



PLEASE NOTE THAT THIS MEETING IS VIRTUAL FOR ALL PUBLIC PARTICIPATION. A LINK TO THE MEETING CAN BE OBTAINED ON THE CITY'S WEBSITE OR BY CONTACTING THE CITY VIA PHONE OR EMAIL

CITY COUNCIL WORKSHOP AND SPECIAL MEETING AGENDA

TUESDAY NOVEMBER 10, 2020 AT 7:00 A.M.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Accounts Payable; Checks Numbered 19971 to 20004 & 20029-20042 (Checks Numbered 19944-2004 were previously missed and are now being used. Checks numbered 19947-19970 were voided due to a printer malfunction error).
5. 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).
6. General Administration:
 - a. 2021 Budget/Finance
 - o Final Budget and Levy Review/Discussion
 - b. City Hall Facility Renovations Update
 - o Review and Discussion of Add Alternates
 - c. Administration
 - o Cares Act Money Distribution
 - o 2021 Public Works Capital Purchase of New Pickup Truck
7. Adjourn

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

To: City Council
From: Mark Kaltsas, City Administrator
Meeting Date: November 10, 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 5th 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.

In addition to the inspection made by staff, West Hennepin Public Safety has been called to the property for several additional complaints. Mr. Velie's Attorney has prepared an additional letter to the City relating to a concern addressed by WHPS on June 26th, 2020. It should be noted that WHPS had visited the site prior to this incident and had given the owner a verbal warning to discontinue burning on the property.

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
 Letter from Owners Attorney



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:

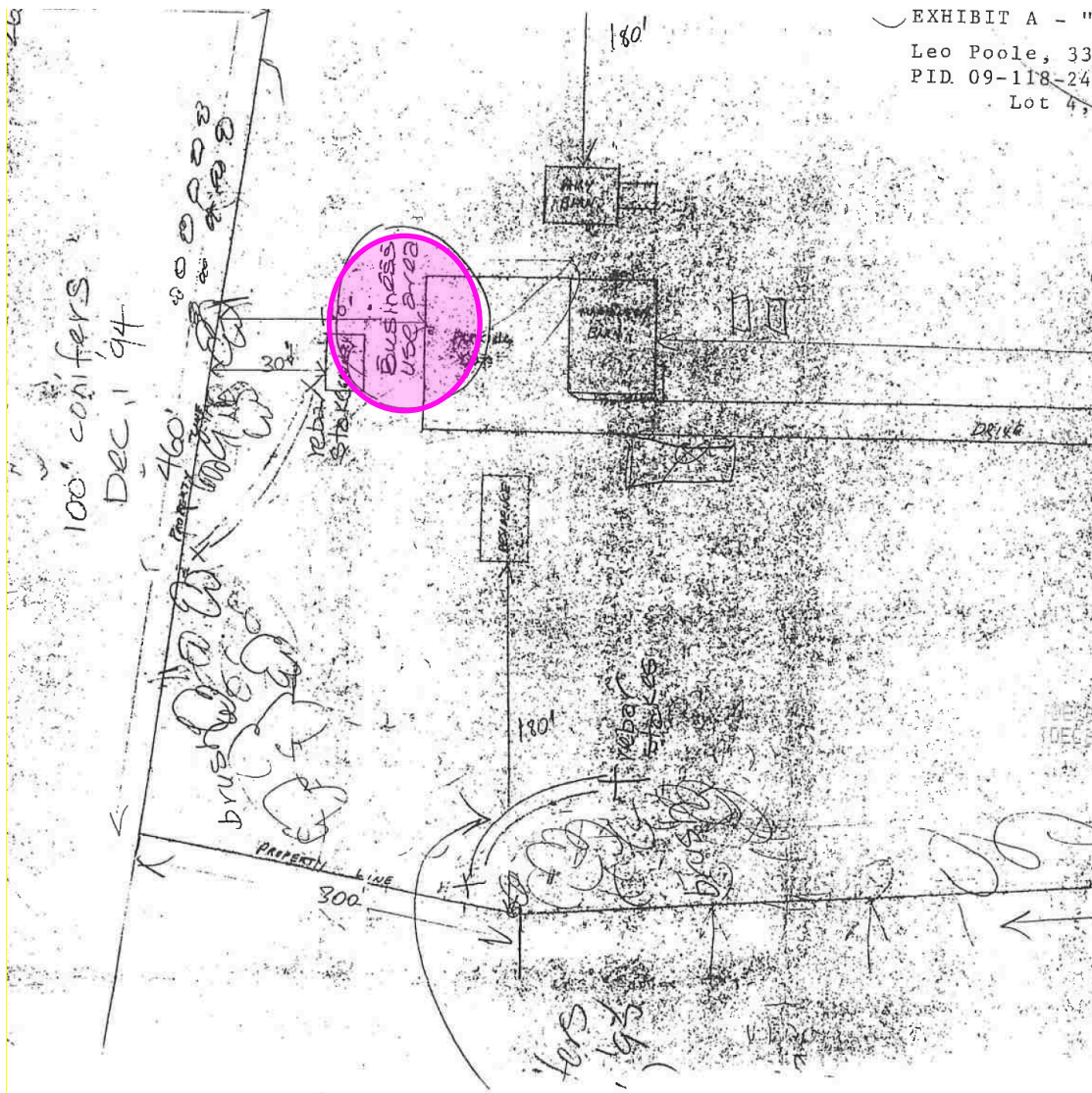
Condition #2b. – The Applicant must plant approximately 200 feet of conifers along the south and west boundary lines, as shown in the attached diagram. The trees must be placed on 10 foot centers and must be at least 4 feet tall when planted. Planting along the west boundary line shall be completed by 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, Mayor

ATTEST:


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

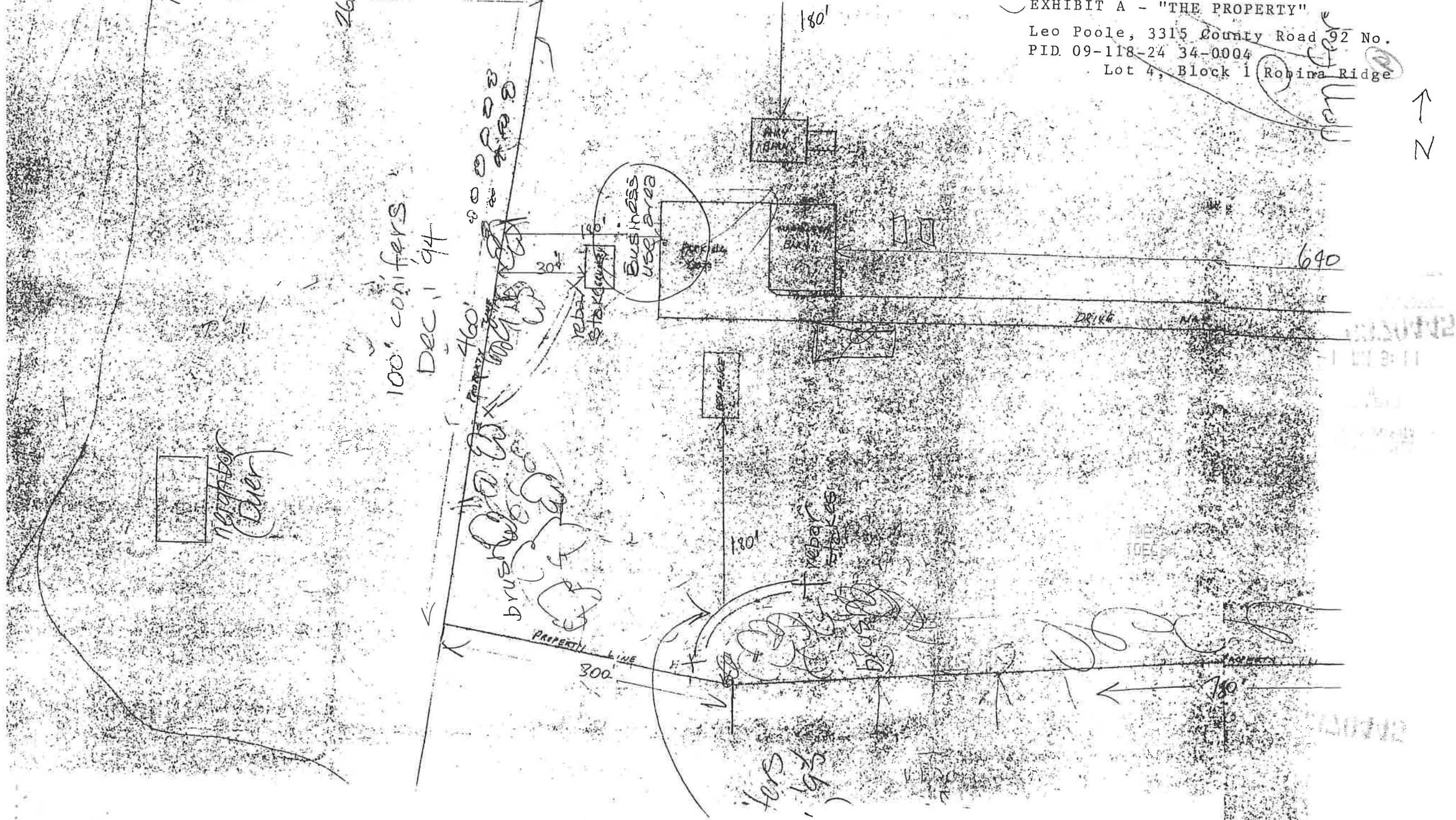
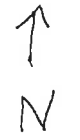
Whereupon said resolution was declared duly passed and adopted.

jy. j'

EXHIBIT A - "THE PROPERTY"

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

West Wall



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

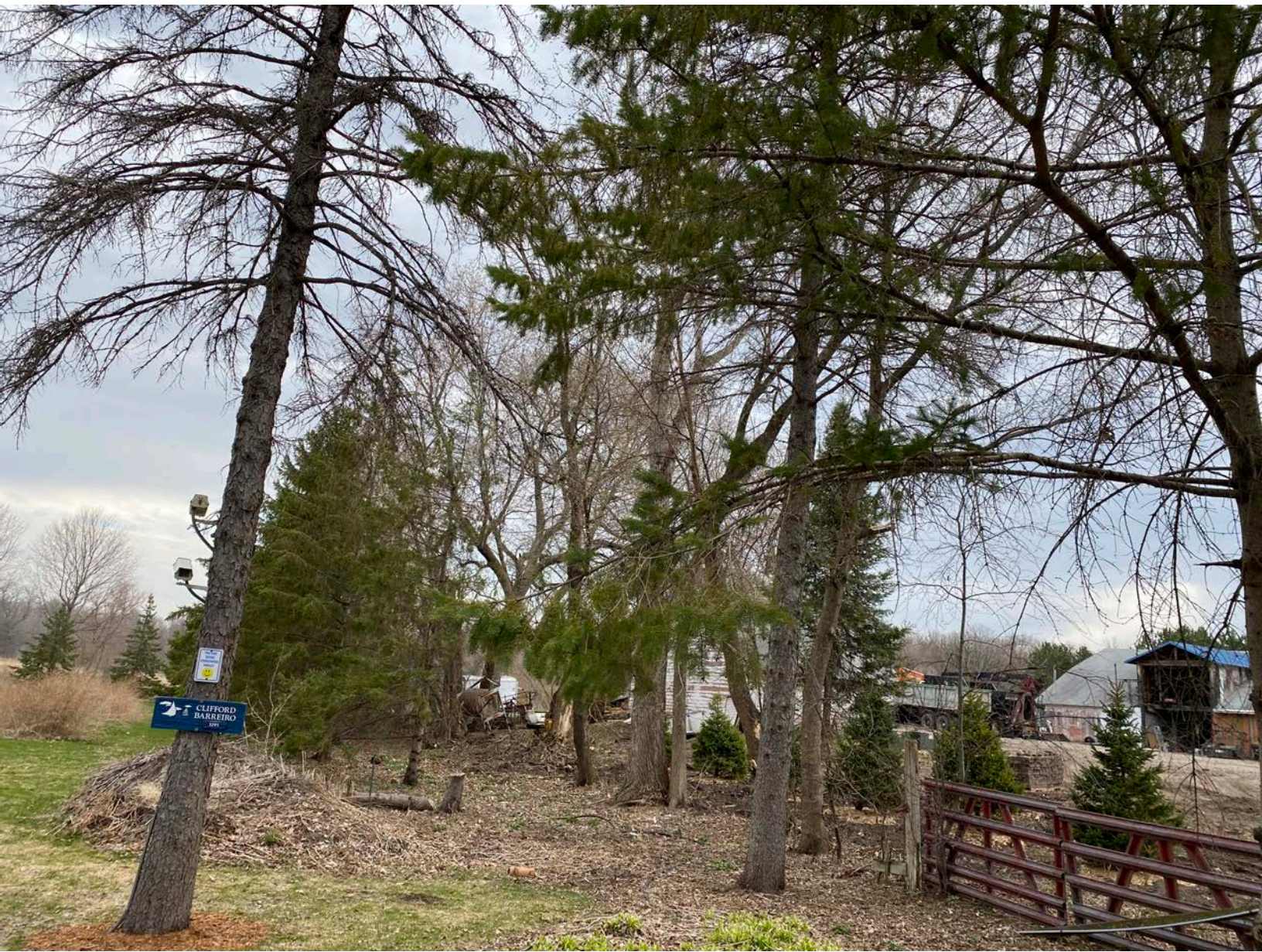
AS DOCUMENT # **6370445**

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

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.

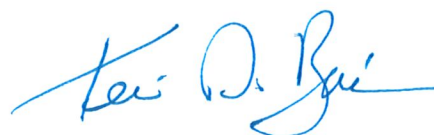
Mr. Velie recently told me he has hired an attorney and the city can't stop him from doing as he wishes.

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
1920 COUNTY ROAD 90
INDEPENDENCE MN 55359
763-479-0527

COMPLAINT FORM

DATE: 6/12/2020

COMPLAINT RECEIVED BY: _____

NAME OF COMPLAINANT: Geoff & Linda Eckman PHONE # 

3250 Co. Rd. 92 No.

NATURE OF COMPLAINT: Use of this property for a noisy, dusty

landscaping operation is contrary to zoning, C.U.P. and
quiet enjoyment of neighbors. Velie threatens complain-
ants, property values lowered. Back-up alarms, truck dumping
at all hours & weekends. Trees & boulders trampled in & out.

NAME AND ADDRESS WHERE COMPLAINT APPLIES: Vince Velie

3000 Block - County Rd. 92 North

ACTION TAKEN: _____

By: _____

City of Independence

Detached Accessory Structure Setback Discussion

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: ^a 85 feet from centerline of road.

(b) Corner yard setback: ^c 51 feet from right-of-way line.

(c) Side yard setback: ^{a b} 30 feet from side lot line.

(d) Rear yard setback: ^a 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.

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

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

^c 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.

November 4, 2020

Via Email (MKaltsas@ci.independence.mn.us)

City Council
City of Independence
1920 County Road 90
Independence, MN 55359

Re: 3315 County Road 92 N.

Dear City Council members:

This firm represents Vince Velie in connection with the Conditional Use Permit for his property at 3315 County Road 92 (“the Property”). I write today to provide additional information in advance of the Council’s discussion of the Property at its November 10 meeting.¹

First, I would like to clarify the circumstances surrounding our appearance, in person, at the October 6 Council meeting. We did so at the instruction of the City Attorney, who informed me that the Council had resumed in-person meetings.

Second, I want to address certain information that has been provided to you regarding an occasion in June 2020 when Mr. Velie burned some trees and brush on the Property. In his July 27, 2020, letter to Mr. Velie, which was included in the meeting packet for the Council’s October 6 meeting, Mr. Kaltsas wrote the following, “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.” The obvious suggestion is that Mr. Velie was burning material that he had brought to the Property from one of his business’s work sites. That is not accurate. We have since obtained the West Hennepin incident report, and it is not at all consistent with Mr. Kaltsas’s statement and supports the fact that Mr. Velie was burning material from the Property:

The wood smelled like pine to me. Velie showed me recent pine trees which he had cut down and chip[p]ed stumps etc. from his property. Velie had trucks full of brush for his business. He advised he takes the brush to a recycling place and does not burn it on his property. The pile Velie was dealing with matched the type of trees on his property. The pile was no where near big enough to have come from his trucks.

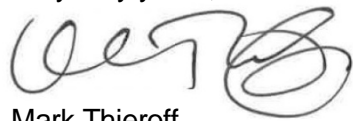
¹ As my letter of October 5 was not included in the meeting packet for the October 6 meeting, it is attached as Exhibit 3 to this letter.

A copy of the incident report is attached as Exhibit 1 to this letter.²

Finally, we want to provide you with additional information regarding Mr. Velie's ongoing investment in and efforts to improve the Property. In my October 5 letter I described many of the larger projects that have been undertaken on the Property, and I can now tell you that those projects have entailed an investment to date of over \$347,000. A number of photographs depicting current conditions on the Property are attached as Exhibit 2, and those photographs amply demonstrate that what was a junk-strewn piece of land when Mr. Velie bought it is now a beautiful property that is an asset to the community.

We look forward to speaking with you at the November 10 meeting, which we will be attending by video conference.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M. Thieroff', written in a cursive style.

Mark Thieroff

612-337-6102 | Direct
markthieroff@siegelbrill.com

cc. Robert Vose

² Mr. Velie did not have a permit for the fire because he was unable to obtain one from City Hall, which was closed due to the pandemic. He is currently appealing the citation.

EXHIBIT 1



WEST HENNEPIN PUBLIC SAFETY INCIDENT REPORT

1918 County Road 90, Maple Plain, MN 55359
 Phone: (763) 479-0500 Fax: (763) 479-0504
 E-mail: westhennepin@westhennepin.com

ICR# 20002509	AGENCY ORI# MN0273700	JUVENILE:
<p>Reported: 06-26-2020 0809 First Assigned:0811 First Arrived:0818 Last Cleared:0845 Committed Start: 06-26-2020 0809 Committed End: Title: Fire/Pri 3 How Received: Radio Short Description: F3 Fire/Pri 3 Summary: R/c of a fire where ash and smoke were flying onto anonymous R/p property. I was tied up on another call and 1200 started to respond. Delano Fire was also started. Upon arrival I met with 1200 and DFD Chief Van Lith. Velie had a pile of brush and wood approximately 15x15 and was using an excavator to pile it up. There was open flame and smoke when I arrived. Velie claimed he had cut down some pine trees from the property and had piled them on the burn pile. He stated there must have been some hot coals yet because it ignited. Velie admitted he did not get a permit for the burn, or the one previous which generated the hot coals. The wood smelled like pine to me. Velie showed me recent pine trees which he had cut down and chipped stumps etc. from his property. Velie had trucks full of brush for his business. He advised he takes the brush to a recycling place and does not burn it on his property. The pile Velie was dealing with matched the type of trees on his property. The pile was no where near big enough to have come from his trucks. The fire burned out before we left and was just smoldering from the wet wood. Van Lith ordered Velie to pull the fire apart. I issued Velie a citation for burning without a permit. I took photos and attached them to this case. baa103 [Officer 103; Citation 273718215046] illegally burning brush pile without a permit dee report for details baa103</p>		
Location(s)		
Address: 3315 County Road 92	City: Independence	State: MN Zip: Country:
Address: 3315 CO RD 92 N	City: Independence	State: MN Zip: Country:
Officer Assigned: Anderson, Benjamin	Badge No: 103	Primary: Yes
Involvement: Cited	Name: Velie, Vincent Stephen Iii	DOB: 09-24-1985
Age: 34	Sex: M	Race: Height: 604 Weight: 210
Address: (Residence) 9180 Highway 12	City: Delano	State: MN Zip: 55328-9418 Country:

Eye Color: BLU**ID Number(s)****ID Type:** Drivers License**ID #:** Z656224616517**State:** MN**Year:****Class:** A**State:** MN**Plate:** 6CE153**VIN:** 3GTP9EEL5KG255228**Make:** GMC**Model:** SIERRA**Year:** 2019**Color:** WHI**Name(s)****Last Name:** Velie**First:** Vincent**Middle:** Stephen**DOB:** 09-24-1985

273718215046

Dt\tm: 06-26-2020 **Officer:** Anderson 103**Description:**

BURN PERMIT REQUIRED ADMIN/IND

Summary:

illegally burning brush pile without a permit dee report for details baa103

Notes:

illegally burning brush pile without a permit dee report for details baa103

Last Name: Velie**First:** Vincent**Middle:** Stephen**DOB:** 09-24-1985**Address:** (Residence) 9180 Highway 12**City:** Delano**State:** MN**Zip:** 55328-9418**Country:****ID Type:** Drivers License**ID #:** Z656224616517**State:** MN**Year:****Class:** A**Offense(s)****Offense:** BURN PERMIT REQUIRED ADMIN/IND (905.29(4)) BURN PERMIT REQUIRED ADMIN/IND**Locations(s)****Address:** (None Selected) 3315 CO RD 92 N**City:** Independence**State:** MN**Zip:** **Country:****Vehicle(s)****State:** MN**Plate:** 6CE153**VIN:** 3GTP9EEL5KG255228**Make:** GMC**Model:** SIERRA**Year:** 2019**Color:** WHI**Court Dt\tm:** -- **Court Location:** Hennepin Criminal Ridgedale**Offense:** BURN PERMIT REQUIRED ADMIN/IND (905.29(4)) BURN PERMIT REQUIRED ADMIN/IND

EXHIBIT 2





















EXHIBIT 3

October 5, 2020

Via Email (MKaltsas@ci.independence.mn.us)

City Council
City of Independence
1920 County Road 90
Independence, MN 55359

Re: 3315 County Road 92 N.

Dear City Council members:

This firm represents Vince Velie in connection with the Conditional Use Permit for his property at 3315 County Road 92 (“the Property”). I write today in response to Mark Kaltsas’s July 27, 2020, letter to my client, which I understand will be considered at the October 6 Council meeting.

I want to emphasize at the outset that my client is prepared to continue working with the City to answer any questions about the Property and his business operation and to address any legitimate concerns about either. He has made a considerable investment into improving the Property, which is both his residence and his place of business. He has greatly improved the Property since acquiring it last year—as described in more detail below—and he looks forward to completing this work in the coming year.

Mr. Kaltsas’s letter alleges a number of violations of the CUP for the Property and identifies four actions that he says Mr. Velie must take in order to comply with ordinance provisions identified in the letter. We provide the following response to each of those items.

1. The tree buffer. Condition 2b of the CUP required the applicant to plat approximately 200 feet of conifers along the south and west boundary lines of the Property. The trees are required to be spaced 10’ feet apart and to be 4’ tall when planted. The CUP expressly contemplates that trees will die and need to be replaced, in that it requires the applicant to “maintain and replace the trees as necessary[.]”

When Mr. Velie purchased the Property, the tree buffer area was overgrown with volunteer trees, and many of the pines required by the CUP were missing. Mr. Velie has since restored the required tree buffer, which now includes the requisite number of trees, spaced per the requirements of the CUP. See the enclosed tree plan, which was previously provided to staff. The Property is in compliance with condition 2b.

2. Business-related vehicles and equipment. Condition 2c of the CUP requires all business-related vehicles and equipment to be stored indoors or consolidated in the area near

the barn. Mr. Velie is in compliance with this requirement. To the extent Mr. Kaltsas has concluded otherwise, that may be due to mistaken assumptions regarding whether a certain vehicle or piece of equipment is used in Mr. Velie's business. To help clarify this issue, Mr. Velie provided staff with an inventory of the vehicles and equipment he owns that are not used in his business. A copy of that document is also included with this letter.

3. Accessory structures. Mr. Kaltsas has identified three detached accessory structures (sheds) on the Property and informed Mr. Velie that the City has no record of any building permits for those structures. As Mr. Velie has explained to staff, all three sheds were built or installed by the previous owner of the Property. Mr. Velie has removed one of the sheds, and the other two are used for personal purposes—gardening and a wood shop—and have no connection to the business.

Mr. Kaltsas has taken the position that Mr. Velie must either remove the three structures or obtain an amendment to the CUP. We disagree. In support of the notion that Mr. Velie must seek a CUP amendment, staff have pointed to Section 520.09, subd. 8, which provides:

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

This provision addresses changes to “the operation” or the “conditions of the permit.” The sheds at issue are not used in the Mr. Velie's business (i.e., “the operation”), and the CUP does not impose any conditions that relate in any way to changes in the non-business uses of the Property. Section 520.09 simply does not apply to the sheds in any way.

4. Unreasonable interference. Condition 2k of the CUP states, “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 key language in this condition is “the business operation.” Mr. Velie's neighbors have not shared any complaints with him so he is unaware of what Mr. Kaltsas is referring to when he states in his letter that the City has received “several verbal and written complaints regarding the use of the property.” The only neighbor letter that Mr. Velie has actually seen is the enclosed letter from Andrew and Brandie Brummer, who express satisfaction with how Mr. Velie has been conducting his business and himself as a neighbor.

Mr. Velie is confident that the City has not received any complaints that refer to his business operation because all business operations are conducted off site. If neighbors have heard any equipment-related or other noise since Mr. Velie bought the Property, that is almost certainly noise relating to non-business activities on the Property, and specifically noise from the very extensive amount of work that has taken place to improve the Property, including both the house and the land. That work has included but is not limited to the following:

- a) Installation of a new septic system
- b) Installation of new roof on the house

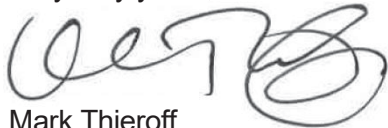
- c) Installation of new windows in house
- d) Ongoing project to replace all siding, fascia and soffits on house
- e) Extensive landscaping work, including installation of retaining walls
- f) Installation of new driveway, including delivery of 20+ loads of gravel
- g) Removal of many junk vehicles
- h) Removal of over 30+ 20-yard dumpsters full of junk and debris
- i) Work to collect and load the junk and debris hauled away in the 30+ dumpsters.
- j) Installation of fencing to contain animals
- k) Clearing vegetation and trees from tree buffer area

If the noise that has been reported to the City is noise that was generated on the Property, it came from these lawful activities.

Although unrelated to any alleged violation of the CUP, one other comment in Mr. Kaltsas's letter warrants a response. Mr. Kaltsas reports that the City was notified that piles of trees and brush were burned on the Property and that West Hennepin Public Safety noted that "the size and quantity of material on the property appears to have brought onto the Property." This is not accurate. The material that was burned was brush and trees that Mr. Velie had cleared on the Property. Mr. Velie does not bring brush or other material from worksites back to the Property. He owns land in Delano where he stores vegetative material from job sites until it is sold as fuel to the operator of the District Energy heating and cooling plant in St. Paul.

We trust this letter addresses all of the concerns in Mr. Kaltsas's letter but would be happy to answer any other questions you may have at or in advance of the October 6 Council meeting.

Very truly yours,



Mark Thieroff

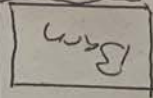
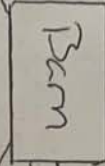
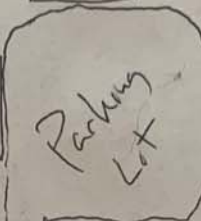
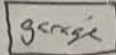
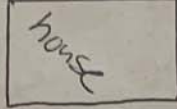
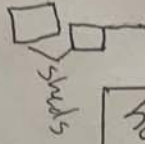
612-337-6102 | Direct
markthieroff@siegelbrill.com

O = Tree "Pine 4'+ tall

— 10' spacing

(17) 4'+ Pine trees spaced 10' on center

o o



(9) trees spaced 10' apart 4'+ trees

o o o o o o o o o o o

Driveway

Vince Velie property

List of vehicles and equipment that are not used in Mr. Velie's business

Chevrolet 1500

Chevrolet 2500

Pontiac Firebird

Jeep CJ7

Roadster

Two 22' enclosed trailers for snowmobiles and four-wheelers

Car trailer for collector cars

One 14' enclosed trailer

Three lawn trailers

One mini skid steer

Various Bobcat attachments (post hole auger, forks, buckets of different sizes)

Log splitters

Lawn mowers

Three Snowmobiles

Three 4-wheelers

Five hunting and fishing boats and trailers

One go-cart

8-31-2020

Vince Veille
Tall Timber
Independence, MN

Vince,

I am your neighbor at 3435 County Road
92 North. Since moving in you have been
a great neighbor, have been quiet and respectful.
I have no issues w/ you as a neighbor and
no issues with your business.

Thank You,

Andy Bummer
Brandie Bummer
~~3435~~