

Packet
March 12, 2025
Township Board Special Meeting

PENINSULA TOWNSHIP

**PARCEL LAND DIVISION APPLICATION APPEAL
LAND DIVISION ACT FILE NO. 359**

FINAL DECISION

- 1. Property Location:** 10598 Peninsula Drive; north of Gray Road, south of Bayside Dr.
Subdivision (plat of) Terrace Grove

Parcel No. 28-11-675-006-00 (the "Property")

Zoning: *All Zoned R-1B Costal Zone*

Meeting Date: January 29, 2025

Decision Issued Date: _____

Purpose of Request: Appeal to the Township Board of the Review Committee's denial of Land Division Application 359 under the Peninsula Township Ordinance No. 49 (the "LDO").

Standards of Review: The Board's review is "*de novo*." The Board considers the entire application as if it had never been decided before. The Township Board determines whether or not to grant the requested division. The Board may make any decision the Review Committee could have made.

2. PROPERTY OWNER(S):

Name: CALLA, LLC with Alan Kostrzewa

Address: P.O. Box 2104, Traverse City, MI 49684

Telephone No. (231) 620-4450

Email: alan@koscomi.com

3. APPLICANT:

Name: Alan Kostrzewa

Address: P.O. Box 2104, Traverse City, MI 49684

Telephone No. (231) 620-4450

Email: alan@koscomi.com

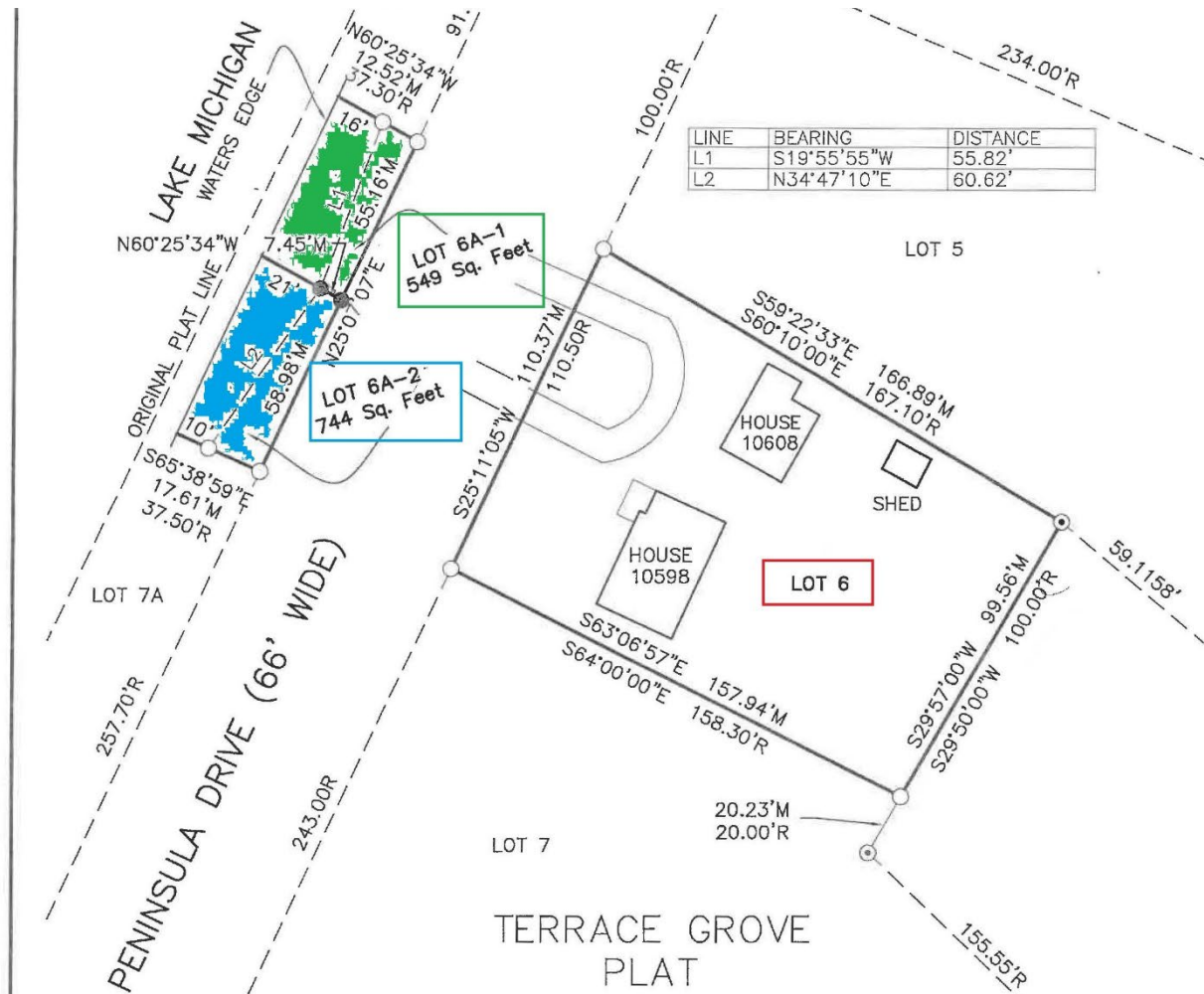
Applicant's Signature: /s/ Alan J. Kostrzewa

Date: August 22, 2024

4. DIVISIONS

- Total Divisions allowed (Not including bonus divisions): 3
- Divisions being reserved for parent parcel: 2
- Additional Divisions Transferred to created parcels: *None*
- Divisions Approved with this Application: 1

Figure 1: Applicant survey showing proposed Lots 6A-1 and 6A-2



5. PARCEL ACCESS: Division of this parcel provides access to an existing public/private road by:

- Each new division has frontage on an existing public/private road.

n/a A new public road (proposed road name):

n/a A recorded easement (Liber and Page Number):

n/a Attach a legal description of the proposed new road or easement, if any.

6. LEGAL DESCRIPTIONS/DEEDS

- Number of new parcels. Intended use (Residential/Commercial, etc.): 1, Beach Access

- A legal description for the parent parcel is attached.

- A legal description for each proposed new parcel is attached.

n/a Deeds shall include both statements as required in Section 109(3) and 109 (4) of the state statute. [Applicant states: *n/a, platted lands*]

7. DEVELOPMENT SITE LIMITS: *Check each which represent a condition which exists on the parent parcel:*

Yes The parcel is a river or lake front parcel.

Yes The parcel is affected by a Lake Michigan High Risk Erosion setback.

n/a The parcel includes wetlands.

Yes Any part of the parcel is within a flood plain.

n/a Any part of the parcel includes slopes steeper than twenty five percent (a 1:4 pitch).

8. ATTACHMENTS: *(all attachments must be included).* Letter each attachment as shown here.

8A. Certified survey of the proposed parent parcel showing:

- (1) Current boundaries of the parent parcel (as of March 31, 1997).
- (2) Area of parent parcel.

- (3) All previous divisions made after March 31, 1997.
 - (4) The proposed division(s).
 - (5) Dimensions of the proposed divisions, including both net and gross acreages.
 - (6) Existing and proposed road/easement rights-of-way.
 - (7) Easements for public utilities from each parcel to existing public utility facilities.
 - (8) Any existing improvements (buildings, wells, septic system, driveways, etc.).
 - (9) Any of the features checked yes in question number 7.
- **8B.** Approval of the Department of Environmental/Quality/Grand Traverse County Health Department, unless each proposed parcel is serviced by a public sewer. [Applicant states: n/a]
 - **8C.** Approval, or a well permit for potable water for each proposed parcel prepared by Department of Environmental Quality/Grand Traverse County Health Department, unless each proposed parcel is serviced by a public water system. [Applicant states: n/a]
 - **8D.** Approval from Grand Traverse County Road Commission for each proposed driveway. [Applicant states: n/a]
 - **8E.** Grand Traverse County Treasurer Certification of Taxes Paid.
 - **8F.** A copy of any reserved division rights in the parent parcel (Sec 109 (4) of the Act). [Applicant states: none]
 - **8G.** Fees: Application fee and escrow fee; payable to Peninsula Twp.
 - **8H.** Other (please list):

TOWNSHIP BOARD REVIEW

Findings & Analysis: The Township Board finds as follows based upon the Land Division Ordinance, the Application, information and comments received by the Applicant, Township staff, and the Township attorney, and based on input (both through comments and written submissions) received during the public hearing.

- A. The Land Division Act, MCL 560.263, provides in part: “No lot, outlot or other parcel of land in a recorded plat shall be further partitioned or divided unless in conformity with the ordinances of the municipality.”
- B. A currently nonconforming lot may “not become more nonconforming.” LDO § 6(b).
- C. The R-1B Coastal Zone requires 25,000 square feet of area (per dwelling unit) and 100 feet of width. Zoning Ordinance § 6.8.
- D. Parcel 28-11-675-006-00 consists of Lots 6 and 6A of the plat of Terrace Grove, which was platted in 1958.
- E. Lots 4A and 5A (excluding the southernly 86 feet) of Terrace Grove are owned with Lot 4 (Parcel No. 28-11-675-004-00).
- F. The majority of Lot 5 appears vacant and is not connected with Lot 5A.
- G. Lot 5 (Parcel No. 28-11-008-014-55) is combined with unplatted land; it is vacant with no property address.
- H. Lot 6A currently has 114 feet of frontage on Peninsula Drive and approximately 1,293 square feet in area.
- I. The requested split of Lot 6A creates two beachfront parcels, Lots 6A-1 and 6A-2.
 - a. Lot 6A-1 would have 549 square feet and 55 feet of frontage on Peninsula Drive.
 - b. Lot 6A-2 would have 744 square feet and 59 feet of frontage on Peninsula Drive.
- J. Both Lot 6A-1 and Lot 6A-2 would be “not buildable.”
- K. The application provides that Lot 6A-1 is “to be deeded to the owner of Lot 5.” A quit claim deed to that effect was provided.

L. In supplemental material to the Township Board, Applicant highlighted that the new lots would be used solely for beach access.

Zoning Compliance (Section 6 of the Land Division Ordinance):

- A. Is municipal zoning applicable? Zoning district: ***Yes; R-1B Costal Zone.***
- B. Is a municipal Land Division Ordinance applicable? ***Yes.***
- C. Are other ordinances applicable? ***Yes. Zoning Ordinance.***
- X** D. The split lots do **NOT** comply with the R1-B Costal Zone minimum lot size of 25,000 square feet or the minimum lot width of 100 feet.

Each parcel must have a minimum width and minimum area. MCL 560.109(1)(c), (d). Peninsula Township may and has adopted an ordinance setting the required minimum width and area of parcels. MCL 560.109(5); LDO § 6(b). Parcel “area and width” requirements are set forth in the zoning ordinance. LDO § 6(b); Zoning Ordinance § 6.8 (Schedule of Regulations). Both Lot 6A-1 and 6A-2 would be less than 1,000 square feet in area and both would have less than 60 feet of frontage on Peninsula Drive. Neither lot can satisfy either the minimum area or minimum width requirements in the LDO and the Zoning Ordinance.

Section 9 of the LDO (“Allowance for Approval of Other Land Divisions”) contemplates small beach front lots when they meet several requirements; it may provide an exception to the standard lot dimensions. First, the applicant must record an affidavit or deed restriction that the nonconforming lot is “not buildable.” LDO § 9(a). Such “not buildable” provisions are “specifically intended” for waterfront situations such as this. *Id.* Second, the beachfront parcel must be “appurtenant to” and “immediately adjacent” to a “conforming building site.” *Id.*

It is not clear that Lot 6A-1 and Lot 5 (to which it would be attached) are immediately adjacent. They are separated by Peninsula Drive, and even across this road the two parcels do not connect. It is also not clear the parcels are “appurtenant.”

On January 29, 2025, the Township Board held a hearing on this appeal. Mr. Marty Lagina presented at the hearing on behalf of the Applicant.

Following the Township Board meeting, the Township Attorney emailed Marty Lagina, who presented the appeal on behalf of the Applicant, regarding “a land combination affidavit” or instrument that would ensure Lot 6A-1 and Lot 5 would be kept together. *See Exhibit A (C. Patterson, 2/3/25)*. This was consistent with the discussion between the Township Board and Mr. Lagina at the close of the hearing on January 29, 2025.

The concern raised during the hearing was regarding satisfaction of the “appurtenant” requirement and that an affidavit “would resolve” appurtenant issues “raised during the appeal hearing” so that Lot 6A-1 and Lot 5 could not be separately transferred and ownership would remain consistent. *Id.* In response on February 6, Mr. Lagina stated: “Please proceed with scheduling the hearing. I have presented well in excess of sufficient data to support **a stand alone 55’ conforming beach** access parcel with two parking spaces across the road and/or as an ‘appurtenant’ parcel which is contiguous as defined by the PTZO.” *See Exhibit B (M. Lagina, 2/6/25)(emphasis added)*.¹ “The board has all they need to make the correct decision.” *Id.* As the Township worked to schedule the meeting (*Exhibit A (C. Patterson, 2/24/25)*), Mr. Lagina reiterated this position: “The proofs are in. I have nothing more to offer other than what was presented.” *Exhibit A (M. Lagina, 3/5/25)*.

Lot 6A-1 and Lot 5 are not directly linked; it is a marked departure from the other beach front lots in the plat and Township. The Township provided the Applicant an opportunity to further support and clarify how Lot 6A-1 and Lot 5 are “appurtenant.” The Applicant responded with reliance on the same materials previously submitted. The Board has determined that information is not sufficient to satisfy the requirement, and no further information was presented by the Applicant. *See Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14 (2003); *Jaikins v Rose Twp*, unpublished per curiam opinion of the Court of Appeals, issued May 4, 2006 (Docket No. 264695) 2006 Mich. App. LEXIS 1552, at *10 (land division application properly denied when it remained incomplete).

Applicant further argues that a minimum lot width of 50 feet is well established since “consistently approved dozens of times.” Calla / Croft LLC, Supplemental Material, 1/29/25, p 9. Five specific examples were provided. Four of those examples indicate the creation of small beach front lots from a single previous larger lot.

However, none of the examples describe or articulate how those divisions confirm or comply with the requirement to be “appurtenant”, nor the time of those splits in relation to amendments to LDO § 9. This Board does is not persuaded that the LDO committee erred. In the Board’s review there is not a sufficient basis to determine that the requirements of LDO § 9(a) were met.

Use for Boat Hoists and Docks

Alternatively, Applicant raised at the hearing that the land division should be approved for use as a boat hoist and dock. He argues that the minimum lot area and minimum lot width requirements in the Zoning Ordinance and Land Division Ordinance apply only to buildable parcels. Affidavits were provided stating that Lots 6A-1 and 6A-2 would be “not buildable.” Further, the lots would be used solely for docks and boat hoists, i.e. beach access.

¹ The same correspondence is available in Exhibit A (M. Lagina, 2/24/25).

Applicant relies on Zoning Ordinance § 6.2.2(2)(c) which provides for boat hoists and docks as a use permitted by right. (Uses in the R-1B Coastal District include all the uses by right in the R-1A Zoning District. Zoning Ordinance § 6.3.2.). One dock and one boat hoist “is permitted per fifty (50) feet of shoreline” for each parcel. Zoning Ordinance § 6.2.2(2)(c)(1). Also, an undersized lot may be used for boat hoists and docks:

Boat hoists and docks are allowed on properties of insufficient size for a single-family dwelling, provided the lot is a pre-existing lot of record or has a minimum width of fifty (50) feet and also provided that provision is made for a minimum of two (2) parking places off the adjacent road right-of-way. In the event of properties owned by the same party being separated by a thoroughfare, parking may be provided on the inland parcel and need not be in excess of that required for a single-family dwelling. [Zoning Ordinance § 6.2.2(2)(c)(2).]

In other words, the use of land for boat hoists and docks is permitted where there is 1) a pre-existing lot or the parcel has a minimum width of 50 feet, and 2) at least two off-street parking spaces available. However, shared waterfront ownership “is allowed pursuant to Section 7.4.2.” Zoning Ordinance § 6.2.2(2)(c)(4).

Article 7 of the Zoning Ordinance contains supplementary regulations. Great Lake shoreland regulations are set forth in Section 7.2. When any waterfront “is to be used by more than one family” then it “shall meet” at least eight distinct requirements. Zoning Ordinance § 7.4.2. Among other things, when there are two families with access rights to shared waterfront, the minimum lot width is 100 feet. Zoning Ordinance § 7.4.2(3)(a). Lot 6A currently meets this requirement with over 100 feet of width with two homes on Lot 6.

Applicant’s survey shows those two different homes on Lot 6. There is 10598 Peninsula Drive as well as 10608 Peninsula Drive. There is nothing in the record establishing that both homes on Lot 6 would not be or cannot both use what would be Lot 6A-2. What the record evidence does show is that there are two homes on Lot 6, both of which may be using Lot 6A under Zoning Ordinance § 7.4.2(3)(a).

The proposed land division would reduce Lot 6A-2 to only 59 feet. It would no longer conform to the minimum lot width required for shared waterfront ownership, creating compliance issues with the PTZO. Even viewing Applicant’s land division application through the land use lens of docks and boat hoists as opposed to minimum parcel requirements, the lots created fail to conform to zoning ordinance requirements.

- F. Complies with minimum depth-to-width ratio of: **3:1**

Decision:

Based on the information submitted by the Applicant and Township staff, and for the reasons above and further stated on the record, the Township Board **DENIES** Land Division Application 359 and the related appeal.

ADOPTED:

YEAS: _____

NAYS: _____

Maura Sanders, Supervisor

CERTIFICATION

I, Becky Chown, the duly qualified and acting Clerk of the Peninsula Township Board, Grand Traverse County, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Township Board at a duly scheduled meeting of the Board held on _____, 2025.

Becky Chown, Clerk

EXHIBIT A

From: [Marty Lagina](#)
To: [Christopher Patterson](#)
Cc: [Becky Chown](#); [Matthew Kuschel](#); [Maura Sanders](#); [Dave Sanger](#); [Alan Kostrzewa](#); [Lagina Alex](#)
Subject: Re: Peninsula LDA Appeal 359
Date: Wednesday, March 5, 2025 4:25:52 PM

Mr: Patterson, et al:

I think it would be very appropriate and fair to schedule these hearings ASAP. These requests have been going on for many months now and have cost around \$15,000 in just fees to Peninsula Township.

I'm entitled at least to a decision.

As to 359, I don't see any reason a decision cannot be expedited. The proofs are in . I have nothing more to offer other than what was presented : the explicitly plain language of the ordinance authorizing 50' beach access parcels and 40+ years of interpreting it that way and dozens (at least) of parcels created that way.

As to 358 , I am still flabbergasted at the motion that was made and UNANIMOUSLY approved by the Township board : Basically it said " Find us a reason to deny this" (Actually I don't think it BASICALLY said that ... it said that)

It sure looks to me that the decision has been made and we're just waiting for the justification.

My read of the Fahey law firm's published materials is that you specialize in such things. ...

As in " tell me what you want to do and we'll find a way to justify it"

That's what was asked , I think , so let's get on with it. What's taking so long?

Oh, also, if I'm perceived as too blunt or somehow insulting to you, I apologize. The PT supervisor made it VERY clear that you were not be chastised as she was busy chastising me You are apparently beyond reproach , even if you omit in your report to the board the key words to a statute , the omission of which completely change its meaning.

Anyway, it's quite clear to me that the decision has been made and you are quite capable of justifying it . Again , let's get on with it.

Please schedule both these hearings as soon as possible so that at least I have a decision

Thank you

Marty L

Sent from my iPhone

On Feb 24, 2025, at 2:05 PM, Christopher Patterson <cpatterson@fsbirlaw.com> wrote:

Mr. Lagina:

Thanks for sending this again. We are working on it. I believe our current hope is to also reschedule LDA 358 at the same time, but I will follow up with the Supervisor regarding next steps.

Sincerely,

Christopher S. Patterson
Member
Fahey Schultz Burzych Rhodes PLC

From: Marty Lagina <Marty@RockMI.com>
Sent: Monday, February 24, 2025 1:56:31 PM
To: Christopher Patterson <cpatterson@fsbrlaw.com>
Cc: Becky Chown <clerk@peninsulatownship.com>; Matthew Kuschel <MKuschel@fsbrlaw.com>; Maura Sanders <supervisor@peninsulatownship.com>; Dave Sanger <dave.peninsulatrustee@gmail.com>; Alan Kostrzewa <Alan@koscomi.com>; Lagina Alex <alex.lagina@gmail.com>
Subject: Re: Peninsula LDA Appeal 359

Mr Patterson:

I am sending this again in case you missed it. Has there been any progress in scheduling the hearing?

Please advise

Thank you
ML

Please proceed with scheduling the hearing. I have presented well in excess of sufficient data to support a stand alone 55' conforming beach access parcel with two parking spaces across the road and/or as an "appurtenant" parcel which is contiguous as defined by the PTZO. We've been through all that. The board can approve as they see fit with conditions or not. With how I have been treated, I'm not willing to sign anything in advance. I offered several times to meet informally so this could be vetted rationally and not involve the board and not cost thousands of \$. I was refused . After what happened at the last hearing, I simply do not trust PT. For the record , I have since determined that only one of the parcels I presented as " comps" has an affidavit on record. This means all the others were determined to be conforming and not needing said affidavit contrary to what was presented about the previous PTLDO. I have lived here for 40 years. It has been standard interpretation by all of the previous ZA's for that entire time period that 50 ' regardless of area was a conforming beach access parcel so long as there are two parking spaces either on site or across the road . There are dozens of such parcels. Neither PTLDO versions change that. Its the PTZO that clearly says what's required and it cannot be amended by a police power ordinance anyway. Explain this: if 6.2.2.2(c)2 isn't controlling, how did all those parcels get approved.? None of them had 100' nor 25000 sq ft. The PTLDO created an exception ? Amended the ordinance? You know that's not right .

I own two such fully approved 50' parcels without any " affidavit". They were both approved as conforming.

The board has all they need to make the correct decision. They can do so with conditions if they think that's appropriate.

M L

Sent from my iPhone

On Feb 3, 2025, at 1:57 PM, Christopher Patterson
<cpatterson@fsbrlaw.com> wrote:

Good afternoon Mr. Lagina:

It was a pleasure speaking with you last week. I am actually following up related to LDA Appeal No. 359, which you presented on behalf of the Applicant. During the appeal presentation, there was discussion regarding your interest in agreeing to a land combination affidavit that would ensure that the proposed beachfront lot would be tied to Lot 5, and neither would be separately sold without the other. This would resolve one of the issues raised during the appeal hearing. As I understand, the Board will still need to revisit the appeal for LDA Appeal No. 359 related to those items discussed on the record regardless of how you would like to proceed on this issue.

If my understanding is accurate, we can send over that combination affidavit or discuss some other legal means to accomplish the same result. Once you have had a chance to review and confirm agreement, we can work with the Township to schedule LDA 359.

Sincerely,

Christopher S. Patterson
Member
Fahey Schultz Burzych Rhodes

EXHIBIT B

From: [Marty Lagina](#)
To: [Christopher Patterson](#)
Cc: [Becky Chown](#); [Matthew Kuschel](#); [Maura Sanders](#); [Dave Sanger](#); [Alan Kostrzewa](#); [Lagina Alex](#)
Subject: Re: Peninsula LDA Appeal 359
Date: Thursday, February 6, 2025 5:50:02 PM

Please proceed with scheduling the hearing. I have presented well in excess of sufficient data to support a stand alone 55' conforming beach access parcel with two parking spaces across the road and/or as an "appurtenant" parcel which is contiguous as defined by the PTZO.

We've been through all that. The board can approve as they see fit with conditions or not. With how I have been treated, I'm not willing to sign anything in advance. I offered several times to meet informally so this could be vetted rationally and not involve the board and not cost thousands of \$. I was refused . After what happened at the last hearing, I simply do not trust PT. For the record , I have since determined that only one of the parcels I presented as "comps" has an affidavit on record. This means all the others were determined to be conforming and not needing said affidavit contrary to what was presented about the previous PTLDO. I have lived here for 40 years. It has been standard interpretation by all of the previous ZA's for that entire time period that 50 ' regardless of area was a conforming beach access parcel so long as there are two parking spaces either on site or across the road . There are dozens of such parcels. Neither PTLDO versions change that. Its the PTZO that clearly says what's required and it cannot be amended by a police power ordinance anyway. Explain this: if 6.2.2.2(c)2 isn't controlling, how did all those parcels get approved.? None of them had 100' nor 25000 sq ft. The PTLDO created an exception ? Amended the ordinance? You know that's not right .

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If my understanding is accurate, we can send over that combination affidavit or discuss some other legal means to accomplish the same result. Once you have had a chance to review and confirm agreement, we can work with the Township to schedule LDA 359.

Sincerely,

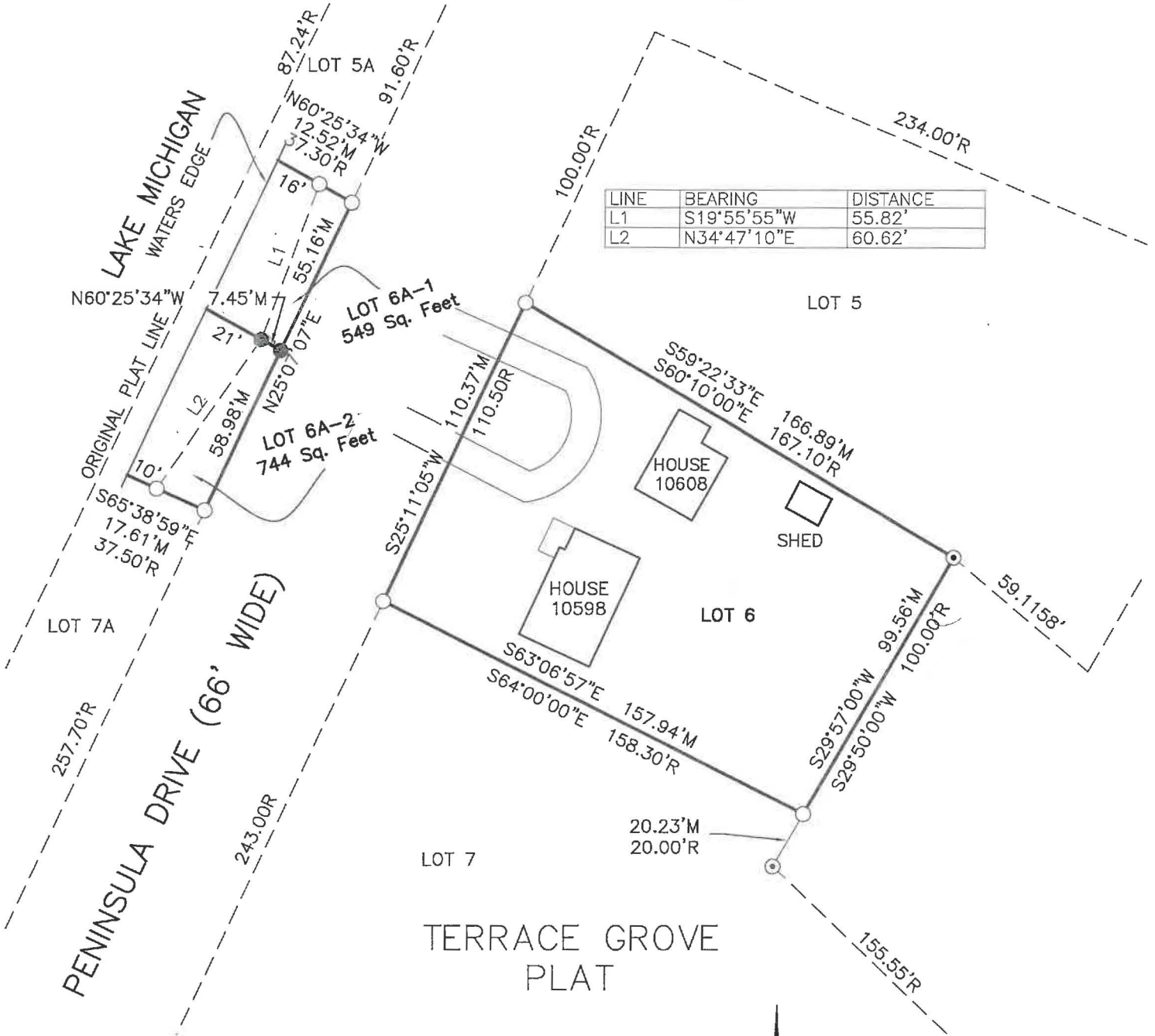
Christopher S. Patterson
Member
Fahey Schultz Burzych Rhodes

EXHIBIT C

CERTIFICATE OF SURVEY

LEGEND

- = SET 1/2" ROD & CAP ◻ ⊙ = FD. CONC. MON.
- ⊙ = FD. FARRIER IRON R = RECORD
- = FD. IRON M = MEASURED
- = SET PROPERTY LINE STAKES



0' 25' 50'
SCALE: 1" = 50'



I, DEAN RAY FARRIER, A PROFESSIONAL SURVEYOR IN THE STATE OF MICHIGAN, CERTIFY THAT I HAVE SURVEYED AND MAPPED THE HEREON DESCRIBED PARCEL OF LAND, AND THE RELATIVE POSITIONAL PRECISION IS WITHIN 0.15 FEET FOR EACH OF THE CORNERS SHOWN HEREIN AND THAT I HAVE FULLY COMPLIED WITH THE SURVEY REQUIREMENTS OF ACT 132 OF 1970 AS AMENDED.

Dean Farrier PS# 40010-41098 DATE 3-18-24
DEAN RAY FARRIER

RATIO OF CLOSURE: 1' / 5100+
BEARING BASIS: ASSUMED

FARRIER SURVEYING INC. P.O. BOX 998 244 S.CEDAR STREET KALKASKA, MI 49646 TEL(231)258-8162 office@farrriersurveying.com	CLIENT ALAN KOSTRZEWA	DRAWN: JAR	FILE No. 12522-24	
	DESCRIPTION LOT 6 & PART OF LOT 6A, TERRACE GROVE, SECTION 7, T28N-R10W, PENINSULA TWP., GRAND TRAVERSE COUNTY, MICHIGAN	CHECK: DRF	COORDS: 12522.TXT	
		REVISED:	DATE: 3/18/24	
			SHEET: 1 of 2	