



Received  
Feb. 21, 2020

Charter Township of Orion Zoning Board of Appeals  
Application for Ordinance No. 99  
Case Number AB-99-02-2020

NOTICE TO APPLICANT

Fill out application. Additional information (letters A-K per ordinance No. 99, Section 5) may be supplied on a separate sheet. Incomplete applications will not be accepted. A check made payable to Orion Township must accompany application. Please contact the Planning & Zoning Coordinator at (248) 391-0304 x 154 for application submission deadline. For information relative to the powers and duties of the Zoning Board of Appeals, please refer to Act 184 of the Public Acts of 1943, as amended, of the State of Michigan, and to Article XXIX of the Orion Township Zoning Ordinance #78, effective July 2, 1984, as amended, and Section 4, B, Ordinance No. 99, effective December 25, 1991, as amended.

I/We, Dan's Excavating Inc of 12955 23 Mile Rd  
(Name) (Street Address)  
Shelby Twp., MI 48315  
(City, State, Zip)  
Email: ljurda@dansexc.com  
Phone: 586-254-2040 Cell: \_\_\_\_\_ Work: \_\_\_\_\_ Fax: 586-254-2259

do hereby appeal to the Zoning Board of Appeals for consideration affecting  
(please provide very explicit details of the affected property; by parcel):

**First Parcel Number** 0-09-32-400-096 formerly 09-32-400-057  
Subdivision and lots, within this parcel, that will be affected  
Mt. Judan Farms Lot 11

Describe what activity will occur on this parcel:

Sand or gravel pits, earth excavating and/or filling earth balancing

Acreage affected within this parcel 2.62

**Second Parcel Number** 0-09-032-400-056  
Subdivision and lots, within this parcel, that will be affected  
Mt. Judah Farms Lot 11

Describe what activity will occur on this parcel:

Sand or gravel pits, earth excavating and/or filling earth balancing

Acreage affected within this parcel 2.02

**Third Parcel Number** 09-32-400-095 Formerly 0-09-032-400-055

Subdivision and lots, within this parcel, that will be affected

Mt. Judah Farms Lot 12

Describe what activity will occur on this parcel:

Sand or gravel pits, earth excavating and/or filling earth balancing

Acreage affected within this parcel 8.05

**Fourth Parcel Number** 0-032-400-063

Subdivision and lots, within this parcel, that will be affected

Mt. Judah Farms Lots 13 & 14

Describe what activity will occur on this parcel:

Sand or gravel pits, earth excavating and/or filling earth balancing

Acreage affected within this parcel 6.68

If additional parcels, please attach separate sheet detailing same.

The petitioner, having met the conditions and requirements being familiar with Ordinance No. 99 of the Charter Township of Orion, requests a permit be granted as follows:

Hours 7:00 am to 7:00 pm

Approx. 100 trucks per day

**Name & Address of Property Owner (if different than applicant):**

Name(s): CP Ventures

Address: 12955 23 Mile Rd

City/State/Zip: Shleby Twp., MI 48315

Email: ljurda@dansexc.com or Bbaker@dansexc.com

Phone: 586-254-2040 Cell: \_\_\_\_\_ Work: \_\_\_\_\_ Fax: 586-254-2259

## Application for Appeal

Ordinance No. 99

Case#:

Meeting date:

STATE OF MICHIGAN    }  
COUNTY OF OAKLAND    }

I hereby depose and say that all of the above statements and statements contained in the papers submitted herewith are true and correct.

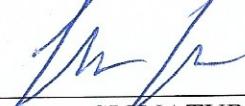
*As the property owner (or having been granted permission to represent the owner as to this application) and on behalf of all owners of this property, I hereby grant the Zoning Board of Appeals members and Township staff permission to perform a site walk on the property, without prior notification, as is deemed necessary.*



SIGNATURE OF APPLICANT

Brett Baker

PRINTED APPLICANT NAME



SIGNATURE OF OWNER

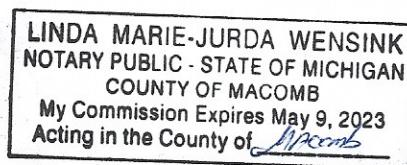
Chris Peyerl

PRINTED OWNER NAME

Sworn and subscribed to me this 17th day of February 20 20

Notary Public, Oakland County, Michigan  
*M. Wensink*

My commission expires 05-09-23



# **CP Ventures, LLP**

**12955 Twenty Three Mile Road  
Shelby Township, MI 48315  
PH 586.254.2040 Fax 586-254-2236**

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February 17, 2017

Charter Township of Orion  
Zoning Board of Appeals  
2525 Joslyn Road  
Lake Orion, MI 48360

RE: Authorization to Represent and Operate Judah Road Sand Pit

Dan's Excavating, Inc. is hereby authorized to operate the Judah Road Sand Pit in Orion Township as well as represent CP Ventures, LLP in matters concerning said property.



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Chris Peyerck, Partner

RIDER A

=====

LEGAL DESCRIPTION:

Land in the Township of Orion, Oakland County, Michigan, described as:

Parcel 1.

The north 535 feet of lot 11, Mount Judah Farms Subdivision, as recorded in Liber 14, page 57 of plats, Oakland County Records.

Parcel 2.

Lot 11, except the north 535 feet, Judah Farms Subdivision, as recorded in Liber 14, page 57 of Plats, Oakland County Records.

Parcel 3.

Lot 12 and the southerly 588 feet of Lots 13 and 14, Judah Farms Subdivision, as recorded in liber 14, page 57 of Plats, Oakland County Records.

Parcel 4.

Lots 13 and 14, except the southerly 588 feet, Judah Farms Subdivision. as recorded in liber 14, page 57 of Plats, Oakland County Records.

Parcel Identification Nos.

09-32-400-056, as to Parcel 1.

09-32-400-096 formerly 09-32-400-057), as to Parcel 2.

09-32-400-095 (formerly 09-32-400-055), as to Parcel 3.

09-32-400-063, as to Parcel 4.

Commonly known as: 2985, 3011 JUDAH ROAD, ORION TOWNSHIP, MI

April 20, 2020

Loren Yaros  
Zoning Board of Appeals Chairman  
**CHARTER TOWNSHIP OF ORION**  
2525 Joslyn Road  
Lake Orion, MI 48360

**RECEIVED**

April 20, 2020

Orion Township  
Planning & Zoning

**RE: Dan's Excavating, Inc., AB-99-02-2020  
Ordinance 99 Permit**

Dear Mr. Yaros:

We have completed our second review of the application materials for Dan's Excavating, Inc. Ordinance 99 permit submittal for the 2020/2021 permit year. The submittal package included an application with ownership information, legal description of the property, and variance requests. An existing topographical survey and proposed mining plan last revised April 13, 2020 were also included in the application. The information was reviewed with respect to the Township's Earth Balancing and Excavation Ordinance, No. 99, and the Township's Engineering Standards.

The proposed mining plan included in the application is generally the same plan approved last year. The property description, as stated on the application, includes lots 11 through 14 of Mt. Judah Farm Subdivision. The property includes parcel numbers 09-32-400-056, -063, -095, and -096. It should be noted the application has excluded ~2.75 acres south of the existing gas easement which was sold for the Breckenridge development off Brown Road. The plans have been updated to reflect the reduction in land. In addition, the plans reflect areas restored in 2019 and completed fence adjustments.

#### **Current Site Conditions**

The main entrance to the Dan's Excavating site is located off Judah Road. The majority of the work proposed onsite consists of filling. However, the application does indicate the possibility of earth excavation. If excavation is intended for other than construction of the proposed retention pond, the plans and application should indicate those locations. The majority of the fill is taking place in the southern portion of the pit. At the time of our site visit, a construction trailer, dozer, and diesel fuel tank were on-site. Grading operations were actively taking place during our visit. In addition, several stockpiles were located onsite consisting of clay. A small stockpile of crushed concrete and edge drain was located near the north end of the site. Construction materials such as edge drain not associated with the grading operations should be removed from the site. It is our understanding that the majority of the fill material is coming from the ongoing I-75 improvement project.



**Construction Trailer & Diesel Fuel Tank**



**Crushed concrete stockpile**



**Looking north at active filling/grading**



**Looking southwest at grading/ponding**

The site perimeter fence appeared to be good condition and has been revised to exclude the area in the northeast corner that has been restored per plan. All fence should be inspected and maintained regularly throughout the year. Any deficiencies found should be repaired.

#### **Mining/Filling**

Significant progress continues to be made on the southern slope. Since last year, the previously mined sand and gravel pit areas located on the southern slope have been filled. There does not appear to be any mining taking place on the site. The steep southern slope that exists from the gas pipeline down to main surface is currently being regraded to the maximum 1:4 slope as shown on the proposed mining plan. Once grading is complete, permanent soil erosion control measures will be required as noted on the plan and will include placing 3-inches of topsoil, seed and mulch over all disturbed areas.



**Looking south at Southern Slope**



**Looking southwest at Southern Slope**

The applicant has indicated that additional cutting and filling will take place this permit year. They estimate 100 vehicles per day will be required to perform the work. The estimated start date and end date of periods of high activity occurring on the site for the year should be included in the application and proper notice provided to the Township so they can help resolve any issues that may arise during heavy activity.

It is our understanding that fill will be placed from north to south in the area between 5000E-5700E and 3800N-4400N. Excavation will be done primarily in the area of the proposed retention basin between 5000E-5450E and 4400N-4800N. Approximately one-third of the basin has already been constructed and restored as previously noted. At the time of the site visit, a significant portion of the site was exposed earth. Continual dust control measures shall be implemented to effectively reduce dust on-site. Such measures should include vegetative restoration and on-site watering.

In summary, the proposed mining plan includes fill from the top of the gas main easement down to roughly midway to Judah Road at a maximum slope of 1:4. In addition, the plan includes the completion of an on-site retention pond for storm water management near the northern end of the site. The retention pond is necessary since the existing pit towards the south is filled in. The proposed grading down from the gas main easement is ongoing. The easterly one-third of the retention pond has been constructed and area restored.

#### **Dust Control and Public Road Conditions**

At the time of the visit, the site was in good condition. No dust was being created, primarily due to the frozen ground conditions. The concrete driveway entrance off Judah Road was partially covered with material being tracked from vehicles. The applicant should continue to clear the driveway of material and maintain it to proper condition on a regular basis.

The applicant will need to renew the haul route permit with the Road Commission for Oakland County for Judah Road. The current permit is set to expire on 6/1/2020. We are unaware of any dust complaints that the Township may have received during the 2019 permit year. The applicant will need to continue maintenance of the haul route to prevent dust and poor road condition issues. The applicant has previously stated that they contract with a chloride company who provides the necessary chloride. As with previous years, tracking of material and dust control issues will need to be monitored and improvements may be required throughout the permit year.



**Entrance off Judah Road**

### **Drainage**

As part of the mining plan, the applicant is proposing a retention pond towards the northern end of the site. The pond has been sized to accommodate (2) 100-year storm events per township requirements. The drainage area tributary to the pond includes both on-site and a small off-site area to the east as noted on the survey. At the time of our visit, the applicant had completed the eastern 1/3 of the proposed retention basin. The culvert located on the east side of the pit now discharges into the retention pond. The culvert was not visible due to ice over the pond at the time of our visit. The upstream end of the culvert was dry at the time of our visit and did not appear to be causing any backups. Throughout the year, the culvert will need to be maintained to ensure it is functioning properly.



**Northeast corner of site restored**



**Offsite area upstream of culvert**

### **Previous Violations**

This office is not aware of any written ordinance violations over the last year, therefore we defer our comments to the Zoning Enforcement Officers for any pending violations.



### **Conclusion**

In our opinion, the application and supplemental materials, as submitted, appear to be in substantial compliance with Township Ordinance, No. 99, and the Township's engineering standards. We recommend the following items be conditions of the approval:

1. The applicant furnish to the township a copy of the haul route permit once renewed with the Road Commission for Oakland County for Judah Road. The current permit is set to expire on 6/1/2020.
2. The approximate start date and end date of any intense activity, if applicable, occurring on the site for the year should be included in the application and/or notice given to the Township prior to high periods of activity.
3. Per Section 7, Item L of Ordinance 99, the applicant shall note that tracking of material and dust control issues will be monitored and improvements may be required throughout the permit year.
4. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the applicant to document all fill is "Suitable Fill Material" as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.
5. Construction materials such as edge drain not associated with the grading operations should be removed from the site.

### **Requested Variances**

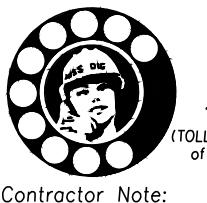
6. The applicant has requested a variance in the hours of operation from the allowable 7:00 a.m. to 5:00 p.m. to be extended to 7:00 a.m. to 7:00 p.m.

Please feel free to contact us with any questions or concerns.

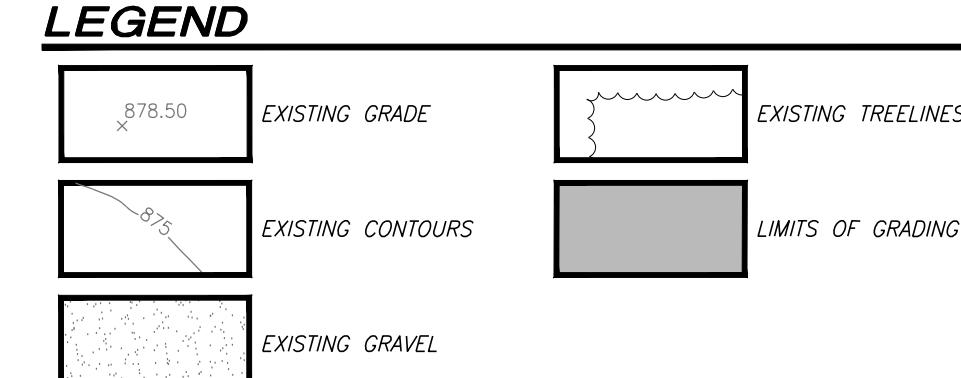
Sincerely,  
**OHM Advisors**

Mark A. Landis, P.E.  
Project Manager

cc: Chris Barnett, Supervisor  
Penny Shults, Clerk  
Donni Steele, Treasurer  
David Goodloe, Building Official  
Lynn Harrison, PC/ZBA Coordinator  
Al Daisley, Code Enforcer  
Brett Baker, Dan's Excavating, Inc.  
Chris Cousino, DEI Properties



3 WORKING DAYS  
BEFORE YOU DIG  
TOLL FREE for the location  
of underground utilities  
1-800-482-7171



**Contractor Note:**  
The contractor shall locate existing underground utilities in an approximate way only. The contractor shall determine the exact location of all existing utilities before commencing work. The contractor agrees to be fully responsible for any damage to existing utilities which may be occasioned by his failure to exactly locate and preserve any and all underground utilities.

SUBMITTAL REVIEW	
<input type="checkbox"/> NO EXCEPTION TAVERNS	<input checked="" type="checkbox"/> REGISTERED
<input type="checkbox"/> NO MAJOR DEVELOPMENTS	<input type="checkbox"/> SUBMIT SPECIFIED ITEM
<input type="checkbox"/> Pre-planned and Required	<input type="checkbox"/> PRE-APPROVED
<input type="checkbox"/> NO APPROVALS REQUIRED	<input type="checkbox"/> ACKNOWLEDGE RECEIPT
This review is only for general conformance with the design intent and the information given in the Construction Documents. Corrections or comments made on this sheet do not change the design intent. Approval of a specific item shall not include approval of an assembly of which the item is a part. Approval of a specific item does not imply that the entire assembly is acceptable. The designer retains the right to accept or reject any item or assembly based upon the techniques, sequences and procedures of construction; coordination of the Work with that of other trades; and performance of the Work.	
OHM Advisors I.M. 02/2020	

**RECEIVED**

April 20, 2020

Orion Township  
Planning & Zoning**PROPERTY DESCRIPTION**

LOTS 11, 12, 13, AND 14, "MT. JUDAH FARMS", AS RECORDED IN LIBER 14, PAGE 57, OF PLATS, OAKLAND COUNTY RECORDS, EXCEPT for that portion of the Lots southerly of the Michigan Gas Storage Co. Easement as described as follows:

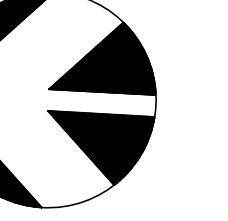
**PROPOSED SPLIT PARCEL:** Part of lots 11, 12, 13, & 14 of "Mt. Judah Farms" a platted subdivision as recorded in Liber 14, Page 57 of Plats, Oakland County Records, being more particularly described as: Commencing at the South 1/4 Corner of Section 32, T4N-R10E, Orion Township, Oakland County, Michigan, thence N00°35'51"E along the North-South 1/4 line of said Section 32, 1427.79 feet to the Southwest corner of said Lot 14, said point also being the Point of Beginning; thence continuing N00°35'51"E 203.52 feet to the southerly line of "Michigan Gas Storage Co Easement Route" as recorded in L-2738, P-38 & 41, and L-9714, P-598 thru 619, as field located; thence along said Southerly line of easement route the following (2) courses: S82°10'29"E 189.58 feet and S83°05'21"E 517.18 feet; thence S00°17'14"E 139.47 feet to the South line of said "Mt. Judah Farms"; thence N88°02'49"W along the South line of said "Mt. Judah Farms" 707.47 feet to the point of Beginning. Said Parcel contains 2.75 acres of land and is subject to any and all easements which may or may not be of record.

PLEASE NOTE THAT URBAN LAND CONSULTANTS HAS NOT PERFORMED ANY BOUNDARY SURVEY WORK ON THIS PARCEL. ALL PROPERTY LINE INFORMATION IS SHOWN FROM RECORDS PROVIDED BY THE CLIENT. THE PROPOSED SPLIT PARCEL DESCRIPTION IS PER SURVEY BY DIFFIN-UMLOR & ASSOCIATES DATED 02-06-2019.

**MINING PLAN SITE CRITERIA**

- PARCEL IDENTIFICATION #: 09-32-400-056, -063, -095, & -096
- EXISTING ZONING: R-1, BIZ
- AQUATIC ZONINGS: R-1, BIZ
- AREA OF SITE: 19.31 ACRES
- AREA OF DISTURBANCE (2019-2020) = 14.4 ACRES
- TOTAL NUMBER OF EXISTING LOTS: 4

**TOPOGRAPHIC SURVEY NOTES:**  
ORIGINAL TOPOGRAPHY WAS BY OHM DATED NOVEMBER 2012 WHICH WAS UPDATED BY URBAN LAND CONSULTANTS, LLC ON FEBRUARY 23, 2016, AND UPDATED AGAIN BY ULC, LLC ON JUNE 24, 2018. CONSIDERABLE GRADING HAS TAKEN PLACE ON THE SITE SINCE THE LAST TOPOGRAPHY UPDATE.

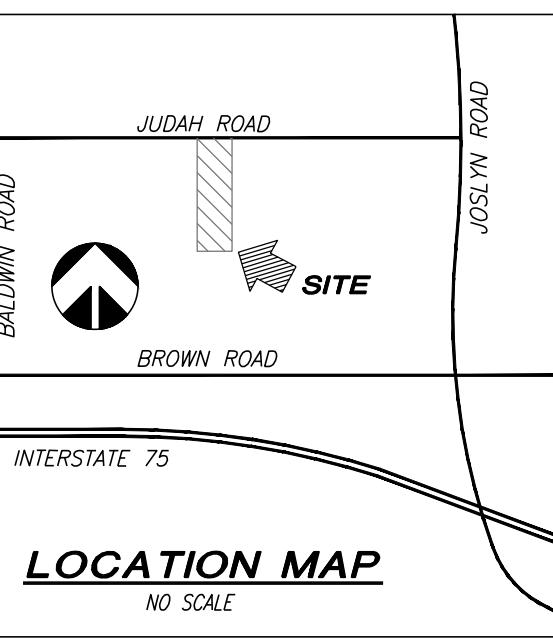
**NORTH****SCALE: 1"-50'**

0 25' 50' 100' 150'

**BENCHMARKS**

B.M. #1 ELEV = 1051.64  
C.G. SPK. IN W. FACE POWER POLE  
N. SIDE JUDAH ROAD, 100' EAST OF  
PIN ENTRANCE.

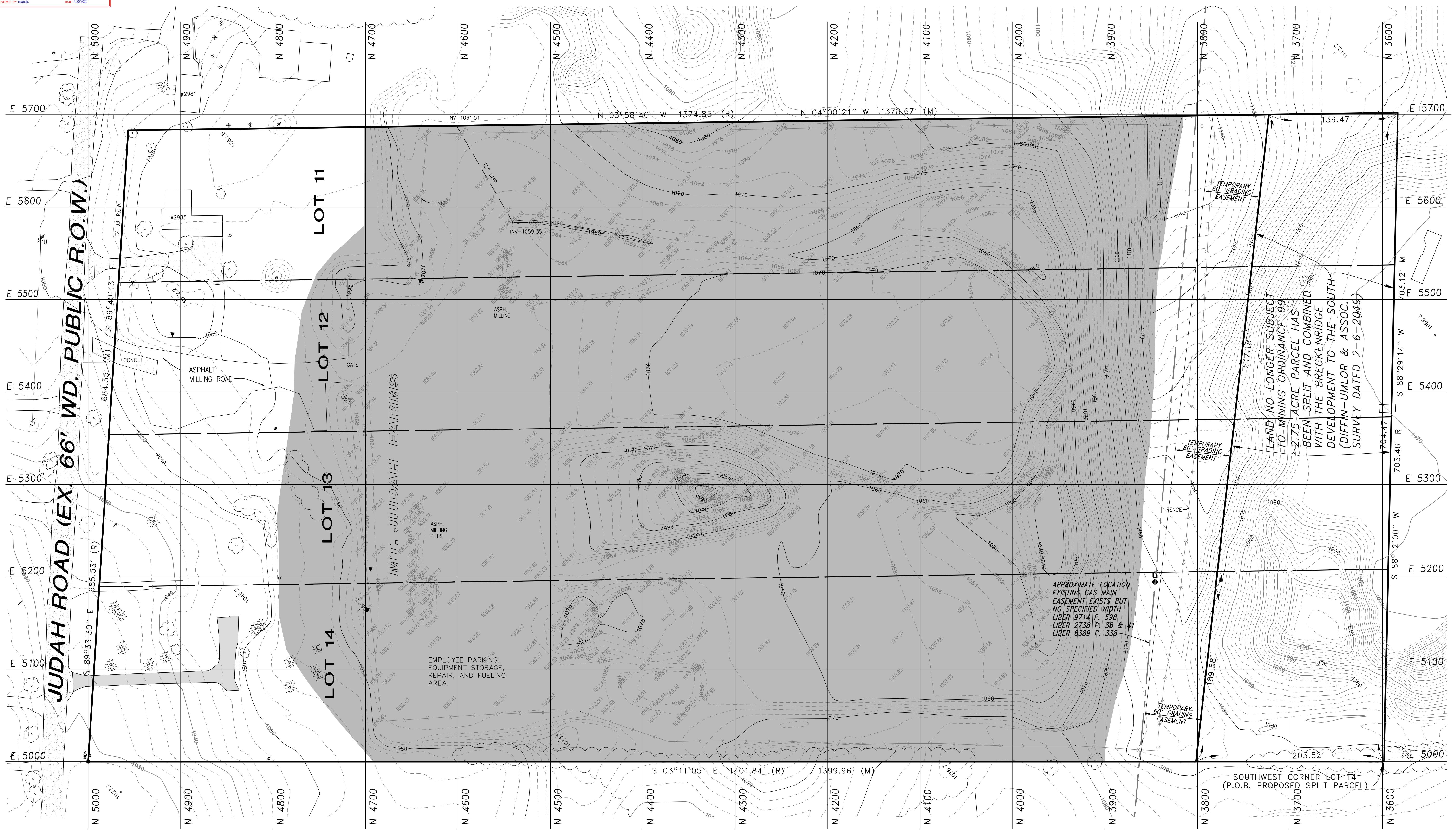
B.M. #2 ELEV = 1066.32  
CUT NAIL IN S. FACE 6X6 FENCE POST

**LOCATION MAP**

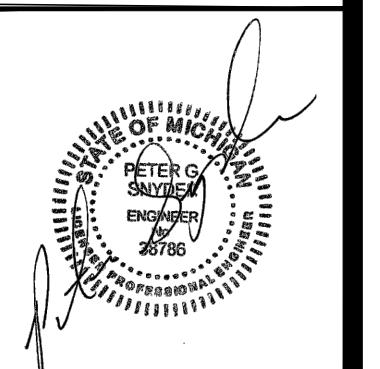
NO SCALE

**EXISTING CONDITIONS**

SHEET NO. 1 OF 2  
PART OF THE S.E. 1/4 OF SECTION 32  
T.4N., R.10E., ORION TOWNSHIP,  
OAKLAND COUNTY, MICHIGAN

**PROPOSED JUDAH ROAD SAND PIT**

FOR: DAN'S EXCAVATING  
1255.25 MILE ROAD  
SHELBY TWP., MICHIGAN 48335  
ATTN: BRETT BAKER



URBAN LAND CONSULTANTS ©  
CIVIL ENGINEERS, PLANNERS, LAND SURVEYORS  
8800 23 MILE ROAD, SHELBY TWP., MI 48316-4516  
PHONE 586 731-8030 FAX 586 731-2605

ADDITIONS AND/OR REVISIONS	DATE	ADDITIONS AND/OR REVISIONS	DATE	ADDITIONS AND/OR REVISIONS	DATE
Job No.	080403-3150	Date	7/20/2018	P.S.	4-15-18
Scale	1"-50'	Rev. P.E. PER TOP ENGINEERING REVIEW		Rev. P.E. PER TOP ENGINEERING REVIEW	
Drawn J.N.		4-15-18		4-15-18	
Check P.G.S.		7-20-19		7-20-19	
1-22-19		1-22-19		1-22-19	
NO CHANGE THIS SHEET		NO CHANGE THIS SHEET		NO CHANGE THIS SHEET	
REV. P.E. PER TOP ENGINEERING REVIEW		REV. P.E. PER TOP ENGINEERING REVIEW		REV. P.E. PER TOP ENGINEERING REVIEW	
REV. P.E. PER TOP ENGINEERING REVIEW		REV. P.E. PER TOP ENGINEERING REVIEW		REV. P.E. PER TOP ENGINEERING REVIEW	
REV. P.E. PER TOP ENGINEERING REVIEW		REV. P.E. PER TOP ENGINEERING REVIEW		REV. P.E. PER TOP ENGINEERING REVIEW	

## RETENTION VOLUME CHECK

RECEIVED

April 20, 2020

Orion Township  
Planning & Zoning

ASSUME NO OUT-FLOW TO JUDAH ROAD FROM THE FORMER MINING AREA NORTH OF THE GAS LINE EASEMENT (1.40 AC.) PLUS OFFSITE N.E. CORNER (0.60 AC.)  
TOTAL 14.60 AC. AT PROPOSED "C" = 0.15 (OPEN SPACE, GRASSY, LIGHT RESIDENTIAL)

## REQUIRED RETENTION VOLUME CALCULATION:

METHOD#1: 2 X's OAK. CO. MODIFIED 100 YEAR EVENT

NO OUTLET,  $Q_0 = 0$ ,  $V_{S100} = 16500 \text{ ft.}^3/\text{Ac.-imp}$ 

## EAST AREA RETENTION

ON-SITE TRIBUTARY = 12.1 AC., OFFSITE = 0.5 AC.

 $V_{req.} = 2.4 \times 33,000 \times 0.15 = 11,900 \text{ CU. FT.}$ 

## PROVIDED RETENTION VOLUME:

$$V = h/3 \times (A_T + A_B + \sqrt{A_T \times A_B})$$

$$A_{1060} = 14,250 \text{ S.F.} \rightarrow V = 22,130 \text{ CU. FT.}$$

$$A_{1063} = 8,160 \text{ S.F.} \rightarrow V = 22,130 \text{ CU. FT.}$$

$$V_{total} = 75,920 \text{ CU. FT.}$$

WEST AREA RETENTION  
UNDISTURBED SOIL  
PROVIDED RETENTION VOLUME:  
 $V = h/3 \times (A_T + A_B + \sqrt{A_T \times A_B})$   
 $A_{1063} = 52,230 \text{ S.F.} \rightarrow V = 42,750 \text{ CU. FT.}$   
 $A_{1062} = 33,940 \text{ S.F.} \rightarrow V = 33,170 \text{ CU. FT.}$   
 $A_{1060} = 4,070 \text{ S.F.} \rightarrow V = 4,070 \text{ CU. FT.}$   
 $V_{total} = 75,920 \text{ CU. FT.}$

Contractor Note:  
The locations of existing underground utilities are shown in an approximate way only. The contractor shall determine the exact location of all utility lines before performing any earth moving work. He agrees to be fully responsible for any and all damages which might be occasioned by his failure to exactly locate and preserve any and all underground utilities.



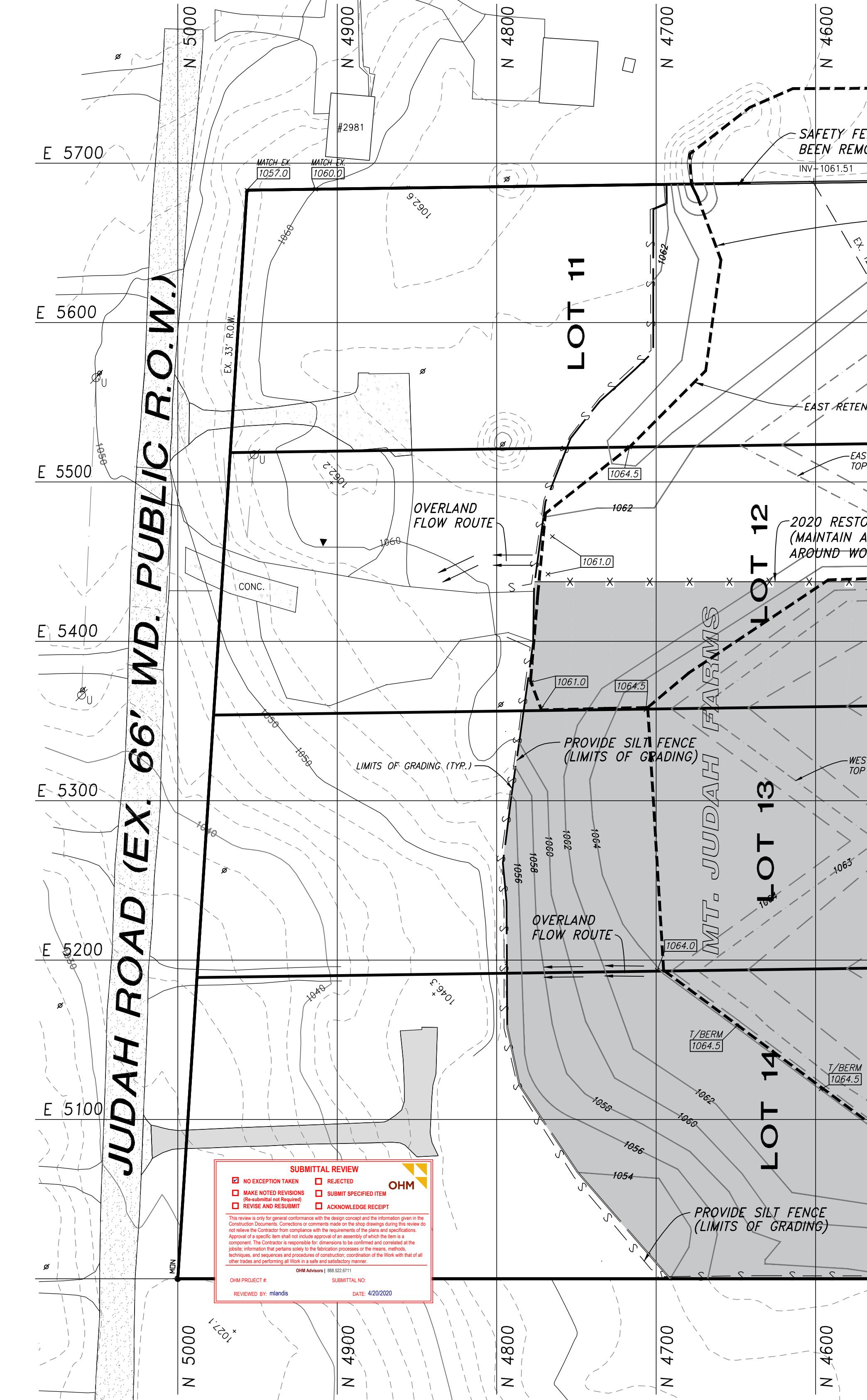
TOLL FREE

for the location of underground utilities

1-800-482-1717

## SILT FENCE DETAIL

(NO SCALE)



## NOTES

- FILLING WILL TAKE PLACE IN THE AREA BETWEEN GRID LINES 5000E-5700E AND 3600N-4800N.
- APPROXIMATE CUT VOLUME IS 4,400 CUBIC YARDS.
- APPROXIMATE FILL VOLUME IS 290,800 CUBIC YARDS.
- APPROXIMATE SHORTAGE VOLUME TO BE BROUGHT ON SITE IS 248,400 CUBIC YARDS.
- TEMPORARY SOIL EROSION CONTROL: INSTALL SILT FENCE AS SHOWN AT THE PERIMETER OF THE WORK AREA WHERE RUNOFF MIGHT LEAVE THE SITE
- PERMANENT SOIL EROSION CONTROL: INSTALL 3" TOPSOIL, SEED AND MULCH ALL DISTURBED AREAS AS GRADING IS COMPLETED

PLEASE NOTE THAT URBAN LAND CONSULTANTS HAS NOT PERFORMED ANY BOUNDARY SURVEY WORK ON THIS PARCEL. ALL PROPERTY LINE INFORMATION IS SHOWN FROM RECORDS PROVIDED BY THE CLIENT. THE PROPOSED SPLIT PARCEL DESCRIPTION IS PER SURVEY BY DIFIN-UMLOR &amp; ASSOCIATES DATED 02-06-2019.

## PROPERTY DESCRIPTION

- LOTS 11, 12, 13, AND 14, "MT. JUDAH FARMS", AS RECORDED IN LIBER 14, PAGE 57, OF PLATS, OAKLAND COUNTY RECORDS, EXCEPT FOR that portion of the Lots southerly of the Michigan Gas Storage Co. Easement as described as follows:
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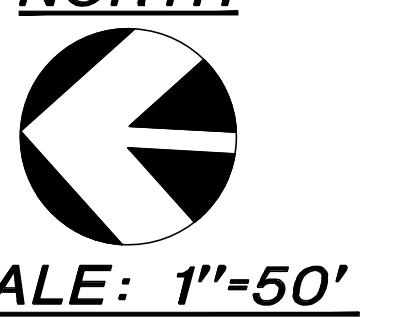
- PARCEL IDENTIFICATION #: 09-32-400-056, -063, -095, & -096  
 • EXISTING ZONING: R-1, BIZ  
 • ADJACENT ZONINGS: R-1, BIZ  
 • AREA OF SITE: 12.31 ACRES  
 • AREA OF DISTURBANCE (2020) = 12.4 ACRES  
 • TOTAL NUMBER OF EXISTING LOTS: 4  
 • LOT SUMMARY:  
 MINIMUM LOT SIZE: 14,000 S.F.  
 MINIMUM LOT FRONTAGE: 100' (AT SETBACK LINE)  
 BUILDING SETBACKS: FRONT = 40'  
 REAR = 35'  
 SIDE = 10' (EACH)

• THE FINAL USE (POST MINING) WILL BE SINGLE FAMILY HOMES ON THE EXISTING FOUR PLATTED LOTS.

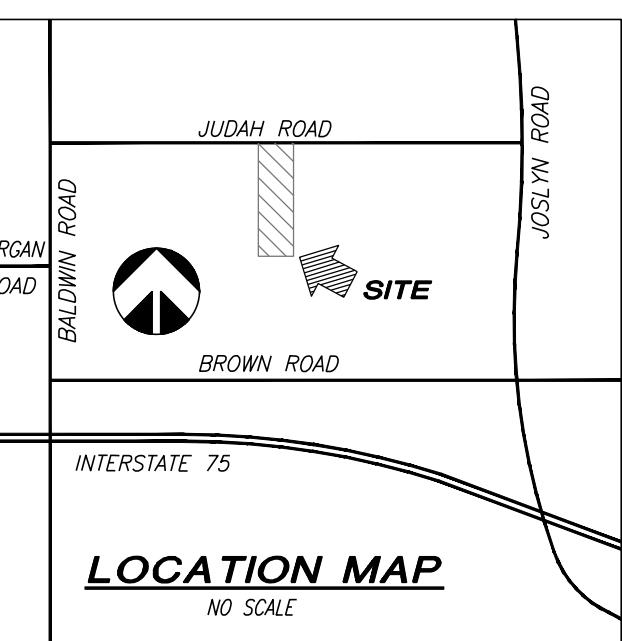
## MINING PLAN SITE CRITERIA

878.50	EXISTING GRADE
1060.0	PROPOSED GRADE
875	EXISTING CONTOURS
878	EXISTING GRAVEL
878	EXISTING TREELINES
878	PROPOSED CONTOURS

## NORTH



SCALE: 1"-50'



## BENCHMARKS

- B.M. #1 ELEV=1051.54  
LOC SPK IN W. FACE POWER POLE  
N. SIDE JUDAH ROAD, 100' EAST OF  
PIT ENTRANCE
- B.M. #2 ELEV=1066.32  
CUT NAIL IN S. FACE 6X6 FENCE POST

## LOCATION MAP

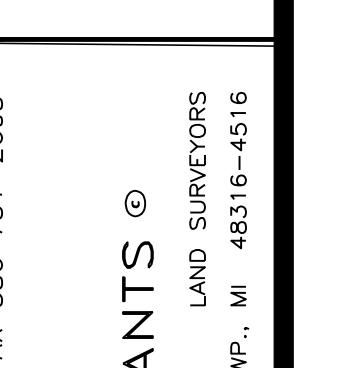
NO SCALE

## MINING PLAN

PART OF THE S.E. 1/4 OF SECTION 32  
T.4N., R.10E., ORION TOWNSHIP,  
OAKLAND COUNTY, MICHIGAN

## PROPOSED JUDAH ROAD SAND PIT

FOR: DAN'S EXCAVATING  
1255.25 MILE ROAD  
SHELBY TWP., MICHIGAN 48351  
ATTN: BRETT BAKER  
ATTN: BRETT BAKER



URBAN LAND CONSULTANTS ©  
 CIVIL ENGINEERS  
 PLANNERS  
 LAND SURVEYORS  
 8800 23 MILE ROAD  
 SHELLY TWP., MI 48316-4516  
 PHONE 586 731-8930  
 FAX 586 731-2605

MINING PLAN - SHEET 2 OF 2

**APRIL 27, 2020 ZBA OUTLINE IN OPPOSITION OF PERMIT  
RENEWAL FOR DAN'S EXCAVATING SPONSORED BY  
McNABB'S OWNERS OF LOT 10**

List of Reasons why Permit Application of Dan's Must be DENIED:

1. 2018 excerpt from Goodloe re “logs” in Ordinance 99, Section 10 (A) (4) (a) and (a) (i):

Building Official Goodloe commented to address some of the points made by the McNabbs - if the Board would like him to get a log of photos, although he does not see the need for it, he has a guy out there looking at what is going on rather than photographing everything. He gets the logs just to see kind of what goes in there and where it is coming from. He interpreted the Ordinance as saying, “if requested by the Building Official”. Chairman Yaros asked Ordinance Enforcement Officer Daisley, when he goes out there and he sees something questionable, would he take a picture of it? Enforcement Officer Daisley said he would.

Absent the “log’s” as received by Goodloe, Dan’s is not in compliance and not eligible for a permit. See Ordinance 99, Section 4 (D) (2) requiring compliance with Ordinance 99 to be issued a permit.

Goodloe must specify how he viewed the logs, if he kept copies, the dates and times of his review, the circumstances of his meeting and review if any, what he found in terms of compliance with the maintenance of log’s and photos and if Dan’s is in compliance. If compliance can’t be certified, Dan’s is not eligible.

2. Ordinance 99, at 10 (A) (4) (a) expressly provides:

*“4. In addition to the requirements set forth in Section 5, at the cost to the permittee, all permittees must:*

- a. maintain a log of each fill material and one photograph of each truckload which shall depict the contents of the fill material, and, including the date and time of the delivery and the contents of the truckload.*
  - i. The permittee will forward to the Township Building Department copies of all logs and photographs on a monthly basis or earlier if requested by the Building Official or his designee”*

The OHM Report submitted in conjunction with this application MIS-STATES AND MISREPRESENTS the language of Ordinance 99, to wit:

- 
- 5. Per Section 10 of Ordinance 99, a log of each fill material load shall be maintained by the applicant to document all fill is “Suitable Fill Material” as defined. In addition, the log will include one photograph of each truckload which shall depict the contents of the fill material and the date and time of the delivery. If requested by the Building Official, copies of all logs and photographs shall be submitted to the Township Building Department on a monthly basis or earlier.

The ZBA and the engineer have mis-quoted the Ordinance for the benefit of Dan’s for the last two years. It is clear both “log’s” and photos” must be maintained AND submitted by Dan’s to OT on a monthly basis OR EARLIER (on a more frequent than monthly basis) IF REQUESTED. The engineer also misquoted the same Ordinance in 2018, per the April 22, 2018 ZBA minutes by representing, falsely, that the Ordinance provided:

***“If requested by the Building Official, copies of all loges and photographs shall be submitted to the Township Building Department on a monthly basis or earlier”. ZBA minutes @ page 15.***

There is no need to specify monthly submission of logs and photos or sooner if the intent is to simply provide they are to be maintained but only submitted on request. The Ordinance would then read, “***Permittee shall maintain a log and a separate photo for each truckload of fill to verify its contents. Photos and logs shall be submitted to OT on request and provided within a reasonable time***”. Moreover, without submission, OT would not know if Dan’s is maintaining them at all, which is a clear requirement of the Ordinance. Why would OT enact an ordinance and then never determine if it has been complied with unless it is a fraud on the people?

It must be asked WHY does OHM/Engineer re-state the Ordinance language with approval by the ZB as it does? Why not just leave it as written, then state that you think logs and photos need only be submitted if REQUESTED. It is rewritten by OHM in this fashion because it is necessary to do so to arrive at its ultimate interpretation, “***only if requested***”. That is the only reason not to accurately quote the Ordinance [the actual words do not support your conclusion].

3. The 2019 ZBA Permit meeting minutes also confirm that Dan’s violated the Ordinance by failing to take any photos [not fail to submit on request] from the inception of the Ordinance. This is an admission made by Mr. Goodloe. See pages 19-20 of ZBA Meeting minutes from April 22, 2019 where Mr. Goodloe states:

*“when [he] first took the position, there was never photologs taken..... Recently, he did e-mail the applicant and requested that he did maintain those logs, and if they don’t then they are getting charged....He has requested that they do start sending photos...”*

Per Mr. Goodloe, Dan's violated by failing to take photos until 2019 and apparently failed to submit them as requested following April 22, 2019 on at least a monthly basis. No one has ever seen any photos. But, photos for every truckload are to have been kept and supplied to OT since at least April 2019 if not 2018 (per Goodloe at that time) if not since 2015 since they failed to KEEP any photos, regardless of submission. Thus, the applicant does not qualify because it: failed to take any photos as required by Ordinance 99 [2015]; failed to submit as requested by Goodloe in 2018 and failed to submit as requested in 2019.

4. The Applicant also does not qualify because it has VIOLATED the Ordinance in the past by obtaining a permit under false pretenses according to counsel for Orion Township.

In the Brief before the court in the pending action, *McNabb v Orion Township and Dan's Excavating*, Case Number: 19-177748-CZ , Orion Township admitted that Dan's had illegally obtained its initial Excavation permit in 2000 for lots

10-14 by failing to join with and obtain the signature of McNabb on the application and by falsely representing that it had an ownership interest in the land. The quoted excerpts include the following admissions:

quoting from pages 2 & 3 of your brief:

"Prior Earth Excavation permits issued to Dan's included Lot 10, despite Lot 10 not being under common ownership and not being included in the approved closure plan". It is true that there was no common ownership and never was. As a result, a permit could not be issued for Lot 10 legally. It is included in the 1998 closure apply and other closure plans and requires clay, leveling, re-seeding and top dressing mulch per LO specs. Why you or Dan's would ever think there was common ownership is a question that needs to be answered;

From page 2.

"In 2008, Lot 10 was removed from subsequent applications as it was error to include it in the application. As stated above, Lot 10 is not owned by Dan's and it was never included in any of the closure plans or engineering plans.....Furthermore, Dan's permit applications that included Lot 10 did not include Plaintiff nor his approval, despite Plaintiff being the owner of the property". This last part is an admission that OT failed to follow the process of obtaining McNabb's approval for permits as an adjacent property owner but mores as THE OWNER!

From page 3

The admissions make clear that: 1) Dan's did not comply with Ordinance 99 in its original application or in any subsequent renewals from 200-2007 but was granted a permit as to McNabb's lot 10 and did in fact trespass on Lot 10 [the violation prohibits grant of the permits put Ordinance 99 Section 4]; 2) that OT has attempted to maintain that Dan's does not have to restore Lot 10 because it was ILLEGALLY on the property from 2000-2008 and the permit was

amended in 2007 to remove Lot 10 due to the illegality [no ownership by Dan's]. Since Lot 10 is no longer on the permit (and never should have been), despite Dan's use of the property with OT consent and permit, Dan's does not have to restore Lot 10. In that sense OT is rewarding Dan's for its trespass; 3) Lot 10 IS IN THE ORIGINAL CLOSURE PLAN because it was part of the permit and that plan has not been changed.

5. A copy of Ordinance 99 with notes imbedded is also being provided to the ZBA along with extracts of the quoted meeting minutes. The Brief of Orion Township is on file with the Oakland County Circuit Court. Copies of the Brief (specific pages) and the Meeting Minutes have been provided to Dan Kelly for distribution prior to this meeting for distribution and display.