



CITY COUNCIL MEETING AGENDA
TUESDAY MAY 7, 2024

CITY COUNCIL MEETING TIME: 6:30 PM

1. Call to Order
2. Pledge of Allegiance
3. Roll Call

4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council Minutes from the April 2, 2024, LBAE Meetings.
 - b. Approval of City Council Minutes from the April 16, 2024, Reconvene LBAE Meetings.
 - c. Approval of City Council Minutes from the April 16, 2024, Regular City Council Meeting.
 - d. Approval of Accounts Payable (Batch #1; Checks Numbered 22795-22801, Batch #2, Checks Numbered 22802-22811 and Batch #3, Checks Numbered 22812-22822).
 - e. Release of Development Contract for Independence Ridge Subdivision (Wild Oak Trail).
5. Set Agenda – Anyone Not on the Agenda can be Placed Under Open/Misc.
6. Reports of Boards and Committees by Council and Staff.
7. West Hennepin Public Safety – Director Gary Kroells: Presentation of the March 2024 Activity Report.
8. Jackson Striggow (Applicant/Owner) is requesting the following action for the property located at 5760 Drake Drive (PID No. 26-118-24-41-0009) in the City of Independence, MN:
 - a. **RESOLUTION No. 24-0507-01:** Considering approval of a variance for a reduced side yard setback to allow an addition to be constructed onto the existing home using the current side yard setback which is non-conforming with the requisite setback.
9. Consider Approval of Development Agreement for Breckenridge Farm Subdivision as required in Final Plat approval.
10. Consider Approval of a text amendment to the City's zoning ordinance Chapter 5, Section 515,

Solar energy systems.

- a. **ORDINANCE No. 2024 -02:** Considering an amendment to the solar energy systems ordinance that will allow an increase in the maximum square footage of residential scale ground mounted solar energy systems.

11. Amendment to Annual City Council Appointments: Maple Plain Fire Commission.

12. Resolution Confirming Pioneer Park Master Plan.

- a. **RESOLUTION No. 24-0507-02:** Considering approval of a resolution confirming willingness to work with Orono Softball and Orono Baseball on park development if funding supports intended improvements.

13. Open/Misc.

- a. West Hennepin History Center – Flag Raising Ceremony on May 11th.

14. Adjourn.



BOARD OF APPEAL AND EQUALIZATION (LBAE) MINUTES
TUESDAY, APRIL 2, 2024 AT 6:00 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof the Independence City Council/ Local Board of Appeal and Equalization meeting (LBAE) was called to order by Mayor Johnson at 6:00 p.m. in the City Hall Chambers.

2. ROLL CALL

PRESENT: Mayor Johnson and Councilors Spencer, Grotting, Betts, McCoy
ABSENT: None
STAFF: City Administrator Kaltsas, City Administrative Services Director Simon
VISITORS: Hennepin County Assessor Joby Rausch, City Attorney Vose, John Mika, Mark & Lisa Kroskin, Mary Fehn, Joseph Kovack

Johnson started the meeting by explaining that this assessment year was from 10/1/2022-10/1/2023. He said one of the major increases that was seen this year was in AG land. It has gone up from \$7,300 to \$10,000/acre. Anyone with AG land would see that increase.

Joby Rausch stated HC values every property as of January 2nd using sales data from 10/1/2022 to 09/30/2023 and trend any sales forward towards Jan 2, 2024.

This year some growth statistics are as follows:

Single Family residences saw an increase of 3.7%

Other Residential increased by 3.1%

Commercial increased by 5.7%

Industrial increased by 17.7%

Duplex and Triplex increased 4.8%

Total Market Value for the City of Independence is \$1,212,775,300 and included in that is \$21,578,300 worth of new construction. Overall, net percent increase for all property types throughout the city is 4.6% and gross percent increase for all property types is 6.5%.

Johnson stated that he wants to make sure people understand that most cities in the county have turned this hearing over to the county directly. We felt it was important that the council retain this hearing so that if we see a trend happening in Indy or a particular area

that we can negotiate with the assessor for you if we feel the same inclination. That's why we continue to hold the LBAE at the city hall.

Mayor Johnson asked that anyone wanting to speak come to the podium one by one to voice their concerns before we take any action.

Mary Fehn – 2930 Lindgren Ln – On the West side of Lake Independence. PID 13-118-24-0031. She stated that she is a single homeowner, and the value has gone up \$400,000 more over the last two years. She said that comps around her are new houses or complete remodels. She spoke with Joby today. She is asking for her house assessment to go down. She said she will have to sell since she can't afford to live there anymore. She needs a new roof and new deck. She sold 1/3 of an acre to her neighbor and after 2 years it's still not completed with HC. It may affect taxes in 2025.

Joby said her value will change depending on when that division is received. She normally wouldn't receive a valuation notice but this one has special circumstances. The deed did not get recorded correctly or at all.

Fehn said she did send the certified appraisal to Joby that was done at the time of the division.

Grotting said it's surprising what is being torn down on the water. Her value is in the land, not the home. The Bridgevine comps should be looked at significantly differently because of the business they are in over there.

Joby said the Bridgevine property wouldn't be included in any sales. We look at sales off of Lindgren Ln. The appraisal was 2 years old. A home sold 3 houses down from her for \$1.1m and it was a tear down as well. He said HC is even low on the assessment now even if they don't include the house value. He said his hands are tied to lower it even more.

Mark & Lisa Kroskin - 6000 Providence Curve stated they were valued at \$964,700 and we bought in 2015 and they didn't do anything besides mechanical and garage updates. In 2016 they had it appraised for a refi. He said he had been talking with Joby on the 18th of March and it came in at \$925k. Joby wrote back and said we still feel number is correct and Mark said he asked why. Joby said the appraiser didn't add value to the common area. Mark said reached out to the appraiser on this – Dave Ostertag. Mark asked the appraiser about the HOA common ground. The appraiser said he mentioned it but didn't give additional value because 90% of it is wetlands. Kroskins said they have a designated area with a gazebo and pond area for people to use but it's pretty disbursed. Members are allowed to use Outlot A, B and C. All of A is wetland. B is wetlands. The appraiser is going to redo it and put his notes in. Kroskins asked if the difference of \$39,700 the value for the common area?

Joby stated that in the appraisal, he didn't take out any of the wetland areas. Almost all the surrounding houses also had wetland area. When comparing their property to yours, the appraiser used an adjustment we haven't seen before and was way higher than we have ever seen before. Joby said he supported the HC value. He said he disagreed with the valuation the appraiser gave. Joby explained that Kroskins technically have more land than you own do because of the wetland areas.

Lisa Kroskin said they technically only own 1.9 acres. She asked how do you parcel out parts of common ground.

Joby said their property will sell differently because they have all that common area as well.

Lisa said if you look at comps in our area, you have comped similar areas such as ours or just recent months. None of these are in an association. When they say 15 acres, its their owned property.

Johnson said you would benefit from that if rules changed and zoning changed in the city. A certain number of acres tillable, but most of it is wetland.

Kaltsas said half of the outlot has to be upland. The Providence development set the standards for future ones.

Lisa said she has been in industry since 1991 in remodeling, kitchen, etc. The comps to their property have done significant remodeling. It would take over \$100k to get it to these comps.

Joseph Kovack – 3060 Lake Sarah Rd – He stated that his valuation has gone up 37% in the last 4 years. The house was built in 1988. There are no out buildings. He has approx. 4 acres all woods, nothing agricultural, and no updates to the house besides septic system.

Johnson asked if he has visited with the assessor.

Kobel said not yet.

Johnson explained that the last two years on average the values have increased 17-19% in the last two years but our taxes in the city did not go up like that.

Joby said until we look at it we won't know but on average we are seeing 20% each year over the last two years across the county.

John Mika – 7620 Pioneer Creek Rd – 21-118-24-34-0002 – Mika said he met with Mr. Rausch. He said his property has been incorrectly assessed as having an extra bedroom and bathroom for several years. His sister and him live right by each other and built the same year. Everything is almost exactly the same.

Rausch said he has more finished sqft.

Mika said they did reduce it a little, but he doesn't think it's enough. He said it is a modular home. The comp home I looked up was at 1760 County Rd 92 N. It has several hundred more sqft, a sport court, outbuilding, and more. He said Joby did reduce the value from \$735k for 2024 is our valuation. Mika said Joby countered at \$720k. He thinks it should be closer to his sisters at \$654k. Joby said his sisters is at \$674k. but sister has less finished sqft.

Council discusses

Fehn:

PID: 13-118-24-24-0031

Johnson said let's start with Mary Fehn's property. He said he doesn't know if there is anything more council can do and there are a lot of moving parts.

Joby said HC supported the values and their decision is made, so HC can't lower it anymore, but it would be up to council.

Johnson said sometimes it is the case where you have not been in the home to see it yourself.

Joby agreed. It was just Mr. Kovack that they have not touched base with yet so they can schedule something or do a reconvene.

Johnson said we usually do a reconvene because we qualify for the time period and we can discuss it more.

Spencer said Mary's is up 31% for this year. He asked if there was any offer or an adjustment.

Joby said he looked at the appraisal but it was over 2 years old and lake lots have increased significantly. The comps on that street still supported this valuation.

Spencer asked if all appreciation was in land itself.

Joby said yes.

Johnson asked what percent of the property was sold.

Mary said 1.3 acres and sold .3.

Joby said the property that sold right down the road was 1.08 acres for \$1.3m.

Johnson said the value is in the land.

Spencer told Mary it's going to get you again. It will catch up.

Johnson said the reality is the value is in the land. We have enough depreciation with the house.

Joby said we have to value the overall value, that's what the land was worth itself.

Johnson said we can emphasize with you but have to deal with reality too.

Spencer said he has a suggestion. He understands the impact of a 31% increase in one year. He thinks it will catch up with her again next year. The lake is just going up. He said if he were to take some consideration for what you transferred to Roers and take it down to \$600k on the property itself, we would lower the total assessed value from \$910k down to 833k. There is going to be a little adjustment. Propose a reduction by \$77k. **Spencer, seconded by mcco**y land value from 677,300k to 600,300, leave house the same. Total \$833,600k, 5-0

Motion by Spencer, second by McCoy to propose the property assessment reduction in her land valuation from \$677,300 to \$600,300k, removing \$77,000 for the portion of her property that has sold for a total valuation of \$833,600. Ayes: Johnson, Spencer, Betts, and Grotting. Nays: None. Abstain: None. Absent: None. MOTION DECLARED CARRIED. 5.0

Kroskins:

PID: 14-118-24-42-0008

Johnson confirmed the valuation went from \$975k last year to \$964,700k

Spencer said they saw a decrease of \$10,300. The valuation in 2022 was \$823k. They saw the biggest jump from 2022-2023 when interest rates were really low. They are seeing a 17% net which doesn't seem that out of line for Orono school district. Wetlands are valued since you won't see any houses around you. He asked Joby his recommendation.

Joby said his recommendation would be no change.

Motion by Johnson, second by Spencer to leave the valuation as proposed. Ayes: Johnson, Spencer, Betts, and Grotting. Nays: None. Abstain: None. Absent: None. MOTION DECLARED CARRIED. 5.0

Kovack:

PID: 15-118-24-22-0033

Joby recommended no change so we can have time to take a look at it and reconvene.

Spencer said to Kovack that Joby will come out and take a look at it with you. If not, he can come back to the reconvene.

Betts moves no change until assessor visits, seconded by McCoy 5-0

Motion by Betts, second by McCoy to move no change until assessor visits the property. Ayes: Johnson, Spencer, Betts, and Grotting. Nays: None. Abstain: None. Absent: None. MOTION DECLARED CARRIED. 5.0

Mika:

PID: 21-118-24-34-0002

Johnson asked if his sister's property the same acreage.

Mika said yes, about 10 acre lots.

Johnson said the value of \$10k/acre on Ag land has to be considered too.

Grotting said he just sold some AG land on Nelson Rd for \$14,500/acre.

Spencer asked if his sister's property is just to the West of his.

Joby said the address of sister's property is 1912 Co Rd 92 is sister's property. Land value is the same, but building and more sqft and half basement is finished.

Betts asked what year the house built.

Joby said 2004. I was comparing it to the other property on 92 which I found to be large differences. It is several hundred more sqft and large outbuilding as well.

Johnson asked Joby if he has been to this property.

Joby said yes, but not the comp. last sold in 2020.

Mika asked if there is an assessment adjustment for modular construction.

Joby said modular type homes can have a lower quality value, but it doesn't necessarily mean there will be.

Spencer said it wasn't the home value that caused the increase, but increase in the land.

Joby said the value now is \$720k, which was lower than the previous year.

Mika said the valuation was wrong before with the additional bathroom and bedroom.

Spencer confirmed that Joby lowered the structure value. It seems reasonable to lower it to \$720k.

Spencer, seconded by Betts to value at \$720k recommendation from Rausch. 4-1 Grotting (nay)

Motion by Spencer, second by Betts to approve the value recommended by Rausch of \$720k. Ayes: Johnson, Spencer, Betts. Nays: Grotting. Abstain: None. Absent: None. MOTION DECLARED CARRIED. 4.1

Johnson asked if someone contacts you from now until the next meeting, do you still hear them.

Joby said you can keep it open or close it. If anyone calls in between now and the reconvene. We recommend keeping it open.

Joby reads in properties that have agreed with valuation:

Residential

13-118-24-24-0031- \$910,600 -\$833,000 -Board Change

14-118-24-24-0005- \$1,422,000 – \$1,350,000

15-118-24-32-0001- \$492,100 – \$452,000

21-118-24-34-0002- \$761,200 – \$720,000

Industrial

23-118-24-23-0001- \$839,000 No Change

Johnson mentioned that anyone that was here tonight can still appeal at the county level if they do not agree.

Motion by Spencer, second by Johnson to approve the valuations read into record from Rausch. Ayes: Johnson, Spencer, Betts and Grotting. Nays: None. Abstain: None. Absent: None. MOTION DECLARED CARRIED. 5.0

Motion by Betts, second by McCoy to reconvene on April 16th at 6:00pm. Ayes: Johnson, Spencer, Betts and Grotting. Nays: None. Abstain: None. Absent: None. MOTION DECLARED CARRIED. 5.0

3. Adjourn.

Meeting adjourned at 7:09p.m.

Respectfully submitted,

Amber Simon, Recording Secretary



RECONVENE – LOCAL BOARD OF APPEAL AND EQUALIZATION (LBAE) MINUTES
TUESDAY, APRIL 16, 2024
6:00 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof the Independence City Council/ Local Board of Appeal and Equalization meeting (LBAE) was called to order by Mayor Johnson at 6:00 p.m. in the City Hall Chambers.

2. ROLL CALL

PRESENT: Mayor Johnson and Councilors Betts, Spencer and Grotting.
ABSENT: McCoy
STAFF: City Administrator Kaltsas, City Administrative Services Director Simon
VISITORS: Hennepin County Assessor Joby Rausch

3. Hennepin County Assessor: Present Local Board of Appeals and Equalization Information.

Johnson explained that this meeting was called to order because we had a resident asking for his home to be looked at further.

Rausch said Mr. Kovack was unable to set up an appointment due to business trips. He said HC recommended a “no-change” so it can be kept open at the county level if necessary. Kovack will appeal next year if he needs to. Rausch explained that Mr. Kovack thought he had an increase of 30% since 2020, but it was only 20%. Most properties saw higher increases, so he seemed okay with that.

Rausch read into record two PIDs:

15-118-24-22-0003 – recommending no change

14-118-24-42-0002 – recommending no change. This resident Rausch stated he was unable to get back in contact with, so he wasn’t sure if it was a value concern.

Johnson said we will read those in so they can go to the county level if needed.

Motion by Johnson, seconded by Grotting to recommend no change to PIDs 15-118-24-22-0003 and 14-118-24-42-0002. Ayes: Johnson, Betts, Grotting and Spencer. Nays: None. Abstain: None. Absent: McCoy and Grotting. MOTION DECLARED CARRIED. 4-0

4. Adjourn.

Motion by Betts, seconded by Spencer to close the LBAE reconvene meeting. Ayes: Johnson, Betts, and Spencer. Nays: None. Abstain: None. Absent: Grotting. MOTION DECLARED CARRIED. 4-0

Meeting adjourned at 6:04 pm.

Respectfully submitted,

Amber Simon, Recording Secretary



CITY COUNCIL MEETING
MINUTES
TUESDAY APRIL 16, 2024

CITY COUNCIL MEETING TIME: 6:30 PM

1. Call to Order

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 6:30 p.m.

2. Pledge of Allegiance

Mayor Johnson led the group in the Pledge of Allegiance.

3. Roll Call

Present: Mayor Johnson, Councilors Spencer, Grotting, and Betts

Absent: McCoy

Staff: Kaltsas, Simon

Visitors: Sally Simpson and County Commissioner Kevin Anderson

4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council Minutes from the April 2, 2024, LBAE Meeting.
- b. Approval of City Council Minutes from the April 2, 2024, Regular City Council Meeting.
- c. Approval of City Council Minutes from the April 11, 2024, City Council Workshop.
- d. Approval of Accounts Payable (Batch #1; Checks Numbered 22743-22767, Batch #2, Checks Numbered 22768-22779 and Batch #3, Checks Numbered 22780-22794).
- e. Large Assembly Permit:
 - i. Tour de Tonka – August 3, 2024

Move LBAE Meeting Minutes Approval to the minutes at the next meeting.

Motion by Spencer to approve consent agenda items b-e, seconded by Betts to approve the Consent Agenda. Ayes: Johnson, Betts, Spencer, Grotting and. Nays: None. Absent: McCoy Abstain: None.

MOTION DECLARED CARRIED. 4-0

5. Set Agenda – Anyone Not on the Agenda can be Placed Under Open/Misc.



6. Reports of Boards and Committees by Council and Staff.

Spencer attended the following meetings:

- Fire Dept Retirement of Nate Scott
- West Hennepin Public Safety Police Academy Graduation
- Workshop
- Board of Appeals
- Spent the morning with Public Works director driving around looking at current road conditions.
- Gravel roads workshop
- Hennepin County Cover Crops Workshop

Grotting attended the following meetings:

- Fire Dept. Retirement of Nate Scott
- West Hennepin Public Safety Police Academy Graduation
- Workshop
- Board of Appeal

Betts attended the following meetings:

- West Hennepin Public Safety Police Academy Graduation
- Workshop
- Board of Appeal

Johnson attended the following meetings:

- West Hennepin Public Safety Police Academy Graduation
- County in review at the Government Center
- Fire Dept. Retirement of Nate Scott
- Presented annual centennial plaque for the Ag Society Farm Bureau spring dinner to Doug & Mary Jo Ende
- Loretto Fire Breakfast
- Regional Council of Mayors
- Maple Plain Chamber Meeting
- NW League
- Workshop
- Ag presentation by Hennepin County Environmental Services
- Hwy 55 Corridor coalition
- Baxter MN Mayors Assoc
- Long Lake Fire Dept Breakfast

7. Hennepin County Commissioner Annual Council Visit – Commissioner Kevin Anderson.

County Commissioner serving District 7 Kevin Anderson – I show up as often as I can. I provide a lot of updates and try to be as transparent as possible. I try to give a yearly update to reintroduce myself and provide an update what is happening in the county and how it is impacting Independence.



District 7 – Public Works chair in Hennepin County, Vice chair of Law Safety Justice Committee, Health and Human Services committee and the vice chair housing and redevelopment. Served on several boards and several committees at the state level and federal level.

Representation of county budget – largest portion is health and human services – by far what we spend most time and energy on. Counties are responsible for funding the safety net for people in need.

Independence & Greenfield has 400 residents that receive Human Services Support. Needs exist in every community. It's harder in a rural setting because we don't have facilities out here. Solutions are online support and try to find innovative ways to help.

Johnson – what depts do you think these are under or are these people coming through other parts for energy services, etc.

Anderson – community action partnership, social services, food, rental assistance. Direct county services.

Johnson – if they are getting energy assistance, we would hear about that through Community Action.

Anderson – Yes. This year we had increase public safety budget for police, social workers, Public Works- we have had a lot of projects out here and maintenance. Where Independence sits in Hennepin County, the age and condition of roadways are warranting maintenance and reconstruction. We have several projects listed. CR 139 RR crossing replacement, culvert replacement 11 & 50, mill and over lay on Co Rd 83 in 2023. 2024 CSAH 19 road, chip and seal Co Rd 6, Rebecca Park trail mill & overlay, County Rd 19 pedestrian ramp.

Recently passed Complete and Green Streets policy – give us another tool to say when we are coming in to do the projects, what other improvements can we look at doing at the same time.

Johnson – in 2023 they did the major replacement along the river N of gun club. That was a major improvement due to the road washing out.

Supporting Youth in Independence – Between over \$700k we have seen.

Johnson – 2023 major replacement weren't we going to ask a question on our grant process?

Kaltsas – we were.

Anderson – grant process is moving through right now. We stopped our contract with MN Youth Sports League. We brought it to an internal person to process them at Hennepin County. Points system.

Kaltsas – we would like help on that and see how we can get the park grant through.

Anderson – reach out to my team to set it up.

Johnson – Kent Koch and I attended State of the County event. I was a little disappointed in that compared to what they had done in the past. When they did snip its, it was a broader presentation. It was a nice event, but it seemed things were missing.

Anderson – it would be nice to have district 7 to show up a little more.

Johnson – Jeff Lunde is holding a summit.

Anderson – HC is hosting a safe cities summit in coordination with cities united. It's designed to bring cities and law enforcement together to come up with solutions that we can implement at the local level.

Johnson – we seen about the County Sheriff suing the County of oversight with a former county sheriff?

Anderson – I can't talk about any of that since its pending litigation.

Grotting – if you looked at things critically, what is the one thing Hennepin County can do a better job at spending money or focusing on?



Anderson – I think one of the things I'd really like to evaluate is making sure the contracts with providers are going toward the goals we have stated we want them to go towards. I am often frustrated with is measurable goals that are clearly defined that we are working towards them. Work that happens in some of our community providers space and our trusted messenger programs – its great but I'm not sure what we are going to get out of that. We should be having county folks building relationships in Independence and Greenfield and western suburbs because there are a lot of people that don't have any trust in what Hennepin County is doing out here. We have a road project coming up, it will close off a road, there is an idea we can do it better. If we had Hennepin County staff, we could engage with the residents and communities to help make the impact less impactful.

Betts – like what the state did when they did US Hwy 12?

Anderson – that's part of it. We can't do it for every project. More avenues to solicit community feedback.

8. Consider Approval of Funds Transfer as Recommended to Close Out ARPA Funds.

- a) **RESOLUTION No. 24-0416-01** – Considering approval of the transfer of funds in accordance with the finance recommendations.

Kaltsas – as part of reporting requirements for ARPA funds, we have to report that those funds have been used and there are some deadlines for that. We have said those funds will be used for PS, ABDO said we should close that out and finalize report to Dept of Treasury. What do we want to do with that money since it's already been spent for WHPS. Instead of putting it into our general funds, we should put it into another account to usage for some of our projects. All money will remain in general funds but out of the unallocated. Building, road, Public Works equip and admin funds. There is \$90k we have earmarked for WHPS improvements. Amounts to move listed on resolution. We can change those amounts if anyone has any import. I put more into PW since we had some gaps for tandem axel.

Johnson – by doing this now, it is in the 2023 accounting process.

Kaltsas – it lets us report those funds are spent and no more regulation issues we have to worry about.

Spencer – this is allowable under American rescue plan?

Kaltsas – we already said WHPS in entirety. We got the money retroactive, now we have captured that money since we already made the payment.

Johnson - Road and bridge fund, they are designating \$25m as a guarantee. It may be increased

Motion by Betts to approve resolution No 24-0416-01 approving the transfer of funds in accordance with the finance recommendations, seconded by Grotting to approve the transfer of funds. Ayes: Johnson, Betts, Spencer, Grotting and. Nays: None. Absent: McCoy Abstain: None.
MOTION DECLARED CARRIED. 4-0



9. Consider Approval of a Resolution Supporting Retention of Local Land Use and Zoning Control and Opposing the Middle Housing Bill.

a. **RESOLUTION No. 24-0416-02**

Johnson – the more support from the cities the better.

Kaltsas – the counties have no impact by it. It was at the municipal levels. The initial bill is dead for this year, but we can give it to our local legislators. It keeps coming back. It would be detrimental to cities like independence.

Johnson – they feel like there's one alive in the senate

Kaltsas – I changed a couple things but it's the model resolution.

Motion by Spencer to approve resolution No 24-0416-02 seconded by Betts to approve LMC Model resolution. Ayes: Johnson, Betts, Spencer, Grotting and. Nays: None.

Absent: McCoy Abstain: None.

MOTION DECLARED CARRIED. 4-0

10. Open/Misc.

Sally Simpson – Copeland Rd, it's been a long time between communications and wanting to know when we can count on some feedback. Almost a year ago I sent my letter to the city. Today we don't have any feedback. I have not talked to everyone in the room, but we want to hear the data. What did the traffic data show, what are solutions for short or long run? Residents on Copeland are not united in saying we all want asphalt, or we all don't.

Johnson – we had a work session last Thursday.

Kaltsas – we presented a bunch of different info relating to all gravel roads across the city. Since Copeland residents met, the council asked to broaden to all gravel roads that are in similar issues. City engineer, PW, council, inventoried the roads, and put together documentation of the issues we identified. WE have been working on a capital gravel road plan – 10 year maybe? How do we fund this? Bond for it – issue debt or try to accommodate through PW budget. We are coming back to council based on direction within the next 30-35 days for options to support funding. We are talking about doing an initial project for highest prioritized roads (larger project) to issue debt and balance that with annual budget specific to gravel roads to help accomplish all roads within 10 years and without assessments to property owners. Our intent is to create the plan and bring it back to the residents. Copeland rd is unique for the issues. We have put together a plan for Copeland. Paving of Copeland was not agreed to or consensus, but some wanted to pay. WE have been maintaining roads for years instead of replenishing the gravel on the roads. More traffic.

Simpson – when I read the minutes, I will have something I can share with the residents.

Kaltsas – I can share more breakdown too, but we have identified about \$4-5m of work that needs to be done on the roads. All of that came from the Copeland rd group. We don't want to put a bandage on Copeland Rd, we want to do it right. We are trying to work this into our budget for 2025 since the budget was already established.

Johnson – Copeland is one of the top priority roads.

Kaltsas – we did unofficial roads and put a counter on it. We took counts and can show you what those are too.

Simpson – I will share the info and let's keep going



11. Adjourn.

Motion by Spencer to adjourn, seconded by Grotting to adjourn at 7:23pm. Ayes: Johnson, Betts, Spencer, Grotting and. Nays: None. Absent: McCoy Abstain: None. MOTION DECLARED CARRIED. 4-0

Respectfully Submitted,

Carrie Solien/Recording Secretary

City of Independence

Consideration of Release from Development Agreement

To: City Council
From: Mark Kaltsas, City Administrator
Meeting Date: May 7, 2024

Discussion:

The city was asked to consider a release of the Development Agreement for Independence Ridge Subdivision (Wild Oak Trail). The city is occasionally asked to consider this type of a release and has historically granted the release from the development contract if all applicable conditions and improvements associated with the agreement have been fully satisfied. The agreement for Independence Ridge and associated improvements was completed more than 20 years ago. The city is not aware of any outstanding items at this time.

Requested Action:

It is recommended that the City Council approve the release of development contract attached.

Attachments: Release of Development Contract

RELEASE OF DEVELOPMENT CONTRACT

The undersigned hereby certifies that the real property legally described on the attached **Exhibit A** (the “Property”), encumbered by that certain Development Contract dated February 9, 1999, recorded with the Office of the Hennepin County Recorder on February 23, 1999, as Document No. 7062993 (the “Agreement”), by and between the **CITY OF INDEPENDENCE**, a Minnesota municipal corporation (the “City”), and **GARY V. KIRT**, a single person, is hereby released from the Agreement. The Office of the Hennepin County Recorder is hereby authorized to accept this instrument for filing and such filing shall be conclusive evidence of the release of the Agreement from title to the Property.

IN WITNESS WHEREOF, the City has caused this Release of Development Contract to be duly executed in its name and behalf on the ____ day of _____, 2024.

[Remainder of page intentionally left blank.]

CITY OF INDEPENDENCE,
a Minnesota municipal corporation

By: _____

Name: _____

Its: Mayor

By: _____

Name: _____

Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024,
by _____ and _____, the Mayor and City Clerk respectively of the City of
Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

**THIS INSTRUMENT WAS DRAFTED BY
AND WHEN RECORDED RETURN TO:**

Dorsey & Whitney LLP (SRT)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

Exhibit "A"

Legal Description of Property

Real property in the City of Maple Plain, County of Hennepin, State of Minnesota, described as follows:

Lot 14, Block 1, Independence Ridge, Hennepin County, Minnesota.

(Abstract Property)

Exhibit "A"

Legal Description of Property

Real property in the City of Maple Plain, County of Hennepin, State of Minnesota, described as follows:

Lot 14, Block 1, Independence Ridge, Hennepin County, Minnesota.

(Abstract Property)

7062993

CERTIFIED FILED AND OR
RECORDED ON

99 FEB 23 AM 10:54

7062993

AS DOCUMENT #

Michael H. Hennepin

ACT'G. CO. REC.

[Signature]

DEPUTY

23FEB9910:53 A7062993 SCD \$4.50

23FEB9910:53 A7062993 DDC \$15.00

P.O. Box 198
Kennedy & Graven, Chartered

Execution Copy

DEVELOPMENT CONTRACT

THIS AGREEMENT is made this 9th day of February, 1999, by and between the CITY OF INDEPENDENCE, a Minnesota municipal corporation (City), and GARY V. KIRT, a single person (Developer).

Recitals

- A. Developer is the fee owner of certain real estate located in Hennepin County, Minnesota, legally described on the attached Exhibit A (the "Property").
- B. Developer proposes to develop the Property for residential land use.
- C. Developer has presented and received preliminary plat approval from the city council of the City for subdivision of the Property, by Resolution No. 98-0908-02, adopted on September 8, 1998 and has received final plat approval by Resolution No. 98-1221-03, adopted on December 21, 1998. The subdivision is to be called INDEPENDENCE RIDGE.
- D. In consideration of City approval of the preliminary and final plat for the Property, Developer agrees to perform all of the acts required and to conform to all of the conditions set forth as follows:

DEVELOPMENT CONTRACT

ARTICLE ONE CONSTRUCTION OF IMPROVEMENTS

1.01. Agreement to Construct Improvements. Developer agrees to construct all public improvements (Improvements) required for development of the Property, as described in plans and specifications prepared by Otto Associates, dated October 13, 1998 and approved by of the City's consulting engineer, Loucks & Associates, Inc. (City Engineer) (the Approved Plans). The Improvements include construction of the public street dedicated as Wild Oak Trail and the construction of a storm water drainage ponding facility on Lot 5, Block 1 of the subdivision (the "Drainage Facility"). A copy of the Approved Plans must be filed with the city clerk-treasurer prior to commencement of construction of the Improvements. All labor and work will be done and

performed in the best and most workerlike manner and in strict conformance with the Approved Plans. Any deviation from the Approved Plans must be approved in writing by the City Engineer.

1.02. Staking, Surveying and Inspections. Developer, through its engineer, must provide all staking, surveying and resident inspection for the Improvements in order to ensure that the completed Improvements conform to the Approved Plans. The City will provide for general inspection. Developer must notify the City Engineer of all tests to be performed.

1.03. Unsatisfactory Labor or Material. In the event that the City Engineer or its designated representative rejects as defective or unsuitable any material or labor supplied by the Developer, then the rejected material must be removed and replaced with approved material and the rejected labor must be done again to the specifications and approval of the City Engineer and at the sole cost and expense of the Developer.

1.04. Time for Developer's Performance. The Developer agrees that it will commence work on the Improvements on or before May 1, 1999 and will have all work done and the Improvements completed to the satisfaction and approval of the City Council of the City on or before November 30, 1999, except that site restoration work is not required to be completed until June 1, 2000. The city council may at its discretion extend the date(s) specified for completion upon receipt of written notice from the Developer of the existence of causes over which the Developer has no control that will delay the completion of the work. Whenever an extension of the date of completion is granted by the city council, the Developer must continue the bond or financial guaranty required by this Contract to cover the work during the extension of time.

1.05. Records. Copies of all bids, change orders, suppliers, subcontractors, etc., relating to the work to be performed by the Developer must be provided to the City Engineer for its files.

1.06. Street Signs. The Developer shall be financially responsible for the cost and installation of street identification signs. The number and location of signs to be installed will be at the direction of the City.

1.07. Maintenance of Improvements. Developer shall be responsible for all maintenance, upkeep and repair (including snow plowing and grading) of all public streets contained within the subdivision until said streets are completed and accepted by the City. Developer shall be responsible for all maintenance, upkeep and repair (including dredging) of the Drainage Facility until said facility is completed and accepted by the City. Developer hereby agrees to indemnify and hold the City harmless from any and all claims for damages of any nature whatsoever arising out of Developer's acts or omissions in performing the obligations imposed upon Developer by this paragraph.

1.08. Restoration. The Developer shall clear any soil, earth or debris from the street Improvements within the subdivision that is placed thereon as a result of construction on the land within the addition by the Developer or its agents, successors or assigns. The Developer shall restore any gravel base for the street Improvements if said gravel base is contaminated by mixing construction or excavation debris or earth in the gravel base and repair any damage to bituminous surfacing and/or concrete curbing of the street Improvements resulting from the authorized or unauthorized use of construction equipment. The work described in this paragraph shall be

completed within fifteen (15) days of notice by the City to Developer that repair or restoration is required pursuant to this paragraph.

1.09. Additional Work or Materials. All work covered by this Contract shall be done at no expense to the City. The Developer shall not do any work or furnish any materials not covered by the Approved Plans and this Contract, for which reimbursement is expected from the City, unless such work is first ordered and reimbursement is approved by the city council. Any such work or materials that may be done or furnished by the Developer or its contractor without prior written order are furnished at the Developer's or contractor's own risk, cost and expense; the Developer agrees that it will make no claim for compensation for work or materials so done or furnished.

1.10. Final Inspection/Acceptance. Upon completion of all work required by the City Engineer or designated representative, the City Engineer and representatives of the Developer's contractor and/or engineer will make a final inspection of the work. Before final payment is made to the contractor by the Developer, the City Engineer shall be satisfied that all work is satisfactorily completed in accordance with the Approved Plans, and the Developer's engineer shall submit a written statement attesting to the same. The final approval and acceptance of the development and Improvements shall take the form of a resolution duly passed by the city council of the City, on the advice of the City Engineer.

1.11. As-built Plans. Upon completion of the work, the Developer shall provide the City with a full set of as-built plans for City records.

1.12. Maintenance Bond. Upon completion of the work, the Developer and/or its contractor shall be required to furnish the City a two-year maintenance bond guaranteeing said work to the City.

ARTICLE TWO FINANCIAL GUARANTY AND REQUIRED PAYMENTS

2.01. Park Dedication and Fees in Lieu of Dedication. In fulfillment of park dedication requirements established by city ordinance, the Developer agrees to grant to the City of Independence an easement for equestrian trail purposes over a portion of the Property, as indicated in the preliminary and final plat submissions made by the Developer and on file with the City. The easement shall be in a form reasonably acceptable to the City. The Developer shall record the easement against the Property promptly after the recording of the plat for INDEPENDENCE RIDGE and this Contract. In addition, the Developer agrees to pay a fee in lieu of dedication in the amount of \$49,748.49, prior to the release by the City of the executed final plat.

2.02. Payment of City Costs. Upon execution of this Contract, the Developer shall pay to the city clerk-treasurer a deposit in the amount of \$5,000, to be used by the City to pay its out-of-pocket costs in: (a) preparing and administering this Contract; (b) processing the Developer's development proposals for the Property; and (c) preparing and reviewing an environmental assessment worksheet (EAW) and environmental impact statement (EIS), if required. The out-of-pocket costs to be paid shall include, but not be limited to, attorneys' fees, engineering fees, and other technical or professional assistance, including the work of the city staff and employees. Whenever the balance remaining in the fund is less than \$1,000, the Developer shall, upon request by the city clerk-treasurer, deposit the amount required to re-establish the fund balance at \$5,000. Upon completion

of all work required by this Contract, any balance remaining shall be refunded to the Developer.

2.03. Financial Guaranty. Prior to commencement of construction, the Developer will furnish the City a corporate surety bond, certified check, certificate of deposit or irrevocable letter of credit (the Security), approved by the City Attorney, in the amount of 150% of the City Engineer's estimated project costs for the Improvements. The City Engineer's estimated project costs for the Improvements are set forth in Exhibit B to this Contract. If the Security is a letter of credit or bond, the Security must contain a provision that prohibits the issuer or surety from terminating the Security without first giving 30 days' written notice to the City of the proposed termination or expiration of the Security. Failure of the Developer to post a substitute Security within 5 days after notice by the City shall constitute a default that shall be grounds for drawing on the letter of credit or making a claim on the bond. The City Council may grant a reduction in the Security upon written request by the Developer based upon the value of the completed work at the time of the requested reduction. The Security may not be reduced to less than 20% of the original amount until all work required of the Developer by this Contract has been completed and accepted by the City. Upon failure of the Developer to perform, the City may declare the Contract to be in default and the amount of the Security shall be paid over to the City. From the proceeds of the Security, the City shall be reimbursed for any attorneys' fees, engineering fees or other technical or professional assistance, including the work of the City staff and employees, and the remainder thereof shall be used by the City to complete the Contract. The Developer shall be liable to the City to the extent that the Security is inadequate to reimburse the City its costs and pay for the completion of the work.

ARTICLE THREE OTHER REQUIREMENTS

3.01. Indemnification. Notwithstanding anything to the contrary in this Contract, the City, its officials, agents and employees shall not be personally liable or responsible in any manner to the Developer, the Developer's contractor or subcontractor, material suppliers, laborers or to any other person or persons for any claim, demand, damages, actions or causes of action of any kind or character arising out of or by reason of the execution of this Contract or the performance and completion of the work required by this Contract to be performed by the Developer. The Developer will save the City, its officials, agents and employees harmless from all such claims, demands, damages, or causes of action and the costs, disbursements, and expenses of defending the same, including but not limited to, attorneys' fees, consulting engineering services, and other technical or professional assistance, including the work of City staff and employees.

3.02. Insurance. The Developer shall furnish proof of insurance acceptable to the City, covering any public liability or property damage by reason of the operation of the Developer's equipment, laborers, and hazard caused by the Improvements. The Developer must keep the insurance in force at all times that construction on the development is in progress. The insurance must name the City as an additional insured and must provide that the insurer will give the City not less than 30 days' written notice prior to cancellation or termination of the insurance policy.

3.03. Building Permits and Occupancy. No building permits will be issued for construction of dwelling units on Lots 6, 7, 8, 10, 11 and 12 of Block 1 in the subdivision, until Class V gravel base for streets is in place. Up to two (2) building permits may be issued when Class V gravel base is in place, and the remaining building permits may be issued after the final wear course is in place. No

occupancy of any newly constructed building in said plat shall occur until Class V gravel base for streets is in place. The Developer shall maintain reasonable access to any occupied house or houses within said addition, including necessary street maintenance such as grading and graveling and snow removal prior to permanent street surfacing and acceptance of the streets by the City.

3.04. Drainage Facility Maintenance Agreement. The Developer agrees to execute an agreement concerning the maintenance of the Drainage Facility. The agreement shall be in a form reasonably acceptable to the City. The City will not accept the completed Drainage Facility improvements and will not issue a building permit for any structure on Lot 5, Block 1, INDEPENDENCE RIDGE, until the Developer provides to the City clerk-treasurer proof that the maintenance agreement has been recorded in the land records of Hennepin County and that the agreement has been joined in by the fee owners of record and any mortgagees of said Lot 5.

3.05. Underground Utilities. The Developer shall contact the electric, telephone and cable companies that are authorized to provide service to the property for the purpose of ascertaining whether any of those utility providers intend to install underground lines within the development. The Developer agrees to comply with applicable requirements of franchise ordinances in effect in the City, copies of which are available from the city clerk-treasurer.

ARTICLE FOUR DEFAULT AND REMEDIES

4.01. Default by Developer. In the event of default by the Developer as to any of the work to be performed hereunder by the Developer, its successors or assigns, the City is granted the right to declare the entire sum set forth in this Contract due and payable in full, and the City may immediately bring legal action against the Developer to collect the sums covered by this Contract and/or draw upon the financial guaranty posted in conformance with paragraph 2.03 of this Contract.

4.02. Denial of Permits. Breach of any term of this Contract by the Developer or failure to comply with City ordinances shall be grounds for denial of building or occupancy permits for buildings within the subdivision until such breach is corrected by the Developer.

4.03. Rights Cumulative. No remedy conferred in this Contract is intended to be exclusive and each shall be cumulative and shall be in addition to every other remedy. The election of any one or more remedies shall not constitute a waiver of any other remedy.

4.04. Attorneys' Fees. The Developer will pay the City's costs and expenses, including attorneys' fees, in the event a suit or action is brought to enforce the terms of this Contract.

ARTICLE FIVE MISCELLANEOUS PROVISIONS

5.01. Amendment. Any amendment to this Contract must be in writing and signed by both parties.

5.02. Assignment. The Developer may not transfer or assign any of its obligations under this

Contract without the prior written consent of the City, which shall not be unreasonably withheld.

5.03. Agreement to Run with Land. The Developer agrees to record this Contract among the land records of Hennepin County, Minnesota immediately prior to recording the plat of INDEPENDENCE RIDGE. The provisions of this Contract shall run with the land and be binding upon the Developer and its successors in interest. Notwithstanding the foregoing, no conveyance of the Property or any part thereof shall relieve the Developer of its personal liability for full performance of this Contract unless the City expressly so releases the Developer in writing.

5.04. Releases. Upon sale of a platted lot by to an owner/occupant, the owner/occupant may provide to the City an instrument in recordable form that releases the lot from this agreement. The City agrees to execute the instrument, provided that at least 25 percent of the lots in INDEPENDENCE RIDGE must remain subject to this Contract until the Developer has completed all work and satisfied all of the Developer's obligations under this Contract. Notwithstanding the foregoing, the City may withhold execution of the instrument if the Developer is in default of any of its obligations under this Contract at the time the request is considered. All costs of recording the partial releases are the responsibility of the Developer or its assigns or successors in interest.

5.05. Severability. The provisions of this Contract are severable, and in the event that any provision of this Contract is found invalid, the remaining provisions shall remain in full force and effect.

5.06. Notices. All notices, certificates or other communications required to be given to City and Developer hereunder shall be sufficiently given and shall be deemed given when delivered or when deposited in the United States mail, first class, with postage fully prepaid and addressed as follows:

To City: City of Independence
 1920 County Road 90
 Maple Plain, MN 55359

To Developer: Gary V. Kirt
 1000 Shelard Parkway, Suite 500
 Minneapolis, MN 55426

With copy to: S. Todd Rapp, Esq.
 15025 Glazier Avenue, Suite 401
 Apple Valley, MN 55124

The City and the Developer, by notice given hereunder, may designate different addresses to which subsequent notice, certificate or other communications should be sent.

5.07. No Third Party Beneficiary. This Contract and any financial guarantees required pursuant to its terms are not intended for the benefit of any third party.

5.08. Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS OF THE ABOVE, the parties have caused this Contract to be executed on the date and year written above.

CITY OF INDEPENDENCE

By Morris D. Johnson
Its Mayor

By L. H. H. H.
Its City Clerk-Treasurer

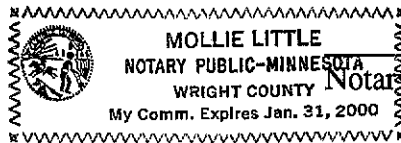
DEVELOPER

Gary V. Kirt
Gary V. Kirt

ACKNOWLEDGEMENT FOR CITY

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 9 day of February, 1999, by Marvin Johnson and Toni Hirsch, the mayor and city clerk-treasurer, respectively, of the City of Independence, a Minnesota municipal corporation, on behalf of the corporation..

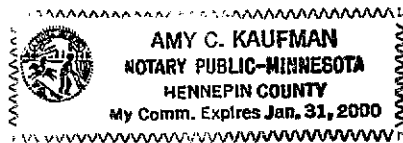


Mollie Little
Notary Public

ACKNOWLEDGEMENT FOR DEVELOPER

STATE OF MINNESOTA)
)ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 9th day of February, 1999, by Gary V. Kirt, a single person.



Amy C. Kaufman
Notary Public

EXHIBIT A
(Legal Description of Property)

Parcel A (Abstract Property)

The Northeast Quarter of the Southeast Quarter of Section 28, Township 118, Range 24, Hennepin County, Minnesota;

The West 82 feet of the Northwest Quarter of the Southwest Quarter of Section 27, Township 118, Range 24, Hennepin County, Minnesota.

Parcel B (Registered Property, as evidenced by Certificate of Title No. 1000858)

The East Half of the Southwest Quarter of Section 28, Township 118, Range 24, except that part of said East Half of the Southwest Quarter lying Southerly of a line drawn from a point on the South line of said Southwest Quarter distant 16.50 feet West from the Southeast corner of said Southwest Quarter to a point on the East line of said Southwest Quarter distant 16.50 feet North from said Southeast corner.

Parcel C (Registered Property, as evidenced by Certificate of Title No. 1000858)

The west 231.00 feet of the north 942.86 feet of the Southwest Quarter of the Southeast Quarter of Section 28, Township 118, Range 24, as measured along the north and west lines, respectively, of said Southwest Quarter of the Southeast Quarter.

Parcel E (Abstract Property)

That part of the Southeast Quarter of the Southeast Quarter of Section 28, Township 118, Range 24, Hennepin County, Minnesota, that lies north of the south 833.78 feet thereof.

Parcel F (Abstract Property)

That part of the Northwest Quarter of the Southwest Quarter of Section 27, Township 118, Range 24, contained in the east 540 feet of the west 622 feet, Hennepin County, Minnesota

Parcel G (Abstract Property)

That part of the Northwest Quarter of the Southwest Quarter of Section 27, Township 118, Range 24, lying east of the west 622 feet, Hennepin County, Minnesota

Parcel H (Abstract Property)

The Southwest Quarter of the Southwest Quarter of Section 27, Township 118, Range 24 West, Hennepin County, Minnesota.

Parcel I (Abstract Property)

The West one-half of the Northwest Quarter of Section 34, Township 118 North, Range 24 West of the Fifth Principal Meridian, except that part lying South of County Road No. 6, according to the United States Government Survey thereof, Hennepin County, Minnesota.

Parcel J (Abstract Property)

All that part of the Northeast Quarter of the Northeast Quarter of Section 33, Township 118 North, Range 24 West of the 5th Principal Meridian, Hennepin County, Minnesota, lying North of the centerline of Watertown Road and east of the west 10 rods thereof, except those parts described as follows:

Beginning at the point of intersection of the West line of the East 1155 feet (70 rods) of said Northeast Quarter of the Northeast Quarter with the centerline of the Watertown Road (County Road No. 6); then North along said West line of the East 1155 feet a distance of 198 feet; thence East parallel with said centerline a distance of 286.03 feet; thence South parallel with said West line to said centerline; thence West along said centerline to the point of beginning;

That part of the West 300 feet of the East 625 feet of said Northeast Quarter of the Northeast Quarter lying South of the North 800 feet of said Northeast Quarter of the Northeast Quarter and Northerly of the centerline of Watertown Road (County Road No. 6).

EXHIBIT B
(Estimated Costs)

<u>Item description</u>	<u>Amount</u>
Grading	20,000.00
Subgrade preparation	2,580.00
Class 5 Aggregate Base	41,250.00
Class 2 Limestone Shoulder	5,100.00
Type 31 Bituminous Base Course	26,400.00
Type 41 Bituminous Wear Course	14,694.00
Bituminous Tack Coat	780.00
Subgrade Stabilization Fabric	8450.00
Rock Construction Entrance	500.00
Silt Fence Erosion Control	1,500.00
12" RCP Storm Sewer Cl. III	600.00
12" RCP FES w/ Trash Guard & Rip Rap	600.00
6" PVC SDR 35	120.00
15" CMP	800.00
15" CMP FES	200.00
Outlet Control Structure (Complete)	3,000.00
Site Restoration	<u>4,500.00</u>
 TOTAL ESTIMATED IMPROVEMENTS	 \$131,074.00
	<u> x 150% </u>
 GUARANTY FOR IMPROVEMENTS	 \$196,611.00

City of Independence

Request for a Variance from the Side Yard Setback for the Property Located at 5760 Drake Dr.

<i>To:</i>	City Council
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	May 7, 2024
<i>Applicant:</i>	Jackson Striggow
<i>Owner:</i>	Jackson Striggow
<i>Location:</i>	5760 Drake Drive

Request:

Jackson Striggow (Applicant/Owner) is requesting the following action for the property located at 5760 Drake Drive (PID No. 26-118-24-41-0009) in the City of Independence, MN:

- a. A variance for a reduced side yard setback to allow an addition to be constructed onto the existing home using the current side yard setback which is non-conforming with the requisite setback.

Property/Site Information:

The subject property is located on the north side of Drake Drive just west of CSAH 83. There is an existing home and detached accessory building on the subject property.

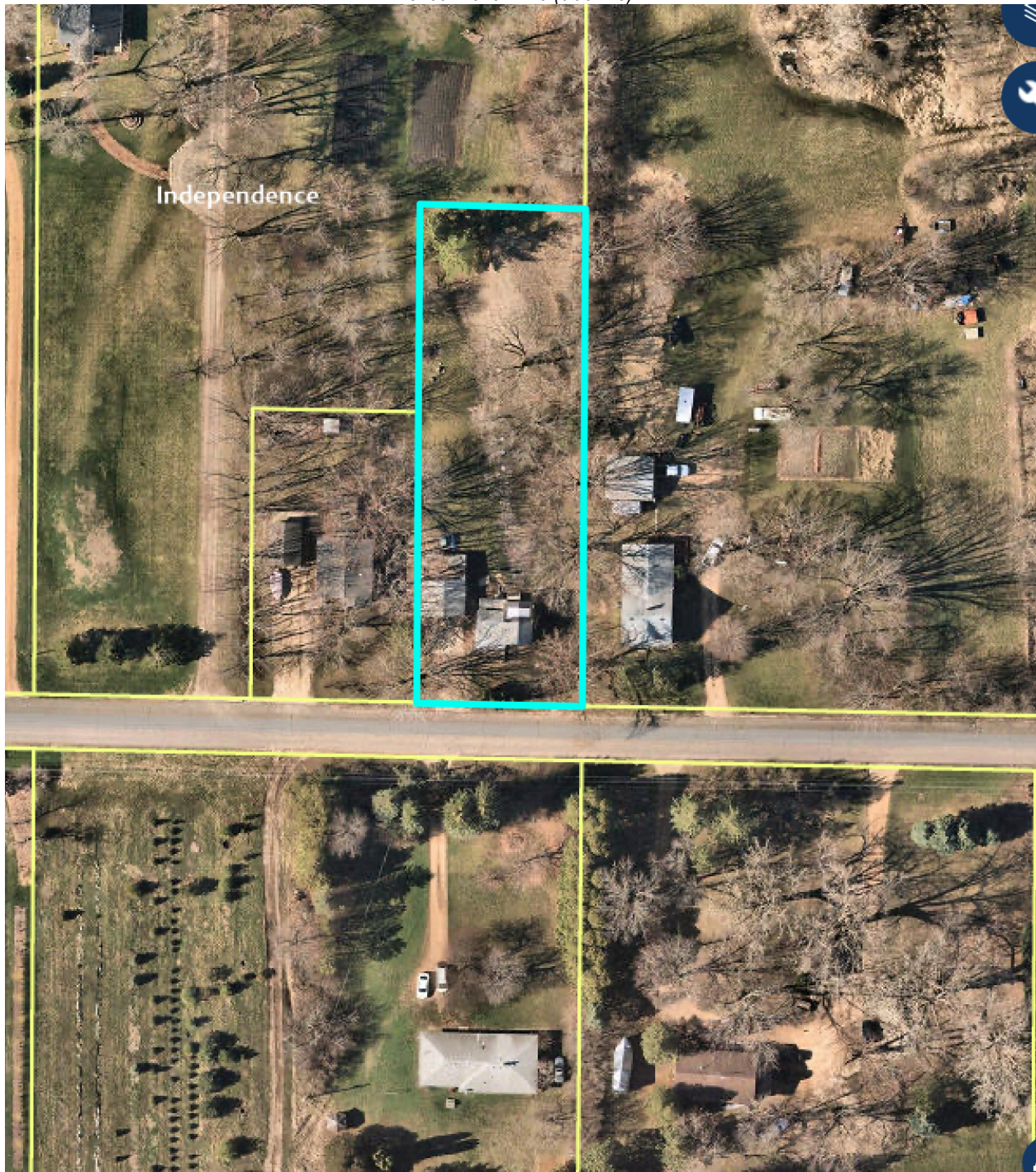
Property Information: ***5760 Drake Dr.***

Zoning: *RR-Rural Residential*

Comprehensive Plan: *Rural Residential*

Acreage: *0.69 acres (30,003 SF)*

5760 Drake Drive (blue line)



Discussion:

The applicant is seeking approval to construct an addition onto the existing home. The addition includes additional living space and a master bedroom in two-stories. The existing home is currently a legal non-

conforming structure that does not meet all applicable setbacks for this property. Specifically, the home does not meet the east side yard setback (30 feet required) or the front yard setback (85 feet from centerline).

The applicant is asking the City to consider granting a variance from the side yard setback (east property line) to allow an expansion of the existing home that is in line with the existing side yard setback. The City requires a side yard setback of 30 feet for properties zoned RR-Rural Residential. The existing home is located 25.5 feet from the east side property line. The applicant is proposing to construct an addition to the north side of the home that would directly align with the existing outside wall of the home. This would cause the addition to have a proposed setback of 24.7 feet at the northeast corner (closest point). The proposed expansion would be setback slightly more than the existing home. The existing home is not perfectly parallel to the east property line. The resulting variance to the side yard setback would be 5.3 feet. The required setbacks for properties zoned RR-Rural Residential are as follows:

Front Yard Setback:

Required: 85 feet from centerline or 51 feet from edge of the ROW

Existing: \pm 53 feet from centerline

Rear Yard Setback:

Required: 40 feet

Existing: \pm 238 feet

Side Yard Setback (West Side):

Required: 30 feet

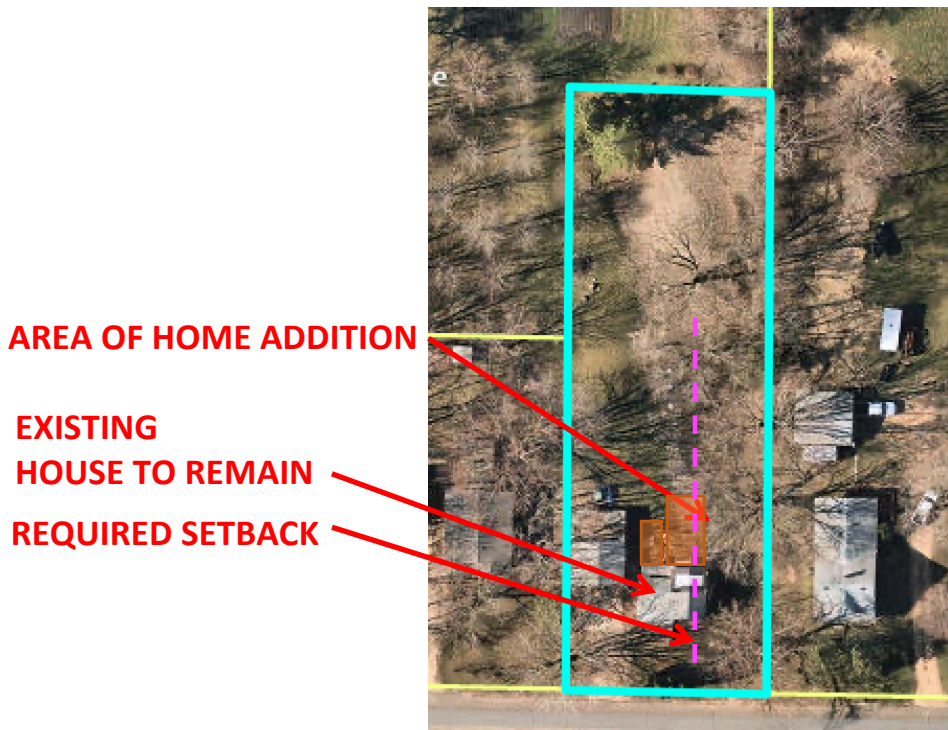
Existing: \pm 42 feet

Side Yard Setback (East Side):

Required: 30 feet

Existing: 25.5 feet

Proposed: 24.7 feet (variance of 5.3 feet)



There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
- (b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;*
- (c) the variance, if granted, will not alter the essential character of the locality.*

Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended, Ord. 2011-08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the

zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend, and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the criteria for granting a variance:

- a. Residential use of the property is consistent with the RR-Rural Residential Zoning District.
- b. The existing house is currently a legal non-conforming structure.
- c. The character of the surrounding area is residential. The proposed expansion and remodel of a single-family home is in keeping with the surrounding area. It should be noted that the adjacent properties to the east and west have legal non-conforming structures.

There are several additional items that could be considered by the City:

1. The proposed addition stays in line with the existing structure and allows for the remodel of the existing home without jogging the house 5.3 feet to the west to comply with applicable setbacks.
2. The applicant is purposing to construct an addition that does not increase the non-conforming setback of the existing structure.
3. The proposed remodel of the existing home would likely increase the value of and bring an update to this property.

Ultimately the City will need to find that the criteria for granting a variance have been met by the applicant. Due to the configuration of the house on the property and the layout of the existing house itself, there are limited ways to expand the structure without jogging the addition.

Planning Commission Discussion and Recommendation:

Planning Commissioners reviewed the request and noted that it appeared to meet the criteria for granting a variance. Commissioners noted that “jogging” the addition would be difficult and create a hardship for the property owner. Commissioners found that the variance request met the criteria for granting a variance and recommended approval to the City Council.

Public Comments:

The City received written correspondence from a neighboring property (across the street) supporting the variance.

Recommendation:

The Planning Commission recommended approval of the request for a variance with the following findings and conditions:

1. The proposed variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The City finds that the criteria for granting a variance have been satisfied by the applicant. Specifically, the City finds the following:
 - a. Residential use of the property is consistent with the RR-Rural Residential Zoning District. The applicant is seeking a variance to allow a building addition to the existing home on the property.
 - b. The location of the proposed addition/remodel is in line with the existing home and building setback from the east property line. The alignment, updated building architecture and exterior finishes appears to mitigate some of the potential impacts resulting from the addition.
 - c. The character of the surrounding area is residential. The proposed building addition and remodel would be in keeping and consistent with the surrounding uses found in this neighborhood.
3. The variance will permit a 5.3-foot reduction (from 30 feet to 24.7 feet) of the east side yard setback to allow the proposed addition to the existing structure as depicted on the site plan and building plans attached hereto as Exhibit B. Any modification changes or alteration to the structure that does not meet applicable setbacks in the future would require additional review and approval in the form of a variance.
4. The Applicant shall pay for all costs associated with the City's review of the requested variance.
5. The Applicant shall record the City Council Resolution with the county within six (6) months of approval.

Attachments:

1. Application
2. House Plans/Elevations
3. Site Survey



RESOLUTION OF THE
CITY OF INDEPENDENCE
HENNEPIN COUNTY, MINNESOTA

RESOLUTION NO. 24-0507-01

**RESOLUTION APPROVING AN APPLICATION FOR A VARIANCE
TO ALLOW A REDUCED SIDE YARD SETBACK
FOR THE PROPERTY LOCATED AT 5760 DRAKE DRIVE**

WHEREAS, the City of Independence (the “City”) is a municipal corporation under the laws of Minnesota; and

WHEREAS, the City adopted a comprehensive plan in 2020 to guide the development of the community; and

WHEREAS, the City has adopted a zoning ordinance and other official controls to assist in implementing the comprehensive plan; and

WHEREAS, Jackson Striggow, (the “Applicant/Owner”) submitted an application for a variance to allow a reduced side yard setback on the property located at 5760 Drake Drive (PID No. 26-118-24-41-0009) (the “Property”); and

WHEREAS, the Property is zoned RR-Rural Residential; and

WHEREAS, the Property is legally described on attached **Exhibit A**; and

WHEREAS the requested variance meets all requirements, standards and specifications of the City of Independence zoning ordinance for Rural Residential lots; and

WHEREAS the Planning Commission held a public hearing on April 16, 2024, to review the application for a variance, following mailed and published noticed as required by law; and

WHEREAS, the City Council has reviewed all materials submitted by the Applicant; considered the oral and written testimony offered by the applicant and all interested parties; and has now concluded that the application is in compliance with all applicable standards and can be considered for approval.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MINNESOTA, that it should and hereby does approve the application by Jackson Striggow and grants the requested variance for the property in accordance with the City’s zoning regulations with the following findings and conditions:

1. The proposed variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The City finds that the criteria for granting a variance have been satisfied by the applicant. Specifically, the City finds the following:
 - a. Residential use of the property is consistent with the RR-Rural Residential Zoning District. The applicant is seeking a variance to allow a building addition to the existing home on the property.
 - b. The location of the proposed addition/remodel is in line with the existing home and building setback from the east property line. The alignment, updated building architecture and exterior finishes appears to mitigate some of the potential impacts resulting from the addition.
 - c. The character of the surrounding area is residential. The proposed building addition and remodel would be in keeping and consistent with the surrounding uses found in this neighborhood.
3. The variance will permit a 5.3-foot reduction (from 30 feet to 24.7 feet) of the east side yard setback to allow the proposed addition to the existing structure as depicted on the site plan and building plans attached hereto as Exhibit B. Any modification changes or alteration to the structure that does not meet applicable setbacks in the future would require additional review and approval in the form of a variance.
4. The Applicant shall record the City Council Resolution with the county within six (6) months of approval.
5. The Applicant shall pay for all costs associated with the City's review and recording of the requested variance.

This resolution was adopted by the City Council of the City of Independence on this 7th day of May 2024, by a vote of ____ ayes and ____ nays.

Marvin Johnson, Mayor

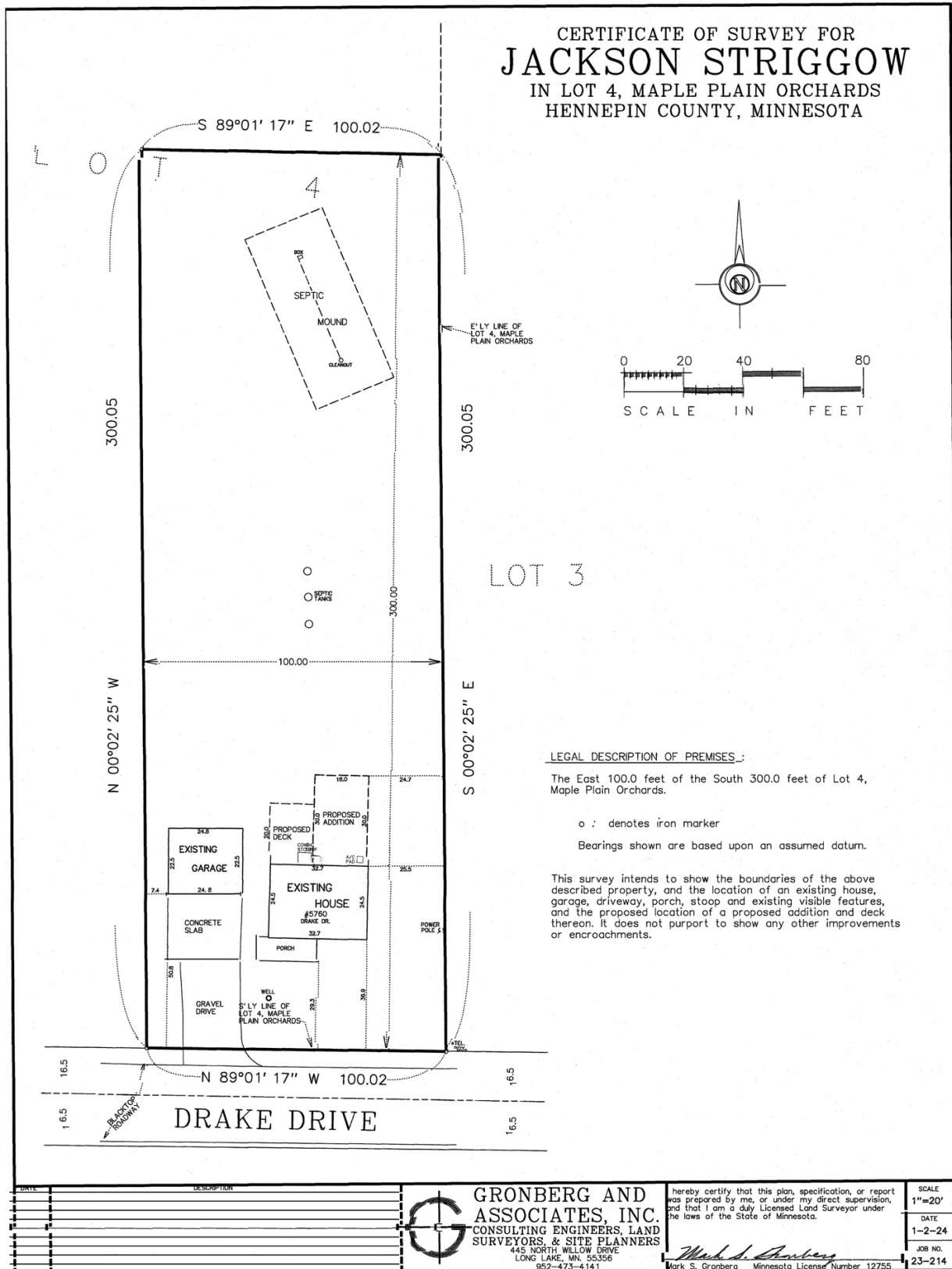
ATTEST:

Mark Kaltsas, City Administrator

EXHIBIT A
(Legal Description)

The East 100.0 feet of the South 300.0 feet of Lot 4, Maple Plain Orchards.

EXHIBIT B
(Site Plan)





**CITY OF
INDEPENDENCE
MINNESOTA**

Date Submitted: 03-04-2024

Applicant Information

Name: Jackson Striggow

Address: 5760 Drake Drive
Maple Plain, Minnesota
55359

Primary Phone: 7636148093

Email: jacksonstriggow@endisys.com

Owner Information

Name: Jackson Striggow

Address: 5760 Drake Drive
Maple Plain, Minnesota
55359

Primary Phone: 7636148093

Email: jacksonstriggow@endisys.com

Property Address:

PID:

Planning Application Type: Variance

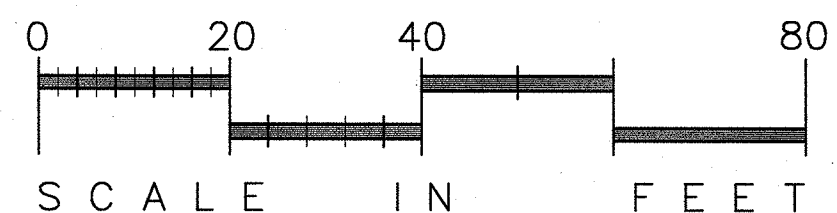
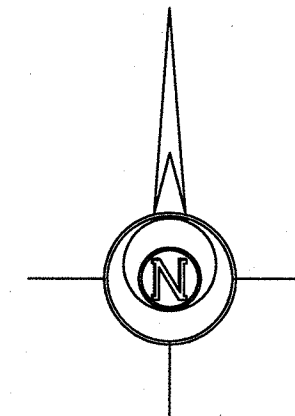
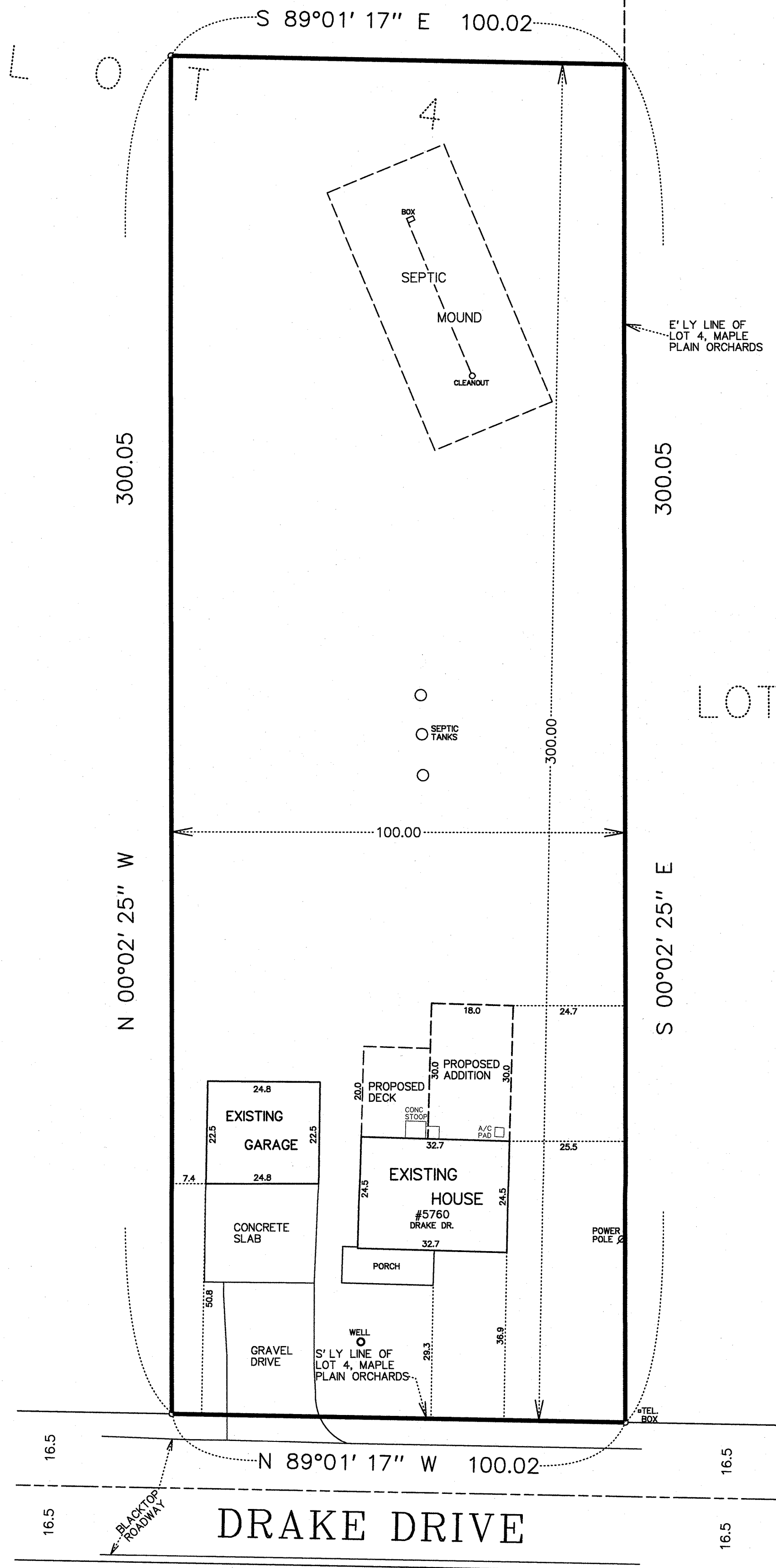
Description:

Supporting Documents: Site Survey (Existing Conditions), Site Survey (Proposed Conditions), Building Plans

Signature:

CERTIFICATE OF SURVEY FOR JACKSON STRIGGOW

IN LOT 4, MAPLE PLAIN ORCHARDS
HENNEPIN COUNTY, MINNESOTA



LOT 3

LEGAL DESCRIPTION OF PREMISES :

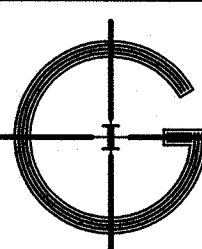
The East 100.0 feet of the South 300.0 feet of Lot 4, Maple Plain Orchards.

o : denotes iron marker

Bearings shown are based upon an assumed datum.

This survey intends to show the boundaries of the above described property, and the location of an existing house, garage, driveway, porch, stoop and existing visible features, and the proposed location of a proposed addition and deck thereon. It does not purport to show any other improvements or encroachments.

DATE	DESCRIPTION

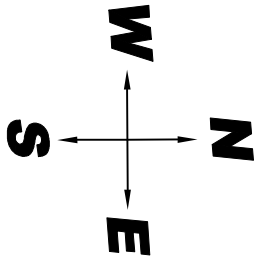


GRONBERG AND ASSOCIATES, INC.
CONSULTING ENGINEERS, LAND SURVEYORS, & SITE PLANNERS
445 NORTH WILLOW DRIVE
LONG LAKE, MN. 55356
952-473-4141

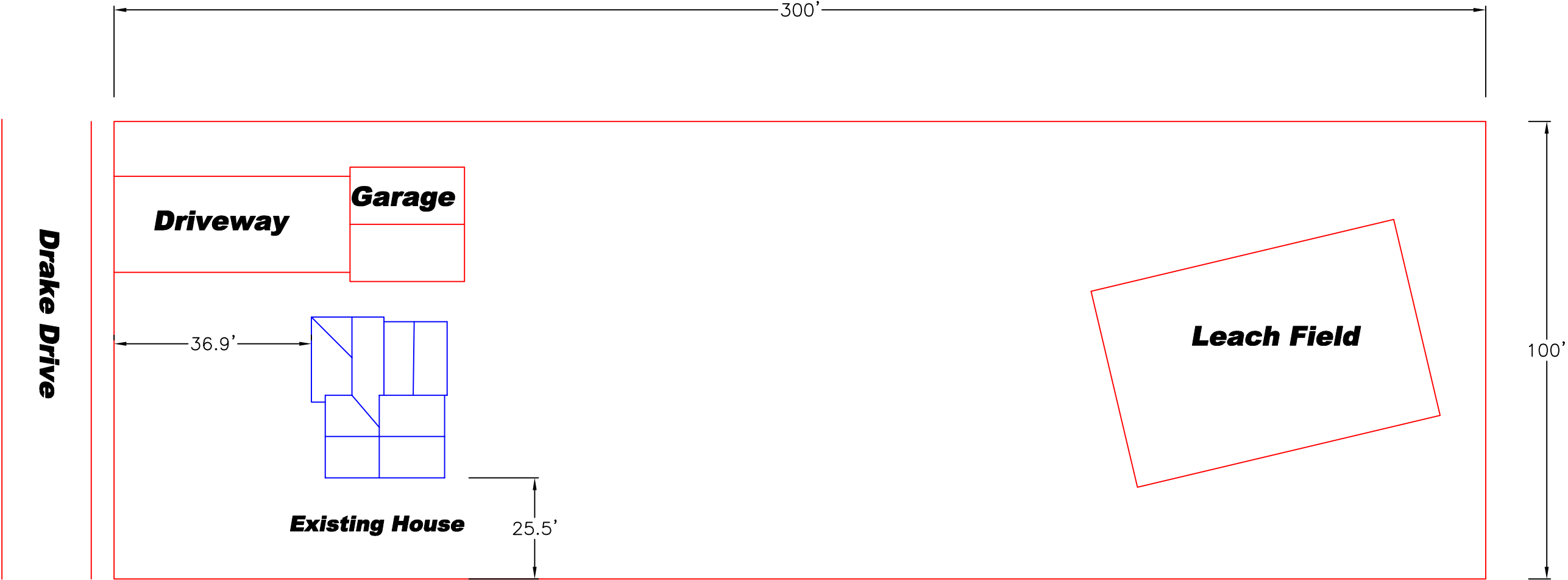
I hereby certify that this plan, specification, or report was prepared by me, or under my direct supervision, and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Mark S. Gronberg
Mark S. Gronberg Minnesota License Number 12755

SCALE
1"=20'
DATE
1-2-24
JOB NO.
23-214

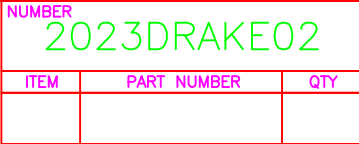


NUMBER 2023DRAKE01		
ITEM	PART NUMBER	QTY



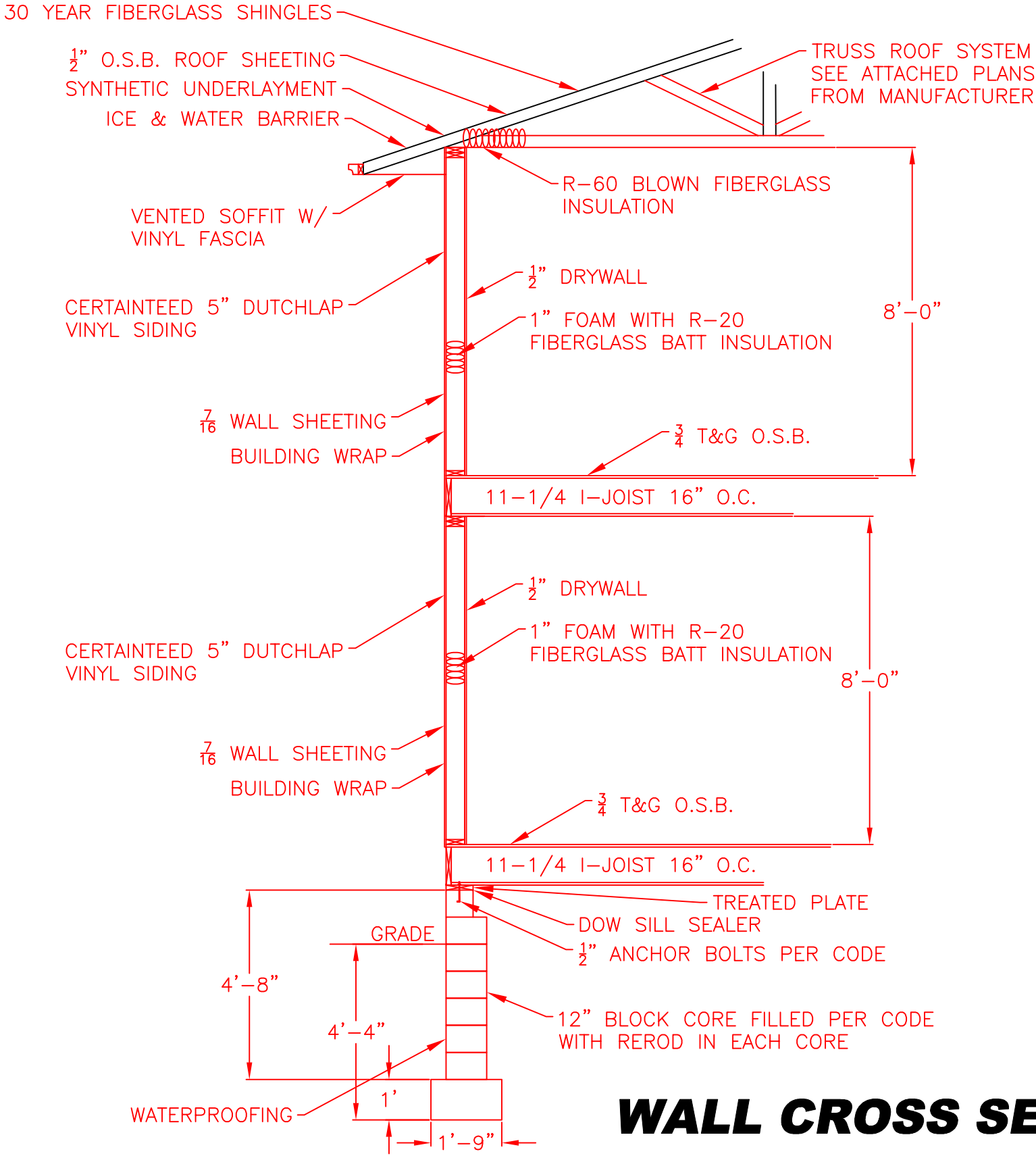
EXISTING LAYOUT: (2) BEDROOMS (2) BATHROOMS

				UNLESS OTHERWISE NOTED: DIMENSIONS ARE IN INCHES		DRAWING SCALE: 1/16		<div>CONFIDENTIAL</div> <div>THIS DRAWING SHALL BE USED ONLY AS SPECIFIED BY EDS. ANY OTHER USE, REPRODUCTION OR DISCLOSURE TO OTHERS WITHOUT WRITTEN PERMISSION IS PROHIBITED.</div> <div>FIRST USED ON None</div>													
				PLOT SCALE: 1/16																	
				CAD Designer 08/23/23 JAS		ENGINEER 08/07/23 JAS		TITLE STRIGGOW RESIDENCE, ADDITION 5760 DRAKE DRIVE													
				CLASS/SBU CODE None		NEXT ASSEMBLY None															
<table><tr><td>LTR</td><td>DESCRIPTION</td><td>ECO</td><td>DATE</td></tr><tr><td colspan="4">REVISIONS</td></tr></table>				LTR	DESCRIPTION	ECO	DATE	REVISIONS				FINISH and SPEC. NO. None None		REFERENCE None		SIZE B		SHEET 1 OF 7		NUMBER 2023DRAKE01	
				LTR	DESCRIPTION	ECO	DATE														
				REVISIONS																	
AutoCAD: LT or 12																					

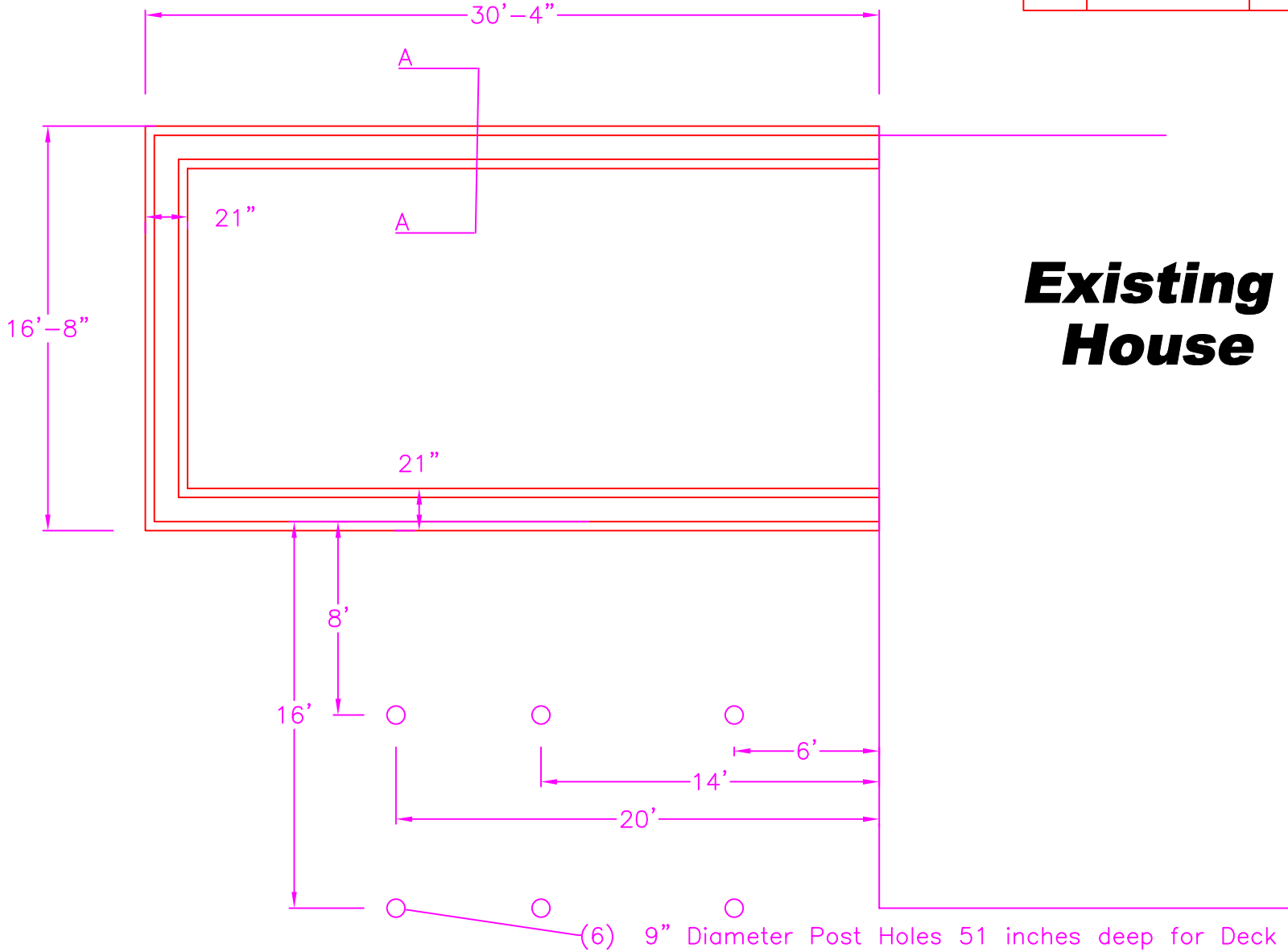


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				NEXT ASSEMBLY None							
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LTR		DESCRIPTION		ECO		DATE		B		2 OF 7	
		REVISIONS						2023		DRAKE01	

NUMBER 2023DRAKE03		
ITEM	PART NUMBER	QTY



WALL CROSS SECTION

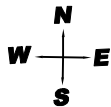


Existing
House

SCALE

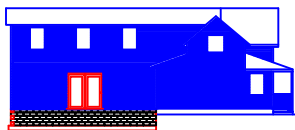
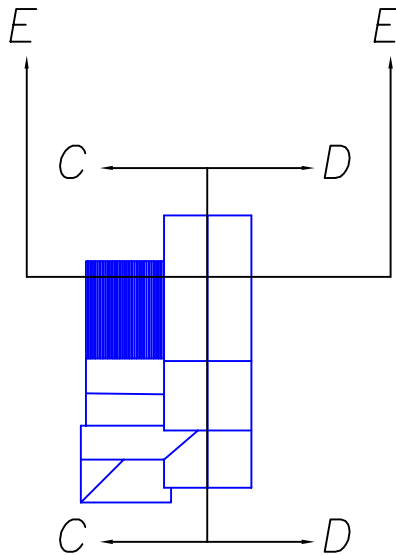
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	PLOT SCALE: 1/16		THIS DRAWING SHALL BE USED ONLY AS SPECIFIED BY EDS. ANY OTHER USE, REPRODUCTION OR DISCLOSURE TO OTHERS WITHOUT WRITTEN PERMISSION IS PROHIBITED.	
	CAD Designer 10/13/2023 JAS		FIRST USED ON None	
	ENGINEER 10/13/2023 JAS		TITLE STRIGGOW RESIDENCE, 5760 DRAKE, MAPLE PLAIN, MN	
MATERIAL and SPEC. NO. None None	CLASS/SBU CODE None	SIZE B	SHEET 3 OF 7	NUMBER 2023DRAKE
	NEXT ASSEMBLY None			
FINISH and SPEC. NO. None None	REFERENCE None			
	AutoCAD: LT or 12			

LTR	DESCRIPTION	ECO	DATE
REVISIONS			

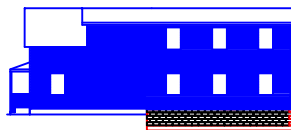


NUMBER
2023DRAKE04

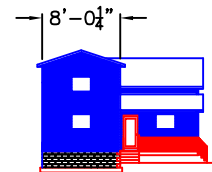
ITEM	PART NUMBER	QTY



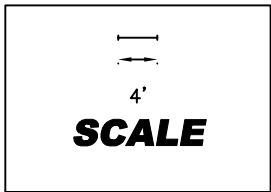
SECTION "C-C"



SECTION "D-D"



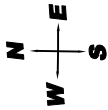
SECTION "E-E"



SIDE VIEWS

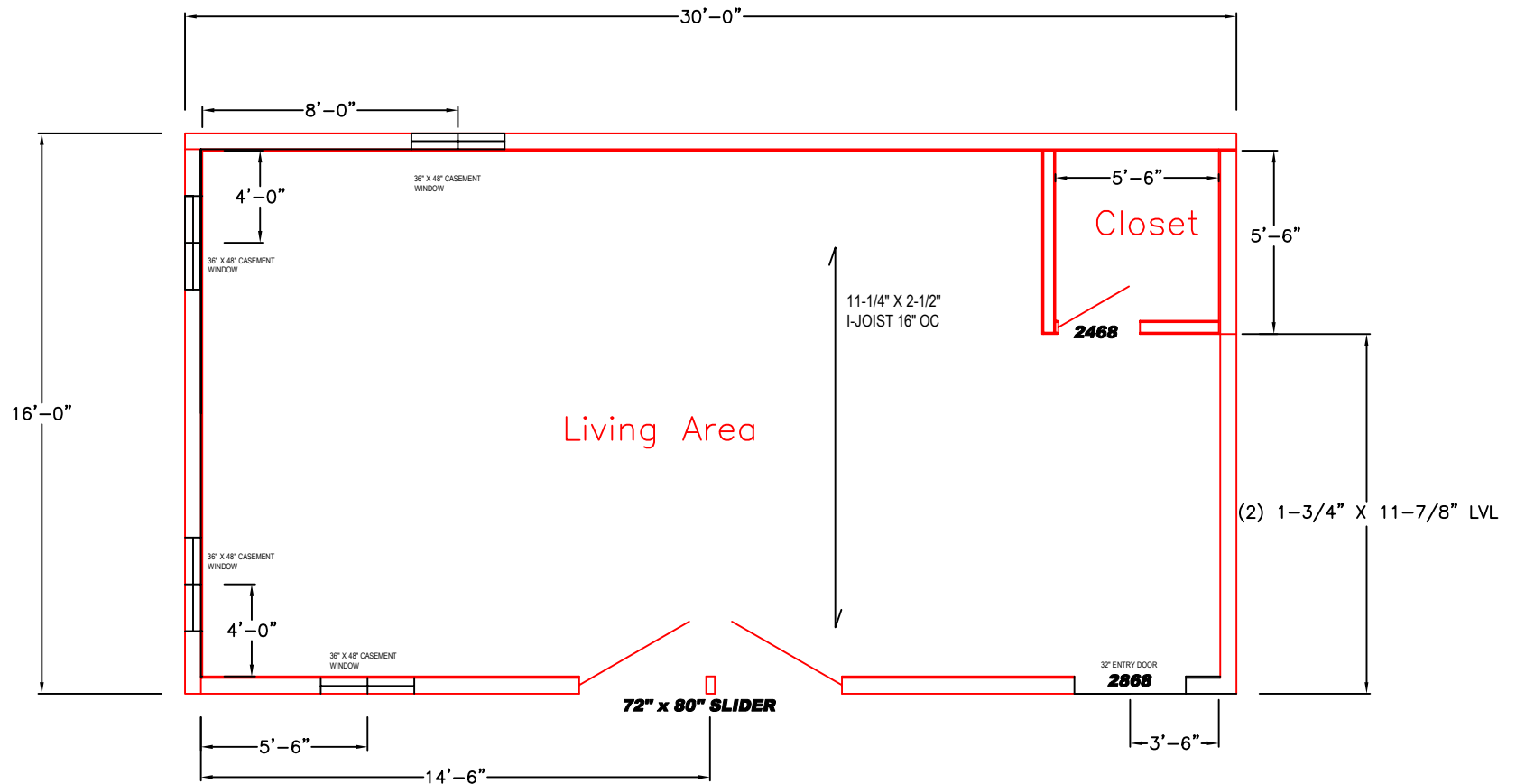
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	PLOT SCALE: 1/16		THIS DRAWING SHALL BE USED ONLY AS SPECIFIED BY EDC. ANY OTHER USE, REPRODUCTION OR DISCLOSURE TO OTHERS WITHOUT WRITTEN PERMISSION IS PROHIBITED.	
	CAD Designer		FIRST USED ON	
	ENGINEER JAS		None	
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MATERIAL and SPEC. NO. None	CLASS/SBU CODE None	SIZE	SHEET 4 OF 7	NUMBER 2023DRAKE
NEXT ASSEMBLY None	REFERENCE None	AutoCAD:	LT or 12	
FINISH and SPEC. NO. None				

LTR	DESCRIPTION	ECO	DATE
REVISIONS			



NUMBER
2023DRAKE05

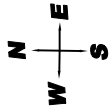
ITEM	PART NUMBER	QTY



1ST FLOOR VIEW

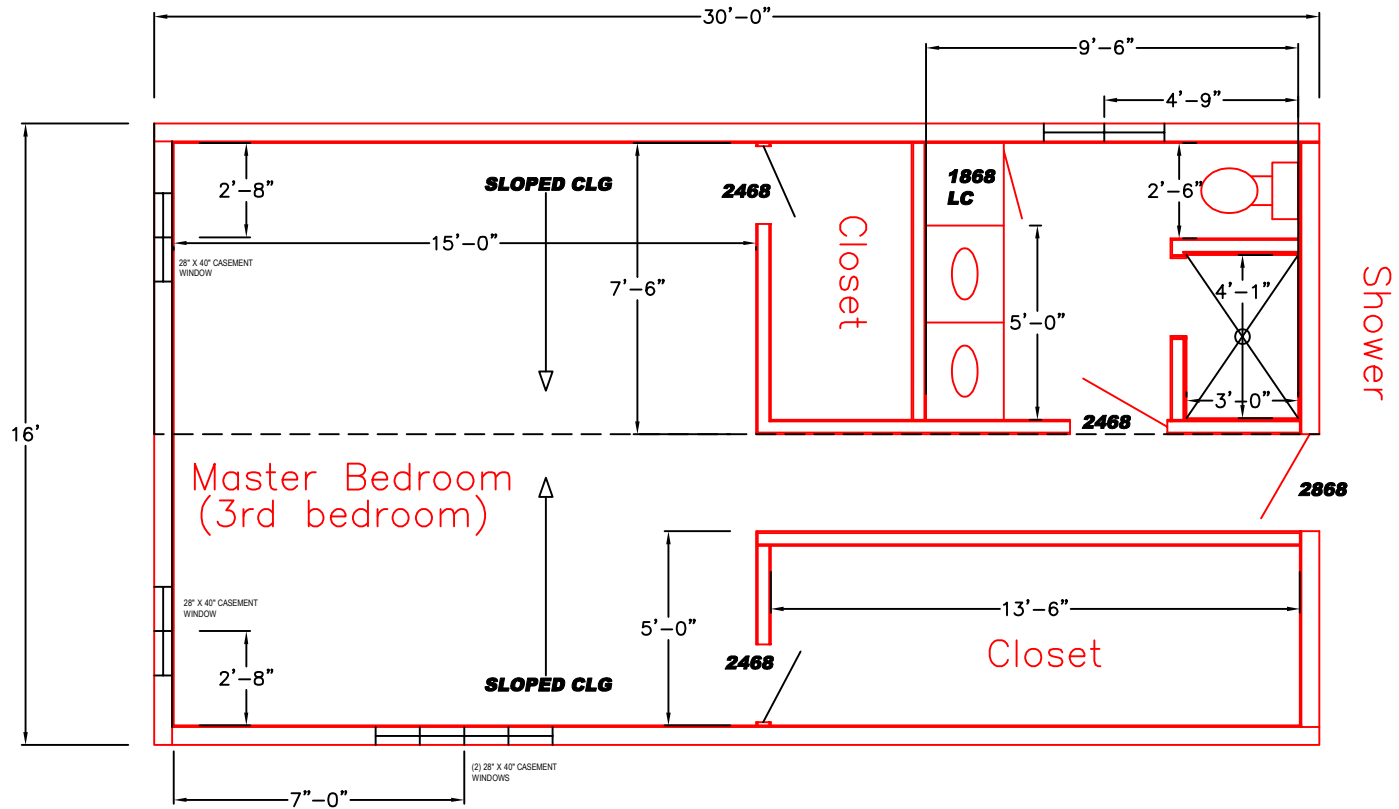
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PLOT SCALE: 1/16		CAD Designer: JAS		
ENGINEER: JAS		CLASS/SBU CODE: None	TITLE: STRIGGOW RESIDENCE, ADDITION 5760 DRAKE DRIVE, MAPLE PLAIN	FIRST USED ON: None
NEXT ASSEMBLY: None		REFERENCE: None		
AutoCAD: LT or 12		AutoCAD: LT or 12	SIZE: B	SHEET: 5 OF 7
NUMBER: 2023DRAKE				

ADDED DETAIL	DATE
LTR	2/12/23
DESCRIPTION	ECO
REVISIONS	



NUMBER
2023DRAKE06

ITEM	PART NUMBER	QTY



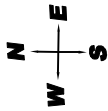
2ND FLOOR VIEW

ADDED DETAIL	DATE
LTR	2/12/24
DESCRIPTION	ECO
REVISIONS	

UNLESS OTHERWISE NOTED: DIMENSIONS ARE IN INCHES
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ANGLES .5 .05
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FINISH and SPEC. NO. None None

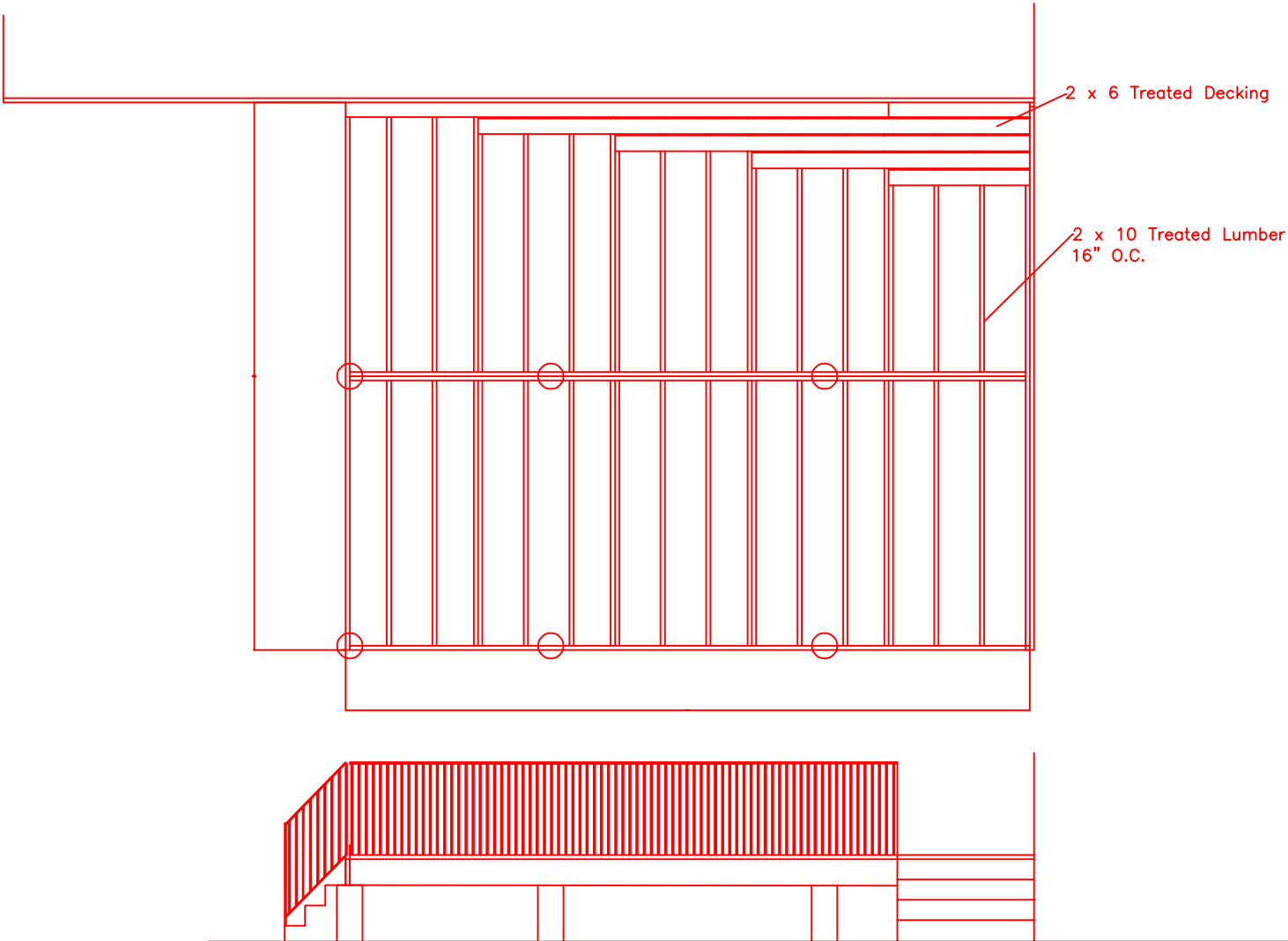
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PLOT SCALE: 1/16
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ENGINEER: JAS
CLASS/SBU CODE: None
NEXT ASSEMBLY: None
REFERENCE: None
AutoCAD: LT or 12

CONFIDENTIAL
THIS DRAWING SHALL BE USED ONLY AS SPECIFIED BY EDS. ANY OTHER USE, REPRODUCTION OR DISCLOSURE TO OTHERS WITHOUT WRITTEN PERMISSION IS PROHIBITED.
FIRST USED ON: None
TITLE: STRIGGOW RESIDENCE, ADDITION 5760 DRAKE DRIVE, MAPLE PLAIN
SIZE: B
SHEET: 6 OF 7
NUMBER: 2023DRAKE



NUMBER
2023DRAKE07

ITEM	PART NUMBER	QTY



DECK LAYOUT

UNLESS OTHERWISE NOTED:
DIMENSIONS ARE IN INCHES

DECIMALS	ANGLES
.X .XX .XXX	
.03 .01 .005	0.50

MATERIAL and SPEC. NO.
None
None

FINISH and SPEC. NO.
None
None

DRAWING SCALE: 1/16

PLOT SCALE: 1/16

CAD Designer JAS

ENGINEER JAS

CLASS/SBU CODE None

NEXT ASSEMBLY None

REFERENCE None

AutoCAD: LT or 12

EnDiSys
An Engineering & Construction Company

TITLE

STRIGGOW RESIDENCE, ADDITION
5760 DRAKE DRIVE, MAPLE PLAIN

SIZE

B

SHEET

7

OF

7

NUMBER

2023DRAKE

CONFIDENTIAL

THIS DRAWING SHALL BE USED ONLY AS
SPECIFIED BY EDS. ANY OTHER USE,
REPRODUCTION OR DISCLOSURE TO
OTHERS WITHOUT WRITTEN PERMISSION
IS PROHIBITED.

FIRST USED ON
None

LTR	DESCRIPTION	ECO	DATE

Midwest Manufacturing 5311 Kane Road Eau Claire, WI 54703							Truss: C11016 JobName: RES STOCK Date: 06/14/19 15:42:54 Page: 1 of 1		
SPAN 16-0-0	PITCH 4/12	QTY 1	OHL 2-0-0	OHR 2-0-0	CANT L 0-0-0	CANT R 0-0-0	PLYS 1	SPACING 24 in	WGT/PLY 50lbs

All plates shown to be Eagle 20 unless otherwise noted.

Loading (psf)	General	CSI	Deflection	L/	(loc)	Allowed
TCLL : 42	Bldg Code : IRC 2015/	TC : 0.70 (1-2)	Vert TL: 0.18 in	L / 999	(5-6)	L / 180
TCDL : 10	TP1 1-2014	BC : 0.69 (5-6)	Vert LL: 0.1 in	L / 999	6	L / 240
BCLL : 0	Rep Mbr: Yes	Web : 0.47 (4-6)	Horz TL: 0.05 in		5	
BCDL : 10	Lumber D.O.L. : 115 %					

Reaction									
JT	Brg Combo	Brg Width	Rqd Brg Width	Max React	Max Grav Uplift	Max MWFRS Uplift	Max C&C Uplift	Max Uplift	Max Horiz
1	1	3.5 in	1.88 in	1,200 lbs	.	.	-413 lbs	-413 lbs	8 lbs
5	1	3.5 in	1.88 in	1,200 lbs	.	.	-413 lbs	-413 lbs	.

Material

TC: SPF#2 2 x 4

BC: SPF#2 2 x 4

Web: SPF Stud 2 x 3

Bracing

TC: Sheathed or Purlins at 3-10-0, Purlin design by Others.

BC: Sheathed or Purlins at 8-2-0, Purlin design by Others.

Loads

1) This truss has been designed for the effects of balanced (41.6 psf) and unbalanced sloped roof snow loads in accordance with ASCE7 - 10 with the following user defined input: 60 psf GSL, Terrain B, Exposure (Ce = 0.9), Risk Category II (I = 1.00), Thermal (Ct = 1.10), DOL = 1.15. Unventilated. If the roof configuration differs from hip/gable, Building Designer shall verify snow loads.

2) This truss has been designed to account for the effects of ice dams forming at the eaves.

3) This truss has been designed for the effects of wind loads in accordance with ASCE7 - 10 with the following user defined input: 115 mph (Factored), Exposure B, Enclosed, Gable/Hip, Risk Category II, Overall Bldg Dims 25 ft x 60 ft, h = 15 ft, End Zone Truss, Both end webs considered. DOL = 1.60

4) Minimum storage attic loading has been applied in accordance with IRC 301.5

Member Forces

Table indicates: Member ID, max CSI, max axial force, (max compr. force if different from max axial force). Only forces greater than 300lbs are shown in this table.

TC	1-2	0.700	-2,225 lbs	3-4	0.376	-1,641 lbs
2-3	0.376	-1,641 lbs	4-5	0.700	-2,225 lbs	
BC	5-6	0.695	2,065 lbs (-544 lbs)	6-1	0.695	2,065 lbs (-544 lbs)
Web	2-6	0.468	-783 lbs	3-6	0.298	494 lbs (-39 lbs)
				4-6	0.468	-783 lbs

JSI

1 = 0.92, 2 = 0.64, 3 = 0.94, 4 = 0.64, 5 = 0.92, and 6 = 0.74

Notes

- 1) Unless noted otherwise, do not cut or alter any truss member or plate without prior approval from a Professional Engineer.
- 2) The fabrication tolerance for this roof truss is 0 % (Cq = 1.00).
- 3) Brace bottom chord with approved sheathing or purlins per Bracing Summary.
- 4) A creep factor of 1.00 has been applied for this truss analysis.
- 5) Listed wind uplift reactions based on MWFRS & C&C loading.

ALL PERSONS FABRICATING, HANDLING, ERECTING OR INSTALLING ANY TRUSS BASED UPON THIS TRUSS DESIGN DRAWING ARE INSTRUCTED TO REFER TO ALL OF THE INSTRUCTIONS, LIMITATIONS AND QUALIFICATIONS SET FORTH IN THE EAGLE METAL PRODUCTS DESIGN NOTES ISSUED WITH THIS DESIGN AND AVAILABLE FROM EAGLE UPON REQUEST. DESIGN VALID ONLY WHEN EAGLE METAL CONNECTORS ARE USED.	TrueBuild® Truss Software V5.6.335 Eagle Metal Products
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■City of Independence

Consider Approval of the Developers Agreement for the
Property Located at 9285 Highway 12

<i>To:</i>	City Council
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	May 7, 2024
<i>Applicant:</i>	William Stoddard
<i>Owner:</i>	Breck Farm, LLC
<i>Location:</i>	9285 Highway 12

Request:

William Stoddard (Applicant) Breck Farm, LLC (Owner) requests that the City consider the following actions for the property located at 9285 US Hwy 12, Independence, MN (PID No. 18-118-24-21-0001):

- a. Development Agreement associated with the approval of the subdivision of the property into seven (7) residential lots and associated lots to allow the proposed commercial development.

Property/Site Information:

The property is located on the south side of Highway 12 and west side of Nelson Rd. The property has frontage on both roads and is comprised primarily of agriculture land, woodlands and wetlands. There is an existing home and several detached accessory structures on the subject property.

Property Information: 9285 Highway 12

Zoning: Agriculture/Urban Commercial

Comprehensive Plan: Agriculture/Urban Commercial

Acreage: ~58 acres

The City approved the preliminary and final plat, site plan review, conditional use permit and comprehensive plan amendment for the subject development. The City has been working with the developer to finalize all conditions and submittals required by the noted approvals and has now prepared the requisite development agreement. It should be noted that the development agreement corresponds to the developers phasing of the development into three (3) phases; Phase 1 - residential lots, Phase 2 – half of commercial development, Phase 3 – second half of commercial development. The development agreement stipulates the requisite and corresponding security required by the city to allow development of each phase (letter of credit).

The city will require the park dedication fees to be paid prior to recording the final plat for the development.

Recommendation:

It is recommended that the City Council approve the development agreement and authorize the City Attorney to make any final and non-material changes necessary to complete and record the agreement.

Attachments:

1. **Development Agreement**

DEVELOPMENT AGREEMENT
BETWEEN SH VENTURES, INC.
AND THE CITY OF INDEPENDENCE

[AUTO CONDO]

This Development Agreement (the “Agreement”) is made and entered into this ____ day of _____, 2024, by and between the city of Independence, a municipal corporation under the laws of Minnesota (the “City”) Breck Farm, LLC, a Minnesota corporation (the “Developer and Owner”).

WITNESSETH:

WHEREAS, the City Council approved the final plat of [AUTO CONDO] (the “Subdivision”) by **Resolution 24-0220-01** adopted on February 20, 2024 which references and incorporates certain building, lighting and landscaping plans on file with the City (together, the “City Approvals”), and;

WHEREAS, the Owner is the fee owner of the land to-be platted as [AUTO CONDO] located at 9285 Highway 12 (PID 18-118-24-21-0001) and legally described on Exhibit A attached hereto (the “Property”), and;

WHEREAS, the Property is comprised of approximately 58 acres to be developed in phases as a mixed-use development including seven (7) single-family residential lots, an approximately 10,000 sq. foot commercial building, and multiple buildings or structures housing 120-130 lifestyle automobile condominiums, and;

WHEREAS, the proposed phasing of development is depicted in Exhibit B attached hereto (“Phasing Plan”), and;

WHEREAS, the City Approvals require the Developer to enter, and Owner to consent to, a development agreement satisfactory to the City, which development agreement will be recorded against the Property.

NOW, THEREFORE, based on the mutual covenants and obligations contained herein, the parties agree as follows:

1. Right to Proceed. This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. The Developer

may not construct public or private improvements or any buildings within the Subdivision until all the following conditions precedent have been satisfied:

- a) the final plat of the Subdivision has been filed with Hennepin County;
- b) this Agreement has been executed by the Developer and the City and filed with Hennepin County;
- c) the required Letter(s) of Credit and escrow amounts (as hereinafter defined) have been received by the City from the Developer;
- d) final engineering and construction plans included in the City Approvals have been submitted in digital form and approved by the city engineer;
- e) the Developer has paid the City for all legal, engineering and administrative expenses incurred by the City regarding the City Approvals;
- f) the Developer has responded to all comments from the Watershed Commission, water resources consultants Hakanson Anderson Associates and Bolton & Menk, Inc, MnDOT, and the city engineer, and such responses have been approved in writing by the city administrator;
- g) the Developer has obtained written approval from the Pioneer Sarah Creek Watershed Management Commission and provided evidence of such approval to the City;
- h) the Developer has executed the stormwater pond maintenance agreement of the form attached hereto as Exhibit B;
- i) the Developer has paid the park dedication fee as provided herein, and;
- j) the Developer's agent has attended a preconstruction meeting with the City engineer and staff.

Upon completion or satisfaction of the foregoing conditions precedent, the Developer shall notify the City and, upon confirmation of completion, the City shall provide written notice that the Developer may proceed.

2. Plans; Improvements. a) The Developer agrees to develop the Property in accordance with the City Approvals, and to construct all improvements in accordance with the approved Phasing Plan and engineering and construction plans (collectively, the "Plans"). All terms and conditions of the City Approvals are hereby incorporated by reference into this Agreement. The Plans may not be modified by the Developer without the prior written approval of the City.

b) In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Subdivision Improvements"):

1. Street and road improvements;
2. Storm sewer facilities, and;
3. Stormwater pond facilities and associated grading.

c) All work performed by or on behalf of the Developer related to construction of the Subdivision Improvements shall be restricted to the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday, and 8:00 a.m. through 4:00 p.m. on Saturday. Construction on homes in phase one,

as provided in the Phasing Plan, shall be restricted to the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday and 8:00 a.m. through 4:00 p.m. on Saturday and Sunday.

3. Erosion Control. a) All construction regarding the Subdivision Improvements shall be conducted in a manner designed to control erosion and in compliance with all City ordinances and other requirements, including the City's permit with the Minnesota Pollution Control Agency regarding municipal separate storm sewer system program dated June 30, 2014. Before any phase of the Subdivision is rough graded, an erosion control plan shall be implemented by the Developer as approved by the City. The City may impose reasonable, additional erosion control requirements after the City's initial approval, if the City deems such necessary due to a change in conditions. All areas disturbed by the excavation shall be reseeded promptly after the completion of the work in that area unless construction of streets or utilities, buildings or other improvements is anticipated immediately thereafter. Except as otherwise provided in the erosion control plan, seed shall provide a temporary ground cover as rapidly as possible. All seeded areas shall be mulched, and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion.

b) If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems reasonably appropriate to control erosion based on the urgency of the situation. The City agrees to provide reasonable notice to the Developer in advance of any proposed action, including notice by telephone or email in the case of emergencies, but limited notice by the City when conditions so dictate will not affect the Developer's obligations or the City's rights hereunder.

c) The Developer agrees to reimburse the City for all expenses it incurs in connection with any action it takes to control erosion. No grading or construction of the Subdivision Improvements will be allowed and no building permits will be issued within the Subdivision unless the Developer is in full compliance with the erosion control requirements. The erosion control measures specified in the Plans or otherwise required within the Subdivision shall be binding on the Developer and its successors and assigns.

4. Site Grading; Haul Routes. a) In order to construct the Subdivision Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Property. All grading must be done in compliance with this Agreement, the Plans and with all requirements of the Minnesota Pollution Control Agency regarding contaminated soils. The City may withhold issuance of a building permit for the Subdivision until the approved certified grading plan is on file with the City and all erosion control measures are in place as determined by the City. Within 30 days after completion of the grading, the Developer shall provide the City with an "as constructed" grading plan and a certification by a registered land surveyor or engineer.

b) The Developer agrees that any fill material which must be brought to or removed from the Subdivision while grading the site or during construction of the Subdivision Improvements or any buildings located within the Subdivision will be transported using Highway 12 or such alternative haul route as is established by the City.

5. Construction of Subdivision Improvements. a) All Subdivision Improvements shall be installed in accordance with the Plans, the City Approvals, the City's subdivision regulations, the City's engineering standards and the requirements of the City engineer. The Developer shall submit plans and specifications for each phase of the Subdivision Improvements. The Developer shall obtain any necessary permits from any other agency having jurisdiction before proceeding with construction. The City shall inspect the Subdivision Improvements at the Developer's expense. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors. Within 45 days after the completion of each phase of the Subdivision Improvements, the Developer shall supply the City with a complete set of reproducible "as constructed" plans and three complete sets of paper "as constructed" plans, each prepared in accordance with City standards and also electronic versions of said plans in AutoCADD and shapefile formats based on Hennepin County coordinates. Iron monuments must be installed in accordance with state law. The Developer's surveyor shall submit a written notice to the City certifying that the monuments have been installed.

b) Each phase of Subdivision Improvements shall, except as may be otherwise approved by the City in writing, be completed by no later than the date specified in the Phasing Plan. The Developer or its construction contractor shall provide to the City a warranty bond against defects in labor and materials for all elements of each phase of the Subdivision Improvements for a period of two years from the date of their acceptance by the City. During such period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. A decision regarding whether a Subdivision Improvement shows signs of failure shall be made by the City in the exercise of its reasonable judgment. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the applicable Letter of Credit (as hereinafter defined) to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the applicable Letter of Credit. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against the Subdivision and Property, or any portion thereof as determined by the City, if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the Subdivision and Property of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

c) If building permits are issued prior to the completion and acceptance of all Subdivision Improvements serving any phase of development or lot, the Developer assumes all liability and costs resulting in delays in completion of the Subdivision Improvements and damage to the Subdivision Improvements caused by the City, the Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties.

6. Stormwater Pond Improvements. a) The Developer agrees to complete all elements of the on-site stormwater facilities, including but not limited to ponds, infiltration basins and accompanying structures, in accordance with the Plans including the Phasing Plan and in compliance with all City requirements regarding such improvements. The stormwater facilities serving the Subdivision will remain private and will be maintained by the Developer, or successor owners, at its sole expense. The City does not intend to accept the stormwater facilities as public and does not intend to maintain them. In order to meet the requirements of the Pioneer Sarah Creek Watershed Management Commission, the Developer agrees to enter into a Stormwater Pond Maintenance Agreement with the City in the form attached hereto as Exhibit C. The purpose of the Stormwater Pond Maintenance Agreement is to ensure that the Developer maintains the stormwater facilities within the Subdivision and to give the City the right but not the obligation to do so if the Developer fails in its obligations. The Stormwater Pond Maintenance Agreement will be recorded against the Property and will run with the land. The Developer acknowledges that i) the on-site storm water improvements will not be accepted by the City; ii) the City does not plan to maintain or pay for maintenance, repair or replacement of the storm sewer improvements and that the Developer and ultimately the lot owners will have primary responsibility for such work; iii) the City has the right but not the obligation to perform necessary work upon the failure or refusal by the Developer or the lot owners to do so; and iv) if the City performs any work on the storm water improvements, the City intends to recover its costs through one of the means available to it, including the right to specially assess the cost of such work against all of the lots within the Subdivision.

b) The Developer agrees to inform purchasers of lots or auto condos within the Subdivision that i) the City does not plan to maintain or pay for maintenance, repair or replacement of the storm water improvements and that the lot owners will have primarily responsibility for such work; ii) the City has the right but not the obligation to perform necessary work upon the failure or refusal by the lot owners to do so; and iii) if the City performs any work on the storm water improvements, the City intends to recover the cost of such work against the lots within the Subdivision through one of the means available to it, including the right to specially assess the cost of the work against all the lots within the Subdivision.

7. Improvement Security. a) In order to ensure completion of each phase of the Subdivision Improvements required under this Agreement and satisfaction of all fees due to the City, the Developer agrees to deliver to the City prior to beginning any construction or work on any development phase within the Subdivision a letter of credit (the "Letter of Credit") in the amount of 150 percent of the estimated cost of the Subdivision Improvements in such phase. The estimated cost of the work covered by the Letter of Credit for each phase of development is itemized on Exhibit D attached hereto. This amount represents the maximum risk exposure for the City, based on the anticipated sequence of phases of construction and the estimate of cost of each element of the Subdivision Improvements, rather than the aggregate cost of all required Subdivision Improvements. The Letter of Credit applicable to each phase of development shall be delivered to the City prior to issuance of any permits or the beginning of any work on the Subdivision Improvements in such phase and shall renew automatically thereafter until released by the City. The Letter of Credit shall be issued by a bank determined by the City to be solvent and creditworthy and shall be in a form acceptable to the City. The Letter of Credit shall allow the City to draw upon the instrument, in whole or part, in order to complete construction of any

or all of the Subdivision Improvements and other specified work within the Subdivision and to pay any fees or costs due to the City by the Developer.

b) The City agrees to return a portion of the Letter of Credit for any phase of development, in an amount to be determined solely by the City, upon substantial completion of any significant portion of the covered Subdivision Improvements, delivery of the required warranty bond to the City, and satisfaction of all of the Developer's financial obligations to the City. The Letter of Credit for a particular phase of development shall not be used as security for Subdivision Improvements in other phases. Prior to releasing any portion of the Letter of Credit, the City shall first be satisfied regarding the quality and completeness of the work and that the Developer has taken such steps as may be necessary to ensure that no liens will attach to the land within the Subdivision.

c) It is the intention of the parties that the City at all times have available to it an Letter of Credit in an amount adequate to ensure completion of all elements of the Subdivision Improvements for a particular phase of development and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of a Letter of Credit shall be evaluated by the City in light of that principle.

8. Park Dedication Requirements. The Developer shall pay a cash-in-lieu park dedication fee of Thirty-Three Thousand Two Hundred and Thirty-Five dollars (**\$33,235.00**) for the Subdivision.

9. Responsibility for Costs; Deposit for Construction Inspection. a) The Developer agrees to pay to the City an administrative fee in the amount necessary to reimburse the City for its reasonable costs and expenses in reviewing the final plat and the drafting and negotiation of this Agreement. The Developer agrees to reimburse the City in full for such reasonable costs within 45 days after notice in writing by the City. The Developer agrees to reimburse the City for the reasonable cost incurred in the enforcement of any provision of this Agreement, including reasonable engineering and attorneys' fees.

b) The Developer shall also pay a fee for City construction observation and administration relating to construction of the Subdivision Improvements. Construction observation shall include inspection of all the Subdivision Improvements. In order to reimburse the City for the administrative fee and the reasonable cost of inspection of the Subdivision Improvements, the Developer shall deposit an additional **\$25,000.00** with the City, which shall receive and hold such funds solely under the terms of this Agreement. The City shall reimburse itself for expenses from the deposit and will provide the Developer with a copy of any invoice from the City engineer or evidence of other cost or expense prior to deducting such funds from the deposit. If any funds held exceed the amount necessary to reimburse the City for its costs under this paragraph, such funds shall be returned to Developer without interest. If it appears that the actual costs incurred will exceed the estimate, Developer and City shall review the costs required to complete the project and the Developer shall deposit additional sums with the City.

10. Developer's Default. In the event of default by the Developer as to construction or

repair of any of the Subdivision Improvements or any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Subdivision for such purposes. If the City does any such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including but not limited to, hearing requirements and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes, section 429.081.

11. Insurance. The Developer agrees to take out and maintain or cause to be taken out and maintained until six months after the City has accepted the Subdivision Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its contractors or subcontractors. Liability limits shall not be less than \$500,000 when the claim is one for death by wrongful act or omission or for any other claim and \$1,500,000 for any number of claims arising out of a single occurrence. The City shall be named as an additional insured on the policy. The certificate of insurance shall provide that the City must be given the same advance written notice of the cancellation of the insurance as is afforded to the Developer.

12. Floodplain Regulations. No structures, including fences and accessory structures, may be constructed within the Subdivision below the regulatory flood protection elevation. The Developer must comply with the requirements of the City with regard to flood protection.

13. No Building Permits Approved, Certificates of Occupancy. a) The City Approvals do not include approval of a building permit for any structures within the Subdivision. The Developer must submit, and the City must approve building plans prior to an application for a building permit for a structure on any lot within the Subdivision. The Developer or the parties applying for the building permits shall be responsible for payment of the customary fees associated with the building permits and other deferred fees as specified in this Agreement.

b) No certificate of occupancy shall be issued for any home, commercial building or auto condo unit constructed in the Subdivision unless prior thereto grading is complete, an compliant driveway access has been installed, the home or structure is connected to an approved sanitary sewer system and such connection has been approved by the City, and an as built survey of the relevant lot has been submitted and approved by the City. In cases in which seasonal weather conditions make compliance with these conditions impossible, the City may accept an escrow of sufficient amount to ensure completion of the work during the following construction season.

14. Clean up and Dust Control. The Developer shall daily clean dirt and debris from streets adjoining the Subdivision resulting from construction work by the Developer, its contractors, agents or assigns. The Developer shall provide dust control to the satisfaction of the

City's engineer throughout construction within the Subdivision.

15. Compliance with Laws. The Developer agrees to comply with all laws, ordinances, regulations and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of Minnesota. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits for the Subdivision.

16. Agreement Runs with the Land. This Agreement shall run with the Property and shall be recorded against the title thereto and shall bind and inure to the benefit of the City and the Developer, and their successors and assigns. It is anticipated that the Developer will acquire some or all of the Property at the time of development, and any successors in title shall be responsible for obligations under this Agreement as required by the City. The Developer and Owner warrant that there are no unrecorded encumbrances or interests relating to the Property. The Developer agrees to indemnify and hold the City harmless for any breach of the foregoing covenants.

17. Indemnification. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless from claims made by it and third parties for damages sustained or costs incurred resulting from approval of the final plat and the other City Approvals. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees, except matters involving acts of gross negligence by the City.

18. Assignment. The Developer may not assign this Agreement or its rights or obligations hereunder without the prior written permission of the City, which consent shall not be unreasonably withheld, conditioned or denied.

19. Notices. Any notice or correspondence to be given under this Agreement shall be deemed to be given if delivered personally or sent by United States certified or registered mail, postage prepaid, return receipt requested:

- | | | |
|----|------------------|--|
| a) | as to Developer: | Breck Farm, LLC
925 Excelsior Blvd
Commercial Building
Excelsior, MN 55331 |
| b) | as to City: | City of Independence
1920 County Road 90
Independence, MN 55359-9448
Attn: City Administrator |

with a copy to:

Robert Vose
Kennedy & Graven, Chartered
150 South Fifth Street, Suite 700
Minneapolis, MN 55402

or at such other address as any party may from time to time notify the others in writing in accordance with this paragraph. The Developer shall notify the City if there is any change in its name or address.

20. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other provision of this Agreement.

21. Non-waiver. Each right, power or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

22. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

[Signature pages to follow]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF INDEPENDENCE

By: _____

Marvin Johnson, Mayor

By: _____

Mark Kaltsas

City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Marvin Johnson and Mark Kaltsas, the Mayor and City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

Developer

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ for Breck Farm, LLC on behalf of the corporation.

Notary Public

And consented to by the Owner:

Owner

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ for Breck Farm, LLC on behalf of the corporation.

Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered (RJV)
150 South Fifth Street, Suite 700
Minneapolis, MN 55402

**EXHIBIT A TO
DEVELOPMENT AGREEMENT**

Legal Description of the Property

The land subject to this Development Agreement is located in Hennepin County, Minnesota and is legally described as follows:

[LEGAL DESCRIPTION]

**EXHIBIT B TO
DEVELOPMENT AGREEMENT**
(Phasing Plan)

**EXHIBIT C TO
DEVELOPMENT AGREEMENT**

**FORM OF
STORMWATER POND MAINTENANCE AGREEMENT**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2024, by and between the city of Independence, a Minnesota municipal corporation (the “City”) and SH Ventures, Inc., a Minnesota corporation (the “Developer”), and consented to by the current fee owners JF Zeglin and MD Zeglin (“Owner”).

WITNESSETH:

WHEREAS, the Developer owns certain real property located in Hennepin County, Minnesota, legally described on Exhibit A attached hereto (the “Property”); and

WHEREAS, the Developer has granted to the City drainage and utility easements over portions of the Property through dedication on the plat of [AUTO CONDO]; and

WHEREAS, those portions of the Property subject to the drainage and utility easements are hereinafter collectively referred to as the “Easement Areas”; and

WHEREAS, the Developer intends to construct within the Easement Areas certain stormwater facilities (the “Stormwater Improvements”) for the benefit of the Property; and

WHEREAS, by a separate development agreement (the “Development Agreement”), the City and the Developer have entered into an agreement for the construction and maintenance of the Stormwater Improvements; and

WHEREAS, the City requires permanent provisions for handling of storm runoff, including terms and conditions for operation and maintenance of all Stormwater Improvements, and requires such provisions to be set forth in an agreement to be recorded against the Property; and

WHEREAS, the City and the Developer intend to comply with certain conditions, including entering into a maintenance agreement regarding the Stormwater Improvements;

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

1. Maintenance of the Stormwater Improvements. The Developer and its successors or assigns as fee owners of the Property shall be responsible for maintaining the Stormwater Improvements and for observing all drainage laws governing the operation and maintenance of the Stormwater Improvements. The Developer shall provide the City with a schedule acceptable

to the City for the periodic inspection of the Stormwater Improvements by the Developer. The Developer shall make all such scheduled inspections, keep record of all inspections and maintenance activities, and submit such records annually to the City. The cost of all inspections and maintenance, including skimming and cleaning of the Stormwater Improvements, shall be the obligation of the Developer and its successors or assigns as the fee owner of the Property.

2. City's Maintenance Rights. The City may maintain the Stormwater Improvements, as provided in this paragraph, if the City reasonably believes that the Developer or its successors or assigns has failed to maintain the Stormwater Improvements in accordance with applicable drainage laws and other requirements and such failure continues for 30 days after the City gives the Developer written notice of such failure or, if such tasks cannot be completed within 30 days, after such time period as may be reasonably required to complete the required tasks provided that Developer is making a good faith effort to complete said task. The City's notice shall specifically state which maintenance tasks are to be performed. If Developer does not complete the maintenance tasks within the required time period after such notice is given by the City, the City shall have the right to enter upon the Easement Area to perform such maintenance tasks. In such case, the City shall send an invoice of its reasonable maintenance costs to the Developer or its successors or assigns, which shall include all reasonable staff time, engineering and legal and other reasonable costs and expenses incurred by the City. If the Developer or its assigns fails to reimburse the City for its costs and expenses in maintaining the Stormwater Improvements within 30 days of receipt of an invoice for such costs, the City shall have the right to assess the full cost thereof against the Property. The Developer, on behalf of itself and its successor and assigns, acknowledges that the maintenance work performed by the City regarding the Stormwater Improvements benefits the Property in an amount which exceeds the assessment and hereby waives any right to hearing or notice and the right to appeal the assessments otherwise provided by Minnesota Statutes, Chapter 429. Notwithstanding the foregoing, in the event of an emergency, as determined by the city engineer, the 30-day notice requirement to the Developer for failure to perform maintenance tasks shall be and hereby is waived in its entirety by the Developer, and the Developer shall reimburse the City and be subject to assessment for any expense so incurred by the City in the same manner as if written notice as described above has been given.

3. Hold Harmless. The Developer hereby agrees to defend, indemnify and hold harmless the City and its agents and employees against any and all claims, demands, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or resulting from the Developer's, or the Developer's agents' or employees' negligent or intentional acts, or any violation of any safety law, regulation or code in the performance of this Agreement, without regard to any inspection or review made or not made by the City, its agents or employees or failure by the City, its agents or employees to take any other prudent precautions. In the event the City, upon the failure of the Developer to comply with any conditions of this Agreement, performs said conditions pursuant to its authority in this Agreement, the Developer shall indemnify and hold harmless the City, its employees, agents and representatives for its own negligent acts in the performance of the Developer's required work under this Agreement, but this indemnification shall not extend to intentional or grossly negligent acts of the City, its employees, agents and representatives.

4. Costs of Enforcement. The Developer agrees to reimburse the City for all costs prudently incurred by the City in the enforcement of this Agreement, or any portion thereof, including court costs and reasonable attorneys' fees.

5. Rights Not Exclusive. No right of the City under this Agreement shall be deemed to be exclusive and the City shall retain all rights and powers it may have under Minnesota Statutes, sections 444.16 to 444.21 to acquire, construct, reconstruct, extend, maintain and otherwise improve the Stormwater Improvements, provided, however, that the City shall not exercise such rights unless the Developer or its successors or assigns does not timely cure a failure to maintain the Stormwater Improvements after receipt of written notice as provided in paragraph 2 above.

6. Notice. All notices required under this Agreement shall either be personally delivered or be sent by United States certified or registered mail, postage prepaid, and addressed as follows:

- | | | |
|----|------------------|--|
| a) | as to Developer: | Breck Farm, LLC
925 Excelsior Blvd
Commercial Building
Excelsior, MN 55331 |
| b) | as to City: | City of Independence
1920 County Road 90
Independence, MN 55359-9448
Attn: City Administrator |
| | with a copy to: | Robert Vose
Kennedy & Graven, Chartered
150 South Fifth Street, Suite 700
Minneapolis, MN 55402 |

or at such other address as any party may from time to time notify the others in writing in accordance with this paragraph.

7. Successors. All duties and obligations of Developer under this Agreement shall also be duties and obligations of Developer's successors and assigns. The terms and conditions of this Agreement shall run with the Property.

8. Effective Date. This Agreement shall be binding and effective as of the date first written above.

9. Governing Law. This Agreement shall be construed under the laws of Minnesota.

Developer

Breck Farm, LLC
925 Excelsior Blvd
Commercial Building
Excelsior, MN 55331

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ for Breck Farm, LLC on behalf of the corporation.

Notary Public

And consented to by the Owner:

Owner

Breck Farm, LLC
925 Excelsior Blvd
Commercial Building
Excelsior, MN 55331

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ for Breck Farm, LLC on behalf of the corporation.

Notary Public

CITY OF INDEPENDENCE

By: _____
Marvin Johnson, Mayor

By: _____
Mark Kaltsas
City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Marvin Johnson and Mark Kaltsas, the Mayor and the City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered (RJV)
150 South Fifth Street, Suite 700
Minneapolis, MN 55402

**EXHIBIT A TO
STORMWATER MAINTENANCE AGREEMENT**

The land subject to this Stormwater Maintenance Agreement is located in Hennepin County, Minnesota and is legally described as follows:

[LEGAL DESCRIPTION], according to the recorded plat thereof.

**EXHIBIT D TO
DEVELOPMENT AGREEMENT**

Subdivision Improvement Cost Estimate

Breckenridge Farm - Letter of Credit	
PHASE I - Residential	
Wetland Mitigation (0.4 credits)	\$ 37,508.00
Wetland Buffer Planting	\$ 3,350.00
Erosion Control	\$ 3,827.00
Shared Driveways	\$ 24,968.00
Landscape Screening	\$ 21,080.00
Sub-total	\$ 90,733.00
Total LOC Amount (150%)	\$ 136,099.50
PHASE 2 - Commercial (1&2)	
Wetland Mitigation (0.7 credits)	\$ 65,639.00
Turn Lane	\$ 51,623.00
Entrance Drive	
Wetland Buffer	\$ 12,751.00
Erosion Control	\$ 4,400.00
Infiltration Basins 1 & 2	\$ 29,475.00
Landscaping	\$ 12,650.00
Sub-total	\$ 176,538.00
Total LOC Amount (150%)	\$ 264,807.00
PHASE 3 - Commercial (3&4)	
Wetland Mitigation (0.7 credits)	\$ 65,639.00
Wetland Buffer	\$ 14,104.00
Erosion Control	\$ 4,200.00
Infiltration Basins 1 & 2	\$ 7,400.00
Landscaping	\$ 14,685.00
Sub-total	\$ 106,028.00
Total LOC Amount (150%)	\$ 159,042.00

City of Independence

***Consideration of a Text Amendment to the
Zoning Ordinance Relating to Solar Energy Systems***

To: City Council

From: Mark Kaltsas, City Planner

Meeting Date: May 7, 2024

Request:

A text amendment to the City's zoning ordinance Chapter 5, Section 515, Solar energy systems.

- a. The City will consider an amendment that will look at possible allowing an increase in the maximum square footage of residential scale ground mounted solar energy systems. The current maximum is 500 square feet.

UPDATED DISCUSSION:

The Planning Commission considered several different amendments to the solar energy ordinance and ultimately recommended approval of the proposed amendment.

Option C - Proposed amendments are noted below. The change would provide additional criteria that would be used to consider allowing a larger solar energy system – up to 2,500 SF. The majority of the existing ordinance would remain intact and apply to a high percentage of properties in the City. The supplemental criteria would be available to the City within the provisions and framework of a CUP and would not require a variance.

Subd. 5. Ground-Mounted Solar Energy Systems - shall conform to the following standards:

- (a) Ground-mounted systems shall only be allowed on a parcel with an existing principal structure.
- (b) Ground-mounted systems shall be located only in rear or side yards.
- (c) Ground-mounted systems shall not be located in the Shoreland Overlay District.

- (d) Ground-mounted systems shall be wholly screened from view from the public right of way and adjacent residential structures. Methods for screening shall include berming, fencing, landscaping and/or combination thereof.
- (e) Ground-mounted systems shall be located on a parcel of at least 2.5 acres.
- ~~(f) Ground-mounted systems shall be setback 40 feet from the rear yards.~~
- ~~(g) Ground-mounted systems shall be setback 30 feet from the side yards.~~
- (h) ~~(f)~~ Ground-mounted systems shall have a maximum area of 500 SF.
- ~~(i)~~ ~~(g)~~ Ground mounted systems shall be setback a minimum of 50 feet from all property lines.
- (j) ~~(h)~~ The maximum height for any component of the system shall be 15 feet.
- (k) ~~(i)~~ Ground-mounted systems shall be in compliance with any applicable local, state and federal regulatory standards, including building, electrical and plumbing codes.
- (l) ~~(j)~~ Ground-mounted systems and their support structures shall be designed by a certified professional to meet applicable professional standards for the local soil and climate conditions.
- (m) The city may permit a ground mounted solar energy system which exceeds 500 SF, if the following additional criteria are wholly satisfied:
 - 1. The ground mounted solar system does not exceed 2,500 SF.
 - 2. The ground mounted solar energy system is located on a property that is 5 acres or larger.
 - 3. The ground mounted solar energy system shall be located a minimum of 100 LF from any property line and 500 LF from any residential structure on an adjoining property.

- (n) The city will also consider the following additional criteria to determine if a ground mounted solar energy system will be permitted to exceed the maximum size limitations established in this code:
1. The ground mounted solar energy system is not visible from any public street or from adjacent properties. Screening can be used to meet this standard.
 2. The applicant has provided with the application, the written consent of the owners of privately or publicly owned real estate directly abutting the premises for which the permit is being requested (on forms provided by the city).
 3. The city finds that granting permission for a ground mounted solar energy system, that exceeds 500 SF, will not be detrimental to the public or take away from the reasonable use and enjoyment of the surrounding property.

Discussion:

Since the adoption of the solar energy ordinance in 2016, the City has considered 3 variance applications relating to ground mounted solar energy systems. All three of the applications considered asked for more than 500 SF of ground mounted surface area which is the maximum size allowed by the City's currently solar energy ordinance. The current ordinance stipulates the following relating to ground mounted solar energy systems:

Subd. 5. Ground-Mounted Solar Energy Systems - shall conform to the following standards:

- (a) Ground-mounted systems shall only be allowed on a parcel with an existing principal structure.
- (b) Ground-mounted systems shall be located only in rear or side yards.
- (c) Ground-mounted systems shall not be located in the Shoreland Overlay District.
- (d) Ground-mounted systems shall be wholly screened from view from the public right of way and adjacent residential structures. Methods for screening shall include berming, fencing, landscaping and/or combination thereof.
- (e) Ground-mounted systems shall be located on a parcel of at least 2.5 acres.
- (f) Ground-mounted systems shall be setback 40 feet from the rear yards.

- (g) Ground-mounted systems shall be setback 30 feet from the side yards.
- (h) Ground-mounted systems shall have a maximum area of 500 SF.
- (i) The maximum height for any component of the system shall be 15 feet.
- (j) Ground-mounted systems shall be in compliance with any applicable local, state and federal regulatory standards, including building, electrical and plumbing codes.
- (k) Ground-mounted systems and their support structures shall be designed by a certified professional to meet applicable professional standards for the local soil and climate conditions.

Staff has discussed the possibility of increasing the size of allowed residential scale ground mounted solar energy systems based on the demonstrated need of a particular property. In addition to demonstrated need, the City could consider additional criteria similar to those already contemplated in the current ordinance. Criteria such as lot size, separation or setbacks from adjacent or neighboring properties, maximum size, etc.

The City reviewed similar ordinances for surrounding communities and noted that the following methods are being utilized:

- Percentage of lot coverage (i.e., counts towards maximum lot coverage requirements – 20%)
- Minimum setbacks (i.e., 300 LF from adjacent residential structures and 100 LF from property line)
- Maximum SF (i.e., 4,000 SF – anything over 1,500 SF is a CUP)
- Minimum lot size (i.e., 5 acres minimum lot size)

The City also reached out to several solar installers to discuss energy usage and solar array sizes typical for today's technology. The City obtained the following information:

Large Residence Example

Conditioned Square Footage: 14,750 sqft
Usage Estimate per Sq/Ft: 0.45 kWh/sqft/month
Estimated Monthly Usage: 6,637 kWh
Estimated Annual Usage: 79,650 kWh

Proposed Solar Installation production estimate: 56,169 kWh
Estimated offset: 71%

MN Average Single-Family Home Example

Square Footage: 2,026 sq.ft.
Average Monthly Usage: 1,013 kWh

Average Annual Usage: 12,156 kWh

The relationship between size of home and usage has been a dependable starting point for determining estimated usage on new construction. In instances where utility bills can be used to see historical usage, the estimate for most homes tracks still tracks within 10% of actual usage. With the addition of electric vehicles and the trend to electrify homes, we have been seeing a trend upwards in average home usage. Electric vehicles alone will add an average of 270 kWh/month per vehicle.

Current 500 sqft CUP limit for ground mounts

- Allows for 22 x 420 modules or 9.24 kWDC system (using the most efficient module in the marketplace)
- Production when optimally placed and tilted, and with no shade would produce approximately 11,916 kWh/yr

Based on the information obtained and considered by the City in reviewing this issue, the following considerations are provided to Planning for further discussion:

- Increase the allowable size of ground mounted solar arrays allowed by conditional use permit to be commensurate with demonstrated usage. This could include utilizing a third-party consultant to prepare and document demonstrated need for each application.
 - Maximum size of ground mounted systems meeting the following additional criteria and showing demonstrated need **is 2,500 SF**
- Provide additional criteria that would be used to review applications:
 - Increased property size or minimum large property size – **10 acres minimum** to exceed 500 SF
 - Increased setbacks from property lines – **100 LF from property lines and 1,000 LF from adjacent residential structures**

Recommendation:

Based on the feedback and direction, it is anticipated that a formal ordinance amendment would be forwarded to the City Council for consideration.

ORDINANCE NO. 2024-02

**CITY OF INDEPENDENCE
COUNTY OF HENNEPIN
STATE OF MINNESOTA**

**AMENDING SECTION 515 OF THE INDEPENDENCE CITY CODE
RELATING TO SOLAR ENERGY SYSTEMS**

**THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, HENNEPIN COUNTY,
MINNESOTA, ORDAINS:**

SECTION 1. The Independence City Code, Chapter IV, Section 515 is revised to include the following (additions shown in **bold/underline**, deletions as ~~striketrough~~):

515.11. Solar Energy Systems. Subdivision 1. The purpose of this subsection is to provide design and performance standards pertaining to solar energy systems.

Subd. 5. Ground-Mounted Solar Energy Systems - shall conform to the following standards:

- (a) Ground-mounted systems shall only be allowed on a parcel with an existing principal structure.
- (b) Ground-mounted systems shall be located only in rear or side yards.
- (c) Ground-mounted systems shall not be located in the Shoreland Overlay District.
- (d) Ground-mounted systems shall be wholly screened from view from the public right of way and adjacent residential structures. Methods for screening shall include berming, fencing, landscaping and/or combination thereof.
- (e) Ground-mounted systems shall be located on a parcel of at least 2.5 acres.
- ~~(f) Ground-mounted systems shall be setback 40 feet from the rear yards.~~
- ~~(g) Ground-mounted systems shall be setback 30 feet from the side yards.~~
- (h) **(f)** Ground-mounted systems shall have a maximum area of 500 SF.

- (i) (g) Ground mounted systems shall be setback **a minimum of 50 feet from all property lines.**
- (j) (h) The maximum height for any component of the system shall be 15 feet.
- (k) (i) Ground-mounted systems shall be in compliance with any applicable local, state and federal regulatory standards, including building, electrical and plumbing codes.
- (l) (j) Ground-mounted systems and their support structures shall be designed by a certified professional to meet applicable professional standards for the local soil and climate conditions.

(k) The city may permit a ground mounted solar energy system which exceeds 500 SF, if the following additional criteria are wholly satisfied:

- 1. The ground mounted solar system does not exceed 2,500 SF.**
- 2. The ground mounted solar energy system is located on a property that is 5 acres or larger.**
- 3. The ground mounted solar energy system shall be located a minimum of 100 LF from any property line and 500 LF from any residential structure on an adjoining property.**

(l) The city will also consider the following additional criteria to determine if a ground mounted solar energy system will be permitted to exceed the maximum size limitations established in this code:

- 1. The ground mounted solar energy system is not visible from any public street or from adjacent properties. Screening can be used to meet this standard.**
- 2. The applicant has provided with the application, the written consent of the owners of privately or publicly owned real estate directly abutting the premises for which the permit is being requested.**
- 3. The city finds that granting permission for a ground mounted solar energy system, that exceeds 500 SF, will**

not be detrimental to the public or take away from the reasonable use and enjoyment of the surrounding property.

SECTION 2. The City Administrator is hereby directed to amend the City of Independence City Code in accordance with the foregoing amendment.

Adopted this 7th day of May 2024.

Marvin D. Johnson, Mayor

ATTEST:

Mark Kaltsas, City Administrator

City of Independence

Consideration of Change to Official City Appointments

To: City Council
From: Mark Kaltsas, City Administrator
Meeting Date: May 7, 2024

Discussion:

Each year the City selects Council Members to serve the City and fill roles supporting boards and commissions. The Council has the discretion to make appointments as necessary. Council is being asked to consider a change to one appointment as follows to accommodate current schedules:

Maple Plain Fire Commission: Brad Spencer in place of Lynn Betts

Requested Action:

It is recommended that the City Council approve this change to the official 2024 appointments.

City of Independence

Consideration of Pioneer Park Master Plan Resolution for Orono Baseball and Orono Softball

To: City Council
From: Mark Kaltsas, City Administrator
Meeting Date: May 7, 2024

Discussion:

Last year the City discussed, developed and adopted an update to the Pioneer Park Master Plan. The updated Master Plan contemplates a softball/baseball area that would provide up to four ballfields and associated improvements (i.e., concessions building, dugouts, fencing, parking). Orono Softball Association and Orono Baseball Association are in the process of initiating a new capital fundraising campaign for the purpose of obtaining funding to construct the noted improvements. The City has had several discussions with both associations relating to improvements and the costs associated with their development. It is anticipated that the cost of developing the softball/baseball portion of the park will be more than 2 million dollars.

Both associations would like general confirmation from the city that it will reserve the area identified in the park master plan for ballfield development and work with the associations on the development, should they be able to raise adequate funding. The city and association would have to eventually develop and arrive at an agreement relating to the operations, maintenance and general park development timing and phasing prior to any project moving forward. Staff has prepared a resolution which is intended to provide a general level of confirmation relating to the city's willingness to develop the ballfields in accordance with the park master plan.

Requested Action:

Staff is seeking City Council approval of **RESOLUTION 24-0507-02**.

Attachments: **RESOLUTION 24-0507-02**



RESOLUTION OF THE
CITY OF INDEPENDENCE
HENNEPIN COUNTY, MINNESOTA

RESOLUTION NO. 24-0507-02

**RESOLUTION CONFIRMING COMMITMENT TO THE ADOPTED PIONEER PARK
MASTER PLAN AND DEVELOPMENT OF ATHLETIC FACILITIES WITH ORONO
BASEBALL ASSOCIATION AND ORONO SOFTBALL ASSOCIATION SUBJECT TO
ASSOCIATION FUNDING, OPERATIONS AND MAINTENANCE AGREEMENTS**

WHEREAS, the City of Independence (the City) has adopted the Pioneer Park Master Plan (Master Plan) to memorialize the intended development of the community park (attached hereto as **Exhibit A**); and

WHEREAS, the City Council has had preliminary discussions with both Orono Softball Association and Orono Baseball Association relating to the future development of the softball/baseball fields and associated parking improvements as depicted in the Master Plan; and

WHEREAS, Orono Softball Association and Orono Baseball Association have initiated a capital fund raising campaign for the purpose of raising funds to be used to realize the development of the softball/baseball fields and associated parking improvements in Pioneer Creek Park; and

WHEREAS, the City and Orono Softball Association and Orono Baseball Association want to work together to develop the improvements in accordance with the Master Plan; and

WHEREAS, the City and Orono Softball Association and Orono Baseball Association will need to further consider and develop an operations and maintenance agreement to advance the development of the Master Plan.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Independence that it does declare recognition of the current capital fundraising campaigns being conducted by Orono Softball Association and Orono Baseball Association and will support the development of the softball/baseball fields and associated improvements (parking, concessions, etc.) as depicted in the Master Plan subject to suitable funding from the associations and approval of an operations and maintenance agreement.

This resolution was adopted by the City Council of the City of Independence on this 7th day of May 2024, by a vote of _____ ayes and _____ nays.

Marvin Johnson, Mayor

ATTEST:

Mark Kaltsas, City Administrator

EXHIBIT A

(Pioneer Park Master Plan)



0 50 100
FEET
SCALE

PIONEER PARK IMPROVEMENTS
City of Independence

Park Master Plan - Concept C-2
March 2023





West Hennepin History Center

**Western Hennepin County Pioneer
Association, Inc.**

Founded 1907

1953 West Wayzata Boulevard
P.O. Box 332
Long Lake, Minnesota 55356
(952) 473-6557
<http://www.whcpa-museum.org/>

To Independence Mayor and Council Members,

On May 11, 2024 Minnesota will have a new State Flag. Like it or not, it will become the official State Flag on May 11. It is also the day that in 1858, Minnesota was admitted to the union. We became the 32nd.State with boundaries approximately where they are now.

To celebrate on Saturday May 11 the Western Hennepin County Pioneer Museum in Long Lake is hosting a flag raising ceremony of the new Minnesota State Flag. We will have a special speaker plus special guided tours of the Museum and the Carriage House.

You are invited to join us at the flagpole in front of the Museum at twelve noon for the ceremony. Coffee and cookies will be served after the ceremony.

Please invite others in your community to attend also. We are looking forward to seeing the new State Flag, you and many of our friends and neighbors on May 11 at this special event.