

LAW WEATHERS & RICHARDSON

*Professional Corporation  
Attorneys and Counselors*

800 Bridgewater Place, 333 Bridge Street, N.W., • Grand Rapids, Michigan 49504-5360  
Phone 616 459-1171 • Fax 616 732-1740 • www.lwr.com



September 22, 2004

Via Facsimile and US Mail

PRIVILEGED AND CONFIDENTIAL

Mr. Timothy R. Wolff, Village Manager  
Village of Lake Isabella  
1096 Queensway  
Lake Isabella, Michigan 48893-9673

**Re: Lake Isabella Building and Use Restrictions**

Dear Mr. Wolff:

We have reviewed the additional documents you forwarded last week regarding the various building and use restrictions that the Central Michigan District Health Department (the "Health Department") is seeking to enforce to avoid the issuance of additional well and/or septic system permits within certain subdivisions in the Village. We are writing today to follow up on our earlier discussion and to provide you with some options on how to proceed.

FACTS

By way of background, you recently advised us that the Health Department is refusing to issue well and/or septic system permits for the development of additional properties in four subdivisions located within the Village. These include: (i) Lake Isabella Golf Estates No. 2, (ii) Lake Isabella Airpark, (iii) Lake Isabella North, and (iv) Lake Isabella South.

The Health Department's refusal to issue additional permits is apparently based upon language within the building and use restrictions for the subdivisions (the "Building and Use Restrictions"), rather than upon any ascertainable or identified health risks or deficiencies that would be associated with the issuance of additional permits. The Building and Use Restrictions for each of the subdivisions is substantially identical and provides that only a small portion of the lots in each subdivision may be developed until such time as either: (a) public water and sewer service to the subdivisions becomes available, or (b) "a written agreement is reached between the Isabella

County Board of Public Works, the Central Michigan Health Department and the Director of the Michigan Department of Public Health.. [approving the additional development].”

No progress has been made to date on the extension of public water and sewer to the subdivisions, and the development limits imposed by the Building and Use Restrictions have been reached. In addition to the fact that Village residents have called Village officials to complain about the Health Department's refusal to issue permits, the actions of the Health Department are of significant concern to the Village, since the Village itself owns a substantial number of (currently undevelopable) lots within the subdivisions.

You have previously contacted the Health Department about these issues and have not received reasonable cooperation in coming to a resolution. Accordingly, you have asked us how, assuming that no health risks are implicated in doing so, to compel the Health Department to issue permits for additional development.

Please let us know if any of the above information is incorrect, as that could change one or more of the opinions or options contained in this letter.

#### DISCUSSION

As discussed, the Village has several options at this point, one or more of which may be simultaneously implemented.

##### Amendment of Building and Use Restrictions

The first option would be to undertake to amend the Building and Use Restrictions to remove the specific limitation on the number of septic permits.

Based on the language contained in Section 24 of the Building and Use Restrictions, such amendment would be possible if the amendment received the affirmative content of a majority of the owners of the lots in each subdivision. If the Building and Use Restrictions were successfully amended, then the Health Department theoretically could not refuse to issue permits based on the language contained in the Building and Use Restrictions. It is possible that the Health Department might claim third party beneficiary status and assert that no amendment can occur without its comment, although that assertion would likely not prevail in court.

Please consider and advise us as to whether you believe that the owners of a majority of the lots would support such an amendment.

##### Negotiation with Health Department

A second option would be to schedule a meeting with representatives of the Health Department and other impacted parties in an attempt to negotiate a resolution. Since you have

had limited success achieving the cooperation of the Health Department in the past, we would be happy to try to set up the meeting if you so desire. As referenced above, this option might best be combined with steps toward amendment of the Building and Use Restrictions to provide additional leverage in negotiations, and should likely be implemented without regard to the other options selected.

#### A Lawsuit to Seek a Writ of Mandamus or other Injunctive Relief

A final option (failing either of the first two options) would be to file a lawsuit against the Health Department for a Writ of Mandamus (*i.e.*, a lawsuit designed to compel a governmental entity to perform its legal duties), or for other injunctive relief.

If the Building and Use Restrictions cannot be amended, the Village could point out that the Health Department appears to have a duty to attempt to “[reach] a written agreement . . . between the Isabella County Board of Public Works, the Central Michigan District Health Department and the Director of the Michigan Department of Public Health, or their successors, permitting [additional development if public water and sewer has not been extended],” and that the Health Department has taken no steps to pursue such an agreement.

Please contact us if you desire to discuss the litigation option further, as the details are beyond the scope of this letter.

#### CONCLUSION

To summarize, a multifaceted approach focusing on amending the Building and Use Restrictions and negotiating with the Health Department would likely yield the best results. If necessary, litigation can also be commenced in an attempt to compel the issuance of additional permits.

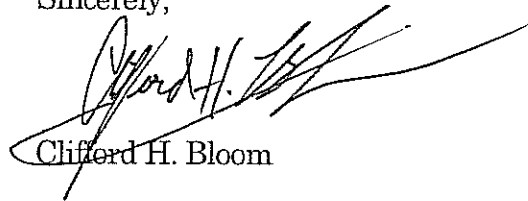
However, as discussed above, the key will be to determine whether a health risk would be created by the issuance of additional permits. If so, then the Health Department is justified in refusing the issuance of the permits without regard to the language in the Building and Use Restrictions and an alternate solution will have to be found. If not, then an amendment of the Building and Use Restrictions, or a lawsuit to compel the issuance of additional permit may resolve the problems. Accordingly, it will be critical to determine early on in our discussions with the Health Department whether the limitation on the number of septic systems is supported by any scientific analysis, or whether the Health Department has arbitrarily established the limitations.

Mr. Timothy R. Wolff  
September 22, 2004  
Page 4

---

Please contact us following your review of this letter to discuss how to proceed. This letter has been marked **"PRIVILEGED AND CONFIDENTIAL"** and should not be disclosed to anyone other than current Village officials unless the Village expressly determines to otherwise disclose this letter or portions hereof.

Sincerely,



Clifford H. Bloom

tmb

99999 (012) 244801.01