TOWN OF LIMA SHEBOYGAN COUNTY

Teresa Stengel, Clerk/Treasurer
W2351 Spring Lane Ct.
Sheboygan Falls, WI 53085

Phone (920) 467-6037

November 12, 1999

Greg & Michele Martin
W2359 Birchwood Drive
Sheboygan Falls, WI 53085

Dear Greg & Michele;

The Town of Lima Board of Supervisors, at its November 8, 1999, meeting, followed the recommendation of the Town Planning Commission and approved a zoning change for your property. The zoning of your property, identification number 103748, has been changed from R-1 (Single Family Residence District) to A-5 (Agricultural Living District).

This is an official notice of the determination for your files.

Sincerely,

Teresa Stengel

Teresa Stengel

RIGHT-OF-WAY
ENCROACHMENT AGREEMENT

THIS RIGHT-OF-WAY ENCROACHMENT AGREEMENT, made this 13th day of January, 2003, between **TOWN OF LIMA**, a municipal body, maintaining its principal offices at W2351 Spring Lane Court Sheboygan Falls, WI 53085, hereinafter referred to as "**TOWN**", and **GREGORY MARTIN** and **MICHELE MARTIN**, property owners, located within the **TOWN OF LIMA,** hereinafter referred to as the "**OWNERS**".

WHEREAS, OWNERS are the owners of property in the First Addition to Birchwood Estates located in the Town of Lima, Sheboygan County, Wisconsin; and

WHEREAS, OWNERS' property abuts a public access sixty feet (60') in width and recorded in the plat of the First Addition to Birchwood Estates as public access from Birchwood Drive to the Onion River in said Town of Lima; and

WHEREAS, OWNERS seek permission to encroach within the public access for the purpose of maintaining trees which have been planted as of October 1, 2002, within the area indicated on the map attached hereto as Exhibit A and more specifically and legally described as follows:

Parcel Identification No.

That part of the public access lying between Lots 5 & 6 in the Plat of First Addition to Birchwood Estates, described as follows:

Commencing at the NW corner of said Lot 6, thence N 02-17-07 W, 15', thence N89-52-32 E, 340', thence S 02-17-07 E, 15' to the northerly most corner of the east line of said Lot 6, thence S 89-52-32 W, 340' along the north line of said Lot 6 to the point of beginning.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **ENCROACHMENT APPROVED**. **TOWN** does hereby consent and authorize **OWNERS** to encroach within the public access abutting his property in the First Addition to Birchwood Estates as more specifically and legally described herein for the limited purpose of maintaining trees planted within said area as of October 1, 2002.

2. **INDEMNIFICATION**. **OWNERS** shall indemnify, defend, and hold harmless the **TOWN**, its successors, assigns, officers, employees, engineers, attorneys, agents, and subcontractors from and against all claims, actions, losses, liabilities, including reasonable attorney's fees and litigation costs, injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or the **TOWN** in connection with **TOWN**'s grant of said encroachment and **OWNERS**' use.

3. **MAINTENANCE OF ENCROACHMENT AREA**. **OWNERS** shall be responsible, at its sole cost, for maintaining the subject property.

4. **TERMINATION**. Either party may terminate this Encroachment Agreement at any time without cause upon thirty (30) days' advance written notice to the other party.

5. **TERM**. The term of this Agreement shall commence upon the date of filing this instrument for record with the Register of Deeds for Sheboygan County, Wisconsin, and except as otherwise herein specifically provided, shall continue in perpetuity.

6. **ENFORCEMENT OF AGREEMENT**. **TOWN** and the **OWNERS** shall each have the right to enforce this Right-of-Way Encroachment Agreement in any manner provided by law or in equity, including without limitation, a suit for damages or injunctive relief.

7. **MISCELLANEOUS**.

A. **Public Record**. The parties acknowledge and understand that this Right-of-Way Encroachment Agreement shall be recorded in the Sheboygan County Register of Deeds office and become a permanent part of the real estate records for the herein described property.

B. **Entire Agreement**. This Right-of-Way Encroachment Agreement and the exhibit attached hereto represent the entire agreement of the parties. This Agreement may not be modified, amended, or supplemented, except by mutual written agreement of the parties.

C. **Waiver**. No delay or omission by either of the parties hereto, or their heirs, successors, and/or assigns, to exercise any right or power accruing upon any non-compliance or failure of performance by another party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto, or their successors and/or assigns of any of the covenants, conditions, or agreements hereof to be performed by another shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

D. **Successors and/or Assigns**. This Agreement and each and all of the terms, covenants, and conditions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and/or assigns and no third party, other than such successor and/or assign shall be entitled to enforce any term, covenant, or condition of this Agreement or have any rights hereunder.

E. **Heading**. The headings appearing in this Agreement are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

F. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

G. **Severability**. If any provisions or portions thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be invalid and enforceable to the fullest extent permitted by law.

H. **Modifications**. No agreement shall be effective to add to, change, modify, waive, or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the parties hereto.

I. **Covenants Running with the Land**. All of the encroachments, restrictions, covenants, and agreements set forth in this Agreement are intended to be and shall be construed as covenants (and not conditions) running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and their respective successors and/or assigns.

J. **Notices**. Any notice, demand, statement, and request required or permitted to be given under this Agreement shall be in writing and be deemed to have been properly given or served when personally delivered to the other party, via overnight carrier, facsimile, or upon deposit in the United States mail, postage prepaid, and addressed to the parties as set forth below:

If to **TOWN**: Town of Lima
W2351 Spring Lane Court
Sheboygan Falls, WI 53085

If to the **OWNERS**: Gregory and Michele Martin
W2359 Birchwood Drive
Sheboygan Falls, WI 53085

K. **Change of Address**. Any party hereto may change the address to which notices to such party shall be sent, by written notice to the other parties given in accordance with this section. At such time as a party transfers its interest under this Agreement so as to create a new party in interest, the previous party in interest or such new party in interest shall send notice to the other parties of the name and address to which notice to the new party shall be sent or delivered. Until such time as such notice is given, the previous party in interest shall be deemed to be the agent for such new party in interest for purposed of receipt of service of notices.

L. **Costs**. **OWNERS** agree to assume the cost of the preparation of the area of encroachment map and legal description attached as Exhibit A and the Town's attorney's fees as relates to the drafting of this Agreement.

IN WITNESS WHEREOF, the undersigned have signed this Right-of-Way Encroachment Agreement to take effect as of the date provided herein.

TOWN OF LIMA:

By William T. Jens
WILLIAM JENS, Town Chairman

By Teresa Stengel
TERESA STENGEL, Clerk/Treasurer

STATE OF WISCONSIN)
) ss.
SHEBOYGAN COUNTY)

Personally came before me this 13th day of January 2003, **WILLIAM T. JENS** and **TERESA STENGEL**, of the above-named corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such Town of Lima Chairman and Town of Lima Clerk/Treasurer of said corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said corporation, by its authority.

James R. Heinen
Notary Public, State of Wisconsin
My commission expires: 5-07-2006.

OWNER:

By _____
GREGORY MARTIN

By _____
MICHELE MARTIN

STATE OF WISCONSIN)
) ss.
SHEBOYGAN COUNTY)

Personally came before me this 13th day of January, 2003, **GREGORY MARTIN** and **MICHELE MARTIN**, of the above-named corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such persons and acknowledged that they executed the foregoing instrument.

James R Heinen
Notary Public, State of Wisconsin
My commission expires: 5-07-2006

This instrument was drafted by:

Attorney Mary Lynne Donohue
HOPP NEUMANN HUMKE LLP
607 North 8th Street, Suite 400
Sheboygan, WI 53081

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RURAL NUMBER ASSIGNMENT

MATCH NUMBER: 103748

NAME: Greg Martin T-NUMBER: T4.12 Brewers-1.06

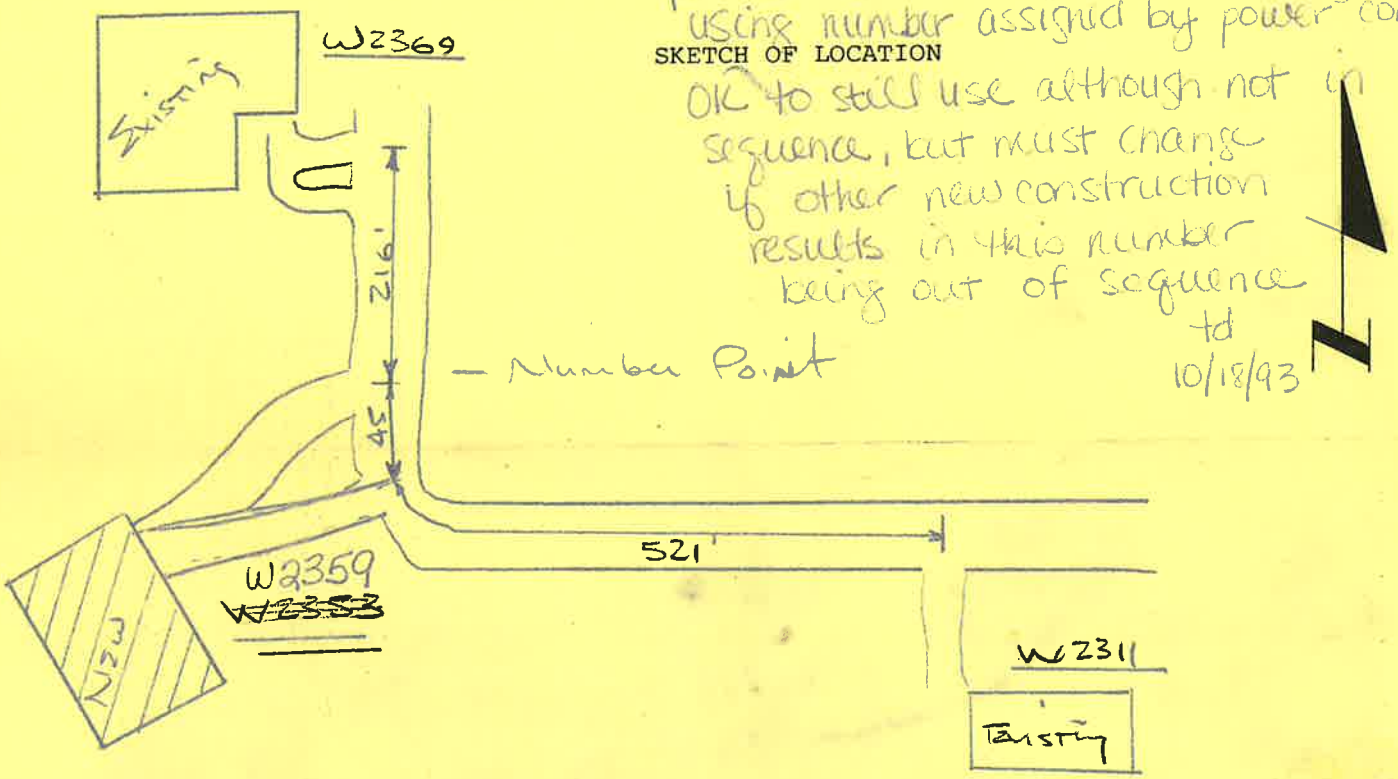
SE 1/4 SW 1/4, SECTION 12 TOWN: Lima

SANITARY PERMIT #: 5216 CTY SHORELAND PERMIT #: —

TYPE OF STRUCTURE: SF-N

per discussion w/ Mrs. Martin, they started using number assigned by power company. OK to still use although not in sequence, but must change if other new construction results in this number being out of sequence td 10/18/93

SKETCH OF LOCATION



DATE: 8-18-92 SIGNED: M. J. DeMaster

NEW NUMBER ASSIGNED: ~~W2353~~ W2359 Birchwood Dr.

PLEASE NOTE: The sign shall be located on the right side of the driveway (as you face your home from the road), 40 feet from the centerline of the road and 15 feet from the edge of the driveway.

ALSO: It shall be the sole responsibility of the Owner to notify the proper agencies (i.e. Post Office, etc.) of this number/address.

ORIGINAL Planning YELLOW Owner PINK Town GOLDENROD Sheriff

SCF-1520

467-3498