



PLANNING COMMISSION MEETING AGENDA
REGULAR MEETING
TUESDAY, SEPTEMBER 20, 2016

6:30 PM Regular Meeting

1. Call to Order
2. Roll Call
3. Approval of Minutes:
 - a. August 16, 2016 Planning Commission Meeting
4. **PUBLIC HEARING (Tabled at August 16 Meeting):** Jay Fogelson (Applicant/Owner) requests that the City consider the following action for the property located at 4618 South Lake Sarah Drive, Independence, MN (PID No. 02-118-24-21-0005):
 - a. A variance to allow a reduced side yard setback on both sides of the property which would permit a home and garage addition.
5. **PUBLIC HEARING:** Jim and Lynda Franklin (Applicants/Owners) request that the City consider the following action for the property located at 6615 Franklin Hills Road, Independence, MN (PID No. 15-118-24-12-0011):
 - a. A Conditional Use Permit to allow an accessory dwelling unit on the subject property.
6. **PUBLIC HEARING:** Donna Hendley (Applicant/Owner) requests that the City consider the following actions for the property located at 4150 Lake Sarah Drive South, Independence, MN (PID No. 02-118-24-43-0003):
 - a. Final Plat for a five lot subdivision of the subject property.
7. **PUBLIC HEARING:** A proposed text amendment to Chapter 5, Sections 506 of the City of Independence Ordinances as follows:
 - a. An amendment to the Floodplain Ordinance following FEMA mapping changes made in 2016.
8. Open/Misc.
9. Adjourn.

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY AUGUST 16, 2016 – 6:30 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Commissioner Phillips at 6:30 p.m.

2. ROLL CALL

PRESENT: Commissioners Olson, Gardner and Thompson
STAFF: City Planner Kaltsas, City Administrative Assistant Horner
ABSENT: Chair Phillips and Commissioner Palmquist
VISITORS: Jan Gardner, Scottie Hines, Bob Lamp, Barb Janas, George and Linda Becker, Jeff Vanderlinde, Lynda Franklin, Rick Gage

3. APPROVAL OF MINUTES:

- a. June 21, 2016 Planning Commission Meeting

Motion by Gardner to approve the minutes of the June 21, 2016 Planning Commission Meeting, second by Thompson. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: Phillips and Palmquist. Abstain: None. Motion approved.

4. **PUBLIC HEARING (Tabled at June 21 Meeting):** Jay Fogelson (Applicant/Owner) requests that the City consider the following action for the property located at 4618 South Lake Sarah Drive, Independence, MN (PID No. 02-118-24-21-0005):

- a. A variance to allow a reduced side yard setback on both sides of the property, which would permit a home and garage addition.

Kaltsas said the applicant has requested tabling the request until the September 20th meeting of the Planning Commission.

5. **PUBLIC HEARING:** Windsong Farm Golf Club, LLC (Applicant/Owner) requests that the City consider the following actions for the property located at 18 Golf Walk (PID No. 32-118-24-13-0001) in Independence, MN:

- a. A Comprehensive Plan Amendment to allow an expansion of Windsong Golf Club to the property north of CSAH 6.
- b. A conditional use permit amendment to allow an expansion of Windsong Golf Club to the property north of CSAH 6 for a new driving range/practice facility (private facility).

Kaltsas said the applicant is seeking an amendment to the existing conditional use permit to allow the use of their property located north of CSAH 6 for a new practice facility. Windsong has recently acquired several properties just north of the existing golf course. The proposed practice facility would include a larger driving range, seasonal building for bathrooms, a short game practice area, putting green and small

storage building. The new practice facility would be accessed via the golf cart tunnel beneath CSAH 6 that was installed last year to provide access to the overflow parking area. The overflow parking area would no longer be in use on the north side of CSAH 6.

In order to consider the expansion of the golf course facility to the north side of CSAH 6, an amendment to the conditional is necessary.

520.09 Subd. 8. If a conditional use permit holder wishes to alter or extend the operation or to change the conditions of the permit, the city will evaluate the permit holder's compliance with the existing permit conditions. Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the conditional use permit issued requires an amended conditional use permit. An amended conditional use permit application must be administered in a manner similar to that required for a new conditional use permit.

Commercial golf courses are permitted as conditional uses in the AG - Agriculture zoning district. The golf club has a conditional use permit that was originally approved in 2001 and amended in 2012 and 2013. The CUP allows a golf course and it's associated 29,000 SF club house/pro shop, guesthouse and overflow parking north of CSAH 6. The initial Golf Course CUP was issued under 530.01, subd. 4(s) which makes "commercial golf course" a conditionally permitted use.

The applicant is proposing to mitigate any visual impacts of the proposed practice facility by constructing 8-10 foot tall berms along CSAH 6 in a similar fashion to the berms that screen the golf course on the south side of CSAH 6. The proposed practice facility is intended to serve the courses existing membership base and will be for the private use of the members. The new practice facility will ultimately allow the club to expand their existing parking lot on the south side of CSAH 6 into their existing driving range. A practice facility is a use that is typically associated with a golf course.

Any amendment to an existing CUP must meet the same requirements established for granting a new CUP. The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

- 1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.*
- 2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.*
- 3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.*
- 4. Sufficient off-street parking and loading space will be provided to serve the proposed use.*
- 5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city from pollution hazards.*
- 6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.*
- 7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.*

8. *The proposed condition use is consistent with the comprehensive plan of the City of Independence.*
9. *The proposed use will not stimulate growth incompatible with prevailing density standards.*

The existing golf course is relatively secluded from the surrounding properties and County Roads. There are existing golf courses to the west and south of this property. Most impacts that would result from the use of the property would be mitigated by the remaining open space and proposed earthen berming. Golf courses are permitted as a conditional use in the Agriculture zoning district. The property is guided in the Comprehensive Plan as Public/Semi-Public. The use of the property as a golf course is consistent with the existing zoning. The City will need to determine if the practice facility is consistent with the use of the property as a golf course. In addition, the City will need to determine if the proposed amendment to the CUP meets the requirements for granting a conditional use permit.

The applicant is currently in the process of securing a grading/wetland mitigation permit from the City to allow grading and site work to be completed on this property. The City has completed an initial review of the proposed grading and wetland mitigation and has provided detailed comments to the applicant. The City will continue reviewing the grading, drainage and mitigation plans for the proposed practice facility expansion and all approvals will be subject to the City's review and approval.

There are a few additional considerations that should be noted:

1. The proposed building noted on the plans is approximately 3,500 SF. The building will be used only during the golf season and will house bathrooms, video swing analysis rooms and a small club repair area. The building will be accessed only via golf carts from the club. A fire department/emergency vehicle access route will be required to serve the building. There is an existing access route that serves the site off of CSAH 6. The applicant is working on a plan to relocate the access drive to the east and maintain an adequate fire access road and turn around. The City will review the revised access drive and any changes to the driveway locations on CSAH 6 will be subject to the review and approval of Hennepin County.
2. It has not been determined if the bathrooms will be served from a separate septic field or utilize holding tanks. The City will review any proposed sanitary service during building permit review.
3. The applicant is not proposing to have artificial lighting on the practice facility. The City may want to consider a condition that specifically addresses artificial lighting of the facility.
4. The City has guided this property in the comprehensive plan as Public/Semi-Public. In an effort to maintain the comprehensive plan guiding, the City requested that the applicant amend the comprehensive plan to include the land north of CSAH 6. Staff met with the Metropolitan Council relating to the comprehensive plan amendment and it appears that there are no issues with the requested amendment. Any City approval of the requested conditional use permit amendment will be subject to the approval of the Metropolitan Council.

Kaltsas said in the existing zoning district, a commercial golf course is permitted as a conditional use. Resulting traffic, noise, and other measureable impacts should not be incrementally amplified because of the proposed practice facility expansion. The use of the facility will be limited to the members of the club and will not increase the amount of traffic or number of users at the golf course. The Planning Commission will need to determine if the requested amendment to the conditional use permit and comprehensive plan meets all of the aforementioned conditions and restrictions.

Kaltsas said the City has not received any written comments regarding the proposed amendment to the conditional use permit.

Kaltsas stated Staff is seeking a recommendation from the Planning Commission for the request for an amendment to the conditional use permit and comprehensive plan. Should the Planning Commission make a recommendation to approve the requested action, the following findings and conditions should be considered:

1. The proposed conditional use permit and comprehensive plan amendment meets all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The comprehensive plan amendment is subject to the review and approval of the Metropolitan Council.
3. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
4. This amendment approves the use of a portion of the property to the north of CSAH 6, and further defined on the approved plans, for a practice facility. The following conditions should be added to the conditional use permit:
 - a. In addition to the 18-hole golf course, 29,000 square foot clubhouse and 5,350 square foot guest house with six sleeping rooms, Windsong Farm Golf Club can use the property north of CSAH 6 for a practice facility with the following limitations:
 - 1) The practice facility shall be no greater in area than that which is designated on the approved plans.
 - 2) Landscaping and berming along CSAH 6 as detailed on the proposed plans shall be required to be installed.
 - 3) A designated and approved fire/emergency vehicle access shall be maintained into the site at all times.
 - 4) There shall be no artificial lighting of the practice facility.
 - 5) Any expansion of the practice facility, additional buildings or expansion of the proposed buildings shall be subject to the review and approval of the City through an amendment to the conditional use permit.
5. Prior to the City granting a grading permit for the proposed practice facility expansion, the applicant shall complete the following items:
 - a. Revise the plans and provide information as requested by the City's water resource consultant Hakanson Anderson.

6. Prior to the City granting a building permit for the proposed practice facility building, the applicant shall complete the following items:
 - b. Provide the City with a sanitary sewer plan for serving the proposed building.
 - c. Provide the City with cut sheets for any building lighting.

Olson asked about the overflow parking addressed previously. Kaltsas said they took out the overflow parking as of now and asked the applicant to speak further on it.

Public Hearing Open

Hines said they do not have an overflow-parking plan determined yet. He said parking expansion plans would happen quickly once these preliminary plans are approved. Gardner asked if the berm would cause parking problems. Olson asked what they do currently for overflow parking. Hines said it has been adequate and they will make it work going forward.

Hines said the changes would be a great improvement for the club. He noted the game has shifted as people do not have as much time as they used to and cannot spend 4-5 hours on a course. The new facility will offer the practice ranges, which are desirable to golfers.

Gage said he lives in the property to the North and he feels this will be a very good use of the property.

Motion by Gardner to close the Public Hearing, second by Thompson.

Public Hearing Closed

Gardner asked if this property/ applicant are in good standing with the City as far as following rules, etc. Kaltsas replied yes.

Thompson asked if screening and berming would be a concern or since they mimicked what was already south of County Road 6 if that was sufficient. Kaltsas confirmed they have adequate berming planned at 5-10 feet above grade. Hines said it is as much for sound as it is for sight.

Thompson asked Kaltsas if this would be well received with the Comprehensive Plan change and Met Council. Kaltsas said the concern would be impact on sewer and roads and this change would have minimal effect. Kaltsas said there is mitigation on this property as far as wetland and storm water review and the applicant has been very receptive working on those issues as well.

Thompson asked how the lake would be impacted. Kaltsas said the water quality should be improved. He said there is no public access on the lake.

Motion by Thompson to approve the CUP and Comprehensive Plan Amendment for Windsong Golf Club at 18 Golf Walk (PID No. 32-118-24-13-0001) per the recommendations by Staff, second by Gardner. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: Phillips and Palmquist. Abstain: None. Motion approved.

6. **PUBLIC HEARING:** Hoikka Construction (Applicant) and Beau'Selle Stable (Owner) request that the City consider the following actions for the property located at 1060 Copeland Road (PID No. 29-118-24-31-0001) in Independence, MN:
- a. A conditional use permit to allow a Commercial Riding Stable.
 - b. A conditional use permit to allow an accessory structure that exceeds 5,000 SF.

Kaltsas said a new owner recently acquired the property and they are seeking a conditional use permit to allow a commercial riding stable on the property. There is an existing barn located on the property that currently has 22 stables. The applicant is seeking to expand the existing barn to include an indoor riding arena, three additional stables and a bunkhouse. The indoor riding arena expansion is greater than 5,000 square feet. All accessory structures greater than 5,000 square feet require a conditional use permit.

The existing barn is approximately 8,750 square feet in size and houses 22 stables. The proposed expansion would add an additional 18,700 square feet and 3 additional stables. In addition to the indoor riding arena, the applicant is seeking a conditional use permit to allow a bunkhouse within the proposed riding arena addition to house a property caretaker. The proposed barn addition would be designed to complement the existing barn and be constructed with matching materials. The proposed expansion would maintain an approximately 100 foot setback from the east property line (closest property line). The applicant has provided the City with a floor plan of the proposed barn addition. The existing barn is currently connected to the septic system for the property. The additional bedroom and bathroom facilities may cause for the system to be expanded. The City will require the applicant to submit a full septic analysis with the building permit.

Commercial riding stables are a conditional use in the Agriculture zoning district. The subject property is zoned Agriculture. The existing property has been established as a private horse farm with several large pastures and outdoor riding areas. The applicant would primarily be utilizing the facility for their own horses; however, they would like to have the ability to board and allow riding of other horses in the facility.

The City generally allows 1 animal unit on the first two acres and then 1 additional animal unit for each additional acre of property. The subject property is approximately 85 acres. Of the 85 acres, approximately 67 acres is useable open space. Applying the City's typical standard, the site would accommodate 84 animals using the gross acreage or 66 animals using the useable acreage. The 25 horses being sought by the applicant would fit within the allowable number of animal units on the property.

The applicant is seeking permission to board up to 25 horses on the subject property. The City has historically required that the applicants maintain a manure management plan, maintain all applicable permits relating to the management of manure on this property and maintain 1/3 acre of open space per animal unit.

There is an existing manure retention area located on the site. The applicant is proposing to fully enclose the retention area with concrete as a part of the construction for the new addition. The manure generated from the existing barn has historically been spread on the fields. In addition to the subject property, the applicant owns an additional 40 acre parcel to the southeast that could also be used for manure spreading. The applicant anticipates that there would be approximately 2 to 6 guests utilizing the stables and riding arena per day. The only other additional traffic proposed would be for the delivery of bedding materials for the stables.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

Kaltsas said the City has visited the site and discussed the operation of the proposed commercial riding stable with the applicant. Given the location of the property on Copeland Road, the adjacent commercial riding stable (810 Copeland Road to the south), the orientation of the buildings and their relationship to the surrounding properties, it appears that the proposed application can be found to meet the requirements for granting a conditional use permit to allow a commercial riding stable, accessory structure larger than 5,000 square feet and a bunkhouse for a caretaker on the property.

The following conditions should be considered:

1. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
2. Any new signage shall comply with all applicable standards of the City's ordinance.
3. No more than 25 horses shall be boarded on the property.
4. The applicant and facility must operate in compliance with manure management permit from MPCA. A copy of the valid MPCA permit with amendments to be attached to and become a part of the conditional use permit.
5. City roads will not be littered in the hauling of manure.
6. A minimum of 1/3 acre or green covered open space, excluding wetland, is required within the horse facility, for each horse allowed by this permit. Grass shall be maintained and be the primary groundcover in all pasture areas.

7. The hours of operation are: summer 7:00am-10:00pm., winter 7:00am-9:00pm.
8. Horse shows will require special approval from the City
9. No renting of hack horses.
10. No riding on private land unless authorized by owners.
11. No parking on public roads.
12. All feed and bedding are to be stored inside a closed building.
13. Utilize appropriate management practices to control flies and odor.
14. Training clinics offered to non-borders will require special approval from the City.
15. The bunkhouse is for the caretaker of the owners of the property only. The bunkhouse shall not be rented to anyone not employed on the property.
16. No future expansion of the barn and riding arena shall be permitted on the property without the further review and approval by the City through the conditional use permit amendment process.

Kaltsas said the City has not received any written or oral comments regarding the proposed amendment to the conditional use permit.

Kaltsas said Staff is seeking a recommendation from the Planning Commission pertaining to the request for a conditional use permit with the following findings and conditions:

1. The proposed conditional use permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The conditional use permit will include the following conditions:
 - a. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
 - b. Any new signage shall comply with all applicable standards of the City's ordinance.
 - c. No more than 25 horses shall be boarded on the property.
 - d. The applicant and facility must operate in compliance with manure management permit from MPCA. A copy of the valid MPCA permit with amendments to be attached to and become a part of the conditional use permit.
 - e. City roads will not be littered in the hauling of manure.
 - f. A minimum of 1/3 acre or green covered open space, excluding wetland, is required within the horse facility, for each horse allowed by this permit. Grass shall be maintained and be the primary groundcover in all pasture areas.

- g. The hours of operation are: summer 7:00am-10:00pm., winter 7:00am-9:00pm.
 - h. Horse shows will require special approval from the City
 - i. No renting of hack horses.
 - j. No riding on private land unless authorized by owners.
 - k. No parking on public roads.
 - l. All feed and bedding are to be stored inside a closed building.
 - m. Utilize appropriate management practices to control flies and odor.
 - n. Training clinics offered to non-borders will require special approval from the City.
 - o. The bunkhouse is for the caretaker of the owners of the property only. The bunkhouse shall not be rented to anyone not employed on the property.
 - p. No future expansion of the barn and riding arena shall be permitted on the property without the further review and approval by the City through the conditional use permit amendment process.
 - q. Be amended to revise the number of horses permitted on the property from 20 to 35. The conditions already established will remain in full effect.
3. The applicant shall pay for all costs associated with reviewing the application and recording the resolution.

Thompson asked if they were limited to 22 horses. Kaltsas said that was for their own private use but they could have up to 84 horses per the ordinance.

Thompson asked if the bunkhouse would have to have a new code. Kaltsas said no, that it would be part of the CUP.

Public Hearing Open

Janas (representing Myers) asked about the outside horses and dust. She also wanted information on increased traffic.

Gage said they have a 26-stall barn. He noted 6-12 horses would not be their own. Gage said 126 acres is dedicated solely for the animals. Olson asked about the amount of traffic and Gage said it is not intended for coming and going. He said there would not even be an average of one trailer per day. He said there are trips to the vet if needed and this is mainly a family riding spot.

Thompson asked Kaltsas if there is a concern with the bunkhouse being a primary building or if there was a plan to actually move onto the property at some point with another residence. Gage said his home is to the Northwest of the property so this not going to be a primary residence. Kaltsas noted that commercial

riding stables do not have to have a permanent residence or homestead. He said there is a stipulation that housing is only for hands working on the property and may not be used as a rental.

Motion by Gardner to close the Public Hearing, second by Thompson.

Public Hearing Closed

Gardner said there is not enough traffic to be a nuisance. He thought they could talk about dust control. Kaltsas said they could add a line item (13) and address control of flies, odor and dust.

Motion by Gardner to approve the CUP per the recommendations on pages 6 and 7 and dust clause added to item (m), second by Thompson. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: Phillips and Palmquist. Abstain: None. Motion approved.

7. **PRELIMINARY REQUEST:** George and Linda Becker (Applicants/Owners) request that the City consider the following actions for the property located at 4675 Lake Sarah Road, Independence, MN (PID No. 03-118-24-22-0002):

- a. A variance to allow the subdivision of property in the AG-Agriculture zoning district.
- b. A minor subdivision to allow the subdivision of the subject parcel into two (2) lots.

Kaltsas said the original farmstead is unique in that the property is bisected by Lake Sarah Road. A portion (approximately 16 acres) of the property is located on the east side of Lake Sarah Road (see diagram below) with the remainder of the property (approximately 16 acres) located on the west side of Lake Sarah Road. The applicant would like the City to provide preliminary feedback relating to whether or not a variance to allow the subdivision of the property based on the physical boundary of Lake Sarah Road would be considered. The City does not allow the subdivision of property zoned Agriculture with the exception of lot line rearrangements and rural view lot splits. The City would have to consider granting a variance from the zoning ordinance to allow the subdivision of this property. The overall property does not meet the minimum 40-acre requirement to realize a rural view lot subdivision. The parcel is located just outside of the area guided for rural residential development.

Planning Commissioners reviewed this request informally during the review of a minor subdivision earlier this year. The owner has now made a formal application for consideration by the City; however, they would like the City to provide direction on whether or not they would grant a variance and allow the subdivision of this property prior to spending the additional money for a survey and septic analysis. Based on the Planning Commission direction, the item will be brought back to the Planning Commission for formal consideration.

Staff reviewed other parcels in the City to try to determine if there were any that would have a similar situation. The only other parcel discovered with a similar condition (where the property crosses over a right of way) is the parcel directly north of the subject parcel. This parcel is owned by Three Rivers Park District.

Should the parcel be subdivided, the newly created and existing remaining parcel would not be completely out of character with the surrounding parcels. The parcel to the east side of Lake Sarah Road backs up to the City's park on the east side and to the Three Rivers parcel on the north side. The parcel to the south is

approximately 10 acres in size and has an existing home. On the west side of Lake Sarah Road, the properties range in size from more than 40 acres to less than 5 acres.

Kaltsas said Staff is seeking direction from the Planning Commission for the requested variance and minor subdivision.

Thompson asked if the two steps were reversed could the 5 acres have been carved out of the 21 acres as easily. Kaltsas said yes due to the lot line rearrangement. Kaltsas noted the purpose of the Ag district is to maintain the large lots for farming. He said the land split off is wooded and low-lying. Gardner asked how close to this section was to rural residential. Kaltsas said it was ¼ section away.

Motion by Gardner to approve the preliminary request subject to a survey, second by Thompson. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: Phillips and Palmquist. Abstain: None. Motion approved.

8. **PUBLIC HEARING:** A proposed text amendment to the City of Independence Ordinances as follows:

- a. An ordinance opting-out of the requirements of Minnesota Statutes, Section 462.3593

Kaltsas noted during the 2016 legislative session, the state adopted a new law relating to temporary family health care dwellings. Temporary family health care dwellings are defined by the new statute as follows:

"Temporary family health care dwelling" means a mobile residential dwelling providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that meets the requirements of subdivision 2.

The Temporary Family Health Care Dwellings law requires cities to approve qualifying temporary accessory dwelling units unless the City opts out of the law by Ordinance prior to September 1st. The law allows temporary structures similar to a trailer or mobile home to be parked on any residential property for a period of six months for the purpose of providing care to family members. The time period can be extended for an additional six months by requesting a permit extension. The mobile dwelling unit would need to be temporarily connected to water and electric from the principal structure. Sewer removal would also need to be accommodated by allowing access to the temporary structure. The temporary dwelling unit can be located anywhere on the property that meets the principal structure setbacks and is accessible to emergency vehicles.

Many Minnesota cities are opting out of the statute so that they can locally govern land use within their respective jurisdiction. Cities are then typically evaluating their own ordinances to determine if changes should be considered to accommodate temporary health care dwelling units. Independence does not have a specific ordinance pertaining to temporary dwelling units; however, the City does consider the use of an accessory dwelling unit for living quarters in both the RR-Rural Residential and AG-Agriculture zoning districts as a conditional use permit.

The City typically uses the conditional use process to fully vet and consider the ramifications, impacts and then potential mitigation measures for land use decisions. The process required for conditional use permits involves a public hearing and notification of the surrounding property owners. During this process the City can evaluate potential impacts to surrounding properties due to the use proposed. Most cities regulate

permanent structures for family care under an accessory dwelling unit or similar ordinance. Independence has the provisions in place for residents to seek approval of a “mother-in-law” type accessory dwelling unit. The City can discuss and further evaluate if temporary “mother-in-law” units or uses fit within Independence and should be further considered by the City.

Kaltsas said Staff will be seeking discussion and direction from the Planning Commission pertaining to the proposed ordinance opting-out of the state statute. Planning Commissioners will also be asked to provide feedback to the Council on whether the City’s current ordinance has adequate measures to allow residents to provide care to mentally or physically impaired family members.

Motion by Thompson for the City to adopt a draft ordinance as written by Staff to opt out of this Minnesota Statute 462.3593, second by Gardner. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: Phillips and Palmquist. Abstain: None. Motion approved.

9. **Open/Misc.**

10. **Adjourn.**

Motion by Thompson, second by Gardner to adjourn the meeting at 7:40 p.m. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: Phillips and Palmquist. Abstain: None. Motion approved.

Respectfully Submitted,

Trish Bemmels
Recording Secretary

City of Independence

Request for a Variance from the Side Yard Setbacks for the Property Located at 4618 South Lake Sarah Drive

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	September 20, 2016
<i>Applicant:</i>	Jay and Rebecca Fogelson
<i>Owner:</i>	Jay and Rebecca Fogelson
<i>Location:</i>	1). 4618 South Lake Sarah Drive

Update:

In May of this year the applicant initially requested a 1'-2" setback on the east property line to allow for home and garage expansion. Commissioners reviewed the request and did not find that it met the criteria for granting a variance. Commissioners recommended that the applicant consider an alternative layout that increased the side yard setback. Commissioners were concerned that the minimum setback would not allow for access to the rear (lakeside) of the property as well as maintenance of the structure itself. In June, the applicant brought back a revised plan with a proposed setback of five (5) feet from the east property line. Commissioners reviewed the request and again found that the 5 feet was not adequate to accommodate access and maintenance of the property and structure. In August, the applicant again revised the plan and proposed an eight (8) foot setback along the east property line and a one (1) foot setback along the west property line. Commissioners were going to recommend denial of the requested variance. The applicant asked to have the item tabled again to review the plans and increase the requested setbacks.

The applicant has now revised the proposed plans and is seeking consideration of a fifteen (15) foot setback along the east property line and a 3.3 foot setback on the west property line. The City had previously granted the applicant a variance to allow a 3.3 foot setback along the east property line to construct a second story and deck using the historic house setback of 3.3 feet. The applicant is proposing to keep the driveway that provides access to the existing detached garage in the same location, one foot off of the east property line. The existing garage would be razed as a part of the proposed home expansion. The proposed expansion of the existing home towards the street will have a potential impact on the property to the west; however, the addition would align with the existing home and provide/allow access to the rear or lake side of the property as recommended by the City.

Planning Commissioners will have to consider if the revised plans adequately address the issues that were previously discussed. Several additional considerations that could be considered are as follows:

1. There have been several recent examples where the City granted a variance for a reduced side yard setback for properties in the shoreland district. The City previously granted a 14.7 foot variance to allow a 3.3 foot setback along the west property line. In many instances the City has provided or granted relief on one side of a property, but then maintained the requisite or near requisite setback on the opposite side of the property.
2. The adjacent property to the west received a variance to allow an addition (attached garage and bonus room) that has an 8 foot setback (10 foot variance) from the side yard setback. This property complies with applicable setbacks (18 feet) on the opposite side yard.
3. The property to the east meets the requisite side yard setback of 18 feet.
4. The building code requires a minimum of a 5 foot separation between a building and a property line (without making more onerous fire preventive building improvements).
5. The City could consider allowing a continuation of the reduced setback along the west side of the property to maintain an increased setback and access along the east side of the property.
6. The existing detached garage is located approximately 1'-10" from the east property line and can remain in its current location. The applicant could connect the existing detached garage to the existing home as long as all applicable setbacks are maintained. It appears that this connection would be possible without any variances. If this were to occur, the access to the back (lakeshore) property would be restricted.
7. The applicant will need to provide the City with an actual impervious surface calculation.
8. The applicant will need to provide the City with an engineered grading plan that depicts how the property will be graded so that no water is discharged onto the neighboring properties.
9. The home is connected to City sewer.

Staff is seeking direction and feedback from the Planning Commission relating to the proposed addition and requested variances. The proposed expansion of the house and garage will provide access to the lakeshore side of the property. Historically, the City has considered granting variances which reduce the setbacks on one side of a property while maintaining the requisite setbacks on the opposite side. The existing lot is one of a handful of narrow lots in the City. The ability to improve these properties for the purpose of constructing a modern home typically requires some relief from the City's zoning ordinances. The City will need to determine if there is a hardship that warrants the requested variance and determine if it meets the criteria for granting the requested variance.

Request:

Jay and Rebecca Fogelson (Applicant) request that the City consider the following action for the property located at 4618 Lake Sarah Drive South (PID No.02-118-24-21-0005):

- a. A variance to allow a reduced side yard setback on both sides of the property which would permit a home and garage addition.

Property/Site Information:

The subject property is located at 4618 South Lake Sarah Drive. The property is a legal non-conforming property that does not meet the current lot and setback requirements. There is an existing home and detached garage on the subject property.

Property Information: **4618 South Lake Sarah Drive**

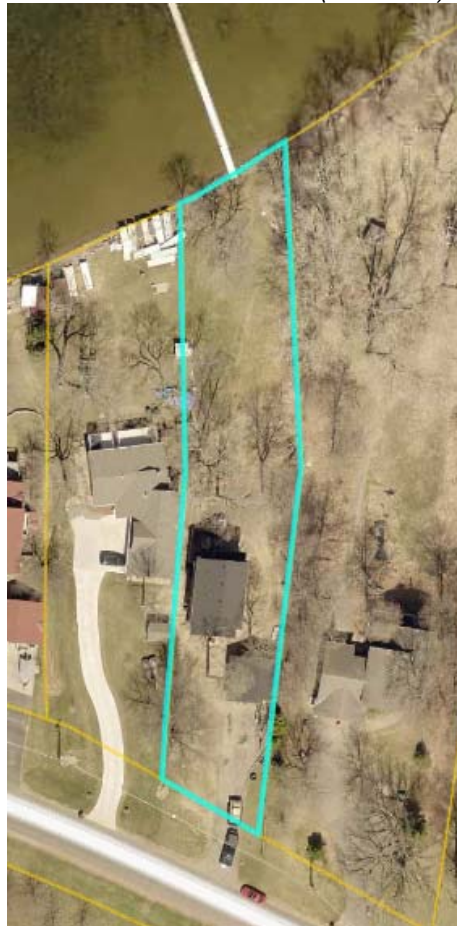
Zoning: *Rural Residential (Shoreland Overlay)*

Comprehensive Plan: *Rural Residential*

Acreage: *0.55 acres (23,031 square feet)*

Impervious Surface Maximum: *25% (5,757.75 square feet)*

4618 South Lake Sarah Drive (blue outline)



The City granted a variance for this property in 2008 to allow the expansion of the existing home on the property. The variance that was previously granted, allowed the expansion of the home along the west property line, utilizing the existing 3.3 foot setback. The variance allowed the upwards expansion of the home, allowing a second story, and out (to the north) for additional space. Those improvements were made to the home in 2014 and now the applicant would like to expand the home again.

LOT 19

LOT 20

SHED CORNER 0.6 FT. EAST OF LOT LINE

50 PLAT 49.2 MEAS.

1" SOLID

VACATED "LANE"

EXISTING HOUSE

CORNER OF PROPOSED ADDITION 4.0 FEET EAST OF LOT LINE

WELL

SHED

GUY WIRE

POWER POLE

HEAD ELECTRIC

"DOLANO ROAD" VACATED PER DOC. NO. 3468742

50 PLAT 47.2 COMP.

BRITANNICUS DRIVE

EXISTING GARAGE (ATTACHED)

GARAGE CORNER 1.8 FT. WEST OF LOT LINE

END OF RETAINING WALL ON LOT LINE

BLOCK RETAINING WALL

END OF WOOD FENCE ON PROPERTY LINE

WOOD FENCE

OPEN I.P.

RED ARROWS POINT TO:

- A green rectangular area in the upper right, labeled "VACATED 'LANE'".
- A green rectangular area in the center, labeled "WELL".
- A green rectangular area in the lower left, labeled "GARAGE".

PROPOSED ADDITION WITH ~3.3'- SETBACK

The subject property is considered a substandard lot of record in accordance with the City's Shoreland Ordinance Section 505.15.

505.15. Substandard lots. Lots of record in the office of the county register of deeds or registrar of titles prior to December 1, 1982, which do not meet the requirements of this section 505, may be allowed as building sites provided:

(a) such use is permitted in the zoning district;

(b) the lot of record is in separate ownership from abutting lands, and can meet or exceed 60% of the lot area and setback requirements of this section; and

(c) all requirements of section 705 of this code regarding individual sewage treatment systems are complied with.

Setbacks for properties located in the shoreland ordinance are as follows:

Subd. 2. Lot standards.

	Unsewered Areas			Sewered Areas		
	NE Waters	RD Waters	Tributary Streams	NE Waters	RD Waters	Tributary Streams
Lot Area	2.5 acres	2.5 acres	2.5 acres	1.0 acre	1.0 acre	1.0 acre
Water frontage and lot width at building line	200 ft	200 ft	200 ft	125 ft	100 ft	100 ft
Structure setback from ordinary high water mark	150 ft	100 ft	100 ft	150 ft	100 ft	100 ft
Structure setback from roads and highways	85 ft from centerline or 50 ft. from right-of-way, whichever is greater					
Structure height limitation	35 ft	35 ft	35 ft	35 ft	35 ft	35 ft
Maximum lot area covered by impervious surface	25%	25%	25%	25%	25%	25%
Sewage system setback from ordinary high water mark	150 ft	75 ft (RR) 150 ft (AG)	75 ft (RR) 150 ft (AG)	125 ft	75 ft	75 ft

Front Yard Setback:

Required: 85 feet from centerline or 50 feet from the ROW (@ 60% = 30 feet from right of way)

Proposed: 44 feet from the right of way

Side Yard Setback (as it relates to proposed addition):

Required: 30 feet (@ 60% = 18 feet)

Provided (West): 3.3" (variance of 14.7')

Provided (East): 15' (variance of 3')

Lakeshore Setback (East Side):

Required: 100 feet from Ordinary High Water Mark (@ 60% = 60 feet)

Proposed: 100+ feet

In addition to the setback requirements, properties located in the shoreland district can have a maximum impervious surface coverage of 25%. This property can have a maximum coverage of 5,757.75 square feet. The applicant will need to provide the City with an impervious surface calculation for the proposed house and impervious site improvements to verify that it does exceed 25%. Should the proposed impervious exceed 25%; the applicant will need to reduce the width of the driveway or utilize impervious pavement options in lieu of traditional paving methods.

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 Rural Residential District. The applicants are seeking a variance that exceeds the typical setback granted for properties in this area.

- b. Each property in this area is non-conforming and typically requires relief from certain setbacks. The City will need to determine if the requested variance is unique to this property.
- c. The character of the surrounding area is residential. The proposed single family home is in keeping with the City's comprehensive plan.

Public Comments:

The City received comments from the neighboring property owner to the east. He stated that he was concerned with the proximity of proposed addition. He recommended that the City consider an increased setback from the east property line.

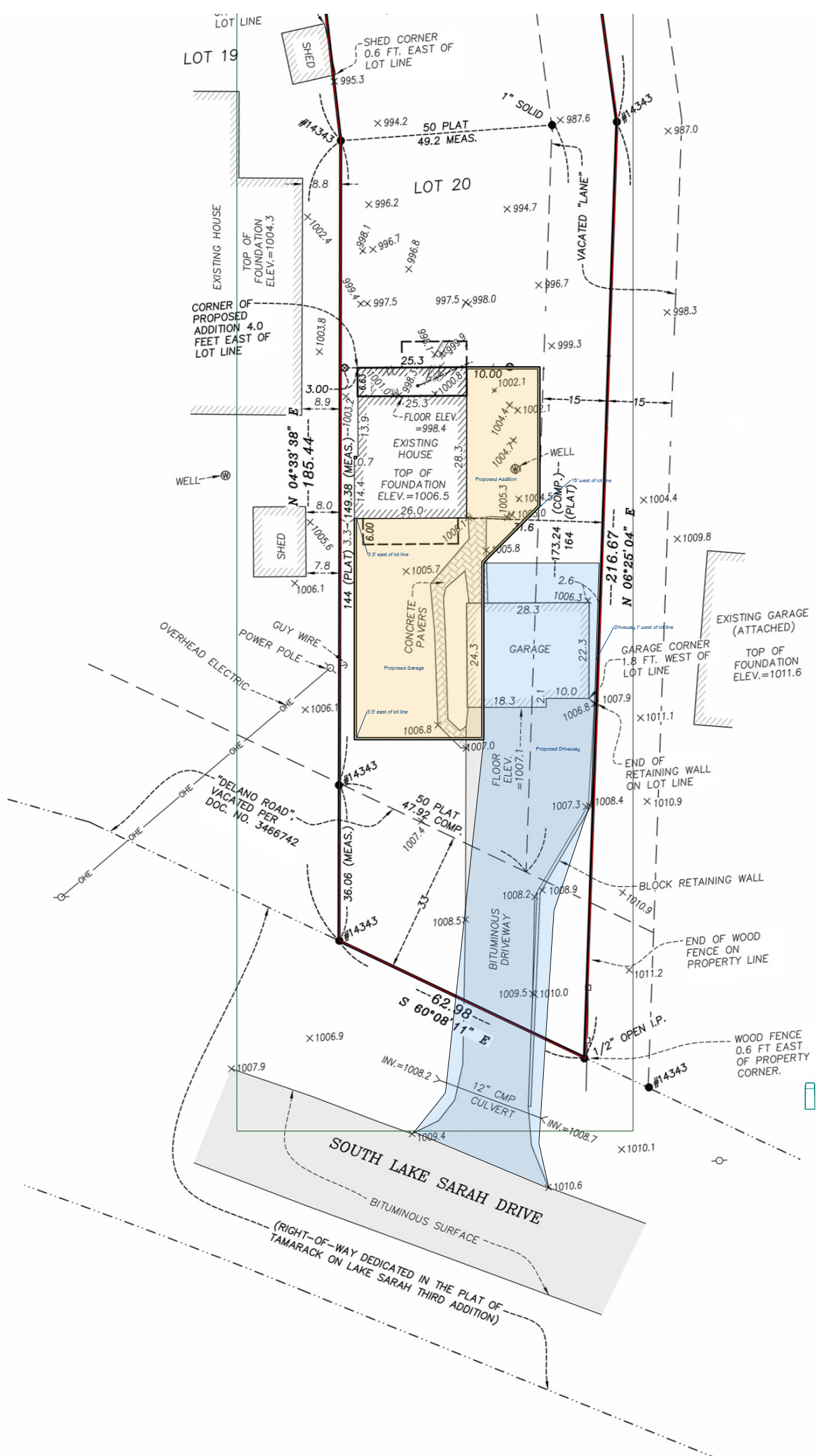
Recommendation:

Staff is seeking a recommendation or direction from the Planning Commission pertaining to the request for a variance. Should the Planning Commission consider granting a variance, the following findings and conditions should be considered.

- 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 total impervious surface coverage for this property will not exceed 25% of the total lot area. The applicant shall submit an impervious surface calculation to the City at the time of building permit application. The calculation shall be prepared by a surveyor and shown on a site survey.
- 3. The applicant shall submit a drainage plan to the City at the time of building permit application. The drainage plan will be reviewed by the City to ensure that the proposed improvements do not adversely impact any of the surrounding properties relating to grading and drainage.
- 4. The Applicant shall pay for all costs associated with the City's review of the requested variance.
- 5. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts. No expansion of the home or impervious areas will be permitted without an additional variance request.

Attachments:

- 1. Application
- 2. Site Plan



City of Independence

Request for a Conditional Use Permit to Allow an Accessory Dwelling Unit on the Property Located at 6615 Franklin Hills Road

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	September 20, 2016
<i>Applicant:</i>	Jim and Lynda Franklin
<i>Owner:</i>	Jim and Lynda Franklin
<i>Location:</i>	1). 6615 Franklin Hills Road

Request:

Jim and Lynda Franklin (Applicants/Owners) request that the City consider the following action for the property located at 6615 Franklin Hills Road, Independence, MN (PID No. 15-118-24-12-0011):

- a. A Conditional Use Permit to allow an accessory dwelling unit on the subject property.

Property/Site Information:

The property is located on Franklin Hills Road which is on the west side of CSAH 90 and south of Fogelman Road. The property has a mixture of wooded areas and upland and has several small accessory buildings.

Property Information: 6615 Franklin Hills Road

Zoning: *Agriculture*

Comprehensive Plan: *Rural Residential*

Acreage: 17.15 *acres*

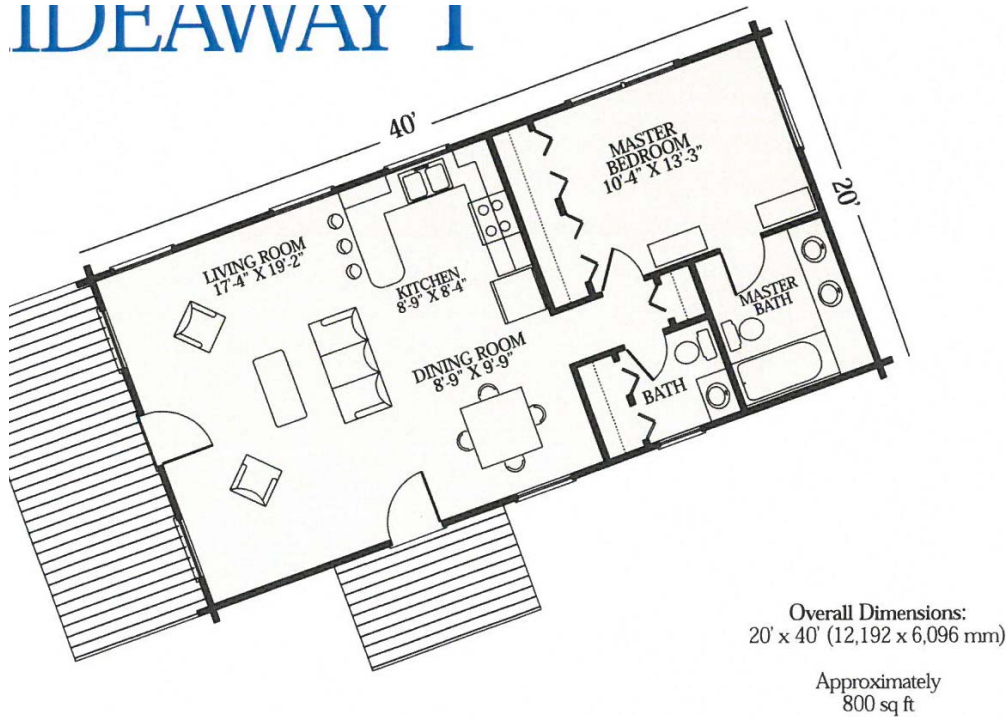


Discussion:

Several years ago, the City adopted an ordinance permitting accessory dwelling units as a conditional use in both Rural Residential and Agriculture zoning districts. The intent of the ordinance was to allow for "mother-in-law" type units to be located within the principle structure or a detached accessory building. The applicant is seeking a conditional use permit to allow a detached accessory dwelling unit to be constructed on the property. The detached accessory structure would be a standalone structure located on the property. The proposed accessory structure would be used a true "mother in law" unit allowing the homesteaded owners of the property a secondary living quarters for their use on the property.

The subject property has an existing principle home and several small accessory buildings on the property. The proposed accessory dwelling unit is comprised of one bedroom, a bathroom, a kitchen, dining and family room area. In order to allow an accessory dwelling unit, the applicant will need to demonstrate how they meet all applicable criteria for granting a conditional use permit. The City has criteria broadly relating to Conditional Use Permits and then more focused criteria relating specifically to accessory dwelling units.

IDEAWAY 1



An accessory dwelling unit must meet the following criteria:

Subd. 2. "Accessory Dwelling Unit." A secondary dwelling unit that is:

- (a) *Physically attached to or within a single family dwelling unit or within a detached^a accessory building that has a principal structure on the parcel; and*

The applicant is proposing to construct the accessory dwelling unit within a new detached accessory structure.

- (b) *Subordinate in size to the single family dwelling unit; and*

The proposed accessory dwelling unit would be subordinate in size to the single family dwelling unit.

- (c) *Fully separated from the single family dwelling unit by means of a wall or floor, with or without a door; and*

The proposed accessory dwelling unit would be separated from the single family home.

- (d) *Architecturally compatible with the principal structure (using materials, finishes, style and colors similar to the principal structure); and*

The proposed accessory structure has been designed to be architecturally similar to the principal structure. The structure has siding and architectural features that complement the principle home on the property.

- (e) *The lesser of 33% of the above ground living area of the principal structure or 1,200 square feet, and no less than 400 square feet; and*

The principal structure has 2,425 square feet of above ground space not including the basement. 33% of 2,425 square feet equals 800 square feet. The applicant is proposing to construct an accessory structure which will total 800 square feet. The proposed square footage would be equal to the permitted maximum of 800 square feet.

- (f) *Not in excess of the maximum square footage for accessory structures as permitted in this code; and*

The maximum accessory structure size for properties zoned Agriculture is 2% of the buildable (upland) lot area up to 10 acres and then it is no longer restricted. The applicant has 17 acres and therefore would comply with applicable standards.

- (g) *Has permanent provisions for cooking, living and sanitation; and*

The applicant is proposing to construct permanent provisions for cooking; living and sanitation (see attached depiction).

- (h) *Has no more than 2 bedrooms; and*

The applicant is proposing to have one bedroom within the accessory dwelling unit.

- (i) *Limited to relatives of the homesteaded owner occupants or the homesteaded owners of the principal structure. The total number of individuals that reside in both the principal dwelling unit and accessory dwelling unit may not exceed the number that is allowed by the building code; and*

The applicant is proposing that the accessory dwelling unit be occupied solely by family members.

- (j) *Uses the existing on-site septic system^b or an approved holding tank; and*

The property has an existing septic system as well as an approved holding tank. The applicant is considering using the approved holding tank initially and then possibly installing a new on-site septic for the proposed accessory dwelling unit. Any use of the existing holding tank is subject to the City's review and approval. Holding tanks also require an annual renewal and maintenance permit.

- (k) *Respectful of the future subdivision of the property and the primary and secondary septic sites. The City may require a sketch of the proposed future subdivision of a property; and*

Based on the proposed location to the east of the existing home, it appears that the proposed accessory structure will not impede the ability to subdivide the property or locate the secondary septic site.

- (l) *In compliance with the adopted building code relating to all aspects of the dwelling unit.*

The proposed accessory structure will meet all applicable building codes and will be required to obtain requisite permits.

^a On lots less than 2.5 acres, the accessory dwelling unit must be attached to the principal dwelling unit or located/constructed within an existing detached accessory structure that meets all criteria of this section.

^b The existing on-site septic system will be required to be inspected by the City to ensure compliance with all applicable standards. Any system that does not meet all applicable standards shall be brought into compliance as a part of the approval of the accessory dwelling unit.

The overall property is heavily wooded which will essentially mitigate potential visual impacts of the proposed accessory structure. The applicant is proposing to locate the structure in an existing opening in the wooded portion of the property (see below). The proposed location would meet all applicable setbacks. The proposed building would be 89 feet from the closest property line to the north. The required setback is 15 feet. The subject property is part of a larger overall development which has been incrementally developed by the owner of this property. The surrounding properties to the east and north are comprised of 3-6 acre lots. The property to the west and south are comprised of larger parcels similar in nature to the subject property. The applicant has submitted a floor plan and building elevation further detailing and depicting the proposed accessory structure. The proposed accessory structure is a single floor building. The accessory dwelling unit will need to meet all applicable building codes and building regulations. The applicant will be required to apply for and receive all applicable and requisite building permits.



As proposed, the accessory dwelling unit appears to meet all applicable criteria established in the zoning ordinance. In addition to the requirements for allowing an accessory dwelling unit, the City has additional criteria which need to be considered for granting a conditional use permit

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic.
4. Sufficient off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards.

Consideration for the proposed conditional use permit should weigh the impact of having an accessory dwelling unit located on this property. The applicant is proposing to design the new structure in a manner that will complement the existing home on the property. The location of the proposed accessory dwelling unit and its compliance with all applicable setbacks appears to mitigate potential impacts resulting from the construction of the accessory dwelling unit. The City will need to consider if the accessory dwelling unit meets the requirements and criteria for granting a conditional use permit.

Should the CUP to allow an accessory dwelling unit be recommended for approval by the Planning Commission, it is suggested that the following conditions be noted by the City:

- The Conditional Use Permit will be subject to the applicant successfully obtaining and completing a building permit for all applicable improvements required for a dwelling unit.
- The applicant will need to apply for and obtain a valid holding tank permit from the City or provide the City with appropriate documentation and application for a primary on-site septic system to be constructed on the subject property.

- The proposed accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit following all applicable procedures.

Neighbor Comments:

The City has not received any written comments regarding the proposed conditional use permit to allow an accessory dwelling unit.

Recommendation:

Staff is seeking a recommendation from the Planning Commission for the requested conditional use permit with the following findings and conditions:

1. The proposed Conditional Use Permit request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The conditional use permit will be issued subject to the following items being completed:
 - a. The Conditional Use Permit will be subject to the applicant successfully obtaining and completing a building permit for all applicable improvements required for a dwelling unit.
 - b. The applicant will need to apply for and obtain a valid holding tank permit from the City or provide the City with appropriate documentation and application for a primary on-site septic system to be constructed on the subject property.
 - c. The proposed accessory structure cannot be expanded or enlarged without the review and approval of the City. Any expansion will require an amendment to the conditional use permit following all applicable procedures.
3. Prior to the City Council placing the Conditional Use Permit into effect, the applicant shall provide the City with the following items:
 - A. The Applicant shall pay for all costs associated with the City's review of the requested conditional use permit.

Attachments:

1. Property Pictures
2. Site Plan of Proposed Accessory Structure on Property
3. Proposed Accessory Dwelling Unit Floor Plan and Building Elevations
4. Application

Attachment #1

6615 Franklin Hills Road (View from south side of property)



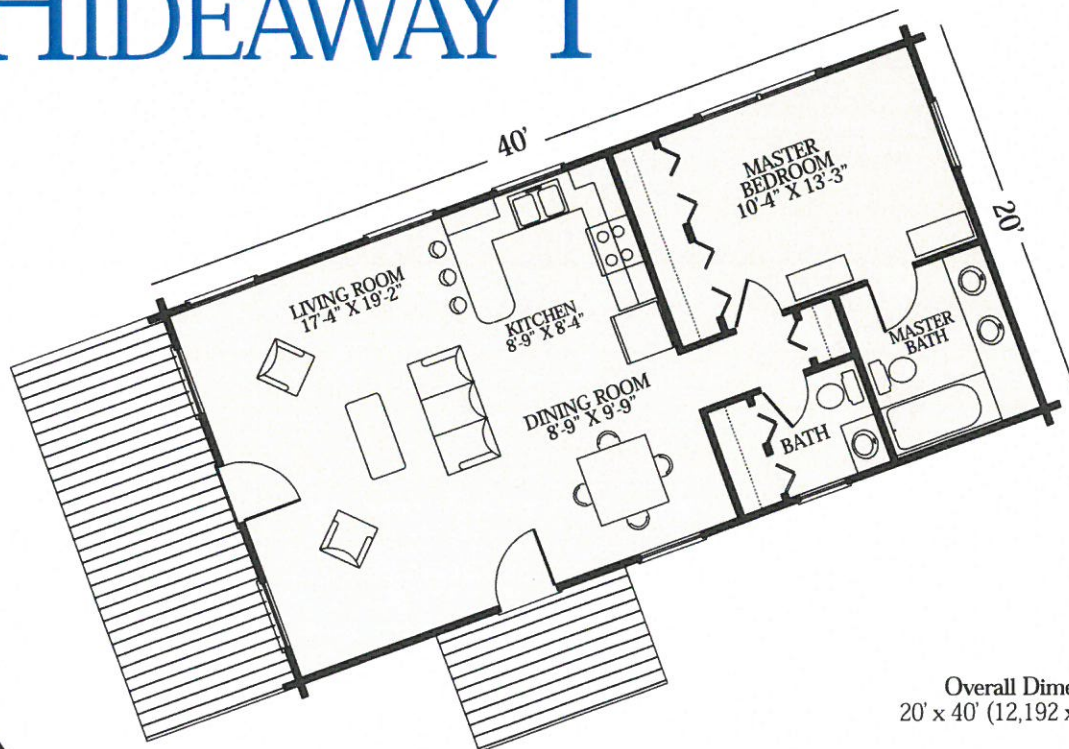
6615 Franklin Hills Road (View from north side of property)





Artist Rendering Actual Plans May Vary

HIDEAWAY I



Overall Dimensions:
20' x 40' (12,192 x 6,096 mm)

Approximately
800 sq ft

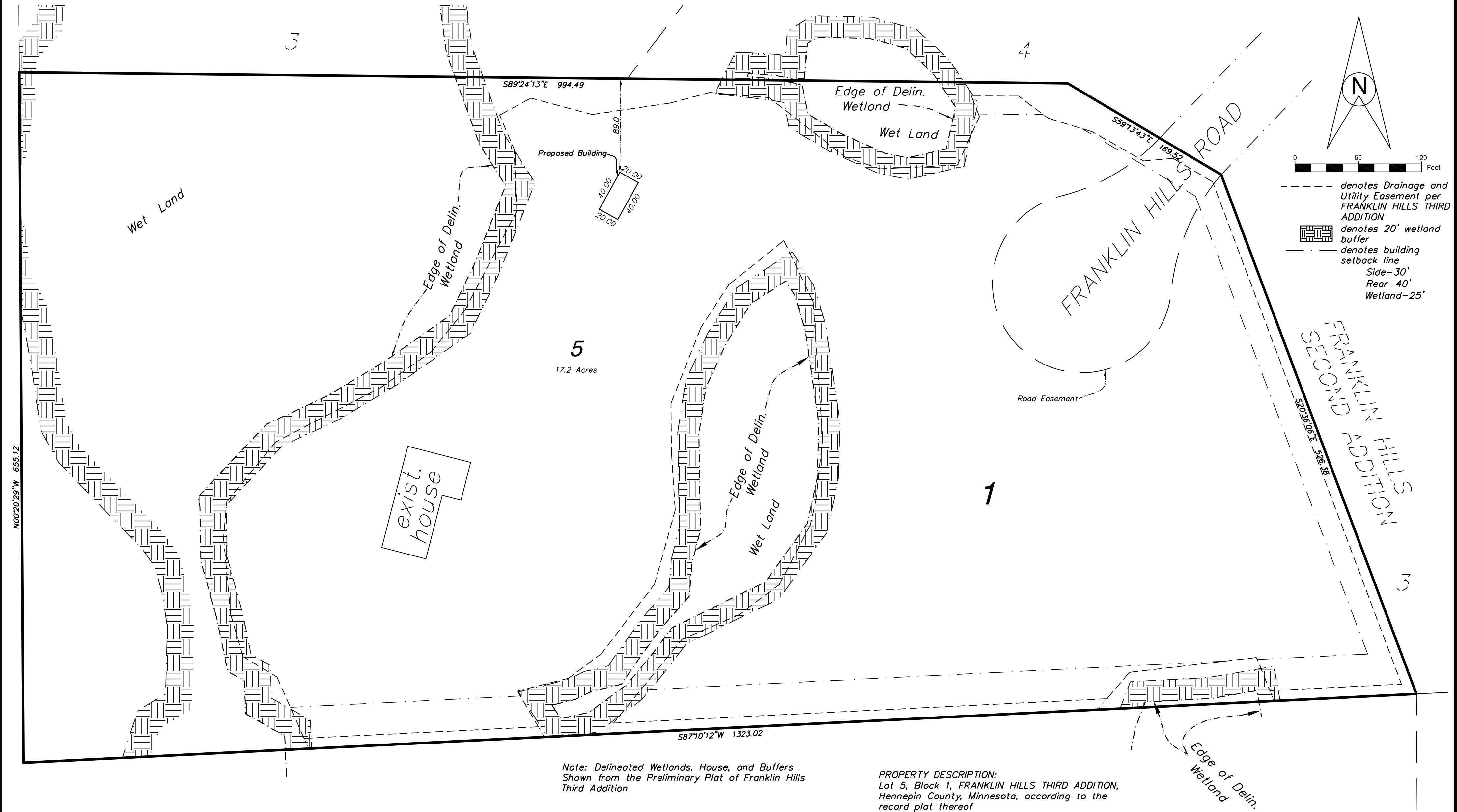




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Site Plan



Site Plan on Lot 5, Block 1, FRANKLIN HILLS THIRD ADDITION, Hennepin County, Minnesota		Requested By: Jim and Lynda Franklin				 www.ottoassociates.com 9 West Division Street Buffalo, MN 55313 (763)682-4727 Fax: (763)682-3522	<ul style="list-style-type: none">● denotes iron monument found○ denotes 1/2 inch by 14 inch iron pipe set and marked by License #40062
Revised:	I hereby certify that this survey, plan, 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.  Paul E. Otto License #40062 Date: 8-29-2016	Date: 08-19-16	Drawn By: S.O.S.	Scale: 1"=60'	Checked By: P.E.O.		
						Project No. 16-0418	

City of Independence

Request for a Final Plat to Permit a Five (5) Lot Subdivision on the Property located at 4150 Lake Sarah Drive South

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	September 20, 2016
<i>Applicants:</i>	Donna Hendley
<i>Owners:</i>	Donna Hendley
<i>Location:</i>	4150 Lake Sarah Drive South

Request:

Donna Hendley (Applicant/Owner) requests that the City consider the following actions for the property located at 4150 Lake Sarah Drive South, Independence (PID No. 02-118-24-43-0003):

- a. A Final Plat for a five (5) lot subdivision.

Property/Site Information:

The subject property is located at the northeast intersection of County Road 11 and Lake Sarah Drive South. The property has an existing home and several detached accessory structures. There is an existing Conditional Use Permit on the property for a Commercial Riding Stable. The property is heavily wooded with a diverse terrain and widespread wetlands. The property has the following site characteristics:

Property Information: 4150 Lake Sarah Drive South

Zoning: Rural Residential

Comprehensive Plan: Rural Residential

Acreage: 62.54 acres



Discussion:

This property was recently subdivided in 2014 in order to separate two existing homes that had historically occupied this property (One of the homes was used as a caretaker's house - home located near the stables in the northwest corner of the property and accessed off of Lake Sarah Drive South and the other as the principal home of the owner - located in the middle of the property with access off of County Road 11). The previous subdivision was permitted under the provisions of the rural view subdivision ordinance. The applicant then made application for a preliminary plat for a five lot subdivision in January of this year. Following approval by the Planning Commission, the owner entered into a purchase agreement with a developer interested in subdividing the property into a seven lot subdivision. Planning Commissioners reviewed the request and recommended approval to the City Council. The developer eventually withdrew the application for the seven lot subdivision and the owner received City Council approval for rezoning of the property and a preliminary plat for the initial five lot development. The applicant is now seeking approval of the final plat for the five lot subdivision.

The City allows the subdivision of property in the rural residential zoning district if it can be shown to meet all applicable criteria of the ordinance. Based on the rural residential lot provisions, the maximum number of lots this property could yield would be twelve (12). This number is only possible if all applicable requirements were met. It is not anticipated that this

property could realize the maximum number of lots due to the unique topography and wetlands. One factor that was considered in reviewing the preliminary is the location of the wetlands on the property. The wetlands bisect this property in a manner that appears to limit the future development potential. The City's applicable standards are further defined as follows:

Subd. 3. Density. Lots of record in the rural residential district may be divided or subdivided into the following maximum number of lots, said maximum number to include the lot for any existing dwelling unit or other principal use: (Amended, Ord. 2010-01)

<u>Area of Lot of Record</u>	<u>Maximum Number of Lots Permitted</u>
7.5 acres or less	One
7.6 through 12.5 acres	Two
12.6 through 17.5 acres	Three
17.6 through 22.5 acres	Four
22.6 through 27.5 acres	Five
27.6 through 32.5 acres	Six
32.6 through 37.5 acres	Seven
37.6 through 42.5 acres	Eight
42.6 through 47.5 acres	Nine, plus one addn. lot for every five addn. acres of land.

In addition to the maximum lot density, the City has the following standards pertaining to Rural Residential lots.

530.03. Physical Standards.

Subd. 3. Physical standards. All lots and construction thereon must meet the following physical standards:

- (a) Minimum lot area ^a 2.50 acres buildable land
- (b) Maximum lot area 10 acres
- (c) Minimum lot frontage on an improved public road or street:

<u>Lot area</u>	<u>Minimum frontage</u>
2.50 – 3.49 acres	^b 200 feet
3.50 – 4.99 acres	^b 250 feet
5.00 – 10.00 acres	^b 300 feet

- (e) Lot depth. The ratio of lot frontage to lot depth must be no more than 1:4.

^a A lot must be a minimum of 2.50 acres buildable land with a demonstrated capability to accommodate two on-site waste disposal systems. Buildable land must be contiguous and not separated by streams, wetlands, slopes in excess of 10% or other physical impediments.

^b A waiver to permit lots with reduced frontage on a public right-of-way, neck lots or lots with no frontage on a public right-of-way but with frontage on a common driveway may be considered and granted or not granted. If granted, evidence must be provided that all standards established and defined in Section 510.05, Subdivision 20 of this zoning code are met: (Amended, Ord. 2010-06)

A more detailed breakdown of the proposed individual lots is as follows:

<u>Lot No.</u>	<u>Gross Acres</u>	<u>Upland Acreage</u>	<u>Frontage</u>	<u>Lot Frontage/Depth</u>
Lot 1	7.31 acres	4.81 acres	351.97 LF	1:2
Lot 2	5.21 acres	2.56 acres	309.07 LF	1:2
Lot 3*	32.41 acres	14.57 acres	562.12/502.30 LF	N/A
Lot 4	8.81 acres	3.65 acres	300.03 LF	1:4
Lot 5	8.81 acres	7.19 acres	300.03 LF	1:4

***Existing Lot**

The proposed subdivision would create four new lots along with the existing lot. The applicant has worked to develop the property in a manner that would respect the natural topography and wetlands, capture the best building site locations and limit construction of additional public infrastructure. The 4 new lots would be similar in size and configuration to the recently subdivided 5 acre lot (4850 County Road 11) with access to County Road 11. The applicant is proposing to maintain a larger, approximately 32 acre parcel, with the existing home and barns in order to continue to accommodate the use of the barn for horses. There are approximately 30 stalls in the existing barn. Based on the City's animal unit provisions, this property would need to be at least 31 acres to accommodate the existing barn. It is possible that the use of the barn would not be desired in the future. If the use of the barn were limited, the property could potentially yield several additional lots.

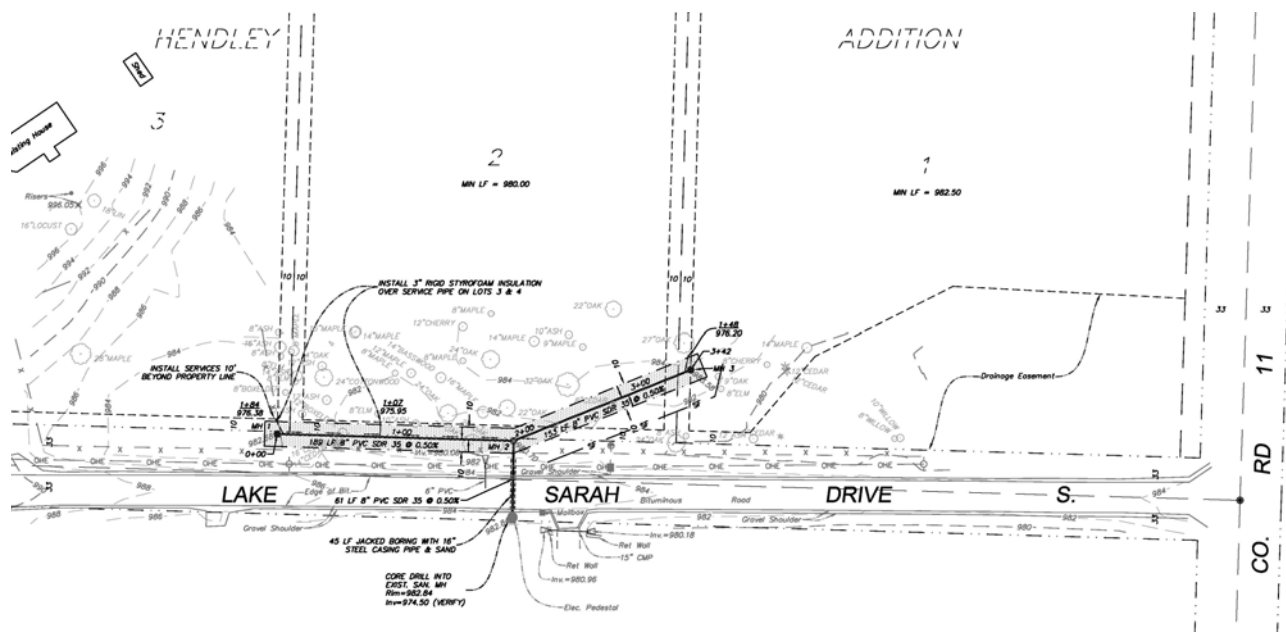
Access to Lots 1, 2 and 3 would be from Lake Sarah Drive South. All of the proposed lots along Lake Sarah Drive South meet the minimum frontage requirements. Lots 4 and 5 would be accessed off of County Road 11 and be required to share a driveway access and access easement. The proposed private access easement could serve both lots and would not trigger the need for a common driveway.



The proposed subdivision was reviewed by Hennepin County. The County recommended that the access to serve Lots 4 and 5 be located across from the existing church access driveway on the south side of County Road 11 (see image below).



City sewer runs along County Road 11 and Lake Sarah Drive South. This property was previously included in the metropolitan urban service area and can be connected to the City's sewer system. All lots within the proposed subdivision are proposed to be connected to the City's sewer. The City will charge all applicable sewer connection fees along with the initial assessment amount for all lots in the proposed development. Lots 4 and 5 located along CSAH 11 will connect to the City's sewer via a direct connection into the force main located on the north side of the road. Lots 1, 2 and 3 will be required to connect to a new public sewer line installed along the east side of Lake Sarah Drive South (see image below).



The 4 newly created lots will be required to pay the City's requisite park dedication fee. The requisite park dedication fees would be as follows:

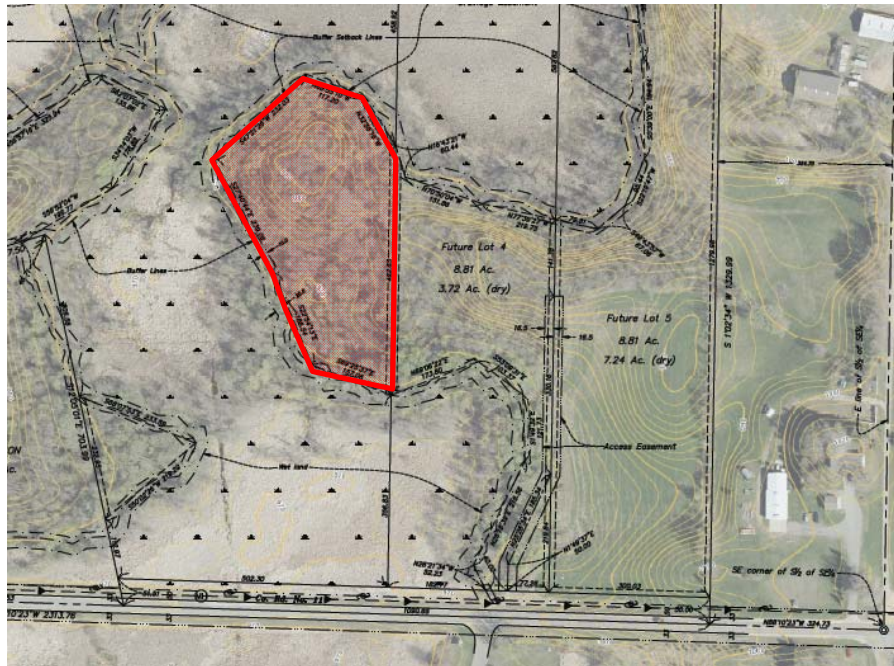
<u>Lot No.</u>	<u>Gross Acres</u>	<u>Park Dedication Amount</u>
Lot 1	7.31 acres	\$5,000
Lot 2	5.21 acres	\$3,500
Lot 3	32.41 acres	Existing Home
Lot 4	8.81 acres	\$6,500
Lot 5	8.81 acres	\$6,500

The total park dedication fee collected will be \$21,500. The park dedication fees will need to be paid prior to the City recording the subdivision.

*Park dedication fee of \$3,500 per lot up to 4.99 acres,
plus \$750 per acre for each acre over 5 acres*

Other Considerations:

1. The property has been rezoned to Rural Residential and granted preliminary plat approval.
2. The final plat is consistent with the approved preliminary plat.
3. There is a small upland portion of the property that is proposed to remain with Lot 3, but is separated from the principle portion of the property by a wetland. This upland portion may be difficult to access in the future. It would be possible to access the property from Lot 4 via an additional easement, but the City would then require a full private driveway to be constructed. At this time the applicant does not want to develop any infrastructure. This upland portion may not be developable in the future unless another means of access is provided. The City will want to note that this portion of the Lot 3 cannot be further subdivided without access that meets the City's applicable requirements.



4. The applicant has prepared a wetland delineation for this property. All wetlands and their requisite buffers will need to be located within the drainage and utility easements.
5. The applicant is providing the requisite 10 foot drainage and utility easements along all property lines.
6. The applicant shall provide and execute the necessary shared driveway easements for lots 4 and 5.
7. The City will require the applicant to enter into a Development Agreement for the proposed public sewer improvements and the costs of the park dedication. The individual lots will be required to apply for and be granted a grading permit at the time of building permit application. At that time the City will review the individual lot grading

Summary:

The proposed subdivision of this property appears to be in keeping with the vision of the comprehensive plan and with the character of the surrounding properties. The proposed lots conform to all applicable criteria for rural residential lots. The proposed plan is in keeping with the previously approved preliminary plat. Given the extensive wetlands on the property and its proximity to adjacent geographic features as well as the surrounding properties, there does not appear to be anything that the City would be preventing for future development. The proposed

subdivision appears to meet all of the applicable standards of the City's zoning and subdivision ordinance.

Neighbor Comments:

The City has not received any written comments regarding the proposed subdivision.

Recommendation:

Staff is seeking a Planning Commission recommendation of the requested Final Plat. Should the Planning Commission recommend approval to the City Council, the following conditions and findings should be considered:

1. The Final Plat shall meet all applicable conditions and restrictions stated Chapter V, Section 510, Zoning, in the City of Independence Zoning and Subdivision Ordinance.
2. City Council approval of the Final Plat is subject to the following:
 - a. The Applicant shall address all comments and applicable requirements pertaining to the development.
 - b. The Applicant shall make all revisions requested in the staff report, by the Planning Commission and City Council.
 - c. The Applicant shall comply with all applicable regulations and conditions prescribed by Pioneer Sarah Watershed District.
 - d. The Applicant shall enter into a development agreement with the City for this development.
 - e. The Applicant shall provide a letter of credit as established by the development agreement for all improvements associated with this development.
 - f. The Applicant shall provide the City with copies of the HOA agreement and covenants, including information related to the maintenance of the common driveway.
 - g. The Applicant shall obtain all necessary City, County, PCA and other regulatory agency approval and permits prior to construction.
3. All lots approved as a part of this subdivision shall be required to connect to the City's sanitary sewer system. The cost for the connections will be further defined in the development agreement for this subdivision.

4. The Applicant shall pay the park dedication fees in accordance with the terms defined in the Development Agreement.
5. The Applicant shall pay for all costs associated with the City's review of the final plat.
6. The Applicant shall record the final plat and associated documents to the City within one year of approval of the final plat.

Attachments:

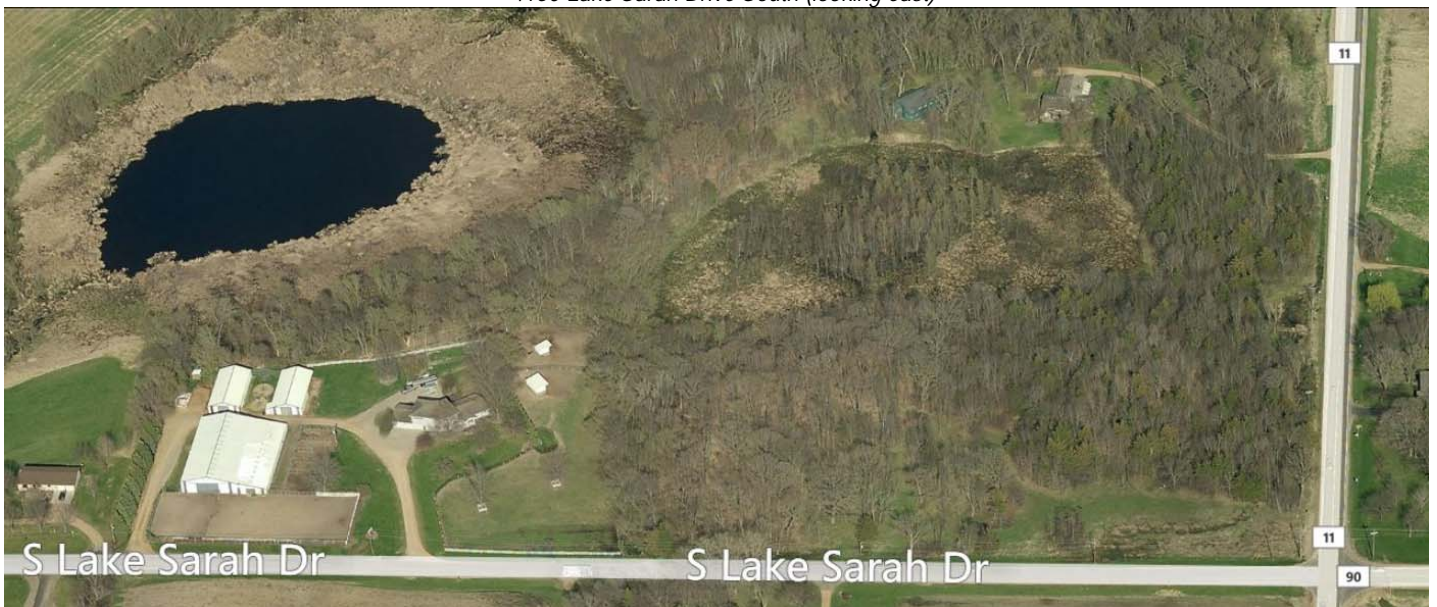
1. Property Pictures
2. Preliminary Plat
3. Proposed Final Plat
4. Proposed Sanitary Sewer Plan

Attachment #1

4150 Lake Sarah Drive South (looking north)



4150 Lake Sarah Drive South (looking east)



HENDLEY ADDITION

C.R. DOC. NO.

KNOW ALL PERSONS BY THESE PRESENTS: That Donna M. Hendley, Trustee of the Gerald A. Hendley Revocable Trust dated XXX, fee owner of the following described property:

The South Half of the Southeast Quarter of Section 2, Township 118 North, Range 24 West of the Fifth Principal Meridian, EXCEPT the East 324.70 feet thereof. ALSO EXCEPT that part described as follows:
Commencing at the Southeast corner of said Section 2; thence on an assumed bearing of North 88 degrees 10 minutes 23 seconds West, along the south line of said South Half of the Southeast Quarter, a distance of 1415.39 feet to the point of beginning of the tract to be described; thence continuing North 88 degrees 10 minutes 23 seconds West, along said south line, a distance of 450.53 feet; thence North 7 degrees 53 minutes 25 seconds East a distance of 616.04 feet; thence North 73 degrees 42 minutes 33 seconds East a distance of 227.50 feet; thence South 12 degrees 05 minutes 01 seconds East a distance of 703.99 feet to the point of beginning and there terminating.
Subject to road right of way.

Has caused the same to be surveyed and platted as HENDLEY ADDITION and does hereby dedicate to the public for public use forever the public ways and the drainage and utility easements as created by this plat.

In witness whereof said Donna M. Hendley, Trustee of the Gerald A. Hendley Revocable Trust dated XXX, has hereunto set her hand this ____ day of _____, 20____.

Donna M. Hendley, Trustee of the
Gerald A Hendley Revocable Trust dated XXX

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Donna M. Hendley, Trustee of the Gerald A. Hendley Revocable Trust dated XXX, on behalf of the trust.

Printed Notary Name

Notary Public, _____ County, Minnesota.

My Commission Expires _____

SURVEYOR'S CERTIFICATION

I, Paul B. Schoborg, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on the plat; that all monuments depicted on the plat have been or will be correctly set within one year as indicated on the plat; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certification are shown and labeled on the plat; and that all public ways are shown and labeled on this plat.

Dated this ____ day of _____, 20____.

Paul B. Schoborg, Licensed Land Surveyor
Minnesota License No. 14700

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me this ____ day of _____, 20____, by Paul B. Schoborg, a Licensed Land Surveyor.

Printed Notary Name

Notary Public, _____ County, Minnesota.

My Commission Expires _____

INDEPENDENCE, MINNESOTA

This plat of HENDLEY ADDITION was approved and accepted by the City Council of the City of Independence, Minnesota, at a regular meeting thereof held this ____ day of _____, 20____, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, City of Independence, Minnesota

By _____ Mayor

By _____ Clerk

RESIDENT AND REAL ESTATE SERVICES. Hennepin County, Minnesota

I hereby certify that the taxes payable in 20____ and prior years have been paid for land described on this plat, dated this ____ day of _____, 20____.

Mark V. Chapin, County Auditor

By _____ Deputy

SURVEY DIVISION. Hennepin County, Minnesota

Pursuant to MN. STAT. Sec. 383B.565 (1969), this plat has been approved this ____ day of _____, 20____.

Chris F. Mavis, County Surveyor

By _____

COUNTY RECORDER. Hennepin County, Minnesota

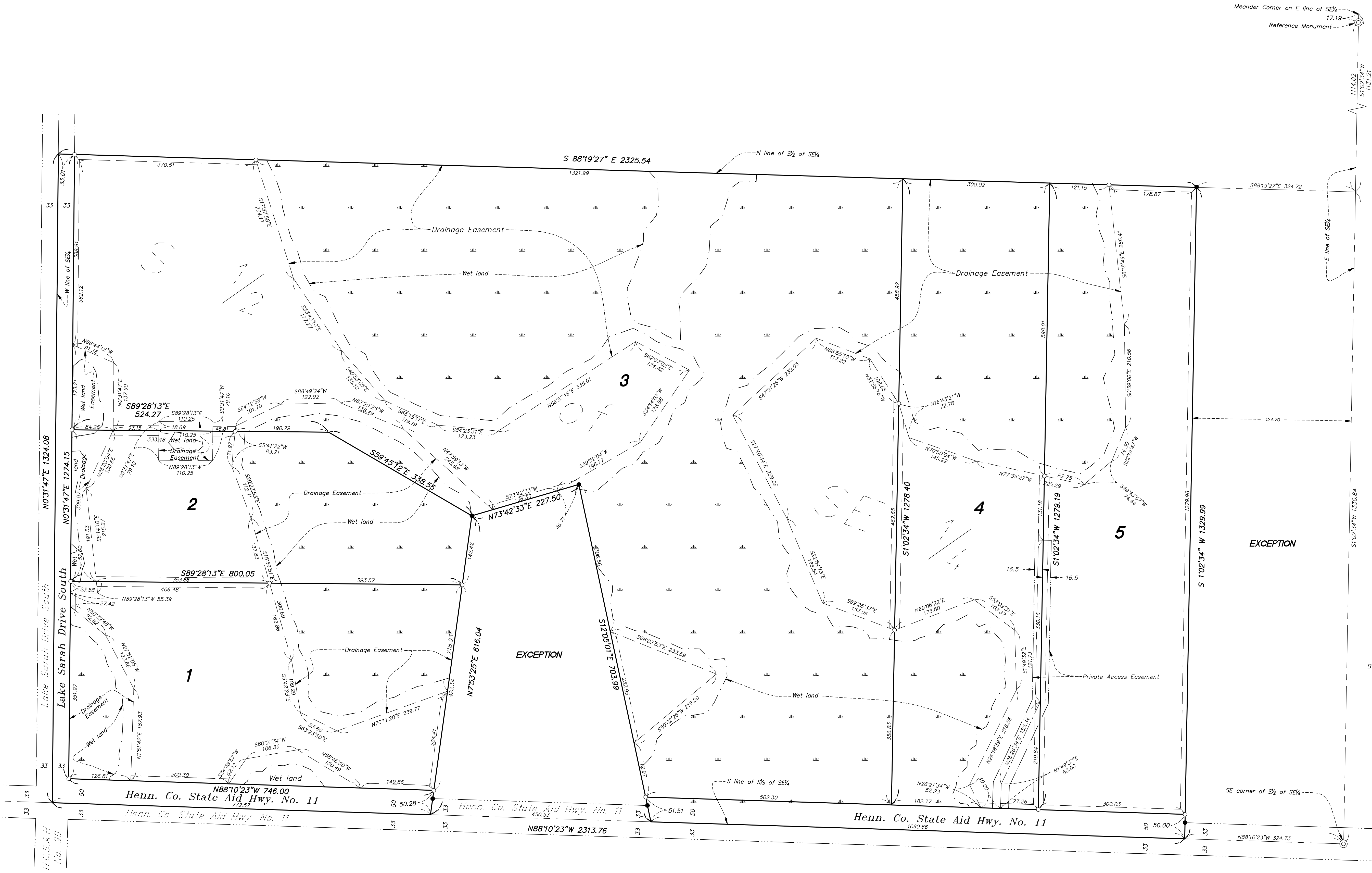
I hereby certify that the within plat of HENDLEY ADDITION was recorded in this office this ____ day of _____, 20____, at ____ o'clock __M.

Martin McCormick, County Recorder

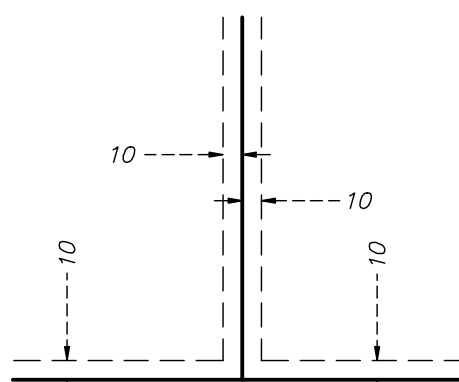
By _____ Deputy

HENDLEY ADDITION

C.R. DOC. NO.

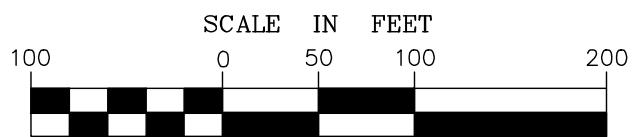


- Legend
- Denotes monument found 1/2 inch iron pipe, unless otherwise shown.
 - Denotes 1/2 inch by 14 inch iron monument set and marked by L.S. No. 14700.
 - ⊙ Cast Iron Monument



Drainage and Utility Easements being 10 feet in width and adjoining right of way lines, and being 10 feet in width and adjoining lot lines, unless otherwise indicated.

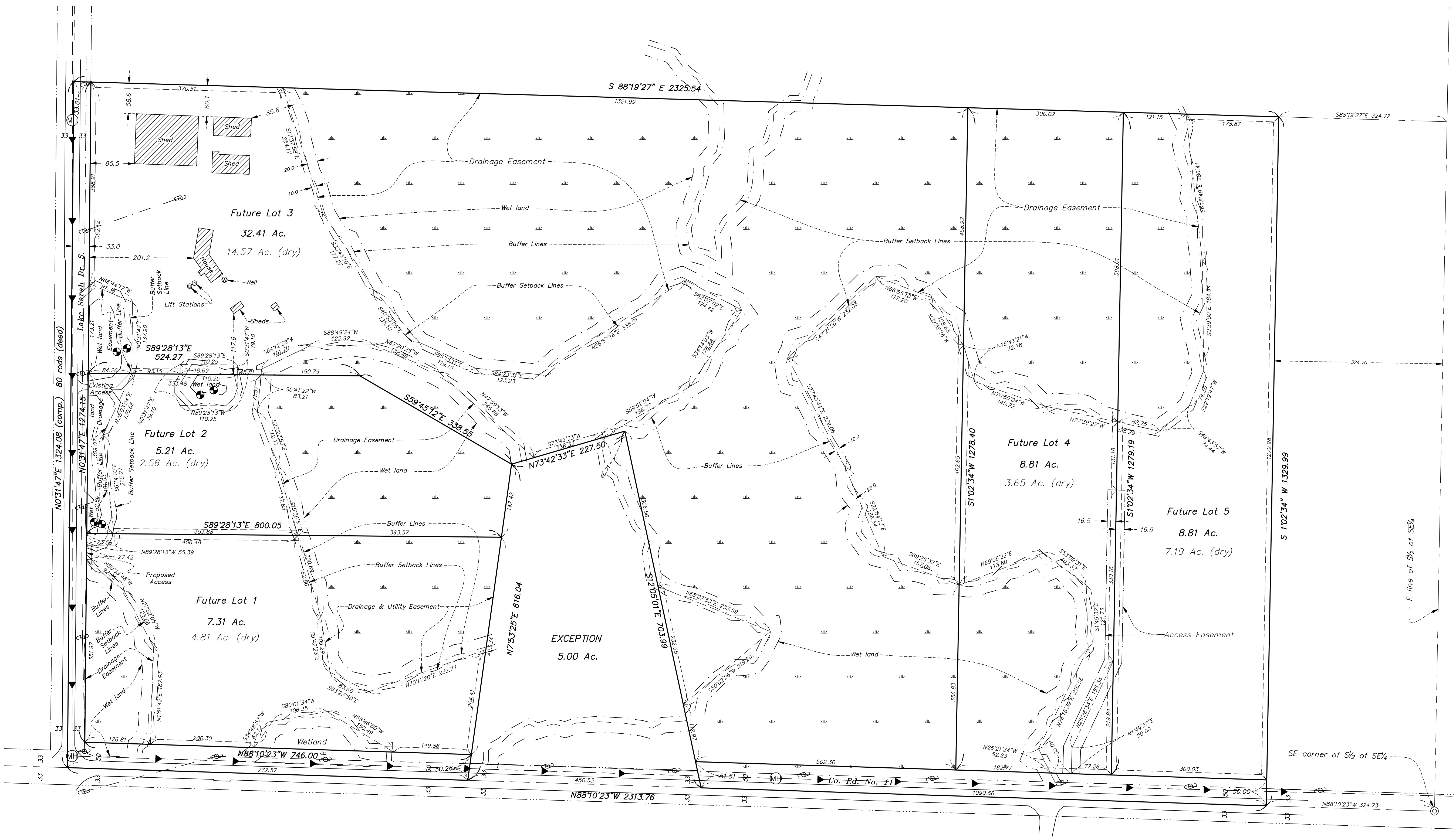
Bearings based on Hennepin County coordinates.



SCHOBORG
LAND SERVICES
INC.

HENDLEY ADDITION

Preliminary Plat



Legend

- Denotes monument found 1/2 inch iron pipe, unless otherwise shown.
- Denotes 1/2 inch by 14 inch iron monument set and marked by L.S. No. 14700.
- ⊙ Cast Iron Monument
- ⊕ Power Pole
- Overhead Electric
- Ⓜ Manhole
- Sanitary Sewer
- ⊕ Soil Boring and/or Perc Test

Property Address: 4150 Lake Sarah Drive S Independence, MN 55359

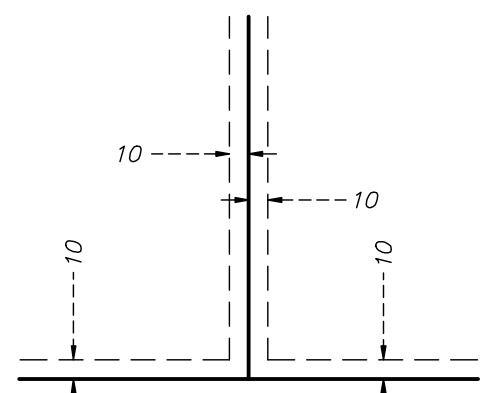
PLD No: 02-118-24-43-0003

Existing Zone: AG (Agricultural)

Proposed Zone: RR (Rural Residential)

AREAS (in sq. ft.)

Lot Name	Total Area	Total Dry
Lot 1, Block 1	318,217	209,491
Lot 2, Block 1	226,950	111,643
Lot 3, Block 1	1,411,580	634,508
Lot 4, Block 1	383,639	159,209
Lot 5, Block 1	383,876	313,231



Drainage and Utility Easements being 10 feet in width and adjoining right of way lines, and being 10 feet in width and adjoining lot lines, unless otherwise indicated.

Owner:
Donna Hendley
4150 Lake Sarah Drive S
Independence, MN 55359

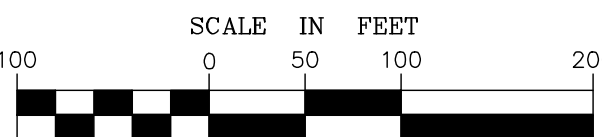
Boundary Description (supplied by client)

The South Half of the Southeast Quarter of Section 2, Township 118 North, Range 24 West of the Fifth Principal Meridian, EXCEPT the East 324.70 feet thereof.

ALSO EXCEPT that part described as follows:

Commencing at the Southeast corner of said Section 2; thence on an assumed bearing of North 88 degrees 10 minutes 23 seconds West, along the south line of said South Half of the Southeast Quarter, a distance of 1415.39 feet to the point of beginning of the tract to be described; thence continuing North 88 degrees 10 minutes 23 seconds West, along said south line, a distance of 450.53 feet; thence North 7 degrees 53 minutes 25 seconds East a distance of 616.04 feet; thence North 73 degrees 42 minutes 33 seconds East a distance of 227.50 feet; thence South 12 degrees 05 minutes 01 seconds East a distance of 703.99 feet to the point of beginning and there terminating.

Subject to road right of way.



SCHOBORG
LAND SERVICES
INC.

763-972-3221 8997 Co. Rd. 13 SE
www.schoborgland.com Delano, MN 55328

Prepared for:
Donna Hendley

Bearings based on Hennepin County coordinates.

Job Number:	7843
Book/Page:	LL
Survey Date:	4/28, 5/5, 5/27, 6/15, 8/27 (2015)
Revisions:	4/18, 9/7 (2016)
Drawing Name:	hendley.dwg
Drawn by:	DMS/KLB
Revisions:	9-01-15, 12-15-15 (Prelim. Plat)
	9-08-16 (Prelim. Plat - rev. wetlands)

City of Independence

ORDINANCE AMENDING SECTION 506 OF THE INDEPENDENCE CITY CODE RELATING TO FLOODPLAIN REGULATIONS

To: City Council
From: Mark Kaltsas, Planner
Meeting Date: September 20, 2016

Request:

A proposed text amendment to Chapter 5, Sections 506 of the City of Independence Ordinances as follows:

- a. An amendment to the Floodplain Ordinance following FEMA mapping changes made in 2016.

Discussion:

The Federal Emergency Management Agency (FEMA) has recently completed an update of the federal Flood Insurance Rate Maps (FIRMS). Along with the updated maps, the City is required to update certain local controls pertaining to the updated mapping information. The Department of Natural Resources administers the federal floodplain management regulations for the State of Minnesota.

The City has an existing Floodplain Ordinance which was adopted in 2005. There are several references and regulations in the City's ordinance that need to be updated as a result of the recent FIRM map changes. The DNR has reviewed the City's ordinance and provided recommended changes that will need to be considered. The City is obligated to have an ordinance which meets the federal guidelines prior to the maps becoming effective on November 4, 2016. Failure to adopt the requisite changes to the ordinance will cause for a City to be suspended from the National Flood Insurance Program.

Staff has reviewed the requested changes and prepared a draft of the City's ordinance for further review and consideration by the City. The changes primarily relate to the listed references of the associated floodplain maps as well as the addition of several definitions that need to be incorporated into the ordinance. The DNR has provided the City with a conditional approval of the Floodplain Ordinance based on the changes provided in the draft ordinance (see attached letter).

Recommendation:

Staff is seeking an action by the Planning Commission to adopt the amendment to the City's floodplain ordinance requirements.

Attachments:

1. Ordinance
2. Conditional Approval Letter from DNR

Section 506 - Floodplain Ordinance
(Added, Ord. No. 95-02, Sec. 1)
(Repealed Ord. No 95-02 in its entirety,
Replaced by Ord. No.2004-05)

506.01. The regulations in section 505 of the Independence city code relating to the management of floodplain areas are hereby superseded in all respects by this new section 506 relating to flood plain regulations. All regulations in section 505 relating to management of shoreland shall remain in full force and effect.

506.03. Statutory authorization, findings of fact and purpose Subdivision 1. The Minnesota legislature in Minnesota Statutes, chapter 103F.101 delegated the responsibility to local government units to adopt regulations designed to minimize flood losses.

Subd. 2. The flood hazard areas of the city of Independence are subject to periodic inundation which results in potential loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures or flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

Subd. 3. This section is based upon a reasonable method of analyzing flood hazards which is consistent with the standards established by the Minnesota department of natural resources.

Subd. 4. This Ordinance is adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

Subd. 5. It is the purpose of this section is to promote the public health, safety, and general welfare and to minimize those losses described in subdivision 2 by provisions contained herein.

506.05. General provisions. Subdivision 1. This section shall apply to all lands within the jurisdiction of the city of Independence shown on the official zoning map and/or the attachments thereto as being located within the boundaries of the floodway, flood fringe, or general flood plain districts.

~~Subd. 2. Establishment of Official Zoning Map. The official zoning map together with all materials attached thereto is hereby adopted by reference and declared to be a part of this ordinance. The attached material shall include the Flood Insurance Study Volume 1 of 2 and Volume 2 of 2, Hennepin County, Minnesota, All Jurisdictions and the Flood Insurance Rate Map panels numbered 27053C0109 E, 27053C0117 E, 27053C0119 E, 27053C0128 E, 27053C0129 E, 27053C0134 E, 27053C0135 E, 27053C0136 E, 27053C0137 E, 27053C0138 E, 27053C0139 E, 27053C0141 E, 27053C0142 E, 27053C0143 E, 27053C0144 E, 27053C0257 E, 27053C0276 E, 27053C0280 E, and 27053C0285 E for the City of Independence, dated September 2, 2004, as developed by the Federal Emergency Management Agency. The official zoning map shall be on file in the office of the city clerk administrator and zoning administrator.~~

Subd. 2. The following maps together with all attached material are hereby adopted by reference and declared to be a part of the Official Zoning Map and this ordinance. The attached material includes the Flood Insurance Study for Hennepin County, Minnesota, and Incorporated Areas, dated November 4, 2016 and the Flood Insurance Rate Map panels enumerated below, dated November 4, 2016, all prepared by the Federal Emergency Management Agency. These materials are on file in the office of the city clerk-administrator and zoning administrator.

Effective Flood Insurance Rate Map panels:

[27053C0109F](#)
[27053C0117F](#)
[27053C0119F](#)
[27053C0128F](#)
[27053C0129F](#)
[27053C0134F](#)
[27053C0135F](#)
[27053C0136F](#)
[27053C0137F](#)
[27053C0138F](#)
[27053C0139F](#)
[27053C0141F](#)
[27053C0142F](#)
[27053C0143F](#)
[27053C0144F](#)
[27053C0257F](#)
[27053C0276F](#)
[27053C0280F](#)
[27053C0285F](#)

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Subd. 3. In their interpretation and application, the provisions of this section shall be held to be minimum requirements and shall be liberally construed in favor of the city council and shall not be deemed a limitation or repeal of any other powers granted by state law.

Subd. 4. The boundaries of the zoning districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed as to the exact location of the boundaries of the district as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions and there is a formal appeal of the decision of the zoning administrator, the board of adjustment shall make the necessary interpretation. All decisions will be based on elevations on the regional (100-year) flood profile and other available technical data. Persons contesting the location of the district boundaries shall be given a reasonable opportunity to present their case to the board and to submit technical evidence.

Subd. 5. It is not intended by this section to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section imposes greater restrictions, the provisions of this section shall prevail. All other sections inconsistent with this section are hereby repealed to the extent of the inconsistency only.

Subd. 6. This section does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damages. This section shall not create liability on the part of the city of Independence or any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

Subd. 7. If any clause, provision or portion of this section is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this section shall not be affected thereby.

506.07. **Definitions.** Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this section its most reasonable application.

Subd. 1. "Accessory use or structure" means a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Subd. 2. "Base Flood Elevation" – The elevation of the "regional flood." The term "base flood elevation" is used in the flood insurance survey.

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Subd. ~~32~~. "Basement" means any area of a structure, including crawl spaces, having its floor or base below ground level on all four sides, regardless of the depth of excavation below ground level.

Subd. ~~43~~. "Conditional use" means a specific type of structure or land use listed in the official control that may be allowed but only after an in-depth review procedure and with appropriate conditions or restrictions as provided in the official zoning controls or building codes and upon a

finding that: (1) certain conditions as detailed in the zoning ordinance exist and (2) the structure

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and/or land use conform to the comprehensive land use plan if one exists and are compatible with the existing neighborhood.

Subd. 5. "Development" – any manmade change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Subd. ~~64~~. "Equal degree of encroachment" means a method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

Subd. ~~75~~. "Flood" means a temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

Subd. 8. "Flood Insurance Rate Map" – an official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Subd. ~~96~~. "Flood frequency" means the frequency for which it is expected that a specific flood stage or discharge may be equalled or exceeded.

Subd. ~~107~~. "Flood fringe" means that portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the flood insurance study for the city of Independence.

Subd. ~~118~~. "Flood plain" means the beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

Subd. ~~129~~. "Flood-proofing" means a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Subd. ~~139~~. "Floodway" means the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain which are reasonably required to carry or store the regional flood discharge.

Subd. ~~144~~. "Lowest Floor". The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor.

Subd. 1~~5~~². “Manufactured Home”. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include the term “recreational vehicle.”

Subd. 16. “New Construction” - Structures, including additions and improvements, and placement of manufactured homes, for which the start of construction commenced on or after the effective date of this ordinance.

Subd. 1~~7~~³. “Obstruction” means any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

Subd. ~~184~~. "Principal use or structure" means all uses or structures that are not accessory uses or structures.

Subd. ~~195~~. "Reach" means a hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

Subd. ~~2046~~. "Recreational Vehicle" means a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this ordinance, the term recreational vehicle shall be synonymous with the term travel trailer/travel vehicle.

Subd. ~~2147~~. "Regional flood" means a flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in the flood insurance study.

Subd. ~~2248~~. "Regulatory flood protection elevation" means an elevation no lower than one foot above the elevation of the regional flood plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

Subd. 23. "Special Flood Hazard Area" – a term used for flood insurance purposes synonymous with "One Hundred Year Floodplain."

Subd. 24. "Start of Construction" – includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit's expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Subd. ~~2549~~. "Structure" means anything constructed or erected on the ground or attached to

the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, travel trailers/vehicles not meeting the exemption criteria specified in subsection 506.21 of this section and other similar items.

| Subd. ~~206~~. Substantial Damage. Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

| Subd. ~~274~~. Substantial Improvement. Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (b) Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.” For the purpose of this ordinance, “historic structure” shall be as defined in Code of Federal Regulations, Part 59.1.

Subd. 2~~82~~. "Variance" means a modification of a specific permitted development standard required in an official control, including this section, to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship, as defined and elaborated upon in a community's respective planning and zoning enabling legislation.

506.09. Establishment of zoning districts

Subd. 1. The following zoning districts are hereby established:

- (a) Floodway district. The floodway district shall include those areas designated as floodway on the flood boundary and floodway map adopted in subsection 506.05.
- (b) Flood fringe district. The flood fringe district shall include those areas shown on the Flood Insurance Rate Map as adopted in Section 506.05 as being within Zone AE, Zone A0, or Zone AH but being located outside of the floodway.
- (c) General flood plain district. The general flood plain district shall include those areas shall include those areas designated as Zone A or Zones AE, Zone A0, or Zone AH without a floodway on the Flood Insurance Rate Map adopted in Section 506.05.

Subd. 2. No new structure or land shall hereafter be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this section and other applicable regulations which apply to uses within the jurisdiction of this section. Within the floodway, flood fringe and general flood plain districts, all uses not listed as permitted uses or conditional uses herein, shall be prohibited.

Subd. 3.

- (a) New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this section;
- (b) Modifications, additions, structural alterations, normal maintenance and repair or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this section; and
- (c) As-built elevations for elevated or flood proofed structures must be certified by ground surveys and flood proofing techniques must be designed and certified by a registered professional engineer or architect as specified in the general provisions of this section

506.11. Floodway district (FW) Subdivision 1. Permitted uses. The following shall be permitted uses within the floodway district:

- (a) general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting;
- (b) industrial-commercial loading areas, parking areas, and airport landing strips;
- (c) private and public golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and single or multiple purpose recreational trails; and
- (d) residential lawns, gardens, parking areas, and play areas.

Subd. 2. The following standards shall apply for floodway permitted uses:

- (a) the use shall have a low flood damage potential;
- (b) the use shall be permissible in the underlying zoning district; and
- (c) the use shall not obstruct flood flows or increase flood elevations and shall not involve structures, fill, obstructions, excavations or storage of materials or equipment.

Subd 3. Conditional uses. The following shall be uses allowed only by conditional use permit within the floodway district:

- (a) structures accessory to the uses listed as permitted or conditional uses;
- (b) extraction and storage of sand, gravel, and other materials;
- (c) marinas, boat rentals, docks, piers, wharves, and water control structures;
- (d) railroads, streets, bridges, utility transmission lines, and pipelines;
- (e) storage yards for equipment, machinery, or materials;

- (f) recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of subsection 506.21 of this section; and
- (g) structural works for flood control, such as levees, dikes and flood walls, constructed to any height where the intent is to protect agricultural crops for a frequency flood event equal to or less than the ten-year frequency flood event.

Subd. 4. The following standards shall apply for floodway conditional uses:

- (a) No filling is allowed within the floodway.
- (b) No structure, temporary or permanent, deposit, obstruction, storage of materials or equipment, or other uses may be allowed as a conditional use that will cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected;
- (c) All floodway conditional uses shall be subject to the procedures and standards contained in subsection 506.15 of this section;
- (d) The floodway conditional use shall be permissible in the underlying zoning district; and
- (e) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long-term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan. As an alternative, dredge spoil disposal and sand and gravel operations may allow temporary, on-site storage of fill or other materials which would have caused an increase to the stage of the 100-year or regional flood but only after the city council has received an appropriate plan which assures the removal of the materials from the floodway based upon the flood warning time available. The conditional use permit must be title registered with the property in the office of the county recorder.

Subd. 5. The following standards shall apply to all accessory structures:

- (a) Accessory structures shall not be designed for human habitation;
- (b) Accessory structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow, and, so far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures; and

- (c) Accessory structures shall structurally dry flood proof in accordance with the FP-1 or FP-2 flood proofing classifications in the state building code. As an alternative, an accessory structure may be flood proofed to the FP-3 or FP-4 flood proofing classification in the state building code provided the accessory structure constitutes a minimal investment, does not exceed 500 square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All flood proofed accessory structures must meet the following additional standards, as appropriate:
- (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls; and
 - (2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly flood proofed.
 - (3) To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

Subd. 6. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the city council.

Subd. 7. Structural works for flood control that will change the course, current or cross section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statutes, chapter 103G. Community-wide structural works for flood control intended to remove areas from the regulatory flood plain shall not be allowed in the floodway.

Subd. 8. A levee, dike or flood wall constructed in the floodway shall not cause an increase to the 100-year or regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.

Subd. 9. Floodway developments must not adversely affect the hydraulic capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.

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506.13. Flood fringe district (FF). Subdivision 1. Permitted uses. Permitted uses shall be those uses of land or structures listed as permitted uses in the underlying zoning district(s).

Subd. 2. The following standards shall apply for flood fringe permitted uses:

- a) All structures, including accessory structures, must be elevated on fill so that the lowest floor including basement floor is at or above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at such elevation at least 15 feet beyond the outside limits of the structure erected thereon;
- (b) As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed in accordance with subsection 506.13;
- (c) The cumulative placement of fill where at any one time in excess of 1,000 cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with this section;
- (d) The storage of any materials or equipment shall be elevated on fill to the regulatory flood protection elevation; and
- (e) The provisions of subsections 506.13 and 506.15 of this section shall also apply to uses within the flood fringe district.

Subd. 3. Conditional uses. Any structure that is not elevated on fill or flood proofed in accordance with this section or any use of land that does not comply with the standards in this section shall only be allowable as a conditional use. An application for a conditional use permit shall be subject to the standards and criteria and evaluation procedures specified in subsection 506.15.

Subd. 4. The following standards shall apply for flood fringe conditional uses:

- (a) Alternative elevation methods other than the use of fill may be utilized to elevate a structure's lowest floor above the regulatory flood protection elevation. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade, enclosed areas such as crawl spaces or tuck under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if the enclosed area is above-grade on at least one side of the structure, it is designed to internally flood and is constructed with flood resistant materials and it is used solely for parking of vehicles, building access or storage. The alternative elevation methods are subject to the following additional standards:
 - (1) The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the state building code and, specifically, that all electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities must be at or above the regulatory flood protection elevation

or be designed to prevent flood water from entering or accumulating within these components during times of flooding; and

- (2) Above-grade, fully enclosed areas such as crawl spaces or tuck under garages must be designed to internally flood and the design plans must stipulate the following:
 - (a) The minimum area of “automatic” openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one-foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. The automatic openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention; and
 - (b) That the enclosed area will be designed of flood resistant materials in accordance with the FP-3 or FP-4 classifications in the state building code and shall be used solely for building access, parking of vehicles or storage;
- (b) Basements shall be subject to the following:
 - (1) Residential basement construction shall not be allowed below the regulatory flood protection elevation.
 - (2) Non-residential basements may be allowed below the regulatory flood protection elevation provided the basement is structurally dry flood proofed in accordance with this section.
- (c) All areas of non residential structures, including basements to be placed below the regulatory flood protection elevation, shall be flood proofed in accordance with the structurally dry flood proofing classifications in the state building code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the state building code and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 classification shall not be permitted; and
- (c) The storage or processing of materials that are, in time of flooding, flammable,

explosive, or potentially injurious to human, animal, or plant life is prohibited.

Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the city council.

Subd. 5. The following additional standards shall apply for all flood fringe uses:

- (a) Any activities that impact the storage volume of the flood plain shall be prohibited unless compensatory flood plain mitigation is provided at a one-to-one ratio by volume and it is demonstrated that the obstruction will not impact the elevation of the regional flood.
- (b) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation. If a variance to this requirement is granted, the board of adjustment must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist;
- (c) Commercial accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation only if there exists a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four (4) upon occurrence of the regional flood;
- (d) Measures shall be taken to minimize interference with normal manufacturing and industrial operations, especially along streams having protracted flood durations. Certain accessory land uses such as yards and parking lots may be at lower elevations, subject to requirements set out above. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas;
- (e) Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method. The federal emergency management agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested;
- (f) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system

where a floodway or other encroachment limit has not been specified on the official zoning map; and

- (g) All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors.

506.15. General flood plain district. Subdivision 1. Permissible uses. All uses permitted in the floodway district shall be permitted uses within the general flood plain district. All other uses shall be subject to the floodway/flood fringe evaluation criteria pursuant to this section.

Subd. 2. The following procedures shall be used for floodway and flood fringe determinations within the general flood plain district.

- (a) Upon receipt of an application for a conditional use permit for a use within the general flood plain district, the applicant shall be required to furnish such of the following information as is deemed necessary by the zoning administrator for the determination of the regulatory flood protection elevation and whether the proposed use is within the floodway or flood fringe district:
 - (1) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high water information;
 - (2) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets; photographs showing existing land uses and vegetation upstream and downstream; and soil type; and
 - (3) Profile showing the slope of the bottom of the channel or flow line of the stream for at least 500 feet in either direction from the proposed development;
- (b) The applicant shall be responsible to submit one copy of the above information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 - 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective department of natural resources' area

hydrologist prior to commencing the analysis. The designated engineer or expert shall:

- (1) Estimate the peak discharge of the regional flood;
 - (2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas; and
 - (3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than 0.5 foot shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries; and
- (c) The zoning administrator shall present the technical evaluation and findings of the designated engineer or expert to the city council. The city council must formally accept the technical evaluation and the recommended floodway and/or flood fringe district boundary or deny the permit application. The city council, prior to official action, may submit the application and all supporting data and analyses to FEMA or the Minnesota department of natural resources for review and comment. Once the floodway and flood fringe boundaries have been determined, the city council shall refer the matter back to the zoning administrator who shall process the permit application consistent with the applicable provisions of this section.

506.17 Subdivisions. Subdivision 1. No land shall be subdivided which is unsuitable for the reason of flooding, inadequate drainage, water supply or sewage treatment facilities. All lots within the flood plain districts shall contain a building site at or above the regulatory flood protection elevation. All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this section and have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation. For all subdivisions in the flood plain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labelled on all required subdivision drawings and platting documents.

Subd. 2. In the general flood plain district, applicants shall provide the information required in subsection 506.15 of this section to determine the 100-year flood elevation, the floodway and flood fringe district boundaries and the regulatory flood protection elevation for the subdivision site.

Subd. 3. FEMA has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.

Subd. 4. If a subdivision proposal or other proposed new development is in a flood prone area, any such proposal must be reviewed to assure that:

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(a) All such proposals are consistent with the need to minimize flood damage within the flood prone area.

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(b) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and

(c) Adequate drainage is provided to reduce exposure of flood hazard.

Subd. 5. Building Sites. If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of manufactured homes) must be:

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(a) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

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(b) Constructed with materials and utility equipment resistant to flood damage;

(c) Constructed by methods and practices that minimize flood damage; and

(d) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

506. Public utilities, railroads, roads, and bridges. The following shall apply to public utilities, railroads, roads, and bridges with the floodway, flood fringe and general flood plain districts:

Subd. 1. All public utilities and facilities, such as gas, electrical, sewer, and water supply systems, to be located in the flood plain shall be flood-proofed in accordance with the state building code or elevated to above the regulatory flood protection elevation.

Subd. 2. Railroad tracks, roads, and bridges to be located within the flood plain shall comply with subsections 506.11 and 506.13 of this section. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety.

Subd. 3. Where public utilities are not provided, on-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems and new or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this section.

506.21. Manufactured homes and manufactured home parks and placement of recreational vehicles.
Subdivision 1. New manufactured home parks and expansions to existing manufactured home parks shall be subject to the provisions placed on subdivisions by subsection 506.17 of this section.

Subd. 2. The placement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record that are located in flood plain districts will be treated as a new structure and may be placed only if elevated in compliance with subsection 506.13 of this section. If vehicular road access for pre-existing manufactured home parks is not provided, then replacement manufactured homes will not be allowed until the property owner develops a flood warning emergency plan acceptable to the city council.

Subd. 3. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors.

Subd. 4. Recreational vehicles that do not meet the exemption criteria specified in subdivision 5 below shall be subject to the provisions of this section and as specifically spelled out in this section.

Subd. 5. Recreational vehicles are exempt from the provisions of this section if they are placed in any of the areas listed in subdivision 6 below and further meet the following criteria:

- (a) Have current licenses required for highway use;

- (b) Are highway ready, meaning on wheels or the internal jacking system, are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the recreational vehicle has no permanent structural type additions attached to it; and
- (c) The recreational vehicle and associated use must be permissible in any preexisting, underlying zoning use district.

Subd. 6. The following areas are exempted for placement of recreational vehicles:

- (a) individual lots or parcels of record;
- (b) existing commercial recreational vehicle parks or campgrounds; and
- (c) existing condominium type associations.

Subd. 7. Recreational vehicles exempted in subdivision 5 lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the recreational vehicle or for an accessory structure such as a garage or storage building. The recreational vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in subsection 506.13 of this section. **There shall be no development or improvement on the parcel or attachment to the recreational vehicle that hinders the removal of the recreational vehicle to a flood free location should flooding occur.**

Subd. 8. New commercial recreational vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five units or dwelling sites shall be subject to the following:

- (a) Any new or replacement recreational vehicle will be allowed in the floodway or flood fringe districts provided said vehicle and its contents are placed on fill above the regulatory flood protection elevation and proper elevated road access to the site exists in accordance with subsection 506.13 of this section. No fill placed in the floodway to meet the requirements of this section shall increase flood stages of the 100-year or regional flood; and
- (b) All new or replacement recreational vehicles not meeting the criteria of (a) above may, as an alternative, be allowed as a conditional use if in accordance with the following provisions and the provisions of subsection 506.15 of this section:
 - (1) The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. Said plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that

adequate time and personnel exist to carry out the evacuation; and

- (2) All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with subsection 506.13 of this section.

506.23. Administration. Subdivision 1. A zoning administrator or other official designated by the city council shall administer and enforce this section. If the zoning administrator finds a violation of the provisions of this section, the zoning administrator shall notify the person responsible for such violation.

Subd. 2. A permit issued by the zoning administrator in conformity with the provisions of this ordinance shall be secured prior to the erection, addition, modification, rehabilitation (including normal maintenance and repair), or alteration of any building, structure, or portion thereof; prior to the use or change of use of a building, structure, or land; prior to the construction of a dam, fence, or on-site septic system; prior to the change or extension of a nonconforming use; prior to the repair of a structure that has been damaged by flood, fire, tornado, or any other source; and prior to the placement of fill, excavation of materials, or the storage of materials or equipment within the flood plain.

Subd. 3. Application for a permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable: plans in duplicate drawn to scale, showing the nature, location, dimensions, and elevations of the lot; existing or proposed structures, fill, or storage of materials; and the location of the foregoing in relation to the stream channel.

Subd. 4. Prior to granting a permit or processing an application for a conditional use permit or variance, the Zoning Administrator shall determine that the applicant has obtained all necessary state and federal permits.

Subd. 5. It shall be unlawful to use, occupy, or permit the use or occupancy of any building or premises or part thereof hereafter created, erected, changed, converted, altered, or enlarged in its use or structure until a certificate of zoning compliance shall have been issued by the zoning administrator stating that the use of the building or land conforms to the requirements of this section.

Subd. 6. Permits, conditional use permits, or certificates of zoning compliance issued on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement, or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided by Section 520.31 of this Ordinance.

Subd. 7. The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations

were accomplished in compliance with the provisions of this Ordinance. Flood proofing measures shall be certified by a registered professional engineer or registered architect.

Subd. **8**. The zoning administrator shall maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the flood plain. The zoning administrator shall also maintain a record of the elevation to which structures or alterations and additions to structures are flood-proofed.

Subd. **9**. The zoning administrator shall notify, in riverine situations, adjacent communities and the commissioner of the department of natural resources prior to the community authorizing any alteration or relocation of a watercourse. If the applicant has applied for a permit to work in the beds of public waters pursuant to Minnesota Statute, Chapter 103G, this shall suffice as adequate notice to the commissioner of natural resources. A copy of said notification shall also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).

Subd. **10**. Notification must be provided to FEMA when physical changes increase or decrease the 100-year flood elevation. As soon as is practicable, but not later than six (6) months after the date such supporting information becomes available, the zoning administrator shall notify the Chicago Regional Office of FEMA of the changes by submitting a copy of said technical or scientific data.

Subd. **11**. The board of adjustment shall hear requests for variances and appeals from the decisions of the zoning administrator regarding this section as in the case of such appeals involving Section 520 . The board of adjustment may authorize upon appeal in specific cases such relief or variance from the terms of this ordinance as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in the respective enabling legislation for planning and zoning for cities or counties as appropriate. In the granting of such variance, the board of adjustment shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in this ordinance, any other applicable zoning regulations, and in the respective enabling legislation that justified the granting of the variance. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the regulatory flood protection elevation for the particular area, or permit standards lower than those required by state law. The following additional variance criteria of the Federal Emergency Management Agency must be satisfied:

- (a) Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (b) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Subd. 12. The board of adjustment shall submit by mail to the commissioner of natural resources a copy of the application for a proposed variance sufficiently in advance so that the commissioner will receive at least ten days notice of the hearing. A copy of all decisions granting variances shall be forwarded by mail to the commissioner of natural resources within ten days of such action.

Subd. 13. The planning commission shall hear and decide applications for conditional use permits under this section as in the case of such applications under Section 520, except that the commissioner of the Minnesota department of natural resources must receive ten-days notice of any hearing. In passing upon conditional use applications, the planning commission shall consider all relevant factors specified in other sections of this Ordinance, and:

- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (e) The importance of the services provided by the proposed facility to the community.
- (f) The requirements of the facility for a waterfront location.
- (g) The availability of alternative locations not subject to flooding for the proposed use.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (i) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) Such other factors which are relevant to the purposes of this ordinance.

Subd. 14. Upon consideration of the factors listed above and the purpose of this ordinance, the planning commission shall attach such conditions to the granting of conditional use permits as it deems necessary to fulfill the purposes of this ordinance. Such conditions may include, but are not limited to, the following:

- (a) Modification of waste treatment and water supply facilities.
- (b) Limitations on period of use, occupancy, and operation.
- (c) Imposition of operational controls, sureties, and deed restrictions.
- (d) Requirements for construction of channel modifications, compensatory storage,

- dikes, levees, and other protective measures.
- (e) Flood proofing measures, in accordance with the state building code and this

ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

Subd. 15. A structure or the use of a structure or premises which was lawful before the passage or amendment of this section but which is not in conformity with the provisions of this section may continue to be used as in the case of a non-conforming use under Section 515.07 of this Ordinance. Historic structures, as defined in subsection 506.07 of this section, shall be subject to the provisions of subdivisions 13 and 14 above.

- (a) Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in subsections (b) and (d) below.
- (c) The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the Community's initial flood plain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of subsections 506.11 or 506.13 of this ordinance for new structures depending upon whether the structure is in the floodway or flood fringe district, respectively.
- (d) If any nonconforming use or structure is substantially damaged, as defined in this section, it shall not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures in subsections 506.11, 506.13 or 506.15 will apply depending upon whether the use or structure is in the floodway, flood fringe or general flood plain district, respectively.
- (e) If a substantial improvement occurs, as defined in this section, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition (as required by (b) above) and the existing nonconforming building must

meet the requirements of subsections 506.11 or 506.13 of this section for new structures, depending upon whether the structure is in the floodway or flood fringe district, respectively.

Subd. 16. The flood plain designation on the official zoning map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the flood plain. Amendments shall be processed as in the case of zoning amendments under Section 520. All amendments to this section, including amendments to the official zoning map, must be submitted to and approved by the commissioner of the Minnesota department of natural resources prior to adoption. Changes in the official zoning map must meet the requirements of FEMA. The commissioner of the Minnesota department of natural resources must be given ten-days written notice of all hearings to consider an amendment to this section and said notice shall include a draft of the ordinance amendment or technical study under consideration.



MINNESOTA DEPARTMENT OF NATURAL RESOURCES
CENTRAL OFFICE
500 LAFAYETTE ROAD, BOX 25
SAINT PAUL, MN 55155
651-296-6157
888-646-6367

September 9, 2016

The Honorable Marvin Johnson
Mayor, City of Independence
6325 County Road 6
Independence, MN 55359

CONDITIONAL STATE APPROVAL OF FLOODPLAIN ORDINANCE & REQUIRED NEXT STEPS

Dear Honorable Mayor Johnson,

The Department of Natural Resources (DNR) received via email on September 2, 2016, a draft floodplain management ordinance for the City of Independence from consulting planner Mark Kaltsas, from TerraMark. This ordinance is being adopted in order to incorporate the *Flood Insurance Study, Hennepin County, Minnesota and Incorporated Areas* and the accompanying Flood Insurance Rate Map panels with an effective date of November 4, 2016.

Prior to adoption, the City should incorporate a number of amendments to ensure conformance with state and FEMA standards:

- Please add definitions for "Base Flood Elevation", "Development", "Flood Insurance Rate Map", "New Construction", "Special Flood Hazard Area", and "Start of Construction" consistent with 44 CFR §59.1.
- Please revise Section 506.05, Subd. 2 to correctly reference the appropriate titles, maps, and dates of the Flood Insurance Study and Flood Insurance Rate Maps.
- Please add a provision in Section 506.11 to ensure that any floodway developments will preserve the capacity of any altered watercourse, to comply with 44 CFR 60.3(b)(7).
- Please amend Section 506.17 of the ordinance to be consistent with Section 7.0 of the model floodplain ordinance. The "model with commentary" that I sent on June 1, 2016 incorrectly identifies Sections 7.25 and 7.3 as optional provisions, when in fact they are required under 44 CFR 60.3(a)(3 & 4).
- Please reference or add adequate enforcement provisions to outline how the city will handle violations and what actions the city will take to ensure compliance. You may consider Section 12.0 of the model ordinance as a guide.

These suggested changes are noted with in the relevant pages of the enclosed draft.



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Apart from the above items, the draft floodplain management ordinance is in compliance with the state floodplain management rules (MR 6120.5000 to 6120.6200) and, to the best of my knowledge, with the floodplain management standards of the Federal Emergency Management Agency. Therefore, in accordance with Minnesota Statutes, Chapter 103F, I hereby give conditional state approval of the draft floodplain management ordinance, provided the above - mentioned revisions are made. This approval is valid upon adoption of the draft ordinance by the city and receipt by this office of **one (1) copy each of the adopted ordinance (signed and stamped with the community seal), the affidavit of publication, and the completed "Ordinance Certification Checklist"** that I have enclosed. Please forward these documents to Ceil Strauss, the DNR's State NFIP Coordinator in St. Paul at the address above in the header. Upon receipt and verification, Ms. Strauss will transmit one copy of these materials to Mr. John Devine at FEMA's Chicago Regional Office.

Please remember, FEMA must receive a signed, certified, and in-effect ordinance no later than November 4, 2016. To allow sufficient time for processing and transmittal, we request that you submit the requested materials to the DNR no later than November 1, 2016. ***If FEMA has not received the documentation by the map effective date, FEMA will suspend the City from the National Flood Insurance Program.***

Please be advised that any future amendments of this ordinance or change in the designation of flood prone areas require prior approval of the Commissioner. In addition, you are required to send copies of hearing notices and final decisions pertaining to variance, conditional uses, and ordinance amendments to this agency. Please send those to State NFIP Coordinator Ceil Strauss at the above address. Should you have any questions on this ordinance or related matters, please contact Ms. Strauss at (651) 259-5713 or ceil.strauss@state.mn.us.

While our office in St. Paul will continue to be the main contact for the ordinance update, your DNR Area Hydrologist will continue to be your main contact for day to day assistance with administering your floodplain management ordinance and questions about other DNR water-related programs and permits. Your Area Hydrologist is Kate Drewry, who can be contacted at 651-259-5753 or kate.drewry@state.mn.us.

The DNR greatly appreciates your community's cooperation and initiative in providing for the reduction of flood damages through the adoption and administration of this ordinance.

Sincerely,



Jennifer Shillcox
Land Use Section Supervisor

Enclosures: Ordinance Certification Checklist

ec: Mark Kaltsas, TerraMark
Terri Yearwood, DNR Eco-Waters' Regional Manager
Jeanne Daniels, DNR Eco-Waters' District Manager
Kate Drewry, Area Hydrologist

ORDINANCE CERTIFICATION CHECKLIST

Please sign and return the checklist and all required documents to the DNR Floodplain Program office when completed.

1. _____ Date(s) of published hearing notice.

2. _____ Date(s) of public hearing.

3. _____ Date of ordinance adoption. Include 1 certified copy of the adopted ordinance text in its entirety including the signature of the chief elected official and the stamped seal of the community.
4. _____ Date of newspaper publication of adopted ordinance. Include 1 copy of affidavit of publication of the adopted ordinance. Publication of an ordinance summary is acceptable by statute.
5. _____ Date of official filing of adopted ordinance with County Recorder (_____ record book number and _____ page number). If filing of an adopted ordinance with the county auditor is not a standard practice, please indicate "N/A."
6. _____ Board of Adjustment/Appeals has been established (yes or no).

Note: Cities under charter must also submit a list of any additional requirements for hearings, notices, etc. stated in their charter and not required by statute. Please specify:

Signature of Clerk/Auditor