

THE BERKELEY COUNTY PLANNING COMMISSION MINUTES

The Berkeley County Planning Commission met in a regular session on May 19, 2025 in the Council Chambers at 400 W. Stephen Street, Martinsburg, West Virginia.

1. CALL TO ORDER

The meeting was called to order at 6:00 p.m. by Linda Barnhart, presiding.

2. ROLL CALL

- a. PLANNING COMMISSION MEMBERS PRESENT: Linda Barnhart, Vickana Norton, John Hardy, Mike Bush, Dan Gantt, Eric Goff, and Tim Lewis.
- b. MEMBERS ABSENT: Troy Barrett, Ron Truitt
STAFF: Monique Boots, Planner; Sarah Sandri, Planner; Doug Smith, County Engineer; Brian Ross, Director of Community Development; Anthony Delligatti, Legal Director.

3. APPROVAL OF THE AGENDA

ACTION TAKEN: The motion was made by Eric Goff and seconded by Dan Gantt to approve the agenda. Call for question. The motion carried unanimously.

4. SUNSHINE LAW SPEAKER: None

5. APPROVAL OF MEETING MINUTES

ACTION TAKEN: The motion was made by Eric Goff and seconded by Dan Gantt to approve the May 5, 2025 minutes. Call for question. The motion carried. Mike Bush and John Hardy abstained due to absence.

6. PUBLIC HEARINGS

REQUEST FOR FINAL PLAT APPROVAL

a. Nadenbousch Pines, Phase 3, Lots 46-53 & 59, File# 2412-399

The project is located on Nadenbousch Lane (WV Rt. 34), approximately one (1) mile east of its intersection with Winchester Avenue (US Rt. 11).

The final plat proposes 9 single-family lots, on approximately 3.31 acres, to be served by public water and sewer.

Monique Boots read the description and project notes.
Trevor Lloyd was present representing the project.

Public Comment: Robert Wickham, resident on Briarcrest Circle, stated he has lived in the community for four and a half years and he stated they have has numerous issues with the builder. He stated specific housing issues aside; the main thing is the stormwater issues and had the report from 1/9/2023 that contained 34 pages of different issues with the stormwater system. He stated since the report in 2023 there has not been any progress with the issue. He also stated he has a bunch of pictures from 2023 and some from current day (attached). He continued that there is overgrowth that has caused Stillwater, rodents, insects, and a number of other different things including garbage. He stated he also brought a copy of the HOA tenets (attached) that the builder does site that the common areas do refer to the stormwater management and drainage spaces and mention that the HOA would be responsible to repair and maintain those areas, and they have failed to do so. He stated that the issues were not fixed prior to the HOA being conveyed to the tenets that the people in the community would be responsible for making the changes. He stated that the issues are multiple thousands of dollars and he does not believe it should fall on the residents. He stated that he has recently received an email stating the HOA dues will be increasing even though there is no board and no explanation on why the dues were raising. He stated the HOA stated they were getting a management company, but still no word on

the stormwater issues. He asked that the project not be approved and the bond not be released until the issues are resolved.

Linda Barnhart stated they are not seeking bond release and they are looking for final plat approval. Mr. Wickham stated that he believes before more homes are built and lots are approved, the builder should make sure the current residents have a safe neighborhood.

Frederico Caldas, resident on Stentson Drive- lot 42, he stated he shares many of the concerns with the other residents. He provided a packet of information to the Planning Commission Members. (attached) He asked the Commission to make sure previous phases are up to standards before the next phase is approved. He stated that he closed on his home in 2022. He stated he spent two growing seasons trying and failing to grow grass. He stated he some neighbors even hired landscaping companies. He stated he submitted a claim when his warranty was up and asking the builder for the required topsoil. He stated the builder stated there was nothing they could do. Mr. Caldas stated the county documents the same issues he was having. He continued to explain how his yard is looking now with weeds/clover. He stated seeding never takes. He provided receipts from his investments and stated other homeowners have also invested more time and money and were not successful. He stated when it rains; water shoots across the lot and sits on the roadside gravel. In December 2023 he stated, the builder tried to fix the issue, but in December, it was too cold for anything to grow. He asked the Planning Commission to pause any permits until the existing phases are compliant and give the homeowner time to fix the current issues. Lauren Adcock, resident on Bonita Pine Trail, stated this is her first home with her husband, and part of her loan process is to have seeding done. She stated it would not take. She stated the developer came out and tried to put hay down and nothing grew. She stated she requested hydro seed and the developer agreed, but never followed through. She stated that the builder has been uncooperative to address any concerns which not only on their lawns, but also within their houses. She stated they have done many things to try to get the grass to grow. She stated that it is apparent that the soil was just pushed down and when it rains glass will come to the surface. She stated the Stormwater people have been to her property as well and they stated the issue from the stormwater comes from not having grass on the lawns. She stated it is not one or two houses and it is many homes and not everyone could come to the meeting.

Josh Nelson, resident on Stetson Drive, the bottom of the neighborhood collects every inch of rainwater and 3 feet of water should not fill a culvert for emergency purposes. He stated his neighbor cannot mow his lawn p to two weeks after it rains because of the grading issues. He stated his neighbor's fence is at risk when it rains because of the rain pushing it out of the ground. He stated he has an \$8,000 fence that is worried about being ruined. He stated neighbors cannot use their backyards because there is too much rock. He stated he ever got any response for help with the issues. He stated the HOA is not registered with the state and they do not tell them where the fees go and they are not maintaining the culverts and the common areas. He stated they have only have 2 plows and the front of the neighborhood is overgrown and it causes a risk to drivers pulling in and out of the development. He stated he would like to see change and the developer not to get anymore money from the bonds because they have not done anything to help the neighborhood.

Laurie Brinzo, resident on Bonita Pine Trail, stated that when she moved in they asked the neighbors what they can do with the lawn and they stated nothing will grow. She stated every time it rains, she has to go out and check for glass and has to make sure it is all picked up so her granddaughter does not get hurt. She stated her husband and her took 3 days to plank a bush because they could not get past a bush. She stated they now have landscapers to come in to plant trees because there are no trees and grass to hold on to the dirt because there is no soil. She stated there are patches of broken shale and the culverts get filled with mud and debris. She stated there is a mess of growth that collects garbage and nothing gets picked up. She stated she wants where she lives to be a beautiful area and it is not. She stated when she got her first HOA bill it had the previous owners name on it. She asked for it to be corrected and the same letter was sent with the persons name crossed off and she then owed a penalty because she did not pay on time. She stated she made the payment and to correct the owner's name. She stated this year she got a new bill with no explanation on why the fee went up because no one does

anything there to keep up the neighborhood. She stated she had a pipe burst and a plumber has to come and reroute the plumbing because there was flooding. She also stated there was no insulation in one of her rooms.

Angela Gregory, resident on Stetson Drive, stated that she has invested thousands of dollars because of the water backing up into her yard. She stated they cannot use their yard because of the erosion and she stated she feels like her house has moved. She stated dealing with the builder has been the most difficult thing she has done in her life.

Rhonda Catlett, resident on Stetson Drive, bought her house in 2021. She stated she had brought it to their attention that her air conditioner stinks in the summer. She stated she told them 3 times and they tell her it is in her head. She stated that she still smells sewer coming from her air conditioner. She stated she has had to put rocks under her fence to keep the stormwater from washing away things and that has caused her neighbor's yard to have a gully. She stated her fence is leaning from the water and she will have to have it fixed.

Casey Petefish, resident on Sanibel Way, stated that she bought her home in March 2021. She stated that she has a lot of the same issues as her neighbors. She stated she believes there was inadequate soil preparation across the neighborhood. She stated no topsoil was placed over the soil base and little to no grass was established during construction. She stated that residents have spent thousands of dollars trying to repair their lawns, but without topsoil grass will not grow. She stated they are left with hard, eroded patches that feed directly into the drainage issues and make the water runoff even worse. She stated that in addition to the visible concerns there are also concerns about cracking drywall, doors that won't close and signs of shifting in their homes. She stated that the issues are usually linked to improper soil preparation, unstable or eroding soil or improper grading. She stated they will not accept the HOA until the issues are fixed. She stated she lives in a walk out basement and the lack of soil there are culverts that run into their back yard causing their sub pump to constantly run after any rain happens.

Trevor Lloyd stated as far as the HOA dues he cannot answer those. He stated he does know that the owner has signed for a property management company to manage the HOA and the neighborhood should see representation of that contract shortly. He stated that the stormwater ponds are still under bond in the County and the DEP permit is active and up to date. He stated the 9 houses at the top of the drainage area will need to be completed prior to the closing of the stormwater ponds.

Doug Smith stated that he had received calls and they are aware of the SWM report done and they went out again and some of the issues were addressed. He stated there is still an open land disturbance permit and DEP permit and there are only certain things they can make them do. He stated he does believe it needs to be stabilized, but that cannot be done until the pond is closed because it is a sediment pond. He stated they are monitoring and some of the money was given back, but the rest will not be given back until it is all done.

Mike Bush asked why the upstream cannot be stabilized now because there are known issues.

Trevor Lloyd stated that rock has been uncovered and there is very little they can do with the rock and in order to build the houses they need to take the rock out.

Mike Bush asked about the existing.

Trevor Lloyd stated that the existing homes that are upstream many of the issues have been addressed since 2023 and those pictures do not represent what is happening today. He stated that there are still some issues, but they are working toward a solution.

Mike Bush asked about the as-built deficiencies such as culverts, SWM facilities, and other issues.

Trevor Lloyd answered that the as-built drawings that have been submitted pertained only to the utility infrastructure and roads. He stated some of the issues were addressed and some have not been addressed. He stated all of the stormwater is under bond and they still need to be addressed.

Doug Smith stated that the culverts that have been out in were put in correctly, but the discharge out of the culverts that is causing some problems and the developer will have to fix them. He stated that the battle is he is pushed to give the bond back even though half of the upstream area is left in mud. He

stated that it should be done sooner because there are residents in there while there is still construction.

Mike Bush asked if all of the upstream issues are addressed with existing homes and the new lots are dealt with later.

Trevor Lloyd stated there are some things they can do now like getting more vegetation established in the roadside ditches, but as far as peoples' lawns and ditches that convey Stormwater through people's properties, there is a limit to what can be done. He stated at some point the homeowner would have the responsibility to maintain the grass. He stated in order to fix everything the full drainage area would have to be constructed and they would have to come back through to complete everything.

Dan Gantt asked if they have any rock check dams to slow the drainage down in those areas to help with erosion.

Trevor Lloyd answered on the approach to the pond, yes, but not on the roadsides.

ACTION TAKEN: The motion was made Dan Gantt and seconded by Mike Bush to close the Public Hearing. Call for question. The motion carried unanimously.

ACTION TAKEN: The motion was made by Mike Bush and seconded by Eric Goff to deny the Final Plat. Call for question. The motion carried unanimously.

b. South Brook – Section 2, Phase 6B - TH Lots 241-249, 273-290, 354-366 & 416-428, File# 2412-398

The property is located on Shiley Road (WV Sec. Rt. 34/2), approximately 0.3 miles north of Hatchery Road (WV Sec. Rt. 11/8).

The final plat proposes 53 lots on 12.96 acres, to be served by public water and sewer.

Monique Boots read the description and project notes.

Brooke Perry and Hunter Wilson were present representing the project.

There were no comments from the public.

ACTION TAKEN: The motion was made Eric Goff and seconded by Tim Lewis to close the Public Hearing. Call for question. The motion carried unanimously.

ACTION TAKEN: The motion was made by Dan Gantt and seconded by Eric Goff to approve the Final Plat contingent upon receipt of surety in the amount of \$875,070.00. Plat to be released upon Receipt of surety and developer's agreement. Call for question. The motion carried unanimously.

REQUEST FOR WAIVER

c. Dry Run Estates, File# 2504-102

The site is located off Shellbark Lane (WV Sec. Rt. 81/4), which is approximately 350' west of the intersection of Dry Run Road (WV Rt. 13) and the I-81 Southbound - Exit 14.

The developer is proposing 95 single-family lots and 244 townhome lots on 57.61 acres, to be served by public water and sewer.

Monique Boots read the description and project notes.

Scott Copen was present representing the project.

Public Comment: Keith Barry, resident on Shellbark Lane, stated that he had returned to the area and retuning to all the growth was a cultural shock. He stated he has seen the impact of rapid growth on increased traffic, over building, stress on infrastructure, and crime. He stated that the proposal does not

address any of the issues and the tax revenue would not come close to the road. He stated there is a narrow lane that will need to be improved. He stated that the Sherriff does not have sufficient staffing and adding this many homes will disturb the privacy they currently enjoy. He stated that the wildlife will be disturbed. He continued that the homes on the street are 50 years old and blasting will pose a structural risk. He stated that approval of the project would lead to significant distributions and long term implications to the current residents who have been there for years. He stated that they do not live in an HOA and they do not want to live in an HOA and coexisting with a large HOA would defeat the purpose. He stated that would open the door to trespassing and unnecessary traffic on their streets. He stated that there will be environmental impacts, along with noise pollution and displacement of wildlife. He stated disturbing the harmony they enjoy currently is not in the currents residents' best interest. William Brophy, resident on Cabana Lane, stated that the roads are narrow and only two times a year they dumb rocks and it washes away with the first rain. He stated the rock is sitting on the side. He stated they asked for a water test and he is concerned the blasting and all the homes will ruin his well. He stated he did a radon test and the results showed it was the worst one. He stated it was vented and it is steady and has been for four years, but the blasting will bring up the radon again. He stated his grand children live in the basement and he is worried for their safety. He stated he is also concerned about the deer and wildlife. He stated the street is unleveled and something will have to be done. He stated he cannot see that many homes in there. He stated he is not against the single family homes but he does not agree with the townhomes.

Tangie Jones, resident on Cabana Lane, stated she also had radon testing and the results were "off the charts". She stated she has been in the house for 20 years and they have stormwater issues and the rain comes into their yard. She stated that plow takes away the rock and the road is barely suitable for the people who live there now. She stated she rather the development not be as big.

Mike Bush stated that there is a different number of lots presented. He asked what the total lot count would be.

Doug Smith stated that the packet shows the most recent submittal and the yield of the lots has changed.

Tim Lewis explained the project is just for a waiver and it would not move the project forward for approval, and it would just be approval for the waiver.

Brian Ross stated that blasting is regulated through the State Fire Marshal's Office. He stated that the developer should be in touch with the neighbors about the blasting schedule.

Doug Smith stated that Cabana Lane is a harp road and will be improved and widened to 50 foot. He stated the traffic study will recommend what improvements will be required.

Scott Copen stated that they are also concerned with the same things the current residents are cornered with. He stated he has been working with DOH for almost a year. He stated at minimum improvements will be made at the intersection of Dry Run and Shellbark Lane. He stated there will also be improvements on Shellbark to Cabana Lane to 18 feet wide with paved shoulders. He stated the entrance will be curb and gutter with sidewalks. He stated the goal of the development is for people to want to stay in it and not go on the neighbors land. He stated that they will be a pump station in the development and will have city water and they have capacity.

ACTION TAKEN: The motion was made Eric Goff and seconded by Dan Gantt to close the Public Hearing. Call for question. The motion carried unanimously.

ACTION TAKEN: The motion was made by Mike Bush and seconded by Dan Gantt to approve the waiver to Article 5, Section 505(5), Table 5-3 of the Subdivision and Land Use Ordinance (2025), to reduce the required single family detached lot width from 75' to 65' or 70'. Call For question. The motion carried unanimously.

PRELIMINARY PLAN APPROVAL

a. BW Quality Growers - Spring Valley, File# 2310-338

The site is located at 3382 Williamsport Pike (US Rt. 11), approximately 1,800' south of the intersection of Bedington Road (WV Rt. 5), Nipetown Road (WV Rt. 8) and Williamsport Pike (US Rt. 11).

The project proposes a watercress farming facility, on 53.72 acres. No utilities are being proposed.

Monique Boots read the description and project notes.

Dan Murphy was present representing the project.

Linda Barnhart asked if they are enlarging the current property.

Mr. Murphy stated they are building it up and creating more fields.

ACTION TAKEN: The motion was made by Dan Gantt and seconded by Mike Bush to approve the advancement of the Preliminary Plan. Call for question. The motion carried unanimously.

b. Cardinal Pointe – Section 7, File# 2503-064

The site is located on the east side of Otero Lane within the Cardinal Pointe Development that is located on the north side Hammonds Mill Road (WV Rt. 901).

The developer is proposing 80 single-family attached (villa) lots, on approximately 40 acres to be serve by public water and sewer.

Dan Gantt recused himself due to conflict of interest and exited the room.

Monique Boots read the description and project notes.

Steve Cvijanovich was present representing the project.

Mike Bush asked about school bus stops on a busy road and asked if the bus stops are in the development.

Steve Cvijanovich stated he does not know and will need to ask the developer.

ACTION TAKEN: The motion was made by Mike Bush and seconded by Eric Goff to approve the advancement of the Preliminary Plan to the Final Plat stage. Call for question. The motion carried unanimously.

Dan Gantt returned to the room.

7. STAFF/ COUNSEL DISCUSSION/ACTION/ MOTION

a. Comprehensive Plan Update

8. ADJOURNMENT

ACTION TAKEN: The motion was made by Eric Goff and seconded by Dan Gantt to adjourn the meeting at 7:30pm. Call for question. The motion carried unanimously.

Respectfully submitted,
Sarah Sandri
Planner I

Robert Wickham

HOA Fee Increase and Question



Robert Wickham

Good afternoon, I am reaching out regarding the most recent bill received by community members for this years HOA dues. It has been identified by us all that in

Tue, Mar 16, 8:15 PM



Robert Wickham

Good afternoon I wanted to follow up on the email below as it has been a week since I've sent it and I haven't received a response. I understand that dues are d

Wed, Mar 26, 9:50 PM



Robert Wickham

Good afternoon This is my third attempt at reaching out to you regarding the most recent HOA dues that were sent. I intend to print this copy and also send as a

Wed, Apr 2, 2:00 PM



Robert Wickham

Good morning, This is my 4th attempt to reach out regarding the information requested further down in this email thread. I have been in contact with both the A/E

Fri, Apr 10, 10:21 AM



Robert Wickham

----- Forwarded message ----- From: Robert Wickham <robert.wickham26@gmail.com> Date: Thu, Apr 10, 2022 at 10:21 AM Subject: Fwd: HOA Fee Increase and Q

Mon, Apr 14, 9:04 PM



Robert Wickham

Good Evening, I'm sending this email from a different email address in the hopes that perhaps it has yet to be seen and/or went to spam. At this point, it is my

Mon, Apr 16, 7:50 PM



accounting dept

Good afternoon, We appreciate your reaching out in regards to the HOA. We are currently in the process of working with a management company to handle all matters

Wed, Apr 23, 4:18 PM



Robert Wickham <robert.wickham26@gmail.com>

to accounting, Robert

Wed, Apr 23, 5:39 PM



Thank you for the response.

However, this doesn't answer anything that I've asked. My check, as well as a number of other homes seeking answers, has not been mailed out as I'm trying to determine why the dues have gone up with no notice and lack of any fellow through on the responsibility listed in the covenants. Will you be allowing a grace period for dues until you are able to answer these questions and provide the response to the community?

Respectfully,

Robert Wickham



Robert Wickham <robert.wickham26@gmail.com>

to Elise, John

Thu, Jul 28, 2022, 4:04 AM



Good Morning

I've been planning to reach out in regard to the overgrown brush that is continuing to grow in the drainage ditches and culverts throughout the subdivision of Nadenbousch Pines. In conversation with representatives from the Storm Water Division, we were told that it is the builders responsibility to tend to these until the HOA is established or the subdivision is complete. Having lived here for a year and a half, there has been no maintenance of those drainage ditches. I was curious what action JBG was planning to take?

To somewhat make this issue worse, yesterday we identified Spotted Lantern Flies on our property. Having made some calls today, and in speaking with our pest service and the Department of Agriculture, we were told these are an extremely invasive pest that should be killed if seen. The reason I bring this up is because the Department of Agriculture identified a weed/tree that attracts these bugs. As the Culverts are not being managed, this tree is growing in many areas, and attracting these flies. Under the direction of the Department of Agriculture, we were told these need to be removed as quickly as possible.

I understand that JBG is busy with many endeavors, but this issue needs to be addressed in a swift fashion. I will be following up with the City of Martinsburg on Monday to determine any further actions that may be necessary. I hope the severity of this issue has been understood and some action can be taken in the very near future. Please feel free to contact me with any questions via email or by phone at 848-221-4484.

Respectfully,

Robert Wickham



Robert Wickham <robert.wickham26@gmail.com>

to Elise, John

Thu, Aug 2, 2022, 10:00 AM



Following up on the email below.

...

On Thu, Jul 28, 2022 at 9:50 AM Robert Wickham <robert.wickham26@gmail.com> wrote:

Good Morning,

I've been planning to reach out in regard to the overgrown brush that is continuing to grow in the drainage ditches and culverts throughout the subdivision of Nadenbousch Pines. In conversation with representatives from the Storm Water Division, we were told that it is the builders responsibility to tend to these until the HOA is established or the subdivision is complete. Having lived here for a year and a half, there has been no maintenance of those drainage ditches. I was curious what action JBG was planning to take?

To somewhat make this issue worse, yesterday we identified Spotted Lantern Flies on our property. Having made some calls today, and in speaking with our pest service and the Department of Agriculture, we were told these are an extremely invasive pest that should be killed if seen. The reason I bring this up is because the Department of Agriculture identified a weed/tree that attracts these bugs. As the Culverts are not being managed, this tree is growing in many areas, and attracting these flies. Under the direction of the Department of Agriculture, we were told these need to be removed as quickly as possible.

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from: **Robert Wickham** <robertwickham25@gmail.com>
to: **Blake Pindell** <blake@jbgbuilders.com>,
Josh Grewal <ilawarranty@gmail.com>
date: Jul 28, 2022, 9:50 AM
subject: ***URGENT*** Culvert management/Spotted Lantern Flies
mailed-by: gmail.com

Culvert Area



Josh Grewal <ilawarranty@gmail.com>

to: all

Wed, Aug 31, 2022, 11:45 AM



Good morning,
The builder is aware of the situation and will be taking care of it in the future
Warranty Dept

JBG Builders, 4115 Old Fox Town Road, Knapixville, WV 26110-7502(304-4056) - ilawarranty@gmail.com
Request for warranty service must be submitted via ilawarranty@gmail.com
Warranty work is scheduled and performed Monday through Thursday 7:30 a.m. to 3:00 p.m.
The sponsor must be present during warranty work

HOA Dues notice

to: all



Robert Wickham <robertwickham25@gmail.com>

to: accounting@jbgbuilders.com

Wed, Dec 27, 2023, 3:04 PM



Good Afternoon,

I received a letter today regarding HOA dues for the upcoming 2024 year for the Nadenboush Pines community. I wanted to inquire as to what the HOA dues were intended to be used for this coming year. I know a few members of the community have reached out over the last 3 years regarding the poor condition of the culverts for the drainage system (which has also been addressed by the Martinsburg Storm Water Department). Those conditions include bad water flow, poor drainage, issues with retention ponds, and also basic upkeep of growth within the culverts (to which Storm Water confirmed is the HOA's responsibility). If there is any visibility that can be provided to the community to the use of the HOA funds and what the HOA will be responsible for, it would be greatly appreciated.

Respectfully,
Robert Wickham
9/18/2023 14:34



accounting dept <accounting@jbgbuilders.com>

to: re

Wed, Jan 9, 2024, 9:31 AM



Hello Robert,
These HOA fees cover your road maintenance, snow removal, lawn maintenance of the common areas and stormwater management.
Thanks!!!



















THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NADENBOUSCH PINES, made this ____ day of _____, 2020, by ILA PROPERTIES, INC, a West Virginia corporation (hereinafter "Declarant"), for itself, its successors, grantees, and assigns, pursuant to the provisions of Chapter 36B of the West Virginia Code.

RECITALS

R1. WHEREAS, Declarant is the sole owner of the land situate in Arden District, Berkeley County, West Virginia, consisting of Lots 1 through 25, and Lots 68 through 76, the common-shared roads of Sanibel Way", "Bonita Pine Trail", and "Briarcrest Circle", and the common areas designated as "Open Space 'A'", "Open Space 'B'", and "Open Space 'C'" (hereinafter in these Recitals collectively referred to as the "Common Interest Community"), all consisting of Phase 1 of Nadenbousch Pines, and all as more particularly described on a plat entitled "Final Plat Nadenbousch Pines Phase 1, Lots 1-25, & 68-76 Property of Ila Properties, Inc.", prepared by Michael Roberts, West Virginia Professional Land Surveyor, and of record in the Office of the Clerk of the County Council of Berkeley County, West Virginia, in Plat Cabinet No. ____, at Slide ____ (hereinafter in these Recitals referred to as the "Plat");

R2. WHEREAS, Declarant desires to develop the Common Interest Community into a residential community that consists of single-family residential homesites on the aforementioned lots as designated on the Plat (hereinafter in these Recitals referred to as the "Units"), and the stormwater management and drainage spaces as designated on the Plat, the shared ingress, egress, and utilities as designated on the Plat, and the potential other facilities and common amenities as designated on the Plat (hereinafter collectively referred to in these Recitals as the "Common Areas"), all for the benefit of said Common Interest Community;

R3. WHEREAS, the name by which this Common Interest Community is to be identified is "Nadenbousch Pines", which, including the lots dedicated under this Dedication, shall be seventy-six (76) single family lots in total, with the remainder of which to be dedicated under a supplemental declaration or supplemental declarations consistent with this Declaration;

R4. WHEREAS, Declarant desires to provide for a common scheme of development of the Common Interest Community, which includes the Units and common areas, and desires to subject the Common Interest Community, together with such additions or amendments as may hereafter be made thereto at the sole discretion of Declarant, as provided herein, to the covenants, restrictions, easements, charges, and liens, hereinafter set forth, each and all of which is, are, and shall remain a burden upon and for the benefit of the Common Interest Community and each owner of any and all Lots thereof;

R5. WHEREAS, Declarant has recorded simultaneously the Plat;

R6. WHEREAS, Declarant has deemed desirable, for the efficient preservation of the values and amenities in the Common Interest Community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the Community properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charged hereinafter created;

R7. WHEREAS, Declarant shall incorporate, under the laws of the State of West Virginia, as a non-profit corporation, the "Nadenbousch Pines Homeowners' Association, Inc.", for the purpose of exercising the functions aforesaid;

R8. WHEREAS, Declarant, by executing and recording this Declaration, submits the Common Interest Community to the provisions of Chapter 36B of the West Virginia Code;

NOW, THEREFORE, the Declarant declares that the Common Interest Community, and such additions thereto as may hereafter be made pursuant to this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth in this Declaration and shall be covenants running with the land.

ARTICLE I

DEFINITIONS

- 1.1 "Act" shall refer to the Uniform Common Interest Ownership Act, Chapter 36B of the W.Va. Code, as it may be amended from time to time.
- 1.2 "Association" shall refer to the "Nadenbousch Pines Homeowners' Association, Inc.", a non-profit corporation organized under the laws of the State of West Virginia.
- 1.3 "Board" shall mean the governing body of the Association consisting of not more than five (5) members who shall each be elected for a one (1) year term at the annual meeting of the Association.
- 1.4 "Bylaws" shall refer to the Bylaws of the Association, as they may be amended from time to time.
- 1.5 "Common Area" shall refer to the stormwater management and drainage spaces as designated on the Plat, the shared ingress, egress, and utilities as designated on the Plat, and the potential other facilities and common amenities as designated on the Plat entitled "Final Plat Nadenbousch Pines Phase 1, Lots 1-25, & 68-76 Property of Ila Properties, Inc.", prepared by Michael Roberts, West Virginia Professional Land Surveyor, and of record in the Office of the Clerk of the County Council of Berkeley County, West Virginia, in Plat Cabinet No. ____, at Slide ____.
- 1.6 "Common Interest Community" shall refer to residential community created upon the land situate in Arden District, Berkeley County, West Virginia, consisting of Lots 1 through 25, and Lots 68 through 76, the common-shared roads of Sanibel Way", "Bonita Pine Trail", and "Briarcrest Circle", and the common areas designated as "Open Space 'A'", "Open Space 'B'", and "Open Space 'C'", all consisting of Phase 1 of Nadenbousch Pines, and all as more particularly described on a plat entitled "Final Plat Nadenbousch Pines Phase 1, Lots 1-25, & 68-76 Property of Ila Properties, Inc.", prepared by Michael Roberts, West Virginia Professional Land Surveyor, and of record in the Office of the Clerk of the County Council of Berkeley County, West Virginia, in Plat Cabinet No. ____, at Slide ____.

- 1.7 "Declarant" shall refer to Ila Properties, Inc, a West Virginia corporation, its successors or assigns.
- 1.8 "Declaration" shall refer to this document, including any and all subsequent amendments hereto.
- 1.9 "Nuisance" or "Nuisances" shall be given the meaning ascribed in the common law of West Virginia and shall refer to an obstruction or unreasonable interference with the reasonable and comfortable use of the Property.
- 1.10 "Person" shall mean a person or legal entity (including but not limited to, limited liability companies, corporations, trusts, or partnerships).
- 1.11 "Property" shall collectively refer to the Common Interest Community and any real property of Declarant that is immediately adjacent to the Common Interest Community, whether such additional real property is added under this Declaration or not.
- 1.12 "Plat" shall refer to that plat entitled "Final Plat Nadenbousch Pines Phase 1, Lots 1-25, & 68-76 Property of Ila Properties, Inc.", prepared by Michael Roberts, West Virginia Professional Land Surveyor, and of record in the Office of the Clerk of the County Council of Berkeley County, West Virginia, in Plat Cabinet No. ___, at Slide ___.
- 1.13 "Unit" shall refer to any physical portion of the Property in Common Interest Community designed for separate occupancy and designated on the Plat.
- 1.14 "Unit Owner" shall refer to the Declarant or any other person or entity that owns a Unit; provided, however, a Unit Owner shall not include a person having an interest in the unit solely as security for an obligation through a deed of trust, real estate tax lien, or other lien of any nature whatsoever.

ARTICLE II

PROPERTY RIGHTS AND RESPONSIBILITIES

- 2.1 Easement of Use. Every Unit Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which right and easement shall pass with and be appurtenant to every Unit, subject to the following reservations and provisions:
 - 2.1.1 The Common Area may be used by Declarant, its heirs, successors, and assigns, to provide for easements for ingress, egress, and/or utilities, including but not limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, all as determined as desirable in the sole and absolute discretion of Declarant, including, without limitation, those easements for ingress, egress, and/or utilities, including but not limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, appurtenant to additional lands owned by Declarant that are developed under a common scheme as this Common Interest Community;
 - 2.1.2 The Common Area may be used by Declarant, its heirs, successors, and assigns, to provide for easements for ingress, egress, and/or utilities, including but not

limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, all as determined as desirable in the sole and absolute discretion of Declarant, including, without limitation, those easements for ingress, egress, and/or utilities, including but not limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, appurtenant to additional lands owned by Declarant that are not developed under a common scheme as this Common Interest Community;

- 2.1.3 The Declarant's rights and reservations as herein stated; and
 - 2.1.4 The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to in writing by seventy-five percent (75%) of the Unit Owners.
- 2.2 Responsibility of Unit Owners. If the act or omission of any Unit Owner or a family member, household pet, guest, or visitor of such Unit Owner shall cause damage to the Common Area or another Unit and maintenance, repairs, or replacements thereof are determined to be appropriate by the Board, then such Unit Owner shall pay for such damages and such maintenance, repairs, or replacements as may be determined by the Board.

ARTICLE III

DECLARANT'S RESERVATION OF DEVELOPMENT RIGHTS

- 3.1 Declarant's Reservation of Development Rights. The Declarant, on behalf of itself, its successors and assigns, expressly reserves the following development rights:
- 3.1.1 The right to construct, maintain, improve, or replace any improvement in the Common Interest Community for any purpose deemed desirable in the sole and absolute discretion of Declarant, including but not limited to, roads, streets, facilities, utility lines, pipes, wires, conduits, or any other utilities or other facilities, all without notice to or a vote or consent from the Association or Unit Owners;
 - 3.1.2 The right to survey improvements, easements, or rights-of-way anywhere in the Common Interest Community, all without notice to or a vote or consent from the Association or Unit Owners;
 - 3.1.3 The right to use, for ingress and egress, any and all streets or roads of the Common Interest Community for any purpose deemed as desirable in the sole and absolute discretion of Declarant. Without limitation, this right shall include the right to use, for ingress and egress, any and all streets or roads of the Common Interest Community for additional lands owned by Declarant that are developed under a common scheme as this Common Interest Community or for additional lands owned by Declarant that are not developed under a common scheme as this Common Interest Community. It is expressly understood that any individual or entity constructing a new

residential structure on a Unit shall, in no manner, whatsoever, be restricted in use of the streets or roads of the Common Interest Community;

- 3.1.4 The right to grant easements for ingress, egress, and/or utilities, including but not limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, all as determined as desirable in the sole and absolute discretion of Declarant, including, without limitation, those easements for ingress, egress, and/or utilities, including but not limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, appurtenant to additional lands owned by Declarant that are developed under a common scheme as this Common Interest Community, all without notice to or a vote or consent from the Association or Unit Owners;
- 3.1.5 The right to grant easements for ingress, egress, and/or utilities, including but not limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, all as determined as desirable in the sole and absolute discretion of Declarant, including, without limitation, those easements for ingress, egress, and/or utilities, including but not limited to, water, sewer, electricity, telephone, television, and cable, or street lighting, appurtenant to additional lands owned by Declarant that are not developed under a common scheme as this Common Interest Community, all without notice to or a vote or consent from the Association or Unit Owners;
- 3.1.6 The right to amend this Declaration and any supplemental Declaration thereto without notice to or a vote or consent from of the Association or Unit Owners. It is expressly stated that, until all Units are sold, the sole and absolute discretion and right to amend this Declaration shall be held by Declarant, without restriction or limitation;
- 3.1.7 The right to appoint or remove any Board member, officer of the Association, or member appointed by the Board to serve any role of the Association, with or without cause, all without notice to or a vote or consent from the Association or Unit Owners;
- 3.1.8 The right to maintain sales offices and management offices and to erect signs of any nature, all without restriction or limitation, and all without notice to or a vote or consent from the Association or Unit Owners;
- 3.1.9 The right to perform work, repairs, and construction and to store materials in secure areas within the Property, all without notice to or a vote or consent from the Association or Unit Owners;
- 3.1.10 The right to construct any improvement or structure within the Property, including but not limited to, the Common Interest Community, without notice to or a vote or consent from the Association or Unit Owners;
- 3.1.11 The right to add additional lands to the Common Interest Community and the right to withdraw lands from the Common Interest Community, provided

that no common area shall be withdrawn from the Common Interest Community without the written consent of all members of the Association.

ARTICLE IV

THE ASSOCIATION

- 4.1 Membership. Every Unit Owner of a Unit shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Unit that is subject to this Declaration.
- 4.2 Board. The Board shall be the governing body of the Association and shall consist of not less than three (3) members and not more than five (5) members who shall each be elected for a one (1) year term at the annual meeting of the Association; provided, however, it is understood that during the first five (5) years this Declaration is in effect, Declarant may appoint all members of the Board at Declarant's sole and absolute discretion. Any Unit Owner may be a Board Member. Persons who are not a Unit Owner shall not be permitted to be a Board Member; provided, however, that in the event a Unit is owned by a legal entity, a representative of that entity may serve as a Board member. Any Board member may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation, or removal of a Board member, his, her, or its successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of the removed Board member. The Board shall appoint officers of the Association to include a president, vice president, secretary, treasurer, and such other positions as the Board deems appropriate. The Board may establish temporary or standing committees to perform some of its duties and responsibilities as the Board deems necessary and proper to effectuate its rights and obligations under this Declaration. Any Unit Owner that is not current with all assessments due or levied under this Declaration shall not be entitled to hold a position of Board member, officer, or any other position created by the Board, until said assessments are current.
- 4.3 Voting Rights. Each Unit shall hold one (1) vote. When more than one Person holds an interest in any Unit, all such Persons shall be members of the Association, but all such Unit Owners shall be entitled to only one (1) vote for each Unit owned. When a Unit is owned by more than one (1) Person, they shall exercise the vote as they, amongst themselves, determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot. There shall be no fractional voting by any Unit. Furthermore, any Unit Owner that is not current with all assessments due or levied under this Declaration shall not be entitled to vote.
- 4.4 Notice and Quorum for any Meeting. There shall be at least an annual meeting of the Association and such other special meetings as may be called by the Board. Unless otherwise provided in the Bylaws, the annual meeting shall occur within the months of June or July each year. Written notice of any meeting, whether annual or special, including the date, time, purpose, and place of the meeting, shall be sent to all Unit Owners not less than ten (10) nor more than more than forty-five (45) days in advance

of the meeting. The Bylaws shall conform to the requirements of West Virginia state law and shall govern the following: 1) matters that may be discussed at any such meeting; 2) the quorum required to proceed with any meeting; 3) the ability of the Unit Owners to vote by a proxy; and 4) such other matters as may be necessary and appropriate for the formation and operation of the Association.

4.5 Rights and Duties of the Association.

4.5.1 Subject to any and all reservations and rights held by the Declarant, the Board shall have the right to enforce or fulfill any and all rights and obligations set forth in this Declaration.

4.5.2 It shall be the affirmative duty of the Association to maintain the Common Area and, as necessary, repair, reconstruct, or replace any part of the Common Areas that requires repair, reconstruction, or replacement. Such maintenance, repair, reconstruction, or replacement shall be completed by the Association regardless of the cause necessitating such work, including, but not limited to, Acts of God and vandalism. Additionally, the Association shall be responsible for any corrective action necessary due to the malfunctioning of any portion of the Common Area.

4.5.3 The Association shall be responsible for snow removal on all streets within the Common Area.

ARTICLE V

ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessment. Each Unit Owner, by the acceptance of a deed for a Unit, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association an annual assessment fee. The annual assessment, together with any interest, costs, and reasonable attorney's fees included in the collection thereof, shall be a charge upon the Unit against which each such assessment or fee is made and shall also be a personal obligation of the Unit Owner who had title to such Unit at the time when the assessment fell due. The Declarant shall not be required to pay any fees whatsoever to the Association or Unit Owners, including but not limited to, annual assessments, other assessments, user fees, or insurance premium fees. The initial annual assessment is established at Two Hundred Dollars and No Cents (\$200.00) per calendar year.

5.2 Purpose of Assessment. The annual assessment fee levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Unit Owners by providing for the improvement, maintenance, construction, and repair of the Common Area and carrying out rights and obligations of the Association set forth in this Declaration.

5.3 Maximum Annual Assessment. The maximum annual assessment shall be three hundred dollars (\$300.00) per Unit subject to adjustment pursuant to § 1-114 of the Act (36B-1-14), and any amendments which may subsequently be made thereto, exclusive,

however, of each Unit Owners *pro rata* share or insurance premiums paid by the Association. The annual assessment provided for herein shall commence as to each Unit when conveyed to a Unit Owner by the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due date for the payment of the annual assessment shall be January 1, unless another date is established by the Board. Any assessment not paid within sixty (60) days after the due date shall bear interest from the due date at the legal rate allowed by law. The assessment shall be due and payable irrespective as to whether any Unit Owner makes use or the Common Area or abandons his Unit. Once an assessment is due and not paid according to this Article, the Association shall be entitled to record a notice of lien against any Unit in the Office of the Clerk of the County Council of Berkeley County, West Virginia and/or bring any action at law against the Unit Owner to personally obtain payment of the same and to institute a lien against the Unit.

- 5.4 Subordination of the Lien. The lien of assessment and all interest and costs of collection, including attorney fees provided for herein, shall be subordinate to the lien of any deed of trust or mortgage recorded in the Office of the Clerk of the County Council of Berkeley County, West Virginia prior to any notice of lien having been filed in the Office of the Clerk of the County Council of Berkeley County, West Virginia. The sale or transfer of any Unit shall not affect the said lien; however, the same shall not be the responsibility of any purchaser of the Unit until the notice of lien is of record in the Office of the Clerk of the County Council of Berkeley County, West Virginia.

ARTICLE VI

RESTRICTIONS, COVENANTS AND EASEMENTS

- 6.1 Subject to any and all reservations and rights held by the Declarant, the following restrictions, covenants, and easements apply to all Units and to the Common Area:
- 6.1.1 Easements.
- 6.1.1.1 Each Unit shall be subject to any easement or right of way shown on the Plat.
- 6.1.2 Occupants Bound.
- 6.1.2.1 All provisions of the Declaration, Bylaws, and of any rules and regulations or use restrictions promulgated pursuant thereto that govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with this Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. Accordingly, notwithstanding any lease or other

agreement to the contrary, all occupants shall be jointly and severally liable for compliance with this Declaration and subject to the sanctions herein.

6.1.3 Animals.

- 6.1.3.1 No livestock, poultry, feed lots, kennels, boarding, or breeding of animals for sale shall be permitted in any part of the Common Interest Community.
- 6.1.3.2 No domestic animals or pets shall be permitted in the Common Interest Community that pose a risk to human health and safety or to the safety of other pets that are properly maintained within the Common Interest Community.
- 6.1.3.3 Canines shall not be fixed to any item on any part of the Common Interest Community, including chains or chords or similar encumbering devices.
- 6.1.3.4 No canines shall be continuously kept outside of a residential structure for more than one (1) hour at a time, unless accompanied by the Unit Owner that owns said canine.
- 6.1.3.5 Canines that are outside of a residential structure shall be confined by a fence or maintained on a leash at all times.
- 6.1.3.6 The persistent disturbance created by pets such as the persistent barking of a canine shall not be permitted in any part of the Common Interest Community and shall constitute a Nuisance for purpose of this covenant.
- 6.1.3.7 No Unit shall be used for the accumulation and/or harboring of pets in a manner that constitutes or creates a Nuisance.
- 6.1.3.8 All pets shall be licensed and vaccinated in accordance with State laws.

6.1.4 Noxious, Illegal or Offensive Use.

- 6.1.4.1 There shall be no noxious emissions of dust, sweepings, cinders, gases or other substances into the atmosphere in the Common Interest Community, excepting: (1) properly operating residential stoves and fire places from residential chimneys; (2) outside grill emissions; and, (3) properly operating motors used in the ordinary course of residential living. Burning is expressly prohibited on all Units.
- 6.1.4.2 No noxious, illegal, or offensive use of any Unit shall be permitted on any Unit, nor shall anything be done thereon that may be, or become, an annoyance or nuisance to the Common Interest Community.
- 6.1.4.3 Excessive noise that intrudes upon the peaceful enjoyment of a Unit Owner's Lot is not permitted.

6.1.4.4 The directing of spotlights or flood lights upon surrounding Units or the Common Area so as to cause annoyance is not permitted.

6.1.4.5 No part of the Common Interest Community shall be used for any purpose that may endanger the health or unreasonably disturb the quiet enjoyment of any occupant of adjacent or neighboring properties.

6.1.5 Hazardous Uses; Waste.

6.1.5.1 Nothing shall be done or kept on any part of Common Interest Community that will increase the rate of insurance applicable for permitted uses for any Unit, the Common Area, or the Property or any part thereof without the prior written consent of the Declarant, including, without limitation, any activities that are unsafe or hazardous with respect to any Person or property. No Person shall permit anything to be done or kept on or in the Common Interest Community that will result in the cancellation of any insurance on any other Unit, the Common Area, or the Property or any part thereof that would be in violation of any law, regulation, or administrative ruling. Each Unit Owner shall comply with all Federal, State, and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage, or disposal of hazardous substances, toxic wastes, and other environmental contaminants (collectively the "Hazardous Materials"). No Unit Owner shall knowingly use, generate, manufacture, store, release, dispose of, or knowingly permit to exist in, on, under, or about any Unit, the Common Area, or the Property, or any portion thereof, or transport to or from any Unit, the Common Area, or the Property, or any portion thereof, any Hazardous Materials except in compliance with the Environmental Laws.

6.1.5.2 No waste shall be committed on the Common Area.

6.1.6 Unit Maintenance.

6.1.6.1 Each Unit Owner shall be individually responsible for the maintenance of that Unit Owner's Unit, including all improvements thereon, and for requiring that the activity thereon shall conform to this Declaration.

6.1.6.2 Every Unit Owner shall keep that Unit Owner's Unit reasonably trimmed and neat at all times, including but not limited to the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting or other appropriate external care of all buildings and all improvements on the Unit Owner's Unit, all in a manner and with such frequency as is consistent with good property management. No trash, garbage, rubbish, waste, or other materials shall

be deposited on any Unit except when deposited in covered sanitary containers and the same shall be maintained free from man-made debris and unsightly conditions. The outdoor storage of building materials, except for during reasonable periods of active construction, and outdoor placement of indoor furniture are examples of conditions that shall be deemed unsightly.

- 6.1.6.3 Each Unit shall be maintained free from conditions that create a Nuisance or Nuisances in the Common Interest Community.
- 6.1.6.4 The Unit Owner of each Unit shall keep the improvements upon the Unit Owner's Unit in good repair in order to prevent the existence of any unsightly condition that reasonably tends to detract from or diminish the aesthetic appearance of the Common Interest Community.
- 6.1.6.5 Improvements that have been partially or totally destroyed by fire or act of God shall not be permitted to remain in such condition for more than ninety (90) days from the time of such destruction or damage.
- 6.1.7 Subdivision of Unit, Time Sharing, Dwellings, and Occupancy.
 - 6.1.7.1 No Unit shall be further subdivided, except in accordance with this Declaration. Minor boundary adjustments, in accordance with the Berkeley County Land Ordinances, however, may be permitted with the approval of the Board. This provision shall not in any way restrict the Declarant's rights and reservations as set forth in the Declaration.
 - 6.1.7.2 No Unit shall be used as a right of way easement for access to any other Unit or to adjoining real estate without the expressed written permission of the Declarant. This provision shall not in any way restrict the Declarant's rights and reservations as set forth in the Declaration.
 - 6.1.7.3 No Unit shall be made subject to any type or timeshare or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule.
 - 6.1.7.4 No more than one single-family residence shall be erected on any Unit.
- 6.1.8 Weapons.
 - 6.1.8.1 The discharge of any firearms within the Common Interest Community is strictly prohibited.
- 6.1.9 Drainage.
 - 6.1.9.1 Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas, whether located on a Unit or the Common Area. No person other than the Declarant may obstruct or re-channel the drainage flows after location and installation of drainage wells, storm sewers, or storm drains within the Common Interest Community. The Declarant hereby

reserves a perpetual easement across the Property for the purpose of altering drainage and water flow as deemed appropriate in the sole and exclusive discretion of Declarant.

6.1.10 Occupancy Restrictions.

6.1.10.1 Subject to the rights and reservations of Declarant set forth herein, the following occupancy restrictions shall apply to all Units and the Common Area:

6.1.10.1.1 Signage.

6.1.10.1.1.1 No signs of any kind shall be erected within the Common Interest Community without the written consent of the Association or Declarant; provided, however, a Unit Owner may place upon the Unit Owner's Unit one (1) sign, not to exceed six (6) square feet in size, to advertise the sale of the Unit Owner's Unit. Under no circumstances shall a Unit Owner place any signs in the Common Area, including but not limited to, signs advertising the sale of the Unit Owner's Unit. The Declarant shall have the right to erect signs as, in Declarant's sole and absolute discretion, it deems appropriate, including the right of Declarant, to erect advertising signs of such dimension as Declarant may deem appropriate for the marketing of the Common Interest Community.

6.1.10.1.1.2 No signs, flags, banners, or similar items advertising or providing directional information with respect to activities being conducted outside the Common Interest Community shall be permitted within the Common Interest Community.

6.1.10.1.2 Vehicles, Motorcycles, Etc.

6.1.10.1.2.1 No inoperative or unlicensed motor vehicles or other motor-driven vehicles shall be left on a Unit for a total of more than sixty (60) days, except within an enclosed garage.

6.1.10.1.2.2 Trail bikes, snow mobiles, all-terrain vehicles, mini-bikes and similar vehicles may be stored in a garage located on any Unit, but none of such vehicles shall be otherwise placed, parked, used, or permitted to remain upon any Unit or road within the Common Interest Community.

6.1.10.1.2.3 No motorcycles shall be permitted in or on the Common Interest Community, except a licensed motorcycle with a

muffler may be used for ingress to and egress from a Unit.

6.1.10.1.2.4 No vehicle having a carrying capacity in excess of one (1) ton, any construction machinery, boats or boat trailers, dump trucks, commercial road trucks, tractors, or rigs normally used for pulling or hauling trailers, box-trailers, tank trailers, low-boys, flat beds, or other similar vehicles, heavy trucks, truck-type tractors, or other similar vehicles, no matter how propelled, shall be placed, parked, stored, or permitted to remain upon any Unit or street in the Common Interest Community, except for temporary use during construction or repair of any structure on a Unit or Common Area, or appurtenant structures, streets, utilities, or other common amenities thereto, or while actively being used in such construction or repair or for such temporary uses as moving or making deliveries to a Unit or Common Area.

6.1.10.1.2.5 No motor homes, travel trailers, campers or trailers of any type shall be kept or parked on any Unit or the Common Area, except and unless stored and parked in an enclosed garage with walls and/or doors on all four sides of said enclosed garage.

6.1.10.1.3 Residential Uses.

6.1.10.1.3.1 Each Unit shall be used exclusively for a single-family residence.

6.1.10.1.3.2 No Unit Owner shall at any time conduct or permit to be conducted on any Unit any trade or business of any type, whether it is commercial or noncommercial, religious or otherwise, including, but not limited to, day schools, nurseries, or church schools; provided, however, that home offices which do not involve on-site physical traffic of patrons or customers shall be permitted subject to the requirements of all local zoning ordinances.

6.1.10.1.4 Manufactured Homes Prohibited.

6.1.10.1.4.1 No mobile homes, house trailers, double-wide homes, trailer homes, or manufactured homes as defined by W. Va. Code § 17 A-1-1 (qq), (rr), and (ss) and 42 U.S.C. § 5401, *et seq.* shall be permitted within the Common Interest Community. Furthermore, no modular homes shall be permitted within the Common Interest Community.

6.1.10.1.5 Appurtenances.

- 6.1.10.1.5.1 Any exterior appurtenance to a Unit, including but not limited to, propane and other above ground tanks, solar devices, chimney flues, hot tubs, in-ground swimming pools, satellite dishes, shall be aesthetically concealed from view on all sides and shall be shielded in such a manner as to minimize noise and safety risks, to the extent technically feasible.
- 6.1.10.1.5.2 Perimeter fencing of an individual Unit shall be permitted with the following conditions, namely said fencing: 1) shall not exceed four and one half (4 1/2) feet in height; 2) shall be constructed of wood, vinyl, or materials of similar or better quality; 3) shall be contained exclusively on the back of the residential structure; 4) and shall be constructed no closer than two feet (2') from the side border of a Unit and four feet (4') from the back border of a Unit. Chain-link fences shall not be permitted on any Unit. Shared fence lines shall not be permitted between Unit Owners. As long as Declarant owns a Unit within the Common Interest Community, any Unit Owner desiring to construct a fence within the Unit Owner's Unit must receive the prior written approval of Declarant of any fencing to be constructed on the Unit Owner's Unit by providing such request to Declarant in writing. Declarant shall review each such written request and provide a response within thirty (30) days. After thirty-days, said request will be deemed approved; provided, however, failure of Declarant to respond within the allotted time does not constitute a variance of the requirements set forth herein.
- 6.1.10.1.5.3 No above-ground swimming pool shall be erected, constructed, or installed on any Unit. In-ground swimming pools shall be permitted on any Unit; provided, however, before any such in-ground pool is installed, plans and location of in-ground swimming pools must be approved by the Declarant. Swimming pools shall be fenced so as to prevent entry over, through or under the fence, with self-locking and self-closing gates. Swimming pools shall be properly maintained and covered from November 15 until March 15 of each year.

6.1.10.2 Sight Distance at Intersection of Common Interest Community Streets and Roads.

6.1.10.2.1 Every Unit located at the intersection of a street or road within the Common Interest Community shall be landscaped so as to permit safe sight across the street corners. The Declarant reserves the right to deem any landscaping, including but not limited to, trees and shrubbery, a Nuisance and require the same to be reduced in size or removed.

6.1.10.3 Set-Backs.

6.1.10.3.1 All structures, including residences, garages, utility buildings, porches, stoops, patios, decks, recreation equipment, and any other structures or swimming pools, shall be constructed within the set-back limits set forth on the Plat. It is expressly understood that Declarant, in its sole and absolute discretion, may vary from this requirement in the construction of a residential structure on a Unit, including any appurtenances thereto, and, in such case, said encroachment shall be deemed a permitted variance of this restriction.

6.1.10.4 Artificial Lighting.

6.1.10.4.1 No artificial lighting shall be directed at any road or street within the Common Area Community so as to interfere with the clear vision of operators of motor vehicles upon the roads.

6.1.10.5 On-Site Fuel Storage.

6.1.10.5.1 No on-site storage of gasoline, heating, or other fuels shall be permitted on any Unit or the Common Area; provided, however, each Unit Owner may store up to five gallons of fuel in the Unit Owner's Unit for emergency purposes, operation of lawn mowers, and similar tools or equipment and outdoor grills. This restriction shall not be construed to prohibit the storage of heating oil or propane gas or other fuels for the heating of enclosed areas on a Unit providing that the storage tanks are screened and installed as fixtures by those duly qualified to install the same.

6.1.10.6 Rentals.

6.1.10.6.1 In the event a Unit Owner leases that Unit Owner's Unit, said Unit Owner has an affirmative duty to provide a copy of this Declaration to the Unit Owner's tenant or tenants.

6.2 Enforcement.

6.2.1 Subject to the limitations set forth in this Declaration, the Declarant, the Association, and each Unit Owner shall have the right to enforce the restrictions, covenants, and conditions contained within this Article VI.

6.2.2 In the event that any Unit Owner fails to maintain the Unit Owner's Unit or improvements thereon in accord with the restrictions, covenants, and conditions contained within this Article VI, the Declarant or Association shall have the right to enter the Unit for the purpose of performing necessary work or other steps to render the Unit compliant with this Declaration, including but not limited to, the removal of junk, trash, and rubbish, and to assess the Unit Owner for all costs so incurred; provided, however, the Declarant or Association shall first provide ten (10) days written notice of the violation(s), with a proposed course of correction, provided through the U.S. Mail, return receipt requested, at the address of the subject Unit, or at such other address as the Unit Owner. In the event Declarant or Association incurs costs or expenses to render the Unit compliant with the restrictions, covenants, and conditions contained within this Article VI, said costs and expenses shall constitute an additional assessment against said Unit, and said assessment shall constitute a lien against the Unit, and the Declarant and/or Association shall have the right to record a lien against said Unit in the Office of the Clerk of the County Council of Berkeley County, West Virginia and/or file suit for additional assessment, in addition to all reasonable costs of collection, reasonable attorney fees, and expenses incurred in the collection of such additional assessment, subject however, to the subordination of such lien as set forth above in this Declaration.

6.2.3 Any Unit Owner desiring to enforce the restrictions, covenants, and conditions contained within this Article VI shall have a right to file a civil action, seeking any appropriate relief, within the Circuit Court of Berkeley County, West Virginia. The prevailing party of such action shall be entitled to that party's costs, and/or attorney fees in such civil action. It is understood, however, that only the Declarant or Association shall have the right to enforce any restrictions, covenants, and conditions contained within this Article VI specific to the Common Area.

6.3 Application of Restrictions and Covenants to Declarant. None of the foregoing restrictions and covenants shall apply to Declarant.

ARTICLE VII

ARCHITECTURAL CONTROL

- 7.1 Right Established; Transfer of Right. For the purpose of this Article VI, Declarant shall control all architectural review until Declarant either transfers said right to a successor or assign or the Association or at the time Declarant no longer owns any part of the Property, whichever occurs sooner. A transfer of the architectural review right prior to Declarant having sold all parts of the Property shall only be effective by a written instrument recorded in the Office of the Clerk of the County Council of Berkeley County, West Virginia. Upon such transfer, all rights of Declarant under this Article VII shall be held by such successor, assign, or the Association, whichever the case may be.
- 7.2 Architectural Approval. In the event that any Unit owner shall intend to have a residential structure or improvement constructed upon a Unit other than by Declarant, then architectural approval shall first be obtained from Declarant. Each written request made to Declarant shall include the plans (including elevations and pertinent details of exterior construction of any improvement), materials, and the name of Person to perform the improvement, except as prior approval may be waived to certain improvements which are adopted by Declarant. Declarant shall have the right to take into consideration the suitability of the proposed improvement in Declarant's sole discretion, including but not limited to the materials, colors, design, location, and harmony of the Common Interest Community of such improvement.
- 7.3 Decision. Declarant shall provide a written response to each request under this Article VII within thirty (30) days of written application of the Unit Owner. If the request is denied by Declarant, Declarant shall provide a written reason as to why the request was denied. It is expressly understood, however, that Declarant shall not unreasonably withhold approval of any improvement that strictly complies with this Declaration. If a written request to make an improvement to a Unit is approved, said improvements shall be completed within one (1) of such approval. Otherwise, the Unit Owner shall be required to re-apply for written approval of the improvement with Declarant under this Article.
- 7.4 No Liability. There shall be no liability imposed upon the Declarant for Declarant's approval or denial of any proposed improvements to a Unit for any loss, damage, or injury arising out of or in any way connected with the performance of the duties thereof. In reviewing any proposed improvement to a Unit, Declarant shall not be responsible for ensuring that any improvement complies with applicable building codes or other governmental laws or regulations or that the Person making the improvement obtains any proper building permit or required inspections to complete the improvements. Nor shall Declarant's approval of any improvement to a Unit be deemed an approval that such improvements comply with of such applicable building codes or other governmental laws or regulations.
- 7.5 Damage During Construction. During construction of any improvement upon any Unit, the Unit Owner shall be responsible for all damage, loss, or repairs caused by such construction to any other Unit or the Common Area. If the Unit Owner does not cause these repairs to be made, Declarant may have the repairs performed and shall have a

cause of action against the Unit Owner for the cost of such repairs, together with such lien rights and collection rights as are set forth in Article 4 above.

ARTICLE VIII

NOTICES

- 8.1 All Unit Owners shall be required to provide to the Declarant and Association their current mailing address. Utilization of the address so supplied, or, in the absence of same, of the address to which assessments are mailed for said lot, shall constitute the legal address for the purpose of any notice required pursuant to all restrictive covenants applicable to said Unit.
- 8.2 In the event that a Unit is occupied by a tenant or tenants, the Unit Owner of said Unit shall be responsible for ensuring that the Declarant and Association is provided the identity of the tenants and their mailing address.

ARTICLE IX

AMENDMENTS TO DECLARATION

- 9.1 General. Until such time as it is no longer owns any portion of the Property, Declarant shall have the sole and exclusive right to amend this Declaration, without limitation and without notice to or the consent or vote of the Association or Unit Members. Unit Owners shall have no cause of action against Declarant for any claim for amendments made to this Declaration, including but not limited to, a cause of action that assert a claim for diminution of value caused by the amendment of this Declaration.
- 9.2 Amendment by Unit Owners. After Declarant no longer owns any portion of the Property, the Unit Owners may amend this Declaration only by the written consent of seventy-five percent (75%) of the Unit Owners, that, in the event additional lands have been added to this Declaration, shall include all such additional units.

ARTICLE X

MISCELLANEOUS

- 10.1 Captions. The captions contained in this document are inserted only as a matter of convenience and for reference and, in no way, shall define, limit, or describe the scope of this Declaration nor the intent of any provision hereof.
- 10.2 Waiver. No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
- 10.3 Severability. Invalidation of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration.
- 10.4 Additional Lands of Declarant. These covenants shall not be construed so as to apply to or restrict the use of any lands outside of the Common Interest Community, regardless of whether or not said adjacent or adjoining lands are owned by Declarant. This shall apply to any parts of the Property to dedicated to this Declaration.

- 10.5 Assignment. Declarant, in Declarant's sole and exclusive discretion, may assign any right or reservation contained within this Declaration, whether such assignment is a full or partial assignment of such rights and reservations, without notice to or the vote or consent of the Association or Lot Owners. Any such assignment shall be recorded in the Office of the Clerk of the County Council of Berkeley County, West Virginia to become effective. Upon such transfer of such rights or reservations, whether such assignment is a full or partial assignment of such rights and reservations, the Person having received such assignment shall be deemed to hold the rights and/or reservations of Declarant so assigned, and shall have those rights and obligations specific to the rights and reservations set forth herein so assigned.

ARTICLE XI

BINDING ON SUBSEQUENT OWNERS

- 11.1 All provisions of this Declaration, including but not limited to, all restrictions, covenants, conditions, shall run with the land and bind the heirs, successors, and assigns of the Association and any Unit Owner. Each Unit Owner, by the acceptance of a deed for a Unit, whether or not it shall be so expressed in such deed, is deemed to covenant and agree with all provisions contained within this Declaration.

WITNESSETH THE following signature of Declarant.

POST-CONSTRUCTION REPORT



BERKELEY COUNTY
PUBLIC SERVICE STORMWATER DISTRICT

Location: Nadenbousch Pines
Date of Inspection: 1/9/2023

Inspector: David Billmyer
Email: dbillmyer@bcpssd.com
Office Phone: 304-596-6973
Mobile Phone: 304-702-3214

Documents Referenced:

1. Preliminary Plat and Site Development Plans for Nadenbousch Pines Plan Change November 2018
2. Preliminary Plat and Site Development Plans for Nadenbousch Pines Plan Change November 2018 As-Built Survey
3. Preliminary Plat and Site Development Plans for Nadenbousch Pines Plan Change November 2018 As-Built Survey, Phase II
4. Nadenbousch Pines Plan Change Stormwater Management Report

Report Send Date: 1/10/2023
Via: Electronic Mail
Recipient: Doug Smith, Berkeley County Engineer

Inspector Signature/Date

David Billmyer 1/10/2023

THE FOLLOWING OBSERVATIONS WERE MADE WHILE REFERENCING THE DOCUMENTS LISTED IN THIS REPORT. IF ANY DOCUMENTED ADMINISTRATIVE OR MAJOR PLAN CHANGES EXIST THAT WOULD NEGATE THE OBSERVATIONS PRESENTED, PLEASE MAKE THEM AVAILABLE TO THE MS4 INSPECTOR ASSOCIATED WITH THIS REPORT.

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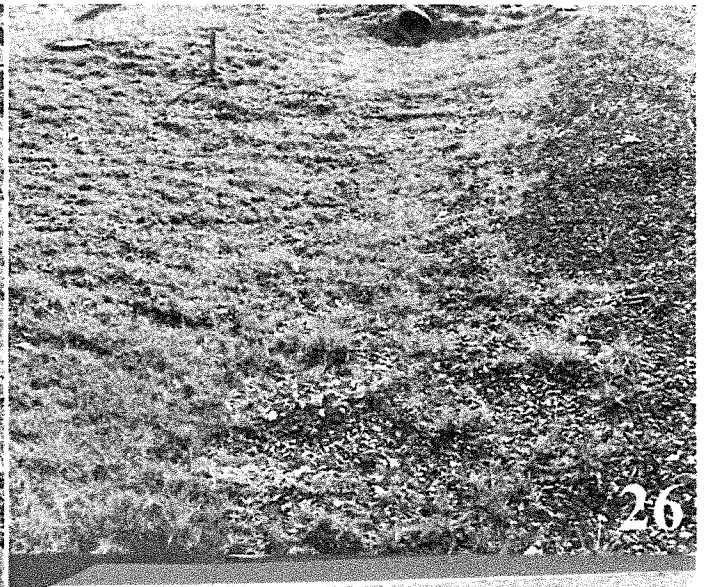
SECTION 1 - OBSERVATIONS 1-139

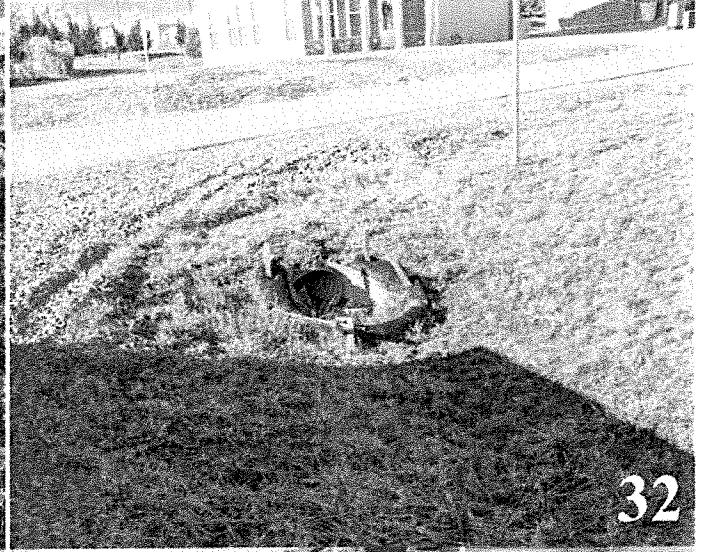




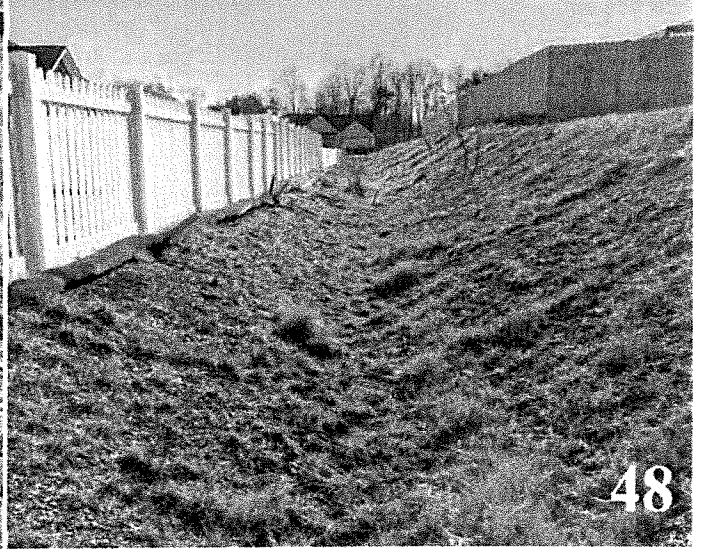
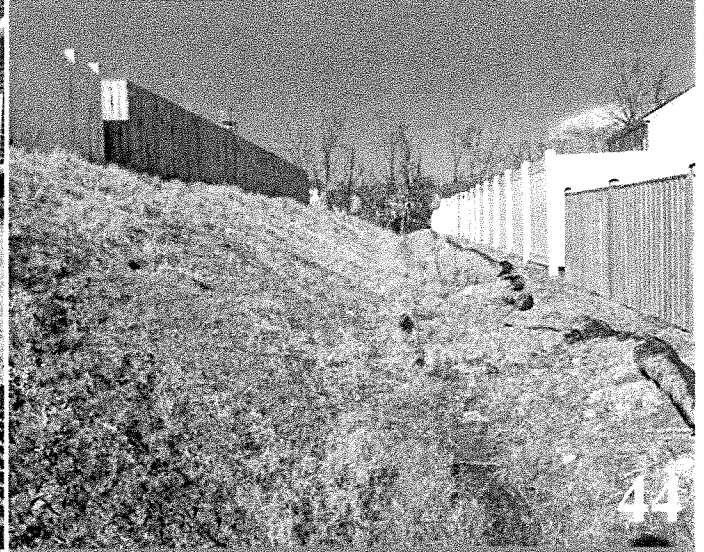




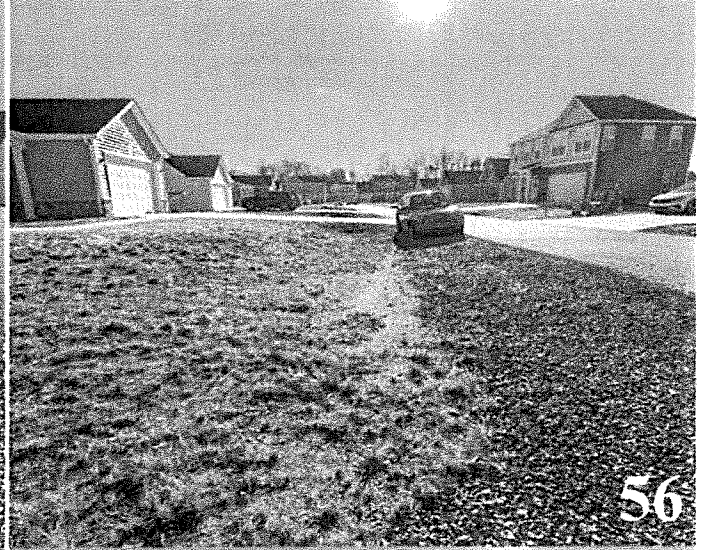




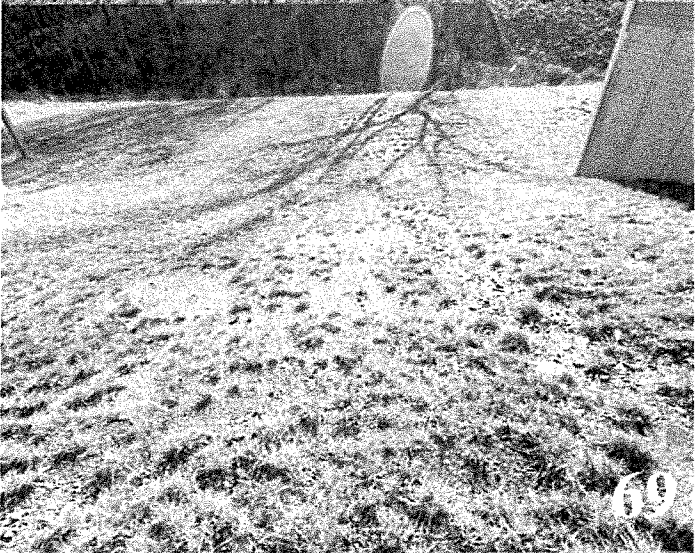












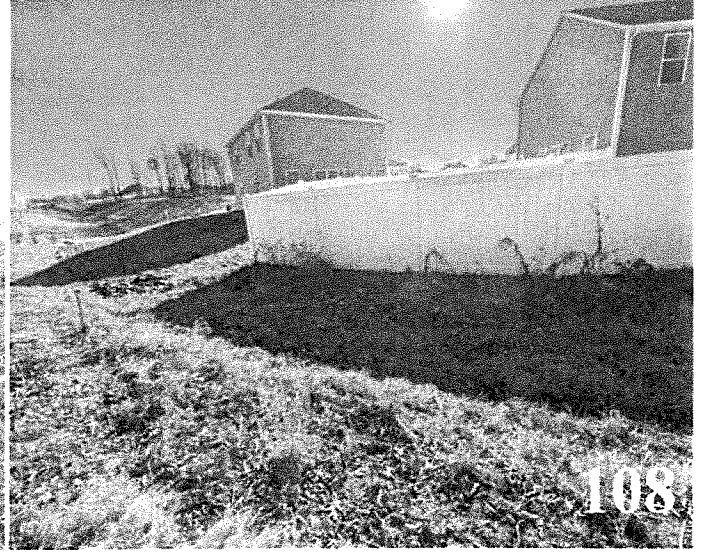
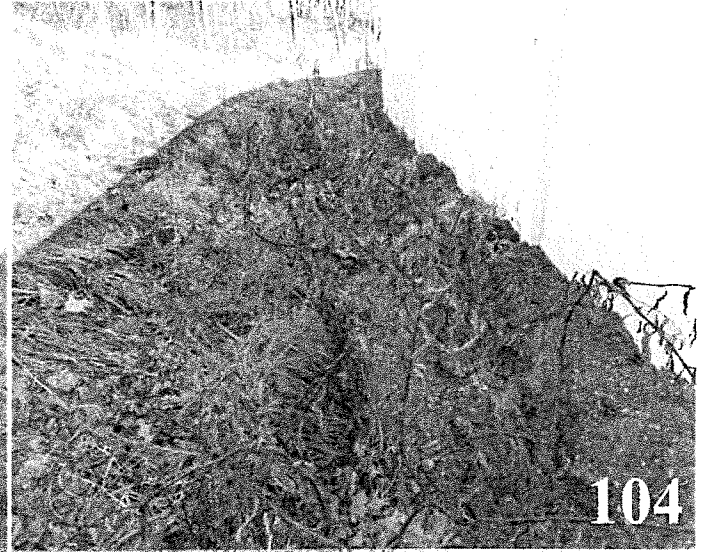


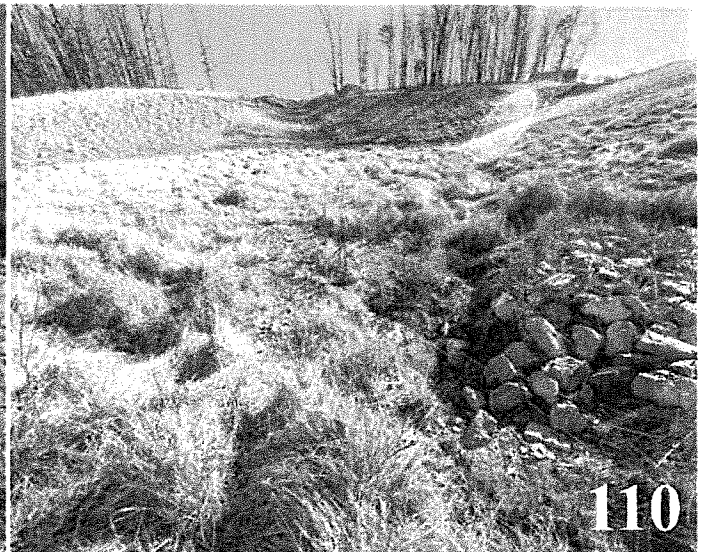














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116



117



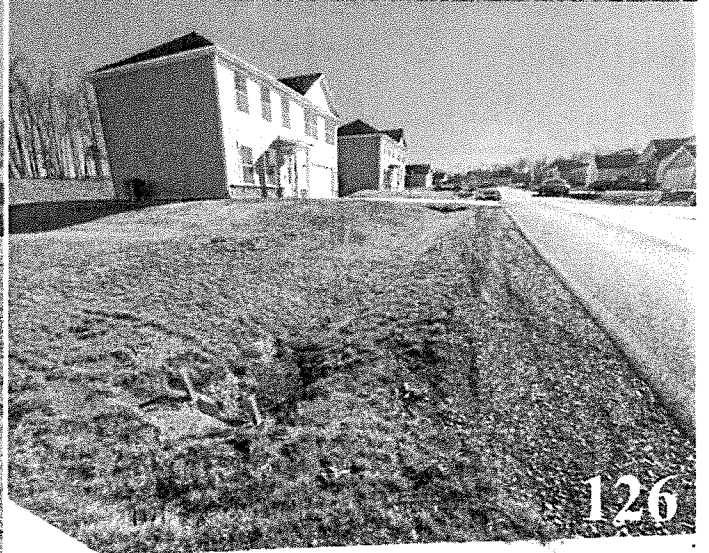
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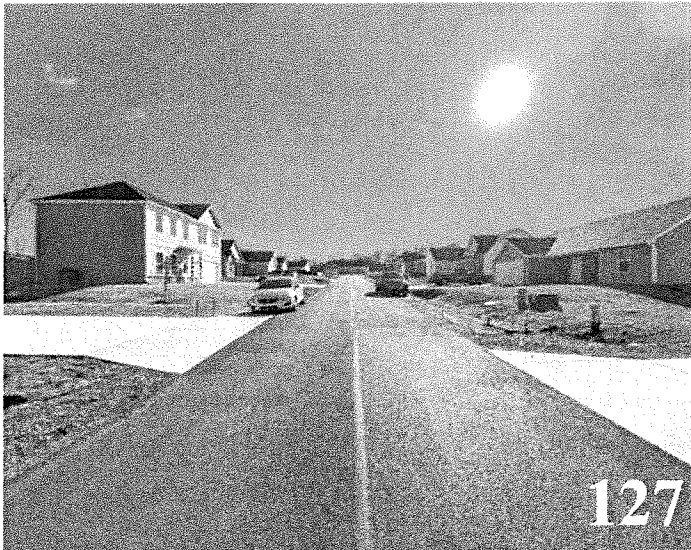


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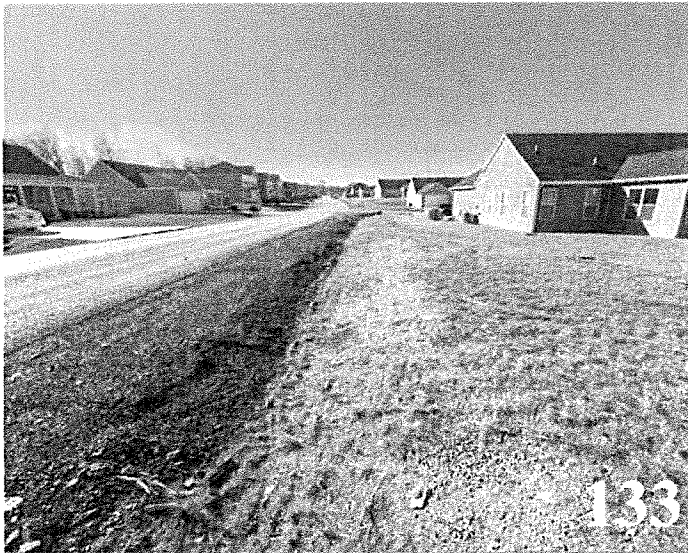
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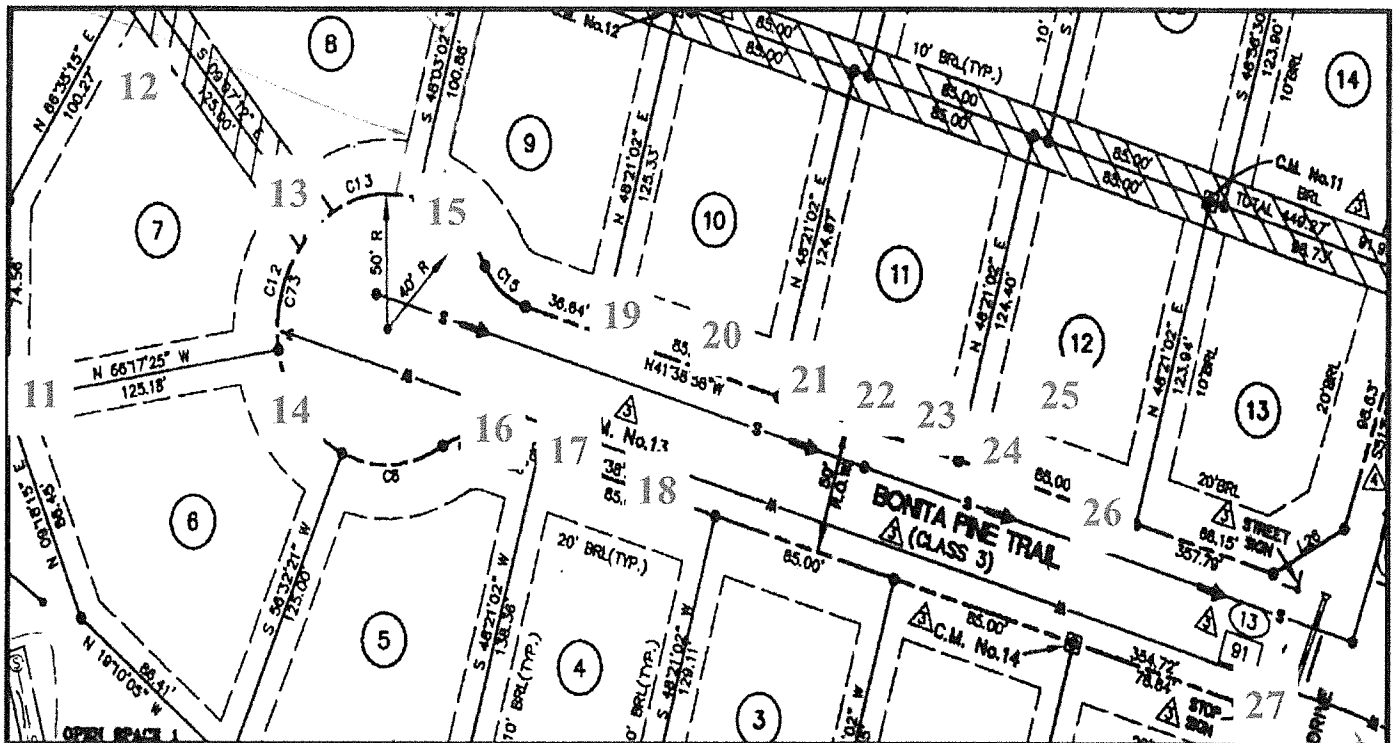
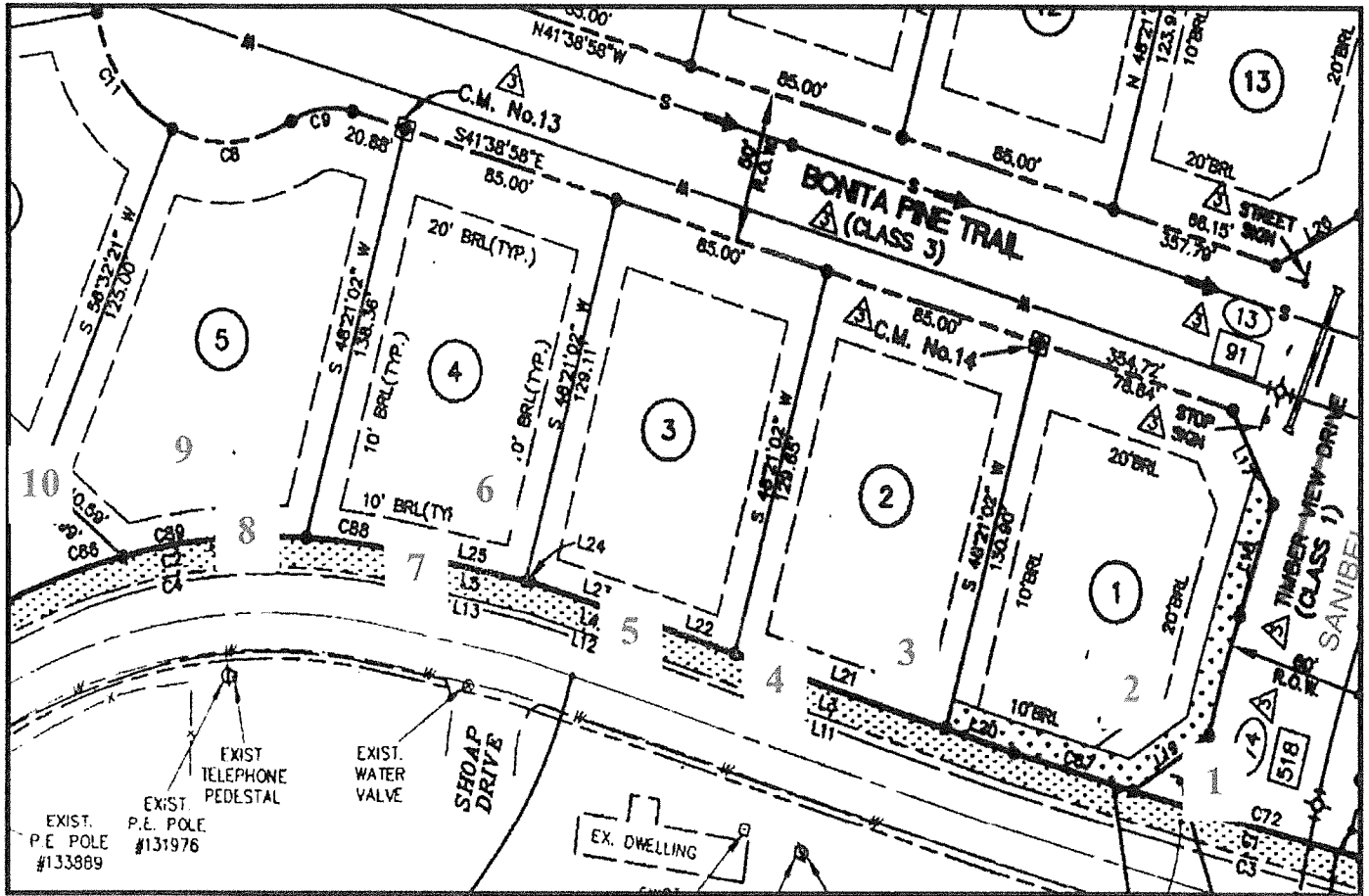
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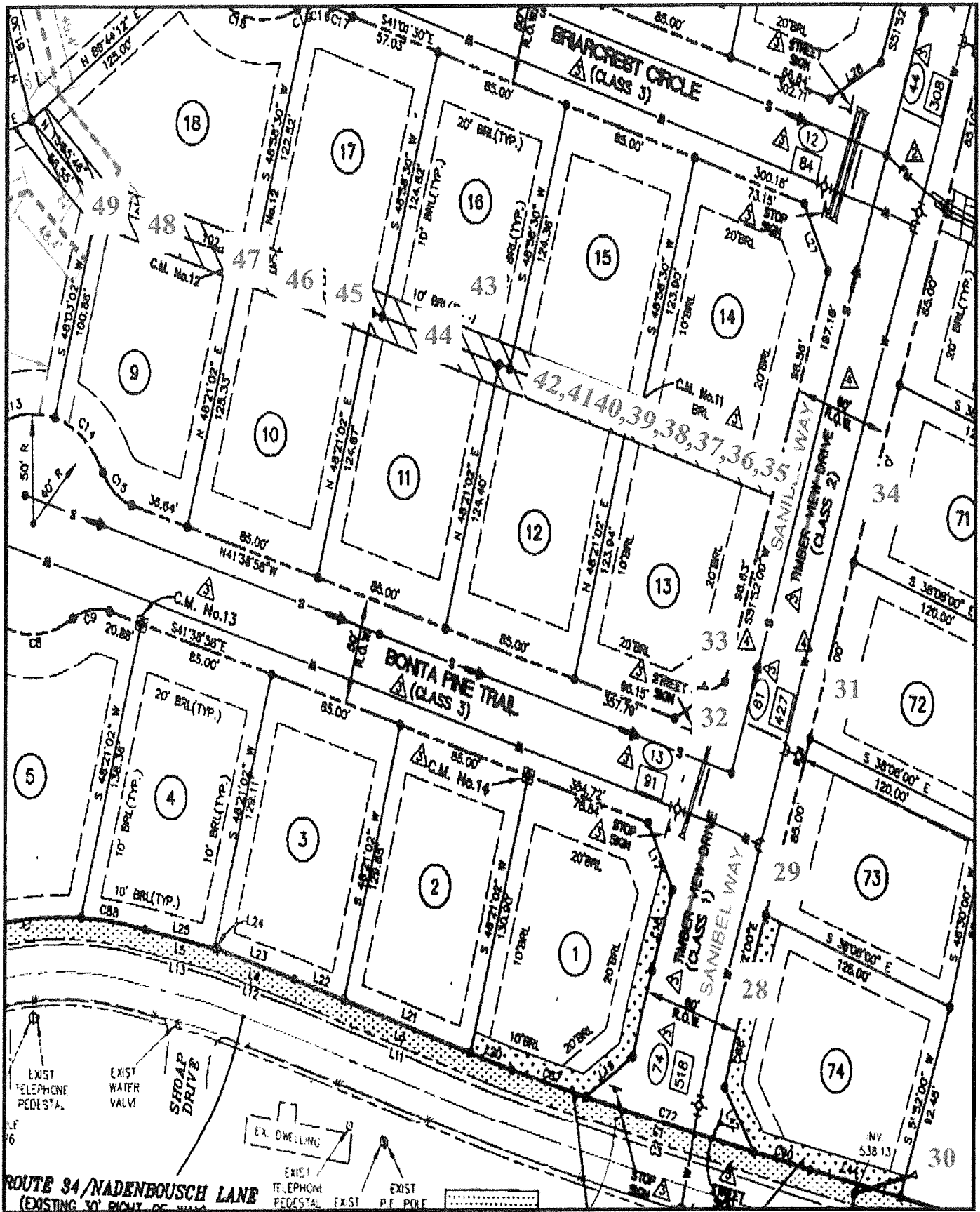


SECTION 2 - OBSERVATION LOCATIONS

1-27

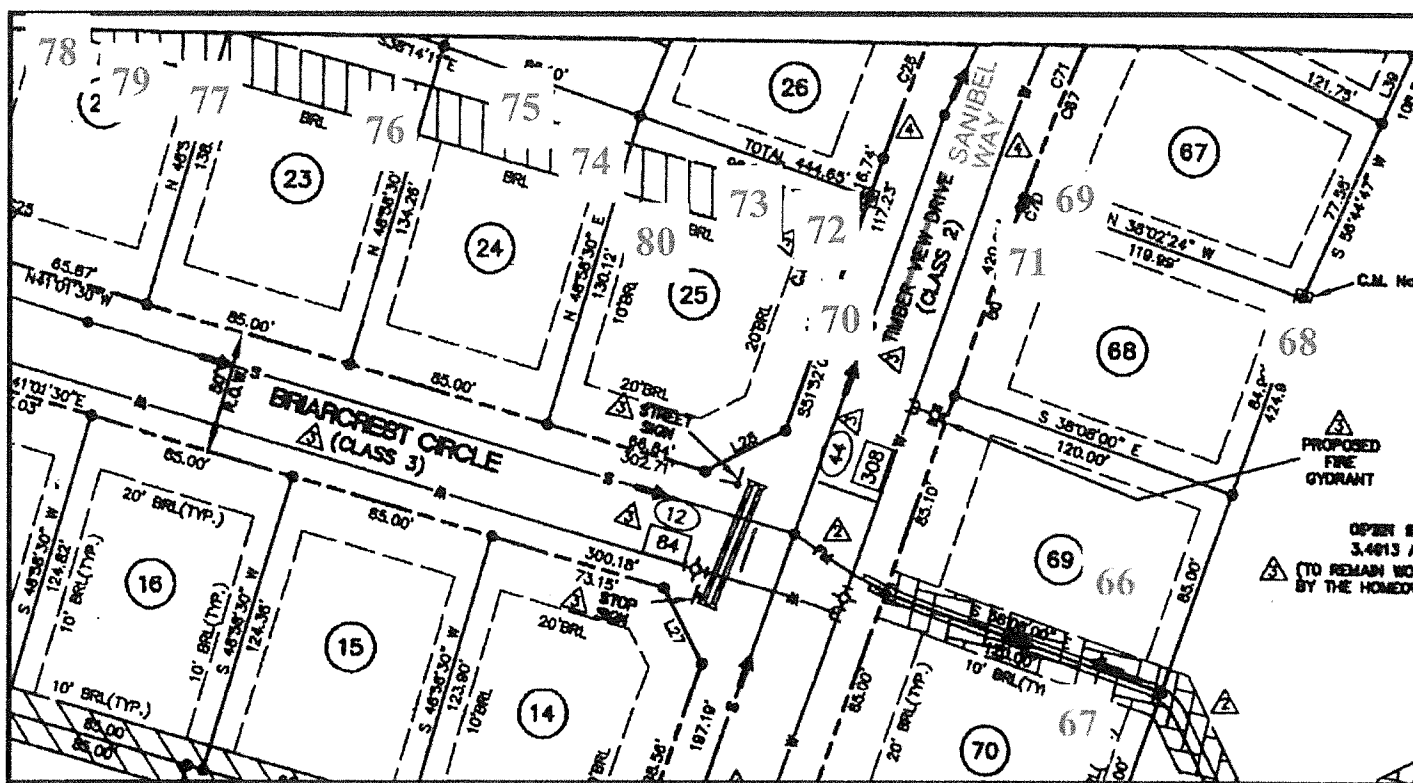
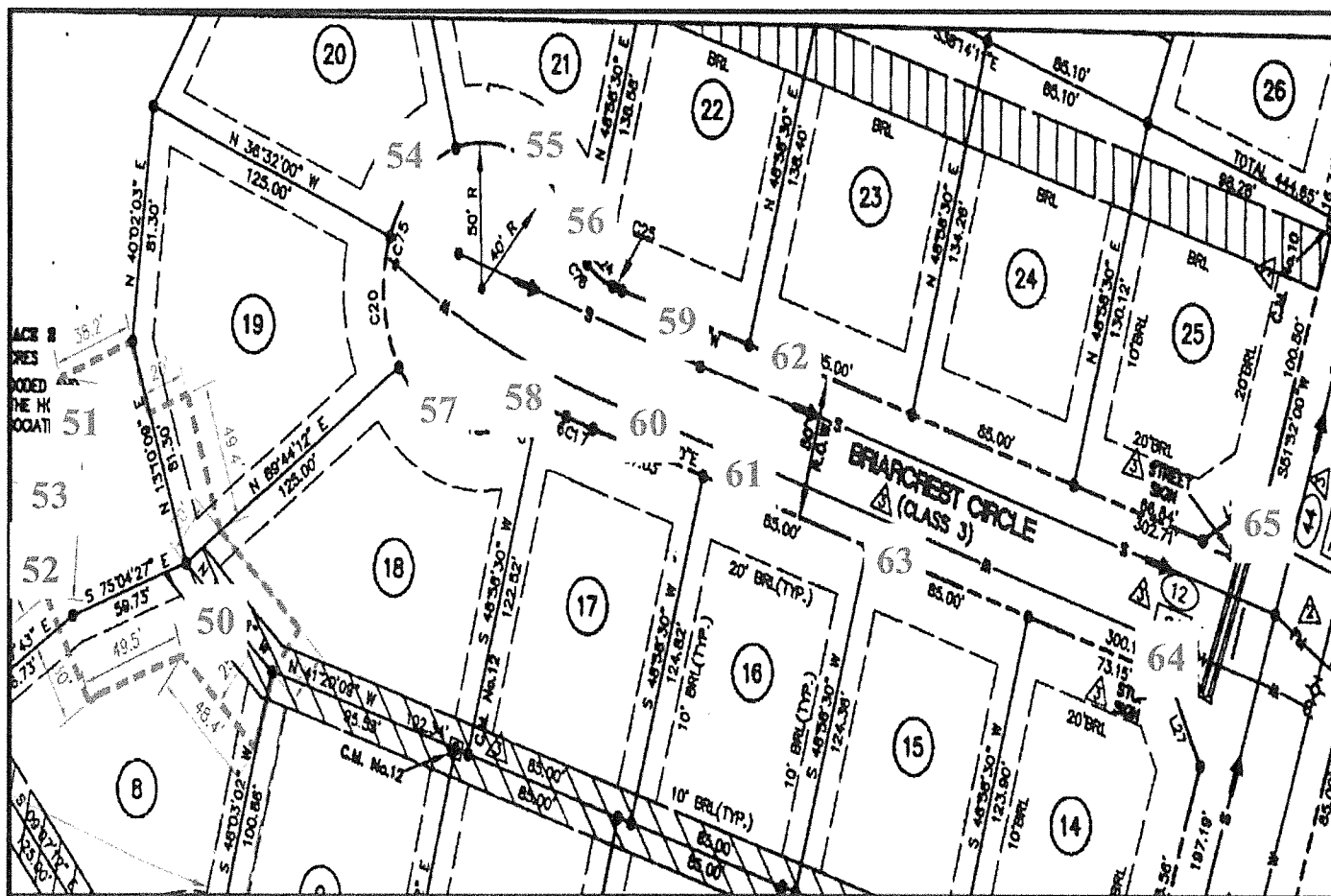


OBSERVATION LOCATIONS 28-49

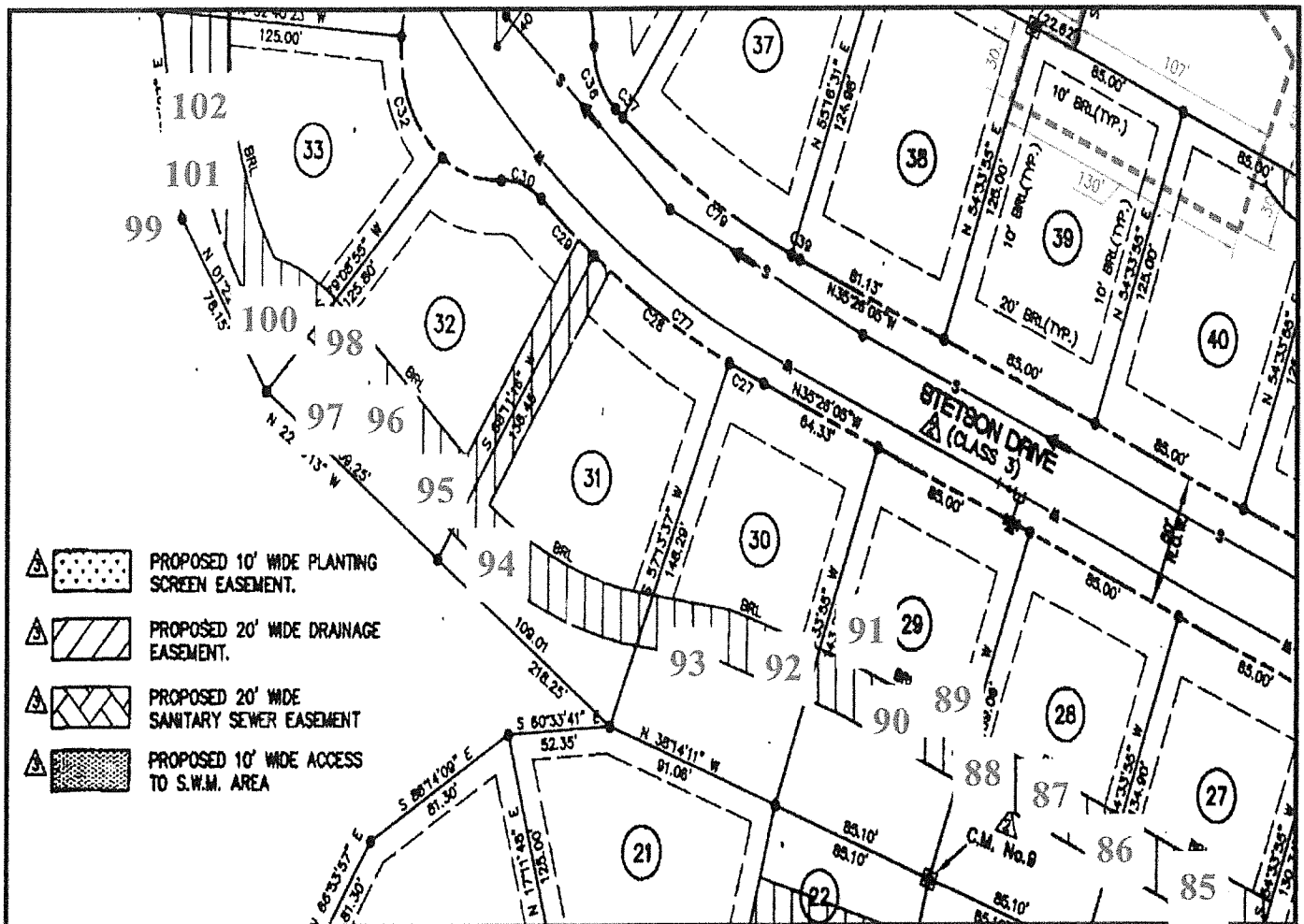
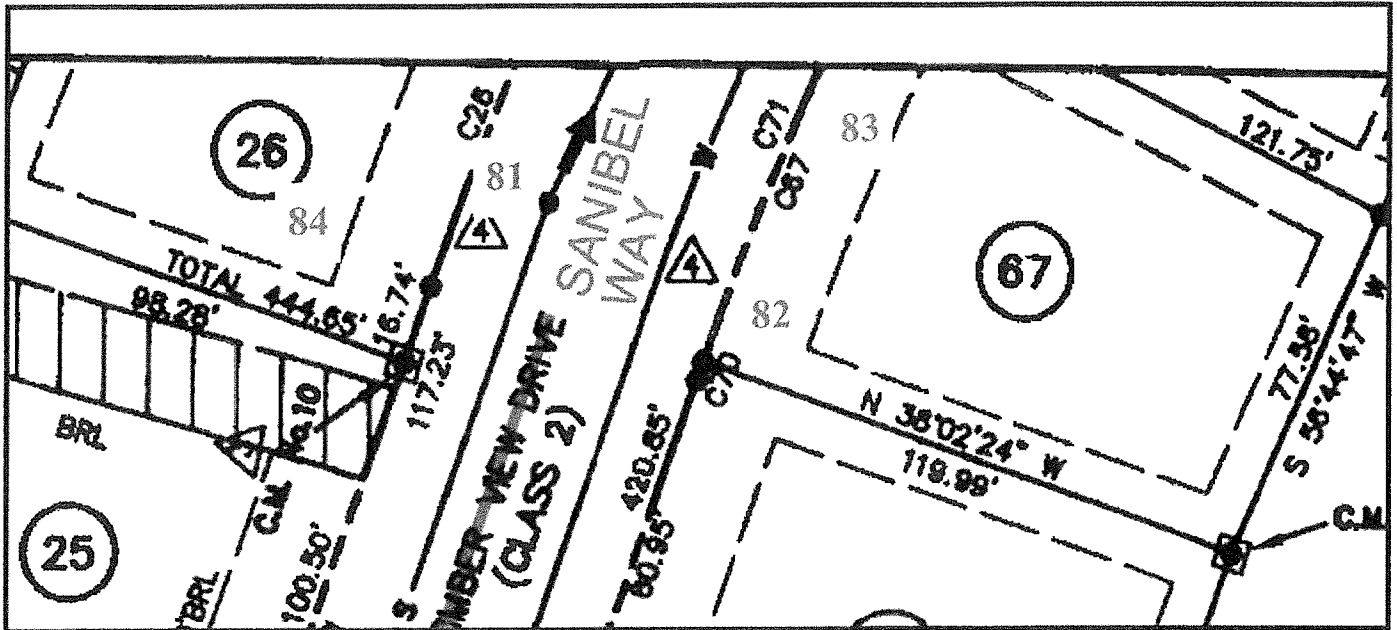


OBSERVATION LOCATIONS

50-80

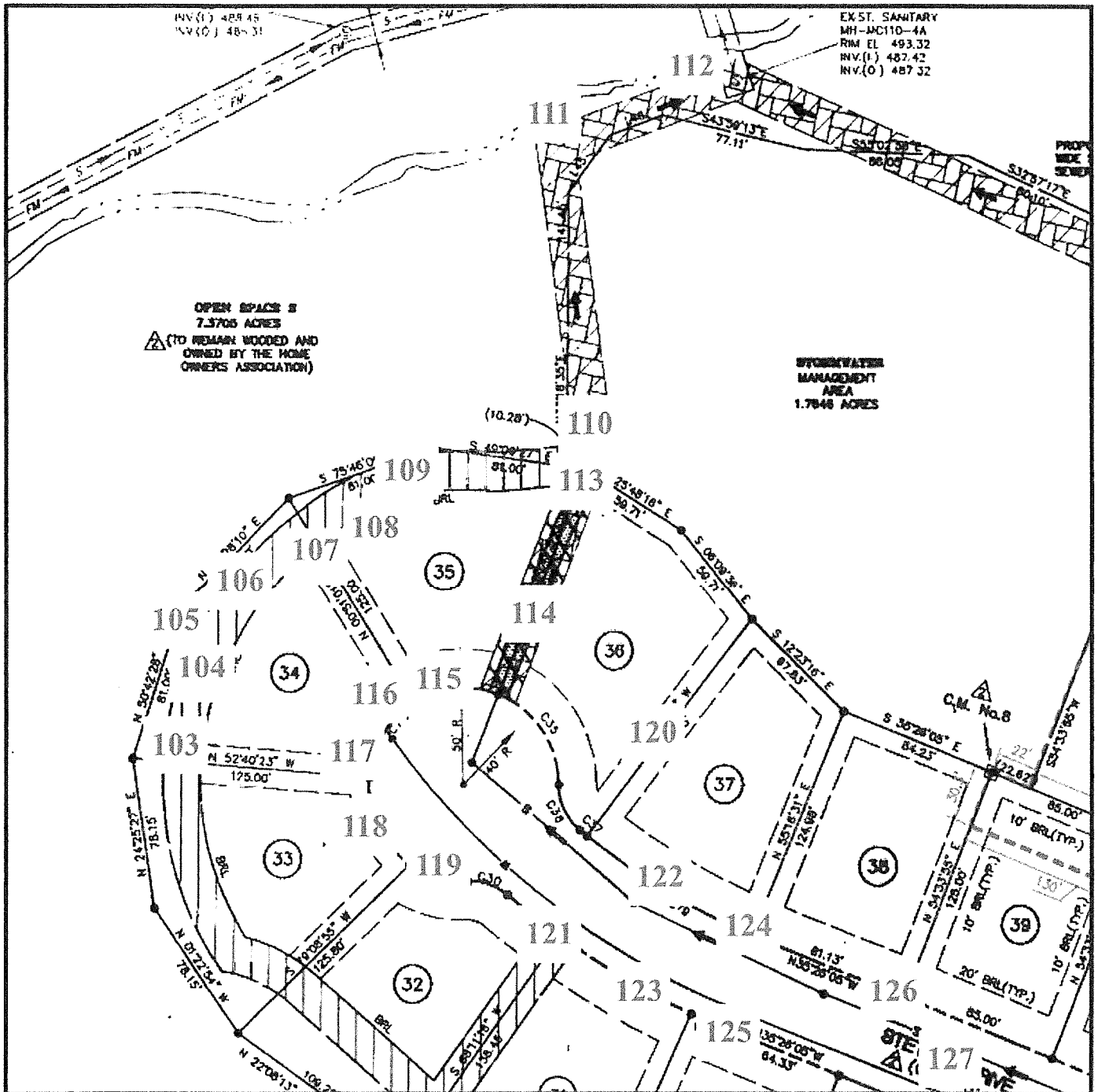


OBSERVATION LOCATIONS 81-102

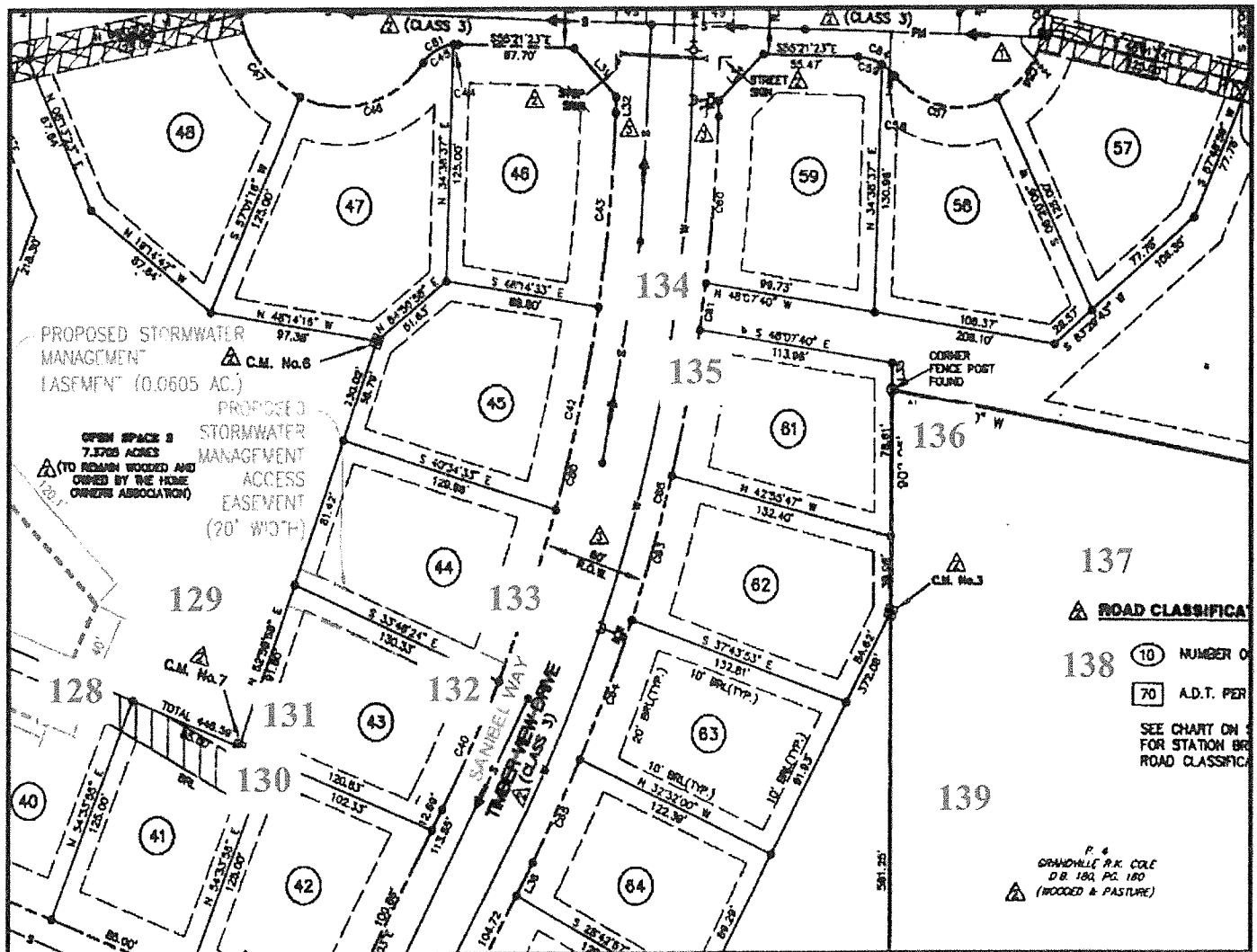


OBSERVATION LOCATIONS

103-127



OBSERVATION LOCATIONS 128-139



SECTION 3 - OBSERVATION EXPLANATIONS

1. Erosion and sediment control product must be removed.
2. Unsatisfactory lot stabilization.
3. Unsatisfactory lot stabilization.
4. Erosion and sediment control product must be removed.
5. Unsatisfactory conveyance channel stabilization.
6. Unsatisfactory lot stabilization.
7. Unsatisfactory conveyance channel stabilization.
8. Erosion and sediment control product must be removed.
9. Unsatisfactory lot stabilization.
10. Erosion and sediment control product must be removed. Location where stormwater pools due to grading issues.
11. Unsatisfactory lot stabilization.
12. Unsatisfactory lot stabilization.
13. Erosion and sediment control product must be removed.
14. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization.
15. Erosion and sediment control product must be removed.
16. Unsatisfactory conveyance channel stabilization and construction.
17. Unsatisfactory conveyance channel stabilization and construction.
18. Erosion and sediment control product must be removed.
19. Unsatisfactory conveyance channel stabilization and construction.
20. Erosion and sediment control product must be removed.
21. Erosion and sediment control product must be removed.
22. Erosion and sediment control product must be removed.
23. Erosion and sediment control product must be removed.
24. Erosion and sediment control product must be removed.
25. Unsatisfactory conveyance channel stabilization.
26. Unsatisfactory lot stabilization.
27. Unsatisfactory conveyance channel stabilization.
28. Erosion and sediment control product must be removed.
29. Unsatisfactory conveyance channel stabilization and construction.
30. Erosion and sediment control product must be removed.
31. Erosion and sediment control product must be removed.
32. Erosion and sediment control product must be removed.
33. Erosion and sediment control product must be removed.
34. Unsatisfactory lot stabilization.
35. Unsatisfactory conveyance channel stabilization and construction.
36. Erosion and sediment control product must be removed.
37. Ponding area due to grading issues.
38. Ponding area due to grading issues.
39. Photo taken to show soil conditions in conveyance channel.
40. Unsatisfactory conveyance channel stabilization.
41. Shale pile left to encroach on conveyance channel. Erosion and sediment control product must be removed.
42. Erosion and sediment control product must be removed.
43. Unsatisfactory conveyance channel stabilization.
44. Unsatisfactory lot stabilization.
45. Unsatisfactory conveyance channel stabilization. Erosion and sediment control product must be removed.
46. Photo taken to show overall conveyance channel conditions.
47. Photo taken to show overall conveyance channel conditions.
48. Unsatisfactory conveyance channel stabilization.
49. From this location, stormwater flows (as best as it can) towards the road.
50. The opposite side of photo 49. Stormwater from this location flows to bioretention basin 3.

51. Outlet protection filter fabric not observed.
52. Unsatisfactory earthen embankment stabilization.
53. Unsatisfactory earthen embankment stabilization.
54. Outlet protection filter fabric not observed.
55. Unsatisfactory conveyance channel stabilization and construction.
56. Unsatisfactory conveyance channel stabilization and construction.
57. Unsatisfactory conveyance channel stabilization and construction.
58. Unsatisfactory conveyance channel stabilization and construction.
59. Unsatisfactory conveyance channel stabilization and construction.
60. Unsatisfactory conveyance channel stabilization and construction.
61. Unsatisfactory conveyance channel stabilization and construction.
62. Unsatisfactory conveyance channel stabilization and construction.
63. Unsatisfactory conveyance channel stabilization and construction.
64. Unsatisfactory lot stabilization. Erosion and sediment control product must be removed.
65. Outlet protection filter fabric not observed.
66. Unsatisfactory lot stabilization.
67. Unsatisfactory lot stabilization.
68. Rock check damns in Buzzard Run tributary
69. Unsatisfactory lot stabilization.
70. Unsatisfactory conveyance channel stabilization.
71. Erosion and sediment control product must be removed.
72. Unsatisfactory conveyance channel stabilization.
73. Unsatisfactory conveyance channel stabilization.
74. Unsatisfactory conveyance channel stabilization.
75. Unsatisfactory conveyance channel stabilization.
76. Unsatisfactory conveyance channel stabilization.
77. Unsatisfactory conveyance channel stabilization.
78. Unsatisfactory conveyance channel stabilization.
79. Unsatisfactory conveyance channel stabilization.
80. Erosion and sediment control product must be removed.
81. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization.
82. Erosion and sediment control product must be removed.
83. Erosion and sediment control product must be removed.
84. Unsatisfactory lot stabilization.
85. Conveyance channel bottom experiencing erosion.
86. Conveyance channel bottom experiencing erosion.
87. Image taken to show majority of the top half of the conveyance channel.
88. Image taken to show the next area of the conveyance channel.
89. Extreme rill erosion occurring on lot and into the conveyance channel.
90. Conveyance channel bottom experiencing erosion.
91. Unsatisfactory lot stabilization.
92. Unsatisfactory lot stabilization from image 91 leading to sediment accumulation in the conveyance channel.
93. Rill erosion in conveyance channel.
94. Erosion and sediment control product must be removed.
95. Ponding location within conveyance channel.
96. Erosion and sediment control product must be removed.
97. Pre-existing drainage way experiencing under erosion. This discharges to the conveyance channel that drains to bioretention basin 1.
98. Water flow appears to be constant from the pre-existing drainage way. This is causing ponding within the conveyance channel at this location. This may be due to a grading issue.
99. Unsatisfactory earthen embankment stabilization.
100. Erosion and sediment control product must be removed.
101. Erosion and sediment control product must be removed.
102. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization.
103. Conveyance channel bottom experiencing erosion.

104. Erosion and sediment control product must be removed. Conveyance channel bottom experiencing erosion.
105. Erosion and sediment control product must be removed.
106. Conveyance channel bottom experiencing erosion.
107. Erosion and sediment control product must be removed.
108. Unsatisfactory conveyance channel stabilization.
109. Not part of the design plan. Riprap filter fabric not observed.
110. Bioretention basin 1 is receiving sediment, shale, etc. from non-stabilized upstream locations.
111. Erosion and sediment control product must be removed..
112. Erosion and sediment control product must be removed.
113. Riprap apron experiencing undercutting. Outlet protection filter fabric not observed.
114. Erosion and sediment control phase rock check dam serving no purpose.
115. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization and construction. Unsatisfactory stabilization around culverts.
116. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization and construction. Unsatisfactory stabilization around culverts.
117. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
118. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
119. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
120. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization.
121. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
122. Erosion and sediment control product must be removed.
123. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
124. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
125. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
126. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
127. For remaining lots towards Sanibel Way: Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
128. Drainage easement encumbered by fence.
129. Unsatisfactory lot stabilization.
130. Drainage easement encumbered by fence. Unsatisfactory lot stabilization.
131. Unsatisfactory lot stabilization.
132. Unsatisfactory lot stabilization.
133. Unsatisfactory channel stabilization and construction.
134. Wattley Court and Collier Circle roads and lots not completed.
135. Unsatisfactory channel stabilization.
136. Unsatisfactory lot stabilization.
137. Erosion and sediment control product must be removed. Construction debris/litter must be picked up and disposed of properly.
138. Erosion and sediment control product must be removed.
139. Erosion and sediment control product must be removed.

SECTION 4 - DISCUSSION

Topsoil and Stabilization

It is my opinion that the reason for poor stabilization observed throughout the site is the result of an insufficient amount of topsoil (if any) applied to the land. An argument may be presented that topsoil was spread but washed away before seed could germinate, or that topsoil was spread and seed germinated, but it was on the responsibility of the homeowner to ensure adequate stabilization. Whatever the argument is, if the spreading of topsoil and site stabilization is a SWPPP requirement, Erosion and Sediment Control Plan requirement, WVDEP closeout requirement, BCPPSWD closeout requirement, and a bond release requirement, how are those items ever the responsibility of a homeowner? It is my recommendation that the developer be required to apply topsoil to all lots and conveyance channels that never received topsoil prior to "stabilization" efforts, and that an adequate amount of seed is spread to ensure sufficient site stabilization.

Conveyance Channel Erosion

The conveyance channel within Lots 27-35 requires attention. There is a velocity issues causing erosion.

As-Builts

The As-Builts produced for the project only show some select roadway culverts. Driveway culverts, storm-water management facilities, and conveyance channels were not as-built. It is my recommendation that the Developer be required to have as-builts produces that show those items.

BERKELEY COUNTY PLANNING COMMISSION

Public Hearing • May 19, 2025

File / Agenda

Item **2412-39 — Final-Plat Approval, Nadenbousch Pines Phase 3**

Submitted by **Frederico J. C. Caldas** – Homeowner, Lot 42 (Phase 1)

Purpose of Document unresolved top-soil, erosion, and drainage deficiencies in
packet Phases 1-2, and request Commission action before Phase 3 plat is signed.

Requested Commission action

1. **Pause all new building or land-disturbance permits** for Nadenbousch Pines.
2. **Require the developer—within 60 days—to:**
 - place ≥ 4 in. screened top-soil on affected lots,
 - install sod, and
 - clean / stabilize culverts noted in Punch-List #131-132.
3. **If unmet, call the 115 % performance bond** and complete the work before any new foundations are poured.

Packet contents

1. Formal Statement of Testimony
2. Exhibit List & Exhibits

1. Formal Statement of Testimony

Hearing Appeal – File No. 2412-39

Final-Plat Approval, Nadenbousch Pines Phase 3

Berkeley County Planning Commission – May 19, 2025

I. Identification of the Speaker

My name is **Frederico J. C. Caldas**. I reside at **Lot 42, Phase 1, Nadenbousch Pines Subdivision, Berkeley County, West Virginia**. I appear solely in my personal capacity as a homeowner affected by the matters described herein.

II. Purpose of Appearance

The developer seeks final-plat approval for Phase 3 of Nadenbousch Pines. I respectfully request that the Commission defer such approval—and withhold any related building or land-disturbance permits—until previously platted phases comply with Berkeley County’s permanent-stabilization and drainage standards.

III. Chronology and Factual Background

1. Closing and Initial Conditions (Summer 2022).

Upon closing, the yard associated with Lot 42 consisted primarily of compacted sub-grade fill. Multiple attempts at conventional lawn establishment (watering, seeding, straw covering) failed to produce sustained vegetative cover.

2. Warranty Claim (Exhibit A).

Prior to the expiration of the builder’s one-year warranty, I submitted a written claim (Item 6) detailing the absence of required topsoil and the resulting erosion. The builder declined corrective action.

3. County Post-Construction Report (9 Jan 2023 – Exhibit C).

The County inspector documented 167 punch-list items. Section 3, Items 131-132—pertaining to the slope and culvert behind Lot 42—cite “*insufficient top-soil, active erosion, sedimented culvert,*” and assign responsibility to the developer.

4. Site Conditions – Jul 2023 (Exhibit B).

Photographs taken in July 2023 show less than ten-percent vegetative cover—well below the $\geq 70\%$ threshold for “final stabilization” under the WVDEP Construction-Stormwater General Permit (WV0115924).

5. Token Winter Work – December 2023 (Exhibit G).

In December 2023 the developer placed a narrow strip of sandy fill and hand-broadcast seed along one side of the culvert. Soil temperatures were below 45 °F, rendering germination improbable; no mulch or erosion mat was applied. Subsequent photographs confirm the material sloughed into the swale by February 2024.

6. Ponding and Erosion – Rain Event, May 2025 (Exhibit F).

Comparative images (June 2023 versus May 2025) reveal continued ponding on the lot and the roadside shoulder, contrary to Storm-Water Ordinance § 6-502, which mandates positive drainage.

7. Current Conditions – May 2025 (Exhibit D).

The surface remains a patchwork of weeds, clover, and exposed shale; excavation to a depth of one inch exposes gravel rather than the required four-inch layer of friable topsoil.

IV. Regulatory Context

- **Subdivision & Land-Development Ordinance, Article 6:** prohibits bond reduction and issuance of additional permits until permanent stabilization ($\geq 70\%$ vegetative cover and compliant drainage) is certified.
- **Storm-Water Ordinance § 6-502:** requires finished grading that prevents ponding and conveys runoff to approved facilities.
- **WVDEP E&S BMP Manual:** prescribes 4–6 inches of topsoil for sustainable vegetation.
- **MS4 Permit Obligations:** unfinished lots contribute sediment to the County’s storm-drain system, jeopardizing MS4 compliance and exposing taxpayers to potential fines.

V. Rebuttal of Warranty Exclusion

The builder’s warranty clause purporting to disclaim responsibility for grading and erosion applies only *when* such work is “not contrary to governing law.” The foregoing evidence demonstrates continuing non-compliance; thus, the clause affords the builder no protection.

VI. Requested Commission Action

1. **Suspend issuance of new land-disturbance and building permits** for Nadenbousch Pines until existing phases achieve full compliance.
2. **Direct the developer, within sixty (60) days, to:**
 - Install not less than four (4) inches of screened topsoil on all affected lots;
 - Mow existing vegetation short, loosen or aerate the surface where feasible, and evenly spread and lightly compact said topsoil;
 - Install sod promptly during a suitable growing season (spring or early fall) and water sufficiently to ensure rooting; and

- Clean and stabilize the culverts identified in Punch-List Items 131-132.
- 3. **If the foregoing conditions are unmet within the specified period,** call the 115 % performance bond and engage an independent contractor to complete the work before any additional foundations are poured.
- 4.

VII. Conclusion

Ensuring that Phase 1 meets County standards before Phase 3 is recorded will safeguard storm-water compliance, protect neighborhood property values and future tax revenue, and spare incoming residents the hardships presently experienced by those of us who purchased in 2022. I appreciate the Commission's attention to these concerns and respectfully request adoption of the actions outlined above.

2. Exhibit List

Exhibit List	
Exhibit	Exhibit Description
O	Public-hearing notice sign (Phase 3 final-plat request)
A	Homeowner 1-year warranty claim (Item 6 – topsoil & erosion)
B	July 2023 photos – bare soil & early erosion - Warranty Claim Photos
C	County Post-Construction Report (9 Jan 2023) – punch-list #131-132 highlighted
D	May 2025 site photos – weeds, shale, < 70 % cover
E	Receipts/invoices for seed, straw, landscaping attempts
F	Rain-event comparison (June 2023 vs May 2025)
G	Builder Fix attempt

Exhibit A

EXHIBIT 2

FINAL REVIEW REQUEST FORM

Buyer(s): Frederico Caldas / Ines MeloProperty Address: 18 Stetson Drive, 25405 Martinsburg WV (Lot 42)

Please list your concerns below. Be as specific as possible:

#	Described Defect	Room of Home	Specific Location In Room	Picture Attached?
4	Attic Insulation: Missing and falling from wall causing thermal losses	Attic	Both Attic Access	Yes attic 1.JPG to attic 7.JPG
5	Attic Insulation Fiberglass not at 13-14in (R38) on some locations of the attic. Causing thermal losses. See picture where the far area does not contain any insulation..	Attic	Both Attic Access	Yes attic 2.JPG
6	Top Soil around house Perimeter: impossible for the homeowner to maintain the lawn (or seeds) due to heavy rain in the first month of house closing. Erosion is visible! Builder should be accountable for this as it was impossible for the homeowner to maintain.	Around House	Around House	Yes TS1 to TS23.JPG & top soil wet1 to top soil wet2
7	Wall (in front of the kitchen sink and countertop) Not Flat! BIG gap shows in winter time due to shrinkage. Caulk was installed there to cover this but due to shrinkage it yielded and showed a non flat wall.	Kitchen	Countertop / Sink Wall	Yes Kitchen Drywall 1.JPG to Kitchen Drywall 7.JPG
8	LVP not correctly cut to length. Baseboard not enough to cover this gap especially in winter time as much bigger gap due to "normal" shrinkage that happens in this season.	Main Entrance Hall	Left Wall (close to light switch)	Yes LVP Short Cut.JPG
9	Entrance door threshold not installed correctly (screws have to be all unscrewed for proper sealing)	Main Entrance Door	Door	Yes Entrydoor Threshold.JPG

Please attach additional pages if needed and be certain to number the alleged defects and pages.

Page 2 of 7



Exhibit B



Exhibit B

1

1



Exhibit B

2

2



Exhibit B

3

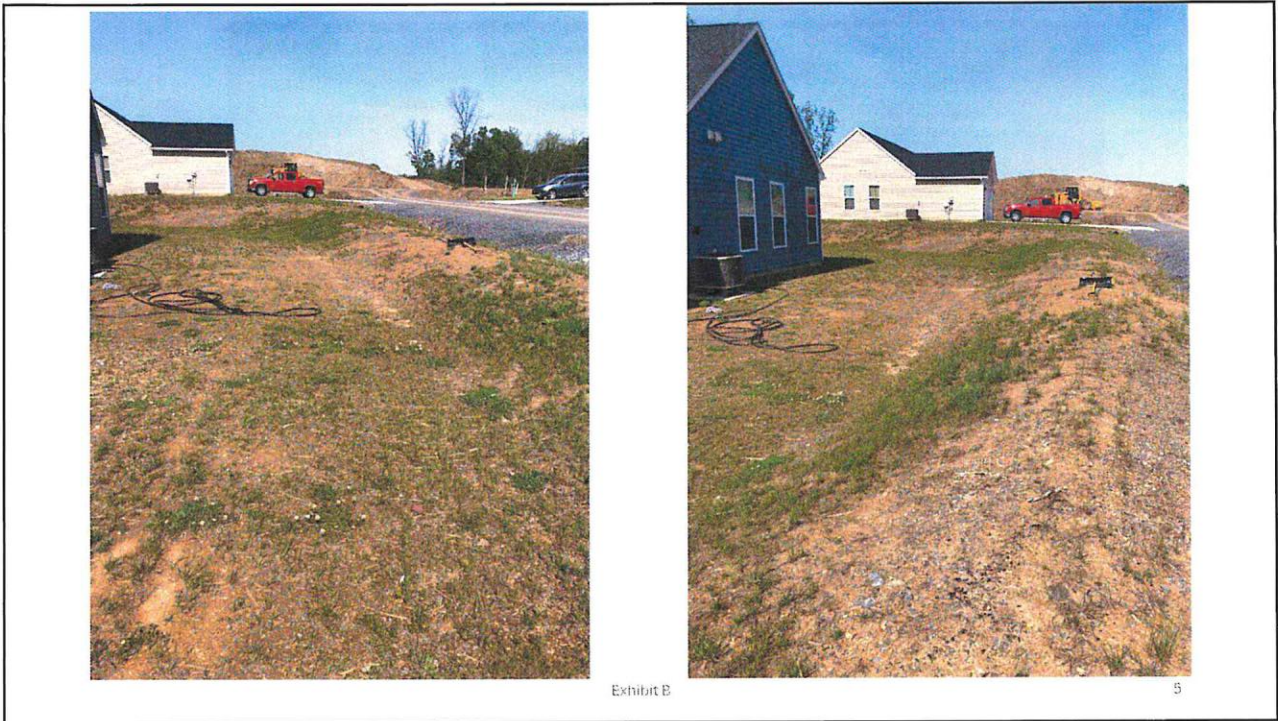
3



Exhibit B

4

4



5



6



Exhibit B

7

Exhibit C

POST-CONSTRUCTION REPORT



BERKELEY COUNTY
PUBLIC SERVICE STORMWATER DISTRICT

Location: Nadenbousch Pines
Date of Inspection: 1/9/2023

Inspector: David Billmyer
Email: dbillmyer@bcpssd.com
Office Phone: 304-596-6973
Mobile Phone: 304-702-3214

Documents Referenced:

1. Preliminary Plat and Site Development Plans for Nadenbousch Pines Plan Change November 2018
2. Preliminary Plat and Site Development Plans for Nadenbousch Pines Plan Change November 2018 As-Built Survey
3. Preliminary Plat and Site Development Plans for Nadenbousch Pines Plan Change November 2018 As-Built Survey, Phase II
4. Nadenbousch Pines Plan Change Stormwater Management Report

Report Send Date: 1/10/2023
Via: Electronic Mail
Recipient: Doug Smith, Berkeley County Engineer

Inspector Signature/Date

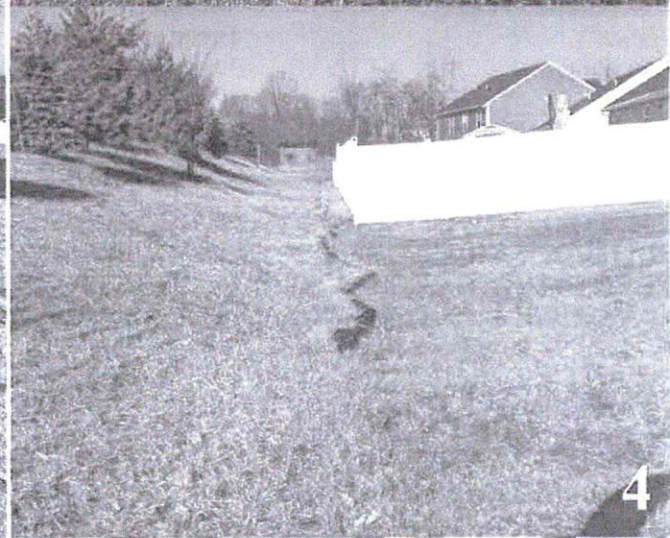
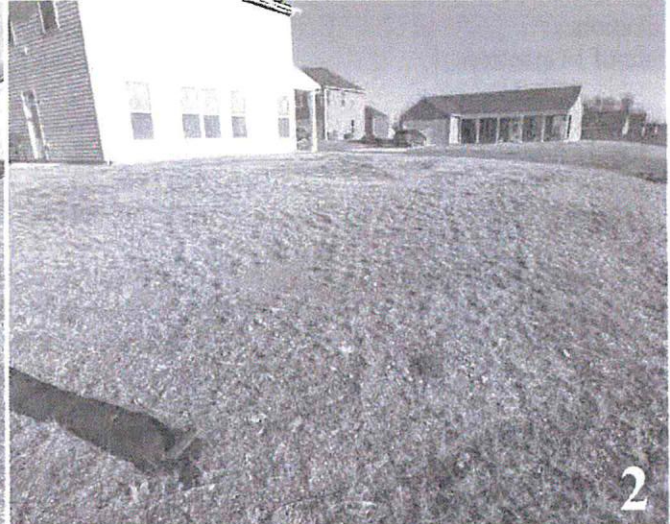
David Billmyer 1/10/2023

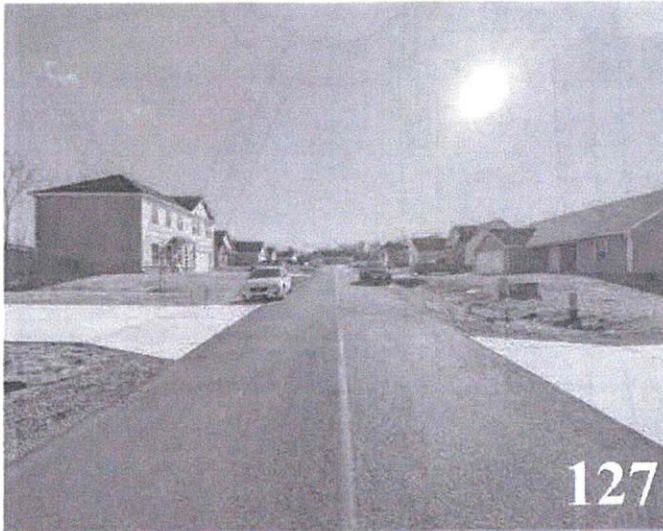
THE FOLLOWING OBSERVATIONS WERE MADE WHILE REFERENCING THE DOCUMENTS LISTED IN THIS REPORT. IF ANY DOCUMENTED ADMINISTRATIVE OR MAJOR PLAN CHANGES EXIST THAT WOULD NEGATE THE OBSERVATIONS PRESENTED, PLEASE MAKE THEM AVAILABLE TO THE MS4 INSPECTOR ASSOCIATED WITH THIS REPORT.

Table of Contents

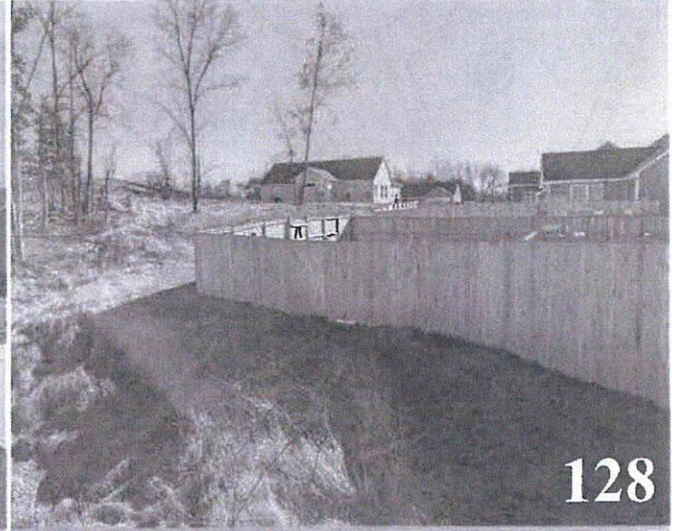
Section 1 Observations 1-49	page 2
Section 2 Observation Locations	page 26
Section 3 Observation Explanations	page 32
Section 4 Discussion	page 35

SECTION 1 - OBSERVATIONS 1-139

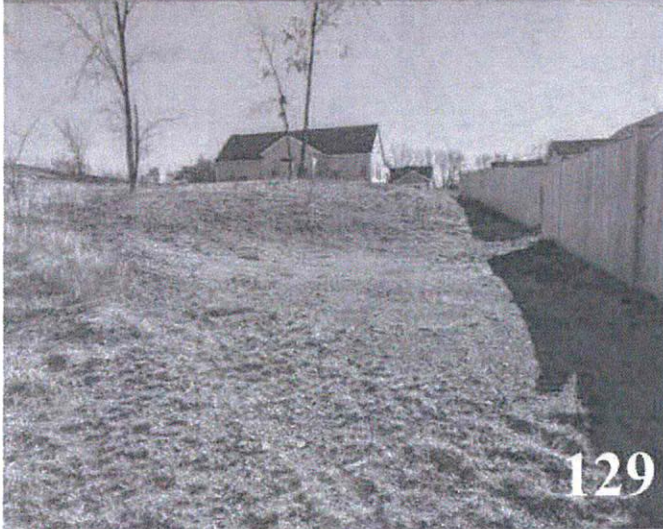




127



128



129



130

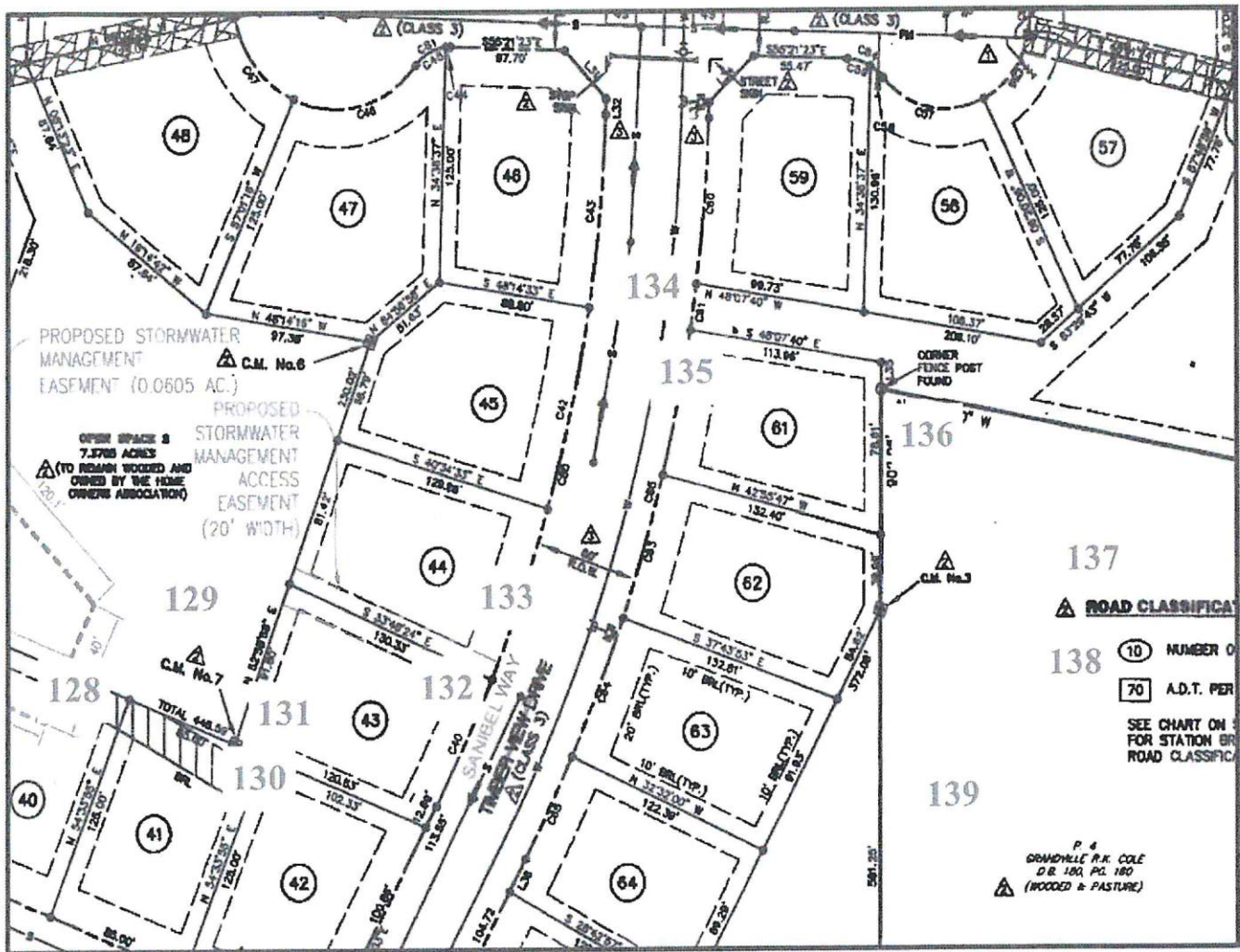


131



132

OBSERVATION LOCATIONS 128-139



SECTION 3 - OBSERVATION EXPLANATIONS

1. Erosion and sediment control product must be removed.
2. Unsatisfactory lot stabilization.
3. Unsatisfactory lot stabilization.
4. Erosion and sediment control product must be removed.
5. Unsatisfactory conveyance channel stabilization.
6. Unsatisfactory lot stabilization.
7. Unsatisfactory conveyance channel stabilization.
8. Erosion and sediment control product must be removed.
9. Unsatisfactory lot stabilization.
10. Erosion and sediment control product must be removed. Location where stormwater pools due to grading issues.
11. Unsatisfactory lot stabilization.
12. Unsatisfactory lot stabilization.
13. Erosion and sediment control product must be removed.
14. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization.
15. Erosion and sediment control product must be removed.
16. Unsatisfactory conveyance channel stabilization and construction.
17. Unsatisfactory conveyance channel stabilization and construction.
18. Erosion and sediment control product must be removed.
19. Unsatisfactory conveyance channel stabilization and construction.
20. Erosion and sediment control product must be removed.
21. Erosion and sediment control product must be removed.
22. Erosion and sediment control product must be removed.
23. Erosion and sediment control product must be removed.
24. Erosion and sediment control product must be removed.
25. Unsatisfactory conveyance channel stabilization.
26. Unsatisfactory lot stabilization.
27. Unsatisfactory conveyance channel stabilization.
28. Erosion and sediment control product must be removed.
29. Unsatisfactory conveyance channel stabilization and construction.
30. Erosion and sediment control product must be removed.
31. Erosion and sediment control product must be removed.
32. Erosion and sediment control product must be removed.
33. Erosion and sediment control product must be removed.
34. Unsatisfactory lot stabilization.
35. Unsatisfactory conveyance channel stabilization and construction.
36. Erosion and sediment control product must be removed.
37. Ponding area due to grading issues.
38. Ponding area due to grading issues.
39. Photo taken to show soil conditions in conveyance channel.
40. Unsatisfactory conveyance channel stabilization.
41. Shale pile left to encroach on conveyance channel. Erosion and sediment control product must be removed.
42. Erosion and sediment control product must be removed.
43. Unsatisfactory conveyance channel stabilization.
44. Unsatisfactory lot stabilization.
45. Unsatisfactory conveyance channel stabilization. Erosion and sediment control product must be removed.
46. Photo taken to show overall conveyance channel conditions.
47. Photo taken to show overall conveyance channel conditions.
48. Unsatisfactory conveyance channel stabilization.
49. From this location, stormwater flows (as best as it can) towards the road.
50. The opposite side of photo 49. Stormwater from this location flows to bioretention basin 3.

104. Erosion and sediment control product must be removed. Conveyance channel bottom experiencing erosion.
105. Erosion and sediment control product must be removed.
106. Conveyance channel bottom experiencing erosion.
107. Erosion and sediment control product must be removed.
108. Unsatisfactory conveyance channel stabilization.
109. Not part of the design plan. Riprap filter fabric not observed.
110. Bioretention basin 1 is receiving sediment, shale, etc. from non-stabilized upstream locations.
111. Erosion and sediment control product must be removed..
112. Erosion and sediment control product must be removed.
113. Riprap apron experiencing undercutting. Outlet protection filter fabric not observed.
114. Erosion and sediment control phase rock check dam serving no purpose.
115. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization and construction. Unsatisfactory stabilization around culverts.
116. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization and construction. Unsatisfactory stabilization around culverts.
117. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
118. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
119. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
120. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization.
121. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
122. Erosion and sediment control product must be removed.
123. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
124. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
125. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
126. Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
127. For remaining lots towards Sanibel Way: Erosion and sediment control product must be removed. Unsatisfactory conveyance channel stabilization. Unsatisfactory stabilization around culverts.
128. Drainage easement encumbered by fence.
129. Unsatisfactory lot stabilization.
130. Drainage easement encumbered by fence. Unsatisfactory lot stabilization.
131. Unsatisfactory lot stabilization.
132. Unsatisfactory lot stabilization.
133. Unsatisfactory channel stabilization and construction.
134. Wattley Court and Collier Circle roads and lots not completed.
135. Unsatisfactory channel stabilization.
136. Unsatisfactory lot stabilization.
137. Erosion and sediment control product must be removed. Construction debris/litter must be picked up and disposed of properly.
138. Erosion and sediment control product must be removed.
139. Erosion and sediment control product must be removed.

SECTION 4 - DISCUSSION

Topsoil and Stabilization

It is my opinion that the reason for poor stabilization observed throughout the site is the result of an insufficient amount of topsoil (if any) applied to the land. An argument may be presented that topsoil was spread but washed away before seed could germinate, or that topsoil was spread and seed germinated, but it was on the responsibility of the homeowner to ensure adequate stabilization. Whatever the argument is, if the spreading of topsoil and site stabilization is a SWPPP requirement, Erosion and Sediment Control Plan requirement, WVDEP closeout requirement, BCPSPWD closeout requirement, and a bond release requirement, how are those items ever the responsibility of a homeowner? It is my recommendation that the developer be required to apply topsoil to all lots and conveyance channels that never received topsoil prior to "stabilization" efforts, and that an adequate amount of seed is spread to ensure sufficient site stabilization.

Conveyance Channel Erosion

The conveyance channel within Lots 27-35 requires attention. There is a velocity issues causing erosion.

As-Builts

The As-Builts produced for the project only show some select roadway culverts. Driveway culverts, storm-water management facilities, and conveyance channels were not as-built. It is my recommendation that the Developer be required to have as-builts produces that show those items.

Exhibit D

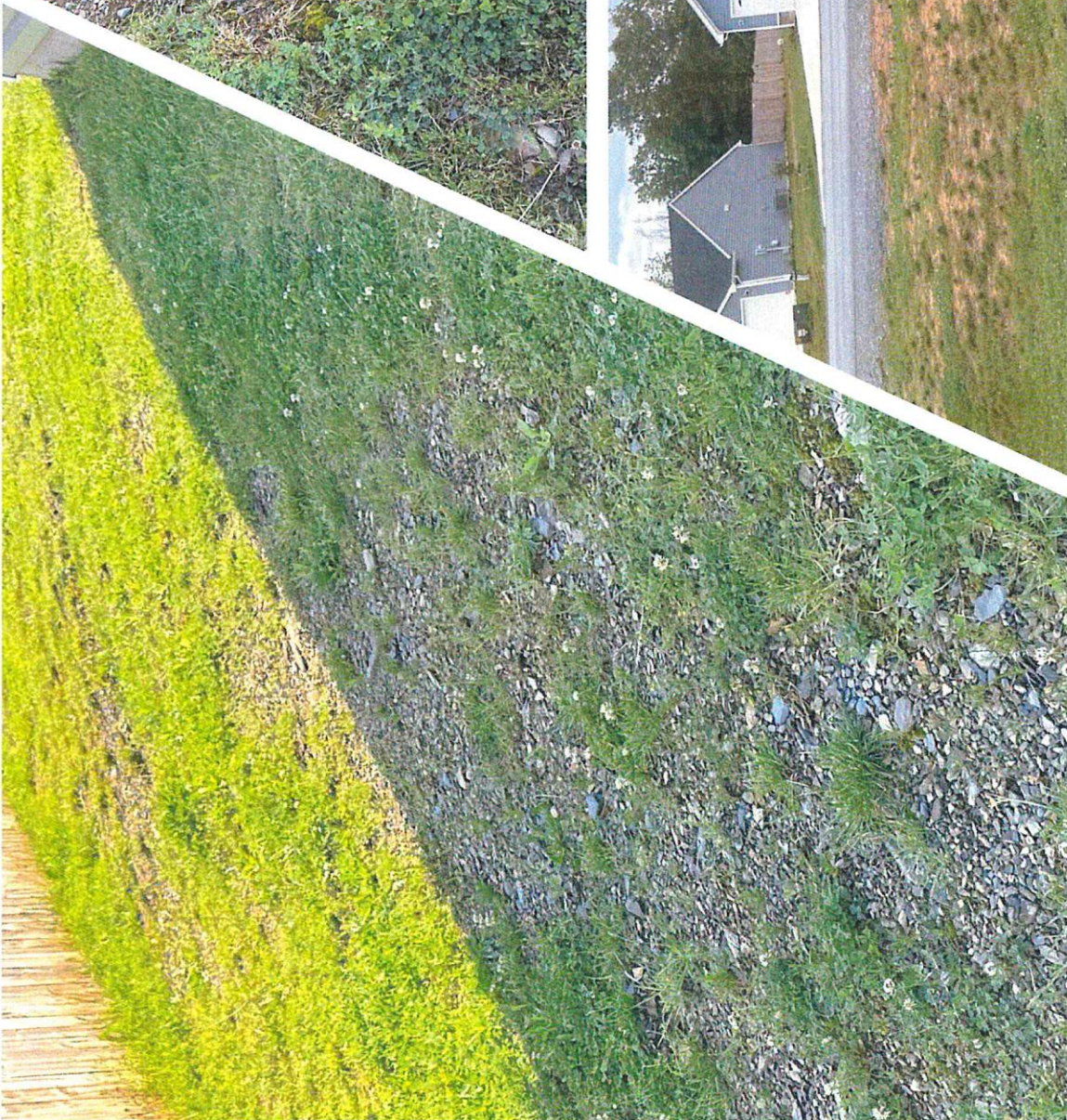


Exhibit E



[View order details](#) Ordered on April 18, 2024
Scotts Turf Builder Lawn Food - Fertilizer for All Grass Types, 5,000 sq. ft., 12.5 lbs.
[Buy it again](#) [View your item](#)



[View order details](#) Ordered on February 24, 2024
Scotts MossEx, Moss Killer for Lawns, Contains Nutrients to Green and Thicken Grass, 18.37 lbs.
[Buy it again](#) [View your item](#)

Order Details

Order placed May 8, 2023 Order # 111-9581163-4930610

[View invoice](#)

Ship to
Ines Filipa da Silva Melo
18 STETSON DR
MARTINSBURG, WV 25405-7010
United States

Payment method
Mastercard ending in 5742

Order Summary	
Item(s) Subtotal:	\$69.99
Shipping & Handling:	\$0.00
Total before tax:	\$69.99
Estimated tax to be collected:	\$4.20
Grand Total:	\$74.19



Watering
+
Straw for moisture retention.



Scotts Turf Builder Starter Food for New Grass, 42 lbs.
Sold by Amazon.com Services, Inc.
[Return and product support eligibility](#) ▼
\$69.99
[Buy it again](#)

Exhibit F

An aerial photograph showing a row of modern, two-story houses with grey roofs and white siding. A blue car is parked on a paved road in front of one of the houses. The surrounding area is a mix of grass and bare earth, suggesting a recently developed or under-construction area.

[illegible]

May 2025



Exhibit G



