December 23, 2008

Mr. John W. Breen

142 Bogey Lane

Salem, VA 24153

Re: Freedom of Information Act Requests (12/12/08)

Dear Mr. Breen:

We are writing in response to your Freedom of Information Act (FOIA) request, as stated in your six e-mails received by the City as of December 12, 2008.

We find the scope and volume of this FOIA request overwhelming in the extreme.

# The Massive Scope of Your FOIA Requests

To summarize, your FOIA requests include a list of 1,109 separate parcels of land located within the City. As we understand your request, you are asking that we provide copies of the following public records for every one of these 1,109 parcels of land:

1. A copy of all zoning complaints received by the City and copies of all public records showing actions taken by the City as to such zoning complaints at any time between January 1, 1993 and November 28, 2008.
2. A copy of all correspondence sent by the City to any Saugatuck property owner notifying the owner of any violation of the City zoning ordinance, covering the period between January 1, 1992 and November 28, 2008.
3. A copy of all correspondence sent by the City to any Saugatuck property owner notifying the owner of any violation of the City building code, covering the period from January 1, 1992 through November 28, 2008.
4. A copy of all stop-work orders issued for any construction from January 1, 1992 through November 28, 2008.
5. A copy of any court complaint filed by the City (except relating to 850 Park Street) covering the period January 1, 1992 through November 28, 2008.
6. A copy of all correspondence sent by the City to any person and/or company notifying that person and/or company of a violation of the City zoning ordinance covering the period from January 1, 1992 through November 28, 2008.

As the above dates indicate, you are requesting copies of all of the above-stated public records for every one of these 1,109 parcels of land over a period of 17 years (or in one instance, 16 years).

In order to summarize for you the massive scope of your request, and the resulting amount of work that would be required to fulfill it, we make the following comments:

1. The City maintains a separate file for each parcel of land within its jurisdiction. These are the only files in which the public records you request are located. Compliance with your FOIA requests would require the City to locate, open and read the contents of every one of the 1,109 separate files covering these 1,109 parcels of land.
2. Once one of these files is located and opened, we would then need to locate, in that file, the material covering the years 1992 (or in one case, 1993) through 2008, and then separate that material from the other papers in the file.
3. Then, having done the above, we would have to read all the papers in the file from 1992 through 2008, and determine which public records are within the scope of your request and which are not, and then separate the relevant materials from the non-relevant materials.
4. From the relevant papers in the file covering the years 1992 through 2008, we would then need to read and evaluate each of the following:
   1. All zoning complaints received by the City.
   2. All papers showing actions taken by the City as to the zoning complaints.
   3. All correspondence sent by the City to the property owner notifying the owner of a zoning ordinance violation.
   4. All correspondence sent by the City notifying the property owner of a building code violation.
   5. Copies of all stop-work orders issued for any construction.
   6. A copy of any complaint filed by the City in any court in Allegan County.
   7. A copy of all correspondence sent by the City to any person and/or company notifying that person and/or company of a violation of the City zoning ordinance.
5. Then, having done all of the above, we would have to read again all of the materials that have been located and separated, to determine if any of these materials are exempt from disclosure under FOIA; if we determine that any of them are exempt under FOIA, then we would have to determine the particular legal basis for that exemption, separate the exempt from the non-exempt material and then prepare a written statement to you as to what public records are not being submitted to you because of an exemption, and stating the particular provision of FOIA under which the public records are exempt.
6. And, we would have to accomplish all of the above work as to every one of the 1,109 parcels you list in your FOIA request.

# The City’s Response to Your FOIA Requests.

The City has no means of responding to these massive requests, in their present form, except over an extremely long period of time. Saugatuck has a population of little more than 1,000 people. In the City Hall, we have only three office employees – the City Manager, the City Clerk and the City Treasurer.

Each of these three City Hall employees has full-time, important responsibilities in the City government. While the City Clerk is the FOIA coordinator, she has the time to respond to only the normal amount and scope of FOIA requests; she does not even begin to have the time to carry out all of the work that would be necessary to respond to your overwhelming FOIA request.

In addition, even if the City Clerk had the time to carry out all of the work involved, some of the evaluation and decision-making as to some of the public records would have to be accomplished by the City Manager, who has the necessary greater expertise. The Manager, however, has even less time available because he is the City’s chief administrative officer and therefore has daily major responsibilities for the ongoing operations of City government.

# Required Reimbursement of the City’s Cost of Responding to Your FOIA Requests.

As you know, Section 4 of FOIA authorizes a public body to charge the requesting party a fee that corresponds to the public body’s costs of copying and mailing the requested public records and also the cost of searching for the records, reading and evaluating them and separating exempt records from non-exempt records. A public body may charge reimbursement for its actual labor cost of all of this work, calculated at the hourly wage of the lowest paid employee of the public body who is capable of carrying out the work necessary to comply with the FOIA request.

Under Section 4(3) of FOIA, please be advised that the City has determined to charge you for reimbursement of all of its permitted costs under FOIA, in responding to your requests, for the reason that if the City failed to do so, that would result in unreasonably high costs to the City because of the nature and massive scope of the requests. These unreasonably high costs consist primarily of the labor cost in responding to the requests, and also the cost of copying the non-exempt public records that you are requesting, and the cost of mailing those records to you.

We estimate that the City’s total cost of responding to your FOIA requests, based upon the types of reimbursement permitted under Section 4 of FOIA, is $50,280.51.

Although you submitted the FOIA request to us in six separate e-mails, we regard these as a single FOIA request for purposes of computing the City’s cost of responding. All of your e-mail requests were not only sent on the same day, they were sent only two or three minutes apart and they all pertain to the same basic subject matter. In addition, all of these separate e-mails derive from and are dependent upon your very long list of the 1,109 parcels of land. Every one of these so-called separate e-mails pertains to the same parcels of land. The only real distinction between each of the several e-mails is a request for a different category of public records, but of course each of these categories of records could have been requested in a single sentence in a single item of correspondence. Accordingly, the e-mails do not differ from each other in any material respect.

Under Section 4(2) of FOIA, a public body may require at the time of a FOIA request a good-faith deposit from the person who is requesting a public record or a series of public records, if the estimated cost of the public body’s response to the request will be more than $50.00. The amount of the requested good-faith deposit may be up to one-half of the total estimated cost.

We therefore inform you that we require from you a good-faith deposit of $25,140.25, which is one-half of the above-stated total estimated cost of responding to the FOIA request.

If you wish that we proceed to respond to the request in its present form, please send us your check made payable to the City of Saugatuck in the amount of $25,140.25. We will not commence work on responding to the request until we receive your good-faith deposit. If your check is a personal or business check, we will deposit the check but will not commence work on the response until we determine that the check has cleared your bank. If your check is a certified check or a bank money order, we will commence work on the response when we receive the check.

Because of the very substantial cost to the City in responding to the request, we will first complete that part of the work as to which the cost is no greater than the amount of your good-faith deposit. We will then mail to you copies of the non-exempt public records which have been located and copied at a cost equal to your good-faith deposit. At that point, we will request a further deposit as to the balance of the work, before commencing the balance of the work.

We emphasize that we will not commence any of the work on the response until we have received verified or guaranteed funds in the amount of the above-stated good-faith deposit.

# The Period of Time Needed for the City’s Response.

As is apparent from the above comments, it will take us a very long time to respond to your FOIA request. The FOIA coordinator already has full-time City responsibilities, Monday through Friday of each week. She will be able to work on the FOIA response only as her other duties permit. There will be many days during which she will have no time to work on the response, though there will be others when she will have a reasonable amount of time to do so. Similarly, the City Manager already has basically all of his time taken up by his major City responsibilities. As to those public records that the Manager himself will need to evaluate as to relevance and possible exemption or non-exemption, the Manager will have many working days when he will have no available time to spend on your request, though there will be other times when he will be able to participate as needed.

Even assuming that there will be some days when the FOIA coordinator will be able to spend a reasonable time on the response, and assuming that the City Manager will be able to occasionally set aside other City work in order to participate to the extent needed, we estimate that it will take approximately 22 months to respond fully to your request.

We want to give you this estimate of the potential amount of time that will be needed, in case you may wish to consider narrowing your request so as to make it more manageable. Obviously, if you are able to eliminate a large number of the 1,109 parcels of land from the request, that would enable the City to respond to the request in correspondingly less time and therefore at less expense to yourself. We urge you to consider this, but if you would prefer not to do so, then we would proceed in the manner and on the terms stated above.

We will not proceed further until we receive either the above-stated good-faith deposit or a revised FOIA request in which you narrow the scope of the request or otherwise revise it.

As this letter makes clear, the City is not equipped to respond in the usual period of time to such a massive FOIA request. In adopting FOIA, the Michigan Legislature recognized that local governments might be confronted with FOIA requests so voluminous that response to them would require so much time and effort that other important municipal functions might be left undone. In this regard, Section 3(3) of FOIA states that “a public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.”

We are requesting that the City Council consider and adopt a policy that will include reasonable rules for the consideration and handling of very large FOIA requests such as this, so that the City may in the public interest prevent the response to such requests from unreasonably interfering with the discharge of the City’s local government functions and responsibilities.

This letter is not a final determination with respect to your FOIA request, but is instead a communication concerning the various FOIA matters noted above and requesting your reply as to the good-faith deposit, modification of your FOIA request or the other matters noted above. At such time as a final determination is made as to your FOIA request, we will notify you as to the rights of appeal available to you under FOIA.

Yours very truly,

Kirk R. Harrier, City Manager Monica Looman, City Clerk