

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

Jeffrey S. Conger and Amanda R. Dombek  
(Block 3-Lot 1); John C. Shull, Trustee of  
the John C. Shull Trust dated January 19, 2000  
(Block 4-Lots 1 & 2), (Block 5-Lot 1) and (Block 6-Lot 11);  
Cynthia A. Harner, Trustee of Cynthia A. Harner  
Declaration of Trust dated January 15, 1999  
(Block 3-Lot 11); and Nicholas H. Gemolas and  
Sherry L. Gemolas (Block 2-Lot 9)

File No. 14- 11657 -CH

MERTZ

**COMPLAINT TO AMEND PLAT**

Plaintiffs,

v.

**Lot Owners within 300 feet of the North portion of Edgewater Beach Road**

James R. Beckman and Kimberly Kay Beckman (Block 2-Lots 6 & 7); Thomas K. Millington and Ruth A. Millington, and their successors, as Trustees of the Millington Family Trust dated September 23, 2004 (Block 2-Lot 8); David F. Tamblyn and Lisa A. Tamblyn (Block 3-Lot 2); Michael D. Smelker and Susan Smelker (Block 3-Lot 5); Wayne D. Witmer and Waitha Witmer (Block 3-Lot 6 and 7); Stanley E. Babiarz and Marilyn A. Babiarz (Block 6-Lots 1, 2 & 3); Cass E. Howard and Mary M. Howard (Block 7-Lot 4); Robert S. Turner and Doreen J. Turner (Block 7-Lots 5 & 6); James D. Walquest (Block 7-Lot 8);

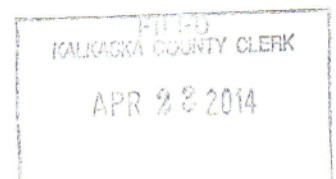
**Lot Owners within 300 feet of North and South portions of Summerdale Avenue**

John B. Beers, Jr. and Rory B. Beers and Thomas H. Ellis and Barbara J. Ellis (Block 3-Lot 8); John N. McKee and Mary McKee (Block 3-Lot 9); John N. Vereecke and Carol A. Vereecke (Block 3-Lot 10);; Joseph P. Winans and Lisa M. Winans (Block 5-Lots 4 & 5); Andrea Rundquist, Kendra Teubert, Nicole Blonde and Stevie Lopresto (tax parcel number 001-120-012-01); Willam H. Hoerr and Ruth A. Hoerr (Block 6-Lots 7 & 8); Kenneth E. Witmer and Joyce L. Witmer (Block 6-Lots 9 & 10);

AND

**First Mortgage Lien Holders**

The Huntington National Bank (first Mortgage lien on Block 2-Lot 6); PNC Bank (first Mortgage lien on Block 2-Lot 6); Lake Michigan Credit Union (first Mortgage lien on Block 3-Lot 2); The Huntington Bank (first Mortgage lien on Block 3-Lot 3 except the E 20' and Lot 4); Northwestern Savings Bank & Trust (first Mortgage lien on Block 3-Lot 8); ABN Amro Mortgage Group, Inc.(first Mortgage lien on



Block 3-Lot 10); Fifth Third Mortgage (first Mortgage lien for Block 4-Lot 1 and 2); U.S. Bank N.A. (first Mortgage lien on Block 4-Lots 3, 4 and 5); Bank of Ann Arbor (first Mortgage lien on Block 4-Lot 5)

AND

**Required Interested Entities**

Consumers Energy; George Banker, Supervisor of Bear Lake Township; Steve Arwood, Director of the Department of Licensing and Regulatory Affairs; and Keith Creagh, the Director of the Department of Natural Resources;

AND

**Consenting Interested Entities**

Great Lakes Energy Cooperative Electric Company; Great Lakes Energy Corporation and Wayne R. Jonker, Director of the Kalkaska County Drain Commission; and Louie Walter, Chairman of the Board of Kalkaska County Road Commission

**Consenting Defendants**

Christopher Smelker and Toyame Smelker (Block 6-Lots 5 & 6); Virginia Pettinger (Block 1-Lots 1,2,3,6,7,8,9,10 Sullivan's Add Pine Ridge); Kendall L. Pearl (Block 3-Lot 3 except the E 20' and Lot 4); Judy D. Lamphere (Block 7-Lots 9 & 10); Jeffrey B. Shull, Trustee of the Jeffrey B. Shull Trust UAD September 15, 1998 and Sally M. Shull, Trustee of the Sally M. Shull Trust UAD September 15, 1998 (Block 4-Lots 3, 4 and 5); Jeffrey B. Shull, Trustee of the Jeffrey B. Shull Trust UAD September 15, 1998 and Sally M. Shull, Trustee of the Sally M. Shull Trust UAD September 15, 1998 (Block 5-Lots 2 & 3); Jeff S. McCarthy and Christine D. McCarthy (Block 4-Lots 6 & 7); Jeff S. McCarthy and Christine D. McCarthy (Block 5-Lot 6); Richard N. Miller (Block 7-Lot 11); Ida M. Pierce (Block 2-Lots 4 & 5); Christopher Harrison and Randice Harrison (Block 6-Lot 4); Richard Tolan (Block 7-Lot 7);

Defendants.

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Lorri B. King (P42564)  
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**There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.**

**COMPLAINT TO AMEND PLAT**

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## GENERAL ALLEGATIONS

1. This action is filed pursuant to MCLA §560.222; MSA 26.430, seeking to have this Court vacate the following roads within the Plat of Sullivan's Addition to Bear Lake (hereinafter referred to as the "Plat", a copy of which is attached as Exhibit A) as the roads have not been opened or maintained as such and Plaintiffs desire to amend the Plat to reflect this fact:
  - a. Summerdale Avenue lying north of Hill Crest Boulevard;
  - b. Summerdale Avenue lying south of Hill Crest Boulevard; and
  - c. Edgewater Beach Road lying north of Hill Crest Boulevard.
2. Jurisdiction is vested with this Court as the real property which is the subject matter of this action is located in Bear Lake Township (f/k/a Clearwater Township), Kalkaska County, Michigan.
3. Plaintiff John C. Shull, Trustee of the John C. Shull Trust dated January 19, 2000 (Shull) is the owner of record of Lot(s) 1 & 2, Block 4 within the Plat of Sullivan's Addition to Bear Lake which lots are adjacent to the portion of Summerdale Avenue lying north of Hill Crest Boulevard and the owner of record of Lot 1 of Block 5 and Lot 11, Block 6 which Lots are adjacent to the portion of Summerdale Avenue lying south of Hill Crest Boulevard.
4. Plaintiff Cynthia A. Harner, Trustee of Cynthia A. Harner Declaration of Trust dated January 15, 1999 (Harner) is the owner of record of Lot 11, Block 3 within the Plat which lot is adjacent to the portion of Summerdale Avenue lying north of Hill Crest Boulevard.
5. Plaintiffs, Jeffrey S. Conger and Amanda R. Dombek (Conger) are the owners of record of Lot 1, Block 3 within the Plat which lot is adjacent to the portion of Edgewater Beach Road lying north of Hill Crest Boulevard.
6. Plaintiffs, Nicholas H. Gemolas and Sherry L. Gemolas (Gemolas) are the owners of record of Lot 9, Block 2 within the Plat which lot is adjacent to the portion of Edgewater Beach Road lying north of Hill Crest Boulevard.
7. Defendant Bear Lake Township (f/k/a Clearwater Township) ("Bear Lake Township") is the municipality in which the Plat is located and is joined as a defendant in this action as required by MCL 560.224a(1)(b).
8. Defendant Steve Arwood is the Director of the Department of Licensing and Regulatory Affairs. He is joined in this action as a defendant as required by MCL 560.224a(1)(c).
9. Defendant Louie Walter is the Chairman of the Kalkaska County Road Commission. Defendant Wayne R. Jonker is the Director of the Kalkaska County Drain Commission. They are joined in this action as defendants as required by MCL 560.224a(1)(d).

10. Defendant Keith Creagh is the Director of the Department of Natural Resources and is joined in this action as required by MCL.560.224a(1)(g).
11. Defendants Consumers Energy, Great Lakes Energy Corporation, and Great Lakes Energy Co-op Electric Co., are public utility companies that may have an easement in the subject property. They are joined in this action as defendants as required by MCL 560.224a(1)(e).
12. The remaining defendants are owners of record title or first mortgage lien holders of parcels of land that are located within 300 feet of the roads described in paragraph 1 of Plaintiff's complaint. They are joined in this action as defendants as required by MCL 560.224a(1)(a).
13. Plaintiff represents that all parties have been joined as required by MCL 560.224a(1). Plaintiff further represents that service of the complaint was made on all defendants who did not consent to the requested relief.
14. The Plaintiff represents that the "Consenting Defendants" listed under the caption have given their consent to the relief requested by Plaintiff in the Complaint which Consents are attached hereto as Exhibit B.
15. Plaintiff represents that the Kalkaska County Road Commission has consented to the relief requested by the Plaintiff in the Complaint with the provision that the final Judgment in this case reflect that the Kalkaska County Road Commission retains a twenty foot wide easement located ten feet on either side of the centerline for surface water drainage over (i) Summerdale Avenue lying north of Hill Crest Boulevard and (ii) Edgewater Beach Road lying north of Hill Crest Boulevard, which signed Consent is attached hereto as Exhibit C.
16. On April 8, 2014, pursuant to MCL 560.226, Bear Lake Township adopted a resolution vacating the portions of the roads identified in this Complaint as attached hereto as Exhibit D.

**COUNT I**  
**PLAT VACATION REVISION**

17. Plaintiff incorporates paragraphs 1 through 14 as though fully set forth herein.
18. Pursuant to MCLA 560.222, Plaintiff is requesting a revision to the Plat to vacate portions of Summerdale Avenue and Edgewater Beach Road as identified in paragraph 1 above.
19. Plaintiffs are requesting this vacation for the purpose of conforming the Plat to the actual use of land.
20. The portions of the roads Plaintiffs are requesting be vacated are not, and never have been,

opened for use by the public.

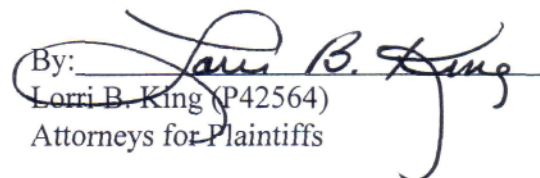
21. The portions of the roads Plaintiffs are requesting to vacate remain in their natural, unimproved condition and have not been used or maintained by the public as roads.
22. Upon information and belief, neither Bear Lake Township nor the Department of Natural Resources desire to control or maintain the road ends.
23. Plaintiffs are seeking to vacate those portions of road set forth in paragraph 1 and to quiet title to those roads in the Plaintiff lot owners abutting such roads.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the following relief:

- a. Entry of a Judgment, pursuant to MCLA § 560.222, et seq. vacating the portions of the roads described in paragraph 1 of the complaint.
- b. Entry of a Judgment ordering the revision of the Plat pursuant to MCLA § 560.229;
- c. Entry of a Judgment vesting title to the vacated portions of the road to the abutting lot owners; and
- d. Entry of a Judgment granting any such other relief as this Court deems just and equitable.

Respectfully submitted,  
The Law Offices of King & King, PLLC

Dated: April 18, 2014

By:   
Lorri B. King (P42564)  
Attorneys for Plaintiffs