

VILLAGE OF BANCROFT
VILLAGE COUNCIL
Resolution # 2022-02
(Enacted February 28, 2022)

**RESOLUTION OF VILLAGE COUNCIL ON PROPOSED STIPULATED ORDER
RESOLVING THE CASE OF *WELCOME HOME VETERANS PROPERTIES, LLC* vs.
*VILLAGE OF BANCROFT***

WHEREAS, in December 2020, the Village of Bancroft received a Rezoning Application from Welcome Home Veterans Properties LLC (hereafter referred to as "WHV") seeking to rezone a fifteen acre parcel of property at 251 Prior Road in the Village of Bancroft, from R-1A Low Density Residential to R-MI Multi-Family Residential. The property is the former Wilbur Bills Elementary School and is legally described as:

*SEC 35, T6N, R3E BANCROFT VILLAGE E 15 ACRES OF N 30 ACRES OF NW 1/4
OF NE 1/4 15 ACRES*

The Rezoning Application was forwarded to the Village of Bancroft Planning Commission under Section 10.3.3 of the Village of Bancroft's Zoning Ordinance for the purpose of holding a public hearing and thereafter having the Planning Commission issue a recommendation to the Village Council for a decision on the rezoning application pursuant to Section 4.1.7 (3) of the Zoning Ordinance.

WHEREAS, a notice was generated setting the date, time and location of the public hearing before the Planning Commission on the rezoning application for Monday, April 12, 2021 at 6:00 p.m. at the Bancroft Community Hall on 108 Warren Street in Bancroft, Michigan. The notice was distributed as required under Section 10.3.3 by providing a copy via US Mail to all property owners within 300 feet of the WHV's property on March 15, 2021, posted on the Village of Bancroft's website on and after March 15, 2021, published in a local paper of general circulation on March 17, 2021, made available for public viewing at the Village Hall during regular business hours on and after March 15, 2021, and provided to the Applicant for posting on the property at least fifteen days prior to the hearing, as required under Section 10.3.3 of the Zoning Ordinance.

WHEREAS the Bancroft Planning Commission conducted a public hearing on April 12, 2021, heard from spokespersons and the attorney for the Applicant, reviewed any written comments from the public, took public comments presented at the hearing, discussed the Application, and conducted the public hearing;

WHEREAS following the public hearing on April 12, 2021, the Planning Commission issued a Recommendation that the property not be rezoned from R-1A Low Density residential to R-MI Multi-Family Residential and forwarded that Recommendation to the Village Council for

their decision on the Rezoning Application at their next regular meeting, pursuant to Section 10.3.5;

WHEREAS the next regular meeting of the Village Council was to be held on April 14, but was canceled for health concerns at a time of an escalation in outbreaks during the COVID-19 pandemic, but the matter was set to be heard by the Village Council at its next regular meeting on May 12, 2021. However, that May 12, 2021 meeting was converted to a virtual meeting to be held via Zoom as permitted under Michigan's Open Meetings Act following the Village Council declaring a local state of emergency on April 27, 2021. Notice of the virtual hearing and virtual connection instructions were published on the Village website at least eighteen (18) hours prior to the start time of the meeting and were forwarded to the Applicant. Meeting packet materials and documents were posted on the Village website at least two (2) hours prior to the meeting;

Whereas on April 22, 2021 Welcome Home Veterans submitted to the Village, in writing, an Offer of Conditions To Rezoning the property, as permitted under the Village's Zoning Ordinance Section 10.4 which sought conditional rezoning to R-M1 under the following conditions:

The rezoning of the property located at 251 West Prior Road Bancroft MI. is conditioned on the ownership of the property by Welcome Home Veterans LLC and or Welcome Home Veterans Inc., and based on the proposed development of the property for apartment living for veterans. The rezoning is also conditioned that the initial development will not exceed 34 residents. The rezoning would not be valid for any other subsequent owners and any further development of the property would be require approval of the Village of Bancroft.

WHEREAS a letter of protest under Section 10.3.6 was submitted to the Village on May 4, 2021 and signed by Donna Hall, one (1) of five (5) owners of private property located within 100 feet of the WHV's parcel and amounting to twenty percent (20 %) of private landowners within said 100 feet, thus increasing to two-thirds (2/3) vote the number of Council members needed to approve the rezoning application pursuant to Section 10.3.6;

WHEREAS the Village Council at a regular meeting on June 9, 2021 passed a Motion to Deny the Current Conditional Rezoning Application (from WHV).

WHEREAS on or about July 28, 2021, WHV filed the lawsuit *WELCOME HOME VETERANS PROPERTIES, LLC, A Michigan Limited Liability Company vs. Village of Bancroft* in the 35th Circuit Court for Shiawassee County. This lawsuit involved a 3 count Verified Complaint alleging in Count I an Unconstitutional Taking and Violation of Substantive Due Process, in Count II a Facial Exclusionary Zoning violation under Michigan's Zoning Enabling Act, and under Count III a Fair Housing Act violation under 42 USC 3601. The Verified Complaint sought permanent injunctive relief and approval of WHV's proposed use and rezoning of the property, among other relief.

WHEREAS the Village of Bancroft and WHV have expressed a willingness to resolve this lawsuit without protracted litigation, the parties' attorneys, under directions from the parties themselves, have been engaged in discussions and negotiations to resolve the case. The attorneys have prepared a proposed, *Stipulated Order Resolving The Case*, attached as Exhibit A to this Resolution.

WHEREAS some of the general terms of the proposed *Stipulated Order Resolving The Case* include:

- A. The parent parcel involved will seek to be split into 2 parcels, a front parcel containing the current structures (hereafter referred to as "Sub-Parcel 2") and a rear parcel (referred to as "Sub-Parcel 1") that is mostly vacant except for some baseball field dugouts.
- B. Sub-Parcel 2 shall be conditionally rezoned R-1M under the Village of Bancroft Zoning Ordinance.
- C. Sub-Parcel 1 will be a U-shaped parcel and shall remain zoned R-1A under the Village of Bancroft Zoning Ordinances unless and until such time that any possible rezoning request is both sought and approved at some point in the future under the provisions of the Village of Bancroft Zoning Ordinance.
- D. A survey by Wolverine Engineers & Surveyor, Inc. was obtained to facilitate negotiations and the eventual split of the property, at a cost of \$2,500.00, with each party to pay half (\$1,250.00).
- E. The conditional rezoning of Sub-Parcel 2 shall limit the uses of this sub parcel to uses of right under the Zoning Ordinance for R-1A districts, permitted uses in R-1M districts, and Uses by Special Use Permit where such special uses are permitted under the R-1A zoning districts, subject to approval of a Special Use Permit under procedures set forth in the Village of Bancroft Zoning Ordinances
- F. The conditional rezoning of Sub-Parcel 2 shall run with the land and apply to all future, title interest holders.
- G. WHV is permitted to construct up to 34 Dwelling Units (Apartments) with the currently existing, former school building, provided construction complies with all other laws, zoning, building codes, fire codes, Village ordinances and any other applicable Federal, State and local laws.
- H. Construction and installation of green belt(s) to screen Sub-Parcel 2 from neighboring properties, subject to Planning Commission approval.
- I. An easement over Sub-Parcel 1 in favor of Sub-Parcel 2 relating to the current, septic system.
- J. Other terms and conditions as specifically outlined in the attached, *Stipulated Order Resolving The Case*, which shall control over the general outlined terms and conditions stated in this Resolution.

WHEREAS the board governing WHV and their attorney, have approved the signing of the proposed *Stipulated Order Resolving The Case* as well as WHV having paid their one-half portion of the cost of the survey utilized in this negotiated resolution process with the Village of Bancroft also paying their one-half portion of that survey;

WHEREAS the Village Council having met with their attorneys in closed session to review a proposed resolution outlined in the *Stipulated Order Resolving The Case*, having had their questions answered and otherwise having discussed this resolution;

IT IS THEREFORE RESOLVED that:

1. The Village of Bancroft's Village Council approves of the payment of the Village's one-half portion of the surveycost, being \$1,250.00 paid to Wolverine Engineers & Surveyor, Inc.
2. The Village Council authorizes the Village President and the Village's attorneys, Gormley and Johnson Law Offices, PLC to sign on behalf of the Village of Bancroft, and enter into the attached *Stipulated Order Resolving The Case* and to file the proposed *Stipulated Order Resolving The Case* with the 35th Circuit Court, thus binding the Village of Bancroft to the terms of the negotiated *Stipulated Order Resolving The Case*.

Adopted at a special meeting of the Bancroft Village Council held on the 28th day of February 2022.

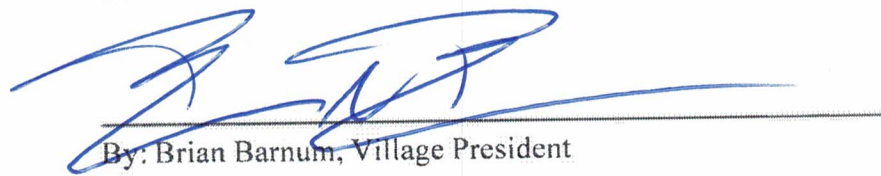
Motion by: T. Terpening Second by: R. Miller

Yeas: T. Barnum, R. Miller, T. Terpening, K. Bible, B. Barnum

Nays: None

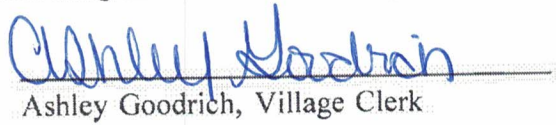
Absent: C. Hutchins, L. Wert Fuller

BANCROFT VILLAGE COUNCIL


By: Brian Barnum, Village President

CLERK'S CERTIFICATION

The foregoing Resolution was approved at a special meeting of the Bancroft Village Council held on the 28th of February 2022.


Ashley Goodrich, Village Clerk

Drafted by: Christopher S. Johnson (P58746), Gormley and Johnson Law Offices, PLC, Attorneys for the Village of Bancroft
101 East Grand River Avenue, Fowlerville, MI 48836, (517) 223-3758; email "chris@gormleylaw.net"

EXHIBIT A
to
VILLAGE OF BANCROFT'S FEBRUARY 28, 2022
Resolution of Village Council on
Proposed *Stipulated Order Resolving The Case*
of
Welcome Home Veterans Properties, LLC
vs Village of Bancroft

STIPULATED ORDER RESOLVING THE CASE

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

WELCOME HOME VETERANS
PROPERTIES, LLC, A Michigan
Limited Liability Company,

Case: 21-5996-CS

Hon. Matthew J. Stewart

Plaintiff,

vs.

VILLAGE OF BANCROFT,

Defendant,

CURTIS L. ZALESKI (P53534)
Attorney for the Plaintiff
535 East Main Street
Owosso, Michigan 48867
9889.732.8166

GORMLEY & JOHNSON LAW OFFICE, PLC
Attorney for the Defendant
John L. Gormley (P53539)
101 East Grand River Avenue
Fowlerville, Michigan 48836
517.223.3758

**STIPULATED ORDER
RESOLVING THE CASE**

At a session of said Court held
in the City of Corunna, County of
Shiawassee, State of Michigan, on this
_____ day of _____, 2022

PRESENT: HONORABLE MATTHEW J. STEWART (P58047)

The Court having reviewed the Stipulation of the Parties, and being otherwise fully advised:

IT IS ORDERED that:

1. The parent parcel of property that is involved in this case is owned by the Plaintiff WELCOME HOME VETERANS PROPERTIES, LLC, a Michigan Limited Liability Company (hereafter referred to as "WHVP") and is legally identified as the Village of Bancroft, County of Shiawassee, and the State of Michigan, to wit:

Section 34, T6N, R3E Bancroft Village 15 acres of N 30 Acres of NW 1/4 of NE 1/4
15 acres.

Common Address: 251 Prior Road, Bancroft, MI 48414
Tax ID# 011-72-021-000

- 1.1 The Parent Parcel is located in the Defendant Village of Bancroft's ("Village") territorial limits and subject to Village Ordinances, including but not limited to the Village Zoning Ordinance.
2. The WHVP shall divided the parent parcel of property identified in paragraph 1 into two Sub-Parcels under the following terms and conditions:
 - 2.1 The parties shall equally split the cost of the staked survey necessary to complete the application for land division performed by Donald Bendzinski of Wolverine Engineers & Surveyor, Inc. on the terms and conditions set forth in the Wolverine Boundary Survey Proposal dated September 20, 2021. (**Exhibit A**)
 - 2.2 WHVP shall: 1) file a land division application upon the later of the execution of this Order or sixty (60) days of the date of receipt of the Wolverine Survey and pay any required application fees, 2) obtain a land division of the parent parcel into the two Sub-Parcels (Sub-Parcel 1 and Sub-Parcel 2) contemplated herein, 3) obtain new tax identification numbers for those two new Sub-Parcels, and 4) record the survey and any other documents necessary to complete the land division.
 - 2.3 Both Sub-Parcels shall conform to all applicable Village of Bancroft Zoning Ordinance and State of Michigan Land Division statutes.
3. Sub-Parcel 1 shall remained zoned R-1A, according to the Village of Bancroft Zoning Ordinances and shall comprise the U-shaped vacant parcel described in the Wolverine Survey.
 - 3.1 Sub-Parcel 1 is legally described as being located in the Village of Bancroft, County of Shiawassee, and the State of Michigan to wit:

Exhibit A, Page 3, Parcel 1

Common Address: V/L Prior Road, Bancroft, MI 48414
Tax ID#: (to be determined upon property split after entry of Order)

4. Sub-Parcel 2 shall be conditionally re-zoned R-1M under the Village of Bancroft Zoning Ordinance on the following conditions:
 - 4.1 Parcel 2 is described as being located in the Village of Bancroft, County of Shiawassee, and the State of Michigan to wit:

Exhibit A, Page 3, Parcel 2

Common Address: 251 Prior Road, Bancroft MI 48414

Tax ID#: (to be determined upon property split after entry of Order)

4.2 The conditional re-zoning of Sub-Parcel 2 to R-1M shall limit the uses as follows:

4.2.1 Uses of Right:

4.2.1.1 Any uses of right permitted under the R-1A Zoning District.

4.2.1.2 the Multiple-Family Dwelling uses permitted in the R-1M Zoning District, only.

4.2.2 Uses by Special Use Permit

4.2.2.1 Only those uses that are permitted by Special Use Permit under the R-1A Zoning District, subjected to approval of the Special Use Permit under the procedures set forth in the Village's Zoning Ordinance.

4.2.3 Any use not specifically authorized as a use of right or a use by special use permit in this conditional re-zoning above is not allowed in Sub-Parcel 2.

4.3 This conditional re-zoning of Sub-Parcel 2 shall run with the land and apply to all future persons or entities with an interest in title. Any reference to WHVP in this Order shall automatically apply to all future persons or entities with an ownership interest in Sub-Parcel 2.

4.4 WHVP is permitted to construct up to 34 Dwelling Units (Apartments) within the existing building, provided the newly constructed Dwelling Units otherwise comply with all other laws, including but not limited to, the Village Zoning Ordinance, applicable Building Codes, County and State of Michigan Health, Drain, and Sewer Codes, applicable Fire Codes, Village's Municipal Water Ordinance, and any other applicable Federal, State, and local statutes, or ordinances.

4.4.1 WHVP acknowledges that the conversion of the old school building into up to 34 dwelling units is a "change of use" that will necessitate the bringing the building into compliance with some or all of the above codes, and nothing in this Stipulated Order Resolving The Case, in any way,

waives those requirements.

- 4.4.2 The Court finds there are currently at least 64 paved parking spaces at this location, as required to construct 32 Dwelling Units, between the existing lined parking lot on the East side of the existing structure, and parallel parking spaces along the circle drive in front (north side) of the existing structure. Nothing in this Order prevents WHVP from constructing an additional four (4) parking spaces on Sub-parcel 2 to permit up to 34 dwelling units.
- 4.4.3 The Owner shall always preserve at least 2 parking spaces for each Dwelling Unit located within this Sub-Parcel in one of these two parking lots. For example, if WHVP only constructs 30 Dwelling Units, then WHVP shall preserve at least 60 parking spaces in any proposed site plan that WHVP submits.
- 4.4.4 WHVP shall install and maintain along the East, West, and South property lines of Sub-Parcel 2 an appropriate fifteen (15') wide green belt, in a manner approved by the Village of Bancroft Planning Commission during WHVP site plan review process, to screen this R-1M use from the surrounding R-1A uses, leaving reasonable access points between the two Sub-Parcels for ingress and egress for both pedestrian and vehicular traffic. The green belt shall meet the following minimum standards, when submitted with the site plan:
 - 4.4.4.1 If WHVP does not have sufficient undeveloped land on any of the above sides of its Sub-Parcel 2 property to install said green belt, due for example to the location of existing parking lots, then WHVP shall have Sub-Parcel 1 grant a permanent easement to Sub-Parcel 2 for said green belt area to be installed and maintained by Sub-Parcel 2 on Sub-Parcel 1.
 - 4.4.4.1.1 On the east edge of Sub-Parcel 2 property, WHVP may, at its option, have the site plan include the green belt extending on Sub-Parcel 1 property along the southern and eastern edge of the driveway from the road south and west to the parking area, then south along the parking area, provided Sub-Parcel 1 grants Sub-Parcel 2 a permanent easement for WHVP to install and maintain the green belt at this location.
 - 4.4.4.2 Green belt trees should be arranged to simulate a natural setting

such as massing or staggered rows

- 4.4.4.3 The green belt shall include one deciduous canopy tree per 30 linear feet of the frontage including any openings for driveways, sidewalks, or easements.
- 4.4.4.4 Evergreen trees shall make up at least 50 percent of the required green belt trees.
- 4.4.4.5 The proposed green belt shall sufficiently screen the R-1M use from the view of the surrounding R-1A properties and WHVP shall maintain the green belt, by replacing any approved trees or plantings that die off, or become sufficiently unhealthy due to disease or damage, within six (6) months of the death or sufficient unhealthiness occurring.
- 4.4.4.6 The green belt shall include only living materials and planting beds, except for approved sidewalks, utilities, signs, driveways and essential services.
- 4.4.4.7 WHVP shall not be required to install the green belt on the south side of the Sub-Parcel 2 property until construction begins on a new permitted use on Sub-Parcel 1 property. WHVP shall have sixty (60) days from the date construction for the new permitted use begins, to install the green belt along the south property line in accordance with any site plan approved by the Planning Commission, but said time frame maybe extended by the Planning Commission, in writing, for weather induced delays, if for example construction begins during the winter months.
- 4.4.4.7.1 The phrase "construction begins" shall be the earlier of earth moving on the site, foundation installation, and/or erection of any above ground structures.
- 4.4.4.7 The Sanitary Sewer System for the building located on Sub-Parcel 2 is located at an undefined location on Sub-Parcel 1, therefore Sub-Parcel 2 is granted a permanent easement across all of Sub-Parcel 1 for the benefit of Sub-Parcel 2's septic tanks and drain field located thereon. This easement shall continue in perpetuity, until either (1) the existing building on Sub-Parcel 2 is destroyed or demolished, and not restored consistent with this Order, or (2) the existing tanks and septic field are abandoned, in writing, by the then Owner of Sub-Parcel 2, and the document confirming the

abandonment is recorded at the Shiawassee County Register of Deeds.

- 4.5.4 This Conditional Re-Zoning shall not be construed as a guarantee of any special use permits, variances, or other site plan requirements of the Zoning Ordinance by the Village, per Section 10.4.2 (4), (5), and (6), other than those specifically set forth herein.
- 4.6 If the existing structure (old school building) located on Sub-Parcel 2 is more than 50% destroyed or demolished by either (1) WHVP, (2) an act of god, or (3) fire, and reconstruction is not started by WHVP within twenty-four (24) months of the date of destruction or demolition, or reconstruction is not substantially completed within thirty-six (36) months of the destruction/demolition date, then the conditional re-zoning shall automatically terminate and the property shall revert to its prior R-1A Zoning classification.
- 4.6.1 However, if there is a legitimate reason WHVP or its successor have not started reconstruction on the property within those first twenty-four (24) months, or substantially completed reconstruction within the thirty-six (36) months, then WHVP may file a motion to re-open this case and request an extension to said time periods for good cause, so long as the motion is filed in the Circuit Court within the twenty-four (24) months of the date of the destruction or demolition if construction has not started, or within the thirty-six (36) months if construction is not substantially completed from the date of the destruction/demolition.
- 4.6.2 If there is a dispute between the parties and/or WHVP successors, regarding the percentage of the building destroyed or demolished, a determination by the building official with jurisdiction over the Village shall create a rebuttable presumption as to the extent of the damage. Either party may file a motion to re-open this case and attempt to rebut that determination of the building official within the six (6) months after that determination has been made, so long as the motion is filed in the Circuit Court within six (6) months of the determination of the building official as to the percentage destroyed. Otherwise, the building official's determination shall stand as the official ruling for purposes of this Order.
- 4.7 If WHVP abandons the multi-family dwelling use, then the conditional re-zoning shall automatically terminate and the property shall revert to its prior R-1A Zoning Classification.
- 4.8 The Village of Bancroft shall amend its Village Zoning Map and its Village Future Land Use Map to reflect this conditional re-zoning, within a reasonable time frame required to permit the statutory requirements for accomplishing same.

5. All references in this Order to the Zoning Ordinance shall mean the Village of Bancroft Zoning Ordinance adopted March 9, 2011, as amended from time to time thereafter.
6. WHVP shall record a certified copy of this Order at the Shiawassee County Register of Deeds to place all future owners on notice of its terms. Within seven (7) days of receipt of the recorded copy of this Order, WHVP's attorney shall serve a copy of the recorded document upon the attorney for the Village.
7. This Order has been negotiated between the parties and therefore shall be deemed to have been mutually drafted by them. Accordingly, no court construing this Order shall construe it more strictly against any party hereto.
8. This Order resolves the last issue in the case, and the case may be dismissed and closed, with prejudice, and with out costs to either party.

Matthew L. Stewart, Circuit Judge

(Countersigned)

Deputy Clerk

Approved as to Form and Content:

Curtis L. Zalenski (P53534)
Attorney for Plaintiff WHVP

Gormley & Johnson Law Office, PLC
Attorney for Defendant Village
John L. Gormley (P53539)

Drafted by: John L. Gormley (P53539)
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