

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

PETERS BUILDING CO., a Michigan
Corporation, and ROBERT WEBER,
an individual,

Plaintiffs,

v

THE CITY OF ANN ARBOR,

Defendant.

Case No. 18-822-NZ
Hon. Carol Kuhnke

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CONSENT JUDGMENT

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

PRESENT: HONORABLE CAROL KUHNKE
Circuit Court Judge

Upon the stipulation and consent of the Parties, by and through their respective attorneys,
the Court finds:

A. Plaintiff, Robert Weber, an individual, is the owner of approximately 7.7 acres of real property located at 2857 Packard, City of Ann Arbor, County of Washtenaw, State of Michigan (the “Property”) which is more specifically described in the attached **Exhibit A**, which is incorporated into this Consent Judgment.

B. Plaintiff, Peters Building Co., a Michigan Corporation (“Peters Building”), has entered into a purchase agreement with Mr. Weber to purchase the Property.

C. Defendant, City of Ann Arbor, is a Michigan municipality located in Washtenaw County as established by the laws of the State of Michigan (“City”), with its governing body being the City Council.

D. The City has adopted a zoning ordinance known as the Unified Development Code (“UDC”) which has been amended from time to time. Pursuant to the UDC, the Property is zoned R1E with Conditions.

E. In June 2016, Peters Building with the consent of Mr. Weber, submitted an application to the City for site plan approval of a residential development on the Property (“2857 Packard Road Site Plan”).

F. On or about November 21, 2017, City Council denied approval of the 2857 Packard Road Site Plan, as amended by Peters Building through the City approval process.

G. On or about August 2, 2018 Peters Building and Mr. Weber (collectively, “Petitioner”) filed a lawsuit against the City challenging the City’s denial of the 2857 Packard Site Plan (“Litigation”).

H. On or about February 22, 2019, the Parties agreed to a Stipulated Order for Stay of Proceedings so that Petitioner could submit an alternative development plan for the Property consisting of a PUD (Planned Unit Development) zoning and site plan (collectively “2857

Packard PUD”) for City consideration that would allow the same number of dwelling units on the Property as the 2857 Packard Road Site Plan, while protecting more of the natural features on the Property.

I. On or about October 7, 2019 the City denied approval of the 2857 Packard PUD.

J. After significant deliberation, Petitioner and the City now desire to settle and resolve the Litigation in accordance with the terms and conditions of this Consent Judgment without any admission of liability, fault, or wrongdoing and to provide for development, construction and use of the Property as provided in this Consent Judgment.

K. The Parties agree that the provisions of this Consent Judgment are contractual promises made by each of them and are binding on the Parties.

NOW THEREFORE, this Consent Judgment is presented to the Court pursuant to the stipulation and consent of the Parties, and the above findings which are incorporated into the Consent Judgment, and the Court having determined that the Consent Judgment is reasonable and just, and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Site Plan Approval. This Consent Judgment shall be deemed to constitute the City’s final approval of the site plan for development of this Property. The approved development shall be referred to as the Revised 2857 Packard Site Plan, and shall consist of the 2857 Packard Road PUD Site Plan as submitted to the City by Midwestern Consulting on behalf of Peters Building and dated April 25, 2019, with latest revision of August 20, 2019, consisting of sheets 1 through 28, attached as **Exhibit B** and incorporated herein. The development, and construction permitted by the Site Plan as authorized by this Consent Judgment (the “Project”) consists of the following:

(a) 51 residential homes as follows: 25 single-single family residential lots, and 26 attached residential units in four buildings.

(b) A private roadway and sidewalk providing access to the homes from Packard Road.

(c) 54% Open space, with preservation of natural features, including the preservation of 62 Woodland Trees and 13 Landmark Trees.

(d) Such other improvements and structures as depicted and described in the Revised 2857 Packard Site Plan.

(e) Development and construction of the Project shall comply with the requirements, attached as **Exhibit C** and incorporated herein and into the 2857 Packard Site Plan, in addition to all other applicable requirements of the UDC, Ann Arbor City Code, and City of Ann Arbor Public Services Standard Specifications.

2. Zoning. The Property is currently zoned R1E with Conditions, and the use of this property shall be deemed to be lawfully conforming under the R1E with Conditions zoning.

3. Development Agreement. Upon entry of this Consent Judgment, Peters Building and the City shall execute a development agreement pertaining to the development and construction of the Project (“Development Agreement”) in the form and substance attached as **Exhibit D**. The Development Agreement shall be binding on both the City and Petitioner and their respective grantees, successors, assigns, vendees, and trustees and shall run with the land. The Development Agreement shall be recorded by the City with the Washtenaw County Register of Deeds.

4. Preservation of Site Conditions. Petitioner shall not remove any natural feature, inclusive of woodlands, and landmark and woodland trees, at any time that is inconsistent with the Revised 2857 Packard Site Plan. Furthermore, Petitioner agrees not to remove any natural

features from the Property until immediately prior to the time of grading and site preparation for construction for the Property.

5. Evaluation of House. Petitioner shall not begin demolition, removal, or salvage of the existing house on the Property prior to April 1, 2020, or when a grading permit is issued to commence construction of the Project, whichever is later, in order to provide the City (or a third party designated by the City Administrator) with time to explore options to move the house and preserve it at another location. Developer agrees to cooperate with the City, to allow reasonable access and entry to the house as long as the City provides notice of at least three business days, and to negotiate in good faith with the City regarding logistics of moving the house. City acknowledges that moving the existing house will be at its own expense. Developer acknowledges that City is not under any obligation to move the house.

6. Mutual Release from Liability. Peters Building and Mr. Weber for themselves and their respective officers, owners, members, partners, shareholders, directors, trustees and employees, independent contractors, attorneys, consultants successors and assigns and the City for itself, its employees, elected officials, boards, commissions, independent contractors, trustees, employees, consultants and attorneys, mutually release and forever discharge each other of and from any and all claims, demands, actions, causes of action, suits, debts, judgments, attorney fees, under any federal, state or other statutes, regulations, executions, damages and rights of whatever nature in law, equity or otherwise, which now exist or which may subsequently accrue by reason of any acts arising out of or related to this Litigation and the subsequent submittal and City consideration of the 2857 Packard PUD, existing as of the date of this Consent Judgment, whether known or unknown on that date. All claims asserted or which could have been asserted in this Litigation and in regards to the 2857 Packard PUD, are hereby

dismissed with prejudice. This mutual release shall not bar claims and actions to enforce this Consent Judgment which are fully preserved.

7. Amendment of Terms. The terms of this Consent Judgment may not be amended except by mutual consent of the Parties or their respective successors, heirs or assigns and a stipulation entered with the Court. No waiver of any provision of this Consent Judgment shall be valid unless in writing and signed by the party against whom the waiver is charged.

8. Minor Site Plan Modifications. Notwithstanding the foregoing, Petitioner may apply to the City Planning Manager or administrative designee for administrative amendments, including extension, to the Revised 2857 Packard Site Plan in accordance with Chapter 55, Section 5.29.6.(B)(3) of Ann Arbor City Code as long as the administrative amendment does not alter the terms and requirements of this Consent Judgment and the Revised 2857 Packard Site Plan.

9. Clerical Errors. Any clerical errors or mistakes in document or exhibit descriptions contained in this Consent Judgment may be corrected by the Parties, and all Parties agree to cooperate in making such corrections in order to effectuate the intent and purpose of this Consent Judgment. Petitioner also agrees to submit a corrected version of the Revised 2857 Packard Site Plan, with corrected titles and references to this Consent Judgment prior to the issuance of any permits for development of the Project.

10. Good Faith. The parties and their respective successors and assigns shall treat each other in good faith and shall not take any action which is contrary to or interferes with the spirit of this Consent Judgment, or fail to take any action which is necessary or consistent with the spirit and intent of this Consent Judgment.

11. Conflicting Provisions. To the extent the terms of this Consent Judgment conflict with the UDC or Ann Arbor City Code and the terms and conditions of the Development Agreement, the terms of the Consent Judgment shall apply and govern the Parties.

12. Authority and Full Understanding. The Parties to this Appeal represent to this Court that they have fully read the Consent Judgment, have discussed it with their respective legal counsel and fully understand the terms and conditions thereof. Each person signing the Consent Judgment hereby represents and warrant that they are a duly authorized representative and agent of the respective Party, and that they have full authority to bind the Party to the covenants, warranties, representations and obligations of this Consent Judgment.

13. Execution of Consent Judgment. This Consent Judgment may be executed by the Parties in counterparts, and pages containing the original signatures shall be attached to the Consent Judgment filed with the Court, photocopies and scanned signatures of the Parties hereto, shall be deemed duplicate signatures.

14. Binding Effect. This Consent Judgment is deemed to have been mutually drafted by the Parties and is binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors, grantees, trustees, departments, commissions, employees, successors in interest and/or assigns without limiting the generality thereto.

15. Recordation. This Consent Judgment shall be recorded by the City in the office of the Register of Deeds of Washtenaw County and shall be deemed a covenant running with the land. A true copy of the recorded Consent Judgment shall be provided by the City to Weber and Peters Building.

16. Continuing Jurisdiction. This Court retains continuing jurisdiction to assure and enforce compliance with the terms of this Consent Judgment and the Development Agreement.

In the event of a proceeding to enforce the Consent Judgment, the prevailing Party may seek to recover costs and reasonable attorney fees in addition to such other r applicable relief including injunctive relief and specific performance.

THIS CONSENT JUDGMENT RESOLVES ALL PENDING CLAIMS AND CLOSES THIS CASE

Hon. Carol Kuhnke, Circuit Court Judge

Approved:

Peters Building Co.

City of Ann Arbor

By: _____
James G. Haeussler
Its: President

By: _____
Christopher Taylor
Its: Mayor

Dated: _____

Dated: _____

By: _____
Robert Weber

By: _____
Jacqueline Beaudry
Its: City Clerk

Dated: _____

And By Its Attorneys:

Conlin, McKenney & Philbrick, P.C.

Office of the City Attorney

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By: _____
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EXHIBIT A
PROPERTY DESCRIPTION

2857 Packard Road:

Commencing at the South 1/4 post of Section 3, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan; thence North $89^{\circ}47'30''$ East, 594 feet in the South line of said Section for a Place of Beginning; thence North $00^{\circ}51'30''$ East, 853.56 feet; thence North $89^{\circ}56'30''$ East, 407.13 feet; thence South $00^{\circ}56'$ West to the South line of the Section; thence West along said South Section line to Place of Beginning.

Being more particularly described as the following:

Commencing at the S 1/4 corner of Section 3, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan; thence N $89^{\circ}47'30''$ E 593.60 feet (recorded 594 feet) along the South line of said Section 3 to the Point of Beginning; thence N $00^{\circ}51'30''$ E 853.56 feet along the East line of Lots 1-9 of "Green Lea" Subdivision as recorded in Liber 11 of Plats, Page 42, Washtenaw County Records; thence N $89^{\circ}56'30''$ E 407.13 feet along the South line of Lots 11-14 of said "Green Lea" Subdivision; thence S $00^{\circ}56'00''$ W 324.52 feet along the West line of Lots 29-33 of "Kensington Farms" Subdivision, as recorded in Liber 12 of Plats, Pages 49 and 50, Washtenaw County Records; thence continuing S $00^{\circ}56'00''$ W 528.00 feet; thence S $89^{\circ}47'30''$ W 406.03 feet (recorded West) along said South line of Section 3 to the Point of Beginning. Being a part of the SE 1/4 of Section 3, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan, and containing 7.96 acres, more or less.

In the City of Ann Arbor, Washtenaw County, Michigan.

**EXHIBIT B
SITE PLAN**

EXHIBIT C
ADDITIONAL SITE PLAN REQUIREMENTS

- A. Permitted Principal Uses of the Property shall be:
1. Single family residential units
 2. Multiple-family residential building with single family dwelling units. Side by side attached units with fire related assemblies
 3. Additional uses as identified in the R1E zoning district.
- B. Permitted Accessory Uses shall be:
1. Uses as identified in the R1E zoning district.
- C. Setbacks: Minimum setbacks are:
1. Single family residential lots:
 - i. Front: 20 foot minimum
 1. Front lot line located at face of curb on private street
 - ii. Side: 3ft per side minimum, 6 ft total minimum
 - iii. Rear: 20 foot minimum
 2. Attached multiple family units:
 - i. Front: 26 foot minimum from face of curb
 - ii. Side: 14ft minimum from face of curb
 - iii. Building separation:
 1. 23 foot minimum side to side
 2. 40 foot minimum rear to rear – decks/patios permitted within 40 foot setback
- D. Density:
1. 7 dwelling units per acre
 2. Maximum of 51 dwelling units
- E. Lot Size:
1. Minimum lot size of 4,000sf
 2. Minimum lot width: 34 ft
- F. Landscaping, Screening, and Buffers:
1. Site perimeter - 15' landscape buffer along the East, North, and South property lines
 2. A City-approved landmark tree maintenance/management plan and invasive species control plan must be implemented for 5 years after completion of construction. An annual monitoring report detailing activities completed, upcoming activities, condition of resource/status of programs and challenges must be submitted to Planning & Development. This requirement shall be part of the Development Agreement and Master Deed.
 3. Natural Features maintenance and invasive species control: A maintenance and invasive species control plan as specified on Page 28 of the Revised 2857 Packard

Site Plan Development Natural Features Maintenance Plan, for the areas indicated, shall be incorporated into the development and perpetuated as part of the master deed and bylaws through the homeowners association.

G. Architectural Design:

1. Building Height: 30 foot, 2 story maximum
2. Floor area: Maximum of 2,000sf floor area. Basement to be excluded in the floor area calculations.
3. Home type: Four distinct model homes (two 2-story, one 1.5-story, and one 1-story) and the same model shall not be built next to each other. A minimum of five 1-story ranch style houses shall be around the perimeter of the development.
4. Finishing: Dwelling units will have varying exterior colors with no two adjacent facing the street being the same color.
5. Garages: Attached garages shall not project further than 12 feet out from the front of each house or 6 feet from the porch.
6. Basements: Basements are permitted to have up to an 8-foot ceiling however, the basement is prohibited to be finished into habitable space.

EXHIBIT D
DEVELOPMENT AGREEMENT

