	MDARD/MLC	Local regulation
Bonfires			Local regulation
Camping			Local regulation
Carnival Rides		DLRA	Local regulation
Cider Mill (non-alcoholic)		MDARD if selling only	Health Dept. if on-site food consumption
Concerts			Local regulation
Cooking Demos			Health Dept. if on-site food consumption
Corn Mazes			Local regulation
Distilleries	ATTB	MDARD/MLC	Local regulation
Festivals			Health Dept. for on-site food consumption, local regulation
Fishing Pond			Local regulation
Food Service			Health Dept. for on-site food consumption
Haunted Barns/Trails			Local regulation
Hunting Preserves		DNR/MDARD	
Mud Runs			Local regulation
Petting Farms	USDA		Health Department
Play-scapes			Local regulation
Processing/bottling - Dairy		MDARD	Health Dept. if on-site food consumption, local regulation
Processing – Meat	USDA	MDARD	Health Department
Processing - Fruits & Vegetables	USDA/FDA	MDARD	
Riding Stables		MDARD	Local regulation
Social Events			Health Dept. for on-site food consumption, local regulation
Winery/Hard Cider	ATTB	MDARD/MLC	Local regulation

REFERENCES

Abbreviations used in this document:

MDARD	Michigan Department of Agriculture & Rural Development
RTF or RTFA	Right to Farm Act (Act 93 of 1981, as amended)
DNR	Michigan Department of Natural Resources
ATTB	Alcohol and Tobacco Tax and Trade Bureau
MLC	Michigan Liquor Control Commission
DLRA	Department of Licensing and Regulatory Affairs

State of Michigan. *Report of Recommendations*. Report of the Michigan Agricultural Tourism Advisory Commission. Commission report of Governor Granholm. January, 2007.

State of Michigan. *Agricultural Tourism Local Zoning Guidebook and Model Zoning Ordinance Provisions*. Report of the Michigan Agricultural Tourism Advisory Commission. Commission report of Governor Granholm. January, 2007.

Michigan Commission of Agriculture & Rural Development. *Final Report to the Michigan Commission of Agriculture & Rural Development*. Report of the Michigan Farm Market Task Force. Task Force report to the Michigan Commission of Agriculture & Rural Development. September, 2008.

State of Michigan. Michigan Department of Transportation. Directory of Offices by Region.
http://www.michigan.gov/mdot/0,1607,7-151-9623_26662_26679_27267_48606-182161--,00.html.

Community Supported Agriculture in Michigan, www.csafarms.org.

REVIEW COMMITTEE

Listed below are the annual review committee members for the Generally Accepted Agricultural and Management Practices for Farm Markets.

Bob Tritten, Chair
District Fruit Educator-East
Michigan
Michigan State University
Extension
605 N. Saginaw Street, Suite 1A
Flint, MI 48502
810-244-8555
810-516-3800 – Cell
810-341-1729 – Fax

Joe Barson
Barson's Greenhouse
6414 N. Merriman Rd
Westland, MI 48185
734-421-5959
info@barsons.com

Robert Beckon
Michigan Department of
Transportation
517-335-2211
beckonrd@michigan.gov

Tom Dudek
Senior District
Horticulture/Marketing
Educator
MSU Extension
12220 Filmore St., Suite 122
West Olive, MI 49460
616-994-4580
616-994-4579 - Fax
dudek@msu.edu

Kristin Esch
Michigan Dept. of Agriculture &
Rural Development
Right to Farm Program
PO Box 30017
517-242-1990 – Cell
Eschk@michigan.gov

Michael Fusilier
16400 Herman Road
Manchester, MI 48158
734-428-8982
734-320-6063 – Cell
734-428-0092 – Fax
kmfusilier@aol.com

Ron Goldy
District Ext. Vegetable Educator
Mich. State University Extension
1791 Hillandale Road
Benton Harbor, MI 49022
269-944-1477 ext. 207
269-208-1651 – Cell
269-944-3106 – Fax
goldy@msu.edu

Jeanne Hausler
Food and Dairy Communication
Michigan Dept of Agriculture &
Rural Development
PO Box 30017
Lansing, MI 48909
517-256-8614
hauslerj@michigan.gov

Abby Jacobson
Westview Orchards
65075 Van Dyke Road
Washington, MI 48095
586-752-3123
586-752-4445 – Fax
Abby429@comcast.net

Steve Klackle
Klackle Orchards
11466 W Carson City Road
Greenville, MI 48838
616-754-8632
616-754-9223
www.klackleorchards.com

Kevin McRitchie
TMZ Farm
2324 Patterson Lake Road
Hell, MI 48169
734-878-6425
734-878-1056 – Fax
Kevin.Macritchie@nethope.org

Kurt H. Schindler, AICP
Regional Land Use Educator
MSU Extension, Greening
Michigan Institute
Benzie County Government
Center
448 Court Place
Beulah, Michigan 49617
schindl9@anr.msu.edu

Susan Smalley
Natural Resources Building
480 Wilson Road, Rm 302A
517-432-0049
Smalley3@msu.edu

Wayne Whitman
Right to Farm Program Manager
Michigan Department of
Agriculture & Rural Development
PO Box 30017
Lansing, MI 48909
517-284-5618
517-335-3329 – Fax
whitmanw@michigan.gov

Jeff Zimmer
Deputy Division Director
Michigan Department of
Agriculture & Rural Development
Pesticide and Plant Pest
Management Division
517-284-5638
800-292-3939
zimmerj@michigan.gov

EXHIBIT R

Township Hits Brothers With Fine For Removing Trees

By Tyler Arnold | Oct. 12, 2018

News Story

Wayne County property owners could face \$450,000 fine

Gary and Matt Percy, brothers and business owners in Canton Township, Michigan, face nearly a half a million dollars in fines after they removed trees from their own property without the township's permission.

Many of the plants the Wayne County township is classifying as trees are actually invasive species, according to the brothers' attorney. The Percys hope to start a Christmas tree farm on the land, which would involve planting 2,500 conifers, such as balsams, firs, and spruce trees.

"It is a shockingly high fine for allegedly clearing a retired grazing pasture in an industrial area," said their lawyer, Michael J. Pattwell.

Township officials claim the brothers violated a local ordinance that requires landowners to get government permission before removing trees.

The township does not know the exact number of trees the brothers removed. Instead, it hired an arborist to examine the trees on an adjacent property to estimate what trees had been removed from the Percy's land. The township proposed a settlement of fines totaling about \$450,000 for the removal of what it says is about 1,500 trees, including 100 landmark or historic trees.

The fine can be reduced by about \$70,000 if the brothers pay into the township's tree fund and plant new trees, according to the settlement offer.

Pattwell objected both to the fine and the arborist's method for estimating the number of trees cut down. He also said the brothers thought they qualified for an agricultural exemption from the township. The trees they removed, he said, were mostly invasive plants, including phragmites, buckthorn, and autumn olive. The land, which is located in an industrial part of the township, included a number of dead ash trees as well.

"Nobody argues with the stated goals of local ordinances to protect true heritage trees in communities or promote neighborhood trees to beautify neighborhoods," Pattwell said. "But in this case, we believe strongly the township has abused its authority in order to punish a landowner unreasonably."

Pattwell also said the adjacent property has a different, unique history, making the comparison with the Percy's land problematic.

Pattwell added that the conflict between the brothers and the township is not an isolated problem.

"There are many communities around Michigan that have established local tree removal ordinances that put municipalities in the business of harassing local business and property owners unfairly, certainly," he said.

Kristin Kolb, the township's attorney, said that she was not at liberty to discuss the specific amount of the fines because of a confidentiality agreement. Pattwell said that no confidentiality agreement exists.

Kolb said citations for illegally removing trees are rare in Canton Township, and she defended the township's decision to enforce the ordinance in this case. She also said the method the arborist used, examining an adjacent property that is part of the "same forest," is recognized in the arborist field.

The township has not received a response from Pattwell about the settlement, Kolb said. Patwell said the Percy brothers will defend themselves against Canton Township's fine and threatened legal action.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

Facing up to \$450,000 in fines, brothers defy township to start Christmas tree farm

Darrell Clem, Hometownlife.com

A heated dispute between Canton Township and two brothers who removed hundreds of trees from property they own — amid plans to start a Christmas tree farm — could be headed for a courtroom showdown.

Canton business owners and brothers Gary and Matt Percy could owe as much as \$450,000 after township officials say they removed an estimated 1,500 trees — without permission — from a 16-acre site they own on Canton's south side.

Defying the township, the Percys already have started planting Christmas trees, according to their attorney, Michael J. Pattwell, who responded to questions Monday by email.

Pattwell said it's still possible the two sides can reach "an agreeable resolution," but the Percys aren't backing down.

"We also are absolutely prepared to take this case into a courtroom," he said. "The brothers are also moving forward with their plan to plant 2,500 Christmas trees on the property. Despite the township's roadblocks, they have already planted 1,000 Christmas trees."

Kristin Kolb, the township's corporation counsel, said aerial photos from last October reveal the former trees already had been cut down. But she said Canton officials only learned of the situation in the spring after a neighboring property owner made inquiries.

"There was absolutely nothing left of the trees," Kolb said, prompting the township to look into the matter.

Kolb said the Percy brothers initially indicated they wanted to grow corn on the site. The land is behind a trucking and logistics company, A.D. Transport Express, Inc., which the brothers have owned since the late 1980s on Belleville Road, near Yost.

More: [Pagan says, 'Canton is my hometown' as lawsuit controversy swirls](#)

More: [Westborn Market of Plymouth, a former post office, bags state economic development award](#)

But the Percys have since opted for a Christmas tree farm.

"That was news to us," Kolb said.

Regardless, Pattwell said the Percy brothers believed they were exercising a state and local exemption for farming when they cleared the land.

"That was when the Canton tree police showed up," he said.

Canton Township Supervisor Pat Williams said he had a meeting Tuesday morning with mayors from Romulus, Westland, Livonia and Northville Township — and they discussed the situation. He said they confirmed their communities all have tree ordinances similar to Canton.

"It's not unique," Williams said.

Pattwell said township officials, after learning of the situation, signaled immediately their intention to levy big fines. He has alleged that many plants referred to as trees by the township are, in fact, invasive species. He said the site "was teeming with invasive plants like phragmites, buckthorn, autumn olive and other scrub brush."

Kolb said Canton had in-house and outside arborists examine sections of a wooded area adjacent to the Percys' property to help determine the likely number of trees removed from the site where the brothers want to farm. She said that is how the township arrived at the 1,500 number.

Moreover, Kolb said, that determination is how officials arrived at the \$450,000 that the Percys may owe. She said the Percys could have reduced the amount to about \$350,000 by agreeing to pay into the township's tree fund. She also said it shouldn't technically be referred to as fines.

"It's a payment into the tree fund for opting not to replace trees," she said. "It's the same thing that any

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

developer would have to do."

Brothers have Canton roots

Pattwell said the Percys were born in Canton and their families and employees live there.

"They could have relocated the business to another town, but wanted their business to succeed in Canton," he said.

Meanwhile, Kolb said a state-regulated wetlands area is on the property, prompting the Michigan Department of Environment Quality to issue a violation notice to the Percys.

Pattwell said the Percys "have worked diligently with MDEQ to be able to move forward with the Christmas tree farm and believe that they have satisfactorily resolved all of MDEQ's stated concerns." He said the brothers have been careful not to plant Christmas trees in any possible wetlands area.

A phone message was left Tuesday morning with MDEQ.

Pattwell acknowledged that Wayne County initially expressed some concerns about tree removal that occurred near a county drain on the property. But after an inspection, he said, "Wayne County has not advised of any violations."

Kolb said Canton has a few options going forward: Do nothing, continue trying to resolve the issue with the Percy brothers, write them a ticket and go to 35th District Court or file legal action in Wayne County Circuit Court. It wasn't clear which action might occur.

Kolb said Monday that Canton has waited six weeks for a new response from the Percys to see what is their next course of action. She said the Percys are being given two more weeks before Canton decides how to proceed.

Kolb said the situation is multi-pronged:

- The Percys didn't seek a permit to remove the trees. If they had, she said, they likely would have had to post a bond; agree to replace the trees on their property, in a park or elsewhere; or pay into Canton's tree fund. The brothers could have opted for a combination of those options.
- She said Canton requires 40 acres of land for a new farm, but the property in question is only 16 acres. She said it was bought and split off from a bigger, 40-acre site.
- Kolb said the Percys would have to ask for a variance to have a farm and would need a rezoning, because the property is zoned industrial.

Pattwell acknowledged that many Michigan communities have tree removal ordinances.

"They are meant to promote tree-lined streets in neighborhoods and protect old, stately heritage trees. The Percy brothers, and most people, support this as a community goal. But that's not what this case is about," he said. "We are talking here about a parcel of former pasture land surrounded entirely by industrial activity.

"This case is about misguided overreach. It is unavoidably about whether people who own property are allowed to use it," Pattwell said. "And it is about local government abusing its authority to shake down its residents. We contend the Percy brothers exercised a farming exemption in the local tree removal law to clear the historic pasture behind their business and develop a Christmas tree farm."

Williams disagreed the situation is an overreach by Canton, saying the rules are in place for a reason.

"The reason for this ordinance is so that when developers come to do their projects in our community, there are controls in place to make sure that everybody's best interests in the community are taken into consideration," he said.

Canton officials contend the tree ordinance, in general, has been in effect for years as a way to protect land in the township and to prevent developers from doing what they want without regulatory oversight.

Pattwell said it's worth noting that Canton Township previously owned this land after acquiring it through tax reversion. He said fines Canton says it can impose are more than what the property sold for, calling the amount of fines "unconstitutional and outrageous."

Pattwell said the Canton site isn't the only family company dedicated to Christmas trees. Montgomery Farms, another family company established in 2006, specializes in specializes in secondary trees and has operated in Hillsdale and Albion, he said.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

Contact Darrell Clem at dclem@hometownlife.com. Follow him on Twitter: @CantonObserver.

Read or Share this story: <https://www.hometownlife.com/story/news/local/canton/2018/10/23/facing-up-450-k-fines-brothers-defy-canton-start-tree-farm/1728522002/>

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

Jacquetta Parkinson
11/9/2018 4:20 PM
WAYNE COUNTY CLERK
Cathy M. Garrett
FILED IN MY OFFICE
18-014569-CE

Kristin Kolb

From: Brent Russ <brent.e.russ@gmail.com>
Sent: Tuesday, October 23, 2018 5:26 PM
To: Kristin Kolb
Cc: dafana@mlive.com; mpattwell@clarkhill.com
Subject: Re: Gary & Matt Percy Fine

Kristin,

The basis of my questions is to determine whether or not you are part of a gang of people who claim to have authority over others but possess absolutely zero evidence which supports your claim and establishes your legitimacy. They are the same questions I ask of many delusional people in law enforcement, government, and the legal system to highlight the utter dearth of integrity, honesty, and professionalism you all seem to conduct yourselves with.

Can you please cite where I asked for your legal advice or opinion? All of my questions are regarding facts, evidence, rational and logical thought, basic human morality, and professional ethics. Your '*legal advice*' deflection is the same garbage reply I get from many liawyers when I ask these questions. I've seen it hundreds of times. Most of what liawyers say is a deflection or distraction to the issues that are being raised.

Besides, the very concept of "legal advice" is as laughable as Santa Claus. I mean come on - when five US Supreme Court Justices look at identical facts, laws, and evidence, and they come to a split decision with the other four Justices - it's not like 'the law' is some intrinsic thing anyone can even know. It's just the opinions of people who wear stupid costumes and have such a personal lack of integrity they make others call them "your honor". LOL! Who even acts like that in any other profession? That's how religious cults operate. Imagine if I was consulting a client and I made them call me "your honor" and threatened to lock them in a cage if they disagreed with me? That is the epitome of mental illness and the hallmark of your profession.

So yeah, play your little liawyer games and say it's not a "fine". Make up some new fancy legal term and play your childish semantic games to avoid the moral question of your cults' activity.

It won't surprise me - Fred Rodell, Professor of Law at Yale, explained it all in 'Woe Unto You Lawyers' when he wrote - *"It is this fact more than any other – the fact that lawyers can't or won't tell what they are about in ordinary English – that is responsible for the hopelessness of the non-lawyer in trying to cope with or understand the so-called science of law. For the lawyers' trade is a trade built entirely on words. And so long as the lawyers carefully keep to themselves the key to what those words mean, the only way the average man can find out what is going on is to become a lawyer, or at least to study law, himself. All of which makes it very nice – and very secure – for the lawyers."*

As to your question of who I am - I'm just a rational and sane adult trying to get the lunatics, like you, who are running this asylum, to stop acting like narcissistic, immature, sociopathic little assholes. You're no different than rapists, child molesters, or other weirdo kidnapping predators.

The only logically valid cause of action you will ever have is when you've got (1) a victim and evidence they suffered harm or injury in fact, and (2) the defendant's actions are fairly traceable to said harm/injury. But you

RECEIVED by MCOA 2/2/2022 11:58:19 PM

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

already knew that - that is why refused to answer my questions and why you play the little liawyer games. It's who you are as a person.

Good luck with that conduct, Kristin. You better hope there isn't a God out there watching how you treat others - you probably won't like what He'll do to you when you face real justice. But then again - you will certainly deserve it, won't you?

-Brent

P.S. An even better joke:

Q. Why are there no liawyers in Heaven

A. God actually does hate fags.

On Tue, Oct 23, 2018, 13:10 Kristin Kolb <kristin.kolb@canton-mi.org> wrote:

Mr. Russ-

I do not know who you are, nor the basis for your questions, but I am not authorized to give legal advice or opinions to anyone besides my client, the Charter Township of Canton.

I will say that the Percy brothers have not been fined, nor threatened with a fine, despite Mr. Pattwell couching the matter as such.

Kristin Bricker Kolb
Corporation Counsel
Charter Township of Canton
1150 S. Canton Center Road
Canton, Michigan 48188
TEL: 734.394.5198
FAX: 734.394.5234
kristin.kolb@canton-mi.org
www.canton-mi.org

The information contained in this email message may be privileged, confidential and protected from disclosure, and no waiver of any privilege is intended. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this e-mail message in error, please e-mail the sender and delete all copies.

18-014569-CE FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 11/9/2018 4:20 PM Jacquetta Parkinson

From: Brent Russ [mailto:brent.e.russ@gmail.com]
Sent: Tuesday, October 23, 2018 2:51 PM
To: Kristin Kolb <kristin.kolb@canton-mi.org>
Cc: dafana@mlive.com; mpattwell@clarkhill.com
Subject: Gary & Matt Percy Fine

Dear Kristin Kolb,

In regards to the fine you are attempting to levy against Gary and Matt Percy for failing to obtain a permit for removing trees from their property - I was wondering if you would be honest enough to answer a couple questions for Dana, Michael, and I:

1. What facts and evidence did you rely upon to determine that the Constitution and Codes of Michigan and Canton Township applied to Gary and Matt Percy for the sole reason that they were physically present in Canton Township?
2. Can you provide a lucid and logical explanation of how physically being present somewhere creates a legally binding obligation to a written instrument (such as a code, contract, or constitution, etc.)?
3. If you are arguing that the Constitution, codes, and laws apply but do not have any evidence to support your claim and refuse to answer questions regarding your claim - would it be fair to conclude that you are arguing in bad faith?
4. Is arguing in bad faith, and with-holding the evidence your claim is based on from the defendant, a clear violation of Rule 8.4 in Michigan's Rules For Professional Conduct?

5. Have you made any oaths or signed any instruments promising to uphold Michigan's Rules For Professional Conduct?

6. If I operated my business like Canton Township and forced perfect strangers to pay me money because I told them to - would you consider me a criminal?

7. Is it moral or immoral to use or threaten force and violence against others in furtherance of political or social objectives (outside of the defense of life, liberty, property, or natural rights)?

8. Do any individuals possess the natural right to use or threaten force and violence against others in furtherance of their political or social objectives?

9. Can any person or group of people convey to anyone else the right to do something (like force strangers to pay them money) that no individuals possess themselves? If so, what is the mechanism and on who's authority does this conveyance occur?

10. Was Dr. Robert Diab, Professor of Law at Thompson River University, correct when he admitted in the following interview that *'there is no rational basis for the applicability of the law'*?

<https://youtu.be/wz4apFYZjVQ>

11. Is irrationality a valid cause to extort money from others - or is that fraudulent by its very nature?

12. Was Dr. Fred Rodell, Professor of Law at Yale University, correct when he wrote in 'Woe Unto You Lawyers': *"The purpose of this little inquiry has rather been to show that the whole pseudo-science of The Law, regardless of its results, is a fraud."*

13. Is using a system of fraud to extort money from others ethical? Is it professional? Is it moral? Why or why not?

Thanks for your help!

Regards,

Brent

P.S. To brighten up your day, I've got a great joke us engineers love to share:

Q. Why are lawyers terrible at math? A. Because math is just logic and reason.

EXHIBIT S

27.09. - Violations and penalties.

1. *Public nuisance.* Buildings erected, altered, razed or converted (including tents, mobile homes, and trailer coaches), or uses carried on in violation of any provision of this ordinance are hereby declared to be a nuisance per se, and shall be subject to abatement or other action by a court of appropriate jurisdiction.
2. *Violation.* Any person, firm, corporation, or agent, or any employee, contractor, or subcontractor of same, who fails to comply with any of the provisions of this ordinance or any of the regulations adopted in pursuance thereof, or who impedes or interferes with the enforcement of this ordinance by the building official or other enforcement official, shall be deemed in violation of this ordinance.
3. *Penalties.* Any violation of this ordinance shall constitute a misdemeanor. Any person who is convicted shall be subject to punishment by a fine not exceeding \$500.00 or by imprisonment not exceeding 90 days for each offense, or both, at the discretion of the court. Each day a violation occurs or continues shall constitute a separate offense. Furthermore, the owner or tenant of any building, structure, premise, or part thereof, and any architect, engineer, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains any violation of the ordinance may each be found guilty of a separate offense and may be subject to the penalties provided herein. The cost of prosecution shall also be assessed against the violator.

The imposition of any sentence shall not exempt the offense from compliance with the requirements of this ordinance.

4. *Authority to pursue court action.* The township board or its duly authorized representative is hereby empowered to commence and pursue any and all necessary and appropriate actions or proceedings in the circuit court, or any other court having jurisdiction, to restrain or prevent any noncompliance with or violation of any of the provisions of this ordinance, and to correct, remedy, or abate such noncompliance or violation. Any person aggrieved or adversely affected by such noncompliance or violation may institute suit or join the township board in such a suit to abate the violation.
5. *Other remedies.* The rights and remedies set forth above shall not preclude the use of other remedies provided by law, including any additional rights of the township to initiate proceedings in an appropriate court of law to restrain or prevent any noncompliance with any provisions of this ordinance, or to correct, remedy, or abate such noncompliance.
6. *Rights and remedies preserved.* Any failure or omission to enforce the provisions of this ordinance, and any failure or omission to prosecute any violations of this ordinance, shall not constitute a waiver of any rights and remedies provided by this ordinance or by law, and shall not constitute a waiver of nor prevent any further prosecution of violations of this ordinance.

State Law reference— Violations, MCL 125.294.

EXHIBIT T

2.01. - Administrative regulations.

- A. *Scope of regulations.* No structure or tract of land shall hereafter be used or occupied, and no structure, or part thereof, shall be erected, altered, or moved, except in conformity with the regulations specified herein for the zoning district in which the structure or land is located.

However, where a building permit for a building or structure has been issued in accordance with law prior to the effective date of this ordinance and provided construction is begun within six months of the effective date, said building or structure may be completed in accordance with the approved plans. Furthermore, upon completion of construction said building may be occupied under a certificate of occupancy for the use for which the building was originally designated, subject thereafter to the provisions of article 3.00 concerning nonconformities. Any subsequent text or map amendments shall not affect previously issued valid permits.

- B. *Minimum requirements.* The provisions of this ordinance shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, morals, prosperity, and general welfare.
- C. *Relationship to other ordinances or agreements.* This ordinance is not intended to abrogate or annul any ordinance, rule, regulation, permit, easement, covenant, or other private agreement previously adopted, issued, or entered into and not in conflict with the provisions of this ordinance.

However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than other such ordinances, rules, regulations, permits, easements, covenants, or other private agreements, the requirements of this ordinance shall govern.

- D. *Vested right.* Nothing in this ordinance should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification, or permissible activities therein. Furthermore, such rights as may exist through enforcement of this ordinance are hereby declared to be subject to subsequent amendment, change or modification as may be necessary for the preservation or protection of public health, safety, and welfare.
- E. *Continued conformity with yard and bulk regulations.* The maintenance of yards and other open space and minimum lot area legally required for a building shall be a continuing obligation of the owner of such building or of the property on which it is located, for as long as the building is in existence.

No portion of a lot used in complying with the provisions of this ordinance for yards, courts, lot area, lot coverage, in connection with an existing or planned building or structure, shall again be used to qualify or justify any other building or structure existing or intended to exist at the same time.

- F. *Division and consolidation of land.* The division and consolidation of land shall be in accordance with the subdivision control ordinance of the Charter Township of Canton [chapter 110 of the Township Code]. No zoning lot shall hereafter be divided into two or more zoning lots and no portion of any zoning lot shall be sold, unless all zoning lots resulting from each such division or sale conform with all applicable regulations of the zoning district in which the property is located.
- G. *Unlawful buildings, structures, site designs, and uses.* A building, structure, or use which was not lawfully existing at the time of adoption of this ordinance shall not become or be made lawful solely by reason of the adoption of this ordinance. In case any building, or part thereof, is used, erected, occupied or altered contrary to law or the provisions of this ordinance, such building shall be deemed an unlawful structure and a nuisance and may be required to be vacated, torn down or abated by any legal means, and shall not be used or occupied until it has been made to conform to the provisions of this ordinance. Public expenditures toward abating any such nuisance shall become a lien upon the land.
- H. *Voting place.* The provisions of this ordinance shall not be so construed as to interfere with the temporary use of any property as a voting place in connection with a public election.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CHARTER TOWNSHIP OF CANTON,

Plaintiff/Counter-Defendant/Appellant,

COA No. 354309

-vs-

Lower Court No.18-014569-CE

44650, INC., a Michigan corporation,

Defendant/Counter-Plaintiff/Appellee,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
Anne McClorey McLaughlin (P40455)
Marcelyn A. Stepanski (P44302)
Attorneys for Plaintiff/Counter-Defendant/
Appellant
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
mstepanski@rsjalaw.com

Kristin Bricker Kolb (P59496)
Charter Township of Canton
Co-Counsel for Plaintiff
1150 S. Canton Center Road
Canton, Michigan 48188
(734) 394-5199
kristin.kolb@canton-mi.org

CLARK HILL PLC
Ronald A. King (P45088)
Stephon B. Bagne (P54042)
Michael J. Pattwell (P72419)
Attorneys for Defendant/Counter-Plaintiff/
Appellee
212 E. Cesar Chavez Avenue
Lansing, MI 48906
(517) 318-3100
rking@clarkhill.com
sbagne@clarkhill.com
mpattwell@clarkhill.com

TEXAS PUBLIC POLICY FOUNDATION
CENTER FOR THE AMERICAN FUTURE
Robert Henneke (MI-HENNR)
Chance Weldon (MI-WELDC)
Theodore Hadzi-Antich (MI-HADZT)
Co-Counsel for Defendant/Counter-
Plaintiff/Appellee
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700
rhenneke@texaspolicy.com
cweldon@texaspolicy.com

CHARTER TOWNSHIP OF CANTON'S APPEAL BRIEF
APPENDIX VOLUME II

RECEIVED by MCOA 2/2/2022 11:58:19 PM

4. Deposition Transcript of Gary Percy
5. Notice of Violation
6. Order Status Quo
7. Tree Removal Permit Application
8. Notice of Violation
9. Future Land Use Map Amendment Application
10. 11-20-17 Planning Commission Proceedings
11. Deposition Transcript of Jeff Goulet
12. Deposition Transcript of Leigh Thurston

EXHIBIT 4

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

1

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

CHARTER TOWNSHIP OF CANTON,

Plaintiff/Counter-Defendant,

vs.

Case No. 18-014569-CE

44650, INC., a Michigan corporation,
Counter-Defendant/Plaintiff.

The Deposition of GARY PERCY

Taken at 500 Woodward Avenue

Detroit, Michigan

Commencing at 2:49 p.m.

Thursday, June 13, 2019

Before Renee J. Ogden, CSR-3455, RPR.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

2

1 **APPEARANCES :**

2
3 MICHAEL J. PATTWELL

4 Clark Hill, PLC

5 212 East Cesar E. Chavez Avenue

6 Lansing, Michigan 48906

7 (517) 318-3043

8 Mpattwell@clarkhill.com

9 Appearing on behalf of Plaintiff/Counter-Defendant.

10
11 CHANCE WELDON

12 Texas Public Policy Foundation

13 901 Congress Avenue

14 Austin, Texas 78701

15 (512) 472-2700

16 Cweldon@texaspolicy.com

17 Appearing on behalf of Plaintiff/Counter-Defendant.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

3

1 ANNE MCCLOREY MCLAUGHLIN

2 Rosati Schultz Joppich & Amtsbuechler, PC

3 27555 Executive Drive

4 Suite 250

5 Farmington Hills, Michigan 48331

6 (248) 489-4100

7 Amclaughlin@rsjalaw.com

8 Appearing on behalf of Defendant/Counter-Plaintiff.

9
10 KRISTIN BRICKER KOLB

11 Charter Township of Canton

12 1150 South Canton Center Road

13 Canton, Michigan 48188

14 (734) 394-5199

15 Kristin.kolb@canton-mi.org

16 Appearing on behalf of Defendant/Counter-Plaintiff.

17
18 **ALSO PRESENT:**

19 Leigh Thurston

20 Juliana Butler

21 Matthew Percy

22

23

24

25

TABLE OF CONTENTS

WITNESS	PAGE
GARY PERCY	
EXAMINATION	5
BY MS. MCLAUGHLIN	

INDEX TO EXHIBITS

EXHIBIT	PAGE
(Exhibits attached to transcript.)	
DEPOSITION EXHIBIT 1	19
DEPOSITION EXHIBIT 2	39
DEPOSITION EXHIBIT 3	43
DEPOSITION EXHIBIT 4	
DEPOSITION EXHIBIT 5	
DEPOSITION EXHIBIT 6	
DEPOSITION EXHIBIT 7	
DEPOSITION EXHIBIT 8	
DEPOSITION EXHIBIT 9	

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

5

1 Detroit, Michigan
2 Thursday, June 13, 2019
3 2:49 p.m.

4
5 GARY PERCY,
6 was thereupon called as a witness herein, and after
7 having first been duly sworn or affirmed to testify to
8 the truth, the whole truth and nothing but the truth,
9 was examined and testified as follows:

10 EXAMINATION

11 **BY MS. MCLAUGHLIN:**

12 Q. Would you state your full name for the record, please.

13 A. Gary Allen Percy.

14 Q. Mr. Percy, my name is Anne McLaughlin. I represent
15 the Township in the litigation between the Township
16 and your company, 44650, Inc.

17 Have you ever given a deposition before?

18 A. Yes.

19 Q. How long ago?

20 A. I don't remember.

21 Q. Okay. You know the general process, then: question
22 and answer?

23 A. Yes.

24 Q. Okay. You're doing good so far. I would request that
25 you wait until I finish my question before you answer

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

6

1 and possibly also give your Counsel time if he feels
2 like he needs to object so that we're not talking over
3 each other and you know what my question is and I know
4 what your answer is.

5 If you don't understand a question, please
6 ask me to rephrase it or clarify it in whatever way
7 necessary. Because if you answer a question, I will
8 assume that you understood it and answered
9 accordingly. Is that fair?

10 A. Yes.

11 Q. All right. And also, you are doing well to keep your
12 answers out loud and verbal as opposed to gestures or
13 shakes of the head, things of that nature. Please try
14 to keep those in mind as we go along.

15 A. Okay.

16 Q. Thank you.

17 What is your present residence address?

18 A. 47601 Joy Road, Canton.

19 Q. What is your date of birth?

20 A. 12/5/53.

21 Q. Are you presently married?

22 A. Of course, yes.

23 Q. Do you have children?

24 A. I do.

25 Q. Are they adult children?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

7

1 A. Yes.

2 Q. How far in school did you go?

3 A. 12th.

4 Q. High school?

5 A. Yeah.

6 Q. Have you had any sort of formal education or training
7 beyond high school?

8 A. I attended a couple of classes here and there in the
9 industry.

10 Q. Which industry is that?

11 A. Trucking.

12 Q. Do you have any type of certifications or licenses or
13 anything of that nature?

14 A. No, I don't.

15 Q. What is your present employment?

16 A. I'm president.

17 Q. Of?

18 A. Multiple corporations.

19 Q. Which would you say is your employer of those
20 corporations?

21 **MR. WELDON:** Objection, form.

22 **BY MS. MCLAUGHLIN:**

23 Q. You know what? Before you answer, I'll ask a
24 different question.

25 Do you draw a salary from any of the

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

8

1 corporations of which you are an owner or officer?

2 A. Yes.

3 Q. Which ones?

4 A. A.D. Transport Express, Inc.

5 Q. That is at 5601 Belleville Road?

6 A. It is.

7 Q. And how long have you been employed by A.D. Transport
8 Express, Inc.?

9 **MR. WELDON:** Objection, form.

10 A. From the beginning.

11 **BY MS. MCLAUGHLIN:**

12 Q. When is -- when was the beginning?

13 A. Like, 1985.

14 Q. Was that a company -- is that a company that you
15 founded?

16 A. Me and my brother, yes.

17 Q. Okay. Are there any predecessor companies to
18 A.D. Transport Express?

19 A. Any other --

20 **MR. WELDON:** Objection, form.

21 **BY MS. MCLAUGHLIN:**

22 Q. Any other predecessor companies? I mean, were you in
23 the trucking business before you formed A.D. Transport
24 Express?

25 A. No.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

9

1 Q. How many businesses operate out of the address at
2 5601 Belleville Road?

3 A. There is A.D. Equipment; 5601, Inc.; 45101, Inc.;
4 5905, Inc. -- and there's a lot of them -- 577, Inc.;
5 ADLP Gas, Inc.; 44650, Inc.; Aviation Systems, Inc. I
6 think I have got them all. Maybe not.

7 Q. How many employees does A.D. Transport Express have,
8 approximately?

9 A. At the present time, I think it's a little over 700.

10 Q. Does A.D. Transport Express have any other operating
11 locations other than the Canton facility on
12 Belleville Road?

13 A. No.

14 Where a business is run out?

15 Q. Pardon me?

16 A. Where a business is ran out of; is that what you're
17 asking?

18 Q. Yes.

19 A. Okay, okay.

20 Q. Does A.D. Transport Express have only one office?

21 A. Yes.

22 Q. Does A.D. Equipment have employees?

23 **MR. WELDON:** Objection, form.

24 Go ahead.

25 A. I don't believe so.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

10

1 **BY MS. MCLAUGHLIN:**

2 Q. What about 5601, Inc.?

3 **MR. WELDON:** Objection, form.

4 A. Me.

5 **BY MS. MCLAUGHLIN:**

6 Q. I'm guessing -- and you can tell me if I'm wrong --
7 that 5601, Inc., 45101, Inc., 577, Inc., and 44650,
8 Inc., are entities for the purpose of something like
9 ownership of property; is that correct?

10 **MR. WELDON:** Objection, form.

11 A. Yes.

12 **BY MS. MCLAUGHLIN:**

13 Q. So you don't really have employees of those companies,
14 but they are the entity that holds certain property.

15 **MR. WELDON:** Objection, form.

16 **BY MS. MCLAUGHLIN:**

17 Q. Correct?

18 A. Right.

19 Q. What about ADLP Gas, does it have any employees?

20 **MR. WELDON:** Objection, form.

21 A. No.

22 **BY MS. MCLAUGHLIN:**

23 Q. And Aviation Systems?

24 A. No.

25 **MR. WELDON:** Objection, form.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

11

1 **THE WITNESS:** Sorry.

2 **MR. WELDON:** Mm-hmm.

3 **BY MS. MCLAUGHLIN:**

4 Q. You are a shareholder in all of those entities; is
5 that true?

6 A. Yes.

7 Q. Are there any of those entities in which you are the
8 sole shareholder?

9 A. No.

10 Q. Is your brother Matthew a shareholder in all of those
11 entities?

12 A. Yes.

13 Q. And in A.D. Transport Express as well?

14 A. Yes.

15 Q. Who are the officers of A.D. Transport Express?

16 A. Me and Matt Percy.

17 Q. There are no other persons who are officers?

18 A. No.

19 Q. Have you ever served in any branch of the military?

20 A. No.

21 Q. Have you ever been convicted of a crime including a
22 misdemeanor in any state?

23 A. No.

24 Q. Before forming A.D. Transport Express in the
25 mid-1980s, did you own any other businesses?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

12

1 A. I was part-owner of a van-conversion business.

2 Q. Is that still in business?

3 A. No.

4 Q. Incidentally, what year did you graduate from
5 high school?

6 A. '72.

7 Q. And where did you go to high school?

8 A. All over, too many to mention.

9 Q. Where did you graduate from?

10 A. Down south, Bristol, Virginia.

11 Q. When was 44650, Inc., formed?

12 **MR. WELDON:** Objection, form.

13 You can answer.

14 A. I don't have the date.

15 **BY MS. MCLAUGHLIN:**

16 Q. Was it in existence for some period of time before it
17 purchased the property that was created by the split
18 of a lot owned by Frank Powelson?

19 **MR. WELDON:** Objection, form.

20 A. I believe it was, yes.

21 **BY MS. MCLAUGHLIN:**

22 Q. Does 44650 own any property other than the parcel that
23 is the subject of this lawsuit?

24 A. Is what? Restate the question.

25 Q. Okay. The lawsuit that we are here to discuss

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

13

1 today --

2 A. Right.

3 Q. -- involves a parcel of property that was created by a
4 lot split from a larger parcel owned by
5 Frank Powelson; true?

6 **MR. WELDON:** Objection, form.

7 A. Yes.

8 **BY MS. MCLAUGHLIN:**

9 Q. And 44650, Inc., is the owner of that parcel; correct?

10 A. Yes.

11 Q. I'm going to show you what I had marked as Exhibit 1
12 in Mr. Powelson's deposition and have you take a look
13 at that.

14 A. Okay.

15 Q. Have you seen that document before?

16 A. I have seen a document like this before.

17 Q. So that looks familiar to you.

18 A. Yes.

19 Q. And on that diagram, it's shown that there is a large
20 what I'm going to call and what's referred to on that
21 diagram a parent parcel, which was the original parcel
22 that has been divided into two, into a Parcel A to the
23 north and Parcel B to the south.

24 Do you see that?

25 A. Yes.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

14

1 Q. Is Parcel B the property that is owned by 44650?

2 A. It is.

3 Q. And that's the property that is the subject of this
4 case; correct?

5 A. Yes.

6 Q. So when I say "the property", if I don't make it a
7 reference to some other property or I say
8 "Parcel B" --

9 A. Okay.

10 Q. -- that's what I'm referring to. Okay?

11 A. Sure.

12 Q. How was it that you -- the lot split came to be?

13 A. I don't --

14 **MR. WELDON:** Objection, form.

15 A. I don't understand the question.

16 **BY MS. MCLAUGHLIN:**

17 Q. Did you approach Mr. Powelson, or did he approach you
18 about the purchase of that Parcel B?

19 A. I approached him.

20 Q. Before you approached him, do you know whether he was
21 in the process of or contemplating splitting that
22 property?

23 **MR. WELDON:** Objection, form.

24 A. No idea.

25 **BY MS. MCLAUGHLIN:**

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

15

1 Q. Was it already split when you spoke with him the first
2 time about it?

3 A. No.

4 Q. So what was your purpose in approaching Mr. Powelson?

5 A. To buy the property.

6 Q. And what was your intended use of the property at that
7 time?

8 A. Future growth of the business.

9 Q. And when you say "the business", you're referring to
10 A.D. Transport?

11 A. Correct.

12 Q. Did you have any involvement in the process of the lot
13 split?

14 **MR. WELDON:** Objection, form.

15 You can answer.

16 A. You would have to tell me what part.

17 **BY MS. MCLAUGHLIN:**

18 Q. Well, did you have any involvement in it?

19 A. Sure. I mean, I -- yes.

20 Q. Did you have contact with the engineers who dealt with
21 the actual splitting of the property?

22 A. Yes.

23 Q. Did you hire Alpine Engineering, or did Mr. Powelson?

24 A. I did.

25 Q. Have you had previous dealings with Alpine

1 Engineering?

2 A. Yes.

3 Q. Did you have any contact or dealings with
4 Canton Township with respect to the lot split itself?

5 **MR. WELDON:** Objection, form.

6 You can answer.

7 A. Yes, I had conversations with Jeff Goulet,
8 Pat Williams, and Tom Yack.

9 **BY MS. MCLAUGHLIN:**

10 Q. What was the nature of your contact with Mr. Goulet?

11 A. The documents.

12 Q. And when you say "the documents", what do you mean by
13 that?

14 A. The documents that you would submit for the split.

15 Q. Oh, the actual process of submitting the application
16 and the proposed split?

17 A. Yes.

18 Q. What conversations or involvement with Mr. Williams
19 did you have with respect to the lot split?

20 A. It would have been because this borders Van Buren
21 Township and Canton Township, Van Buren on the south
22 side, there was a question whether or not Canton was
23 going to allow the split, because it had no access to
24 the roads, to the public road.

25 Q. Right. It adjoins Yost Road on the south, but that's

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

17

1 not really an improved road; is it?

2 A. Yost Road is abandoned -- not abandoned, but
3 unimproved.

4 Q. And what input did Mr. Williams have into that
5 question or issue about allowing the split due to the
6 location?

7 A. We spoke with Pat, or I spoke with Pat, and just
8 brought it up and see if there was any assistance that
9 he could give us with regards to Canton Township.

10 Q. And what was his response?

11 A. Well, I think he helped me. I don't know. I don't
12 know what he had.

13 Q. In any event, the lot split went through; right?

14 A. Yes.

15 Q. And you mentioned Tom Yack. What involvement did he
16 have in the lot split?

17 A. Well, he didn't have input with the lot split so much
18 as he was Tom Yack, I guess years ago or a few years
19 ago sold Frank that property through Canton Township.

20 Q. Okay.

21 A. And my question to him was, is there anything wrong
22 with the property.

23 Q. Ah. How did Mr. Yack respond to that?

24 A. He said, "It's old farm property." He says, "There is
25 nothing wrong with it."

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

18

1 Q. Did you undertake any sort of investigation yourself
2 into the conditions on the property before you
3 actually went through with the lot split and the
4 purchase?

5 A. Other than the conversations I told you about with
6 Tom Yack and Pat Williams, I --

7 Q. That was the extent of it?

8 A. Yes.

9 Q. Once the property split was approved, Mr. Powelson --
10 or F.P. Development, actually -- sold the property to
11 your entity, 44650; correct?

12 A. Correct.

13 Q. Do you know what the zoning classification of that
14 property is?

15 **MR. WELDON:** Objection, form.

16 Go ahead.

17 A. It was L1. I believe it's L1. It was L1 and then
18 went to G1, I believe, General Industrial. Maybe it's
19 GI.

20 **BY MS. MCLAUGHLIN:**

21 Q. Do you believe that the zoning classification of that
22 property has been changed?

23 A. It hasn't been changed. We have not filed the
24 paperwork to change it, but the future land use has
25 been approved.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

19

1 **MARKED FOR IDENTIFICATION:**

2 DEPOSITION EXHIBIT 1

3 3:10 p.m.

4 **BY MS. MCLAUGHLIN:**

5 Q. Mr. Percy, I'm showing you what I have had marked as
6 Deposition Exhibit 1.

7 Do you recognize that document?

8 A. Yes.

9 Q. Is this the future land-use change that you just
10 mentioned?

11 A. This was the -- I had a conversation with Jeff Goulet,
12 and he was in the process of doing this and -- anyway,
13 change future land use map.

14 Q. Right. But you understand the Township has a master
15 plan that kind of lays out how it projects future
16 developments will occur?

17 A. And that was what this was.

18 Q. Yeah. And on the existing master plan for future land
19 use, your property was shown as -- when I say "your
20 property", I mean Parcel B -- was shown as Light
21 Industrial, and through this application that was
22 approved by the Township, it was changed to General
23 Industrial.

24 **MR. WELDON:** Objection, form.

25 **BY MS. MCLAUGHLIN:**

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

20

1 Q. Is that true?

2 A. Correct.

3 Q. And that's your signature on the front of the
4 document; correct?

5 A. Yes.

6 Q. How long after the application was submitted did the
7 Township approve the change, if you know?

8 A. I don't know.

9 Q. The current zoning of the property is still Light
10 Industrial; correct?

11 A. Correct.

12 Q. When you purchased the property from Mr. Powelson for
13 the possibility of future growth, did you have a
14 specific use in mind?

15 **MR. WELDON:** Objection, form.

16 Go ahead.

17 A. Basically, that's the last piece that squares us off,
18 our property, and so that's the reason we purchased
19 it. At the time we purchased it, we had no intention
20 -- or, had no -- you know, we don't know if we're
21 going to develop it or not. It hasn't been developed.

22 **BY MS. MCLAUGHLIN:**

23 Q. So there was no specific plan for any specific use for
24 that piece of property when you bought it?

25 A. We were intending to farm it, at which time we would

1 use it.

2 Q. When you say you were "intending to farm it", what do
3 you mean by that?

4 A. Basically, manage the property, manage it and farm it.

5 Q. What type of farm?

6 A. Management, I guess.

7 Q. What type of farm use did you contemplate?

8 A. At what time?

9 Q. When you bought it.

10 A. The idea of farming it was probably what our intent
11 was. We hadn't at that time decided what type of
12 farming we were going to do on it.

13 Q. Okay. Did you have plans to grow some type of crop
14 for sale?

15 **MR. WELDON:** Objection, form.

16 A. Again, we hadn't decided at that point.

17 **BY MS. MCLAUGHLIN:**

18 Q. And that was in 2017; is that right?

19 A. Yes.

20 It was actually before this.

21 Q. Right. I'm going to show you what I have had marked
22 in the Powelson deposition as Exhibit 2.

23 I'd ask if you can identify that document?

24 A. This appears to be the deed, warranty deed for the
25 property.

1 Q. And that document has what date on it?

2 A. August 25th.

3 Q. Okay. At the top there, that's the stamped date.

4 A. Yeah, right.

5 Q. That looks like the date it was received at the
6 Registrar of Deeds?

7 A. So what date do you want me to -- August what?

8 Q. Do you have any reason to believe that it was a
9 different date than August 1, 2017?

10 A. That what?

11 Q. That the transfer of the property was effective.

12 **MR. WELDON:** Objection, form.

13 A. I have no idea.

14 **BY MS. MCLAUGHLIN:**

15 Q. Okay. But you have a document like that in your
16 possession; correct?

17 A. I hope so.

18 Q. All right. So shortly after comparing the dates on
19 the deed and then the request for a change in the
20 master-plan map use, it looks like the property was
21 transferred shortly before you made that request; is
22 that accurate?

23 **MR. WELDON:** Objection, form.

24 A. Based on the dates, yes.

25 **BY MS. MCLAUGHLIN:**

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

23

1 Q. If you were planning to farm the property, why did you
2 request that the map amendment show General Industrial
3 versus Light Industrial use?

4 A. Jeff Goulet made a suggestion. He was the one that
5 suggested it.

6 Q. Did you tell him that you had plans to farm the
7 property?

8 A. Not Jeff. He basically says, "You know, you're in the
9 trucking business," and I believe his statement was,
10 "We need to take it to GI or whatever to make it all
11 the same."

12 Q. Consistent?

13 A. Mm-hmm.

14 Q. Is that yes?

15 A. Yes.

16 Q. So all the property that you own on Belleville Road is
17 zoned GI?

18 **MR. WELDON:** Objection, form.

19 A. I'm not sure of that.

20 **BY MS. MCLAUGHLIN:**

21 Q. I know this diagram isn't very -- doesn't offer a
22 broad view; but on the western property line of the
23 parcels reflected here, do you own all the property
24 that abuts these two properties?

25 A. No.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

24

1 Q. Do you own any property that abuts these two
2 properties?

3 A. No.

4 Q. So there is property between your property and
5 Parcel B that you do not own.

6 **MR. WELDON:** Objection, form.

7 **BY MS. MCLAUGHLIN:**

8 Q. Is that true?

9 A. Yes.

10 Q. To your recollection, did you have any other
11 conversations about this property with anyone from
12 Canton Township that you haven't already identified at
13 the time that you purchased the property?

14 A. Before we purchased it, I had a conversation with
15 Pat Williams with regards to farming.

16 Q. Did you already tell me about that, or no?

17 A. I'm not sure.

18 Q. What did you tell Mr. Williams about your plan to
19 farm?

20 A. We talked about it. He had suggested that -- that we
21 contact a local restaurant in town that's called
22 Rose's, and they do farming as well.

23 Q. Did he say why he thought you should contact them?

24 A. Well, he is friends with Richie. So he said, "You
25 should get Richie to farm it."

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

25

1 Q. What is Richie's full name, if you know?

2 A. I do not know it.

3 Q. You don't know his last name?

4 A. I don't know.

5 Q. Did you ever contact Richie?

6 A. No.

7 Q. Did you ever tell Mr. Williams that you intended to
8 plant corn on the property?

9 A. No.

10 Q. When did you first initiate any plan to clear-cut the
11 forest and trees that were on Parcel B?

12 **MR. WELDON:** Objection, form.

13 A. I'm not sure of the date. I know that the week that
14 we settled on this, Davey Tree Service came in and
15 they took out about 70 feet, the whole southern edge
16 of that property.

17 **BY MS. MCLAUGHLIN:**

18 Q. When you say "they took out -- the whole southern
19 edge" --

20 A. 70 feet.

21 Q. -- what do you mean by that?

22 A. They ground it up. Any vegetation, any anything, they
23 ground it up.

24 Q. Do you know when that took place?

25 A. The first week, probably right at the time we signed

1 for it.

2 Q. In August of 2017?

3 A. Mm-hmm.

4 Q. Yes?

5 A. Yes.

6 Q. Did you have any sort of written agreement with
7 Davey Tree Service for that?

8 A. No, that's DTE. Detroit Edison.

9 Q. Oh, okay. I thought you said it was Davey Tree
10 Service that did that.

11 A. Well, it is. They work for DTE.

12 Q. Did you -- how did that come about, did you contact
13 DTE?

14 A. No.

15 Q. Are you referring to the Davey Tree Service location
16 on Ronda Drive in Canton?

17 A. They're a big company, I don't know. I believe
18 they're all over the United States.

19 Q. Right. Did you contact a local office of theirs,
20 though?

21 A. No.

22 Q. Who did you contact?

23 A. I didn't contact anybody.

24 Q. Okay. Did you arrange for that 70 feet or so at the
25 southern edge of that property to be --

1 A. No.

2 Q. -- cut?

3 They just did that work.

4 A. They came through, and I was driving back in our
5 property and see them and stopped and chitchatted with
6 them.

7 Q. I see. Is there an easement on that portion of your
8 property?

9 A. I would say yes, probably.

10 Q. You don't know for sure?

11 A. I don't know.

12 Q. So Davey did it on behalf of DTE.

13 A. Yes.

14 Q. In which case if DTE had a right to do that, they
15 would have had to have an easement; right?

16 **MR. WELDON:** Objection, form.

17 A. No idea.

18 **BY MS. MCLAUGHLIN:**

19 Q. Well, if somebody has just come in and cleared your
20 property without asking you if they could do it --

21 A. I just happened to see them. I talked to the guys,
22 and they said they were clearing underneath the power
23 lines. So I don't know if there is an easement.

24 Q. Okay. Did you ever have any type of contractual
25 relationship yourself with Davey Tree Service?

1 A. No.

2 Q. After that clearing took place, when did you take any
3 specific action to initiate a plan to remove trees
4 from Parcel B?

5 **MR. WELDON:** Objection, form.

6 A. I don't remember the date.

7 **BY MS. MCLAUGHLIN:**

8 Q. Do you remember how long it was after that Davey Tree
9 Service removal?

10 A. Not really.

11 Q. Was it in 2017?

12 A. Yes.

13 Q. Do you know approximately what month?

14 A. Maybe October, but not sure.

15 Q. Okay. When did you -- -- strike that.

16 Did you contract with another company to
17 perform that removal?

18 A. Yes.

19 Q. And who was that?

20 A. Kilanski.

21 Q. Where is Kilanski located?

22 A. In -- I believe they're Belleville, possibly, Van
23 Buren Township.

24 Q. Had you had previous dealings with them before this
25 particular instance?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

29

1 A. No.

2 Q. Were you referred to them by anybody?

3 A. I knew them just from just -- I believe I sold them a
4 trailer or something.

5 Q. I see. Do you know when they began any work on the
6 property?

7 A. I believe it was maybe in October, late October,
8 something like that.

9 Q. 2017?

10 A. Yes.

11 Q. Did you have any type of formal written agreement with
12 Kilanski to perform that work?

13 A. No.

14 Q. What was the agreed-upon price for the work?

15 A. 40,000.

16 Q. To clear the entire property?

17 A. Yes.

18 MR. WELDON: Objection, form.

19 THE WITNESS: Sorry.

20 MR. WELDON: Mm-hmm.

21 BY MS. MCLAUGHLIN:

22 Q. How long after -- well, strike that.

23 How long did it take Kilanski to complete
24 that job?

25 A. I'm not sure.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

30

1 Q. More than a week?

2 A. I'm not sure.

3 Q. Did you ever visit the property when they were in the
4 process of removing the vegetation from the property?

5 A. Oh, yes.

6 Q. Did you go out there on any type of regular basis when
7 they were in the process of doing that work?

8 **MR. WELDON:** Objection, form.

9 A. I have -- you know, we have almost 100 acres there.
10 So I'm constantly in the yard, because we run trucks
11 and trailers.

12 **BY MS. MCLAUGHLIN:**

13 Q. Who did you deal with from Kilanski -- is that
14 Kilanski Excavating?

15 A. Dave, Dave Kilanski.

16 Q. Did Dave ever suggest to you that there was any type
17 of regulatory matter that you needed to address before
18 having the property cleared?

19 **MR. WELDON:** Objection, form.

20 A. Other than it was loaded down -- it was just all dead
21 trees laying down, trees that were laying at a
22 45-degree angle against other brush; that the property
23 was loaded with buckthorn and some other plants. It
24 was just junk. It wasn't -- it was just junk, brush.

25 Q. Had you before hiring Kilanski, had you made any type

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

31

1 of determination or had somebody determine what type
2 of vegetation was actually on that property?

3 A. Well, the guys at Davey Tree Service, I was
4 chitchatting with them, and they made the comment as
5 well.

6 Q. What comment is that?

7 A. "You have just got a lot of dead stuff out there."
8 Because they were working it. "You have got a lot of
9 dead trees, and it's loaded down with buckthorn, some"
10 -- and -- what's the other one? Anyway, I don't
11 remember.

12 Q. Do you know who you spoke to from Davey Tree Service?

13 A. No. It was just guys that were working there.

14 Q. How long after the clearing of that property was
15 complete did you receive contact from Canton Township
16 about it?

17 A. I believe it was -- I think it's in the complaint that
18 there's -- like, the last week of April or something
19 of 2018.

20 Q. Had you informed anyone from Canton Township that the
21 property was being clear-cut?

22 A. Pat Williams.

23 Q. When did you apprise him of that?

24 A. I believe we were at one of -- we were at his house, I
25 believe. He has some benefit thing that he does, Boys

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

32

1 and Brews or something, I don't know.

2 Q. Do you know when that conversation took place?

3 A. No, I don't.

4 Q. Was it before Kilanski began any work out there?

5 A. No, it would have been -- I believe it would have been
6 after. I'm not 100-percent, though.

7 Q. Did you have any contact with anybody from Canton
8 about clear-cutting the property before the work
9 began?

10 **MR. WELDON:** Objection, form.

11 A. Pat Williams.

12 BY MS. MCLAUGHLIN

13 Q. About that specific subject?

14 A. That it was our intent to farm it, yes.

15 Q. Did you assume that Mr. Williams understood that your
16 intent to farm meant that it would be clear-cut, or
17 did you tell him that it would be clear-cut?

18 A. I don't know. He runs Canton Township. He is a
19 pretty smart guy.

20 Q. That's nice, but you didn't answer my question.

21 A. I would have to assume that he is a very smart guy,
22 and he got it.

23 Q. So you never said, "We're going to go out and clear
24 out those trees from the property" or words to that --

25 **MR. WELDON:** Objection, form.

1 You can answer.

2 A. I don't remember. You know, I don't remember the
3 whole entire conversation, but --

4 **BY MS. MCLAUGHLIN:**

5 Q. You had more than a few conversations with
6 Mr. Williams about the subject of removal of trees
7 from that property; correct?

8 A. Yes.

9 Q. Before and after the ordinance enforcement?

10 **MR. WELDON:** Objection, form.

11 A. I would have to say yes.

12 **BY MS. MCLAUGHLIN:**

13 Q. I believe that you said that the first time you
14 received any contact from the Township was in April of
15 2018 about enforcing the forest-preservation and
16 tree-clearing ordinance?

17 **MR. WELDON:** Objection, form.

18 **BY MS. MCLAUGHLIN:**

19 Q. Is that true?

20 A. I just seen it in the complaint.

21 Q. You don't have a specific recollection of when it was?

22 A. I would have to assume it was -- the complaint would
23 be correct.

24 Q. What was your contact from the Township about
25 enforcing that tree ordinance?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

34

1 A. I don't understand your question.

2 Q. Who contacted you?

3 A. Well, in the complaint, it says Leigh Thurston.

4 Q. I understand that that's what it says in the
5 complaint. What do you remember? I want to know what
6 your personal knowledge is about what you recall about
7 any contact you had.

8 A. Again, I remember something along those lines, but I'm
9 not sure of it.

10 Q. Do you know Leigh Thurston to look at her, to see her?

11 A. I do now.

12 Q. You recognize her sitting here today to my right?

13 A. Yes, I met her when I guess the Township wanted to
14 come out and look over the property. I met her then.
15 But before that, I never knew her.

16 Q. Did you have any phone conversations with her as far
17 as you know before you actually met her in person?

18 A. No. Well, yeah, I had to have.

19 Q. Was it she that called you and told you that you were
20 in violation of the Township's tree ordinance?

21 A. I have to assume so.

22 Q. But you don't have a specific recollection of that.

23 A. I have to assume so. That's all I can tell you.

24 Q. In addition to notifying you that you were in
25 violation of the tree ordinance, do you remember

1 anything else that you were told the first time you
2 were advised of the violation?

3 **MR. WELDON:** Objection, form.
4 You can answer.

5 A. No.

6 **BY MS. MCLAUGHLIN:**

7 Q. When you were first advised of the violation, were you
8 told about any of the options to bring the property
9 into compliance?

10 **MR. WELDON:** Objection, form.
11 Go ahead.

12 A. Not really. We had a meeting -- Pat Williams come
13 down to the office, and we had a meeting with him in
14 our conference room.

15 **BY MS. MCLAUGHLIN:**

16 Q. Okay. But that was obviously after the first time you
17 knew about it.

18 **MR. WELDON:** Objection, form.

19 A. After I got the first call, yes.

20 **BY MS. MCLAUGHLIN:**

21 Q. Right, okay. When you got the first call, were you
22 advised of any of the consequences of violating the
23 ordinance?

24 **MR. WELDON:** Objection, form.

25 A. Well, first of all, we didn't know that we were in

1 violation. It hadn't been established.

2 **BY MS. MCLAUGHLIN:**

3 Q. All right. Have you yourself reviewed the Township's
4 forest-preservation and tree-clearing ordinance?

5 A. I did not look at the ordinance. I looked at the
6 application for a tree permit.

7 Q. When did you do that?

8 A. Before we performed the work.

9 Q. So you looked at the application?

10 A. That's correct.

11 Q. Where did you look at that?

12 A. Online.

13 Q. As a result of looking at that application, did you
14 make any inquiries to the Township about whether you
15 needed to submit a permit application?

16 A. Well, it says in the application that the farming and
17 stuff is exempt. The application didn't need to be
18 filed.

19 Q. From your testimony, I gather that you -- whatever
20 information you got about the requirements, you got
21 from the permit application and not by reading the
22 terms of the ordinance; is that true?

23 **MR. WELDON:** Objection, form.

24 A. Correct.

25 **BY MS. MCLAUGHLIN:**

1 Q. At the time that you looked at that permit
2 application, had you begun farming the property?

3 MR. WELDON: Objection, form.

4 A. I don't understand the question.

5 BY MS. MCLAUGHLIN:

6 Q. You took a look at the permit application, you said,
7 online.

8 A. Yes.

9 Q. How were you made aware of the existence of that
10 application form?

11 A. I'm not sure.

12 Q. In any of your conversations with Jeff Goulet, did he
13 inform you that there was a permit application that
14 had to be made before you could remove trees from the
15 property?

16 MR. WELDON: Objection, form.

17 A. He sent us a letter, and in that letter, it stated
18 that to develop the property -- develop it: build a
19 building, parking lot, whatever -- that I would have
20 to address the tree issue. But we never developed it.

21 BY MS. MCLAUGHLIN:

22 Q. When you looked at the permit application form, had
23 you begun farming the property by that time?

24 MR. WELDON: Objection, form.

25 A. No.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

38

1 **BY MS. MCLAUGHLIN:**

2 Q. Did you ever review any of the zoning requirements for
3 the zoning classification of that property before the
4 tree-removal process began?

5 A. Right here, this form here was filled out.

6 Q. But the property itself and the master-plan
7 classification are not the same; correct?

8 **MR. WELDON:** Objection, form.

9 A. Correct.

10 **BY MS. MCLAUGHLIN:**

11 Q. Do you know when Mr. Goulet sent you the letter that
12 you just referred to?

13 A. I don't know the exact date.

14 Q. Was it sometime between the time you submitted this
15 Exhibit 1 application and -- well, I'm going to
16 withdraw that question. It's not going to work.

17 So if this Exhibit 1 application was
18 submitted in August and the tree-clearing took place
19 in October, we can assume Mr. Goulet's letter was
20 somewhere between August and October of 2017; is that
21 right?

22 **MR. WELDON:** Objection, form.

23 A. I would assume.

24 **MS. MCLAUGHLIN:** Off the record for one
25 second.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

39

1 (Off the record at 3:44 p.m.)

2 (Back on the record at 3:44 p.m.)

3 **MARKED FOR IDENTIFICATION:**

4 DEPOSITION EXHIBIT 2

5 3:45 p.m.

6 **BY MS. MCLAUGHLIN:**

7 Q. Mr. Percy, I'm going to show you what I have had
8 marked as Exhibit 2 and have you take a look at that
9 document.

10 A. Okay.

11 Q. Do you recognize that document?

12 A. Yes, it looks like an email from me.

13 Q. Okay. So do you remember sending Pat Williams an
14 email on May 5, 2018 of this nature?

15 A. Yeah, I would have sent it.

16 Q. Between the time that Ms. Thurston first notified you
17 of the Township's position that you violated the tree
18 ordinance and your drafting of this email to
19 Mr. Williams, had you had any other communications
20 between yourself and anyone from the Township about
21 this violation?

22 A. I'm not sure.

23 Q. Did you have more than one conversation with
24 Leigh Thurston?

25 **MR. WELDON:** Objection, form.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

40

1 A. I don't remember.

2 **BY MS. MCLAUGHLIN:**

3 Q. After you were notified of the violation, did you have
4 any conversations with Jeff Goulet?

5 A. Again, I don't remember.

6 Q. Did you deal with anyone else from the Township from
7 either the planning or ordinance enforcement divisions
8 with respect to the ordinance violation?

9 **MR. WELDON:** Objection, form.

10 **BY MS. MCLAUGHLIN:**

11 Q. Other than Ms. Thurston, Mr. Goulet or -- well, I
12 won't include Pat Williams, because he's not part of
13 those divisions.

14 I'll start the question over.

15 Other than Leigh Thurston and Jeff Goulet,
16 did you deal with anyone else from the Township from
17 either the planning department or ordinance
18 enforcement division with respect to the
19 tree-ordinance violation?

20 **MR. WELDON:** Objection, form.

21 A. I don't remember.

22 **BY MS. MCLAUGHLIN:**

23 Q. Do you remember what, if any, Mr. Williams's response
24 was to the email shown in Exhibit 2?

25 A. Again, I don't remember.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

41

1 Q. When you said you had a meeting with Mr. Williams, was
2 that as a result of this email?

3 MR. WELDON: Objection, form.

4 A. I don't remember, and I'd have to assume.

5 BY MS. MCLAUGHLIN:

6 Q. Okay. Do you know when the meeting that you referred
7 to took place?

8 MR. WELDON: Objection, form.

9 A. With Pat Williams?

10 BY MS. MCLAUGHLIN:

11 Q. Yes.

12 MR. WELDON: Objection, form.

13 A. No, I don't remember.

14 BY MS. MCLAUGHLIN:

15 Q. By the content of this email, evidently you and
16 Mr. Powelson had already had some type of conversation
17 about tree-ordinance enforcement on your property; is
18 that right?

19 MR. WELDON: Objection, form.

20 A. Apparently.

21 BY MS. MCLAUGHLIN:

22 Q. Do you recall any conversations that you had with
23 Mr. Powelson preceding this letter or email?

24 MR. WELDON: Objection, form.

25 A. I talk to Frank a lot, probably too much. But, no,

1 you know, again, I don't remember; so I would just be
2 assuming.

3 **BY MS. MCLAUGHLIN:**

4 Q. Okay. Other than this email to Mr. Williams, did you
5 have any written communications with either
6 Ms. Thurston or Mr. Goulet with respect to the tree
7 ordinance?

8 **MR. WELDON:** Objection, form.

9 A. I don't remember.

10 **BY MS. MCLAUGHLIN:**

11 Q. The Fisher, Lenge, or McKinstry Drain runs through
12 both Mr. Powelson's property and your property; true?

13 A. Yes.

14 Q. Do you have flooding issues on your property because
15 of the drain?

16 A. Of course.

17 Q. You are downstream -- when I say "you", I mean your
18 property is downstream in the drain in Mr. Powelson's
19 property?

20 A. Up.

21 Q. You're upstream?

22 A. Mm-hmm.

23 Q. So the drain flows essentially north?

24 **MR. WELDON:** Objection, form.

25 A. The drain starts in a junkyard just right across the

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

43

1 street from our property. That's where it starts,
2 begins, and just --

3 **BY MS. MCLAUGHLIN:**

4 Q. On Belleville Road?

5 A. Yeah, and it goes through our property east and west.
6 Then on the 16 acres, it goes east and west and then
7 turns north.

8 Q. And then it continues north across Mr. Powelson's
9 property?

10 A. Correct.

11 Q. Do you know where that drain ultimately discharges to?

12 A. No idea.

13 Q. When did you retain Counsel to represent you with
14 respect to the issues that we're here about today?

15 A. I don't remember the day.

16 **MARKED FOR IDENTIFICATION:**

17 DEPOSITION EXHIBIT 3

18 3:53 p.m.

19 **BY MS. MCLAUGHLIN:**

20 Q. I'm going to show you what's been marked as Exhibit 3.
21 I would ask you if you have seen that document before.

22 A. I have seen a document like this, yes.

23 Q. This notice of violation is dated August 29, 2018.

24 A. Yes.

25 Q. Would you have retained Counsel with respect to the

1 tree-ordinance issues before you received this
2 violation notice?

3 MR. WELDON: Objection.

4 MS. KOLB: Hang on, Mr. Percy.

5 MR. WELDON: We're good, we're good.

6 MS. MCLAUGHLIN: Okay, one second.

7 MR. WELDON: Can we go off the record for
8 just a second?

9 MS. MCLAUGHLIN: Sure.

10 (Off the record at 3:54 p.m.)

11 (Back on the record at 3:55 p.m.)

12 MR. WELDON: We can go back on the record.

13 BY MS. MCLAUGHLIN:

14 Q. Mr. Percy, we have had a brief discussion off the
15 record in which your Counsel informed me that
16 Clark Hill law firm has represented you for some
17 period of time, at least, before these tree-ordinance
18 issues arose; is that true?

19 A. Yes.

20 Q. When was the first time you contacted your attorneys
21 regarding the tree-ordinance issues?

22 A. Again, I don't know the date.

23 Q. All right. And to that effect, was it before you
24 received this notice of violation?

25 A. Yes.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

45

1 Q. Do you know whether your attorney had any contact with
2 the Township about it before the notice of violation
3 was issued?

4 MR. WELDON: Objection. That's going to
5 call for privileged communications between Clark Hill
6 and Mr. Percy.

7 Unless you have some other basis of
8 knowledge other than conversations you had with your
9 attorney.

10 THE WITNESS: No.

11 BY MS. MCLAUGHLIN:

12 Q. Based on what I'm reading here, I'm not sure that I
13 asked the question properly. I thought I asked a
14 different question than is shown here.

15 MS. KOLB: Off the record.

16 (Off the record at 3:56 p.m.)

17 (Back on the record at 3:56 p.m.)

18 MS. MCLAUGHLIN: Back on the record.

19 BY MS. MCLAUGHLIN:

20 Q. Mr. Percy, do you know whether your attorney had any
21 contact with Canton Township before the notice of
22 violation was issued?

23 A. Again, without looking at -- no, I don't know.

24 Q. Okay. Are you --

25 A. Not that I don't know. I just don't remember.

1 Q. Okay. Is there something that would refresh your
2 memory?

3 A. I would have to go back and see.

4 Q. To look at it from --

5 A. And I think it would be under the privilege anyway,
6 dates and times.

7 Q. Are you aware that the Township attorney, Ms. Kolb,
8 had communications with Mr. Pattwell regarding the
9 violation in September of 2018?

10 A. I don't know; but if it happened, it happened.

11 Q. Okay. Do you know of any attempts by the Township to
12 start some type of settlement negotiation with respect
13 to the violation?

14 **MR. WELDON:** Objection, form.

15 And I'm also going to object -- you can
16 answer the question, provided that you don't talk
17 about anything that is privileged communications
18 between you and Mike.

19 A. And I think that would be privileged.

20 **BY MS. MCLAUGHLIN:**

21 Q. Are you aware that your Parcel B, shown on the
22 previous exhibit that we looked at earlier, is a
23 regulated wetland?

24 **MR. WELDON:** Objection, form.

25 **BY MS. MCLAUGHLIN:**

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

47

1 Q. Or, contains regulated wetland?

2 MR. WELDON: Objection, form.

3 A. I disagree.

4 MARKED FOR IDENTIFICATION:

5 DEPOSITION EXHIBIT 4

6 3:59 p.m.

7 BY MS. MCLAUGHLIN:

8 Q. I'm going to show you what I have had marked as
9 Exhibit 4. Take a look at that.

10 A. Yes.

11 Okay.

12 Q. Have you seen that document before?

13 A. I have seen a document like this, yes.

14 Q. This is a letter on State of Michigan Department of
15 Environmental Quality letterhead dated June 11, 2018,
16 and addressed to you at A.D. Transport; correct?

17 A. Yes.

18 Q. The letter is two pages, but it also contains an
19 attachment entitled "A Preliminary Wetland Map" --

20 A. Okay.

21 Q. -- at the back.

22 It's the Department of Environmental
23 Quality's position that your property, this property,
24 is regulated wetlands; isn't it?

25 MR. WELDON: Objection, form.

1 A. This is a violation notice kicked off by Canton
2 Township after they called everybody to the table.

3 Since then, the DEQ has agreed that --
4 well, I don't -- I don't even want to make a -- they
5 have given us a release on anything that they said was
6 a violation.

7 **BY MS. MCLAUGHLIN:**

8 Q. Did you have to take any remedial measures in order to
9 obtain that clearance?

10 **MR. WELDON:** Objection, form.

11 You can answer.

12 A. The -- there is -- they show on the last page, they
13 show that there was a ditch, and the Township, as well
14 as the DEQ, had insinuated that we went out there and
15 dug a ditch, and it wasn't true.

16 So they asked us to -- the little bitty --
17 again, I don't know what you would call it; but you
18 have got this area here and this area right here.

19 **MR. WELDON:** Let the record reflect that
20 Mr. Percy just marked on the exhibit two circles.

21 A. They asked us to plug those, I call them lateral
22 drains or lateral ditches; but they have been there
23 since the '60s or the '50s.

24 They also requested could we pick up the
25 wood-chip pile. The wood chip was laying on the

1 ground; it's a byproduct of any woods or anything or
2 any land. They asked us to put -- and those have to
3 go to a landfill.

4 **BY MS. MCLAUGHLIN:**

5 Q. The wood chips?

6 A. Yes.

7 Q. The part that is designated wood-chip fill area on the
8 diagram that is on the last page of Exhibit 4 --

9 A. Yes.

10 Q. -- was that area changed as a result of this letter?

11 **MR. WELDON:** Objection, form.

12 A. The wood chips were just agreed to put them up in a
13 pile.

14 **BY MS. MCLAUGHLIN:**

15 Q. Was the wood-chip area a result of the work that had
16 been done by Kilanski on the property?

17 **MR. WELDON:** Objection, form.

18 A. Yes. The wood chips were generated from not only dead
19 trees, but like buckthorn and invasive plants, and
20 that's why it's got to go to the landfill.

21 **BY MS. MCLAUGHLIN:**

22 Q. Did you meet with anybody from the MDEQ about this
23 letter?

24 A. Yeah, I caught them out there trespassing.

25 Q. Who?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

50

1 A. I did.

2 Q. I'm sorry. You caught who out there trespassing?

3 A. Guys from the DEQ, after being called by Canton
4 Township.

5 Q. Do you know who it was from the MDEQ that was on your
6 property?

7 A. The guy that signed this letter, Jeremy Richardson.
8 He was one of them, and there was another young kid
9 with him.

10 Q. Do you know who that was?

11 A. I don't know who it is.

12 Q. Was the tree removal by Kilanski done in an area that
13 the State identified as a wetland?

14 **MR. WELDON:** Objection, form.

15 A. Kilanski's equipment was up in the upper end, the
16 south end of those wood chips.

17 **BY MS. MCLAUGHLIN:**

18 Q. Do you mean in an area below where the --

19 A. See where Yost Road is --

20 Q. Yes.

21 A. I can draw it on this.

22 In this area right here.

23 Q. The record should reflect you're making a circle with
24 a dark-colored ink pen to demonstrate the area just
25 north of the Yost Road.

1 A. Just north of it, yes. It looks to be it's not even
2 in the wetland, or their so-called wetland.

3 Q. Were there trees removed from the area that they have
4 alleged that there was a wetland?

5 A. No idea.

6 Q. Did you know where on the property --

7 MR. WELDON: Before you ask a question, can
8 we take a break -- or, well, you can finish that
9 question, and afterward we'd like to take a break.

10 MS. MCLAUGHLIN: Sure.

11 MR. WELDON: Okay.

12 BY MS. MCLAUGHLIN:

13 Q. Do you know what areas on the property MDEQ considers
14 regulated wetlands?

15 MR. WELDON: Objection, form.

16 A. I have no idea.

17 BY MS. MCLAUGHLIN:

18 Q. Have you ever seen a wetland inventory done?

19 MR. WELDON: Objection, form.

20 A. Inventory? I don't understand your question.

21 BY MS. MCLAUGHLIN:

22 Q. Have you ever seen a map designating portions of that
23 property as a wetland?

24 MR. WELDON: Objection, form.

25 A. Again, it's questionable, because I've seen those maps

1 before.

2 **BY MS. MCLAUGHLIN:**

3 Q. So your answer is, yes, you have seen those maps.

4 **MR. WELDON:** Objection, form.

5 A. I haven't seen those maps, but I have seen maps of
6 wetlands before.

7 **BY MS. MCLAUGHLIN:**

8 Q. On that property?

9 A. No.

10 **MR. WELDON:** We're going to ask for a break
11 if you're done with that question.

12 **MS. MCLAUGHLIN:** Sure, yeah.

13 (Off the record at 4:08 p.m.)

14 (Back on the record at 4:19 p.m.)

15 **BY MS. MCLAUGHLIN:**

16 Q. Mr. Percy, before the Michigan Department of
17 Environmental Quality issued the letter on June 11,
18 2018 that is Exhibit 4, do you have any information
19 that they visited your property?

20 **MR. WELDON:** Objection, form.

21 A. I think -- I caught them on the property.

22 **BY MS. MCLAUGHLIN:**

23 Q. Right. But was that before this letter was issued or
24 after?

25 A. Before this.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

53

1 Q. Okay. Do you have any information that anyone from
2 Wayne County was on your property at any time after
3 the ordinance violation was issued by Canton Township?

4 MR. WELDON: Objection, form.

5 MS. MCLAUGHLIN: What's wrong with the
6 form?

7 MR. WELDON: You're assuming it's a
8 violation every time you ask the question, so I'm
9 going to continue to object. The fact of the nature
10 of the violation is still in dispute in this case.

11 MR. PATTWELL: If you said "notice of
12 violation" --

13 MR. WELDON: "Notice of violation" wouldn't
14 draw an objection.

15 BY MS. MCLAUGHLIN:

16 Q. Well, Canton Township's position is that there is a
17 violation. You understand that; correct?

18 A. That's the way they have always been.

19 Q. Okay. The answer is nonresponsive.

20 You understand that Canton Township's
21 position is that there has been a violation of its
22 tree ordinance; correct?

23 A. That's been alleged, yeah.

24 Q. Do you have any information that anyone from
25 Wayne County was on your property at any time after

1 the ordinance violation was issued by Canton Township?

2 A. I'm not sure.

3 **MS. MCLAUGHLIN:** By the way, that's the
4 exact same question I asked that you objected to
5 before.

6 **MR. WELDON:** My objection is on the record.

7 **MARKED FOR IDENTIFICATION:**

8 DEPOSITION EXHIBIT 5

9 4:22 p.m.

10 **BY MS. MCLAUGHLIN:**

11 Q. I am showing you what has been marked as Exhibit 5.

12 Do you recall seeing this letter?

13 A. Yes.

14 Q. Did you have any contact with Patrick Cullen of
15 Wayne County after this letter was issued?

16 A. I have, yes.

17 Q. What was the nature of your contact with Mr. Cullen?

18 A. Basically, this is about this letter.

19 Q. Okay. Did you call him?

20 A. Yes.

21 Q. And you spoke to him on the phone?

22 A. Yes.

23 Q. Did you have any other form of communication with
24 Mr. Cullen other than by phone?

25 A. He visited the property.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

55

1 Q. Were you there when he visited the property?

2 A. Yes.

3 Q. Did he visit the property with your permission?

4 A. Yes.

5 Q. Did you walk the property with him?

6 A. Yes.

7 Q. What was the nature of the conversation at that time?

8 A. He had no problem with the property.

9 Q. The first sentence of that letter says that "Wayne
10 County Department of Public Services Land Resource
11 Management Division staff has conducted investigations
12 in response to concerns raised by Canton Township
13 officials regarding earth-change activities that have
14 taken place at your property."

15 Do you know what type of investigations
16 Wayne County may have done before this letter was
17 issued?

18 A. No idea.

19 Q. Okay. When Mr. Cullen visited the property with
20 you -- incidentally, do you know when that was?

21 A. I don't remember.

22 Q. When Mr. Cullen walked the property with you, did he
23 inform you as to any previous visits or observations
24 made at your property by the Wayne County Department
25 of Public Services?

1 A. No.

2 Q. Did you have an understanding what the specific issue
3 was with respect to which there was this notice of
4 determination by Wayne County?

5 A. No.

6 Q. All right. The violation apparently was of the
7 soil-erosion or sediment-erosion control ordinance.

8 MR. WELDON: Objection, form.

9 MS. MCLAUGHLIN: I'm not done.

10 BY MS. MCLAUGHLIN:

11 Q. Do you know specifically what they objected to?

12 A. No.

13 Q. Was there any further activity on the property with
14 Mr. Cullen or after Mr. Cullen's visit?

15 MR. WELDON: Objection, form.

16 A. When? What date are you referencing?

17 BY MS. MCLAUGHLIN:

18 Q. After -- I said either with Mr. Cullen or after his
19 visits.

20 A. No.

21 Q. Did anybody else from Wayne County visit your
22 property, to your knowledge?

23 A. No, just him. I think he had an engineer with him.

24 Q. Do you know who that was?

25 A. I do not.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

57

1 Q. Could you take a look at the second page of that
2 letter.

3 A. Okay.

4 Q. Where it says that persons are copied on the letter --

5 A. Right.

6 Q. -- do any of those names ring a bell that they might
7 be the engineer who was present with Mr. Cullen?

8 A. No.

9 Q. As a result of Mr. Cullen's visit, what were you
10 required to do in order to abate the violation and
11 notice of determination?

12 **MR. WELDON:** Objection, form.

13 A. He asked us to put some seed down along the ditch, and
14 we put the seed down. He had no violations. He said
15 there was no violations.

16 **MARKED FOR IDENTIFICATION:**

17 DEPOSITION EXHIBIT 6

18 4:28 p.m.

19

20 **BY MS. MCLAUGHLIN:**

21 Q. This notice of determination specifically states,
22 though, that the Wayne County Division of Public
23 Services Land Resource Management Division determined
24 that you were in violation of the soil-erosion and
25 sedimentation-control ordinance. That's contained

1 right in the letter; isn't it?

2 A. I understand that. But when he walked the property
3 before this, April 5, 2019, again, he puts it in his
4 letter that there was already preexisting things in
5 there.

6 Q. You're referring to what I haven't shown you yet --

7 A. Right.

8 Q. -- but what I have marked as Exhibit 6.

9 A. Right.

10 Q. The April 15, 2019 letter marked as Exhibit 6
11 indicates that the area around the drain had been
12 subject to erosion and sedimentation as a result of
13 the removal of vegetative cover; correct?

14 A. Yes. That's what the letter says, yes.

15 Q. And as a result of his visit and his observations, he
16 directed you to stabilize the area around the drain so
17 that further erosion and sedimentation would not
18 continue to occur; is that true?

19 MR. WELDON: Objection, form.

20 A. Again, yes. We did exactly what he asked.

21 MARKED FOR IDENTIFICATION:

22 DEPOSITION EXHIBIT 7

23 4:30 p.m.

24 BY MS. MCLAUGHLIN:

25 Q. I have had marked as Exhibit 7 a July 31 letter under

1 the letterhead of the Wayne County Drain Commissioner
2 addressed to you.

3 Do you recognize this document?

4 A. A document like this, yes.

5 Q. What, to your understanding, was the concern of the
6 Wayne County Drain Commissioner that caused this
7 letter to be issued?

8 A. No idea.

9 Q. Have you had any further dealings with the Wayne
10 County Drain Commissioner's Office since the issuance
11 of this letter?

12 A. Trying to get a release and -- of which we got an
13 email that released it.

14 Q. When did you receive an email that released it?

15 A. I don't know. I don't have the date in front of me.

16 Q. Was that recently?

17 A. It was within the last month or so.

18 Q. Was that email directed to you alone?

19 A. No, it was with the attorney.

20 Q. So your attorney had knowledge of the email?

21 A. If he got the email, he would, yeah.

22 Q. Which attorney was it addressed to?

23 A. Mike, I believe, and maybe Chance. I don't know.

24 Q. This letter indicates that there's a fence in the
25 easement area of the Fisher and Lenge Drain. Are you

1 familiar with such a fence?

2 A. Yes.

3 Q. Where is that located on the property?

4 A. It's on the --

5 Q. Can you show me on Powelson Exhibit 1?

6 A. I can't show you on this.

7 Q. Is the drain not shown on there?

8 A. Huh-huh.

9 Q. Oh, sorry.

10 I am handing you what has been marked as
11 Exhibit 4. Can you show me on the third page of that
12 exhibit where the fence is located in the easement for
13 the drain?

14 A. This is just a 16 -- where the fence is is not on this
15 map.

16 Q. All right. Is the -- is the fence within the drain on
17 Parcel A?

18 A. There is no drain on Parcel A. It doesn't show a --

19 Q. I mean on this particular --

20 A. No.

21 Q. Okay. Let me rephrase the question. I realize that
22 this exhibit does not show the drain.

23 But is that where the fence is actually
24 located --

25 A. No.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

61

1 Q. -- is on Parcel A?

2 A. No.

3 Q. Where is it located?

4 A. It's on our property west of that property.

5 Q. So it's on A.D. Transport's property?

6 A. Right. Well, 5601, Inc.

7 Q. Have you ever had any encounters with Canton Township
8 about the tree ordinance before 2017, 2018?

9 A. Not to my knowledge.

10 **MARKED FOR IDENTIFICATION:**

11 DEPOSITION EXHIBIT 8

12 4:36 p.m.

13 **BY MS. MCLAUGHLIN:**

14 Q. I am showing you what has been marked as Exhibit 8.
15 The exhibit consists of two pages.

16 A. Okay.

17 Q. Isn't it true, Mr. Percy, that you were issued a
18 notice of violation of the forest-preservation
19 ordinance in 1994?

20 A. Yeah, I don't remember this.

21 Q. At all?

22 A. No.

23 Q. You don't remember receiving it?

24 A. No. And, again, it calls up tax ID numbers. I don't
25 know where these ID numbers are without looking at a

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

62

1 map.

2 Q. Do you recall a conversation that you had with
3 Pat Williams in which you offered \$25,000 to resolve
4 this ordinance violation?

5 A. Yes.

6 Q. Do you know when that took place?

7 A. I was at one of the -- Frank and I was at one of
8 Pat Williams's parties at his house, and it was talked
9 about.

10 Q. Did Mr. Williams give you any feedback about that
11 offer?

12 A. He just said it wasn't enough.

13 Q. Did he say what was enough?

14 A. No.

15 Q. Back in 1994 when that violation was issued, were you
16 president of A.D. Transport?

17 A. Yes.

18 Q. Do you recall submitting a site plan for expansion of
19 your business in 1994?

20 A. Which one?

21 Q. Well, do you recall submitting a site plan for
22 expansion of your A.D. Transport business in 1994?

23 A. I don't recall it, you know, but --

24 Q. When you have had many site-plan reviews by Canton
25 Township -- strike that.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

63

1 Have you submitted site plans to Canton
2 Township for review and approval for your -- any of
3 your properties and your businesses on Belleville
4 Road?

5 A. Of course.

6 Q. Okay. When you have submitted those, have they
7 involved the expansion of your business?

8 A. Well, sure.

9 Q. Do you recall any of those site plans involving the
10 location of trees on the property?

11 A. Without looking at a print.

12 Q. Have you used the same engineers or architects for all
13 of your businesses that have created site plans for
14 submission to the Township?

15 A. Yeah, I don't recall. I'm sure there was more than
16 one.

17 Q. Are you aware of any conversations that your brother
18 Matthew had with Canton Ordinance Officer Miles Davis
19 back in 1994 about trees being removed without a
20 permit?

21 A. I don't know. I don't recall.

22 Q. Has Canton Township in the past worked with you to
23 remedy any allegations of ordinance violations on any
24 of your properties?

25 **MR. WELDON:** Objection, form.

1 A. You know, without looking at the -- I have been there
2 for 30-plus years.

3 **BY MS. MCLAUGHLIN:**

4 Q. Has the Township prosecuted you for ordinance
5 violations in the past?

6 A. I don't remember.

7 Q. Did you ever have to go to court to deal with an
8 appearance ticket or anything like that for an
9 ordinance violation?

10 A. If you have something to refresh my memory, I don't
11 know. I don't recall.

12 Q. How would you describe your relationship with
13 Canton Township, in general?

14 A. When? Right now, or yesterday, or today, or what?
15 What are you asking?

16 Q. Has it changed over the past 30 years?

17 A. Well, it has now.

18 Q. Before this tree-ordinance issue arose, what was your
19 relationship like with the Township?

20 A. It was fair. It was all right.

21 Q. Have you had any confrontations with any Township
22 officials or employees as a result of the
23 tree-ordinance violations that have been brought
24 against you?

25 **MR. WELDON:** Objection, form.

1 A. When?

2 **BY MS. MCLAUGHLIN:**

3 Q. At any time that the tree-ordinance violations --

4 A. Since the trees?

5 Q. Yes.

6 A. Yeah. Yeah, we have.

7 Q. Who?

8 A. The Fire Marshal and the -- and, evidently, the
9 Building Department.

10 Q. Were you involved in those personally?

11 **MR. WELDON:** Objection, form.

12 A. Not with the Fire Marshal, no.

13 **BY MS. MCLAUGHLIN:**

14 Q. What about with respect to the tree-ordinance
15 enforcement?

16 A. Again, I guess I don't understand your question.

17 Q. Have you had any confrontations with Township
18 officials or employees regarding the tree-ordinance
19 violation that's been brought against you?

20 **MR. WELDON:** Objection, form.

21 A. We have not had any -- well, other than the Fire
22 Marshal showing up.

23 **BY MS. MCLAUGHLIN:**

24 Q. That's not related to the tree ordinance.

25 A. Huh-huh.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

66

1 Q. When was the last time you talked to Pat Williams
2 about the tree-ordinance issue?

3 A. Without looking back, I don't know.

4 Q. Without looking back at what?

5 A. I would have to look back at my notes or whatever.

6 Q. Do you keep notes of your conversations with
7 Mr. Williams?

8 A. It would have probably been an email that says: "Pat,
9 give me a call."

10 Q. Okay. Do you keep a calendar?

11 A. Very small.

12 Q. Would any of your meetings, or I think you called it
13 Boys and Brew at Pat Williams's house, be reflected in
14 a calendar that you have?

15 A. No.

16 Q. I'm going to show you what I marked in Mr. Powelson's
17 deposition as Exhibit 5, which consists of three
18 pages, and have you to take a look at that.

19 A. Okay.

20 Q. Do you recognize what's depicted in those photographs?

21 A. Yeah, this is 16 acres.

22 Q. That's Parcel B?

23 A. Yeah.

24 Q. Do you know who took those photographs?

25 A. No idea.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

67

1 Q. There are three of them there, by the way.

2 A. No idea.

3 Q. Have you ever seen them before?

4 A. I don't think so.

5 Q. Do you know whether they reflect the condition as
6 these exist on the property presently?

7 A. No.

8 Q. No, you don't know, or, no, it --

9 A. No, it's different. It's grass.

10 Q. Based on how your property appeared after the tree
11 removal, would it be fair to assume that those
12 photographs were taken shortly after the tree removal?

13 A. I'm not sure. I don't know who took them.

14 **MARKED FOR IDENTIFICATION:**

15 DEPOSITION EXHIBIT 9

16 4:48 p.m.

17 **BY MS. MCLAUGHLIN:**

18 Q. I would like you take a look at what I have had marked
19 as Exhibit 9.

20 A. Okay.

21 Q. Have you seen this document before?

22 A. I'm sure I have.

23 Q. Do you know whether you had any role in preparing it?

24 A. I'm not sure. This would have been something --

25 Q. Do you know where the information contained in

1 Exhibit 9 came from?

2 A. I think from Google maps or something. Some mapping
3 software, I don't know.

4 Q. The diagrams, or the pictures?

5 A. No, I don't know.

6 Q. All right. Did you have any hand in preparing the
7 descriptions that are contained in that document?

8 A. Legal descriptions?

9 Q. No, the narrative that is contained in between the
10 pictures.

11 A. No idea.

12 Q. What attempts did you make to negotiate a resolution
13 of the notice of the violation of the tree ordinance
14 with Canton Township?

15 **MR. WELDON:** Objection, form.

16 A. Do what, now?

17 **BY MS. MCLAUGHLIN:**

18 Q. What attempts did you make to negotiate a resolution
19 of the violation of the tree ordinance with Canton
20 Township?

21 A. Just through Pat Williams. We already talked about
22 that.

23 Q. You're talking about the \$25,000 offer?

24 A. Correct.

25 Q. Was there anything additional?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

69

1 A. Through the attorneys.

2 Q. Do you know what through the attorneys was offered as
3 an attempt to resolve the violation notice?

4 A. It would be between the attorneys.

5 Q. Were you ever made aware of what anything was offered
6 from the attorneys?

7 **MR. WELDON:** I'm going to object to
8 privilege. You're asking for communications between
9 Mike and Gary, and that is just going to be privileged
10 communication.

11 **BY MS. MCLAUGHLIN:**

12 Q. What is your relationship, if any, with Leander
13 Richmond?

14 A. He owns Eagle Express.

15 Q. How does that relate to you?

16 A. It's a specialized transportation company.

17 Q. Where is it located?

18 A. Out of our office.

19 Q. It's located in your office on Belleville Road?

20 A. Correct.

21 Q. Have you had discussions with Mr. Richmond about the
22 issues involved in this lawsuit?

23 A. I think everybody in Canton knows about it.

24 Q. That's not my question. Have you had discussions with
25 Mr. Richmond about the lawsuit and the issues?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

70

1 A. Again, I probably would have had a brief conversation,
2 that's about it.

3 Q. Has Mr. Richmond ever provided you with any documents
4 or information that he obtained from Canton Township
5 about the tree ordinance and the violation?

6 A. I don't recall that.

7 Q. Have you ever requested Mr. Richmond to make Freedom
8 of Information requests for information from Canton
9 Township?

10 A. No.

11 Q. Have you ever had the property appraised?

12 A. Which property? The property?

13 Q. The property, Parcel B.

14 A. Okay. I have not.

15 Q. Before the tree removal was done by Kilanski
16 Excavating, do you know whether there were any
17 photographs taken of what the property looked like at
18 that time?

19 A. The brush removal?

20 Q. Before the work was done by Mr. Kilanski.

21 A. No, I don't think so.

22 Q. Did you ever either direct Mr. Kilanski or do yourself
23 the creation of an inventory or an accounting of the
24 types and numbers of trees and vegetation that was on
25 that property?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

71

1 A. Of the brush and dead trees, no.

2 Q. Were you present on the property when Leigh Thurston
3 and Kay Sikandar visited the property and conducted a
4 tree survey?

5 A. They were supposed to be on Sheldon Road, and somehow
6 or another, they decided to come over to my property
7 because it's easier walking. So I met them out there
8 on the property or by the property. They took off and
9 started walking the property, and I went back to the
10 office.

11 Q. Was anybody else present at the property at the time
12 that Ms. Thurston and Ms. Sikandar were there?

13 A. There was an officer from Canton. She was at the
14 deal, an attorney, and staff from our place.

15 Q. What attorney?

16 A. Clark Hill.

17 Q. Do you know which attorney was there?

18 A. I don't.

19 Q. Do you know if it was Mr. Pattwell or someone else?

20 A. It wasn't Mike.

21 Q. What staff from your place was there?

22 A. Well, it wasn't our place; it was our expert.

23 Q. Teresa Hurst?

24 A. Mm-hmm.

25 Q. Yes?

1 A. Yes.

2 Q. You earlier said: "They were supposed to be on
3 Sheldon Road, and somehow -- they decided to come over
4 to my property." What do you mean by "They were
5 supposed to be on Sheldon Road"?

6 A. It was my understanding that they were supposed to
7 meet over on Sheldon Road, and somehow or another,
8 they didn't want to walk through the woods, so they
9 decided to come over to AD. Kind of a last-minute
10 thing, I don't know.

11 Q. Did you have an objection to that?

12 A. Whatever.

13 Q. Are you aware of any other expert witnesses who have
14 been retained to testify in this case besides Teresa
15 Hurst?

16 MR. WELDON: Objection, form.

17 A. Not at this time.

18 BY MS. MCLAUGHLIN:

19 Q. Have you had contact with the Mackinaw Center for
20 Public Policy?

21 A. I'm sure I spoke to them.

22 Q. What about any persons from the Michigan Capitol
23 Confidential?

24 A. From what date to what date?

25 Q. Does that make a difference?

1 A. Well, I don't know. I'm sure I possibly talked to
2 them.

3 Q. Do you know a Tyler Arnold, does that name ring a
4 bell?

5 A. Not really.

6 Q. After the Township issued the notice of violation,
7 have you talked to any reporters from any of the local
8 media outlets, either print or television or radio?

9 A. Possibly one time.

10 Q. Do you know who you spoke to and what organization
11 they represented?

12 A. I believe it was the local news.

13 Q. Do you know which station?

14 A. No.

15 Q. Are you aware of any statements taken from any person
16 relating to this case?

17 A. I don't understand the question.

18 Q. Do you know if anybody has written out a version of
19 events or any facts related to this case, either in
20 their own handwriting or printed, that they have
21 signed and adopted as their own account?

22 **MR. WELDON:** I'm going to object to
23 privilege, just to be sure that you understand that
24 doesn't involve anything that we have written and
25 circulated back and forth.

1 **BY MS. MCLAUGHLIN:**

2 Q. I'm not asking you about any attorney-client privilege
3 communication.

4 A. Not outside the attorney.

5 Q. Is there anybody that you know who has knowledge of
6 the facts surrounding this case that we have not
7 already mentioned today?

8 A. Everybody in Canton Township.

9 Q. Well, personal knowledge.

10 A. And then Farmington --

11 Q. Not hearsay, not personal knowledge.

12 A. -- and West Virginia and --

13 Q. Yeah. Personal knowledge, not hearsay or reported to
14 them.

15 A. I don't, I have no clue.

16 Q. I believe in your discovery answers, you previously
17 identified someone from Dearborn real estate who had
18 provided some type of oral appraisal of your property.
19 Does that sound familiar? I'm trying to find them,
20 because I had them.

21 A. Yeah, Dearborn Realty?

22 Q. Dearborn Realty.

23 A. Yes.

24 Q. Who at Dearborn Realty?

25 A. I think you already called him out in there: Ben.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

75

1 Q. Ben who? Do you know his last name?

2 A. I don't know his last name.

3 Q. Did you ever receive any type of documentation from
4 Dearborn Realty?

5 A. No, not on this property.

6 Q. Have you used Dearborn Realty with relation to
7 appraisals for other properties?

8 A. Not appraisals, but we do a lot of business with them.

9 Q. In terms of buying and selling property?

10 A. Buying and selling property, leasing, that type of
11 thing.

12 Q. Have you had any conversations with anybody from
13 Sauk Trail Development Company -- or Inc., rather --
14 related to the issues involved in this case?

15 A. No.

16 Q. Have you had any conversations with anyone from
17 Miller Brothers Construction Company related to this
18 case?

19 A. Yes.

20 Q. Who have you spoken to from Miller Brothers?

21 A. I don't know the guy's name.

22 Q. What was the nature of the contact related to this
23 case?

24 A. They were just a contractor that did work on DPW's
25 site.

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

76

1 Q. You're referring to the Township's DPW yard that is
2 east of, west of --

3 A. East of us.

4 Q. East of you, okay.

5 A. Northeast.

6 Q. What information did you obtain from Miller Brothers
7 Construction in relation to that site?

8 A. Really nothing other than they did -- they did some
9 work there, that's it.

10 Q. Did anybody from Miller Brothers Construction indicate
11 a willingness to testify against the Township in this
12 case?

13 A. I didn't ask that.

14 Q. Whether you asked or not, did they make that
15 indication?

16 A. No.

17 Q. Has Alpine Engineering been involved in any part of
18 the defense of this -- I'm sorry, well, defense of the
19 ordinance-violation notice in this case?

20 MR. WELDON: Objection --

21 A. No.

22 MR. WELDON: Objection, form.

23 BY MS. MCLAUGHLIN:

24 Q. Are you aware of any property owners in Canton
25 Township who have removed regulated trees under the

1 ordinance, but were not required to comply with the
2 permit requirements of the ordinance?

3 A. I don't know anyone, but we have been told that there
4 has been.

5 Q. When you say "we", who do you mean?

6 A. Just in conversation.

7 Q. Do you have any information as to the identity of any
8 of those property owners?

9 A. I believe Walmart was one of them.

10 Q. Do you know the location of the Walmart that you're
11 referring to?

12 A. It's Belleville Road and Michigan Avenue.

13 Q. Have you taken any action to verify that information?

14 A. No.

15 Q. Do you know if anyone on your behalf has?

16 **MR. WELDON:** I'm going to object to any
17 privileged conversations that we may have had
18 regarding those issues.

19 **MS. MCLAUGHLIN:** I'm not asking for the
20 content of the conversations.

21 **BY MS. MCLAUGHLIN:**

22 Q. Are you aware of anybody who has done that on your
23 behalf?

24 A. On my behalf, no.

25 Q. Are you aware of any property owners in Canton

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

78

1 Township who use property in an agricultural use, but
2 which is not zoned for agricultural use?

3 A. It's all over.

4 Q. Do you know of any specific places?

5 A. Yes.

6 Q. Where?

7 A. Joy and Beck for years was, and it's not zoned RA, and
8 it was farmed and it's right behind my house. I
9 watched it grow every year. Michigan Avenue, an
10 industrial property, that's farmed.

11 Q. Do you have an address on Michigan Avenue?

12 A. No, I do not.

13 Geddes Road --

14 Q. On Joy and Beck, do you know the address of that
15 location?

16 A. No.

17 Q. But you said it's right behind your house?

18 A. Yes.

19 Q. You said Michigan Avenue?

20 A. Yes.

21 Q. What agricultural use is there?

22 A. Farm fields of Michigan.

23 Q. Do you know what kind of activity is there?

24 A. I didn't watch it. I just seen the equipment there.

25 Q. What about the one behind your house, what kind of

1 farm is it?

2 A. Farming?

3 Q. Or farming.

4 A. There was, I don't know, corn one year, soybean the
5 next year.

6 Q. How big are these parcels, if you know?

7 A. 45 acres on -- no, it's not 45 because they didn't do
8 the 15, so 45 less 15.

9 Q. Any other locations that you're aware of?

10 A. Geddes Road and Beck.

11 Q. Is it like on a corner?

12 A. Yes.

13 Q. North, east, south, west?

14 A. Northwest corner.

15 Q. What kind of farming activity is taking place there?

16 A. Everything.

17 Q. That's pretty broad.

18 A. Well, I'm just --

19 Q. Are crops being raised there?

20 A. They have for years, yes.

21 Q. And what's the zoning of that property?

22 A. No idea, but I know it's not RA.

23 Q. Have you explored for any of these properties whether
24 they have obtained any type of variance or permission
25 from the Township to do it?

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

80

1 A. No.

2 Q. Are you aware of other properties other than these
3 three that you have just mentioned?

4 A. I mean, you could drive probably 5 square miles and
5 count them, yeah.

6 Q. When were the Norway spruce trees planted on your
7 Parcel B property?

8 A. I don't have the date.

9 Q. After you received the notice of violation from Canton
10 Township about the tree ordinance?

11 A. I'm not sure.

12 Q. Who planted those trees?

13 A. We did.

14 Q. Who is "we"?

15 A. Me, my brother.

16 Q. You and Matt?

17 A. Mm-hmm.

18 Q. Yes?

19 A. Yes.

20 Q. Anyone else?

21 A. There might have been someone else -- I don't know. I
22 don't remember.

23 Q. Do you have -- did you obtain any advice from anybody
24 about the types of trees to put in that location?

25 **MR. WELDON:** I'm going to object if he did

1 as --

2 **BY MS. MCLAUGHLIN:**

3 Q. I don't mean attorney advice. I mean horticultural
4 advice.

5 A. No.

6 Q. What made you decide to put Norway spruce in that
7 location?

8 A. Less maintenance.

9 Q. When you planted them, were they seedlings?

10 A. Yes.

11 Q. Have all of those tree survived, to your knowledge, so
12 far?

13 A. I see them almost every day. I haven't gone out there
14 and counted them.

15 Q. How many trees did you plant on the property?

16 A. About 1,000. Maybe a little more or a little less, I
17 don't know.

18 Q. Did you have more trees that were in your possession
19 but not planted as a result of the Court's order in
20 this case?

21 A. No.

22 Q. Did you intend to plant more trees other than the
23 1,000 that you have already planted?

24 A. We could have, yes.

25 Q. Well, "could have" and "were going to" are two

Gary Percy
F.P. Development, LLC v. Charter Township of Canton

82

1 different things.

2 A. We hadn't made up our mind yet.

3 Q. Where did you obtain the nursery stock from?

4 A. From a nursery supply company.

5 Q. Where?

6 A. I don't remember the name of it.

7 Q. Do you remember where it was?

8 A. It was in Michigan.

9 Q. Do you remember what part of Michigan?

10 A. West of here. That's all I remember.

11 Q. West as in Jackson or --

12 A. Possibly --

13 Q. -- or west as in Grand Rapids?

14 A. -- Kalamazoo. I don't know.

15 Q. Who is the owner of MG Development Company?

16 A. Matt and I.

17 Q. Anybody else?

18 A. No.

19 Q. When was MG Development Company incorporated?

20 A. Quite a few years ago, I don't remember. I don't
21 recall, don't remember without re-looking into it.

22 Q. Does MG Development Company have a license from the
23 State of Michigan Department of Agriculture to operate
24 a tree farm?

25 A. It does.

1 Q. When did you obtain that?

2 A. Many, many, many, many years ago.

3 Q. Do you have the records that show when you first
4 obtained that license?

5 A. I'm sure we do.

6 Q. Do you have personal knowledge of any regulated trees
7 that were removed from the property?

8 **MR. WELDON:** Objection, form.

9 A. No. It was brush and --

10 **BY MS. MCLAUGHLIN:**

11 Q. Do you know what trees are regulated under the
12 ordinance?

13 **MR. WELDON:** Objection, form.

14 A. Again, you guys would have a document to that.

15 **BY MS. MCLAUGHLIN:**

16 Q. I'm asking you if you know what the ordinance says.

17 A. Without looking at it, no.

18 Q. When did you first decide to plant Christmas trees, or
19 Norway spruce trees, on the property?

20 A. You have already asked me that, and I said I don't
21 remember.

22 Q. Sorry about that. I didn't remember that I asked you.

23 Since this litigation has been filed, have
24 you had any personal contact with anybody from Canton
25 Township about the tree ordinance, notice of

1 violation, and the lawsuit?

2 A. On the -- back up.

3 Q. Since the litigation has been filed, this case, last
4 November --

5 A. The tree case.

6 Q. The tree case, yes. Have you had any conversations
7 with any officials or employees of Canton Township
8 about the allegations in the complaint?

9 A. Probably Pat Williams is the only one I have had.

10 **MS. MCLAUGHLIN:** Let me just review my
11 notes and make sure I have asked everything I want to
12 ask.

13 **MR. WELDON:** Mm-hmm.

14 **BY MS. MCLAUGHLIN:**

15 Q. I'm not going to mark this as an exhibit, but I am
16 just going to show you what has been provided to us as
17 your company's answers and objections to our first set
18 of interrogatories. I've got a lot of notes on there.

19 A. Okay.

20 Q. And it's double-sided.

21 Would you flip it over to the back?

22 That's your signature at the bottom of page
23 16?

24 A. Yes.

25 Q. Did you assist in preparing those answers?

1 A. I would have agreed and supported any of these.
2 That's why I would have signed it, approved it.

3 Q. Right, I understand. I just --

4 A. Yeah. I would have approved it, yeah.

5 Q. Did you specifically supply the information that is
6 contained in here, or did you just review it after it
7 was prepared?

8 A. I would have assisted, but any legal conclusions or
9 anything like that would have been prepared by the
10 attorneys.

11 **MS. MCLAUGHLIN:** I think that's all the
12 questions I have at this time.

13 **MR. WELDON:** Let us recess for just a
14 couple of minutes, and I'll --

15
16 **MS. MCLAUGHLIN:** As long as it's just a
17 couple minutes.

18 (Off the record at 5:20 p.m.)

19 (Back on the record at 5:20 p.m.)

20 **MR. WELDON:** I have no questions.

21 (The deposition was concluded at 5:20 p.m.
22 Signature of the witness was not requested by Counsel
23 for the respective parties hereto.)
24
25

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF WAYNE)

I, RENEE J. OGDEN, certify that this deposition was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.

RENEE J. OGDEN, CSR-3455

Notary Public,

Wayne County, Michigan

My Commission expires: June 21, 2025

A	83:2	29:2 32:7	architects 63:12	attorneys 44:20
A.D 8:4,7,18,23	agreed 48:3	49:22 56:21	area 48:18,18	69:1,2,4,6
9:3,7,10,20,22	49:12 85:1	71:11 73:18	49:7,10,15	85:10
11:13,15,24	agreed-upon	74:5 75:12	50:12,18,22,24	August 22:2,7,9
15:10 47:16	29:14	76:10 77:22	51:3 58:11,16	26:2 38:18,20
61:5 62:16,22	agreement 26:6	80:23 82:17	59:25	43:23
abandoned 17:2	29:11	83:24	areas 51:13	Austin 2:14
17:2	agricultural	anyway 19:12	Arnold 73:3	Avenue 1:14 2:5
abate 57:10	78:1,2,21	31:10 46:5	arose 44:18	2:13 77:12
abuts 23:24 24:1	Agriculture	apparently	64:18	78:9,11,19
access 16:23	82:23	41:20 56:6	arrange 26:24	Aviation 9:5
account 73:21	Ah 17:23	appearance 64:8	asked 45:13,13	10:23
accounting	ahead 9:24	APPEARANC...	48:16,21 49:2	aware 37:9 46:7
70:23	18:16 20:16	2:1	54:4 57:13	46:21 63:17
accurate 22:22	35:11	appeared 67:10	58:20 76:14	69:5 72:13
acres 30:9 43:6	allegations	Appearing 2:9	83:20,22 84:11	73:15 76:24
66:21 79:7	63:23 84:8	2:17 3:8,16	asking 9:17	77:22,25 79:9
action 28:3	alleged 51:4	appears 21:24	27:20 64:15	80:2
77:13	53:23	application	69:8 74:2	
activities 55:13	Allen 5:13	16:15 19:21	77:19 83:16	B
activity 56:13	allow 16:23	20:6 36:6,9,13	assist 84:25	B 13:23 14:1,8
78:23 79:15	allowing 17:5	36:15,16,17,21	assistance 17:8	14:18 19:20
actual 15:21	Alpine 15:23,25	37:2,6,10,13	assisted 85:8	24:5 25:11
16:15	76:17	37:22 38:15,17	assume 6:8	28:4 46:21
AD 72:9	Amclaughlin...	appraisal 74:18	32:15,21 33:22	66:22 70:13
addition 34:24	3:7	appraisals 75:7	34:21,23 38:19	80:7
additional 68:25	amendment	75:8	38:23 41:4	back 27:4 39:2
address 6:17 9:1	23:2	appraised 70:11	67:11	44:11,12 45:17
30:17 37:20	Amtsbuechler	apprise 31:23	assuming 42:2	45:18 46:3
78:11,14	3:2	approach 14:17	53:7	47:21 52:14
addressed 47:16	angle 30:22	14:17	attached 4:11	62:15 63:19
59:2,22	Anne 3:1 5:14	approached	attachment	66:3,4,5 71:9
adjoins 16:25	answer 5:22,25	14:19,20	47:19	73:25 84:2,21
ADLP 9:5 10:19	6:4,7 7:23	approaching	attempt 69:3	85:19
adopted 73:21	12:13 15:15	15:4	attempts 46:11	Based 22:24
adult 6:25	16:6 32:20	approval 63:2	68:12,18	45:12 67:10
advice 80:23	33:1 35:4	approve 20:7	attended 7:8	basically 20:17
81:3,4	46:16 48:11	approved 18:9	attorney 45:1,9	21:4 23:8
advised 35:2,7	52:3 53:19	18:25 19:22	45:20 46:7	54:18
35:22	answered 6:8	85:2,4	59:19,20,22	basis 30:6 45:7
affirmed 5:7	answers 6:12	approximately	71:14,15,17	Beck 78:7,14
afterward 51:9	74:16 84:17,25	9:8 28:13	74:4 81:3	79:10
ago 5:19 17:18	86:9	April 31:18	attorney-client	began 29:5 32:4
17:19 82:20	anybody 26:23	33:14 58:3,10	74:2	32:9 38:4

beginning 8:10 8:12 begins 43:2 begun 37:2,23 behalf 2:9,17 3:8 3:16 27:12 77:15,23,24 believe 9:25 12:20 18:17,18 18:21 22:8 23:9 26:17 28:22 29:3,7 31:17,24,25 32:5 33:13 59:23 73:12 74:16 77:9 bell 57:6 73:4 Belleville 8:5 9:2 9:12 23:16 28:22 43:4 63:3 69:19 77:12 Ben 74:25 75:1 benefit 31:25 beyond 7:7 big 26:17 79:6 birth 6:19 bitty 48:16 borders 16:20 bottom 84:22 bought 20:24 21:9 Boys 31:25 66:13 branch 11:19 break 51:8,9 52:10 Brew 66:13 Brews 32:1 BRICKER 3:10 brief 44:14 70:1 bring 35:8 Bristol 12:10 broad 23:22	79:17 brother 8:16 11:10 63:17 80:15 Brothers 75:17 75:20 76:6,10 brought 17:8 64:23 65:19 brush 30:22,24 70:19 71:1 83:9 buckthorn 30:23 31:9 49:19 build 37:18 building 37:19 65:9 Buren 16:20,21 28:23 business 8:23 9:14,16 12:1,2 15:8,9 23:9 62:19,22 63:7 75:8 businesses 9:1 11:25 63:3,13 Butler 3:20 buy 15:5 buying 75:9,10 byproduct 49:1 <div style="text-align: center;">C</div> calendar 66:10 66:14 call 13:20 35:19 35:21 45:5 48:17,21 54:19 66:9 called 5:6 24:21 34:19 48:2 50:3 66:12 74:25 calls 61:24 Canton 1:4 3:11	3:12,13 6:18 9:11 16:4,21 16:22 17:9,19 24:12 26:16 31:15,20 32:7 32:18 45:21 48:1 50:3 53:3 53:16,20 54:1 55:12 61:7 62:24 63:1,18 63:22 64:13 68:14,19 69:23 70:4,8 71:13 74:8 76:24 77:25 80:9 83:24 84:7 Capitol 72:22 case 1:7 14:4 27:14 53:10 72:14 73:16,19 74:6 75:14,18 75:23 76:12,19 81:20 84:3,5,6 caught 49:24 50:2 52:21 cause 86:14 caused 59:6 Center 3:12 72:19 certain 10:14 CERTIFICATE 86:1 certifications 7:12 certify 86:6 Cesar 2:5 Chance 2:11 59:23 change 18:24 19:9,13 20:7 22:19 changed 18:22 18:23 19:22 49:10 64:16	Charter 1:4 3:11 Chavez 2:5 children 6:23,25 chip 48:25 chips 49:5,12,18 50:16 chitchatted 27:5 chitchatting 31:4 Christmas 83:18 circle 50:23 circles 48:20 CIRCUIT 1:2 circulated 73:25 clarify 6:6 Clark 2:4 44:16 45:5 71:16 classes 7:8 classification 18:13,21 38:3 38:7 clear 29:16 32:23 clear-cut 25:10 31:21 32:16,17 clear-cutting 32:8 clearance 48:9 cleared 27:19 30:18 clearing 27:22 28:2 31:14 clue 74:15 come 26:12 27:19 34:14 35:12 71:6 72:3,9 Commencing 1:16 comment 31:4,6 Commission 86:25 Commissioner 59:1,6	Commissioner's 59:10 communication 54:23 69:10 74:3 communicatio... 39:19 42:5 45:5 46:8,17 69:8 companies 8:17 8:22 10:13 company 5:16 8:14,14 26:17 28:16 69:16 75:13,17 82:4 82:15,19,22 company's 84:17 comparing 22:18 complaint 31:17 33:20,22 34:3 34:5 84:8 complete 29:23 31:15 compliance 35:9 comply 77:1 computer 86:10 concern 59:5 concerns 55:12 concluded 85:21 conclusions 85:8 condition 67:5 conditions 18:2 conducted 55:11 71:3 conference 35:14 Confidential 72:23 confrontations 64:21 65:17 Congress 2:13 consequences
--	--	--	--	---

35:22 considers 51:13 Consistent 23:12 consists 61:15 66:17 constantly 30:10 Construction 75:17 76:7,10 contact 15:20 16:3,10 24:21 24:23 25:5 26:12,19,22,23 31:15 32:7 33:14,24 34:7 45:1,21 54:14 54:17 72:19 75:22 83:24 contacted 34:2 44:20 contained 57:25 67:25 68:7,9 85:6 contains 47:1,18 contemplate 21:7 contemplating 14:21 content 41:15 77:20 CONTENTS 4:1 continue 53:9 58:18 continues 43:8 contract 28:16 contractor 75:24 contractual 27:24 control 56:7 conversation 19:11 24:14 32:2 33:3 39:23 41:16 55:7 62:2 70:1	77:6 conversations 16:7,18 18:5 24:11 33:5 34:16 37:12 40:4 41:22 45:8 63:17 66:6 75:12,16 77:17,20 84:6 convicted 11:21 copied 57:4 corn 25:8 79:4 corner 79:11,14 corporation 1:9 corporations 7:18,20 8:1 correct 10:9,17 13:9 14:4 15:11 18:11,12 20:2,4,10,11 22:16 33:7,23 36:10,24 38:7 38:9 43:10 47:16 53:17,22 58:13 68:24 69:20 86:11 counsel 6:1 43:13,25 44:15 85:22 86:13 count 80:5 counted 81:14 Counter-Defe... 1:10 County 1:2 53:2 53:25 54:15 55:10,16,24 56:4,21 57:22 59:1,6,10 86:4 86:24 couple 7:8 85:14 85:17 course 6:22 42:16 63:5 court 1:2 64:7	Court's 81:19 cover 58:13 created 12:17 13:3 63:13 creation 70:23 crime 11:21 crop 21:13 crops 79:19 CSR-3455 1:18 86:22 Cullen 54:14,17 54:24 55:19,22 56:14,18 57:7 Cullen's 56:14 57:9 current 20:9 cut 27:2 Cweldon@tex... 2:16 <hr/> D <hr/> dark-colored 50:24 date 6:19 12:14 22:1,3,5,7,9 25:13 28:6 38:13 44:22 56:16 59:15 72:24,24 80:8 86:7 dated 43:23 47:15 dates 22:18,24 46:6 Dave 30:15,15 30:16 Davey 25:14 26:7,9,15 27:12,25 28:8 31:3,12 Davis 63:18 day 43:15 81:13 dead 30:20 31:7 31:9 49:18	71:1 deal 30:13 40:6 40:16 64:7 71:14 dealings 15:25 16:3 28:24 59:9 dealt 15:20 Dearborn 74:17 74:21,22,24 75:4,6 decide 81:6 83:18 decided 21:11 21:16 71:6 72:3,9 deed 21:24,24 22:19 Deeds 22:6 Defendant/Co... 3:8,16 defense 76:18,18 demonstrate 50:24 department 40:17 47:14,22 52:16 55:10,24 65:9 82:23 depicted 66:20 deposition 1:13 4:13,14,15,16 4:17,18,19,20 4:21 5:17 13:12 19:2,6 21:22 39:4 43:17 47:5 54:8 57:17 58:22 61:11 66:17 67:15 85:21 86:7 DEQ 48:3,14 50:3 describe 64:12 descriptions	68:7,8 designated 49:7 designating 51:22 determination 31:1 56:4 57:11,21 determine 31:1 determined 57:23 Detroit 1:15 5:1 26:8 develop 20:21 37:18,18 developed 20:21 37:20 Development 18:10 75:13 82:15,19,22 developments 19:16 diagram 13:19 13:21 23:21 49:8 diagrams 68:4 difference 72:25 different 7:24 22:9 45:14 67:9 82:1 direct 70:22 directed 58:16 59:18 disagree 47:3 discharges 43:11 discovery 74:16 discuss 12:25 discussion 44:14 discussions 69:21,24 dispute 53:10 ditch 48:13,15 57:13 ditches 48:22 divided 13:22
---	--	--	--	--

division 40:18 55:11 57:22,23 divisions 40:7,13 document 13:15 13:16 19:7 20:4 21:23 22:1,15 39:9 39:11 43:21,22 47:12,13 59:3 59:4 67:21 68:7 83:14 documentation 75:3 documents 16:11,12,14 70:3 doing 5:24 6:11 19:12 30:7 double-sided 84:20 downstream 42:17,18 DPW 76:1 DPW's 75:24 drafting 39:18 drain 42:11,15 42:18,23,25 43:11 58:11,16 59:1,6,10,25 60:7,13,16,18 60:22 drains 48:22 draw 7:25 50:21 53:14 drive 3:3 26:16 80:4 driving 27:4 DTE 26:8,11,13 27:12,14 due 17:5 dug 48:15 duly 5:7	E 2:5 Eagle 69:14 earlier 46:22 72:2 earth-change 55:13 easement 27:7 27:15,23 59:25 60:12 easier 71:7 east 2:5 43:5,6 76:2,3,4 79:13 edge 25:15,19 26:25 Edison 26:8 education 7:6 effect 44:23 effective 22:11 either 40:7,17 42:5 56:18 70:22 73:8,19 86:13 email 39:12,14 39:18 40:24 41:2,15,23 42:4 59:13,14 59:18,20,21 66:8 employed 8:7 employees 9:7 9:22 10:13,19 64:22 65:18 84:7 employer 7:19 employment 7:15 encounters 61:7 enforcement 33:9 40:7,18 41:17 65:15 enforcing 33:15 33:25 engineer 56:23 57:7	Engineering 15:23 16:1 76:17 engineers 15:20 63:12 entire 29:16 33:3 entities 10:8 11:4,7,11 entitled 47:19 entity 10:14 18:11 Environmental 47:15,22 52:17 equipment 9:3 9:22 50:15 78:24 erosion 58:12,17 essentially 42:23 established 36:1 estate 74:17 event 17:13 86:13 events 73:19 everybody 48:2 69:23 74:8 evidently 41:15 65:8 exact 38:13 54:4 exactly 58:20 EXAMINATI... 4:5 5:10 examined 5:9 Excavating 30:14 70:16 Executive 3:3 exempt 36:17 exhibit 4:10,13 4:14,15,16,17 4:18,19,20,21 13:11 19:2,6 21:22 38:15,17 39:4,8 40:24 43:17,20 46:22	47:5,9 48:20 49:8 52:18 54:8,11 57:17 58:8,10,22,25 60:5,11,12,22 61:11,14,15 66:17 67:15,19 68:1 84:15 Exhibits 4:9,11 exist 67:6 existence 12:16 37:9 existing 19:18 expansion 62:18 62:22 63:7 expert 71:22 72:13 expires 86:25 explored 79:23 Express 8:4,8,18 8:24 9:7,10,20 11:13,15,24 69:14 extent 18:7	21:12 24:15,22 36:16 37:2,23 79:2,3,15 Farmington 3:5 74:10 feedback 62:10 feels 6:1 feet 25:15,20 26:24 fence 59:24 60:1 60:12,14,16,23 fields 78:22 filed 18:23 36:18 83:23 84:3 fill 49:7 filled 38:5 find 74:19 finish 5:25 51:8 Fire 65:8,12,21 firm 44:16 first 5:7 15:1 25:10,25 33:13 35:1,7,16,19 35:21,25 39:16 44:20 55:9 83:3,18 84:17 Fisher 42:11 59:25 flip 84:21 flooding 42:14 flows 42:23 follows 5:9 foregoing 86:8 forest 25:11 forest-preserv... 33:15 36:4 61:18 form 7:21 8:9,20 9:23 10:3,10 10:15,20,25 12:12,19 13:6 14:14,23 15:14 16:5 18:15 19:24 20:15
E			F	
			F.P 18:10 facility 9:11 fact 53:9 facts 73:19 74:6 fair 6:9 64:20 67:11 familiar 13:17 60:1 74:19 far 5:24 7:2 34:16 81:12 farm 17:24 20:25 21:2,4,5 21:7 23:1,6 24:19,25 32:14 32:16 78:22 79:1 82:24 farmed 78:8,10 farming 21:10	

21:15 22:12,23 23:18 24:6 25:12 27:16 28:5 29:18 30:8,19 32:10 32:25 33:10,17 35:3,10,18,24 36:23 37:3,10 37:16,22,24 38:5,8,22 39:25 40:9,20 41:3,8,12,19 41:24 42:8,24 46:14,24 47:2 47:25 48:10 49:11,17 50:14 51:15,19,24 52:4,20 53:4,6 54:23 56:8,15 57:12 58:19 63:25 64:25 65:11,20 68:15 72:16 76:22 83:8,13 formal 7:6 29:11 formed 8:23 12:11 forming 11:24 forth 73:25 86:8 Foundation 2:12 founded 8:15 Frank 12:18 13:5 17:19 41:25 62:7 Freedom 70:7 friends 24:24 front 20:3 59:15 full 5:12 25:1 86:11 further 56:13 58:17 59:9 future 15:8 18:24 19:9,13 19:15,18 20:13	G G1 18:18 Gary 1:13 4:4 5:5,13 69:9 Gas 9:5 10:19 gather 36:19 Geddes 78:13 79:10 general 5:21 18:18 19:22 23:2 64:13 generated 49:18 gestures 6:12 GI 18:19 23:10 23:17 give 6:1 17:9 62:10 66:9 given 5:17 48:5 go 6:14 7:2 9:24 12:7 18:16 20:16 30:6 32:23 35:11 44:7,12 46:3 49:3,20 64:7 goes 43:5,6 going 13:11,20 16:23 20:21 21:12,21 32:23 38:15,16 39:7 43:20 45:4 46:15 47:8 52:10 53:9 66:16 69:7,9 73:22 77:16 80:25 81:25 84:15,16 good 5:24 44:5,5 Google 68:2 Goulet 16:7,10 19:11 23:4 37:12 38:11 40:4,11,15 42:6 Goulet's 38:19	graduate 12:4,9 Grand 82:13 grass 67:9 ground 25:22,23 49:1 grow 21:13 78:9 growth 15:8 20:13 guess 17:18 21:6 34:13 65:16 guessing 10:6 guy 32:19,21 50:7 guy's 75:21 guys 27:21 31:3 31:13 50:3 83:14 H hand 68:6 handing 60:10 handwriting 73:20 Hang 44:4 happened 27:21 46:10,10 head 6:13 hearsay 74:11 74:13 helped 17:11 hereinbefore 86:8 hereto 85:23 high 7:4,7 12:5,7 Hill 2:4 44:16 45:5 71:16 Hills 3:5 hire 15:23 hiring 30:25 holds 10:14 hope 22:17 horticultural 81:3 house 31:24 62:8	66:13 78:8,17 78:25 Huh-huh 60:8 65:25 Hurst 71:23 72:15 I ID 61:24,25 idea 14:24 21:10 22:13 27:17 43:12 51:5,16 55:18 59:8 66:25 67:2 68:11 79:22 IDENTIFICA... 19:1 39:3 43:16 47:4 54:7 57:16 58:21 61:10 67:14 identified 24:12 50:13 74:17 identify 21:23 identity 77:7 improved 17:1 incidentally 12:4 55:20 include 40:12 including 11:21 incorporated 82:19 INDEX 4:9 indicate 76:10 indicates 58:11 59:24 indication 76:15 industrial 18:18 19:21,23 20:10 23:2,3 78:10 industry 7:9,10 inform 37:13 55:23 information	36:20 52:18 53:1,24 67:25 70:4,8,8 76:6 77:7,13 85:5 informed 31:20 44:15 initiate 25:10 28:3 ink 50:24 input 17:4,17 inquiries 36:14 insinuated 48:14 instance 28:25 intend 81:22 intended 15:6 25:7 intending 20:25 21:2 intent 21:10 32:14,16 intention 20:19 interested 86:13 interrogatories 84:18 invasive 49:19 inventory 51:18 51:20 70:23 investigation 18:1 investigations 55:11,15 involve 73:24 involved 63:7 65:10 69:22 75:14 76:17 involvement 15:12,18 16:18 17:15 involves 13:3 involving 63:9 issuance 59:10 issue 17:5 37:20 56:2 64:18 66:2
---	--	---	--	---

issued 45:3,22 52:17,23 53:3 54:1,15 55:17 59:7 61:17 62:15 73:6 issues 42:14 43:14 44:1,18 44:21 69:22,25 75:14 77:18	78:23,25 79:15 knew 29:3 34:15 35:17 know 5:21 6:3,3 7:23 14:20 17:11,12 18:13 20:7,8,20,20 23:8,21 25:1,2 25:3,4,13,24 26:17 27:10,11 27:23 28:13 29:5 30:9 31:12 32:1,2 32:18 33:2 34:5,10,17 35:25 38:11,13 41:6 42:1 43:11 44:22 45:1,20,23,25 46:10,11 48:17 50:5,10,11 51:6,13 55:15 55:20 56:11,24 59:15,23 61:25 62:6,23 63:21 64:1,11 66:3 66:24 67:5,8 67:13,23,25 68:3,5 69:2 70:16 71:17,19 72:10 73:1,3 73:10,13,18 74:5 75:1,2,21 77:3,10,15 78:4,14,23 79:4,6,22 80:21 81:17 82:14 83:11,16 knowledge 34:6 45:8 56:22 59:20 61:9 74:5,9,11,13 81:11 83:6 knows 69:23	Kolb 3:10 44:4 45:15 46:7 KRISTIN 3:10 Kristin.kolb@... 3:15	59:1 license 82:22 83:4 licenses 7:12 Light 19:20 20:9 23:3 line 23:22 lines 27:23 34:8 litigation 5:15 83:23 84:3 little 9:9 48:16 81:16,16 loaded 30:20,23 31:9 local 24:21 26:19 73:7,12 located 28:21 60:3,12,24 61:3 69:17,19 location 17:6 26:15 63:10 77:10 78:15 80:24 81:7 locations 9:11 79:9 long 5:19 8:7 20:6 28:8 29:22,23 31:14 85:16 look 13:12 34:10 34:14 36:5,11 37:6 39:8 46:4 47:9 57:1 66:5 66:18 67:18 looked 36:5,9 37:1,22 46:22 70:17 looking 36:13 45:23 61:25 63:11 64:1 66:3,4 83:17 looks 13:17 22:5 22:20 39:12 51:1	lot 9:4 12:18 13:4 14:12 15:12 16:4,19 17:13,16,17 18:3 31:7,8 37:19 41:25 75:8 84:18 loud 6:12
J J 1:18 2:3 86:6 86:22 Jackson 82:11 Jeff 16:7 19:11 23:4,8 37:12 40:4,15 Jeremy 50:7 job 29:24 Joppich 3:2 Joy 6:18 78:7,14 Juliana 3:20 July 58:25 June 1:17 5:2 47:15 52:17 86:25 junk 30:24,24 junkyard 42:25				M Mackinaw 72:19 maintenance 81:8 making 50:23 manage 21:4,4 Management 21:6 55:11 57:23 map 19:13 22:20 23:2 47:19 51:22 60:15 62:1 mapping 68:2 maps 51:25 52:3 52:5,5 68:2 mark 84:15 marked 13:11 19:1,5 21:21 39:3,8 43:16 43:20 47:4,8 48:20 54:7,11 57:16 58:8,10 58:21,25 60:10 61:10,14 66:16 67:14,18 married 6:21 Marshal 65:8,12 65:22 master 19:14,18 master-plan 22:20 38:6 Matt 11:16 80:16 82:16
K Kalamazoo 82:14 Kay 71:3 keep 6:11,14 66:6,10 kicked 48:1 kid 50:8 Kilanski 28:20 28:21 29:12,23 30:13,14,15,25 32:4 49:16 50:12 70:15,20 70:22 Kilanski's 50:15 kind 19:15 72:9				

matter 30:17	76:23 77:19,21	Miller 75:17,20	53:19	24:6 25:12
Matthew 3:21	81:2 83:10,15	76:6,10	north 13:23	27:16 28:5
11:10 63:18	84:10,14 85:11	mind 6:14 20:14	42:23 43:7,8	29:18 30:8,19
MCCLOREY	85:16	82:2	50:25 51:1	32:10,25 33:10
3:1	MDEQ 49:22	minutes 85:14	79:13	33:17 35:3,10
McKinstry	50:5 51:13	85:17	Northeast 76:5	35:18,24 36:23
42:11	mean 8:22 15:19	misdemeanor	Northwest 79:14	37:3,16,24
McLaughlin 3:1	16:12 19:20	11:22	Norway 80:6	38:8,22 39:25
4:6 5:11,14	21:3 25:21	Mm-hmm 11:2	81:6 83:19	40:9,20 41:3,8
7:22 8:11,21	42:17 50:18	23:13 26:3	Notary 86:1,23	41:12,19,24
10:1,5,12,16	60:19 72:4	29:20 42:22	notes 66:5,6	42:8,24 44:3
10:22 11:3	77:5 80:4 81:3	71:24 80:17	84:11,18 86:12	45:4 46:14,24
12:15,21 13:8	81:3	84:13	notice 43:23	47:2,25 48:10
14:16,25 15:17	meant 32:16	month 28:13	44:2,24 45:2	49:11,17 50:14
16:9 18:20	measures 48:8	59:17	45:21 48:1	51:15,19,24
19:4,25 20:22	media 73:8	Mpattwell@cl...	53:11,13 56:3	52:4,20 53:4
21:17 22:14,25	meet 49:22 72:7	2:8	57:11,21 61:18	53:14 54:6
23:20 24:7	meeting 35:12	Multiple 7:18	68:13 69:3	56:8,15 57:12
25:17 27:18	35:13 41:1,6		73:6 76:19	58:19 63:25
28:7 29:21	meetings 66:12	N	80:9 83:25	64:25 65:11,20
30:12 32:12	memory 46:2	name 5:12,14	notified 39:16	68:15 72:11,16
33:4,12,18	64:10	25:1,3 73:3	40:3	76:20,22 83:8
35:6,15,20	mention 12:8	75:1,2,21 82:6	notifying 34:24	83:13
36:2,25 37:5	mentioned 17:15	names 57:6	November 84:4	objections 84:17
37:21 38:1,10	19:10 74:7	narrative 68:9	numbers 61:24	observations
38:24 39:6	80:3	nature 6:13 7:13	61:25 70:24	55:23 58:15
40:2,10,22	met 34:13,14,17	16:10 39:14	nursery 82:3,4	obtain 48:9 76:6
41:5,10,14,21	71:7	53:9 54:17		80:23 82:3
42:3,10 43:3	MG 82:15,19,22	55:7 75:22	O	83:1
43:19 44:6,9	MICHAEL 2:3	necessary 6:7	object 6:2 46:15	obtained 70:4
44:13 45:11,18	Michigan 1:1,9	need 23:10	53:9 69:7	79:24 83:4
45:19 46:20,25	1:15 2:6 3:5,13	36:17	73:22 77:16	obviously 35:16
47:7 48:7 49:4	5:1 47:14	needed 30:17	80:25	occur 19:16
49:14,21 50:17	52:16 72:22	36:15	objected 54:4	58:18
51:10,12,17,21	77:12 78:9,11	needs 6:2	56:11	October 28:14
52:2,7,12,15	78:19,22 82:8	negotiate 68:12	objection 7:21	29:7,7 38:19
52:22 53:5,15	82:9,23 86:2	68:18	8:9,20 9:23	38:20
54:3,10 56:9	86:24	negotiation	10:3,10,15,20	offer 23:21
56:10,17 57:20	mid-1980s 11:25	46:12	10:25 12:12,19	62:11 68:23
58:24 61:13	Mike 46:18	never 32:23	13:6 14:14,23	offered 62:3
64:3 65:2,13	59:23 69:9	34:15 37:20	15:14 16:5	69:2,5
65:23 67:17	71:20	news 73:12	18:15 19:24	office 9:20 26:19
68:17 69:11	miles 63:18 80:4	nice 32:20	20:15 21:15	35:13 59:10
72:18 74:1	military 11:19	nonresponsive	22:12,23 23:18	69:18,19 71:10

officer 8:1 63:18 71:13	36:4,5,22 39:18 40:7,8	parcel 12:22 13:3,4,9,21,21	29:12	81:22 83:18
officers 11:15,17	40:17 42:7	13:22,23 14:1	performed 36:8	planted 80:6,12
officials 55:13	53:3,22 54:1	14:8,18 19:20	period 12:16	81:9,19,23
64:22 65:18	56:7 57:25	24:5 25:11	44:17	plants 30:23
84:7	61:8,19 62:4	28:4 46:21	permission 55:3	49:19
Ogden 1:18 86:6	63:18,23 64:4	60:17,18 61:1	79:24	PLC 2:4
86:22	64:9 65:24	66:22 70:13	permit 36:6,15	please 5:12 6:5
Oh 16:15 26:9	68:13,19 70:5	80:7	36:21 37:1,6	6:13
30:5 60:9	77:1,2 80:10	parcels 23:23	37:13,22 63:20	plug 48:21
okay 5:21,24	83:12,16,25	79:6	77:2	point 21:16
6:15 8:17 9:19	ordinance-viol...	Pardon 9:15	person 34:17	Policy 2:12
9:19 12:25	76:19	parent 13:21	73:15	72:20
13:14 14:9,10	organization	parking 37:19	personal 34:6	portion 27:7
17:20 21:13	73:10	part 15:16 40:12	74:9,11,13	portions 51:22
22:3,15 26:9	original 13:21	49:7 76:17	83:6,24	position 39:17
26:24 27:24	outlets 73:8	82:9	personally 65:10	47:23 53:16,21
28:15 35:16,21	outside 74:4	part-owner 12:1	persons 11:17	possession 22:16
39:10,13 41:6	owned 12:18	particular 28:25	57:4 72:22	81:18
42:4 44:6	13:4 14:1	60:19	phone 34:16	possibility 20:13
45:24 46:1,11	owner 8:1 13:9	parties 62:8	54:21,24	possibly 6:1
47:11,20 51:11	82:15	85:23	photographs	28:22 73:1,9
53:1,19 54:19	owners 76:24	party 86:13	66:20,24 67:12	82:12
55:19 57:3	77:8,25	Pat 16:8 17:7,7	70:17	Powelson 12:18
60:21 61:16	ownership 10:9	18:6 24:15	pick 48:24	13:5 14:17
63:6 66:10,19	owns 69:14	31:22 32:11	pictures 68:4,10	15:4,23 18:9
67:20 70:14		35:12 39:13	piece 20:17,24	20:12 21:22
76:4 84:19		40:12 41:9	pile 48:25 49:13	41:16,23 60:5
old 17:24		62:3,8 66:1,8	place 25:24 28:2	Powelson's
Once 18:9	p.m 1:16 5:3	66:13 68:21	32:2 38:18	13:12 42:12,18
ones 8:3	19:3 39:1,2,5	84:9	41:7 55:14	43:8 66:16
online 36:12	43:18 44:10,11	Patrick 54:14	62:6 71:14,21	power 27:22
37:7	45:16,17 47:6	Pattwell 2:3	71:22 79:15	preceding 41:23
operate 9:1	52:13,14 54:9	46:8 53:11	places 78:4	predecessor
82:23	57:18 58:23	71:19	Plaintiff/Coun...	8:17,22
operating 9:10	61:12 67:16	PC 3:2	1:5 2:9,17	preexisting 58:4
opposed 6:12	85:18,19,21	pen 50:24	plan 19:15,18	Preliminary
options 35:8	page 4:3,10	Percy 1:13 3:21	20:23 24:18	47:19
oral 74:18	48:12 49:8	4:4 5:5,13,14	25:10 28:3	prepared 85:7,9
order 48:8 57:10	57:1 60:11	11:16 19:5	62:18,21	preparing 67:23
81:19	84:22	39:7 44:4,14	planning 23:1	68:6 84:25
ordinance 33:9	pages 47:18	45:6,20 48:20	40:7,17	present 3:18
33:16,25 34:20	61:15 66:18	52:16 61:17	plans 21:13 23:6	6:17 7:15 9:9
34:25 35:23	paperwork	perform 28:17	63:1,9,13	57:7 71:2,11
	18:24		plant 25:8 81:15	presently 6:21

67:6 president 7:16 62:16 pretty 32:19 79:17 previous 15:25 28:24 46:22 55:23 previously 74:16 price 29:14 print 63:11 73:8 printed 73:20 privilege 46:5 69:8 73:23 74:2 privileged 45:5 46:17,19 69:9 77:17 probably 21:10 25:25 27:9 41:25 66:8 70:1 80:4 84:9 problem 55:8 process 5:21 14:21 15:12 16:15 19:12 30:4,7 38:4 projects 19:15 properly 45:13 properties 23:24 24:2 63:3,24 75:7 79:23 80:2 property 10:9 10:14 12:17,22 13:3 14:1,3,6,7 14:22 15:5,6 15:21 17:19,22 17:24 18:2,9 18:10,14,22 19:19,20 20:9 20:12,18,24 21:4,25 22:11 22:20 23:1,7	23:16,22,23 24:1,4,4,11,13 25:8,16 26:25 27:5,8,20 29:6 29:16 30:3,4 30:18,22 31:2 31:14,21 32:8 32:24 33:7 34:14 35:8 37:2,15,18,23 38:3,6 41:17 42:12,12,14,18 42:19 43:1,5,9 47:23,23 49:16 50:6 51:6,13 51:23 52:8,19 52:21 53:2,25 54:25 55:1,3,5 55:8,14,19,22 55:24 56:13,22 58:2 60:3 61:4 61:4,5 63:10 67:6,10 70:11 70:12,12,13,17 70:25 71:2,3,6 71:8,8,9,11 72:4 74:18 75:5,9,10 76:24 77:8,25 78:1,10 79:21 80:7 81:15 83:7,19 proposed 16:16 prosecuted 64:4 provided 46:16 70:3 74:18 84:16 public 2:12 16:24 55:10,25 57:22 72:20 86:23 purchase 14:18 18:4 purchased 12:17	20:12,18,19 24:13,14 purpose 10:8 15:4 put 49:2,12 57:13,14 80:24 81:6 puts 58:3 <hr/> <p style="text-align: center;">Q</p> <hr/> Quality 47:15 52:17 Quality's 47:23 question 5:21,25 6:3,5,7 7:24 12:24 14:15 16:22 17:5,21 32:20 34:1 37:4 38:16 40:14 45:13,14 46:16 51:7,9 51:20 52:11 53:8 54:4 60:21 65:16 69:24 73:17 questionable 51:25 questions 85:12 85:20 86:8 Quite 82:20 <hr/> <p style="text-align: center;">R</p> <hr/> RA 78:7 79:22 radio 73:8 raised 55:12 79:19 ran 9:16 Rapids 82:13 re-looking 82:21 reading 36:21 45:12 real 74:17 realize 60:21 really 10:13 17:1 28:10 35:12	73:5 76:8 Realty 74:21,22 74:24 75:4,6 reason 20:18 22:8 recall 34:6 41:22 54:12 62:2,18 62:21,23 63:9 63:15,21 64:11 70:6 82:21 receive 31:15 59:14 75:3 received 22:5 33:14 44:1,24 80:9 receiving 61:23 recess 85:13 recognize 19:7 34:12 39:11 59:3 66:20 recollection 24:10 33:21 34:22 record 5:12 38:24 39:1,2 44:7,10,11,12 44:15 45:15,16 45:17,18 48:19 50:23 52:13,14 54:6 85:18,19 recorded 86:9 records 83:3 reduced 86:10 reference 14:7 referencing 56:16 referred 13:20 29:2 38:12 41:6 referring 14:10 15:9 26:15 58:6 76:1 77:11 reflect 48:19	50:23 67:5 reflected 23:23 66:13 refresh 46:1 64:10 regarding 44:21 46:8 55:13 65:18 77:18 regards 17:9 24:15 Registrar 22:6 regular 30:6 regulated 46:23 47:1,24 51:14 76:25 83:6,11 regulatory 30:17 relate 69:15 related 65:24 73:19 75:14,17 75:22 86:12 relating 73:16 relation 75:6 76:7 relationship 27:25 64:12,19 69:12 release 48:5 59:12 released 59:13 59:14 remedial 48:8 remedy 63:23 remember 5:20 28:6,8 31:11 33:2,2 34:5,8 34:25 39:13 40:1,5,21,23 40:25 41:4,13 42:1,9 43:15 45:25 55:21 61:20,23 64:6 80:22 82:6,7,9 82:10,20,21 83:21,22
--	--	---	---	---

removal 28:9,17 33:6 50:12 58:13 67:11,12 70:15,19 remove 28:3 37:14 removed 51:3 63:19 76:25 83:7 removing 30:4 Renee 1:18 86:6 86:22 rephrase 6:6 60:21 reported 74:13 reporters 73:7 represent 5:14 43:13 represented 44:16 73:11 request 5:24 22:19,21 23:2 requested 48:24 70:7 85:22 requests 70:8 required 57:10 77:1 requirements 36:20 38:2 77:2 residence 6:17 resolution 68:12 68:18 resolve 62:3 69:3 Resource 55:10 57:23 respect 16:4,19 40:8,18 42:6 43:14,25 46:12 56:3 65:14 respective 85:23 respond 17:23 response 17:10	40:23 55:12 Restate 12:24 restaurant 24:21 result 36:13 41:2 49:10,15 57:9 58:12,15 64:22 81:19 retain 43:13 retained 43:25 72:14 review 38:2 63:2 84:10 85:6 reviewed 36:3 reviews 62:24 Richardson 50:7 Richie 24:24,25 25:5 Richie's 25:1 Richmond 69:13 69:21,25 70:3 70:7 right 6:11 10:18 13:2 16:25 17:13 19:14 21:18,21 22:4 22:18 25:25 26:19 27:14,15 34:12 35:21 36:3 38:5,21 41:18 42:25 44:23 48:18 50:22 52:23 56:6 57:5 58:1 58:7,9 60:16 61:6 64:14,20 68:6 78:8,17 85:3 ring 57:6 73:3 road 3:12 6:18 8:5 9:2,12 16:24,25 17:1 17:2 23:16 43:4 50:19,25 63:4 69:19	71:5 72:3,5,7 77:12 78:13 79:10 roads 16:24 role 67:23 Ronda 26:16 room 35:14 Rosati 3:2 Rose's 24:22 RPR 1:18 run 9:14 30:10 runs 32:18 42:11 <hr/> <p style="text-align: center;">S</p> <hr/> salary 7:25 sale 21:14 Sauk 75:13 says 17:24 23:8 34:3,4 36:16 55:9 57:4 58:14 66:8 83:16 school 7:2,4,7 12:5,7 Schultz 3:2 second 38:25 44:6,8 57:1 sediment-erosi... 56:7 sedimentation 58:12,17 sedimentation... 57:25 see 13:24 17:8 27:5,7,21 29:5 34:10 46:3 50:19 81:13 seed 57:13,14 seedlings 81:9 seeing 54:12 seen 13:15,16 33:20 43:21,22 47:12,13 51:18 51:22,25 52:3	52:5,5 67:3,21 78:24 selling 75:9,10 sending 39:13 sent 37:17 38:11 39:15 sentence 55:9 September 46:9 served 11:19 Service 25:14 26:7,10,15 27:25 28:9 31:3,12 Services 55:10 55:25 57:23 set 84:17 86:8 settled 25:14 settlement 46:12 shakes 6:13 shareholder 11:4,8,10 Sheldon 71:5 72:3,5,7 shortly 22:18,21 67:12 show 13:11 21:21 23:2 39:7 43:20 47:8 48:12,13 60:5,6,11,18 60:22 66:16 83:3 84:16 showing 19:5 54:11 61:14 65:22 shown 13:19 19:19,20 40:24 45:14 46:21 58:6 60:7 side 16:22 signature 20:3 84:22 85:22 signed 25:25 50:7 73:21	85:2 Sikandar 71:3 71:12 site 62:18,21 63:1,9,13 75:25 76:7 site-plan 62:24 sitting 34:12 small 66:11 smart 32:19,21 so-called 51:2 software 68:3 soil-erosion 56:7 57:24 sold 17:19 18:10 29:3 sole 11:8 somebody 27:19 31:1 sorry 11:1 29:19 50:2 60:9 76:18 83:22 sort 7:6 18:1 26:6 sound 74:19 south 3:12 12:10 13:23 16:21,25 50:16 79:13 southern 25:15 25:18 26:25 soybean 79:4 specialized 69:16 specific 20:14,23 20:23 28:3 32:13 33:21 34:22 56:2 78:4 specifically 56:11 57:21 85:5 split 12:17 13:4 14:12 15:1,13 16:4,14,16,19
---	---	--	--	--

16:23 17:5,13 17:16,17 18:3 18:9 splitting 14:21 15:21 spoke 15:1 17:7 17:7 31:12 54:21 72:21 73:10 spoken 75:20 spruce 80:6 81:6 83:19 square 80:4 squares 20:17 SS 86:3 stabilize 58:16 staff 55:11 71:14 71:21 stamped 22:3 start 40:14 46:12 started 71:9 starts 42:25 43:1 state 1:1 5:12 11:22 47:14 50:13 82:23 86:2 stated 37:17 statement 23:9 statements 73:15 states 26:18 57:21 station 73:13 stenographic 86:11 stenographica... 86:9 stock 82:3 stopped 27:5 street 43:1 strike 28:15 29:22 62:25 stuff 31:7 36:17	subject 12:23 14:3 32:13 33:6 58:12 submission 63:14 submit 16:14 36:15 submitted 20:6 38:14,18 63:1 63:6 submitting 16:15 62:18,21 suggest 30:16 suggested 23:5 24:20 suggestion 23:4 Suite 3:4 supply 82:4 85:5 supported 85:1 supposed 71:5 72:2,5,6 sure 14:11 15:19 23:19 24:17 25:13 27:10 28:14 29:25 30:2 34:9 37:11 39:22 44:9 45:12 51:10 52:12 54:2 63:8,15 67:13,22,24 72:21 73:1,23 80:11 83:5 84:11 surrounding 74:6 survey 71:4 survived 81:11 sworn 5:7 Systems 9:5 10:23 <hr/> T <hr/> table 4:1 48:2	take 13:12 23:10 28:2 29:23 39:8 47:9 48:8 51:8,9 57:1 66:18 67:18 taken 1:14 55:14 67:12 70:17 73:15 77:13 86:7,12 talk 41:25 46:16 talked 24:20 27:21 62:8 66:1 68:21 73:1,7 talking 6:2 68:23 tax 61:24 television 73:8 tell 10:6 15:16 23:6 24:16,18 25:7 32:17 34:23 Teresa 71:23 72:14 terms 36:22 75:9 testified 5:9 testify 5:7 72:14 76:11 testimony 36:19 Texas 2:12,14 Thank 6:16 theirs 26:19 thing 31:25 72:10 75:11 things 6:13 58:4 82:1 think 9:6,9 17:11 31:17 46:5,19 52:21 56:23 66:12 67:4 68:2 69:23 70:21 74:25 85:11 third 60:11	thought 24:23 26:9 45:13 three 66:17 67:1 80:3 Thursday 1:17 5:2 Thurston 3:19 34:3,10 39:16 39:24 40:11,15 42:6 71:2,12 ticket 64:8 time 6:1 9:9 12:16 15:2,7 20:19,25 21:8 21:11 24:13 25:25 33:13 35:1,16 37:1 37:23 38:14 39:16 44:17,20 53:2,8,25 55:7 65:3 66:1 70:18 71:11 72:17 73:9 85:12 times 46:6 today 13:1 34:12 43:14 64:14 74:7 told 18:5 34:19 35:1,8 77:3 Tom 16:8 17:15 17:18 18:6 top 22:3 town 24:21 Township 1:4 3:11 5:15,15 16:4,21,21 17:9,19 19:14 19:22 20:7 24:12 28:23 31:15,20 32:18 33:14,24 34:13 36:14 39:20 40:6,16 45:2	45:21 46:7,11 48:2,13 50:4 53:3 54:1 55:12 61:7 62:25 63:2,14 63:22 64:4,13 64:19,21 65:17 68:14,20 70:4 70:9 73:6 74:8 76:11,25 78:1 79:25 80:10 83:25 84:7 Township's 34:20 36:3 39:17 53:16,20 76:1 Trail 75:13 trailer 29:4 trailers 30:11 training 7:6 transcript 4:11 86:11 transcription 86:10 transfer 22:11 transferred 22:21 Transport 8:4,7 8:18,23 9:7,10 9:20 11:13,15 11:24 15:10 47:16 62:16,22 Transport's 61:5 transportation 69:16 tree 25:14 26:7,9 26:15 27:25 28:8 31:3,12 33:25 34:20,25 36:6 37:20 39:17 42:6 50:12 53:22 61:8 65:24
---	---	--	--	---

67:10,12 68:13 68:19 70:5,15 71:4 80:10 81:11 82:24 83:25 84:5,6 tree-clearing 33:16 36:4 38:18 tree-ordinance 40:19 41:17 44:1,17,21 64:18,23 65:3 65:14,18 66:2 tree-removal 38:4 trees 25:11 28:3 30:21,21 31:9 32:24 33:6 37:14 49:19 51:3 63:10,19 65:4 70:24 71:1 76:25 80:6,12,24 81:15,18,22 83:6,11,18,19 trespassing 49:24 50:2 trucking 7:11 8:23 23:9 trucks 30:10 true 11:5 13:5 20:1 24:8 33:19 36:22 42:12 44:18 48:15 58:18 61:17 86:11 truth 5:8,8,8 try 6:13 trying 59:12 74:19 turns 43:7 two 13:22 23:24 24:1 47:18 48:20 61:15	81:25 Tyler 73:3 type 7:12 21:5,7 21:11,13 27:24 29:11 30:6,16 30:25 31:1 41:16 46:12 55:15 74:18 75:3,10 79:24 types 70:24 80:24 <hr/> <p style="text-align: center;">U</p> <hr/> ultimately 43:11 underneath 27:22 understand 6:5 14:15 19:14 34:1,4 37:4 51:20 53:17,20 58:2 65:16 73:17,23 85:3 understanding 56:2 59:5 72:6 understood 6:8 32:15 undertake 18:1 unimproved 17:3 United 26:18 upper 50:15 upstream 42:21 use 15:6 18:24 19:13,19 20:14 20:23 21:1,7 22:20 23:3 78:1,1,2,21 <hr/> <p style="text-align: center;">V</p> <hr/> Van 16:20,21 28:22 van-conversion 12:1 variance 79:24 vegetation 25:22	30:4 31:2 70:24 vegetative 58:13 verbal 6:12 verify 77:13 version 73:18 versus 23:3 view 23:22 violated 39:17 violating 35:22 violation 34:20 34:25 35:2,7 36:1 39:21 40:3,8,19 43:23 44:2,24 45:2,22 46:9 46:13 48:1,6 53:3,8,10,12 53:13,17,21 54:1 56:6 57:10,24 61:18 62:4,15 64:9 65:19 68:13,19 69:3 70:5 73:6 80:9 84:1 violations 57:14 57:15 63:23 64:5,23 65:3 Virginia 12:10 74:12 visit 30:3 55:3 56:14,21 57:9 58:15 visited 52:19 54:25 55:1,19 71:3 visits 55:23 56:19 vs 1:7 <hr/> <p style="text-align: center;">W</p> <hr/> wait 5:25 walk 55:5 72:8 walked 55:22	58:2 walking 71:7,9 Walmart 77:9 77:10 want 22:7 34:5 48:4 72:8 84:11 wanted 34:13 warranty 21:24 wasn't 30:24 48:15 62:12 71:20,22 watch 78:24 watched 78:9 way 6:6 53:18 54:3 67:1 Wayne 1:2 53:2 53:25 54:15 55:9,16,24 56:4,21 57:22 59:1,6,9 86:4 86:24 we're 6:2 20:20 32:23 43:14 44:5,5 52:10 week 25:13,25 30:1 31:18 WELDON 2:11 7:21 8:9,20 9:23 10:3,10 10:15,20,25 11:2 12:12,19 13:6 14:14,23 15:14 16:5 18:15 19:24 20:15 21:15 22:12,23 23:18 24:6 25:12 27:16 28:5 29:18,20 30:8 30:19 32:10,25 33:10,17 35:3 35:10,18,24 36:23 37:3,16	37:24 38:8,22 39:25 40:9,20 41:3,8,12,19 41:24 42:8,24 44:3,5,7,12 45:4 46:14,24 47:2,25 48:10 48:19 49:11,17 50:14 51:7,11 51:15,19,24 52:4,10,20 53:4,7,13 54:6 56:8,15 57:12 58:19 63:25 64:25 65:11,20 68:15 69:7 72:16 73:22 76:20,22 77:16 80:25 83:8,13 84:13 85:13,20 went 17:13 18:3 18:18 48:14 71:9 west 43:5,6 61:4 74:12 76:2 79:13 82:10,11 82:13 western 23:22 wetland 46:23 47:1,19 50:13 51:2,2,4,18,23 wetlands 47:24 51:14 52:6 Williams 16:8 16:18 17:4 18:6 24:15,18 25:7 31:22 32:11,15 33:6 35:12 39:13,19 40:12 41:1,9 42:4 62:3,10 66:1,7 68:21 84:9 Williams's 40:23
---	--	---	--	--

62:8 66:13 willingness 76:11 withdraw 38:16 witness 4:3 5:6 11:1 29:19 45:10 85:22 witnesses 72:13 wood 48:25 49:5 49:12,18 50:16 wood-chip 48:25 49:7,15 woods 49:1 72:8 Woodward 1:14 words 32:24 work 26:11 27:3 29:5,12,14 30:7 32:4,8 36:8 38:16 49:15 70:20 75:24 76:9 worked 63:22 working 31:8,13 wouldn't 53:13 written 26:6 29:11 42:5 73:18,24 wrong 10:6 17:21,25 53:5	year 12:4 78:9 79:4,5 years 17:18,18 64:2,16 78:7 79:20 82:20 83:2 yesterday 64:14 Yost 16:25 17:2 50:19,25 young 50:8	2 4:14 21:22 39:4,8 40:24 2:49 1:16 5:3 2017 21:18 22:9 26:2 28:11 29:9 38:20 61:8 2018 31:19 33:15 39:14 43:23 46:9 47:15 52:18 61:8 2019 1:17 5:2 58:3,10 2025 86:25 21 86:25 212 2:5 248 3:6 25,000 62:3 68:23 250 3:4 25th 22:2 27555 3:3 29 43:23	60:11 4:08 52:13 4:19 52:14 4:22 54:9 4:28 57:18 4:30 58:23 4:36 61:12 4:48 67:16 40,000 29:15 43 4:15 44650 1:9 5:16 9:5 10:7 12:11 12:22 13:9 14:1 18:11 45 79:7,7,8 45-degree 30:22 45101 9:3 10:7 472-2700 2:15 47601 6:18 48188 3:13 48331 3:5 489-4100 3:6 48906 2:6	70 25:15,20 26:24 700 9:9 72 12:6 734 3:14 78701 2:14
	Z			8
	zoned 23:17 78:2,7 zoning 18:13,21 20:9 38:2,3 79:21			8 4:20 61:11,14
	0			9
	1			9 4:21 67:15,19 68:1 901 2:13
	1 4:13 13:11 19:2,6 22:9 38:15,17 60:5 1,000 81:16,23 100 30:9 100-percent 32:6 11 47:15 52:17 1150 3:12 12/5/53 6:20 12th 7:3 13 1:17 5:2 15 58:10 79:8,8 16 43:6 60:14 66:21 84:23 18-014569-CE 1:7 19 4:13 1985 8:13 1994 61:19 62:15,19,22 63:19	3 3 4:15 43:17,20 3:10 19:3 3:44 39:1,2 3:45 39:5 3:53 43:18 3:54 44:10 3:55 44:11 3:56 45:16,17 3:59 47:6 30 64:16 30-plus 64:2 31 58:25 318-3043 2:7 39 4:14 394-5199 3:14	5 5 4:5,17 39:14 54:8,11 58:3 66:17 80:4 5:20 85:18,19,21 500 1:14 50s 48:23 512 2:15 517 2:7 5601 8:5 9:2,3 10:2,7 61:6 577 9:4 10:7 5905 9:4	
X				6
Y				6 4:18 57:17 58:8,10 60s 48:23
Yack 16:8 17:15 17:18,23 18:6 yard 30:10 76:1 yeah 7:5 19:18 22:4 34:18 39:15 43:5 49:24 52:12 53:23 59:21 61:20 63:15 65:6,6 66:21 66:23 74:13,21 80:5 85:4,4	2	4 4 4:16 47:5,9 49:8 52:18	7 7 4:19 58:22,25	

EXHIBIT 5

CHARTER TOWNSHIP OF CANTON
DEPARTMENT OF BUILDING & INSPECTION SERVICES
1150 S. Canton Center Road, Canton, MI 48188

NOTICE OF VIOLATION

CASE NO. CE20180000040
NAME 44650, Inc. (GARY A. PERCY, Resident Agent)
ADDRESS 5601 BELLEVILLE CANTON, MI. 48188

D.L.N.

D.O.B.

PHONE

This officer has investigated a complaint at the stated address as required by LAW and has found the following ordinance violation(s):

Article and Section: 5A.05

Zoning Ordinance Article 5A, Section 5A.05, TREE REMOVAL PERMIT.

The removal or relocation of any tree with a DBH of six inches or greater on any property without first obtaining a tree removal permit shall be prohibited.

Comments:

On 4/27/18 information was received, which was confirmed, that a 16.07 acre forested parcel with a significant amount of regulated wetlands was completely cleared of all trees and vegetation in the fall of 2017. The Fisher & Leng/McKinstry Drain, which traverses the property and is regulated by Wayne County was also completely cleared of any vegetation. The tree removal was in violation of Zoning Ordinance Article 5A.Forest Preservation and Tree Clearing, Section 5A.05.A.1 Tree Removal Permit: 1. The removal or relocation of any tree with a DBH of six inches or greater on any property without first obtaining a tree removal permit shall be prohibited; and, 2. The removal or relocation of any landmark tree without first obtaining a tree removal permit shall be prohibited; and 3. The removal, damage or destruction of any tree located within the dripline of a forest without first obtaining a tree removal permit is prohibited; and 4. Clear cutting or grubbing within the dripline of a forest without first obtaining a tree removal permit is prohibited.

Analysis based on a site inspection on 8/22/18 and evaluation of existing trees on adjacent POCO property, at 4850 S. Sheldon Rd., Canton MI, found that 1,385 regulated trees and 300 landmark trees require replacement under Township Ordinance.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

ADDRESS OF CONCERN:

Parcel 135-99-0001-709

A response to this violation shall be received within 14 day(s). Please provide a plan to resolve the violation, or the Township shall consider further legal action.

Leigh Thurston

THURSTON, LEIGH

08/29/18

Officer

Date

For further information, call (734) 394-5200 between 8:30 a.m. - 4:30 p.m.

WARNING: Damage or injury resulting from delay or failure to comply with this notice will be attributed to negligence on the part of the responsible party or parties.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

EXHIBIT 6

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

CHARTER TOWNSHIP OF CANTON,

Plaintiff,

Case No. 18-014569-CE

Hon. Susan L. Hubbard

v

44650, INC., a Michigan corporation,

Defendant.

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
Anne McClorey McLaughlin (P40455)
Stephanie Simon Morita (P53864)
Attorneys for Plaintiff
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100
amclaughlin@rsjalaw.com
smorita@rsjalaw.com

Kristin Bricker Kolb (P59496)
Charter Township of Canton
Co-Counsel for Plaintiff
1150 S. Canton Center Road
Canton, Michigan 48188
(734) 394-5199
kristin.kolb@canton-mi.org

CLARK HILL PLC
Ronald A. King (P45088)
Michael J. Pattwell (P72419)
Cynthia M. Filipovich (P53173)
Stephon B. Bagne (P54042)
Kelly E. Kane (P81912)
212 East Cesar E. Chavez Avenue
Lansing, MI 48906
(517) 318-3100
rking@clarkhill.com
mpattwell@clarkhill.com
cfilipovich@clarkhill.com
sbagne@clarkhill.com
kkane@clarkhill.com

ORDER MAINTAINING STATUS QUO

At a session of the Court, held in the
Coleman A. Young Municipal Center, Detroit, Michigan
On 12/5/2018

PRESENT: HON. SUSAN L. HUBBARD
Circuit Judge

The parties having appeared for hearing before the Court on December 4, 2018, and the Court being fully advised of the premises;

IT IS HEREBY ORDERED that the condition of the subject Property in Canton, Michigan, Parcel ID No. 71-135-99-0001-709, as of December 4, 2018 be maintained as is until further order of this Court. This Order is subject to the following conditions:

- Defendant shall not physically modify or use the Property in violation of Township ordinance, except modifications necessary to comply with regulations and/or directives of other federal, state and/or county agencies having jurisdiction over the Property.

In the event of an allegation of a violation of this Order, Plaintiff may notify the Defendant and the Court. After the notification, the Court shall schedule an immediate hearing to consider the violation alleged.

/s/ Susan Hubbard 12/5/2018
CIRCUIT COURT JUDGE

Stipulated as to form and substance:

/s/ Anne McClorey McLaughlin (P40455)
ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
Attorney for Plaintiff

/s/ RONALD A. KING (P45088) with consent 12/5/18
CLARK HILL PLC
Attorney for Defendant

EXHIBIT 7

Tree Removal Permit Application

Page 2

Planning Services: Tree Removal Policy and Tree Fund and Tree Removal Bonds

Revised 2/13/97, 1/1/02, 4/24,06

Purpose:

To establish a uniform interpretation of the tree replacement criteria and procedures for the issuance of tree removal permits, collection of tree removal bonds and collections of contributions to the tree fund as provided for in Ordinance No. 124, the Charter Township of Canton Forest Preservation Ordinance.

Background:

Article 5A of the Zoning Ordinance establishes standards for tree replacement and requires guarantees for the replacement trees, requires that the replacement trees to be of the same species, or at a minimum, the same type of tree (shade, evergreen, ornamental). If physical constraints inhibit the ability to replace all or a portion of the required replacement trees on the property from which they were removed, the project sponsor may elect to pay monies into the Township tree fund. The ordinance also states that the amount for each tree shall be based on current market value. (see schedule below).

Policy:

Tree Removal Bonds - Prior to issuance of a tree removal permit where replacement trees are required to be planted, a cash bond or letter of credit shall be submitted to the Planning Services Division for 110% of the cost of the replacement trees. This cost shall be based on a 2 year guarantee from the nursery or landscape contractor, the cost of planting, and the cost of labor to remove, dispose and replace any dead material throughout the 2 year guarantee period.

Tree Fund - Prior to issuance of a tree removal permit where the project sponsor opts to pay into the tree fund for all or a portion of the required tree replacement, the tree removal bond (as required above) and/or cash payment into the tree fund shall be submitted to the Planning Services Division. The payment shall be based on the following schedule:

• 2" DBH (regular) Replacement Tree: \$300.00

• 4" DBH (landmark) Replacement Tree: \$450.00

Procedure:

The Planning Services Division will evaluate tree removal permits based on the guidelines set forth in the Forest Preservation Ordinance and the information required to be submitted with the attached application for tree removal permit.

Effective Date: May 1, 2006

RECEIVED by MCOA 2/2/2022 11:58:19 PM

EXHIBIT 8

CHARTER TOWNSHIP OF CANTON

DEPARTMENT OF BUILDING & INSPECTION SERVICES
1150 S. Canton Center Road • Canton, MI 48188

NOTICE OF VIOLATION

CASE NO. 0607-94

NAME Gary Percy - AD Transport

ADDRESS 5601 Belleville Rd.
Canton, MI 48188

D.L.N. _____

D.O.B. _____ PHONE _____

This officer has investigated a complaint at the stated address as required by LAW and has found the following ordinance violation(s):

Be advised you are in violation of Canton Township's Soil Erosion and Sedimentation Control Ord. No. 56, Sec. 3.1, requirement of grading permit.

Re: Earth changes without a grading permit at the following parcel numbers:

135-01-0036-300 135-01-0041-300
135-01-0037-300 135-01-0042-300
135-01-0038-000
135-01-0039-000
135-01-0040-000

This violation(s) shall be corrected and be in compliance within 5 days. Failure to comply will result in a court appearance.

Miles A. Davis #764
Miles A. Davis Officer & Date 6/28/94

For further information, call 397-5400 between 8:30-9:30 a.m. or 4:00-5:00 p.m.

WARNING: Damage or injury resulting from delay or failure to comply with this notice will be attributed to negligence on the part of the responsible party or parties.

BD-213

RECEIVED by MCOA 2/2/2022 11:58:19 PM

CHARTER TOWNSHIP OF CANTON
ORDINANCE COMPLAINT

GRID _____ ORD. SE CASE NO. 0607-94

COMPLAINANT TED ^{SJEF.} (ENGINEERING) PHONE NO. ()

ADDRESS _____

LOCATION OF COMPLAINT A D Transport 5601 Bellevue RD

NATURE OF COMPLAINT Moving Soil w/o a permit

DEFENDANT ~~Matthew~~ GARY E. Percy PHONE NO. ()

ADDRESS 5601 Bellevue RD Canton MI 48187

DOB _____ DLN _____

YR. _____ MAKE _____ MODEL _____ COLOR _____

LPN _____ VIN _____

RECEIVED BY M. Davis DATE 16 JUN 94 TIME 1500HRS OFFICER McDANIEL

COMPLAINT ACTIVITY AND DISPOSITION

1630HRS - Observed that Large Amounts of Soil
HAVE been MOVED. ADVISED WORKERS to STOP AND
LEAVE. AN WORKERS LEFT SITE ADVISED MR MATTHEW
Percy that All work had to stop and permit had to
be obtained, HE stated that work would stop till permit
is obtained.

1655HRS - Contacted At counter ADVISED him NO to work
till permits ARE issued

1700HRS - Observed Soil being Moved ADVISED MR Percy
that Work had to stop or All people operating would be arrested.
ADVISED WORKERS of site to LEAVE as he arrested. All three
Workers LEFT limited 15 minutes posted STOP WORK ORDER on
sign adjacent to property

1700HRS - No work being done.

Planning has now approved site Plans

DATE CLOSED 9-2-94 REVIEWED RR TICKET NO. _____ COURT DATE _____

CASE NO.

0607-94

RECEIVED by MCOA 2/2/2022 11:58:19 PM

CHARTER TOWNSHIP OF CANTON

DEPARTMENT OF BUILDING & INSPECTION SERVICES
1150 S. Canton Center Road • Canton, MI 48188

NOTICE OF VIOLATION

CASE NO. 0606-94

NAME Gary Percy - AD Transport

ADDRESS 5601 Belleville Rd.
Canton, MI 48188

D.L.N. _____

D.O.B. _____ PHONE _____

This officer has investigated a complaint at the stated address as required by LAW and has found the following ordinance violation(s):

Be advised you are in violation of
Canton Township's Forest Preservation
Ordinance, Section 3.1A, 3.1C, 3.1D,
permits required.

Re: The following parcel numbers:

135-01-0036-300
135-01-0037-300
135-01-0038-000
135-01-0039-000
135-01-0040-000
135-01-0041-300
135-01-0042-300

This violation(s) shall be corrected and be in compliance within
5 days. Failure to comply will result in a court appearance.

Miles A. Davis #764
Miles A. Davis Officer & Date 6/28/94

For further information, call 397-5400 between 8:30-
9:30 a.m. or 4:00-5:00 p.m.

WARNING: Damage or injury resulting from delay or failure to comply with this
notice will be attributed to negligence on the part of the responsible party or parties.

BD-213

RECEIVED by MCOA 2/2/2022 11:58:19 PM

CHAPTER TOWNSHIP OF CANTON
ORDINANCE COMPLAINT

GRID _____ ORD. FP CASE NO. 0606-94

COMPLAINANT Twp (Engineering) ^{SURF.} PHONE NO. ()

ADDRESS _____

LOCATION OF COMPLAINT AD Transport 5601 Bellville

NATURE OF COMPLAINT Trees removed w/o a permit

DEFENDANT GARY PERCY PHONE NO. ()

ADDRESS 5601 Bellville Rd Canton MS 38188

DOB _____ DLN _____

YR. _____ MAKE _____ MODEL _____ COLOR _____

LPN _____ VIN _____

RECEIVED BY M. Davis DATE 16 Jun 94 TIME 1500Hrs OFFICER M. Davis

COMPLAINT ACTIVITY AND DISPOSITION

16 Jun 94 1500Hrs - Observed that numerous trees have been removed without a permit. Contacted Mr. Matthew Percy and advised him that work had to stop and that permit had to be obtained. He stated that work would stop until permit is obtained.
1655Hrs - Contacted at location by Mr. Goff advised him not to work till permit is obtained.

9-2-94 Planning has now approved site Plans for expansion of Business

DATE CLOSED 9-2-94 REVIEWED PPB TICKET NO. _____

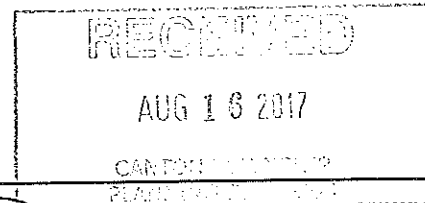
CASE NO. 0606-94

RECEIVED by MCOA 2/2/2022 11:58:19 PM

EXHIBIT 9

Future Land Use Map Amendment Application

CHARTER TOWNSHIP OF CANTON
DEPARTMENT OF MUNICIPAL SERVICES
PLANNING SERVICES DIVISION
1150 Canton Center Road, Canton, MI 48188 • 734/394-5170



General Information:

- Name(s) of Legal Owners of Property: 44650, Inc.
Address: 5601 Belleville Road, Canton, MI 48188
Phone: 734-748-9950
- Signature(s) of Legal Owner(s): [Signature]
- Agent processing the Amendment if different from number 1: _____
Company: gpercy@ADTransport.com -
Address: _____
Phone: _____

Location of Property: _____

- The property is located on the (circle one) ☒ S ☐ E ☐ W side of Yost Road.
between Belleville and Sheldon Roads.
- Dimensions of property: Frontage: 896.17 Depth: 759.05 E, 812.48 W Acreage: 16.17
- Parcel(s) tax ID number(s): 71-135-99-0001-707 - part of

7. It is requested that the Land Use classification of the foregoing described property be amended from
LI to GI

8. Lis attached exhibits if any (example: location map, legal description, etc.): _____

Exhibit A: Location Map

Exhibit B: Legal Description

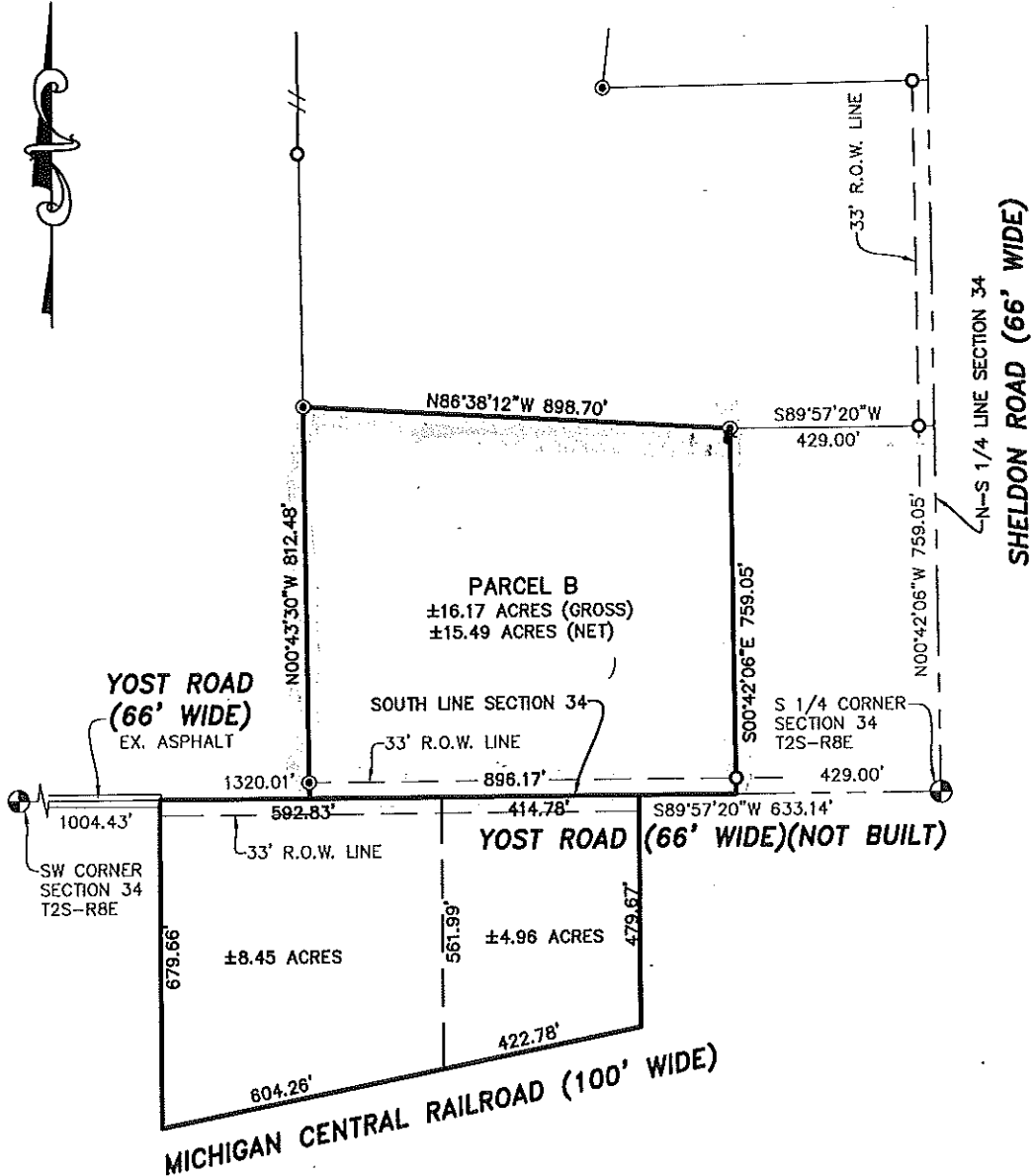
For Township Use:
File Number: 135-MLP-4391 Date Received: 8-15-17
Fee Paid: N/A - will process w/ P.C. update Receipt Number: N/A



EXHIBIT A

LEGEND

- FOUND IRON
- SET IRON



ALPINE
 ENGINEERING, INC.
 CIVIL ENGINEERS & LAND SURVEYORS

46892 WEST ROAD
 SUITE 109
 NOVI, MICHIGAN 48377
 (248) 926-3701 (BUS)
 (248) 926-3765 (FAX)


CLIENT:		DATE: 6-5-17	
GARY PERCY		DRAWN BY: JRV	
BOUNDARY EXHIBIT		CHECKED BY: GLM	
YOST ROAD			
SECTION: 34 TOWNSHIP: 2&3S RANGE: 8E		FBK: 309	1
CANTON & VAN BUREN TOWNSHIP		CHF: RDF	
WAYNE COUNTY		SCALE HOR 1"= 300 FT.	
MICHIGAN		VER 1"= FT.	

Exhibit B

Legal Description: 71-135-99-0001-707

PART OF THE SOUTHWEST 1/4 OF SECTION 34, T2S-R8E, CANTON TOWNSHIP, WAYNE COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH 1/4 CORNER OF SECTION 34, SAID POINT BEARING S00°42'06"E 2643.51 FEET FROM THE CENTER OF SAID SECTION 34; THENCE S89°57'20"W 429.00 FEET ALONG THE SOUTH LINE OF SAID SECTION 34 TO THE POINT OF BEGINNING; THENCE CONTINUING S89°57'20"W 896.17 FEET ALONG THE SOUTH LINE OF SAID SECTION 34; THENCE N00°43'30"W 812.48 FEET; THENCE N89°44'47"E 896.47 FEET; THENCE S00°42'06"E 815.74 FEET TO THE POINT OF BEGINNING, CONTAINING 16.75 ACRES, MORE OR LESS, SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE EASTERLY 33.00 FEET FOR SHELDON ROAD.

RECEIVED by MCOA 2/2/2022 11:58:19 PM

WARRANTY DEED

The Grantor, **F.P. DEVELOPMENT, LLC**, a Michigan limited company (the "Grantor"),
whose address is 4850 S. Sheldon Road, Canton, MI 48188
Conveys and Warrants to **44650, INC.**, a Michigan corporation (the "Grantee"),
whose address is 5601 Belleville Road, Canton, MI 48188

the premises situated in the Township of Canton, County of Wayne, State of Michigan, described in Exhibit A attached hereto, together with all and singular tenements, hereditaments, appurtenances and easements benefiting the said premises and all improvements located thereon (collectively, the "Premises"), for the sum of Four Hundred Four Thousand Two Hundred Fifty and No/100 (\$404,250.00), the receipt of which is hereby acknowledged.

Grantor grants the Grantee the right to make all permitted divisions under Section 108 of the Land Divisions Act, Act No. 288 of the Public Acts of 1967.

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

Effective as of August 1, 2017.

GRANTOR:

F.P. DEVELOPMENT, LLC, a Michigan limited liability company

BY: Martin F. Powelson
MARTIN F. POWLESON, a/k/a
Frank Powelson

ITS: Manager and Sole Member

[Notary Page Follows]

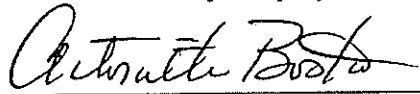
RECEIVED by MCOA 2/2/2022 11:58:19 PM

[Notary Page to Warranty Deed]

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 1st day of August, 2017, by Martin F. Powelson, also known as Frank Powelson, the Manager and Sole Member of F.P. DEVELOPMENT, LLC, a Michigan limited liability company, on behalf of said limited liability company.

Antoinette Bostice
Notary Public, State of Michigan
County of Oakland
My Commission Expires 12/10/2018



Notary Public, Oakland County, MI
My Commission Expires: 12/10/2018

When recorded return to and send
subsequent tax bills to:

F.P. Development, LLC
Attn: Martin F. Powelson
4850 S. Sheldon Road
Canton, MI 48188

Drafted by:

Sullivan Ward Asher & Patton, P.C.
A. Stuart Tompkins, Esq.
25800 Northwestern Highway
Suite 1000
Southfield, Michigan 48075

EXHIBIT 10

**CHARTER TOWNSHIP OF CANTON
PLANNING COMMISSION PROCEEDINGS
November 20, 2017**

A Regular meeting of the Planning Commission of the Charter Township of Canton was held at 1150 South Canton Center Road on Monday, November 20, 2017. Chairman Greene called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance to the Flag.

ROLL CALL:

Members Present: Dodson, Engel, Graham-Hudak, Greene, Perkins and Zuber
Absent: Okon

STAFF PRESENT: Goulet

APPROVAL OF THE MINUTES OF NOVEMBER 20, 2017

Motion by Zuber, supported by Perkins, to accept the Minutes of November 20, 2017 as presented. Ayes all present on a voice vote.

ACCEPTANCE OF AGENDA:

Motion by Zuber, supported by Perkins, to accept the Agenda as presented. Ayes all present on a voice vote.

Chairman Greene acknowledged a long time servant and friend of the Canton community, John Burdziak who passed away recently. Chairman Greene stated that Mr. Burdziak was one who responsible for the success for Canton as a Township Trustee, Planning Commission and Zoning Board of Appeals member. Chairman Greene stated that he will be sadly missed in the community and condolences go out to his wife and family.

PUBLIC HEARINGS

1. 000-MLP-4314 **COMPREHENSIVE PLAN FIVE YEAR UPDATES / AMENDMENTS**
- 1). Future Land Use Element/Lotz Road Corridor Policies
 - 2). Northeast Quadrant – (Future Land Use Map)
 - 3). Areas Designated Rural Residential – (Future Land Use Map)
 - 4). Michigan Avenue between Lotz/Hannan Road – (Future Land Use Map)
 - 5). Percy Request – North of Yost/west of Sheldon Road – (Future Land Use Map)
 - 6). Beaumont Request – North of Michigan/West of Beck Road – (Future Land Use Map)

Motion by Zuber, supported by Dodson, to open the public hearing. Ayes all present on a voice vote.

Mr. Goulet explained that the proposals are a culmination of reviews to the Comprehensive Plan which needs to be evaluated every five years. Mr. Goulet explained the following proposed changes as follows;

RECEIVED by MCOA 2/2/2022 11:58:19 PM

1. **Future Land Use Element and Lotz Road Corridor Development Plan Policies** – The attached excerpts from the current Plan would amend the policies for areas designated on the Future Land Use Map as “Mixed Use” and updates the Lotz Road Corridor Zoning Strategies. These changes would allow consideration of residential uses along the Lotz Road Corridor and in specific areas in the Michigan Avenue Corridor. These policies support the general consensus of the Planning Commission and Board relative to preservation of open space through the use of the Planned Development and Conditional Zoning options, providing better interconnectivity throughout the community by extending and filling gaps in the sidewalk and trail system, and integrating a mix land uses where appropriate to create better accessibility between commercial and residential areas.
2. **Future Land Use Map (Northeast Quadrant)** - The Future Land Use Map in the northeast corner of the community is proposed to be amended by changing the area between I-275 and Holiday Park Subdivision from “Light Industrial” to “Medium-High Density Residential (up to 8 dwelling units/acre).” The area east of the expressway is generally all residential. The map is also being corrected to reflect the Wayne County Park as “Community Facilities” and the mobile home park on Warren Road as “Medium-High Density Residential” to reflect the existing land use.
3. **Future Land Use Map (Areas Designated Rural Residential)**
 - a. There is a block of land in the northwest part of the community and a small area along Napier Road south of Ford Road that is currently designated “Rural Residential” which allows a maximum density of 1 dwelling unit per 2.5 acres, and accommodates up to RE, Rural Estates zoning. A recent change was approved for Westchester 3 on the south side of Warren Road, due to its proximity to the existing Westchester and Hampton Ridge developments, which were zoned R-1 and developed at the “Very Low Density.” The Planning Commission indicated interest in evaluating this area during the update. Planning staff does not see a huge benefit in keeping the “Rural Residential” designation and would support these areas being re-designated as “Very-Low Density Residential,” allowing a maximum density of 1 dwelling unit per acre, consistent with the remainder of the area.
 - b. The small enclave of frontage lots on Napier south of Ford Road should be re-designated to “Low-Density Residential”, which would allow a maximum density of 2 dwelling units/acre, based on the fact that everything around it is designated “Low-Density Residential” and zoned R-2.
 - c. The area on the west side of Denton Road north of Proctor was part of a larger area designated Rural Residential which was changed 5 years ago. This area should be designated “Very-Low-Density Residential” to be consistent with the portion of Central Park Estates on the east side of Denton Road.
4. **Future Land Use Map (Michigan Avenue between Lotz and Hannan)**

The area on the south side of Michigan Avenue is currently designated primarily “Light Industrial”, with “General Commercial” designations near the intersections of Lotz and Hannan Road. The proposed change to the “Mixed Use” designation would allow more flexibility along this section of Michigan Avenue to encourage consolidation and redevelopment of some of the obsolete properties on narrow deep parcels.

5. Future Land Use Map (Percy Request - North of Yost and west of Sheldon)

The owner has requested a change from "Light Industrial" to "General Industrial" on the Future Land Use map to allow for future consideration of GI, General Industrial Zoning. This area has been traditionally designated and zoned light industrial since Sheldon Road is not a Class A road, thus is weigh restricted. The owner has purchased this property, which does not have access to Sheldon and will combine it with his trucking company property located on Belleville Road and on the south side of Yost Road in van Buren Township. Wayne County is currently considering vacation of the Yost Road right-of way. The property in question is wooded with wetlands.

6. Future Land Use Map (Beaumont Request – North of Michigan and West of Beck)

The owner is requesting a change from "Light Industrial Research" to "Medium-High Density Residential" (up to 8 dwelling unit/acre). This is currently regulated by the Oakwood Planned Development Agreement until 2018 for a medical campus with assisted living and other senior housing and some commercial and medical office use along Beck Road. Beaumont has merged with Oakwood and has no plans to pursue development under the PDD agreement and is marketing the property for sale. The demand is for attached senior housing. The traffic and sewer demands for potential R-6 zoning are similar and potential less than the anticipated impacts that the previous approved development agreement identified. A change to the "Medium-High Density Residential" designation would provide opportunities for similar housing products to what exists north of the site along the south side of Geddes Road.

Motion by Dodson, supported by Perkins, to close the public hearing. Ayes all present on a voice vote.

Chairman Greene asked for any comments from the audience.

Mr. Eric Lord, Atwell Hicks, representing Marketplace for America, the property owners on the north side of Michigan Avenue and Morton Taylor Road west of the ITC corridor, stated that they own 90 acres that will be affected by the text amendment. Mr. Lord stated that the amendment only incorporates Mid Rise Development and asked that consideration be given to include an R-6, Single-Family attached residential designation which would give more flexibility for the property under Policy 1.5.2a. Mr. Lord stated that MRD has a limitation of 3 stories and that R-6 allows for more flexibility.

Mr. Goulet indicated that Mr. Lord has requested that language is added into Policy 1.5.2a for an R-6 component instead of it being limited to MRD zoning (Mid Rise Development). Commissioner Graham-Hudak verified that the request is for both classifications to be included in the amendment. Mr. Goulet explained that R-6 zoning can be considered on the south side of Michigan Avenue near Sheldon Road but is limited to MRD in the policy due to the direction the Planning Commission requested suggesting it is integrated with the commercial area. Mr. Goulet explained that MRD and R-6 are very different and allow for attached housing, however, MRD requires a minimum of 3 stories in height. Chairman Greene inquired whether a PDD will be required. Mr. Goulet explained that if the property is zoned R-6 a PDD is not necessarily required. Mr. Goulet explained that with a Mixed Use designation many zoning districts can be considered in the area and doesn't force the entire development to be mixed use.

Mr. Goulet explained that R-6 could be included in the amendment but would recommend it be conditioned as part of a mixed use development.

Mr. Goulet explained that he would not want to see the entire site developed as R-6 without any other component associated with it. Mr. Goulet suggested adding language which would reflect R-6 be part of a mixed use development. Commissioner Graham-Hudak verified that any residential development is ADA compliant.

Richard Sable, Marketplace representative, stated that he agreed with the comments made and that R-6 allows for the changing economic conditions occurring in the community and that it would be a mixed use product for the property.

Chairman Greene asked for comments from audience on Item No. 2 (northeast quadrant). There were no comments from the audience regarding proposed Item No. 2.

Chairman Greene asked for comments from audience on Item No. 3 (Rural Residential). There were no comments from the audience regarding proposed Item No. 3. Mr. Goulet stated that the request makes these pockets of parcels consistent with what the adjacent property is currently designated

Chairman Greene asked for comments from the audience on Item No. 4 (Michigan Avenue between Lotz and Hannan Roads). There were no comments from the audience regarding Item No. 4. Mr. Goulet explained that the request is for Mixed Use which gives flexibility in either direction for commercial and office.

Chairman Greene asked for comments from the audience regarding Item No. 5 (Percy).

Matthew Percy, owner of A.D. Transport Express, stated that a General Industrial designation would help for future growth of his business. Mr. Percy stated that they currently do not have any plans for expansion but would like the zoning in place in the event they do expand their business. Mr. Percy explained that the parcels to the west are designated General Industrial and want this parcel General Industrial for future growth. Mr. Percy stated that Wayne County is in the process of vacating Yost Road.

Chairman Greene asked for comments from the audience regarding Item No. 6 (Beaumont).

Commissioner Graham-Hudak inquired if the road vacation is due in part to the wooded wetlands in the area. Mr. Goulet stated that the parcel would be difficult to develop due to the wetland area. Commissioner Graham-Hudak inquired if General Industrial would then give consideration for Wayne County to construct a new road. Mr. Percy explained that road access will be through their property to the west with access onto Belleville Road on to Yost Road. Mr. Percy indicated that there will not be access to Sheldon Road as it is a Class A Road. Mr. Goulet stated that POCO requested adding their property into the General Industrial request but it abuts Sheldon Road and that he would not be supportive of this request. Mr. Percy stated that if POCO was incorporated into the request it could help classify Sheldon Road as a Class A Road. Mr. Goulet stated that Sheldon Road should be a Class A Road but Wayne County does not have the money to rebuild Sheldon Road.

Mr. Goulet stated that property owners would have to pay to reconstruct the road to Class A to support heavy industrial traffic. Mr. Goulet explained that Mr. Percy's business cannot be expanded under LI zoning.

Mr. Randy Thomas, president of Insite Commercial and Beaumont representative, stated that the property was initially bought by Oakwood Hospital but due to the merger with Beaumont plans have changed. Mr. Thomas explained that a market analysis for value and potential uses was done and it was determined there was potential on the residential aspect with small commercial to support the community. Mr. Thomas explained that Pulte was awarded the contract with the intent to develop mixed use residential, single-family, senior living, and multiple family along with items that are in the PDD such as a day care facility. Mr. Thomas explained that Pulte is in the planning process of developing a site plan. Chairman Greene inquired of the difference in designating a mixed use with straight R-6 zoning. Mr. Thomas explained that the site is large and want varied products within the site as it is a transitional piece of property. Mr. Goulet explained that the change would allow for attached housing, daycare, assisted living and other types of institutional uses which is more suitable for the area as opposed to Light Industrial Research zoning. Mr. Goulet explained that the Michigan Avenue frontage should remain industrial as carry over development due to the auto industry expansion at nearby Willow Run. Mr. Goulet indicated that industrial zoning becomes less viable north of the drain property. Commissioner Graham-Hudak suggested designating the area mixed use. Mr. Goulet explained that a mixed use designation only allows for light industrial, office or C-3 but not residential. Mr. Goulet stated that the sewer analysis indicates supporting R-6 zoning. Mr. Goulet stated that plans are for different housing products because one product over 97 acres will not be absorbed very quickly.

Motion by Dodson, support by Perkins, to close the public hearing. Ayes all present on a voice vote.

Motion by Zuber, supported by Perkins to approve and adopt the proposed amendments to the Comprehensive Plan as proved in the draft text and map excerpts in the packets as summarized in items 1, 2, 3a, 3b, 3c, 4, 5, and 6 above and to amend policy 1.5.2A to include R-6 as long as it is not exclusive and part of a mixed use development.

Ayes: Dodson, Engel, Graham-Hudak, Greene, Perkins and Zuber
Absent: Okon

NEW BUSINESS REFER TO STAFF

2. 072-PDDA-4550 **UPTOWN APARTMENTS PDD AMENDMENT #5** – Refer review of PDD Amendment to staff for parcel no. 072 99 0003 713. Property is located north of Cherry Hill between Ridge and Denton Roads.

Motion by Zuber, supported by Perkins, to refer the Item 2 site plan to staff. Ayes all present on a voice vote.

NEW BUSINESS-SET PUBLIC HEARING FOR DECEMBER 4, 2017

3. 073-RZ-4533 **SUMMER PARK BIXLER (ZONING ORDINANCE AMENDMENT** – Set public hearing for December 4, 2017 to consider request to amend an area of the Village Core and Village Edge areas within the Cherry Hill Village Overlay District for parcel nos. 073 99 0001 706, 073 99 0001 708 and 073 99 0005 715. Property is located south of Cherry Hill Road between Denton and Ridge Roads.
- 133-RZ-4318 **CANTON MI AVE DEVELOPMENT REZONING** – Set public hearing date for December 4, 2017 to consider request to rezone all of parcel no. 133 02 0040 010, part of 133 02 0040 011 from C-3, Regional Commercial to LI, Light Industrial and part of parcel no. 133 02 0040 011 and the northern part of parcel no. 133 02 0040 008 from LI, Light Industrial to C-3, Regional Commercial. Property is located south of Michigan and east of Sheldon Road.

Motion by Zuber, supported by Perkins, to set the Item 3 public hearing for December 4, 2017. Ayes all present on a voice vote.

REPORTS, DISCUSSION AND CORRESPONDENCE

ADJOURN.

Motion by Zuber, supported by Perkins, to adjourn the meeting at 8:00 p.m. Ayes all present on a voice vote.

Connie Wade
Recording Secretary

EXHIBIT 11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

F.P. DEVELOPMENT, LLC,
a Michigan Corporation,

Plaintiff/Counter-Defendant,

vs.

Case No. 2:18-cv-13690

Hon. George Caram Steeh

CHARTER TOWNSHIP OF CANTON,
MICHIGAN, a Michigan Municipal
Corporation,

Defendant/Counter-Plaintiff.

_____ /

DEPOSITION OF JEFF GOULET

The deposition of JEFF GOULET, taken before
CHRISTINE A. LERCHENFELD, Notary Public and Court
Reporter, in and for the County of Macomb, State of
Michigan, acting in the County of Oakland, on Wednesday,
June 12, 2019, at 27555 Executive Drive, Suite 250,
Farmington Hills, Michigan 48331, commencing at 9:31 A.M.

<p>1 APPEARANCES:</p> <p>2 CHANCE D. WELDON (Texas Bar No. 24076767)</p> <p>3 901 Congress Avenue</p> <p>4 Austin, Texas 78701</p> <p>5 (512) 472-2700</p> <p>6 Appearing on behalf of Plaintiff/Counter-</p> <p>7 Defendant.</p> <p>8</p> <p>9 MICHAEL J. PATTWELL (P72419)</p> <p>10 212 East Cesar Chavez Avenue</p> <p>11 Lansing, Michigan 48906</p> <p>12 (517) 318-3043</p> <p>13 Appearing on behalf of Plaintiff/Counter-</p> <p>14 Defendant.</p> <p>15</p> <p>16 ANNE McCLOREY McLAUGHLIN (P40455)</p> <p>17 27555 Executive Drive, Suite 250</p> <p>18 Farmington Hills, Michigan 48331</p> <p>19 (248) 489-4100</p> <p>20 Appearing on behalf of the Defendant/Counter-</p> <p>21 Plaintiff.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 2</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 JEFF GOULET</p> <p>5 Examination by Mr. Weldon 6</p> <p>6 Examination by Ms. McLaughlin 58</p> <p>7 Re-Examination by Mr. Weldon 61</p> <p>8 * * * *</p> <p>9</p> <p>10</p> <p>11 EXHIBITS: MARKED</p> <p>12 Exhibit Number 1 - Tree Ordinance 7</p> <p>13 Exhibit Number 2 - Tree Removal Application 15</p> <p>14 Exhibit Number 3 - Tree Count 18</p> <p>15 Exhibit Number 4 - Notice of Violation 27</p> <p>16 Exhibit Number 5 - Code of Ordinance, Article 27 34</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 * * * * *</p> <p>25</p> <p style="text-align: center;">Page 4</p>
<p>1 APPEARANCES, (continued):</p> <p>2</p> <p>3 KRISTIN BRICKER KOLB (P59496)</p> <p>4 1150 South Canton Center Road</p> <p>5 Canton, Michigan 48188</p> <p>6 (734) 394-5198</p> <p>7 Appearing on behalf of the Defendant/Counter-</p> <p>8 Plaintiff.</p> <p>9</p> <p>10 ALSO APPEARING: JULIANA BUTLER</p> <p>11</p> <p>12 * * * * *</p> <p>13</p> <p>14</p> <p>15 REPORTED BY: Christine A. Lerchenfeld, CER6501</p> <p>16 Certified Electronic Reporter</p> <p>17 FOR: Network Reporting Corporation</p> <p>18 Firm Registration Number 8151</p> <p>19 1-800-632-2720</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 3</p>	<p>1 Farmington Hills, Michigan</p> <p>2 Wednesday, June 12, 2019</p> <p>3 9:31 a.m.</p> <p>4 * * * * *</p> <p>5 JEFF GOULET</p> <p>6 * * * * *</p> <p>7 COURT REPORTER: Would you raise your</p> <p>8 right hand, please? Do you solemnly swear or affirm</p> <p>9 to tell the truth, the whole truth and nothing but</p> <p>10 the truth in this matter?</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. WELDON: Could you please state your</p> <p>13 name for the record?</p> <p>14 THE WITNESS: My name is Jeff Goulet.</p> <p>15 MR. WELDON: Have you ever given a</p> <p>16 deposition before?</p> <p>17 THE WITNESS: Yes.</p> <p>18 MR. WELDON: So this will be sort of old</p> <p>19 hat, but just a couple of things up front. So we</p> <p>20 can keep a clear record for the Reporter will you</p> <p>21 agree that you'll wait until I finish asking any of</p> <p>22 my questions before you give an answer and I'll</p> <p>23 extend the same courtesy and wait till you finish</p> <p>24 your answer before I ask another question; is that</p> <p>25 fair?</p> <p style="text-align: center;">Page 5</p>

2 (Pages 2 to 5)

1 THE WITNESS: Yes.
 2 MR. WELDON: And if at any point you need
 3 to take a break, just let me know. I just ask that
 4 if there's a question out on the table at the time
 5 that you answer that question before we break; is
 6 that fair?
 7 THE WITNESS: That's fine.
 8 EXAMINATION
 9 BY MR. WELDON:
 10 Q Now, you've been designated by the Township to
 11 testify on a few topics today; is that correct?
 12 A Yes.
 13 Q Do you know what those topics are?
 14 A It's in the summons.
 15 Q And that would be the interpretation and application
 16 of the tree ordinance; is that correct?
 17 A That's correct.
 18 Q Do you work for the Township?
 19 A Yes.
 20 Q And what do you do there?
 21 A I'm the community planner for Canton Township.
 22 Q And what does that involve?
 23 A It's administration of the Zoning Ordinance and the
 24 land development regulations, review of all new
 25 develop plans. It involves putting together a

Page 6

1 master plan, the administration of all the planning
 2 and zoning activities in the Township.
 3 Q And does that involve the interpretation and
 4 application of Canton Code of Ordinances Article 5A?
 5 A Yes.
 6 Q And how long have you been in that position?
 7 MS. KOLB: Can we clarify that? Because
 8 5A is actually in the appendix to the Code of
 9 Ordinances. 5A of the Code is a different section.
 10 MR. WELDON: Are you testifying?
 11 MS. KOLB: I'm making a clarification for
 12 the record. 5A of the Code is not the ordinance.
 13 MR. WELDON: I'm going to object that
 14 you're testifying on behalf of your Witness.
 15 BY MR. WELDON:
 16 Q For the purposes of today's deposition I'm going to
 17 refer to Article 5A that we just spoke of as the
 18 tree ordinance. Is that okay?
 19 A Article 5A of Appendix A Zoning is the tree
 20 ordinance.
 21 Q Yes. So how long have you worked for the Township?
 22 A Twenty-six years.
 23 MR. WELDON: I'm going to go ahead and
 24 introduce Exhibit 1 here.
 25 (Exhibit Number 1 was marked for

Page 7

1 identification at 9:34 a.m.)
 2 BY MR. WELDON:
 3 Q Take a look at that, please. Are you familiar with
 4 this document?
 5 A Yes.
 6 Q And what is that?
 7 A This is alluding to the version of the Code of
 8 Ordinances Article 5A of Appendix A Zoning.
 9 Q Can you turn to 5A.05-A, please? Are you familiar
 10 with that section?
 11 A Yes.
 12 Q And that section of the ordinance says that a permit
 13 is required to remove or relocate any tree with a
 14 DBH of 6 inches or greater; is that correct?
 15 A Yes.
 16 Q And so does that mean that if a property owner has a
 17 tree on his property that's 5 inches that he can
 18 just cut it down without notifying the Township?
 19 A Yes, generally.
 20 Q Can you turn to A3 under 5A.05? That section
 21 prohibits the removal, damage or destruction of a
 22 tree in a forest, correct?
 23 A Yes.
 24 Q So does that mean that the 6-inch DBH requirement
 25 doesn't apply to trees that are in a forest?

Page 8

1 A All the requirements in here are read together, not
 2 separately. So you have to look at these together
 3 and it depends on the particular application on that
 4 particular piece of property.
 5 Q Right. So I'm trying to understand, because A-1
 6 says the removal of any tree with a DBH of 6 inches
 7 or greater, but then when you go down to A-3 it says
 8 the removal or damage or destruction of any tree
 9 located within a forest. So does that apply to
 10 trees less than 6 inches if they're in a forest?
 11 A Yes.
 12 Q How does the Township determine what constitutes a
 13 forest?
 14 A The constitution of a forest could be looking at the
 15 definition. There's the definition of a forest in
 16 the code. Forest means any treed area of 1/2 acre
 17 or more containing at least 28 trees with a DBH of 6
 18 inches or more.
 19 Q Do you know if the trees allegedly removed in this
 20 case were in a forest?
 21 A I'm not familiar with the exact manner of the trees
 22 in this particular thing. I was not on-site, I did
 23 not do the investigation.
 24 Q Do you know if the Township has made a determination
 25 as to whether or not the trees were in a forest?

Page 9

1 **A I believe it has.**
 2 Q And did the Township determine that they were in a
 3 forest?
 4 **A I believe we did.**
 5 Q But under this ordinance, whether they're in a
 6 forest or not, if the tree has a DBH of 6 inches
 7 then you need a permit to remove it, correct?
 8 **A That's correct.**
 9 Q And that permit requirement applies whether the tree
 10 you want to remove is a big, beautiful tree or if
 11 it's an ugly tree. If it's bigger than 6 inches you
 12 need a permit, correct?
 13 **A Right.**
 14 Q And that applies whether removing the tree causes
 15 any injury to your neighbors or not, correct?
 16 **A That's correct.**
 17 Q And that permit requirement applies regardless why
 18 the property owner wants to cut down the tree,
 19 correct?
 20 **A That's correct.**
 21 Q So hypothetically let's say that a property owner
 22 doesn't want to chop down the tree, but he wants to
 23 dig it up and sell it. Like if someone sees he has
 24 a big oak tree and they want it. Would he need a
 25 permit for that?

Page 10

1 **A If somebody is removing a tree that's over 6 inches**
 2 **it needs a permit for removal.**
 3 Q What if removing the tree would, say, reduce
 4 flooding, would he still need a permit?
 5 **A Removal of a tree that's regulated requires a**
 6 **permit.**
 7 Q No matter what?
 8 **A No matter what.**
 9 Q So let's talk about what's required to get a permit
 10 under the ordinance. Can you turn to Section 5A.08?
 11 Are you familiar with that section of the ordinance?
 12 **A Yes.**
 13 Q Under that section to remove a tree that's covered
 14 by the ordinance a property owner will need to
 15 either pay market value of the tree into the tree
 16 fund or plant a replacement tree, correct?
 17 **A It depends on how many trees they're removing.**
 18 Q Can you explain what you mean?
 19 **A There is a provision in the ordinance that allows**
 20 **for development of a property or use of a property**
 21 **that they can remove up to 25 percent of the**
 22 **regulated trees without any penalty or any**
 23 **replacement on the site. So it depends on how many**
 24 **trees are on the property and how many trees they're**
 25 **removing.**

Page 11

1 Q So after that 25 percent threshold is reached they
 2 have to either pay into the tree fund or provide
 3 replacement trees, correct?
 4 **A First option is to replace the trees on the**
 5 **property. The second option, if they choose not to**
 6 **and they want to use more property and they don't**
 7 **want to preserve any of the trees, they have an**
 8 **option of paying into the tree fund, so the trees**
 9 **can be planted elsewhere.**
 10 Q So is that 25 percent exemption you were talking
 11 about is that automatic or does the Township have to
 12 sign off on it?
 13 **A It's automatic. It's part of the calculation of the**
 14 **permit.**
 15 Q Can you point to the section of the Code that
 16 provides for that 25 percent?
 17 **A The same section you just said. It's 5A.08. It's**
 18 **in the middle portion of it. It states that such**
 19 **trees shall be relocated or replaced by the permit**
 20 **if more than 25 percent of the total inventory of**
 21 **trees is removed. So replacement only kicks in**
 22 **after 25 percent.**
 23 Q But once we've reached this 25 percent tree
 24 replacement or paying into the tree fund is a
 25 mandatory condition of any permit, correct?

Page 12

1 **A Right, if they choose to remove more than 25**
 2 **percent.**
 3 Q What if a property owner doesn't want any trees on
 4 his property at all?
 5 **A Then he can choose to -- then he can choose to pay**
 6 **into the tree fund if he doesn't want any trees on**
 7 **his property. It's his choice. We don't prevent**
 8 **people from removing all of the trees on their**
 9 **property. The Code provides a disincentive for**
 10 **doing that in terms of preserving the forest that**
 11 **was there to begin with.**
 12 Q What if the owner thinks the ordinance is
 13 unconstitutional and he says, "I don't want to pay
 14 anything"? Is that an option under the ordinance?
 15 MS. McLAUGHLIN: Objection to the form of
 16 the question. Go ahead and answer.
 17 THE WITNESS: I guess he could always sue
 18 us for it being unconstitutional. I'm not an
 19 attorney.
 20 BY MR. WELDON:
 21 Q But there's not -- I'm sorry, you can go ahead and
 22 answer. There's not anything under this ordinance
 23 that allows him some sort of option that says, "Hey,
 24 I'm not paying anything"?
 25 **A We wouldn't issue a permit unless he chose one or**

Page 13

1 **the other.**
2 Q Can you turn to Section 5A.08-E-1?
3 **A Which section?**
4 Q We're still in 08 and we're in E-1. I know we've
5 already touched on this briefly, but that says that
6 the owner can replace the tree or pay the market
7 value; is that correct?
8 **A That's correct.**
9 Q How does the Township determine what the market
10 value of a tree is?
11 **A The market value is the going rate for that size**
12 **tree, you know, retail price of the tree planted on-**
13 **site with a warranty.**
14 Q When is that determined?
15 **A We determine that every several years. We go by**
16 **policy based on what the Township is paying for**
17 **trees under its tree programs.**
18 Q So you said it's not based on what other townships
19 are paying for trees under their tree programs? I'm
20 sorry.
21 **A Based on what the going rate for trees is, based on**
22 **bidding trees out on the market we know what the**
23 **price of trees is planted with warranties. So**
24 **obviously that market changes from year to year**
25 **based on the cost of trees. So the policy**

Page 14

1 **establishes those costs based on the size of the**
2 **tree in the policy and based on the current market**
3 **rate of those trees.**
4 Q And how often do you guys set your rates?
5 **A Every several years.**
6 Q When is the last time you guys reset the rate?
7 **A I don't recall.**
8 Q In the last five years?
9 **A I don't recall.**
10 MR. WELDON: I'm going to introduce
11 Exhibit 2.
12 (Exhibit Number 2 was marked for
13 identification at 9:45 a.m.)
14 BY MR. WELDON:
15 Q Have you seen this document before? And take time
16 to look at it.
17 **A Yes.**
18 MS. McLAUGHLIN: Do you have a copy?
19 MR. WELDON: Yeah.
20 BY MR. WELDON:
21 Q Can you tell me what the document is that I just
22 handed you?
23 **A This is the application form for a tree removal**
24 **permit.**
25 Q And if you turn to what's marked in here as page 2

Page 15

1 down under the heading "Tree Fund" that seems to
2 indicate that the current going rate for a 2-inch
3 tree is \$300 and a 4-inch tree is \$450; is that
4 correct?
5 **A That's correct.**
6 Q And so that is what the Township has determined is
7 the market rate?
8 **A Yes.**
9 Q And it doesn't seem to indicate that there is any
10 sort of variation between types of trees; is that
11 correct?
12 **A It's an average cost.**
13 Q Does the Township -- if they require payment into
14 the tree fund does the Township differentiate on the
15 basis of tree type?
16 **A No.**
17 Q So to be clear, if it's a 2-inch oak tree or 2-inch
18 some other hardwood tree it's going to be this \$300
19 cost?
20 **A That's correct.**
21 Q So under the ordinance if a person wants to cut down
22 a tree and they don't want to have replacement trees
23 placed on their property you go to these two
24 numbers, either 300 or 450 and you give them a price
25 based on the size of a replacement tree, correct?

Page 16

1 **A That's correct.**
2 Q And that applies regardless whose property the tree
3 is on, correct?
4 **A That's correct.**
5 Q And that applies whether the tree is on a hill or
6 down in a valley, correct?
7 **A Can you clarify what tree you're talking about? The**
8 **replacement tree or the removed tree?**
9 Q Either one. Let's start with the replacement tree.
10 **A If it's on the property and it's regulated, it's**
11 **regulated.**
12 Q Same with the removed tree. It doesn't matter if
13 they remove the tree in a valley or on a hill it's
14 going to be the same replacement cost, correct?
15 **A If it's a regulated tree, yes.**
16 Q Let's say the property owners, their neighbors don't
17 really think that the tree removal on their
18 neighbor's property impacted them in any way. The
19 replacement cost is still going to be 200 or 450,
20 correct?
21 **A That's correct.**
22 Q So the actual impact on the neighbors of removing
23 the tree isn't relevant in this calculation,
24 correct?
25 **A The calculation is based on the number of trees that**

Page 17

1 **are required to be replaced.**
2 Q So I'm going to ask that again. The actual impact
3 to the neighbors of removal of the tree is not
4 relevant to how you calculate the dollar amount for
5 the tree fund, correct?
6 **A No.**
7 MR. WELDON: Let's go to Exhibit 3.
8 (Exhibit Number 3 was marked for
9 identification at 9:50 a.m.)
10 BY MR. WELDON:
11 Q Are you familiar with this document?
12 **A Not specifically.**
13 Q Does it look like -- have you seen documents like
14 this before?
15 **A Similar to this.**
16 Q And do you know what these types of documents are?
17 Can you tell by looking at it what it is?
18 **A It appears to be a survey of trees on the property.**
19 Q Turn to what's marked at the top as page 3. It
20 looks like it's the second page, but it says page 3.
21 You know what? Since you're not familiar with this
22 document I'm just going to strike this line of
23 questioning. So I won't ask you any questions about
24 it.
25 Go back to Exhibit 1, please, back to the

Page 18

1 tree ordinance. Can you turn to section 5A.05-F-4?
2 Are you familiar with that section?
3 **A Yes.**
4 Q The next section says that a permit will only be
5 granted under three conditions. They're listed
6 there as A, B and C; is that correct?
7 **A Yes.**
8 Q So if you're applying for a tree removal do you have
9 to satisfy all three of these criteria or is it --
10 **A Which ones are applicable. So they may not all be**
11 **applicable.**
12 Q And whether a proposed tree removal meets these
13 criteria that's at the sole discretion of the
14 Township, correct?
15 **A Yes.**
16 Q And those are in addition to the requirement that
17 the applicant pay into the tree fund or buy
18 replacement trees, correct?
19 **A Well, payment into -- replacing trees on the site or**
20 **payment into the tree fund would be a result of**
21 **evaluation of these criteria.**
22 Q Correct. So let me clarify that question. So if
23 they don't satisfy these criteria it doesn't matter
24 if they're willing to pay into the tree fund or not,
25 correct?

Page 19

1 **A Payment into the tree fund is not an issue. The**
2 **issue is what are they removing and why are they**
3 **removing them and have they taken actions to**
4 **minimize the necessary removal of trees based on**
5 **what they want to do on the property.**
6 Q So let me try and clarify what I'm asking here. To
7 get a tree removal permit you have to satisfy these
8 criteria and either pay into the tree fund or
9 replace the trees, correct?
10 **A Right.**
11 Q Would you agree that trees, by their nature, tend to
12 get bigger over time?
13 **A Yes.**
14 Q So any unwanted tree that an owner is required to
15 keep on his property under this ordinance that could
16 get bigger, too, correct?
17 MS. McLAUGHLIN: Objection to the form of
18 the question. Assumes facts not in evidence. Go
19 ahead.
20 THE WITNESS: I'm not sure what the
21 question is -- what you're asking me.
22 BY MR. WELDON:
23 Q You said that trees get bigger. I'm just applying
24 it to a tree that's required to be kept on the
25 property under the ordinance. It's in the category

Page 20

1 of trees, it could get bigger, too, correct?
2 MS. McLAUGHLIN: Objection to the form of
3 the question. There's no testimony that the
4 ordinance requires anyone to keep trees on their
5 property. Assumes facts not in evidence. Go ahead.
6 THE WITNESS: If somebody has trees on
7 their property and they want to remove them and it's
8 considered a forest they need a permit that allows
9 them to remove a certain amount of trees on the
10 property to maintain the property in the condition
11 they want to maintain it.
12 MR. WELDON: I'm going to object that
13 that's nonresponsive.
14 BY MR. WELDON:
15 Q You said earlier that you can't remove a tree, I'm
16 paraphrasing here, correct me if I'm wrong, you
17 can't remove a tree without permission from the
18 Township, correct?
19 MS. KOLB: Objection. You're
20 misrepresenting his testimony.
21 MR. WELDON: I'm sorry, I don't believe
22 two attorneys can object at a deposition. So I'm
23 going to object to the other speaking objection from
24 a second attorney.
25 MS. KOLB: I'm Counsel of record. I

Page 21

1 can --
 2 MR. WELDON: That's fine.
 3 MS. KOLB: -- put objections on the
 4 record.
 5 MR. WELDON: Under the rules you're not
 6 the attorney that is representing right now.
 7 BY MR. WELDON:
 8 Q We spoke earlier that you need a permit to remove a
 9 tree under the tree ordinance, correct?
 10 **A Yes, if you're removing regulated trees over a**
 11 **certain percentage and it met the criteria for**
 12 **removal.**
 13 Q And to get a permit you have to meet the criteria in
 14 Section 4 that we talked about, correct?
 15 **A Yes.**
 16 Q And if you meet those criteria then you either have
 17 to pay into the tree fund or plant replacement
 18 trees, correct?
 19 MS. McLAUGHLIN: Objection. Asked and
 20 answered. Go ahead.
 21 THE WITNESS: Only if they're removing
 22 more than 25 percent of the regulated trees. If
 23 they're not removing trees that are regulated
 24 they're going to get a permit to remove anything
 25 that's under 6 inches in order to maintain the

Page 22

1 property. That was the purpose of my answer before
 2 that you objected to, because it depends on what
 3 they're removing. They need to show us on a plan
 4 what they're removing, what the sizes of the trees
 5 are in order for us to apply these criteria.
 6 BY MR. WELDON:
 7 Q So if they don't want to pay into the tree fund, the
 8 property owner, and the property owner does not want
 9 to plant replacement trees then under this ordinance
 10 they would have to keep those trees on the property,
 11 correct?
 12 **A They'd have to maintain up to 75 percent of the**
 13 **regulated trees on the property if they didn't want**
 14 **to replace any trees. They're allowed 25 percent**
 15 **removal of the regulated trees. If they're removing**
 16 **trees that are not regulated that's considered brush**
 17 **and maintenance of the property. They still need a**
 18 **permit, but they would be allowed to do that without**
 19 **replacing trees on the property. So part of it**
 20 **depends on what they're removing and how many**
 21 **they're removing.**
 22 Q But there are trees, theoretically, that would be on
 23 the property that you would need to either pay for
 24 or replace to remove, correct?
 25 **A Not necessarily. It depends on the size and the**

Page 23

1 **number. Say if there's 100 trees on the property.**
 2 **I'm going to give you a hypothetical. Okay?**
 3 **There's 100 trees on the property and 50 of them are**
 4 **regulated and 50 of them are not regulated. They**
 5 **can remove 50 trees without replacing trees on the**
 6 **property. If they remove 25 trees that are**
 7 **regulated, more than 25 percent of the regulated**
 8 **trees, then they would have to start replacing on**
 9 **the property.**
 10 Q I see what's happening here.
 11 **A So part of it depends on what's on the property and**
 12 **it depends on the composition of the trees and what**
 13 **they're proposing to remove.**
 14 Q Let me be clear. Regulated trees on the property,
 15 to use your term, they want to remove more than 25
 16 percent of the regulated trees on the property. If
 17 they wish to do that they either have to pay into
 18 the tree fund or they have to replace trees,
 19 correct?
 20 **A That's correct.**
 21 Q Okay. So my question was in that case there will be
 22 some trees, regulated trees, that they will have to
 23 maintain on the property if they don't want to do
 24 that, if they don't want to pay into the tree fund
 25 or replace the trees, correct?

Page 24

1 **A Right. It's their choice on how they manage the**
 2 **trees on the property.**
 3 Q I just want to clarify that answer. You're saying,
 4 yes, they would have to maintain those trees on the
 5 property if they don't want to pay?
 6 **A I'm saying how they maintain their property is up to**
 7 **them, whether or not they maintain the property**
 8 **without any trees on it or whether they maintain the**
 9 **property with portions of the trees on it or all of**
 10 **the trees on it. They decide how many trees they're**
 11 **going to remove and then we determine what the**
 12 **ordinance requires.**
 13 Q Are there penalties for removing trees without a
 14 permit under this ordinance?
 15 **A It would be misdemeanor requirements for violation**
 16 **of not getting a permit.**
 17 Q And in addition to those penalties could you then
 18 also be forced to pay into the tree fund or provide
 19 replacement trees after the fact?
 20 **A That would be a mitigation issue that -- it would be**
 21 **a legal issue if they chose to go that route. If**
 22 **they come in with an after-the-fact permit obviously**
 23 **they're going to have to mitigate what they've**
 24 **removed.**
 25 Q So when you say that it's their choice to do so it's

Page 25

1 not a choice without consequences, is it?

2 **A They have to meet the requirements of the ordinance.**

3 Q Right. So does the Township compensate property

4 owners for trees they're required to keep on their

5 property?

6 MS. McLAUGHLIN: Objection to the form of

7 the question. Assumes facts not in evidence. It's

8 contrary to his prior testimony. You may answer.

9 THE WITNESS: We don't physically pay

10 anybody to maintain trees on their property.

11 BY MR. WELDON:

12 Q So there's nothing in this ordinance that says that

13 the Township will pay private property owners for

14 requiring them to maintain trees on their property?

15 MS. McLAUGHLIN: Objection to the form of

16 the question. Assumes facts not in evidence.

17 THE WITNESS: No.

18 BY MR. WELDON:

19 Q Let's say that -- and we talked about this a little

20 bit earlier. Let's say that a property owner cuts

21 down a tree without a permit. What does the

22 Township generally do in that situation?

23 **A If we're aware of it we would issue a Notice of**

24 **Violation and require them to get a permit.**

25 MR. WELDON: I'd like to introduce Exhibit

Page 26

1 4.

2 (Exhibit Number 4 was marked for

3 identification at 10:02 a.m.)

4 BY MR. WELDON:

5 Q Are you familiar with this document?

6 **A Generally.**

7 Q What is it?

8 **A It's a stop work order and Notice of Violation.**

9 Q Would you say that this is a typical Notice of

10 Violation issued by the Township for violating the

11 tree ordinance?

12 **A Yes.**

13 Q You said -- you mentioned just a second ago a stop

14 work order. If the Township thinks that a property

15 owner is still cutting down trees after the Notice

16 of Violation it could issue a stop work order,

17 correct?

18 **A That's correct.**

19 Q Are there penalties for violating a stop work order?

20 **A Whatever the legal remedies are. I'm not an**

21 **attorney.**

22 Q Does the Township typically assess penalties for

23 violating a stop work order?

24 **A I'm not sure what the penalties are for violating a**

25 **stop work order, whether it's a misdemeanor, how the**

Page 27

1 **ordinance considers that in terms of what type of**

2 **violation that is. I guess the answer would be I**

3 **don't know.**

4 Q You agree, though, that there is some sort of

5 penalty. The Township doesn't just let people

6 violate stop work orders, correct?

7 **A That's correct.**

8 Q And would those penalties be in addition to any

9 penalties that may exist for violating the tree

10 ordinance?

11 **A I guess that would be for a court to determine. It**

12 **would be a part of a court action of the Notice of**

13 **Violation.**

14 Q You were designated by the Township to testify as to

15 the interpretation and application of the tree

16 ordinance. Isn't that correct?

17 **A That's correct.**

18 Q So as the Township's representative are you stating

19 you are unaware if there are penalties for violating

20 a stop work order?

21 MS. McLAUGHLIN: Objection to the form of

22 the question and foundation.

23 THE WITNESS: I answered that at the

24 beginning of the deposition that it would be a

25 misdemeanor.

Page 28

1 BY MR. WELDON:

2 Q So are the penalties for violating a stop work order

3 independent of the penalties for violating the tree

4 ordinance?

5 **A It's part of the same violation.**

6 Q So if I'm a property owner in that case then I don't

7 have to worry about any sort of additional new

8 violation if I choose to violate a stop work order?

9 MS. McLAUGHLIN: Objection to the form of

10 the question. Foundation. I believe it calls for a

11 legal conclusion.

12 THE WITNESS: I don't know whether that

13 would be considered another occurrence and another,

14 you know -- whether or not the penalties are going

15 to be done on a day-by-day basis or whether it would

16 be part of the continuation of the same violation.

17 I'm not sure. I'm not an attorney.

18 BY MR. WELDON:

19 Q You said just a moment ago -- well, I'll ask you

20 this. Do you know if a stop work order was issued

21 to F.P. Development in this case?

22 **A I believe a stop work order was issued based on what**

23 **you provided me in Exhibit 4 signed by Kristin Kolb.**

24 Q Can you turn back to Exhibit 1? That's going to be

25 5A.04 of the tree ordinance. It's actually going to

Page 29

1 be on page 3 of what I gave you what I'm going to
2 ask about, but it's the Notice of Violation;
3 issuance of an appearance ticket. Are you familiar
4 with that section?
5 **A Yeah.**
6 Q And that section says that if a property is not in
7 compliance with this article at the end of the
8 period specified in the Notice of Violation an
9 appearance ticket may be issued, correct?
10 **A Yes.**
11 Q And an appearance ticket, that's basically a
12 lawsuit, right?
13 **A An appearance ticket is a notice to appear in court.**
14 Q So if the property owner receives a Notice of
15 Violation how would one come into compliance?
16 **A They would submit an after-the-fact tree removal**
17 **permit, have it evaluated and meet the requirements**
18 **for issuance of a permit.**
19 Q And that would -- assuming that they were covered
20 trees and more than 25 percent were removed that
21 would require him to replant or pay for removed
22 trees, correct?
23 **A Yes.**
24 Q Do you know if F.P. Development removed more than 25
25 percent of the trees on the property in this case?

Page 30

1 **A I do not.**
2 Q So the way that I read this section it also says --
3 it says basically that a Notice of Violation gives a
4 property owner a time period to comply with the
5 Township's demand, in this case filing an after-the-
6 fact permit, and if that doesn't happen then the
7 next step is the Township can file suit, correct?
8 **A That's correct.**
9 MS. McLAUGHLIN: Objection to the form of
10 the question.
11 THE WITNESS: If they do not meet the
12 requirements of the Notice of Violation we would
13 then proceed to issue a court appearance ticket.
14 BY MR. WELDON:
15 Q Can you turn back to Exhibit 4, the Notice of
16 Violation? Is there anything in that Notice of
17 Violation that talks about an administrative appeal?
18 MS. McLAUGHLIN: I'm going to place an
19 objection to the form of the question and lack of
20 foundation. This document was not authored by this
21 Witness. You haven't established that he has
22 knowledge of this, the specific terms of this
23 document.
24 MR. WELDON: I think that I already laid
25 the predicate that he was familiar with it, but I

Page 31

1 can ask him again.
2 THE WITNESS: What are you asking me
3 again? I'm not sure I understand.
4 BY MR. WELDON:
5 Q Are you familiar with this document?
6 **A Generally.**
7 Q And the document is in front of you, correct?
8 **A Yes.**
9 Q And you said that that was a typical Notice of
10 Violation, correct?
11 **A Yes, this is the typical format that the Township**
12 **uses for all Notices of Violation.**
13 Q Is there anything on that Notice of Violation that
14 talks about an administrative appeal?
15 MS. McLAUGHLIN: Objection to the form of
16 the question. Foundation.
17 BY MR. WELDON:
18 Q You can take your time.
19 **A It doesn't appear that the Notice of Violation**
20 **specifically addresses administrative appeals on the**
21 **form of the notice.**
22 Q Turn back to Exhibit 1, please. Sorry to jump
23 around.
24 MS. McLAUGHLIN: What page?
25 MR. WELDON: I'm just going to ask a

Page 32

1 general question about the ordinance in its entirety
2 since he's familiar with it.
3 BY MR. WELDON:
4 Q Are you aware of anything in this ordinance, the
5 tree removal ordinance, that talks about an
6 administrative appeal?
7 MS. McLAUGHLIN: I'm going to place an
8 objection to the form of the question. The entire
9 ordinance is an administrative process.
10 THE WITNESS: This ordinance is part of
11 the overall Zoning Code of Appendix A, Zone A.
12 Appendix A, Zone A does have a section in the Zoning
13 Code dealing with administrative appeals.
14 BY MR. WELDON:
15 Q In the tree ordinance, including the section dealing
16 with Notices of Violation, which, as we've just
17 discussed, is 5A.04, is there anything in that
18 section that mentions administrative appeals?
19 **A As I mentioned before, this ordinance is part of a**
20 **larger ordinance and there is a separate section in**
21 **Appendix A, Zoning that deals with administrative**
22 **appeals.**
23 Q Do those administrative appeals deal with Notices of
24 Violation?
25 **A Not specifically.**

Page 33

1 MR. WELDON: I'd like to turn to Exhibit
2 5, please. I haven't given it to you yet.
3 (Exhibit Number 5 was marked for
4 identification at 10:12 a.m.)
5 BY MR. WELDON:
6 Q Are you familiar with the document that I've handed
7 you, Exhibit 5?
8 A Yes.
9 Q And what is that?
10 A This is Section 27.09 of Appendix A, Zoning.
11 Q And that section deals with penalties for
12 violations, correct?
13 A Yes.
14 Q So if I had been issued a Notice of Violation as a
15 property owner this might be where I would
16 rationally look?
17 A Yes.
18 Q Is there anything in this section that talks about
19 administrative appeals?
20 A No.
21 Q So as we discussed earlier, if we're dealing with
22 covered trees and the ordinance has been triggered,
23 then the ordinance requires individuals who remove
24 those covered trees to either pay into the tree fund
25 or plant replacement trees, correct?

Page 34

1 A Yes.
2 Q And under this Section 27.09 if a person doesn't do
3 either of those things they can be subject to
4 criminal penalties for violating the ordinance,
5 correct?
6 A Yes.
7 Q And those penalties, it appears to be, are a fine
8 not exceeding \$500 or by imprisonment not exceeding
9 90 days for each offense, correct?
10 A That's what it says.
11 Q But typically that's not all a person is on the hook
12 for if they cut down trees without a permit,
13 correct?
14 A I'm not sure what you mean.
15 Q In this case, for example, the Township is seeking
16 approximately \$48,000 from my client; isn't that
17 correct?
18 A I don't believe so. I'm not aware of that.
19 Q Are you familiar with the counter-complaint filed in
20 this lawsuit?
21 A Not specifically.
22 Q You spoke earlier about the fact that if you cut
23 down trees without a permit you still have to go and
24 apply for an after-the-fact permit?
25 A That would be a normal sequence of events.

Page 35

1 Q So let's say that my client did cut down trees on
2 the property. He doesn't want to pay you guys
3 anything and he doesn't want to plant any
4 replacement trees. Are you telling me that you're
5 going to fine him \$500 and be done with it?
6 A No. He's still subject to the terms of the tree
7 ordinance, so I assume that would be why we're here
8 in terms of settling the court case.
9 Q And the terms of the tree ordinance would require
10 either some replacement or payment into the tree
11 fund, correct?
12 A Normally.
13 Q You say normally there and I'm curious why you
14 didn't use the term always. Are there situations
15 where you can cut down regulated trees and not pay
16 anything?
17 A Somebody submits a permit under normal circumstances
18 they would need to follow the ordinance. Obviously
19 we're in a court case here. Court cases are
20 resolved by resolving the court case. I don't know
21 what the resolution will be in this particular case.
22 I can't allude to what will happen in this
23 particular case.
24 Q Well, I'm not asking you to speculate about what
25 will happen in this case, I'm asking you to testify

Page 36

1 regarding the way that the ordinance is interpreted
2 and applied.
3 A Okay. Well, you were basically referring to the
4 section of it dealing with penalties and
5 misdemeanors.
6 Q Right.
7 A So when we get into a legal issue with somebody that
8 does not get a tree removal permit obviously we have
9 to go through the legal process to determine what
10 the resolution of that's going to be. So that was
11 the basis of my answer, based on the context of the
12 question.
13 Q I'm just asking what the ordinance requires and it
14 seems like the ordinance requires, as you testified
15 to earlier, the potential of a criminal penalty and
16 I'm asking if that's it.
17 MS. McLAUGHLIN: Is that another question?
18 MR. WELDON: Yes.
19 THE WITNESS: Is what it?
20 BY MR. WELDON:
21 Q The criminal penalty. Is that all that the client
22 could be on the hook for? Or do they have to
23 actually, as you testified to earlier, have to go
24 back in and still pay something or plant some
25 replacement tree?

Page 37

<p>1 MS. McLAUGHLIN: Objection to the form of 2 the question. It's compound. It also has been 3 asked and answered. 4 THE WITNESS: In accordance with the 5 ordinance he may be subject to a criminal penalty. 6 Pursuant to the permit requirements he may be 7 required to either replace trees on the site and/or 8 pay for a portion of the trees on the site, 9 depending on what the outcome of the tree removal 10 permit and the litigation is. 11 BY MR. WELDON: 12 Q What's the purpose of requiring individuals who cut 13 down trees without a permit to go through the permit 14 process and make that payments or whatever after the 15 fact? 16 A They never received a permit, so how do we know what 17 they did on the property without them getting a 18 permit. They have to establish what they are doing 19 on their property so we can determine what the 20 permit is for or was for. And if they're going to 21 take additional trees down what additional trees do 22 they plan on taking down. 23 Q I guess I'm asking if they violated the ordinance 24 why not just do the criminal penalty and be done 25 with it? Why the additional going back and paying</p> <p style="text-align: center;">Page 38</p>	<p>1 landmark trees, which are larger trees than the 2 normal regulated trees. 3 BY MR. WELDON: 4 Q Can you turn back to Exhibit 1, please? So your 5 position here is that the 25 percent requirement 6 only applies to regulated trees, but not to landmark 7 trees. Can you point to the section of the tree 8 ordinance that you base that on? 9 MS. McLAUGHLIN: Hold on. Let me object 10 to the preamble to your question, the form of it, 11 insofar as it's part of the question. But go ahead, 12 answer the question. 13 THE WITNESS: Section 5A.08, Relocation or 14 replacement of trees, subsection A, Landmark tree 15 replacement. It says, "Every landmark/historic tree 16 that is removed shall be replaced by three trees 17 with a minimum caliper of 4 inches. Such trees will 18 be of the species from Section 5B.06." Landmark 19 trees are identified in 5B.06. 20 BY MR. WELDON: 21 Q So the 25 percent exemption does not apply to 22 landmark trees? 23 A That's correct. 24 Q So if a property owner wants to remove any landmark 25 tree then they have to either replace the tree or</p> <p style="text-align: center;">Page 40</p>
<p>1 the tree fund or planting replacement trees? 2 A Because they still didn't get a permit. They still 3 didn't comply with the ordinance. So our intent is 4 to achieve compliance with the ordinance. 5 MR. WELDON: Why don't we take a break for 6 just a minute? Off the record. 7 (Off the record at 10:21 a.m.) 8 (Back on the record at 10:34 a.m.) 9 BY MR. WELDON: 10 Q You testified earlier that the replacement or tree 11 fund payments don't apply if the property owner 12 removes less than 25 percent of the regulated trees 13 on the property, correct? 14 A That's correct. 15 Q So in this case if F.P. Development removed less 16 than 25 percent of regulated trees on the property 17 this case would have to be dismissed then, correct? 18 MS. McLAUGHLIN: Objection. Calls for a 19 legal conclusion. Foundation. 20 THE WITNESS: We would have to make a 21 determination of what trees were removed, what size 22 were there, whether they were landmark trees and 23 whether or not the landmark trees needed to be 24 replaced. So there's two provisions in the 25 ordinance, one for regulated trees and one for</p> <p style="text-align: center;">Page 39</p>	<p>1 pay into the tree fund, correct? 2 A That's correct. 3 Q So if less than 25 percent is -- sorry, let me run 4 that back. So your position is even if F.P. 5 Development removed less than 25 percent of the 6 regulated trees on the property there would still 7 need to be an additional investigation as to whether 8 or not landmark trees were removed, correct? 9 MS. McLAUGHLIN: I'm going to place an 10 objection to the qualification of your position as 11 to the terms of the ordinance that apply. But go 12 ahead. 13 THE WITNESS: The ordinance would evaluate 14 the number of trees and type of trees and size of 15 trees removed and determine whether or not they 16 needed to be replaced based on the ordinance 17 standards. 18 BY MR. WELDON: 19 Q And when you say the ordinance standards what do you 20 mean by that? 21 A Whether it was a landmark tree, whether it was a 22 regulated tree, whether it was an exempt tree. 23 Q You testified earlier, feel free to correct me if 24 I'm wrong, if I paraphrase this wrong, that in 25 addition to the criminal penalties in the ordinance</p> <p style="text-align: center;">Page 41</p>

<p>1 that a property owner who cut down trees without a</p> <p>2 permit would still have to go back and comply with</p> <p>3 the permitting requirement, correct?</p> <p>4 A The ordinance requires a permit. The intent of the</p> <p>5 ordinance is to achieve compliance with permit</p> <p>6 requirements.</p> <p>7 Q Look at Exhibit 1 and turn to Section 5A.04. Is</p> <p>8 that the only section -- sorry. That section deals</p> <p>9 with enforcement mechanism for the ordinance; is</p> <p>10 that correct?</p> <p>11 A This issue deals with the Notice of Violation.</p> <p>12 Q Is there any other section in the tree ordinance</p> <p>13 that deals with enforcements?</p> <p>14 A Enforcement of the Zoning Ordinance generally would</p> <p>15 be in the section that you referred to in Exhibit 5.</p> <p>16 Q And that would be 27.09?</p> <p>17 A Yes.</p> <p>18 Q Is there any other section that deals with</p> <p>19 enforcement?</p> <p>20 A I'm not aware of any other particular section.</p> <p>21 Q Is there anything, either in .04 that we just talked</p> <p>22 about or in 27.09, that talks about requiring an</p> <p>23 after-the-fact permit for a violation of the tree</p> <p>24 ordinance?</p> <p>25 A There's nothing that specifically talks about an</p> <p style="text-align: center;">Page 42</p>	<p>1 provided by law, including any additional rights of</p> <p>2 the Township to initiate proceedings in an</p> <p>3 appropriate court of law."</p> <p>4 Q So to be clear, that's the provision that you're</p> <p>5 saying gives the Township authority to file a</p> <p>6 lawsuit to demand submission of an after-the-fact</p> <p>7 permit?</p> <p>8 MS. McLAUGHLIN: Objection. Calls for a</p> <p>9 legal conclusion. Asked and answered.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. WELDON:</p> <p>12 Q In that section it talks about, looking at it right</p> <p>13 here, to abate noncompliance. Is that what you're</p> <p>14 talking about?</p> <p>15 A That's the last section of that section. I didn't</p> <p>16 read the entire section.</p> <p>17 Q Is it your position that requiring a submission of</p> <p>18 an after-the-fact permit and all the tree fund and</p> <p>19 replacement costs and things of that nature that</p> <p>20 we've spoken of, that's to abate noncompliance?</p> <p>21 A That's one way of doing it.</p> <p>22 Q Is that what you're claiming this lawsuit -- is that</p> <p>23 what you're claiming the counterclaims are in this</p> <p>24 case?</p> <p>25 MS. McLAUGHLIN: Objection to foundation.</p> <p style="text-align: center;">Page 44</p>
<p>1 after-the-fact permit, but the method of coming into</p> <p>2 compliance with the ordinance would be submitting an</p> <p>3 after-the-fact tree permit.</p> <p>4 Q Is there anything in the tree ordinance or 27.09</p> <p>5 that talks about filing a lawsuit -- that gives the</p> <p>6 Township authority to file a lawsuit to demand that</p> <p>7 my client apply for an after-the-fact permit?</p> <p>8 MS. McLAUGHLIN: Objection to the form of</p> <p>9 the question and lack of foundation.</p> <p>10 THE WITNESS: I'm not sure how to answer</p> <p>11 that question.</p> <p>12 BY MR. WELDON:</p> <p>13 Q It seems like you've pointed to two places for</p> <p>14 enforcement mechanisms of the tree ordinance,</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q Do either one of those sections include filing a</p> <p>18 lawsuit to demand compliance with an after-the-fact</p> <p>19 -- submission of an after-the-fact permit?</p> <p>20 A It refers to issuance of a court appearance ticket.</p> <p>21 So the section that says other remedies in the Code</p> <p>22 under 27.09 -- where's 27.10? It looks like it's</p> <p>23 not all here. This would be 27.09, subsection 5 are</p> <p>24 the remedies. "The rights and remedies set forth</p> <p>25 above shall not preclude the use of other remedies</p> <p style="text-align: center;">Page 43</p>	<p>1 He's already testified he was not specifically</p> <p>2 familiar with the counterclaim.</p> <p>3 BY MR. WELDON:</p> <p>4 Q When the Township -- does the Township file lawsuits</p> <p>5 to require after-the-fact submission of permits?</p> <p>6 MS. McLAUGHLIN: Foundation.</p> <p>7 THE WITNESS: In the event that they do</p> <p>8 not comply with the Notice of Violation, come to the</p> <p>9 Township to abate or remedy the noncompliance, they</p> <p>10 would either be issued a court appearance ticket or</p> <p>11 we would use other remedies provided by law to</p> <p>12 achieve compliance.</p> <p>13 BY MR. WELDON:</p> <p>14 Q Other remedies like what?</p> <p>15 A I assume filing a lawsuit. That's one remedy.</p> <p>16 There may be other remedies.</p> <p>17 Q And that would be, again, to abate noncompliance?</p> <p>18 A That's correct.</p> <p>19 Q So the Township -- if you cut down a tree without a</p> <p>20 permit, a regulated tree, or a landmark tree without a</p> <p>21 permit, and the Township requires you to come back</p> <p>22 in after the fact and pay into the tree fund, is</p> <p>23 that a penalty?</p> <p>24 MS. McLAUGHLIN: I'll place an objection</p> <p>25 to the form of the question. It assumes facts not</p> <p style="text-align: center;">Page 45</p>

1 in evidence and it's contrary to his prior
 2 testimony. And foundation. I think the term
 3 penalty calls for a legal conclusion as well.
 4 THE WITNESS: Is it a penalty? Not
 5 specifically. It's a permit.
 6 BY MR. WELDON:
 7 Q It requires payment after the fact, correct?
 8 **A Not necessarily.**
 9 Q It requires payment or replacement of trees,
 10 correct?
 11 **A Not necessarily.**
 12 Q What else could happen?
 13 **A The tree may not necessarily need to be replaced.**
 14 **It depends on whether or not it was an exempt tree,**
 15 **whether or not -- depending on how many trees they**
 16 **removed --**
 17 MR. WELDON: Objection. Nonresponsive to
 18 my question.
 19 THE WITNESS: Well, I'm trying to explain
 20 to you how -- I'm trying to explain to you how we
 21 would evaluate whether the tree had to be replaced
 22 and whether or not they chose to replace it or
 23 whether they chose to pay into the tree fund.
 24 BY MR. WELDON:
 25 Q So hypothetically speaking let's say that an

Page 46

1 individual cuts down a landmark tree without a
 2 permit. Under this ordinance they will have to
 3 either replace the tree or pay into the tree fund,
 4 correct?
 5 MS. McLAUGHLIN: Objection to the form of
 6 the question. Hypothetical. Go ahead.
 7 THE WITNESS: Those would be his two
 8 choices.
 9 BY MR. WELDON:
 10 Q Would you say that that is a penalty?
 11 MS. McLAUGHLIN: Objection. Asked and
 12 answered.
 13 THE WITNESS: No, that would be his choice
 14 on how he wanted to comply with the tree removal
 15 permit requirements.
 16 BY MR. WELDON:
 17 Q I guess what I'm unclear on is I'm trying to figure
 18 out what gives the Township authority to force
 19 compliance like this after the fact. Now, you
 20 pointed to that code section that talked about
 21 abatement. What are they trying to abate? Are they
 22 trying to abate a nuisance?
 23 **A It would be abating the fact that he didn't get a**
 24 **permit and they need to resolve the permit issue and**
 25 **resolve the matter of getting a permit and**

Page 47

1 **mitigating the impact of removal of the tree. In**
 2 **this particular case abatement would be mitigation,**
 3 **I guess.**
 4 Q When you collect payments into the tree fund under
 5 the tree ordinance how is that money used?
 6 **A That money goes into a fixed account used for**
 7 **replacement and maintenance of trees on property.**
 8 **So generally the Township will take that money and**
 9 **the ordinance specifies what it can be used for. So**
 10 **we'll go out and plant trees in parks, we'll plant**
 11 **trees along streets to re-establish the tree cover**
 12 **that was removed on the property. And we'll replace**
 13 **those trees elsewhere within the community to re-**
 14 **establish that canopy.**
 15 Q Can money paid into the tree fund be used for
 16 anything besides trees?
 17 **A Trees and their maintenance.**
 18 Q Is there any sort of statute, regulation or
 19 ordinance that states that explicitly?
 20 **A The ordinance specifically talks about the tree**
 21 **fund, so Section 5.08-E.**
 22 Q I'm sorry. Can you say that again, please?
 23 **A 5.08-E talks about paying money into the Township**
 24 **tree fund for replacement within the Township.**
 25 **These monies shall be equal to the tree amount**

Page 48

1 **representing the current market value for the tree**
 2 **replacement that would have been otherwise required.**
 3 Q That seems to indicate what the property owner has
 4 to do, but I'm asking is there any sort of
 5 ordinance, statute or regulation that limits what
 6 the Township can do with the money once they have
 7 it?
 8 **A I believe we have a policy that addresses how the**
 9 **tree fund is to be used.**
 10 Q Is that a written policy?
 11 **A I believe so.**
 12 Q Do you know what it's called?
 13 **A I don't know specifically the title of the policy.**
 14 **It would be a division policy. I would have to pull**
 15 **it.**
 16 Q Is that a binding policy?
 17 **A It's a policy that can be evaluated from time to**
 18 **time. It's a policy that we use in order to go to**
 19 **the Board and ask for disbursement of monies from**
 20 **the tree fund to provide some standard procedures on**
 21 **the use of the tree fund.**
 22 Q I guess my question is does the Board have
 23 discretion to use money from the tree fund for other
 24 things?
 25 MS. McLAUGHLIN: Foundation.

Page 49

<p>1 THE WITNESS: The ordinance specifically</p> <p>2 says tree fund, monies paid into the Township tree</p> <p>3 fund for replacement within the Township.</p> <p>4 BY MR. WELDON:</p> <p>5 Q So the Township's position on the interpretation of</p> <p>6 this ordinance is that that language in this</p> <p>7 ordinance binds the Board and says that they can't</p> <p>8 spend the money on anything else but tree</p> <p>9 replacement and maintenance?</p> <p>10 A Right.</p> <p>11 Q How long did you say you've been with the Township?</p> <p>12 A Twenty-six years.</p> <p>13 Q Are you aware of any time that the Township has</p> <p>14 spent money from the tree fund on anything else?</p> <p>15 A Not that I'm aware of.</p> <p>16 Q If a property owner pays money into the tree fund</p> <p>17 for a tree removal how long is it before the</p> <p>18 Township purchases and plants a tree? Let me take</p> <p>19 that back. If they pay into the tree fund for a</p> <p>20 tree removal does the Township have to plant a tree</p> <p>21 with that money or they can spend that money for</p> <p>22 other tree-related things?</p> <p>23 A The tree fund is used for tree planting and</p> <p>24 maintenance. So we have an ongoing budget every</p> <p>25 year where the Township Board budgets a certain</p> <p style="text-align: center;">Page 50</p>	<p>1 BY MR. WELDON:</p> <p>2 Q Who would know that?</p> <p>3 A Our finance department.</p> <p>4 Q Do you know an individual that you could give a name</p> <p>5 of that would know that?</p> <p>6 A That would be our finance director.</p> <p>7 Q So if the Township does do actual replacement trees</p> <p>8 from the tree fund for a tree that's removed on the</p> <p>9 property does the Township have to plant that</p> <p>10 replacement tree in the same vicinity as the</p> <p>11 property is was removed from or can they plant it</p> <p>12 anywhere in the Township?</p> <p>13 A We can plant it anywhere in the Township.</p> <p>14 Q Do you know how much money was collected in the tree</p> <p>15 fund last year?</p> <p>16 A Not specifically.</p> <p>17 Q Do you have a ballpark figure?</p> <p>18 A Not offhand.</p> <p>19 Q Do you know how many trees were planted last year</p> <p>20 out of funds from the tree fund?</p> <p>21 A Not specifically.</p> <p>22 Q Have you got a ballpark figure?</p> <p>23 A I'd have to go back and look at the program from</p> <p>24 last year.</p> <p>25 Q More than ten?</p> <p style="text-align: center;">Page 52</p>
<p>1 amount of money for tree planting and tree</p> <p>2 maintenance.</p> <p>3 Q So I guess what I'm getting at is that's not like a</p> <p>4 one-to-one. So if the property owner pays into the</p> <p>5 tree fund for the removal of a tree the Township</p> <p>6 doesn't just take that money and plant a tree,</p> <p>7 correct?</p> <p>8 A No, not directly.</p> <p>9 Q Is there a separate bank account for the tree fund?</p> <p>10 A It's a separate fund within the Township's accounts.</p> <p>11 Q Is it part of the general fund?</p> <p>12 A No.</p> <p>13 Q Is it held in a bank?</p> <p>14 A Yes.</p> <p>15 Q Is it a separate bank account?</p> <p>16 A I don't know how the Township manages their bank</p> <p>17 accounts in terms of how they divvy up money. We</p> <p>18 follow standard accounting procedures that are for</p> <p>19 public agencies.</p> <p>20 Q Are any of those funds ever commingled?</p> <p>21 MS. McLAUGHLIN: Objection. Foundation.</p> <p>22 THE WITNESS: I'm not sure what you mean</p> <p>23 by funds commingling. I'm not sure how the bank</p> <p>24 accounts are maintained. We have to follow State</p> <p>25 guidelines on deposits of our monies.</p> <p style="text-align: center;">Page 51</p>	<p>1 A Yes.</p> <p>2 Q More than 100?</p> <p>3 A Maybe.</p> <p>4 Q More than 200?</p> <p>5 A I can't answer that question. That would be a</p> <p>6 question for my program manager.</p> <p>7 Q Who would that be?</p> <p>8 A Leigh Thurston.</p> <p>9 Q I'll ask her today. If the Township removes trees</p> <p>10 does it have to pay into the tree fund?</p> <p>11 A We require a tree removal permit for all Township</p> <p>12 projects. Right now we have a fire station project.</p> <p>13 They've submitted a tree removal permit. So they</p> <p>14 have to comply with the tree removal regulations</p> <p>15 just like anybody else does.</p> <p>16 Q So it's your position that the Township never</p> <p>17 removes trees without paying into the tree fund or</p> <p>18 applying for a tree removal permit?</p> <p>19 MS. McLAUGHLIN: Objection to the form of</p> <p>20 the question. It mischaracterizes his testimony.</p> <p>21 Assumes facts not in evidence. Go ahead.</p> <p>22 THE WITNESS: Our general policy is to</p> <p>23 apply the tree removal permit guidelines to all</p> <p>24 Township projects just like we do to everybody else.</p> <p>25 BY MR. WELDON:</p> <p style="text-align: center;">Page 53</p>

1 Q Is that a binding policy that applies all the time
2 or is it possible for the Township to remove trees
3 without paying into the tree fund?
4 MS. McLAUGHLIN: Objection to the form of
5 the question.
6 THE WITNESS: If the Township were to
7 comply with the ordinance generally we're going to
8 replace the trees on the property of where they came
9 from. The Township doesn't have a policy of paying
10 into the tree fund, we have a policy of replacing
11 the trees on the site.
12 BY MR. WELDON:
13 Q Is that discretionary?
14 **A It's always up to the Board.**
15 Q You've been here for a long time. Has the Township
16 ever removed trees without replacing them or paying
17 into the tree fund?
18 MS. McLAUGHLIN: Objection. Form of the
19 question. Foundation.
20 THE WITNESS: I don't know. I can't
21 answer that question.
22 MR. WELDON: Can we go off the record for
23 a second, please?
24 (Off the record at 10:57 a.m.)
25 (Back on the record at 11:07 a.m.)

Page 54

1 BY MR. WELDON:
2 Q So we discussed earlier that the 25 percent
3 requirement doesn't apply to landmark trees,
4 correct?
5 **A That's correct.**
6 Q And so if I have a landmark tree on my property my
7 choices are to either pay into the tree fund or
8 replant it if I want it cut down, right?
9 MS. McLAUGHLIN: Objection. Asked and
10 answered. Go ahead.
11 THE WITNESS: Those are the two choices.
12 BY MR. WELDON:
13 Q And you would agree that landmark trees can grow
14 over time, correct?
15 **A That's how they become a landmark tree.**
16 Q So you would agree that they can get bigger,
17 correct?
18 **A Yes.**
19 Q And their root zone can get bigger, correct?
20 **A Yes.**
21 Q So over time they take up a larger portion of the
22 property, correct?
23 **A Whether they take up a larger portion of the**
24 **property the canopy area, yes, will get bigger.**
25 Q And does the Township pay property owners for the

Page 55

1 amount of the property that's consumed by that
2 landmark tree?
3 **A No, we do not physically pay the property owner for**
4 **maintenance of the landmark tree.**
5 Q I was saying like as in compensation for the fact
6 that the property is now consumed by a tree.
7 **A No.**
8 Q We talked a little bit earlier about the 6-inch
9 requirement, the 6-inch DBH requirement not applying
10 to removal of trees within a forest, correct?
11 **A Right. So --**
12 MS. McLAUGHLIN: Objection -- go ahead.
13 THE WITNESS: Based on the definition of
14 forest, no.
15 BY MR. WELDON:
16 Q And it talks about -- the ordinance talks about
17 damaging trees in a forest, as well, correct?
18 **A That's correct.**
19 Q Would damaging include, you know, trimming branches
20 off of trees?
21 **A Damaging would be injuring the tree.**
22 Q Does that include cutting branches off of the tree?
23 MS. McLAUGHLIN: Objection. Form of the
24 question. Asked and answered.
25 THE WITNESS: It depends on what branches

Page 56

1 they were removing.
2 BY MR. WELDON:
3 Q And who would decide whether or not removing a
4 branch is damaging?
5 **A We would have to evaluate the -- what they did to**
6 **the tree.**
7 Q So would a property owner who wants to cut branches
8 off of a tree in a forest have to go to the Township
9 for a permit?
10 **A No.**
11 Q If they remove branches without a permit could they
12 be subject to penalties?
13 MS. McLAUGHLIN: Objection to the form of
14 the question. Asked and answered. Foundation.
15 THE WITNESS: It depends on how many
16 branches they've removed and whether or not it
17 damaged the tree.
18 BY MR. WELDON:
19 Q And whether or not it damages the tree is that at
20 the discretion of the Township?
21 **A That would be upon the Township's technical staff or**
22 **a consultant evaluating the health of the tree.**
23 Q If a property owner wants to clear out undergrowth
24 in a forest, wants to clear brush and undergrowth in
25 a forest would he need a permit for that?

Page 57

1 **A Yes.**
 2 Q If he wanted to clear out invasives in a forest
 3 would he need a permit for that?
 4 **A Any clearing work within a forest you'd need a**
 5 **permit.**
 6 MR. WELDON: I think that's all the
 7 questions that I have. Thank you.
 8 MS. McLAUGHLIN: I have a couple follow-up
 9 questions.
 10 EXAMINATION
 11 BY MS. McLAUGHLIN:
 12 Q Mr. Goulet, I'd like you to refer to Exhibit 2,
 13 specifically page 2 of that exhibit. Counsel
 14 earlier asked you about the --
 15 MR. WELDON: Can you hold on for just a
 16 second and let me figure out where you're at.
 17 MS. McLAUGHLIN: Page 2 of Exhibit 2.
 18 MR. WELDON: Okay. Thank you.
 19 BY MS. McLAUGHLIN:
 20 Q Counsel earlier asked you about the policy referred
 21 to on page 2 of Exhibit 2 with respect to the tree
 22 fund that is referenced a little more than halfway
 23 down the page. Do you see that section?
 24 **A Yes.**
 25 Q And the replacement tree cost is referenced in that

Page 58

1 paragraph, correct?
 2 **A Yes.**
 3 Q The last time, apparently, that the cost of \$300 for
 4 a 2-inch DBH replacement tree or \$450 for a 4-inch
 5 DBH replacement tree was in 2006; is that correct?
 6 **A That's correct.**
 7 Q That hasn't been changed in 13 years?
 8 **A That's correct.**
 9 Q Has that been reviewed since 2006?
 10 **A Yes. We generally review that every one to two**
 11 **years based on market value of the trees to**
 12 **determine whether or not the policy needs to be**
 13 **updated.**
 14 Q I'd also like to refer you to Exhibit 5. This is
 15 Section 27.09 of the Violations and Penalties
 16 section of the Zoning Ordinance, correct?
 17 **A Yes.**
 18 Q Did I say 05? I meant 09. 27.09. The first
 19 section of 27.09 refers to a public nuisance,
 20 correct?
 21 **A Yes.**
 22 Q And it indicates, "uses carried on in violation of
 23 any provision of the ordinance are declared to be a
 24 nuisance, per se." Do you see that?
 25 **A Yes.**

Page 59

1 Q Does that include violations of the tree ordinance?
 2 **A Yes. Tree ordinance is part of the Zoning Code.**
 3 Q The following section it says, such violations, I'm
 4 paraphrasing, shall be subject to abatement or other
 5 action by a court of appropriate jurisdiction. Do
 6 you see that in paragraph 1?
 7 **A Yes.**
 8 Q Is a nuisance per se, to your knowledge, subject to
 9 abatement by any other means other than by a court?
 10 **A Voluntarily or involuntarily? Voluntarily?**
 11 Q Yes.
 12 **A If the violator comes into the Township and wants to**
 13 **abate it without going through a court process we'll**
 14 **work with him to abate the nuisance and we will not**
 15 **then take him to court. If he voluntarily wants to**
 16 **do that, then we will work with him, for example,**
 17 **submitting an after-the-fact permit and going out**
 18 **and evaluating the damage and having him then**
 19 **mitigate the issue, whether or not -- depending on**
 20 **what the issue is.**
 21 Q And as far as interpretation of the tree ordinance,
 22 itself, is there any part of the Zoning Ordinance
 23 that refers to any administrative appeals for
 24 interpretation of the ordinance?
 25 **A The administrative section, I believe it's Article**

Page 60

1 **27 or 28 of the Code, it deals with administrative**
 2 **procedures. Zoning Board of Appeals does have a**
 3 **provision in there where they can -- if somebody**
 4 **does not agree with my interpretation of the**
 5 **ordinance they can appeal my interpretation to the**
 6 **Zoning Board of Appeals.**
 7 Q And Counsel, just at the closing of his questions,
 8 asked you about landmark trees and the fact that
 9 they grow. The canopy they provide also grows,
 10 doesn't it?
 11 **A Yes.**
 12 Q And so removal of a landmark tree with a large
 13 canopy has an effect on the surrounding property,
 14 doesn't it?
 15 **A Yes.**
 16 MS. McLAUGHLIN: That's all the questions
 17 I have.
 18 MR. WELDON: I have just a couple of
 19 follow-up questions.
 20 RE-EXAMINATION
 21 BY MR. WELDON:
 22 Q You talked just a second ago about nuisance
 23 abatement in 27.09. Is the Township's position that
 24 requiring an after-the-fact permit application is
 25 nuisance abatement?

Page 61

1 **A That can be one form of nuisance abatement.**
 2 Q Is that how you interpret the ordinance?
 3 **A That would be an interpretation if that's what the**
 4 **-- if we had an applicant that was noticed --**
 5 **received a Notice of Violation and they came in with**
 6 **after-the-fact permit and they came in compliance**
 7 **with the ordinance that would abate the nuisance.**
 8 Q And the nuisance here, to be clear, the nuisance
 9 here is simply violating the tree ordinance,
 10 correct?
 11 **A Right.**
 12 Q We're not talking about a traditional nuisance where
 13 a fire has been caused or something, correct?
 14 MS. McLAUGHLIN: Objection to the form of
 15 the question. You may answer.
 16 THE WITNESS: A nuisance in this case
 17 would be damage of the property by removal of the
 18 trees without a permit. Abatement of a nuisance
 19 would be restoration of the property.
 20 BY MR. WELDON:
 21 Q Well, it's their property, correct?
 22 **A Yes.**
 23 Q Nuisance typically applies to damaging someone
 24 else's property, correct?
 25 **A Why would it apply to anybody else's property? It**

Page 62

1 **could apply to their own property.**
 2 Q You can cause a nuisance by damaging your own stuff?
 3 **A Yes.**
 4 Q That's your position. Does the Township claim that
 5 F.P. Development has caused any sort of public
 6 nuisance injuries other than violating the tree
 7 ordinance in this case?
 8 MS. McLAUGHLIN: Objection to foundation.
 9 THE WITNESS: Violation of the ordinance
 10 is a nuisance per se.
 11 BY MR. WELDON:
 12 Q Regardless whether or not it causes any other
 13 injuries, correct?
 14 MS. McLAUGHLIN: Asked and answered.
 15 THE WITNESS: Violation of the ordinance
 16 is a nuisance per se.
 17 BY MR. WELDON:
 18 Q Regardless whether or not it causes any other
 19 injuries, correct?
 20 MS. McLAUGHLIN: Objection to the
 21 question. The form of the question assumes that a
 22 nuisance per se is subject to evaluation other than
 23 specific circumstances. The definition of a
 24 nuisance per se under Michigan law controls.
 25 THE WITNESS: Correct.

Page 63

1 MR. WELDON: That's fine. Well, then he
 2 can answer the question. You don't have to testify
 3 on his behalf.
 4 MS. McLAUGHLIN: I'm not testifying, I'm
 5 making an objection.
 6 MR. WELDON: That's a speaking objection.
 7 BY MR. WELDON:
 8 Q But just to be clear your answer was "correct"?
 9 That was the answer you gave?
 10 **A Pursuant to the ordinance, yes.**
 11 Q You talked just a minute ago in the follow-up
 12 questions, you were asked about the potential of an
 13 administrative appeal if someone disagreed with the
 14 interpretation of the ordinance. What if they just
 15 thought the ordinance was unconstitutional and they
 16 didn't want to pay anything?
 17 MS. McLAUGHLIN: Objection to the form of
 18 the question. Asked and answered.
 19 MR. WELDON: That is correct.
 20 BY MR. WELDON:
 21 Q You did say earlier that they still have to pay,
 22 correct?
 23 MS. McLAUGHLIN: Objection to the form of
 24 the question.
 25 THE WITNESS: What's the question?

Page 64

1 MS. McLAUGHLIN: It's mischaracterizing
 2 his prior answer.
 3 BY MR. WELDON:
 4 Q You talked about the potential of an administrative
 5 appeal for interpretations of the Zoning Code.
 6 Okay? In that administrative appeal process is it
 7 possible -- what if they don't -- they're not
 8 disagreeing with your interpretation, they think
 9 your interpretation is correct. They think the
 10 ordinance is unconstitutional. Would that be a
 11 basis for an administrative appeal?
 12 **A No.**
 13 MR. WELDON: I have no further questions.
 14 (Deposition concluded at 11:20 a.m.)
 15 ** ** ** **
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

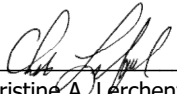

Page 65

1 STATE OF MICHIGAN)
2) ss.
3 COUNTY OF MACOMB)
4

5 I certify that this transcript, consisting
6 of sixty-five (65) pages, is a complete, true, and
7 correct transcript of the testimony of JEFF GOULET held
8 in this case on June 12, 2019.

9 I also certify that prior to taking this
10 deposition JEFF GOULET was sworn to tell the truth.

11 I also certify that I am not a relative or
12 employee of or an attorney for a party; or a relative or
13 employee of an attorney for a party; or financially
14 interested in this action.
15
16

17
18  
19 Christine A. Lerchenfeld, CER06501
20 Notary Public, Macomb County, Michigan
21 My Commission Expires: 07/07/2020
22
23
24
25

Page 66

A	ago 27:13 29:19 61:22 64:11 agree 5:21 20:11 28:4 55:13,16 61:4 ahead 7:23 13:16 13:21 20:19 21:5 22:20 40:11 41:12 47:6 53:21 55:10 56:12 allegedly 9:19 allowed 23:14,18 allows 11:19 13:23 21:8 allude 36:22 alluding 8:7 amount 18:4 21:9 48:25 51:1 56:1 and/or 38:7 ANNE 2:16 answer 5:22,24 6:5 13:16,22 23:1 25:3 26:8 28:2 37:11 40:12 43:10 53:5 54:21 62:15 64:2,8,9 65:2 answered 22:20 28:23 38:3 44:9 47:12 55:10 56:24 57:14 63:14 64:18 anybody 26:10 53:15 62:25 apparently 59:3 appeal 31:17 32:14 33:6 61:5 64:13 65:5,6,11 appeals 32:20 33:13 33:18,22,23 34:19 60:23 61:2,6 appear 30:13 32:19 appearance 30:3,9 30:11,13 31:13 43:20 45:10 APPEARANCES 2:1 3:1 Appearing 2:6,13 2:20 3:7,10 appears 18:18 35:7 appendix 7:8,19 8:8 33:11,12,21 34:10 applicable 19:10,11 applicant 19:17 62:4	application 4:13 6:15 7:4 9:3 15:23 28:15 61:24 applied 37:2 applies 10:9,14,17 17:2,5 40:6 54:1 62:23 apply 8:25 9:9 23:5 35:24 39:11 40:21 41:11 43:7 53:23 55:3 62:25 63:1 applying 19:8 20:23 53:18 56:9 appropriate 44:3 60:5 approximately 35:16 area 9:16 55:24 article 4:16 7:4,17 7:19 8:8 30:7 60:25 asked 22:19 38:3 44:9 47:11 55:9 56:24 57:14 58:14 58:20 61:8 63:14 64:12,18 asking 5:21 20:6,21 32:2 36:24,25 37:13,16 38:23 49:4 assess 27:22 assume 36:7 45:15 assumes 20:18 21:5 26:7,16 45:25 53:21 63:21 assuming 30:19 attorney 13:19 21:24 22:6 27:21 29:17 66:12,13 attorneys 21:22 Austin 2:4 authored 31:20 authority 43:6 44:5 47:18 automatic 12:11,13 Avenue 2:3,10 average 16:12 aware 26:23 33:4 35:18 42:20 50:13 50:15	back 18:25,25 29:24 31:15 32:22 37:24 38:25 39:8 40:4 41:4 42:2 45:21 50:19 52:23 54:25 ballpark 52:17,22 bank 51:9,13,15,16 51:23 Bar 2:2 base 40:8 based 14:16,18,21 14:21,25 15:1,2 16:25 17:25 20:4 29:22 37:11 41:16 56:13 59:11 basically 30:11 31:3 37:3 basis 16:15 29:15 37:11 65:11 beautiful 10:10 beginning 28:24 behalf 2:6,13,20 3:7 7:14 64:3 believe 10:1,4 21:21 29:10,22 35:18 49:8,11 60:25 bidding 14:22 big 10:10,24 bigger 10:11 20:12 20:16,23 21:1 55:16,19,24 binding 49:16 54:1 binds 50:7 bit 26:20 56:8 Board 49:19,22 50:7,25 54:14 61:2,6 branch 57:4 branches 56:19,22 56:25 57:7,11,16 break 6:3,5 39:5 BRICKER 3:3 briefly 14:5 brush 23:16 57:24 budget 50:24 budgets 50:25 BUTLER 3:10 buy 19:17	17:23,25 caliper 40:17 called 49:12 calls 29:10 39:18 44:8 46:3 can't 21:15,17 36:22 50:7 53:5 54:20 canopy 48:14 55:24 61:9,13 Canton 1:10 3:4,5 6:21 7:4 Caram 1:9 carried 59:22 case 1:8 9:20 24:21 29:6,21 30:25 31:5 35:15 36:8 36:19,20,21,23,25 39:15,17 44:24 48:2 62:16 63:7 66:8 cases 36:19 category 20:25 cause 63:2 caused 62:13 63:5 causes 10:14 63:12 63:18 Center 3:4 CER6501 3:15 66:20 certain 21:9 22:11 50:25 Certified 3:16 certify 66:5,9,11 Cesar 2:10 CHANCE 2:2 changed 59:7 changes 14:24 CHARTER 1:10 Chavez 2:10 choice 13:7 25:1,25 26:1 47:13 choices 47:8 55:7,11 choose 12:5 13:1,5 13:5 29:8 chop 10:22 chose 13:25 25:21 46:22,23 Christine 1:17 3:15 66:20 circumstances 36:17 63:23 claim 63:4
	B B 19:6	C C 19:6 calculate 18:4 calculation 12:13		

claiming 44:22,23 clarification 7:11 clarify 7:7 17:7 19:22 20:6 25:3 clear 5:20 16:17 24:14 44:4 57:23 57:24 58:2 62:8 64:8 clearing 58:4 client 35:16 36:1 37:21 43:7 closing 61:7 code 4:16 7:4,8,9,12 8:7 9:16 12:15 13:9 33:11,13 43:21 47:20 60:2 61:1 65:5 collect 48:4 collected 52:14 come 25:22 30:15 45:8,21 comes 60:12 coming 43:1 commencing 1:21 commingled 51:20 commingling 51:23 Commission 66:22 community 6:21 48:13 compensate 26:3 compensation 56:5 complete 66:6 compliance 30:7,15 39:4 42:5 43:2,18 45:12 47:19 62:6 comply 31:4 39:3 42:2 45:8 47:14 53:14 54:7 composition 24:12 compound 38:2 concluded 65:14 conclusion 29:11 39:19 44:9 46:3 condition 12:25 21:10 conditions 19:5 Congress 2:3 consequences 26:1 considered 21:8 23:16 29:13 considers 28:1 consisting 66:5 constitutes 9:12	constitution 9:14 consultant 57:22 consumed 56:1,6 containing 9:17 CONTENTS 4:1 context 37:11 continuation 29:16 continued 3:1 contrary 26:8 46:1 controls 63:24 copy 15:18 Corporation 1:6,12 3:17 correct 6:11,16,17 8:14,22 10:7,8,12 10:15,16,19,20 11:16 12:3,25 14:7,8 16:4,5,11 16:20,25 17:1,3,4 17:6,14,20,21,24 18:5 19:6,14,18 19:22,25 20:9,16 21:1,16,18 22:9 22:14,18 23:11,24 24:19,20,25 27:17 27:18 28:6,7,16 28:17 30:9,22 31:7,8 32:7,10 34:12,25 35:5,9 35:13,17 36:11 39:13,14,17 40:23 41:1,2,8,23 42:3 42:10 43:15 45:18 46:7,10 47:4 51:7 55:4,5,14,17,19 55:22 56:10,17,18 59:1,5,6,8,16,20 62:10,13,21,24 63:13,19,25 64:8 64:19,22 65:9 66:7 cost 14:25 16:12,19 17:14,19 58:25 59:3 costs 15:1 44:19 Counsel 21:25 58:13,20 61:7 Count 4:14 counter-complaint 35:19 counterclaim 45:2 counterclaims 44:23	County 1:18,19 66:3,21 couple 5:19 58:8 61:18 court 1:1,17 5:7 28:11,12 30:13 31:13 36:8,19,19 36:20 43:20 44:3 45:10 60:5,9,13 60:15 courtesy 5:23 cover 48:11 covered 11:13 30:19 34:22,24 criminal 35:4 37:15 37:21 38:5,24 41:25 criteria 19:9,13,21 19:23 20:8 22:11 22:13,16 23:5 curious 36:13 current 15:2 16:2 49:1 cut 8:18 10:18 16:21 35:12,22 36:1,15 38:12 42:1 45:19 55:8 57:7 cuts 26:20 47:1 cutting 27:15 56:22	Defendant/Count... 2:20 3:7 Defendant/Count... 1:13 definition 9:15,15 56:13 63:23 demand 31:5 43:6 43:18 44:6 department 52:3 depending 38:9 46:15 60:19 depends 9:3 11:17 11:23 23:2,20,25 24:11,12 46:14 56:25 57:15 deposition 1:15,16 5:16 7:16 21:22 28:24 65:14 66:10 deposits 51:25 designated 6:10 28:14 destruction 8:21 9:8 determination 9:24 39:21 determine 9:12 10:2 14:9,15 25:11 28:11 37:9 38:19 41:15 59:12 determined 14:14 16:6 develop 6:25 development 1:5 6:24 11:20 29:21 30:24 39:15 41:5 63:5 didn't 23:13 36:14 39:2,3 44:15 47:23 64:16 different 7:9 differentiate 16:14 dig 10:23 directly 51:8 director 52:6 disagreed 64:13 disagreeing 65:8 disbursement 49:19 discretion 19:13 49:23 57:20 discretionary 54:13 discussed 33:17 34:21 55:2 disincentive 13:9	dismissed 39:17 DISTRICT 1:1,2 division 1:3 49:14 divvy 51:17 document 8:4 15:15 15:21 18:11,22 27:5 31:20,23 32:5,7 34:6 documents 18:13,16 doesn't 8:25 10:22 13:3,6 16:9 17:12 19:23 28:5 31:6 32:19 35:2 36:2,3 51:6 54:9 55:3 61:10,14 doing 13:10 38:18 44:21 dollar 18:4 don't 12:6 13:7,13 16:22 17:16 19:23 21:21 23:7 24:23 24:24 25:5 26:9 29:6 39:5,11 64:2 65:7 Drive 1:20 2:17
D				
D 2:2 damage 8:21 9:8 60:18 62:17 damaged 57:17 damages 57:19 damaging 56:17,19 56:21 57:4 62:23 63:2 day-by-day 29:15 days 35:9 DBH 8:14,24 9:6,17 10:6 56:9 59:4,5 deal 33:23 dealing 33:13,15 34:21 37:4 deals 33:21 34:11 42:8,11,13,18 61:1 decide 25:10 57:3 declared 59:23 Defendant 2:7,14				
E				
E-1 14:4 earlier 21:15 22:8 26:20 34:21 35:22 37:15,23 39:10 41:23 55:2 56:8 58:14,20 64:21 East 2:10 EASTERN 1:2 effect 61:13 either 11:15 12:2 16:24 17:9 20:8 22:16 23:23 24:17 34:24 35:3 36:10 38:7 40:25 42:21 43:17 45:10 47:3 55:7 Electronic 3:16 else's 62:24,25 employee 66:12,13 enforcement 42:9 42:14,19 43:14 enforcements 42:13 entire 33:8 44:16 entirety 33:1 equal 48:25 establish 38:18				

48:14 established 31:21 establishes 15:1 evaluate 41:13 46:21 57:5 evaluated 30:17 49:17 evaluating 57:22 60:18 evaluation 19:21 63:22 event 45:7 events 35:25 everybody 53:24 evidence 20:18 21:5 26:7,16 46:1 53:21 exact 9:21 Examination 4:5,6 6:8 58:10 example 35:15 60:16 exceeding 35:8,8 Executive 1:20 2:17 exempt 41:22 46:14 exemption 12:10 40:21 exhibit 4:12,13,14 4:15,16 7:24,25 15:11,12 18:7,8 18:25 26:25 27:2 29:23,24 31:15 32:22 34:1,3,7 40:4 42:7,15 58:12,13,17,21 59:14 EXHIBITS 4:11 exist 28:9 Expires 66:22 explain 11:18 46:19 46:20 explicitly 48:19 extend 5:23	53:21 fair 5:25 6:6 familiar 8:3,9 9:21 11:11 18:11,21 19:2 27:5 30:3 31:25 32:5 33:2 34:6 35:19 45:2 far 60:21 Farmington 1:21 2:18 5:1 feel 41:23 figure 47:17 52:17 52:22 58:16 file 31:7 43:6 44:5 45:4 filed 35:19 filing 31:5 43:5,17 45:15 finance 52:3,6 financially 66:13 fine 6:7 22:2 35:7 36:5 64:1 finish 5:21,23 fire 53:12 62:13 Firm 3:18 first 12:4 59:18 five 15:8 fixed 48:6 flooding 11:4 follow 36:18 51:18 51:24 follow-up 58:8 61:19 64:11 following 60:3 force 47:18 forced 25:18 forest 8:22,25 9:9 9:10,13,14,15,16 9:20,25 10:3,6 13:10 21:8 56:10 56:14,17 57:8,24 57:25 58:2,4 form 13:15 15:23 20:17 21:2 26:6 26:15 28:21 29:9 31:9,19 32:15,21 33:8 38:1 40:10 43:8 45:25 47:5 53:19 54:4,18 56:23 57:13 62:1 62:14 63:21 64:17 64:23 format 32:11	forth 43:24 foundation 28:22 29:10 31:20 32:16 39:19 43:9 44:25 45:6 46:2 49:25 51:21 54:19 57:14 63:8 free 41:23 front 5:19 32:7 fund 11:16 12:2,8 12:24 13:6 16:1 16:14 18:5 19:17 19:20,24 20:1,8 22:17 23:7 24:18 24:24 25:18 34:24 36:11 39:1,11 41:1 44:18 45:22 46:23 47:3 48:4 48:15,21,24 49:9 49:20,21,23 50:2 50:3,14,16,19,23 51:5,9,10,11 52:8 52:15,20 53:10,17 54:3,10,17 55:7 58:22 funds 51:20,23 52:20 further 65:13	goes 48:6 going 7:13,16,23 14:11,21 15:10 16:2,18 17:14,19 18:2,22 21:12,23 22:24 24:2 25:11 25:23 29:14,24,25 30:1 31:18 32:25 33:7 36:5 37:10 38:20,25 41:9 54:7 60:13,17 Goulet 1:15,16 4:4 5:5,14 58:12 66:7 66:10 granted 19:5 greater 8:14 9:7 grow 55:13 61:9 grows 61:9 guess 13:17 28:2,11 38:23 47:17 48:3 49:22 51:3 guidelines 51:25 53:23 guys 15:4,6 36:2	52:23 58:12 59:14 I'll 5:22 29:19 45:24 53:9 I'm 6:21 7:11,13,16 7:23 9:5,21 13:18 13:21,24 14:19 15:10 18:2,22 20:6,23 21:12,15 21:16,21,22,25 24:2 25:6 27:20 29:6,17 30:1 31:18 32:25 33:7 36:13,24,25 37:13 37:16 38:23 41:9 41:24 46:19,20 47:17,17 48:22 49:4 51:3 60:3 64:4,4 I've 34:6 identification 8:1 15:13 18:9 27:3 34:4 identified 40:19 impact 17:22 18:2 48:1 impacted 17:18 imprisonment 35:8 inches 8:14,17 9:6 9:10,18 10:6,11 11:1 22:25 40:17 include 43:17 56:19 56:22 60:1 including 33:15 44:1 independent 29:3 indicate 16:2,9 49:3 indicates 59:22 individual 47:1 52:4 individuals 34:23 38:12 initiate 44:2 injuries 63:6,13,19 injuring 56:21 injury 10:15 insofar 40:11 intent 39:3 42:4 interested 66:14 interpret 62:2 interpretation 6:15 7:3 28:15 50:5 60:21,24 61:4,5 62:3 64:14 65:8,9
F		G	H	
F.P 1:5 29:21 30:24 39:15 41:4 63:5 fact 25:19 31:6 35:22 38:15 45:22 46:7 47:19,23 56:5 61:8 facts 20:18 21:5 26:7,16 45:25		general 33:1 51:11 53:22 generally 8:19 26:22 27:6 32:6 42:14 48:8 54:7 59:10 George 1:9 getting 25:16 38:17 47:25 51:3 give 5:22 16:24 24:2 52:4 given 5:15 34:2 gives 31:3 43:5 44:5 47:18 go 7:23 9:7 13:16,21 14:15 16:23 18:7 18:25 20:18 21:5 22:20 25:21 35:23 37:9,23 38:13 40:11 41:11 42:2 47:6 48:10 49:18 52:23 53:21 54:22 55:10 56:12 57:8	halfway 58:22 hand 5:8 handed 15:22 34:6 happen 31:6 36:22 36:25 46:12 happening 24:10 hardwood 16:18 hasn't 59:7 hat 5:19 haven't 31:21 34:2 he's 33:2 36:6 45:1 heading 16:1 health 57:22 held 51:13 66:7 Hey 13:23 hill 17:5,13 Hills 1:21 2:18 5:1 hold 40:9 58:15 Hon 1:9 hook 35:11 37:22 hypothetical 24:2 47:6 hypothetically 10:21 46:25	
		I		
		I'd 26:25 34:1		

<p>interpretations 65:5</p> <p>interpreted 37:1</p> <p>introduce 7:24 15:10 26:25</p> <p>invasives 58:2</p> <p>inventory 12:20</p> <p>investigation 9:23 41:7</p> <p>involuntarily 60:10</p> <p>involve 6:22 7:3</p> <p>involves 6:25</p> <p>isn't 17:23 28:16 35:16</p> <p>issuance 30:3,18 43:20</p> <p>issue 13:25 20:1,2 25:20,21 26:23 27:16 31:13 37:7 42:11 47:24 60:19 60:20</p> <p>issued 27:10 29:20 29:22 30:9 34:14 45:10</p> <p>it's 6:14,23 10:11 10:11 12:13,13,17 12:17 13:7 14:18 16:12,17,18 17:10 17:10,10,13,15 18:20 20:25 21:7 25:1,25,25 26:7 27:8,25 29:5,25 30:2 38:2 40:11 43:22 46:1,5 49:12,17,18 51:10 53:16 54:14 60:25 62:21 65:1</p> <hr/> <p>J</p> <p>J 2:9</p> <p>Jeff 1:15,16 4:4 5:5 5:14 66:7,10</p> <p>JULIANA 3:10</p> <p>jump 32:22</p> <p>June 1:20 5:2 66:8</p> <p>jurisdiction 60:5</p> <hr/> <p>K</p> <p>keep 5:20 20:15 21:4 23:10 26:4</p> <p>kept 20:24</p> <p>kicks 12:21</p> <p>know 6:3,13 9:19</p>	<p>9:24 14:4,12,22 18:16,21 28:3 29:12,14,20 30:24 36:20 38:16 49:12 49:13 51:16 52:2 52:4,5,14,19 54:20 56:19</p> <p>knowledge 31:22 60:8</p> <p>Kolb 3:3 7:7,11 21:19,25 22:3 29:23</p> <p>Kristin 3:3 29:23</p> <hr/> <p>L</p> <p>lack 31:19 43:9</p> <p>laid 31:24</p> <p>land 6:24</p> <p>landmark 39:22,23 40:1,6,14,18,22 40:24 41:8,21 45:20 47:1 55:3,6 55:13,15 56:2,4 61:8,12</p> <p>landmark/historic 40:15</p> <p>language 50:6</p> <p>Lansing 2:11</p> <p>large 61:12</p> <p>larger 33:20 40:1 55:21,23</p> <p>law 44:1,3 45:11 63:24</p> <p>lawsuit 30:12 35:20 43:5,6,18 44:6,22 45:15</p> <p>lawsuits 45:4</p> <p>legal 25:21 27:20 29:11 37:7,9 39:19 44:9 46:3</p> <p>Leigh 53:8</p> <p>Lerchenfeld 1:17 3:15 66:20</p> <p>let's 10:21 11:9 17:9,16 18:7 26:19,20 36:1 46:25</p> <p>limits 49:5</p> <p>line 18:22</p> <p>listed 19:5</p> <p>litigation 38:10</p> <p>little 26:19 56:8 58:22</p>	<p>LLC 1:5</p> <p>located 9:9</p> <p>long 7:6,21 50:11 50:17 54:15</p> <p>look 8:3 9:2 15:16 18:13 34:16 42:7 52:23</p> <p>looking 9:14 18:17 44:12</p> <p>looks 18:20 43:22</p> <hr/> <p>M</p> <p>Macomb 1:18 66:3 66:21</p> <p>maintain 21:10,11 22:25 23:12 24:23 25:4,6,7,8 26:10 26:14</p> <p>maintained 51:24</p> <p>maintenance 23:17 48:7,17 50:9,24 51:2 56:4</p> <p>making 7:11 64:5</p> <p>manage 25:1</p> <p>manager 53:6</p> <p>manages 51:16</p> <p>mandatory 12:25</p> <p>manner 9:21</p> <p>marked 4:11 7:25 15:12,25 18:8,19 27:2 34:3</p> <p>market 11:15 14:6 14:9,11,22,24 15:2 16:7 49:1 59:11</p> <p>master 7:1</p> <p>matter 5:10 11:7,8 17:12 19:23 47:25</p> <p>McCLOREY 2:16</p> <p>McLAUGHLIN 2:16 4:6 13:15 15:18 20:17 21:2 22:19 26:6,15 28:21 29:9 31:9 31:18 32:15,24 33:7 37:17 38:1 39:18 40:9 41:9 43:8 44:8,25 45:6 45:24 47:5,11 49:25 51:21 53:19 54:4,18 55:9 56:12,23 57:13 58:8,11,17,19</p>	<p>61:16 62:14 63:8 63:14,20 64:4,17 64:23 65:1</p> <p>mean 8:16,24 11:18 35:14 41:20 51:22</p> <p>means 9:16 60:9</p> <p>meant 59:18</p> <p>mechanism 42:9</p> <p>mechanisms 43:14</p> <p>meet 22:13,16 26:2 30:17 31:11</p> <p>meets 19:12</p> <p>mentioned 27:13 33:19</p> <p>mentions 33:18</p> <p>met 22:11</p> <p>method 43:1</p> <p>MICHAEL 2:9</p> <p>Michigan 1:2,6,11 1:11,19,21 2:11 2:18 3:5 5:1 63:24 66:1,21</p> <p>middle 12:18</p> <p>minimize 20:4</p> <p>minimum 40:17</p> <p>minute 39:6 64:11</p> <p>mischaracterizes 53:20</p> <p>mischaracterizing 65:1</p> <p>misdeemeanor 25:15 27:25 28:25</p> <p>misdeemeanors 37:5</p> <p>misrepresenting 21:20</p> <p>mitigate 25:23 60:19</p> <p>mitigating 48:1</p> <p>mitigation 25:20 48:2</p> <p>moment 29:19</p> <p>money 48:5,6,8,15 48:23 49:6,23 50:8,14,16,21,21 51:1,6,17 52:14</p> <p>monies 48:25 49:19 50:2 51:25</p> <p>Municipal 1:11</p> <hr/> <p>N</p> <p>name 5:13,14 52:4</p> <p>nature 20:11 44:19</p> <p>necessarily 23:25</p>	<p>46:8,11,13</p> <p>necessary 20:4</p> <p>need 6:2 10:7,12,24 11:4,14 21:8 22:8 23:3,17,23 36:18 41:7 46:13 47:24 57:25 58:3,4</p> <p>needed 39:23 41:16</p> <p>needs 11:2 59:12</p> <p>neighbor's 17:18</p> <p>neighbors 10:15 17:16,22 18:3</p> <p>Network 3:17</p> <p>never 38:16 53:16</p> <p>new 6:24 29:7</p> <p>noncompliance 44:13,20 45:9,17</p> <p>nonresponsive 21:13 46:17</p> <p>normal 35:25 36:17 40:2</p> <p>normally 36:12,13</p> <p>Notary 1:17 66:21</p> <p>notice 4:15 26:23 27:8,9,15 28:12 30:2,8,13,14 31:3 31:12,15,16 32:9 32:13,19,21 34:14 42:11 45:8 62:5</p> <p>noticed 62:4</p> <p>Notices 32:12 33:16 33:23</p> <p>notifying 8:18</p> <p>nuisance 47:22 59:19,24 60:8,14 61:22,25 62:1,7,8 62:8,12,16,18,23 63:2,6,10,16,22 63:24</p> <p>number 3:18 4:12 4:13,14,15,16 7:25 15:12 17:25 18:8 24:1 27:2 34:3 41:14</p> <p>numbers 16:24</p> <hr/> <p>O</p> <p>oak 10:24 16:17</p> <p>Oakland 1:19</p> <p>object 7:13 21:12 21:22,23 40:9</p> <p>objected 23:2</p> <p>objection 13:15</p>
---	---	--	---	---

20:17 21:2,19,23 22:19 26:6,15 28:21 29:9 31:9 31:19 32:15 33:8 38:1 39:18 41:10 43:8 44:8,25 45:24 46:17 47:5 47:11 51:21 53:19 54:4,18 55:9 56:12,23 57:13 62:14 63:8,20 64:5,6,17,23 objections 22:3 obviously 14:24 25:22 36:18 37:8 occurrence 29:13 offense 35:9 offhand 52:18 okay 7:18 24:2,21 37:3 58:18 65:6 old 5:18 on- 14:12 on-site 9:22 once 12:23 49:6 one-to-one 51:4 ones 19:10 ongoing 50:24 option 12:4,5,8 13:14,23 order 22:25 23:5 27:8,14,16,19,23 27:25 28:20 29:2 29:8,20,22 49:18 orders 28:6 ordinance 4:12,16 6:16,23 7:12,18 7:20 8:12 10:5 11:10,11,14,19 13:12,14,22 16:21 19:1 20:15,25 21:4 22:9 23:9 25:12,14 26:2,12 27:11 28:1,10,16 29:4,25 33:1,4,5,9 33:10,15,19,20 34:22,23 35:4 36:7,9,18 37:1,13 37:14 38:5,23 39:3,4,25 40:8 41:11,13,16,19,25 42:4,5,9,12,14,24 43:2,4,14 47:2 48:5,9,19,20 49:5	50:1,6,7 54:7 56:16 59:16,23 60:1,2,21,22,24 61:5 62:2,7,9 63:7 63:9,15 64:10,14 64:15 65:10 Ordinances 7:4,9 8:8 outcome 38:9 overall 33:11 owner 8:16 10:18 10:21 11:14 13:3 13:12 14:6 20:14 23:8,8 26:20 27:15 29:6 30:14 31:4 34:15 39:11 40:24 42:1 49:3 50:16 51:4 56:3 57:7,23 owners 17:16 26:4 26:13 55:25 <hr/> P <hr/> P40455 2:16 P59496 3:3 P72419 2:9 page 4:3 15:25 18:19,20,20 30:1 32:24 58:13,17,21 58:23 pages 66:6 paid 48:15 50:2 paragraph 59:1 60:6 paraphrase 41:24 paraphrasing 21:16 60:4 parks 48:10 part 12:13 23:19 24:11 28:12 29:5 29:16 33:10,19 40:11 51:11 60:2 60:22 particular 9:3,4,22 36:21,23 42:20 48:2 party 66:12,13 PATTWELL 2:9 pay 11:15 12:2 13:5 13:13 14:6 19:17 19:24 20:8 22:17 23:7,23 24:17,24 25:5,18 26:9,13	30:21 34:24 36:2 36:15 37:24 38:8 41:1 45:22 46:23 47:3 50:19 53:10 55:7,25 56:3 64:16,21 paying 12:8,24 13:24 14:16,19 38:25 48:23 53:17 54:3,9,16 payment 16:13 19:19,20 20:1 36:10 46:7,9 payments 38:14 39:11 48:4 pays 50:16 51:4 penalties 25:13,17 27:19,22,24 28:8 28:9,19 29:2,3,14 34:11 35:4,7 37:4 41:25 57:12 59:15 penalty 11:22 28:5 37:15,21 38:5,24 45:23 46:3,4 47:10 people 13:8 28:5 percent 11:21 12:1 12:10,16,20,22,23 13:2 22:22 23:12 23:14 24:7,16 30:20,25 39:12,16 40:5,21 41:3,5 55:2 percentage 22:11 period 30:8 31:4 permission 21:17 permit 8:12 10:7,9 10:12,17,25 11:2 11:4,6,9 12:14,19 12:25 13:25 15:24 19:4 20:7 21:8 22:8,13,24 23:18 25:14,16,22 26:21 26:24 30:17,18 31:6 35:12,23,24 36:17 37:8 38:6 38:10,13,13,16,18 38:20 39:2 42:2,4 42:5,23 43:1,3,7 43:19 44:7,18 45:20,21 46:5 47:2,15,24,24,25 53:11,13,18,23	57:9,11,25 58:3,5 60:17 61:24 62:6 62:18 permits 45:5 permitting 42:3 person 16:21 35:2 35:11 physically 26:9 56:3 piece 9:4 place 31:18 33:7 41:9 45:24 placed 16:23 places 43:13 Plaintiff 2:21 3:8 Plaintiff/Counter- 2:6,13 Plaintiff/Counter... 1:7 plan 7:1 23:3 38:22 planner 6:21 planning 7:1 plans 6:25 plant 11:16 22:17 23:9 34:25 36:3 37:24 48:10,10 50:20 51:6 52:9 52:11,13 planted 12:9 14:12 14:23 52:19 planting 39:1 50:23 51:1 plants 50:18 please 5:8,12 8:3,9 18:25 32:22 34:2 40:4 48:22 54:23 point 6:2 12:15 40:7 pointed 43:13 47:20 policy 14:16,25 15:2 49:8,10,13 49:14,16,17,18 53:22 54:1,9,10 58:20 59:12 portion 12:18 38:8 55:21,23 portions 25:9 position 7:6 40:5 41:4,10 44:17 50:5 53:16 61:23 63:4 possible 54:2 65:7 potential 37:15 64:12 65:4 preamble 40:10	preclude 43:25 predicate 31:25 preserve 12:7 preserving 13:10 prevent 13:7 price 14:12,23 16:24 prior 26:8 46:1 65:2 66:9 private 26:13 procedures 49:20 51:18 61:2 proceed 31:13 proceedings 44:2 process 33:9 37:9 38:14 60:13 65:6 program 52:23 53:6 programs 14:17,19 prohibits 8:21 project 53:12 projects 53:12,24 property 8:16,17 9:4 10:18,21 11:14,20,20,24 12:5,6 13:3,4,7,9 16:23 17:2,10,16 17:18 18:18 20:5 20:15,25 21:5,7 21:10,10 23:1,8,8 23:10,13,17,19,23 24:1,3,6,9,11,14 24:16,23 25:2,5,6 25:7,9 26:3,5,10 26:13,14,20 27:14 29:6 30:6,14,25 31:4 34:15 36:2 38:17,19 39:11,13 39:16 40:24 41:6 42:1 48:7,12 49:3 50:16 51:4 52:9 52:11 54:8 55:6 55:22,24,25 56:1 56:3,6 57:7,23 61:13 62:17,19,21 62:24,25 63:1 proposed 19:12 proposing 24:13 provide 12:2 25:18 49:20 61:9 provided 29:23 44:1 45:11 provides 12:16 13:9 provision 11:19
--	--	--	--	--

44:4 59:23 61:3 provisions 39:24 public 1:17 51:19 59:19 63:5 66:21 pull 49:14 purchases 50:18 purpose 23:1 38:12 purposes 7:16 Pursuant 38:6 64:10 put 22:3 putting 6:25	39:8 54:22,24,25 reduce 11:3 refer 7:17 58:12 59:14 referenced 58:22,25 referred 42:15 58:20 referring 37:3 refers 43:20 59:19 60:23 regarding 37:1 regardless 10:17 17:2 63:12,18 Registration 3:18 regulated 11:5,22 17:10,11,15 22:10 22:22,23 23:13,15 23:16 24:4,4,7,7 24:14,16,22 36:15 39:12,16,25 40:2 40:6 41:6,22 45:20 regulation 48:18 49:5 regulations 6:24 53:14 relative 66:11,12 relevant 17:23 18:4 relocate 8:13 relocated 12:19 Relocation 40:13 remedies 27:20 43:21,24,24,25 45:11,14,16 remedy 45:9,15 removal 4:13 8:21 9:6,8 11:2,5 15:23 17:17 18:3 19:8 19:12 20:4,7 22:12 23:15 30:16 33:5 37:8 38:9 47:14 48:1 50:17 50:20 51:5 53:11 53:13,14,18,23 56:10 61:12 62:17 remove 8:13 10:7 10:10 11:13,21 13:1 17:13 21:7,9 21:15,17 22:8,24 23:24 24:5,6,13 24:15 25:11 34:23 40:24 54:2 57:11 removed 9:19 12:21	17:8,12 25:24 30:20,21,24 39:15 39:21 40:16 41:5 41:8,15 46:16 48:12 52:8,11 54:16 57:16 removes 39:12 53:9 53:17 removing 10:14 11:1,3,17,25 13:8 17:22 20:2,3 22:10,21,23 23:3 23:4,15,20,21 25:13 57:1,3 replace 12:4 14:6 20:9 23:14,24 24:18,25 38:7 40:25 46:22 47:3 48:12 54:8 replaced 12:19 18:1 39:24 40:16 41:16 46:13,21 replacement 11:16 11:23 12:3,21,24 16:22,25 17:8,9 17:14,19 19:18 22:17 23:9 25:19 34:25 36:4,10 37:25 39:1,10 40:14,15 44:19 46:9 48:7,24 49:2 50:3,9 52:7,10 58:25 59:4,5 replacing 19:19 23:19 24:5,8 54:10,16 replant 30:21 55:8 REPORTED 3:15 Reporter 1:18 3:16 5:7,20 Reporting 3:17 representative 28:18 representing 22:6 49:1 require 16:13 26:24 30:21 36:9 45:5 53:11 required 8:13 11:9 18:1 20:14,24 26:4 38:7 49:2 requirement 8:24 10:9,17 19:16	40:5 42:3 55:3 56:9,9 requirements 9:1 25:15 26:2 30:17 31:12 38:6 42:6 47:15 requires 11:5 21:4 25:12 34:23 37:13 37:14 42:4 45:21 46:7,9 requiring 26:14 38:12 42:22 44:17 61:24 reset 15:6 resolution 36:21 37:10 resolve 47:24,25 resolved 36:20 resolving 36:20 respect 58:21 restoration 62:19 result 19:20 retail 14:12 review 6:24 59:10 reviewed 59:9 right 5:8 9:5 10:13 13:1 20:10 22:6 25:1 26:3 30:12 37:6 44:12 50:10 53:12 55:8 56:11 62:11 rights 43:24 44:1 Road 3:4 root 55:19 route 25:21 rules 22:5 run 41:3	section 7:9 8:10,12 8:20 11:10,11,13 12:15,17 14:2,3 19:1,2,4 22:14 30:4,6 31:2 33:12 33:15,18,20 34:10 34:11,18 35:2 37:4 40:7,13,18 42:7,8,8,12,15,18 42:20 43:21 44:12 44:15,15,16 47:20 48:21 58:23 59:15 59:16,19 60:3,25 sections 43:17 see 24:10 58:23 59:24 60:6 seeking 35:15 seen 15:15 18:13 sees 10:23 sell 10:23 separate 33:20 51:9 51:10,15 separately 9:2 sequence 35:25 set 15:4 43:24 settling 36:8 show 23:3 sign 12:12 signed 29:23 Similar 18:15 simply 62:9 site 11:23 14:13 19:19 38:7,8 54:11 situation 26:22 situations 36:14 sixty-five 66:6 size 14:11 15:1 16:25 23:25 39:21 41:14 sizes 23:4 sole 19:13 solemnly 5:8 somebody 11:1 21:6 36:17 37:7 61:3 sorry 13:21 14:20 21:21 32:22 41:3 42:8 48:22 sort 5:18 13:23 16:10 28:4 29:7 48:18 49:4 63:5 South 3:4 SOUTHERN 1:3	
Q					
qualification 41:10 question 5:24 6:4,5 13:16 19:22 20:18 20:21 21:3 24:21 26:7,16 28:22 29:10 31:10,19 32:16 33:1,8 37:12,17 38:2 40:10,11,12 43:9 43:11 45:25 46:18 47:6 49:22 53:5,6 53:20 54:5,19,21 56:24 57:14 62:15 63:21,21 64:2,18 64:24,25 questioning 18:23 questions 5:22 18:23 58:7,9 61:7 61:16,19 64:12 65:13					
R					
raise 5:7 rate 14:11,21 15:3,6 16:2,7 rates 15:4 rationality 34:16 re- 48:13 re-establish 48:11 Re-Examination 4:7 61:20 reached 12:1,23 read 9:1 31:2 44:16 really 17:17 recall 15:7,9 received 38:16 62:5 receives 30:14 record 5:13,20 7:12 21:25 22:4 39:6,7					
			S		
			satisfy 19:9,23 20:7 saying 25:3,6 44:5 56:5 says 8:12 9:6,7 13:13,23 14:5 18:20 19:4 26:12 30:6 31:2,3 35:10 40:15 43:21 50:2 50:7 60:3 se 59:24 60:8 63:10 63:16,22,24 second 12:5 18:20 21:24 27:13 54:23 58:16 61:22		

speaking 21:23 46:25 64:6	summons 6:14	22:2,25 23:16	12:11 14:9,16	49:21,23 50:2,2,8
species 40:18	sure 20:20 27:24	24:20 27:18 28:7	16:6,13,14 19:14	50:14,16,17,18,19
specific 31:22 63:23	29:17 32:3 35:14	28:17 29:24 30:11	21:18 26:3,13,22	50:20,20,23,23
specifically 18:12	43:10 51:22,23	31:8 35:10,11	27:10,14,22 28:5	51:1,1,5,5,6,9
32:20 33:25 35:21	surrounding 61:13	37:10,16 39:14	28:14 31:7 32:11	52:8,8,10,14,20
42:25 45:1 46:5	survey 18:18	40:23 41:2 44:4	35:15 43:6 44:2,5	53:10,11,13,14,17
48:20 49:13 50:1	swear 5:8	44:15,20,21 45:15	45:4,4,9,19,21	53:18,23 54:3,10
52:16,21 58:13	sworn 66:10	45:18 51:3 52:8	47:18 48:8,23,24	54:17 55:6,7,15
specified 30:8	T	55:5,15 56:1,18	49:6 50:2,3,11,13	56:2,4,6,21,22
specifies 48:9	table 4:1 6:4	58:6 59:6,8 61:16	50:18,20,25 51:5	57:6,8,17,19,22
speculate 36:24	take 6:3 8:3 15:15	62:3 63:4 64:1,6	51:16 52:7,9,12	58:21,25 59:4,5
spend 50:8,21	32:18 38:21 39:5	theoretically 23:22	52:13 53:9,11,16	60:1,2,21 61:12
spent 50:14	48:8 50:18 51:6	there's 6:4 9:15	53:24 54:2,6,9,15	62:9 63:6
spoke 7:17 22:8	55:21,23 60:15	13:21,22 21:3	55:25 57:8,20	tree-related 50:22
35:22	taken 1:16 20:3	24:1,3 26:12	60:12 63:4	treed 9:16
spoken 44:20	talk 11:9	39:24 42:25	Township's 28:18	trees 8:25 9:10,17
ss 66:2	talked 22:14 26:19	They'd 23:12	31:5 50:5 51:10	9:19,21,25 11:17
staff 57:21	42:21 47:20 56:8	they're 9:10 10:5	57:21 61:23	11:22,24,24 12:3
standard 49:20	61:22 64:11 65:4	11:17,24 19:5,24	townships 14:18	12:4,7,8,19,21
51:18	talking 12:10 17:7	22:21,23,24 23:3	traditional 62:12	13:3,6,8 14:17,19
standards 41:17,19	44:14 62:12	23:4,14,15,20,21	transcript 66:5,7	14:21,22,23,25
start 17:9 24:8	talks 31:17 32:14	24:13 25:10,23	tree 4:12,13,14 6:16	15:3 16:10,22
state 1:18 5:12	33:5 34:18 42:22	26:4 38:20 65:7	7:18,19 8:13,17	17:25 18:18 19:18
51:24 66:1	42:25 43:5 44:12	they've 25:23 53:13	8:22 9:6,8 10:6,9	19:19 20:4,9,11
states 1:1 12:18	48:20,23 56:16,16	57:16	10:10,11,14,18,22	20:23 21:1,4,6,9
48:19	technical 57:21	thing 9:22	10:24 11:1,3,5,13	22:10,18,22,23
stating 28:18	tell 5:9 15:21 18:17	things 5:19 35:3	11:15,15,16 12:2	23:4,9,10,13,14
station 53:12	66:10	44:19 49:24 50:22	12:8,23,24 13:6	23:15,16,19,22
statute 48:18 49:5	telling 36:4	think 17:17 31:24	14:6,10,12,12,17	24:1,3,5,5,6,8,12
Steeh 1:9	ten 52:25	46:2 58:6 65:8,9	14:19 15:2,23	24:14,16,18,22,22
step 31:7	tend 20:11	thinks 13:12 27:14	16:1,3,3,14,15,17	24:25 25:2,4,8,9
stop 27:8,13,16,19	term 24:15 36:14	thought 64:15	16:18,22,25 17:2	25:10,10,13,19
27:23,25 28:6,20	46:2	three 19:5,9 40:16	17:5,7,8,8,9,12,13	26:4,10,14 27:15
29:2,8,20,22	terms 13:10 28:1	threshold 12:1	17:15,17,23 18:3	30:20,22,25 34:22
streets 48:11	31:22 36:6,8,9	Thurston 53:8	18:5 19:1,8,12,17	34:24,25 35:12,23
strike 18:22	41:11 51:17	ticket 30:3,9,11,13	19:20,24 20:1,7,8	36:1,4,15 38:7,8
stuff 63:2	testified 37:14,23	31:13 43:20 45:10	20:14,24 21:15,17	38:13,21,21 39:1
subject 35:3 36:6	39:10 41:23 45:1	till 5:23	22:9,9,17 23:7	39:12,16,21,22,23
38:5 57:12 60:4,8	testify 6:11 28:14	time 6:4 15:6,15	24:18,24 25:18	39:25 40:1,1,2,6,7
63:22	36:25 64:2	20:12 31:4 32:18	26:21 27:11 28:9	40:14,16,17,19,22
submission 43:19	testifying 7:10,14	49:17,18 50:13	28:15 29:3,25	41:6,8,14,14,15
44:6,17 45:5	64:4	54:1,15 55:14,21	30:16 33:5,15	42:1 46:9,15 48:7
submit 30:16	testimony 21:3,20	59:3	34:24 36:6,9,10	48:10,11,13,16,17
submits 36:17	26:8 46:2 53:20	title 49:13	37:8,25 38:9 39:1	52:7,19 53:9,17
submitted 53:13	66:7	today 6:11 53:9	39:10 40:7,14,15	54:2,8,11,16 55:3
submitting 43:2	Texas 2:2,4	today's 7:16	40:25,25 41:1,21	55:13 56:10,17,20
60:17	Thank 58:7,18	top 18:19	41:22,22 42:12,23	59:11 61:8 62:18
subsection 40:14	that's 6:7,17 8:17	topics 6:11,13	43:3,4,14 44:18	triggered 34:22
43:23	10:8,16,20 11:1,5	total 12:20	45:19,20,20,22	trimming 56:19
sue 13:17	11:13 14:8 16:5	touched 14:5	46:13,14,21,23	true 66:6
suit 31:7	16:20 17:1,4,21	Township 1:10 6:10	47:1,3,3,14 48:1,4	truth 5:9,9,10 66:10
Suite 1:20 2:17	19:13 20:24 21:13	6:18,21 7:2,21	48:5,11,15,20,24	try 20:6
		8:18 9:12,24 10:2	48:25 49:1,9,20	trying 9:5 46:19,20

47:17,21,22 turn 8:9,20 11:10 14:2 15:25 18:19 19:1 29:24 31:15 32:22 34:1 40:4 42:7 Twenty-six 7:22 50:12 two 16:23 21:22 39:24 43:13 47:7 55:11 59:10 type 16:15 28:1 41:14 types 16:10 18:16 typical 27:9 32:9,11 typically 27:22 35:11 62:23	30:2,8,15 31:3,12 31:16,17 32:10,12 32:13,19 33:16,24 34:14 42:11,23 45:8 59:22 62:5 63:9,15 violations 34:12 59:15 60:1,3 violator 60:12 voluntarily 60:10 60:10,15 vs 1:8	45:3,13 46:6,17 46:24 47:9,16 50:4 52:1 53:25 54:12,22 55:1,12 56:15 57:2,18 58:6,15,18 61:18 61:21 62:20 63:11 63:17 64:1,6,7,19 64:20 65:3,13 what's 11:9 15:25 18:19 24:10,11 38:12 64:25 where's 43:22 willing 19:24 wish 24:17 Witness 4:3 5:11,14 5:17 6:1,7 7:14 13:17 20:20 21:6 22:21 26:9,17 28:23 29:12 31:11 31:21 32:2 33:10 37:19 38:4 39:20 40:13 41:13 43:10 44:10 45:7 46:4 46:19 47:7,13 50:1 51:22 53:22 54:6,20 55:11 56:13,25 57:15 62:16 63:9,15,25 64:25	you'll 5:21 you're 7:14 17:7 18:21 19:8 20:21 21:19 22:5,10 25:3 36:4 44:4,13 44:22,23 58:16 you've 6:10 43:13 50:11 54:15	2006 59:5,9 2019 1:20 5:2 66:8 212 2:10 24076767 2:2 248 2:19 25 11:21 12:1,10,16 12:20,22,23 13:1 22:22 23:14 24:6 24:7,15 30:20,24 39:12,16 40:5,21 41:3,5 55:2 250 1:20 2:17 27 4:15,16 61:1 27.09 34:10 35:2 42:16,22 43:4,22 43:23 59:15,18,19 61:23 27.10 43:22 27555 1:20 2:17 28 9:17 61:1
U	W		Z	
ugly 10:11 unaware 28:19 unclear 47:17 unconstitutional 13:13,18 64:15 65:10 undergrowth 57:23 57:24 understand 9:5 32:3 UNITED 1:1 unwanted 20:14 updated 59:13 use 11:20 12:6 24:15 36:14 43:25 45:11 49:18,21,23 uses 32:12 59:22	wanted 47:14 58:2 wants 10:18,22 16:21 40:24 57:7 57:23,24 60:12,15 warranties 14:23 warranty 14:13 way 17:18 31:2 37:1 44:21 we'll 48:10,10,12 60:13 we're 14:4,4 26:23 34:21 36:7,19 54:7 62:12 we've 12:23 14:4 33:16 44:20 Wednesday 1:19 5:2 Weldon 2:2 4:5,7 5:12,15,18 6:2,9 7:10,13,15,23 8:2 13:20 15:10,14,19 15:20 18:7,10 20:22 21:12,14,21 22:2,5,7 23:6 26:11,18,25 27:4 29:1,18 31:14,24 32:4,17,25 33:3 33:14 34:1,5 37:18,20 38:11 39:5,9 40:3,20 41:18 43:12 44:11	won't 18:23 work 6:18 27:8,14 27:16,19,23,25 28:6,20 29:2,8,20 29:22 58:4 60:14 60:16 worked 7:21 worry 29:7 wouldn't 13:25 written 49:10 wrong 21:16 41:24 41:24	04 42:21 05 59:18 07/07/2020 66:22 08 14:4 09 59:18	
			1	
			1 4:12 7:24,25 18:25 29:24 32:22 40:4 42:7 60:6 1-800-632-2720 3:19 1/2 9:16 10:02 27:3 10:12 34:4 10:21 39:7 10:34 39:8 10:57 54:24 100 24:1,3 53:2 11:07 54:25 11:20 65:14 1150 3:4 12 1:20 5:2 66:8 13 59:7 15 4:13 18 4:14	
			2	
			2 4:13 15:11,12,25 58:12,13,17,17,21 58:21 2-inch 16:2,17,17 59:4 2:18-cv-13690 1:8 200 17:19 53:4	
				3
				3 4:14 18:7,8,19,20 30:1 300 16:3,18,24 59:3 318-3043 2:12 34 4:16 394-5198 3:6
				4
				4 4:15 22:14 27:1,2 29:23 31:15 40:17 4-inch 16:3 59:4 450 16:3,24 17:19 59:4 472-2700 2:5 48,000 35:16 48188 3:5 48331 1:21 2:18 489-4100 2:19 48906 2:11
				5
				5 4:16 8:17 34:2,3,7 42:15 43:23 59:14 5.08-E 48:21,23 50 24:3,4,5 500 35:8 36:5 512 2:5 517 2:12 58 4:6 5A 7:4,8,9,12,17,19 8:8

5A.04 29:25 33:17
42:7
5A.05 8:20
5A.05-A 8:9
5A.05-F-4 19:1
5A.08 11:10 12:17
40:13
5A.08-E-1 14:2
5B.06 40:18,19

6

6 4:5 8:14 9:6,10,17
10:6,11 11:1
22:25
6-inch 8:24 56:8,9
61 4:7
65 66:6

7

7 4:12
734 3:6
75 23:12
78701 2:4

8

8151 3:18

9

9:31 1:21 5:3
9:34 8:1
9:45 15:13
9:50 18:9
90 35:9
901 2:3

EXHIBIT 12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

F.P. DEVELOPMENT, LLC,
a Michigan Corporation,

Plaintiff/Counter-Defendant,

vs.

Case No. 2:18-cv-13690

Hon. George Caram Steeh

CHARTER TOWNSHIP OF CANTON,
MICHIGAN, a Michigan Municipal
Corporation,

Defendant/Counter-Plaintiff.

_____ /

DEPOSITION OF LEIGH THURSTON

The deposition of LEIGH THURSTON, taken before
CHRISTINE A. LERCHENFELD, Notary Public and Court
Reporter, in and for the County of Macomb, State of
Michigan, acting in the County of Oakland, on Wednesday,
June 12, 2019, at 27555 Executive Drive, Suite 250,
Farmington Hills, Michigan 48331, commencing at 1:04 P.M.

<p>1 APPEARANCES:</p> <p>2 CHANCE D. WELDON (Texas Bar No. 24076767)</p> <p>3 901 Congress Avenue</p> <p>4 Austin, Texas 78701</p> <p>5 (512) 472-2700</p> <p>6 Appearing on behalf of Plaintiff/Counter-</p> <p>7 Defendant.</p> <p>8</p> <p>9 ANNE McCLOREY McLAUGHLIN (P40455)</p> <p>10 27555 Executive Drive, Suite 250</p> <p>11 Farmington Hills, Michigan 48331</p> <p>12 (248) 489-4100</p> <p>13 Appearing on behalf of the Defendant/Counter-</p> <p>14 Plaintiff.</p> <p>15</p> <p>16 KRISTIN BRICKER KOLB (P59496)</p> <p>17 1150 South Canton Center Road</p> <p>18 Canton, Michigan 48188</p> <p>19 (734) 394-5198</p> <p>20 Appearing on behalf of the Defendant/Counter-</p> <p>21 Plaintiff.</p> <p>22</p> <p>23 ALSO APPEARING: JULIANA BUTLER</p> <p>24</p> <p>25 ** ** ** **</p> <p>Page 2</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 LEIGH THURSTON</p> <p>5 Examination by Mr. Weldon 6</p> <p>6 Examination by Ms. McLaughlin 85</p> <p>7 * * * *</p> <p>8</p> <p>9</p> <p>10 EXHIBITS: MARKED</p> <p>11 Exhibit Number 1 - Tree Ordinance 5</p> <p>12 Exhibit Number 2 - Responses to Req. to Produce 5</p> <p>13 Exhibit Number 3 - Answers to Interrogatories 5</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 ** ** ** **</p> <p>24</p> <p>25</p> <p>Page 4</p>
<p>1 REPORTED BY: Christine A. Lerchenfeld, CER6501</p> <p>2 Certified Electronic Reporter</p> <p>3 FOR: Network Reporting Corporation</p> <p>4 Firm Registration Number 8151</p> <p>5 1-800-632-2720</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 3</p>	<p>1 Farmington Hills, Michigan</p> <p>2 Wednesday, June 12, 2019</p> <p>3 1:04 p.m.</p> <p>4 ** ** ** *</p> <p>5 LEIGH THURSTON</p> <p>6 ** ** ** *</p> <p>7 (Exhibits Numbers 1 through 3 were marked</p> <p>8 for identification before the start of the</p> <p>9 deposition.)</p> <p>10 COURT REPORTER: Would you raise your</p> <p>11 right hand, please? Do you solemnly swear or affirm</p> <p>12 to tell the truth, the whole truth and nothing but</p> <p>13 the truth in this matter?</p> <p>14 THE WITNESS: I do.</p> <p>15 MR. WELDON: Good afternoon. My name is</p> <p>16 Chance Weldon. I represent F.P. Development in this</p> <p>17 case. Can you please state your name for the</p> <p>18 record?</p> <p>19 THE WITNESS: Leigh Thurston.</p> <p>20 MR. WELDON: Have you ever given a</p> <p>21 deposition before?</p> <p>22 THE WITNESS: No, I haven't.</p> <p>23 MR. WELDON: Great. So just two basic</p> <p>24 requirements. So we can keep a clear record for the</p> <p>25 Reporter will you agree to wait until I finish</p> <p>Page 5</p>

2 (Pages 2 to 5)

<p>1 asking a question before you give your answer?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. WELDON: And I'll offer you the same</p> <p>4 courtesy; I'll wait until you finish answering</p> <p>5 before I ask another question. Sound fair?</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. WELDON: If at any point you need to</p> <p>8 take a break, just let me know, we'll break. I just</p> <p>9 ask that you answer any question that is on the</p> <p>10 table at the time; is that fair?</p> <p>11 THE WITNESS: Sure.</p> <p>12 EXAMINATION</p> <p>13 BY MR. WELDON:</p> <p>14 Q You've been designated by the Township to testify on</p> <p>15 a few topics today; is that correct?</p> <p>16 A Yes.</p> <p>17 Q Do you know what those topics are?</p> <p>18 A The tree ordinance and items related to it.</p> <p>19 Q Specifically regarding the government interests that</p> <p>20 allegedly justifies the tree ordinance; is that</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q And any issues of nuisance. Is that also correct?</p> <p>24 A Any issues of --</p> <p>25 Q Nuisance.</p> <p style="text-align: center;">Page 6</p>	<p>1 A Okay.</p> <p>2 Q Are you familiar with that document?</p> <p>3 A Yes, I am.</p> <p>4 Q And what is it?</p> <p>5 A It's our tree ordinance. Forest preservation and</p> <p>6 tree removal -- tree removal and replacement.</p> <p>7 Q And I was speaking with your colleague earlier and</p> <p>8 he agreed that under that tree ordinance a property</p> <p>9 owner who removes trees, certain trees, without a</p> <p>10 permit is required to either replace those trees or</p> <p>11 pay into the tree fund; is that correct?</p> <p>12 A That's correct.</p> <p>13 Q And that this replacement or payment is in addition</p> <p>14 to any criminal penalties under that ordinance. Do</p> <p>15 you agree with that?</p> <p>16 A Yes. It's the value of the trees.</p> <p>17 Q And he explained a little bit there at the end that</p> <p>18 this payment or replacement is a form of nuisance</p> <p>19 abatement. Do you agree with that?</p> <p>20 A Yes.</p> <p>21 MR. WELDON: I'd like to go to Exhibit 2,</p> <p>22 please.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MR. WELDON:</p> <p>25 Q Go ahead and take a look at that document and</p> <p style="text-align: center;">Page 8</p>
<p>1 A Yes.</p> <p>2 Q Do you work for the Township?</p> <p>3 A Yes, I do.</p> <p>4 Q And what do you do there?</p> <p>5 A I'm a landscape architect, planner and site</p> <p>6 inspector.</p> <p>7 Q And what does that involve?</p> <p>8 A I deal with review of projects for landscape design</p> <p>9 and making sure that all of the landscape</p> <p>10 requirements are met. I inspect sites for</p> <p>11 compliance. After they have site plan approval and</p> <p>12 they develop their project I check it. I deal with</p> <p>13 the tree ordinance and applications of that. If we</p> <p>14 have any complaints or inquiries that involve it, I</p> <p>15 interpret the ordinance. I do all of our planting</p> <p>16 programs and maintenance programs of street trees</p> <p>17 and those kinds of issues. Things like that.</p> <p>18 Q And when we're talking about the tree ordinance</p> <p>19 we're talking about Canton Code of Ordinances,</p> <p>20 Article 5A?</p> <p>21 A Yes.</p> <p>22 MR. WELDON: We'll go ahead and use</p> <p>23 Exhibit 1.</p> <p>24 BY MR. WELDON:</p> <p>25 Q Can you take a look at that, please?</p> <p style="text-align: center;">Page 7</p>	<p>1 familiarize yourself with it for a moment.</p> <p>2 MS. McLAUGHLIN: I'm going to place an</p> <p>3 objection to -- at least the copy I have refers to a</p> <p>4 different lawsuit, not this one.</p> <p>5 MR. WELDON: It does, but it has a</p> <p>6 statement made by the Township and I'm going to ask</p> <p>7 questions about it.</p> <p>8 MS. McLAUGHLIN: Well, I'm going to place</p> <p>9 an objection because under the Michigan Court Rules,</p> <p>10 which govern the case that is reflected in Exhibit</p> <p>11 2, those requests for admissions and answers are</p> <p>12 applicable only to that litigation. That is also</p> <p>13 true of Federal Rule 36. So admissions are not</p> <p>14 binding in any matter other than the lawsuit in</p> <p>15 which they are brought, those admissions are brought</p> <p>16 or are issued.</p> <p>17 MR. WELDON: Objection noted.</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MR. WELDON:</p> <p>20 Q Have you ever seen this document before?</p> <p>21 A Yes.</p> <p>22 Q And are you familiar with it?</p> <p>23 A Well, I've reviewed it several times.</p> <p>24 Q In what context?</p> <p>25 A I helped respond to some of these items. I</p> <p style="text-align: center;">Page 9</p>

1 **certainly don't have it memorized.**
 2 Q Of course not. I'm not going to ask you to have it
 3 memorized. Can you turn to the first question,
 4 request for admission number 1. It's on the very
 5 first page.
 6 MS. McLAUGHLIN: So I don't have to keep
 7 objecting may I have a standing objection to any
 8 reference to these requests for admissions?
 9 MR. WELDON: You may have a standing
 10 objection to any questions referring to these
 11 admissions.
 12 MS. McLAUGHLIN: For the record, the
 13 requests for admissions, Exhibit 2, are brought in
 14 the matter of Canton Township versus 44650, Inc. in
 15 Wayne County Circuit Court case 18-014569-CE before
 16 Judge Susan Hubbard.
 17 BY MR. WELDON:
 18 Q And you said --
 19 MR. WELDON: Did we go off the record or
 20 are we still on?
 21 COURT REPORTER: We're still on.
 22 BY MR. WELDON:
 23 Q And you said that you helped prepare these
 24 responses; is that correct?
 25 **A I did assist.**

Page 10

1 Q So you did that in your capacity representing the
 2 Township; is that correct?
 3 **A Correct.**
 4 Q If you take a look at request for admission number 1
 5 it says -- it asks to "Admit that removing trees
 6 from one's own private property does not, of itself,
 7 constitute a nuisance at common law"; is that
 8 correct? It's going to be on that first page. The
 9 question is --
 10 **A I see it. I would say that's true.**
 11 Q And the Township's official answer there, if you go
 12 down to the very last line of that paragraph, it
 13 admits that removing trees from one's own property
 14 does not, of itself, constitute a nuisance at common
 15 law; is that correct?
 16 **A That's correct.**
 17 Q Has the Township changed its official position
 18 without notifying the Court?
 19 MS. McLAUGHLIN: Objection. Foundation.
 20 Vague. Object to the form of the question.
 21 BY MR. WELDON:
 22 Q Has the Township, to your knowledge -- actually,
 23 you're speaking on behalf of the Township regarding
 24 nuisances so you can answer this question directly.
 25 Has the Township changed its position that removing

Page 11

1 trees does not, of itself, constitute a nuisance at
 2 common law?
 3 MS. McLAUGHLIN: Objection to the form of
 4 the question. Foundation.
 5 MR. WELDON: Are you going to instruct her
 6 not to answer?
 7 MS. McLAUGHLIN: No, I'm not instructing
 8 her not to answer.
 9 THE WITNESS: This is not a yes or no
 10 question to me. It depends on the property.
 11 BY MR. WELDON:
 12 Q So let me unpack just a little bit and see what I'm
 13 getting at here. You would agree that right here in
 14 the request for admission -- well, you worked on
 15 these requests for admissions, correct?
 16 **A Yes.**
 17 Q And these requests for admissions were filed in the
 18 court, correct?
 19 **A Yes.**
 20 Q And this represents, at that time, the official
 21 position of the Township, correct?
 22 **A Yes, I believe so.**
 23 Q And the last sentence in response there says that
 24 removing trees from one's own property does not, of
 25 itself, constitute a nuisance at common law. Is

Page 12

1 that a true statement?
 2 **A Yes.**
 3 Q So whenever you said earlier that the payments under
 4 the tree ordinance are nuisance abatement you're not
 5 talking about a common law nuisance; is that
 6 correct?
 7 MS. McLAUGHLIN: Objection. Calls for a
 8 legal conclusion. Lack of foundation.
 9 THE WITNESS: I don't know how to apply
 10 that.
 11 MR. WELDON: I'm sorry. Can I go off the
 12 record for just one second?
 13 (Off the record at 1:16 p.m.)
 14 (Back on the record at 1:16 p.m.)
 15 BY MR. WELDON:
 16 Q When you were talking about payments under the tree
 17 ordinance being nuisance abatement is that -- the
 18 nuisance that you're talking about there is that
 19 simply the violation of the ordinance?
 20 **A It's the violation of the ordinance. Removing trees**
 21 **violates the ordinance without proper permits.**
 22 Q And that's the nuisance that's being abated is the
 23 violation of the ordinance?
 24 **A Yes.**
 25 Q And that's because the Township has this theory that

Page 13

1 under state law any violation of a zoning ordinance
 2 is a nuisance per se, correct?
 3 MS. McLAUGHLIN: Objection to the form of
 4 the question. You can answer.
 5 THE WITNESS: Yes.
 6 BY MR. WELDON:
 7 Q And that is true regardless of any injuries that
 8 have or have not been caused by this alleged
 9 violation, correct?
 10 MS. McLAUGHLIN: Objection to the form of
 11 the question. Calls for a legal conclusion. You
 12 may answer.
 13 THE WITNESS: Yes.
 14 BY MR. WELDON:
 15 Q In the present case the Township has claimed that it
 16 doesn't have any evidence that F.P. Development's
 17 removal of trees from its own property has created
 18 an actual nuisance, correct?
 19 MS. McLAUGHLIN: Objection to the form of
 20 the question. I believe that's a
 21 mischaracterization of the Township's answers to its
 22 request for admissions in the present case, not in
 23 the Wayne County case that does not apply to this
 24 case.
 25 MR. WELDON: Okay. We can introduce

Page 14

1 those, too, when we get there.
 2 BY MR. WELDON:
 3 Q Are you going to answer the question?
 4 A **Would you repeat it, please?**
 5 MR. WELDON: You know, I think probably
 6 the best way to do this, given that objection, is to
 7 go ahead and go to Exhibit 3.
 8 BY MR. WELDON:
 9 Q Are you familiar with this document?
 10 A **Yes.**
 11 Q And what is it?
 12 A **Answers to interrogatories that our office prepared.**
 13 Q And that's in the case regarding F.P. Development
 14 and the Township of Canton; is that correct?
 15 A **Yes.**
 16 Q And you signed these interrogatories, didn't you?
 17 A **I did.**
 18 Q So you worked on these interrogatories?
 19 A **I did assist on these, yes.**
 20 Q If you take a look at interrogatory number 1, it
 21 asks to provide any explanation that you claim that
 22 removing trees from private property -- I'm sorry;
 23 interrogatory number 2. I'm sorry. It asks if
 24 there's any evidence that removing trees from the
 25 F.P. Development property caused fires, flooding,

Page 15

1 other tangible injuries to neighboring properties,
 2 et cetera, correct?
 3 A **It does ask that.**
 4 Q And if you go down to your response on the following
 5 page the Township's answer there is "not
 6 applicable"; is that correct?
 7 A **Without waiving objections it's not applicable.**
 8 Q So you don't have any evidence that the removal of
 9 trees on F.P. Development's property caused concrete
 10 injuries to his neighbors, do you? Let me rephrase
 11 that. Other than the per se injury that you assume
 12 is caused per se by violating an ordinance.
 13 A **Well, there are injuries. It affects air quality,**
 14 **storm water management, protection of a natural**
 15 **resource. There are all those injuries.**
 16 Q Because I -- I'm sorry. I didn't mean to talk over
 17 you.
 18 A **And nobody is aware yet of what might have happened**
 19 **to adjacent or downstream properties.**
 20 Q Do you have any evidence that the removal of trees
 21 on the F.P. Development property caused the spread
 22 of infectious diseases?
 23 A **I do not.**
 24 Q Do you have any evidence that the removal of trees
 25 on the property caused fires?

Page 16

1 A **No.**
 2 Q Do you have any evidence that it caused flooding on
 3 adjacent properties?
 4 A **I can't answer that because there is already**
 5 **potential for flooding there because there are**
 6 **constricted waterways and this very well could have**
 7 **made it worse and I don't know the answer to that.**
 8 Q So it's your position that you do or do not have
 9 evidence to that effect, that the removal of trees
 10 caused flooding on neighboring properties?
 11 MS. McLAUGHLIN: Asked and answered. Go
 12 ahead again.
 13 THE WITNESS: I don't know.
 14 BY MR. WELDON:
 15 Q You don't know if you have evidence or you don't
 16 know --
 17 A **I don't have evidence.**
 18 Q Do you have any evidence that removing trees on the
 19 property has caused any physical injury to anyone in
 20 the Township?
 21 MS. McLAUGHLIN: You mean a person?
 22 BY MR. WELDON:
 23 Q A person.
 24 A **I do not.**
 25 Q Do you have any evidence that removing trees on the

Page 17

1 property has caused any injury to any corporation or
2 business entity?
3 **A Physical injury?**
4 Q Physical injury, lost profit margins, anything.
5 **A I don't know, but it's possible.**
6 Q Do you have any evidence of it?
7 **A I don't.**
8 Q In responses to these interrogatories the answer
9 that you provided is "not applicable." What does
10 that mean? It seems like you're saying that you
11 don't have any of this evidence that we're
12 requesting, but I just want to confirm that.
13 **A The questions are so broad, we need something more**
14 **specific to answer them directly.**
15 Q When you say that interrogatory, for example, number
16 3 is too broad, you've already answered a lot of
17 those questions for me today, about whether or not
18 you had evidence, what part of that interrogatory is
19 too broad?
20 **A We believe -- our ordinance believes that this**
21 **affects public safety, safety of our natural**
22 **resources and the welfare of our residents.**
23 Q Yes, you assume that trees provide those benefits;
24 is that correct?
25 **A Yes.**

Page 18

1 Q But you're not claiming that you have actual
2 evidence that the removal of trees from this
3 property has caused any of the injuries listed in
4 these interrogatories; is that correct?
5 **A It does affect neighbors. Do I have a specific**
6 **person? No.**
7 Q What is the basis of that contention?
8 **A It is because the trees were performing a benefit in**
9 **terms of clean air, protecting the soil and erosion**
10 **and we definitely had an erosion problem there.**
11 Q When you say "there," where is "there"?
12 **A On the Powelson and Percy sites.**
13 Q There was an erosion problem on the Powelson
14 property?
15 **A Yes.**
16 Q That was caused by tree removal?
17 **A Yes, by clearing the buffer zone of the drain that**
18 **crosses that property.**
19 Q So do you have photographs, soil samples, any sort
20 of physical evidence that there's been any sort of
21 erosion or flooding caused by the removal of trees
22 on that property?
23 **A No.**
24 Q Do you have any evidence, whatsoever, that Mr.
25 Powelson's neighbors have suffered any monetary

Page 19

1 damages on the basis of the removal of trees on the
2 F.P. Development property?
3 **A I don't know.**
4 Q Do you have any evidence to that effect?
5 MS. McLAUGHLIN: Asked and answered.
6 THE WITNESS: The soil erosion from the
7 clearing of drains has certainly affected that
8 property.
9 BY MR. WELDON:
10 Q Which property?
11 **A The property to the south, as well as this property.**
12 Q Who owns that property?
13 **A Gary Percy is 44650, I believe.**
14 Q Has 44650 made any complaints about erosion or
15 drainage problems being caused by the removal of
16 trees by F.P. Development property?
17 **A No.**
18 Q So then what is the basis of your claim that he's
19 been injured in some way by it?
20 **A Surrounding properties in general and in the area**
21 **have been injured.**
22 Q What is your evidence for that?
23 **A Because there's a loss of shade that tempers the --**
24 **moderates the temperatures. Loss of water being**
25 **able to be absorbed and intercepted by the trees.**

Page 20

1 **The groundwater to be replaced. All of those**
2 **natural resource kinds of impacts.**
3 Q I understand that that's what you assume the
4 ordinance does. My question is say, for example,
5 temperature. Have you guys gone out and gauged
6 whether or not the removal of trees has increased
7 the temperature on neighboring properties?
8 **A No. It's well-documented.**
9 MS. McLAUGHLIN: I want to place my
10 objection to the form of the question. Go ahead.
11 THE WITNESS: It's well-documented
12 scientifically.
13 BY MR. WELDON:
14 Q I'm sorry, that's an ambiguous answer. What is
15 well-documented scientifically?
16 **A That forests moderate temperature.**
17 Q My question to you, though, is did the removal of
18 trees in this case -- do you have evidence that the
19 removal of trees in this case actually affected
20 temperatures on neighboring properties?
21 **A No.**
22 Q Going back to Number 2, Exhibit Number 2. I
23 apologize. And if you look down at request for
24 admission number 8, please. This asks the Township
25 to admit that prior to the adoption of the tree

Page 21

<p>1 ordinance citizens of the Township had the right to 2 remove trees from their property without a tree 3 removal permit; is that correct? 4 A It does, yes. 5 Q And if you go down to the third line there, "Canton 6 admits that prior to the adoption of the original 7 ordinance in the 1970s," et cetera, et cetera, et 8 cetera, "property owners were generally allowed to 9 remove trees from their property without a tree 10 removal permit from the Township"; is that correct? 11 A In general it is. 12 Q So when you say "in general" what do you mean? 13 A Development projects would have probably gone 14 through a review process for trees and probably 15 replaced some. 16 Q So prior to the tree removal -- prior to the tree 17 ordinance? 18 A I can't say for sure it was not required. 19 Q And it says here that they were not required and I'm 20 just wondering if the Township has changed its 21 position in some way and, if so, if you can point me 22 towards something that would justify that change. 23 A No, I can't. 24 Q And has the Township changed its position? 25 MS. McLAUGHLIN: Has it changed its</p> <p style="text-align: center;">Page 22</p>	<p>1 government interest, correct? 2 A Yes. 3 Q One of the government interests that is laid out 4 here I believe is reduction in crime; is that 5 correct? 6 MS. McLAUGHLIN: Objection. Foundation. 7 Form of the question. I don't believe that that was 8 advanced as a justification in this case. If you 9 can point to it I'll be happy to let my client 10 answer, but she's not answering something that's not 11 true. 12 BY MR. WELDON: 13 Q You would agree that these interrogatories attached 14 a group, several pages worth of supporting material 15 regarding government interests; isn't that correct? 16 A I don't know. 17 Q Regarding tree benefits? 18 A There are several pages of tree benefit. 19 Q And you would agree that on one of those pages, I'll 20 tell you precisely the one, starting on page 4 of 6 21 of the Arbor Foundation documents that was attached 22 to the interrogatories, number 18. 23 A Number 18 page, interrogatory, what? 24 Q It's the documents attached to the interrogatories. 25 MS. McLAUGHLIN: I'm going to place an</p> <p style="text-align: center;">Page 24</p>
<p>1 position? 2 BY MR. WELDON: 3 Q Since these RFAs were entered in this case has the 4 Township changed its position regarding the answer 5 to this request for admission? 6 A No. 7 Q Going back to old times and the common law a person 8 generally had the right to make use of trees on 9 their property, correct? 10 MS. McLAUGHLIN: Objection. Foundation. 11 Calls for a legal conclusion. 12 BY MR. WELDON: 13 Q You can answer the question. 14 MS. McLAUGHLIN: If you know. 15 THE WITNESS: I don't completely know. 16 BY MR. WELDON: 17 Q Can you turn back to the interrogatories? What 18 exhibit were those? Three; Exhibit Number 3. Can 19 you turn to interrogatory number 5, please? 20 A Okay. 21 Q That interrogatory lays out the government interests 22 that the Township claims justifies the tree 23 ordinance, correct? 24 A Yes. 25 Q And you've been designated to testify on that</p> <p style="text-align: center;">Page 23</p>	<p>1 objection to the form of the question because it 2 improperly characterizes the Township's answer to 3 both interrogatory number 5 and 8. Interrogatory 4 number 8 requests justification for the interests 5 articulated in response to interrogatory number 5. 6 As an example, the document you just referred to was 7 attached, but we did not specifically refer to a 8 reduction in crime. 9 MR. WELDON: She can testify to that 10 effect. 11 MS. McLAUGHLIN: I'm placing an objection 12 because your question assumes -- 13 MR. WELDON: Your objection is noted. 14 MS. McLAUGHLIN: -- things that are not 15 true. 16 MR. WELDON: Your objection is noted. 17 I'll let her testify on it. 18 BY MR. WELDON: 19 Q Can you take a look at interrogatory number 8, 20 please? Interrogatory number 8 asks for any 21 documents, facts, data or evidence, including 22 studies that you claim support that the tree 23 ordinance is justified by government interest 24 articulated in interrogatory number 5; is that 25 correct?</p> <p style="text-align: center;">Page 25</p>

1 **A It does.**
 2 Q And as part of the answer to that it says, at the
 3 bottom of that response paragraph, "See attached
 4 samples from the Arbor Day Foundation, the United
 5 States Environmental Protection Agency"; is that
 6 correct?
 7 **A Yes.**
 8 Q And in these responses the Township has attached a
 9 study from the Arbor Day Foundation; is that
 10 correct?
 11 **A I believe so.**
 12 Q And if you turn to page 4 of that study.
 13 **A Four of 6?**
 14 Q Yes. It says, "Trees help reduce crime"; is that
 15 correct?
 16 MS. McLAUGHLIN: I'm going to place an
 17 objection. I don't think that this is necessarily a
 18 study. I believe it's entitled, "Tree Facts."
 19 BY MR. WELDON:
 20 Q It's one of the documents that was provided by the
 21 Township, correct?
 22 MS. McLAUGHLIN: So stipulated.
 23 BY MR. WELDON:
 24 Q And it says that trees help reduce crime; is that
 25 correct?

Page 26

1 **A I don't know.**
 2 Q You don't know if it says that or you --
 3 **A I have no statistics on that.**
 4 Q Is it the Township's position that trees help reduce
 5 crime?
 6 MS. McLAUGHLIN: Objection to the form of
 7 the question. Assumes facts not in evidence. We
 8 have not advanced that as a defense in this case.
 9 MR. WELDON: Are you testifying?
 10 MS. McLAUGHLIN: No, I'm making an
 11 objection. You're trying to put words in my
 12 client's mouth and I'm not going to let you do it.
 13 MR. WELDON: I'm not, I'm just -- you
 14 produced the document. I'm asking her about it.
 15 She can answer it however she wants.
 16 MS. McLAUGHLIN: Sure, she can.
 17 MR. WELDON: Okay.
 18 BY MR. WELDON:
 19 Q Is it the Township's position that trees help reduce
 20 crime?
 21 MS. McLAUGHLIN: Objection to foundation.
 22 Go ahead.
 23 THE WITNESS: We have no statistics in our
 24 office on that. I can't respond to it.
 25 BY MR. WELDON:

Page 27

1 Q Okay. Is there anything else in this document that
 2 was provided as evidence for the government interest
 3 that the Township will now disavow?
 4 MS. McLAUGHLIN: I'm going to place an
 5 objection to the form of the question. It's
 6 argumentative and you are misrepresenting the nature
 7 of the interrogatory to which the attachment was
 8 responsive, as well as --
 9 MR. WELDON: Are you going to ask her not
 10 to answer?
 11 MS. McLAUGHLIN: I am not.
 12 MR. WELDON: Are you just going to make
 13 extended speaking objections?
 14 MS. McLAUGHLIN: I'm making an objection.
 15 It's not a speaking objection, it's an objection.
 16 MR. WELDON: Okay.
 17 THE WITNESS: I don't know how to answer
 18 that.
 19 BY MR. WELDON:
 20 Q The Township, in response to interrogatory number 5,
 21 provides what it claims is the government interest
 22 that supports the tree ordinance, correct?
 23 **A Yes.**
 24 Q And in interrogatory number 8, in response to
 25 interrogatory number 8, they provide the facts,

Page 28

1 data, evidence, including studies that they claim
 2 justifies that articulated interest; is that
 3 correct?
 4 **A This is simply backup material.**
 5 Q But the Township claims that this supports the
 6 government interest of the tree ordinance, correct?
 7 **A Yes.**
 8 Q So is it the Township's position that trees help
 9 reduce crime?
 10 MS. McLAUGHLIN: Objection. Asked and
 11 answered, as well as to the form of the question.
 12 BY MR. WELDON:
 13 Q Did you look through these supplemental documents
 14 that were attached to the interrogatories?
 15 **A Sometime ago.**
 16 Q And whenever you were answering these -- let me ask
 17 you this question first. You signed these
 18 interrogatories, didn't you?
 19 **A Yes.**
 20 Q So you provided the answers to these
 21 interrogatories?
 22 **A Partly.**
 23 Q Who else worked on these interrogatories?
 24 **A Legal Counsel.**
 25 Q But you were --

Page 29

1 **A As well as other people in our office.**
 2 Q Who else?
 3 **A Jeffrey Goulet.**
 4 Q Is that the only other person?
 5 MS. McLAUGHLIN: Foundation.
 6 THE WITNESS: I believe so.
 7 BY MR. WELDON:
 8 Q So you looked over these documents -- or did you
 9 look over these documents before the Township
 10 submitted the answers to the interrogatories?
 11 **A Yes.**
 12 Q Do you believe these six pages from the Arbor Day
 13 Foundation provide evidence that supports the
 14 government interest articulated in the tree
 15 ordinance?
 16 MS. McLAUGHLIN: I believe that was asked
 17 and answered, but you can answer it again.
 18 THE WITNESS: I believe they do support.
 19 BY MR. WELDON:
 20 Q I believe, correct me if I'm wrong, earlier you said
 21 that you have no evidence that trees reduce crime?
 22 MS. McLAUGHLIN: Objection to the form of
 23 the question. Mischaracterizes her testimony. Go
 24 ahead, answer it again.
 25 THE WITNESS: I'm not in possession of it,

Page 30

1 no.
 2 BY MR. WELDON:
 3 Q Well, you're here to testify as to the government
 4 interest on behalf of the Township. Does the
 5 Township have that evidence?
 6 **A I don't know.**
 7 MS. McLAUGHLIN: The Township has -- I'm
 8 going to place an objection. The Township has not
 9 advanced reduction of crime as a justification for
 10 the ordinance.
 11 MR. WELDON: Well, you produced it in
 12 response to discovery so I can ask questions about
 13 it.
 14 MS. McLAUGHLIN: Sure you can, but you
 15 can't mischaracterize the nature of our answer.
 16 MR. WELDON: Do you want to stipulate that
 17 these documents are not reflective of the Township's
 18 position?
 19 MS. McLAUGHLIN: No. You said your
 20 interrogatory says describe the documents that
 21 support the claim that the ordinance is justified by
 22 the interest you articulated in response to 5. Just
 23 because it contains additional information --
 24 MR. WELDON: Well, that's what I'm trying
 25 to get at.

Page 31

1 MS. McLAUGHLIN: Well, she's already
 2 answered the question.
 3 MR. WELDON: Okay.
 4 MS. McLAUGHLIN: We haven't advanced that
 5 as an interest.
 6 MR. WELDON: Okay.
 7 BY MR. WELDON:
 8 Q Are there any other things listed in this six-page
 9 document that the Township does not advance as a
 10 government interest?
 11 **A Can you be more specific?**
 12 MS. McLAUGHLIN: Objection. Calls for a
 13 legal conclusion.
 14 THE WITNESS: I believe by and large that
 15 these tree facts are positive comments on the effect
 16 of trees in general.
 17 BY MR. WELDON:
 18 Q And do you believe that these statements provide
 19 foundation for the government interest that the tree
 20 ordinance targets?
 21 MS. McLAUGHLIN: Asked and answered.
 22 MR. WELDON: She hasn't answered that
 23 question yet.
 24 THE WITNESS: Our ordinance does that.
 25 BY MR. WELDON:

Page 32

1 Q It does what?
 2 **A It dictates how we handle tree removal.**
 3 Q My question is as these are the documents that were
 4 provided to justify your claim that it serves a
 5 legitimate government interest, and I'm just trying
 6 to narrow down which one of these the Township
 7 stands by. It seems like there was a big fuss about
 8 the one about crime, so I just want to figure out if
 9 there are any other ones. I guess we can go through
 10 them one by one.
 11 MS. McLAUGHLIN: I believe she's answered
 12 that they support the interest identified.
 13 THE WITNESS: It is only supporting
 14 documentation. We have an ordinance that we follow
 15 in order to deal with tree removal and tree
 16 preservation. We don't need any of this.
 17 BY MR. WELDON:
 18 Q The Township's position is that it doesn't need any
 19 evidence of public benefit in order to justify an
 20 ordinance?
 21 MS. McLAUGHLIN: Objection.
 22 Mischaracterizing her answer.
 23 MR. WELDON: She said they don't need any
 24 of it.
 25 THE WITNESS: The violation at hand --

Page 33

1 managing that violation all we need is an ordinance
 2 and the ordinance dictates how we deal with that and
 3 how it's controlled.
 4 BY MR. WELDON:
 5 Q So it's your position then that it's irrelevant
 6 whether or not they actually provide clean drinking
 7 water or oxygen or all those other things. You
 8 don't need any evidence of that. Is that your
 9 position?
 10 MS. McLAUGHLIN: Objection to the form of
 11 the question. Mischaracterizes her prior testimony
 12 and it's argumentative.
 13 MR. WELDON: I'd like to note that there
 14 was about a 20-second pause there.
 15 THE WITNESS: Am I expected to answer
 16 this?
 17 MS. KOLB: If you don't know just say you
 18 don't know.
 19 THE WITNESS: What I can say is these are
 20 how -- these kinds of issues are what cause people
 21 to form ordinances to help manage their tree
 22 populations.
 23 BY MR. WELDON:
 24 Q But you don't need this to justify the ordinance,
 25 correct?

Page 34

1 MS. McLAUGHLIN: Objection. That's not
 2 what she said. You're mischaracterizing her
 3 testimony and I'm going to object to the form of the
 4 question and foundation.
 5 MR. WELDON: I'd like to note another
 6 extended pause. Are you going to instruct her not
 7 to answer?
 8 MS. McLAUGHLIN: I haven't instructed her
 9 not to answer.
 10 BY MR. WELDON:
 11 Q Could you please answer the question?
 12 **A What's the question again?**
 13 Q You stated earlier and put your hand on the document
 14 and said, "We don't need any of this." So my
 15 question is is it the Township's position that you
 16 don't need evidence of any of this stuff to justify
 17 an ordinance? As you said, all you need is an
 18 ordinance.
 19 MS. McLAUGHLIN: I'm going to place the
 20 same objections I previously made to the same
 21 question numerous times.
 22 THE WITNESS: I didn't say exactly that.
 23 BY MR. WELDON:
 24 Q Okay. What did you say?
 25 **A I didn't say that we didn't need these to come up**

Page 35

1 **with an ordinance, I said we don't need these to**
 2 **enforce our ordinance. That was the intent of my**
 3 **language.**
 4 Q Yes. Thank you for clarifying. How do you draw
 5 that distinction? What do you mean by that?
 6 **A I have an ordinance to enforce. Someone years ago**
 7 **formulated why we needed it. It wasn't me. And I**
 8 **am obligated and directed to enforce the ordinance.**
 9 Q I totally understand that. You're here today,
 10 though, to testify for the government interest that
 11 supports the ordinance and so I'm just wondering, it
 12 sounds like you're saying that you don't need actual
 13 facts and data, it's just if the ordinance is on the
 14 books, it's on the books.
 15 MS. McLAUGHLIN: Is that a question?
 16 BY MR. WELDON:
 17 Q Is that true?
 18 MS. McLAUGHLIN: Objection to the form of
 19 the question and foundation. Asked and answered.
 20 THE WITNESS: We obviously need reasons
 21 for developing ordinances.
 22 MR. WELDON: I'd like to note that Counsel
 23 was just speaking to the client.
 24 MS. McLAUGHLIN: There's no question on
 25 the table.

Page 36

1 BY MR. WELDON:
 2 Q You said -- let me ask you. Are you involved at all
 3 in decisions of the Township to plant trees?
 4 **A Yes.**
 5 Q In what way are you involved?
 6 **A I manage the tree planting programs.**
 7 Q And some of those trees are planted out of tree
 8 funds from the tree fund; is that correct?
 9 **A Yes, it is.**
 10 Q Are all of the trees planted paid for out of the
 11 tree fund?
 12 **A Anything that -- no. Planning Services uses that**
 13 **fund. We might also have grant money to add to**
 14 **that. Leisure Services may have their own funds to**
 15 **plant trees in parks.**
 16 Q So is there money in the tree fund other than money
 17 that's paid in for replacement trees?
 18 **A No, not to my knowledge.**
 19 Q So other than replacement trees and other than trees
 20 planted with money out of the tree fund how many
 21 trees did the Township plant last year?
 22 **A I don't know exactly. That were paid for out of the**
 23 **tree fund?**
 24 Q No, that weren't paid for out of the tree fund and
 25 weren't replacement for mitigation for a tree

Page 37

1 removal. Those are my two conditions.
 2 **A There's a project on Gyde Road to help restore what**
 3 **DTE cut down for line clearance. We assisted with**
 4 **that. DTE paid half of it or more.**
 5 Q Who is DTE?
 6 **A Detroit Edison.**
 7 Q I apologize, I'm from Texas.
 8 **A Oh, I'm sorry. It's a utility company.**
 9 Q And do utility companies like DTE typically have to
 10 comply with the tree ordinance?
 11 **A No. We've had a U.S. Forest Service grant that's**
 12 **been in effect for the last couple of years. We are**
 13 **now finally planting from that this year. We didn't**
 14 **plant last year.**
 15 Q And given your -- outside of replacement trees or
 16 tree fund trees how many trees would you say that
 17 the Township plants?
 18 **A It varies. We used to plant -- we had very large**
 19 **projects. We might have, some years, planted 1,000**
 20 **trees. Now it is much less.**
 21 Q When you say used to like how long ago are we
 22 talking?
 23 **A '90s through mid 2000s.**
 24 Q Does the Township ever remove trees?
 25 **A Yes.**

Page 38

1 Q When the Township does remove trees does it pay into
 2 the tree fund?
 3 **A It does not. We're not required to.**
 4 Q Is the Township required to plant replacement trees
 5 for anything it removes?
 6 **A No, but that's what our fund is used for.**
 7 Q How many trees has the Township cut down in the last
 8 year? Cut down or removed, just to be clear.
 9 MS. McLAUGHLIN: If you know.
 10 THE WITNESS: May I ask -- may I say what
 11 for?
 12 BY MR. WELDON:
 13 Q For any reason.
 14 **A Okay. We try to remove all the dead trees on major**
 15 **streets every year. We have removed a few trees for**
 16 **water main breaks and utility kinds of repairs in**
 17 **which case my department has them replaced. Those**
 18 **are for residents, not on major roads. Residential**
 19 **streets.**
 20 Q So when you say them replaced you're talking about
 21 the ones with regard to water main breakage?
 22 **A Yeah. If our Public Works department has to tear**
 23 **out a tree my department generally has it replaced.**
 24 Q And that's if it occurs on private property?
 25 **A It is. Well, it's in the right-of-way.**

Page 39

1 Q If it occurs on public property, if there's a water
 2 main like at a city park or something do you replace
 3 the tree?
 4 **A We try, but we are not specific about replacing**
 5 **that.**
 6 Q And do you replace dead trees that are removed?
 7 **A Not specifically that tree immediately. What we do**
 8 **is try to replace where we've lost trees, where**
 9 **we've developed voids, whether from disease or lack**
 10 **of water or whatever trees meet their demise. So we**
 11 **plant in those areas. We also plant where there**
 12 **hasn't been a tree planting program yet.**
 13 Q So I guess you guys -- how does that decision
 14 process work? Do you guys sort of look at cost
 15 benefit of, you know, what it would cost to replace
 16 the tree versus, you know, benefits that it's
 17 providing? How do you decide whether or not to
 18 replace a tree when one of these things happen?
 19 **A It's a goal to create a tree canopy on our major**
 20 **streets. We're only in the process of it because**
 21 **we're a young township, so we haven't completed it.**
 22 **So we have to prioritize where we can plant and what**
 23 **we have to maintain, because it costs far more to do**
 24 **the maintenance now than plant. Our major**
 25 **expenditure is maintenance.**

Page 40

1 Q And then that's all paid out of the tree fund?
 2 **A It is.**
 3 Q So would that include things like putting mulch
 4 down?
 5 **A It does.**
 6 Q Watering the existing trees?
 7 **A Right.**
 8 Q Landscaping, things like that?
 9 **A Not much landscaping; tree planting.**
 10 Q Does it involve any landscaping?
 11 **A Not to my knowledge.**
 12 Q Do you know if the tree fund is a separate account
 13 from the general fund?
 14 MS. McLAUGHLIN: Foundation.
 15 THE WITNESS: I don't know legally if it's
 16 separated, but monies that go in are separated and
 17 can only be used for planting and maintenance out of
 18 that account.
 19 BY MR. WELDON:
 20 Q Do you know if it's the same account, though, at the
 21 bank?
 22 **A I don't.**
 23 Q Turn back to interrogatory number 5. One of the
 24 government interests that's listed in there is storm
 25 water management, correct?

Page 41

1 **A Yes.**
 2 Q Has the Township planted any trees in the past year
 3 for storm water management purposes?
 4 **A That's part of the reason any tree is planted.**
 5 Q So your position is that all of the trees you have
 6 planted are for the purpose of storm water
 7 management?
 8 **A That's part of the purpose.**
 9 Q Did the Township plant more trees than it cut down
 10 in the past two years?
 11 **A That's probably a wash. It's close.**
 12 Q Is your position that storm water management or
 13 flood prevention from a tree basically is a public
 14 benefit that's provided by that tree?
 15 **A Yes.**
 16 Q Do you guys have a flooding problem or a storm water
 17 problem here in Canton?
 18 **A We have a lot of flooding.**
 19 Q What constitutes a lot?
 20 **A I don't know that I can quantify that, but you're**
 21 **probably familiar with all the rain we've had this**
 22 **year that's unprecedented.**
 23 Q Yeah, I heard about that.
 24 **A So we have flooded basements and everything that**
 25 **goes into a drain goes into a river and goes**

Page 42

1 **downstream and affects a lot of people downstream**
 2 **that have a tremendous amount of flooding.**
 3 Q Is that typical here or is this an unusual year?
 4 **A It is worse this year.**
 5 Q If trees are important for flood mitigation why not
 6 pass a law requiring every homeowner to plant trees
 7 on their property?
 8 MS. McLAUGHLIN: Objection to the
 9 foundation. Calls for a legal conclusion. This
 10 Witness isn't qualified to answer that question.
 11 THE WITNESS: You're above my salary
 12 range.
 13 BY MR. WELDON:
 14 Q Take a look at interrogatory number 5 again. We're
 15 still there. There's a list of a lot of what looks
 16 like benefits provided by trees; is that correct?
 17 **A Yes.**
 18 Q And those benefits are essentially provided by
 19 requiring some individuals who otherwise might want
 20 to remove trees requiring them to keep those trees
 21 on their property, correct?
 22 MS. McLAUGHLIN: Objection to the form of
 23 the question. Foundation.
 24 THE WITNESS: I need you to be more
 25 specific. What kind of property?

Page 43

1 BY MR. WELDON:
 2 Q So how does the tree ordinance generate these public
 3 benefits? What's the mechanism? What does the tree
 4 ordinance do that gets us all of this carbon dioxide
 5 removal and all the other things listed here?
 6 **A The trees help mitigate all these issues or improve**
 7 **them.**
 8 Q So what I'm getting at, though, is not whether or
 9 not trees can provide these benefits, but how does
 10 the tree ordinance generate these benefits? Is it
 11 by requiring people to keep trees on their property?
 12 **A By and large people are not required to keep them.**
 13 **They are, in cases, required to mitigate the**
 14 **removal.**
 15 Q So to keep them or to pay mitigation?
 16 **A Yes.**
 17 Q So the tree ordinance achieves these benefits by
 18 requiring people to either have trees on their
 19 property or pay mitigation for those trees, correct?
 20 MS. McLAUGHLIN: Objection to the form of
 21 the question.
 22 THE WITNESS: It does not apply to all
 23 properties but, yes.
 24 BY MR. WELDON:
 25 Q I understand that it does not apply to some

Page 44

1 properties, but we'll get to that in a minute.
 2 Well, you know, let's just unpack it right now. The
 3 tree ordinance applies to all properties greater
 4 than two acres, correct?
 5 **A Yes.**
 6 Q And the F.P. Development property in this case is
 7 greater than two acres, correct?
 8 **A Yes.**
 9 Q And so the ordinance applies to the F.P. Development
 10 property, correct?
 11 **A It does.**
 12 Q And so for the ordinance to produce these benefits
 13 from the F.P. Development property it requires
 14 either that F.P. Development maintain trees on its
 15 property or that F.P. Development pay some form of
 16 mitigation for any trees removed, correct?
 17 MS. McLAUGHLIN: Objection to the form of
 18 the question.
 19 THE WITNESS: A developed property either
 20 needs to replant the trees and there are lots of
 21 opportunities in the landscaping requirements to do
 22 that, or they need to pay in the tree fund or find
 23 another location, acceptable public location to
 24 plant trees.
 25 BY MR. WELDON:

Page 45

<p>1 Q So effectively, and I'm going to ask a follow-up 2 question because I know it's been asked and 3 answered, but I'm just trying to unpack it, so 4 effectively it requires some individuals to either 5 keep trees on their property or pay to have those 6 trees planted elsewhere; is that correct? 7 MS. McLAUGHLIN: Objection. Asked and 8 answered. I'll also object to the form of the 9 question. 10 THE WITNESS: I already answered that. 11 BY MR. WELDON: 12 Q And what was your answer? 13 A Yes. 14 Q So typically when the government requires that one 15 person provide a public benefit they have to pay for 16 that, right? 17 A Not necessarily. 18 Q Can you explain? 19 A We have property developers who provide a public 20 benefit in their developments like a park in a 21 residential area. 22 Q Let's say that the Township wanted F.P. Development 23 to store, you know, 500 beams of timber on its 24 property for the benefit of the Township. Would the 25 Township have to pay to store that stuff on the</p> <p style="text-align: center;">Page 46</p>	<p>1 whether or not in that situation it would have to 2 provide compensation? 3 MS. McLAUGHLIN: Objection to the form of 4 the question. 5 THE WITNESS: The Township doesn't require 6 them to plant a park or to provide a park, so the 7 question is irrelevant to me. 8 BY MR. WELDON: 9 Q I didn't ask you whether or not you thought it was 10 relevant, I just asked you if you could provide an 11 answer to it. 12 A No, I can't. 13 Q Fair enough. So is the Township's position then 14 that it could require a private individual to 15 provide a public benefit without providing 16 compensation? 17 MS. McLAUGHLIN: Objection to the form of 18 the question. Lack of foundation. Calls for a 19 legal conclusion and that's an improper 20 hypothetical. 21 THE WITNESS: I can't answer that. 22 BY MR. WELDON: 23 Q Let's work through the foundation again. You said 24 that the tree ordinance provides public benefits, 25 correct?</p> <p style="text-align: center;">Page 48</p>
<p>1 property or would F.P. just have to eat that loss? 2 MS. McLAUGHLIN: Objection to the form of 3 the question. It's a compound question. Calls for 4 an improper hypothetical and lack of foundation. 5 Calls for a legal conclusion. 6 THE WITNESS: It's too hypothetical. I 7 don't know how to answer that. 8 BY MR. WELDON: 9 Q Would you say a park is a public benefit? 10 A Yes. 11 Q If the Township requires that F.P. Development 12 dedicate part of its property as a park wouldn't the 13 Township have to pay for that? 14 MS. McLAUGHLIN: Objection. Form of the 15 question. Calls for speculation. Improper 16 hypothetical and calls for a legal conclusion. 17 THE WITNESS: We haven't asked them to do 18 that. 19 BY MR. WELDON: 20 Q That's not the question I asked. 21 MR. WELDON: Objection. Nonresponsive. 22 THE WITNESS: Because it's a hypothetical. 23 I don't have an answer for you. 24 BY MR. WELDON: 25 Q So is the Township's position that it doesn't know</p> <p style="text-align: center;">Page 47</p>	<p>1 A Yes. 2 Q And you said that it provides these public benefits 3 by requiring individuals to either keep trees on 4 their property or pay mitigation either through 5 replanting or paying into the tree fund, correct? 6 MS. McLAUGHLIN: Asked and answered. 7 THE WITNESS: Certain properties. 8 BY MR. WELDON: 9 Q The F.P. Development property which you said the 10 ordinance applies to. 11 A Yes. 12 Q So F.P. Development either has to maintain the trees 13 on the property or pay into the tree fund or plant 14 trees elsewhere, correct? 15 MS. McLAUGHLIN: Asked and answered. 16 THE WITNESS: Yes. 17 BY MR. WELDON: 18 Q And that's so that it can provide these public 19 benefits, correct? 20 A Yes. 21 Q And that's the method by which the ordinance 22 provides public benefits, correct? 23 MS. McLAUGHLIN: I'm going to place an 24 objection to the form of the question and foundation 25 to the extent it calls for a legal conclusion.</p> <p style="text-align: center;">Page 49</p>

1 THE WITNESS: Can you ask something more
2 specific?
3 BY MR. WELDON:
4 Q It's difficult to be more specific. The mechanism
5 -- I've already asked this question. I'll just move
6 on. I think you've already given the answer.
7 Going back to interrogatory number 5, one
8 of the government interests listed in that
9 interrogatory is the protection of natural
10 resources, correct?
11 **A Yes.**
12 Q What does that mean?
13 **A Protection of natural green open spaces, forests,**
14 **woodlands, waterways.**
15 Q Is there a shortage of trees in Michigan?
16 **A We've cut a lot of trees down.**
17 Q I saw a lot of them on the way in, I just figured
18 I'd ask.
19 **A There is a shortage in many areas.**
20 Q Was there a shortage in Canton?
21 **A Yes.**
22 Q How do you evaluate whether or not there's a
23 shortage of trees?
24 **A I'm familiar with what has been lost to development,**
25 **so we really haven't replaced all that's been lost,**

Page 50

1 **which would be impossible to do.**
2 Q You can't replace all of it because there are houses
3 and things there now, right?
4 **A Correct.**
5 Q So what is the metric by which a shortage is
6 determined?
7 MS. McLAUGHLIN: I'm going to place an
8 objection to the form of the question and
9 foundation. The issue of a shortage of trees has
10 not been presented as an issue in this case.
11 MR. WELDON: I'm just trying to figure out
12 the reason for the ordinance.
13 THE WITNESS: Continuing to plant trees
14 satisfies one of the goals of the Township to
15 beautify the Township, to improve it socially,
16 culturally, economically, and trees help do that.
17 BY MR. WELDON:
18 Q Is there an objective metric by which you measure
19 whether or not there's a shortage of trees?
20 **A No.**
21 Q And so that's left to the discretion of the
22 Township, correct?
23 MS. McLAUGHLIN: Objection to the form of
24 the question and foundation.
25 THE WITNESS: I don't know how to answer

Page 51

1 that.
2 BY MR. WELDON:
3 Q When you say there's a shortage of trees and you
4 said there's no objective metric are you really
5 saying that the Township wants more trees?
6 MS. McLAUGHLIN: More than what?
7 BY MR. WELDON:
8 Q Than it currently has.
9 **A The Township definitely wants to improve our**
10 **community with more trees.**
11 Q If a property owner is -- so you're claiming then
12 that trees are a public resource?
13 MS. McLAUGHLIN: Objection to the form of
14 the question. I don't know what public resource
15 means, but -- I mean, do you mean publicly owned
16 benefit? I don't know what you mean by that. Can
17 you be more specific?
18 MR. WELDON: It's another speaking
19 objection. I'll clarify.
20 MS. McLAUGHLIN: Objection to the form of
21 the question. (Unintelligible).
22 MR. WELDON: I mean, if she wants me to
23 clarify -- yeah, if she wants me to clarify it I'll
24 -- you know, she can ask and I'll provide
25 clarification.

Page 52

1 MS. McLAUGHLIN: Well, in order for her to
2 answer a question I have to know what the question
3 means.
4 MR. WELDON: Okay.
5 BY MR. WELDON:
6 Q You testified earlier that protection of natural
7 resources is part of the government interest that
8 justifies the ordinance, correct?
9 **A Yes.**
10 Q And by natural resources there you're referring to
11 trees, correct?
12 MS. McLAUGHLIN: Objection. Asked and
13 answered.
14 THE WITNESS: Partly.
15 BY MR. WELDON:
16 Q So is the Township's position that trees are a
17 public resource? They're a resource to the public?
18 **A They are a natural resource.**
19 Q Who owns the tree on private property?
20 MS. McLAUGHLIN: To the extent it may call
21 for a legal conclusion I'll place an objection.
22 THE WITNESS: I don't know how to answer
23 that. You would need to tell me size of parcel and
24 zoning. It's too broad.
25 BY MR. WELDON:

Page 53

1 Q So I guess I don't understand the objection. Are
2 you saying that whether or not a tree on private
3 property is owned by the owner of the private parcel
4 is dependent on the Zoning Code?
5 **A I'm saying on a small residential built parcel,
6 occupied parcel, it doesn't apply.**
7 Q What doesn't apply?
8 **A Our ordinance does not apply. It's an exemption.**
9 Q The tree ordinance would be exempt. So those owners
10 do own their trees?
11 **A I guess you could say that.**
12 Q Who owns the trees on a larger than two-acre parcel?
13 **A I believe the property owner owns it.**
14 Q Can the property owner cut them down without a
15 permit? Without permission from the Township?
16 MS. McLAUGHLIN: Objection to the form of
17 the question.
18 THE WITNESS: Can you rephrase that?
19 BY MR. WELDON:
20 Q Assume a property larger than two acres, Mr.
21 Powelson's property, the F.P. Development property,
22 just to be clear. Let's say that there is a
23 landmark tree on that property and that landmark
24 tree is in a forest. Does Mr. Powelson -- sorry;
25 F.P. Development own that tree?

Page 54

1 **A I guess so. I think a legal person would need to
2 answer that.**
3 Q Can they cut all the branches off that tree without
4 permission from the Township?
5 **A Interesting. All the branches off a landmark tree?**
6 Q Yep.
7 **A That's a good question. I don't know how to answer
8 it.**
9 Q You operate the -- you run the tree permitting
10 program here, don't you?
11 **A I review tree removal permits. I'm the main person.**
12 Q Let's say that that application comes across your
13 desk. They want to cut all the branches off this
14 tree. Do you approve that permit?
15 MS. McLAUGHLIN: Objection to the form of
16 the question. Foundation. It's an incomplete
17 question and an improper hypothetical.
18 THE WITNESS: Can you be more specific?
19 BY MR. WELDON:
20 Q Let's say that F.P. Development has a landmark tree
21 within a forest and he wants to apply to cut all the
22 branches off of it and that permit application comes
23 across your desk. What do you do?
24 **A I would not approve it.**
25 Q Let's say that someone wants to build a really

Page 55

1 extensive tree house in a landmark tree in a forest.
2 That would require a permit, correct?
3 MS. McLAUGHLIN: Objection to the form of
4 the question. Foundation.
5 BY MR. WELDON:
6 Q Let me run it back. The tree ordinance prohibits
7 work within a forest, correct?
8 **A On what size parcel?**
9 Q Larger than two acres.
10 **A The tree ordinance applies to that.**
11 Q It would apply to work within -- and it prohibits
12 damaging trees in a forest on the same two-acre
13 parcel, correct?
14 **A We're back to two acres?**
15 Q Larger than two acres to be clear. Let me just make
16 a running statement that when I'm talking about a
17 parcel it is larger than two acres.
18 **A All right.**
19 Q Unless I specify otherwise. That will be our
20 default.
21 **A I need your example to be more specific.**
22 Q Okay. F.P. Development has a tree within a forest
23 and it wants to build a very extensive tree house
24 that is going to involve cutting branches and
25 hammering nails into it and sawing out steps on the

Page 56

1 side of it. It's going to do some pretty
2 significant modification to this tree. Would they
3 need a permit for that?
4 **A Yes.**
5 Q Would you grant that permit?
6 MS. McLAUGHLIN: Objection. Foundation.
7 Improper hypothetical.
8 THE WITNESS: It would have to be
9 evaluated according to the ordinance, but depending
10 on the circumstance we would want the tree replaced.
11 BY MR. WELDON:
12 Q But they'd have to ask permission first either way,
13 correct?
14 **A Yes.**
15 Q If they wanted to chop up the tree and use it as
16 firewood they would have to get permission first,
17 correct?
18 MS. McLAUGHLIN: Objection. Foundation.
19 Hypothetical.
20 BY MR. WELDON:
21 Q Same tree.
22 MS. McLAUGHLIN: A landmark tree.
23 BY MR. WELDON:
24 Q A tree in a forest.
25 MS. McLAUGHLIN: I thought you said

Page 57

1 landmark tree.
 2 MR. WELDON: A tree in a forest.
 3 THE WITNESS: It depends on whether it's
 4 regulated.
 5 BY MR. WELDON:
 6 Q What sort of trees are not regulated in a forest?
 7 **A Cottonwood, box elder, things like that.**
 8 Q So let's say that it is a tree that falls under the
 9 tree ordinance and they want to chop it up for
 10 firewood. They'd have to get permission first,
 11 right?
 12 MS. McLAUGHLIN: Objection to the
 13 foundation. Improper hypothetical.
 14 THE WITNESS: We don't generally deal with
 15 an individual tree in working with the ordinance.
 16 BY MR. WELDON:
 17 Q He wants to cut down 15 trees and sell them as log
 18 firewood.
 19 **A He would need a permit.**
 20 Q Would you grant that one?
 21 MS. McLAUGHLIN: Objection. Foundation.
 22 Hypothetical. Irrelevant.
 23 THE WITNESS: I don't know the answer to
 24 that.
 25 BY MR. WELDON:

Page 58

1 Q So what if he doesn't want to chop the tree down, he
 2 just wants to dig that sucker up and move it to a
 3 different property. That still would need a permit,
 4 wouldn't it?
 5 MS. McLAUGHLIN: Hypothetical.
 6 Foundation.
 7 THE WITNESS: Are we talking about the
 8 landmark tree?
 9 BY MR. WELDON:
 10 Q Sure, we'll talk about a landmark tree. Or any tree
 11 within a forest because the ordinance applies to any
 12 work within a forest.
 13 **A If he wants to do that to a landmark tree we're**
 14 **going to assume it's going to die.**
 15 Q Okay. So earlier you said that the property owner
 16 owns the tree, correct?
 17 **A Yep.**
 18 Q But before he does anything to the tree, like build
 19 a tree house or chop the branches off, he has to get
 20 permission, correct?
 21 MS. McLAUGHLIN: Objection to the form of
 22 the question. Foundation. Improper hypothetical.
 23 Asked and answered.
 24 MR. WELDON: She did already answer it.
 25 I'm just walking her back through it.

Page 59

1 MS. McLAUGHLIN: You're wasting time at
 2 this point.
 3 MR. WELDON: I have a point.
 4 THE WITNESS: The ordinance applies. If
 5 you were simply building a tree house without
 6 decimating the regulated tree there would be no
 7 question.
 8 BY MR. WELDON:
 9 Q But you'd have to apply for a permit either way to
 10 make sure that they're not decimating the tree,
 11 correct?
 12 MS. McLAUGHLIN: Objection --
 13 THE WITNESS: No.
 14 BY MR. WELDON:
 15 Q I guess I'm trying to figure out what's left of the
 16 ownership interest if you can't sell it, can't use
 17 it, can't tear it down.
 18 MS. McLAUGHLIN: Is there a question?
 19 MR. WELDON: Yeah.
 20 BY MR. WELDON:
 21 Q What's left of the ownership interest?
 22 MS. McLAUGHLIN: Objection to the form of
 23 the question and foundation. That calls for a legal
 24 conclusion that this Witness is not qualified to
 25 answer.

Page 60

1 THE WITNESS: I can't answer that.
 2 BY MR. WELDON:
 3 Q Turn to interrogatory number 7, please. You would
 4 agree that this interrogatory involves the alleged
 5 government interest for exempting lots of less than
 6 two acres from the tree ordinance, correct?
 7 **A Occupied lots, yes.**
 8 Q And one of the reasons that's given there is that
 9 removal of trees on small parcels have a
 10 correspondingly lesser impact on the surrounding
 11 community and the community as a whole than tree
 12 removal from larger parcels; is that right?
 13 **A Yes.**
 14 Q Is it the Township's position that cutting down a
 15 tree on a three-acre parcel has a greater impact
 16 than cutting down an identical tree on a one-acre
 17 parcel?
 18 MS. McLAUGHLIN: Objection to the form of
 19 the question. Improper hypothetical. And it's an
 20 incomplete foundation, so I would object. Lack of
 21 foundation.
 22 THE WITNESS: That's our cutoff line
 23 between two and three acres.
 24 BY MR. WELDON:
 25 Q I know it's in the ordinance. My question is is it

Page 61

1 your position that an identical tree, adjacent lots,
 2 one lot is three acres, one lot is one acre,
 3 identical same type of tree, same size of tree. Is
 4 it your position that the impact, the public impact,
 5 is greater from cutting down the tree on the three-
 6 acre parcel than it is on the one-acre parcel?
 7 MS. McLAUGHLIN: Objection to the form of
 8 the question. Lack of foundation. Improper
 9 hypothetical. And it's irrelevant in this case.
 10 THE WITNESS: I can't answer the question.
 11 BY MR. WELDON:
 12 Q Well, you're here to testify as to the government
 13 interest which supports the ordinance and the
 14 ordinance includes a provision that treats these two
 15 types of things differently. And my client has a
 16 two-acre parcel so it's important to us to
 17 understand what this justification is. And so is it
 18 the Township's position that it doesn't know whether
 19 or not the impact is different based on the parcel
 20 size?
 21 MS. McLAUGHLIN: I'm going to place an
 22 objection to the form of the question. It assume
 23 something that's not true in the question. It's
 24 just not true. Your client does not have an
 25 occupied parcel of two acres or less.

Page 62

1 MR. WELDON: No, I said he has a larger
 2 parcel.
 3 THE WITNESS: No, you said two --
 4 MS. McLAUGHLIN: Then I misspoke.
 5 BY MR. WELDON:
 6 Q He has a parcel that's larger than two acres, so it
 7 matters. So I guess, again, say it's an oak tree
 8 and I'm cutting down a 6-inch oak tree or 7-inch oak
 9 tree on a one-acre parcel and I'm cutting down a 7-
 10 inch oak tree on a three-acre parcel. What's the
 11 public impact difference?
 12 MS. McLAUGHLIN: Same objections. Form
 13 and foundation.
 14 BY MR. WELDON:
 15 Q Is the flood mitigation different? Is the oxygen
 16 provided different? Is the carbon cleaning
 17 different? What's the difference between a tree on
 18 a three-acre parcel and a one-acre parcel?
 19 MS. McLAUGHLIN: Objection to the form of
 20 the question. Improper hypothetical. Lack of
 21 foundation.
 22 THE WITNESS: What we take into
 23 consideration is that that smaller lot was already
 24 developed once. Tree clearing already took place
 25 and would have been regulated when it was developed

Page 63

1 or as part of a larger development and tree removal
 2 and replacement would already have been taken care
 3 of. So we do not regulate the less than two acres
 4 that is occupied.
 5 MR. WELDON: I'm going to object that
 6 that's nonresponsive and I'm going to ask you again.
 7 BY MR. WELDON:
 8 Q Is there a difference in flood mitigation, carbon
 9 mitigation, any of these public benefits you list in
 10 the interrogatories that is different from the exact
 11 same tree if that tree is on a one-acre parcel
 12 versus a three-acre parcel?
 13 MS. McLAUGHLIN: Objection to the form of
 14 the question. Improper hypothetical. You haven't
 15 identified any specific --
 16 MR. WELDON: I can ask hypotheticals to
 17 get to the government interest at issue.
 18 MS. McLAUGHLIN: But your examples are not
 19 complete. They don't take into account any of the
 20 circumstances other than the difference in the
 21 acreage.
 22 MR. WELDON: That's where you guys draw
 23 the difference in your ordinance, so it's a valid
 24 question.
 25 MS. McLAUGHLIN: Well, she's already

Page 64

1 answered it.
 2 MR. WELDON: She doesn't know if there's a
 3 difference? She's here to testify on government
 4 interest.
 5 MS. McLAUGHLIN: She's answered your
 6 question. You can answer it again.
 7 BY MR. WELDON:
 8 Q It's a yes or no question. Is there a difference
 9 between a 6-inch oak tree on one parcel and a 6-inch
 10 oak tree on another?
 11 MS. McLAUGHLIN: Same objections.
 12 THE WITNESS: There's not any difference
 13 in the tree.
 14 BY MR. WELDON:
 15 Q Can you point to any evidence that a 6-inch oak tree
 16 on a one-acre parcel provides less flood mitigation
 17 than a 6-inch oak tree on a three-acre parcel? Do
 18 you have that evidence?
 19 MS. McLAUGHLIN: I'm going to place an
 20 objection to the form of the question and lack of
 21 foundation. You haven't given any specifics as to
 22 the specific conditions that apply to either parcel.
 23 MR. WELDON: I'm just asking about the
 24 tree.
 25 MS. McLAUGHLIN: I know you are, but the

Page 65

1 effects are not just to the tree. They're to the
 2 surrounding property.
 3 BY MR. WELDON:
 4 Q I'm talking about the effects to the public at
 5 large, the same ones that are listed in your
 6 response to the interrogatories. Flood mitigation,
 7 carbon reduction, heat reduction, all of the things
 8 that you list, right? Those seem to be qualities
 9 that you attach to trees qua trees. Okay? So my
 10 question is what does it matter the acreage for that
 11 tree? Now, you've given an answer that I'm going to
 12 address in just a minute about these other things,
 13 about like it could have been cleared before. My
 14 question is, and we're going to get there, but my
 15 question is is there a difference based on the tree?
 16 A tree is a tree is a tree, correct?
 17 MS. McLAUGHLIN: She's already answered
 18 that question. Asked and answered. Same
 19 objections.
 20 THE WITNESS: I don't have anything else.
 21 BY MR. WELDON:
 22 Q Is your answer that you don't know?
 23 MS. McLAUGHLIN: Argumentative.
 24 THE WITNESS: They both have a benefit,
 25 both trees.

Page 66

1 BY MR. WELDON:
 2 Q And the benefit of that tree doesn't magically
 3 change based on the size of the parcel that it's on,
 4 correct?
 5 MS. McLAUGHLIN: Objection to the form of
 6 the question. Lack of foundation.
 7 THE WITNESS: Right.
 8 BY MR. WELDON:
 9 Q Now, you talked a little bit earlier --
 10 MS. McLAUGHLIN: Can we take a quick
 11 break?
 12 MR. WELDON: Yeah.
 13 (Off the record at 2:36 p.m.)
 14 (Back on the record at 2:50 p.m.)
 15 BY MR. WELDON:
 16 Q Will you turn to interrogatory number 7, please?
 17 That claims that a reason for the exemption for
 18 smaller lots is that many small lots are part of
 19 developments that have already had to comply with
 20 the tree ordinance, correct?
 21 **A That's one of the reasons.**
 22 Q Is there anything in the tree ordinance that limits
 23 the two-acre exemption to developments that already
 24 complied with the ordinance?
 25 MS. McLAUGHLIN: I'm going to object to

Page 67

1 the form of the question.
 2 THE WITNESS: So if it's an occupied lot
 3 that has already -- unless it's a very old parcel
 4 that has already complied with the ordinance.
 5 BY MR. WELDON:
 6 Q When was the ordinance adopted?
 7 **A The first tree preservation ordinance was in '75.**
 8 Q Are there any lots less than one acre in the
 9 Township that were developed prior to the tree
 10 ordinance?
 11 MS. McLAUGHLIN: Foundation and form.
 12 THE WITNESS: I don't know.
 13 BY MR. WELDON:
 14 Q You don't know if there are any residential lots
 15 that were developed prior to what year did you say
 16 it was?
 17 **A '75.**
 18 Q Prior to 1975?
 19 **A Probably.**
 20 Q And those lots are still exempt under the tree
 21 ordinance, correct, if they're less than two acres?
 22 MS. McLAUGHLIN: I'm going to place an
 23 objection to the form of the question and
 24 foundation.
 25 THE WITNESS: Well, I'd have to qualify.

Page 68

1 I mean, it depends on the conditions on that site.
 2 There could be some issues of, you know, if there's
 3 a creek running through it and we have a lot of
 4 sites like that, whether that's helping to stabilize
 5 a stream bank or --
 6 BY MR. WELDON:
 7 Q Is that under the tree ordinance or some other
 8 ordinance?
 9 **A That would be under our engineering -- that would be**
 10 **the engineering purview.**
 11 Q Let me go back to Exhibit 1, which is the tree
 12 ordinance. And at 5A.05-B is that the exemption for
 13 occupied lots less than two acres?
 14 **A Yes, if they are already in existence.**
 15 Q So what do you mean by already in existence?
 16 **A There are agricultural exemptions for farming if the**
 17 **farming use is already in place.**
 18 Q Okay. Let me be clear. We were talking about the
 19 exemption for lots less than two acres in size,
 20 correct? And this was -- I'm just asking if that's
 21 where that exemption comes from is that from that
 22 section?
 23 **A Yes.**
 24 Q Does it say unless the lot was developed prior to
 25 1975?

Page 69

1 MS. McLAUGHLIN: Objection to the form of
2 the question. The ordinance speaks for itself.
3 THE WITNESS: It doesn't say that here.
4 BY MR. WELDON:
5 Q Is there anything you can point to anywhere in the
6 ordinance that says that this exemption does not
7 apply to lots that were developed prior to 1975?
8 MS. McLAUGHLIN: Objection to the form of
9 the question. It's irrelevant.
10 BY MR. WELDON:
11 Q And that's assuming that 1975 is when the tree
12 ordinance was adopted, of course.
13 **A I don't know.**
14 Q Well, is it in there?
15 **A I don't see it in here, no.**
16 Q So when you said earlier that the reason for the
17 exemption for the small -- a reason for the
18 exemption of the smaller lots is that they've
19 already had to comply with the tree ordinance but,
20 of course, a small lot developed before the tree
21 ordinance wouldn't have had to comply with the
22 ordinance, correct?
23 **A I believe that's correct.**
24 Q Yet that same lot would be -- would benefit from
25 this exemption, correct?

Page 70

1 MS. McLAUGHLIN: Objection to the form of
2 the question.
3 BY MR. WELDON:
4 Q Is there anything in this ordinance that says that
5 the exemption does not apply to a lot that's less
6 than two acres for any purpose?
7 MS. McLAUGHLIN: I'm sorry. Can you
8 repeat that?
9 BY MR. WELDON:
10 Q Is there anything in this exemption that says that
11 there are some lots less than two acres that this
12 does not apply to?
13 MS. McLAUGHLIN: I'll place an objection
14 to relevance and the ordinance speaks for itself.
15 THE WITNESS: You're talking about
16 occupied lots?
17 BY MR. WELDON:
18 Q Occupied lots, yes, ma'am.
19 **A No.**
20 Q And I don't remember what your answer was to this
21 question. Are there residential lots in the
22 Township that were developed before the '70s?
23 **A Probably.**
24 Q And those lots are less than two acres in size?
25 MS. McLAUGHLIN: Foundation.

Page 71

1 THE WITNESS: Some are and some aren't. I
2 don't know.
3 BY MR. WELDON:
4 Q And they would be -- they would benefit from this
5 exemption, correct, if they're less than two acres
6 in size?
7 MS. McLAUGHLIN: Asked and answered.
8 THE WITNESS: Yes.
9 BY MR. WELDON:
10 Q Thank you. That's all. If you could turn back to
11 interrogatory number 7, please. Interrogatory
12 number 7 also mentions situations where a, quote,
13 "high number of trees are removed from a multi-acre
14 property," correct?
15 **A We're on 3?**
16 Q Interrogatory number 7. Yeah, we're on Exhibit 3.
17 **A Okay. Repeat the question, please.**
18 Q The response to interrogatory number 7, let me get
19 the wording exactly right. It talks about, on that
20 third line, "especially where a high number of trees
21 is removed from multiple-acre property"; is that
22 correct?
23 **A Yes.**
24 Q The tree ordinance applies even if the property
25 owner wants to cut down a single tree, correct?

Page 72

1 MS. McLAUGHLIN: Objection to the form of
2 the question.
3 THE WITNESS: It has to comply with the
4 regulations. So if we have an owner say, "Hey, I've
5 got a large oak tree on my property, it's in bad
6 condition, it's causing a safety hazard for me and
7 my neighbors, may I cut it down?"
8 BY MR. WELDON:
9 Q Yeah. He still has to go get the permit, correct?
10 **A Not on a parcel of -- a developed parcel of two
11 acres.**
12 Q Let's talk about a parcel that's larger than two
13 acres. A larger than two-acre parcel if you want to
14 cut down a single landmark tree you have to get a
15 permit, correct?
16 MS. McLAUGHLIN: Asked and answered.
17 THE WITNESS: If we are consulted on that
18 and the tree is poor or dead, if they can get at it
19 without damaging part of a forest or other things we
20 would verbally allow them to do that.
21 BY MR. WELDON:
22 Q That's at your discretion, correct?
23 **A Yes.**
24 Q But that's not actually in the tree ordinance,
25 correct?

Page 73

1 **A No.**
 2 Q In interrogatory number 7 we were just talking
 3 about, you know, to avoid -- the tree ordinance is
 4 there to avoid a high number of trees being removed
 5 from a multiple-acre property, isn't there already a
 6 disincentive built into the ordinance that you have
 7 to pay on a per-tree basis? Doesn't that already
 8 address the clear-cutting issue? Why do you still
 9 need to distinguish between three-acre properties
 10 and one-acre properties?
 11 MS. McLAUGHLIN: Objection to the form of
 12 the question. Foundation.
 13 THE WITNESS: I'm not sure I can make that
 14 judgment.
 15 BY MR. WELDON:
 16 Q I'm just trying to get at the -- because we're
 17 talking about here in interrogatory number 7 the
 18 government interests that justifies treating the two
 19 lots differently and one of those interests is, you
 20 know, to prevent clear-cutting, right? You know,
 21 high number of trees. Isn't there already a
 22 disincentive to removing multiple trees? Why
 23 distinguish between two acres and three acres?
 24 MS. McLAUGHLIN: Objection. Compound
 25 question. Objection to the form of the question and

Page 74

1 foundation.
 2 BY MR. WELDON:
 3 Q Does the tree ordinance provide a disincentive to
 4 clear-cutting by charging on a per-tree basis?
 5 MS. McLAUGHLIN: Asked and answered.
 6 MR. WELDON: I don't believe she's
 7 answered that one.
 8 MS. McLAUGHLIN: The record will reflect
 9 that.
 10 THE WITNESS: I don't know what you're
 11 getting at.
 12 BY MR. WELDON:
 13 Q Maybe this will help. Interrogatory number 7 is
 14 trying to understand what the government's reason
 15 for treating three-acre parcels and one-acre parcels
 16 differently, or parcels than larger than two acres
 17 and parcels smaller than two-acres differently. I'm
 18 just trying to understand -- because you gave a
 19 couple of reasons why here in the response and I'm
 20 trying to understand why the distinction between two
 21 and three is necessary. So I asked, and this is the
 22 question, I asked does the tree ordinance without
 23 that distinction, without the distinction between
 24 two and three-acre parcels, would it nonetheless
 25 provide a disincentive to removing multiple trees

Page 75

1 because it charges on a per-tree basis? It's a very
 2 long question. I can try and clean that up. It's
 3 an awful question.
 4 MS. McLAUGHLIN: I'm going to have to
 5 really spend all that time objecting. So if you
 6 want to rephrase it, that's fine. If not, let me
 7 know and I'll place my objection.
 8 MR. WELDON: I'll go ahead and rephrase
 9 that. That ran on a very long time. I apologize.
 10 BY MR. WELDON:
 11 Q The government interest that you talk about for --
 12 one of the government interests for treating larger
 13 parcels differently than smaller parcels is to avoid
 14 removing a lot of trees, correct?
 15 **A Yes.**
 16 Q Does the tree ordinance already disincentivize that
 17 just by charging on a per-tree basis?
 18 MS. McLAUGHLIN: I'm going to object to
 19 the form of the question and foundation.
 20 THE WITNESS: And is the small parcel
 21 developed or not?
 22 BY MR. WELDON:
 23 Q It's a developed parcel, but that's not what I'm
 24 asking. I'll swing back to that. I don't have a
 25 good way to ask that question.



Page 76

1 Interrogatory number 7 talks about
 2 balancing the rights of small owners. What does
 3 that mean?
 4 **A It refers to the fact that these owners have already**
 5 **developed their properties and they should not be**
 6 **further burdened by having to get a permit to remove**
 7 **any tree, each and every tree that they have.**
 8 Q But we talked --
 9 **A It's already gone through that process.**
 10 Q We talked about earlier, though, that there are some
 11 smaller parcels that haven't already gone through
 12 that process because they were built prior to 1975,
 13 correct?
 14 **A This is talking about occupied parcels of two acres**
 15 **or less.**
 16 Q Right. And we talked about earlier that they were
 17 occupied parcels of two acres or less developed
 18 prior to 1975. So they wouldn't have gone through
 19 this process already. So what interest is served by
 20 treating those differently than two and three-acre
 21 parcels?
 22 **A As our history developed we came to a point where we**
 23 **felt -- the Township Board felt it was important to**
 24 **protect our resources.**
 25 Q So that's what I'm getting at is that basically they

Page 77

<p>1 get a windfall but that's because the real reason is</p> <p>2 that you're protecting resources going forward,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q Would you say that their rights are any more</p> <p>6 important, small parcel owners' rights are any more</p> <p>7 important than large parcel owner rights?</p> <p>8 MS. McLAUGHLIN: Objection to the form of</p> <p>9 the question. Argumentative.</p> <p>10 THE WITNESS: I can't make that judgment.</p> <p>11 BY MR. WELDON:</p> <p>12 Q F.P. Development is owned by Frank Powelson. His</p> <p>13 parcel is larger than three acres. Are his rights</p> <p>14 any different or any less important than somebody</p> <p>15 else in this building that owns a parcel that's one</p> <p>16 acre that's developed?</p> <p>17 MS. McLAUGHLIN: Objection to the form of</p> <p>18 the question. Argumentative. Foundation.</p> <p>19 THE WITNESS: I can't answer this any</p> <p>20 other way.</p> <p>21 BY MR. WELDON:</p> <p>22 Q I mean, you don't know if -- are you saying you</p> <p>23 can't answer whether or not their rights are of</p> <p>24 equal importance?</p> <p>25 MS. McLAUGHLIN: Objection to the form of</p> <p style="text-align: center;">Page 78</p>	<p>1 BY MR. WELDON:</p> <p>2 Q Can you turn to interrogatory number 12?</p> <p>3 Interrogatory number 12 seems to claim that the</p> <p>4 market value -- sorry. The market value for</p> <p>5 replacing a tree is roughly proportional to the</p> <p>6 public value created by a tree; is that correct?</p> <p>7 MS. McLAUGHLIN: Objection to the form of</p> <p>8 the question.</p> <p>9 THE WITNESS: I don't know that I can say</p> <p>10 that. I can just say that we know what current tree</p> <p>11 costs are and that's what -- that's the value we</p> <p>12 assign to it, because that's what we would have to</p> <p>13 pay for it if we planted it.</p> <p>14 BY MR. WELDON:</p> <p>15 Q Do you think that that dollar amount is a good</p> <p>16 measure of the public benefit that's generated from</p> <p>17 a tree on private property?</p> <p>18 MS. McLAUGHLIN: Object to foundation.</p> <p>19 THE WITNESS: Yes, in general.</p> <p>20 BY MR. WELDON:</p> <p>21 Q Do trees produce different benefits, and when I say</p> <p>22 benefits I'm talking about the benefits we talked</p> <p>23 about earlier, you know, storm water mitigation,</p> <p>24 carbon, things like that, based on the type of tree?</p> <p>25 A Yes.</p> <p style="text-align: center;">Page 80</p>
<p>1 the question. Argumentative. It's a legal</p> <p>2 question.</p> <p>3 THE WITNESS: No, I can't.</p> <p>4 BY MR. WELDON:</p> <p>5 Q That's fine. Do you know if the majority of the</p> <p>6 voters in Canton live on parcels smaller than two</p> <p>7 acres?</p> <p>8 MS. McLAUGHLIN: Foundation.</p> <p>9 THE WITNESS: I don't know the numbers.</p> <p>10 BY MR. WELDON:</p> <p>11 Q You've worked with the Township for how many years?</p> <p>12 A Fifteen.</p> <p>13 Q And you're in charge of -- does that job entail like</p> <p>14 city planning and platting and things like that?</p> <p>15 A It does.</p> <p>16 Q Do you have an idea how many residential parcels</p> <p>17 there are in the Township?</p> <p>18 A Well, that information exists, but I don't know what</p> <p>19 it is.</p> <p>20 Q Of the occupied developed lots are the majority of</p> <p>21 them, at least 51 percent of them, smaller than two</p> <p>22 acres?</p> <p>23 MS. McLAUGHLIN: Objection. Form of the</p> <p>24 question. Asked and answered. Foundation.</p> <p>25 THE WITNESS: Probably.</p> <p style="text-align: center;">Page 79</p>	<p>1 Q Do they provide different benefits based on where</p> <p>2 the tree is located?</p> <p>3 A It could.</p> <p>4 Q But the tree ordinance seems to assign the value</p> <p>5 just based on, you know, its diameter regardless; is</p> <p>6 that correct?</p> <p>7 MS. McLAUGHLIN: Objection to the form.</p> <p>8 THE WITNESS: Yes. To base it on every</p> <p>9 feature of every different species of tree would be</p> <p>10 impossible.</p> <p>11 BY MR. WELDON:</p> <p>12 Q Do you know what types of trees were allegedly cut</p> <p>13 down on the F.P. Development property?</p> <p>14 A White oak, sugar maple, red maple, silver maple,</p> <p>15 basswood, possibly some elm, black cherry, as well</p> <p>16 as some invasives or unregulated trees like</p> <p>17 cottonwood, buckthorn, box elder.</p> <p>18 Q Your recall is very good. I would not remember all</p> <p>19 those tree names. How much flood mitigation is</p> <p>20 provided by a 6-inch diameter tree? A 6-inch</p> <p>21 diameter white oak, for example.</p> <p>22 A I don't know.</p> <p>23 Q Would you say that the amount of flood mitigation</p> <p>24 provided by a tree will vary based on things like</p> <p>25 location and soil and topography?</p> <p style="text-align: center;">Page 81</p>

<p>1 A That and many other conditions or characteristics of 2 that tree. 3 Q None of which calculates into the, you know, flat 4 dollar amount for tree replacement, correct? 5 A No. It's an average. 6 Q So hypothetically speaking is there other situations 7 where removing a tree would help flood mitigation? 8 Say if a tree was clogging a ditch? 9 A Sure. 10 Q But that isn't part of the calculation, it's still 11 \$400 for every tree removed, correct? Or whatever 12 the dollar amount is, depending on the size of the 13 tree. 14 A It depends on the circumstances. I think I touched 15 on this before; if a tree is impacting that drain, 16 that's the only tree you want to remove because it's 17 causing a nuisance, we would let somebody cut that 18 tree down. 19 Q If you can go back to Exhibit 1, which is the 20 ordinance. An individual would still need to go to 21 you to get a permit for that, though, correct? 22 MS. McLAUGHLIN: Objection to the form of 23 the question. 24 THE WITNESS: They should, yes. 25 BY MR. WELDON:</p> <p style="text-align: center;">Page 82</p>	<p>1 MS. McLAUGHLIN: Objection. Improper 2 hypothetical. Objection to form. 3 THE WITNESS: Probably not. 4 BY MR. WELDON: 5 Q Was there ever a calculation done on the F.P. 6 Development property to determine whether or not 7 tree removal would make flooding better or worse? 8 A No calculation was done. 9 Q Are there things that a property owner could do to 10 offset increased flooding other than planting trees? 11 A Well, you could come in with a site plan for 12 development that included a detention basin, other 13 planting zones. But we would still require that 14 those trees be replaced after the 25 percent 15 allowance. 16 Q But you could get the same flood mitigation benefit 17 that you do from a tree from something else, 18 correct, from digging a detention basin? 19 A Other things contribute to reducing flooding. 20 MR. WELDON: I think that I am finished. 21 Give me just one minute. Yeah, I don't have any 22 other questions at this time unless I need to 23 redirect for some reason. 24 MS. McLAUGHLIN: I have just a few follow- 25 up questions.</p> <p style="text-align: center;">Page 84</p>
<p>1 Q And if you could take a look down at it's going to 2 be 5A.08-A. And it says -- 3 MS. McLAUGHLIN: Where are you? 4 MR. WELDON: 5A.08. 5 MS. McLAUGHLIN: Page 7? 6 MR. WELDON: Page 7 of 9. 7 BY MR. WELDON: 8 Q And that section says, "Whenever a tree removal 9 permit is issued for the removal of any landmark 10 tree with a DBH of 6 inches or greater such trees 11 shall be relocated or replaced by the permit 12 grantee." So are you claiming that you wouldn't 13 have to -- they wouldn't have to replace it? And if 14 so -- well, answer that question first. 15 A If it's creating a public problem, something that 16 impacts the public, or if it's mostly dead we would 17 probably not -- we would probably make an exception. 18 Q Where in the ordinance do you have the ability to 19 make those exceptions? 20 MS. McLAUGHLIN: Objection to the form of 21 the question. 22 THE WITNESS: I don't know. 23 BY MR. WELDON: 24 Q What if it just makes flood mitigation a little bit 25 better, would you grant an exception for that?</p> <p style="text-align: center;">Page 83</p>	<p>1 EXAMINATION 2 BY MS. McLAUGHLIN: 3 Q For occupied lots less than two acres in size that 4 were -- strike that. Before I get to that question 5 when was the Township's Zoning Ordinance adopted, if 6 you know? 7 A I don't know. 8 Q Do you know whether it was in effect in the '70s 9 before the tree ordinance was adopted? 10 A I don't know for certain. 11 Q For occupied lots of less than two acres in size 12 that were built before the tree ordinance would the 13 Zoning Ordinance have addressed conditions that were 14 subject to general zoning approval? 15 A Yes. 16 Q So even if this tree ordinance, itself, wasn't 17 specifically in effect the Zoning Ordinance would 18 have addressed other means of taking care of 19 whatever concerns were presented by the removal of 20 trees on that specific site at the time of removal? 21 MR. WELDON: Object to the form of the 22 question. 23 THE WITNESS: Yes. 24 BY MS. McLAUGHLIN: 25 Q Do you have discretion in your enforcement of the</p> <p style="text-align: center;">Page 85</p>

<p>1 tree ordinance?</p> <p>2 A We have some discretion.</p> <p>3 Q If a property owner comes to you before they do any</p> <p>4 tree removal do you always require them to comply</p> <p>5 with every single specific letter or provision of</p> <p>6 the ordinance or will you work with them to achieve</p> <p>7 the goals that they want in relation to the</p> <p>8 Township's goals?</p> <p>9 A We will work with them. I almost always go out and</p> <p>10 look at that tree, the situation, so I can evaluate</p> <p>11 and will get their opinion of whether a tree is</p> <p>12 damaged or poses a hazard or things like that is</p> <p>13 valid.</p> <p>14 Q If representatives of F.P. Development had come to</p> <p>15 you before trying to remove any trees on their</p> <p>16 property in this case what would you have done?</p> <p>17 A I would have told them they need to turn in a</p> <p>18 permit.</p> <p>19 Q Would you have tried to work with them as far as</p> <p>20 what that permit would look like and what it would</p> <p>21 require?</p> <p>22 MR. WELDON: I'm going to object to the</p> <p>23 form of the question. Go ahead.</p> <p>24 THE WITNESS: Sure. We have a tree survey</p> <p>25 for the developed portion of their lot. The lower</p> <p style="text-align: center;">Page 86</p>	<p>1 STATE OF MICHIGAN)</p> <p>2) ss.</p> <p>3 COUNTY OF MACOMB)</p> <p>4</p> <p>5 I certify that this transcript, consisting</p> <p>6 of eighty-seven (87) pages, is a complete, true, and</p> <p>7 correct transcript of the testimony of LEIGH THURSTON</p> <p>8 held in this case on June 12, 2019.</p> <p>9 I also certify that prior to taking this</p> <p>10 deposition LEIGH THURSTON was sworn to tell the truth.</p> <p>11 I also certify that I am not a relative or</p> <p>12 employee of or an attorney for a party; or a relative or</p> <p>13 employee of an attorney for a party; or financially</p> <p>14 interested in this action.</p> <p>15</p> <p>16</p> <p>17 </p> <p>18</p> <p>19 </p> <p>20 Christine A. Lerchenfeld, CER6501</p> <p>21 Notary Public, Macomb County, Michigan</p> <p>22 My Commission Expires: 07/07/2020</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 88</p>
<p>1 half, the southern half, would need to be surveyed</p> <p>2 and the tree removal would be based on that.</p> <p>3 MS. McLAUGHLIN: Thanks. That's all the</p> <p>4 questions I have.</p> <p>5 MR. WELDON: That's it for me.</p> <p>6 (Deposition concluded at 3:23 p.m.)</p> <p>7 ** ** ** **</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 87</p>	<p style="text-align: right; color: green;">RECEIVED by MCOA 2/2/2022 11:58:19 PM</p>

<p>A</p> <p>abated 13:22</p> <p>abatement 8:19 13:4,17</p> <p>ability 83:18</p> <p>able 20:25</p> <p>absorbed 20:25</p> <p>acceptable 45:23</p> <p>account 41:12,18 41:20 64:19</p> <p>achieve 86:6</p> <p>achieves 44:17</p> <p>acre 62:2,6 68:8 78:16</p> <p>acreage 64:21 66:10</p> <p>acres 45:4,7 54:20 56:9,14,15,17 61:6,23 62:2,25 63:6 64:3 68:21 69:13,19 71:6,11 71:24 72:5 73:11 73:13 74:23,23 75:16 77:14,17 78:13 79:7,22 85:3,11</p> <p>acting 1:19</p> <p>action 88:14</p> <p>actual 14:18 19:1 36:12</p> <p>add 37:13</p> <p>addition 8:13</p> <p>additional 31:23</p> <p>address 66:12 74:8</p> <p>addressed 85:13,18</p> <p>adjacent 16:19 17:3 62:1</p> <p>admission 10:4 11:4 12:14 21:24 23:5</p> <p>admissions 9:11,13 9:15 10:8,11,13 12:15,17 14:22</p> <p>admit 11:5 21:25</p> <p>admits 11:13 22:6</p> <p>adopted 68:6 70:12 85:5,9</p> <p>adoption 21:25 22:6</p> <p>advance 32:9</p> <p>advanced 24:8 27:8 31:9 32:4</p> <p>affect 19:5</p> <p>affirm 5:11</p> <p>afternoon 5:15</p> <p>Agency 26:5</p>	<p>ago 29:15 36:6 38:21</p> <p>agree 5:25 8:15,19 12:13 24:13,19 61:4</p> <p>agreed 8:8</p> <p>agricultural 69:16</p> <p>ahead 7:22 8:25 15:7 17:12 21:10 27:22 30:24 76:8 86:23</p> <p>air 16:13 19:9</p> <p>alleged 14:8 61:4</p> <p>allegedly 6:20 81:12</p> <p>allow 73:20</p> <p>allowance 84:15</p> <p>allowed 22:8</p> <p>ambiguous 21:14</p> <p>amount 43:2 80:15 81:23 82:4,12</p> <p>ANNE 2:9</p> <p>answer 6:1,9 11:11 11:24 12:6,8 14:4 14:12 15:3 16:5 17:4,7 18:8,14 21:14 23:4,13 24:10 25:2 26:2 27:15 28:10,17 30:17,24 31:15 33:22 34:15 35:7 35:9,11 43:10 46:12 47:7,23 48:11,21 50:6 51:25 53:2,22 55:2,7 58:23 59:24 60:25 61:1 62:10 65:6 66:11 66:22 71:20 78:19 78:23 83:14</p> <p>answered 17:11 18:16 20:5 29:11 30:17 32:2,21,22 33:11 36:19 46:3 46:8,10 49:6,15 53:13 59:23 65:1 65:5 66:17,18 72:7 73:16 75:5,7 79:24</p> <p>answering 6:4 24:10 29:16</p> <p>answers 4:13 9:11 14:21 15:12 29:20 30:10</p>	<p>apologize 21:23 38:7 76:9</p> <p>APPEARANCES 2:1</p> <p>Appearing 2:6,13 2:20,23</p> <p>applicable 9:12 16:6,7 18:9</p> <p>application 55:12 55:22</p> <p>applications 7:13</p> <p>applies 45:3,9 49:10 56:10 59:11 60:4 72:24</p> <p>apply 13:9 14:23 44:22,25 54:6,7,8 55:21 56:11 60:9 65:22 70:7 71:5 71:12</p> <p>approval 7:11 85:14</p> <p>approve 55:14,24</p> <p>Arbor 24:21 26:4,9 30:12</p> <p>architect 7:5</p> <p>area 20:20 46:21</p> <p>areas 40:11 50:19</p> <p>aren't 72:1</p> <p>argumentative 28:6 34:12 66:23 78:9 78:18 79:1</p> <p>Article 7:20</p> <p>articulated 25:5,24 29:2 30:14 31:22</p> <p>asked 17:11 20:5 29:10 30:16 32:21 36:19 46:2,7 47:17,20 48:10 49:6,15 50:5 53:12 59:23 66:18 72:7 73:16 75:5 75:21,22 79:24</p> <p>asking 6:1 27:14 65:23 69:20 76:24</p> <p>asks 11:5 15:21,23 21:24 25:20</p> <p>assign 80:12 81:4</p> <p>assist 10:25 15:19</p> <p>assisted 38:3</p> <p>assume 16:11 18:23 21:3 54:20 59:14 62:22</p> <p>assumes 25:12 27:7</p>	<p>assuming 70:11</p> <p>attach 66:9</p> <p>attached 24:13,21 24:24 25:7 26:3,8 29:14</p> <p>attachment 28:7</p> <p>attorney 88:12,13</p> <p>Austin 2:4</p> <p>Avenue 2:3</p> <p>average 82:5</p> <p>avoid 74:3,4 76:13</p> <p>aware 16:18</p> <p>awful 76:3</p> <p>B</p> <p>back 13:14 21:22 23:7,17 41:23 50:7 56:6,14 59:25 67:14 69:11 72:10 76:24 82:19</p> <p>backup 29:4</p> <p>bad 73:5</p> <p>balancing 77:2</p> <p>bank 41:21 69:5</p> <p>Bar 2:2</p> <p>base 81:8</p> <p>based 62:19 66:15 67:3 80:24 81:1,5 81:24 87:2</p> <p>basements 42:24</p> <p>basic 5:23</p> <p>basically 42:13 77:25</p> <p>basin 84:12,18</p> <p>basis 19:7 20:1,18 74:7 75:4 76:1,17</p> <p>basswood 81:15</p> <p>beams 46:23</p> <p>beautify 51:15</p> <p>behalf 2:6,13,20 11:23 31:4</p> <p>believe 12:22 14:20 18:20 20:13 24:4 24:7 26:11,18 30:6,12,16,18,20 32:14,18 33:11 54:13 70:23 75:6</p> <p>believes 18:20</p> <p>benefit 19:8 24:18 33:19 40:15 42:14 46:15,20,24 47:9 48:15 52:16 66:24 67:2 70:24 72:4</p>	<p>80:16 84:16</p> <p>benefits 18:23 24:17 40:16 43:16 43:18 44:3,9,10 44:17 45:12 48:24 49:2,19,22 64:9 80:21,22,22 81:1</p> <p>best 15:6</p> <p>better 83:25 84:7</p> <p>big 33:7</p> <p>binding 9:14</p> <p>bit 8:17 12:12 67:9 83:24</p> <p>black 81:15</p> <p>Board 77:23</p> <p>books 36:14,14</p> <p>bottom 26:3</p> <p>box 58:7 81:17</p> <p>branches 55:3,5,13 55:22 56:24 59:19</p> <p>break 6:8,8 67:11</p> <p>breakage 39:21</p> <p>breaks 39:16</p> <p>BRICKER 2:16</p> <p>broad 18:13,16,19 53:24</p> <p>brought 9:15,15 10:13</p> <p>buckthorn 81:17</p> <p>buffer 19:17</p> <p>build 55:25 56:23 59:18</p> <p>building 60:5 78:15</p> <p>built 54:5 74:6 77:12 85:12</p> <p>burdened 77:6</p> <p>business 18:2</p> <p>BUTLER 2:23</p> <p>C</p> <p>calculates 82:3</p> <p>calculation 82:10 84:5,8</p> <p>call 53:20</p> <p>calls 13:7 14:11 23:11 32:12 43:9 47:3,5,15,16 48:18 49:25 60:23</p> <p>can't 17:4 22:18,23 27:24 31:15 48:12 48:21 51:2 60:16 60:16,17 61:1 62:10 78:10,19,23</p>
---	--	---	--	---

79:3 canopy 40:19 Canton 1:10 2:17 2:18 7:19 10:14 15:14 22:5 42:17 50:20 79:6 capacity 11:1 Caram 1:9 carbon 44:4 63:16 64:8 66:7 80:24 care 64:2 85:18 case 1:8 5:17 9:10 10:15 14:15,22,23 14:24 15:13 21:18 21:19 23:3 24:8 27:8 39:17 45:6 51:10 62:9 86:16 88:8 cases 44:13 cause 34:20 caused 14:8 15:25 16:9,12,21,25 17:2,10,19 18:1 19:3,16,21 20:15 causing 73:6 82:17 Center 2:17 CER6501 3:1 88:20 certain 8:9 49:7 85:10 certainly 10:1 20:7 Certified 3:2 certify 88:5,9,11 cetera 16:2 22:7,7,8 Chance 2:2 5:16 change 22:22 67:3 changed 11:17,25 22:20,24,25 23:4 characteristics 82:1 characterizes 25:2 charge 79:13 charges 76:1 charging 75:4 76:17 CHARTER 1:10 check 7:12 cherry 81:15 chop 57:15 58:9 59:1,19 Christine 1:17 3:1 88:20 Circuit 10:15 circumstance 57:10 circumstances 64:20 82:14	citizens 22:1 city 40:2 79:14 claim 15:21 20:18 25:22 29:1 31:21 33:4 80:3 claimed 14:15 claiming 19:1 52:11 83:12 claims 23:22 28:21 29:5 67:17 clarification 52:25 clarify 52:19,23,23 clarifying 36:4 clean 19:9 34:6 76:2 cleaning 63:16 clear 5:24 39:8 54:22 56:15 69:18 clear-cutting 74:8 74:20 75:4 clearance 38:3 cleared 66:13 clearing 19:17 20:7 63:24 client 24:9 36:23 62:15,24 client's 27:12 clogging 82:8 close 42:11 Code 7:19 54:4 colleague 8:7 come 35:25 84:11 86:14 comes 55:12,22 69:21 86:3 commencing 1:21 comments 32:15 Commission 88:22 common 11:7,14 12:2,25 13:5 23:7 community 52:10 61:11,11 companies 38:9 company 38:8 compensation 48:2 48:16 complaints 7:14 20:14 complete 64:19 88:6 completed 40:21 completely 23:15 compliance 7:11 complied 67:24 68:4	comply 38:10 67:19 70:19,21 73:3 86:4 compound 47:3 74:24 concerns 85:19 concluded 87:6 conclusion 13:8 14:11 23:11 32:13 43:9 47:5,16 48:19 49:25 53:21 60:24 concrete 16:9 condition 73:6 conditions 38:1 65:22 69:1 82:1 85:13 confirm 18:12 Congress 2:3 consideration 63:23 consisting 88:5 constitute 11:7,14 12:1,25 constitutes 42:19 constricted 17:6 consulted 73:17 contains 31:23 contention 19:7 CONTENTS 4:1 context 9:24 Continuing 51:13 contribute 84:19 controlled 34:3 copy 9:3 corporation 1:6,12 3:3 18:1 correct 6:15,21,23 8:11,12 10:24 11:2,3,8,15,16 12:15,18,21 13:6 14:2,9,18 15:14 16:2,6 18:24 19:4 22:3,10 23:9,23 24:1,5,15 25:25 26:6,10,15,21,25 28:22 29:3,6 30:20 34:25 37:8 41:25 43:16,21 44:19 45:4,7,10 45:16 46:6 48:25 49:5,14,19,22 50:10 51:4,22 53:8,11 56:2,7,13	57:13,17 59:16,20 60:11 61:6 66:16 67:4,20 68:21 69:20 70:22,23,25 72:5,14,22,25 73:9,15,22,25 76:14 77:13 78:3 80:6 81:6 82:4,11 82:21 84:18 88:7 correspondingly 61:10 cost 40:14,15 costs 40:23 80:11 cottonwood 58:7 81:17 Counsel 29:24 36:22 County 1:18,19 10:15 14:23 88:3 88:21 couple 38:12 75:19 course 10:2 70:12 70:20 court 1:1,17 5:10 9:9 10:15,21 11:18 12:18 courtesy 6:4 create 40:19 created 14:17 80:6 creating 83:15 creek 69:3 crime 24:4 25:8 26:14,24 27:5,20 29:9 30:21 31:9 33:8 criminal 8:14 crosses 19:18 culturally 51:16 current 80:10 currently 52:8 cut 38:3 39:7,8 42:9 50:16 54:14 55:3 55:13,21 58:17 72:25 73:7,14 81:12 82:17 cutoff 61:22 cutting 56:24 61:14 61:16 62:5 63:8,9 <hr/> D <hr/> D 2:2 damaged 86:12 damages 20:1	damaging 56:12 73:19 data 25:21 29:1 36:13 Day 26:4,9 30:12 DBH 83:10 dead 39:14 40:6 73:18 83:16 deal 7:8,12 33:15 34:2 58:14 decide 40:17 decimating 60:6,10 decision 40:13 decisions 37:3 dedicate 47:12 default 56:20 Defendant 2:7 Defendant/Count... 2:13,20 Defendant/Count... 1:13 defense 27:8 definitely 19:10 52:9 demise 40:10 department 39:17 39:22,23 dependent 54:4 depending 57:9 82:12 depends 12:10 58:3 69:1 82:14 deposition 1:15,16 5:9,21 87:6 88:10 describe 31:20 design 7:8 designated 6:14 23:25 desk 55:13,23 detention 84:12,18 determine 84:6 determined 51:6 Detroit 38:6 develop 7:12 developed 40:9 45:19 63:24,25 68:9,15 69:24 70:7,20 71:22 73:10 76:21,23 77:5,17,22 78:16 79:20 86:25 developers 46:19 developing 36:21
--	--	--	---	--

development 1:5 5:16 15:13,25 16:21 20:2,16 22:13 45:6,9,13 45:14,15 46:22 47:11 49:9,12 50:24 54:21,25 55:20 56:22 64:1 78:12 81:13 84:6 84:12 86:14	27:14 28:1 32:9 35:13 documentation 33:14 documents 24:21,24 25:21 26:20 29:13 30:8,9 31:17,20 33:3 doesn't 14:16 33:18 47:25 48:5 54:6,7 59:1 62:18 65:2 67:2 70:3 74:7 dollar 80:15 82:4 82:12 don't 10:1,6 16:8 17:17 18:7,11 23:15 24:7 26:17 33:16,23 34:8,24 35:14,16 36:1,12 41:22 47:23 54:1 55:10 58:14 64:19 66:20 70:15 75:6 76:24 84:21 downstream 16:19 43:1,1 drain 19:17 42:25 82:15 drainage 20:15 drains 20:7 draw 36:4 64:22 drinking 34:6 Drive 1:20 2:10 DTE 38:3,4,5,9	elder 58:7 81:17 Electronic 3:2 elm 81:15 employee 88:12,13 enforce 36:2,6,8 enforcement 85:25 engineering 69:9,10 entail 79:13 entered 23:3 entitled 26:18 entity 18:2 Environmental 26:5 equal 78:24 erosion 19:9,10,13 19:21 20:6,14 especially 72:20 essentially 43:18 et 16:2 22:7,7,7 evaluate 50:22 86:10 evaluated 57:9 evidence 14:16 15:24 16:8,20,24 17:2,9,15,17,18 17:25 18:6,11,18 19:2,20,24 20:4 20:22 21:18 25:21 27:7 28:2 29:1 30:13,21 31:5 33:19 34:8 35:16 65:15,18 exact 64:10 exactly 35:22 37:22 72:19 Examination 4:5,6 6:12 85:1 example 18:15 21:4 25:6 56:21 81:21 examples 64:18 exception 83:17,25 exceptions 83:19 Executive 1:20 2:10 exempt 54:9 68:20 exempting 61:5 exemption 54:8 67:17,23 69:12,19 69:21 70:6,17,18 70:25 71:5,10 72:5 exemptions 69:16 exhibit 4:11,12,13 7:23 8:21 9:10	10:13 15:7 21:22 23:18,18 69:11 72:16 82:19 Exhibits 4:10 5:7 existence 69:14,15 existing 41:6 exists 79:18 expected 34:15 expenditure 40:25 Expires 88:22 explain 46:18 explained 8:17 explanation 15:21 extended 28:13 35:6 extensive 56:1,23 extent 49:25 53:20	finished 84:20 fires 15:25 16:25 firewood 57:16 58:10,18 Firm 3:4 first 10:3,5 11:8 29:17 57:12,16 58:10 68:7 83:14 flat 82:3 flood 42:13 43:5 63:15 64:8 65:16 66:6 81:19,23 82:7 83:24 84:16 flooded 42:24 flooding 15:25 17:2 17:5,10 19:21 42:16,18 43:2 84:7,10,19 follow 33:14 follow- 84:24 follow-up 46:1 following 16:4 forest 8:5 38:11 54:24 55:21 56:1 56:7,12,22 57:24 58:2,6 59:11,12 73:19 forests 21:16 50:13 form 8:18 11:20 12:3 14:3,10,19 21:10 24:7 25:1 27:6 28:5 29:11 30:22 34:10,21 35:3 36:18 43:22 44:20 45:15,17 46:8 47:2,14 48:3 48:17 49:24 51:8 51:23 52:13,20 54:16 55:15 56:3 59:21 60:22 61:18 62:7,22 63:12,19 64:13 65:20 67:5 68:1,11,23 70:1,8 71:1 73:1 74:11 74:25 76:19 78:8 78:17,25 79:23 80:7 81:7 82:22 83:20 84:2 85:21 86:23 formulated 36:7 forward 78:2 foundation 11:19 12:4 13:8 23:10
	E		F	
development 1:5 5:16 15:13,25 16:21 20:2,16 22:13 45:6,9,13 45:14,15 46:22 47:11 49:9,12 50:24 54:21,25 55:20 56:22 64:1 78:12 81:13 84:6 84:12 86:14 Development's 14:16 16:9 developments 46:20 67:19,23 diameter 81:5,20,21 dictates 33:2 34:2 didn't 15:16 16:16 29:18 35:22,25,25 38:13 48:9 die 59:14 difference 63:11,17 64:8,20,23 65:3,8 65:12 66:15 different 9:4 59:3 62:19 63:15,16,17 64:10 78:14 80:21 81:1,9 differently 62:15 74:19 75:16,17 76:13 77:20 difficult 50:4 dig 59:2 digging 84:18 dioxide 44:4 directed 36:8 directly 11:24 18:14 disavow 28:3 discovery 31:12 discretion 51:21 73:22 85:25 86:2 disease 40:9 diseases 16:22 disincentive 74:6,22 75:3,25 disincentivize 76:16 distinction 36:5 75:20,23,23 distinguish 74:9,23 DISTRICT 1:1,2 ditch 82:8 DIVISION 1:3 document 8:2,25 9:20 15:9 25:6		elder 58:7 81:17 Electronic 3:2 elm 81:15 employee 88:12,13 enforce 36:2,6,8 enforcement 85:25 engineering 69:9,10 entail 79:13 entered 23:3 entitled 26:18 entity 18:2 Environmental 26:5 equal 78:24 erosion 19:9,10,13 19:21 20:6,14 especially 72:20 essentially 43:18 et 16:2 22:7,7,7 evaluate 50:22 86:10 evaluated 57:9 evidence 14:16 15:24 16:8,20,24 17:2,9,15,17,18 17:25 18:6,11,18 19:2,20,24 20:4 20:22 21:18 25:21 27:7 28:2 29:1 30:13,21 31:5 33:19 34:8 35:16 65:15,18 exact 64:10 exactly 35:22 37:22 72:19 Examination 4:5,6 6:12 85:1 example 18:15 21:4 25:6 56:21 81:21 examples 64:18 exception 83:17,25 exceptions 83:19 Executive 1:20 2:10 exempt 54:9 68:20 exempting 61:5 exemption 54:8 67:17,23 69:12,19 69:21 70:6,17,18 70:25 71:5,10 72:5 exemptions 69:16 exhibit 4:11,12,13 7:23 8:21 9:10	10:13 15:7 21:22 23:18,18 69:11 72:16 82:19 Exhibits 4:10 5:7 existence 69:14,15 existing 41:6 exists 79:18 expected 34:15 expenditure 40:25 Expires 88:22 explain 46:18 explained 8:17 explanation 15:21 extended 28:13 35:6 extensive 56:1,23 extent 49:25 53:20	finished 84:20 fires 15:25 16:25 firewood 57:16 58:10,18 Firm 3:4 first 10:3,5 11:8 29:17 57:12,16 58:10 68:7 83:14 flat 82:3 flood 42:13 43:5 63:15 64:8 65:16 66:6 81:19,23 82:7 83:24 84:16 flooded 42:24 flooding 15:25 17:2 17:5,10 19:21 42:16,18 43:2 84:7,10,19 follow 33:14 follow- 84:24 follow-up 46:1 following 16:4 forest 8:5 38:11 54:24 55:21 56:1 56:7,12,22 57:24 58:2,6 59:11,12 73:19 forests 21:16 50:13 form 8:18 11:20 12:3 14:3,10,19 21:10 24:7 25:1 27:6 28:5 29:11 30:22 34:10,21 35:3 36:18 43:22 44:20 45:15,17 46:8 47:2,14 48:3 48:17 49:24 51:8 51:23 52:13,20 54:16 55:15 56:3 59:21 60:22 61:18 62:7,22 63:12,19 64:13 65:20 67:5 68:1,11,23 70:1,8 71:1 73:1 74:11 74:25 76:19 78:8 78:17,25 79:23 80:7 81:7 82:22 83:20 84:2 85:21 86:23 formulated 36:7 forward 78:2 foundation 11:19 12:4 13:8 23:10

24:6,21 26:4,9 27:21 30:5,13 32:19 35:4 36:19 41:14 43:9,23 47:4 48:18,23 49:24 51:9,24 55:16 56:4 57:6 57:18 58:13,21 59:6,22 60:23 61:20,21 62:8 63:13,21 65:21 67:6 68:11,24 71:25 74:12 75:1 76:19 78:18 79:8 79:24 80:18 Four 26:13 Frank 78:12 fund 8:11 37:8,11 37:13,16,20,23,24 38:16 39:2,6 41:1 41:12,13 45:22 49:5,13 funds 37:8,14 further 77:6 fuss 33:7	going 9:2,6,8 10:2 11:8 12:5 15:3 21:22 23:7 24:25 26:16 27:12 28:4 28:9,12 31:8 35:3 35:6,19 46:1 49:23 50:7 51:7 56:24 57:1 59:14 59:14 62:21 64:5 64:6 65:19 66:11 66:14 67:25 68:22 76:4,18 78:2 83:1 86:22 good 5:15 55:7 76:25 80:15 81:18 Goulet 30:3 govern 9:10 government 6:19 23:21 24:1,3,15 25:23 28:2,21 29:6 30:14 31:3 32:10,19 33:5 36:10 41:24 46:14 50:8 53:7 61:5 62:12 64:17 65:3 74:18 76:11,12 government's 75:14 grant 37:13 38:11 57:5 58:20 83:25 grantee 83:12 Great 5:23 greater 45:3,7 61:15 62:5 83:10 green 50:13 groundwater 21:1 group 24:14 guess 33:9 40:13 54:1,11 55:1 60:15 63:7 guys 21:5 40:13,14 42:16 64:22 Gyde 38:2	haven't 5:22 32:4 35:8 40:21 47:17 50:25 64:14 65:21 77:11 hazard 73:6 86:12 he's 20:18 heard 42:23 heat 66:7 held 88:8 help 26:14,24 27:4 27:19 29:8 34:21 38:2 44:6 51:16 75:13 82:7 helped 9:25 10:23 helping 69:4 Hey 73:4 high 72:13,20 74:4 74:21 Hills 1:21 2:11 5:1 history 77:22 homeowner 43:6 Hon 1:9 house 56:1,23 59:19 60:5 houses 51:2 Hubbard 10:16 hypothetical 47:4,6 47:16,22 48:20 55:17 57:7,19 58:13,22 59:5,22 61:19 62:9 63:20 64:14 84:2 hypothetically 82:6 hypotheticals 64:16	51:11 54:5 55:11 56:16 59:25 60:15 62:21 63:8,9 64:5 64:6 65:19,23 66:4,11 67:25 68:22 69:20 71:7 74:16 75:17,19 76:4,18,23 77:25 80:22 86:22 I've 9:23 50:5 73:4 idea 79:16 identical 61:16 62:1 62:3 identification 5:8 identified 33:12 64:15 immediately 40:7 impact 61:10,15 62:4,4,19 63:11 impacting 82:15 impacts 21:2 83:16 importance 78:24 important 43:5 62:16 77:23 78:6 78:7,14 impossible 51:1 81:10 improper 47:4,15 48:19 55:17 57:7 58:13 59:22 61:19 62:8 63:20 64:14 84:1 improperly 25:2 improve 44:6 51:15 52:9 inch 63:10 inches 83:10 include 41:3 included 84:12 includes 62:14 including 25:21 29:1 incomplete 55:16 61:20 increased 21:6 84:10 individual 48:14 58:15 82:20 individuals 43:19 46:4 49:3 infectious 16:22 information 31:23 79:18	injured 20:19,21 injuries 14:7 16:1 16:10,13,15 19:3 injury 16:11 17:19 18:1,3,4 inquiries 7:14 inspect 7:10 inspector 7:6 instruct 12:5 35:6 instructed 35:8 instructing 12:7 intent 36:2 intercepted 20:25 interest 24:1 25:23 28:2,21 29:2,6 30:14 31:4,22 32:5,10,19 33:5 33:12 36:10 53:7 60:16,21 61:5 62:13 64:17 65:4 76:11 77:19 interested 88:14 Interesting 55:5 interests 6:19 23:21 24:3,15 25:4 41:24 50:8 74:18 74:19 76:12 interpret 7:15 interrogatories 4:13 15:12,16,18 18:8 19:4 23:17 24:13,22,24 29:14 29:18,21,23 30:10 64:10 66:6 interrogatory 15:20 15:23 18:15,18 23:19,21 24:23 25:3,3,5,19,20,24 28:7,20,24,25 31:20 41:23 43:14 50:7,9 61:3,4 67:16 72:11,11,16 72:18 74:2,17 75:13 77:1 80:2,3 introduce 14:25 invasives 81:16 involve 7:7,14 41:10 56:24 involved 37:2,5 involves 61:4 irrelevant 34:5 48:7 58:22 62:9 70:9 isn't 24:15 43:10
G Gary 20:13 gauged 21:5 general 20:20 22:11 22:12 32:16 41:13 80:19 85:14 generally 22:8 23:8 39:23 58:14 generate 44:2,10 generated 80:16 George 1:9 getting 12:13 44:8 75:11 77:25 give 6:1 84:21 given 5:20 15:6 38:15 50:6 61:8 65:21 66:11 go 7:22 8:21,25 10:19 11:11 13:11 15:7,7 16:4 17:11 21:10 22:5 27:22 30:23 33:9 41:16 69:11 73:9 76:8 82:19,20 86:9,23 goal 40:19 goals 51:14 86:7,8 goes 42:25,25,25	H half 38:4 87:1,1 hammering 56:25 hand 5:11 33:25 35:13 handle 33:2 happen 40:18 happened 16:18 happy 24:9 hasn't 32:22 40:12	I I'd 8:21 34:13 35:5 36:22 50:18 68:25 I'll 6:3,4 24:9,19 25:17 46:8 50:5 52:19,23,24 53:21 71:13 76:7,8,24 I'm 7:5 9:2,6,8 10:2 12:7,12 13:11 15:22,23 16:16 21:14 22:19 24:25 25:11 26:16 27:10 27:12,13,13,14 28:4,14 30:20,25 31:7,24 33:5 35:3 35:19 36:11 38:7 38:8 44:8 46:1,3 49:23 50:24 51:7		

74:5,21 82:10 issue 51:9,10 64:17 74:8 issued 9:16 83:9 issues 6:23,24 7:17 34:20 44:6 69:2 it's 8:5,16 10:4 11:8 13:20 16:7 17:8 18:5 21:8,11 24:24 26:18,20 28:5,15,15 34:3,5 34:5,12 36:13,14 38:8 39:25 40:16 40:19 41:15,20 42:11 46:2 47:3,6 47:22 50:4 52:18 53:24 54:8 55:16 57:1 58:3 59:14 61:19,25 62:9,16 62:23 63:7 64:23 65:8 67:3 68:2,3 70:9 73:5,6 76:1,2 76:23 77:9 79:1 82:5,10,16 83:1 83:15,16 items 6:18 9:25	17:16 18:5 20:3 23:14,15 24:16 27:1,2 28:17 31:6 34:17,18 37:22 39:9 40:15,16 41:12,15,20 42:20 45:2 46:2,23 47:7 47:25 51:25 52:14 52:16,24 53:2,22 55:7 58:23 61:25 62:18 65:2,25 66:22 68:12,14 69:2 70:13 72:2 74:3,20,20 75:10 76:7 78:22 79:5,9 79:18 80:9,10,23 81:5,12,22 82:3 83:22 85:6,7,8,10 knowledge 11:22 37:18 41:11 KOLB 2:16 34:17 KRISTIN 2:16	43:9 47:5,16 48:19 49:25 53:21 55:1 60:23 79:1 legally 41:15 legitimate 33:5 Leigh 1:15,16 4:4 5:5,19 88:7,10 Leisure 37:14 Lerchenfeld 1:17 3:1 88:20 lesser 61:10 let's 45:2 46:22 48:23 54:22 55:12 55:20,25 58:8 73:12 letter 86:5 limits 67:22 line 11:12 22:5 38:3 61:22 72:20 list 43:15 64:9 66:8 listed 19:3 32:8 41:24 44:5 50:8 66:5 litigation 9:12 little 8:17 12:12 67:9 83:24 live 79:6 LLC 1:5 located 81:2 location 45:23,23 81:25 log 58:17 long 38:21 76:2,9 look 7:25 8:25 11:4 15:20 21:23 25:19 29:13 30:9 40:14 43:14 83:1 86:10 86:20 looked 30:8 looks 43:15 loss 20:23,24 47:1 lost 18:4 40:8 50:24 50:25 lot 18:16 42:18,19 43:1,15 50:16,17 62:2,2 63:23 68:2 69:3,24 70:20,24 71:5 76:14 86:25 lots 45:20 61:5,7 62:1 67:18,18 68:8,14,20 69:13 69:19 70:7,18 71:11,16,18,21,24	74:19 79:20 85:3 85:11 lower 86:25	53:1,12,20 54:16 55:15 56:3 57:6 57:18,22,25 58:12 58:21 59:5,21 60:1,12,18,22 61:18 62:7,21 63:4,12,19 64:13 64:18,25 65:5,11 65:19,25 66:17,23 67:5,10,25 68:11 68:22 70:1,8 71:1 71:7,13,25 72:7 73:1,16 74:11,24 75:5,8 76:4,18 78:8,17,25 79:8 79:23 80:7,18 81:7 82:22 83:3,5 83:20 84:1,24 85:2,24 87:3 mean 16:16 17:21 18:10 22:12 36:5 50:12 52:15,15,16 52:22 69:1,15 77:3 78:22 means 52:15 53:3 85:18 measure 51:18 80:16 mechanism 44:3 50:4 meet 40:10 memorized 10:1,3 mentions 72:12 met 7:10 method 49:21 metric 51:5,18 52:4 Michigan 1:2,6,11 1:11,19,21 2:11 2:18 5:1 9:9 50:15 88:1,21 mid 38:23 minute 45:1 66:12 84:21 mischaracterizati... 14:21 mischaracterize 31:15 Mischaracterizes 30:23 34:11 mischaracterizing 33:22 35:2 misrepresenting 28:6
J Jeffrey 30:3 job 79:13 Judge 10:16 judgment 74:14 78:10 JULIANA 2:23 June 1:20 5:2 88:8 justification 24:8 25:4 31:9 62:17 justified 25:23 31:21 justifies 6:20 23:22 29:2 53:8 74:18 justify 22:22 33:4 33:19 34:24 35:16	L lack 13:8 40:9 47:4 48:18 61:20 62:8 63:20 65:20 67:6 laid 24:3 landmark 54:23,23 55:5,20 56:1 57:22 58:1 59:8 59:10,13 73:14 83:9 landscape 7:5,8,9 landscaping 41:8,9 41:10 45:21 language 36:3 large 32:14 38:18 44:12 66:5 73:5 78:7 larger 54:12,20 56:9,15,17 61:12 63:1,6 64:1 73:12 73:13 75:16 76:12 78:13 law 11:7,15 12:2,25 13:5 14:1 23:7 43:6 lawsuit 9:4,14 lays 23:21 left 51:21 60:15,21 legal 13:8 14:11 23:11 29:24 32:13	M ma'am 71:18 Macomb 1:18 88:3 88:21 magically 67:2 main 39:16,21 40:2 55:11 maintain 40:23 45:14 49:12 maintenance 7:16 40:24,25 41:17 major 39:14,18 40:19,24 majority 79:5,20 making 7:9 27:10 28:14 manage 34:21 37:6 management 16:14 41:25 42:3,7,12 managing 34:1 maple 81:14,14,14 margins 18:4 marked 4:10 5:7 market 80:4,4 material 24:14 29:4 matter 5:13 9:14 10:14 66:10 matters 63:7 McCLOREY 2:9 McLAUGHLIN 2:9 4:6 9:2,8 10:6,12 11:19 12:3,7 13:7 14:3,10,19 17:11 17:21 20:5 21:9 22:25 23:10,14 24:6,25 25:11,14 26:16,22 27:6,10 27:16,21 28:4,11 28:14 29:10 30:5 30:16,22 31:7,14 31:19 32:1,4,12 32:21 33:11,21 34:10 35:1,8,19 36:15,18,24 39:9 41:14 43:8,22 44:20 45:17 46:7 47:2,14 48:3,17 49:6,15,23 51:7 51:23 52:6,13,20		
K keep 5:24 10:6 43:20 44:11,12,15 46:5 49:3 kind 43:25 kinds 7:17 21:2 34:20 39:16 know 6:8,17 13:9 15:5 17:7,13,15				

misspoke 63:4 mitigate 44:6,13 mitigation 37:25 43:5 44:15,19 45:16 49:4 63:15 64:8,9 65:16 66:6 80:23 81:19,23 82:7 83:24 84:16 moderate 21:16 moderates 20:24 modification 57:2 moment 9:1 monetary 19:25 money 37:13,16,16 37:20 monies 41:16 mouth 27:12 move 50:5 59:2 mulch 41:3 multi-acre 72:13 multiple 74:22 75:25 multiple-acre 72:21 74:5 Municipal 1:11	Network 3:3 nonresponsive 47:21 64:6 Notary 1:17 88:21 note 34:13 35:5 36:22 noted 9:17 25:13,16 notifying 11:18 nuisance 6:23,25 8:18 11:7,14 12:1 12:25 13:4,5,17 13:18,22 14:2,18 82:17 nuisances 11:24 number 3:4 4:11,12 4:13 10:4 11:4 15:20,23 18:15 21:22,22,24 23:18 23:19 24:22,23 25:3,4,5,19,20,24 28:20,24,25 41:23 43:14 50:7 61:3 67:16 72:11,12,13 72:16,18,20 74:2 74:4,17,21 75:13 77:1 80:2,3 numbers 5:7 79:9 numerous 35:21	51:23 52:13,19,20 53:12,21 54:1,16 55:15 56:3 57:6 57:18 58:12,21 59:21 60:12,22 61:18 62:7,22 63:19 64:13 65:20 67:5 68:23 70:1,8 71:1,13 73:1 74:11,24,25 76:7 78:8,17,25 79:23 80:7 81:7 82:22 83:20 84:1,2 objects 16:7 28:13 35:20 63:12 65:11 66:19 objective 51:18 52:4 obligated 36:8 obviously 36:20 occupied 54:6 61:7 62:25 64:4 68:2 69:13 71:16,18 77:14,17 79:20 85:3,11 occurs 39:24 40:1 offer 6:3 office 15:12 27:24 30:1 official 11:11,17 12:20 offset 84:10 Oh 38:8 Okay 8:1,23 9:18 14:25 23:20 27:17 28:1,16 32:3,6 35:24 39:14 53:4 56:22 59:15 66:9 69:18 72:17 old 23:7 68:3 once 63:24 one-acre 61:16 62:6 63:9,18 64:11 65:16 74:10 75:15 one's 11:6,13 12:24 ones 33:9 39:21 66:5 open 50:13 operate 55:9 opinion 86:11 opportunities 45:21 order 33:15,19 53:1 ordinance 4:11 6:18	6:20 7:13,15,18 8:5,8,14 13:4,17 13:19,20,21,23 14:1 16:12 18:20 21:4 22:1,7,17 23:23 25:23 28:22 29:6 30:15 31:10 31:21 32:20,24 33:14,20 34:1,2 34:24 35:17,18 36:1,2,6,8,11,13 38:10 44:2,4,10 44:17 45:3,9,12 48:24 49:10,21 51:12 53:8 54:8,9 56:6,10 57:9 58:9 58:15 59:11 60:4 61:6,25 62:13,14 64:23 67:20,22,24 68:4,6,7,10,21 69:7,8,12 70:2,6 70:12,19,21,22 71:4,14 72:24 73:24 74:3,6 75:3 75:22 76:16 81:4 82:20 83:18 85:5 85:9,12,13,16,17 86:1,6 ordinances 7:19 34:21 36:21 original 22:6 outside 38:15 owned 52:15 54:3 78:12 owner 8:9 52:11 54:3,13,14 59:15 72:25 73:4 78:7 84:9 86:3 owners 22:8 54:9 77:2,4 78:6 ownership 60:16,21 owns 20:12 53:19 54:12,13 59:16 78:15 oxygen 34:7 63:15	16:5 24:20,23 26:12 83:5,6 pages 24:14,18,19 30:12 88:6 paid 37:10,17,22,24 38:4 41:1 paragraph 11:12 26:3 parcel 53:23 54:3,5 54:6,12 56:8,13 56:17 61:15,17 62:6,6,16,19,25 63:2,6,9,10,18,18 64:11,12 65:9,16 65:17,22 67:3 68:3 73:10,10,12 73:13 76:20,23 78:6,7,13,15 parcels 61:9,12 75:15,15,16,17,24 76:13,13 77:11,14 77:17,21 79:6,16 park 40:2 46:20 47:9,12 48:6,6 parks 37:15 part 18:18 26:2 42:4,8 47:12 53:7 64:1 67:18 73:19 82:10 Partly 29:22 53:14 party 88:12,13 pass 43:6 pause 34:14 35:6 pay 8:11 39:1 44:15 44:19 45:15,22 46:5,15,25 47:13 49:4,13 74:7 80:13 paying 49:5 payment 8:13,18 payments 13:3,16 penalties 8:14 people 30:1 34:20 43:1 44:11,12,18 per-tree 74:7 75:4 76:1,17 percent 79:21 84:14 Percy 19:12 20:13 performing 19:8 permission 54:15 55:4 57:12,16 58:10 59:20 permit 8:10 22:3,10
---	--	--	--	---

54:15 55:14,22 56:2 57:3,5 58:19 59:3 60:9 73:9,15 77:6 82:21 83:9 83:11 86:18,20 permits 13:21 55:11 permitting 55:9 person 17:21,23 19:6 23:7 30:4 46:15 55:1,11 photographs 19:19 physical 17:19 18:3 18:4 19:20 place 9:2,8 21:9 24:25 26:16 28:4 31:8 35:19 49:23 51:7 53:21 62:21 63:24 65:19 68:22 69:17 71:13 76:7 placing 25:11 Plaintiff 2:14,21 Plaintiff/Counter- 2:6 Plaintiff/Counter... 1:7 plan 7:11 84:11 planner 7:5 planning 37:12 79:14 plant 37:3,15,21 38:14,18 39:4 40:11,11,22,24 42:9 43:6 45:24 48:6 49:13 51:13 planted 37:7,10,20 38:19 42:2,4,6 46:6 80:13 planting 7:15 37:6 38:13 40:12 41:9 41:17 84:10,13 plants 38:17 platting 79:14 please 5:11,17 7:25 8:22 15:4 21:24 23:19 25:20 35:11 61:3 67:16 72:11 72:17 point 6:7 22:21 24:9 60:2,3 65:15 70:5 77:22 poor 73:18 populations 34:22 portion 86:25	poses 86:12 position 11:17,25 12:21 17:8 22:21 22:24 23:1,4 27:4 27:19 29:8 31:18 33:18 34:5,9 35:15 42:5,12 47:25 48:13 53:16 61:14 62:1,4,18 positive 32:15 possession 30:25 possible 18:5 possibly 81:15 potential 17:5 Powelson 19:12,13 54:24 78:12 Powelson's 19:25 54:21 precisely 24:20 prepare 10:23 prepared 15:12 present 14:15,22 presented 51:10 85:19 preservation 8:5 33:16 68:7 pretty 57:1 prevent 74:20 prevention 42:13 previously 35:20 prior 21:25 22:6,16 22:16 34:11 68:9 68:15,18 69:24 70:7 77:12,18 88:9 prioritize 40:22 private 11:6 15:22 39:24 48:14 53:19 54:2,3 80:17 probably 15:5 22:13,14 42:11,21 68:19 71:23 79:25 83:17,17 84:3 problem 19:10,13 42:16,17 83:15 problems 20:15 process 22:14 40:14 40:20 77:9,12,19 produce 4:12 45:12 80:21 produced 27:14 31:11 profit 18:4	program 40:12 55:10 programs 7:16,16 37:6 prohibits 56:6,11 project 7:12 38:2 projects 7:8 22:13 38:19 proper 13:21 properties 16:1,19 17:3,10 20:20 21:7,20 44:23 45:1,3 49:7 74:9 74:10 77:5 property 8:8 11:6 11:13 12:10,24 14:17 15:22,25 16:9,21,25 17:19 18:1 19:3,14,18 19:22 20:2,8,10 20:11,11,12,16 22:2,8,9 23:9 39:24 40:1 43:7 43:21,25 44:11,19 45:6,10,13,15,19 46:5,19,24 47:1 47:12 49:4,9,13 52:11 53:19 54:3 54:13,14,20,21,21 54:23 59:3,15 66:2 72:14,21,24 73:5 74:5 80:17 81:13 84:6,9 86:3 86:16 proportional 80:5 protect 77:24 protecting 19:9 78:2 protection 16:14 26:5 50:9,13 53:6 provide 15:21 18:23 28:25 30:13 32:18 34:6 44:9 46:15 46:19 48:2,6,10 48:15 49:18 52:24 75:3,25 81:1 provided 18:9 26:20 28:2 29:20 33:4 42:14 43:16 43:18 63:16 81:20 81:24 provides 28:21 48:24 49:2,22	65:16 providing 40:17 48:15 provision 62:14 86:5 public 1:17 18:21 33:19 39:22 40:1 42:13 44:2 45:23 46:15,19 47:9 48:15,24 49:2,18 49:22 52:12,14 53:17,17 62:4 63:11 64:9 66:4 80:6,16 83:15,16 88:21 publicly 52:15 purpose 42:6,8 71:6 purposes 42:3 purview 69:10 put 27:11 35:13 putting 41:3 <hr/> Q <hr/> qua 66:9 qualified 43:10 60:24 qualify 68:25 qualities 66:8 quality 16:13 quantify 42:20 question 6:1,5,9 10:3 11:9,20,24 12:4,10 14:4,11 14:20 15:3 21:4 21:10,17 23:13 24:7 25:1,12 27:7 28:5 29:11,17 30:23 32:2,23 33:3 34:11 35:4 35:11,12,15,21 36:15,19,24 43:10 43:23 44:21 45:18 46:2,9 47:3,3,15 47:20 48:4,7,18 49:24 50:5 51:8 51:24 52:14,21 53:2,2 54:17 55:7 55:16,17 56:4 59:22 60:7,18,23 61:19,25 62:8,10 62:22,23 63:20 64:14,24 65:6,8 65:20 66:10,14,15	66:18 67:6 68:1 68:23 70:2,9 71:2 71:21 72:17 73:2 74:12,25,25 75:22 76:2,3,19,25 78:9 78:18 79:1,2,24 80:8 82:23 83:14 83:21 85:4,22 86:23 questions 9:7 10:10 18:13,17 31:12 84:22,25 87:4 quick 67:10 quote 72:12 <hr/> R <hr/> rain 42:21 raise 5:10 ran 76:9 range 43:12 real 78:1 really 50:25 52:4 55:25 76:5 reason 39:13 42:4 51:12 67:17 70:16 70:17 75:14 78:1 84:23 reasons 36:20 61:8 67:21 75:19 recall 81:18 record 5:18,24 10:12,19 13:12,13 13:14 67:13,14 75:8 red 81:14 redirect 84:23 reduce 26:14,24 27:4,19 29:9 30:21 reducing 84:19 reduction 24:4 25:8 31:9 66:7,7 refer 25:7 reference 10:8 referred 25:6 referring 10:10 53:10 refers 9:3 77:4 reflect 75:8 reflected 9:10 reflective 31:17 regard 39:21 regarding 6:19
--	--	--	---	---

11:23 15:13 23:4 24:15,17 regardless 14:7 81:5 Registration 3:4 regulate 64:3 regulated 58:4,6 60:6 63:25 regulations 73:4 related 6:18 relation 86:7 relative 88:11,12 relevance 71:14 relevant 48:10 relocated 83:11 remember 71:20 81:18 removal 8:6,6 14:17 16:8,20,24 17:9 19:2,16,21 20:1 20:15 21:6,17,19 22:3,10,16 33:2 33:15 38:1 44:5 44:14 55:11 61:9 61:12 64:1 83:8,9 84:7 85:19,20 86:4 87:2 remove 22:2,9 38:24 39:1,14 43:20 77:6 82:16 86:15 removed 39:8,15 40:6 45:16 72:13 72:21 74:4 82:11 removes 8:9 39:5 removing 11:5,13 11:25 12:24 13:20 15:22,24 17:18,25 74:22 75:25 76:14 82:7 repairs 39:16 repeat 15:4 71:8 72:17 rephrase 16:10 54:18 76:6,8 replace 8:10 40:2,6 40:8,15,18 51:2 83:13 replaced 21:1 22:15 39:17,20,23 50:25 57:10 83:11 84:14 replacement 8:6,13 8:18 37:17,19,25	38:15 39:4 64:2 82:4 replacing 40:4 80:5 replant 45:20 replanting 49:5 REPORTED 3:1 Reporter 1:18 3:2 5:10,25 10:21 Reporting 3:3 represent 5:16 representatives 86:14 representing 11:1 represents 12:20 Req 4:12 request 10:4 11:4 12:14 14:22 21:23 23:5 requesting 18:12 requests 9:11 10:8 10:13 12:15,17 25:4 require 48:5,14 56:2 84:13 86:4 86:21 required 8:10 22:18 22:19 39:3,4 44:12,13 requirements 5:24 7:10 45:21 requires 45:13 46:4 46:14 47:11 requiring 43:6,19 43:20 44:11,18 49:3 residential 39:18 46:21 54:5 68:14 71:21 79:16 residents 18:22 39:18 resource 16:15 21:2 52:12,14 53:17,17 53:18 resources 18:22 50:10 53:7,10 77:24 78:2 respond 9:25 27:24 response 12:23 16:4 25:5 26:3 28:20 28:24 31:12,22 66:6 72:18 75:19 responses 4:12 10:24 18:8 26:8	responsive 28:8 restore 38:2 review 7:8 22:14 55:11 reviewed 9:23 RFAs 23:3 right 5:11 12:13 22:1 23:8 41:7 45:2 46:16 51:3 56:18 58:11 61:12 66:8 67:7 72:19 74:20 77:16 right-of-way 39:25 rights 77:2 78:5,6,7 78:13,23 river 42:25 Road 2:17 38:2 roads 39:18 roughly 80:5 Rule 9:13 Rules 9:9 run 55:9 56:6 running 56:16 69:3 <hr/> S <hr/> safety 18:21,21 73:6 salary 43:11 samples 19:19 26:4 satisfies 51:14 saw 50:17 sawing 56:25 saying 18:10 36:12 52:5 54:2,5 78:22 says 11:5 12:23 22:19 26:2,14,24 27:2 31:20 70:6 71:4,10 83:2,8 scientifically 21:12 21:15 se 14:2 16:11,12 second 13:12 section 69:22 83:8 see 11:10 12:12 26:3 70:15 seen 9:20 sell 58:17 60:16 sentence 12:23 separate 41:12 separated 41:16,16 served 77:19 serves 33:4 Service 38:11 Services 37:12,14	shade 20:23 she's 24:10 32:1 33:11 64:25 65:3 65:5 66:17 75:6 shortage 50:15,19 50:20,23 51:5,9 51:19 52:3 side 57:1 signed 15:16 29:17 significant 57:2 silver 81:14 simply 13:19 29:4 60:5 single 72:25 73:14 86:5 site 7:5,11 69:1 84:11 85:20 sites 7:10 19:12 69:4 situation 48:1 86:10 situations 72:12 82:6 six 30:12 six-page 32:8 size 53:23 56:8 62:3 62:20 67:3 69:19 71:24 72:6 82:12 85:3,11 small 54:5 61:9 67:18 70:17,20 76:20 77:2 78:6 smaller 63:23 67:18 70:18 75:17 76:13 77:11 79:6,21 socially 51:15 soil 19:9,19 20:6 81:25 solemnly 5:11 somebody 78:14 82:17 sorry 13:11 15:22 15:23 16:16 21:14 38:8 54:24 71:7 80:4 sort 19:19,20 40:14 58:6 Sound 6:5 sounds 36:12 south 2:17 20:11 southern 1:3 87:1 spaces 50:13 speaking 8:7 11:23 28:13,15 36:23	52:18 82:6 speaks 70:2 71:14 species 81:9 specific 18:14 19:5 32:11 40:4 43:25 50:2,4 52:17 55:18 56:21 64:15 65:22 85:20 86:5 specifically 6:19 25:7 40:7 85:17 specifics 65:21 specify 56:19 speculation 47:15 spend 76:5 spread 16:21 ss 88:2 stabilize 69:4 standing 10:7,9 stands 33:7 start 5:8 starting 24:20 state 1:18 5:17 14:1 88:1 stated 35:13 statement 9:6 13:1 56:16 statements 32:18 States 1:1 26:5 statistics 27:3,23 Steeh 1:9 steps 56:25 stipulate 31:16 stipulated 26:22 store 46:23,25 storm 16:14 41:24 42:3,6,12,16 80:23 stream 69:5 street 7:16 streets 39:15,19 40:20 strike 85:4 studies 25:22 29:1 study 26:9,12,18 stuff 35:16 46:25 subject 85:14 submitted 30:10 sucker 59:2 suffered 19:25 sugar 81:14 Suite 1:20 2:10 supplemental 29:13 support 25:22
---	--	---	---	---

30:18 31:21 33:12 supporting 24:14 33:13 supports 28:22 29:5 30:13 36:11 62:13 sure 6:11 7:9 22:18 27:16 31:14 59:10 60:10 74:13 82:9 86:24 surrounding 20:20 61:10 66:2 survey 86:24 surveyed 87:1 Susan 10:16 swear 5:11 swing 76:24 sworn 88:10	34:11 35:3 88:7 Texas 2:2,4 38:7 Thank 36:4 72:10 Thanks 87:3 that's 8:12 11:10,16 13:22,22,25 14:20 15:13 21:3,14 24:10 31:24 35:1 37:17 38:11 39:6 39:24 41:1,24 42:4,8,11,14,22 47:20 48:19 49:18 49:21 50:25 51:21 55:7 61:8,22 62:23 63:6 64:6 64:22 67:21 69:4 69:20 70:11,23 71:5 72:10 73:12 73:22,24 76:6,23 77:25 78:1,15,16 79:5 80:11,11,12 80:16 82:16 87:3 87:5 theory 13:25 there's 15:24 19:20 20:23 36:24 38:2 40:1 43:15 50:22 51:19 52:3,4 65:2 65:12 69:2 they'd 57:12 58:10 they're 53:17 60:10 66:1 68:21 72:5 they've 70:18 things 7:17 25:14 32:8 34:7 40:18 41:3,8 44:5 51:3 58:7 62:15 66:7 66:12 73:19 79:14 80:24 81:24 84:9 84:19 86:12 think 15:5 26:17 50:6 55:1 80:15 82:14 84:20 third 22:5 72:20 thought 48:9 57:25 three 23:18 61:23 62:2 74:23 75:21 78:13 three- 62:5 three-acre 61:15 63:10,18 64:12 65:17 74:9 75:15 75:24 77:20	Thurston 1:15,16 4:4 5:5,19 88:7,10 timber 46:23 time 6:10 12:20 60:1 76:5,9 84:22 85:20 times 9:23 23:7 35:21 today 6:15 18:17 36:9 told 86:17 topics 6:15,17 topography 81:25 totally 36:9 touched 82:14 township 1:10 6:14 7:2 9:6 10:14 11:2 11:17,22,23,25 12:21 13:25 14:15 15:14 17:20 21:24 22:1,10,20,24 23:4,22 26:8,21 28:3,20 29:5 30:9 31:4,5,7,8 32:9 33:6 37:3,21 38:17,24 39:1,4,7 40:21 42:2,9 46:22,24,25 47:11 47:13 48:5 51:14 51:15,22 52:5,9 54:15 55:4 68:9 71:22 77:23 79:11 79:17 Township's 11:11 14:21 16:5 25:2 27:4,19 29:8 31:17 33:18 35:15 47:25 48:13 53:16 61:14 62:18 85:5 86:8 transcript 88:5,7 treating 74:18 75:15 76:12 77:20 treats 62:14 tree 4:11 6:18,20 7:13,18 8:5,6,6,8 8:11 13:4,16 19:16 21:25 22:2 22:9,16,16 23:22 24:17,18 25:22 26:18 28:22 29:6 30:14 32:15,19 33:2,15,15 34:21	37:6,7,8,11,16,20 37:23,24,25 38:10 38:16 39:2,23 40:3,7,12,16,18 40:19 41:1,9,12 42:4,13,14 44:2,3 44:10,17 45:3,22 48:24 49:5,13 53:19 54:2,9,23 54:24,25 55:3,5,9 55:11,14,20 56:1 56:1,6,10,22,23 57:2,10,15,21,22 57:24 58:1,2,8,9 58:15 59:1,8,10 59:10,13,16,18,19 60:5,6,10 61:6,11 61:15,16 62:1,3,3 62:5 63:7,8,9,10 63:17,24 64:1,11 64:11 65:9,10,13 65:15,17,24 66:1 66:11,15,16,16,16 67:2,20,22 68:7,9 68:20 69:7,11 70:11,19,20 72:24 72:25 73:5,14,18 73:24 74:3 75:3 75:22 76:16 77:7 77:7 80:5,6,10,17 80:24 81:2,4,9,19 81:20,24 82:2,4,7 82:8,11,13,15,16 82:18 83:8,10 84:7,17 85:9,12 85:16 86:1,4,10 86:11,24 87:2 trees 7:16 8:9,9,10 8:16 11:5,13 12:1 12:24 13:20 14:17 15:22,24 16:9,20 16:24 17:9,18,25 18:23 19:2,8,21 20:1,16,25 21:6 21:18,19 22:2,9 22:14 23:8 26:14 26:24 27:4,19 29:8 30:21 32:16 37:3,7,10,15,17 37:19,19,21 38:15 38:16,16,20,24 39:1,4,7,14,15 40:6,8,10 41:6	42:2,5,9 43:5,6,16 43:20,20 44:6,9 44:11,18,19 45:14 45:16,20,24 46:5 46:6 49:3,12,14 50:15,16,23 51:9 51:13,16,19 52:3 52:5,10,12 53:11 53:16 54:10,12 56:12 58:6,17 61:9 66:9,9,25 72:13,20 74:4,21 74:22 75:25 76:14 80:21 81:12,16 83:10 84:10,14 85:20 86:15 tremendous 43:2 tried 86:19 true 9:13 11:10 13:1 14:7 24:11 25:15 36:17 62:23 62:24 88:6 truth 5:12,12,13 88:10 try 39:14 40:4,8 76:2 trying 27:11 31:24 33:5 46:3 51:11 60:15 74:16 75:14 75:18,20 86:15 turn 10:3 23:17,19 26:12 41:23 61:3 67:16 72:10 80:2 86:17 two 5:23 38:1 42:10 45:4,7 54:20 56:9 56:14,15,17 61:6 61:23 62:14,25 63:3,6 64:3 68:21 69:13,19 71:6,11 71:24 72:5 73:10 73:12 74:18,23 75:16,20,24 77:14 77:17,20 79:6,21 85:3,11 two-acre 54:12 56:12 62:16 67:23 73:13 two-acres 75:17 type 62:3 80:24 types 62:15 81:12 typical 43:3 typically 38:9 46:14
--	---	---	--	---

U	wasting 60:1	55:19 56:5 57:11	79:3,9,25 80:9,19	54:4 85:5,13,14 85:17
U.S 38:11	water 16:14 20:24	57:20,23 58:2,5	81:8 82:24 83:22	0
understand 21:3	34:7 39:16,21	58:16,25 59:9,24	84:3 85:23 86:24	07/07/2020 88:22
36:9 44:25 54:1	40:1,10 41:25	60:3,8,14,19,20	wondering 22:20	1
62:17 75:14,18,20	42:3,6,12,16	61:2,24 62:11	36:11	1 4:11 5:7 7:23 10:4
Unintelligible 52:21	80:23	63:1,5,14 64:5,7	woodlands 50:14	11:4 15:20 69:11
United 1:1 26:4	Watering 41:6	64:16,22 65:2,7	wording 72:19	82:19
unpack 12:12 45:2	waterways 17:6	65:14,23 66:3,21	words 27:11	1-800-632-2720 3:5
46:3	50:14	67:1,8,12,15 68:5	work 7:2 40:14	1,000 38:19
unprecedented	way 15:6 20:19	68:13 69:6 70:4	48:23 56:7,11	1:04 1:21 5:3
42:22	22:21 37:5 50:17	70:10 71:3,9,17	59:12 86:6,9,19	1:16 13:13,14
unregulated 81:16	57:12 60:9 76:25	72:3,9 73:8,21	worked 12:14 15:18	1150 2:17
unusual 43:3	78:20	74:15 75:2,6,12	29:23 79:11	12 1:20 5:2 80:2,3
use 7:22 23:8 57:15	Wayne 10:15 14:23	76:8,10,22 78:11	working 58:15	88:8
60:16 69:17	we'll 6:8 7:22 45:1	78:21 79:4,10	Works 39:22	15 58:17
uses 37:12	59:10	80:1,14,20 81:11	worse 17:7 43:4	18 24:22,23
utility 38:8,9 39:16	we're 7:18,19 10:21	82:25 83:4,6,7,23	84:7	18-014569-CE
V	18:11 39:3 40:20	84:4,20 85:21	worth 24:14	10:15
Vague 11:20	40:21 43:14 56:14	86:22 87:5	wouldn't 47:12	1970s 22:7
valid 64:23 86:13	59:13 66:14 72:15	welfare 18:22	59:4 70:21 77:18	1975 68:18 69:25
value 8:16 80:4,4,6	72:16 74:16	well-documented	83:12,13	70:7,11 77:12,18
80:11 81:4	we've 38:11 40:8,9	21:8,11,15	wrong 30:20	2
varies 38:18	42:21 50:16	weren't 37:24,25	X	2 4:12 8:21 9:11
vary 81:24	Wednesday 1:19	what's 35:12 44:3	Y	10:13 15:23 21:22
verbally 73:20	5:2	60:15,21 63:10,17	yeah 39:22 42:23	21:22
versus 10:14 40:16	Weldon 2:2 4:5	whatsoever 19:24	52:23 60:19 67:12	2:18-cv-13690 1:8
64:12	5:15,16,20,23 6:3	white 81:14,21	72:16 73:9 84:21	2:36 67:13
violates 13:21	6:7,13 7:22,24	windfall 78:1	year 37:21 38:13,14	2:50 67:14
violating 16:12	8:21,24 9:5,17,19	Witness 4:3 5:14,19	39:8,15 42:2,22	20-second 34:14
violation 13:19,20	10:9,17,19,22	5:22 6:2,6,11 8:23	43:3,4 68:15	2000s 38:23
13:23 14:1,9	11:21 12:5,11	9:18 12:9 13:9	years 36:6 38:12,19	2019 1:20 5:2 88:8
33:25 34:1	13:11,15 14:6,14	14:5,13 17:13	42:10 79:11	24076767 2:2
voids 40:9	14:25 15:2,5,8	20:6 21:11 23:15	Yep 55:6 59:17	248 2:12
voters 79:6	17:14,22 20:9	27:23 28:17 30:6	you'd 60:9	25 84:14
vs 1:8	21:13 23:2,12,16	30:18,25 32:14,24	you're 11:23 13:4	250 1:20 2:10
W	24:12 25:9,13,16	33:13,25 34:15,19	13:18 18:10 19:1	27555 1:20 2:10
wait 5:25 6:4	25:18 26:19,23	35:22 36:20 39:10	27:11 31:3 35:2	3
waiving 16:7	27:9,13,17,18,25	41:15 43:10,11,24	36:9,12 39:20	3 4:13 5:7 15:7
walking 59:25	28:9,12,16,19	44:22 45:19 46:10	42:20 43:11 52:11	18:16 23:18 72:15
want 18:12 21:9	29:12 30:7,19	47:6,17,22 48:5	53:10 60:1 62:12	72:16
31:16 33:8 43:19	31:2,11,16,24	48:21 49:7,16	71:15 75:10 78:2	3:23 87:6
55:13 57:10 58:9	32:3,6,7,17,22,25	50:1 51:13,25	79:13	36 9:13
59:1 73:13 76:6	33:17,23 34:4,13	53:14,22 54:18	you've 6:14 18:16	394-5198 2:19
82:16 86:7	34:23 35:5,10,23	55:18 57:8 58:3	23:25 50:6 66:11	4
wanted 46:22 57:15	36:16,22 37:1	58:14,23 59:7	79:11	4 24:20 26:12
wants 27:15 52:5,9	39:12 41:19 43:13	60:4,13,24 61:1	young 40:21	400 82:11
52:22,23 55:21,25	44:1,24 45:25	61:22 62:10 63:3	Z	44650 10:14 20:13
56:23 58:17 59:2	46:11 47:8,19,21	63:22 65:12 66:20	zone 19:17	
59:13 72:25	47:24 48:8,22	66:24 67:7 68:2	zones 84:13	
wash 42:11	49:8,17 50:3	68:12,25 70:3	zoning 14:1 53:24	
wasn't 36:7 85:16	51:11,17 52:2,7	71:15 72:1,8 73:3		
	52:18,22 53:4,5	73:17 74:13 75:10		
	53:15,25 54:19	76:20 78:10,19		

20:14 472-2700 2:5 48188 2:18 48331 1:21 2:11 489-4100 2:12 <hr/> 5 <hr/> 5 4:11,12,13 23:19 25:3,5,24 28:20 31:22 41:23 43:14 50:7 500 46:23 51 79:21 512 2:5 5A 7:20 5A.05-B 69:12 5A.08 83:4 5A.08-A 83:2 <hr/> 6 <hr/> 6 4:5 24:20 26:13 83:10 6-inch 63:8 65:9,9 65:15,17 81:20,20 <hr/> 7 <hr/> 7 61:3 67:16 72:11 72:12,16,18 74:2 74:17 75:13 77:1 83:5,6 7- 63:9 7-inch 63:8 70s 71:22 85:8 734 2:19 75 68:7,17 78701 2:4 <hr/> 8 <hr/> 8 21:24 25:3,4,19,20 28:24,25 8151 3:4 85 4:6 87 88:6 <hr/> 9 <hr/> 9 83:6 901 2:3 90s 38:23				
--	--	--	--	--

STATE OF MICHIGAN

MI Court of Appeals

Proof of Service

Case Title: CHARTER TOWNSHIP OF CANTON V 44650 INC	Case Number: 354309
--	-------------------------------

1. Title(s) of the document(s) served:

Filing Type	Document Title
Brief	Appeal Brief
Exhibits	Index of Exhibits - Appendix Volume I
Exhibits	Index of Exhibits - Appendix Volume II

2. On 02-03-2022, I served the document(s) described above on:

Recipient	Address	Type
Michael Pattwell Clark Hill 72419	MPattwell@clarkhill.com	e-Serve
Julie Hinkle Rosati Schultz Joppich & Amtsbuechler	jhinkle@rsjalaw.com	e-Serve
Laurie Jefferson Third Circuit Court 6909	lauriejefferson1@yahoo.com	e-Serve
Anne McClorey McLaughlin Rosati Schultz Joppich & Amtsbuechler PC P40455	amclaughlin@rsjalaw.com	e-Serve
Stephon Bagne Clark Hill 54042	sbagne@clarkhill.com	e-Serve
Chance Weldon Texas Public Policy Foundation 24076767	cweldon@texaspolicy.com	e-Serve
Marcelyn Stepanski Rosati Schultz Joppich & Amtsbuechler PC P44302	mstepanski@rsjalaw.com	e-Serve
Robert Henneke Texas Public Policy Foundation 24046058	rhenneke@texaspolicy.com	e-Serve
Zachary Larsen Clark Hill PLC P72189	ZLarsen@clarkhill.com	e-Serve
Lori Gazdag Rosati Schultz Joppich & Amtsbuechler PC	lgazdag@rsjalaw.com	e-Serve
Antoinette Bostice Clark Hill, PLC	abostice@clarkhill.com	e-Serve
Theodore Hadzi-Antich Texas Public Policy Foundation	tha@texaspolicy.com	e-Serve

RECEIVED by MCOA 2/2/2022 11:58:19 PM

264663		
Joseph Mondelli Charter Township of Canton	joseph.mondelli@canton-mi.org	e-Serve
Kristin Kolb Charter Township of Canton 59496	kristin.kolb@canton-mi.org	e-Serve
Paula Mertins Clark Hill	pmertins@clarkhill.com	e-Serve
Laurie Petrowsky Clark Hill	lpetrowsky@clarkhill.com	e-Serve
Ronald King Clark Hill 45088	RKing@clarkhill.com	e-Serve
Erin Cardimen Rosati Schultz Joppich & Amtsbuechler PC	ecardimen@rsjalaw.com	e-Serve
Michelle Irick Rosati Schultz Joppich & Amtsbuechler PC	mirick@rsjalaw.com	e-Serve

This proof of service was automatically created, submitted and signed on my behalf through my agreements with MiFILE and its contents are true to the best of my information, knowledge, and belief.

02-03-2022

Date

/s/ Marcelyn Stepanski

Signature

Rosati Schultz Joppich & Amtsbuechler PC

RECEIVED by MCOA 2/2/2022 11:58:19 PM