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October 15, 1994

Central Michigan District
Health Department
1222 North Drive
Mt. Pleasant, MI 48858

Attn: Mark Lowe
Environmental Health Director

Building and Use Restriction,
Lake Isabella Golf Estates No. 2

Dear Mr. Lowe:

You have raised several questions concerning the effect of the impending termination of the captioned restrictions.

From your letter I am to assume that these restrictions were adopted about 24 years ago and are going to terminate in accordance with Article 24 unless some action is taken by a majority of the lot owners.

There are, of course, exceptions to termination. The first exception is referred to in Article 24 itself. It states that Article 32 will last in perpetuity. Article 32 states that if any covenant is invalidated by a judgment or court order, it will not affect the remaining provisions. If I had to make a guess, I think that it was Article 33 which was to have remained in perpetuity.

The second exception to Article 24 is found in Article 29. This article restricts development on certain lots until a public sewage system is available or until a written agreement is reached between the Isabella County Department of Public Works, the Central Michigan District Health Department and the director of the Michigan Department of Public Health to permit development beyond the limitations set forth in the article.

It could be argued that since the contingency, a public sewer system or an agreement, may not occur within the time limits of the rule against perpetuities, that article was never in effect. It is my opinion that this article could survive the 25 years because perpetual restrictions of certain types have been allowed by the courts and this particular restriction appears to be directed to the health, safety and welfare of the public. In the usual case it would be presumed that Article 29 should be strictly construed against restricting development. In this particular case I believe the opposite is true.

Accordingly, it is my opinion that the article which concerned you would survive termination at the end of 25 years. It is also my opinion that other portions of the so-called "Building and Use Restrictions" would survive the 25-year period because they are not true building and use restrictions. Some of these confer benefits upon the lot owners, for example, the use of parks and dedicated roads. The true "Building and Use Restrictions" would, however, terminate after 25 years unless renewed in accordance with the provisions of the contract.

You should be made aware that we have been asked on several occasions to comment on the covenants of Golf Estates No. 2.

I believe you should find a letter authored by Kent Gray (and written by our office) on June 25, 1988, or shortly thereafter, directed to the Michigan Department of Public Health, which reached the conclusion that Central Michigan District Health Department no longer felt that the reasons for the Escrow Account provided for in Article 30 of the covenants no longer existed. The Department felt that the rights of the public and property owners to regulation of the disposal of sanitary waste could, for the time being, was adequately protected through the enforcement of existing laws, rules, regulations and ordinances adopted by the State of Michigan and the Central Michigan District Health Department, on a case-by-case basis.

On June 13, 1983 I wrote an opinion to Mr. Kent L. Gray concerning the escrow accounts established to facilitate a public sewer system to permit 86 lots in Lake Isabella Golf Estates No. 2 to be developed. I held that Central Michigan District Health Department by being a party to the Escrow Agreement had the responsibility to ensure that no development occurred in Golf Estates No. 2 on the lots in question until the terms and conditions of the agreement were fulfilled and Lake Isabella Corporation submitted plans and specifications for a municipal sewer system. While that opinion was directed mainly to how the escrowed funds would be distributed between the property owners and others, I did conclude that the matter could be resolved by

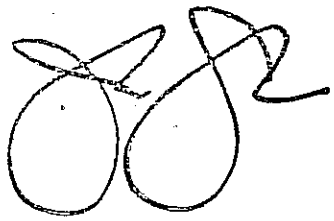
an agreement between all parties to the escrow agreement. That may include all of the persons who have installed on-site sanitary disposal systems in reliance upon others not doing the same.

That is, while the Health Department may issue permits on a case-by-case basis, the total impact may be such that the lake, the prime source of value for the lots, may be damaged so all interested parties should sign any termination of the escrow accounts.

In the recent case of Robert Taylor v Lake Isabella Corporation, CMDHD, the Isabella Bank and others, Central Michigan District Health Department took the position that the purpose of the Escrow Agreement, and thus the restrictions on development, no longer existed and it had no objection to Mr. Taylor being paid his equitable share of the escrowed funds.

I call your attention to these matters, and there may be more, to assist you in understanding past positions of the Department with respect to the same subdivision you are discussing with Mr. Ed Spayd of Lake Isabella Homeowners Association.

If you want a more in-depth opinion in response to your letter of October 7, 1994, give me a call. It will be a pleasure meeting you.



JJL/dlh