



PLANNING COMMISSION MEETING AGENDA
REGULAR MEETING
TUESDAY, AUGUST 16, 2016

6:30 PM Regular Meeting

1. Call to Order
2. Roll Call
3. Approval of Minutes:
 - a. June 21, 2016 Planning Commission Meeting
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.
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).
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.

7. **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

8. **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.

9. Open/Misc.

10. Adjourn.

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY JUNE 21, 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 Chair Phillips at 6:30 p.m.

2. ROLL CALL

PRESENT: Chair Phillips, Commissioners Olson, Gardner, Palmquist and Thompson
STAFF: City Planner Kaltsas, City Administrative Assistant Horner
ABSENT: None
VISITORS: Brad Spencer, Peter Beck, Jack Wegmann, Ed Pluth, John Pritchard, Kirt Kletscher, Rebecca Arendt, Alecia Babich, Tim Babich, Abby Lindenor, Laverne Dunsmore, Jay Fogelson, Tom and Barb Janas, Lynda Franklin

3. APPROVAL OF MINUTES:

- a. May 17, 2016 Planning Commission Meeting

Motion by Gardner to approve the minutes of the May 17, 2016 Planning Commission Meeting, second by Olson. Ayes: Gardner, Olson and Thompson. Nays: None. Absent: None. Abstain: Palmquist. Motion approved.

4. **PUBLIC HEARING (Tabled at May 17 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 stated 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.

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 3.4-foot setback. The variance allowed the expansion of the home up, 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.

The applicant would like the City to consider granting two variances to the property. The first variance requested would allow the construction of deck to the north of the home (lakeside) utilizing the existing setback of approximately 3.4 feet from the west property line. The deck is proposed to be constructed in line with the existing west wall of the home. The home and proposed deck are setback a significant distance from the OHWL and would not encroach into the shoreland setback.

The second variance requested is to allow the expansion of the house and garage towards the east property line. The applicant would like to expand the house and replace the existing garage. The applicant is proposing to expand the house and garage by constructing a connected garage and addition between 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: 48 feet from the right of way

Side Yard Setback:

Required: 30 feet (@ 60% = 18 feet)
Provided (West): 3'-4" (variance of 14'-8")
Provided (East): 1'-2" (variance of 16'-10")

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 proposed house and impervious site improvements have a total approximate impervious coverage area of approximately 4,900 square feet or 21%. The proposed house and site improvements would not exceed the required maximum impervious coverage allowed under the Shoreland Ordinance.

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 can require 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.

The Planning Commission will need to determine if the requested variance meets the requirements for granting a variance. Several additional considerations that could be considered are as follows:

1. This lot was developed prior to the establishment of the setbacks in the current ordinance being adopted.
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.
3. The property to the east appears to meet the side yard setback of 18 feet.
4. The applicant currently has access to the lakeside of the home via an opening between the existing home and detached garage. This access is approximately 20 feet in width and allows for an open (non-covered) access to the remainder of the property. The proposed addition would significantly restrict access to the remainder of the property and would make it difficult to maintain the proposed structure or property from the applicant's property without encroaching onto the neighbor's property.
5. 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). Based on this separation, the proposed building would potentially restrict the development of the adjacent property due to the limited setback.
6. The proposed configuration does not appear to be the only layout that could accommodate the applicants proposed improvements. It is possible that the garage addition could be shifted to the west to provide for a greater setback along the east property line. The City could consider requiring an increased setback along one side of the property to maintain a reasonable access to the lakeshore property.
7. 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.
8. The applicant will need to provide the City with an actual impervious surface calculation.
9. 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.
10. The home is connected to City sewer.

Kaltsas said Staff is seeking direction and feedback from the Planning Commission relating to the proposed addition and requested variances. The variance along the west property line to allow the construction of the deck is consistent with the previously granted variance. The proposed expansion of the house and garage to the east will limit access to the lakeshore property and will make it difficult to maintain the new structure. The City has typically considered granting variances for non-conforming properties in this area. The City will need to determine if there is a hardship that warrants the requested variance and determine what a reasonable setback would be for the proposed expansion.

The City received comments from the neighboring property owner to the east. He stated that he was concerned with the proximity of proposed addition and spoke to that point at the public hearing. He was concerned that the close proximity of the proposed addition would negatively impact his property. He was also concerned with the impact to his property during construction noting that the proposed addition could not be constructed without construction encroaching onto his property. He recommended that the City consider an increased setback from the east property line.

Commissioners discussed the requested variance and asked questions of staff and the applicant. Commissioners asked staff if the fire code stipulated any setback requirements that should be noted. Staff discussed that the building code has a minimum setback requirement of 5 feet from a property line. Commissioners expressed concerns relating to the close proximity of the proposed addition on the east side of the property. Commissioners asked how the addition could be maintained without having to go on the neighboring property. Commissioners also discussed that the proposed addition would limit access to the rear of the property. Planning Commissioners discussed whether the addition could be located further to the west to provide for a larger setback. The applicant stated that moving the addition to the west would encroach on the front door of the home. Commissioners believed that the proposed addition to the east could not be recommended for approval as proposed and asked the applicant to consider revising the plans and coming back with a proposal that addressed their concerns. Commissioners asked if they could separate the request and did recommend approval of the variance on the west property line to allow the construction of the proposed deck. The applicant will be bringing back a revised plan at the next Planning Commission Meeting for further review and consideration by the Planning Commission.

Kaltsas said the Planning Commission recommended approval of the requested variance to allow a 3'-4" setback on the west property to allow the construction of the proposed deck with the following findings and conditions:

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The variance allows allow a 3'-4" setback on the west property line to allow the construction of the proposed deck. Any changes to the configuration of the deck as proposed or future expansion will require City Council approval through the variance review process.
3. The total impervious surface coverage for this property will not exceed 25% of the total lot area. The Applicant shall submit a survey, which provides impervious surface calculations to the City.
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 comply with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts.

Phillips asked that the difference would be between hardship and practical difficulty as it relates to this proposal. Kaltsas said "practical difficulty" allows it to be more subjective. Thompson asked if they would lose the pathway between the houses. Kaltsas said the concern is the access path would then rely on the neighbor's property due to the gap being lost. Gardner asked if the garage door would remain as shown. Kaltsas said the applicant is now proposing a 9-foot door with access through the back.

Public Hearing Open

Fogelson stated they looked at connecting the existing garage to the house but there was not a way to do that without any cross-footings in place. He noted they would not be putting in this addition without the access to the back.

Spencer stated Fogelson has had done a beautiful job with the Langdon house. He said that it was a challenging lot and his concern would be the dual variances. Spencer said such large variances on either side could represent issues for the City in the future with other lots that want the same consideration. Spencer said the City does not want to set a precedence allowing a larger variance than has been allowed prior. He said this was not a hardship so in order to process this request it would have to meet the practical difficulties guidelines.

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

Public Hearing Closed

Phillips said they need to look at what has been historically and use that for guidance in this case. Thompson said a two-car garage would seem reasonable so they could remove the third stall and that would give back 10 feet. Gardner asked if the fire department has any input. Kaltsas said current code requires 5 feet or the wall has to be rated according to the fire code. Gardner noted the access is dismal. Olson said making the property less conforming is not a persuasive reason to approve the variance. He said there were other options to accomplish a similar thing.

Palmquist asked if the applicant's explored making the garage double deep. He said he would be concerned with the proposal as it is if he lived next door to the property. Kaltsas said if the motion would be to decline if the applicant could get some direction so they could go back and revise accordingly. Palmquist said the concern is the precedence being set. He noted there were a couple ideas presented that would allow for the square footage the applicant is looking for while making it more conforming. Phillips said they need to be strategic and consistent in their recommendations to Council.

Motion by Olson to table the discussion for a variance to allow a reduced side yard setback on both sides of the property, which would permit a home and garage addition, second by Palmquist. Ayes: Gardner, Olson, Palmquist and Thompson. Nays: None. Absent: None. Motion approved.

5. **PUBLIC HEARING:** Jeff Arendt (Applicant/Owner) requests that the City consider the following action for the property located at 1665 Copeland Road (PID No. 19-118-24-44-0001) in Independence, MN:

- a. A rural view lot subdivision to allow the subdivision of property into two lots.

Kaltsas stated The subject property is bounded on three sides by public roads. It is located at the intersections of Copeland Road and Dean Lane and Nelson Road and Dean Lane. There is an existing home and large detached accessory structure on the property. The property is primarily agriculture with some tree coverage in the southeast corner. The property has the following site characteristics: The applicant is proposing to subdivide the property in order to create a rural view lot. The applicant is proposing to create one (1) rural view lot in accordance with the provisions set forth in the City's Zoning Ordinance. The subject property has a total acreage of 75.85 acres. The provisions in the Agriculture

Zoning District allow one (1) rural view lot for every 40 acres of land under the same ownership. Under the current zoning standards, the subject property has the ability to realize one (1) rural view lot for a total of two (2) lots on this property.

Rural view lots must have the following characteristics:

Lot size required - between 2.5 and 10 acres

Lot size proposed – South Parcel – 8.12 acres

Minimum lot frontage required – 300 LF (for property between 5-10 acres)

Minimum lot frontage proposed – Parcel A – 1,246 LF

Ratio of lot frontage to lot depth required - no more than 1:4

Ratio of lot frontage to lot depth proposed – Parcel A - ~1:2 (436.04:809.96)

In addition to the minimum size necessary to subdivide, the ordinance requires a minimum of 2.5 acres of buildable upland, 300 LF of frontage on a right of way and no greater than a 1:4 ratio of lot frontage to lot depth for each rural view lot. Based on the proposed subdivision, the rural view lot would have approximately 8.12 acres of useable upland and over 1,200 LF of frontage on Nelson Road and Dean Lane. The proposed lot depth to lot frontage ratio for the rural view lot would be ~1:2.

The proposed subdivision would produce an approximate 8.12 acre rural view lot. The proposed newly created property would be “in line” with the property to the south and located primarily along Nelson Road. The proposed Parcel A would accommodate a new building pad given its overall size, topography and proposed dimensions. Any development on the property would need to meet all applicable setbacks including those from wetlands. The City received an on-site septic report verifying that the proposed rural view lot can accommodate a primary and secondary on-site septic system. Access to the property can be located off of either Nelson Road or Dean Lane given its frontage on both streets. The applicant has included the requisite drainage and utility easements as required by ordinance (Section 500.15, Subd.’s 1 and 2) for both the existing and proposed parcels.

The remaining 67.73 acres would continue to be a conforming lot of record. The remaining lot would have access on Kuntz Drive. The City’s subdivision ordinance allows lots on a cul-de-sac to have a minimum right of way frontage of 50 LF. The existing home and detached accessory structure meet all applicable setbacks in the after condition.

The newly created Parcel A will be required to pay the City’s requisite Park Dedication fee. For this property the requirement is \$6,500. This fee will need to be paid prior to 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*

Summary:

The proposed subdivision appears to meet all of the applicable standards of the City’s zoning and subdivision ordinance. The lot being created will fit into the surrounding area and have minimal impacts on the surrounding properties.

Kaltsas said the City has not received any written comments regarding the proposed subdivision to permit a rural view lot.

Kaltsas said staff is seeking a recommendation from the Planning Commission for the requested Minor Subdivision with the following findings:

1. The proposed minor subdivision for a rural view lot meets all applicable criteria and conditions stated in Chapter V, Section 500, Planning and Land Use Regulations of the City of Independence Zoning Ordinance.
2. The Applicant shall pay the park dedication fees in the amount of \$6,500, for the newly created Parcel A, prior to the applicant receiving final approval to record the subdivision by the City.
3. The Applicant shall pay for all costs associated with the City's review of the requested subdivision.
4. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.
5. The Applicant shall execute and record the requisite drainage and utility easements with the county within six (6) months of approval.
6. The remaining Parcel B will have no remaining rural view lot eligibilities.

Public Hearing Open

Kletcher said he is concerned with what may be going in next door. He said he has an architectural background and wants to see something similar to other structures on Nelson being permitted. Kaltsas said the only stipulation as far as building code is that it be a 750 sq. ft. home or larger with one bedroom and one bathroom minimum. Kletcher said he has no issues with the parcel being split.

Motion by Gardner to approve a rural view lot subdivision to allow the subdivision of property into two lots for the property located at 1665 Copeland Road, second by Palmquist. Ayes: Gardner, Olson, Palmquist and Thompson. Nays: None. Absent: None. Motion approved.

6. A proposed text amendment to the City of Independence Ordinances as follows:

- Chapter 5, Sections 510 and 530;
 1. Consideration of the establishment of regulations pertaining to solar systems.

Kaltsas said at the last Planning Commission Meeting staff presented information pertaining to decision points that could be considered by the City in adopting a solar energy ordinance. Commissioners provided staff with direction relating to the detailed design and performance standards for solar energy systems. Based on that discussion, staff has prepared a draft ordinance amendment for consideration by the Planning Commission.

Staff is seeking Planning Commission feedback pertaining to the draft ordinance amendment. Commissioners can make revisions or changes to the language presented. Based on the meeting the Planning Commission can consider a recommendation to the City Council.

Staff is seeking discussion and direction from the Planning Commission for the requested Text Amendment.

DRAFT SOLAR ENERGY SYSTEM ORDINANCE

510.05 Definitions. Subdivision 1. The following words and terms, and their derivations have the meanings given in this zoning code.

Subd. 2. “Solar Energy System (SES).” A device or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating.

Subd. 3. “Solar Energy System, Building Integrated.” A solar energy system that is an integral part of a principle or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building, examples of which are roofing materials, windows, skylights, and awnings.

Subd. 4. “Solar Energy System, Ground-Mounted”. A freestanding solar system mounted directly to the ground using a rack or pole rather than being mounted on a building.

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

Subd. 2. Compliance required. A Solar Energy System is permitted only in accordance with this subsection.

Subd. 3. Permitted Districts. Solar Energy Systems are only permitted in accordance with the following table:

Type of Use	Zoning Districts				
	AG-Agriculture	RR-Rural Residential	UR-Urban Residential	CLI-Commercial - Light Industrial	UC-Urban Commercial
Building Integrated Solar Energy System	A	A	A	A	A
Ground Mounted Solar Energy System	C	C	C	C	C

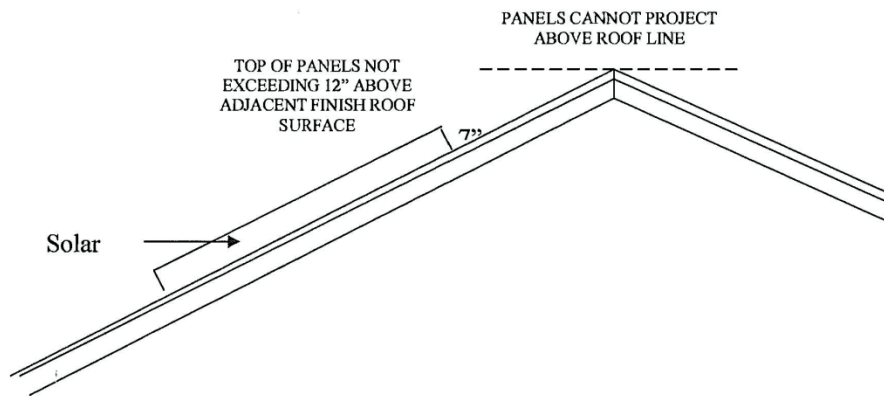
P - Permitted
A - Accessory
C - Conditional
I - Interim

Subd. 4. Building Integrated Solar Energy Systems - shall conform to the following standards:

- Solar panels (photovoltaic and solar thermal systems) can be located on pitched and flat roofs of all principle and accessory buildings within the City.
- Solar panels mounted on a pitched roof shall not have a highest finished pitch more than five (5) percent steeper than the roof pitch on which the system is mounted, and shall be no higher than twelve (12) inches above the roof. Solar panels mounted on a flat roof shall not extend more than 5 feet above the roof

surface. Solar panels cannot exceed the maximum structure or accessory building height for the structure they are mounted on.

- c. Solar panels, mounting structures and all accessory components shall be set back a minimum of four (4) feet from the outside edge (or inside edge of the parapet) of a flat roof to minimize visibility and allow roof access.
- d. Solar panels, solar devices, mechanical equipment and mounting structures shall have non-reflective finishes to eliminate glare.
- e. Solar panel frames and support structures should be constructed of a neutral color and compatible with the roof surface color.
- f. Solar panels shall be placed in a uniform manner. Consider the panels as part of the overall roof configuration. Match the slope and proportions of the array with the shape and proportions of the roof.



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

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

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

Phillips commented on spelling corrections and other text additions. Palmquist asked about restoration requirements. Thompson asked why it would be limited if it was for personal use. Palmquist said he is concerned about screening. Olson asked how screening would be enforced years from now. Kaltsas said any free standing solar would be conditional use guided. If the screening goes away they could revoke the CUP for freestanding units. Gardner said it would be hard to control and is a nuisance factor. He said people do not like to see them. Palmquist asked for clarification on the definition of wholly screened. He asked if it meant landscaping or fencing or something more intrusive. Kaltsas said it was discussed relating to free standing and the City would always be able to control as a conditional use. He said it could range from a berm to some trees to other creative ways to screen and could be looked at on a case-by-case basis.

Thompson said he wanted to reiterate that he felt screening was not always needed nor the limits on size. He thought this should be a continuation of a commercial use of land.

Motion by Olson to approve text amendment changes to the City of Independence Solar Ordinance Chapter 5, Sections 510 and 530 incorporating changes presented this evening and submitted letter by Brenno, second by Gardner. Ayes: Gardner, Olson and Palmquist. Nays: Thompson. Absent: None. Motion approved.

7. Open/Misc.

Kaltsas said he would like the Planning Commissioners feedback on the technology initiative to go paperless for the meetings. He asked if they preferred to use their own devices or would like to have City issued devices. Kaltsas noted City email was important to have a backup.

8. Adjourn.

Motion by Gardner, second by Olson to adjourn the meeting at 8:05 p.m. Ayes: Gardner, Olson, Thompson and Palmquist. Nays: None. Absent: 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>	August 16, 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. 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 east setback.

The applicant has once again revised their request and is now seeking consideration of an eight (8) foot setback along the east property line and a one (1) foot variance on the west property line. The applicant is proposing to set the house addition back along the east side to allow walking access to the rear of the property. In addition, the applicant has noted that they are still proposing a garage door to be located on the rear of the garage to provide additional access to the lake side of the property. Shifting the proposed house/garage addition to the west has now created a situation where the applicant is requesting a one (1) foot variance on the west side of the property.

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. What makes this request unique is

that the City has already provided the applicant with relief from the requisite setback on the west side of the property. The City granted a 15 foot variance to allow a 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 applicant currently has access to the lakeside of the home via an opening between the existing home and detached garage (see attached picture). This access is approximately 20 feet in width and allows for an open (non-covered) access to the remainder of the property. The proposed addition would significantly restrict access to the remainder of the property.
5. There is an existing retaining wall located along the east property line. The proposed eight (8) foot setback may allow some access to the rear of the property; however, due to the grade change along the property line, access around this side of the building will likely still be restricted.
6. 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).
7. The proposed configuration does not appear to be the only layout that could accommodate the applicants proposed improvements. It is possible that the garage addition could be shifted to the west to provide for a greater setback along the east property line. The City has seen similar conditions to the one being considered. Other solutions that have been implemented include constructing a tandem two car garage versus a three car garage which reduces structure width. The applicant has noted that he explored the tandem garage concept and does not believe that his neighbors would be in favor of the configuration. 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.
8. 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.
9. The applicant will need to provide the City with an actual impervious surface calculation.
10. 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.

11. 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 to the east will still limit access to the lakeshore side of the property, but will likely allow maintenance of the proposed structure. In addition, the City has not recently considered granting variances which reduce the setback on both sides of a property. The City will need to determine if there is a hardship that warrants the requested variance and determine if there is a reasonable setback that would allow for the proposed expansion.

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, deck 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

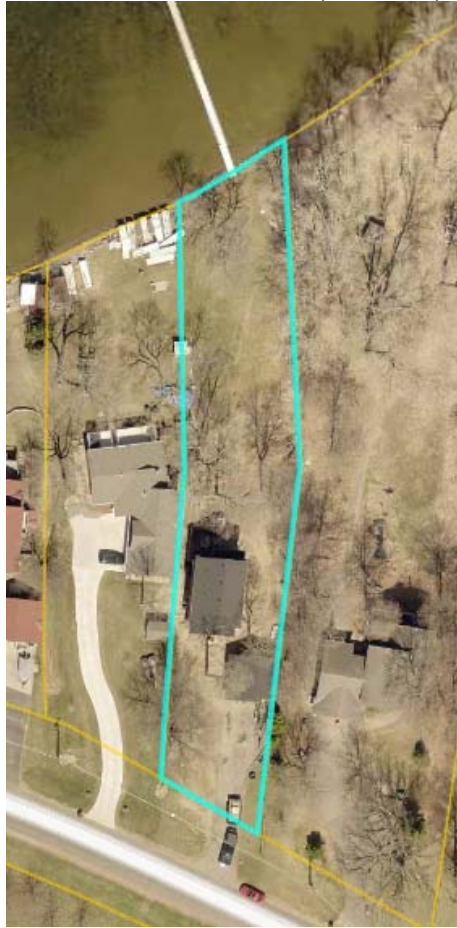
Zoning: *Rural Residential (Shoreland Overlay)*

Comprehensive Plan: *Rural Residential*

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

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

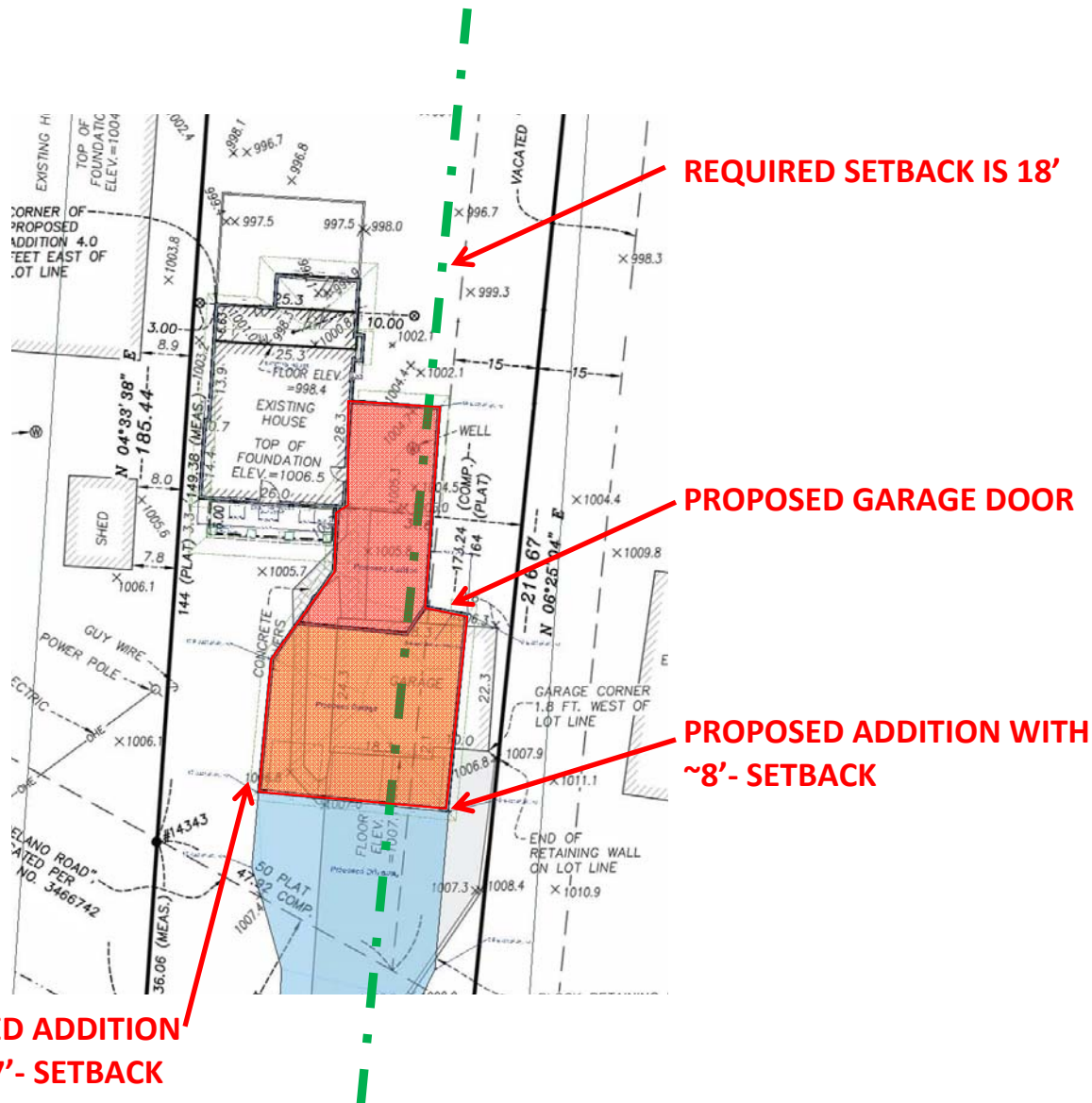
4618 South Lake Sarah Drive (blue outline)



Discussion:

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 3.4 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.

The applicant would like the City to consider granting two variances to the property. The variances requested would allow the expansion of the house and garage towards the east and west property lines. The applicant would like to expand the house and replace the existing garage. The applicant is proposing to expand the house and garage by constructing a connected garage and addition between the existing home and new garage. The applicant is proposing to setback the proposed addition 5'-0" from the east property line and 17'-0" from the west property line. The current detached garage is setback approximately 1'-10" from the east property line.



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: 48 feet from the right of way

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

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

Provided (West): 17'-0" (variance of 1'-0")

Provided (East): 5'-0" (variance of 13'-0")

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 proposed house and impervious site improvements have a total approximate impervious coverage area of approximately 4,900 square feet or 21%. The proposed house and site improvements would not exceed the required maximum impervious coverage allowed under the Shoreland Ordinance.

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. Subdivision1. 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 can require 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:

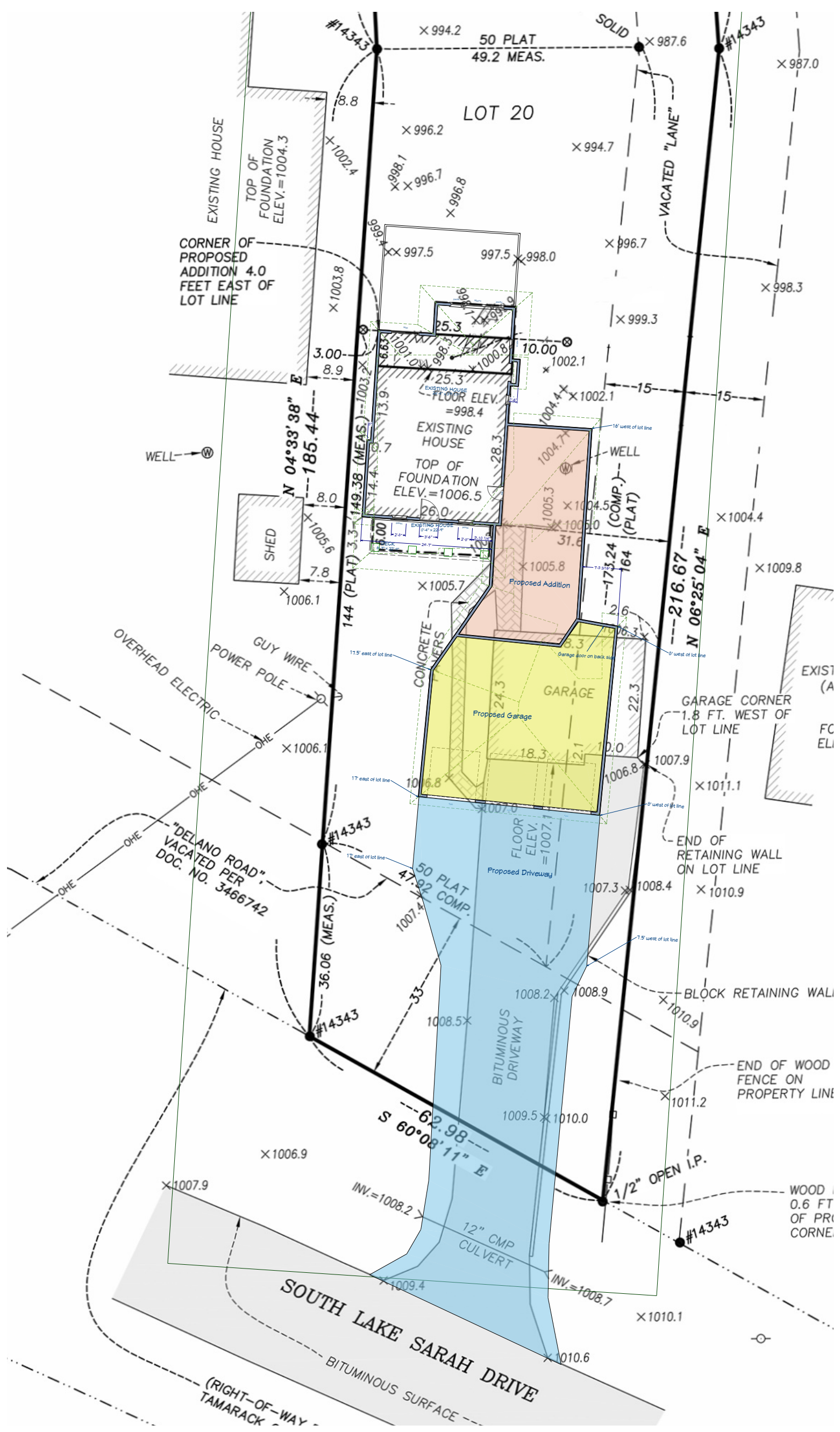
Staff is seeking a recommendation or direction from the Planning Commission pertaining to the request for a variance. Should the Planning Commission consider granting a variance, the following findings and conditions

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.
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.

Attachments:

1. Application
2. Site Plan



City of Independence

Request for an Amendment to the Conditional Use Permit for the Windsong Farm Golf Club Located at 18 Golf Walk

To: Planning Commission
From: Mark Kaltsas, City Planner
Meeting Date: August 16, 2016
Applicant: Windsong Farm Golf Club
Owner: David Meyer
Location: 1). 18 Golf Walk

Request:

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.s 32-118-24-23-0001, 32-118-24-12-0004, 32-118-24-12-0003) 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).

Property/Site Information:

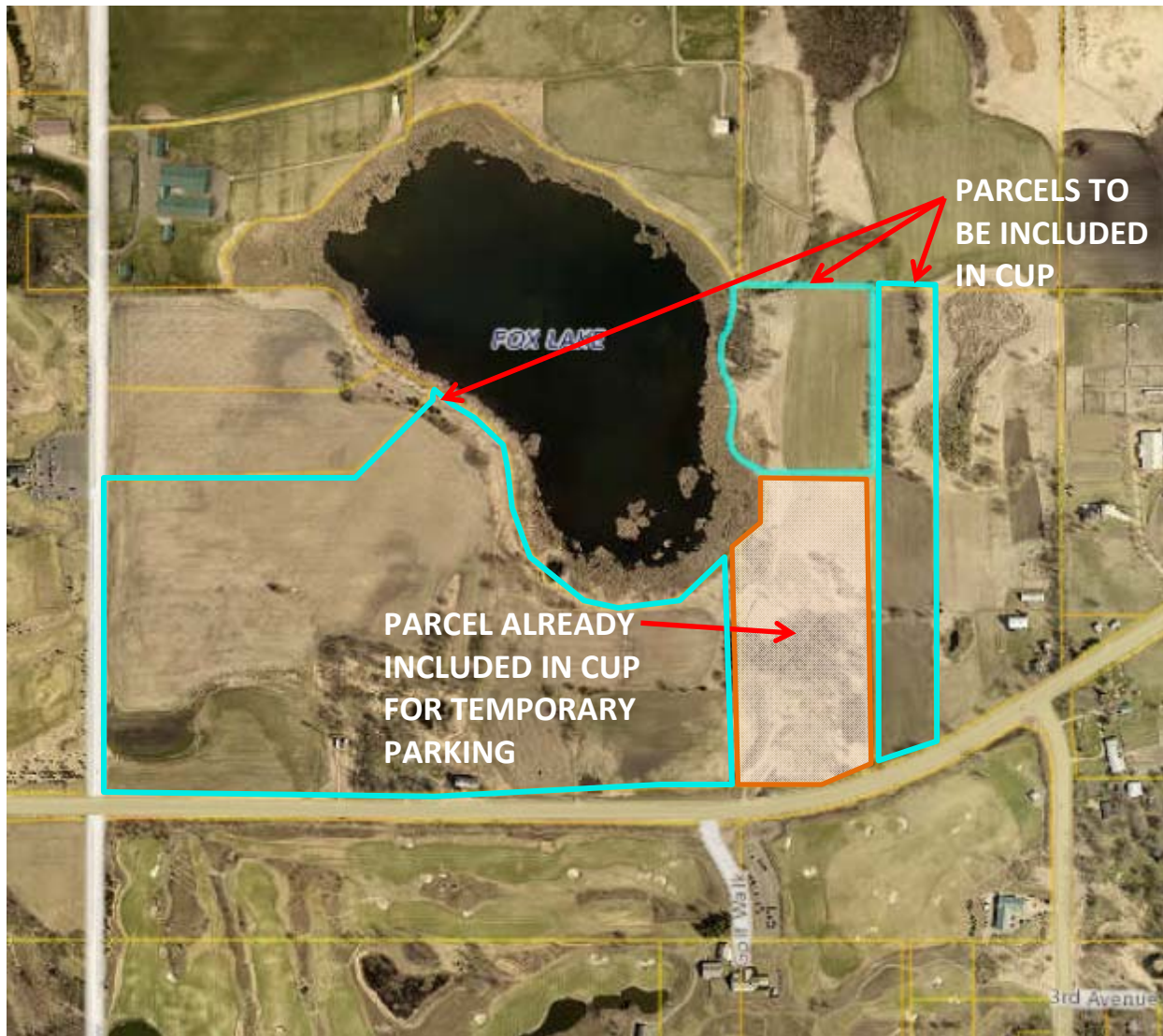
The subject properties are located on the north side of County Road 6, just west of County Road 92. The properties are comprised of rolling topography, ponds, wetlands and tree coverage. The properties have the following characteristics:

Property Information 18 Golf Walk
Zoning: *Agriculture*
Comprehensive Plan: *Public/Semi-Public*
Acreage: ~200 total acreage of golf course

Property 32-118-24-23-001
Zoning: *Agriculture*
Comprehensive Plan: *Agriculture*
Acreage: 69.91 acres

Property 32-118-24-12-0004
Zoning: *Agriculture*
Comprehensive Plan: *Agriculture*
Acreage: 10.06 acres

Property 32-118-24-12-0003
Zoning: *Agriculture*
Comprehensive Plan: *Agriculture*
Acreage: 10.75 acres



Discussion:

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, guest house 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 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.*

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.

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 as a result 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.

Neighbor Comments:

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

Recommendation:

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.

Attachments:

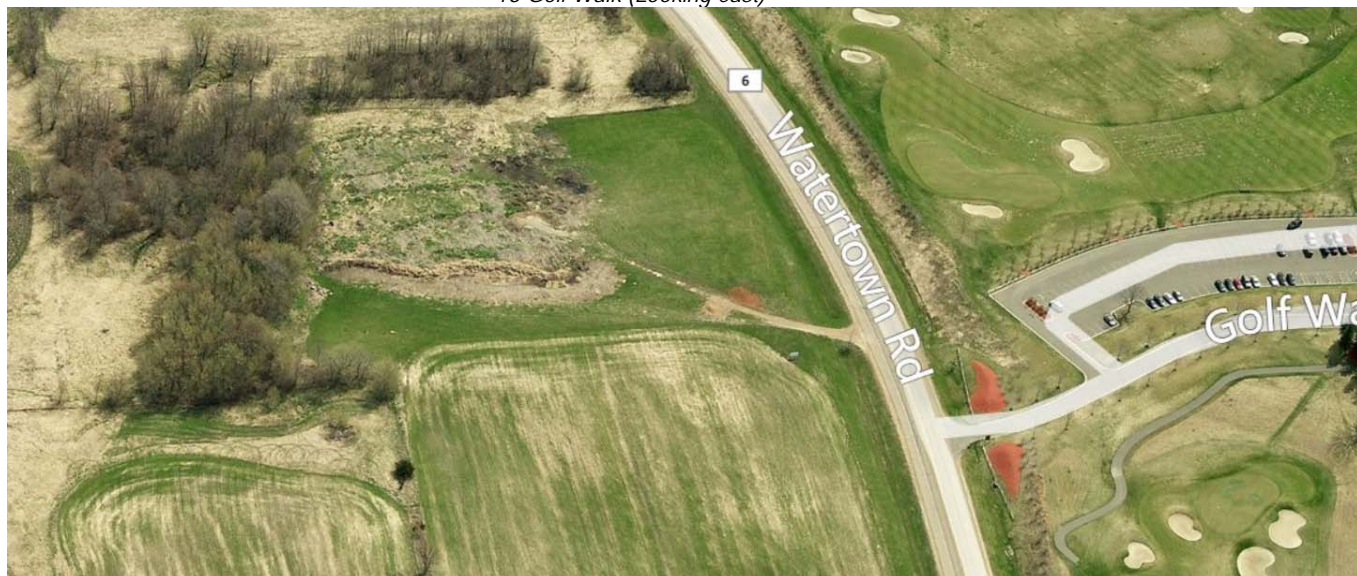
1. Applicants Proposed Plans
2. Aerial Photographs

Attachment

18 Golf Walk (Looking North)



18 Golf Walk (Looking east)





DATE	REVISIONS
May 10, 2016	



JOHN FOUGHT DESIGN
GOLF COURSE ARCHITECTURE
8040 Morgan Trail, Suite 18

WINDSONG FARM GOLF CLUB

PRACTICE FACILITY PLANS

MAPLE PLAIN, MINNESOTA

DATE:	May 10, 2016
REVISIONS:	

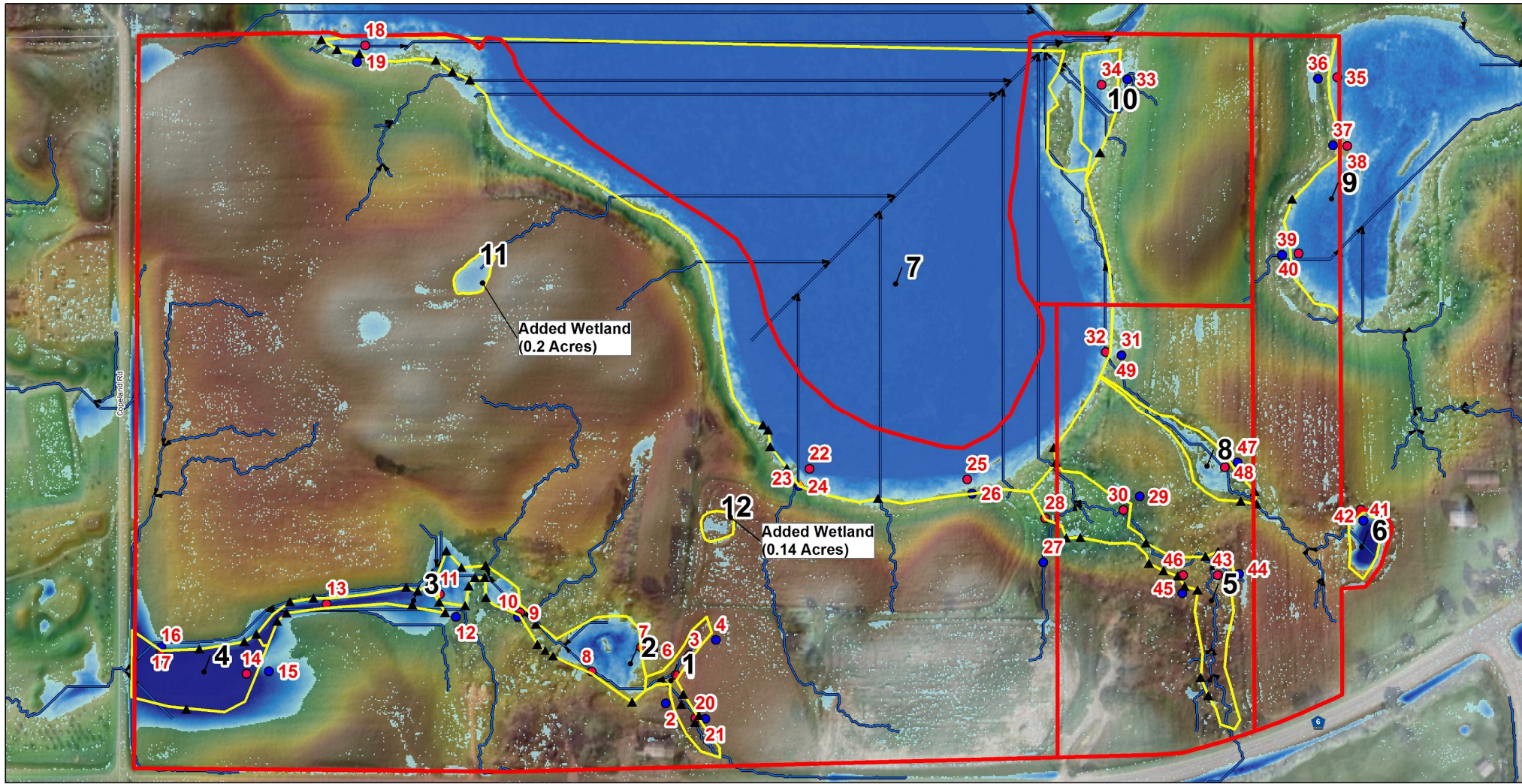
GRADING PLAN



SCALE: 1" = 100'

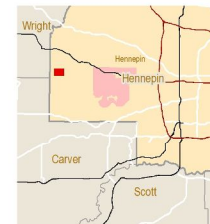
SHEET NUMBER:

GP
3 OF 6

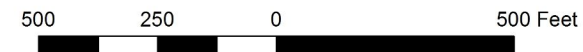


Legend

Area Delineated	Soil Pit	Depression Depth Grid	Elevation (Meters)
Delineated Wetland	Test	Value	High : 305.186
	Upland	High : 3.45816	Low : 288.988
	Wetland	Low : 3.05176e-005	



Windsong Farm
Delineated Wetlands



City of Independence

Request for a Conditional Use Permit to Allow a Commercial Riding Stable and Bunkhouse and Accessory Structure Larger than 5,000 SF on the Property located at 1060 Copeland Road

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	August 16, 2016
<i>Applicant:</i>	Beau'Selle Stable
<i>Property Owner:</i>	Ese Riders
<i>Location:</i>	1060 Copeland Road

Request:

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 with Bunkhouse.
- b. A conditional use permit to allow an accessory structure that exceeds 5,000 SF.

Property/Site Information:

The property is located on the east side of Copeland Road, north of CSAH 6. The property has an existing home, large barn, and several smaller barns and accessory structures. There are several large pasture areas and a large area with existing tree coverage. The property has the following characteristics:

Property Information: 1060 Copeland Road

Zoning: *Agriculture*

Comprehensive Plan: *Agriculture*

Acreage: *85.11 acres*



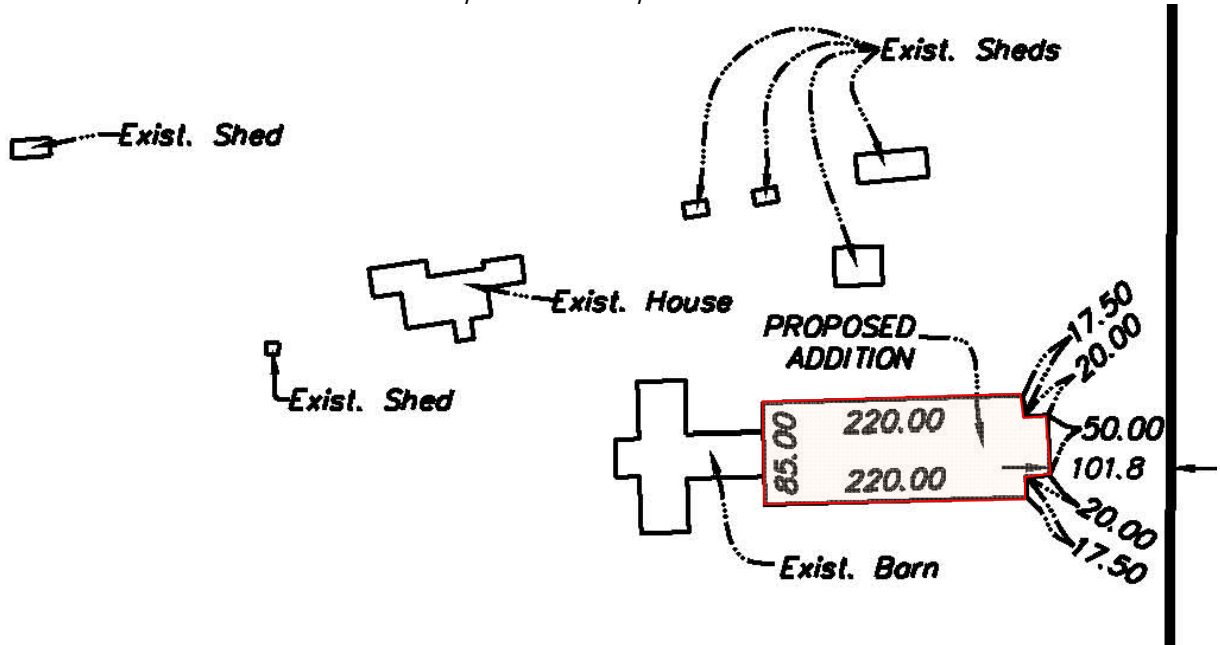
Discussion:

The property was recently acquired by a new owner 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, 3 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.

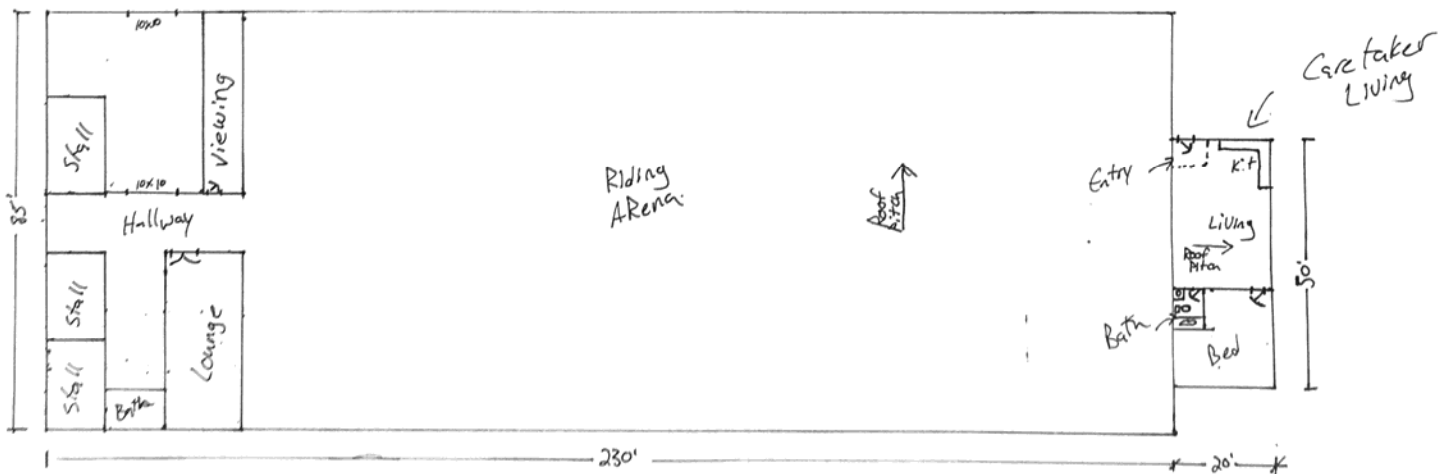
The existing barn is approximately 8,750 square feet in size and houses 22 stables. The proposed expansion would add an additional 18,700 square feet and 3 additional stables. In addition to the indoor riding arena, the applicant is seeking a conditional use permit to allow a bunkhouse within the proposed 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.

Proposed Barn Expansion



Proposed Barn Expansion Floor Plan



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.

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.

Neighbor Comments:

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

Recommendation:

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.

Attachments:

- 1. Property Pictures
- 2. Survey/Site Plan Existing and Proposed

Attachments

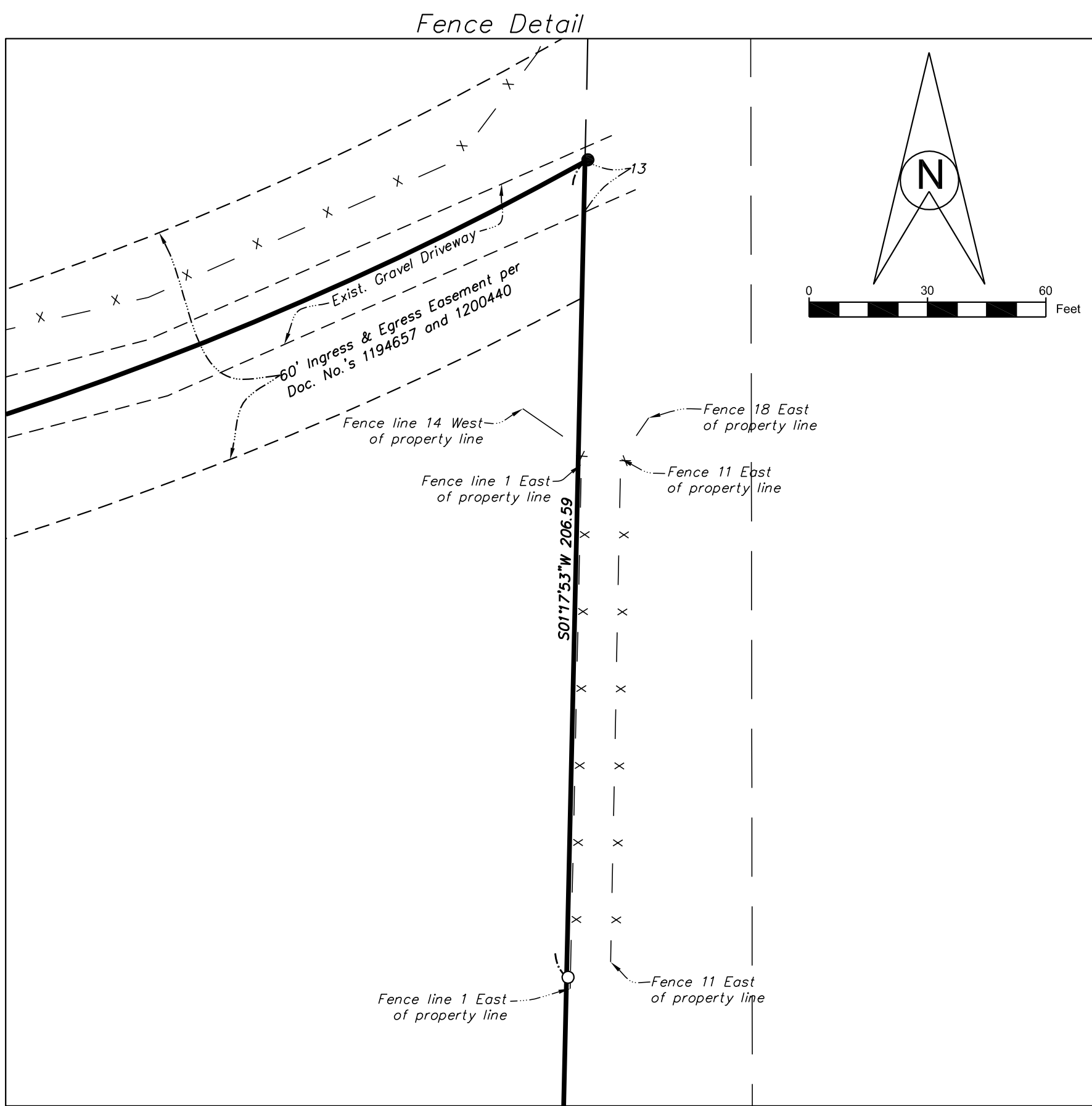
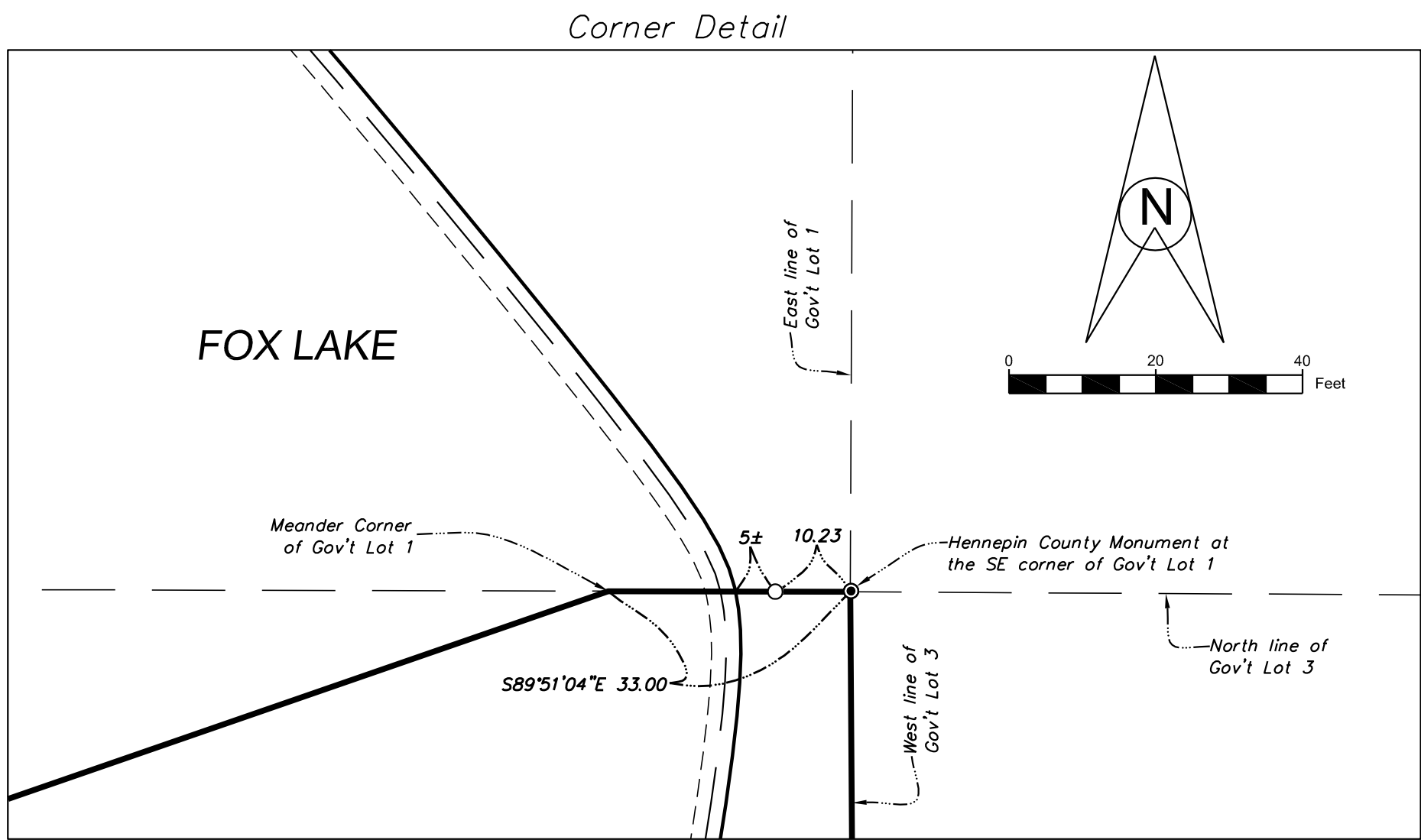
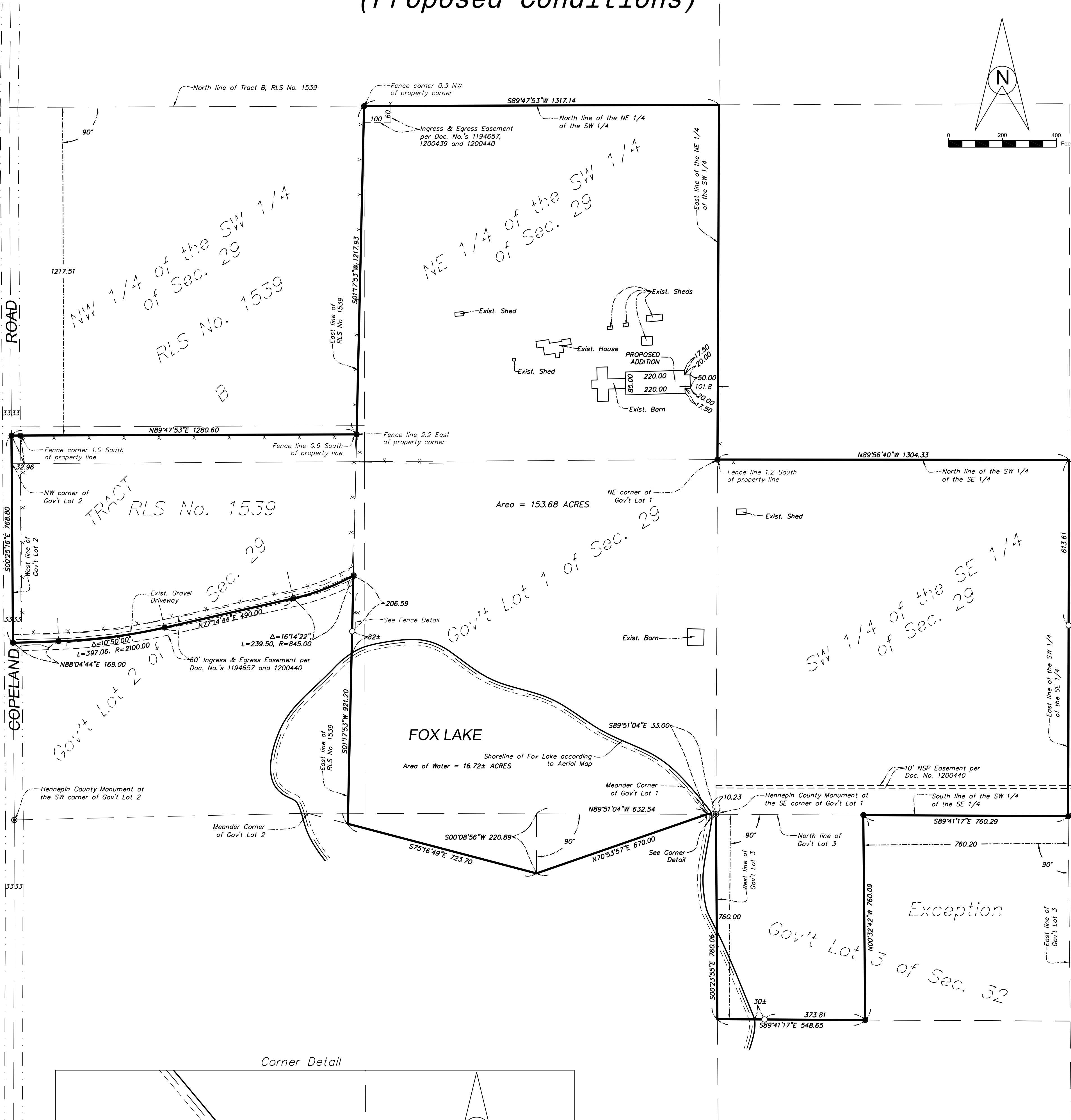
1060 Copeland Road (Looking north)



1060 Copeland Road (Looking west)



Certificate of Survey
(Proposed Conditions)



PROPERTY DESCRIPTIONS

Parcel 1:
The Northeast Quarter of the Southwest Quarter, Section 29, Township 118, Range 24.

Parcel 2:
That part of and Government Lots 1 and 2, Section 29, Township 118, Range 24, including the accretions to said Government Lots 1 and 2, which is described as follows:
Commencing at the meander corner on the South line of said Government Lot 1; thence West along the line between the meander corner of the South line of said Government Lot 1 and the meander corner on the South line of said Government Lot 2, a distance of 632.54 feet; thence South, at a right angle, a distance of 220.89 feet to the actual point of beginning; thence Northeasterly a distance of 670 feet to the meander corner on the South line of said Government Lot 1; thence East to the Southeast corner of said Government Lot 1; thence North to the Northeast corner of said Government Lot 1; thence West to the Northwest corner of said Government Lot 2; thence South to the Southwest corner of said Government Lot 2; thence East to the meander corner on the South line of said Government Lot 2; thence Southeasterly to the actual point of beginning.

That lies East of Registered Land Survey No. 1539.

Parcel 3:
That part of the Northwest Quarter of the Southwest Quarter, Section 29, Township 118, Range 24 that lies East of REGISTERED LAND SURVEY NO. 1539.

Parcel 4:
The North 760 feet of Government Lot 3, except the East 760.2 feet thereof, Section 32, Township 118, Range 24.

Parcel 5:
The Southwest Quarter of the Southeast Quarter of Section 29, Township 118, Range 24.

Parcel 6:
That part of Tract B, Registered Land Survey No. 1539, Hennepin County, Minnesota which lies South of a line 1217.51 feet South of, measured at right angles to, and parallel with the North line of said Tract B and its extensions.

Certificate of Survey on part of
Sections 29 & 32, Township 118,
Range 24, Hennepin County, Minnesota

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: 8-11-16

Requested By:

ESE Riders

Date:

6/17/15

Drawn By:

J.D.L.

Scale:

1"=200'

Checked By:

P.E.O.



Engineers & Land Surveyors, Inc.

www.ottoassociates.com

9 West Division Street
Buffalo, MN 55313
(763)682-4727
Fax: (763)682-3522

● denotes iron monument found
○ denotes 1/2 inch by 14 inch iron pipe set and marked by License #40062

Project No.

16-0400B



a division of Bluescope Buildings North America, Inc.

DRAWING INDEX	
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Anchor Rod Plan	4-5
Primary Structural	6-19
Secondary Structural	20-33
Covering	34-48
Special Drawings	
Standard Erection Details	
Plumbing Details	

[illegible]

MATERIALS

3 PLATE RIBBED SECTIONS	A003 A027 A1011, A1118	GRADE 55
COLD FORMED LIGHT GAUGE SHAPES	A003 A1011	GRADE 60
BRIDGE ROOPS	A027 A110	GRADE 50
HOT ROLLED RAIL SHAPES	A01 A029 A072 A084 A092	GRADE 36 OR 50
HOT ROLLED ANGLES	A023 A072 A084 A092	GRADE 50
HOLLOW STRUCTURAL SECTION (HSS)	A003	GRADE 60
CLADDING	A003 A102	GRADE 50 OR GRADE 60

HIGH STRENGTH BOLT TIGHTENING REQUIREMENTS

IT IS THE RESPONSIBILITY OF THE ERECTOR TO ENSURE PROPER BOLT TIGHTENING IN ACCORDANCE WITH applicable REGULATIONS. SEE ALSO SPECIFICATION FOR STRUCTURAL JOINTS USING HIGH-STRENGTH BOLTS FOR MORE INFORMATION. THE ERECTOR GUIDE FOR BOLT TIGHTENING INSTITUTIONS, THE FOLLOWING CRITERIA MAY BE USED TO DETERMINE THE BOLT TIGHTNESS (I.E. SNUG TIGHT OR PRE-TENSION) VALUES REQUIRED OTHERWISE BY LOCAL JURISDICTION OR CONTRACT.

PRE-TENSION A325 BOLTS IF BUILDING SUPPORTS A CRANE GREATER THAN 5 TON CAPACITY

PRE-TENSION A325 BOLTS IF BUILDING SUPPORTS MACHINERY THAT CREATES VIBRATION, IMPACT, OR STRESS REVERSALS ON CONNECTIONS.

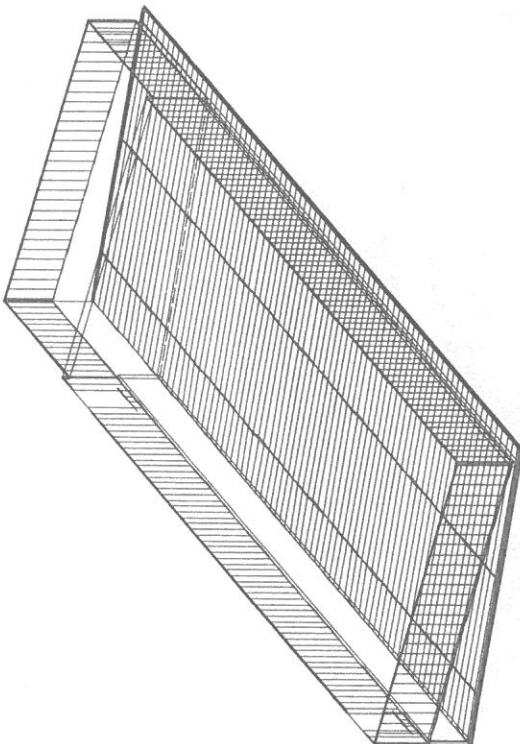
PRE-TENSION A325 BOLTS IF LOCATED IN HIGH SEISMIC AREAS. FOR IBC BASED CODES: HIGH SEISMIC IS DESIGN CATEGORY D, E OR F. SEE CODES AND LOADS SECTION BELOW FOR DETAILS.

PRE-TENSION ANY CONNECTION WITH DESIGNATION A325-SC, SLIP CRITICAL (SC), CONNECTIONS MUST BE FREE OF PAINT, OIL, OR OTHER MATERIALS THAT REDUCE FRICTION AT CONTACT SURFACES. GALVANIZED OR LIGHTLY RUSTED SURFACES ARE ACCEPTABLE.

IN CANADA ALL A325 AND A490 BOLTS SHALL BE "PRE-TENSIONED", EXCEPT FOR SECONDARY MEMBERS AND PLUNGES BRACES.

SECONDARY MEMBERS AND FLANGE BRACE CONNECTIONS ARE ALWAYS SNUG TIGHTENED UNLESS INDICATED OTHERWISE IN ERECTION DRAWING DETAILS.

Building Dept. Set
Any changes may affect
price and delivery date.



VP Buildings 3200 Plymra Club Circle Memphis TN 38122


THE VP ENGINEER'S SEAL APPLIES ONLY TO THE WORK PRODUCT OF VP AND DESIGN AND PERFORMANCE REQUIREMENTS SPECIFIED BY VP. THE VP ENGINEER'S SEAL DOES NOT APPLY TO THE PERFORMANCE OR DESIGN OF ANY OTHER PRODUCT OR COMPONENT FURNISHED BY VP EXCEPT TO ANY DESIGN OR PERFORMANCE REQUIREMENTS SPECIFIED BY VP.

THIS DRAWING, FOLLOWING THE INFORMATION HEREON, REMAINS THE PROPERTY OF VP BUILDINGS. IT PROVIDED SOLELY FOR THE BUILDING DESCRIBED IN THE APPLICABLE PURCHASE ORDER AND SHALL NOT BE MODIFIED, REPRODUCED OR USED FOR ANY OTHER PURPOSE WITHOUT PRIOR WRITTEN APPROVAL OF VP BUILDINGS.

THE GENERAL CONTRACTOR AND/OR ERECTOR IS SOLELY RESPONSIBLE FOR ACCURATE GOOD QUALITY WORKMANSHIP IN ERECTING THIS BUILDING IN ACCORDANCE WITH THIS DRAWING. DETAILS REFERENCED IN THIS DRAWING, ALL APPLICABLE PLUMBING ERECTION GUIDES, AND INDUSTRY STANDARDS PERTAINING TO PROPER ERECTION, INCLUDING THE CORRECT USE OF TEMPORARY BRACING.



B COVER SHEET

customer	Steel Structures, Inc.	Q&A	3/1/2016	DATE
DATE ORDER				
LOCATION	Duane, Minnesota			
PROJECT	Duane			
ORDERING JOB				
 VP BUILDINGS <small>MEMBER SINCE 1988</small>		PFC VERSION: 2016.1c FILE# 1		

PROFESSIONAL ENGINEER
I hereby certify that this plan

...ect was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Print Name CARL W. WALKER

Signature: _____

Date 1-15-12 License # 26438

City of Independence

Proposed Amendment to the City of Independence Ordinances Title XV: Land Usage Opting-out of the Requirements of Minnesota Statute, Section 462.3593

To: Planning Commission
From: Mark Kaltsas, City Planner
Meeting Date: August 16, 2016

Consideration:

Consideration of an amendment to the City's Zoning Ordinance as follows:

1. An ordinance opting-out of the requirements of Minnesota Statutes, Section 462.3593 which defines and regulates Temporary Family Health Care Dwellings.

Discussion:

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.

Summary:

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.

Attachments: Draft Ordinance
League of Minnesota Cities Summary Publication

ORDINANCE NO. _____

CITY OF INDEPENDENCE

**AN ORDINANCE OPTING-OUT OF
THE REQUIREMENTS OF
MINNESOTA STATUTES, SECTION 462.3593**

WHEREAS, on May 12, 2016, Governor Dayton signed into law the creation and regulation of temporary family health care dwellings, codified at Minn. Stat. § 462.3593, which permit and regulate temporary family health care dwellings;

WHEREAS, subdivision 9 of Minn. Stat. §462.3593 allows cities to “opt out” of those regulations;

THE CITY COUNCIL OF THE CITY OF INDEPENDENCE ORDAINS as follows:

Section 1. City Code, Section 153 is amended by adding Section 153.069 as follows:

OPT-OUT OF MINNESOTA STATUTES, SECTION 462.3593:

SECTION 153.069. Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of Independence opts-out of the requirements of Minn. Stat. §462.3593, which defines and regulates Temporary Family Health Care Dwellings.

SECTION 2. This Ordinance shall be effective immediately upon its passage and publication.

ADOPTED this 23rd day of August, 2016, by the City Council of the City of Independence.

CITY OF INDEPENDENCE

By: _____
Marvin Johnson, Mayor

ATTEST:

Mark Kaltsas, City Administrator



Temporary Family Health Care Dwellings of 2016 Allowing Temporary Structures – What it means for Cities

Introduction:

On May 12, 2016, Gov. Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.¹ Community desire to provide transitional housing for those with mental or physical impairments and the increased need for short term care for aging family members served as the catalysts behind the legislature taking on this initiative. The resulting legislation sets forth a short term care alternative for a “mentally or physically impaired person”, by allowing them to stay in a “temporary dwelling” on a relative’s or caregiver’s property.²

Where can I read the new law?

Until the state statutes are revised to include bills passed this session, cities can find this new bill at [2016 Laws, Chapter 111](#).

Does the law require cities to follow and implement the new temporary family health care dwelling law?

Yes, unless a city opts out of the new law or currently allows temporary family health care dwellings as a permitted use.

Considerations for cities regarding the opt-out?

These new temporary dwellings address an emerging community need to provide more convenient temporary care. When analyzing whether or not to opt out, cities may want to consider that:

- The new law alters a city’s level of zoning authority for these types of structures.
- While the city’s zoning ordinances for accessories or recreational vehicles do not apply, these structures still must comply with setback requirements.
- A city’s zoning and other ordinances, other than its accessory use or recreational vehicle ordinances, still apply to these structures. Because conflicts may arise between the statute and a city’s local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

¹ [2016 Laws, Chapter 111](#).

² Some cities asked if other states have adopted this type of law. The only states that have a somewhat similar statute at the time of publication of this FAQ are North Carolina and Virginia. It is worth noting that some states have adopted Accessory Dwelling Unit (ADU) statutes to allow granny flats, however, these ADU statutes differ from Minnesota’s Temporary Health Care Dwelling law.

- Although not necessarily a legal issue for the city, it seems worth mentioning that the permit process does not have the individual with the physical or mental impairment or that individual's power of attorney sign the permit application or a consent to release his or her data.
- The application's data requirements may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act.
- The new law sets forth a permitting system for both cities and counties³. Cities should consider whether there is an interplay between these two statutes.

Do cities need to do anything to have the new law apply in their city?

No, the law goes into effect Sept. 1, 2016 and automatically applies to all cities that do not opt out or don't already allow temporary family health care dwellings as a permitted use under their local ordinances.

Do cities lose the option to opt out after the Sept. 1, 2016 effective date?

No, the law does not set a deadline for opting out, so cities can opt out after Sept. 1, 2016. However, if the city has not opted out by Sept. 1, 2016, then the city must not only have determined a permit fee amount⁴ before that date (if the city wants to have an amount different than the law's default amount), but also must be ready on that date to accept applications and process the permits in accordance with the short timeline required by the law. Cities should consult their city attorney to analyze how to handle applications submitted after Sept. 1, 2016, but still pending at the time of a later opt out.

What if a city already allows a temporary family health care dwelling as a permitted use?

If the city already has designated temporary family health care dwellings as a permitted use, then the law does not apply and the city follows its own ordinance. The city should consult its city attorney for any uncertainty about whether structures currently permitted under existing ordinances qualify as temporary family health care dwellings.

What process should the city follow if it chooses to opt out of this statute?

Cities that wish to opt out of this law must pass an ordinance to do so. The statute does not provide clear guidance on how to treat this opt-out ordinance. However, since the new law adds section 462.3593 to the land use planning act (Minn. Stat. ch. 462), arguably, it may represent the adoption or an amendment of a zoning ordinance, triggering the requirements of Minn. Stat. § 462.357, subd. 2-4, including a public hearing with 10-day published notice. Therefore, cities may want to err on the side of caution and treat the opt-out ordinance as a zoning provision.⁵

³ See Minn. Stat. §394.307

⁴ Cities do have flexibility as to amounts of the permit fee. The law sets, as a default, a fee of \$100 for the initial permit with a \$50 renewal fee, but authorizes a city to provide otherwise by ordinance.

⁵ For smaller communities without zoning at all, those cities still need to adopt an opt-out ordinance. In those instances, it seems less likely that the opt-out ordinance would equate to zoning. Because of the ambiguity of the

Does the League have a model ordinance for opting out of this program?

Yes. Link to opt out ordinance here: [Temporary Family Health Care Dwellings Ordinance](#)

Can cities partially opt out of the temporary family health care dwelling law?

Not likely. The opt-out language of the statute allows a city, by ordinance, to opt out of the requirements of the law but makes no reference to opting out of parts of the law. If a city wanted a program different from the one specified in statute, the most conservative approach would be to opt out of the statute, then adopt an ordinance structured in the manner best suited to the city. Since the law does not explicitly provide for a partial opt out, cities wanting to just partially opt out from the statute should consult their city attorney.

Can a city adopt pieces of this program or change the requirements listed in the statute?

Similar to the answer about partially opting out, the law does not specifically authorize a city to alter the statutory requirements or adopt only just pieces of the statute. Several cities have asked if they could add additional criteria, like regulating placement on driveways, specific lot size limits, or anchoring requirements. As mentioned above, if a city wants a program different from the one specified in the statute, the most conservative approach would involve opting out of the statute in its entirety and then adopting an ordinance structured in the manner best suited to the city. Again, a city should consult its city attorney when considering adopting an altered version of the state law.

What is required in an application for a temporary family health care dwelling permit?

The mandatory application requests very specific information including, but not limited to:⁶

- Name, address, and telephone number of the property owner, the resident of the property (if different than the owner), and the primary care giver;
- Name of the mentally or physically impaired person;
- Proof of care from a provider network, including respite care, primary care or remote monitoring;
- Written certification signed by a Minnesota licensed physician, physician assistant or advanced practice registered nurse that the individual with the mental or physical impairment needs assistance performing two or more “instrumental activities of daily life;”⁷

statute, cities should consult their city attorneys on how best to approach adoption of the opt-out ordinance for their communities.

⁶ New Minn. Stat. § 462.3593, subd. 3 sets forth all the application criteria.

⁷ This is a term defined in law at Minn. Stat. § 256B.0659, subd. 1(i) as “activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.”

- An executed contract for septic sewer management or other proof of adequate septic sewer management;
- An affidavit that the applicant provided notice to adjacent property owners and residents;
- A general site map showing the location of the temporary dwelling and the other structures on the lot; and
- Compliance with setbacks and maximum floor area requirements of primary structure.

The law requires all of the following to sign the application: the primary caregiver, the owner of the property (on which the temporary dwelling will be located) and the resident of the property (if not the same as the property owner). However, neither the physically disabled or mentally impaired individual nor his or her power of attorney signs the application.

Who can host a temporary family health care dwelling?

Placement of a temporary family health care dwelling can only be on the property where a “caregiver” or “relative” resides. The statute defines caregiver as “an individual, 18 years of age or older, who: (1) provides care for a mentally or physically impaired person; and (2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.” The definition of “relative” includes “a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece of the mentally or physically impaired person. Relative also includes half, step and in-law relationships.”

Is this program just for the elderly?

No. The legislature did not include an age requirement for the mentally or physically impaired dweller.⁸

Who can live in a temporary family health care dwelling and for how long?

The permit for a temporary health care dwelling must name the person eligible to reside in the unit. The law requires the person residing in the dwelling to qualify as “mentally or physically impaired,” defined as “a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified by a physician, a physician assistant, or an advanced practice registered nurse, licenses to practice in this state.” The law specifically limits the time frame for these temporary dwellings permits to 6 months, with a one-time 6 month renewal option. Further, there can be only one dwelling per lot and only one dweller who resides within the temporary dwelling

⁸ The law expressly exempts a temporary family health care dwelling from being considered “housing with services establishment”, which, in turn, results in the 55 or older age restriction set forth for “housing with services establishment” not applying.

What structures qualify as temporary family health care dwellings under the new law?

The specific structural requirements set forth in the law preclude using pop up campers on the driveway or the “granny flat” with its own foundation as a temporary structure. Qualifying temporary structures must:

- Primarily be pre-assembled;
- Cannot exceed 300 gross square feet;
- Cannot attach to a permanent foundation;
- Must be universally designed and meet state accessibility standards;
- Must provide access to water and electrical utilities (by connecting to principal dwelling or by other comparable means⁹);
- Must have compatible standard residential construction exterior materials;
- Must have minimum insulation of R-15;
- Must be portable (as defined by statute);
- Must comply with Minnesota Rules chapter [1360](#) (prefabricated buildings) or [1361](#) (industrialized/modular buildings), “and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2”¹⁰; and
- Must contain a backflow check valve.¹¹

Does the State Building Code apply to the construction of a temporary family health care dwelling?

Mostly, no. These structures must meet accessibility standards (which are in the State Building Code). The primary types of dwellings proposed fall within the classification of recreational vehicles, to which the State Building Code does not apply. Two other options exist, however, for these types of dwellings. If these structures represent a pre-fabricated home, the federal building code requirements for manufactured homes apply (as stated in Minnesota Rules, Chapter 1360). If these structures are modular homes, on the other hand, they must be constructed consistent with the State Building Code (as stated in Minnesota Rules, Chapter 1361).

What health, safety and welfare requirements does this new law include?

Aside from the construction requirements of the unit, the temporary family health care dwelling must be located in an area on the property where “septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.”

What local ordinances and zoning apply to a temporary health care dwelling?

The new law states that ordinances related to accessory uses and recreational vehicle storage and parking do not apply to these temporary family health care dwellings.

⁹ The Legislature did not provide guidance on what represents “other comparable means”.

¹⁰ ANSI Code 119.2 has been superseded by NFPA 1192. For more information, the American National Standards Institute website is located at <https://www.ansi.org/>.

¹¹ New Minn. Stat. § 462.3593, subd. 2 sets forth all the structure criteria.

However, unless otherwise provided, setbacks and other local ordinances, charter provisions, and applicable state laws still apply. Because conflicts may arise between the statute and one or more of the city's other local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

What permit process should cities follow for these permits?

The law creates a new type of expedited permit process. The permit approval process found in Minn. Stat. § 15.99 generally applies; however, the new law shortens the time frame within which the local governmental unit can make a decision on the permit. Due to the time sensitive nature of issuing a temporary dwelling permit, the city does not have to hold a public hearing on the application and has only 15 days (rather than 60 days) to either issue or deny a permit. For those councils that regularly meet only once a month, the law provides for a 30-day decision. The law specifically prohibits cities from extending the time for making a decision on the permit application. The new law allows the clock to restart if a city deems an application incomplete, but the city must provide the applicant written notice within five business days of receipt of the application identifying the missing information.

Can cities collect fees for these permits?

Cities have flexibility as to amounts of the permit fee. The law sets the fee at \$100 for the initial permit with a \$50 renewal fee, unless a city provides otherwise by ordinance

Can cities inspect, enforce and ultimately revoke these permits?

Yes, but only if the permit holder violates the requirements of the law. The statute allows for the city to require the permit holder to provide evidence of compliance and also authorizes the city to inspect the temporary dwelling at times convenient to the caregiver to determine compliance. The permit holder then has sixty (60) days from the date of revocation to remove the temporary family health care dwelling. The law does not address appeals of a revocation.

How should cities handle data it acquires from these permits?

The application data may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act. To minimize collection of protected health data or other nonpublic data, the city could, for example, request that the required certification of need simply state "that the person who will reside in the temporary family health care dwelling needs assistance with two or more instrumental activities of daily living", without including in that certification data or information about the specific reasons for the assistance, the types of assistance, the medical conditions or the treatment plans of the person with the mental illness or physical disability. Because of the complexities surrounding nonpublic data, cities should consult their city attorneys when drafting a permit application.

Should the city consult its city attorney?

Yes. As with any new law, to determine the potential impact on cities, the League recommends consulting with your city attorney.

Temporary Family HealthCare Dwellings
June 27, 2016
Page 7

Where can cities get additional information or ask other questions.

For more information, contact Staff Attorney Pamela Whitmore at pwhitmore@lmc.org or LMC General Counsel Tom Grundhoefer at tgrundho@lmc.org. If you prefer calling, you can reach Pamela at 651.281.1224 or Tom at 651.281.1266.

City of Independence

Request for a Variance and Minor Subdivision to Permit a Lot Line Rearrangement for the Property Located at 4675 Lake Sarah Road

To: Planning Commission
From: Mark Kaltsas, City Planner
Meeting Date: August 16, 2016
Applicant/Owner: George and Linda Becker
Location: 4675 Lake Sarah Road

Request:

1. 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.

Property/Site Information:

The subject property is located north of CSAH 11 and on the west and east sides of Lake Sarah Road. There is an existing home and outbuildings located on the west side of the property. The property has the following site characteristics:

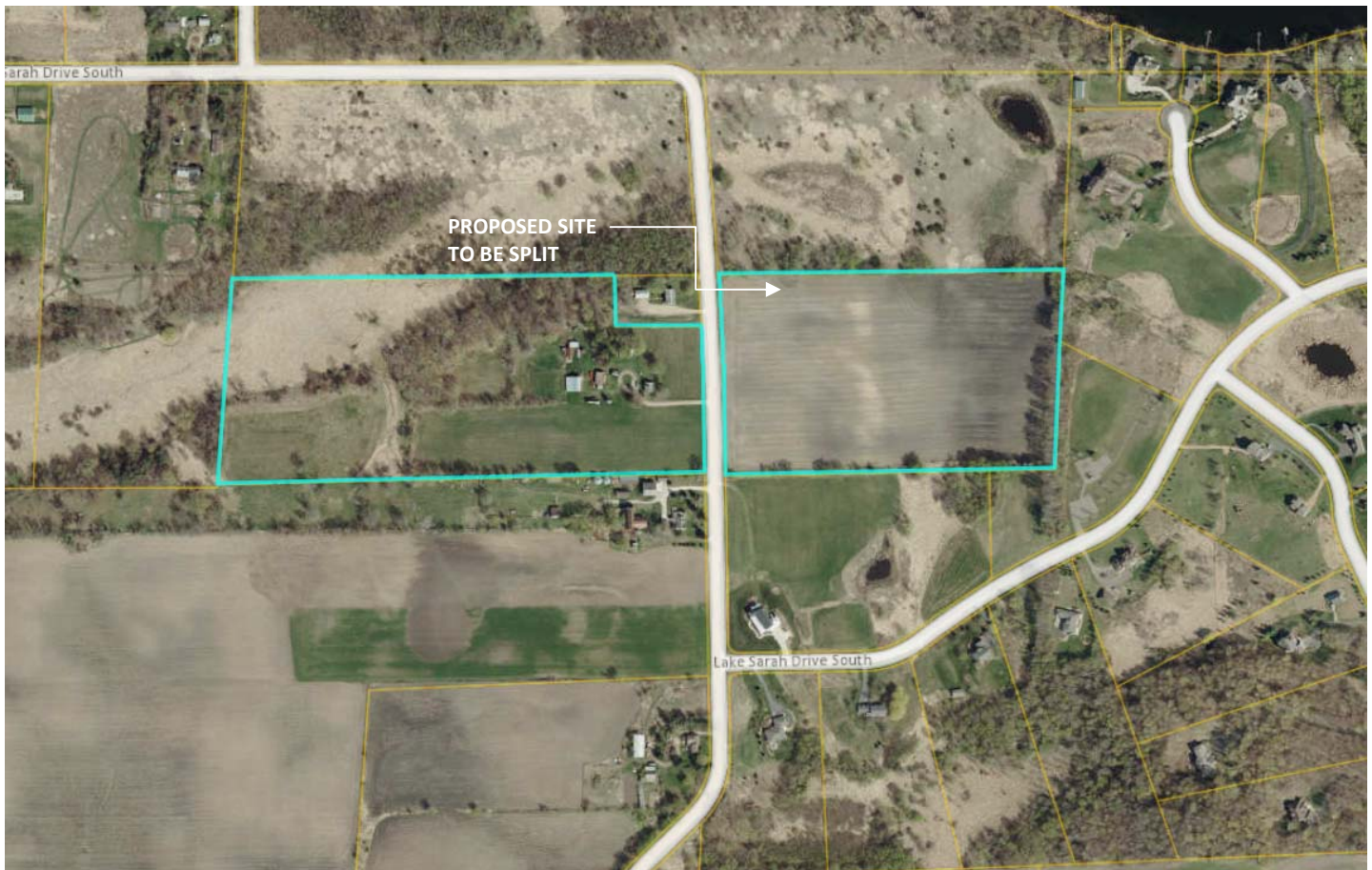
Property Information: 4675 Lake Sarah Drive

Zoning: Agriculture

Comprehensive Plan: Agriculture

Acreage: (BEFORE) 32.49 acres

*Acreage: (AFTER) 16.49 acres – West Parcel
16.00 acres – East Parcel*



Discussion:

The original farmstead is somewhat 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.



Planning Commission Discussion:

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