

Michigan Department of Environment Quality
Central Michigan District Health Department
Village of Lake Isabella

WORK PLAN
ON-SITE SEPTIC RESTRICTIONS
ISABELLA SOUTH PLAT
LAKE ISABELLA AIRPARK PLAT
December 2006

Purpose:

It is the purpose of this work plan to guide the Village of Lake Isabella (Village), Michigan Department of Environmental Quality (DEQ), and the Central Michigan District Health Department (CMDHD) in a collective effort to review environmental conditions relating restrictions of on-site septic systems in the plats of Isabella South and Lake Isabella Airpark located within the Village of Lake Isabella.

Background:

In 1975, the Lake Isabella Airpark and Lake Isabella South plats were recorded with the Isabella County Register of Deeds. These plats were two of the last “original” plats of Lake Isabella. Upon the recording of Isabella South in July of 1975, Lake Isabella would have only one new plat recorded until May of 1996 when development boom of the late 90s began. In addition to these two plats, the following plats all contain restrictions on the number of on-site septic systems that are permitted; Lake Isabella North, Canterbury Estates, and Lake Isabella Golf Estates II. This work plan shall only focus on a collective effort to address the restrictions in Isabella South, Airpark, and possibly Canterbury Estates due to it being adjacent to the Lake Isabella Airpark plat and likely having the same soil composition.

The restrictions referenced above can be found in the building & use restrictions for each respective plat. They place a cap on the number of on-site septic systems that are permitted in each plat sans a sanitary sewer system. The Village has researched the restrictions and has found

official correspondence between Village and/or the Lake Isabella Property Owner's Association and the CMDHD that supports the notion that the residents of the Village originally had it in mind that the restrictions were only in place for a period of 25 years from the date of the plat approval.¹

After review by the parties this initial belief was proven false. 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 that amended the building and use restrictions by deleting the section that related to the septic prohibitions.

The State of Michigan informed the Village in the summer of 2005 that the only legal authority to change the restrictions regarding on-site septic systems is the Department of Environment Quality. The Attorney General's of the State of Michigan has concurred with this opinion on at least two prior occurrences.² It is the State's legal opinion that as the restriction (to the number of on-site septic systems) was placed by a public agency as part of the approval process for that individual plat, only that specific public agency has the legal authority to remove or amend the restriction.³

The Village of Lake Isabella, after being notified of the Attorney General's opinion, requested a meeting in the winter of 2005-2006 to discuss the restrictions. At that time the Village, CMDHD, and DEQ began to collectively work on reviewing the two plats and restrictions based on the geotechnical conditions of each plat.

This meeting occurred on February 8, 2006 and was held at the CMDHD offices in Mount Pleasant. All parties were present. In the summer of 2006, the Village, working with their

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.

engineering consulting firm, Rowe Incorporated; conducted an initial review of the soils in both plats. The results of these tests were forwarded to both the CMDHD and DEQ in October of 2006. Upon receipt of those results, both agencies requested that the Village generate this work plan prior to meeting to discuss the results of the tests.

Questions:

The CMDHD has raised three questions of substance that they would like to have answered.

Is there a course of action that would remove any of the three public agencies from liability if the restrictions are either amended or lifted; and what measures can be taken to prevent any of the three public agencies from receiving undue negative publicity if the restrictions are amended or lifted?

It is the position of the Village that none of the three public agencies presently working together on this project are liable, or should be singled out to be held responsible in a “taking” claim for the restrictions. The fact is that public agencies are only allowed to base their actions in matters such as these on information provided to them from a developer or applicant. In this case, the information provided in the application process over 30 years ago was insufficient; as such, none of the current parties is to blame in any manner. It is the position of the Village that working together in a collective effort the Village, CMDHD, and the DEQ are attempting to determine whether the restrictions as they are in place in the Lake Isabella Airpark and Lake Isabella South plats are needed based upon the environmental factors, as they exist in 2006.

How will the public be notified if changes are made to the restrictions?

The Village publishes a hard-print newsletter three times a year which is mailed to all property owners in the Village. This would be an appropriate venue to announce any changes to the restrictions. In addition, a public notice could be printed in a local paper of record (The Morning Sun) that announces any changes. It should be noted

that if any changes were made, there would likely be a feature article in the Morning Sun that would be in addition to any public notice. In such case, all parties would agree to the position outlined in the above question, and present this as a collective effort of all three public bodies.

Does the Village plan to offer back to previous owners all or any of the lots they currently own in any of these plats?

The answer to this question is “no.” The Village acquired property in each of these plats through the State of Michigan, which received the property through delinquent property taxes. Each and every original property owner was afforded equal rights and opportunity to retain ownership of their property. Those who lost their property due to unpaid property taxes must be deemed to have forfeited any and all claims of ownership and interest of the property in question. In no way should this obligate any of the parties currently working on this project to any course of action. Furthermore, the Village is under deed obligation from the State of Michigan on these parcels to use them for public use or sell them at fair market price, and cannot legally make any such offer. Per the requirements of the deed restrictions from the State, the Village has sold over 30 such lots in 2006 that they have identified hold no public use or purpose.

Jointly, the CMDHD and DEQ have raised the question on what legal means can be used if to amend or lift the restrictions if, after sufficient review, is deemed to be appropriate?

It is the position of the Village that the restrictions can be legally amended by an instrument, such as a deed restriction, signed by all parties and recorded with the Isabella County Register of Deeds. Such action was taken in July of 1998 and involved the Lake Isabella Property Owners Association (LIPOA), the CMDHD, Isabella County Board of Public Works, and DEQ. In this case the building and use restrictions of Lake Isabella North were amended. Lake Isabella North originally had a restriction of 50 on-site wells and 134 on-site septic systems. Per the recorded agreement the public agencies worked together with the LIPOA to document the

geotechnical conditions in Lake Isabella North and review the validity of the restrictions. Ultimately, they amended the building and use restrictions in Lake Isabella North were amended by increasing the number of on-site wells permitted in the plat to a total of 134, thereby matching the number of permitted on-site septic systems.⁴

The Village has raised the question of whether the soils in these plats support the long-term placement of on-site septic systems by either conventional or unconventional means.

It is the position of the Village, and the Village's engineering firm, that the soils in both plats would support additional on-site septic systems. By reviewing the geotechnical data in both plats, the Village feels that there is an adequate sand base in both areas to lift the blanket restrictions. This would then begin to allow parcels to be reviewed on an individual case-by-case basis, as is done in every other plat in the Village without these restrictions. It is also the position of the Village that in certain locations where heavy soils exist on-site systems could, and should, be considered if the heavy soils were removed and replaced with sand fill, or if the system was an unconventional one, as has been approved in other areas of the Village. This would be determined on a case-by-case basis by the CMDHD, as they are the permitting public agency for on-site septic systems.

What is the end goal of this work plan and project?

It is the goal of the Village that upon supplying both the CMDHD and DEQ with documented geotechnical science data, that the blanket restrictions in both plats can be either lifted or amended. This would then allow parcels to be reviewed on an individual case-by-case basis, and have a permit approved or denied by the individual, site specific, geotechnical conditions of that specific parcel. It was also allow the installation and use of unconventional systems if so mandated by the CMDHD. It could also include permits being approved on the condition that the

⁴ Recorded agreement on July 13, 1998, Liber 916, pages 414-417; Isabella County Register of Deeds.

applicant removes and heavy soils and then fills the area with sand in order to promote on-site systems that leach wastewater in a sufficient manner.

Action Steps:

The Village proposes the following action steps in order to complete this work plan.

- All three parties meet to discuss the initial geotechnical data supplied by the Village. In addition to the already supplied data, the Village will also furnish two additional maps showing lot ownership and combinations in both plats. The Village will also supply an additional topographical map of Isabella South showing elevations overlaid with the initial soil data.
- Upon review of the geotechnical data, the parties collectively agree on how to verify the data in a manner that satisfies all statutory obligations for reviewing the restrictions.
- The parties agree on a date and time to collectively verify the data via fieldwork consisting of additional soil borings, field observations, and other agreed-to practices.
- Once the geotechnical data has been verified, the plats are fairly evaluated, based on the agreed geotechnical data evidence collected. At that time, the plat restrictions would be reviewed to judge if they are appropriate based on the actual geotechnical data.
- If changes are to be made, a deed restriction, signed by all parties, is filed with the Isabella County Register of Deeds making these changes.
- The Village then would publish any such changes in the Morning Sun and in the Village's newsletter, thereby notifying the public.
- It is agreed that it is the responsibility of each individual parcel owner to apply for any permit to develop an on-site septic system, and obtain approval for such system based on development specifications of the CMDHD, once the blanket restrictions have been amended or lifted.
- It is the position of the Village, that the surface and ground waters in and around the Village, specifically the lake it self, are of vital importance to the health and well-being of the community, and as such, agree to work collectively with the LIPOA and CMDHD to monitor the water quality of the lake. If at any time the results from such monitoring indicate unacceptable water quality that could jeopardize the health and/or well-being of

the community, the Village agrees to work collectively with all agencies to review and address the situation.