INVER GROVE HEIGHTS
PLANNING COMMISSION AGENDA

TUESDAY, DECEMBER 20, 2016 – 7:00 p.m.
City Council Chambers - 8150 Barbara Avenue

1. CALL TO ORDER

2. APPROVAL OF PLANNING COMMISSION MINUTES FOR NOVEMBER 15, 2016

3. OTHER BUSINESS

3.01 <u>CITY OF INVER GROVE HEIGHTS - CASE NO. 16-62X</u>
Recommendation on consistency with the Comprehensive Plan for a potential property transfer of park property.

Planning Commission Action _____

4. APPLICANT REQUESTS AND PUBLIC HEARINGS

4.01 <u>GRACE CHRISTIAN REFORM CHURCH - CASE NO.16-55V</u>
Consider a **<u>Variance</u>** to exceed the maximum height requirements and to allow more than one freestanding sign for the property located at 3540 75th Street.

Planning Commission Action _____

4.02 <u>5681 GLG PROPERTIES, LLC - CASE NO.16-56PDA</u>
Consider an **<u>Amendment</u>** to allow the 15,400 square foot building to be used for office/retail and restaurant for Lot 1, Block 1, Bishop Heights 4th Addition and amending traffic volumes to fit the proposed use mix.

Planning Commission Action _____

4.03 <u>ROVINDRA OHNESWERE - CASE NO.16-54V</u>
Consider a **<u>Variance</u>** to allow a 39 foot driveway width whereas 30 feet is the maximum width allowed for the property located at 3999 87th Street.

Planning Commission Action _____

4.04 SCOTT PATNODE - CASE NO.16-52C

Consider a **Conditional Use Permit** to allow impervious surface above the maximum amount but within the additional 10% of lot area allowed with a conditional use permit for the property located at 11440 Avery Drive.

Planning Commission Action _____

4.05 NORTH AMERICAN TRAILER - CASE NO.16-51NCUC

Consider a **Non-Conforming Use Certificate** to establish existing conditions and status of use for the existing truck repair and storage facility for the property located at 7649-7655 Concord Blvd.

Planning Commission Action _____

5. ADJOURN

This document is available upon 3 business day request in alternate formats such as Braille, large print, audio recording, etc. Please contact Kim Fox at 651.450.2545 or kfox@invergroveheights.org

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, November 15, 2016 – 7:00 p.m.
City Hall Chambers - 8150 Barbara Avenue

Chair Maggi called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present:	Pat Simon Tony Scales Joan Robertson Annette Maggi Jonathan Weber Luke Therrien Dennis Wippermann Elizabeth Niemioja
Commissioners Absent:	Armando Lissarrague (excused)
Others Present:	Tom Link, Community Development Director Allan Hunting, City Planner Heather Botten, Associate Planner

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APPROVAL OF MINUTES
The November 1, 2016 Planning Commission minutes were approved as submitted.

B52 RESTAURANT – CASE NO. 16-48PDA

Reading of Notice
Commissioner Simon read the public hearing notice to consider the request for a planned unit development amendment to the Bishop Heights PUD to add a 100 seat rooftop patio to the existing restaurant and amend the forecasted PM peak hour traffic count in the Bishop Heights Ordinance, for the property located at 5639 Bishop Avenue. 10 notices were mailed.

Presentation of Request
Heather Botten, Associate Planner, explained the request as detailed in the report. She advised that the applicant is requesting a 2,299 square foot rooftop restaurant addition to be located on top of the B52 restaurant. The property was originally approved for a 7,400 square foot restaurant; they would like to add the proposed roof top restaurant space to that total. The rooftop seating is placed on the north side of the building to minimize the noise impact to the abutting hotel. A tall feature wall will also be put in place to help deflect noise away from the hotel. Any lighting must be downcast and designed to deflect light away from the public street and adjoining property. The proposed addition would result in a net increase of 60 seats. The zoning code requires 20 additional parking spaces for the roof top seating. The site has a shared parking agreement with the abutting hotel and movie theatre. Based on the shared parking agreement staff is not concerned with the additional parking spaces required for the restaurant expansion. A traffic analysis determined the traffic count would increase 25 trips during the afternoon peak time. The traffic table will be amended to reflect the new numbers. Staff recommends approval of the request with the three conditions listed in the report. Staff did not hear from any of the surrounding property owners.

Commissioner Simon asked if notices were sent to the specific businesses or the actual owners.

Ms. Botten replied that notices were mailed to the property owners.

Commissioner Robertson asked if there would be an easily identifiable safe walkway from the movie theater to B52s.

Commissioner Therrien noted that is a set of stairs from the movie theatre lot to B52s.

Commissioner Robertson asked if there was a marked pedestrian crossing to the stairs.

Ms. Botten stated the abutting roadway between B52s and the theater was owned by the movie theater and therefore she did not believe they could require a pedestrian crossing as a condition of approval.

Opening of Public Hearing
Brandon Bramscher, 3553 Avon Drive, Woodbury, stated he was available to answer any questions.

Chair Maggi asked the applicant if he read and understood the report.

Mr. Bramscher replied in the affirmative. In regard to potential noise issues, he stated it would not be a raucous environment, would be mostly food orders, and they did not plan on having loud bands. He stated it was important to maintain good relationships with their neighbors and the proposed addition would be a good asset for the community.

Commissioner Niemioja complimented the applicant on the proposed design, but agreed that a lit pedestrian crossing sign would be advantageous.

Mr. Bramscher stated he would speak with the movie theater owner regarding that possibility, and added that he was not aware of any accidents occurring in that area.

Chair Maggi closed the public hearing.

Planning Commission Discussion
Chair Maggi stated the proposed rooftop addition would be a good addition to the City.

Planning Commission Recommendation
Motion by Commissioner Simon, second by Commissioner Scales, to approve the request for an amendment to the Southeast Quadrant PUD Ordinance to add 2,299 square feet of rooftop restaurant space for Lot 2/3, Block 1, Bishop Heights and amending traffic volumes for the property located at 5639 Bishop Avenue, with the three conditions listed in the report.

Motion carried (8/0). This item goes to the City Council on November 28, 2016.

PULTE HOMES OF MINNESOTA – CASE NO. 16-49SZV

Reading of Notice
Commissioner Simon read the public hearing notice to consider the request for a rezoning of the parcel from I-1, Limited Industry to R-1C, Single-Family Residential, a preliminary and final plat for a residential subdivision to be known as Tipperary, variances from the minimum lot size and width standards in the R-1C district, and variances for the cul-de-sac length and right-of-way length, for the property located on the west side of Jefferson Trail, south of Wescott Road. 49 notices were mailed.

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Presentation of Request
Allan Hunting, City Planner, explained the request as detailed in the report. He advised that Pulte Homes is proposing to develop a residential project on adjoining properties in both Eagan and Inver Grove Heights. The parcel in Inver Grove Heights is approximately 3 acres in size with 10 units proposed. The application consists of a rezoning, preliminary and final plat, and three variances. The proposed lots range from 9,000 to 20,000 square feet in size with lot widths ranging from 65 to 92 feet. Required minimum lot size is 12,000 square feet and 85 feet lot width. The Mendota Lebanon Regional Trail is proposed to cross Highway 149 at Wescott Road. In order to accommodate a possible future crossing the developer must provide a 30 foot trail easement on the northern tip of the proposed development. The project is proposed with a 20 foot separation between units as opposed to the standard 15. The project would utilize one existing access onto Dodd Road. The City of Eagan allows for smaller right-of-way widths than Inver Grove Heights. The applicant is requesting a variance from right-of-way width to allow a 50 foot right-of-way width. The applicant does not need a variance from cul-de-sac length. The development will be served by Eagan sewer and water as part of a joint powers agreement between the two cities. Staff feels that the practical difficulty for the three variances from lot size, width and right-of-way width are that the property would be utilized in a reasonable manner, the requests can be found in harmony with City Code as the Northwest Area allows smaller lot sizes, widths, and right-of-way widths, and it would provide a more uniform and cohesive neighborhood between the two cities. Staff recommends approval of the requests with the nine conditions listed in the report.

Commissioner Robertson asked how Lots 14 and 15 would gain access to their property.

Mr. Hunting replied they would use Road A to get to the Road B cul-de-sac.

Opening of Public Hearing
Paul Heuer, Pulte Homes, 7500 Office Ridge Circle, Eden Prairie, advised he was available to answer any questions.

Chair Maggi asked the applicant if he read and understood the report.

Mr. Heuer replied in the affirmative. He advised that since the planning report was written the City of Eagan approved the preliminary plat for their portion of the development. He advised that only Lots 14 and 15 were 65 feet wide; the others were 72-92 feet wide. In most cases the homes will be 30-40 feet apart; if they decide to build a third stall garage they would have a 20-30 foot separation.

Commissioner Wippermann asked what price range they were anticipating.

Mr. Heuer replied the homes would likely cost $375,000-$450,000.

Chair Maggi closed the public hearing.

Planning Commission Discussion
Commissioner Wippermann supported the requests and was pleased to see that only two of the lots were 65 feet wide.

Chair Maggi stated it was unlikely there would be additional requests based on topography since the property was fairly flat.

Planning Commission Recommendation
Motion by Commissioner Scales, second by Commissioner Wippermann, to approve on a white ballot the request for a rezoning of the parcel from I-1, Limited Industry to R-1C, Single-Family

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Residential, a preliminary and final plat for a residential subdivision to be known as Tipperary, variances from the minimum lot size and width standards in the R-1C district, and a variance from right-of-way length, for the property located on the west side of Jefferson Trail, south of Wescott Road, with the practical difficulty being consistency with the City of Eagan, including the nine conditions listed in the report.

Motion carried (8/0). This item goes to the City Council on December 12, 2016.

OTHER BUSINESS

Allan Hunting advised he is working with an attorney from the League of Minnesota Cities to organize a presentation in regard to variances.

Commissioner Niemioja asked if that presentation would be done jointly with the City Council.

Mr. Hunting stated he did not yet know the answer to that.

Chair Maggi asked if they should perhaps reestablish the annual joint meetings between the Planning Commission and City Council and if so, whether this could be the first of those.

Commissioner Wippermann stated the topic could also be discussed at a Council work session and Planning Commissioners could be in attendance.

Commissioner Robertson agreed that having an annual meeting with City Council could be beneficial. She stated perhaps they could discuss what it is that the Planning Commission should bear in mind in understanding how the City Council looks at some requests with more flexibility, and hopefully they could better understand why the Council either agrees or disagrees with the Planning Commission findings.

The meeting was adjourned by unanimous vote at 7:30 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary

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PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

REPORT DATE: December 14, 2016 **CASE NO:** 16-62X

HEARING DATE: December 20, 2016

APPLICANT: City of Inver Grove Heights

PROPERTY OWNER: N/A

REQUEST: Review of property transfer to Dakota County associated with the expenditure of funds for improvements to Swing Bridge Park, Heritage Village Park and Pine Bend Bluff Trailhead

LOCATION: N/A

COMPREHENSIVE PLAN: N/A

ZONING: N/A

REVIEWING DIVISIONS: Planning
Parks and Recreation

PREPARED BY: Allan Hunting
City Planner
Eric Carlson
Parks and Recreation Director

BACKGROUND

In 2014, the City was awarded a $2,000,000 grant from the state bonding bill to uses at either Swing Bridge Park, Heritage Village Park or the Mississippi River Regional Trail. The City must match grant dollars for the park improvements. Eric Carlson, Parks and Recreation Director has prepared a memo which describes the projects for which the funds will be used.

Per State Statures, the Planning Commission must review capital improvement projects for consistency with the Comprehensive Plan (Minnesota Statute 462.356 subd. 2).

EVALUATION OF THE REQUEST

Compliance with the Comprehensive Plan. Minnesota Statutes requires the Planning Commission to review capital improvement projects to verify they are in compliance with the City's Comprehensive Plan.

The capital improvement project is consistent with the comprehensive plan chapter on Parks and Recreation in that these projects are named in the chapter. As part of the improvements to the Mississippi River Regional Trail, the current access (111th Street) to the proposed Pine Bluff Trail

head would be transferred to the County. The project would be consistent with the Parks and Recreation Chapter of the Comprehensive Plan.

ALTERNATIVES

A. **Approval**. If the Planning Commission finds the request acceptable, the following actions should take place:

- An Approval recommendation that property transfer of 111th Street to Dakota County is consistent with the intent of the Parks and Recreation Chapter of the Comprehensive Plan.

B. **Denial**. If the Planning Commission does not find the proposed project consistent with the Comprehensive Plan, the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

The Parks and Recreation Director and Planning Staff both recommend the property transfer be found consistent with the Comprehensive Plan.

Attachment: Memo from Eric Carlson, Park and Recreation Director

CITY OF INVER GROVE HEIGHTS

TO: **Tom Link, Community Development Director**
Allan Hunting, City Planner
Heather Botten, Associate Planner

FROM: **Eric Carlson, Park & Recreation Director**

SUBJECT: **111th St Property Transfer**

DATE: **December 9, 2016**

In the 2014 Legislative Session, the City of Inver Grove Heights was awarded a $2,000,000 grant from the Bonding Bill which is being administered by the Metropolitan Council. Grant proceeds must be used at Swing Bridge Park, Heritage Village Park, or the Mississippi River Regional Trail. The grant allows for the City to utilize bond proceeds for the following projects:

- Land acquisition
- Roadway; public utility; storm water treatment improvements
- Park Improvements

The City must match grant dollars on a 1:1 basis with non-State dollars and developed plans to use $1,300,000 of the grant proceeds for improvements in Heritage Village Park that would include the following:

- Property acquisition
- Park improvements
- Parking lot construction
- Trail improvements

To utilize the remaining $700,000 of grant proceeds, the City and Dakota County have been working cooperatively with the understanding that the County would provide the 1:1 non-State match. The projects include:

- Project 1 - Pine Bend Bluff Trailhead
- Project 2 - Swing Bridge Historic Interpretation
- Project 3 - HVP/Swing Bridge Trail Connection

Access to the trailhead facility is provided by 111th Street. Currently 111th St is an unimproved roadway that the City doesn't plan to improve. The City proposes to turn the ownership of the

roadway to Dakota County effectively making the County the public road authority. The Planning Commission is asked to review the issue and make a determination that the property transfer is consistent with the intent of the Comprehensive Plan.

Joint Powers Agreement (JPA) – Property Transfer

The access road (111th St) is currently an unimproved road that serves a single private property (Dolphy's) and the future trailhead. Under the JPA, the City will be transferring the ownership of the roadway to Dakota County who will then be obligated to assume public roadway jurisdiction and will be solely responsible, at their own cost and expense, for all construction, maintenance and operations, to include snow and ice control. The Dolphy's will continue to gain access to their property via this public roadway. Dakota County must use its own resources to make the necessary improvements on the access road and cannot use grant proceeds based on the fact the City will not have an ownership interest. The City will retain the necessary utility easements/rights it needs related to water, sewer, and storm water.

It is important to point out that Dakota County cannot use grant dollars to improve 111th St.

JPA for Property Transfer

Agreement provides for the City transferring ownership of the access road to the County. Under the agreement the County is responsible for the construction of the access road, and future operations and maintenance of the roadway. Because the City will not own the road or have an easement right, no State Bond Funds will be used to construct the access road.

JOINT POWERS AGREEMENT BETWEEN DAKOTA COUNTY AND THE CITY OF INVER GROVE HEIGHTS FOR TRANSFER OF PROPERTY FOR MRRT PINE PEND BLUFF TRAILHEAD FACILITY

This Joint Powers Agreement ("Agreement") is made and entered into between Dakota County ("County") and the City of Inver Grove Heights ("City").

WHEREAS, Minn. Stat. § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to Parties; and

WHEREAS, the County is a governmental unit and political subdivision of the State of Minnesota; and

WHEREAS, the City is a Minnesota municipal corporation; and

WHEREAS, the County has designed, and intends to design, engineer, and construct, a Trailhead Facility at the Pine Bend Bluff Trail Head (the Project), a preliminary sketch of which is attached hereto as Exhibit 1; and

WHEREAS, City owns in fee the property identified and legally described in Exhibit 2 (Parcel A); and

WHEREAS, the property identified in Exhibit 3 has been dedicated to the City for public use forever in the Chesley Addition Plat, recorded and filed in the office of the County Recorder on September 29, 1997 (Parcel B); and

NOW, THEREFORE, in consideration of the mutual promises and benefits that the County and the City shall derive from this Agreement, the County and the City hereby enter into this Agreement for the purposes stated herein.

ARTICLE 1
PARTIES

The parties to this Agreement are Dakota County, Minnesota (County) and the City of Inver Grove Heights, Minnesota (City). The City and the County may be referred to collectively as "the Parties."

ARTICLE 2
PURPOSE

The purpose of this Agreement is to authorize the parties to execute a quitclaim deed transferring the City's interest in Parcel A and Parcel B to the County and to define the rights and responsibilities of the County and City upon such transfer. The quitclaim deed shall be in the form and substance similar to the quitclaim deed attached to this Agreement as Exhibit 4.

ARTICLE 3
TERM

This Agreement shall be effective on the date of the signature of the last party to sign this Agreement (Effective Date) and shall remain in effect indefinitely, unless amended in writing or earlier terminated by law or according to the provisions of this Agreement.

ARTICLE 4
COOPERATION

The Parties agree to cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement and to, in good faith, undertake resolution of any dispute in an equitable, timely and fair manner.

ARTICLE 5
COUNTY'S OBLIGATIONS

5.1. Upon recording of the quitclaim deed, Parcel A and Parcel B shall be deemed open to the public. The County will henceforth assume road jurisdiction, responsibility, and authority over Parcel A and Parcel B. The County shall be solely responsible, at its own cost and expense, for all construction, maintenance, and operation of any road, trail, or right of way on Parcel A and Parcel B.

5.2. County shall be solely liable for all events arising from the County's ownership, maintenance, construction, or operations on Parcel A and Parcel B.

ARTICLE 6
CITY'S OBLIGATIONS

6.1. **INTENTIONALLY OMITTED.**

ARTICLE 7
OWNERSHIP

The County and the City agree that after the quitclaim deed is signed by all parties, delivered, and recorded, County shall henceforth own all trails, right of way, or other structure that the County builds or constructs on Parcel A or Parcel B.

ARTICLE 8
HOLD HARMLESS

8.1. Each party to this Agreement shall be solely liable for the acts of its officers, employees or agents and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. The

provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability of the County and the City. Each Party warrants that they are able to comply with the aforementioned indemnity requirements through an insurance or self-insurance program and that each has minimum coverage consistent with liability limits contained in Minn. Stat. Ch. 466.

8.2. In the event of any claims or actions filed against either party, nothing in this JPA shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual Parties. In order to insure a unified defense against any third party liability claim arising from the construction or maintenance of the Project, the Parties agree to require any contractors or subcontractors hired to do any of the work contemplated by this Agreement to maintain commercial general liability insurance in amounts consistent with minimum limits of coverage established under Minnesota Statutes §466.04 during the term of such activity. All such insurance policies shall name County and City as additional insureds.

ARTICLE 9
REPORTING, ACCOUNTING AND AUDITING REQUIREMENTS

9.1. **Accounting and Records.** The Parties agree to establish and maintain accurate and complete accounts, financial records and supporting documents relating to the receipt and expenditure of the funding provided in accordance with this Agreement. Such accounts and records shall be kept and maintained by the Parties for a minimum period of six years following the expiration of this Agreement. The Parties agree to promptly provide each other copies of any accounting records related to this Agreement upon request.

9.2. **Data Practices.** The City and County agree with respect to any data that it possesses regarding the Agreement to comply with all of the provisions of the Minnesota Government Data Practices Act contained in Minnesota Statutes Chapter 13, as the same may be amended from time to time.

9.3. **Auditing.** The books, records, documents and accounting procedures and practices of the Parties that are relevant to this Agreement are subject to examination by the other party and the Legislative Auditor or State Auditor for a minimum of six years following the expiration of this Agreement.

ARTICLE 10
AUTHORIZED REPRESENTATIVES

10.1. **Authorized Representatives.** The following named persons are designated as the Authorized Representatives of the Parties for purposes of this Agreement. These persons have authority to bind the Party they represent and to consent to modifications,

except that the Authorized Representatives shall have only authority specifically granted by their respective governing boards. Notice required to be provided pursuant this Agreement shall be provided to the following named persons:

TO THE COUNTY: Steven C. Mielke
Dakota County
Attn: Physical Development Division Director
14955 Galaxie Avenue
Apple Valley, MN 55124

TO THE CITY: City of Inver Grove Heights
Attn: City Administrator
8150 Barbara Ave.
Inver Grove Heights, MN 55077

or to such other person and address as the Parties shall furnish to each other in writing.

In addition, notification to the County regarding termination of this Agreement by the other party shall be provided to the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, Minnesota 55033.

10.2. **Liaisons.** To assist the Parties in the day-to-day performance of this Agreement and to ensure compliance and provide ongoing consultation, a liaison shall be designated by the County and the City. The Parties shall keep each other continually informed, in writing, of any change in the designated liaison. The designated liaisons under this Agreement are:

County Liaison: Steve Sullivan
Telephone: (952) 891-7088
Email: steve.sullivan@co.dakota.mn.us

City Liaison: Eric Carlson
Telephone: (651) 450-2587
ecarlson@invergroveheights.org

or such other person and address as the Parties shall furnish to each other in writing.

ARTICLE 11
MODIFICATIONS

Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, approved by the Parties respective Boards, and signed by the Authorized Representatives of the County and the City.

ARTICLE 12
TERMINATION

12.1. **In General.** Either Party may terminate this Agreement for cause by giving seven (7) calendar days written notice of its intent to terminate to the other Party. Such Notice of Termination for cause shall specify the circumstances warranting termination of the Agreement. Cause shall mean a material breach of this Agreement and any supplemental agreements or amendments thereto. Notice of Termination shall be made by certified mail or personal delivery to the Authorized Representative of the other Party. Termination of this Agreement shall not discharge any liability, responsibility or right of any party, which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the Effective Date of termination.

12.2. **Termination by County For Lack of Funding.** Notwithstanding any provision of this Agreement to the contrary, Dakota County may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding source, or if funding cannot be continued at a level sufficient to allow payments due under this Agreement or any contract or work orders of Invoices submitted. Written notice of termination sent by Dakota County to the City by facsimile is sufficient notice under this section. Dakota County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. Dakota County will not be assessed any penalty of damages if the Agreement is terminated due to lack of funding.

ARTICLE 13
MINNESOTA LAW TO GOVERN

This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in Dakota County, Minnesota.

ARTICLE 14
MERGER

14.1. This Agreement is the final expression of the agreement of the Parties and the complete and exclusive statement of the terms agreed upon and shall supercede all prior negotiations, understandings, or agreements related to the Transfer of Property for the MRRT Pine Bend Bluff Trailhead Facility.

14.2. Exhibits 1 through and including Exhibit 4 (including all Attachments or addenda) are attached hereto, and all terms, obligations and conditions in said Exhibits are

incorporated herein and made a part of this Agreement. By signing this Agreement, City and County affirms and acknowledges receipt of all the above Exhibits (including all Attachments or Addenda).

ARTICLE 15
SEVERABILITY

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable substantially impairs the value of the entire Agreement with respect to either Party.

ARTICLE 16
RELATIONSHIP OF THE PARTIES

Nothing contained in this Agreement is intended or should be construed as creating or establishing the relationship of co-partners or joint ventures between the County and the City, nor shall the County be considered or deemed to be an agent, representative or employee of the City in the performance of this Agreement. Personnel of the City or other persons while engaging in the performance of this Agreement shall not be considered employees of the County and shall not be entitled to any compensation, rights or benefits of any kind whatsoever.

ARTICLE 17
FORCE MAJEURE

Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to the unforeseeable acts or events outside the defaulting party's reasonable control, provided the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

ARTICLE 18
INTERPRETATION AND CONSTRUCTION

This Agreement was fully reviewed and negotiated by the Parties. Accordingly, the Parties agree the "against the offeror" principle of contract interpretation and construction shall not be applied to this Agreement. Any ambiguity, inconsistency, or question of interpretation or construction in this Agreement shall not be resolved strictly against the party that drafted the Agreement. It is the intent of the Parties that every section or article (including any subsection or subpart thereto), clause, term, provision, condition, and all other language used in this

Agreement shall be constructed and construed so as to give its natural and ordinary meaning and effect, regardless of any rule or law to the contrary.

ARTICLE 19
SURVIVORSHIP

The following provisions under this Agreement survive after the termination of this Agreement: Article 8 (Hold Harmless); Article 9 (Reporting, Accounting and Auditing Requirements); Article 13 (Minnesota Law to Govern), Article 14 (Merger), Article 15 (Severability), Article 17 (Force Majeure); Article 18 (Interpretation and Construction), Article 19 (Survivorship).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated below.

APPROVED AS TO FORM:

_____
Assistant County Attorney/Date
KS-2016-
County Board Res. No. _____

DAKOTA COUNTY

By _____
Steven C. Mielke
Physical Development Division Director
Date of Signature: _____

CITY OF INVER GROVE HEIGHTS

By _____
George Tourville, Mayor
Date of Signature: _____

By _____
Michelle Tesser, Deputy City Clerk
Date of Signature: _____

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED
Business Entity to Business Entity

eCRV number: _____

DEED TAX DUE: $1.65

DATE: _____ _____, **2016**

FOR VALUABLE CONSIDERATION, **City of Inver Grove Heights,** a municipal corporation under the laws of Minnesota ("**Grantor**"), hereby conveys and quitclaims to Dakota County, a political subdivision of the State of Minnesota ("**Grantee**"), real property in Dakota County, Minnesota, legally described as follows:

See Exhibit A attached hereto and incorporated herein.

*total consideration for this transfer was less than $500.00.

Check here if all or part of the described real property is Registered (Torrens) ☐

Reserving unto Grantor a permanent easement for drainage and utility purposes in favor of the City of Inver Grove Heights, in, over, under, across and through that real property described on Exhibit A, attached hereto and incorporated herein by reference. Said real property described on Exhibit A shall be subject to any other easements, covenants and conditions of record and is hereby conveyed together with all hereditaments and appurtenances belonging thereto.

Check applicable box:

☒ The Seller certifies that the Seller does not know of any wells on the described real property.

☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: **[...]**.)

☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

City of Inver Grove Heights

By: _____
George Tourville
Its: Mayor

By: _____
Michelle Tesser
Its: City Clerk

This instrument was acknowledged before me on _____ _____, 2016, by George Tourville as Mayor and by Michelle Tesser as City Clerk of City of Inver Grove Heights, a Minnesota municipal corporation.

_____
(signature of notarial officer)

Title (and Rank): Notary Public

My commission expires: _____
(month/day/year)

(Stamp)

THIS INSTRUMENT WAS DRAFTED BY:
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831
Atty ID: 58993

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:
Dakota County
_____
_____
_____
_____

EXHIBIT A
LEGAL DESCRIPTION

111th Street East as shown in the plat of Chesley Addition, said plat being on file and of record in the office of the County Recorder, Dakota County, Minnesota;

and

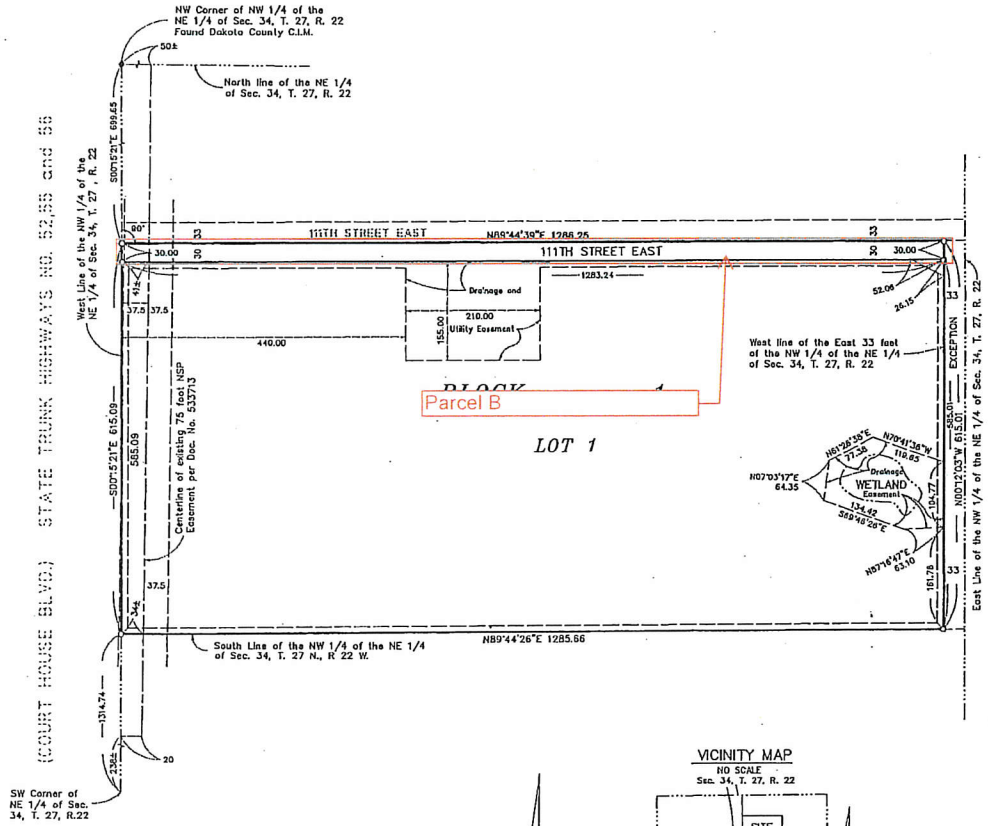
A strip of land thirty-three (33) feet wide across the NW ¼ of the NE ¼ of Section thirty-four (34), township twenty-seven (27) north, range twenty-two (22) west, the center line of which is described as follows:

Beginning at a point 683.5 feet south of the one-quarter corner between sections twenty-seven (27), and thirty-four (34), township twenty-seven (27) north, range twenty-two (22) west, said point being on the east right of way line of Trunk highway No. 55 (formerly No. 53) and running thence east a distance of eighty rods and there terminating in the east line of said NW ¼ of NE ¼ of section thirty-four (34) township twenty-seven (27) north, range twenty-two (22) west, said tract amounting to one acre.

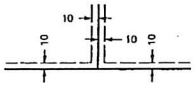
Abstract Property.

COPY

CHESLEY ADDITION



Drainage and Utility Easements are shown thus:



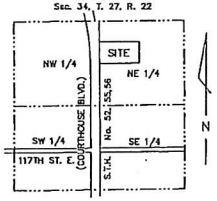
Being 10 feet in width and adjoining lot lines, unless otherwise shown, and 10 feet in width and adjoining street lines as shown on the plat.

100 0 100 200 300
SCALE IN FEET

O Denotes 1/2 inch by 14 inch iron monument set and marked by registration No. 14376.

Bearings shown are based upon west line of the Northwest 1/4 of the Northeast 1/4 of Sec. 34, T. 27, R. 22, which has an assumed bearing of S 00°15'21" E.

VICINITY MAP
NO SCALE
Sec. 34, T. 27, R. 22



HEDLUND
PLANNING ENGINEERING SURVEYING

KNOW ALL MEN BY THESE PRESENTS: That Chesley Freightliner Duluth, Inc., a Minnesota corporation, fee owner of the following described property situated in the County of Dakota, State of Minnesota, to wit:

That part of the Northwest Quarter of the Northeast Quarter of Section 34, Township 27, Range 22, lying southerly of the following described line:

Beginning at a point on the west line of said Northwest Quarter of the Northeast Quarter distant 899.65 feet south of the northwest corner of said Northwest Quarter of the Northeast Quarter; thence easterly at right angles to said west line of said Northwest Quarter of the Northeast Quarter, to the east line of said Northwest Quarter of the Northeast Quarter and said line here terminating.

Excepting therefrom the East 33.00 feet.

Has caused the same to be surveyed and platted as CHESLEY ADDITION and does hereby donate and dedicate to the public for public use forever the thoroughfare and also dedicates the easements as shown on this plat for drainage and utility purposes only.

In witness whereof said Chesley Freightliner Duluth, Inc., a Minnesota corporation, has caused these presents to be signed by its proper officer this 14th day of July, 1997.

CHESLEY FREIGHTLINER DULUTH, INC.

By: Steve Chesley Its: Treasurer

STATE OF MINNESOTA
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 14th day of July, 1997, by Steve Chesley the Treasurer of Chesley Freightliner Duluth, Inc., a Minnesota corporation, on behalf of the corporation.

ROMELLE P. MOLINE
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2000

Romelle P. Moline
Notary Public, Hennepin County, Minnesota
My Commission Expires 1-31-2000

I hereby certify that I have surveyed and platted the property described on this plat as CHESLEY ADDITION; that this plat is a correct representation of the survey; that all distances are correctly shown on the plat in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown; that the outside boundary lines are correctly designated on the plat; and that there are no wet lands as defined in Minnesota Statutes, Section 505.02, Subd. 1, or public highways to be designated other than as shown.

Jeffrey D. Lindgren
Jeffrey D. Lindgren, Land Surveyor
Minnesota License Number 14376

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing Surveyor's Certificate was acknowledged before me this 1ST day of JULY, 1997, by Jeffrey D. Lindgren, Land Surveyor, Minnesota License No. 14376.

ROMELLE P. MOLINE
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2000

Romelle P. Moline
Notary Public, Hennepin County, Minnesota
My Commission Expires January 31, 2000.

PLANNING COMMISSION, INVER GROVE HEIGHTS, MINNESOTA

Approved by the Planning Commission of the City of Inver Grove Heights, Minnesota, at a regular meeting thereof, on the 18th day of FEBRUARY, 1997.

By Edward W. Lehmann Chairperson By Barbara Hoechstetter Secretary

CITY COUNCIL, INVER GROVE HEIGHTS, MINNESOTA

We do hereby certify that on the 14th day of July, 1997, the City Council of Inver Grove Heights, Minnesota approved this plat.

By Joe Atkins Mayor By Judith Gurity Clerk

Pursuant to Section 383D.65, Minnesota Statutes, this plat has been approved this 7th day of August, 1997

By Gary H. Stevenson
Gary H. Stevenson, Dakota County Surveyor

I hereby certify that the taxes for the year 1997 for the land described on this plat as CHESLEY ADDITION have been paid and that no delinquent taxes are due and transfer entered this 12th day of September, 1997.

By Thomas V. Novak by K. Walters Deputy
County Treasurer-Auditor, Dakota County, Minnesota

Document Number 1446920

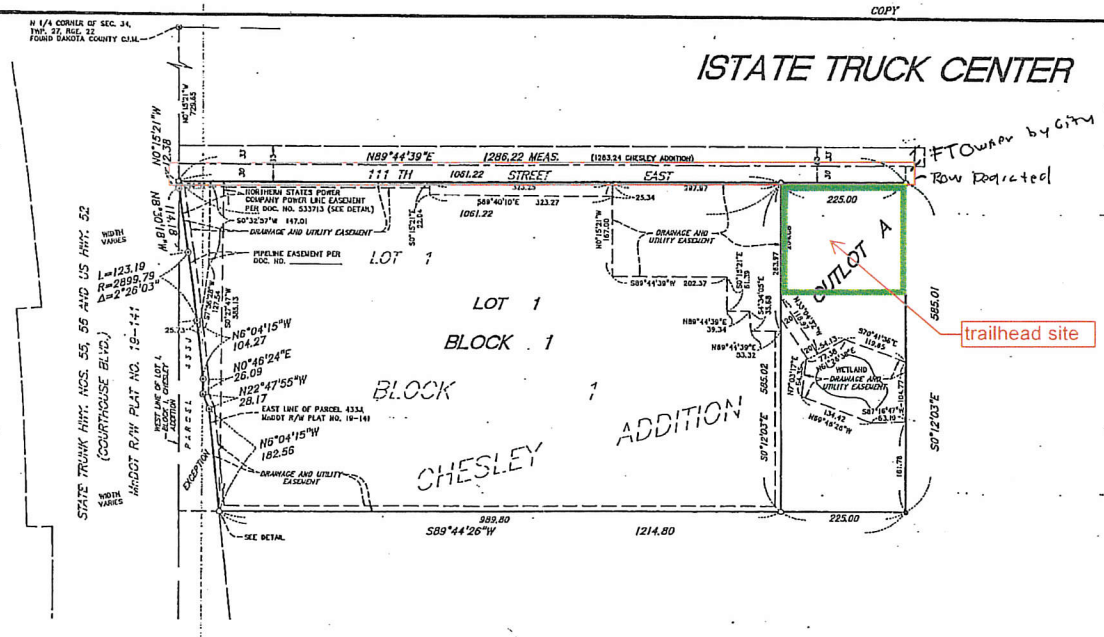
I hereby certify that this instrument was filed in the office of the County Recorder for record on this 29th day of September 1997, at 8:00 o'clock A.M., and was duly recorded in Book Thirty-Three of plats on page 4

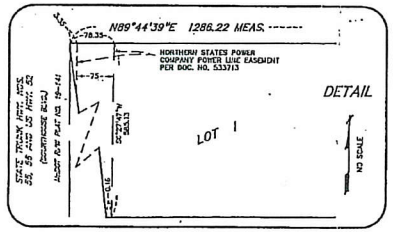
James N. Dolan
James N. Dolan
County Recorder, Dakota County, Minnesota
C. Kampa Deputy

Thirty-Three 4

COPY

ISTATE TRUCK CENTER



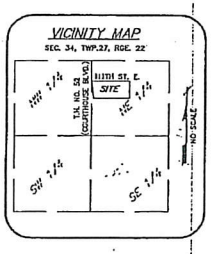


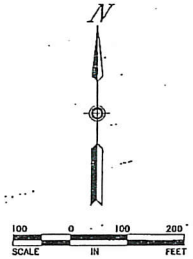
- ○ DENOTES 1/2 INCH x 14 INCH IRON PIPE MONUMENT SET, MARKED BY LICENSE NO. 15480, UNLESS OTHERWISE NOTED
- ● DENOTES IRON PIPE MONUMENT FOUND MARKED WITH LICENSE NO. 17003, UNLESS OTHERWISE NOTED
- ■ DENOTES ALUMINUM MnDOT DISK FOUND, UNLESS OTHERWISE NOTED

THE SOUTH LINE OF LOT 1, BLOCK 1, CHESLEY ADDITION IS ASSUMED TO BEAR S89°44'26"W

Drainage and utility easements are shown thus:

Being 10 feet in width, unless otherwise indicated, and adjoining lot lines and right of way lines, as shown on the plat.





KNOW ALL PERSONS BY THESE PRESENTS: That I-STATE INVER GROVE HEIGHTS, LLC, a Minnesota limited liability company, owner and proprietor of the following described property situated in the County of Dakota, State of Minnesota, to wit:

Lot 1, Block 1, CHESLEY ADDITION, according to the recorded plat thereof, Dakota County, except that part thereof shown as Parcel 433J on MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 19-141, according to the recorded plat thereof

Has caused the same to be surveyed and platted as ISTATE TRUCK CENTER and does hereby dedicate to the public, for public use forever the easements as shown on this plat for drainage and utility purposes only.

In witness whereof said I-STATE INVER GROVE HEIGHTS, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this 13th day of May 2008

I-STATE INVER GROVE HEIGHTS, LLC

BY: _____ Its Manager

STATE OF Minnesota
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 13 day of May 2008 by Jacob B. Underwood Jr. Manager of said I-STATE INVER GROVE HEIGHTS, LLC, a Minnesota limited liability company, on behalf of said company.

Notary Public-Minnesota
My Commission Expires January 31, 2010

Notary Public, Hennepin County, Minnesota
My Commission Expires January 31, 2010

I hereby certify that I have surveyed and platted the property described on this plat as ISTATE TRUCK CENTER; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on the plat; that all monuments depicted on the plat have been or will be correctly set within one year as indicated on the plat; that all water boundaries and wet lands as defined in MS 505.01, Subd. 3 existing as of the date of this certification are shown and labeled on the plat; and that all public ways are shown and labeled on the plat.

Mark S. Hanson
Mark S. Hanson, Land Surveyor
Minnesota License No. 15480

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing Surveyor's Certificate was acknowledged before me this 6th day of May 2008 by Mark S. Hanson, Land Surveyor, Minnesota License No. 15480

JANET C. POEHLER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan 31, 2010

Notary Public, Dakota County, Minnesota
My Commission Expires January 31, 2010

Approved by the Planning Commission of the City of Inver Grove Heights, Minnesota, at a regular meeting thereof, on the 9th day of October 2007

Patricia Simon Secretary _____ Chair

We do hereby certify that on the 22ND day of OCTOBER 2007 the City Council of Inver Grove Heights, Minnesota approved this plat.

George Tourville Mayor _____ Clerk

Pursuant to Section 383 D. 65, Minnesota Statutes, this plat has been approved this 5th day of June 2008

BY: _____
Todd B. Tollefson
Dakota County Surveyor

I hereby certify that the taxes for the year 2007 for the land described on this plat as ISTATE TRUCK CENTER have been paid and that there are no delinquent taxes due and transfer entered this 12TH day of June 2008

Joel T. Beckman by K. Hutton Deputy
County Treasurer-Auditor
Dakota County, Minnesota

DOCUMENT NUMBER 2591301

I hereby certify that this instrument was filed in the office of the County Recorder for record on this 13th day of June 2008 at 9:00 o'clock A.M., and was duly recorded in Book FIFTY-ONE of Plats on page 31

Joel T. Beckman by D. Wagner Deputy
County Recorder
Dakota County, Minnesota

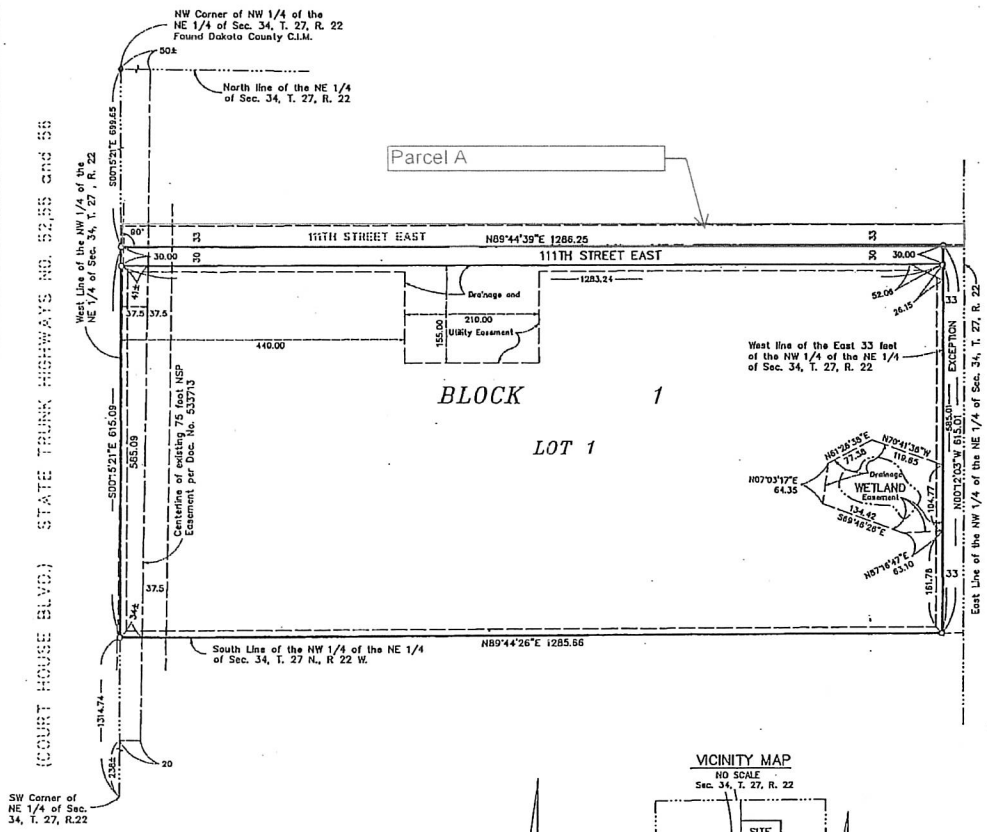
SUNDE LAND SURVEYING

FIFTY-One 31

COPY

CHESLEY ADDITION

Exhibit 2 Page 1 of 2



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Beginning at a point on the west line of said Northwest Quarter of the Northeast Quarter distant 699.65 feet south of the northwest corner of said Northwest Quarter of the Northeast Quarter; thence easterly at right angles to said west line of said Northwest Quarter of the Northeast Quarter, to the east line of said Northwest Quarter of the Northeast Quarter and said line there terminating.

Excepting therefrom the East 33.00 feet.

Has caused the same to be surveyed and platted as CHESLEY ADDITION and does hereby donate and dedicate to the public for public use forever the thoroughfare and also dedicates the easements as shown on this plat for drainage and utility purposes only.

In witness whereof said Chesley Freightliner Duluth, Inc., a Minnesota corporation, has caused these presents to be signed by its proper officer this 14th day of July, 1997.

CHESLEY FREIGHTLINER DULUTH, INC.

By: Steve Chesley its: Treasurer

STATE OF MINNESOTA
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 14th day of July, 1997, by Steve Chesley the Treasurer of Chesley Freightliner Duluth, Inc., a Minnesota corporation, on behalf of the corporation.

ROMELLE F. MOLINE NOTARY PUBLIC - MINNESOTA

Romelle F. Moline
Notary Pubic, Hennepin County, Minnesota
My Commission Expires 1-31-2000

I hereby certify that I have surveyed and platted the property described on this plat as CHESLEY ADDITION; that this plat is a correct representation of the survey; that all distances are correctly shown on the plat in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown; that the outside boundary lines are correctly designated on the plat; and that there are no wet lands as defined in Minnesota Statutes, Section 505.02, Subd. 1, or public highways to be designated other than as shown.

Jeffrey D. Lindgren
Jeffrey D. Lindgren, Land Surveyor
Minnesota License Number 14376

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing Surveyor's Certificate was acknowledged before me this 1ST day of JULY, 1997, by Jeffrey D. Lindgren, Land Surveyor, Minnesota License No. 14376.

ROMELLE F. MOLINE NOTARY PUBLIC - MINNESOTA

Romelle F. Moline
Notary Public, Hennepin County, Minnesota
My Commission Expires January 31, 2000.

PLANNING COMMISSION, INVER GROVE HEIGHTS, MINNESOTA

Approved by the Planning Commission of the City of Inver Grove Heights, Minnesota, at a regular meeting thereof, on the 18th day of FEBRUARY, 1997.

By Edward W. LeBmann Chairperson By Barbara Hoechstetter Secretary

CITY COUNCIL, INVER GROVE HEIGHTS, MINNESOTA

We do hereby certify that on the 14th day of July, 1997, the City Council of Inver Grove Heights, Minnesota approved this plat.

By [illegible] Mayor By Lutta Burrity Clerk

Pursuant to Section 383D.65, Minnesota Statutes, this plat has been approved this 7th day of August, 1997.

By Gary H. Stevenson
Gary H. Stevenson, Dakota County Surveyor

I hereby certify that the taxes for the year 1997 for the land described on this plat as CHESLEY ADDITION have been paid and that no delinquent taxes are due and transfer entered this 12th day of September, 1997.

By Thomas W. Novak By K. Buttner Deputy
County Treasurer-Auditor, Dakota County, Minnesota

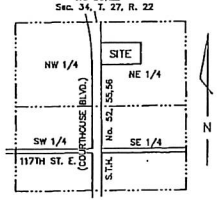
Document Number 1446920

I hereby certify that this instrument was filed in the office of the County Recorder for record on this 29th day of September 1997, at 8:00 o'clock A.M., and was duly recorded in Book Thirty-Three of plats on page 4

James N. Dolan
James N. Dolan
County Recorder, Dakota County, Minnesota

C. Kampa Deputy

VICINITY MAP
NO SCALE
Sec. 34, T. 27, R. 22



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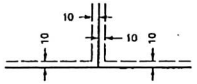
SCALE IN FEET

Drainage and Utility Easements are shown thus:



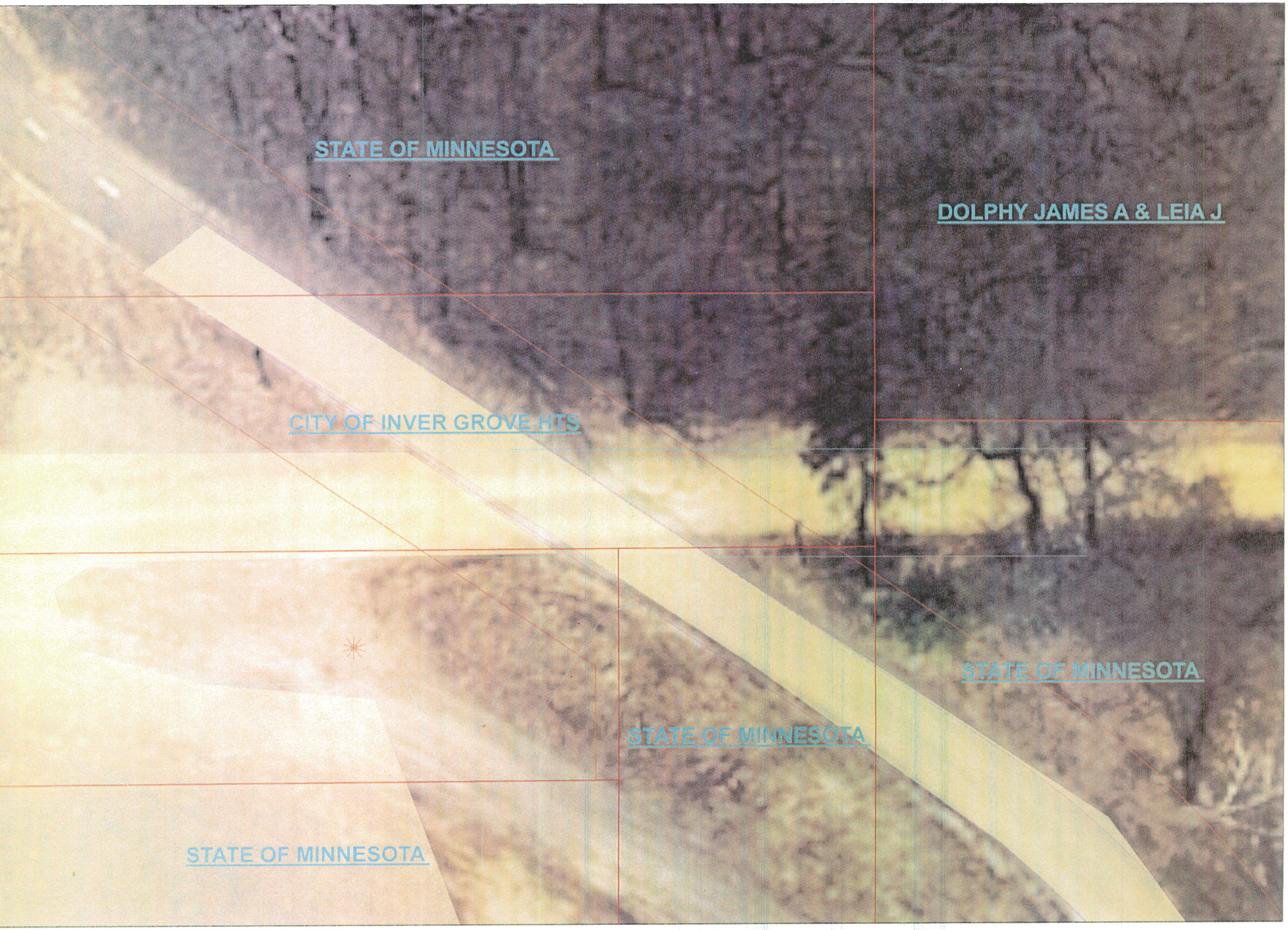
Being 10 feet in width and adjoining lot lines, unless otherwise shown, and 10 feet in width and adjoining street lines as shown on the plat.

O Denotes 1/2 inch by 14 inch iron monument set and marked by registration No. 14376.

Bearings shown are based upon west line of the Northwest 1/4 of the Northeast 1/4 of Sec. 34, T. 27, R. 22, which has an assumed bearing of S 00°15'21" E.

HEDLUND
PLANNING ENGINEERING SURVEYING

STATE OF MINNESOTA
STATE OF MINNESOTA
DOLPHY JAMES A & LEIA J
CITY OF INVER GROVE HTS
I STATE INVER GROVE HEIGHTS LLC
STATE OF MINNESOTA
STATE OF MINNESOTA
STATE OF MINNESOTA


STATE OF MINNESOTA
DOLPHY JAMES A & LEIA J
CITY OF INVER GROVE HTS
STATE OF MINNESOTA
STATE OF MINNESOTA
STATE OF MINNESOTA

PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

HEARING DATE: December 20, 2016 **CASE NO.:** 16-55V

APPLICANT AND PROPERTY OWNER: Grace Christian Reform Church

REQUEST: A variance from the number and height requirements for a sign

LOCATION: 3540 75th Street

COMP PLAN: Public/Institutional

ZONING: P, Institutional

REVIEWING DIVISIONS: Planning **PREPARED BY:** Heather Botten
Associate Planner HB

BACKGROUND

Grace Christian Reform Church is located on the corner of 75th Street and Clayton. The property is about 4 acres in size. There is currently one freestanding sign on the property located along 75th Street. There are two access points on the property; one along 75th Street and the other on Clayton Avenue. For better visibility and identification purposes the Church would like to add one additional freestanding sign on the property.

The applicant would like to install a cross 26′ in height on the property. The cross is considered a sign and shall follow the sign requirements for the P district. The P district allows for one freestanding sign on the property and the maximum height for a sign shall not exceed the height of the principal structure on the property by more than ten feet. The existing building is a one level structure about 14 feet in height, which would then allow a sign to be 24 feet in height. The location of the sign would be located over 40 feet from the north property line, exceeding setback requirements. The size of the cross will be about 40 square feet, complying with the maximum size allowance of 75 square feet.

SPECIFIC REQUEST

The following specific application is being requested:

1) A variance from the maximum height requirements and to allow more than one freestanding sign on the property.

SURROUNDING USES

The following land uses, zoning districts, and comprehensive plan designations surround the subject property:

North – Single family; zoned R-1C; guided LDR, low density residential
East - Mixed use; zoned R-3A, multi-family; guided LDR, low density residential
West – Single family; zoned R-1C; guided LDR, low density residential
South –Vacant; zoned P, Institutional; guided P/I Public/Institutional

EVALUATION OF REQUEST

VARIANCE REVIEW

City Code Title 10, Chapter 3. Variances, states that the City Council may grant variances when they are in harmony with the general purposes and intent of the zoning ordinance and consistent with the comprehensive plan and establishes that there are practical difficulties in complying with the official control. In order to grant the requested variances, City Code identifies criteria which are to be considered practical difficulties. The applicant's request is reviewed below against those criteria.

1. *The variance request is in harmony with the general purpose and intent of the city code and consistent with the comprehensive plan.*

The purpose of the sign code is to regulate the placement, erection, and maintenance of signs in the city so as to promote the health, safety and general welfare of its residents. The variance request itself does not appear to be in conflict with this general purpose. The application is not contrary to the Comprehensive Plan as the future land use is public/institutional and a Church is an approved land use in this district.

2. *The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.*

The existing building is a one level structure that is often overlooked as a church. The request for an additional sign and sign height appears to be a reasonable use of the property. Based on the height of the building the code allows a maximum sign height of 24 feet. The additional two feet seems to be reasonable as the building has a shallow roof line when comparing it to the height of other structures. If the principal structure on the property was built to the maximum building height in the P district it could be 40 feet high, which would then allow a sign height of 50 feet. The proposed 26 foot high sign appears to be reasonable request for the zoning district it is in.

3. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

The maximum sign height is based on the height of the building. The property is unique in that the building was constructed in the early 60's, prior to the adoption of the City code. The church is not as grandiose as some churches may be limiting the maximum height of the sign. Allowing an additional sign will assist in identifying the building from a public safety standpoint.

4. *The variance will not alter the essential character of the locality.*
When looking at the size of the lot, the amount of road frontage, and total signage allowed on the property, allowing the applicant to have two freestanding signs is not out of the character for the neighborhood. A cross is an identification associated with a church, allowing an additional sign would help identify the building as a church.

5. *Economic considerations alone do not constitute an undue hardship.*
Economic considerations do not appear to be a basis for this request.

ALTERNATIVES

The Planning Commission has the following alternatives available for the requested action:

A. **Approval** If the Planning Commission finds the variance requests to be acceptable, the Commission should recommend approval of the request with at least the following conditions:

1. The site shall be developed in substantial conformance with the site plan on file with the Planning Department.

B. **Denial** If the Planning Commission does not favor the proposed request, it should be recommended for denial and state findings for a denial.

RECOMMENDATION

The request is not out of character for the neighborhood and is consistent with the comprehensive plan. A cross is a typical sign allowed on a church property and the additional two feet in height does not appear to have any adverse impacts on the neighboring properties. Staff believes a practical difficulty can be found based on the fact the building, limiting the height of the sign, was constructed with a shallow roof line that blends in with the residential neighborhood. Approving the variance for the additional sign and sign height will assist in identifying the building from a public safety standpoint.

Based on the information in the preceding report and the condition listed in Alternative A, staff is recommending approval of the requested variances.

Attachments: Location/Zoning Map
Applicant Narrative
Site Plan
Sample elevation
Example of a similar sign

Grace Christian Church
Case No. 16-55V

THIS DRAWING IS NEITHER A LEGALLY RECORDED MAP NOR A SURVEY AND IS NOT INTENDED TO BE USED AS ONE. THIS DRAWING IS A COMPILATION OF RECORDS, INFORMATION AND DATA LOCATED IN VARIOUS CITY, COUNTY AND STATE OFFICES AND OTHER SOURCES AND IS TO BE USED FOR REFERENCE PURPOSES ONLY. THE CITY OF INVER GROVE HEIGHTS IS NOT RESPONSIBLE FOR ANY INACCURACIES HEREIN CONTAINED

Map produced by the City of Inver Grove Heights GIS Dept.

Copyright© City of Inver Grove Heights 2016

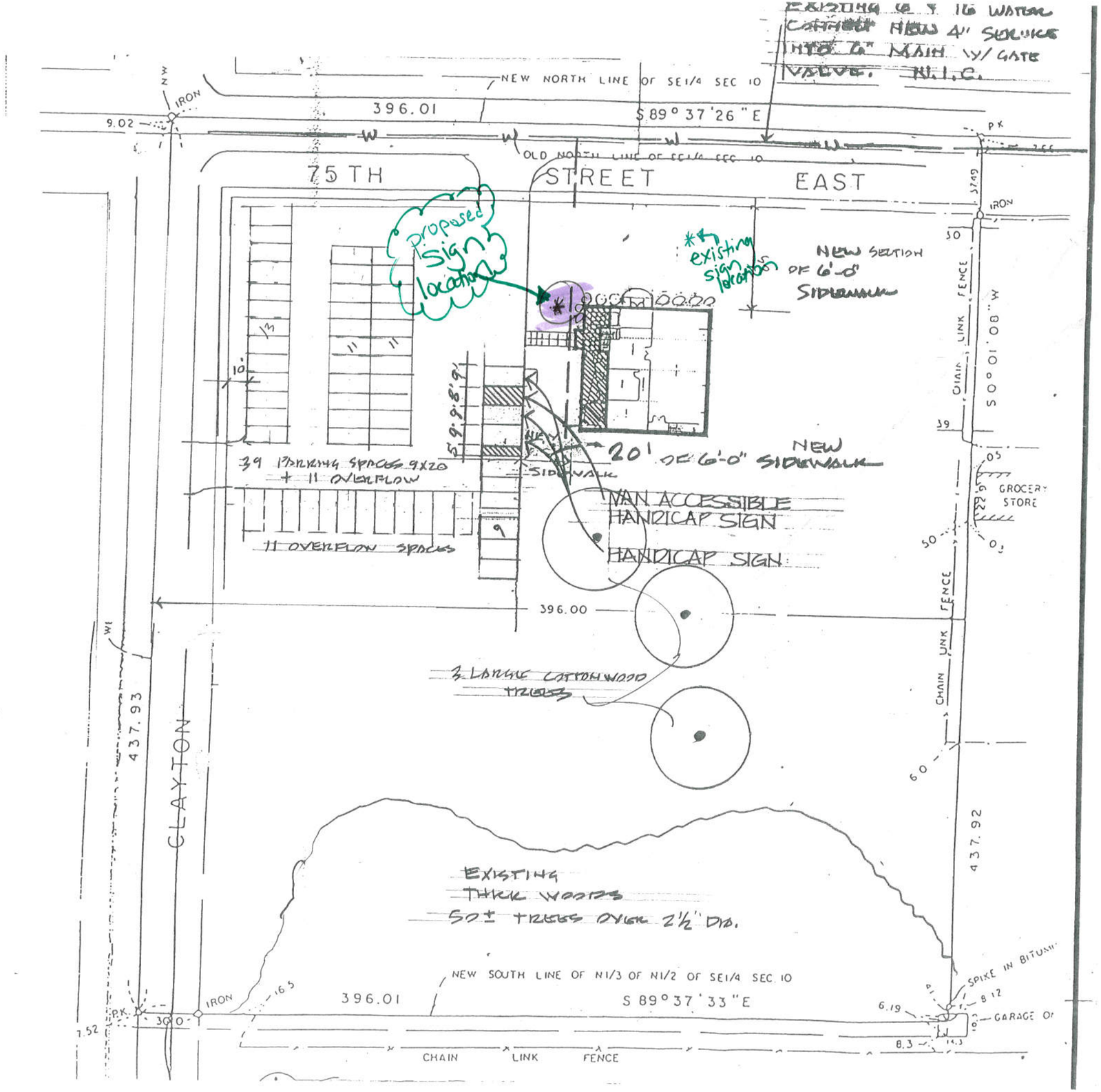
N
W E
S

Map not to scale

Exhibit A
Zoning and Location Map

Request for variance

Grace Christian Reformed Church requests a variance to permit the church to erect a free-standing cross next to the building, just off the NW corner of the building. We are asking for variance because we understand that a cross structure next to the church is considered a sign, and as there is already a sign in front of the church, this would constitute a second sign, for which a variance is required. Furthermore, we are requesting a variance of two (2) additional feet of height. As our building is quite low, with a shallow roof line, in order for the cross to have the appropriate visibility, we request this additional variance.



49' 4"
sidewalk to
front of building

SITE PLAN

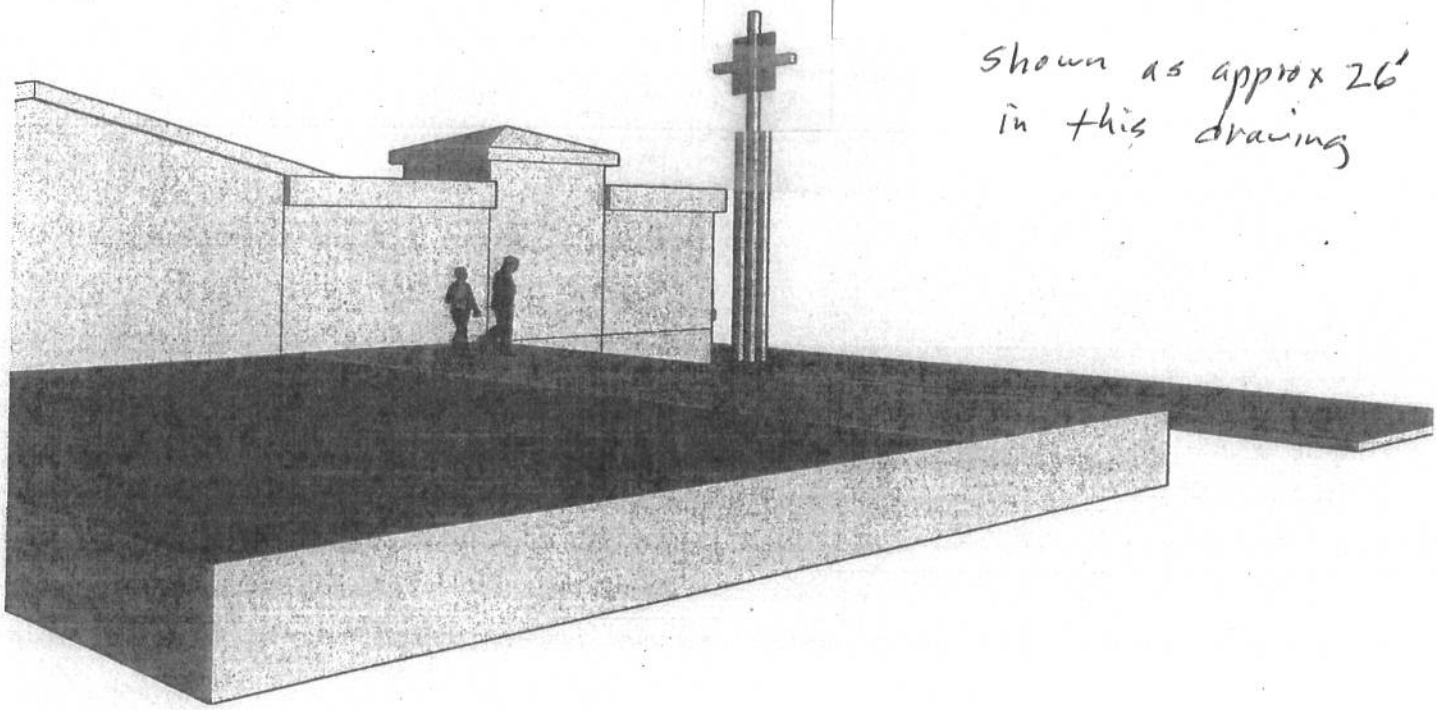
1" = 50'

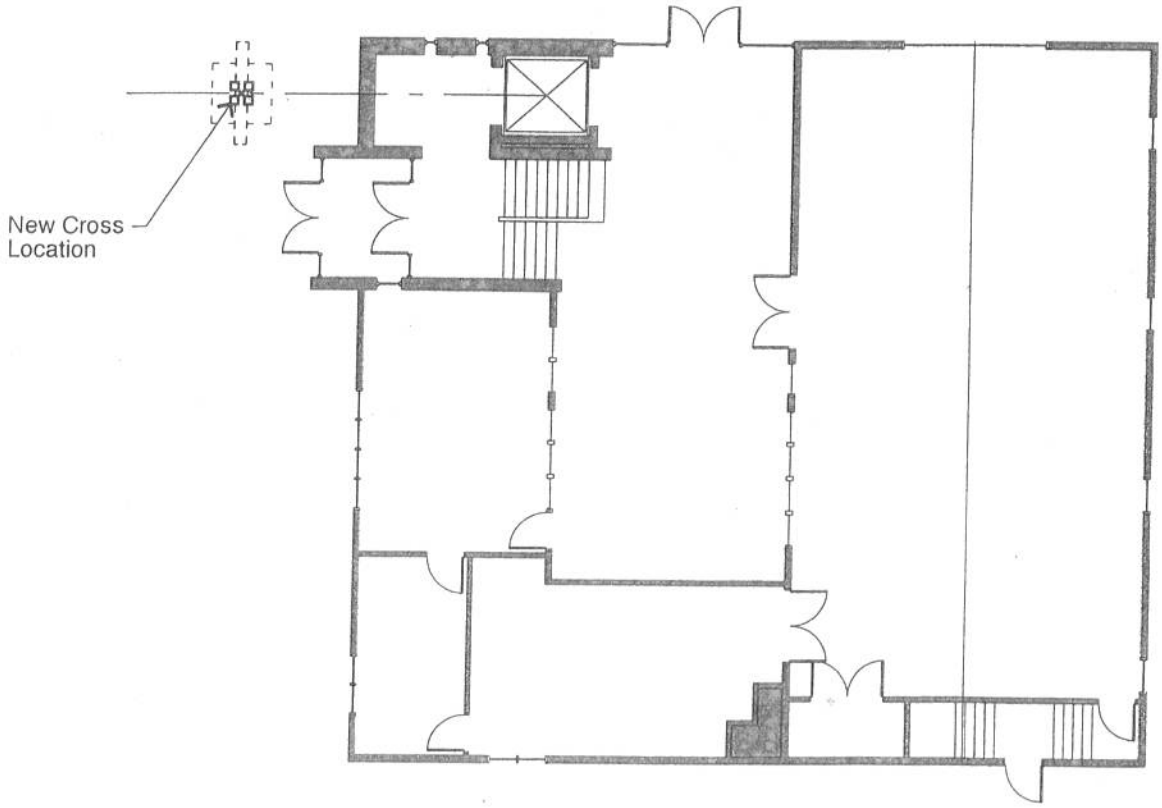
MORRISON/WALIJARVI ARCHITECTS, INC.
4770 WHITE BEAR PARKWAY
WHITE BEAR LAKE, MINNESOTA 55110
PH (612) 426-3287 FAX (612) 426-5440

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Registered Architect under the laws of the State of Minnesota.
Date 3/21/91 Reg. No. 7913

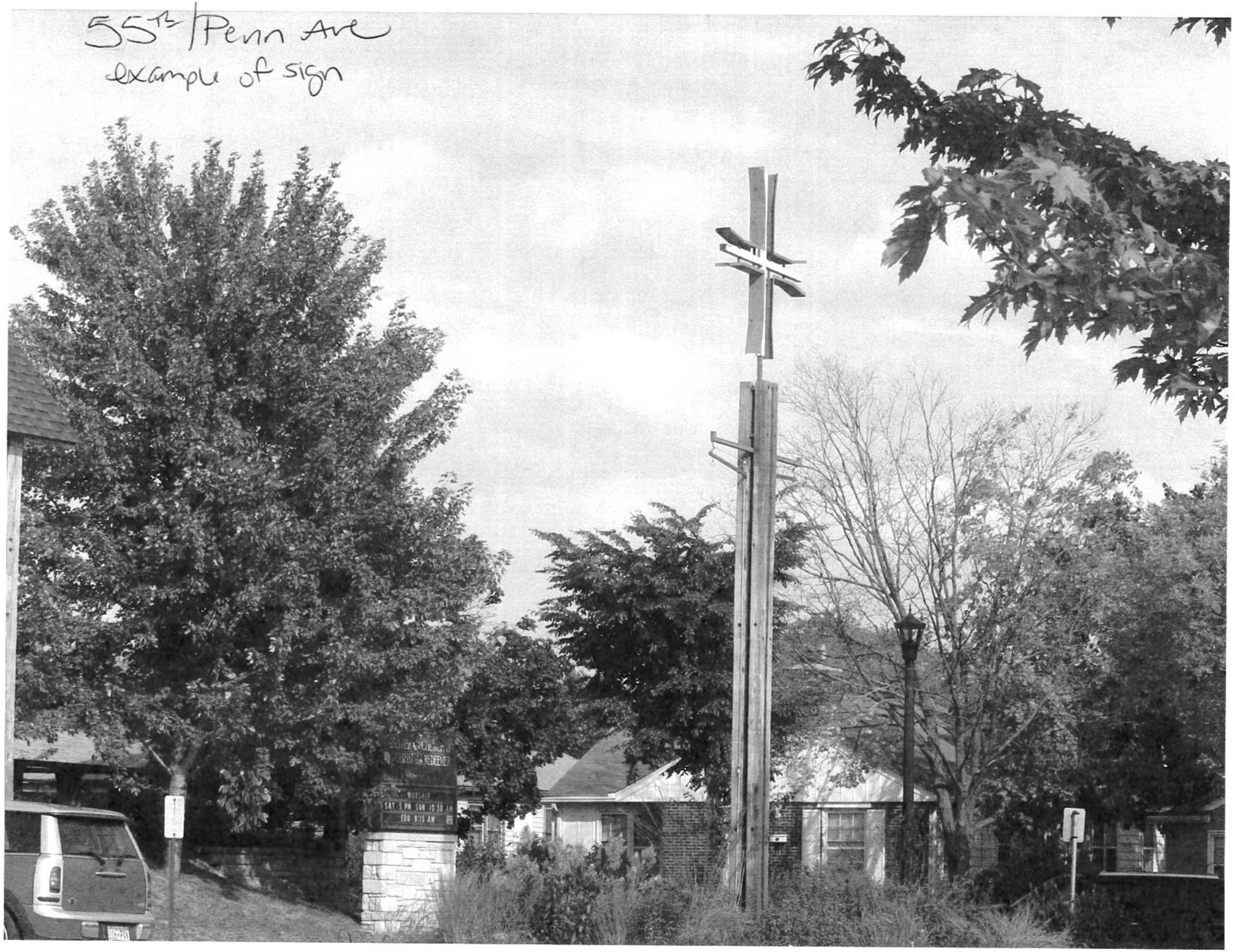
GRACE COMMUNITY C R CHURCH
3540 E. 75TH STREET
INVER GROVE HEIGHTS, MN

SHEET
S-1
OF: 1


Shown as approx 26'
in this drawing


New Cross
Location

55th / Penn Ave
example of sign



PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

HEARING DATE: December 20, 2016 **CASE NO:** 16-56PDA

APPLICANT: 5681 GLG Properties, LLC

PROPERTY OWNER: Associated Bank, NA

REQUEST: SE Quad Ordinance Amendment (Bishop Heights)

LOCATION: 5681 Bishop Avenue

COMPREHENSIVE PLAN: RC, Regional Commercial

ZONING: PUD (Southeast Quadrant)

REVIEWING DIVISIONS: Planning **PREPARED BY:** Heather Botten
Associate Planner

BACKGROUND

The applicant is requesting an amendment to the Bishop Heights PUD Ordinance to allow for a mix of uses located within an existing strip center building located on the west side of Blaine Avenue between Blackburn Lane and Upper 55th Street. The building previously contained a mexican restaurant and a clothing consignment shop. The building is currently vacant and is now owned by Associated Bank. The Bishop Heights PUD lists the allowed uses on the property as: 10,400 square feet retail and 5,000 square feet restaurant. The applicant would like the flexibility to add an office use to the allowed uses in the building. Because the ordinance is set up to approve specific uses in each building to track traffic generation, an amendment is required to add office use. The Bishop Heights PUD was set up with its own ordinance and all projects and uses are approved individually and listed in the ordinance. Uses and traffic counts are tracked in the Bishop Heights PUD because it is important that traffic generation at the Upper 55th Street and Hwy 52 intersection remain below capacity.

Approvals Required

In order to develop the property as proposed, the applicant has requested the following specific actions:

1) Adoption of a Bishop Heights PUD Ordinance Amendment to allow the 15,400 square foot building to be used for office/retail and restaurant for Lot 1, Block 1, Bishop Heights 4th Addition and amending traffic volumes to fit the proposed use mix.

EVALUATION OF THE REQUEST

Surrounding Uses. The subject site is surrounded by the following uses:

North – Auto service uses; zoned PUD; guided RC.
East - Auto services, growing fields; zoned PUD; guided RC
West – Restaurant; zoned PUD; guided RC

South – Parking lot/vacant; zoned PUD; guided RC

ANALYSIS
The SE Quadrant PUD approval for this lot is:

22	Lot 1, Block 1, Bishop Heights 4th	10,400 square foot retail, 5,000 square foot sit down restaurant

The requested use change for the lot is proposed to read as follows:

22	Lot 1, Block 1, Bishop Heights 4th Addition	15,400 square foot office/retail/sit down restaurant

Trip generation and parking are the two main issues to review with this request.

Required number of parking stalls per the zoning ordinance for retail space is greater than office space. Therefore, a mix of use in the building would not exceed the number of parking spaces provided. The only limitation staff would recommend is that the restaurant area should not be allowed to exceed the current 5,000 square foot allowed maximum because it has a parking demand greater than retail. Parking at peak times could become an issue if more of the building were converted to restaurant.

The Bishop Heights Ordinance also needs to be amended to reflect traffic generation for the use. All uses in the PUD are approved with a peak traffic generation number. This is used to track total projected traffic volumes to compare when actual traffic counts are done in the area. In this case the traffic count would decrease in the afternoon peak time from the current approval volume of 126 trips p.m. to 75 p.m. trips. This is based on a usage of 5,700 sq ft office, 4,150 sq ft retail and 5,000 sq ft restaurant. The Traffic Table would be amended to reflect the new numbers.

ALTERNATIVES

A. **Approval:** If the Planning Commission finds the application acceptable, the following request should be recommended for approval:

1. Approval of an **Amendment** to the Southeast Quadrant PUD Ordinance to allow the uses approved for Lot 1, Block 1, Bishop Heights 4th Addition to be office/retail/sit down restaurant and amending traffic volumes to 75 PM peak trips with the condition that the restaurant use be limited to the existing 5,000 square foot maximum.

B. **Denial**: If the Planning Commission does not support the request, a recommendation of denial should be forwarded to the City Council. With a recommendation of denial, the basis of the recommendation should be given.

RECOMMENDATION

Staff recommends approval of the request with the condition listed.

Attachments: Exhibit A –Location Map
Exhibit B – Letter from applicant
Exhibit C – Trip generation calculation
Exhibit D – Site Plan
Exhibit E – Ordinance Amendment (changes highlighted, pages 4 & 9)

Location Map
Case No. 16-56PDA

PLANNED UNIT DEVELOPMENT AMENDMENT APPLICATION

This application is to amend the current PUD in place for the building located at 5681 Blaine Ave, Inver Grove Heights, MN. The property is a retail center that consists of approximately 15,011 SF. The building was built approximately 10 years ago and consists of several rental spaces. The building has been vacant for the past 2 years and certain areas have never been leased since it was built. The property is currently owned by Associated Bank. This property is in a PUD that requires it to be used for retail only. One of the requirements was that part of the center has to be occupied by a restaurant.

The property is presently under contract to be purchased by the owners of Gertens. The buyer wants to use part of the property for office space.

The buyer is requesting that the PUD be amended to allow <u>either</u> office or retail use in any of the spaces in the center.

TRIP GENERATION CALCULATIONS

A Trip Generation calculation was done by the buyer's architect and is attached to this application.

Three scenarios were done in these calculations and are summarized as follows:

If the building is 100% office, there are a total PM Peak Trips of 22.
If the building is 100% retail, there are a total PM Peak Trips of 88
If the building is 100% mixed per the assumptions attached, the total PM Peak Trips would be 75.

Under all of the circumstances, the retail use creates the most trips with office generating the least amount.

Thus, from a traffic standpoint, the change to allow office space will not create any more trips than the current zoning and will actually decrease the PM peak traffic trips occurring.

TRIP GENERATION CALCULATIONS: (BASED ON THE ITE TRIP GENERATION MANUAL, 9TH EDITION)

ASSUMED BUILDING TO BE 100% OFFICE

OFFICE - 15,011 S.F. x 1.49 / 1000 = 22 TRIPS

TOTAL PM PEAK TRIPS - 22

ASSUMED BUILDING TO BE 100% RETAIL

RETAIL - 9,870 S.F. x 3.71 / 1000 = 37 TRIPS
HIGH QUALITY RESTAURANT - 5,141 S.F. x 9.85 / 1000 = 51 TRIPS

TOTAL PM PEAK TRIPS - 88

PROPOSED CHANGE FROM RETAIL TO MIXED RETAIL AND OFFICE USE

OFFICE - 5,714 S.F. x 1.49 / 1000 = 9 TRIPS
RETAIL - 4,156 S.F. x 3.71 / 1000 = 15 TRIPS
HIGH QUALITY RESTAURANT - 5,141 S.F. x 9.85 / 1000 = 51 TRIPS

TOTAL PM PEAK TRIPS - 75

TRIP GENERATION CALCULATIONS (BASED ON THE ITE TRIP GENERATION MANUAL, 9TH EDITION)

ASSUMED BUILDING TO BE 100% OFFICE

OFFICE - 15,011 S.F. x 1.49 / 1000 = 22 TRIPS

TOTAL PM PEAK TRIPS - 22

ASSUMED BUILDING TO BE 100% RETAIL

RETAIL - 9,870 S.F. x 3.71 / 1000 = 37 TRIPS
HIGH QUALITY RESTAURANT - 5,141 S.F. x 9.85 / 1000 = 51 TRIPS

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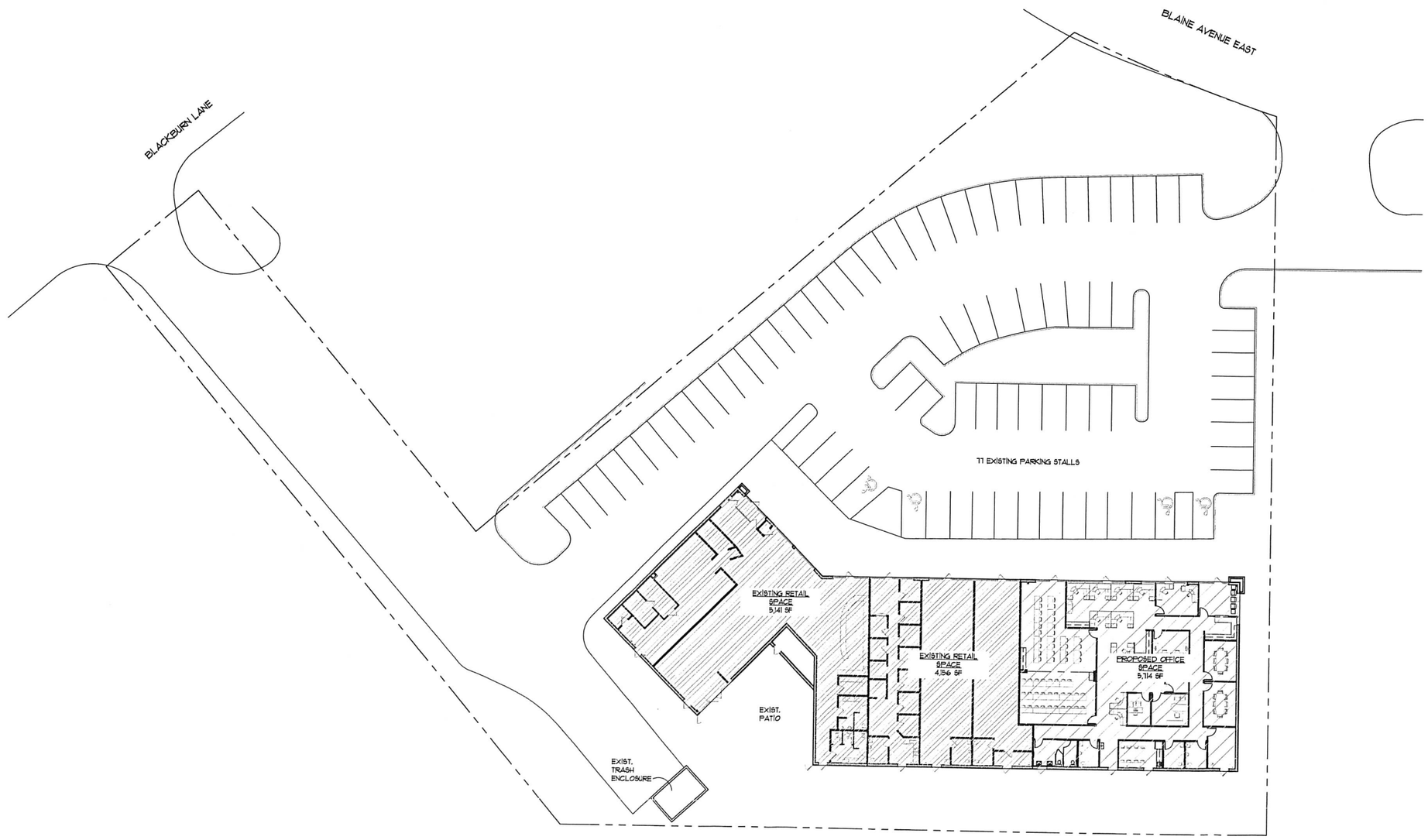
TOTAL PM PEAK TRIPS - 75



NORTH

1 AS-1.0 EXISTING SITE PLAN
SCALE: 1" = 30'-0"

WELSH ARCHITECTURE
4350 Baker Road, Suite 400, Minnetonka, MN 55343
TEL. 952.897.7874 FAX: 952.897.7740

THE DRAWINGS AND / OR SPECIFICATIONS CONTAINED HEREIN ARE THE EXCLUSIVE PROPERTY OF WELSH ARCHITECTURE AND SHALL NOT BE UTILIZED OR COPIED BY OTHER PARTIES WITHOUT PRIOR WRITTEN CONSENT.

Gertens

PROJECT:
GERTENS

5681 BLAINE AVENUE EAST
INVER GROVE HEIGHTS, MN

SHEET:
EXISTING SITE PLAN

ISSUE / REVISION	DATE
CITY SUBMITTAL	11.15.2016

JOB: 2016.5210
DRAWN BY: AJV CHECKED BY: DF

AS-1.0

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 10 OF THE CITY CODE RELATED TO THE PLANNED UNIT DEVELOPMENT ZONING DISTRICT IN THE SOUTHEAST QUADRANT OF HIGHWAYS 52 AND 494

THE CITY OF INVER GROVE HEIGHTS ORDAINS THAT ORDINANCE NUMBERS 891, 912, 915, 928, 946, 968, 976, 977, 985, 1022, 1056, 1058, 1062, 1064, 1074, 1101, 1106, 1112, 1133, 1135, 1136, 1187, 1190, 1230 and 1313 ARE HEREBY RESTATED AND AMENDED TO READ AS FOLLOWS:

SECTION I. **Rezoning Land to Planned Unit Development (PUD).** Ordinance No. 1190 adopted July 27, 2009, entitled, "AN ORDINANCE ADOPTING THE RECODIFICATION OF THE INVER GROVE HEIGHTS CITY CODE INCLUDING THE CITY ZONING ORDINANCE, is hereby amended to rezone from MF PUD to Planned Unit Development Zoning District No. 2016-01 the following described property:

Parts of Southeast Quarter of Northeast Quarter of Section 33, Township 28, Range 22, which was formerly platted as Lots 1 through 8 inclusive, Block 6, Lots 1 through 8 inclusive, Block 7, Lots 23 through 30 inclusive, Block 7, Lots 1 through 8 inclusive, Block 8 of Edgewood Addition to South St. Paul, and as the streets and alleys abutting on said Lots before the Vacation of Edgewood Addition to South St. Paul, Dakota County, Minnesota

SECTION II. The Zoning Map of the City of Inver Grove Heights referred to and described in said Ordinance No. 1230 as that certain map entitled "Inver Grove Heights Zoning Map, June 24, 2002", together with all amendments thereto, hereinafter referred to as the "zoning map", shall not be republished to show the aforesaid rezoning, but the Clerk shall appropriately mark the said zoning map on file in the Clerk's Office for the purpose of indicating the rezoning hereinabove provided for in this ordinance and all of the notations, references and other information shown thereon are hereby incorporated by reference and made a part of this ordinance.

SECTION III. **Purpose and Intent.** The above referenced property is hereby rezoned to Commercial Planned Unit Development Zoning District No. 2016-01, for the purposes of:

A. Providing the means for greater creativity and flexibility in environmental design than is provided for under the strict application of the existing zoning code while at the same time preserving the health, safety, order, convenience, prosperity and general welfare of the City and its inhabitants.
B. Recognizing the economic and cultural advantages that will accrue to the residents of a planned community.
C. Encouraging the preservation and enhancement of desirable site characteristics and open space.

D. Encouraging a development pattern in harmony with land use density, transportation facilities and community objectives of the comprehensive plan.
E. Limiting development of tax exempt uses.
F. Providing incentives and encouraging development that will create a desirable tax base.
G. Prohibiting uses and developments that could be detrimental to the overall development of the area.

SECTION IV. Findings. In rezoning the above referenced property to Commercial Planned Unit Development No. 2016-01, the City Council has found the following:

A. That the proposed Commercial Planned Unit Development is consistent with the City's 2030 Comprehensive Plan.
B. That the proposed development has been designed as a complete and unified development within its own boundaries in terms of relationship of structures, patterns of circulation, visual character, interrelationship of utilities and drainage infrastructure, and overall architectural theme.
C. That the proposed layout of land use within the development will result in compatible land uses with present and planned uses in the surrounding area.
D. That the development is sufficient unto itself on the basis of size, composition, arrangement and the provision of municipal utilities.
E. That the impacts of the proposed development on municipal services and facilities have been reviewed and that mitigative measures have been identified where needed.
F. That the impacts of the proposed development on environmental quality and the reasonable enjoyment of surrounding property have been identified, analyzed and mitigative measures identified where needed.
G. That the existing and proposed layout and land use for Tracts A-D have been heretofore regulated in part by a succession of Conditional Use Permit Resolutions. Resolution No. 4573 was adopted by the City Council on 9/25/89. It was rescinded and replaced on 11/20/89 by Resolution No. 4615, which was rescinded on 8/27/90 and replaced with Resolution No. 4847, which was rescinded on 6/13/94 and replaced by Resolution No. 6055, which was rescinded on 4/10/95 and replaced by Resolution No. 6276, which was rescinded on 2/24/97 and replaced by Resolution No. 6789, which was rescinded on 2/23/98 and replaced by Resolution No. 98-30, which was rescinded on 2/28/11 and replaced by Resolution No. 11-28. This PUD Ordinance now replaces Resolution No. 11-28.

SECTION V. Land Use Regulations. For the above referenced property contained within the Commercial Planned Unit Development District No. 2011-01, the following land use regulations shall apply:

A. SITE PLAN
Prior to commencement of any development or issuance of grading or building permits, the City Council shall approve final development plans, including but not limited to: final plat, site plan, grading plan, utility plan, landscape plan, elevation plan, signage plan, lighting plan.

B. USES

All development shall be restricted to the following uses:

Parcel No.	Legal Description*	Specific Use
1	Lot 1, Block 1, Bishop Heights	65,000 square foot, 16-screen theater
2	Lot 2/3, Block 1, Bishop Heights	7,400 square foot sit down restaurant and a 2,299 square foot roof top restaurant space
3	Lot 2/3, Block 1, Bishop Heights	36,371 square foot, 89 room motel
4	Lot 4, Block 1, Bishop Heights	25,292 square foot, 63 room motel
5	Lot 5 and part of Lot 4, Bishop Heights	6,163 square foot sit down restaurant
6	Lot 2, Block 2, Bishop Heights	6,500 square foot bank and office building
7	Lot 3, Block 2, Bishop Heights	4,271 square foot gas station convenience store
8	Lot 1, Block 1, Krech's Addition	15,120 square foot drug store
9	Tracts A-D, F and G	42,000 square foot lawn, garden, floral & nursery retail center (two buildings: 29,400 sf in one, 12,400 sf in other); 605,000 square feet of greenhouses and nursery buildings; 2,150 sf accessory structures (2 barns) for storage of materials and equipment; nursery fields and nursery field caretaker's residence; outside storage/display of nursery and landscaping stock and materials; nursery and landscaping services, 5.7 acres of growing fields and one house for use by employees**
10	Lot 1, Block 1, Bishop Heights 2nd Addition	1,710 sf quick service oil change store
11	Lot 1, Block 1, Bishop Heights 3rd Addition	6,832 sf auto service center store
12	Lots 1-31, Block 1, Blackberry Town Office Park	65,415 net sf townoffice space, 31 units
13	Lot 1, Block 1, Blackberry Town Office Park Second Addition	4,950 gross sf veterinary clinic
14	Lot 1, Block 1, Inver Grove Market	14,009 square feet of general retail, 5,680 square feet of sit-down restaurant, and 1,516 square feet of fast food restaurant (without a drive through window)
15	Lots 6-10, Block 7, Warren and McDowell's Acre Lots No. 2	Rock and Block Yard for Gerten's Greenhouses
16	Lots 1-88, Brentwood Village	80 townhome units
17	Lot 1, Bk 2, Bishop Heights	7,200 sf sit down restaurant
18	Lots 1 & 2, Block 1, Outlot A Brentwood Village Apts.	219 apartment units
19	Outlot B, Bishop Heights	43,400 square foot medical/office building
20	Lot 2, Block 1, Inver Grove Market	5,200 square foot bank building
21	Lot 3, Block 1, Bishop Heights	9,100 square feet of general retail

	4th Addition	
22***	**Lot 1, Block 1, Bishop Heights 4th Addition**	**15,400 square feet office/retail/ sit-down restaurant**
23	Lot 1, Block 1, Scenic Heights Addition	16,000 square foot office condominium
24	Outlot A, Brentwood Hills Apartments	24 multiple family townhome units
25	Lot 2, Block 1, Inver Grove Professional Addition	13,318 square foot office building

* More detailed legal descriptions available in Exhibit A

** Uses on Tracts A-D, F & G shall be governed not only by this ordinance, but also by the conditions found in Resolution No 98-210, Resolution 11-28 and Resolution 16-82.

***Parcel 22 shall be subject to the following conditions:

1. A Joint Parking Agreement affecting the restaurant in Lot 1, Block 1 Bishop Heights 4th Addition between Outlot B, Bishop Heights and Lot 3, Block 1, Bishop Heights 4th Addition. This document must be drafted by the City attorney's office, signed by the land owners, and recorded with the County.
2. If restaurant parking becomes a problem restaurant employees shall park off site at any of the locations listed in the Joint Parking Agreement.

C. PERFORMANCE STANDARDS

All development shall meet the following performance standards. Where a specific standard is not addressed herein, the appropriate land use regulations of the City Code shall apply.

1. Minimum lot width - 100'

2. Setbacks:

	Structures	Parking Lots	Driveways
Upper 55th St., Blaine Ave. & Cahill Ave	50'	20'	10'
Other Public Streets	30'	20'	10'
Side Yard (adjacent to properties within PUD)	0'	0'	0'
Side Yard (adjacent to properties outside PUD)	30'	10'	10'

Internal private driveways (setbacks to be approved with final development plan).

3. Maximum Building Height:

a. Principal Structures - 35'

b. Accessory Structures - 30'

c. Greater building height shall be allowed by conditional use permit subject to City Code Section 515.59, Subd 10.

4. Minimum Open Space shall be 25% of lot area, with the lot area to be determined by the City. Ponding or steep slopes (in excess of 18%) shall not exceed 10% of the total lot area for purposes of this computation.

5. Parking/Circulation Requirements:

(a) All open off-street parking and loading areas shall have a perimeter continuous concrete curb barrier around the entire lot.

6. Landscaping, Signage and Architecture:

Development of all lots in Bishop Heights shall be in conformance with the design manual on file in the City Offices entitled Design Guidelines, Bishop Heights and Kerasotes Theaters, Inc., Planned Unit Development, Inver Grove Heights, dated June 23, 1997 and prepared by Damon Farber Associates and Abend Singleton Associates.

Development of all lots in Krech's Addition shall be in conformance with the Cahill Corridor Master Plan and those portions of the Design Guidelines, Bishop Heights and Kerasotes Theaters, Inc., Planned Unit Development, Inver Grove Heights which the City finds appropriate.

Development of Tracts A-D, as described in Exhibit A, shall be in conformance with those portions of the design manual on file in the City Offices entitled Design Guidelines, Bishop Heights and Kerasotes Theaters, Inc., Planned Unit Development, Inver Grove Heights which the City finds appropriate.

Development of all lots shall also be in conformance with the City landscape policy.

D. GENERAL PROVISIONS

All development, except Tracts A-D, shall meet the following general provisions. All development which occurs on Tracts A-D in accordance with Resolution No. 98-210, and which has occurred prior to the effective date of this Ordinance, shall not be required to meet General Provisions 1, 2, 3, 4, 5, 6 and 9. Where a specific provision is not addressed herein, the appropriate land use regulation of the City Code shall apply.

1. Loading Areas:

Loading and unloading areas shall be in compliance with the following:

a. Any use which the City believes requires the provision of designated spaces for the loading, unloading or parking of trucks or semi-trailers shall provide such spaces and maneuvering area in the number and configuration which shall be deemed necessary by the City to prevent interference with the use of the public right-of-way and with vehicles entering onto or exiting from the public right-of-way.

b. Screening shall be provided in accordance with provisions of Paragraph 2, below, of this Section.

2. Screens and Buffers:

a. Definition and Purpose: Screens and buffers are designated yards or open areas where distance, planting, berming and fencing help minimize adverse impacts of public nuisances, such as: noise, glare, activity or dust; which are sometimes associated with parking, storage, signs or buildings.

b. Screens and Buffer Requirements:

(i) All parking, loading, service, utility and outdoor storage areas shall be screened from all public streets and adjacent differing land use by a combination of any of the following: earth mounds, walls, fences, shrubs, deciduous overstory or coniferous trees or hedge materials. The height and depth of the screening shall be consistent with the height and size of the area to be screened. When natural materials, such as trees or hedges, are used to meet the screening requirements of this Paragraph, density and species of planting shall be such as to achieve seventy-five percent (75%) opacity year round at maturity.

c. All plant materials required within a specified buffer yard shall be planted to completion within six (6) months from the date of issuance of a building permit unless otherwise approved by the City due to the time of the year or construction for a large

project. In no case shall the period exceed six (6) months from issuance of the certificate of occupancy.

3. Building Design Requirements:

a. Design Supervision by Architect: An architect shall be required for the construction of all buildings. The building plan, including site plan for such a building, shall be certified by an architect, registered by the State of Minnesota, stating that the individual personally viewed the site and has designed the building to fit the site as planned and to be harmonious with the adjacent buildings, topography and natural surroundings and in accordance with the purposes and objectives of this Chapter. This requirement shall not prohibit the preparation of the site by a professional site designer, or the landscape plan by a professional landscape architect or certified nurseryman.

b. Exterior Vertical Surface Design for Commercial Structures: All exterior vertical surfaces of any principal or accessory structure shall have an equally attractive or the same fascia as the front. At least 50% of the exterior vertical surface shall consist of one or a combination of the following or similar materials: brick veneer; sculptured, textured or concrete block or panels; natural wood siding; steel, aluminum or vinyl lap siding; natural stone or glass.

4. Site Design and Development Requirements:

a. Landscaping shall be in accordance with the provisions of the "Performance Standards" Section of this Planned Unit Development.

b. Interior curbs shall be constructed within the property to separate driving and parking surfaces from landscaped areas. Interior curbs required by this Section shall be Portland cement concrete construction.

c. Surfaced walkways shall be provided from parking, loading and recreational areas to the entrances of buildings.

d. All interior driveways, parking areas, and loading areas, etc. shall be of blacktop or concrete construction.

e. No exterior trash or garbage disposal or incineration shall be permitted. Any exterior storage shall be enclosed within a container and such container shall be completely screened by a wall or equivalent visual screen and shall be attached to the principal structure and be constructed of the same building material.

f. On-site lighting shall be provided as is necessary for security, safety and traffic circulation. Lighting shall not be directed upon public rights-of-way or adjacent properties. Such illumination shall be indirect and diffused.

g. Prior to the issuance of building permits, fire lanes shall be provided and identified as required by the City Fire Marshal.

5. Mechanical Equipment Screening:

All mechanical equipment possessing one or more of the following characteristics shall be physically screened, to the extent feasible, from all public streets and adjacent land

uses with either natural or artificial materials in a manner architecturally compatible to the building(s) on the site. Said screening shall pertain to, but not be limited to, exposed and/or protruding fans, grills, tubes, wires, vents, unfinished metal covering, exposed rivets and exposed seams.

6. Sidewalks, Trails and Pedestrian Walkways:

a. Sidewalks, trails and pedestrian walkways shall be provided and maintained in accordance with the Comprehensive Plan.

b. As a minimum, a pedestrian sidewalk and/or minimum eight (8) foot wide bituminous trail shall be provided by the developer or land owner along the north side of Upper 55th Street and an eight (8) foot wide bituminous trail along the west side of Blaine Avenue.

c. The developer shall install six (6) foot wide concrete sidewalks along both sides of Bishop Avenue and along both sides of the public roadway connecting Bishop Avenue and Blaine Avenue.

d. An interior pedestrian circulation; plan shall be submitted with each development for approval by the City.

7. Site Plan and Building Permit Review:

To ensure uniform development throughout the planned unit development area and development that is consistent with the provisions herein, all site and building plans required for building permits, grading permits, excavation permits or other similar permits issued by the City must be found by the Director of Community Development or assigns to be consistent with the approved PUD Plans, the provisions of this Ordinance, the Development Contract and all other applicable sections of the City Code.

8. Traffic:

The forecasted p.m. peak hour traffic generated by the developments shall not exceed:

Lot	Parcel #	Trips
Lot 1, Block 1, Bishop Heights	1	177
Parcel A, Bishop Heights (Described in Exhibit A)	2	153
Parcel B, Bishop Heights (Described in Exhibit A)	3	83
That part of Lot 4, Block 1, Bishop Heights described in Exhibit A.	4	38
Lot 5, Block 1, Bishop Heights and that portion of Lot 4 described in Exhibit A.	5	78
Lot 2, Block 2, Bishop Heights	6	120
Lot 3, Block 2, Bishop Heights	7	180
Lot 1, Block 1, Krech's Addition	8	116
Tracts A-D, F and G as described in Exhibit A	9	208
Lot 1, Block 1, Bishop Heights 2nd Addition	10	18
Lot 1, Block 1, Bishop Heights 3rd Addition	11	28
Lots 1-31, Block 1, Blackberry Town Office Park	12	141
Lot 1, Block 1, Blackberry Town Office Park Second Addition	13	20
Lot 1, Inver Grove Market	14	148
Lots 6-10, Block 7, Warren and McDowell's Acre Lots No. 2	15	40
Lots 1-88, Brentwood Village	16	43
Lot 1, Bk 1, Bishop Heights	17	78
Lots 1 & 2, Bk 1, Brentwood Village Apartments	18	136
Outlot B, Bishop Heights	19	146
Lot 2, Inver Grove Market	20	205
Lot 3, Block 1, Bishop Heights 4th Addition	21	34
Lot 1, Block 1, Bishop Heights 4th Addition	22	75
Lot 1, Block 1, Scenic Heights Addition	23	23
Outlot A, Brentwood Hills Apartments	24	19
Lot 2, Block 1, Inver Grove Professional Addition	25	20

The trips have been determined by the City using national or state traffic generation studies or reports prepared by engineering professionals, including the Trip Generation Report, prepared by the Institute of Transportation Engineers. This determination is being made by the City at the time of final development plan approval. Any change which effects the site plan or uses, as approved in Section V, A and B, including an increase in building size, shall require a redetermination by the City of forecasted p.m. peak hour trips, and shall not exceed the number of trips, as hereby approved.

9. Maintenance Agreements:

Contemporaneous with recording the plat of Bishop Heights, the owners of Lots 1,2,3, Block 1; Lots 1,2,3, Block 2, Bishop Heights, shall execute a stormwater maintenance agreement, a landscape maintenance agreement, and a street light maintenance agreement, in a form to be approved by the Director of Public Works, the Director of Community Development, and the City Attorney.

SECTION VI. The effective date of the Planned Unit Development Zoning District No. 2010-01 as amended shall be from and after publication of this Ordinance pursuant to City Code Section 110.03 Subd. 5. The Planned Unit Development shall be designated on the official City Zoning Map as "Planned Unit Development No. 2011-01" upon approval of the rezoning by the City Council.

THIS ORDINANCE NO. 1230 RESTATES AND AMENDS ORDINANCE NOS. 891, 912, 915, 928, 946, 968, 976, 977, 985, 1022, 1056, 1058, 1062, 1064, 1074, 1101, 1106, 1112, 1133, 1135, 1136, 1187, 1190, 1230 and 1313.

The City Deputy Clerk is hereby authorized and directed to record a certified copy of this ordinance at the Dakota County Recorder's Office.

This ordinance shall be in full force and effect from and after its publication according to law.

Enacted and ordained into an Ordinance this 28th day of November, 2016.

Ayes:
Nays:

_____
George Tourville, Mayor

ATTEST:

_____
Michelle Tesser, City Clerk

EXHIBIT A

Parcel No.	Legal Description
1	Lot 1, Block 1, Bishop Heights, Dakota County, Minnesota
2	That part of Block 1, Lots 2 and 3, Bishop Heights, Dakota County, Minnesota which lies northerly and northeasterly of the following described line: Commencing at the northwest corner of said Lot 2; thence South 21 degrees 15 minutes 20 seconds East, bearing assumed, along the southwesterly line of said Lot 2 a distance of 24.16 feet to the point of beginning of the line to be described; thence South 89 degrees 25 minutes 07 seconds East 155.57 feet; thence South 0 degrees 34 minutes 53 seconds West 39.02 feet; thence South 20 degrees 40 minutes 09 seconds East 22.52 feet; thence South 89 degrees 25 minutes 07 seconds East 62.64 feet; thence South 0 degrees 34 minutes 53 seconds West 30.00 feet; thence South 89 degrees 25 minutes 07 seconds East 90.00 feet; thence South 0 degrees 34 minutes 53 seconds West 30.00 feet; thence South 89 degrees 25 minutes 07 seconds East 191.65 feet; thence South 76 degrees 45 minutes 56 seconds East 29.75 feet more or less to the westerly right of way line of Bishop Avenue, and there terminating.
3	That part of Block 1, Lots 2 and 3, Bishop Heights, Dakota County, Minnesota which lies southerly and southwesterly of the following described line: Commencing at the northwest corner of said Lot 2; thence South 21 degrees 15 minutes 20 seconds East, bearing assumed, along the southwesterly line of said Lot 2 a distance of 24.16 feet to the point of beginning of the line to be described; thence South 89 degrees 25 minutes 07 seconds East 155.57 feet; thence South 0 degrees 34 minutes 53 seconds West 39.02 feet; thence South 20 degrees 40 minutes 09 seconds East 22.52 feet; thence South 89 degrees 25 minutes 07 seconds East 62.64 feet; thence South 0 degrees 34 minutes 53 seconds West 30.00 feet; thence South 89 degrees 25 minutes 07 seconds East 90.00 feet; thence South 0 degrees 34 minutes 53 seconds West 30.00 feet; thence South 89 degrees 25 minutes 07 seconds East 191.65 feet; thence South 76 degrees 45 minutes 56 seconds East 29.75 feet more or less to the westerly right of way line of Bishop Avenue, and there terminating
4	Lot 4, Block 1, Bishop Heights, except that part lying south of the following described line: Commencing at the northwest corner of said Lot 4, thence southeasterly along the westerly line of said Lot 4 on an assumed bearing of South 21 degrees 15 minutes 20 seconds East 107.57 feet to the point of beginning of the line to be described; thence North 68 degrees 44 minutes 40 seconds East, a distance of 80.50 feet; thence South 21 degrees 15 minutes 20 seconds East, a distance of 17.04 feet; thence South 18 degrees 58 minutes 24 seconds East a distance of 65.59 feet; thence North 89 degrees 59 minutes 25 seconds East a distance of 216.22 feet; thence North 37 degrees 12 minutes 54 seconds East 28.52 feet; thence North 89 degrees 25 minutes 20 seconds East, a distance of 47.10 feet more or less to the Easterly line of Lot 4 and there terminating.
5	Lot 5, Block 1, Bishop Heights and that part of Lot 4, Lot 1, Bishop Heights lying south of the following described line: Commencing at the northwest corner of said Lot 4, thence southeasterly along the westerly line of said Lot 4 on an assumed bearing of South 21 degrees 15 minutes 20 seconds East 107.57 feet to the point of beginning of the line to be described; thence North 68 degrees 44 minutes 40 seconds East, a distance of 80.50 feet; thence South 21 degrees 15 minutes 20 seconds East, a distance of 17.04 feet; thence South 18 degrees 58 minutes 24 seconds East a distance of 65.59 feet; thence North 89 degrees 59 minutes 25 seconds East a distance of 216.22 feet; thence North 37 degrees 12 minutes 54 seconds East 28.52 feet; thence North 89 degrees 25 minutes 20 seconds East, a distance of 47.10 feet more or less to the Easterly line of Lot 4 and there terminating.
6	Lot 2, Block 2, Bishop Heights
7	Lot 3, Block 2, Bishop Heights
8	Lot 1, Block 1, Krech's Addition
9	Tract A, described as: The East Half of the Southwest Quarter of the Northeast Quarter; and the North 270 feet of the East Half of the Northwest Quarter of the Southeast Quarter, Section 33, Township 28, Range 22, according to the U.S. Government Survey thereof, Dakota County, Minnesota.

	Tract B, described as: Parcel 1: Lots 8 through 23, Block 3, Edgewood Addition to South St. Paul, Dakota County, Minnesota, the vacated alley in said Block 3, and that part of Boyd Avenue (formerly Hamilton Avenue) accruing thereto by reason of the vacation thereof, which lies South of the tract shown as parcel 240B on the plat designated as Minnesota Department of Transportation Right of Way Plat Numbered 19-46 on file and of record in the office of the County Recorder in and for Dakota County, Minnesota, and as said plat has been corrected by Certificate of Correction filed for record with said County Recorder on the 4th day of November 1982, at 9:00 a.m., as Document No. 610751; Parcel 2: Block 4, Edgewood Addition to South St. Paul, Dakota County, Minnesota including the alley in said Block 4 and that part of Boyd Avenue (formerly Hamilton Avenue) accruing thereto by reason of the vacation thereof, Except that part of Lots 1 through 8 inclusive and Lots 23 through 30 inclusive, in said Block 4, and that part of the alley in said Block 4 and that part of vacated Boyd Avenue (formerly Hamilton Avenue) accruing thereto by reason of the vacation thereof, shown as Parcel 240A on the plat designated as Minnesota Department of Transportation Right of Way Plat Numbered 19-46 on file and of record in the office of the County Recorder in and or Dakota County, Minnesota, and as said plat has been corrected by Certificate of Correction filed for record with said County Recorder on the 4th day of November 1982, at 9:00 a.m., as Document No. 610751. Tract C, described as: Parcel 1: Lots 3, 6, 7 and the westerly 60 feet of Lot 2, Block 8, Warren and McDowell's Acre Lots No. 2, according to the plat thereof on file and of record in the office of the office of the Register of Deeds in and for Dakota County, Minnesota, except that part shown as Parcel 233B on the plat designated as Minnesota Department of Transportation Right of Way Plat Numbered 19-46 on file and of record in the office of the County Recorder in and for Dakota County, Minnesota, except the existing Right of Way of Trunk Highway 110. Torrens Property, Torrens Certificate No. 32372 Parcel 2: Lot 1 and Lot 2 less the westerly 60 feet thereof, Block 8, Warren and McDowell's Acre Lots No. 2, according to the plat thereof on file and of record in the office of the Register of Deeds in and for Dakota County, Minnesota, except that part shown as Parcel 233C on the plat designated as Minnesota Department of Transportation Right of Way Plat Numbered 19-46 on file and of record in the office of the County Recorder in and for Dakota County, Minnesota, and except the existing Right of Way of Trunk Highway 110. Torrens Property, Torrens Certificate No. 101901. Parcel 3: Lots 4, 5, 8, 9 and 10, Block 8, Warren and McDowell's Acre Lots No. 2, according to the plat thereof on file and of record in the office of the Register of Deeds in and for Dakota County, Minnesota, except that part shown as Parcel 233A on the plat designated as Minnesota Department of Transportation Right of Way Plat Numbered 19-46 on file and of record in the office of the County Recorder in and for Dakota County, Minnesota, and except the existing Right of Way of Trunk Highway 110. Torrens Property, Torrens Certificate No. 101902. Tract D, described as: Lots 3, 4, 5, 26 and 27, Block 3, Glenwood, Dakota County, Minnesota, according to the recorded plat hereof, in Dakota County, Minnesota. Tract F, described as: The East Half of the Northwest Quarter of the Southeast Quarter of Section 33, Township 28, range 22, except the North 270 feet thereof lying Northerly of the Southerly right-of-way of Dakota County Road No. 18.

	Except that part described as follows: Commencing at the Southwest corner of the Northwest Quarter of the Southeast Quarter of Section 33, Township 28, Range 22 West; thence on an assumed bearing of North 89 degrees 50 minutes 28 seconds East along the South line of said Northwest Quarter of the Southeast Quarter a distance of 657.07 feet to the Southwest corner of the East Half of the Northwest Quarter of the Southeast Quarter and said point being the point of beginning; thence North 0 degrees 07 minutes 49 seconds West along the West line of said East Half of the Northwest Quarter of the Southeast Quarter a distance of 58.51 feet; thence North 83 degrees 29 minutes 34 seconds East 197.77 feet; thence South 6 degrees 30 minutes 26 seconds East a distance of 80.88 feet to the South line of said East Half of the Northwest Quarter of the Southeast Quarter; thence South 89 degrees 50 minutes 28 seconds West along said South line a distance of 205.52 feet to the point of beginning, except that part previously acquired for County Road No. 18 (a/k/a Upper 55th Street). Tract G, described as: Parts of Southeast Quarter of Northeast Quarter of Section 33, Township 28, Range 22, which was formerly platted as Lots 1 through 8 inclusive, Block 6, Lots 1 through 8 inclusive, Block 7, Lots 23 through 30 inclusive, Block 7, Lots 1 through 8 inclusive, Block 8 of Edgewood Addition to South St. Paul, and as the streets and alleys abutting on said Lots before the Vacation of Edgewood Addition to South St. Paul, Dakota County, Minnesota
10	Lot 1, Block 1, Bishop Heights 2nd Addition
11	Lot 1, Block 1, Bishop Heights 3rd Addition
12	Lots 1-31, Block 1, Blackberry Townoffice Park
13	Lot 1, Block 1, Blackberry Town Office Park Second Addition
14	Lot 1, Inver Grove Market
15	Lots 6, 7, 8, 9 and 10, Block 7, Warren and McDowell's Acre Lots No. 2, according to the plat thereof on file and of record in the office of the Register of Deeds in and for Dakota County, Minnesota, except that part shown as Parcel 333 on the plat designated as Minnesota Department of Transportation Right of Way Plat Numbered 19-46 on file and of record in the office of the County Recorder in and for Dakota County, Minnesota.
16	Lots 1-88, Brentwood Village
17	Lot 1, Block 2, Bishop Heights
18	Lots 1 & 2, Bk 1, Outlot A, Brentwood Village Apartments
19	Outlot B, Bishop Heights
20	Lot 2, Block 1, Inver Grove Market
21	Lot 3, Block 1, Bishop Heights 4th Addition
22	Lot 1, Block 1, Bishop Heights 4th Addition
23	Lot 1, Block 1, Scenic Heights Addition
24	Outlot A, Brentwood Hills Apartments
25	Lot 2, Block 1, Inver Grove Professional Addition

PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

HEARING DATE: December 20, 2016 **CASE NO:** 16-54V

APPLICANT/PROPERTY OWNER: Rovindra Ohneswere

REQUEST: A variance to allow a driveway width wider than 30 feet in the right-of-way

LOCATION: 3999 87th Street

COMPREHENSIVE PLAN: LDR, Low Density Residential

ZONING: R-1C, Single-family residential

REVIEWING DIVISIONS: Planning **PREPARED BY:** Heather Botten
Associate Planner

BACKGROUND

The applicant is requesting an after-the-fact variance to allow a 39 foot driveway whereas 30 feet is the maximum width allowed within the right-of-way. The building permit for the new home, including the driveway, was approved in May 2016. The driveway was approved at 18 feet at the curb, complying with code requirements. A complaint was received that a driveway was installed wider than code allowed. The applicant stated that the driveway was not wider than the garage and he did not realize it was in violation.

The property is located in the Concord Hills neighborhood; because of the narrow roads in the development parking is only allowed on one side of the street. The applicant stated the wider driveway provides a safe environment for his family and guests to park on his property and not on the street. It also reduces the impact to the neighbors as parking on the street is not allowed on the side of the applicant's home.

SPECIFIC REQUEST

The following specific application is being requested:

1) A variance to allow a 39 foot wide driveway whereas 30 feet is the maximum allowed.

EVALUATION OF THE REQUEST

The following land uses, zoning districts, and comprehensive plan designations surround the subject property:

North – Single-family; zoned R-1C; guided LDR, Low density residential
South – Single-family; zoned R-1C; guided LDR, Low density residential

West - Single-family; zoned R-1C; guided LDR, Low density residential
East - Single-family; zoned R-1C; guided LDR, Low density residential

Engineering. The Engineering Department supports the City Code's maximum driveway width as allowing for wider driveways increases the amount of runoff into the storm sewer. Developments are designed to accommodate a certain amount of runoff, increasing the amount of hard surface in the right-of-way could have an adverse affect on the City's storm sewer system and adversely impact downstream storm water facilities such as infiltration basins.

VARIANCE REVIEW

City Code Title 10, Chapter 3. Variances, states that the City Council may grant variances when they are in harmony with the general purposes and intent of the zoning ordinance and consistent with the comprehensive plan and establishes that there are practical difficulties in complying with the official control. In order to grant the requested variances, City Code identifies criteria which are to be considered practical difficulties. The applicant's request is reviewed below against those criteria.

1. *The variance request is in harmony with the general purpose and intent of the city code and consistent with the comprehensive plan.*

The property is located in a single-family neighborhood. The driveway width requirement of the city code pertains to the portion of the driveway located within the right-of-way. The driveway can be wider on private property, as long as other code requirements are met such as setbacks and impervious surface amounts. The impervious surface in the right-of-way is not included with the total allowed on a property. With this in mind, granting the variance may establish a precedence that is contrary to the intent of the City Code.

2. *The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.*

The maximum driveway width in a residential area for a "single" driveway is 30 feet and a "combined" or shared driveway is 40 feet. The intent of the regulation is to minimize and control driveway widths for safety and aesthetic reasons along with reducing the amount of stormwater runoff into the street.

The applicant has stated that parking is an issue in the development. The additional driveway width provides himself and his guests a safe place to park off of the street. The driveway does not exceed the width of the garage and complies with setback requirements.

3. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

The survey submitted with the new home showed a driveway that was in compliance with the code. The lot is located in a neighborhood that allows parking on one side of the street, but the requirement is for the entire neighborhood, not unique to the one specific lot. The additional width could be considered a convenience to the applicant.

4. *The variance will not alter the essential character of the locality.*

Although the driveway would not exceed the width of the garage the applicant is requesting a nine foot variance to allow a 39 foot driveway in the right-of-way. Approving a variance could alter the character of the area and set a precedent for other wider driveways.

5. *Economic considerations alone do not constitute an undue hardship.*

Economic considerations do appear to be a basis for the request as the applicants already paved the driveway at 39 feet; to remove the bituminous and restore the area would be at the cost of the applicant.

ALTERNATIVES

A. **Approval:** If the Planning Commission finds the application acceptable, the following request should be recommended for approval:

- Approval of a **Variance** to allow a 39 foot driveway whereas 30 feet is the maximum allowed in the right-of-way subject to the following conditions:

  1. The site shall be developed in substantial conformance with the site plan on file with the Planning Department.

B. **Denial**. If the Planning Commission does not favor the proposed request, it should be recommended for denial, which could be based on the following rationale:

1. The conditions of the property are not so limiting or unique that the property could not be used in a reasonable manner without the variance approval. The property would still function as a residential lot and the applicant could have a 39 foot driveway on his property, just not in the right-of-way.
2. Approval of the variance could set a precedent for other requests to exceed the maximum driveway width on residential lots.
3. The facts presented did not satisfy the criteria needed to show a practical difficulty on the lot to support granting a variance; the additional driveway

width may be considered a convenience to the applicant, not a practical difficulty.

If the Planning Commission recommends denial of the 39 foot driveway width the following condition shall be considered:

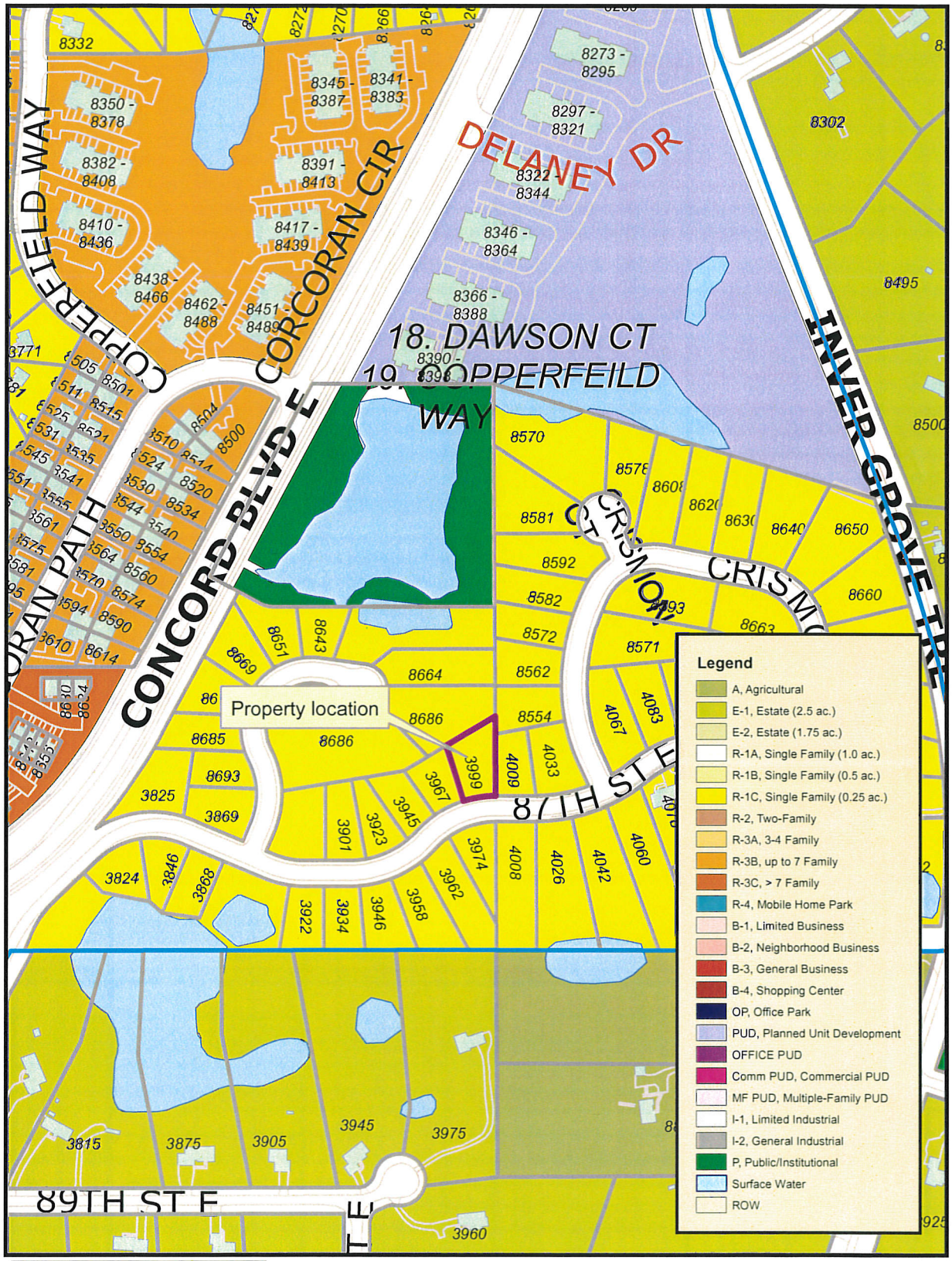
a. The property owner shall restore the boulevard and a driveway width of 30 feet or less by June 30, 2017.

RECOMMENDATION

Based on the information in the preceding report and the rational listed in Alternative B, staff is recommending denial of the variance request as staff believes the request does not meet the variance criteria.

Attachments: Exhibit A – Zoning and Location Map
Exhibit B – Narrative
Exhibit C- Site Plan

Ohneswere
Case No. 16-54V



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Map not to scale

Exhibit A
Zoning and Location Map

City of Inver Grove Heights
8150 Barbara Avenue
Inver Grove Heights, MN 55077

November 02, 2016

Re: Application for Variance

This application for variance is for the driveway of property Lot 8, Block 2, Concord Hills, located at 3999 87th Street East, Inver Grove Heights, MN 55076. The width of the driveway on this new construction exceeds the dimension allowed by the IGH Code and I am seeking your consideration in granting this variance.

My entire family lives in IGH and my brother and sister live in the Summit Pines/Concord Hills development. When I decided to build, I wanted to be close to them in the same neighborhood and chose to build my home at this location. My hobby is modifying cars, and most times I have cars in my garage that I'm working on. I need the driveway space for parking. Parking is allowed only on one side of the street in front of my house. It is fairly narrow, is on a hill and it curves. This presents a danger to the residents of the development when cars are parked on the street. My driveway will allow me to avoid these situations and make it safer, especially when I have visitors. The variance, if granted, will not alter the essential character of the neighborhood.

Thank you very much for your consideration in this matter.

Respectfully,

Rovindra Ohneswere
Property Owner
651-468-1620

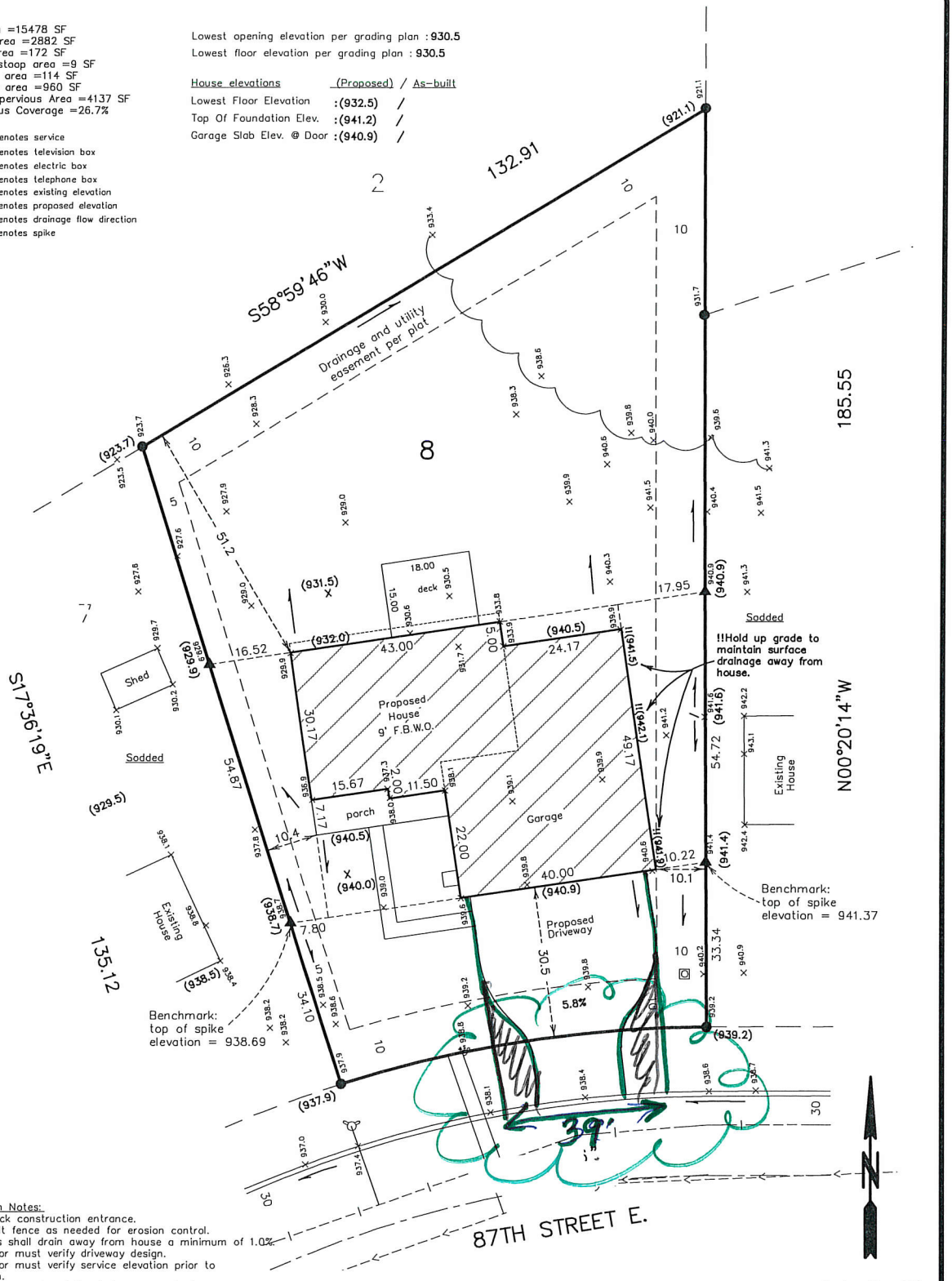
B

Lot area =15478 SF
House area =2882 SF
Porch area =172 SF
Garage stoop area =9 SF
Sidewalk area =114 SF
Driveway area =960 SF
Total Impervious Area =4137 SF
Impervious Coverage =26.7%

Denotes service
Denotes television box
Denotes electric box
Denotes telephone box
X 000.00 Denotes existing elevation
(000.00) Denotes proposed elevation
Denotes drainage flow direction
Denotes spike

Lowest opening elevation per grading plan : 930.5
Lowest floor elevation per grading plan : 930.5

House elevations	(Proposed) / As-built
Lowest Floor Elevation	:(932.5) /
Top Of Foundation Elev.	:(941.2) /
Garage Slab Elev. @ Door	:(940.9) /



Construction Notes:
1. Install rock construction entrance.
2. Install silt fence as needed for erosion control.
3. Sidewalks shall drain away from house a minimum of 1.0%.
4. Contractor must verify driveway design.
5. Contractor must verify service elevation prior to construction.
6. Add or remove foundation ledge as required.

General Notes:
1. Grading plan by Pioneer Engineering last dated 9/22/11 was used to determine proposed elevations shown herein.
2. This survey does not purport to show improvements or encroachments, except as shown, as surveyed by me or under my direct supervision.
3. Proposed building dimensions shown are for horizontal location of structures on the lot only. Contact builder prior to construction for approved construction plans.
4. No specific soils investigation has been performed on this lot by the surveyor. The suitability of soils to support the specific house proposed is not the responsibility of the surveyor.
5. This certificate does not purport to show easements other than those shown on the recorded plat.
6. Bearings shown are based on an assumed datum.

We hereby certify to Elevate Builders LLC 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, dated 05/03/16.

Signed: Pioneer Engineering, P.A.

BY:
Peter J. Hawkinson, Professional Land Surveyor
Minnesota License No. 42299 email-phawkinson@pioneereng.com

Scale: 1" = 20'

Benchmark:
Top Nut Hydrant
Lots 7-8 Block 2
Elevation = 940.64

Revisions:
1.) 05-05-16 Stake house

PIONEER engineering, P.A.
CIVIL ENGINEERS LAND PLANNERS LAND SURVEYORS LANDSCAPE ARCHITECTS
2422 Enterprise Drive
Mendota Heights, MN 55120
Ph.: (651) 681-1914
Fax: (651) 681-9488
www.pioneereng.com

Project #: 116105001 | Folder #: 7141 | Drawn by: MTW

Lot 8, Block 2,
CONCORD HILLS
according to the recorded plat thereof
Dakota County, Minnesota
Address: 3999 87th Street East, Inver Grove Heights, Minnesota
House Model: Rovin Elevation:
Buyer:

Certificate of Survey for:
Elevate Builders LLC
PO Box 714
Forest Lake, MN 55025
Phone: (651) 368-6767

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PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

HEARING DATE: December 20, 2016 **CASE NO.:** 16-52C

APPLICANT & PROPERTY OWNER: Scott Patnode

REQUEST: Conditional Use Permit to exceed the allowed impervious surface on a property

LOCATION: 11440 Avery Drive

COMPREHENSIVE PLAN: LDR, Low Density Residential

ZONING: R-1C, Single-family Residential

REVIEWING DIVISIONS: Planning **PREPARED BY:** Heather Botten
Associate Planner

BACKGROUND

The applicant is requesting an after-the-fact Conditional Use Permit (CUP) to exceed the allowed impervious surface amount on the property. City code allows additional impervious surface on a property, up to 10% of the lot area, with a conditional use permit. Due to a misunderstanding of how to calculate impervious surface on the property, the applicant installed a patio and pool addition that was completed in 2015 without CUP approval.

The existing improvements on the lot exceed the allowed maximum impervious surface by 141 square feet. To avoid a variance request, the applicant will be removing 141+ square feet of sidewalk in the front yard. The applicant is requesting 6,092 square feet of hard surface to be allowed on the property.

	Square Feet	**Allowed Impervious Coverage (sq. ft)**
Lot Size Additional impervious allowed w/ CUP Total	15,230 10% of lot area	4,569 1,523 6,092
Impervious surface before pool/patio addition	4,709	Over by 140
Impervious surface after pool/ patio addition	6,233	
Impervious surface to be removed	141	-
Total impervious coverage requested	**6,092**	6,092

SPECIFIC REQUEST

A **Conditional Use Permit** to allow impervious surface above the maximum amount but within the additional 10% of lot area allowed with a conditional use permit.

SURROUNDING USES:

The subject site is surrounded by the following uses:

North –Residential; zoned R-1C, single-family; guided LDR, Low Density Residential
West - Residential; zoned R-1C, single-family; guided LDR, Low Density Residential
South - Residential; zoned R-1C, single-family; guided LDR, Low Density Residential
East - Residential; zoned R-1C, single-family; guided LDR, Low Density Residential

EVALUATION OF REQUEST:

GENERAL CUP CRITERIA

Section 10-3A-5 of the Zoning Regulations lists criteria to be considered with all conditional use permit requests. This criterion generally relates to the Comprehensive Plan and Zoning consistency, land use impacts such as setbacks, drainage, and aesthetics, environmental impacts, and public health and safety impacts.

The proposed impervious surface conditional use permit meets the above criteria. As shown in Exhibit A, the surrounding properties are all single-family residential homes. The proposed property improvements fit in with the neighborhood. Additionally, the applicant has agreed to comply with the storm water treatment conditions, which help maintain the drainage and storm water runoff on the applicant's property.

IMPERVIOUS SURFACE CUP CRITERIA

The zoning ordinance sets a maximum impervious surface allowed on each lot in the city based on lot size categories. Impervious surface can be increased by up to 10% of the lot area with a conditional use permit provided the following criteria are met:

a) A Storm Water Management System shall be constructed within the property that meets the Best Management Practices design criteria as set forth in the Northwest Area Ordinances and Storm Water Manual.
b) The Storm Water Management System and Grading Plan (including necessary details for construction, showing proper location, material, size, and grades) shall be approved by the Engineering Division prior to ground disturbance or installation of the facility.
c) The Storm Water Management System is considered a private system and the responsibility of maintenance is that of the owner.
d) The design of the facility shall provide storage and treatment for the 100-year event volume as it relates to the additional impervious surface being considered with a conditional use application.
e) A storm water facilities maintenance agreement shall be entered into between the applicant and City to address responsibilities and maintenance of the storm water system.
f) An escrow or fee, to be determined by the City Engineer, shall be submitted to the City with the Storm Water Management System submittal. The final amount and submittal process shall be determined by the City by the time the Owners are ready to submit the Storm Water Management System and Grading Plan. Surety shall be

provided to ensure construction of the system according to the plans approved by the City Engineer.

g) The soils shall be tested to determine the infiltration capacity at and below the stormwater facility to ensure the stormwater management facility performs and functions within the assumed design parameters. A three (3) foot separation shall be maintained from seasonal high water levels and the bottom of any facility.

ENGINEERING REVIEW

The Engineering Department has reviewed the plans and is working with the applicant on stormwater and grading requirements. The stormwater management system for the conditional use permit shall be approved by the City Engineer and provide storage and treatment for the 100-year event consistent with the impervious surface standards. The property owner shall provide a storm water system that manages the 100-year storm volume for the additional impervious surface, thereby protecting downstream property and storm water facilities in complying with the impervious surface standard. The applicant is proposing to construct three rain gardens on the property, designed to treat 1,383 square feet of impervious surface.

Engineering has made recommendations on conditions that are included at the end of this report. The applicant shall continue to work with the City to secure final approval of the construction plans. The request will not proceed to City Council until a storm water management plan and stormwater facility maintenance agreement is approved by the City Engineer and the applicant.

ALTERNATIVES

The Planning Commission has the following alternatives available for the requested action:

A. Approval If the Planning Commission finds the requests to be acceptable, the Commission should recommend approval of the request with at least the following conditions:

- Approval of the **Conditional Use Permit** to exceed the impervious surface requirements up to 10% of the lot area subject to the following conditions:

    1. A storm water facilities maintenance agreement shall be prepared by the City Attorney and executed by both the City and the property owner to ensure long term maintenance of the facilities.

    2. Prior to any work being done on the site, an Engineering cash escrow and letter of credit shall be submitted to the City to ensure the proper construction of the improvements and to review the drainage modeling.

    3. The developer shall meet all the conditions outlined in the City Engineers review letters and subsequent correspondence.

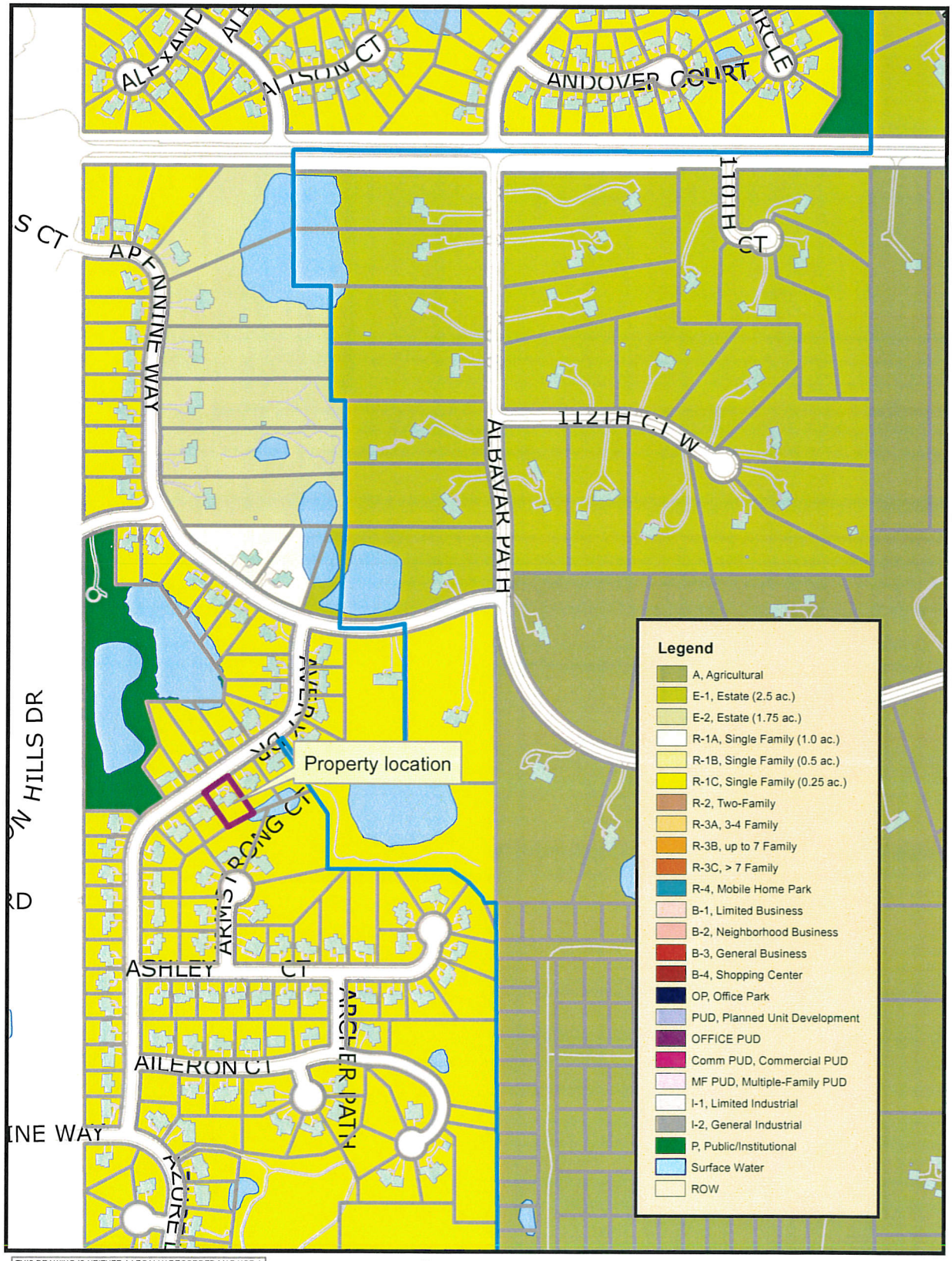
B. Denial If the Planning Commission does not favor the proposed Conditional Use Permit, the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

Based on the information in the preceding report and the conditions listed in Alternative A, staff is recommending approval of the conditional use permit.

Attachments: Exhibit A - Location/Zoning Map
Exhibit B - Applicant Narrative
Exhibit C - Site Plan
Exhibit D- Aerial Photo

Scott Patnode
Case No. 16-52C



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Map not to scale

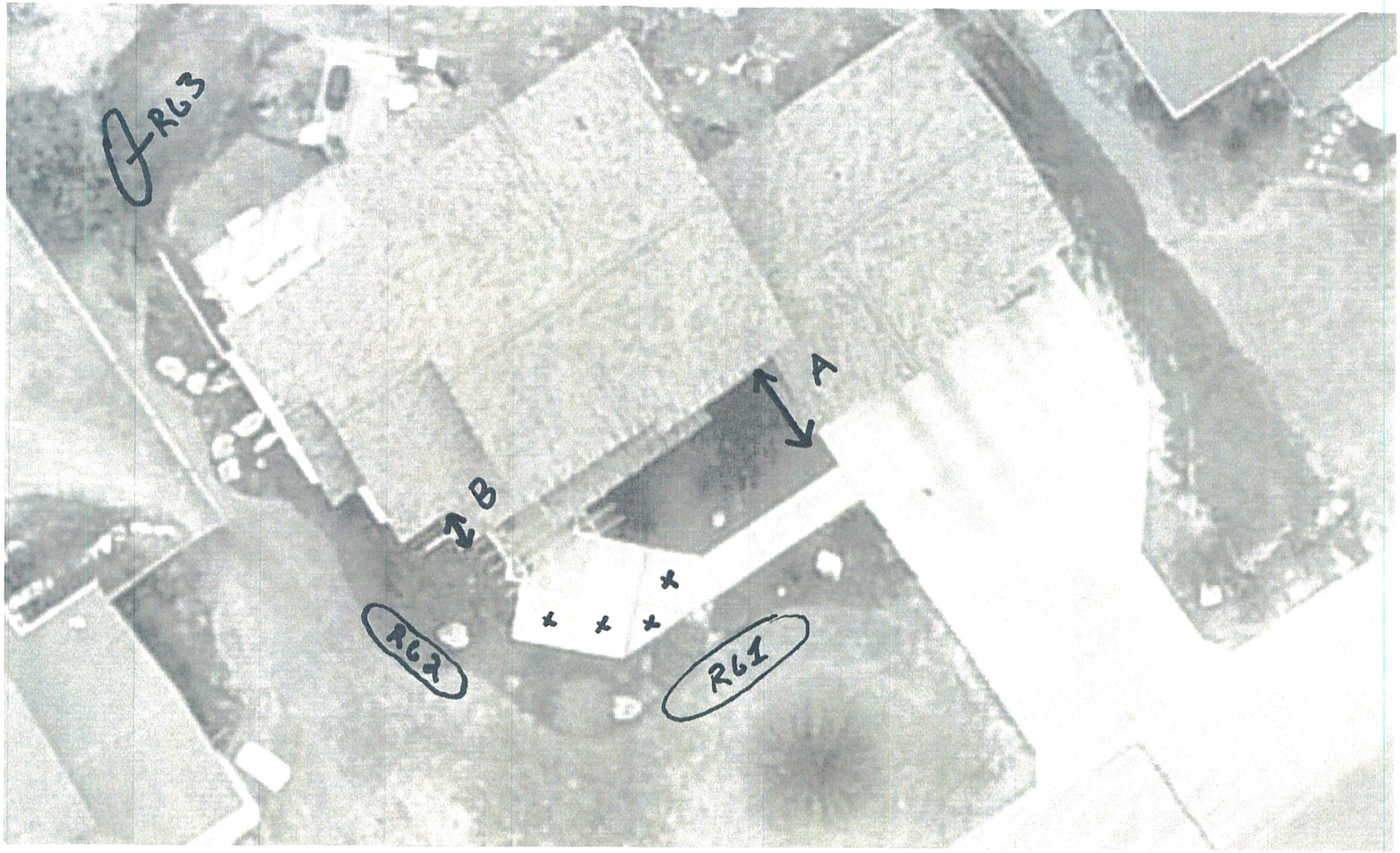
Exhibit A
Zoning and Location Map

Impervious surface issue at 11440 at Avery Dr.

We are over our allowed impervious surface after we added a pool and a patio in project that ended in the summer of 2015. We were over because I incorrectly calculated the amount of our existing impervious surface in two areas. First was my misunderstanding that the garage square footage (843 sq. ft.) listed on the Dakota County website was in addition to, rather than a subset of, the foundation square footage. Second, I did not realize that I needed to expand beyond my house footprint to include the roof overhangs, which added approximately 492 sq. ft. to my hardcover. These two mistakes on my part come to 1335 sq. ft. In addition, using the engineering department's numbers it appears my house was already 140 sq. ft. over the impervious coverage limit at the time I bought it in 2012. According to the city's numbers I was at 4,709 sq. ft. before my project started and my lot only allows 4,569 sq. ft.

I do not have exact numbers from the engineering department, but after removing an existing patio (~200 sq. ft.) and adding around 1200 sq. ft. of pavers plus 324 sq. ft. of pool deck, I am somewhere around 1500 sq. feet above my limit. My proposal to the city is to account for this overage using two rain gardens which would split the total volume that the engineering department tells me I need. My plan is to install two new sections of gutters on the front of my house which are labeled in my attached copy of an aerial photo. Each gutter will drain into one of the two raingardens, and I will also tie the downspout of an existing gutter over my front door into raingarden number 2. This will direct all water on the street side of my house, with the exception of the section over our single garage, into two raingardens.

B


RG3
A
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11440 Avery Drive

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Aerial Photo

Map not to scale

D

PLANNING REPORT
CITY OF INVER GROVE HEIGHTS

HEARING DATE: December 20, 2016 **CASE NO:** 16-51NCUC

APPLICANT: North American Trailer Sales

PROPERTY OWNER: JD Trailers Properties, LLC

REQUEST: Non Conforming Use Certificate

LOCATION: 7649-7655 Concord Blvd

COMPREHENSIVE PLAN: CC, Community Commercial **ZONING:** B-3, General Business

REVIEWING DIVISIONS: Planning **PREPARED BY:** Allan Hunting
City Planner

BACKGROUND

North American Trailer Sales has operated a truck repair and sales operation at the location on Concord Boulevard for a number of years. They have recently moved their operation to a new building along Clark Avenue.

A few years ago, the owners of North American Trailer had approached the city to determine if the current use could be continued if they moved to another location and the Concord property was sold to a similar user. The use as a truck repair operation does not fit the current uses allowed in the B-3 zoning district. A detailed history of the property could not be found in city records which left the question about status of use unanswered. The applicant has therefore applied for a non-conforming use certificate to establish a record of the use of the property and allowing it to continue in its present state.

The Zoning Ordinance has a provision for the issuance of non conforming use certificates when an existing use may become nonconforming either due to an unknown history or changes to the zoning or zoning ordinance that make the use a legal non conformity.

Section 10-3-3, Nonconforming Use Certificates, provides a purpose statement to describe their use:

> "From time to time, amendments to this title cause uses and structures to become lawfully nonconforming. This may create uncertainties for owners and operators of lawfully nonconforming uses and structures as to their rights and obligations and complexities for the city in monitoring and enforcing this code with respect to such uses. To address these uncertainties and complexities, the city council, sitting as a board of adjustments and appeals, by majority vote, may grant nonconforming use certificates for lawfully

nonconforming uses and structures, impose reasonable conditions in the nonconforming use certificates, and authorize accessory uses not currently on the property to be placed thereon in the future.

In this case, the allowed uses within the B-3 zoning district have changed over the years and the current truck repair operation is not consistent with those uses. The applicant is requesting a nonconforming use certificate be issued to memorialize the uses occurring on the site and deeming them as a legal nonconforming use.

HISTORY

- In March, 1968, the Council approved a conditional use permit for truck sales agency and school bus terminal on the property.
- Outside sales and storage was also deemed allowed by the 1968 CUP.
- No further city approvals or conditional use permit amendments have been found for the property.
- Over the years, staff has interpreted "truck sales" permitted by the original CUP to include truck sales, including tractor trailer and tanker sales.
- Over the years, staff has interpreted the original CUP to permit the repair of trucks, including trailers, tractors, and tankers as accessory to the truck sales use on the property.
- The zoning ordinance has been modified several times since the original 1968 CUP, most notably adding the sales and service of semi-tanks, trucks and trailers including parts and equipment as a conditional use in the I-2 district. The sales and service of semi-tanks, trucks and trailers is not a listed use in the B-3 district.
- As a result of the adoption of the amendments listed above, the repair of trucks, including trailers, tractors, and tankers, as an accessory use to trucks sales in the B-3 district is now nonconforming.

EVALUATION OF THE REQUEST

The following land uses, zoning districts and comprehensive plan designations surround the subject property:

North – Residential and commercial uses; zoned R-3C and B-3; guided LDR and CC
East - Skyline Village mfg home park; zoned R-4; guided MDR
West - Multiple family residential; zoned R-3C; guided MDR
South – Single family residential; zoned R-1C; guided LDR

Proposed uses contained in the Nonconforming Use Certificate (NCUC)

City Staff, City Attorney and the applicant met to discuss the current status of uses on the property and Section 1 of the NCUC identifies what uses would be allowed. They include:

1. Bus Terminal with incidental and ancillary repair of buses as currently allowed under the CUP issued in 1968.
2. Truck sales and leasing including sales of trailers, tractors, and tankers in an open sales lot as currently allowed under the CUP issued in 1968.
3. Repair of trucks, including the repair of trailers, tractors and tankers subject to the following conditions:

   a) The Property must be used for the on-site sale of trucks, trailers, tractors, or tankers.

   b) The repair of trucks, trailers, tractors, and tankers, must be incidental to the primary use of the property for on-site sales of trucks, trailers, tractors, or tankers.

   c) The repair of trucks, trailers, tractors, or tankers may only occur within the buildings currently located on the Property, and all repair activities must occur within the existing buildings on the Property.

   d) The area within the currently existing buildings on the Property where repairs occur may not be expanded.

The overall use of the property would be in accordance with the Site Plan dated 6/23/13, on file with the Planning Department.

The Fire Marshal has reviewed the request and noted that Minnesota Fire Code has restrictions regarding tank vehicles and tank vehicle operations used for hazardous materials including flammable / combustible liquids. These regulations make it unlawful for anything other than a new or clean tank vehicles to be located on the property because of its close proximity to residential structures. For that reason it would be prudent to be more specific about what is allowed regarding "tankers" at the site. He recommends that the NCUC contain language that states:

- Only new or clean tanks or used tanks for food, water or non hazardous materials are allowed on the property.
- Clean means tank and all lines emptied and cleaned leaving no residue or vapors.

These changes are incorporated into the NCUC attached to this report.

ALTERNATIVES

The Planning Commission has the following actions available on the following requests:

A. **Approval.** If the Planning Commission finds the application to be acceptable, the following actions should be recommended for approval:

- o Approval of the **Non Conforming Use Certificate** (NCUC) to allow the use of the property as described in Section 1 of the NCUC.

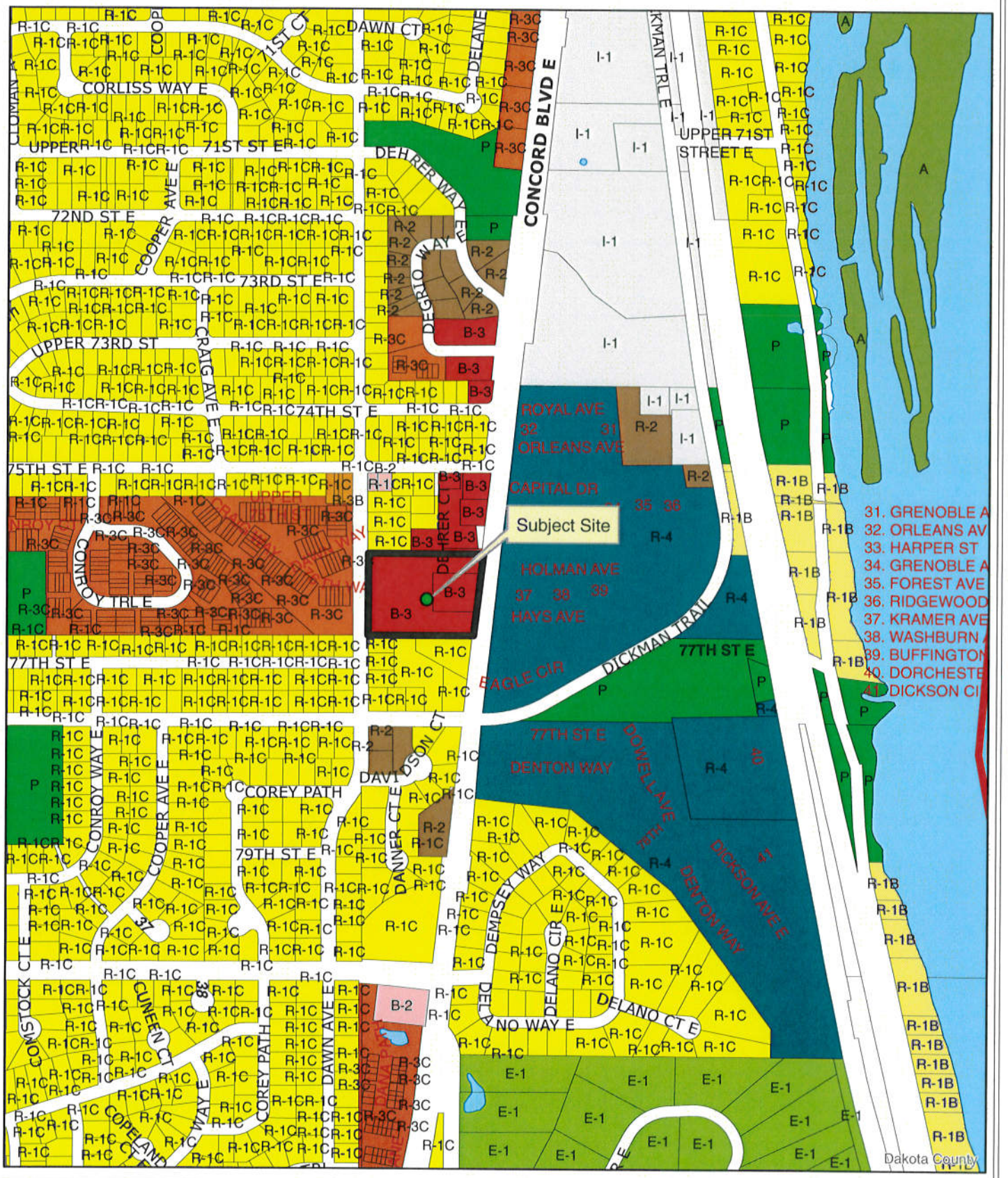
B. **Denial**. If the Planning Commission does not favor the proposed application, the above request should be recommended for denial. With a recommendation for denial, findings or the basis for the denial should be given.

RECOMMENDATION

Staff supports the use of the non conforming use certificate process and would recommend approval of the NCUC as presented.

Attachments:
Exhibit A – Location Map
Exhibit B – Aerial Map
Exhibit C – Non Conforming Use Certificate
Exhibit D – Site Plan
Exhibit E - Resident response e-mails

Location Map
Case No. 16-51NCUC



Aerial Map
Case No. 16-51NCUC

RESOLUTION NO. __ GRANTING A NON-CONFORMING USE CERTIFICATE FOR THE PROPERTY LOCATED AT 7649-7655 CONCORD BOULEVARD EAST, INVER GROVE HEIGHTS, MN

ISSUED BY
THE CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

ON

January _____, 2017

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CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. _____

A RESOLUTION GRANTING A NON-CONFORMING USE CERTIFICATE FOR THE PROPERTY LOCATED AT 7649-7655 CONCORD BOULEVARD EAST, INVER GROVE HEIGHTS, MN

A. JD Trailers Properties, LLC, currently owns two parcels of land located at 7649 and 7655 Concord Boulevard East in the City of Inver Grove Heights, County of Dakota, State of Minnesota, and legally described on Exhibit A (collectively, the "Property"). JD Trailers Properties, LLC, leases the Property to North American Trailer Sales, Ltd. pursuant to a written lease recorded on April 13, 2010, as Document Number T660383 with the Dakota County Registrar of Titles. The owner and lessee of the Property and their respective successors and assigns are hereby referred to collectively as the "User."

B. On October 25, 1965, the Village of Inver Grove Heights ("Village"), now the City of Inver Grove Heights, adopted Zoning Ordinance Number 19, which established several zoning districts throughout the Village.

C. At the time Zoning Ordinance Number 19 was adopted, the Property was located within the corporate boundaries of the Village and subject to the provisions of Zoning Ordinance Number 19.

D. Following the adoption of Zoning Ordinance Number 19, the Property was zoned "B-3," General Business District and has remained zoned "B-3" through the present date.

E. In 1968 Gerald Priebe sought a Conditional Use Permit ("CUP") for the Property for use as a Truck Sales Agency and School Bus Terminal/Bus Repair Facility and Bus Storage.

F. At the time of application for the CUP, Zoning Ordinance 19 listed bus terminals and open sales lots as conditional uses in the "B-3" General Business District.

G. According to the minutes of the Planning Commission of Inver Grove Heights dated February 6, 1968, Gerald Priebe filed an application for a Conditional Use Permit for a Truck Sales Agency and School Bus Terminal on the Property.

H. According to the minutes of the Planning Commission of Inver Grove Heights dated March 5, 1968, a public hearing was held on March 5, 1968 regarding the request by Gerald Priebe for a "conditional use permit within a "B-3" General Business District to allow a bus repair facility and bus storage (school buses)." The minutes reflect that "after considerable discussion" a motion was made "to recommend to the Village Council that a conditional use permit be granted to Gerald J. Priebe for a conditional use permit to allow a school bus repair facility and school bus storage on the following property:

That part of the S1/2 of the N 2/3 of the NW ¼ of the SW ¼ of Section 11, Township 27N, Range 22W, lying west of TH. 56, containing 6+ acres, with the exception of the Westerly 250 feet.

Subject to the following conditions:

1. Access driveway shall be a maximum of 40 feet in width with 40 foot radius driveway curves.

2. The exterior boundary of the construction for the access driveways shall be a minimum of 50 feet from the side lot lines measure [sic] from the side lot lines along the front property line.

3. Bituminous surfacing of the driveway between the property line and the highway pavement shall be required.

4. Surfacing of the on-site parking and maneuvering areas with oiled crushed rock, oiled gravel, or similar surfacing shall be required.

5. A landscape plan for approval of the Planning Commission and Council shall be submitted. Such a plan shall include a screen hedge parallel to the front property line extending north and south [sic] of the office and lying east of the garage.

6. No parking shall be allowed in front of the office building.

7. A plan, as in section 5, shall be submitted showing the location and type of security fencing on the site.

8. Colored metal paneling shall be used on all exterior wall surfaces visible from Highway 56.

9. The front set-back shall be 100 feet.

10. All repair facilities shall be conducted within the building.

11. No open storage of dismantled vehicles or junked vehicle shall be permitted.

I. The Planning Commission minutes reflect that the motion carried.

J. The March 11, 1968 minutes of the Village of Inver Grove Heights City Council reflect that the Council considered a Conditional Use Permit for truck sales agency and school bus terminal on the Property. Following discussion of the application and the Planning Commission recommendations, a motion was made to grant a conditional use permit to Gerald Priebe subject to the conditions as originally submitted by the Planning Commission with the correction of an error made in Condition No. 10 related to the use of the word "facilities" instead of "activities," with the conditions as submitted by the Planning Commission listed as follows:

CONDITION 1. Access driveways shall be a maximum of 40 feet in width with 40 foot radius driveway curves.

CONDITION 2. The exterior boundary of the construction for the access driveways shall be a minimum of 50 feet from the side lot lines along the front property line.

CONDITION 3. Bituminous surfacing of the driveway between the property line and the highway pavement shall be required.

CONDITION 4. Surfacing of the on-site parking and maneuvering areas with oiled crushed rock, oiled gravel, or similar surfacing shall be required.

CONDITION 5. A landscape plan for approval of the Planning Commission and Council shall be submitted. Such plan shall include a screen hedge parallel to the front property line extending north and south of the office and lying east of the garage.

CONDITION 6. No parking shall be allowed in front of the office building.

CONDITION 7. A plan, as in Section 5, shall be submitted showing the location and type of security fencing on the site.

CONDITION 8. Colored metal paneling shall be used on all exterior wall surfaces visible from Highway 56.

CONDITION 9. The front set-back shall be 100 feet.

CONDITION 10. All repair facilities*(corrected to <u>activities</u>) shall be conducted within the building.

CONDITION 11. No open storage of dismantled vehicles or junked vehicles shall be permitted.

The motion carried 4-1.

K. Despite an exhaustive search by City Staff, a separate resolution granting the CUP was not found.

L. Over the years, City zoning staff, acting as the Zoning Administrator, has interpreted the "truck sales" permitted by the CUP to include truck sales, including tractor, trailer, and tanker sales.

M. Over the years, City zoning staff, acting as the Zoning Administrator, has interpreted the relevant provisions of the CUP and applicable Zoning Ordinance to permit the repair of trucks, including trailers, tractors, and tankers, as an ancillary use to truck sales on the Property.

N. Since the granting of the CUP in 1968, several changes have been made to the City's Zoning Ordinance regarding the sales and service of semitrucks, tractors, trailers, and tankers. Specifically, Ordinance Number 1254, enacted on June 11, 2012, made the service of semitrucks, trucks, and trailers, including equipment, parts, and tires, a conditional use in the "I-2" zoning districts. Additionally, Ordinance Number 1137, enacted on October 23, 2006, made the sales and service of semitanks, trucks and trailers, including equipment, parts, and tires, an Accessory Use to Manufacturing and Assembly in the "I-2" zoning districts.

O. As a result of the adoption of the ordinances listed above, the repair of trucks, including trailers, tractors, and tankers, as an ancillary use to truck sales in a "B-3" zoning district is now a nonconforming use.

P. User has applied for a Nonconforming Use Certificate under City Code Section 10-3-3 in order to clarify and document the permitted nonconforming uses on the Property.

NOW, THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS HEREBY GRANTS A NON-CONFORMING USE CERTIFICATE FOR THE PROPERTY SUBJECT TO THE TERMS, CONDITIONS, AND QUALIFICATIONS HEREINAFTER STATED.

The City Council finds and determines that with respect to the Property:

SECTION 1 – STATUS OF USE

1.1 **Bus Terminal**. Use of the Property as a bus terminal with incidental and ancillary repair of buses is a Conditional Use in the "B-3" zoning district, and the Property has a CUP for those uses, which are subject to the conditions stated in that CUP as reflected in minutes from the March 11, 1968 Village of Inver Grove Heights Council meeting.

1.2 **Truck Sales and Leasing**. Use of the Property for truck sales and leasing, including the sales and leasing of trailers, tractors, and tankers, in an open sales lot is a Conditional Use on the Property which is subject to the conditions of the CUP as reflected in the minutes from the March 11, 1968 Village of Inver Grove Heights Council meeting..

1.3 **Ancillary Repair Activities**. Repair of trucks, including the repair of trailers, tractors, and tankers, is a legal non-conforming use on the Property that is allowed on the Property subject to all of the following conditions:

(1) The Property may be used for the on-site sale and leasing of trucks, trailers, tractors, or tankers.

(2) The repair of trucks, trailers, tractors, and tankers, must be incidental to the primary use of the property for on-site sales and leasing of trucks, trailers, tractors, or tankers.

(3) The repair of trucks, trailers, tractors, or tankers may only occur within the buildings currently located on the Property, and all repair activities must occur within the existing buildings on the Property.

(4) The area within the currently existing buildings on the Property where repairs occur may not be expanded.

1.4 **Site Plan**. Uses on the Property must conform to the site plan ("Site Plan") attached as Exhibit B to this Certificate.

1.5 **Impermissible Uses**.

1.5.1 Under the City Code, the Property may not be used for a truck terminal or a freight terminal as defined in the City's Zoning Ordinance unless the Property is rezoned to "I-2."

1.5.2 The Property may not be used for the storage, repair, or parking of tanks or tankers containing hazardous materials, and only new or clean tanks or tankers, or used tanks or tankers that contain food, water or non-hazardous materials, are allowed on the Property. "Clean" means that the tank or tanker and all lines are emptied and cleaned, with no remaining residue or vapors.

SECTION 2 - RELATIONSHIP OF THIS CERTIFICATE TO THE INVER GROVE HEIGHTS ZONING CODE AND SUBSEQUENT AMENDMENTS THERETO

2.1 **Currently Allowed Uses Can be Established**. This Certificate does not preclude User from establishing on the Property now or in the future any use which is or may be in the future denominated as permitted, conditional, or accessory under the Inver Grove Heights Zoning Code for the zoning district applicable to the Property, provided that User must comply with the Inver Grove Heights Zoning Code and other applicable laws and regulations in establishing such a use. This Certificate does not allow User to establish any use on the Property not allowed under the Inver Grove Heights Zoning Code as amended from time to time except as specifically set forth in this Certificate.

2.2 **No Obligation for City to Grant New Conditional Use Permits**. This Certificate does not impose on the City any obligation to grant new conditional use permits for the Property.

SECTION 3 - SITE PLAN

3.1 **Purpose**. In this section the parties agree the Site Plan found in Exhibit B will be used to control the location of buildings, parking areas, and open sales lot areas on the Property, and will become part of this Certificate.

3.2 **Approval and Incorporation of Site Plan**. The Site Plan for the location of buildings, parking areas, and open sales lot areas on the Property, shown on Exhibit B, is hereby approved by the City Council. This Site Plan is and subsequent amendments shall be incorporated herein and become part of this Certificate. To the extent the Site Plan or any subsequent amendment depict the location of uses or structures which require other City permits, such uses or structures are not authorized by approval of the Site Plan, and the necessary permits must be obtained before the uses may be established or the structures constructed.

3.3 **Amendments and Conditions**.

3.3.1 **Amendments**. The Site Plan may be amended from time to time, upon application by the User and approval by the City as provided in the City Code.

3.3.2 **Conditions**. The City may attach reasonable site plan conditions to a site plan amendment.

SECTION 4 - COMPLIANCE WITH ALL LAWS AND REGULATIONS

4.1 **City Decisions, Orders, and Requirements**. User shall comply with lawful decisions, determinations, orders, and requirements made by a City administrative officer in the enforcement of this Certificate or the IGH Zoning Code, subject to the right of User to appeal such decisions to the City Council, which shall act on the appeal by majority vote of the Council.

4.2 **Federal, State, Regional, County, and Local Laws and Regulations**. User must maintain and operate all uses on the Property, including all repair uses, in compliance with all Federal, State, regional, County, and local laws and regulations, including but not limited to all Fire Code regulations. Nothing in this Certificate authorizes, "grandfathers in," or otherwise permits any use of the Property prohibited by the provisions of the Minnesota State Fire Code, nor does anything in this Certificate alter, lessen, or otherwise modify the application of the provisions of the Minnesota State Fire Code to the Property.

SECTION 5 - ENFORCEMENT AND REMEDIES

5.1 **Purpose.** In this section the parties agree on the enforcement mechanisms which the City may use to ensure compliance with the Certificate. This includes administrative orders and fines, criminal citations and penalties, court actions, and suspension or termination of this Certificate.

5.2 **Compliance by User**. User shall maintain and operate the uses on the Property in compliance with this Certificate, including all the requirements herein.

5.3 **City's Power to Enforce**.

5.3.1 **Enforcement Alternatives**. The City has the power to enforce the terms and conditions of this Certificate through one or more of the following:

(1) Decisions, determinations, orders, and requirements made by a City administrative officer in the enforcement of this Certificate or the IGH Zoning Code.

(2) Administrative fines levied by a City administrative officer.

(3) Misdemeanor citations issued pursuant to the Inver Grove Heights City Code.

(4) Suspension of this Certificate for a fixed time period as set forth in Section 5.4.

(5) Termination of this Certificate as set forth in Section 5.5.

(6) Prohibitory or mandatory restraining orders or injunctions.

(7) Declaratory judgment actions.

(8) Any other legal means of enforcement available to the City.

5.3.2 **Remedies Cumulative**. No remedy or enforcement action herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Certificate or now or hereafter existing at law or in equity or by statute.

5.3.3 **City to Determinate Compliance Times**. The City shall determine the reasonable and appropriate time periods for compliance with its decisions, determinations, orders, and requirements except as provided for suspension in Section 5.4 and termination as provided in Section 5.5.

5.3.4 **City Delay In Enforcement Not a Waiver**. No delay or omission to exercise any right or power accruing upon any violation shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. This section shall not constitute a stay or waiver by User of any applicable statute of limitations.

5.4 **Suspension of the Certificate**.

5.4.1 **Suspension for a Specific Violation**. The City may suspend this Certificate, provided it adheres to the following process:

(1) The City must determine that User is in violation of the terms and conditions of this Certificate.

(2) The City shall give notice to User of the violation and the City's intent to suspend this Certificate.

(3) After receipt of the violation/suspension notice, User shall have 60 days to cure the violation, provided that, if construction or landscaping is required, User shall have a reasonable amount of time to complete the work taking into account seasonal circumstances and the magnitude of the work, but in no event fewer than 60 days.

(4) The City shall extend the time to cure if User demonstrates ongoing efforts to cure the violation and if the City and User agree to a stated time by which the violation will be cured.

(5) If the violation remains uncured, the City may suspend this Certificate until the violation is cured and up to five working days thereafter.

5.4.2 **Suspension for Repeated Violations**. If the City, acting pursuant to Section 5.4.1 to suspend this Certificate for a specific violation, determines that User has repeatedly violated the terms and conditions of this Certificate as evidenced by violation notices and orders, administrative fines, misdemeanor citations, or other enforcement actions issued or taken by the City or other regulatory bodies, the City may suspend this Certificate until the violation is cured and up to ten working days thereafter.

5.4.3 **Suspension in the Case of an Emergency**. Notwithstanding the provisions of Section 5.4.1, if the City determines that a violation of this Certificate presents an immediate threat to health or safety of person or property, the City may order User to cease immediately that part of the operations at the Property presenting the threat, or all operations if necessary to terminate the threat, until the violation is cured.

5.5 **Termination of the Certificate**.

5.5.1 **Termination for a Specific Cause**. The City may terminate this Certificate if User does any of the following:

(1) Intentionally presents false information concerning the Property to the City or any governmental regulatory agency.

(2) Intentionally engages in a use not legally allowed on the Property.

(3) Fails to comply with a court order regarding the Property, unless User is appealing the order and a stay has been issued.

(4) Continues operating the Property for more than three (3) days during a City imposed suspension, unless User is appealing the suspension, and a stay of the suspension has been issued by the Court.

(5) Receives two suspensions of this Certificate by the City in any twelve month period.

5.5.2 **Termination for Repeated Violations**. If User has repeatedly violated the terms and conditions of this Certificate, the City may terminate this Certificate, provided it adheres to the following process:

(1) The City must determine that User has repeatedly violated the terms and conditions of this Certificate as evidenced by violation notices and orders, administrative fines, misdemeanor citations, or other enforcement actions issued or taken by the City or other regulatory bodies.

(2) The City must determine that User is continuing to violate the terms and conditions of this Certificate.

(3) The City shall give notice to User of the violation and the City's intent to terminate this Certificate.

(4) After receipt of the violation/termination notice, User shall have 60 days to cure the violation, provided that, if construction or landscaping is required, User shall have a reasonable amount of time to complete the work, taking into account seasonal circumstances and the magnitude of the work, but in no event fewer than 60 days.

(5) The City shall extend the time to cure if User demonstrates ongoing efforts to cure the violation and if the City and User agree to a stated time by which the violation will be cured.

(6) If the violation remains uncured or if an intentional violation occurs within twelve months after the violation/termination notice was issued, the City may terminate this Certificate.

SECTION 6 - MISCELLANEOUS PROVISIONS

6.1 **Assignment and Successors**. User may assign this Certificate to any person, partnership, corporation, subsidiary, or any other entity without City Approval. This Certificate runs with the land identified in Exhibit A, and shall inure to the benefit of and be binding upon the successors and assigns of User.

6.2 **Governing Law**. All questions relative to the execution, validity, interpretation, and performance of this Certificate shall be governed by the laws of the State of Minnesota.

6.3 **Headings, Purpose Statements, and Appendices**. The headings of the several sections contained herein are for convenience only and do not define, limit, or construe the contents of such sections.

6.4 **Severability**. If any term or provision of this Certificate is preempted, made invalid, or made unenforceable by the operation of law or held to be preempted, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Certificate shall not be affected thereby and each term and provision of this Certificate shall be valid and enforceable to the fullest extent permitted by law.

6.5 **Recording**. This Certificate may be filed for record purposes in the office of the Registrar of Titles for Dakota County, State of Minnesota.

ADOPTION:

Adopted by the City Council of Inver Grove Heights on this _____ day of _____, _____.

Ayes: _____
Nays: _____

CITY OF INVER GROVE HEIGHTS

By: _____
George Tourville
Its: Mayor

ATTEST:

_____
Michelle Tesser, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this _____ day of _____, 2017, before me a Notary Public within and for said County, personally appeared George Tourville and Michelle Tesser, to me personally known,

who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

_____

Notary Public

ACCEPTANCE:

JD Trailers Properties, LLC, and North American Trailer Sales, Ltd., hereby accept and agree to the terms and conditions of this Certificate.

JD Trailers Properties, LLC

By: _____

_____

Its: _____

Dated: _____ _____, 2017

North American Trailer Sales, Ltd.

By: _____

_____

Its: _____

Dated: _____ _____, 2017

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this _____ day of _____, 2017, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who being by me duly sworn did say that he is the _____ of JD Trailers Properties, LLC, a Minnesota limited liability company, the limited liability company named in the foregoing instrument, and that said instrument was signed on behalf of said entity by authority of its _____ and said _____ acknowledged said instrument to be the free act and deed of the limited liability company.

_____
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this _____ day of _____, 2017, before me a Notary Public within and for said County, personally appeared _____, to me personally known, who being by me duly sworn did say that he is the _____ of North American Trailer Sales, Ltd, a Minnesota company, the company named in the foregoing instrument, and that said instrument was signed on behalf of said entity by authority of its _____ and said

_____ acknowledged said instrument to be the free act and deed of the limited liability company.

_____
Notary Public

THIS INSTRUMENT DRAFTED BY AND
AFTER RECORDING PLEASE RETURN TO:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

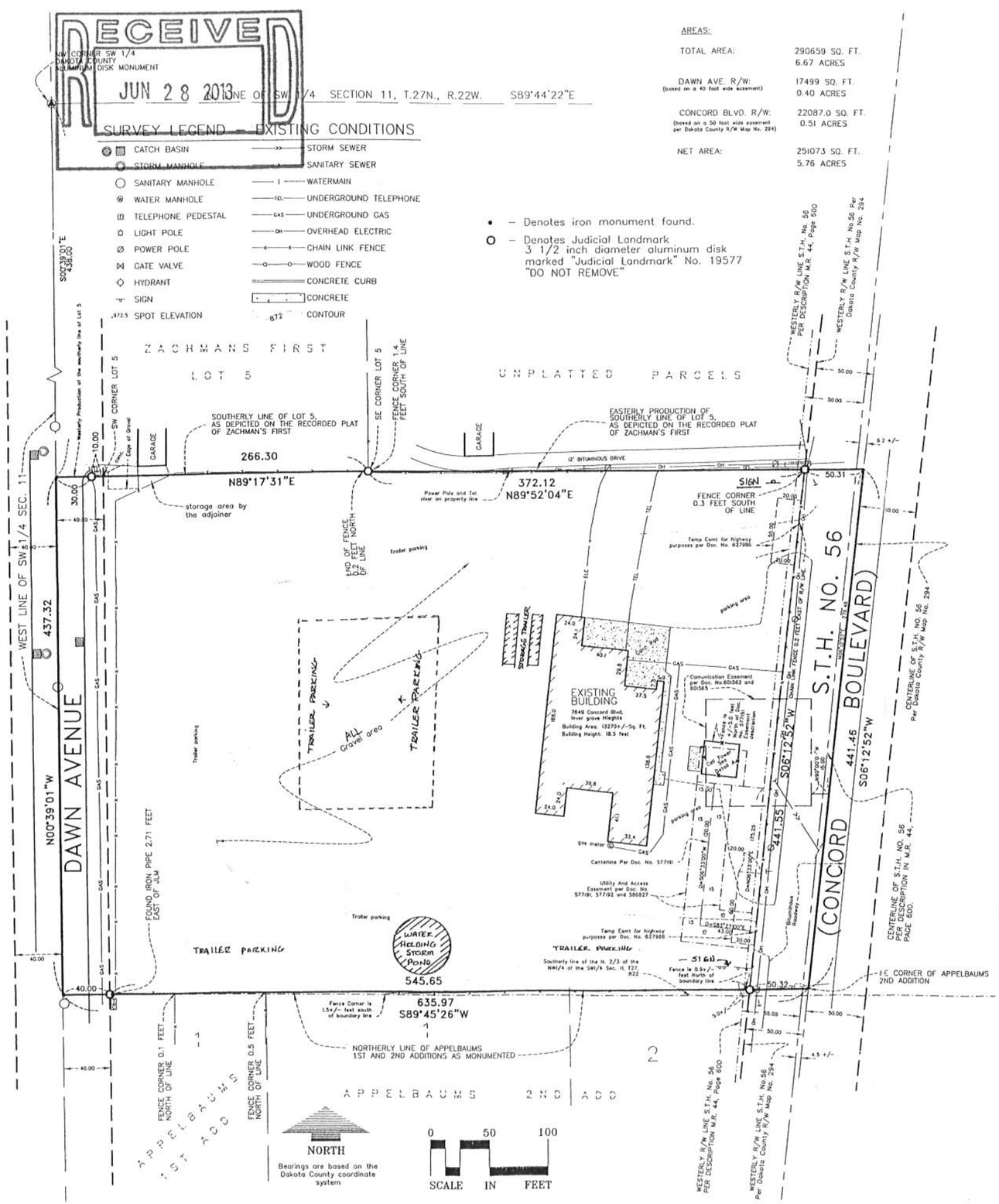
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Parcel Identification Numbers 20-01100-51-010 and 20-01100-51-020 legally described as follows:

That part of the Northwest Quarter of the Southwest Quarter of Section 11, Township 27, Range 22 West, Dakota County, Minnesota, described as follows:

Commencing at the Northwest corner of said Southwest Quarter; thence South 0 degrees 39 minutes 01 seconds East (bearing assumed) along the west line thereof 438.00 feet to the intersection with the westerly production of the southerly line of Lot 5, Block 1, ZACHMAN'S FIRST, Dakota County, said point of intersection being the point of beginning of the property to be described; thence North 89 degrees 17 minutes 31 seconds East 30.00 feet along the westerly production of said southerly line to a Judicial Landmark; thence continuing easterly along the last described line 10.00 feet to the southwest corner of said Lot 5; thence continuing North 89 degrees 17 minutes 31 seconds East along said southerly line a distance of 226.30 feet to the southeast corner of said Lot 5; said point being marked by a Judicial Landmark; thence North 89 degrees 52 minutes 04 seconds East 372.12 feet to a Judicial Landmark; thence continuing easterly on the last described line 50.31 feet to the center line of S.T.H. No. 56 as it is now laid out and located; thence South 06 degrees 12 minutes 52 seconds West along said center line 441.46 feet to the northeast corner of APPELBAUM'S 2ND ADDITION, Dakota County; thence South 89 degrees 45 minutes 26 seconds West along the northerly boundary of said APPELBAUM'S 2ND ADDITION 50.32 feet to a Judicial Landmark; thence continuing westerly along the last described line and the westerly production thereof 545.65 feet to a Judicial Landmark; thence continuing westerly along the last described line 40.00 feet to the west line of the Southwest Quarter of said Section 11; thence North 00 degrees 39 minutes 01 seconds West 437.32 feet along said west line to the point of beginning.

EXHIBIT B
SITE PLAN



DESCRIPTION OF PROPERTY SURVEYED

(Per Schedule A of the herein referenced Title Commitment)

That part of the Northwest Quarter of the Southwest Quarter of Section 11, Township 27, Range 22 West, Dakota County, Minnesota, described as follows:

Commencing at the Northwest corner of said Southwest Quarter; thence South 0 degrees 39 minutes 01 seconds East (bearing assumed) along the west line thereof 438.00 feet to the intersection with the westerly production of the southerly line of Lot 5, Block 1, Zachman's First, Dakota County, said point of intersection being the point of beginning of the property to be described; thence North 89 degrees 17 minutes 31 seconds East 30.00 feet along the westerly production of said southerly line to a Judicial Landmark; thence continuing easterly along the last described line 10.00 feet to the southwest corner of said Lot 5; thence continuing North 89 degrees 17 minutes 31 seconds East along said southerly line a distance of 226.30 feet to the southeast corner of said Lot 5; said point being marked by a Judicial Landmark; thence North 89 degrees 52 minutes 04 seconds East 372.12 feet to a Judicial Landmark; thence continuing easterly on the last described line 50.31 feet to the center line of S.T.H. No. 56 as it is now laid out and located; thence South 06 degrees 12 minutes 52 seconds West along said center line 441.46 feet to the northeast corner of Appelbaum's 2nd Addition, Dakota County; thence South 89 degrees 45 minutes 26 seconds West along the northerly boundary of said Appelbaum's 2nd Addition 50.32 feet to a Judicial Landmark; thence continuing westerly along the last described line and the westerly production thereof 545.65 feet to a Judicial Landmark; thence continuing westerly along the last described line 40.00 feet to the west line of the Southwest Quarter of said Section 11; thence North 00 degrees 39 minutes 01 seconds West 437.32 feet along said west line to the point of beginning.

(Torrens Property - Certificate No. 111328)

ALTA/ACSM optional Table A Notes

(The following items refer to Table A optional survey responsibilities and specifications)

3 This property is contained in Zone C (area of minimal flooding) per Flood Insurance Rate Map, Community Panel No. 270106005B, effective date of August 1, 1980

6 The current Zoning for the subject property is B-3 (General Business District) per the City of Inver Grove's zoning map located on their web site on the date of October 15, 2008. The general minimum setback, height, and floor space area restrictions for said zoning designation were obtained from a table laid out in section 515.80 subd. 19 of the zoning ordinance found on their web site on the aforementioned date and are as follows:

Lot Area= None, Lot Width =100 feet, Front Yard Setback = 30 feet, Side Yard Setback = 10 feet, Rear Yard Setback = 30 feet, Setbacks abutting "E" or "R" Districts = 75 feet, Height (max.) 35 feet, Impervious Surface (max.) 100 percent

Please note that restrictions are subject to interpretation by the zoning administrator. The restrictions for this site may have been waived or amended through a city process such as a P.U.D. or a variance. Please consult the city's planning department to confirm whether or not this site is entirely in compliance with any restrictions contained in the zoning ordinances or its amendments.

11(b) We have shown buried structures and utilities on and/or serving the site to the best of our ability, subject to the following restrictions:
- i) Utility operators do not consistently respond to locate requests through the Gopher State One Call service for boundary purposes such as this.
- ii) Those utility operators that do respond often will not locate services from their main line to the customer's structure or facility - they consider those segments private installations that are outside their jurisdiction. If a private service to an adjoiner's site crosses this site or a service to this site crosses an adjoiner, it may not be located since most operators will not mark such "private" services.
- iii) Snow and ice conditions during winter months may obscure otherwise visible evidence of a buried structure or utility.
- iv) Maps provided by operators, either along with a field location or in lieu of such a location, are very often inaccurate or inconclusive.
- v) EXTREME CAUTION MUST BE EXERCISED BEFORE AN EXCAVATION TAKES PLACE ON OR NEAR THIS SITE. BEFORE DIGGING, YOU ARE REQUIRED BY LAW TO NOTIFY GOPHER STATE ONE CALL AT LEAST 48 HOURS IN ADVANCE AT 651/454-0002.
- vi) Per Gopher State One-Call Ticket No. 80538864, the following utilities and municipalities were notified: CITY OF INVER GROVE HEIGHTS (651)450-2579, COMCAST (651)224-0413 , QWEST (800)283-4237, XCEL ENERGY (651)229-2427

SURVEY REPORT

1) In regards to Item No. 19 in the herein referenced title commitment, there is a legal description for a lease area, which does not entirely cover the cell tower area, as shown hereon. The Legal Description commences on the south line of the north 2/3rds of the NW1/4 of the SW1/4, which is approximately 5 feet south of the south line of the subject property. It appears that the description intended to commence on the south line of the subject property. This discrepancy places the lease easement approximately 5 feet southerly of the northerly fence of the cell tower, as shown hereon. Also, the point of commencement as described for the lease area is ambiguous. There is uncertainty to this point because state trunk highway No. 56 could be construed to be placed in three different locations; one, as the centerline as traveled; two, per Dakota county R/W map No. 294; three, as described in miscellaneous records 44, page 600. It appears that the description intended to commence on the west line of state trunk highway No. 56 as described in Book 44 of Miscellaneous Records, page 600. We have shown its location based on this assumption. The client's counsel may wish to pursue these matters further, so as to clean up any title matters these discrepancies may cause.

2) In regard to Item No. 20 in the herein referenced title commitment, the legal description for the communication easement as contained in Doc. No. 601562 has two possible typographical errors; first, the third to last call of "South 90° 00'00"" does not give an east or west direction; second, the second to last call of "North 89° 59' 19" West" should probably be called out as a South East direction in order to close the description. The client's counsel may wish to pursue these matters further, so as to clean up any title matters these typographical errors may cause.

3) Please note that there is a gravel drive and a storage area located in the northwest corner of the property. The usage of this area appears to be by the northerly adjoining property, as shown hereon.

4) Please note that there are utilities that run along the northerly boundary line, as shown hereon, that encumbers the subject property, apparently without an easement.

5) We have shown the right-of-way of Dawn Avenue across the Westerly portion of the site. We have surveyed it as a right-of-way that extends 40 feet east from the centerline of the west line of the southeast quarter. This is per the historic practice of providing 80 feet of right-of-way on this road that apparently developed via prescriptive rights. Based upon contemporary case law this right-of-way could be construed to be of more or less width based upon a determination of what area is actually being utilized for road purposes including slopes and possibly drainage.

CERTIFICATION

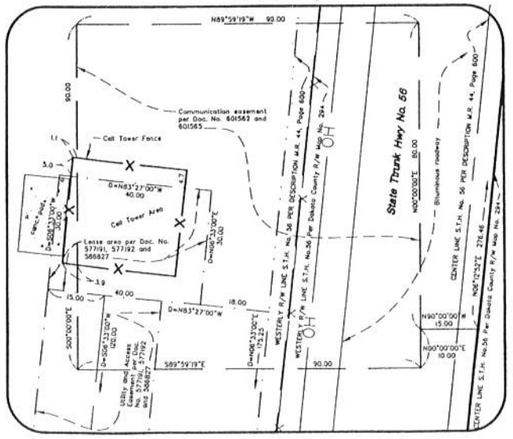
This is to certify to: Donald P. Balsimo and Shelly M. Balsimo; North American Trailer Sales; J.D. Trailers Properties, LLC, a Minnesota limited liability company; Village Bank and First American Title Insurance Company that on the 20th day of October, 2008, I surveyed that property described in Schedule A of that Commitment for Title Insurance issued by First American Title Insurance Company, No. NCS-371543-MPLS, dated September 30, 2008, and that that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005, and includes Items 1 – 4, 6, 7a, 7b(1), 7b(2), 8 – 10 and 11b of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of Minnesota, the Relative Positional Accuracy of this survey does not exceed that which is specified therein.

Rory L. Synstelien Minnesota License No. 44565

RORY LOGAN SYNSTELIEN
LICENSED LAND SURVEYOR
44565
STATE OF MINNESOTA

DETAIL A

Scale 1=20



Project Name:

North American Trailer Sales

Inver Grove Heights, Minnesota

Owner/Developer Name:

Don Balsimo

7649 Concord Blvd East
Inver Grove Heights, MN 55076

Professional Services:

LOUCKS ASSOCIATES

Planning • Civil Engineering • Land Surveying
Landscape Architecture • Environmental

7200 Hemlock Lane - Suite 300
Minneapolis, Minnesota 55369
Telephone: (763)424-5505
Fax: (763)424-5822
www.LoucksAssociates.com

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CADD Qualification:

CADD files prepared by the Consultant for this project are instruments of the Consultant professional services for use solely with respect to this project. These CADD files shall not be used on other projects, for additions to this project, or for completion of this project by others without written approval by the Consultant. With the Consultant's approval, others may be permitted to obtain copies of the CADD drawing files for information and reference only. All intentional or unintentional revisions, additions, or deletions to these CADD files shall be made at the full risk of that party making such revisions, additions or deletions and that party shall hold harmless and indemnify the Consultant from any & all responsibilities, claims, and liabilities.

96729A-BNDY.DWG/Layout1

Submittal:

10-22-08	Drawing Issued

Professional Signature:

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.

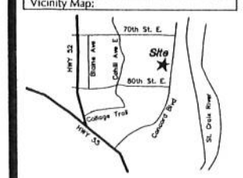
Rory L. Synstelien - PLS

44565	10-20-08
License No.	Date

Quality Control:

Project Lead:	RLL	Drawn By:	RLS
Checked By:	RLL	Review Date:	10/21/08

Vicinity Map:



Sheet Title:

ALTA/ACSM Land Title Survey

Project No.:

96729.0A

Sheet No.:

1 of 1

Date: 10/23/2008 11:10 AM N:\96729A\Dwg\Survey

Allan Hunting

From: twins80@comcast.net
Sent: Friday, December 16, 2016 12:05 AM
To: Allan Hunting
Cc: Jemb.Smith@comcast.net; t.thone@roofspec.com
Subject: Fwd: Case No. 16-51NCUC, North American Trailer

December 15, 2016

Planning Department
Attn: Allan Hunting
ahunting@invergroveheights.org,

Re: North American Trailer
Case No. 16-51NCUC
7649 Concord Blvd.
Inver Grove Hts., MN
PIN Nos. 20-01100-51-010 & 20-01100-51-020

We are not opposed to the usage described in the Hearing Notice regarding the above referenced case. However, we would propose that the usage be modified as follows:

- That a noise variance be enforced (i.e. backup beepers, equipment, etc.) not be used prior to 7:00 a.m. and after 8:00 p.m. Currently they hook up all hours of the night and early morning with the backup beepers going and banging on the trailer hitches especially during the winter.
- "Purging" of tanker trucks not be allowed as they dispense contents (ammonia etc.) across the residential properties.

We have all lived here for a number of years prior to North American Trailer and J.D. Trailers. Therefore, the use of equipment in late evening -early morning hours was not pre-existing to the purchase of our properties.

Respectfully Submitted,

Terry and Ruth Thone, 7578 Dawn Ave. E., IGH, MN (651) 451-1366
(Twins80@comcast.net)
James and Bonnie Smith, 7525 Dawn Ave. E., IGH, MN (651) 451-9584
(Jemb.Smith@comcast.net)

Allan Hunting

From: George Colaizy [gcolaizy@centurylink.net]
Sent: Thursday, December 15, 2016 12:36 PM
To: Allan Hunting
Cc: gcolaizy@centurylink.net
Subject: North American trailer ATT: ALLAN HUNTING

I have lived at this address since October 1985, at that time a school bus garage was located on the property 7649 Concord. It was an appropriate business for the location . I had no reservations about a bus garage. After a period of time it was sold to another company. As a near neighbor I was never asked if I was OK with this new business. I was later told by Jim Hayes ,my neighbor behind me that it was formally located in an industrial zoned area. I found out why they were there when I let my dog out for her nature call, I saw her just fall down and started to whimper. I ran to her only to be surrounded by a hazy cloud.
I immediately started to choke, my eyes burning , holding my breath I pulled my dog away from the cloud where it seemed OK.(the cloud was about 50 feet by 100 feet and about 7 feet in height) The smell was very familiar to me, IT WAS PROPANE GAS! I called about it but it had dissipated by the time someone arrived to check it out. I had fire training and other hazardous material handling training as I worked at 3M nuclear as a health Physics tech responsible for the safety and handling nuclear waste. I was terrified, If that cloud had found an ignition source my family and surrounding neighbors would be DEAD.
I talked to the city fire marshal a Mr Shatuck and he was greatly concerned about the business, because they were repairing propane tankers, gasoline tankers, and other bulk hauling tankers. He said he did not know how they could do that in such a heavily residential area of high density trailer court across from them. child care facilities within a block, and residential single family homes within 200 feet. He told me It should be in an industrial park far from any residences. I wanted to move my family but could not afford to do it. I had nightmares about being blown up. After a short period of time there was an accident that killed a person working on the inside of a gasoline tanker. It Exploded killing him. I though because of this accident It would be shut down and told to move to the industrial park, for some reason nothing happened and I was puzzled.

The noise and dust that comes from there makes it almost impossible to use my yard at times. The banging of large hammers/sledges, air tools shrieking and banging of trucks moving tankers into places between regular semi trailers as it appears that they want to hide the many tankers they have, one just has to be up high like on my deck to see this. This seems to be what they do but appearances can be wrong it has gone on for several years by my account.

In my opinion the North American Trailer company should be away from such a heavily populated area. I do not want to make the six o'clock news as a fatality of a massive tanker explosion being repaired at North American Trailer. I thought one death would have been enough to Investigate the improper placement of this business. Part of my training was a statement under the proper conditions a gasoline tanker can destroy up to a five mile radius. NOW you know my concerns as a resident of Inver Grove Heights. PLEASE DO SOMETHING TO KEEP OUR CHILDREN AND HOMES SAFE.
You my contact me if you need any clarifications

George E. Colaizy
7552 Dawn ave East
651 451 3337 H
651 402 3886 Cell