

LEMONT TOWNSHIP  
COOK COUNTY, ILLINOIS

ORDINANCE  
NUMBER 2017-2018-01

AN ORDINANCE IN PROTEST OF THE APPLICATION BY J.P. MCMAHON  
PROPERTIES, LLC FOR ZONING MAP AMENDMENT FOR  
16548 AND 16572 NEW AVENUE

STEVEN F. ROSENDAHL, Township Supervisor  
BARBARA A. BUSCHMAN, Township Clerk

GREGORY W. NICKLAS  
FRANCIS E. WOZNIAK  
JASON A. SANDERSON  
DOUGLAS M. WRIGHT

Board of Trustees

Approved and adopted by the Board of Trustees on 10/10/17, 2017

Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd. - Township Attorney

**ORDINANCE NO. 2017-2018-07**

**AN ORDINANCE IN PROTEST TO THE APPLICATION BY J.P. MCMAHON PROPERTIES, LLC FOR ZONING MAP AMENDMENT FOR 16548 AND 16572 NEW AVENUE**

**WHEREAS**, Lemont Township (hereinafter "Township") is an Illinois Township governed by the provisions of the Illinois Township Code, 60 ILCS 1/1-1 *et seq.*; and

**WHEREAS**, representatives of the Township were present at the September 13, 2017 hearing before the Cook County Zoning Board of Appeals concerning the Application by J.P. McMahon Properties, LLC ("McMahon") for Zoning Map Amendment for 16548 and 16572 New Avenue from R-4 to I-4, and the Supervisor and Board of Trustees have obtained and considered the transcript of the hearing, the evidence and supporting documents presented at the hearing, and the application submitted by McMahon; and

**WHEREAS**, the Supervisor and Township Board have also listened intently and responsibly to the concerns of Township residents and community stakeholders with respect to the McMahon property; and

**WHEREAS**, for the reasons explained more fully below, the Supervisor and Board of Trustees oppose the Map Amendment sought by McMahon and adopt this ordinance for the purpose of formally protesting the relief sought by McMahon.

**NOW, THEREFORE, BE IT ORDAINED BY THE SUPERVISOR AND BOARD OF TRUSTEES OF LEMONT TOWNSHIP, COOK COUNTY, ILLINOIS, AS FOLLOWS:**

**SECTION 1.** The above recitals are incorporated herein and shall have the same force and effect as through fully set forth in this Section 1.

**SECTION 2.** Lemont Township hereby formally protests the Application for Map Amendment sought by McMahon for the reasons explained in its position statement, which is attached hereto and incorporated herein as Exhibit A.

**SECTION 3.** The Township Supervisor and Board of Trustees represent that they are available to give oral testimony, under oath, if requested by the Zoning Board of Appeals and that they will make Township employees available for the same purpose, if requested.

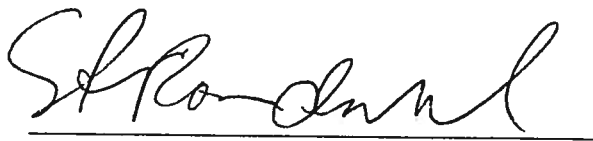
**SECTION 4.** The Township Clerk is hereby directed to immediately transmit this Ordinance to the Secretary of the Cook County Zoning Board of Appeals and to Matt Norton, the attorney of record for McMahon.

**SECTION 5.** This Ordinance shall take effect from and after its adoption and approval.

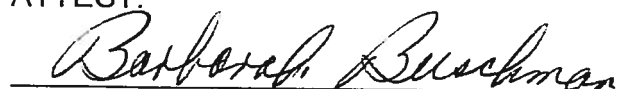
**ADOPTED** by the SUPERVISOR and BOARD OF TRUSTEES of Lemont Township, Cook County, Illinois, on October 10, 2017 by the following roll call vote:

	YES	NO	ABSENT	PRESENT
Trustee Nicklas	✓			
Trustee Wozniak	✓			
Trustee Sanderson	✓			
Trustee Wright	✓			
Supervisor Rosendahl	✓			
TOTAL	5			

**APPROVED** by the Supervisor and Board of Trustees on October 10, 2017  
2017.

  
STEVEN ROSENDAHL  
Township Supervisor

ATTEST:

  
BARBARA A. BUSCHMAN  
Township Clerk

## **EXHIBIT A**

### **POSITION STATEMENT OF LEMONT TOWNSHIP IN OPPOSITION TO THE APPLICATION BY J.P. MCMAHON PROPERTIES, LLC FOR ZONING MAP AMENDMENT**

The evidence submitted by McMahon does not establish that the proposed map amendment will benefit the public health, safety and welfare because the applicable standards are not satisfied. Here is why:

#### **I. Incompatible uses of surrounding property and zoning classification of surrounding property (section 13.7.9 A. 1 and 2).**

The use of surrounding property is almost always the most important factor in a rezoning analysis. *LaSalle Nat. Trust N.A. v. Village of Westmont*, 264 Ill. App. 3d 43, 51, 636 N.E.2d 1157, 1162 (2d Dist. 1994). The McMahon property itself has houses, is surrounded by single-family residential uses on the south side of New Avenue, and would, if zoned industrial, literally divide a residential area. For a sense of the bucolic nature of the neighborhood see Group Exhibit 1 showing an aerial overview, New Avenue frontage and photos of the 16572 New Avenue property when it was for sale in 2016.

In fact, a new development of high-end homes is slated to come in directly behind the McMahon property. See Exhibit 2. And while McMahon proffered testimony that a “natural bluff” over 100’ high separated his property from the new development, there was no topographic maps introduced to prove that assertion, and “CookViewer” (<https://maps.cookcountyil.gov/cookviewer/>), the County’s map application, tells a different story. The increase in elevation from the rear of McMahon’s property, an area that he is using and continues to use, to where new homes are proposed to be developed, is quite modest. Certainly, the elevation does not approach 100’ at any point. The upshot is that a brand new single-family development to the south will be separated from a heavy industrial use by some

trees, and the residential uses to the east and west will be separated by, at best, a berm. This is hardly the type of separation that is likely to head off costly nuisance suits and land use conflicts that seem almost inevitable when considering what McMahon is proposing. The solution is not to put up barriers (real or man-made) but, instead, to not allow spot zoning in the first instance.

McMahon seeks rezoning of his property from R-4 (Single-Family Residence District) to I-4 (Motor Freight Terminal District). It is important to keep in mind that “Motor Freight Terminal District” is a misnomer. The I-4 is unmistakably an industrial district exceeded in intensity only by the I-3 district (Intensive Industrial District). A rezoning of the McMahon property would mean the property would immediately go from single-family residential to a zoning classification permitting activities such as bottling works, contractor yards including cement, masonry, painting and more, concrete storage, fuel storage, grain storage, automobile paint shops, automobile gas and service stations, automobile undercoating, and electrical substations among many other industrial uses. Zoning Code, § 6.4.3. And then there is the permitted adult uses. If the fuel hauling business does not work out for McMahon, he will be free to sell the property to an owner who could then, as a matter of right, open a strip club, adult bookstore or other adult venues or stores. Zoning Code, § 6.4.3 (H).

**II. Suitability of the McMahon property for the uses currently permitted, trend of development in the area and length of time property has been vacant as zoned (section 13.7.9 A. 3, 4 and 5).**

McMahon must prove that his property is not suitable for uses under the existing R-4 zoning classification. He fails the test. McMahon proffered testimony from his appraiser that it is not economically viable to develop high-end residential homes on the McMahon property. (See transcript, p. 34-35, 65). But the testimony was critically flawed: the appraiser assumes that a high-end residential subdivision—like the development coming in to the south—is the only

development possibility. But the question is not whether a fully developed high-end residential subdivision is viable, but, rather, whether *any* use allowed in the R-4 zoning district is viable. On that topic the appraiser offered no testimony.

The record shows that residential uses are very viable. The McMahon property has occupied houses on both sides of it and the McMahon property itself contains two single family homes. See Group Exhibit 1. A picture of the homes on McMahon's property, taken from the Cook County Assessor's website, is attached as Group Exhibit 3. Indeed, at least for the home on the McMahon property at 16572 New Avenue, a homeowner exemption was in place for the 2016 tax year. In other words, at least as recently as January 1, 2016, the McMahon property was someone's primary residence. See 2016 Tax Year Info, attached as Exhibit 4. Just because the McMahon property may not be the ideal site for a large square-footage luxury homes subdivision does not mean the R-4 designation must be wiped away. Furthermore, McMahon does not establish that the myriad other permitted uses are not viable such as group homes, educational institutions, commercial or non-commercial recreational facilities or religious institutions. McMahon also does not prove that the special uses in the R-4 district are not viable.

It is common to think of this issue as far as return on investment—i.e. whether McMahon can make a reasonable profit from the property—but even on this issue his argument fails. Nothing in the record establishes the price McMahon paid for the property. And even assuming the ZBA believes McMahon's testimony that he purchased the property thinking it was already appropriately zoned for his anticipated use—an astonishing lack of due diligence for a businessman if true and virtual malpractice if a result of attorney oversight—McMahon still has not proved his point because the ZBA does not know if the purchase price factored in the assumption that the property could be used for a freight terminal. Information on the County

Assessor's website, including estimated market values for 16548 and 16572 New Avenue, at \$265,140 and \$290,660 respectively, certainly indicates that the properties are assessed as residential. McMahon can hardly be heard to complain if a rezoning denial simply means he is not able to secure a massive windfall following his purchase of 9.7 acres of residential property on the cheap.

As far as trend of development in the area, Member Pedersen pointed out that there are nearby homes with businesses (transcript, p. 12) and McMahon's appraiser stated the same thing, noting one house with a sign for welding and equipment repair (transcript, p. 33). McMahon also pointed out that the Village had a public works facility nearby (transcript, p. 65). But these comments and testimony, if they show a trend at all, show that the trend in the area is towards a district like the Cook County C-5 Commercial Transition District. The C-5 district is described as follows:

*5.5.1. Description of district.* The C-5 Commercial Transition District is intended to provide locations for residential structures which are suitable for use as small businesses or offices. This district is designed to encourage the development of structures which architecturally blend with neighboring residential buildings and often serves as a buffer between residential and commercial areas. The district is normally located on primary and secondary thoroughfares where single-family structures are being converted to low intensity commercial uses, while remaining compatible with the contiguous single-family neighborhood.

In other words, if the ZBA thinks that the New Avenue area is in transition, there is a zoning district for that—the appropriately named Commercial Transition District. Just because there is a homeowner making some extra money welding in his back yard does not mean that a residential area where people live should go straight to an industrial district. The ZBA and ultimately the County ignoring the C-5 district would set up a very straightforward argument to the courts that the rezoning was arbitrary under a *LaSalle* factor analysis. After all, if the ZBA

has observed conditions like in a C-5 district, why should it recommend rezoning to the intense and residentially incompatible I-4 district?

In fact, McMahon himself doesn't really believe that the trend in the area is toward industrial. The McMahon property is classified with the Cook County Assessor as a one-story residence between 1,000 and 1,800 square feet. Far from taking action to disabuse the notion in the Assessor's Office that the property is residential by letting the Assessor know that he is using the property for a high intensity industrial use, McMahon has actually appealed his 2017 assessment, getting his EAV reduced by over \$6,000 (for PIN # 22-30-101-037-0000) even though he knows the property is no longer residential. See Appeal History, attached as Exhibit 5.

### **III. Need in the community for the proposed use (section 13.7.9 A. 7).**

McMahon's business is not a community based business and there is no need in the area for his use. McMahon's trucks do nothing more than depart and return to and from Lemont as they head across the Midwest region delivering petroleum products. Positioned in this way, McMahon has no incentive to be a good neighbor or to respect homeowners and community organizations. His far-flung customers have little if any concern about where his trucks park or how the neighbors are treated.

### **IV. Unresolved environmental concerns.**

McMahon acknowledges a wetland on this property, admits that his property has flooding issues, and admits that the vast majority of the property will be converted to an impervious surface. Yet, as was pointed out at the hearing, McMahon has not obtained approval from the Army Corp of Engineers for the wetlands his use may disturb. He obtained a Letter of No Objection from the Army Corp (see Tab 16 to Application) but then changed his plans in a substantial and meaningful way after the Letter was sent on February 15, 2017 (see Objector's

Exhibit A). It would not be prudent to recommend rezoning in an area where an I-4 use is not compatible with the ecology. Rezoning applications are sent to the Cook County Department of Transportation and Highways and to the Cook County Department of Environmental Control for the very purposes of considering criteria from other regulatory agencies such as the Army Corp of Engineers and for wetland impact and mitigation. See Zoning Code, § 13.7.6 C. 1, 7 and F. 3, 5. The ZBA should not ignore this important issue.

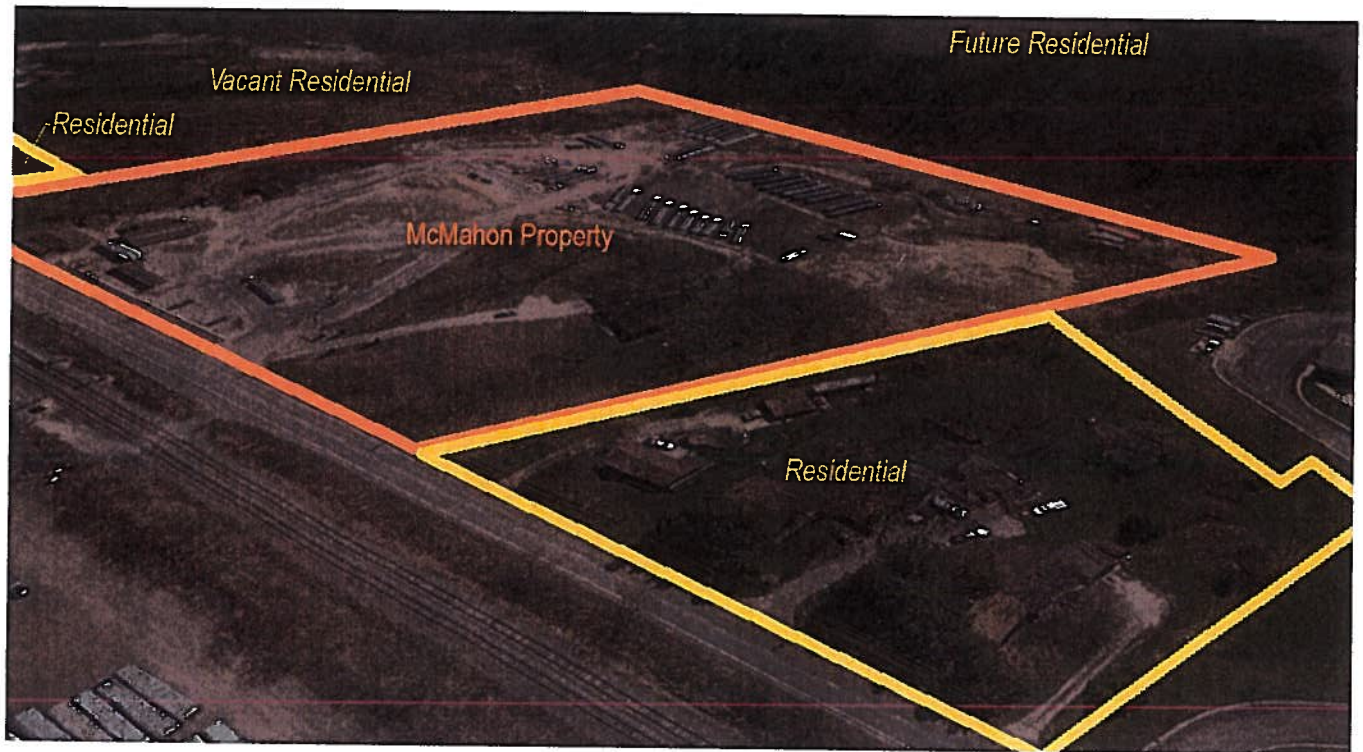
### **Conclusion**

The ZBA cannot recommend that a map amendment be granted unless the proposed use satisfies each of the standards in Section 13.7.9 of the Zoning Code and is in the best interest of the public. See Zoning Code, § 13.7.9 C. McMahon has not satisfied his burden of proof and the ZBA should decline to recommend rezoning. McMahon wants to maximize his profits to be sure, and Cook County could pave the way for a massive McMahon windfall, but the County does not regulate zoning for the purpose of picking winners and losers. It is charged with acting in the best interests of the public. The McMahon rezoning request does not fit the bill.

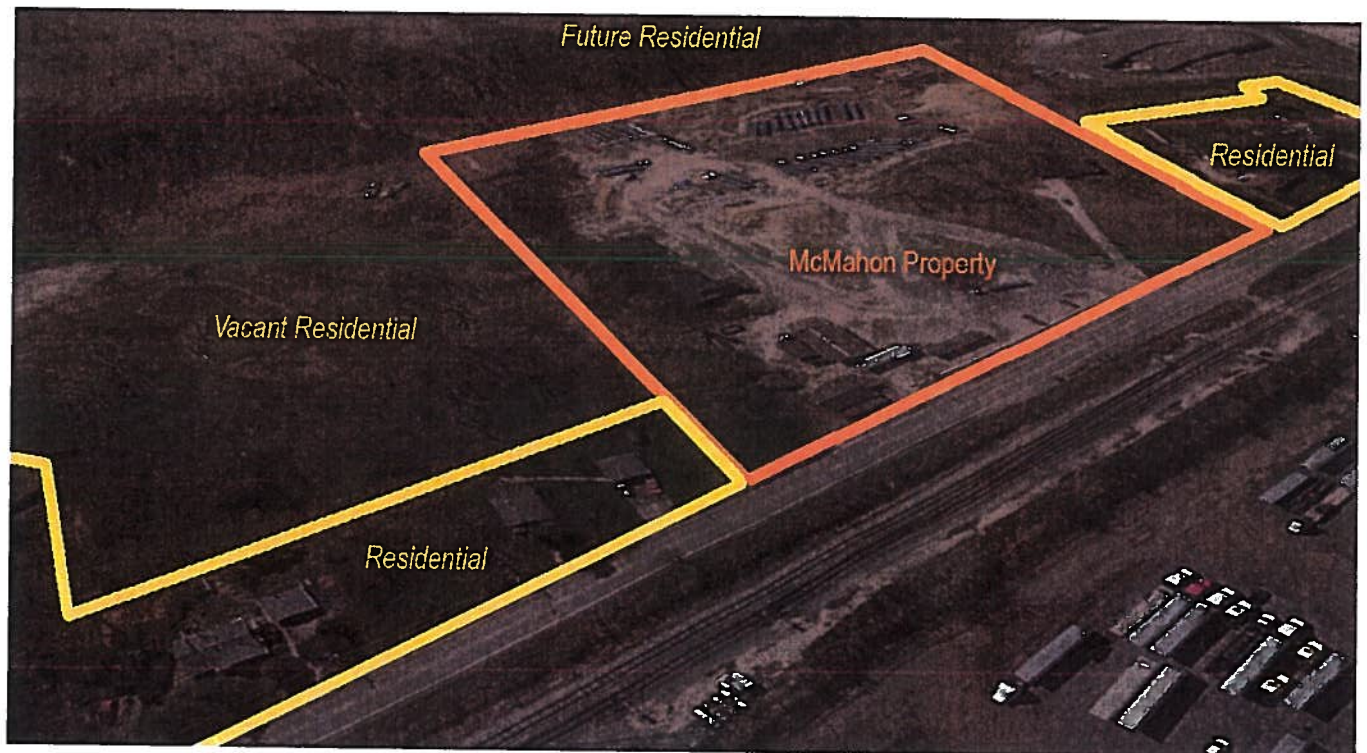
Respectfully Submitted,

LEMONT TOWNSHIP

**GROUP EXHIBIT #1**



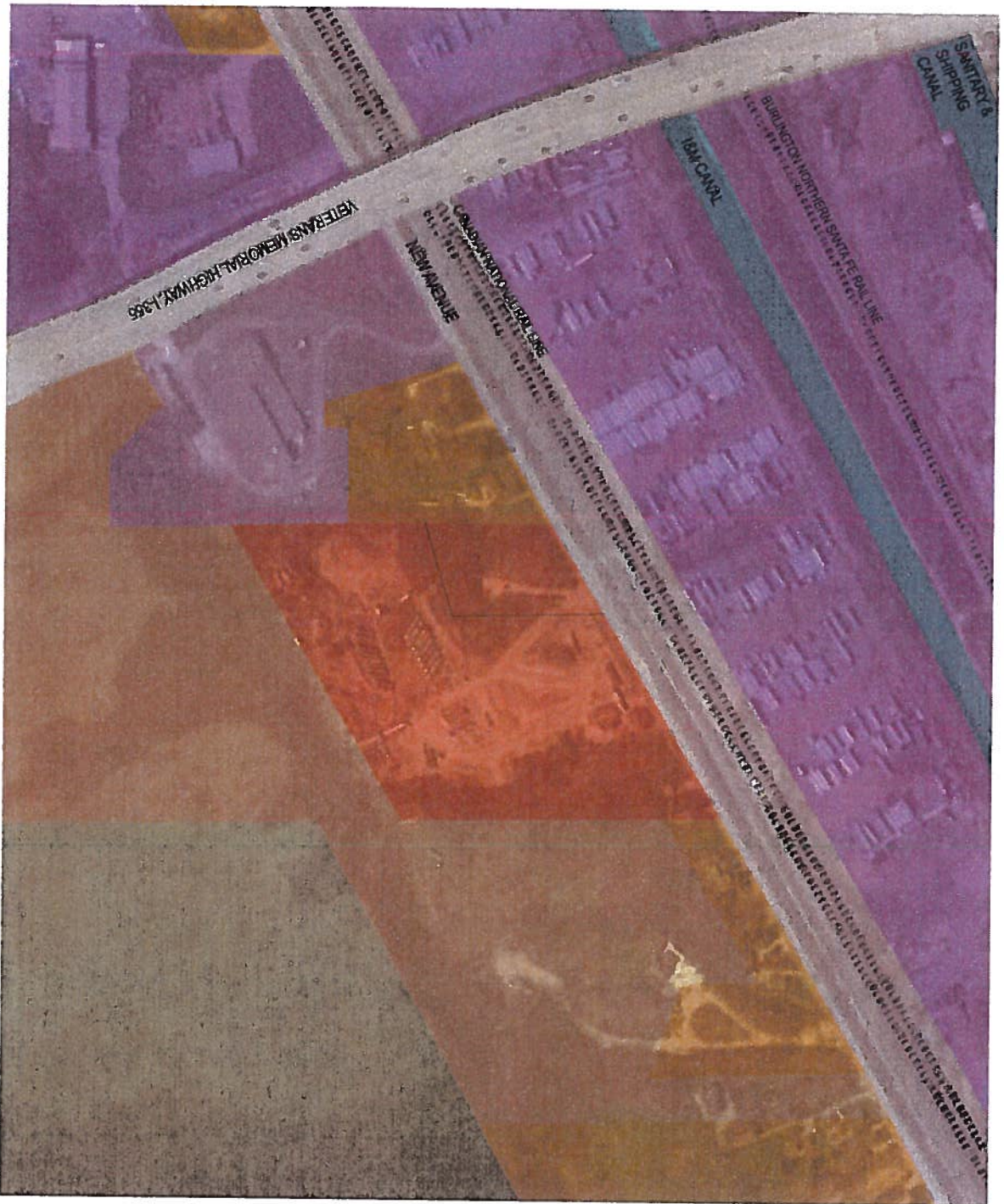
**View from Northwest**



**View from Northeast**

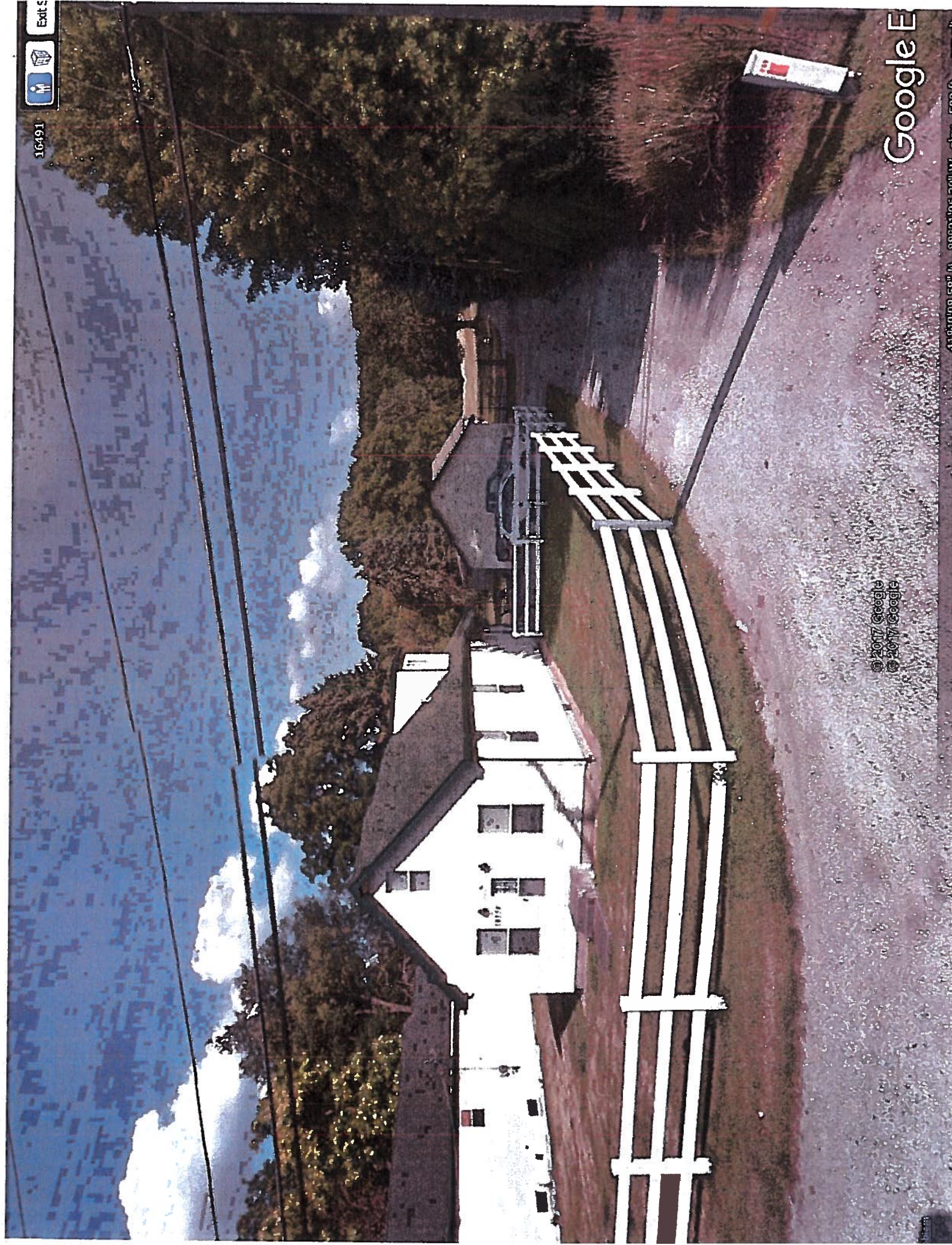


<b>LAND USE</b>		<b>McMahon Property</b> (zoned residential)
		<b>Residential</b>



## LAND USE

- McMahon Property  
(zoned residential)
- Residential
- Village Public Works
- Vacant Land
- Vacant Residential /  
Future Residential
- Zoned Industrial
- Water
- Transportation



16491

Exit S



© 2017 Google  
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Google E



16491



Exit S

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Google E

41°40'09.86" N 88°01'09.40" W elev. 588 ft

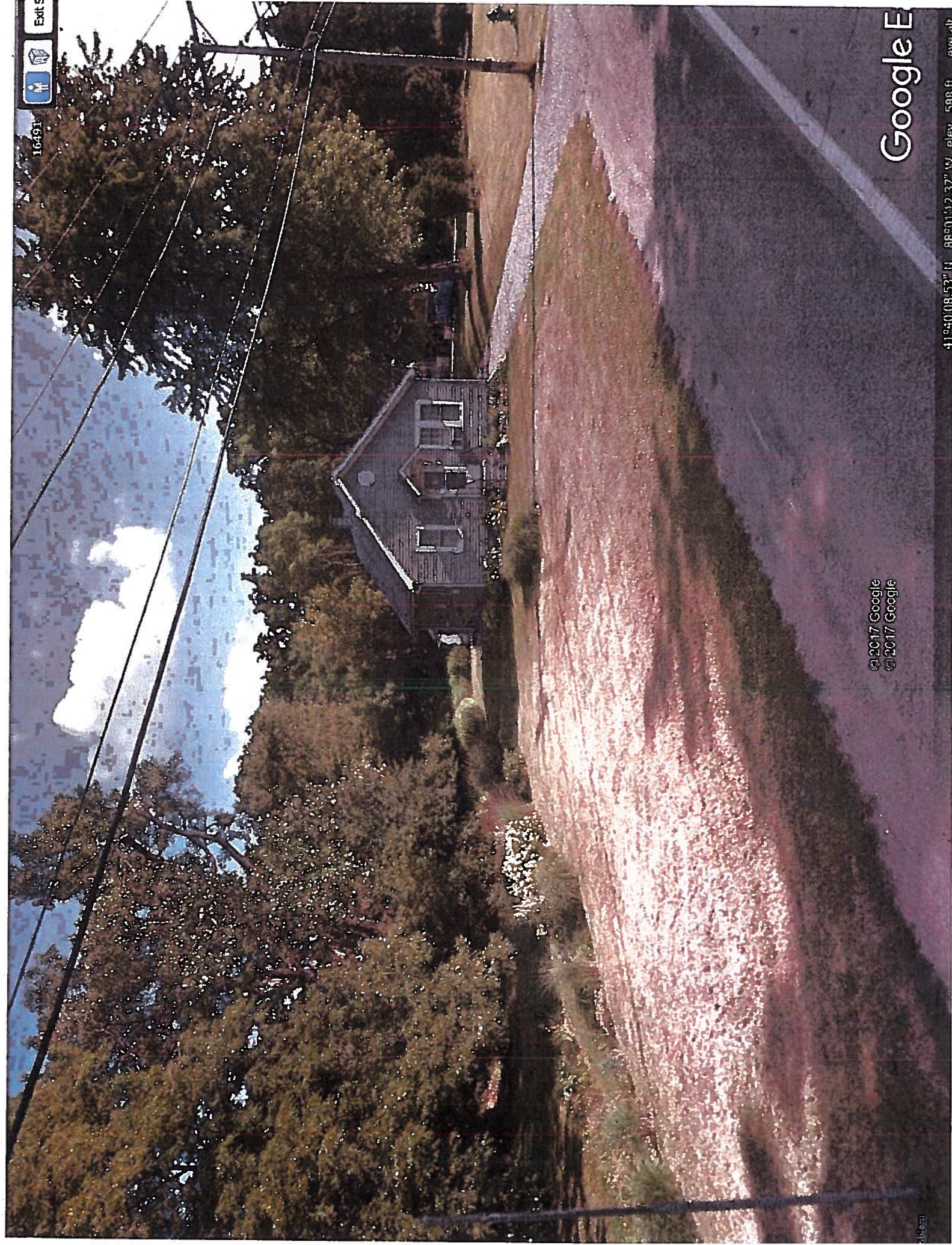
16491



Google E

© 2017 Google  
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41°40'05.52" N 88°01'54.69" W elev. 591 ft



Google E

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41°40'08.53" N 88°01'12.37" W elev. 588 ft

16491

Exit S



16491

Exit 5



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Google E

41°40'06.40" N 88°01'08.53" W elev 591 ft



16491

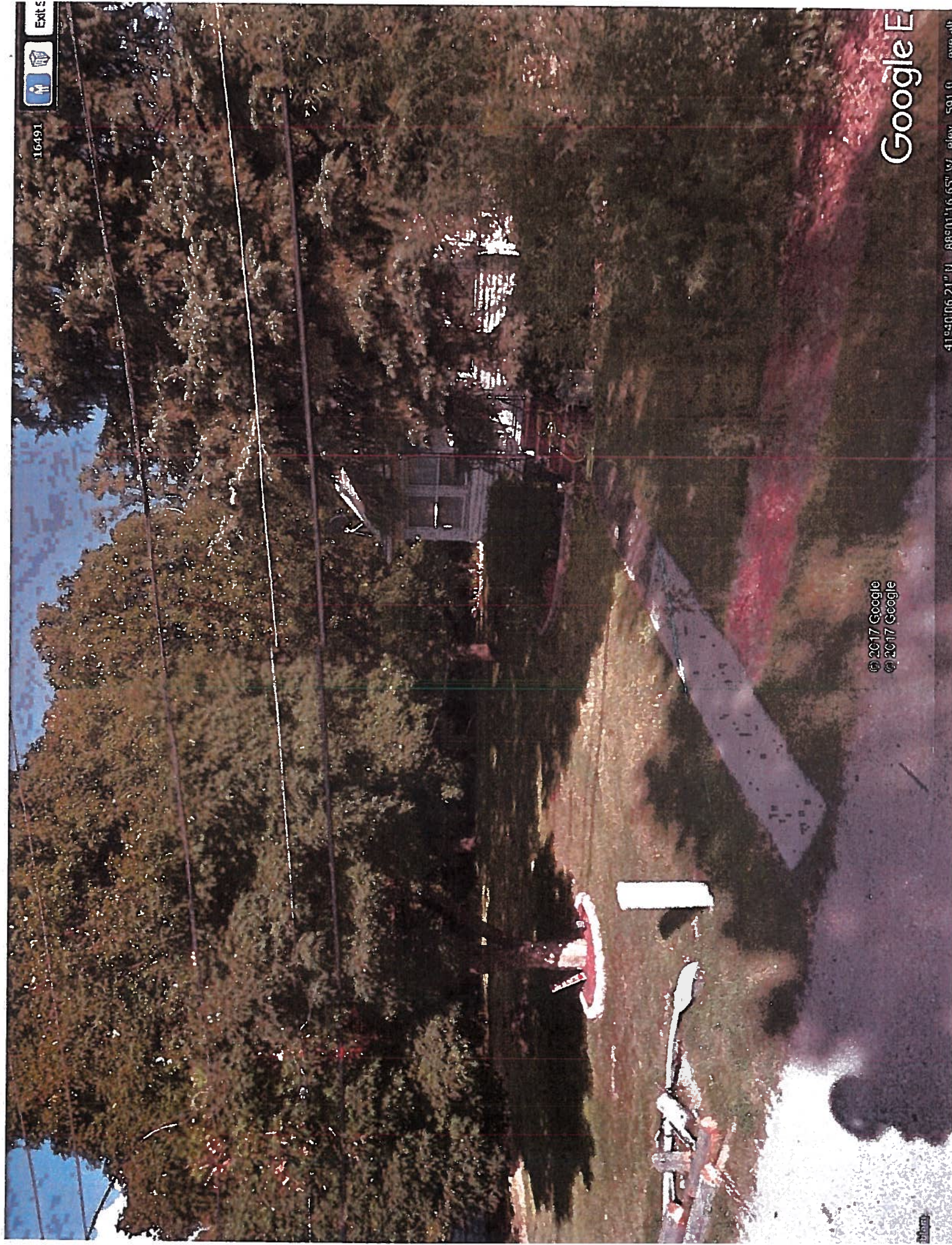
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Google E

41°40'1.77" N 88°0'28.37" W elev 597 ft



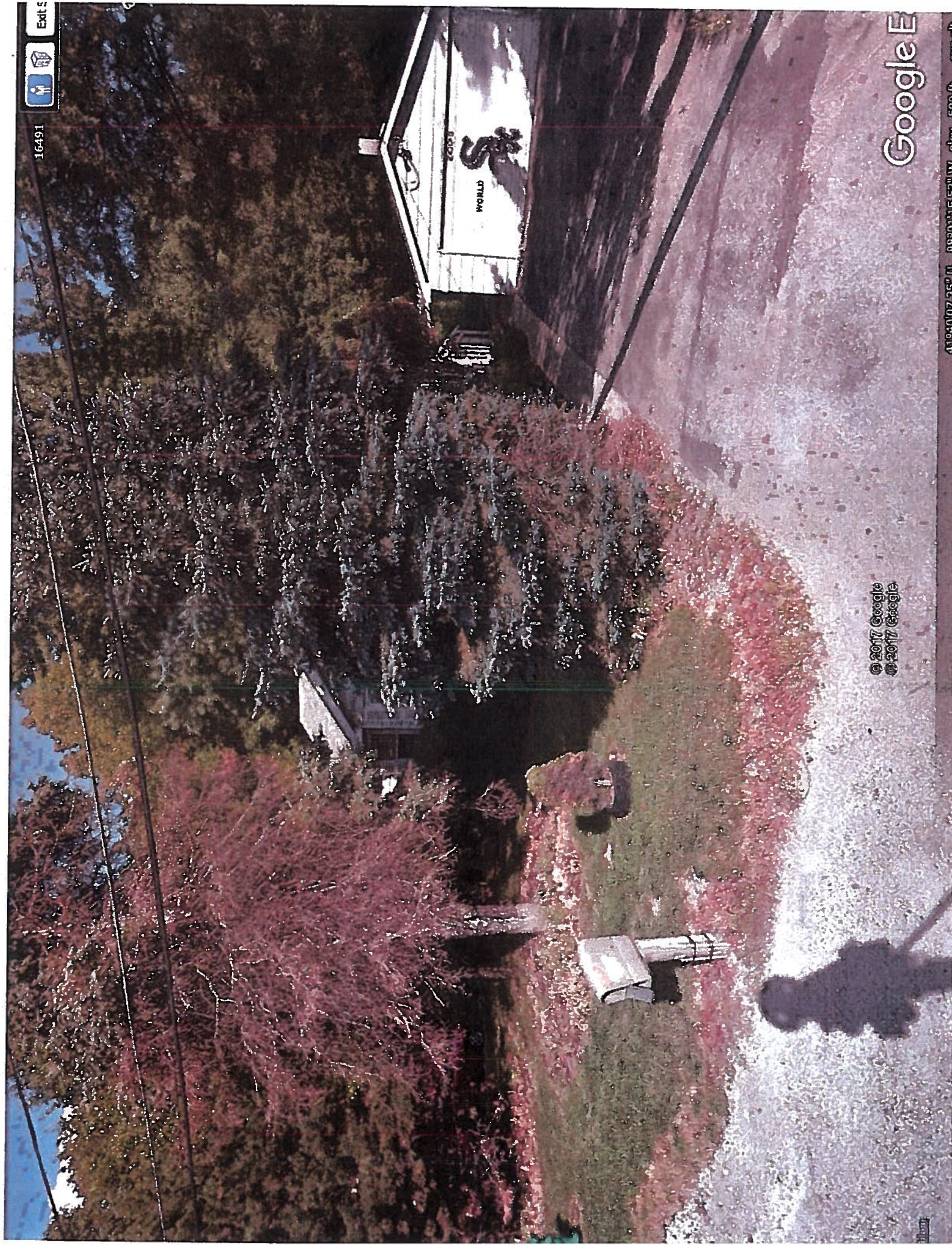
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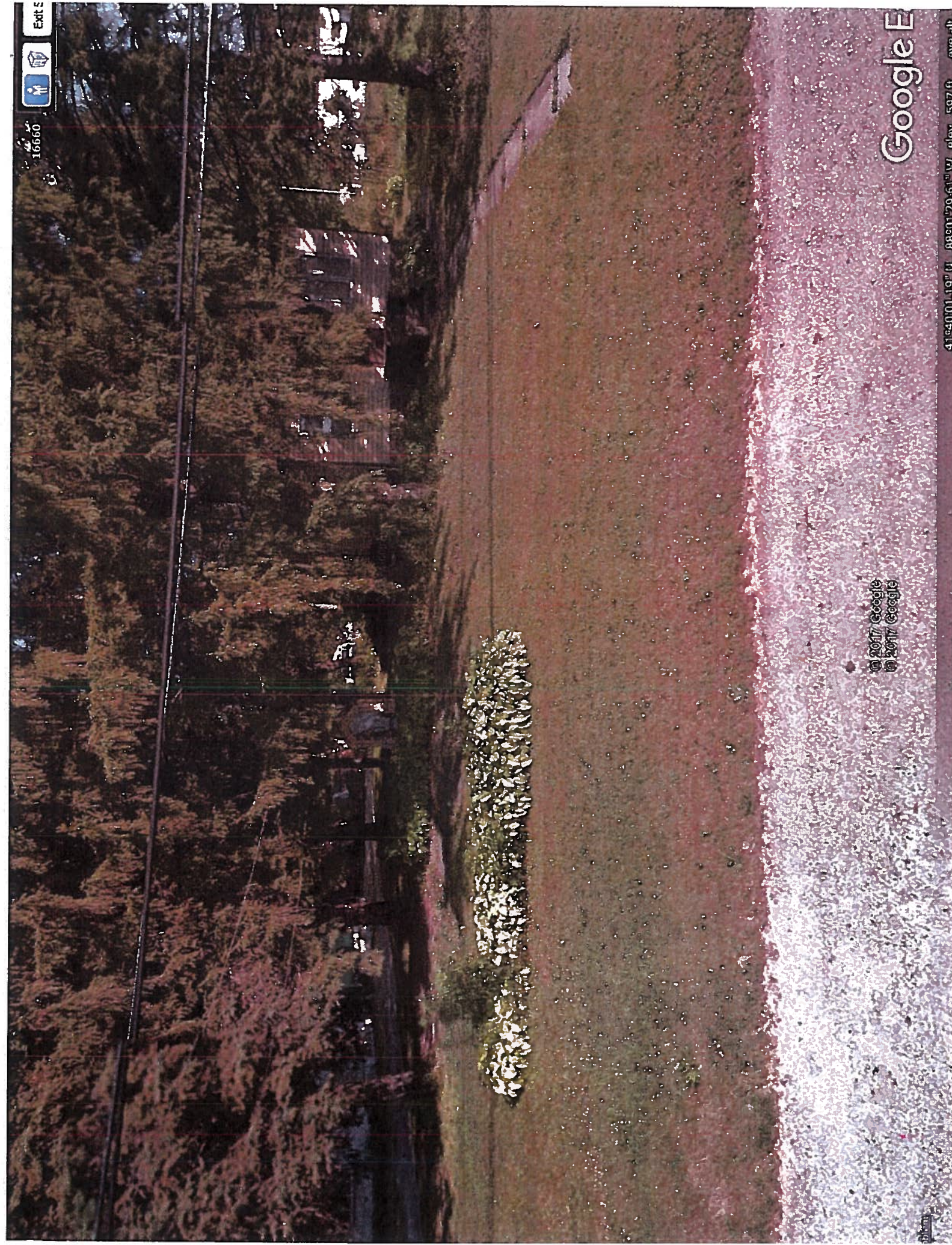


Google E

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41°40'06.21" N 88°01'16.65" W elev. 591 ft





Exit S

16660

Google E

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© 2017 Google

43°40'14.19" N 88°21'29.61" W elev 597 ft



16491

Exit S



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Google E

41°40'02.76" N 88°01'23.41" W elev 592 ft ave alt



16491



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41°04'04.77" N 88°01'22.13" W elev 592 ft eye dlt



16491

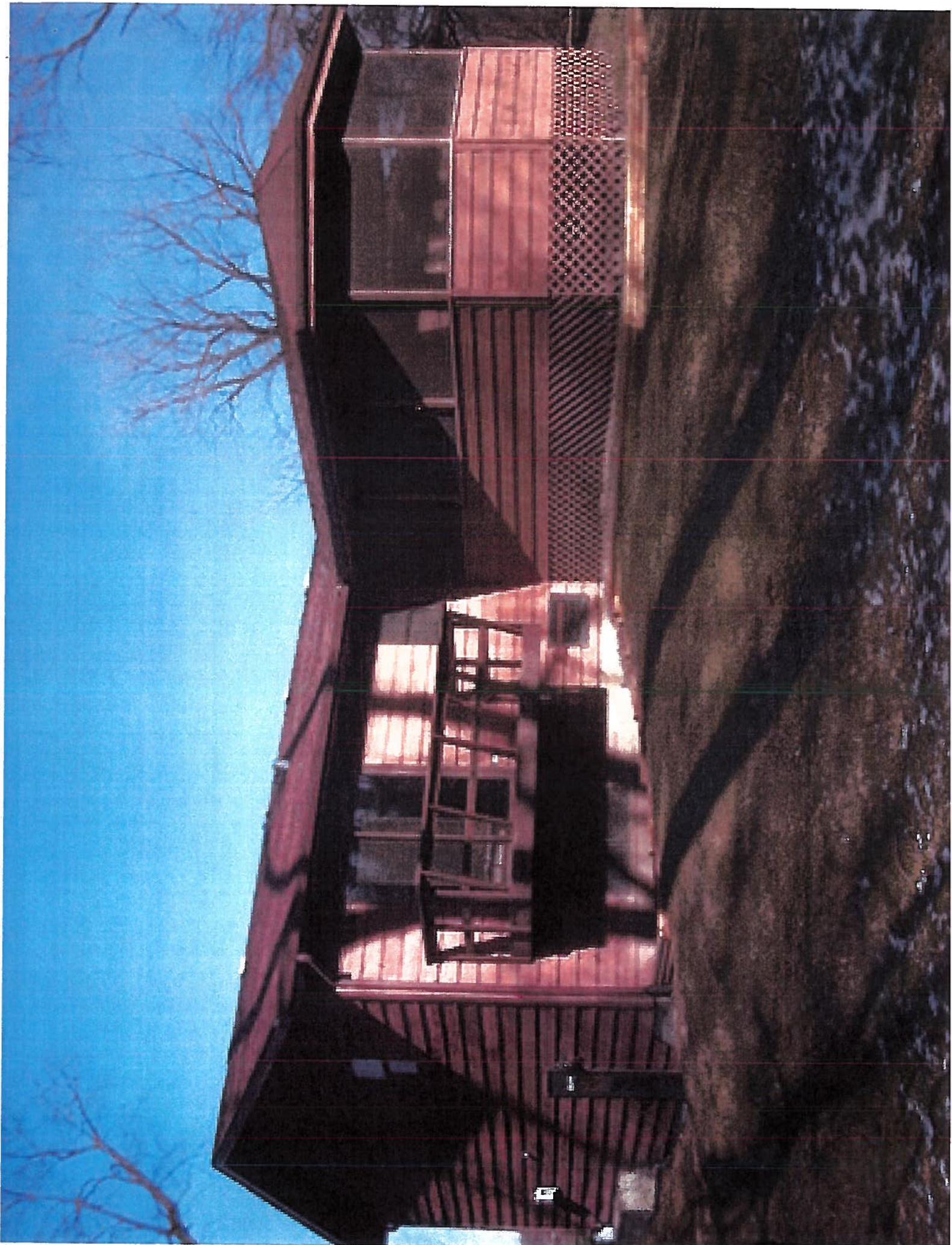
Exit S

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© 2017 Google

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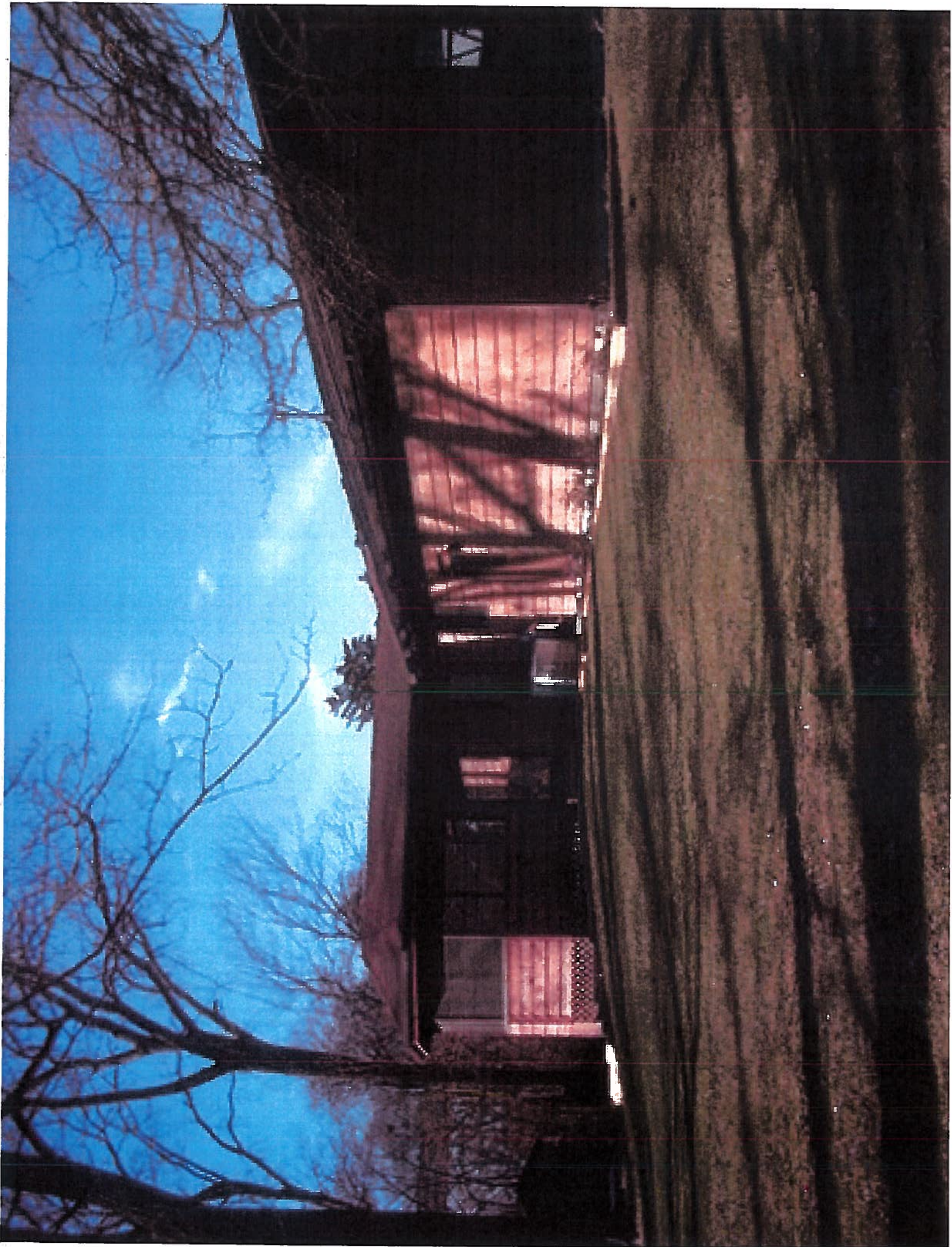
41°54'02.74"N 88°01'24"W















# **BENCHMARKS:**

**BM#1**  
ARROW ON HYDRANT, SOUTHEAST CORNER  
TIMBERLINE DRIVE & OLD QUARRY ROAD  
ELEVATION: 598.87 N.A.V.D. 1988

**BM#2**  
MAG NAL WEST SIDE POWER POLE, 55'±  
OF LOT 40, TIMBERLINE 1' SUBDIVISION  
ELEVATION: 678.27 N.A.V.D. 1988

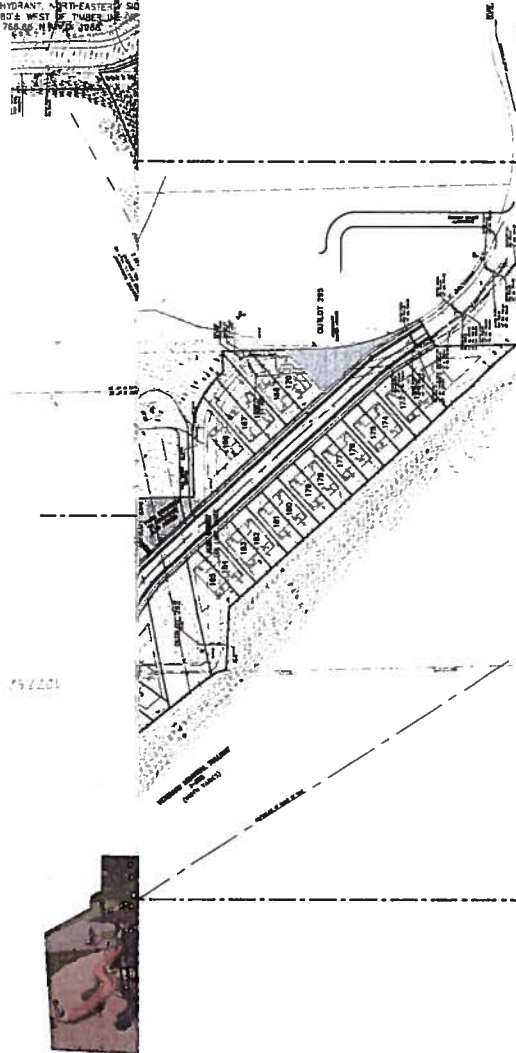
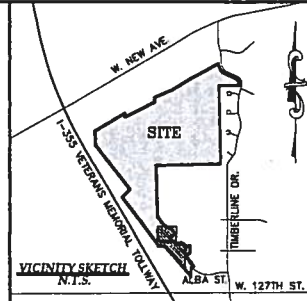
**BM#3**  
R.R. SPIKE NORTH SIDE POWER POLE, REAR  
PROPERTY LINE OF 855 TIMBERLINE DRIVE  
ELEVATION: 728.34 N.A.V.D. 1988

**BM#4**  
MAG NAL WEST SIDE 8" OAK (TAG #1358)  
95'± EAST OF THE NORTH-SOUTH 1/4 LINE  
780'± NORTH OF THE CENTER OF SECTION 33  
ELEVATION: 677.88 N.A.V.D. 1988

**BM#5**  
MAG NAL SOUTH SIDE OF POWER POLE 7  
WEST OF THE NORTH-SOUTH 1/4 LINE, 33  
SOUTH OF THE CENTER OF SECTION 33  
ELEVATION: 723.38 N.A.V.D. 1988

**BM#6**  
ARROW ON HYDRANT, NORTH SIDE OF PARK  
LOT LEMONT TOWNSHIP PARK BUILDING, 10  
SIDE OF ALBA RD  
ELEVATION: 773.43 N.A.V.D. 1988

**BM#7**  
ARROW ON HYDRANT, NORTH-EASTERN SIDE  
ALBA RD. 680'± WEST OF TIMBERLINE DRIVE  
ELEVATION: 760.00 N.A.V.D. 2000



## **NOTE:**

THE LOCATIONS OF EXISTING UNDERGROUND  
UTILITIES SHOWN ON THIS PLAN ARE BASED  
ONLY AS DISCLOSED BY AVAILABLE UTILITIES  
INDEPENDENTLY VERIFIED BY THE COMPANY 75 150  
IMPLIED AS TO THE COMPLETENESS OR A/E; 1"=150'  
DETERMINE THE EXACT LOCATION OF ALL  
AGREES TO BE FULLY RESPONSIBLE FOR  
OCCASIONED BY THE CONTRACTOR'S FALL  
ALL UNDERGROUND UTILITIES. THE CONTRACTOR  
IMMEDIATELY IF A CONFLICT IS APPARENT

**GREENTECH**  
ENGINEERS & LAND SURVEYORS  
CIVIL ENGINEERS & LAND SURVEYORS  
5147 W. Portau Trail, Westmont, IL 60151  
Phone: (708) 668-0703 Fax: (708) 668-0707



CLIENT: INTREPID DEVELOPMENT

## **PARK PLAN**

SECTION: 30  
VISTANCIA  
TOWNSHIP, 37N  
VILLAGE OF LEMONT  
COOK COUNTY  
ILLINOIS  
RANGE: 11E

REVISED

3-3-2017 PSP SUBMITTAL 5  
2-27-2017 PSP SUBMITTAL 4  
1-28-2017 PSP SUBMITTAL 3  
1-8-2017 PSP SUBMITTAL 2  
12-8-2016 PSP SUBMITTAL  
11-25-16 PLAN UPDATE

DATE: 10-24-2016

DRAWN BY:

CHECKED BY: D.J.

0 75 150

FILE: --

DATE: 10-24-2016

SCALE: HOR 1"=150 FT.  
VER 1"=5 FT.

**C3.11**

16-202

**EXHIBIT**

**2**

## Property Characteristics

### 2017 Tax Year Property Information

**PIN:** 22-30-101-036-0000  
**\*Property Location:** 16548 NEW AVE  
**City:** LEMONT  
**Township:** Lemont  
**Property Classification:** 203  
**Square Footage (Land):** 367,210  
**Neighborhood:** 10  
**Taxcode:** 19002



22301010360000 08/26/2007

### Assessed Valuation

	2017 Assessor Certified	2016 Board of Review Certified
Land Assessed Value	9,180	9,180
Building Assessed Value	17,334	13,307
Total Assessed Value	26,514	22,487

### Property Characteristics

**Estimated 2017 Market Value** \$265,140

**Estimated 2016 Market Value** \$224,870

**Description** One story residence, any age, 1,000 to 1,800 square feet

**Residence Type** 1.5 to 1.9 Stories

**Use** Single Family

**Apartments** 0

**Exterior Construction** Frame

**Full Baths** 1

**Half Baths** 0

**Basement<sup>1</sup>** None

**Attic** Partial and Living Area

**Central Air** No

**Number of Fireplaces** 0

**Garage Size/Type<sup>2</sup>** 1 car attached

**Age** 146

**Building Square Footage** 1,526

**Assessment Pass** Assessor Certified

<sup>1</sup> Excluded from building square footage, except apartment

<sup>2</sup> Excluded from building square footage

\* "Property Location" is not a legal/postal mailing address. Its sole purpose is to help our Office locate the property. Therefore, you should not utilize the property location for any purpose, however, you may update the Property Location with your Legal/Postal Mailing Address should you choose to do so. Updating the address will not change the Property Location to a Legal/Postal Mailing Address.

## Property Characteristics

### 2017 Tax Year Property Information

PIN: 22-30-101-037-0000  
 \*Property Location: 16572 NEW AVE  
 City: LEMONT  
 Township: Lemont  
 Property Classification: 203  
 Square Footage (Land): 56,018  
 Neighborhood: 10  
 Taxcode: 19002



22301010370000 08/26/2007

### Assessed Valuation

	2017 Assessor Certified	2016 Board of Review Certified
Land Assessed Value	7,002	5,601
Building Assessed Value	22,064	22,556
Total Assessed Value	29,066	28,157

### Property Characteristics

Estimated 2017 Market Value \$290,660

Estimated 2016 Market Value \$281,570

Description One story residence, any age, 1,000 to 1,800 square feet

Residence Type One Story

Use Single Family

Apartments 0

Exterior Construction Frame

Full Baths 2

Half Baths 0

Basement<sup>1</sup> Full and Unfinished

Attic None

Central Air No

Number of Fireplaces 0

Garage Size/Type<sup>2</sup> 2.5 car attached

Age 28

Building Square Footage 1,058

Assessment Pass Assessor Certified

<sup>1</sup> Excluded from building square footage, except apartment

<sup>2</sup> Excluded from building square footage

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# Cook County Property Tax and Payment Information

Property Index Number (PIN): 22-30-101-037-0000

2016 Tax Year Information - Payable in 2017

Tax Year: 2016 Tax Type: Current Tax Volume: 062 Classification: 2-03

## Property Location

16572 NEW AVE  
LEMONT, IL 60439-3692

To update contact the Cook County Assessor's Office at 312.443.7550.

## Mailing Information

J P MCMAHON PROP LLC  
350 BLACKSTONE  
LAGRANGE, IL 60525-2106

To update your mailing information [click here](#).

## Exemption Information

Homeowner Exemption: YES  
Senior Citizen Exemption: NO  
Senior Freeze Exemption: NO

If you are entitled to an exemption you did not receive, [click here](#).

To check if you received exemptions on previous tax years, [click here](#).

## Tax Billing Information

Original installment billing information and on-time due date for reference purposes.

Installment	Tax Amount Billed	Tax Due Date
1st	\$3,142.68	03/01/2017
2nd	\$2,500.23	08/01/2017

## Tax Payment Information

The balance due, including any interest, is as of Friday, October 06, 2017.

Payments processed are posted through Thursday, October 05, 2017.

Installment	Total Amount	Tax Amount	Interest Amount	Last Payment Received	Date Rece
1st	\$0.00	\$0.00	\$0.00	\$3,142.68	02/28/
2nd	\$0.00	\$0.00	\$0.00	\$2,500.23	07/21/

**BALANCE DUE:** \$0.00

**EXHIBIT**  
**4**

Property Data    Exemption History    Appeal History    Certificate of Error

## Appeal History

This PIN: 22-30-101-037-0000 is not open for appeals at this time because the town is closed.

### Appeal History

#### 2017 Assessment Appeal Information

Tax Year: 2017  
 Appeal Number: 57244  
 Attorney/Tax Representative: MICHAEL J. ELLIOTT  
 Applicant: J P MCMAHON PROP LLC  
 Status: Appeal Review Complete  
 Status Date:  
 Prior Value: 28,157  
 Current Value: 29,066  
 Result:

**Assessed Value Adjusted** The result of a market analysis of your property as well as an analysis of comparable properties.

1) Initial Result:	0
2) Re-Review:	0
3) Final Review:	Assessed Value Adjusted 29,066

Permanent Index Number	Class	Property Location	Result	2016 Board Final	2017 Proposed Assessor	2017 Final
22-30-101-037-0000	2-03	16572 NEW AVE	Assessed Value Adjusted The result of a market analysis of your property as well as an analysis of comparable properties.	28,157	35,280	29,066

#### 2014 Assessment Appeal Information

Tax Year: 2014  
 Appeal Number: 80990  
 Attorney/Tax Representative: GILBERT SNIEGOWSKI  
 Applicant: GILBERT SNIEGOWSKI  
 Status: Appeal Review Complete  
 Status Date:  
 Prior Value: 23,598  
 Current Value: 28,157  
 Result:

1) Initial Result:	0
2) Re-Review:	0
3) Final Review:	28,157

Permanent Index Number	Class	Property Location	Result	2013 Board Final	2014 Proposed Assessor	2014 Final
22-30-101-037-0000	2-03	16572 NEW AVE		23,598	28,157	28,157

**EXHIBIT**  
**5**