

**NOTE: THIS MEETING IS BEING TAPED FOR THE  
PURPOSE OF DEVELOPING MINUTES ONLY**

**LODI TOWNSHIP BOARD OF  
TRUSTEES  
SPECIAL MEETING  
October 20, 2025, at 6:30 pm**

- 1. Call to order – Pledge of Allegiance**
- 2. Roll Call**
- 3. Approval of minutes 10.7.2025**
- 4. Short Public Comment**

(A member of the public may address the Board briefly, for up to two minutes or request to be scheduled on the agenda of a future meeting.)

**5. Revision / Approval of Agenda**

(Items may be added or deleted from the meeting agenda, and/or the order of items may be changed, at the request of an individual Board member or the Supervisor. The agenda must be approved before proceeding further.)

**6. Unfinished Business**

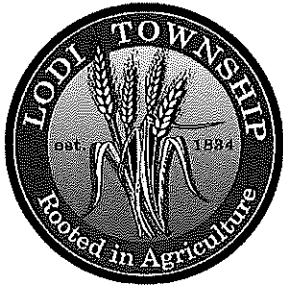
- a. Arbor Preserve Final Site Plan**

- 7. Closed Session – if necessary**
- 8. Adjournment**

**Next Meeting will be on November 4, 2025 at 6:30pm**

**Please note that Lodi Township does not visually record meetings.**

**There to a possibility of a quorum of the Board of Trustees and Planning  
Commission at Lodi Township Board Meetings.**



## LODI TOWNSHIP BOARD OF TRUSTEES

### DRAFT - Regular Meeting Minutes

Tuesday, October 7, 2025 at 6:00 pm

Lodi Township Hall  
3755 Pleasant Lake Road  
Ann Arbor, Michigan 48103

#### 1. Call to order - Pledge of Allegiance

The regular meeting of October 7, 2025 opened with the Pledge of Allegiance at 6:00 pm.

#### 2. Roll Call

Present: Blackburn, Foley, Godek, Marsh, Matelski, Rentschler, Smith

Absent: None

#### 3. Consent Agenda

- C-1: Approve – September 2, 2025 Regular Meeting Minutes
- C-2: Accept - Investment Report (treasurer report)
- C-3: Approve - Checks for Approval – 9/3/2025-10/7/2025
- C-4: Recognize - Monthly Budget Report
- C-5: Amend Budget – none
- C-6: Recognize Planning Commission Minutes – September 23, 2025 Regular Meeting Minutes
- C-7: Recognize Board of Appeals Minutes – none
- C-8: Recognize Sheriff Report – August 2025

Smith moved to approve the consent agenda as presented. Second by Rentschler. A voice vote was taken. Aye=all, Nay=none. Motion carried, 7-0.

#### 4. Attorney Report: None

#### 5. Planning Commission Update

Strader reviewed the most recent Planning Commission meeting held on September 23, 2025.

#### 6. Short Public Comment

Public comment began at 6:02 pm. Twenty-five comments were received from members of the public. Public comment ended at 6:41 pm.

#### 7. Revision / Approval of Agenda

Travis Pointe Country Club (TPCC) requested to be removed from this agenda and be moved to the November agenda. An application from Copperleaf Crossing was received today. That will be passed onto the Planning Commission to review. Copperleaf Crossing can be removed from the agenda.

Blackburn moved to removed TPCC and Copperleaf Crossing from the agenda and move Arbor Preserve North & South Final Site Plan Submittal from #3 under New Business to #1 under New Business. Second by Marsh. A roll call vote was taken. Matelski=aye, Rentschler=nay, Foley=nay, Smith=nay, Godek=nay, Marsh=aye, Blackburn=aye. Motion failed, 3-4.

Smith moved to approve the agenda as amended with TPCC and Copperleaf Crossing removed. Second by Godek. A roll call vote was taken. Godek=aye, Marsh=aye, Blackburn=nay, Matelski=aye, Rentschler=aye, Foley=aye, Smith=aye. Motion carried, 6-1.

## **8. Unfinished Business:**

### **1. Fence Ordinance #2025-002/Resolution #2025-010**

Smith moved to approve Fence Ordinance #2025-002 and Resolution #2025-010 as presented. Second by Foley.

A discussion was held regarding the draft Fence Ordinance, the reason for the proposed changes, and other options for changing the Ordinance.

Smith moved to amend her motion to approve Fence Ordinance #2025-002 and Resolution #2025-010 as presented with the removal of “Decorative fences are defined as those not in excess of forty-nine percent (49%) solid or impervious and constructed of wrought iron (tubular aluminum), wood or vinyl picket, or similar as determine by the Zoning Administrator” from Section 55.18.B.1.

After further discussion, Smith withdrew her motion.

Matelski moved to approve Fence Ordinance #2025-002 and Resolution #2025-010 as presented with the following changes:

- Remove corrugated metal as an unlawful fence material under Section 55.18.A.2
- Remove “Decorative fences are defined as those not in excess of forty-nine percent (49%) solid or impervious and constructed of wrought iron (tubular aluminum), wood or vinyl picket, or similar as determine by the Zoning Administrator” from Section 55.18.B.1.

Second by Smith. A roll call vote was taken. Godek=aye, Marsh=aye, Blackburn=aye, Matelski=aye, Rentschler=aye, Smith=aye, Foley=aye. Motion carried, 7-0.

## **9. New Business:**

### **1. Resolution #2025-013 – Resolution to not assume ownership and not accept responsibility for Arbor Preserve N & S Private Wastewater Treatment Plants**

Trustee Smith stated that the proposed Resolution #2025-013 is a requirement of EGLE for the proposed wastewater treatment plants for Arbor Preserve North and Arbor Preserve South. Alan Greene, the attorney representing Toll Brothers, explained the reasoning for the proposed Resolution #2025-013.

Smith moved to approve Resolution #2025-013 as presented. Second by Rentschler.

Foley asked if this was based on the Consent Judgement from 2023. O’Jack stated that this is not related to the Consent Judgement; this is a requirement from EGLE.

Marsh asked if voting to approve Resolution #2025-013 has any impact on the ability to approve or deny the Final Site Plan submittal for the developments. O’Jack stated that the does not believe that it does, but that could be added to the motion to make it clear if desired.

Blackburn stated that approving Resolution #2025-013 makes sense, but if approved, the money required to be placed in escrow by the developer only supports the owner of those

wastewater treatment plants. If something goes wrong, that escrow will not support Lodi Township or Lodi Township residents. Additionally, Blackburn stated that, since Lodi Township does not have any ordinances regulating wastewater treatment plants since they are not permitted, there is a gap in regulations surrounding these plants.

O'Jack stated that, according to his understanding, if the Township does not pass Resolution #2025-013, the developer will send a certified letter to the Township asking the Township to make a decision regarding this. If the Township ignores this request, the decision will be made for the Township that the Township does not assume ownership and does not accept responsibility for Arbor Reserve N & S's private wastewater treatment plants. Marsh asked what the benefit of approving Resolution #2025-013 would be, if the end result would be the same if the Township ignored it. O'Jack did not know.

Blackburn expressed concern with approving Resolution #2025-013 before deciding on the Final Site Plan submittal. O'Jack stated that the motion could be amended to state that the Township agrees to approve Resolution #2025-013 if the Final Site Plan is approved. Blackburn did not like the idea of a conditional approval.

Blackburn moved to amend the motion to table Resolution #2025-013 until a decision on the Final Site Plan submittal has been made. Second by Matelski.

It was unclear how to proceed given the fact that two opposing motions with seconds were on the table. Further discussion was held regarding what happens if a problem occurs with the wastewater treatment plants that affects neighboring properties. Greene explained that in those cases, the Township has immunity and the neighboring property owner would need to file a complaint with EGLE and/or sue the developer for restitution.

A roll call vote was taken on the first motion to approve Resolution #2025-013 as presented. Rentschler=aye, Foley=aye, Smith=aye, Godek=aye, Marsh=nay, Blackburn=aye, Matelski=aye. Motion carried, 6-1.

## **2. Proposed Amendment to Arbor Preserve N & S Consent Judgement**

The proposed Amendment to Arbor Preserve N & S Consent Judgement was discussed. O'Jack discussed the reasoning behind the proposed amendments.

Blackburn expressed dissatisfaction in considering the proposed Amendment to Arbor Preserve N & S Consent Judgement before the deciding on the Final Site Plan submittal. Blackburn's dissatisfaction with giving Toll Brothers more concessions was also stated.

Godek decided to table discussion on the proposed amendment on the Consent Judgement since no decision needs to be made at this time.

## **3. Arbor Preserve North & South Final Site Plan Submittal**

Toll Brother's attorney, Alan Greene, made a presentation discussing the history of the property and the proposed development.

Township Planner Hannah Smith reviewed her review and report of the Final Site Plan submittal dated October 1, 2025.

Township Engineer MC Moritz reviewed OHM's review and report of the Final Site Plan submittal also dated October 1, 2025. Additionally, Moritz reviewed the current status of the permits and approvals required from outside agencies.

Godek asked Township Attorney Jesse O'Jack to explain what is being reviewed and discussed at this meeting. O'Jack explained that the Area Plan, the preliminary Site Plan, the wells and the wastewater treatment plants were approved and decided on as part of the Consent Judgement entered into in 2023. Denial of the Final Site Plan submittal cannot be based on any of those items since they have already been approved. If the Board of Trustees wanted to change those details, the Board of Trustees would need to overturn the Consent Judgement. He stated that, at this time, the Board of Trustees is deciding whether the Final Site Plan submittal is in compliance with the Consent Judgement and the Zoning Ordinance. The options the Board of Trustees has at this time are to:

- Approve the Final Site Plan submittal
- Approve the Final Site Plan submittal with conditions
- Deny the Final Site Plan submittal
- Send it back to the Planning Commission
- Table the decision on the Final Site Plan submittal

Godek stated that she asked Planner Smith to go through Exhibit 2 of the 2023 Consent Judgement and make notes as to whether those conditions have been addressed or are still outstanding. That review was included in the Board packet with the Planner and Engineer reports.

O'Jack noted that he provided two draft Resolutions, one for approval and one for denial, as a starting place for the Board of Trustees. Those Resolutions can be used or new ones can be created instead.

Blackburn expressed interest in moving to deny approval of the Final Site Plan submittal and sharing an additional narrative than has not been heard so far. Blackburn believes that there is additional information that was not in front of the Board of Trustees in 2023 that is available now that should be shared. Blackburn feels that there is information that has been shared with the Planning Commission and through public comment that has been missed and is being glossed over. An example of this includes misrepresentation of the data from Toll Brothers regarding wetland setbacks and whether they have been fully met. Blackburn stated that public experts with credentials have submitted hours of work that has not been seen. Blackburn wants to highlight that.

Blackburn pointed out that the preliminary site plan included one small table that talked about 83 trees and Toll Brothers said that they included all of the trees that were going to be destroyed at that time. Blackburn stated that that was not true and when the plans were submitted in February it showed page after page of tree data in .pdf form that was not summarized. A volunteer local data expert went through that data and summarized it. Blackburn stated that that information was provided to the Planning Commission and Board of Trustees. The summarization says that there are 6,100 trees on the sites and they are proposing

destroying over 3,500 of them, but Toll Brothers only mentioned 83 of them in their preliminary plans.

Blackburn stated that Toll Brothers submitted information to EGLE as part of the public document process showing that they are destroying 90% of the land and only 10% is being preserved.

Additionally, Blackburn said that there are inconsistencies in how the hashtags for the open spaces were created and the calculations are incorrect. At this time, Blackburn asked for a document that was distributed by a member of the public to be displayed.

O'Jack asked for Blackburn to make it clear which condition in the Consent Judgement is being violated in the examples that are being given. Blackburn stated that the fifth bullet number is being violated with regard to the wetland setbacks. Blackburn read the Zoning Ordinance requirements for the wetland setbacks and then stated that Toll Brothers is now asking for yard setback variances to mitigate that. Blackburn stated that that seems like a reasonable thing, but they are still violating the setbacks even with the front yard setback variances. Blackburn noted that the Consent Judgement already makes deviations from the Zoning Ordinance requirements and now Toll Brothers is asking for more deviations.

Blackburn stated that wetland mitigation is located in the sixth bullet of the Consent Judgement and Section 54.08.L of the Zoning Ordinance. The Consent Judgement states that the wetland mitigation needs to be located in Lodi Township. Just because they cannot find a way to complete the wetland mitigation in Lodi Township does not mean that they can destroy more wetlands. Blackburn claims that there is another way to deal with this.

Blackburn stated that watercourse setbacks is located in the seventh bullet of the Consent Judgement and Section 54.08.F and 54.08.B.2 of the Zoning Ordinance. Blackburn states that it is still unclear where the high-water mark of the watercourses are located to be able to determine if the Zoning Ordinance and Consent Judgement are being followed.

Blackburn also asked about the documentation for the flood plain.

At this time, the document Blackburn was working from was displayed on the screen. Blackburn stated that it shows the deviations approved by the Consent Judgement and where Toll Brothers is asking for even more deviations than what was already approved by the Consent Judgement. Additionally, Blackburn stated, there are other Zoning Ordinances that are being flouted. Blackburn claimed that the Natural Features Statement included in the preliminary plan grossly underestimates what is on the site and the Township could not have made a choice based on that plan because the Natural Areas Features Assessment and Tree Inventory were not completed. Now that the Township has that information, those need to be reviewed against the Zoning Ordinance.

Blackburn moved to deny approval of the final site plan for Arbor Preserves North and South Planned Unit Development with the following Resolution:

**Township of Lodi**  
**Resolution No. 2025-014**  
**October 7, 2025**

A resolution to deny approval of the final site plan for Arbor Preserves North and South Planned Unit Development.

WHEREAS all of the original properties covered by the original Consent Judgment per that Consent Judgment are zoned R-3 (or “low density multiple family residential”); and

WHEREAS Red Equities, LLC has entered into agreements to acquire approximately 106 acres of the original properties covered by the original Consent Judgment; and

WHEREAS on or about October 14, 2020, Red Equities, LLC submitted an application for preliminary site plan approval for multiple-family housing developments on the Red Equities Parcels, consisting of 434 units (later amended to reduce the density to 391 units), along with recreation areas, private roads, two community wells and a private wastewater treatment facility; and

WHEREAS after discussion between the parties Red Equities, LLC submitted a different request for a Planned Unit Development with an area/preliminary site plan, including but not limited to, with a maximum number of residential units of 107, an individual on-site water well within the boundary of each lot or site with an agreement that if Red Equities, LLC is not able to obtain a governmentally approved individual on-site water well within the boundary of an individual lot or site, that the maximum number of residential units in the Residential Development will be reduced accordingly, and including open space and preserved areas; and

WHEREAS the Township consultants reviewed and provided reports to the Township on the request for a Planned Unit Development with an area/preliminary site plan; both finding that the request and area/preliminary site plan, other than the proposed waste water treatment, was in substantial compliance with the Township’s ordinance and regulations so long as certain conditions were met as part of the final site plan process; and

WHEREAS the Planning Commission held a Public Hearing on the request and held an additional informational meeting regarding the wells, wastewater, and drainage; and

WHEREAS the Planning Commission after review of the public comments, review of the consultants reports and discussion with the consultants, study and review of the request, and discussion with representatives of Red Equities, LLC, found that the request including the area/preliminary site plan was in substantial compliance with the Township’s ordinances and regulations, other than the proposed waste water treatment, so long as certain conditions were met as part of the final site plan process; and

WHEREAS the Planning Commission recommended that the Township Board deny the application solely due to the proposed community wastewater treatment; and

WHEREAS the Township Board held a second Public Hearing on the request; and

WHEREAS the Township Board considered all the public comments on the request; the reports of its consultants, and the findings and recommendations of the Planning Commission; and

WHEREAS the Township Board found that the request including the area/preliminary site plan was in substantial compliance with the Township's ordinances and regulations, other than the proposed waste water treatment, so long as the conditions in the attached document entitled Arbor Preserve Area/Preliminary Site Plan, List of Conditions, dated September 12, 2023 were met as part of the final site plan process; and

WHEREAS while the Red Equities Parcels were not within the area currently planned for municipal utility services, the Township Board found that the combination of several factors and features made the circumstances unique in the Township, including: (i) the agreement to develop land, which was zoned R-3, and which allowed for a materially higher density multiple family use if municipal sanitary sewage facilities were available, for a lower-density single-family use which would, among other things, substantially reduce traffic, preserve open space and natural features and reduce impacts on municipal services; (ii) the fact that the land, when originally made subject to original Consent Judgment, was located in a planned future utility district; (iii) based upon certain soil borings and other information available to date, the land appeared to be not suitable for safe and economically feasible on-site septic systems; and (iv) considering the proposed extensive open space and preserved areas.

WHEREAS the Lodi Township Board of Trustees found that it would best secure the public safety, health, and welfare of its residents and property owners of Lodi Township by the entering of the First Amendment to Consent Judgment in case no. 05-001086-NZ.

WHEREAS the First Amendment to Consent Judgment approved the Planned Unit Development rezoning and the proposed area/preliminary site plan subject to the conditions set forth in the First Amendment to Consent Judgment including that the conditions set forth in the attached document entitled Arbor Preserve Area/Preliminary Site Plan, List of Conditions, dated September 12, 2023 (**Attached as Exhibit 1**) were met as part of the final site plan process.

WHEREAS Toll Northeast V Corp. purchased the Red Equities, LLC properties from Red Equities, LLC, and submitted final plans in early 2025 and a revised final site plan (dated May 22, 2025) that in response to comments made modifications to the plans including to reduce the impact on wetlands, tree removal, update the natural features information, and provide missing information.

WHEREAS the Lodi Township Planning Commission reviewed the Final Site Plan submittals at its regular meeting on July 22, 2025. After reviewing consultant reports, applicant presentation and Commission discussion, the Planning Commission considered the three options on the table: recommend approval to the Township Board, recommend denial to the Township Board, or postpone the decision. In response to the discussion by the Planning Commission, a representative of the applicant stated, "The plan is the plan at this point, and a postponement will not result in any changes to that plan." After further discussion, the

Planning Commission unanimously voted to recommend to the Lodi Township Board of Trustees denial of the Final Site plans for the following reasons:

- The Natural Features Statement of Impact, Protection, and Mitigation does not meet the criteria detailed in Section 54.08.D.
- The wetland setbacks, as required by the ordinance in Section 54.08.E.6 and amendment consent judgement, are not provided in all areas.
- The proposed tree replacement plan is not in compliance with ordinance requirements in Section 54.08.O and proposed replacement offered by applicant is an insufficient alternative.
- The proposed plan will increase the volume of existing surface water on neighboring property in violation of Section 55.02.B.

WHEREAS during the discussion at the July 22, 2025, Planning Commission meeting various commissioners raised a number of additional concerns regarding the Final Site plans. (See attached Exhibit 2 letter to the applicant regarding the recommendation of denial and the draft minutes to the meeting that were attached to the letter).

WHEREAS subsequent to the July 22, 2025 recommendation of denial from the Lodi Township Planning Commission, the applicant submitted revised final site plans and supplemental materials to address the concerns set forth in the recommended denial, the other concerns stated by Planning Commission members, and the consultant review letters, including an updated layout plan addressing the outstanding building encroachments into the required 50-foot wetland setback for buildings; a revision to the access area to the adjacent parcel; revised drafts of the master deed and bylaws; proposed language for an amendment to the existing consent judgment; correspondence from the US Fish & Wildlife Service and the Washtenaw County Health Department; among other materials.

WHEREAS the Township Consultants have reviewed the revised site plans and other materials and provided their comments to the Lodi Township Board.

WHEREAS the Lodi Township Board have reviewed the revised final site plans, the Planning Commission's findings, conclusions, and recommendation regarding the previous version of the final site plans, and the reports of its consultants.

WHEREAS the Lodi Township Board makes the findings of fact as initialed in the attached document titled: "Findings of fact for resolution to deny approval of the final site plan for Arbor Preserves North and South Planned Unit Development." (Attached as Exhibit 3)

THEREFORE, be it resolved, the Lodi Township Board, after review and considering the record, the Planning Commission's findings, conclusions, and recommendation, and the attached findings of fact regarding the revised (2) final site plans for Arbor Preserve North and Arbor Preserve South (parcels # M-13-01-300-007, M-13-01-300-008, M-13-01-300-009, M-13-01-300-010, M-13-01-300-005, M-13-01-300-011, M-13-01-300-012, M-13-01-300-014),

as supplemented and amended, that the revised final site plans are denied for not complying with the conditions required by the First Amendment to Consent Judgment.

Township Trustee \_\_\_\_\_ moved the adoption of the foregoing Resolution, which was seconded by Township Trustee \_\_\_\_\_ and thereupon adopted by the Lodi Township Board of Trustees by a roll call vote of the Township Board at the regular meeting, held this 7th day of October 2025.

The following members voted:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent or abstain: \_\_\_\_\_

The Supervisor declared the resolution adopted.

Christina Smith, Lodi Township Clerk

**Findings of fact for resolution to deny approval of the final site plan for Arbor Preserves North and South Planned Unit Development**

The Lodi Township Board of Trustees makes the following findings of fact with regard to the final site plan for Arbor Preserves North and South Planned Unit Development:

1. The final site plan reviewed by the Lodi Township Planning Commission showed 13 units within the 50-foot building wetland setbacks contrary to the Zoning Ordinance. Subsequently, the applicant has proposed a Second Amendment to Consent Judgment to in part address the wetland setback issue by requesting additional deviations to the front yard setbacks to eliminate the encroachment into the wetland setbacks for 12 units and to reduce the encroachment for Unit 26 to 7 feet. The Lodi Township Board finds that granting additional deviations to the front yard setbacks is not appropriate and that even if granted Unit 26 would still be within the wetland setback. (See proposed Second Amendment to Consent Judgment attached as Exhibit 4).
2. The final site plan shows 39 units whose yards are within the 25-foot wetland setbacks contrary to the Zoning Ordinance in Section 54.08.E.6.a and the First Amendment to Consent Judgment Exhibit 2 bullet number 5. In the North development those units include Units 25, 26, 27, 29, 30, 31, 33, 34, 37, 38, 39, 43, 45, 46, 47, 48, 49, 50, 53, 54, and 55. In the South development those units include Units 14, 15, 16, 17, 18, 21, 22, 23, 24, 30, 31, 34, 35, 36, 37, 43, 46, and 47.
3. Sidewalks along internal roads: In an effort to further minimize impacts to wetlands and preserve more of the wetlands, some areas on the revised site plan provide sidewalks only on one side of internal roads, including areas of Mill Race Court in Arbor Preserve North and Cortland Road and Gilbert Court in Arbor Preserve South. Where sidewalks are only

- proposed on one side of the road, dedicated pedestrian crossing areas are provided. It should also be noted that on the revised site plan, sidewalks in some areas are pulled in toward the road in an effort to further minimize wetland impacts. In these areas, a guardrail is provided along the road. The proposed guardrails have a rustic appearance; a detail is provided within the submittal. The Lodi Township Board finds sidewalks on one side of internal roads where shown is not reasonable and appropriate and the applicant should reduce the impacts on existing wetlands by reducing the number of units or other means.
4. The Lodi Township has reviewed the proposed wetland mitigation plan and finds that it is not acceptable as the applicant has not made all prudent attempts to avoid wetland impacts and because the proposed mitigation is not proposed to be provided within Lodi Township.
  5. The proposed second amendment to the consent judgment outlines the proposed front yard setback deviations. The Lodi Township Board finds that the revised final site plans do not show that all side yard setbacks are maintained and still in compliance with the required setbacks.
  6. The Lodi Township Board finds that the applicant has not indicated and shown how the 25-foot buffer from the wetlands is to be established as untouched area that must remain undisturbed, especially for lots that have yard area within the setback area.
  7. WWTP Building Setbacks. The Lodi Township Board finds that because the wastewater treatment plants are now proposed to be fully enclosed within buildings, the buildings must meet required setbacks per the Ordinance. The applicant does not properly show the proposed setbacks of the WWTP buildings.
  8. Easements. An ingress/egress easement providing access to Parcel M-13-01-300-013 is shown on the existing conditions plan and site plans for Arbor Preserve South. The applicant has provided a copy of the amended access easement with the submittal. The easement provides access from Waters Road and provides access to the parcel from Gilbert Court. As part of the supplemental package provided on September 18th, the applicant team provided a sheet indicating a 20-foot-wide asphalt stub road within the existing access easement indicated for "Township access to adjacent property." The Lodi Township Board finds that the Township Engineer approval is required for the proposed access road specifications, and the Board has not yet received it. The Lodi Township Board further finds that the applicant has not shown how access to this easement will be provided given the gated entryway specified in the plans.
  9. The Lodi Township Board reviewed the Natural Features Statement, per review criteria in Section 54.08.D, and finds that that the applicant must comply with all applicable state, local, and federal laws, ordinances, standards, and regulations and while the applicant has provided information that it is working with or has submitted to applicable agencies that it has not received approval yet from those agencies.
  10. The Lodi Township Board finds all reviews and approvals from all applicable consultants, departments, and agencies have not been obtained and provided.
  11. Township Board finds that the following reviews and permits are required and have not been obtained and provided:
    - Washtenaw County Road Commission (WCRC): A permit will be required for all work within the right-of-way.
    - Washtenaw County Water Resources Commissioner's Office (WCWRC): A permit will be required for soil erosion and sedimentation control.

- Washtenaw County Health Department (WCHD): Permits will be required for wells.
  - Michigan EGLE Sanitary/Part 41 (WWTP NPDES): A permit will be required for the collection system and WWTP.
  - Michigan EGLE Wetlands & Watercourses/Part 303: A permit may be required for the wetland mitigation measures prior to construction.
  - Other permits/approvals/etc. may be required
12. The Lodi Township Board finds that the Final Site Plan violates the township's open space requirements because it includes undevelopable land in its open space calculations.
13. The Lodi Township Board finds that the applicant has not provided a natural features document that shows features within 100 feet of the property.
14. The Lodi Township Boards finds the final site plans do not meet the additional following requirements for natural features:
- According to Section 54.08.C.1, the natural features statement is subject to Planning Commission approval. The Planning Commission did not approve the natural features statement.
  - Section 54.08.B.5 states that unnecessary tree removal is prohibited.
  - Some trees on the site were illegally logged a couple years ago in violation of Section 42.002.
  - Section 54.08.D.4.a.4.a states that plans must include required natural feature types and locations which was not provided.
  - Section 54.08.D.4.a.4.e and Section 54.08.D.4.a.4.h states that plans must include trees with numbered dots on the map as well as the ground elevation and tree grouping information which was not provided.
  - Section 54.08.D.4.a.4.f states that the plans need to include information and documentation about the diversity of the tree species. The pages and pages of tables that were provided was never summarized and the narrative never mentioned that there are 44 species of trees named in the data.
  - The value/benefit of the area was not listed as required by Section 54.08.D.4.a.4.g.
15. The Lodi Township Board finds that the applicant has not complied with the conditions set forth in the First Amendment to Consent Judgment in that it is removing too many trees and not replacing sufficient trees. The applicant has proposed a Second Amendment to Consent Judgment to in part address the tree replacement issue and with regard to the tree replacement the Lodi Township Board finds that the proposal in the Second Amendment to Consent Judgment is not consistent with the Lodi Township Zoning Ordinance and does not sufficiently replace the removed trees. (See proposed Second Amendment to Consent Judgment attached as Exhibit 4). Additionally, according to Section 54.08.I.2, landmark trees must be correctly identified. At least 4 species of trees were not correctly identified as landmark trees.

Second by Marsh.

Foley asked if Planner Smith agrees with the units with yards encroaching on the 25-foot wetland setback stated by Blackburn. Smith stated that she has the same list as Blackburn. Blackburn asked for confirmation that those 25-foot wetland setbacks need to remain untouched including during grading and construction. Planner Smith confirmed that was correct. A Toll Brothers representative stated that many of the encroachments in the 25-foot

wetland setback are only going to be graded to form backyards and resodded, but will remain untouched otherwise. Those areas will have a conservation easement protecting them, but Toll Brothers is not in favor of placing signage at the setbacks. Planner Smith stated that signs would not be needed, but there does need to be a clear way for potential buyers and current owners to know that those areas need to remain untouched. A Toll Brothers representative stated that he believes that the owners deserve the right to continue to maintain the area since other residents in the Township are allowed to maintain those areas on their property. Greene stated that all of the areas that were proposed to be graded and have the trees removed were shown in the Consent Judgement; the trees were not counted, but were shown. According to Greene, everyone knew what was happening when the Consent Judgement was approved. Greene also stated that in order to complete the wetland mitigation onsite, more trees would need to be removed. Generally, communities would prefer to have the wetlands mitigation off site versus removing more trees. Greene said that this was discussed during the deliberation on the Consent Judgement and agreed to. Greene stated that they have done everything to build what they promised to build and have changed the plans so that they are better than they were before. Greene feels that Toll Brothers has worked with Township to improve the plans and meet the Township's requests. Blackburn stated that conservation easements are in conjunction with a managing partner who makes sure that that easement is being followed. The conservation easement that Toll Brothers is proposing does not include a managing partner which suggests that the conservation easement will not be enforced by anyone.

O'Jack noted that he does not agree with Blackburn regarding the Final Site Plan violating the Township's open space requirements because it includes undevelopable land in its open space calculations; he included that in the draft Resolution because he knew that that was one of Blackburn's concerns. O'Jack does not agree with Blackburn's understanding of what is developable and undevelopable land and what land is allowed to be included in the open space calculations. Marsh asked for the Planner's view on this issue. Planner Smith stated that, according to her understanding of what is developable land, what open space is, and what is to be included in open space, the calculations provided by Toll Brothers is accurate. Blackburn stated that an unnamed local data expert did recalculate the open space calculations and calculated that the open space in the South development is 47% instead of the 49% that Toll Brothers is declaring and the open space in the North development is 33.5% which falls below the approved deviation of 35%. Blackburn's understanding of the Zoning Ordinances regarding open spaces including Sections 42.301.G, 54.08.E.6, and 54.08.F.2.C was reviewed. O'Jack stated that if this ends up back in Court, this unnamed data expert will have to qualify before the judge.

A roll call vote was taken. Smith=nay, Godek=nay, Marsh=aye, Blackburn=aye, Matelski=aye, Rentschler=nay, Foley=nay. Motion failed, 3-4.

Smith moved to approve the final site plan for Arbor Preserves North and South Planned Unit Development with conditions with the following Resolution:

**Township of Lodi**  
**Resolution No. 2025-014**  
**October 7, 2025**

A resolution to approve with conditions the final site plan for Arbor Preserves North and South Planned Unit Development.

WHEREAS all of the original properties covered by the original Consent Judgment per that Consent Judgment are zoned R-3 (or “low density multiple family residential”); and

WHEREAS Red Equities, LLC has entered into agreements to acquire approximately 106 acres of the original properties covered by the original Consent Judgment; and

WHEREAS on or about October 14, 2020, Red Equities, LLC submitted an application for preliminary site plan approval for multiple-family housing developments on the Red Equities Parcels, consisting of 434 units (later amended to reduce the density to 391 units), along with recreation areas, private roads, two community wells and a private wastewater treatment facility; and

WHEREAS after discussion between the parties Red Equities, LLC submitted a different request for a Planned Unit Development with an area/preliminary site plan, including but not limited to, with a maximum number of residential units of 107, an individual on-site water well within the boundary of each lot or site with an agreement that if Red Equities, LLC is not able to obtain a governmentally approved individual on-site water well within the boundary of an individual lot or site, that the maximum number of residential units in the Residential Development will be reduced accordingly, and including open space and preserved areas; and

WHEREAS the Township consultants reviewed and provided reports to the Township on the request for a Planned Unit Development with an area/preliminary site plan; both finding that the request and area/preliminary site plan, other than the proposed waste water treatment, was in substantial compliance with the Township’s ordinance and regulations so long as certain conditions were met as part of the final site plan process; and

WHEREAS the Planning Commission held a Public Hearing on the request and held an additional informational meeting regarding the wells, wastewater, and drainage; and

WHEREAS the Planning Commission after review of the public comments, review of the consultants reports and discussion with the consultants, study and review of the request, and discussion with representatives of Red Equities, LLC, found that the request including the area/preliminary site plan was in substantial compliance with the Township’s ordinances and regulations, other than the proposed waste water treatment, so long as certain conditions were met as part of the final site plan process; and

WHEREAS the Planning Commission recommended that the Township Board deny the application solely due to the proposed community wastewater treatment; and

WHEREAS the Township Board held a second Public Hearing on the request; and

WHEREAS the Township Board considered all the public comments on the request; the reports of its consultants, and the findings and recommendations of the Planning Commission; and

WHEREAS the Township Board found that the request including the area/preliminary site plan was in substantial compliance with the Township's ordinances and regulations, other than the proposed waste water treatment, so long as the conditions in the attached document entitled Arbor Preserve Area/Preliminary Site Plan, List of Conditions, dated September 12, 2023 were met as part of the final site plan process; and

WHEREAS while the Red Equities Parcels were not within the area currently planned for municipal utility services, the Township Board found that the combination of several factors and features made the circumstances unique in the Township, including: (i) the agreement to develop land, which was zoned R-3, and which allowed for a materially higher density multiple family use if municipal sanitary sewage facilities were available, for a lower-density single-family use which would, among other things, substantially reduce traffic, preserve open space and natural features and reduce impacts on municipal services; (ii) the fact that the land, when originally made subject to original Consent Judgment, was located in a planned future utility district; (iii) based upon certain soil borings and other information available to date, the land appeared to be not suitable for safe and economically feasible on-site septic systems; and (iv) considering the proposed extensive open space and preserved areas.

WHEREAS the Lodi Township Board of Trustees found that it would best secure the public safety, health, and welfare of its residents and property owners of Lodi Township by the entering of the First Amendment to Consent Judgment in case no. 05-001086-NZ.

WHEREAS the First Amendment to Consent Judgment approved the Planned Unit Development rezoning and the proposed area/preliminary site plan subject to the conditions set forth in the First Amendment to Consent Judgment including that the conditions set forth in the attached document entitled Arbor Preserve Area/Preliminary Site Plan, List of Conditions, dated September 12, 2023 (**Attached as Exhibit 1**) were met as part of the final site plan process.

WHEREAS Toll Northeast V Corp. purchased the Red Equities, LLC properties from Red Equities, LLC, and submitted final plans in early 2025 and a revised final site plan (dated May 22, 2025) that in response to comments made modifications to the plans including to reduce the impact on wetlands, tree removal, update the natural features information, and provide missing information.

WHEREAS the Lodi Township Planning Commission reviewed the Final Site Plan submittals at its regular meeting on July 22, 2025. After reviewing consultant reports, applicant presentation and Commission discussion, the Planning Commission considered the three options on the table: recommend approval to the Township Board, recommend denial to the Township Board, or postpone the decision. In response to the discussion by the Planning Commission, a representative of the applicant stated, "The plan is the plan at this point, and a postponement will not result in any changes to that plan." After further discussion, the

Planning Commission unanimously voted to recommend to the Lodi Township Board of Trustees denial of the Final Site plans for the following reasons:

- The Natural Features Statement of Impact, Protection, and Mitigation does not meet the criteria detailed in Section 54.08.D.
- The wetland setbacks, as required by the ordinance in Section 54.08.E.6 and amendment consent judgement, are not provided in all areas.
- The proposed tree replacement plan is not in compliance with ordinance requirements in Section 54.08.O and proposed replacement offered by applicant is an insufficient alternative.
- The proposed plan will increase the volume of existing surface water on neighboring property in violation of Section 55.02.B.

WHEREAS during the discussion at the July 22, 2025, Planning Commission meeting various commissioners raised a number of additional concerns regarding the Final Site plans. (See **attached Exhibit 2 letter to the applicant regarding the recommendation of denial and the draft minutes to the meeting that were attached to the letter).**

WHEREAS subsequent to the July 22, 2025 recommendation of denial from the Lodi Township Planning Commission, the applicant submitted revised final site plans and supplemental materials to address the concerns set forth in the recommended denial, the other concerns stated by Planning Commission members, and the consultant review letters, including an updated layout plan addressing the outstanding building encroachments into the required 50-foot wetland setback for buildings; a revision to the access area to the adjacent parcel; revised drafts of the master deed and bylaws; proposed language for an amendment to the existing consent judgment; correspondence from the US Fish & Wildlife Service and the Washtenaw County Health Department; among other materials.

WHEREAS the Township Consultants have reviewed the revised site plans and other materials and provided their comments to the Lodi Township Board.

WHEREAS the Lodi Township Board have reviewed the revised final site plans, the Planning Commission's findings, conclusions, and recommendations regarding the previous version of the final site plans, and the reports of its consultants.

WHEREAS the Lodi Township Board makes the following findings of fact:

1. The Lodi Township Board finds that the revised site plans are substantially in compliance with the Lodi Township Zoning Ordinance, the approved Area Plan/Preliminary Site Plan, and the First Amendment to Consent Judgment including its attached conditions, with the exception of the tree replacement and certain setbacks.
2. The Lodi Township Board with regard to whether the applicant has complied with the conditions attached to the First Amendment to Consent Judgment as part of its findings of fact adopt by reference the October 1, 2025, document from OHM regarding "Arbor

Preserve Final Site Plan – Consent Judgment Conditions (UPDATED.” (Attached as Exhibit 3).

3. The Lodi Township Board further adopts by reference as part of its findings of facts the OHM Planning Final Site Plan Review and Engineering Final Site Plan Review, both dated October 1, 2025. (Attached as Exhibit 4).
4. The applicant has proposed a Second Amendment to Consent Judgment to in part address the tree replacement issue and with regard to the tree replacement the Lodi Township Board finds that the proposed Second Amendment to Consent Judgment is in best interest of the health, safety, and welfare of Lodi Township for the reasons set forth in that document. (See proposed Second Amendment to Consent Judgment attached as Exhibit 5).
5. The applicant has proposed a Second Amendment to Consent Judgment to in part address the wetland setback issue and the Lodi Township Board finds that granting the proposed setback deviations for 13 Units to eliminate all encroachment into the wetland setbacks for 12 units and to reduce the encroachment for Unit 26 to 7 feet is in best interest of the health, safety, and welfare of Lodi Township. (See proposed Second Amendment to Consent Judgment attached as Exhibit 5).
6. The Lodi Township Board finds that it is appropriate to grant the applicant request to not provide street lighting.
7. The Lodi Township Board finds that the applicant has provided a private road maintenance agreement as required and it has been approved by the township attorney.
8. Sidewalks along internal roads: In an effort to further minimize impacts to wetlands and preserve more of the wetlands, some areas on the revised site plan provide sidewalks only on one side of internal roads, including areas of Mill Race Court in Arbor Preserve North and Cortland Road and Gilbert Court in Arbor Preserve South. Where sidewalks are only proposed on one side of the road, dedicated pedestrian crossing areas are provided. It should also be noted that on the revised site plan, sidewalks in some areas are pulled in toward the road in an effort to further minimize wetland impacts. In these areas, a guardrail is provided along the road. The proposed guardrails have a rustic appearance; a detail is provided within the submittal. The Lodi Township Board finds sidewalks on one side of internal roads where shown is reasonable and appropriate to minimize impacts on existing wetlands.
9. The Lodi Township Board has reviewed the proposed wetland mitigation plan and finds that it is acceptable.
10. The proposed second amendment to the consent judgment outlines the proposed front yard setback deviations. The Lodi Township Board finds that the applicant must clarify that all side yard setbacks are still in compliance with required setbacks.
11. The buildable footprints shown on the plans reflect buildable area within the required setback, although building footprints are shown outside of the setback area. The Lodi Township Board finds that the applicant must clarify that lots will be restricted to the building footprints shown on the plans.
12. The Lodi Township Board finds that the applicant must indicate how the 25-foot buffer from the wetlands is to be established as untouched area, especially for lots that have yard area within the setback area. The Lodi Township Board further finds that the applicant should consider locating the conservation signs at the 25-foot setback, rather

than the wetland boundary, or propose an alternative method of indicating the area to remain undisturbed.

13. WWTP Building Setbacks. The Lodi Township finds that because the wastewater treatment plants are now proposed to be fully enclosed within buildings, the buildings must meet required setbacks per the Ordinance. The applicant should clarify proposed setbacks of the WWTP buildings. If the buildings do not meet the required setbacks, the location if kept within the setback will require approval from the Lodi Township Board for a setback modification.
14. Condominium Documents. The Lodi Township Board finds that the developments are proposed as a site condominium. Section 45.04 requires that condominium documents, including bylaws, deed restrictions, articles of incorporation and other covenants or restrictions to be imposed upon land or buildings shall be submitted with the final site plan. The revised submittal includes draft master deed, bylaws, and open space preservation easement. The Lodi Township Board finds that these documents must be approved and following approval, the property owner/developer must record all condominium documents/exhibits with the Washtenaw County Register of Deeds and provide copies to the Township Clerk in line with Section 45.17.
15. Easements. An ingress/egress easement providing access to Parcel M-13-01-300-013 is shown on the existing conditions plan and site plans for Arbor Preserve South. The applicant has provided a copy of the amended access easement with the submittal. The easement provides access from Waters Road and provides access to the parcel from Gilbert Court. As part of the supplemental package provided on September 18th, the applicant team provided a sheet indicating a 20-foot-wide asphalt stub road within the existing access easement indicated for "Township access to adjacent property." The Lodi Township Board finds that upon approval of the Township Engineer of the proposed access road specifications that the Board finds those specifications acceptable. The Lodi Township Board further finds that the applicant must clarify how access to this easement will be provided given the gated entryway specified in the plans and obtain approval for that access.
16. Traffic Impact Study. An updated traffic impact study is provided with the revised submittal, as required by the amended consent judgment. Recommendations of the traffic study include installation of an actuated traffic signal at Wagner & Waters intersection and left-turn lanes for both entrances on Wagner Road. The Lodi Township Board finds that the recommendations are appropriate.
17. The Lodi Township Board reviewed the Natural Features Statement, per review criteria in Section 54.08.D, and finds that in addition to the findings made above that the applicant must comply with all applicable state, local, and federal laws, ordinances, standards, and regulations. The applicant has provided information that it is working with or has submitted to applicable agencies. The Lodi Township Board further finds that final site plan approval should not be granted until approval is provided by all applicable agencies.
18. The Lodi Township Board finds all reviews and approvals from all applicable consultants, departments, and agencies must obtained and provided.
19. The Lodi Township Board finds that the following reviews and permits are required:

- a. Washtenaw County Road Commission (WCRC): Review and approval will be required. A permit will be required for all work within the right-of-way.
- b. Washtenaw County Water Resources Commissioner's Office (WCWRC): Review and approval will be required for establishment of the drainage district and storm water detention and outlet.
- c. Washtenaw County Water Resources Commissioner's Office (WCWRC): A permit will be required for soil erosion and sedimentation control.
- d. Saline Area Fire Department: Review and approval will be required.
- e. Washtenaw County Health Department (WCHD): Permits will be required for wells.
- f. Michigan EGLE Sanitary/Part 41 (WWTP NPDES): A permit will be required for the collection system and WWTP.
- g. Michigan EGLE Wetlands & Watercourses/Part 303: A permit may be required for the wetland mitigation measures prior to construction.
- h. Other permits/approvals/etc. may be required.

20. The Lodi Township Board finds that after approval of the final site plan that a Development Agreement per the Lodi Township Zoning Ordinance Section 54.20 should be entered into and the Board hereby requests it.

THEREFORE, be it resolved, based on the above findings of fact by the Lodi Township Board regarding the revised (2) final site plans for Arbor Preserve North and Arbor Preserve South (parcels # M-13-01-300-007, M-13-01-300-008, M-13-01-300-009, M-13-01-300-010, M-13-01-300-005, M-13-01-300-011, M-13-01-300-012, M-13-01-300-014), as supplemented and amended (attached as Exhibit 6), that the revised final site plans are approved, subject to the following conditions:

1. The signing, entry, and recording of the proposed Second Amendment to Consent Judgment with the agreement to add that Toll Brothers will provide two trees to each lot owner to be planted and increase the contribution sum under item 3 Tree Replacement to Seven Hundred Fifty Thousand Dollars (\$750,000). **(See proposed Second Amendment to Consent Judgment attached as Exhibit 5).**
2. The proposed second amendment to the consent judgment outlines the proposed front yard setback deviations. The applicant must clarify that all side yard setbacks are still in compliance with required setbacks.
3. The buildable footprints shown on the plans reflect buildable area within the required setback, although building footprints are shown outside of the setback area. The applicant must clarify that lots will be restricted to the building footprints shown on the plans.
4. The applicant must indicate how the 25-foot buffer from the wetlands is to be established as untouched area, especially for lots that have yard area within the setback area and obtain approval from the Lodi Township Board for the method chosen.
5. WWTP Building Setbacks. The wastewater treatment plant building setbacks are approved as provided on the plan with setbacks indicated.

6. Condominium Documents. The developments are proposed as a site condominium. Section 45.04 requires that condominium documents, including bylaws, deed restrictions, articles of incorporation and other covenants or restrictions to be imposed upon land or buildings shall be submitted with the final site plan. The revised submittal includes draft master deed, bylaws, and open space preservation easement. The applicant must obtain final approval of these documents from Lodi Township and following approval, the property owner/developer must record all condominium documents/exhibits with the Washtenaw County Register of Deeds and provide copies to the Township Clerk in line with Section 45.17. The applicant will add the 25-foot wetland setback to the Condominium Documents to be approved by consultants.
7. Easements. An ingress/egress easement providing access to Parcel M-13-01-300-013 is shown on the existing conditions plan and site plans for Arbor Preserve South. The applicant has provided a copy of the amended access easement with the submittal. The easement provides access from Waters Road and provides access to the parcel from Gilbert Court. As part of the supplemental package provided on September 18th, the applicant team provided a sheet indicating a 20-foot-wide asphalt stub road within the existing access easement indicated for "Township access to adjacent property." The applicant must obtain approval of the Township Engineer of the proposed access road specifications. Additionally, the applicant must clarify how access to this easement described above will be provided given the gated entryway specified in the plans and obtain approval from Lodi Township for that access. The gated entryway will have the option to be removed now or in the future to give access to the public to Parcel M-13-01-300-013. The Township Engineer will do a final inspection of the stub road to access Parcel M-13-01-300-013 to make sure that it meets the same standards as the rest of the roads.
8. Traffic Impact Study. The applicant must comply with the updated traffic study including installation of an actuated traffic signal at Wagner & Waters intersection and left-turn lanes for both entrances on Wagner Road, or if the WCRC has additional or different requirements, those requirements must be met.
9. Regarding the Natural Features. The applicant must comply with all applicable state, local, and federal laws, ordinances, standards, and regulations and obtain and provide approval from all applicable agencies as required.
10. The applicant must obtain and provide reviews and approvals from all applicable consultants, departments, and agencies.
11. The applicant must obtain and provide the following reviews and permits:
  - a. Washtenaw County Road Commission (WCRC): Review and approval will be required. A permit will be required for all work within the right-of-way.
  - b. Washtenaw County Water Resources Commissioner's Office (WCWRC): A permit will be required for soil erosion and sedimentation control.
  - c. Washtenaw County Health Department (WCHD): Permits will be required for wells.
  - d. Michigan EGLE Sanitary/Part 41 (WWTP NPDES): A permit will be required for the collection system and WWTP.
  - e. Michigan EGLE Wetlands & Watercourses/Part 303: A permit may be required for the wetland mitigation measures prior to construction.
  - f. Other permits/approvals/etc. may be required.

12. Per the First Amendment to Consent Judgment, if the applicant is not able to obtain a governmentally approved individual on-site water well within the boundary of an individual lot or site, that the maximum number of residential units will be reduced accordingly. Therefore, the right to build on any individual Unit is conditioned on obtaining governmentally approved individual on-site water well within the boundary of that individual lot or site.
13. The applicant after approval of the final site plan must execute with Lodi Township a Development Agreement per the Lodi Township Zoning Ordinance Section 54.20.
14. Unit 26 in the North development will be a smaller house footprint in the buildable envelope in order to remove the building from the 50-foot wetland set back.

Township Trustee \_\_\_\_\_ moved the adoption of the foregoing Resolution, which was seconded by Township Trustee \_\_\_\_\_ and thereupon adopted by the Lodi Township Board of Trustees by a roll call vote of the Township Board at the regular meeting, held this 7th day of October 2025.

The following members voted:

Ayes:

Nays:

Absent or abstain:

The Supervisor declared the resolution adopted.

Christina Smith, Lodi Township Clerk

While Smith was stating her motion, Blackburn interrupted and stated that the Township does not need to approve the Final Plans as proposed, but can deviate from the approved preliminary site plan and collaborate to create something better for the community. Godek reminded Blackburn that the Board of Trustees allowed Blackburn to state their motion without interruption and Smith deserves the same right and respect.

Blackburn additionally interrupted Smith's motion when tree removal and replacement was discussed. After Blackburn's interruption, Godek asked Toll Brothers if they would be willing to increase the proposed contribution in the proposed Second Amendment to the Consent Judgement item 3 Tree Replacement and/or consider contributing to increase the length of the non-motorized pathway along Waters Rd. A Toll Brothers representative stated that they would be able to increase their contribution to \$750,000 which could be used however the Township wishes.

Second by Rentschler. A roll call vote was taken. Marsh=nay, Blackburn=nay, Matelski=nay, Rentschler=aye, Foley=nay, Smith=aye, Godek=aye. Motion failed, 3-4.

Matelski moved to table the decision until later. Second by Foley.

A discussion was held regarding when a Special Meeting could be held to resume the discussion. Monday, October 20, 2025 at 6:30 pm was decided on.

Matelski moved to amend his motion to table the decision until a Special Meeting to be held on Monday, October 20, 2025 at 6:30 pm. Second by Foley. A voice vote was taken. Aye=all, Nay=none. Motion carried, 7-0.

Blackburn asked to have a one-on-one meeting with Planner Smith. After further discussion, O'Jack recommended having a discussion during the Special Meeting before continuing to deliberate on the Final Site Plan submittal. O'Jack requested questions to be provided to Planner Smith so that she could prepare.

#### **4. Blackburn Request for a Special Meeting in October**

Blackburn requested a Special Meeting to discuss appointment processes. If the next appointments are not being made until 2026, Blackburn stated that this request can be postponed until later.

Godek stated that she would not be in favor of having a Special Meeting to discuss appointments, but would prefer to discuss it during a regular meeting instead.

No planned appointments are known until 2026 so a discussion regarding appointments will be held later.

#### **10. Closed Session: None**

#### **11. Public Comment**

Public comment began at 9:51 pm. Public comment was received from 11 people. Public comment ended at 10:05 pm.

#### **12. FYI: None**

#### **13. The next Meeting will be a Special Meeting next October 20, 2025, starting at 6:30 pm.**

#### **14. Adjournment**

Smith moved to adjourn at 10:05 pm. Second by Foley. A voice vote was taken. Aye=all, Nay=none. Motion carried, 7-0.

Respectfully Submitted,

Christina Smith,  
Lodi Township Clerk

Michelle Joppeck,  
Recording Secretary



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October 16, 2025

**Via Email: [jan@LodiTownshipMI.org](mailto:jan@LodiTownshipMI.org)**

Jan Godek  
Township Supervisor  
Lodi Township  
3755 Pleasant Lake Road  
Ann Arbor, MI 48103

Re: Red Equities v Lodi Township, Case No. 05-001086-NZ--Final Site Plan Approval

Dear Supervisor Godek:

As you know, I represent Toll Brothers in connection with the proposed Arbor Preserve development (the "Development") and I represented Red Equities in connection with the above litigation. I regret having to write this letter, but it is clearly appropriate in light of what occurred at the last Township Board meeting on October 7. The purpose of this letter is to set forth Toll's position regarding final site plan approvals for the Development.

**A. Background and Summary**

Toll acquired the Property at issue with the understanding and commitment that it would build the development agreed upon by the Township as set forth in the First Amendment to Consent Judgment ("First Amendment"). As explained further below, Toll has honored that commitment and is seeking final site plan approvals for a development virtually identical to that shown in the First Amendment.

Toll has cooperated in good faith with the Township and addressed every issue raised. It has received recommended approvals from the Township professionals—its planner, engineer and the fire department. All of the collateral project documents, including condo documents, private road maintenance agreement and propose second amendment to Consent Judgment (a document actually proposed by the Township's attorney) have been reviewed by the Township's attorney and all of his comments and language revisions have been fully incorporated in those documents.

Yet, at the last Township Board meeting on October 7, it was apparent that one or more Board members now oppose the Development and believe that the Township Board made a mistake in approving the Development in the first place. A Board Member berated the Township's professional consultants and questioned their competence, and questioned the decisions made

by the Board after nearly a year of public meetings and studies of the Development and the advice received by State and County regulators.

It appears that on or more Board Members are behind an entity referred to as Livable Lodi, which has posted defamatory and untrue statements about the Development and urging residents to oppose the Development. The website does not identify the authors of material posted there or even those involved in controlling the website. Livable Lodi does not appear to be a legal entity, non-profit or otherwise. The group of form letters the Board received before the last meeting in opposition to the Development came from the Livable Lodi website.

As stated below, Toll believes that this conduct is in direct violation of the First Amendment, which is both a contract of the parties and court order and is exposing the Township to substantial potential liability for damages proximately caused by the breach and sanctions for contempt of court.

## **B. The Township and Red Equities Enter Into the First Amendment.**

Some accurate history would be relevant here. I was not involved in the original litigation which led to the Consent Judgment which includes a zoning of the Property for R-3 residential use, which is a multi-family designation. The Township has very few locations on which a multi-family use is authorized. My client, Red Equities, acquired the Property because it was zoned for R-3 residential and intended to develop the Property for housing consistent with the R-3 zoning classification. Site plans and preliminary engineering were prepared for a multi-family residential development containing 434 units (later reduced to 391 units to address initial comments received from the Township's consultants). The development was designed to be fully compliant with the R-3 zoning requirements and not require any deviations that would necessitate pursuing a planned unit development. On August 28, 2020, application was made to EGLE for an NPDES permit to construct and operate a sewer treatment plant to serve the development. EGLE issued a draft permit on February 10, 2021, and held a public hearing on July 1, 2021.

Despite the R-3 zoning, Township officials indicated that they would not welcome a large multifamily development, even if fully consistent with the R-3 zoning. Red Equities entered into discussions with the Township about an alternative development. Two issues were paramount to both sides—reaching an agreement on the nature and number of housing units and the utilities to serve the project. The parties reached an agreement on 107 single-family units. That number was agreed upon as being more consistent with the master plan designation of the Property at one unit per acre. Red Equities agreed to prepare detailed plans for such a development and the parties went through an extensive review process through the Planning Commission and Township Board.

Several information sessions took place where all key development issues were reviewed and discussed—including with respect to traffic, stormwater, water, grading and tree removal and sewer service. The Township brought in regulators from Washtenaw County to speak to the Planning Commission and the public and answer questions. Detailed information regarding the sewer system was provided by EGLE and documents regarding a similar private wastewater

system for a residential project in Lima Township were presented as an example of how the process would work.

The culmination of this effort was the First Amendment to Consent Judgment ("First Amendment"). By virtue of the First Amendment, Red Equities gave up the right to develop the Property for several hundred multi-family units for a single-family development consisting of only 107 units. The First Amendment specifically reflected the key nature of the dispute and what was being resolved, including the following:

"e. On or about October 14, 2020, Red Equities submitted an application for preliminary site plan approval for multiple-family housing developments on the Red Equities Parcels, consisting of 434 units (later amended to reduce the density to 391 units), along with recreation areas, private roads, two community wells and a private wastewater treatment facility.

f. **Disputes arose between the parties regarding, among other things, the density of the proposed development and the provision of utility services for the development.** The parties worked together in good faith to resolve those disputes, which resolution is reflected in this Amended Consent Judgment.

g. As a result, the Township and Red Equities, as the successor-in-interest to Peters-Summit with respect to the Red Equities Parcels, wish to amend the Original Consent Judgment in order to reflect the change in interest to the Red Equities Parcels and **to approve a revised development plan for the Red Equities Parcels to reflect changes in conditions and new opportunities for enhancing the property and surrounding area for the benefit of all of the parties hereto.**"

Attached to the First Amendment are 70 pages of detailed plans showing the proposed development of 107 single family homes, including detailed plans for grading, utilities, roads and preserved open space areas. As to the two key items of dispute referenced above, the parties agreed on a density of 107 homes as specifically situated on the plans and the Township's demand with respect to utilities—(a) no community well be provided (as shown for the earlier development); (b) to the extent that any homesite could not be served by an on-site well, the number of homes would be thus reduced accordingly; and (c) that the sewer service be through two smaller sewer systems rather than one larger treatment plant as proposed in the original B-3 zoning site plan.

Final site plan and detailed engineering would still be required, but the comprehensive 70 pages of plans attached to the First Amendment would assure that each side got the development shown on the plans and for which it bargained. The Township was enjoined and restrained from interfering with the development as proposed in the Amendment and Red Equities was enjoined and restrained from developing the Property in a manner inconsistent with the First Amendment.

The Amendment set forth some provisions as to how the final approvals and next steps would proceed in that there are always issues or questions that may arise through final engineering and other regulatory approvals. The Township agreed that the Property would be served by two community wastewater sewer systems and that it would support State regulatory approvals for same. (First Amendment, par. 8.) The Township further agreed that it would not in any way interfere with or delay Red Equities' efforts to obtain necessary approvals of the development from other governmental or regulatory agencies. (*Id.* at par. 9.) The parties agreed to cooperate in good faith with each other to carry out the development contemplated in the Amendment. (*Id.* at par. 10.) The uses and structures permitted in the Amendment were deemed *conforming* uses and structures. (*Id.* at par. 11.) Notably, the Amendment did not include a waiver or release of any claims or damages by Red Equities.

Separate and apart from the Amendment, we should not lose sight of what preliminary site plan approval means in the ordinary course under the Zoning Ordinance. Section 44.08 of the Zoning Ordinance identifies the extensive information required for preliminary site plan review and approval, including: (1) gross and net dwelling unit density; (2) a schedule of the number, sizes and types of dwelling units and the gross and net lot areas per dwelling unit; (3) delineation of required yards, setback areas and transition strips; (4) location, outline and height of proposed structures; (5) location and surface type of roads, rights-of-ways, location and dimensions of vehicle access points, the locations and widths of sidewalks and pedestrian ways; (6) natural features determination; (7) outdoor open space and recreation areas; (8) general layout of landscaping and screening; (9) general layout of water, sanitary sewer and stormwater management facilities; (10) location and size of proposed detention and retention ponds; and (11) general areas of intended filling and cutting. All of these items and more were included in the comprehensive plans, reviewed by the Township and approved by virtue of granting preliminary site plan approval.

### C. Toll Brothers Acquires the Property.

Toll acquired the Property with the understanding that it would build the Development in accordance with the First Amendment. Toll undertook extensive due diligence with respect to the Property and reviewed all of the detailed plans attached to the First Amendment. In good faith, Toll pursued more detailed engineering and final site plan preparation and submitted a final site plan package virtually identical to the preliminary site plan. Indeed, Toll was able to increase open space and wetland preservation and decrease setback variations from the Preliminary Site Plans attached to the First Amendment.

Toll submitted its request for final site plan approvals on February 3, 2025. Despite favorable recommendations from the Township's professional consultants, the Planning Commission recommended against approval of the final site plan. The Commission identified certain alleged deficiencies in the information provided. While Toll disagreed with the Planning Commission, Toll worked diligently and in good faith with Township officials and consultants to resolve those issues. Toll also responded not only to the specific items raised by the Planning Commission's recommendation for denial, but also addressed all of the individual comments and questions raised by individual Commissioners. The few items of disagreement were resolved through a

proposed Second Amendment to the Consent Judgment. The Second Amendment was actually suggested by the Township's attorney.

When Toll appeared before the Township Board on October 7, 2025, all of the issues had been resolved. The Board had at that time:

1. A full set of revised final site plan drawings reflecting all of the comments and requests of the Township's professional consultants.
2. Recommendations of approval from the Township's professional planner and engineer.
3. Recommendation of approval from the Fire Department.
4. Washtenaw County Water Resources Commission – plans approved, waiting for EGLE wetland permit and draft of 433 agreement.
5. Washtenaw County Health Department – hydrogeologic study approved. Well spacing plan approved. Final approval pending recorded master deed and bylaws.
6. WCWRC Soil Erosion permit – plans approved. Permit issuance pending EGLE wetland permit.
7. EGLE Part 31 Discharge Permit – permit drafted, public hearing scheduled for 11/5/2025.
8. EGLE Part 41 WWTP/Sanitary Sewer Permit – submitted and under review.
9. EGLE Wetland Permit – public hearing scheduled for 10/27/2025.
10. Washtenaw County Road Commission – traffic study approved, plans under review.
11. A full set of condominium documents, reviewed and approved as to content and form by the Township attorney.
12. A private road maintenance agreement, reviewed and approved as to content and form by the Township attorney.
13. A proposed Second Amendment to Consent Judgment, reviewed and approved as to content and form by the Township attorney.

Instead of the approval to which Toll was entitled, Toll was berated and insulted by one or more Board Members who made it clear that they opposed the project and that the prior Board made a "mistake" in approving the First Amendment, despite the fact that the prior Board negotiated from a multi-family project that could include hundreds of units as permitted in the original Consent

Judgment to a lower density single-family development consisting of only 107 homes. There was a great deal of discussion regarding the trees to be removed and the amount of open space provided. But while the final number of trees to be removed was not calculated in the Preliminary Site Plans, all of the areas of grading and tree removal were identified in the Plans as required by the Township's Zoning Ordinance. There is no dispute that Toll limited tree removal to the areas required to build the agreed upon Development and proposed the maximum amount of re-planting on site. The Township's Planner also confirmed that the calculation of open space submitted by Toll was correct and that the amount of open space provided was even greater than that shown in the Preliminary Site Plans.

#### D. Summary of Law with respect to Consent Judgments.

A consent judgment is a hybrid document that "has features of both a contract and of a judicial act." *Belfor USA Group, Inc v Ins Reconstruction, LLC*, 755 F Supp 2d 812, 815 (ED Mich 2010). Thus, a consent judgment "becomes a judicial act and possesses the same force and character as a judgment rendered following a contested trial or motion." *Trendell v Solomon*, 178 Mich App 365, 369; 443 NW2d 509 (1989), *app den*, 434 Mich 891 (1990). *See also Clohset v No Name Corp*, 302 Mich App 550, 572; 840 NW2d 375 (2013) ("Certainly, once entered, consent judgments are treated the same as litigated judgments in terms of their force and effect."). Explaining further: "Judgments by consent . . . are entered by sanction and order of the court, exercising a judicial function and power, and therefore are not to be treated as mere contracts, but, to the contrary, as adverse judgments." *Trendell, supra*, at 368 (quoting 47 Am Jur 2d, Judgments, § 1082).

Because a consent decree is a judgment, the proper remedy "is enforcement where one of the parties does not comply with its terms . . ." *Trendell, supra*, at 365. *See also Shy v Navistar Intern Corp*, 701 F3d 523 (CA 6, 2012) (citations omitted) ("Courts have a duty to enforce . . . their consent decrees as required by the circumstances."). "Failure to abide by a consent decree is a serious matter . . ." *Kelley, supra*, 145 FRD at 439. Although courts differ on methods of enforcement, it is clear that consent judgments are to be enforced. *See Trendell, supra*. Additionally, "[t]his Court has the power to fashion such relief as may be necessary for compliance with a prior Court order." *Chippewa & Ottawa Indians v Director Mich DNR*, 971 F Supp 282, 291 (WD Mich 1995), *aff'd* 141 F3d 635 (CA 6 1998). Finally, the Court is authorized by law to exercise its contempt powers to enforce consent decrees. *See MCL 600.1701(g)*. *See also Catsman v Flint*, 18 Mich App 641; 171 NW2d 684 (1969) (Court properly exercised power of contempt for City's failure to abide by Court's mandamus order).

Not only is a consent judgment a judicial act, it is also a contract to be enforced. "Like any settlement agreement, which a court can enforce as a binding contract, a proposed consent judgment is binding on the parties as a contract even if the court does not enter it as a judgment." *United States v Crown Enameling, Inc*, 651 F Supp 1316, 1318 (ED Mich 1987) (citations omitted).

[A consent decree] memorializes the bargained-for positions of the parties. A defendant has foregone the possibility of prevailing on the merits in exchange for granting some form of limited relief to

plaintiff. A plaintiff has exchanged a right to obtain adjudicatory relief for a known recovery sum. The bargained-for positions of the parties should be preserved when possible, by strictly construing the terms of the decree.

*Kelley v Thomas Solvent Co*, 717 F Supp 507, 514-15 (WD Mich 1989) (citations omitted). Here, whether viewed as a contract or a judgment, if the Township violates its obligations, it exposes itself to contempt and remedies for contempt as well as damages proximately caused by the breach of contract. And, as previously mentioned, Red Equities did not release any claims or damages in connection with the First Amendment.

## **E. Conclusion**

This is a long letter, but it has been five long years since Red Equities acquired the Property and began working in good faith with the Township to come up with an agreed upon alternative development to a much denser multi-family use authorized in the Consent Judgment. Red Equities gave up a lot when it agreed to the current plan, but valued a positive working relationship with the community. Toll purchased the Property both in reliance on the Preliminary Site Plans and with the commitment of carrying out the development depicted on the Preliminary Site Plans. Red Equities and Toll have incurred substantial design and engineering expense over the last five years and have paid substantial review and permit fees to the Township and other State and County agencies. The Final Site Plans have been reviewed and approved by third parties and are under final review by other agencies. Any material change to those plans would essentially require Toll to start over. We respectfully urge the Board to approve the Final Site Plans and the Second Amendment.

Sincerely,

**Dykema Gossett PLLC**



Alan M. Greene

cc: Christina Smith, Esq.  
Fred Lucas, Esq.  
Jesse O'Jack, Esq.  
Scott Hanson  
Jacob Iacoangeli

125831.000007 4917-4151-1794.1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

TOLL NORTHEAST V CORP., a Delaware  
corporation, as successor in interest to RED  
EQUITIES, LLC, a Michigan limited liability  
company,

Plaintiff,

v.

LODI TOWNSHIP, a Michigan municipal  
corporation,

Defendant.

Case No. 05-001086-NZ

Hon. Tracy Van den Bergh

DYKEMA GOSSETT PLLC  
Alan M. Greene (P31984)  
*Attorneys for Plaintiff*  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304  
(248) 203-0700  
agreene@dykema.com

Jesse O'Jack (P29548)  
*Attorneys for Defendant*  
PO Box 363  
Saline, MI 48176  
(734) 355-9527  
jojlaw@msn.com

**SECOND AMENDMENT TO CONSENT JUDGMENT**

At a session of said Court held in the Courthouse,  
County of Washtenaw and State of Michigan  
on: \_\_\_\_\_, 2025.

PRESENT: Hon. \_\_\_\_\_  
Circuit Court Judge

Plaintiff Toll Northeast V Corp. ("Toll" or "Plaintiff") and Lodi Township ("Defendant" or the "Township") wish to amend the Consent Judgment entered in this action on February 13, 2007 (the "Original Consent Judgment"), as revised by that First Amendment to Consent Judgment entered on October 30, 2023 (the "First Amendment"), to revise certain terms and conditions regarding development of certain of the properties subject to the Original Consent Judgment and First Amendment; the Court having reviewed the agreements in this Second Amendment to

Consent Judgment (the “Second Amendment”) and having specifically found that its terms are fair, just, reasonable, and in the public interest, and that it has been entered into in good faith by the parties:

**THE COURT HEREBY FINDS AND IT IS ORDERED AND ADJUDGED** as follows:

1. **Background.** The following findings are incorporated within and made a part of this Amended Consent Judgment:

a. The Original Consent Judgment was entered in the above-captioned lawsuit on February 13, 2007 by Washtenaw County Circuit Court Judge David S. Swartz with respect to the use and development of approximately 206 acres of land located in Section 1 of Lodi Township, as more particularly described in **Exhibit A** to the Original Consent Judgment (the “Original Properties”). The Original Consent Judgment was recorded in Liber 4609, Pages 207 *et seq.*, with the Washtenaw County Register of Deeds.

b. Under the Original Consent Judgment, the Township was enjoined from interfering with the use of the Property in a manner consistent with the Township’s R-3 (low-density multiple family residential) zoning designation.

c. Plaintiff Red Equities, LLC had entered into agreements to acquire approximately 106 acres of the Original Properties covered by the Original Consent Judgment, which are described and depicted on **Exhibit B** to the First Amendment (the “Red Equities Parcels”). The Red Equities Parcels consist of two non-contiguous parcels of land containing approximately 46.6 acres and 59.9 acres, located in the southwest corner of Section 1 of the Township.

d. Notwithstanding the R-3 zoning of the Red Equities Parcels, Red Equities agreed to develop the Red Equities Parcels for a maximum of 107 single-family residential units. The parties further agreed that if Red Equities was not able to obtain a governmentally approved individual on-site water well within the boundary of an individual lot or site, that the maximum number of residential units in the Residential Development will be reduced accordingly. The parties entered into the First Amendment in which, among other things, the Township approved the preliminary site plans for the single-family development, subject to the terms and conditions of the First Amendment. The Court entered the First Amendment on October 30, 2023, which was recorded in Liber 5568, Page 166, *et seq.*, with the Washtenaw County Register of Deeds.

e. On or about October 16, 2024, Toll acquired the Red Equities Parcels and has submitted applications for final site plan approvals for the Arbor Preserve–North and Arbor Preserve–South single-family developments, consisting collectively of 107 residential unit as described in the First Amendment (collectively, the “Development”).

f. Certain issues have arisen between the parties in connection with final site planning of the Development that were not fully evaluated or addressed in the First Amendment. As a result, the Township and Toll, as successor to Red Equities with respect to the Red Equities Parcels, wish to further amend the First Amendment in order to reflect the change in ownership interest of the Red Equities Parcels and to address and confirm the resolution of the outstanding issues.

2. **Substitution Of Parties And Amendment Of Caption.** Toll, as the purchaser of the Red Equities Parcels, shall be substituted as the party-plaintiff in place of Red Equities, LLC.

The Clerk shall make the appropriate entries in the Court records to revise the caption of the lawsuit to substitute Toll as the Plaintiff herein.

3. **Tree Replacement.** The Red Equities Parcels are largely covered with trees. A number of trees will be removed to accommodate the Development. The Township's Zoning Ordinance provides for the replacement of certain removed trees on site. The parties agree that there is insufficient space on the Red Equities Parcels to replace all of the trees required to be replaced under the Zoning Ordinance. The Final Site Plans identify the number and location of trees to be removed and the number and location of trees to be planted on site. The Zoning Ordinance, however, does not designate alternatives for on-site replacement where such replacement is not feasible. The Parties agree that in lieu of replacement for the trees that cannot be placed on site as set forth in the Final Site Plans, Toll, prior to the commencement of tree clearing, will contribute the sum of ~~Seven~~Five Hundred ~~Fifty~~ Thousand Dollars (\$~~75~~500,000) to the Township for use by the Township, at its discretion, for natural resource preservation, future tree planting, park or pathway improvements, acquisition of development rights or any other purpose that relates to the protections and preservation of natural resources and farmland in the Township. In addition, Toll will offer each initial purchaser of a Unit two (2) trees that could be planted by the Unit owner in connections with the landscaping of each such Unit.

4. **Setback Deviations.** Certain Units as reflected in the Preliminary Site Plans attached to the First Amendment encroach into the wetland setbacks set forth in the Township's Zoning Ordinance. In order to move the houses on those Units outside of the wetland setbacks, the Parties agree to slight deviations from front-yard setbacks for Arbor Preserve-North Unit Nos. 26, 30, 34, 38, 45, and 47, and Arbor Preserve-South Unit Nos. 17, 18, 24, 37, 43, 46 and 47, and

the encroachment of Unit 26 into the wetland setback, as reflected in the plan attached hereto as **Exhibit 1**.

5. **Access to Adjacent Property.** Notwithstanding any existing or future ingress/egress easement between Toll and the owner of certain adjacent land identified as Parcel No. M-13-01-300-013 (the "Neighbor Parcel"), Toll agrees to install a stub connection from the cul-de-sac on Gilbert Court located in Arbor Preserve-South, to the Neighbor Parcel, as depicted on Sheet 37 of the Final Site Plan for Arbor Preserve—South attached as **Exhibit 2**, to accommodate police, fire, emergency and other Township access to the Neighbor Parcel to and from Waters Road.

6. **Approval of Final Site Plan and Commencement of Construction.** Unless an earlier commencement date is approved by the Township in the exercise of its discretion and notwithstanding the Township's approval of the Final Site Plans for the Development, no construction shall commence until Toll receives all applicable regulatory approvals for the Project, including without limitation, from the Washtenaw County Road Commission, Washtenaw County Water Resources Commission and the Michigan Department of Environment, Great Lakes and Energy ("EGLE"), and not until obtaining the Township's acknowledgement that the conditions of approval set forth in the resolution approving the Final Site Plans have been satisfied, which acknowledgment shall be handled administratively.

7. **No Oral Modification.** This Second Amendment may be modified only by written agreement of Toll, the Township, or their successors in interest, and approval of the Court to the extent required herein.

8. **Successors and Assigns.** All of the provisions of this Second Amendment shall be deemed to run with the land and shall be binding upon and inure to the benefit of Toll and the

Township, and each of their respective heirs, successors, assigns, purchasers and transferees, and reference in this Second Amendment to Toll and/or the Township shall also mean and refer to its rights and obligations under this Second Amendment.

9. **Recording.** A copy of this Second Amendment shall be recorded at Toll's' expense with the Register of Deeds for Washtenaw County.

10. **Public Health, Safety and Welfare.** Toll and the Township acknowledge and represent that the terms and conditions of this Second Amendment are fair and reasonable and that the land uses authorized herein and the locations of same are appropriate and reasonable under all of the circumstances present and that this Second Amendment is consistent with the public health, safety and welfare of the community.

11. **Enforcement.** The Court hereby retains jurisdiction of this matter for the purpose of resolving any disputes that may arise under the terms hereof.

12. **Continuing Validity of Original Consent Judgment and First Amendment.** Except as specifically amended by this Second Amendment regarding the Red Equities Parcels, all of the terms and conditions of the Original Consent Judgment as thereafter interpreted by the Court in an Order Denying Motion for Order to Show Cause dated June 29, 2021, with respect to the remaining Original Properties, and the terms of the First Amendment with respect to the Red Equities Parcels, shall remain in full force and effect.

13. **Authority.** By their execution of this Second Amendment, the parties each represent and warrant that they have the authority to execute this Judgment and bind themselves and/or their respective entities to this Second Amendment.

14. **Final Decision.** This Second Amendment is a final order and closes the case.

Dated: \_\_\_\_\_

---

CIRCUIT COURT JUDGE

Approved For Entry As To Form And  
Substance:

DYKEMA GOSSETT PLLC

By: \_\_\_\_\_  
Alan M. Greene (P31984)  
*Attorneys for Plaintiff*  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304

By: \_\_\_\_\_  
Jesse O'Jack (P29548)  
*Attorneys for Defendant*  
PO Box 363  
Saline, MI 48176

TOLL NORTHEAST V CORP., a Delaware  
corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

LODI TOWNSHIP, a Michigan municipal  
corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

125831.000007 4896-8881-5718.1

**EXHIBIT 1**  
(Setback Plan)

DRAFT

**EXHIBIT 2**  
(Neighbor Parcel Plan)

125831.000007 4896-8881-5718.2

DRAFT



## GRETCHEN DRISKELL

Water Resources Commissioner

705 N Zeeb Road  
Ann Arbor, MI 48103  
734-222-6860

[Drains@washtenaw.org](mailto:Drains@washtenaw.org)

Harry Sheehan  
Chief Deputy Water Resources Commissioner

Scott Miller, P.E.  
Deputy Water Resources Commissioner

Theo Eggermont  
Public Works Director

October 6, 2025

Mathew Bush, PE  
Atwell, LLC  
311 N. Main Street  
Ann Arbor, MI 48104

RE: Arbor Preserve North and South  
Lodi Township  
WCWRC Project No. 7572

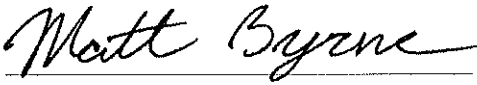
Dear Mr. Bush:

This office has reviewed the construction plans for the above referenced project located in Lodi Township. These plans have a job number of 20000349, a date of January 7, 2025, a most recent revision date of September 24, 2025, and were received on September 30, 2025. As a result of our review, we would like to offer the following comments:

1. The plans are technically correct and do not require revisions at this time. Any changes to the stormwater management system from subsequent 433 reviews, other agencies or during construction will require review and approval from our office.
2. We understand that multiple piezometers have been installed to measure groundwater observations throughout the year. If the results of this study show that groundwater is impacting the stormwater management system, design modifications will be required to ensure that the current stormwater requirements are satisfied.
3. Please provide a copy of the approved EGLE Joint Permit for wetland impacts and EGLE Part 41 permit for wastewater facilities construction. The above permits must be obtained before the start of construction.
4. This site will be under the jurisdiction of the Washtenaw County Water Resources Commissioner. A mechanism to provide for the long-term operation and maintenance of the storm drainage facilities is required. This can be accomplished by the establishment of a county drain and drainage district under provisions of section 280.433 of the Michigan Drain Code.
5. Our office will draft the 433 Drainage District Agreement. The following information will be required to complete the document.
  - a. The name(s) and address(es) of all owner/developer(s) and his/her correlating title(s) if signing on behalf of an organization. Please also provide the owner/developer(s) phone number and email address for future correspondence.
  - b. The marital status of any male grantors unless signing on behalf of an organization.

If you have any questions, please do not hesitate to contact me via email at [byrnem@washtenaw.org](mailto:byrnem@washtenaw.org).

Sincerely,

A handwritten signature in black ink that reads "Matt Byrne". The signature is written in a cursive style and is positioned above a horizontal line.

Matt Byrne, P.E.  
Stormwater Engineer  
(drainage district\ Arbor Preserve North and South\_rev6)

cc: Christina Smith, Lodi Township Clerk  
MC Moritz, Lodi Township Engineer (OHM)

Items I'd like clarified by the Planner, Engineer & Attorney:

1. Have all the conditions been met listed on Exhibit 2 of the CJ?
  - a. Have the wetland setback issues been resolved, with TB agreeing to a smaller house footprint on lot #26 in South?
  - b. Can a yard, road, sidewalk be in the 25' wetland setback if approved by the Township?
  - c. For clarification – a wetland setback can be within a yard and maintained by the homeowner as a wetland area.
2. Have the 4 items the PC states as findings of facts been addressed?
3. Is it correct that the WWTP (when/if approved) will be drained into the detention ponds on site then those ponds will flow through the natural runoff process?
4. The Atwell correspondence received on August 12, 2025, has the runoff calculations along with Atwell responses to WCHD, and WCHD letter dated 9.16.2025 where Atwell states that all drainage areas have been revised to include all house footprints which will be captured via downspout routing to roadway or rear yard catch basins, any rear yard areas that are undetained will flow as they do currently in existing conditions. Does the Planner/Engineer have any concerns that the runoff of those undetained will affect the Miller property?
5. Toll Brothers has made every effort to address the tree replacement issue. With the developer providing 2 trees to each lot and increasing the number of trees in the updated plans that gets the number down to \_\_\_\_\_ trees that can not be mitigated on the property.
6. The easement provided for in South meets those of a private road, and will be built to those specs and inspected/approved by Township Engineer to allow for access to the landlocked property. This property will have public access on a privately maintained road, correct? If and when that property is sold whoever purchases it will be granted access through Arbor Preserve South, correct? Toll Brothers is reserving the right to have AP South gated or not, or remove the gates at such time that property changes hands is acceptable by the Planner...where does this need to be documented?
7. The Board of Trustees can decide if the momentary donation to the Township in lieu of the trees that cannot be replaced on site. This is something that only can be decided by the Board of Trustees, therefore will need to be addressed in an amendment to the CJ, to be clear the Township does not have to take the funds, and since there is nothing in the zoning ordinance that states what the process is if the trees cannot be mitigated on site, this is seen as a good faith effort by the developer.
8. Confirm that the open space calculations have been calculated correctly per the Township Ordinance.

9. Conservation Easement – please clarify who is in charge of that, and how it will be enforced? Is this a question for Toll? Will this be addressed in the HO bylaws?
10. Natural Features Statement – what was the PC's role here? Can you clarify as to why it has been stated the PC didn't approve it.
11. 100' natural features of the property – this is required per the ZO? On the plans there are natural features that go beyond the property, Atwell/Toll stated they don't trespass on properties to complete this, was this done with mapping sites? Can you clarify if what is shown on the plans as far as land contours etc...that extend beyond the property line are in fact the "natural features" that are required per the ZO?

#### Questions for Jesse-

1. What happens if the board denies this development?
2. Can Toll Brothers take us back to court?
3. What damages can Toll add to the lawsuit?
4. Is there any scenario where it could be stopped and there be no development on this property without any penalty to the Township/tax payers of the Township
5. If this does go back to court what is the possibility of the amended CJ being overturned for some reason and the Judge ordering the property go back to the original CJ?
6. Trees-are trees a reason to fight this development?
7. Drainage on to the neighboring properties – if the Township Engineers, county health, county soil erosion, and state agencies all give approvals for the drainage, what is the basis for the Township to deny the project?
8. If the PC didn't give specifics for their reasons, what are we to do?
9. Can the Board deny this project on ANY OTHER zoning issues not listed in the CJ or by the PC? If I am understanding correctly the development has been approved in the CJ with stipulations in exhibit #2, the area plan that was approved as part of the CJ can be modified, which they have done to make the plans in compliance with exhibit #2, can the board now go back and say Toll doesn't meet different zoning ordinance and not approve it?

## Christina Smith

---

**From:** Leslie Blackburn  
**Sent:** Tuesday, October 14, 2025 11:07 AM  
**To:** Christina Smith  
**Subject:** Questions for the Planner for review before Oct 20 meeting  
**Attachments:** Questions and points requested to be reviewed by Planner.pdf; Toll Brothers \_Arbor Preserve\_ Violations, Deviations Summary v2.pdf

Hi Christina, as Jesse suggested could you please send this to Hannah Smith, for review before our October 20th meeting.

Hannah, please review the attached questions and concerns. This is a long list, and for any items that you can easily respond to ahead of time please do and thank you so much. Then the others that may take longer we can discuss in the meeting.

Attached are the "Questions and points requested to be reviewed by planner" dated 2025-10-14 And referenced Executive summary of "Toll Brothers ACJ violations and deviations" that was previously sent to the board on 2025-10-07.

I wanted to get this first part out as soon as I could. I may follow-up with more questions if needed.

Thank you so much,

*Leslie*

**Leslie Blackburn**

**Lodi Township Trustee**

**pronouns:** they/them

(why this is important: pronouns)

**email:** [leslie@loditownshipmi.org](mailto:leslie@loditownshipmi.org)

[loditownshipmi.org](http://loditownshipmi.org)



1. Wetland setbacks. Hannah, I believe I heard you say your list of lots that still showed violations of the 25 foot setbacks seemed to match mine in the meeting. Can you confirm this?
  - a. South: Units 14, 15, 16, 17, 18, 21, 22, 23, 24, 30, 31, 34, 35, 36, 37, 43, 46, 47 for a Total of at least 18 units out of 52
  - b. North: Units 25, 26, 27, 29, 30, 31, 33, 34, 37, 38, 39, 43, 45, 46, 47, 48, 49, 50, 53, 54, 55 for a Total of at least 21 units out of 55
  - c. A total of at least 39 units in violation of the 25' wetland setbacks.
  - d. Also planner states (Oct 1, 2025 report) this was not addressed satisfactorily: "a road, sidewalk, and yard areas" in violation. Can you list specifics as to which roads and sidewalks?
2. Can you confirm the wetland setbacks must be protected before construction and confirm the review of the grading plans show that many are slated for destruction?
  - a. Review of grading plans shows areas marked by the edge of construction/silt fence (--xx--) line are in violation of ZO 54.08.F.2.c
    - i. Spot check: Unit 31 in South shows the construction line 14' from the wetland boundary. (not exhaustive, many more examples)
3. Can you confirm/list the side/front yard setback violations in latest plans (after the developer moved buildings in attempt to alleviate wetland setbacks)?
  - a. Plans violate yard setback agreements from the ACJ, which are deviations to the ZO. Applicant is requesting additional deviation to the deviation in yard setback requirements agreed to in the ACJ.
    - i. The ZO 30.101 requires a front yard set back of 100 feet.
    - ii. During the preliminary site plan process, the applicant requested a deviation and it was agreed in the ACJ to a reduced front yard setback of 68 feet from the center of road (ACJ page 5).
    - iii. In a letter dated Sept 18, 2025, the applicant is requesting a deviation to the ACJ agreement for front yard setbacks for 17 lots.
    - iv. Plans show Unit 26 is 54 ft, Unit 30 is 54 ft, Unit 34 is 58 ft, Unit 45 is 63 ft to the center of road, which are violations of the agreed ACJ setbacks. This is a non-exhaustive list as result of a spot check of these four properties. Can you confirm/list all of them?
4. Where are the high water mark lines of watercourses? Some have claimed verbally that these are the same as the wetland boundaries, but where is this documented in the plans?
5. Confirm the applicant's landmark tree list is missing trees, details below. Can you confirm this?
  - a. plans violate tree inventory and replacement requirements (ACJ bullet 8, section 54.08.O)
    - i. Applicant is required to provide tree inventory with landmark trees correctly identified (ACJ bullet 8, section 54.08.I.2)

1. Applicant's tables show 23 landmark species, but review of the data in the tables show that they missed four (4) for a total of 27 Landmark species and mis-categorized at least 3 others:
  - a. Ironwood, Common Apple, Apple/Crabapple, Pear 8" and over were missed being categorized as Landmark entirely.
  - b. Black Cherry, Quaking Aspen, and Eastern Redcedar: the ones over 14" were correctly categorized, but they missed the ones in the 12-14" range.
  - c. Applicant missed at least 89 trees being classified as Landmark due to this.
2. Applicant only mentions a few species in the Natural Features Analysis, and emphasizes invasive species, but ignores the majority of trees. There are 44 tree species listed in the applicant's tables, yet most aren't mentioned in their Natural Features Analysis.
3. Applicant states in the Natural Features Analysis that "A total of 524 Landmark trees were identified within the site". This is incorrect and low. There are over 950 landmark trees:
  - a. The applicant's tables show at least 657 landmark trees
  - b. They are missing 288 Landmark/434 total trees due to grouping of trees
  - c. They are missing at least 89 due to species they missed.
4. Applicant never summarizes their own data
  - a. Preliminary site plans (2023) only mentioned 83 trees (proposing to destroy 38 of them), whereas review of their tables from the Feb 2025 plans shows there are actually over 6,100 trees and they are proposing destroying over 3,500 of them
  - b. At least 945 landmark trees exist on the sites and they are proposing destroying at least 457 of them.
6. How does the planner sign off on the Natural Features Analysis when the applicant has not done the survey of 100 ft beyond the edges of the property (54.08.D.5) and assessed impact and possible mitigation of impact? And when the Planning Commission has not approved it (required by 54.08.C.1)? And where is the assessment against the rest of the ordinance? Including but not limited to the ones named in the attached document.
7. Are any of these areas floodplains, if so what about additional flood plain regulations? This could be a potential ordinance violation.
  - a. Has applicant provided required floodplain documentation of compliance with Sec 54.07.D (ordinance 54.08.D.4.a.5)? The Board has not seen this documentation, can you send it?
    - i. Also note if there are floodplains, this could change open space calculations.
8. Applicant data discrepancies within the plans:

- a. Gross and net acres vary from the preliminary plans, what changed? It appears applicant is using old numbers in open space calculations.

| ACRE  | Prelim & Feb 2025 |       |        |
|-------|-------------------|-------|--------|
|       | North             | South | TOTAL  |
| Gross | 46.6              | 59.9  | 106.5  |
| Net   | 35.1              | 42.7  | 77.8   |
|       | May-Sep 2025      |       |        |
|       | North             | South | TOTAL  |
| Gross | 46.61             | 60.07 | 106.68 |
| Net   | 35.11             | 42.87 | 77.98  |

9. Niswander wetland study: shows 10.494 AC wetland total, 3.9 AC in North and 6.6 AC in South before development. The numbers given on the front page of the plans differ from these. What is included in the plan numbers? Does this change Open Space calculation?
10. Open space
- Can you confirm the developer is counting the boardwalk as open space? If you look closely at the open space diagram of the site plans, it appears the boardwalk has hash-marks, indicating the developer is counting these as open space, whereas ordinance 45.10.E states clearly that "A pedestrian way shall be treated as an easement" and thus is not open space. Also, much of the boardwalk is within the ROW, and thus cannot be counted as open space.
  - How can "open space" be claimed inside Detention Basin areas?
    - Toll is including spillways, these are not buildable land
    - What is the solid black line around the detention basins? Is this the freeboard line? What is this designed for: a 10-year storm? 100-year? Other?
11. Why does the South property line go through the right side of the road (lower right corner)?
12. Plans mention "Scio Twp" (not Lodi Twp) on manhole covers and standards for storm sewer construction, sanitary sewer construction standards, water main construction, etc. This has not been called out nor corrected, even on latest plans (Aug 2025).
13. What is Applicant calling a "Heritage Tree" in it's site plans?
- Is this the same as Landmark tree?
  - For example, sheet 7 in North, sheet 9 in South.
14. Please provide the plans dated Sept 24, 2025, referred to in the WCWRC letter dated Oct 6, 2025

15. Please confirm these plans address the issues raised in the WCWRC letter dated June 17, 2025
16. Can you confirm which floor plans are being proposed? The ones submitted to Lodi include four options (Decker, Haslett, Morenci and Holt). However, the plans show at least 5 house shapes, are there other floor plans that need to be reviewed? The floor plans submitted to EGLE name a different set of floor plans.
17. Gelman dioxane plume concerns
  - a. Residents have been concerned that the wells would draw the Gelman plume towards Lodi Twp. Someone said no, the underground aquifer structure makes that impossible. Need to confirm this: who said this and where is the documentation?

Attached: Toll Brothers \_Arbor Preserve\_ Violations, Deviations Summary v2.pdf

| Toll Brothers "Arbor Preserve" Plan Violations/Deviations Summary |                                     |                                                                                                                                                                                                                                |                                                  |                                                                   |
|-------------------------------------------------------------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-------------------------------------------------------------------|
| Ordinance requirement                                             | Ordinance #                         |                                                                                                                                                                                                                                | ACJ 2023                                         | Latest plans<br>(Aug/Sep 2025)                                    |
| Wastewater Treatment Plants                                       | 55.10.B                             | Not allowed                                                                                                                                                                                                                    | Deviation Approved:<br>Allowed                   |                                                                   |
| Open Space                                                        | 42.301.G.2                          | 50%                                                                                                                                                                                                                            | Deviation Approved:<br>45% (South) / 35% (North) | Violation:<br>33.5% (South)                                       |
| Density                                                           | 30.204                              | 1 DU/AC                                                                                                                                                                                                                        | Deviation Approved                               |                                                                   |
| Perimeter Setbacks                                                | 42.301.E.1,<br>30.203.E             | Transition buffer: 15'                                                                                                                                                                                                         | Deviation Approved:<br>0'                        |                                                                   |
|                                                                   | 42.301.E.2,<br>30.203.D             | Landscape strip: 20'                                                                                                                                                                                                           | Deviation Approved:<br>0'                        |                                                                   |
|                                                                   | 42.301.E.5.a                        | Perimeter open space: 20'                                                                                                                                                                                                      | Deviation Approved:<br>0'                        |                                                                   |
|                                                                   | 42.301.E.5.b                        | ROW: 50'                                                                                                                                                                                                                       | Deviation Approved:<br>40'                       |                                                                   |
| Wetland Mitigation                                                | 54.08.L                             | Must be within immediate vicinity                                                                                                                                                                                              | Must be in Lodi Twp                              | Violation:<br>Deviation requested                                 |
| Wetland Setbacks                                                  | 54.08.E.6.a                         | 25' in general                                                                                                                                                                                                                 | Setbacks required                                | Violation: 39 yards, a road,<br>sidewalk within setbacks          |
|                                                                   | 54.08.E.6.c                         | 50' for buildings                                                                                                                                                                                                              | Setbacks required                                | Violation:<br>1 building within setback                           |
| Watercourse Setbacks                                              | 54.08.F.2.c                         | 50' for construction activity                                                                                                                                                                                                  |                                                  | Violation:<br>numerous cases                                      |
| Yard Setbacks                                                     | 30.101                              | Front yard: 100'                                                                                                                                                                                                               | Deviation Approved:<br>68'                       | Violation (many yards < 68')<br>Deviation requested               |
|                                                                   | 30.101                              | Side yard: 15' each, 35' total                                                                                                                                                                                                 | Deviation Approved:<br>10' each, 40' total       |                                                                   |
| Lot Size                                                          | 30.101                              | >= 43,560 sq ft                                                                                                                                                                                                                | Deviation Approved:<br>13,440 sq ft              |                                                                   |
| Lot Width                                                         | 30.101                              | >= 150'                                                                                                                                                                                                                        | Deviation Approved:<br>96'                       |                                                                   |
| Tree Inventory/Replacement                                        | 54.08.I.2                           | Landmark trees must<br>be correctly identified                                                                                                                                                                                 | Required                                         | Violation: missing and<br>mis-categorized data                    |
|                                                                   | 54.08.O                             | Replacement shall be<br>on the same parcel                                                                                                                                                                                     |                                                  | Violation:<br>Deviation requested                                 |
| Natural Features                                                  | 54.08.C.1                           | Natural Features Statement subject<br>to Planning Commission approval                                                                                                                                                          |                                                  | Violation: not<br>approved by PC                                  |
|                                                                   | 54.08.B.5                           | Unnecessary tree removal prohibited                                                                                                                                                                                            |                                                  | Violation                                                         |
|                                                                   | 54.08.D.4.a,<br>54.08.D.5.a.1       | Inventory must<br>include 100' around site                                                                                                                                                                                     |                                                  | Violation                                                         |
|                                                                   | 54.08.E.6.a.2                       | Plans must include<br>include high water marks                                                                                                                                                                                 |                                                  | Violation                                                         |
|                                                                   | 42.002                              | No cutting of trees until<br>all requirements met                                                                                                                                                                              |                                                  | Violation: developer illegally<br>logged trees                    |
|                                                                   | 54.08.D.4.a.4.e,<br>54.08.D.4.a.4.h | Plans must include trees w/<br>numbered dots on map                                                                                                                                                                            |                                                  | Violation                                                         |
|                                                                   | 54.08.D.4.a.4.e                     | Plans must include trees w/<br>ground elevation for each                                                                                                                                                                       |                                                  | Violation                                                         |
|                                                                   | 54.08.D.4.a.4.e                     | Plans must include required<br>tree grouping information                                                                                                                                                                       |                                                  | Violation                                                         |
|                                                                   | 54.08.D.4.a.4.a                     | Plans must include required<br>natural feature type/location                                                                                                                                                                   |                                                  | Violation (e.g. South has A-L<br>described but not on map)        |
|                                                                   | 54.08.D.4.a.4.f                     | Plans must include diversity<br>of tree species                                                                                                                                                                                |                                                  | Violation (e.g. 44+ species exist<br>but not named in assessment) |
|                                                                   | 54.08.D.4.a.4.g                     | Value/benefits of area must be listed                                                                                                                                                                                          |                                                  | Violation                                                         |
| PUD Eligibility                                                   | 42.301.A.8                          | 1+ required: open space conservation,<br>preservation of natural resources, public benefit                                                                                                                                     |                                                  | Violation                                                         |
|                                                                   | 42.301.A.6                          | Plans must not impede<br>development of surrounding properties                                                                                                                                                                 |                                                  | Violation: adverse effect on<br>neighbors properties              |
| Surface Water Flow                                                | 55.02.B                             | No increase of surface water allowed                                                                                                                                                                                           |                                                  | Violation                                                         |
| Others                                                            |                                     | Planned WWTPs are significantly undersized<br>WWTPs violate county/state requirement of 2000' isolation distance from community wells<br>Violates the States "natural flow doctrine" which has been upheld in court many times |                                                  |                                                                   |
|                                                                   | 55.09.D                             | WWTPs are missing 200' setback and 6' fence                                                                                                                                                                                    |                                                  |                                                                   |
|                                                                   | 54.08.H.2.a                         | Plans violate wellhead protection areas (Ann Arbor Steere Farm Wellhead Protection Area)                                                                                                                                       |                                                  |                                                                   |
|                                                                   | 42.003                              | Deviations must result in higher quality of development than would be possible without                                                                                                                                         |                                                  |                                                                   |
|                                                                   | 44.11                               | Grading/filling must not destroy/adversely affect character of the property or adjacent properties                                                                                                                             |                                                  |                                                                   |
|                                                                   |                                     | Proposed entry/gate appearance is not in character of the township (a master plan violation)                                                                                                                                   |                                                  |                                                                   |
|                                                                   | 53.07                               | Misleading signs are prohibited ("Arbor Preserve" is misleading)                                                                                                                                                               |                                                  |                                                                   |
| (this is not an exhaustive list)                                  |                                     |                                                                                                                                                                                                                                |                                                  |                                                                   |



## CITY OF ANN ARBOR, MICHIGAN

301 E. Huron St., P.O. Box 8647 • Ann Arbor, Michigan 48107-8647

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VIA Regular Mail and email ([BraunT2@michigan.gov](mailto:BraunT2@michigan.gov))

October 3, 2025

Tom Braun  
Permits Section, WRD  
Department of Environment, Great Lakes, and Energy  
PO Box 30458  
Lansing, MI 48909-7958

RE: Permit No. MI00060383 Arbor Preserve South WWTP  
Permit No. MI00060385 Arbor Preserve North WWTP

Dear Mr. Braun,

Please accept this letter as the City of Ann Arbor's public comment on Permit Nos. MI00060383 and MI00060385 relating to the proposed WWTPs for Arbor Preserve South and North.

The City of Ann Arbor provides drinking water to more than 140,000 people in Ann Arbor and surrounding communities. Our groundwater wells at Steere Farm are protected by a designated Wellhead Protection Area (WHPA), which is central to ensuring the long-term safety and reliability of the City's public water supply. Because these areas directly contribute groundwater to public supply wells, regulated WWTP discharges within them are concerning and warrant the most rigorous oversight.

Permits MI00060383 and MI00060385 propose discharges from private wastewater treatment plants within the City's WHPA, and the location of these proposed discharges require careful and consistent regulation by the State.

Accordingly, the City respectfully urges EGLE to:

1. Ensure rigorous oversight and inspection of the wastewater treatment facility during construction, start-up, and ongoing operations.



## CITY OF ANN ARBOR, MICHIGAN

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2. Require the operator to consistently meet the highest state and federal standards for wastewater treatment and effluent discharge.
3. Implement robust accountability measures, including transparent monitoring and public reporting, to ensure compliance and protect the integrity of the WHPA.

The City wants to ensure that any activity with potentially negative impacts to its drinking water supply and regional water quality is managed with the utmost care. The City values EGLE's leadership in safeguarding Michigan's water resources. In this case, the sensitivity of the WHPA makes it especially important that EGLE uphold the highest standards of environmental protection, public health, and accountability.

Thank you for your continued commitment to protecting our state's drinking water supplies.

Sincerely,

A handwritten signature in black ink, appearing to read "J C Roberts", is written over a horizontal line.

Jordan C. Roberts  
Public Services Area Administrator  
City of Ann Arbor, Michigan

CC: Jan Godek, Lodi Township Supervisor  
Milton Dohoney Jr., Ann Arbor City Administrator

Jan Godek  
Township Supervisor  
Lodi Township  
3755 Pleasant Lake Road  
Ann Arbor, MI 48103



Re. Red Equities-Toll Brothers  
Arbor Preserve North and South Final Site Plan Approval

Dear Supervisor, Godek,  
We own Orchard Grove manufactured home community in Lodi Township adjacent to the new Toll Brothers Arbor Preserve North and South with 107 homes on approx..107 acres directly adjacent to our property to our north and east . We fully support these new Toll Brothers neighborhoods, with no concerns and believe they will be a great neighbor and asset for Lodi Township.  
Please distribute our support letter to your Trustees accordingly.

Yours truly,

Orchard Grove Village, LLC  
By: Newbury Management Company, its authorized agent

By: \_\_\_\_\_  
Joel K. Brown, President

*-signature on emailed  
letter - won't print*

Don

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

PETERS-SUMMITT, LLC, a Michigan  
limited liability company,

Plaintiff,

v

Case No. 05-001086-NZ

Hon. Archie C. Brown

LODI TOWNSHIP, a Michigan  
municipal corporation,

Defendant.

---

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**ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE**

At a session of said Court held in the City of Ann  
Arbor, County of Washtenaw, State of Michigan, on

June 29, 2021

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Before the Court is Plaintiff's Motion for an Order to Show Cause Why Defendant Lodi Township Should Not Be Held in Contempt for Violation of Consent Judgment. A response has been filed. Oral argument occurred on February 4, 2021.

At issue is the application of a Consent Judgment signed on February 13, 2007 ('2007 Judgment'). The 2007 Judgment changed the zoning of the at issue property from Agriculture to Low Density Multi-Family Residential (R-3). In 2020, Plaintiff submitted for review two site plans. The submission included two separate development proposals on only a portion of the original 206 acres (resulting in a 20 acre middle section that was not part of the proposal) and also included a private waste-water treatment system. Prior to the undertaking the required administrative review process, Plaintiff elected to withdraw their 2020 submission before any action had been taken by Defendant.

At issue in the 2007 Judgment is ¶2:

2. The zoning of the Property is changed from AG (Agricultural) to R-3 (Low Density Multi-Family Residential) and Defendant is permanently enjoined from interfering with Plaintiff's use of the Property in a manner consistent with the R-3 zoning designation, as that designation was defined in Article 22.0 of the Lodi Township Zoning Ordinance as of July 22, 2004.

Plaintiff argues that Defendant is interfering with Plaintiff's use of the property in a manner consistent with the R-3 zoning designation as that designation was defined in Article 22.0 of the Lodi Township Zoning Ordinance as of July 22, 2004 ("2004 Zoning Ordinance"). Defendant applied its current Zoning Ordinance to Plaintiff's site plans; arguing that Plaintiff failed to file the site plans/PUD plans within a reasonable time as detailed in ¶4 of the 2007 Judgment.

4. Plaintiff shall submit its site plan for uses consistent with the R-3 zoning classification or, in the alternative, an application for a PUD zoning classification, as soon as is reasonably possible following the entry of this Consent Judgment.

The Court first addresses the issue of standing. Peters-Summit LLC was the original Plaintiff in this cause of action. On December 22, 2020, an Assignment Agreement was entered into by "Peters-Summit, LLC a Michigan limited liability company, by Lodi-Summit, LLC" and "Red Equities, LLC a Michigan limited liability company." Defendant argues that Red Equities

does not have standing as Lodi-Summit, LLC failed to provide evidence that Lodi-Summit had authority to sign on behalf of Peters-Summit, LLC.

The 2007 Judgment specifically states in ¶1 that the 2007 Judgment runs with the land.

1. This Consent Judgment shall run with the land (the above described Property) and shall apply to and be binding upon Plaintiff, Peters-Summit, LLC, and Defendant, Lodi Township, and their successors and assigns.

Santa Claus could have signed the assignment agreement and it would not change this Court's analysis on enforcement of the 2007 Judgment. The 2007 Judgment runs with the property:

**DESCRIPTION OF A 206.20 ACRE PARCEL OF LAND  
LOCATED IN SECTION 1, T3S, R5E, LODI TOWNSHIP,  
WASHTENAW COUNTY, MICHIGAN**

**BEGINNING** at the N ¼ Corner of Section 1, T3S, R5E, Lodi Township, Washtenaw County, Michigan; thence N87°46'05"E 917.38 feet along the North line of said Section 1 and the centerline of Selo Church Road (variable width); thence S00°30'05"E 2218.96 feet; thence S88°18'48"W 888.91 feet along the East-West ¼ line of said Section 1; thence S01°13'56"E 2646.78 feet along the North-South ¼ line of said Section 1; thence S88°20'01"W 1297.02 feet along the South line of said Section 1 and the centerline of Waters Road (66 feet wide); thence N01°27'41"W 1984.84 feet along the West line of the East ½ of the SW ¼ of said Section 1; thence S88°19'29"W 1304.96 feet along the South line of the North ½ of the NW ¼ of the SW ¼ of said Section 1; thence N01°41'25"W 661.54 feet along the West line of said Section 1 and the centerline of Wagner Road (66 feet wide) to the West ¼ corner of said Section 1; thence continuing along said West line and said centerline N01°21'44"W 664.09 feet; thence N87°30'04"E 1723.52 feet; thence N01°14'19"W 468.88 feet along the West line of the East ½ of the NW ¼ of said Section 1; thence N87°29'13"E 445.00 feet; thence N01°14'19"W 1039.13 feet; thence N87°29'13"E 448.87 feet along the North line of said Section 1 and the centerline of Selo Church Road to the Place of Beginning, being a part of the N ¼ and the SW ¼ of said Section 1, containing 206.20 acres of land, more or less, being subject to the rights of the public over the Northerly 33.00 feet thereof, as occupied by said Selo Church Road, being subject to the rights of the public over the Southerly 33.00 feet thereof, as occupied by said Waters Road, being subject to the rights of the public over the Westerly 33.00 feet thereof, as occupied by said Wagner Road. Also being subject to easements and restrictions of record, if any.

The Court enforces orders and, in this case, the Court enforces the order as to the property.

The Court finds Plaintiff's argument as to ¶2 and which zoning rules apply (2004 or current) to overreach the face of the agreement. Paragraph 2 specifically sets forth that "Defendant is permanently enjoined from interfering with Plaintiff's *use* of the Property in a manner consistent with the R-3 zoning designation." (emphasis added) The 2004 zoning

ordinance (Article 22.0). Section 22.02 defines "Permitted Uses" and Section 22.03 defines "Special Uses" and the Court limits the application of the 2004 Zoning Ordinances to those definitions of "Use". Had the parties intended to assume the entirety of the 2004 Zoning Ordinances, in perpetuity to the property, the 2007 Judgment would have specified as such.

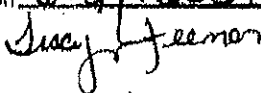
The Court has reviewed the Motion, Response, Oral argument, the February 13, 2007 Consent Judgment and the Court file, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for an Order to Show Cause Why Defendant Lodi Township Should Not Be Held in Contempt for Violation of Consent Judgment is DENIED.
  - a. Application of the 2004 Lodi Township Zoning Ordinances to the specified property is limited to the defined permitted/special uses found in §22.02 and §22.03.
  - b. Other than as stated above, Defendant shall apply the current Zoning Ordinance associated with R-3 Low Density Multiple-Family Residential District at the time of the site plan approval process.

**IT IS SO ORDERED.**



Hon. Archie C. Brown  
Circuit Court Judge

Proof of Service  
I hereby certify that I served a copy  
of the foregoing document upon the  
attorneys of record and/or the parties in  
this case on the DATE NOTED below:  
PERSONALLY on \_\_\_\_\_  
FIRST CLASS MAIL on \_\_\_\_\_  
VIA EMAIL on 6-29-2007  




**TOKIOMARINE  
HCC**

Tokio Marine HCC - Public Risk Group  
1700 Opdyke Court, Auburn Hills, Michigan 48326  
Main 248.371.3100/800.225.6561 Facsimile 248.371.3091

January 25, 2021

**VIA EMAIL ONLY**

Lodi Township  
c/o Christina Smith  
Township Clerk  
[christina@loditownshipmi.org](mailto:christina@loditownshipmi.org)

Jan Godek  
Township Supervisor  
[jan@loditownshipmi.org](mailto:jan@loditownshipmi.org)

Jesse O'Jack, Esq.  
Township Attorney  
[jojlaw@msn.com](mailto:jojlaw@msn.com)

|                 |                                      |
|-----------------|--------------------------------------|
| Claim #:        | 198463                               |
| Insured:        | Lodi Township                        |
| Program:        | Michigan Township Participating Plan |
| Policy #:       | HMTP-361783                          |
| Effective Date: | 9/1/2020 – 9/1/2021                  |
| Claimant:       | Red Equities, LLC                    |

Dear All,

Tokio Marine HCC – Public Risk Group is the Claims Administrator for the Michigan Township Participating Plan ("MTPP") and US Specialty Insurance Company ("USSIC")<sup>1</sup>. On 1/6/2021, we received a copy of a Motion to Reinstate Case for Enforcement of Consent Judgment and for Substitution of Parties filed by Red Equities, LLC ("Red") on 1/5/2021.<sup>2</sup> The Motion to Reinstate seeks to reopen Case No. 05-1086-NZ in the Washtenaw County Circuit Court that was previously filed by Peters-Summit, LLC against Lodi Township ("Township"). On or about 2/13/2007 a consent judgment was entered as a final order resolving that case ("Consent Judgment"). On 1/15/2021, Red also filed a Motion for Order to Show Cause Why Defendant Lodi Township Should not be Held in Contempt for Violation of Consent Judgment ("Motion to Show Cause").<sup>3</sup>

We are directing this letter to you as representatives of the Township authorized to receive this coverage related correspondence. If this is not the case, please let us know immediately. In the event that you no longer serve as the Township's authorized representatives for insurance coverage purposes, please forward this letter to the Township's authorized representatives and provide us with their contact information.

**Coverage Summary**

The purpose of this letter is to provide you with MTPP's position with respect to coverage for the Motions. For the reasons discussed herein, we evaluated coverage under the Public Officials Liability form of package policy HMTP-361783 with effective dates 9/1/2020 – 9/1/2021 issued to the Township

<sup>1</sup> Hereinafter collectively referred to as MTPP.

<sup>2</sup> This filing will hereinafter be referred to as the "Motion to Reinstate."

<sup>3</sup> The Motion to Reinstate and Motion to Show Cause will be collectively referred to herein as the "Motions."

by MTPP. **For the reasons set forth below, there is no coverage for indemnity or defense of the Township related to the Motions. Accordingly, and as previously advised, the Township should maintain legal representation and protect its interests in this matter.**<sup>4</sup>

### **Claim Summary**<sup>5</sup>

The Consent Judgment resolved and finalized the lawsuit previously filed by Peters-Summit, LLC ("Peters-Summit") against the Township and provided in part that 206 acres of property owned by Peters-Summit in the Township (the "Property") would be rezoned from AG/Agricultural to R-3/Low Density Multi-Family Residential so that the Property could be further developed.<sup>6</sup> However, due to the downturn in the market in 2007 and 2008, Peters-Summit did not pursue development of the Property following entry of the Consent Judgment and rezoning of the Property.

The Motion to Reinstate asserts that in July 2019, Red was created for the purpose of residential real estate development. The Affidavit of Gilbert "Buzz" Silverman (Managing Member of Red) that was filed with the Motion to Reinstate states that on 12/22/2020, Peters-Summit executed an Assignment Agreement assigning all of its rights, title and interest in the Consent Judgment to Red. It also states that Red is the contract purchaser of 5 parcels of land within the Property<sup>7</sup> and that those parcels are subject to the terms of the Consent Judgment. Red alleges that the Consent Judgment runs with the land and applies to and is binding upon Peters-Summit, the Township and their successors and assigns. As a result of the Assignment Agreement, Red alleges it has the right to develop the 5 parcels in accordance with the terms of the Consent Judgment. It further alleges that the Consent Judgment provides that not only was the zoning of the Property (which includes the 5 parcels) changed from AG to R-3, but that the Township was also "permanently enjoined from interfering with Plaintiff's use of the property in a manner consistent with the R-3 zoning designation as that designation was defined in Article 22.0 of the Lodi Township Zoning Ordinance as of July 22, 2004."<sup>8</sup>

In the Summer of 2020, following its purchase of the 5 parcels (and before the execution of the Assignment Agreement) Red advised the Township of its intent to develop the 5 parcels. On 7/27/2020, the Township Attorney sent a letter to Red's Attorney advising in part that Red should "submit an application that complies with R-3 zoning as it was designated on July 22, 2004, and in compliance with other ordinances and laws." On 10/12/2020, Red submitted site plans to the Township Planning Commission ("Township PC") for 2 adjacent developments to be located within the 5 parcels, referred to as Arbor Preserve North and Arbor Preserve South ("Proposed Development"). On 12/7/2020, Donald Pennington, the Township Land Use Planning Consultant, issued a Preliminary Site Plan Report ("Report") to the Township PC regarding this Proposed Development, which concluded that the site plan failed to meet the standards of the "current Zoning Ordinance." Upon receipt of the Report, Red sent a letter to the Township Attorney on 12/11/2020 contending that Mr. Pennington had erroneously applied the current Zoning Ordinance inconsistent with the terms of the Consent Judgment. In an email response dated 12/14/2020, the Township Attorney advised that the Consent Judgment does not require the Township to apply the 2004 Zoning Ordinance.

<sup>4</sup> It is our understanding from discussions with Mr. O'Jack that the Township assigned Fred Lucas to represent it in the Motions filed by Red and discussed herein.

<sup>5</sup> Information contained herein was obtained from the Motion to Reinstate and related filings, unless otherwise indicated. We recognize that allegations made in the Motion to Reinstate and related filings may be unsubstantiated contentions at this time. Nothing in this letter is intended to suggest or imply that these allegations have any legal or factual merit.

<sup>6</sup> This matter is hereinafter referred to as the "Peters-Summit Lawsuit." It was submitted to MTPP and handled under Claim 123349. Following entry of the Consent Judgment, that matter was closed.

<sup>7</sup> It's not clear from the Affidavit or other filings as to whether these 5 parcels comprise the entire 206 acres of the Property or are only a portion of the Property.

<sup>8</sup> See ¶ 9 of the Lawsuit.

Red alleges that the Township has a long history of obstructing and delaying residential development within its borders and its wrongful conduct is causing Red to suffer significant lost profits and delay damages.

The Motion to Reinstate seeks to have the court issue an order setting aside the Consent Judgment and dismissal and substituting Red in for Peters-Summit as Plaintiff in the Peters-Summit Lawsuit.<sup>9</sup>

On 1/15/2021, Red also filed a Motion for Order to Show Cause Why Defendant Lodi Township Should not be Held in Contempt for Violation of Consent Judgment, which was emailed to the undersigned on 1/17/2021. A hearing is scheduled for 2/4/2021 at 10:00 a.m. This motion asserts almost identical factual allegations to those asserted in the Motion to Reinstate and discussed above and seeks the following relief: Grant motion and enter order: (a) the Township appear before the Court and show cause why it should not be held in civil contempt of court under MCL 600.1707(g) and MCR 2.621(F) for violating the Consent Judgment; (b) that the Consent Judgment requires the Township to apply its 2004 Zoning Ordinance to Plaintiff's site plan; (c) sanctions against the Township for violating the terms of the Consent Judgment; (d) any other relief the court finds is just and appropriate.

### Insurance Policy

The Township is the Named Insured under package policy HMTP-361783 ("Policy"). Coverage for the Motions is reviewed relevant to the Public Officials Liability portion of the Policy for the 9/1/2020 – 9/1/2021 **POLICY PERIOD**<sup>10</sup> ("POL Policy")<sup>11</sup> which is occurrence-based. The POL Policy is subject to a Limit of Liability of \$5,000,000 per each covered **WRONGFUL ACT** with no annual aggregate and no deductible. There is also no Excess/Umbrella Liability Coverage.

Please refer to the full POL Policy for its complete terms, conditions, exclusions, and endorsements.

### Coverage Position

The insuring agreement provides that "**WE**<sup>12</sup> will pay on behalf of the insured all **LOSS** that the insured shall be legally obligated to pay resulting from a **WRONGFUL ACT** to which this insurance applies. The **WRONGFUL ACT(S)**<sup>13</sup> must occur within the **POLICY TERRITORY**. This insurance applies only to **WRONGFUL ACT(S)** that take place during the **POLICY PERIOD**. All claims for damages causing loss to the same person or organization as a result of **WRONGFUL ACT(S)** will be deemed to have occurred at the time the first **WRONGFUL ACT(S)** had allegedly been committed by the **INSURED(S)**."<sup>14</sup> The POL Policy goes on to state that "**WE** shall have the right and duty to select counsel and to defend any **SUIT** against the **INSURED** seeking damages for **LOSS** even if any of the allegations of the **SUIT** are groundless, false or fraudulent. MTPP shall have the sole right to assign counsel to defend any such **SUIT** against the **INSURED** and the **INSURED** agrees to consent to **OUR** exercise of that sole right. However, MTPP shall have no duty to defend the **INSURED** against any **SUIT** seeking damages for **WRONGFUL ACT(S)** to which this insurance does not apply. **WE** may make such investigation of any **SUIT** as **WE** deem expedient."<sup>15</sup>

<sup>9</sup> The requested relief paragraph in the Motion to Reinstate does seek any monetary damages, despite such being alleged in the body of the document as mentioned herein.

<sup>10</sup> Capitalized and bolded terms are specifically defined in the POL Policy. Please refer to the full POL Policy if these terms are not otherwise defined herein.

<sup>11</sup> POOPLH0001 (1-12). There is no coverage under the General Liability, Employee Benefits Liability and Law Enforcement Liability policies for the reasons, among others, that the Claim involves allegations that are either specifically excluded or do not meet the requirements of the Insuring Agreements of those policy forms.

<sup>12</sup> **WE** refers to MTPP.

<sup>13</sup> **WRONGFUL ACT** is defined as an alleged or actual: (1) Error, misstatement, misleading statement, omission, neglect or breach of duty of the **INSURED**; or (2) Violation of any civil rights protected by federal law; or (3) Violation of any state civil rights law; that arises out of the discharge of duties for the **NAMED INSURED**, individually or collectively.

<sup>14</sup> POOPLH0001 (1-12); **SECTION II – COVERAGES/INSURING AGREEMENTS**

<sup>15</sup> POOPLH0001 (1-12); **SECTION II – DEFENSE AND SUPPLEMENTARY PAYMENTS**

**LOSS** is defined as any compensatory monetary amount, including punitive damages where permitted by law, for which the **INSURED** is legally obligated to pay as a result of **WRONGFUL ACT(S)** covered by this policy, and shall include but not be limited to, judgments and settlements. Among other things, **LOSS** does not include criminal or civil fines, penalties or taxes.

**SUIT** is defined in relevant part as a civil proceeding in which monetary **LOSS** is alleged because of a **WRONGFUL ACT** to which this insurance applies.

Pursuant to the terms of this occurrence-based POL Policy, coverage is being reviewed under the 9/1/2020 – 9/1/2021 **POLICY PERIOD** because according to the allegations asserted in the Motions, the first **WRONGFUL ACT** took place on 12/14/2020 when the Township Attorney emailed Red advising that the Consent Judgment does not require the Township to apply the 2004 Zoning Ordinance. MTPP reserves the right to review this matter under a different **POLICY PERIOD(S)** and to modify its coverage determination if it is later determined that any alleged **WRONGFUL ACT(S)** took place during a different **POLICY PERIOD**. MTPP reserves its right to deny defense and/or indemnity coverage if warranted under a different **POLICY PERIOD**.

Further, if at any time it is determined that Red is not seeking, or cannot seek, monetary damages through the Motions the definitions of **LOSS** and **SUIT** would not be met and therefore the Insuring Agreement would also not be met. Accordingly, MTPP reserves the right to deny defense and indemnity coverage related to this matter to the extent the terms of the Insuring Agreement are not met.

Even if the Insuring Agreement is met (which we do not concede), there is no coverage for the Motions and any related proceedings pursuant to **Exclusion 19**<sup>16</sup>, which states that “[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**:<sup>17</sup> For any **LOSS** arising as a consequence of the failure, refusal, or inability of the **INSURED** to enter into, renew, or perform any oral, written or implied contract or agreement between the **INSURED** and any other person, except any oral, written or implied contract relating to that persons employment by the **INSURED**.” The entire basis of the Motions is that the Township has failed to comply with and/or violated the terms of the Consent Judgment, which was a signed agreement between the Township and Peters-Summit which was subsequently entered with the court. Accordingly, **Exclusion 19** applies to preclude coverage for defense and indemnity of the Motions, and any proceedings that may follow if either of the Motions are granted, because Red alleges that the Township has allegedly failed or refused to perform a written contract or agreement.

Notwithstanding the above, MTPP reserves its rights regarding a number of other POL Policy provisions noted below (which is not intended to be an exhaustive list).

MTPP reserves the right to deny defense and/or indemnity coverage pursuant to **Exclusion 2**, which provides “[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**: Brought about or contributed to by fraud, dishonesty, or bad faith of an **INSURED**.”

MTPP reserves the right to deny defense and/or indemnity coverage pursuant to **Exclusion 3**, which provides “[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**: Arising from the deliberate violation of any federal, state or local statute, ordinance, rule or regulation committed by or with the knowledge and consent of the **INSURED**.”

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<sup>16</sup> This exclusion is unnumbered in the POL Policy but is the paragraph that follows **Exclusion 18**.

<sup>17</sup> This language is the precursor to all exclusions in the POL Policy and will be referenced with each exclusion discussed herein.

MTPP reserves the right to deny defense and/or indemnity coverage pursuant to **Exclusion 4**, which provides in pertinent part that "[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**: ...for **LOSS** to or destruction of any property, tangible or intangible, including diminution of value or loss of use.

Further, MTPP reserves the right to deny defense and/or indemnity coverage pursuant to **Exclusion 9**, which provides that "[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**: Resulting in any **SUIT** seeking relief or redress in any form other than compensatory **LOSS**; nor shall **WE** have any obligation to indemnify the **INSURED** for any costs, fees, including attorney fees, or expenses that the **INSURED** shall become obligated to pay as a result of any adverse judgment for injunctive or declaratory relief; however, **WE** will afford a defense to the **INSURED** for such **SUIT**, if not otherwise excluded, where payment for compensatory **LOSS** is requested."

MTPP also reserves all of its rights, including the right to deny or limit defense and/or indemnity coverage, pursuant to **Exclusion 10** as modified by the **PRIVATE PROPERTY USE RESTRICTION SUBLIMIT ENDORSEMENT**<sup>18</sup> ("Sublimit Endorsement"). **Exclusion 10** precludes coverage for any allegations "based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the taking, partial taking, temporary taking, control of property or resulting diminution of property value by any means, method or proceeding, including but not limited to, zoning decisions, building code decisions, and permitting decisions, however characterized, and public officials' acts that involve or are in any way related to, the principles of eminent domain, condemnation, inverse condemnation, adverse possession, right of prescription or dedication by adverse use or zoning, building code or permitting decisions." The Sublimit Endorsement goes on to state that, "this Exclusion does not apply to the **PRIVATE PROPERTY USE RESTRICTION** sublimit provided on the Declaration Page. For any such specific 'claims' or 'suits' for 'loss' or 'damages' resulting from the insured controlling or restricting the use of private property, while not taking legal ownership of said property, we will cover such specific claims or **SUITS** subject to the sublimit and other policy terms and conditions."

### **Conclusion**

For the above reasons, there is no coverage for defense or indemnity related to the Motions and any proceedings that follow. MTPP reserves the right to modify its coverage determination for the reasons stated herein. MTPP also reserves the right to review any additional claim(s) or amendments to this claim and to make a separate determination as to whether either a defense and/or indemnity might be provided by MTPP. The decision set forth herein is based only upon the facts and information as presented to us to date and should not be construed as applicable to a new claim or an amendment to this claim. MTPP's right to have notice of either situation is reserved as are the notice conditions of the policy of insurance.

The failure of this correspondence to reference other terms, conditions, definitions or exclusions of the policy shall not constitute a waiver of any rights or coverage defenses available to MTPP and does not preclude MTPP's ability to assert them in the future whether those rights are presently identifiable or later identified.

MTPP trusts that you understand its coverage position. If you have any questions or comments, please do not hesitate to contact us. Similarly, if you believe that MTPP is incorrect in any respect or wish to bring any matter to our attention, please do not hesitate to do so. MTPP is prepared to consider additional information and reassess its position should the circumstances so warrant.

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<sup>18</sup> POOPLH0031 1017.

If you have any questions regarding this letter, please feel free to contact me at 248.459.7832.

Sincerely,

Tokio Marine HCC – Public Risk Group

A handwritten signature in black ink, appearing to read "Kelly Cumberworth".

Kelly L. Cumberworth, Esq.  
Senior Claims Attorney & Litigation Management Lead  
[kcumberworth@tmhcc.com](mailto:kcumberworth@tmhcc.com)

cc: Decker Agency (Via Email – [info@dkragency.com](mailto:info@dkragency.com))



TOKIO MARINE  
HCC

Tokio Marine HCC - Public Risk Group  
1700 Opdyke Court, Auburn Hills, Michigan 48326  
Main 248.371.3100/800.225.6561 Facsimile 248.371.3091

July 14, 2021

**VIA ELECTRONIC MAIL WITH READ RECEIPT REQUESTED**

Lodi Township  
c/o Christina Smith  
Township Clerk  
[christina@loditownshipmi.org](mailto:christina@loditownshipmi.org)

Jan Godek  
Township Supervisor  
[jan@loditownshipmi.org](mailto:jan@loditownshipmi.org)

Jesse O'Jack, Esq.  
Township Attorney  
[joilaw@msn.com](mailto:joilaw@msn.com)

|                 |                                       |
|-----------------|---------------------------------------|
| Claim #:        | 198463                                |
| Insured:        | Lodi Township                         |
| Program:        | Michigan Township Participating Plan  |
| Policy #:       | HMTP-361783                           |
| Effective Date: | September 1, 2020 – September 1, 2021 |
| Claimant:       | Red Equities, LLC                     |

Dear All,

We are in receipt of an email from your insurance agent, Kevin Decker, dated July 7, 2021, sent on your behalf, requesting that Tokio Marine HCC – Public Risk Group<sup>1</sup> reconsider its decision denying coverage for the above-referenced matter in light of the judgement denying Red Equities LLC's *Motion for Order to Show Cause Why Defendant Lodi Township Should not be Held in Contempt for Violation of Consent Judgment*.<sup>2</sup>

For the reasons explained in our letter dated January 25, 2021,<sup>3</sup> MTPP continues to maintain that no coverage is available for this matter. The Insuring Agreement of the POL Form provides that "**WE** will pay on behalf of the **INSURED** all **LOSS** that the **INSURED** shall be legally obligated to pay resulting from a **WRONGFUL ACT** to which this insurance applies," and "**WE** shall have the right and duty to select counsel and to defend any **SUIT** against the **INSURED** seeking damages for **LOSS** even if any of the *allegations* of the **SUIT** are groundless, false or fraudulent. . . However, **WE** will have no duty to defend the **INSURED** against any **SUIT** seeking damages for **WRONGFUL ACT(S)** to which this insurance does not apply."<sup>4</sup>

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<sup>1</sup> Tokio Marine HCC – Public Risk Group administers insurance on behalf of Michigan Township Participating Plan ("MTPP").

<sup>2</sup> Hereafter referred to as the "Motion".

<sup>3</sup> MTPP's previous correspondence are incorporated herein by reference.

<sup>4</sup> POOPLH0001 (1-12), **SECTION II – COVERAGES – INSURING AGREEMENTS – DEFENSE AND SUPPLEMENTARY PAYMENTS** (emphasis added).

Pursuant to the aforementioned language, the availability of coverage is based upon the allegations set forth in the pleadings. The Motion alleged that the Township failed to comply with and/or violated the terms of a 2007 consent judgment, which was a signed agreement between the Township and Peters-Summit that was subsequently entered with the court.

Pursuant to **Exclusion 19**<sup>5</sup>, "[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**;<sup>6</sup> [f]or any **LOSS** arising as a consequence of the failure, refusal, or inability of the **INSURED** to enter into, renew, or perform any oral, written or implied contract or agreement between the **INSURED** and any other person, except any oral, written or implied contract relating to that persons employment by the **INSURED**." Since the Motion alleged that the Township failed or refused to perform a written contract or agreement (the consent judgment), **Exclusion 19** applies to preclude coverage for defense and indemnity of the Motion. The Court's order denying the Motion does not affect the application of **Exclusion 19** as a bar to coverage for this matter.

Based upon the above, MTPP does not have any defense or indemnity obligations with respect to the Lawsuit. There are other terms and exclusions that may serve to limit or preclude coverage and we direct your attention to our January 25, 2021 letter for an explanation of those policy provisions.

MTPP's response to your request for reconsideration is not intended in any way to be an exhaustive or exclusive coverage position, and MTPP continues to reserve all of its rights, remedies, and defenses. The failure of this correspondence to reference other terms, conditions, definitions or exclusions of the policy shall not constitute a waiver of any rights or coverage defenses available to MTPP and does not preclude MTPP's ability to assert them in the future whether those rights are presently identifiable or later identified.

MTPP trusts that you understand its coverage position. If you have any questions or comments, please do not hesitate to contact us. Similarly, if you believe that MTPP is incorrect in any respect or wish to bring any matter to our attention, please do not hesitate to do so. MTPP is prepared to consider additional information and reassess its position should the circumstances so warrant.

If you have any questions or wish to discuss further, please do not hesitate to contact us.

Sincerely,  
Tokio Marine USSIC - Public Risk Group



Sarah M. Spigno, Esq.  
Claims Attorney

cc: Decker Agency (*via email to info@dkragency.com*)

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<sup>5</sup> This exclusion is unnumbered in the POL Policy but is the paragraph that follows **Exclusion 18**.

<sup>6</sup> This language is the precursor to all exclusions in the POL Policy and will be referenced with each exclusion discussed herein.

## Christina Smith

---

**From:** Patricia Harroun <triciaharroun@gmail.com>  
**Sent:** Thursday, October 16, 2025 1:14 PM  
**To:** Jan Godek; Christina Smith; Michelle Foley; don@loditownshipmi.org; Alex Matelski; Steve Marsh; Leslie Blackburn  
**Subject:** Request you follow the rules for Twsp Trustees & Officers

October 16, 2025

Hello Jan, Christina, Michelle, Don, Alex, Steve, Leslie,

I am voicing my strong opinion that each of you hold as ACTIVE AND ENFORCEABLE, all applicable Lodi Twsp Zoning Ordinances AND the Conditions of Lodi Twsp Amended Consent Judgement that Lodi Township Lawyer/s and Arbor Preserve Developer previously agreed to.

Each of you has been elected by residents of Lodi Twsp, in good faith that you will uphold our Lodi Township Zoning Ordinances and the Conditions in our Amended Consent Agreement that Arbor Preserve Developer & Lodi Lawyer/s agreed upon.

To do anything else is violating your Lodi Township Trustee/Officer position.

I look forward to seeing each of you tonight & witnessing you following the rules of your Trustee/Officer positions.

Thank you,

Patricia Haroun, a Lodi Resident since 1983

I am Suzanne Baccouche and I would like to thank you for your services to Lodi township and for allowing me to speak.

2 points I would like to make:

- (1) The site plan zoning is a Planned Unit Development (PUD) and the Arbor Preserve PUD is an integral part of the consent judgment and the objective of a PUD is to allow for regulatory flexibility by permitting developers to DEVIATE from standard zoning rules in exchange for providing public benefits.

Yet, At the October 7th Board of Trustees meeting - a board member showed absolutely no regulatory flexibility (ZERO FLEXIBILITY) regarding the PUD,

- (2) The Consent judgement - approved for 107 units, allowing for green space, roads, etc, has very specific site plan approval details - if it is not approved, this will open an avenue for the developer to sue Lodi Township, allowing the developer to build over 400 units on the same acreage as well as granting monetary damages to the developer which will negatively impact Lodi township taxpayers.

I am a taxpayer and have been paying Lodi Township taxes for 30 years, and I am still paying taxes today and I don't want my tax dollars wasted by a board member arguing PUD design details that are an integral part of the consent judgment that was signed and agreed upon by the township and the developer.

RECEIVED  
OCT 16 2025  
Lodi Township

## Christina Smith

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**From:** Eric Roberts <e3robertsmi@gmail.com>  
**Sent:** Wednesday, October 15, 2025 11:11 AM  
**To:** Jan Godek; Christina Smith; Michelle Foley; Donald Rentschler; Leslie Blackburn; Steve Marsh; Alex Matelski  
**Subject:** Vote NO with Denial Language that Works for Lodi Twp

Hello Lodi Township Board,

I am writing again to ask that you listen to the now hundreds of concerned Lodi Township residents and vote to deny the Arbor Preserve proposal on October 20, 2025.

On recording, I watched Treasurer Foley express some interest in denying the project (thank you!) but didn't like some of the language in the denial resolution written by Attorney O'Jack and Trustee Blackburn. Instead of discussing changes to the denial resolution language, Supervisor Godek moved to a vote right away.

This, it appears, was done to prevent Treasurer Foley from engaging with and suggesting amendments to the language. Not only is it unruly and a violation of Robert's Rules, but it undermines local government control and cooperation among your Township Board.

I know Lodi Township doesn't fully commit to using Robert's Rules, but here it could be helpful. It says that "calling the question" (ending discussion to vote on the issue) can only be done by a 2/3 majority. This is a way to protect the rights of all members.

How can the Township Board engage in any topic if the Supervisor calls for votes to put board members in very hard positions, forcing them to accept language they don't agree with or voting the way Supervisor Godek wants?

I greatly appreciate Treasurer Foley for not falling for this power move and subsequently voting against the approval resolution. And I want to thank the other board members that voted against this dangerous and destructive project.

I hope that October 20 is collaborative, but for that to happen you have to respect the speaking rights of all members.

--

Thank you,

**Eric John Roberts, MMC**

He/Him Pronouns (what's this?)

Master Municipal Clerk

Supplier / Owner, E3 Gaming, LLC ([www.e3games.org](http://www.e3games.org))