

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHARTER TOWNSHIP OF CANTON,
a Michigan municipal corporation,

Case No. 18-014569-CE
Hon. Susan L. Hubbard

Plaintiff/Counter-Defendant,

v.

44650, INC., a Michigan corporation,

Defendant/Counter-Plaintiff.

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Stephanie Simon Morita (P53864)
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NOTICE OF HEARING

PLEASE TAKE NOTICE that *Defendant/Counter-Plaintiff's Motion for Partial Summary Disposition* will be brought on for hearing before the Hon. Susan L. Hubbard, on **THURSDAY, MARCH 12, 2020 at 10:30 a.m.**, or as soon thereafter as may be heard.

Respectfully submitted,

/s/ Chance D. Weldon

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DEFENDANT/COUNTER-PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY DISPOSITION

I. INTRODUCTION.

In 2018, Defendant/Counter-Plaintiff, 44650, Inc. (hereafter, “the Percys”) removed trees, scrub brush, and other invasive species from a largely blighted portion of their industrially zoned property and planted approximately 1,000 Norway Spruce trees, intending to start a Christmas tree farm. Plaintiff/Counter-Defendant Charter Township of Canton (hereafter “Canton”) acknowledges that the Percys’ activities on their own property did not harm anyone. Nonetheless, Canton sued seeking nearly half-a-million dollars in penalties and other relief against the Percys for alleged violations of its Tree Ordinance.

The Percys counter-claimed on the grounds that (1) on its face and as applied to the Percys, the Tree Ordinance violates several constitutional provisions, including the Fourth, Fifth, Eighth, and Fourteenth Amendments (the “Constitutional Counter-Claims”), and (2) Canton is otherwise not entitled to relief on its municipal and state law claims against the Percys (the “Michigan Law Issues”). Pursuant to MCR 2.116 (C)(10), the Percys file this motion for summary disposition solely with regard to the Constitutional Counter-Claims. Concurrently herewith, the Percys file a separate motion for summary disposition under MCR 2.116 on other grounds.

II. CANTON’S TREE ORDINANCE.

Article 5A.00 of Canton’s ordinances is titled Forest Preservation and Tree Clearing. *Ex. I*, the “Tree Ordinance.” The Tree Ordinance requires that certain private property owners, including the Percys, apply for and receive a permit from Canton before removing any “tree” from their properties. “Tree” is broadly defined to include “any woody plant with at least one well-defined stem and having a minimum [diameter at breast-height] (“DBH”) of three inches.” *Id.* Art. 5A.01. If the targeted tree happens to be in a “forest,” restrictions are even greater.¹ Canton

¹ The Tree Ordinance distinguishes between trees in a “forest” and trees not in a “forest.” If the tree is not in a “forest,” a permit is required only if the tree is 6 inches DBH or greater. *Id.*, Art. 5A.05(A).

prohibits both removal and damage to any tree within a forest. *Id.* Art. 5A.05(A). According to Canton, even removing undergrowth or brush in a forest requires Canton's approval. *Id.*; *Ex. 2*, Goulet Dep., at 57:23-25; 58:1-5. "Forest" is defined as "any treed area of one-half acre or more, containing at least 28 trees with DBH of six inches or more." *Ex. 1*, Art. 5A.01.

Generally, a tree removal permit will only be granted if Canton decides that the removal is "necessary" and the owner agrees to either 1) replace any removed tree with up to three trees of Canton's choosing, or 2) pay a designated amount (currently between \$300 and \$450 per tree) into Canton's tree fund. *Ex. 1*, Art. 5A.05 and 5A.08. These mitigation requirements are mandatory, regardless of the impact or benefit accruing from the tree removal. *Id.*; *Ex. 2*, at 18:2-6.

Under the Ordinance, property owners who remove trees from their properties without a permit are required to pay the "market value" of any tree removed, or may pay the fine in-kind by replacing each removed tree with up to three trees of Canton's choosing. *Ex. 3*, Thurston Dep., at 8:7-16; *Ex. 1*, Art. 5A.08. Additionally, a property owner may be subject to criminal penalties of up to \$500 and 90-days imprisonment. *Ex. 2*, at 35:1-10.

These requirements are not uniformly enforced, however. The Ordinance exempts occupied residential lots under two acres, farms, and licensed nurseries. *Ex. 1*, Art. 5A.05(B).

III. STATEMENT OF FACTS.

A. The Percys Purchased and Cleared the Property for Agricultural Purposes, Which Is Exempt from the Ordinance.

Plaintiff 44650, Inc. is a real estate holding company formed primarily to manage certain property owned by brothers Gary and Matt Percy. *Ex. 4*, G. Percy Aff. at ¶5. The Percy brothers are the sole owners of 44650, Inc. *Id.* at ¶2.

The brothers' primary business is A.D. Transport, a trucking company that they started in their garage with two trucks in 1986. *Id.* Today, A.D. Transport operates a fleet of approximately

600 trucks. *Id.* In addition to A.D. Transport, the brothers also operate several other business endeavors, including a licensed nursery. *Id.* at ¶3; *Ex. 5*, Nursery Permit.

A.D. Transport's headquarters is located at 5601 Belleville Road, in Canton. *Ex. 4*, at ¶6. By 2017, the brothers owned all of the property adjacent to A.D. Transport, except an approximately 16 acre parcel located adjacent to their headquarters (hereafter, the "Property.") *Id.* at ¶6. The Property had once been used as a dairy cow pasture, but in recent years had become overgrown with scrub-brush, fallen trees, and invasive species, which must be removed by state law.² *Id.* at ¶5, 6. These species include ash trees, which were killed by the ash borer outbreak of recent years. *Id.* at ¶6. Additionally, flooding caused by a clogged ditch on an adjacent property had caused some trees on the Property to die or rot. *Id.* Moreover, the Property had been used as a dumping ground at some point and portions were blighted with trash. *Id.* at ¶6. Due to its proximity to A.D. Transport, the brothers were interested in purchasing the Property. *Id.* at ¶5.

Before purchasing the Property, Gary Percy contacted Canton Township Supervisor Pat Williams. *Id.* at ¶5. Mr. Williams suggested that the brothers should use the property to farm vegetables. *Id.* He did not mention that clearing the Property in order to do so would trigger substantial fines. *Id.* Because the brothers intended to use the Property for agricultural purposes, they believed that removing unwanted objects, such as scrub brush, from the Property was exempt from the Tree Ordinance. *Id.* at ¶8. The Ordinance explicitly exempts agriculture and nurseries. *Ex. 1*, 5A.05(B). In 2017, the brothers, acting through Plaintiff 44650, Inc., purchased the Property for \$404,250. *Ex. 6*, Deed. The Percys then cleared scrub brush and other vegetation from the property. *Ex. 4*, at ¶6.

²The Insect Pest and Plant Disease Act, MCL 286.201 *et seq.*, declares that certain vegetation that can "host" "injurious insects and plant diseases" are "a nuisance." See also the Michigan Insect Pest and Plant Diseases Law, MCL 286.251 *et seq.*

After clearing the Property, the brothers discovered that the property was not suited to farming vegetables. *Id.* at ¶7. Accordingly, because they already possessed a nursery license, they planted about 1,000 Norway Spruce trees for eventually sale as Christmas Trees. *Id.*

B. Canton Enforces the Ordinance Against the Percys and Files Suit.

In late April or early May of 2018, Ms. Thurston contacted the Percys and informed them that Canton believed that they had violated the Ordinance and that Canton was entitled to more than \$700,000 in tree penalties. *Ex. 4*, at ¶8; *see also, Ex. 7*(warrant confirming \$700,000 demand.)

In September of 2018, Canton issued a Notice of Violation, alleging violation of the Ordinance. *Ex. 7*. The Notice did not state the amount of the penalty. *Id.* After some discussion, Canton sent the Percys a letter claiming that Canton believed it was entitled to as much as \$446,625, but offering to settle the case for \$342,750. *Ex. 8*, Violation Letter. The Percys requested a sit-down negotiation. *Ex. 9*.

Rather than respond to the Percys' request for a sit-down negotiation, Canton filed suit in this Court seeking, among other things, up to \$ 446,625 in penalties against the Percys for allegedly violating the Ordinance. *Ex. 10*, p. 17. Canton concurrently filed a motion for an emergency *Ex Parte* Temporary Restraining Order to prevent the Percys from planting more trees. The Percys did not oppose it because they had no intention to plant additional trees in the frozen soil in December. The Percys filed a counter-claim, including the Constitutional Counter-Claims addressed in the instant Motion.

IV. STANDARD OF REVIEW

Summary disposition of a claim is appropriate if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(10).

V. LEGAL ARGUMENT.

In 1722, British Authorities of the Crown in the American Colonies adopted a law almost identical to the one at issue here (<https://www.arboretum.harvard.edu/pinus-strobus-pine-tree-riot/>).³ Under that law, it was illegal for colonists to cut down any white pine tree on their own property that was greater than 12 inches DBH. Violators were fined £5 for any tree cut. *Id.*

The law went largely unenforced for 50 years, until 1772, when the Royal Governor of New Hampshire sent representatives to Weare, New Hampshire, to enforce the Crown’s tree fines. *Id.* The Colonists were so enraged that they captured the governor’s representatives, subjected them to lashing (one lash for every tree the Crown claimed), shaved their horses, and ran them out of town. *Id.* In honor of that act of rebellion, the “Pine Tree Flag” became a symbol of independence and was the first flag authorized by George Washington to fly from the Colonial Navy’s warships. *Id.* It should come as little surprise then that the Founders designed a Constitution that places multiple structural limitations on government power to prevent laws similar to the Crown’s tree edict. Accordingly, Canton’s attempt to revive a modern version of the edict is flat-out unconstitutional.

A. Canton’s Tree Ordinance Is an Unconstitutional Regulatory Taking.

The Fifth Amendment, made applicable to the states by the Fourteenth Amendment, provides that private property shall not be taken “for public use, without just compensation.” *Palazzolo v Rhode Island*, 533 US 606, 617 (2001). Takings subject to compensation under the takings clause include the classic taking—where the government formally acquires title to private property through eminent domain—as well as regulatory takings. As relevant here, a regulatory taking can occur in at least three ways: 1) when the government effectively takes possession and

³Site last visited on September 24, 2019; *see also*, Steven L. Danver, *Revolts, Protests, Demonstrations, and Rebellions in American History: An Encyclopedia* (2010), p. 183-185.

control over an interest in property through regulation⁴; 2) when the government mandates that an owner maintain unwanted objects on the property for a public purpose, thus appropriating a portion of the property for the public without compensation⁵; or 3) when a regulation goes “too far” under the balancing test articulated in *Penn Central Transp Co v New York City*, 438 US 104 (1978). The Ordinance meets the criteria of all three forms of regulatory taking.

i. The Ordinance Is a Per Se Regulatory Taking Because It Effectively Grants Canton Constructive Possession of the Trees on the Property.

In Michigan, the right to own real property typically includes the right to fell and utilize any trees on that property. *See Delaney v Manshum*, 146 Mich 525, 528; 109 NW 1051 (1906). This is often referred to as the right to “timber.” *Mulder v Durand Hoop Co*, 238 Mich 373, 375; 213 NW 106 (1927). The right to timber is a separate property interest that is severable from the underlying estate in the same manner as minerals. *See e.g., Groth v Stillson*, 20 Mich App 704, 707; 174 NW2d 596 (1969) (trees are severable interests); *State Hwy Commr v Green*, 5 Mich App 583, 589; 147 NW2d 427 (1967) (trees considered separately for takings purposes).

A property right is often described as a bundle of rights, including “the rights to possess, use and dispose of [it.]” *Horne*, 135 SCt at 2428. When the government effectively takes control of any of these rights, it can give rise to a taking. *See Pennsylvania Coal Co v. Mahon*, 260 US 393 (1922) (restriction on access to severed mineral estate constituted a taking); *State Hwy Commr v Hahn*, 380 Mich 115, 117; 156 NW2d 33 (1968) (same). In *Horne*, the plaintiffs successfully challenged a federal statute by which they were required to set aside a portion of their raisins for the government to control as a means of restricting the supply of raisins in the national raisin market. The set-aside raisins remained on the plaintiffs’ property but the plaintiffs’ could not sell,

⁴ *See Horne v Dep’t of Agric*, 135 SCt 2419 (2015).

⁵ *See Loretto v Teleprompter Manhattan CATV Corp.*, 458 US 419 (1982).

use, or destroy the raisins without being fined their “fair market value.” *Horne*, 135 SCt at 2428, 2433. The Court held that this was a *per se* taking, explaining “[r]aisin growers subject to the reserve requirement thus lose the entire ‘bundle’ of property rights in the appropriated raisins—‘the rights to possess, use and dispose’ of them . . . gives rise to a taking as clearly ‘as if the Government held full title and ownership.’” *Id.* at 2428.

Just as the statute in *Horne* forbade the property owners from exercising any property right with regard to their raisins, the Ordinance forbids the Percys from exercising any property right with regard to their trees. Like the raisins in *Horne*, the trees remain on the Property, but the Percys may not sell, use, or destroy them without paying Canton the “current market value.” *Ex. I*, Art. 5A.08(E). Accordingly, because the Ordinance effectively takes possession of the trees without compensation, it is a *per se* regulatory taking.

ii. ***The Tree Ordinance Is a Per Se Regulatory Taking Because It Forces the Percys to Maintain Unwanted Objects on the Property.***

In addition to taking possession of the trees, the Tree Ordinance also constitutes a *per se* taking of portions of the underlying Property by requiring that the Percys maintain unwanted objects—trees—on the Property. In *Loretto*, 458 US at 435, the Court held that a state law requiring that landlords allow cable boxes to remain attached to their buildings constituted a *per se* taking that was entitled to compensation under the Constitution. The Court explained that forbidding the removal of the cable boxes was tantamount to “physical occupation authorized by government [and] is a taking without regard to the public interests that it may serve” *Id.* at 426. This remains true, even if the occupation involves “relatively insubstantial amounts of space and do[es] not seriously interfere with the landowner’s use of the rest of his land.” *Id.* at 430.

Similarly, in *Hendler v United States*, 952 F2d 1364 (Fed Cir 1991) the EPA drilled testing wells on private property in order to monitor groundwater contamination. The court recognized

that those wells served an important government interest, but nonetheless held that the physical occupation of private property by an unwanted object constituted a *per se* taking warranting compensation. *Id.* at 1378. As that court explained, once a permanent physical occupation is established “...nothing more needed to be shown [to establish a taking].” *Id.*

Here, the physical invasion is far more extensive than the cable box recognized as a taking in *Loretto* or the test wells in *Hendler*. Under the Ordinance, property owners must maintain potentially thousands of unwanted trees on their property. As these trees inevitably grow and spread over time, the extent of this legally mandated physical occupation increases over time. *Ex.* 2, at 55:6-25; 56:1-7. Accordingly, the ordinance is a *per se* taking under *Loretto*.

iii. *The Ordinance Is a Regulatory Taking Because It Goes “Too Far” in Depriving the Percys of the Economic Value of the Property.*

The Tree Ordinance constitutes a regulatory taking under the balancing approach announced in *Penn Central Transportation Co v New York City*, 438 US 104 (1978). Under that approach, a government regulation that deprives a property owner of some—but not all—of a property’s economic value may be a taking if the regulation “goes too far.” *Palazzolo v Rhode Island*, 533 US 606, 617 (2001) (quoting *Pennsylvania Coal Co.*).

To determine if the regulation goes too far, courts look at three factors: 1) “the economic impact of the regulation on the claimant”; 2) “the extent to which the regulation has interfered with distinct investment-backed expectations”; and 3) “the character of the governmental action.” *Palazzolo*, 533 US at 633-34 (quoting *Penn Central*, 438 US at 124). These factors are not “mathematically precise variables, but instead provide[] important guideposts that lead to the ultimate determination whether just compensation is required.” *Palazzolo*, 533 US at 634.

The Tree Ordinance meets all three of the *Penn Central* regulatory takings criteria. First, the economic impact of the Tree Ordinance on the Percys is substantial. Canton is seeking

approximately \$450,000 from the Percys for the removal of trees. That is more than the purchase price of the property. *Ex. 6*.

Second, the Tree Ordinance has substantially interfered with the Percys' reasonable investment-backed expectations. The Percys purchased the industrially zoned Property with the reasonable expectation that they could put it to productive use. In addition, before purchasing the Property or clearing it, the Percys had conversations with Township Supervisor Pat Williams, who suggested growing vegetables on the Property, something that could not be done without removing trees. Here, the Percys are prevented from making nearly any use of the Property without being subject to significant sanctions, exactions, or fines.

Third, in determining the "character of the governmental action" courts ask whether the regulation is more akin to traditional nuisance abatement, for which no compensation is generally required, (*see Keystone Bituminous Coal Ass'n v DeBenedictis*, 480 US 470, 488, 492 (1987)) or more akin to a regulation to generate public benefits, in which case, "fairness and justice" demand that the cost of that burden "should be borne by the public as a whole." *See Bowen v Gilliard*, 483 US 587, 608-09 (1987). This determination requires that courts "inquire into the degree of harm created by the claimant's prohibited activity, its social value and location, and the ease with which any harm stemming from it could be prevented." *Maritrans Inc v United States*, 342 F3d 1344, 1356 (Fed Cir 2003).

Canton acknowledges that the removal of trees from private property is not a nuisance at common law, and acknowledges that it has no evidence that the tree removal in this case caused any public injury. *Ex. 11*, Canton Resp. to RFA 1, 2, 3. Indeed, Ms. Thurston clearly stated that the Ordinance's purpose is to provide "public benefits"—not to remedy an actual injury. *Ex. 3*, 48:23-25; 49:1-20. But government may not acquire a public benefit at a property owners' expense

without paying the property owner for it. “[A] strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.” *Mahon*, 260 US at 416. The Ordinance is therefore a taking.

B. Canton’s Tree Ordinance Constitutes an Unconstitutional Seizure.

Canton’s enforcement of the Ordinance is unconstitutional under the Fourth Amendment because it constitutes a meaningful interference with the Percys’ possessory interests in the Property without compensation or justification. *See Severance v Patterson*, 566 F3d 490, 503–04 (5th Cir 2009). The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, prohibits “unreasonable seizures” of private property. *Ker v California*, 374 US 23, 30 (1963). While this prohibition is most often encountered in the criminal context, multiple courts have held that it applies with equal force in the civil context to land use regulations that interfere with the possession or use of private property. *See e.g., Presley v Charlottesville*, 464 F3d 480, 487 (4th Cir 2006) (anti-fencing ordinance); *Severance*, 566 F3d at 503–04 (government mandated easement). Thus, a property regulation violates the Fourth Amendment if it is “(a) a meaningful interference with [a Plaintiff’s] possessory interests in [its] property, which is (b) unreasonable because the interference is unjustified by law or, if justified, then uncompensated.” *Id.* at 502.

While this test appears to track fairly closely to the takings clause of the Fifth Amendment, the Supreme Court has recognized takings and seizures as distinct claims, because they focus on different aspects of government action. *See United States v. James Daniel Good Real Prop*, 510 US 43, 50 (1993). The takings clause is primarily concerned with whether the interference is for “public use” and whether the interference is compensated. The Fourth Amendment, by contrast, is primarily concerned with whether or not the interference is “reasonable.” “[T]he touchstone of

the Fourth Amendment is reasonableness based upon the facts and circumstances of the case.” *United States v Proctor*, 489 F3d 1348, 1352 (DC Cir 2007)(citations omitted).

The Fourth Amendment also sweeps more broadly than the takings clause. While some federal courts have held that the takings clause only applies to total deprivations of a property right (see *Tannian v Grosse Pointe Park*, 1995 US Dist LEXIS 12084, at *15 (ED Mich July 31, 1995)), in fact partial deprivations of property rights are actionable as seizures under the Fourth Amendment. See e.g., *United States v Gray*, 484 F2d 352, 356 (6th Cir 1973) (holding that temporarily removing rifles from a closet to copy down their serial numbers was a seizure.)

i. The Ordinance Creates a Meaningful Interference with the Percys’ Property Rights.

The Supreme Court has held that a seizure of property occurs whenever “there is some meaningful interference with an individual’s possessory interests in that property.” *United States v Jacobsen*, 466 US 109, 113 (1984). Typically, regulations that prevent a property owner from excluding unwanted things from his property are sufficient to trigger Fourth Amendment protections. For example, in *Severance*, 566 .3d at 503–04, the court held that the government’s claim of a public use easement on Carol Severance’s beach front property was a Fourth Amendment seizure because it limited her right to exclude people and things from her property and therefore was a clear interference with her possessory interest in the property. Similarly, in *Presley*, 464 F3d 480, 487 the court held that the plaintiff had stated a claim for a Fourth Amendment violation when a city passed an ordinance that prevented the plaintiff from fencing her property to keep trespassers and trash off the property.

Here, the Ordinance creates a meaningful interference with the Percys’ property interest in its trees by preventing them from felling, moving, or selling the trees. Indeed, the Ordinance effectively prohibits the Percys from otherwise using the trees for any purpose other than perhaps

enjoying them aesthetically or climbing them. The Ordinance also constitutes a meaningful interference with the Percys' interest in its land, because it denies the Percys the right to exclude unwanted trees from the Property.

ii. The Interference with the Percys' Property Rights Is Unreasonable Because It Is Not Justified By Any Risk to the Public.

To assess the reasonableness of a seizure under the Fourth Amendment, courts "must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *United States v Jacobsen*, 466 US 109, 125 (1984). In balancing these interests, a government "allegation that a seizure was for a public purpose does not somehow eliminate Fourth Amendment scrutiny." *Presley*, 464 F3d at 487. Instead, the alleged government purpose must be examined and balanced against the real-world effects of the seizure. *Id.*

For example, in *Miranda v City of Cornelius*, 429 F3d 858 (9th Cir 2005), the court struck down the application of an ordinance that allowed police to tow and impound the car of any person reasonably believed to have operated a vehicle without a license. An officer towed Miranda's vehicle from her driveway because he believed Miranda lacked a license. The government did not dispute that a seizure had occurred but argued that the seizure was reasonable because it was authorized by the ordinance. The court disagreed, explaining that a "city ordinance . . . does not, in and of itself, determine the reasonableness of the seizure under the Fourth Amendment." *Id.* at 864. Instead, the Fourth Amendment requires a careful balancing of harms. Looking at the facts, the court noted that the government's stated interest in preventing vehicles from "impeding traffic or threatening public safety and convenience" could not justify the seizure. The car was already safely in Miranda's driveway and was causing no threat to the public. The fact that Miranda may drive the car improperly in the future was also not sufficient to justify a seizure. *Id.* at 865.

Just as in *Miranda*, Canton invokes its power to abate nuisances to justify its interference with the Percys' possessory interest in the trees, while conceding that tree removal does not, of itself, constitute a nuisance at common law and that it has no evidence that tree removal from the Percys' property has caused an actual nuisance or injured anyone. *Ex. 10*, RFA Nos: 1, 2, 3. By contrast, the nature and quality of the intrusion is significant. The Ordinance not only interferes with the Percys' ability to develop the Property but also its right to exclude unwanted objects—"one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Loretto*, 458 US at 433. Canton is thus left with little more to justify its seizure of the Percys' property than an abstract desire to populate the Township with trees and to enforce its Tree Ordinance. *Ex. 3*, 13:16-25; 14:1-13.

iii. The Interference with the Percys' Property Rights Is Unreasonable Because It Is Uncompensated.

Outside of narrow parameters, such as the existence of exigent circumstances or the seizure of a public nuisance, contraband, or evidence of a crime, an uncompensated seizure of private property is deemed *per se* unreasonable. For example, a seizure and destruction violated the Fourth Amendment where the property was not "abandoned, a public nuisance, contraband, or evidence of a crime." *Bloem v Unknown Dep't of the Interior Employees*, 920 FSupp2d 154, 162–63 (DDC 2013). Regardless of its intentions, the government may not take a person's property without paying for it. "[A] strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Mahon*, 260 US at 416.

Here, not only has Canton not compensated the Percys, it is actively seeking compensation *from* the Percys in this case. Accordingly, both on its face and as applied, any interference with property rights under the Ordinance is uncompensated and therefore *per se* unreasonable.

C. Canton's Tree Ordinance Constitutes an Unconstitutional Condition on the Use of the Property.

The Ordinance is also unconstitutional because it 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. Under *Nollan v California Coastal Comm'n*, 483 US 825 (1987), and *Dolan v City of Tigard*, 512 U S 374 (1994), "a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." See *Koontz v St. Johns River Water Mgmt Dist*, 570 US 595, 599 (2013). This analysis may not be made in the abstract, but must be based on an individualized assessment of the facts on the ground, both as to the existence of a sufficient nexus and as to rough proportionality. The government "must make some sort of individualized determination that the required dedication is related both in nature [i.e., nexus] and extent [i.e., rough proportionality] to the impact of the proposed development." *Dolan*, 512 US at 391.

In *Dolan*, the city required the plaintiff to construct a bike path on its property as a condition of granting a construction permit. *Id.* at 380. The city argued that this mitigation requirement was proper because the proposed construction would increase traffic and parking problems and the bike path could offset some of those problems. *Id.* at 381-82. The city produced evidence that the proposed construction would increase traffic, but provided no site-specific evidence as to the actual effect that the proposed bike-path would have on the traffic in the area. *Id.* at 395. Instead, the city's official findings relied on the common knowledge that, in general, a bike path "could offset some of the traffic demand . . . and lessen the increase in traffic congestion." *Id.* The Court rejected this abstract approach to exactions, noting that "findings of fact that the bicycle pathway

system ‘*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.* at 395-96. As the Court explained, “the city must make some effort to quantify its findings in support of the dedication for the pedestrian/bicycle pathway beyond the conclusory statement that it could offset some of the traffic demand generated.” *Id.* Because the city failed to engage in this site-specific analysis, the proposed mitigation requirement was unconstitutional. *Id.*

Here, Canton claims that tree removal has a nexus to public benefits like air quality and flood control, and that its mitigation requirements are roughly proportional to that interest. But, as in *Dolan*, Canton does not base its claim of “rough proportionality” on any site-specific analysis of the impacts of tree removal on the Percys’ property. In fact, it concedes that it has no evidence that any such impacts exist. *Ex. 11*, RFA Nos: 1, 2, 3. Moreover, the type of site-specific analysis required by *Dolan*, is precluded by the Tree Ordinance on its face. Under the ordinance, property owners *shall* pay market value of any removed tree into the tree fund or plant a pre-set number of replacement trees, regardless of its impact on neighbors. *Ex. 1*, 5A.08 (A); 5A.08 (B); 5A.08 (E) (1) and *Ex. 2*, 16:1-25, 17:1-25; 18:1-6.

In *Mira Mar Dev Corp v City of Coppell*, 421 SW3d 74, 95-96 (Tex. App—Dallas, 2013), the court applied *Nolan* and *Dolan* to strike down the application of a tree ordinance that required developers removing a tree to pay a “mitigation fee” that would be used to plant replacement trees elsewhere. As in this case, the city argued that the mitigation requirement would “protect trees and promote urban forestation for the many benefits trees provide...including shade and cooling, reduction of noise and glare, protection of soils, providing of ecosystems, and increasing property values.” *Id.* But the City presented no evidence of the actual impact of removing trees from the relevant property and no comparison of that impact with the actual benefit of planting replacement

trees on public property. *Id.* Instead, like Canton’s ordinance, the Ordinance in *Mira Mar* based mitigation amounts solely on the size of trees removed. *Id.* The court held that with “no evidence of any projected impact caused by the removal of trees during the development, the City did not raise a genuine issue of material fact that any amount of tree retribution fees would be roughly proportional.” *Id.* The Court therefore granted summary judgment in favor of the property owner. Canton’s Tree Ordinance fails for the same reasons—*i.e.*, it does not allow the site-specific analysis mandated by *Dolan*.

D. Canton’s Tree Ordinance Requires the Imposition of Unconstitutionally Excessive Fines.

The Tree Ordinance is also unconstitutional and should be enjoined because it mandates fines that are grossly disproportionate to any public harm caused by tree removal. The excessive fines clause of the Eighth Amendment “limits the government’s power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’” *Timbs v Indiana*, 139 SC. 682, 687 (2019). The Eighth Amendment is violated when there is a: 1) mandatory payment “in cash or in kind” to the government (*id.*); 2) the required payment is intended, at least in part, to serve “either retributive or deterrent purposes” (*Austin v United States*, 509 US 602, 610, (1993)); and 3) the payment is not proportional to the violation allegedly committed. *United States v. Bajakajian*, 524 US 321, 334 (1998). That burden is met here.

First, the Tree Ordinance requires a mandatory payment in “cash or in kind” to the government. The Tree Ordinance requires that the Percys pay either hundreds of thousands of dollars or plant over a thousand trees as a penalty for removing trees on its own property. These payments are mandatory on the face of the ordinance (*Ex. 1*, Art. 5A.08) and are being affirmatively sought by Canton in this case.

Second, these payments are designed, at least in part, for “retributive or deterrent purposes.” *See Austin v United States*, 509 US at 610. At deposition, Canton’s representative conceded that the purpose of requiring after-the-fact payments was to ensure compliance with the Tree Ordinance and to deter individuals from removing trees without a permit. *Ex. 2*, 38:23-25; 39:1-4 (compliance) and 13:3-11 (deterrence). The required payments are therefore punitive in nature. *See WCI, Inc v Ohio Dep’t of Pub Safety*, No 18-3962, 2019 US App LEXIS 15527, at *18 (6th Cir. May 24, 2019) (“even if only intended partially as a punishment, and partially for other reasons—the protections of the Eighth Amendment apply.”)

Finally, the fines sought in this case are grossly disproportional to any public harm the Percys may have caused by removing trees. “The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality.” *Bajakajian*, 524 US at 334. The “amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.” *United States v Madison*, 226 Fed. Appx. 535, 548 (6th Cir 2011).

In determining proportionality, courts look at several factors—two of which are dispositive here. First, courts look at the actual “harm that respondent caused.” *Bajakajian*, 524 US 321. In *Bajakajian*, the Court held that a seizure of \$357,144 was “grossly disproportional” to the crime of not reporting the amount of currency leaving the country to federal authorities, because “the harm that respondent caused was ...minimal.” *Id.* at 339. As the Court explained, the respondent’s failure “to report his currency affected only one party, the Government, and in a relatively minor way.” *Id.* There “was no fraud on the United States, and respondent caused no loss to the public fisc.” *Id.* Given these minimal injuries, the forfeiture of thousands of dollars was excessive. *Id.*

Second, courts compare the civil fine to the criminal penalties for the same offense. *Id.* The Supreme Court held that the civil penalty of \$357,144 was grossly disproportional because it

was “many orders of magnitude” greater than the \$5,000 criminal penalty. *Id.* at 340.

The fines assessed under the Tree Ordinance in this case fail both tests. First, there is no public harm at issue in this case. Canton concedes that removing trees from private property does not, of itself, constitute a nuisance and concedes that there is no evidence that the tree removal in this case harmed or otherwise injured the Percys’ neighbors. *Ex. 11*, RFA Nos. , 1, 2, 3.

Second, the fine in this case is grossly excessive in comparison to the maximum criminal penalties available for the same offense. In *Bajakajian*, a forfeiture of \$357,144 was considered “grossly” excessive because it was seventy times larger than the maximum criminal penalty. *Bajakajian*, 524 US at 339. Here, the maximum criminal penalty for violating the Ordinance is \$500, but the civil fines sought against the Percys under that same ordinance for removal of trees on the property are up to \$446,625—approximately 900-times greater than the maximum criminal penalty. Such a level of disproportionality cannot pass under *Bajakajian*.

VI. CONCLUSION.

For the foregoing reasons, this Court should grant summary disposition in the Percys’ favor on the above-mentioned constitutional counterclaims, declare the Tree Ordinance unconstitutional, and enjoin its enforcement against the Percys. This Court should also dismiss Counts I and II of Canton’s complaint as they are based entirely on the enforcement of the Tree Ordinance, which is unconstitutional.

Respectfully submitted,

/s/ Chance D. Weldon

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PROOF OF SERVICE

Antoinette Bostice, being first duly sworn, deposes that on January 21, 2020, she caused to be served a copy of the foregoing pleading upon all counsel of record via the Court's electronic filing system.

/s/ Antoinette Bostice

Antoinette Bostice

EXHIBIT 1

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 lot than two acres in size, including utility companies and public tree trimming agencies, shall be exempt from 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	<i>Thuja occidentalis</i>	18"
American Basswood	<i>Tilia americana</i>	24"
American Beech	<i>Fagus grandifolia</i>	18"
American Chestnut	<i>Castanea</i>	8"
Birch	<i>Betula</i> spp.	18"
Black Alder	<i>Alnus glutinosa</i>	12"
Black Tupelo	<i>Nyssa sylvatica</i>	12"
Black Walnut	<i>Juglans nigra</i>	20"
White Walnut	<i>Juglans cinerea</i>	20"
Buckeye (Horse Chestnut)	<i>Aesculus</i> spp.	18"
Cedar, Red	<i>Juniperus</i> spp.	12"
Crabapple (cultivar)	<i>Malus</i> spp.	12"

Douglas Fir	<i>Pseudotsuga menziesii</i>	18"
Eastern Hemlock	<i>Tsuga canadensis</i>	12"
Fir	<i>Abies</i> spp.	18"
Flowering Dogwood	<i>Cornus florida</i>	8"
Ginkgo	<i>Ginkgo biloba</i>	18"
Hackberry	<i>Celtis occidentalis</i>	18"
Hickory	<i>Carya</i> spp.	18"
Honey Locust	<i>Gleditsia triacanthos</i>	24"
Kentucky Coffeetree	<i>Gymnocladus dioicus</i>	18"
Larch/tamarack	<i>Larix laricina</i> (Eastern)	12"
Sycamore/London Planetree	<i>Platanus</i> spp.	18"
Maple	<i>Acer</i> spp.(except <i>negundo</i> and <i>saccharinum</i>)	18"
Oak	<i>Quercus</i> spp.	20"
Pine	<i>Pinus</i> spp.	18"
Sassafras	<i>Sassafras albidum</i>	15"
Spruce	<i>Picea</i> spp.	18"
Tuliptree	<i>Liriodendron tulipifera</i>	18"
Cherry	<i>Prunus</i> 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 2

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.

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

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?

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**

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

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.**

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

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

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

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

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?

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

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.

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Christine A. Lorchfeld, CER6501

Notary Public, Macomb County, Michigan

My Commission Expires: 07/07/2020



EXHIBIT 3

Page 1

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.

1 **A** **Okay.**

2 **Q** Are you familiar with that document?

3 **A** **Yes, I am.**

4 **Q** And what is it?

5 **A** **It's our tree ordinance. Forest preservation and**
6 **tree removal -- tree removal and replacement.**

7 **Q** And I was speaking with your colleague earlier and
8 he agreed that under that tree ordinance a property
9 owner who removes trees, certain trees, without a
10 permit is required to either replace those trees or
11 pay into the tree fund; is that correct?

12 **A** **That's correct.**

13 **Q** And that this replacement or payment is in addition
14 to any criminal penalties under that ordinance. Do
15 you agree with that?

16 **A** **Yes. It's the value of the trees.**

17 **Q** And he explained a little bit there at the end that
18 this payment or replacement is a form of nuisance
19 abatement. Do you agree with that?

20 **A** **Yes.**

21 MR. WELDON: I'd like to go to Exhibit 2,
22 please.

23 THE WITNESS: Okay.

24 BY MR. WELDON:

25 **Q** Go ahead and take a look at that document and

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

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

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?

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.

1 STATE OF MICHIGAN)

2) ss.

3 COUNTY OF MACOMB)

4

5 I certify that this transcript, consisting
6 of eighty-seven (87) pages, is a complete, true, and
7 correct transcript of the testimony of LEIGH THURSTON
8 held in this case on June 12, 2019.

9 I also certify that prior to taking this
10 deposition LEIGH THURSTON 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

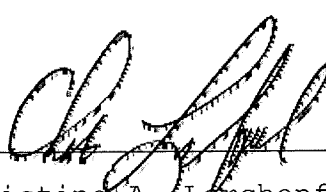
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Christine A. Larchenfeld, CER6501

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Notary Public, Macomb County, Michigan

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My Commission Expires: 07/07/2020

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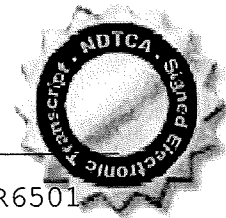


EXHIBIT 4

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHARTER TOWNSHIP OF CANTON,
a Michigan municipal corporation,

Case No. 18-014569-CE
Hon. Susan L. Hubbard

Plaintiff/Counter-Defendant,

v.

44650, INC., a Michigan corporation,

AFFIDAVIT OF GARY PERCY

Defendant/Counter-Plaintiff.

AFFIDAVIT OF GARY PERCY

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

Gary Percy, being first duly sworn, deposes and says as follows:

1. I have personal knowledge concerning the statements contained in this Affidavit, and if called to testify, can testify competently to the facts stated in this Affidavit.

2. My brother, Matt Percy, and I are the co-owners of several businesses in Canton, Michigan, including the Defendant/Counter-Plaintiff in this case, 44650, Inc. In 1986, we started our first transportation business out of our garage with two trucks. Since then, we've grown into a multi-service transportation and logistics suite of companies, known generally as A.D. Transport, with approximately 600 trucks moving a wide variety of products throughout the continental United States.

3. We also run several small real estate companies, including 44650, Inc. and 5601, Inc. These entities manage our properties, a licensed tree nursery operation, and other endeavors related to the trucking industry.

4. Our trucking operations are primarily located on two adjacent industrial properties in Canton, Michigan: Parcel No. 71-132-99-0010-711 ("Parcel A") and Parcel No. 71-135-01-0033-303 ("Parcel B"). *See* Property Map attached as Exhibit A. A.D. Transport's headquarters is located at 5601 Belleville Road, in Canton.

5. By 2017, our companies owned most of the property immediately adjacent to A.D. Transport. That year, 44650, Inc., which is a real estate holding company owned by Matt and I that was formed primarily to manage certain property our real estate company, decided to purchase a parcel (hereafter, "the Property") adjacent to A.D. Transport. I was informed by one of the previous owners that prior to being abandoned, the Property had historically been used as a grazing pasture for dairy cows. Before the purchase, I reached out to Pat Williams (Canton's Supervisor) to discuss possibly farming the Property. Mr. Williams suggested that I hire his friend Richie to plant vegetables on the property. Mr. Williams did not mention that clearing the property would result in significant fines.

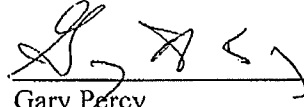
6. The Property, however, was overgrown with scrub brush, dead and fallen trees, weeds, and invasive species. It was also littered with trash and debris. Some of these trees were killed by the ash borer outbreak of recent years, and by flooding caused by a clogged ditch in the area. 44650, Inc. cleared the 16-acre Property of the unwanted vegetation and debris in 2017.

7. After cleaning the Property, it was determined that the land was not well suited for growing vegetables. In 2018, my brother and I planted approximately 1,000 Norway Spruce trees on the Property to utilize it as a Christmas Tree farm.

8. In late April of 2018, Leigh Thurston contacted me on behalf of Canton and told me that Canton believed that clearing the Property violated the Tree Ordinance, and that 44650, Inc. owed Canton a significant amount in fines. I contacted Canton Supervisor Pat Williams and

told him that the fines were ridiculous, the Property had consisted of mostly scrub brush and invasive species, and it was my understanding that because it would be put an agricultural use the Property was exempt from the Tree Ordinance.

FURTHER AFFIANT SAYETH NOT.



Gary Percy

Subscribed and sworn to before me this
20 day of Aug, 2020.
Margaret Seely
Margaret Seely Notary Public,
Wayne, County, State of Michigan
My Commission Expires: 7/31/26

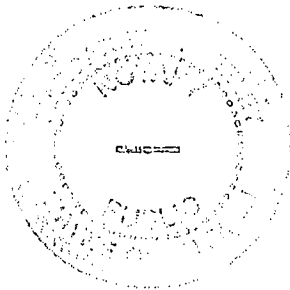


EXHIBIT 5

P-384 (1/93)

Michigan Department of Agriculture

Pesticide and Plant Pest Management Division

License/Certificate #

60087

ID No. 27125

Date issued: 07/23/1998

NURSERY STOCK DEALER LICENSE

Expires: 10/31/1998

Inspection date:

ISSUED TO

M G Development Co Inc

3601 Belleville Rd

Canton, MI 48188

ADDITIONAL CERTIFICATION

THIS STOCK CERTIFICATE HAS BEEN ISSUED

has been inspected and is apparently free of
harmful insects and contagious plant diseases.

Responsible Party and Mailing Address:

M G Development Co Inc
3601 Belleville Rd
Canton, MI 48188



Director of Agriculture

Dan W. Ant

This license is not transferable and is only valid for the establishment covered and address listed above. This license issued in accordance with provisions of Act 189, P.A. of 1991, as amended.

EXHIBIT 6

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. POWELSON, a/k/a
Frank Powelson

ITS: Manager and Sole Member

[Notary Page Follows]

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

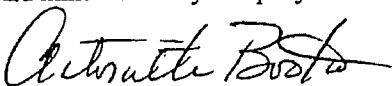
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[Notary Page to Warranty Deed]

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]

EXHIBIT 7

AFFIDAVIT FOR ADMINISTRATIVE SEARCH WARRANT FOR VIOLATIONS OF
THE CANTON TOWNSHIP CODE OF ORDINANCES

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

The undersigned Affiant, Leigh Thurston, being first duly sworn, deposes and states as follows:

1. Affiant is a Planner and Landscape Architect employed by the Charter Township of Canton whose duties include oversight of the Township's tree removal program set forth in the Township's Zoning Ordinance.

2. Affiant is seeking access to two parcels of vacant real property, located generally north of Yost Road and west of Sheldon Road, in the Charter Township of Canton, in order to assess the damage caused by the unpermitted and unlawful removal of trees and related site work in violation of the Canton Township Code of Ordinances.

3. Affiant believes that probable cause exists to issue an administrative search warrant based on the following information:

- A. F.P. Development, LLC, is the owner of certain vacant real property located generally north of Yost Road and west of Sheldon, in the Charter Township of Canton, Parcel ID# 71-135-99-0001-708 ("Parcel A").
- B. 44650, Inc. is the owner of certain vacant real property located generally north of Yost Road and west of Sheldon Road, in the Charter Township of Canton, Parcel ID# 71-135-99-0001-709 ("Parcel B").
- C. Parcel A and B were at one time a single parcel (the "Parent Parcel"); however, following the sale of Parcel B to 44650, Inc., in 2017, application was made to split the Parent Parcel into two distinct parcels. (See attached Exhibit A.)
- D. F. P. Development, LLC, was the owner of the Parent Parcel, and following the split, retained ownership of Parcel A, which is approximately 30 acres in size.
- E. Parcel B is approximately 16 acres in size, and was acquired by 44650, Inc. from F.P. Development, LLC, on or about August 1, 2017. (See attached Exhibit B.)
- F. At the time of the property split, the southern portion of Parcel A and almost the entirety of Parcel B were covered in mature trees. (See attached Exhibit C, Google Maps aerial photo.)

- G. The Fisher & Lenge Drain, a drain under the jurisdiction of Wayne County and governed by the Michigan Drain Code, traverses both Parcel A and Parcel B. (See attached Exhibit *D*—Wayne County Drainage District Map.)
- H. There are also Michigan Department of Environmental Quality-regulated wetlands on both Parcels A and B. (See attached Exhibit *E*.)
- I. Sometime subsequent to the property split and sale of Parcel B, tree cutting occurred, and a significant number of what are believed to be regulated and landmarks trees were removed from Parcel B. (See attached Exhibit *F*.)
- J. Canton Township learned of the unpermitted tree clearing and site work through a telephone call from a property owner in the area on or about April 27, 2018.
- K. Following receipt of the phone call, Affiant personally observed the denuded conditions on Parcel B, which she was able to view from the Yost Road public right-of-way.
- L. Affiant was also able to observe portions of Parcel A from a neighboring property, and observed the property owner then in the process of removing trees.
- M. Removal of trees without the submission of a site plan and without obtaining a permit, in violation of Sec. 5A-05 of Appendix A to the Canton Township Code of Ordinances. (See attached Exhibit *G*.)
- N. Additionally, any work within 25' of a waterway, including drains and wetlands, is a violation of Sec. 2.24 of Appendix A to the Canton Township Code of Ordinances. (See attached Exhibit *H*.)
- O. Canton Township representatives and officials have attempted on multiple occasions to obtain the consent of the property owners to access their properties in order to perform inspections to determine the extent and scope of violations related to the unpermitted tree removal; such consent has been repeatedly denied.
- P. A scientific estimate of the scope of the unpermitted tree removal was performed by Affiant in junction with a professional arborist by taking a survey of trees on a neighboring parcel of property with similar elevation and soil types.
- Q. The conclusion of Affiant and the professional arborist is that it is likely that more than 2,500 regulated trees, including an estimated 140 landmark trees, have been unlawfully removed from Parcel B, alone, with a total replacement value in excess of \$700,000. (See attached Exhibit *I*.)

- R. The State of Michigan, Wayne County and the Wayne County Drain Commissioner have already issued violation notices to the owner of Parcel B for the impacts caused by the unpermitted tree removal and other site work. (See attached Exhibits J, K, and L.)
- S. In order to assess the actual number and types of trees removed from the Property, as well as any additional violations related to the tree removal, Affiant requires direct access to Parcels A and B.

WHEREFORE, Affiant requests this Court issue an administrative search warrant for the purpose of permitting Affiant and representatives from Owen Tree Service to enter the two properties for the purposes of the determining (1) the number and type of trees unlawfully removed from the Properties; (2) whether any unpermitted work has been performed within 25 feet of any watercourse on the Properties; and (3) the existence of any other violations of Township ordinances related to the tree removal. Such entry or entries shall include the use of such tools and equipment as necessary to properly conduct the assessment.

Affiant:

Leigh Thurston
Leigh Thurston

Subscribed and sworn to before me by Leigh Thurston, Planner and Landscape Architect, on behalf of the Charter Township of Canton on 8/7, 2018.

Paula J. Jule
Notary Public
County, Michigan

My Commission Expires: _____

EXHIBIT 8



RECEIVED

SEP 17 2018

CLARK HILL



GENERAL OFFICES

1150 Canton Center S.
Canton, MI 48188-1699
734/394-5100
734/394-5128 FAX

Pat Williams
Supervisor
394-5185
394-5234 FAX

Michael Siegrist
Clerk
394-5120
394-5128 FAX

Dian Slavens
Treasurer
394-5130
394-5139 FAX

John Anthony
Sommer N. Foster
Anne Marie Graham-Hudak
Steven Sneiderman
Trustees

FOR SETTLEMENT PURPOSES ONLY—MRE 408

September 13, 2018

Via electronic mail to mpattwell@clarkhill.com and regular U.S. Mail

Michael Pattwell, Esq.
Clark Hill PLC
212 Cesar Chavez Avenue
Lansing, Michigan 48906

Re: Your client 44650, Inc.; Gary Percy, Resident Agent

Dear Mr. Pattwell:

In accordance with the Notice of Violation issued to your client, 44650, Inc., and emailed to you on August 30, 2018, it is the position of Canton Township that your client has committed a violation of the Canton Township Zoning Ordinance by clear cutting approximately 16 acres of its property, despite being told in writing in July of 2017 that any tree removal on that property would require a site plan and a tree removal permit.

Specifically, Canton Township asserts that the following Zoning Ordinance provisions were violated by your client:

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.

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.

Because all the tree stumps were removed as part of the clear cutting, and all or a majority of the trees have been woodchipped and removed from the property, it is difficult to determine the exact number and species of trees removed. However, the Township retained the services of a professional arborist who worked in conjunction with the Township's landscape architect, and utilizing methods recognized in the arboriculture science, conducted an analysis and have made a scientific estimate of the number and type of trees removed.

As stated in the notice of violation, it was determined that 1,385 regulated trees (defined under Canton Township ordinance as having a diameter breast height ("dbh") of 6" or greater) were unlawfully removed, along with 100 landmark trees (I believe the NOV listed 300 landmark trees, but that was a typographical error)¹. Attached you will find a spreadsheet which lists the type and estimated number of regulated and landmark trees removed.

Under the Zoning Ordinance, Mr Percy has several options to remedy the violation: (1) he can plant trees to replace the ones removed in accordance with the requirements of the Zoning Ordinance; (2) he can pay into the tree fund the amount required by the Zoning Ordinance; or (3) some combination of the above.

If Mr. Percy opts to plant replacement trees, the standards for doing so are set forth in the Zoning Ordinance:

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.

¹ Note that this number does not include any trees that may have been in the public rights-of-way, which are not "regulated" under Township Ordinance.

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.

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.

Whether Mr. Percy opts to plant replacements trees or to pay money into the tree replacement fund, the number of replacement trees planted and/or amount owed to Canton can either be calculated based on 2"-2.5" caliper trees or with 3" caliper trees. Note that if 3" caliper trees are used, each replacement tree counts as 1.5 trees removed, which therefore reduces the number of trees that must be planted or paid for. Each landmark tree is are required to be replaced by three trees with a minimum of 4" caliper each.

Based on the extent of the tree removal as determined by staff, the amount that is due Canton for violation of the Zoning Ordinance is as follows:

Replacement with 2-2.5" Caliper Trees:		Replacement with 3" Caliper Trees:	
1,385 Regulated Trees (6" dbh or greater) X \$225/tree	\$311,625	1,385 Regulated Trees (6" dbh or greater) / 1.5 x \$300/tree	\$277,000
100 Landmark Trees x 3 x \$450	\$135,000	100 Landmark Trees x 3 x \$450	\$135,000
TOTAL DUE	\$446,625	TOTAL DUE	\$412,000

As stated above, Mr. Percy has the third option of remedying his violation through a combination of planting trees and paying into the tree fund.

As a proposed settlement and in an attempt to avoid litigation, and assuming it is Mr. Percy's preference to pay into the tree fund, the Township is willing to discount the amount owed

by crediting the regulated trees (not the landmark trees) by 25%, which credit would have been available to Mr. Percy, had he complied with Township ordinances. This results in an amount due of either \$368,718.75 calculated using 2-2.5" caliper replacement trees (a discount of \$77,906.75), or \$342,750 calculated using 3" caliper replacement trees (a discount of \$69,250). The Township is agreeable to either of these amounts.

After you have had a chance to discuss this matter with your client, please advise of his decision as to how he wishes to proceed.

Thank you for your prompt attention to this matter.

A handwritten signature in cursive script, reading "Kristin Bricker Kolb".

Kristin Bricker Kolb
Corporation Counsel
Charter Township of Canton

Cc: Pat Williams, Township Supervisor
Tim Faas, Municipal Services Director
Jeff Goulet, Community Planner
Leigh Thurston, Landscape Architect

Enc.

POCO PROPERTY

[illegible]

AD TRANSPORT TREE CLEARING ANALYSIS

CANTON TOWNSHIP PLANNING SERVICES

8/22/2018 Field Work

POCO PROPERTY

Page 2

WOOD PLOT SIX

2,320 SF

TREE TYPE

6" + CALIPER TREE

REGULATED TREE

LANDMARK TREE

Silver Maple

1

1

Sugar Maple

2

2

Hickory

1

1

Hickory

1

1

x

3

=

3

Basswood

10

10

Basswood

2

2

x

3

=

6

Swamp White Oak

3

3

Swamp White Oak

2

2

x

3

=

6

Black Cherry

2

2

Walnut

1

1

Total Trees

20

5

x

3

=

15

Total 2 1/2- 3" trees

21

Total 4" trees

15

Total SF of Plot 6

2,320

1.06

Acreage of NW Section of Site

0.053

Acres Surveyed

Off Site

21

Reg. Trees Surveyed

1/.053 = 18.87

Conversion Factor for 1 Acre

21 x 18.87 = 396

Reg. Trees per Acre

396 x 1.06 = 420

Total Trees in 1.06 Ac

5 x 18.87 x 1.06 = 100

Total Landmark Trees in 1.06 Ac

(Replacement: 3 - 4" Cal. Trees Each

EXHIBIT 9

Bagne, Stephon B.

From: Pattwell, Michael J.
Sent: Thursday, November 08, 2018 3:08 PM
To: Kristin Kolb; Smith, Matthew T.
Cc: Bagne, Stephon B.; Filipovich, Cynthia M.; Carol Rosati; Campbell, Stephen A.
Subject: RE: Your Clients: Gary and Matt Percy

Kristin:

The Percy Brothers have provided us authority to increase the settlement offer considerably. There are, however, our outstanding inquiries to which Canton has not provided responses as well as what we perceive to be significant factual disagreements regarding the characteristics of the property in question which include, among many other things, that the property is a retired farming and grazing pasture, Canton's regulated tree estimate is not accurate, and the property was blighted with litter and teeming with invasive and weedy species. Our hope would be that in appreciation of these facts Canton would reevaluate its settlement position. Additionally, because we also represent F.P. Development, we think it would be most appropriate to resolve both matters simultaneously. Accordingly, we once again request the opportunity for a meeting at a mutually convenient time in the very near future during which we can discuss and possibly make progress on reaching settlement on these issues.

Please advise.

Regards,

MJP

Michael J. Pattwell

CLARK HILL PLC
517.318.3043 (Direct) | 517.318.3082 (Fax) | 517.897.1087 (Cell)

From: Kristin Kolb [mailto:kristin.kolb@canton-mi.org]
Sent: Wednesday, November 07, 2018 4:23 PM
To: Smith, Matthew T.; Pattwell, Michael J.
Cc: Bagne, Stephon B.; Filipovich, Cynthia M.; Carol Rosati; Campbell, Stephen A.
Subject: RE: Your Clients: Gary and Matt Percy

Given how far apart our clients are, and given that Mr. Percy continues to violate Township ordinances with the planting of evergreen trees, I do not think mediation would accomplish anything.

If the property owners have an offer that hasn't already been made and declined, please forward for the Township's consideration.

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

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From: Smith, Matthew T. [mailto:msmith@clarkhill.com]

Sent: Friday, November 02, 2018 11:33 AM

To: Kristin Kolb <kristin.kolb@canton-mi.org>; Pattwell, Michael J. <mpattwell@clarkhill.com>

Cc: Bagne, Stephon B. <sbagne@clarkhill.com>; Filipovich, Cynthia M. <cfilipovich@clarkhill.com>; Carol Rosati <crosati@rsjalaw.com>; Campbell, Stephen A. <scampbell@clarkhill.com>

Subject: RE: Your Clients: Gary and Matt Percy

Good Morning:

What about getting together in person to discuss settlement or do an informal mediation?

Matthew Tolbert Smith

CLARK HILL PLC

212 East Cesar E. Chavez Avenue | Lansing, Michigan 48906
517.318.3037 (direct) | 517.318.3080 (fax) | 517.281.9088 (cell) Ext 1-58-548
msmith@clarkhill.com | www.clarkhill.com

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From: Kristin Kolb [mailto:kristin.kolb@canton-mi.org]

Sent: Thursday, October 25, 2018 10:33 AM

To: Pattwell, Michael J.

Cc: Bagne, Stephon B.; Smith, Matthew T.; Filipovich, Cynthia M.; Carol Rosati; Campbell, Stephen A.

Subject: RE: Your Clients: Gary and Matt Percy

Mr. Pattwell:

First of all, a \$25,000 settlement proposal was previously offered directly to the Township Supervisor by Gary Percy several months ago, and was declined at that time. As that proposal does not nearly begin to bring your clients into compliance with Township Ordinances, the response is unchanged.

As for the supposed October 11th requests, I was unable to discern an actual question from amongst the litany of grievances against Canton Township contained in your email. To answer your question, yes, the analysis was conducted based on a recognized scientific basis, utilizing the knowledge and experience of both the Township's arborist and a consulting arborist from Owen Tree Service. As for backup information, to my knowledge, handwritten notes were kept during the actual site visit on August 22nd, but those were not retained after the compiling of the information.

If you have further questions, please advise.

Kristin Bricker Kolb
Corporation Counsel
Charter Township of Canton
1150 S. Canton Center Road
Canton, Michigan 48188
TEL: 734.394.5198
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From: Pattwell, Michael J. [<mailto:mpattwell@clarkhill.com>]
Sent: Wednesday, October 24, 2018 4:41 PM
To: Kristin Kolb <kristin.kolb@canton-mi.org>
Cc: Bagne, Stephon B. <sbagne@clarkhill.com>; Smith, Matthew T. <msmith@clarkhill.com>; Filipovich, Cynthia M. <cfilipovich@clarkhill.com>; Carol Rosati <crosati@rsjalaw.com>; Campbell, Stephen A. <scampbell@clarkhill.com>
Subject: RE: Your Clients: Gary and Matt Percy

Ms. Kolb:

In our correspondence dated October 11, 2018, to which Canton did not respond, we advised that the Percy Brothers had authorized us to make a settlement offer subject to Rule 408 of the Michigan Rules of Evidence. We explained, however, that we have been unable to fully evaluate the matter at issue here due to the vagueness contained in Canton's notice of violation and subsequent settlement offer. Specifically, the papers issued by Canton failed to identify whether Canton intends to proceed with a civil or criminal action and the legal basis allowing it to proceed in whatever manner it identifies. In terms of the substantive merits, the two pages of summary data that form the basis of the tree counts are difficult to analyze. We requested confirmation that a recognized scientific basis exists to proceed with the methodology employed and the backup information that formed the basis of the evaluation.

Although Canton has chosen not to provide this basic information, we are nevertheless moving forward (subject to MRE 408) with a settlement offer in the amount of \$25,000.00. Without getting into the numerous legal defenses at play, it cannot be disputed that the health of the property has been significantly improved as a result the activities now in question. Moreover, after consulting with MDEQ, the Percy Brothers made sure that none of the 1,000 Christmas trees

were planted in any areas identified as wetland by MDEQ. And, contrary to the statement below, the Percy Brothers do in fact have a MDARD nursery stock license which shows up on MDARD's database.

Regards,

MJP

Michael J. Pattwell

CLARK HILL PLC
517.318.3043 (Direct) | 517.318.3082 (Fax) | 517.897.1087 (Cell)

From: Kristin Kolb [<mailto:kristin.kolb@canton-mi.org>]

Sent: Tuesday, October 23, 2018 12:10 PM

To: Pattwell, Michael J.

Cc: Bagne, Stephon B.; Smith, Matthew T.; Filipovich, Cynthia M.; Carol Rosati; Campbell, Stephen A.

Subject: Your Clients: Gary and Matt Percy

Mr. Pattwell:

As Canton learned on Channel 7 News last night, your clients have apparently proceeded with the planting of 1,000 Norway spruce trees on the property they previously cleared.

To the extent this is an attempt to remedy their violation, it is not acceptable.

First of all, the trees planted are not of the same type and species as those removed, and therefore, they do not count toward replacement. Secondly, the planted trees do not meet the size requirements for replacement trees as set forth in the Zoning Ordinance. (See Article 5A of the Township Zoning Ordinance.)

The property is zoned GI-General Industrial, and agricultural operations are neither a principal permitted nor a special land use. (See Article 23 of the Township Zoning Ordinance.) Even if the Township Planning Commission were to allow the property (which is completely surrounded by industrial uses) to be rezoned to RA-Rural Agricultural, a minimum 40 acre parcel is required for an agricultural use, which your clients do not have. (See Article 9 of the Township Zoning Ordinance.)

Additionally, the MDEQ has indicated that, due to the existence of the regulated wetlands on the property (see Violation Notice dated June 11, 2018), a permit is required to plant trees. In speaking with Jeremy Richardson at the MDEQ, he is not aware of any permit or other authorization to plant trees in the wetlands. A commercial grower of trees also requires a nursery stock license from the MDARD. A search of the MDARD nursery stock licensing list shows no results for a nursery license for your clients (including for the Montgomery Farms tree farm they claim to own and operate).

Finally, thanks to your taking this to the media instead of engaging in professional negotiations to resolve this matter, Canton Township staff is having to endure threatening and abusive phone calls and emails. My paralegal was the unfortunate recipient of a threatening phone call (aimed at me). To extent you wished for a public outcry against Canton Township, you have succeeded through your mischaracterization of the issue and the dissemination of inaccurate information. To the extent you thought you might influence Canton Township's next steps in this matter, you were wrong.

Unless you finally decide to contact me to discuss this matter, I will assume your clients' response to my September 13th letter has been communicated through the media.

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
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This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify us immediately by reply email and destroy all copies of this message and any attachments. Please do not copy, forward, or disclose the contents to any other person. Thank you.

EXHIBIT 10

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.

(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

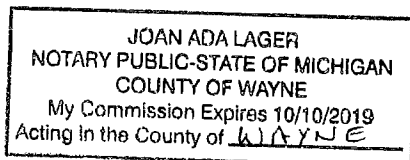
Subscribed and sworn to before me this

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 48186 • 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



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. Poore

SIGNATURE OF PROJECT REPRESENTATIVE:

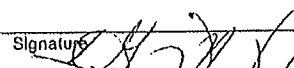
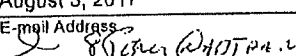
[Signature]

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) _____

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. <u>Transfers</u> include deeds, land contracts, transfers involving trusts or wills, certain long-term leases and interest in a business. See Page 2 for list. <input type="checkbox"/> Land Contract <input type="checkbox"/> Lease <input type="checkbox"/> Deed <input type="checkbox"/> Other (specify) _____			
11. Was property purchased from a financial institution? <input type="checkbox"/> Yes <input type="checkbox"/> No		12. Is the transfer between related persons? <input type="checkbox"/> Yes <input type="checkbox"/> No	
14. If you financed the purchase, did you pay market rate of interest? <input type="checkbox"/> Yes <input type="checkbox"/> No		13. Amount of Down Payment	
		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. <input type="checkbox"/> Transfer from one spouse to the other spouse. <input type="checkbox"/> Change in ownership solely to exclude or include a spouse. <input type="checkbox"/> Transfer between certain family members *(see page 2). <input type="checkbox"/> Transfer of that portion of a property subject to a life lease or life estate (until the life lease or life estate expires). <input type="checkbox"/> Transfer to effect the foreclosure or forfeiture of real property. <input type="checkbox"/> Transfer by redemption from a tax sale. <input type="checkbox"/> 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. <input type="checkbox"/> Transfer resulting from a court order unless the order specifies a monetary payment. <input type="checkbox"/> Transfer creating or ending a joint tenancy if at least one person is an original owner of the property (or his/her spouse). <input type="checkbox"/> Transfer to establish or release a security interest (collateral). <input type="checkbox"/> Transfer of real estate through normal public trading of stocks. <input type="checkbox"/> Transfer between entities under common control or among members of an affiliated group. <input type="checkbox"/> Transfer resulting from transactions that qualify as a tax-free reorganization. <input type="checkbox"/> Transfer of qualified agricultural property when the property remains qualified agricultural property and affidavit has been filed. <input type="checkbox"/> Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed. <input type="checkbox"/> Transfer of land with qualified conservation easement (land only - not improvements). <input type="checkbox"/> 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 734-744-9956 E-mail Address 			

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
SL-1710N-B

5 -
21 -
3,478.70
WO 3p. 20 u

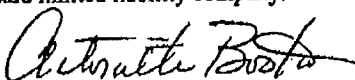
2017287260 Page 2 of 3

[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:

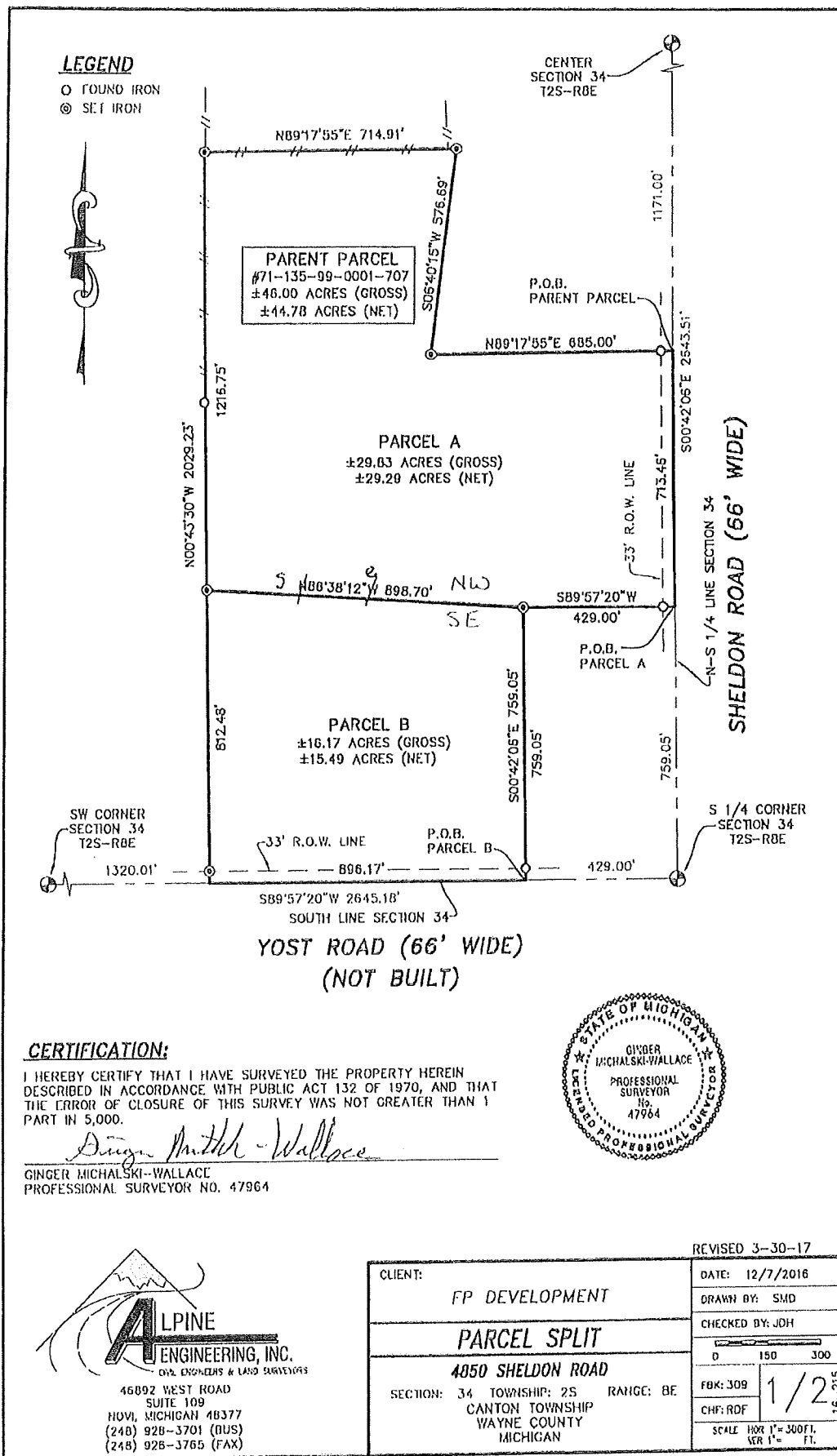
Sullivan Ward Asher & Patton, P.C.
A. Stuart Tompkins, Esq.
25800 Northwestern Highway
Suite 1000
Southfield, Michigan 48075

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 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.
Not
Date 11/9/17 *Eric R. [Signature]* Not Examined
WAYNE COUNTY TREASURER Clerk *[Signature]*



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 SHELDON 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 SHELDON 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°42'06"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:

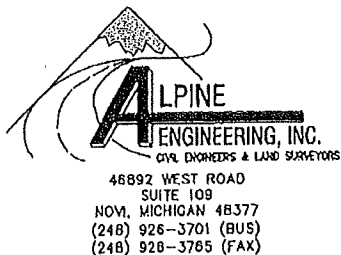
BEARINGS ARE BASED ON PREVIOUS SURVEYS OF RECORD.

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: SMO	
PARCEL SPLIT		CHECKED BY: JOH	
4850 SHELDON ROAD		0 150 300	
SECTION: 34 TOWNSHIP: 2S RANGE: 8E		FBK: 309 2/2	
CANTON TOWNSHIP		CHP: RDF	
WAYNE COUNTY		SCALE HOR 1"=300 FT.	
MICHIGAN		VER 1"= FT.	

EXHIBIT B

Date: Tue, 18 Apr 2017

Notes: Tree Clearing

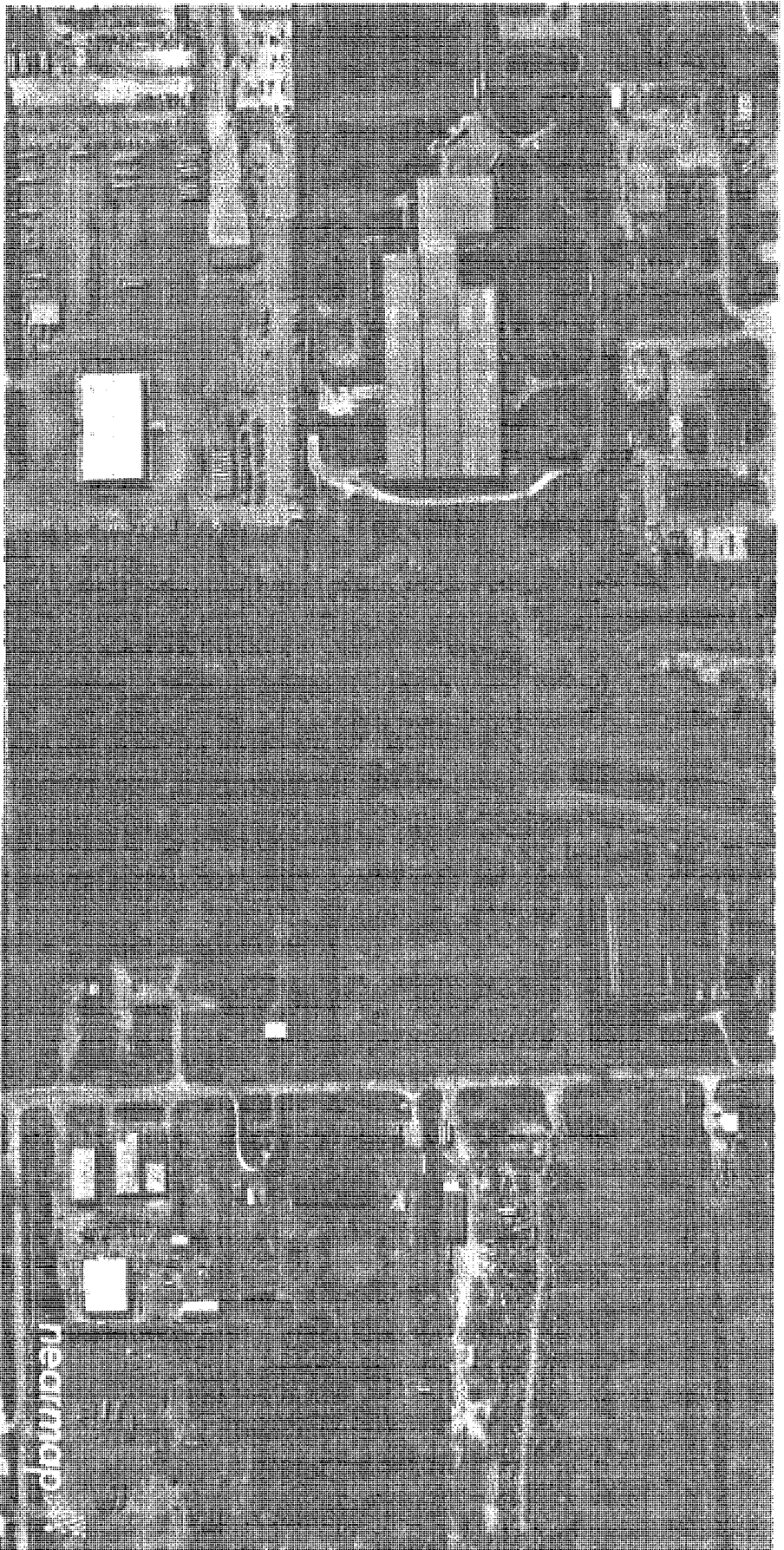


EXHIBIT C



July 14, 2017

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

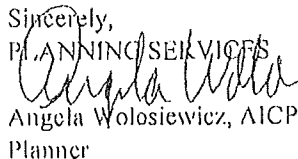
Re: Frank O' Real Estate Holdings Property Split
File No: File: 135-PS-3887 Section 34

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

EXHIBIT D

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-Percy 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

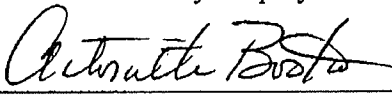
5-
21
3,478.70
WD 3p. 20 u

[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 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 titles owed to any other entities.


No. 17913 Date 8/17 Eric R. Johnson Not Examined
WAYNE COUNTY TREASURER Clerk 

EXHIBIT E

Date: Fri, 20 Oct 2017

Notes: Tree Clearing

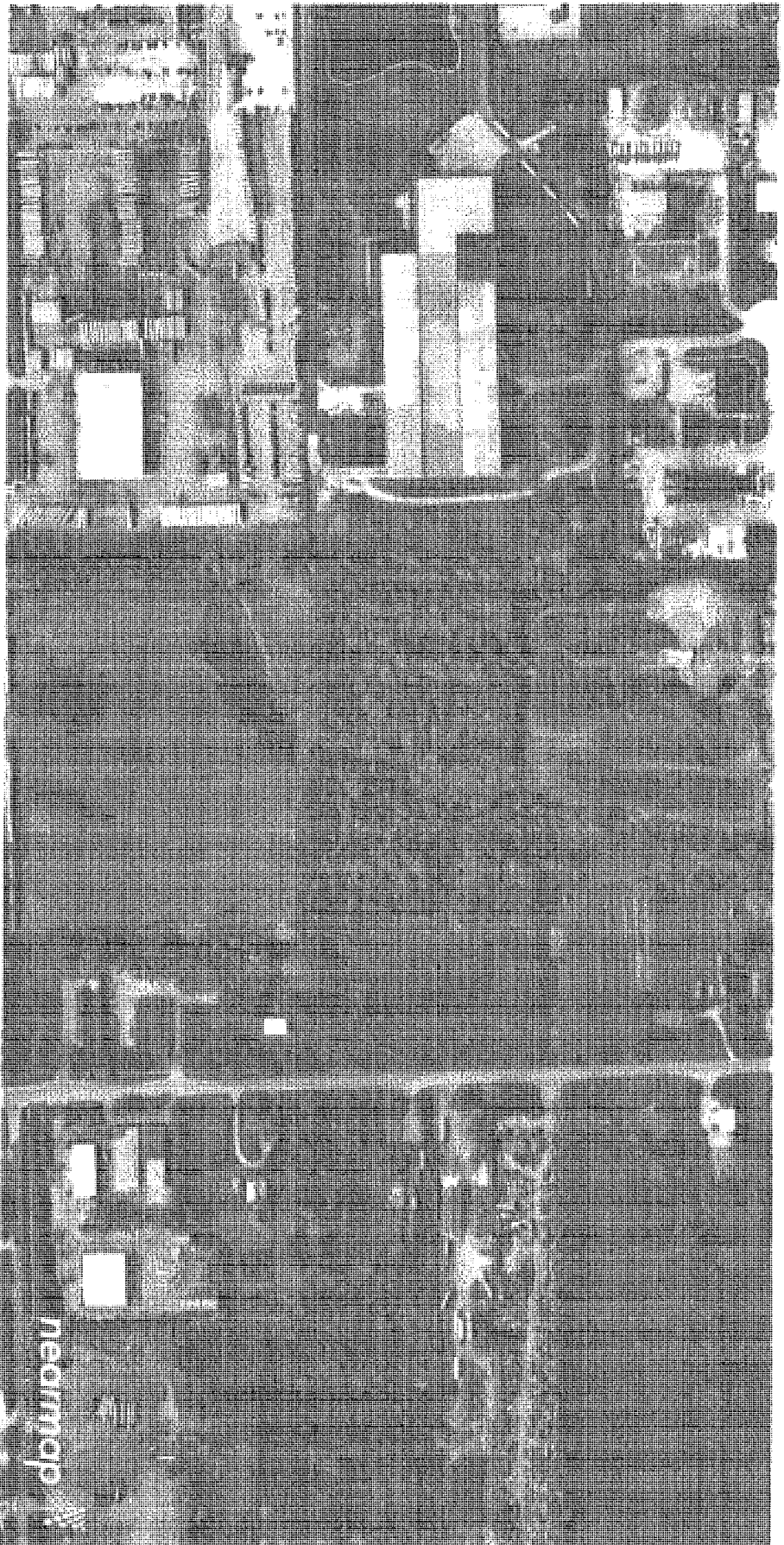


EXHIBIT F



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

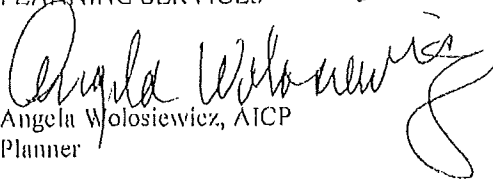
Dear Ms. Michalski-Wallace:

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/le

cc: file

Tim Fuus, Director
734/394-5160
Building & Inspection Services
734/394-5209

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



EXHIBIT G



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

Nicole Borsh
GIS Mapping Specialist

NB/lc

Enc.

Tim Fias, 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



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

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

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

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

See attached legal description	
29.83 Ac.	

Parent/Parents
135-99-0001-707

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

Child/Children

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				F.P. Development, LLC		File No. 135-PS-3887		

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.

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

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

NEW Electronic Data Processing Number(Child)

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
Exempt	Supervisor	
Split	X	Parcel B on survey
Combine	Appraiser	
Revise	Letter/Memo	
Name	Application	
Road	Owner	
Alley	Other	
Vacate	WD	X EXC L
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
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

ACREAGE DESCRIPTION SHEET

NEW Electronic Data Processing Number				YEAR	2018	CANTON	UNIT NO.:
MAP	SUB	LOT	SPLIT	SHEET	1 OF 1		TWP
135-99-0001-709				Change Slip		Remarks	
NAME				1-17-18 - nb		File No. 135-PS-3887	
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 ¼ 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.

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



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

VIOLATION NOTICE:

VN No. CC-0001103

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

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

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

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

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


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

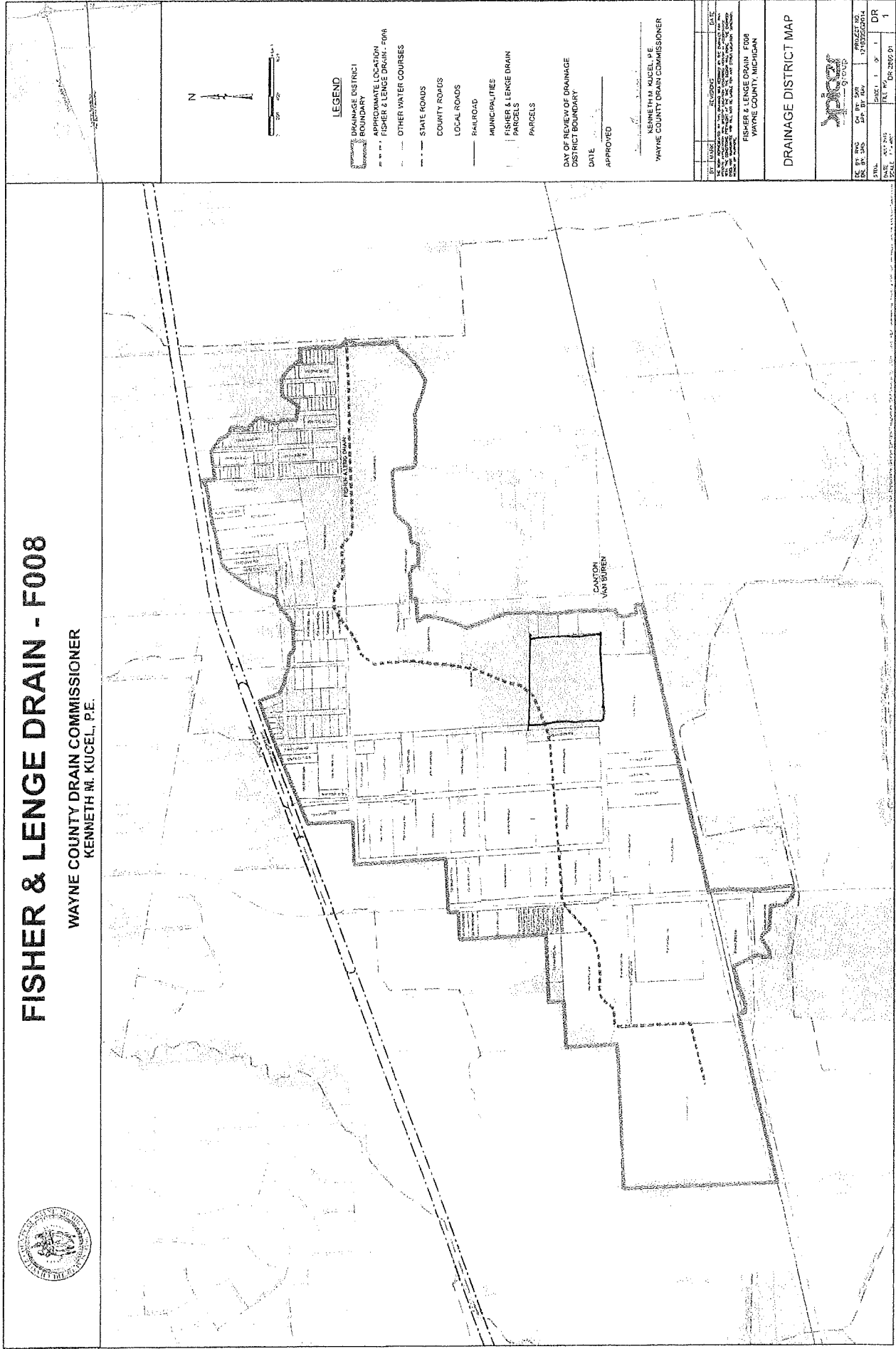
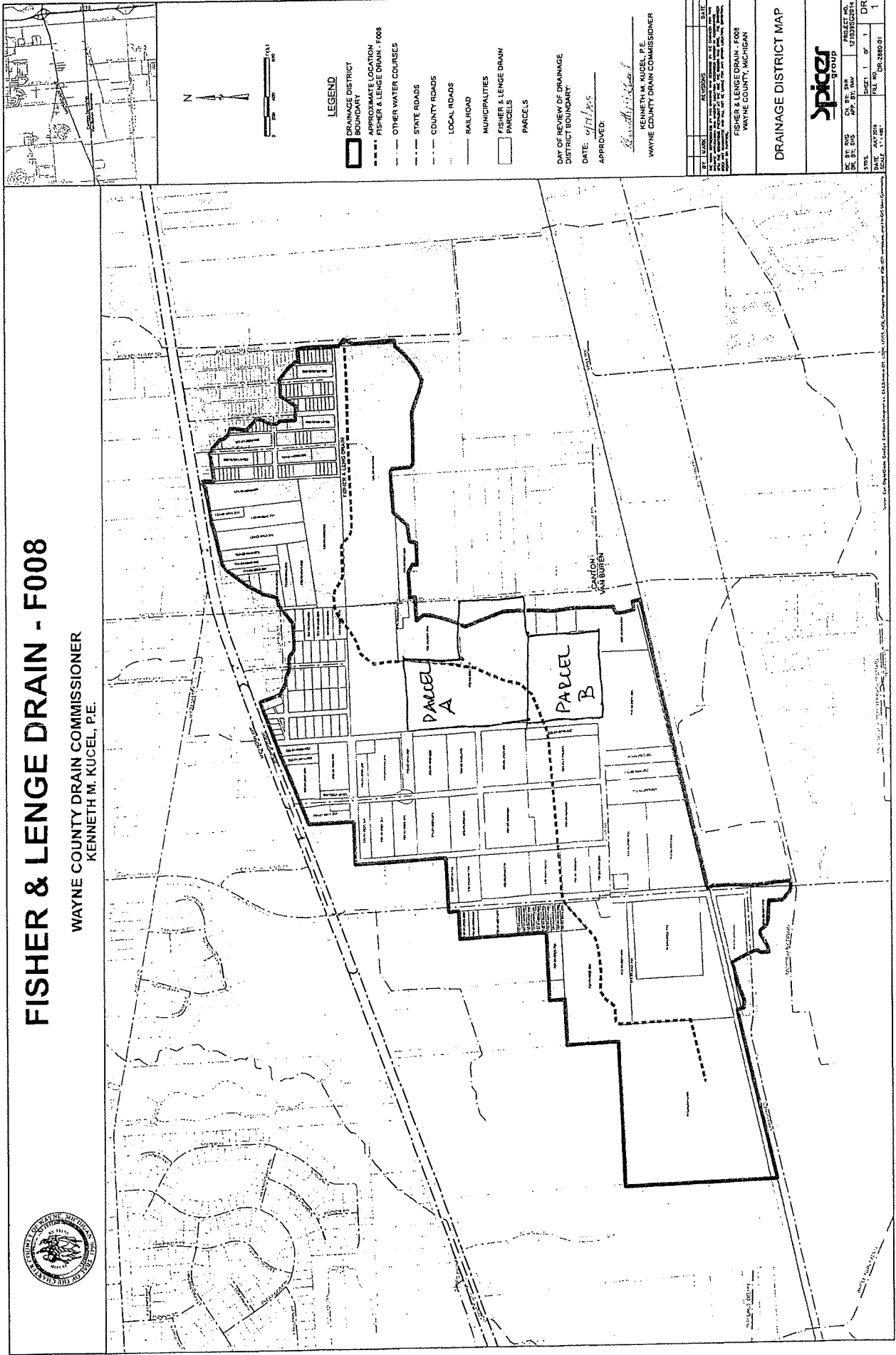


EXHIBIT L

FISHER & LENGE DRAIN - F008

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



LEGEND

- DRAINAGE DISTRICT BOUNDARY
- APPROXIMATE LOCATION 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: 11/9/2018

APPROVED:

Kenneth M. Kucel

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

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DRAINAGE DISTRICT MAP

spicer group

DC DT: RVG	CH DT: SHR	PROJECT NO. 121039SG2010
DR DT: SHS	APP. DT: DAV	
STDS	SHEET 1 of 1	DR 1
DATE JULY 2010	FILE NO.	DR-2080-01
SCALE 1"=400'		

EXHIBIT M

[illegible]

[illegible]

EXHIBIT N

10/30/2018

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

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,

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

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:

10/30/2018

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

- 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.

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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

10/30/2018

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

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

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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.

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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

EXHIBIT P

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.

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

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EXHIBIT Q



Department of
AGRICULTURE
& Rural Development

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

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

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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.

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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.

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

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 secondary trees and has operated in Hillsdale and Albion, he said.

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/>

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

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

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.

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

10/30/2018

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

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.

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.

EXHIBIT 11

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

CHARTER TOWNSHIP OF CANTON,
a Michigan municipal corporation,

Plaintiff/Counter-Defendant,

v.

44650, INC., a Michigan corporation,

Defendant/Counter-Plaintiff.

Case No. 18-014569-CE
Hon. Susan L. Hubbard

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Stephanie Simon Morita (P53864)
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**PLAINTIFF/COUNTER-DEFENDANT CHARTER TOWNSHIP OF CANTON'S
RESPONSES TO DEFENDANT/COUNTER-PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS**

REQUEST FOR ADMISSION No 1: Admit that removing trees from one's own private property does not, of itself, constitute a nuisance at common law.

RESPONSE: Canton objects to Request for Admission No. 1 as irrelevant and not within the scope of MCR 2.312(A) and MCR 2.302(B). The existence of a nuisance at common law has not been alleged in this matter. The Request also presents a hypothetical situation and does not request admission of the truth of a fact or the application of law to fact. Further, the request is vague, ambiguous and overbroad. Without waiving such objection, Canton admits that removing trees from one's own property does not of itself constitute a nuisance at common law.

REQUEST FOR ADMISSION No 2: Admit that the removal of trees from the Property has not resulted in flooding, fires, the spread of infectious disease, or any other tangible injury to neighboring properties.

RESPONSE: Canton objects to Request for Admission No. 2 as irrelevant and not within the scope of MCR 2.312(A) and MCR 2.302(B). The request is directed to the elements of a nuisance *per accidens*, which is not at issue in this case. The extensive removal of trees from the Property without applying for and obtaining a permit violates the Zoning Ordinance. By operation of law, violation of the Zoning Ordinance is presumed to cause injury to the health, safety and general welfare of the public and does not depend on circumstances. Without waiving this objection, Canton admits that it presently has no evidence that the unpermitted removal of trees from the Property has resulted in flooding, fires, the spread of infectious disease, or any other tangible injury to neighboring properties.

REQUEST FOR ADMISSION No 3: Admit that the Township has no evidence that anyone has been injured by the removal of the trees from the Property.

RESPONSE: Canton objects to Request for Admission No. 3 as irrelevant and not within the scope of MCR 2.312(A) and MCR 2.302(B). The request is directed to the elements of a nuisance *per accidens*, which is not at issue in this case. The extensive removal of trees from the Property without applying for and obtaining a permit violates the Zoning Ordinance. By operation of law, violation of the Zoning Ordinance is presumed to cause injury to the health, safety and general welfare of the public and does not depend on circumstances. Without waiving this objection, Canton admits that it presently has no evidence that anyone has been injured by the unpermitted removal of trees from the Property.

REQUEST FOR ADMISSION No 4: Admit that at the time of the removal of trees made the basis of this lawsuit, the Property contained at least some invasive species covered by the Insect Pest and Plant Disease Act, MCL 286.201 et seq.

RESPONSE: Canton is unable to admit or deny this request, as Defendant/Counter-Plaintiff never submitted a tree survey to Canton or identified the items that were removed from the property. Further, Defendant/Counter-Plaintiff clear-cut the Property without notifying Canton and before Canton had the opportunity to inspect the property.

REQUEST FOR ADMISSION No 5: Admit that at the time of the removal of trees made the basis of this lawsuit the Property contained at least some invasive species covered by the Michigan Insect Pest and Plant Diseases Law, MCL 286.251 et seq.

RESPONSE: Canton is unable to admit or deny this request, as Defendant/Counter-Plaintiff never submitted a tree survey to Canton or identified the items that were removed from the property. Further, Defendant/Counter-Plaintiff clear-cut the Property without notifying Canton and before Canton had the opportunity to inspect the property.

REQUEST FOR ADMISSION No 6: Admit that at the time of the removal of trees made the basis of this lawsuit the property contained at least some scrub brush, trash, and other objects or vegetation that are not protected under the Tree Ordinance.

RESPONSE: Canton objects to Request for Admission No. 6, as irrelevant and not within the scope of MCR 2.312(A) and 2.302(B). Canton has not enforced and does not seek to enforce the Forest Preservation and Tree Clearing Ordinance for removal of trash, objects or vegetation that is not regulated under the Ordinance. Without waiving this objection, Canton is unable to admit or deny this request, as Defendant/Counter-Plaintiff never submitted a tree survey to Canton or identified what was removed from the property. Further, Defendant/Counter-Plaintiff clear-cut the Property without notifying Canton and before Canton Township had the opportunity to inspect the property.

REQUEST FOR ADMISSION No 7: Admit that the Defendant's planting of Christmas trees on the property is not harmful to the health, safety, or general welfare of the Defendant's neighbors.

RESPONSE: Canton objects to Request for Admission No. 7 as irrelevant and not within the scope of MCR 2.312(A) and MCR 2.302(B). The request is directed to the elements of a nuisance *per accidens*, which is not at issue in this case. Without waiving this objection, Canton denies this request, as the planting of Christmas trees on the Property is an agricultural use not permitted on the Property, which is zoned LI-Light Industrial, and violates the Zoning Ordinance. By operation of law, violation of the Zoning Ordinance is presumed to cause injury to the health, safety and general welfare of the public and does not depend on circumstances.

REQUEST FOR ADMISSION No 8: Admit that prior to the adoption of the Tree Ordinance, citizens of the Township had a right to remove trees from their property without a tree removal permit.

RESPONSE: Canton objects to this Request as irrelevant, vague, ambiguous and overbroad, and is an improper hypothetical, and therefore is not within the scope of MCR 2.302(B) and MCR 2.312(A). Without waiving this objection, Canton admits that prior to the adoption of the original ordinance in the 1970s by Canton Township, which was the predecessor to the Forest Preservation and Tree Clearing Ordinance, property owners were generally allowed to remove trees from their own property without a tree removal permit *from the Township*. This does not include permits that may have been required by other governmental agencies under regulations governing the type and/or location of the work performed. In further response, Canton states that under the Forest Preservation and Tree Clearing Ordinance, only removal of trees with a diameter breast height ("dbh") in the Ordinance of 6 inches or greater requires a permit. Existing agricultural/farming uses, and commercial nurseries and trees farms are also exempt from the permit requirements. Canton Code of Ordinances, Appendix A, Sec. 5A.05(B). Additionally, certain species of plants and trees, and dead or dying trees do not require a permit prior to removal.

REQUEST FOR ADMISSION No 9: Admit that under the Tree Ordinance it would be unlawful for Defendant to remove trees on its property for the purpose of selling them as timber, unless it applied for and received a tree removal permit from the Township.

RESPONSE: Canton objects to Request for Admission No. 9 as it is not within the scope of MCR 2.312(A) and MCR 2.302(B). The Request presents a hypothetical situation and does not request admission of the truth of a fact or the application of law to fact. Further, it is irrelevant, vague, ambiguous and overbroad. Without waiving this objection, Canton denies this Request as phrased. Under the Forest Preservation and Tree Clearing Ordinance, only removal of trees with a diameter breast height (“dbh”) of 6 inches or greater requires a permit. Commercial nursery and tree farms are also exempt from the permit requirements. Canton Code of Ordinances, Appendix A, Sec. 5A.05(B). Additionally, certain species of trees do not require a permit prior to removal. In further response, Canton states that agricultural uses are not permitted on the Property.

REQUEST FOR ADMISSION No 10: Admit that under the Tree Ordinance it would be unlawful for Defendant to remove trees on its property for the purpose of using them as firewood, unless it applied for and received a tree removal permit from the Township.

RESPONSE: Canton objects to Request for Admission No. 10, as it is not within the scope of MCR 2.312(A) and MCR 2.302(B). The Request presents a hypothetical situation and does not request admission of the truth of a fact or the application of law to fact. Further, it is irrelevant, vague, ambiguous and overbroad. Without waiving this objection, Canton denies this Request. Under the Forest Preservation and Tree Clearing Ordinance, only removal of trees with a diameter breast height (“dbh”) of 6 inches or greater require a permit. Additionally, a permit is not required for removal of trees from existing agricultural/farming operations, existing commercial nursery/tree farms, and occupied lots of less than two acres. Removal of dead or dying trees also does not require a permit. Canton Code of Ordinances, Appendix A, Sec. 5A.05(A) and (B).

REQUEST FOR ADMISSION No 11: Admit that under the Tree Ordinance it would be unlawful for Defendant to remove trees on its property for the purpose of building a house, unless it applied for and received a tree removal permit from the Township.

RESPONSE: Canton objects to Request for Admission No. 11, as it is not within the scope of MCR 2.312(A) and MCR 2.302(B). The Request presents a hypothetical situation and does not request admission of the truth of a fact or the application of law to fact. Further, it is irrelevant, vague, ambiguous and overbroad. Without waiving these objections, Canton denies this Request. Under the Forest Preservation and Tree Clearing Ordinance, only removal of trees with a diameter breast height (“dbh”) of 6 inches or greater require a permit. Additionally, a permit is not required for removal of trees from existing agricultural/farming operations, existing commercial nursery/tree farms, and occupied lots of less than two acres. Canton Code of Ordinances, Appendix A, Sec. 5A.05(B). In further response, Canton states that Defendant/Counter-Plaintiff would not be permitted to construct a house on the property, as residential uses are not permitted on the Property, which is zoned LI-Light Industrial.

REQUEST FOR ADMISSION No 12: Admit that under the Tree Ordinance it would be unlawful for Defendant to remove trees on its property for the purpose of wood working or boat building, unless it applied for and received a permit from the Township.

RESPONSE: Canton objects to Request for Admission No. 12, as it is not within the scope of MCR 2.312(A) and MCR 2.302(B). The Request presents a hypothetical situation and does not request admission of the truth of a fact or the application of law to fact. Further, it is irrelevant, vague, ambiguous and overbroad. Without waiving this objection, Canton denies this Request. Under the Forest Preservation and Tree Clearing Ordinance, only removal of trees with a diameter breast height ("dbh") of 6 inches or greater requires a permit. Canton Code of Ordinances, Appendix A, Sec. 5A.05(A).

REQUEST FOR ADMISSION No 13: Admit that the Tree Ordinance applies to the removal of a tree even if the removal of that tree would not constitute a nuisance in fact.

RESPONSE: Canton objects to Request for Admission No. 13. The Request presents a hypothetical situation, and does not request admission of the truth of a fact or the application of law to fact. It is also vague and ambiguous, and overbroad, and is therefore not within the scope of MCR 2.312(A) and MCR 2.302(B). Without waiving these objections, Canton denies this Request. Under the Forest Preservation and Tree Clearing Ordinance, only removal of trees with a diameter breast height ("dbh") of 6 inches or greater requires a permit. Additionally, a permit is not required for removal of trees from existing agricultural/farming operations, existing commercial nursery/tree farms, and occupied lots of less than two acres. Canton Code of Ordinances, Appendix A, Sec. 5A.05(B). In further response, Canton states that the existence of a nuisance in fact is not at issue in this matter.

REQUEST FOR ADMISSION No 14: Admit that at the time of the removal of trees made the basis of this lawsuit, the market value of the Property was less than \$450,000.

RESPONSE: Canton Township is unable to admit or deny this fact as: (1) The Township has no involvement in the sale or purchase of private property and therefore has no knowledge or information of the details of any individual transaction; (2) The Township has not been provided with a copy of any property appraisal for the Property at issue in this matter; and (3) the Township has not conducted its own independent appraisal of the Property.

**ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC**

/s/ Anne McClorey McLaughlin

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CHARTER TOWNSHIP OF CANTON

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the MiFile system which will send notification of such filing to all counsel of record.

/s/ Dawn Hallman