



CITY COUNCIL MEETING AGENDA  
TUESDAY OCTOBER 6, 2020

**CITY COUNCIL MEETING TIME: 6:30 PM**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. \*\*\*\*Consent Agenda\*\*\*\*

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

- a. Approval of City Council Minutes from the September 10, 2020 City Council Workshop.
  - b. Approval of City Council Minutes from the September 15, 2020 Regular City Council Meeting.
  - c. Approval of Accounts Payable; Checks Numbered 19894-19943.
  - d. Approval of Election Judges for the 2020 General Election.
  - e. Consideration of Amendment to the Hennepin Council residential recycling resolution.
  - f. 3<sup>rd</sup> Quarter Building Permit Report (For Council Information).
5. Set Agenda – Anyone Not on the Agenda can be Placed Under Open/Misc.
  6. Reports of Boards and Committees by Council and Staff.
  7. Trevor Clemming Jr. (Applicant/Owner) requests that the City consider the following action for the property located at 2740 Nelson Road (PID No. 18-118-24-42-0001) in Independence, MN:
    - a. **RESOLUTION 20-1006-01:** Considering approval of a conditional use permit (CUP) to allow a commercial riding stable to be operated on the subject property.
  8. Darryl Jorgenson (Applicant) and Mary Jorgenson (Owner) request that the City consider the following action for the property located at 4594 Shady Beach Circle, Independence, MN (PID No. 02-118-24-21-0029):
    - a. **RESOLUTION 20-1006-02:** Considering approval of the Final Plat and Development Agreement for the subdivision to be known as Shady Beach Park.

9. Discussion regarding compliance of the Conditional Use Permit granted for the property located at 3315 County Road 92 N. (PID No. 09-118-24-34-0004).
10. Discussion relating to the interpretation and application of setbacks for detached accessory structures within the City.
11. Open/Misc.
12. Adjourn.

MINUTES OF A WORK SESSION OF THE  
INDEPENDENCE CITY COUNCIL  
THURSDAY SEPTEMBER 10, 2020 –7:00 A.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a work session of the Independence City Council was called to order by Mayor Johnson at 7:00 a.m.

2. ROLL CALL

PRESENT: Mayor Johnson, Councilors Betts, Spencer, Grotting and McCoy

ABSENT: None

STAFF: City Administrator Kaltsas, Public Works Supervisor Bode, Assistant to Administrator Horner

VISITORS: Steve McDonald (ABDO), WHPS Chief Kroells

3. Large Assembly Permit for 1060 Copeland Road

Kaltsas said the City has received an application from MN SNAP (Minnesota Spay Neuter Assistance Program) for a large assembly permit to hold a charity drive-in event on the property located at 1060 Copeland Road. The event is scheduled to be held on Saturday September 12th from 6:00 PM to 8:00 PM. The City received the application on Tuesday, September 1 which does not meet our application submittal deadlines. Staff is working to accommodate the application and has reviewed the information presented. Both WHPS and the City have reviewed and approved the application pending City Council consideration.

This event will have approximately 200 guests (76 cars) that will remain in their vehicles for the duration of the event. There will be a performance by the MacPhail Kids Choir along with a donor recognition and artwork reveal. The event will largely be held in the pasture located adjacent to Copeland Road (see attached site plan). The event will be professionally catered, and boxed meals will be provided to the attendees.

Staff would like to discuss large assembly permits in general and the timing and submittal of applications with Council. This year is more difficult for planning and timely submittals due to the uncertainty of many events relating to Covid-19. The City also received two additional large assembly permits last week and this week for events on September 19th that will be presented at the September 15th City Council Meeting. Council is being asked to consider approval of the Large Assembly Permit for an event to be held on Saturday, September 12th, 2020 for MN SNAP and located on the property at 1060 Copeland Road.

Grotting asked if the meeting wasn't held would it have to be turned down. Kaltsas said they probably would have still held the event. Grotting asked how many events are not approved and should administration be able to ok these types of things without Council approval. Kaltsas noted that there is a need to educate the residents that permits are required for events greater than 50 people. Johnson noted it was hard to plan events this year. Kroells stated it helps to notify police of events so they can be prepared. Kaltsas said 30 days would be a more workable timeframe for people than 45.

**Motion by Spencer, second by Grotting to approve the large assembly permit for 1060 Copeland Road  
Ayes: Johnson, Betts, Spencer, McCoy and Grotting. Nays: None. Absent: None. Abstain. None.  
MOTION DECLARED CARRIED.**

**Motion by Grotting, second by McCoy directing Staff to draft an ordinance to allow Staff approval on large assemblies: Johnson, Betts, Spencer, McCoy and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

#### 4. General Administration

##### a. 2020 Budget/Finance

###### Preliminary Budget and Levy Review/Discussion

- Police/Fire Updates
- Updated Sewer Rate

McDonald said there was an increased transfer out of the general fund. He noted the projected 2021 fund balance. 135k maintains the fund balance reserve level at 45%. The budget was kept under 10% and the tax rate is 40%. This budget has 100k for roads with sealcoat and tiling/ graveling. Kaltsas said it will be voted on at the City Council meeting on 9/15/2020.

Spencer asked about Maple Plain Fire. Kaltsas said they did not provide a budget, so he kept the number flat for them this year. He said he will discuss with Maple Plain and Loretto Fire about possibly doing a JPA or forming a district. He said they looked at response times and Maple Plain can get to Independence much quicker than Delano Fire. Kaltsas said as a small city it may make more sense to form a district to avoid redundancy in equipment and then there would be adequate staff. McCoy noted equipment costs keep going up and with the current equipment it is not sustainable. He noted the ladder truck is 20 years old and in 5 years will need to be replaced.

Kaltsas noted that Maple Plain wants a zero increase in the police budget as they also requested last year. Last year a nominal increase was agreed upon. The City of Independence did not agree as that would equate to a cut to the police. The City of Independence proposed a 2.3% budget increase. Maple Plain does not think they can sustain the continued growth of the police budget but had no solution either. Kaltsas said they looked at a 10-city survey and compare to our services and budgets. He said we want to be in the top half of that study and right now we are rated 5<sup>th</sup>. He noted we are the only department without a union. Kaltsas said Maple Plain came back with a request for 3-5-year budget projection. Independence provides 69% of the budget currently and Maple Plain provides 32%. Kaltsas noted with Haven Homes new facility in Maple Plain that their calls for police service will skyrocket.

Betts said a 3-year projection is a good idea. Kroells said the discussion is great and we value the employees greatly. He noted his police did not miss a minute of time due to COVID-19. Spencer said models change and maybe we should lock the formula of percentages. Kroells said a 1-year contract does not provide a lot of stability. McCoy said a 5-year contract would provide stability and some relief. Kroells said in 5 years Independence went up 4% (from 2013-2019). Kaltsas said the whole commission will look at this issue not just a sub-commission. McCoy stated that if Maple Plain withdrew it would have a huge impact. Kroells said Mound has contract now with an automatic 3% increase each year.

McDonald outlined some items in the sewer rate study. He noted the 3% increase and the connection fee increase to 4k from 1k. He said the details that drive the largest revenue change are new connections with a 2 per year projected scenario. Kaltsas noted the issue is our lift stations with 34 stations serving only 230 customers. He said the connection fee is in line with other cities. Kaltsas said there will be growth with Jerde Tree Farm and Otten Developments once the Comp Plan is approved.

He said Jerde will be a gravity system. Kaltsas noted this will go to Council for fee schedule determination.

b. City Hall Facility Renovations Update

Kaltsas noted there will be bid opening on 9/15 at City Hall for the City Hall Renovations.

c. Highway 12 Update

Kaltsas said the City needs to determine if the Robert's property should keep the Highway 12 driveway. It would come out where County Road 92 round-about merges. Kroells stated he did not feel it was safe for the Roberts driveway to have an entry on Highway 12. Kaltsas said it could make their house value go down with a driveway out to Highway 12. The Wolf's would have to grant an easement for Robert's to have access across their property. Grotting asked if a frontage road would be eligible for federal dollars. Kaltsas said it is a frontage road and is indeed eligible. He noted the City would take it over for maintenance after it was developed. Council suggested that Staff do some more negotiating and give residents a choice.

d. Administration

- Civil Penalty for Golf Course Illegal Sale of Alcohol to Minor
- Absentee Voting Notification
- City Council Compensation Analysis/Survey
- Personnel Committee Recommendations

Kroells stated alcohol compliance checks were done on local businesses for the illegal sale of alcohol to minors. He noted four out of nine failed with one in Independence. The City is able to impose a civil penalty for the non-compliance. Kroells stated Pioneer Creek is a model place in general for training and usually on top of it. They would like remedial training instead of a fine. Spencer said it remains consistent and request more training and not impose a fine much like has been done with Ox Yoke previously.

**Motion by Spencer, second by Grotting to do follow-up training instead of imposing a fine. Ayes: Johnson, Betts, Spencer, McCoy and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

Kaltsas stated a postcard would be mailed out with voting information at City Hall to all residents. He said COVID money would be used to produce and send the mailer.

Kaltsas said a survey of City Councils illustrated that our salary levels are low in comparison. He noted an increase would happen after the election. The City Administrators contract was up, and a performance review took place. It was noted that Kaltsas is a contractor, so the City does not have to pay for his benefits. The Council makes policy and the Administrator runs the City. Spencer said the personnel committee determined that it was in the City's best interest to extend Kaltsas' s contract for another five years as well an increase of 5% annually in salary.

**Motion by Spencer, second by McCoy approve the new contract for the City Administrator for another five years with the adjusted base salary and annual 5% increases. Ayes: Johnson, Betts,**

**Spencer, McCoy and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

4. Adjourn

**Motion by Spencer, second by McCoy to adjourn at 9:32 a.m.**

Respectfully submitted,

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Trish Gronstal, Recording Secretary

DRAFT

MINUTES OF A REGULAR MEETING OF THE  
INDEPENDENCE CITY COUNCIL  
TUESDAY, SEPTEMBER 15, 2020 –6:30 P.M.

1. CALL TO ORDER.

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

3. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

2. ROLL CALL

PRESENT: Mayor Johnson, Councilors Betts, Spencer, McCoy and Grotting

ABSENT: City Attorney Vose

STAFF: City Administrator Kaltsas, Assistant to Administrator Horner

VISITORS: Gretchen Piper

3. \*\*\*\*Consent Agenda\*\*\*\*

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

- a. Approval of City Council Minutes from the September 1, 2020 Regular City Council Meeting.
- b. Approval of Accounts Payable; Checks Numbered 19878-19893.
- c. Large Assembly Permit for 2636 Independence Rd. - Event to be Held on Saturday, September 19<sup>th</sup>, 2020.

**Motion by McCoy, second by Grotting to approve the Consent Agenda. Ayes: Johnson, Betts, Spencer, McCoy and Grotting. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

4. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

5. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

**Spencer attended the following meetings:**

- Highway 12 Safety Coalition
- City Council Workshop
- Shoreland Restoration Meeting

**Grotting attended the following meetings:**

- City Council Workshop

**McCoy attended the following meetings:**

- City Council Workshop

**Betts attended the following meetings:**

- City Council Workshop
- West Hennepin Chamber of Commerce Meeting
- Highway 12 Safety Coalition Meeting

**Johnson attended the following meetings:**

- Met with Ag Commissioner (Zoom)
- City Council Workshop
- West Hennepin Chamber of Commerce Meeting
- Bid Opening for City Hall renovations
- Regional Council of Mayors Meeting (Zoom)
- Email from resident about erosion issues (forward to Staff)
- Phone Call from Census taker

**Horner attended the following meetings:**

- Met with BKV architects
- City Council Workshop

**Kaltsas attended the following meetings:**

6. Gretchen Piper – Running for State Senate.

Piper introduced herself as a Senate candidate for District 33. She grew up in the area and currently lives in Wayzata. She wants to get past the partisan gridlock and looks forward to promoting important values in the Senate. Piper stressed the importance of healthcare for all and addressed the current challenges with Covid19. She spoke to environmental issues and how important funding is for that. Piper thanked the Council for the service to the community.

7. West Hennepin Public Safety – Director Gary Kroells: Presentation of the August 2020 Activity Report.

Kroells stated as of August 31, 2020 there were a total of 3,546 incidents year-to-date in the community. He said in August there were 276 incidents in Independence and 170 incidents in Maple Plain. Kroells highlighted some cases.

\*for a complete report see the City Council packet\*

8. Consider Approval of the 2020 Preliminary Budget and Tax Levy:

- RESOLUTION NO. 20-0915-01** – Establishing the General and Debt Service Preliminary Tax Levy and Setting a Date for the 2020 Truth in Taxation Meeting for December 1, 2020.
- RESOLUTION NO. 20-0915-02** – Establishing the Pioneer Sarah Creek Watershed Management Commission Preliminary Tax Levy.

Kaltsas said Staff and Council have had several meetings to discuss and revise the preliminary budget and corresponding tax levy for 2021. Council is being asked to consider and provide direction relating to the preliminary budget goals. For the past three years, Council has directed staff to prepare a budget using a



flat tax rate of ~40% with no increase in rate. Abdo, Eick & Meyers and staff have prepared a draft preliminary budget which reflects an overall increase of 9.48% or \$292,697.00. A large percentage of the total increase (\$135,000) is a transfer out into the general fund. The draft budget and associated budget memo provide additional information relating to the budget.

Several highlights of the draft preliminary budget are as follows

o The budget includes initial public safety increases prepared by all public safety entities. The City has received estimated budgets from all three Fire Departments. West Hennepin Public Safety has received approval from the Police Commission on their preliminary budget.

Maple Plain Fire: **\$250,684.00**

Delano Fire: **\$64,806.41**

Loretto Fire: **\$93,605.48**

WHPS: **\$1,182,630.00**

o The City has PW capital equipment cash balance of approximately \$27,218. Several minor adjustments have been made to the capital plan to keep the cash flow in the positive. Staff has changed the purchase of a new single axel truck to a tandem axel and pushed back the purchase until 2026 from 2025. The City's capital equipment plan projects how the City will be able to fund capital equipment purchases moving forward using a flat budget number of \$60,000 per year (see capital equipment plan). For 2021, the City anticipates purchasing a new 1-ton pickup truck as shown in the capital plan. Once again, the capital improvement plan for City Hall shows no significant expenditures as a result of the current improvement projects.

o The budget reflects a 2% cost of living increase and no increase to benefit amounts per employee. It should be noted that health insurance costs are estimated to be increasing by 8%.

o The City has a capital road improvement plan that includes seal coating and gravel road tiling. In order to fund the plan, the City needs to budget approximately \$100,000 to \$125,000 per year. The budget reflects an increased place holder for 2021 of \$100,000 (\$50,000 in seal coating and \$50,000 in tiling). Note that the City has determined that in practice, it would focus all funds in both line items towards either seal coating or tiling in alternating years to achieve an economy of scale.

The City Council will have the opportunity to further refine the budget prior to the requisite December 2020 adoption. At this time, the City is considering the adoption of the preliminary budget and tax levy which establishes the maximum tax levy for taxes payable in 2021. The preliminary levy is required to be set prior to September 30, 2020. The City can adopt a final levy that is less than the preliminary but cannot increase the final levy set in December from the adopted preliminary levy. The City Council is being asked to consider approval of **RESOLUTION 20-0915-01** and **RESOLUTION 20- 0915-02** approving the preliminary levies and budget for 2021.

**Motion by Spencer, second by McCoy to approve RESOLUTION 20-0915-01 -Establishing the General and Debt Service Preliminary Tax Levy and Setting a Date for the 2020 Truth in Taxation Meeting for December 1, 2020. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

**Motion by Spencer, second by Betts to approve RESOLUTION NO. 20-0915-02 – Establishing the Pioneer Sarah Creek Watershed Management Commission Preliminary Tax Levy. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

9. Award City Hall/WHPS Renovation and Update Contract:

- a. **RESOLUTION NO. 20-0915-03** – Awarding the City Hall renovation project contract to the low bidder.

Kaltsas said some needed renovations for City Hall which include mechanicals and cosmetic changes were put out for bid. The City received 11 bids with 3 below budget. 6 add alternates which aren't essential but may want to incorporate. Kaltsas recommended awarding to low bidder-Rochon. He said construction should be able to start this year.

**Motion by McCoy, second by Spencer to approve RESOLUTION NO. 20-0915-03 – Awarding the City Hall renovation project contract to the Rochon Corporation. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

10. OPEN/MISC.

11. ADJOURN.

**Motion by Betts, second by Grotting to adjourn at 7:30 p.m. Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. Abstain. None. MOTION DECLARED CARRIED.**

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Respectfully Submitted,  
Trish Gronstal/ Recording Secretary



## City of Independence

### Approval of Election Judges for the General Election

To: City Council  
From: Beth Horner  
Meeting Date: October 6, 2020

**Discussion:**

The City Council is required to appoint election judges for the upcoming 2020 General Election. Staff has prepared a list of judges for consideration by the City Council. The following election judges can be considered for appointment by the City Council:

- Marvin Johnson
- Charlie Hayes
- Marilyn Hamilton
- Jerry Wise
- Julie Grist (Absentee Only)
- Damon Kocina
- Andrea Combs
- Lori McNamara
- Kathy Quandt
- Judy Crosby
- Darcy Ciatti
- Sharon Cook
- Carol Neyens
- Chandani Shroff
- Atul Shroff
- Chris Lyrek
- Susan Ritts
- Tim Zeigler
- Kim Klancke
- Max Berkelman
- Judy MacGibbon

**Recommendation:**

It is recommended that the City Council approve the appointment of the  
aforementioned election judges.



**RESOLUTION NO. 20-1006-03**

**RESOLUTION AUTHORIZING AMENDMENT TO  
RESIDENTIAL RECYCLING GRANT AGREEMENT WITH HENNEPIN COUNTY**

WHEREAS, pursuant to Minnesota Statutes, Chapter 115A.552, Counties shall ensure that residents have an opportunity to recycle; and

WHEREAS, Hennepin County Ordinance 13 requires that each city implement and maintain a recycling program; and

WHEREAS, the Hennepin County Board adopted Resolution No. 20-0197 adopted on June 2, 2020, amended the Hennepin County Residential Recycling Funding Policy to extend the contract period to December 31, 2021, allocate 2021 funds using the same methodology as 2020, allow organics recycling funds to be used for organics drop-off site, and authorized grant funding for municipal recycling programs consistent with said policy; and

WHEREAS, the parties desire to amend the Agreement to extend the term and incorporate other changes as in the Amendment No. 1 to Agreement A166404; and

WHEREAS, the funding policy sets the terms and conditions for distributing grant funds; and

WHEREAS, in order to receive grant funds, the City must sign the agreement; and

WHEREAS, the City wishes to receive these grant funds each year.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Independence, Minnesota, that the City Council accepts the amendment as proposed.

BE IT FURTHER RESOLVED that the City Council authorizes the Mayor, City Administrator or his designee to execute such Residential Recycling Grant Agreement with the County.

This resolution was adopted by the Independence City Council on October 6, 2020, by a vote of \_\_\_\_ ayes and \_\_\_\_ nays.

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Marvin Johnson, Mayor

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Mark Kaltsas, City Administrator

**AMENDMENT NO. 1 TO AGREEMENT A166404**

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 (“COUNTY”), on behalf of the Hennepin County Environment and Energy Department, 701 Fourth Avenue South, Minneapolis, Minnesota 55415-1600 (“DEPARTMENT”) and the CITY OF INDEPENDENCE, 1920 County Road 90, Independence, Minnesota 55359 (“CITY”).

WHEREAS, the COUNTY and the CITY entered into a four-year Residential Recycling Grant Agreement, Contract No. A166404 (“Agreement”), for a residential recycling grant commencing on January 1, 2017; and

WHEREAS, the County Board, by Resolution No. 20-0197 adopted on June 2, 2020, amended the Hennepin County Residential Recycling Funding Policy to extend the contract period to December 31, 2021, allocate 2021 funds using the same methodology as 2020, allow organics recycling funds to be used for organics drop-off sites, and authorized grant funding for municipal recycling programs consistent with said policy; and

WHEREAS, the parties desire to amend the Agreement to extend the term and incorporate other changes;

NOW, THEREFORE, the parties agree that Agreement A166404 is amended as follows:

1. Section 1, TERM AND COST OF THE AGREEMENT, shall be amended to read as follows:

This Agreement shall commence upon execution and terminate on December 31, 2021, unless cancelled or terminated earlier in accordance with the provisions herein.

2. Section 2, SERVICES TO BE PROVIDED, shall be amended to read as follows:

The CITY shall operate its recycling program in accordance with the requirements described in the County’s amended Residential Recycling Funding Policy (“Policy”), attached as Attachment A and incorporated by this reference, and fulfill the responsibilities of the Policy.

3. Section 3, ALLOCATION OF FUNDS, shall be amended to read as follows:

The COUNTY will distribute SCORE funds as described in the Policy. The CITY shall follow the requirements for use of funds described in the Policy.

Except as amended, the terms, conditions and provisions of this Agreement shall remain in full force and effect.

**RESIDENTIAL RECYCLING GRANT AGREEMENT**

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 ("COUNTY"), on behalf of the Hennepin County Environment and Energy Department, 701 Fourth Avenue South, Minneapolis, Minnesota 55415-1600 ("DEPARTMENT") and the CITY OF INDEPENDENCE, 1920 County Road 90, Independence, Minnesota 55359 ("CITY").

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

This Agreement shall commence upon execution and expire on December 31, 2020, unless cancelled or terminated earlier in accordance with the provisions herein.

Annual grant payments shall be calculated as set forth in Section 3.

2. SERVICES TO BE PROVIDED

The CITY shall apply for annual grant funds and operate its Recycling Program as more fully described in Attachment A, the Residential Recycling Funding Policy.

3. ALLOCATION OF FUNDS

The COUNTY will distribute to Hennepin County municipalities 100% of SCORE funds that the COUNTY receives from the state. SCORE funds will be dedicated to two different purposes: 1) curbside recycling and 2) curbside organics recycling. SCORE funds are based on revenue received by the State of Minnesota from the solid waste management (SWM) tax on garbage services. SCORE funds are subject to change based on the SWM tax revenue received by the state and funds allocated by the legislature. Funds distributed to municipalities for the current calendar year will be based on SCORE funds received by the COUNTY in the state's corresponding fiscal year.

Recycling

The following formula will be utilized to determine a CITY'S recycling SCORE grant each year.

Percent of SCORE funds allocated to curbside recycling:

2017	80%
2018	70%
2019	60%
2020	50%



CITY recycling grant calculation:

$$\frac{\text{Number of households with curbside recycling in city}}{\text{Total number of households with curbside recycling in county}} \times \text{Total SCORE funds available for recycling} = \text{Recycling grant amount available to the city}$$

Eligible residential households are defined as single family through eight-plex residential buildings or other residential buildings where each housing unit sets out its own recycling container for curbside collection. The number of eligible households will be determined by counting the number of eligible households on January 1 of each funding year. The CITY will report the number in its application for funding.

The COUNTY will make two equal payments to the CITY. One payment will be made after the COUNTY receives the application, which consists of the web-based report and the planning document. A second payment will be made after basic program requirements, education and outreach requirements, and recycling performance have been confirmed and approved. If the CITY meets the COUNTY requirements, both payments will be made during the same calendar year. Funding will be withheld until the CITY meets the requirements of the Residential Recycling Funding Policy.

Organics

The following formula will be utilized to determine a CITY'S organics recycling SCORE grant each year.

Percent of SCORE funds allocated to curbside organics recycling:

2017	20%
2018	30%
2019	40%
2020	50%

CITY organics recycling grant calculation:

$$\frac{\text{Number of households with curbside organics in city}}{\text{Total number of households with curbside organics in county}} \times \text{Total SCORE funds available for organics} = \text{Organics grant amount available to the city}$$

If the formula above results in the CITY receiving a grant where the dollar amount per participating household is greater than \$25 per year, then a cap will apply. The funding cap per participating household is \$25 per year. The most the COUNTY will grant a CITY is \$25 per participating household per year. If funds are left over because of the cap, those funds will carry over into the following year's SCORE funds.

Eligible residential households are defined as single family through eight-plex residential buildings or other residential buildings where the household is signed up for organics service and the household sets out its own container with organics for curbside collection. The number of eligible households will be determined by counting the number of eligible households on September 1 of each funding year. The CITY will report the number in the application for funding.

The COUNTY will make one organics grant payment to the CITY each year. The payment will be made after the COUNTY receives the application and confirms that the CITY meets the requirements of the Residential Recycling Funding Policy.

4. PROFESSIONAL CREDENTIALS

INTENTIONALLY OMITTED

5. INDEPENDENT CITY

CITY shall select the means, method, and manner of performing the services. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting CITY as the agent, representative, or employee of COUNTY for any purpose. CITY is and shall remain an independent contractor for all services performed under this Agreement. CITY shall secure at its own expense all personnel required in performing services under this Agreement. CITY's personnel and/or subcontractors engaged to perform any work or services required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or Minnesota Statutes, chapter 176 (which may be referred to as the "Workers' Compensation Act"), on behalf of any personnel, including, without limitation, claims of discrimination against CITY, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

6. INDEMNIFICATION

CITY shall defend, indemnify, and hold harmless COUNTY, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of CITY, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CITY to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of CITY personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the provisions set forth herein.

7. INSURANCE

A. With respect to the services provided pursuant to this Agreement, CITY shall at all times during the term of this Agreement and beyond such term when so required have and keep in force the following minimum insurance coverages or CITY's actual insurance limits for primary coverage and excess liability or umbrella policy limits, whichever is greater:

	<u>Limits</u>
1. Commercial General Liability on an occurrence basis with contractual liability coverage:	
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	2,000,000
Personal and Advertising Injury	1,500,000
Each Occurrence—Combined Bodily Injury and Property Damage	1,500,000
2. Workers' Compensation and Employer's Liability:	
Workers' Compensation	Statutory
Employer's Liability. Bodily injury by:	
Accident—Each Accident	500,000
Disease—Policy Limit	500,000
Disease—Each Employee	500,000

3.	Professional Liability—Per Claim	1,500,000
	Aggregate	2,000,000

The professional liability insurance must be maintained continuously for a period of two years after the expiration, cancellation or termination of this Agreement.

- B. An umbrella or excess policy is an acceptable method to provide the required commercial general insurance coverage.

The above establishes minimum insurance requirements. It is the sole responsibility of CITY to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Upon written request, CITY shall promptly submit copies of insurance policies to COUNTY.

CITY shall not commence work until it has obtained required insurance and filed with COUNTY a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Hennepin County as the certificate holder, and as an additional insured for the commercial general liability coverage required herein. A self-insured retention (SIR) applicable to the commercial liability coverage is not acceptable, unless expressly agreed to in writing by COUNTY. If the certificate form contains a certificate holder notification provision, the certificate shall state that the insurer will endeavor to mail to COUNTY thirty (30) day prior written notice in the event of cancellation/termination of any described policies. If CITY receives notice of cancellation/termination from an insurer, CITY shall fax or email a copy of the notice to COUNTY within two business days.

CITY shall furnish to COUNTY updated certificates during the term of this Agreement as insurance policies expire. If CITY fails to furnish proof of insurance coverages, COUNTY may withhold payments and/or pursue any other right or remedy allowed under contract, law, equity, and/or statute.

CITY waives all rights against COUNTY, its officials, officers, agents, volunteers, and employees for recovery of damages to the extent that damages are covered by insurance of CITY.

8. DUTY TO NOTIFY

CITY shall promptly notify COUNTY of any claim, action, cause of action or litigation brought against CITY, its employees, officers, agents or subcontractors, which arises out of the services described in this Agreement.

CITY shall also notify COUNTY whenever CITY has a reasonable basis for believing that CITY and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a claim, action, cause of action, administrative action,

criminal arrest, criminal charge or litigation arising out of and/or related to the services described in this Agreement.

9. DATA

CITY, its officers, agents, owners, partners, employees, volunteers and subCITYs shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For clarification and not limitation, COUNTY hereby notifies CITY that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. CITY shall promptly notify COUNTY if CITY becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA or other data or privacy laws.

Classification of data as trade secret data will be determined pursuant to applicable law and, accordingly, merely labeling data as "trade secret" does not necessarily make the data protected as such under any applicable law.

10. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CITY and involve transactions relating to this Agreement. CITY shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its expiration, cancellation or termination.

11. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. CITY binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations herein.
- B. CITY shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by CITY, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve CITY of its liabilities and obligations under the Agreement.
- C. CITY shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of COUNTY. Permission to subcontract, however, shall under no circumstances relieve CITY of

its liabilities and obligations under the Agreement. Further, CITY shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CITY and each subcontractor shall require that the subcontractor's services be performed in accordance with this Agreement. CITY shall make contracts between CITY and subcontractors available upon request. For clarification and not limitation of Section 15E, none of the following constitutes assent by COUNTY to a contract between CITY and a subcontractor, or a waiver or release by COUNTY of CITY's full compliance with the requirements of this Section: (1) COUNTY's request or lack of request for contracts between CITY and subcontractors; (2) COUNTY's review, extent of review or lack of review of any such contracts; or (3) COUNTY's statements or actions or omissions regarding such contracts.

- D. As required by Minnesota Statutes section 471.425, subd. 4a, CONTRACTOR shall pay any subcontractor within ten (10) days of CONTRACTOR's receipt of payment from COUNTY for undisputed services provided by the subcontractor, and CONTRACTOR shall comply with all other provisions of that statute.

12. MERGER, MODIFICATION AND SEVERABILITY

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
- B. Any alterations, variations or modifications of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. Except as expressly provided, the substantive legal terms contained in this Agreement including but not limited to Indemnification, Insurance, Merger, Modification and Severability, Default and Cancellation/Termination or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.
- C. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

13. DEFAULT AND CANCELLATION/TERMINATION

- A. If CITY fails to perform any of the provisions of this Agreement, fails to administer the work so as to endanger the performance of the Agreement or otherwise breaches or fails to comply with any of the terms of this Agreement, it

shall be in default. Unless CITY's default is excused in writing by COUNTY, COUNTY may upon written notice immediately cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until CITY's compliance. In the event of a decision to withhold payment, COUNTY shall furnish prior written notice to CITY.

- B. For purposes of this subsection, "Data" means any data or information, and any copies thereof, created by CITY or acquired by CONTACTOR from or through COUNTY pursuant to this Agreement, including but not limited to handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, videos, or symbols, or combinations thereof.

Upon expiration, cancellation or termination of this Agreement:

1. At the discretion of COUNTY and as specified in writing by the Contract Administrator, CITY shall deliver to the Contract Administrator all Data so specified by COUNTY.
  2. COUNTY shall have full ownership and control of all such Data. If COUNTY permits CITY to retain copies of the Data, CITY shall not, without the prior written consent of COUNTY or unless required by law, use any of the Data for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such Data; and shall not do anything which in the opinion of COUNTY would affect COUNTY's ownership and/or control of such Data.
  3. Except to the extent required by law or as agreed to by COUNTY, CITY shall not retain any Data that are confidential, protected, privileged, not public, nonpublic, or private, as those classifications are determined pursuant to applicable law.
- C. Notwithstanding any provision of this Agreement to the contrary, CITY shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by CITY. Upon notice to CITY of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to CITY for the purpose of set-off until such time as the exact amount of damages due COUNTY from CITY is determined. Following notice from COUNTY of the claimed breach and damage, CITY and COUNTY shall attempt to resolve the dispute in good faith.
- D. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.

- E. COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- F. This Agreement may be canceled/terminated with or without cause by either party upon thirty (30) day written notice.
- G. If this Agreement expires or is cancelled or terminated, with or without cause, by either party, at any time, CITY shall not be entitled to any payment, fees or other monies except for payments duly invoiced for then-delivered and accepted deliverables/milestones pursuant to this Agreement. In the event CITY has performed work toward a deliverable that COUNTY has not accepted at the time of expiration, cancellation or termination, CITY shall not be entitled to any payment for said work including but not limited to incurred costs of performance, termination expenses, profit on the work performed, other costs founded on termination for convenience theories or any other payments, fees, costs or expenses not expressly set forth in this Agreement.
- H. Upon written notice, COUNTY may immediately suspend or cancel/terminate this Agreement in the event any of the following occur: (i) COUNTY does not obtain anticipated funding from an outside source for this project; (ii) funding for this project from an outside source is withdrawn, frozen, shut down, is otherwise made unavailable or COUNTY loses the outside funding for any other reason; or (iii) COUNTY determines, in its sole discretion, that funding is, or has become, insufficient. COUNTY is not obligated to pay for any services that are provided or costs or expenses or obligations incurred or encumbered after the notice and effective date of the suspension or cancellation/termination. In the event COUNTY suspends, cancels or terminates this Agreement pursuant to this paragraph, COUNTY shall pay any amount due and payable prior to the notice of suspension or cancellation/termination except that COUNTY shall not be obligated to pay any amount as or for penalties, early termination fees, charges, time and materials for services not then performed, costs, expenses or profits on work done.
- I. CITY has an affirmative obligation, upon written notice by COUNTY that this Agreement may be suspended or cancelled/terminated, to follow reasonable directions by COUNTY, or absent directions by COUNTY, to exercise a fiduciary obligation to COUNTY, before incurring or making further costs, expenses, obligations or encumbrances arising out of or related to this Agreement.

14. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement do survive such term, cancellation or termination. Such



provisions include but are not limited to: SERVICES TO BE PROVIDED (as to ownership of property); INDEPENDENT CITY; INDEMNIFICATION; INSURANCE; DUTY TO NOTIFY; DATA; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION/TERMINATION; MEDIA OUTREACH; and MINNESOTA LAW GOVERNS.

15. CONTRACT ADMINISTRATION

In order to coordinate the services of CITY with the activities of the Environment and Energy Department so as to accomplish the purposes of this Agreement, Ben Knudson, Waste Reduction and Recycling Specialist, or his successor, shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and CITY.

16. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CITY shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. CITY shall comply with all applicable conditions of the COUNTY grant.

17. PAPER RECYCLING

COUNTY encourages CITY to develop and implement an office paper and newsprint recycling program.

18. NOTICES

Unless the parties otherwise agree in writing, any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to CITY shall be sent to the address stated in the opening paragraph of this Agreement or to the address stated in CITY's Form W-9 provided to COUNTY.

19. CONFLICT OF INTEREST

CITY affirms that to the best of CITY's knowledge, CITY's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to CITY, CITY shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether CITY will or will not resign from the other engagement or representation. Unless waived by COUNTY, a conflict or potential conflict may, in COUNTY's discretion, be cause for cancellation or termination of this Agreement.

20. MEDIA OUTREACH

CITY shall notify COUNTY, prior to publication, release or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by COUNTY, by and through the Public Relations Officer or his/her designee(s), prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing, promotions, client lists, civic/community events or opportunities and/or other forms of outreach created by, or on behalf of, CITY (i) that reference or otherwise use the term "Hennepin County," or any derivative thereof; or (ii) that directly or indirectly relate to, reference or concern the County of Hennepin, this Agreement, the services performed hereunder or COUNTY personnel, including but not limited to COUNTY employees and elected officials.

21. MINNESOTA LAWS GOVERN

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, state of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the state of Minnesota.

22. COOPERATIVE PURCHASING

At the time of this Agreement: (1) Hennepin County is a signature party to the Joint Powers Purchasing Agreement (Agreement No. A131396) (the "JPA"); (2) the Minnesota Counties of Anoka, Carver, Dakota, Olmsted, Ramsey, Scott and Washington are signatories to the JPA ("Cooperative Members"); (3) if agreed upon pursuant to a separate agreement between CITY and any Cooperative Member, the JPA allows a Cooperative Member, subject to the terms of the JPA, to purchase the same or substantially similar services based upon terms that are the same or substantially similar to those set forth in this Agreement including but not limited to price/cost; and (4) COUNTY shall have no obligation, liability or responsibility for any order or purchase made under the contract between a Cooperative Member and CITY.

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COUNTY BOARD AUTHORIZATION

Reviewed by the County Attorney's Office

*[Signature]*

Assistant County Attorney

Date: 2/2/17

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

By: *[Signature]*  
Chair of Its County Board

ATTEST: *[Signature]*  
Deputy Clerk of County Board

Date: 2.7.17

By: *[Signature]*  
County Administrator

Date: 2/6/17

By: *[Signature]*  
Assistant County Administrator  
- Public Works

Date: 2/6/17

**Recommended for Approval**

By: *[Signature]*  
Acting Director,  
Environment and Energy Department

Date: 1/27/2017

MUNICIPALITY

CITY warrants that the person who executed this Agreement is authorized to do so on behalf of CITY as required by applicable articles, bylaws, resolutions or ordinances.\*

Printed Name: MARK KALBAS

Signed: *[Signature]*

Title: CITY ADMINISTRATOR

Date: 1/10/2017

\*CITY shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time CITY returns the Agreement to the COUNTY. Documentation is not required for a sole proprietorship.

# Hennepin County Residential Recycling Funding Policy

January 1, 2017 – December 31, 2021

Board Adopted: June 2, 2020



Public Works  
Environment and Energy Department

## I. Policy Description

### A. Background

The Hennepin County Board of Commissioners has determined that curbside collection of recyclables and organics from Hennepin County residents is an effective strategy to reduce reliance on landfills, prevent pollution, conserve natural resources and energy, improve public health, support the economy, and reduce greenhouse gases. Therefore, the county adopted the goals established in State Statute and by the Minnesota Pollution Control Agency (MPCA) in its Metropolitan Solid Waste Management Policy Plan and developed a Residential Recycling Funding Policy to help reach a 75% recycling rate by 2030.

The county will distribute all Select Committee on Recycling and the Environment (SCORE) funds received from the state to cities for curbside collection of residential recyclables and organics. If cities form a joint powers organization responsible for managing a comprehensive recycling and waste education system for the residents of those cities, the county will distribute recycling and organics grants to that organization. Cities are expected to fulfill the conditions of the policy.

### B. Term of the Policy

Hennepin County is committed to implement this policy and continue distributing all SCORE funds received from the state for the purpose of funding curbside residential recycling and organics programs from January 1, 2017 through December 31, 2020. The county may revise this policy if it determines changes are needed to assure compliance with state law and MPCA goals established for metropolitan counties. In the event that SCORE funds are eliminated from the state budget or significantly reduced, the county will consult with municipalities at that time and develop a subsequent recommendation to the board on continuation of this policy and future funding of curbside recycling and organics programs.

### C. Grant Agreements

Each municipality seeking funding under the terms of the Residential Recycling Funding Policy must enter into a recycling grant agreement with the county for a term concurrent with the expiration of this policy, December 31, 2020. The grant agreement must be accompanied by a resolution authorizing the city to enter into such an agreement.

### D. Fund Distribution

The county will distribute to Hennepin County municipalities 100% of SCORE funds that the county receives from the state. SCORE funds will be dedicated to two different purposes: 1)

curbside recycling and 2) curbside organics recycling. SCORE funds are based on revenue received by the State of Minnesota from the solid waste management (SWM) tax on garbage services. SCORE funds are subject to change based on the SWM tax revenue received by the state and funds allocated by the legislature. Funds distributed to municipalities for the current calendar year will be based on SCORE funds received by the county in the state’s corresponding fiscal year.

## II. Recycling

### A. Allocation of Funds

The following formula will be utilized to determine a city’s recycling SCORE grant each year.

Percent of SCORE funds allocated to curbside recycling:

2017	80%
2018	70%
2019	60%
2020	50%
2021	50%

City recycling grant calculation:

$$\frac{\text{Number of households with curbside recycling in city}}{\text{Total number of households with curbside recycling in county}} \times \text{Total SCORE Funds available for recycling} = \text{Recycling grant amount available to the city}$$

Eligible residential households are defined as single family through eight-plex residential buildings or other residential buildings where each housing unit sets out its own recycling container for curbside collection. The number of eligible households will be determined by counting the number of eligible households on January 1 of each funding year. The city will report the number in its application for funding.

### B. Application for Funding

Each municipality must complete an annual grant application by February 15 to receive funding for that year. The application consists of a web-based report and a planning document provided

by the county. The web-based report asks for contract, program, tonnage, and financial information. The participation rate for the curbside recycling program must also be included in the web-based report. The municipality must calculate its participation rate during the month of October. The methodology for measuring participation must be provided to the county upon request. The planning document asks for a description of activities the city will implement to increase recycling and make progress toward county objectives.

## C. Use of Funds

The following requirements apply to the use of recycling funds:

1. All grant funds accepted from the county must be used for waste reduction and recycling capital and operating expenses in the year granted. The county will not reimburse any funds in excess of actual expenses.
2. A municipality or joint powers organization may not charge its residents through property tax, utility fees, or any other method for the portion of its recycling program costs that are funded by county grant funds.
3. Municipalities must establish a separate accounting mechanism, such as a project number, activity number, or fund that will separate recycling revenues and expenditures from other municipal activities, including solid waste and yard waste activities.
4. Recycling and waste reduction activities, revenues, and expenditures are subject to audit.
5. Municipalities that do not contract for curbside recycling services will receive grant funds provided that at least 90% of the grant funds are credited back to residents and the city meets all minimum program requirements. The additional 10% may be used for waste reduction and recycling expenses. The county may waive this requirement if the city negotiates a recycling improvement plan with the county.

## D. City Requirements

### 1. Materials Accepted

At a minimum, the following materials must be collected curbside:

- Metal food and beverage cans;
- Glass food and beverage containers;
- Cardboard boxes;
- Newspaper and inserts;

- Mail, office and school papers;
- Cereal, cracker, pasta, cake mix, shoe, gift, and electronics boxes;
- Boxes from toothpaste, medications and other toiletries;
- Magazines and catalogs;
- Aseptic and gable-topped containers; and
- Plastic bottles and containers, #1 – Polyethylene Terephthalate (PET, PETE), #2 High Density Polyethylene (HDPE), #4 – Low Density Polyethylene (LDPE) and #5 – Polypropylene (PP) plastic bottles, except those that previously contained hazardous materials or motor oil.

The county may add materials to this list and require municipalities to begin collection within one year of receiving notification from the county. Municipalities will notify the county if materials not found on this list will be collected.

## 2. Education and Outreach

The partnership between the county and municipalities has been highly effective in educating residents and motivating behavior change. In order to continue this partnership and increase these efforts, program activities of municipalities must be coordinated with county and regional efforts. Municipalities must adhere to the following requirements:

- a. Use county terminology when describing recycling guidelines, including the description of materials accepted and not accepted, preparation guidelines, and promotional materials;
- b. Use images provided by the county or the Solid Waste Management Coordinating Board (SWMCB) if using images of recyclables;
- c. Provide recycling information on the city's website, including materials accepted and not accepted, a recycling calendar, and links to county resources;
- d. Mail a recycling guide to residents each year using a template developed jointly with the county. The county will design and print the guide. If a municipality does not use the template produced by the county, the municipality may develop its own guide at the municipality's expense, but it must be approved by the county. If the municipality relies on the hauler to provide the recycling guide, this guide requires approval by the county.
- e. Complete two educational activities from a menu of options developed by the county.



Any print material that communicates residential recycling guidelines that were not provided by the county template will require county approval. This does not apply to waste reduction and reuse, articles on recycling that do not include guidelines, or social media posts. The county will respond within five business days to any communication piece submitted.

### 3. Recycling Performance

On an annual basis, municipal recycling programs must demonstrate that a reasonable effort has been made to maintain and increase the pounds of recyclables per household collected from their residential recycling programs.

If a municipality does not demonstrate measurable progress, a recycling improvement plan must be submitted by the municipality within 90 days of being notified by the county. The recycling improvement plan must be negotiated with the county and specify the efforts that will be undertaken by the municipality to improve its recycling program to yield the results necessary to achieve county objectives.

In cooperation with the county, the municipality may be required to participate in waste and recycling sorts to identify recovery levels of various recyclables in its community. Based on the results of the study, the county and municipality will collaborate to increase the recovery of select recyclable materials being discarded in significant quantities.

### E. Grant Payments

The county will make two equal payments to the municipality. One payment will be made after the county receives the application, which consists of the web-based report and the planning document. A second payment will be made after basic program requirements, education and outreach requirements, and recycling performance have been confirmed and approved. If the municipality meets the county requirements, both payments will be made during the same calendar year. Funding will be withheld until the municipality meets the requirements of this policy.

## III. Organics Recycling

### A. Allocation of Funds

The following formula will be utilized to determine a city's organics recycling SCORE grant each year:

Percent of SCORE funds allocated to curbside organics recycling:

2017	20%
2018	30%
2019	40%
2020	50%
2021	50%

City organics recycling grant calculation:

$$\frac{\text{Number of households with curbside organics in city}}{\text{Total number of households with curbside organics in county}} \times \frac{\text{Total SCORE funds available for organics}}{\text{Total SCORE funds available for organics}} = \frac{\text{Organics grant amount available to the city}}{\text{Organics grant amount available to the city}}$$

If the formula above results in cities receiving grants where the dollar amount per participating household is greater than \$25 per year, then a cap will apply. The funding cap per participating household is \$25 per year. The most the county will grant a city is \$25 per participating household per year. If funds are left over because of the cap, those funds will carry over into the following year's SCORE funds.

Eligible residential households are defined as single family through eight-plex residential buildings or other residential buildings where the household is signed up for organics service and the household sets out its own container with organics for curbside collection. The number of eligible households will be determined by counting the number of eligible households on September 1 of each funding year. The city will report the number in the application for funding.

## B. Application for Funds

Each municipality must complete an annual application provided by the county by September 1 to receive funding. As a part of the application, a city must submit the number of households signed up for and receiving curbside organics service.

## C. Use of Funds

The grant funds may be used for program expenses, including the following:

- Discount to new customers
- Discount to existing customers

- Referral incentives
- City contract costs
- Education and outreach
- Compostable bags
- Kitchen containers
- Carts
- Organics drop-off sites

Program administration is not an eligible expense. Yard waste expenses are not eligible. If organics are co-collected with other waste, the organics expenses must be tracked separately. If a city passes funds through to a hauler, 100% of those funds must be credited to residents' bills.

In addition, the following requirements apply:

- All grant funds must be used during the term of the agreement. Funds not spent must be returned to the county.
- Funds must be expended on eligible activities per Minnesota State Statute 115A.557.
- A municipality or joint powers organization may not charge its residents through property tax, utility fees, or any other method for the portion of its organics program costs that are funded by county grant funds.
- Municipalities must account for organics expenditures separately upon request by the county. Expenditures are subject to audit.

#### D. Education and Outreach Requirements

The partnership between the county and municipalities has been highly effective in educating residents and motivating behavior change. In order to continue this partnership and increase these efforts, program activities of municipalities must be coordinated with county and regional efforts. The following requirements apply:

1. Use county terminology when describing organics recycling guidelines, including the description of materials accepted and not accepted, preparation guidelines, and promotional materials;
2. Use images provided by the county or the SWMCB if using images of organic materials;
3. Provide organics recycling information on the city's website, including material accepted and not accepted, service options, and links to county resources;
4. Work with the county to develop promotional resources to increase participation.

## E. Reporting

A report on the city's organics program must be submitted electronically to the county by February 15 following each year. The report must include, but is not limited to, the following:

### Basic Program Information

- Hauler(s)
- Collection method
- Where organics were delivered to and processed
- Is service opt-in or opt-out
- Cost of service to residents; contract cost for city
- How the service was billed
- Items included in service, such as curbside collection, cart, compostable bags, etc.

### Results

- Tons
- Number of households signed up
- Average pounds per household per year
- Participation (set-out rate on pickup day)
- Program costs
- How funds were used

## F. Grant Payment

The county will make one organics grant payment to a municipality each year. The payment will be made after the county receives the application and confirms that the municipality meets the requirements of this policy.

COLOR CODE:

NEW HOME SEPTIC

DATE	PERMIT #	NAME	ADDRESS	PID	TYPE	OTHER	MECH.	PLMBG	BLDG VALUE	TOTAL FEES	TOTAL LESS SURCHARGE	TOTAL LESS SURCHARGE	VALUATION
7/1/20	20-186	MN Restoration	5280 Painters Creek	36-21-0007	Re-roof		1			101	1	100	\$14,500.00
7/1/20	20-187	NMC Exteriors	3435 Co Rd 92	09-31-0003	Re-roof		1			101	1	100	\$9,000.00
7/2/20	20-188	Anchor Roofing	6360 Warren Way	14-33-0003	Re-roof		1			101	1	100	\$41,500.00
7/2/20	20-189	Allstar Construction	236 Co Rd 92	32-41-0042	Re-roof		1			101	1	100	\$6,000.00
7/2/20	20-190	Legacy Restoration	6605 Hillstrom	22-13-0001	Re-roof		1			101	1	100	\$24,687.81
7/6/20	20-191	Renewal by Anderson	5630 Drake Dr.	26-41-0002	5 windows				1	141	1	140	\$11,049.00
7/6/20	20-192	Two Teachers Const.	9185 Co Rd 11	07-12-0001	Deck			7.5		434.5	7.5	427	\$14,500.00
7/7/20	20-193	Excel Renovations	7510 Maple Ponds	16-12-0005	Re-roof		1			101	1	100	\$25,000.00
7/7/20	20-194	Decks Unlimited	6630 Franklin Hills	15-12-0004	Deck			7.5		434.5	7.5	427	\$15,000.00
7/7/20	20-195	D-Fence Comp.	9384 Co Rd 6	31-31-0005	Fence					40			\$8,000.00
7/8/20	20-196	New Town Exteriors	5401 Lake Sarah Hgts	01-23-0012	Re-side		1			101	1	100	\$29,829.00
7/9/20	20-197	Bauer Design	2376 Copeland	24-22-0002	Re-roof		2			402	2	400	\$30,000.00
7/9/20	20-198	All Star Construction	5024 S Lakeshore	24-12-0008	Re-roof		1			101	1	100	
7/14/20	20-199	Gregg Gabriel	5300 Pagenkopf	24-21-0006	Mech.			1		101	1	100	\$1,000.00
7/14/20	20-200	Turnkey Restoration	4720 S. Lakeshore Dr.	03-11-0004	Re-roof		1			101	1	100	\$18,000.00
7/14/20	20-201	Dorian Thompson	6465 Olstad Dr.	15-14-0011	Fence					40			\$3,500.00
7/15/20	20-202	Brett Esterberg	4970 McCallister	25-41-0009	Deck			4		264.45	4	260.45	\$8,000.00
7/15/20	20-203	Safeguard Property	550 Co Rd 92	32-14-0002	Re-roof		1			191	1	100	\$20,000.00
7/15/20	20-204	Air Mechanical	2225 Co Rd 92	17-43-0008	Mech.			1		101	1	100	\$1,014.00
7/16/20	20-205	Custom Pools	3411 Brei Kessel	24-34-0001	Pool			1	11	705.55	12	693.55	\$22,500.00
7/17/20	20-206	Royal Crown	4255 Eagle Ridge Ct	24-13-0005	Re-roof		1			101	1	100	\$8,575.00
7/16/20	20-207	Renewal by Anderson	6340 Pagenkopf	24-33-0007	Windows		1			131	1	130	\$19,267.00
7/16/20	20-208	Greatstone Constr	2670 Co Rd 90	24-32-0012	Windows		1			321	1	320	\$25,000.00
7/17/20	20-209	Brad Hayes	6511 Hwy 12	22-44-0011	Septic					300			
7/21/20	20-210	Patnode Bros	4510 Co Rd 50	06-23-0007	Septic					300			
7/23/20	20-211	The Kingdom Bldrs	1187 Co Rd 92	29-14-0003	Re-roof		1			101	1	100	\$15,000.00
7/23/20	20-212	Tom Campion	4310 Woodhill Dr.	01-32-0011	Deck			7		434.5	7	424.5	\$15,000.00
7/23/20	20-213	Owner	6140 Woodhill Lane	14-21-0003	Re-roof		1			101	1	100	\$18,000.00
7/27/20	20-214	All Star Today	2885 Valley Rd	16-14-0003	Re-roof		1			101	1	100	\$14,000.00
7/28/20	20-215	Prestige Pool	3050 Becker Rd	14-21-0006	Pool			1	12	778.43	13	765.43	\$25,000.00
7/28/20	20-216	Mike Hayes	6050 Pagenkopf	14-34-0003	Re-roof		1			101	1	100	\$6,160.00
7/28/20	20-217	Majestic Heating	5450 Timber Trail	25-23-0007	Mech.			1		101	1	100	\$2,000.00
7/29/20	20-218	Brad Hayes	5062 Perkinsville	24-13-0005	Septic					300			
7/30/20	20-219	Advance Homes	1395 Co Rd 83	26-14-0001	Deck			3		344.87	3	341.87	\$5,760.00
7/30/20	20-220	Jeff Peterson	5161 Perkinsville Rd	24-42-0002	Heater			1		101	1	100	\$1,000.00
7/30/20	20-221	J Skogman Homes	315 Ingerson Rd	34-31-0001	Deck			4.5		288.74	4.5	284.24	\$9,000.00
8/3/20	20-222	All Around Roofing	9226 Hwy 12	07-34-0005	Re-roof		1			201	1	200	\$13,700.00
8/3/20	20-223	Western heating	7950 Egret Dr.	16-32-0003	Furn. AC			1		201	1	200	\$5,500.00
8/3/20	20-224	Brad Chowitz Const	6090 Pagenkopf Rd	14-34-0004	Re-roof		1			101	1	100	\$10,000.00
8/10/20	20-225	Corey Gindorff	6511 Hwy 12	22-44-0011	Re-roof			92		1600	92	1508	\$184,000.00
8/10/20	20-226	K. Randell	6355 Warren Way	14-33-0005	Deck			6		361	6	355	\$12,000.00
8/11/20	20-227	Weego Construction	2389 Nelson Rd	19-21-0006	Pole bldg			1	31.5	1381	32.5	1348.5	\$63,000.00
8/11/20	20-228	Majestic Custom	3375 Co Rd 92	24-34-0003	Mech.			1		101	1	100	\$2,000.00
8/11/20	20-229	Ashco Exteriors	5390 Lake Sarah Hgts	01-24-0002	Re-roof		1			101	1	100	\$24,000.00
8/11/20	20-230	Metro Gas Install	6630 Franklin Hills	15-12-0004	Gas lines			1		101	1	100	\$1,750.00
8/11/20	20-231	Clear Choice Pool	217 Hamilton Hills	35-41-0007	Pool			1	23.5	1167	24.5	1142.5	\$47,500.00
8/13/20	20-232	J. Skoogman	1989 Budd Ave.	24-31-0020	Addition				70	2341	70	2271	\$140,000.00
8/17/20	20-233	Chris Johnson	2589 Geggan Tina	15-31-0006	Addition				18	871	18	853	\$36,000.00

8/17/20	20-234	Foss Roofing	1449 Co Rd 92	29-11-0004	Re-roof	1			101	1	100	\$90,000.00
8/17/20	20-235	Home Pro America	2865 Becker Rd	14-24-0003	Deck		12.5		677	12.5	664.5	\$25,333.00
8/18/20	20-236	Window Store	4905 Perkinsville	24-41-0034	4 windows	1			131	1	130	\$4,200.00
8/18/20	20-237	Mike Barenert	985 Co Rd 92	24-44-0001	Demo				100			\$1,000.00
8/18/20	20-238	Mark Klein	4514 Shady Beach	24-21-0017	Deck		3		215.86	3	212.86	\$7,000.00
8/18/20	20-239	Performance Pool	4850 Deer Ridge	25-41-0010	Pool	1	7.5		535.5	8.5	527	\$15,000.00
8/18/20	20-240	Daniel Hamann	2692 Becker Rd	14-42-0007	Re-roof	1			201	1	100	\$30,000.00
8/19/20	20-241	Practical Systems	2880 Becker Rd	14-13-0005	Heater			1	101	1	100	\$2,000.00
8/19/20	20-242	Adam Skogg	4898 Co Rd 6	25-44-0002	Demo				100			\$5,000.00
8/20/20	20-243	Paul Fiedler	1187 Co Rd 92	29-14-0003	Addition	1	10		656.96	11	645.96	\$20,000.00
8/24/20	20-244	Kolar Construction	4735 Co Rd 92	04-21-0002	Deck		2.5		191.57	2.5	189.07	\$5,000.00
8/24/20	20-245	Kevin Schmid	3424 Lake Sarah Rd	10-31-0003	Re-roof	1			101	1	100	\$12,000.00
25-Aug	20-246	Boldenow & Assoc.	18 Golf Walk	31-31-0002	Bathrooms	1	1	17.5	1554.08	19.5	1534.58	\$35,000.00
8/25/20	20-247	Boldenow & Assoc.	18 Golf Walk	31-31-0002								
8/25/20	20-248	Tonka House	5742 Co Rd 6	26-44-0015	Deck		2.5		191.57	2.5	189.07	\$5,000.00
8/26/20	20-249	Kristen Honts	5615 Kochs Crossing	11-14-0011	New home	1	1	222.5	6297.81	224.5	6075.31	\$445,365.00
8/27/20	20-250	Structural Bldgs	9255 County Rd 6	31-34-0001	Link bldg			4	264.45	4	260.45	\$8,200.00
8/27/20	20-251	Jeff Pluth	5165 Fern Dr.	01-31-0006	Stairs/deck			2.5	191.57	2.5	189.07	\$4,500.00
8/27/20	20-252	Kevin Sturman	1824 Copeland	20-32-0003	Re-roof	1			101	1	100	\$4,000.00
8/27/20	20-253	Kingsway	5270 Moline Rd	36-31-0012	Plumbing			1	101	1	100	\$800.00
8/31/20	20-254	Robert Roofing	161 Timeber Island	36-33-0004	Re-roof	1			101	1	100	\$10,500.00
9/1/20	20-255	Pease Const.	3175 Co Rd 90	24-11-0002	Garage add.			20	942	20	922	\$40,000.00
9/1/20	20-256	Nate Pribyl	5405 Lake Sarah	01-27-0011	Re-roof	1			101	1	100	\$15,000.00
9/1/20	20-257	Brandon Paske	4665 S. Lake Sarah	02-23-0008	Deck			1.5	142	1.5	140.5	\$3,500.00
9/2/20	20-258	NewTown Exterior	2925 Becker	14-24-0005	Re-roof	1			101	1	100	\$15,432.00
9/2/20	20-259	Jim Nelson	4586 Shady Beach Cr	02-21-0007	Fireplace			1	101	1	100	
9/2/20	20-260	Joe Fake	3585 Lake Sarah Rd	10-32-0003	Re-roof	1			101	1	100	
9/3/20	20-261	Res Moore	217 Hamilton Hills	35-41-0007	Deck			7	434	7	427	\$15,000.00
9/3/20	20-262	Arnold Simpson	2840 Copeland	17-23-0001	Generator			1	101	1	100	\$2,000.00
9/4/20	20-263	ServPro	6396 Fogelman Rd.	10-44-0002	Re-roof	1			101	1	100	
9/4/20	20-264	Kingdom Builders	264 Co Rd 92	32-41-0040	Re-roof	1			101	1	100	\$6,716.00
9/4/20	20-265	AllStar Construction	3025 Co Rd 90	15-11-0006	Re-roof	1			101	1	100	\$33,000.00
9/8/20	20-266	alma Homes	3016 Lindgren Lane	13-22-0007	Re-roof	1			101	1	100	\$20,000.00
9/8/20	20-267	Hackbarth Construct.	2325 Old Post Rd	22-11-0002	Re-roof	1			101	1	100	\$12,000.00
9/8/20	20-268	PSI Roof	5080 Fern Dr.	01-42-0023	Re-roof	1			101	1	100	\$18,000.00
9/8/20	20-269	Metro Gas	4850 Deer Ridge	25-41-0010	Gaslines			1	201	1	200	\$2,250.00
9/9/20	20-270	Able Heating	5585 Co Rd 6	36-22-0005	Furnace			1	201	1	200	\$7,689.00
9/9/20	20-271	Prestige Pool	5372 Saddle Ridge	36-24-0004	Pool	1	12.5		778	13.5	764.5	\$25,000.00
9/10/20	20-272	Sierra Restoration	2040 N Budd	24-13-0012	Re-roof	1			101	1	100	\$10,500.00
9/10/20	20-273	Ashoo Exteriors	5498 Lake Sarah Hgts	01-23-0001	Re-roof	1			101	1	100	\$16,000.00
9/10/20	20-274	All Around Roofing	3776 Independence	12-23-0001	Re-roof	1			101	1	100	\$24,757.00
9/10/20	20-275	All Around Roofing	3974 Independence	12-22-0007	Re-roof	1			101	1	100	\$34,910.00
9/10/20	20-276	Hayes & Sons	1410 Co Rd 90	26-22-0011	Septic				300			\$24,000.00
9/10/20	20-277	Hayes & Sons	4898 Co Rd 6	25-44-0002	Septic				300			\$21,000.00
9/10/20	20-278	Adam Skogg	4898 Co Rd 6	25-44-0002	New home	1	1	238	6427	240	6187	\$475,263.00
9/10/20	20-279	Steve Berg	1010 Drake	26-31-0014	Shed			3	215	3	212	\$5,900.00
9/10/20	20-280	Alecia Booth	9177 Dean Lane	19-43-0003	Deck			3	240	3	237	\$7,500.00
9/10/20	20-281	The Kingdom Bldrs	7164 Pagenkopf	15-23-0002	Re-roof	1			101	1	100	\$15,488.00
9/10/20	20-282	Select Exteriors	4785 Townline Rd	01-11-0001	Re-roof	1			101	1	100	\$20,000.00
9/10/20	20-283	All Around Roofing	6935 Dylan Lane	03-13-0004	Re-roof	1			101	1	100	\$33,070.00
9/11/20	20-284	Shelter Const.	5090 Fern Lane	01-42-0022	Re-roof	1			101	1	100	\$6,375.00
9/15/20	20-285	Allied Constr.	5150 Sunset	01-13-0001	Re-roof	1			101	1	100	\$15,000.00
9/15/20	20-286	allied Constr.	5585 Lake Sarah	02-11-0015	Re-roof	1			101	1	100	\$15,000.00

9/15/20	20-287	Pella Northland	4115 Townline Rd	01-44-0003	Window	1				101	1	100	\$1,827.00
9/15/20	20-288	Patnode Bros	1040 Polo Club	27-41-0006	Re-do septic					150			
9/16/20	20-289	Fireside Hearth	3295 Co Rd 92	09-45-0002	Fireplace		1			101	1	100	\$4,671.00
9/16/20	20-290	The Kingdom Bldrs	3245 co Rd 92	09-35-0005	Re-roof	1				101	1	100	\$11,817.00
9/17/20	20-291	American Bldrs	4375 Lake Sarah Rd	03-32-0001	Re-roof	1				101	1	100	\$10,800.00
9/18/20	20-292	Advantage Construct.	7388 Co Rd 11	04-43-0002	Re-roof	1				101	1	100	\$23,100.00
9/18/20	20-293	Midwest Roofing	650 Wild Oak	34-22-0006	Re-roof	1				101	1	100	\$24,000.00
9/22/20	20-294	Excel MN Roofing	5030 Sunset	01-13-0004	Re-roof	1				101	1	100	\$9,800.00
9/22/20	20-295	Transform Home	6325 co Rd 6	26-33-0003	Windows-4			1		131	1	130	\$5,736.00
9/22/20	20-296	Ashco Exteriors	5580 Sunset	01-22-0011	Re-roof	1				101	1	100	\$16,000.00
9/22/20	20-297	Ben Higginbotham	2990 Co Rd 90	14-23-0009	Re-roof	1				101	1	100	\$20,000.00
9/22/20	20-298	Midwest Roofing	3370 Lake Sarah Rd.	10-34-0004	Re-roof	1				101	1	100	\$14,000.00
9/22/20	20-299	Lightning Restoration	6474 Co Rd 11	03-44-0002	Re-roof	1				101	1	100	\$20,000.00
9/22/20	20-300	Kingdom Builders	4035 S Lake Sarah	02-34-0002	Re-roof	1				101	1	100	
9/22/20	20-301	Bob Cheney	685 Nelson Rd	31-24-0004	Siding	1				101	1	100	\$12,000.00
9/21/20	20-302	Hayes & Sons	6014 Drake Dr.	26-31-0011	Septic					300			\$30,000.00
9/22/20	20-303	Sylvester Const.	7676 Turner Rd	28-24-0001	Deck			6		361	6	355	\$12,500.00
9/23/20	20-304	Sunrise Exteriors	3924 Independence		Re-roof	1				101	1	100	\$31,600.00
9/23/20	20-305	Ashco Exteriors	5240 Lake Sarah Rd	01-24-0009	Re-roof	1				101	1	100	\$29,000.00
9/23/20	20-306	Ascho Exteriors	5370 Lake Sarah Hgts	01-24-0003	Re-roof/sid	2				202	2	200	\$30,000.00
9/23/20	20-307	Pronto Heating	5922 Co Rd 6	26-43-0010	Mech.		1			201	1	200	\$12,637.00
9/24/20	20-308	Roofing	5355 Sunset	01-24-0012	Re-roof	1				101	1	100	\$20,000.00
9/24/20	20-309	Sheryl Fischer	4435 Townline Rd	01-41-0012	Re-roof	1				101	1	100	\$25,941.00
9/24/20	20-310	Pink Construction	9224 Co Rd 11	06-34-0004	Deck			5		313	5	308	\$9,600.00
9/28/20	20-311	Thunderstruck Ext.	7440 Maple Ponds	16-12-0007	Re-roof	1				201	1	200	\$22,000.00
9/28/20	20-312	Thunderstruck Ext.	7460 Maple Ponds	16-12-0006	Re-roof	1				201	1	200	\$18,000.00
9/29/20	20-313	Excel	7510 Maple Ponds	16-12-0005	Windows	1				251	1	250	\$33,275.00
9/29/20	20-314	Mike Barfknect	7075 Hwy 12	22-24-001	Demo					100			\$30,000.00
9/29/20	20-315	Suszyushi	3175 Co Rd 90	15-11-0002	Plumbing			1		101	1	100	
9/30/20	20-316	Drawrestler	4825 Co Rd 6	36-11-0007	Re-roof	1				101	1	100	\$20,000.00
9/30/20	20-317	Incline Exteriors	2730 Co Rd 90	14-32-0013	Re-roof	1				101	1	100	\$2,500.00
9/30/20	20-318	Simco	4084 S Lake Sarah	02-43-0005	Re-roof	1				101	1	100	\$20,000.00
9/30/20	20-319	Legacy Homes	489 Nelson Rd	31-31-0006	New home		2	1	189	5736	192	5544	\$377,677.00
9/30/20	20-320	All Seasons Remodel	4724 Lake Sarah Dr.	03-11-0003	Re-roof	2				202	2	200	\$50,670.00
9/30/20	20-321	Travis Linson	3375 Co Rd 90	10-44-0001	Re-roof	1				101	1	100	\$23,348.00
9/30/20	20-322	All Around Roofing	6240 Stephanie Way	02-23-0006	Re-roof	1				101	1	100	\$19,968.00

## City of Independence

### ***Request for a Conditional Use Permit to Allow a Commercial Riding Stable on the Property located 2740 Nelson Road***

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*To:* City Council  
*From:* Mark Kaltsas, City Planner  
*Meeting Date:* October 6, 2020  
*Applicant:* Trevor Clemming Jr.  
*Property Owner:* Trevor Clemming Jr.  
*Location:* 2740 Nelson Road

#### ***Request:***

Trevor Clemming Jr. (Applicant/Owner) requests that the City consider the following action for the property located at 2740 Nelson Road (PID No. 18-118-24-42-0001) in Independence, MN:

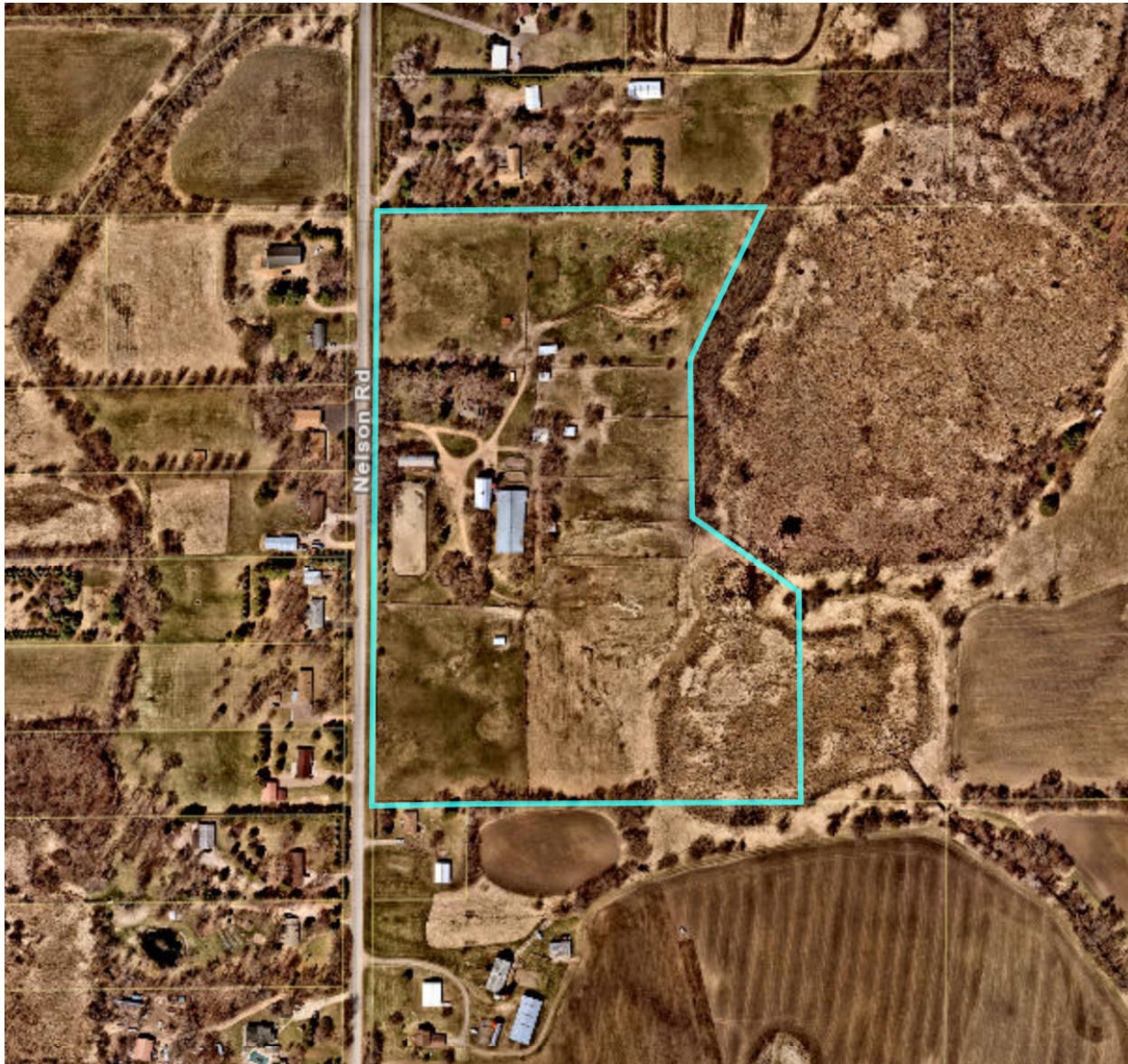
- a. A conditional use permit (CUP) to allow a commercial riding stable to be operated on the subject property.

#### ***Property/Site Information:***

The property is located on the east side of Nelson Road, south of TH 12 and north of Dean Lane. This property is located on the paved portion of Nelson Road. The property is comprised of an existing home, barn, riding arena and several additional detached accessory structures. The property has pasture areas, paddocks and a wetland in the southeast corner. The property has the following characteristics:

Property Information: 2740 Nelson Road  
Zoning: *Agriculture*  
Comprehensive Plan: *Agriculture*  
Acreage: *25 acres*





**Discussion:**

The Applicant recently purchased the subject property and approached the City about the possibility of obtaining a conditional use permit to allow boarding and commercial riding stable operations on the property. The property has historically been operated as a private horse farm. There are eight stalls located within the existing barn. There is an existing quonset style building that is used for storage and would be renovated inside to accommodate an additional 6-10 stalls. There is an existing indoor and outdoor riding arena. The indoor riding arena and barn are connected.

Commercial riding stables are a conditional use in the Agriculture zoning district. The subject property is zoned Agriculture. 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 comprised of approximately 25 acres. Of the 25 acres, approximately 21 acres is useable upland based on the national wetland inventory and Hennepin County natural resources mapping. Applying the City's typical standard, the site would accommodate 24 animal units using the gross acreage.

The City has historically required that the applicants comply with a manure management plan, maintain all applicable permits relating to the management of manure on the property and maintain 1/3 acre of open pasture per animal unit. In December 2018, City Council adopted a Manure Management Policy for the City. The policy provides regulations relating to the management of manure associated with commercial horse operations in the City. This property is subject to the Manure Management Policy.

The subject property is primarily comprised of open pasture, several small tree stands and a wetland in the southeast corner. There are approximately 15 acres of open pasture. The requisite amount of open pasture needed to comply with the City's Manure Management Policy (1/3 acre per animal unit) would be 8 acres (24 animal units). The applicant noted that the horses are not fully dependent on pasture grazing as all horses will be boarded inside the stall barn or renovated quonset building and receive hay and feed supplements.

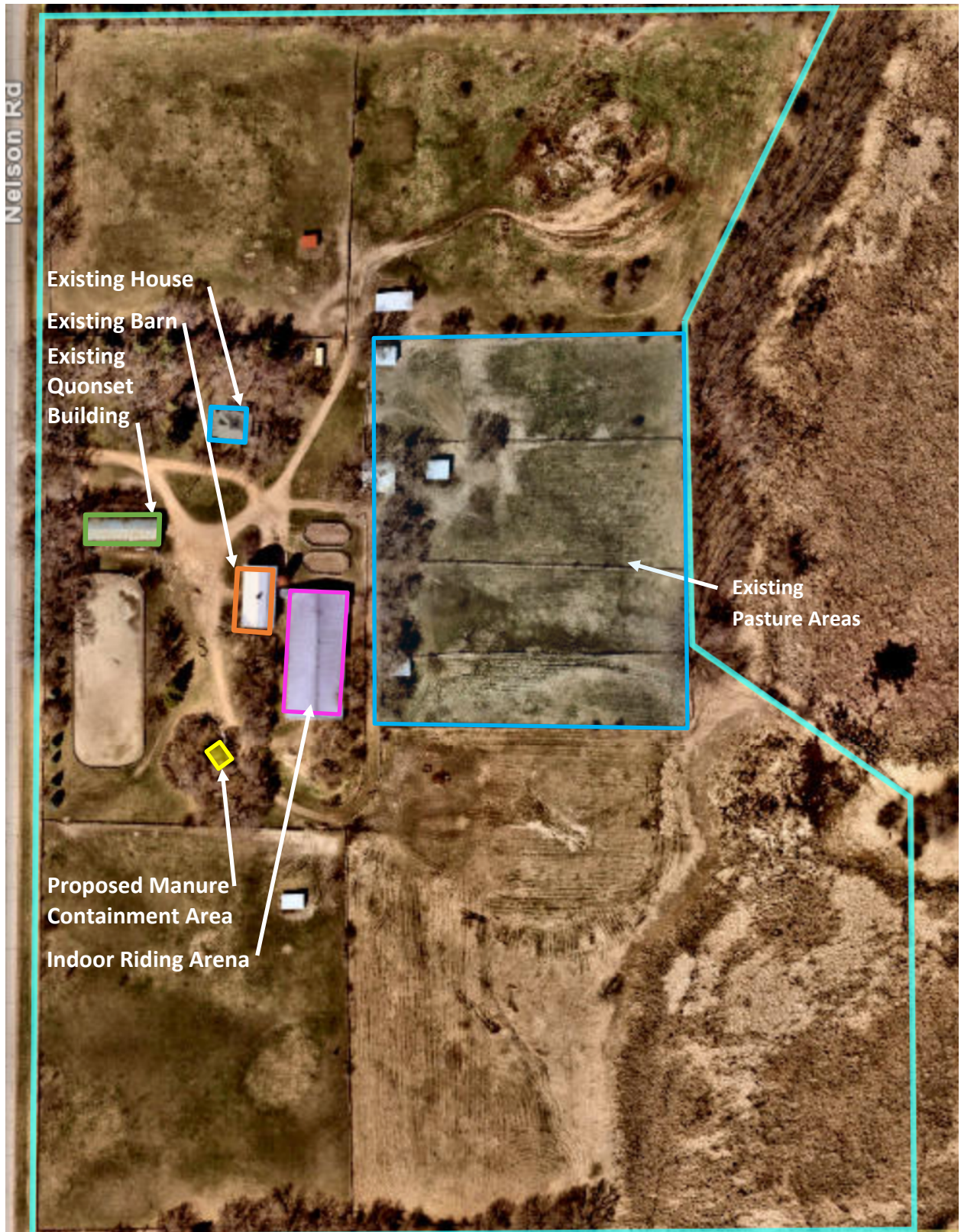
The proposed commercial boarding stable would have the additional following characteristics:

1. The existing horse indoor riding arena is one-story and 8,400 SF in size.
2. The existing barn is 2,275 SF and has a total of 8 stalls.
3. There would be no full-time employees on the property. The Applicant is working with a trainer that would provide lessons and boarding for private clients. The typical number of guests on the property during regular hours will be 3-5. There may be additional guests for group trainings and clinics.
4. The applicant has stated that they would initially have 16 horses on the property in addition to the cows that are currently on the property. They would like to have the option to accommodate a maximum of 24 animal units on the property.
5. Ferriers would come to the site to shoe the horses on a regular basis.
6. There would be regular garbage service and deliveries to the property.
7. Manure is proposed to be collected on-site and stored in a new manure enclosure that would have a concrete floor and wood wall construction. The applicant would like to spread the manure if possible in accordance with the manure management policy. Any manure that could not be field spread would be hauled off-site as needed.
8. The applicant has already received a delivery of hay that will provide an adequate supply for this upcoming winter. Hay would be delivered as needed after that supply is consumed.

9. The City typically regulates the number of events, training sessions or gatherings that are greater than 15 people in size through the conditional use permit. The City has commonly applied a limit to no more than two larger events per year that would allow up to 50 people. Any event greater than 50 participants would be subject to the review and approval of a large assembly permit.
10. The Applicant has worked with the City to provide a site plan of the existing and proposed conditions.

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 reviewed the site and discussed the operation of the proposed commercial riding stable with the applicant. The following additional considerations should be noted by the City:

- This property has historically been operated as a private horse farm and riding stable.
- The proposed use as a commercial riding stable generally fits into the character of the surrounding area and is in keeping with the City's Comprehensive Land Use Plan. It should be noted that there is a cluster of five-acre parcels located west and north of the subject property. All properties in this area are guided for long-term Agriculture.
- The applicant will need to fully comply with the City's recently adopted Manure Management Policy. This will include maintaining the prescribed buffer from the existing wetland located in the southwest corner of the property and constructing a new manure containment area.

The location of the property, the orientation of the buildings and their relationship to the surrounding properties and the existing use of the property as a private horse farm aid in mitigating potential impacts relating to the commercial use of the property. The City will need to find that the proposed commercial riding stable meets the requirements for granting a conditional use permit.

***Neighbor Comments:***

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

***Planning Commission Discussion:***

The City discussed the proposed conditional use permit and asked questions of the City and applicant. Commissioners asked about additional traffic on Nelson Road and whether or not there would be any issues associated with dust control. It was noted that this property is located on the portion of Nelson Road that is paved. Commissioners and the applicant asked about the number of animal units and how the City calculates other animal units such as pigs. The City described the way that animal units are calculated. The City also clarified that the total number of animal units on the property cannot exceed the maximum permitted regardless of the CUP. Ultimately the Planning Commission recommended approval of the proposed CUP with a clarification to the number of animal units that clearly notes the maximum number of animal units includes all animals on the property including the horses to be boarded.

***Recommendation:***

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

1. The proposed conditional use permit requests meet all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Ordinances.
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 and require a sign permit.
  - c. No more than 24 horses shall be boarded on the property. The maximum number of animal units, including horses to be boarded on the property, shall not exceed 24.
  - d. The applicant and facility must operate in compliance with the City of Independence Manure Management Policy.
  - e. The hours of operation are: 7:00 am – 10:00 pm.
  - f. No parking shall be permitted on public roadways.
  - g. Two (2), one day, horse related events (greater than 15 participants and less than 50) will be permitted per year and shall comply with the following provisions:
    - The horse related events shall occur during the permitted hours of operation.
    - No more than 50 participants shall be permitted at each event.
  - h. No renting of hack horses shall be permitted.
  - i. No riding on adjacent private land unless authorized by owners.
  - j. Must utilize appropriate management practices to control flies and odor.
  - k. No riding on adjacent private land unless authorized by owners.
  - l. No future expansion of the accessory structures shall be permitted on the property without the further review and approval by the City through the conditional use permit amendment process.
3. The applicant shall pay for all costs associated with the review and recording of the resolution for a conditional use permit.
4. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

**Attachments:**

1. Application
2. Site Plan Sketch
3. Manure Management Policy



**RESOLUTION NO. 20-1006-01**

**A RESOLUTION GRANTING APPROVAL OF A CONDITIONAL USE PERMIT TO  
ALLOW A COMMERCIAL RIDING STABLE  
ON THE PROPERTY LOCATED AT 2740 NELSON ROAD**

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

WHEREAS, the City adopted a comprehensive plan in 2010 to guide the development of the community; and

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

WHEREAS, Trevor Clemming Jr. (the “Applicant/Owner”) submitted a request for a Conditional Use Permit to allow a Commercial Riding Stable on the property located 2740 Nelson Road and identified by (PID No. 18-118-24-42-0001) (the “Property”); and

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

WHEREAS, the approved site plan is further depicted on Exhibit B attached hereto; and

WHEREAS, the Property is zoned AG-Agriculture; and

WHEREAS the requested Conditional Use Permit meets all requirements, standards and specifications of the City of Independence zoning ordinance for Agriculture lots; and

WHEREAS the Planning Commission held a public hearing on September 15, 2020 to review the application for the Conditional Use Permit, following mailed and published noticed as required by law; and

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

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MINNESOTA, that it should and hereby does approve the application by**



Trevor Clemming Jr. for a Conditional Use Permit to allow a Commercial Riding Stable per the City's zoning regulations with the following conditions:

1. The proposed conditional use permit requests meet all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Ordinances.
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 and require a sign permit.
  - c. No more than 24 horses shall be boarded on the property. The maximum number of animal units, including horses to be boarded on the property, shall not exceed 24.
  - d. The applicant and facility must operate in compliance with the City of Independence Manure Management Policy.
  - e. The hours of operation are: 7:00 am – 10:00 pm.
  - f. No parking shall be permitted on public roadways.
  - g. Two (2), one day, horse related events (greater than 15 participants and less than 50) will be permitted per year and shall comply with the following provisions:
    - The horse related events shall occur during the permitted hours of operation.
    - No more than 50 participants shall be permitted at each event.
  - h. No renting of hack horses shall be permitted.
  - i. No riding on adjacent private land unless authorized by owners.
  - j. Must utilize appropriate management practices to control flies and odor.
  - k. No riding on adjacent private land unless authorized by owners.
  - l. No future expansion of the accessory structures shall be permitted on the property without the further review and approval by the City through the conditional use permit amendment process.
3. The applicant shall pay for all costs associated with the review and recording of the resolution for a conditional use permit.

4. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

This resolution was adopted by the City Council of the City of Independence on this 6<sup>th</sup> day of October 2020, by a vote of \_\_\_\_ ayes and \_\_\_\_ nays.

\_\_\_\_\_  
Marvin Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Mark Kaltsas, City Administrator

**EXHIBIT A**  
*(Legal Description)*

**EXHIBIT B**

*(Proposed Improvements)*





# PLANNING APPLICATION

Case No. \_\_\_\_\_

## Type of application

- Standard     
  Staff Approval     
  Plan Revision     
  Amended     
  Reapplication
- 
- Rezoning     
  Conditional Use Permit     
  Variance     
  Ordinance Amendment     
  Subdivision
- Preliminary Development Plan     
  Interim Use Permit     
  Comprehensive Plan Amendment
- Final Development Plan     
  Final Site & Building Plan     
  Other \_\_\_\_\_

## Site Location— Additional addresses on back and legal description attached

Property address 2740 Nelson Rd      PID 18-118-24-42-0001

## Proposal - Full documentation must accompany application

17 horses ~~20 max~~ T.C. 35 Max

## Applicant

Name Trevor Clemming Jr      Email Clemmings.TJ@gmail.com

Address 2740 Nelson Rd Independence MN 55328

Phone 612-655-0399      Additional phone/contact 612-384-4971

Printed Name Trevor Clemmings Jr      Signature

## Owner Information (if different from applicant)

Name \_\_\_\_\_      Email \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_      Additional phone/contact \_\_\_\_\_

Printed Name \_\_\_\_\_      Signature \_\_\_\_\_

**Office Use Only**      Date 7-30-2020      Application Amount 2000      Check # 1406      Accepted By Bruce S

Escrow Paid \_\_\_\_\_      Check # \_\_\_\_\_      Date Accepted by Planner \_\_\_\_\_

## City of Independence

The Independence City Code was established to protect both current and future residents from the negative impacts of improper development and to ensure a positive future for the city. The land use application review is the mechanism that allows the city to examine proposed uses to ensure compatibility with the surrounding environment, natural or otherwise. It is important to understand that a proposed use may be acceptable in some circumstances, but unacceptable in others— all applications are reviewed on a case-by-case basis.

Minnesota State Statute 15.99 requires local governments to review an application within 15 days of its submission to determine if an application is complete and/ or if additional information is needed to adequately review the subject request. ***To ensure an expedited review, applicants shall schedule a pre-application meeting with the City Planner/ Administrator at least one week prior to submittal.*** Most applications have a review period of 60 days, with the City's ability to extend an additional 60 days if necessary due to insufficient information or schedule.

### ***Application for Planning Consideration Fee Statement***

---

The City of Independence has set forth a fee schedule for the year 2019 by City Ordinance. However, projects of large scope that include two or more requests will be required to provide a larger deposit than the resolution sets forth as set by the City Administrator. The fees collected for land use projects are collected as deposits. All invoices associated with each land employ application will be billed to the applicant within 30 days upon receipt by the City for each project. The City of Independence often utilizes consulting firms to assist in the review of projects. The consultant and City rates are noted on the current fee schedule. By signing this form, the applicant recognizes that he/ she is solely responsible for any and all fees associated with the land use application from the plan review stage to the construction monitoring stage through to the release of any financial guarantee for an approved project. If a project is denied by the City Council or withdrawn by the applicant, the fees associated for the project until such denial or withdrawal, remain the applicant's responsibility.

I UNDERSTAND THE FEE STATEMENT AND RESPONSIBILITIES ASSOCIATED WITH THIS LAND USE APPLICATION:

***Applicant Signature:*** \_\_\_\_\_

***Date:*** \_\_\_\_\_

***Owner Signature (if different):*** \_\_\_\_\_

***Date:*** \_\_\_\_\_

PASTURE

PASTURE

PASTURE

LANE

ROVING SHED

GARDEN

PROPOSED INDOOR RIDING ARENA APPROX. 60 X 140

GRADE LEVEL HERE APPROX. 16-18 FT. BELOW NELSON RD.

APPR TO J. DAIRY

300 FT TO NELSON ROAD

CHICKEN

WOOD

SILD

RAMP

EXISTING 35 X 65 BARN

CAR

HOUSE

well

APPROX. 400 FT. TO NEIGHBOR'S HOUSE

TILLED 7A FIELD

9 ACRE TILLED FIELD

GRAIN

CORN CRIB

QUANSET MACHINE SHED 40 X 80

EXISTING OUTDOOR RIDING CORRAL 80 X 160

KEN MORRISON  
RT. 2 BOX 40  
ISLAND MA



## **City of Independence Manure Management Policy**

### **1. Determination of Need and Introduction**

The City has determined that it is in the best interest of the residents of Independence to protect the valuable water resources of our region. Management of surface water runoff relating to the storage and land application of manure generated by commercial riding stables has been identified as an important measure to protect water quality. The City has found that the consistent application of standards relating to manure management is important and warrants the establishment of this manure management policy.

In order to ensure that best management practices are being followed, Independence has identified a need for all commercial riding stables to prepare and maintain a manure management plan and adhere to established manure management standards. The required plan will provide detailed information pertaining to the management of manure generated from commercial riding stables.

### **2. Manure Management Best Practices**

The City has developed the following best management practices that shall be used in the preparation of the manure management plan:

- a. Animal unit density should be based on the buildable, upland acres of a property. Existing and proposed building areas, parking areas as well as wetlands, steep slopes and other natural impediments should be subtracted from the total acreage.
- b. Each animal unit shall have 1/3 of an acre of grazable pasture. If the grazable pasture area restricts the number of animal units, the lesser number should be used to determine the maximum number of animal units permitted.
  - i. The applicant shall manage the pasture areas by rotating their use during the growing months. A minimum of 70 percent vegetative cover shall be maintained on the pasture areas during the growing season. The City shall determine the 70% coverage by using a dimensional transect method.
- c. Manure management shall be addressed using one of the following methods:
  - i. Contain manure on-site and remove manure from the property by taking off-site.



- ii. Contain manure on-site and compost by using an approved compost system.
  - iii. Contain manure on-site and land apply manure.
- d. Land application of manure shall consider the following best practices:
- i. Time of year – manure shall not be land applied to frozen ground.
  - ii. Setbacks from wetlands, steep slopes, drainage ditches/creeks/other water resources – a minimum of a twenty-five (25) foot setback (buffer) shall be maintained for all land applications.
  - iii. Shoreland Overlay – no land application of manure shall be permitted in the shoreland overlay zoning district.
  - iv. Manure Containment - detailed plans for the manure containment area, including the type of surface and or structure to be used for manure storage. Manure containment areas shall be impervious and located in an area which avoids direct run-off into wetlands, drainage swales and other similar water resource areas.
  - v. Soil Testing – the City will review the plan and may require that prior to land application of manure, the soil will be tested to determine the existing level of nutrients. The City will review the site and determine the best locations for testing. Test samples should be taken at a rate of three samples for each twenty acres. The soil test samples taken shall be analyzed using the University of Minnesota recommended maximum nutrient levels for in-situ phosphorous concentration (the phosphorous uptake from the vegetation). Based on the findings of the analysis and at the discretion of the City, the applicant may not be permitted to land apply the manure until such time as the phosphorus levels decrease.

### **3. Plan Requirements**

The manure management plan shall address and provide information relating to the following:

- a. Site Plan – Provide a scaled site plan indicating the location of the manure containment area, existing natural resources (wetlands, drainage swales, wooded areas, etc.), two-foot contours, pasture areas, and existing and proposed structures.
- b. Manure Containment - Detailed plans for the manure containment area, including the type of surface and or structure to be used for manure storage.
- c. Buffer Areas – Indicate on the plan the twenty-five-foot buffer setback from wetlands and drainage swales.

## City of Independence

### ***Request for Final Plat Approval for a Subdivision to be known as Shady Beach Park Located at 4594 Shady Beach Circle***

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*To:* City Council  
*From:* Mark Kaltsas, City Planner  
*Meeting Date:* October 6, 2020  
*Applicant/Owner:* Daryl Jorgenson/Mary Jorgenson  
*Location:* 4594 Shady Beach Circle

#### ***Request:***

Darryl Jorgenson (Applicant) and Mary Jorgenson (Owner) request that the City consider the following actions for the property located at 4594 Shady Beach Circle, Independence, MN (PID No. 02-118-24-21-0029):

- a. Final Plat approval for a two (2) lot subdivision to be known as Shady Beach Park and Associated Development Agreement.

#### ***Property/Site Information:***

The subject property is located on Lake Sarah and at the end of Shady Beach Circle. The City recently approved a minor subdivision which allowed the original parcel to be split into two parcels. The vacant parcel that was created has an existing pond and bituminous trail. The property has the following site characteristics:

**Property Information: 4594 Shady Beach Circle**

*Zoning: Rural Residential (Shoreland Overlay)*

*Comprehensive Plan: Rural Residential*

*Platted Lots: Lot 1, Block 1 – 1.0 acres*

*Lot 2, Block 1 – 1.4 acres*



***Discussion:***

The property is zoned RR-Rural Residential and is governed by the S-Shoreland Overlay District. Historically, the southern portion of the property was a part of the overall campground that existed on the property prior to the current residential developing occurring. The City approved a minor subdivision and preliminary plat of this property in May 2020 which allowed the house and accessory structure to be split off from the remainder of the property. The applicant is now seeking approval for a final plat that is consistent with the preliminary plat.

Within the S-Shoreland Overlay zoning district, the City allows the subdivision of properties connected to City sewer into lots with a minimum size of one acre. The City has historically allowed lots that are within 1,000 feet from the OWHL and connected to sewer to be subdivided as long as they meet all other applicable criteria.

The applicant initially requested that the City consider a subdivision of the property into four lots, one of which would have captured the existing home that is located across the street and on Lake Sarah. In order for the City to consider approval of the four lots, a variance to allow a lot that is less than one acre in size would have been required for the existing home. Initially, an application was submitted to the City for the Preliminary Plat and Variance and was considered by the Planning Commission in February.

The proposed final plat would establish two new lots that meet all applicable requirements of the City. There is one sanitary sewer stub that connects to Lot 1, Block 1 that can likely be used for a new home. One additional sanitary sewer connection would be required to serve Lot 2, Block 1. The new lots as proposed would have the following detail:

<u>Block 2</u>	<u>Area</u>	<u>Frontage</u>	<u>Lot Frontage to Lot Depth</u>
Lot 1	1.0 acres	235 LF	~1:1
Lot 2	1.4 acres	261 LF	~1:1

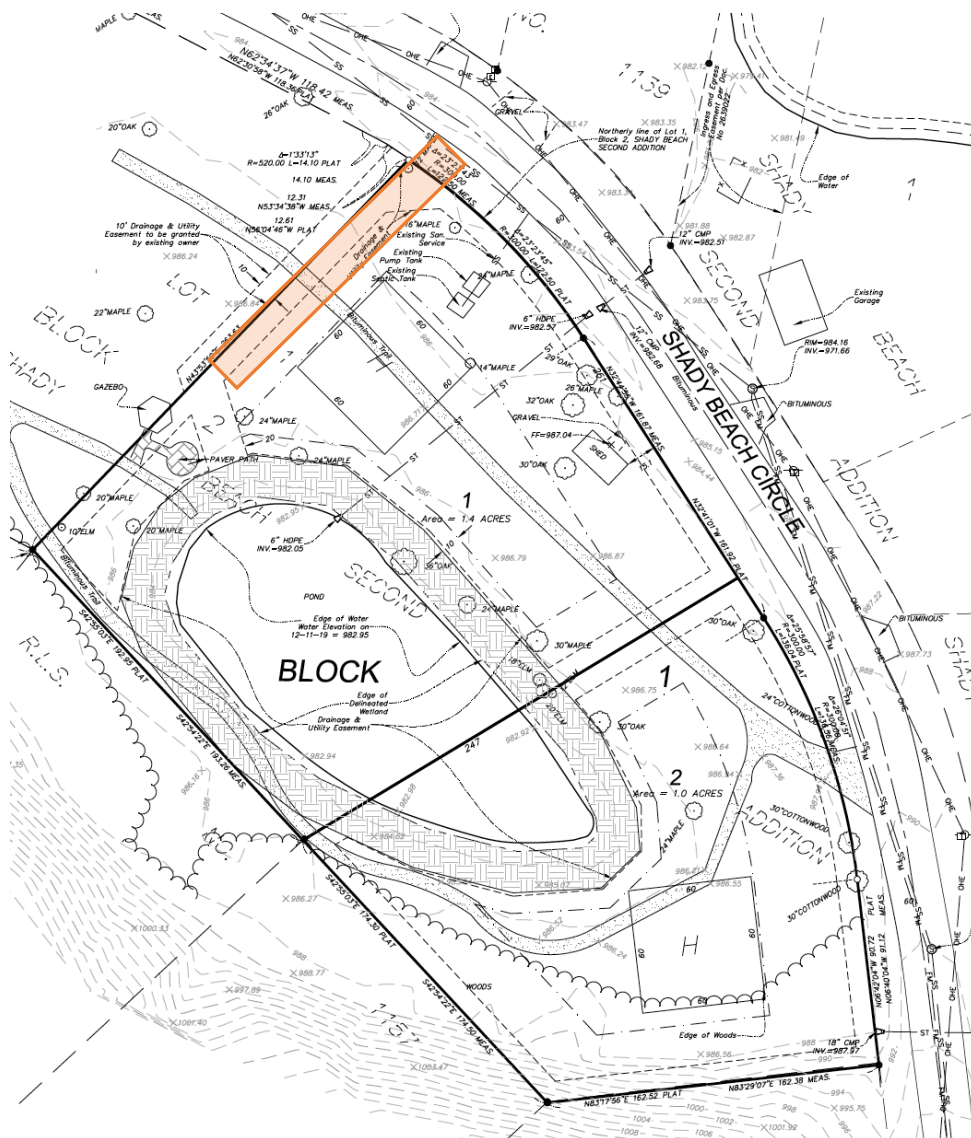
The City requires the following setbacks/lots standards for lots zoned RR-Rural Residential and in the S-Shoreland:

Side Yard Setback:	30 feet
Front Yard Setback:	85 feet from the centerline of road
Rear Yard Setback:	40 feet
Wetland Buffer Setback:	10 feet
Maximum Impervious Coverage:	25%

The City has reviewed the proposed final plat and found it to be consistent with the preliminary plat. The following comments and notes are offered for further consideration:

1. The applicant is proposing to connect Lots 1 and 2, Block 1 to the existing sewer line running along Shady Beach Circle. There is one existing sewer stub that will serve Lot 1. Lot 2 will require a new service stub. In order to make the connection, it will be necessary to cut into the existing bituminous street. The two new proposed lots would be subject to applicable sewer fees. In addition to applicable fees, a sewer assessment of \$9,550 per lot is applicable to Lot 2, Block 1. The applicant is asking the City to consider collection of this fee at the time a building permit is applied for with the City.
2. The proposed home on Lot 1, Block 1 would be a slab on grade home with no basement. This is a result of the high-water table, existing grades and adjacent pond elevation. Lot 2, Block 1 is shown as a walk out basement that utilizes the natural grade of the lot.

- The City has reviewed the proposed grading and has minor comments pertaining to the proposed driveway culverts, grading and swales. The applicant has revised the plans to address the comments of the City. One unique element that will be required is an additional easement over a portion of the remainder property (see below). This easement will accommodate a new public storm sewer connection between the pond and the ditch of Shady Beach Cir.



- The existing shed and sidewalk will be removed prior to development.
- The applicant will be required to enter into a Development Agreement with the City. A copy of the draft agreement is attached to this report. The agreement stipulates the

maintenance of the existing pond, park dedication fees, sewer connection fees, public improvement conditions and requisite security.

6. Lots 1 and 2, Block 1 will be subject to applicable park dedication fees. The current park dedication fee is \$3,500 per lot for all properties up to 5 acres in size.

The proposed final plat will split the property into two lots. The two lots created meet all applicable criteria of the City's zoning and subdivision ordinance. The City will work with the applicant to revise the construction plans to address all advised comments outstanding following Council review.

***Recommendation:***

The City Council is being asked to consider approval of the proposed Final Plat of Shady Beach Park with the conditions noted below and found within the attached resolution.

1. The proposed final plat request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, and Chapter V, Section 500, Subdivisions, in the City of Independence Zoning Ordinance.
2. The Applicant shall address all comments made within this report, recommended by the City Council and required by the City's Engineer review of the subdivision.
3. The detached accessory structure on Lot 1, Block 1 shall be removed prior to issuance of a building permit for a new home on the property.
4. The Applicant shall prepare the legal description and convey the drainage and utility easement adjacent to the northerly property line of Lot 1, Block 1 as depicted on the Preliminary Plat of Shady Beach Park.
5. The Applicant shall enter into a Development Agreement with the City. The Development Agreement will provide for all applicable fees and details relating to the development and proposed improvements.
6. The Applicant shall pay for all costs associated with the City's review of the requested final plat
7. The Applicant shall record the final plat with Hennepin County within 180 days of the City Council approval.

**Attachments:**

- **RESOLUTION No. 20-1006-02** – Final Plat
- Engineer Review Letters
- Utility Plan
- Grading Plan
- Final Plat
- Development Agreement
- Drainage and Utility Conveyance Document



**RESOLUTION NO. 20-1006-02**

**A RESOLUTION GRANTING APPROVAL OF A FINAL PLAT  
TO BE KNOWN AS SHADY BEACH PARK**

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

WHEREAS, the City adopted a comprehensive plan in 2010 to guide the development of the community; and

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

WHEREAS, Darryl Jorgenson (the “Applicant”) and Mary Jorgenson (the “Owner”) have submitted a request for a Final Plat to the allow the subdivision of the property located at 4594 Shady Beach Circle and identified by (PID No. 02-118-24-21-0029) (the “Property”); and

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

WHEREAS, the Final Plat is further depicted on Exhibit B attached hereto; and

WHEREAS, the Property is zoned RR-Rural Residential with the S-Shoreland Overlay; and

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

WHEREAS the Planning Commission held a public hearing on February 18, 2020 to review the application for the Subdivision, following mailed and published noticed as required by law; and

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

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MINNESOTA, that it should and hereby does approve the application by



Darryl Jorgenson for a final plat to permit the subdivision of the property per the City's subdivision regulations with the following conditions:

1. The proposed final plat request meets all applicable conditions and restrictions stated in Chapter V, Section 500, Subdivisions, in the City of Independence Ordinances.
2. City Council approval shall be subject to the following:
  - a. The Applicant shall address all comments made within the final plat staff report, recommended by the Planning Commission and City Council and required by the City's Engineer review of the subdivision.
  - b. The City shall add a condition to the final plat approval that allows the detached accessory structure on Lot 1, Block 1 to be removed prior to issuance of a certificate of occupancy for a new home on the property.
  - c. The Applicant shall enter into a Development Agreement with the City.
3. The detached accessory structure on Lot 1, Block 1 shall be removed prior to issuance of a building permit for a new home on the property.
4. The Applicant shall prepare the legal description and convey the drainage and utility easement adjacent to the northerly property line of Lot 1, Block 1 as depicted on the Preliminary Plat of Shady Beach Park.
5. The Applicant shall enter into a Development Agreement with the City. The Development Agreement will provide for all applicable fees and details relating to the development and proposed improvements.
6. The Applicant shall pay for all costs associated with the City's review of the requested final plat
7. The Applicant shall record the final plat with Hennepin County within 180 days of the City Council approval.

This resolution was adopted by the City Council of the City of Independence on this 6<sup>th</sup> day of October 2020, by a vote of \_\_\_\_ ayes and \_\_\_\_ nays.

\_\_\_\_\_  
Marvin Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Mark Kaltsas, City Administrator

**EXHIBIT A**  
*(Legal Description)*

*Parcel B:*

*That part of Lot 1, Block 2, SHADY BEACH SECOND ADDITION, Hennepin County, Minnesota, according to the recorded plat thereof, that lies Southeasterly of the following described line:*

*Commencing at the Southwest corner of said Lot 1, said Southwest corner also being the Northwest corner of REGISTERED LAND SURVEY NO. 1157 according to the files of the Registrar; thence on an assumed bearing of South 61 degrees 53 minutes 05 seconds East, along the South line of said Lot 1, a distance of 237.33 feet to an angle point on said South line and the point of beginning of said line; thence North 43 degrees 52 minutes 49 seconds East, a distance of 263.57 feet to the Northerly line of said Lot 1 and said line there terminating.*





# PLANNING APPLICATION

Case No. \_\_\_\_\_

## Type of application

- Standard     
  Staff Approval     
  Plan Revision     
  Amended     
  Reapplication  
 Rezoning     
  Conditional Use Permit     
  Variance     
  Ordinance Amendment     
  Subdivision  
 Preliminary Development Plan     
  IUP     
  Accessory Height     
  Comprehensive Plan Amendment  
 Final Development Plan     
  Final Site & Building Plan     
  Other \_\_\_\_\_

## Site Location— Additional addresses on back and legal description attached

Property address

PID

## Proposal -Full documentation must accompany application

\_\_\_\_\_  
 \_\_\_\_\_

## Applicant

Name <u>Mary Jorgenson</u>	Email <u>miorgenson@aol.com</u>
Address <u>4594 Shady Beach Cir</u>	
Phone <u>763-479-3994</u>	Additional phone/contact <u>darryl.jorgenson@gmail.com</u> <u>Darryl Jorgenson 763-286-9682</u>
Printed Name <u>Mary Jorgenson</u>	Signature <u>Mary Jorgenson</u>

## Owner Information (if different from applicant)

Name	Email
Address	
Phone	Additional phone/contact
Printed Name	Signature

### Office Use Only

Date	Application Amount	Check #	Accepted By
Escrow Paid	Check #	Date Accepted by Planner	

# City of Independence

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## Application for Planning Consideration Fee Statement

The City of Independence approves a fee schedule annually per City Ordinance. However, projects of large scope that include two or more requests will be required to provide a larger deposit than the resolution sets forth as set by the City Administrator. The fees collected for land use projects are collected as deposits. All invoices associated with each land employ application will be billed to the applicant within 30 days upon receipt by the City for each project. The City of Independence often utilizes consulting firms to assist in the review of projects. The consultant and City rates are noted on the current fee schedule. By signing this form, the applicant recognizes that he/ she is solely responsible for any and all fees associated with the land use application from the plan review stage to the construction monitoring stage through to the release of any financial guarantee for an approved project. If a project is denied by the City Council or withdrawn by the applicant, the fees associated for the project until such denial or withdrawal, remain the applicant's responsibility.

I UNDERSTAND THE FEE STATEMENT AND RESPONSIBILITIES ASSOCIATED WITH THIS LAND USE APPLICATION:

Applicant Signature: Mary Jorgensen Co Applicant Dan Jorgensen  
Date: 7-31-2020

Owner Signature (if different): Mary Jorgensen  
Date: 7-31-2020



Real People. Real Solutions.

2638 Shadow Lane  
Suite 200  
Chaska, MN 55318-1172

Ph: (952) 448-8838  
Fax: (952) 448-8805  
Bolton-Menk.com

August 27, 2020

Mark Kaltsas  
City Administrator  
City of Independence  
1920 County Rd 90  
Independence, N 55359

RE: Shady Beach Circle  
City of Independence  
Project No.: C16.120784

Dear Mr. Kaltsas,

This is a final plat application that is revised from the initial application that was the subject of my 4/16/20 review comments. Below are my comments for your consideration.

- A. Subdivision – The initial submittal had four proposed lots, one for the existing house and three new lots. This application shows platting a portion of the current Lot 1, Block 2 Shady Beach Second Addition into two new lots and leaving the balance with the existing house. The only significant grading proposed is filling of Lot 2 to allow a walkout house. The house on Lot 1 is proposed as a slab-on grade.
- B. What is the intent for the existing bituminous trails? If to be removed it should be shown in the plan and areas restored.
- C. Sanitary Sewer Service – The submittal has been updated to show the entire existing sanitary sewer system. There is an existing lift station across the street from Lot 1. I don't have information on the station capacity, but it has a 4" forcemain which would indicate higher capacity. The station currently services about 12 lots so capacity should not be an issue. Lot 1 has an existing sewer service. A new service is proposed for Lot 2.
- D. Drainage
  - a. There is an existing pond/wetland in the rear yards of the proposed lots. Very limited information on stormwater management is provided. The current plans show an existing 6" tile outlet which drains from the roadway ditch toward the pond or has negative flow for an outlet. The grading plan calls for plugging this 6" pond outlet on both ends. The grading plan also shows a proposed 6" HDPE drain from the Shady Beach Circle ditch to the pond at grades of 0.24% and 0.16% also draining towards the pond or has negative flow for an outlet. No pond outlet control structure is proposed. The proposed drainpipe has no provision for sediment removal and the 6" size at flat slope would be a maintenance issue for the City for floating debris and rodents. Drainage calculations are required that show the pond high water elevation to confirm it is contained within the proposed drainage and utility easements, define the required outlet capacity, and provides proper freeboard from the low floor of Lot 2.
  - b. The proposed 6" pipe and the swale and the EOF on the west property line of Lot 1 should be shifted 5'-10' east and the easement width adjusted as needed.

Name: Shady Beach Park Subdivision

Date: August 27, 2020

Page: 2

Alternatively, a separate drainage & utility easement description should be provided to cover the 10' wide on the east portion of the remaining lot to cover the 6" pipe and swale EOF as currently proposed.

- c. Additional easement should be provided at the NW corner of Lot 1 to cover the proposed angle in the 6" pipe.
- d. An erosion control plan may be required from the watershed.

This review only addresses the engineering related issues. Please contact me with questions.

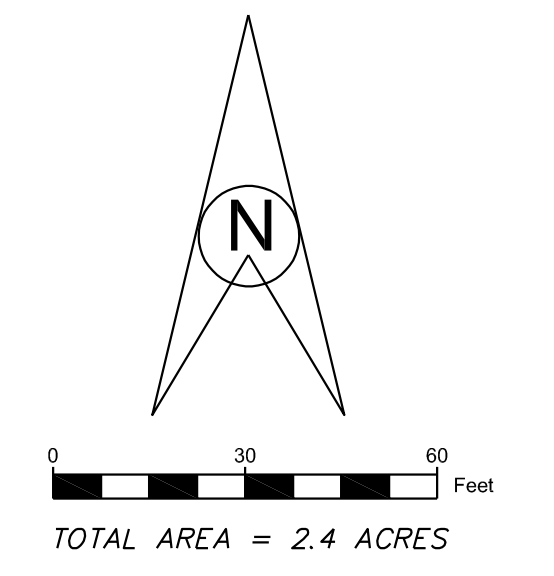
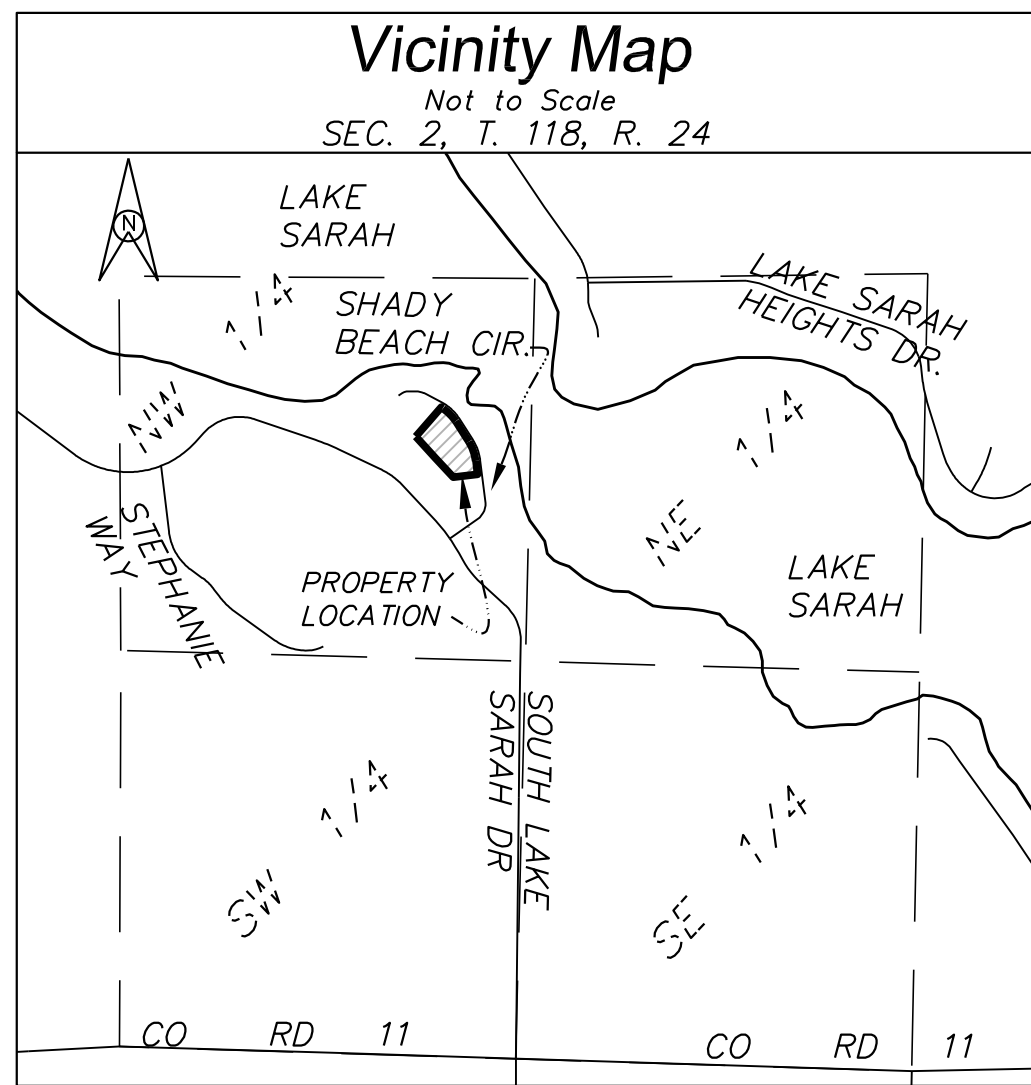
Sincerely,

**Bolton & Menk, Inc.**



**Andrew Budde**  
Principal Engineer

# Preliminary Plat of SHADY BEACH PARK



- LEGEND**
- 988 — denotes Existing Contour
  - 988.00 X denotes Existing Spot Elevation
  - FF=989.36 denotes Finished Floor Elevation
  - ⊙ denotes Well
  - ⊕ denotes Telephone Pedestal
  - ⊖ denotes Guy Wire
  - ⊙ denotes Power Pole
  - ⊙ denotes Deciduous Tree
  - ⊙ denotes Sanitary Manhole
  - ⊙ denotes Storm Manhole
  - ⊕ denotes Electrical Pedestal
  - SS — denotes Sanitary Sewer Line
  - FM — denotes Sanitary Sewer Forcemain
  - ST — denotes Storm Sewer Line
  - OHE — denotes Overhead Electric Line
  - denotes Existing Culvert
  - denotes Building Setback Line  
Front = 50'  
Side = 30'  
Rear = 40'  
Wetland Buffer = 10'  
O.H.W.L. = 60'
  - ⊠ denotes Proposed 20' Wetland Buffer
  - H denotes Possible House Pad Location

Note: Wetlands delineated by Kjolhaug Environmental Services Company.

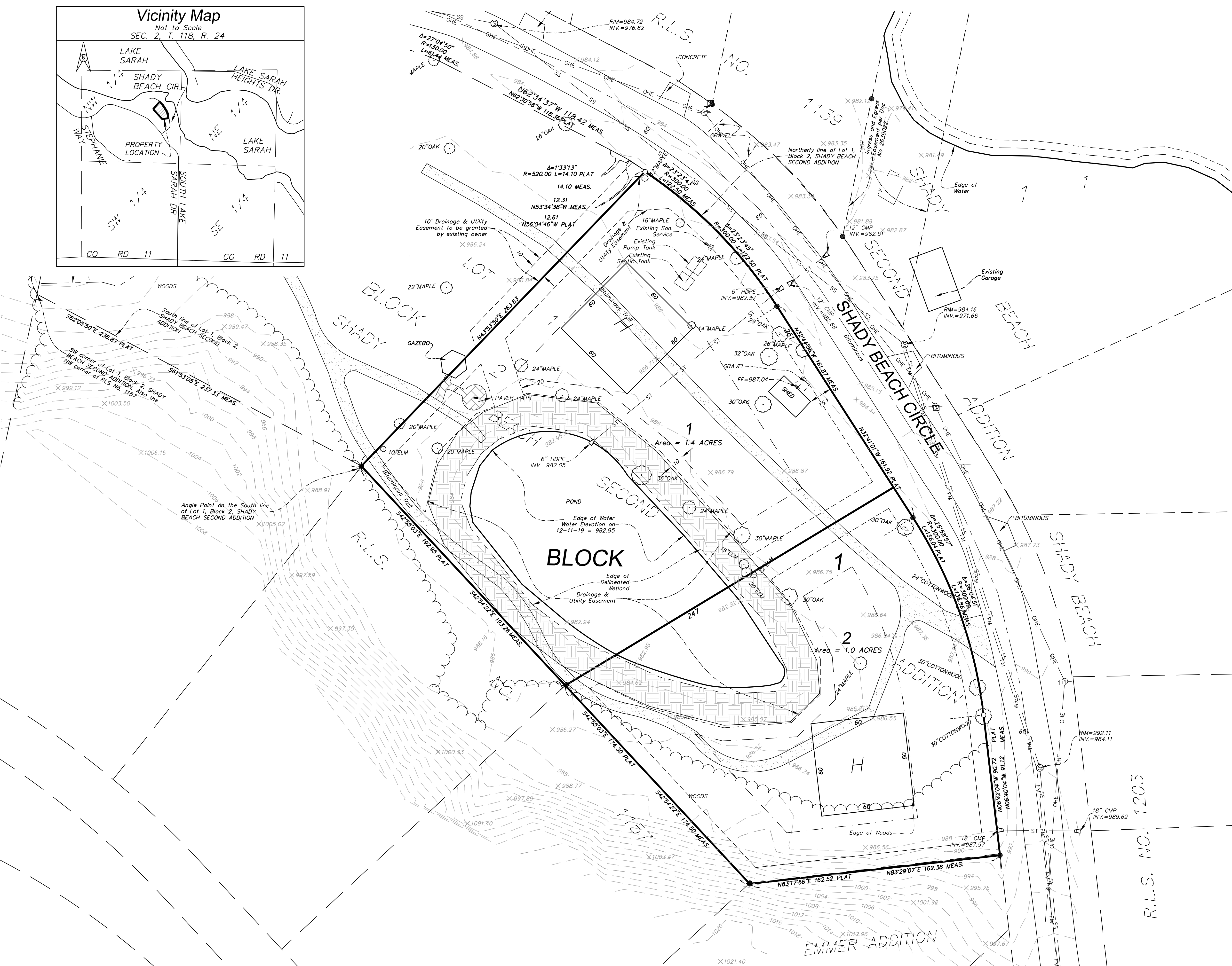
DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:

BEING 10 FEET IN WIDTH, UNLESS OTHERWISE INDICATED, AND ADJOINING RIGHT-OF-WAY LINES, AND BEING 10 FEET IN WIDTH, UNLESS OTHERWISE INDICATED, AND ADJOINING LOT LINES, AS SHOWN ON THE PLAT.

**PROPERTY DESCRIPTION:**

That part of Lot 1, Block 2, SHADY BEACH SECOND ADDITION, Hennepin County, Minnesota, according to the recorded plat thereof, that lies Southeasterly of the following described line:

Commencing at the Southwest corner of said Lot 1, said Southwest corner also being the Northwest corner of REGISTERED LAND SURVEY NO. 1157 according to the files of the Registrar; thence on an assumed bearing of South 61 degrees 53 minutes 05 seconds East, along the South line of said Lot 1, a distance of 237.33 feet to an angle point on said South line and the point of beginning of said line; thence North 43 degrees 52 minutes 49 seconds East, a distance of 263.57 feet to the Northerly line of said Lot 1 and said line there terminating.



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

www.ottoassociates.com  
9 West Division Street  
Burling, MN 55313  
Tel: (763) 662-4727  
Fax: (763) 662-3522

**OTTO ASSOCIATES**  
Engineers & Land Surveyors, Inc.

Requested By: **Mary Jorgenson**  
Checked By: **P.E.O.**  
Date: **01-06-20**  
Scale: **1"=30'**  
Drawn By: **E.M.S.**

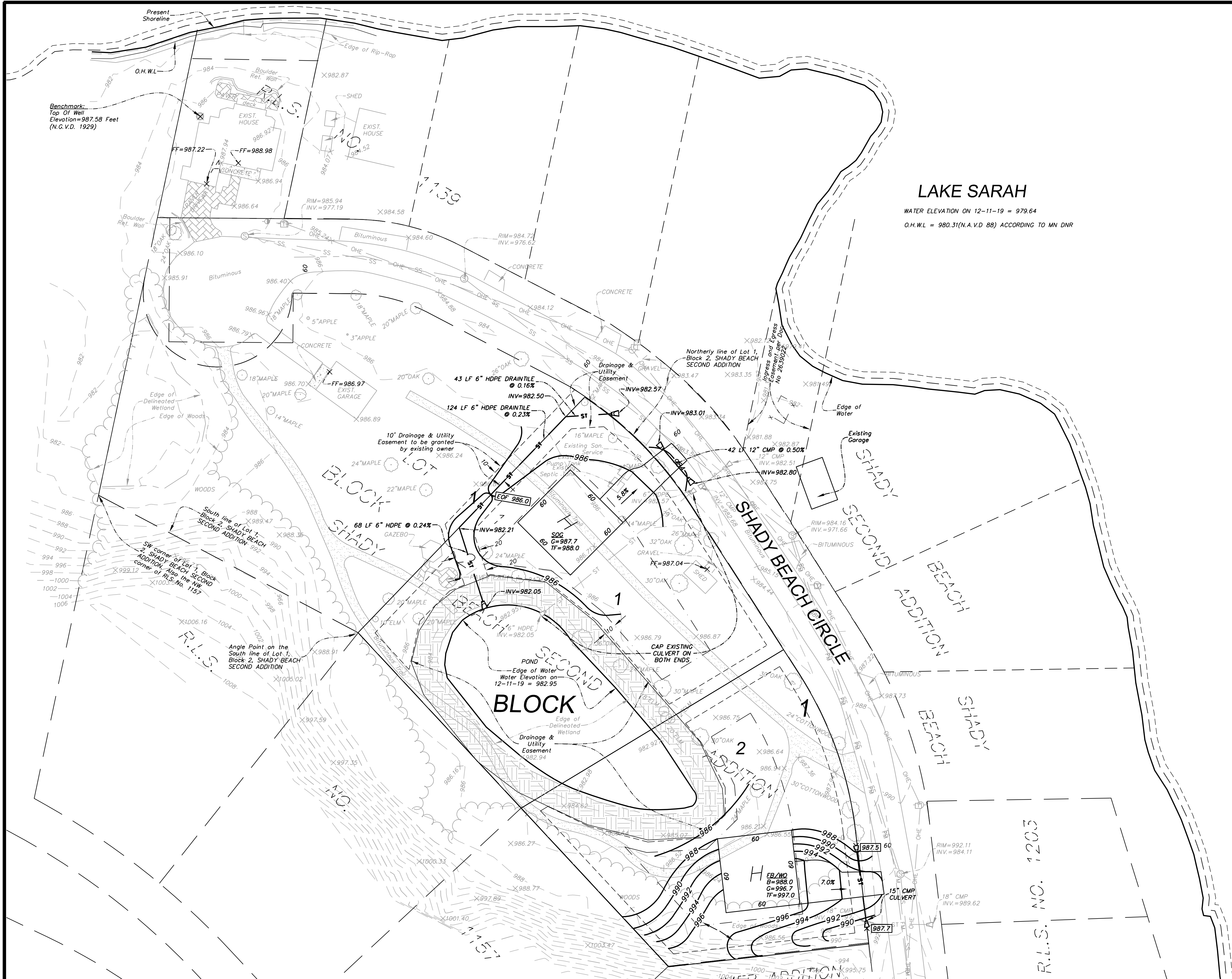
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

*Paul E. Otto*  
Paul E. Otto  
License #40062 Date: 9-29-20

Preliminary Plat on Lot 1, Block 2, SHADY BEACH SECOND ADDITION, Hennepin County, Minnesota.

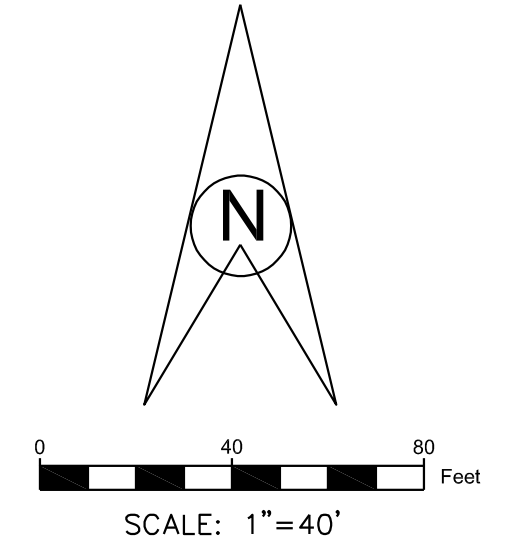
Revised: 02-11-20 - Easement - E.M.S.  
5-19-20 - Delineated Wetland and Topo - S.O.S.  
5-28-20 - House Pads, Easements, & Setbacks - T.J.B.  
7-22-20 - Revise Easements & Setbacks - T.J.B.  
9-29-20 - Revise Easements - T.J.B.





### LAKE SARAH

WATER ELEVATION ON 12-11-19 = 979.64  
 O.H.W.L = 980.31(N.A.V.D 88) ACCORDING TO MN DNR



#### LEGEND

- 988 — denotes Existing Contour
- 988.00 X denotes Existing Spot Elevation
- FF=989.36 denotes Finished Floor Elevation
- 1010 — denotes Proposed Contour
- [1017.5] X denotes Proposed Spot Elevation
- denotes Proposed Drainage
- denotes Deciduous Tree
- ⊙ denotes Well
- ⊕ denotes Telephone Pedestal
- ⊖ denotes Guy Wire
- ⊗ denotes Power Pole
- ⊙ denotes Sanitary Manhole
- ⊙ denotes Storm Manhole
- ⊕ denotes Electrical Pedestal
- denotes Drainage and Utility Easement
- SS --- denotes Sanitary Sewer Line
- FM --- denotes Sanitary Sewer Forcemain
- ST --- denotes Storm Sewer Line
- OHE --- denotes Overhead Electric Line
- denotes Existing Culvert
- H denotes Possible House Pad Location
- denotes Building Setback Line
  - Front = 50'
  - Side = 30'
  - Rear = 40'
  - Wetland Buffer = 10'
  - O.H.W.L = 60'
- [Hatched Box] denotes Proposed Wetland Buffer

- NOTES:
- 1) THIS GRADING PLAN DENOTES POSSIBLE GRADING ON LOTS. THE LOTS ARE PROPOSED TO BE CUSTOM GRADED AT THE TIME OF HOUSE CONSTRUCTION.
  - 2) REMOVE ALL EXISTING BITUMINOUS TRAILS WITHIN LOTS 1 AND 2. INSTALL TOPSOIL AND RESTORE WITH SEED AND MULCH.
  - 3) CULVERT INSTALLATION AND SWALE GRADING TO BE COMPLETED BY DEVELOPER.

REV. NO.	DATE	BY	DESCRIPTION
1	5-28-20	T.J.B.	REVISE EXIST. SAN. SEWER & PROPOSED GRADING
2	7-22-20	T.J.B.	REVISE GRADING & DRAINTILE
3	9-29-20	T.J.B.	REVISE DRAINAGE & UTILITY EASEMENTS

DESIGNED DRAWN  
 P.E.O. E.M.S.  
 CHECKED  
 P.E.O.

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.

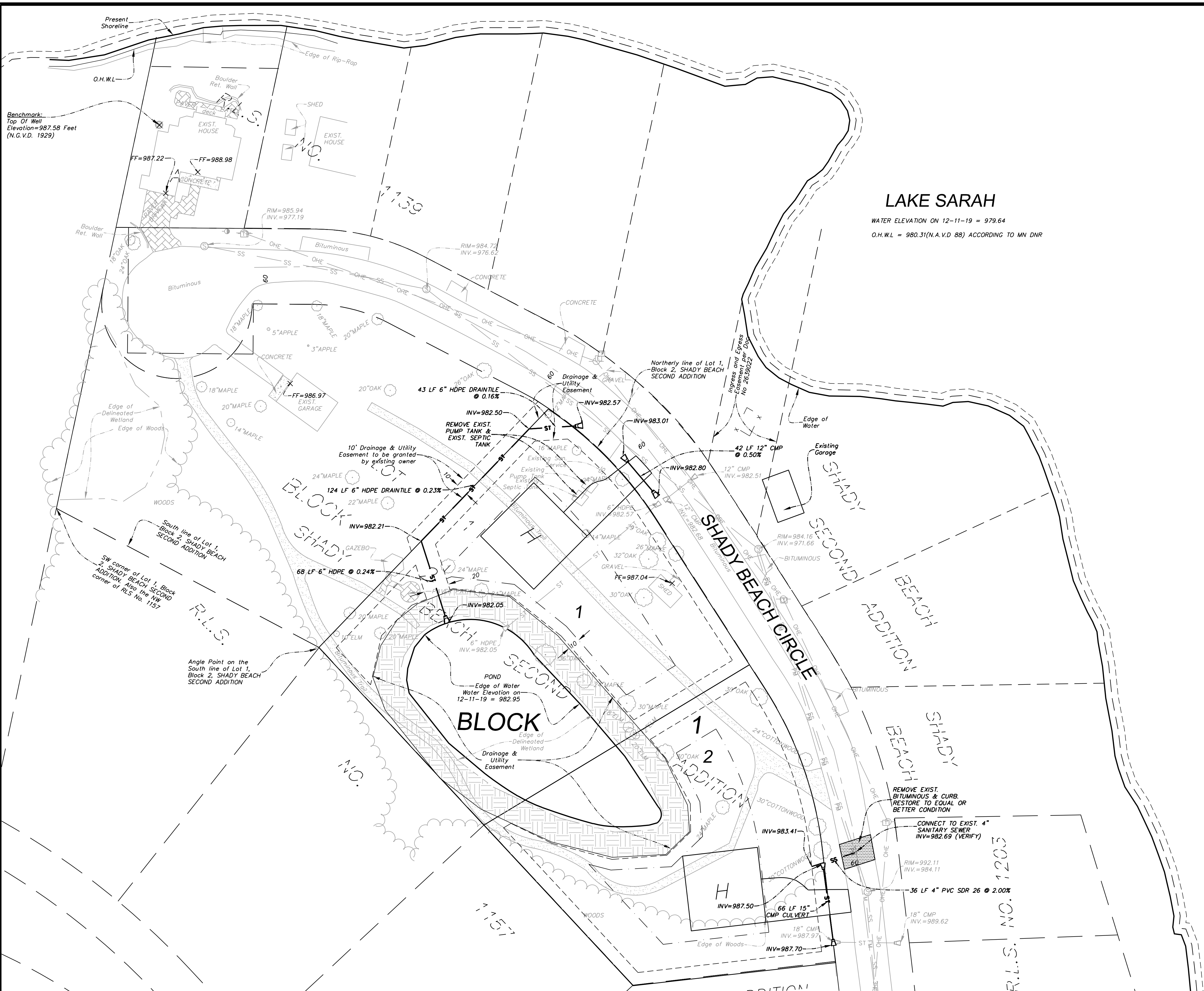
*Paul E. Otto*  
 Paul E. Otto  
 License #40062 Date: 9-29-20

**OTTO ASSOCIATES**  
 Buffalo, MN 55313  
 (763)682-4727  
 Fax: (763)682-3522  
 Engineers & Land Surveyors, Inc.

**SHADY BEACH PARK**  
 MARY JORGENSON  
 INDEPENDENCE, MN

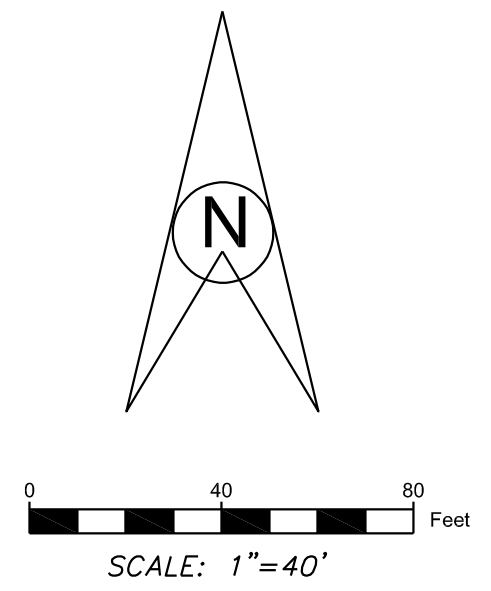
PRELIMINARY GRADING PLAN  
 SHEET NO. 2 OF 3 SHEETS

PROJECT NO:  
 19-0494  
 DATE: 01-06-20



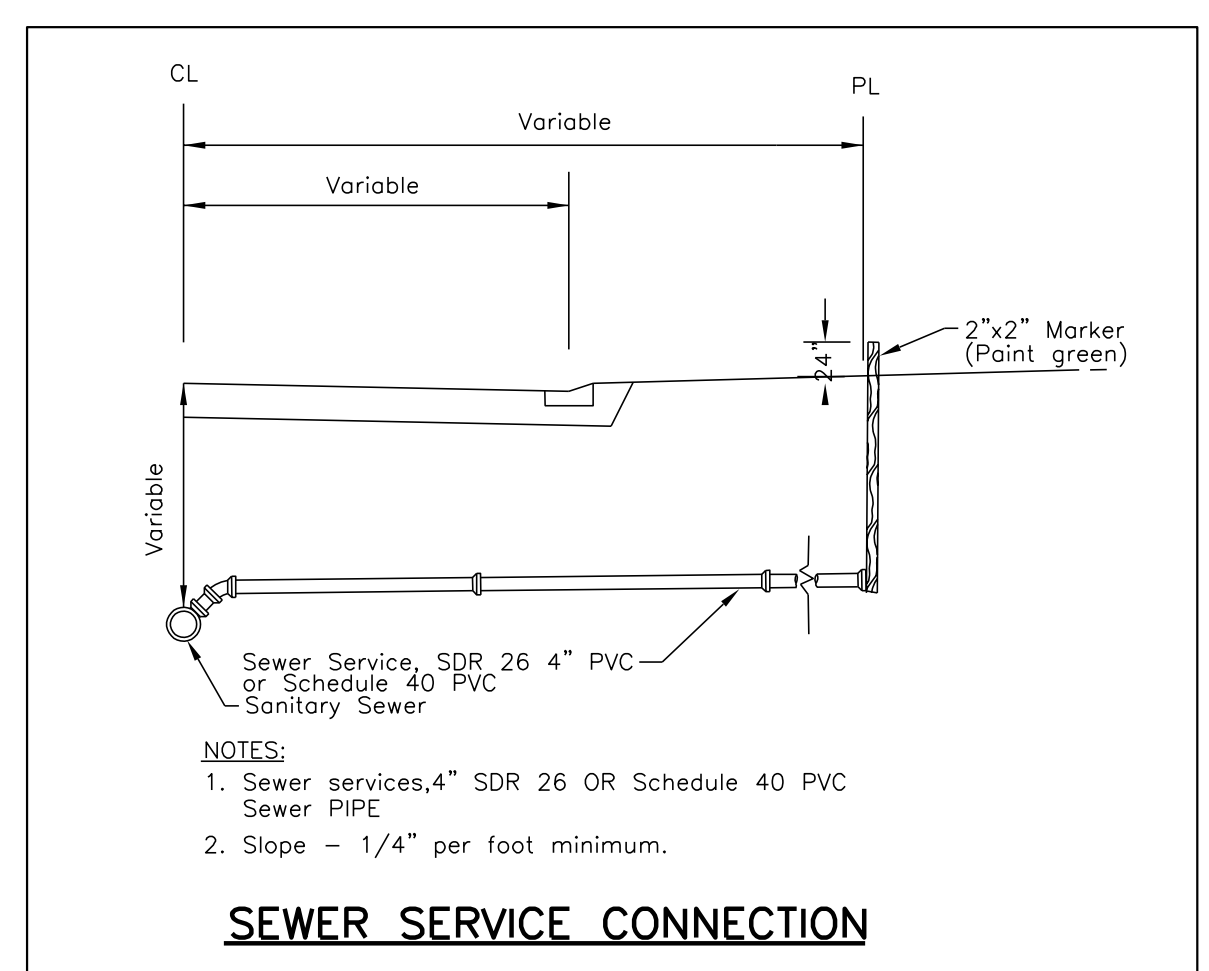
**LAKE SARAH**

WATER ELEVATION ON 12-11-19 = 979.64  
 O.H.W.L. = 980.31(N.A.V.D 88) ACCORDING TO MN DNR



- LEGEND**
- ⊙ denotes Well
  - ⊠ denotes Telephone Pedestal
  - ⊙ denotes Guy Wire
  - ⊙ denotes Power Pole
  - ⊙ denotes Sanitary Manhole
  - ⊙ denotes Storm Manhole
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  - SS denotes Existing Sanitary Sewer Line
  - FM denotes Existing Sanitary Sewer Forcemain
  - ST denotes Existing Storm Sewer Line
  - OHE denotes Existing Overhead Electric Line
  - denotes Existing Culvert
  - SS denotes Proposed Sanitary Sewer Line
  - denotes Building Setback Line  
 Front = 50'  
 Side = 30'  
 Rear = 40'  
 Wetland Buffer = 10'  
 O.H.W.L. = 60'
  - ▨ denotes Proposed Wetland Buffer
  - H denotes Possible House Pad Location

Note: Sanitary services shall be 4" PVC SDR 26.



- NOTES:**
- Sewer services, 4" SDR 26 OR Schedule 40 PVC Sewer PIPE
  - Slope - 1/4" per foot minimum.

REV. NO.	DATE	BY	DESCRIPTION
1	5-28-20	T.J.B.	REVISE EXIST. SAN. SEWER
2	7-22-20	T.J.B.	REVISE PROPOSED STORM SEWER
3	9-29-20	T.J.B.	REVISE DRAINAGE & UTILITY EASEMENTS

DESIGNED DRAWN  
 P.E.O. E.M.S.

CHECKED  
 P.E.O.

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*  
 Paul E. Otto  
 License #40062 Date: 9-29-20

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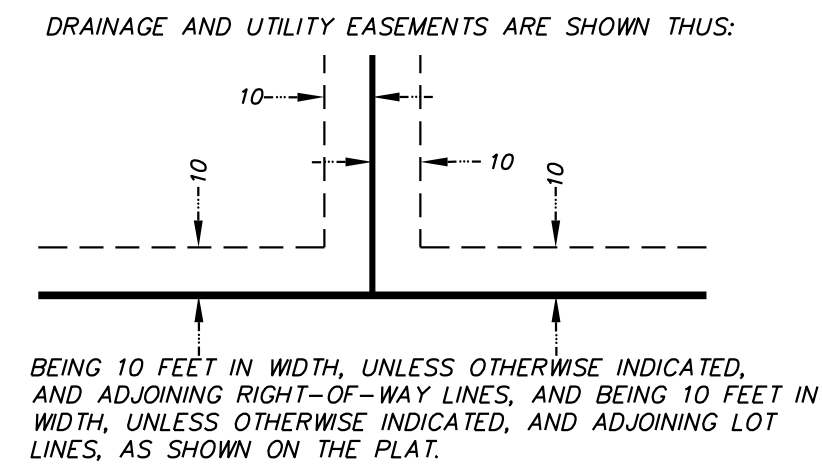
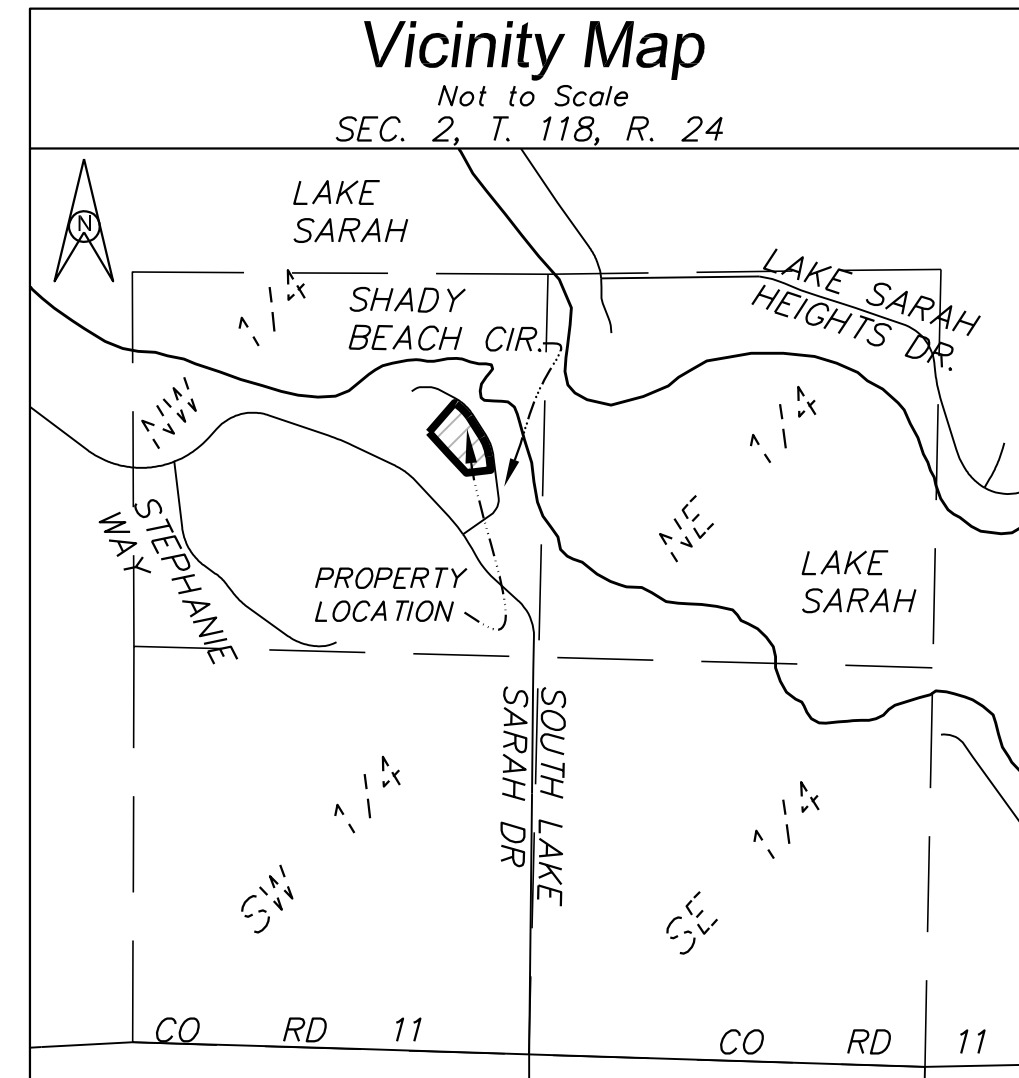
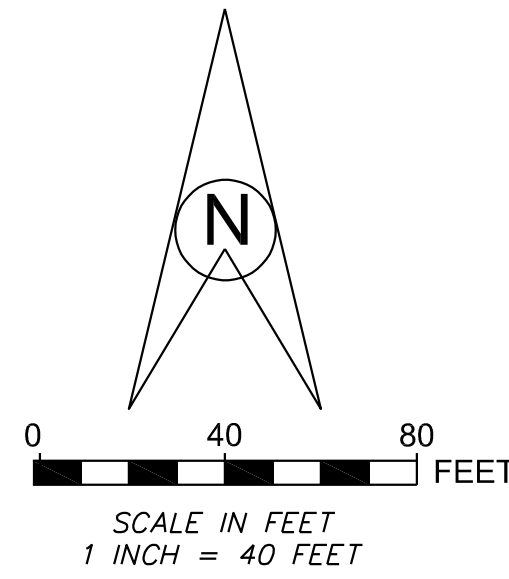
**SHADY BEACH PARK**  
 MARY JORGENSON  
 INDEPENDENCE, MN

PROJECT NO:  
**PRELIMINARY UTILITY PLAN** 19-0494

**SHEET NO. 3 OF 3 SHEETS** DATE: 01-06-20

# SHADY BEACH PARK

R.T. DOC. NO. \_\_\_\_\_



Bearing Note:  
The West line of Lot 1, Block 2, SHADY BEACH SECOND ADDITION, Hennepin County, Minnesota, is assumed to bear N12°06'57"E.

- denotes iron monument found 1/2" open pipe (Unless Otherwise Noted)
- denotes 1/2 iron by 14 inch iron pipe set and marked by License number 40062
- (130.00) denotes plot distance
- (Δ=27°00'00") denotes plot curve angle
- (L=200.54) denotes plot curve length

KNOW ALL PERSONS BY THESE PRESENTS: That Mary A. Jorgenson, a single person, fee owner of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

That part of Lot 1, Block 2, SHADY BEACH SECOND ADDITION, Hennepin County, Minnesota, according to the recorded plat thereof, that lies Southeasterly of the following described line:

Commencing at the Southwest corner of said Lot 1, said Southwest corner also being the Northwest corner of REGISTERED LAND SURVEY NO. 1157 according to the files of the Registrar; thence on an assumed bearing of South 61 degrees 53 minutes 05 seconds East, along the South line of said Lot 1, a distance of 237.33 feet to an angle point on said South line and the point of beginning of said line; thence North 43 degrees 52 minutes 49 seconds East, a distance of 263.57 feet to the Northerly line of said Lot 1 and said line there terminating.

Torrens Property

Has caused the same to be surveyed and platted as SHADY BEACH PARK and does hereby dedicate to the public for public use the drainage and utility easements as created by this plat.

In witness whereof said Mary A. Jorgenson, a single person, has hereunto set her hand this day of \_\_\_\_\_, 20\_\_\_\_.

Mary A. Jorgenson

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Mary A. Jorgenson, a single person.

(Notary Signature)

(Notary Printed Name)

Notary Public, \_\_\_\_\_ County, \_\_\_\_\_

My commission expires \_\_\_\_\_

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Paul E. Otto, Licensed Land Surveyor  
Minnesota License Number 40062

STATE OF MINNESOTA  
COUNTY OF WRIGHT  
This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Paul E. Otto.

(Notary Signature)

(Notary Printed Name)

Notary Public, \_\_\_\_\_ County, Minnesota

My commission expires \_\_\_\_\_

CITY COUNCIL, CITY OF INDEPENDENCE, MINNESOTA

This plat of SHADY BEACH PARK was approved and accepted by the City Council of the City of Independence, Minnesota at a regular meeting thereof held this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, City of Independence, Minnesota

By \_\_\_\_\_ Mayor By \_\_\_\_\_ Clerk

RESIDENT AND REAL ESTATE SERVICES, Hennepin County, Minnesota  
I hereby certify that taxes payable in 20\_\_\_\_ and prior years have been paid for land described on this plat, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

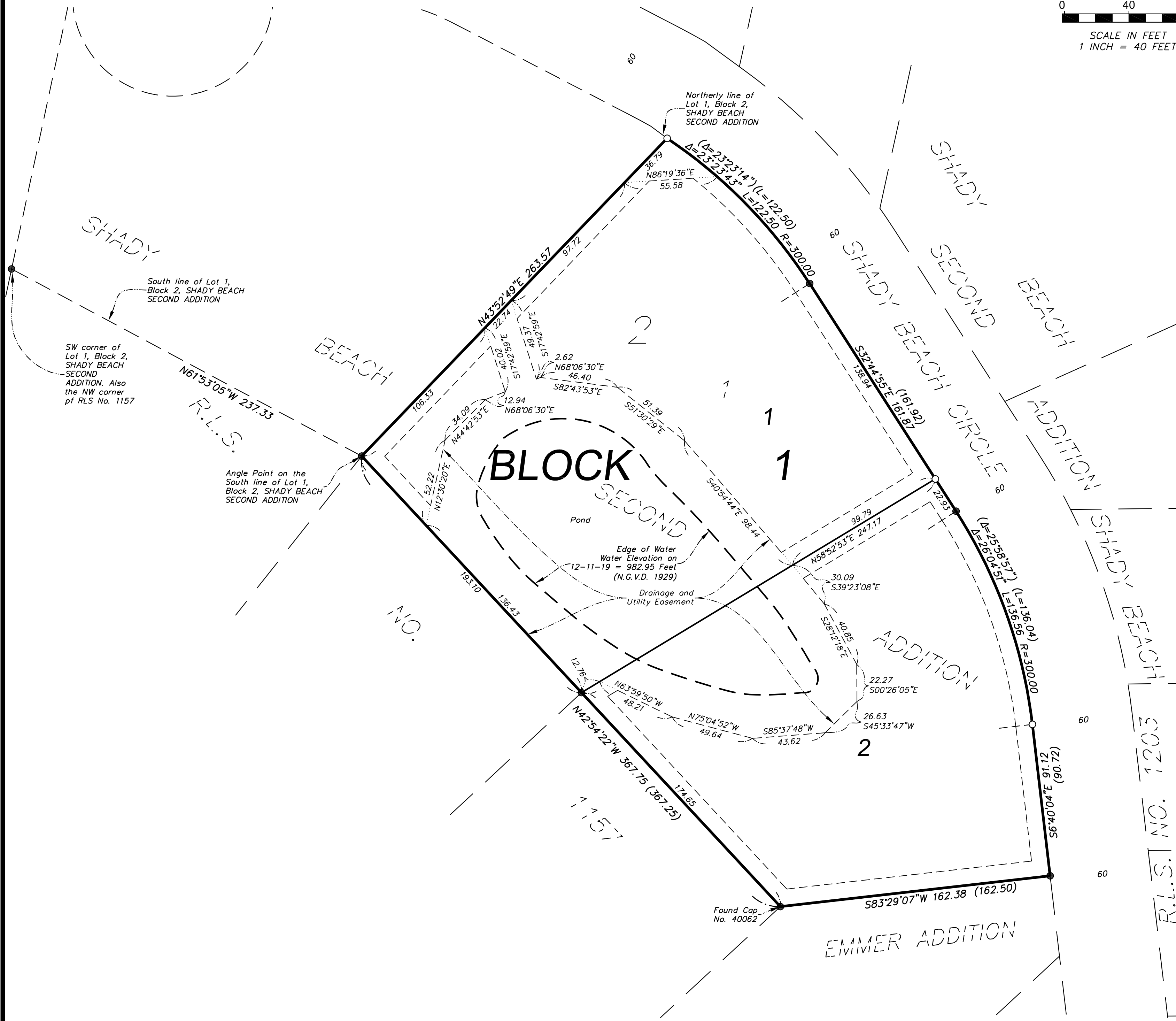
Mark V. Chapin, County Auditor Deputy by \_\_\_\_\_

SURVEY DIVISION, Hennepin County, Minnesota  
Pursuant to MN. STAT. Sec. 383B.565 (1969), this plat has been approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Chris F. Mavis, County Surveyor by \_\_\_\_\_

REGISTRAR OF TITLES, Hennepin County, Minnesota  
I hereby certify that the within plat of SHADY BEACH PARK was filed in this office this day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ m.

Martin McCormick, Registrar of Titles Deputy by \_\_\_\_\_



**DEVELOPMENT AGREEMENT  
BETWEEN MARY A. JORGENSEN  
AND THE CITY OF INDEPENDENCE**

**SHADY BEACH PARK**

This Development Agreement (the “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between the city of Independence, a municipal corporation under the laws of Minnesota (the “City”), and Mary A. Jorgenson (the “Developer”).

WITNESSETH:

WHEREAS, the Developer is the fee owner of land located at 4594 Shady Beach Circle, which land is legally described on Exhibit A attached hereto (the “Property”), and;

WHEREAS, the City Council previously approved the preliminary plat of Shady Beach Park (the “Subdivision”) and on October 6, 2020 approved the final plat of the Subdivision, and;

WHEREAS, the City approvals are collectively referred to hereinafter as the “City Approvals,” and;

WHEREAS, the final approval of the plat of Shady Beach Park is contingent upon the Developer entering into a development agreement satisfactory to the City, which development agreement will be recorded against the Property.

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

1. Right to Proceed. This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. The Developer may not construct public or private improvements or any buildings within the Subdivision until all the following conditions precedent have been satisfied:

- a) the final plat of Shady Beach Park has been filed with Hennepin County;
- b) this Agreement has been executed by the Developer and the City and filed with Hennepin County;
- c) the required Improvement Deposit and escrow amount (as hereinafter defined) have been received by the City from the Developer;
- d) final engineering and construction plans in digital form have been submitted by the Developer and approved by the city engineer;

- e) the Developer has paid the City for all legal, engineering and administrative expenses incurred by the City regarding the City Approvals;
- f) the Developer has responded to all comments from Bolton & Menk, Inc., dated August 31, 2020, and such responses have been approved in writing by the city administrator;
- g) the Developer has obtained written approval from the Minnehaha Creek Watershed District and provided evidence of such approval to the City;
- h) the Developer has executed the stormwater pond maintenance agreement of the form attached hereto as Exhibit B;
- i) the Developer has paid the park dedication fee as per paragraph 8 herein, and;
- j) the Developer's agent has attended a preconstruction meeting with the City engineer and staff.

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

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

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

- 1. sanitary sewer connection for Lot 2, Block 1.
- 2. stormwater pond facility and associated grading.

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

3. Erosion Control. a) All construction regarding the Subdivision Improvements shall be conducted in a manner designed to control erosion and in compliance with all City ordinances and other requirements, including the City's permit with the Minnesota Pollution Control Agency regarding municipal separate storm sewer system program dated June 30, 2014. Before any portion of the Subdivision is rough graded, an erosion control plan shall be implemented by the Developer as approved by the City. The City may impose reasonable, additional erosion control requirements after the City's initial approval, if the City deems such necessary due to a change in conditions. All areas disturbed by the excavation shall be reseeded promptly after the completion of the work in that area unless construction of streets or utilities,

buildings or other improvements is anticipated immediately thereafter. Except as otherwise provided in the erosion control plan, seed shall provide a temporary ground cover as rapidly as possible. All seeded areas shall be mulched, and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion.

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

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

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

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

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

coordinates. Iron monuments must be installed in accordance with state law. The Developer's surveyor shall submit a written notice to the City certifying that the monuments have been installed. All Subdivision Improvements required by this Agreement shall be completed by no later than December 15, 2020, except as specifically noted otherwise in this Agreement.

b) The Developer agrees to require its contractor to provide to the City a warranty bond against defects in labor and materials for all elements of the Subdivision Improvements for a period of two years from the date of their acceptance by the City. During such period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. A decision regarding whether a Subdivision Improvement shows signs of failure shall be made by the City in the exercise of its reasonable judgment. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Improvement Deposit (as hereinafter defined) to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Improvement Deposit. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

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

6. Stormwater Pond Improvements. a) The Developer agrees to complete all elements of the on-site stormwater facilities, including but not limited to ponds, infiltration basins and accompanying structures, in accordance with the Plans and in compliance with all City requirements regarding such improvements. The stormwater facilities serving the Subdivision will remain private and will be maintained by the Developer, or successor owners, at its sole expense. The City does not intend to accept the stormwater facilities as public and does not intend to maintain them. In order to meet the requirements of the Minnehaha Creek Watershed District, the Developer agrees to enter into a Stormwater Pond Maintenance Agreement with the City in the form attached hereto as Exhibit B. The purpose of the Stormwater Pond Maintenance Agreement is to ensure that the Developer and ultimately the homeowners association maintain the stormwater facilities within the Subdivision and to give the City the right but not the obligation to do so if the Developer fails in its obligations. The Stormwater Pond Maintenance Agreement will be recorded against the Property and will run with the land. The Developer acknowledges that i) the on-site storm water improvements will not be accepted by the City; ii) the City does not plan to maintain or pay for maintenance, repair or replacement of the storm sewer improvements and that the

Developer and ultimately the lot owners will have primary responsibility for such work; iii) the City has the right but not the obligation to perform necessary work upon the failure or refusal by the Developer or the lot owners to do so; and iv) if the City performs any work on the storm water improvements, the City intends to recover its costs through one of the means available to it, including the right to specially assess the cost of such work against all of the lots within the Subdivision.

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

7. Improvement Deposit. a) In order to ensure completion of the Subdivision Improvements required under this Agreement, repair of any roads damaged by the Developer or its contractors or subcontractors and satisfaction of all fees due to the City, the Developer agrees to deliver to the City prior to beginning any construction or work within the Subdivision, \_\_\_\_\_ and 00/100 Dollars (\$) \_\_\_\_\_ (the “Improvement Deposit”), which represents 150 percent of the estimated cost of the Subdivision Improvements as specified in the Plans. The Improvement Deposit amount represents the maximum risk exposure for the City, based on the anticipated sequence of construction and the estimate of cost of each element of the Subdivision Improvements, rather than the aggregate cost of all required Subdivision Improvements. The City shall deposit the Improvement Deposit in a City account with a bank of its choosing. The City shall be the sole accountholder and have sole rights to access and control the funds within the account. The estimated cost of the work covered by the Improvement Deposit is itemized on Exhibit C attached hereto. Upon 10 days’ written notice to Developer, the City may draw upon the Improvement Deposit, in whole or part, in order to complete construction of any or all of the Subdivision Improvements and other specified work within the Subdivision, to repair any damaged roads and to pay any fees or costs due to the City by the Developer.

b) The City agrees to return a portion of the Improvement Deposit, in an amount to be determined solely by the City, upon substantial completion of any significant portion of the covered Subdivision Improvements, delivery of the required warranty bond to the City, and satisfaction of all of the Developer’s financial obligations to the City. The Improvement Deposit may also be used as security for additional elements of the Subdivision Improvements. Prior to releasing any portion of the Improvement Deposit, the City shall first be satisfied regarding the quality and completeness of the work and that the Developer has taken such steps as may be necessary to ensure that no liens will attach to the land within the Subdivision. The remaining balance of the Improvement Deposit shall be released in full and returned to the Developer following installation of the final wear course of bituminous on the streets and after satisfaction of all the Developer’s financial obligations to the City under this Agreement.



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

8. Park Dedication Requirements. The Developer shall pay a cash-in-lieu park dedication fee of Seven Thousand and 00/100 Dollars (\$7,000.00) for the Subdivision.

9. Sewer Assessment Payment. The Developer shall pay Nine Thousand Five Hundred and Fifty-Five and 00/100 Dollars (\$9,550.00) for the connection of Lot 2, Block 1 to the municipal sanitary sewer system.

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

b) The Developer shall also pay a fee for City construction observation and administration relating to construction of the Subdivision Improvements. Construction observation shall include inspection of all the Subdivision Improvements. In order to reimburse the City for the administrative fee and the reasonable cost of inspection of the Subdivision Improvements, the Developer shall deposit an additional \$5,000.00 with the City, which shall receive and hold such funds solely under the terms of this Agreement. The City shall reimburse itself for expenses from the deposit and will provide the Developer with a copy of any invoice from the City engineer or evidence of other cost or expense prior to deducting such funds from the deposit. If any funds held exceed the amount necessary to reimburse the City for its costs under this paragraph, such funds shall be returned to Developer without interest. If it appears that the actual costs incurred will exceed the estimate, Developer and City shall review the costs required to complete the project and the Developer shall deposit additional sums with the City.

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

successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes, section 429.081.

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

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

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

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

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

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


17. Agreement Runs With the Land. This Agreement shall run with the Property and shall be recorded against the title thereto and shall bind and inure to the benefit of the City and the Developer and their successors and assigns. The Developer's successor in title may be responsible for obligations under this Agreement as required by the City. The Developer

warrants that there are no unrecorded encumbrances or interests relating to the Property. The Developer agrees to indemnify and hold the City harmless for any breach of the foregoing covenants.

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

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

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

- a) as to Developer: Mary A. Jorgenson  

  
- b) as to City: City of Independence  
1920 County Road 90  
Independence, MN 55359-9448  
Attn: City Administrator
  
- with a copy to: Robert Vose  
Kennedy & Graven  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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

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

22. Non-waiver. Each right, power or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or

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

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

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

**CITY OF INDEPENDENCE**

By: \_\_\_\_\_  
Marvin Johnson, Mayor

By: \_\_\_\_\_  
Mark Kaltsas  
City Administrator

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Marvin Johnson and Mark Kaltsas, the Mayor and City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

**Mary A. Jorgenson**

---

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020,  
by Mary A. Jorgenson.

---

Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A TO  
DEVELOPMENT AGREEMENT**

Legal Description of the Property

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

Lots 1 and 2, Block 1, Shady Beach Park, according to the recorded plat thereof.

**EXHIBIT B TO  
DEVELOPMENT AGREEMENT**

**FORM OF  
STORMWATER POND MAINTENANCE AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the city of Independence, a Minnesota municipal corporation (the “City”), and Mary A. Jorgenson (the “Developer”).

**WITNESSETH:**

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

**WHEREAS**, the Developer has granted to the City drainage and utility easements over portions of the Property through dedication on the plat of Shady Beach Park; and

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

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

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

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

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

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

1. Maintenance of the Stormwater Improvements. The Developer and its successors or assigns as fee owners of the Property shall be responsible for maintaining the Stormwater Improvements and for observing all drainage laws governing the operation and maintenance of the Stormwater Improvements. The Developer shall provide the City with a schedule acceptable to the City for the periodic inspection of the Stormwater Improvements by the Developer. The Developer shall make all such scheduled inspections, keep record of all inspections and

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

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

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

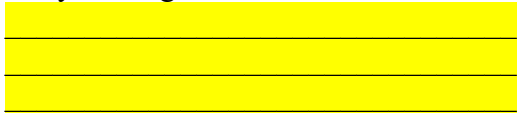
4. Costs of Enforcement. The Developer agrees to reimburse the City for all costs prudently incurred by the City in the enforcement of this Agreement, or any portion thereof,



including court costs and reasonable attorneys' fees.

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

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

a) as to Developer: Mary A. Jorgenson  


b) as to City: City of Independence  
1920 County Road 90  
Independence, MN 55359-9448  
Attn: City Administrator

with a copy to: Robert Vose  
Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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

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

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

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

**Mary A. Jorgenson**

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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020,  
by Mary A. Jorgenson.

---

Notary Public

**CITY OF INDEPENDENCE**

By: \_\_\_\_\_  
Marvin Johnson, Mayor

By: \_\_\_\_\_  
Mark Kaltsas  
City Administrator

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Marvin Johnson and Mark Kaltsas, the Mayor and the City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A TO  
STORMWATER MAINTENANCE AGREEMENT**

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

Lots 1 and 2, Block 1, Shady Beach Park, according to the recorded plat thereof.

**EXHIBIT C TO  
DEVELOPMENT AGREEMENT**

Subdivision Improvement Cost Estimate

[To be inserted]

## DRAINAGE AND UTILITY EASEMENT

**THIS INSTRUMENT** is made this \_\_\_ day of \_\_\_\_\_ 2020 by \_\_\_\_\_, (collectively, the “**Grantor**”) in favor of the City of Independence, a Minnesota municipal corporation (the “**Grantee**” or the “**City**”).

### Recitals

- A. The Grantor is the fee owner of certain real property legally described on the attached **Exhibit A** (the “**Property**”);
- B. Grantor wishes to grant to the City those certain permanent drainage and utility easements as hereinafter described in, over, across, beneath, and above a portion of the Property which is legally described on the attached **Exhibit B**, and further as depicted on the attached **Exhibit C** (the “**Easement Area**”) according to the terms and conditions contained herein (“**Easement**”).

### Terms of Easement

- 1. Recitals: The above recitals are hereby incorporated into this Easement.
- 2. Grant of Easement. For good and valuable consideration, receipt of which is hereby acknowledged by Grantor, Grantor grants and conveys to the City those perpetual, non-exclusive easements for drainage and utility purposes in, over, across, beneath, and above the Easement Area.
- 3. Scope of Easement. The permanent non-exclusive easements for drainage and utility purposes granted herein includes the right of the City, its contractors, agents, and employees to install, locate, construct, operate, maintain, alter, repair, improve, and replace

the utilities, drainage ways and stormwater facilities in, over, across, beneath and above the Easement Area. The Easement granted herein also includes the right to cut, trim, or remove from the Easement Area such trees, shrubs, or other vegetation as in the City's judgment unreasonably interfere with the Easement or facilities of the City, its successors, or assigns.

4. Warranty of Title. The Grantor warrants it is the fee owner of the Property and has the right, title and capacity to convey to the City the Easement.
5. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorney's fees, or losses resulting from any claims, actions, suits or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or the Property prior to the date of this instrument.
6. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Grantor, its heirs, successors and assigns.

*{Remainder of Page Intentionally Left Blank; Signature Page to Follow}*

**GRANTOR:**

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_ and \_\_\_\_\_, married to each other, Grantor.

\_\_\_\_\_  
Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT DRAFTED BY:  
Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300



**EXHIBIT A**  
Legal Description of the Property

**EXHIBIT B**  
Legal Description of the Easement Area

**EXHIBIT C**  
Depiction of the Easement Area

**City of Independence**  
**Discussion and Direction Regarding CUP for 3315 County Road 19 N.**

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*To:* City Council  
*From:* Mark Kaltsas, City Administrator  
*Meeting Date:* October 6, 2020

***Discussion:***

Last year the City completed its regular compliance review of all conditional use permits in the City. Following inspection of the majority of conditional use permits and after an extended period of time and opportunities were granted to property owners to bring non-compliant properties into compliance, it was recommended that a handful of conditional use permits be considered for revocation. The City Council revoked a number of conditional use permits in February 2019 based on non-compliance or no longer being used by the property owner. The property located at 3315 County Road 92 N. was notified of a hearing for revocation at the February 5<sup>th</sup> City Council Meeting. The property identification number was mistakenly not included in the revocation resolution. The City identified this error and looked to make a correction at the July 30, 2019 City Council Meeting.

The City Council considered the matter at the July 2019 meeting. The future buyer of the property was in attendance at the meeting and asked the City Council to consider postponing a decision on the CUP revocation. The buyer described his intent to clean the property and bring it into compliance with applicable conditions associated with the conditional use permit. Council discussed the matter and ultimately made a decision to table revocation of the CUP. After a lengthy Council discussion, it was noted that the purpose for tabling the CUP was to allow the buyer and opportunity to consider and make application for an Interim Use Permit. The Interim Use Permit would allow a reasonable public process to be authenticated and relevant current details of the business to be considered by the City.

The purchaser of the subject property, Vincent Velie, made an application to the City in October of 2019 for an Interim Use Permit. The City reviewed and processed the IUP. The Planning Commission considered the IUP in February 2020 and were unable to pass a motion to approve nor deny the application. Ultimately, the IUP was withdrawn by the applicant before City Council consideration on the matter.

At the request of Mr. Velie's Attorney, the City inspected the site in April 2020. The City prepared a letter with the findings of the inspection. A copy of the inspection letter is attached to this report. Mr. Velie's Attorney has also provided the City with a list of equipment and vehicles on the property that Mr. Velie does not use in his business. The City has also received several additional letters or correspondence from neighboring property owners relating to the use of the property in 2019 and 2020.

***Recommendation:***

The City Council is being asked to consider the information presented and to provide direction to staff relating to the status of the revocation of the existing conditional use permit that was tabled in 2019.

***ATTACHMENTS:***    **Original Conditional Use Permit**  
                          **Neighboring Property Owner Letters**  
                          **Private Vehicle List**



July 27, 2020

Vincent Velie  
3315 County Road 92 N  
Independence, MN 55359

**RE: 3315 County Road 92 N. – Conditional Use Permit Application**

Dear Vincent,

A Conditional Use Permit (CUP) allowing a landscaping, irrigation and snowplowing business was granted to the prior owner of your property via Resolution 94-1025-02 in 1994. Following the withdrawal of your application for an interim use permit, the City of Independence has reviewed the condition of your business and property, and I inspected the site on March 26, 2020.

Inspection of the property along with continued correspondence from surrounding property owners has aided the City in identifying areas of noncompliance with the 1994 CUP which governs use of the subject property. As a result of not being compliant with the approved CUP, the property is in violation of applicable zoning ordinances. The City would like to work with you to remedy the identified issues immediately and bring the property into full conformity with all applicable CUP conditions and zoning ordinance requirements.

The conditions of the City's approval were stated in Resolution 94-1025-02 which was approved by the Independence City Council on October 25, 1994 and is attached hereto. In particular, the CUP specified the following requirements:

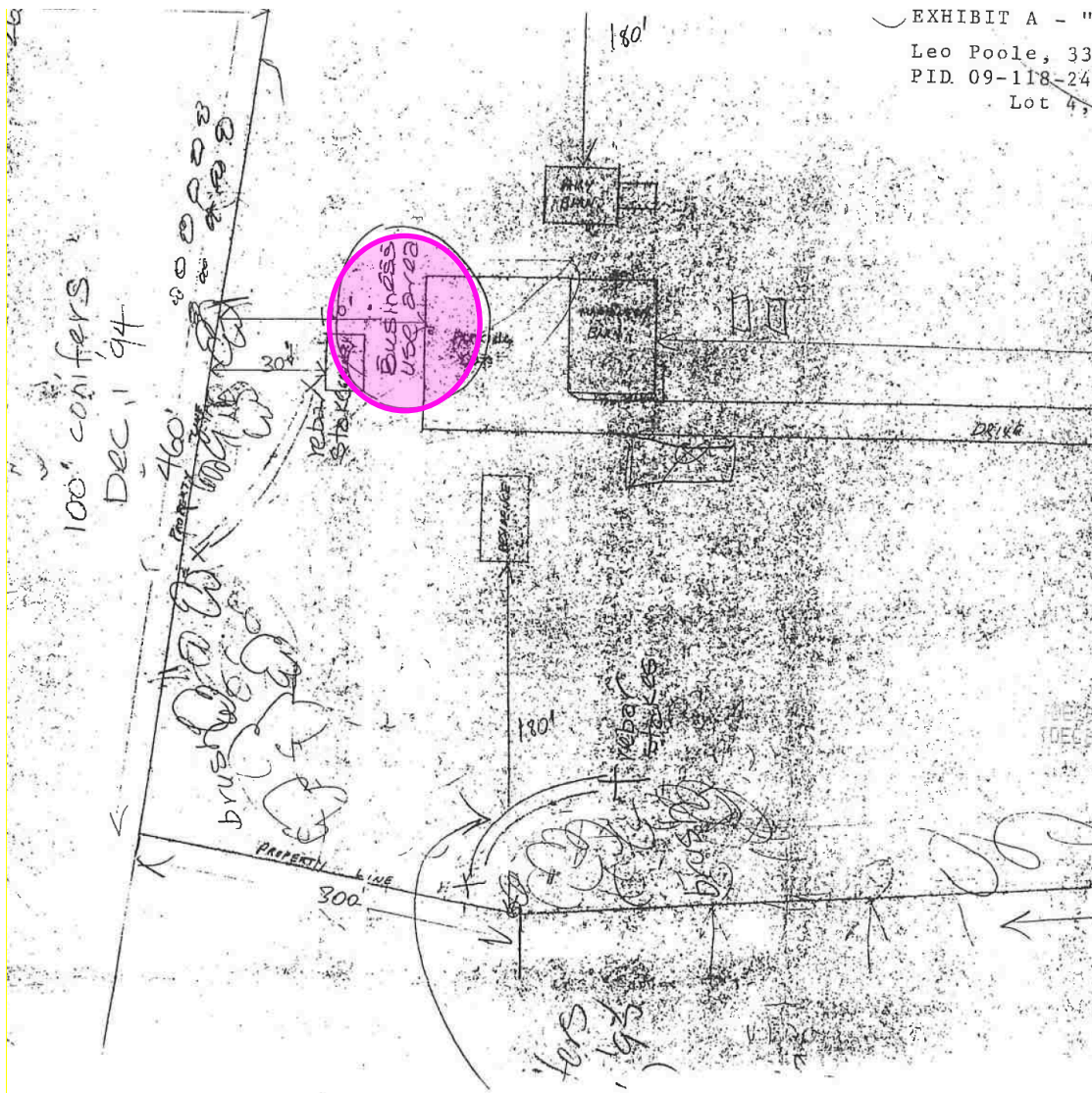
*Condition #2b. – The Applicant must plant approximately 200 feet of conifers along the south and west boundary lines, as shown in the attached diagram. The trees must be placed on 10 foot centers and must be at least 4 feet tall when planted. Planting along the west boundary line shall be completed by June 1, 1995. The Applicant shall maintain and replace the trees as necessary at all times that the conditional use permit is in effect, in order to provide the screening required by Section 13 A of Ordinance No. 88.*

*Condition #2c. – All business-related vehicles and equipment must be stored indoors or consolidated in the area near the barn, as shown on the attached diagram.*

*Condition #2k. – The business operation shall not be conducted in a manner that, in the determination of the city council, unreasonably interferes with the neighboring property owners' peaceable enjoyment of their property.*

The property is not fully in compliance with the aforementioned conditions. You must comply with all applicable CUP conditions, including those outlined above. During my inspection, I noted that there were newly planted evergreen trees along the west property line. It was clear from the site visit that these trees were new and that the requisite trees had not been planted and therefore maintained since June 1, 1995 in accordance with condition 2b. The City could also not verify the location, spacing and height of the trees that were newly planted.

There is a wide array of equipment, vehicles and other miscellaneous items stored outside of the defined outdoor storage area discussed in condition 2c. The CUP specifically allows vehicles and equipment to be consolidated outside and only in the area near the barn. Any outdoor storage other than inside a building or within the area defined on the plan is not permitted on the property (see pictures attached to this letter).



I also identified three (3) detached accessory buildings located in the southwest corner of the property, but I could not identify what the buildings were being used for at the time of the on-site inspection. The approved site plan does not identify any detached accessory buildings located in this location. The City has not approved any amendments or modifications to the site plan or the number and quantity of designated accessory storage buildings permitted on the property, nor approved building permits for construction of such buildings.

West Hennepin Public Safety has notified that City that burning of large piles of trees and brush has occurred on the property without applicable permits. The most recent violation occurred on June 26, 2020. West Hennepin Public Safety received a call that a large fire was burning on the property. West Hennepin issued a citation for burning without a permit and noted that the size and quantity of material on the property appeared to have been brought onto the property. West Hennepin Public Safety has notified the City that no burn permits can be issued for this property due to the citation.

Over the course of the past 12 months, the City has received several verbal and written complaints regarding the use of the property and the disruption and interference with the peaceful enjoyment of surrounding properties. The concerns represented both verbally and in writing express concerns with the business operation on the property. Condition 2k clearly states that the business operation shall not unreasonably take away the neighboring properties reasonable use and enjoyment.

There are two (2) zoning violations relating to your use of the property.

1. Violation of City Code Chapter V, Section 520.09, Procedure for conditional use permits. You have violated the conditions stated within the approved conditional use permit. City Code § 520.09-Subd. 9. specifically provides, “If the applicant violates any of the conditions set forth in the conditional use permit, the city council may revoke the conditional use permit.”
2. Violation of City Code Chapter V, Section 520.37, Enforcement. You have violated the conditions stated within the approved conditional use permit. City Code § 520.37-Subd. 1. specifically provides, “Any person, firm, or corporation who violates or fails to comply with any of the provisions of this zoning code or the provisions of any permit issued pursuant to this zoning code or who makes any false statement in any document required under the provisions hereof is guilty of a misdemeanor. Unless otherwise provided, each act of violation and every day on which a violation occurs or continues constitutes a separate offense.”

In order to comply with the requirements of the City’s Ordinance, you will need to complete the following actions:

- Provide the City with a site plan/survey that confirms that location of the planted trees, spacing and planted size (confirmation of size planted using ANSI Z60.1).



- Remove all items stored outside of the buildings or within the designated storage area that do not comply with conditions #2c of the approved CUP.
- Remove three (3) detached accessory structures located in the southwest corner of the property or apply for and be granted an amendment to the CUP allowing additional detached accessory buildings.
- The City Council has been notified of the verbal and written concerns that the business use of the property has unreasonably taken away the reasonable use and peaceful enjoyment of the neighboring properties. The City Council will need to consider the information presented in this letter and in the verbal and written communication with the City at a future City Council Meeting to determine if a violation of the approved conditions has occurred. Prior to the matter being considered by the City Council, the City will provide you with the date and time that the issue will be considered by the City Council.

Failure to comply with all requirements of the CUP may result in revocation of the conditional use permit, the issuance of ordinance violation citation(s), and/or the pursuit of any and all other legal and equitable remedies available to the City

Please let me know if you have any questions regarding this letter by contacting me at (612) 567-8786.

Sincerely,



Mark Kaltsas  
City Administrator

CC: Robert Vose – City Attorney

ATTACHMENTS: **Resolution 2013-06-25-01**  
Site Inspection Pictures

Member Anderson introduced the following resolution and moved its adoption:

CITY OF INDEPENDENCE

RESOLUTION NO. 94-1025

RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO LEO POOLE FOR A LANDSCAPING, IRRIGATION, AND Snowplowing BUSINESS AT 3315 COUNTY ROAD 92

WHEREAS, Leo Poole ("Applicant") has applied for a conditional use permit to operate a landscaping, irrigation and snowplowing business on the property at 3315 County Road 92, which is legally described on the attached Exhibit A (the "Property"); and

WHEREAS, pursuant to City of Independence Ordinance No. 88, Sections 13A and 15, the Applicant must obtain a conditional use permit for this use; and

WHEREAS, the planning commission reviewed this matter at its meeting on February 21, 1994 and the city council reviewed the application on February 22, October 11, and October 25, 1994.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Independence, Minnesota:

1. The City Council makes the following findings of fact:
  - a. The Applicant's landscaping, irrigation and snowplowing business was in existence and operating as of January 1, 1992 on the Property, and the business was a nonconforming use at the time of adoption of Section 13A of Ordinance No. 88. The Applicant applied for this conditional use permit prior to September 1, 1993.
  - b. The Applicant has at all times since January 1, 1992 occupied the Property as his principal residence.
  - c. The Property is located in an agricultural zoning district.
  - d. The Applicant failed to establish that outdoor storage of scrap metals, inoperable machinery, vehicles, windmill, or PVC pipe is necessary. Such outdoor storage unreasonably interferes with the character of the surrounding area and the neighboring property owners' peaceable enjoyment of their properties.

- e. The Applicant's business meets the requirements of Sections 13A and 15 of Ordinance No. 88, provided that the Applicant complies with the conditions of this resolution.
2. A conditional use permit is hereby granted to the Applicant for the operation of a landscaping, irrigation, and snowplowing business on the Property, subject to the following terms and conditions:
- a. The business may not employ more than 5 persons who do not reside on the Property. The business owner/operator must reside on the Property at all times that this conditional use permit is in effect.
  - b. The Applicant must plant approximately 200 feet of conifers along the south and west boundary lines, as shown in the attached diagram. The trees must be placed on 10 foot centers and must be at least 4 feet tall when planted. Planting along the west boundary line shall be completed by December 1, 1994 and planting on the south boundary line shall be completed by June 1, 1995. The Applicant shall maintain and replace the trees as necessary at all times that the conditional use permit is in effect, in order to provide the screening required by Section 13A of Ordinance No. 88.
  - c. All business-related vehicles and equipment must be stored indoors or consolidated in the area near the barn, as shown on the attached diagram.
  - d. Scrap metals, inoperable machinery and vehicles must be removed from the site on or before January 1, 1995. The ford dump truck will be moved and stored in the area between the house and the barn.
  - e. The windmill on the site must be removed or set in place on or before June 1, 1996.
  - f. The piles of PVC that are currently stored outside must be moved to the north side of the barn by January 1, 1995.
  - g. The Applicant must comply with all applicable requirements of Section 13A.5 at all times that this conditional use permit is in effect.
  - h. There shall be no signs on the Property that identify or advertise the business.
  - i. Hours of operation for the business shall be Monday through Saturday, from 7:00 a.m. to 8:00 p.m. All maintenance work on machinery shall be done during the authorized hours of operation.
  - j. The Fire Department shall be permitted to inspect the premises at reasonable times to ascertain location and type of any chemicals used in connection with the business.

- k. The business operation shall not be conducted in a manner that, in the determination of the city council, unreasonably interferes with the neighboring property owners' peaceable enjoyment of their property.
- l. An inventory of all equipment stored on the property will be filed with the City Clerk.

Dated: 10/25, 1994.

Marvin Johnson  
Marvin Johnson, Mayor

ATTEST:

Mary Leintz  
Mary Leintz, Clerk-Treasurer

The motion for the adoption of the foregoing resolution was duly seconded by member *Ostvig* and upon vote being taken thereon, the following voted in favor thereof:

*Johnson, Anderson, Fraser, Ostvig, Smith*

and the following voted against same:

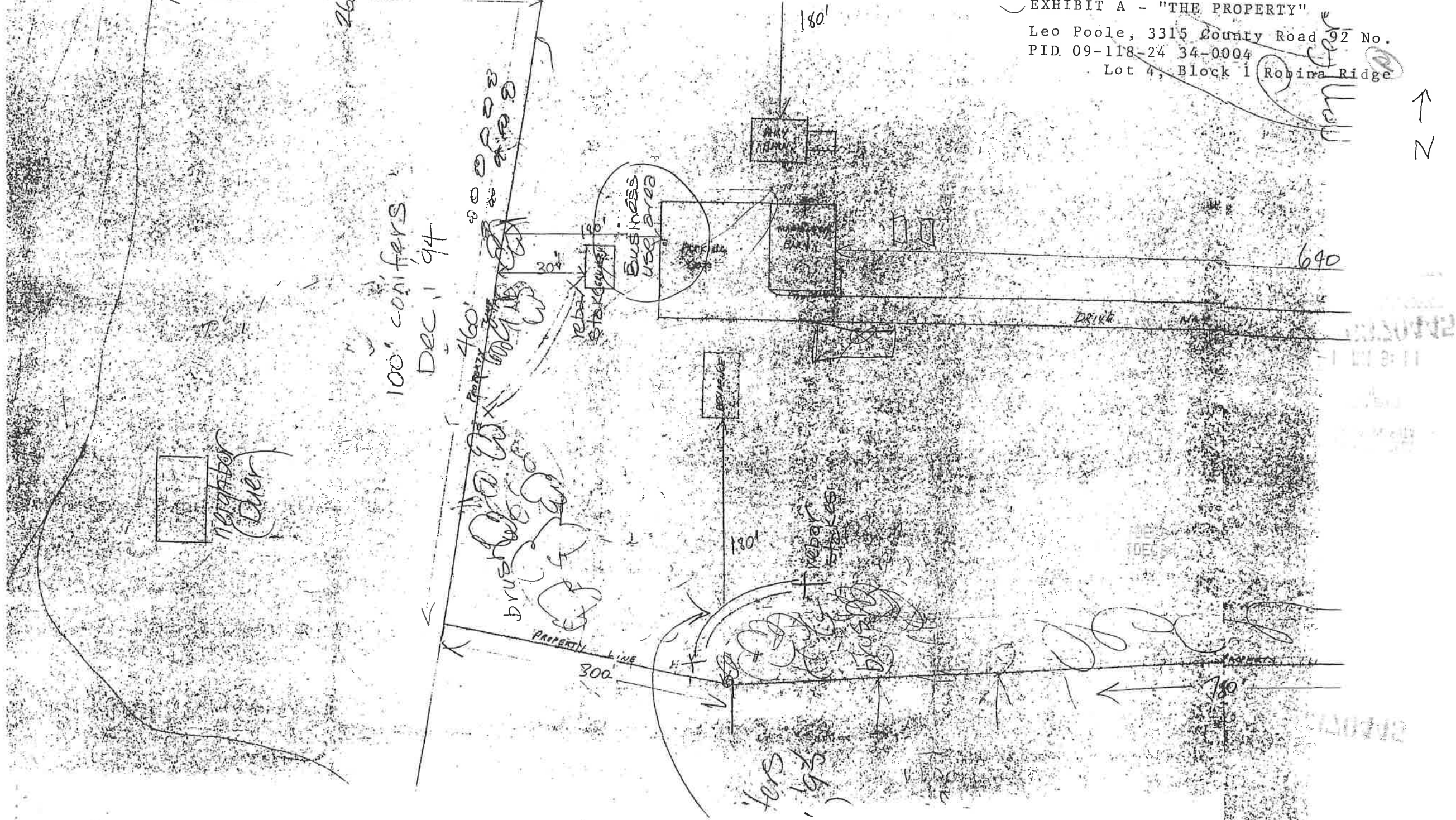
*None*

Whereupon said resolution was declared duly passed and adopted.

EXHIBIT A - "THE PROPERTY"

Leo Poole, 3315 County Road 92 No.  
PID. 09-118-24 34-0004  
Lot 4, Block 1 Robina Ridge

↑  
N



18m

**6370445**

1DEC94 9:13 B6370445 SC0 \$4 50  
1DEC94 9:13 B6370445 DDC \$15 00

OFFICE OF COUNTY RECORDER  
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR  
RECORDED ON

1994 DEC -1 AM 9:11

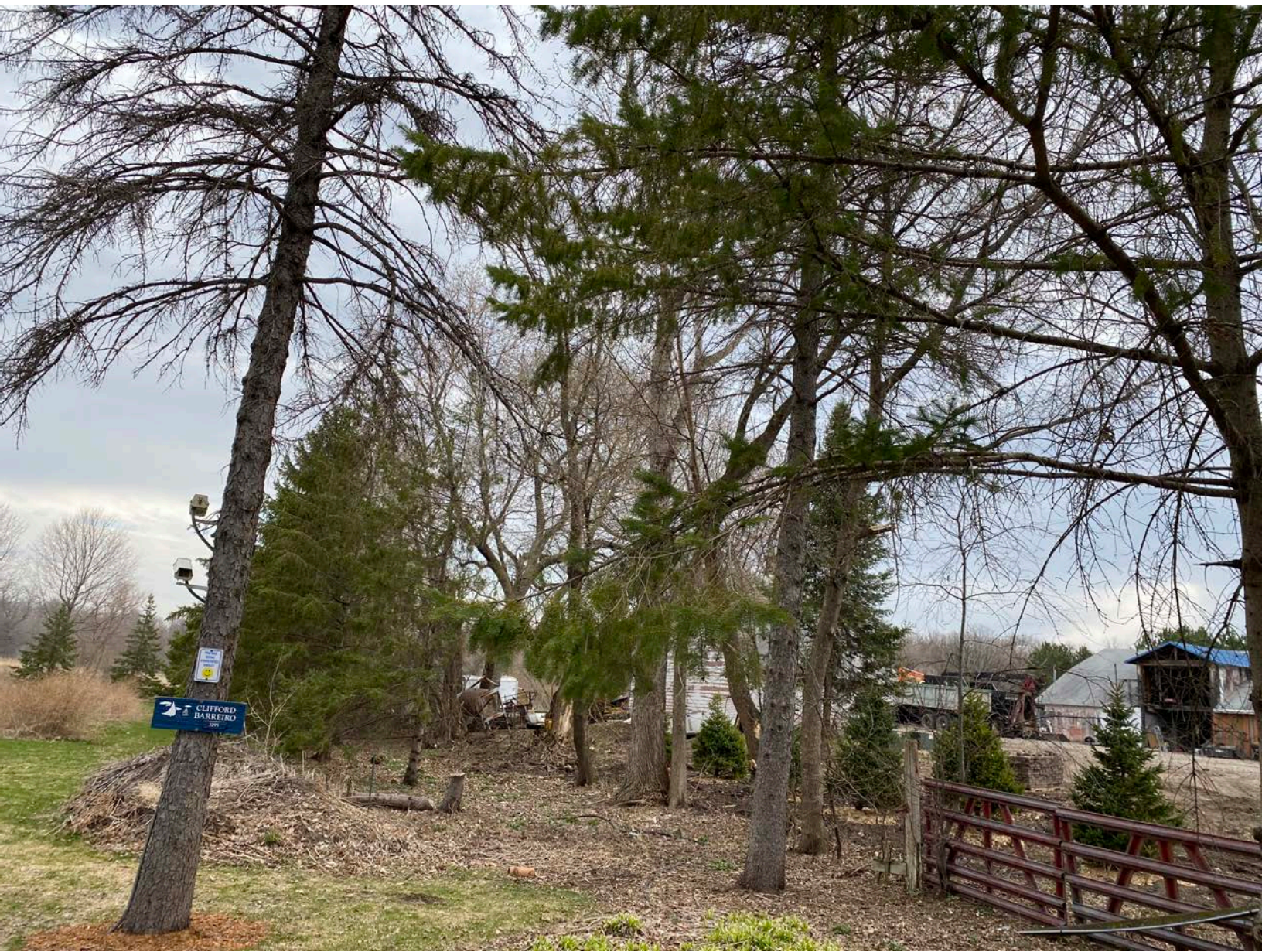
AS DOCUMENT # **6370445**

*R. Dean Carlson* CO. RECORDER

BY *[Signature]* DEPUTY

EW  
Mary L. Leintz  
City Independence

























Jim Clifford and Terri Barreiro  
PO Box 397  
3295 County Road 92 N.  
Maple Plain, MN 55359

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April 9, 2020

Brad Spencer  
City of Independence  
1920 County Rd 90  
Independence, MN 55359

RECEIVED  
City of Independence  
APR 15 2020  
1920 County Road 90  
Independence, MN 55359

Dear Mr Spencer,

We are writing to you concerning the mess that has been created in the issue of CPU / IUP for 3315 County Road 92 N.

Something is amiss in the City's dealing with this. Prior to the Planning Commission Hearing on November 19, 2019, I sent a letter to City Planning (attached) I received no reply to my concerns, most of which have materialized.

At the November 19th the City Planning Director made a presentation showing building placement, equipment parking, etc.

At the November 19th meeting, Commissioner Steve Thompson asked the City Planner whether this would even be considered if a new application. The answer was "No". An insightful question, indeed. A whispered discussion in the audience ensued about why the CPU was not revoked upon sale of the property. City Council action? What in the world happened?

Having dealt with the City's lack of enforcement concerning this property for 25 years, we knew that stopping the IUP was unlikely and that the issue would be a new sprit of enforcement. I made a plea to the committee to make an effort to emphasize enforcement in any IUP granted.

After the November 19th meeting, things got really confused. Mr. Velie seemed to think that he was to negotiate with me. I presumed the Planning Director would lead the process.

Mr Velie said that if the city required 6 foot trees be planted, he would continually prune them to 6 feet. He discussed berms, fences and all sorts of "ideas". He said many such things at the meeting and to my face that led me to believe he could not be trusted.

Sheds, equipment and clutter remain everywhere, in fact are worse than before because massive number of trees and screening vegetation have been removed. The City had assured me that no equipment would be visible from my property. Come up my driveway and look, anytime. Equipment and junk has been place on the property line. Bruce Satek was out a couple weeks ago. You might seek out his observations.

I also suspect there are un-permitted projects underway. Massive amounts of dirt have been moved to build what looks like a parking lot on the west side of his house. There are many more issues concerning screening, noise, fires, inspections, etc. Too many to enumerate here.

Most blatant, I was told that he could not operate a business under either CUP or IUP unless he lived there. Well, since there is no Certificate of Occupancy (50+ year old septic) how is it possible someone is living there and this equipment is on the property?

Mr. Spencer, I know this is not a big problem for the you, the council and the City. But, in all fairness, it is a problem of the City's making. I think someone is sneaking this through contrary to City zoning and building codes. Something has corrupted the process and needs investigation. Promises were made in the original CPU and the more recent IUP. The City has failed to keep virtually all of those promises.

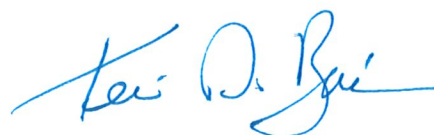
Mr. Velie recently told me he has hired an attorney and the city can't stop him from doing as he wishes.

Can the City act on these issues or not? We would appreciate your ideas and comments.

Sincerely



Jim Clifford



Terri Barreiro

Independence Planning Commission Hearing  
November 19, 2019  
Proposed Interim Use Permit for 3315 County Road 92 N

November 12, 2019

My wife, Terri D. Barreiro, and I have lived at 3295 County Road 92 N for some 25 years. Our property is a “flag lot” that lies between the subject property and Lake Robina.

Many of the conditions of the existing conditional permit were never implemented and there was little or no enforcement of the myriad of violations (despite city awareness). I state this in hopes that the commission will commit to and take into account the various costs that *should* be incurred by the city if there are violations of any imposed conditions for this interim use permit.

#### Visual Barrier

There is a large parking area to the north of the subject house. It has displayed boom trucks, dumpsters, bobcats, etc. There are storage sheds just to the south of the house. We would like these all screened from view of our property. In general, I refer you to Section 2, item b of the original CU from 1994. (I think it might be more than 200 feet of screening.) We would ask the the height of the planting be changed to 10 feet.

#### Noise

We would ask that no commercial chipping be allowed on the subject property. It is very loud. We would ask that no commercial heavy equipment noise be allowed before 7 AM nor after 6 PM.

#### Burning

We would ask that no commercial burning be allowed. This would forbid customers' brush being brought in to be burned.

## Use of easement

There is an easement that serves our property between the subject property and 3245 County Road 92 N. (Dr. Nate Barlow) The easement was poorly drafted with maintenance and use not defined. Terri and I have therefore been 100% responsible for it's the upkeep on the upper drive for 25 years despite extensive use by the subject property.

I don't think the city can do anything about the ill drafted easement, but we would ask that no commercial nor heavy vehicles use the easement be allowed under the interim use permit.

There are also screening issues on the easement.

We do want to say that Mr. Velie is working hard to clean up the property and we do not want to discourage that effort. However, we have had our driveway blocked twice, limiting our and any emergency vehicles access. In our minds, this demonstrated a lack of concern for our property rights . . . and our safety.

Terri and I invite any and all members of the commission, or their representative, to visit our home to see the issues first hand. A call would be good, but not necessary. Just stop by.

Thank You,

James W Clifford

Terri D Barreiro













# City of Independence

## Detached Accessory Structure Setback Discussion

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To: City Council  
From: Mark Kaltsas, City Administrator  
Meeting Date: October 6, 2020

### **Discussion:**

Council was recently notified of a potential discrepancy in an interpretation of the rear yard setback for a property located at 6098 Wood Hill Lane. Staff had initially made an interpretation relating to the designation of the rear and side yard for this property. When the formal building permit was submitted and reviewed, it was determined that there was no basis for the previous interpretation and the applicant was notified of the actual setback requirements based on the City's zoning ordinance.

The City clearly identifies the front, rear and side yards and stipulates setbacks for each yard. The City further provides setbacks for both detached accessory structures as well as principle structure setbacks.

*Subd. 53. "Lot line, front." The line connecting the side lot lines of a lot measured along the boundary of the right-of-way designated by the city council to serve the lot.*

*Subd. 54. "Lot line, rear." The lot line that is opposite the front lot line. If the rear line is less than ten feet in length or if the lot forms a point at the rear, the rear lot line is a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.*

*Subd. 55. "Lot line, side." Any lot line that is not a front lot line or a rear lot line.*

*Subd. 2.*

*Setbacks. All buildings and structures, including houses with attached garages or decks, must meet or exceed the following setbacks:*

*(a) Front yard setback: <sup>a</sup> 85 feet from centerline of road.*

*(b) Corner yard setback: <sup>c</sup> 51 feet from right-of-way line.*

*(c) Side yard setback: <sup>a b</sup> 30 feet from side lot line.*

*(d) Rear yard setback: <sup>a</sup> 40 feet from rear lot line.*

*(e) Setback from lakes, rivers and streams: 100 feet from ordinary high mark.*

*(f) Setback from wetlands: ten feet from the outside edge of the required wetland buffer.*

*(g) Fences, trees, shrubs, or other appurtenances are not allowed within any road right-of-way.*

*<sup>a</sup> Except buildings housing livestock, which may not be located closer than 150 feet from an existing residential structure on all adjacent property.)*

<sup>b</sup> Except detached garages and other accessory buildings, which may be 15 feet from the side lot line.)

<sup>c</sup> All principle and accessory structures shall meet the corner yard setback requirements.)

The City currently requires detached accessory structures to have a 15-foot side yard setback and a 40-foot rear yard setback.

The lot that was in question has a clear front and rear yard; however, the lots to the east, west and south all have unique conditions that bring into question the side and rear yard setbacks. In addition, the lot that is directly north of the subject property has a side yard condition that abuts this lot's rear yard condition. This means that the subject property has to maintain a 40-foot setback, but the property to the north can build a structure to within 15 feet of the same line.



Staff has been looking for a possible solution to the issue presented to the City. Staff and the City Attorney have discussed the issue and determined that there are two possible solutions:

- The City could grant a variance to allow a reduced rear yard setback.

- The City could amend the zoning ordinance to reduce (or change how it is applied) the rear yard setback for detached accessory structures.

Staff has looked at the ordinance and believes that it is reasonable to consider reviewing the rear yard setback for detached accessory structures. The City could look at a provision that would accommodate situations where there are two different prescribed setbacks for a common property line (i.e. the rear yard of one lot is the side yard of an adjoining lot). The City could determine that in this type of situation, the lesser of the two setback requirements could apply to both lots. The City could also look at reducing the requisite setback from 40 feet to something closer to 15 feet. It is often a typical condition that detached accessory structures such as sheds, would be located in the “back corner” of a property. Having a consistent rear and side yard would eliminate the discrepancy and remove the need to interpret side and rear property lines that do not clearly meet the prescribed definition.

***Council Direction:***

Staff is seeking Council direction relating to this issue. If City Council agrees that the ordinance should be reviewed for a possible amendment, staff can be directed to go through the process for considering an ordinance amendment.