



Village of  
Lake Isabella  
INCORPORATED 1998

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August 6, 2007

Law Weathers & Richardson

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Grand Rapids, MI 49504

Dear Cliff,

This memo is to follow-up on your memo dated September 22, 2004. Nearly three years have elapsed since the Village began to seriously pursue review work for the unbuildable lots in five plats located at Lake Isabella. I would like to take this opportunity to bring you up to speed on what has been done and learned since 2004. Furthermore, I would like to seek your legal guidance on what, if any, avenues remain for the Village.

Your memo outlined three options the Village could consider in amending the building and use restrictions. We have tried with no luck to make progress through two of these methods. And have even found that the Central Michigan District Health Department wanted to enforce provisions of the document outside of their legal authority. This was proven when the Village applied for an on-site septic permit on property that the Village was considering in as a location for our new office complex. The CMDHD felt that since the building and use restrictions indicated that the property in question was listed as residential use only, our application could (and should) be denied. After several correspondences between the Village and the CMDHD they backed off from their position and approved the permit.

The Village of Lake Isabella spearheaded an effort in 2005 to amend the building and use restrictions for Lake Isabella Airpark. We were able to obtain the endorsement of over 51% of the lot owners in the plat, and filed the amended restrictions with the Isabella County Register of Deeds and the Michigan Department of Environmental Quality. Shortly thereafter, we were informed that because the restrictions pertaining to on-site septic systems we required by the Michigan Department of Public Health for approval of the plat, that only that public agency which placed the restriction has the legal authority to release the restrictions.

We then tried to resolve the matter through direct negotiation with the Central Michigan District Health Department and the Michigan Department of Environmental Quality. After a handful of meetings, it has become clear to the Village that we are at an impasse. The deadlock that has occurred deals with the position of the Michigan Department of Environmental Quality's stance that they will only entertain

amendments to the plat restrictions that address the buildability of all lots in the plat. Additionally, the DEQ feels that the matter must go through the steps of a preliminary plat approval, and that the Village must pay for the field work, application fee, and additional tests that may be required.

While the Village is not a party to the restrictions, it has become clear to us that we are only entity that seriously wants to see progress made on this issue. The position of the DEQ that review work must done on an "all or nothing" threshold only furthers our position that the restrictions are arbitrary and capricious. The enforcement of these restrictions has resulted in a clear regulatory taking on the part of the DEQ and CMDHD.

Over the past three years our research has been able to uncover the following two matters that remain unresolved.

The only plats that restrictions were placed were the final five plats done of the original development. On the surface this may appear insignificant, but if you examine geographically where in the Village these plats are located you will see no clear pattern or uniformity. This is only amplified by the clear geotechnical evidence in three of these five plats that show no basis for any type of restriction.

Additionally, one of the two plats where "heavy soils" do exist has seen their restrictions enforced in a haphazard manner at best. Lake Isabella Golf Estates II is unique in that it specifically identifies what lots are buildable. In researching the location of those lots, the Village has been able to show that over twenty homes have been built on unbuildable lots. The septic permits for all of these homes were approved by the CMDHD. Yet for some reason, the CMDHD feels they are well within their means to continue to deny people the ability to apply for an on-site septic system because their lot is listed as unbuildable in the building and use restrictions.

This I feel leaves us at the third option that you presented in your memo, a lawsuit. I would like to discuss this option further with you and then take the substance of our conversation back to my Village Council for them to determine the Village's course of action.

Sincerely,

*Timothy R. Wolff*

Tim Wolff  
Village Manager