

To: All property owners in plats with restrictions as to on-site well and/or septic systems.
From: The Lake Isabella Village Council
Date: January 18, 2008
Re: Unbuildable Lots Status Report

Dear Property Owner:

At its regular meeting this past October, the Lake Isabella Village Council (“Village Council”) directed that this memorandum be drafted to highlight the history of the building and use restrictions, describe the work done to date on this matter, request input from all of the landowners in the five plats with restrictions to on-site well and septic systems, and describe how these restrictions affect buildability.

Historical Synopsis of the Issue and Work Done to Date

In 1975, the Lake Isabella Airpark and Lake Isabella South plats were recorded with the Isabella County Register of Deeds. These two plats were the last of the “original” plats of Lake Isabella and contained restrictions to on-site well and septic systems. Upon the recording of Lake Isabella South in July of 1975, Lake Isabella would not see another plat recorded until May of 1996. In addition to these two plats, the following “original” plats (Dating back to the 1960s and 1970s) also contain restrictions on the number of on-site septic systems that are permitted: Lake Isabella North, Canterbury Estates, and Lake Isabella Golf Estates II. The restrictions vary somewhat per plat; however, in essence, they all restrict the development of lots to a certain number of on-site well and/or septic systems. Such restrictions are contained in the recorded building and use restrictions, which are included as part of the plat, and were required by the Michigan Department of Public Health (now the Michigan Department of Environmental Quality) in order for plat approval to be granted.

Discussions with long-time residents of the community indicate that the original developers were attempting to work with local and state officials to develop a small public sewer system during the 1970s. To further the sewer plan the developers began to shape property, now owned by the Village of Lake Isabella, at the intersection of Baseline Road and School Road into lagoons to treat the wastewater from the future sewer system. The developers also began to attach a “sewer fee” onto the sale of lots in Lake Isabella Golf Estates II, Lake Isabella Airpark, Lake Isabella North, and Lake Isabella South during this time period in order to help defray the cost of establishing a public sewer system.

The money collected by the developers eventually ended up under the management of the Lake Isabella Property Owners Association (“LIPOA”), which ultimately transferred the funds to the Village after its incorporation in 1998. Those funds today (\$160,000 +/-) are restricted per a consent judgment from the Isabella County Circuit Court. This judgment mandates the manner in which the Village may use the funds regarding buildability issues in Lake Isabella Golf Estates II, Lake Isabella South, Lake Isabella North, and Lake Isabella Airpark. In October of 2007, the Village Council authorized action to be taken to have this section of the consent judgment amended to allow the funds held in escrow to be used on a prorated basis in all plats with buildability issues. The proposed changes to the Sewer Fund consent judgment would free the use of funds to be used to cover the expense of an expanded list of items relating to addressing buildability. Specifically, this list includes; geotechnical testing (soil samples and borings), hydrogeological testing (drinking water quality and underground water flow), legal fees for special assessment district creation, and development costs to be covered in each respective plat apart from action in the other plats with buildability

restrictions. Presently, the Village is awaiting the endorsement from the other two parties of the consent judgment to approve this change.

The Village has further researched the history of the restrictions and has found official correspondence between the Village (and/or the Lake Isabella Property Owner's Association) and the Central Michigan District Health Department that supports the notion that the residents of the community may have originally felt that the restrictions were only to be in place for a period of 25 years from the date of the original plat approval in the 1970s.¹ This belief was proven wrong as there is no sunset period for these restrictions. That is to say, they will remain binding and effective until such time as they are amended or a successful court challenge occurs.

The Village has also attempted to work within the confines of the building and use restrictions to amend and remove the restrictions pertaining to on-site septic systems. In 2005, the Village headed an effort of like-minded property owners in the Lake Isabella Airpark plat to amend the building and use restrictions by deleting the section that related to the septic prohibitions. After receiving the endorsement of over 51% of the lot owners in the plat, the Village recorded these amended new building and use restrictions and attempted to obtain a septic permit on an "unbuildable" lot.

After the recording of the amended restrictions, the Michigan Department of Environmental Quality ("DEQ") informed the Village during the summer of 2005 that the only legal authority to change the restrictions regarding on-site septic systems, as it was a condition which the state imposed for plat approval, solely lies with the DEQ and the other public agencies referenced in the restrictions (The Central Michigan District Health Department and the Isabella County Board of Public Works). The Attorney General's Office of the state of Michigan concurred with this opinion on at least two other occasions.² As such, it is the opinion of the Michigan Attorney General that since the restrictions were put in place by a public agency as part of the approval process for a specific plat, only that public agency has the legal authority to remove or amend the restrictions.³

The Village of Lake Isabella, after being notified of the Attorney General's opinion, requested a meeting during the winter of 2005-2006 to discuss the restrictions. At that time, the Village, Health Department, and DEQ begin to collectively work on reviewing the restrictions based on the geotechnical conditions of Lake Isabella Airpark and Lake Isabella South. This meeting occurred on February 8, 2006 and was held at the Health Department office in Mount Pleasant. In the summer of 2006, the Village, working with its engineering consulting firm Rowe Incorporated, conducted a review of the soils in both of the above-mentioned plats and also Canterbury Estates. In the opinion of our professional engineering firm, the soils at Lake Isabella Airpark, Canterbury Estates, and most of Lake Isabella South are suitable for additional development of on-site septic systems. The results of these tests were forwarded to both the Health Department and the DEQ in October of 2006. Upon receipt of those results, both agencies requested that the Village generate a work plan prior to meeting again to discuss the results of the tests, and also address a series of six questions regarding amending the restrictions. The Village of Lake Isabella submitted the work

¹ November 1, 1994 memo to LIPOA Manager Ed Spayd from the Central Michigan District Health Department.

² January 2, 1997 memo to Maynard Dyer, Department of Consumer and Industry Services, from State of Michigan Assistant Attorney General James E. Riley.

³ June 10, 2005 memo to Richard Falardeau, Michigan Department of Environmental Quality, from State of Michigan Assistant Attorney General James E. Riley.

plan and requested a meeting (which was ultimately held on February 28, 2007) to outline the next steps in removing the restrictions.

After the meeting, the DEQ issued a memo summarizing the contents of the meeting as follows:

Lake Isabella Airpark/(Canterbury Estates) – Previous soil work suggest that suitable conditions may exist to support on-site sewage systems to service each lot in the plat. At the time of the original plat approval, only a very limited number of soil evaluations were conducted, since it was anticipated that on-site systems would be of a very temporary nature. Sufficient additional soils work must be scheduled and accomplished to document that all lots offer suitable soil conditions. We (DEQ) discussed with you (the Village) the need to complete additional soil evaluations jointly by the DEQ, CMDHD, and our engineer. It was agreed upon that Rowe Incorporated would be submitted a plat detailing accessible locations available within the plats to complete soil evaluations.

Lake Isabella South – Existing knowledge of soils in the area suggest that suitable conditions are not present for all lots to stand alone on individual on-site sewage systems. Discussions on available options included a mixture of individual on-site sewage systems in combination with a community system(s). It was agreed that a summary of the lot combinations that have occurred over time and the legal binding authority be summarized and submitted to all parties involved in the review process. As with the Lake Isabella Airpark plat, we discussed the need to complete additional soil evaluations and the submission of a plan detailing accessible locations available within the plat for review of soils.

Water Supplies – Consideration for the lot restrictions to be lifted or adjusted is contingent on the presence of a potable groundwater source available in both areas. Therefore, in addition to assessment of soil suitability for on-site systems, water supply information detailing aquifer quality, quantity, and protection must be analyzed and submitted for review.⁴

The contents of the above cited memo were confirmed by the DEQ via e-mail in January 2008.⁵ This e-mail also addressed the matter of two different rounds of soil sampling tests that are needed in the review process. The first round would establish the baseline geophysical and soil composition for the respective plat; the second round would be site specific soil evaluations which would be evaluated for suitable soils for on-site systems.

While the bulk of our work in recent years has focused on Lake Isabella Airpark, Canterbury Estates, and Lake Isabella South, it is likely safe to assume that the requirements to amend the restrictions as to on-site well and/or septic systems will be the same for Lake Isabella North and Lake Isabella Golf Estates II. Specifically, there is a strong likelihood (due to soil composition and groundwater flow) that those other two plats will ultimately require a solution similar to the one proposed above for Lake Isabella South. Ultimately, in each plat the same matter of numerous lot owners paying taxes, assessments, and other fees with limited use of their property is what the Village Council wants to address and hopefully resolve.

⁴ March 19, 2007 memo from Sean M. Nalepka, Michigan Department of Environmental Quality, to Timothy R. Wolff, Lake Isabella Village Manager.

⁵ January 3, 2008 e-mail from Sean M. Nalepka, Michigan Department of Environmental Quality, to Timothy R. Wolff, Lake Isabella Village Manager

Request for Landowners' Input

Prior to work proceeding on this matter, the Village would like to solicit your feedback on a future course of action. The enclosed postcard has six general questions which will be used by the Village Council to gauge support for various options that are being considered. Those questions and a summary of what a "yes" answer implies are as follows:

- *"This issue is important to me/us, and we encourage the Village to continue working on it."* By answering "yes" to this question, you will indicate that the issue of buildability is important to you, and that you desire to see the Village continue to work on resolving the matter.
- *"I/We would like to see a community forum type meeting scheduled with representatives from the CMDHD, DEQ, and state government."* By answering "yes" to this question, it will indicate that you would like to see the Village attempt to schedule a large community forum-type meeting with the owners of lots in all of the unbuildable plats, representatives of the CMDHD, DEQ, and other elected state officials.
- *"I/We support further professional work done with the CMDHD and DEQ to resolve this matter short of a lawsuit."* By answering "yes" to this question, it will indicate that you feel the matter of unbuildable lots should be addressed by the Village working with the CMDHD and DEQ by conducting geotechnical and hydrogeological testing to determine what lots specifically will need to be serviced by sanitary sewer system and which lots are suitable for on-site systems.
- *"I/We support legal action against the CMDHD and DEQ which possibly could resolve the issue."* By answering "yes" to this question, it will indicate that you support the Village taking legal action against the CMDHD and DEQ regarding the building and use restrictions, if necessary, and which if successful could allow certain lots to become buildable.
- *"I/We support legal action and would be willing to assist financially."* By answering "yes" to this question, it will indicate that you would likely support legal action on behalf of the Village of Lake Isabella, and that while you would not be willing to be a party to the lawsuit, you would contribute money to help cover the financial burdens of such action.
- *"I/We are willing to allow our property to be used for soil and/or water quality samples."* By answering "yes" to this question, it will indicate that if soil and/or water samples are needed in your area to help resolve the matter of unbuildable lots, you may be willing to allow samples to be taken from your property after written consent is obtained by the Village. The ability to collect a sufficient number of samples to properly evaluate the on-site conditions is a primary factor in working to amend the restrictions.

Please fill out the enclosed card and return it to the Village. Thank you in advance of your input. The results of the information submitted by landowners to the Village via the enclosed postcards will be summarized in a future Village of Lake Isabella newsletter.

Copies of all documents referenced can be found on the Village of Lake Isabella website on the "Unbuildable Lots" page at www.lakeisabellami.org