

Village of
Lake Isabella
INCORPORATED 1998

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February 1, 2007

Senator Alan Cropsey
S-8 Capitol Building
PO Box 30036
Lansing, MI 48909

Dear Senator Cropsey;

I want to begin by thanking you and your staff for reviewing this situation. In my three years as Village Manager, one of the most pressing and contorted issues I have worked on is the history of unbuildable lots within the Village of Lake Isabella. As I have researched this matter I have become increasingly convinced that the restrictions pertaining to on-site septic systems in five plats within the Village are largely unwarranted. The on-site septic restrictions were put in place during the platting process for these five plats back in the 1960s and 1970s by one of the Michigan Department of Environmental Quality's predecessor, the Michigan Department of Public Health.

Before I continue I want to be explicitly clear, the Village of Lake Isabella in no manner whatsoever is advocating that individual lots be allowed to be built on without appropriate environmental review and permitting. The permitting is handled through the Central Michigan District Health Department (CMDHD), who receives their directives on environmental sciences from the DEQ. Included is a map which highlights which of the plats in the Village has restrictions in place per the approved plat documents from over 30 years ago. The history surrounding these five plats is nothing short of a denial of personal property rights through regulatory taking.

It is the opinion of the Village that in four of these five plats, the current restrictions on the number of on-site septic systems is totally unjustified. These four plats; Isabella North, Canterbury Estates, Airpark, and Isabella South consistently show that a majority of the lots have sandy soils which are ideal for on-site systems. Through our work, done in partnership with our

engineering firm, we feel that the only plat where environmental conditions warrant any type of additional on-site septic system regulations is the Golf Estates II plat.

This past year the Village, after holding a joint meeting with the DEQ and CMDHD, had our professional engineering firm, Rowe Incorporated, conduct a series of environment tests and observations in the Isabella South plat and the Airpark plats. The results of these tests were then forwarded on to both the DEQ and CMDHD in October of 2006. Upon receipt of this information, the Village was then asked to generate a "work plan" on how to proceed. That document is also included in this packet. We have a tentative meeting date with the DEQ and CMDHD of February 28, 2007 established to discuss this work plan.

It is my earnest hope and desire that at our upcoming February meeting, the DEQ and CMDHD will be receptive to the plight of the Village and agree that upon verification of the information, the restrictions in the Isabella South plat and the Airpark plat can be amended if not lifted. While this work will hopefully benefit property owners who have been denied the legal use of their land in these two plats, it does not solve the issues that remain in the other three plats. Two of these plats, as I have indicated above, have soils that would support additional on-site septic systems. If the Village finds that the DEQ and CMDHD will act in a fair and unbiased manner, we would like to continue working with them to review and either amend or lift the restrictions in those two plats.

Golf Estates II however is a different story. Included in this packet is an 11x17 color map showing the on-site septic permit history in the plat. On this map, is an excerpt from the Building & Use Restrictions for the plat, section 29. Section 29 was required by the Michigan Department of Public Health in 1970 when this plat was submitted before final approval would be granted. This section spells out specifically what lots can and cannot be built upon in this plat. This section is continually being used by the CMDHD, per the mandate of the DEQ, to deny on-site septic system permits to lots that are not approved in section 29.

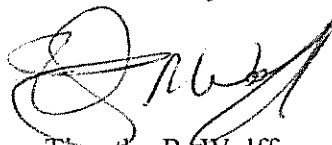
After reviewing this document, and then making a comparison of where homes have actually been built in the plat, the resulting map was drawn. It shows that over the past three decades there has been arbitrary enforcement of this section, which has allowed over 20 homes to be built on lots that are "unbuildable" per the restrictions put in place by the Michigan Department of

Public Health, and are being administered today by the DEQ through the CMDHD. When pressed by property owners on how somebody could build on an “unbuildable lot,” and why others have been allowed to build contrary to the restrictions, but they are not able to, I cannot answer them. It goes without objection that if a property owner were to take the DEQ and CMDHD to court over the selective enforcement of section 29, the courts would likely find in favor of the property owner and nullify any future enforcement of section 29 due to the arbitrary and capricious manner by which it has been enforced over the past three decades.

While the Village has questioned if restrictions like these are even legal under Michigan law (see memo dated June 6, 2005), we would be happy to simply work with the DEQ and CMDHD and in a fruitful manner to address our concerns in a fair and unbiased manner. I would like to note that during my time working on this project, I have been treated in a professional manner, and feel that they have given the Village’s position consideration by the DEQ. I counter that, by noting that these restrictions have been in place for over 30 years, and represent extremely poor public policy. The restrictions are subjective in nature, and do not allow individual property owners the legal use of their land based on the environmental factors of their property, the site specific soils for an individual lot could be supportive of the placement of an on-site septic system, but will be and has been denied because of the plat wide restrictions that have been put in place. Further, these restrictions give property owners no ability to seek to use their property through the use of non-traditional on-site septic system, or by removing heavy soils and replacing them with sandy fill for their drain fields. This practice is commonly used elsewhere in the state to modify sites where the soils at a location do not naturally support on-site septic systems.

I write today not only on behalf of the Village of Lake Isabella, but also for the hundreds of property owners in your district that are victims of this situation. Thank you again for your consideration and any assistance you can provide to us.

Sincerely

A handwritten signature in black ink, appearing to read 'Timothy R. Wolff', written in a cursive style.

Timothy R. Wolff
Village Manager