City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Agenda
City Commission

Monday, July 12, 2021
6:00 PM
Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

Approval of the Agenda

Announcements

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

Presentation(s)

1. K9 Nitro-Recognition of Services, by Police Chief Blake Rieboldt and K9 Officer John Waldo
2. Swearing in of K9 Zepp, by Police Chief Blake Rieboldt
3. Police-Fire Pension Board, by Chair Mike Archocosky

Public Hearing(s)

4. Proposed Rezoning of 1651 S. Front Street - Roll Call Vote
5. Planned Unit Development Major Amendment Request - Roll Call Vote
6. Vault Marquette Brownfield Plan - Roll Call Vote

7. **Consent Agenda**

   7.a. Approve the minutes of the June 28, 2021 regular Commission meeting
   7.b. Approve the minutes of the June 30, 2021 Commission work session
   7.c. Approve the total bills payable in the amount of $1,349,388
   7.d. Application for License to Use City Property Adjacent to 3152 Island Beach Road
   7.e. Outback Art Fair - Special Event Permit
   7.f. Superior Kayaking Company - Lease Agreement

Unfinished Business

8. Ordinance #695 - Street Performers - Roll Call Vote
9. Ordinance #696 - Presque Isle Open Burning Regulation - Roll Call Vote

New Business

10. MBLP Broadband Resolution- Roll Call Vote

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

Comments from the Commission

Comments from the City Manager

Adjournment

Kyle Whitney, City Clerk

This meeting will be live on Marquette Charter Cable Channel 191 and will be broadcast (subject to temporary programming) as follows: Tuesday at 11a.m. and 6p.m.; Wednesday at noon and 8 p.m.; Thursday at 4 a.m. and 1 p.m.; Friday at 6 p.m.; Saturday at noon; and Sunday at 8 a.m. and 4 p.m.

If you require assistance to participate in any meeting, program or activity offered by the City of Marquette, please provide advanced notice to City of Marquette ADA Coordinator Eric Stemen at 906-225-8978 or via email at estemen@marquettemi.gov.

Agenda Date: 7/12/2021

Public Hearing(s)
Proposed Rezoning of 1651 S. Front Street - Roll Call Vote

BACKGROUND:

The Planning Commission (PC) held a public hearing on June 1, 2021 for the consideration of Rezoning of the property at 1651 S. Front Street, from General Commercial with Conditional Rezoning (GC-CR) to General Commercial (GC). This property was Rezoned with Conditions, from Mixed Use (M-U) to General Commercial with Conditions on April 27, 2020.

The following motion was made:

> *It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 4-1 that after conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is not consistent with the Community Master Plan and does not meet the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission deny 03-REZ-06-21 as presented.*
> *Yes: M. Dunn, S. Mittlefehldt, M. Larson, J. Cardillo*
> *No: W. Premeau*

Under procedures in accordance with section 54.1405 of the Land Development Code, staff has scheduled this public hearing and provided the Planning Commission's case file with all background materials, and their June 1st meeting minutes for consideration along with their recommendation.

The City Commission scheduled this public hearing at the June 14, 2021 regular meeting.

FISCAL EFFECT:

None.

RECOMMENDATION:

Following the Public Hearing, deny the rezoning request as recommended by the Planning Commission.

ALTERNATIVES:

Approve the rezoning request, adopt Ordinance #698 and authorize the Mayor and City Clerk to sign.

ATTACHMENTS:

Description

- 03-REZ-06-21 PC Case File with late correspondence
- 06-01-21 PC meeting minutes
- Ord #698

CITY OF MARQUETTE
PLANNING AND ZONING
1100 WRIGHT ST
MARQUETTE, MI 49855
(906) 228-0425
www.marquettemi.gov

MEMORANDUM

TO: Planning Commission
FROM: Andrea Landers, Zoning Official
DATE: May 25, 2021
SUBJECT: **03-REZ-06-21 – 1651 S. Front St. (PIN: 0020251)**

The Planning Commission is being asked to make a recommendation to the City Commission regarding a request to rezone the property located at 1651 S. Front Street which is zoned **General Commercial with Conditional Rezoning (GC CR)** to be zoned **General Commercial (GC)**.

Please see the attached Staff Report for more specific information regarding the application.

RECOMMENDED ACTION:

The Planning Commission should review the application and support information provided in this packet, conduct a public hearing, and determine whether or not the proposed rezoning of the above property is appropriate and meets Section 54.1405 Zoning Ordinance Amendment Procedures, and make a recommendation to the City Commission.

It is also highly recommended that any motion regarding the request include the following or similar language:

> *After conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is (consistent / not consistent) with the Community Master Plan and (meets / does not meet) the requirements of the Land Development Code Section 54.1405 and hereby recommends that the City Commission (approve / deny) 03-REZ-06-21 (as presented / for the following reasons / with the following conditions).*

STAFF FILE REPORT/ANALYSIS

Completed by Andrea M. Landers – Zoning Official
Reviewed by David Stensaas – City Planner and Zoning Administrator

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Case #: 03-REZ-06-21

Date: May 25, 2021

Project/Application: Rezoning request from **General Commercial with Conditional Rezoning (GC CR)** to be zoned **General Commercial (GC).**

Location: 1651 S. Front St.

Parcel ID: 0020251

Available Utilities: Natural Gas, Electricity, City Water, City Sewer, and Garbage Collection.

Year Built: 1987 per Assessing Records.

Current Zoning: GC CR, General Commercial with Conditional Rezoning

Surrounding Zoning:
North: MDR – Medium Density Residential
South: LDR – Low Density Residential
East: LDR – Low Density Residential
West: PUD – Planned Unit Development & GC – General Commercial

Zoning Districts and Standards:

Current Zoning with Conditions

GC CR, General Commercial with Conditional Rezoning District

Eliminated uses are struck-through and highlighted

(A) Intent
The GC district is intended to provide suitable areas for businesses that cater to both the local and regional market. Uses include offices, retail and wholesale businesses, services, light manufacturing, comparison shopping and land intensive establishments, which may be located so as to utilize a common parking area, or may provide their own parking separately. The GC district also serves as a transition between the urban development character of the CBD and the suburban character of the RC district.

(B) Permitted Principal Uses	(C) Special Land Uses
• Accessory Building or Structure • ~~Bar~~ * • Child Care Center or Day Care Center • ~~Drive-Through Uses~~* • Emergency Services • Farmers' Markets • Food Production, Minor • ~~Gasoline Service Stations~~* • Health Services • Hospice • ~~Hotel or Motel~~* • Indoor Recreation • Medical Hospital Related Accessory Uses • Medical Hospital Related Office • Medical Hospital Related Uses • Office, Medical • Office, Professional • Outdoor Food and Beverage Service • Outdoor Recreation • Public or Governmental Building • Religious Institution • Restaurant, Indoor Service • Retail Business, Indoor • Retail Sales, Outdoor Temporary • Service Establishment • ~~Storage, Open~~* • Veterinary Clinic (Domestic Animals Only) • ~~Wholesale Trade Establishment~~*	• Accessory Use, Non-Single Family Residential Lots • Hospital • Manufacturing, Light • ~~Marihuana Designated Consumption Establishment~~* • Marihuana Grower – Class A • Marihuana Grower – Class B • Marihuana Grower – Class C • ~~Marihuana Grower – Excess~~* • Marihuana Microbusiness Light Manufacturing • Marihuana Processor – Light Manufacturing • Marihuana Retailer • Marihuana Safety Compliance Facility • ~~Marihuana Secure Transporters~~* • ~~Pet Boarding Facility~~* • Recreational Use, Public • ~~Retail Business, Outdoor Permanent~~* • Vehicle Repair and Service • ~~Wireless Telecommunications Facilities~~*
Where there is a discrepancy between *Section 54.306* and this table, *Section 54.306* shall prevail.	

(D) Dimensional Regulations			
Lot, Coverage, and Building Height Standards		***Minimum Setbacks***	
Min. Lot Area (sq. ft.)	None	*Front Yard (ft.)*	0 *(E), (F)*
Min. Lot Width (ft.)	None	*Side Yard (one) (ft.)*	15 *(H)*
Max. Impervious Surface Coverage (%)	*(R)*	*Side Yard (total of 2) (ft.)*	30 *(H)*
Max. Building Height of Primary Building (ft.) (O)	40	*Rear Yard (ft.)*	20
Max. Building Height of Accessory Building	18		
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

54.403 Footnotes to Schedule of Regulations

(D) Minimum Front Yard Setback in the M-U and GC Districts. In the M-U and GC districts, the minimum front yard setback is 0 ft. if there is at least a 10-foot distance between the front lot line and the curb/edge of the street. If there is not at least a 10-foot distance between the front lot line and the curb/edge of the street in these districts, the minimum front yard setback shall be increased accordingly so that the minimum separation distance between a structure and the curb/edge of the street is at least ten (10) feet.

(E) Maximum Front Yard Parking in the M-U and GC Districts. Although there are no maximum front yard setbacks in the M-U and GC districts, refer to Article 9 for the maximum allowable parking in the front yard of the M-U (Section 54.902(E)(3)) and GC (Section 54.902(E)(4)) districts.

(H) Reduced Side Yard Setbacks in the M-U, CBD, and GC Districts. In the M-U, CBD, and GC districts the side yards may be eliminated under the following conditions:

(1) The side walls are of fireproof construction and are wholly without opening.

(2) The zoning of the adjacent property is M-U, CBD, GC, Marquette Downtown Waterfront District, or Third Street Corridor District.

(O) Height Exemptions. There shall be no height restriction on chimneys, flagpoles, public monuments, and wireless telecommunications facilities except when they are part of a special land use.

(R) Storm Water Management. For all uses except Single-family and Two-family dwelling units, please refer to Section 54.803 Storm Water Management. For Single-family and Two-family dwelling units, please refer to item Q above.

Section 54.1003 Landscaping Design Requirements

(D) Buffer and Greenbelt Requirements.

Intent. It is the intent of this section to provide suitable transitional yards for the purpose of reducing the impact of and conflicts between incompatible land uses abutting district boundaries.

Buffer and Greenbelt Schedule. On any lot abutting a zoning district boundary, no structure, building or part thereof shall hereafter be erected, constructed, altered or maintained closer to the district boundary line than specified (in feet) in the following schedule (*Figure 50*). Where indicated, landscape planting is required.

Figure 50 - Required Buffer and Greenbelt Specifications:

DISTRICT IN WHICH BUFFER & GREENBELT IS REQUIRED	ABUTTING DISTRICT							
	LDR & MDR	MFR	MHP	M-U	CBD	GC & RC	C, M, & CR	I-M & BLP
GC	40 (b)	40 (b)	N.A.	N.A.	N.A.	N.A.	N.A.	20 (b)

(b) Within this buffer area, one (1) tree per 20 linear feet is required, and at least 50% of the trees must be evergreen trees. Where a CBD, GC, or RC district abuts any residential district, a fence at least four (4) feet in height shall be erected within the business district boundary, except where the boundary is a public right-of-way.

Proposed Zoning

Section 54.313 GC, General Commercial District

(A) Intent
The GC district is intended to provide suitable areas for businesses that cater to both the local and regional market. Uses include offices, retail and wholesale businesses, services, light manufacturing, comparison shopping and land intensive establishments, which may be located so as to utilize a common parking area, or may provide their own parking separately. The GC district also serves as a transition between the urban development character of the CBD and the suburban character of the RC district.

(B) Permitted Principal Uses	(C) Special Land Uses
• Accessory Building or Structure • Bar • Child Care Center or Day Care Center • Drive-Through Uses • Emergency Services • Farmers' Markets • Food Production, Minor • Gasoline Service Stations • Health Services • Hospice • Hotel or Motel • Indoor Recreation • Medical Hospital Related Accessory Uses • Medical Hospital Related Office • Medical Hospital Related Uses • Office, Medical • Office, Professional • Outdoor Food and Beverage Service • Outdoor Recreation • Public or Governmental Building • Religious Institution • Restaurant, Indoor Service • Retail Business, Indoor • Retail Sales, Outdoor Temporary • Service Establishment • Storage, Open • Veterinary Clinic (Domestic Animals Only) • Wholesale Trade Establishment	• Accessory Use, Non-Single Family Residential Lots • Hospital • Manufacturing, Light • Marihuana Designated Consumption Establishment • Marihuana Grower – Class A • Marihuana Grower – Class B • Marihuana Grower – Class C • Marihuana Grower – Excess • Marihuana Microbusiness Light Manufacturing • Marihuana Processor – Light Manufacturing • Marihuana Retailer • Marihuana Safety Compliance Facility • Marihuana Secure Transporters • Pet Boarding Facility • Recreational Use, Public • Retail Business, Outdoor Permanent • Vehicle Repair and Service • Wireless Telecommunications Facilities
Where there is a discrepancy between *Section 54.306* and this table, *Section 54.306* shall prevail.	

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Min. Lot Width (ft.)	None	*Side Yard (one) (ft.)*	15 *(H)*
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Max. Building Height of Primary Building (ft.) (O)	40	*Rear Yard (ft.)*	20
Max. Building Height of Accessory Building	18		
Max. Building Height (stories)	-		
Where there is a discrepancy between *Article 4* and this table, *Article 4* shall prevail.			

54.403 Footnotes to Schedule of Regulations

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(G) Maximum Front Yard Parking in the M-U and GC Districts. Although there are no maximum front yard setbacks in the M-U and GC districts, refer to Article 9 for the maximum allowable parking in the front yard of the M-U (Section 54.902(E)(3)) and GC (Section 54.902(E)(4)) districts.

(I) Reduced Side Yard Setbacks in the M-U, CBD, and GC Districts. In the M-U, CBD, and GC districts the side yards may be eliminated under the following conditions:

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(2) The zoning of the adjacent property is M-U, CBD, GC, Marquette Downtown Waterfront District, or Third Street Corridor District.

(O) Height Exemptions. There shall be no height restriction on chimneys, flagpoles, public monuments, and wireless telecommunications facilities except when they are part of a special land use.

(R) Storm Water Management. For all uses except Single-family and Two-family dwelling units, please refer to Section 54.803 Storm Water Management. For Single-family and Two-family dwelling units, please refer to item Q above.

Section 54.1003 Landscaping Design Requirements

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Intent. It is the intent of this section to provide suitable transitional yards for the purpose of reducing the impact of and conflicts between incompatible land uses abutting district boundaries.

Buffer and Greenbelt Schedule. On any lot abutting a zoning district boundary, no structure, building or part thereof shall hereafter be erected, constructed, altered or maintained closer to the district boundary line than specified (in feet) in the following schedule (*Figure 50*). Where indicated, landscape planting is required.

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	LDR & MDR	MFR	MHP	M-U	CBD	GC & RC	C, M, & CR	I-M & BLP
GC	40 (b)	40 (b)	N.A.	N.A.	N.A.	N.A.	N.A.	20 (b)

(b) Within this buffer area, one (1) tree per 20 linear feet is required, and at least 50% of the trees must be evergreen trees. Where a CBD, GC, or RC district abuts any residential district, a fence at least four (4) feet in height shall be erected within the business district boundary, except where the boundary is a public right-of-way.

Relationship to Applicable Land Development Code Standards (staff comments in bold text):

Section 54.1405 Zoning Ordinance Amendment Procedures

(A) Initiation of Amendments. The City Commission, the Planning Commission, or the property owner (including a designated agent of the property owner) may at any time originate a petition to amend or change the zoning district boundaries pursuant to the authority and procedure established by Act 110 of Public Acts of 2006 as amended. Changes in the text of this Ordinance may be proposed by the City Commission, Planning Commission, or any interested person or organization.

(B) Application for Amendment. Each petition by one (1) or more persons for an amendment shall be submitted to the Zoning Administrator. Documents to support the application may be filed with the Zoning Administrator. A fee, as established by the City Commission shall accompany each petition, except those originated by the Planning Commission or City Commission.

Application accepted.

(C) Amendment Review Procedures.

(1) Public Hearing. The staff liaison to the Planning Commission shall set a time and date for a public hearing, and the public hearing shall be noticed in accordance with *Section 54.1406*. The Planning Commission may refuse to schedule a hearing on a petition for rezoning which includes any portion of a site considered for rezoning in the previous six (6) months.

The public hearing before the Planning Commission is scheduled for 6:00 p.m. on Tuesday, June 1, 2021.

(2) Planning Commission Consideration of the Proposed Amendment. The Planning Commission shall review the proposed amendment, together with any reports and recommendations from staff, consultants, other reviewing agencies, and any public comments. The Planning Commission shall identify and evaluate all factors relevant to the petition, including the appropriate criteria listed in this Section. Following the public hearing, the Planning Commission shall make a recommendation to the City Commission to either approve or deny the petition and report its findings to the City Commission.

The Planning Commission is being asked to make a recommendation at their meeting on June 1, 2021.

(3) City Commission Consideration of the Proposed Amendment. The City Commission, upon recommendation from the Planning Commission, shall either schedule a public hearing or deny the petition. This hearing shall be advertised in accordance with *Section 54.1406*. If determined to be necessary, the City Commission may refer the amendment back to the Planning Commission for further consideration. In the case of an amendment to the Official Zoning Map, the City Commission shall approve or deny the amendment, based upon its consideration of the criteria contained in this Ordinance.

TBD.

(D) Standards of Review for Amendments. In considering any petition for an amendment to the text of this Ordinance or to the Official Zoning Map, the Planning Commission and City Commission shall consider the following criteria that apply to the application in making findings, recommendations, and a decision. The Planning Commission and City Commission may also take into account other factors or considerations that are applicable to the application but are not listed below.

(1) Master Plan**.** Consistency with the recommendations, goals, policies and objectives of the Master Plan and any sub-area plans. If conditions have changed since the Master Plan was adopted, consistency with recent development trends in the area shall be considered.

This property is designated for *Mixed Use* on the *Future Land Use Map* of the Community Master Plan and is designated as a *Mixed Use zoning* district on the *Proposed Zoning Map*. These designations were adopted with the 2015 amendments to the CMP after careful consideration, and they remained unchanged as of the December 2018 update to the CMP.

Excerpt of the Master Plan Future Land Use Map



Please see p.3-31 and p.3-32 of the Community Master Plan (CMP), regarding Rezoning Requests. The Planning Commission must review all supporting information, this report in particular, and the attachment titled *Rezoning Considerations for Planning Commissions,* and hold a public hearing for community input prior to making a determination of whether to recommend approval or the request as presented or not.

(2) Intent and Purpose of the Zoning Ordinance. Consistency with the basic

intent and purpose of this Zoning Ordinance.

Please see above - "Zoning District and Standards".

(3) Street System. The capability of the street system to safely and efficiently accommodate the expected traffic generated by uses permitted in the requested zoning district.

This portion of S. Front Street is classified as an "urban principal arterial" per the Community Master Plan (see p.6-6), therefore vehicular traffic volumes are high.

(4) Utilities and Services. The capacity of the City's utilities and services sufficient to accommodate the uses permitted in the requested district without compromising the health, safety, and welfare of the City.

There are no problems anticipated.

(5) Changed Conditions Since the Zoning Ordinance Was Adopted or Errors to the Zoning Ordinance. That conditions have changed since the Zoning Ordinance was adopted or there was an error in the Zoning Ordinance that justifies the amendment.

No conditions have changed nor was there an error in the Zoning Ordinance.

(6) No Exclusionary Zoning**.** That the amendment will not be expected to result in exclusionary zoning.

The proposal would not result in exclusionary zoning.

(7) Environmental Features. If a rezoning is requested, compatibility of the site's physical, geological, hydrological and other environmental features with the uses permitted in the proposed zoning district.

The proposed zoning is compatible with site's physical, geological, hydrological and other environmental features with the uses permitted in the proposed zoning district.

(8) Potential Land Uses and Impacts. If a rezoning is requested, compatibility of all the potential uses allowed in the proposed zoning district with surrounding uses and zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic impacts, aesthetics, infrastructure and potential influence on property values.

The compatibility of adding the following permitted uses: bar, drive through uses, gasoline service stations hotel or motel, open storage, wholesale trade establishment as permitted uses; and the following special land uses: marihuana designated consumption establishment, marihuana grower – excess, marihuana secure transporter, pet boarding facility, retail business – outdoor permanent, wireless

telecommunication facilities in this location is an issue that the Planning Commission must determine.

(9) Relationship to Surrounding Zoning Districts and Compliance with the Proposed District. If a rezoning is requested, the boundaries of the requested rezoning district will be reasonable in relationship to surrounding zoning districts, and construction on the site will be able to meet the dimensional regulations for the requested zoning district.

The proposed zoning is the same as the zoning to the northwest across S. Front Street.

(10) Alternative Zoning Districts**.** If a rezoning is requested, the requested zoning district is considered to be more appropriate from the City's perspective than another zoning district.

The Master Plan recommendation and the previous zoning of MU was more appropriate as the adjacent zoning districts are all residential, however, the property has been exclusively used for commercial purposes since at least the 1980s.

(11) Rezoning Preferable to Text Amendment, Where Appropriate**.** If a rezoning is requested to allow for a specific use, rezoning the land is considered to be more appropriate than amending the list of permitted or special land uses in the current zoning district to allow the use.

A text amendment would not be appropriate as the request is to go from GC CR to GC, which is essentially adding the uses that were removed from the GC CR request.

(12) Isolated or Incompatible Zone Prohibited**.** If a rezoning is requested, the requested rezoning will not create an isolated or incompatible zone in the neighborhood.

The Planning Commission must determine if the proposed zoning would create an isolated or incompatible (see item #8 above) zone. The land use of this site has been of a commercial nature for the vast majority of the past four decades, so new commercial uses alone would not create an isolating effect. As well, there is another GC zoning district less than 90' to the northwest of the subject property.

(E) Notice of Adoption of Amendment. Following adoption of an amendment by the City Commission, one (1) notice of adoption shall be filed with the City Clerk and one (1) notice shall be published in a newspaper of general circulation in the City within fifteen (15) days after adoption, in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended. Amendments shall take effect eight (8) days after publication. A record of all amendments shall be maintained by the City Clerk. A Zoning Map shall be maintained by the City Clerk or his/her designee, which shall identify all map amendments.

The required notice of adoption shall include all of the following information:

(1) In the case of a newly adopted Zoning Ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by the City of Marquette."
(2) In the case of an amendment(s) to the existing Zoning Ordinance, either a summary of the regulatory effect of the amendment(s), including the geographic area affected, or the text of the amendment(s).
(3) The effective date of the ordinance or amendment.

If the proposed zoning amendment is adopted by the City Commission the requirements of this section will be met.

(H) Rezoning (Zoning Map Amendment) with Conditions. Pursuant to MCL 125.3405, the City Commission, following a public hearing and recommendation by the Planning Commission, may approve a petition for a rezoning with conditions requested by a property owner. The standards of this section shall grant a property owner the option of proposing conditions for the development and use of property in conjunction with an application for rezoning. Such conditions may be proposed at the time the application for rezoning is filed, or at a subsequent point in the process of review of the proposed rezoning.

This section is not applicable, as this is not a rezoning with conditions request.

Additional Comments:

The Planning Commission should consider the request, and the information provided in this analysis, and provide a recommendation to the City Commission.

Previous Rezoning Request for this Parcel:

01-REZ-03-20 – 1651 S. Front St. (PIN: 0020251): TDK LLC is requesting to rezone the property located at 1651 S. Front Street that is zoned Mixed-Use (M-U) to be zoned General Commercial with Conditional Rezoning (GC CR).

- On March 17, 2020, the Planning Commission conducted a public hearing and discussed the proposed rezoning, in accordance with procedures established in the Land Development Code for evaluating rezoning requests and in the administrative procedures for processing such a request. The following motion was made to recommend approval of the request:
    - It was moved by M. Larson, seconded by M. Dunn, and carried (4-1) that after conducting a public hearing and review of the application and STAFF FILE REVIEW/ANALYSIS for 01- REZ-03-20, the Planning Commission finds that the proposed rezoning with conditions is consistent with the intent of the Community Master Plan and meets the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission approve 01-REZ-03-20 with the following condition – that the Marijuana Grower-Excess classification is struck from the list of allowable uses proposed by the applicant.
      Yes: M. Dunn, J. Cardillo, W. Premeau, M. Larson; No: A. Andres

- At their March 30, 2020 meeting, the City Commission directed that a Public Hearing be held for the requested Conditional Rezoning.
- At the April 27, 2020, City Commission meeting the following motion was made:
    - The main motion, as amended, then became to approve the conditional rezoning of 1651 S. Front Street with the stipulation that the Marijuana Grower-Excess and the Designated Consumption Establishment classifications are struck from the list of allowable uses.
    - This amended main motion was then adopted by 5-2 by roll call vote, with Mayor Pro-Tem Hill and Commissioner Schloegel voting no.

Attachments:

1. Rezoning Application
2. Area Map
3. Block Map
4. Area Zoning Map
5. Future Land Use Map from the Master Plan
6. Proposed Zoning Map from the Master Plan
7. Photos of the site
8. Publication Notice
9. Excerpt from the 3-17-20 Planning Commission minutes
10. Excerpt from the 4-27-20 City Commission minutes
11. *Rezoning Considerations for Planning Commissions* document
12. *Spot Zoning Considerations*
13. Correspondence

Mail to:
Municipal Service Center
Community Development Office
1100 Wright St.
Marquette, MI 49855

CITY OF MARQUETTE
REZONING APPLICATION

CITY STAFF USE

Parcel ID#: 002025 1 File #: 03-REZ-06-21 Date: 5-4-21

Hearing Date: 6-1-21 Application Deadline (including all support material): 5-4-21

* **FEE $540** Receipt #: 235267 Check #: 006431 Received by and date: DAG 5-4-21

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED, THE REZONING REQUEST WILL NOT BE SCHEDULED FOR A HEARING UNTIL IT HAS BEEN VERIFIED THAT ALL OF THE INFORMATION REQUIRED IS PRESENT AT THE TIME OF THE APPLICATION - NO EXCEPTIONS!

If you have any questions, please call 228-0425 or e-mail alanders@marquettemi.gov. Please refer to www.marquettemi.gov to find the following information:

- ☑ Planning Commission page for filing deadline and meeting schedule
- ☑ Section 54.1405 Zoning Ordinance Amendment Procedures from the Land Development Code

Please review the attached excerpts from the Land Development Code

APPLICANT CONTACT INFORMATION

PROPERTY OWNER

Name: TDK L.L.C.

Address: 1001 ALLOUEZ

City, State, Zip: MARQUETTE MI 49855

Phone #: 906.360.0119

Email: TERRYDOYLE119@GMAIL.COM

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

APPLICANT/OWNERS REPRESENTATIVE

RG DESIGN CO. JASON GAUTHIER FOR TRANQUILITY FIELDS

Name:

Address: 333 W WASHINGTON ST.

City, State, Zip: MARQUETTE, MI 49855

Phone #: 906 273.1041

Email: JASON@RG-DESIGN.CO

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

PROPERTY INFORMATION

Location (Street Address): 1651 S. FRONT ST. Property Identification Number: 002025 1

Size of property (frontage / depth / sq. ft. or acres): 200' x 190' +/- 0.697 ACRES

Current Zoning District: GC - CR Proposed Zoning District: GC

Surrounding Zoning Districts: North MDR East LDR South LDR West PUD - CONDO

Legal Description: JOHN & KIM. BURTS ADD., LOTS - 37, 38 & 39...
SEE ATTACHED PROPERTY INFO, INCLUDING LEGAL DESCRIPTION

PRE-APPLICATION CONFERENCE

It is strongly encouraged that all applicants and their representatives meet with City of Marquette staff prior to submitting an application for a rezoning. A pre-application meeting with staff allows for a preliminary review of the application procedures, project timelines, compliance with the City Master Plan, and other project criteria, and prevents most situations that usually results in a project being postponed.

PHASING OF APPLICATION

Public hearings before the Planning Commission are held on the first meeting of the month only. Applications and support materials must be submitted twenty (20) business days prior to the public hearing date.

The Marquette City Commission is also required to hold a public hearing and take final action on a rezoning request. This usually takes two City Commission meetings, one to schedule the public hearing and one to hold the public hearing.

SIGNATURE

I hereby certify the following:

1. I am the legal owner of the property for which this application is being submitted, or I have submitted a written statement by the property owner that allows me to apply on their behalf.
2. I desire to apply for a rezoning of the property indicated in this application with the attachments and the information contained herein is true and accurate to the best of my knowledge.
3. The requested rezoning would not violate any deed restrictions attached the property involved in the request.
4. I have read the attached excerpt of the Land Development Code and understand the necessary requirements that must be completed.
5. I understand that the payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that is does not assure approval of the plan.
6. I acknowledge that this application is not considered filed and complete until all of the required information has been submitted and all required fees have been paid in full. Once my application is deemed complete, I will be assigned a date for a public hearing before the Planning Commission that may not necessarily be the next scheduled meeting due to notification requirements and Planning Commission Bylaws.
7. I acknowledge that this form is not in itself a rezoning but only an application for a rezoning and is valid only with procurement of applicable approvals.
8. I authorize City Staff and the Planning Commission members to inspect the site.

Property Owner Signature: _____ Date: 5/3/2021

Section 54.1405 Zoning Ordinance Amendment Procedures

(A) Initiation of Amendments. The City Commission, the Planning Commission, or the property owner (including a designated agent of the property owner) may at any time originate a petition to amend or change the zoning district boundaries pursuant to the authority and procedure established by Act 110 of Public Acts of 2006 as amended. Changes in the text of this Ordinance may be proposed by the City Commission, Planning Commission, or any interested person or organization.

(B) Application for Amendment. Each petition by one (1) or more persons for an amendment shall be submitted to the Zoning Administrator. Documents to support the application may be filed with the Zoning Administrator. A fee, as established by the City Commission shall accompany each petition, except those originated by the Planning Commission or City Commission.

(C) Amendment Review Procedures.

(1) Public Hearing. The staff liaison to the Planning Commission shall set a time and date for a public hearing, and the public hearing shall be noticed in accordance with *Section 54.1406*. The Planning Commission may refuse to schedule a hearing on a petition for rezoning which includes any portion of a site considered for rezoning in the previous six (6) months.

(2) Planning Commission Consideration of the Proposed Amendment. The Planning Commission shall review the proposed amendment, together with any reports and recommendations from staff, consultants, other reviewing agencies, and any public comments. The Planning Commission shall identify and evaluate all factors relevant to the petition, including the appropriate criteria listed in this Section. Following the public hearing, the Planning Commission shall make a recommendation to the City Commission to either approve or deny the petition and report its findings to the City Commission.

(3) City Commission Consideration of the Proposed Amendment. The City Commission, upon recommendation from the Planning Commission, shall either schedule a public hearing or deny the petition. This hearing shall be advertised in accordance with *Section 54.1406*. If determined to be necessary, the City Commission may refer the amendment back to the Planning Commission for further consideration. In the case of an amendment to the Official Zoning Map, the City Commission shall approve or deny the amendment, based upon its consideration of the criteria contained in this Ordinance.

(D) Standards of Review for Amendments. In considering any petition for an amendment to the text of this Ordinance or to the Official Zoning Map, the Planning Commission and City Commission shall consider the following criteria that apply to the application in making findings, recommendations, and a decision. The Planning Commission and City Commission may also take into account other factors or considerations that are applicable to the application but are not listed below.

(1) Master Plan. Consistency with the recommendations, goals, policies and objectives of the Master Plan and any sub-area plans. If conditions have changed since the Master Plan

was adopted, consistency with recent development trends in the area shall be considered.

(2) **Intent and Purpose of the Zoning Ordinance.** Consistency with the basic intent and purpose of this Zoning Ordinance.

(3) **Street System.** The capability of the street system to safely and efficiently accommodate the expected traffic generated by uses permitted in the requested zoning district.

(4) **Utilities and Services.** The capacity of the City's utilities and services sufficient to accommodate the uses permitted in the requested district without compromising the health, safety, and welfare of the City.

(5) **Changed Conditions Since the Zoning Ordinance Was Adopted or Errors to the Zoning Ordinance.** That conditions have changed since the Zoning Ordinance was adopted or there was an error in the Zoning Ordinance that justifies the amendment.

(6) **No Exclusionary Zoning.** That the amendment will not be expected to result in exclusionary zoning.

(7) **Environmental Features.** If a rezoning is requested, compatibility of the site's physical, geological, hydrological and other environmental features with the uses permitted in the proposed zoning district.

(8) **Potential Land Uses and Impacts.** If a rezoning is requested, compatibility of all the potential uses allowed in the proposed zoning district with surrounding uses and zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic impacts, aesthetics, infrastructure and potential influence on property values.

(9) **Relationship to Surrounding Zoning Districts and Compliance with the Proposed District.** If a rezoning is requested, the boundaries of the requested rezoning district will be reasonable in relationship to surrounding zoning districts, and construction on the site will be able to meet the dimensional regulations for the requested zoning district.

(10) **Alternative Zoning Districts.** If a rezoning is requested, the requested zoning district is considered to be more appropriate from the City's perspective than another zoning district.

(11) **Rezoning Preferable to Text Amendment, Where Appropriate.** If a rezoning is requested to allow for a specific use, rezoning the land is considered to be more appropriate than amending the list of permitted or special land uses in the current zoning district to allow the use.

(12) **Isolated or Incompatible Zone Prohibited.** If a rezoning is requested, the requested rezoning will not create an isolated or incompatible zone in the neighborhood.

(E) **Notice of Adoption of Amendment.** Following adoption of an amendment by the City Commission, one (1) notice of adoption shall be filed with the City Clerk and one (1) notice

shall be published in a newspaper of general circulation in the City within fifteen (15) days after adoption, in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended. Amendments shall take effect eight (8) days after publication. A record of all amendments shall be maintained by the City Clerk. A Zoning Map shall be maintained by the City Clerk or his/her designee, which shall identify all map amendments. The required notice of adoption shall include all of the following information:

(1) In the case of a newly adopted Zoning Ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by the City of Marquette."

(2) In the case of an amendment(s) to the existing Zoning Ordinance, either a summary of the regulatory effect of the amendment(s), including the geographic area affected, or the text of the amendment(s).

(3) The effective date of the ordinance or amendment.

(F) Protest Petition of Amendment. An amendment under this Chapter is subject to a protest petition in accordance with Section 403 of the Michigan Zoning Enabling Act, PA 110 of 2006 (as amended), summarized as follows:

(1) Petition Submittal Requirements. The protest petition shall be presented to the City Commission before final legislative action on the amendment, and shall be signed by one (1) or more of the following:

(a) The owners of at least 20% of the area of land included in the proposed change. Publicly owned land shall be excluded in calculating the 20% land area.

(b) The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change. Publicly owned land shall be excluded in calculating the 20% land area.

(2) Vote. If a protest petition is filed, approval of the amendment to this Ordinance shall require a 2/3 vote of the City Commission.

(G) Referendum. Within thirty (30) days following the passage of the Zoning Ordinance, a petition signed by a number of registered electors may be filed with the City Clerk requesting submission of this Ordinance or part of this Ordinance to the electors for their approval, in accordance with Section 402 of the Michigan Zoning Enabling Act, PA 110 of 2006, as amended. Whenever there is a conflict between this section of the Zoning Ordinance or P.A. 110 of 2006, as amended, the provisions of P.A. 110 of 2006, as amended, shall govern.

(H) Rezoning (Zoning Map Amendment) with Conditions. Pursuant to MCL 125.3405, the City Commission, following a public hearing and recommendation by the Planning Commission, may approve a petition for a rezoning with conditions requested by a property owner. The standards of this section shall grant a property owner the option of proposing conditions for the development and use of property in conjunction with an application for rezoning. Such

conditions may be proposed at the time the application for rezoning is filed, or at a subsequent point in the process of review of the proposed rezoning.

(1) Conditional Rezoning Agreement. The conditions attached to the rezoning shall be set forth by submitting a conditional rezoning agreement listing the proposed conditions. A conditional rezoning agreement shall contain the following information:

(a) A statement acknowledging that the rezoning with conditions was proposed by the applicant to induce the City to grant the rezoning, and that the City relied upon such proposal and would not have granted the rezoning but for the terms spelled out in the conditional rezoning agreement; and, further agreement and acknowledgment that the conditions and conditional rezoning agreement are authorized by all applicable state and federal law and constitution, and that the Agreement is valid and was entered on a voluntary basis, and represents a permissible exercise of authority by the City.

(b) Agreement and understanding that the property in question shall not be developed or used in a manner inconsistent with the conditional rezoning agreement.

(c) Agreement and understanding that the approval and conditional rezoning agreement shall be binding upon and inure to the benefit of the property owner and City, and their respective heirs, successors, assigns, and transferees.

(d) The date upon which the rezoning with conditions becomes void, as specified in *Section 54.1405(H)(3)*, below. If an extension of approval is granted by the City Commission, a new conditional rezoning agreement with the new expiration date shall be recorded.

(e) Agreement and understanding that, if a rezoning with conditions becomes void in the manner provided in *Section 54.1405(H)(3)*, below, no development shall be undertaken or permits for development issued until a new zoning district classification of the property has been established.

(f) Agreement and understanding that each of the requirements and conditions in the conditional rezoning agreement represents a necessary and reasonable measure which, when considered with all other conditions and requirements, is roughly proportional to the increased impact created by the use represented in the approved rezoning with conditions, taking into consideration the changed zoning district classification and the specific use authorization granted.

(g) A legal description of the property affected by the rezoning with conditions.

(h) Development regulations affected by the conditions of rezoning, including but not limited to density, setbacks, height, site coverage, signs, parking, architecture, lighting, landscaping etc.

(i) Revocation of approval provisions returning the property to its original zoning designation if the developer violates the terms of the agreement.

(j) A conditional rezoning agreement may contain a conditional rezoning plan as an attachment, with such detail and inclusions proposed by the applicant and approved by the City Commission in accordance with this Section, following recommendation by the Planning Commission. Inclusion of a conditional rezoning plan as an attachment to a conditional rezoning agreement shall not replace the requirement for Preliminary and Final Site Plan, Subdivision, Condominium, or Special Land Use review and approval, as the case may be.

(2) Amendment to Conditional Rezoning Agreement. A proposed amendment to a conditional rezoning agreement shall be reviewed and approved in the same manner as a new rezoning with conditions.

(3) Period of Approval. Unless extended by the City Commission for good cause, the rezoning with conditions shall expire following a period of two (2) years from the effective date of the rezoning unless bona fide development of the property pursuant to approved building and other permits required by the City commences within the two (2) year period and proceeds diligently and in good faith as required by ordinance to completion.

(a) Expiration or Extension. In the event bona fide development has not commenced within two (2) years from the effective date of the rezoning, the rezoning with conditions and the conditional rezoning agreement shall be void and of no effect. The landowner may apply for a one (1) year extension one (1) time. The request must be submitted to the Zoning Administrator before the two (2) year time limit expires. The landowner must provide to the City Commission good cause as to why the extension should be granted. If an extension of approval is granted by the City Commission, a new conditional rezoning agreement with the new expiration date shall be recorded.

(b) Effect of Expiration. If the rezoning with conditions becomes void in the manner provided in this section, either or both of the following actions may be taken:

(i) The property owner may seek a new rezoning of the property; and/or

(ii) Pursuant to MCL 125.3405, the land shall revert to its former zoning classification following the process for approval of a rezoning with conditions.

(4) Zoning Map. If approved, the zoning district classification of the rezoned property shall consist of the district to which the property has been rezoned accompanied by a reference to "CR Conditional Rezoning." The Zoning Map shall specify the new zoning district plus a reference to CR. By way of example, the zoning classification of the property may be "CBD Central Business District with CR Conditional Rezoning," with a Zoning Map designation of "CBD CR."

(5) Review and Approval Process. An application for a rezoning with conditions shall be reviewed following the same process and procedures applicable to a rezoning set forth in *Section 54.1405(C)*, with the exception that the conditional rezoning agreement shall be

executed between the applicant and the City Commission at the time of City Commission approval of a rezoning with conditions.

(6) Recordation of a Conditional Rezoning Agreement. A rezoning with conditions shall become effective following publication in the manner provided by law, and after the conditional rezoning agreement is recorded with the County Register of Deeds.

1651 S FRONT ST MARQUETTE, MI 49855 (Property Address)

Parcel Number: 0020251



Item 1 of 5 3 Images / 2 Sketches

Property Owner: TDK LLC

Summary Information

> Commercial/Industrial Building Summary
- Yr Built: 1987 - # of Buildings: 1
- Total Sq Ft: 2,820

> Property Tax Information found

> Assessed Value: $172,300 | Taxable Value: $118,853

> 5 Building Department records found

Owner and Taxpayer Information

Owner	TDK LLC 1001 ALLOUEZ MARQUETTE, MI 49855	**Taxpayer**	SEE OWNER INFORMATION

General Information for Tax Year 2020

Property Class	COMMERCIAL	**Unit**	52 CITY OF MARQUETTE
School District	MARQUETTE PUBLIC	**Assessed Value**	$172,300
MAP #	52-52-000-202-51	**Taxable Value**	$118,853
D.D.A. DIST.	0	**State Equalized Value**	$170,801
BLDG. TYPE	RESTAURANT	**Date of Last Name Change**	07/17/2008
LAST VISIT	*No Data to Display*	**Notes**	*Not Available*
Historical District	No	**Census Block Group**	*No Data to Display*
T.I.F. DIST.	*No Data to Display*	**Exemption**	*No Data to Display*

Principal Residence Exemption Information

Homestead Date *No Data to Display*

Principal Residence Exemption	June 1st	Final
2021	0.0000 %	-
2020	0.0000 %	0.0000 %

Previous Year Information

Year	MBOR Assessed	Final SEV	Final Taxable
2019	$172,200	$172,200	$116,637
2018	$154,800	$154,800	$113,904
2017	$150,700	$150,700	$111,562

Land Information

Zoning Code	GC-CR	**Total Acres**	0.697
Land Value	$93,000	**Land Improvements**	$77,237
Renaissance Zone	No	**Renaissance Zone Expiration Date**	*No Data to Display*
ECF Neighborhood	COMMERCIAL - RETAIL	**Mortgage Code**	*No Data to Display*
Lot Dimensions/Comments	IREGULAR; SEE SKETCH	**Neighborhood Enterprise Zone**	No

Lot(s)	Frontage	Depth
No lots found		
	Total Frontage: 0.00 ft	**Average Depth: 0.00 ft**

Legal Description

JOHN & WM. BURT'S ADD., LOTS-37, 38, & 39 & THAT PART OF LOT-36 LYING W. OF A LINE DRAWN FROM THE N.W. COR. TO THE S.E. COR. OF SAID LOT-36; ALSO THE S. 10' OF THE VAC. ALLEY LYING N. OF SAID LOTS-37 THRU 39; ALSO ALL OF VAC. SANDSTONE ST. LYING S. OF SAID LOTS-36 THRU 39 (CONTAINS 0.70 A)

Land Division Act Information

Date of Last Split/Combine	*No Data to Display*	**Number of Splits Left**	*Not Available*
Date Form Filed	*No Data to Display*	**Unallocated Div.s of Parent**	*Not Available*
Date Created	*No Data to Display*	**Unallocated Div.s Transferred**	*Not Available*
Acreage of Parent	0.00	**Rights Were Transferred**	Yes
Split Number	0	**Courtesy Split**	No
Parent Parcel	*No Data to Display*		

Sale History

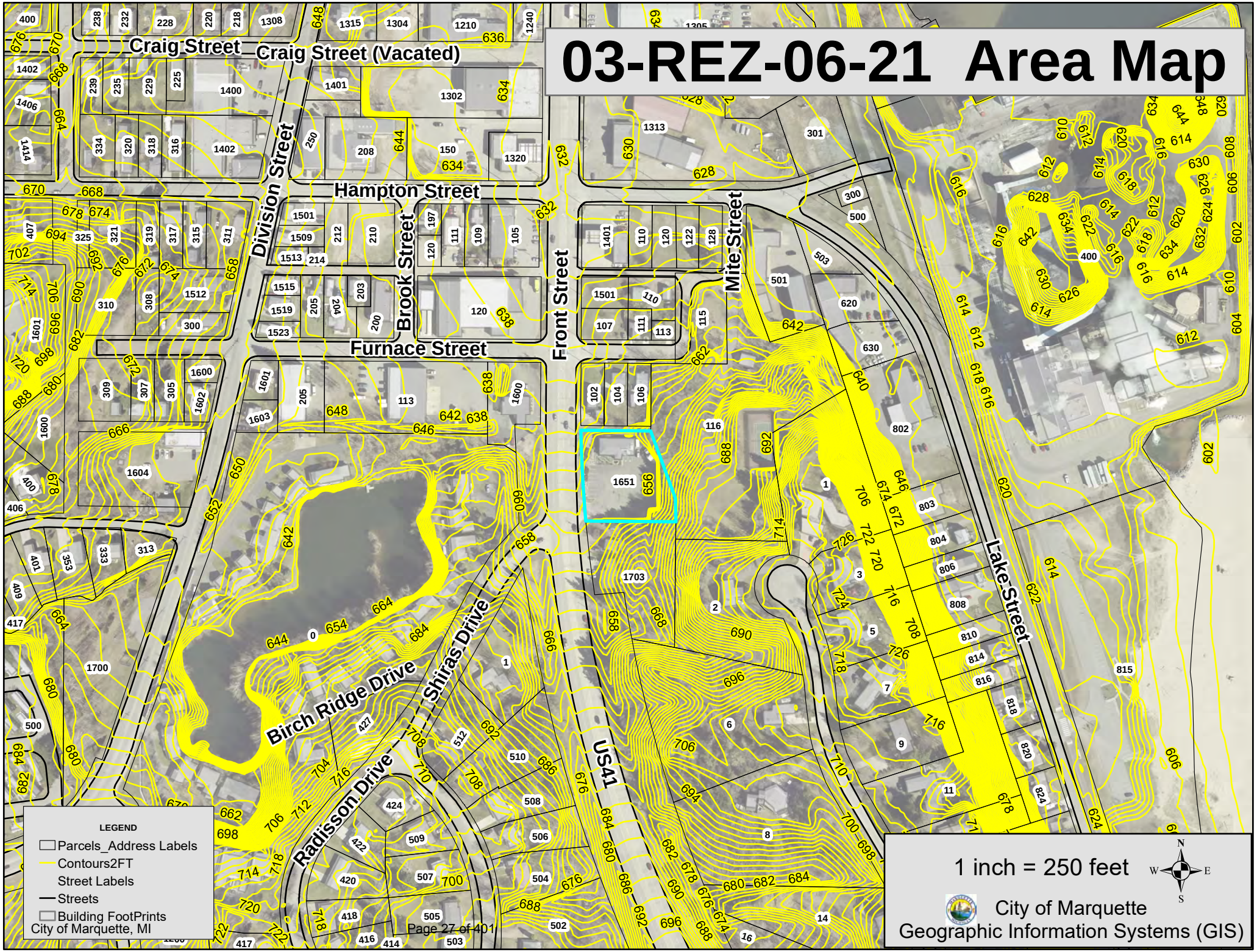
Sale Date	Sale Price	Instrument	Grantor	Grantee	Terms of Sale	Liber/Page	Comments
02/24/2003	$170,000.00	WD	MICHIGAN PIZZA HUT INC	TDK LLC	ARMS-LENGTH	452/771	
07/07/1987	$75,000.00	WD	BRISSON, FREDERICK	E & D PROPERTIES	ARMS-LENGTH	361/321	VACANT COMMERCIAL LAND SALE

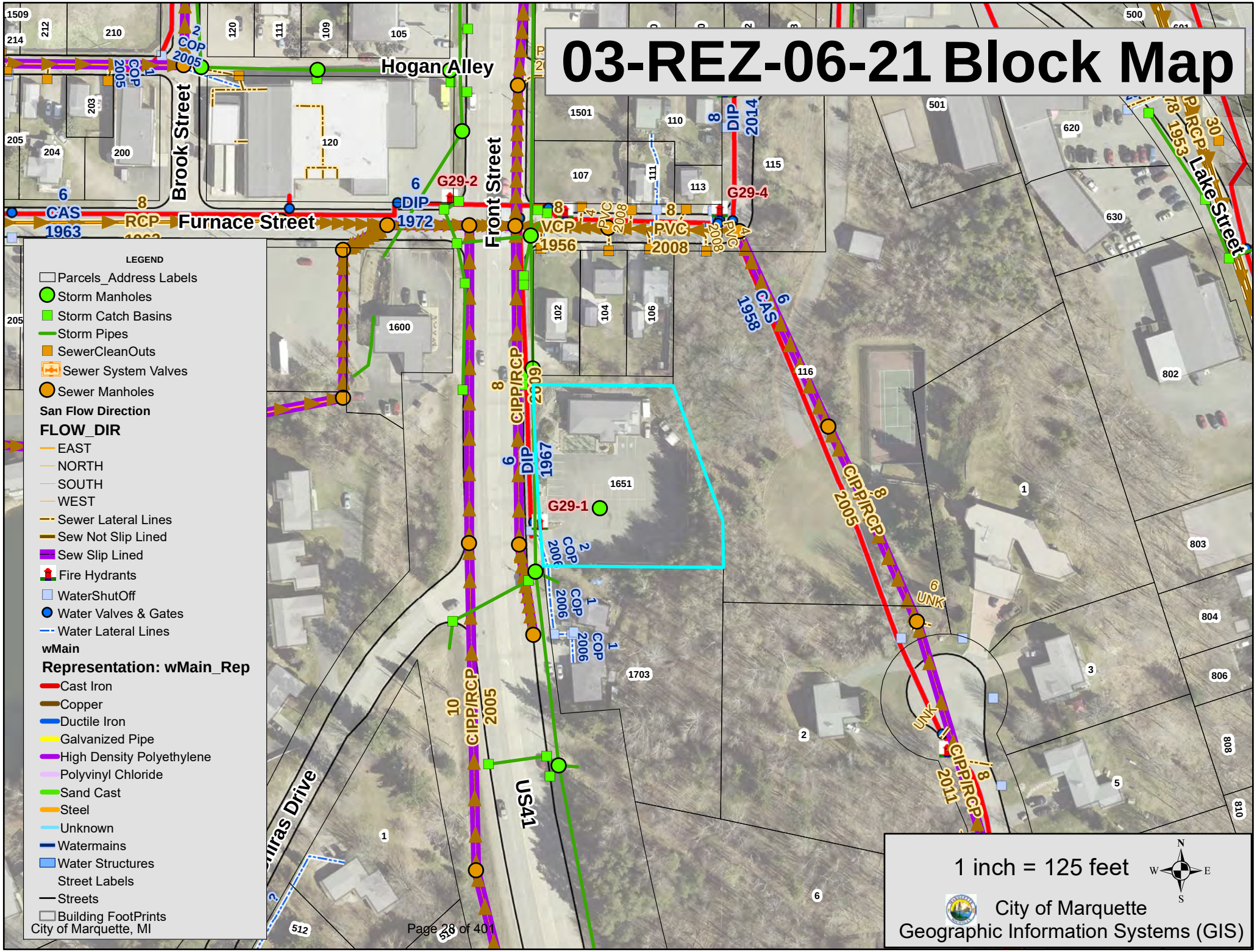
Building Information - 2820 sq ft Restaurants - Fast Food (Commercial)

Floor Area	2,820 sq ft	**Estimated TCV**	$166,290
Occupancy	Restaurants - Fast Food	**Class**	D Frame
Stories Above Ground	1	**Average Story Height**	12 ft
Basement Wall Height	0 ft	**Identical Units**	1
Year Built	1987	**Year Remodeled**	*No Data to Display*
Percent Complete	100%	**Heat**	Forced Air Furnace
Physical Percent Good	47%	**Functional Percent Good**	100%
Economic Percent Good	100%	**Effective Age**	25 yrs

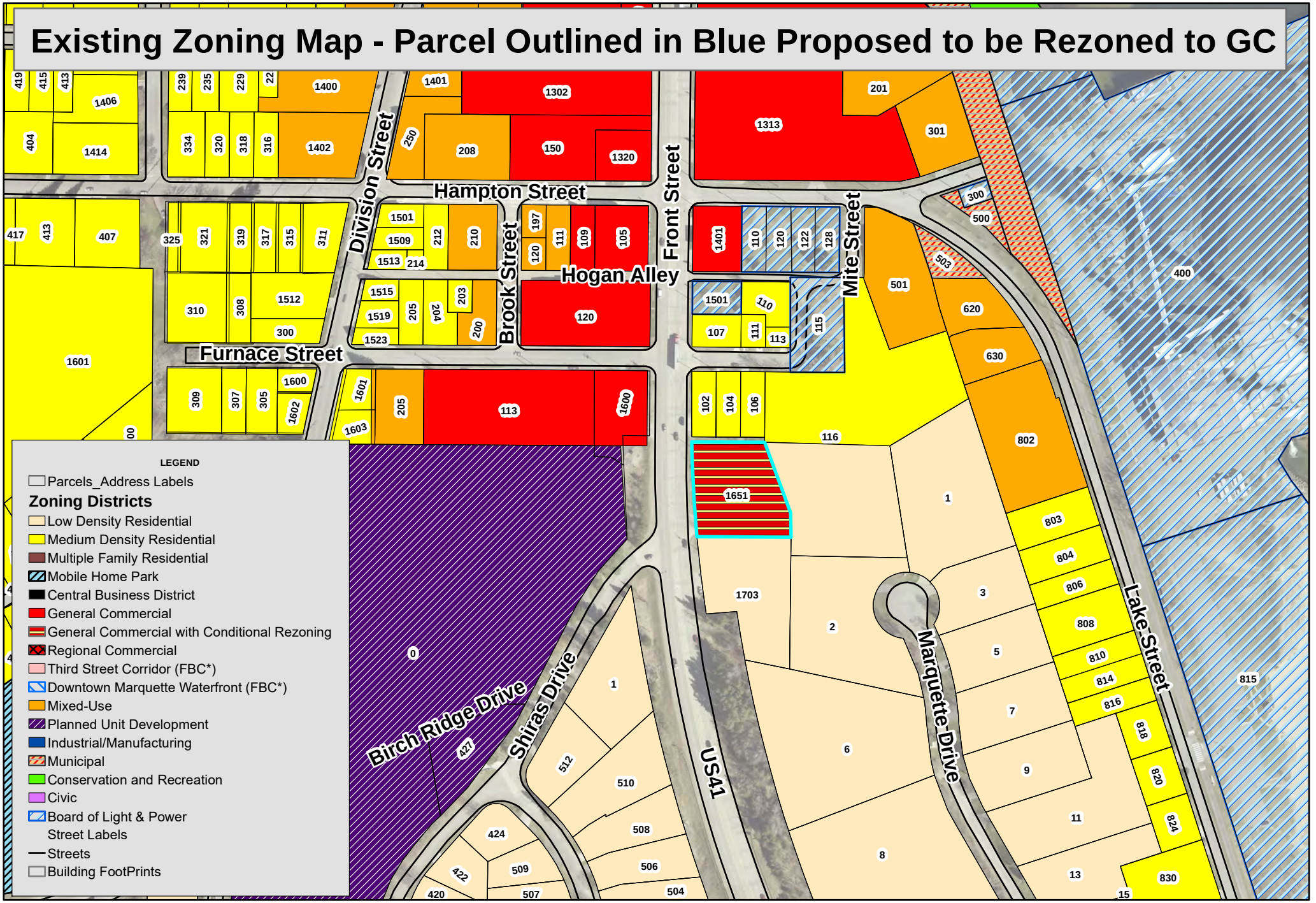
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03-REZ-06-21 Area Map
Craig Street
Craig Street (Vacated)
Division Street
Hampton Street
Brook Street
Front Street
Mite Street
Furnace Street
Lake Street
US41
Shiras Drive
Birch Ridge Drive
Radisson Drive
LEGEND
Parcels_Address Labels
Contours2FT
Street Labels
Streets
Building FootPrints
City of Marquette, MI
1 inch = 250 feet
N
W
E
S
City of Marquette
Geographic Information Systems (GIS)


03-REZ-06-21 Block Map
Hogan Alley
Brook Street
Furnace Street
Front Street
Lake Street
US41
Duras Drive
G29-1
G29-2
G29-4
LEGEND
Parcels_Address Labels
Storm Manholes
Storm Catch Basins
Storm Pipes
SewerCleanOuts
Sewer System Valves
Sewer Manholes
San Flow Direction
FLOW_DIR
EAST
NORTH
SOUTH
WEST
Sewer Lateral Lines
Sew Not Slip Lined
Sew Slip Lined
Fire Hydrants
WaterShutOff
Water Valves & Gates
Water Lateral Lines
wMain
Representation: wMain_Rep
Cast Iron
Copper
Ductile Iron
Galvanized Pipe
High Density Polyethylene
Polyvinyl Chloride
Sand Cast
Steel
Unknown
Watermains
Water Structures
Street Labels
Streets
Building FootPrints
City of Marquette, MI
1 inch = 125 feet
N
W
E
S
City of Marquette
Geographic Information Systems (GIS)

Existing Zoning Map - Parcel Outlined in Blue Proposed to be Rezoned to GC



In regard to the map, the information contained on this map is believed to be accurate but accuracy is not guaranteed. Mapping information is a representation of various data sources and is not a substitute for information that would result from an accurate land survey. The information contained herein does not replace information that may be obtained by consulting the information's official source. In no event shall the City of Marquette be liable for any damages, direct or consequential, from the use of the information.

N W E S

1 inch = 250 feet

MARQUETTE COMMUNITY MASTER PLAN

Future Land Use Map

Future Land Use

Human Activity Types:

- Single Family Residential
- MultipleFamily Residential
- Mobile Home Park
- Central Commercial
- General Commercial
- Regional Commercial
- Third Street Corridor
- Mixed Use
- Industrial/Manufacturing
- Conservation and Recreation
- Parks
- Civic
- Board of Light & Power
- Lake Shore Blvd Relocation

AREA OF REQUESTED REZONING

0 0.25 0.5 1 Miles

N W E S

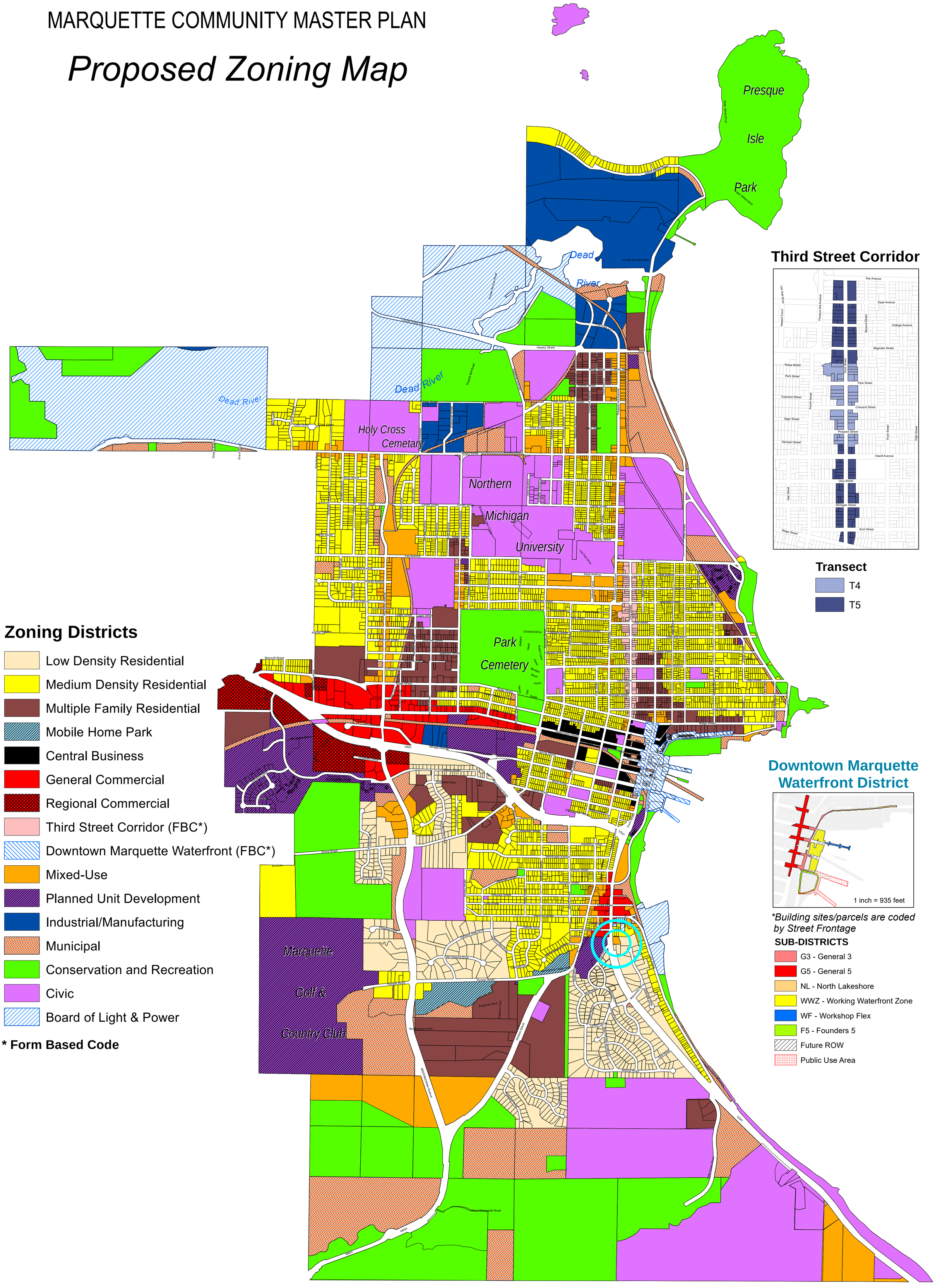
MARQUETTE COMMUNITY MASTER PLAN

Proposed Zoning Map

Zoning Districts

- Low Density Residential
- Medium Density Residential
- Multiple Family Residential
- Mobile Home Park
- Central Business
- General Commercial
- Regional Commercial
- Third Street Corridor (FBC*)
- Downtown Marquette Waterfront (FBC*)
- Mixed-Use
- Planned Unit Development
- Industrial/Manufacturing
- Municipal
- Conservation and Recreation
- Civic
- Board of Light & Power

*** Form Based Code**




05/20/2021 10:58


FOR SALE
OR
LEASE
05/20/2021 10:58


05/20/2021 10:59


05/20/2021 10:58


05/20/2021 10:58


05/20/2021 10:59


05/20/2021 10:58


05/20/2021 10:58

PUBLIC HEARING NOTICE
MARQUETTE CITY PLANNING COMMISSION

Notice is hereby given that the Marquette City Planning Commission will hold a public hearing on the following matters at their regular meeting scheduled for 6:00 P.M. on Tuesday, **June 1, 2021**:

01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300160): Julie Bowerman, Lakeshore Residences LLC, and Picnic Rocks Pointe Association are seeking approval of an amendment to their previously approved Planned Unit Development (PUD) consisting of 15 residential units in the form of single-family dwellings. They are requesting to revise paragraph 7.6 Codes and Ordinances of the PUD Master Deed. It states that "In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected." They would like it to read that "In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot high closed construction vinyl fence on Lot #9 to remain in place."

04-SUP-06-21 – 717 N. Third St (PIN: 0330420): Superior Culture LLC and Alex Rowland are seeking a Special Land Use permit for an expansion to their previously approved Outdoor Food and Beverage Service, and a Special Land Use Permit for Outdoor Entertainment and Community Events as a Principal Use to be located at 717 N. Third St.

03-REZ-06-21 – 1651 S. Front St. (PIN: 0020251): TDK LLC and Tranquility Fields are requesting to rezone the property located at 1651 S. Front Street which is zoned **General Commercial with Conditional Rezoning (GC CR)** to be zoned **General Commercial (GC)**.

The public hearing for these requests will begin at 6:00 p.m. on Tuesday, **June 1, 2021**, and the meeting will be held virtually with Commission members and Staff attending remotely. This meeting will be streamed on the City of Marquette YouTube channel, at https://www.youtube.com/user/CityofMarquetteGov. Please note that the YouTube livestream will have at least a 20 second delay, and that anyone that wishes to offer public comment via Zoom (directions are provided below) will need to open the livestream to follow along while they wait to enter the meeting. In order to offer a live video comment, you must visit: https://us02web.zoom.us/j/84127534741. Members of the public wishing to call in and make a comment over the phone will need to call 312-626-6799 and enter the meeting ID (841 2753 4741).

Written comments, prior to the meeting, may be submitted to the Community Development Department located at 1100 Wright St., Marquette, Michigan 49855 or e-mail alanders@marquettemi.gov. Materials relating to this request may be viewed at the Community Development Department's office at the Municipal Service Center during 7:30 a.m. to 4:30 p.m., Monday through Friday, however, please call 906.225.8383 to schedule an appointment. You can also request to have the materials submitted by the applicant e-mailed to you by e-mailing alanders@marquettemi.gov. If you have a disability and require assistance to participate, please provide advance notice.

Andrea M. Landers
Zoning Official
alanders@marquettemi.gov
225-8383

Excerpt of the March 17, 2020 Planning Commission Minutes

B. 01-REZ-03-2020 1651 S. Front St. - Conditional Rezoning Request (Mixed Use to General Commercial with Conditions)

Zoning Official A. Landers stated that staff has reviewed the Conditional Rezoning permit application for 1651 S. Front St. and stated that the STAFF FILE REVIEW/ANALYSIS contains specific information regarding the request. She showed the application, staff report, photos and maps of the site, and asked if there were any questions for staff.

Mr. Terry Doyle, 1001 Allouez Dr, stated nothing is going to change and if it were to go back to a normal restaurant there would still be the same amount of traffic if you do a marijuana growing place they are going to have to filter it. He also stated if the neighbors have trouble with that then they can file a complaint and they will shut the place down. He stated in order to have a grow area it is going to have to be totally filtered out. He also stated he does not see any change in what the Union Grill has done. He stated that they started out there in 2003 and opened in 2005, and ran it for ten years very successfully and then they sold it to another entity, and they changed things and it kind of failed and then they got it back. He also stated it was a very viable property and it was very busy there, and there was not one accident coming out of that parking lot, so those arguments are a little bit mute. He stated that the application is a little bit mute at the moment, because he does not think that they would turn it over to a marijuana growing entity at this point because of the economy, and those fears could be alleviated a little bit. He also stated he would just like it to be expanded into more of the commercial side because it went from General Business zoning to Mixed Use, so they are just asking for a little bit more leeway because it is definitely a commercial property.

M. Dunn asked if the intent is to have a grow operation and retail. Mr. Doyle stated that they were just asking to be include into the district right across the street and all of that was designated into the marijuana growing maps and they wanted to have the same leeway that they were afforded. He also stated to be truthful they had an offer and when the zoning kicked them out they could not close the deal. He stated that they would just like to have that afforded to them, and there are no written contacts on the property right now. He also stated with the development in the Lower Harbor, with the big hotel, he can see it turning back into a restaurant which will have as much traffic as retail marijuana would.

Chair J. Cardillo opened the public hearing. No one wished to speak so Chair J. Cardillo closed the public hearing.

It was moved by M. Larson, seconded by M. Dunn and carried 5-0 to suspend the rules for discussion.

M. Larson stated that he wants to make sure that they are all on the same page since they have not used conditional rezoning yet.

D. Stensaas stated that the option allows for the applicant to propose a set of conditions that the City would approve outright or could possibly approve with further conditions that may not include requesting anything beyond the offer, but maybe to take some things off of the table. He also stated one thing that the City cannot get into with a conditional rezoning is a *quid pro quo* situation by asking for something else. He stated that they have to take it at face value or possibly make a motion where you take something off the table that was offered by the applicant. He also stated the benefit to the applicant is that this is not reviewed as a standard rezoning and it is not reviewed for spot zoning because a conditional rezoning is a unique land use to itself. He stated the Planning Commission does need to consider that the Master Plan made certain recommendations about this area and property specifically, and so the one issue that comes up is the consistency with the Master Plan. He also stated when you are looking at the Future Land Use Map being the main thing that has to jive for a rezoning, as far as the Master Plan is concerned it is not strictly consistent, but that is where a motion would need to address this. He stated that the motion would need to address the consistency issue. J. Cardillo stated because this change would be inconsistent. D. Stensaas stated one of the reasons that conditional rezoning was proposed into the Land Development Code, and adopted in, was to allow for very rare and unique situations where that maybe it makes sense to allow for certain things to transpire on the property that there is no other remedy for. J. Cardillo stated that they do

not want to change the whole district. D. Stensaas stated that is right, and it is up to the Planning Commission to decide if it fits with the rare kind of unique situation where a conditional rezoning might be appropriate.

M. Dunn stated that the majority of the permitted uses would probably be fine considering the nature of the surrounding properties, except Light Manufacturing concerns him being right next door to residential.
J. Cardillo stated what has been highlighted and taken out of the staff packet are things in the General Commercial that are not in Mixed Use. Ms. Landers stated the things that are highlighted and crossed out are the property owners proposed exempted uses. She also stated the applicant is asking to be rezoned and not include those uses. D. Stensaas stated all of those uses are what are allowed in General Commercial that are not allowed in Mixed Use, with one exception and that is a bar is allowed in Mixed Use as a Special Land Use. He also stated the applicant has taken the General Commercial standards and eliminated everything except for the marijuana facilities, and all of the other things that are not crossed out are allowed in Mixed Use. J. Cardillo stated the point is that Light Manufacturing is already allowed in Mixed Use and that this is essentially Mixed Use with adding in the marijuana component and that is the net result of what they are trying to do.

M. Dunn asked to clarify if Light Manufacturing is allowed in Mixed Use. A. Landers stated that is correct. D. Stensaas stated that “marijuana light manufacturing” is not allowed but the regular Light Manufacturing is a Special Land Use in Mixed Use.

J. Cardillo stated that her thoughts on this are that they should go through it in the way that they have done this with the other zones, which is to look at each of these different marijuana uses and decide on a kind of case by case basis. She also stated that they are essentially just adding in the marijuana uses and she personally thinks that some are appropriate and some others she is a bit dubious about.

M. Larson stated that this is actually proposing to take the General Commercial standards and just crossing some of those out so it would no longer be Mixed Use, it would be General Commercial conditional rezoning shown with certain uses. D. Stensaas stated all of the other things are allowed in General Commercial that are not allowed in Mixed Use the applicant has proposed be taken out or omitted.

J. Cardillo stated let’s just look at the things that the applicant wants to add in, which is the marijuana, and go one by one reviewing it. She also stated starting with the Designated Consumption, that is the one that she probably has the biggest issue with. She stated it is her feeling that it is a specific condition because it is on the highway and it has historically been commercial and she appreciates that, but she also appreciates that on three sides it is surrounded by residential. She also stated consumption is the only use where people are actually consuming the product and she can understand residential concerns about it. She stated that they were also very, very cautious where they allowed consumption in the community because they want to give it some time to understand what it is all about. She also stated it is her personal feeling to eliminate that one. D. Stensaas stated that they can make a recommendation on that condition. He also stated that they are making a recommendation to the City Commission, and it is up to them to decide what to do with the recommendation of the Planning Commission. He stated that he talked to the City Attorney about this and there is not a lot of guidance out there on Conditional Rezoning aside from do not get into a quid pro quo thing and do not give up any of your zoning powers. He also stated recommending that certain facility types should not get approved by the City Commission is okay, and the attorney seemed to think that is probably okay. He stated that it is a new thing for them and there are not a lot of communities that do conditional rezoning.
J. Cardillo stated they are talking about a specific property and typically they are not with zoning, it is usually generalized. She also stated that here we’re talking about one specific property and we can go through the proposed uses and say if they are appropriate at this specific property.

A. Andres stated for consumption he would vote no, it is not appropriate for this site.

M. Larson stated that he can understand the residents immediately surrounding, but General Commercial is also literally across the street right there and it is allowed at that facility directly across the street. He also stated in proximity he feels like to other general business areas it is something to be considered. He stated that does not discount the neighbors that are immediately around it, so he is a little bit torn which side.

M. Dunn stated that he recognized the concerns for the consumption establishment but that is not his top concern, and his biggest concern is some of the larger grow operations being in General Commercial, and he thought they should be in industrial zones only. D. Stensaas stated grower class A is up to 100 plants, class B is not more than 500 plants, class C is not more than 2,000, and the Excess license to cultivate or sell or transfer is five stacked class C licenses - so that is up to 10,000 plants. J. Cardillo asked what the square footage of the property is. Mr. Doyle stated it is about an acre and the building is 2,700-square feet. M. Dunn stated his concern is with the class C and Excess again, not because of the property itself, but because of the residential around it. J. Cardillo stated that she would concur with that.

Mr. Doyle stated with the proposal they had, they were going to tear the building down and build a $2.2-million facility, so that is why they did not want to exclude. He also stated that they had assured them that they would have all of the ventilation. He stated that anybody would have to have purified air coming out of the building. J. Cardillo stated this is why for her the consumption is the one that is different than everything else because you have people actually consuming the product. She also stated she understands that it is hard to comprehend that a mechanical system is going to be able to handle this, but the reality is that the code states that if you smell it with your nose than you are in violation. M. Dunn stated that he gets the aspect of it that it is allowed in commercial too.

M. Dunn stated that he is okay with consumption.

W. Premeau stated that it is okay with keeping consumption in.

J. Cardillo stated that they will keep that one in. She also asked if everyone is okay with Class A, for a grower, which is 100 plants. Planning Commission members concurred that they all agreed to this. She asked about Class B, which is up to 500 plants. Planning Commission members all agreed to this. She asked about Class C, which is up to 2,000 plants. J. Cardillo stated that if you tear down the building that is there and build something new she feels confident that they could house 2,000 plants. M. Dunn asked about truck traffic at that point. J. Cardillo stated that she does not think that it is an issue. M. Dunn stated if you take odor off, if you assume that the code addresses that properly, then his only other concern is the traffic. J. Cardillo stated that it is all plants and not people. Ms. Landers stated for marijuana you have to have the secure transporter, so it would probably be the vans that are locked. M. Dunn stated that he is okay with Class C. J. Cardillo stated that all members are okay with C.

J. Cardillo asked about excess which is stacking up to 10,000 plants. M. Dunn stated that he is not okay with it, it seems like too big of a jump. M. Larson stated that he thinks that it will likely self-select itself out due to the size of the property, and he would be okay with eliminating it. A. Andres stated he would eliminate this one. M. Dunn stated that he would eliminate this. W. Premeau stated that he would like to eliminate it. J. Cardillo stated that right now the only exclusion is Excess Grower.

J. Cardillo stated the next is Microbusiness. She also stated that it seems appropriate to her as long as it is the Light Manufacturing level. There was no objection from Planning Commission members to Microbusiness establishments.

J. Cardillo stated that marijuana Processor-Light Manufacturing is next. She also stated that the Light Manufacturing level does not have the hazardous materials for extraction. There was no opposition from the Planning Commission on this.

J. Cardillo stated the next to review is marijuana Retailer. She also stated that is the one that might have the most traffic, but she does not think that it would be more than a restaurant or a bar. She also stated that you cannot consume onsite. There was no opposition to this from Planning Commission members.

J. Cardillo stated the last one to review is the Safety Compliance, which is one of the lower impact options. Planning Commission members agreed to this.

J. Cardillo stated that it looks like they are okay with everything except the Excess Grower. Members of the Planning Commission agreed with this.

M. Larson stated had this discussion come up prior to the marijuana issue he thinks that they would have said that it makes sense to be General Commercial. He also stated that because is across the street essentially from General Commercial it fits with being that last commercial entity as you go up that hill and he does think there is a case to be made that it is a General Commercial property and is a like use.

J. Cardillo stated what is a challenge and what makes this a unique property is that it should be commercial, but it is the fact that it is surrounded by these residential properties, but they are anomalies because it is residential properties that are right on the highway. She also stated that they do want to protect those people's rights, but also acknowledge that they are in a fairly commercial location.

> *It was moved by M. Larson, seconded by M. Dunn, and carried (4-1) that After conducting a public hearing and review of the application and STAFF FILE REVIEW/ANALYSIS for 01-REZ-03-20, the Planning Commission finds that the proposed rezoning with conditions is consistent with the intent of the Community Master Plan and meets the requirements of the Land Development Code Section 54.1405 and hereby recommends that the City Commission approve 01-REZ-03-20 with the following condition – that the* Marijuana Grower-Excess *classification is struck from the list of allowable uses proposed by the applicant.*
>
> *Yes: M. Larson, M. Dunn, J. Cardillo, W. Premeau; No: A. Andres*

CORRESPONDENCE
B. Marquette Township Notice of 63-day Review Period for Master Plan Amendment
The Planning Commission and staff discussed the letter.

COMMISSION AND STAFF COMMENTS

M. Dunn stated that he lives in the city and expects there to be noise, but there has been tree cutting along streets in the night recently, and a great deal of other noise from garbage pickup to other city vehicles and he is wondering if all of these night operations are necessary when it seems that residential areas and streets are fairly quiet during the day when most people are at work. D. Stensaas recommended that Mr. Dunn contact a member of the City Commission to express his concerns as a resident. A. Landers recommended that Mr. Dunn speak with the Administrative Assistant to the Public Works Dept. as well.

ADJOURNMENT
The meeting was adjourned by Chair J. Cardillo at 9:05 p.m.

David Stensaas

Prepared by:
David Stensaas, City Planner and Zoning Administrator
Planning Commission Secretary
Imedat/smc

Excerpt of the April 27, 2020 City Commission Minutes

City of Marquette, MI
300 West Baraga Ave
Marquette, Michigan 49855
Meeting Minutes
City Commission Meeting
April 27, 2020

Call to Order, Pledge of Allegiance and Roll Call

Present: Ayes: Bonsall, Davis, Frazier, Hill, Schloegel, Smith, Stonehouse

Approval of the Agenda

Commissioner Pete Frazier moved to Approve the agenda as presented, seconded by Commissioner Fred Stonehouse and Passed.

Announcements

Mayor Smith had no announcements.

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

As the meeting was being held remotely via Zoom, residents were given the opportunity to submit written public comments to be read during the meeting. Deputy Clerk Kyle Whitney read the following comments:
John Braamse wrote to encourage the City to implement a permanent absentee ballot mailing list.
Nathan Larsh wrote to thank the Commissioners for their work throughout the COVID-19 pandemic, and praised Mayor Smith's daily video updates.
Matthew Dawson and Kati Mead wrote in separately, each voicing opposition to a plan to construct a Verizon tower.
Following the written comments, Mary Dawson spoke to the Commission via Zoom, also voicing opposition to the Verizon tower plan.

Public Hearing(s)

1. Public Hearing for a Conditional Rezoning Request for 1651 S. Front Street - Roll Call Vote

Mayor Smith opened the public hearing, and the following citizens commented via Zoom:

Terry Doyle, who owns the subject property, thanked the Commission for taking this item up and said he's available for questions.
Pete LaRue said he owns a property on Furnace Street. He said he is concerned about a marijuana facility operating near his property, and voiced specific concerns

about traffic increases and fumes.
Carrie Roy also lives in the area of this property and voiced concern with having a marijuana business in the area.

With no one else hoping to comment, the Mayor closed the public hearing.

Commissioner Paul Schloegel moved to Authorize suspending the rules for discussion, seconded by Commissioner Pete Frazier and Carried Unanimously.

Commissioner Schloegel asked Planning Commission Chair Joy Cardillo for background on the process to this point. Chair Cardillo and City Community Development Director Dennis Stachewicz discussed the history of this item, as well as the concept of conditional rezoning.
Discussion ensued regarding the conditions proposed to be allowed at this site, the state requirements for marijuana facilities and the next steps in any redevelopment.

Mayor Pro-Tem Jenn Hill moved to approve the conditional rezoning of 1651 S. Front Street with the Planning Commission's recommended stipulation that the Marijuana Grower-Excess classification is struck from the list of allowable uses, seconded by Commissioner Evan Bonsall.

Commissioner Bonsall then moved to amend the main motion by removing the Designated Consumption Establishment classification from the list of allowable uses. This motion was seconded by Commissioner Pete Frazier, and discussion ensued.

Commissioner Bonsall said that after talking with residents, reading the Planning Commission minutes and hearing public comment on this issue tonight, he thinks this is a prudent step.

The motion to amend was adopted 6-1 by roll call, with Mayor Pro-Tem Hill voting no.

The main motion, as amended, then became to approve the conditional rezoning of 1651 S. Front Street with the stipulation that the Marijuana Grower-Excess and the Designated Consumption Establishment classifications are struck from the list of allowable uses.

This amended main motion was then adopted by 5-2 by roll call vote, with Mayor Pro-Tem Hill and Commissioner Schloegel voting no.

Rezoning

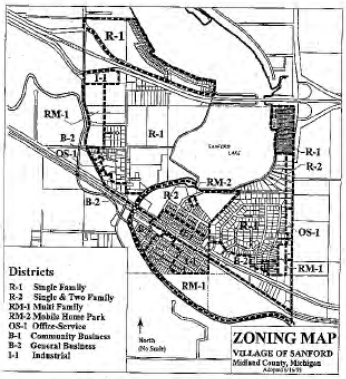
- The main question that must be answered when considering a rezoning is: *"Is that an appropriate location for that zone?"*
- The proposed use of land is not as important as is the fact that if the land is rezoned, any of the uses permitted in that zone may be established on that land.
- If a specific land use is proposed then an additional question must also be answered: *"Are the uses permitted in the existing zone reasonable?"*
- Failing to follow notice requirements may result in a Court invalidating the amendment.

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Rezoning Factors to Consider

RE: Question One (previous page)

- Would rezoning be consistent with other zones and land uses in the area?
- Is the proposed rezoning consistent with the trend of development in that area?
- Are uses in the proposed zone equally or better suited to the area than the current uses?
- Is the proposed rezoning consistent with both the policies and uses proposed for that area in the master plan?



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Rezoning Factors to Consider

RE: Question Two (previous page)

- Is the proposed use compatible with uses in the existing district? If so, would it be more appropriate to amend the text of the ordinance to add the proposed use to the existing district as a use permitted by right, or by special permit, or by planned unit development than to rezone?
- Is another district, different than the one requested, more appropriate in this location?

22

SPOT ZONING



Characteristics

- Typically a single parcel zoned for uses that are quite dissimilar from the zoning of lands around it.
- Typically small in area.
- Typically grants a right to use land that is not enjoyed by similarly situated adjacent parcels.
- Most important, it is typically inconsistent with the future land use plan and the policies of the master plan.

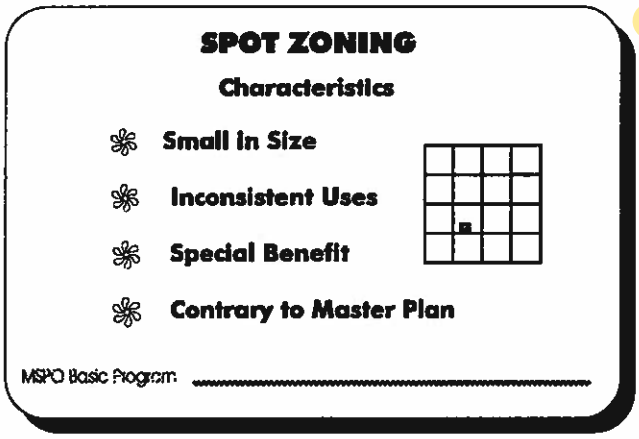
Result

- Typically ruled invalid if challenged in court.

23

SPOT ZONING CONSIDERATIONS

The following is an excerpt from a Planning Commissioner training/resource manual that summarizes the four characteristics of a "spot zone" - and explains that all four must be found in the subject rezoning request to constitute an "unjustified spot zone". The Planning Commission needs to address each of the four characteristics and determine if there is a spot zone.



What is a Spot Zone?

Public hearings for rezonings are often filled with comments about the creation of a "spot zone," and the dire results of such an approval. But spot zoning is a derogatory and often misused term.

Spot zoning has some specific characteristics. It is not simply the appearance of a "spot" on a zoning map. Many acceptable zone districts may be "islands," surrounded by other zone districts. But while some may disagree on whether or not a specific case is a spot zone, nearly everyone agrees that it is a poor zoning practice. A unjustified spot zone is, therefore, likely to be viewed by the courts as unlawful.

In order to qualify as a spot zone the property will meet each of four characteristics.

Small in Size

As the term "spot" implies, the location of a spot zone will be a relatively small parcel, particularly with respect to the sizes of the parcels in the vicinity. While there are no firm rules on what size a spot needs to be, the larger the area, the less likely is will be considered a "spot." If the property was large enough to accommodate buffers or transition areas, landscaping or open space could be used to soften the impact on surrounding properties or uses.

Inconsistent Uses

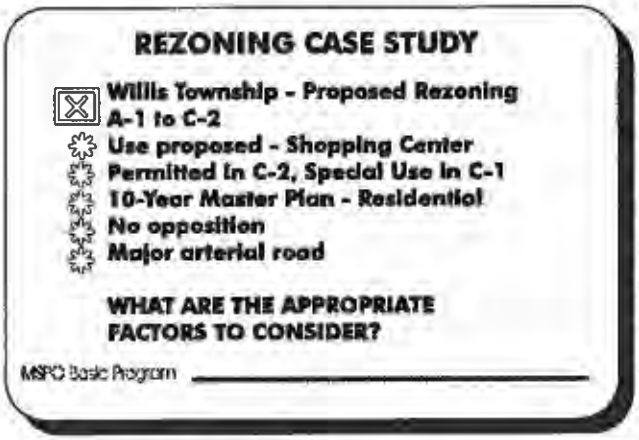
The second quality is that the spot zone will permit uses that are inconsistent with the uses already established or allowed in the vicinity. The inconsistent nature of the spot zone's uses should be clear, i.e. the uses should be very different. These uses, either by virtue of building design, traffic, or intensity will be incompatible with uses allowed in surrounding districts. For example, a proposed two-family district rezoning in a single family zoned area would not be an inconsistent use. A sporting goods store in the midst of a residential area, however, would be an entirely different use of land.

Special Benefit

Spot zoning also confers a "special benefit" on a single property owner which is not available to others in the area. Since the uses allowed by the spot zone are inconsistent with, and often more intense than, those allowed in surrounding districts, a special benefit is given to the holder of the spot zone, to the detriment of nearby properties.

Contrary to the Master Plan

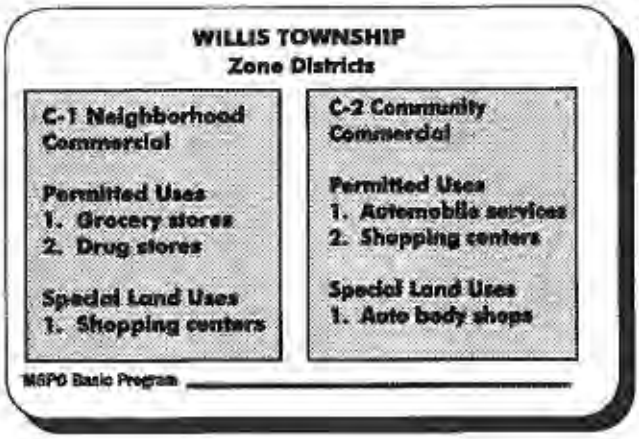
The final characteristic of a spot zone is the one that most distinguishes it as a poor zoning practice. If the Master Plan designates a small parcel in a rural or agricultural area for commercial use to serve residents in the general area, it may have the look of a classic spot zone. In fact, it may even meet the first three characteristics. But it is not a spot zone since the Master Plan planned for its creation. As a result, labeling a rezoning a "spot zone" simply because it is on a small parcel and the uses allowed are different from the other uses around it is not always correct.



Rezoning Case Study

Willis Township - Proposed Rezoning A-1 to C-2

The application states that two existing barns and an old farmhouse on a ten acre parcel are to be razed and a shopping center constructed on the property. The C-1 District requires that shopping centers be reviewed as a special land use; the C-2 District allows shopping centers as a Permitted Use. The applicant is requesting the C-2 District. A variance may also be required for a side yard setback.



- The 10-year old Master Plan designates the property and the surrounding area for Residential use.
- No neighborhood opposition is apparent.
- The road which serves the property is a major arterial, but no public sewer or water is available.

WHAT ARE THE APPROPRIATE FACTORS TO CONSIDER?

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

City of Marquette

To Whom it may Concern,

I agree with the purchase and renovation of 1651 S. Front St. (old Pizza Hut) by the Tranquility Fields Group.

I understand that this proposed facility will have provisions for the consumption of marijuana for adults 21 years and older in accordance with the laws of the State of Michigan.

Name: Colleen Pascoe

Address: 102 E. Furnace

Date: 5-25-2021

Signature: Colleen Pascoe

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

City of Marquette

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Name: JEREMIAH BAUMANN

Address: 110 E. HOGAN ALY MQT MI

Date: 5/25/21

Signature: JB

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

City of Marquette

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Name: Adam Mowafy

Address: 1703 S. Front Street

Date: 5/25/21

Signature: Adam Mowafy

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

City of Marquette

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Name: Scott M. Chalstrom

Address: 111 E Furnace

Date: 5/25/21

Signature: Scott Chalstrom

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

City of Marquette

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Name: Jeff Michalski

Address: 111 E Furnace Marq. MI

Date: 5-25-21

Signature: Jeff Michalski

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

City of Marquette

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Name: Gregory Stelthpoll

Address: 1401 S. Front

Date: May 26th 2021

Signature:

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

City of Marquette

To Whom it may Concern,

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I understand that this proposed facility will have provisions for the consumption of marijuana for adults 21 years and older in accordance with the laws of the State of Michigan.

Name: DEAN KANANEN

Address: 113 E. FURNACE

Date: 5-26-21

Signature: Dean Kananen

Cannabis consumption request

Linda Byers-Blaksmith [redacted]

Thu 5/27/2021 1:58 PM

To: Andrea Landers <alanders@marquettemi.gov>

Dear Ms. Landers,

It has come to my attention that there is a request coming before your commission to have cannabis consumption at a proposed business. I am writing to ask that the zoning request that would make that possible be denied. My reasoning is quite simple. There is no way currently to measure for marijuana intoxication while driving and it would be very likely people would be driving to and from this business on Front Street.

Until there is an effective way to measure impaired driving for marijuana as there is for alcohol there should be NO public consumption allowed in our community. Please forward my email to any others and do not hesitate to contact me for further clarity.

Sincerely,

Linda Byers-Blaksmith
2810 Granite Pointe Drive
Marquette

New Pot Store

Daniel Knight <[redacted]>

Mon 5/31/2021 4:13 PM

To: Andrea Landers <alanders@marquettemi.gov>

Andrea Landers,

I am strongly opposed to the sale and consumption of drugs in my neighborhood. The building and parking lot is directly adjacent to my backyard as well as two of my neighbors' backyards. This is definitely not the appropriate location for this business. There are already two dispensaries just down the highway. There's absolutely no need for a 3rd similar business in our neighborhood. Surely, there is an alternative business that would better serve our small neighborhood.

Sincerely,
Shirley Michelson
106 E. Furnace Street
Marquette, MI

Sent from my iPhone

RECEIVED
JUN 01 2021
Marquette City
Community Development Office

May 28, 2021

City of Marquette
Attn: Andrea M. Landers, Zoning Official
1100 Wright Street
Marquette, MI 49855

Re: Rezoning of 1651 S. Front Street

Dear Ms. Landers and Planning Commission:

I am the owner of a single family residence located at 104 Furnace Street in the City of Marquette. I purchased this property in 1965, and it is currently occupied by my daughter and her family. My property is located in the Medium Density Residential Zoning District. The south boundary of my parcel abuts the north boundary of the parcel that is subject to a Rezoning Request from General Commercial with Conditional Rezoning (GC-CR) to General Commercial (GC). I am once again corresponding to oppose a rezoning of the 1651 S. Front Street parcel for several reasons.

The Zoning Enabling Act authorizes a property owner to voluntarily propose conditions for use of a specific parcel in exchange for rezoning of the land or an amendment to a zoning map. The intent of this statute is self evident, and is to afford some protection to adjoining property owners from drastic or extreme uses that would otherwise be allowed under a zoning change in the absence of any such conditions. Here, it is my general understanding that the landowner proposed to eliminate certain types of uses that would have been clearly incompatible with this parcel. Those conditions should not be removed. In fact, if the landowner is no longer willing to comply with the conditions that resulted in rezoning in the first instance, the remedy is to revoke the Conditional Rezoning and return the property to its original zoning district, which I understand was Mixed Use (MU).

I have spoken with the property owner and developer who indicates that he hopes to establish a marijuana consumption facility. Patrons would be permitted to consume marijuana on-site. This is a considerably higher use intensity than even marijuana retail sales, and is arguably the equivalent of a bar or tavern. When the landowner originally proposed conditions, a bar was one of the uses that was precluded under the limited conditions presented. In any event, rezoning from GC-CR to General Commercial will expand the potential for more invasive use of

the property immediately adjacent to residential parcels. The standards to be considered in proving or denying this rezoning request, weigh against moving this request forward. For example, "The capability of the street system to safely and efficiently accommodate the expected traffic generated" appears problematic. The sight distances, especially when making a left turn into or out of the property are marginal, at best, especially in the winter. Its single driveway is located on a hill, and a vehicle must cross multiple lanes of traffic to exit to the south or enter from the north. Traffic speeds through this area, especially during rush hour, almost always exceed the posted speed limit. This will be compounded by the fact that drivers leaving the premises will just have ingested marijuana, thereby impacting their reaction times and driving skills.

Potential Land Uses and Impacts must also be considered under the City of Marquette Land Development Code. If the conditions are withdrawn, even more intense uses than those eliminated by the conditions now in effect would potentially be permitted. Assuming, however, for sake of argument that the owners are being forthright in their intent to establish a marijuana consumption facility, this type of operation would also arguably attract a significant bicycle and pedestrian traffic. Other parcels in the GC District are served by sidewalks and/or bicycle paths. The sidewalks end and there is no readily available safe pedestrian or bicycle access to this parcel. Additionally, by its very nature, a consumption establishment will generate considerable smoke and odor. While air filtration systems can reduce the negative odors, it is doubtful that they can be completely eliminated. These factors are critical in determining the effects upon the neighboring families attempting to enjoy a meal at their picnic table in their backyards, or upon children playing in sandboxes.

The relationship to surrounding zoning districts is a separate factor to be considered, but at least in this case, overlaps with evaluation of Potential Land Uses and Impacts. This parcel appears to be approximately two-thirds of an acre. The building structure is located close to the northern boundary of the property. There is little or no effective means to place an additional buffer area between this parcel and the adjoining residential properties. Fencing and heavy vegetation can provide a visual barrier, but will be ineffective to prevent migration of unwelcome odors.

The adjoining residential parcels will also likely be impacted by extended business hours. Again, the nature of the business will likely draw customers at all hours of the night, similar to a bar or tavern, with closing hours well past midnight once COVID restrictions are lifted. This will necessarily result in added noise and extended hours of outdoor lighting that would not normally be necessary for a small office building, political office, or even most family restaurants.

The relevant factors weight against advancing this rezoning request. The proposed new use, as well as other uses that would become permissible, greatly exceed any prior use of this property when it was included within the Mixed Use (MU) zone and would be further expanded if changed from GC-CR to GC. It is doubtful that satisfactory conditions could be implemented even under a Special Use Permit, if the rezoning request is granted.

In summary, as an adjoining landowner, I strenuously oppose this application for rezoning.

Sincerely,

Jerome F LaRue

Jerome F. LaRue

JEROME LA RUE
PETE LaRUE
906-250-9934
906-228-6656

Rezoning of property-03-REZ-06-21-1651 S. Front St.

Colleen Pascoe <>
Thu 5/27/2021 8:47 PM
To: Andrea Landers <alanders@marquettemi.gov>

I noticed a typo in the first line with the address, it should read rezoning of the property at 1651 S. Front St. so sorry. Thank you for your time,
Colleen Pascoe

Rezoning of property-03-REZ-06-21-1651 S. Front St.

Colleen Pascoe <[redacted]>

Thu 5/27/2021 2:28 PM

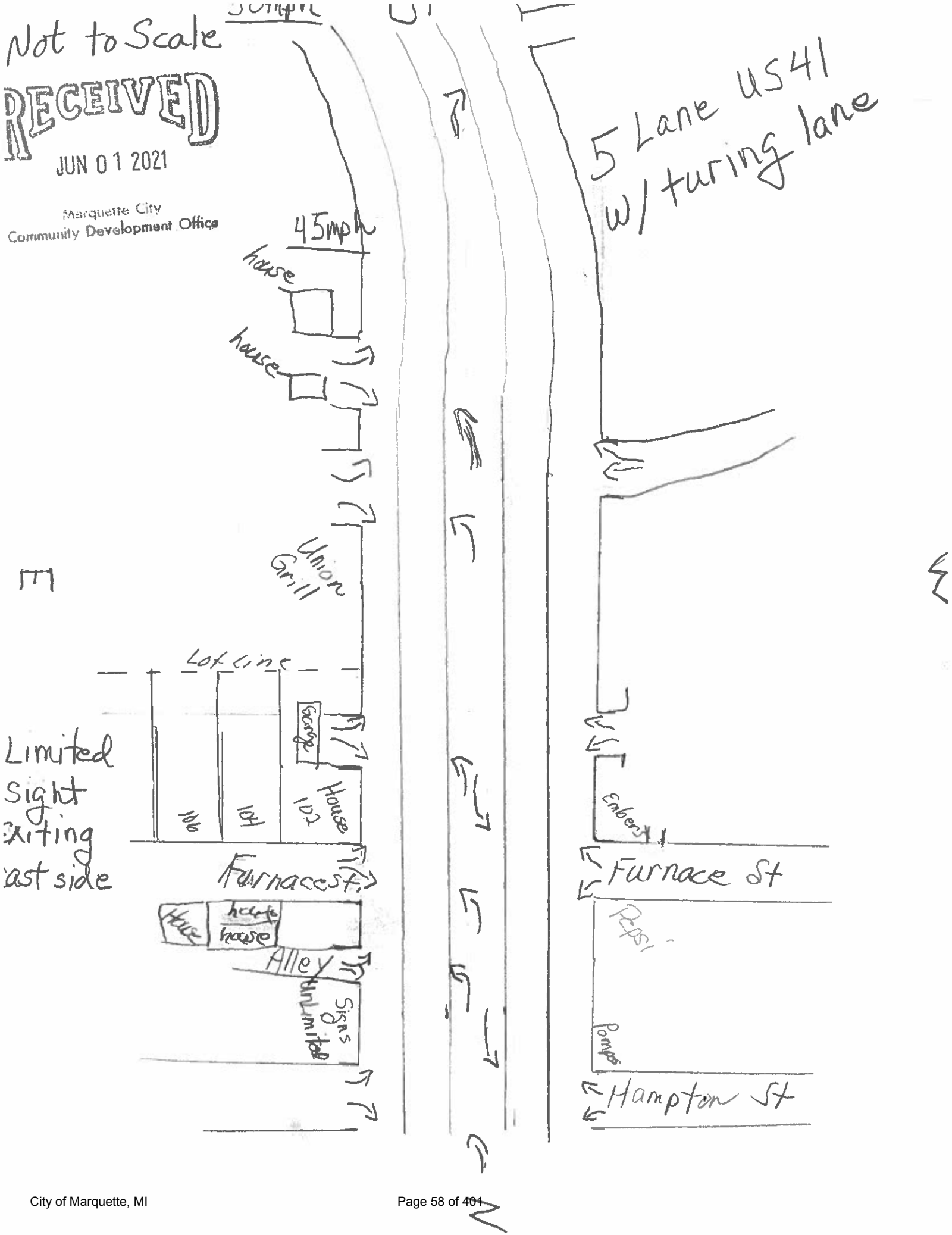
To: Andrea Landers <alanders@marquettemi.gov>

On 5/25/2021 I was approached at my property(102 E. Furnace St.) by Mr. Doyle and asked to sign a statement agreeing with the rezoning of the property at 1615 S. Front St. I felt intimidated and signed the agreement. I called Mr. Doyle the next day and informed him I had spoke with my 92 year old father who also resides at and is partial owner of our property at 102 E. Furnace St., I informed Mr. Doyle that my father is against the proposal therefore I was with drawing my consent. Mr. Doyle stopped at my residence again and had me sign another form withdrawing my consent saying he had already mailed in my prior consent and that he would mail in my withdrawal. This residence has been in our family for approximately 70 years, we have several concerns with any business being located at 1651 S. Front St., there are 10 driveways and street crossings on a very busy highway with limited sight for entering and leaving in this approx. 3 block area. There have been several accidents in this area over the years including a family member being rear ended when pulling into my property. Foot traffic through our yard and the loss of privacy is the norm when this property is open for business. Several neighbors have medical issues which would be a detriment to their health, my father and I included. I ask that you please consider my concerns and I ask you to also consider "would you want this business next door to your family". Thank you, James Fitzpatrick and Colleen Pascoe

Attached Visual of Traffic Congestion received June 1, 2021

Not to Scale

RECEIVED
JUN 01 2021
Marquette City
Community Development Office



RECEIVED
MAY 27 2021
Marquette City
Community Development Office

WITHDRAWN

City of Marquette

To Whom it may Concern,

I agree with the purchase and renovation of 1651 S. Front St. (old Pizza Hut) by the Tranquility Fields Group.

I understand that this proposed facility will have provisions for the consumption of marijuana for adults 21 years and older in accordance with the laws of the State of Michigan.

Name: Colleen Pascoe

Address: 102 E. Furnace

Date: 5-26-2021

Signature: Colleen Pascoe

5-27-21
To Whom It May Concern,

My name is Carrie Roy and I reside at 104 East Furnace Street in Marquette. I have resided here with my family for the past 26 years.

Recently I received notification that the property located directly behind me is requesting to be rezoned. This property is currently zoned General Commercial with Conditional Rezoning (GC CR) and wants to be zoned General Commercial.

The reason for the rezoning appears to be so the property can be afforded all the rights and privileges of a Marijuana Retailer, Marijuana Grower (Class A, Class B, C and Excess) Marijuana Processor, Light Manufacturing, Marijuana Microbusiness and a Marijuana Designated Consumption Establishment.

As I stated last year during the original hearing, I am opposed to this rezoning for a variety of reasons. Most importantly, I am concerned at how this type of rezoning and business would affect the health and wellbeing of the individuals surrounding it. Being within 300 feet of this location, my major concerns are: air quality, traffic issues, and pedestrian trespassing.

My family and I enjoy spending time in our yard and having our windows open. The neighbors on each side of my home currently have health conditions that affect their breathing. I am unsure how this type of business would affect my neighbors, my family and myself from a health standpoint.

Previously, this property was a restaurant and a market. When the restaurant was open, we did have increased foot traffic. In some instances, individuals would use the residential properties to access the business. With a busy Marijuana Manufacturing/Consumption business, we may see a lot more foot traffic. With this area not having a sidewalk along the highway, trespassing could become an issue.

It seems obvious that automotive traffic would also increase if the proposed business were to go into this location. Over the years, we have witnessed several accidents in the South Front Street/Shiras Hill area. With an increase of vehicles pulling in and out, limited visibility, and possibility of a driver under the influence, this rezoning and type of business seems to be a legitimate concern.

With other businesses located in this vicinity, at times, traffic can get quite busy. (Especially in the turning lane) There are many large vehicles and semi's that pass through this area daily. These vehicles often turn into the businesses on west Furnace Street and both east and west Hampton Street. I was wondering if there has been a traffic study to see how an increase in traffic would affect the businesses and homes already there?

With the business in question being a place of consumption, "driver safety" seems like a big concern. Below is what the Secretary of State, has published in their pamphlet, "What Every Driver Should Know".

"Marijuana is gaining acceptance as having legitimate medicinal applications and as a recreational drug, as evidenced by trends in state laws permitting its use. Although marijuana may be legal for medicinal or recreational use in some states, **it is still not legal, safe or wise to operate a motor vehicle while impaired by marijuana since it tends to distort your perception of time, space and speed.**"

I strongly feel there are more suitable locations for this type of business. The individuals who I have spoken with (whether for or against this type of business) all agreed on one fact, none of them would want this in their backyard either. I ask that you please consider the valid concerns of those residing in this area.

Thank you for your time,
Carrie Roy

RECEIVED
JUN 01 2021
Development Office

RECEIVED
MAY 27 2021
Marquette City
Community Development Office

W. and A. Sramek
1 Marquette Drive
Marquette, MI 49855
May 27, 2021

Planning Commission
Marquette, MI

RE: 03-REZ-06-21

Dear Planning Commission:

We are writing regarding the request to rezone the property at 1651 S. Front Street, Marquette, MI. It is our understanding that the building is to be used for the consumption of marijuana. We are concerned that the location of the building in regards to the traffic pattern with an impaired driver and the legality of driving under the influence of a controlled substance. This building is located south of downtown and on a stretch of highway without a sidewalk. Coming from the south there is a curve on a downhill with the speed limit of 50 MPH where we frequently observe cars traveling in excess of the speed limit. The entrance/exit to the property has poor visibility to the south. Without safe access for pedestrians to walk to the location we are concerned that the only way to access the building will be to drive.

MCL 333.27954.1(a) does not authorize operating, navigating, or being in physical control of any motor vehicle while under the influence of marijuana. MCL 257.625(1) states that a person shall not operate a vehicle while intoxicated which means any person under the influence of a controlled substance or other intoxicating substance and according to MCL 257.625(8) this includes any amount of a controlled substance listed in section 1 under section 7212 of the public health code, which includes THC.

According to a study by Dr. Marilyn Huestis and Rebecca Hartman published in March, 2013 in Clinical Chemistry (PMID: 23220273) titled "Cannabis Effects on Driving Skills" recent smoking and/or blood THC concentrations 2-5 ng/mL are associated with substantial driving impairment. Within 30 minutes after smoking THC concentrations drop 80% in the blood to a level of 15-16 ng/ML and after 90 minutes drop to 2-3 ng/mL which is a concentration still associated with significant impairment. Skills necessary for safe driving including reaction times, divided-attention tasks, lane-position variability and critical-tracking tests have been shown to be impaired after use of THC. This includes impairment even for those who regularly use cannabis. Other effects of marijuana include sedation and disorientation.

OFFICIAL PROCEEDINGS OF THE
MARQUETTE CITY PLANNING COMMISSION
June 1, 2021

A regular meeting of the Marquette City Planning Commission was duly called and held at 6:00 p.m. on Tuesday, June 1, 2021, by remote means (due to the COVID-19 pandemic).

ROLL CALL
Present: A. Andres, W. Premeau, M. Dunn, S. Mittlefehldt, Vice-Chair M. Larson, Chair J. Cardillo
Absent: E. Brooks (excused)

AGENDA
It was moved by M. Larson, seconded by A. Andres, and carried 6-0 to approve the agenda.

MINUTES
The minutes of May 4th was approved by consensus.

CONFLICT OF INTEREST
J. Cardillo stated that she has a conflict regarding the SUP case for 717 N. Third St. due to her business being the design consultant for the project, and she will leave the meeting during the case, but her partner will represent the applicant this evening. No other certain or potential conflicts were stated.

PUBLIC HEARINGS
A. 01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300150)

Zoning Official A. Landers stated that Julie Bowerman, Lakeshore Residences LLC, and Picnic Rocks Pointe Association are seeking approval of an amendment to their previously approved Planned Unit Development (PUD) consisting of 15 residential units in the form of single-family dwellings. She stated they are requesting to revise paragraph 7.6 Codes and Ordinances of the PUD Master Deed. She also stated it states that "In addition to the construction requirements in this section, all buildings and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected." She stated they would like it to read that "In addition to the construction requirements in this section, all buildings and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot-high closed construction vinyl fence on Lot #9 to remain in place." She also stated the Planning Commission should review the request and send a recommendation to the City Commission. She stated that the Planning Commission has received the agenda packets which included the application for a Major Amendment to the Picnic Rocks Pointe Planned Unit Development, the PUD Master Deed amendments, the area map, the block map, and photos of the site. She also stated that there were several items of correspondence in the packet, which were briefly shown on the screen. She stated that staff received many items of correspondence and those received prior to the agenda being posted are in the agenda packet and that most were received after the agenda was published will need to be read into the record. A form letter that was sent separately by 33 different parties in support of the application and was read into the record along with the name and address (if supplied) from the 33 different parties. 14 other pieces of correspondence were read into the record with one piece of correspondence of photos that were from the applicant and shown on the screen, 11 pieces were in favor of the request and 2 pieces were in opposition. (Please refer to the video of the meeting and/or the printed file in the Planning/Zoning office for details of all of the correspondence read into the record).

The applicant, Ms. Julie Bowerman of 1301 Picnic Rocks Dr., stated that she just wanted to say that contrary to what some of the people have said in there before she bought this property, she asked about the funds, and she was told by Dan Keller that they could get a variance for that. She stated that when she submitted her plans, the fence was on there. She also stated that they even handwrote it on there. She stated that it was approved at the meeting by everybody. She stated there were four people on the board at that time. She also stated that two of them do not remember that they approved this. She stated that she is

not sure why, but they do not. She also stated that everybody else at the meeting remembers this, including the other board members. She stated that her builder did not understand that he had to get a separate fence permit in addition to his building permit, so when he built the house, he did not know that. She stated that it was his first house. She stated that she understands that was a mistake, but then the fence has been up since then. She stated that it was not done in malice at all, and this is something that she has been dealing with for, like, a year here, and she understands that it is against the regulations, but they did not know when they wrote the PUD that they would have to change that, which is why they approved it in the 1st place. She stated that they thought that they had the authority to approve a variance for this kind of fence. She also stated that she knows that some of the neighbors are saying that it obstructs their view, but the houses obstruct their view. She stated that she could have built two stories, but she did not. She stated that she only built one. She also stated that she built the smallest house that she could, and she just would really appreciate it if they could come to some kind of agreement. She stated that they are not asking that everybody has a fence. She stated that the board understands that it was a mistake, and they are just trying to get the variance for this one fence. She also stated that she would like to say to all the people that live in the condos behind her that her last house was 416 E. College. She stated that she lived at the very end of College Street, and she bought the house in 2002, so for 10 years, she had an unobstructed view of the lake, and then they built those condos, and the whole neighborhood lost their view of the lake. She stated that is development. She stated that is how it goes. She also stated that since she lost it, she moved closer, so she just does not understand how all of them are saying that it is obstructing their view when she could have had a house double the size.

J. Cardillo opened the public hearing and asked if anyone wanted to speak.

Brian Bloch, of 908 N. Third St., stated that Ms. Bowerman is a friend of his, and he has spent a lot of time at her house and when she was considering buying it and building it. He stated that he has been in real estate for over 30 years. He also stated that he has been an attorney for 20 years, and he has walked around that fence, he has driven around that fence, he has walked all over, looking at it from different angles, and in his opinion, the community interests underlying the reason for the fence ordinance do not apply to this circumstance. He stated that it is set far enough away from the road that the concern about vehicles and pedestrian traffic are not a concern. He also stated that Ms. Bowerman could have built a two-story home with the footprint of her home into the area that she decided to make a backyard. He stated that she built the yard because she wanted a dog, and she built the fence because it is a busy corner, and she wants some privacy. He stated that the majority of the homeowners in her development support her. He also stated that the great majority of the surrounding neighbors who would have been given notice support her or are ambivalent. He stated that the letters received from other parties are disingenuous. He also stated that as to the request to amend the PUD to allow her fence, if you look at pages 32 and 33, the photographs, you will see that the issue of obstructed views from which he thinks there is only one unit in the corner of the FIR building 200 feet away, there is a tree. He stated if you did not have the fence, the view is obstructed by the tree in her front yard, or technically in the common area just on the other side of her property line. He stated that is all he has to say on the issue.

J. Cardillo closed the public hearing.

> *It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 6-0 to suspend the rules for discussion.*

M. Dunn stated that he has got a couple of questions for staff about variances, and he will start with the big-picture one, and that is why this would not be a zoning variance request for the BZA. A. Landers stated that you cannot get variances from a planned unit development. She stated that the process that it is going through is the only way that you can get a variance. She also stated that a planned unit development is what you apply for, it is a contract with the City, and they have to meet the Master Deed. She stated that this is the process for planned unit developments. She stated that it is not a regular zoning district that would allow for variances. D. Stensaas stated that it is something he is surprised that Dan Keller, the developer's representative, was not aware of, but that is what is being said. M. Dunn stated that to kind of go on from that, when the original PUD was agreed upon, they did not have any design guidelines for fences. He asked if that is correct. D. Stensaas stated that the PUD agreement itself has a clause in there that requires that all development of anything that is not directly approved out of the pattern book would

have to meet City ordinances and be permitted by the City. M. Dunn stated that is kind of a bummer because usually when they do a PUD, the intent of that is to have everything set up ahead of time so that they do not need to get into sticky situations like this and handle these things, where a PUD usually has all these things mapped out, and any appeals to those things should go to the HOA Board rather than coming to the City. He stated that he guesses that kind of leads him into his other thought here, and that is that he is trying to figure out why they would be approving something for, he guesses, an individual member of that HOA by changing the entire Master Deed for the entire HOA and having one specific lot pulled out and indicating that, so he is having a hard time thinking of that, and he is wondering if the City is going to get involved with - if they are not going to stick to what the City's standards are for fences in this particular case, it seems to him that there should be some design guidelines put forward by the HOA. He asked if they know what he is saying. He stated that if they are going to have to be in the position where they are deciding on which fences are okay and which ones are not, their options should be either they go by the City's guidelines or they should not handle it at all, and the HOA should be handling it with their own design guidance because, to him, this does not seem like the kind of problem that they should be dealing with, and he knows that they need to, and he gets that, but he is trying to think of a way that they can take care of this without having it go forward and now they are looking at, he guesses, 13 other homes that may or may not want to come forward and look for changes to the PUD so that they can do the fence that they want to do.

J. Cardillo stated to Ms. Bowerman that they are going to let everybody on the Commission have their discussion, and if they need to, they will come back to her, but they are going to try to sort of let the process roll through.

D. Stensaas stated that to address Commissioner Dunn's question in his comment, the fact that he is having this hearing is because it is a remedy of sorts that is available to the applicant. He stated that it is far from preferable or ideal, but once this fence is built without a permit, the options are extremely limited, and so this was one of the options that exist, to go back and go through this extremely complex process of amending the PUD, and he did have some discussion with Ms. Bowerman and talking with the HOA board about whether or not they wanted to consider a larger PUD amendment to address further amendments to fences or to make this applicable to all the lots on these through lots aligned with Ms. Bowerman's lot, and that, he was told, was not the option that was chosen. He stated that they decided that just - and Ms. Bowerman certainly has the right to decide with her application whether or not she wanted to even go there - but that option was taken off the table and was just looked at as this one lot.

M. Dunn stated that leads him to his next question, which is what happens if the City approves this and then a neighbor that does not like it comes back and holds the City responsible for their damaged view or someone from the HOA comes back and says, "Well, why are you overstepping our authority?" He stated that from what he read in the application, there is obviously some controversy as to whether the HOA agrees on approving the fence anyway, and so he is not convinced that the entire HOA wants to amend the PUD, so for them to change the PUD based on the request of one individual in the HOA, it just does not sit well with him. He also stated that if they had a formal motion that - and, again, he saw in the packet there was a little statement there from the HOA Board of Directors, but it was not signed, he does not know who did what, and there seemed to be some controversy there, and he does not want the City getting involved in some sort of dispute that is going on in the HOA. He stated that he feels like the HOA needs to sort out what they want to do, and if the HOA together as a body wants to change the PUD, then they can talk about changing the PUD, but based on one individual coming forward wanting to change it, and then there is some controversy as to whether the Board of Directors and the whole HOA wants to do that, it just seems like a very precarious situation for the City to get involved.

M. Larson stated that he agrees with M. Dunn that he thinks that is a little bit of a situation in applying consistency with the fencing ordinances and ordinances in general where it gets built first and essentially asked for forgiveness later. He also stated that he had the same question of why it is just for one particular lot, one lot here that you are going to change the entire deed for this particular lot, and asked if that opens them up for consistency's sake that a neighbor two houses down builds a fence without a permit and then comes and requests a similar change to it as well. He stated that he thinks there are some issues along those lines that he does not feel entirely comfortable with, and, also, just for a point here is that they are making a recommendation to the City Commission here today, and so whichever way they vote, the City Commission, it will be heard there one more time.

S. Mittlefehldt stated that she shares a lot of the thoughts that Commissioner Dunn and Commissioner Larson just mentioned about the issue of precedent and consistency, and she guesses she has got another question for A. Landers or D. Stensaas about that. She stated that it is an illegal fence by the City Code Standards, and maybe the builder did not know or whatever, but nobody wants to waste the money and resources of making the applicant tear it down per se, so she is just wondering if there is a way to not make this a precedent. She stated that it just seems like she does not know what that compromise would look like in this situation. She asked D. Stensaas if he is saying this is it - it is kind of all or nothing at this point. D. Stensaas stated no, and that was never the case. He stated that when this was first reported to them, and they reached out to Ms. Bowerman and talked to her about this situation and her options, the goal of trying to enforce the Land Development Code in a situation like this is to achieve compliance with the code, so that option was put on the table that the fence can be reconstructed to conform to the code. He stated that was the first conversation they had, and they will recall that during the later part of 2020 when the Planning Commission was entertaining the whole variety of changes to the land development code that ended up as dozens of amendments, one of the things he presented to them was the option to create a 5-foot fence for front yards, and they first said no, they do not want to allow 5-foot fences. He also stated that maybe it had been a long time since the City considered allowing 5-foot fences in front yards, but he thought that was another potential remedy to this situation that he brought to the Planning Commission as an option with amending the Land Development Code since they are already looking at other amendments to it, and it was considered at more than one meeting. He stated that at the first meeting, the result of that was basically, “Well, if we could maybe envision an option where the fence was open on the top but closed on the bottom,” maybe that was another way to address the 50% open thing with a 5-foot fence, and that was brought to them with illustrations, and that was rejected as a potential amendment to the Land Development Code, so they first went through the option of reconstructing the fence. He stated that was rejected by the applicant, and they brought that potential amendment to the Planning Commission. He stated that then as a staff, they go back to, “Okay, this Planning Commission is not interested in amending the code, so you are still in violation of the code. You either have to bring the fence into compliance, or the other option on the table was to amend the PUD.” He stated that this is not the first case in this particular PUD where an amendment has been made for one lot - and A. Landers could tell them about that - and it is a very unusual thing. He also stated that he does not know that there is another PUD in the City where they have made an amendment for a fence on one lot, but they made an amendment to another lot in the same PUD, and he will let A. Landers talk about that. A. Landers asked if he is referring to the setback one? He stated yes. A. Landers stated that they just asked for a setback to go for example from 10 feet to 9 feet or something like that, and that was reviewed and approved. J. Cardillo asked if that was done at a staff level or if that came before the Planning Commission. A. Landers stated that was a Zoning Administrator approval. D. Stensaas stated that there are two levels of amendment to a PUD, the minor PUD which would not have affects beyond the property boundary is the basic criteria and the major.

A. Andres stated that he just thought of a couple of questions. He stated that the first is why the applicant did not want to amend the fence to meet the code in the first place. He stated that he would like to ask that question. He stated that the second statement that he has is he is not really in favor of amending a PUD for one individual. He stated that if the Association wants to make it allowable for everybody, then okay, but that is on the Association, and he does not think they should get into any more politics than they have to. J. Cardillo asked A. Andres if he can just restate his question for the applicant. A. Andres asked why she did not just amend the fence to meet the existing fence regulations.

Ms. Bowerman stated that the reason that she did not want a 4-foot fence is that her dog can get over it, and she knows that, which is why before she bought the property, she asked if she could have a 6-foot high fence and if they would be able to give her a variance for that. She stated that the other question that he had was why isn't it for the whole neighborhood, and they consulted with a lawyer who wrote the PUD and said that it probably would not get approved by the City if they did it for everyone, but if they could ask for just this one, that they might approve it. She stated that the other question if they do not mind her talking about this too, is that when she originally had her plans with the fence on it, it was approved by every board member. She stated that there were only four at the time. J. Cardillo asked if she is talking about the HOA specifically. Ms. Bowerman stated yes, the HOA. She stated that they approved it, they approved the variance, and it said 6-foot vinyl fence right on it. She stated that when she wrote that, everybody approved it. She also stated that when it came back through from the City that it was against the rules, that is when

they had to regroup again and talk about it, so they had another meeting. She stated that now there are five people on the board at this time. She stated that there are two people in this neighborhood who are against it. She also stated that everybody else in her neighborhood that owns a house has written a letter for support, and it was an email chain to if they would allow me to go for this amendment for her fence because it had already been approved by them. She stated that everybody in the neighborhood supported her going ahead with this except for the two neighbors. She asked if can just say one more thing about it. She stated that they did have a meeting about it, and the Board met, and they approved it. She stated that she knows that they are saying that Dan Keller was against it by proxy, but he wrote a letter of support. J. Cardillo stated that they do not want to get too deep in the politics of it. She stated that they want to keep this at sort of a higher level of sort of what is their obligation as a Planning Commission, so she will just briefly state that.

J. Cardillo asked W. Premeau if he had a comment.

W. Premeau stated that he does not see anything wrong with the fence himself. He stated that he can get into all the complications they want. He stated that there was more support for it than there was against it, and mistakes are made, and there should be some remedies. He stated that the only thing they did not do was tear it down, thank the people that did it, but asked what good it does. He stated that he really does not see anything wrong with it, and he thinks they should just go ahead and approve this. He stated that the Board told her she could do it. He asked what more can you can do. He stated that as far as knowing if they have to have a permit and all that, he knows a lot of people that just do not know that. He stated that they know, they are supposed to know, but he tried to do a couple of little things, and it gets very difficult and very complicated. He also stated that he thinks they should just leave it alone, let the fence there. He stated that the lady explains why her dog will jump over a 4-foot high fence. He stated that if it is half-open by 50%, you have still got a dog that can bark and scare the living hell out of you, so he does not see anything wrong with it. He stated that he would go along with all the people that support it. He stated that there are very few against it.

J. Cardillo asked if anybody else has anything they want to add or ask.

M. Dunn stated a question for staff and asked if there is a way if they can postpone enforcement of this. He stated that here is his contention, and he does not have a problem with the fence. He stated that the only reason he is having a problem with this is that it is one individual that is named as the applicant and that one individual is coming forward and asking us to change the PUD Agreement for an entire neighborhood, and he does not feel good about that, and he does not think that is a smart move on the City's part, so what he is wondering is if they can kind of postpone any kind of enforcement of the fence and let the HOA figure out what they want to do and come back as an HOA. He stated that he guesses he does not know what the process would be. He stated that maybe it would be the same process, but the HOA is the applicant, something to that effect so that the City is not on the hook for changing a PUD that is going to affect everybody in the neighborhood. He stated that, again, he does not have a problem with the fence. He stated that he just does not like the way this is happening, for lack of a better term.

D. Stensaas stated that M. Dunn has an interesting point, but the longer this is drawn out, they could have a completely different board vote, and maybe the vote that was done is or is not - the comment from one of the board members that it was not a legitimate vote, that is not really for them to determine at this point, but one thing that he thinks is sort of being missed here is the reason that this is at a hearing right now at the Planning Commission level, why this is not a minor Planned Unit Development request is that this has effects beyond the property boundary, and if it did not, then the Homeowners Association making a decision about what happens within their PUD, that seems perfectly logical that they should be able to make rules that affect them. He stated that they could have 10-foot fences around everybody's house, but that is not the rule because some things affect beyond the property boundary, and that is why this is an issue for the City. He also stated that obviously, there are points on each side. He stated that not everybody agrees and that supports the point that this was a legitimate item to have at a public hearing, and the fact that the Board whatever they decided came out the way it did really at this point hardly matters because this issue really needs to get settled, and the applicant brought this forward in this manner to settle it.

M. Larson stated that he guesses what he is hearing is even though there is a lot of support for it, you have

folks that have moved into that neighborhood or had a house built in that particular neighborhood that had a set of rules that were in mind potentially for that, and potentially doing this, he asked if that is changing the rules beyond what that is - not the neighborhood in which they initially signed up to live in as a planned unit development, and so he guesses there could be some issues that are associated with that as well, even if there is nothing wrong with the fence per se, but kind of coming in with one set of rules and then changing it because the rules were not known to one individual potentially causes a problem.

S. Mittlefehldt asked another question for D. Stensaas in response to his comments. She asked if he is saying when he is saying that this example of a 6-foot high fence which does not meet the code and has implications for people in the PUD beyond just this one property, but if this could hypothetically in a hypothetical future if somebody could on West Crescent or the west side of town or anywhere else in the city build a 6-foot fence and then come to us and say, “Well, there is a precedent. We have 6-foot high fences now,” and try to make some amendment to our Land Development Code or something like that. She asked if that is what he was saying. A. Landers stated no, they review everything on a case-by-case basis. She stated that it is the same for variances. She also stated that a major amendment is like a PUD variance. S. Mittlefehldt stated that it would only be a precedent, which they have already started seeing a lot of special requests for this particular PUD, but that makes her feel a little better that it would not be like opening a giant can of worms in terms of precedents across the City.

J. Cardillo stated that she guesses she just wants to chime in the fact that the whole point of the PUD is that it is sort of all set out at the beginning, and the idea with the PUD is that you get to sort of not follow the rules of the City necessarily to the T because you are sort of setting your own set of rules which you agreed to abide by, so she guesses the issue she is having is that as much as she is sympathetic to the sort of narrative of how the applicant got in this situation, the whole point of the PUD is that all of this was gone through in incredible detail at the time that the PUD was approved. She also stated that these properties, it was known that they would have two frontages, and so as much as she feels bad for the narrative that got her into this situation and sort of information that was not properly disclosed, she has a hard time, especially on an individual level, in saying they should change this one lot. She stated that as Commissioner Dunn said, it would be one thing if they wanted to come back and change the design standards for the whole PUD, not that she is saying that she would be in support of that, but that would be something that she could entertain more rationally, but for her, she is very much challenged by having language in there that says with the exception of this one lot, so that is kind of how she sees it.

It was moved by M. Dunn, seconded by A. Andres, and carried 5-1 that after conducting a public hearing and review of the PUD application with support information, staff memo and attachments for 01-PUD-05-09-A8, the Planning Commission recommends that the PUD amendment request be denied by the Marquette City Commission for the reasons discussed in the meeting.
Yes: A. Andres, M. Dunn, S. Mittlefehldt, M. Larson, J. Cardillo
No: W. Premeau

B. 04-SUP-06-21 (05-SPR-06-21)– 717 N. Third St (PIN: 0330420): Special Land Use permit for an expansion to their previously approved Outdoor Food and Beverage Service, and a Special Land Use Permit for Outdoor Entertainment and Community Events as a Principal Use

J. Cardillo exited the meeting due to her aforementioned conflict of interest and M. Larson assumed the role of acting Chair for the case.

Zoning Official A. Landers stated that Superior Culture LLC and Alex Rowland are seeking a Special Land Use permit for an expansion to their previously approved Outdoor Food and Beverage Service, and a Special Land Use Permit for Outdoor Entertainment and Community Events as a Principal Use to be located at 717 N. Third Street. She also stated that the Planning Commission has received agenda packets which included the staff report and analysis and showed that on the screen, and she also showed the applicant’s Special Land Use Permit application with attachments including the area map with the parcel outlined in blue, the block map with parcel outlined in blue, photos of the site, site plan set, lighting sheets, excepts of the Planning Commission minutes of January 9, 2018, and May 7, 2019, and one piece

of correspondence with attachments. She also stated that several items of correspondence were received after the agenda was posted. Correspondence from Igor Popovic of 216 W. Hewitt Ave. in opposition to the request was read into the record. Correspondence from Sandra and Paul Gluski of 212 W. Hewitt Ave., opposed to the request, was read into the record. Correspondence from Steven Wahlstrom of 723 N. Third St., in support of the request, was read into the record. Correspondence from Susan Bohor and Ron Sundell of 130 W. Hewitt Ave. in opposition to the proposal was read into the record.

The applicant, Mr. Alex Rowland, owner of 717 N. Third St., stated that he has been in business for going on five years now. He also stated that the last year has been the greatest struggle of that time, but they managed to persevere through COVID, doing takeout and delivery. He stated that when they were able to reopen in May, they moved their operations into the back yard as their taproom is quite small and cannot necessarily accommodate enough people to keep going, so where they stand right now, they employ five employees. He stated that they kind of got that going last year, and they are continually hosting live music, and he has a place for artists to present their music and get paid throughout all this. He also stated that the success of last summer allowed him to purchase the building in September of last year, so he is planning on being here for quite some time. He stated that with this project, he is hoping to mitigate the sound and separate their commercial space as much as possible from these residences while still maintaining their rights as a commercial business owner on Third Street. He also stated that he thinks that looking at other businesses that are coming up on Third Street like Blackrocks or the Third Street Marketplace, he thinks they are beginning to set this precedent for what a business owner should be able to do in the downtown district. He stated that where they plan to put the stage is underneath the retaining wall. He stated that it is about 4 feet tall. He also stated that behind the retaining wall is where they hope to put up this fence. He stated that they will be using acoustic sheeting within the entire fence as well as within the covered stage as well as running cables up above overhead and running some sheeting there, so they are looking to contain this as much as possible, but looking at the property that he owns, the inside space is so limited, so he thinks the only way to accommodate, especially last year, safety all the traffic that they have had is by utilizing this outdoor space.

Mr. Joe Rom, the applicant's design consultant, stated he will just maybe touch a little bit on a couple of points. He stated that he means they are not designing sort of a proper amphitheater, but they are trying to use a lot of the best practices to try to mitigate a lot of the reverberation or kind of echoing of sound waves there, and the shape of the pavilion they see in the support material is kind of wedge-shaped, and the bottom surface of that roof would have acoustic panels on it for absorbing sound as would the proscenium or basically the surface behind the performer, so really just trying to make the sound go to the audience and limit its propagation. He also stated that, obviously, this is an outdoor space, so it is not going to be sort of whisper-quiet, but they believe the acoustic treatment on the stage area coupled with the change in elevation that Mr. Rowland had mentioned coupled with the acoustic treatments on the fence, which is an absorptive treatment where the sound waves go into the material and then the energies basically disappear at that point, and the design intends to reduce the decibel levels through that. He stated that then the addition of the kind of wedge-shaped panels between the tent and the stage area to try to capture any additional sound that might be traveling upwards, so that is kind of one point he wanted to make, and another one is he saw that one of the letters kind of against this action had a lot of decibel readings, and he knows sound, obviously, degrades with the distance traveled, but just relative to overall decibel readings, some of these levels in the 40s and 50s and even low 60s, those are relatively low levels. He stated that if you look at a decimal chart, those levels are soft radio music or background audio and things like that, so it is not like the roar of a jet engine and those sorts of things. He stated that their hope is that through this process and Mr. Rowland's great management and these acoustic properties, they are taking steps to try to be a good neighbor and also maximize the potential of Mr. Rowland's business. He stated one other thing, just the additional discussion about lighting. He stated that maybe Mr. Rowland can speak to the lighting that was maybe present in the tent when that photograph was taken that was referenced in the letter, but as they can see from the cut sheets that were introduced as part of this SOU application, they are looking at a lot of downlighting and such, so there is no obscene lighting that they are trying to introduce here. He also stated that everything is to try to keep everything down.

Mr. Rowland stated that he just wanted to say that he is not entirely sure about the angle and the dark background of that picture, but the lights that are shown within that picture, are soft LEDs that are underneath the tent, so it does give the tent a soft glow, but he does not think it is intrusive. He stated that it

is not radiating up into the sky. He also stated that he will also note that they, throughout the entirety of last year, shut down everything by 10:00 p.m. every night, which is well before the 11:00 p.m. noise ordinance.

M. Larson opened the public hearing and asked if anyone wanted to speak.

Paul Gluski, of 212 W. Hewitt Ave., stated his comments will probably exceed three minutes, so his wife will continue when he is done. He stated that they are speaking in opposition to the special land use permit application submitted by Alex Rowland and Superior Culture, and he is asking the Planning Commission not to approve it. He stated that furthermore, they would also ask the Planning Commission or whoever has the authority to prevent Superior Culture from continuing to have a tent, lighting, and live music in their outdoor space because, as they understand it, they have done all this without permission. He stated that when they purchased their retirement home in 2016, they researched what sort of businesses were nearby at that time. He stated that in addition to quiet residential homes, their home backed up to an optometrist, a hair salon, and short-term rental property. He stated that since then, Superior Culture has moved in. He stated that at first, it was not an issue because he was just manufacturing, and it was just an outdoor service. He stated that, however, in May of 2019, they applied for and were approved for outdoor food and beverage service. He stated that, in theory, they were not completely opposed to this. He stated that they were not, especially because, at the Planning Commission hearing, the following statements were made by the owner, Mr. Rowland. He stated that Mr. Rowland described it to the Planning Commission as basically creating a natural space where people can hang out. He stated that Mr. Rowland indicated that the capacity will be no more than 15 people. He stated that in an apparent effort to downplay the outdoor stage, Mr. Rowland stated that there would be not much of an appeal to sit in the back since they are not looking to propose any lighting out there. He stated that when directly asked by Commissioner LaChapell about whether or not there would be music. He stated that Mr. Rowland specifically said once a month or maybe even less than that. He stated that Mr. Rowland did not mention a 20-by-30 tent that would be erected. He stated that since that date, they have definitely exceeded 15 in capacity, a large tent was set up within sight of many of the homes, outdoor lighting was hung and very loud, live music has been occurring outdoors up to four nights a week in the summer and fall months, including school nights, and they are fostering a niece and nephew, so they are surprised and disappointed all of those things are allowed to happen since they are all contrary to what Mr. Rowland stated at the Planning Commission in 2019. He stated that they do not support the “ask for forgiveness, not for permission” approach Mr. Rowland has taken, and they do not believe that it should be rewarded with approval. He stated that truth be told, they enjoy venues with outdoor seating and live music. He stated that many of the venues in Marquette seem to be a good fit for that. He stated that, however, Superior Culture is unique as it backs up almost entirely to residential home lots and not an ideal location for these types of outdoor events. He stated that his wife will finish with hers.

Sandra Gluski, of 212 W. Hewitt Ave., stated that they support the growth and expansion of business along Third Street, and they want to support small businesses near them, but they also believe that expansion and growth need to be balanced with the needs of the residents. She stated that they have spent between $15,000 and $20,000 making their backyard an extension of their living space. She stated that they have before and after pictures that were submitted. She stated that, however, the loud patrons and live music in the outdoor space have effectively made their outdoor living space useless. She stated that to further cause insult to injury, even if they move indoors to socialize, they have to close their windows and doors during beautiful summer nights due to disruptive sound. She stated that this is their home. She stated that this is where they plan to live the rest of their days. She stated that they made a deliberate decision to move to and invest in Marquette and are now heartbroken that they cannot enjoy their space. She stated that Mr. Rowland wrote a letter to us and our neighbors, expressing how he feels his business has positively impacted the community, especially during COVID. She stated that the letter effectively dismissed how his business has absolutely negativity during COVID. She stated that during summer when outdoor socializing was the only way they could spend time with their son and daughter and their friends, the noise from live music prevented us from being able to do that. She stated that Mr. Rowland indicates that he wants to be a good neighbor, but she and her neighbors have approached Superior several times, and their concerns and their needs were dismissed. She stated that just saying you want to be a good neighbor does not make you a good neighbor. She also stated that, finally, they would like to say that just because something meets the criteria does not mean that the Planning Commission must approve it. She stated that they sometimes feel that businesses are given a bigger voice because it appears that they are investing in their community but attracting and retaining owner-occupied homeowners is also a way to invest in the community. She stated

that homeowners who make improvements to their front and back yards are also investing in their community. She stated that they believe there needs to be a better balance, and the needs of the businesses cannot outweigh the needs of the people who live here and are equally invested.

Bernie Huetter, of 220 W. Hewitt Ave., stated he owns 224 W. Hewitt and 220 W. Hewitt, directly in the backyard of this proposed project. He stated that he did attend the meeting on May 7th, two years ago, where he indicated that having lived at 224 W. Hewitt that there is a natural amphitheater created by this property the way it extends into the backyards of strictly residential property and has a natural effect. He stated that it is very impossible to correct this with the devices that have been proposed. He also stated that what was approved back in May of 2019 was not adhered to, was extensively expanded, and has caused disruption for the people in his residences and surrounding neighbors. He stated that police have been called a number of times based upon the disturbance. He stated that they have a limited effect on the disturbance, and once they leave, it just seems to escalate. He stated that one of the bad things, he raised four children in 224 W. Hewitt, and the noise and language that comes out of that is inconducive to that type of residence and that this property has been for over 125 years used that way and is still viable. He stated that he thinks that in Mr. Rowland's letter that was proposed showed that he can produce his products and market them way beyond Third Street and has done so with success. He stated that this venue is not necessary for him to maintain a business on Third Street. He stated that he guesses that those are the only comments he has to make there.

Linda Popovic, of 216 W. Hewitt Ave., stated that she will speak for three minutes, and then her husband, they are sharing the same computer, Igor. She stated that he will speak after she is done. She stated that she would like to voice her opposition to Mr. Rowland's proposed plans to expand his outdoor food and beverage service and his plans to construct an outdoor entertainment venue at his place of business, Superior Culture, which is located at 717 N. Third Street. She stated that she is also asking the Zoning Commission to revisit the original food and beverage permit that was approved on May 7, 2019, for Mr. Rowland's business because of the events that occurred at Superior Culture last summer and fall of 2020. She stated that last week, she submitted documents to the Zoning Commission to review. She stated that these included her letter outlining her concerns about the noise level Superior Culture generates. She also stated that she also submitted a log of dB levels of Mr. Rowland's events from her house and back yard from September the 24th through October 31st, 2020, a letter that was given to Mr. Rowland on October the 9th, 2020, from his neighbors, 13 of them, that expressed concerns about the level of noise Superior Culture was generating from live amplified musical events and a calendar of events, also, that Mr. Rowland had posted on his Facebook page from Superior Culture. She stated that she would like to point out that Mr. Rowland generally held amplified singing and instrumental events three to four nights each week throughout the summer and fall last year, all of which were conducted without proper permits. She stated that she cannot support any of the new changes Mr. Rowland is proposing, as he has proven to her that he is not able to conduct his business in a manner that would address the concerns she has over the noise level. She stated that Mr. Rowland did nothing to mitigate this issue last summer, and she has no reason to believe that he would act any differently moving forward. She stated that the sound generated from the back area of Superior Culture carries throughout the neighborhood into her backyard and her house. She stated that not only do these events sound like they are in my back yard, but she can hear them and the crowd inside her house, even with all her doors and windows closed. She stated that the noise was so loud last year that I filed multiple noise complaints with the police throughout the season. She also stated that in May 2019, the Planning Commission wanted to trust Mr. Rowland and give him a chance to prove that he was listening to his neighbors and heard their concerns about noise levels. She stated that Mr. Rowland had his chance, and now she is asking the Zoning Commission to consider the effect this business has on the surrounding neighbors. She stated that Mr. Rowland morphed the proposed art therapy and health and wellness projects to be held on his back porch into raucous, amplified musical events and concerts that culminated in a full-blown rock concert, which disrupted the entire neighborhood, and all of this took place in the middle of a pandemic when any singing event was considered to be a very high risk for spreading the virus. She stated thank you so much for your time and for taking her concerns into consideration.

Igor Popovic, of 216 W. Hewitt Ave., stated that he is a joint property owner and resident with his wife, and their property touches Superior Culture's lot in their northeast corner, and so most of his comments were covered by the reading of his letter at the beginning of this hearing, so he can just summarize here. He stated that on the onset, he would like to say that he is somewhat familiar with decibel measurements,

having spent the last 25 years planning and conducting acoustic wave surveys for the industry, and he is also aware of the difference between decibels measured at the source and the receiver, so the measurements that they have logged throughout the events in their backyard are measured at the receiver, so 70 dB at the receiver is considerable. He stated that with the current application it appears that Superior Culture is now applying for a permit to continue doing what they were doing last summer and fall already. He stated that drawings in their proposal suggest that some noise attenuation will be attempted. He stated that, however, the measures described appear to me doubtful to be affected. He stated that the acoustic canopy shown there is really just a disjoint set of shade sails. He stated that a new temporary tent appears to be the one he used last year, and that tent has been set up this year for over a month already. He also stated that, finally, the proposed acoustic fence is unlikely to have an appreciable effect as its top will be still below the grade of virtually every property west of Superior Culture's back parking lot, which will continue to function like an orchestra pit with the entire neighborhood behind and west of it as a target. He stated that, finally, he needs to say that he is skeptical of Superior Culture's execution of what they propose, seeing that they barely have implemented the conditions attached to their last permit from two years ago. He also stated that, by the way, one of those conditions included a fence to be erected adjacent to the MDR zoning district, which Superior Culture implemented as three 8-foot segments of lattice, and that whole contraption is in the process of falling over already. He stated that in concluding, he would like to assert that he is not principally against open-air live-music concert venues. He stated that he does believe that as successful a business Superior Culture may be that it has more than outgrown its current location, in particular in view of the current proposal and to the detriment of an entire MDR-zoned neighborhood.

Julie Bowerman, of 1301 Picnic Rocks Dr., stated that she also works at the Third Base, and she works the door every weekend, every Thursday and Friday, ever since the pandemic began, and she is just going to tell them that as the person standing outside waiting to let people in and check IDs, she has never once heard a loud noise from the kombucha place. She stated that, but, again, she is only there on Thursday and Friday nights, the busiest nights for the weekend. She also stated that they also have five other people here who would like to comment.

Pasqual Stabile, owner of 236 W. Prospect St., stated that it is right there where the kombucha place is, and he supports Mr. Rowland on this one because, first of all, the music and noise coming out there is very, very low, and it is not annoying at all, and on top of that, even in the middle of downtown, it is right on Third Street, and it is a vibrant, young, growing town with students, and people want to have a little bit of life without bothering anyone, and he thinks they are being really, really, really nice about it. He also stated that they are trying to make all the adjustments to reduce the noise, and they are okay with cutting down the music early at night. He stated that they were doing it at 10:00. He stated that he thinks nobody gets to sleep before 10:00, especially in the summertime. He stated that to be honest, it is still light out, so he totally supports Mr. Rowland, and he hopes they can think about this because this guy is work hard, he is trying to make a living, he is trying to support the City, he is trying to make it appealing for the young people, and let us live life, and if you want to sleep at 9:00 at night, you should not be buying a house in the middle of the town. He stated that he is sorry, so he supports him.

Sara Stabile, owner of 236 W. Prospect St., stated that she is also talking in support of the business as well in agreement with a lot of what has been said already. She stated she is from Marquette. She stated that she has lived here all her life, and Marquette has always been a downtown area where things have been active and to think that you can have a retirement home right outside of Third Street does not seem like a good, viable plan. She stated that if you want a retirement home where you plan on spending some quiet hours, she would do it outside of the city center. She stated that she understands that some type of agreement has to be made, but as Mr. Rowland had said, he is stopping a lot of the music at 10:00, which is before the 11:00 ordinance, so she thinks he is already respecting those rules and those ordinances that are already put in place, so she thinks that he, as a young man, a young entrepreneur, trying to make his way in this world, she thinks he is doing a really good job, and we should be supporting him instead of putting him down.

Heather Pickett, of 921 W. Fair Ave., stated that she spends a lot of time in the Third Street area, and she just thinks that kind of the precedent has already been set by the Blackrocks music policy. She stated that they quit playing music at 10:00. She stated that seems to make everyone happy, and people who come to spend money and support this town are able to still come and spend their money without upsetting the

people who live in that area.

M. Larson stated that with that, they can move into commissioner discussion and if they have additional questions then, they can direct them back to the applicant.

M. Larson closed the public hearing.

> *It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 5-0 to suspend the rules for discussion.*

S. Mittlefehldt stated that she guesses she just had a technical question about the acoustic fencing and the acoustic tiles, the triangular shapes. She stated that she thinks just trying to understand a little bit about how the space might function to mitigate the noise issue. She stated that they have not necessarily, and another proposal is the Cognition Brewery that they just recently looked at and certainly Blackrocks. She stated that she does not know if they have ever seen efforts to actually show this level of kind of acoustic engineering, so she was wondering if maybe Mr. Rom could explain some of that a little bit.

Mr. Rom stated that they do not have an empirical sound transmission coefficient or reduction target. He stated that the goal with this exercise was to reduce the amount of acoustic energy that is propagating outward, which was very astutely noted by some of the letters that were presented, so the acoustic fence is a well-known product. He stated that there is a lot of support information there where basically, with general kind of acoustic panels, what you have is you have kind of an outer sort of acoustically permeable layer, and then the sound basically goes within that layer and then kind of bounces around between the outer fabric layer and the backing layer, and it loses a lot of its energy that way, and so that is to kind of stop the energy from bouncing and not being reduced and going out into the neighborhood, so the fact that the performance area is dropped down and the fence is actually above the retaining wall, so there is four feet of retaining wall and there is the additional fence, so you have you know the effective top of the fence is actually significantly higher than just the overall fence height, so that is perimeter fence, which is actually they are working to extend around both sides to really create kind of a horseshoe shape sort of surrounding the stage area, so that is kind of step one is this acoustic fence product, which is a national product and international product. He also stated that then within this kind of stage pavilion that is proposed, having the roof basically over the performer's head and also from behind and having that treated with acoustic properties, and that with a little bit more of a traditional kind of acoustic panel, which is basically like foam with a fabric on it, which is very, very similar to the type of acoustic paneling and tuning that you would see in any sort of venue that you would go to. He stated that, obviously, in an orchestral scenario or an auditorium, it is a higher degree of refinement, but here they are deploying all of those same principles, so within this pavilion, you have the sound. He stated that they are trying to really limit a lot of wayward and errant acoustic energy, so those are kind of the two major items, and then to bridge the schism, if you will, between the performance stage and the tent proper, these wedge panels or sail panels are there, not to 100% block any acoustic energy from escaping, but really to try to diffuse that energy and to lower the sound any which way they can, so between those kind of three items, the nature of the tent and the fabric and all of the trees and vegetation, they believe that is making an earnest and honest effort to mitigating the sound levels.

M. Dunn stated that he was just looking back at minutes to see what they have done with similar situations where they have several different property owner rights to consider. He stated that, obviously, the business has a right to do what is within the code, and they would all like to see that happen, but they also need to consider the homeowners that are there and the right to their quiet enjoyment of their property. He stated that it sounds to him like the design is doing everything it can to mitigate the noise. He stated that looking through everything else, he does not see any other sticking points other than the noise. He stated that everything else seems fine, so he guesses he is wondering a couple of things. He stated that he guesses one question would be for the applicant, and that is a very simple solution, and he is wondering how critical electrically amplified music is to their business if Superior Culture's unplugged might fly.

Mr. Rowland stated that they have actually done some acoustic shows in the back yard, and with just general crowd conversation noise if you are standing towards the back, you can not necessarily hear it, although one thing he will say that will be different, last year was doing everything they could to survive and

stay alive. He stated that he was using some of his amplifiers and then would also allow some musicians to bring in their equipment, which caused variation in noise levels. He stated that this year with some more financing going forward, he is looking to invest in a PA system that would connect, and basically every musician that came would plug into the same PA system. He stated that it would have the levels controlled by them rather than the musicians, and he also owns a decimal meter, and he last year was going to the corners of the property, the front corners, the back corners, trying to get as close to these properties as possible. He stated that he was trying to keep the noise level roughly 50 decibels 50 feet from the point source, so he thinks with some of these advancements with their sound system that he thinks they will be able to do a lot better job of controlling those levels, but he does believe that outside the acoustic is just not quite enough.

M. Dunn stated that he guesses the other thing he would like to hear from the other commissioners on is If whatever they do here, he wants to make sure that they are consistent with what they did at Blackrocks, with what they did at the market. He stated that he thinks that 10:00 was pretty consistent for the other businesses, but again, just coming back to the noise thing, he is trying to go through the old minutes to see if they did anything else as far as trying to control noise when they were right next to residential properties, but he is just looking for other commissioners' input on that.

A. Andres stated that he believes Blackrocks is at 11:00. He stated that he thought they came before them and they moved it from 10:00 to 11:00, which is the cutoff time. He stated that he is not sure about that, but it is worth keeping the standard with everybody else to all at 11:00.

W. Premeau stated that you can stop the noise going to through the side and through top maybe, but what good would your audience be that the noise has to go out in order for people to hear it, so he does not believe that you are going to be able to stop the noise at all, and he knows Third Street has changed. He stated that they have never seen it when it was a residential neighborhood. He stated that if you made noise, the cops would come down, and, I mean, I watched them beat the hell out of a crippled kid because he was making noise in front of Vangos, which was Dimbles then. He stated that it is silly, and they are not going to stop the noise. He stated that it is not going to stop it. He stated that it is still going to come out the front. He stated that otherwise, what would you do, put your audience somewhere inside or what. He stated that other thing that he did not understand on the survey plan, they show that tent. He asked what is the intent of the tent that covers that patio.

Mr. Rowland stated that basically, towards the end of last summer, they realized that all it would take is a rainstorm, and they would have a very mediocre night, and you can't necessarily afford that, especially in the middle of a pandemic, so kind of going off of the emergency order for the City of Marquette, that is when they ended up purchasing and installing that tent in September of last year, just to give people a place to go and still be able to sit at their distance tables outside while being covered from the weather. W. Premeau asked if that is going to continue. Mr. Rowland stated yes, that was the plan. W. Premeau asked if they are going to have the music in the back yard, people in the tent. He stated that he does not understand. Mr. Rowland stated that the tent is open on - it would be the east and west sides. He stated that it just has walls along the sides, but it is a big, pointed tent that continues right up to the front of the stage area, so you would be able to view all of that from within the tent.

S. Mittlefehldt stated that she really empathizes with what they have heard from the residents, but this really is not a new issue for them. She stated that she means they saw this with Blackrocks, and they saw this with the recent marketplace with Cognition. She stated that she remembers parents and multiple young families concerned about music and a brewery literally in their backyard, the same situation, and she thinks they came to a compromise. She stated that she thought it was a 10:00 and stated that maybe D. Stensaas remembers, which it sounds like Superior Culture has already been doing the 10:00 outdoor service is done, outdoor music is done, anything outdoor would be done at 10:00, and she thinks they also talked about acoustical fencing in that scenario to try to mitigate the noise. She stated that she thinks Commissioner Dunn said it well, like trying to balance the rights of the business community with the rights of the residents, and if they already have these precedents of allowing, she believes it is Cognition Brewery that is going to be in that marketplace, Blackrocks, then are they not putting Superior Culture at a sort of economic disadvantage if they have a different set of rules for this business owner as opposed potential competitors now that they are serving more than just kombucha, so she does not don't know. She stated

that she is really empathetic and empathizes with the neighbors, but at the same time, they already have kind of had this conversation with two other establishments.

M. Larson stated that one of his questions for the applicant is it was brought up that in his previous outdoor food and beverage service that you put forth that it was stated that there would be fewer individuals out there than there actually were and there would be a limited number of events. He stated that, however, then it was shown that there were essentially events every weekend from there, so kind of coming from what was originally told to the Planning Commission to kind of what actually came into being, he was just hoping he might be able to comment on that and them thinking about kind of moving this forward, just as it was pointed out, and he thinks there is potentially some valid concern on that portion of saying the right things at that one time to help calm folks' nerves and then having that be essentially music every weekend. He stated that to just give him the opportunity to talk about that.

Mr. Rowland stated that the number one factor in all of that was COVID, and the last year changed everything that he ever knew as a business owner. He stated that it changed the entire way they operated, so they had to move outside, and there are all of these artists that were looking for an avenue to express themselves, all these people looking for socialization to happen with safe distance and outdoor practices, and that is kind of how that backyard came into being, and since then, they have had hundreds and hundreds of people coming through this area and enjoying themselves, enjoying the beverages, enjoying the music, and they are just kind of trying to keep that alive for them, and having this consistency with these events allows them to plan them further ahead and pay out these artists and give people something to predict that can happen every weekend in this area.

M. Larson stated that a question for staff, just thinking about the local residents in the surrounding area, if there is a recourse that they can come into if the conditions are not met or if they move out of conditions of this if this were to move forward.

A. Landers stated that she does have one thing to note. She stated that the proposal is for a 6-foot-high solid fence, but the Third Street corridor does allow it to be up to an 8-foot-high for an approved commercial outdoor food and beverage service and the outdoor entertainment and community events, so she just wants to throw that out that the code allows for that. She also stated that if there are conditions placed on an approval per se, and if they are not meeting the conditions, then there is something in the code where you could look at revoking that permit if it seems as if they are not meeting that.

D. Stensaas stated that their discussion jumped around from Blackrocks to the Third Street Marketplace. He stated that he looked at the last three cases for Blackrocks. He also stated that, of course, they have the brewery over on Washington Street as well. He stated that he would have to go back even farther, but he is pretty sure there is a 10:00 outdoor food and beverage service limitation, and that is what was set for the Third Street Marketplace. He stated that they were required to construct an 8-foot-tall, sound-dampening wall. He stated that they were required to limit food and beverage outdoor service to 10:00 p.m. and then the mobile food operations had to be separately approved, but the other thing he wanted to mention, just to dispel the kind of notion that City staff or whatever did not respond to the fact that there was a change in the way the business was conducted over the past couple of years. He stated that largely, that is a product of the City Commission adopting a resolution to support local businesses during the pandemic by allowing temporary outdoor seating for food and beverage service, and the noise part of this, after listening to all the testimony, he is not sure why they did not get any complaints, and he is not speaking in favor or support of the applicant or anything, but they did not get a complaint about anything related to this until this February, and that is when they contacted the applicant and notified them they were in violation of the code, and that brought up on this request to kind of modify the facility to be more responsive to that and continue to do that kind of thing, but you can place conditions on this. He stated that, of course, the police are going to continue to enforce an 11:00 p.m. noise ordinance, but the Planning Commission could potentially set up a maximum number of complaints that if it exceeds that number of noise complaints, you would hold a hearing and potentially revoke this special land use permit for outdoor entertainment.

A. Andres stated to correct him if he is wrong, but he does not think they have ever done that for any other business.

D. Stensaas stated that has not been done. He also stated that does not mean you cannot do it. A. Andres stated that he is just thinking of being fair to the business here.

M. Larson asked if they have any other additional discussion on this matter or any reaction to what D. Stensaas has stated here. He stated that he thinks there is one thing that A. Landers brought up. He stated that they did suggest an 8-foot fence for the other facility that was there. He stated that if the Commission is leaning towards making it conditional that there is an option. He stated that otherwise with D. Stensaas' potential of some number of particular complaints and that would just trigger a hearing to discuss those particular issues, that is another option.

M. Dunn stated that he has got a quick technical question for A. Landers, but they have a condition that indicates an 8-foot fence, if that is measured from the grade of the subject property and if the 4-foot retaining wall would be part of that 8 foot high measurement. A. Landers stated no and showed the site plan on the screen. She indicated that the fence is by the property line, and that the retaining wall was setback into the property.

Ms. Larson stated that he would also just point out that there are potentially some unique characteristics here of the way the lot is set up that may set this slightly apart from other locations, just given the number of properties that it is touching at that point in time. He stated that he does not know if that is worth a discussion or kind of anybody's thoughts, but just point putting that out there.

M. Dunn stated that he is trying to put together something just so the Commission knows what he is thinking for whatever that is worth. He stated that he is inclined to approve this with similar conditions to what they did for the market. He stated that he guesses his only remaining reservation is the number of people. He asked if there is a cap on the capacity because, with the market case, they were approving it for outdoor food and beverage, which this location already has, so this is beyond going to the outdoor entertainment and community events. He stated that he is wondering about capacity. He also stated that it is the only limiting factor on capacity, fire department codes, or something like that. He stated that he is wondering what they might be looking at as kind of a worst-case scenario for a number of people.

Mr. Rowland stated that as far as he knows when it comes to outdoor capacity, he has talked to the fire marshal last year, and it basically goes on seating room versus the standing room, so it is 15 square feet per person if it is a seated area or 7 square feet per person if it is standing room, and that is the only restriction that he knows of other than what might fall back into building code where it comes to bathrooms and occupancy. He stated that he is not entirely positive about all that. M. Dunn asked if he has done that math already. He stated that he will get out his calculator there and see how many people that might be. Mr. Rowland stated that he only has the capacity for inside currently. M. Dunn asked what that is. Mr. Rowland stated 47. M. Dunn asked then with the outside if he knows if the outdoor area would be considered all standing or if part of that seated and part of that standing as well. Mr. Rowland stated that as of right now, the seated area would be underneath the tent, and then he guesses he is not entirely positive on what would be considered. He stated that there are still the two parking spots and the driveway, so he thinks that would be excluded entirely, so it would be whatever is on the east side of the tent and whatever is on the west side of the tent that is not already some other structure, kind of running in a straight line almost from the back of the building to the retaining wall.

M. Dunn asked for staff how capacity is factored into other outdoor entertainment venues. He asked if that is just limited to the size. He asked if they have not made any decisions as far as limiting the capacity of outdoor areas.

A. Landers stated that when it comes to tents, the Fire Department will look at the tent capacity, and if it is in a zoning district that requires parking for uses, that is what they would look at, which they have done before, but this zoning district does not require parking for this use, so it would be something that the Fire Department would look at for the tent as far as the outdoor stuff. She stated that she can show it on screen here. She stated that what Mr. Rowland was indicating was this area and this area may be the standing and this would be the sitting area underneath the tent.

A. Andres asked if they have any comment from the Fire Department. He stated that he did not see any in

the correspondence. A. Landers stated that the Fire Department asked for more information on the tent and its fabric type and structure, and then they provided that information, and then the Fire Department did not have any issues with the tent information, so it is going to meet their requirements for a tent.

M. Larson asked if there was any follow-up discussion.

S. Mittlefehldt stated she is going back to D. Stensaas' idea about like 3, 4, or 5 strikes, and then the permit gets revoked idea. She stated that she thought Commissioner Andres' comment about it might be unfair to others. She stated that she is trying to remember back to Blackrocks when they were getting started. She stated that she means they have never done this kind of 3 strikes and you are out or however many numbers of strikes, and she remember there being quite a bit of residential neighbors concern about that proposal, and then obviously the last one they looked at on the Third Street Marketplace. She stated that she guesses she is just curious what other people think about the potential. She stated that she thinks she definitely would support the 8-foot fence, adding that as an additional condition of the permit, but she is thinking about potentially a fourth condition. She stated that she is looking at the list. She stated that there are already the two that the staff recommended and then if they added an 8-foot fence and then a fourth. She asked how others feel about that.

M. Larson stated that he thinks it is an interesting idea. He stated that it is, he guesses, hard to determine what the level of strikes would be. He stated that he thinks it would be hard to determine how many strikes those are and not necessarily that the permit is revoked, but it essentially brings a hearing or a discussion on how you can approach that or if it has gotten better or has not gotten better and what the redeeming factor is there, so he does not know if it would go straight to some sort of revoking of the permit or not. He stated that it is an interesting idea. He stated that he is not sure where he fully stands on it, but interesting to think about.

W. Premeau stated that if they said, he does not know, say, 50. He stated that he could go get 50 complaints. He stated that he does not think that is a fair way to do it. He stated that Blackrock had plenty of complaints, but nobody paid any attention to them. He stated that there were complaints from blocks and blocks away. He stated that he thinks it is a real unfair burden to say, I could get 50 of his friends to make a call and then to shut somebody down. He stated that is not right. He stated that it sounds like all of them are for it, so he thinks that would be totally unfair. A. Andres asked what would be unfair. W. Premeau stated to put a condition of a number of complaints before they come in and have to come to a hearing or get shut down. A. Andres stated that he is not for it. M. Larson stated that he thinks it is just up for discussion.

D. Stensaas stated that W. Premeau made a really good point that is certainly subject to sabotage, for lack of a better term, but another option might be something that the City Commission does every so often with projects, and he thinks they did it with the marijuana ordinances, is to require a follow-up in a certain amount of time to look at. He stated that, for example, you could require a hearing in one year to review complaints that have been lodged to the Police Department for noise violations or to staff in our department and just go from there.

M. Larson stated to the applicant he thinks they have asked others in the past if to go from a proposed 6-foot high to an 8-foot high fence, is that something that he would consider as one of those options. Mr. Rowland stated that yes, absolutely, and he guesses he would propose perhaps that it would maybe just be on the south side or the west side as he does not see really any opposition coming from the northwest side of the property. He stated that it basically butts up to a rental unit parking lot. He stated that he could do it if need be, but it is kind of following that grade up towards the west side of the property. M. Larson stated that if that is something that they think might be appropriate, he does not know if they need to bring that up on the screen so they can take a look at that, not to keep this going here. He stated that this is where the new fence is projected here. A. Landers stated that it is in the red, so this is the west side and the south side that he was referring to, and here is the north side. She asked Mr. Rowland if he said this north side was what was adjacent to the parking lot. Mr. Rowland stated yes. A. Landers stated that this would be the west and south that he was referring to. M. Larson asked Mr. Rowland if that leaving that side there just up to the north side to be limited the 6 foot. Mr. Rowland stated that yes, he means either that or the far west side fence line is also at the highest point of the property, so he guesses, depending on what everybody thinks

there, he thinks definitely along that south side seems appropriate.

M. Larson stated that he thinks D. Stensaas' suggestion might make sense, just like a review similar to that they did for the other facilities. He stated that maybe that makes sense in this. He stated that he does think there are some unique characteristics to the location of this in comparison to some of the other sites that they have considered that may warrant at least just a revisitation after some point in time. He stated that, again, if he is overruled on that, that is perfectly fine, but he thinks that might make sense.

D. Stensaas stated that he just wanted to add that one of the things that - this is maybe the third facility where there is going to be outdoor food and beverage on Third Street, and that is part of what he is seeing is concern with the public comments is it is kind of a cumulative thing for some of the residents to be experiencing outdoor noise that they have not been accustomed to, but one of the things Blackrocks did in the beginning after they started their food and beverage service and had their first kind of request to expand their facility is they said that they were policing themselves, and they had some proof that they had been cracking down on people that were getting rowdy and trying to keep it more neighborhood friendly, and so he thinks that really would support the notion that having a review within a certain period would put the onus on the applicant here to do the same thing to really try to mitigate the - you are going to have that in any kind of situation where people are consuming alcohol, so it really becomes incumbent on them to crack down on bad actors, and he thinks that review period would help them feel more confident that they have some control in the future.

S. Mittlefehldt asked D. Stensaas if he was thinking like a one year and then come back in for review, if that is something the Planning Commission would need to review, or if that could be something that administratively could be reviewed. D. Stensaas stated that it would be good to review it at the Planning Commission level just for the sake of having public being able to come in and provide testimony and submit written correspondence once it is on their agenda. He stated that it can be scheduled as a business item to review, he thinks. He stated that they would have to talk about the details but putting it on their agenda at a specific time would help, he thinks, with the public being able to contribute testimony.

M. Dunn stated that he was sorry to kind of repeat himself, but he guesses he still did not really get any clear answer. He stated that he is wondering if staff can tell me if there is any limit on the capacity with the approval for outdoor entertainment. D. Stensaas stated that he does not think there is. He stated that there is nothing that he can think of that is baked into the codes. He stated that other than the fire safety considerations, he does not think in our ordinances that there is anything in the outdoor area, and even for events. He also stated that he was a board member of the Blues Society, helped plan the Blues Fest, and has been involved with some other music events like that, and he does not know in their city parks that any certain capacity limits are set by Code anywhere. He stated that he thinks it comes down to the Fire Department's considerations for life safety.

M. Dunn stated that he guesses for the rest of the Commission, he is still thinking about some sort of condition to limit the number of occupants here, but he does not want to pick an arbitrary number, and he does not know enough about it, so he is looking for input on that, but it just seems to him that based on the standards, the 54.1403, one of the standards that they need to consider is #7 is the number of people, and then also on 54.1402 under E10, they are looking at nuisances and that those two things, it just makes him think that they should limit this to some degree. He stated that he hates doing that to a business because you want businesses to grow and do as much as they can, but at the same time, in fairness to the existing property owners, it just seems like there needs to be some sort of limit so that they do not have 300 people packed into a back yard listening to a rock concert. He stated that he is looking for input as far as whether that would be something you guys would be okay with and what number might make sense if they are okay with it.

M. Larson stated that he thinks that is partially a question to them and partially a question to Mr. Rowland as far as the numbers anticipated. He asked M. Dunn if that is partially a question to them, or if that more of a question directed at the applicant. M. Dunn stated both. He stated that he would love to hear what the applicant is thinking the numbers are going to be, but then he also wants to hear from Commissioners if they are okay with that suggestion and what is the number that makes sense to them.

A. Andres stated that if it moves along, he would love to revisit this in a year if they can do that. He stated that he is not in favor of putting any number limit on it, but if that is something to move it forward, he will be okay with that if they can just move this forward, he thinks it is a good idea. He stated that he thinks it should be approved.

S. Mittlefehldt stated that she went back and checked out the proposed space in preparation for this meeting, and it is not a very huge space, and she thinks in the past they have things that defaulted to fire code, so maybe they could add something like occupancy will comply with fire code whatever, but she is kind of with Commissioner Andres. She stated that she does not think beyond that, it is not a huge space. She stated that she cannot imagine 300 people fitting back there.

A. Landers stated that she would echo S. Mittlefehldt's comments because she is thinking that is the only way they could be able to enforce it is it would have to meet the fire safety codes. She stated that she does not think they can just assign an occupancy number unless there is some kind of code, some kind of requirement, so if that is where they want to go with the condition, she thinks it would have to be a condition that as long as what is being proposed would meet the Fire Department's required codes, she thinks, and it does not violate their occupancy requirements or something if there are any for outdoor, outside of the tent.

M. Larson asked Commissioner Dunn before they talk to the applicants if they have to even vote to that if that satisfies him. M. Dunn stated that yes if that is what the Commission wants to do. He stated that it does not sound like folks want to have a cap on it, and that is fine. He also stated that he would still like to hear from the applicant just to have it on record of what they think their crowds actually would be.

W. Premeau stated that the only things he can think of that would limit the capacity outdoors in most areas, you have got huge areas that you could get out of in case there is a fire or something and have an exit. He stated that in this case, you have got a limited amount of exit space unless you want to jump over the 8-foot fence, so he does not know of any other thing that limits capacity, but that could be one.

M. Larson asked the applicant if he would like to kind of think about what capacity of that area might be. Mr. Rowland stated that yes, so last year due to COVID restrictions, they actually did enact a 50-person capacity, and that was on the entire premises, which then makes it really hard to control with the way that they built their wraparound deck in 2019, but they had multiple people. He stated that there were like three of them there every night of the weekend, and they were doing everything they possibly could, using baseball number counters to make sure they were meeting those capacity restrictions for that time, so there were definitely times where they would be hitting that 50-person capacity on a Friday night, say. He also stated that he cannot really imagine it is going to go much over 100, but, again, it does make it very difficult to control unless you are putting fencing and gates and having people at all points of exits on an outdoor space, and they will actually be having somebody running the back yard as well as somebody running the inside and somebody kind of going between and watching the front door, but he guesses he does not know. He stated that he imagines it would be right around there on a busy night. He stated that maybe there are 100 people there, but it is hard for him to put an exact number on it as they are in this growth phase, and he guesses he has not seen it go beyond 50 really at this point. M. Larson stated thank you, and he thinks he can appreciate they are taking this time because they are certainly trying to balance the interests of all parties, him as well as the residents around and trying to figure out how they can mitigate this, and he thinks he is trying to take steps to mitigate some of the issues that have been brought up, but then also just to make sure that the onus is put on the applicant to help police their own facility and patrons that live there and hopefully to help to remove bad actors from that situation, so he thinks this is just one of these situations, and to D. Stensaas' point, in his mind, there is a little bit of a commutative situation going on as well with other facilities that have outdoor events and you have competing music on similar days, depending on that, that coupled with his slightly unique location, to his mind anyway, in comparison to some of the others, do, he thinks, warrant some of this further discussion that they are taking there today. M. Larson asked Mr. Rom if he would like to say something to that.

Mr. Rom stated yes, just to maybe follow up with what Mr. Rowland said with respect to the occupancy and based on what they had discussed with you know the projection of the rear of the house to the tent to the stage, just a crude sketch and outdoor spaces, obviously, this can be interpreted a few different ways and they would certainly defer to the expertise of the Fire Department and what they would want to see, but just

looking at the numbers, Mr. Rowland's number of 100 is pretty close to what the prescribed occupancy would be. He stated that the area under the tent is 640 square feet, 15 square feet per person, that is 42 people, and then in front and behind that, that is going to be about 57 people potentially between the tent and the stage and then maybe about another 20 behind the stage, so that is going to get us to about 125 maximum just space-wise. He stated that, of course, that can be limited further, but then looking at International Building Code Regulations for egress width per occupant, it is typically .3 inches per occupant of exiting width that you would need, and it is under 4 feet for that type of space, and there is porosity on the site, but there's also the driveway that goes to Third Street and then around the other side of the house, so there are kind of two ways around the house to get to the street, and both of those ways have enough width. He stated that it would more than satisfy the requirements from a just a really basic, quick, back-of-the-napkin kind of egress conception. M. Larson asked Commissioner Dunn if that helps. M. Dunn stated yes, that is great.

It was moved by M. Dunn, seconded by A. Andres, and carried 5-0 that after review of the site plan dated May 4, 2021, and the Staff Report/Analysis for 04-SUP-06-21 & 05-SPR-06-21, the Planning Commission finds that the request meets the intent of the requirements of the Land Development Code Sections 54.635, Section 54.636, 54.1402, and 54.1403, and hereby approves 04-SUP-06-21 & 05-SPR-06-21 with the following conditions:

1. *That an amended plan is submitted to meet staff comments*
2. *That the bike racks are added to the property to meet code.*
3. *That the applicant constructs an 8-ft tall fence with sound dampening materials on all sides, as shown on the site plan as a proposed 6-ft high fence.*
4. *That operations outdoors will stop at 10 p.m.*
5. *That the applicant will return to the Planning Commission for review in July of 2022 to review all complaints received by the City for the prior year.*
6. *That the capacity in the outdoor area will meet fire and safety code requirements.*

Yes: A. Andres, M. Dunn, S. Mittlefehldt, M. Larson, W. Premeau
No: None

J. Cardillo rejoined the meeting. D. Stensaas suggested taking a brief recess.

It was moved by M. Larson, seconded by S. Mittlefehldt, and carried 6-0 to take a 10-minute recess, until 9:05 p.m.

It was moved by M. Larson, seconded by A. Andres, and carried 6-0 to reconvene the meeting.

03-REZ-06-21 – 1651 S. Front St. (PIN: 0020251): Request to rezone from GC-CR to GC

Zoning Official A. Landers stated the Planning Commission is being asked to make a recommendation to the City Commission regarding a request to rezone the property located at 1651 S. Front Street, which is zoned currently General Commercial with Conditional Rezoning (GC CR) to be zoned General Commercial (GC). She stated that attached to the agenda was the Staff Report, which she will show on the screen. She stated that this first page shows the items that were struck out both by what was proposed by the applicant and what was approved by the City Commission and the proposed zoning of GC-CR, which shows permitted principal uses and the special land uses, and we included the case information for the previous rezoning request, and then the attachments for this rezoning application - and their attachments, the area map, the block map, the existing zoning map, the excerpt of the Master Community master plan with the Future Land Use Map and the zoning map showing the area of the requested rezoning. She stated that in that Future Land Use Map it was proposed to be mixed-use. She stated that in the Proposed Zoning Map Mixed-use was proposed. Shown on the screen were the following agenda attachments: photos of the site, the public notice in the Mining Journal, excerpts of the Planning Commission meeting minutes and the City Commission meeting minutes of the previous [conditional rezoning] request, rezoning considerations for planning commissions, spot zoning considerations, and attached in the agenda was correspondence that was received prior to the agenda being posted.

She also stated that they received additional correspondence that was sent after the agenda was posted,

and she and D. Stensaas read correspondence for the Planning Commission as follows. Correspondence from Colleen Pascoe of 102 E. Furnace Street in opposition to the request, was read, and a visual that was attached to the correspondence was shown on the screen. Correspondence from Shirley Michelson of 106 E. Furnace Street, in opposition to the request, was read. Correspondence from Linda Byers Blacksmith of 2810 Granite Pointe Drive, in opposition to the request, was read. Correspondence from Jerome LaRue of 104 Furnace Street, in opposition to the request, was read. Correspondence from Carrie Roy of 104 E. Furnace Street, in opposition to the request, was read. Correspondence from Amelia and Weston Sramek of 1 Marquette Drive, stating their concerns regarding the proposal, was read.

D. Stensaas stated the letters indicated that the hearing tonight is about a marijuana business, and he wants to clarify that is not the case, that the decision tonight is about rezoning the property to General Commercial, which would allow for every use stated in the Land Development Code for General Commercial, and open the door to all of the Special Land uses listed under General Commercial. He also stated that if the rezoning were successful the property owner could come forward with a Special Land Use Permit to seek to have a cannabis consumption facility at the location. He stated that is a whole different process that would require another public hearing with the Planning Commission, and that would only happen if the City Commission decides in favor of this rezoning request. He also stated that regarding the rezoning, in the packet for this case, there are two key rezoning considerations, and he discussed the portion of the agenda materials that addressed the first issue of *consistency with the Community Master Plan* (CMP), and he spoke about the Future Land Use map and the Proposed Zoning Map from the CMP and explained how the subject parcel was designated for Mixed-Use zoning in the 2015 major amendment to the CMP and how it was implemented with the adoption of the Land Development Code in 2019. He also stated that section 54.1405 lists several factors, standards to consider regarding if the zoning map should be amended due to a proposed LDC amendment or a rezoning request, for whatever reason, and he stated the two that stand out to him are considering if conditions have changed so that the CMP should be updated or were there shortcomings that have resulted in a new zoning district being appropriate, and then the potential land use and impacts of the requested, proposed new zoning district, and those are the two things that stick out to me as ones the Planning Commission has a chore to wrestle with. He also stated that the other thing is spot zoning – and it's stated in your packets, it lists four conditions or criteria, and for a spot zone to exist, you have to find that all four of the criteria are met, and he stated that he suggests the Planning Commission look at those four criteria one at a time to determine if a spot zone would be created.

Mr. Scott Dianda, of 25607 Wedge St. in Calumet, stated thank you to Madame Chair and the rest of the Commissioners, City staff. He stated that they appreciate everything they do. He stated that he just wanted to say that he represents AgronoMod, which is 710 Woods, and they are working with the landowner, which would be Terry Doyle in the application, and they just want to let folks know that this is a local business that will be operated as a franchise with a local owner that will employ people locally, full-time positions, and he is going to let the rest of their team introduce themselves tonight, and they just wanted to let them know that the planned used for the property will be cannabis sales with on-site consumption lounges, and they want to make sure that they go through and make sure that everything is done according to all the City's specifications, whether it is the site preparations with the hours of operation. He stated that this was originally a business that they all remember as the Pizza Hut that ran for many decades in that area of that piece of Marquette, so with that, he is going to ask their team to introduce themselve.

Mr. Dax Richer, 333 W. Washington St., the design consultant for the applicant, stated that they are representing Terry Doyle, the current owner, and also hopefully the future owners, in getting their interests for the cannabis retail and consumption side of things. He stated that he wants to thank everybody for being here so late, for revisiting this. He stated that it has been like one year since they talked about it. He stated that some of them were on the Commission last year, so thanks for listening to it again. He also stated that a lot has happened in one year. He stated that last year at this time when they were revisiting this, they were dealing with COVID and then also cannabis in Michigan as being a new thing, and both of those things, they have had a year had to deal with them. He stated that on the cannabis side of things, they have had super successful projects. He stated that there are a lot of them that opened in Marquette. He also stated that it brought employment, it brought taxation, renovation of buildings, and he thinks they have also brought a sense that they are really not impacting in a negative way to the community. He stated that he means they have not seen anything. He stated that they work with multiple entities in the cannabis industry, and they have not seen anything negative yet. He stated that Marquette has seen a lot of cannabis retail

shops. He also stated that they have a site that they feel is appropriate for a consumption lounge. He stated that it was currently a liquor consumption lounge and a restaurant consumption lounge, so it kind of fits in that same use. He also stated that they do not feel like cannabis is any more harmful, if not less harmful than liquor bars, and so they want to answer any questions about that. He stated that he is going to dive into the site. He stated that they are all familiar with the old Pizza Hut site, Terry Doyle's site. He stated that it has been there for decades. He stated that the entire north side of the site is buffered by a building. He stated that the proposed building they do not need to get into, but...
D. Stensaas stated, to the Chair – a point of order – this is a Rezoning hearing and not a Special Land Use review.

J. Cardillo stated that we need to contain the statements basically to the global idea of rezoning this property, not to the specific use that he intends to use for this property. She stated that, for them, they are deciding whether turning this into General Commercial and any use that could be under the canopy of general commercial would be appropriate, so if he wants to put his argument or his conversation towards that, that would be more helpful for them.

Mr. Richer stated in terms of general use in comparison to other properties, their property is two to four times larger than some of the other general uses. He stated that it does have natural buffers. He stated that it is on a U.S. 41 Highway, which is a strong argument for general commercial use versus being on a two-lane downtown road. He stated that he feels that is fair that they should be able to bring up some issues because you read the letters of the negative issues. He also stated that he thinks there were equally a number of positive support letters that were not read. He stated that their site is going to be quieter than U.S. 41. He stated that it has state-regulated control of odors. He stated that US 41 does not have that. He stated that bars do not have that. He stated that they have three residents in the 300-foot proximity range. He stated that if they look at some of the other comparable properties, there are 23 residents next to one, 8 residents next to another, 14 next to another that would have the same approved general commercial use, so in terms of size and residential proximity, odors, and noise, they can prove their site has less impact than other properties. J. Cardillo asked if he has anything else, he wants to add. Mr. Richer stated that he thinks that is it. He stated that he is here to answer any other questions. He stated that he is trying to limit himself, but they have got parking. He stated that he thinks some of the comments had to do with traffic, and obviously, they are on U.S. 41, and the site has been there for decades, so he thinks they disagree with a little bit on the traffic issues. He also stated that he does not think they could get a better size road to handle any other traffic that would be caused from the development of this site, and, again, it would be similar to a bar and restaurant, which is the current use.

J. Cardillo stated that at this point, they have already got the correspondence and asked if they have any public testimony. A. Landers stated that there are two people in the waiting room.

Mr. Doug Hamborsky, of AgronoMod Inc., stated he is with the AgronoMod 710 Woods Group. He stated that they are excited to be in Marquette. He also stated that it is conditioned upon them acquiring this land that will suit the uses that they see, so they understand that is not what this hearing is, but they also have to emphasize that if the use they need does not occur, then they are not sure how to go forward. He stated that a couple of just the key support items that he thinks they wanted to reinforce is that their understanding of their local ordinances with regard to the use that they are seeking, that all these other properties do not have the one restriction that this property currently has, and so all they are asking for is to sort of eliminate that spot zoning that occurred last year for reasons that they did not understand until just recently. He stated that they just want sort of what everyone else has. He stated that also, they need to emphasize that - again, like Dax was saying, it is hard to speak to the future, which is not before us - but when they were before this Planning Commission a year ago, the conditional rezoning that was granted then did only have one restriction, and without looking at the [meeting] minutes, but he believes it was just that for, like, high-volume manufacturing of a product, but the consumption and retail use for the business was not restricted at the Planning Commission-recommended level. He stated that the restriction came at the City Commission in step two of the rezoning process, so they are literally just asking to enjoy what was granted to us one year ago by the Planning Commission. He also stated that the site would not warrant large-scale production so that restriction is not of concern to them, but all the other listed uses in their zoning for this district, they would want to enjoy and be able to use, and, as Dax mentioned, they do have significant items to clarify. He stated that some of the negative comments that were read by some of the residential people

in the community, he stated that if as the City Attorney [Planner] said, all those issues will be re-reviewed and restated as part of a special land use presentation at a future date, then they are fine addressing those at a future date, but if they have any questions tonight, they would be glad to address any of those, but the bottom line is they just want, number one, what they had last year from the Planning Commission as far as an approval for everything except for that one use restriction and, number two, that they are allowed the zoning that all other properties similar to what they are needing to operate on presently have. J. Cardillo asked A. Landers if they have anybody else in waiting. A. Landers stated that now there is an additional new person and another person, so will admit one that says iPhone 2, and she that she does not have a name for it. Mr. Hamborsky stated that he is assuming iPhone 2 might be Terry Doyle, who has years or decades-long history with this property. He stated that he thinks it is important for the Commission to hear from Mr. Doyle.

J. Cardillo opened the public hearing.

Mr. Terry Doyle, 1001 Allouez Road, stated that they purchased this restaurant in 2003 from Pizza Hut, Inc. He stated that they ran it for 10 years as the Union Grill, and then they transferred the lease agreement over to the Steinhaus Market. He stated that they were there for two more years. He stated that they had no traffic issues that he can recall. He also stated that it has been a commercial spot since 1987. He stated that their latest tax bill reflected the Code of 201, which is commercial improved property, so all he can say is this deserves this attention. He stated that they need to get this done. He stated that it would be a great sale, and it would be a great development for this area. He also stated that people do not understand how that is going to improve that whole area, that whole property. He stated that is probably all he has to say, but it is a great property, and it is a very secure property. He stated that, in fact, the DOT when they redid 41 South, they put in a little turn lane for them, so it is much safer than it was in the past, and like he said, he does not recall any accidents in the 12 years it was operating. He stated that is all he has to say.

J. Cardillo closed the public hearing.

> *It was moved by M. Larson, seconded by S. Mittlefehldt, and carried 6-0 to suspend the rules for discussion.*

M. Larson stated that initial thoughts are that started when they rezoned this a year ago with the conditional rezoning, they did go through this and the City Commission had the second part, so they just make a recommendation to the City Commission on whether or not to move forward with the rezoning. He stated that they used the conditional rezoning vehicle, and the City Commission went ahead and put additional conditions for that land use on that property, so when they are thinking about turning this into a rezoning, they are going to look at the plan that the City had in place originally, kind of going back to a situation in 2012 to 2015, where it looked forward at changing over to mixed-use property, and as that came to be with the Land Development Code, they indeed moved into that mixed-use category, and so when it came before them to kind of revert into a conditionally-rezoned general commercial, taking that into consideration, they went ahead and made some of those recommendations and to say what is right for that piece of property. He stated that when they are looking at rezoning it back to general commercial, they also have to think about the future that is beyond the facility that you are putting in, so whether, potentially, that property could be a gas station, that property could be a medical facility, that property could be some sort of hotel or housing. He stated that it could be anything that is on that particular list of items there, and so they have to think about whether those items are appropriate beyond the use that you are currently looking at. He stated that the Commission seems to agree that this place where a drive-through is not appropriate, a gasoline service station is not appropriate, hotel or motel is not appropriate. He stated that either it is open storage or wholesale trade establishments, along with a number of these other special land uses, and so he is trying to get his head around that, so if this was not this particular consumption facility that they are talking about, would any of these other items be appropriate for that facility and for that neighborhood, because if they allow it to go back into general commercial, they are essentially saying that any of these land uses are allowed to be at that facility if this potential business decides not to work, five years from now it sells, and then at that point in time, somebody could potentially put in a gasoline service station right there as well, and so that is what he is struggling with right here. He stated that with that general piece they did, it does look like there has been quite a bit of latitude that has been given, but those are just his initial thoughts and kind of framing for his fellow Commissioners of what he is thinking about it right now.

S. Mittlefehldt stated that she has been kind of trying to wrestle with the idea of if this is spot zoning, and, of course, one of the criteria of spot zoning forces them to ask themselves if this is consistent with what is in the Master Plan and the Future Land Use Plan, which in 2015 the Master Plan had this area designated as a mixed-use, so, more from that, it is not mixed-use, but she does recall when they were getting into the weeds of what would fall into the mixed-use when they were writing the Land Development Code. She stated that she thinks they clearly were erring on the side of mixed-use as sort of primarily potentially residential with commercial also and trying to prioritize the integration into residential areas, and they decided no marijuana consumption establishments in a mixed-use area. She stated that, again, she is trying to answer this question of if it is a spot zone, and she does not think it is because she thinks when they did the conditional rezoning, it was both them and she thinks the City Commission also agreed that a marijuana consumption establishment would not be appropriate land use for this particular area, and that is how they got to where they did with this conversation last year, so she is kind of scratching her head.

J. Cardillo stated that she thinks it is an interesting thing to point out, but she guesses the one thing she wants to kind of clarify for everybody from the get-go and asked D. Stensaas to correct her if she is wrong, but the reason they were able to go ahead with the conditional rezoning for general commercial last year was because that is not subject to spot zoning criteria, but what they are asking for tonight, which is to be taken fully into general commercial, is now subject to their scrutiny as a spot zoning. She asked D. Stensaas if that is correct. D. Stensaas stated that yes, that is correct. He stated that he would suggest they look at those four criteria one by one and decide as a group on them. He stated that one at a time would probably be the most efficient way to get through that part of the decision-making. J. Cardillo asked if that sort of explains why that is on the table tonight, but they really did not have to think about it when they did it last year. A. Andres stated that he thinks it should stay mixed-use, but that is just him.

A. Andres left the meeting at 10:18 p.m.

J. Cardillo stated that she is going to sort of just let everybody kind of give their first thoughts and then maybe they can go through some of these sort of more itemized things like if it is spot rezoning or if it is some of the items that D. Stensaas had mentioned from that list. She stated to M. Dunn to just give them his initial thoughts, and then they can kind of go through systematically.

M. Dunn stated that he definitely wants to go through the spot zoning for the four criteria for spot zoning. He stated that he thinks that makes a lot of sense, but his thought is that they are sort of pushing the needle further and further every time they look at this property. He stated that when the original zoning was put in place, it appears to him that, and when you go back and look at the deliberations there, it looks like it was made mixed-use rather than medium-density residential simply because it was an existing restaurant and they did not want to impede the owner who was operating a restaurant there, so they made it mixed-use to allow for that use, which makes sense, but that is what resulted in an anomaly when you are looking at the zoning map where you have got residential on three sides, actually four sides if you go across the street to the PUD, and that is residential as well. He stated that is why that mixed-use zone may have looked a little bit out of place, and so he has heard the term spot zoning thrown out there a couple of times in regard to the existing zoning and the previous zoning of mixed-use, and he does not think that is appropriate because that mixed-use zone is actually less restrictive than the surrounding properties around this parcel. He stated that at that point, it was made mixed-use. He stated that then, later on, they did the conditional rezoning and made it a little bit further, and now at this point, to him, it is way beyond what all of the adjacent properties are. He stated that the only general commercial is sort of off the corner of this property across the street, which is the bank, which is not really a high-intensity use and it is not incompatible with residential properties, so he is definitely leaning towards this not being general commercial. He stated that it just does not make sense to him to have a zone map that goes from medium-density residential to low-density residential and then has the general commercial thrown in.

J. Cardillo stated she thinks one of the things that they find with mixed-use is that its intention was always to be an acceptable commercial application to be inserted within residential to sort of provide - that was always the idea that an island of mixed-use is preferable to an island, say, of general commercial, and it was there to sort of solve these trickier problem sites. M. Dunn stated absolutely, he agrees 100%. He stated that the thing he is questioning right now is their last action on this property, but that is for a different

time. J. Cardillo asked W. Premeau if he wanted to make any comments before they sort of start to go through their item-by-item checklists.

W. Premeau stated that he thinks they have to go through the rezoning considerations. J. Cardillo stated let us start with the spot zoning. She asked A. Landers if she can pull that up just so everybody can see it. J. Cardillo stated that D. Stensaas has got it. J. Cardillo stated so the first one to review is it small in size, a relatively small parcel with respect to the sizes of the parcels in the vicinity, so she is just looking at it on the zoning map. She stated that it is obviously bigger than the small residential sites, but it is sort of equal or smaller than the other sites adjacent to it. She asked if they kind of agree with that and what their thoughts are. S. Mittlefehldt stated that she thinks it is small, but, to her, the big one that jumps out is contrary to the Master Plan. J. Cardillo stated that was right. S. Mittlefehldt stated, not to skip ahead, but it has to meet all of these to qualify. J. Cardillo stated yes, if there is one that it fails at, then it fails the whole thing. S. Mittlefehldt stated that she keeps going back to the Master Plan and the Future Land Use Map. She stated that she did not mean to speak out of turn.

J. Cardillo stated that, to her, another thing it says there is the property was large enough to accommodate buffers or transition areas, landscaping, or open space, could be used to soften the impact. She stated that she would argue that maybe on some sites it could, but given the location of the building adjacent to the border, that does make it challenging, and, again, if they are talking about some of these other uses that she thinks Commissioner Larson pointed out at the beginning, it would be quite challenging. She asked where they fall on small in size. She stated that she kind of wants to just get everybody talking about this and move through it. M. Dunn asked, in order for this action to qualify as spot zoning, if it needs to meet all four of these or only one. M. Larson and J. Cardillo stated all four. M. Dunn stated that is what he thought, too. He stated that the way he reads that, it needs to meet all of those characteristics to be considered spot zoning. He stated that regarding the small property, he does think it is small compared to the properties on three sides there. M. Larson stated large enough to have a buffer. He stated that you could argue that you have an open space there with the parking lot on this one. W. Premeau stated that he does not think it is spot zoning. He stated that the other businesses around there are the same type of business if you just go down a block, you have got two marijuana businesses. He also stated that he does not believe it is spot zoning, not based on what he was reading. M. Larson stated that he thinks the one he gets hung up on is inconsistent with uses already established or allowed in the vicinity, and so understanding what the vicinity is. He stated that he means if it is immediately adjacent, yes. He stated that, however, if the vicinity is kind of moved into the kitty-corner where you do have a general commercial kind of across the street and down, he thinks that it would potentially fail this inconsistent use and, therefore, not be a spot zoning to consider in his mind. J. Cardillo asked where he lands. M. Larson stated that to continue to consider this, he does not think it is spot zoning because it potentially does not meet the inconsistent use to meet spot, so, therefore, allowing us to consider the rezoning. He stated that he means there are other factors to consider, but he does not think it meets the spot zoning test, so he thinks, therefore, it is not spot zoning. J. Cardillo stated that okay and asked Commissioner Mittlefehldt how she feels about it. S. Mittlefehldt stated that she does not think it is spot zoning. She stated that she does not think necessarily the proposed plans do meet the Master Plan goals of the mixed-use designation that was in the Master Plan for that area, but she thinks the spot zoning is kind of not an issue.

M. Dunn stated that he thinks it does qualify as spot zoning. He stated that if they were to make this general commercial, he believes it would be spot zoning. He stated that he believes it satisfies all four of those criteria. He also stated that the one that he guesses is most subjective in his mind is the size, but you look at the uses that are allowed in General Commercial. He stated that he means you are surrounded again. He also stated to look at the zoning map, you are surrounded on all sides by residential, and the only commercial is that little corner. He stated that it seems obvious to him that the intent of the citizens and the Master Plan process intended to have this as lower intensity as they move toward the edges of the City and as you are heading south there. He stated that he means everything is getting less intense uses, and this just so happens to be kind of close to the edge there. He stated that he thinks, okay, what if that trapezoid was red and it is completely surrounded by yellow on three sides and then a residential PUD across the street. He stated that it appears to him to be spot zoning, and, again, back to those criteria, he is satisfied that it meets all four of them, and the only one that he is questioning is the size. He stated that, also, since he is at it, he may as well get it all out here, and he can be done. He stated that when they did the conditional rezoning, the whole purpose of that was to avoid the possibility of spot zoning. He stated that is

why they did it the way they did it, and the City Commission thought that it needed to be slightly more restrictive than what they had, and he supports their decision. He stated that he does not think any changes need to be made here.

J. Cardillo asked W. Premeau if it is correct that he already indicated he does not think it is spot zoning. W. Premeau stated that he does not believe it is, and if they go back to that map on the corner of First Street, it shows yellow residential, but he believes that is where there is a gas station and is now the Signs Now place or asked if he is wrong on that. He stated right on the corner of Front and US 41. J. Cardillo asked if it was on the same side of the street or the other side of the street. D. Stensaas stated that the sign business is a commercial property that is directly to the north, the general commercial on the corner of Hampton. D. Stensaas stated that they are vacant lots owned by the BLP. W. Premeau asked if there is a bar back there or a brew-pub or something, and a repair station. D. Stensaas stated yes. He stated that is right on the corner, that mixed-use parcel on the other side of Mite Street, on the east side of Mite Street. W. Premeau stated that he still does not think it is spot zoning, and they are some pretty tiny parcels. J.

Cardillo stated she will be honest that she kind of thinks it is pretty close to being spot zone. She stated that she thinks it is small in size. She stated that she means that is pretty subjective. She also stated that she thinks as much as it has had sort of commercial and restaurant uses, that is not including all of the other sort of general commercial uses that go along with it, and so she just has a hard time when she looks at this sort of idea of the red in a sea of yellow that it is not inconsistent. She stated that contrary to the Master Plan, that one is very clear to her. She also stated that as far as the special benefit, that one is kind of a hard one to pinpoint.
M. Larson stated that as far as spot zoning goes, he agrees, he does not think it is spot zoning, and so, ultimately, they just want to try to avoid spot zoning so they do not end up in a legal issue or that it can be challenged, and so even if there is disagreement amongst the Commission here, like them, whether it is spot zoning or not, he thinks they can still consider other factors as far as those other conditions for zoning or remaining the same or moving forward. J. Cardillo asked S. Mittlefehldt if she had something else she wanted to say. S. Mittlefehldt stated that she was just going to say, to her, the one thing that jumps out of those criteria is just really their fundamental goal here is deciding whether or not rezoning or other things are consistent with the Master Plan, and that is kind of what they are trying to decide, and she does not think it is, and she is ready to make a motion unless they need more discussion just to see where people are falling up, but maybe they need to discuss it more. J. Cardillo stated yes, she means they wanted to make sure they discussed the impacts, so she guesses she is just going to go back to that, the bit that D. Stensaas had sort of brought out in the email, which was the 54.1405 standards for determining a zoning map amendment, which starts with the Master Plan. She asked if this is consistent with the goals, policies, and recommendations of the Master Plan. S. Mittlefehldt stated that she does not think it is because in the Master Plan that is a mixed use area and many long conversations about what mixed use was, and they have kind of touched on here, it prioritizes or emphasizes residential with the integrated commercial uses, and they talked about your neighborhood grocery or something that would be like kind of low-intensity-type commercial development, much less intense than what is allowed in the general commercial, so she thinks it is not consistent with the Community Master Plan, and she thinks maybe she is getting the sense others on the Commission agree with that as well.

J. Cardillo stated that one of her issues is when did the conditional rezoning, the bars and restaurants were taken out, which she kind of thought was strange at the time, but that was what the applicant wanted, and she is not opposed to putting them back in, but especially as it relates to sort of bars and obviously all these other things. She stated that she does think those should be special land uses because it is in the middle of a residential area, she thinks that it would be appropriate if somebody wants to put a bar there that they would have to go through the SLUP so that residential neighbors, which they know are within a 300 foot radius, would have the opportunity to at least address the Planning Commission, and conditions could potentially be put on it as they have seen in many other cases that they have dealt with where they have commercial in the middle of residential. She also stated that one of her real hang-ups is the fact that bars essentially would not have to be a special land use if it is general commercial. S. Mittlefehldt stated that if they keep it as is, then that has been excluded. J. Cardillo stated that it would be one thing if they had come back to us with an amendment maybe to their conditional rezoning, and she does not know if that is even possible. She asked D. Stensaas if that is a thing they could have even done is say, like, “We want to amend our conditional rezoning.” D. Stensaas stated yes, that was probably an option, but that is not where

they are at now. Mr. Richer stated that it was not an option. D. Stensaas and J. Cardillo stated that it does not matter.

J. Cardillo stated that as far as she is concerned, obviously, they are looking at all of these other things in addition to whatever perhaps the intended use is, and she just thinks moving into general commercial, in addition to adding all these higher-intensity uses, really takes this public hearing out of so many of these special land uses that would happen if it were a mixed-use. S. Mittlefehldt stated that they are not deciding if it is mixed-use. She stated that they are just saying whether or not it is rezoned as general commercial. J. Cardillo stated that what she is saying is it was mixed-use, which was the intent of the Master Plan, which meant that for a bar to go there, it would have to have a SLU. She stated that they then moved it into this very specific general commercial conditional rezoning, which took out all the bars and restaurants. She also stated that they are not allowed even as a special land use, she believes, so it was sort of a non-issue, but it was the owner's choice to do that, was her understanding. She stated that now they are asking to be put into general commercial, which would add all those uses that they had taken out in their effort to get the marijuana retail in as "as-of-right" uses, and there would not be special land use permits. She also stated that for her it is just a real sticking point and she thinks that if you are going to have a general commercial plopped in the middle of a residential, you should at least have that public hearing capacity. She asked if that makes any sense. S. Mittlefehldt stated that it makes sense.

W. Premeau stated that he is just curious when they Master Plan and needing this and needing that, well 40 to 45 years ago, somebody allowed that Pizza Hut to go in there, so it has been used in that type of use for a long time, so he does not understand what gives us the right to come up and say, "Yeah, you have had that for all these years, but we decided it is not right." He stated that it just does not make sense to him. He stated that he does not see it as a problem, and that he would favor to just go ahead, rezone it and give them the use they are asking for. He stated that Mr. Doyle has been a longtime resident of Marquette - give a businessman a chance to sell his property. He stated that they had no problem with the neighbors on the other two issues that came up tonight. He stated that they basically said "tough" to them. He stated that they could really have said, "Look, we'll come and sit in your back yard, and if it's too loud and it's not comfortable." He stated that he does not know, and he just thinks they should go right along and rezone it the way they want it. He stated that he does not see anything wrong with it. He stated that he gets really disgusted with taking people's rights away, that really is what we are doing. He stated the same thing with the traffic and all that, he does not know what the difference is between coming out of buying marijuana down the street, and you are higher than a kite and you come out in the road. He stated that it is no different. He stated that he did not see anything in the packet that said, "You know, we've got to stop this to save the world." He stated that he does not know. D. Stensaas stated that he just wants to point out that Commissioner Premeau was on the Planning Commission in 2015 when they adopted that mixed-use zoning district for the property. Mr. Richer asked if they are allowed to talk. W. Premeau asked if he was responsible for that. J. Cardillo asked if she can continue with their discussion, and if they have questions, they will ask him. She stated that they need to get this moving along.

S. Mittlefehldt stated that maybe Mr. Premeau should make a motion.

> *It was moved by W. Premeau, and not seconded, that after conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is consistent with the Community Master Plan and does meet the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission approve 03-REZ-06-21 as presented.*
>
> *It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 4-1 that after conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is not consistent with the Community Master Plan and does not meet the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission deny 03-REZ-06-21 as presented.*
> *Yes: M. Dunn, S. Mittlefehldt, M. Larson, J. Cardillo*
> *No: W. Premeau*

Citizens Wishing to Address the Commission on Non-Agenda Items

Terry Doyle, the property owner for 1651 S. Front Street, stated it is so sad and they are passing up a great development for that neighborhood. He stated those houses are ram shackled and you did not even read the letters that I had submitted. A. Landers stated they were in the agenda packet and we only read correspondence that was submitted after. Terry Doyle stated oh that is another tricky thing you guys have, and you reverse spot zoned me. He stated we were in General Commercial in 2018 and then we were kicked out. He also stated we were a little spot and we were reverse spot zoned, so look for that coming forward. He stated believe me you just screwed up a million and half dollar deal which would have been great for that whole area, just because of Pete LaRue and he champions everyone around in his neighborhood. J. Cardillo stated we did try to look at this from a very overview kind of look and not from a specific use. Terry Doyle stated you reverse spot zoned me, I am telling you did that, you took that one little zoned area out of context without moral or ethical reasons in the benefits of the community. Mr. Dunn stated we already made that decision and it will be brought forward to the City Commission. J. Cardillo stated their motion was just their recommendation to the City Commission, and we have already addressed this. She stated she is sorry you could not come in when the time was appropriate. Terry Doyle stated he knows and he is not really good with Zoom.

Commission and Staff Comments

D. Stensaas stated there is no business for the June 15th meeting and so it will be canceled.

W. Premeau stated that the only thing he will say is he gets really confused sometimes, but that is just him. He stated that he is not quite up to par. He stated that he has just seen some horrible things done, but they have made mistakes before, and the Court reversed it.

M. Larson stated it was a long, long night, but he does think that they tried to stand by some of the planning principles that they have gone through in looking at these cases and what is allowed and not allowed, but two of these cases are going to go to the City Commission, and they certainly have an opportunity to restate their case, and the City Commission will certainly make their own decision, potentially overrule them as far as that goes, but he thinks long night, but he thinks they did okay.

S. Mittlefehldt stated it was a tough night. She stated that she wanted to tell them all the excitement she had as she attended the Michigan Planning Association “preparing for climate change” conference, but now she is too exhausted and she will them about it later, but Dennis Stachewicz talked about how Marquette is a great leader in finding climate solutions, so that was kind of cool to see Marquette highlighted at this statewide planning conference, but anyway, good work today, everybody, even though she is sure they are all pretty tired.

J. Cardillo stated great work. She stated that it was a long meeting. She stated that she does not really have much else to say.

ADJOURNMENT
The meeting was adjourned by Chair J. Cardillo at 10:36 p.m.

Prepared by:

David Stensaas

David Stensaas, City Planner and Zoning Administrator
Planning Commission Secretary
nb/ Imedat

ORDINANCE #698
AN ORDINANCE TO AMEND MARQUETTE CITY CODE CHAPTER 54 – ZONING, BY CHANGING THE ZONING DESIGNATION OF THE PROPERTY AT 1651 S. FRONT ST.

The City of Marquette Ordains:

SECTION 1. Zoning Designation.
The zoning of the property located at 1651 S. Front Street (PIN: 0020251) is hereby changed from General Commercial with Conditional Rezoning (GC CR) to General Commercial (GC).

SECTION 2. Map Revision.
This change shall be shown on the Marquette City Zoning Map.

SECTION 3. Effective Date.
This ordinance shall take effect ten days after adoption but not before publication.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

Date Adopted: _____

Date Published: _____

Agenda Date: 7/12/2021

Public Hearing(s)
Planned Unit Development Major Amendment Request - Roll Call Vote

BACKGROUND:

On March 8, 2010, the City of Marquette executed a Planned Unit Development (PUD) Agreement with Lakeshore Residences, LLC, after approving the Qualification Criteria, Preliminary Site Plan, Final Site Plans, and the Master Deed for the Picnic Rocks Pointe PUD.

Julie Bowerman of 1301 Picnic Rocks Drive, has submitted an application with the support of the Picnic Rocks Pointe Homeowners Association Board, for a Major Amendment to the PUD. Ms. Bowerman's request is to allow a 6' closed construction fence that was built around her home without a permit to remain in place unaltered. The current language of paragraph 7.6 Codes and Ordinances of the PUD Master Deed:

"7.6 Codes and Ordinances. In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected."

Revise paragraph 7.6 Codes and Ordinances of the PUD Master Deed to read as follows: "7.6 Codes and Ordinances. In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot high closed construction vinyl fence on Lot #9 to remain in place."

In accordance with the procedures for a Major PUD Amendment (Section 54.323(N)(2) of the Land Development Code), the Planning Commission held a Public Hearing regarding this request on June 1, 2021, and made the following motion:

It was moved by M. Dunn, seconded by A. Andres, and carried 5-1 that after conducting a public hearing and review of the PUD application with support information, staff memo and attachments for 01-PUD-05-09-A8, the Planning Commission recommends that the PUD amendment request be denied by the Marquette City Commission for the reasons discussed in the meeting.

Yes: A. Andres, M. Dunn, S. Mittlefehldt, M. Larson, J. Cardillo
No. W. Premeau

The Planning Commission provided their recommendation on this request to the City Commission, and staff has thus requested a public hearing to be scheduled for this date. The public hearing shall hence be conducted in accordance with section 54.1406 of the Land

Development Code.

Following the submittal of the recommendation from the Planning Commission, the City Attorney reviewed the language and determined that the applicant's property should be referred to as a Unit, rather than a Lot. This change should be reflected in any affirmative motion by the City Commission.

The City Commission scheduled this public hearing at the June 14, 2021 regular meeting.

FISCAL EFFECT:

None.

RECOMMENDATION:

Following the Public Hearing, deny the PUD Amendment request as recommended by the Planning Commission.

ALTERNATIVES:

Grant the PUD Amendment request and correct all references to the applicant's "lot" to properly refer to it as a "unit".

ATTACHMENTS:

Description

- Planning Commission Case File 01-PUD-05-09-A8_06012021
- Planning Commission Draft Meeting Minutes of 6-01-2021

CITY OF MARQUETTE
PLANNING AND ZONING
1100 WRIGHT ST
MARQUETTE, MI 49855
(906) 228-0425
www.marquettemi.gov

MEMORANDUM

TO: Planning Commission
FROM: Andrea Landers, Zoning Official
DATE: May 24, 2021
SUBJECT: **01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300150)**

Julie Bowerman, Lakeshore Residences LLC, and Picnic Rocks Pointe Association are seeking approval of an amendment to their previously approved Planned Unit Development (PUD) consisting of 15 residential units in the form of single-family dwellings. They are requesting to revise paragraph 7.6 Codes and Ordinances of the PUD Master Deed. It states that "In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected." They would like it to read that "In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot high closed construction vinyl fence on Lot #9 to remain in place." The Planning Commission will review the request and send a recommendation to the City Commission.

The following is an excerpt from the PUD Master Deed paragraph 7.6 Codes and Ordinances of the PUD Master Deed:

> "7.6 *Codes and Ordinances*. In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected."

Section 54.706 of the City of Marquette Land Development Code (LDC), states:

- "*Adjoining a Lot Containing a One- or Two-Family Dwelling or Adjoining a Vacant Lot that Could Contain a One- or Two-Family Dwelling. Where a fence or wall is within ten (10) feet of an adjoining lot containing a one- or two-family dwelling or within ten (10) feet of an adjoining a vacant lot that could contain a one- or two-family dwelling; the fence or wall shall not exceed four (4) feet in height if it is located in the side or front yard (see Section 54.706(C)(1)(a)(iii) for additional front yard requirements), with the exception of required retaining walls."*

- *Construction. A fence limited to four (4) feet, as stated in Section 54.706(C)(1)(a) above, may not have more than 50% of the fence area of solid matter or of closed construction (See Figure 35 for examples of noncompliant fences). A six (6) foot high fence may be of solid, opaque construction. A screening fence required by any City ordinance or by State law may be of solid, opaque construction.*

Lots 1-9 of the Picnic Rocks PUD are through lots as they front Picnic Rocks Drive and Lakeshore Park Place Drive. So, they have two front yards and two side yards. Per the LDC, you can only have a 6-ft high closed construction fence in a rear yard. These lots do not have rear yards.

Please review the attached:

- PUD application with support material
  - Picnic Rocks Pointe Condo Excavation Area Exhibit for Lot 9
  - Revisions to the PUD proposal
  - Variances from Ordinance(s) proposal
  - Letter signed by the Homeowner's Association Board 7-25-19
  - Letter from the Homeowner's Association Board 11-13-20
  - 3 Photos of the fence
- 2014 First Amendment Recorded Master Deed
- 2019 Second Amendment Recorded Master Deed
- Area Map
- Block Map
- Photos of site
- Correspondence

RECOMMENDED ACTION:

In accordance with the Land Development Code, the Planning Commission should hold a public hearing, review the proposed major PUD amendment request and support information provided in this packet, and make a recommendation to the City Commission regarding the proposed PUD major amendment.

It is also highly recommended that any recommendation regarding the PUD amendment request include:

After conducting a public hearing and review of the PUD application with support information, and staff memo attachments for 01-PUD-05-09-A8, the Planning Commission recommends that the PUD amendment request be (approved/denied) by the Marquette City Commission (for the following reasons/with the following conditions).

Julie Bowerman
1301 Picnic Rocks Drive
Marquette, MI 49855
906-226-7523
jbowerma@nmu.edu

April 26, 2021

Planning Commission
Municipal Service Center
Community Development Office
1100 Wright St.
Marquette, MI 49855

Dear Planning Commission:

Enclosed is a PUD Amendment Application for Lot #9 in the Picnic Rocks Pointe Condominium Development. I am the homeowner for Lot #9 and I am requesting to keep the existing fence on this lot. Before I purchased this lot, I asked if I could have a six-foot fence, as my rescue dog is required to have a taller fence. This fence was approved by the Home Owners Association. Once we were notified that this fence was illegal and could not be approved without a change to the PUD the board met to discuss. An email was sent to every homeowner in the community with a request to change the PUD to allow this fence. Each homeowner sent an email in support of this change except two (and they have been causing problems for this development on every issue). I know that there are other neighbors who support the fence too as it is a busy walking area and the fence provides an obstruction so the dog is not barking as they walk past the home.

Throughout the process of building there were many mistakes made with the approval of this fence. The Board was unaware that they could not legally approve this fence and the builder, this being his first home built from the ground up, was not aware that he needed a separate fence permit in addition to the building permit. Everyone has learned a lot throughout this process and I am confident that there will be no similar mistakes made in this development nor with Hagerty Construction.

In closing, I apologize that this amendment has taken so long to submit. I am a single person and it has taken me longer than expected to save the funds to apply as I lost many work hours in the past year due to COVID-19. I have recently picked up a third job and was finally able to write the check to cover the amendment fee. I greatly appreciate all of the help and patience I have received throughout this process from the Zoning Officials.

Thank you very much for your consideration,

Julie Bowerman

Mail to:
Municipal Service Center
Community Development Office
1100 Wright St.
Marquette, MI 49855

CITY OF MARQUETTE
PLANNED UNIT DEVELOPMENT APPLICATION

1001 Lakeshore; 1301-1317 Picnic Rocks Dr.
0370070; 1300010 to 1300150

CITY STAFF USE

Parcel ID#: 1300090 File #: 01-PUD-05-09-AB Required Narrative Submitted: Y/N
Receipt #: 235260 Check #: 1529 + 1531 Received by and date: AM 4-30-21
Concept Plans (12 copies) Submitted: Y/N Hearing Date:_____ Notice Date:_____
Preliminary Plan & Pattern Book (12) Submitted: Y/N Hearing Date:_____ Notice Date: _____
Final Site Plan(12) Submitted: Y/N Contract signed: Y/N Meeting Date:_____
Amendment Plan (12) Submitted: Y/N N/A Meeting Date: 6-1-21

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED, THE PLANNED UNIT DEVELOPMENT REQUEST WILL NOT BE SCHEDULED FOR A HEARING UNTIL IT HAS BEEN VERIFIED THAT ALL OF THE INFORMATION REQUIRED IS PRESENT AT THE TIME OF THE APPLICATION - NO EXCEPTIONS!

FEE SCHEDULE

☐ PUD Criteria Qualification	**$830**
☐ PUD Review *(includes Site plan Review)*	**$3,960**
PUD Revision – Administrative Minor	
☐ Residential (additions, etc.)	**$160**
☐ Commercial structure, ≥ 3 residential units	**$780**
☒ PUD Revision - Major	**$1,920**

If you have any questions, please call 228-0425 or e-mail alanders@marquettemi.gov. Please refer to www.marquettemi.gov to find the Planning Commission page for filing deadline and meeting schedule.

Please review the attached:
- ☐ PUD Timeline
- ☐ PUD Checklist
- ☐ Excerpts from the City Land Development Code
  - Section 54.323 Planned Unit Development
  - Section 54.1402 Site Plan Review

APPLICANT CONTACT INFORMATION

PROPERTY OWNER

Name: Julie Bowerman
Address: 1301 Picnic Rocks Dr.
City, State, Zip: Marquette MI 49855
Phone #: 906-226-7523
Email: jbowerma@nmu.edu

APPLICANT/OWNER'S REPRESENTATIVE

Name:
Address:
City, State, Zip:
Phone #:
Email:

PRE-APPLICATION CONFERENCE

It is strongly encouraged that all applicants and their representatives meet with City of Marquette staff prior to submitting an application for a Planned Unit Development. A pre-application meeting with staff allows for a preliminary review of the application procedures, project timelines, compliance with the City Master Plan, and other project criteria, and prevents most situations that usually results in a project being postponed.

PROPERTY INFORMATION

Property Address: 1301 Picnic Rocks Dr. **Property Identification Number:** 1300090

Size of property (frontage / depth / sq. ft. or acres): See attached sketch

Zoning District: PUD

Current Land Use: Residential

Surrounding Zoning Districts:

North - Municipal
East - Conservation & Recreation
South - PUD, Conservation & Recreation
West - PUD

Surrounding Land Use:

North - Lakeshore Blvd & Lakeshore Arena
East - Picnic Rocks Park
South - Picnic Rocks Park & Single family residential
West - Lakeshore Place Condos

PLANNED UNIT DEVELOPMENT INFORMATION

Percentage of Land Use by Type

	Residential	Commercial/ Institutional	Industrial	Open Space	Other	Total
# of Acres	3.81					
% of Total	100%					

Residential Density

Type of Unit	Number of Units	Net Acres	Net Density
Single Family Home	15 permitted by PUD	3.81	3.93
Town Home	0		
Apartments	0		
Other	0		
Total	15	3.81	3.93

Net Acres - Land development for land use type not including right-of-way
Net Density - Number of Units/Net Acres

VARIANCES FROM ORDINANCE(S)

THIS IS A REQUIRED SECTION. FAILURE TO FILL OUT MAY INDICATE THAT THE PROPERTY CAN BE DEVELOPED UNDER CURRENT ZONING DISTRICT STANDARDS.

Please list and justify the request variance(s) from the Zoning or Subdivision Ordinances (attach additional pages if necessary):

Please See Attachment 3

REVISIONS TO PUD

Please list the proposed revisions to your approved PUD (attach additional pages if necessary):

Please See Attachment

SIGNATURE

I hereby certify the following:

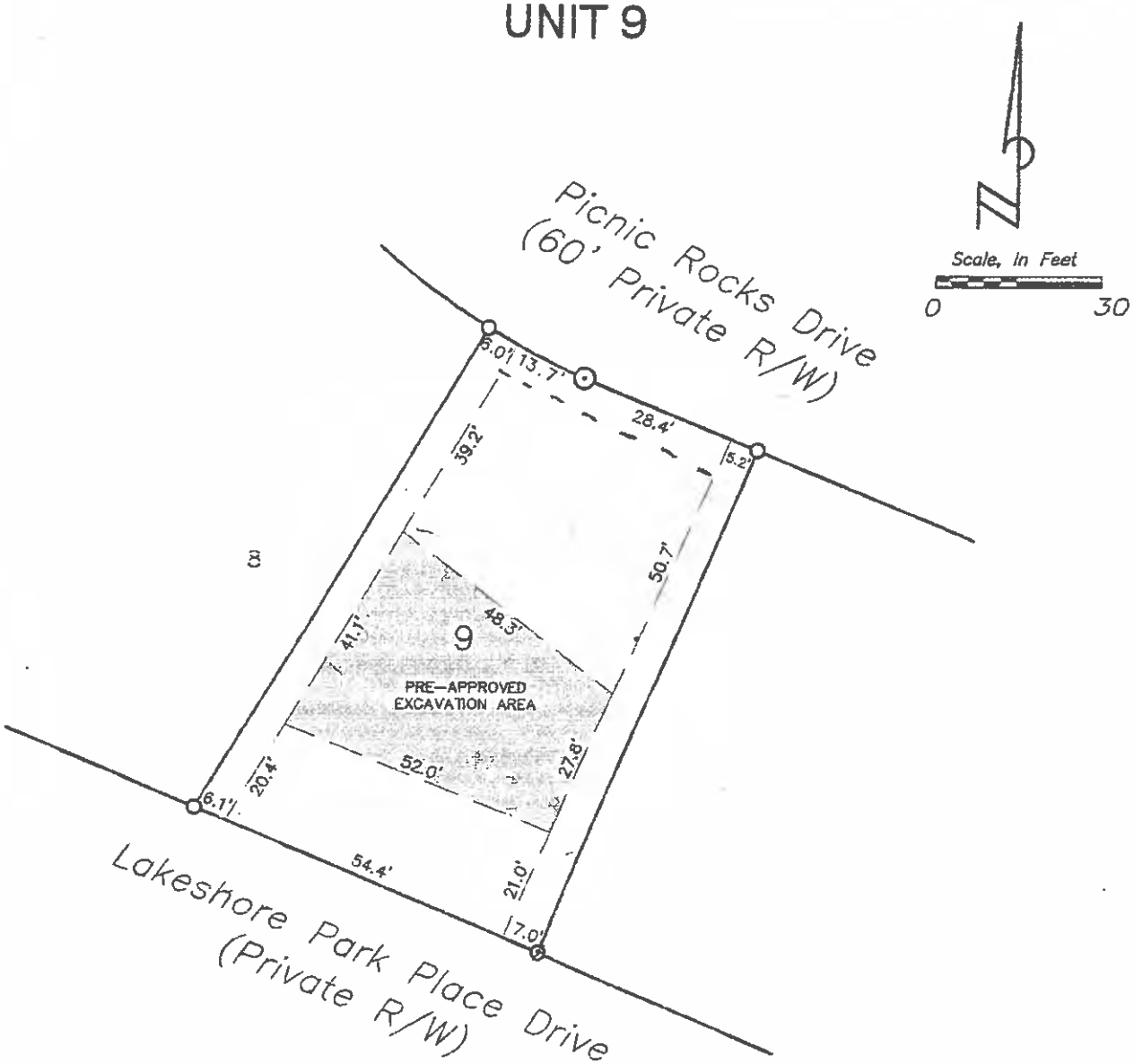
1. I am the legal owner of the property for which this application is being submitted.
2. I desire to apply for the Planned Unit Development Permit indicated in this application with the attachments and the information contained herein is true and accurate to the best of my knowledge.
3. The requested Planned Unit Development would not violate any deed restrictions attached the property involved in the request.
4. I have read the attached Planned Unit Development section of the Land Development Code and understand the necessary requirements that must be completed.
5. I understand that the payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that is does not assure approval of the plan.
6. I acknowledge that this application is not considered filed and complete until all of the required information has been submitted and all required fees have been paid in full. Once my application is deemed complete, I will be assigned a date for a public hearing before the Planning Commission that may not necessarily be the next scheduled meeting due to notification requirements and Planning Commission Bylaws.
7. I acknowledge that this form is not in itself a Planned Unit Development but only an application for a Planned Unit Development and is valid only with procurement of applicable approvals.
8. I authorize City Staff and the Planning Commission members to inspect the site.

Property Owner Signature: Julie Bonsema Date: 3/20/21

Applicant Signature: _____ Date: _____

PICNIC ROCKS POINTE CONDOMINIUM
PRE-APPROVED EXCAVATION AREA EXHIBIT

UNIT 9



JOB # 209009	SCALE: 1" = 30'	DATE: 24 SEP 2013
(R) RECORDED	(M) MEASURED	DRAWN BY: TWVN
	LINE NOT DRAWN TO SCALE	

VAN NESTE SURVEYING
26 YEARS OF PROFESSIONAL SURVEYING SERVICES
1402 KIMBER AVENUE MARQUETTE, MICHIGAN 49855
PHONE (906) 226-6241 FAX 226-6293
www.VanNesteSurveying.com

V N S

Revisions to PUD

The current language of paragraph 7.6 Codes and Ordinances of the PUD Master Deed:

> "7.6 *Codes and Ordinances*. In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected."

Revise paragraph 7.6 Codes and Ordinances of the PUD Master Deed to read as follows:

> "7.6 *Codes and Ordinances*. In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot high closed construction vinyl fence on Lot #9 to remain in place."

Variances from Ordinance(s)

Request for Lot #9 to keep existing six-foot vinyl fence. Justification for this request is that before purchasing this lot the homeowner Julie Bowerman asked if a six-foot fence would be permitted on this lot. Board member and realtor Dano Keller told her that there would not be a problem with the board approving a variance for the six-foot vinyl fence. When Julie Bowerman submitted her development plan, which included the six-foot white vinyl fence, the board did in fact approve the plan (see attached letter of approval). Unfortunately, the board was not aware that legally they could not approve this fence because the PUD adopted the City of Marquette fence regulations instead of creating their own for the development. The builder, this being his first house built from the ground up, also was not aware that he needed to apply for a separate fence permit in addition to his building permit. The reason this fence is so important and was specifically asked if it was permitted before purchase of the land is that homeowner, Julie Bowerman, has a rescue dog from Last Day Dog Rescue that is required to have a six-foot fence, as the dog has been known to jump four-foot fences. Julie Bowerman works long hours and the dog has access to a dog door so that she can relieve herself throughout the day. Lakeshore Boulevard is a busy road and this fence is required to keep the dog safe. Additionally, there are people daily who walk their dogs in this area of the bike path without a leash. This fence is also needed to keep other animals out of the backyard of Lot #9. The current six-foot fence also provides privacy from the dog to the rest of the neighborhood. Nestledown Bed and Breakfast has a gathering area for guests directly behind Lot #9 and throughout the day guests use this area to gather and relax. The current fence allows these guests not to be disturbed by a barking dog. Lastly, the grade of the land and fence placement requires a taller fence because a four-foot fence in the same area would be even with the land and provide no protection. As you can see in the attached photos the back of the house is on a hill, if a four-foot fence is required we will have to move it up the hill (closer to the house) four feet to the top of the hill. In that case, the top of a four-foot fence will be the exact same height as it is currently with the placement of the six-foot fence down the hill. The photos show views of the fence from the neighborhood side, the back and Lakeshore Blvd. As you can see in the photos taken from Lakeshore Boulevard the fence is almost completely hidden by the large pine tree in the community area and cannot be seen, much less cause an obstruction to traffic. This fence has been erect since November 2019 and in that time, there have been no traffic incidents in the area because of this fence as it is not on a corner lot nor can it be seen from the road.

Picnic Rocks Pointe Homeowners' Association, Inc.
1317 Picnic Rocks Dr. Marquette MI 49855
President, Phyllis A. Aurich Vice President, Nancy Seminoff
Secretary, Tom Rulseh Treasurer, Vicki Reuling

July 25,2019

Ms. Julie Bowerman

416 E College Ave.

Marquette, MI 49855

Thank you for submitting the plan details for the new home that you intend to build on Lot # 9 on Picnic Rocks Drive, here in Marquette. The Picnic Rocks Pointe Homeowners Association has reviewed your plans and we find them to be in compliance with our design requirements.

Phyllis A. Aurich, President

Dan Keller Developers' Representative

Picnic Rocks Pointe Homeowners' Association, Inc.
1317 Picnic Rocks Dr. Marquette MI 49855
President, Phyllis A. Aurich Vice President, Nancy Seminoff
Secretary, Tom Rulseh

November 13, 2020

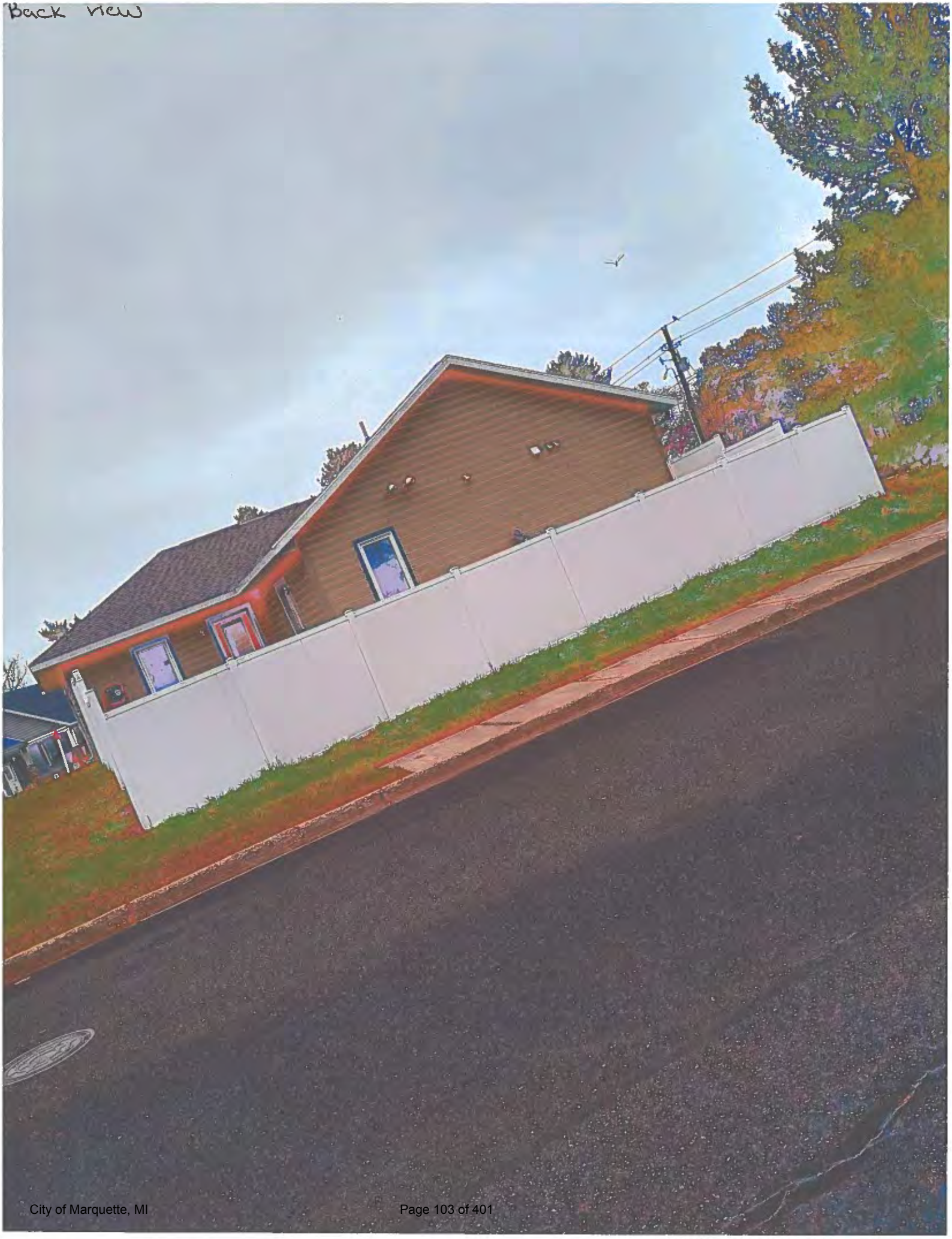
Following a request from Homeowner Julie Bowerman, 1301 Picnic Rocks Drive, for a change in our PUD that would allow her to keep her fence, and having received subsequent majority support from the residents of Picnic Rocks Pointe, a motion was advanced to the Board of the Picnic Rocks Pointe Homeowners Association by way of email. Board member Tom Rulseh circulated the **Motion to support an amendment to the PUD for lot #9 that would permit the existing fence to remain in place provided that the City of Marquette will approve it and that payment of the filing fee for this amendment would be the responsibility of homeowner, Julie Bowerman.** The motion was supported by Board member David Brule. Following responses from other Board members the motion passed on a vote of 3-2 with Dan Keller giving his proxy to David Brule and David Brule casting his vote and Keller's as yes, Tom Rulseh voting yes, and Phyllis Aurich and Nancy Seminoff voting no.

This document will be included with the Minutes of Board Meetings as a formal record of this action by the Board on November 12, 2020.

Recorded by Secretary, Tom Rulseh

Ratified on December 2, 2020 at a meeting of the PRPHA Board


Lakeshore Blvd View
PRIVATE DRIVE


Back view


Side view

RECEIVED APR 11 2014
2:15 p.m.

2014R-03603 77
2014R-03603
PATRICIA A. MANLEY
REGISTER OF DEEDS
MARQUETTE COUNTY, MI

RECORDED ON
04/11/2014 05:19PM pm
PAGES: 77

FIRST AMENDED MASTER DEED OF PICNIC ROCKS POINTE
Pursuant to the Condominium Act, MCL 559.101 et seq.

Marquette Condominium Subdivision Plan No. 38 containing

1. First Amended Master Deed establishing Picnic Rocks Pointe Condominium;
2. form A to Master Deed: Condominium Bylaws;
3. form B to Master Deed: Condominium Subdivision Plan;
4. form C to Master Deed: Pattern Book;
5. form D to Master Deed: Pre-Approved Excavation Area Exhibit;
6. form E to Master Deed: Mortgagee's Consent to Submission to Condominium Ownership; and
7. form F to Master Deed: Affidavit of Mailing for Notices required by MCL 559.171.

This document is exempt from transfer tax under MCL 207.505(a) and MCL 207.526(t).

This document drafted by and after recording return to:
Adrianne N. Wolf
McDonald & Wolf, PLLC
115 S. Lakeshore Blvd., Ste. A
Marquette, MI 49855

This Master Deed is signed and delivered on March 27, 2014, by Lakeshore Residences, LLC, a Delaware limited liability company, of 5257 S. Cicero, Chicago, IL 60632 ("Developer"), on the terms and conditions set forth below.

This Master Deed replaces, in its entirety, the original Master Deed, dated June 27, 2011, and recorded at the Marquette County Register of Deeds as Document No. 2011R-06829 on June 30, 2011.

Section 1. ESTABLISHMENT OF CONDOMINIUM

1.1 Project. Developer is engaged in the development of a condominium project to be known as Picnic Rocks Pointe Condominium (the "Project"), in the City of Marquette, Marquette County, Michigan, on a parcel of land as described in section 2.

1.2 Establishment of Condominium. Developer desires, by recording this Master Deed together with the Condominium Bylaws attached as form A and the Condominium Subdivision Plan attached as form B, to establish the real property described in section 2 (the "Property"), together with the improvements located and to be located on the Property, as a condominium project (the "Condominium") under the provisions of the Michigan Condominium Act (the "Act"). Developer declares that on the recording of this Master Deed, the Condominium shall be a Project under the Act and shall be held, conveyed, encumbered, leased, rented, occupied, improved, or in any other manner used subject to the provisions of the Act and to the covenants, conditions, restrictions, uses, limitations, and affirmative obligations in this Master Deed, all of which shall be deemed to run with the land and to be a burden on and a benefit to Developer; its successors and assigns; any persons who may acquire or own an interest in the Condominium; and their grantees, successors, heirs, personal representatives, administrators, and assigns.

1.3 Project Description. The Project is a residential site condominium, which is being constructed pursuant to a Planned Unit Development Agreement with the City of Marquette, dated February 22, 2010 and recorded at the Marquette County Register of Deeds on May 27, 2011 as Document No. 2011R-05653. The Condominium units that may be developed in the Project, including the number, boundaries, dimensions, and area of each unit ("Unit"), are shown on the Condominium Subdivision Plan. Each of the Units is capable of individual use by reason of having its own entrance from and exit to a common element of the Project.

1.4 Owner Rights. Each owner of a Unit ("Owner") in the Project shall have an exclusive property right to Owner's Unit and to the limited common elements that are appurtenant to Owner's Unit and shall have an undivided right to share with other Owners in the ownership and use of the general common elements of the Project as described in this Master Deed.

Section 2. LEGAL DESCRIPTION OF THE PROPERTY

2.1 Condominium Property. The land that is being submitted to condominium ownership in accordance with the provisions of the Act is a parcel of land situated in the City of Marquette, Marquette County, Michigan, and more fully described as follows:

> Part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northwest 1/4 of the Southwest 1/4, of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in the City of Marquette, Town 48 North, Range 25 West, Marquette County, Michigan, more particularly described as commencing at the East 1/4 corner of said Section 14; thence S01°22'00"W, 39.93' along the East line of said Section 14 to the POINT OF BEGINNING, a found 5/8" rerod with cap on the Southerly Right-of-Way (R/W) line of

Fair Avenue (80' R/W, May 2000); thence N88°34'50"W, 52.51' along said Southerly R/W line; thence S01°22'25"W, 177.55'; thence S32°49'45"E, 132.98'; thence Southeasterly, 112.68' along the arc of a 50.30' radius curve to the right, having a delta angle of 128°21'05", and a chord bearing S32°49'45"E, 90.55'; thence S32°49'45"E, 131.70'; thence S67°01'55"E, 211.31' to the Westerly R/W line of Lakeshore Boulevard (variable R/W, May 2000); thence Northeasterly, 134.78' along the arc of a 1637.02' radius R/W curve to the right, having a delta angle of 04°43'03" and a chord bearing N21°36'58"E, 134.74' along said Westerly R/W line of Lake Shore Boulevard; thence Northwesterly, 277.05' along the arc of a 437.47' radius curve to the left, having a delta angle of 36°17'08" and a chord bearing of N01°40'59"W, 272.44' along said Westerly R/W line of Lake Shore Boulevard to the Southerly R/W line of Agate Street (66' R/W, not constructed, May 2000); thence N58°41'54"W, 301.27' along said Agate Street R/W line to the Southerly R/W line of said Fair Avenue; thence N88°29'12"W, 114.64' along said Southerly Fair Avenue R/W line to the POINT OF BEGINNING. Parcel contains 3.81 acres and is subject to access and utility easements in favor of the City of Marquette.

2.2 Beneficial Easements. Easements are created and conveyed in this Master Deed to and for the benefit of the Project and the Units located in the Project, and the Project and the Units located in the Project are benefited and burdened by the ingress, egress, utility, and other easements described or shown on form B.

Section 3. DEFINITIONS

3.1 Definitions. Certain terms used in this Master Deed are defined terms and have the meaning given them in the text where they are defined, and the same meaning shall be ascribed to the term in various other instruments with regard to the Project including, but not limited to, the Articles of Incorporation, Association Bylaws, Rules and Regulations of the Picnic Rocks Pointe Homeowners' Association (a Michigan nonprofit corporation), and various deeds, mortgages, land contracts, easements, and other instruments affecting the establishment or transfer of interests in the Project. As used in documents regarding the Project, unless the context otherwise requires:

a. *Act* or *Condominium Act* means the Michigan Condominium Act, MCL 559.101 et seq.

b. *Association* or *Association of Owners* means Picnic Rocks Pointe Homeowners' Association, Inc., the Michigan nonprofit corporation of which all Owners shall be members, which shall administer, operate, manage, and maintain the Project.

c. *Association Bylaws* means the corporate bylaws of the Association organized to manage, maintain, and administer the Project.

d. *Common Elements* means the general and limited common elements described in section 4 of this Master Deed.

e. *Condominium Bylaws* means form A to this Master Deed, which are the bylaws that describe the substantive rights and obligations of the Owners.

f. *Condominium Documents* means this Master Deed with its forms, the Articles of Incorporation and Bylaws of the Association, the Rules and Regulations adopted by the board of directors of the Association, and any other document that affects the rights and obligations of an Owner in the Condominium.

g. *Condominium Property* or *Property* means the land referenced in section 2, as that may be amended, together with all structures, improvements, easements, rights, and appurtenances on or belonging to the Condominium Property.

h. *Condominium Subdivision Plan* or *Subdivision Plan* means form B to this Master Deed, which is the survey and other drawings depicting the real property and improvements to be included in the Project.

i. *Condominium Unit* or *Unit* means the portion of the Project that is designed and intended for separate ownership and use, as described in this Master Deed.

j. *Owner* means the person, firm, corporation, partnership, association, trust, other legal entity, or combination of entities that owns or co-owns a Condominium Unit in the Project, including both the vendees and vendors of any land contract of purchase.

k. *Developer* means Lakeshore Residences, LLC, a Delaware limited liability company, which has signed, delivered, and recorded this Master Deed, and its successors and assigns.

l. *Development and Sales Period* means the period continuing for as long as Developer or its successors continue to own and offer for sale any Unit in the Project, excepting any Unit that was previously conveyed by Developer and then repurchased by Developer.

m. *General Common Elements* means the common elements described in paragraph 4.1, which are for the use and enjoyment of all Owners in the Project.

n. *Limited Common Elements* means the common elements described in paragraph 4.2, which are reserved for the exclusive use of the Owners of a specified Unit or Units.

o. *Master Deed* means this document, together with the forms attached to it and all amendments that may be adopted in the future, by which the Project is being submitted to condominium ownership.

p. *Project* or *Condominium* means Picnic Rocks Pointe Condominium, a residential site condominium development of fifteen (15) Units established under the provisions of the Act.

q. *Transitional Control Date* means the date on which a board of directors for the Association takes office pursuant to an election in which the votes that may be cast by eligible Owners unaffiliated with Developer exceed the votes that Developer may cast.

3.2 Applicability. Whenever any reference is made to one gender, it will be assumed to include both genders where the reference is appropriate; similarly, whenever a reference is made to the singular, it will be assumed to include the plural where the reference is appropriate.

Section 4. COMMON ELEMENTS

4.1 General Common Elements. The General Common Elements are

a. **Real Estate.** the Property, except for that portion of the Property described in paragraph 5.1 as constituting a part of a Unit and any portion of the Property designated in this section as a Limited Common Element, including easement interests appurtenant to the Property, such as easements for ingress, egress, and utility installation over, across, and through non-Condominium Property or Units in the Project;

b. **Improvements.** lawns, trees, shrubs, and other improvements not located within the boundaries of a Unit and the common sidewalks (if any). All structures and improvements located within the boundaries of a Unit shall be owned in their entirety by the Owner of the Unit within which they are located, unless expressly provided to be a Common Element in the Condominium Documents;

c. **Electrical.** the electrical transmission system throughout the Project up to, but not including, the point of lateral connection for service to each Unit;

d. **Gas.** the natural gas line network and distribution system throughout the Project, up to, but not including, the point of lateral connection for service to each Unit;

e. **Water.** the underground sprinkling system for the Common Elements (if any) and the water distribution system throughout the Project up to, but not including, the point of lateral connection for service to each Unit;

f. **Sanitary Sewer.** the sanitary sewer system throughout the Project, up to, but not including, the point of lateral connection for service to each Unit;

g. **Storm Drainage.** the storm drainage and water retention system throughout the Project;

h. **Telephone.** the telephone wiring system throughout the Project up to, but not including, the point of lateral connection for service to each Unit;

i. **Telecommunications.** the cable television and other telecommunications systems installed throughout the Project up to, but not including, the point of lateral connection for service to each Unit;

j. **Project Entrance Improvements.** any entry signage and other improvements located at or near the entrance to the Project; and

k. **Miscellaneous Common Elements.** all other Common Elements of the Project not designated as Limited Common Elements and not enclosed within the boundaries of a Condominium Unit, which are intended for common use or are necessary to the existence, upkeep, or safety of the Project.

Some or all of the utility lines, equipment, and systems (including mains and service leads) and the telecommunications systems described above may be owned by the local public authority or by the company that is providing the pertinent service. Accordingly, such utility or telecommunication lines, equipment, and systems shall be General Common Elements only to the extent of the Owners' interest in them, and Developer makes no warranty with respect to the nature or extent of that interest.

4.2 Limited Common Elements. The Limited Common Elements are

a. **Utility Service Lines.** the pipes, ducts, wiring and conduits supplying service to or from a residence now located or subsequently constructed within Unit boundaries for electricity, gas, water, sewage, telephone, television and other utility or telecommunication services, up to and including the point of lateral connection with a General Common Element of the Project or utility line or system owned by the local public authority or company providing the service;

b. **Subterranean Land.** the subterranean land located within Unit boundaries below a depth of 20 feet, including all utility and supporting lines;

c. **Subsurface Improvements.** the portion of any footing or foundation extending more than 20 feet below surrounding grade level;

d. **Yard Areas.** the portion of any yard area designated as a Limited Common Element on the Condominium Subdivision Plan, which is limited in use to the Unit of which it is a part;

e. **Delivery Boxes.** the mail and paper box that is located on a Unit or is permitted by the Association to be located on the General Common Elements to serve a Condominium Unit;

f. **Yard Lights.** the yard lights and bulbs installed on each yard area (if any) to illuminate the house number and driveway on that Unit;

g. **Driveways.** the portion of any driveway, serving the residence constructed within a Unit, located between the residence and the paved roadway; and

h. **Miscellaneous.** any other improvement designated as a Limited Common Element appurtenant to a particular Unit or Units in the Subdivision Plan or in any future amendment to the Master Deed made by Developer or the Association.

If no specific assignment of one or more of the Limited Common Elements described in this section has been made in the Subdivision Plan, Developer (during the Development and Sales Period) and the Association (after the Development and Sales Period has expired) reserve the right to designate each such space or improvement as a Limited Common Element appurtenant to a particular Unit or Units by subsequent amendment to this Master Deed.

4.3 Maintenance Responsibilities. Responsibility for the cleaning, decoration, maintenance, repair, and replacement of the Common Elements will be as follows:

a. **Limited Common Elements.** Each Owner shall be individually responsible for the routine cleaning, snow removal, maintenance, repair, and replacement of all Limited Common Elements appurtenant to the Owner's Unit, except for driveways. The Association is responsible for the routine cleaning, snow removal, maintenance, repair, and replacement of the driveways in the Project, except that the affected Owner or Owners shall be assessed the cost of such cleaning, snow removal, maintenance, repair, and replacement on a reasonably uniform basis and collected in accordance with the assessment procedures established by the Condominium Bylaws.

b. **Unit Improvements and Other Owner Responsibilities.** Unless otherwise stated in this Master Deed, Unit Owners shall be responsible for the maintenance, repair, and replacement of all structures and improvements and the maintenance and mowing of all yard areas situated within the boundaries of a Unit. If an Owner elects, with the prior written consent of the Association, to construct or install any improvements within a Unit or on the Common Elements that increase the costs of maintenance, repair, or replacement for which the Association is responsible, those increased costs or expenses may, at the option of the Association, be specially assessed against the Unit.

c. **Association Oversight.** The exterior appearance of all structures, improvements, and yard areas (to the extent visible from any other Unit or from a Common Element) shall be subject at all times to the approval of the Association and to any reasonable aesthetic and maintenance standards prescribed by the Association in duly adopted rules and regulations. The Association may not disapprove the appearance of an improvement so long as it is maintained as constructed by Developer or constructed with Developer's approval.

d. **Other Common Elements.** The cost of cleaning, decoration, maintenance, repair, replacement, and snow removal of all Common Elements other than that described above shall be the responsibility of the Association, except for the repair or replacement of a Common Element due to an act or the neglect of an Owner or an Owner's agent, invitee, family member, or pet.

e. **Maintenance by the Association.** If an Owner fails, as required by this Master Deed, the Bylaws, or any rules or regulations promulgated by the Association, to properly and adequately decorate, repair, replace, or otherwise maintain the Owner's Unit, any structure or improvement located within the Unit, or any appurtenant Limited Common Element, the Association (or Developer during the Development and Sales Period) shall have the right, but not the obligation, to undertake periodic exterior maintenance functions with respect to

improvements constructed or installed within any Unit boundary as it deems appropriate (including, without limitation, painting or other decoration, lawn mowing, snow removal, tree trimming, and replacement of shrubbery and other plantings). The Association (or Developer during the Development and Sales Period) will in no event be obligated to repair or maintain any such Limited Common Element or improvement. Failure of the Association (or Developer) to take any such action shall not be deemed a waiver of the Association's (or Developer's) right to take any such action at a future date.

f. **Assessment of Costs.** All costs incurred by the Association or Developer in performing any maintenance functions that are the primary responsibility of an Owner shall be charged to the affected Owner or Owners on a reasonably uniform basis and collected in accordance with the assessment procedures established by the Condominium Bylaws. A lien for nonpayment shall attach to Owner's Unit for any such charges, as with regular assessments, and may be enforced by the use of all means available to the Association under the Condominium Documents or by law for the collection of assessments, including, without limitation, legal action, foreclosure of the lien securing payment, and the imposition of fines. Any other unusual common expenses benefiting less than all of the Units, or any expenses incurred as a result of the conduct of less than all those entitled to occupy the Project or by their licensees or invitees, shall be specially assessed against the Unit or Units involved, in accordance with the assessment procedures established by the Condominium Bylaws.

4.4 Assignment of Limited Common Elements. A Limited Common Element may be assigned or reassigned by written application to the board of directors of the Association by all Owners whose interest will be affected by the assignment. On receipt and approval of an application, the board shall promptly prepare and execute an amendment to this Master Deed assigning or reassigning all rights and obligations with respect to the Limited Common Elements involved and shall deliver the amendment to the Owners of the Units affected on payment by them of all reasonable costs for the preparation and recording of the amendment.

4.5 Power of Attorney. By acceptance of a deed, mortgage, land contract, or other document of conveyance or encumbrance, all Owners, mortgagees, and other interested parties are deemed to have appointed Developer (during the Development and Sales Period) or the Association as their agent and attorney to act in connection with all matters concerning the Common Elements and their respective interests in the Common Elements. Without limiting the generality of this appointment, Developer (during the Development and Sales Period) and the Association will have full power and authority to grant easements over, to sever or lease mineral interests in, and to convey title to the land or improvements constituting the General Common Elements or any part of them; to dedicate as public streets any parts of the General Common Elements; to amend the Condominium Documents to assign or reassign the Limited Common Elements; and in general to sign and deliver all documents and to do all things necessary or convenient to exercise such powers.

4.6 Boundary Relocation. The boundaries of two or more adjacent Units may be relocated by amendment of the Master Deed in accordance with the provisions of MCL 559.148, provided that the expense of preparing the amendment is paid in full by the Owner or Owners desiring to relocate the boundaries.

4.7 Separability. Except as provided in this Master Deed, Condominium Units shall not be separable from their appurtenant Common Elements, and neither shall be used in any manner inconsistent with the purposes of the Project or in any other way that might interfere with or impair the rights of other Owners in the use and enjoyment of their Units or their appurtenant Common Elements.

Section 5. UNITS

5.1 Description of Units. A complete depiction of each Unit in the Project, with elevations referenced to an official benchmark of the U.S. Geological Survey sufficient to accurately relocate the space enclosed by the depiction without reference to any structure, is contained in the Subdivision Plan as surveyed by the Project's consulting engineers and surveyors. Each Unit shall have its own unique profile and shall include all the space within the Unit boundaries and below to a depth of 20 feet and above the surface to a height of 50 feet as shown on form B, together with all appurtenances to the Unit. The depth and height boundaries for each Unit are to be measured from the average elevation of the centerline of Picnic Rocks Drive adjoining the Unit.

5.2 Percentage of Value. The total percentage value of the Project is 100, and the Percentage of Value assigned to each of the Condominium Units in the Project shall be equal to every other Unit. The determination that Percentages of Value for all Units should be equal was made after reviewing the comparative characteristics of each Unit, including those that may affect maintenance costs, and concluding that the Units should each have an equal Percentage of Value. The Percentage of Value assigned to each Unit shall be changed only in the manner permitted by section 10, expressed in an Amendment to this Master Deed and recorded in the register of deeds office in the county where the Project is located. The Percentage of Value assigned to each Unit shall be determinative of the proportionate share of the proceeds and expenses of the Association attributable to that Unit and the value of that Unit's Owner(s) vote at meetings of the Association.

5.3 Unit Modification. The number, size, style, boundary, or location of a Unit or of any Limited Common Element appurtenant to a Unit may be modified from time to time by Developer or its successors without the consent of any Owner, mortgagee (except as provided in the Act), or other interested person, so long as the modifications do not unreasonably impair or diminish the appearance of the Project or the view, privacy, or other significant attribute of any Unit that adjoins or is proximate to the modified Unit or Limited Common Element. However, no Unit that has been sold or is subject to a binding purchase agreement shall be modified without the consent of the Owner or Purchaser and the mortgagee of the Unit. Developer may also, in connection with any modification, readjust Percentages of Value for all Units in a manner that gives reasonable recognition to the changes based on the method of original determination of Percentages of Value for the Project. All Owners, mortgagees of Units, and other persons interested or to become interested in the Project from time to time shall be deemed to have granted a Power of Attorney to Developer and its successors for any purpose that is similar in nature and effect to that described in paragraph 4.5 of this Master Deed.

5.4 Owner Interest in Common Elements. Each Owner shall have an undivided and inseparable interest in the Common Elements equal to the Unit's Percentage of Value.

Section 6. NONEXPANDABILITY OF THE CONDOMINIUM

The Project is not an expandable project under the Michigan Condominium Act.

Section 7. NONCONTRACTIBILITY OF CONDOMINIUM

The Condominium is not a contractible project under the Michigan Condominium Act.

Section 8. EASEMENTS

8.1 Easements for Maintenance and Repair. If any portion of a Unit or Common Element encroaches on another Unit or Common Element due to the shifting, settling, or moving of a building or due to survey errors or construction deviations, reciprocal easements shall exist for the maintenance of the encroachment for so long as the encroachment exists and for the maintenance of the encroachment after rebuilding in the event of destruction.

There shall also be permanent easements over, under, and across the Project (including all Units and Common Elements) in favor of the Association (and Developer during the Development and Sale Period) as may be necessary to develop, construct, and market any Units within the Project and to fulfill any responsibilities of repair, maintenance, decoration, or replacement which they or any of them are required or permitted to perform under the Condominium Documents or by law. These easements include, without any implication of limitation, the right of the Association or Developer to obtain access during reasonable hours and upon reasonable notice to any utilities or other elements which affect other Units or Common Elements and which are located within or must be accessed through any particular Unit or its appurtenant Limited Common Elements.

There shall be easements to, through, and over those portions of the Property (including the Units) as may be reasonable for the installation, maintenance, and repair of all utility services furnished to the Project. Public utilities shall have access to the Common Elements and to the Units at reasonable times for the installation, repair, or maintenance of those services; and any costs incurred in the repairing of any Common Element or other improvement to install, repair, or maintain common utility services to the Project shall be an expense of administration assessed in accordance with the Condominium Documents.

The Association shall be empowered and obligated to grant such easements, licenses, rights-of-entry, and rights-of-way over, under, and across the Property for utility purposes, access purposes, or other lawful purposes as may be necessary for the benefit of the Project; subject, however, to the approval of the Developer during the Development and Sales Period.

8.2 Easements Reserved by Developer. Developer reserves nonexclusive easements for the benefit of itself and its successors and assigns, which may be used at any time or times,

a. to use, improve, or extend all roadways, drives, and walkways in the Project for the purpose of ingress and egress to and from any Unit or real property owned by Developer and

b. to use, tap, tie into, extend, or enlarge all utility lines and mains, public and private, located on the land described in Section 2

for the benefit of real property in which Developer owns an interest and real property in which Developer obtains an interest at any time in the future. The easements described in this section are subject to payment by the owners of the benefited property of a reasonable share of the cost of maintenance and repair of the improvements constructed on the easements.

8.3 Easements for Environmental Monitoring. A nonexclusive easement is granted to the Michigan Department of Environmental Quality ("DEQ") and its representatives, successors, and assigns for the purpose of determining and monitoring compliance with the DEQ's restrictions on the Property that are in the chain of title. This easement includes the right of the DEQ to take samples, inspect the operation of the response activities, and inspect any records relating thereto, and to perform any actions necessary to maintain compliance with state law and the restrictions in the Property's chain of title.

8.4 Utility Easement for the City of Marquette. A private, nonexclusive easement for public utilities is granted to the City of Marquette. The location of the easement is more particularly described as:

A 6' wide private easement for public utilities in part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northwest 1/4 of the Southwest 1/4 of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in Town 48 North, Range 25 West, City of Marquette, Marquette County, Michigan more particularly described as commencing at the 1/4 corner common to Sections 13 and 14; thence S01°22'00"W, 39.93' along the common Section line between 13 and 14 to the Southerly Right-of-Way (R/W) line of Fair Avenue (80' wide public R/W); thence S88°29'12"E, 104.63' along said Fair Avenue R/W line to the Easterly R/W line of Picnic Rocks Drive (60' wide private R/W) and the POINT OF BEGINNING; thence continuing S88°29'12"E, 6.00' along said Fair Avenue R/W line to a line parallel with and 6.00' distant from said Easterly R/W line of Picnic Rocks Drive; thence along said 6.00' offset line the following five calls: 1) S01°31'12"W, 57.14' to a Point of Curvature (P.C.), 2) Southeasterly, 39.94' along the arc of a 64.00' radius curve to the left, delta angle of 35°45'38" and a chord bearing S16°21'37"E, 39.30' to a Point of Tangency (P.T.), 3) S34°14'26"E, 305.74' to a P.C., 4) Southeasterly, 37.38' along the arc of a 64.00' radius curve to the left, delta angle of 33°27'36" and a chord bearing S50°58'14"E, 36.85' to a Point of Tangency (P.T.), 5) S67°42'02"E, 72.51' to the Westerly Lakeshore Boulevard (Variable width public R/W) R/W line; thence Southwesterly, 6.09' along said Lakeshore Boulevard R/W line on the arc of a 437.47' radius curve to the right, delta angle of 00°47'49" and a chord bearing S12°42'43"W, 6.08' to said Easterly R/W line of Picnic Rocks Drive; thence

along said Easterly R/W line the following five calls: 1) N67°42'02"W, 73.52' to a P.C., 2) Northwesterly, 40.88' along the arc of a 70.00' radius curve to the right, delta angle of 33°27'36" and a chord bearing N50°58'14"W, 40.30' to a P.T., 3) N34°14'26"W, 305.74' to a P.C., 4) Northwesterly, 43.69' along the arc of a 70.00' radius curve to the right, delta angle of 35°45'38" and a chord bearing N16°21'37"W, 42.98' to a P.T., 5) N01°31'12"E, 57.14' to the POINT OF BEGINNING, containing 3,101 square feet;

and

A private easement for public utilities in part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northwest 1/4 of the Southwest 1/4 of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in Town 48 North, Range 25 West, City of Marquette, Marquette County, Michigan more particularly described as commencing at the 1/4 corner common to Sections 13 and 14; thence S01°22'00"W, 39.93' along the common Section line between 13 and 14 to the Southerly Right-of-Way (R/W) line of Fair Avenue (80' wide public R/W); thence S88°29'12"E, 38.63' along said Fair Avenue R/W line to the POINT OF BEGINNING; thence continuing S88°29'12"E, 6.00' along said Fair Avenue R/W line to the Westerly R/W line of Picnic Rocks Drive (60' wide private R/W); thence along said Westerly R/W line the following five courses, 1) S01°31'12"W, 57.14' to a Point of Curvature (P.C.), 2) Southeasterly, 81.14' along the arc of a 130.00' radius curve to the left, delta angle of 35°45'38" and a chord bearing S16°21'37"E, 79.83' to a Point of Tangency (P.T.), 3) S34°14'26"E, 305.74' to a P.C., 4) Southeasterly, 75.92' along the arc of a 130.00' radius curve to the left, delta angle of 33°27'36" and a chord bearing S50°58'14"E, 74.84' to a P.T., 5) S67°42'02"E, 76.22' to the Westerly R/W line of Lakeshore Boulevard (variable width public R/W); thence Southwesterly, 6.00' along said Lakeshore Boulevard R/W line on the arc of a 1637.02' radius curve to the left, delta angle of 00°12'36" and a chord bearing S22°39'24"W, 6.00' to a line parallel with and 6.00' distant from said Westerly R/W line of Picnic Rocks Drive; thence N67°42'02"W, 28.59' along said 6.00' offset line; thence S22°58'05"W, 93.72'; thence N67°01'55"W, 153.27'; thence N22°58'05"E, 20.00'; thence S67°01'55"E, 133.27'; thence N22°58'05"E, 73.48' to said 6.00' offset line; thence N67°42'02"W, 27.59' along said 6.00' offset line to a P.C.; thence Northwesterly, 79.42' along said 6.00' offset line on the arc of a 136.00' radius curve to the right, delta angle of 33°27'36" and a chord bearing N50°58'14"W, 78.30' to a P.T.; thence N34°14'26"W, 149.33' along said 6.00' offset line; thence S57°10'15"W, 95.63' to the Easterly Lakeshore Park Place Drive (variable width private road) R/W line; thence Northeasterly, 42.12' along said Easterly R/W line on the arc of a 50.30' radius curve to the left, delta angle of 47°58'41" and a chord bearing N45°29'57"W, 40.90'; thence N57°10'15"E, 22.68'; thence S33°24'19"E, 15.90'; thence N57°10'15"E, 81.17' to said 6.00' offset line; thence N34°14'26"W, 132.40' along said 6.00' offset line to a P.C.; thence Northwesterly, 78.05' along said 6.00' offset line on the arc of a 136.00' radius curve to the right, delta angle

of 32°52'52" and a chord bearing N17°48'01"W, 76.98'; thence S83°54'28"W, 71.76'; thence S01°22'25"W, 90.49'; thence N88°37'35"W, 20.00'; thence N01°22'25"E, 108.05'; thence N83°54'28"E, 91.81' to said 6.00' offset line; thence N01°31'12"E, 43.81' to the POINT OF BEGINNING, containing 14,316 square feet.

8.5 Access Easement for the City of Marquette. A private, nonexclusive easement for access to the Project for purposes of providing public services is granted to the City of Marquette across Picnic Rocks Drive, the location of which is shown on form B.

Section 9. RECIPROCAL RESTRICTIONS AND COVENANTS

All Units in the Project shall be subject to the following reciprocal restrictions and covenants:

9.1 Single Family Residences Only. Units shall be used exclusively for single-family residential occupancy and purposes incidental to single-family residential occupancy. Only one residence may be constructed within a Unit. No apartment house, rooming house, or other commercial or multiple-family dwelling of any kind shall be erected, placed, or permitted on any Unit.

9.2 Home Occupations. Home occupations conducted entirely within the residence and participated in solely by members of the immediate family residing in the residence that do not generate unreasonable traffic by members of the general public and do not change the residential character of the Unit or neighborhood are permitted as incidental to primary residential use. To be permitted as a home occupation, there must be (a) no sign or display that indicates from the exterior that the residence is being used for any purpose other than that of a single-family dwelling; (b) no goods or commodities kept for viewing or sale within the Unit or the Project; and (c) no mechanical or electrical equipment used other than personal computers and other office equipment. In no event shall any barbershop, styling salon, beauty parlor, tearoom, animal hospital, or any other form of animal care or treatment such as dog trimming be considered as a home occupation.

9.3 Approval for Structures. No structure shall be constructed within the boundaries of a Unit until the plans for such structure have been approved in writing by the Developer, if during the Development and Sales Period, or the Association thereafter, pursuant to the Bylaws, to ensure conformity with the Project's overall aesthetics and Pattern Book, attached hereto as form C. No materials may be used on the exterior of any structure within a Unit unless expressly listed in the Pattern Book or specifically authorized in writing by the Developer during the Development and Sales Period or the Association thereafter. No Owner shall use any landscaping or decoration scheme on the exterior of any structure that is inconsistent with the scheme of the Project or the Pattern Book.

9.4 Owner-Occupancy. No Unit may be leased to a non-Owner.

9.5 Completion of Residences. The residence to be built in each Unit must be substantially complete no later than six years from the date the Unit is purchased from Developer. "Substantially complete" as used herein means that a permanent certificate of occupancy has been issued for the residence.

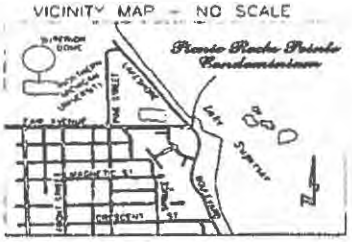
Picnic Rocks Pointe

MARQUETTE COUNTY CONDOMINIUM SUBDIVISION PLAN #38
EXHIBIT 'B' TO THE MASTER DEED OF PICNIC ROCKS POINTE CONDOMINIUM

Part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northeast 1/4 of the Southeast 1/4, of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in the City of Marquette, Town 48 North, Range 25 West, Marquette County, Michigan

DEVELOPER:
Lakeshore Residences, LLC • 955 Lakeshore Boulevard • Marquette, Michigan 49855

VICINITY MAP - NO SCALE



SHEET INDEX:

Cover and Legal Descriptions Page	Sheet 1
Survey, Site, and Utility Plan	Sheet 2

SURVEYORS:
Glenn C. Van Neste
Professional Surveyor # 27464
Travis W. Van Neste
Professional Surveyor # 48895

VAN NESTE SURVEYING
1405 HIGHLAND AVENUE MARQUETTE, MICHIGAN 49855
PHONE (906) 228-8241 FAX 228-8783
www.vannestesurveying.com

LEGAL DESCRIPTION PICNIC ROCKS POINTE CONDOMINIUM
(Recorded as Expandable Area #1 in Lakeshore Park Place Condominium, Marquette County Condominium Subdivision Plan #8)
Part of the Northeast 1/4 of the Southeast 1/4 of Section 14 and part of the plat of Ely Park subdivision in the Northeast 1/4 of the Southeast 1/4, of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in the City of Marquette, Town 48 North, Range 25 West, Marquette County, Michigan, more particularly described as commencing at the East 1/4 corner of said Section 14, thence S01°22'05"W, 39.93' along the East line of said Section 14 to the POINT OF BEGINNING, a found 5/8" rebar with cap on the Southerly Right-of-Way (R/W) line of Fair Avenue (80' R/W, May 2000); thence N88°34'50"W, 32.51' along said Southerly R/W line; thence S01°22'25"W, 177.55'; thence S32°49'45"E, 132.98'; thence Southeasterly, 112.88' along the arc of a 50.30' radius curve to the right, having a delta angle of 128°31'05", and a chord bearing S32°49'45"E, 90.55', thence S32°49'45"E, 131.70'; thence S87°01'55"E, 211.31' to the Westerly R/W line of Lakeshore Boulevard (variable R/W, May 2000); thence Northeasterly, 134.78' along the arc of a 1637.02' radius R/W curve to the right, having a delta angle of 04°43'03" and a chord bearing N21°36'56"E, 134.74' along said Westerly R/W line of Lake Shore Boulevard; thence Northwesterly, 277.05' along the arc of a 437.47' radius curve to the left, having a delta angle of 36°17'06" and a chord bearing of N01°40'39"W, 272.44' along said Westerly R/W line of Lake Shore Boulevard to the Southerly R/W line of Agate Street (66' R/W, not constructed, May 2000); thence N38°41'54"W, 301.27' along said Agate Street R/W line to the Southerly R/W line of said Fair Avenue; thence N88°29'12"W, 514.64' along said Southerly Fair Avenue R/W line to the POINT OF BEGINNING. Parcel contains 3.81 acres and is subject to utility easements in favor of the City of Marquette.

LEGAL DESCRIPTION PUBLIC UTILITY EASEMENT 'A'
A 8' wide private easement for public utilities in part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northeast 1/4 of the Southeast 1/4 of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in Town 48 North, Range 25 West, City of Marquette, Marquette County, Michigan more particularly described as commencing at the 1/4 corner common to Sections 13 and 14; thence S01°22'00"W, 39.93' along the common Section line between 13 and 14 to the Southerly Right-of-Way (R/W) line of Fair Avenue (80' wide public R/W); thence S88°29'12"E, 104.63' along said Fair Avenue R/W line to the Easterly R/W line of Picnic Rocks Drive (60' wide private R/W) and the POINT OF BEGINNING; thence continuing S88°29'12"E, 8.00' along said Fair Avenue R/W line to a line parallel with and 8.00' distant from said Easterly R/W line of Picnic Rocks Drive; thence along said 8.00' offset line the following five calls: 1) S01°31'12"W, 57.14' to a Point of Curvature (P.C.), 2) Southeasterly, 39.94' along the arc of a 64.00' radius curve to the left, delta angle of 35°45'38" and a chord bearing S16°21'37"E, 39.30' to a Point of Tangency (P.T.), 3) S34°14'26"E, 305.74' to a P.C., 4) Southeasterly, 37.38' along the arc of a 64.00' radius curve to the left, delta angle of 33°27'36" and a chord bearing S50°58'14"E, 36.85' to a Point of Tangency (P.T.), 5) S67°42'02"E, 72.51' to the Westerly Lakeshore Boulevard (variable width public R/W) R/W line; thence Southwesterly, 8.09' along said Lakeshore Boulevard R/W line on the arc of a 437.47' radius curve to the right, delta angle of 00°47'49" and a chord bearing S12°42'43"W, 8.08' to said Easterly R/W line of Picnic Rocks Drive, thence along said Easterly R/W line the following five calls: 1) N67°42'02"W, 73.53' to a P.C., 2) Northwesterly, 40.85' along the arc of a 70.00' radius curve to the right, delta angle of 33°27'36" and a chord bearing N50°58'14"W, 40.30' to a P.T., 3) N34°14'26"W, 305.74' to a P.C., 4) Northwesterly, 43.65' along the arc of a 72.00' radius curve to the right, delta angle of 35°45'38" and a chord bearing N16°21'37"W, 42.98' to a P.T., 5) N01°31'12"E, 57.14' to the POINT OF BEGINNING, containing 3,101 square feet

LEGAL DESCRIPTION PUBLIC UTILITY EASEMENT 'B'
A private easement for public utilities in part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northeast 1/4 of the Southeast 1/4 of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in Town 48 North, Range 25 West, City of Marquette, Marquette County, Michigan more particularly described as commencing at the 1/4 corner common to Sections 13 and 14; thence S01°22'00"W, 39.93' along the common Section line between 13 and 14 to the Southerly Right-of-Way (R/W) line of Fair Avenue (80' wide public R/W); thence S88°29'12"E, 38.63' along said Fair Avenue R/W line to the POINT OF BEGINNING; thence continuing S88°29'12"E, 8.00' along said Fair Avenue R/W line to the Westerly R/W line of Picnic Rocks Drive (60' wide private R/W); thence along said Westerly R/W line the following five courses, 1) S01°31'12"W, 57.14' to a Point of Curvature (P.C.), 2) Southeasterly, 81.14' along the arc of a 130.00' radius curve to the left, delta angle of 35°45'38" and a chord bearing S16°21'37"E, 79.83' to a Point of Tangency (P.T.), 3) S34°14'26"E, 305.74' to a P.C., 4) Southeasterly, 75.92' along the arc of a 130.00' radius curve to the left, delta angle of 33°27'36" and a chord bearing S50°58'14"E, 74.84' to a P.T., 5) S67°42'02"E, 76.22' to the Westerly R/W line of Lakeshore Boulevard (variable width public R/W), thence Southwesterly, 8.00' along said Lakeshore Boulevard R/W line on the arc of a 1637.02' radius curve to the left, delta angle of 00°16'36" and a chord bearing S22°39'24"W, 8.00' to a line parallel with and 8.00' distant from said Westerly R/W line of Picnic Rocks Drive; thence N67°42'02"W, 28.59' along said 8.00' offset line; thence S22°58'05"W, 93.72'; thence N67°01'55"W, 153.27'; thence N22°58'05"E, 20.00'; thence S67°01'55"E, 133.27'; thence N22°58'05"E, 73.48' to said 8.00' offset line; thence N67°42'02"W, 27.59' along said 8.00' offset line to a P.C.; thence Northwesterly, 79.42' along said 8.00' offset line on the arc of a 138.00' radius curve to the right, delta angle of 33°27'36" and a chord bearing N50°58'14"W, 78.30' to a P.T., thence N34°14'26"W, 148.33' along said 8.00' offset line; thence S55°10'15"W, 95.63' to the Easterly Lakeshore Park Place Drive (variable width private road) R/W line; thence Northeasterly, 42.12' along said Easterly R/W line on the arc of a 50.33' radius curve to the left, delta angle of 47°58'41" and a chord bearing N48°29'57"W, 40.90', thence N57°10'15"E, 22.68'; thence S32°24'19"E, 15.90'; thence N57°10'15"E, 81.17' to said 8.00' offset line, thence N34°14'26"W, 132.40' along said 8.00' offset line to a P.C.; thence Northwesterly, 78.05' along said 8.00' offset line on the arc of a 138.00' radius curve to the right, delta angle of 32°24'52" and a chord bearing N17°48'01"W, 76.98', thence S83°54'28"W, 71.76'; thence S01°22'25"W, 90.48'; thence N88°37'35"W, 20.00'; thence N01°22'25"E, 106.05'; thence N83°54'28"E, 91.81' to said 8.00' offset line; thence N01°31'12"E, 43.81' to the POINT OF BEGINNING, containing 14,315 square feet

NOTES
- The condominium boundary is recorded as Expandable Area #1 in Lakeshore Park Place Condominium Marquette County Condominium Subdivision Plan #8.
- This condominium project does not lie within a FEMA flood hazard area

I, Glenn C. Van Neste, a Professional Surveyor in the State of Michigan, hereby certify

That the subdivision plan known as Picnic Rocks Pointe, Marquette County Condominium Subdivision Plan No. 38, as shown on the accompanying drawings, represents a survey on the ground made under my direction

That the required monuments and iron markers will be located in the ground prior to 01 March 2013, as required by the rules promulgated under Section 142 of Act No. 59 of the Public Acts of 1978 as Amended. That the accuracy of the survey is within the limits required by the rules promulgated under Section 142 of Act No. 59 of the Public Acts of 1978 as Amended

That the bearings, as shown, are relied on the survey plan as required by the rules promulgated under Section 142 of Act No. 59 of the Public Acts of 1978 as Amended

SIGNED: GLENN C. VAN NESTE DATE: 26 June 2013

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As-Built June 2013

9.6 Limits of Construction. No structure within the Project that requires any movement of soil may be constructed outside the buildable area for such Unit as shown in the Pre-Approved Excavation Area Exhibit, attached hereto as form D, without the written consent of Developer if during the Development and Sales Period or the Association thereafter, except that this sentence does not apply to Unit 11. In no event may any structure exceed 30 feet in height. All structures on Units 1-9 shall be limited to 2-stories, and structures on Units 10-15 shall be limited to 1 ½-stories.

9.7 Signs. No signs or other advertising devices (other than one professionally made unlit sign or a sign of substantially the same quality and appearance advertising a unit for sale that is not larger than four square feet in size) shall be displayed from any residence or on any Unit that are visible from the exterior of the Unit or from the Common Elements without written permission from the Association or its managing agent.

9.8 Common Areas. The Common Elements shall be used only by the Owners and their agents, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and for other purposes incidental to use of the Units. The use, maintenance, and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Owner and shall be subject to any lease or easement presently in existence or entered into by the Developer or Association at some future date that affects all or any part of the Common Elements. No Owner shall make any additions, alterations, or modifications to any of the Common Elements without prior written approval of Developer or the Association. The General Common Elements shall not be used for the storage of supplies, personal property, trash or refuse of any kind (except for the short periods of time that are reasonably necessary to permit the placement of trash for collection the next day). No Owner shall perform landscaping, planting or decorating of any kind on any Common Element without the prior written approval of the Association.

9.9 Lawn Care. Each Owner shall mow all grass within their respective Unit and Limited Common Elements at least two times each month during the growing season.

9.10 Nuisances. No nuisances shall be permitted on the Property, nor shall any use or practice be permitted that is a source of annoyance to or that unreasonably interferes with the peaceful possession or proper use of the Project by its residents. No Unit shall be used in whole or in part for the storage of rubbish or trash or for the storage of any property or thing that may cause the Unit to appear in an unclean or untidy condition. No substance or material shall be kept on a Unit that will emit foul or obnoxious odors or that will cause excessive noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding Units. No immoral, improper, unlawful or offensive activity shall be carried on in any Unit or upon any Common Element.

9.11 Prohibited Uses. Nothing shall be done or kept in any Unit or on the Common Elements that will increase the rate of insurance for the Project without the prior written consent of the Association, which consent, if given, shall require the Owner to pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition. No Owner shall permit anything to be done or kept in the Owner's Unit or elsewhere on the Common Elements that will result in the cancellation of insurance on any Unit or any part of the Common Elements or that will violate any law.

9.12 Personal Property. No Owner shall display, hang, or store any clothing, sheets, blankets, laundry, or other items of personal property, or allow any unsightly condition, outside a Unit or ancillary building. This restriction shall not be construed to prohibit a Owner from placing and maintaining outdoor furniture and accoutrements and decorative foliage of a customary nature and appearance on the patio of a Unit only during the appropriate season(s) of reasonable use.

9.13 Pets and Animals. No animals may be kept on any Unit, except for a maximum of three (3) common, domestic, indoor, household pets, without written consent of the Association, which, if given, may be revoked at any time by the Association. No exotic, savage, or dangerous animal shall be kept on the Property, and no animal may be kept or bred for commercial purposes. Common household pets permitted under the provisions of this subsection shall be kept only in compliance with the rules and regulations promulgated by the Association from time to time and must at all times be kept under care and restraint so they are not obnoxious on account of noise, odor, or unsanitary conditions. No animal shall be permitted to run loose on the Common Elements or on any Unit except the Unit owned by the owner of the animal, and the owner of each pet shall be responsible for cleaning up after it.

9.14 Vehicles and recreational vehicles. No commercial vehicle, recreational vehicles, house trailers, motor homes, camping vehicles, camping trailers, snowmobiles, snowmobile trailers, boats, boat trailers or other types of trailers shall be parked or stored in any garage if the storage would prevent full closure of the garage door or elsewhere on the Property without the written approval of the Association. No snowmobile, all-terrain vehicle, or other motorized recreational vehicle shall be operated on the Property. No maintenance or repair shall be performed on any boat or vehicle except within a garage or residence where totally isolated from public view. No unlicensed or inoperable vehicles may be parked or stored outside of the garage.

9.15 Trash Containers and Pick Up. All trash shall be placed in containers subject to the Association's approval and kept inside the garage or other fully enclosed area except that Owners may place trash containers on Common Elements as reasonably necessary for collection the next day.

9.16 Solar Panels and Satellite Dishes. No exterior radio, television or other antenna, aerials, or solar panels, may be installed on the exterior of any building unless the type, design, and location has been approved in writing by the Association. An Owner may install a small satellite dish or other receiving dish on the exterior of a building, subject to reasonable prior approval by the Association for size, location, color, and screening. To the extent required by applicable federal law, the Association's regulations shall not unreasonably impair an Owner's installation, maintenance, or use of a satellite dish.

9.17 Hazardous Materials. Owners shall not, nor shall they permit their agents, invitees, contractors or subcontractors (collectively, "Owners' Agents") to, bring on, keep, store, use, or dispose of any Hazardous Materials on, in, under, or about the Project except ordinary cleaning chemicals and solutions, suitably packaged goods offered for sale at retail, none of which may pose any significant threat of contamination of the Project. Each Owner shall cause the presence, use, storage, or disposal of any Hazardous Materials on, in, under, or about the Project by the Owner or the Owner's Agents to be in compliance with all applicable laws, rules, regulations, and orders. Each Owner shall defend, indemnify, protect, and hold harmless the Association from and against all claims, costs, fines, judgments, and liabilities, including attorney fees and

costs, arising out of or in connection with the presence, storage, use, or disposal of Hazardous Material in, on, under, or about the Project caused by the acts, omissions, or negligence of the Owner or the Owner's Agents. The term "Hazardous Materials" as used herein means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local government authority, any agency of the State of Michigan, or any agency of the U.S. government.

9.18 Window Treatments. Window treatments shall be installed within sixty (60) days of occupancy of a residence in the Project. No sheets, blankets, bedspreads, newspapers, aluminum foil, or other material not commercially made for use as a window treatment may be used as a temporary or permanent window treatment for any Unit.

9.19 Additional Structures. No additional temporary or permanent structure, including, but not limited to kennel fencing and hot tubs, shall be constructed or placed in the Development without the prior written approval of the Association.

9.20 Elevations and Surface Water. No changes in land elevations shall be made on any Unit that will cause undue hardship to any adjoining Unit. No change to the surface water management system or draining direction of the Property shall be made without the prior approval of the Association. The Association reserves the right to correct any undesirable areas of standing water or other poor drainage which may develop or exist anywhere on the Property.

9.21 Reserved Rights of Developer. The restrictions in this section shall not apply to the commercial activities of Developer during the Development and Sale Period. Developer shall also have the right to maintain a sales office, advertising display sign, storage areas, and reasonable parking incident to its sales efforts and to reasonable access to, from, and over the Property to enable development and sale of the entire Project.

Section 10. AMENDMENT, TERMINATION, AND WITHDRAWAL

10.1 Preconveyance Amendments. If there is no Owner other than Developer, Developer may unilaterally amend the Condominium Documents or, with the consent of any interested mortgagee, unilaterally terminate the Project. All documents reflecting an amendment to the Master Deed or the Condominium Bylaws or a termination of the Project shall be recorded in the register of deeds office in the county where the Project is located.

10.2 Postconveyance Amendments. If there is an Owner other than Developer, the recordable Condominium Documents may be amended for a proper purpose as follows:

a. **Nonmaterial Changes.** An amendment may be made without the consent of any Owner or mortgagee if the amendment does not materially alter or change the rights of any Owner or mortgagee of a Unit in the Project, including, but not limited to, (i) amendments to modify the types and sizes of unsold Condominium Units and their appurtenant Limited Common Elements; (ii) amendments correcting survey or other errors in the Condominium Documents; or (iii) amendments to facilitate conventional mortgage loan financing for existing or prospective Owners and enable the purchase of such mortgage loans by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the

Government National Mortgage Association, or any other agency of the federal government or the State of Michigan.

b. **Material Changes.** An amendment may be made even if it will materially alter or change the rights of the Owners with the consent of not less than two-thirds of the Owners and, to the extent required by law, mortgagees. However, an Owner's Unit dimensions or Limited Common Elements may not be modified without that Owner's consent, nor may the method or formula used to determine the percentage of value of Units in the Project for other than voting purposes be modified without the consent of each affected Owner and mortgagee. Rights reserved by Developer, including without limitation rights to amend for purposes of contraction or modification of units, shall not be amended without the written consent of Developer so long as Developer or its successors continue to own and to offer for sale any Unit in the Project.

c. **Reserved Developer Rights.** During the Development and Sales Period, this Master Deed and forms A and B shall not be amended nor shall provisions be modified in any way without the written consent of Developer or its successors or assigns. Notwithstanding paragraph (b) above, Developer may unilaterally make a material amendment to the Condominium Documents without the consent of any Owner or mortgagee for any of the following purposes:

i. to achieve compliance with the Act, administrative rules, or orders adopted by the courts pursuant to the Act or with other federal, state, or local laws, ordinances, or regulations affecting the Project;

ii. to the extent required by any federal, state, or local agency in order to permit the residential occupancy of the Property;

iii. to comply with any requirements of any financing institution providing or proposing to provide a mortgage on any Unit or to satisfy the title requirements of any title insurer insuring or proposing to insure title to any Unit;

iv. to correct arithmetic errors, typographical errors, survey errors, or any similar errors in the Condominium Documents;

v. to clarify or explain the provisions of the Condominium Documents;

vi. to make, define, or limit easements affecting the Project; or

vii. to record an "as built" Condominium Subdivision Plan and/or consolidating master deed and to depict thereon any improvements, if any, not shown on the Plan attached hereto.

d. **Costs of Amendments.** A person causing or requesting an amendment to the Condominium Documents shall be responsible for costs and expenses of the amendment, except for amendments based on a vote of the Owners, the costs of which are expenses of

administration. The Owners shall be notified of proposed amendments under this section not less than 10 days before the amendment is recorded.

10.3 Project Termination. If there is an Owner other than Developer, the Project may be terminated only with consent of Developer and not less than 80 percent of the Owners, in the following manner:

a. **Termination Agreement.** Agreement of the required number of Owners to termination of the Project shall be evidenced by the Owners' execution of a Termination Agreement, and the termination shall become effective only when the Agreement has been recorded in the register of deeds office in the county where the Project is located.

b. **Real Property Ownership.** On recordation of a document terminating the Project, each Owner shall be deemed to hold fee simple title to his/her Unit, and the Common Elements shall be owned by the Owners as tenants in common in proportion to their respective undivided interests in the Common Elements immediately before recordation. As long as the tenancy in common lasts, each Owner and their heirs, successors, or assigns shall have an exclusive right of occupancy of that portion of the property that formerly constituted their Condominium Unit and Limited Common Elements.

c. **Association Assets.** On recordation of a document terminating the Project, any rights the Owners may have to the net assets of the Association shall be in proportion to their respective undivided interests in the Common Elements immediately before recordation, except that common profits (if any) shall be distributed in accordance with the Condominium Documents and the Act.

d. **Notice to Interested Parties.** Notification of termination by first-class mail shall be made to all parties interested in the Project, including escrow agents, land contract vendors, creditors, lienholders, and prospective purchasers who have deposited funds.

10.4 Withdrawal of Property. Notwithstanding anything in this Master Deed to the contrary, if Developer has not completed development and construction of Units or improvements in the Project that are identified as "need not be built" during a period ending 10 years after the date of commencement of construction by Developer of the Project, Developer has the right to withdraw from the Project all undeveloped portions of the Project not identified as "must be built" without the prior consent of any Owners, mortgagees of Units in the Project, or any other person having an interest in the Project. The undeveloped portions of the Project withdrawn shall also automatically be granted easements for utility and access purposes through the Project for the benefit of the undeveloped portions of the Project, subject to the payment of a reasonable pro rata share of the costs of maintaining the easements. If Developer does not withdraw the undeveloped portions of the Project from the Project before the 10 year time period expires, those undeveloped lands shall remain part of the Project as General Common Elements, and all rights to construct Units on that land shall cease.

Section 11. ASSIGNMENT OF DEVELOPER RIGHTS

Developer may assign any or all of the rights and powers granted to or reserved by Developer in the Condominium Documents or by law, including without limitation the power to approve or to disapprove any act, use, or proposed action, to any other entity or person, including the Association. Any such assignment or transfer shall be made by an appropriate document in writing and shall be duly recorded in the register of deeds office in the county where the Project is located.

Section 12. DEVELOPER'S RIGHT TO PUT ADDITIONAL BURDENS ON THE PROPERTY

Developer may unilaterally agree to and record with the Marquette County Register of Deeds any document (including, but not limited to, easements and restrictive covenants) required by a federal, state, or local government agency to permit residential occupancy of the Property.

This Master Deed has been signed by Developer and shall be effective as of the date stated on page 1.

DEVELOPER

LAKESHORE RESIDENCES, LLC

By: Valdy Biernacki, Agent

STATE OF MICHIGAN)
)ss
COUNTY OF MARQUETTE)

On this 27th day of March, 2014, before me a Notary Public, in and for said County, personally appeared Valdy Biernacki, to me known to be the same person described herein and who executed the foregoing instrument as agent of Lakeshore Residences, LLC, and who acknowledged the same to be the free act and deed of Lakeshore Residences, LLC.

Sheryl A. Nardi, Notary Public
Marquette County
My Commission Expires: 07/07/14
Acting in Marquette County

FORM A

PICNIC ROCKS POINTE
CONDOMINIUM BYLAWS

Section 1. ASSOCIATION OF OWNERS

1.1 Organization. Picnic Rocks Pointe is a residential site condominium project located in the City of Marquette, Marquette County, Michigan being developed in a single phase, to comprise a maximum of 15 building sites. On the recording of the Master Deed, the management, maintenance, operation, and administration of the Project shall be vested in an Association of Owners organized as a nonprofit corporation under the laws of the State of Michigan. The Association will keep current copies of the Master Deed, all amendments to the Master Deed, and other Condominium Documents for the Project available at reasonable hours for inspection by Owners, prospective buyers, mortgagees, and prospective mortgagees of Units in the Project.

1.2 Compliance. All present and future Owners, mortgagees, lessees, or other persons who may use the facilities of the Condominium in any manner shall be subject to and comply with the provisions of the Act, the Master Deed and any amendments, the Condominium Bylaws, the Association's Articles of Incorporation, the Association Bylaws, and other Condominium Documents that pertain to the use and operation of the Project. The acceptance of a deed of conveyance or the act of occupying a Condominium Unit in the Project shall constitute an acceptance of the terms of the Condominium Documents and an agreement to comply with their provisions.

Section 2. MEMBERSHIP AND VOTING

2.1 Membership. Each Owner of a Unit in the Project shall be a member of the Association during the period of ownership, and no other person or entity will be entitled to membership. The share of a member in the funds and assets of the Association may be assigned, pledged, or transferred only as an appurtenance to a Unit.

2.2 Voting Rights. Each Unit shall be entitled to one vote when voting by number and one vote, the value of which shall equal the total of the Percentage of Value assigned to the Unit, when voting by value. If there is more than one Owner of a Unit, the Unit's vote shall be exercised in accordance with the majority ownership. Voting shall be by number except when the Master Deed or Bylaws specifically require voting to be by number and value, and no cumulative voting shall be permitted.

2.3 Eligibility to Vote. No member other than Developer will be entitled to vote at any meeting of the Association until the member has presented written evidence of ownership of a Unit in the Project, nor shall the member be entitled to vote (except for elections pursuant to paragraph 4.2) before the Initial Meeting of Members. A member shall be permitted to vote only if the member is not in default of payment of assessments levied against the member's Unit. Developer shall be entitled to vote only those Units to which Developer still holds title.

2.4 Designation of Voting Representative. The person entitled to cast the vote for each Unit and to receive all notices and other communications from the Association shall be designated by a certificate signed by all the record owners of a Unit and filed with the secretary of the Association. The certificate shall state the name and address of the individual representative designated; the number of the Unit owned; and the name and address of the Owner(s). All certificates shall be valid until revoked, until superseded by a subsequent certificate, or until a change has occurred in the ownership of the Unit.

2.5 Proxies. Votes may be cast in person or by proxy. Proxies may be made by any designated voting representative who is unable to attend the meeting in person. Proxies will be valid only for the particular meeting designated and any adjournment and must be filed with the Association before the appointed time of the meeting.

2.6 Majority. At any meeting of members at which a quorum is present, 51 percent of the votes cast (counting only those entitled to vote) shall constitute a majority for the approval of the matters presented to the meeting, except when these Bylaws, the Master Deed, or law require a majority exceeding a simple majority.

Section 3. MEETINGS AND QUORUM

3.1 Initial Meeting of Members. The initial meeting of the members of the Association may be convened only by the Developer and may be called at any time after two or more of the Units have been sold and the buyers qualified as members of the Association. In no event, however, shall the initial meeting be called later than (a) 120 days after the conveyance of legal or equitable title to nondeveloper Owners of 75 percent of the total number of Units that may be created in the Project or (b) 54 months after the first conveyance of legal or equitable title to a nondeveloper Owner of a Unit, whichever first occurs, at which meeting the eligible Owners may vote for the election of directors of the Association. Developer may call meetings of members of the Association for informational or other appropriate purposes before the initial meeting, but no such informational meeting shall be construed as the initial meeting of members.

3.2 Annual Meeting of Members. After the initial meeting has occurred, annual meetings of the members shall be held in each year on a date and at a time and place selected by the Board of Directors. At least 20 days before the date of an annual meeting, written notice of the date, time, place, and purpose of the meeting shall be mailed or delivered to each member entitled to vote at the meeting; but no less than 30 days written notice shall be provided to each member of any proposed amendment to these Bylaws or to other recorded Condominium Documents.

3.3 Special Meetings. Special meetings of the Association may be called by the Board of Directors or upon the request of 5 members made to the Board of Directors in writing. Notice of the meeting's date, time, place, and purpose shall be mailed to each member not less than 30 days before the date of the meeting.

3.4 Advisory Committee. Within one year after the initial conveyance by Developer of legal or equitable title to a Unit, or within 120 days after conveyance of five Units, whichever first occurs, Developer shall select two or more persons from the non-Developer Owners to serve as an advisory committee to the Board of Directors (the Advisory Committee). The purpose of the Advisory Committee is to facilitate communication between the Developer-appointed Board of Directors and the non-Developer Owners and to aid in the ultimate transition of control to the Owners. The members of the Advisory Committee shall serve for one year or until their successors are selected, and the Committee shall automatically cease to exist at the Transitional Control Date. The Board of Directors and the Advisory Committee shall meet with each other at the request of the Advisory Committee, but there shall be not more than two such meetings each year unless both parties agree.

3.5 Quorum of Members. The presence in person or by proxy of members in good standing entitled to cast 35 percent of the total number of votes in the Association shall constitute a quorum of members. The written vote of a member properly furnished at or before a meeting at which the member is not present in person or by proxy shall be counted in determining the presence of a quorum with respect to the question on which the vote is cast.

Section 4. ADMINISTRATION

4.1 Board of Directors. The business, property, and affairs of the Association shall be managed by a board of directors (the Board of Directors) to be elected in the manner described in these Bylaws. All actions of the first Board of Directors designated in the Articles of Incorporation or any successors to the directors selected by Developer before the initial meeting of members shall be binding on the Association as though the actions had been authorized by a Board of Directors elected by the members of the Association, so long as the actions are within the scope of the powers and duties that a Board of Directors may exercise under the Condominium Documents. A service contract or management agreement entered into between the Association and Developer or affiliates of Developer shall be voidable without cause by the Board of Directors on the Transitional Control Date or within 90 days after the initial meeting has been held and on 30 days' notice at any time for cause.

4.2 Board Composition. The Board of Directors shall consist of five elected members: four elected officers, as set forth below, and one member at large. The number of directors can be changed by an affirmative vote of a majority of the total number of votes in the Association entitled to be cast. Not later than 120 days after conveyance of legal or equitable title to nondeveloper Owners of 25 percent of the Units that may be created in the Project, at least one director and not less than one-fourth of the Board of Directors of the Association shall be elected by nondeveloper Owners. Not later than 120 days after conveyance of legal or equitable title to nondeveloper Owners of 50 percent of the Units that may be created in the Project, not less than one-third of the Board of Directors shall be elected by nondeveloper Owners. Not later than 120 days after conveyance of legal or equitable title to nondeveloper Owners of 75 percent of the Units that may be created in the Project and before conveyance of 90 percent of those Units, the nondeveloper Owners shall elect all directors on the board except that Developer shall have the right to designate at least one director as long as Developer owns and offers for sale at least 1 Unit in the Project.

4.3 Owner Control. If 75 percent of the Units that may be created in the Project have not been conveyed within 54 months after the first conveyance of legal or equitable title to a nondeveloper Owner, the nondeveloper Owners shall have the right to elect the percentage of members of the Board of Directors of the Association equal to the percentage of Units they hold, and Developer will have the right to elect the percentage of members of the board equal to the percentage of Units that are owned by Developer and for which all assessments are payable by Developer. This election may increase, but shall not reduce, the minimum election and designation rights of directors otherwise established in paragraph 4.2. Application of this provision does not require a change in the size of the board as designated in the Association bylaws.

4.4 Mathematical Calculations. If the calculation of the percentage of members of the board that the nondeveloper Owners have a right to elect or the product of the number of members of the board multiplied by the percentage of Units held by the nondeveloper Owners results in a right of nondeveloper Owners to elect a fractional number of members of the board, a fractional election right of 0.5 or greater shall be rounded up to the nearest whole number. After application of this formula, Developer shall have the right to elect the remaining members of the board. Application of this provision shall not eliminate the right of Developer to designate at least one member as provided in paragraph 4.2.

4.5 Powers and Duties. The Board shall have all powers and duties necessary to administer the affairs of the Association and may take all actions in support of the administration that are not prohibited by the Condominium Documents or specifically reserved to the members, including the following:

a. care, upkeep, and maintenance of the Common Elements;

b. development of an annual budget and the determination, levy, and collection of assessments required for the operation and affairs of the Condominium;

c. employment and dismissal of contractors and personnel as necessary for the efficient management and operation of the Condominium Property;

d. adoption and amendment of rules and regulations governing the use of the Condominium Property not inconsistent with these Bylaws;

e. opening bank accounts, borrowing money, and issuing evidences of indebtedness in furtherance of the purposes of the Association and designating signatories required for those purposes;

f. obtaining insurance for the Common Elements, the premiums of which shall be an expense of administration;

g. granting licenses for the use of the Common Elements for purposes not inconsistent with the provisions of the Act or of the Condominium Documents;

h. authorizing the execution of contracts, deeds of conveyance, restrictive covenants, easements, and rights-of-way affecting any real or personal property of the Condominium on behalf of the Owners;

i. making repairs, additions, and improvements to or alterations of the Common Elements and repairs to and restoration of the Common Elements after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings;

j. asserting, defending, or settling claims on behalf of all Owners in connection with the Common Elements of the Project and, on written notice to all Owners, instituting actions on behalf of and against the Owners in the name of the Association; and

k. further duties as may be imposed by resolution of the members of the Association or that may be required by the Condominium Documents or the Act.

4.6 Books of Account. The Association shall keep books and records containing a detailed account of the expenditures and receipts of administration, which will specify the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Association and its members. The accounts shall be open for inspection by the Owners and their mortgagees during reasonable hours. The Association shall also prepare and distribute a financial statement to each Owner at least once a year, the contents of which will be defined by the Association. The books and records shall be reviewed annually and audited at times required by the Board of Directors by qualified independent accountants (who need not be certified public accountants), and the cost of the review or audit shall be an expense of administration.

4.7 Maintenance, Repair, and Replacement. The responsibility for maintenance, repair, and replacement of Units and Common Elements (other than following casualty damage, which is described in section 6 of the Bylaws) is as follows:

a. All maintenance, repair, and replacement of the structures and other improvements located within a Unit or Limited Common Elements that are the responsibility of the Owner of a Unit as set forth in the Master Deed shall be made by the Owner of the Unit. Each Owner shall be responsible for all damages to the Common Elements resulting from the repairs or from any failure of the Owner to perform maintenance and repairs to a Unit.

b. All maintenance, repair, and replacement of the General Common Elements, whether located inside or outside the Units, and of Limited Common Elements to the extent required by the Master Deed shall be made by the Association and shall be charged to all the Owners as a common expense, unless provided otherwise in the Master Deed or unless necessitated by the negligence, misuse, or neglect of a particular Owner, in which case the expense shall be charged to the responsible Owner. The Association or its agent shall have access to each Unit (but not to the interior of any residence or garage within a Unit) from time to time during reasonable hours, on notice to the occupant, to maintain,

repair, or replace any of the Common Elements located within or accessible only from a Unit that are the responsibility of the Association. The Association or its agents shall also have access to each Unit at all times without notice for making emergency repairs necessary to prevent damage to other Units or the Common Elements.

4.8 Reserve Fund. The Association shall maintain a reserve fund, to be used for major repairs and replacement of the Common Elements, as provided by MCL 559.205. The fund shall be established in the minimum amount required on or before the Transitional Control Date and shall, to the extent possible, be maintained at a level that is equal to or greater than 10 percent of the then current annual budget of the Association on a noncumulative basis. The minimum reserve standard required by this section may prove to be inadequate, and the Board of Directors should carefully analyze the Project from time to time to determine if a greater amount should be set aside or if additional reserve funds should be established for other purposes.

4.9 Construction Liens. A construction lien arising as a result of work performed on a Unit or on an appurtenant Limited Common Element shall attach only to the Unit on which the work was performed, and a lien for work authorized by Developer or the principal contractor shall attach only to Condominium Units owned by Developer at the time of recording the lien. A construction lien for work authorized by the Association shall attach to each Unit only to the proportionate extent that the Owner of the Unit is required to contribute to the expenses of administration. No construction lien shall arise or attach to a Condominium Unit for work performed on the General Common Elements not contracted for by the Association or Developer.

4.10 Managing Agent. The Board of Directors may employ a management company or managing agent at a compensation established by the Board of Directors to perform the duties and services as the Board of Directors shall authorize, including, but not limited to, the powers and duties described in paragraph 4.5. Developer or any person or entity related to Developer may serve as managing agent, but any compensation paid to Developer shall be at competitive rates.

4.11 Officers. The officers of the Association shall consist of a President, Vice President, Secretary, and Treasurer. Each of the officers is also a member of the Board of Directors. The duties of the officers shall be as follows:

a. **President.** The President shall preside at all meetings of the Association and shall appoint such committees as the President or the Association shall consider expedient or necessary. The President shall sign all leases, contracts, or other instruments on behalf of the Association. The President shall also serve as Chairman of the Board of Directors.

b. **Vice President.** In the absence of the President, the Vice President shall perform the President's duties. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Association.

c. **Secretary.** The Secretary shall keep the minutes of all meetings of the Association. The Secretary shall mail out all notices for meetings of the Association and shall perform such other duties as may be required by the Condominium Documents, the President, or the Association.

d. **Treasurer.** In the absence of both the President and Vice President, the Treasurer shall preside and assume the duties of the President. The Treasurer shall have charge of all receipts and monies of the Association, deposit them in the name of the Association in a bank approved by the Association, and disburse funds as authorized by the Association. The Treasurer shall keep regular accounts of all receipts and disbursements, submit the records when requested, and file an itemized statement at annual meetings of the Association. The Treasurer, President, or Vice President may sign checks and withdrawal slips on behalf of the Association.

4.12 Qualifications. Except for the directors selected by the Developer prior to the Initial Meeting of Members, the officers and directors of the Association shall be members of the Association, in good standing at the time of their election. No more than one owner of a particular Unit may serve as an officer or director.

4.13 Elections. Nominations may be made by any member of the Association, and officers and directors shall be elected by a plurality vote at the Annual Meeting. Officers and directors shall serve for a term of two years.

4.14 Vacancy. If a vacancy occurs among the officers or directors, the Board of Directors shall fill the vacancy for the remainder of the director's or officer's term.

4.15 Removal. Any director or officer may be impeached and removed from office by the affirmative vote of 66 percent of the total number of votes in the Association entitled to be cast.

4.16 Compensation. Neither the Board of Directors, officers, nor members serving on committees shall receive any salary or compensation for services rendered to the Association, but may be reimbursed for funds advanced on behalf of the Association as approved by the Board of Directors.

4.17 Indemnification. All directors and officers of the Association shall be entitled to indemnification against costs and expenses incurred as a result of actions (other than willful or wanton misconduct or gross negligence) taken or failed to be taken on behalf of the Association.

Section 5. ASSESSMENTS

5.1 Administrative Expenses. The Association shall be assessed as the entity in possession of any tangible personal property of the Condominium owned or possessed in common, and personal property taxes levied on such property shall be treated as expenses of administration. All costs incurred by the Association in satisfaction of any liability arising

within, caused by, or connected with the Common Elements or the administration of the Project shall be expenses of administration, and all sums received as proceeds of or pursuant to any policy of insurance covering the interests of the Owners against liabilities or losses arising within, caused by, or connected with the Common Elements or the administration of the Common Elements shall be receipts of administration.

5.2 Determination of Assessments. Assessments will be determined in accordance with the following provisions:

a. **Initial Budget.** The Board of Directors of the Association shall establish an initial budget in advance for each fiscal year that will project all expenses for the coming year that may be required for the proper operation, management, and maintenance of the Condominium Project, including a reasonable allowance for contingencies and reserves. The annual assessment to be levied against each Unit in the Project shall then be determined on the basis of the budget. Copies of the budget shall be delivered to each Owner, although the failure to deliver a copy to each Owner will not affect or in any way diminish the liability of an Owner for any existing or future assessment.

b. **Budget Adjustments.** If the Board of Directors determines at any time, in its sole discretion, that the initial assessments levied are insufficient (i) to pay the costs of operation and maintenance of the Common Elements, (ii) to provide for the replacement of existing Common Elements, (iii) to provide for additions to the Common Elements not exceeding $5,000 annually, or (iv) to respond to an emergency or unforeseen development; the Board of Directors is authorized to increase the initial assessment or to levy any additional assessments it deems necessary for such purposes. The discretionary authority of the Board of Directors to levy additional assessments will rest solely with the Board of Directors for the benefit of the Association and its members and may not be attached by or subject to specific performance by any creditors of the Association.

c. **Special Assessments.** The Board of Directors may make special assessments in excess of those permitted by sub-paragraphs (a) and (b) from time to time following the approval of the Owners to meet other needs or requirements of the Association, including but not limited to (i) assessments for additions to the Common Elements costing more than $5,000 in any year or (ii) assessments for any other appropriate purpose not specifically described. Special assessments referred to in this sub-paragraph (but not those assessments referred to in sub-paragraphs (a) and (b), which will be levied in the sole discretion of the Board of Directors) will not be levied without the prior approval of 66 percent or more (in number and in value) of all Owners. The authority to levy assessments pursuant to this sub-paragraph is solely for the benefit of the Association and its members and may not be attached by or subject to specific performance by any creditors of the Association.

5.3 Apportionment of Assessments. All assessments levied against the Owners to cover expenses of administration shall be apportioned among and paid by the Owners in accordance with the Percentage of Value allocated to each Unit in the Master Deed and any other assessment provisions in the Master Deed, without increase or decrease for the

existence of any rights to the use of Limited Common Elements appurtenant to a Unit. Unless the Board of Directors elects some other periodic payment schedule, annual assessments will be payable by Owners in 4 equal quarterly installments, commencing with the acceptance of a deed to or a land contract vendee's interest in a Unit, or with the acquisition of title to a Unit by any other means. The payment of an assessment will be in default if the assessment, or any part, is not received by the Association in full on or before the due date for the payment established by rule or regulation of the Association. However, the Board of Directors, including the first Board of Directors appointed by Developer, may relieve an Owner who has not constructed a residence within a Unit from payment, for a limited period of time, of all or some portion of the assessment for the Unit's respective allocable share of the Association budget. The purpose of this provision is to provide fair and reasonable relief from Association assessments for nonresident Owners until those Owners begin to use the Common Elements on a regular basis.

5.4 Expenses of Administration. The expenses of administration shall consist, among other things, of the amounts the Board of Directors deems proper to operate and maintain the Condominium property under the powers and duties delegated to it and may include, without limitation, amounts to be set aside for working capital of the Condominium, for a general operating reserve, for a reserve for replacement, and for meeting any deficit in the common expense for any prior year. Any reserves established by the Board of Directors before the Initial Meeting of Members shall be subject to approval by the members at the initial meeting. The Board of Directors shall advise each Owner in writing of the amount of common charges payable by the Owner and shall furnish copies of each budget containing common charges to all Owners.

5.5 Collection of Assessments. Each Owner shall be obligated for the payment of all assessments levied on the Owner's Unit while that person is the Owner of the Unit, and no Owner may become exempt from liability for the Owner's contribution toward the expenses of administration by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of a Unit.

a. **Legal Remedies.** In the event of default by any Owner in paying any assessment, the Board of Directors may declare all unpaid installments of the annual assessment for the pertinent fiscal year to be immediately due and payable. In addition, the Board of Directors may impose reasonable fines and charge interest at the highest legal rate on assessments from and after the due date. Unpaid assessments, together with interest on the unpaid assessments, collection and late charges, advances made by the Association for taxes or other liens to protect its lien, attorney fees, and fines in accordance with the Condominium Documents, shall constitute a lien on the Unit prior to all other liens except tax liens in favor of any state or federal taxing authority and sums unpaid on a mortgage of record recorded before the recording of any notice of lien by the Association; and the Association may enforce the collection of all sums due by suit at law for a money judgment or by foreclosure of the liens securing payment as provided by MCL 559.208. In a foreclosure proceeding, whether by advertisement or by judicial action, the Owner or anyone claiming under the Owner shall be liable for assessments charged against the Unit that become due before the redemption period expires, together

with interest, advances made by the Association for taxes or other liens to protect its lien, costs, and reasonable attorney fees incurred in their collection.

b. **Sale of Unit.** On the sale or conveyance of a Unit, all unpaid assessments against the Unit shall be paid out of the sale price by the buyer in preference over any other assessment or charge except as otherwise provided by the Condominium Documents or by the Act. A buyer or grantee may request a written statement from the Association for the amount of unpaid assessments levied against the Unit being sold or conveyed, and the buyer or grantee shall not be liable for, nor shall the Unit sold or conveyed be subject to, a lien for any unpaid assessments in excess of the amount stated in a written response from the Association. However, unless the buyer or grantee requests a written statement from the Association at least five days before the sale as provided in the Act, the buyer or grantee shall be liable for any unpaid assessments against the Unit together with interest, late charges, fines, costs, and attorney fees.

c. **Self-Help.** The Association may discontinue the furnishing of services to an Owner in default under any of the provisions of the Condominium Documents on seven days written notice to the Owner of the Association's intent to do so. An Owner in default shall not be entitled to use any of the General Common Elements of the Project and shall not be entitled to vote at any meeting of the Association so long as the default continues, but this provision shall not operate to deprive any Owner of ingress and egress to and from the Owner's Unit.

d. **Application of Payments.** Money received by the Association in payment of assessments in default shall be applied as follows: first, to costs of collection and enforcement of payment, including reasonable attorney fees; second, to any interest charges and fines for late payment on the assessments; and third, to installments of assessments in default in order of their due dates.

5.6 Financial Responsibility of Developer. The responsibility of Developer for assessments is as follows:

a. **Preturnover Expenses.** Before the Transitional Control Date, it will be Developer's responsibility to keep the books balanced and to avoid any continuing deficit in operating expenses, but the Developer shall not be responsible for the payment of general or special assessments. At the time of the initial meeting, Developer will be liable for the funding of any continuing deficit of the Association that was incurred before the Transitional Control Date.

b. **Postturnover Expenses.** After the Transitional Control Date and continuing for any remaining Development and Sales Period, Developer shall be responsible for the payment of either general or special assessments levied by the Association on Units owned by Developer.

c. **Exempted Transactions.** Under no circumstances will Developer be responsible for the payment of any portion of any assessment that is levied for deferred maintenance,

reserves for replacement, capital improvements, or additions or to finance litigation or other claims against Developer.

Section 6. TAXES, INSURANCE, AND REPAIR

6.1 Real Property Taxes. Real property taxes and assessments shall be levied against the individual Units and not against the Property or Common Elements, except for the calendar year in which the Project is established. Taxes and assessments that become a lien against the Property in the year in which the Project was established shall be expenses of administration and shall be assessed against the Units in proportion to the Percentage of Value assigned to each Unit. Real property taxes and assessments levied in any year in which a vacation of the Project occurs shall be assessed only against the individual Units. For tax and special assessment purposes, no Unit shall be combined with any other Unit or Units, and no assessment of any fraction of a Unit or combination of any Unit with other whole or partial Units shall be made, nor shall any division or split of the assessment or taxes of a single Unit be made, whether the Unit is owned by an individual or multiple Owners. Taxes for real property improvements made to or within a specific Unit shall be assessed against that Unit only, and each Unit shall be treated as a separate, single parcel of real property for purposes of property taxes and special assessments.

6.2 Insurance Coverage. The Association shall be appointed as attorney-in-fact for each Owner to act on insurance matters and shall be required to obtain and maintain, to the extent applicable, casualty insurance with extended coverage, vandalism, and malicious mischief endorsements; liability insurance (including director's and officer's liability coverage if deemed advisable); and worker's compensation insurance pertinent to the ownership, use, and maintenance of the Common Elements of the Project. All insurance shall be purchased by the Board of Directors for the benefit of the Association, the Owners, the mortgagees, and Developer, as their interests may appear. The insurance, other than title insurance, shall be carried and administered according to the following provisions:

a. **Owner Responsibilities.** Each Owner will be responsible for obtaining casualty insurance coverage at the Owner's expense with respect to the residence and all other improvements constructed or located within the perimeters of the Owner's Unit and for the Limited Common Elements appurtenant to the Owner's Unit. It shall also be each Owner's responsibility to obtain insurance coverage for the Owner's personal property within the Owner's Unit or elsewhere on the Project, for personal liability for occurrences within the Owner's Unit or on the Limited Common Elements appurtenant to the Owner's Unit, and for alternative living expenses in the event of fire or other casualty causing temporary loss of the Owner's residence. All insurance carried by the Association or any Owner shall contain provisions permitting the waiver of the right of subrogation for any claims against any Owner or the Association for insured losses.

b. **Common Element Insurance.** The General Common Elements of the Project shall be insured by the Association against casualties covered by a standard extended coverage endorsement, to the extent deemed applicable and appropriate, in an amount to be determined annually by the Board of Directors. The Association shall not be responsible

for maintaining insurance with respect to the Limited Common Elements, the Units themselves, or any improvements located within the Units.

c. **Fidelity Insurance.** The Association may obtain, if desired, fidelity coverage to protect against dishonest acts by its officers, directors, employees, and all others who are responsible for handling funds of the Association.

d. **Power of Attorney.** The Board of Directors is irrevocably appointed as the agent for each Owner, each mortgagee, other named insureds and their beneficiaries, and any other holder of a lien or another interest in the Condominium or the Property to adjust and settle all claims arising under insurance policies purchased by the Board of Directors and to execute and deliver releases on the payment of claims.

e. **Indemnification.** Each individual Owner shall indemnify and hold harmless every other Owner, Developer, and the Association for all damages, costs, and judgments, including actual attorney fees, that any indemnified party may suffer as a result of defending claims arising out of an occurrence on or within an individual Owner's Unit or appurtenant Limited Common Elements. This provision shall not be construed to give an insurer any subrogation right or other right or claim against an individual Owner, Developer, or the Association, which rights are waived.

f. **Premium Expenses.** Unless otherwise provided, all premiums for insurance purchased by the Association pursuant to these Bylaws shall be expenses of administration of the Association.

6.3 Reconstruction and Repair. If any part of the Condominium Property is damaged or destroyed by fire or other casualty, the decision whether or not it will be reconstructed or repaired will be made in the following manner:

a. **General Common Elements.** If the damaged property is a General Common Element, the damaged property shall be repaired or rebuilt unless 80 percent or more of the votes entitled to be cast by Owners are to the contrary. However, if the damaged property is common roadway and is the sole means of ingress and egress to one or more Units in the Project, it will be repaired or rebuilt unless the 80 percent or more of the Owners agreeing not to repair or rebuild includes the Owners of all such Units.

b. **Limited Common Elements and Improvements.** If the damaged property is a Limited Common Element or an improvement located within the boundaries of a Unit, the Owner of the affected Unit alone shall determine whether to rebuild or repair the damaged property, subject to the rights of any mortgagee or other person having an interest in the property, and the Owner shall be responsible for the cost of any reconstruction or repair that the Owner elects to make. However, if the damaged property is a Limited Common Element and is the sole means of ingress and egress to more than one Unit in the Project, it must be rebuilt or repaired unless agreed otherwise by all affected Owners. The Owner shall in any event remove all debris and restore the

Unit and its improvements to a clean and sightly condition satisfactory to the Association within a reasonable period of time following the occurrence of the damage.

c. **Reconstruction Standards.** Any reconstruction or repair shall be substantially in accordance with the Master Deed and the original plans and specifications for the improvements located within the Unit, unless prior written approval for changes is obtained from the Association.

d. **Procedure and Timing.** Immediately after the occurrence of a casualty causing damage that is to be reconstructed or repaired by the Association, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that existing before the damage. If the proceeds of insurance are not sufficient to cover the estimated cost of reconstruction or repair required to be performed by the Association or if at any time during the reconstruction or repair the funds for the payment of the costs by the Association are insufficient, assessment shall be levied against all Owners in sufficient amounts to provide funds to pay the estimated or actual costs of reconstruction or repair. This provision shall not be construed to require the replacement of mature trees and vegetation with equivalent trees or vegetation.

6.4 Eminent Domain. The following provisions will control on any taking by eminent domain:

a. **Condominium Units.** In the event of the taking of all or any portion of a Unit or any improvements located within the perimeters of a Unit, the award for the taking shall be paid to the Owner of the Unit and any mortgagee, according to their interests. If an Owner's entire Unit is taken by eminent domain, the Owner and any mortgagee shall, after acceptance of the condemnation award, be divested of all interest in the Project.

b. **Common Elements.** In the event of the taking of all or any portion of the General Common Elements, the condemnation proceeds relative to the taking shall be paid to the Association for its distribution to its members according to their Percentage of Value. A majority of the votes entitled to be cast in number shall determine whether to rebuild, repair, or replace the portion taken or to take another action.

c. **Amendment to the Master Deed.** If the Project continues after the taking by eminent domain, the remaining portion of the Project shall be resurveyed and the Master Deed amended accordingly; and if any Unit has been taken, section 5 of the Master Deed shall also be amended to reflect the taking and to proportionately readjust the Percentages of Value of the remaining Owners based on the continuing total value of the Condominium of 100 percent. The amendment may be completed by an officer of the Association duly authorized by the Board of Directors without the necessity of execution or specific approval by any Owner.

d. **Notice to Mortgagees.** If any Unit in the Condominium, the Common Elements, or any portion of them is made the subject matter of an eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Association shall

promptly notify each holder of a publicly recorded mortgage lien on any of the Units in the Condominium.

e. **Inconsistent Provisions.** To the extent not inconsistent with the provisions of this section, MCL 559.233 shall control on any taking by eminent domain.

Section 7. CONSTRUCTION REQUIREMENTS

7.1 Design Standards. Design standards for Units in the Project are set forth in this section. Design standards promote quality, value, and stability for Unit Owners. The standards in this section are intended to promote consistency of architecture and landscape design and to enhance and preserve real estate values.

7.2 Developer Approvals. During the Development and Sales Period, no residences, buildings, fences, walls, drives, walks, or other improvements shall be commenced, erected, or maintained; no addition to or external change in the appearance of any structure shall be made (including color and design); and no hedges, trees, plantings, or landscaping modifications shall be made until plans or specifications acceptable to Developer, showing the nature, kind, shape, height, materials, color scheme, location, and approximate cost of the structure or improvement and the grading and landscaping plan of the area to be affected, have been submitted to and approved in writing by Developer. Developer shall have the right to refuse to approve any plans or specifications, including the grading and landscaping plan, that are not suitable or desirable in its opinion for aesthetic or other reasons. In passing on such specifications or grading or landscaping plans, Developer shall have the right to take into consideration the suitability of the proposed structure, improvement, or modification; the site on which it is proposed to be erected; and the degree of harmony with the Pattern Book and Condominium as a whole.

7.3 Association Review. Following the Development and Sales Period, no residences, buildings, fences, walls, drives, walks, or other improvements shall be commenced, erected, or maintained; no addition to or external change in the appearance of any structure shall be made (including color and design); and no hedges, trees, plantings, or landscaping modifications shall be made until plans or specifications acceptable to the Association's Board of Directors, showing the nature, kind, shape, height, materials, color scheme, location, and approximate cost of the structure or improvement and the grading and landscaping plan of the area to be affected, have been submitted to and approved in writing by the Board of Directors. The Board of Directors shall have the right to refuse to approve any plans or specifications, including the grading and landscaping plan that are not suitable or desirable in its opinion for aesthetic or other reasons. In passing on such specifications or grading or landscaping plans, the Board of Directors shall have the right to take into consideration the suitability of the proposed structure, improvement, or modification; the site on which it is proposed to be erected; and the degree of harmony with the Pattern Book and Condominium as a whole.

7.4 Approval of Contractor. All residences and other structures shall be constructed only by residential home builders approved in writing by Developer or, following the Development

and Sales Period, by the Association's Board of Directors and licensed as required by the State of Michigan. If building construction is intended to commence within three months after the date of plan approval, the name of the proposed residential builder must be submitted when the plans and specifications are submitted. If construction is to be delayed beyond three months, the name of the proposed residential builder must be submitted for approval at least 60 days before the commencement of construction. The qualifications of the proposed builder along with its reputation in the community may be taken into consideration before deciding whether or not that builder will be approved for participation in the Project. Construction of all other improvements, including landscaping, must also be done by contractors approved in writing by the Developer or Association.

7.5 Specific Requirements. All approvals required by this section shall comply with the following requirements:

a. **Construction Materials.** Each residence shall be finished with materials listed in the Pattern Book or materials of a similar quality. Any children's play areas and fencing shall be constructed primarily of wood or have a wood appearance. All exterior paints, stains, and material colors must be shown as part of the plan submitted for Developer or Association approval, and samples shall be furnished to the Developer or Association on request.

b. **Size and Space Requirements.** No residence shall be constructed on any Unit with less than the following sizes of finished living areas (as calculated on exterior dimensions), exclusive of decks, porches, patios, garages, and basements (whether full basements, daylight basements, or walkout basements):

- One story home – 1,400 sq. ft.
- One and a half story home – 1,600 sq. ft.
- Two story home – 1,800 sq. ft. (with a minimum of 1,200 sq. ft. on the first floor)

c. **Roof Orientation.** Any structure to be constructed on Units 10-15 shall be oriented and designed to minimize the obstruction of the view of Lake Superior from Lots 1-9.

d. **Garages and Driveways.** Each residence must be equipped with an attached garage of not less than two stalls and not more than three stalls. The Developer will construct a driveway to serve the residence on each Unit, and the Owner is responsible for its construction cost. Units 2, 3, 4, 5, 6, 7, 12, and 13 share a driveway with another Unit, and any Owner of Unit 2, 3, 4, 5, 6, 7, 12, or 13 shall design and build all structures on the Unit to accommodate the shared driveway as designed and/or built by Developer. The cost of constructing the shared driveways to Units 2, 3, 4, 5, 6, 7, 12, and 13 will be split equally amongst all Units adjoining each driveway.

e. **Letter and Delivery Boxes.** The Association will determine the location, design, and permitted lettering of all mail and paper delivery boxes. Each Owner will either install a

mailbox and delivery box or pay the reasonable cost of installation as determined by the Association for installation by the Association.

7.6 Codes and Ordinances. In addition to the construction requirements in this section, all buildings and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected.

7.7 Time for Construction. At the time of submitting the name of a proposed residential builder for approval, a date for commencement of construction (which shall not be more than three years after the date of approval) must be agreed on and approved by the Developer or Association. Once construction has started, work on the residence must be diligently pursued and completed within a maximum of 12 months from the date of commencement. The Association may extend the time for commencement or completion when, in its opinion, conditions warrant an extension.

7.8 Reserved Developer Rights. The purpose of this section 7 is to ensure the continued maintenance of the Condominium as an attractive and harmonious residential development, and its provisions shall be binding on both the Association and all Owners in the Project. Developer (or any residential builder to whom Developer has assigned such rights) shall have the right to maintain a model unit, sales office, advertising display signs, storage areas, and reasonable parking incident to its sales efforts and to access to, from, and over the Property as may be reasonable to enable development and sale of the entire Project.

7.9 Permitted Variance. The Developer, during the Development and Sales Period, or the Association thereafter may, on a showing of practical difficulty or other good cause, grant variances from the requirements of this section, but only to an extent and in a manner that does not violate the spirit and intent of the requirements; except that no variance from the requirements of this section shall be granted if such variance would violate the Planned Unit Development ("PUD") Agreement (as amended from time to time) with the City of Marquette.

7.10 Improvements Adjoining Roadway. No trees, plantings, fencing, or other improvements will be placed where they obstruct vehicular visibility at or near street intersections.

7.11 Soil from Excavation. All soil to be removed from any of the Units in the course of grading or excavating will, at Developer's option, become the property of Developer and be placed by the Owner or the Owner's contractor at the Owner's expense in a location within or adjoining the Project designated by Developer.

Section 8: Use and Occupancy Restrictions

8.1 Zoning Compliance. In addition to the restrictions in section 9 of the Master Deed and section 7 of these Bylaws, the use of any Unit or structure on the Property must satisfy the

requirements of the PUD Agreement with the City of Marquette unless an amendment to the PUD has been obtained.

8.2 Rules of Conduct. Additional rules and regulations consistent with the Act, the Master Deed, and these Bylaws concerning the use of Units and Common Elements may be promulgated and amended by the Association's Board of Directors. Copies of the rules and regulations must be furnished by the Board of Directors to each Owner at least 10 days before their effective date and may be revoked at any time by the affirmative vote of the Board of Directors or 60 percent or more of all Owners.

8.3 Enforcement by Developer. The Project shall at all times be maintained in a manner consistent with the highest standards of a private residential community used and occupied for the benefit of the Owners and all other persons interested in the Condominium. If at any time, the Association fails or refuses to carry out its obligations to maintain, repair, replace, and landscape in a manner consistent with the maintenance of such standards, Developer, or any person to whom it assigns this right, may, at its option, elect to maintain, repair, or replace any Common Elements or to do any landscaping required by the Condominium Documents and to charge the cost to the Association as an expense of administration. Developer shall have the right to enforce the Condominium Documents throughout the Development and Sales Period, and this right of enforcement shall include (without limitation) an action to restrain the Association or any Owner from any prohibited activity and for damages.

8.4 Remedies on Breach. In addition to all other available remedies, the Association shall have the right, in the event of a violation of the restrictions on construction, use and occupancy imposed by these Bylaws and the Master Deed, to enter the Unit and/or Common Elements and to remove or correct the cause of the violation. The entry will not constitute a trespass, and the Owner of the Unit will reimburse the Association for all costs of the removal or correction. Failure to enforce any of the restrictions in this section will not constitute a waiver of the right of the Association to enforce restrictions in the future.

Section 9. MORTGAGES

9.1 Notice to the Association. Any Owner who mortgages a Unit shall notify the Association of the name and address of the mortgagee (in this section, the Mortgagee), and the Association will maintain this information. The information relating to Mortgagees will be made available to Developer or its successors as needed to obtain consent from or give notice to Mortgagees concerning actions requiring consent from or notice to Mortgagees under the Condominium Documents or the Act.

9.2 Insurance. The Association shall notify each of the Mortgagees of the name of each company insuring the Condominium Project against fire, perils covered by extended coverage, and vandalism and malicious mischief, with the amounts of the coverage.

9.3 Rights of Mortgagees. Except as otherwise required by applicable law or regulations, a Mortgagee of a Unit will be granted the following rights:

a. **Inspection and Notice.** On written request to the Association, a Mortgagee will be entitled (i) to inspect the books and records relating to the Project on reasonable notice, (ii) to receive a copy of the annual financial statement that is distributed to Owners; (iii) to notice of any default under the Condominium Documents by its mortgagor in the performance of the mortgagor's obligations that is not cured within 30 days; and (iv) to notice of all meetings of the Association and its right to designate a representative to attend the meetings.

9.4 Additional Notification. When notice is to be given to a Mortgagee, the Board of Directors shall also give such notice to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association, and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages of Units in the Condominium if the Board of Directors has notice of their participation.

Section 10. TRANSFER OF UNITS

10.1 Unrestricted Transfers. An individual Owner may, without restriction under these Bylaws, sell, give, devise, or otherwise transfer the Owner's Unit or any interest in the Unit.

10.2 Notice to Association. Whenever a Owner sells, gives, devises, or otherwise transfers the Owner's Unit or any interest in the Unit, the Owner shall give written notice to the Association within five days after consummating the transfer. The notice shall be accompanied by documents evidencing the title or interest transferred.

Section 11. ARBITRATION

11.1 Submission to Arbitration. Any dispute, claim, or grievance arising out of or relating to the interpretation or application of the Condominium Documents and any disputes, claims, or grievances arising among or between Owners or between Owners and the Association may, on the election and written consent of the parties to the dispute, claim, or grievance and written notice to the Association, be submitted to arbitration; and the parties shall accept the arbitrator's decision and award as final and binding. The Arbitration Rules for the Real Estate Industry of the American Arbitration Association, as amended and in effect from time to time, shall apply to all such arbitrations.

11.2 Disputes Involving Developer. A contract to settle by arbitration may also be executed by Developer and any claimant for any claim against Developer that might be the subject of a civil action, provided as follows:

a. **Buyer's Option.** At the exclusive option of a buyer or an Owner in the Project, Developer shall execute a contract to settle by arbitration any claim that might be the subject of a civil action against Developer that involves an amount less than $2,500 and arises out of or relates to a purchase agreement, a Unit, or the Project.

b. **The Association's Option.** At the exclusive option of the Association, Developer shall execute a contract to settle by arbitration any claim that might be the subject of a civil action against Developer that arises out of or relates to the Common Elements of the Project if the amount of the claim is $10,000 or less.

11.3 Preservation of Rights. Election by any Owner or by the Association to submit any dispute, claim, or grievance to arbitration shall preclude that party from litigating the dispute, claim, or grievance in the courts. Except as provided in this section, however, all interested parties shall be entitled to petition the courts to resolve any dispute, claim, or grievance in the absence of an election to arbitrate.

Section 12. OTHER PROVISIONS

12.1 Definitions. All terms used in these Bylaws will have the same meaning assigned by the Master Deed to which these Bylaws are attached or, if not defined in the Master Deed, as defined in the Act.

12.2 Enforcement by Association and Owners. In addition to other available remedies, the Association is entitled to compel enforcement of any provision of the Condominium Documents by an action for injunctive relief or damages. An aggrieved Owner may maintain an action against the Association to compel it to enforce the terms and provisions of the Condominium Documents, and an aggrieved Owner may maintain an action against any other Owner for injunctive relief or for damages or any combination thereof for noncompliance with the terms and provisions of the Condominium Documents. In a proceeding to enforce the Condominium Documents, the Association or the aggrieved Owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees.

12.3 Assignment and Succession. Developer may assign any of the rights granted to or reserved by it in the Condominium Documents or by law to any other entity or to the Association. Any assignment or transfer shall be made by an appropriate document in writing, signed by Developer and recorded in the register of deeds office for the county where the Project is located. On qualification, the assignee will have the same rights and powers as those granted to or reserved by Developer in the Condominium Documents.

12.4 Severability. If any of the terms, provisions, or covenants of these Bylaws or of any Condominium Document are held to be partially or wholly invalid or unenforceable for any reason, that holding shall not affect, alter, modify, or impair any of the other terms, provisions, or covenants of the documents or the remaining portions of any terms, provisions, or covenants held to be partially invalid or unenforceable.

12.5 Notices. Notices provided for in the Act, Master Deed, or Bylaws shall be in writing and shall be addressed to the Association at its registered office in the State of Michigan and to any Owner at the address in the deed of conveyance or at another address subsequently provided. The Association may designate a different address for notices to it by giving written notice of the change of address to all Owners. Any Owner may designate a different

address for notices by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by U.S. mail with postage prepaid or when delivered in person.

12.6 Amendment. These Bylaws may be amended, altered, changed, added to, or repealed only in the manner prescribed by the Master Deed.

12.7 Conflicting Provisions. In the event of a conflict between the Act (or other laws of the State of Michigan) and any Condominium Document, the Act (or other laws of the State of Michigan) shall govern. In the event of a conflict between the provisions of any one or more of the Condominium Documents themselves, the following order of priority shall be applied, and the provisions of the document having the highest priority shall govern:

1. the Master Deed, including the Condominium Subdivision Plan, but excluding these Bylaws

2. these Condominium Bylaws

3. the Articles of Incorporation of the Association

4. the Association Bylaws

5. the Rules and Regulations of the Association

6. Disclosure Statement

FORM B

Picnic Rocks Pointe

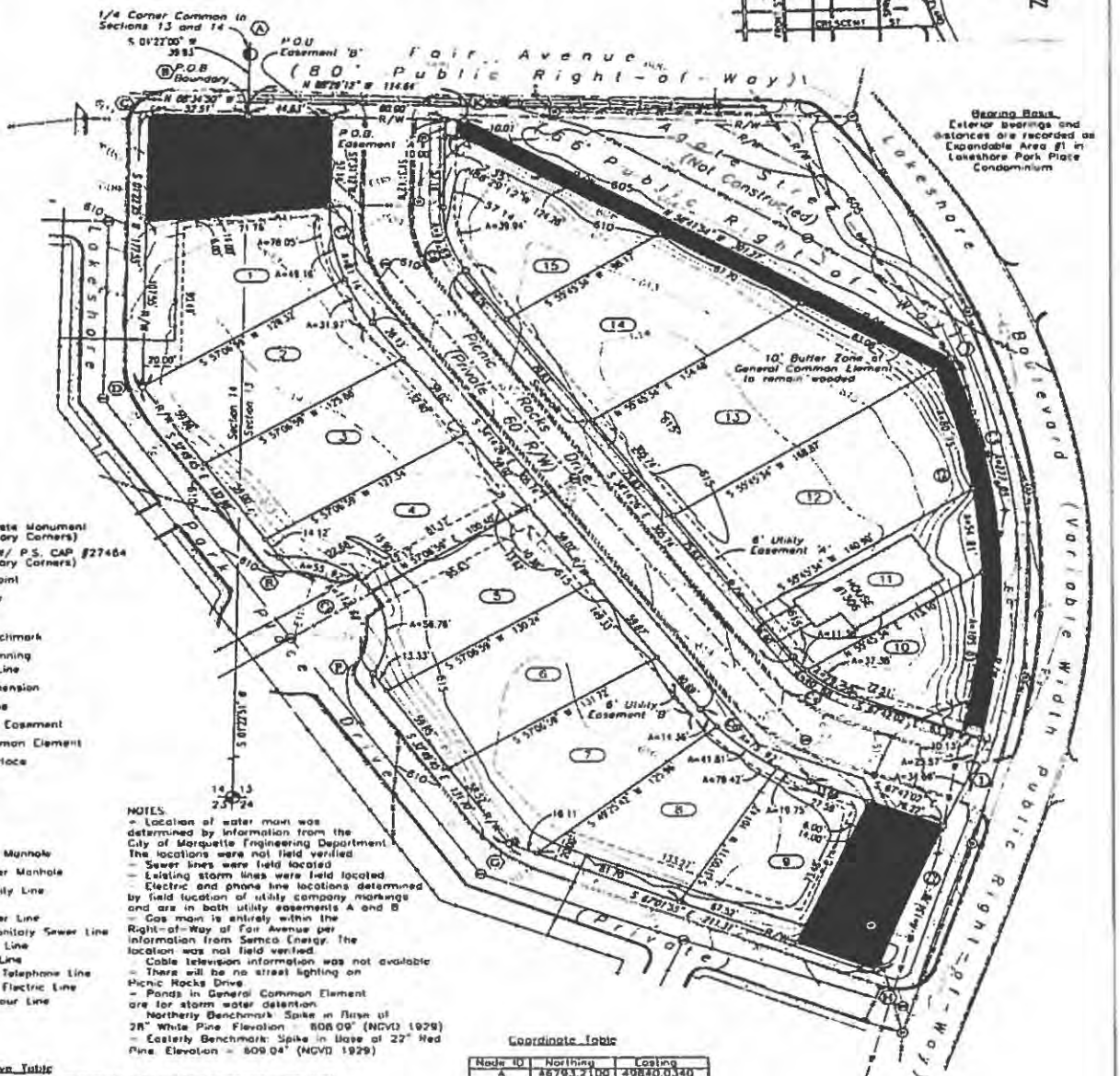
MARQUETTE COUNTY CONDOMINIUM SUBDIVISION PLAN #38
EXHIBIT 'B' TO THE MASTER DEED OF PICNIC ROCKS POINTE CONDOMINIUM

Part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northwest 1/4 of the Southwest 1/4, of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in the City of Marquette, Town 48 North, Range 25 West, Marquette County, Michigan.

Survey, Site, and Utility Plan

VICINITY MAP - NO SCALE





TOTAL PARCEL AREA EXCLUDING PICNIC ROCKS DRIVE
132,213 Sq. Ft.
3.04 Acres

GENERAL COMMON AREA
16,058 Sq. Ft.

UNIT #	SQUARE FEET
1	8,014
2	7,532
3	7,470
4	6,646
5	6,709
6	7,540
7	8,229
8	8,644
9	8,016
10	4,982
11	6,112
12	11,816
13	11,471
14	9,288
15	7,178

LEGEND

- 4"x36" Concrete Monument (Major Boundary Corners)
- 5/8" Rebar w/ P.S. CAP #27484 (Minor Boundary Corners)
- Coordinate Point
- Curve Number
- Unit Number
- Elevation Benchmark
- P.O.B. Point of Beginning
- C.V.L. Clear Vision Line
- 301.37' Boundary Dimension
- Easement Line
- Public Utility Easement
- General Common Element
- Concrete Surface
- Power Pole
- Fire Hydrant
- Light Pole
- Catch Basin
- Storm Sewer Manhole
- Sanitary Sewer Manhole
- Overhead Utility Line
- Watermain
- Sanitary Sewer Line
- Forcemain Sanitary Sewer Line
- Storm Sewer Line
- Natural Gas Line
- Underground Telephone Line
- Underground Electric Line
- Existing Contour Line

NOTES:
- Location of water main was determined by information from the City of Marquette Engineering Department. The locations were not field verified.
- Sewer lines were field located.
- Existing storm lines were field located.
- Electric and phone line locations determined by field location of utility company markings and are in both utility easements A and B.
- Gas main is entirely within the Right-of-Way of Fair Avenue per information from Semco Energy. The location was not field verified.
- Cable television information was not available.
- There will be no street lighting on Picnic Rocks Drive.
- Ponds in General Common Element are for storm water detention.
- Northerly Benchmark: Spike in Base of 28" White Pine. Elevation = 606.09' (NGVD 1929)
- Easterly Benchmark: Spike in Base of 22" Red Pine. Elevation = 609.04' (NGVD 1929)

Curve Table

NUM	ARC	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	112.84'	50.30'	128°31'05"	S. 32°49'45" E.	90.55'
C2	134.78'	1632.02'	04°43'03"	N. 21°38'58" E.	134.75'
C3	277.09'	432.42'	36°42'06"	N. 01°40'58" W.	272.43'
C4	40.88'	70.00'	33°27'36"	S. 50°58'14" E.	40.30'
C5	240.80'	427.47'	32°14'55"	N. 01°13'41" W.	237.64'
C6	75.92'	130.00'	33°27'36"	S. 50°58'14" E.	74.84'
C7	81.14'	130.00'	35°45'36"	S. 16°21'37" E.	79.83'
C8	43.89'	70.00'	35°45'36"	S. 16°21'37" E.	43.98'

Coordinate Table

Node ID	Northing	Easting
A	46793.2100	49840.0340
B	46753.2047	49839.0818
C	46754.5955	49786.5863
D	46577.1018	49787.3266
E	46485.3843	49854.4203
F	46389.2737	49903.5178
G	46278.6060	49874.9175
H	46186.1513	50189.4658
I	46321.4186	50218.1037
J	46565.7421	50211.1018
K	46750.2674	49953.6798

I, Glenn C. Van Neste, a Professional Surveyor in the State of Michigan, hereby certify:

That the subdivision plan known as Picnic Rocks Pointe, Marquette County Condominium Subdivision Plan No. 38, as shown on the accompanying drawings, represents a survey on the ground made under my direction.

That the required monuments and iron markers will be located in the ground prior to 01 March 2013, as required by the rules promulgated under Section 142 of Act No. 59 of the Public Acts of 1978 as Amended. That the accuracy of the survey is within the limits required by the rules promulgated under Section 142 of Act No. 59 of the Public Acts of 1978 as Amended.

That the bearings, as shown, are noted on the survey plan as required by the rules promulgated under Section 142 of Act No. 59 of the Public Acts of 1978 as Amended.

DEVELOPER:
Lakeshore Residences, LLC
955 Lakeshore Boulevard
Marquette, Michigan 49855

VAN NESTE SURVEYING
26 YEARS OF PROFESSIONAL SURVEYING SERVICES
1402 KIMBERLY AVENUE MARQUETTE, MICHIGAN 49855
PHONE (906) 226-4341 FAX 226-8363

As-Built June 2013

FORM C

Picnic Rocks Pointe
Marquette, Michigan

Preliminary Planned Unit Development Plan
Pattern Book

Contents

1	Introduction	1
2	Concept	2
3	Home Types	3
4	Architectural Character	7
5	Site Elements	10

Preliminary Planned Unit Development Plan

Pattern Book

Picnic Rocks Pointe

Lakeshore Boulevard
Marquette, Michigan

Presented to:

The City of Marquette
Community Development Department
300 West Baraga Avenue
Marquette, MI 49855

May 5, 2009
Revised March 1, 2011

Owner:

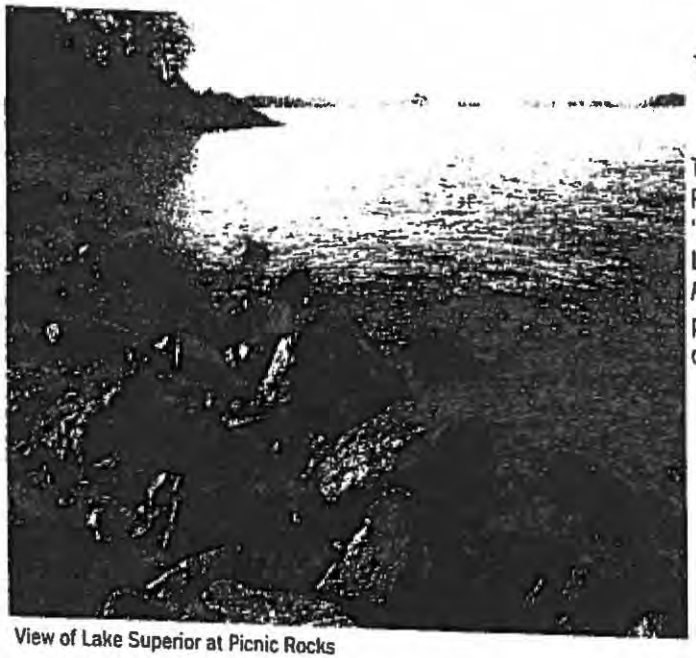
Lakeshore Residences LLC
955 Lakeshore Boulevard
Marquette, MI 49855

Architect:

John Larson Architect
237 Fortress
Gwinn, MI 48941

Tel. 906.372.9290
Email: *jlarsonarchitect@gmail.com*

1 Introduction



View of Lake Superior at Picnic Rocks

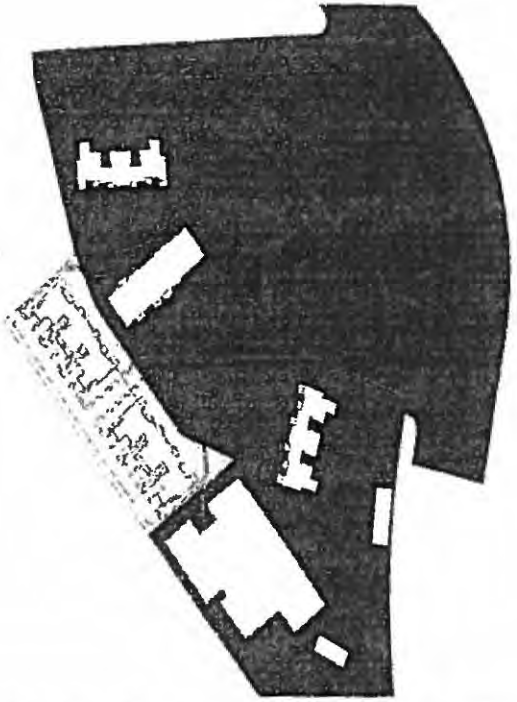
This pattern book is intended to convey the design intent for the proposed Picnic Rocks Pointe neighborhood. This traditionally styled residential 'neighborhood' will be developed on a parcel located at the corner of Lakeshore Boulevard and Fair Avenue, adjacent to the existing "*Park Place*" condominium development. This document will describe the proposed architectural character of future residences including information on proposed building forms and materials.

2 Concept

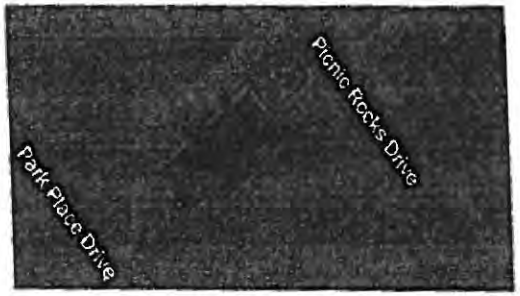
The Picnic Rocks Pointe Condominium development is comprised of fifteen single-family home lots at the corner of Lakeshore Boulevard and Fair Avenue on the city's northeast side. The development will be attractive to future home buyers who will enjoy the site's proximity to Lake Superior, the public Picnic Rocks Park and beaches, and the Lakeshore Boulevard walking path. The development will include a new Picnic Rocks Drive.

The lots are proposed to be sold as site condominiums. Purchasers will own the unit encompassed by the property lines of each lot. Individual owners will design and build their respective residence. The development owner shall monitor and approve home and landscape design and construction, through condominium bylaws and covenants. The bylaws and covenants for architectural character of the homes shall be based upon this Pattern Book and PUD agreement with the City of Marquette.

The mission of the development is to create a residential neighborhood with uniform high construction and design standards. At the same time, it provides each initial owner freedom to create a home unique to individual living needs and aspirations and specific lot limitations. The goal is to have individual unique homes in the context of overriding uniformity to the development as a whole. The following Prototypical Home Types Section and Architectural Character Section begins the development of the guidance to carry out this mission.



Picnic Rocks Pointe Site – Example Two-Story and One-Story House Footprints

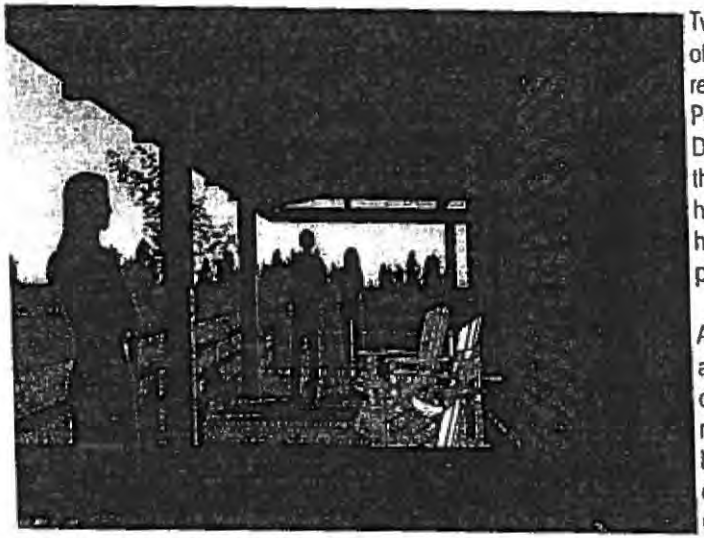


Two-Story House Site Layout



One-Story House Site Layout

3 Home Types



Upper level porch - Two-Story Concept Two

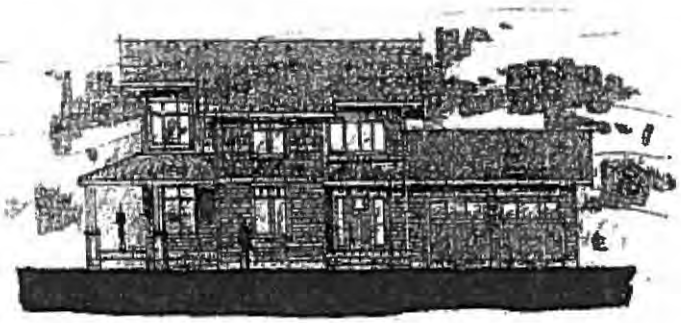
Two schematic home types have been developed to convey an example of the proposed architectural character of the Picnic Rocks Pointe residential neighborhood. A two story option is proposed for lots south of Picnics Rocks Drive and a one story option for lots north of Picnic Rocks Drive. All homes will have full basements under the living area. Homes on the lots north of the drive shall be limited to one and a half stories and the homes on the lots south of the drive shall be limited to two stories. All homes shall be constructed within the set back lines indicated on the site plan.

As outlined in the concept section 2, each individual lot owner shall design and build their own home for Picnic Rocks Pointe. Therefore the Home designs on the proceeding pages do not reflect specific final designs that may be constructed on the lots. The home schematics are prepared hypothetically as an example to illustrate the potential architectural character of the residential neighborhood. Refer to section 4 Architectural Character for additional details, façade materials etc.

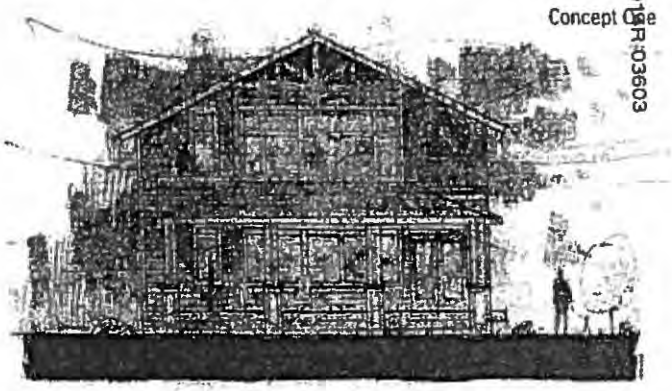
Two Story Home

Concept One

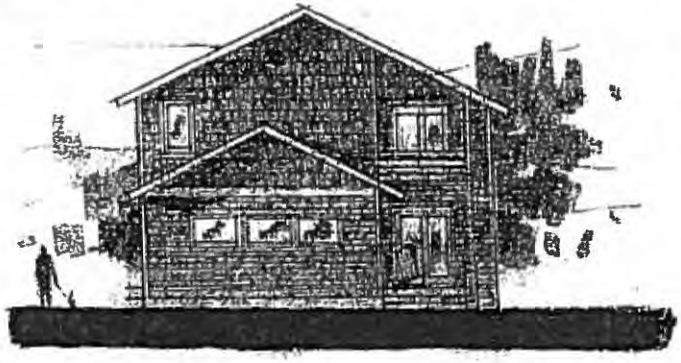
51 of 2018R-03603



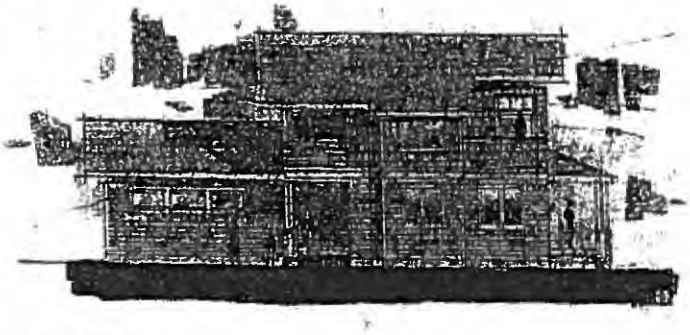
Side Elevation



Lake Facing Elevation



Park Place Facing Elevation



Side Elevation

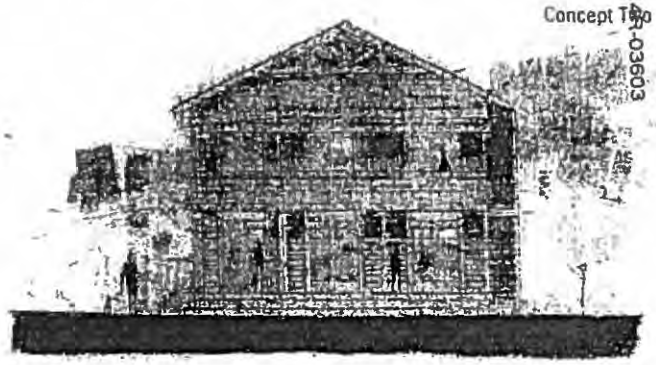
Description

First floor living area	Living, Dining, Kitchen, Half Bath, Guest Bedroom
Second floor area	Master bedroom and bath, and one or two additional bedrooms and bath
Garage	Two car with driveway access to Picnic Rocks Drive
Bedrooms	One master bedroom suite, guest bedroom, 1 or 2 additional bedrooms
Baths	First floor half bath second floor bath, master bath
Covered Porches	Covered front porch, Protected side entry porch and privacy porch. Second floor deck with Lake Superior view

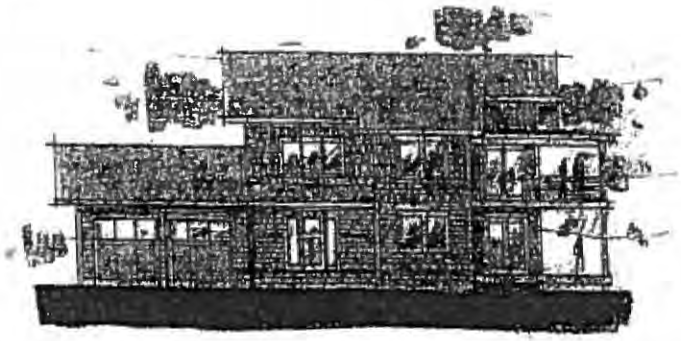
52 of 72
2019-03603

Two Story Home

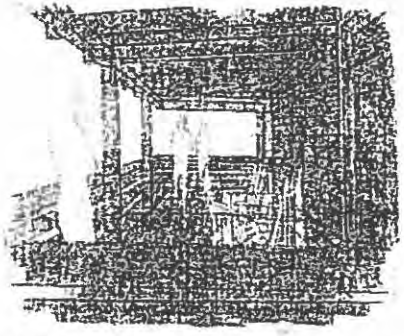
Concept Two



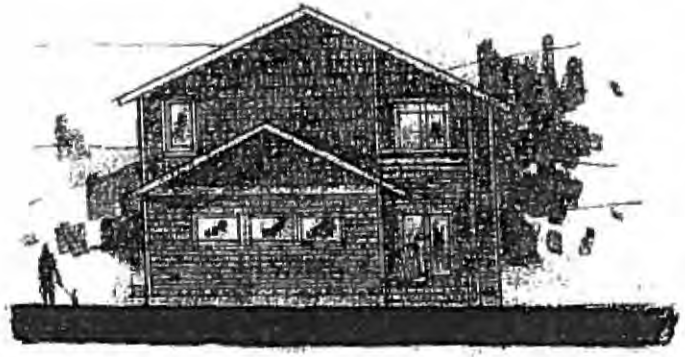
Lake facing Elevation



Side Elevation



Two-Story House Deck



Park Place Facing Elevation

Description

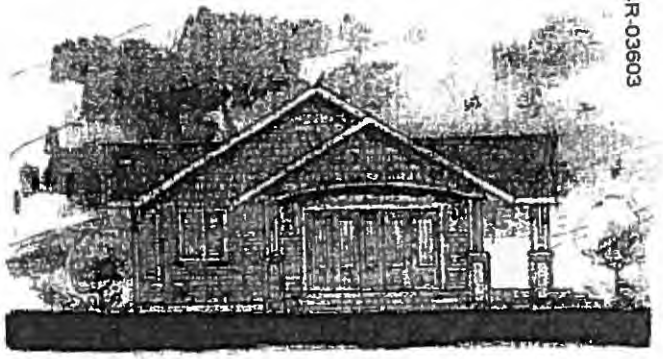
First floor living area	Guest bedroom, living, dining, kitchen, half bath
Second floor area	One or two additional bedrooms, bath, master bath
Garage	Two car
Bedrooms	One master bedroom suite two additional bedroom suites
Baths	First floor bath second floor bath, master bath
Covered Porches	Covered front porch, Protected side entry porch, a privacy porch. Large second floor deck with Lake Superior view

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2014R-03603

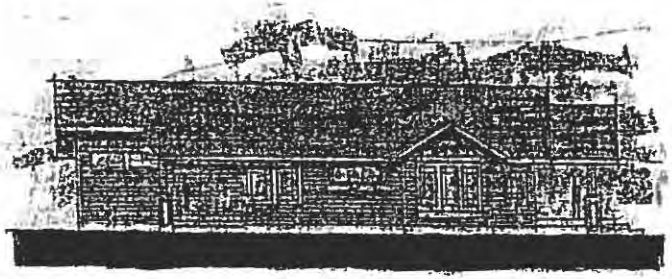
One Story Home



Side Elevation



Lake Facing Elevation



Side Elevation

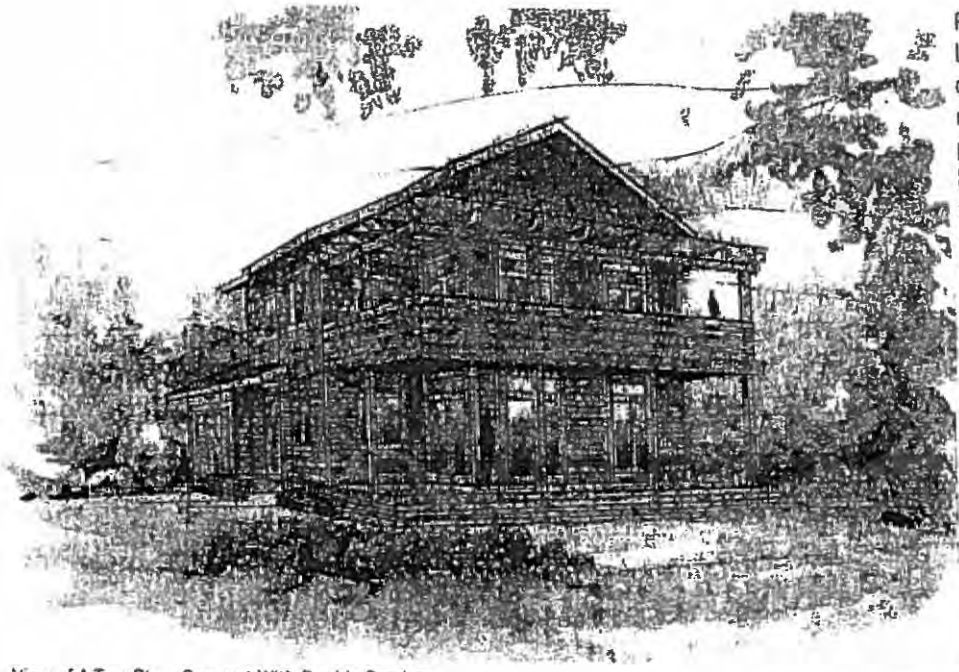


Park Place Facing Elevation

Description

First floor living area	Master bedroom and living area face the lake Additional bedroom(s), or den and full bath in addition to master bedroom suite and master bath
Second floor living area	Potential bonus room
Garage	Two car with driveway access to Picnic Rocks Drive
Bedrooms	One first floor master bedroom suite
Baths	Master bath at first floor, hall bath at first floor
Covered Porches	Covered porch facing lake. Covered side entry porch. Porch access to patio

4 Architectural Character



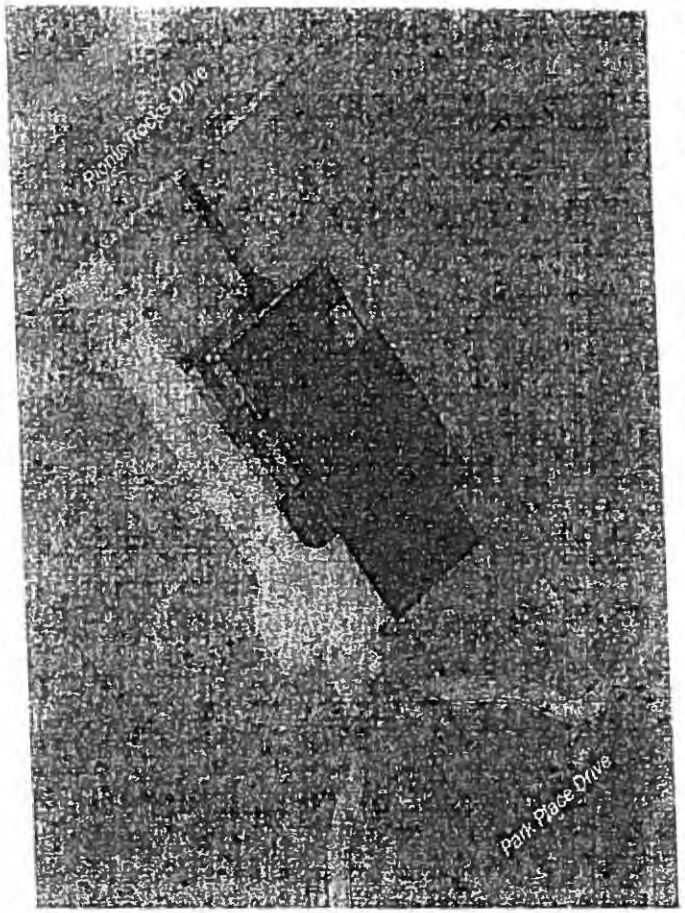
View of A Two-Story Concept With Double Porches

Picnic Rocks Pointe is ideally situated on Lake Shore Boulevard with panoramic views of Lake Superior. The proposed residential neighborhood will overlook Marquette's picturesque Picnic Rocks Park and beaches, and the Lakeshore Boulevard recreational pathway. The architectural character of Picnic Rocks Pointe respects the architectural fabric of the surrounding residential neighborhoods. These neighborhoods contain some of Marquette's classic homes with Craftsman, Bungalow architectural influences. Picnic Rocks Pointe home designs intend to take advantage of views due to the neighborhood's proximity to the Lake Superior shoreline.

Two Story Homes The owners on the lots 1 through 9, southwest of Picnic Rocks Drive shall have the option to build two story homes. The homes at these lots may have upper level porches offering spectacular views of the lake. The intent is to ensure consistency in architectural character, while allowing for individual owner design preference. Each of these homes may have living and dining areas with views toward the lake, and upper level master suites with views of the lake. The nine two-story homes have attached garages and are adjacent to the proposed common green space on the southwest side of the site.

One Story Six one-story homes are proposed to be constructed in the 'outer ring' of lots 10 through 15 adjacent to Lakeshore Boulevard. These houses will also have outstanding views of Lake Superior and the rugged Picnic Rocks. It's just a short walk to the beach, the recreational pathway, Lakeview Arena, the YMCA, the Berry Events Center and the NMU

55 of 57 2014R-033-02



campus. The proposed one-story homes on these sites offer direct views of Picnic Rocks and Lake Superior to the east of Lakeshore Boulevard They are easily accessible to the Lakeshore Boulevard walkway and Picnic Rocks Park. Each home has an attached two car garage

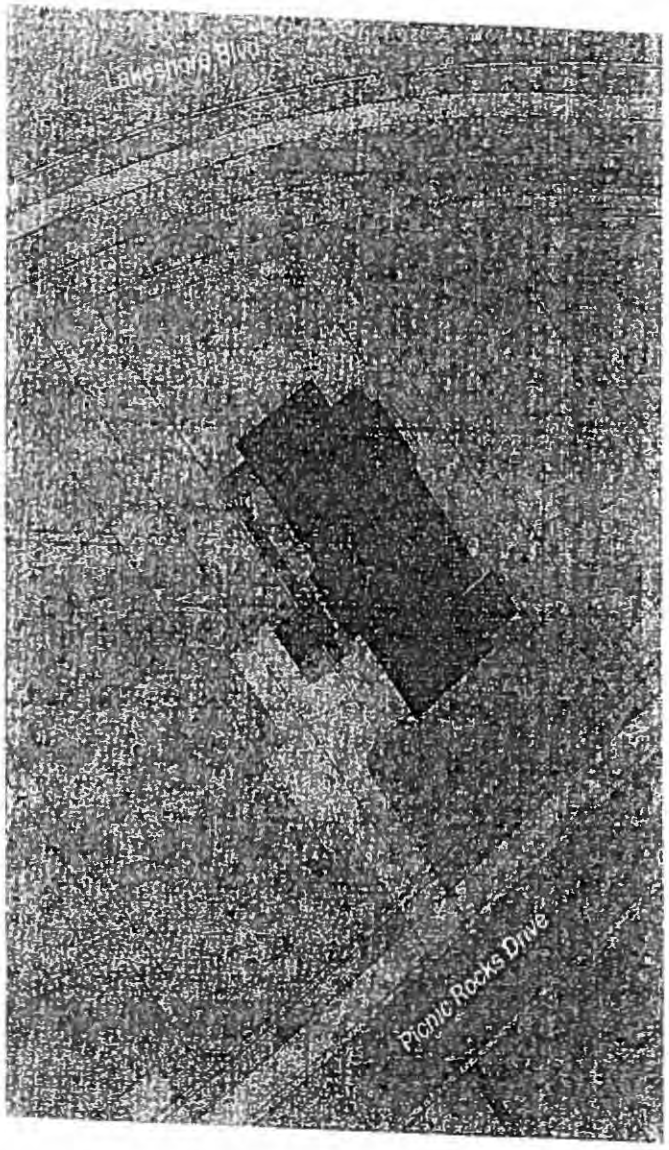
Proposed Façade Materials The Picnic Rocks Pointe concept intends to use materials that resemble those used in the traditional early 20th century Marquette neighborhoods, located just west of the site. Façade materials will include wood composite and/or cement board siding, shingles, columns, posts, and trim. Stone products may be used for accent. The design intent is create a neighborhood of residences with natural material exteriors.

Proposed Color Palette.
The Development Team will consult with prospective owners to choose a congruous color scheme for the residences. The selected palette will present exterior color schemes to create a coordinated, harmonious appearance for Picnic Rocks Pointe.

Proposed Façade Materials .
As set forth in the Condominium Documents, proposed materials to be used in the construction of Picnic Rocks Pointe will be selected from the following

Roof Materials:
- *Fiberglass asphalt shingles*
- *Simulated slate*
- *Finials and other architectural details*
- *No standing seam metal roofs*

Façade cladding or siding
- *Wood, composite and/or cement board siding*
- *Siding styles:*
  - *Cedar shake*
  - *Board and batten*
  - *Tongue and groove*
  - *Dutch lap siding*
  - *Bevel horizontal siding*
  - *Stone or simulated stone*
  - *Split faced concrete masonry units*



Trim

Traditional trim at doors and windows, accent trim as indicated. Trim may be constructed with simulated wood products
Rainwater table boards
Lattice work, tracery, finials, brackets, fnezes, balusters, trim boards, dentils, etc.

Windows

Casement
Awning
Double hung
Fixed window
Transom, stained

Proposed Façade Materials—Landscape Amenities
Columns and Porch Railings:

Wood,
Composite
Fiberglass

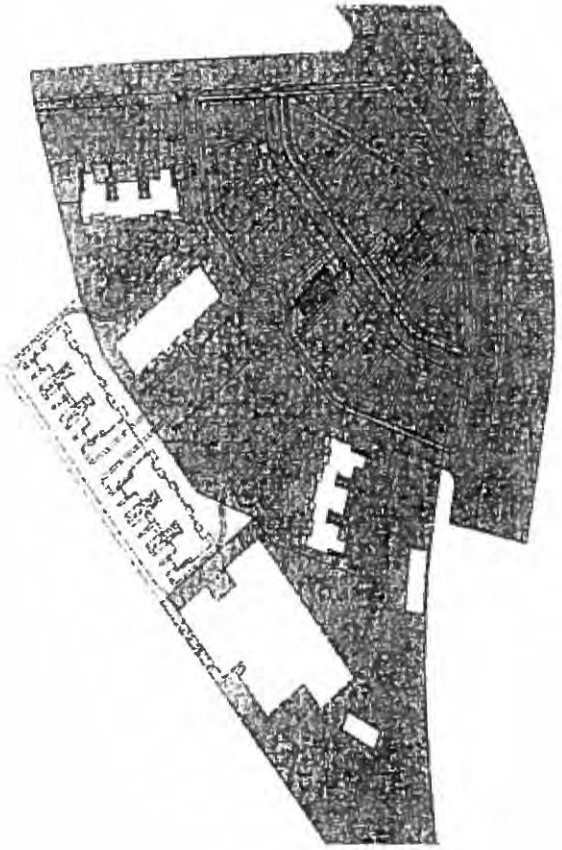
Landscape Amenities

Deciduous shade trees
Cedar trees
Shrubs
Turf paver grid
Brick pavers, stone, stamped concrete

57 of 77 2014R-05603

6 Site Elements

The Picnic Rock Pointe site design establishes a traditional neighborhood vocabulary with defined front, side and back yards, and Lake Superior facing front yard orientation. Each house includes a garage which is accessible from Picnic Rocks Drive. Approved pedestrian scale site lighting by light posts may be installed by the owner of the individual lots, but in design harmony with the established motifs of the east side. Attached building site lighting would be an alternative and supplement to streetscape style lamp posts.



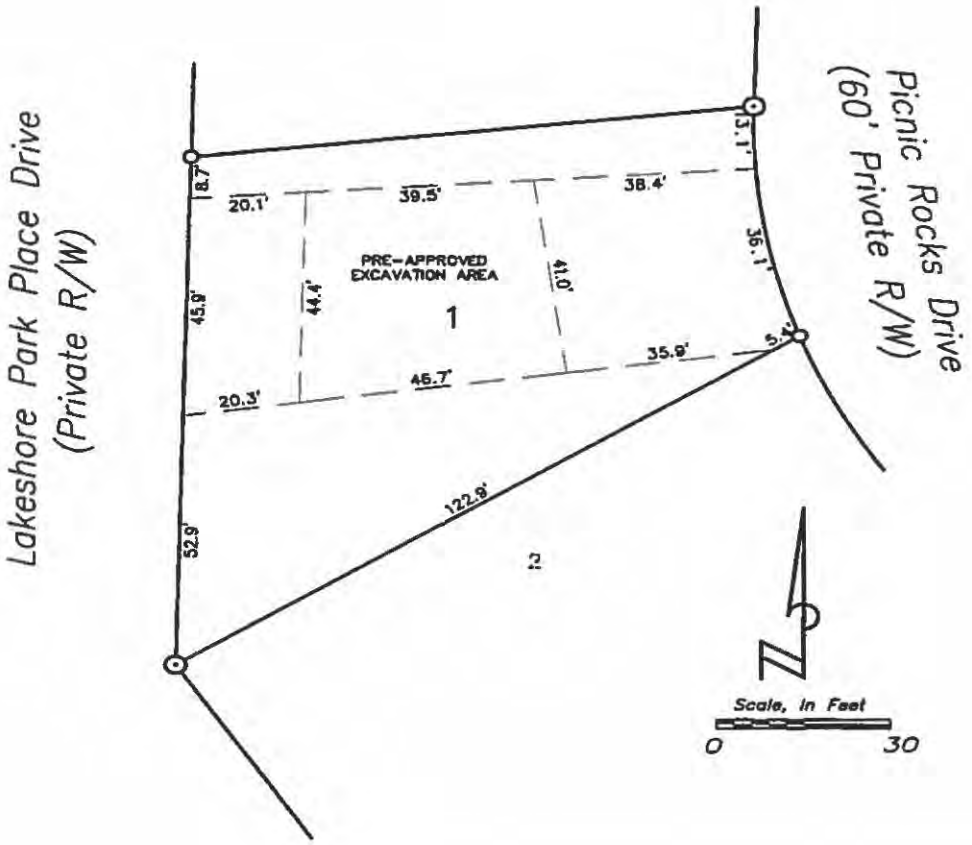
Picnic Rocks Pointe Site Layout



FORM D

PICNIC ROCKS POINTE CONDOMINIUM
PRE-APPROVED EXCAVATION AREA EXHIBIT

UNIT 1



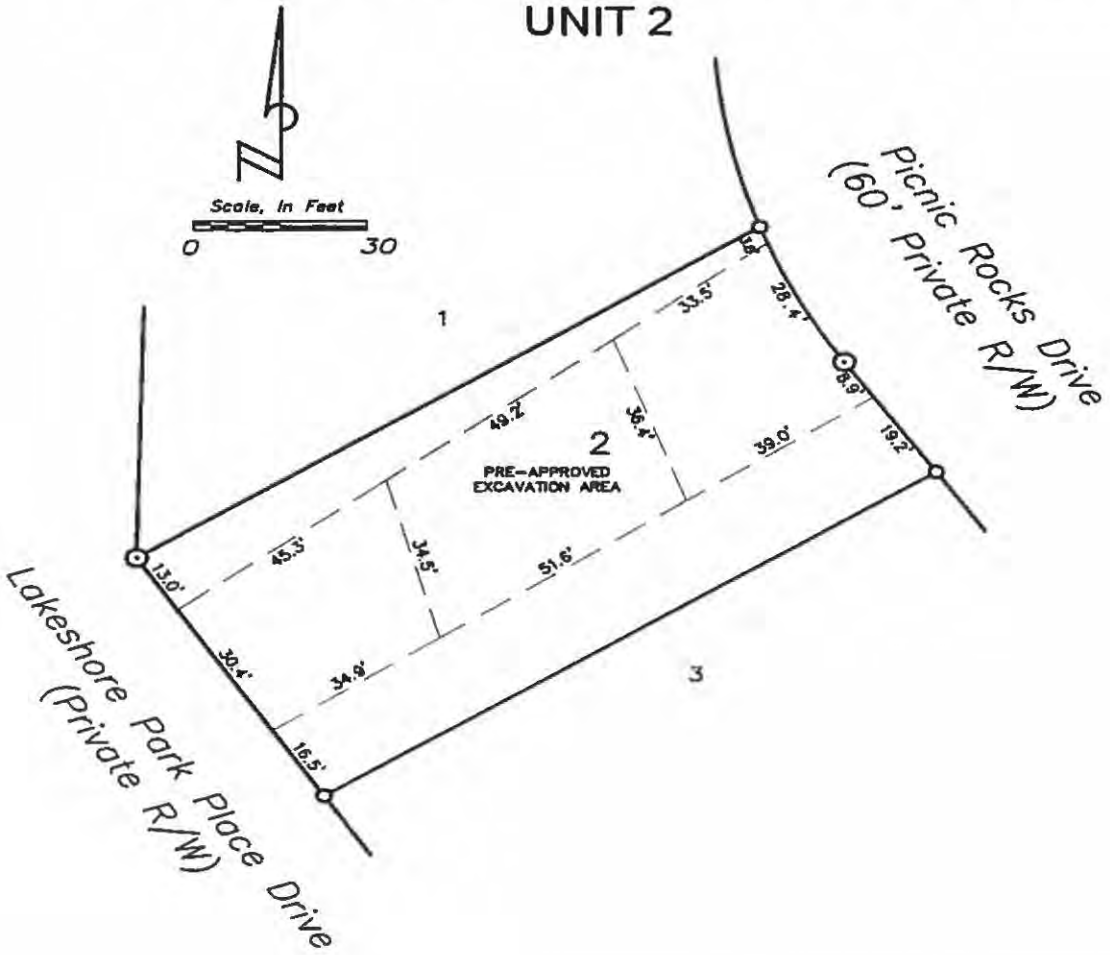
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PRE-APPROVED EXCAVATION AREA EXHIBIT

UNIT 2



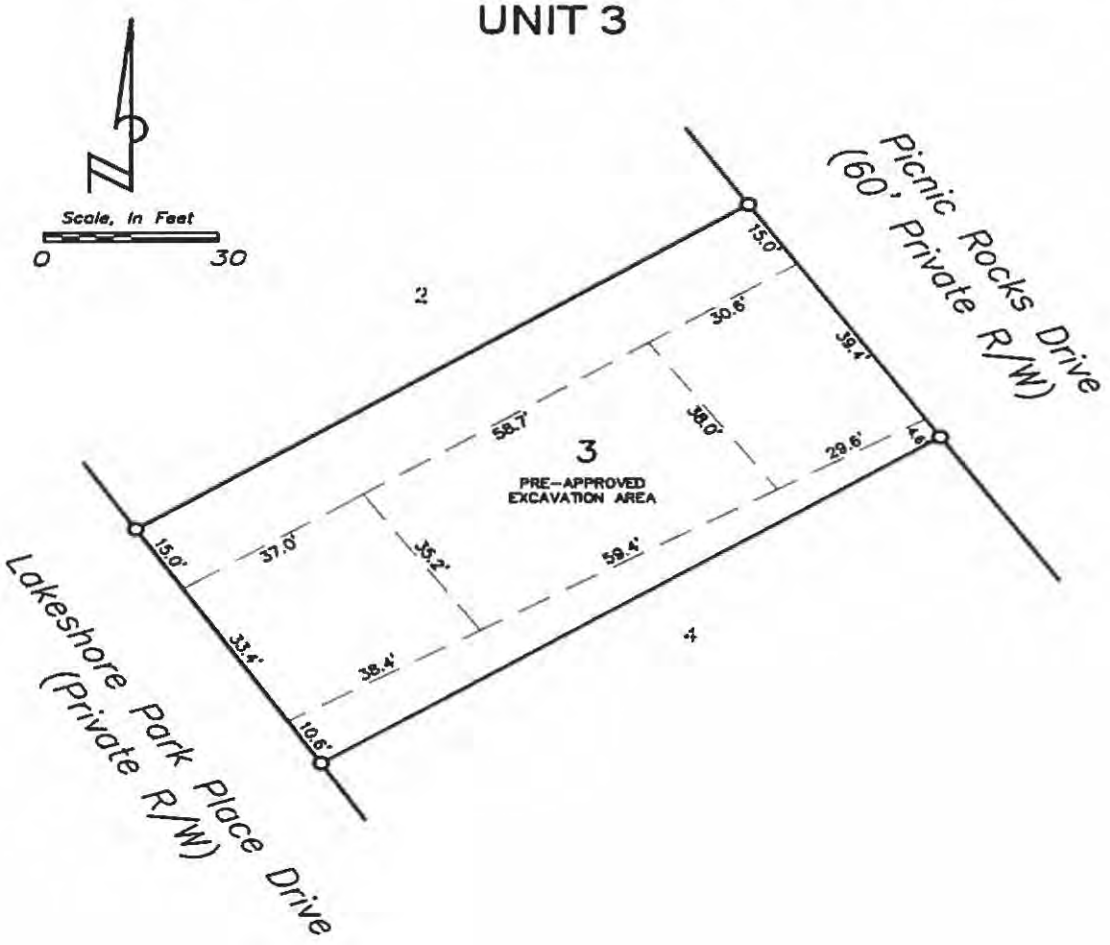
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UNIT 3



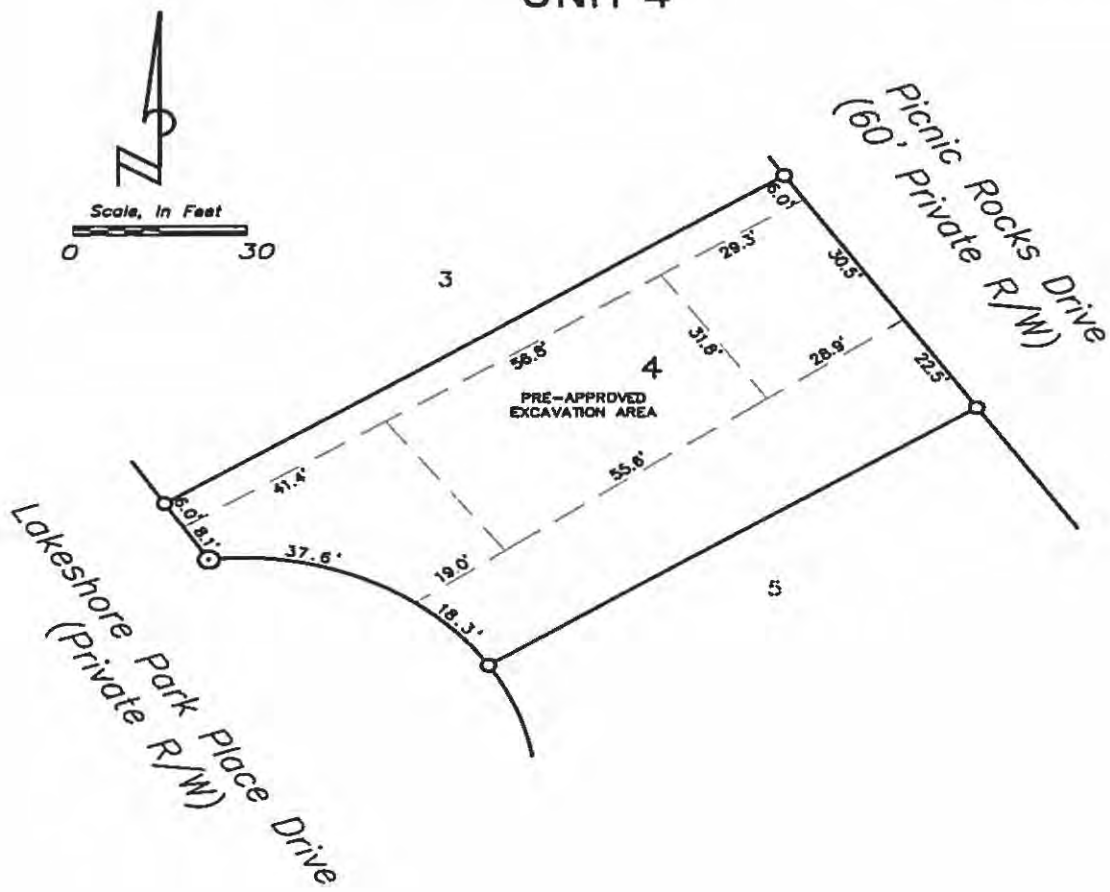
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UNIT 4



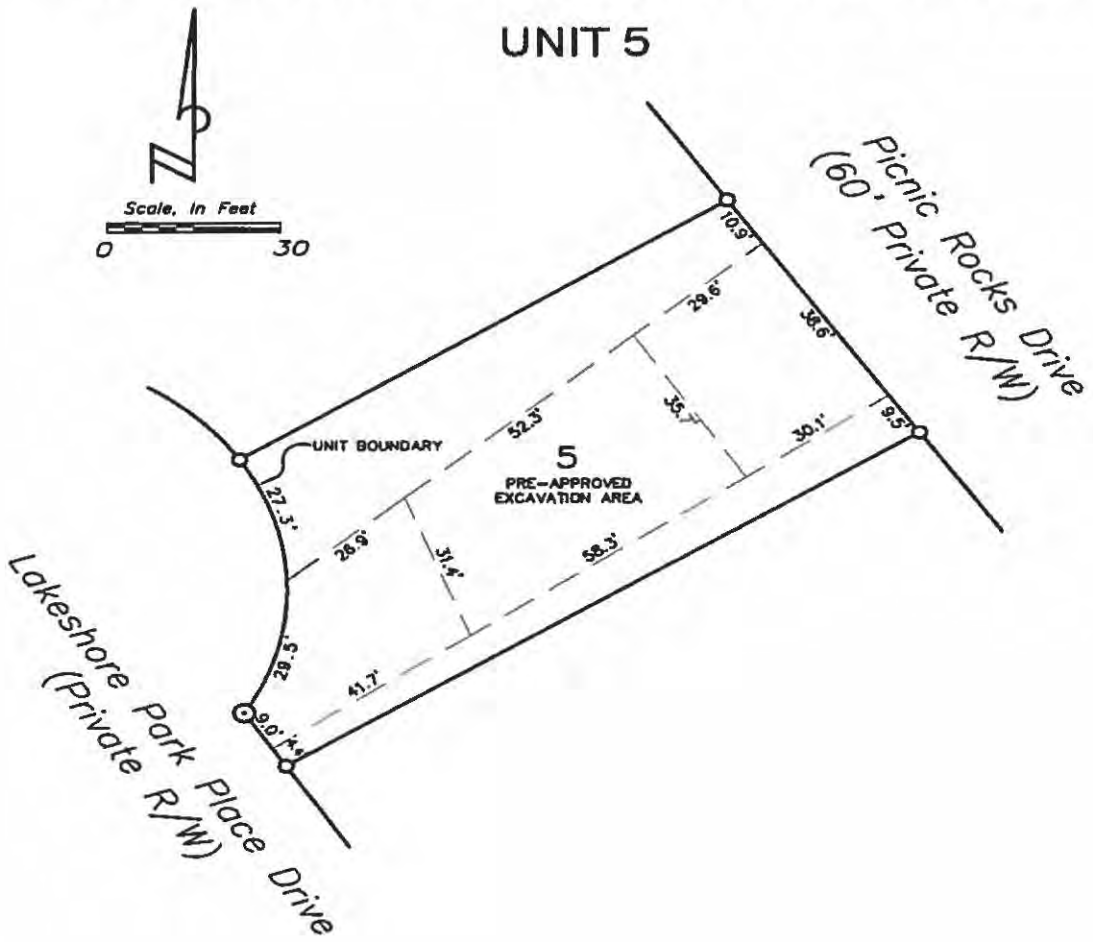
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UNIT 5

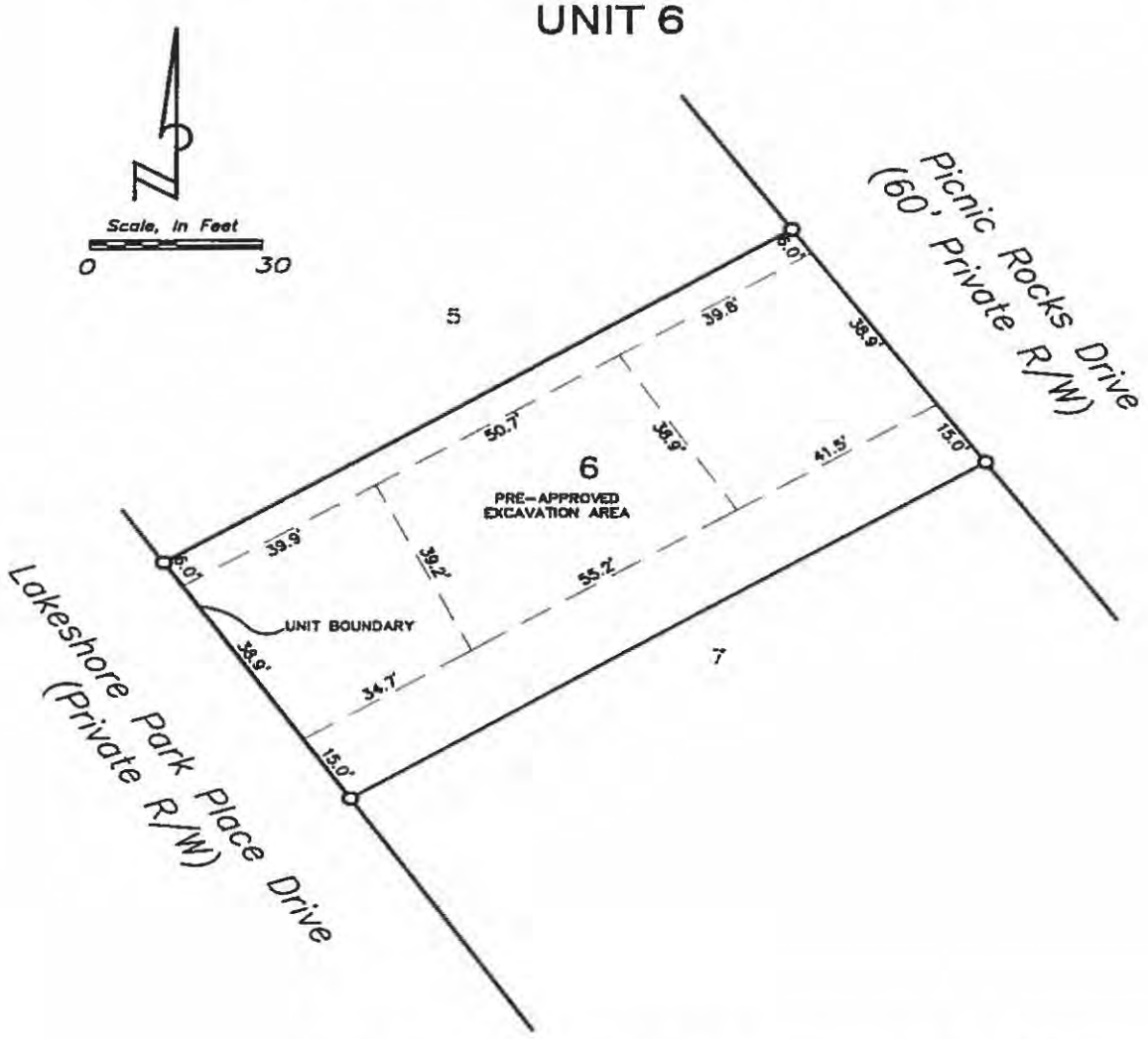


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UNIT 6



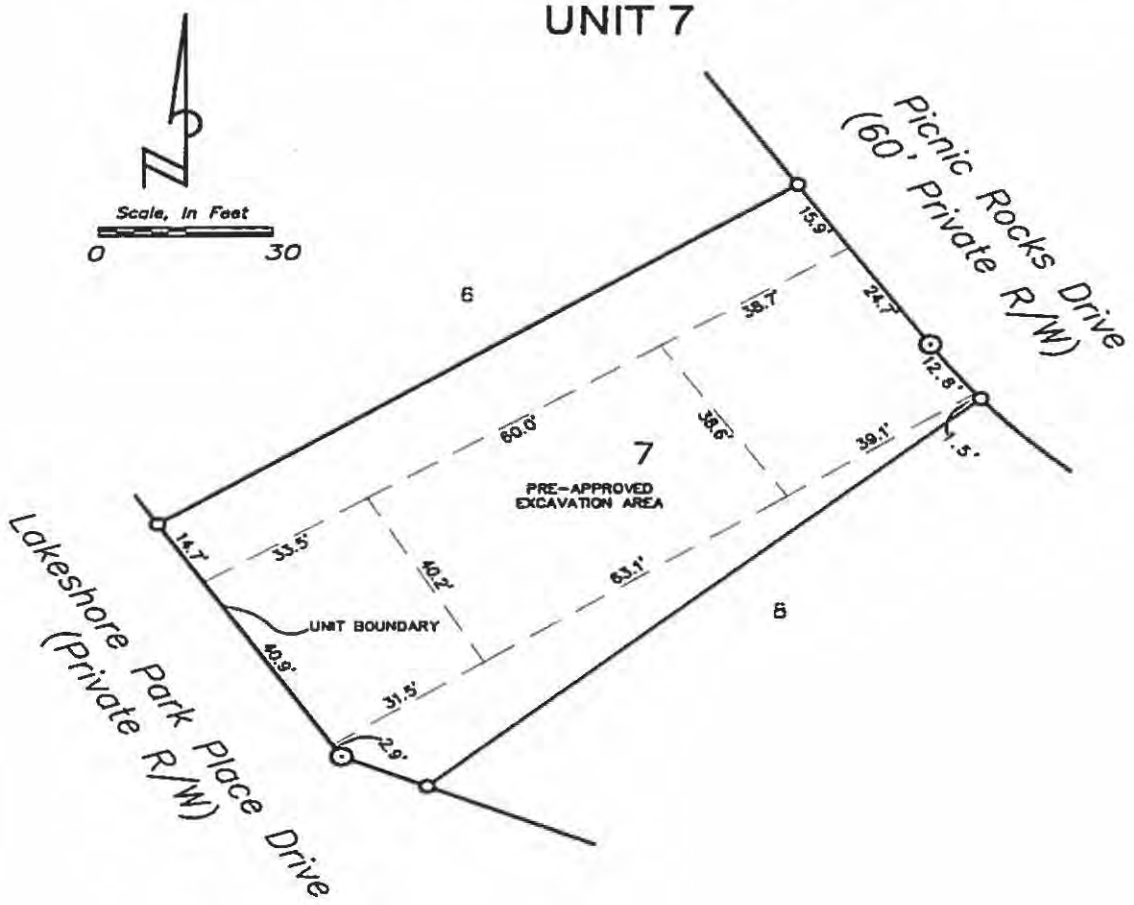
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UNIT 7



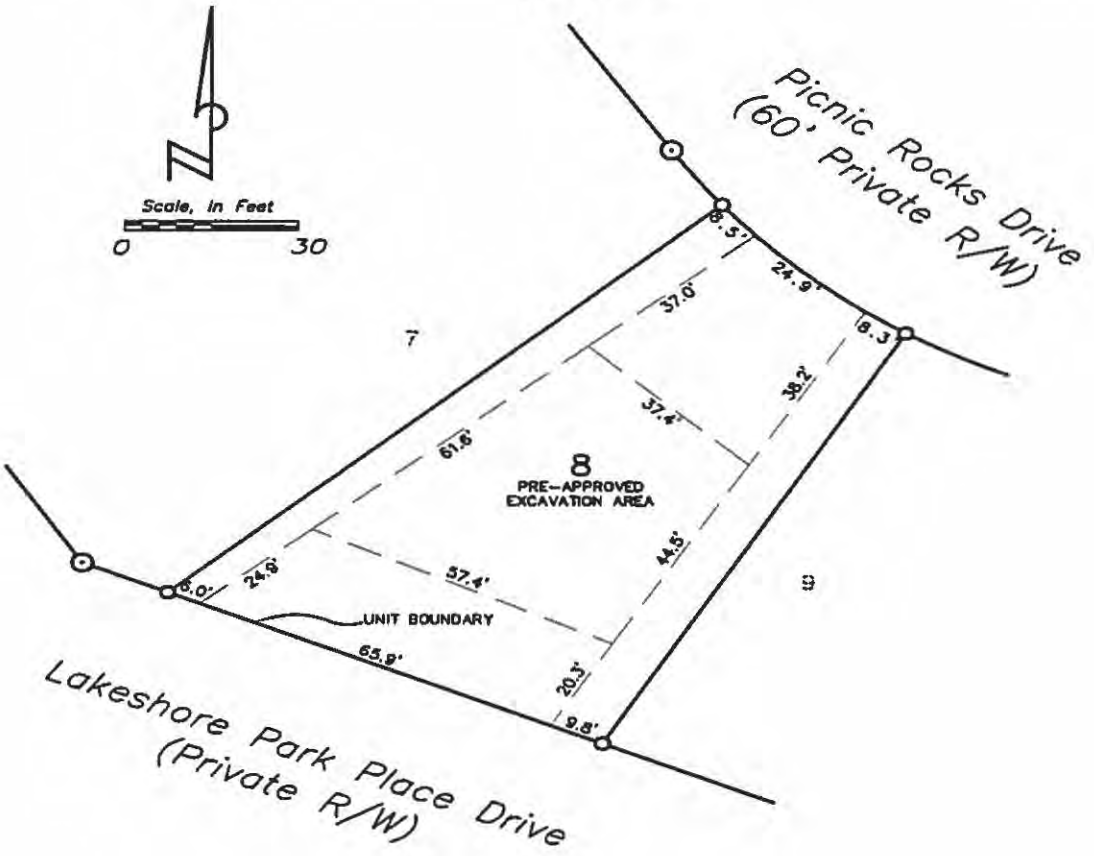
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UNIT 8



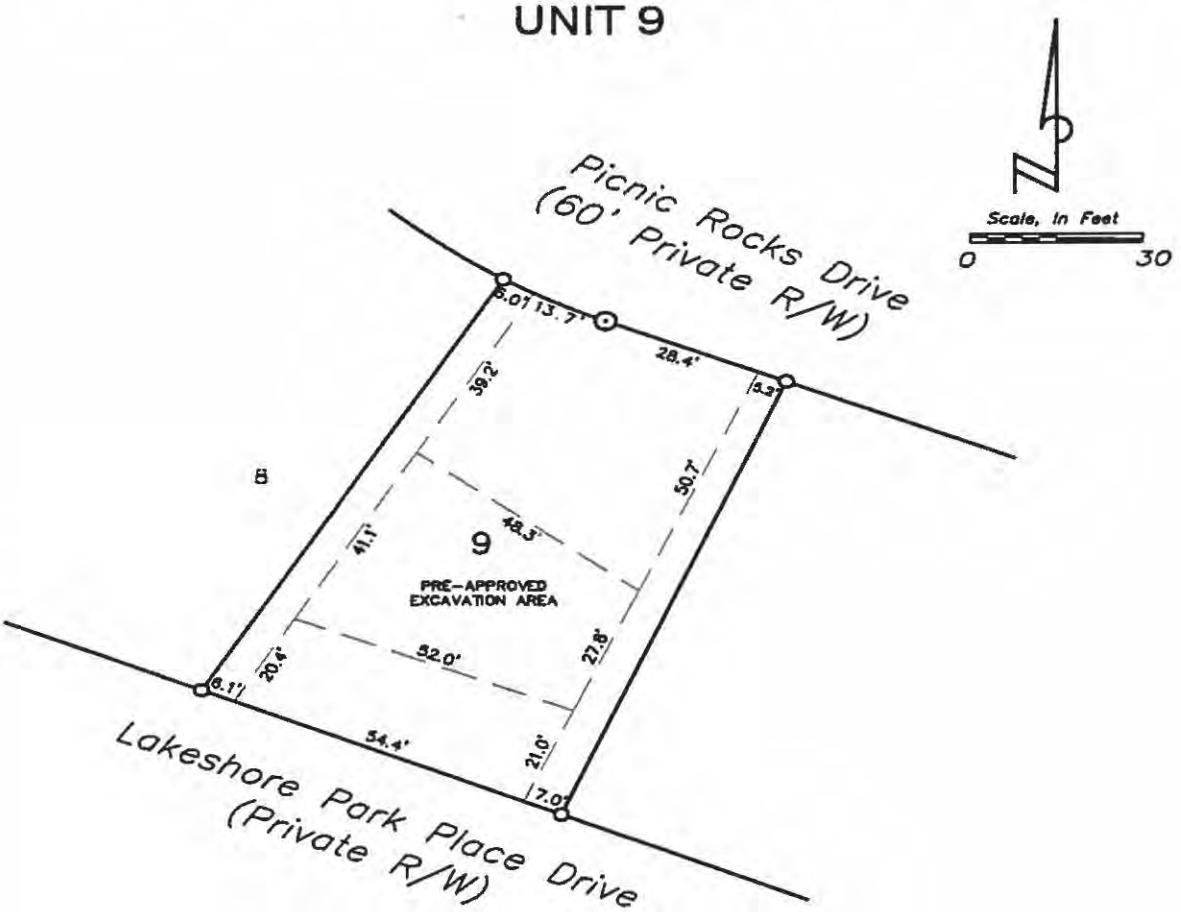
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UNIT 9

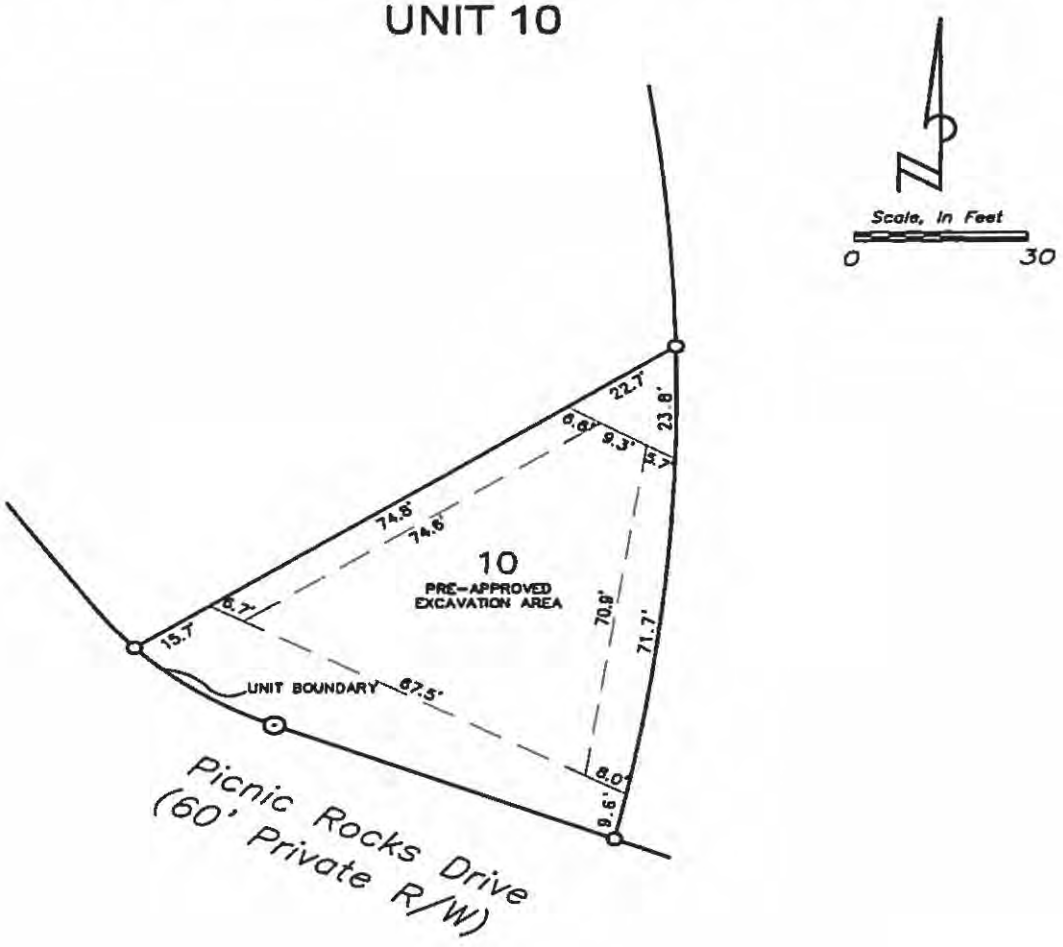


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UNIT 10

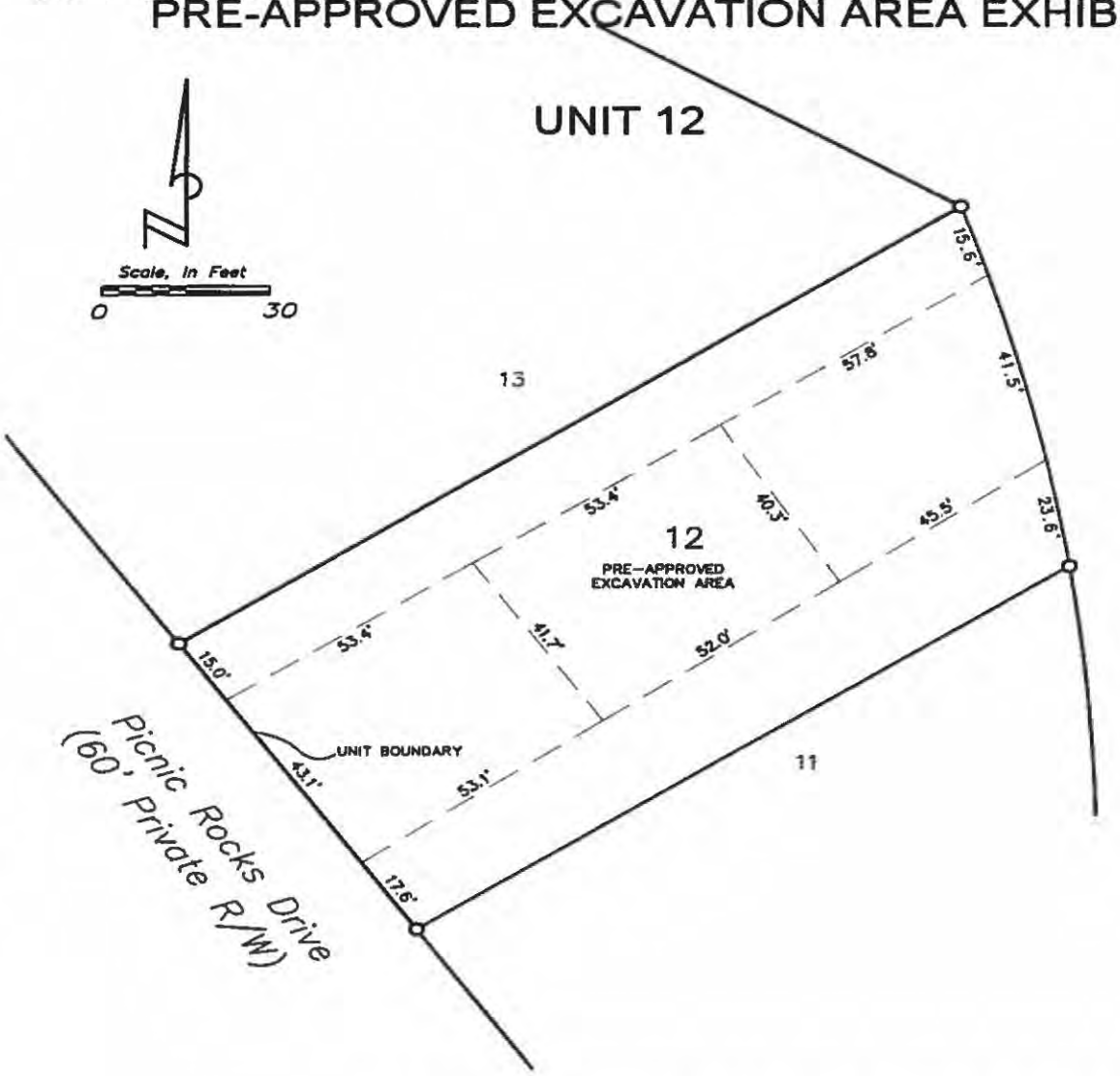


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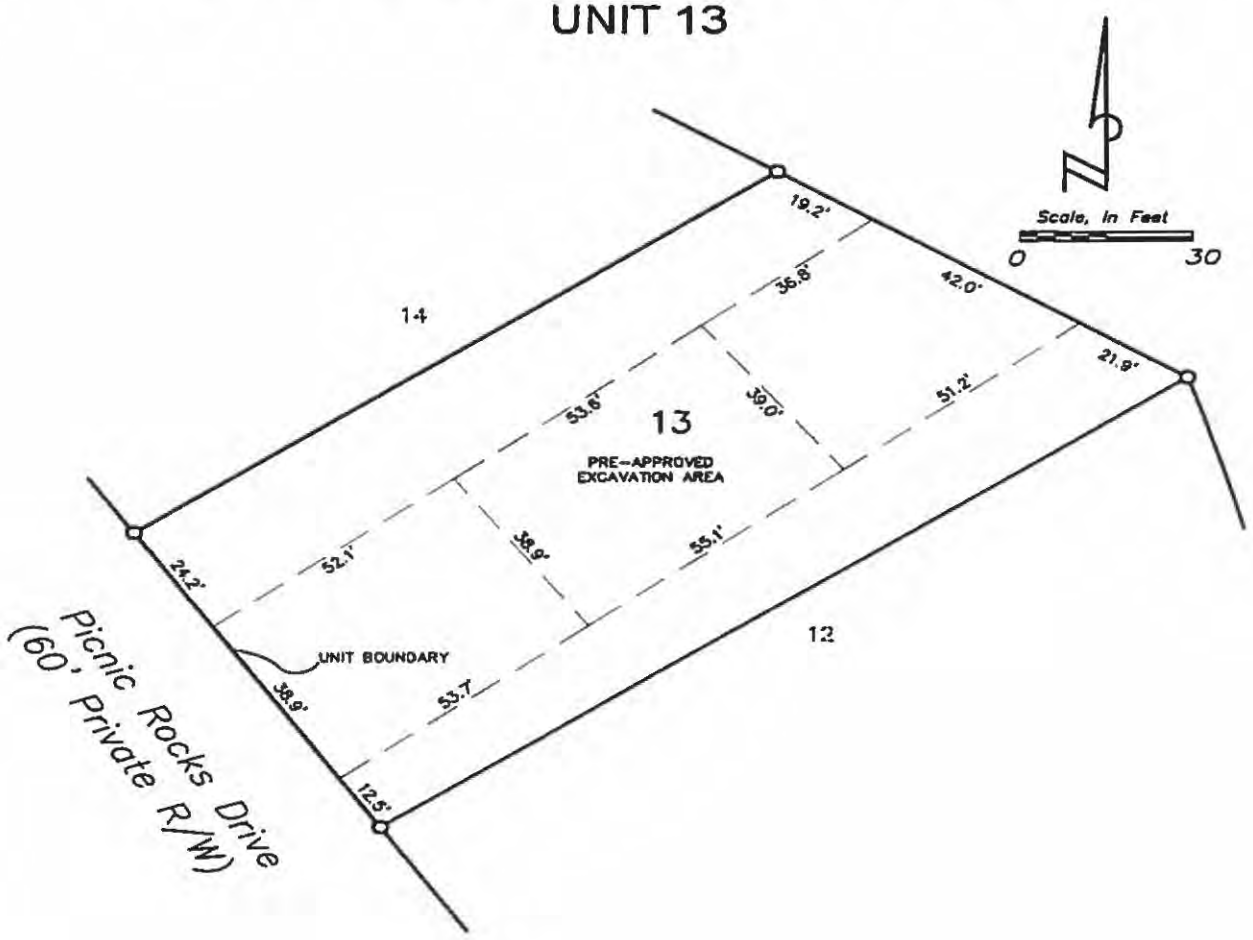
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UNIT 13

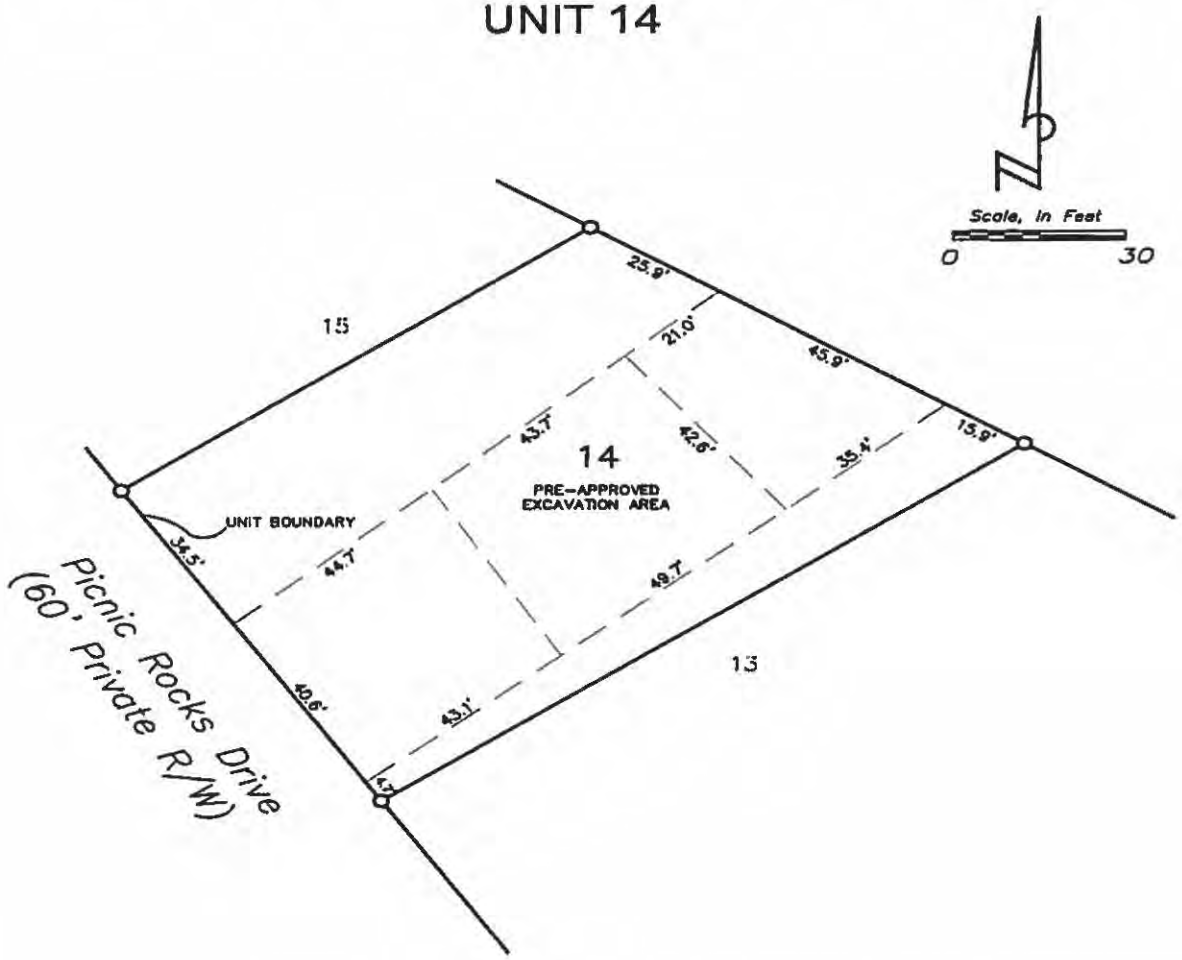


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UNIT 14



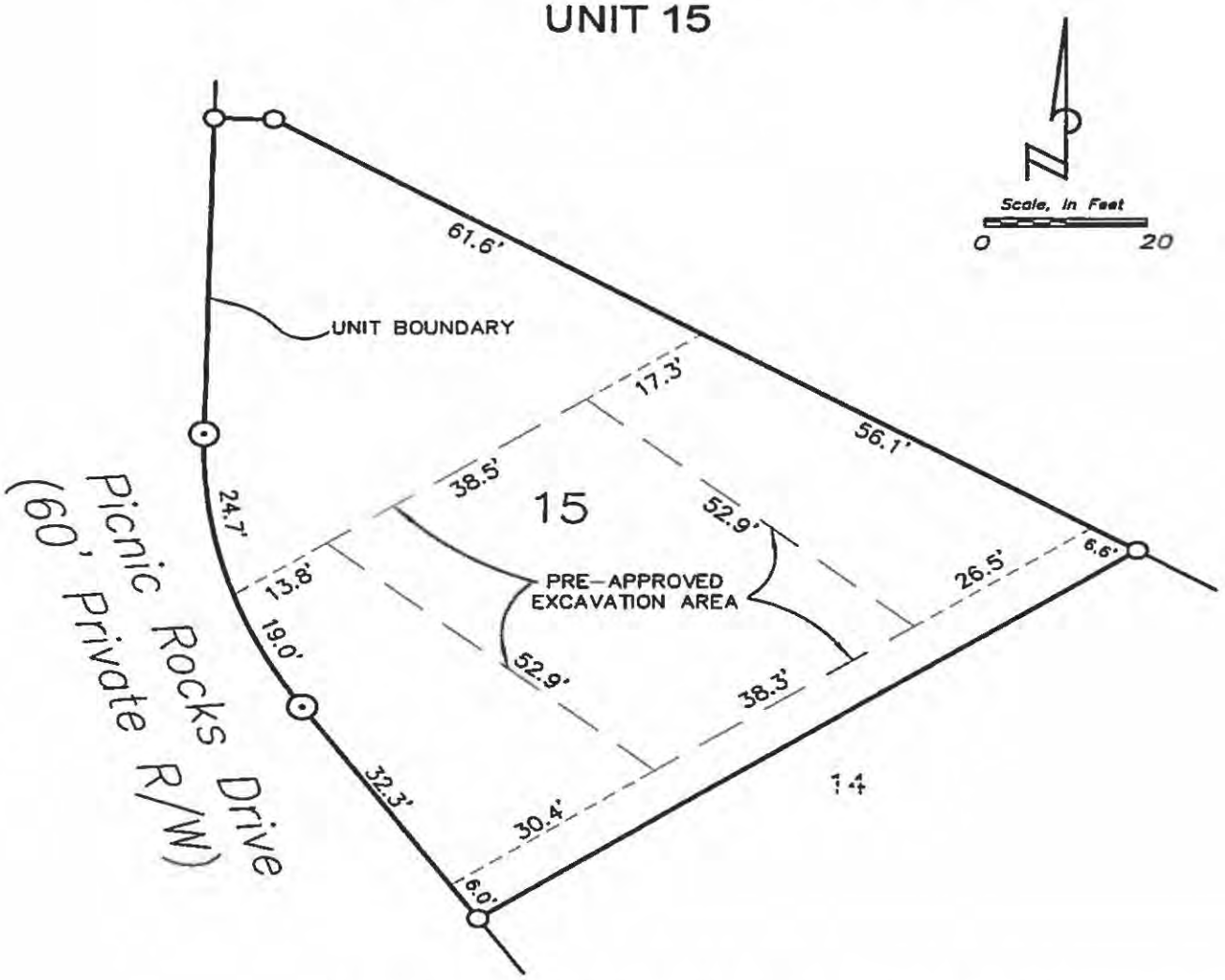
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UNIT 15



JOB # 209009	SCALE: 1" = 20'	DATE: 19 AUG 2013
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FORM E

MORTGAGEE'S CONSENT TO SUBMISSION TO CONDOMINIUM OWNERSHIP

Lakeshore Residences, LLC a Delaware limited liability company, as Developer, is establishing Picnic Rocks Pointe Condominium (the Condominium) as a condominium project by recordation in the office of the Marquette Register of Deeds of the master deed (the Master Deed) of Picnic Rocks Pointe Condominium, to which this consent is attached, submitting to condominium ownership the real property in the city of Marquette, Marquette county, Michigan, described in the Master Deed as

> Part of the Northeast 1/4 of the Southeast 1/4 of Section 14, and part of the plat of Ely Park subdivision in the Northwest 1/4 of the Southwest 1/4, of Section 13, as recorded in Liber 3 of Plats, Page 21, Marquette County records, all in the City of Marquette, Town 48 North, Range 25 West, Marquette County, Michigan, more particularly described as commencing at the East 1/4 corner of said Section 14; thence S01°22'00"W, 39.93' along the East line of said Section 14 to the POINT OF BEGINNING, a found 5/8" rerod with cap on the Southerly Right-of-Way (R/W) line of Fair Avenue (80' R/W, May 2000); thence N88°34'50"W, 52.51' along said Southerly R/W line; thence S01°22'25"W, 177.55'; thence S32°49'45"E, 132.98'; thence Southeasterly, 112.68' along the arc of a 50.30' radius curve to the right, having a delta angle of 128°21'05", and a chord bearing S32°49'45"E, 90.55'; thence S32°49'45"E, 131.70'; thence S67°01'55"E, 211.31' to the Westerly R/W line of Lakeshore Boulevard (variable R/W, May 2000); thence Northeasterly, 134.78' along the arc of a 1637.02' radius R/W curve to the right, having a delta angle of 04°43'03" and a chord bearing N21°36'58"E, 134.74' along said Westerly R/W line of Lake Shore Boulevard; thence Northwesterly, 277.05' along the arc of a 437.47' radius curve to the left, having a delta angle of 36°17'08" and a chord bearing of N01°40'59"W, 272.44' along said Westerly R/W line of Lake Shore Boulevard to the Southerly R/W line of Agate Street (66' R/W, not constructed, May 2000); thence N58°41'54"W, 301.27' along said Agate Street R/W line to the Southerly R/W line of said Fair Avenue; thence N88°29'12"W, 114.64' along said Southerly Fair Avenue R/W line to the POINT OF BEGINNING. Parcel contains 3.81 acres and is subject to access and utility easements in favor of the City of Marquette.

(the Premises). River Valley Bank, a Michigan banking corporation, holds an interest in the Premises as mortgagee; consents to the submission of the Premises to the Condominium described and set forth in the Master Deed; and consents to the recordation of the Master Deed in the office of the Register of Deeds for Marquette County, Michigan.

MORTGAGEE
River Valley Bank

Dated: 6/24/11

By: /s/
Todd Horton
Its: Vice President, Business Banking Officer

STATE OF MICHIGAN)
)ss
COUNTY OF MARQUETTE)

On this 24th day of June 2011, before me a Notary Public, in and for said County, personally appeared Todd Horton, personally known to me to be the Vice President, Business Banking Officer of River Valley Bank, on behalf of River Valley Bank.

Stacy B Chantelois
, Notary Public
Marquette County
My Commission Expires: April 7 2015
Acting in Marquette County

Drafted by and when recorded return to:
Adrianne N. Wolf
115 S. Lakeshore Blvd., Ste. A
Marquette, MI 49855
TITLE NOT EXAMINED BY SCRIVENER

STACY B. CHANTELOIS
Notary public, Marquette County, Michigan
My commission expires April 7, 2015

FORM F

AFFIDAVIT OF MAILING NOTICE OF INTENT TO ESTABLISH CONDOMINIUM PROJECT

STATE OF MICHIGAN)
)ss.
COUNTY OF MARQUETTE)

Sheryl Nardi, being duly sworn, states that on February 16, 2011, she served copies of a notice of intent with regard to the Picnic Rocks Pointe Condominium Project on the following persons at the addresses listed below by mailing them the notice of intent by U.S. mail, certified mail, return receipt requested, first-class postage fully prepaid:

On-Site Wastewater Unit
Water Bureau
Michigan Department of Environmental Quality
PO Box 30273
Lansing, MI 48909-7773

David Stensaas
City of Marquette
300 West Baraga Avenue
Marquette, MI 49855

Marquette County Drain Commissioner
2133 Montgomery Avenue
Marquette, MI 49855

Michigan Department of Transportation
Bureau of Highway Operations, Design Division
PO Box 30050
Lansing, MI 48909

Marquette County Road Commission
1610 N. Second Street
Ishpeming, MI 49849

Subscribed and sworn before me
February 16, 2011.

Sheryl Nardi

Adrianne N. Wolf, Notary Public
Marquette County, Michigan
My Commission Expires: 08/10/2016
Acting in Marquette County

6 DANO

8044780
Tx:4026669
7/3/2019 3:12:00 PM

2019R-05891
CARLA A L'HUILLIER
REGISTER OF DEEDS
MARQUETTE COUNTY, MI
RECORDED ON
07/03/2019 03:21 PM
PAGES: 6

SECOND AMENDMENT TO THE MASTER DEED
PICNIC ROCKS POINTE CONDOMINIUM

This Second Amendment to the Master Deed has been executed on the 19 day of ~~April~~ June, DK 2019, by and on behalf of, Lakeshore Residences, LLC (the "Developer"), a Delaware limited liability company, of 5257 S. Cicero, Chicago, IL 60632; Lily Properties, LLC, a Michigan limited liability company, of P.O. Box 148, Channing, MI 49815; and Picnic Rocks Pointe Homeowners' Association, Inc. ("Association"), a Michigan nonprofit corporation, of 955 N. Lakeshore Blvd., ✓ Marquette, MI 49855, on the terms and conditions set forth below.
Marquette Condominium Subdivision Plan No..38

RECITALS

A. The original Master Deed for the Picnic Rocks Pointe Condominium (the "Project"), was dated June 27, 2011, and recorded at the Marquette County Register of Deeds as Document No. 2011R-06829 on June 30, 2011.

B. The First Amended Master Deed for the Project was dated March 27, 2014, and recorded at the Marquette County Register of Deeds as Document No. 2014R-03603 on April 11, 2014, which replaced the original Master Deed in its entirety.

C. Lily Properties, LLC is the current owner of Units 12 and 13 in the Project.

D. Lily Properties, LLC desires to merge Units 12 and 13, as shown on the Subdivision Plan, into one Unit to be designated as Unit 12 with the voting rights, Percentage of Value, and responsibility for assessments equal to one Unit. The Developer and Association consent to the same.

By executing and recording this Second Amendment to the Master Deed, pursuant to paragraphs 4.6 and 5.3 of the First Amended Master Deed, the parties hereby amend the First Amended Master Deed as follows:

A. The first sentence of Paragraph 5.1 of the First Amended Master Deed shall be deleted in its entirety and replaced with the following:

A complete depiction of each Unit in the Project, with elevations referenced to an official benchmark of the U.S. Geological Survey sufficient to accurately relocate the space enclosed by the depiction without reference to any structure, is contained in the Subdivision Plan as surveyed by the Project's consulting engineers and surveyors, except that Units 12 and 13 identified on the Subdivision Plan are merged into one Unit to be designated Unit 12.

B. Paragraph 9.6 of the First Amended Master Deed shall be deleted in its entirety and replaced with the following:

No structure within the Project that requires any movement of soil may be constructed outside the buildable area for such Unit as shown in the Pre-Approved Excavation Area Exhibit, attached hereto as form D, without the written consent of Developer if during the Development and Sales Period or the Association thereafter, except that this sentence does not apply to Unit 11; further, the Developer agrees to provide such written consent to the Owner of Unit 12 (as amended in this Second Amended Master Deed) on reasonable terms, including indemnification of Developer for any movement of soil outside of the Pre-Approved Excavation Area. In no event may any structure exceed 30 feet in height. All structures on Units 1-9 shall be limited to 2-stories, and structures on Units 10-15 shall be limited to 1 ½-stories.

C. In paragraph 1.1 of the Condominium Bylaws, attached as form A to the First Amended Master Deed, the phrase "15 building sites" shall be replaced with the phrase "14 building sites."

D. Except as specifically and expressly amended by this Second Amendment to the Master Deed, all of the terms, conditions, covenants and exhibits set forth in the First Amended Master Deed remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment to the Master Deed as of the date and year first written.

DEVELOPER
LAKESHORE RESIDENCES, LLC

By: Dan Keller, Agent

STATE OF MICHIGAN)
)ss
COUNTY OF MARQUETTE)

On this 12th day of ~~April~~ June, 2019, before me a Notary Public, in and for said County, personally appeared Dan Keller, to me known to be the same person described herein and who executed the foregoing instrument as agent of Lakeshore Residences, LLC, and who acknowledged the same to be the free act and deed of Lakeshore Residences, LLC.

William I. McDonald

Sheryl A. Nardi, Notary Public
Marquette County
My Commission Expires: ~~07/07/21~~ 1/23/2024
Acting in Marquette County

William I. McDonald
NOTARY PUBLIC - STATE OF MICHIGAN
County of Marquette
My Commission Expires 1/23/2024
Acting in the County of Marquette

ASSOCIATION
PICNIC ROCKS POINTE HOMEOWNERS' ASSOCIATION, INC.

By: Phyllis Ann Aurich
Its: President

STATE OF MICHIGAN)
)ss
COUNTY OF MARQUETTE)

On this 25 day of ~~April~~ June 2019, before me a Notary Public, in and for said County, personally appeared Phyllis Aurich, to me known to be the same person described herein and who executed the foregoing instrument as President of Picnic Rocks Pointe Homeowners' Association, Inc., and who acknowledged the same to be the free act and deed of Picnic Rocks Pointe Homeowners' Association, Inc.

Michelle L Sellers
Michelle L. Sellers, Notary Public
Marquette County, MI
My Commission Expires: 10/30/24
Acting in Marquette County

This Second Amendment to the Master Deed is exempt from taxation pursuant to MCL 207.505(a) and MCL 207.526(a).

Drafted by and when recorded return to:
Adrianne N. Wolf
McDonald & Wolf, PLLC
115 S. Lakeshore Blvd., Suite A
Marquette, MI 49855
(906) 226-6537

OWNER
LILY PROPERTIES, LLC

By: David J. Brule
Its: Member

STATE OF MICHIGAN)
)ss
COUNTY OF MARQUETTE)

On this 19 day of ~~April~~ June, 2019, before me a Notary Public, in and for said County, personally appeared David J. Brule, to me known to be the same person described herein and who executed the foregoing instrument as a member of Lily Properties, LLC, and who acknowledged the same to be the free act and deed of Lily Properties, LLC.

Nikki Bowers
Nikki Bowers, Notary Public
Dickinson ~~Marquette~~ County
My Commission Expires: 5-12-26
Acting in ~~Marquette~~ County
Dickinson

RECEIVED APR 11 2014
3:15 p.m.

2014R-03603 77
2014R-03603
PATRICIA A. MANLEY
REGISTER OF DEEDS
MARQUETTE COUNTY, MI

RECORDED ON
04/11/2014 05:19PM
PAGES: 77

FIRST AMENDED MASTER DEED OF PICNIC ROCKS POINTE
Pursuant to the Condominium Act, MCL 559.101 et seq.

Marquette Condominium Subdivision Plan No. 38 containing

1. First Amended Master Deed establishing Picnic Rocks Pointe Condominium;

2. form A to Master Deed: Condominium Bylaws;

3. form B to Master Deed: Condominium Subdivision Plan;

4. form C to Master Deed: Pattern Book;

5. form D to Master Deed: Pre-Approved Excavation Area Exhibit;

6. form E to Master Deed: Mortgagee's Consent to Submission to Condominium Ownership; and

7. form F to Master Deed: Affidavit of Mailing for Notices required by MCL 559.171.

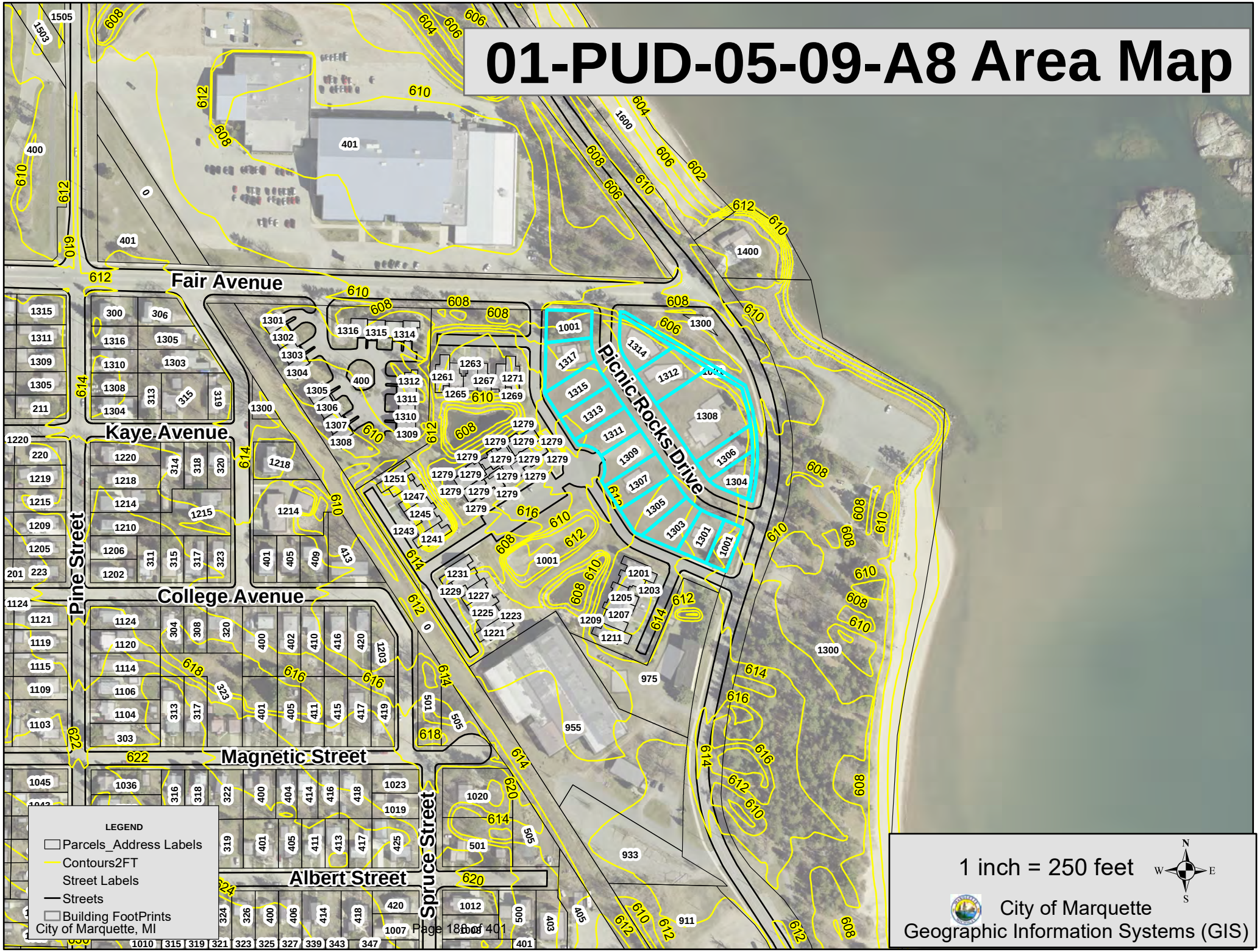
This document is exempt from transfer tax under MCL 207.505(a) and MCL 207.526(t).

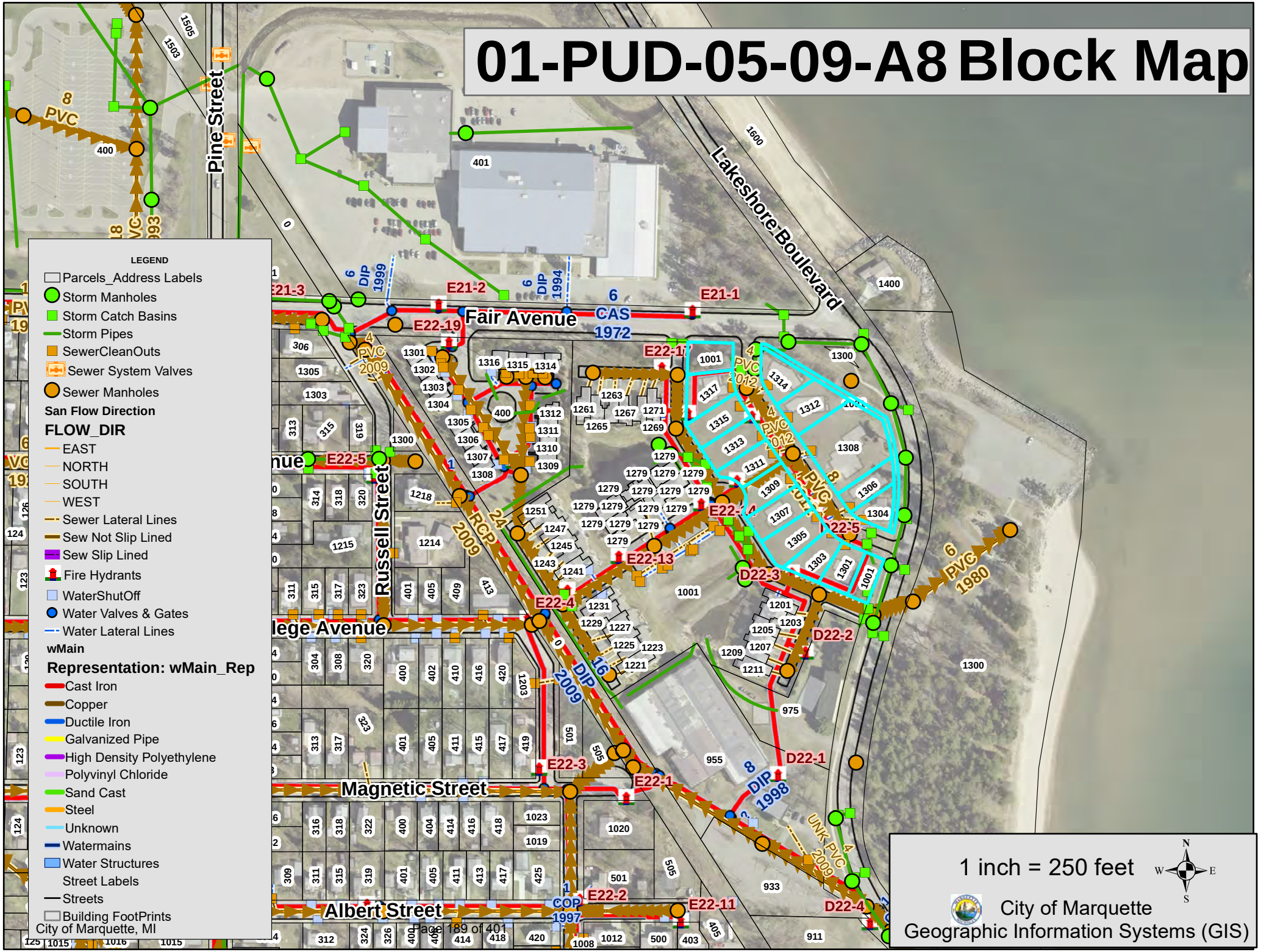
This document drafted by and after recording return to:

Adrianne N. Wolf
McDonald & Wolf, PLLC
115 S. Lakeshore Blvd., Ste. A
Marquette, MI 49855

This Master Deed is signed and delivered on March 27, 2014, by Lakeshore Residences, LLC, a Delaware limited liability company, of 5257 S. Cicero, Chicago, IL 60632 ("Developer"), on the terms and conditions set forth below.

This Master Deed replaces, in its entirety, the original Master Deed, dated June 27, 2011, and recorded at the Marquette County Register of Deeds as Document No. 2011R-06829 on June 30, 2011.


01-PUD-05-09-A8 Area Map
Fair Avenue
Kaye Avenue
College Avenue
Magnetic Street
Albert Street
Pine Street
Spruce Street
Picnic Rocks Drive
LEGEND
Parcels_Address Labels
Contours2FT
Street Labels
Streets
Building FootPrints
City of Marquette, MI
1 inch = 250 feet
N
W
E
S
City of Marquette
Geographic Information Systems (GIS)


01-PUD-05-09-A8 Block Map
LEGEND
Parcels_Address Labels
Storm Manholes
Storm Catch Basins
Storm Pipes
SewerCleanOuts
Sewer System Valves
Sewer Manholes
San Flow Direction
FLOW_DIR
EAST
NORTH
SOUTH
WEST
Sewer Lateral Lines
Sew Not Slip Lined
Sew Slip Lined
Fire Hydrants
WaterShutOff
Water Valves & Gates
Water Lateral Lines
wMain
Representation: wMain_Rep
Cast Iron
Copper
Ductile Iron
Galvanized Pipe
High Density Polyethylene
Polyvinyl Chloride
Sand Cast
Steel
Unknown
Watermains
Water Structures
Street Labels
Streets
Building FootPrints
City of Marquette, MI
Pine Street
Lakeshore Boulevard
Fair Avenue
Russell Street
Magnetic Street
Albert Street
E21-1
E21-2
E21-3
E22-1
E22-2
E22-3
E22-4
E22-5
E22-11
E22-13
E22-19
D22-1
D22-2
D22-3
D22-4
1 inch = 250 feet
N
W
E
S
City of Marquette
Geographic Information Systems (GIS)


05/04/2021 07:31


05/04/2021 07:33


05/04/2021 07:36


05/04/2021 07:31


05/04/2021 07:33


05/04/2021 07:33


05/04/2021 07:36

Nancy E. Seminoff
1314 Picnic Rocks Drive
Marquette, MI 49855

May 24, 2021

To Marquette City Planning Commission Members:

I am writing as a member of the Picnic Rocks Pointe Homeowners Association (PRP HOA) to express *my strong opposition to allowing the existing fence on Lot #9 to remain in place.*

1-The fence does not comply with the City of Marquette ordinance with its height and closed construction which can be explained by any Marquette Zoning Official.

2-The existing fence does not comply with the PRP HOA Bylaws expectation that a resident must obtain a City of Marquette permit and, consequently, meet all city ordinances. Further the Bowerman fence does not comply with the HOA Bylaws in materials used.

3-Not all Homeowners Association members support the existing fence as you may have been led to believe. At an August 24, 2020 HOA Board of Directors meeting three members (Keller-Developer's Representative, Aurich-President, Seminoff-Vice President) voted unanimously **not to seek an amendment** to the PUD despite Bowerman's request to do so. At a follow-up meeting, two Board members (Brule-who used Keller's two votes given to him until December 31, 2020 because Keller was incapacitated), and Rulesh-Secretary) voted in the affirmative but Aurich and Seminoff voted no (resulting in a vote of 3-2) on the motion to support Bowerman in seeking a change to the PUD for Lot #9 if she paid for the city fee to do so.

NOTE: The second Board vote was presented to City of Marquette officials as seemingly representing a vote of all homeowners which was never legally taken. Residents were told that Bowerman threatened to sue the Board, because the Board had given permission to her to build an illegal fence when her plans were reviewed. Her plans were not approved with an illegal fence.

4-Importantly, to allow the existing fence to remain will set an untenable precedent for future fence construction,

5-If the existing fence is allowed to remain, the clear message is that seeking permission after the fact is permissible and there are no consequences. This issue was first addressed in the fall of 2019 and the City of Marquette has not levied any fines yet.

6-The reduced visibility for Lakeshore Park Place residents and the incompatibility of a large swath of white vinyl fencing with other fencing in this neighborhood should be and is of considerable concern for residents in this highly visible condominium complex.

I respectfully request you recommend to the City Commission that the existing 6' vinyl fence NOT remain in place.

Nancy E. Seminoff

Phyllis A. Aurich

1317 Picnic Rocks Dr.

Marquette, MI 49855

To: Ms. Andrea M. Landers, Zoning Official

Marquette County Planning Commission May, 22, 2021

Re: Picnic Rocks Pointe, Lot #9, Julie Bowerman's issue with her fence

Dear Ms. Landers,

I am writing as a homeowner in Picnic Rocks Pointe Homeowners Association.

The plans for the house to be built on Lot #9 for Ms. Julie Bowerman were submitted and signed by 3 HOA board members (Keller-Developer, Aurich-Pres. and Seminoff -Vice Pres.) There was no indication on the plans showing a fence.

Under our By Laws Section 7. CONSTRUCTION REQUIREMENTS,

7.3 Association Review…

"no residences, buildings, fences…shall be commenced, erected, "…" until plans or specifications and approximate cost of the structure are acceptable to the Association' s Board of Directors, showing the nature, kind, shape, and height, material, color scheme, and location, and showing the plans or specifications acceptable to the Association's Board of Directors. The Board of Directors shall have the right to refuse to approve any plans or specifications, including the grading and landscaping plans that are not suitable or desirable In its opinion for aesthetic or other reasons."

NO PLANS for this fence, color scheme, height or grading, were ever presented to the Board of Directors. The fence seemed to have appeared "overnight. "

Not all of the HOA Board members supported the fence as it stood. Three Board members, (Keller-developer, Aurich-Pres. and Seminoff -Vice Pres.) voted unanimously not to seek an amendment to the PUD. Following this meeting three (3) Board members, Brule with 2 votes (1 as homeowner, 1 as Developer's rep, and Rulesh, Secretary voted in the affirmative, however, Aurich-President and Seminoff-Vice President voted no, the result was a vote of 3-2 to support Bowerman to seek a change to the PUD for Lot #9 if she paid the city fee to make this change.

The 2nd Board vote was presented to the City of Marquette officials and noted this was a vote of all homeowners. This vote was never legally taken. All residents were told that Bowerman threatened to sue the Board because the Board had given permission for Bowerman to build an illegal fence when her plans were reviewed. Bowerman's plans were NOT approved with an illegal fence.

If the existing fence is allowed, the message is that seeking permission is no longer required. This issue was 1st addressed in the Fall of 2019.

Sincerely,

Phyllis A. Aurich

Fence on Lot 9 of Picnic Rocks Planned Unit Development at 1001 Lakeshore Boulevard and 1301-1317 Picnic Rocks Drive.

Cary Bjork <c[redacted]

Sun 5/23/2021 7:52 PM

To: Andrea Landers <alanders@marquettemi.gov>

Dear Ms. Andrea M. Landers, Zoning Official,

I am opposed to allowing the six foot high vinyl fence on lot 9 to remain in place. This fence was apparently constructed without a permit from the city. The fence interferes with nearby residents' views of Lake Superior and is detrimental to the aesthetics of the neighborhoods in close proximity to lot 9.

The city needs a healthy tax base which includes new housing units. However, the property value of existing units needs to be protected as well. This fence obstructs views of The Lake which could decrease the value of existing housing near the lot in question.

I urge you to encourage compliance with PUD Master Deeds and not to grant the requested revision.

Thank you for requesting comments on this matter.

Cary Bjork
1279 Lakeshore Park Place
Unit PD
Marquette, MI 49855
Cary M. Bjork MD, FACP, CTropMed®

Notice of Public Hearing (Picnic Rocks Assn. Fence)

Nancy Fierstine [redacted] >

Mon 5/24/2021 9:21 AM

To: Andrea Landers <alanders@marquettemi.gov>

Dear Commision:

As affected property owners we feel the existing fence on Lot #9 of the Picnic Rocks Planned Unit Development is not acceptable and should not remain in place.

1. The fence does not meet Marquette City fence permit requirements and we believe it would not have been approved prior to construction.

2. The fence was constructed without an approved fence permit from the City of Marquette. The permitting process should followed for fencing, as is done for building, mechanical, electrical, and plumbing construction or installation.

3. The factors of the height and because it is closed, gleaming white vinyl fencing gives us other concerns: negative impact on neighborhood aesthetics, visibility of
pedestrian and vehicle traffic along Lakeshore Blvd and on a personal note, the view from our ground-level patio and interior living area.

4. Codes and ordinances are in place to service the community as a whole and any amendments to fit the needs of individuals may set a precedence to allow additional non-compliant fencing or other non-compliant structures.
We would discourage “act first, ask later”

Please consider our comments and deny the six-foot high, closed construction vinyl fence from remaining in place.

Thank you
Nancy and Greg Fierstine
1279 Lakeshore Park Place #1G
Marquette

Amendment to the Picnic Rocks Planned Unit Development, 1001 Lakeshore Blvd.

Dave Blair <[redacted]>

Mon 5/24/2021 11:15 AM

To: Andrea Landers <alanders@marquettemi.gov>

As an affected property owner residing at 1279 Lakeshore Park Place, Suite PE, I believe the existing fence on lot 9 of the Picnic Rocks Planned Unit Development is not acceptable and should not remain in place.

1. The fence does not meet Marquette City fence permit requirements.

2. The fence was constructed without an approved fence permit from the City of Marquette. The permitting process should be followed for fencing, just as is done for building, electrical, mechanical and plumbing construction or installation. Because there was not an approved fence permit the fence must be removed, rather than changing the PUD. I would also like to note that Picnic Rocks previously sought approval of an amendment that was based on individual, self-serving reasons that did not respect the interests of the neighborhood. As in the past case, this amendment should also be denied.

3. The fence has a negative impact on neighborhood aesthetics and hinders the visibility of pedestrian and vehicle traffic along Lakeshore Park Place Drive. These factors would have resulted in denial of a permit for the fence, had the owners followed proper procedures. Approval of the fence after the fact would set an unacceptable precedent and must not be allowed to occur.

Please consider my comments and deny approval of the requested amendment.

Leon D. Blair
1279 Lakeshore Park Place, Suite PE
[redacted]

FW: RE: FW: Notice of Public Hearing (Picnic Rocks Assn. fence)

[redacted] >

Mon 5/24/2021 2:45 PM

To: Andrea Landers <alanders@marquettemi.gov>
Cc: [redacted] >

As affected property owners we feel the existing fence on lot 9 of the Picnic Rocks Planned Unit Development is not acceptable and should not remain in place.

1. The fence does not meet Marquette City fence permit requirements.

2. The fence was constructed without an approved fence permit from the City of Marquette. The permitting process should be followed for fencing, as is done for building, electrical, mechanical and plumbing construction or installation. Because there was not an approved fence permit we now must go through this lengthy process. This has been a waste of time, energy and resources.

3. The factors of the height and because it is closed construction fencing give us other concerns; negative impacts on neighborhood aesthetics, visibility of pedestrian and vehicle traffic along Lake Shore Blvd., and the potential precedence to allow additional non-compliant fencing or other non-compliant structures.

Please consider our comments and deny the fence as constructed .

Thank you
Karen and Frank Nettell
1279 Lake Shore Park Place #3B
Marquette, Mich 49855

Kevin and Judy Moyle
1304 Picnic Rocks Dr
Marquette MI 49855
kevinamoyle@gmail.com / 906-281-0211
moylejudy@gmail.com / 906-281-0106

RECEIVED
MAY 25 2021
Marquette City
Community Development Office

5/21/2021

TO: Community Development Department
City of Marquette

FR: Kevin and Judy Moyle

RE: Public Hearing
01-PUD-05-09-A8
Amendment to the Picnic Rocks Planned Unit Development
1001 Lakeshore Blvd and 1301-1317 Picnic Rocks Drive

We are unable to participate in the public hearing on June 1, 2021, therefore, we are submitting our written comments.

We have reviewed the letter we received regarding the property of Julie Bowerman.

We are in favor of the proposed changes to paragraph 7.6 Codes and Ordinances of the PUD Master Deed.

If you have any questions, please feel free to contact us.

Thank you,

Kevin Moyle Judy Moyle

May 13, 2021

Dear Property Owner or Occupant:

RE: Notice of PUBLIC HEARING before the Marquette City Planning Commission regarding: **01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300150)**

Julie Bowerman, Lakeshore Residences LLC, and Picnic Rocks Pointe Association are seeking approval of an amendment to their previously approved Planned Unit Development (PUD) consisting of 15 residential units in the form of single-family dwellings. They are requesting to revise paragraph 7.6 Codes and Ordinances of the PUD Master Deed. It states that "In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected." They would like it to read that "In addition to the construction requirements in this section, all buildings and other- structures must comply with applicable building and other- structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot high closed construction vinyl fence on Lot #9 to remain in place." The Planning Commission will review the request and send a recommendation to the City Commission.

You are being notified of the public hearing referenced above because you own or occupy property within 300 feet of the property.

The public hearing for this request will begin at 6:00 p.m. on Tuesday, **June 1, 2021**, and the meeting will be held virtually with Commission members and Staff attending remotely. This meeting will be streamed on the City of Marquette YouTube channel, at https://www.youtube.com/user/CityofMarquetteGov. **Please note that the YouTube livestream will have at least a 20-second delay, and that anyone that wishes to offer public comment via Zoom (directions are provided below) will need to open the livestream to follow along while they wait to enter the meeting.**

Public Participation

There will be three options for public participation in this meeting: video conferencing, phone conferencing, or written comment. There will be three public comment periods for the meeting, one near the beginning of the agenda, one for the public hearing, and one at the end. Comments are limited to three minutes and speakers must give their name and address before speaking.

In order to offer a live video comment, you must visit:
https://us02web.zoom.us/j/84127534741

Picnic Rocks Planned Unit Development Lot #9 Exception requested for fence to remain in place

John Ashby <[redacted]>

Tue 5/25/2021 3:54 PM

To: Andrea Landers <alanders@marquettemi.gov>

John and Judy Ashby
Lakeshore Park Place Condo
1201 Lakeshore Park Place
Marquette, MI 49855
DATE: 5/25/2021

TO; MARQUETTE CITY PLANNING COMMISSION/ZONING

Commissioners:

THIS LETTER IS RELATIVE TO THE RECENT PUBLIC NOTICE WE RECEIVED FROM THE ZONING OFFICIAL OF MARQUETTE, MICHIGAN CONCERNING A REQUEST FOR "AN EXCEPTION TO PERMIT THE EXISTING SIX-FOO HIGH CLOSED CONSTRUCTION VINYL FENCE ON LOT #9 TO REMAIN IN PLACE:.

AS AN AFFECTED PROPERTY OWNER, WE FEEL THE EXISTING FENCE ON LOT #9 OF THE PICNIC ROCKS PLANNED UNIT DEVELOPMENT IS NOT ACCEPTABLE AND SHOULD NOT REMAIN IN PLACE.

OUR OBJECTIONS INCLUDE:
...THE FENCE DOES NOT MEET MARQUETTE CITY FENCE PERMIT REQUIREMENTS
...THE FENCE PERMIT PROCESS WAS NOT INITIATED. IN OTHER WORDS BUILD NOW, REQUEST VARIANCE LATER
...THE ENCLOSED 6' HIGH CLOSED VINYL FENCE OBSTRUCTS OTHERS' VIEWS OF THE LAKE
...WE FEEL ALL MARQUETTE RESIDENTS SHOULD FOLLOW PERMITTING PROCEDURES WHETHER FOR FENCES, BUILDINGS, ELECTRICAL, MECHANICAL, OR PLUMBING INSTALLATIONS.

WE ARE SIGNIFICANTLY OPPOSED TO BUILD NOW, ASK FOR A VARIANCE AFTER. THIS PROCEDURE ESTABLISHES A VERY BAD PRECEDENT FOR OTHER RESIDENTS TO FOLLOW NON-COMPLIANT FENCING OR OTHER STRUCTURES.

John and Judith Ashby

Carol Cappuccio

1279 Lakeshore Park Place, Apt. 1F, Marquette, Michigan 49855

May 23. 2021
Andrea M. Landers
Zoning official
Community Development Department
1100 Wright Street
Marquette, Michigan 49855

Dear Ms, Landers

I am writing regarding the Picnic Rocks Association's request for approval to have an amendment to revise their Planned Unit Development so that an existing six-foot high closed construction vinyl fence can remain on Lot #9. This request will be considered at a public hearing before the Marquette City Planning Commission on June 1. I live at 1279 Lakeshore Park Place, Unit 1F. The fence blocks the view of the lake for several residents in the Lakeshore Park Place Condominium Association. I am concerned that if the fence remains in place other owners in the Picnic Rocks Pointe Association may use the fact that unit 9 was allowed to build a fence as a rational for building more fences on their properties, This could in turn block the lake views of even more members in the Lakeshore Park Place Condominium Association. For these reasons I am asking that the request for the revision be denied.

Sincerely,

Carol Cappuccio

Carol Cappuccio

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

Tel 906-273-2027 Email carolcappuccio@charter.net

May 24, 2021

Community Development Department
1100 Wright Street
Marquette, Michigan 49855

RE: PUBLIC HEARING before the Marquette City Planning Commission regarding: 01-PUD-05-09-A8- Amendment to the Picnic Rocks Planned Unit Development

I am writing in support of this proposed amendment to the PUD. I own a home at 1307 Picnic Rocks Drive, two lots away from Lot #9 which has the six-foot high closed construction vinyl fence. The home with the fence was built at about the same time as we built our home, one and a half years ago.

I have no objection to the current fence on Lot #9. It is well cared for, neat, and provides privacy to the residents and the adjoining lots. It fits well within the neighborhood. As I pass it nearly every day, I do not see it as a safety hazard. There is good sight distance to all roads and intersections. The current owner has a dog and the fence provides a safe opportunity for the dog to be off-leash.

Thank you for your consideration,

Vicki Reuling
1307 Picnic Rocks Drive
Marquette, MI

RECEIVED
MAY 26 2021
City of Marquette
Community Development Office

May 23, 2021

Tom Rulseh
1307 Picnic Rocks Drive
Marquette MI 49855

Marquette City Planning Commission
1100 Wright Street
Marquette MI 49855

Re: 01-PUD-05-09-A8 - Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300150)

Dear Commission Members:

Please know that I am in full support of Julie Bowerman's request for the above referenced amendment so that she may keep her fence in its current location and in its current design. In fact, as Julie's neighbor I very much appreciate her fence and the multiple purposes it serves in its current placement and design. Further, in my experience as a pedestrian, cyclist and motorist in this neighborhood I do not perceive any safety hazards posed by Julie's fence in its current location and design.

Thank you for your attention to this matter as you continue to do what is best for our community and its residents.

Respectfully,

Tom Rulseh

RECEIVED
MAY 26 2021
Marquette City
Community Development Office

CHURCH AND KORHONEN, PC

ATTORNEYS AT LAW

CATHY C. CHURCH
CARA KORHONEN

May 26, 2021

Andrea Landers
Marquette City Planning Commission
Sent via email to alanders@marqeuttemi.gov

RE: Public Hearing regarding Julie Bowerman, 01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd and 1301 – 1317 Picnic Rocks Drive

Dear Ms. Landers/Marquette City Planning Commission:

We are writing to voice our strong support for Ms. Bowerman's request to amend the Picnic Rocks PUD as referenced above.

We live across the street and one house over from Ms. Bowerman. We appreciate that Ms. Bowerman took the time and expense of having a fence put up for her dog and privacy. We know that at times Ms. Bowerman has to work long hours, and her dog has the option of going out into the yard as she needs. As you are aware, we live in a very high traffic area for pedestrians and vehicles. Personally, if we had a low or partially-open style fence, we would never leave one of our dogs out due to concerns of the dog escaping, being taken, or barking incessantly at all the passersby. It would be aggravating to the neighbors should the dog be able to sit and bark at everyone she sees through the fence, and even worse it would be heart breaking if something happened to Ms. Bowerman's dog should she be required to change her current fence to a less secure style of fence. Furthermore, any mess in the yard due to her dog is hidden away by this fence. It's an attractive fence that complements her home and our neighborhood.

This seems to be a really unfortunate situation that is due in no part to Ms. Bowerman's actions. She took the appropriate actions in gaining HOA Board approval prior to having the fence erected, and the HOA did in fact approve the current fence. Ms. Bowerman then relied on the HOA approval and the expertise of her builder to ensure that her fence was in compliance. Unfortunately, she learned after the fact that her reliance was misplaced. Now it seems that the brunt of this problem has fallen entirely at her feet, despite the fact that she was the only party who did everything they were supposed to. In contrast, the HOA should have known that the fence they were approving was not in compliance, and her builder should have known to pull the appropriate permits. However innocent the HOA and builder's actions were, they have caused this problem for Ms. Bowerman.

Our question really becomes what is the benefit of denying Ms. Bowerman's request? The current fence is well done, it keeps her backyard private, it adds to the appearance of her property and the surrounding properties, it keeps her dog safe, it enables her dog to quietly enjoy the backyard, etc. We do not understand how it could negatively impact anyone else in any way. Accordingly, we urge the Commission to grant Ms. Bowerman's request to alter the PUD.

Sincerely,

Cara Korhonen and Cathy Church

708 CHIPPEWA SQUARE, STE. 2 • MARQUETTE, MI 49855 • TEL: 906-226-0001 • TOLL FREE: 800-758-5611
FAX: 906-226-0002 • EMAIL: CHURCHKORHONEN@GMAIL.COM • WWW.HELPYOURCASE.COM

Picnic Rocks PUD Development Lot #9 June 1, 2021

Dear Andrea Landers, Zoning Official, and Marquette County Planning Commission,

I am writing this letter in support of the PUD amendment allowing the six-foot vinyl fence on the property at 1301 Picnic Rocks Drive. I write as a member of the community who frequently uses the bike path and the sidewalk on the Lakeshore Blvd. side of this property. This fence is clean, new and professionally built which is more than I can say for many other fences in the area. This fence does not obstruct the visibility of the road or pedestrians on the sidewalk, as there is a very large tree in front of this fence. The fence is also placed at a safe distance from the road and private drive as to not be an obstruction and was aligned properly as to not obstruct any views of the lake more than the house already does.

As a member of this community I appreciate that the fence offers safe protection from the dog that lives at 1301 Picnic Rocks Drive. It is often unnerving to walk past a property that has a large dog without a fence and I worry if that dog is going to run at me when I am walking. It is equally unnerving when a large dog can fit a head through the fence slots or put feet on top of the fence and bark as I pass by, I never know if it will be able to break through or jump the fence and attack.

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Thomas Deslak

Thomas Deslak

112 E. Prospect - Apt 1

Picnic Rocks PUD Development Lot #9 June 1, 2021

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Sarah K. Reynolds
Former City Commissioner
424 W. Crescent
Marquette, MI 49855

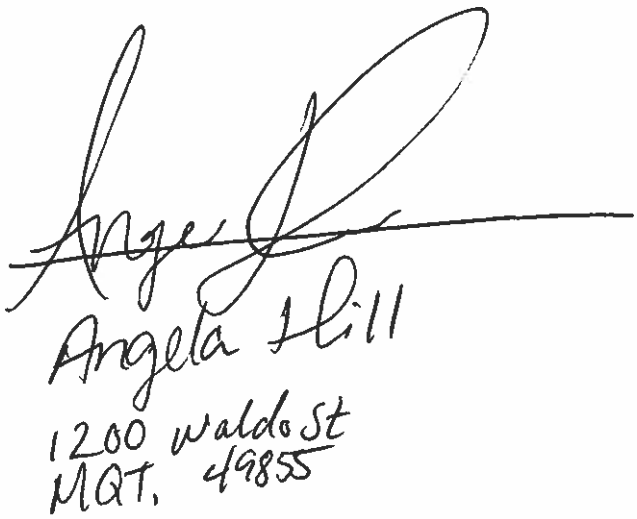
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Angela Hill
1200 Waldo St
MQT. 49855

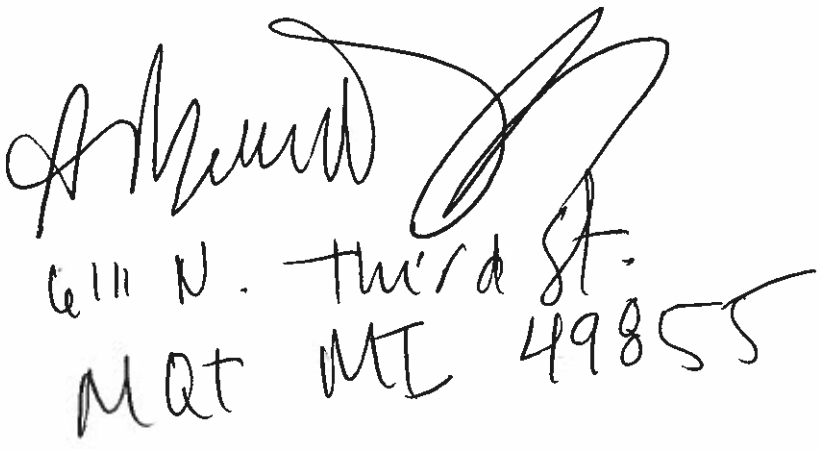
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310. E. Park
Marquette, MI

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Nicole Limback

N. Limback

1201 ALBION

MQT, MI.

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TJ Carpenter

520 Fisher St.

MQT

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PAT SLATTERY 348 W. Hewitt

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Joanne Jones
1613 West, Marquette
Joanne Jones

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Jessica Darcy
Third Base Bar Owner
Jessica Darcy

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Scott Beaudoin
1554B W. Ridge St Apt # 14
Marquette MI 49855

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MICHAEL MERING 421 E. RIDGE MQT

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Shelly K Marley
5.31.21

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Steve Kelly 123 E Ridge

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Paul Mart
112 E. Ridge St
Marquette MI
49855

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Renee Imus
107 N. Lakeshore Blvd
Mqt. Mi

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Leslie Seratti

352 E. HEWITT AVE

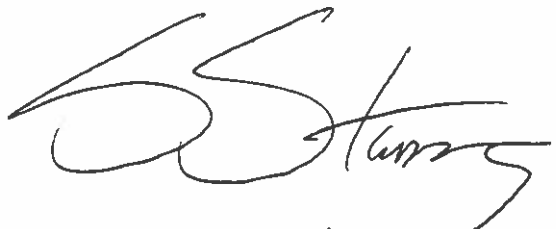
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103 N. Lakeshore BLVD

MQT MI 49855

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Sara Sanderson
312 E. Prospect St
MQT MI 49855

Nick Sanderson
312 E Prospect Apt. 2
Mqt, MI 49855

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622 N. Third St.

Marquette, MI

49855.

Picnic Rocks PUD Development Lot #9 June 1, 2021

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I am writing this letter in support of the PUD amendment allowing the six-foot vinyl fence on the property at 1301 Picnic Rocks Drive. I write as a member of the community who frequently uses the bike path and the sidewalk on the Lakeshore Blvd. side of this property. This fence is clean, new and professionally built which is more than I can say for many other fences in the area. This fence does not obstruct the visibility of the road or pedestrians on the sidewalk, as there is a very large tree in front of this fence. The fence is also placed at a safe distance from the road and private drive as to not be an obstruction and was aligned properly as to not obstruct any views of the lake more than the house already does.

As a member of this community I appreciate that the fence offers safe protection from the dog that lives at 1301 Picnic Rocks Drive. It is often unnerving to walk past a property that has a large dog without a fence and I worry if that dog is going to run at me when I am walking. It is equally unnerving when a large dog can fit a head through the fence slots or put feet on top of the fence and bark as I pass by, I never know if it will be able to break through or jump the fence and attack.

I believe this fence is an asset to the community and helps everyone using the area for recreation to feel safer. Please consider my comments and take the time to look at the fence in person and see that it is not an obstruction to any views. Thank you for your time and consideration.

Laura McLaurin
113 E Michigan
Marquette MI 49855
906-361-3542
5/28/2021

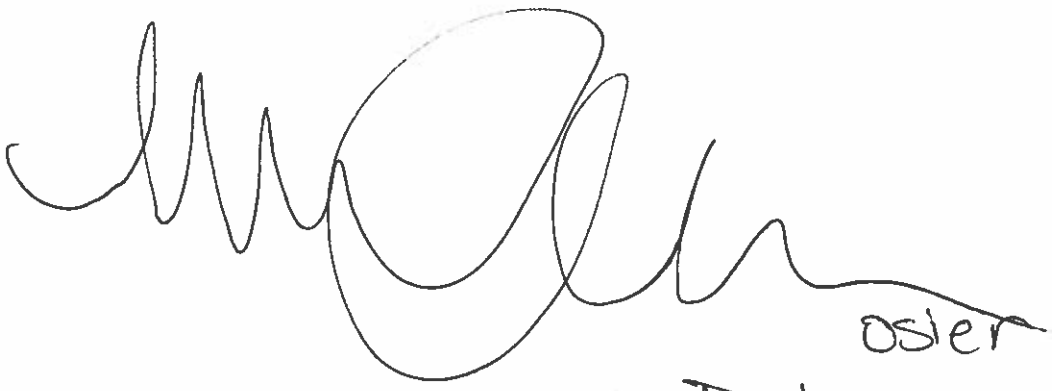
Picnic Rocks PUD Development Lot #9 June 1, 2021

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Osier

1000 Elder Drive

MQT, MI 49855

Picnic Rocks PUD Development Lot #9 June 1, 2021

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CROsier

Cris Osier 315 E College Ave MQT

Picnic Rocks PUD Development Lot #9 June 1, 2021

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Maggi Chapin

1413 Birch Ave.

MQT, MI 49855

Picnic Rocks PUD Development Lot #9 June 1, 2021

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Tori Carey
Tori Carey
325 W. Park St.
Apt. 1 MQT, MI 49855

Picnic Rocks PUD Development Lot #9 June 1, 2021

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Adam Pooler

923 N third st
Marquette MI 49855

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Deb DeMatteo
244 Rock Street
Marquette, MI 49855

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Alexander Scott

2817 Cedarville Drive Apt 2
Marquette, MI 49855

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1603 West Fair,
Marquette 49855

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325 E ARCH, MQT, 49855

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Miranda Stradinger
409 Norwood St
Mqt, 49855



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Deana Groop
710 N. 3rd St.
Marquette MI
49855

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314 W. Hewitt Avenue
Marquette, MI
49855

Bowerman fence

Rachel Alworden <[redacted]>

Tue 6/1/2021 10:41 AM

To: Andrea Landers <alanders@marquettemi.gov>

I am writing to express my support for the PUD change at 1301 Picnic Rocks Drive to keep the existing fence on the property. I am in the area almost daily and have been using the sidewalk and bike path in front of this house for over a year. In that time I have not seen nor been made aware of any safety concerns regarding this fence. It looks professional and compliments the house and neighborhood. Please take into account my comments and allow the PUD change.

Thank you,
Rachel Alworden

Re: sidewalk near Picnic Rocks Park

Penny Barney <[redacted]>

Tue 6/1/2021 3:41 PM

To: Andrea Landers <alanders@marquettemi.gov>

Hello,

I am writing to express concern regarding the area near the Bowerman residence across the street from Picnic Rocks. My husband and I frequent that area while out walking and running and use the sidewalk and prefer the fencing to stay the same. It is not a problem and looks nice. Please consider other better uses of the city's time and resources by focusing on the areas that need to be cleaned up. It could only be a blessing for our city's areas of blight to have fencing as nice as the Bowerman's. Thank you for your consideration.

Penny Barney
[redacted]
339 Jackson St.

Julie Bowerman Request to Amend PUD

Brule Sr., Dave <[redacted]>

Mon 5/31/2021 12:44 PM

To: Andrea Landers <alanders@marquettemi.gov>

Andrea, As neighbors , Thu and I support Julie Bowerman's request to amend the Picnic Rocks PUD to allow her to retain the six foot fence she built in her back yard.

Thank you,

David & Thu Brule

Bowerman Fence Approval

Dominic Hagerty <[redacted]>

Tue 6/1/2021 4:43 PM

To: Andrea Landers <alanders@marquettemi.gov>

Andrea,
I would like to offer my support to Julie Bowerman's nicely constructed fence for the following reasons in my humble opinion:

1. The fence is not impeding on line of sight for motorists making the corner onto Lakeshore Blvd. Making that turn is not a safety issue in regards to the fence location.
2. The fence is well constructed of nice looking higher quality fence materials.
3. The fence fits well with the surrounding areas and steps down nicely to fit in with grade changes.
4. The fence would stop her dog from barking at passerby's and neighboring Nestledown Inn visitors.

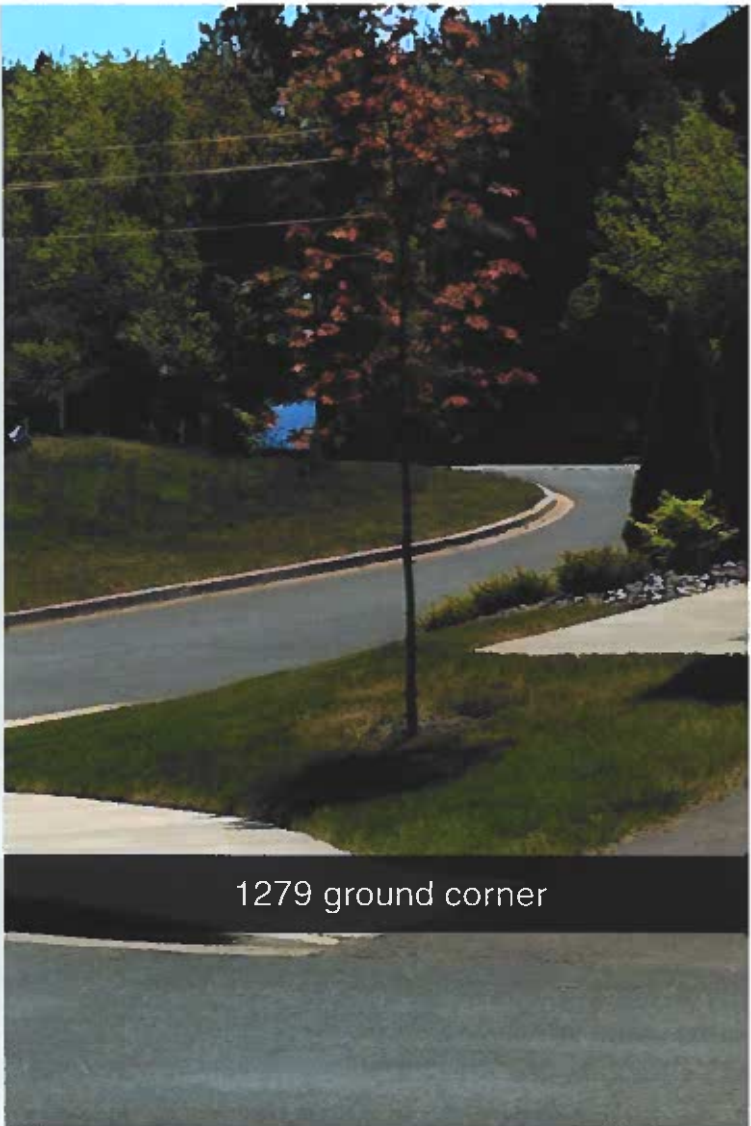
Please take the time to consider approving the fence and possibly take a look at the site to find reason for approval if needed.

Thanks,
Dom Hagerty

Get Outlook for iOS

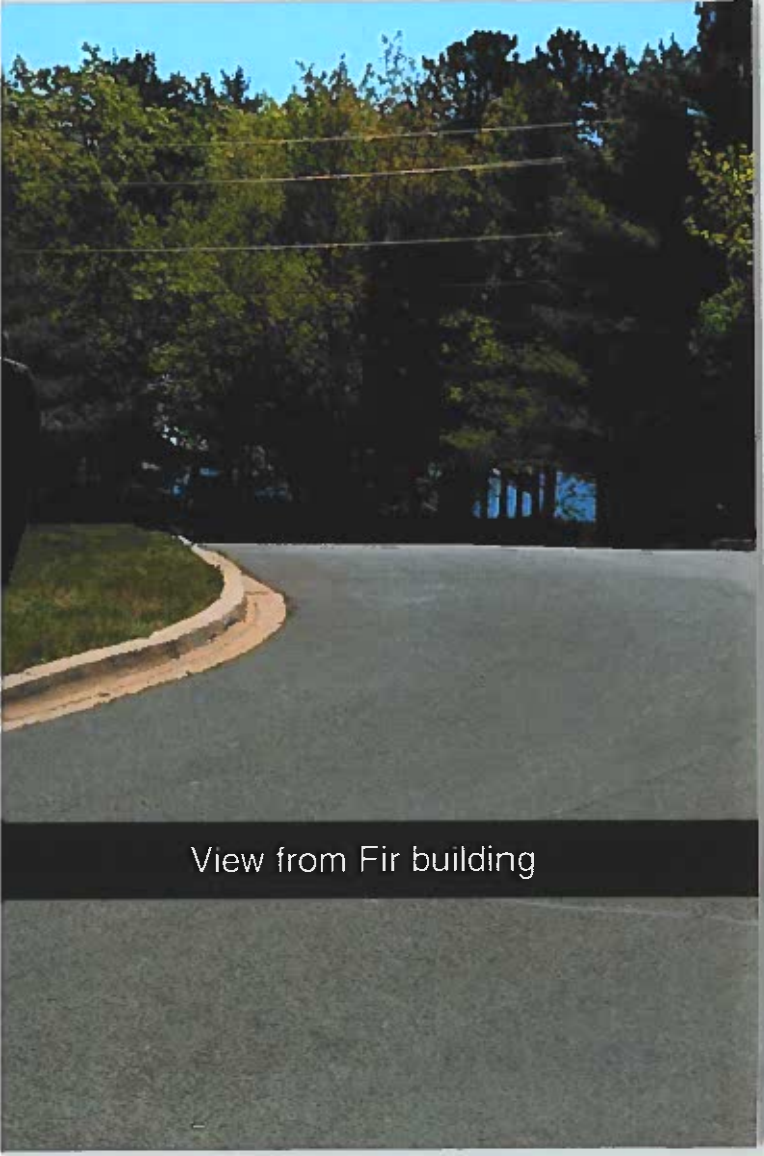


Ground view second ground condo 1279


1279 ground corner

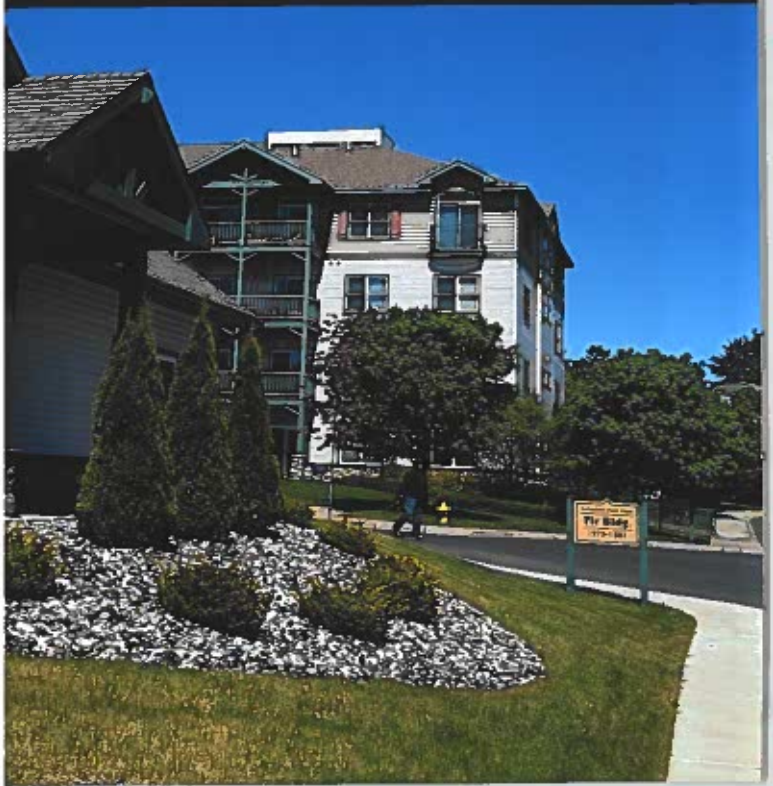


View from 1201



View from Fir building

Penthouse at 1279 complaining fence blocks his view







****

RECEIVED
MAY 2 7 2021

Andrea landers

City of MQT

Zoning Dept

05/27/21 @ 5: 02pm

I wish to give my full support to Julie Bowerman as developers agent, board member and I designed the Picnic Rocks Pointe Condo's. The fence is set back from the line of sight for the safe turning at Private drive. The SE Corner of the fence steps down for a nice style, the big Pine tree is a big buffer. The condo's cluster just to the SW of Julie's home orientation face West not East. I believe the city ruling for 4 ½ ft and not a 6 ft fence, issues due to a corner lot that abuts 2 streets, Julie's lot setback is a good distance from the street corner, both private drives have good line of sight. The fence in my opinion fits with this neighborhood mix and is made of higher quality materials, which looks good in my opinion. I hope the PUD board will take a few minutes to visit the location and get a feel for this specific sight orientation.

Thanks for your time with this matter,

Dan Keller / PRP Board Member

105 S Lakeshore Blvd, Mqt Mi.

****

PUD at 1301 Picnic Rocks Drive

Lori Malnor [redacted] >

Fri 5/28/2021 9:35 AM

To: Andrea Landers <alanders@marquettemi.gov>

I am writing to express my support for the PUD change at 1301 Picnic Rocks Drive to keep the existing fence on the property. I am in the area almost daily and have been using the sidewalk and bike path in front of this house for over a year. In that time I have not seen nor been made aware of any safety concerns regarding this fence. It looks professional and compliments the house and neighborhood.

Please take into account my comments and allow the PUD change.

Thank you,

Lori Malnor

[redacted]

1301 Picnic Rocks Drive

Lee Marana <[redacted]>

Mon 5/31/2021 3:56 PM

To: Andrea Landers <alanders@marquettemi.gov>

I am writing as a neighbor affected by the PUD change at 1301 Picnic Rocks Drive. I fully support keeping the existing fence on this property. It does not pose a safety issue for traffic or pedestrians and unlike the condos behind it, does not block anyone's view of the lake. I know the homeowner took responsibility to ask and was approved by her HOA board to get a variance for a six foot fence on this property before building as I used to live next door to her and the dog would occasionally jump the fence into my yard while she was working, especially in the winter. She took care of this issue by putting up a six foot fence to keep the dog safely contained. Please consider approving this PUD change.

Thank you,

Lee Marana
413 E College Ave
Marquette, MI 49855

Andrea Landers,

I am writing this letter in support of the PUD change to keep the existing fence at 1301 Picnic Rocks Drive. As a business owner in the area I support this fence remaining as is. The fence is done tastefully, reflects the design of the house and is visually pleasing.

Thank you,

Derek Parker
Owner of Parker and Sons Properties
955 North Lakeshore Blvd
Marquette MI, 49855

RECEIVED
JUN 01 2021
Marquette City
Community Development Office

Good fences make good neighbors - 1301 Picnic Rocks Drive

Heather Pickett <[redacted]>

Tue 6/1/2021 4:11 PM

To: Andrea Landers <alanders@marquettemi.gov>

Dear Ms. Landers:

I am writing to express my support for the PUD change at 1301 Picnic Rocks Drive to keep the existing fence on the property. I frequently use the sidewalk and bike path in front of this house. Personally, I quite like the look of the fence. It goes with the house and aesthetic of the surrounding properties. It poses no safety concerns as far as I, or any of my friends in the neighborhood can tell. Please take into account my comments and allow the PUD change. Thank you in advance for your consideration.

Sincerely,
Heather Pickett

Picnic Rocks Point PUD Amendment

Nestledown Bed and Breakfast <[redacted]>

Thu 5/27/2021 9:50 PM

To: Andrea Landers <alanders@marquettemi.gov>

Hello Andrea. Thank you for seeing this letter to the City Planning Commission documents regarding agenda item:

01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300150)

Dear City Planning Commission

This is Ken and Sue Schauland, owners and Innkeepers of Nestledown Bed and Breakfast. We are nearby neighbors to Julie Bowerman, and her fence is directly North of our Inn. We have a full view of it across our yard. We see Julie Bowerman as a good neighbor in building the fence. Her motivation and need to keep good track of her dog, provide a secure yard that is private and one that would minimize aggravation from people, cars and other dogs going by is effective and appreciated here at Nestledown.

Ken and I do see that the fence doesn't meet the city fence ordinance. It may cause others to want fences of their own if Julie is not penalized and asked to take down the fence. Sure, these are thoughts out there in the neighborhood, but is this the right thing to do? Is this the most neighborly way to proceed? The fence is built, materials and labor have been used and spent. It would be shameful and costly to destroy what is already in place.It is our understanding the fence was not built with malice towards the permitting process or the Picnic Rocks Point Association. Mistakes were made as they often are in a building project.

We are asking for empathy and understanding on Julie's behalf and that the amendment to the Picnic Rocks Planned Unit development be allowed.

Thank you for serving!

Sincerely,

Ken and Sue Schauland
975 N. Lakeshore Blvd
Marquette MI 49855

Privacy Matters

Jason Schneider <[redacted]>

Tue 6/1/2021 5:44 PM

To: Andrea Landers <alanders@marquettemi.gov>

To whom it may concern,

I am writing in support for use of 6ft fencing in the new development across from the picnic rocks area, specifically at the house located at 1301 Picnic Rocks Dr.. As someone who walks and bikes through this beautiful neighborhood, I would find it distracting to see what happens in backyard of these homes, especially since this particular home has a hill that goes down to the sidewalk level. A 4ft fence will not provide the privacy that homeowners need in that part of the property. Please consider the use of 6ft fencing in this neighborhood.

Sincerely,
Jason Schneider

Nancy E. Seminoff
1314 Picnic Rocks Drive
Marquette, MI 49855

RECEIVED
JUN 01 2021
Marquette City
Community Development Office

May 29, 2021

To Members of the Marquette Planning Commission:

RE: Proposed Amendment to Lot #9, Picnic Rocks Pointe PUD

I am writing in response to J. Bowerman's letter of April 26, 2021 to the Planning Commission. As the second *resident (in 2014)* on Picnic Rocks Drive, my expectation is to reside in a neighborhood where residents respect each other and subscribed to association bylaws and city ordinances.

J. Bowerman's letter of April 26, 2021 contains several inaccuracies and an unfounded allegation against me. As Commission members, you have the right to accurate, documented information (available upon request) in your deliberations, and I should not be vilified for standing on principle. 1-The current fence was not approved by the Homeowners Association *with any formal action*. 2-The allegation that I "have been causing problems for this development on every issue" is false and obviously publicly defamatory. Evidently subscribing to city and condominium documented expectations is considered problematic to those who want to exercise their free will. 3-Citing the association board "was unaware that they could not legally approve this fence" is nonsense. The association's bylaws are clear regarding the need to comply with city ordinances. (If the association board had infinite power, we could approve a water tower in each yard for example.) 4-Noting the builder "was not aware he needed a separate fence permit' attempts to absolve J. Bowerman of her personal responsibility in the building process.

The expectation here is that one can build something, expect city officials not to take any immediate action, and then have neighbors claim the built item is acceptable. Further, J. Bowerman's excuse that she did not have funds to secure a permit as an acceptable reason for inaction is spurious. The permit should have been secured in 2019 before building.

Attempts have been made to discuss this issue with J. Bowerman to explore alternative solutions; she declined. I have two rescue cats, and I understand the need to be concerned about their care. My neighbor has dogs but did not expect the neighborhood to accommodate these dogs.

We make personal choices in our lives – in this instance adopting a pet. That kind action should not require city officials, city boards, or neighbors to change bylaws and ordinances to accommodate the individual's choice.

Hopefully, decisions by the commission are not made based on emotional appeal, personal attacks, or threats to one's welfare (a documented police report exists regarding a previous decision related to Picnic Rocks Pointe where Marquette residents stood on principle and were threatened.). Reasonable people can work together to find reasonable solutions, without setting precedents for future requests seeking forgiveness rather than permission after the fact.

Again, the Planning Commission's response to this request will set a precedent for additional requested changes to this PUD that will likely be filed in the near future.

Respectfully,

Nancy E. Seminoff

Freedom of having a fence to protect the safety and security of pets and property.

Sara Stabile <[redacted]>

Thu 5/27/2021 8:24 PM

To: Andrea Landers <alanders@marquettemi.gov>

I am writing to express my support for the PUD change at 1301 Picnic Rocks Drive to keep the existing fence on the property. I am in the area almost daily and have been using the sidewalk and bike path in front of this house for over a year. In that time I have not seen nor been made aware of any safety concerns regarding this fence. It looks professional and compliments the house and neighborhood. Please take into account my comments and allow the PUD change. Thank you,

Sara Stabile

Sent from my iPhone

Julie's fence

Livio Stabile <[redacted]>

Tue 6/1/2021 3:41 PM

To: Andrea Landers <alanders@marquettemi.gov>

I am writing to express my support for the PUD change at 1301 Picnic Rocks Drive to keep the existing fence on the property. I am in the area almost daily and have been using the sidewalk and bike path in front of this house for over a year. In that time I have not seen nor been made aware of any safety concerns regarding this fence. It looks professional and compliments the house and neighborhood. Please take into account my comments and allow the PUD change. Thank you,

Amendment to Picnic Rocks Planned Unit Developed located at 1001 Lakeshore Blvd

Jeannie Wagner [redacted] >

Fri 5/28/2021 9:38 PM

To: Andrea Landers <alanders@marquettemi.gov>

As affected property owner 1279 Lakeshore Park Place, Apt PA, we are not in support of the fence at Lot #9 of the Picnic Rocks development.

1. The fence does not meet the City of Marquette requirements

2. The fence has a negative impact on the asethetics of the neighborhood and obscures the view of the lake for several residents at Lakeshore Park Place

3. The fence was constructed prior to obtaining proper permits

4. Approval of this amendment would set a precident for other homeowners in the Picnic Rocks development to construct a fence in a similar manner which would negatively impact the asethetics of the area.

Respectfully submitted,

I-Chung and Grace Chien
1279 Lakeshore Park Place, Apt PA

OFFICIAL PROCEEDINGS OF THE
MARQUETTE CITY PLANNING COMMISSION
June 1, 2021

A regular meeting of the Marquette City Planning Commission was duly called and held at 6:00 p.m. on Tuesday, June 1, 2021, by remote means (due to the COVID-19 pandemic).

ROLL CALL
Present: A. Andres, W. Premeau, M. Dunn, S. Mittlefehldt, Vice-Chair M. Larson, Chair J. Cardillo
Absent: E. Brooks (excused)

AGENDA
It was moved by M. Larson, seconded by A. Andres, and carried 6-0 to approve the agenda.

MINUTES
The minutes of May 4th was approved by consensus.

CONFLICT OF INTEREST
J. Cardillo stated that she has a conflict regarding the SUP case for 717 N. Third St. due to her business being the design consultant for the project, and she will leave the meeting during the case, but her partner will represent the applicant this evening. No other certain or potential conflicts were stated.

PUBLIC HEARINGS
A. 01-PUD-05-09-A8 – Amendment to the Picnic Rocks Planned Unit Development located at 1001 Lakeshore Blvd. and 1301-1317 Picnic Rocks Drive (PIN: 0370070, and 1300010 to 1300150)

Zoning Official A. Landers stated that Julie Bowerman, Lakeshore Residences LLC, and Picnic Rocks Pointe Association are seeking approval of an amendment to their previously approved Planned Unit Development (PUD) consisting of 15 residential units in the form of single-family dwellings. She stated they are requesting to revise paragraph 7.6 - Codes and Ordinances - of the PUD Master Deed. She also stated it states that "In addition to the construction requirements in this section, all buildings and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected." She stated they would like it to read that "In addition to the construction requirements in this section, all buildings and other structures must comply with applicable building, mechanical, electrical, and plumbing codes of the applicable jurisdictions in effect when the building or structure is erected with an exception to permit the existing six-foot-high closed construction vinyl fence on Lot #9 to remain in place." She also stated the Planning Commission should review the request and send a recommendation to the City Commission. She stated that the Planning Commission has received the agenda packets, which included the application for a Major Amendment to the Picnic Rocks Pointe Planned Unit Development, the PUD Master Deed amendments, the area map, the block map, and photos of the site. She also stated that there were several items of correspondence in the packet, which were briefly shown on the screen. She stated that staff received many items of correspondence and those received prior to the agenda being posted are in the agenda packet and that most were received after the agenda was published and will need to be read. She read a form letter that was sent separately by 33 different parties in support of the application, along with the name and address (if supplied) from the 33 different parties. She and City Planner-Zoning Administrator D. Stensaas read 14 other pieces of correspondence, with one piece of correspondence including photos that were from the applicant and shown on the screen (11 items of correspondence were in favor of the request and 2 items were in opposition; please refer to the video of the meeting and/or the printed file in the Planning/Zoning office for details of all of the correspondence read into the record).

The applicant, Ms. Julie Bowerman of 1301 Picnic Rocks Dr., stated that she just wanted to say that contrary to what some of the people have said, before she bought this property she asked about the fence, and she was told by Dan Keller that they could get a variance for that. She stated that when she submitted her plans, the fence was on there. She also stated that they even handwrote it on there. She stated that it was approved at the meeting by everybody. She stated there were four people on the board at that time. She also stated that two of them do not remember that they approved this. She stated that she is not sure

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why, but they do not. She also stated that everybody else at the meeting remembers this, including the other board members. She stated that her builder did not understand that he had to get a separate fence permit in addition to his building permit, so when he built the house, he did not know that. She stated that it was his first house. She stated that she understands that was a mistake, but then the fence has been up since then. She stated that it was not done in malice at all, and this is something that she has been dealing with for, like, a year here, and she understands that it is against the regulations, but they did not know when they wrote the PUD that they would have to change that, which is why they approved it in the first place. She stated that they thought that they had the authority to approve a variance for this kind of fence. She also stated that she knows that some of the neighbors are saying that it obstructs their view, but the houses obstruct their view. She stated that she could have built two stories, but she did not. She stated that she only built one. She also stated that she built the smallest house that she could, and she just would really appreciate it if they could come to some kind of agreement. She stated that they are not asking that everybody has a fence. She stated that the board understands that it was a mistake, and they are just trying to get the variance for this one fence. She also stated that she would like to say to all the people that live in the condos behind her that her last house was 416 E. College. She stated that she lived at the very end of College Street, and she bought the house in 2002, so for 10 years, she had an unobstructed view of the lake, and then they built those condos, and the whole neighborhood lost their view of the lake. She stated that is how it goes. She also stated that since she lost it, she moved closer, so she just does not understand how all of them are saying that it is obstructing their view when she could have had a house double the size.

J. Cardillo opened the public hearing and asked if anyone wanted to speak.

Brian Bloch, of 908 N. Third St., stated that Ms. Bowerman is a friend of his, and he has spent a lot of time at her house and when she was considering buying it and building it. He stated that he has been in real estate for over 30 years and that he has been an attorney for 20 years, and he has walked around that fence, he has driven around that fence, he has walked all over, looking at it from different angles, and in his opinion the community interests underlying the reason for the fence ordinance do not apply to this circumstance. He stated that it is set far enough away from the road that the concern about vehicles and pedestrian traffic are not a concern. He also stated that Ms. Bowerman could have built a two-story home with the footprint of her home into the area that she decided to make a backyard. He stated that she built the yard because she wanted a dog, and she built the fence because it is a busy corner, and she wants some privacy. He stated that the majority of the homeowners in her development support her. He also stated that the great majority of the surrounding neighbors who would have been given notice support her or are ambivalent. He stated that the letters received from other parties are disingenuous. He also stated that as to the request to amend the PUD to allow her fence, if you look at pages 32 and 33, the photographs, you will see that the issue of obstructed views from which he thinks there is only one unit in the corner of the FIR building 200 feet away, there is a tree. He stated if you did not have the fence, the view is obstructed by the tree in her front yard, or technically in the common area just on the other side of her property line. He stated that is all he has to say on the issue.

J. Cardillo closed the public hearing.

> *It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 6-0 to suspend the rules for discussion.*

M. Dunn stated that he has got a couple of questions for staff about variances, and he will start with the big-picture one, and that is why this would not be a zoning variance request for the BZA. A. Landers stated that you cannot get variances for a Planned Unit Development [PUD]. She stated that the process that it is going through is the only way that you can get a variance. She also stated that a planned unit development is what you apply for, it is a contract with the City, and they have to meet the Master Deed. She stated that this is the process for planned unit developments. She stated that it is not a regular zoning district that would allow for variances. D. Stensaas stated that it is something he is surprised by, that Dan Keller, the developer's representative, was not aware of, but that is what is being said. M. Dunn stated that to kind of go on from that, when the original PUD was agreed upon, they did not have any design guidelines for fences. He asked if that is correct. D. Stensaas stated that the PUD agreement itself has a clause that requires that all development, of anything that is not directly approved out of the pattern book, would have

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to meet City ordinances and be permitted by the City. M. Dunn stated that is kind of a bummer because usually when they do a PUD, the intent of that is to have everything set up ahead of time so that they do not need to get into sticky situations like this and handle these things, where a PUD usually has all these things mapped out, and any appeals to those things should go to the HOA Board rather than coming to the City. He stated that he guesses that kind of leads him into his other thought here, and that is that he is trying to figure out why they would be approving something for, he guesses, an individual member of that HOA by changing the entire Master Deed for the entire HOA and having one specific lot pulled out and indicating that, so he is having a hard time thinking of that, and he is wondering if the City is going to get involved with - if they are not going to stick to what the City's standards are for fences in this particular case, it seems to him that there should be some design guidelines put forward by the HOA. He asked if they know what he is saying. He stated that if they are going to have to be in the position where they are deciding on which fences are okay and which ones are not, their options should be either they go by the City's guidelines or they should not handle it at all, and the HOA should be handling it with their own design guidance because, to him, this does not seem like the kind of problem that they should be dealing with, and he knows that they need to, and he gets that, but he is trying to think of a way that they can take care of this without having it go forward and now they are looking at, he guesses, 13 other homes that may or may not want to come forward and look for changes to the PUD so that they can do the fence that they want to do.

J. Cardillo stated to Ms. Bowerman that they are going to let everybody on the Commission have their discussion, and if they need to, they will come back to her, but they are going to try to sort of let the process roll through.

D. Stensaas stated that to address Commissioner Dunn's question in his comment, the fact that he is having this hearing is because it is a remedy of sorts that is available to the applicant. He stated that it is far from preferable or ideal, but once this fence is built without a permit, the options are extremely limited, and so this was one of the options that exist, to go back and go through this extremely complex process of amending the PUD, and he did have some discussion with Ms. Bowerman and talking with the HOA board about whether or not they wanted to consider a larger PUD amendment to address further amendments to fences or to make this applicable to all the lots on these through-lots aligned with Ms. Bowerman's lot, and that, he was told, was not the option that was chosen. He stated that they decided that just - and Ms. Bowerman certainly has the right to decide with her application whether or not she wanted to even go there - but that option was taken off the table and was just looked at as this one lot.

M. Dunn stated that leads him to his next question, which is what happens if the City approves this and then a neighbor that does not like it comes back and holds the City responsible for their damaged view or someone from the HOA comes back and says, "Well, why are you overstepping our authority?" He stated that from what he read in the application, there is obviously some controversy as to whether the HOA agrees on approving the fence anyway, and so he is not convinced that the entire HOA wants to amend the PUD, so for them to change the PUD based on the request of one individual in the HOA, it just does not sit well with him. He also stated that if they had a formal motion that - and, again, he saw in the packet there was a little statement there from the HOA Board of Directors, but it was not signed, he does not know who did what, and there seemed to be some controversy there, and he does not want the City getting involved in some sort of dispute that is going on in the HOA. He stated that he feels like the HOA needs to sort out what they want to do, and if the HOA together as a body wants to change the PUD, then they can talk about changing the PUD, but based on one individual coming forward wanting to change it, and then there is some controversy as to whether the Board of Directors and the whole HOA wants to do that, it just seems like a very precarious situation for the City to get involved.

M. Larson stated that he agrees with M. Dunn that he thinks that is a little bit of a situation in applying consistency with the fencing ordinances and ordinances in general where it gets built first and essentially asked for forgiveness later. He also stated that he had the same question of why it is just for one particular lot, one lot here that you are going to change the entire deed for this particular lot, and asked if that opens them up for consistency's sake that a neighbor two houses down builds a fence without a permit and then comes and requests a similar change to it as well. He stated that he thinks there are some issues along those lines that he does not feel entirely comfortable with, and, also, just for a point here is that they are making a recommendation to the City Commission here today, and so whichever way they vote, the City Commission, it will be heard there one more time.

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S. Mittlefehldt stated that she shares a lot of the thoughts that Commissioner Dunn and Commissioner Larson just mentioned about the issue of precedent and consistency, and she guesses she has got another question for A. Landers or D. Stensaas about that. She stated that it is an illegal fence by the City Code Standards, and maybe the builder did not know or whatever, but nobody wants to waste the money and resources of making the applicant tear it down per se, so she is just wondering if there is a way to not make this a precedent. She stated that it just seems like she does not know what that compromise would look like in this situation. She asked D. Stensaas if he is saying this is it - it is kind of all or nothing at this point. D. Stensaas stated no, and that was never the case. He stated that when this was first reported to them, and they reached out to Ms. Bowerman and talked to her about this situation and her options, the goal of trying to enforce the Land Development Code in a situation like this is to achieve compliance with the code, so that option was put on the table that the fence can be reconstructed to conform to the code. He stated that was the first conversation they had, and they will recall that during the later part of 2020 when the Planning Commission was entertaining the whole variety of changes to the land development code that ended up as dozens of amendments, one of the things he presented to them was the option to create a 5-foot fence for front yards, and they first said no, they do not want to allow 5-foot fences. He also stated that maybe it had been a long time since the City considered allowing 5-foot fences in front yards, but he thought that was another potential remedy to this situation that he brought to the Planning Commission as an option with amending the Land Development Code since they are already looking at other amendments to it, and it was considered at more than one meeting. He stated that at the first meeting, the result of that was basically, “Well, if we could maybe envision an option where the fence was open on the top but closed on the bottom,” maybe that was another way to address the 50% open thing with a 5-foot fence, and that was brought to them with illustrations, and that was rejected as a potential amendment to the Land Development Code, so they first went through the option of reconstructing the fence. He stated that was rejected by the applicant, and they brought that potential amendment to the Planning Commission. He stated that then as a staff, they go back to, “Okay, this Planning Commission is not interested in amending the code, so you are still in violation of the code. You either have to bring the fence into compliance, or the other option on the table was to amend the PUD.” He stated that this is not the first case in this particular PUD where an amendment has been made for one lot - and A. Landers could tell them about that - and it is a very unusual thing. He also stated that he does not know that there is another PUD in the City where they have made an amendment for a fence on one lot, but they made an amendment to another lot in the same PUD, and he will let A. Landers talk about that. A. Landers asked if he is referring to the setback one? He stated yes. A. Landers stated that they just asked for a setback to go for example from 10 feet to 9 feet or something like that, and that was reviewed and approved. J. Cardillo asked if that was done at a staff level or if that came before the Planning Commission. A. Landers stated that was a Zoning Administrator approval. D. Stensaas stated that there are two levels of amendment to a PUD, the minor - which would not have affects beyond the property boundary is the basic criteria - and the major.

A. Andres stated that he just thought of a couple of questions. He stated that the first is why the applicant did not want to amend the fence to meet the code in the first place. He stated that he would like to ask that question. He stated that the second statement that he has is he is not really in favor of amending a PUD for one individual. He stated that if the Association wants to make it allowable for everybody, then okay, but that is on the Association, and he does not think they should get into any more politics than they have to. J. Cardillo asked A. Andres if he can just restate his question for the applicant, and we’ll let her answer that question. A. Andres asked why she did not just amend the fence to meet the existing fence regulations.

Ms. Bowerman stated that the reason that she did not want a 4-foot fence is that her dog can get over it, and she knows that, which is why before she bought the property, she asked if she could have a 6-foot high fence and if they would be able to give her a variance for that. She stated that the other question that he had was why isn't it for the whole neighborhood, and they consulted with a lawyer who wrote the PUD and said that it probably would not get approved by the City if they did it for everyone, but if they could ask for just this one, that they might approve it. She stated that the other question if they do not mind her talking about this too, is that when she originally had her plans with the fence on it, it was approved by every board member. She stated that there were only four at the time. J. Cardillo asked if she is talking about the HOA specifically. Ms. Bowerman stated yes, the HOA. She stated that they approved it, they approved the variance, and it said 6-foot vinyl fence right on it. She stated that when she wrote that, everybody approved it. She also stated that when it came back through from the City that it was against the rules, that is when

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they had to regroup again and talk about it, so they had another meeting. She stated that now there are five people on the board at this time. She stated that there are two people in this neighborhood who are against it. She also stated that everybody else in her neighborhood that owns a house has written a letter for support, and it was an e-mail chain, if they would allow me to go for this amendment for her fence because it had already been approved by them. She stated that everybody in the neighborhood supported her going ahead with this except for the two neighbors. She asked if can just say one more thing about it. J. Cardillo stated briefly please. Ms. Bowerman stated that they did have a meeting about it, and the Board met, and they approved it. She stated that she knows that they are saying that Dan Keller was against it by proxy, but he wrote a letter of support.
J. Cardillo stated that they do not want to get too deep in the politics of it. She stated that they want to keep this at sort of a higher level of sort of what is their obligation as a Planning Commission, so she will just briefly state that.

J. Cardillo asked W. Premeau if he had a comment.

W. Premeau stated that he does not see anything wrong with the fence himself. He stated that he can get into all the complications they want. He stated that there was more support for it than there was against it, and mistakes are made, and there should be some remedies. He stated that the only thing they did not do was tear it down, spank the people that did it, but asked what good it does. He stated that he really does not see anything wrong with it, and he thinks they should just go ahead and approve this. He stated that the Board told her she could do it. He asked what more can you can do. He stated that as far as knowing if they have to have a permit and all that, he knows a lot of people that just do not know that. He stated that they know, they are supposed to know, but he tried to do a couple of little things, and it gets very difficult and very complicated. He also stated that he thinks they should just leave it alone, let the fence there. He stated that the lady explains why her dog will jump over a 4-foot high fence. He stated that if it is half-open by 50%, you have still got a dog that can bark and scare the living hell out of you, so he does not see anything wrong with it. He stated that he would go along with all the people that support it. He stated that there are very few against it.

J. Cardillo asked if anybody else has anything they want to add or ask.

M. Dunn stated a question for staff and asked if there is a way if they can postpone enforcement of this. He stated that here is his contention, and he does not have a problem with the fence. He stated that the only reason he is having a problem with this is that it is one individual that is named as the applicant and that one individual is coming forward and asking us to change the PUD Agreement for an entire neighborhood, and he does not feel good about that, and he does not think that is a smart move on the City's part, so what he is wondering is if they can kind of postpone any kind of enforcement of the fence and let the HOA figure out what they want to do and come back as an HOA. He stated that he guesses he does not know what the process would be. He stated that maybe it would be the same process, but the HOA is the applicant, something to that effect so that the City is not on the hook for changing a PUD that is going to affect everybody in the neighborhood. He stated that, again, he does not have a problem with the fence. He stated that he just does not like the way this is happening, for lack of a better term.

D. Stensaas stated that M. Dunn has an interesting point, but the longer this is drawn out, they could have a completely different board vote, and maybe the vote that was done is or is not - the comment from one of the board members that it was not a legitimate vote, that is not really for them to determine at this point, but one thing that he thinks is sort of being missed here is the reason that this is at a hearing right now at the Planning Commission level, why this is not a minor Planned Unit Development request is that this has effects beyond the property boundary, and if it did not, then the Homeowners Association making a decision about what happens within their PUD, that seems perfectly logical that they should be able to make rules that affect them. He stated that they could have 10-foot fences around everybody's house, but that is not the rule because some things affect beyond the property boundary, and that is why this is an issue for the City. He also stated that obviously, there are points on each side. He stated that not everybody agrees and that supports the point that this was a legitimate item to have at a public hearing, and the fact that the Board whatever they decided came out the way it did really at this point hardly matters because this issue really needs to get settled, and the applicant brought this forward in this manner to settle it.

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M. Larson stated that he guesses what he is hearing is even though there is a lot of support for it, you have folks that have moved into that neighborhood or had a house built in that particular neighborhood that had a set of rules that were in mind potentially for that, and potentially doing this, he asked if that is changing the rules beyond what that is - not the neighborhood in which they initially signed up to live in as a planned unit development, and so he guesses there could be some issues that are associated with that as well, even if there is nothing wrong with the fence per se, but kind of coming in with one set of rules and then changing it because the rules were not known to one individual potentially causes a problem.

S. Mittlefehldt asked another question for D. Stensaas in response to his comments. She asked if he is saying when he is saying that this example of a 6-foot high fence which does not meet the code and has implications for people in the PUD beyond just this one property, but if this could hypothetically in a hypothetical future if somebody could on West Crescent or the west side of town or anywhere else in the city build a 6-foot fence and then come to us and say, “Well, there is a precedent. We have 6-foot high fences now,” and try to make some amendment to our Land Development Code or something like that. She asked if that is what he was saying. A. Landers stated no, they review everything on a case-by-case basis. She stated that it is the same for variances. She also stated that a major amendment is like a PUD variance. S. Mittlefehldt stated that it would only be a precedent, which they have already started seeing a lot of special requests for this particular PUD, but that makes her feel a little better that it would not be like opening a giant can of worms in terms of precedents across the City.

J. Cardillo stated that she guesses she just wants to chime in the fact that the whole point of the PUD is that it is sort of all set out at the beginning, and the idea with the PUD is that you get to sort of not follow the rules of the City necessarily to the T because you are sort of setting your own set of rules which you agreed to abide by, so she guesses the issue she is having is that as much as she is sympathetic to the sort of narrative of how the applicant got in this situation, the whole point of the PUD is that all of this was gone through in incredible detail at the time that the PUD was approved. She also stated that these properties, it was known that they would have two frontages, and so as much as she feels bad for the narrative that got her into this situation and sort of information that was not properly disclosed, she has a hard time, especially on an individual level, in saying they should change this one lot. She stated that as Commissioner Dunn said, it would be one thing if they wanted to come back and change the design standards for the whole PUD, not that she is saying that she would be in support of that, but that would be something that she could entertain more rationally, but for her, she is very much challenged by having language in there that says with the exception of this one lot, so that is kind of how she sees it.

J. Cardillo asked of there were any further pieces that anybody wanted to bring into this. She asked if anyone wanted to make a motion. M. Dunn stated that he could give it a go in just a second.

> *It was moved by M. Dunn, seconded by A. Andres, and carried 5-1 that after conducting a public hearing and review of the PUD application with support information, staff memo and attachments for 01-PUD-05-09-A8, the Planning Commission recommends that the PUD amendment request be denied by the Marquette City Commission for the reasons discussed in the meeting.*
> *Yes: A. Andres, M. Dunn, M. Larson, S. Mittlefehldt, J. Cardillo*
> *No: W. Premeau*

B. 04-SUP-06-21 (05-SPR-06-21)– 717 N. Third St (PIN: 0330420): Special Land Use permit for an expansion to their previously approved Outdoor Food and Beverage Service, and a Special Land Use Permit for Outdoor Entertainment and Community Events as a Principal Use

J. Cardillo exited the meeting due to her aforementioned conflict of interest and M. Larson assumed the role of acting Chair for the case.

Zoning Official A. Landers stated that Superior Culture LLC and Alex Rowland are seeking a Special Land Use permit for an expansion to their previously approved Outdoor Food and Beverage Service, and a Special Land Use Permit for Outdoor Entertainment and Community Events as a Principal Use to be located at 717 N. Third Street. She also stated that the Planning Commission has received agenda packets which included the staff report and analysis and showed that on the screen, and she also showed

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the applicant's Special Land Use Permit application with attachments including the area map with the parcel outlined in blue, the block map with parcel outlined in blue, photos of the site, site plan set, lighting sheets, excepts of the Planning Commission minutes of January 9, 2018, and May 7, 2019, and one piece of correspondence with attachments. She also stated that several items of correspondence were received after the agenda was posted. Correspondence from Igor Popovic of 216 W. Hewitt Ave. in opposition to the request was read into the record. Correspondence from Sandra and Paul Gluski of 212 W. Hewitt Ave., opposed to the request, was read into the record. Correspondence from Steven Wahlstrom of 723 N. Third St., in support of the request, was read into the record. Correspondence from Susan Bohor and Ron Sundell of 130 W. Hewitt Ave. in opposition to the proposal was read into the record.

The applicant, Mr. Alex Rowland, owner of 717 N. Third St., stated that he has been in business for going on five years now. He also stated that the last year has been the greatest struggle of that time, but they managed to persevere through COVID, doing takeout and delivery. He stated that when they were able to reopen in May, they moved their operations into the back yard as their taproom is quite small and cannot necessarily accommodate enough people to keep going, so where they stand right now, they employ five employees. He stated that they kind of got that going last year, and they are continually hosting live music, and he has a place for artists to present their music and get paid throughout all this. He also stated that the success of last summer allowed him to purchase the building in September of last year, so he is planning on being here for quite some time. He stated that with this project, he is hoping to mitigate the sound and separate their commercial space as much as possible from these residences while still maintaining their rights as a commercial business owner on Third Street. He also stated that he thinks that looking at other businesses that are coming up on Third Street like Blackrocks or the Third Street Marketplace, he thinks they are beginning to set this precedent for what a business owner should be able to do in the downtown district. He stated that where they plan to put the stage is underneath the retaining wall. He stated that it is about 4 feet tall. He also stated that behind the retaining wall is where they hope to put up this fence. He stated that they will be using acoustic sheeting within the entire fence as well as within the covered stage as well as running cables up above overhead and running some sheeting there, so they are looking to contain this as much as possible, but looking at the property that he owns, the inside space is so limited, so he thinks the only way to accommodate, especially last year, safety all the traffic that they have had is by utilizing this outdoor space.

Mr. Joe Rom, the applicant's design consultant, stated he will just maybe touch a little bit on a couple of points. He stated that he means they are not designing sort of a proper amphitheater, but they are trying to use a lot of the best practices to try to mitigate a lot of the reverberation or kind of echoing of sound waves there, and the shape of the pavilion they see in the support material is kind of wedge-shaped, and the bottom surface of that roof would have acoustic panels on it for absorbing sound as would the proscenium or basically the surface behind the performer, so really just trying to make the sound go to the audience and limit its propagation. He also stated that, obviously, this is an outdoor space, so it is not going to be sort of whisper-quiet, but they believe the acoustic treatment on the stage area coupled with the change in elevation that Mr. Rowland had mentioned coupled with the acoustic treatments on the fence, which is an absorptive treatment where the sound waves go into the material and then the energies basically disappear at that point, and the design intends to reduce the decibel levels through that. He stated that then the addition of the kind of wedge-shaped panels between the tent and the stage area to try to capture any additional sound that might be traveling upwards, so that is kind of one point he wanted to make, and another one is he saw that one of the letters kind of against this action had a lot of decibel readings, and he knows sound, obviously, degrades with the distance traveled, but just relative to overall decibel readings, some of these levels in the 40s and 50s and even low 60s, those are relatively low levels. He stated that if you look at a decimal chart, those levels are soft radio music or background audio and things like that, so it is not like the roar of a jet engine and those sorts of things. He stated that their hope is that through this process and Mr. Rowland's great management and these acoustic properties, they are taking steps to try to be a good neighbor and also maximize the potential of Mr. Rowland's business. He stated one other thing, just the additional discussion about lighting. He stated that maybe Mr. Rowland can speak to the lighting that was maybe present in the tent when that photograph was taken that was referenced in the letter, but as they can see from the cut sheets that were introduced as part of this SOU application, they are looking at a lot of downlighting and such, so there is no obscene lighting that they are trying to introduce here. He also stated that everything is to try to keep everything down.

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Mr. Rowland stated that he just wanted to say that he is not entirely sure about the angle and the dark background of that picture, but the lights that are shown within that picture, are soft LEDs that are underneath the tent, so it does give the tent a soft glow, but he does not think it is intrusive. He stated that it is not radiating up into the sky. He also stated that he will also note that they, throughout the entirety of last year, shut down everything by 10:00 p.m. every night, which is well before the 11:00 p.m. noise ordinance.

M. Larson opened the public hearing and asked if anyone wanted to speak.

Paul Gluski, of 212 W. Hewitt Ave., stated his comments will probably exceed three minutes, so his wife will continue when he is done. He stated that they are speaking in opposition to the special land use permit application submitted by Alex Rowland and Superior Culture, and he is asking the Planning Commission not to approve it. He stated that furthermore, they would also ask the Planning Commission or whoever has the authority to prevent Superior Culture from continuing to have a tent, lighting, and live music in their outdoor space because, as they understand it, they have done all this without permission. He stated that when they purchased their retirement home in 2016, they researched what sort of businesses were nearby at that time. He stated that in addition to quiet residential homes, their home backed up to an optometrist, a hair salon, and short-term rental property. He stated that since then, Superior Culture has moved in. He stated that at first, it was not an issue because he was just manufacturing, and it was just an outdoor service. He stated that, however, in May of 2019, they applied for and were approved for outdoor food and beverage service. He stated that, in theory, they were not completely opposed to this. He stated that they were not, especially because, at the Planning Commission hearing, the following statements were made by the owner, Mr. Rowland. He stated that Mr. Rowland described it to the Planning Commission as basically creating a natural space where people can hang out. He stated that Mr. Rowland indicated that the capacity will be no more than 15 people. He stated that in an apparent effort to downplay the outdoor stage, Mr. Rowland stated that there would be not much of an appeal to sit in the back since they are not looking to propose any lighting out there. He stated that when directly asked by Commissioner LaChapell about whether or not there would be music. He stated that Mr. Rowland specifically said once a month or maybe even less than that. He stated that Mr. Rowland did not mention a 20-by-30 tent that would be erected. He stated that since that date, they have definitely exceeded 15 in capacity, a large tent was set up within sight of many of the homes, outdoor lighting was hung and very loud, live music has been occurring outdoors up to four nights a week in the summer and fall months, including school nights, and they are fostering a niece and nephew, so they are surprised and disappointed all of those things are allowed to happen since they are all contrary to what Mr. Rowland stated at the Planning Commission in 2019. He stated that they do not support the “ask for forgiveness, not for permission” approach Mr. Rowland has taken, and they do not believe that it should be rewarded with approval. He stated that truth be told, they enjoy venues with outdoor seating and live music. He stated that many of the venues in Marquette seem to be a good fit for that. He stated that, however, Superior Culture is unique as it backs up almost entirely to residential home lots and not an ideal location for these types of outdoor events. He stated that his wife will finish with hers.

Sandra Gluski, of 212 W. Hewitt Ave., stated that they support the growth and expansion of business along Third Street, and they want to support small businesses near them, but they also believe that expansion and growth need to be balanced with the needs of the residents. She stated that they have spent between $15,000 and $20,000 making their backyard an extension of their living space. She stated that they have before and after pictures that were submitted. She stated that, however, the loud patrons and live music in the outdoor space have effectively made their outdoor living space useless. She stated that to further cause insult to injury, even if they move indoors to socialize, they have to close their windows and doors during beautiful summer nights due to disruptive sound. She stated that this is their home. She stated that this is where they plan to live the rest of their days. She stated that they made a deliberate decision to move to and invest in Marquette and are now heartbroken that they cannot enjoy their space. She stated that Mr. Rowland wrote a letter to us and our neighbors, expressing how he feels his business has positively impacted the community, especially during COVID. She stated that the letter effectively dismissed how his business has absolutely negativity during COVID. She stated that during summer when outdoor socializing was the only way they could spend time with their son and daughter and their friends, the noise from live music prevented us from being able to do that. She stated that Mr. Rowland indicates that he wants to be a good neighbor, but she and her neighbors have approached Superior several times, and their concerns and their needs were dismissed. She stated that just saying you want to be a good neighbor does not make you a good neighbor. She also stated that, finally, they would like to say that just because something meets the

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criteria does not mean that the Planning Commission must approve it. She stated that they sometimes feel that businesses are given a bigger voice because it appears that they are investing in their community but attracting and retaining owner-occupied homeowners is also a way to invest in the community. She stated that homeowners who make improvements to their front and back yards are also investing in their community. She stated that they believe there needs to be a better balance, and the needs of the businesses cannot outweigh the needs of the people who live here and are equally invested.

Bernie Huetter, of 220 W. Hewitt Ave., stated he owns 224 W. Hewitt and 220 W. Hewitt, directly in the backyard of this proposed project. He stated that he did attend the meeting on May 7th, two years ago, where he indicated that having lived at 224 W. Hewitt that there is a natural amphitheater created by this property the way it extends into the backyards of strictly residential property and has a natural effect. He stated that it is very impossible to correct this with the devices that have been proposed. He also stated that what was approved back in May of 2019 was not adhered to, was extensively expanded, and has caused disruption for the people in his residences and surrounding neighbors. He stated that police have been called a number of times based upon the disturbance. He stated that they have a limited effect on the disturbance, and once they leave, it just seems to escalate. He stated that one of the bad things, he raised four children in 224 W. Hewitt, and the noise and language that comes out of that is inconducive to that type of residence and that this property has been for over 125 years used that way and is still viable. He stated that he thinks that in Mr. Rowland's letter that was proposed showed that he can produce his products and market them way beyond Third Street and has done so with success. He stated that this venue is not necessary for him to maintain a business on Third Street. He stated that he guesses that those are the only comments he has to make there.

Linda Popovic, of 216 W. Hewitt Ave., stated that she will speak for three minutes, and then her husband, they are sharing the same computer, Igor. She stated that he will speak after she is done. She stated that she would like to voice her opposition to Mr. Rowland's proposed plans to expand his outdoor food and beverage service and his plans to construct an outdoor entertainment venue at his place of business, Superior Culture, which is located at 717 N. Third Street. She stated that she is also asking the Zoning Commission to revisit the original food and beverage permit that was approved on May 7, 2019, for Mr. Rowland's business because of the events that occurred at Superior Culture last summer and fall of 2020. She stated that last week, she submitted documents to the Zoning Commission to review. She stated that these included her letter outlining her concerns about the noise level Superior Culture generates. She also stated that she also submitted a log of dB levels of Mr. Rowland's events from her house and back yard from September the 24th through October 31st, 2020, a letter that was given to Mr. Rowland on October the 9th, 2020, from his neighbors, 13 of them, that expressed concerns about the level of noise Superior Culture was generating from live amplified musical events and a calendar of events, also, that Mr. Rowland had posted on his Facebook page from Superior Culture. She stated that she would like to point out that Mr. Rowland generally held amplified singing and instrumental events three to four nights each week throughout the summer and fall last year, all of which were conducted without proper permits. She stated that she cannot support any of the new changes Mr. Rowland is proposing, as he has proven to her that he is not able to conduct his business in a manner that would address the concerns she has over the noise level. She stated that Mr. Rowland did nothing to mitigate this issue last summer, and she has no reason to believe that he would act any differently moving forward. She stated that the sound generated from the back area of Superior Culture carries throughout the neighborhood into her backyard and her house. She stated that not only do these events sound like they are in my back yard, but she can hear them and the crowd inside her house, even with all her doors and windows closed. She stated that the noise was so loud last year that I filed multiple noise complaints with the police throughout the season. She also stated that in May 2019, the Planning Commission wanted to trust Mr. Rowland and give him a chance to prove that he was listening to his neighbors and heard their concerns about noise levels. She stated that Mr. Rowland had his chance, and now she is asking the Zoning Commission to consider the effect this business has on the surrounding neighbors. She stated that Mr. Rowland morphed the proposed art therapy and health and wellness projects to be held on his back porch into raucous, amplified musical events and concerts that culminated in a full-blown rock concert, which disrupted the entire neighborhood, and all of this took place in the middle of a pandemic when any singing event was considered to be a very high risk for spreading the virus. She stated thank you so much for your time and for taking her concerns into consideration.

Igor Popovic, of 216 W. Hewitt Ave., stated that he is a joint property owner and resident with his wife, and

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their property touches Superior Culture's lot in their northeast corner, and so most of his comments were covered by the reading of his letter at the beginning of this hearing, so he can just summarize here. He stated that on the onset, he would like to say that he is somewhat familiar with decibel measurements, having spent the last 25 years planning and conducting acoustic wave surveys for the industry, and he is also aware of the difference between decibels measured at the source and the receiver, so the measurements that they have logged throughout the events in their backyard are measured at the receiver, so 70 dB at the receiver is considerable. He stated that with the current application it appears that Superior Culture is now applying for a permit to continue doing what they were doing last summer and fall already. He stated that drawings in their proposal suggest that some noise attenuation will be attempted. He stated that, however, the measures described appear to me doubtful to be affected. He stated that the acoustic canopy shown there is really just a disjoint set of shade sails. He stated that a new temporary tent appears to be the one he used last year, and that tent has been set up this year for over a month already. He also stated that, finally, the proposed acoustic fence is unlikely to have an appreciable effect as its top will be still below the grade of virtually every property west of Superior Culture's back parking lot, which will continue to function like an orchestra pit with the entire neighborhood behind and west of it as a target. He stated that, finally, he needs to say that he is skeptical of Superior Culture's execution of what they propose, seeing that they barely have implemented the conditions attached to their last permit from two years ago. He also stated that, by the way, one of those conditions included a fence to be erected adjacent to the MDR zoning district, which Superior Culture implemented as three 8-foot segments of lattice, and that whole contraption is in the process of falling over already. He stated that in concluding, he would like to assert that he is not principally against open-air live-music concert venues. He stated that he does believe that as successful a business Superior Culture may be that it has more than outgrown its current location, in particular in view of the current proposal and to the detriment of an entire MDR-zoned neighborhood.

Julie Bowerman, of 1301 Picnic Rocks Dr., stated that she also works at the Third Base, and she works the door every weekend, every Thursday and Friday, ever since the pandemic began, and she is just going to tell them that as the person standing outside waiting to let people in and check IDs, she has never once heard a loud noise from the kombucha place. She stated that, but, again, she is only there on Thursday and Friday nights, the busiest nights for the weekend. She also stated that they also have five other people here who would like to comment.

Pasqual Stabile, owner of 236 W. Prospect St., stated that it is right there where the kombucha place is, and he supports Mr. Rowland on this one because, first of all, the music and noise coming out there is very, very low, and it is not annoying at all, and on top of that, even in the middle of downtown, it is right on Third Street, and it is a vibrant, young, growing town with students, and people want to have a little bit of life without bothering anyone, and he thinks they are being really, really, really nice about it. He also stated that they are trying to make all the adjustments to reduce the noise, and they are okay with cutting down the music early at night. He stated that they were doing it at 10:00. He stated that he thinks nobody gets to sleep before 10:00, especially in the summertime. He stated that to be honest, it is still light out, so he totally supports Mr. Rowland, and he hopes they can think about this because this guy is work hard, he is trying to make a living, he is trying to support the City, he is trying to make it appealing for the young people, and let us live life, and if you want to sleep at 9:00 at night, you should not be buying a house in the middle of the town. He stated that he is sorry, so he supports him.

Sara Stabile, owner of 236 W. Prospect St., stated that she is also talking in support of the business as well in agreement with a lot of what has been said already. She stated she is from Marquette. She stated that she has lived here all her life, and Marquette has always been a downtown area where things have been active and to think that you can have a retirement home right outside of Third Street does not seem like a good, viable plan. She stated that if you want a retirement home where you plan on spending some quiet hours, she would do it outside of the city center. She stated that she understands that some type of agreement has to be made, but as Mr. Rowland had said, he is stopping a lot of the music at 10:00, which is before the 11:00 ordinance, so she thinks he is already respecting those rules and those ordinances that are already put in place, so she thinks that he, as a young man, a young entrepreneur, trying to make his way in this world, she thinks he is doing a really good job, and we should be supporting him instead of putting him down.

Heather Pickett, of 921 W. Fair Ave., stated that she spends a lot of time in the Third Street area, and she

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just thinks that kind of the precedent has already been set by the Blackrocks music policy. She stated that they quit playing music at 10:00. She stated that seems to make everyone happy, and people who come to spend money and support this town are able to still come and spend their money without upsetting the people who live in that area.

M. Larson stated that with that, they can move into commissioner discussion and if they have additional questions then, they can direct them back to the applicant.

M. Larson closed the public hearing.

> *It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 5-0 to suspend the rules for discussion.*

S. Mittlefehldt stated that she guesses she just had a technical question about the acoustic fencing and the acoustic tiles, the triangular shapes. She stated that she thinks just trying to understand a little bit about how the space might function to mitigate the noise issue. She stated that they have not necessarily, and another proposal is the Cognition Brewery that they just recently looked at and certainly Blackrocks. She stated that she does not know if they have ever seen efforts to actually show this level of kind of acoustic engineering, so she was wondering if maybe Mr. Rom could explain some of that a little bit.

Mr. Rom stated that they do not have an empirical sound transmission coefficient or reduction target. He stated that the goal with this exercise was to reduce the amount of acoustic energy that is propagating outward, which was very astutely noted by some of the letters that were presented, so the acoustic fence is a well-known product. He stated that there is a lot of support information there where basically, with general kind of acoustic panels, what you have is you have kind of an outer sort of acoustically permeable layer, and then the sound basically goes within that layer and then kind of bounces around between the outer fabric layer and the backing layer, and it loses a lot of its energy that way, and so that is to kind of stop the energy from bouncing and not being reduced and going out into the neighborhood, so the fact that the performance area is dropped down and the fence is actually above the retaining wall, so there is four feet of retaining wall and there is the additional fence, so you have you know the effective top of the fence is actually significantly higher than just the overall fence height, so that is perimeter fence, which is actually they are working to extend around both sides to really create kind of a horseshoe shape sort of surrounding the stage area, so that is kind of step one is this acoustic fence product, which is a national product and international product. He also stated that then within this kind of stage pavilion that is proposed, having the roof basically over the performer's head and also from behind and having that treated with acoustic properties, and that with a little bit more of a traditional kind of acoustic panel, which is basically like foam with a fabric on it, which is very, very similar to the type of acoustic paneling and tuning that you would see in any sort of venue that you would go to. He stated that, obviously, in an orchestral scenario or an auditorium, it is a higher degree of refinement, but here they are deploying all of those same principles, so within this pavilion, you have the sound. He stated that they are trying to really limit a lot of wayward and errant acoustic energy, so those are kind of the two major items, and then to bridge the schism, if you will, between the performance stage and the tent proper, these wedge panels or sail panels are there, not to 100% block any acoustic energy from escaping, but really to try to diffuse that energy and to lower the sound any which way they can, so between those kind of three items, the nature of the tent and the fabric and all of the trees and vegetation, they believe that is making an earnest and honest effort to mitigating the sound levels.

M. Dunn stated that he was just looking back at minutes to see what they have done with similar situations where they have several different property owner rights to consider. He stated that, obviously, the business has a right to do what is within the code, and they would all like to see that happen, but they also need to consider the homeowners that are there and the right to their quiet enjoyment of their property. He stated that it sounds to him like the design is doing everything it can to mitigate the noise. He stated that looking through everything else, he does not see any other sticking points other than the noise. He stated that everything else seems fine, so he guesses he is wondering a couple of things. He stated that he guesses one question would be for the applicant, and that is a very simple solution, and he is wondering how critical electrically amplified music is to their business if Superior Culture's unplugged might fly.

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Mr. Rowland stated that they have actually done some acoustic shows in the back yard, and with just general crowd conversation noise if you are standing towards the back, you can not necessarily hear it, although one thing he will say that will be different, last year was doing everything they could to survive and stay alive. He stated that he was using some of his amplifiers and then would also allow some musicians to bring in their equipment, which caused variation in noise levels. He stated that this year with some more financing going forward, he is looking to invest in a PA system that would connect, and basically every musician that came would plug into the same PA system. He stated that it would have the levels controlled by them rather than the musicians, and he also owns a decimal meter, and he last year was going to the corners of the property, the front corners, the back corners, trying to get as close to these properties as possible. He stated that he was trying to keep the noise level roughly 50 decibels 50 feet from the point source, so he thinks with some of these advancements with their sound system that he thinks they will be able to do a lot better job of controlling those levels, but he does believe that outside the acoustic is just not quite enough.

M. Dunn stated that he guesses the other thing he would like to hear from the other commissioners on is If whatever they do here, he wants to make sure that they are consistent with what they did at Blackrocks, with what they did at the market. He stated that he thinks that 10:00 was pretty consistent for the other businesses, but again, just coming back to the noise thing, he is trying to go through the old minutes to see if they did anything else as far as trying to control noise when they were right next to residential properties, but he is just looking for other commissioners' input on that.

A. Andres stated that he believes Blackrocks is at 11:00. He stated that he thought they came before them and they moved it from 10:00 to 11:00, which is the cutoff time. He stated that he is not sure about that, but it is worth keeping the standard with everybody else to all at 11:00.

W. Premeau stated that you can stop the noise going to through the side and through top maybe, but what good would your audience be that the noise has to go out in order for people to hear it, so he does not believe that you are going to be able to stop the noise at all, and he knows Third Street has changed. He stated that they have never seen it when it was a residential neighborhood. He stated that if you made noise, the cops would come down, and, I mean, I watched them beat the hell out of a crippled kid because he was making noise in front of Vangos, which was Dimbles then. He stated that it is silly, and they are not going to stop the noise. He stated that it is not going to stop it. He stated that it is still going to come out the front. He stated that otherwise, what would you do, put your audience somewhere inside or what. He stated that other thing that he did not understand on the survey plan, they show that tent. He asked what is the intent of the tent that covers that patio.

Mr. Rowland stated that basically, towards the end of last summer, they realized that all it would take is a rainstorm, and they would have a very mediocre night, and you can't necessarily afford that, especially in the middle of a pandemic, so kind of going off of the emergency order for the City of Marquette, that is when they ended up purchasing and installing that tent in September of last year, just to give people a place to go and still be able to sit at their distance tables outside while being covered from the weather. W. Premeau asked if that is going to continue. Mr. Rowland stated yes, that was the plan. W. Premeau asked if they are going to have the music in the back yard, people in the tent. He stated that he does not understand. Mr. Rowland stated that the tent is open on - it would be the east and west sides. He stated that it just has walls along the sides, but it is a big, pointed tent that continues right up to the front of the stage area, so you would be able to view all of that from within the tent.

S. Mittlefehldt stated that she really empathizes with what they have heard from the residents, but this really is not a new issue for them. She stated that she means they saw this with Blackrocks, and they saw this with the recent marketplace with Cognition. She stated that she remembers parents and multiple young families concerned about music and a brewery literally in their backyard, the same situation, and she thinks they came to a compromise. She stated that she thought it was a 10:00 and stated that maybe D. Stensaas remembers, which it sounds like Superior Culture has already been doing the 10:00 outdoor service is done, outdoor music is done, anything outdoor would be done at 10:00, and she thinks they also talked about acoustical fencing in that scenario to try to mitigate the noise. She stated that she thinks Commissioner Dunn said it well, like trying to balance the rights of the business community with the rights of the residents, and if they already have these precedents of allowing, she believes it is Cognition Brewery

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that is going to be in that marketplace, Blackrocks, then are they not putting Superior Culture at a sort of economic disadvantage if they have a different set of rules for this business owner as opposed potential competitors now that they are serving more than just kombucha, so she does not don't know. She stated that she is really empathetic and empathizes with the neighbors, but at the same time, they already have kind of had this conversation with two other establishments.

M. Larson stated that one of his questions for the applicant is it was brought up that in his previous outdoor food and beverage service that you put forth that it was stated that there would be fewer individuals out there than there actually were and there would be a limited number of events. He stated that, however, then it was shown that there were essentially events every weekend from there, so kind of coming from what was originally told to the Planning Commission to kind of what actually came into being, he was just hoping he might be able to comment on that and them thinking about kind of moving this forward, just as it was pointed out, and he thinks there is potentially some valid concern on that portion of saying the right things at that one time to help calm folks' nerves and then having that be essentially music every weekend. He stated that to just give him the opportunity to talk about that.

Mr. Rowland stated that the number one factor in all of that was COVID, and the last year changed everything that he ever knew as a business owner. He stated that it changed the entire way they operated, so they had to move outside, and there are all of these artists that were looking for an avenue to express themselves, all these people looking for socialization to happen with safe distance and outdoor practices, and that is kind of how that backyard came into being, and since then, they have had hundreds and hundreds of people coming through this area and enjoying themselves, enjoying the beverages, enjoying the music, and they are just kind of trying to keep that alive for them, and having this consistency with these events allows them to plan them further ahead and pay out these artists and give people something to predict that can happen every weekend in this area.

M. Larson stated that a question for staff, just thinking about the local residents in the surrounding area, if there is a recourse that they can come into if the conditions are not met or if they move out of conditions of this if this were to move forward.

A. Landers stated that she does have one thing to note. She stated that the proposal is for a 6-foot-high solid fence, but the Third Street corridor does allow it to be up to an 8-foot-high for an approved commercial outdoor food and beverage service and the outdoor entertainment and community events, so she just wants to throw that out that the code allows for that. She also stated that if there are conditions placed on an approval per se, and if they are not meeting the conditions, then there is something in the code where you could look at revoking that permit if it seems as if they are not meeting that.

D. Stensaas stated that their discussion jumped around from Blackrocks to the Third Street Marketplace. He stated that he looked at the last three cases for Blackrocks. He also stated that, of course, they have the brewery over on Washington Street as well. He stated that he would have to go back even farther, but he is pretty sure there is a 10:00 outdoor food and beverage service limitation, and that is what was set for the Third Street Marketplace. He stated that they were required to construct an 8-foot-tall, sound-dampening wall. He stated that they were required to limit food and beverage outdoor service to 10:00 p.m. and then the mobile food operations had to be separately approved, but the other thing he wanted to mention, just to dispel the kind of notion that City staff or whatever did not respond to the fact that there was a change in the way the business was conducted over the past couple of years. He stated that largely, that is a product of the City Commission adopting a resolution to support local businesses during the pandemic by allowing temporary outdoor seating for food and beverage service, and the noise part of this, after listening to all the testimony, he is not sure why they did not get any complaints, and he is not speaking in favor or support of the applicant or anything, but they did not get a complaint about anything related to this until this February, and that is when they contacted the applicant and notified them they were in violation of the code, and that brought up on this request to kind of modify the facility to be more responsive to that and continue to do that kind of thing, but you can place conditions on this. He stated that, of course, the police are going to continue to enforce an 11:00 p.m. noise ordinance, but the Planning Commission could potentially set up a maximum number of complaints that if it exceeds that number of noise complaints, you would hold a hearing and potentially revoke this special land use permit for outdoor entertainment.

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A. Andres stated to correct him if he is wrong, but he does not think they have ever done that for any other business.

D. Stensaas stated that has not been done. He also stated that does not mean you cannot do it. A. Andres stated that he is just thinking of being fair to the business here.

M. Larson asked if they have any other additional discussion on this matter or any reaction to what D. Stensaas has stated here. He stated that he thinks there is one thing that A. Landers brought up. He stated that they did suggest an 8-foot fence for the other facility that was there. He stated that if the Commission is leaning towards making it conditional that there is an option. He stated that otherwise with D. Stensaas' potential of some number of particular complaints and that would just trigger a hearing to discuss those particular issues, that is another option.

M. Dunn stated that he has got a quick technical question for A. Landers, but they have a condition that indicates an 8-foot fence, if that is measured from the grade of the subject property and if the 4-foot retaining wall would be part of that 8 foot high measurement. A. Landers stated no and showed the site plan on the screen. She indicated that the fence is by the property line, and that the retaining wall was setback into the property.

Ms. Larson stated that he would also just point out that there are potentially some unique characteristics here of the way the lot is set up that may set this slightly apart from other locations, just given the number of properties that it is touching at that point in time. He stated that he does not know if that is worth a discussion or kind of anybody's thoughts, but just point putting that out there.

M. Dunn stated that he is trying to put together something just so the Commission knows what he is thinking for whatever that is worth. He stated that he is inclined to approve this with similar conditions to what they did for the market. He stated that he guesses his only remaining reservation is the number of people. He asked if there is a cap on the capacity because, with the market case, they were approving it for outdoor food and beverage, which this location already has, so this is beyond going to the outdoor entertainment and community events. He stated that he is wondering about capacity. He also stated that it is the only limiting factor on capacity, fire department codes, or something like that. He stated that he is wondering what they might be looking at as kind of a worst-case scenario for a number of people.

Mr. Rowland stated that as far as he knows when it comes to outdoor capacity, he has talked to the fire marshal last year, and it basically goes on seating room versus the standing room, so it is 15 square feet per person if it is a seated area or 7 square feet per person if it is standing room, and that is the only restriction that he knows of other than what might fall back into building code where it comes to bathrooms and occupancy. He stated that he is not entirely positive about all that. M. Dunn asked if he has done that math already. He stated that he will get out his calculator there and see how many people that might be. Mr. Rowland stated that he only has the capacity for inside currently. M. Dunn asked what that is. Mr. Rowland stated 47. M. Dunn asked then with the outside if he knows if the outdoor area would be considered all standing or if part of that seated and part of that standing as well. Mr. Rowland stated that as of right now, the seated area would be underneath the tent, and then he guesses he is not entirely positive on what would be considered. He stated that there are still the two parking spots and the driveway, so he thinks that would be excluded entirely, so it would be whatever is on the east side of the tent and whatever is on the west side of the tent that is not already some other structure, kind of running in a straight line almost from the back of the building to the retaining wall.

M. Dunn asked for staff how capacity is factored into other outdoor entertainment venues. He asked if that is just limited to the size. He asked if they have not made any decisions as far as limiting the capacity of outdoor areas.

A. Landers stated that when it comes to tents, the Fire Department will look at the tent capacity, and if it is in a zoning district that requires parking for uses, that is what they would look at, which they have done before, but this zoning district does not require parking for this use, so it would be something that the Fire Department would look at for the tent as far as the outdoor stuff. She stated that she can show it on screen here. She stated that what Mr. Rowland was indicating was this area and this area may be the standing and

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this would be the sitting area underneath the tent.

A. Andres asked if they have any comment from the Fire Department. He stated that he did not see any in the correspondence. A. Landers stated that the Fire Department asked for more information on the tent and its fabric type and structure, and then they provided that information, and then the Fire Department did not have any issues with the tent information, so it is going to meet their requirements for a tent.

M. Larson asked if there was any follow-up discussion.

S. Mittlefehldt stated she is going back to D. Stensaas' idea about like 3, 4, or 5 strikes, and then the permit gets revoked idea. She stated that she thought Commissioner Andres' comment about it might be unfair to others. She stated that she is trying to remember back to Blackrocks when they were getting started. She stated that she means they have never done this kind of 3 strikes and you are out or however many numbers of strikes, and she remember there being quite a bit of residential neighbors concern about that proposal, and then obviously the last one they looked at on the Third Street Marketplace. She stated that she guesses she is just curious what other people think about the potential. She stated that she thinks she definitely would support the 8-foot fence, adding that as an additional condition of the permit, but she is thinking about potentially a fourth condition. She stated that she is looking at the list. She stated that there are already the two that the staff recommended and then if they added an 8-foot fence and then a fourth. She asked how others feel about that.

M. Larson stated that he thinks it is an interesting idea. He stated that it is, he guesses, hard to determine what the level of strikes would be. He stated that he thinks it would be hard to determine how many strikes those are and not necessarily that the permit is revoked, but it essentially brings a hearing or a discussion on how you can approach that or if it has gotten better or has not gotten better and what the redeeming factor is there, so he does not know if it would go straight to some sort of revoking of the permit or not. He stated that it is an interesting idea. He stated that he is not sure where he fully stands on it, but interesting to think about.

W. Premeau stated that if they said, he does not know, say, 50. He stated that he could go get 50 complaints. He stated that he does not think that is a fair way to do it. He stated that Blackrock had plenty of complaints, but nobody paid any attention to them. He stated that there were complaints from blocks and blocks away. He stated that he thinks it is a real unfair burden to say, I could get 50 of his friends to make a call and then to shut somebody down. He stated that is not right. He stated that it sounds like all of them are for it, so he thinks that would be totally unfair. A. Andres asked what would be unfair. W. Premeau stated to put a condition of a number of complaints before they come in and have to come to a hearing or get shut down. A. Andres stated that he is not for it. M. Larson stated that he thinks it is just up for discussion.

D. Stensaas stated that W. Premeau made a really good point that is certainly subject to sabotage, for lack of a better term, but another option might be something that the City Commission does every so often with projects, and he thinks they did it with the marijuana ordinances, is to require a follow-up in a certain amount of time to look at. He stated that, for example, you could require a hearing in one year to review complaints that have been lodged to the Police Department for noise violations or to staff in our department and just go from there.

M. Larson stated to the applicant he thinks they have asked others in the past if to go from a proposed 6-foot high to an 8-foot high fence, is that something that he would consider as one of those options. Mr. Rowland stated that yes, absolutely, and he guesses he would propose perhaps that it would maybe just be on the south side or the west side as he does not see really any opposition coming from the northwest side of the property. He stated that it basically butts up to a rental unit parking lot. He stated that he could do it if need be, but it is kind of following that grade up towards the west side of the property. M. Larson stated that if that is something that they think might be appropriate, he does not know if they need to bring that up on the screen so they can take a look at that, not to keep this going here. He stated that this is where the new fence is projected here. A. Landers stated that it is in the red, so this is the west side and the south side that he was referring to, and here is the north side. She asked Mr. Rowland if he said this north side was what was adjacent to the parking lot. Mr. Rowland stated yes. A. Landers stated that this would be the west

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and south that he was referring to. M. Larson asked Mr. Rowland if that leaving that side there just up to the north side to be limited the 6 foot. Mr. Rowland stated that yes, he means either that or the far west side fence line is also at the highest point of the property, so he guesses, depending on what everybody thinks there, he thinks definitely along that south side seems appropriate.

M. Larson stated that he thinks D. Stensaas' suggestion might make sense, just like a review similar to that they did for the other facilities. He stated that maybe that makes sense in this. He stated that he does think there are some unique characteristics to the location of this in comparison to some of the other sites that they have considered that may warrant at least just a revisitation after some point in time. He stated that, again, if he is overruled on that, that is perfectly fine, but he thinks that might make sense.

D. Stensaas stated that he just wanted to add that one of the things that - this is maybe the third facility where there is going to be outdoor food and beverage on Third Street, and that is part of what he is seeing is concern with the public comments is it is kind of a cumulative thing for some of the residents to be experiencing outdoor noise that they have not been accustomed to, but one of the things Blackrocks did in the beginning after they started their food and beverage service and had their first kind of request to expand their facility is they said that they were policing themselves, and they had some proof that they had been cracking down on people that were getting rowdy and trying to keep it more neighborhood friendly, and so he thinks that really would support the notion that having a review within a certain period would put the onus on the applicant here to do the same thing to really try to mitigate the - you are going to have that in any kind of situation where people are consuming alcohol, so it really becomes incumbent on them to crack down on bad actors, and he thinks that review period would help them feel more confident that they have some control in the future.

S. Mittlefehldt asked D. Stensaas if he was thinking like a one year and then come back in for review, if that is something the Planning Commission would need to review, or if that could be something that administratively could be reviewed. D. Stensaas stated that it would be good to review it at the Planning Commission level just for the sake of having public being able to come in and provide testimony and submit written correspondence once it is on their agenda. He stated that it can be scheduled as a business item to review, he thinks. He stated that they would have to talk about the details but putting it on their agenda at a specific time would help, he thinks, with the public being able to contribute testimony.

M. Dunn stated that he was sorry to kind of repeat himself, but he guesses he still did not really get any clear answer. He stated that he is wondering if staff can tell me if there is any limit on the capacity with the approval for outdoor entertainment. D. Stensaas stated that he does not think there is. He stated that there is nothing that he can think of that is baked into the codes. He stated that other than the fire safety considerations, he does not think in our ordinances that there is anything in the outdoor area, and even for events. He also stated that he was a board member of the Blues Society, helped plan the Blues Fest, and has been involved with some other music events like that, and he does not know in their city parks that any certain capacity limits are set by Code anywhere. He stated that he thinks it comes down to the Fire Department's considerations for life safety.

M. Dunn stated that he guesses for the rest of the Commission, he is still thinking about some sort of condition to limit the number of occupants here, but he does not want to pick an arbitrary number, and he does not know enough about it, so he is looking for input on that, but it just seems to him that based on the standards, the 54.1403, one of the standards that they need to consider is #7 is the number of people, and then also on 54.1402 under E10, they are looking at nuisances and that those two things, it just makes him think that they should limit this to some degree. He stated that he hates doing that to a business because you want businesses to grow and do as much as they can, but at the same time, in fairness to the existing property owners, it just seems like there needs to be some sort of limit so that they do not have 300 people packed into a back yard listening to a rock concert. He stated that he is looking for input as far as whether that would be something you guys would be okay with and what number might make sense if they are okay with it.

M. Larson stated that he thinks that is partially a question to them and partially a question to Mr. Rowland as far as the numbers anticipated. He asked M. Dunn if that is partially a question to them, or if that more of a question directed at the applicant. M. Dunn stated both. He stated that he would love to hear what the

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applicant is thinking the numbers are going to be, but then he also wants to hear from Commissioners if they are okay with that suggestion and what is the number that makes sense to them.

A. Andres stated that if it moves along, he would love to revisit this in a year if they can do that. He stated that he is not in favor of putting any number limit on it, but if that is something to move it forward, he will be okay with that if they can just move this forward, he thinks it is a good idea. He stated that he thinks it should be approved.

S. Mittlefehldt stated that she went back and checked out the proposed space in preparation for this meeting, and it is not a very huge space, and she thinks in the past they have things that defaulted to fire code, so maybe they could add something like occupancy will comply with fire code whatever, but she is kind of with Commissioner Andres. She stated that she does not think beyond that, it is not a huge space. She stated that she cannot imagine 300 people fitting back there.

A. Landers stated that she would echo S. Mittlefehldt's comments because she is thinking that is the only way they could be able to enforce it is it would have to meet the fire safety codes. She stated that she does not think they can just assign an occupancy number unless there is some kind of code, some kind of requirement, so if that is where they want to go with the condition, she thinks it would have to be a condition that as long as what is being proposed would meet the Fire Department's required codes, she thinks, and it does not violate their occupancy requirements or something if there are any for outdoor, outside of the tent.

M. Larson asked Commissioner Dunn before they talk to the applicants if they have to even vote to that if that satisfies him. M. Dunn stated that yes if that is what the Commission wants to do. He stated that it does not sound like folks want to have a cap on it, and that is fine. He also stated that he would still like to hear from the applicant just to have it on record of what they think their crowds actually would be.

W. Premeau stated that the only things he can think of that would limit the capacity outdoors in most areas, you have got huge areas that you could get out of in case there is a fire or something and have an exit. He stated that in this case, you have got a limited amount of exit space unless you want to jump over the 8-foot fence, so he does not know of any other thing that limits capacity, but that could be one.

M. Larson asked the applicant if he would like to kind of think about what capacity of that area might be. Mr. Rowland stated that yes, so last year due to COVID restrictions, they actually did enact a 50-person capacity, and that was on the entire premises, which then makes it really hard to control with the way that they built their wraparound deck in 2019, but they had multiple people. He stated that there were like three of them there every night of the weekend, and they were doing everything they possibly could, using baseball number counters to make sure they were meeting those capacity restrictions for that time, so there were definitely times where they would be hitting that 50-person capacity on a Friday night, say. He also stated that he cannot really imagine it is going to go much over 100, but, again, it does make it very difficult to control unless you are putting fencing and gates and having people at all points of exits on an outdoor space, and they will actually be having somebody running the back yard as well as somebody running the inside and somebody kind of going between and watching the front door, but he guesses he does not know. He stated that he imagines it would be right around there on a busy night. He stated that maybe there are 100 people there, but it is hard for him to put an exact number on it as they are in this growth phase, and he guesses he has not seen it go beyond 50 really at this point. M. Larson stated thank you, and he thinks he can appreciate they are taking this time because they are certainly trying to balance the interests of all parties, him as well as the residents around and trying to figure out how they can mitigate this, and he thinks he is trying to take steps to mitigate some of the issues that have been brought up, but then also just to make sure that the onus is put on the applicant to help police their own facility and patrons that live there and hopefully to help to remove bad actors from that situation, so he thinks this is just one of these situations, and to D. Stensaas' point, in his mind, there is a little bit of a commutative situation going on as well with other facilities that have outdoor events and you have competing music on similar days, depending on that, that coupled with his slightly unique location, to his mind anyway, in comparison to some of the others, do, he thinks, warrant some of this further discussion that they are taking there today. M. Larson asked Mr. Rom if he would like to say something to that.

Mr. Rom stated yes, just to maybe follow up with what Mr. Rowland said with respect to the occupancy and

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based on what they had discussed with you know the projection of the rear of the house to the tent to the stage, just a crude sketch and outdoor spaces, obviously, this can be interpreted a few different ways and they would certainly defer to the expertise of the Fire Department and what they would want to see, but just looking at the numbers, Mr. Rowland's number of 100 is pretty close to what the prescribed occupancy would be. He stated that the area under the tent is 640 square feet, 15 square feet per person, that is 42 people, and then in front and behind that, that is going to be about 57 people potentially between the tent and the stage and then maybe about another 20 behind the stage, so that is going to get us to about 125 maximum just space-wise. He stated that, of course, that can be limited further, but then looking at International Building Code Regulations for egress width per occupant, it is typically .3 inches per occupant of exiting width that you would need, and it is under 4 feet for that type of space, and there is porosity on the site, but there's also the driveway that goes to Third Street and then around the other side of the house, so there are kind of two ways around the house to get to the street, and both of those ways have enough width. He stated that it would more than satisfy the requirements from a just a really basic, quick, back-of-the-napkin kind of egress conception. M. Larson asked Commissioner Dunn if that helps. M. Dunn stated yes, that is great.

It was moved by M. Dunn, seconded by A. Andres, and carried 5-0 that after review of the site plan dated May 4, 2021, and the Staff Report/Analysis for 04-SUP-06-21 & 05-SPR-06-21, the Planning Commission finds that the request meets the intent of the requirements of the Land Development Code Sections 54.635, Section 54.636, 54.1402, and 54.1403, and hereby approves 04-SUP-06-21 & 05-SPR-06-21 with the following conditions:

1. *That an amended plan is submitted to meet staff comments*
2. *That the bike racks are added to the property to meet code.*
3. *That the applicant constructs an 8-ft tall fence with sound dampening materials on all sides, as shown on the site plan as a proposed 6-ft high fence.*
4. *That operations outdoors will stop at 10 p.m.*
5. *That the applicant will return to the Planning Commission for review in July of 2022 to review all complaints received by the City for the prior year.*
6. *That the capacity in the outdoor area will meet fire and safety code requirements.*

Yes: A. Andres, M. Dunn, S. Mittlefehldt, M. Larson, W. Premeau
No: None

J. Cardillo rejoined the meeting. D. Stensaas suggested taking a brief recess.

It was moved by M. Larson, seconded by S. Mittlefehldt, and carried 6-0 to take a 10-minute recess, until 9:05 p.m.

It was moved by M. Larson, seconded by A. Andres, and carried 6-0 to reconvene the meeting.

03-REZ-06-21 – 1651 S. Front St. (PIN: 0020251): Request to rezone from GC-CR to GC

Zoning Official A. Landers stated the Planning Commission is being asked to make a recommendation to the City Commission regarding a request to rezone the property located at 1651 S. Front Street, which is zoned currently General Commercial with Conditional Rezoning (GC CR) to be zoned General Commercial (GC). She stated that attached to the agenda was the Staff Report, which she will show on the screen. She stated that this first page shows the items that were struck out both by what was proposed by the applicant and what was approved by the City Commission and the proposed zoning of GC-CR, which shows permitted principal uses and the special land uses, and we included the case information for the previous rezoning request, and then the attachments for this rezoning application - and their attachments, the area map, the block map, the existing zoning map, the excerpt of the Master Community master plan with the Future Land Use Map and the zoning map showing the area of the requested rezoning. She stated that in that Future Land Use Map it was proposed to be mixed-use. She stated that in the Proposed Zoning Map Mixed-use was proposed. Shown on the screen were the following agenda attachments: photos of the site, the public notice in the Mining Journal, excerpts of the Planning Commission meeting minutes and the City Commission meeting minutes of the previous [conditional rezoning] request, rezoning considerations for planning commissions, spot zoning considerations, and attached in the agenda was correspondence that

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was received prior to the agenda being posted.

She also stated that they received additional correspondence that was sent after the agenda was posted, and she and D. Stensaas read correspondence for the Planning Commission as follows. Correspondence from Colleen Pascoe of 102 E. Furnace Street in opposition to the request, was read, and a visual that was attached to the correspondence was shown on the screen. Correspondence from Shirley Michelson of 106 E. Furnace Street, in opposition to the request, was read. Correspondence from Linda Byers Blacksmith of 2810 Granite Pointe Drive, in opposition to the request, was read. Correspondence from Jerome LaRue of 104 Furnace Street, in opposition to the request, was read. Correspondence from Carrie Roy of 104 E. Furnace Street, in opposition to the request, was read. Correspondence from Amelia and Weston Sramek of 1 Marquette Drive, stating their concerns regarding the proposal, was read.

D. Stensaas stated the letters indicated that the hearing tonight is about a marijuana business, and he wants to clarify that is not the case, that the decision tonight is about rezoning the property to General Commercial, which would allow for every use stated in the Land Development Code for General Commercial, and open the door to all of the Special Land uses listed under General Commercial. He also stated that if the rezoning were successful the property owner could come forward with a Special Land Use Permit to seek to have a cannabis consumption facility at the location. He stated that is a whole different process that would require another public hearing with the Planning Commission, and that would only happen if the City Commission decides in favor of this rezoning request. He also stated that regarding the rezoning, in the packet for this case, there are two key rezoning considerations, and he discussed the portion of the agenda materials that addressed the first issue of *consistency with the Community Master Plan* (CMP), and he spoke about the Future Land Use map and the Proposed Zoning Map from the CMP and explained how the subject parcel was designated for Mixed-Use zoning in the 2015 major amendment to the CMP and how it was implemented with the adoption of the Land Development Code in 2019. He also stated that section 54.1405 lists several factors, standards to consider regarding if the zoning map should be amended due to a proposed LDC amendment or a rezoning request, for whatever reason, and he stated the two that stand out to him are considering if conditions have changed so that the CMP should be updated or were there shortcomings that have resulted in a new zoning district being appropriate, and then the potential land use and impacts of the requested, proposed new zoning district, and those are the two things that stick out to me as ones the Planning Commission has a chore to wrestle with. He also stated that the other thing is spot zoning – and it's stated in your packets, it lists four conditions or criteria, and for a spot zone to exist, you have to find that all four of the criteria are met, and he stated that he suggests the Planning Commission look at those four criteria one at a time to determine if a spot zone would be created.

Mr. Scott Dianda, of 25607 Wedge St. in Calumet, stated thank you to Madame Chair and the rest of the Commissioners, City staff. He stated that they appreciate everything they do. He stated that he just wanted to say that he represents AgronoMod, which is 710 Woods, and they are working with the landowner, which would be Terry Doyle in the application, and they just want to let folks know that this is a local business that will be operated as a franchise with a local owner that will employ people locally, full-time positions, and he is going to let the rest of their team introduce themselves tonight, and they just wanted to let them know that the planned used for the property will be cannabis sales with on-site consumption lounges, and they want to make sure that they go through and make sure that everything is done according to all the City's specifications, whether it is the site preparations with the hours of operation. He stated that this was originally a business that they all remember as the Pizza Hut that ran for many decades in that area of that piece of Marquette, so with that, he is going to ask their team to introduce themselve.

Mr. Dax Richer, 333 W. Washington St., the design consultant for the applicant, stated that they are representing Terry Doyle, the current owner, and also hopefully the future owners, in getting their interests for the cannabis retail and consumption side of things. He stated that he wants to thank everybody for being here so late, for revisiting this. He stated that it has been like one year since they talked about it. He stated that some of them were on the Commission last year, so thanks for listening to it again. He also stated that a lot has happened in one year. He stated that last year at this time when they were revisiting this, they were dealing with COVID and then also cannabis in Michigan as being a new thing, and both of those things, they have had a year had to deal with them. He stated that on the cannabis side of things, they have had super successful projects. He stated that there are a lot of them that opened in Marquette. He also stated that it brought employment, it brought taxation, renovation of buildings, and he thinks they have also

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brought a sense that they are really not impacting in a negative way to the community. He stated that he means they have not seen anything. He stated that they work with multiple entities in the cannabis industry, and they have not seen anything negative yet. He stated that Marquette has seen a lot of cannabis retail shops. He also stated that they have a site that they feel is appropriate for a consumption lounge. He stated that it was currently a liquor consumption lounge and a restaurant consumption lounge, so it kind of fits in that same use. He also stated that they do not feel like cannabis is any more harmful, if not less harmful than liquor bars, and so they want to answer any questions about that. He stated that he is going to dive into the site. He stated that they are all familiar with the old Pizza Hut site, Terry Doyle's site. He stated that it has been there for decades. He stated that the entire north side of the site is buffered by a building. He stated that the proposed building they do not need to get into, but...
D. Stensaas stated, to the Chair – a point of order – this is a Rezoning hearing and not a Special Land Use review.

J. Cardillo stated that we need to contain the statements basically to the global idea of rezoning this property, not to the specific use that he intends to use for this property. She stated that, for them, they are deciding whether turning this into General Commercial and any use that could be under the canopy of general commercial would be appropriate, so if he wants to put his argument or his conversation towards that, that would be more helpful for them.

Mr. Richer stated in terms of general use in comparison to other properties, their property is two to four times larger than some of the other general uses. He stated that it does have natural buffers. He stated that it is on a U.S. 41 Highway, which is a strong argument for general commercial use versus being on a two-lane downtown road. He stated that he feels that is fair that they should be able to bring up some issues because you read the letters of the negative issues. He also stated that he thinks there were equally a number of positive support letters that were not read. He stated that their site is going to be quieter than U.S. 41. He stated that it has state-regulated control of odors. He stated that US 41 does not have that. He stated that bars do not have that. He stated that they have three residents in the 300-foot proximity range. He stated that if they look at some of the other comparable properties, there are 23 residents next to one, 8 residents next to another, 14 next to another that would have the same approved general commercial use, so in terms of size and residential proximity, odors, and noise, they can prove their site has less impact than other properties. J. Cardillo asked if he has anything else, he wants to add. Mr. Richer stated that he thinks that is it. He stated that he is here to answer any other questions. He stated that he is trying to limit himself, but they have got parking. He stated that he thinks some of the comments had to do with traffic, and obviously, they are on U.S. 41, and the site has been there for decades, so he thinks they disagree with a little bit on the traffic issues. He also stated that he does not think they could get a better size road to handle any other traffic that would be caused from the development of this site, and, again, it would be similar to a bar and restaurant, which is the current use.

J. Cardillo stated that at this point, they have already got the correspondence and asked if they have any public testimony. A. Landers stated that there are two people in the waiting room.

Mr. Doug Hamborsky, of AgronoMod Inc., stated he is with the AgronoMod 710 Woods Group. He stated that they are excited to be in Marquette. He also stated that it is conditioned upon them acquiring this land that will suit the uses that they see, so they understand that is not what this hearing is, but they also have to emphasize that if the use they need does not occur, then they are not sure how to go forward. He stated that a couple of just the key support items that he thinks they wanted to reinforce is that their understanding of their local ordinances with regard to the use that they are seeking, that all these other properties do not have the one restriction that this property currently has, and so all they are asking for is to sort of eliminate that spot zoning that occurred last year for reasons that they did not understand until just recently. He stated that they just want sort of what everyone else has. He stated that also, they need to emphasize that - again, like Dax was saying, it is hard to speak to the future, which is not before us - but when they were before this Planning Commission a year ago, the conditional rezoning that was granted then did only have one restriction, and without looking at the [meeting] minutes, but he believes it was just that for, like, high-volume manufacturing of a product, but the consumption and retail use for the business was not restricted at the Planning Commission-recommended level. He stated that the restriction came at the City Commission in step two of the rezoning process, so they are literally just asking to enjoy what was granted to us one year ago by the Planning Commission. He also stated that the site would not warrant large-scale

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production so that restriction is not of concern to them, but all the other listed uses in their zoning for this district, they would want to enjoy and be able to use, and, as Dax mentioned, they do have significant items to clarify. He stated that some of the negative comments that were read by some of the residential people in the community, he stated that if as the City Attorney [Planner] said, all those issues will be re-reviewed and restated as part of a special land use presentation at a future date, then they are fine addressing those at a future date, but if they have any questions tonight, they would be glad to address any of those, but the bottom line is they just want, number one, what they had last year from the Planning Commission as far as an approval for everything except for that one use restriction and, number two, that they are allowed the zoning that all other properties similar to what they are needing to operate on presently have. J. Cardillo asked A. Landers if they have anybody else in waiting. A. Landers stated that now there is an additional new person and another person, so will admit one that says iPhone 2, and she that she does not have a name for it. Mr. Hamborsky stated that he is assuming iPhone 2 might be Terry Doyle, who has years or decades-long history with this property. He stated that he thinks it is important for the Commission to hear from Mr. Doyle.

J. Cardillo opened the public hearing.

Mr. Terry Doyle, 1001 Allouez Road, stated that they purchased this restaurant in 2003 from Pizza Hut, Inc. He stated that they ran it for 10 years as the Union Grill, and then they transferred the lease agreement over to the Steinhaus Market. He stated that they were there for two more years. He stated that they had no traffic issues that he can recall. He also stated that it has been a commercial spot since 1987. He stated that their latest tax bill reflected the Code of 201, which is commercial improved property, so all he can say is this deserves this attention. He stated that they need to get this done. He stated that it would be a great sale, and it would be a great development for this area. He also stated that people do not understand how that is going to improve that whole area, that whole property. He stated that is probably all he has to say, but it is a great property, and it is a very secure property. He stated that, in fact, the DOT when they redid 41 South, they put in a little turn lane for them, so it is much safer than it was in the past, and like he said, he does not recall any accidents in the 12 years it was operating. He stated that is all he has to say.

J. Cardillo closed the public hearing.

> *It was moved by M. Larson, seconded by S. Mittlefehldt, and carried 6-0 to suspend the rules for discussion.*

M. Larson stated that initial thoughts are that started when they rezoned this a year ago with the conditional rezoning, they did go through this and the City Commission had the second part, so they just make a recommendation to the City Commission on whether or not to move forward with the rezoning. He stated that they used the conditional rezoning vehicle, and the City Commission went ahead and put additional conditions for that land use on that property, so when they are thinking about turning this into a rezoning, they are going to look at the plan that the City had in place originally, kind of going back to a situation in 2012 to 2015, where it looked forward at changing over to mixed-use property, and as that came to be with the Land Development Code, they indeed moved into that mixed-use category, and so when it came before them to kind of revert into a conditionally-rezoned general commercial, taking that into consideration, they went ahead and made some of those recommendations and to say what is right for that piece of property. He stated that when they are looking at rezoning it back to general commercial, they also have to think about the future that is beyond the facility that you are putting in, so whether, potentially, that property could be a gas station, that property could be a medical facility, that property could be some sort of hotel or housing, it could be anything that is on that particular list of items there, and so they have to think about whether those items are appropriate beyond the use that you are currently looking at. He stated that the Commission seems to agree that this place where a drive-through is not appropriate, a gasoline service station is not appropriate, hotel or motel is not appropriate, either is open storage or wholesale trade establishments, along with a number of these other special land uses, and so he is trying to get his head around that, so if this was not this particular consumption facility that they are talking about, would any of these other items be appropriate for that facility and for that neighborhood, because if they allow it to go back into general commercial, they are essentially saying that any of these land uses are allowed to be at that facility if this potential business decides not to work, five years from now it sells, and then at that point in time, somebody could potentially put in a gasoline service station right there as well, and so that is what

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he is struggling with right here. He stated that with that general piece they did, it does look like there has been quite a bit of latitude that has been given, but those are just his initial thoughts and kind of framing for his fellow Commissioners of what he is thinking about it right now.

S. Mittlefehldt stated that she has been kind of trying to wrestle with the idea of if this is spot zoning, and, of course, one of the criteria of spot zoning forces them to ask themselves if this is consistent with what is in the Master Plan and the Future Land Use Plan, which in 2015 the Master Plan had this area designated as a mixed-use, so, more from that, it is not mixed-use, but she does recall when they were getting into the weeds of what would fall into the mixed-use when they were writing the Land Development Code. She stated that she thinks they clearly were erring on the side of mixed-use as sort of primarily potentially residential with commercial also and trying to prioritize the integration into residential areas, and they decided no marijuana consumption establishments in a mixed-use area. She stated that, again, she is trying to answer this question of if it is a spot zone, and she does not think it is because she thinks when they did the conditional rezoning, it was both us, and she thinks the City Commission also agreed, that a marijuana consumption establishment would not be appropriate land use for this particular area, and that is how they got to where they did with this conversation last year, so she is kind of scratching her head.

J. Cardillo stated that she thinks it is an interesting thing to point out, but she guesses the one thing she wants to kind of clarify for everybody from the get-go and asked D. Stensaas to correct her if she is wrong, but the reason they were able to go ahead with the conditional rezoning for general commercial last year was because that is not subject to spot zoning criteria, but what they are asking for tonight, which is to be taken fully into general commercial, is now subject to their scrutiny as a spot zoning. She asked D. Stensaas if that is correct. D. Stensaas stated that yes, that is correct. He stated that he would suggest they look at those four criteria one by one and decide as a group on them. He stated that one at a time would probably be the most efficient way to get through that part of the decision-making. J. Cardillo asked if that sort of explains why that is on the table tonight, but they really did not have to think about it when they did it last year. A. Andres stated that he thinks it should stay mixed-use, but that is just him.

A. Andres left the meeting at 10:18 p.m.

J. Cardillo stated that she is going to sort of just let everybody kind of give their first thoughts and then maybe they can go through some of these sort of more itemized things like if it is spot rezoning or if it is some of the items that D. Stensaas had mentioned from that list. She stated to M. Dunn to just give them his initial thoughts, and then they can kind of go through systematically.

M. Dunn stated that he definitely wants to go through the spot zoning for the four criteria for spot zoning. He stated that he thinks that makes a lot of sense, but his thought is that they are sort of pushing the needle further and further every time they look at this property. He stated that when the original zoning was put in place, it appears to him that, and when you go back and look at the deliberations there, it looks like it was made mixed-use rather than medium-density residential simply because it was an existing restaurant and they did not want to impede the owner who was operating a restaurant there, so they made it mixed-use to allow for that use, which makes sense, but that is what resulted in an anomaly when you are looking at the zoning map where you have got residential on three sides, actually four sides if you go across the street to the PUD, and that is residential as well. He stated that is why that mixed-use zone may have looked a little bit out of place, and so he has heard the term spot zoning thrown out there a couple of times in regard to the existing zoning and the previous zoning of mixed-use, and he does not think that is appropriate because that mixed-use zone is actually less restrictive than the surrounding properties around this parcel. He stated that at that point, it was made mixed-use. He stated that then, later on, they did the conditional rezoning and made it a little bit further, and now at this point, to him, it is way beyond what all of the adjacent properties are. He stated that the only general commercial is sort of off the corner of this property across the street, which is the bank, which is not really a high-intensity use and it is not incompatible with residential properties, so he is definitely leaning towards this not being general commercial. He stated that it just does not make sense to him to have a zone map that goes from medium-density residential to low-density residential and then has the general commercial thrown in.

J. Cardillo stated she thinks one of the things that they find with mixed-use is that its intention was always to be an acceptable commercial application to be inserted within residential to sort of provide - that was

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always the idea that an island of mixed-use is preferable to an island, say, of general commercial, and it was there to sort of solve these trickier problem sites. M. Dunn stated absolutely, he agrees 100%. He stated that the thing he is questioning right now is their last action on this property, but that is for a different time. J. Cardillo asked W. Premeau if he wanted to make any comments before they sort of start to go through their item-by-item checklists.

W. Premeau stated that he thinks they have to go through the rezoning considerations. J. Cardillo stated let us start with the spot zoning. She asked A. Landers if she can pull that up just so everybody can see it. J. Cardillo stated that D. Stensaas has got it. J. Cardillo stated so the first one to review is it small in size, a relatively small parcel with respect to the sizes of the parcels in the vicinity, so she is just looking at it on the zoning map. She stated that it is obviously bigger than the small residential sites, but it is sort of equal or smaller than the other sites adjacent to it. She asked if they kind of agree with that and what their thoughts are. S. Mittlefehldt stated that she thinks it is small, but, to her, the big one that jumps out is contrary to the Master Plan. J. Cardillo stated that was right. S. Mittlefehldt stated, not to skip ahead, but it has to meet all of these to qualify. J. Cardillo stated yes, if there is one that it fails at, then it fails the whole thing.
S. Mittlefehldt stated that she keeps going back to the Master Plan and the Future Land Use Map. She stated that she did not mean to speak out of turn.

J. Cardillo stated that, to her, another thing it says there is the property was large enough to accommodate buffers or transition areas, landscaping, or open space, could be used to soften the impact. She stated that she would argue that maybe on some sites it could, but given the location of the building adjacent to the border, that does make it challenging, and, again, if they are talking about some of these other uses that she thinks Commissioner Larson pointed out at the beginning, it would be quite challenging. She asked where they fall on small in size. She stated that she kind of wants to just get everybody talking about this and move through it. M. Dunn asked, in order for this action to qualify as spot zoning, if it needs to meet all four of these or only one. M. Larson and J. Cardillo stated all four. M. Dunn stated that is what he thought, too. He stated that the way he reads that, it needs to meet all of those characteristics to be considered spot zoning. He stated that regarding the small property, he does think it is small compared to the properties on three sides there. M. Larson stated large enough to have a buffer. He stated that you could argue that you have an open space there with the parking lot on this one. W. Premeau stated that he does not think it is spot zoning. He stated that the other businesses around there are the same type of business if you just go down a block, you have got two marijuana businesses. He also stated that he does not believe it is spot zoning, not based on what he was reading. M. Larson stated that he thinks the one he gets hung up on is inconsistent with uses already established or allowed in the vicinity, and so understanding what the vicinity is. He stated that he means if it is immediately adjacent, yes. He stated that, however, if the vicinity is kind of moved into the kitty-corner where you do have a general commercial kind of across the street and down, he thinks that it would potentially fail this inconsistent use and, therefore, not be a spot zoning to consider in his mind. J. Cardillo asked where he lands. M. Larson stated that to continue to consider this, he does not think it is spot zoning because it potentially does not meet the inconsistent use to meet spot, so, therefore, allowing us to consider the rezoning. He stated that he means there are other factors to consider, but he does not think it meets the spot zoning test, so he thinks, therefore, it is not spot zoning. J. Cardillo stated that okay and asked Commissioner Mittlefehldt how she feels about it. S. Mittlefehldt stated that she does not think it is spot zoning. She stated that she does not think necessarily the proposed plans do meet the Master Plan goals of the mixed-use designation that was in the Master Plan for that area, but she thinks the spot zoning is kind of not an issue.

M. Dunn stated that he thinks it does qualify as spot zoning. He stated that if they were to make this general commercial, he believes it would be spot zoning. He stated that he believes it satisfies all four of those criteria. He also stated that the one that he guesses is most subjective in his mind is the size, but you look at the uses that are allowed in General Commercial. He stated that he means you are surrounded again. He also stated to look at the zoning map, you are surrounded on all sides by residential, and the only commercial is that little corner. He stated that it seems obvious to him that the intent of the citizens and the Master Plan process intended to have this as lower intensity as they move toward the edges of the City and as you are heading south there. He stated that he means everything is getting less intense uses, and this just so happens to be kind of close to the edge there. He stated that he thinks, okay, what if that trapezoid was red and it is completely surrounded by yellow on three sides and then a residential PUD across the street. He stated that it appears to him to be spot zoning, and, again, back to those criteria, he is satisfied

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that it meets all four of them, and the only one that he is questioning is the size. He stated that, also, since he is at it, he may as well get it all out here, and he can be done. He stated that when they did the conditional rezoning, the whole purpose of that was to avoid the possibility of spot zoning. He stated that is why they did it the way they did it, and the City Commission thought that it needed to be slightly more restrictive than what they had, and he supports their decision. He stated that he does not think any changes need to be made here.

J. Cardillo asked W. Premeau if it is correct that he already indicated he does not think it is spot zoning. W. Premeau stated that he does not believe it is, and if they go back to that map on the corner of First Street, it shows yellow residential, but he believes that is where there is a gas station and is now the Signs Now place or asked if he is wrong on that. He stated right on the corner of Front and US 41. J. Cardillo asked if it was on the same side of the street or the other side of the street. D. Stensaas stated that the sign business is a commercial property that is directly to the north, the general commercial on the corner of Hampton. D. Stensaas stated that they are vacant lots owned by the BLP. W. Premeau asked if there is a bar back there or a brew-pub or something, and a repair station. D. Stensaas stated yes. He stated that is right on the corner, that mixed-use parcel on the other side of Mite Street, on the east side of Mite Street. W. Premeau stated that he still does not think it is spot zoning, and they are some pretty tiny parcels. J.

Cardillo stated she will be honest that she kind of thinks it is pretty close to being spot zone. She stated that she thinks it is small in size. She stated that she means that is pretty subjective. She also stated that she thinks as much as it has had sort of commercial and restaurant uses, that is not including all of the other sort of general commercial uses that go along with it, and so she just has a hard time when she looks at this sort of idea of the red in a sea of yellow that it is not inconsistent. She stated that contrary to the Master Plan, that one is very clear to her. She also stated that as far as the special benefit, that one is kind of a hard one to pinpoint.
M. Larson stated that as far as spot zoning goes, he agrees, he does not think it is spot zoning, and so, ultimately, they just want to try to avoid spot zoning so they do not end up in a legal issue or that it can be challenged, and so even if there is disagreement amongst the Commission here, like them, whether it is spot zoning or not, he thinks they can still consider other factors as far as those other conditions for zoning or remaining the same or moving forward. J. Cardillo asked S. Mittlefehldt if she had something else she wanted to say. S. Mittlefehldt stated that she was just going to say, to her, the one thing that jumps out of those criteria is just really their fundamental goal here is deciding whether or not rezoning or other things are consistent with the Master Plan, and that is kind of what they are trying to decide, and she does not think it is, and she is ready to make a motion unless they need more discussion just to see where people are falling up, but maybe they need to discuss it more. J. Cardillo stated yes, she means they wanted to make sure they discussed the impacts, so she guesses she is just going to go back to that, the bit that D. Stensaas had sort of brought out in the email, which was the 54.1405 standards for determining a zoning map amendment, which starts with the Master Plan. She asked if this is consistent with the goals, policies, and recommendations of the Master Plan. S. Mittlefehldt stated that she does not think it is because in the Master Plan that is a mixed use area and many long conversations about what mixed use was, and they have kind of touched on here, it prioritizes or emphasizes residential with the integrated commercial uses, and they talked about your neighborhood grocery or something that would be like kind of low-intensity-type commercial development, much less intense than what is allowed in the general commercial, so she thinks it is not consistent with the Community Master Plan, and she thinks maybe she is getting the sense others on the Commission agree with that as well.

J. Cardillo stated that one of her issues is when did the conditional rezoning, the bars and restaurants were taken out, which she kind of thought was strange at the time, but that was what the applicant wanted, and she is not opposed to putting them back in, but especially as it relates to sort of bars and obviously all these other things. She stated that she does think those should be special land uses because it is in the middle of a residential area, she thinks that it would be appropriate if somebody wants to put a bar there that they would have to go through the SLUP so that residential neighbors, which they know are within a 300 foot radius, would have the opportunity to at least address the Planning Commission, and conditions could potentially be put on it as they have seen in many other cases that they have dealt with where they have commercial in the middle of residential. She also stated that one of her real hang-ups is the fact that bars essentially would not have to be a special land use if it is general commercial. S. Mittlefehldt stated that if they keep it as is, then that has been excluded. J. Cardillo stated that it would be one thing if they had come

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back to us with an amendment maybe to their conditional rezoning, and she does not know if that is even possible. She asked D. Stensaas if that is a thing they could have even done is say, like, “We want to amend our conditional rezoning.” D. Stensaas stated yes, that was probably an option, but that is not where they are at now. Mr. Richer stated that it was not an option. D. Stensaas and J. Cardillo stated that it does not matter.

J. Cardillo stated that as far as she is concerned, obviously, they are looking at all of these other things in addition to whatever perhaps the intended use is, and she just thinks moving into general commercial, in addition to adding all these higher-intensity uses, really takes this public hearing out of so many of these special land uses that would happen if it were a mixed-use. S. Mittlefehldt stated that they are not deciding if it is mixed-use. She stated that they are just saying whether or not it is rezoned as general commercial. J. Cardillo stated that what she is saying is it was mixed-use, which was the intent of the Master Plan, which meant that for a bar to go there, it would have to have a SLU. She stated that they then moved it into this very specific general commercial conditional rezoning, which took out all the bars and restaurants. She also stated that they are not allowed even as a special land use, she believes, so it was sort of a non-issue, but it was the owner’s choice to do that, was her understanding. She stated that now they are asking to be put into general commercial, which would add all those uses that they had taken out in their effort to get the marijuana retail in as “as-of-right” uses, and there would not be special land use permits. She also stated that for her it is just a real sticking point and she thinks that if you are going to have a general commercial plopped in the middle of a residential, you should at least have that public hearing capacity. She asked if that makes any sense. S. Mittlefehldt stated that it makes sense.

W. Premeau stated that he is just curious when they Master Plan and needing this and needing that, well 40 to 45 years ago, somebody allowed that Pizza Hut to go in there, so it has been used in that type of use for a long time, so he does not understand what gives us the right to come up and say, “Yeah, you have had that for all these years, but we decided it is not right.” He stated that it just does not make sense to him. He stated that he does not see it as a problem, and that he would favor to just go ahead, rezone it and give them the use they are asking for. He stated that Mr. Doyle has been a longtime resident of Marquette - give a businessman a chance to sell his property. He stated that they had no problem with the neighbors on the other two issues that came up tonight. He stated that they basically said “tough” to them. He stated that they could really have said, “Look, we’ll come and sit in your back yard, and if it’s too loud and it’s not comfortable.” He stated that he does not know, and he just thinks they should go right along and rezone it the way they want it. He stated that he does not see anything wrong with it. He stated that he gets really disgusted with taking people’s rights away, that really is what we are doing. He stated the same thing with the traffic and all that, he does not know what the difference is between coming out of buying marijuana down the street, and you are higher than a kite and you come out in the road. He stated that it is no different. He stated that he did not see anything in the packet that said, “You know, we’ve got to stop this to save the world.” He stated that he does not know. D. Stensaas stated that he just wants to point out that Commissioner Premeau was on the Planning Commission in 2015 when they adopted that mixed-use zoning district for the property. Mr. Richer asked if they are allowed to talk. W. Premeau asked if he was responsible for that. J. Cardillo asked if she can continue with their discussion, and if they have questions, they will ask him. She stated that they need to get this moving along.

S. Mittlefehldt stated that maybe Mr. Premeau should make a motion.

> *It was moved by W. Premeau, and not seconded, that after conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is consistent with the Community Master Plan and does meet the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission approve 03-REZ-06-21 as presented.*
>
> *It was moved by S. Mittlefehldt, seconded by M. Dunn, and carried 4-1 that after conducting a public hearing and review of the application and Staff Report for 03-REZ-06-21, the Planning Commission finds that the proposed rezoning is not consistent with the Community Master Plan and does not meet the requirements of the Land Development Code Section 54.1405, and hereby recommends that the City Commission deny 03-REZ-06-21 as presented.*
> *Yes: M. Dunn, S. Mittlefehldt, M. Larson, J. Cardillo*

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No: W. Premeau

Citizens Wishing to Address the Commission on Non-Agenda Items

Terry Doyle, the property owner for 1651 S. Front Street, stated it is so sad and they are passing up a great development for that neighborhood. He stated those houses are ramshackle, and you did not even read the letters that I had submitted. A. Landers stated they were in the agenda packet and we only read correspondence that was submitted after. Mr. Doyle stated that is another tricky thing you guys have, and you reverse spot zoned me. He stated we were in General Commercial in 2018 and then we were kicked out. He also stated we were a little spot and we were reverse spot zoned, so look for that coming forward. He stated believe me you just screwed up a million and half dollar deal which would have been great for that whole area, just because of Pete LaRue and he champions everyone around in his neighborhood. J. Cardillo stated we did try to look at this from a very overview kind of look and not from a specific use. Mr. Doyle stated you reverse spot zoned me, I am telling you did that, you took that one little zoned area out of context without moral or ethical reasons in the benefits of the community. Mr. Dunn stated we already made that decision and it will be brought forward to the City Commission. J. Cardillo stated their motion was just their recommendation to the City Commission, and we have already addressed this. She stated she is sorry you could not come in when the time was appropriate. Mr. Doyle stated he knows, and he is not really good with Zoom.

Commission and Staff Comments

D. Stensaas stated there is no business for the June 15th meeting and so it will be canceled.

W. Premeau stated that the only thing he will say is he gets really confused sometimes, but that is just him. He stated that he is not quite up to par. He stated that he has just seen some horrible things done, but they have made mistakes before, and the Court reversed it.

M. Larson stated it was a long, long night, but he does think that they tried to stand by some of the planning principles that they have gone through in looking at these cases and what is allowed and not allowed, but two of these cases are going to go to the City Commission, and they certainly have an opportunity to restate their case, and the City Commission will certainly make their own decision, potentially overrule them as far as that goes, but he thinks long night, but he thinks they did okay.

S. Mittlefehldt stated it was a tough night. She stated that she wanted to tell them all the excitement she had as she attended the Michigan Planning Association “preparing for climate change” conference, but now she is too exhausted and she will them about it later, but Dennis Stachewicz talked about how Marquette is a great leader in finding climate solutions, so that was kind of cool to see Marquette highlighted at this statewide planning conference, but anyway, good work today, everybody, even though she is sure they are all pretty tired.

J. Cardillo stated great work. She stated that it was a long meeting. She stated that she does not really have much else to say.

ADJOURNMENT
The meeting was adjourned by Chair J. Cardillo at 10:36 p.m.

Prepared by:

_____
David Stensaas, City Planner and Zoning Administrator
Planning Commission Secretary
nb/ Imedat

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Agenda Date: 7/12/2021

Public Hearing(s)
Vault Marquette Brownfield Plan - Roll Call Vote

BACKGROUND:

A Brownfield Plan is being proposed for the redevelopment of the Marquette Savings Bank at 101 S. Front Street and 119 S. Lakeshore Boulevard into a boutique hotel, commercial space, residences and public parking facility, as well as other public improvements. A public hearing must be established and held by the City Commission for the approval of the Brownfield Plan.

Approval of the Brownfield Plan will provide for the reimbursement of Brownfield Environmental and Non-Environmental Eligible Activity costs, including environmental due diligence and environmental response activities, lead and asbestos abatement, demolition, site preparation, and infrastructure, including a public parking facility and park improvements.

The property is located in the Downtown Development Authority (DDA) and Local Development Finance Authority (LDFA) Tax Increment Financing (TIF) Districts which have first right to certain tax increment revenues. In order to receive approval for State tax capture for Eligible Activities, the Michigan Economic Development Corporation and Michigan Strategic Fund require either a proportionate expense or approval to forgo future tax increment revenues to reimburse Brownfield Eligible Activities.

Interlocal Agreements under the Urban Cooperation Act with the Marquette Brownfield Redevelopment Authority (MBRA) were presented to and approved by the LDFA at a special meeting on July 7 and the DDA at a regular meeting on July 8.

The Brownfield Plan was presented to and approved by the MBRA at their June 17, 2021 meeting.

This Public Hearing was scheduled by the City Commission at their June 28, 2021 regular meeting.

FISCAL EFFECT:

None.

RECOMMENDATION:

Following the public hearing, approve the Vault Marquette brownfield plan, and authorize the Mayor and City Clerk to sign the resolution.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Resolution
- Brownfield Plan

RESOLUTION
Brownfield Plan Approval
Vault Marquette
101 S. Front Street and 119 S. Lakeshore Boulevard

At a regular meeting of the Marquette City Commission held at Marquette City Hall, 300 W. Baraga Avenue, Marquette, Michigan on July 12, 2021, at 6:00 p.m., the following resolution was offered by

Commissioner _____ and supported by

Commissioner _____.

Whereas The Michigan Brownfield Redevelopment Financing Act, Act 381, P.A. 1996 as amended, authorizes municipalities to create a brownfield redevelopment authority to promote the revitalization, redevelopment, and reuse of contaminated, blighted, functionally obsolete, or historic property through tax increment financing of Eligible Activities approved in a Brownfield Plan; and

Whereas the Marquette City Commission (the "Commission") established the City of Marquette Brownfield Redevelopment Authority (MBRA) under the procedures under Act 381 on September 8, 1997 and certified by the State of Michigan on January 28, 1998 to facilitate the cleanup and redevelopment of Brownfields within the City of Marquette; and,

Whereas a Brownfield Plan that outlines the qualifications, costs, impacts, and incentives for reimbursement from Brownfield Tax Increment Financing revenues with the adoption of the Brownfield Plan has been prepared and submitted for the adaptive reuse of the former State Saving Bank at 101 S. Front Street as well as property at 119 S. Lakeshore Boulevard with the addition of approximately 70,000 square feet of additional hotel, commercial and residential space and the incorporation of an integrated, collaborative public parking facility; and

Whereas the City of Marquette Brownfield Redevelopment Authority reviewed the Brownfield Plan and determined the Brownfield Plan meets the requirements of Act 381 and constitutes a public purpose of meeting a critical community need for downtown parking, significantly increases the value of downtown property, increases property taxes, and provides employment; and

Whereas the City of Marquette Brownfield Redevelopment Authority approved the Brownfield Plan at a regular meeting on June 17, 2021 and provided a recommendation to the Marquette City Commission to approve the Brownfield Plan; and

Whereas a public hearing on the Brownfield Plan was held on July 12, 2021, and notice of the public hearing and notice to taxing jurisdictions has been provided in compliance with the requirements of Act 381; and

Now, Therefore be it Resolved, Whereas, The Marquette City Commission has reviewed the Brownfield Plan and finds, in accordance with the requirements of Section 14 of Act 381 that:

(a) The Brownfield Plan constitutes a public purpose of meeting a critical community need for downtown parking, significantly increasing the value of downtown property, increasing property taxes, and providing employment;
(b) The Brownfield Plan meets the requirements of Sections 13 and 13b of Act 381, Brownfield Plan Provisions as described in the Brownfield Plan, consistent with format recommended by the State of Michigan, including a description of the costs intended to be paid with tax increment revenues, a brief summary of Eligible Activities, estimate of captured taxable value and tax increment revenues, method of financing, maximum amount of indebtedness, beginning date and duration of capture, estimate of impact on taxing jurisdictions, legal description of Eligible Property, estimates of persons residing on the Eligible Property if applicable, and a plan and provisions for relocation of residents, if applicable;
(c) The proposed method of financing the costs of Eligible Activities by Braveworks, Inc. for private Eligible Activities and the Authority and the City of Marquette for public infrastructure is feasible, as described in Section 2.4 of the Brownfield Plan;
(d) The costs of Eligible Activities proposed are reasonable and necessary to carry out the purposes of Act 381, including environmental due diligence and due care activities, meeting regulatory requirements for lead and asbestos inspection and if necessary, abatement prior to demolition, demolition, relocation of active utilities, and public infrastructure, and the cost estimates are based on evaluation from certified professionals, experience in comparable projects, and preliminary discussions with reputable companies, as described in Section 2.1 and 2.2 of the Brownfield Plan; and
(e) The amount of captured taxable value estimated from the adoption of the Brownfield Plan is reasonable, as calculated in Table 2.1 and 2.2 of the Brownfield Plan, based on calculations of the tax revenues derived from taxable value increases and millage rates approved and authorized by the taxing jurisdictions on an annualized basis and balances against the outstanding Eligible Activity obligation approved as part of the Brownfield Plan and expenses reviewed and approved by the City of Marquette Brownfield Redevelopment Authority; and

Be it Further Resolved that pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of 1996, as amended, being MCL 125.2651, *et seq,* the Marquette City Commission hereby approves the Brownfield Plan for the Vault Marquette.

Be it Further Resolved that should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid; and,

Be it Further Resolved that any prior resolutions, or any part thereof, in conflict with any of the provisions of this Resolution are hereby repealed.

Yes:_____

No:_____

Resolution duly adopted

_____
Jennifer A. Smith, Mayor
City of Marquette

Certified to be a true copy, _____
Date

_____
Kyle Whitney, City Clerk

ACT 381 BROWNFIELD PLAN

VAULT MARQUETTE
101 S. FRONT STREET & 119 S. LAKESHORE BOULEVARD
MARQUETTE, MICHIGAN 49855

City of Marquette Brownfield Redevelopment Authority

June 2021

Prepared by:

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Approved by Marquette Brownfield Redevelopment Authority: ***June 17, 2021***

Public Hearing: ***July 12, 2021***

Approved by Marquette City Commission: ***July 12, 2021 (tentative)***

Brownfield Plan
Vault Marquette
City of Marquette, Marquette County, Michigan

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Project Summary

Braveworks, Inc., a Michigan corporation engaged in development based on Houghton, has a purchase agreement for the State Savings Bank building at 101 Front Street and 119 S. Lakeshore Boulevard. A $21 million project is proposed that will include a boutique hotel in the historic building and construction of new buildings that total an estimated 70,000 square feet with additional hotel rooms, commercial space and up to 40 residential units. As part of the development, Braveworks, Inc. is proposing a collaborative arrangement for a 200 plus space public parking facility within the development that will help meet the need for downtown parking during the day and providing hotel parking overnight. The synergy of daytime community parking needs and overnight hotel parking needs provides an effective utilization of fixed parking spaces.

This collaborative arrangement will result in the ability to finance a 200 plus space parking deck in downtown Marquette with increased incremental taxes generated by the Vault project, almost half of which will be State revenues and without City General Funds.

This Brownfield Plan will provide incremental tax revenues to repay certain Eligible Activities, including environmental due diligence and due care, lead and asbestos abatement, demolition, site preparation and infrastructure. Reimbursement of these Brownfield Eligible Activity expenses, including the development of a collaborative public parking facility, are critical to the economic viability of the redevelopment and downtown.

Environmental investigations have identified the presence of contaminants in soil and groundwater exceeding EGLE Generic Cleanup Criteria and a Baseline Environmental Assessment is being prepared and will be submitted to EGLE. As a result, the property is a Part 201 Facility and qualifies as Brownfield Eligible Property under Act 381.

Project Name: Vault Marquette

Project Location: The Eligible Property is comprised of two parcels in downtown Marquette, 101 S. Front Street, Parcel Identification Number 52-52-001-509-40, and 119 S. Lakeshore Boulevard, Parcel Identification Number 52-52-001-509-70

Type of Eligible Property: Part 201 Facility

Eligible Activities: Baseline Environmental Assessment Activities, Due Care Activities, Asbestos Abatement, Demolition, Site Preparation, Infrastructure

Eligible Activities	Environmental	Non-Environmental	TOTAL
Eligible Activities	**$909,650**	**$11,213,575**	**$12,123,225**
Interest	**$268,400**	**$5,359,950**	**$5,628,350**
ELIGIBLE ACTIVITY SUBTOTAL	**$1,178,050**	**$16,573,525**	**$17,751,575**
Brownfield Plan Development and Approval	**$20,000**	**$20,000**	**$40,000**
Brownfield Plan Implementation	**$10,000**	**$80,000**	**$90,000**
TOTAL ELIGIBLE ACTIVITY	***$1,208,050***	***$16,673,525***	***$17,881,575***
Administrative and Operating Cost (Local Only)	***$25,000***	***$75,000***	**$100,000**

Years to Complete Eligible Activities Payback: *30 years*

Estimated Investment: $30,200,000

Estimated Annual Tax Revenue in First Year After Brownfield Obligation: $880,550

BROWNFIELD PLAN

VAULT MARQUETTE
MARQUETTE, MARQUETTE COUNTY, MICHIGAN

CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY

1.0 INTRODUCTION

Act 381, P.A. 1996, as amended, was enacted to promote the revitalization, redevelopment and reuse of contaminated, tax reverted, blighted, functionally obsolete, or historically designated property through incentives adopted as part of a Brownfield Plan. The Brownfield Plan outlines the qualifications, costs, impacts, and incentives for the project.

The Brownfield Plan must be approved by the brownfield redevelopment authority established under Act 381 and the governing body of the authority's municipality in order to take effect. The Michigan Department of Environment, Great Lakes and Energy (EGLE) must approve Environmental Eligible Activities and the Michigan Strategic Fund must approve Non-Environmental Eligible Activities for State tax capture. The City of Marquette established the City of Marquette Brownfield Redevelopment Authority under the procedures required under Act 381 and filed with the Secretary of State on January 28, 1998.

The Brownfield Plan describes the public purpose and qualifying factors for determining the site as an Eligible Property, the Eligible Activities and estimated costs, the impacts of tax increment financing, and other project factors.

1.1 Proposed Redevelopment and Future Use for Each Eligible Property

The proposed redevelopment will adaptively reuse the historic State Savings Bank building into a boutique hotel and construct new buildings that total an estimated 70,000 square feet with additional hotel rooms, commercial space and up to 40 residential units. The project includes a collaborative arrangement for a 200 plus space public parking facility within the development that will help meet the need for downtown parking during the day and providing overnight parking for the hotel. The synergy of daytime community parking needs and overnight hotel parking needs provides an effective utilization of fixed parking spaces. The property is zoned Downtown Marquette Waterfront and is governed by the Form Based Code of the City of Marquette.

The estimated private investment is anticipated at $21,000,000, plus $9,200,000 for the public parking facility and other public infrastructure improvements. The development is anticipated to provide up to 60 jobs at 30

FTE jobs. Site work is anticipated to begin in late Fall 2021 with the completion in Spring 2023. The project is located in the City of Marquette, a Qualified Local Governmental Unit (QLGU).

1.2 Eligible Property Information

The Eligible Property includes two parcels, as described below:

Parcel Number	Address	Description	Acreage	Qualifying Status
52-52-001-509-40	101 S. Front Street	THE 36 ACRE PLAT, LOTS-1 THRU 5, BLOCK-17 EXC. THAT PART OF LOTS-4 & 5 S. OF R.R. R.O.W.	0.538	Part 201 Facility
52-52-001-509-70	119 S. Lakeshore Blvd	THE 36 ACRE PLAT (17,100 SF / 0.3926 A M/L) THE E 38.5' OF LOT 7, ALL OF LOTS 8, 9, & 10, BLOCK 17	0.393	Part 201 Facility

1.3 Public Purpose *MCL 125.2664(5):*

The adaptive reuse of the former State Savings Bank building and the addition of approximately 70,000 square feet of additional hotel, commercial and residential space and the incorporation of an integrated, collaborative public parking facility and other public infrastructure improvements will meet a critical community need for downtown parking, significantly increase the value of downtown property, increase property taxes, and provide employment. When completed, property taxes are estimated at **$880,550** per year (following the retirement of Brownfield obligations).

2.0 INFORMATION REQUIRED BY SECTION 13(2) OF THE STATUTE

2.1 Description of Project and Plan Costs *MCL 125.2663(2)(a):*

The project includes the adaptive reuse of the former State Savings Bank building and the addition of approximately 70,000 square feet of additional hotel, commercial and residential space and the incorporation of an integrated, collaborative public parking facility and other public infrastructure improvements. The Brownfield Plan includes Environmental and Non-Environmental Eligible Activities:

Environmental Eligible Activities include:

- Baseline Environmental Assessment Activities
    - Phase I Environmental Site Assessment
    - Phase II Environmental Site Assessment
    - Baseline Environmental Assessment

- Due Care Activities
    - Due Care Investigation, Planning and Documentation
    - Due Care Response Activities
    - Vapor Mitigation

Non-Environmental Eligible Activities include:

- Lead and Asbestos Abatement
- Demolition
- Site Preparation
- Public Infrastructure

Other Eligible Activities include:

- Brownfield Plan development and approval;
- Brownfield Plan implementation; and
- Administrative and operating costs of the MBRA with local tax capture only.
- Interest (Estimated at 5.0% for 10 years for Private EA, 4.0% for 20 years for Public EA)

Eligible Activities	Environmental	Non-Environmental	TOTAL
Eligible Activities	**$909,650**	**$11,213,575**	**$12,123,225**
Interest	**$268,400**	**$5,359,950**	**$5,628,350**
ELIGIBLE ACTIVITY SUBTOTAL	**$1,178,050**	**$16,573,525**	**$17,751,575**
Brownfield Plan Development and Approval	**$20,000**	**$20,000**	**$40,000**
Brownfield Plan Implementation	**$10,000**	**$80,000**	**$90,000**
TOTAL ELIGIBLE ACTIVITY	***$1,208,050***	***$16,673,525***	***$17,881,575***
Administrative and Operating Cost (Local Only)	***$25,000***	***$75,000***	**$100,000**

Additional detail is provided in Table 1.1: Environmental Eligible Activities and Table 1.2 Non-Environmental Eligible Activities.

The cost of Eligible Activities included in and authorized by this Brownfield Plan will be reimbursed with incremental applicable local and state tax revenue generated by the increased private investment on the Eligible Property and captured by the MBRA, subject to any limitation and conditions described in this Brownfield Plan, Act 381 Work Plan and the terms of a Reimbursement Agreement between the Developer, the MBRA, and the City of Marquette. State tax capture requires approval of an Act 381 Work Plan by the Michigan Department of Environment, Great Lakes and Energy (EGLE) for Environmental Eligible Activities and the Michigan Strategic Fund (MSF) for Non-Environmental Eligible Activities, with exemptions for certain Eligible Activities, including Baseline Environmental Assessment and Due Care Investigation and Planning Activities.

The Eligible Activity costs included in this Brownfield Plan are estimated and may increase or decrease depending on the nature and extent of unknown conditions encountered on the Eligible Property or other circumstances. Reimbursement will be based on the actual cost of Eligible Activities approved under this Brownfield Plan and an Act 381 Work Plan from Brownfield Tax Increment Financing (TIF) revenues captured by the Authority and shall be governed by the terms and conditions of the Reimbursement Agreement and Section 2 of Act 381 of 1996, as amended (MCL 125.2652). This Brownfield Plan and the Reimbursement Agreement establish the maximum Eligible Activity cost. Line-item Eligible Activity may be adjusted after the adoption of this Brownfield Plan with the approval of the Authority, as long as the total maximum Eligible Activity cost is not exceeded.

2.2 Summary of Eligible Activities *MCL 125.2663(2)(b):*

Act 381 provides for the costs of certain Environmental and Non-Environmental Eligible Activities to be reimbursed through tax increment financing. The following is a summary of Environmental Eligible Activities and Non-Environmental Eligible Activities.

EGLE Eligible Activities

1. *Baseline Environmental Assessment (BEA) Activities:* BEA Activities include Phase I Environmental Site Assessments (ESAs), Phase II ESAs, and a Baseline Environmental Assessment to provide an exemption for the developer and assigns from environmental liability for pre-existing contamination. Act 381 includes provisions for Baseline Environmental Activities to be conducted prior to the approval of a Brownfield Plan for local tax capture (Section 13b.(9)(b)) and for State tax capture without EGLE approval (Section 13b.(8)(a-b)), as long as included in a subsequent Brownfield Plan.
    A. Phase I ESA: A Phase I ESA has been conducted for both parcels consistent with ASTM Standard E1527-13. The Phase I ESA includes a review of historical and current information, including regulatory agency files, historical maps, and past uses to evaluate the potential for contamination, a site inspection of both the grounds and the exterior and interior of buildings on the property, and interviews with individuals knowledgeable about the past use of the property to identify any Recognized Environmental Conditions (RECs). The Phase I report identified the following RECs:
        1. The subject property at the address 119 S. Lakeshore Boulevard has documented environmental impacts;
        2. The historical use of the subject property as an automobile garage, service center, and extensive operational history as an operable railroad from at least 1884 through 1917; and

3. North adjoining property (105 East Washington Street) has documented environmental impacts.

B. Phase II ESA: A Phase II Environmental Site Assessment was conducted for the Eligible Property in May 2021 to investigate the RECs as part of the environmental due diligence process for property acquisition. Analysis of the soil samples identified the presence of Volatile Organic Compounds (VOCs) above Part 201 Drinking Water Protection Criteria and Groundwater Surfacewater Interface Protection Criteria and Semi-Volatile Organic Compounds (SVOCs) above Groundwater Surfacewater Interface Protection Criteria, as well as VOCs and SVOCs above Residential Volatilization to Indoor Air Inhalation Screening Criteria. Analysis of groundwater samples identified the presence of SVOCs above Groundwater Surfacewater Interface Criteria. As a result, the property qualifies as Brownfield Eligible Property as a Part 201 Facility.

C. Baseline Environmental Assessment: A Baseline Environmental Assessment (BEA) will be prepared on behalf of Braveworks, Inc. to provide an exemption from environmental liability for pre-existing contamination.

2. Due Care Investigation and Activities: While the BEA provides an exemption from environmental liability for pre-existing contamination, new purchasers have due care obligations to prevent exposure to or exacerbation of pre-existing contamination. Act 381 includes provisions for Due Care Investigation Activities to be conducted prior to the approval of a Brownfield Plan for local tax capture (Section 13b.(9)(b)) and for State tax capture without EGLE approval (Section 13b.(8)(a,c)), as long as included in a subsequent Brownfield Plan. There are three primary due care activities proposed under this Brownfield Plan:

A. Due Care Investigation**:** Due to the presence of contaminated soils on the Eligible Property, additional investigation will be required to determine if exposure pathways are complete and if mitigation measures are required.

B. Due Care Planning and Documentation: Following the completion of the due care investigation and determination of the redevelopment details of each future land use, the data summary and recommendations for meeting due care obligations will be included in a Response Activity Plan/Due Care Plan. The Response Activity Plan/Due Care Plan will describe the known contamination, proposed redevelopment activities, plans for mitigating unacceptable exposures and preventing exacerbation, recommendations for filing abandon container notices, notices to third parties who

may be exposed to contamination (e.g., utility workers), and filing of Notices of Migration of Contamination, if necessary. In addition, an Environmental Construction Management Plan will be prepared to detail measures to protect on-site workers and construction measures to meet due care obligations. Once the due care measures are completed, Documentation of Due Care Compliance will be compiled.

C. Due Care Exposure Pathway Mitigation: The Response Activity Plan/Due Care Plan and Environmental Construction Management Plan will identify specific measures to be taken to address due care requirements. These activities could include soil remediation; developing and implementing a soils management plan to safely relocate soils on the property or remove soils for transport and disposal to a licensed landfill; a vapor mitigation system; and/or institutional controls if necessary. These measures will be subject to approval of an Act 381 Work Plan by the EGLE for State tax capture.

Other Activities

Brownfield Plan and Work Plan Preparation: The preparation and approval of the Brownfield Plan and Act 381 Work Plans are included as Eligible Activities. These costs are allocated between EGLE Environmental Eligible Activities and MSF Non-Environmental Eligible Activities.

Brownfield Plan and Work Plan Implementation: The implementation of the Brownfield Plan and Act 381 Work Plans are included as Eligible Activities. These costs are allocated between EGLE Environmental Eligible Activities and MSF Non-Environmental Eligible Activities.

Administrative and Operating Costs: An estimate of reasonable and actual administrative and operating costs of the City of Marquette Brownfield Redevelopment Authority (MBRA) is included as Eligible Activities as a Local Only Cost. These costs are split between EGLE Environmental Eligible Activities and MSF Non-Environmental Eligible Activities.

Interest: Interest is included as an Eligible Activity. Interest is calculated at 5.0% for 10 years for Environmental Eligible Activity costs for the purposes of this Brownfield Plan.

The following tables estimate the costs for Environmental Eligible Activities to be funded by tax increment revenues.

EGLE Environmental Eligible Activity Cost

Eligible Activities	**Estimated Cost**
Baseline Environmental Assessment	*$27,000*
Due Care Activities	*$764,000*

Eligible Activities	Estimated Cost
Contingency (15%)	*$118,650*
EGLE Eligible Activities Subtotal	*$117,645*
Interest	*$268,400*
EGLE Environmental Eligible Activities Total	***$1,178,050***
Brownfield Plan/Work Plan Development and Approval Cost	*$20,000*
Brownfield Plan/Work Plan Implementation Cost	*$10,000*
ENVIRONMENTAL ELIGIBLE ACTIVITIES TOTAL	***$1,208,050***
MBRA Administrative and Operation Costs	*$25,000*

MSF Non-Environmental Eligible Activities

MSF Non-Environmental Eligible Activities are included under this Brownfield Plan under the auspices of Act 381. The MSF Non-Environmental Eligible Activities include lead and asbestos abatement, demolition, site preparation and infrastructure.

1. *Lead and Asbestos Abatement:* NESHAP regulations require a lead and asbestos survey prior to disturbance of commercial buildings to demonstrate Potential Asbestos Containing Materials (PACMs) do not contain asbestos by properly testing materials in accordance with OSHA standards. Demolition or remodeling buildings that contain lead, cadmium and/or asbestos is subject to regulations to protect the health of the persons that may be affected.

Lead and Asbestos Abatement	Total
Pre-Demolition Survey	$4,000
Monitoring	$8,000
Abatement	$75,000
Contingency (15%)	$13,050
TOTAL	$100,050

2. *Demolition:* In preparation for adaptive reuse, selective demolition of interior of the State Savings Bank is anticipated. In addition, site demolition is anticipated for the existing parking area and associated infrastructure. The scope of work includes engineering specifications, contractor procurement and site demolition and selective demolition of the interior of the State Savings Bank.

Demolition	Total
Site Demolition	$82,000
Building Demolition	$40,000

Engineering/Inspections	$8,000
Contingency (15%)	$19,500
TOTAL	$149,500

3. *Site Preparation:* Site preparation will consist of land balancing and grading, geotechnical engineering, special foundations, relocation of active utilities, and temporary site and erosion control.

Site Preparation	Total
Land Balance	$274,000
GeoTech, Special Foundations	$388,000
Relocation of Active Utilities	$264,000
Staking, Temp Facilities	$324,000
Architectural/Engineering	$103,000
Contingency (15%)	$202,950
TOTAL	$1,555,950

4. *Infrastructure:* Infrastructure will include urban stormwater management, streetscaping, park improvements, utilities and a public parking facility directly benefitting the Eligible Property and adjacent property.

Infrastructure	Total
Urban Stormwater Mgt (private)	$157,680
Public Parking Facility	$7,240,000
Streetscaping	$424,000
Park Improvements	$330,000
Contingency (15%)	$1,230,000
TOTAL	$9,381,680

Other Activities

Brownfield Plan and Work Plan Preparation: The preparation and approval of the Brownfield Plan and Act 381 Work Plans are included as Eligible Activities. These costs are allocated between EGLE Environmental Eligible Activities and MSF Non-Environmental Eligible Activities.

Brownfield Plan and Work Plan Implementation: The implementation of the Brownfield Plan and Act 381 Work Plans are included as Eligible Activities. These costs are allocated between EGLE Environmental Eligible Activities and MSF Non-Environmental Eligible Activities.

Administrative and Operating Costs: An estimate of reasonable and actual administrative and operating costs of the City of Marquette Brownfield Redevelopment Authority (MBRA) is included as Eligible Activities for Local Only capture. These costs are split between EGLE Environmental Eligible Activities and MSF Non-Environmental Eligible Activities.

Interest: Interest is included as an Eligible Activity. Interest is calculated at 5.0% for 10 years for Private Eligible Activity costs and at 4.0% for 25 years for Public Eligible Activity costs for the purposes of this Brownfield Plan.

2.3 Estimate of Captured Taxable Value and Tax Increment Revenues *MCL 125.2663(2)(c):*

Act 381 defines Initial Taxable Value as taxable value of an Eligible Property identified in and subject to a Brownfield Plan at the time the resolution adding that Eligible Property in the Brownfield Plan is adopted, as shown either by the most recent assessment roll for which equalization has been completed at the time the resolution is adopted or, if provided by the Brownfield Plan, by the next assessment roll for which equalization will be completed following the date the resolution adding that eligible property in the Brownfield Plan is adopted.

The taxable value as of December 31, 2020 is $386,039. As provided in this Brownfield Plan, the Initial Taxable Value will be established by the taxable value as of December 31, 2020.

The EGLE Environmental and MSF Non-Environmental Eligible Activity cost is *$12,123,225* plus an estimated *$5,628,350* in interest and *$130,000* in Brownfield Plan/Work Plan Development, Approval and Implementation, for a total of *$17,881,575.* The Brownfield Plan also includes $*100,000 i*n MBRA Administrative and Operating Costs and capture of 50% of the State Education Tax for the State Brownfield Fund as required by Act 381, estimated at *$1,107,291* for this Brownfield Plan. The Brownfield Plan also provides for deposits into the Local Brownfield Revolving Fund during the time of capture and five years after capture, with State tax capture limited to an amount equal to State tax capture for EGLE Environmental Eligible Activities if available. LBRF deposits from local taxes are estimated at *$749,268*. The overall investment for the Project is estimated at over *$30 million*.

Table 2 identifies taxable values for real and personal property, including tax increment revenues for the Eligible Property. In addition, 3 mils are captured and distributed to the State for the State Brownfield Redevelopment Fund. In accordance with Act 381, this share does not affect the State and local ratio. Interlocal Agreements between the MBRA and the Marquette Downtown Development Authority and the Marquette Local Development Financing Authority which have first right to selected tax capture have been approved by all parties and attached to this Brownfield Plan. The overall contribution of local taxes is consistent with the ratio of captured local taxes (53.50%) to captured State taxes (46.50%). The cash flow analysis for the project indicates payoff of the obligation in *thirty (30) years* from 2021 for Local and State Capture.

Redevelopment of the property is anticipated to be initiated in late Fall 2021, with site preparation activities. The actual tax increment captured will be based on taxable value set through the property assessment process by the local unit of government and equalized by the County and the millage rates set each year by the taxing jurisdictions. The estimated tax increment captured by the Authority is summarized in the table below and detailed in Table 2.

Estimate Tax Revenues and Tax Increment Capture by the Authority

Year	Total Tax Revenues	Captured Taxes	Year	Total Tax Revenues	Captured Taxes	
2022	$55,174	$33,329	2037	$718,694	$684,898	
2023	$406,005	$368,561	2038	$729,169	$695,183	
2024	$595,794	$549,913	2039	$739,803	$705,623	
2025	$604,427	$558,162	2040	$750,595	$716,219	
2026	$613,189	$566,534	2041	$761,550	$726,974	
2027	$622,082	$575,032	2042	$772,669	$738,685	
2028	$631,109	$583,658	2043	$783,954	$749,765	
2029	$640,271	$597,621	2044	$795,409	$761,012	
2030	$649,571	$617,827	2045	$807,036	$772,427	
2031	$659,010	$626,300	2046	$818,837	$784,013	
2032	$668,591	$635,707	2047	$830,815	$795,773	
2033	$678,315	$645,254	2048	$842,973	$807,710	
2034	$688,185	$654,945	2049	$855,313	$819,826	
2035	$698,204	$664,781	2050	$867,838	$832,123	(1)
2036	$708,372	$674,764	2051	$880,551	$844,605	(2)

Total	$20,873,504	$19,787,224
State Brownfield Fund		$1,107,291
Balance		$18,679,933

(1) Local Tax Capture Ends

(2) LBRF Capture Ends

2.4 Method of Financing and Description of Advances Made by the Municipality *MCL 125.2663(2)(d):*

Private Environmental Eligible Activity Costs and Non-Environmental Eligible Activity Costs will be financed by the Developer. Public Infrastructure – Public Parking Facility may be funded through a Brownfield Bond issued by the MBRA and Public Infrastructure – Park Improvements may be funded through a Capital Improvement Bond issued by the City of Marquette or other public sources.

2.5 Maximum Amount of Note or Bond Indebtedness *MCL 125.2663(2)(e):*

The maximum amount of Eligible Activities is anticipated to be will be *$12,123,225*.

2.6 Beginning Date and Duration of Capture ***MCL 125.2663(2)(f):***

The anticipated beginning date of capture is 2023, estimated to be the first year tax increment revenues are available. The duration of Brownfield Plan capture will be the time to capture taxes in an amount equal to the Eligible Activity obligation, Interest, State Brownfield Fund, Local Brownfield Revolving Fund, and Administrative and Operation Costs. As shown on Table 2, total costs of all Eligible Activities on the property redevelopment are expected to be repaid through tax increment financing within *30 years* for Local and State Capture.

2.7 Estimated Impact of Tax Increment Financing on Tax Revenues of Taxing Jurisdictions ***MCL 125.2663(2)(g):***

Table 2.1 and 2.2 identify annual and total tax revenues projected for capture from the increase in property tax valuations. Individual tax levies within each taxing jurisdiction are also presented on Table 2.1. The Marquette Downtown Development Authority captures local taxes on the subject property. The Marquette Local Development Financing Authority (LDFA) captures one-half of the State tax on the subject property. Interlocal Agreements have been approved by and executed between the MBRA and the DDA and the MBRA and the LDFA to provide for capture of applicable taxes for the reimbursement of Brownfield Eligible Activities under this Brownfield Plan and are included in the Appendix. Table 3 presents the allocation of tax capture and the total tax increment for the 30-year duration of the Brownfield Plan. The DDA and LDFA will continue to receive their tax allocation for the project once the Brownfield obligation is met and beyond the duration of the Brownfield Plan.

The total tax capture is estimated at *$12,123,225* for Eligible Activities, plus an estimated *$5,628,350* in interest, *$130,000* in Brownfield Plan development, approval and implementation, $*100,000* in MBRA Administrative and Operating costs, an estimated $1,107,291 for the State Brownfield Fund and an estimated $749,268 for a total capture of *$19,838,135.* After the Brownfield obligation is met, tax revenues in an amount estimated at *$880,550* per year on into the future.

2.8 Legal Description, Location, and Determination of Eligibility ***MCL 125.2663(2)(h):***

Legal Description: The legal description of the Eligible Property follows:

Parcel Number	Address	Description	Acreage	Qualifying Status
52-52-001-509-40	101 S. Front Street	THE 36 ACRE PLAT, LOTS-1 THRU 5, BLOCK-17 EXC. THAT PART OF LOTS-4 & 5 S. OF R.R. R.O.W.	0.538	Part 201 Facility

52-52-001-509-70	119 S. Lakeshore Blvd	THE 36 ACRE PLAT (17,100 SF / 0.3926 A M/L) THE E 38.5' OF LOT 7, ALL OF LOTS 8, 9, & 10, BLOCK 17	0.393	Part 201 Facility

Location: The Eligible Property is located at 101 S. Front Street and 119 S. Lakeshore in Marquette, Michigan. Figure 1 depicts the location of the Eligible Property and Figure 2 depicts the Eligible Property boundaries.

Eligibility Determination: A Phase II Environmental Site Assessment was conducted for the Eligible Property in May 2021 to investigate the RECs as part of the environmental due diligence process for property acquisition. Analysis of the soil samples identified the presence of Volatile Organic Compounds (VOCs) above Part 201 Drinking Water Protection Criteria and Groundwater Surfacewater Interface Protection Criteria and Semi-Volatile Organic Compounds (SVOCs) above Groundwater Surfacewater Interface Protection Criteria, as well as VOCs and SVOCs above Residential Volatilization to Indoor Air Inhalation Screening Criteria. Analysis of groundwater samples identified the presence of SVOCs above Groundwater Surfacewater Interface Criteria. As a result, the property qualifies as Brownfield Eligible Property as a Part 201 Facility.

Summary of Soil Concentrations Above EGLE GCC

Sample Number	Sample Depth	Parameter Over Criteria	CAS #	Parameter Analytical Result (ug/Kg, ppb)	GCC Exceeded (ug/Kg, ppb)
SB-1	6—7’	Naphthalene	91-20-3	370	RVIAP - 67
		Naphthalene (SVOC)	91-20-3	520	RVIAP - 67
SB-2	8-10’	1,2,4 Trimethylbenzene	95-63-6	1,700	RVIAP – 150 GSIP – 570
		1,3,5 Trimethylbenzene	108-67-8	350	RVIAP - 100
		2-Methylnapthalene	91-57-6	5,400	RVIAP – 1,700 GSI – 4,200
		Ethylbenzene	100-41-4	41	RVIAP - 12
		Isopropyl benzene	92-82-8	90	RVIAP – 3.8
		Naphthalene	91-20-3	1,400	RVIAP – 67

Sample Number	Sample Depth	Parameter Over Criteria	CAS #	Parameter Analytical Result (ug/Kg, ppb)	GCC Exceeded (ug/Kg, ppb)
					GISP – 730
		Naphthalene (SVOC)	91-20-3	730	RAISL – 67
SB-3	10'-12'	1,2-Dibromo-3-chloropropane	96.12-8	870	DWP – 4 RVIAP - 220
SB-4	10'-11'	Naphthalene (SVOC)	91-20-3	130	RVIAP – 67

RVIAP – EGLE Residential Volatilization to Indoor Air Pathway Screening Levels
DWP – EGLE Part 201 Drinking Water Protection Criteria
GSIP - EGLE Part 201 Groundwater Surface Water Interface Protection Criteria
GCC – EGLE Part 201 Generic Cleanup Criteria
CAS # - Chemical Abstracts Service
SVOC – Semi-Volatile Organic Compounds
ppb – Parts per billion
ug/Kg – Micrograms per kilogram or ppb

Personal Property: Personal Property is included as part of the Eligible Property.

2.9 Estimate of Number of Persons Residing on Eligible Property ***MCL 125.2663(2)(i):***

There are currently no residential dwellings or residences that occupy the Eligible Property.

2.10 Plan for Residential Relocation ***MCL 125.2663(2)(j):***

The Eligible Property does not currently contain any residential dwellings; therefore, a plan for residential relocation is not applicable.

2.11 Provision of Costs of Relocation ***MCL 125.2663(2)(k):***

The Eligible Property does not currently contain any residential dwellings; therefore, a provision for residential relocation has not been allocated.

2.12 Strategy to Comply with Relocation Assistance Act, 1972 PA 227 ***MCL 125.2663(2)(l):***

The Eligible Property does not currently contain any residential dwellings; therefore, relocation is not necessary.

2.13 Other Material Required by the Authority or Governing Body ***MCL 125.2663(2)(m):***

None

EXHIBITS

FIGURES

Figure 1 Eligible Property Location Map

Figure 2.1 Eligible Property Boundaries

Figure 2.2 ALTA Survey

Figure 2.3 Preliminary Site Plan

Figure 3 Public Infrastructure Improvements

TABLES

Table 1.1 Environmental Eligible Activities Costs and Schedule

Table 1.2 Non-Environmental Eligible Activities Costs and Schedule

Table 2.1 – Annual Revenue and Brownfield Capture Estimates

Table 2.2 – Tax Increment Revenue Reimbursement Allocation Table

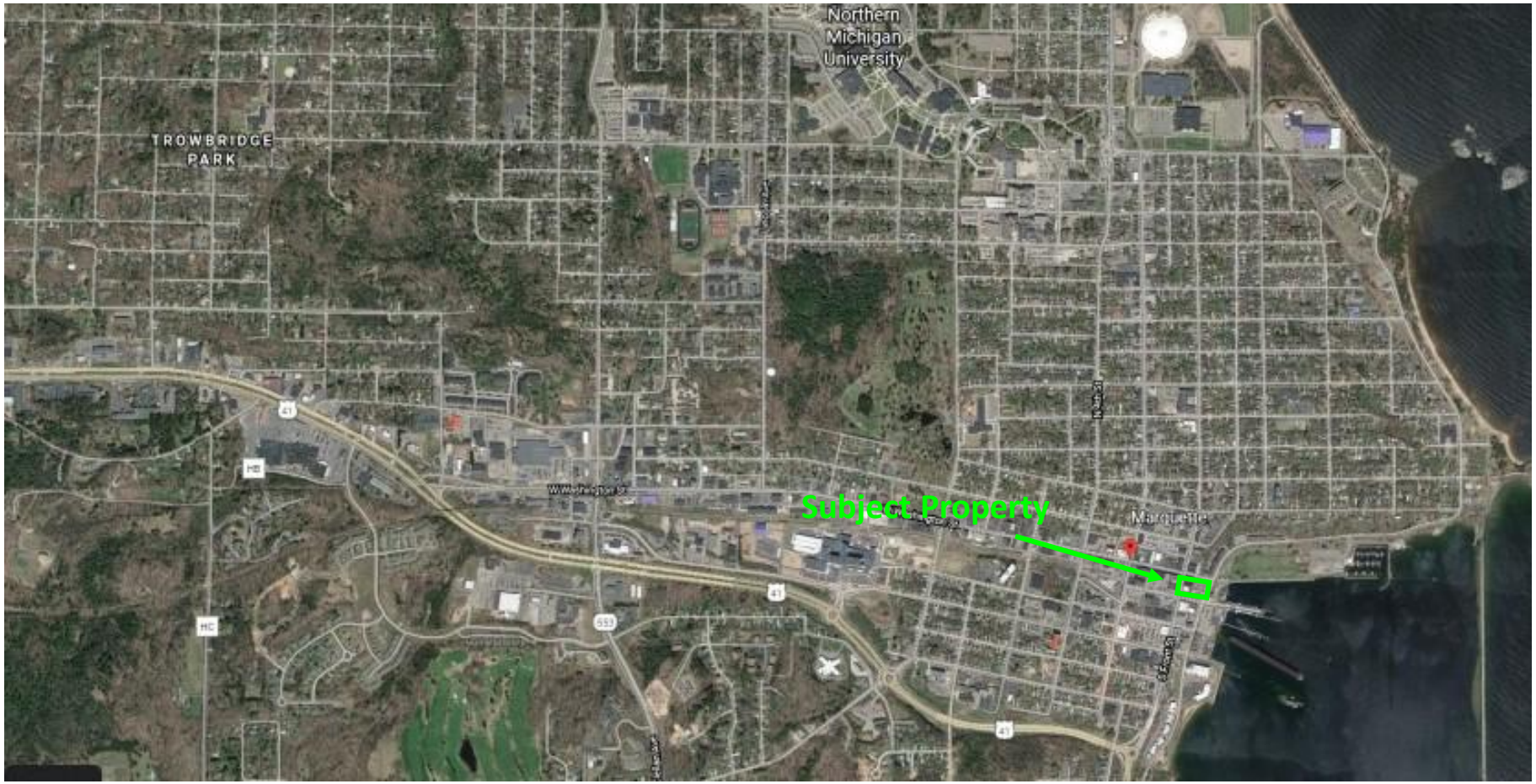
Table 3. Impact on Tax Jurisdictions

ATTACHMENTS

Attachment A – Brownfield Plan Resolutions

Attachment B – Interlocal Agreement: Marquette Brownfield Redevelopment Authority/Marquette Downtown Development Authority

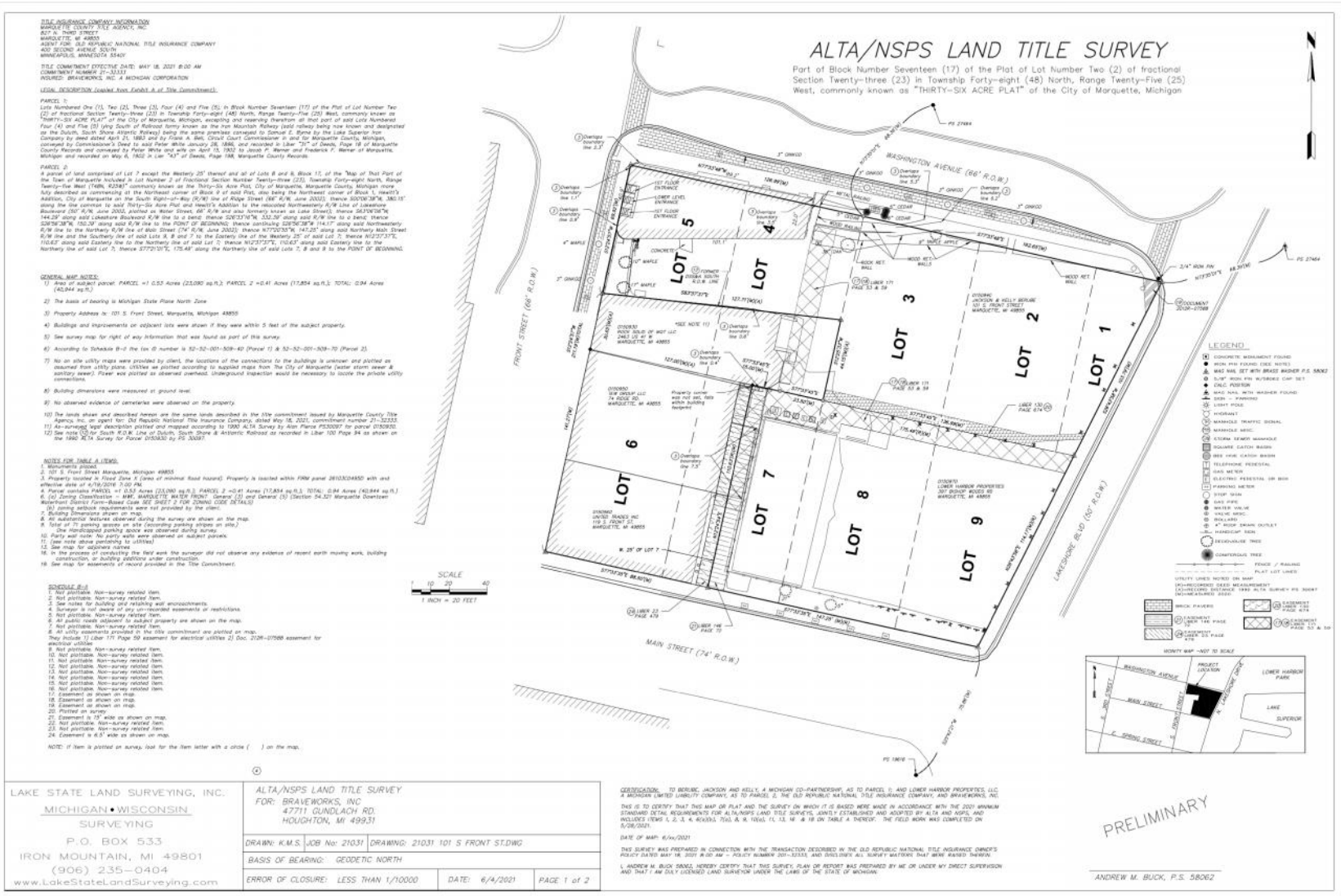
Attachment C – Interlocal Agreement: Marquette Brownfield Redevelopment Authority/Marquette Local Development Finance Authority



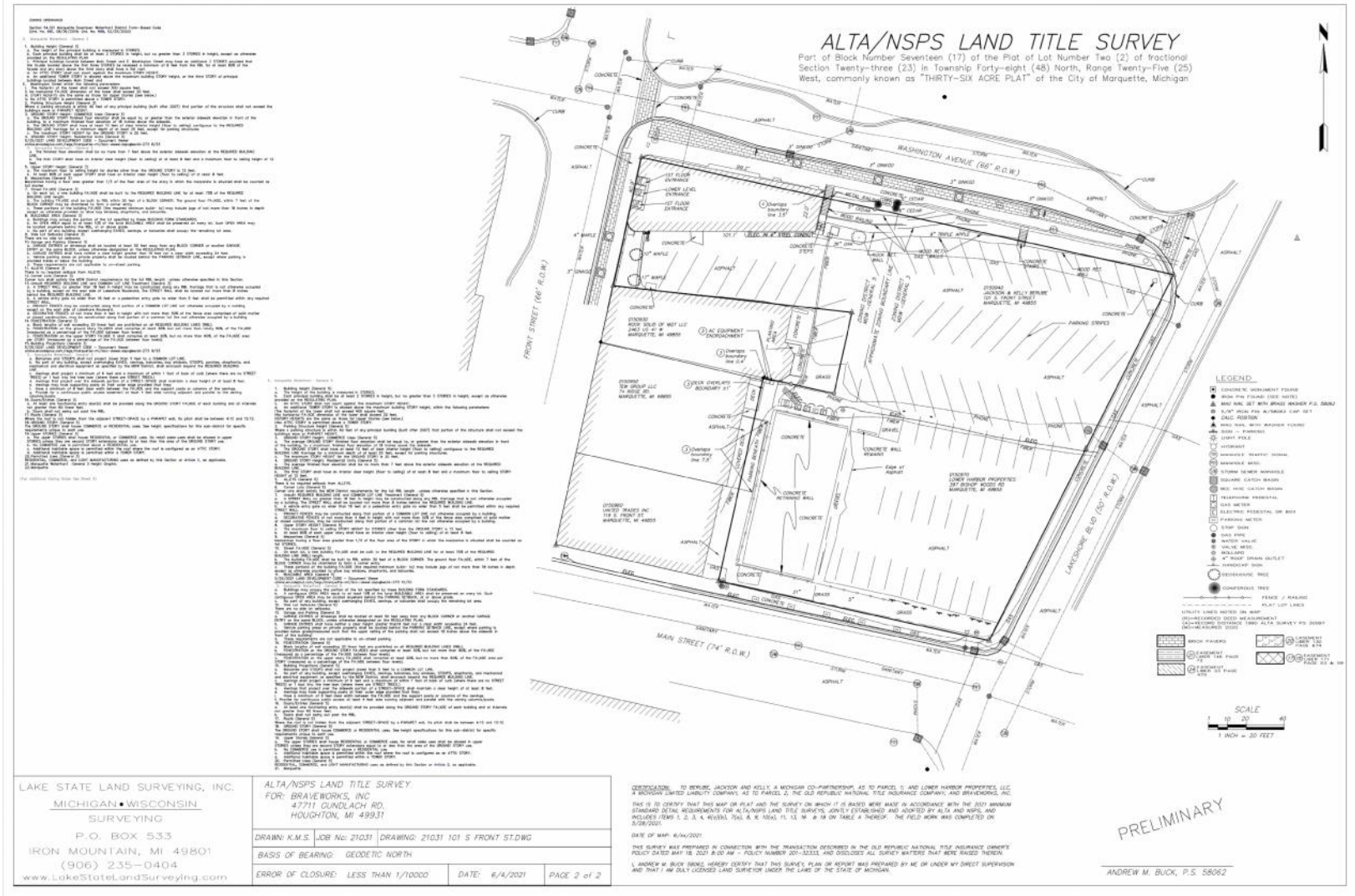
Brownfield Plan Vault – Marquette	Figure 1: Eligible Property Site Location
Marquette Brownfield Redevelopment Authority Marquette, Michigan	Source: Google Earth Date: June 2021



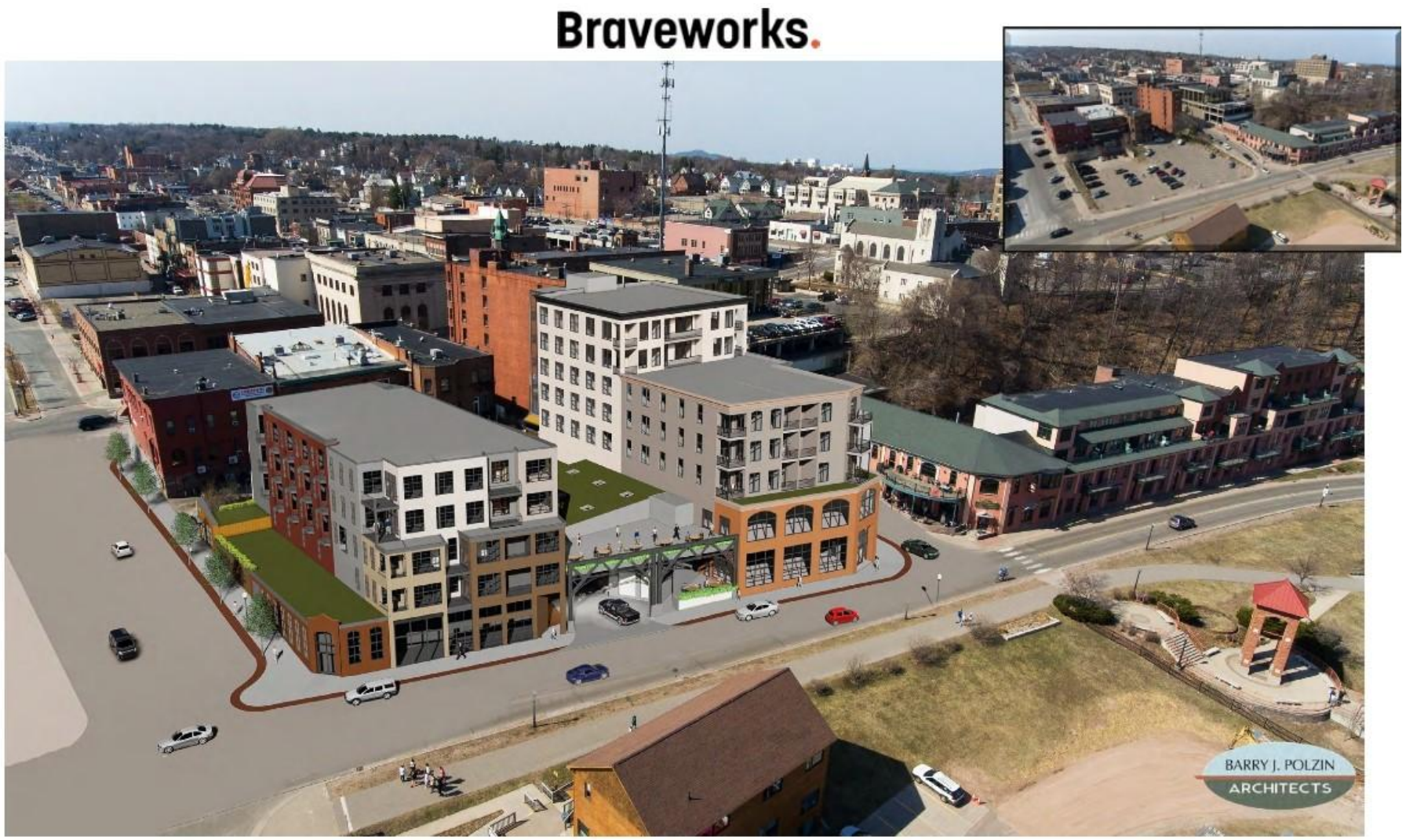
Brownfield Plan **Vault – Marquette**	**Figure 2.1: Eligible Property Boundary**
	Source: Google Earth
Marquette Brownfield Redevelopment Authority **Marquette, Michigan**	**Date: June 2021**



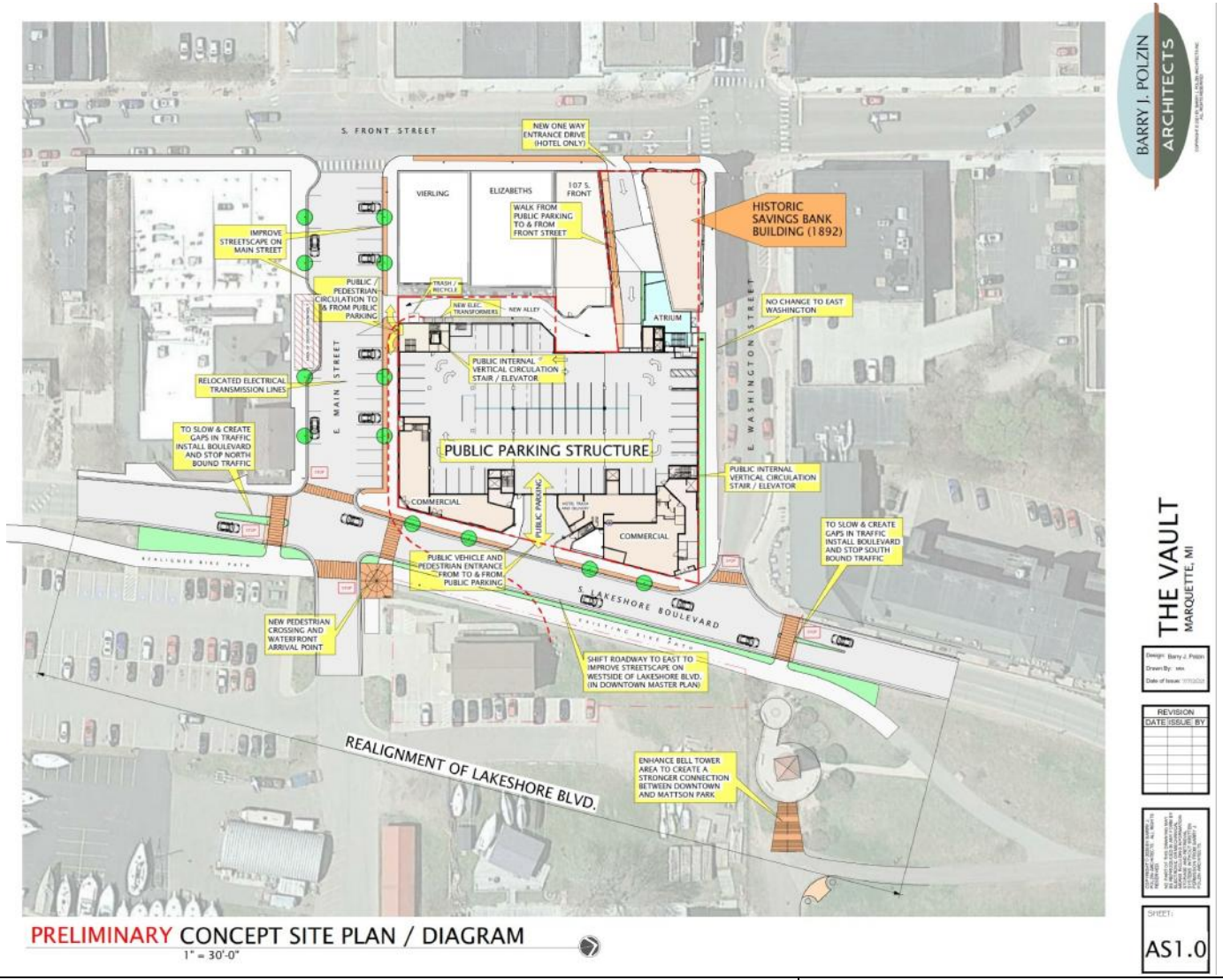
Brownfield Plan **Vault - Marquette**	**Figure 2.2.1: ALTA Survey**
	Source: TriMedia Environmental and Engineering, Marquette, Michigan
Marquette Brownfield Redevelopment Authority **Marquette, Michigan**	**Date: June 2021**



Brownfield Plan **Vault - Marquette**	**Figure 2.2.2: ALTA Survey**
	Source: TriMedia Environmental and Engineering, Marquette, Michigan
Marquette Brownfield Redevelopment Authority **Marquette, Michigan**	**Date: June 2021**



Brownfield Plan **Vault – Marquette**	**Figure 2.3: Preliminary Site Plan Rendering**
Marquette Brownfield Redevelopment Authority **Marquette, Michigan**	**Source: Barry Polzin Architects Marquette, Michigan** **Date: June 2021**



Brownfield Plan **Vault - Marquette**	**Figure 3: Public Infrastructure**
Marquette Brownfield Redevelopment Authority **Marquette, Michigan**	**Source: Barry Polzin Architects** **Marquette, Michigan** **Date: June 2021**

Table 1.1 EGLE Eligible Activities Costs and Schedule Vault Marquette City of Marquette Brownfield Redevelopment Authority	
EGLE Eligible Activities	**Cost**
Department Specific Activities	
BEA Actiivities	
Phase I ESA	$4,000
Phase II ESA	$20,000
Baseline Environmental Assessment	$3,000
Subtotal	$27,000
Due Care Activities	
Due Care Investigation	$50,000
Section 7A Compliance Analysis	$4,000
Due Care Measures	
Soil Removal, Transport and Disposal	$300,000
Vapor Mitigation	$410,000
Subtotal	$764,000
EGLE Eligible Activities Subtotal	*$791,000*
Contingency (15%)	*$118,650*
EGLE Eligible Activities Subtotal	**$909,650**
Interest (5% for 10 Years)	**$268,400**
EGLE Eligible Activities Total Costs	**$1,178,050**
Brownfield Plan/Act 381 Work Plan Preparation	**$20,000**
Brownfield Plan/Act 381 Work Plan Implementation	**$10,000**
EGLE Eligible Activities Total Costs	**$1,208,050**
MBRA Administrative and Operating Costs	**$25,000**

Table 1.2 MSF Eligible Activities Costs and Schedule Vault Marquette Marquette Brownfield Redevelopment Authority	
MSF Eligible Activities	**Cost**
Demolition	
Site Demolition	$82,000
Building Demolition	$40,000
Engineering/Inspections	$8,000
Subtotal	$130,000
Lead, Asbestos, Mold Abatement	
Survey	$4,000
Monitoring	$8,000
Abatement	$75,000
Subtotal	$87,000
Private Infrastructure Improvements	
Urban stormwater management system - low impact design	$146,000
Architectural/Engineering Costs (8%)	$11,680
Subtotal	$157,680
Site Preparation	
Cut and Fill Operations	$234,000
Excavation for Unstable Soils	$25,000
Fill	$15,000
Special Foundations	$360,000
Geotechnical Engineering	$28,000
Relocation of Active Utilities	$264,000
Staking	$12,000
Temporary Facilities, Site Control, Protection	$32,000
Temporary Sheeting Shoring	$280,000
Soft Costs	$103,000
Subtotal	$1,353,000
Private MSF Eligible Activities Sub-Total	**$1,727,680**
Contingency (15%)	**$237,250**
Private MSF Eligible Activities SubTotal	**$1,964,930**
Interest (5% for 10 years)	**$579,750**
Brownfield Plan/Act 381 Work Plan Preparation	**$20,000**
Private MSF Eligible Activities Total	**$2,564,680**
Public Infrastructure Improvements	
Vertical, underground, or integrated parking	$7,240,000
Sidewalks	$100,000
Curbs and Gutters	$24,000
Bridges	$200,000
Landscaping	$42,000
Lighting	$28,000
Park/Seating Areas	$330,000
Publicly-Owned Utilities	$30,000
Architectural/Engineering Costs (not incl parking)	$48,300
Subtotal	$8,042,300
Contingency (15%)	**$1,206,345**
Public MSF Eligible Activities SubTotal	**$9,248,645**
Interest 4% for 25 years)	$4,780,200
Brownfield Plan/Act 381 Work Plan Implementation	**$80,000**
City MSF Eligible Activities Total	**$14,108,845**
MSF Eligible Activities Total Costs	**$16,673,525**
MBRA Administrative and Operating Costs	**$75,000**

Table 2.1 - Annual Revenue and Brownfield Capture Estimates
Vault Marquette Brownfield Plan
City of Marquette Brownfield Redevelopment Authority

Estimated Taxable Value (TV) Increase Rate: 1.50%

Plan Year			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Revenue Year		2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
*Base Taxable Value		$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039
Annual Value Additions	$ 21,000,000			$ 14,000,000	$ 7,000,000												
Cumulative Value Additions			$ 663,450	$ 14,673,402	$ 21,893,503	$ 22,221,905	$ 22,555,234	$ 22,893,562	$ 23,236,966	$ 23,585,520	$ 23,939,303	$ 24,298,393	$ 24,662,869	$ 25,032,812	$ 25,408,304	$ 25,789,428	$ 26,176,270
Estimated New TV		$ 386,039	$ 1,049,489	$ 7,722,740	$ 11,332,790	$ 11,496,992	$ 11,663,656	$ 11,832,820	$ 12,004,522	$ 12,178,799	$ 12,355,691	$ 12,535,235	$ 12,717,473	$ 12,902,445	$ 13,090,191	$ 13,280,753	$ 13,474,174
Incremental Difference (New TV - Base TV)			$ 663,450	$ 7,336,701	$ 10,946,751	$ 11,110,953	$ 11,277,617	$ 11,446,781	$ 11,618,483	$ 11,792,760	$ 11,969,652	$ 12,149,196	$ 12,331,434	$ 12,516,406	$ 12,704,152	$ 12,894,714	$ 13,088,135
Total School Revenue	Millage Rate																
45.65%	24.0000	$ 9,265	$ 25,188	$ 185,346	$ 271,987	$ 275,928	$ 279,928	$ 283,988	$ 288,109	$ 292,291	$ 296,537	$ 300,846	$ 305,219	$ 309,659	$ 314,165	$ 318,738	$ 323,380
Total Local Revenue	Millage Rate																
54.35%	28.5726	$ 11,030	$ 29,987	$ 220,659	$ 323,807	$ 328,499	$ 333,261	$ 338,094	$ 343,000	$ 347,980	$ 353,034	$ 358,164	$ 363,371	$ 368,656	$ 374,021	$ 379,466	$ 384,992
Total Revenue	Millage Rate																
	52.5726	$ 20,295	$ 55,174	$ 406,005	$ 595,794	$ 604,427	$ 613,189	$ 622,082	$ 631,109	$ 640,271	$ 649,571	$ 659,010	$ 668,591	$ 678,315	$ 688,185	$ 698,204	$ 708,372
State Revenue	Millage Rate	46.50%															
State Education Tax (SET)	6.0000	$ -	$ 3,981	$ 44,020	$ 65,681	$ 66,666	$ 67,666	$ 68,681	$ 69,711	$ 70,757	$ 71,818	$ 72,895	$ 73,989	$ 75,098	$ 76,225	$ 77,368	$ 78,529
School Operating Tax	18.0000	$ -	$ 11,942	$ 132,061	$ 197,042	$ 199,997	$ 202,997	$ 206,042	$ 209,133	$ 212,270	$ 215,454	$ 218,686	$ 221,966	$ 225,295	$ 228,675	$ 232,105	$ 235,586
School Total	**24.0000**	**$ -**	**$ 15,923**	**$ 176,081**	**$ 262,722**	**$ 266,663**	**$ 270,663**	**$ 274,723**	**$ 278,844**	**$ 283,026**	**$ 287,272**	**$ 291,581**	**$ 295,954**	**$ 300,394**	**$ 304,900**	**$ 309,473**	**$ 314,115**
Local Revenue	Millage Rate	53.50%															
City Operating	14.9225	$ -	$ 9,900	$ 109,482	$ 163,353	$ 165,803	$ 168,290	$ 170,815	$ 173,377	$ 175,977	$ 178,617	$ 181,296	$ 184,016	$ 186,776	$ 189,578	$ 192,421	$ 195,308
Senior	0.3496	$ -	$ 232	$ 2,565	$ 3,827	$ 3,884	$ 3,943	$ 4,002	$ 4,062	$ 4,123	$ 4,185	$ 4,247	$ 4,311	$ 4,376	$ 4,441	$ 4,508	$ 4,576
County Allocated	5.2938	$ -	$ 3,512	$ 38,839	$ 57,950	$ 58,819	$ 59,701	$ 60,597	$ 61,506	$ 62,429	$ 63,365	$ 64,315	$ 65,280	$ 66,259	$ 67,253	$ 68,262	$ 69,286
Transit	0.6000	$ -	$ 398	$ 4,402	$ 6,568	$ 6,667	$ 6,767	$ 6,868	$ 6,971	$ 7,076	$ 7,182	$ 7,290	$ 7,399	$ 7,510	$ 7,622	$ 7,737	$ 7,853
Aging	0.4474	$ -	$ 297	$ 3,282	$ 4,898	$ 4,971	$ 5,046	$ 5,121	$ 5,198	$ 5,276	$ 5,355	$ 5,436	$ 5,517	$ 5,600	$ 5,684	$ 5,769	$ 5,856
MOE	0.5500	$ -	$ 365	$ 4,035	$ 6,021	$ 6,111	$ 6,203	$ 6,296	$ 6,390	$ 6,486	$ 6,583	$ 6,682	$ 6,782	$ 6,884	$ 6,987	$ 7,092	$ 7,198
Dispatch	0.4970	$ -	$ 330	$ 3,646	$ 5,441	$ 5,522	$ 5,605	$ 5,689	$ 5,774	$ 5,861	$ 5,949	$ 6,038	$ 6,129	$ 6,221	$ 6,314	$ 6,409	$ 6,505
Rescue	0.1525	$ -	$ 101	$ 1,119	$ 1,669	$ 1,694	$ 1,720	$ 1,746	$ 1,772	$ 1,798	$ 1,825	$ 1,853	$ 1,881	$ 1,909	$ 1,937	$ 1,966	$ 1,996
Veterans	0.0800	$ -	$ 53	$ 587	$ 876	$ 889	$ 902	$ 916	$ 929	$ 943	$ 958	$ 972	$ 987	$ 1,001	$ 1,016	$ 1,032	$ 1,047
Heritage Trail	0.2000	$ -	$ 133	$ 1,467	$ 2,189	$ 2,222	$ 2,256	$ 2,289	$ 2,324	$ 2,359	$ 2,394	$ 2,430	$ 2,466	$ 2,503	$ 2,541	$ 2,579	$ 2,618
Library	1.3685	$ -	$ 908	$ 10,040	$ 14,981	$ 15,205	$ 15,433	$ 15,665	$ 15,900	$ 16,138	$ 16,380	$ 16,626	$ 16,876	$ 17,129	$ 17,386	$ 17,646	$ 17,911
ISD	2.2048	$ -	$ 1,463	$ 16,176	$ 24,135	$ 24,497	$ 24,865	$ 25,238	$ 25,616	$ 26,001	$ 26,391	$ 26,787	$ 27,188	$ 27,596	$ 28,010	$ 28,430	$ 28,857
MAPS Sinking Fund	0.9500	$ -	$ 630	$ 6,970	$ 10,399	$ 10,555	$ 10,714	$ 10,874	$ 11,038	$ 11,203	$ 11,371	$ 11,542	$ 11,715	$ 11,891	$ 12,069	$ 12,250	$ 12,434
Local Total	**27.6161**	**$ -**	**$ 18,322**	**$ 202,611**	**$ 302,307**	**$ 306,841**	**$ 311,444**	**$ 316,115**	**$ 320,857**	**$ 325,670**	**$ 330,555**	**$ 335,513**	**$ 340,546**	**$ 345,654**	**$ 350,839**	**$ 356,102**	**$ 361,443**
State and Local Capture	Millage Rate																
TOTAL	**51.6161**	$ -	**$ 34,245**	**$ 378,692**	**$ 565,029**	**$ 573,504**	**$ 582,107**	**$ 590,838**	**$ 599,701**	**$ 608,696**	**$ 617,827**	**$ 627,094**	**$ 636,501**	**$ 646,048**	**$ 655,739**	**$ 665,575**	**$ 675,558**
Non-Capturable Millages	Millage Rate																**$ 68,519**
Library Debt	0.4565	$ -	$ 303	$ 3,349	$ 4,997	$ 5,072	$ 5,148	$ 5,225	$ 5,304	$ 5,383	$ 5,464	$ 5,546	$ 5,629	$ 5,714	$ 5,799	$ 5,886	$ 5,975
MAPS Debt	0.5000	$ -	$ 332	$ 3,668	$ 5,473	$ 5,555	$ 5,639	$ 5,723	$ 5,809	$ 5,896	$ 5,985	$ 6,075	$ 6,166	$ 6,258	$ 6,352	$ 6,447	$ 6,544
		$ -	**$ 635**	**$ 7,018**	**$ 10,471**	**$ 10,628**	**$ 10,787**	**$ 10,949**	**$ 11,113**	**$ 11,280**	**$ 11,449**	**$ 11,621**	**$ 11,795**	**$ 11,972**	**$ 12,152**	**$ 12,334**	**$ 12,519**

Estimated Taxable Value (TV) Increase Rate: 2.50%

Plan Year		16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Revenue Year		2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051
*Base Taxable Value		$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039
Annual Value Additions																
Cumulative Value Additions		$ 26,568,914	$ 26,967,448	$ 27,371,959	$ 27,782,539	$ 28,199,277	$ 28,622,266	$ 29,051,600	$ 29,487,374	$ 29,929,684	$ 30,378,630	$ 30,834,309	$ 31,296,824	$ 31,766,276	$ 32,242,770	$ 32,726,412
Estimated New TV		$ 13,670,496	$ 13,869,763	$ 14,072,019	$ 14,277,308	$ 14,485,677	$ 14,697,172	$ 14,911,839	$ 15,129,726	$ 15,350,881	$ 15,575,354	$ 15,803,194	$ 16,034,451	$ 16,269,177	$ 16,507,424	$ 16,749,245
Incremental Difference (New TV - Base TV)		$ 13,284,457	$ 13,483,724	$ 13,685,980	$ 13,891,269	$ 14,099,638	$ 14,311,133	$ 14,525,800	$ 14,743,687	$ 14,964,842	$ 15,189,315	$ 15,417,155	$ 15,648,412	$ 15,883,138	$ 16,121,385	$ 16,363,206
Total School Revenue	Millage Rate															
45.65%	24.0000	$ 328,092	$ 332,874	$ 337,728	$ 342,655	$ 347,656	$ 352,732	$ 357,884	$ 363,113	$ 368,421	$ 373,808	$ 379,277	$ 384,827	$ 390,460	$ 396,178	$ 401,982
Total Local Revenue	Millage Rate															
54.35%	28.5726	$ 390,602	$ 396,295	$ 402,074	$ 407,940	$ 413,893	$ 419,936	$ 426,070	$ 432,296	$ 438,615	$ 445,028	$ 451,538	$ 458,146	$ 464,853	$ 471,660	$ 478,569
Total Revenue	Millage Rate															
	52.5726	$ 718,694	$ 729,169	$ 739,803	$ 750,595	$ 761,550	$ 772,669	$ 783,954	$ 795,409	$ 807,036	$ 818,837	$ 830,815	$ 842,973	$ 855,313	$ 867,838	$ 880,551
School Capture	Millage Rate															
State Education Tax (SET)	6.0000	$ 79,707	$ 80,902	$ 82,116	$ 83,348	$ 84,598	$ 85,867	$ 87,155	$ 88,462	$ 89,789	$ 91,136	$ 92,503	$ 93,890	$ 95,299	$ 96,728	$ 98,179
School Operating Tax	18.0000	$ 239,120	$ 242,707	$ 246,348	$ 250,043	$ 253,793	$ 257,600	$ 261,464	$ 265,386	$ 269,367	$ 273,408	$ 277,509	$ 281,671	$ 285,896	$ 290,185	$ 294,538
School Total	**24.0000**	**$ 318,827**	**$ 323,609**	**$ 328,464**	**$ 333,390**	**$ 338,391**	**$ 343,467**	**$ 348,619**	**$ 353,848**	**$ 359,156**	**$ 364,544**	**$ 370,012**	**$ 375,562**	**$ 381,195**	**$ 386,913**	**$ 392,717**
Local Capture	Millage Rate															
City Operating	14.9225	$ 198,237	$ 201,211	$ 204,229	$ 207,292	$ 210,402	$ 213,558	$ 216,761	$ 220,013	$ 223,313	$ 226,663	$ 230,062	$ 233,513	$ 237,016	$ 240,571	$ 244,180
Senior	0.3496	$ 4,644	$ 4,714	$ 4,785	$ 4,856	$ 4,929	$ 5,003	$ 5,078	$ 5,154	$ 5,232	$ 5,310	$ 5,390	$ 5,471	$ 5,553	$ 5,636	$ 5,721
County Allocated	5.2938	$ 70,325	$ 71,380	$ 72,451	$ 73,538	$ 74,641	$ 75,760	$ 76,897	$ 78,050	$ 79,221	$ 80,409	$ 81,615	$ 82,840	$ 84,082	$ 85,343	$ 86,624
Transit	0.6	$ 7,971	$ 8,090	$ 8,212	$ 8,335	$ 8,460	$ 8,587	$ 8,715	$ 8,846	$ 8,979	$ 9,114	$ 9,250	$ 9,389	$ 9,530	$ 9,673	$ 9,818
Aging	0.4474	$ 5,943	$ 6,033	$ 6,123	$ 6,215	$ 6,308	$ 6,403	$ 6,499	$ 6,596	$ 6,695	$ 6,796	$ 6,898	$ 7,001	$ 7,106	$ 7,213	$ 7,321
MOE	0.55	$ 7,306	$ 7,416	$ 7,527	$ 7,640	$ 7,755	$ 7,871	$ 7,989	$ 8,109	$ 8,231	$ 8,354	$ 8,479	$ 8,607	$ 8,736	$ 8,867	$ 9,000
Dispatch	0.497	$ 6,602	$ 6,701	$ 6,802	$ 6,904	$ 7,008	$ 7,113	$ 7,219	$ 7,328	$ 7,438	$ 7,549	$ 7,662	$ 7,777	$ 7,894	$ 8,012	$ 8,133
Rescue	0.1525	$ 2,026	$ 2,056	$ 2,087	$ 2,118	$ 2,150	$ 2,182	$ 2,215	$ 2,248	$ 2,282	$ 2,316	$ 2,351	$ 2,386	$ 2,422	$ 2,459	$ 2,495
Veterans	0.08	$ 1,063	$ 1,079	$ 1,095	$ 1,111	$ 1,128	$ 1,145	$ 1,162	$ 1,179	$ 1,197	$ 1,215	$ 1,233	$ 1,252	$ 1,271	$ 1,290	$ 1,309
Heritage Trail	0.2	$ 2,657	$ 2,697	$ 2,737	$ 2,778	$ 2,820	$ 2,862	$ 2,905	$ 2,949	$ 2,993	$ 3,038	$ 3,083	$ 3,130	$ 3,177	$ 3,224	$ 3,273
Library	1.3685	$ 18,180	$ 18,452	$ 18,729	$ 19,010	$ 19,295	$ 19,585	$ 19,879	$ 20,177	$ 20,479	$ 20,787	$ 21,098	$ 21,415	$ 21,736	$ 22,062	$ 22,393
ISD	2.2048	$ 29,290	$ 29,729	$ 30,175	$ 30,627	$ 31,087	$ 31,553	$ 32,026	$ 32,507	$ 32,994	$ 33,489	$ 33,992	$ 34,502	$ 35,019	$ 35,544	$ 36,078
MAPS Sinking Fund	0.95	$ 12,620	$ 12,810	$ 13,002	$ 13,197	$ 13,395	$ 13,596	$ 13,800	$ 14,007	$ 14,217	$ 14,430	$ 14,646	$ 14,866	$ 15,089	$ 15,315	$ 15,545
Local Total	**27.6161**	**$ 366,865**	**$ 372,368**	**$ 377,953**	**$ 383,623**	**$ 389,377**	**$ 395,218**	**$ 401,146**	**$ 407,163**	**$ 413,271**	**$ 419,470**	**$ 425,762**	**$ 432,148**	**$ 438,630**	**$ 445,210**	**$ 451,888**
Local Capture	Millage Rate															
TOTAL	**51.6161**	**$ 685,692**	**$ 695,977**	**$ 706,417**	**$ 717,013**	**$ 727,768**	**$ 738,685**	**$ 749,765**	**$ 761,012**	**$ 772,427**	**$ 784,013**	**$ 795,773**	**$ 807,710**	**$ 819,826**	**$ 832,123**	**$ 844,605**
Non-Capturable Millages	Millage Rate															
Library Debt	0.4565	$ 303	$ 3,349	$ 4,997	$ 5,072	$ 5,148	$ 5,225	$ 5,304	$ 5,383	$ 5,464	$ 5,546	$ 5,629	$ 5,714	$ 5,799	$ 5,886	$ 5,975
MAPS Debt	0.5000	$ 6,642	$ 6,742	$ 6,843	$ 6,946	$ 7,050	$ 7,156	$ 7,263	$ 7,372	$ 7,482	$ 7,595	$ 7,709	$ 7,824	$ 7,942	$ 8,061	$ 8,182
		$ 6,945	**$ 10,091**	**$ 11,840**	**$ 12,018**	**$ 12,198**	**$ 12,381**	**$ 12,567**	**$ 12,755**	**$ 12,947**	**$ 13,141**	**$ 13,338**	**$ 13,538**	**$ 13,741**	**$ 13,947**	**$ 14,156**

Table 2.2 - Tax Increment Revenue Reimbursement Allocation Table
Vault Marquette Brownfield Plan
City of Marquette Brownfield Redevelopment Authority

Maximum Reimbursement	Proportionality	School & Local Taxes	State Brownfield Fund	LBRF	Local-Only Taxes	Total
State	**46.50%**	**$ 8,314,417**	$ 1,107,291	$ -		$ 9,421,709
Local	**53.50%**	**$ 9,567,158**		$ 749,268	**$ 100,000**	$ 10,416,426
TOTAL	100.0%	**$ 17,881,575**	**$ 1,107,291**	**$ 749,268**		**$ 19,838,135**
EGLE		$ 1,208,050				
MSF		$ 16,673,525				
TOTAL		**$ 17,881,575**				

Estimated Total Years of Capture:	
Local Eligible Activities	28
State Eligible Activities	30
LBRF	2

Estimated Capture	$ 17,881,575
Administrative Fees	$ 100,000
State Revolving Fund	$ 1,107,291
LSRRF	$ 749,268
TOTAL	$ 19,838,135

Estimated Taxable Value (TV) Increase Rate: 1.50%

Plan Year				**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**
Revenue Year				2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
*Base Taxable Value				$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039
Annual Value Additions				$ -	$ -	$ 14,000,000	$ 7,000,000	$ -											
Cumulative Value Additions					$ 663,450	$ 14,673,402	$ 21,893,503	$ 22,221,905	$ 22,555,234	$ 22,893,562	$ 23,236,966	$ 23,585,520	$ 23,939,303	$ 24,298,393	$ 24,662,869	$ 25,032,812	$ 25,408,304	$ 25,789,428	$ 26,176,270
Estimated New TV				$ 386,039	$ 717,764	$ 7,722,740	$ 11,332,790	$ 11,496,992	$ 11,663,656	$ 11,832,820	$ 12,004,522	$ 12,178,799	$ 12,355,691	$ 12,535,235	$ 12,717,473	$ 12,902,445	$ 13,090,191	$ 13,280,753	$ 13,474,174
Incremental Difference (New TV - Base TV)					$ 331,725	$ 7,336,701	$ 10,946,751	$ 11,110,953	$ 11,277,617	$ 11,446,781	$ 11,618,483	$ 11,792,760	$ 11,969,652	$ 12,149,196	$ 12,331,434	$ 12,516,406	$ 12,704,152	$ 12,894,714	$ 13,088,135
Total School Revenue	Millage Rate																		
	45.65%	24.0000		$ 9,265	$ 25,188	$ 185,346	$ 271,987	$ 275,928	$ 279,928	$ 283,988	$ 288,109	$ 292,291	$ 296,537	$ 300,846	$ 305,219	$ 309,659	$ 314,165	$ 318,738	$ 323,380
Total Local Revenue	Millage Rate																		
	54.35%	28.5726		$ 11,030	$ 29,987	$ 220,659	$ 323,807	$ 328,499	$ 333,261	$ 338,094	$ 343,000	$ 347,980	$ 353,034	$ 358,164	$ 363,371	$ 368,656	$ 374,021	$ 379,466	$ 384,992
Total Revenue	Millage Rate																		
	52.5726			$ 20,295	$ 55,174	$ 406,005	$ 595,794	$ 604,427	$ 613,189	$ 622,082	$ 631,109	$ 640,271	$ 649,571	$ 659,010	$ 668,591	$ 678,315	$ 688,185	$ 698,204	$ 708,372

Plan Year				0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Revenue Year	notes		Capture Rate	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Total State Incremental Revenue			46.50%	$ -	$ 15,923	$ 176,081	$ 262,722	$ 266,663	$ 270,663	$ 274,723	$ 278,844	$ 283,026	$ 287,272	$ 291,581	$ 295,954	$ 300,394	$ 304,900	$ 309,473	$ 314,115
State Brownfield Revolving Fund (50% of SET)				$ -	$ 1,990	$ 22,010	$ 32,840	$ 33,333	$ 33,833	$ 34,340	$ 34,855	$ 35,378	$ 35,909	$ 36,448	$ 36,994	$ 37,549	$ 38,112	$ 38,684	$ 39,264
State TIR Available for Reimbursement				**$ -**	**$ 13,932**	**$ 154,071**	**$ 229,882**	**$ 233,330**	**$ 236,830**	**$ 240,382**	**$ 243,988**	**$ 247,648**	**$ 251,363**	**$ 255,133**	**$ 258,960**	**$ 262,845**	**$ 266,787**	**$ 270,789**	**$ 274,851**
Total Local Incremental Revenue			53.50%	$ -	$ 18,322	$ 202,611	$ 302,307	$ 306,841	$ 311,444	$ 316,115	$ 320,857	$ 325,670	$ 330,555	$ 335,513	$ 340,546	$ 345,654	$ 350,839	$ 356,102	$ 361,443
BRA Administrative Fee	5%	$ 100,000		$ -	$ 916	$ 10,131	$ 15,115	$ 15,342	$ 15,572	$ 15,806	$ 16,043	$ 11,076							
Local TIR Available for Reimbursement				**$ -**	**$ 17,406**	**$ 192,481**	**$ 287,191**	**$ 291,499**	**$ 295,872**	**$ 300,310**	**$ 304,814**	**$ 314,595**	**$ 330,555**	**$ 335,513**	**$ 340,546**	**$ 345,654**	**$ 350,839**	**$ 356,102**	**$ 361,443**
Total State & Local TIR Available for Reimbursement				**$ -**	**$ -**	**$ 31,338**	**$ 346,551**	**$ 517,073**	**$ 524,829**	**$ 532,702**	**$ 540,692**	**$ 548,802**	**$ 562,243**	**$ 581,918**	**$ 590,647**	**$ 599,506**	**$ 608,499**	**$ 617,626**	**$ 626,891**	**$ 636,294**
DEVELOPER	Beginning Balance				% Allocation		20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%
Developer Reimbursement		21%	$3,742,730		$ -	$ 69,310	$ 103,415	$ 74,268	$ 82,140	$ 108,138	$ 109,760	$ 112,449	$ 116,384	$ 118,129	$ 119,901	$ 121,700	$ 123,525	$ 125,378	$ 127,259
Developer Reimbursement Balance			***$3,742,730***	***$ 3,742,730***	***$ 3,742,730***	***$ 3,673,420***	***$ 3,570,005***	***$ 3,495,737***	***$ 3,413,597***	***$ 3,305,458***	***$ 3,195,698***	***$ 3,083,249***	***$ 2,966,866***	***$ 2,848,737***	***$ 2,728,835***	***$ 2,607,136***	***$ 2,483,610***	***$ 2,358,232***	***$ 2,230,973***
CITY	Beginning Balance				% Allocation		80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
City Reimbursement			$14,108,845		$ -	$ 277,241	$ 413,658	$ 419,863	$ 426,161	$ 432,554	$ 439,042	$ 449,794	$ 465,534	$ 472,517	$ 479,605	$ 486,799	$ 494,101	$ 501,513	$ 509,035
City Reimbursement Balance			***$14,108,845***	***$ 14,108,845***	***$ 13,831,604***	***$ 13,417,946***	***$ 12,998,082***	***$ 12,571,921***	***$ 12,139,367***	***$ 11,700,325***	***$ 11,250,531***	***$ 10,784,997***	***$ 10,312,480***	***$ 9,832,875***	***$ 9,346,076***	***$ 8,851,975***	***$ 8,350,462***	***$ 7,841,427***

MSF Non-Environmental Costs			$ 16,673,525	$ -	$ 29,221	$ 323,139	$ 482,140	$ 489,373	$ 496,713	$ 504,164	$ 511,726	$ 524,258	$ 542,604	$ 550,743	$ 559,005	$ 567,390	$ 575,900	$ 584,539	$ 593,307
State Tax Reimbursement	93.24%		$ 7,752,709	$ -	$ 12,991	$ 143,662	$ 214,351	$ 217,567	$ 220,830	$ 224,143	$ 227,505	$ 230,917	$ 234,381	$ 237,897	$ 241,465	$ 245,087	$ 248,763	$ 252,495	$ 256,282
Local Tax Reimbursement	93.24%		$ 8,920,816	$ -	$ 16,230	$ 179,477	$ 267,789	$ 271,806	$ 275,883	$ 280,021	$ 284,222	$ 293,341	$ 308,223	$ 312,847	$ 317,539	$ 322,302	$ 327,137	$ 332,044	$ 337,025
Total MSF Reimbursement Balance				$ 16,673,525	$ 16,644,304	$ 16,321,165	$ 15,839,025	$ 15,349,652	$ 14,852,939	$ 14,348,775	$ 13,837,049	$ 13,312,791	$ 12,770,186	$ 12,219,443	$ 11,660,438	$ 11,093,049	$ 10,517,148	$ 9,932,609	$ 9,339,302
State MSF Balance to Be Reimbursed				$ 7,752,709	$ 7,739,718	$ 7,596,056	$ 7,381,704	$ 7,164,138	$ 6,943,308	$ 6,719,165	$ 6,491,660	$ 6,260,743	$ 6,026,362	$ 5,788,465	$ 5,547,000	$ 5,301,913	$ 5,053,150	$ 4,800,655	$ 4,544,372
Local MSF Balance to Be Reimbursed				$ 8,920,816	$ 8,904,586	$ 8,725,109	$ 8,457,320	$ 8,185,514	$ 7,909,631	$ 7,629,610	$ 7,345,388	$ 7,052,047	$ 6,743,824	$ 6,430,977	$ 6,113,438	$ 5,791,136	$ 5,463,999	$ 5,131,955	$ 4,794,930
EGLE Environmental Costs			$ 1,208,050	$ -	$ 2,117	$ 23,412	$ 34,933	$ 35,457	$ 35,988	$ 36,528	$ 37,076	$ 37,984	$ 39,313	$ 39,109	$ 39,708	$ 40,315	$ 40,932	$ 41,558	$ 42,193
State Tax Reimbursement	6.76%		$ 561,708	$ -	$ 941	$ 10,409	$ 15,530	$ 15,763	$ 16,000	$ 16,240	$ 16,483	$ 16,731	$ 16,982	$ 17,236	$ 17,495	$ 17,757	$ 18,024	$ 18,294	$ 18,568
Local Tax Reimbursement	6.76%		$ 646,342	$ -	$ 1,176	$ 13,004	$ 19,402	$ 19,693	$ 19,989	$ 20,288	$ 20,593	$ 21,253	$ 22,332	$ 21,873	$ 22,213	$ 22,558	$ 22,908	$ 23,264	$ 23,625
Total EGLEReimbursement Balance				$ 1,208,050	$ 1,205,933	$ 1,182,520	$ 1,147,588	$ 1,112,131	$ 1,076,143	$ 1,039,614	$ 1,002,538	$ 964,554	$ 925,241	$ 886,132	$ 846,423	$ 806,108	$ 765,176	$ 723,619	$ 681,426
State EGLE Balance to Be Reimbursed				$ 561,708	$ 560,767	$ 550,358	$ 534,828	$ 519,065	$ 503,065	$ 486,825	$ 470,341	$ 453,611	$ 436,629	$ 419,393	$ 401,898	$ 384,140	$ 366,117	$ 347,823	$ 329,254
Local EGLE Balance to Be Reimbursed				$ 646,342	$ 645,166	$ 632,162	$ 612,760	$ 593,067	$ 573,078	$ 552,790	$ 532,197	$ 510,943	$ 488,612	$ 466,739	$ 444,526	$ 421,968	$ 399,060	$ 375,796	$ 352,172
Total Annual Eligible Activity Reimbursement				$ -	$ 31,338	$ 346,551	$ 517,073	$ 524,829	$ 532,702	$ 540,692	$ 548,802	$ 562,243	$ 581,918	$ 589,853	$ 598,712	$ 607,705	$ 616,832	$ 626,097	$ 635,500
Local Only Costs	5%																		
Local Tax Reimbursement				$ -														$ -	-
Total Local Only Reimbursement Balance				$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-
Local Brownfield Revolving Fund																			
State Tax Capture	$ -			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-					
Local Tax Capture	$ 749,268			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-					
Total LBRF Capture	$ 749,268			$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	-				$ -	-
State Brownfield Fund				$ -	$ 1,990	$ 22,010	$ 32,840	$ 33,333	$ 33,833	$ 34,340	$ 34,855	$ 35,378	$ 35,909	$ 36,448	$ 36,994	$ 37,549	$ 38,112	$ 38,684	$ 39,264
Total Annual Brownfield Capture Reimbursement				$ -	$ 33,329	$ 368,561	$ 549,913	$ 558,162	$ 566,534	$ 575,032	$ 583,658	$ 597,621	$ 617,827	$ 626,300	$ 635,707	$ 645,254	$ 654,945	$ 664,781	$ 674,764

Table 2.2 - Tax Increment Revenue Reimbursement Allocation Table
Vault Marquette Brownfield Plan
City of Marquette Brownfield Redevelopment Authority

Estimated Taxable Valu	16	17	18	19	20	21	22	23	24	25	26	27	28	29	Local State Eligible Activity Capture Ends 30
	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051
*	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039	$ 386,039
Ann								$ -	$ -			$ -	$ -	$ -	$ -
Cumulat	$ 26,568,914	$ 26,967,448	$ 27,371,959	$ 27,782,539	$ 28,199,277	$ 28,622,266	$ 29,051,600	$ 29,487,374	$ 29,929,684	$ 30,378,630	$ 30,834,309	$ 31,296,824	$ 31,766,276	$ 32,242,770	$ 32,726,412
	$ 13,670,496	$ 13,869,763	$ 14,072,019	$ 14,277,308	$ 14,485,677	$ 14,697,172	$ 14,911,839	$ 15,129,726	$ 15,350,881	$ 15,575,354	$ 15,803,194	$ 16,034,451	$ 16,269,177	$ 16,507,424	$ 16,749,245
Incremental Difference	$ 13,284,457	$ 13,483,724	$ 13,685,980	$ 13,891,269	$ 14,099,638	$ 14,311,133	$ 14,525,800	$ 14,743,687	$ 14,964,842	$ 15,189,315	$ 15,417,155	$ 15,648,412	$ 15,883,138	$ 16,121,385	$ 16,363,206
Total School Revenue															
	$ 328,092	$ 332,874	$ 337,728	$ 342,655	$ 347,656	$ 352,732	$ 357,884	$ 363,113	$ 368,421	$ 373,808	$ 379,277	$ 384,827	$ 390,460	$ 396,178	$ 401,982
Total Local Revenue															
	$ 390,602	$ 396,295	$ 402,074	$ 407,940	$ 413,893	$ 419,936	$ 426,070	$ 432,296	$ 438,615	$ 445,028	$ 451,538	$ 458,146	$ 464,853	$ 471,660	$ 478,569
Total Revenue															
	$ 718,694	$ 729,169	$ 739,803	$ 750,595	$ 761,550	$ 772,669	$ 783,954	$ 795,409	$ 807,036	$ 818,837	$ 830,815	$ 842,973	$ 855,313	$ 867,838	$ 880,551
Plan Year	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Revenue Year	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051
Total State Incremental Revenue	$ 318,827	$ 323,609	$ 328,464	$ 333,390	$ 338,391	$ 343,467	$ 348,619	$ 353,848	$ 359,156	$ 364,544	$ 370,012	$ 375,562	$ 381,195	$ 386,913	$ 392,717
State Brownfield Revolving Fund (50% of SET)	$ 39,853	$ 40,451	$ 41,058	$ 41,674	$ 42,299	$ 42,933	$ 43,577	$ 44,231	$ 44,895	$ 45,568	$ 46,251	$ 46,945	$ 47,649	$ 48,364	$ 49,090
State TIR Available for Reimbursement	**$ 278,974**	**$ 283,158**	**$ 287,406**	**$ 291,717**	**$ 296,092**	**$ 300,534**	**$ 305,042**	**$ 309,617**	**$ 314,262**	**$ 318,976**	**$ 323,760**	**$ 328,617**	**$ 333,546**	**$ 338,549**	**$ 343,627**
Total Local Incremental Revenue	$ 366,865	$ 372,368	$ 377,953	$ 383,623	$ 389,377	$ 395,218	$ 401,146	$ 407,163	$ 413,271	$ 419,470	$ 425,762	$ 432,148	$ 438,630	$ 445,210	$ 451,888
BRA Administrative Fee															
Local TIR Available for Reimbursement	**$ 366,865**	**$ 372,368**	**$ 377,953**	**$ 383,623**	**$ 389,377**	**$ 395,218**	**$ 401,146**	**$ 407,163**	**$ 413,271**	**$ 419,470**	**$ 425,762**	**$ 432,148**	**$ 438,630**	**$ 445,210**	**$ 451,888**
Total State & Local TIR Available for Reimbursement	**$ 645,838**	**$ 655,526**	**$ 665,359**	**$ 675,339**	**$ 685,469**	**$ 695,751**	**$ 706,188**	**$ 716,781**	**$ 727,532**	**$ 738,445**	**$ 749,522**	**$ 760,765**	**$ 772,176**	**$ 783,759**	**$ 795,515**
DEVELOPER	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	20%	38%	12%
Developer Reimbursement	$ 129,168	$ 131,105	$ 133,072	$ 135,068	$ 137,094	$ 139,150	$ 141,238	$ 143,356	$ 145,506	$ 147,689	$ 149,904	$ 152,153	$ 154,435	$ 298,085	$ 93,949
Developer Reimbursement Balance	***$ 2,101,806***	***$ 1,970,700***	***$ 1,837,629***	***$ 1,702,561***	***$ 1,565,467***	***$ 1,426,317***	***$ 1,285,079***	***$ 1,141,723***	***$ 996,217***	***$ 848,527***	***$ 698,623***	***$ 546,470***	***$ 392,035***	***$ 93,950***	***$ 0***
CITY	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	62%	0%
City Reimbursement	$ 516,671	$ 524,421	$ 532,287	$ 540,271	$ 548,376	$ 556,601	$ 564,950	$ 573,424	$ 582,026	$ 590,756	$ 599,618	$ 608,612	$ 617,741	$ 485,674	$ -
City Reimbursement Balance	***$ 7,324,756***	***$ 6,800,335***	***$ 6,268,048***	***$ 5,727,777***	***$ 5,179,401***	***$ 4,622,800***	***$ 4,057,850***	***$ 3,484,425***	***$ 2,902,400***	***$ 2,311,643***	***$ 1,712,026***	***$ 1,103,414***	***$ 485,673***	***$ (0)***	***$ (0)***
		$ 73,860													
MSF Non-Environmental Costs	*$ 602,207*	*$ 611,240*	*$ 620,408*	*$ 629,715*	*$ 639,160*	*$ 648,748*	*$ 658,479*	*$ 668,356*	*$ 678,381*	*$ 688,557*	*$ 698,885*	*$ 709,369*	*$ 720,009*	*$ 445,376*	*$ 320,412*
State Tax Reimbursement	$ 260,127	$ 264,028	$ 267,989	$ 272,009	$ 276,089	$ 280,230	$ 284,434	$ 288,700	$ 293,031	$ 297,426	$ 301,888	$ 306,416	$ 311,012	$ 315,677	$ 320,412
Local Tax Reimbursement	$ 342,080	$ 347,211	$ 352,419	$ 357,706	$ 363,071	$ 368,517	$ 374,045	$ 379,656	$ 385,351	$ 391,131	$ 396,998	$ 402,953	$ 408,997	$ 129,699	$ -
Total MSF Reimbursement Balance	*$ 8,737,095*	*$ 8,125,856*	*$ 7,505,447*	*$ 6,875,733*	*$ 6,236,572*	*$ 5,587,825*	*$ 4,929,346*	*$ 4,260,990*	*$ 3,582,609*	*$ 2,894,051*	*$ 2,195,166*	*$ 1,485,797*	*$ 765,788*	*$ 320,412*	*$ -*
State MSF Balance to Be Reimbursed	*$ 4,284,246*	*$ 4,020,217*	*$ 3,752,228*	*$ 3,480,220*	*$ 3,204,131*	*$ 2,923,900*	*$ 2,639,467*	*$ 2,350,767*	*$ 2,057,736*	*$ 1,760,310*	*$ 1,458,422*	*$ 1,152,006*	*$ 840,994*	*$ 525,317*	*$ 204,905*
Local MSF Balance to Be Reimbursed	*$ 4,452,850*	*$ 4,105,638*	*$ 3,753,219*	*$ 3,395,513*	*$ 3,032,442*	*$ 2,663,924*	*$ 2,289,879*	*$ 1,910,223*	*$ 1,524,873*	*$ 1,133,742*	*$ 736,744*	*$ 333,791*	*$ (75,206)*	*$ (204,905)*	*$ (204,905)*
EGLE Environmental Costs	*$ 42,838*	*$ 43,492*	*$ 44,157*	*$ 44,831*	*$ 45,515*	*$ 47,004*	*$ 47,709*	*$ 48,425*	*$ 49,151*	*$ 49,888*	*$ 50,636*	*$ 51,396*	*$ 52,167*	*$ 41,002*	*$ 23,215*
State Tax Reimbursement	$ 18,847	$ 19,130	$ 19,417	$ 19,708	$ 20,004	$ 20,304	$ 20,608	$ 20,917	$ 21,231	$ 21,549	$ 21,873	$ 22,201	$ 22,534	$ 22,872	$ 23,215
Local Tax Reimbursement	$ 23,991	$ 24,363	$ 24,740	$ 25,123	$ 25,512	$ 26,700	$ 27,101	$ 27,507	$ 27,920	$ 28,339	$ 28,764	$ 29,195	$ 29,633	$ 18,131	$ -
Total EGLEReimbursement Balance	*$ 638,588*	*$ 595,096*	*$ 550,939*	*$ 506,108*	*$ 460,593*	*$ 413,589*	*$ 365,880*	*$ 317,456*	*$ 268,305*	*$ 218,417*	*$ 167,780*	*$ 116,384*	*$ 64,217*	*$ 23,215*	*$ (0)*
State EGLE Balance to Be Reimbursed	*$ 310,407*	*$ 291,278*	*$ 271,861*	*$ 252,153*	*$ 232,149*	*$ 211,846*	*$ 191,238*	*$ 170,321*	*$ 149,090*	*$ 127,540*	*$ 105,667*	*$ 83,467*	*$ 60,933*	*$ 38,061*	*$ 14,846*
Local EGLE Balance to Be Reimbursed	*$ 328,181*	*$ 303,819*	*$ 279,079*	*$ 253,956*	*$ 228,444*	*$ 201,744*	*$ 174,643*	*$ 147,136*	*$ 119,216*	*$ 90,877*	*$ 62,113*	*$ 32,918*	*$ 3,285*	*$ (14,846)*	*$ (14,846)*
Total Annual Eligible Activity Reimbursement	*$ 645,044*	*$ 654,732*	*$ 664,565*	*$ 674,545*	*$ 684,675*	*$ 695,751*	*$ 706,188*	*$ 716,781*	*$ 727,532*	*$ 738,445*	*$ 749,522*	*$ 760,765*	*$ 772,176*	*$ 486,379*	*$ 343,627*
Local Only Costs															
Local Tax Reimbursement	$ -	$ -	$ -												
Total Local Only Reimbursement Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Local Brownfield Revolving Fund															
State Tax Capture		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Local Tax Capture		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	*$ 297,380*	*$ 451,888*
Total LBRF Capture		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	*$ 297,380*	*$ 451,888*
State Brownfield Fund	*$ 39,853*	*$ 40,451*	*$ 41,058*	*$ 41,674*	*$ 42,299*	*$ 42,933*	*$ 43,577*	*$ 44,231*	*$ 44,895*	*$ 45,568*	*$ 46,251*	*$ 46,945*	*$ 47,649*	*$ 48,364*	*$ 49,090*
Total Annual Brownfield Capture Reimbursement	*$ 684,898*	*$ 695,183*	*$ 705,623*	*$ 716,219*	*$ 726,974*	*$ 738,685*	*$ 749,765*	*$ 761,012*	*$ 772,427*	*$ 784,013*	*$ 795,773*	*$ 807,710*	*$ 819,826*	*$ 832,123*	*$ 844,605*

TABLE 3 IMPACT ON TAXING JURISDICTIONS

BROWNFIELD PLAN - THIRTY YEAR DURATION

VAULT MARQUETTE

CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY

		Millages	Captured Millage	Percent Allocation	Total Capture $19,838,135
City of Marquette*			15.2721	55.30%	$5,760,433
Allocated		14.9225			
Senior		0.3496			
Marquette County*			7.6207	27.60%	$2,874,427
County Allocated		5.2938			
Transit		0.6000			
Aging		0.4474			
MOE		0.5500			
Dispatch		0.4970			
Rescue		0.1525			
Veterans		0.0800			
Heritage Trail*		0.2000	0.2000	0.72%	$75,437
Library*		1.3685	1.3685	4.96%	$516,180
Library Debt**		***0.4565***			
Marquette Area Public Schools			0.9500	3.44%	$358,327
MAPS Sinking Fund		0.9500			
School Debt**		***0.5000***			
ISD		2.2048	2.2048	7.98%	$831,621
Local Taxes Total	53.50%	28.5726	27.6161	100.00%	$10,416,426
State Taxes*	46.50%		24.0000		$8,314,417
School Operating		18.0000			
State Educ Tax		3.0000			
State Brownfield Fund		3.0000			$1,107,291
Total		52.5726	51.6161		$19,838,135

* DDA captures all local taxes except ISD. Interlocal Agreement provides for Brownfield Capture

** LDFA 50% of School Operating and SET. Interlocal Agreement provides for Brownfield Reimbursement

‘** Debt Millage not captured as part of brownfield plan

RESOLUTION
Brownfield Plan – Vault Marquette
City of Marquette Brownfield Redevelopment Authority

At a regular meeting of the City of Marquette Brownfield Redevelopment Authority of Marquette, Michigan, held at the Marquette Municipal Service Center, 1100 Wright Street, Marquette, Michigan on June 17, 2021 at 8:00 a.m., the following resolution was offered by

Authority Member _____ and supported by

Authority Member _____.

Whereas The Michigan Brownfield Redevelopment Financing Act, Act 381, P.A. 1996 as amended, authorizes municipalities to create a brownfield redevelopment authority to promote the revitalization, redevelopment, and reuse of contaminated, blighted, functionally obsolete, or historic property through tax increment financing of Eligible Activities approved in a Brownfield Plan; and

Whereas the Marquette City Commission (the "Commission") established the Marquette Brownfield Redevelopment Authority (MBRA) under the procedures under Act 381 on September 8, 1997 and certified by the State of Michigan on January 28, 1998 to facilitate the cleanup and redevelopment of Brownfields within the City of Marquette; and,

Whereas, a Brownfield Plan that outlines the qualifications, costs, impacts, and incentives for reimbursement from Brownfield Tax Increment Financing revenues with the adoption of the Brownfield Plan has been prepared and submitted for the adaptive reuse of the former State Saving Bank at 101 S. Front Street as well as property at 119 S. Lakeshore Boulevard with the addition of approximately 70,000 square feet of additional hotel, commercial and residential space and the incorporation of an integrated, collaborative public parking facility; and

Whereas the Marquette Brownfield Redevelopment Authority has reviewed the Brownfield Plan and finds that it meets the requirements of Act 381 and constitutes a public purpose by meeting a critical community need for downtown parking, significantly increasing the value of downtown property, increasing property taxes, and providing employment; and

Whereas a public hearing on the Brownfield Plan is anticipated to be held on the regular meeting of the Marquette City Commission on July 12, 2021 and notice of the public hearing and notice to taxing jurisdictions will provided in compliance with the requirements of Act 381;

Now, Therefore be it Resolved that the City of Marquette Brownfield Redevelopment Authority hereby approves the Brownfield Plan for Vault Marquette subject to final review and approval by the Executive Director, and recommends approval by the Marquette City Commission; and

Be it Further Resolved that should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid; and,

Be it Further Resolved that any prior resolution, or any part thereof, in conflict with any of the provisions of this Resolution are hereby repealed.

Yes:_____

No:_____

Resolution duly adopted

_____
David Allen, Chair, City of Marquette
Brownfield Redevelopment Authority

Certified to be a true copy

_____
Date

_____
Matt Tuccini, Secretary

RESOLUTION
Brownfield Plan Approval
Vault Marquette
101 S. Front Street and 119 S. Lakeshore Boulevard

At a regular meeting of the Marquette City Commission held at Marquette City Hall, 300 W. Baraga Avenue, Marquette, Michigan on July 12, 2021, at 6:00 p.m., the following resolution was offered by

Commissioner _____ and supported by

Commissioner _____.

Whereas The Michigan Brownfield Redevelopment Financing Act, Act 381, P.A. 1996 as amended, authorizes municipalities to create a brownfield redevelopment authority to promote the revitalization, redevelopment, and reuse of contaminated, blighted, functionally obsolete, or historic property through tax increment financing of Eligible Activities approved in a Brownfield Plan; and

Whereas the Marquette City Commission (the "Commission") established the City of Marquette Brownfield Redevelopment Authority (MBRA) under the procedures under Act 381 on September 8, 1997 and certified by the State of Michigan on January 28, 1998 to facilitate the cleanup and redevelopment of Brownfields within the City of Marquette; and,

Whereas a Brownfield Plan that outlines the qualifications, costs, impacts, and incentives for reimbursement from Brownfield Tax Increment Financing revenues with the adoption of the Brownfield Plan has been prepared and submitted for the adaptive reuse of the former State Saving Bank at 101 S. Front Street as well as property at 119 S. Lakeshore Boulevard with the addition of approximately 70,000 square feet of additional hotel, commercial and residential space and the incorporation of an integrated, collaborative public parking facility; and

Whereas the City of Marquette Brownfield Redevelopment Authority reviewed the Brownfield Plan and determined the Brownfield Plan meets the requirements of Act 381 and constitutes a public purpose of meeting a critical community need for downtown parking, significantly increases the value of downtown property, increases property taxes, and provides employment; and

Whereas the City of Marquette Brownfield Redevelopment Authority approved the Brownfield Plan at a regular meeting on June 17, 2021 and provided a recommendation to the Marquette City Commission to approve the Brownfield Plan; and

Whereas a public hearing on the Brownfield Plan was held on July 12, 2021, and notice of the public hearing and notice to taxing jurisdictions has been provided in compliance with the requirements of Act 381; and

Now, Therefore be it Resolved, Whereas, The Marquette City Commission has reviewed the Brownfield Plan and finds, in accordance with the requirements of Section 14 of Act 381 that:

(a) The Brownfield Plan constitutes a public purpose of meeting a critical community need for downtown parking, significantly increasing the value of downtown property, increasing property taxes, and providing employment;
(b) The Brownfield Plan meets the requirements of Sections 13 and 13b of Act 381, Brownfield Plan Provisions as described in the Brownfield Plan, consistent with format recommended by the State of Michigan, including a description of the costs intended to be paid with tax increment revenues, a brief summary of Eligible Activities, estimate of captured taxable value and tax increment revenues, method of financing, maximum amount of indebtedness, beginning date and duration of capture, estimate of impact on taxing jurisdictions, legal description of Eligible Property, estimates of persons residing on the Eligible Property if applicable, and a plan and provisions for relocation of residents, if applicable;
(c) The proposed method of financing the costs of Eligible Activities by Braveworks, Inc. for private Eligible Activities and the Authority and the City of Marquette for public infrastructure is feasible, as described in Section 2.4 of the Brownfield Plan;
(d) The costs of Eligible Activities proposed are reasonable and necessary to carry out the purposes of Act 381, including environmental due diligence and due care activities, meeting regulatory requirements for lead and asbestos inspection and if necessary, abatement prior to demolition, demolition, relocation of active utilities, and public infrastructure, and the cost estimates are based on evaluation from certified professionals, experience in comparable projects, and preliminary discussions with reputable companies, as described in Section 2.1 and 2.2 of the Brownfield Plan; and
(e) The amount of captured taxable value estimated from the adoption of the Brownfield Plan is reasonable, as calculated in Table 2.1 and 2.2 of the Brownfield Plan, based on calculations of the tax revenues derived from taxable value increases and millage rates approved and authorized by the taxing jurisdictions on an annualized basis and balances against the outstanding Eligible Activity obligation approved as part of the Brownfield Plan and expenses reviewed and approved by the City of Marquette Brownfield Redevelopment Authority; and

Be it Further Resolved that pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of 1996, as amended, being MCL 125.2651, *et seq,* the Marquette City Commission hereby approves the Brownfield Plan for the Vault Marquette.

Be it Further Resolved that should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid; and,

Be it Further Resolved that any prior resolutions, or any part thereof, in conflict with any of the provisions of this Resolution are hereby repealed.

Yes:_____

No:_____

Resolution duly adopted

_____
Jennifer A. Smith, Mayor
City of Marquette

Certified to be a true copy, _____
Date

_____
Kyle Whitney, City Clerk

INTERLOCAL AGREEMENT TO USE DDA TAX INCREMENT REVENUES FOR THE VAULT MARQUETTE BROWNFIELD REDEVELOPMENT PROJECT

WHEREAS, the Urban Cooperation Act, PA7 of 1967, Extra Session (Act 7), provides that a public agency may enter into interlocal agreements with other public agencies to exercise jointly any power, privilege, or authority that the agencies share to in common and that each might exercise separately; and

WHEREAS, the City of Marquette Downtown Development Authority ("DDA") was duly established pursuant to PA 197 of 1975 as amended (Act 197); and

WHEREAS, the City of Marquette Brownfield Redevelopment Authority ("MBRA") was duly established pursuant to PA 381, 1996, as amended (Act 381); and

WHEREAS, the MBRA and DDA are each considered a "public agency" under Act 7; and

WHEREAS, the MBRA has the authority to pay for "Eligible Activities" and capture tax increment revenues generated by the levy of certain taxes via approved Brownfield Plans pursuant to and as described in Act 381; and

WHEREAS, the DDA has the authority to pay certain activities and capture tax increment revenues generated by the levy of certain taxes on the property pursuant to the Marquette Downtown Development Authority Tax Increment Financing Plan, as amended (the "DDA Plan"), and

WHEREAS, the DDA and the MBRA now wish to enter into this Interlocal Agreement to transfer the DDA tax increment revenues generated by the redevelopment of the former State Savings Bank building and property located at 101 S. Front Street and 119 S. Lakeshore Boulevard in Marquette, Michigan ("Eligible Property") to the MBRA to reimburse certain eligible activities as defined in Act 381 ("Eligible Activities"), including a public parking facility, pursuant to the Brownfield Plan for Vault Marquette ("Brownfield Plan"); and

THEREFORE, the DDA and MBRA agree as follows:

1. **Transfer and Use of Tax Increment Revenues**. Only upon affirmative vote by MBRA and the Marquette City Commission approving the Brownfield Plan, shall the tax increment revenues captured by the DDA generated by the Eligible Property be transferred to the MBRA to reimburse approved Eligible Activities, MBRA administration and operation cost, transfers to the State Brownfield Fund as required by Act 381, and deposits into the Local Brownfield Revolving Fund (LBRF). Tax Increment Revenues to be transferred will be based on the Initial Taxable Value identified in the Brownfield Plan as of December 31, 2020. The DDA shall retain all applicable tax increment revenue generated by the Eligible Property up to the Brownfield Initial Taxable Value.

2. **Limitation to Tax Increment Revenues from Eligible Property.** The DDA shall only transfer to the MBRA the tax increment revenues generated by the Eligible Property to reimburse approved Eligible Activity and other costs in the approved Brownfield

Plan, authorized by Act 381, and approved by the MBRA and the Marquette City Commission. Upon conclusion or dissolution of the Brownfield Plan, all tax increment revenues generated by the eligible property shall be captured by the DDA as stated in the DDA Plan.

3. **DDA Obligation Subordinate to Existing Bonds.** This DDA's obligation to transfer captured tax revenues to the MBRA pursuant to this Agreement is subordinate to, and contingent upon the ability of the DDA to capture sufficient tax increment revenues from the captured assessed value of the property in its TIF District other than the Eligible Property to pay it annual debt service obligations on bonds and other obligations issued by the DDA pursuant to PA 57 of 2018. In the event that the DDA does not have sufficient funds from tax increment revenues from the captured assessed values of the property in its TIF District other than the Eligible Property to pay its annual debt service on such bonds or other obligations, then the DDA shall not be obligated to transfer tax increment revenues from the Eligible Property to the MBRA in that year and so long as a shortfall exists, so that the DDA may use the tax increment revenues generated from the Eligible Property to pay its annual debt service obligations on such bonds. In such instances where the DDA uses tax increment revenues from the Eligible Property to pay its annual debt service on such bonds or other obligations, it is understood that once these obligations are met the transfer of tax increment revenues from the Eligible Property will continue until Eligible Activities are reimbursed.

4. **MBRA as Agent under This Agreement.** The parties designate the MBRA as the agent to receive and disburse all tax increment revenues generated by the Eligible Properties until such time as all obligations of the approved Brownfield Plan have been satisfied.

5. **Effective Date.** The Agreement shall commence upon its approval by the legislative bodies of the DDA and MBRA and duly executed by their authorized representatives and filed with the Marquette County Clerk and Secretary of State of the State of Michigan as required by Act 7.

6. **Severability.** To the extent that any provisions contained in this Agreement is deemed unenforceable, to the extent possible, the remaining terms shall remain in effect.

7. **Term.** The parties agree that the transfer of tax increment revenue from the Eligible Property to reimburse Eligible Activities, MBRA administration and operating costs, transfers to the State Brownfield Fund as required by Act 381, and LBRF deposits shall begin once tax increment revenues are collected from the Eligible Property, which will occur after the official approval of the Brownfield Plan by the Marquette City Commission. This contract extends until all obligations under this contract are met.

The DDA and MBRA, by their authorized representatives, have executed this Agreement as indicated on the attached signature page:

This agreement was approved by Marquette Downtown Development Authority. The Chairperson and Secretary were authorized to sign this Agreement on the __ day of ____, 2021 and was signed by the Chairperson and Secretary on the __ day of ____, 2021.

Witnesses

CITY OF MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY

_____

_____
Chairperson,

_____

_____
Secretary

Subscribed and sworn to before me on this _____ day of _____, 2021.

_____

_____

Notary Public, Marquette County
My commission expires

_____

This agreement was approved by the Marquette Brownfield Redevelopment Authority. The Chairperson and Secretary were authorized to sign this agreement on the __ day of ____, 2021 and was signed on the ____ day of ___, 2021.

Witnesses

CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY

_____

_____
Chairperson,

_____

_____
Secretary,

Subscribed and sworn to me this _____ day of _____, 2021.

_____

_____

Notary Public, Marquette County
My commission expires:

_____

INTERLOCAL AGREEMENT TO USE LDFA TAX INCREMENT REVENUES FOR THE VAULT MARQUETTE BROWNFIELD REDEVELOPMENT PROJECT

WHEREAS, the Urban Cooperation Act, PA7 of 1967, Extra Session (Act 7), provides that a public agency may enter into interlocal agreements with other public agencies to exercise jointly any power, privilege, or authority that the agencies share to in common and that each might exercise separately; and

WHEREAS, the City of Marquette Local Development Finance Authority ("LDFA") was duly established pursuant to PA 281 of 1986 as amended (Act 281); and

WHEREAS, the City of Marquette Brownfield Redevelopment Authority ("MBRA") was duly established pursuant to PA 381, 1996, as amended (Act 381); and

WHEREAS, the MBRA and LDFA are each considered a "public agency" under Act 7; and

WHEREAS, the MBRA has the authority to pay for "Eligible Activities" and capture tax increment revenues generated by the levy of certain taxes via approved Brownfield Plans pursuant to and as described in Act 381; and

WHEREAS, the LDFA has the authority to pay certain activities and capture tax increment revenues generated by the levy of certain taxes on the property pursuant to the Marquette Local Development Financing Authority Tax Increment Financing Plan, as amended (the "LDFA Plan"), and

WHEREAS, the LDFA and the MBRA now wish to enter into this Interlocal Agreement to transfer the LDFA tax increment revenues generated by the redevelopment of the former State Savings Bank building and property located at 101 S. Front Street and 119 S. Lakeshore Boulevard in Marquette, Michigan ("Eligible Property") to the MBRA to reimburse certain eligible activities as defined in Act 381 ("Eligible Activities"), including a public parking facility, pursuant to the Brownfield Plan for Vault Marquette ("Brownfield Plan"); and

THEREFORE, the LDFA and MBRA agree as follows:

1. **Transfer and Use of Tax Increment Revenues**. Only upon affirmative vote by MBRA and the Marquette City Commission approving the Brownfield Plan, shall the tax increment revenues captured by the LDFA generated by the Eligible Property be transferred to the MBRA to reimburse approved Eligible Activities, MBRA administration and operation cost, transfers to the State Brownfield Fund as required by Act 381, and deposits into the Local Brownfield Revolving Fund (LBRF). Tax Increment Revenues to be transferred will be based on the Initial Taxable Value identified in the Brownfield Plan as of December 31, 2020. The LDFA shall retain all applicable tax increment revenue generated by the Eligible Property up to the Brownfield Initial Taxable Value.

2. **Limitation to Tax Increment Revenues from Eligible Property.** The LDFA shall only transfer to the MBRA the tax increment revenues generated by the Eligible Property to reimburse approved Eligible Activity and other costs in the approved Brownfield Plan, authorized by Act 381, and approved by the MBRA and the Marquette City

Commission. Upon conclusion or dissolution of the Brownfield Plan, all tax increment revenues generated by the eligible property shall be captured by the LDFA as stated in the LDFA Plan.

3. **LDFA Obligation Subordinate to Existing Bonds.** This LDFA's obligation to transfer captured tax revenues to the MBRA pursuant to this Agreement is subordinate to, and contingent upon the ability of the LDFA to capture sufficient tax increment revenues from the captured assessed value of the property in its TIF District other than the Eligible Property to pay it annual debt service obligations on bonds and other obligations issued by the LDFA pursuant to PA 57 of 2018. In the event that the LDFA does not have sufficient funds from tax increment revenues from the captured assessed values of the property in its TIF District other than the Eligible Property to pay its annual debt service on such bonds or other obligations, then the LDFA shall not be obligated to transfer tax increment revenues from the Eligible Property to the MBRA in that year and so long as a shortfall exists, so that the LDFA may use the tax increment revenues generated from the Eligible Property to pay its annual debt service obligations on such bonds. In such instances where the LDFA uses tax increment revenues from the Eligible Property to pay its annual debt service on such bonds or other obligations, it is understood that once these obligations are met the transfer of tax increment revenues from the Eligible Property will continue until Eligible Activities are reimbursed.

4. **MBRA as Agent under This Agreement.** The parties designate the MBRA as the agent to receive and disburse all tax increment revenues generated by the Eligible Properties until such time as all obligations of the approved Brownfield Plan have been satisfied.

5. **Effective Date.** The Agreement shall commence upon its approval by the legislative bodies of the LDFA and MBRA and duly executed by their authorized representatives and filed with the Marquette County Clerk and Secretary of State of the State of Michigan as required by Act 7.

6. **Severability.** To the extent that any provisions contained in this Agreement is deemed unenforceable, to the extent possible, the remaining terms shall remain in effect.

7. **Term.** The parties agree that the transfer of tax increment revenue from the Eligible Property to reimburse Eligible Activities, MBRA administration and operating costs, transfers to the State Brownfield Fund as required by Act 381, and LBRF deposits shall begin once tax increment revenues are collected from the Eligible Property, which will occur after the official approval of the Brownfield Plan by the Marquette City Commission. This contract extends until all obligations under this contract are met.

The LDFA and MBRA, by their authorized representatives, have executed this Agreement as indicated on the attached signature page:

This agreement was approved by City of Marquette Local Development Financing Authority. The Chairperson and Secretary were authorized to sign this Agreement on the __ day of ____, 2021 and was signed by the Chairperson and Secretary on the __ day of ____, 2021.

Witnesses

CITY OF MARQUETTE LOCAL DEVELOPMENT FINANCING AUTHORITY

_____

_____
Chairperson,

_____

_____
Secretary

Subscribed and sworn to before me on this _____ day of _____, 2021.

_____

_____

Notary Public, Marquette County
My commission expires

_____

This agreement was approved by the City of Marquette Brownfield Redevelopment Authority. The Chairperson and Secretary were authorized to sign this agreement on the __ day of ____, 2021 and was signed on the ____ day of ___, 2021.

Witnesses

CITY OF MARQUETTE BROWNFIELD REDEVELOPMENT AUTHORITY

_____

_____
Chairperson,

_____

_____
Secretary,

Subscribed and sworn to me this _____ day of _____, 2021.

_____

_____

Notary Public, Marquette County
My commission expires:

_____

Agenda Date: 7/12/2021

Consent Agenda
Approve the minutes of the June 28, 2021 regular Commission meeting

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- June 28 minutes

City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Minutes
City Commission

Monday, June 28, 2021
6:00 PM
Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

Present: Bonsall, Davis, Hanley, Hill, Mayer, Smith, Stonehouse

Approval of the Agenda

Commissioner Evan Bonsall removed Item 4.j from the Consent Agenda. Mayor Smith indicated it would become Item 5 under New Business, with all other items being pushed down the agenda.

Commissioner Sally Davis moved to Approve the agenda as amended, seconded by Mayor Pro Tem Jenn Hill and Carried Unanimously.

Announcements

Mayor Smith reminded the public that glass recycling is taking place during the first week of the month, from July 5 to 9.

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

There were no public comments.

Presentation(s)

1. Police/Fire Beach Update

   Cpl. John Rink of the Marquette Police Department shared an update on local law enforcement's preparations for the upcoming Independence Day celebrations.

2. Lake Superior Community Partnership, by Chief Executive Officer Sarah Lucas

   Lake Superior Community Partnership CEO Sarah Lucas introduced herself to the City Commission and offered a summary of her background, as well as an overview of LSCP activities. Ms. Lucas said the LSCP is focusing on data collection and marketing, and is embarking on a strategic planning process. She discussed messaging and metrics and highlighted the group's work in collaboration with local governments.

3. Innovation Marquette SmartZone's Digital Economy Initiative Update, by Leslie Hartman and Chief Executive Officer Joe Thiel

SmartZone CEO Joe Thiel offered an update on SmartZone activities and plans for the future. He shared an overview of the SmartZone, as well as metrics, including data on client and business interactions since January of 2020. Mr. Thiel said the SmartZone was working to strengthen local collaboration.

4. Consent Agenda

Commissioner Fred Stonehouse moved to Approve the ocnsent Agenda as presented, seconded by Commissioner Cody Mayer and Carried Unanimously.

4.a. Approve the minutes of the June 14, 2021 regular Commission meeting.

4.b. Approve the total bills payable in the amount of $1,637,924.95

4.c. 44 North Master Administrative Agreement

4.d. Annual Wetland Mitigation Monitoring and Maintenance Services

4.e. Contract Modification for BP 17-11 Solid Waste Collection Services – Curbside Residential

4.f. NTN EGLE Permit Authorization

4.g. Ordinance #695 - Street Performers (First Read)

4.h. Ordinance #696 - Presque Isle Open Burning Regulation (First Read)

4.i. Purchase of Bullet Proof Vests

4.k. Superior Kayaking Company - Lease Agreement

4.l. Tree Planting Services

New Business

5. Schedule a Public Hearing for Vault Marquette Brownfield Plan - Roll Call Vote

Commissioner Fred Stonehouse moved to Approve scheduling a public hearing for the Vault Marquette Brownfield Plan for the July 12, 2021 City Commission meeting, approve the resolution establishing the public hearing, and authorize the Mayor and City Clerk to sign the resolution, seconded by Mayor Pro Tem Jenn Hill and Carried Unanimously by Roll Call Vote.

6. Ad-Hoc Housing Committee Report

Commissioner Fred Stonehouse moved to Approve the acceptance of the final report of findings from the Ad-Hoc Housing Committee, seconded by Commissioner Jessica Hanley and Carried Unanimously.

7. Ordinance #697 - FY 21 CWSRF Bonds (First Read)

Mayor Pro Tem Jenn Hill moved to Move Ordinance #697 to the next regular meeting, seconded by Commissioner Fred Stonehouse and Carried Unanimously.

8. Resolution Authorizing 2021 Capital Improvement and Refunding Bonds- Roll Call Vote

Commissioner Jessica Hanley moved to Approve a Resolution authorizing 2021 Limited Tax General Obligation and Refunding Bonds, and authorize the Mayor and Clerk to sign the Resolution, seconded by Commissioner Cody Mayer and Carried Unanimously.

Public Comments - Comments may not exceed three minutes per person. Please state your name and physical address when making public comments.

Margaret Brumm said City Commission work sessions are very important, and supported the idea of televising and recording the sessions.

Comments from the Commission

Commissioner Davis said she represented the City at the recent US Coast Guard changing of the guard ceremony, which she enjoyed. She voiced appreciation for the organization, which has been officially operating on Lake Superior since the late 1800s.
Commissioner Hanley wished everyone a safe and happy Fourth of July holiday.
Mayor Pro Tem Hill spoke on the possible negative impacts that would result from the adoption of the short-term rental bills currently awaiting action in the state legislature. She also said she was curious if broadcasting work sessions would be feasible.
Commissioner Mayer thanked tonight's presenters, as well as the members of the Ad Hoc Housing Committee for the work that went in to the report that was accepted this evening. He also said it was good to see the public in Commission Chambers.
Commissioner Stonehouse agreed about the short-term rental bills, and he urged people to voice opposition to their sate representatives, as well as to the Governor's office.
Commissioner Bonsall said Art Week was a great success and thanked the Commission for their comments on the Ad Hoc Housing Committee, which he chaired. He also voiced support for UPHS hospital techs, a group that voted this week to join the Michigan Nurses Association.
Mayor Smith agreed with previous commissioners on the importance of opposing the short-term rental bills. She also highlighted the fact that the current real estate market may ultimately influence local tax revenues.

Comments from the City Manager

City Manager Karen Kovacs noted that, in honor of the Independence Day holiday, most City offices would be closing at noon on Friday and would remain closed through Monday, re-opening for business on Tuesday, July 6.

Adjournment

Mayor Smith adjourned the work session at 7:18 p.m.

_____ _____

Jennifer A. Smith, Mayor **Kyle Whitney, City Clerk**

If you require assistance to participate in any meeting, program or activity offered by the City of Marquette, please provide advanced notice to City of Marquette ADA Coordinator Eric Stemen at 906-225-8978 or via email at estemen@marquettemi.gov.

Agenda Date: 7/12/2021

Consent Agenda
Approve the minutes of the June 30, 2021 Commission work session

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- June 30 WS minutes

City of Marquette, MI

300 West Baraga Ave
Marquette, Michigan 49855

Meeting Agenda
City Commission

WORK SESSION

Wednesday, June 30, 2021
5:15 PM
Commission Chambers

Call to Order, Pledge of Allegiance and Roll Call

Present: Bonsall, Davis, Hanley, Hill, Mayer, Smith, Stonehouse

Announcements

Public Comment

Frank Stabile, who owns property near the proposed development, said he was interested to see what was presented in the meeting and voiced optimism about the project.

1. Vault Marquette Brownfield Plan Update

Braveworks owners Jon and Jen Julien introduced themselves to the City Commission and gave a brief overview of the project. Architect Barry Polzin also shared information about the project scope and design specifics.

The Juliens, Polzin and the City Commission then discussed the project timeline, questions related to traffic and parking, the impacts of tax-increment financing, and possible public improvements tied to the project.

Public Comment

Margaret Brumm said she is a member of the City's Local Development Finance Authority, which will be asked as a part of this project to forego some future TIF capture on this property. She said it should be made clear that the LDFA consent is required to make the project viable.

Adjournment

Mayor Smith adjourned the work session at 6:41 p.m.

_____ _____

Jennifer A. Smith, Mayor **Kyle Whitney, City Clerk**

If you require assistance to participate in any meeting, program or activity offered by the City of Marquette, please provide advanced notice to City of Marquette ADA Coordinator Eric Stemen at 906-225-8978 or via email at estemen@marquettemi.gov.

Agenda Date: 7/12/2021

Consent Agenda

Application for License to Use City Property Adjacent to 3152 Island Beach Road

BACKGROUND:

David and Julie Thomson have submitted an application to use a small portion of the Island Beach Road right-of-way for the placement of a fence that will also be placed on their property at 3152 Island Beach Road, as shown in the attached license application. All City staff reviewers approved of the request and the City Attorney has drafted the license. Mrs. Thomson has signed the license.

FISCAL EFFECT:

The application fee for a License to Use City Property is currently $250 and has been paid.

RECOMMENDATION:

Approve the License, and authorize the Mayor and City Clerk to sign agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Signed License Agreement_05-PRU-07-2021
- Application Packet 05-PRU-07-2021_3152 Island Beach Rd.

GRANT OF LICENSE

THE CITY OF MARQUETTE, a municipal corporation of 300 W. Baraga Ave., Marquette, MI 49855, ("City"), and David and Julie Thomson, of 3152 Island Beach Road, Marquette, MI 49855, ("Thomson",) licensee, enter into this agreement on _____, 2021, subject to the following conditions:

1. Background. The City owns the Island Beach Road public right of way, in the City of Marquette, and State of Michigan.
   Thomson desires to construct landscaping and a fence ("Fence"), on the real estate and to the specifications set forth in Exhibit A.
2. Grant of the license. In consideration of $250.00, the City grants to Thomson the right to construct the Fence on the real estate and to the specifications set forth in Exhibit A.
3. Construction and Maintenance. Thomson shall construct, and at all times while this License is in effect, maintain the Fence in good repair. Thomson shall be responsible for all fees and expenses related to the construction and maintenance of the Fence and real estate described in Exhibit A.
4. Use. The right to use the real estate described in Exhibit A is not exclusive, however as long as this License is in effect, the City shall not permit any use contrary to the Fence except as may be necessary to install, repair, remove or replace utilities. In the event the City repairs, removes or replaces utilities, Thomson shall be responsible for any removal of, repair to or replacement of the Fence in connection with utility work. Thomson shall not use the real estate for any purpose except as specifically allowed within this agreement, and shall not alter, injure or damage the City's public right of way.
5. Reimbursement for damages. Thomson shall reimburse the City for any physical damages to the City's public right of way caused by Thomson's use on the real estate. Thomson, and any successor or assign shall indemnify, defend and hold harmless the City from and against any demand, claim, action or cause of action, assessment, loss, damage, liability cost and/or expense, including but not limited to, interest, penalties, consultants fees and expenses, and attorneys' fees and expenses, asserted against, imposed upon or incurred by the City due solely to Thomson's use. Thomson's obligations under this provision shall not extend to claims, losses, expenses or damages arising out of or in any way attributable to the negligence of the City or its agents, consultants, or employees. Thomson reserves the right to control the defense and settlement of any claim for which Thomson has an obligation to indemnify hereunder.
6. Revocation. This License may be revoked by either party at any time by providing at least 180 days' written notice of termination to the other party. On the termination date, all rights and obligations of the parties shall cease and on or before the termination date, Thomson shall remove the Fence from the real estate, at her own expense. Thomson shall not be entitled to a reimbursement for any portion of the fee previously paid to the City.
7. Entire Agreement. This Grant of License constitutes the entire agreement between the parties.

The said parties have caused this document to be executed the day and year first written above.

CITY OF MARQUETTE

_____
By: Jennifer A. Smith
Its: Mayor

_____
By: Kyle Whitney
Its: Clerk

STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on _____, 2021, by Jennifer A. Smith, Mayor and Kyle Whitney, Clerk, of the City of Marquette, a Michigan municipal corporation.

_____
_____, Notary Public
State of Michigan, County of Marquette
My Commission Expires: _____
Acting in the County of Marquette

_____
David Thomson

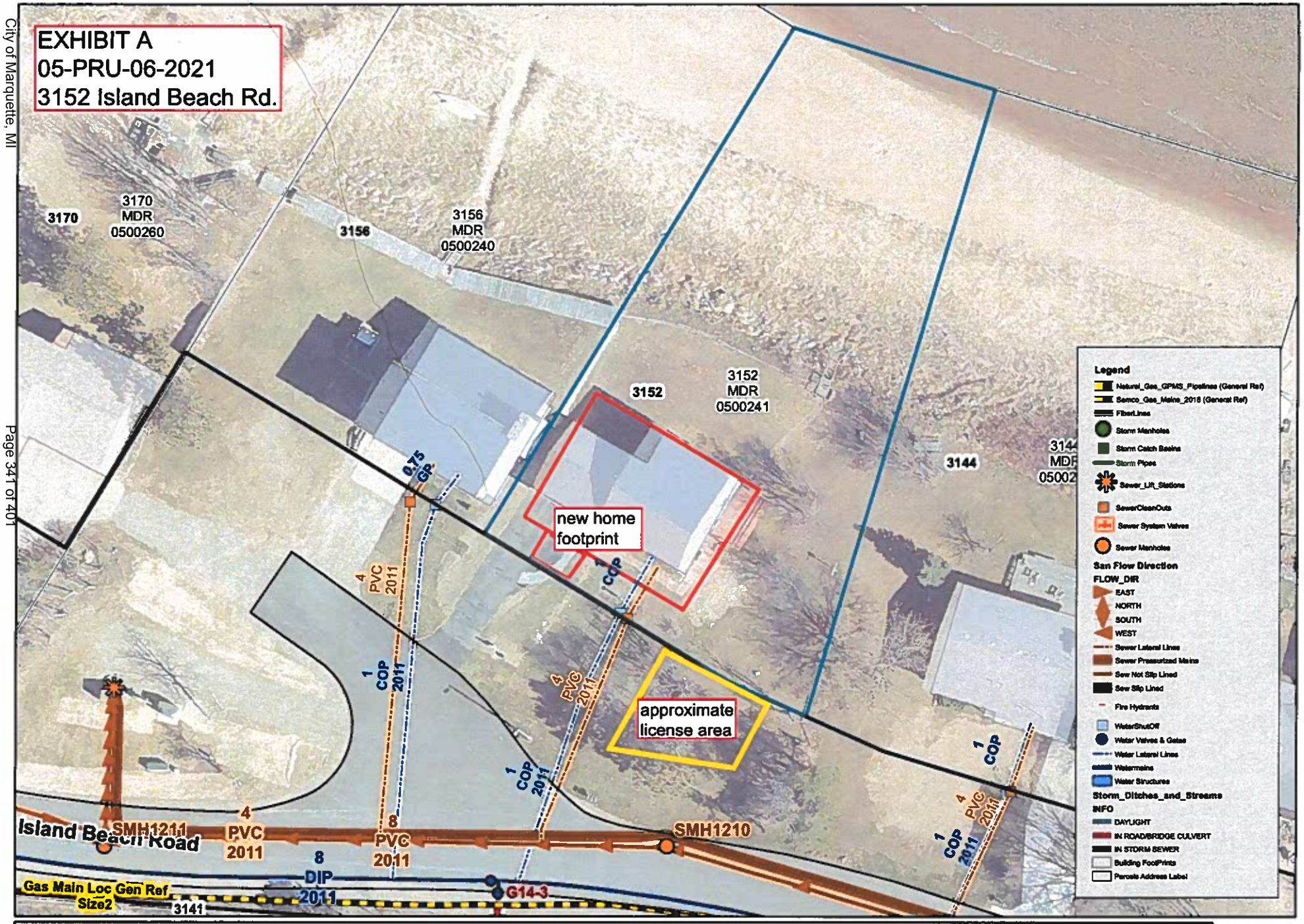
Julie Thomson
Julie Thomson

STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

Acknowledged before me in Marquette County, Michigan, on June 30, 2021, by David Thomson and Julie Thomson.

Ann M. Cook
Ann M. Cook, Notary Public
State of Michigan, County of Marquette
My Commission Expires: 11-22-24
Acting in the County of Marquette

ANN M. COOK
Notary public, Marquette County, Michigan
My commission expires November 22, 2024



In regard to the map, the information contained on this map is believed to be accurate but accuracy is not guaranteed. Mapping information is a representation of various data sources and is not a substitute for information that would result from an accurate land survey. The information contained herein does not replace information that may be obtained by consulting the information's official source. In no event shall the City of Marquette be liable for any damages, direct or consequential, from the use of the information.

N
W E
S

Mail to:
Municipal Service Center
Community Development Office
1100 Wright St.
Marquette, MI 49855

CITY OF MARQUETTE
APPLICATION FOR LICENSE/EASEMENT OF CITY OWNED PROPERTY

Fee $250

CITY STAFF USE

Date Submitted: 6-3-21 Parcel ID#: 0500241 File #: 05-PRU-07-2021

Property Address/Location: 3152 Island Beach Rd.

Adequate Legal Description Submitted: Y / N Anticipated Hearing Date: _____

NOTE- PLEASE MAKE A CASE FILE FOR THIS REQUEST AND INCLUDE A COPY OF THE APPLICATION, THEN ROUTE THE ORIGINAL FOR SIGNATURES.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED, ALL OF THE INFORMATION REQUIRED IS PRESENT AT THE TIME OF THE APPLICATION - NO EXCEPTIONS!

APPLICANT CONTACT INFORMATION

APPLICANT

Name: David and Julie Thomson

Address: 3152 Island Beach Road

City, State, Zip: Marquette, MI 49855

Phone #: 626-926-1092

Fax #: _____

Email: dthomson.quad@gmail.com

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

APPLICANT'S REPRESENTATIVE

Name: -- Same --

Address: _____

City, State, Zip: _____

Phone #: _____

Fax #: _____

Email: _____

****APPLICANTS OR REPRESENTATIVES ARE STRONGLY ENCOURAGED TO BE PRESENT AT THE MEETING****

What is the street address, or nearest street address, to the location of the requested license/easement?
3152 Island Beach Road, Marquette, MI

Please describe the reason or necessity for the requested license/easement for use of the City property:

Without this license, landscaping the front of our new home is not possible.
See attached Supporting Documentation write up, prior approvals from City, and former and current condition photos.

You may attach sketches, maps, photos, or other items that may help to illustrate/visualize your request. Community Development staff will attach a photo-map of the area.

Attachments: See attached land scape plan for proposed fence location.

LEGAL DESCRIPTION

Legal description of the license/easement area:

3152 Island Beach Road. See attached survey.

SIGNATURE

I understand that this application itself is not considered an approval and only the Marquette City Commission has the authority to grant an approval for a license/easement for use of property owned by the City of Marquette.

Signature: _____ Date: 6-2-2021

Answer to "Please describe the reason or necessity for the requested license/easement for use of the City property:"

Proposed Improvement

Construct a 4' high, black chain link fence around raised beds. Please refer to the Background section for additional information and photos to support this application.

Our request for a license is based on the following:

- We have improved the former conditions on City property, cleaning up buried debris, septic tanks and an overgrown and half dead sugar plum grove.
- We are following the City approved landscaping plan.
- Our proposed improvements meet with City zoning per our classification or per the variance received, unlike grandfathered improvements along Island Beach Road.
- This request does not impact any known utility easements nor any known plans the City has for utilizing the property where the proposed improvements would be located, unlike grandfathered improvements along Island Beach Road.
- The City owns most of our front yard, and our neighbor's front yards, and without this license, no landscaping on the front of our house is possible.
- The improvements we have made contribute to the City's desire to improve its street scapes.
- The City and local schools benefit as the valuation and resultant taxes on this new home are considerably more than what was paid previously.
-

Background

A driveway and sidewalk has been constructed on City property per the original plot plan submitted and approved per the Zoning Variance request from 2018 due to the location of the road. Per email from City:

The original home on this lot was built in 1928 as a camp, and later remodeled into a 2-bedroom home. Please see Photos 1 thru 6, attached. Julie Thomson, current resident of the new home, grew up in this house. Her maiden name was Loehde, her parents were Fred and Bertha Loehde. Both worked at Spear & Sons on Washington Street.

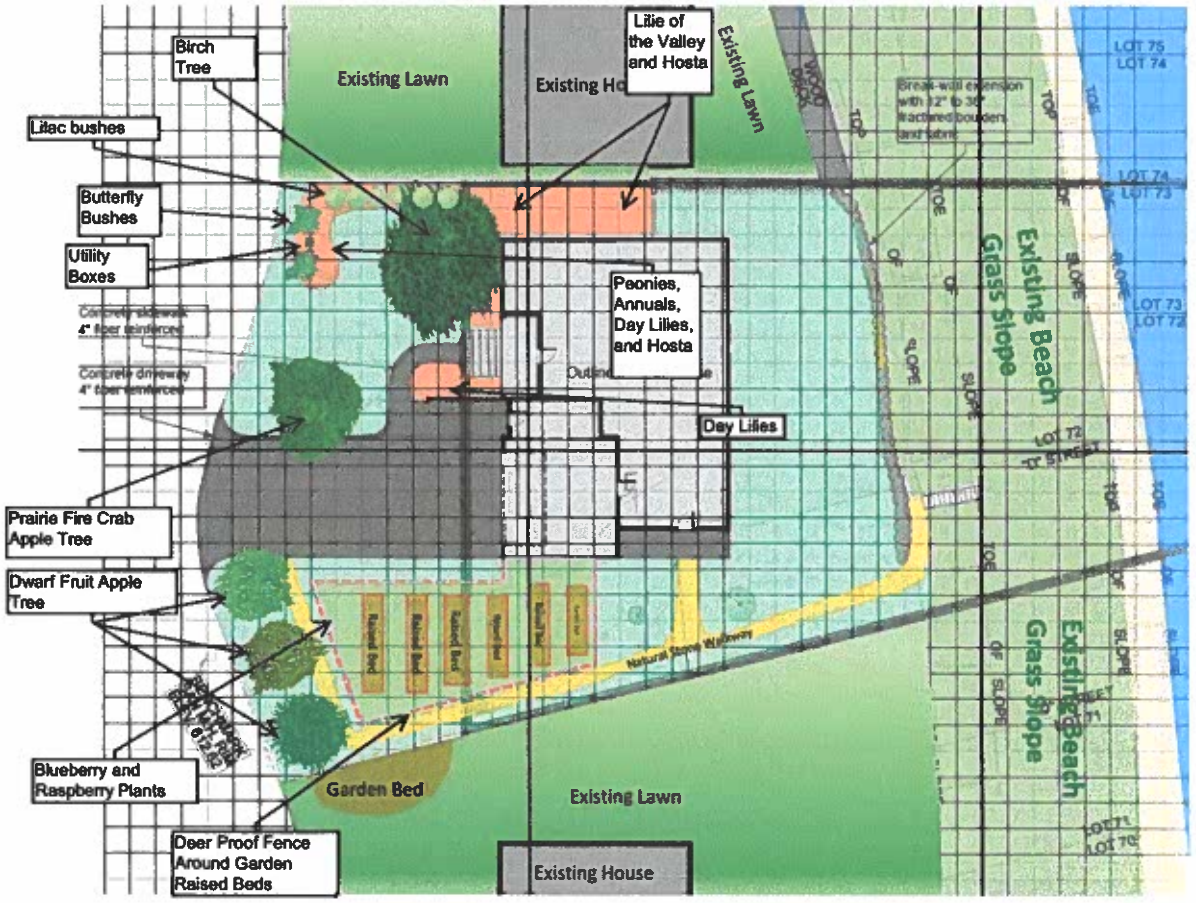
The original house was in very deteriorated condition and required either total replacement of almost all components or be demolished and rebuilt. We choice the latter. We have removed a large grove of overgrown and half dead sugar plums, septic tanks, other buried debris, and an old brown shed from City property during our rebuilding effort. Please see Photos 7 & 9, attached, for a picture of the house showing lawn where the overgrown grove and shed were located.

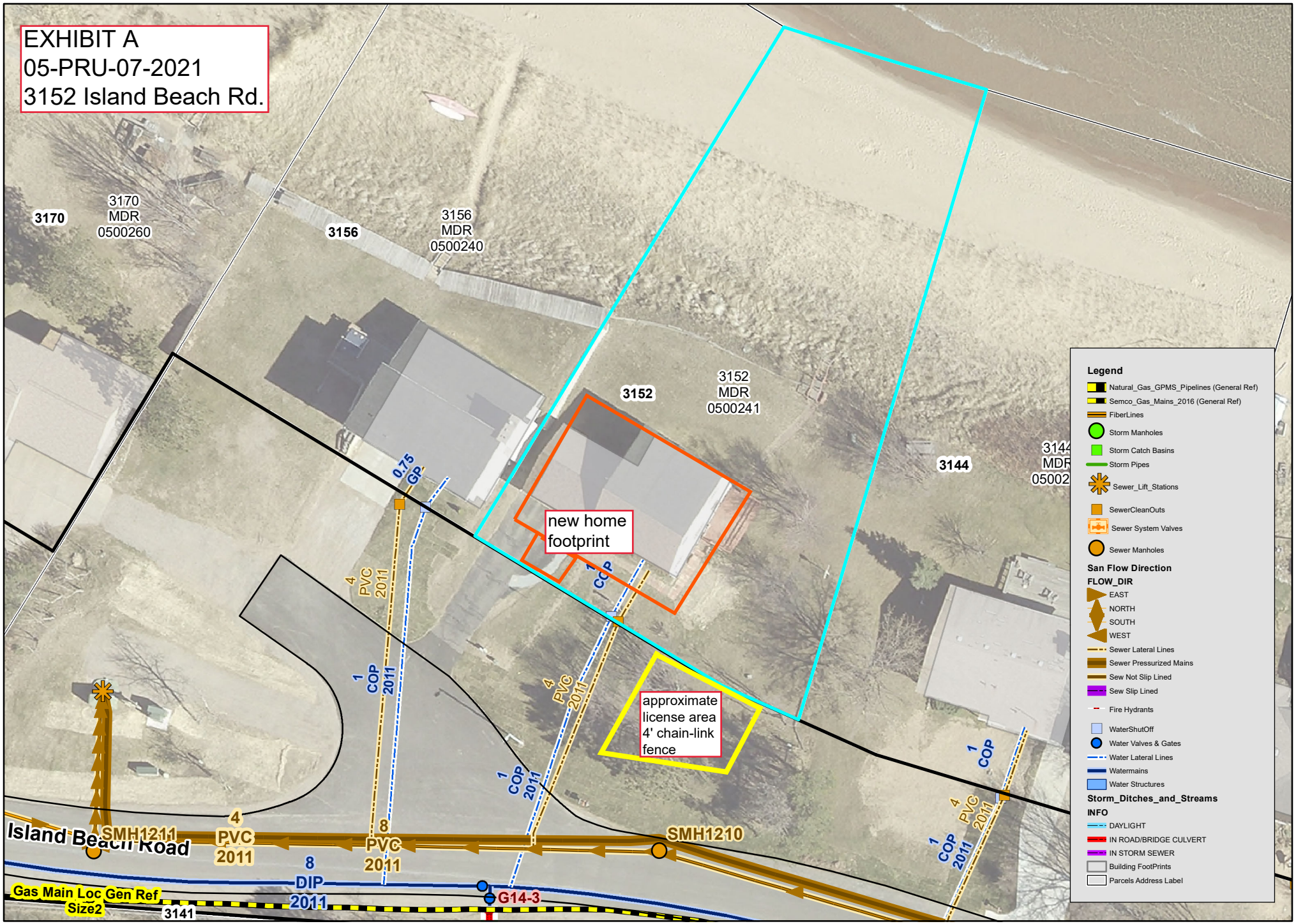
Please see Photo 8, attached, showing the proposed location of the fence. Consideration for the utility easements along the road have been accounted for. We had all utilities located to verify our fence would not interfere with any utilities. The gas line that runs up to our house gas meter is the only utility within the proposed fence.

Please see Photo 10, attached, to observe the view along Island Beach Road looking west. This view demonstrates that the garden beds in our neighbor's yard visually obstructs the fence we are proposing.

There are numerous examples of fences, landscaping and driveways built on City property. Many do not conform to the City zoning setback rules but are most likely grandfathered. Please see Photo 11 thru 17, attached, for examples.

Due to the width of City right-of-way, and as detailed in the Zoning Variance request, the City owns property up to the fronts of most houses along Island Beach Road east of the subject lot. See Photo 18, attached, for an approximate understanding of the City right-of-way south of the existing homes along Island Beach Road. This right-of-way and placement of the Island Beach Road causes many houses along Island Beach Road to landscape and construct fencing on City property.


Birch Tree
Existing Lawn
Existing Ho
Lilie of the Valley and Hosta
Existing Lawn
Break-will extension with 12" to 36" fractured boulders and debris
Lilac bushes
Butterfly Bushes
Utility Boxes
Peonies, Annuals, Day Lilies, and Hosta
Day Lilies
Existing Beach Grass Slope
Existing Beach Grass Slope
Prairie Fire Crab Apple Tree
Dwarf Fruit Apple Tree
Blueberry and Raspberry Plants
Garden Bed
Existing Lawn
Deer Proof Fence Around Garden Raised Beds
Existing House



In regard to the map, the information contained on this map is believed to be accurate but accuracy is not guaranteed. Mapping information is a representation of various data sources and is not a substitute for information that would result from an accurate land survey. The information contained herein does not replace information that may be obtained by consulting the information's official source. In no event shall the City of Marquette be liable for any damages, direct or consequential, from the use of the information.

File #: _____ Parcel ID#: _____

STAFF REVIEW

- For a sign/object/structure/project encroaching into a public right-of-way or on City property -

Please fill out the form within 48 hours of receiving it.

Reviewing Department	Recommend Approval	Comments

Planning & Zoning-Community Development

Date Received: _____

Engineering Division of CD

Date Received: _____

Fire

Date Received: _____

DPW

Date Received: _____

Treasurer

Date Received: _____

Police

Date Received: _____

Community Services (Parks & Rec.)

Date Received:_____

Agenda Date: 7/12/2021

Consent Agenda
Outback Art Fair - Special Event Permit

BACKGROUND:

Cynthia Engle d/b/a Outback Art Fair is requesting the City Commission enter into a Special Event Permit for City Parks, Streets, Buildings and Grounds to use Shiras Park for the purpose of the Outback Art Fair on July 24, 2021 and July 25, 2021. Staff worked with the City Attorney and Ms. Engle to develop the permit.

FISCAL EFFECT:

The general fund will receive $1,940 plus miscellaneous reimbursements if approved.

RECOMMENDATION:

Approve the Special Event Permit for City Parks, Streets, Buildings and Grounds with Ms. Cynthia Engle d/b/a Outback Art Fair, and authorize the Mayor and Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Permit

SPECIAL EVENTS PERMIT FOR CITY PARKS,
STREETS, BUILDINGS AND GROUNDS

THIS AGREEMENT, made this _____ day of _____, 2021 between CITY OF MARQUETTE, a Municipal Corporation, of 300 W. Baraga Avenue, Marquette, Michigan, 49855, hereinafter referred to as the "CITY", and Cynthia Engle d/b/a Outback Art Fair of 380 Karen Road, Marquette, Michigan 49855, hereinafter referred to as "PERMITTEE".

INSTRUCTIONS - PERMITTEE shall comply with all sections of this permit with a darkened box (■) .

WITNESSETH:

■ (1) Description. The CITY in consideration of the terms, conditions, covenants and agreements to be performed by PERMITTEE, does hereby grant to PERMITTEE permission to use and occupy the following ["premises"]:

SHIRAS PARK

■ (2) Term. The term of this Permit shall be for July 24, 2021 from 10:00 a.m. until July 25, 2021 at 6:00 p.m.

■ (3) Acceptance of Premises. PERMITTEE has examined and is satisfied with the physical condition of the premises, and accepts the premises in their "as is" condition.

■ (4) Use. PERMITTEE may use and occupy the premises for:

OUTBACK ART FAIR

and for no other reason. The use and occupancy shall only be under PERMITTEE'S name or any assumed name of PERMITTEE. PERMITTEE shall not use or knowingly allow any part of the premises to be used for any unlawful purpose. In the event of any violation of this provision the CITY at its sole discretion may terminate this Permit and expel PERMITTEE from the premises. PERMITTEE waives, releases and relinquishes all claims of right or interest in the premises, other than as granted pursuant to this Permit.

■ (5) Fees. PERMITTEE shall be responsible for paying the following fees in connection with the use of the PREMISES:

Exclusive Park Use	**$1,045.00 (first day)** **$895.00 (second day)**
55-gallon trash drums	*
Trash drum liners	**at current cost**

*PERMITTEE must submit a "Request to Borrow" form to the City Department of Public Works for any garbage cans, barricades, etc. needed. All items requested must be transported to and from the CITY for use during the event and must return the drums to the City no later than 5:00 p.m. the Monday immediately after the event ends.

■ (6) Clean-up, Repairs, Maintenance and Damage. PERMITTEE shall be solely responsible for clean-up of the premises and the repair expense for any damage caused to the premises throughout the term of this Permit. PERMITTEE shall, at the direction of the CITY, provide a sufficient number of dumpsters and trash collection cans for the event. PERMITTEE will be responsible to reimburse the CITY for out-of-pocket costs (i.e. tipping fee) associated with trash removal and disposal. The CITY strongly encourages PERMITTEE to utilize volunteers for clean-up.

PERMITTEE shall take good care of and shall keep the premises, including its fixtures and furnishings, in a clean, safe, orderly and sanitary condition including, but not limited to, keeping all sidewalks, parking areas, alleys, roadways and facilities/areas which are a part of the premises, neat and clean; guarding all defects on the premises which may be a hazard to the general public and business invitees; and promptly removing all debris or any other material which may be a hazard to the general public and business invitees. PERMITTEE shall promptly make all repairs which are required to maintain the premises in the condition which existed upon the commencement of its actual use and occupancy. PERMITTEE shall not be required to repair plumbing and electrical components of the premises for damages which is not caused by the PERMITTEE, its guests or invitees. At the termination of this Permit, PERMITTEE shall yield and deliver up the premises in like condition, reasonable use and wear thereof and damage by the elements exempted.

■ (7) Clean-up and Damage Bond. PERMITTEE shall deposit with the Parks and Recreation Department a clean-up and damage bond in the form of cash or certified check payable to the CITY, in the amount of $250.00. This will correlate with the type of insurance required. The bond should be deposited with the Community Services Department - Parks and Recreation Division at the time the application is submitted, when possible, but is required prior to the permit being presented to the City Commission for approval. The bond shall be processed to be returned to PERMITTEE, without interest, within seven (7) days after all of the following have occurred:

(a) PERMITTEE has complied with all terms of this Permit, including completely vacating the premises by the required time period.

(b) the term of the Permit has expired;

(c) PERMITTEE has fully performed the restoration and clean-up of the premises to an "as-is" or better condition as prior to the event; and

(d) PERMITTEE has paid all fees set forth herein.

Should PERMITTEE fail to comply with any of these terms, the CITY may retain the clean-up and damage bond and if the amount thereof is insufficient, pursue all other remedies.

□ (8) Electrical Permits. For any event, carnival or fair connecting to or modifying an existing electrical source or service, PERMITTEE covenants and agrees to designate a licensed electrical contractor and secure an electrical permit in compliance under Article 525 of the current National Electric Code. An electrical permit shall be obtained two (2) weeks prior to the event and a copy shall be provided to the Community Services Department - Parks & Recreation Division office at least one (1) week prior to the event. Inspections shall be requested by the electrical contractor prior to the opening of the event, or use of the electrical service.

■ (9) All Utilities. The CITY agrees to allow PERMITTEE to use existing electrical and water services for food and beverage concessions, lighting and audio equipment. However, the CITY shall not be responsible for any damages whatsoever due to any interruption in electrical, water or other services.

There shall be no modification or alteration of the CITY's electrical supply boxes or other equipment, unless prior approval has been obtained from the CITY and any work is approved by the CITY's electrical inspector. All such work must be done by a licensed electrical contractor at PERMITTEE'S sole expense.

■ (10) Reimbursement of Utility Costs. PERMITTEE shall reimburse the CITY the sum of $300.00 for the costs of electric, water and other utility services utilized by the PERMITTEE, its vendees and concessionaires.

■ (11) Signs. PERMITTEE shall be entitled, at PERMITTEE'S own expense, to install signs and banners along the premises. Signs shall comply with the Zoning Chapter of the Marquette Code of Ordinances.

■ (12) Insurances. CERTIFICATES OR OTHER EVIDENCE OF ALL REQUIRED COVERAGES AND ENDORSEMENTS MUST BE FILED WITH THE COMMUNITY SERVICES DEPARTMENT - PARKS & RECREATION DIVISION NO LATER THAN THE DATES LISTED WITH EACH TYPE OF INSUARNCE. FAILURE TO ABIDE BY THE REQUIRED DATES WILL RESULT IN THE EVENT BEING CANCELLED OR RESTRICT THE TYPE OF ACTIVITY THAT MAY OCCUR AT THE EVENT.

■ General Liability

PERMITTEE shall carry comprehensive general liability insurance, including premises and all operations, through companies licensed and admitted to do business in Michigan, which shall provide protection from

all claims of damage or injury, including death, to persons and property which may arise out of, result from or be caused by PERMITTEE'S use or occupancy of the premises or its operations conducted thereon, with occurrence and aggregate limits of not less $1,000,000, per occurrence.

THE CITY, ITS OFFICERS AND EMPLOYEES SHALL BE NAMED AN ADDITIONAL INSURED AND THIS COVERAGE SHALL BE ENDORSED ON THE CERTIFICATE AND POLICY "AS BEING PRIMARY TO THE CITY, AND NOT IN EXCESS OF ANY OTHER INSURANCE, SIMILAR PROTECTION (E.G. RISK MANAGEMENT ASSOCIATION) OR ANY OTHER VALID, APPLICABLE, OR COLLECTABLE INSURANCE OR SELF-INSURANCE WHICH IS OR MAY BE AVAILABLE TO OR CARRIED BY THE CITY."

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in cancellation of the event.

☐ Liquor Liability.

PERMITTEE or its designee (for example, a local service club) shall carry liquor liability insurance with combined limits of not less than $500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of alcoholic beverages on the premises.

PERMITTEE shall, no later than 7 days prior to the Event, provide the CITY with a certificate or other evidence of liquor liability insurance coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

☐ Motor Vehicle Liability

PERMITTEE shall also obtain and maintain vehicle liability coverage for all owned, non-owned and hired motor vehicles which may be operated, maintained or used on the premises. Minimum combined limits of $500,000 shall be maintained.

PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day

written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any motor vehicle at the event.

- Food

  PERMITTEE or its designee shall carry products and completed operations coverage insurance with combined limits of not less than $500,000 insuring for any and all damage and liability which may be caused by, related to or arise out of the sale, furnishing, giving, distribution or consumption of food on the premises.

  PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of food at the event.

- Other insurance.

  If PERMITTEE employs any independent contractor or others for any purpose whatsoever in relation to its use or occupancy of the premises, or for any operations or maintenance connected therewith, PERMITTEE shall obtain and maintain, or cause said independent contractor to obtain and maintain, policies of workers compensation insurance and such other liability insurance of the types and in the amounts outlined above which will provide coverage to the CITY, its officer and employees for all claims which may arise out of, result from or be caused by that work.

  PERMITTEE shall, no later than 30 days prior to the Event, provide the CITY with a certificate or other evidence of the required coverage. The certificate or other evidence of coverage shall provide a thirty (30) day written notice to the CITY in the event of cancellation or material changes in the coverage. Failure to abide by this provision will result in the prohibition of use of any independent contractor or other person or entity in connection with the event.

- (13) Indemnity. PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, its officers and employees harmless from any claim, action or suit for any loss, liability and damages that may be asserted or levied against the premises or the CITY, its officers or employees, in whole or in part by reason of PERMITTEE'S acts or omissions, or by its use or occupancy of or its operations on the premises or by reason of any other person on the premises by contract, invitation or license, including any expenses, costs and attorney fees incurred in connection with any such claim, action or suit. In the event of any

incident occurring on the premises resulting in any personal injury, including death, to any person, PERMITTEE shall give notice to the CITY within twelve (12) hours after the occurrence thereof or after PERMITTEE learns of such occurrence.

The indemnity, defense and hold harmless requirements shall include and extend to bodily injury to any person or injury to any property of PERMITTEE, its employees and all persons on the premises by contract, invitation or consent.

All property kept, stored or maintained in the premises shall be so kept, stored or maintained at the risk of PERMITTEE only.

■ (14) Right of Inspection and Access. The CITY may enter the premises at any time to examine, inspect and to do whatever the CITY may deem necessary or desirable to determine compliance with or to enforce the terms of the permit. Marquette police, fire and other enforcement personnel shall have unrestricted access to the premises at all times.

■ (15) Compliance With Rules and Regulations. PERMITTEE shall abide by all laws, statutes, ordinances, governmental orders, rules and regulations which control or in any manner affect or relate to the use or occupancy of the premises, or operations conducted thereon.

■ (16) Concessions. PERMITTEE or its designees shall be allowed to sell assorted food and beverage items and to run concession stands during the term of the Permit. PERMITTEE or its designee shall obtain all necessary licenses and/or permits from the appropriate state, county or city governmental authorities. All concessions will be closed by 10:00 p.m. each day. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 2 weeks prior to the event. PERMITTEE shall submit a list of all food concessionaires to the Fire Marshall's office one (1) week prior to the event. PERMITTEE shall notify and require the following of all food concessionaires:

(a) A fire extinguisher shall be provided in all tents and in all areas and enclosures used for cooking.

(i) The fire extinguisher shall be a 1A:20B: C type, a minimum of 5 pounds.

(ii) Proof that the fire extinguisher has been serviced within the last year is required.

(iii) The extinguisher shall be tagged with the date and service provider.

(iv) If the fire extinguisher was purchased within the last year, a sales slip must be provided.

(v) The unit shall be mounted on the center post of each tent, not more than five (5) feet of the ground and accessible for use in an emergency.

(b) All propane tanks used for cooking shall be secured so as to prevent tipping. The tanks shall be remote from congested areas.

(c) Only approved, heavy-duty extension cords shall be used and all electrical connections shall be protected.

If the vendor fails to comply with these requirements, they will not be permitted to participate in the event.

☐ (17) Alcoholic Beverages. PERMITTEE or its designee shall be allowed to sell and/or furnish beer and wine on the premises as follows:

from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;
from _____ a.m. / p.m. until _____ a.m. / p.m. on _____ 20__;

PERMITTEE is solely responsible for obtaining all necessary licenses and permits in order to sell and/or furnish alcohol products. A copy of each license and/or permit obtained by PERMITTEE must be provided to the Parks & Recreation Department no later than 7 days prior to the event. Failure to abide by this provision will result in the prohibition of the sale, furnishing, giving, distribution or consumption of alcohol beverages at the event.

If an additional day is needed for the event due to inclement weather, the time for selling and/or furnishing beer and wine on the premises shall be from _____ a.m. / p.m. until _____ a.m. / p.m. on _____, 20__. The sale, furnishing and consumption of alcoholic beverages is specifically conditioned upon PERMITTEE or its designee obtaining and maintaining the appropriate license or permit from the Michigan liquor control commission at all relevant times and on PERMITTEE or its designee obtaining and maintaining liquor liability insurance as required in this Permit.

■ (18) Exclusive Use. PERMITTEE shall have the exclusive use of the premises during the term of this permit.

☐ (19) Admission. PERMITTEE may charge admission to the general public to enter premises. Entry shall not be denied to any individual based upon race, sex, age, creed, or national origin.

■ (20) Police and Fire Protection. PERMITTEE shall fully reimburse the CITY at overtime and fringe benefit rates for all additional police and/or fire department officers who are assigned to the premises, or the vicinity thereof, because of the use or occupancy thereof by PERMITTEE.

■ (21) Parking and Traffic. PERMITTEE shall prohibit all motor vehicles in or on the premises and shall cause all streets and alleys to be properly barricaded and signed. All motor vehicles shall be operated only on established roads and parked in designated areas. All fire lanes and no parking zones shall be maintained during the event.

■ (22) Health and Sanitation Facilities. PERMITTEE shall furnish and maintain a sufficient number of portable bathrooms and washing facilities, at PERMITTEE'S expense. This number shall be determined by the Marquette County Health Department. Each bank or group of portable restrooms shall have a minimum of one (1) barrier free/ADA compliant restroom. A bank or group consists of ten (10) or less portable restrooms.

■ (23) Compliance with PERMITTEE'S Representations. PERMITTEE shall fully comply with all representations and promises set forth in its Application for Special Events Permit

.□ (24) Equipment and Services. The CITY agrees to have the following equipment and services available during the term of this Permit:

_____

_____

_____.

■ (25) Security. It shall be PERMITTEE'S sole responsibility to provide security throughout the term of the event. The Chief of Police or designee shall establish the number of security personnel whom PERMITTEE shall be required to have on the premises. The security shall be provided by a licensed and certified security agency, whose members shall be in identifiable uniforms.

■ (26) Bleachers, Booths, Fencing and Tents. PERMITTEE shall be solely responsible for the construction and removal of any bleachers, booths, fencing, tents or structures used during the course of the event, except that CITY shall be responsible for booths located within the Arena.

■ (27) Reimbursement of Other Costs. PERMITTEE shall reimburse the CITY for all cost relating to the use of barricades, fencing, bleachers and other facilities and equipment provided by the CITY. PERMITTEE, on behalf of the organization, agrees to reimburse the City of Marquette for its "out-of-pocket" expenses which includes but is not limited to overtime of City employees and trash disposal tipping fees at landfills. City staff is readily accessible to discuss out-of-pocket cost estimates and ways to reduce these costs. All City of Marquette invoices sent to organizations for reimbursement of out-of-pocket costs are due within thirty (30) days.

■ (28) Tents. All tents or air supported structures used during the term of the permit shall comply with Section 31 of the Michigan Building Code and Section 24 of the International Fire Code. Material of all tents shall be of non-combustible material or flame resistant material conforming to NFPA 701, treated in an approved manner to render the material flame resistant. Appropriate documentation must be presented to any Building Code Enforcement Officer, Fire Official or other Code Official upon request. A copy shall also be retained on the premises where the tent is located. The documentation must attest to the following information relative to the flame resistance of the fabric:

(a) Name and address of the owners of the tent or air supported structure.

(b) Date the fabric was last treated with flame resistant solution.

(c) Trade name of kind of chemical used in treatment.

(d) Name of person or firm treating the material.

(e) Name of testing agency and test standard by which the fabric was treated.

If more than one tent or air supported structure is located on the premises a copy of all required documentation for each tent or structure shall be kept at a central location on the premises. The use of gasoline, gas, charcoal or any other cooking devices or any unapproved flame inside or within 20 feet of a tent or other air supported structure is strictly prohibited.

■ (29) Fire.

(a) No open flames or explosives shall be permitted for decoration, display or use without permission from the Fire Department.

(b) The use of paper or fabric for coverings or decoration shall not be permitted unless proof is submitted to the Fire Department that such materials are flame proof.

(c) All seating capacity and room arrangements shall be approved by the Fire Department.

(d) An access lane, a minimum of eighteen (18) feet wide, shall be maintained leading into and out of the event so that emergency vehicles can enter in case of an emergency.

(e) Barricades or any type of obstruction which could impede or interfere with fire suppression forces shall not be erected.

■ (30) Music. PERMITTEE shall be solely responsible for obtaining the appropriate license to present any music covered by copyright, whether by live performance, recorded music or retransmission of radio and/or television broadcast. The PERMITTEE covenants and agrees to indemnify, protect, defend and save the CITY, it officers and employees harmless from any claim, action or suit or for any loss, liability and damages that may be asserted or levied against the CITY, its officers or employees, based in whole or in part upon a claim of copyright infringement.

■ (31) Conditions/Requirements. Additional conditions and requirements of this permit are as follows:

PERMITTEE has permission to begin setting up on July 23, 2021 at 3:00 p.m. and must have all items removed from the park by 8:00 p.m. on July 26, 2021.

■ (32) Cancellation or Modification. It is understood and agreed that ten (10) days advance written notice of any cancellation, reduction and/or material changes in the proposed agenda will be provided to the Community Services Director, City of Marquette, 401 East Fair Avenue, Marquette, Michigan, 49855.

■ (33) Duplicate Original Copies. This Permit is executed in triplicate original copies, two of which shall be retained by the CITY and one by PERMITTEE, each of which shall be deemed to be an original, but all of which shall be construed as one and the same document.

■ (34) Governing Law. This Permit and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Michigan.

■ (35) Paragraph Headings. The paragraph headings appearing in the Permit have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the paragraphs to which they appertain.

■ (36) Entire Agreement. This Permit represents the entire agreement of the parties and shall be deemed to be an integrated agreement containing all prior and contemporaneous oral and written agreement between the parties, and shall not be modified in any part, except in a writing signed by all parties.

IT SHALL BE THE RESPONSIBILITY OF THE PERMITTEE TO DESIGNATE A SPECIFIC LOCATION ON THE PREMISES AS ITS HEADQUARTERS AND TO HAVE AVAILABLE AT THAT LOCATION, AT ALL TIMES THE PREMISES ARE OPEN TO THE PUBLIC AND DURING SET UP OR CONSTRUCTION, AT LEAST ONE PERSON WHO HAS THE KNOWLEDGE AND AUTHORITY TO REPRESENT PERMITTEE CONCERING ALL ACTIVITIES CONDUCTED UNDER THE TERMS OF THE PERMIT.

FAILURE TO COMPLY WITH THIS SECTION OR ANY OTHER TERM OF THE PERMIT SHALL BE CAUSE FOR THE CITY MANAGER, CHIEF OF POLICE, FIRE CHIEF, OR DESIGNEE TO IMMEDIATELY REVOKE THIS SPECIAL EVENTS PERMIT AND TO REQUIRE PERMITTEE TO VACATE THE PREMISES.

The parties hereto have hereunto set their hands and seals the day and year first above written.

CITY OF MARQUETTE

Jennifer A. Smith, Mayor

Cynthia J Engle

Cynthia Engle d/b/a Outback Art Fair

Kyle Whitney, City Clerk

Approved as to Substance:

Karen M. Kovacs, City Manager

Approved as to Form:

Suzanne C. Larsen, City Attorney

Agenda Date: 7/12/2021

Consent Agenda
Superior Kayaking Company - Lease Agreement

BACKGROUND:

Following a public process, Superior Kayaking has successfully operated a kayak tour service at Presque Isle Park for the last four years.

Superior Kayaking Company, LLC has requested that the City Commission renew their lease. The parking and section of beach is located near the Superior Watershed Partnership offices outlined in the attached map. It should be noted the parking spaces are not exclusive to Superior Kayaking. Staff has worked with the City Attorney and Superior Kayaking Company to draft a standard lease agreement which provides for the terms and conditions of the request. The monthly payment will be $147. The term of the lease is four months.

Staff intends to put this sole concessionaire out for proposals again in 2022.

The proposed lease agreement was introduced at the Commission's June 28, 2021 meeting and approved as recommended to move the lease agreement forward to the July 12, 2021 meeting.

FISCAL EFFECT:

The General Fund will receive $588 in 2021 with approval of the lease agreement.

RECOMMENDATION:

Approve the lease agreement with Superior Kayaking Company, LLC for parking and beach space at Presque Isle Park for a period of four months at the rate of $147 per month, and authorize the Mayor and City Clerk to sign the agreement.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Lease, Exhibit A and B
- PIPAC Minutes
- Request For Proposals
- Superior Kayaking Proposal 2018

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 13 day of June 2021, by and between **THE CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter "LESSOR", and **SUPERIOR KAYAKING COMPANY, LLC**, a Michigan limited liability company, with a mailing address of P.O. Box 495, Marquette, Michigan 49855, hereinafter "LESSEE".

Recitals

A. Lessor is the owner of the real property and beachfront located at 1 Peter White Dr. at Presque Isle Park in the City of Marquette.

B. Lessee desires to lease and Lessor is willing to lease to Lessee a section of beach located near Superior Watershed offices as shown in Exhibit "A" located on Lessor's real property in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Leased Premises

1.1 Lessor leases to Lessee space as shown in Exhibit "A", hereinafter "PREMISES".

2. Term of Lease

This lease shall run from May 15, 2021 through September 15, 2021. Prior to Lessee's first day of operations, Lessee will meet with City employees to discuss logistics for the use of the Premises.

3. Rent

The rent shall be $147.00/month, based on 1,000 square feet of beach front and 600 square feet of parking space at $1.10/square foot for a total of $588.00 for the lease term, due by the May 20th each year this lease is in effect.

4. Use of Premises

4.1 Lessee shall use the Premises only for launching and retrieving kayaks and other non-motorized boats from the sandy beach area.

4.2 Lessee shall not use the Premises for any purpose that would:

a) be deemed hazardous to the public or adjoining premises including, but not necessarily limited to, fire, and environmental type hazards;

b) constitute a violation of any public law or requirement;

c) cause damage or injury to the Premises, or any part of it (ordinary wear and tear excepted);

d) constitute a public or private nuisance;

e) interfere with other uses of the Premises; or

f) permit refuse to accumulate in or around leasehold.

g) prohibit or restrict public access across and through the Premises.

5. Use of Public Areas by Lessee

Lessee and its invitees shall have the right to use all public areas, subject however to all rules and regulations regarding these areas. Lessee and its invitees shall only use the designated parking area as shown on Exhibit A, or if the designated parking area is full Lessee and its invitees may use any legal parking space adjacent to the Premises. Lessee is permitted to display temporary signage in common areas in accordance with all City ordinances.

6. Non-exclusive Use of Premises

Lessee acknowledges that its use of the Premises is not exclusive and that Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the Premises.

7. Maintenance and Repair

7.1 Lessee shall be solely responsible for the maintenance and repair of all of Lessee's tangible personal property located or used on the Premises and shall keep them in a safe condition and good repair.

8. Insurance and Indemnity

8.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's insurance policies covering the Premises.

8.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased.

8.3 Lessee at its sole expense shall be responsible for insuring its own tangible personal property, equipment, and fixtures from loss from fire and other casualty and shall at all times provide Lessor with a certificate evidencing such coverage.

8.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Three Hundred Thousand and 00/100 Dollars ($300,000.00) for property damage. Lessee shall at all times provide Lessor with a current copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.

8.5 Lessee will indemnify and hold Lessor harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's cost of defending against the foregoing, such cost to include attorneys' fees) resulting or occurring by reason of Lessee's use and occupancy of the Premises.

8.6 Lessee at its sole expense shall follow the safety guidelines regarding water sport outfitters as set forth in Exhibit B.

9. Assignment/Subletting

9.1 Lessee shall not assign or sublet the Premises or any part thereof without the express prior written consent of the Lessor.

9.2 Lessor may freely assign its rights and obligations under this Lease Agreement to any third party pursuant to a Purchase and Sale Agreement, Land Contract or similar instrument.

10. Use of Premises by Lessor

Lessor reserves for itself and its contractors and agents the right to enter the Premises at reasonable times for the purpose of inspecting, maintaining, installation, operation and repair services of the Premises or adjacent real property.

11. Covenant of Quiet Enjoyment

Lessor warrants and represents that it has full authority to execute this lease for the above term. Lessor covenants that upon Lessee paying the rents and performing its covenants and duties prescribed herein, Lessee may, except as otherwise described herein, have the non-exclusive and reasonable right to have, hold and enjoy the Premises.

12. Lessor's Right to Perform Lessee's Obligation

If Lessee defaults in the observance or performance of any term or covenant of this lease, Lessor may, without thereby waiving the default, remedy the default at Lessee's expense. If, in connection therewith, Lessor makes any expenditure or incurs any obligation for the payment of money or in instituting, prosecuting, or defending any action or proceeding commenced before or during the term of this lease, or after the expiration or termination of this lease including, but not necessarily limited to, legal expenses and attorneys' fees, Lessee shall pay to Lessor on demand the sums paid or obligations incurred together with legal fees and costs.

13. Default by Lessee

13.1 If the Lessee fails to perform any obligation under this agreement within 30 days after receiving written notice of the default from the Lessor; the Lessor may terminate this lease.

13.2 In addition to the Lessor's other rights and remedies as stated in this lease, and without waiving any of those rights, if the Lessor deems necessary any repairs that the Lessee is required to make or if the Lessee defaults in the performance of any of its obligations under this lease, the Lessor may make repairs or cure defaults and shall not be responsible to the Lessee for any loss or damage that is caused by that action. The Lessee shall immediately pay to the Lessor, on demand, the Lessor's costs for curing any defaults, as additional rent under this lease.

13.3 The rights and remedies of Lessor shall be cumulative as more particularly provided by law or in equity pursuant to the laws of the State of Michigan.

14. Surrender of Leasehold Upon Termination of Lease

If upon termination of the lease, Lessee has failed to remove its trailer and rowing shells, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

15. Miscellaneous

15.1 This agreement shall be binding on the parties and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

15.2 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

15.3 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated herein.

15.4 Any modification of this agreement or additional obligations assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

15.5 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.

15.6 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

15.7 All notices to be given under this lease shall be in writing and mailed, postage prepaid, or by certified or registered mail, return receipt requested, or delivered personally or by courier delivery, or sent by telecopy (immediately followed by one of the preceding methods) to Lessor's address and Lessee's address as above stated or any other place that Lessor or Lessee may designate in a written notice given to the other parties. Notices shall be deemed served on the earlier of receipt or three (3) working days after the date of mailing.

The parties have set their hands on the day and year first above written.

CITY OF MARQUETTE

_____
Jennifer A. Smith, Mayor

_____
Kyle Whitney, City Clerk

SUPERIOR KAYAKING COMPANY, LLC

_____
By: Alexandra Jarvis
Its: Owner

Approved as to Substance:

_____
, City Manager

Approved as to Form:

_____
Suzanne C. Larsen, City Attorney

EXHIBIT A


Peter White Dr
OVERFLOW PARKING
WHEN NEEDED
LAUNCH AREA
ADJACENT AREAS MAY BE USED IF
THE SPACE IS NOT AVAILABLE
OR PREVIOUSLY OCCUPIED BY
THE PUBLIC
Peter White Dr
APPX. 25' x 50'
PARKING AREA
3 SPOTS– APPX. 30' x 20'

Exhibit B

General Equipment to be Provided

- Sea Kayaks (single or tandem) with front & rear floatation, declines, tow line attachment
- One spare paddle per four boats
- One paddle float and bilge pump per two boats

Equipment to be Carried by Guide

- VHF Radio with weather radio
- Spare clothing for 2-4 people in dry bag
- First Aid Kit
- Repair kit (may include duct tape, mini tool, etc)
- Spare water and food

Safety Equipment to be Provided by Outfitter

- USCG approved PFD
- Sprayskirt
- Whistle
- Paddle
- Dry bags
- Water proof container for emergency medications

Required Certifications

- CPR and First Aid
- Certification/Assessment as a kayak instructor and/or kayak trip leader at a level appropriate to paddling on Lake Superior such as ACA Coastal Kayaking or equivalent training.
    - Issued by a national organization such as the American Canoe Association, Paddle Canada, and/ or British Canoe Union.
    - Can be in training, having completed training and taking assessment within the year.

Operations

- Guide/leader will operate in conditions at or below level of training/certification/assessment.
- All activities are lead and accompanied by at least one guide per five kayaks with a maximum of ten kayaks per tour. Tours must have sufficient time in between groups to ease congestion of parking and patrons at Presque Isle Park.
- All equipment is to be routinely inspected, properly fitted, and in good working order.

City of Marquette
Presque Isle Park Advisory Committee
Board Minutes
Lakeview Arena

Meeting date: April 11, 2018

Call to Order: A regular meeting of the Presque Isle Park Advisory Committee was held in Marquette, Michigan. The meeting convened at 5:30 P.M. on 4/11/2018, Chair Samuel Crowley presiding; Phil Watts, Secretary.
Members of the Board in attendance were: Barbara Coleman, Samuel Crowley, Orville Dishno, Tara Gluski, Theresa Hamari, William Thompson, Phillip Watts. Excused – Maura Davenport, Natasha Koss, Joshua Morrison

Approval of Agenda and Minutes:

Minutes of the 3/21/2018 meeting of the PIPAC were approved as printed and distributed to the members of the board. Motion to approve by Barb, Second by Theresa. Motion Passed Approved by Consent

Announcements:

a. New member, Orville Dishno, was introduced.
b. Theresa announced that the Ad Hoc committee would meet Thursday.

Public Comment: None

Director's Report:

a. Park usage is still low as normal for this time of the year. The colder than average weather has kept most people away and this will prolong the road closure and spring cleanup/projects.
b. Reservations for facilities are picking up for the summer and we will get very busy as we enter graduation season.
c. Talks are ongoing with NMU. Barb will update us, but there are already NMU students reaching out for workshops, presentations, and resource requests for Leave No Trace education. Staff are looking to budget to become members of the Leave No Trace organization for additional resources to promote the principles in our operations and policies in our parks. Barb announced NMU students have produced LNT videos. There will be a presentation on April 20th at The Lodge facility on campus.
d. Staff are discussing execution of the Path to Blackrocks plan. Utilizing fence at the top of the hill may not be an option due to the rock, so staff are looking at other measures to create a barrier. Staff will be meeting with the Superior Watershed to discuss their assistance in the project relative to erosion prevention and planting of native plant species. Signage design was discussed and a layout for barrier boulders and signage will be brought to the next PIPAC meeting.
e. Only one bid for the Kayak Concessionaire was submitted. Superior Kayaking Company submitted an application for a 3-year agreement with them. This will be the same agreement from last year with the same stipulations that were recommended by PIPAC. Staff are looking for support from PIPAC via motion of approval (see New Business).
f. Discussion are still ongoing about operations for a Dark Sky Park at Presque Isle. The biggest hurdle is addressing security and enforcement of the hours and the gates. The City has limited resources, especially at that time frame. Further research and discussions took place this month. The main gate will be closed at 1:00 am during the period of June 1 – October 31 for Fridays and Saturdays. The road gate will remain open until the main gate closure. A motion of support was requested (see New

Business)

Old Business:

a. Strategic Planning Process – Policies impacting Presque Isle Park. Motion to approve by Barb, Second by Bill. Motion Passed.
b. Land use policy – A copy of Policy for Use Regulations for Presque Isle Park was provided in the Committee packet and reviewed.
    i. There was a question regarding section area I relative to dogs and the need for language regarding service animals.
c. Mobile Food Vending ordinance - Copy of the City ordinance for food vending (Chapter 35) was provided in the Committee packet. This language could be included under Rule 1 of the Use Regulations for Presque Isle Park. Discussion centered on potential for noise and other environmental pollution issues. Options include limiting vendors to specific locations or not allowing mobile vendors at Presque Isle. Andrew will explore the discussion points with his Director and report back to PIPAC.

New Business:

a. Motion to approve contract with Superior Kayak Company (see Director's Report, point e). Motion by Tara, Second by Barb. Motion passed.
b. Motion to support agreement of support for Dark Sky Park (see Director's Report point f). Motion by Theresa, second by Barb. Motion passed.
c. Membership – PIPAC still needs one new member.

Committee Member comments:

Orville asked about Park Patrol having enforcement power and this was affirmed by Andrew. Barb commented that PIPAC members could be available to help in additional ways. Theresa suggested discussion regarding limiting the size of vehicles at Presque Isle. Sam will miss the next three months of meetings and will talk to Josh about Chairing meetings.

Adjournment: May 9, 2018 and 5:30 pm at Lakeview Arena, were fixed as the time and place of the next regular meeting and the March 21, 2018 meeting was adjourned at 6:45 pm.

Respectfully Submitted by

_____ _____

Phillip B. Watts
Presque Isle Park Advisory Committee

Date of Approval

City of Marquette

REQUEST FOR PROPOSALS

RFP # 18-05
KAYAK CONCESSIONAIRE

3-12-18

Deadline and RFP Opening will be at 2:00 PM, March 29, 2018. Location of the opening will be at City Manager's Office Conference Room, 300 West Baraga Ave, Marquette, MI 49855. RFPs must be in sealed envelopes clearly identifying the RFP title. No fax or electronic RFPs will be accepted. Bid specs can be found on the City website at www.marquettemi.gov

Mail Proposals To:

City of Marquette
ATTN: Katie Burnette, Finance Department
300 W. Baraga Ave.
Marquette, MI 49855

The City of Marquette reserves the right to reject any and all bids if judged not to be in the best interest of the City.

L. M. Angeli

L. Michael Angeli
City Manager

For questions or further information, contact:

ANDREW MACIVER
ASST. DIRECTOR OF COMMUNITY SERVICES
CITY OF MARQUETTE
401 EAST FAIR AVE
MARQUETTE, MI 49855
906-225-8594
AMACIVER@MARQUETTEMI.GOV

KAYAK CONCESSIONAIRE

I. INVITATION

The City of Marquette, Community Services Department- Parks and Recreation Division ("City"), is pleased to offer an exciting opportunity for any individual or company to submit a proposal regarding the sole concessionaire operation at Presque Isle Park for a guided Kayak Outfitter.

Any individual or company interested in providing kayak outfitting services should prepare a proposal in compliance with the specifications described in this Request for Proposal ("RFP").

II. DESCRIPTION OF THE SITES

A small section of beach on Middle Bay at Presque Isle Park is available for a private entity to conduct guided kayak tours on Lake Superior. This site includes designated parking for a vehicle and trailer and a 1,000 square feet of beach front for a lay down and launch area for kayaks. These sites are not exclusive to the concessionaire and are open to the general public.

III. REQUIRED CONSIDERATIONS

The successful bidder will be notified of the award in writing and will be expected to properly and promptly execute a contract, which will include the following conditions:

a) To be leased in "as-is" condition without exclusive rights from the general public.
b) An award of a contract resulting in an agreement between the City and the Vendor shall be "exclusive" for paddle sport tours launched from Presque Isle Park.
c) Vendor shall be responsible for all costs relating to the operations, vessels, refuse from tours, or emergency services.
d) Vendor must meet the following requirements for operations as defined:

General Equipment to be Provided

- Sea Kayaks (single or tandem) with front & rear floatation, declines, tow line attachment
- One spare paddle per four boats
- One paddle float and bilge pump per two boats

Equipment to be Carried by Guide

- VHF Radio with weather radio
- Spare clothing for 2-4 people in dry bag
- First Aid Kit
- Repair kit (may include duct tape, mini tool, etc)

- Spare water and food

Safety Equipment to be Provided by Outfitter

- USCG approved PFD
- Sprayskirt
- Whistle
- Paddle
- Dry bags
- Water proof container for emergency medications

Required Certifications

- Emergency Integrated Lifesaving Lanyard Device (EMILY) training by Marquette Fire Department
- CPR and First Aid
- Certification/Assessment as a kayak instructor and/or kayak trip leader at a level appropriate to paddling on Lake Superior such as ACA Coastal Kayaking or equivalent training.
    - Issued by a national organization such as the American Canoe Association, Paddle Canada, and/ or British Canoe Union.

Operations

- Guide/leader will operate in conditions at or below level of training/certification/assessment.
- All activities are lead and accompanied by at least one guide per five kayaks with a maximum of ten kayaks per tour. Tours must have sufficient time in between groups to ease congestion of parking and patrons at Presque Isle Park.
- All equipment is to be routinely inspected, properly fitted, and in good working order.

e) Vendor shall indemnify and hold the City harmless from any damage, liability or cost (including reasonable attorney fees and cost of defense) for or on account of injury to or death of persons, damage to or destruction of property belonging to the City occurring by reason of the negligent acts, errors or omissions of the Vendor, its employees, or agents in connection with the performance of this contract.

f) Without limiting any of its obligations and liabilities, Vendor, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Michigan, and with forms reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less

than A-VII. Use of alternative insurers requires prior approval from the City.

A. General Clauses

1. Additional Insured. The insurance coverage, except Workers' Compensation and Professional Liability, required by this Contract, shall name the City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded the Vendor shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the City or its employees shall be excess coverage, and not contributory coverage to that provided by the Vendor.

2. Coverage Term. All insurance required herein shall be maintained in full force and effect until Services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of the City.

3. Primary Coverage. The Vendor's insurance shall be primary insurance as respects City and any insurance or self insurance maintained by City shall be excess of the Vendor's insurance and shall not contribute to it.

4. Claim Reporting. Vendor shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect City.

5. Waiver. The policies for Workers' Compensation and General Liability, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the Vendor.

6. Deductible/Retention. The policies may provide coverage which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. The Vendor shall be solely responsible for deductible or self-insured retentions and the City may require the Vendor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

7. Policies and Endorsements. City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.

8. Certificates of Insurance. Prior to commencing services under this Contract, Vendor shall furnish City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Vendor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full
force and effect. Such certificate shall identify this Contract by referencing the project name and/or project number and shall provide for not less than thirty (30) days advance written notice by Certified Mail
of Cancellation or

Termination. B. Workers'

Compensation

The Vendor shall carry Workers' Compensation and Employer's Liability insurance coverage as required by law and deemed necessary for its own protection.

In case services are subcontracted, the Vendor will require the sub-consultant to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by Vendor.

C. Commercial General Liability

Commercial General Liability insurance with a combined single limit of not less than $1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract.

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the Services as evidenced by annual Certificates of Insurance.

g) Operating season for services is approximately May 1 to October 1, but may be adjusted as determined by the vendor.
h) Vendor shall be responsible for obtaining all appropriate approvals, licenses and permits from the proper governmental agencies and for

paying all fees, or other charges imposed by such municipalities or governmental agencies.

i) Vendor shall propose compensation to be paid to the City monthly as consideration for the use of the premises rights and must cover all *UTILITY* costs to the City.
j) Vendor shall be responsible for the premises area with repairs and maintenance of the site while this Agreement is in effect.
k) Vendor shall abide by all current ordinances, including site advertisement and obtaining necessary permits.

IV. OBJECTIVE OF THE REQUEST FOR PROPOSAL

The objective of the RFP is to:

- Obtain concise and straight forward proposals towards the operations of a kayak concessionaire at Presque Isle Park

When submitting proposals, interested parties should keep in mind that the City's goal is to lease a site at Presque Isle Park to qualified individuals or companies for operations of guided kayak tours at **NO COST to the City.**

V. RECEIPT OF INFORMATION

Interested parties are invited to respond to this RFP by submitting a response to the City. In addition to the information requested below, please see section Ill, "Required Considerations" in formulating your response.

Responses should include ideas, information and recommendations that could result in a clarification of the requirements and the identification of potential problem areas with this initiative. Respondents are requested to provide a concise and focused response to this RFP. Responses are requested in the following format:

(a) Individual and or Company profile.
(b) Name of a key contact person, including telephone number, fax number and email address.
(c) Brief description of individual and or firm's interest, past experience and views on how the kayak concessionaire will best operate at Presque Isle Park.
(d) Ability to meet the standards and requirements as
(e) A minimum of three (3) references in the last three (3) years, including name of contact, company/agency name and telephone numbers.
(f) State the amount of investment you will require to begin operations and potential sources of funding.
(g) A list and explanation of additional equipment (if any) the proposer would be providing at these sites.

(h) An explanation of routine cleaning and preventive maintenance schedules intended to assure an attractive appearance for all equipment to meet County Health Department Codes
(i) Other information specific to the nature of this RFP and deemed important by the interested party.
(j) The City is interested in entering into a three (3) year lease agreement with the opportunity to extend based on mutual interest.
(k) Lease compensation should be based on current market square foot value of each facility or value proposed by vendor.

Responses will be accepted until 2:00 p.m. EST, on March 29, 2018. Proposals are to be in sealed envelopes, clearly identifying the proposal title, "Kayak Concessionaire at Presque Isle Park" and are to be addressed to:

City of Marquette
Katie Burnette, Finance Dept.
RFP- 18-05
Kayak Concessionaire at Presque Isle Park
300 W. Baraga
Marquette, MI 49855

Proposals will be publicly opened at the following place and time:

Date: March 29, 2018
Time: 2:00p.m. EST
Place: City Manager's Conference Room, City Hall, 300 W. Baraga Avenue, Marquette, MI 49855

Transmissions by fax or email will not be accepted. The City of Marquette reserves the right to reject any and all proposals.

VI. QUESTIONS CONCERNING THE RFP

Please direct all comments and questions to Jon Swenson, Assistant Director of Community Services. All contact regarding this RFP or any matter relating thereto must be in writing and may be mailed, e-mailed, or faxed as follows:

Andrew MacIver
Assistant Director of Community Services
401 E. Fair St. Marquette, MI 49855
Phone: (906) 225-8594
Fax: (906) 228-0493
Email: amaciver@marquttemi.gov

Superior Kayaking Company LLC
PO Box 495
Marquette, MI 49855

March 23, 2018

City of Marquette
Attn: Katie Burnett, Finance Department
300 W Baraga Ave
Marquette, MI 49855

To: City of Marquette

Enclosed, please find Superior Kayaking Company, LLC's response to **Request for Proposal #18-05 - "Kayak Concessionaire"** as published by the City of Marquette.

I was enthused to see the RFP and believe this proactive approach the City is taking is vital to preserve Presque Isle Park, promote tourism in the area, and establish guidelines for a vendor to safely guide tours from City property. I am confident and that our business model is the best suited to manage the responsibilities and opportunities which will arise for the winning bidder.

I am happy to speak with anyone should there be any questions on the information contained within the proposal. Thank you in advance for your consideration.

Regards,

Alexandra Jarvis
Co-Founder and Owner

Superior Kayaking Company, LLC

Response to City of Marquette RFP #18-05

Kayaking Concessionaire

March 23, 2018

IV. RECEIPT OF INFORMATION

(A) INDIVIDUAL AND OR COMPANY PROFILE.

Founded by Alexandra Jarvis and Anders Ahlberg in 2016, Superior Kayaking Company is a sea kayak guide service operating out of Marquette, MI. We currently conduct tours at Presque Isle Park in Marquette and Grand Island National Recreation Area in Munising.

Our mission is to provide guests with opportunities to safely explore the sights and features of Lake Superior. We believe the wilderness and city park alike are best enjoyed in smaller group sizes that allow for intimate settings and personalized attention.

(B) NAME OF A KEY CONTACT PERSON, INCLUDING TELEPHONE NUMBER, FAX NUMBER AND EMAIL ADDRESS.

Name: Alexandra Jarvis
Phone: (517) 643-1550
Fax: (517) 374-6112
Email: superiorkayakingcompany@gmail.com

(C) BRIEF DESCRIPTION OF INDIVIDUAL AND OR FIRM'S INTEREST, PAST EXPERIENCE AND VIEWS ON HOW THE KAYAK CONCESSIONAIRE WILL BEST OPERATE AT PRESQUE ISLE PARK.

Sea kayaking is an enjoyable pastime that is specifically relevant to our community with abundant beaches and beautiful geologic landscapes. With the right approach, we believe that kayaking can be on par with other popular activities in Marquette such as biking, skiing, and sailing. Through various local businesses and associations, residents and visitors to our area have the opportunity to rent equipment or take lessons to participate in these sports. However, as of 2016, there was no provision for people who wanted to kayak in Marquette. Superior Kayaking Company fills that gap and expands the recreational choices for residents and visitors to include sea kayaking under the guidance of an industry professional.

From the outset, our goal has been to conduct a business in a way that is additive to the community, safe for clients, welcomed by residents of Marquette, and in compliance with the visions and ordinances set forth by our Department of Parks and Recreation.

This core value is best evidenced by our choice to seek input from the City and relevant stakeholders during the development of our business plan. These included the Department of Parks and Recreation; Harbor Advisory Committee; Presque Isle Park Advisory Committee; Parks and Recreation Advisory Board; local business owners; and kayaking hobbyists and experts. Though this method was neither the most expeditious nor profitable, we received valuable feedback which we used to inform our long-term business model. For example, it was feedback from multiple advisory committee members that led us to eliminate the option to rent kayaks from our operation at Presque Isle Park. After vetting, we mutually agreed that, due to safety, it was not within the best interest of the community to rent kayaks from City beaches.

A kayak concessionaire operating at the city park should take all reasonable measures to be minimally invasive to the natural landscape and to respect the views and use of space for non-kayakers. To this end, we previously proposed and are advocates of a maximum number of kayaks and business vehicles allowable. This RFP adequality captures our views on the minimum operating standards that should be in place for safe operation. Superior Kayaking Company's standard operating procedures are already in full compliance with the letter and the spirit of standards set forth in the City's request.

We do not believe that a kayak concessionaire at Presque Isle Park will be sustainable or capable of accomplishing the City's goals if it is singularly focused on commercial profitability. Additional factors such as safety, respect for the community's long-term interests, and the promotion of kayak sports in general must be given prominent consideration. Our owner-operator model of is particularly effective in terms of blending all of these objectives into a successful kayak operation at Presque Isle Park. Being owner-operators keeps us directly connected to all aspects of the kayak concession from daily operations and interactions with customers to working closely with the city with firsthand knowledge about how the concession is running. We are invested in the business, but we are equally invested in the City of Marquette.

Experience: Alexandra Jarvis has guided sea kayak tours on Lake Superior since 2012. Anders Ahlberg gained his trip leadership experience at a camp where he guided wilderness backpacking and canoe trips for young people and began guiding sea kayak tours in 2016.

(D) ABILITY TO MEET THE STANDARDS AND REQUIREMENTS

All requirements outlined in *RFP 18-05, Section III,* are reasonable and agreeable. Of particular note:

part (d) guiding requirements are and have always been minimum operating standards for Superior Kayaking Company.

Alexandra Jarvis and Anders Ahlberg hold CPR and First Aid certifications through the American Red Cross and are certified Level III Coastal Kayak Trip Leaders (CKTL) through the American Canoe Association (ACA). In addition, both Ms. Jarvis and Mr. Ahlberg have successfully performed self-rescue and assisted rescues in Level IV wave and wind conditions under the supervision of an ACA Instructor. While our own launch guidelines would prohibit our taking tours in such conditions, both guides are adequately trained to adapt to sudden changes in wind/wave conditions to ensure the safety of tour participants.

part (f) Superior Kayaking Company currently holds a liability insurance policy, on which the City of Marquette is an additional insured, from a company with A+ rating with A.M. Best Company.

(E) A MINIMUM OF THREE (3) REFERENCES IN THE LAST THREE (3) YEARS, INCLUDING NAME OF CONTACT, COMPANY/AGENCY NAME AND TELEPHONE NUMBERS.

Name: Sam Crowley
Company/Agency: Sea Kayak Specialists
Phone: (906) 250-4238

Name: Sarah Peurakoski
Company/Agency: Superior Alliance for Independent Living (SAIL)
Phone: (906) 228-5744 (work phone) (906) 251-8906 (cell phone)

Name: Dale Forrester
Company/Agency: Maple Dale Farm
Phone: (269) 625-6738

(F) State the amount of investment you will require to begin operations and potential sources of funding.

Superior Kayaking Company is an established, fully operational guide service. No investment or additional sources of funding—from public or private entity—is sought.

(G) A list and explanation of additional equipment (if any) the proposer would be providing at these sites.

Superior Kayaking Company will not require or provide any additional equipment on site. The mobile, low profile nature of the company is intentional to be minimally invasive to the natural landscapes and non-kayaking park users.

(H) An explanation of routine cleaning and preventive maintenance schedules intended to assure an attractive appearance for all equipment to meet County Health Department Codes

Kayaks and equipment are inspected after each use. The kayaks are again inspected before each trip while clients are being fitted into their boats. Rudder cables are specifically checked to ensure that no loosing of nuts or fraying has occurred which may cause the system to become disabled mid-trip. Bulk heads are regularly checked to ensure there are no water leaks between compartments. Guides carry tool kits to address any unexpected equipment malfunction on site.

The beach and parking areas are inspected before leaving each area the group stopped to ensure that no trash or other items from tour participants are left.

(I) Other information specific to the nature of this RFP and deemed important by the interested party.

1) The company has held a commercial use permit with the United States Forest Service since 2016 and remains in good standing with that agency.

2) As described in section C, Superior Kayaking Company created and presented a proposal to multiple city advisory boards in 2016 as it relates to kayaking at Presque Isle Park. Over the course of several months, the proposal was fine-tuned, and on April 27, 2017, a one-year lease agreement between the City of Marquette and Superior Kayaking Company was approved in a unanimous vote by city commissioners.

   The lease agreement, attached as Appendix A for reference, contained the same park use and safety requirements outlined in RFP 18-05. Superior Kayaking Company successfully carried out all terms of the contract, maintained a clean record with no customer complaints or safety incidents, and received ample positive feedback from our community. To our knowledge, there were zero reports of our operation negatively impacting another park user.

3) In summary, there are three distinct strengths to highlight when considering the merits of this bid.

- Our demonstrated commitment to operating a business within the best interest of the community, and in cooperation with local governing authorities.
- Prioritization of safety, as evidenced by our track record and prior completion of ACA certifications.
- Successful experience guiding tours at the location and under operating guidelines set forth within RFP 18-05

(J) THE CITY IS INTERESTED IN ENTERING INTO A THREE (3) YEAR LEASE AGREEMENT WITH THE OPPORTUNITY TO EXTEND BASED ON MUTUAL INTEREST.

Company is prepared to enter three year lease.

(K) LEASE COMPENSATION SHOULD BE BASED ON CURRENT MARKET SQUARE FOOT VALUE OF EACH FACILITY OR VALUE PROPOSED BY VENDOR.

Superior Kayaking Company agrees to make timely payments to the City for the current market square foot value of leased space.

Appendix A

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of April 2017, by and between **THE CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter "LESSOR", and **SUPERIOR KAYAKING COMPANY, LLC**, a Michigan limited liability company, with a mailing address of P.O. Box 495, Marquette, Michigan 49855, hereinafter "LESSEE".

Recitals

A. Lessor is the owner of the real property and beachfront located at 1 Peter White Dr. at Presque Isle Park in the City of Marquette.

B. Lessee desires to lease and Lessor is willing to lease to Lessee a section of beach located near Superior Watershed offices as shown in Exhibit "A" located on Lessor's real property in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Leased Premises

1.1 Lessor leases to Lessee space as shown in Exhibit "A", hereinafter "PREMISES".

2. Term of Lease

This lease shall run from May 1, 2017 through October 1, 2017. Prior to Lessee's first day of operations, Lessee will meet with City employees to discuss logistics for the use of the Premises.

3. Rent

The rent shall be $147.00/month, based on 1,000 square feet of beach front and 600 square feet of parking space at $1.10/square foot for a total of $735.00 for the entire lease term. Monthly rental payments are due by the 5th of each month.

4. Use of Premises

4.1 Lessee shall use the Premises only for launching and retrieving kayaks and other non-motorized boats from the sandy beach area.

4.2 Lessee shall not use the Premises for any purpose that would:

a) be deemed hazardous to the public or adjoining premises including, but not necessarily limited to, fire, and environmental type hazards;

b) constitute a violation of any public law or requirement;

c) cause damage or injury to the Premises, or any part of it (ordinary wear and tear excepted);

d) constitute a public or private nuisance;

e) interfere with other uses of the Premises; or

f) permit refuse to accumulate in or around leasehold.

g) prohibit or restrict public access across and through the Premises.

5. Use of Public Areas by Lessee

Lessee and its invitees shall have the right to use all public areas, subject however to all rules and regulations regarding these areas. Lessee and its invitees shall only use the designated parking area as shown on Exhibit A. Lessee is permitted to display temporary signage in common areas in accordance with all City ordinances.

6. Non-exclusive Use of Premises

Lessee acknowledges that its use of the Premises is not exclusive and that Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the Premises.

7. Maintenance and Repair

7.1 Lessee shall be solely responsible for the maintenance and repair of all of Lessee's tangible personal property located or used on the Premises and shall keep them in a safe condition and good repair.

8. Insurance and Indemnity

8.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's insurance policies covering the Premises.

8.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased.

8.3 Lessee at its sole expense shall be responsible for insuring its own tangible personal property, equipment, and fixtures from loss from fire and other casualty and shall at all times provide Lessor with a certificate evidencing such coverage.

8.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises by Lessee, its employees, agents, invitees, and licensees. The amount of the insurance shall be not less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Five Hundred Thousand and 00/100 Dollars ($300,000.00) for property damage. Lessee shall at all times provide Lessor with a current copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.

8.5 Lessee will indemnify and hold Lessor harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's cost of defending against the foregoing, such cost to include attorneys' fees) resulting or occurring by reason of Lessee's use and occupancy of the Premises.

8.6 Lessee at it's sole expense shall follow the safety guidelines regarding water sport outfitters as set forth in Exhibit B.

9. Assignment/Subletting

9.1 Lessee shall not assign or sublet the Premises or any part thereof without the express prior written consent of the Lessor.

9.2 Lessor may freely assign its rights and obligations under this Lease Agreement to any third party pursuant to a Purchase and Sale Agreement, Land Contract or similar instrument.

10. Use of Premises by Lessor

Lessor reserves for itself and its contractors and agents the right to enter the Premises at reasonable times for the purpose of inspecting, maintaining, installation, operation and repair services of the Premises or adjacent real property.

11. Covenant of Quiet Enjoyment

Lessor warrants and represents that it has full authority to execute this lease for the above term. Lessor covenants that upon Lessee paying the rents and performing its covenants and duties prescribed herein, Lessee may, except as otherwise described herein, have the non-exclusive and reasonable right to have, hold and enjoy the Premises.

12. Lessor's Right to Perform Lessee's Obligation

If Lessee defaults in the observance or performance of any term or covenant of this lease, Lessor may, without thereby waiving the default, remedy the default at Lessee's expense. If, in connection therewith, Lessor makes any expenditure or incurs any obligation for the payment of money or in instituting, prosecuting, or defending any action or proceeding commenced before or during the term of this lease, or after the expiration or termination of this lease including, but not necessarily limited to, legal expenses and attorneys' fees, Lessee shall pay to Lessor on demand the sums paid or obligations incurred together with legal fees and costs.

13. Default by Lessee

13.1 If the Lessee fails to perform any obligation under this agreement within 30 days after receiving written notice of the default from the Lessor; the Lessor may terminate this lease.

13.2 In addition to the Lessor's other rights and remedies as stated in this lease, and without waiving any of those rights, if the Lessor deems necessary any repairs that the Lessee is required to make or if the Lessee defaults in the performance of any of its obligations under this lease, the Lessor may make repairs or cure defaults and shall not be responsible to the Lessee for any loss or damage that is caused by that action. The Lessee shall immediately pay to the Lessor, on demand, the Lessor's costs for curing any defaults, as additional rent under this lease.

13.3 The rights and remedies of Lessor shall be cumulative as more particularly provided by law or in equity pursuant to the laws of the State of Michigan.

14. Surrender of Leasehold Upon Termination of Lease

If upon termination of the lease, Lessee has failed to remove its trailer and rowing shells, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

15. Miscellaneous

15.1 This agreement shall be binding on the parties and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

15.2 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

15.3 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated herein.

15.4 Any modification of this agreement or additional obligations assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

15.5 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.

15.6 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

15.7 All notices to be given under this lease shall be in writing and mailed, postage prepaid, or by certified or registered mail, return receipt requested, or delivered personally or by courier delivery, or sent by telecopy (immediately followed by one of the preceding methods) to Lessor's address and Lessee's address as above stated or any other place that Lessor or Lessee may designate in a written notice given to the other parties. Notices shall be deemed served on the earlier of receipt or three (3) working days after the date of mailing.

The parties have set their hands on the day and year first above written

CITY OF MARQUETTE

David J. Campana, Mayor

for Kris M. Hazeres, City Clerk

SUPERIOR KAYAKING COMPANY, LLC

By: ALEXANDRIA JARVIS

Its: Co-Owner

Approved as to Substance:

L. Michael Angeli, City Manager

Approved as to Form:

Ronald D. Keefe, City Attorney

EXHIBIT A

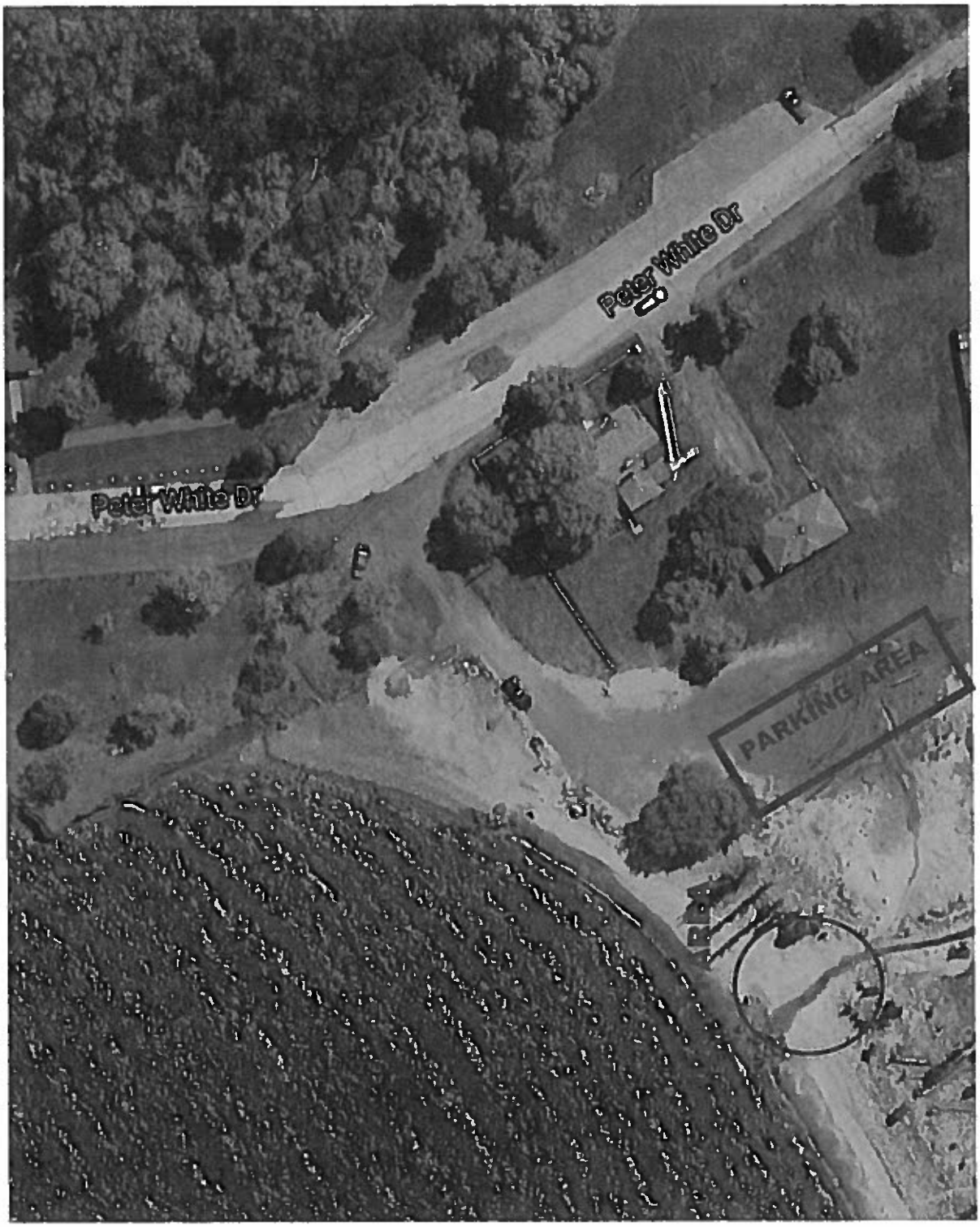


Exhibit B

General Equipment to be Provided

- Sea Kayaks (single or tandem) with front & rear floatation, declines, tow line attachment
- One spare paddle per four boats
- One paddle float and bilge pump per two boats

Equipment to be Carried by Guide

- VHF Radio with weather radio
- Spare clothing for 2-4 people in dry bag
- First Aid Kit
- Repair kit (may include duct tape, mini tool, etc)
- Spare water and food

Safety Equipment to be Provided by Outfitter

- USCG approved PFD
- Sprayskirt
- Whistle
- Paddle
- Dry bags
- Water proof container for emergency medications

Required Certifications

- CPR and First Aid
- Certification/Assessment as a kayak instructor and/or kayak trip leader at a level appropriate to paddling on Lake Superior such as ACA Coastal Kayaking or equivalent training.
    - Issued by a national organization such as the American Canoe Association, Paddle Canada, and/ or British Canoe Union.
    - Can be in training, having completed training and taking assessment within the year.

Operations

- Guide/leader will operate in conditions at or below level of training/certification/assessment.
- All activities are lead and accompanied by at least one guide per five kayaks with a maximum of ten kayaks per tour. Tours must have sufficient time in between groups to ease congestion of parking and patrons at Presque Isle Park.
- All equipment is to be routinely inspected, properly fitted, and in good working order.

ANOTT

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/26/17

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	K & K Insurance Group, Inc. P.O. Box 2338 Fort Wayne, In 46801	CONTACT NAME:	
		PHONE (A/C, No. Ext): 000-000-0000	FAX (A/C, No): 000-000-0000
		E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: NEW HAMPSHIRE INSURANCE COMPAN	23841
INSURED	SUPERIOR KAYAKING COMPANY, LLC PO BOX 495 MARQUETTE, MI 49855	INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1896255 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR Owners & Contractors GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PROJECT LOC OTHER:			RPA3000897700	12:01AM 7/01/16	12:01AM 7/01/17	EACH OCCURRENCE	1000000
							DAMAGE TO RENTED PREMISES (Ea occurrence	300000
							MED EXP (Any one person)	NC
							PERSONAL & ADV INJURY	1000000
							GENERAL AGGREGATE	2000000
							PRODUCTS-COMP/OP AGG	2000000
	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea Accident)	
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION						EACH OCCURRENCE	
							AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/ EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER-STATUTE OTHER	
							E.L. EACH ACCIDENT	
							E.L. DISEASE – EA EMPLOYEE	
							E.L. DISEASE – POLICY LIMIT	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERT HOLDER IS ADDED AS AN ADDITIONAL INSURED, BUT ONLY FOR LIABILITY CAUSED, IN WHOLE OR IN PART, BY THE ACTS OR OMISSIONS OF THE NAMED INSURED. COVERAGE DOES NOT EXTEND TO THE NEGLIGENCE OR ERRORS AND OMISSIONS OF THE ADD'L INSURED

CERTIFICATE HOLDER

CITY OF MARQUETTE
300 W BARAGE AVE
MARQUETTE, MI 49855

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Scott Hartwell

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Agenda Date: 7/12/2021

Unfinished Business
Ordinance #695 - Street Performers - Roll Call Vote

BACKGROUND:

City staff has worked recently to establish a way to support local street performers, which provide a public amenity that enhances the character of the City, and to do so in a manner consistent with the overall public interest.

Performers may use props or other materials and could draw crowds to their performances, so the proposed framework must protect the ability of pedestrians to move safely on sidewalks and through crosswalks in the impacted areas.

Aware that street performers are engaged in First Amendment activities, the proposed ordinance includes reasonable time, place and manner restrictions on street performers to the extent necessary to ensure the safety of performers, their audiences and the general public and to prevent unreasonable interference with residents' enjoyment of peace and quiet in their homes or the ability of local businesses to conduct business.

The proposed ordinance would establish criteria for street performers in certain locations throughout the City, while the accompanying resolution would identify appropriate locations and hours for such activity.

This ordinance was first introduced at the June 28 City Commission meeting.

FISCAL EFFECT:

None by this action.

RECOMMENDATION:

Adopt Ordinance #695 and approve the resolution establishing operating locations and times for street performers, and direct the Mayor and City Clerk to sign both.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Ordinance 695

Ord 695 - Resolution

ORDINANCE #695
AN ORDINANCE TO AMEND MARQUETTE CITY CODE CHAPTER 12 - BUSINESSES, BY ADOPTING A NEW ARTICLE VIII. - STREET PERFORMERS

INTENT

The purpose of this ordinance is to create regulations to allow for local street performers, which enhance the character of the City, and to do so in a manner consistent with the overall public interest.

The City of Marquette Ordains:

SECTION 1. Adoption.

New *Chapter 12 – Businesses, Article VIII. – Street Performers* is hereby adopted as follows:

Sec. 12-204 – 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:

Designated public area means an area on public property designated for street performances.

Perform/performance means a live, public presentation or exhibition which includes, but is not limited to, the following activities: acting, singing, playing a musical instruments, pantomime, juggling, magic, dancing, reading aloud, puppetry, art demonstrations, and performing of any sort.

Performer means a person conducting activities defined as a Performance under this article.

Sec. 12-205 – Rules and Regulations.

Any performer operating in the City of Marquette shall comply with the following:

1. May only locate in a designated public area, as identified by city commission resolution.
2. May only perform during hours established by city commission resolution.
3. A person who is under the age of 15 shall only perform when accompanied at all times by a responsible adult. A person who is 15 years of age or older may perform without a responsible adult.
4. May request contributions or money at a performance. Contributions may be received in any receptable, so long as it does not interfere with the pedestrian passage requirements set forth in Sec. 42-30 of this code.
5. May only perform if located more than 10 feet from the entrance of any business, unless prior permission is granted by the business owner.
6. May only perform if located more than 50 feet from any other performer, unless performing together.
7. May only perform if located more than 100 feet from any playground or school while in session, unless prior permission is granted by the school administrator.

8. May not use any:
    a. knife, sword, torch, flame, axe, saw, animal or other object, thing or being that can cause serious bodily injury to any person;
    b. Amplification device;
    c. Generator, battery or any other power source that poses a fire or public safety hazard;
    d. Electrical connection to an adjacent building or City power source.
9. The performer shall be responsible for clean-up of all litter at the performance site.
10. Must allow the public to utilize any public benches, waste receptacles or other street furniture during the performance.
11. Must not block or obstruct a curb cut.
12. Must allow for the free and safe movement of pedestrians in accordance with Sec. 42-30 of this Code. If a sufficient crowd gathers to observe a performance such that the passage of the public through a public area is blocked or obstructed, a police officer may disperse that portion of the crowd that is blocking or obstructing the passage of the public.
13. Must only perform with instruments, props, equipment, or other items the performer can reasonably transport or remove at one time.
14. May not obstruct visibility for passing motorists.
15. May not offer for sale or make available for a price or donation any items.
16. May not create excessive levels of noise, as established in Sec 22-30 of this Code.

Sec. 12-206 – City Manager Exclusion of public areas.

The City Manager or his or her designee may temporarily exclude a designated public area, due to road or sidewalk construction, utility maintenance, other city activity, or in the case of an emergency. Such designation will be based upon the determination that exclusion is necessary to protect the public health, safety, and welfare.

Sec. 12-207 – Civil infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

SECTION 2. EFFECTIVE DATE.

This ordinance shall take effect ten days after adoption but not before publication.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

Date Adopted: _____

Date Published: _____

Resolution
Establishing Operating Locations and Times for Street Performances on City-Owned Property

WHEREAS, the City of Marquette desires to encourage street performers, who add to the vibrancy and desirability of Marquette, while providing a framework under which such performers operate; and,

WHEREAS, the City Commission may by resolution establish by hours of operation and identify City-controlled property where street performing is a permissible use;

NOW THEREFORE BE IT RESOLVED, by the City Commission for the City of Marquette that street performers may only perform within the areas, and during the hours, stipulated below:

1. Unless otherwise stated, performers may operate in public parks during park hours and on other listed sites between the hours of 9 a.m. and 11 p.m.
2. In accordance with Chapter 12 of the Marquette City Code, street performers are authorized to perform at the following City-owned or controlled properties:
    a. Southwest corner of W. Washington and S. Third Streets
    b. Phil Niemisto Pocket Park
    c. Marquette Commons (green space)
    d. Rosewood Walkway
    e. Founders Landing Boardwalk
    f. The Baraga Avenue parking lot (green space) located on the corner of E. Baraga Avenue and S. Front Street.
    g. Scenic overlooks located along S. Lakeshore (Founders Landing) and N. Lakeshore Boulevard east of Mattson Park.
    h. All public parks during park hours
    i. City multi-use path (green space only)

Performers may not operate in any DDA- or City-sponsored event, unless operating as a part of said event.

This resolution will take effect XXX, 2021.

Duly adopted by the City Commission on XXX, 2021.

_____
Jennifer A. Smith, Mayor

Certified to be a true copy on XXX, 2021.

_____
Kyle Whitney, City Clerk

Agenda Date: 7/12/2021

Unfinished Business

Ordinance #696 - Presque Isle Open Burning Regulation - Roll Call Vote

BACKGROUND:

Presque Isle Park Advisory Committee (PIPAC) has worked over the last two years to compile a list of regulations that would address the ever increasing stress on the natural resources of the park. City staff has worked to confirm that the majority of these regulations are enforceable with existing ordinances.

However, open burning still remains a concern; therefore Ordinance #696 is a high priority in order to reduce the risk of wildfire at the park. The purpose of this ordinance is to regulate open burning in the City in order to limit sources of fire in Presque Isle Park. This action would ban any fires for cooking or recreational enjoyment in the park, other than those in existing City-provided grilling appliances using charcoal as a fuel source.

Per the requirements of Section 3.1 of the City Charter, this action requires two reads. The first read was at the June 28, 2021 meeting.

FISCAL EFFECT:

None with this action.

RECOMMENDATION:

Adopt Ordinance #696, and authorize the Mayor and City Clerk to sign.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Proposed Ord. 696

ORDINANCE #696
AN ORDINANCE TO AMEND MARQUETTE CITY CODE CHAPTER 26 – FIRE PREVENTION AND PROTECTION, IN ORDER TO LIMIT OPEN BURNING ON PRESQUE ISLE PARK

INTENT
The purpose of this ordinance is to regulate open burning in the City in order to limit sources of fire in the City's Presque Isle Park.

The City of Marquette Ordains:

SECTION 1. Repeal.
Chapter 26 – Fire Prevention and Protection, Section 26-89 – Open Burning, (c) – Permitting and prohibitions, (1) Open burning; **and**

Chapter 26 – Fire Prevention and Protection, Section 26-89 – Open Burning, (d) – Exceptions **are hereby repealed.**

SECTION 2. Adoption, Prohibitions.
New *Chapter 26 – Fire Prevention and Protection, Section 26-89 – Open Burning, (c) – Permitting and prohibitions, (1) Open burning* is hereby adopted as follows:

(1) Open burning. Open burning is prohibited unless specifically permitted by this chapter. Permitted open burning shall be constantly attended and supervised by a competent person of at least 18 years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.

a. *Open burning of refuse.* Open burning of refuse is prohibited.
b. *Burning trees, logs, brush, stumps, leaves, and grass clippings.* Open burning of trees, logs, brush, stumps, leaves, and grass clippings is prohibited.
c. *Patio wood-burning units.* A patio wood-burning unit may be used in the City of Marquette only in accordance with all the following provisions:

1. The patio wood-burning unit shall burn only clean wood.
2. The patio wood-burning unit shall be located at least 25 feet from the nearest structure which is not on the same property as the patio wood-burning unit and at least 15 feet from any combustible material, wall, window, or door.
3.The patio wood-burning unit shall not cause a nuisance to neighbors, as defined under section 22-19, environment.
4. Patio wood-burning units may only be operated on privately owned property and with the permission of the property owner.

SECTION 3. Adoption, Exceptions.
New *Chapter 26 – Fire Prevention and Protection, Section 26-89 – Open Burning, (d) – Exceptions* is hereby adopted as follows:

(d) *Exceptions.* This section applies to all open burning within the City of Marquette with the following exceptions:

(1) In all areas of the City except Presque Isle Park, this section does not apply to grilling or cooking food using charcoal, wood propane or natural gas in cooking or grilling.
(2) Open burning may only occur in Presque Isle Park when the activity takes place in a City-provided grilling appliance and only when charcoal is used as a fuel source.
(3) This section does not apply to open burning for the purpose of generating heat in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation.
(4) This section does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.
(5) The section does not apply to campfires within licensed campgrounds.

SECTION 4. EFFECTIVE DATE.
This ordinance shall take effect ten days after adoption but not before publication.

Jennifer A. Smith, Mayor

Kyle Whitney, City Clerk

Date Adopted: _____

Date Published: _____

Agenda Date: 7/12/2021

New Business
MBLP Broadband Resolution- Roll Call Vote

BACKGROUND:

The Marquette Board of Light and Power (MBLP) is currently exploring the potential benefit and financial viability of offering broadband internet service to their customer base. The MBLP is currently only authorized to deliver electric light and power utilities to City residents and residents of the surrounding area and the City Charter places all other municipal utilities under the control of the City. As a municipal electric company, the MBLP is uniquely suited to offer broadband internet service due to the overlap in infrastructure required to provide electricity and fiber optic internet.

This resolution provides support for the exploration of broadband internet as a potential additional utility provided and controlled by the MBLP and recognizes there may be future need for modifications or additions to the City Code or Charter to this effect.

Support of the MBLP effort to become a broadband provider is a priority listed in the proposed 2021-2023 City Strategic Plan.

FISCAL EFFECT:

None.

RECOMMENDATION:

Approve the resolution supporting the Marquette Board of Light and Power's broadband initiative.

ALTERNATIVES:

As determined by the Commission.

ATTACHMENTS:

Description

- Resolution

RESOLUTION IN SUPPORT OF CITY BROADBAND INITIATIVE BY MARQUETTE BOARD OF LIGHT AND POWER

At a regular meeting of the City Commission of the City of Marquette (the "Commission") held on the ___ day of _____, 2021;

PRESENT: _____

ABSENT: _____

The following Resolution was offered by _____ and seconded by _____.

WHEREAS, the Commission recognizes that reliable, high-speed, affordable access to the internet is imperative for Marquette area residents, businesses, non-profits, and visitors, as well as a driving force for the current and future economy; and

WHEREAS, municipalities are increasingly prioritizing internet infrastructure as an essential service, along with other utilities such as electricity; and

WHEREAS, the Board of Light and Power of the City of Marquette (the "MBLP") has invested in a feasibility study to explore the potential benefit and financial viability of offering fiber-to-the-premises (FTTP) broadband internet service to its customers inside and outside the City of Marquette; and

WHEREAS, the Charter of the City of Marquette places all municipal utilities under control of the City except the "electric light and power utilities", which it reserves to the control of the MBLP; and

WHEREAS, the City recognizes that the MBLP, as a municipal electric company, is uniquely suited to offer broadband internet service due to the overlap in infrastructure required to provide electric and fiber optic internet services, as well as MBLP's existing "fiber loop" which has existed approximately 15 years in the City; and

WHEREAS, the City does not intend to offer broadband internet service as a utility

and agrees the MBLP is best positioned to offer and control broadband internet service, should the MBLP decide to offer it as a utility in addition to electrical service.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION, as follows:

1. The City supports the MBLP's exploration of broadband internet service as a potential additional utility in the City to be offered and controlled by the MBLP.

2. The City welcomes any future requests by the MBLP to adapt City ordinances and, if necessary, the Charter, to facilitate the offering of broadband internet service as an additional municipal utility by the MBLP.

3. This resolution shall be in effect from and after its adoption.

YEAS: _____

_____

NAYS: _____

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

I certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Marquette, Michigan, at a regular meeting held on the ___ day of _____, 2021, and that notice of said meeting was given, the meeting was held and the minutes therefor were filed in accordance with the Open Meetings Act, Act No.267, Public Acts of Michigan, 1976, as amended.

_____
Secretary

Dated: _____, 2021