

**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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FIRST AMENDED 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**.

B. 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.

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

D. Defendant Peters Building Co., a Michigan corporation (“Peters Building”), had entered into a purchase agreement with Robert Weber to purchase the Property.

E. In June 2016, Peters Building, with the consent of Robert 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 Robert Weber filed a lawsuit against the City challenging the City’s denial of the 2857 Packard Road Site Plan, entitled *Peters Building Co. and Robert Weber v. City of Ann Arbor*, Washtenaw County Circuit Court Case No. 18-822-NZ (“Litigation”).

H. On or about February 22, 2019, the parties agreed to a Stipulated Order for Stay of Proceedings so that plaintiffs 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. On January 6, 2020, the Court entered a consent judgment in this matter, which was recorded in Liber 5336, Page 865 of the Washtenaw County Register of Deeds (“Original Consent Judgment”).

K. Peters Building never developed the Property, is dissolved as of July 15, 2022 with no successor entity, and no longer has an interest in the Property.

L. A new purchase agreement has been entered into between Robert Weber and Robertson Packard, LLC, a Michigan limited liability company (“Robertson”) in which Robertson is to purchase the Property from Weber.

M. The Original Consent Judgment approved a site plan for development of the Property (the “Approved Site Plan”).

N. Plaintiff Robert Weber and Defendant City of Ann Arbor wish to enter an amendment to the Original Consent Judgment to allow for alternative development on the Property while preserving the ability to build the Approved Site Plan.

O. The parties agree that the provisions of this First Amended Consent Judgment are contractual promises made by each of them and are binding on the parties.

NOW THEREFORE, this First Amended Consent Judgment is presented to the Court pursuant to the stipulation and consent of the parties, and the above findings are incorporated into the First Amended Consent Judgment, and the Court having determined that the First Amended 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. **Dismissal.** Plaintiff Peters Building Co. is hereby dismissed from the Litigation with prejudice.

2. **Approved Site Plan.** Plaintiff shall be entitled to construct the Approved Site Plan, which is described as follows: The Approved Site Plan consists of the 2857 Packard 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**. The development and construction permitted by the Approved Site Plan (the "Original 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 on **Exhibit B**.
- (e) Development and construction of the Original Project shall comply with the requirements, attached as **Exhibit C** and incorporated herein and into the Approved 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.

3. **Alternative Site Plan.** Plaintiff may submit one or more proposed alternative site plans for the Property to the City, which the City will evaluate for compliance with all applicable requirements in the normal course of business. A proposed alternative site plan submitted under this section shall be administratively evaluated and approved by the City Planning Manager upon

a determination by the City Planning Manager that applicable requirements have been met. For the purposes of the City Planning Manager's evaluation, the following aspects of a proposed alternative site plan shall be considered to meet the applicable use requirements for the alternative project:

- (a) Up to 40 residential homes that each include a first-floor bedroom.
- (b) A sidewalk providing access to the homes from Packard Road.
- (c) The preservation of natural features, including the preservation of a minimum of 22 Woodland Trees and 8 Landmark Trees.
- (d) The extent the plan advances the priorities set forth by City Council Resolution R-25-092 of March 17, 2025, specifically:
 - a. Assessment and protection of landmark trees and woodlands on the site.
 - b. Zero or reduced carbon emissions from the development when compared to typical construction.
 - c. Fully electric development.
 - d. The provision of desired housing forms that complement existing housing stock across the City.
- (e) Development and construction of a project under an alternative site plan shall comply with the requirements of the UDC, Ann Arbor City Code, and City of Ann Arbor Public Services Standard Specifications, with any deviations specifically identified in the approval by the Planning Manager.

Upon approval by the City of an alternative site plan under this section, the Approved Site Plan shall be void and Plaintiff shall have no further right to construct the Approved Site Plan. The City may choose to consider only one proposed alternative site plan at a time. Plaintiff must

designate in writing a single development entity to pursue a proposed alternative site plan with the City under this section and no more than one such entity may be designated at any given time. For clarification, as of the date of this Amended Consent Judgment, Plaintiff has designated Robertson as the entity to pursue a proposed alternative site plan with the City which designation Weber confirms by executing this Amended Consent Judgment. The City shall have the right to refuse to have discussions with or accept a site plan application from any person or entity that has not been so designated by Plaintiff.

4. **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.

5. **Development Agreement.** If Plaintiff elects to construct the Approved Site Plan, Plaintiff and the City shall execute a development agreement pertaining to the development and construction of the Original Project in the form and substance attached as **Exhibit D**. If Plaintiff elects to construct an alternative site plan, Plaintiff and the City shall execute a development agreement pertaining to the development and construction of the alternative site plan in the form and substance of the City's template development agreement at the time the alternative site plan is approved. Development agreements shall be binding on both the City and Plaintiff and their respective grantees, successors, assigns, vendees, and trustees and shall run with the land.

6. **Preservation of Site Conditions.** Plaintiff shall not remove any natural feature, inclusive of woodlands and landmark and woodland trees, at any time that is inconsistent with the Approved Site Plan or the requirements for an alternative site plan set forth in this First Amendment to First Amended Consent Judgment. Plaintiff shall not remove any natural features from the Property until immediately prior to the time of grading and site preparation for construction for the Property.

7. **Completion of Project.** Once a project has been constructed in compliance with this First Amended Consent Judgment and received final certificates of occupancy, the particular planning, zoning, and land use requirements and processes set forth herein shall no longer apply to the Property and any future development of the Property thereafter shall be done according to the applicable planning, zoning, and land use requirements and processes in place at the time of such development.

8. **Mutual Release from Liability.** The parties each, for themselves and their respective officers, owners, members, partners, shareholders, directors, trustees and employees, independent contractors, attorneys, consultants, successors and assigns, and anyone else they may bind or who may claim through them, 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 First Amended Consent Judgment, whether known or unknown on that date. All claims asserted or which could have been asserted in this Litigation and in regard to the 2857 Packard PUD are hereby dismissed with prejudice. This mutual release shall not bar claims and actions to enforce this First Amended Consent Judgment which are fully preserved.

9. **Amendment of Terms.** This First Amended Consent Judgment supersedes and replaces the Original Consent Judgment. The terms of this First Amended 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 First Amended Consent

Judgment shall be valid unless in writing and signed by the party against whom the waiver is charged.

10. Minor Site Plan Modifications. Notwithstanding the foregoing, Plaintiff may apply to the City Planning Manager or administrative designee for administrative amendments, including extension, to the Approved Site Plan in accordance with Ann Arbor City Code as long as the amendment does not alter the terms and requirements of this First Amended Consent Judgment.

11. Clerical Errors. Any clerical errors or mistakes in document or exhibit descriptions contained in this First Amended 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 First Amended Consent Judgment. Plaintiff also agrees to submit a corrected version of the Approved Site Plan, with corrected titles and references to this First Amended Consent Judgment prior to the issuance of any permits for development of the Original Project.

12. 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 First Amended Consent Judgment, or fail to take any action which is necessary or consistent with the spirit and intent of this First Amended Consent Judgment.

13. Conflicting Provisions. To the extent the terms of this First Amended Consent Judgment conflict with the UDC or Ann Arbor City Code and the terms and conditions of any development agreement contemplated herein, the terms of the First Amended Consent Judgment shall apply and govern the parties.

14. Authority and Full Understanding. The parties represent to this Court that they have fully read the First Amended Consent Judgment, have discussed it with their respective legal counsel and fully understand the terms and conditions thereof. Each person signing the First

Amended 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 First Amended Consent Judgment.

15. No Admission of Liability. Nothing in this First Amended Consent Judgment, including any documents executed and delivered under this consent judgment, or any actions taken to further this consent judgment by the City shall constitute, or be deemed or construed as an admission of liability or wrongdoing in connection with the Lawsuit or the Counter-Complaint.

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

17. Binding Effect. This First Amended 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. This First Amended Consent Judgment may not be assigned by Plaintiff, but shall be deemed a covenant running with the land.

18. Recording. This First Amended 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 First Amended Consent Judgment shall be provided by the City to Plaintiff Weber.

19. Continuing Jurisdiction. This Court retains continuing jurisdiction to assure and enforce compliance with the terms of this First Amended Consent Judgment and the Development Agreement. In the event of a proceeding to enforce the First Amended Consent Judgment, the prevailing party may seek to recover costs and reasonable attorney fees in addition to such other applicable relief including injunctive relief and specific performance.

**THIS FIRST AMENDED CONSENT JUDGMENT
RESOLVES ALL PENDING CLAIMS
AND CLOSES THIS CASE**

Honorable Carol Kuhnke
Circuit Court Judge

SIGNATURES CONTINUE ON THE FOLLOWING PAGE.

Stipulated and approved as to form and substance for entry:

CITY OF ANN ARBOR

Christopher Taylor, Mayor

Dated: _____, 2025

Jacqueline Beaudry, City Clerk

Dated: _____, 2025

OFFICE OF THE CITY ATTORNEY

Atleen Kaur, City Attorney
301 E. Huron Street, 3rd Floor
(734) 794-6170
Ann Arbor, Michigan 48104

SIGNATURES CONTINUE ON THE FOLLOWING PAGE.

By: _____
Robert Weber

Dated: _____, 2025

And By His Attorneys:

Conlin, McKenney & Philbrick, P.C.

By: _____
William Daniel Troyka (P65155)
340 S. Main Street, Suite 400
Ann Arbor, MI 48104-2131
(734) 761-9000

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°47'30" East, 594 feet in the South line of said Section for a Place of Beginning; thence North 00°51'30" East, 853.56 feet; thence North 89°56'30" East, 407.13 feet; thence South 00°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 N89°47'30"E 593.60 feet (recorded 594 feet) along the South line of said Section 3 to the Point of Beginning; thence N00°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 N89°56'30"E 407.13 feet along the South line of Lots 11-14 of said "Green Lea" Subdivision; thence S00°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 S00°56'00"W 528.00 feet; thence S89°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.

Tax Parcel No. 09-12-03-404-054

EXHIBIT B
SITE PLAN

EXHIBIT C
ADDITIONAL SITE PLAN REQUIREMENTS FOR
THE APPROVED SITE PLAN

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 **Exhibit B**, Page 28 of the 2857 Packard PUD 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