STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JOHN DARISH, JOAN DARISH,
GAIL NICKLOWITZ,
MICHAEL NICKLOWITZ,
GRACE KIM and EUGENE KIM

Plaintiffs,

Case No. 25-002153-CE
Hon. Julia B. Owdziej

v.

WSG PROPERTIES, LLC, AMC-WSG, LLC and AMC-MID MICHIGAN MATERIALS LLC,

Defendants.

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DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Defendants WSG Properties, LLC, AMC-WSG, LLC, and AMC-Mid-Michigan Materials LLC (collectively "Defendants") move for an order dismissing Plaintiffs' Complaint pursuant to MCR 2.116(C)(4), (7), and (8) for the reasons stated below and the accompanying brief.

Plaintiffs filed this action to challenge Defendants' operation of a sand and gravel mine near their respective residences. Defendants are parties to a factually related, years-long litigation

(in another court of this Circuit) with Ann Arbor Charter Township. Plaintiffs' Complaint attempts to impose liability on Defendants for following the orders issued in that long-pending case. That is not a basis for liability because (1) The lack-of-permit issue that is the basis of Plaintiffs' claims is moot by way of Defendants obtaining the permit; (2) Defendants were obligated to follow a sister court's orders; and (3) Plaintiffs may not collaterally attack decisions of another court. Even in the absence of those dispositive obstacles, Plaintiffs have not stated any viable claim for relief. Plaintiffs fail to plead a factual basis to support their claims and offer only conclusory labels.

WHEREFORE, Defendants respectfully request that the Court:

A. Grant this Motion;

B. Dismiss Plaintiffs' Complaint in its entirety and with prejudice;

C. Grant Defendants such other relief as the Court deems proper and just.

BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

Defendants own and operate a gravel mine in Ann Arbor Charter Township. For more than two years, Defendants have been involved in litigation in another court of this Circuit with the Township over use of the mine. Plaintiffs—individual property owners residing near the gravel mine—recently filed this case to create a parallel and inconsistent attack on Defendants' use of their property. The basis of Plaintiffs' Complaint is moot because Defendants have obtained the permit Plaintiffs alleges is lacking. To the extent any portion of the Complaint is not moot, Plaintiffs seek to impose liability solely because of the consequence of Defendants' compliance with long-standing court orders. They attempt to collaterally attack the rulings in a pending case. And they do all of this without pleading any facts that would entitle them to relief. Plaintiffs' Complaint should be dismissed for three independently sufficient reasons.

First, Plaintiffs' claims are moot. The gravamen of Plaintiffs' Complaint is that Defendants do not have a permit to enlarge and mine a lake. Since Plaintiffs' filing, Defendants have obtained such a draft permit, which is to be finalized within 60 days.

Second, Defendants cannot be sued for obeying court orders. Plaintiffs' theory depends on the opposite premise: that Defendants should be exposed to liability for doing what the court ordered them to do. Plaintiffs cannot put Defendants in an impossible position where compliance with the court's directives becomes the basis for a new lawsuit.

Third, Plaintiffs' Complaint is a collateral attack on another court within this Circuit. The relief Plaintiffs request would require this Court to second-guess or effectively negate the practical effect of injunctions and stipulated orders entered by a sister court in the *Ann Arbor* case. That is precisely what Michigan's collateral-bar rule prohibits. Plaintiffs cannot obtain indirectly through a new lawsuit what they chose not to pursue directly in the case that generated the operative orders.

Finally, even if the Court sets aside these threshold defects, Plaintiffs have not pled viable claims. The Complaint relies heavily on conclusions and statutory labels without the factual allegations necessary to state claims for MEPA relief, riparian interference, or nuisance. MEPA is not a procedural vehicle to litigate permitting disputes or to obtain perpetual judicial oversight of ongoing administrative review. Plaintiffs likewise plead no facts showing any concrete interference with riparian rights, and their nuisance counts rest on generalized complaints about dust, noise, vibration, and truck traffic untethered to any pleaded substantial and unreasonable interference with use and enjoyment of land.

Defendants respectfully request that the Court grant summary disposition under MCR 2.116(C)(4), (7), and (8) and dismiss the Complaint in its entirety with prejudice.

II. STATEMENT OF FACTS

This case arises out of a long-running dispute concerning an aggregate mining operation located at 4984 Earhart Road in Ann Arbor Charter Township (the "Property"). A sand and gravel mine has existed and operated on the Property for decades. Defendants WSG Properties, LLC, AMC-WSG, LLC, and AMC-Mid-Michigan Materials LLC (collectively, "Defendants") have owned and/or operated the mine on the Property since approximately 2020. (Compl. ¶¶ 18–27, 30.) Plaintiffs are nearby residential property owners whose parcels are located adjacent to, or in the vicinity of, the Property. (Compl. ¶¶ 1–17.)

A. The 2023 Litigation

Defendants' mining operation historically included groundwater pumping intended to control surface water accumulation. (Compl. ¶¶ 31–32.) Although standing water had existed on the Property for decades, groundwater pumping had prevented the formation of a surface waterbody exceeding five acres, thus no "lake" permit was required. See MCL 324.30101(i) (excluding from definition and regulation any "lake or pond that has a surface area of less than 5 acres"). In 2023, several nearby residents—including Plaintiffs John and Joan Darish and Gail and Michael Nicklowitz—complained to Ann Arbor Charter Township ("Township") that groundwater pumping at the mine had adversely affected their private wells by lowering the local water table. (Compl. ¶ 40.) In response, the Township sought a temporary restraining order and injunction against Defendants in Washtenaw County Circuit Court, alleging violations of the Township's Conditional Use Permit and harm to residential wells. (Compl. ¶¶ 38–41; *Ann Arbor Charter Twp v WSG Properties, LLC,* Case No. 23-001234-CE (Mich Cir Ct, filed September 28, 2023).)

On October 20, 2023, the *Ann Arbor* court entered the Court's Stipulated Clarification to Order Granting Preliminary Injunction, a stipulated clarification to its initial injunction, permitting Defendants to resume mining operations but prohibiting them from pumping or discharging

groundwater or processing wastewater in a manner that would cause a net loss of groundwater from the Property ("Injunction Order"). (Compl. ¶¶ 44–45; Ex. 1.) The most recent order governing the Property is the Order Extending Administrative Stay, dated January 7, 2026, ("Administrative Stay"), which permits Defendants to "engage in mining activities in accordance with the Conditional Use Permit authorized by the Township's Board of Trustees on July 20, 2020 ("CUP") and the Injunction Order, notwithstanding the term of the CUP." (Ex. 2.)

During the *Ann Arbor* case, the court issued additional orders governing the manner and scope of Defendants' activities, including a limited "dredging trial period" authorized by order dated July 3, 2024, and later extended through October 15, 2024. (Compl. ¶¶ 46–47; Ex. 3.) The Township case remains pending, and Defendants' mining activities have been subject to ongoing judicial supervision through that action. (Compl. ¶ 49.)

As a direct result of being enjoined from pumping groundwater to reduce the groundwater elevation, groundwater levels immediately began to increase, resulting in the enlargement of the lake within the Property, soon exceeding the five-acre permitting threshold. (See Compl. ¶ 50.) This growth has been entirely passive and a direct result of the court's ruling prohibiting Defendants from pumping groundwater. Defendants have not taken affirmative steps to create a larger lake within their Property—to the contrary, their preference is ***not*** to have any such lake.

Because the lake's size had exceeded the permitting threshold, Defendants promptly met with the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") and agreed to submit a Joint Permit Application in December 2023 seeking "after-the-fact" approval for creation of a lake exceeding 5 acres. (Compl. ¶¶ 61–67.) Due to changes in EGLE's permitting guidance and modelling requirements, Defendant submitted a revised permit application in May 2025. (Compl. ¶¶ 71–74.) After EGLE extended its permitting decision twice due to changes in guidance

and several requests for additional data and modelling revisions, EGLE issued a draft permit to Defendants on Friday, January 16, 2026 (the "Draft Permit"). (Ex. 4.) Defendants are now working with EGLE to develop a monitoring program requested by EGLE as a condition of the Draft Permit, which is expected to be approved, and the Draft Permit finalized within 60 days.

B. Plaintiffs' Allegations

Plaintiffs initiated this action in December 2025—more than two years after the *Ann Arbor* litigation began and the Injunction Order issued.

Plaintiffs' primary complaint is that Defendants do not have an EGLE permit for a lake. (Compl. ¶ 60.) Yet Defendants were actively in the process of obtaining such a permit, and in fact received a Draft Permit on January 16, 2026. (Compl. ¶ 61; Ex. 4.) Plaintiffs contend that the lake on the Property violates MEPA precisely—and exclusively—because it is not permitted. They do not allege that (let alone *how*) the existence of a lake creates any actual environmental harm. Instead, they effectively contend that absence of a permit is a proxy for environmental harm. As a result, Plaintiffs assert conclusory claims for violations of MEPA, nuisance, and (seemingly unrelated to the lake on the Property) violations of their ability to access Massey Lake on a *separate* property. (Compl. ¶¶ 50, 120, 122–125.) Plaintiffs seek relief under MEPA and common law theories, notwithstanding the ongoing regulatory proceedings, now-issued Draft Permit and the separate action already pending before the court. (Compl. ¶¶ 126–136.)

III. STANDARD

MCR 2.116(C)(4) controls motions for lack of subject matter jurisdiction.

MCR 2.116(C)(7) provides that summary disposition is appropriate if a claim is barred by a prior proceeding or judgment. MCR 2.116(C)(7). "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence." *Maiden v*

Rozwood, 461 Mich 109, 119; 597 NW2d 817 (1999). "If such material is submitted, it must be considered." *Id.* (citing MCR 2.116(G)(5)).

"A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint." *Id.* "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id.* (citing *Wade v Dep't of Corrections*, 439 Mich 158, 162, 483 NW2d 26 (1992)). However, "[m]ere conclusions, unsupported by allegation of fact, will not suffice to state a cause of action." *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 534; 542 NW2d 912 (1995).

IV. ARGUMENT

A. Plaintiffs' Claims Are Moot.

Plaintiffs' Complaint is now moot because its central factual premise—that Defendants are operating without an EGLE permit for a lake—no longer exists. "It is well established that a court will not decide moot issues." *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010). A case is moot when it presents "abstract questions of law which do not rest upon existing facts or rights." *Id.* at 35. Reviewing a moot question would be a "purposeless proceeding" and courts "refuse to hear cases they do not have the power to decide, including cases that are moot." *Id.* "Whether a case is moot is a threshold issue that a court addresses before it reaches the substantive issues of the case itself." *Id.*

Since the Complaint was filed, EGLE's Water Resources Division has issued a Draft Permit authorizing the lake creation and associated mining activities at the Property, subject to final execution and standard administrative conditions. (Ex. 4.) The Draft Permit authorizes Defendants to "[e]xcavate approximately 7,300,000 cubic yards of material from below the water table to create a lake for the purpose of sand and gravel mining. The lake shall be approximately 60 acres in size upon project completion." *Id.* In the Draft Permit EGLE certifies that the discharge from the authorized activities will comply with Michigan's water quality requirements and

associated administrative rules. *Id*. Plaintiffs' claims all rest on the alleged absence of a permit and unlawfulness that supposedly flows from that absence. Since the permitting deficiency alleged in the Complaint is cured, there is no longer a live controversy for this Court to adjudicate.

Any ruling by this Court on whether Defendants must obtain a permit or whether their operations are unlawful due to the absence of one would be advisory only. Plaintiffs' requested relief would neither halt unpermitted activity nor compel regulatory compliance which has already been obtained. Because Plaintiffs' claims no longer rest on "existing facts or rights," and "a court should not hear moot issues" this action should be dismissed as moot. *Richmond,* 486 Mich at 41.

B. Defendants Cannot Be Held Liable for Compliance with Court Orders.

"A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Michigan High School Athletic Ass'n,* 459 Mich 23, 40; 585 NW2d 290 (1998). This rule is not discretionary. It reflects the foundational principle that the orderly administration of justice depends on compliance with court orders. Parties are not free to disregard or selectively comply with judicial directives.

1. Plaintiffs' Alleged Harms are the Product of Court Orders

Plaintiffs' claims arise against the backdrop of a separate, still-pending enforcement action brought by Ann Arbor Charter Township. (Compl. ¶ 38; *Ann Arbor,* Case No. 23-001234-CE.) That case resulted in a preliminary injunction—issued more than two years ago—temporarily halting Defendants' mining operation, followed by a clarification prohibiting groundwater pumping and discharge, and later orders authorizing and regulating a limited dredging trial period. (Compl. ¶¶ 43–47.) Plaintiffs are fully aware of the *Ann Arbor* case as they have plainly laid out in the Complaint. Defendants were obligated to conform their conduct to the express terms of

those orders. Failure to do so would expose Defendants to contempt proceedings and judicial sanctions. Under *Kirby*, Defendants had no lawful option other than compliance.

Michigan courts have applied this principle to bar civil liability where a defendant's challenged conduct was compelled by a court order. In *Sharma v Metropolitan Life Insurance Co*, an analogous decision, the Court of Appeals held that the defendant could not be liable for releasing funds pursuant to a garnishment order, even where the plaintiff later contended the order was improper. Unpublished opinion of the Court of Appeals, issued December 14, 2004 (Docket No. 249314), 2004 WL 2875085, at *3 (Ex. 5). The court explained that a party subject to a court order cannot be expected to ignore it based on a belief or possibility that it is unlawful. "A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal." *Id*. at *4 (quoting *Johnson v White*, 261 Mich App 332, 346; 682 NW2d 505 (2004)).

The same reasoning applies here. Plaintiffs' alleged harms arise from Defendants' compliance with injunctions and stipulated orders entered by the court. According to Plaintiffs, "[a]fter the EGLE Violation Notice and this Court's prior preliminary injunction orders issued in 2023, Defendants changed their operation to create and enlarge a lake." (Compl. ¶ 50.) Plaintiffs themselves acknowledge that the injunction drove the conduct they now complain about. They allege, "[s]tarting in October 2023, [after the Injunction Order], Defendants began mining the newly created[1] and enlarged lake bottomland." (Compl. ¶ 58.) Defendants promptly moved to cure the permitting issue—an issue created by the Injunction Order, not by Defendants' independent conduct—by submitting an "after-the-fact" EGLE permit application. (Compl. ¶¶ 65,

[1] Defendants did not "create" a lake in the ordinary sense. Here the relevant definition of lake specifically excludes "a lake or pond that has a surface area of less than 5 acres." MCL 324.30101(i).

67.) The application stated the surface water acreage on the Property "has grown since pumping ceased in October 2023." (Compl. ¶ 65.) "Ann Arbor Township claimed the discharge was in violation of the Conditional Use Permit and required that pumping be discontinued immediately. As a result, Pond 3 has grown larger than five acres very quickly after pumping ceased." (*Id.*) Plaintiffs claim Defendants should be liable for the inadvertent accumulation of water. Those alleged harms cannot form the basis of liability against Defendants.

2. Plaintiffs Cannot Shift the Consequences of Their Own Inaction

Michigan places the burden on affected third parties to protect their interests through proper procedural channels. Instructive is *Sharma*'s emphasis on timing, notice, and the plaintiff's failure to act. The court explained, "It was incumbent upon plaintiff to defend against the garnishment or contest the order that required defendant to relinquish the funds." *Sharma*, 2004 WL 2875085, at *4. "Any error is solely attributable to plaintiff and fault cannot be assigned to defendant for simply complying with a valid court order." *Id.* There, "it [was] undisputed that only after the issuance of a court order did defendant release the funds," and that the plaintiff was "apprised by defendant, at each step in the process, of the action or position taken by defendant." *Id.* at *3. By failing to take action to dispute the court order, the plaintiff "violated the basic tenet" that a party may not disregard a court order based on its own view of legality. *Id.* at *3–4.

The same sequence is alleged here. Plaintiffs' claimed injury flows from conditions that arose only after the *Ann Arbor* court entered injunctions and stipulated orders governing Defendants' groundwater pumping, discharge and mining operations. (Compl. ¶¶ 43–49.) Plaintiffs were aware of the Township's enforcement action and resulting orders, which expressly directed Defendants to cease pumping and discharging groundwater. (Compl. ¶¶ 38–45.) Yet Plaintiffs took no action for years until filing this Complaint. Plaintiffs cannot shift liability onto

Defendants for Plaintiffs' own failure to act, particularly where Plaintiffs had notice and were fully apprised of the events in the Township's case.

"It was incumbent upon Plaintiffs" to challenge the Injunction Order directly and not to bring a later, separate action against Defendants who complied with it. Here, Plaintiffs could have sought to intervene in the *Ann Arbor* case, moved to modify or dissolve the Injunction Order, or pursued appellate relief. See *Shree, LLC v Lehman & Valentino*, PC, unpublished opinion of the Court of Appeals, issued December 14, 2004 (Docket No. 249321), 2004 WL 2889879, at *2 (with mirror facts to *Sharma, supra*) (Ex. 6):

> Plaintiff knew of the issuance of the court order and the intent of [defendant] to comply with the order, yet it did nothing to contest the order in a timely manner. It was incumbent upon plaintiff to defend. . . or contest the order. . . Even after attempting to intervene in the garnishment proceeding, plaintiff merely abandoned its efforts by dismissing the action.

Plaintiffs did none of those things. Having failed to challenge the operative court orders, Plaintiffs may not now recast their objections as independent claims against Defendants for obeying them and cannot be heard to complain, years later, of the effects of the order in the *Ann Arbor* case.

3. Plaintiffs Seek to Impose Conflicting Standards on Defendants

Allowing Plaintiffs' claims to proceed would place Defendants in an untenable position. Under Plaintiffs' theory of liability, Defendants must either comply with court orders and face civil liability in this action or avoid civil liability here and face contempt proceedings in the Township's action. The rule articulated in *Kirby* exists precisely to avoid this dilemma. Until modified or vacated, the *Ann Arbor* injunctions must be obeyed, and compliance with them cannot give rise to tort, statutory, or equitable liability.

Because Plaintiffs' claims seek to impose liability for conduct undertaken in compliance with valid court orders, those claims fail as a matter of law and must be dismissed.

C. Plaintiffs' Claims Are an Impermissible Collateral Attack on Another Court.

Plaintiffs' Complaint is also barred for an independent and equally dispositive reason: it constitutes an impermissible collateral attack on injunctions and orders entered in the Township's enforcement action. Under the "collateral bar" rule, a litigant may not indirectly attack a prior judgment in a later, separate action unless the issuing court lacked jurisdiction over the person or subject matter. *In re Ferranti*, 504 Mich 1, 22 (2019). "Instead, the litigant must seek relief by reconsideration of the judgment from the issuing court or by direct appeal." *Id.* at 23.

1. Michigan Courts Prohibit Collateral Attacks on Injunctions

Court orders, including injunctions, cannot be challenged on their merits through collateral proceedings. See *State ex rel Prosecuting Attorney for Ingham County v American Amusement Co, Inc*, 71 Mich App 130, 133 (1976) (rejecting challenge to injunctions in a later proceeding, holding that the defendants were "impermissibly attempting to collaterally attack the injunctions").

The rule forecloses Plaintiffs' claims here. Plaintiffs seek to impose liability on Defendants precisely because Defendants complied with the *Ann Arbor* court's orders and because Plaintiffs disagree with their effects. Because Plaintiffs' theories of liability rest on a finding incompatible with *Ann Arbor*, the Complaint is an impermissible collateral attack.

Although styled as statutory and common-law claims, Plaintiffs' allegations target the consequences of the Injunction Order and Administrative Stay. The Injunction Order states "Defendants are prohibited from discharging process waste water or groundwater from the NPDES discharge pipe. . . or otherwise causing a net loss of groundwater from the site." (Compl. ¶ 45; Injunction Order, Ex. 1.) Plaintiffs allege that Defendants' compliance with the Injunction Order contributed to the creation or enlargement of surface water at the site and that this condition gives rise to environmental, riparian, and nuisance claims. (Compl. ¶ 50 (alleging that ***after*** the Court's preliminary injunction order Defendants changed their operation); Compl. ¶ 94 ("Defendants'

enlargement of the lake pollutes, impairs, and destroys Michigan's water.").) Those allegations necessarily challenge the substance and effect of the Court's orders. If Plaintiffs are correct, then the relief they seek would require Defendants to act in contempt or would effectively declare the court's orders in the *Ann Arbor* case wrongful. Michigan law does not permit a second court, or the same court in a different action, to reach that result indirectly.

2. The Collateral Bar Rule is Regularly Applied in Land Use Cases

Michigan courts have repeatedly applied the collateral-attack doctrine in land-use and zoning disputes. In *Old EPI Building v Meridian Charter Township*, the court rejected a subsequent lawsuit challenging a consent judgment on the ground that ordinance procedures were not followed, holding that such arguments did not challenge subject matter jurisdiction but "were challenging the exercise of the court's jurisdiction" and were therefore "not subject to collateral attack." *Old EPI Bldg v Meridian Charter Twp*, unpublished opinion of the Court of Appeals, issued April 17, 2008 (Docket No. 276713), 2008 WL 1765249 at *9 (Ex. 7).

Similarly, in *Cuson v Tallmadge Charter Township*, nearby property owners attempted to collaterally challenge a consent judgment that resolved rezoning litigation. *Cuson v Tallmadge Charter Twp*, unpublished opinion of the Court of Appeals, issued May 15, 2003 (Docket No. 234157), 2003 WL 2110847 at *1 (Ex. 8). The Court of Appeals emphasized that the plaintiffs' failure to intervene in the original case was "most important" and dispositive, concluding that a new lawsuit was not a permissible vehicle for challenging the judgment. *Id*. at *5 (citing *People v Ingram*, 439 Mich 288, 291; 484 NW2d 241 (1992) ("Collateral attacks, as opposed to direct appeals, require consideration of the interest of finality and of administrative consequences.")). "For these reasons collateral attacks on prior judgments are disfavored." *Id*.

Plaintiffs' collateral attack is similarly barred here. Plaintiffs were aware of the Township's enforcement action and the resulting Injunction Order and Administrative Stay.

(Compl. ¶¶ 38–49.) If Plaintiffs believed those years-old orders impaired environmental resources or private rights, their remedy was to challenge those orders—not to wait and file a separate lawsuit attacking the consequences. Permitting this action to go forward would invite precisely the mischief the collateral bar rule is designed to prevent. Any nonparty dissatisfied with the outcome of an injunction could simply wait and file a new lawsuit against the enjoined party, effectively relitigating the court's orders under different legal theories.

D. Plaintiffs Fail to State Any Claim Upon Which Relief Can Be Granted.

Setting aside the dispositive defects discussed above, Plaintiffs' Complaint independently fails because it does not plead legally sufficient claims under any of the asserted theories. Michigan law requires more than statutory labels, conclusory assertions, or disagreement with regulatory outcomes. Plaintiffs' allegations, taken as true, do not state a viable claim under MEPA, riparian-rights doctrine, or nuisance law.

1. Plaintiffs Fail to State a Claim Under MEPA

MEPA does not create a free-standing cause of action for regulatory noncompliance, nor does it permit plaintiffs to bypass administrative processes by repackaging permitting disputes as environmental torts. To state a claim under MEPA, a plaintiff must make "a prima facie showing that the conduct of the defendant has polluted, impaired, or destroyed or is likely to pollute, impair, or destroy the air, water, or other natural resources." MCL 324.1703(1). Plaintiffs have no such allegations. Merely alleging the absence of a permit or reciting statutory phrases does not suffice.[2]

The Michigan Supreme Court rejected a MEPA claim premised on an allegedly improper permitting decision, explaining that "an improper administrative decision, standing alone, does not

[2] EGLE has now issued the Draft Permit and necessarily found that Defendants' past and intended future mining operation have not and are not expected to result in any harm to the environment. (Ex. 4.)

harm the environment." *Preserve the Dunes, Inc v Department of Environmental Quality*, 471 Mich 508, 520; 684 NW2d 847 (2004). "Only wrongful conduct offends MEPA." *Id.* MEPA "provides no private cause of action in circuit court for plaintiffs to challenge the [agency] determinations of permit eligibility." *Id.* at 519.

Plaintiffs' MEPA claim is built on the assertion that Defendants lack required EGLE permits to create, enlarge, or dredge a lake. (Compl. ¶¶ 88–89.) But *Preserve the Dunes* forecloses the notion that permitting status, by itself, establishes environmental harm. "The focus of MEPA is on the defendant's conduct." *Preserve the Dunes*, 471 Mich at 514. MEPA is not a vehicle to police permitting disputes. Plaintiffs repeatedly conflate alleged regulatory violations with an actual environmental injury, but MEPA requires factual allegations of actual or likely pollution, impairment, or destruction. Absence of a permit is not sufficient.

Plaintiffs' allegations underscore that the subject matter of their dispute should be resolved within EGLE's regulatory and technical expertise. Plaintiffs' MEPA allegations focus on the status of pending permit applications and administrative review and amount to a second collateral attack on those proceedings. (Compl. ¶¶ 61–89.) As discussed above, Plaintiffs cannot be permitted to attack other outside actions in this Complaint. MEPA does not exist to allow plaintiffs to short-circuit the administrative process. When plaintiffs disagree with permitting decisions or the pace or outcome of permitting review, their remedy lies in intervention or administrative appeal, not in a collateral MEPA action filed months or years later. See *Preserve the Dunes*, 471 Mich at 520; MCL 324.1705(1). "If administrative, licensing, or other proceedings are required or available to determine the legality of the defendant's conduct, the court may direct the parties to seek relief in such proceedings." MCL 324.1704. This Court is not the proper place for Plaintiffs to address EGLE permitting processes or decisions.

Separate from the permit issue, in evaluating a claim under MEPA, a "trial court must conduct a dual inquiry to determine if a prima facie showing of pollution, impairment, or destruction of a natural resource has been made: (1) whether a natural resource is involved, and (2) whether the impact of the activity on the environment rises to the level of impairment to justify the trial court's intervention." *Rush v Sterner*, 143 Mich App 672, 679; 373 NW2d 183 (1985) (citations omitted).

> [T]he trial court should evaluate the environmental situation before the proposed action and compare it with the probable condition of the environment after. Among the factors to be considered are: (1) whether the natural resource involved is rare, unique, endangered, or has historical significance, (2) whether the resource is easily replaceable (for example, by replanting trees or restocking fish), (3) whether the proposed action will have any significant consequential effect on other natural resources (for example, whether wildlife will be lost if its habitat is impaired or destroyed), and (4) whether the direct or consequential impact on animals or vegetation will affect a critical number, considering the nature and location of the wildlife affected. Finally, esthetic considerations by themselves do not constitute significant environmental impact.

Id. In *Rush*, impoundment of a creek with a dam that would slow the speed of the creek, raise its temperature, increase sedimentation, shift biodiversity away from trout and towards warmer water fish, convert the flood plain into a permanent swamp, and generally have effects on the stream, trees, and other vegetation for a 20-mile stretch, was insufficient to show a prima facie MEPA claim. *Id*. at 680. Plaintiffs do not allege *any* factual details, let alone allegations that could exceed the facts that failed in *Rush*. This point is compounded now that EGLE has determined that there has been no environmental harm and that future operations are not likely to result in harm in granting the Draft Permit. (Ex. 4.)

Plaintiffs do not make out a prima facie case. They include only generalized and conclusory assertions that Defendants' operations are "likely to materially diminish, reduce, and adversely impact" groundwater and connected surface waters. (See, e.g., Compl. ¶ 102.) Even

assuming groundwater in a man-made mine is a sufficient *natural* resource to state a claim—it is not—Plaintiffs do not allege *any wrongful activity* on the environment *by Defendants* or *any* adverse impacts. Plaintiffs do not allege *any* facts describing how groundwater quality has changed, how Plaintiffs' wells have been impaired, or how natural resources have been polluted. Plaintiffs do not allege adverse impacts to wildlife, vegetation, or non-renewable resources. And clearly Plaintiffs do not allege a reduction or diminishment of water resources, rather they say Defendants are expanding the water! Plaintiffs fail to state a MEPA claim as a matter of law.

2. Plaintiffs Fail to State a Claim for Violation of Riparian Rights

Plaintiffs' riparian-rights claim fails for the most basic failure to plead it. Riparian rights are "special rights to make use of water in a waterway adjoining the owner's property," including the right to reasonable use of the water, to construct and maintain a dock, and to use the water surface for recreational purposes. *Holton v Ward*, 303 Mich App 718, 725–26; 847 NW2d 1 (2014). A riparian-rights claim requires factual allegations showing unreasonable interference with those specific rights.

Plaintiffs allege, in conclusory fashion, that Defendants' mining operations "interfere with and violate" their riparian rights in Massey Lake. (Compl. ¶¶ 115-117, 120.) What Plaintiffs do not allege is any factual interference with boating, fishing, canoeing, shoreline access, or any other recognized riparian use. There are no allegations that Plaintiffs cannot access the lake, use the lake for recreation, construct or maintain docks, or otherwise exercise riparian ownership rights. In short, there are no allegations whatsoever as to what rights Defendants are affecting or how Defendants are interfering with them. Absent such allegations, Plaintiffs' riparian-rights claim amounts to nothing more than a disagreement with Defendants' land use. Riparian rights protect use and enjoyment of a waterbody, not general objections to nearby activity—particularly activity that has been going on for decades. Plaintiffs' failure to plead any concrete interference with their

riparian uses is fatal to this claim. See *A & C Engineering Co v Atherholt*, 355 Mich 677, 683; 95 NW2d 871 (1959) ("the plaintiff must allege all of the necessary facts upon which he bases his cause of action. Failure to state those facts, or others from which they might reasonably be inferred, is failure to state a cause of action.").

3. Plaintiffs Fail to State a Claim for Private Nuisance

Plaintiffs' private-nuisance claim fails because they do not allege facts establishing a "significant harm" or "unreasonable interference" with the use and enjoyment of their properties. For a private nuisance claim, Plaintiffs must allege: (1) an invasion of property interests; (2) resulting in significant harm; (3) caused by Defendants' conduct; and (4) that the invasion was either intentional and unreasonable or otherwise actionable as negligence. *Capitol Properties Group, LLC v 1247 Center Street, LLC*, 283 Mich App 422, 428–32; 770 NW2d 105 (2009).

Plaintiffs allege that Defendants' operations cause noise, vibration, dust, and truck traffic. (Compl. ¶¶ 104–106.) However, Defendants' mining operation, along with the effects of vibrations, dust, and truck traffic, are permitted and have been specifically authorized under Defendants' CUP that governs the Property granted by Ann Arbor Township. (Ex. 9.) This alone is reason to disregard Plaintiffs' nuisance claims. See *Capitol Props Group*, 283 Mich App at 437 (rejecting nuisance claims for noise from a nightclub, where the ordinance included specific provisions for increased noise in public entertainment areas). Alleged nuisance conditions must be assessed in light of the character of the area, the permitted use of the property, and the reasonable expectations of neighboring landowners. See *Id*. at 433. Like loud noise in a nightclub, dust and traffic near a legally permitted mine should be an expectation, not a basis for a nuisance claim. Defendants' actions have long since been considered and approved by the planning commission and the Township; Plaintiffs do not allege facts showing that these conditions rise above the level of ordinary, incidental impacts associated with lawful industrial or mining activity.

In *Adkins v Thomas Solvent Co*, the Michigan Supreme Court rejected nuisance claims premised on alleged regulatory violations and contamination concerns, emphasizing that "the fact that violations of the law may have occurred on the property does not make the conduct of the business a nuisance in fact." 440 Mich 293, 314; 487 NW2d 715 (1992). "Only a substantial interference with the use and enjoyment of property" is actionable. *Id.* at 312. Plaintiffs make the same arguments that failed in *Adkins*. Plaintiffs repeatedly label Defendants' operations "unlawful" based on the EGLE permitting and then treat the labels as substitutes for the required showing of substantial and unreasonable interference. (Compl. ¶¶ 104, 122, 125.) However, whether Defendants have a permit from EGLE is not dispositive of Plaintiffs' nuisance claims, and moreover, as previously discussed, Defendants *do* now have the Draft Permit.

Plaintiffs do not allege that their homes are uninhabitable, that property values have been destroyed, or that daily life has been materially disrupted. They allege noise, dust, and truck traffic—conditions that, without more, do not establish a private nuisance, particularly where the activity complained of occurs in a location historically used for mining and industrial purposes. Plaintiffs' private nuisance claim therefore fails as a matter of law.

4. Plaintiffs Fail to State a Claim for Public Nuisance

Plaintiffs' public-nuisance claim suffers from the same defects as their private claim.

A public nuisance is an "unreasonable interference with a common right enjoyed by the general public." *Capitol Properties Group*, 283 Mich App at 427 (quoting *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995)).

> The term "unreasonable interference" includes conduct that (1) significantly interferes with the public's health, safety, peace, comfort, or convenience, (2) is proscribed by law, or (3) is known or should have been known by the actor to be of a continuing nature that produces a permanent or long-lasting, significant effect on these rights. A private citizen may file an action for a public nuisance

> against an actor where the individual can show he suffered a type of harm different from that of the general public. *Id.* at 427–428.

Plaintiffs allege that Defendants' mining activities harm the public's interest in air, water, and natural resources. (Compl. ¶ 125.) But these allegations merely restate MEPA-style concerns and do not identify any special injury distinct from generalized environmental interests shared by the public at large. Plaintiffs' attempt to transform broad environmental policy concerns into a public-nuisance claim improperly collapses MEPA into nuisance law. Without factual allegations of a significant, long-lasting interference with public health, safety, or convenience and a distinct injury to Plaintiffs, this claim cannot proceed.

5. Plaintiffs' Request for Declaratory and Injunctive Relief Also Fails

Finally, Plaintiffs' count for declaratory and injunctive relief fails because it is entirely derivative of the defective substantive counts and it cannot stand on its own. Declaratory and injunctive remedies do not exist in the abstract; they require a viable underlying cause of action. See *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 455; 761 NW2d 846 (2008) ("Claims for declaratory relief must necessarily be based on an underlying substantive claim to satisfy the requirement that an 'actual controversy' exist."). Because Plaintiffs' other claims all fail, there is no legal basis for declaratory or injunctive relief.

V. CONCLUSION

For these reasons, Defendants respectfully request that the Court dismiss Plaintiffs' Complaint in its entirety with prejudice.

Dated: January 20, 2026

Respectfully submitted,
HONIGMAN LLP

By: /s/ *Andrew W. Clark* /
Andrew W. Clark (P79165) aclark@honigman.com
Brian R. Hamilton (P88135) bhamilton@honigman.com
660 Woodward Ave. Ste. 2290, Detroit, MI 48226
(313) 465-7000

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed the foregoing paper(s) with the Clerk of the Court using the electronic filing system, which will provide electronic notice to all counsel of record.

By: /s/ Andrew W. Clark /
Andrew W. Clark (P79165)

EXHIBIT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP,
a Michigan municipal corporation,

Plaintiff,

vs.

Case No. 23-001234-CE
Hon. Timothy P. Connors

WSG PROPERTIES LLC, a Michigan limited liability company, AMC-WSG LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company,

Defendants. /

Nathan D. Dupes (P75454)
Sarah J. Gabis (P67722)
Sinéad G. Redmond (P85718)
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Attorneys for Defendants

/

STIPULATED CLARIFICATION TO ORDER GRANTING PRELIMINARY INJUNCTION

At a session of said Court, held in the City of Ann Arbor, County of Washtenaw, State of Michigan
On October 20, 2023

PRESENT: Timothy P. Connors
CIRCUIT COURT JUDGE

This matter comes before the Court upon the stipulation of the parties (as to form only) after they have conferred about the scope of the Court's October 10, 2023 Order Granting Preliminary Injunction in response to Plaintiff Ann Arbor Charter Township's (the "Township") Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion") and the Court having previously found that:

A. Injunctive relief is appropriate to abate a nuisance per se.

B. The Township will be irreparably injured unless an order is granted enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement;

C. The Township is likely to prevail on the merits of its claims;

D. An order enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement will not unjustly injure Defendants.

E. The public interest will be served by enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Township's Motion is granted.

IT IS FURTHER ORDERED that:

1. The Court's October 10, 2023 Order Granting Preliminary Injunction is vacated effective immediately and replaced with this clarified Order, except that the findings supporting the Court's October 10, 2023 Order, which are restated above, remain undisturbed.

2. Defendants, and those acting as agents or in concert with Defendants, are immediately enjoined from operating their mining operation, except in full compliance with (a) the Conditional Use Permit authorized by the Township's Board of Trustees on July 20, 2020 ("CUP"), (b) the Township Zoning Ordinances, and (c) the Development Agreement between the Township and Defendant AMC-WSG, LLC ("Development Agreement"). Without modifying or limiting the generality of the foregoing, (a) Defendants are prohibited from discharging process waste water or groundwater from the NPDES discharge pipe, as indicated on Exhibit A hereto, or otherwise causing a net loss of groundwater from the site; (b) Defendants shall not use a dewatering process in order to access sand or gravel; (c) if Defendants mine, they shall do so without operating their wash plant, until such time as they are unable to mine further without operating the wash plant, currently estimated to be 2-3 weeks from the date of this Order ("Stage 1"); (d) After Stage 1, Defendants may resume operation of the wash plant by withdrawing water solely from Pond 2, as indicated on Exhibit A, until such time as they are unable to further operate the wash plant by withdrawing water solely from Pond 2, currently estimated to be 1 week from the end of Stage 1 ("Stage 2"); (e) After Stage 2, only as necessary for operation of the wash plant,

Defendants may operate the wash plant using Pond 1 to replenish Pond 2, but may only withdraw the minimum amount from Pond 1 necessary to operate the wash plant ("Stage 3"), subject to Paragraph 4, below; (f) Defendants shall notify the Township's counsel prior to changing from one Stage to another, as described in this paragraph.

3. Defendants shall provide the Township daily measurements of the surface elevation of Pond 1, as indicated on Exhibit A, for the purpose of demonstrating recovery of the aquifer and water table. For the same purpose, subject to obtaining access, Defendants also shall regularly test (or pay for the cost of testing) the surface elevation of a reasonable number of off-site water features (e.g., residential wells) suggested by the Township.

4. Defendants shall cease operating under Stage 3, as described in Paragraph 2, above, if doing so adversely impacts the recovery of the aquifer and water table.

5. Once Defendants have demonstrated to the Township that the aquifer and water table have recovered to the natural levels existing prior to Defendants' dewatering operations, Defendants may notify the Township that they wish to operate a "closed loop" system without following the staging process under Paragraph 2, above. The Township shall review Defendants' proposed "closed loop" system to ensure it complies with the CUP, Township Zoning Ordinances, the Development Agreement, and this Order. If the Township approves, Defendants may operate such "closed loop" system, provided they

continue to fully comply with the remaining provisions of this Order. If there is a dispute between the parties under this paragraph, either party may submit the dispute to the Court for resolution.

6. The Township may immediately enter the Vella Pit to ensure operations are being performed in compliance with this Order. If operations are not being performed as set forth herein, the Township may tag and padlock the Vella Pit against entry by any person or entity.

7. This Court has considered the requirements of MCR 3.310(D) and has determined that security is not required for entry of this Order.

This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

Dated: October ____, 2023.

/s/ Timothy Connors
October 20, 2023
Honorable Timothy P. Connors
Washtenaw County Circuit Court Judge

Stipulated as to form only by:

/s/ Nathan D. Dupes (P75454) (with consent)	/s/ Andrew W. Clark (P79165)
BODMAN PLC	HONIGMAN LLP
Attorneys for Plaintiff	Attorneys for Defendants

EXHIBIT A

49800447.1

EXHIBIT 2

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP, a Michigan municipal corporation,	Case No. 23-001234-CE Hon. Tracy E. Van den Bergh
Plaintiff,	
v.	
WSG PROPERTIES, LLC, a Michigan limited liability company, AMC-WSG, LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company,	
Defendants.	

BODMAN PLC
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Sarah J. Gabis (P67722)
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Attorneys for Defendant

ORDER EXTENDING ADMINISTRATIVE STAY

At a session of said Court, held in the
City of Ann Arbor, County of Washtenaw, State of Michigan
On 1/7/2026

PRESENT: Tracy E. Van den Bergh

This matter comes before the Court upon the stipulation of the parties to extend the administrative stay so the parties may continue settlement discussions. Per the parties' stipulation,

IT IS HEREBY ORDERED that the current administrative stay is extended until March 6, 2026. If any party wishes to end the stay prior to its expiration, it may do so by providing 3 days' written notice to the other parties, after which the party wishing to end the stay may submit an order to the Court lifting the stay.

IT IS FURTHER ORDERED that Defendants shall answer or otherwise respond to the Complaint within 7 days after the end of the stay.

IT IS FURTHER ORDERED that, while the administrative stay remains in place, Defendants may engage in mining activities in accordance with the Conditional Use Permit authorized by the Township's Board of Trustees on July 20, 2020 ("CUP") and the Court's Stipulated Clarification to Order Granting Preliminary Injunction, entered October 20, 2023 ("Injunction Order"), notwithstanding the term of the CUP. For purposes of clarity, nothing herein shall impact the Injunction Order, which remains binding and enforceable.

IT IS FURTHER ORDERED that the January 14, 2026 status conference is adjourned, and counsel for the parties shall appear for a Zoom Status Conference on March 18, 2026 at 12:00 p.m.

This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

/s/ Tracy Van den Bergh

Dated: January 7, 2026

Tracy E. Van den Bergh
Washtenaw Court Circuit Court Judge

Approved as to Form and Content:

/s/ *Nathan Dupes (w/ permission)*
Nathan D. Dupes (P75454)
Attorney for Plaintiff
ndupes@bodmanlaw.com

/s/ *Andrew Clark*
Andrew W. Clark (P79165)
Attorney for Defendants
aclark@honigman.com

EXHIBIT 3

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP, a Michigan municipal corporation,	Case No. 23-001234-CE Hon. Timothy P. Connors
Plaintiff,	
v.	
WSG PROPERTIES, LLC, a Michigan limited liability company, AMC-WSG, LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company,	
Defendants.	

BODMAN PLC
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Attorneys for Defendants

STIPULATED ORDER REGARDING TEMPORARY DREDGING OPERATIONS

At a session of said Court, held in the
City of Ann Arbor, County of Washtenaw, State of Michigan
On 7/3/24

PRESENT: Hon. Timothy P. Connors

This matter comes before the Court upon the stipulation of the parties to (1) implement a trial period during which Defendants may engage in dredging operations as specifically described below (the "Dredging Trial Period"), (2) partially reimburse Plaintiff for attorney fees, and (3)

extend the administrative stay so the parties may continue settlement discussions. Per the stipulation of the parties:

IT IS ORDERED that, for settlement purposes only, Defendants may conduct on a temporary basis a dragline dredging operation in Pond 1, as defined in the Court's October 20, 2023 Stipulated Clarification to Order Granting Preliminary Injunction ("Preliminary Injunction"), using a Skagit 747 dredge. The Dredging Trial Period will begin on or about August 1, 2024 and conclude on or about September 14, 2024, at which point Defendants shall remove the dredging equipment from their property. The parties recognize and agree that the exact start date for commencement of dragline dredging is subject to weather and equipment availability, and could be up to fifteen (15) days earlier or later than the August 1, 2024 start date specified in this Order. If Defendants request to modify the start date by up to fifteen days before or after August 1, 2024, the parties agree to submit an amended order confirming such modified start date and corresponding end date, 45 days after the modified start date. The parties further agree that neither this Order nor the Dredging Trial Period creates any right for Defendants to continue dredging after expiration of the Dredging Trial Period. The parties further agree that this Order is without prejudice to: (i) Plaintiff's rights and authority to review and approve or deny a more permanent change in site operations and to review and approve or deny any future applications for a renewed or new conditional use permit under Plaintiff's ordinances; or (ii) Defendants' rights, if any, to make modifications to site operations as allowed by the current CUP.

IT IS FURTHER ORDERED that Defendants shall install two sound meters on their property prior to start of the Dredging Trial Period. One meter shall be installed near the southern boundary of Defendants' property in the vicinity of the neighboring single family home, and the other near the northern boundary, adjacent to Joy Road. Defendants shall use the meters to

continuously measure the decibel levels from their operations during all hours of operation for 7 days prior to and for the full duration of the Dredging Trial Period. Defendants shall provide Plaintiff with decibel level measurements from both sound meters on a daily basis.

IT IS FURTHER ORDERED that Defendants shall pay Plaintiff the amount of $25,000.00 as a partial reimbursement of attorney fees. Said payment shall not operate as a release or satisfaction of any of Plaintiff's claims, except as to the specific amount paid.

IT IS FURTHER ORDERED that the current administrative stay is extended until October 31, 2024. If any party wishes to end the stay prior to its expiration, it may do so by providing 3 days' written notice to the other parties, after which the party wishing to end the stay may submit an order to the Court lifting the stay. Defendants shall answer or otherwise respond to the Complaint within 7 days after the end of the stay.

IT IS FURTHER ORDERED that, except as expressly modified by this Order, the Preliminary Injunction remains binding and enforceable and Defendants shall continue to comply with the terms and conditions of the CUP, Development Agreement (both as defined in the Preliminary Injunction), and Plaintiff's Zoning Ordinances.

This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

Dated: _____

/s/ Timothy Connors
July 3, 2024
Honorable Timothy P. Connors
Washtenaw Court Circuit Court Judge

Approved as to Form and Content:

/s/ Nathan D. Dupes
Nathan D. Dupes (P75454)
Attorney for Plaintiff
ndupes@bodmanlaw.com

/s/ Andrew W. Clark with consent
Andrew W. Clark (P79165)
Attorney for Defendants
aclark@honigman.com

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP,
a Michigan municipal corporation,

Plaintiff,

v.

WSG PROPERTIES, LLC, a Michigan limited liability company, AMC-WSG, LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company,

Defendants.

Case No. 23-001234-CE
Hon. Timothy P. Connors

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Attorneys for Defendants

STIPULATED ORDER EXTENDING DATES OF TEMPORARY DREDGING OPERATIONS

At a session of said Court, held in the
City of Ann Arbor, County of Washtenaw, State of Michigan
On 9/30/2024

PRESENT: Hon. Timothy P. Connors

On July 3, 2024, the Court entered a Stipulated Order Regarding Temporary Dredging allowing Defendants to engage in dredging during a trial period ("Dredging Order"). On August 5, 2024, the Court entered a Stipulated Order Setting Dates of Temporary Dredging Operations,

which provided that the Dredging Trial Period (as defined in the Dredging Order) would commence on August 5, 2024 and end on September 19, 2024. The parties now wish to extend the Dredging Trial Period until October 15, 2024 and provide for the collection of additional sound data. Per the stipulation of the parties:

IT IS ORDERED that the Dredging Trial Period (as defined in the Dredging Order) shall end on October 15, 2024.

IT IS FURTHER ORDERED that, after the Dredging Trial Period ends, Defendants shall perform additional sound monitoring using the equipment described in the Dredging Order for at least two weeks of normal operations using standard excavators, and provide the data from same to Plaintiff on a daily basis in the same report format that Defendants are using at the time of submission of this Order.

IT IS FURTHER ORDERED that, except as expressly modified by this Order, the Dredging Order remains in full force and effect.

This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

Dated: _____

/s/ Timothy Connors
September 30, 2024
Honorable Timothy P. Connors
Washtenaw Court Circuit Court Judge

Approved as to form and content:

/s/Nathan D. Dupes
Nathan D. Dupes (P75454)
Attorney for Plaintiff
ndupes@bodmanlaw.com

/s/Andrew W. Clark (with consent)
Andrew W. Clark (P79165)
Attorney for Defendants
aclark@honigman.com

EXHIBIT 4

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
WATER RESOURCES DIVISION
PERMIT

Issued To:

AMC-WSG LLC
Attn: Rob Wilson
1955 East Lakeville Road
Oxford, Michigan 48371

Permit No: **WRP047682 v.1**
Submission No.: **HPB-72AQ-79WYR**
Site Name: **AMC-WSG, LLC - Vella Pit**
Issued: **DRAFT**
Revised:
Expires: **DRAFT**

This permit is being issued by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division, under the provisions of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); specifically:

- ☒ **Part 301, Inland Lakes and Streams**
- ☐ **Part 303, Wetlands Protection**
- ☐ **Part 315, Dam Safety**
- ☐ **Part 31, Water Resources Protection (Floodplain Regulatory Authority)**
- ☐ **Part 323, Shorelands Protection and Management**
- ☐ **Part 325, Great Lakes Submerged Lands**
- ☐ **Part 353, Sand Dunes Protection and Management**

EGLE certifies that the activities authorized under this permit are in compliance with the State Coastal Zone Management Program and certifies without conditions under the Federal Clean Water Act, Section 401 that the discharge from the activities authorized under this permit will comply with Michigan's water quality requirements in Part 31, Water Resources Protection, of the NREPA and associated administrative rules, where applicable.

Permission is hereby granted, based on permittee assurance of adherence to State of Michigan requirements and permit conditions, to:

Authorized Activity:

Excavate approximately 7,300,000 cubic yards of material from below the water table to create a lake for the purpose of sand and gravel mining. The lake shall be approximately 60 acres in size upon project completion. The depth of the lake shall be approximately 50 feet deep upon completion. All excavation shall be done in the "wet" with no dewatering or pumping of groundwater/surface water. No surface water outlet from the lake shall be utilized.

All work shall be completed in accordance with the approved plans and the specifications of this permit.

Waterbody Affected: Lake Creation
Property Location: Washtenaw County, Ann Arbor Township, T02S, R06E, Section 01
Property Tax No. I -09-01-200-002

Authority granted by this permit is subject to the following limitations:

A. Initiation of any work on the permitted project confirms the permittee's acceptance and agreement to comply with all terms and conditions of this permit.
B. The permittee, in exercising the authority granted by this permit, shall not cause unlawful pollution as defined by Part 31 of the NREPA.
C. This permit shall be kept at the site of the work and available for inspection at all times during the duration of the project or until its date of expiration.
D. All work shall be completed in accordance with the approved plans and specifications submitted with the application and/or plans and specifications attached to this permit.
E. No attempt shall be made by the permittee to forbid the full and free use by the public of public waters at or adjacent to the structure or work approved.
F. It is made a requirement of this permit that the permittee give notice to public utilities in accordance with 2013 PA 174 (Act 174) and comply with each of the requirements of Act 174.
G. This permit does not convey property rights in either real estate or material, nor does it authorize any injury to private property or invasion of public or private rights, nor does it waive the necessity of seeking federal assent, all local permits, or complying with other state statutes.
H. This permit does not prejudice or limit the right of a riparian owner or other person to institute proceedings in any circuit court of this state when necessary to protect his rights.
I. Permittee shall notify EGLE within one week after the completion of the activity authorized by this permit by completing and forwarding the attached preaddressed postcard to the office addressed thereon.
J. This permit shall not be assigned or transferred without the written approval of EGLE.
K. Failure to comply with conditions of this permit may subject the permittee to revocation of permit and criminal and/or civil action as cited by the specific state act, federal act, and/or rule under which this permit is granted.
L. All dredged or excavated materials shall be disposed of in an upland site (outside of floodplains, unless exempt under Part 31 of the NREPA, and wetlands).
M. In issuing this permit, EGLE has relied on the information and data that the permittee has provided in connection with the submitted application for permit. If, subsequent to the issuance of a permit, such information and data prove to be false, incomplete, or inaccurate, EGLE may modify, revoke, or suspend the permit, in whole or in part, in accordance with the new information.
N. The permittee shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, employees, agents, and representatives for any and all claims or causes of action arising from acts or omissions of the permittee, or employees, agents, or representative of the permittee, undertaken in connection with this permit. The permittee's obligation to indemnify the State of Michigan applies only if the state: (1) provides the permittee or its designated representative written notice of the claim or cause of action within 30 days after it is received by the state, and (2) consents to the permittee's participation in the proceeding on the claim or cause of action. It does not apply to contested case proceedings under the Administrative Procedures Act, 1969 PA 306, as amended, challenging the permit. This permit shall not be construed as an indemnity by the State of Michigan for the benefit of the permittee or any other person.

O. Noncompliance with these terms and conditions and/or the initiation of other regulated activities not specifically authorized shall be cause for the modification, suspension, or revocation of this permit, in whole or in part. Further, EGLE may initiate criminal and/or civil proceedings as may be deemed necessary to correct project deficiencies, protect natural resource values, and secure compliance with statutes.

P. If any change or deviation from the permitted activity becomes necessary, the permittee shall request, in writing, a revision of the permitted activity from EGLE. Such revision request shall include complete documentation supporting the modification and revised plans detailing the proposed modification. Proposed modifications must be approved, in writing, by EGLE prior to being implemented.

Q. This permit may be transferred to another person upon written approval of EGLE. The permittee must submit a written request to EGLE to transfer the permit to the new owner. The new owner must also submit a written request to EGLE to accept transfer. The new owner must agree, in writing, to accept all conditions of the permit. A single letter signed by both parties that includes all the above information may be provided to EGLE. EGLE will review the request and, if approved, will provide written notification to the new owner.

R. Prior to initiating permitted construction, the permittee is required to provide a copy of the permit to the contractor(s) for review. The property owner, contractor(s), and any agent involved in exercising the permit are held responsible to ensure that the project is constructed in accordance with all drawings and specifications. The contractor is required to provide a copy of the permit to all subcontractors doing work authorized by the permit.

S. Construction must be undertaken and completed during the dry period of the wetland. If the area does not dry out, construction shall be done on equipment mats to prevent compaction of the soil.

T. Authority granted by this permit does not waive permit requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA, or the need to acquire applicable permits from the County Enforcing Agent (CEA).

U. Authority granted by this permit does not waive permit requirements under the authority of Part 305, Natural Rivers, of the NREPA. A Natural Rivers Zoning Permit may be required for construction, land alteration, streambank stabilization, or vegetation removal along or near a natural river.

V. The permittee is cautioned that grade changes resulting in increased runoff onto adjacent property is subject to civil damage litigation.

W. Unless specifically stated in this permit, construction pads, haul roads, temporary structures, or other structural appurtenances to be placed in a wetland or on bottomland of the water body are not authorized and shall not be constructed unless authorized by a separate permit or permit revision granted in accordance with the applicable law.

X. For projects with potential impacts to fish spawning or migration, no work shall occur within fish spawning or migration timelines (i.e., windows) unless otherwise approved in writing by the Michigan Department of Natural Resources, Fisheries Division.

Y. Work to be done under authority of this permit is further subject to the following special instructions and specifications:

1. The property owner, contractor(s), and any agent involved in exercising this permit are held responsible to ensure the project is constructed in accordance with all drawings and specifications contained in this permit. The contractor is required to provide a copy of the permit to all subcontractors doing work authorized by this permit.

2. The permittee shall monitor wetlands and waterbodies adjacent to permitted activities (offsite) for measurable adverse impacts. Prior to commencing permitted activities, the permittee shall:
    a. Within 90 days of draft permit issuance, the permittee shall prepare and submit an approvable resource monitoring plan to EGLE for review and approval. The approvable monitoring plan document will be provided and accepted by EGLE prior to signature of this permit by EGLE.
    b. A monitoring report, which compiles and summarizes data collected during the monitoring period, shall be submitted annually by the permittee. Monitoring reports shall cover the period of January 1 through December 31 and be submitted to EGLE prior to January 31 of the following year.

3. If monitoring data reveals that adjacent wetlands or waterbodies have been measurably or adversely impacted, the permittee shall assess the extent of the wetland impacts and notify EGLE within 48 hours. Based on the extent of the impacts, EGLE may require the permittee to submit an adaptive management plan to eliminate measurable adverse impacts, and/or a mitigation plan that may include purchase of wetland bank credits, and/or require a permit modification. Depending on the extent of the offsite wetland or waterbody impacts, the permittee may be required to implement additional strategies to eliminate the potential for these impacts.

4. The permittee shall provide a surety bond or letter of credit to EGLE in a form identical to the financial assurance models on EGLE's Web site at www.michigan.gov/wetlands in an amount of $XXX,XXX (to be determined) to ensure that monitoring is performed and the lake creation does not result in impacting nearby wetlands and waterbodies. The financial assurance document will be provided and accepted by EGLE prior to signature of this permit by EGLE.
    a. The financial instrument will be released upon completion of the project following successful execution of the monitoring plan and monitoring demonstrates that the adjacent wetlands and waterbodies have not been adversely impacted, or mitigation bank credits have been purchased to mitigate for impacts.

5. Prior to the initiation of any permitted construction activities, a sedimentation barrier (e.g., silt fence, straw bale barrier, etc.) shall be constructed immediately downgradient of the construction site. Sedimentation barriers shall be specifically designed to handle the sediment type, load, water depth, and flow conditions of each construction site throughout the anticipated time of construction and unstable site conditions. The sedimentation barrier shall be maintained in good working order throughout the duration of the project. Upon project completion, the accumulated materials shall be removed and disposed of at an upland (i.e., non-wetland, non-floodplain, non-bottomland) site and stabilized with seed and mulch. The sedimentation barrier shall then be removed in its entirety and the area restored to its original configuration and cover. In the event there is a problem with the sedimentation barrier, and a failure to contain the sediments from leaving the project site, the project shall be immediately stopped, evaluated, and appropriate measures shall be taken to stop the release of sediments/turbidity. The permittee, agent, or contractor shall immediately notify the EGLE representative through MiEnviro Schedules of Compliance submission, or via phone or email at 517-257-4532 or BalesJ@Michigan.gov, on the turbidity curtain failure and the measures being taken to stop the release of sediments/turbidity.

6. All raw areas in uplands resulting from the permitted construction activity shall be effectively stabilized with sod and/or seed and mulch (or other technology specified by this permit or project plans) in a sufficient quantity and manner to prevent erosion and any potential siltation to surface waters or wetlands. Temporary stabilization measures shall be installed before or upon commencement of the permitted activity, and shall be maintained until permanent measures are in place. Permanent measures shall be in place within five (5) days of achieving final grade.

7. A stormwater discharge permit may be required under the Federal Clean Water Act for construction activities that disturb one or more acres of land and discharge to surface waters. For sites over five (5) acres, the permit coverage may be obtained by a Part 91, Soil Erosion and Sedimentation Control (SESC) permit, or coverage as an Authorized Public Agency (APA), and filing a "Notice of Coverage" form to EGLE's Water Resource Division. For sites with disturbance from one acre up to five acres, stormwater coverage is automatic once the SESC permit is obtained or if work is being conducted by an APA. These one to five acre sites are not required to apply for coverage but are required to comply with stormwater discharge permit requirements. Information on the stormwater discharge permit is available from the Water Resource Division's Stormwater Permit Program at www.michigan.gov/soilerosion under the "Construction Stromwater Info".

8. The permittee is cautioned that grade changes resulting in increased runoff onto adjacent property is subject to civil damage litigation.

9. The permittee is cautioned that impacts to the aquifers of adjacent properties as a result of this lake development are subject to civil damage litigations.

10. Dewatering is not authorized by this permit.

11. No connection of the lake to surface waters of the state is authorized by this permit.

12. No fill, excess soil, or other material shall be placed in the 100-year floodplain, or any wetland or surface water area not specifically authorized by this permit, its plans, and specifications.

13. In issuing this permit, EGLE has relied on the information and data which the permittee has provided in connection with the permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, or additional information demonstrates that the spoils are causing environmental contamination, or that new State or Federal regulations are promulgated which cause this disposal to be inappropriate, EGLE may modify, revoke, or suspend the permit, in whole or in part, in accordance with the new information.

14. Dredged material, including organic and inorganic sediment, vegetation, and other material removed from bottomlands, shall not be placed in any wetland, floodplain or critical dune, or below the ordinary high-water mark of any inland lake, Great Lake, or stream. Dredged material placed on upland shall be stabilized in such a manner to prevent erosion of any material into any waterbody, including wetlands, or floodplain.

15. The permittee is advised of other potential requirements and legal liabilities under other statutes for placement of dredge material on upland and is responsible for compliance with all applicable local, state, and federal regulations. Please review the information under Dredging Documents at the attached link: https://www.michigan.gov/deq/0,4561,7-135-3312_4123-14201--,00.html

16. This permit does not authorize any future expansion of the mine or any extension of operations with the potential to result in additional direct, indirect or cumulative impacts to wetlands.

17. At the end of five (5) years, the permittee shall apply to EGLE for a new Part 301, Inland Lakes and Streams/Part 303, Wetlands Protection permit to continue sand and gravel mining at this site.

18. If the life of mine is projected to extend past the life of this permit, a new permit will be required for impacts to aquatic resources regulated under Part 301, Inland Lakes and Streams, of the NREPA, including, but not limited to, the drawdown or dewatering of regulated aquatic resources. All work authorized by this permit shall be completed in accordance with the approved plans and specifications.

19. This permit is limited to authorizing the construction as specified above and carries with it no assurances or implications that associated lake, stream, wetland, or floodplain areas can be developed and/or serviced by the structures authorized by this permit.

20. This permit is issued after-the-fact and authorizes only the construction as specified above. This permit does not authorize or sanction other work that has been completed in violation of applicable federal, state, or local statutes.

21. The local unit of government in which this project site is located has a wetland ordinance. Authority granted by this permit does not waive permit requirements or the need to obtain a separate permit from the local unit of government.

22. Authority granted by this permit does not waive permit or program requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA or the need to acquire applicable permits from the CEA. To locate the Soil Erosion Program Administrator for your county, visit https://www.michigan.gov/egle/about/organization/water-resources/soil-erosion/sesc-overview and select “Soil Erosion and Sedimentation Control Agencies”.

23. The authority to conduct the activity as authorized by this permit is granted solely under the provisions of the governing act as identified above. This permit does not convey, provide, or otherwise imply approval of any other governing act, ordinance, or regulation, nor does it waive the permittee's obligation to acquire any local, county, state, or federal approval or authorization necessary to conduct the activity.

24. This permit does not authorize or sanction work that has been completed in violation of applicable federal, state, or local statutes.

25. The permit placard shall be kept posted at the work site in a prominent location at all times for the duration of the project or until permit expiration.

26. This permit is being issued for the maximum time allowed and no extensions of this permit will be granted. Initiation of the construction work authorized by this permit indicates the permittee's acceptance of this condition. The permit, when signed by EGLE, will be for a five-year period beginning on the date of issuance. If the project is not completed by the expiration date, a new permit must be sought.

27. Upon signing by the permittee named herein, this permit must be returned to EGLE's Water Resources Division, Jackson District Office for final execution. This permit shall become effective on the date of the EGLE representative's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.
X

_____

Permittee Date

X

_____

Printed Name and Title of Permittee

Issued By: _____

James Bales
Jackson District Office
Water Resources Division
517-257-4532

cc: Ann Arbor Township Clerk
Washtenaw County Water Resources Commissioner
Leslie Nelson, Haley & Aldrich of Michigan, Inc.
Amy Lounds, EGLE
Kyle Alexander, EGLE
Jeff Pierce, EGLE
Elana Bruursema, EGLE
Megan Cameron, EGLE
Lena Pappas, EGLE
Mike Pennington, EGLE

VELLA PIT PART 301
APPLICATION FOR PERMIT

SITE ADDRESS:
4984 EARHART RD.
ANN ARBOR, MICHIGAN
TOWNSHIP 02 SOUTH, RANGE 06 EAST

SITE LOCUS
TOPO SOURCE: USGS TOPOGRAPHIC MAP, ANN ARBOR EAST, MICHIGAN QUADRANGLE (2023).

0 2000 4000
SCALE IN FEET

SITE AERIAL
MAP SOURCE: NEARMAP, 2023

0 500 1000
SCALE IN FEET

DRAWING INDEX		
SHEET NO.	SHEET TITLE	DESCRIPTION
1	G-100	TITLE SHEET AND DRAWING INDEX
2	C-100	EXISTING CONDITIONS
3	C-101	PRE-2020 CONDITIONS
4	C-102	CROSS SECTIONS
5	C-103	WETLAND LOCATION PLAN
6	C-104	WELL LOCATION PLAN
7	C-105	CONCEPTUAL RECLAMATION PLAN
8	C-106	RECLAMATION CROSS SECTIONS

HALEY ALDRICH

HALEY & ALDRICH OF MICHIGAN, INC
455 E. Eisenhower Parkway, Suite 210
Ann Arbor, MI 48108-3323
Tel: 734.887.8400
www.haleyaldrich.com

PREPARED FOR:

AMC-WSG LLC
6966 FISHER ROAD
JEDDO, MI

FOR PERMITTING PURPOSES ONLY

Project No.:	0207866_003
Scale:	AS SHOWN
Date:	23 OCTOBER 2023
Drawn By:	JD
Designed By:	JD
Checked By:	DS
Approved By:	LN
Stamp:	

Rev.	Description	By	Date

VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

TITLE SHEET AND DRAWING INDEX

G-100

Sheet: 1 of 8

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LEGEND

- SITE BOUNDARY
- PARCEL BOUNDARY
- TOPOGRAPHIC CONTOURS 5-FT INTERVAL
- ORDINARY HIGH WATER MARK
- CROSS SECTION (1 C-102)

NOTES

1. LOCATIONS OF BUILDINGS AND STRUCTURES ARE APPROXIMATE.
2. TOPOGRAPHIC CONTOUR SOURCE: SURVEY PERFORMED BY PEA GROUP, 20 OCTOBER 2023. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT.
3. AERIAL IMAGERY SOURCE: NEARMAP, 2 OCTOBER 2023.
4. SLOPES AND BATHYMETRIC CONDITIONS OF PONDS 1 AND 2 ARE NOT EXPECTED TO CHANGE UNTIL FUTURE MINING OF THESE AREAS TO REACH FINAL EXTENT SHOWN IN SHEET C-105.
5. SLOPE AND BATHYMETRIC CONDITIONS OF PONDS 3 AND 4 ARE EXPECTED TO CHANGE DUE TO CURRENT MINING ACTIVITIES.

N

0 150 300 450 600
SCALE IN FEET

HALEY ALDRICH

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6966 FISHER ROAD
JEDDO, MI

FOR PERMITTING PURPOSES ONLY

Project No.:	3207866_003
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Checked By:	OS
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Stamp:	

Rev.	Description	By	Date

VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

EXISTING CONDITIONS

C-100

Sheet: 2 of 8

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Sheet: C-100

LEGEND

- SITE BOUNDARY
- PARCEL BOUNDARY
- TOPOGRAPHIC CONTOURS 5-FT INTERVAL
- ORDINARY HIGH WATER MARK
- CROSS SECTION (1 / C-102)

NOTES

1. LOCATIONS OF BUILDINGS AND STRUCTURES ARE APPROXIMATE.
2. TOPOGRAPHIC CONTOUR SOURCE: 2016 - 2017 NRCS 30 COUNTY MI LIDAR. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT. VERTICAL DATUM IS NAVD88.
3. AERIAL IMAGERY SOURCE: NEARMAP, 19 OCTOBER 2019.
4. SLOPES AND BATHYMETRIC CONDITIONS OF PONDS 1 AND 2 ARE NOT EXPECTED TO CHANGE UNTIL FUTURE MINING OF THESE AREAS TO REACH FINAL EXTENT SHOWN IN SHEET C-105.
5. SLOPE AND BATHYMETRIC CONDITIONS OF PONDS 3 AND 4 ARE EXPECTED TO CHANGE DUE TO CURRENT MINING ACTIVITIES.

N

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SCALE IN FEET

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JEDDO, MI

FOR PERMITTING PURPOSES ONLY

Project No.:	3207866_003
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Date:	23 OCTOBER 2023
Drawn By:	JD
Designed By:	JD
Checked By:	OS
Approved By:	LN
Stamp:	

Rev.	Description	By	Date

VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

PRE-2020 CONDITIONS

C-101

Sheet: 3 of 8

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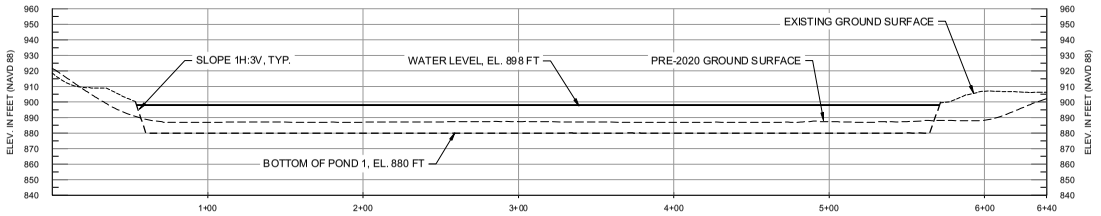

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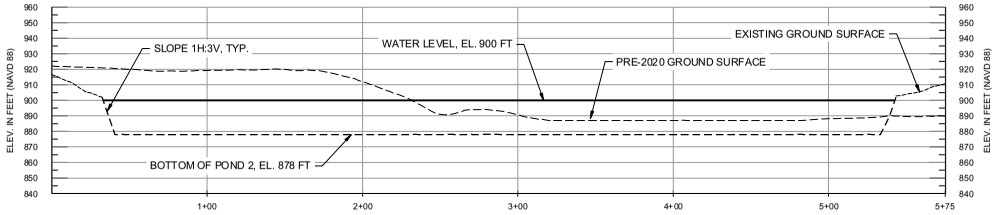

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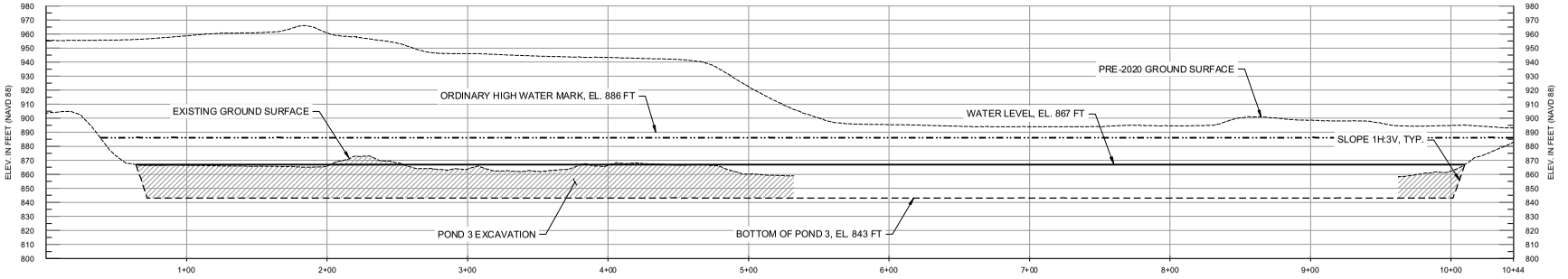

3 / C-100 CROSS SECTION - POND 3
SCALE: AS SHOWN

NOTES

1. TOPOGRAPHIC CONTOUR SOURCE: SURVEY PERFORMED BY PEA GROUP, 20 OCTOBER 2023. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT.
2. PRE-2020 GROUND SURFACE DATA SOURCE: 2016 - 2017 NRCS 30 COUNTY MI LIDAR. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT. VERTICAL DATUM IS NAVD88.
3. SLOPES AND BATHYMETRIC CONDITIONS OF PONDS 1 AND 2 ARE NOT EXPECTED TO CHANGE UNTIL FUTURE MINING OF THESE AREAS TO REACH FINAL EXTENT SHOWN IN SHEET C-105. SLOPE AND BATHYMETRIC CONDITIONS OF PONDS 3 AND 4 ARE EXPECTED TO CHANGE DUE TO CURRENT MINING ACTIVITIES.
4. POND 3 EXCAVATION VOLUME IS 158,406 CU YD.

HORIZ. 0 50 100 150 200
VERT. 0 50 100 150 200
SCALE IN FEET

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PREPARED FOR:

AMC-WSG LLC
6966 FISHER ROAD
JEDDO, MI

FOR PERMITTING PURPOSES ONLY

Project No.:	0207666_003
Scale:	AS SHOWN
Date:	23 OCTOBER 2023
Drawn By:	JD
Designed By:	JD
Checked By:	OS
Approved By:	LN
Stamp:	

Rev.	Description	By	Date

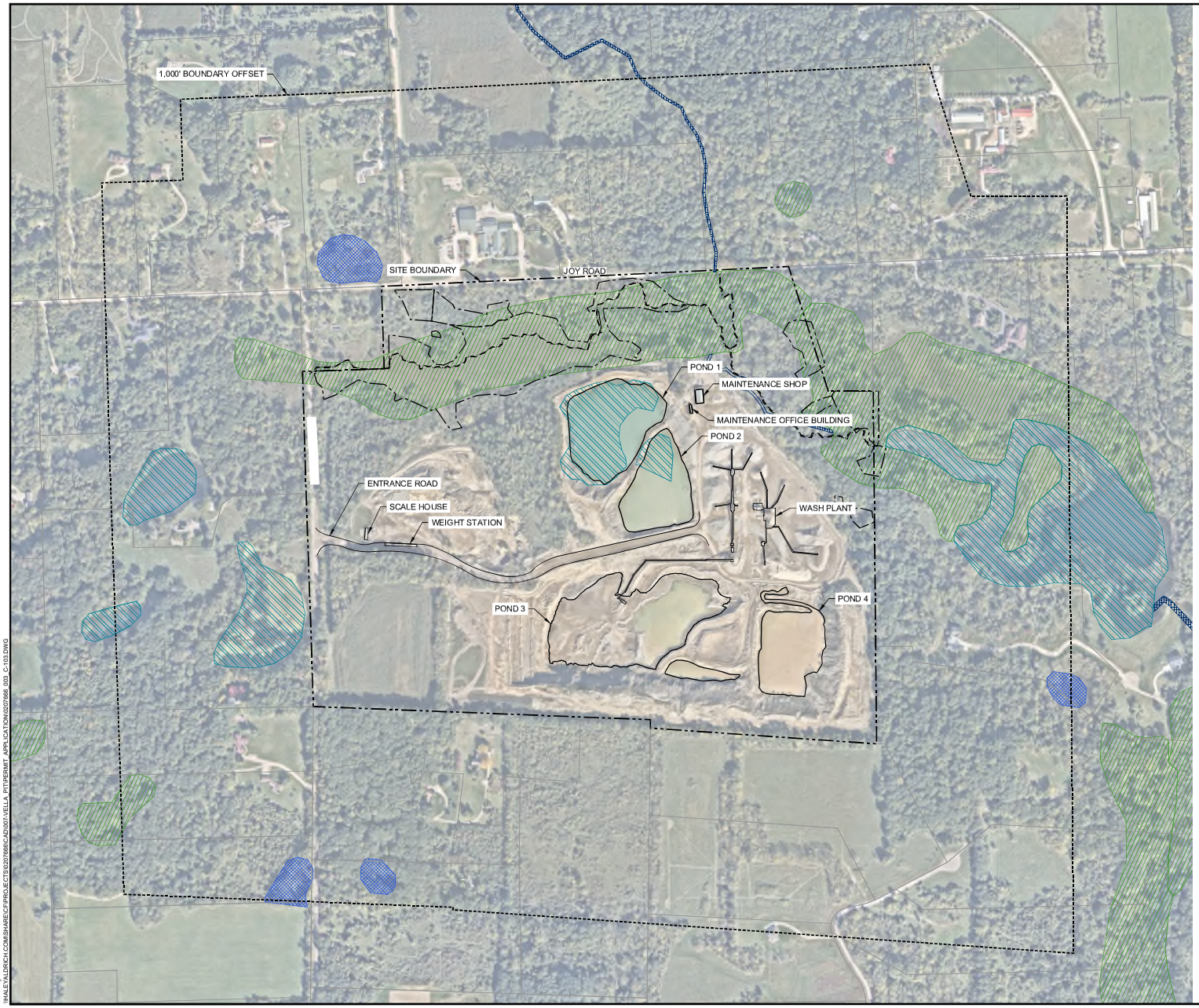
VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

CROSS SECTIONS

C-102

Sheet: 4 of 8



LEGEND

- SITE BOUNDARY
- 1,000-FT BOUNDARY OFFSET
- PARCEL BOUNDARY
- WETLAND DELINEATION
- STREAM DELINIATION
- FRESHWATER FORESTED/SHRUB WETLAND (USGS)
- FRESHWATER EMERGENT WETLAND (USGS)
- FRESHWATER POND (USGS)
- RIVERINE (USGS)

NOTES

1. LOCATIONS OF BUILDINGS AND STRUCTURES ARE APPROXIMATE.
2. REGIONAL WETLANDS DATA SOURCE: U.S. FISH AND WILDLIFE NATIONAL WETLANDS INVENTORY, 2023. WETLAND BOUNDARY IS APPROXIMATE.
3. ON-SITE DELINEATED WETLANDS DATA SOURCE: WETLAND AND STREAM DELINEATION REPORT FOR MID-MICHIGAN MATERIALS - VELLA PIT, HALEY & ALDRICH, 6 MAY 2024
4. AERIAL IMAGERY SOURCE: NEARMAP, 2 OCTOBER 2023.

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Project No.:	0207666_003
Scale:	AS SHOWN
Date:	23 OCTOBER 2023
Drawn By:	JD
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Checked By:	OS
Approved By:	LN
Stamp:	

Rev.	Description	By	Date

VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

WETLAND LOCATION PLAN

C-103

Sheet: 5 of 8

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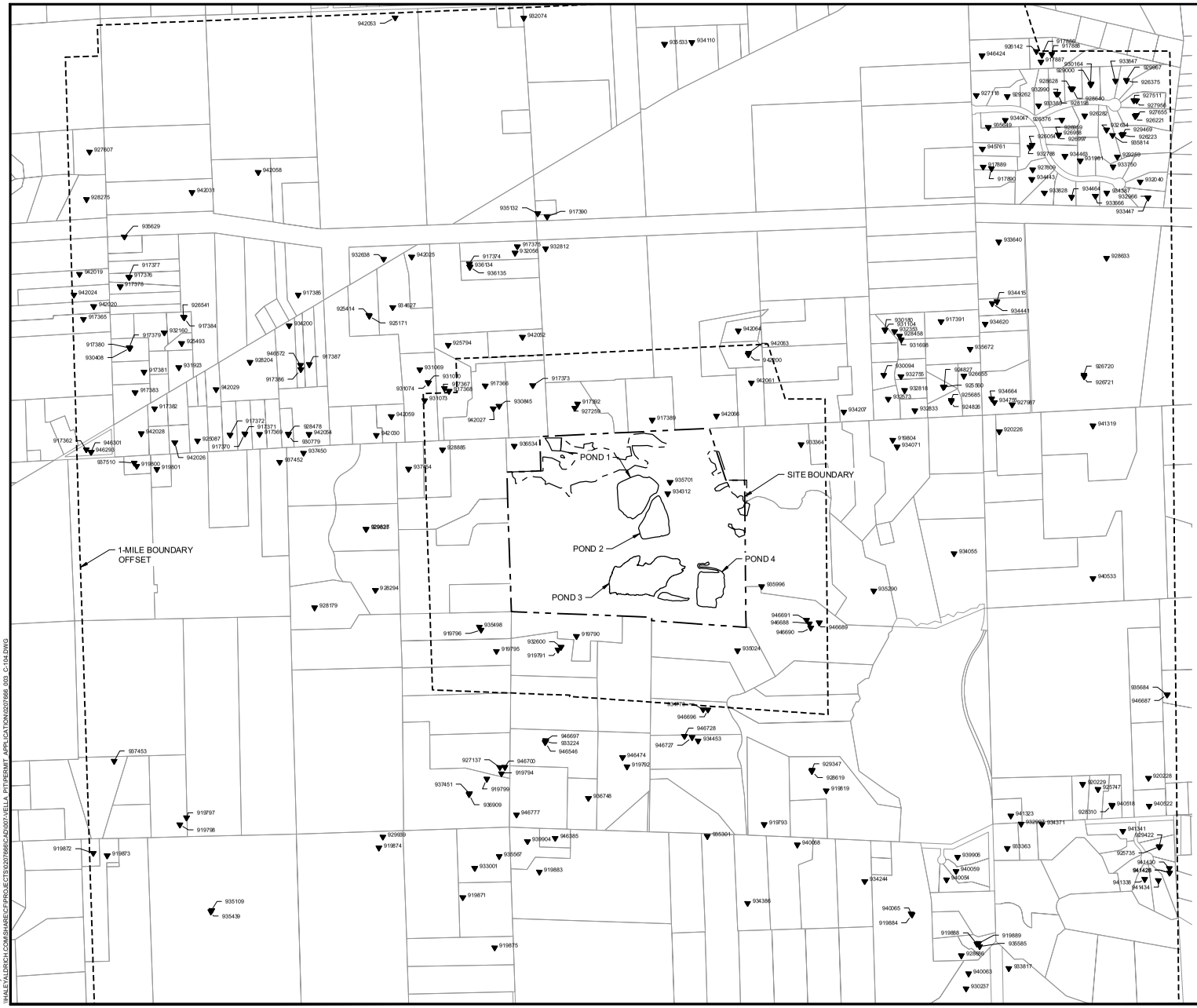

LEGEND

- SITE BOUNDARY
- 1-MILE BOUNDARY OFFSET
- PARCEL BOUNDARY
- 933847 WELL LOCATION AND DESIGNATION

NOTES

1. LOCATIONS OF BUILDINGS AND STRUCTURES ARE APPROXIMATE.
2. WELL LOCATION DATA SOURCE: MICHIGAN DEPARTMENT OF ENVIRONMENT GREAT LAKES, AND ENERGY WELLOGIC DATABASE, 2024.

0 600 1200 1800 2400
SCALE IN FEET

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PREPARED FOR:

AMC-WSG LLC
6966 FISHER ROAD
JEDDO, MI

FOR PERMITTING PURPOSES ONLY

Project No.:	0207666_003
Scale:	AS SHOWN
Date:	23 OCTOBER 2023
Drawn By:	JD
Designed By:	JD
Checked By:	OS
Approved By:	LN
Stamp:	

Rev.	Description	By	Date

VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

WELL LOCATION PLAN

C-104

Sheet: 6 of 8

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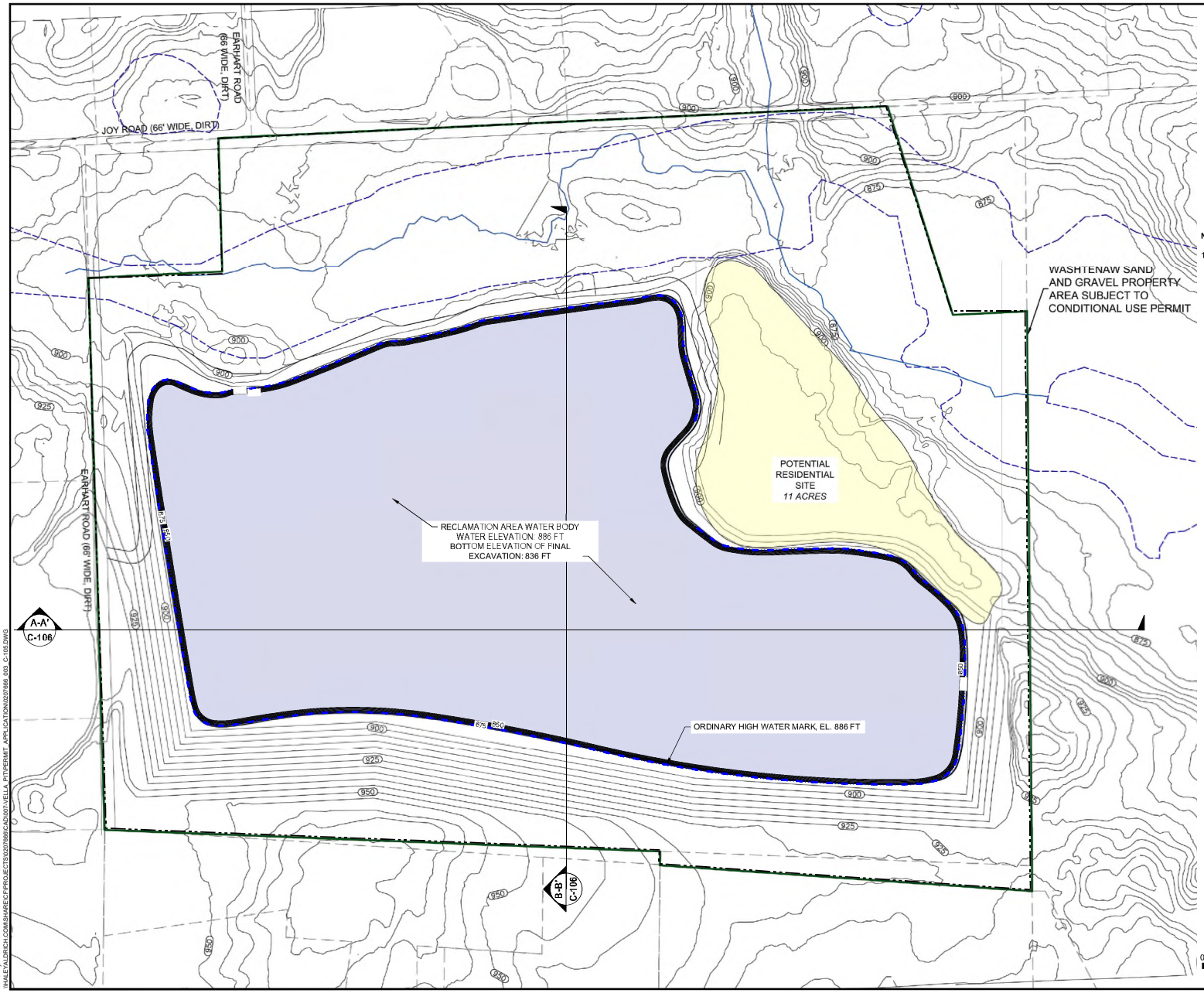

NOTES

1. THIS PLAN IS BASED ON A FIGURE THAT WAS PREPARED BY PEA INC. AND REVISED BY GZA GEOENVIRONMENTAL, INC. IN OCTOBER 2020.

HALEY ALDRICH

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PREPARED FOR:

AMC-WSG LLC
6966 FISHER ROAD
JEDDO, MI

FOR PERMITTING PURPOSES ONLY

Project No.:	3207866_003
Scale:	AS SHOWN
Date:	23 OCTOBER 2023
Drawn By:	JD
Designed By:	JD
Checked By:	OS
Approved By:	LN
Stamp:	

Rev.	Description	By	Date

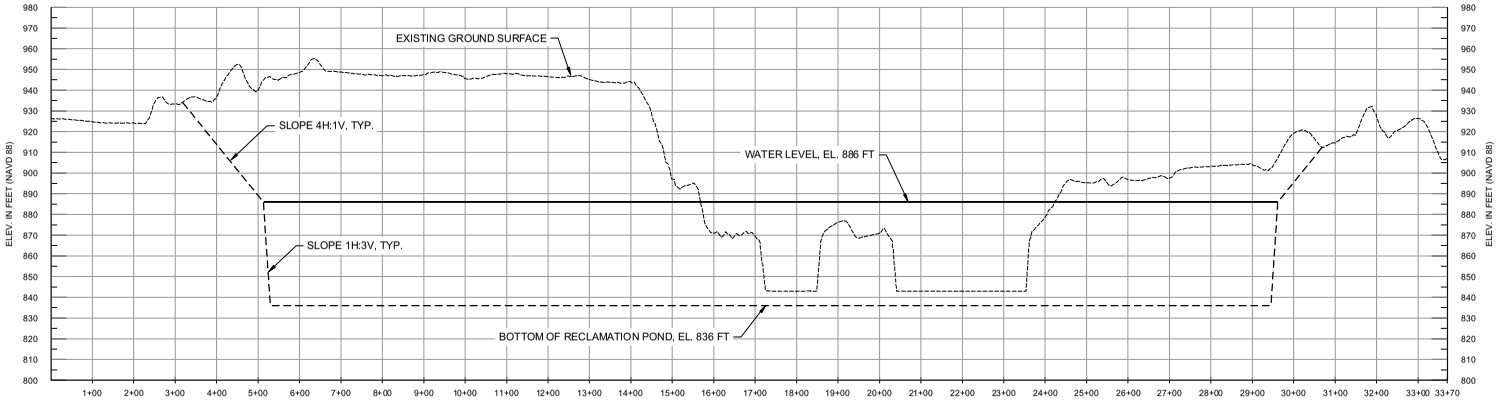
VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

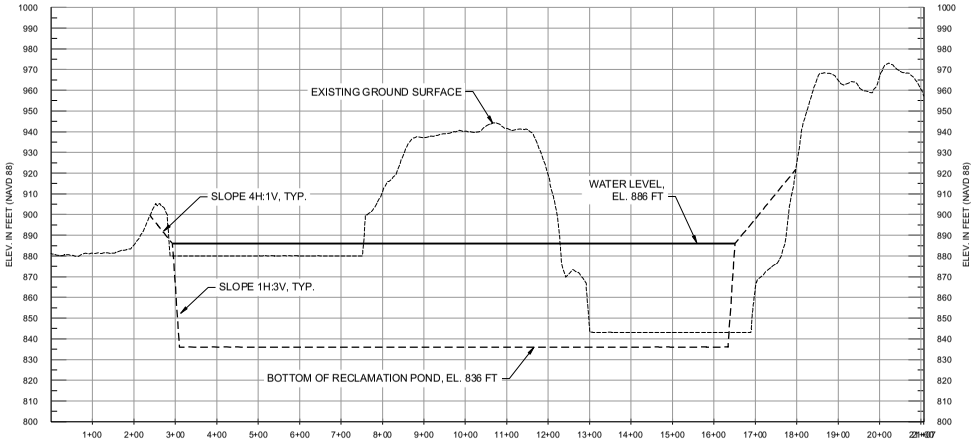
CONCEPTUAL RECLAMATION PLAN

C-105

Sheet: 7 of 8



1 C-105 **CROSS SECTION A-A'**
SCALE: AS SHOWN



2 C-105 **CROSS SECTION B-B'**
SCALE: AS SHOWN

NOTES

1. TOPOGRAPHIC CONTOUR SOURCE: SURVEY PERFORMED BY PEA GROUP, 20 OCTOBER 2023. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT.
2. PRE-2020 GROUND SURFACE DATA SOURCE: 2016 - 2017 NRCS 30 COUNTY MI LIDAR. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT. VERTICAL DATUM IS NAVD88.

HORIZ. 0 150 300 450 600
VERT. 0 30 60 90 120
SCALE IN FEET

HALEY & ALDRICH OF MICHIGAN, INC
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Ann Arbor, MI 48108-3323
Tel: 734.887.8400
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PREPARED FOR:

AMC-WSG LLC
6966 FISHER ROAD
JEDDO, MI

FOR PERMITTING PURPOSES ONLY

Project No.:	0207666_003
Scale:	AS SHOWN
Date:	23 OCTOBER 2023
Drawn By:	JD
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Approved By:	LN
Stamp:	

Rev.	Description	By	Date

VELLA PIT PART 301
APPLICATION FOR PERMIT

4984 EARHART RD.
ANN ARBOR, MICHIGAN

RECLAMATION CROSS SECTIONS

C-106

Sheet: 8 of 8

EXHIBIT 5

2004 WL 2875085
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Vinod SHARMA, Plaintiff-Appellant,
v.
METROPOLITAN LIFE INSURANCE COMPANY, Defendant-Appellee.

No. 249314.
|
Dec. 14, 2004.

Before: WHITBECK, C.J., and SAAD and TALBOT, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Plaintiff appeals the trial court's order that granted summary disposition in favor of defendant, and we affirm.

I

A

Plaintiff argues that the trial court erred when it granted defendant's motion for summary disposition based on expiration of the statute of limitations. A trial court's decision on a motion for summary disposition is reviewed de novo on appeal. *Dressel v. Ameribank,* 468 Mich. 557, 561; 664 NW2d 151 (2003). To the extent the motion for summary disposition was granted based on the expiration of the statute of limitations, the dismissal is reviewed pursuant to MCR 2.116(C)(7). Also, the determination of whether a limitations period applies to preclude a lawsuit is a question of law that we review de novo. *City of Detroit v. 19675 Hasse,* 258 Mich.App 438, 444; 671 NW2d 150 (2003). Issues not addressed by the trial court are generally not preserved for appellate review. *Herald Co v. Ann Arbor Pub Schools,* 224 Mich.App 266, 278; 568 NW2d 411 (1997). Plaintiff's arguments related to the tolling of the statute of limitations based on disability and imposition of the discovery rule, are unpreserved and therefore are reviewed for plain error that affected substantial rights. *Kern v. Blethen-Coluni,* 240 Mich.App 333, 336; 612 NW2d 838 (2000); *People v. Carines,* 460 Mich. 750, 763; 597 NW2d 130 (1999).

B

To obtain relief from a judgment, based upon claims of misrepresentation or fraud, MCR 2.612(C)(2), requires that plaintiff bring his claim within a year from the entry of the order. [1] Because the order was entered on May 17, 1999, and because plaintiff filed this lawsuit on November 15, 2002, his claim is untimely.

C

Similarly, plaintiff's claims of negligence, breach of fiduciary duty and racial discrimination are time-barred by the applicable statute of limitations. MCL 600.5805(1). [2] Because plaintiff's injury occurred on May 17, 1999, with the issuance of an order releasing funds held by defendant, or at the very latest on May 27, 1999, when defendant actually released the funds from plaintiff's annuity account, plaintiff was required to initiate his lawsuit no later than May 27, 2002. It is undisputed that plaintiff filed his claim on November 15, 2002, and thus his claims are time-barred.

D

Plaintiff's breach of contract and fraud claims are similarly time-barred by the applicable statutes of limitation. A claim for breach of contract [3] and for fraud [4] must be brought within six years from the time the claim accrues. A claim accrues "at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827. Plaintiff asserts he was fraudulently induced to purchase the annuity contract by defendant. The misrepresentations asserted by plaintiff occurred at the time of purchase of the contract in 1995. An action for breach of contract accrues on the date of the breach, not on the date the breach is discovered. *Michigan Millers Mut Ins Co v. West Detroit Bldg Co, Inc,* 196 Mich.App 367, 372 n 1; 494 NW2d 1 (1992). Similarly, accrual of a claim of fraud is not extended until plaintiff discovers or should have discovered

the claim. *Boyle v. General Motors Corp,* 468 Mich. 226, 231; 661 NW2d 557 (2003). Plaintiff's claim for fraud in issuance of the annuity contract began to run in 1995, and is barred by the applicable statute of limitations.

E

***2** Plaintiff argues that his involvement in bankruptcy proceedings, with the resultant court-ordered stay, tolls the running of the statute of limitations. Plaintiff asserts 11 USC 108(c)(2) served to stay the applicable limitations period during his bankruptcy proceeding. Plaintiff incorrectly interprets the meaning and applicability of this provision. The historical and statutory notes that follow this section of the code indicate that the provision only "extends the statute of limitations for creditors." In addition, case law has indicated that, even if plaintiff received a stay under 11 USC 108(c)(2), he had only "thirty days from the termination of that stay to bring an action" as a grace period to file his claim, if the applicable limitations period, MCL 600.5805(10), had expired. *Ashby v. Byrnes,* 251 Mich.App 537, 542-543; 651 NW2d 922 (2002). [5] If permitted to use the thirty day savings provision, plaintiff would have been required to file his claim no later than October 24, 2002, or thirty days subsequent to the completion of the bankruptcy and lifting of the stay, which he failed to do.

F

Plaintiff erroneously claims that the statute of limitations should be tolled based on either his disability or that of his daughter and/or the discovery rule. In order to determine whether to impose the discovery rule or strictly enforce a limitations period, a court "must carefully balance when the plaintiff learned of her injuries, whether she was given a fair opportunity to bring [her] suit, and whether defendant's equitable interests would be unfairly prejudiced by tolling the statute of limitations." *Brennan v. Edward D Jones & Co,* 245 Mich.App 156, 159; 626 NW2d 917 (2001), citing *Stephens, supra* at 531, 536. Pursuant to the discovery rule, "the period of limitations does not begin to run 'until the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, that he had a possible cause of action." ' *Brennan, supra* at 159, quoting *Brown v. Drake-Willock Int'l, Ltd,* 209 Mich.App 136, 142; 530 NW2d 510 (1995). Plaintiff acknowledged receipt of defendant's motion for release of the annuity funds, receipt of the order requiring defendant to release the monies and the actual payment of the monies pursuant to the May 17, 1999, court order. Plaintiff is unable to demonstrate, and fails to indicate any evidence that would imply, he was unable to discover the alleged injury on the date of the lower court order of May 17, 1999. Simply based on plaintiff's claim of ordinary negligence, the discovery rule is not available. *Stephens, supra* at 537.

Plaintiff also argues that the statute of limitations should be tolled pursuant to MCL 600.5851(1) for "disability" due to his daughter's illness and the psychological and emotional stress he incurred as a result of the ongoing court proceedings and subsequent financial distress. Plaintiff cannot succeed in tolling the statute of limitations pursuant to this statute. Plaintiff acknowledged in his deposition receiving the court notices and garnishment order and comprehending their meaning. Plaintiff has failed to demonstrate that he was unable to attend to personal or business affairs to the extent it became necessary to explain matters that an ordinary person would comprehend. *Lemmerman v. Fealk,* 449 Mich. 56, 71-73; 534 NW2d 695 (1995). As plaintiff provides no evidence other than his own contention of disability, he cannot sustain his burden of demonstrating insanity for purposes of tolling the statute. *Warren Consolidated Schools v. WR Grace & Co,* 205 Mich.App 580, 583; 518 NW2d 508 (1994). MCL 600.5851(1) deals exclusively with an individual's disability and not the disability or infancy of a dependent. Moreover, plaintiff's unsupported assertion that his daughter's medical condition should toll the limitations period is not properly pled or supported by plaintiff. "It is not sufficient for a party to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject the position." *Wilson v. Taylor,* 457 Mich. 232, 243; 577 NW2d 100 (1998), citing *Mitcham v. Detroit,* 355 Mich. 182, 203; 94 NW2d 388 (1959).

II

***3** Plaintiff maintains that the trial court erred when it dismissed his breach of contract claim. Plaintiff has failed to identify the actual language of the annuity contract that defendant breached. The annuity contract does not contain a duty to defend provision. Nothing in the annuity contract supports plaintiff's position that defendant was obligated to defend the garnishment action on plaintiff's behalf. Contrary to plaintiff's contention, there is no ambiguity in the language

of the contract. Plaintiff does not argue that the wording of the contract is subject to differing interpretations. Rather, plaintiff asserts the release of funds from the annuity by defendant is contrary to plaintiff's understanding, and assurance by defendant, that the funds were protected from creditors. Plaintiff asserts that the basis of his agreement for entering into the annuity contract was the assurance by defendant that the contract was inviolate with regard to creditor actions. The problem with this argument is that plaintiff has failed to demonstrate that the annuity contract was fraudulently induced and did not conform with plaintiff's requirements. The contract is clear, on its face, that it is an "annuity contract." Further, the contract "is an Individual Retirement Annuity under Section 408(b) of the Internal Revenue Code" and may also qualify as a "Simplified Employee Pension Plan" pursuant to "Section 408(k) of the Internal Revenue Code." Plaintiff has failed to demonstrate that the contract funds were subject to MCL 600.6023(1). The structure of the annuity contract, in conformance with MCL 600.6023(1)(k) contradicts plaintiff's assertion that defendant fraudulently or negligently provided a contract that was not subject to invasion by creditors. Because plaintiff failed to timely contest the propriety of the garnishment of these funds by creditors, he cannot now assert the contract did not conform to his expectations and understanding with defendant. Similarly, because plaintiff has failed to demonstrate fraud or mistake in relation to the contract, there exists no basis to reform the contract as requested by plaintiff.

Plaintiff's assertion that defendant wrongfully released the annuity funds following the issuance of a court order, thereby breaching the annuity contract, is without a legal basis:

> A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date. [*Kirby v Michigan High School Athletic Ass'n,* 459 Mich. 23, 40; 585 NW2d 290 (1998).]

It is undisputed that only after the issuance of a court order did defendant release the funds. Also, plaintiff was apprised by defendant, at each step in the process, of the action or position taken by defendant. By failing to take action to dispute the release of funds, subsequent to the issuance of the court order, plaintiff violated the basic tenet, that:

> ***4** A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal. [*Johnson v. White,* 261 Mich.App 332, 346; 682 NW2d 505 (2004), quoting *In re Contempt of Dudzinski,* 257 Mich.App 96, 111; 667 NW2d 68 (2003).]

It was incumbent upon plaintiff to defend against the garnishment or contest the order that required defendant to relinquish the funds. Any error is solely attributable to plaintiff and fault cannot be assigned to defendant for simply complying with a valid court order.

III

Plaintiff asserts that the trial court erred when it dismissed his claims of negligence and breach of fiduciary duty against defendant. Plaintiff claims that defendant violated the Michigan Consumer Protection Act, and that plaintiff should be permitted to proceed based upon the expanded limitations period provided by MCL 445.911. The provision is not applicable as it refers to the use of class actions to preclude deceptive trade, practice or commerce declared by a court of law to be unlawful. Plaintiff asserts that defendant was more knowledgeable regarding individual retirement accounts and annuity contracts, and thus, should be held to the level of a fiduciary in the underlying transaction. However, plaintiff's status as a consumer does not transform this commercial transaction into a situation that gives rise to a fiduciary relationship.

Plaintiff's broader assertion of an action sounding in negligence is unsustainable. It is well recognized in Michigan, that:

> It has often been stated that the sometimes hazy distinction between contract and tort actions is made by applying the following rule: if a

> relation exists that would give rise to a legal duty without enforcing the contract promise itself, the tort action will lie, otherwise it will not. [*Sherman v. Sea Ray Boats, Inc,* 251 Mich.App 41, 49; 649 NW2d 783 (2002), citing *Hart v. Ludwig,* 347 Mich. 559, 565; 79 NW2d 895 (1956).]

While plaintiff's claims imply negligent performance by defendant, as they center on a failure to warn and instruct plaintiff, they are, in essence, a claim of nonfeasance "for which there is no duty alleged that is separate and distinct from a claim of breach of contract." *Sherman, supra* at 53. As such, the trial court was correct in dismissing the negligence action.

Plaintiff argues defendant breached its fiduciary duty by misleading plaintiff regarding the inviolate nature of the annuity contract by creditors. However, the relationship between an insurer and its insured is contractual, not fiduciary, in nature. "While this Court has recognized a relationship of trust and confidence between insurer and insured which permits an action for fraud predicated upon a claim of misrepresentation," *Crossley v. Allstate Ins Co,* 155 Mich.App 694, 697; 400 NW2d 625 (1986), citing *Drouillard v. Metropolitan Life Ins Co,* 107 Mich.App 608, 621; 310 NW2d 15 (1981), plaintiff's assertion of misrepresentation and negligence is simply unfounded under these facts.

IV

***5** Plaintiff contends the trial court and defendant discriminated against him based on race, ethnicity and his status as an in propria persona plaintiff. A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone and may not be supported with documentary evidence. *Beaudrie v. Henderson,* 465 Mich. 124, 129; 631 NW2d 308 (2001).

Plaintiff merely asserted a suspicion that defendant had discriminated against him. "It is not sufficient for a party to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject the position." *Wilson, supra* at 243. It is a well established rule of pleading that "[c]onclusory statements, unsupported by factual allegations, are insufficient to state a cause of action." *Churella v. Pioneer State Mut Ins Co,* 258 Mich.App 260, 272; 671 NW2d 125 (2003). Therefore, the trial court's dismissal of plaintiff's claim of discrimination was appropriate pursuant to MCR 2.116(C)(8). [6]

Affirmed.

All Citations

Not Reported in N.W.2d, 2004 WL 2875085

Footnotes

1 The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order or proceeding was entered or taken.

2 See also *Stephens v. Dixon,* 449 Mich. 531, 534; 536 NW2d 755 (1995) (negligence); *Bay Mills Indian Community v. State,* 244 Mich.App 739, 751; 626 NW2d 169 (2001) (breach of fiduciary duty); and *Collins v. Comerica Bank,* 468 Mich. 628, 630; 664 NW2d 713 (2003) (discrimination).

3 MCL 600.5807(8).

4 MCL 600.5813; *Kwasny v. Driessen,* 42 Mich.App 442, 445-446; 202 NW2d 443 (1972).

5 See also *Bowers v. Bowers,* 216 Mich.App 491, 498; 549 NW2d 592 (1996), indicating in reference to 11 USC 108(c)(2) that “the savings provision acts as an extension to the Michigan period of limitation, not as an independent limitation period.”

6 Also, plaintiff implies that the trial court discriminated against him as a pro se litigant based upon the failure of the court to hold plaintiff's pleadings to a lower standard to survive summary disposition. While case law suggests that the pleadings of pro se litigants are held to “less stringent standards” than those drafted by attorneys, *Haines v. Kerner,* 404 U.S. 519, 520; 92 S Ct 594; 30 L.Ed.2d 652 (1972), the technical leniency permitted does not suggest that pro se litigants are not required to follow the court rules or that their claims should survive despite an absence of factual support. A plaintiff may not leave it to a court to find or discern the factual basis to support their position. *Great Lakes Div of Nat'l Steel Corp v Ecorse,* 227 Mich.App 379, 424; 576 NW2d 667 (1998). As such, the trial court properly granted summary disposition in favor of defendant on plaintiff's discrimination claim pursuant to MCR 2.116(C)(8).

Plaintiff also says that the trial court erred when it granted summary disposition prior to the conduct of discovery. Because plaintiff failed to raise this issue before the trial court, he has waived his right to appeal. In any event, discovery could and would not have changed the outcome because his claims were simply time-barred.

End of Document

EXHIBIT 6

2004 WL 2889879
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

SHREE, L.L.C., Plaintiff-Appellant/Cross-Appellee,
v.
LEHMAN & VALENTINO, P.C., and Paul G. Valentino, Defendants/Crossdefendants-Appellees,
and
METROPOLITAN LIFE INSURANCE COMPANY, Defendant/Crossplaintiff-Appellee/Cross-Appellant.

No. 249321.
|
Dec. 14, 2004.

Before: WHITBECK, C.J., and SAAD and TALBOT, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Plaintiff appeals the grant of summary disposition in favor of defendants Lehman and Valentino, P.C. ("Lehman"), Paul G. Valentino ("Valentino"), and Metropolitan Life Insurance Company ("MetLife") in this breach of contract and fraud action, and we affirm. On cross-appeal, MetLife concurs with the grant of summary disposition in its favor and asserts additional justification for dismissal of plaintiff's claims based on the failure of plaintiff (1) to identify the specific provisions of the contract allegedly breached or (2) to demonstrate that MetLife was the proximate cause of plaintiff's damages.

I

Plaintiff says that MetLife breached its contract with plaintiff when it surrendered the cash value of a life insurance policy following issuance of a court order. [1]

The grant of summary disposition on a breach of contract claim is appropriate where the relevant contract language is unambiguous. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand),* 217 Mich.App 687, 700-702; 552 NW2d 919 (1996). Plaintiff's assertion that MetLife breached its duty to defend on the garnishment action is simply unsupported by the language of the contract. Plaintiff fails to produce any documentation or evidence to support its contention regarding MetLife's contractual duty. With reference to assignment of the policy to plaintiff, the language of the contract fails to support plaintiff's contention that MetLife breached its contract. The policy indicates that "the provisions of the policy must be read as a whole." Plaintiff's argument that the waiver of liability contained within the "collateral assignment" provision of the contract is limited or restricted is in error. Based on reading the policy "as a whole" the waiver provision contained within the assignment provision applies more broadly to changes in ownership and beneficiary. The language of the provision is a clear and explicit waiver of liability pertaining to assignments of the contract.

MetLife repeatedly indicated its understanding that the policy value was not subject to surrender. Even if plaintiff demonstrates MetLife erred in not designating plaintiff as the owner of the policy, plaintiff's assertion that MetLife breached its contract by releasing the life insurance proceeds following the issuance of a court order is without a legal basis:

> A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date. [*Kirby v Michigan High School Athletic Ass'n,* 459 Mich. 23, 40; 585 NW2d 290 (1998).]

It is undisputed that MetLife released the funds only after the issuance of a court order, and that plaintiff was apprised by MetLife, at each step in the process, of the action or position taken by it. By failing to take action to dispute the release of the funds, subsequent to the issuance of the court order, plaintiff violated the basic tenet, that:

> ***2** A person may not disregard a court order simply on the basis of his

> subjective view that the order is wrong or will be declared invalid on appeal. [*Johnson v. White,* 261 Mich.App 332, 346; 682 NW2d 505 (2004), quoting *In re Contempt of Dudzinski,* 257 Mich.App 96, 111; 667 NW2d 68 (2003).]

Plaintiff knew of the issuance of the court order and the intent of MetLife to comply with the order, yet it did nothing to contest the order in a timely manner. It was incumbent upon plaintiff to defend against the garnishment or contest the order requiring MetLife to relinquish the funds. Even after attempting to intervene in the garnishment proceeding, plaintiff merely abandoned its efforts by dismissing the action. Hence, any damage incurred is attributable to plaintiff and fault cannot be assigned to MetLife for simply complying with a valid court order.

II

Plaintiff asserts that Lehman and Valentino failed to accurately and fully disclose information in the garnishment proceeding, resulting in fraud. As noted by the trial court in its ruling, the statements and representations pertaining to ownership of the policy were known beforehand by plaintiff as a recipient of Valentino's written motion prior to hearing. While plaintiff asserts it did not know what Valentino would say at the hearing, there has been no demonstration by plaintiff that Valentino's oral representations to the court differed in any significant manner or context from his written pleadings. In addition, the court had received copies of the letter from MetLife indicating ownership of the policy. The letters from MetLife indicated Vinod Sharma was the policy owner. While the correspondence noted Sharma's title or role as the general partner of plaintiff, this does not demonstrate that Lehman and Valentino wrongfully pursued the asset. When viewed in the context of Sharma's own testimony at the creditors examination that plaintiff was not funded, plaintiff fails to present evidence sufficient to imply knowledge to Valentino that his representations regarding ownership of the policy to the court were false.

Plaintiff has not presented sufficient evidence on the reliance element necessary to demonstrate fraud, because the alleged misrepresentations were made to the court and not to plaintiff. *Cleary Trust v. Muzyl Trust,* 262 Mich.App 485, 499-500; 686 NW2d 770 (2004). The court, in the garnishment proceeding, acted less on Valentino's assertions than the absence of any opposition. Because plaintiff has not sufficiently established the requisite elements of fraudulent misrepresentation, the trial court correctly dismissed plaintiff's claim against Lehman and Valentino. [2]

Because we hold that the trial court properly granted summary disposition in favor of defendants, we decline to address the remaining issues on appeal.

Affirmed.

All Citations

Not Reported in N.W.2d, 2004 WL 2889879

Footnotes

1 The trial court granted summary disposition pursuant to MCR 2.116(C)(10) on plaintiff's claim of breach of contract. A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is sufficient factual support for a claim. *Spiek v. Dep't of Transportation,* 456 Mich. 331, 337; 572 NW2d 201 (1998). With reference to plaintiff's unpreserved argument pertaining to the proximate cause of plaintiff's damages, the issue is reviewed for plain error that affected substantial rights. *Kern v. Blethen-Coluni,* 240 Mich.App 333, 336; 612 NW2d 838 (2000); *People v. Carines,* 460 Mich. 750, 763; 597 NW2d 130 (1999).

2 Plaintiff also argues, frivolously, that the trial court erroneously dismissed its claims of negligence and breach of fiduciary duty against MetLife. Plaintiff conceded to the trial court that its claims of negligence and breach of

fiduciary duty were not viable and therefore plaintiff has waived these claims. See *Coddington v. Robertson,* 160 Mich.App 406, 412; 407 NW2d 666 (1987); See also *Phinney v. Verbrugge,* 222 Mich.App 513, 544; 564 NW2d 532 (1997) ("[A] party may not take a position in the trial court and subsequently seek redress in an appellate court on the basis of a position contrary to that taken in the trial court."); *Kast v. Citizens Mutual Ins Co,* 125 Mich.App 309, 313; 336 NW 2d 18 (1983).

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EXHIBIT 7

2008 WL 1765249
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

OLD EPI BUILDING, T.A. Forsberg, Inc., LLC, and Kurt J. Boegner, Plaintiffs-Appellants,
v.
MERIDIAN CHARTER TOWNSHIP, Defendant-Appellee.

Docket No. 276713.
|
April 17, 2008.

West KeySummary

1 **Constitutional Law** Particular issues and applications

Zoning and Planning Proceedings

Property owners were not denied due process of law when a site plan approval and special use permit were effectively amended by a consent judgment reached in litigation between a township and an owner-developer in which the property owners were not involved. The township had the authority to eliminate a road improvement condition in the site plan approval and special use permit through the consent judgment and its actions were not contrary to the statutes or ordinances. Property owners had no legal right to have the township enforce the properly eliminated road improvement condition and the township had no clear legal duty to enforce the properly eliminated road improvement condition. Property owners attempted to force the township to enforce a condition contained in the site plan approval and special use permit relative to the obligations of the owner-developer, pursuant to which condition the owner-developer was responsible for improving and paving a road on which owners' property was located. U.S.C.A. Const.Amend. 14; MCR 2.205(A).

Ingham Circuit Court; LC No. 06-001264-AW.

Before: WILDER, P.J., and MURPHY and METER, JJ.

Opinion

PER CURIAM.

***1** Plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendant Meridian Charter Township (township). Plaintiffs own property on Jolly Oak Rd., a mostly unimproved and unpaved, L-shaped roadway that ends at Jolly Rd. to the south and Okemos Rd. to the east. This case arises out of plaintiffs' attempt to force the township, by way of a mandamus action, to enforce a condition contained in a site plan approval and special use permit relative to the obligations of an owner-developer of property also located on Jolly Oak Rd., pursuant to which condition the owner-developer was responsible for improving and paving Jolly Oak Rd. However, as a collateral matter in zoning litigation between the township and the owner-developer, in which plaintiffs did not participate, there was an agreement reached in a consent judgment to eliminate the condition, permitting the owner-developer to develop the property without being required to improve and pave the roadway. Plaintiffs seek to have the condition enforced because otherwise Jolly Oak Rd. will be improved and paved by the government, resulting in a special assessment district under which the owners of property abutting the road will have to share in the road construction costs, including plaintiffs. The trial court summarily dismissed the action under MCR 2.116(C)(8) and (10), ruling that plaintiffs' action was precluded by the prior consent judgment, that plaintiffs, although not a party to the suit, had the alternative remedy of appealing the consent judgment, that plaintiffs failed to show a clear legal right to have the township perform a clear legal duty, that plaintiffs failed to establish that enforcement of the site plan condition was ministerial, and that plaintiffs failed to show that the township lacked discretion to enforce or eliminate the condition. We affirm.

I. Basic Facts and Procedural History

A. The Complaint and Documentary Evidence

On October 4, 2006, plaintiffs filed a complaint against the township, which included allegations that they each owned property on Jolly Oak Rd. and that their properties and the roadway were located within the township's boundaries. The location of Jolly Oak Rd. was described in reference to Okemos Rd. and Jolly Rd., between which Jolly Oak traverses in an L-shaped pattern. Plaintiffs alleged and it is undisputed that Jolly Oak is unpaved except for the eastern section of the road abutting Okemos. In the northwest corner of the Jolly and Okemos intersection, and within a rectangular area bounded by Jolly, Okemos, and Jolly Oak, is property that was once owned by LandEquities Corporation. That property is now owned by Meridian Crossing Associates, LLC (Meridian), and is known as the Meridian Crossing property. We shall simply refer to it as the "property" or the "development property ." According to the complaint, LandEquities desired to develop the property for commercial purposes and obtained approval of a site plan from the township in 1998 for the first phase of the development. Plaintiffs alleged and it is undisputed that paragraph or condition number 17 of the site plan approval required LandEquities to make road improvements in the area as outlined in a letter from the county road commissioner, and the improvements were to be completed within two years of the date that the first building permit was issued relative to the development property. [1] The referenced road commissioner letter spoke of road construction improvements to be made to Jolly Oak, including reconstruction of Jolly Oak to "a three lane all-season standard with concrete curb and gutter." Plaintiffs contended that LandEquities developed part of the property fronting on Okemos and Jolly without making any improvements to Jolly Oak, contrary to the site plan approval. Plaintiffs claimed that, pursuant to a letter dated June 18, 2001, the township granted LandEquities an extension until August 3, 2003, to make the Jolly Oak improvements. The letter was attached to the complaint and confirmed this claim, and the letter also indicated that no building permit would be issued for the last building in the development "until all road improvements required in the site plan approval [are] completed."

***2** Plaintiffs alleged that after the first phase of the development was completed, LandEquities conveyed ownership of the property to Meridian, making Meridian, in plaintiffs' view, subject to the road improvement condition in the site plan approval. Plaintiffs claimed that on September 20, 2005, the township granted a special use permit for the construction of four one-story buildings and a three-story hotel on the property. [2] Plaintiffs alleged that the township's actions in granting the special use permit did not expressly include a requirement that Meridian comply with the site plan approval and improve Jolly Oak. [3] Plaintiffs complained that, despite a duty to do so, the township elected not to enforce the road improvement condition relative to Meridian. The decision not to enforce the road improvement condition was encompassed within a consent judgment arising out of litigation between Meridian and the township, which we shall discuss further below.

The complaint contained an allegation that in July 2006, the township board entertained a petition by Meridian that sought the creation of a special assessment district for purposes of grading, graveling, paving, and improving Jolly Oak, and to cover the costs of constructing drainage facilities, curbs, and gutters. If a special assessment district is created, persons or entities owning property on Jolly Oak will have to share in the costs of improving Jolly Oak according to the amount of each owner's frontage on the roadway, instead of Meridian absorbing the full cost per the road improvement condition. Plaintiffs alleged that the township's failure to enforce the road improvement condition as part of the site plan approval was unlawful and caused them to suffer damages and irreparable harm. Plaintiffs requested that the trial court issue a writ of mandamus, directing the township to enforce the site plan approval relative to the road improvement condition prior to any further development of the property.

B. The Township's Motion for Summary Disposition

Prior to filing an answer, the township filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). The township argued that Meridian had sued the township in 2006 regarding an amendment of the zoning classification affecting the development property, and in September 2006 the parties settled the suit, resulting in a consent judgment. One aspect of the consent judgment was the elimination of any past conditions requiring the improvement and paving of Jolly Oak as contained in the site plan approval and special use permit. The township argued that plaintiffs' request for a writ of mandamus could not be granted because the road improvement condition was eliminated by way of the consent judgment. In the alternative, the township contended

that MCL 125.286e(3), repealed by 2006 PA 110,[4] or its replacement statute, MCL 125.3501(2), gave the township the discretion to amend a site plan if the property owner agreed; therefore, plaintiffs did not have a clear legal right to have the site plan condition enforced and thus no right to a writ of mandamus. Additionally, the township asserted that plaintiffs had no legal right to have Meridian improve Jolly Oak *at its own expense,* where the site plan approval, while requiring Meridian to improve the road, did not specify that Meridian had to also pay for the work, as opposed to the government or surrounding property owners. Moreover, the township claimed that it had the discretion to change or eliminate the requirement for improving and paving the roadway under MCL 125.286b and 125.586d(3), both repealed by 2006 PA 110, or their replacements, MCL 125.3502 and MCL 125.3504(5).[5] Because the township had the discretion not to force Meridian to improve and pave Jolly Oak, the mandamus action, which only applies to ministerial and not discretionary actions, could not be sustained.

***3** In response, plaintiffs argued that there was a question of fact regarding whether the township entered into the consent judgment in the earlier litigation in a manner consistent with township ordinances and state law. Plaintiffs questioned whether the township could alter the site plan approval and special use permit through the consent judgment, where various ordinances suggested that certain procedures, including a public hearing, were required before changes were made. Plaintiffs stated that while there may be an element of discretion in amending the site plan in the enabling statutes, there were factual questions concerning whether the planning director was granted that discretion by the township board and, if so, how that discretion was to be utilized. Plaintiffs contended that the site plan approval and special use permit were intertwined and that if the site plan approval was amended, it also resulted in amendment of the special use permit, which required certain procedures to be followed under the zoning ordinances. With respect to the township's argument that the road improvement condition contained in the site plan approval did not express that LandEquities or Meridian had to pay for the improvement, plaintiffs argued that this was technically true, but such a position would be unreasonable and lack common sense.

In reply, the township argued that amendment of a site plan approval and special use permit were akin to administrative actions, not legislative; therefore, the consent judgment could permissibly amend the site plan approval and special use permit. Further, the amendments were minor in nature and needed only to be addressed and approved by the planning director and not the planning commission.

At the hearing on the township's motion for summary disposition, the trial court ruled from the bench in fairly cursory fashion. The court ruled that plaintiffs' action was precluded by the prior consent judgment, that plaintiffs, although not a party to the suit, had the alternative remedy of appealing the consent judgment, that plaintiffs failed to show a clear legal right to have the township perform a clear legal duty, that plaintiffs failed to establish that enforcement of the site plan condition was ministerial, and that plaintiffs failed to show that the township lacked discretion to enforce or eliminate the condition. An order dismissing plaintiffs' action was subsequently entered for the reasons stated by the trial court on the record.

C. Prior Litigation Between Meridian and the Township

The lower court record contains only a copy of the complaint and the consent judgment from the litigation between the township and Meridian. The complaint arose out of the township's 2001 ordinance amendment and zoning map change that downsized Meridian's property from commercial service (CS) to the newly created zoning classification of C-2, which contained some commercial use restrictions not found in the prior CS classification, and which caused some buildings on the property to become nonconforming uses. Meridian's claims included denial of procedural due process, denial of substantive due process, an unconstitutional taking of property, violation of equal protection, and a taking under 42 USC 1983. Subsequently, J.P.M.S., Inc., joined as a party plaintiff in the action. J.P.M.S., Inc., had acquired a portion of the development property on which the hotel was to be built. Our plaintiffs were never involved in the litigation.

***4** The consent judgment provided that the development property would be governed by and subject to the C-2 zoning classification as contained in the township's zoning ordinance. Further, the judgment addressed a site plan for the construction of the hotel on the property, which is not relevant for purposes of our analysis. Additionally, the 2005 special use permit was amended to add language that provided that all site plan approvals and the original special use permit "shall not require the paving of Jolly Oak Rd." Other provisions in the consent judgment are not pertinent to our discussion.

II. Analysis

A. Appellate Arguments

Plaintiffs argue that the trial court erred in concluding that their complaint was barred because of plaintiffs' failure to appeal the earlier lawsuit in which they did not participate. Plaintiffs contend that there was no reason for them to participate in that suit, where the issue being litigated concerned the zoning classification of the development property. According to plaintiffs, they would not be aggrieved by a zoning change, nor would they have had standing to intervene in that suit, and there was no basis to include them in the suit under the joinder rules. However, the consent judgment that was eventually entered, and specifically the provision eliminating the road improvement condition, went beyond the scope of the litigation and did aggrieve plaintiffs and caused them injury in light of the special assessment district. Just as a matter of simple procedure, plaintiffs could not "appeal" the prior suit.

Plaintiffs further argue that the statutory provisions cited by the township below do indeed grant the township authority to modify previously-approved site plans and special use permits, but they do not give the township authority to circumvent their own ordinances. Plaintiffs maintain that, pursuant to Meridian Township Ordinance (MTO) § 86-129, a party that seeks amendment of a special use permit must do so in writing, and a determination must be made whether the proposed change is "major" or "minor." If the change is deemed "major," the planning commission or township board must review it, and it may be subject to a public hearing. If the change is deemed "minor," a public hearing still may be necessary. With respect to modification of site plans, plaintiffs argue that MTO § 86-157 requires a written application, the payment of fees, and an analysis by the director of community planning and development to assure that any changes conform to a multitude of criteria. Plaintiffs contend that none of the steps involved in amending a site plan and special use permit were followed, although both were effectively amended here by way of the consent judgment, thereby depriving plaintiffs of due process.

The township argues that plaintiffs are not entitled to undo the consent judgment as they failed to intervene in the action or appeal the judgment. According to the township, to the extent that plaintiffs had standing to pursue the instant litigation, they had standing to intervene in the prior litigation between Meridian and the township. The consent judgment was final and binding, and if plaintiffs were aggrieved by the judgment they could have appealed the judgment. Further, for purposes of a mandamus action, the township asserts that plaintiffs did not establish that the township owed them a clear legal duty, that plaintiffs did not establish that the action sought was ministerial, as opposed to discretionary, and that plaintiffs did not establish that they had no other legal or equitable remedy. The township argues that a mandamus action cannot be used to overturn a consent judgment. Under either MCL 125.286e(3), repealed by 2006 PA 110, of the old TZA, or MCL 125.3501(2) of the recently enacted MZEA, the township had the discretion to amend the site plan as long as the property owner was in agreement. The township also maintains that the site plan approval did not dictate that LandEquities or Meridian had to construct the roadway at its own expense. With regard to special use permits, the township retained the discretionary authority to change the paving requirement under MCL 125.286b and MCL 125.586d(3), both repealed by 2006 PA 110, or their replacement counterparts, MCL 125.3502 and MCL 125.3504(5). See footnote 5 ante. The township argues that because the consent judgment represented mutual consent by the township and Meridian to eliminate the improvement and paving condition, plaintiffs' claims fail. [6]

B. Standard of Review and Summary Disposition Tests

***5** This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v. Fischer,* 471 Mich. 109, 129, 683 N.W.2d 611 (2004).

MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v. Henderson,* 465 Mich. 124, 129, 631 N.W.2d 308 (2001). The trial court may only consider the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan v. Continental Airlines/Continental Express,* 454 Mich. 373, 380-381, 563 N.W.2d 23 (1997). "The motion should be granted if no factual development could possibly justify recovery." *Beaudrie, supra* at 130, 631 N.W.2d 308.

MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment

as a matter of law. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v. Cross & Peters Co.,* 451 Mich. 358, 362, 547 N.W.2d 314 (1996), citing MCR 2.116(G)(5). Initially, the moving party has the burden of supporting its position with documentary evidence, and, if so supported, the burden then shifts to the opposing party to establish the existence of a genuine issue of disputed fact. *Quinto, supra* at 362, 547 N.W.2d 314; see also MCR 2.116(G)(3) and (4). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in [the] pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto, supra* at 362, 547 N.W.2d 314. Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 363, 547 N.W.2d 314. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v. Gen. Motors Corp.,* 469 Mich. 177, 183, 665 N.W.2d 468 (2003). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v. Rozwood,* 461 Mich. 109, 121, 597 N.W.2d 817 (1999).

C. Discussion

We shall begin by analyzing the applicable statutory provisions and local ordinances. MCL 125.3102(r) defines a site plan as "the documents and drawings required by the zoning ordinance to insure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes." A special use permit is "[a] zoning board's authorization to use property in a way that is identified as a special exception in a zoning ordinance." Black's Law Dictionary (7th ed). "Unlike a variance, which is an authorized violation of a zoning ordinance, a special-use permit is a permitted exception." *Id.*

***6** With respect to site plans, MCL 125.3501 provides in pertinent part:

> (1) The local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.
>
> (2) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowner and the body or official that initially approved the site plan.

Here, a site plan was submitted and approved, and the change to the site plan, or rather its approval conditions, through the consent judgment reflected a mutual agreement between the township and Meridian. We shall discuss below whether the change conformed to the zoning ordinance.

With respect to special use permits, MCL 125.3504(5) provides that "[t]he conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner...."[7] Meridian and the township mutually consented to change a condition of the special use permit by eliminating the road improvement condition as evidenced by the consent judgment. Finding no statutory problem with the township's actions, we now turn to the local ordinances.

MTO § 86-129 addresses the amendment of special use permits. An applicant may apply for an amendment in writing to the director of community planning and development. MTO § 86-129(a). The director must make a determination whether the requested amendment is minor or major. *Id.* If the amendment is deemed major, approval of the amendment must be made either by the planning commission or the township board if the board originally approved the special use permit subsequent to an appeal of a planning commission determination on the application. MTO § 86-129(d).[8] With respect to requested amendments addressed by the township board, an application for an amended special use permit must be submitted to the director of community planning and development, a filing fee must be paid, and public hearings and all other procedures required for the initial application must occur. MTO § 86-129(d)(2). In regard to situations in which the planning commission is addressing a requested

major amendment, the ordinance simply provides that it may be granted "in accordance with the procedures and criteria set forth in this division[.]" MTO § 86-129(d)(1). It appears that the procedures entail essentially the same as those related to the township board's action on a requested amendment. If an amendment is deemed minor, an application for an amended special use permit must be submitted to the director of community planning and development, a filing fee must be paid, and procedures required for the initial application as set forth in MTO § 86-121 *et seq.,* which does include a public hearing, MTO § 86-125, must be followed. MTO § 86-129(e). [9]

***7** Under MTO § 86-129, it appears that an amendment of a special use permit is an issue distinct from a change in a condition of its approval. [10] For example, MTO § 86-129(b) provides that "[a] major amendment shall be evidenced by having a significant impact on the permit and the conditions of its approval[.]" Thus, an amendment of a special use permit under the ordinance encompasses changes in the property owner's desired construction and building plans, which could impact conditions, not merely a decision by the township to eliminate a condition of an existing special use permit. The examples of major amendments include significant building additions relative to square footage, an expansion or increase in the intensity of use, significant additions of square footage to the site area, expansions that will cause the need for more parking spaces, and the addition of a drive-through window. MTO § 86-129(b). We cannot read MTO § 86-129 as demanding some type of application, the payment of a filing fee, and the holding of public hearings when the township simply wishes to eliminate a condition of an existing special use permit.

MTO § 86-156 sets forth review criteria for examining site plan submissions, which includes consideration of traffic, drives, and vehicle circulation. MTO § 86-157, which addresses modifications to approved site plans, provides:

> Upon application and payment of the fee in the amount established in the schedule of fees adopted by the township board, modifications to an approved site plan may be granted by the director of community planning and development, provided that such changes conform to the provisions of this chapter and all other township, county, state, and federal laws and regulations.

To the extent that Meridian may not have submitted an application and paid a fee to change the site plan as a prerequisite to the entry of a consent judgment that eliminates a site plan condition, this was something of little significance that the township could certainly waive without impinging the rights of the public or plaintiffs, as opposed to foregoing a required public hearing, and does not give a basis to order enforcement of a no-longer existing condition, nor to partially set aside the consent judgment, assuming said judgment was subject to collateral attack. Moreover, comparable to our discussion concerning MTO § 86-129, we do not view MTO § 86-157 as demanding an application and the payment of a fee where the township wishes to eliminate a site plan condition; rather, it is applicable where the property owner seeks to make construction or development changes that deviate from the original site plan submitted to the township.

We find nothing in the statutes or ordinances that would bar the township from eliminating the road improvement condition in the site plan approval and special use permit as it did vis-à-vis entry of the consent judgment. To obtain a writ of mandamus, a plaintiff must show that: (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy. *White-Bey v. Dep't of Corrections,* 239 Mich.App. 221, 223-224, 608 N.W.2d 833 (1999). Here, plaintiffs had no clear legal right to have the township enforce the properly eliminated road improvement condition, the township had no clear legal duty to enforce the properly eliminated road improvement condition, and a discretionary action, as opposed to a ministerial action, was involved. Furthermore, because the township had the authority to eliminate the road improvement condition through the consent judgment and its actions were not contrary to the statutes or ordinances, plaintiffs were not denied due process of law. Assuming that plaintiffs could collaterally attack the consent judgment, there is no basis for finding the judgment void or unenforceable.

***8** Although unnecessary for resolution of this appeal given our ruling above, we shall briefly examine whether plaintiffs could attack the validity of the consent judgment as argued. We do agree with plaintiffs that the nature of the litigation between Meridian and the township would not have given

plaintiffs notice or a reason to become involved in that litigation. The case dealt with zoning classifications and not conditions attached to the site plan approval and special use permit. The agreement to eliminate the road improvement condition was clearly a peripheral matter that Meridian and the township decided to address in settling the case. The court rule on necessary joinder of parties, MCR 2.205, was not triggered by the allegations in Meridian's complaint, and the allegations did not give rise to permissive joinder under MCR 2.206, nor serve as a ground for plaintiffs to intervene in the action under MCR 2.209. We acknowledge the argument that plaintiffs should have been joined in the previous lawsuit at the point when there was talk of an agreement between Meridian and the township to eliminate the road improvement condition. However, plaintiffs' interest in the subject matter of the litigation was not sufficient such that their presence in the action was essential to permit complete relief. MCR 2.205(A) (necessary joinder). The road improvement condition was a matter between Meridian and the township, not involving plaintiffs. Plaintiffs had no legal right or basis to force the township to include the road improvement condition in the first place; they were merely the incidental beneficiaries of the township's initial decision to have LandEquities, and later Meridian, pave Jolly Oak. Accordingly, plaintiffs had no legal right or basis to stop the township from later eliminating the condition simply because they and others, including Meridian, will have to share in the costs of improving the road through a special assessment district. Plaintiffs point to no law that mandates the township to force Meridian to improve Jolly Oak as a condition of development. Thus, and also given our ruling regarding the statutes and ordinances, plaintiffs' participation in the earlier lawsuit was unnecessary, and even had they participated, it would have been of no consequence.

Furthermore, assuming a valid argument existed to challenge the consent judgment, plaintiffs' particular course of action in challenging the judgment was not supported by authority. Perhaps the proper method would have been for plaintiffs to seek relief from judgment in the previous action under one or more of the various theories found in MCR 2.612 after, if allowed, first becoming a "party" to the action postjudgment. We note that MCR 2.209 provides that an application for intervention must be timely, but there is no language suggesting that the application cannot be made postjudgment, which, under certain circumstances, might indeed be timely. Plaintiffs could have attempted to interject themselves postjudgment in the previous litigation to challenge the consent judgment but declined to do so.

***9** The method chosen by plaintiffs to challenge the consent judgment can best be described as a collateral attack on the judgment through the filing of the instant action. However, while the lack of subject matter jurisdiction can generally be collaterally attacked, "the exercise of that jurisdiction can be challenged only on direct appeal." *In re Hatcher,* 443 Mich. 426, 439, 505 N.W.2d 834 (1993). The court presiding over the litigation between Meridian and the township unquestionably had subject matter jurisdiction concerning the zoning dispute and over issues about the site plan and special use permit arising between Meridian and the township. Plaintiffs, by arguing that the consent judgment was invalid because certain ordinance-required procedures were not followed, were challenging the exercise of the court's jurisdiction, and that is not subject to collateral attack.

III. Conclusion

We find nothing in the statutes or ordinances that barred the township from eliminating the road improvement condition in the site plan and special use permit vis-à-vis entry of the consent judgment. Further, plaintiffs had no clear legal right to have the township enforce the properly eliminated road improvement condition, the township had no clear legal duty to enforce the properly eliminated road improvement condition, and a discretionary action, as opposed to a ministerial action, was involved. Accordingly, the writ of mandamus was properly denied. Additionally, because the township had the authority to eliminate the road improvement condition through the consent judgment and its actions were not contrary to the statutes or ordinances, plaintiffs were not denied due process of law. Moreover, plaintiffs' interest in the subject matter of the previous litigation was not sufficient such that their presence in the action was essential to permit complete relief, MCR 2.205(A), where they had no legal say in the township's decision to eliminate the road improvement condition. Finally, assuming a valid argument existed to challenge the consent judgment, plaintiffs' particular course of action in challenging the judgment constituted a collateral attack unsupported by authority.

Affirmed.

All Citations

Not Reported in N.W.2d, 2008 WL 1765249

Footnotes

1 The site plan approval was attached to plaintiffs' complaint.

2 Pursuant to documentary evidence later submitted in support of summary disposition, an August 10, 2005, letter from the township indicated that the planning commission approved a special use permit to build a Staybridge Suites Hotel on the property. The document also stated that approval was granted in accordance with plans showing four one-story buildings on the property and the hotel. According to the approval letter, the letter itself acted as the special use permit. A subsequent letter dated September 22, 2005, provided that the township had approved, on September 20, 2005, an amendment to the earlier special use permit, which amendment allowed the expansion of a shopping center on the property. The letter also referenced the four one-story buildings and hotel to be built on the property. This letter clearly formed the basis of the allegation in plaintiffs' complaint. We note that the August 10 letter stated that all previous conditions placed on two other special use permits remained in effect; however, no evidence regarding previous special use permits was ever submitted by the parties. The township did allege that in 1999 a special use permit had been granted on an application by LandEquities.

3 While the September 22, 2005, letter, which constituted a special use permit, did not refer to any conditions, the August 10, 2005, letter stated that "Jolly Oak Road shall be paved from Meridian Crossing Drive west to the hotel entrance prior to issuance of [a] certificate of occupancy."

4 2006 PA 110 repealed the Township Zoning Act (TZA), effective July 1, 2006. See MCL 125.3702(1)(c). The Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq.,* replaced the TZA.2006 PA 110. MCL 125.3702(2) provides that "[t]his section [repealing the TZA] shall not be construed to alter, limit, void, affect, or abate any pending litigation, administrative proceeding, or appeal that existed on the effective date of this act or any ordinance, order, permit, or decision that was based on the acts repealed by this section." Plaintiffs' complaint was filed in October 2006, and the consent judgment that eliminated the road improvement condition was entered in September 2006. Therefore, we shall apply the MZEA. While the site plan approval and special use permit were issued prior to July 1, 2006, there is no indication that the subsequent, post-July 1, 2006, elimination of the road improvement condition was subject to TZA provisions that would call for a different result than one reached under analysis pursuant to the MZEA.

5 We note that MCL 125.586d(3) was found in the City and Village Zoning Act, MCL 125.581 *et seq.,* repealed by 2006 PA 110, effective July 1, 2006, and that the so-called replacement statute, MCL 125.3504(5), found in the MZEA, addresses all forms of local government. Because a township is involved here, MCL 125.586d(3) would never have been applicable, but we can apply MCL 125.3504(5).

6 The township also points out that plaintiffs failed to challenge the special assessment district under MCL 41.721 *et seq.*

7 MCL 125.3502 describes the general procedures relative to special use permits:

> (1) The legislative body may provide in a zoning ordinance for special land uses in a zoning district. A special land use shall be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance. The zoning ordinance shall specify all of the following:
>
> (a) The special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval.

(b) The requirements and standards for approving a request for a special land use.

(c) The procedures and supporting materials required for the application, review, and approval of a special land use.

(2) Upon receipt of an application for a special land use which requires a discretionary decision, the local unit of government shall provide notice of the request as required under section 103. The notice shall indicate that a public hearing on the special land use request may be requested by any property owner or the occupant of any structure located within 300 feet of the property being considered for a special land use regardless of whether the property or occupant is located in the zoning jurisdiction.

(3) At the initiative of the body or official responsible for approving the special land use or upon the request of the applicant, a real property owner whose real property is assessed within 300 feet of the property, or the occupant of a structure located within 300 feet of the property, a public hearing shall be held before a discretionary decision is made on the special land use request.

(4) The body or official designated to review and approve special land uses may deny, approve, or approve with conditions a request for special land use approval. The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.

8 The ordinance indicates that "[m]ajor amendments to approved special use permits may only be granted by the body issuing the original special use permit[.]" MTO § 86-129(d).

9 There does not appear to be much of a difference between the treatment of major and minor amendments, except that proceedings regarding minor amendments are conducted before the director of community planning and development instead of the planning commission. MTO § 86-129(e)(3).

10 This would be consistent with MCL 125.3504(5), quoted above, which addresses the changing of conditions.

EXHIBIT 8

2003 WL 21108470
Only the Westlaw citation is currently available.

Court of Appeals of Michigan.

Dennis L. CUSON, Kevin C. Heinig, Michael J. Barron, and Jay Fisher, Plaintiffs-Appellants,
v.
TALLMADGE CHARTER TOWNSHIP and Land Acquisition, LLC., Defendants-Appellees,
and
PANDA TALLMADGE POWER, L.P., Intervening Defendant-Appellee.

No. 234157.
|
May 15, 2003.

Before: WILDER, P.J., and GRIFFIN and SMOLENSKI, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Plaintiffs appeal as of right an order and opinion of the circuit court granting defendants' motions for summary disposition. [1] We affirm.

I

In court II of their complaint, plaintiffs seek to vacate a consent judgment entered in a previous case, *Land Acquisition, LLC v. Tallmadge Charter Twp* (Ottawa Circuit Court file No. 99-32939-CZ). In this collateral attack, [2] plaintiffs claim that the judgment entered by the Ottawa Circuit Court in settlement of File No. 99-32939-CZ violates the township rural zoning act (TRZA), M.C.L. § 125.271 *et seq.,* and public policy. In count I of their amended complaint, plaintiffs allege defendant Tallmadge Charter Township (township) violated Michigan's Open Meetings Act (OMA), M.C.L. § 15.261, when it approved the proposed consent judgment.

The relevant facts not in dispute are summarized in the well-reasoned written opinion by the Honorable Calvin L. Bosman: Defendant [Land] owns property located in the township (the Land parcel). Part of the Land parcel is zoned "RP" (rural preserve) and part is zoned "C-2" (general commercial). The township's master plan indicates that, in the future, the Land parcel should be used for industrial purposes. Defendant Panda also owns property located in the township (Panda parcel # 1). Panda parcel # 1 is zoned "RP" (rural preservation). The township's master plan indicates that, in the future, Panda parcel # 1 should be used for rural preservation.

Land wished to build a 750-unit multi-family residential housing development on the Land parcel. However, multi-family residential housing is not permitted on property zoned RP or C-2. Land requested that the township rezone the parcel. The Township denied Land's request.

Panda wished to build a power plant on Panda parcel # 1. Power plants are not permitted on property zoned RP, so Panda asked that the Township rezone Panda parcel # 1. Panda's application met with resistance from some of the citizens of the Township, who felt that power plants should be located on property designated for industrial use rather than on property designated for rural preservation. The Township denied Panda's request for rezoning.

Dissatisfied with the Township's denial of its request for rezoning, Land filed a lawsuit against the Township accusing the Township of exclusionary zoning.... After a year and a half of litigation, Land and the Township decided to settle the case. The parties drafted terms of a proposed consent judgment. The proposed consent judgment provided that Land would sell part of the Land parcel to Panda (Panda parcel # 2) and that Panda would build a power plant on Panda parcel # 2. However, Panda parcel # 2 is zoned RP and power plants are not permitted on property zoned RP. Therefore, in the proposed consent judgment, the Township agreed it would treat Panda parcel # 2 *as if* it were zoned "I-1" (industrial). Power plants are permitted on property zoned I-1. For its part, Panda agreed to abide by all the regulations that apply to property zoned I-1 and that it would comply with all applicable state and federal laws and regulations. In addition, over time, Panda agreed to pay the Township more than $5,000,000.00.

***2** The proposed consent judgment required the approval of the Tallmadge Township Board of Supervisors (Board). Four members of the Board constitute a quorum. Prior to voting on the proposed consent judgment, Board members gathered together informally in private homes in sub-quorum groups of two or three to review and discuss the terms of the proposed consent judgment.

On October 25, 2000, the Board held a special meeting to vote on the proposed consent judgment. At the meeting, the Township Supervisor informed the members of the public who were present at the meeting that the meeting was not a public meeting and that no one would be permitted to comment on the terms of the proposed consent judgment until after the Board had voted to approve or reject it. At the meeting, the Board enacted resolutions approving the proposed consent judgment. Following the vote, the Board permitted members of the public who were present to comment on the terms of the consent judgment. The next day, the consent judgment was presented to Judge Post. Judge Post signed the consent judgment in the absence of the undersigned judge, who was on vacation at the time.

On February 13, 2001, the Board held a second meeting to discuss the consent judgment. At this meeting, the Board permitted public comment on the consent judgment prior to voting on the matter. After entertaining comments on the terms of the consent judgment from the members of the public who were present at the meeting, the Board voted to re-enact the resolutions approving the consent judgment that the Board had previously enacted on October 25, 2000.

On February 14, 2001, the Board presented the re-enacted consent judgment to the undersigned judge, and he signed it.

Plaintiffs, who are residential property owners that live near Panda parcel # 2, oppose the construction of the power plant and bring this action to vacate the consent judgment.

In count I, plaintiffs allege that by meeting informally in sub-quorum groups of two or three at private residences to review and discuss the terms of the consent judgment, the Board ran afoul of the OMA. Plaintiffs make two claims in count I. First, plaintiffs claim that the informal sub-quorum gatherings constitute a violation of the OMA. Second, plaintiffs claim that the Board's refusal to permit public comment at the October 26, 2000, meeting prior to voting on the resolutions approving the consent judgment is also a violation of the OMA.

Nevertheless, on February 19, 2001, the parties entered into the following stipulation and order:

> "... the parties ... hereby agree and stipulate that Plaintiffs ... dismiss with prejudice that portion of the relief requested under Count I ... which seeks to invalidate the decision ... by the ... Board .. to approve the ... Consent Judgment ... without prejudice to Plaintiffs' other claims for relief under the Open Meetings Act...."

Count II alleges that the consent judgment violates the TRZA.

II

***3** This Court reviews de novo the grant or denial of a motion for summary disposition. *Maiden v. Rozwood,* 461 Mich. 109, 118; 597 NW2d 817 (1999). Further,

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v. Dep't of Corrections,* 439 Mich. 158, 162; 483 NW2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5). [*Id.* at 119-120.]

A motion brought under MCR 2.116(C)(10) tests the factual support of a claim. *Smith v. Globe Life Ins Co,* 460 Mich. 446, 454; 597 NW2d 28 (1999). In doing so,

> a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial

> court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). [*Quinto v. Cross & Peters Co,* 451 Mich. 358, 362-363; 547 NW2d 314 (1996).]

III

First, in regard to the OMA violation alleged in count I, in view of the parties' partial stipulation for dismissal, [3] the only relief remaining at issue is the request for injunctive relief to prohibit *future* violations of the act by defendant township. In addressing defendant township's motion for summary disposition, the lower court ruled that the equitable relief requested for potential future violations is "too speculative and hypothetical to be justiciable." We agree.

In general, the equitable relief of injunction is an extraordinary remedy that should be granted only
"if a plaintiff has a right but is without an effective remedy at law he may resort to equity for the enforcement of such right." Injunctive relief is an extraordinary remedy that is granted only when (1) justice requires it, (2) there is no adequate remedy at law, and (3) there exists a real and imminent danger of irreparable injury. *In re Martin,* 200 Mich.App 703, 723; 504 NW2d 917 (1993) .[*ETT Ambulance Service Corp v. Rockford Ambulance, Inc,* 204 Mich.App 392, 400; 516 NW2d 498 (1994), quoting *Kefgen v. Coates,* 365 Mich. 56, 63; 111 NW2d 813 (1961).

See also *Wexford Co Prosecutor v. Pranger,* 83 Mich.App 197, 205; 268 NW2d 344 (1978).

After applying the above standards, we agree with the trial judge that plaintiffs have failed to sustain their burden of establishing sufficient facts for the issuance of the extraordinary remedy of injunction. *Id.* The possibility for additional violations of the OMA by defendant township is purely hypothetical and speculative.

***4** In addition, we note that under the standing requirements adopted by our Supreme Court in *Lee v. Macomb Co Bd of Comm'rs,* 464 Mich. 726; 629 NW2d 900 (2001), plaintiffs do not have standing in regard to the issuance of an injunction for future acts. In order for plaintiffs to have standing, they must have suffered an injury in fact, and an invasion of a legally protected interest, which is concrete, particularized, and actual or imminent, not conjectural or hypothetical. *Id.* Here, plaintiffs have not established standing for the issuance of an injunction for potential future violations.

IV

Plaintiffs' main issue on appeal is their collateral attack claiming that the consent judgment entered in the previous action violated the statutory procedures in the township rural zoning act, M.C.L. § 125.271, *et seq.* and the public policy of the state of Michigan. We disagree.

Recently in *Green Oak Twp v. Munzel,* 255 Mich.App 235; ___ NW2d ___ (2003), this Court rejected a similar argument that a consent judgment entered in settlement of a zoning lawsuit constitutes de facto rezoning in violation of the TRZA. In Green Oak Township, the township was sued by a developer when it refused to grant a use variance for a proposed mobile home park. After the case was settled with the entry of a judgment, a property owner near the proposed mobile home park filed a subsequent action claiming that the consent judgment, which allowed the mobile home park to proceed, was a de facto amendment of the township's zoning ordinance in violation of the TRZA. We rejected the defendant's argument and held:

> [T]he consent judgment was neither the promulgation of a zoning ordinance nor an amendment of a zoning ordinance as contemplated by M.C.L. § 125.282. Therefore, a determination that M.C.L. § 125.282 is applicable to a consent judgment would be contrary to the plain language of the statute. [*Id.* at 241.]

In ruling that the consent judgment was not an amendment to the zoning ordinance, we stated:

> We suggest that the effect of the consent judgment is more akin to a use variance, which our Supreme Court has determined is allowable. *Mitchell v. Grewal,* 338 Mich. 81, 87; 61 NW2d 3 (1953). Specifically, a zoning board has the authority to allow a use in a zoning district that would not otherwise be allowed under an ordinance. *Paragon Properties Co v. Novi,* 452 Mich. 568, 575; 550 NW2d 772 (1996); 25 Mich. Civ Jur, zoning § 36, pp 669-670 (2001). Essentially, when a variance is granted, the ordinance - and zoning pursuant to the ordinance - is left unchanged. However, a particularized exception to the provision of the ordinance is permitted. Mich Civ Jur, zoning § 37, pp 670-673 (2001); *Mitchell, supra* at 88. Accordingly, a variance is distinct from an ordinance or an amendment of an ordinance as contemplated by the TRZA. [*Id.* at 242-243.]

Finally, in *Green Oak Twp* we rejected similar public policy arguments and suggested that plaintiffs' remedies were political in nature against their township board members or through the timely intervention in prior proceedings:

***5** Amici curiae argue that our holding today will encourage townships to routinely use consent judgments to effect zoning changes by circumventing the enactment procedure and the citizen's right to referendum. We do not agree. A consent judgment by its nature is a settlement reached by two opposing parties to a court proceeding. To reach a consent judgment allowing a zoning change, the township would have to file suit against or be sued by a developer. That is, the township's position would necessarily be opposing that of the developer. Putting aside the fact that the citizens could intervene at this point in the proceedings, it strikes us as uncertain and illogical that a township would engage in the fiction of advocating against a zoning change initially only to successfully procure a settlement with the opposing party allowing the zoning change.

The proper remedies in this case were: (1) citizen intervention in the trial court proceedings below, which was done too late here and therefore denied, see *Vestevich v. West Bloomfield Twp,* 245 Mich.App 759, 762; 630 NW2d 646 (2001) (property owners could intervene to challenge a township's continued enforcement of a zoning ordinance where the township had entered into a consent judgment allowing development, suggesting that township's representation of property owners was inadequate), citing MCR 2.209; and (2) recalling the offending township officials, see M.C.L. § 168.960(1). Further, the township could have reserved the right to appeal the consent judgment, but chose not to. See *Travelers Ins v. U-Haul of Michigan, Inc,* 235 Mich.App 273, 278, n 4; 597 NW2d 235 (1999) (appeal of right is available from a consent judgment where reserved); 7 Martin, Dean & Webster, Michigan Court Rules Practice, Rule 7.203, p 139 (an appeal by right is generally lost on agreeing to a consent judgment; leave to appeal may be requested). *We believe that it is within the township's discretionary authority to settle a legal matter or appeal an adverse judicial decision.* [*Id.* at 242 ns 6 and 7 (emphasis added).]

In the present case, plaintiffs' reliance on dicta contained in *Vestevich v. West Bloomfield Twp, supra,* and *Sloban v. Shelby Twp,* 67 Mich.App 371; 241 NW2d 211 (1976), is misplaced and unpersuasive. Both cases are factually distinguishable from the facts of the instant case. Most importantly, the intervenors in *Vestevich,* injected the issue of the validity of the consent judgment into the original action in which the consent judgment was designed to settle. In contrast, this Court is presented in the instant case with a *collateral attack* to the validity of a prior judgment entered in a different action. "Collateral attacks, as opposed to direct appeals, require consideration of the interests of finality and of administrative consequences." *People v. Ingram,* 439 Mich. 288, 291; 484 NW2d 241 (1992). For these reasons, collateral attacks on prior judgments are disfavored. *Id.; In re Hatcher,* 443 Mich. 426; 505 NW2d 834 (1993).

***6** Plaintiffs' argument that a consent judgment entered by the circuit court should be treated differently from a litigated judgment is not the law of this jurisdiction. As we held in *Trendell v. Solomon,* 178 Mich.App 365; 443 NW2d 509 (1989), a consent judgment is a judicial act that possesses the same force and character as a judgment rendered following a contested trial. See also *System Federation No. 91 Railway Employees' Dep't v Wright,* 364 U.S. 642, 651; 81 S Ct 368; 5 L.Ed.2d 349 (1961), and *Siebring v Charles W Hansen*

& Afsco, Inc, 346 F.2d 474, 477 (CA 8, 1965). Plaintiffs' arguments to the contrary are without merit. *Madison v. Detroit,* 182 Mich.App 696, 701; 452 NW2d 883 (1990).

Affirmed.

All Citations

Not Reported in N.W.2d, 2003 WL 21108470

Footnotes

1 Defendant township's motion was granted on the basis of both MCR 2.116(C)(8) and (10). Defendants Land Acquisition's and Panda's motions in regard to count II were granted pursuant to MCR 2.116(C)(8).

2 “Collateral attacks encompass those challenges raised other than by initial appeal of the [judgment] in question.” *People v. Ingram,* 439 Mich. 288, 291 n1; 484 NW2d 241 (1992).

3 In an effort to cure the claimed OMA violation, defendant township convened a second meeting at which the proposed consent judgment was reapproved. The partial stipulation for dismissal was apparently in response to the second meeting.

EXHIBIT 9

TOWNSHIP BOARD OF TRUSTEES
CHARTER TOWNSHIP OF ANN ARBOR
WASHTENAW COUNTY, MICHIGAN
RESOLUTION APPROVING CONDITIONAL USE PERMIT FOR AMC-WSG, LLC GRAVEL PIT
DATE: JULY 20, 2020

Resolution adopted at a regular meeting of the Board of Trustees of the Charter Township of Ann Arbor, Washtenaw County, Michigan, held at the Township Hall, 3792 Pontiac Trail, Ann Arbor, Michigan, on January 20, 2020.

PRESENT: Diane O'Connell, Rena Basch, Michael Moran, Della DiPietro, Rodney Smith, John Allison, Randy Perry

ABSENT: None

Motion by Trustee: Basch; supported by Trustee: Perry.

I. RECITALS

A. Ann Arbor Charter Township ("Township") received an application dated February 11, 2020, as revised by submissions dated March 17, 2020 and April 20, 2020 (collectively the "Application") for a Conditional Use Permit for Mineral Mining ("CUP") for AMC-WSG, LLC, a Michigan limited liability company ("Applicant"). The Application is to expand the sand and gravel mining operations of an existing gravel pit on the property located at 4984 Earhart Road, Ann Arbor Township, Parcel Number I-09-01-200-002, Ann Arbor Charter Township, containing approximately 142 acres of property ("Property"), including, but not limited to, by increasing the amount of materials mined on the Property and upgrading tools and equipment on site.

B. The Application also includes a request for approval of a combined preliminary and final site plan initially dated February 11, 2020 and updated March 17, 2020 (collectively the "Site Plan"). Under the Township's Code of Ordinances (the "Code"), requests for conditional land uses are reviewed concurrently with site plans.

C. Applicant is currently under contract with Washtenaw Sand & Gravel Co., a Michigan corporation and the current owner of the Property ("Owner"), to purchase the Property. Owner has submitted correspondence to the Township consenting to the Application and to Applicant entering into all necessary agreements with the Township for approval of the Mining Activities (defined below). A copy of the correspondence was included in the Application.

D. The Application includes plans for expanding Owner's current sand and gravel mining operation currently in operation on the Property. The expanded operation will use front-end loaders, excavators, and dump trucks to mine the sand and gravel and carry it to a wash plant on site. The new operation will use approximately five (5) to seven (7) large pieces of equipment on a daily basis. Unlike the current operation by Owner, the Applicant has represented that no other materials (i.e. construction aggregates, used concrete and asphalt, or limestone) will be brought on the Property for re-sale. Mining activities will be conducted primarily March through November (referred to as the "peak season"), but there will be winter stockpiles depending on customer demand. Applicant has

indicated that winter mining could occur if conditions are favorable for mining. Applicant estimates that, initially, the average number of trucks that are expected to enter/exit the Property is approximately 40-50 per day during the peak season, and could go up to 80 per day during the peak season. In addition to the activities outlined in the Application and the Reports (as defined below), the foregoing activities shall be referred to as the "Mining Activities."

E. The Mining Activities do not constitute a permissible prior nonconforming extraction operation under Code Section 74-224.

F. Applicant represents to the Township that for the duration of any conditional use permit granted by the Township, Applicant will use Earhart Road consistent with, in accordance with the regulations of, and under the limits of, a Normal Route, sometimes referred to as a "Class B," or "medium volume" road under the Washtenaw County Road Commission ("WCRC") Procedures & Regulations for Permit Activities, meaning that no improvements will be required by WCRC to comply with a "Designated Route" and/or "Class A" road requirements. The Applicant represents that it will not seek a designated haul route permit from the WCRC to increase the number of trips or to allow for heavier loads for the duration of this CUP without first requesting an amendment to the CUP to allow for same.

G. The Township Planner and Township Engineer have reviewed the Application and Site Plan and provided detailed comments and reviews, the most recent being the Township Planner's reviews dated February 27, 2020, April 6, 2020 and April 27, 2020, and the Township Engineer's reviews dated February 27, 2020, April 2, 2020, April 30, 2020 and June 30, 2020 (together, the "Reports").

H. On April 13, 2020, the Planning Commission held a Special Meeting to consider the Application and to set a date for a public hearing. On May 4, 2020, the Planning Commission held a public hearing to consider the CUP. On June 1, 2020, July 6, 2020 and at a special meeting held on July 13, 2020, the Planning Commission extensively considered the application for CUP and requested additional information and clarifications from the Applicant.

I. The Township Planning Commission considered the Application and Site Plan, the reports and comments of the Township Planner and Township Engineer, and the comments of the public at the public hearing on the CUP as well as during public comment at each of the meetings described above, and adopted a resolution ("PC Resolution") approving the Site Plan and recommending approval of the CUP to the Township Board based on findings and subject to the conditions set forth in the PC Resolution. A copy of the PC Resolution is attached as Exhibit A.

II. STANDARDS AND FINDINGS – CONDITIONAL USE PERMIT

Section 74-137 of the Code states that any Conditional Land Use approval shall run with the land and shall remain unchanged except upon mutual consent of the Township Board and the landowner. The Planning Commission and Township Board must evaluate the proposed use to determine if it meets all the required standards listed in Code Sections 74-136 and 74-592.

Code Section 74-592 states that any approval of the CUP is conditioned upon Applicant's adherence to all of the performance standards set forth in Code Section 74-594, as well as the conditions of the PC Resolution and this Resolution.

Based on the foregoing and the PC Resolution, the Township Board adopts the standards and findings of the Planning Commission pertaining to the CUP pursuant to Code Sections 74-136 and 74-592 and, subject to the conditions of the Planning Commission as set forth in the PC Resolution (as modified and supplemented by the Township Board herein) approves the CUP for the Mining Activities on the Property.

III. CONDITIONS – CUP

Based on the foregoing, the Township Board approves the CUP as set forth in the PC Resolution, subject to the conditions set forth in the PC Resolution (as modified and supplemented by the Township Board herein), as follows, which conditions shall run with the Property and are required in order for no very serious consequences to occur in connection with the Mineral Activities on the Property:

1. Within one (1) year after approval of the CUP, Applicant shall plant evergreen trees within the 100-foot buffer adjacent to the existing single family home to the south of the Property so that a proper buffer will be established by the time that the Mining Activities will be located closer to the southern boundary line of the Property.

2. Applicant shall plant native species identified on the Bio-Retention Plant List described above for the 25-foot buffer around the lakes to be created in accordance with the reclamation plan included in the Application and approved Site Plan, except in those locations designated for boat launches or docks.

3. Applicant shall not revise or modify the Site Plan without prior written notice to and approval by the Township.

4. In the event Applicant or any subsequent owner ceases use of the Property as described in this Resolution for a period in excess of 24 months, the CUP may be revoked in accordance with the Code.

5. Applicant shall reapply for a new conditional use permit within five (5) years after final approval of this CUP by the Board of Trustees as required by Section 74-592 of the Code.

6. Applicant shall not (i) seek, apply for, or obtain approval for a designated Haul Route Permit from the WCRC for Earhart Road, (ii) utilize Earhart Road in a manner which exceeds County Normal Route or Class B vehicle axle weight, length or size limitations, and/or (iii) coordinate with the WCRC in any manner relating to improvements to Earhart Road prior to obtaining approval from the Township regarding the change in use. Applicant acknowledges and agrees that any change in the use of Earhart Road is a change in use under the CUP and will require an amendment to the CUP, or application for a new conditional use permit, in the sole discretion of the Township.

7. Applicant and Township must sign a Development Agreement in a form acceptable to the Township, as required by Section 74-177 of the Code, and Applicant must deposit the performance guarantees as required by Section 74-592 of the Code for restoration of the Property and to cover the costs of the Township Engineer in certifying conformance, as well as a cash escrow with the Township to allow the Township and WCRC to undertake additional dust control, grading and gravel application measures on Earhart Road.

8. Applicant shall remove all inoperable vehicles and equipment not used for Mining Activities from the Property within twelve (12) months after approval of the CUP.

9. In the event that a portion of the internal roadway located on the Property encroaches onto the neighboring property located at 4410 Earhart Road, Applicant shall move the portion of the road encroaching on the neighboring property to a location wholly located on the Property and which complies with the set-back and other requirements of the Code within thirty (30) days of approval of this CUP. Further, Applicant shall plant grass seed to restore the neighboring property in the location of the road encroachment. In the event that the road does need to be relocated, the Applicant shall work cooperatively with the neighbor to ensure access to the neighboring property at times reasonably convenient to the neighboring property owner to relocate the road and restore the area by planting grass seed.

10. Applicant shall not perform any concrete, cement or asphalt production on the Property in accordance with Code Section 74-592.

11. The Owner, Applicant and their tenants shall comply with all comments, conditions and recommendations set forth in this Resolution and the Reports related to the CUP and Site Plan and any reports and comments of the Township Building and Zoning Official, Township Fire Chief, Township attorney and Township Utilities Department.

12. Applicant shall limit truck entering and exiting the Property to an average of fifty (50) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day.

13. Applicant shall track, compile and submit to the Township, in the form of an annual report (unless requested more frequently by the Township), information regarding the vehicle traffic using Earhart Road and entering the Property. Specifically, the Applicant shall track the number of daily vehicle trips entering and exiting the site in relation to the Mining Activities and report those numbers, as well as the monthly daily average and monthly maximum counts.

14. Use of the Property shall be in accordance with this Resolution and other applicable laws and ordinances, including the Township noise, light and nuisance ordinances, and ordinances relating to hours of operation.

15. All truck staging shall be contained on the Property. Truck staging on Earhart or Joy Road is prohibited. Applicant shall assist the Township in enforcing this condition.

16. Crushing operations are prohibited within 300 feet of any neighboring residences.

17. Applicant shall not utilize chemicals in relation to the washing process of the Mining Activities (only water is permissible in relation to the washing process).

18. Prior to any Mining Activities, Applicant shall provide the Township (for administrative review) with updates of the Site Plan to address inconsistencies, requirements of the consultants' reports, and the terms of this Resolution.

19. Prior to creating a five (5) acre lake on Property, Applicant shall establish and submit a plan to the Township to ensure that the planned lake will not impact the water level of surrounding wells and wetlands.

20. Applicant shall comply with all state and federal requirements for mineral mining, including any and all requirements a set forth in the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq.*, MCL §125.3205.

IV. TOWNSHIP BOARD APPROVAL

Based on the foregoing findings and standards and subject to the foregoing findings and conditions, the Township Board approves the CUP for the Mining Activities on the Property.

RESOLUTION DECLARED ADOPTED.

Diane O'Connell
Township Supervisor

I certify that the foregoing is a true and complete copy of a resolution adopted by Township Board of the Ann Arbor Charter Township, County of Washtenaw, State of Michigan, at a regular meeting held on July 20, 2020, that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Rena Basch
Township Clerk

Dated: July 29, 2020

EXHIBIT A

Planning Commission Resolution

AS RECOMMENDED 7/13/2020

PLANNING COMMISSION
CHARTER TOWNSHIP OF ANN ARBOR
WASHTENAW COUNTY, MICHIGAN
RESOLUTION RECOMMENDING APPROVAL OF COMBINED PRELIMINARY AND FINAL SITE PLAN AND CONDITIONAL USE PERMIT FOR MINERAL MINING
MID MICHIGAN MATERIALS GRAVEL PIT

DATE: JULY 13, 2020

Resolution adopted at a special meeting of the Planning Commission of the Charter Township of Ann Arbor, Washtenaw County, Michigan, held at the Township Hall, 3792 Pontiac Trail, Ann Arbor, Michigan, on July 13, 2020.

PRESENT: Kris Olsson, Lee Gorman, Peter Kotila, Linda Young, John Allison, Karen Mendelson, David Gidley

ABSENT:

Motion by Commissioner: Olsson; supported by Commissioner: Gidley.

I. RECITALS

A. Ann Arbor Charter Township ("Township") received an application dated February 11, 2020, as revised by applications dated March 17, 2020 and April 20, 2020 (collectively the "Application") for a Conditional Use Permit for Mineral Mining ("CUP") for AMC-WSG, LLC, a Michigan limited liability company ("Applicant"). The Application is to expand the existing sand and gravel mining operations of an existing gravel pit on the property located at 4984 Earhart Road, Ann Arbor Township, Parcel Number I-09-01-200-002, Ann Arbor Charter Township, containing approximately 142 acres ("Property"), including, but not limited to, increasing the amount of materials mined on the Property and upgrading tools and equipment on site.

B. The Application also includes a request for approval of a combined preliminary and final site plan initially dated February 11, 2020 and updated March 17, 2020 (collectively the "Preliminary and Final Site Plan"). Under the Township Code, requests for conditional land uses are reviewed concurrently with site plans.

C. Applicant is currently under contract with Washtenaw Sand & Gravel Co., a Michigan corporation and the current owner of the Property ("Owner"), to purchase the Property. Owner has submitted correspondence to the Township consenting to the Application and to Applicant entering into all necessary agreements with the Township for approval of the Mining Activities. A copy of the correspondence was included in the Application.

D. The Application includes plans for expanding the current sand and gravel mining operation already operating on the Property by Owner. The expanded operation will use front-end loaders, excavators, and dump trucks to mine the sand and gravel and carry it to a wash plant on site. The new operation will use approximately 5-7 large pieces on equipment on a daily basis. Unlike the

previous operation by Owner, the Applicant has represented that no other materials (i.e. construction aggregates, used concrete and asphalt, or limestone) will be brought on the Property for re-sale. Mining activities will be conducted primarily March through November, but there will be winter stockpiles depending on customer demand. Applicant has indicated that winter mining could occur if conditions are favorable for mining. The Applicant estimates that initially, the average number of trucks that are expected to enter/exit the Property is approximately 40-50 per day, and could go up to 80 per day during the peak season. In addition to the activities outlined in the Application and the Reports (as defined below), the foregoing activities shall be referred to as the "Mining Activities."

E. The Mining Activities do not constitute a permissible prior nonconforming extraction operation under Ann Arbor Township Code Section 74-224.

F. The Applicant represents to the Township that for the duration of any conditional use permit granted by the Township, the Applicant will use Earhart Road consistent with, and in accordance with the regulations of, and under the limits of a Normal Route, sometimes referred to as a "Class B," or "medium volume" road under the Washtenaw County Road Commission ("WCRC") Procedures & Regulations for Permit Activities, meaning that no improvements will be required by WCRC to comply with a "Designated Route" and/or "Class A" road requirements. The Applicant represents that it will not seek a designated haul route permit from the WCRC to increase the number of trips or to allow for heavier loads for the duration of this CUP.

G. The Township Planning and Engineering Consultants, have reviewed Applicant's Application and Site Plan and provided detailed comments and reviews, the most recent being the Township Planner's review dated February 27, 2020, April 6, 2020 and April 27, 2020, and the Township Engineer's review dated February 27, 2020, April 2, 2020, April 30, 2020 and June 30, 2020 (together, the "Reports").

H. On April 13, 2020, the Planning Commission held a Special Meeting to consider the Application and to set a date for a public hearing. On May 4, 2020, the Planning Commission held a public hearing to consider the CUP. On June 1, 2020, July 6, 2020 and at a special meeting held on July 13, 2020, the Planning Commission extensively considered the application for CUP and requested additional information and clarifications from the Applicant.

I. The Township Planning Commission considered the Application and Preliminary and Final Site Plan, the reports and comments of the Township Planning and Engineering Consultants, and the comments of the public at the public hearing on the CUP, and recommends approval by the Township Board of the Preliminary and Final Site Plan and the CUP based on the findings, and subject to the conditions set forth below pursuant to Section 74-136 of the Code pertaining to approval of a conditional use permit, Sections 74-174 through 74-176 of the Code pertaining to site plan review, and Section 74-592 of the Code pertaining to mineral mining (which is consistent with and subject to the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq*, MCL §125.3205 regarding the mining of natural resources).

II. FINDINGS, CONDITIONS AND APPROVAL-COMBINED PRELIMINARY AND FINAL SITE PLAN

Based on the Preliminary and Final Site Plan submitted by the Applicant, review of the Reports, and review of approvals and reports from applicable governmental authorities, and pursuant to the Recitals and Reports which are incorporated into this Resolution, and the Township Code, the

Planning Commission finds that the proposed Preliminary and Final Site Plan meets the standards of the Township Code Sections 74-174 through 74-176, subject to Applicant completing all required revisions to the Preliminary and Final Site Plan as set forth in the Reports, any revisions requested by the Township consultants and as otherwise required by the Planning Commission herein.

III. STANDARDS AND FINDINGS – CONDITIONAL USE PERMIT

1. CUP. Based on the Applicant's submittals, the Reports and comments of the public at the public hearing, the Planning Commission makes the following findings pertaining to the CUP pursuant to Section 74-136 of the Code:

A. Standard: The project will be harmonious with and in accordance with the objectives, intent and purposes of the ordinance.

Finding 1: Upon compliance with the conditions set forth in this Resolution, the CUP is harmonious and in accordance with the objectives, intent and purposes of the Code, which states that the intent of the chapter is to ensure economical use of land. The Property can either continue use as a gravel pit, or be reclaimed and redeveloped into a residential development. The Applicant is proposing to continue the use on the Property as a gravel pit and submitted a market study in its Application, which discusses future profitability. Continued use as a gravel pit is consistent with an economical use of the land.

B. Standard: The project will be compatible with the natural environment and existing and future land uses in the vicinity.

Finding 2: Upon compliance with the conditions set forth in this Resolution, the Mining Activities will be compatible with the natural environment and existing and future land uses in the vicinity as the Applicant is proposing a continuation of the current use of the Property.

The Mining Activities are occurring away from the sensitive water features on the Property (wetlands and tributary) to avoid any physical impacts from the Mining Activities in the wetlands or tributary. Regarding Stormwater runoff to the wetlands to the north and the tributary to the east:

1. The Applicant has provided information that runoff will be filtered by a proposed stormwater diversion berm that will act as a sedimentation basin (on the north), and stormwater berms to the east before entering the wetland and wetland surrounding the tributary. Applicant shall revise the site plans to show improvements to the berms located on the east side of the Property to show that any runoff will either be detained and allowed to infiltrate into the ground, or will filter through the berm, pursuant to an administrative review. In either case, runoff will be directed away from the Fleming Creek tributary and wetlands and will be redirected back into the mine itself. As noted below, this berm shall be inspected in relation to the Soil Erosion Control Permit Process identified below.

2. A Soil Erosion and Sedimentation Control (SESC) Permit is required for the Mining Activities on the Property, which the Township will oversee for the duration of the CUP.

3. As further addressed below in relation to the mining ordinance, the CUP expires in five (5) years, after which time the Applicant will need to reapply for a new conditional use permit. Therefore, any erosion issues that are impacting the wetland and/or tributary will be addressed through the application process for a future conditional use permit.

Regarding the existing woodlands on site, the Applicant has offered, and the Township is requiring that the Applicant vegetate the 100-foot buffer that is currently used for a roadway (southeast corner of the Property) to contribute to the natural vegetation on the Property. Further, Applicant states that further vegetation will also occur where Area A is to be reclaimed in accordance with Applicant's Reclamation Plan, which is planned to occur in two (2) to five (5) years.

Regarding the Massasagua rattlesnake habitat, Applicant has provided information regarding the federally threatened species and its existing habitat on the Property. The Applicant has represented, and the Township requires that Applicant commit to producing a study on the existing habitat and strategies for reducing impact on any existing protected habitat on the Property. Any development of the Property in relation to the CUP shall be in compliance with federal law regarding federally protected and/or endangered species.

Regarding future land uses in the vicinity, Applicant represents that once mining on this Property is complete, which Applicant estimates will be between 16-40 years, reclamation of the Property will make it appropriate for agriculture, wildlife habitat, and/or large-lot residential uses. The Master Plan calls for Open Space Preservation on this property. This future land use category is characterized by mixed farmland and natural areas. The goals of this category include residential clustering, while preserving open space, enhancing rural character and enabling small-scale agricultural uses. Once the site is reclaimed, the proposed uses will be consistent with the Township Master Plan.

C. ***Standard: The project will be compatible with the Township Master Plan.***

Finding 3: Upon compliance with the conditions set forth in this Resolution, the CUP will be compatible with the Township Master Plan designation of the area as mixed farmland and natural areas. As noted above, the Applicant represents that under the reclamation plan contained in the Application, the Property will be appropriate for agriculture, wildlife habitat, and/or large-lot residential uses in the future, which is consistent with the Master Plan.

D. Standard: The project will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage ways, and structures, refuse disposal or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

Finding 4: Upon compliance with the conditions set forth in this Resolution, the Mining Activities and Property will be served adequately by essential public facilities and services. The Property is accessible from Earhart Road. Applicant has provided information from the WCRC confirming that Earhart Road is currently being operated as a County Normal Route as defined by the Washtenaw County Truck Operators Map, hereafter known as a Class B Road or "medium volume" road in accordance with the Procedures and Regulations for Permit Activities for the WCRC and in accordance with the Michigan Vehicle Code. If transport of loads over Earhart Road by Applicant exceed the axle weight, length and size limitations for a Class B Road, the Applicants agrees that

Earhart Road may be classified as a Class A Road, and Applicant will be required to apply for and obtain a Haul Route Permit and make certain improvements to Earhart Road as required by the WCRC. Applicant has represented to the Township in the Application at the public hearing that the transport of sand, gravel and other materials in relation to the Mining Activities over Earhart Road will not exceed the Class B axle weight, length and size limitations, and Earhart Road will continue to be classified and operated as a Class B Road and all axle weight, length and size will be at or below the requirements of a County Normal Route. In the event that the Mining Activities, or Applicant's use of Earhart Road results in an increase of use of Earhart Road (over that of the Class B Road), the Applicant shall apply for an amendment to this CUP, or otherwise apply for a new conditional use permit to obtain a Haul Route Permit and to perform any and all improvements to Earhart Road as required by the WCRC. Approval of this CUP is conditioned upon the Applicant agreeing not to seek a designated Haul Route Permit, nor work in conjunction with the WCRC to improve Earhart Road unless and until Applicant obtains approval for the change in use from the Township in accordance with Code.

Further Earhart Road will provide adequate access for fire and police service vehicles, which such services will be provided by the Township. Applicant will use water, and if that is insufficient calcium chloride to mitigate dust as a result of truck traffic or the Mining Activities on site. The Planning Commission is recommending that the Township Board require Applicant to financially assist the Township and WCRC in assuring that truck traffic impacts to the integrity of Earhart Road will be mitigated by more frequent grading, application of gravel and dust control measures, as described herein.

The commercial septic system at the Property is adequate based on the report from the Washtenaw County Environmental Health Department ("WCEHD"). The trash disposal system proposed by the Applicant at the Property consists of an outdoor, covered, dumpster as indicated in the Preliminary and Final Site Plan.

E. <u>Standard</u>: The project will not be detrimental, hazardous or disturbing to existing or future neighboring uses, persons, property or the public welfare.

<u>Finding 5</u>: The adjacent land uses include two single-family residential homes on the south boundary, two single-family residential homes across Earhart Road to the west, and two single-family residential homes to the north on Joy Road (located in Northfield Township), as well as the school Spiritus Sanctus Academies. A lake and woodlands occupy the land located between the Property and the homes and building sites to the east. Land uses along Earhart and Joy Roads are primarily single family residences.

The Mining Activities are a continuation and expansion of the existing land use by Owner. The Planning Commission has found that the Mining Activities will be an increase over the current operation, with approximately 5-7 large pieces of equipment conducting the Mining Activities. There will be a wash plant and additional truck traffic entering and exiting the site each day. Applicant has represented that only water is utilized in the washing process. Applicant represents, and the Township requires, that Applicant shall not utilize chemicals in relation to the washing process on the Property.

As a condition to this Resolution, the Planning Commission requires that the Applicant show the 100-foot buffer along the perimeter of the Property as required by the Ordinance. In addition, the Applicant shall augment the vegetation located along the perimeter of the Property closest to the

neighboring residential properties and along the perimeter of the Property in order to reduce the impact of the Mining Activities on the surrounding area. Specifically, the Applicant will augment the existing buffer with evergreen trees along the southern boundary of the Property abutting the neighboring property containing a single family house in the twelve (12) months following the date of approval of the CUP to ensure that a sufficient perimeter buffer is established to reduce the impact of the Mining Activities. Additionally, the Applicant shall augment the vegetation within the 100 foot buffer located on the western side of the Property and Applicant shall not removes trees in the 100 foot buffer located on the western property line. Applicant shall revise the Site Plan to show all vegetative buffering, which may include trees, or other plantings acceptable to the Township Planner. Further, Applicant shall further vegetate the area located between the Mining Activities and the residence located to the southeast of the Property during the reclamation phase of Area A to ensure that the 100-foot vegetative buffer remains intact.

As a condition to this Resolution, the Planning Commission requires, that the hours of operation for the Mining Activities, as well as the noise from such Mining Activities will be within the limitations set forth in the Township Code. Subject to the Conditions set forth in this Resolution, the Planning Commissions finds that the Project will not be detrimental, hazardous or disturbing to existing or future neighboring uses, persons, property or the public welfare.

Significant concerns were expressed in writing and in public testimony by members of the public regarding the impact of proposed increases in truck traffic from the Property in relation to the Mining Activities, which poses various serious consequences to pedestrian, bicycle, horseback riding and vehicular safety peaceful use of properties along Earhart and Joy Roads, and to the rural character of the Township in accordance with the Township's designated Master Plan. The Planning Commission received significant testimony and analysis regarding traffic counts and impacts and found that these concerns were valid, and if unregulated would be detrimental, hazardous and disturbing to neighboring uses and people. To mitigate these very serious consequences, as a condition to this Resolution, the Planning Commission finds limits on either truck traffic or daily load limits (that relate to truck traffic) to be appropriate and required as outlined in the conditions below.

F. <u>Standard</u>: The project will not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.

<u>Finding 6</u>: Upon compliance with the conditions of this Resolution, the CUP will not create additional requirements at public cost for public facilities and services that would be detrimental to the economic welfare of the community. Notwithstanding the foregoing, if the Applicant's use of Earhart Road exceeds the Class B limitations as set forth above, Applicant will be required to seek approval of the increased use of Earhart Road from the Township as a revision to the CUP or in relation to a new conditional use permit.

IV. STANDARDS AND FINDINGS-MINERAL MINING CONDITIONAL USE

Based on the Applicant's submittals, the Township Consultants' Reports and the comments of the public at the public hearing, the Planning Commission makes the following findings pertaining to the Mineral Mining Conditional Use pursuant to Section 74-592 of the Code:

A. ***<u>Standard</u>: The Township Board shall grant a conditional use permit if it finds that no very serious consequences would result from the operation of the mineral mining activity. If is it***

demonstrated that a very serious consequence to the Township would occur, the Township Board shall not grant a conditional use permit. In accordance with MCL 125.3205, Section (5), the following factors shall be considered in making that determination:

1) ***The relationship of extraction and associated activities with existing land uses.***
2) ***The impact on existing land uses in the vicinity of the property.***
3) ***The impact on property values in the vicinity of the property and along the proposed hauling route serving the property.***
4) ***The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.***
5) ***The impact on other identifiable health, safety and welfare interests in the local unit of government.***
6) ***The overall public interest in the extraction of the specific natural resources on the property.***

Finding 1: Upon compliance with the conditions of this Resolution and Township Code, the Planning Commission finds that no very serious consequences would result from the CUP. As noted above, the use of the Property as a sand and gravel mine has been occurring for decades.

Regarding the existing land uses, to the best of the Township's actual knowledge, the Township has not received any complaints about the existing mining activities. Provided that the Applicant comply with the terms of this Resolution and the Township Code, including augmenting the vegetative buffer located along the perimeter of the Property to shield the neighboring properties from disturbance, the Mining Activities are not inconsistent with the existing land uses.

Regarding property values, the Property has been used as a sand and gravel mining operation for decades. Continuation of sand and gravel mining as detailed in the Mining Activities should not result in a decrease in property values in the vicinity of the Property.

Regarding pedestrian and traffic safety, Earhart Road (north of M-14) is a narrow, gravel road with heavy vegetation on both sides of the road, and no pedestrian accommodations (such as a shoulder or sidewalk) and no speed limit posted (which means that that the speed limit is 55 mph). Applicant states that the Mining Activities will result in approximately 40-50 trucks entering/exiting the site and using Earhart Road on an average day. The Planning Commission determined that this number of truck trips represents a significant increase over the current use of the Property and would be detrimental, hazardous and disturbing to neighboring uses and people and poses very serious consequences to pedestrian, bicycle, horseback riding and vehicular safety, peaceful use of properties along Earhart Road, and to the rural character of the Township as described in the Master Plan. As enumerated below daily truck traffic/daily tonnage limits are a condition of this recommendation for approval. In addition, all truck staging shall be contained on site and no truck staging shall be allowed on Earhart or Joy Roads. The Planning Commission determined that limiting the number of trucks entering and exiting the Property to an average of forty (40) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day was necessary to avoid serious adverse consequences.

B. ***Standard: The applicant shall submit a report by a geologist or other experts with credentials satisfactory to the Township Board to demonstrate compliance with MCL 125.3205, Sections (3) and (4), that the natural resources to be extracted shall be considered valuable, and***

the applicant can receive revenue and reasonably expect to profit from the proposed mineral mining operation. The applicant shall also provide documentation to demonstrate that there is a need for the natural resources to be mined by either the applicant or in the market served by the applicant.

Finding 2: Applicant has submitted a study entitled "Market Study for Washtenaw Sand and Gravel" amended March 16, 2020. The Market Study was prepared by Anderson Economic Group, Inc., a consulting firm that states that it specializes in business valuation and market and industry analysis. The Market Study concludes that, based on this analysis, there is a significant and on-going need for construction sand and gravel in southeast Michigan, and that Applicant is reasonably expected to receive revenues and operate the Property in a profitable manner, similar to peers.

C. ***Standard: Mineral Mining operations shall be subject to the following conditions set forth in Section 74-592(c) and as set forth in the Report of the Township Planner:***

Finding 3: Upon compliance with the conditions of this Resolution, the Planning Commission finds and the Applicant represents and warrants that the Mining Activities will be conducted in accordance with the requirements of Section 74-592(c) regarding mineral mining and as set forth in the Report of the Township Planner which is incorporated herein.

With regard to requirement of a 100 foot buffer along the perimeter of the Property, the Township is requiring, and the Applicant has agreed to increase the vegetation along the west, south and east lines of the Property and to confirm that the proposed areas of disturbance for the Mining Activities are not within 100 feet of any boundary line of the Property. As noted above, this augmentation will include augmenting the vegetative buffer along the southern and western lines of the Property, and in the southeast corner to reduce impact on the neighbors and the properties located to the west. Applicant shall begin augmenting the vegetation on the southern property boundary with evergreens within one year of approval of this CUP.

With regard to the impact of the Mining Activities on surrounding wetlands or watercourses, the Site Plan shows the boundary of a wetland and tributary along the north side of the Property. The Plans also show a tributary of Fleming Creek on the east side of the Property, which is approximately 25 feet from the lines of disturbance at the closest points. The Township is requiring and the Applicants agreed that that the berms along the east side of the Property must be inspected in relation to Applicant's Soil Erosion Control Permit and if necessary, improved so that they are constructed to adequately divert stormwater away from the tributary. There is a 50-foot buffer between the Mining Activity and the wetland boundary, which is sufficient, provided however, Applicant must install a seven (7) foot tall fence on the south side of the wetland, and on the west side of the Fleming Creek tributary to eliminate unintended impacts to the wetlands or tributary.

With regard to crushing operations, the Applicant has proposed, and the Township is requiring that no crushing activities occur within 300 feet of any neighboring residence in order to minimize potential noise impacts on the surrounding properties. Applicant shall revise its Site Plan to show that no crushing activities will occur within 300 feet of neighboring residences.

With regard to the required reclamation plan, the Site Plan shows two reclamation concepts. Concept 4A shows two large lakes, and one small lake, with the existing main road still intact

through the center. Concept 4B shows one large lake, with the main road re-routed to the north of the site along the wetland edge. The road leads to the existing parking/maintenance building area, which remains as uplands on the reclamation plan.

The narrative states that the initial revegetation will be a cover crop of rye, wheat, or oat, but the owner will attempt to negotiate agricultural leases for crop production. If this isn't successful, the site will be seeded for wildlife habitat consistent with the Michigan Department of Transportation's ("MDOT") standard specifications. The ultimate proposed uses of the site will be agricultural, wildlife habitat or residential.

The ordinance standard for a reclamation plan requires a sketch plan of the proposed use of the site once reclaimed. The two reclamation plans submitted by Applicant identify the areas that the applicant proposes as potential residential home sites. Concept 4A would provide for three lakes (one small lake and two large lakes, one being adjacent to the existing wetland), 14-acres of residential uses, plus an upland conservation area. The Planning Commission requires, and Applicant agrees that Applicant shall provide detailed reclamation plans for Sub-Areas A and B to be reviewed and approved by the Township consultants in relation to this Resolution. Applicant shall submit more detailed reclamation plans for the remaining Sub-Areas C-H in the future when Applicant must re-apply for a CUP in accordance with the Ordinance. The Township will review more detailed reclamation plans in the future re-application for CUP. Regardless of the reclamation plan discussed in the future, the Planning Commission is requiring that Applicant, during any initial reclamation phase, install native plantings as set forth on Bio-Retention Plant List (in Section VIII of the Washtenaw County Water Resources Commissioner's Rules & Design Standards) for a native 25-foot buffer around the created lakes, except in those areas identified by Applicant as inappropriate for native plantings which include boat launches and beaches for use by residences.

With regard to the requirement that Applicant provide performance guarantees related to reclamation, prior to any Mining Activities occurring on the Property, the Applicant shall provide the Township a letter of credit (or alternatively a cash escrow) in the amount designated by the Township Consultants to guarantee restoration of the Property and to reimburse the Township Consultants in certifying conformance with the Reclamation Plan.

Applicant, prior to conducting any Mining Activities on the Property shall also deposit a cash escrow with the Township in an amount to be determined by the Township in coordination with the Washtenaw County Road Commission to be used by the Township and County for providing additional dust control measures on Earhart Road, including, but not limited to periodic brining applications as well as periodic grading and gravel application. The Township Board shall set a reasonable escrow amount in consultation with the WCRC and the Applicant. When necessary, the Township and WCRC will coordinate to perform the additional dust control and grading and gravel application measures on Earhart. Such costs and expenses relating to the additional dust control, grading and gravel application measures shall be reimbursed to the Township from the cash escrow to be deposited by the Applicant pursuant to this Section.

Last, with regard to the performance standards set forth in Section 74-594 of the Township Zoning Code, approval of the CUP is conditioned upon Applicant's adherence to all performance standard set forth in Section 74-594, as well as the conditions set forth in this Resolution.

V. CONDITIONS – CUP AND PRELIMINARY AND FINAL SITE PLAN

Based on the foregoing Standards and Findings, the Planning Commission recommends approval by the Township Board of the CUP and finds that, subject to the conditions as set forth above, as well as the following conditions, which shall run with the Property, no serious consequences will occur upon approval of this CUP:

1. Within one (1) year of approval of the CUP, Applicant shall plant evergreen trees within the 100-foot buffer adjacent to the existing single family home to the south of the Property so that a proper buffer will be established by the time that the Mining Activities will be located closer to the southern boundary line of the Property.

2. Applicant shall plant native species identified on the Bio-Retention Plant List described above for the 25-foot buffer around the lakes to be created in accordance with the Reclamation Plan, except in those locations designated for boat launches or docks.

3. Applicant shall not revise or modify the Preliminary and Final Site Plan without prior written notice to and approval by the Township.

4. In the event the Applicant or any subsequent owner ceases use of the Property as described in this Resolution for a period in excess of 24 months, the CUP may be revoked in accordance with the Code.

5. Applicant shall reapply for a new conditional use permit within five (5) years of final approval of this CUP by the Board of Trustees as required by Section 74-592 of the Township Code.

6. Applicant shall not (i) seek, apply for, or obtain approval for a designated Haul Route Permit from the WCRC for Earhart Road, (ii) utilize Earhart Road in a manner which exceeds County Normal Route or Class B vehicle axle weight, length or size limitations, and/or (iii) coordinate with the WCRC in any manner relating to improvement to Earhart Road prior to obtaining approval from the Township regarding the change in use. Applicant acknowledges and agrees that any change in the use of Earhart Road is a change in use under the CUP and will require an amendment to the CUP, or application for a new conditional use permit, in the sole discretion of the Township.

7. The Applicant and Township must sign a Development Agreement in a form acceptable to the Township, as required by Section 74-177 of the Code, and Applicant must deposit the performance guarantees as required by Section 74-592 of the Code for restoration of the Property and to cover the costs of the Township Engineer in certifying conformance, as well as a cash escrow with the Township to allow the Township and County to undertake additional dust control, grading and gravel application measures on Earhart Road.

8. Applicant shall remove all inoperable vehicles and equipment not used for Mining Activities from the Property within twelve (12) months of approval of the CUP.

9. In the event that a portion of the internal roadway located on the Property encroaches onto the neighboring property located at 4410 Earhart Road, Applicant shall move the portion of the road encroaching on the neighboring property to a location wholly located on the Property and which complies with the set-back and other requirements of the Township's Ordinance within thirty (30) days of approval of this CUP. Further, Applicant shall plant

grass seed to restore the neighboring property in the location of the road encroachment. In the event that the road does need to be located, the Applicant shall work cooperatively with the neighbor to ensure access to the neighboring property at times reasonably convenient to the neighboring property owner to relocate the road and restore the area by planting grass seed.

10. Applicant shall not perform any concrete, cement of asphalt production on the Property in accordance with the Section 74-592.

11. The Owner, Applicant and their tenants shall comply with all comments, conditions and recommendations set forth in this Resolution and the Reports related to the CUP and Preliminary and Final Site Plan and any reports and comments of the Township Building and Zoning Official, Township Fire Chief, Township attorney and Township Utilities Department.

12. Applicant shall limit truck entering and exiting the Property to an average of forty (40) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day.

13. Applicant shall track, compile and submit to the Township in the form of an annual report (unless requested more frequently by the Township), information regarding the vehicle traffic using Earhart Road and entering the Property. Specifically, the Applicant shall track the number of daily vehicle trips entering and exiting the site in relation to the Mining Activities and report those numbers, as well as the monthly daily average and monthly maximum counts.

14. Use of the Property shall be in accordance with this Resolution and other applicable laws and ordinances, including the Township noise, light and nuisance ordinances, and ordinances relating to hours of operation.

15. All truck staging shall be contained on the Property. Truck staging on Earhart or Joy Road is prohibited. Applicant shall assist the Township in enforcing this condition.

16. Crushing operations are prohibited within 300 feet of any neighboring residences.

17. Applicant shall not utilize chemicals in relation to the washing process of the Mining Activities (only water is permissible in relation to the washing process).

18. Prior to any Mining Activities, Applicant shall provide the Township with updates of the Preliminary and Final Site Plan to address inconsistencies, requirements of the consultants' reports, and the terms of this Resolution.

19. Prior to creating a five acre lake on Property, Applicant shall establish and submit a plan to the Township to ensure that the planned lake will not impact the water level of surrounding wells and wetlands.

20. Applicant shall comply with all state and federal requirements for mineral mining, including any and all requirements a set forth in the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq.*, MCL §125.3205.

VI. RECOMMENDATION TO TOWNSHIP BOARD

Based on the foregoing findings and standards and subject to the foregoing conditions, the Planning Commission recommends approval by the Township Board of the CUP for the Mining Activities and for approval of the Preliminary and Final Site Plan.

RESOLUTION DECLARED ADOPTED.

Peter Kotila, Chair
Planning Commission

I certify that the foregoing is a true and complete copy of a resolution adopted by the Ann Arbor Charter Township Planning Commission, County of Washtenaw, State of Michigan, at a special meeting held on July 13, 2020, that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Lee Gorman, Secretary
Planning Commission

Dated: _____, 2020

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Planning Commission

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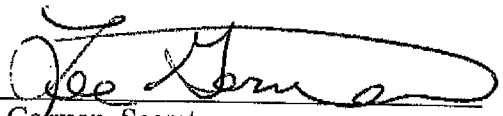

Lee Gorman, Secretary
Planning Commission

Dated: _____, 2020

EXHIBIT 10

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JOHN DARISH, JOAN DARISH,
GAIL NICKLOWITZ,
MICHAEL NICKLOWITZ,
GRACE KIM and EUGENE KIM

Plaintiffs,

Case No. 25-002153-CE
Hon. Julia B. Owdziej

v.

WSG PROPERTIES, LLC, AMC-WSG, LLC and AMC-MID MICHIGAN MATERIALS LLC,

Defendants.

Todd F. Flood (P58555)
Michael D. Weaver (P43985)
Noah D. Hall (P66735)
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Attorneys for Defendants

PROPOSED ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

This matter, having come before the Court upon the Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(4), (7), and (8), the Court having had an opportunity to review the Parties' briefs and hear argument on April 8, 2026, and the Court otherwise being advised in the premises,

For the reasons set forth on the record, IT IS HEREBY ORDERED:

1. Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(4) for lack of subject matter jurisdiction on finding that Plaintiffs' claims are Moot is **GRANTED**.
2. Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(7) on the basis that Plaintiffs' claims are barred by the prior proceeding or judgment in *Ann Arbor Charter Twp v WSG Properties, LLC*, Case No. 23-001234-CE (Mich Cir Ct, filed September 28, 2023) is **GRANTED**.
3. Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(8) on the basis that Plaintiffs' have failed to state a claim under all counts is **GRANTED**.

IT IS FURTHER ORDERED, in light of the Court's rulings on Defendants' Motion for Summary Disposition that Plaintiffs' Complaint is **DISMISSED WITH PREJUDICE**.

This is a final order and closes this case.

_____

DATED: Hon. Julia B. Owdziej