

**INVER GROVE HEIGHTS
PLANNING COMMISSION AGENDA**

**TUESDAY, JANUARY 15, 2013 – 7:00 p.m.
City Council Chambers - 8150 Barbara Avenue**

1. CALL TO ORDER

2. APPROVAL OF PLANNING COMMISSION MINUTES FOR DECEMBER 18, 2012.

3. APPLICANT REQUESTS AND PUBLIC HEARINGS

3.01 CITY OF INVER GROVE HEIGHTS -

Consider an addition to the 2012 Capital Improvement Program (2011-15 Orchard Trail Stormwater Improvements).

Planning Commission Action _____

3.02 CAROL FETZER - CASE NO. 12-36V

Consider a Variance to construct a porch addition seven feet from the side property line whereas 10 feet is the required setback for the property located at 2612 Borden Way.

Planning Commission Action _____

3.03 EVAN MOLDE - CASE NO. 12-39C

Consider a Conditional Use Permit to exceed the impervious surface requirements in the shoreland district. This request is for the property located as 6240 Carmen Avenue.

Planning Commission Action _____

3.04 HALLBLADE TRAILER SALES - CASE NO. 12-37ZA

Consider an appeal of staff interpretation of the Zoning Ordinance (Chapter 10-3-7) pertaining to allowing an outdoor sales lot on the property located south of Tractor Supply.

Planning Commission Action _____

4. OTHER BUSINESS

5. ADJOURN

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Wednesday, December 18, 2012 – 7:00 p.m.
City Hall Chambers - 8150 Barbara Avenue

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

Commissioners Present: Tom Bartholomew
Armando Lissarrague
Paul Hark
Pat Simon
Tony Scales
Harold Gooch
Dennis Wippermann
Victoria Elsmore
Annette Maggi

Commissioners Absent:

Others Present: Allan Hunting, City Planner
Tom Link, Director of Community Development

APPROVAL OF MINUTES

The minutes from the November 20, 2012 meeting were approved as submitted.

There were no public hearings for applicant requests.

OTHER BUSINESS

a) Elections

Motion by Commissioner Gooch, second by Commissioner Wippermann, to nominate Paul Hark to the position of Planning Commission Chair.

Motion by Commissioner Simon, second by Commissioner Elsmore, to nominate Harold Gooch to the position of Planning Commission Vice-Chair.

Motion by Commissioner Wippermann, second by Commissioner Hark, to nominate Pat Simon to the position of Planning Commission Secretary.

Motions carried (9/0)

b) Electronic Packet Distribution Process

Allan Hunting, City Planner, reminded Commissioners that the delivery of packets has been discontinued. He advised Commissioners they had the option of electronically accessing the packets from the City's website, picking up a printed copy at City Hall during business hours, or picking up a printed copy at The Grove.

Commissioner Elsmore asked if Commissioners would receive an email advising them that the packets were ready.

Mr. Hunting replied that a reminder email could be sent for the first couple packets to help with the transition. After that it would be the Commissioners' responsibility to pick up or electronically

access the packets the Friday prior to a Planning Commission meeting.

Commissioner Lissarrague asked what time the packets would be available on Fridays.

Mr. Hunting replied approximately 3:00 PM.

Commissioner Simon asked if Commissioners should notify the Planning Secretary if they planned to pick up their packet at City Hall.

Mr. Hunting replied in the affirmative.

Commissioner Hark asked when the packets would be available at The Grove.

Ms. Fox advised she would drop them off at 4:30 at The Grove.

Chair Bartholomew asked how late The Grove was open.

Mr. Hunting replied 8:00 PM or 10:00 PM, depending on the day.

Commissioner Maggi asked if bringing an electronic device to the meetings would cause microphone interference.

Mr. Hunting replied he was unsure.

Commissioner Hark asked if Commissioners should notify the Planning Secretary if they planned to pick up their packet at The Grove.

Mr. Hunting replied in the affirmative, stating the packets would be at the main desk.

Chair Bartholomew noted the concerns raised by Planning Commissioners at their last meeting, and asked if there had been additional discussion regarding resuming the delivery of packets.

Mr. Link replied that he had a follow-up discussion with the City Administrator; however, because the budget was established with no delivery of packets, the decision remained the same. He noted that packet delivery was stopped for all City commissions.

Chair Bartholomew stated he was concerned that this change would make finding volunteers more difficult in the future.

Mr. Link replied that he hoped this would not affect someone's decision to serve, and he encouraged Commissioners to contact the City Administrator or Councilmembers if they continued to have concerns.

Commissioner Wippermann requested that an email with a link to the City's website be sent to Commissioners when the packets were ready.

Mr. Hunting replied that would be possible.

Chair Bartholomew suggested that Commissioners provide the Planning Secretary with all email addresses they would like to be notified at.

Mr. Link stated for those that want them, paper packets would be available at City Hall until 4:30 p.m., and any remaining packets would be brought to the VMCC after that.

Commissioner Gooch stated his concern was that Commissioners may not have the technology at home to print off the colored or oversized maps/blueprints, and that reducing them to 8 ½" x 11" would make them difficult to read.

Commissioner Hark asked if the paper copies that would be picked up would include full-sized color maps.

Mr. Hunting replied in the affirmative, stating they would be identical to the packets the Commissioners were currently receiving.

Mr. Link noted that staff could provide Commissioners with paper copies of maps or visuals on the night of the meetings.

Commissioner Hark questioned how much money would actually be saved by implementing this new policy, and stated it made it harder for volunteers to participate.

c) Summary of 2013 Planning Projects

Mr. Hunting discussed some of the projects Planning staff would be working on in 2013, including amending the City's Road Access Management Ordinance, establishing a front yard parking ordinance and rental regulation program, setting up an electronic application system, Zoning Ordinance clean up revisions, transferring files into permanent file storage, acting as a City liaison in regard to the South St. Paul Airport Master Plan update, and working with Dakota County on their greenway master plan.

d) Meeting Cancellation

Mr. Hunting advised that the January 2, 2013 Planning Commission meeting has been cancelled. The next meeting is scheduled for January 15, 2013.

Chair Bartholomew thanked staff for their help throughout his term on the Planning Commission and commended Commissioners on their professionalism.

Commissioner Simon asked when Chair Bartholomew's position would be filled.

Mr. Hunting replied he was unsure.

The Commission thanked Chair Bartholomew for his leadership during his term as Chair of the Planning Commission.

ADJOURNMENT

Chair Bartholomew adjourned the meeting at 7:20 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary

MEMO

CITY OF INVER GROVE HEIGHTS

TO: Planning Commission

FROM: Scott D. Thureen, Public Works Director 

DATE: January 7, 2013 for Planning Commission Meeting of January 15, 2013

SUBJECT: Addition to 2012 Improvement Program (2011-15 – Orchard Trail Storm Water Improvements)

ACTION REQUESTED: Provide comments regarding proposed addition to the 2012 Improvement Program, approve the program, and forward the program to City Council for adoption.

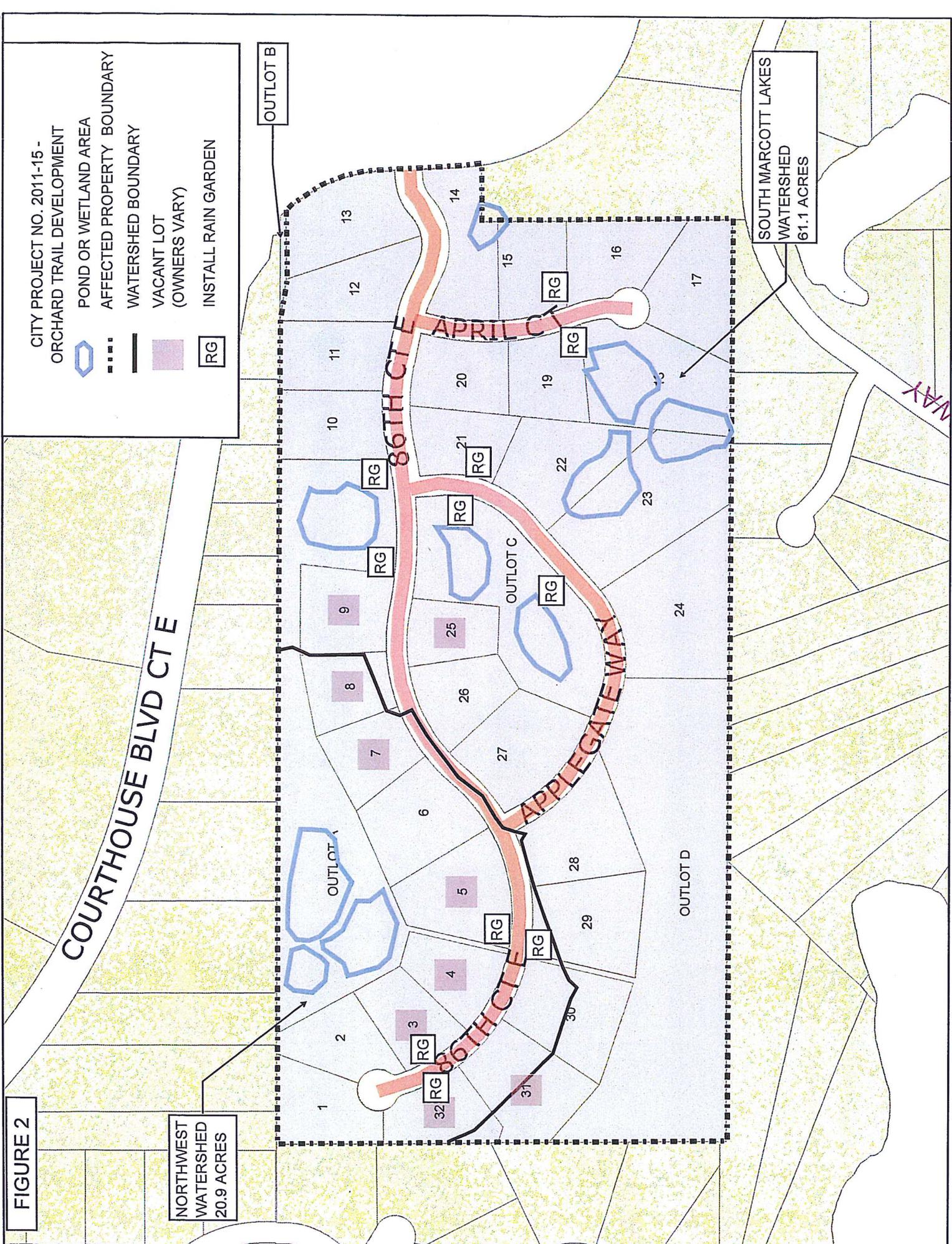
BACKGROUND: The City's standard operating procedure calls for the Planning Commission to review the proposed Improvement Program each year for consistency with the City's Comprehensive Plan.

PRIMARY ISSUES AND ANALYSIS: The proposed addition to the 2012 Improvement Program is City Project No. 2011-15 – Orchard Trail Storm Water Improvements. This project would complete the construction of the storm water management system in the Orchard Trail development. The project includes pond excavation, slope grading, rain garden construction, erosion control, storm sewer, restoration and appurtenances. This work was not completed due to the developer filing for bankruptcy.

RECOMMENDATIONS AND CONCLUSIONS: I recommend that the Planning Commission review the proposed addition to the 2012 Improvement Program, City Project No. 2011-15 – Orchard Trail Storm Water Improvements, provide comments, approve the program, and refer the program to the City Council.

SDT/kf

Attachments: Project Area Map



CITY PROJECT NO. 2011-15 -

ORCHARD TRAIL DEVELOPMENT

POND OR WETLAND AREA
 AFFECTED PROPERTY BOUNDARY
 WATERSHED BOUNDARY
 VACANT LOT (OWNERS VARY)
 INSTALL RAIN GARDEN

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FIGURE 2

NORTHWEST WATERSHED 20.9 ACRES

SOUTH MARCOTT LAKES WATERSHED 61.1 ACRES

P L A N N I N G R E P O R T
C I T Y O F I N V E R G R O V E H E I G H T S

REPORT DATE: January 8, 2013

CASE NO: 12-36V

HEARING DATE: January 15, 2013

APPLICANT: Carol Fetzer

PROPERTY OWNER: Carol Fetzer

REQUEST: Variance

LOCATION: 7807 Cooper Avenue

COMPREHENSIVE PLAN: Low Density Residential

ZONING: R-1C, Single-family Residential

REVIEWING DIVISIONS: Planning

PREPARED BY: Allan Hunting
City Planner

BACKGROUND

The applicant is requesting a Variance from setbacks to allow the construction of a porch addition which would be 7.0 feet from the side property line whereas 10 feet is required. The house has an existing deck in this location which meets the required five (5) foot setback for an accessory structure. The applicant is proposing to construct a screened-in porch on top of the existing deck. The conversion of the deck into a covered porch is considered a principle structure and therefore must meet a 10 foot minimum setback from the property line. The property is a corner lot located at 2612 Borden Way.

Staff noticed that the property is currently two separate lots with two tax parcel numbers. Since the house straddles the lot line, setbacks are not being met. In these instances, in order to clean up these types of issues, staff recommends a condition be added that as part of any approval, the two lots must be combined into one tax parcel so the stray property line running through the house goes away. This would bring the house and property into full compliance with setback requirements.

EVALUATION OF THE REQUEST

SURROUNDING USES: The subject site is surrounded by the following uses:

North - Residential; zoned R-2, two-family; guided LDR, Low Density Residential

East - Residential; zoned R-1C, single-family; guided LDR, Low Density Residential

West - Residential; zoned R-2, two-family; guided LDR, Low Density Residential

South - Residential; zoned R-1C, single-family; guided LDR, Low Density Residential

VARIANCE REVIEW

City Code Title 11, Chapter 3. **Variations**, states that the City Council may grant variations 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 variations, 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 general intent of this standard is to limit the precedent that could be set if the variance was granted. The area is developed primarily with single family homes. The porch addition would be consistent with residential use of the neighborhood and would be consistent with the Comprehensive Plan. There does not appear, however, to be any other properties with principle structure setback encroachments in the area. The use would still be in harmony with the purpose of the code and comp plan.

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

As staff understands the request, the porch would be constructed over the existing deck. New footings would be required for the increased loads, but the width and distance from the side property line would be the same as what exists today. Converting a deck into a porch is a typical improvement seen on residential properties and thus the property seems to be used in a reasonable manner. The addition would be 7 feet from the property line which falls in between the accessory and principle structure setback. If the existing deck were at the 5 foot setback and a porch was to be constructed with the same setback, that may not be consistent with the intent of the code and that may fall out of the boundaries of property being used in a reasonable manner.

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

The applicant proposes to construct the addition over the exact dimensions of the existing deck. The new addition would have a three (3) foot encroachment into the required setback. Due to the topography of the lot and design of the house, the existing deck is slightly elevated and it connects to the pool decking in the rear yard. The new addition would continue to blend into the existing decking system.

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

Staff does not believe this variance would alter the essential character of the locality. The property is a corner lot, so any improvements would be to the rear or side due to the double front yard setback requirements. The new living space would still be approximately 42 feet from the house portion of the structure on the adjoining lot. The garage and attached accessory structure create a buffer between the proposed addition and adjacent house. The proposed addition is a typical type expansion of a home.

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 for the requested action:

Approval: If the Planning Commission finds the Variance to be acceptable, the Commission has the following options:

A. Approval of the Variance to allow the construction of a porch addition 7 feet from the front property line whereas 10 feet is required subject to the following conditions:

1. The construction of the addition shall be in substantial conformance with the site plan dated 8/27/12 on file with the Planning Department.
2. Prior to issuance of a building permit, the landowner shall combine the two parcels into one tax parcel and file with the County.

Denial: If the Planning Commission does not favor the proposed Variance, 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 request is not out of character of the neighborhood and is consistent with the comp plan. The request is a typical improvement for a residential property and the three foot encroachment does not appear to have any adverse impacts on the neighboring properties. Staff recommends approval of the variance.

Attachments: Location Map
 Site Plan
 Applicant Narrative

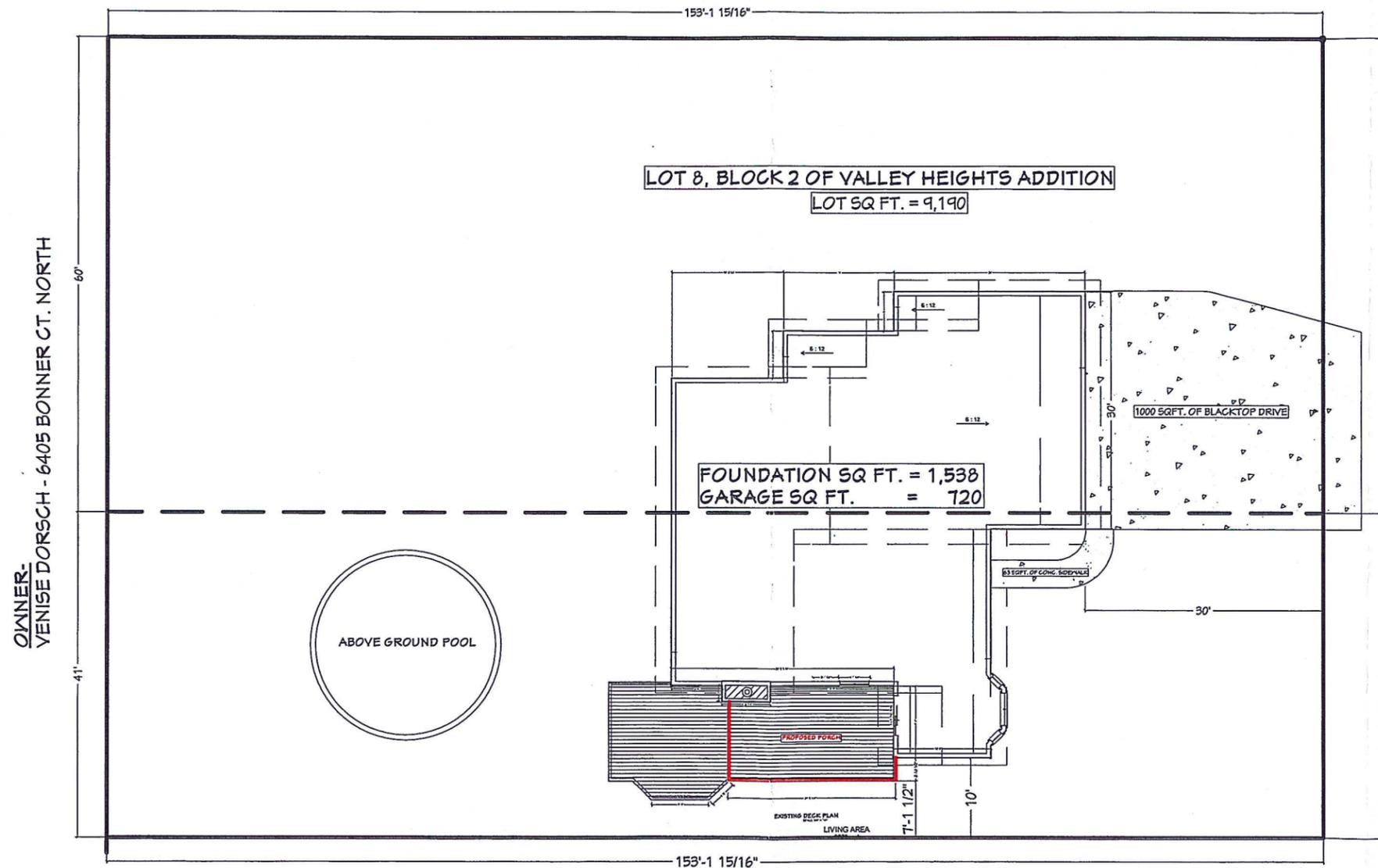


Location Map

Case No. 12-36V



OWNER-
 KEVIN INMAN - 6490 BONNER CT.
 DARLENE NYBERG - 6488 BONNER CT.



OWNER-
 GREGORY & SUSAN MOE - 2620 BORDEN WAY

EXISTING SITE PLAN
 SCALE: 1/8" = 1'-0"

CLIENT:
 CAROL FETZER
 2612 BORDEN WAY
 INVER GROVE HEIGHTS, MN 55076

PROJECT:
 SCREEN PORCH

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DRAWING DATE:
 8-6-12

REVISIONS:
 8-27-12

PROJECT SHEET:
 2 OF 2

To: The City of Inver Grove Heights Planning Department

Variance Rational for the Carol Fetzer residence at 2612 Borden Way, Inver Grove Heights

The owner of the property is requesting a variance to allow a screened-in porch to be put on an existing deck. The existing deck that the new porch will be placed on does not encroach into the side yard setback for decks; however the porch will encroach into the setback for porches by 2'-10 ½" which is still 7'- 1 ½" from the lot line. Due to the fact that the lot rises steeply to the rear and with the practicality of using the existing deck to place the porch, along with the close proximity of the kitchen and eating areas makes the proposed location the only reasonable option. It keeps a number of living functions at one level which is ideal for "aging in place" and for the owner who has polio and difficulty negotiating steps and steep terrain.

The existing home and placement does not allow for a porch large enough for a dining table and reasonable passage for anyone, especially someone who may be using a walker or wheelchair, only 8"-9" wide narrowing to 6'-9" . The neighbor to the east's garage is approximately 15' from the side yard setback and the home is approximately 37' from the side yard setback. There is also a storage shed on the neighbor's property approximately 5' from the lot line. The new porch would be approximately 42' from the neighbor's home so it would no cause a hardship for that neighbor.

The variance would continue to allow the owner to use the home in a reasonable manner and would not alter the essential character of the neighborhood.

EVALUATION OF THE REQUEST

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

North	Industrial; zoned I-1; guided Industrial Office Park
East	Industrial; zoned I-1; guided Industrial Office Park
South	Industrial; zoned I-1; guided Industrial Office Park
West	Multi-family and Industrial; zoned R-3C/I-1; guided IOP and Medium Density Residential

SITE PLAN REVIEW

Access. Access to the site would not be changing. There is one main access on the west side of the property along Carmen Avenue. There is also a fire lane along the north property line.

Parking Lot. The proposed parking lot would be bituminous. The project meets setbacks and surfacing requirements.

Impervious surface. The underlying zoning district of I-1, Limited Industry, does not have an impervious surface maximum. The property currently has about 44% impervious surface, which includes the building, parking lot, and fire lane. The applicant is proposing to add about 12,080 square feet of impervious surface, increasing the total to 46% impervious cover.

Engineering. The parking lot expansion would be adding to the impervious surface on the property. The Engineering Department has reviewed the plans and is working with the applicant on stormwater and grading requirements. 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 drawings.

Fire Marshal Review. The Fire Marshal had no concerns regarding the proposed parking lot.

CONDITIONAL USE PERMIT TO EXCEED 25% IMPERVIOUS SURFACE

The site is located in the shoreland overlay district for Bohrer Pond (DNR Lake #19-34). Impervious surface coverage is limited to 25% of the development in the shoreland overlay district. This may be increased, provided the city has approved and implemented a storm water management plan affecting the subject site and a conditional use permit permitting an increase has been granted.

Existing impervious surface on the lot is about 44%. The new impervious surface would increase this percentage to 46%. The applicant is proposing a grass swale and a bio-filtration basin to treat the stormwater runoff. They are working with the City on obtaining final approval of a storm water management plan.

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 conditional use permit meets the above criteria. 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.

DNR REVIEW

The request was sent to the DNR for review. The City has not yet received a response. In 2009, a similar request was sent to them and they did not have any concerns with the proposed request with its proximity to Bohrer Pond; staff is anticipating a similar response.

ALTERNATIVES

The Planning Commission has the following actions available for the proposed requests:

- A. Approval. If the Planning Commission finds the application to be acceptable, the Commission should recommend approval of the requests with at least the following conditions:
- Approval of the Conditional Use Permit to exceed the maximum impervious surface allowed in the shoreland overlay district subject to the following conditions:
 1. The site shall be developed in substantial conformance with the following plans on file with the Planning Division except as modified herein
Plan Set dated 01/09/13
 2. 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.
 3. An improvement agreement shall be prepared by the City Attorney and executed by both the City and the property owner prior to any work being done on the site.
 4. 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.
 5. The developer shall meet all the conditions outlined in the City Engineers review letters and subsequent correspondence. Prior to commencement of any

grading, the final grading, drainage and erosion control, and utility plans shall be approved by the City Engineer.

6. All final development plans shall be subject to the review and approval of the City Fire Marshal.

B. **Denial.** If the Planning Commission does not favor the proposed application the above requests 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 to exceed impervious surface in the shoreland district.

Attachments: Exhibit A –Zoning Map
Exhibit B– Narrative
Exhibit C- Site Plan
Exhibit D- Landscape Plan

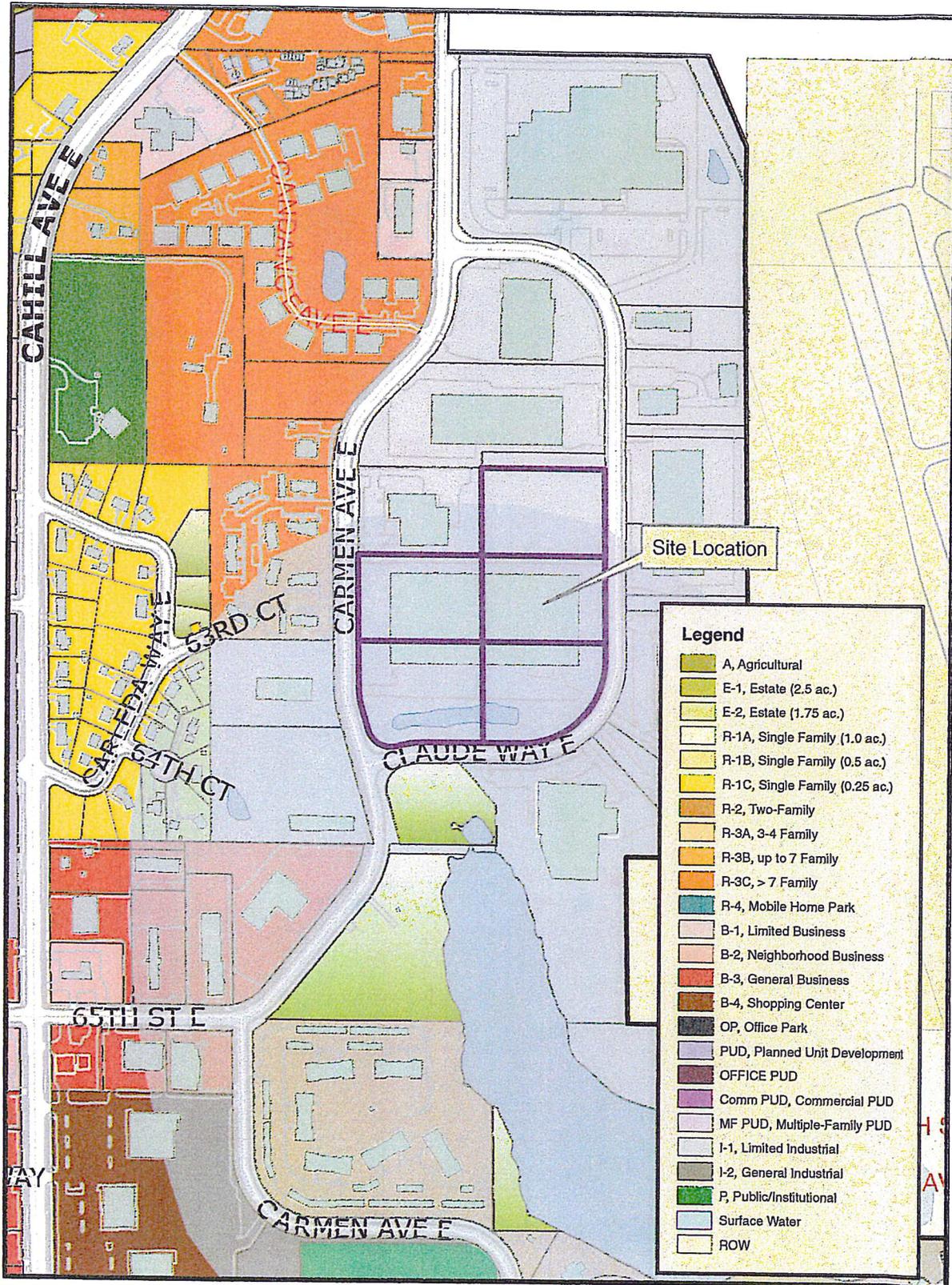
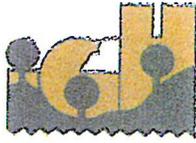
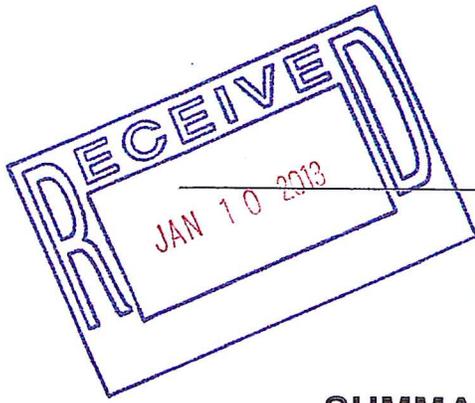


Exhibit A
Zoning Map



*Parking Lot Expansion
6240 Carmen Avenue*

SUMMARY OF STORMWATER RUNOFF

This project will consist of the construction of a 30 stall parking lot addition on the east side of the existing building, with a grass swale and a bio-filtration basin on site to treat the stormwater runoff from the new impervious areas.

The existing area is currently grass covered turf between the existing building and Claude Way East. Currently the storm water runoff sheet flows to Claude Way East or overland to the south into an onsite depression where the water infiltrates. The existing site contains primarily type D soils (lean clay, sandy lean clay) with very low infiltration rates.

The proposed parking lot runoff will sheet flow across the bituminous surface to the flush curb. The runoff will sheet flow off of the curb into a proposed grass swale. The swale will serve as pretreatment as the water makes its way to the north bio-filtration basin. A 4" perforated pipe and an 8" standpipe will serve as water quantity control for stormwater leaving the bio-filtration basin into the City system. When the bio-filtration basin is at capacity, a high point at the south end of the swale will serve as the overflow, directing runoff along the proposed drive into the existing onsite depression at the south end of the property.

Water Quality Summary

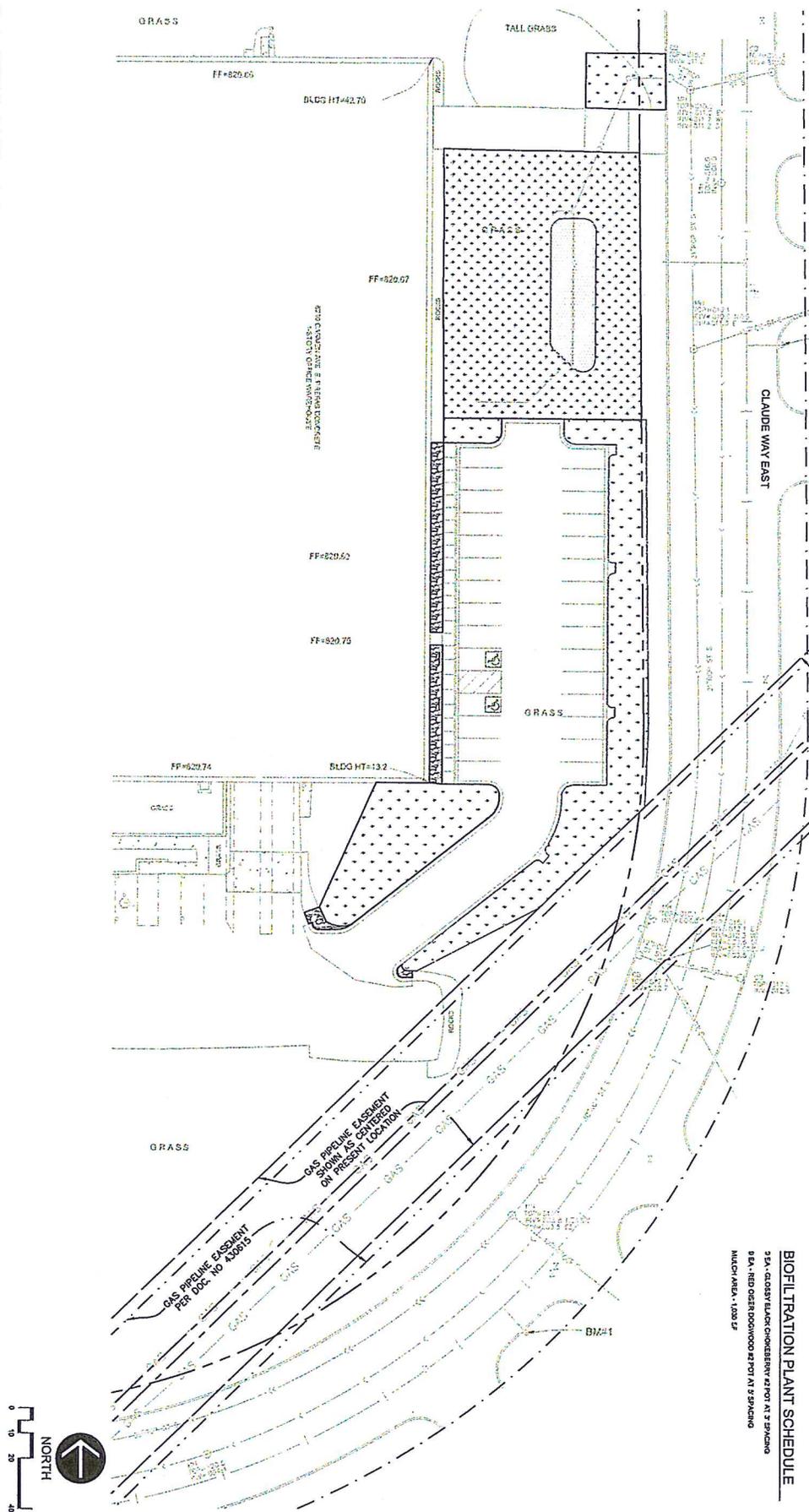
Bio-Filtration Basin Design:
New Impervious Area = 12,080sf
Volume to be infiltrated = 1,007 cubic feet (1.0" x impervious area)
Bio-Filtration Basin volume to emergency overflow = 2,371cf

Water Quantity Summary

EVENT	EXISTING RUNOFF RATE RATE (cfs)	PROPOSED RUNOFF RATE RATE (cfs)
2 YEAR	1.21	1.18
10 YEAR	2.94	2.86
100 YEAR	4.89	4.66

2013-01-15 10:00 AM

ALL EXISTING UTILITIES AND CONDITIONS SHOWN ARE BASED UPON THE INFORMATION RECEIVED FROM THE CLIENT.



SYMBOL LEGEND

[Symbol]	DOUBLE STRIPED HARDWOOD MULCH
[Symbol]	4" OR TOWER, AND ANCHOR TREE SEED MAT WITH PLANTING
[Symbol]	3" DEPTH OF LANDSCAPE ROCK MULCH AND EXISTING SEED MAT WITH LANDSCAPING SOIL.
[Symbol]	4" TOPSOIL AND SOIL

BIOFILTRATION PLANT SCHEDULE

3 SA - GASTRULAC CHOISERNEY 21 POT AT 3 SPACING
3 BA - RED OSTER BOGWOOD 21 POT AT 3 SPACING
MULCH AREA - 1028 SQ

C4

LANDSCAPE PLAN

Sheet 5 of 7

Project: 1312181800
 Designer: CJD
 Checker: MWJ
 Date: 12/11/13

PARKING LOT EXPANSION
 6240 CARMEN AVENUE
 INVER GROVE HEIGHTS, MN

CUSHMAN & WAKEFIELD/NORTHMARQ
 3500 W. AMERICAN BLVD., SUITE 200
 MINNEAPOLIS, MN 55431

Larson Engineering, Inc.
 3524 Leona Road
 White Bear Lake, MN 55110
 651.481.9120 (F) 651.481.9201
 www.larsoneng.com

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**PLANNING REPORT
CITY OF INVER GROVE HEIGHTS**

REPORT DATE: January 8, 2013

CASE NO: 12-37ZA

APPLICANT: Hallblade Trailer Sales

REQUEST: Appeal of Zoning Interpretation

HEARING DATE: January 15, 2013

LOCATION: Cahill Avenue/Cafferty Court just south of Tractor Supply
Lots 2, 3, Block 1, Arbor Pointe Commons Second Addition

COMPREHENSIVE PLAN: Community Commercial

ZONING: B-3, General Business

REVIEWING DIVISIONS: Planning

PREPARED BY: Allan Hunting
City Planner

BACKGROUND

The owners of the above listed lots have submitted an appeal of zoning interpretation as allowed in Chapter 10-3-7 of the City Code. The owner wishes to relocate Absolute Trailer Sales to this location. Absolute Trailer Sales is currently located at 9601 Jefferson Trail (Hwy 149). The business currently operates with a conditional use permit as an open sales and open storage for a commercial trailer sales lot originally issued in 1998. The applicant contends that "outdoor storage", listed as a conditional use, should include a retail business with sales of outdoor stored items on the property.

Planning Staff has reviewed zoning of the property and has interpreted that the list of allowed uses for this property does not include open sales lot or open storage as the proprietary or principle use of the property under the category of "outdoor storage". The applicant argues that the use is more similar to retail sales with "outdoor storage", which is allowed by the agreement.

The Zoning Ordinance stipulates that an appeal of staff interpretation of the zoning ordinance may be made by submitting a request to the city. The request is then reviewed by the Planning Commission and the Commission makes a recommendation to the City Council.

EVALUATION OF THE REQUEST

History: The property in question is Lots 2 and 3, Arbor Pointe Commons Second Addition (see attached map). Part of the property was included in the Arbor Pointe Commons plat which was platted in 2003 as part of the Walmart project. Arbor Pointe Commons Second Addition was platted in 2006 as part of the Tractor Supply project. At that time, all of the land was located within the Arbor Pointe planned unit development. The property in question was

guided Office and was zoned for Research and Development. In 2005, there were discussions between the land owner and council members about the possibility of removing the land from the Arbor Pointe PUD and rezoning it to B-3, General Commercial. General discussions at council meetings between the landowner and the council were that the council did not want certain uses including auto type uses and dealerships (large open sales lots).

Council then directed staff to hold a public hearing regarding the possible zoning change and comp plan amendment. The Planning Commission reviewed this request and generally supported the idea, but added that outdoor storage was a concern. The commission felt the design guidelines of Arbor Pointe should also be carried forward if the property were to be allowed out of the Arbor Pointe PUD.

In the end, the council supported the request to remove the property from the Arbor Pointe PUD and to rezone it from Research/Development to B-3, General Business with a compromise with the land owner. An agreement restricting land uses document was prepared and recorded for the property which stipulated the allowed uses and prohibited uses for the property (see attached). This agreement and its interpretation is the subject of the appeal.

Prior to the Council acting on removing the subject parcels from the Arbor Pointe PUD, the Council adopted some changes to the uses contained in the Arbor Pointe Ordinance in 2004. This was a direct result of the applications for both Advance Auto and Discount Tire coming in around the same time. Council was concerned about the mix of uses in the area and did not want this to become an auto oriented neighborhood. The goal of the ordinance amendment was to encourage a diversification of uses in Arbor Pointe, to provide a broad range of goods and services and maintain the attractiveness of the area. The Arbor Pointe area provides a unique opportunity for a broad spectrum of commercial uses. It has valuable assets with its visibility from the highway, good access from major roadways and current mix of large retail and service retail businesses. Achieving a broad mix of high intensity, quality retail uses in Arbor Pointe is an important step in obtaining this goal.

As a result, the code was changed to eliminate several auto related uses, including outdoor sales and rental, boat and marine sales, and outdoor storage and display. The elimination of these types of uses addressed the concerns of low intensity development as these were inefficient uses of this high intensity commercial district.

ANALYSIS

Staff considers the proposed use to best fit a category of "open sales lot" under the land use agreement. It is staff's opinion that a use of this type is not one that is listed in the agreement. The proposed use is primarily an open sales lot with a relatively small accessory building. This type of use is not allowed by staff's interpretation of the agreement. The applicant argues that the use is more similar to retail sales with "outdoor storage", which is allowed by the agreement.

The property is located along Hwy 52/55, just south of Tractor Supply and Walmart. The property is visible from the highway and because it is near the southern end of sewer and commercial development, it could be considered a “gateway commercial property” that defines the uses allowed by the city. This is a very prominent commercial property, very visible from the freeway. As such, staff questions whether an open sales lot is the highest and best use for this property.

Building/Lot Size Analysis: Since the applicant compares the Tractor Supply site to the subject site, Staff did a comparison of FAR (floor area ratio) of the Tractor Supply, existing Absolute Trailer Sales and proposed lot.

Location	Lot Size	Building Size	FAR
Tractor Supply	135,036 sq ft (3.1 acres)	24,730 sq ft	.18
Absolute Trailer Sales	102,366 sq ft (2.4 acres)	3,584 sq ft	.04
Assumptions for Future Site	137,040 sq ft (3.1 acres)	8,000 sq ft ¹	.06

¹Building size assumption based on information provided by the applicant.

A typical FAR for commercial or industrial is typically in the .20 - .25 range. This comparison would indicate that the use as a sales lot would be under utilizing the development potential for the site.

Building Size to Open Storage/Sales Comparison:

Location	Building Size	Open Storage/Sales Size	Percentage of Lot Size
Tractor Supply	24,730 sq ft	19,600 sq ft	14.5
Absolute Trailer Sales	3,584 sq ft	81,893 sq ft ¹	80.0
Assumptions for Future Site	8,000 sq ft	109,632 ¹	80.0

¹Open storage/sales size based on aerial photography to be determined at approximately 80%.

The open storage approved as part of the Tractor Supply project did require a conditional use permit for outdoor storage and display. This display area is accessory to the main retail building. The storage area is also located in a fenced area along the south side of the building. The open storage is not the primary use of the property. Only 14.5% of the Tractor Supply lot is used for outdoor storage. Staff argues that the proposed use would be the primary use of the property, that of an open sales lot. It is estimated that approximately 80% of the proposed lot would be used for open storage/sales. The percentage of outdoor storage or sales would be

considerably higher with the proposed use and therefore is not consistent with the intent of controlled list of uses that was approved for the property.

Tax Valuation Analysis: The City Council has emphasized economic development in recent years in large part to improve and expand the city’s tax base. The properties in and around the Arbor Pointe area has a unique ability to foster economic development because of its location, access, visibility, and amenities.

Staff reviewed county tax records for some commercial properties in Arbor Pointe to compare the tax base of existing uses and the proposed use. Projected taxes for the subject site are purely based on staff’s analysis. Comparisons are not presented as actual, but only for comparison analysis.

Location	Lot Size	Land Valuation	Building Size	Building Valuation	Property Taxes
Tractor Supply	135,036 sq ft	\$945,500	24,730 sq ft	\$2,064,400	\$109,324
Absolute Trailer Sales	102,366 sq ft	\$272,600	3,584 sq ft	\$140,600	\$13,970
Assumptions for future Site	137,040 sq ft	\$900,000 ¹	8,000 sq ft	\$500,000 ¹	\$49,000 ¹

¹Assumptions made by Planning Staff based on tax information taken from Dakota County records for comparable sites within Arbor Pointe.

The tax comparison information is included as an illustration to show that a more intensely developed site with an FAR that is closer to the average will generate more tax revenue. The proposed use does not appear to offer the highest and best use of the property.

ALTERNATIVES

The Planning Commission has the following actions available for the request:

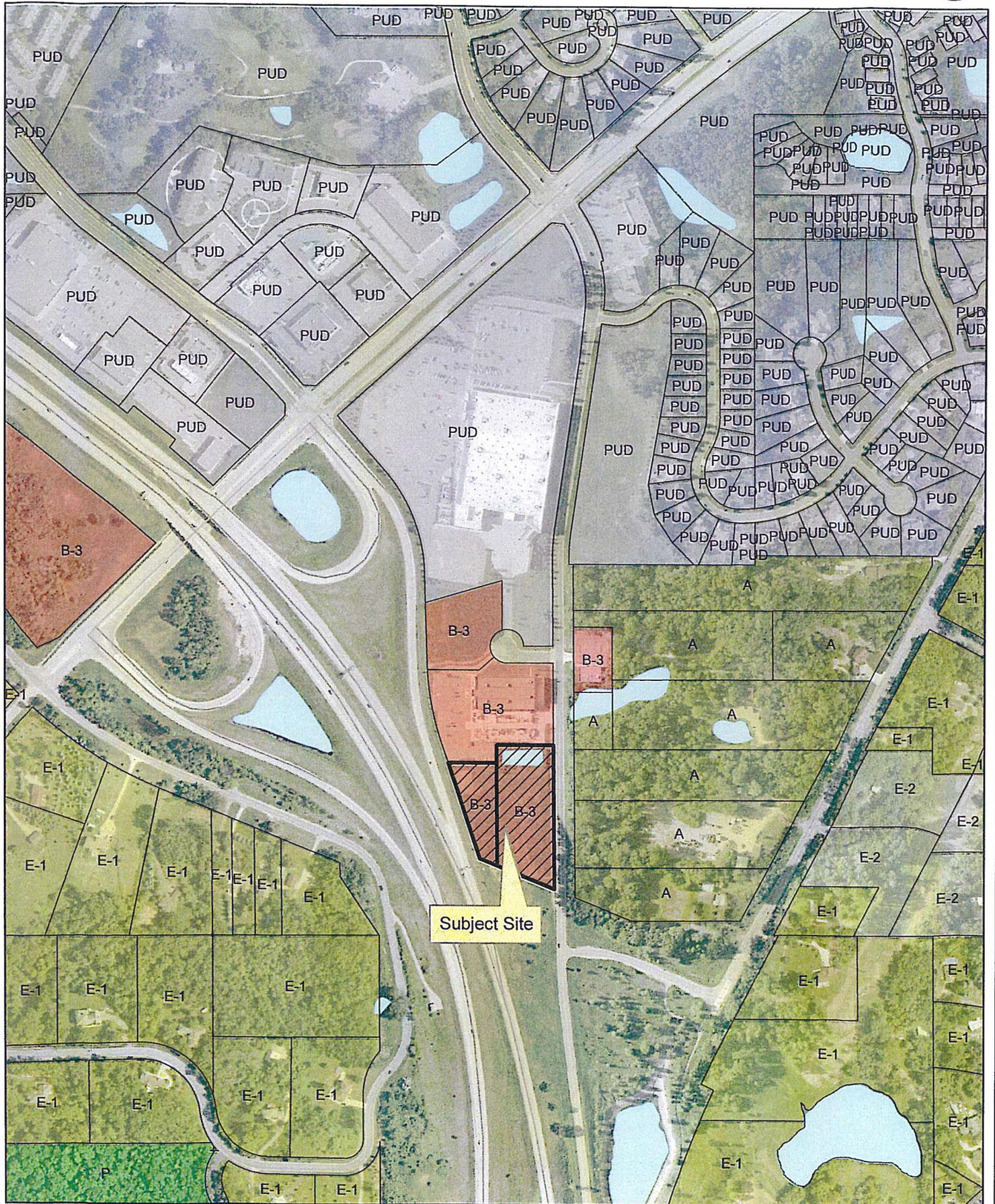
- A. Concur with Staff’s interpretation of the land use agreement for the property that outdoor storage does not include outdoor sales:
- B. Concur with Applicant’s interpretation of the land use agreement for the property that outdoor storage does include outdoor sales:

A basis must be stated by the Commission for either decision.



Location Map

Case No. 12-37ZA





December 3, 2012

City of Inver Grove Heights
City Council acting as the board for Appeal and Adjustments
8150 Barbara Avenue
Inver Grove Heights, MN 55077

RE: Request for Clarification of Agreement Restricting Land Uses

Dear Council:

On August 8, 2005 Walmart Stores, Inc. predecessor to the Landowner entered into an Agreement with the City relating to Walmart's Property (which is now Lot 2, Block 1, Arbor Point Commons Second Addition), which agreement allowed various uses including "Retail, general" and prohibited certain uses on the attached Exhibit C.

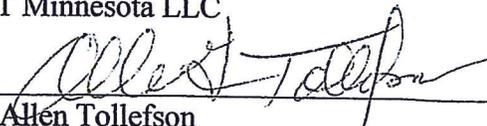
Another part of the Property that was subject to the same agreement became the Tractor Supply Company site, which business has general retail sales, including trailers and outdoor storage of the trailers and other items. The actual sales of all items take place inside the store. Numerous other businesses throughout the City with a B-3 zoning for "Retail, general" also have sales of outdoor stored items on their property.

Recently, the Landowner entered into a Purchase Agreement to sell Lot 2, Block 1, Arbor Point Commons Second Addition to Hallblade Trailer Sales to operate a general retail business with, including sales of trailers, which would be stored outside pursuant to a conditional use permit. As with Tractor Supply, all sales would take place in the store. City staff was not sure sales of trailers was allowed under the terms of the Agreement even though there was no prohibition in Exhibit C, and adjoining property, subject to the same Agreement, was allowed to have sales of various pieces of equipment, including trailers and other items.

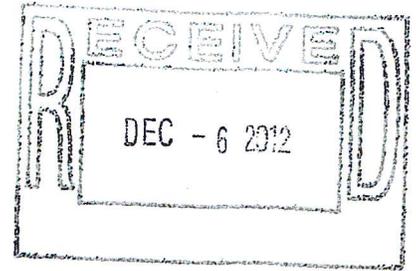
The Landowners request an appeal to Staff's interpretation of this zoning matter as provided for in Chapter 10-3-7 of the Zoning Ordinance and respectfully request that the City Council clarify the Agreement to allow Hallblade Trailer Sales to have sales of trailers on said Lot 3, Block 1.

Dated this 30 day of November, 2012.

AMT Minnesota LLC

By: 
Allen Tollefson

November 28, 2012



City of Inver Grove Heights
City Council acting as the board for Appeal and Adjustments
8150 Barbara Avenue
Inver Grove Heights, MN 55077

RE: Request for Clarification of Agreement Restricting Land Uses

Dear Council:

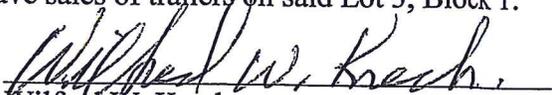
On August 3, 2005 the Landowners entered into an Agreement with the City relating to Landowners' Property (which is now Lot 3, Block 1, Arbor Point Commons Second Addition), which agreement allowed various uses including "Retail, general" and prohibited certain uses on the attached Exhibit C.

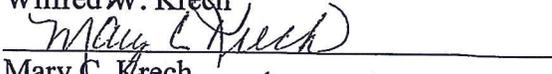
Another part of the Property that was subject to the same agreement became the Tractor Supply Company site, which business has general retail sales, including trailers and outdoor storage of the trailers and other items. The actual sale of all items takes place inside the store. Numerous other businesses throughout the City with a B-3 zoning for "Retail, general" also have sales of outdoor stored items on their property.

Recently, the Landowners entered into a Purchase Agreement to sell Lot 3, Block 1, Arbor Pointe Commons Second Addition to Hallblade Trailer Sales to operate a general retail business with, including sales of trailers, which would be stored outside pursuant to a conditional use permit. As with Tractor Supply, all sales would take place in the store. City staff was not sure sales of trailers was allowed under the terms of the Agreement even though there was no prohibition in Exhibit C, and adjoining property, subject to the same Agreement, was allowed to have sales of various pieces of equipment and other items.

The Landowners request an appeal to Staff's interpretation of this zoning matter as provided for in Chapter 10-3-7 of the Zoning Ordinance and respectfully request that the City Council clarify the Agreement to allow Hallblade Trailer Sales to have sales of trailers on said Lot 3, Block 1.

Dated this 3 day of December, 2012.



Wilfred W. Krech


Mary C. Krech


Walter E. Krech

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2005 AUG 29 A 11: 20

JOEL T. BECKMAN, COUNTY RECORDER

BY *[Signature]* Deputy

FEE 35.50 SURCHARGE 10.50

CASH CHECK ESCROW

WELL CHARGE

CHARGE TO: _____
O/R _____

DeLander Saw Off.

AGREEMENT RESTRICTING LAND USES

This Agreement is made, effective and entered into this 8th day of August, 2005, by and between Wal-Mart Stores, Inc., a Delaware corporation, (Landowner) and the City of Inver Grove Heights, a municipal corporation (City). For and in consideration of and based on the recitals, covenants, representations and agreements made herein, the parties do hereby agree as follows.

ARTICLE 1
DEFINITIONS

1.1 TERMS. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 CITY. City means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 LANDOWNER. Landowner means Wal-Mart Stores, Inc., a Delaware corporation, and its successor and assigns.

1.4 PROPERTY. Property means that certain real property located in the City of Inver Grove Heights, County of Dakota, State of Minnesota, as more particularly described on the attached Exhibit A.

1.5 ACCEPTABLE USES. Acceptable Uses means, individually and collectively, those land uses itemized on the attached Exhibit B, subject to and as regulated by the zoning ordinances, zoning regulations and zoning requirements of the City of Inver Grove Heights as amended from time to time. Except to the extent specific definitions are provided on Exhibit B, the Acceptable Uses shall be interpreted, defined and construed according to the City of Inver Grove Heights zoning ordinances, zoning regulations and zoning requirements as amended from time to time.

1.6 SPECIFIC PROHIBITED USES. Specific Prohibited Uses means those land uses itemized on the attached Exhibit C. Except to the extent specific definitions are provided on Exhibit C, the Specific Prohibited Uses shall be interpreted, defined and construed according to the City of Inver Grove Heights zoning ordinances, zoning regulations and zoning requirements as amended from time to time.

1.7 GENERAL PROHIBITED USES. General Prohibited Uses means all of the permitted uses, conditional uses, interim uses and accessory uses for the zoning district of B-3 General Business District as those particular uses are interpreted, defined and construed according to the City of Inver Grove Heights zoning ordinances, zoning regulations and zoning requirements as amended from time to time, except for the Acceptable Uses (as defined in Section 1.5 hereof).

ARTICLE 2 **RECITALS**

Recital No. 1. Wal-Mart Stores, Inc. is the fee owner of the Property.

Recital No. 2. Landowner has prepared various development proposals to develop the Property and Landowner has sought a response by the City with respect to the development proposals.

Recital No. 3. The development proposals contain land uses that are within the Acceptable Uses. None of the development proposals as presented to the City contain Specific Prohibited Uses or General Prohibited Uses.

Recital No. 4. In light of the development proposals that have been submitted, the City and the Landowner are examining a process whereby the City would consider rezoning the Property to B-3 General Business District.

Recital No. 5. The parties acknowledge that an impediment to rezoning the Property to B-3 General Business District is that the B-3 General Business District identifies the Specific Prohibited Uses and General Prohibited Uses as either permitted, conditional, accessory or interim uses within the B-3 General Business District.

Recital No. 6. The Landowner and the City have determined that the Specific Prohibited Uses and General Prohibited Uses are not appropriate uses for the Property.

Recital No. 7. As part of its development proposals, the Landowner has represented to the City that the Specific Prohibited Uses and the General Prohibited Uses are land uses that will not be made, developed or constructed on the Property. Landowner has voluntarily offered to impose covenants and restrictions on the Property so that the Property is not used for Specific Prohibited Uses and General Prohibited Uses and is not developed or constructed with Specific Prohibited Uses and General Prohibited Uses.

Recital No. 8. The City is willing to consider rezoning the Property B-3 General Business District if such covenants and restrictions are imposed.

Recital No. 9. By this Agreement, the parties desire to impose such restrictions and covenants on the Property.

ARTICLE 3
CITY REVIEW

3.1 CITY REVIEW. The City agrees to review and consider a process of rezoning the Property to B-3 General Business District.

ARTICLE 4
RESTRICTIONS ON LAND USE

4.1 RESTRICTIONS ON PROPERTY RELATING TO SPECIFIC PROHIBITED USES. The Landowner does hereby contract and agree with the City and does hereby impose a restriction on the Property and declare that the Property will not be used for Specific Prohibited Uses and the Property will not be developed or constructed with Specific Prohibited Uses.

4.2 RESTRICTIONS ON PROPERTY RELATING TO GENERAL PROHIBITED USES. The Landowner does hereby contract and agree with the City and does hereby impose a restriction on the Property and declare that the Property will not be used for General Prohibited Uses and the Property will not be developed or constructed with General Prohibited Uses.

4.3 RESTRICTIONS ON PROPERTY RELATING TO ACCEPTABLE USES. The Landowner agrees that the Property will only be developed and used for Acceptable Uses. The Acceptable Uses are subject to and regulated by the zoning ordinances, zoning regulations and zoning requirements of the City of Inver Grove Heights. To the extent any of the Acceptable Uses are conditional uses or interim uses under the applicable zoning district for the Property, the Landowner must obtain a conditional use permit or interim use permit from the City before using or developing the Property for such conditional uses or interim uses. If the zoning applicable to the Property does not allow any particular Acceptable Use, then the Property shall not be used or developed for that particular Acceptable Use.

4.4 RESTRICTIONS ON PROPERTY RELATING TO ARBOR POINTE DESIGN MANUAL. The Landowner does hereby contract and agree with the City and does hereby impose a restriction on the Property and declare that buildings and structures on the Property will be developed, constructed and maintained in conformity with the standards, conditions and requirements of Section 4 of the Arbor Pointe Design Manual (as amended from time to time), which is on file with the City Planning Department as such standards, conditions and requirements relate to architectural components.

4.5 **CITY REMEDIES.** If the Landowner breaches this Agreement, then the City may avail itself of any remedy afforded by law and any of the following remedies:

- a.) the City may specifically enforce this Agreement;
- b.) the City may suspend or deny building and occupancy permits for buildings within the Property;

4.6 **NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement, restriction or covenant contained in this Agreement is breached by the Landowner and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the City must be in writing.

4.7 **NO REMEDY EXCLUSIVE.** No remedy 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 the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default 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.

ARTICLE 5 **MISCELLANEOUS**

5.1 **HEADINGS.** The headings in this Agreement are for convenience only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof. It is understood and agreed that this Agreement has been made following negotiation by the parties and it is, therefore, not to be construed against any party because of draftsmanship.

5.2 **MODIFICATIONS.** All modification to this Agreement must be in writing and signed by the parties hereto.

5.3 **ENTIRE UNDERSTANDING.** This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior arrangements and understandings between the parties hereto.

5.4 **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Minnesota.

5.5 **BINDING UPON PROPERTY.** This Agreement runs with the Property and shall be binding upon the Property.

5.6 **BINDING UPON PARTIES AND ASSIGNS.** This Agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

5.7 AMENDMENT AND WAIVER. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

5.8 INCONSISTENCY. If any agreements, covenants or restrictions are inconsistent or if the obligation imposed hereunder are inconsistent, then that provision or term which imposes a greater and more demanding restriction or obligation shall prevail.

5.9 VOLUNTARY AGREEMENT. The Landowner acknowledges and agrees that the Landowner has voluntarily agreed to enter into this Agreement, that the Landowner has consulted with its own private attorney and that the Landowner is willingly making this Agreement.

5.10 NO LIMITATION ON CITY'S ZONING POWER. Nothing contained in this Agreement shall be deemed to limit or restrain the power and authority of the City to exercise its zoning powers with respect to the Property.

The Acceptable Uses are subject to and regulated by the zoning ordinances, zoning regulations and zoning requirements of the City of Inver Grove Heights. To the extent any of the Acceptable Uses are conditional uses or interim uses under the applicable zoning district for the Property, the Landowner must obtain a conditional use permit or interim use permit from the City before using or developing the Property for such conditional uses or interim uses. If the zoning applicable to the Property does not allow any particular Acceptable Use, then the Property shall not be used or developed for that particular Acceptable Use.

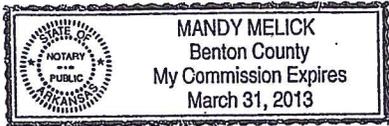
[The remainder of this page has been intentionally left blank.]

STATE OF ARKANSAS)
)
COUNTY OF BENTON) ss.

On this 8 day of August, 2005, before me a Notary Public within and for said County, personally appeared Jed Harrison to me personally known, who being by me duly sworn, did say that Jed Harrison is the Director of Building Development of Wal-Mart Stores, Inc., the Delaware corporation named in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of the Board of Directors and said Jed Harrison acknowledged said instrument to be the free act and deed of the corporation.



Notary Public *Mandy Melick*



**THIS INSTRUMENT WAS
DRAFTED BY:**

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

AFTER RECORDING, 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 PROPERTY

Outlots A and B of Arbor Pointe Commons, according to the plat thereof on file and of record in the office of Dakota County Recorder, Dakota County, Minnesota.

EXHIBIT B

ACCEPTABLE USES

Appliance store
Bakery (retail)
Bank or Savings and Loan (building only)
Bank or Savings and Loan (drive-up service subject to IGH City Code § 515.90, subd. 25)
Barber/Beauty shop
Building Supplies and Housewares (retail only and indoor sales and showroom only)
Clinic (only for human care and medical and dental only)
Daycare facility (a conditional use permit must first be obtained)
Dry cleaning; laundry pick-up stations
Electronic store (retail)
Floor covering stores
Florist – retail sales
Furniture store
Gift shop
Hobby shop
Interior decorating store
Jewelry store
Liquor store (off-sale)
Liquor sales (on-sale but only in conjunction with a restaurant)
Medical and dental clinics
Motel/hotel
Music store
Music studio (non-retail)
Music studio with incidental sales
Off-Street Parking (only as an accessory use to other Acceptable Uses)
Optical/eyewear sales
Outdoor storage (a conditional use permit must first be obtained)

Paint and wallpaper sales

Photo processing with film sales

Photography studio (non-retail)

Photography supply and processing

Picture framing

Professional offices, not within office building but within retail center

Restaurant, not including a fast-food restaurant. The term, "restaurant, not including a fast-food restaurant" means a business establishment whose principal business is the selling of unpackaged food to the customer in a ready-to-consume state, in individual servings, or in nondisposable containers, and where the customers consume these foods while seated at tables or counters located within the building.

Restaurant/Fast Food, without any drive-thru (a conditional use permit must first be obtained). The term, "Restaurant/Fast Food, without any drive-thru" means an establishment that offers quick food service of items already prepared, prepackaged or quickly served where orders are not generally taken at the customer's table but at an order/pickup counter but not or at a drive-thru window. Food may be consumed on-site or carried-out.

Retail, general

Sporting goods store

Tanning salon

Veterinary Emergency Clinic/Hospital (small animal only)

Acceptable Uses also includes uses determined to be substantially similar to those uses listed above pursuant to the procedures and requirements set forth in IGH City Code § 515.40, subd. 8.

Acceptable Uses also includes accessory uses to the above-identified list of Acceptable Uses to the extent such accessory uses are permitted in the City's B-3 Zoning District.

EXHIBIT C
SPECIFIC PROHIBITED USES

Automobile body shop. A place where the following services may be carried out; collision service such as frame, or fender straightening and repair, painting and undercoating of automobiles.

Auto repair, major. The general repair, rebuilding, or reconditioning of engines, transmissions, differentials, motor vehicles, or trailer, including body work, frame work, and major painting service.

Auto repair, minor. The replacement of any part or repair of any part that does not require the removal of the engine head or pan, engine, transmission or differential to passenger automobiles and trucks not in excess of 7,000 pounds gross vehicle weight.

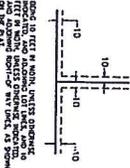
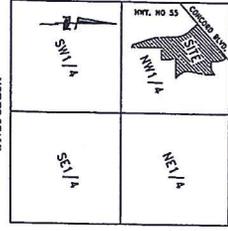
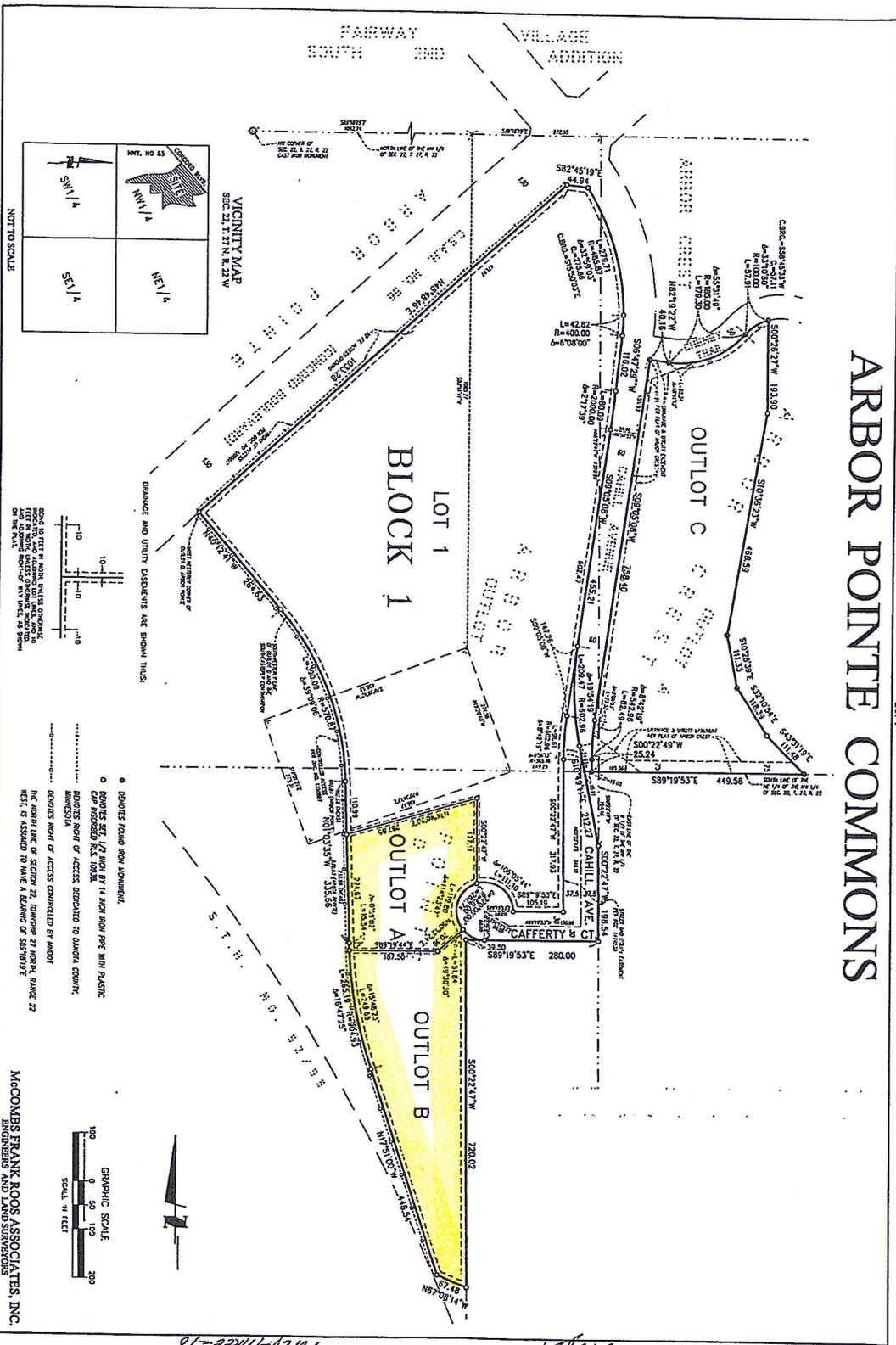
Automobile service station. An establishment where gasoline and other petroleum products are sold and dispensed by a service station attendant and/or self-service. Service stations also include light maintenance activities such as engine tune-ups, minor auto repairs, and lubrication, but exclude Major Auto Repair.

Automobile service center. An establishment in which the retail sale of accessories and services for automobiles are provided as the primary use, including the customary space and facilities for the installation of such commodities on or in such vehicles, but not including the space for facilities for major storage, repair, bumping, painting and refinishing. No petroleum products are sold or dispensed on the premises.

Restaurant, Fast-food With Drive-Thru. An establishment that offers quick food service of items already prepared, prepackaged or quickly served where orders can be taken or delivered at a drive-thru window.

ARBOR POINTE COMMONS

COPY



- DOWNS FROM ROW ADJACENT
 - DOWNSET SET 1/2" HIGH BY 1/4" HIGH ROW PIPE WITH PLASTIC CAP PROTECTED BY 10" DIA. CONCRETE
 - DOWNSET RIGHT OF ACCESS, DEPOSITED TO DAVENIA COUNTY JURISDICTION
 - DOWNSET RIGHT OF ACCESS CONTROLLED BY HOOD
- THE RIGHT OF ACCESS CONTROLLED BY HOOD IS ASSUMED TO HAVE A BEARING OF S89°19'17" E

McCOMBS FRANK ROOS ASSOCIATES, INC.
PLANNERS AND LAND SURVEYORS

SHEET 2 OF 2 SHEETS

8 NUMBER	DRAWING NUMBER	DRAWING NUMBER	DRAWING NUMBER
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OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA

CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2005 AUG 29 A 11:26

JOEL T. BECKMAN, COUNTY RECORDER

BY: *[Signature]* Deputy

FEE 35.50 SURCHARGE 0.50

CASH CHECK ESCROW

WELL CHARGE

CHARGE TO: _____
O/R _____

Seander Law Off.

AGREEMENT RESTRICTING LAND USES

This Agreement is made, effective and entered into this 3rd day of August, 2005, by and between Walter E. Krech, a single person, and Wilfred W. Krech and Mary C. Krech, husband and wife (Landowner) and the City of Inver Grove Heights, a municipal corporation (City). For and in consideration of and based on the recitals, covenants, representations and agreements made herein, the parties do hereby agree as follows.

ARTICLE 1
DEFINITIONS

1.1 TERMS. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 CITY. City means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 LANDOWNER. Landowner means, individually and collectively, Walter E. Krech a single person, and Wilfred W. Krech and Mary C. Krech, husband and wife, and their heirs, successor and assigns.

1.4 PROPERTY. Property means that certain real property located in the City of Inver Grove Heights, County of Dakota, State of Minnesota, as more particularly described on the attached Exhibit A.

1.5 ACCEPTABLE USES. Acceptable Uses means, individually and collectively, those land uses itemized on the attached Exhibit B, subject to and as regulated by the zoning ordinances, zoning regulations and zoning requirements of the City of Inver Grove Heights as amended from time to time. Except to the extent specific definitions are provided on Exhibit B, the Acceptable Uses shall be interpreted, defined and construed according to the City of Inver

Grove Heights zoning ordinances, zoning regulations and zoning requirements as amended from time to time.

1.6 SPECIFIC PROHIBITED USES. Specific Prohibited Uses means those land uses itemized on the attached Exhibit C. Except to the extent specific definitions are provided on Exhibit C, the Specific Prohibited Uses shall be interpreted, defined and construed according to the City of Inver Grove Heights zoning ordinances, zoning regulations and zoning requirements as amended from time to time.

1.7 GENERAL PROHIBITED USES. General Prohibited Uses means all of the permitted uses, conditional uses, interim uses and accessory uses for the zoning district of B-3 General Business District as those particular uses are interpreted, defined and construed according to the City of Inver Grove Heights zoning ordinances, zoning regulations and zoning requirements as amended from time to time, except for the Acceptable Uses (as defined in Section 1.5 hereof).

ARTICLE 2 **RECITALS**

Recital No. 1. Walter E. Krech and Wilfred W. Krech as tenants in common are the fee owners of the Property. Walter E. Krech is a single, unmarried person. Wilfred W. Krech is married to Mary C. Krech.

Recital No. 2. Landowner has prepared various development proposals to develop the Property and Landowner has sought a response by the City with respect to the development proposals.

Recital No. 3. The development proposals contain land uses that are within the Acceptable Uses. None of the development proposals as presented to the City contain Specific Prohibited Uses or General Prohibited Uses.

Recital No. 4. In light of the development proposals that have been submitted, the City and the Landowner are examining a process whereby the City would consider rezoning the Property to B-3 General Business District.

Recital No. 5. The parties acknowledge that an impediment to rezoning the Property to B-3 General Business District is that the B-3 General Business District identifies the Specific Prohibited Uses and General Prohibited Uses as either permitted, conditional, accessory or interim uses within the B-3 General Business District.

Recital No. 6. The Landowner and the City have determined that the Specific Prohibited Uses and General Prohibited Uses are not appropriate uses for the Property.

Recital No. 7. As part of its development proposals, the Landowner has represented to the City that the Specific Prohibited Uses and the General Prohibited Uses are land uses that will not be made, developed or constructed on the Property. Landowner has voluntarily offered to

impose covenants and restrictions on the Property so that the Property is not used for Specific Prohibited Uses and General Prohibited Uses and is not developed or constructed with Specific Prohibited Uses and General Prohibited Uses.

Recital No. 8. The City is willing to consider rezoning the Property B-3 General Business District if such covenants and restrictions are imposed.

Recital No. 9. By this Agreement, the parties desire to impose such restrictions and covenants on the Property.

ARTICLE 3 CITY REVIEW

3.1 **CITY REVIEW.** The City agrees to review and consider a process of rezoning the Property to B-3 General Business District.

ARTICLE 4 RESTRICTIONS ON LAND USE

4.1 **RESTRICTIONS ON PROPERTY RELATING TO SPECIFIC PROHIBITED USES.** The Landowner does hereby contract and agree with the City and does hereby impose a restriction on the Property and declare that the Property will not be used for Specific Prohibited Uses and the Property will not be developed or constructed with Specific Prohibited Uses.

4.2 **RESTRICTIONS ON PROPERTY RELATING TO GENERAL PROHIBITED USES.** The Landowner does hereby contract and agree with the City and does hereby impose a restriction on the Property and declare that the Property will not be used for General Prohibited Uses and the Property will not be developed or constructed with General Prohibited Uses.

4.3 **RESTRICTIONS ON PROPERTY RELATING TO ACCEPTABLE USES.** The Landowner agrees that the Property will only be developed and used for Acceptable Uses. The Acceptable Uses are subject to and regulated by the zoning ordinances, zoning regulations and zoning requirements of the City of Inver Grove Heights. To the extent any of the Acceptable Uses are conditional uses or interim uses under the applicable zoning district for the Property, the Landowner must obtain a conditional use permit or interim use permit from the City before using or developing the Property for such conditional uses or interim uses. If the zoning applicable to the Property does not allow any particular Acceptable Use, then the Property shall not be used or developed for that particular Acceptable Use.

4.4 **RESTRICTIONS ON PROPERTY RELATING TO ARBOR POINTE DESIGN MANUAL.** The Landowner does hereby contract and agree with the City and does hereby impose a restriction on the Property and declare that buildings and structures on the Property will be developed, constructed and maintained in conformity with the standards, conditions and requirements of Section 4 of the Arbor Pointe Design Manual (as amended from

time to time), which is on file with the City Planning Department as such standards, conditions and requirements relate to architectural components.

4.5 **CITY REMEDIES.** If the Landowner breaches this Agreement, then the City may avail itself of any remedy afforded by law and any of the following remedies:

- a.) the City may specifically enforce this Agreement;
- b.) the City may suspend or deny building and occupancy permits for buildings within the Property;

4.6 **NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement, restriction or covenant contained in this Agreement is breached by the Landowner and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the City must be in writing.

4.7 **NO REMEDY EXCLUSIVE.** No remedy 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 the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default 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.

ARTICLE 5 **MISCELLANEOUS**

5.1 **HEADINGS.** The headings in this Agreement are for convenience only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof. It is understood and agreed that this Agreement has been made following negotiation by the parties and it is, therefore, not to be construed against any party because of draftsmanship.

5.2 **MODIFICATIONS.** All modification to this Agreement must be in writing and signed by the parties hereto.

5.3 **ENTIRE UNDERSTANDING.** This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior arrangements and understandings between the parties hereto.

5.4 **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Minnesota.

5.5 **BINDING UPON PROPERTY.** This Agreement runs with the Property and shall be binding upon the Property.

5.6 **BINDING UPON PARTIES AND ASSIGNS.** This Agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

5.7 **AMENDMENT AND WAIVER.** The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

5.8 **INCONSISTENCY.** If any agreements, covenants or restrictions are inconsistent or if the obligation imposed hereunder are inconsistent, then that provision or term which imposes a greater and more demanding restriction or obligation shall prevail.

5.9 **VOLUNTARY AGREEMENT.** The Landowner acknowledges and agrees that the Landowner has voluntarily agreed to enter into this Agreement, that the Landowner has consulted with its own private attorney and that the Landowner is willingly making this Agreement.

5.10 **NO LIMITATION ON CITY'S ZONING POWER.** Nothing contained in this Agreement shall be deemed to limit or restrain the power and authority of the City to exercise its zoning powers with respect to the Property.

The Acceptable Uses are subject to and regulated by the zoning ordinances, zoning regulations and zoning requirements of the City of Inver Grove Heights. To the extent any of the Acceptable Uses are conditional uses or interim uses under the applicable zoning district for the Property, the Landowner must obtain a conditional use permit or interim use permit from the City before using or developing the Property for such conditional uses or interim uses. If the zoning applicable to the Property does not allow any particular Acceptable Use, then the Property shall not be used or developed for that particular Acceptable Use.

[The remainder of this page has been intentionally left blank.]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that part of the Westerly 205 feet of the Easterly 280 feet of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 22, Township 27, Range 22, Dakota County, Minnesota, lying Northerly of the Northeasterly right-of-way line of State Trunk Highway No. 55 and U.S. Highway No. 52 and lying Southerly of the North 353 feet thereof.

Pr. SWNW, (A.)
22-27-22

EXHIBIT B

ACCEPTABLE USES

Appliance store
Bakery (retail)
Bank or Savings and Loan (building only)
Bank or Savings and Loan (drive-up service subject to IGH City Code § 515.90, subd. 25)
Barber/Beauty shop
Building Supplies and Housewares (retail only and indoor sales and showroom only)
Clinic (only for human care and medical and dental only)
Daycare facility (a conditional use permit must first be obtained)
Dry cleaning; laundry pick-up stations
Electronic store (retail)
Floor covering stores
Florist – retail sales
Furniture store
Gift shop
Hobby shop
Interior decorating store
Jewelry store
Liquor store (off-sale)
Liquor sales (on-sale but only in conjunction with a restaurant)
Medical and dental clinics
Motel/hotel
Music store
Music studio (non-retail)
Music studio with incidental sales
Off-Street Parking (only as an accessory use to other Acceptable Uses)
Optical/eyewear sales
Outdoor storage (a conditional use permit must first be obtained)

Paint and wallpaper sales

Photo processing with film sales

Photography studio (non-retail)

Photography supply and processing

Picture framing

Professional offices, not within office building but within retail center

Restaurant, not including a fast-food restaurant. The term, "restaurant, not including a fast-food restaurant" means a business establishment whose principal business is the selling of unpackaged food to the customer in a ready-to-consume state, in individual servings, or in nondisposable containers, and where the customers consume these foods while seated at tables or counters located within the building.

Restaurant/Fast Food, without any drive-thru (a conditional use permit must first be obtained). The term, "Restaurant/Fast Food, without any drive-thru" means an establishment that offers quick food service of items already prepared, prepackaged or quickly served where orders are not generally taken at the customer's table but at an order/pickup counter but not or at a drive-thru window. Food may be consumed on-site or carried-out.

Retail, general

Sporting goods store

Tanning salon

Veterinary Emergency Clinic/Hospital (small animal only)

Acceptable Uses also includes uses determined to be substantially similar to those uses listed above pursuant to the procedures and requirements set forth in IGH City Code § 515.40, subd. 8.

Acceptable Uses also includes accessory uses to the above-identified list of Acceptable Uses to the extent such accessory uses are permitted in the City's B-3 Zoning District.

EXHIBIT C
SPECIFIC PROHIBITED USES

Automobile body shop. A place where the following services may be carried out; collision service such as frame, or fender straightening and repair, painting and undercoating of automobiles.

Auto repair, major. The general repair, rebuilding, or reconditioning of engines, transmissions, differentials, motor vehicles, or trailer, including body work, frame work, and major painting service.

Auto repair, minor. The replacement of any part or repair of any part that does not require the removal of the engine head or pan, engine, transmission or differential to passenger automobiles and trucks not in excess of 7,000 pounds gross vehicle weight.

Automobile service station. An establishment where gasoline and other petroleum products are sold and dispensed by a service station attendant and/or self-service. Service stations also include light maintenance activities such as engine tune-ups, minor auto repairs, and lubrication, but exclude Major Auto Repair.

Automobile service center. An establishment in which the retail sale of accessories and services for automobiles are provided as the primary use, including the customary space and facilities for the installation of such commodities on or in such vehicles, but not including the space for facilities for major storage, repair, bumping, painting and refinishing. No petroleum products are sold or dispensed on the premises.

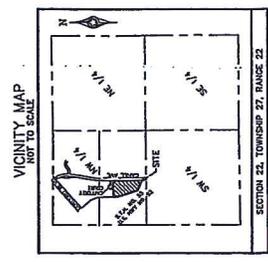
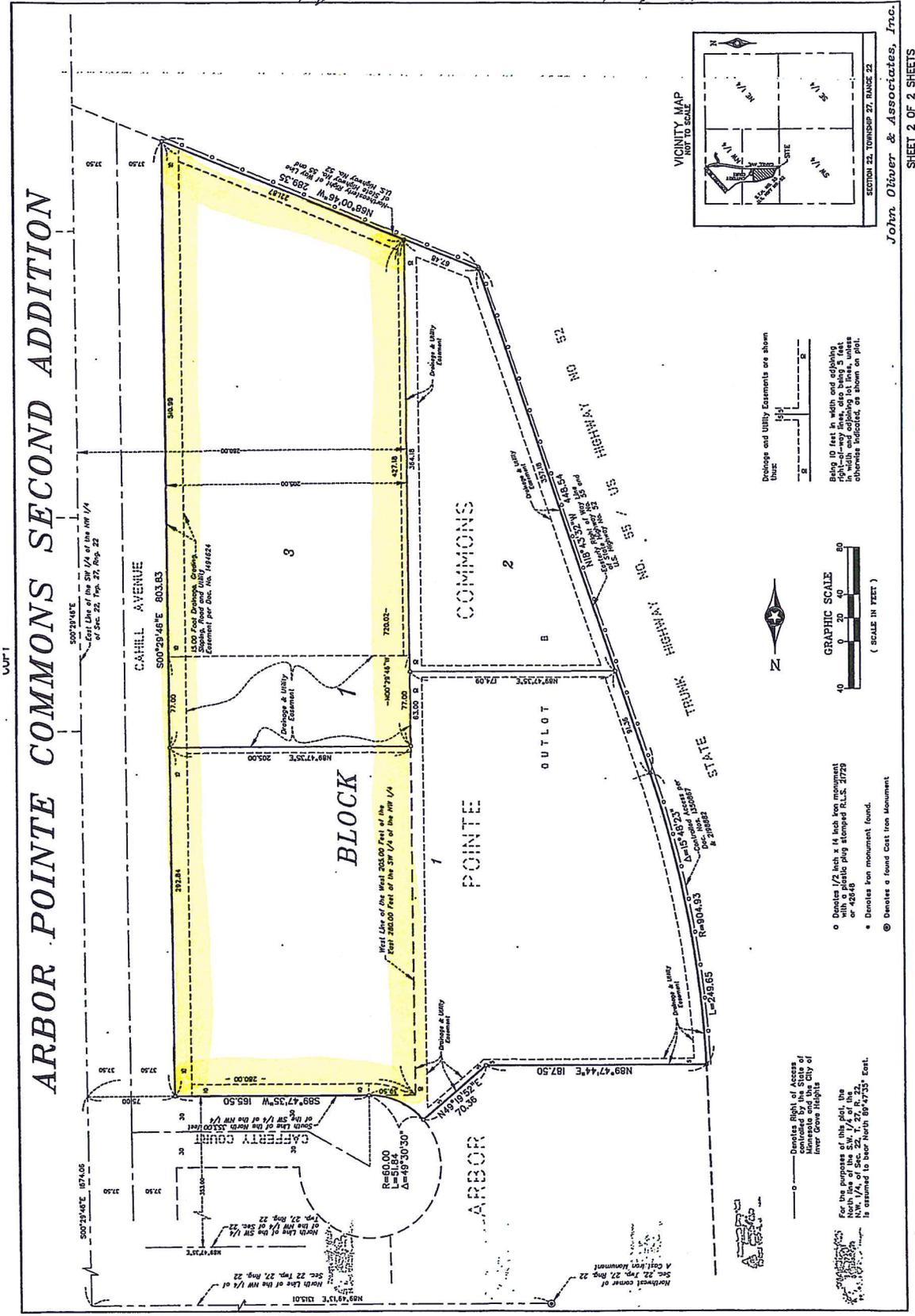
Restaurant, Fast-food With Drive-Thru. An establishment that offers quick food service of items already prepared, prepackaged or quickly served where orders can be taken or delivered at a drive-thru window.

NEW HAVEN, CONNECTICUT
 PLANNING DEPARTMENT
 714-3-4232

DAVID PRODUCTS • NEW HAVEN, CONNECTICUT
 REGISTERED PROFESSIONAL ENGINEER

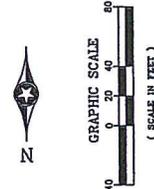
DAVID PRODUCTS • NEW HAVEN, CONNECTICUT
 REGISTERED PROFESSIONAL ENGINEER

DAVID PRODUCTS • NEW HAVEN, CONNECTICUT
 REGISTERED PROFESSIONAL ENGINEER



Drainage and Utility Easements are shown
 thus:

Being 10 feet in width and adjoining
 right-of-way lines, also being 5 feet
 wide, and being 5 feet from the
 centerline of the right-of-way lines,
 otherwise indicated, as shown on plan.



- Denotes 1/2 inch x 14 inch iron monument with a plastic plug stamped R.L.S. 3/729 or 42846
- Denotes iron monument found.
- ⊙ Denotes a found cast iron monument

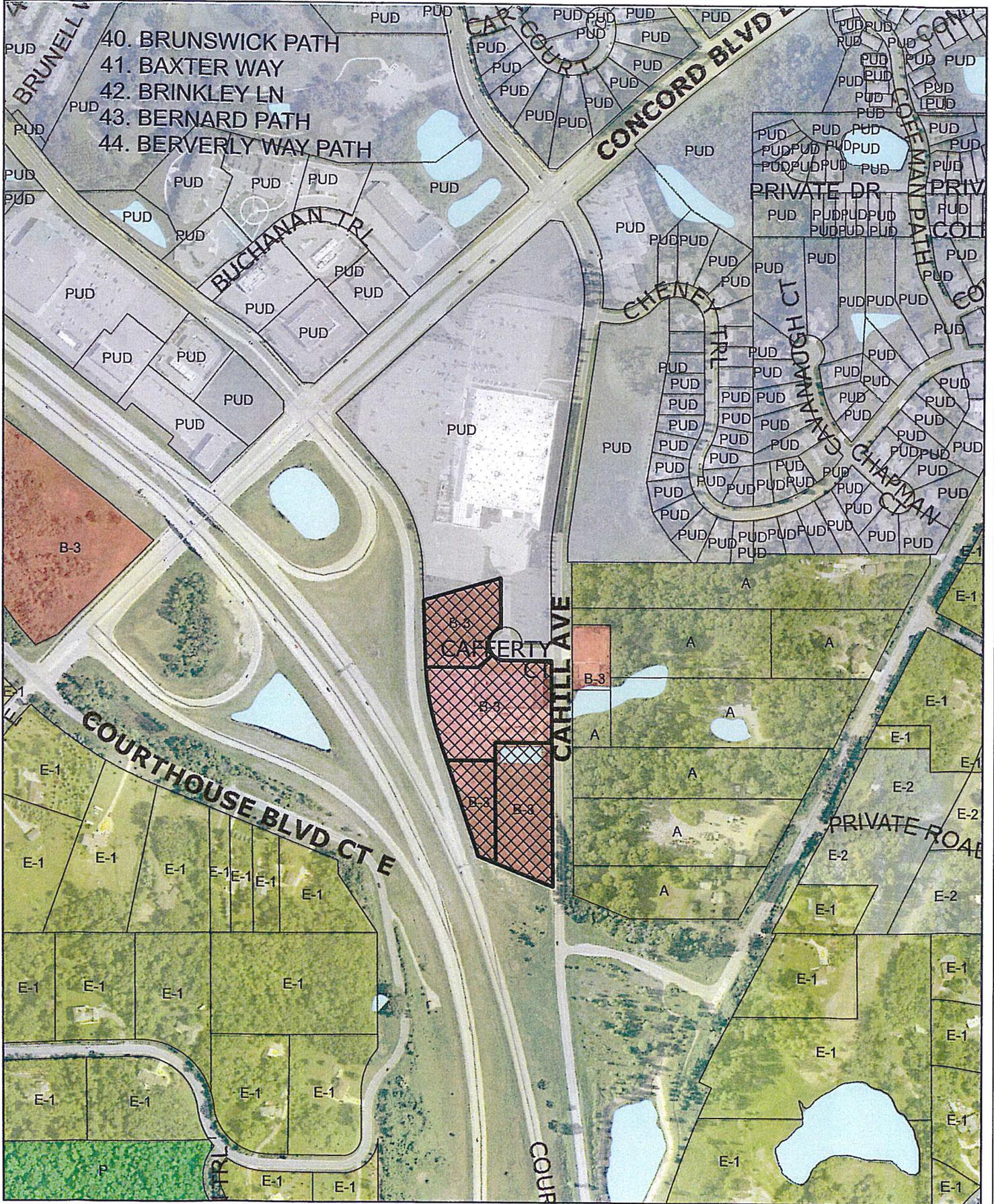
Denotes Right of Access Monument for the City of Inver Grove Heights

For the purposes of this plan, the Northwest corner of the monument at the intersection of the NW 1/4 of Sec. 22, T. 27, R. 22, N.W. 1/4 of Sec. 22, T. 27, R. 22, is assumed to bear North 89°57'35\"/>

John Oliver & Associates, Inc.
 SHEET 2 OF 2 SHEETS



Properties That Were Removed From the Arbor Pointe PUD in 2005



**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE #789 (ARBOR POINTE PUD
ORDINANCE AND SUBSEQUENT AMENDMENTS THERETO) RELATING TO A
MODIFICATION OF ALLOWED USES IN ALL COMMERCIAL ZONING
DISTRICTS**

The City of Inver Grove Heights hereby ordains as follows:

SECTION I. Amendment. Section VI. B. TABLE 1 PERMISSIBLE USES
table is hereby amended to read as follows:

**TABLE I
PERMISSIBLE USES**

<u>Development District</u>						<u>Allowance of Use</u>
NB = Neighborhood Business District						P = Permitted Use
CSC = Community Shopping Center District						C = Conditional Use
R & D = Research and Development District						A = Accessory Use
LB = Limited Business District						(-) = Prohibited Use
HOTEL = Hotel District						
<u>Type of Use</u>	<u>LB</u>	<u>NB</u>	<u>CSC</u>	<u>R & D</u>	<u>HOTEL</u>	
AMUSEMENT DEVICES (PINBALL, VIDEO GAMES, BILLIARDS, ETC.):						
Indoor	-	A	P	A	A	
Outdoor	-	-	-	-	-	
ANIMALS:						
Clinic, Small	P	-	P	-	-	

TABLE I
PERMISSIBLE USES (CONTINUED)

<u>Type of Use</u>	<u>LB</u>	<u>NB</u>	<u>CSC</u>	<u>R & D</u>	<u>HOTEL</u>
Clinic, Large & Hospital	-	-	-	-	-
Incineration	-	-	P	-	-
Kennel, Indoor	-	-	P	-	A
Kennel, Outdoor	-	-	-	-	-
ANTENNAS & SATELLITE DISHES:					
Receivers	A	A	A	A	A
Transmitters	-	-	-	-	-
AUTOMOBILE:					
Auto Body, Upholstery	-	-	-	-	-
Gasoline Sales	-	C	C	A	-
Minor Repair (Indoor only)	-	C	P	-	-
Major Repair	-	-	-	-	-
Sales and Rental, Indoor	-	-	P	-	-
Sales and Rental, Outdoor	-	-	C	-	-
Wash, Drive Thru & Self Serve	-	P A	P A	A	-
BAKERY (RETAIL):	-	P	P	-	A
BANK, SAVINGS & LOAN:					
Building Only	P	P	P	-	-
Drive-up Service	P	P	P	-	-
BILLBOARD:	-	-	-	-	-
BINGO PARLOR:	-	-	P	-	-
BOAT & MARINE:					
Indoor Sales, Supply & Service	-	-	P	-	-
Outdoor Storage & Display	-	-	C	-	-
BUILDING SUPPLIES & HOUSEWARES (RETAIL):					
Indoor Sales or Showroom	-	P	P	-	-
Outdoor Sales and Storage	-	-	C	-	-
BUS TERMINAL:					
Passenger Terminal Only	-	-	C	C	-
With Storage & Repair	-	-	-	-	-
CAFETERIA:	-	-	P	A	A
CATALOG STORE:	-	-	P	-	-
CLINIC FOR HUMAN CARE:	P	P	P	-	-
CLUBS & LODGES:					
Private or Public	-	-	P	-	-
COMMERCIAL RECREATION:					
Indoor (i.e. Bowling Alley)	-	-	P	-	A
Outdoor (i.e. Mini-Golf)	-	-	C	-	C
COMMUNITY CENTER:					
Indoor	-	P	P	-	A
Outdoor	-	-	P	-	-
CONFERENCE FACILITY:	-	-	-	P	P
CONTRACTORS' YARD:					
Indoor	-	-	P	-	-
Outdoor Storage	-	-	-	-	-
CONVENIENCE STORE:	-	P	P	-	-
With gasoline sales	-	C	C	-	-

TABLE I
PERMISSIBLE USES (CONTINUED)

<u>Type of Use</u>	<u>LB</u>	<u>NB</u>	<u>CSC</u>	<u>R & D</u>	<u>HOTEL</u>
CONVENTION HALL:	-	-	P	P	A
DAY CARE CENTER:	P	P	P	A	A
DEPARTMENT/DISCOUNT STORE:	-	-	P	-	-
DRY CLEANING/LAUNDRY MAT:	-	P	P	-	-
ELECTRONICS STORE (RETAIL):	-	P	P	-	-
EQUIPMENT RENTAL:					
Indoor	-	-	P	-	-
Outdoor Storage or Display	-	-	C	-	-
FLORAL SHOP:	-	P	P	-	A
GREENHOUSE & NURSERY:					
Indoor	-	-	P	-	-
Outdoor Sales & Storage	-	-	C ^A	-	-
GROCERY (RETAIL):	-	P	P	-	-
HEALTH CLUB:					
Indoor	-	-	P	P	A
Outdoor Activity	-	-	P	C	A
HELIPORT:	-	-	C	C	-
HOTEL OR APARTMENT HOTEL	-	-	-	-	P
LABORATORY (MEDICAL, DENTAL, RESEARCH, ETC.)					
Indoor	P	-	-	P	-
Outdoor Testing	-	-	-	C	-
LIQUOR:					
Off-Sale	-	P	P	-	A
On-Sale	-	-	P	-	P
LOTTERY TICKET SALES:	-	P	P	-	P
MANUFACTURING:	-	-	-	A	-
MORTUARY:	P	-	P	-	-
MOTEL:	P	-	-	P	-
MUSEUM:	P	-	P	P	-
NURSING HOME:	-	-	P	-	-
OFFICE:					
Administrative, Professional, Service & Government	P	P	P	P	P
OPEN MARKET:					
7-Day Limit	-	-	P	-	-
OUTDOOR (SIDEWALK) SALE:					
3-Day Limit	-	P	P	-	P
PARKING:					
Open Lot or Structure	A	A	A	A	A
Structure	-	-	C	C	C
PERSONAL SERVICE:					
Barber, Beauty, Tanning	-	P	P	A	A
PHOTOGRAPHY:					
Developing (Retail)	-	P	P	-	A
Studio	-	P	P	-	-
POSTAL OFFICE:					
Principal Use	-	-	P	A	A

TABLE I
PERMISSIBLE USES (CONTINUED)

<u>Type of Use</u>	<u>LB</u>	<u>NB</u>	<u>CSC</u>	<u>R & D</u>	<u>HOTEL</u>
Branch Service	A	A	A	A	A
PRINTING (RETAIL):	-	-	P	A	A
REPAIR (INDOOR):					
Small Engine, Bicycle, Appliances, Etc.	-	C	P	-	-
Outdoor Storage or Display	-	-	-	-	-
RESIDENTIAL USE FOR SECURITY ONLY:	A	-	A	A	A
RESTAURANT:					
Drive-In or Drive Thru	-	-	P	-	-
Fast Food	-	-	P	-	-
Sit-Down	-	C	P	A	P
RETAIL SALES & STORES:					
Unless Otherwise Specified Herein	-	P	P	-	A
SPORTS ARENA:	-	-	C	-	-
STONE & MONUMENT SALES:					
Indoor and Outdoor Display	-	-	P	-	-

Resolution No. 05-12 titled, RESOLUTION APPROVING THE FINAL PUD DEVELOPMENT PLANS FOR A WELLS FARGO BANK BUILDING ON LOT 2, BLOCK 1, INVER GROVE MARKET, subject to conditions as amended with Condition No. 11 to read that the six southern most parking stall be removed.

Ordinance No. 1101 titled, AN ORDINANCE AMENDING SECTION 151 OF THE CITY CODE RELATED TO THE PLANNED UNIT DEVELOPMENT ZONING DISTRICT IN THE SOUTHEAST QUADRANT OF HIGHWAYS 52 AND 494, by Adding the Bank to the list of Permitted Uses and to Assign a Peak PM Hour Traffic Generation Volume of 208 to the property legally described as Lot 2, Block 1, Inver Grove Market.

Ayes: 4 (Grannis, Tourville, Klein, Piekarski Krech)
 Nays: 1 (Madden) Motion carried.

7.B. CITY OF INVER GROVE HEIGHTS; Request to Consider First Reading of an Ordinance Amending the Arbor Pointe PUD Ordinance (Ord. 789 and Amendments thereto) Relating to the List of Allowed Uses in all Commercial Zoning districts with the intent of Deleting some of the Uses

Mr. Link explained that Council directed staff to review the allowed uses within the commercial districts in Arbor Pointe to determine if there are any uses that would be detrimental to the continued development of the area and should be eliminated. He explained that due to the areas excellent access and visibility it would be appropriate to encourage a wide variety of retail and service uses in this area. He noted the direction was broad, although it was more specific about eliminating some auto related uses. When reviewing the list of permitted uses, staff considered uses that no longer fit in this area; such as those related to vehicle repair, sales or rental, boat sales, and uses with outdoor storage. He noted a list was prepared that shows uses suggested for possible elimination. He stated that most of the uses on the suggested list are low intensity with open storage or sales and may not be the most efficient use of land for this particular area of the City; although the uses cited for removal are allowed in a number of other areas in the City. He displayed a map showing the properties affected by the ordinance amendment.

Mr. Link advised that one letter was received the owners of Arbor Pointe 14th Addition, located near the Walgreens development, objecting to the changes proposed in the ordinance; a copy of the letter from their attorney was included with the agenda materials. He deferred to the City Attorney to address the content of the letter at a later date as to whether the proposed changes, if made, apply to Arbor Pointe 14th Addition, and if so, when they apply. He explained the property owners are not present this evening but have advised staff they will be here for the second reading of the proposed amendment.

Planning Commission and staff recommend approval of the first reading of the ordinance amendment as presented.

Councilmember Madden questioned if the ordinance amendment would affect the Discount Tire Store recently approved. Mr. Link responded no.

Councilmember Piekarski Krech asked if the map shown this evening is an integral part of the proposed ordinance amendment. She noted that if the map is part of the amendment, Council needs to address Mr. Krech's concerns relating to his property. Mr. Link responded the map is part of the proposed amendment, but pointed out the proposed changes do not affect the zoning of the property, only the permitted uses for the parcel.

Willie Krech, 9574 Inver Grove Trail, stated he recalls that the parcel received a B zoning classification at the time the City was revising the zoning in this area.

Mr. Link stated staff would research the matter. He explained that under the neighborhood business classification there are only two uses suggested for removal; a stand-alone car wash and minor auto repair.

Councilmember Piekarski Krech reiterated her concern that if the map pertains to the proposed ordinance amendment, it should correctly reflect the zoning for the properties shown. Mr. Link stated that there are two more readings for the proposed ordinance and suggested that as part of the action taken this evening, Council could direct staff to research the correct zoning.

Councilmember Piekarski Krech asked why Drive-thru and Drive-In Restaurants are not listed as Conditional Uses. Mr. Link stated that Council has the option to require a CUP, but noted that all restaurants are permitted uses in the Community Neighborhood Business zoning at this time.

Councilmember Madden recalled extensive discussion of zoning in this area when he served on the Planning Commission and recalled discussing R & D Corporate and questioned what uses fall under that designation.

Mr. Link explained that the Research & Development (R & D) is an office use designation and he does not recall the discussion related to the parcel in questions, but advised that staff would research the matter.

There was discussion regarding the zoning of Mr. Krech's brother's property and how the zoning may have changed when the WalMart development occurred. Mr. Link advised that the property owned by Mr. Krech's brother on the south side of the highway interchange is zoned B-3.

Mr. Krech reiterated that he has a prospective client interested in constructing a Tractor Supply store on the property and the store is a permitted use with B-3 zoning. He suggested a representative from the Tractor Supply store give a brief presentation of the project.

Commercial Real Estate Developer Barry Bratland provided a brief overview of the proposed development and displayed photos of the store front and outdoor storage area. He explained that he has been looking in this area for 12 months and has been in negotiations for approximately 6 months to secure three acres of land in this area. He stated he was in the process of drafting a concept site plan and negotiating a purchase agreement when he was informed of the possible ordinance amendment by the Planning Department. He indicated he understands this area is visible and could be classified as a "gateway" to the City and that is why Council has concerns regarding proposed uses in the area.

Councilmember Klein noted the proposed development would be close to the golf course and questioned if Mr. Bratland had considered any other parcels in the area. Mr. Bratland responded that some of the lots he had reviewed were too narrow and long and the parcel on the other side of the interchange does not have sewer and water utility services; he stated he was unsure if the City would allow commercial development without utilities or if the utilities could be installed at a later date. He noted there are approximately three sites in the area that could be used for the store.

Councilmember Madden stated he would not favor this type of use close to the golf course. Councilmember Klein agreed.

Mayor Tourville noted that Mr. Bratland has received input from Council and suggested that Council continue the discussion of the ordinance amendment.

Mr. Bratland thanked Council for their time.

Mayor Tourville suggested that staff research the zoning of the properties in the area and provide a map that reflects the current zoning designations.

Councilmember Klein pointed out that in the City of Eagan they have grouped the uses into quadrants when PUD development occurs and that is what he wished to accomplish in this area. Mayor Tourville indicated that would have to occur in the initial planning stages.

Mayor Tourville asked if Council had to formally receive the letter from the property owner. Mr. Kuntz responded no, since the letter was distributed with the agenda materials.

Mr. Kuntz explained that he has been in contact with the legal counsel for the property owner regarding Outlots C & D that are part of the Walgreens development. He noted that the property owner and his attorney would be present at the next meeting and that they have indicated they would rather not have the suggested uses deleted. He further noted there is a legal question as to the title of Outlots C & D and that he will be forwarding a letter to Council addressing the issue of the outlots this week.

Mayor Tourville asked if staff had reviewed the changes with the Chamber Local Issues group. Mr. Link responded no.

Mayor Tourville noted that it was the intent of Council to proceed with the first reading of the ordinance and discuss any issues at the second reading.

Mr. Kuntz explained that in discussions with the attorney representing the property owner who sent the letter opposing the amendment, it was his understanding that an application to re-plat the property may be filed within the next seven days and that he is not aware of any other pending applications that would be affected by the proposed amendment.

Councilmember Piekarski Krech stated she would prefer to initiate action on the first reading this evening rather than delay the matter; she noted that if necessary the second reading could be postponed.

Councilmember Madden disagreed and stated he would prefer to have more information on the property zoning before the first reading.

Councilmember Piekarski Krech pointed out it would be preferable to initiate the first reading prior to any formal applications being filed for development in this area.

Mayor Tourville commented that the ordinance may not be in place prior to applications being filed. Mr. Kuntz explained that if the three readings are accomplished during January and February and the ordinance is published in March, the new ordinance would be in place to govern any application filed within the 45 day period.

Councilmember Grannis agreed that the first reading should be held this evening in order to get the ordinance in place and prevent any further undesirable uses.

Councilmember Madden indicated that he would support the first reading based on the discussion.

Mayor Tourville asked if there were any further comments from the audience and there was no response.

Motion by Piekarski Krech, seconded by Grannis, to approve the First Reading of an Ordinance Amending the Arbor Pointe PUD Ordinance (Ord. 789 and Amendments thereto) Relating to the List of Allowed Uses in all Commercial Zoning districts with the intent of Deleting some of the Uses

In discussion, Councilmember Klein asked if staff could review the possibility of the "pods" development that has been utilized in Eagan. Mr. Willis noted that the ordinance for development in Arbor Pointe was established several years ago and it is not possible to use that development premise in this area of the City. Mayor Tourville agreed that the City would have had to put the pods in place during the initial application stage of the Arbor Pointe development.

Mr. Krech asked what he would have to do to change the zoning on his parcel. Councilmember Piekarski Krech suggested that he wait until staff has reviewed the matter to determine the correct zoning for the parcel.

Ayes: 5

Nays: 0 Motion carried.

7.C. CITY OF INVER GROVE HEIGHTS; Request to Consider Resolution Ordering Preparation of Report for City Project No. 2005-09D1, 2005 Pavement Management Program, Albavar Path

Mr. Thureen explained the proposed rural street reconstruction project would consist of full-depth reclamation, bituminous paving, re-grading and other drainage improvements, restoration and appurtenances. He advised the project location is on Albavar Path from Akron Avenue to Cliff Road and on 112th Court West. He stated the project would be funded from the Pavement Management Fund and special assessment to the benefited properties; the cost share proportion would be determined using the Pavement Management Program funding policy.

Staff recommends approval of the resolution authorizing preparation of the feasibility study.

Motion by Piekarski Krech, seconded by Klein, to adopt Resolution No. 05-13 titled, RESOLUTION ORDERING PREPARATION OF REPORT FOR CITY PROJECT NO. 2005-09D1, 2005 PAVEMENT MANAGEMENT PROGRAM – RURAL STREET RECONSTRUCTION, AS INITIATED BY THE CITY COUNCIL, on Albavar Path from Akron Avenue to Cliff Road and on 112th Court West.

**RECOMMENDATION TO
CITY OF INVER GROVE HEIGHTS**

TO: Mayor and City Council of Inver Grove Heights
FROM: Planning Commission
DATE: April 19, 2005
SUBJECT: CITY OF INVER GROVE HEIGHTS – CASE NO. 05-24PAZ

Reading of Notice

Commissioner Roberts read the request to approve a Comprehensive Plan Amendment to change the land use designation of the parcels from O, Office to CC, Community Commercial, and a rezoning to remove the parcels from the Arbor Pointe PUD Ordinance No. 789 and rezone to B-3, General Business for the property located at the corner of Cahill Avenue and Cafferty Court. 66 notices were mailed.

Presentation of Request

Allan Hunting, Associate Planner, explained the request as detailed in the report. He advised that City Council directed staff to initiate a public hearing for the rezoning and Comprehensive Plan amendment for three parcels; one owned by Willi Krech and the other two owned by Wal-Mart. The request includes rezoning the parcels by removing them from the Arbor Pointe PUD Ordinance and rezoning them from R&D, Research and Development and LB, Limited Business to B-3, General Business and changing the Comprehensive Plan Land Use Designation of the three parcels from O, Office to CC, Community Commercial. A report was provided which included background on the topic for the Planning Commission to make a recommendation.

Commissioner Simon noted there was no signage posted on the property advising the public of the proposed land use changes.

Mr. Hunting advised that a sign was requested and should have been in place.

Commissioner Mandell questioned whether the parcels should be removed from the Arbor Pointe PUD Ordinance as they would then no longer be required to adhere to the design standards of Arbor Pointe.

Mr. Hunting stated that if the parcels were changed to B-3 they would no longer be required to adhere to the design manual of the Arbor Pointe PUD.

Chair Bartholomew asked for a brief background on why the property was originally zoned R&D.

Tom Link, Director of Community Development, advised that the property was acquired as part of the improvements to the Arbor Pointe area interchange. The City had no need for it and therefore sold it. At the time it was thought that the uses associated with R & D would be more consistent with the uses anticipated for that area.

Opening of Public Hearing

Chris Riess, 9281 Cheney Trail, stated that it was normal practice to consider a rezoning/comprehensive plan change only after receiving a specific request and questioned why

the Planning Commission was asked to discuss this change without an actual application. He urged the Commission to thoughtfully discuss this matter rather than considering it a directive from City Council.

Chair Bartholomew asked staff how this request got to them without an actual application.

Mr. Link stated that during the recent Arbor Pointe ordinance amendment regarding eliminating some uses, Willi Krech questioned the correct zoning of the "Krech Garden Center Parcel" as it was his understanding that it was zoned B-3. Staff reviewed the planning file on this property and found that the property was rezoned from B-3 to R & D and LB in 1998 before the property was deeded to Mr. Krech. At that point City Council directed staff to initiate the rezoning and Comprehensive Plan amendment and present it to the Planning Commission for discussion.

Commissioner Simon asked how the Wal-Mart sites then got attached to the application.

Mr. Link stated that one of the uses proposed for the Krech property, Tractor Supply Company (TSC), would need the Wal-Mart property as well as the Willi Krech property and it was decided that the parcels needed to be looked at as a group instead of individual parcels.

Commissioner Simon asked if all properties would be purchased by the same person, to which Mr. Link stated not necessarily.

Commissioner Simon asked why the City would rezone a parcel if there was no specific proposal for it.

Mr. Link stated that the City has the authority to change zoning as it desires, not only when considering a specific application. He added that the basic questions the Commission should discuss were if it would be more appropriate to rezone the property to B-3 rather than the current Office and R&D designation, and should it be inside or outside of the Arbor Pointe PUD.

Commissioner Simon asked why the parcel on the north side of Cafferty Court would not be changed also.

Mr. Link advised that the parcel in question had an open space easement over it as part of the open space requirements for the Wal-Mart store and would remain as is.

Mr. Hunting advised also that it was not a separate parcel, but was actually part of the Wal-Mart lot.

Commissioner Mandell stated he was reluctant to lose another potential restaurant site to a Tractor Supply Store. He added that the plan appeared to have a lot of outside storage.

Vance Grannis, representing Mr. Krech, 1260 Yankee Doodle Road, Eagan, stated that originally hotels were planned for the existing Walgreen's site and therefore it was thought that Office and R&D would be a compatible use. That concept later vanished from the site, making Office and R&D designations no longer practical. He stated it was Mr. Krech's understanding that Council had communicated that his parcel would be changed back to B-3, but when staff checked the minutes they couldn't find documentation of that. He stated that at that time

Council decided to initiate the rezoning rather than ask Mr. Krech to apply for it, and that Council thought it made sense to keep the entire area together rather than rezoning just the Krech piece. He stated that Mr. Krech has been marketing his property for years, but that potential buyers have been unwilling to go through the process of rezoning the property for a retail, restaurant, etc. use. He added that the Tractor Supply store being discussed for the site would be a different style from the one in South St. Paul, and added that the other parcel is being actively marketed for a sit-down restaurant. Mr. Grannis then provided a diagram of the area TSC would likely occupy.

Commissioner Gooch asked how the site would be accessed, to which Mr. Grannis advised via Cahill Avenue to Cafferty Court.

Barry Brottlund, coordinator for TSC, 3643 Lincoln Street NE, Minneapolis, explained how the configuration of the property made it difficult for most businesses to fit on the property, therefore prompting them to join the two properties and replat them in such a manner that all the businesses on the property could face the traffic stream. He stated that TSC was waiting to make application until after they received the proper zoning necessary to accommodate their use.

Commissioner Wippermann asked if the rezoning was needed for the outdoor storage.

Mr. Brottlund stated that outdoor storage was an essential part of their business and would be conditionally permitted in the B-3 zoning.

Commissioner Wippermann asked if the outdoor storage would be kept within the wrought iron fence shown on the preliminary plan, to which Mr. Brottlund stated that it would with the one exception of some seasonal items that would be displayed during the day on the walkway in front of the building (small lawn tractors, etc.).

Commissioner Gooch asked if TSC would be willing to adhere to the design standards of Arbor Pointe.

Mr. Brottlund stated they were flexible to a certain degree on the design criteria. Mr. Brottlund asked if all the commercial buildings in Arbor Pointe had identical exteriors.

Commissioner Roberts stated that all the commercial buildings in Arbor Pointe were very similar, and that the Commission felt very strongly about maintaining the continuity of the area.

Mr. Brottlund asked Commissioner Roberts if he would object to an Olive Garden or similar restaurant coming in if they refused to change their appearance, to which Commissioner Roberts stated he would, adding that in his opinion any company seriously interested in building in the area would change their design standards to fit the criteria.

Mr. Brottlund asked if Arbor Pointe was governed by the City or the residents, to which Mr. Link replied that the City ultimately had control over the architectural design of the buildings in Arbor Pointe.

Commissioner Mandell stated he doubted that a restaurant such as Olive Garden would walk

away because of architectural standards, and stated that in his opinion an Olive Garden would be well received, in part because of the design standards in place.

Chair Bartholomew asked if fast food could be eliminated from B-3 by the conditional use.

Mr. Hunting replied that if it was allowed by conditional use, and the applicant met the performance standards of the ordinance and conditional use criteria, typically it would be hard to deny the request. He advised that eliminating a use would have to be done by ordinance amendment.

Chair Bartholomew asked if the same principle applied to outside storage, to which Mr. Hunting replied that the City would have some flexibility in setting standards regarding screening, location, amount, etc. for outdoor storage

Commissioner Mandell stated he would be opposed to rezoning the Wal-Mart parcels as Wal-Mart at one time indicated they would like to be surrounded by fast food restaurants. He asked if there was an alternative other than B-3 which would protect the neighborhood from fast food but still allow desirable uses.

Willi Krech, 9574 Inver Grove Trail, stated that a Tractor Supply store would add value to the community. He advised that he has been actively marketing a sit-down restaurant for the other parcel and has been approached by interested parties, but can't finalize anything because it is currently not a permitted use. He stated that in his opinion complying with the design standards of Arbor Pointe would not be a problem for most interested companies.

Commissioner Mandell asked if interested parties are requesting B-3 zoning specifically, or if they simply need zoning compatible to their use.

Mr. Krech stated it was his understanding that TSC needed B-3 zoning as it would allow for outdoor storage. He then advised the Commission that this land was originally acquired from the City as a result of the rerouting of Concord Boulevard and Highway 52, and that in the process he essentially traded B-3 zoned land for what he thought was another B-3 zoned parcel.

Mr. Link stated that he was hearing four issues: 1) the design standards of Arbor Pointe, 2) allowing a sit-down restaurant, 3) not allowing fast food, and 4) outdoor storage. He outlined two options. The Arbor Pointe Community Shopping Center designation, which would provide design standards, would allow a sit-down restaurant, would allow fast food, and would not allow outdoor storage. B-3 on the other hand would not provide the design standards, but would allow a sit-down restaurant, fast food and outdoor storage.

Commissioner Wippermann asked if it could be rezoned with conditions attached such as design criteria.

Mr. Link explained that the difficulty with the B-3 zoning was that any criteria changed for this property would be changed for all other property zoned B-3 in the City, whereas with the Arbor Pointe PUD there was more flexibility as it was a smaller area.

Mr. Riess suggested the Commission utilize the Limited Business designation, stating it was an existing unused designation in Arbor Pointe. He stated the City could add the components they wanted and eliminate the ones they didn't and therefore get exactly what they were looking for.

Mr. Link stated that staff suggested another option, the Arbor Pointe Neighborhood Business designation. He added that it would maintain the design guidelines, would allow a sit-down restaurant, would not allow fast food, and currently prohibited outdoor storage but could be amended.

Commissioner Wippermann asked if that would affect other areas zoned Neighborhood Business, to which Mr. Link replied it would not as currently there were no other properties zoned Neighborhood Business in Arbor Pointe. He added that additional provisions regarding outdoor storage could also be added, such as construction materials, pillars, screening, amount, etc.

Mr. Link advised that if Neighborhood Business was the direction the Planning Commission wanted to pursue, the City would have to schedule another public hearing.

Mr. Grannis stated that the term outside storage seemed misleading, as TSC was proposing a display area rather than traditional outdoor storage such as that found in a lumber yard. He stated that they could use any new zoning designation, since it would not affect any other land as long as this would be the only piece of that type in the City.

Commissioner Roberts stated that the way Tractor Supply displays their product at the South St. Paul store would not be acceptable in Inver Grove Heights, and that he would like some assurances that they would not.

Commissioner Simon asked if the area behind the metal fences was considered outdoor storage.

Mr. Grannis stated in his opinion it was more display than outdoor storage.

Mr. Link advised that the City has always interpreted what TSC is proposing as outdoor storage. He added, however, that the quality and design of the fencing, and size of the material they would be storing was quite different from what is typically considered outdoor storage (contractors yard, used car dealership, etc.) and could perhaps be addressed in the ordinance language. He commented that the Planning Commission should address the two questions asked by City Council, which was should the property be zoned B-3 and should it be pulled out of the Arbor Pointe PUD. He added that if the Commission didn't feel comfortable with either of those options, it would be within their purview to recommend something other than that, such as Neighborhood Business with some allowances for outdoor storage.

Commissioner Hoffmann asked Mr. Brottlund if he had an issue with rezoning to Limited Business or Neighborhood Business, or if they would prefer to be removed from the Arbor Pointe PUD.

Mr. Brottlund stated he did not object in concept to rezoning to either of those designations, as long as it would allow their proposed use, along with sit-down restaurants.

Commissioner Mandell asked how the Commission should proceed, to which Mr. Link advised that if the Commission would like to recommend Neighborhood Business as opposed to the two existing requests they could take their recommendation on to City Council and if City Council wanted to go that route they would then bring it back to the Planning Commission for another public hearing.

Mr. Krech stated he would prefer B-3, but would be willing to discuss another zoning designation compatible with B-3. He added that he would not be opposed to prohibiting fast food.

Mr. Riess suggested that the City designate the property as Limited Business and add any desired uses, rather than using Neighborhood Business which may have some uses not appropriate for this area.

Planning Commission Recommendation

Motion by Commissioner Mandell, seconded by Commissioner Simon, to recommend against the initiation of a rezoning for the three parcels by removing them from the Arbor Pointe PUD Ordinance and rezoning from R&D, Research & Development to B-3, General Business. Motion carried (8/0).

Motion by Commissioner Mandell, seconded by Commissioner Boerbon, to recommend the subject property be rezoned to either Limited Business or Neighborhood Business with the understanding that they would allow for the potential for retail, sit-down restaurants, outdoor storage, and design standards, and not allow fast food restaurants.

Motion carried (8/0). This matter goes to City Council on May 9, 2005.

Attorney Kuntz asked the applicant to confirm agreement to install the sprinkler systems. Ms. Gill responded the CDA agrees to install the systems.

There was discussion regarding the reason for requiring the sprinkler system installation due to low water pressure and if any alternatives would be acceptable.

Mayor Tourville pointed out that the applicant has agreed to install the sprinklers in each building so the issue is resolved.

Mayor Tourville asked if there were comments from the audience and there was no response.

Motion by Madden, seconded by Piekarski Krech, to adopt the following:

Resolution No. 05-80 titled, RESOLUTION APPROVING THE FINAL PLAT KNOWN AS LAFAYETTE EAST 4TH ADDITION, subject to conditions as listed.

Resolution No. 05-81 titled, RESOLUTION APPROVING THE FINAL PLANNED UNIT DEVELOPMENT PLANS AND DEVELOPMENT CONTRACT FOR LAFAYETTE EAST 4TH ADDITION, subject to conditions as listed,

Ayes: 5

Nays: 0

Motion carried.

RECESS: Council took at brief recess at 8:55 p.m. and reconvened at 9:05 p.m.

7.E. CITY OF INVER GROVE HEIGHTS; Request for Ordinance Amendment to the Arbor Pointe PUD and Rezoning of Three Parcels of land and a Comprehensive Plan Land Use Map Amendment Changing the Guided Use of the Parcels, for property located next to Cafferty Court and Cahill Avenue:

Mr. Link explained that staff was directed by Council to initiate a rezoning and comprehensive plan amendment for three parcels along Cafferty Court and Cahill Avenue; the parcels include one owned by Willie Krech abutting Cahill Avenue, and two owned by Wal-Mart, south of the Wal-Mart store. He stated that the current zoning designation of the three properties is primarily for office and service type uses and changing to a B-3 zoning district would allow a wide range of retail uses. He further stated that removing the properties from the Arbor Pointe Ordinance would limit the City's review on external building design criteria that are contained in the Arbor Pointe Design Manual.

Mr. Link stated that the Planning Commission review focused on four objectives; 1) maintain the design requirements over exterior materials and site design as contained in the Arbor Pointe Design Manual; 2) allow for sit-down restaurants; 3) prohibit fast-food restaurants; and 4) allow outdoor storage with certain restrictions. He advised that neither the B-3 District nor any district in the Arbor Pointe PUD Ordinance meet all of these objectives.

The Planning Commission recommended the properties; 1) remain in the Arbor Pointe PUD Ordinance; 2) be rezoned to either Limited Business or Neighborhood Business, and; 3) the allowed list of uses be amended to allow for retail uses, sit-down restaurants, open storage with conditions and exclude fast-food restaurants. He explained this would require a new public hearing because it is not what Council directed for a zoning change.

Mr. Link advised that after the Planning Commission meeting, Vance Grannis, Mr. Krech's legal counsel, provided a memo to staff which suggested that if the property is to remain in the Arbor Pointe Ordinance, it be rezoned to NB, Neighborhood Business, and that the list of uses be amended to include the list attached as an exhibit. He noted that many of the suggested uses are allowed in the B-3 District. He further explained that he received a phone call today from Vance Grannis who stated that Tractor Supply is interested and ready to proceed and he questioned if the application could proceed in conjunction with the rezoning if Planning Commission recommendations are accepted. He pointed out that an application for Tractor Supply could be heard at a public hearing in conjunction with the rezoning and that there would be an opportunity to set the guidelines while reviewing the application.

Councilmember Madden questioned if there is an opportunity to maintain the Arbor Pointe Design standards if the property is zoned B-3. Mr. Link responded no since those standards would then have to be applied throughout the City in B-3 Districts.

Councilmember Klein asked Mr. Krech to comment on which zoning classification he would prefer.

Darcy Winter of DE Winter & Associates, explained she is present to represent Wal-Mart. She asked if it would be possible to rezone the properties to B-3 and add language to a deed restriction that specifies uses and design criteria.

Mr. Kuntz explained that a deed restriction has a life-span of 30 years and he has concerns regarding future enforceability of the zoning uses. He noted that although Wal-Mart would agree at this time, the next owner may disagree with the restrictions and the City has no authority to mandate deed restrictions.

Ms. Winter commented that she is used to deed restrictions having a 99 year life-span. She asked if the matter could be handled through a developer's agreement. Mr. Kuntz explained that use of a development agreement would create a mechanism for City's enforcement of the uses and design criteria. He questioned if Ms. Winter had the authority to speak on behalf of Wal-Mart. Ms. Winter responded yes and explained that a representative from Wal-Mart is also present.

There was discussion regarding uses that would be allowed under the B-3 zoning and the possibility of amending the PUD ordinance to create a new district. Mr. Krech indicated he does not wish to sell his property for an auto dealership or fast-food use.

Councilmember Piekarski Krech expressed concern that other property owners may request rezoning and that she prefers to establish some method of restricting the B-3 zoning to prohibit fast-food, car dealerships and auto service related uses.

Ms. Winter stated that Wal-Mart would agree to those restrictions on their parcel.

Barry Bratlund, Tractor Supply Company, explained that the other parcel he was interested was zoned Community Commercial and prohibited outdoor sales and storage; he stated that Tractor Supply Company would be willing to work with any criteria established and that he would defer to Wal-Mart as the property owner.

Councilmember Klein noted that the Tractor Supply building would resemble the exterior of Wal-Mart if the Council requires the Arbor Pointe Design Manual standards remain in place. Mr. Bratlund stated his preference would be for the B-3 zoning and that Tractor Supply would construct an attractive building.

Mr. Kuntz asked the representatives of Tractor Supply and Wal-Mart to voice their expectation if the properties are rezoned to B-3 and if all three parcels would be sold to one user or have multiple uses.

Ms. Winter stated that Wal-Mart would retain Outlot A for a future user and that Outlot B would be used by Tractor Supply along with the Krech parcel.

Councilmember Piekarski Krech asked if Wal-Mart has a proposed use for Outlot A. Ms. Winter explained the parcel is for sale and that Wal-Mart is aware of the fact that the City would prefer a sit-down restaurant.

Mr. Bratlund explained that Tractor Supply Company is interested in purchasing Outlot B and a portion of Mr. Krech's parcel; he noted there would be a remnant parcel of approximately 3 acres at the south end of Mr. Krech's property.

Mayor Tourville asked if there were any comments from the audience.

Christopher Reiss, 9281 Cheney Trail, commented that it would make more sense to expand the Limited Business zoning classification than to re-write the appropriate uses for the zoning district. He stated there does not appear to be undesirable uses in the limited business district, while the B-3 zoning opens up a larger range of uses. He further stated that his concern relates to possible future uses for the undeveloped parcel of land. He also noted that the parcel owned by Wal-Mart was originally proposed for office use and they are "piggy-backing" on the Krech rezoning request. He agreed that the City should use the method that retains control and enforceability.

Councilmember Piekarski Krech again questioned if this rezoning would prompt other requests from property owners in this area and if there would be repercussions due to the fact that Tractor Supply moved its interest to this site because outdoor storage was not permitted on the property the store originally sought for development.

Mayor Tourville pointed out that Council should review the zoning issue as a separate matter from future applications. He also noted that no formal application was submitted by Tractor Supply for any other parcel so there should be no repercussions.

Mr. Krech commented that the City makes it difficult for owners of small parcels to develop their land with the zoning requirements and incorrect zoning for the area.

Councilmember Madden agreed with the Planning Commission recommendation to maintain the design criteria and to prohibit fast-food and auto service related uses.

Ms. Winter suggested creating a zoning district to meet the requirements. Councilmember Madden asked if that could be done by creating a PUD district. Mr. Link stated that would be an option.

Mr. Reiss suggested that most of the uses in the Limited Business District are acceptable and he was unsure if the B-3 zoning district could be restricted; he noted that no one objects to the Tractor Supply proposal and that Limited Business could be modified to accommodate the application.

There was discussion regarding which zoning classification would be most acceptable and how this matter could be successfully resolved.

Mr. Kuntz stated that zoning classifications have to be uniform throughout the City. He noted that if the B-3 zoning is approved, a development contract could be used to restrict the type of development that occurs on the site and establish criteria so that the project performs according to the Arbor Pointe Design Manual.

Mayor Tourville asked the City Attorney for an opinion on the best way to approach the request. Mr. Kuntz advised that Council should exercise its zoning power to maintain control and that a deed restriction would not provide the same type of control.

Mr. Krech stated that if the B-3 zoning were approved, the City could be protected if the property owners are willing to commit to a long-term development agreement for the parcels.

Councilmember Madden asked if the rezoning could be contingent upon an approved plan and revert back if no plan is submitted.

Mayor Tourville asked the attorney if there could be language incorporated into the approval of the rezoning. Mr. Kuntz responded yes and suggested that the property owners be asked if they would agree to a contract that incorporates performance standards and limits the uses for their parcels. He also noted that the rezoning would not become effective until a contract is signed by both parties.

Mayor Tourville suggested that both parties review the prohibited uses in the Arbor Pointe PUD ordinance; auto uses fast-food, animal uses, pawn shops.

Mr. Krech questioned why the emergency veterinarian clinic would be prohibited. Councilmember Madden explained that some people had concerns regarding noise from housing the animals.

Mayor Tourville summarized by stating that generally Council concurs with the proposed B-3 rezoning pending execution of a development contract from the property owners that stipulates they agree to following the design manual for the Arbor Pointe PUD and omitting some undesirable uses as discussed. He further noted that Tractor Supply could make application for development to concur with the public hearing for the proposed rezoning.

The Mayor asked if there were further comments and there was no response.

Motion by Madden, seconded by Piekarski Krech, to adopt the following:

Ordinance No. 1113, AN ORDINANCE AMENDING SECTION 515 OF THE CITY CODE, for property described as Outlots A and B, Arbor Pointe Commons and the property owned by Mr. Krech, by removing three parcels from the Arbor Pointe PUD, and rezoning those three parcels to B-3 General Business, subject to execution of a Development Contract BY June 30, 2005, whereby the property owners, WalMart and Krech, agree to

follow the Arbor Pointe Design Manual, and whereby certain specified uses under the B-3 Zoning designation will not be used or constructed on the subject properties.

Resolution No. 05-82 titled, RESOLUTION APPROVING A COMPREHENSIVE PLAN AMENDMENT TO CHANGE LAND USE FROM O, OFFICE TO CC, COMMUNITY COMMERCIAL, for three parcels owned by Wal-Mart and Mr. Krech as legally described in the resolution, subject to conditions as listed.

Ayes: 4 (Tourville, Madden, Klein, Piekarski Krech)
 Nays: 0
 Abstain: 1 (Grannis) Motion carried.

7.F. Complaint Regarding Simon Delivers Operation

Mr. Link explained a complaint was received from Mike Wolff and Diane Darrow regarding outside night time noise at the Simon Delivers' facility on Carmen Avenue. He stated that a Conditional Use Permit was approved for Simon Delivers on September 8, 2003 and subsequently the City has received complaints from the neighbors west of the property about operations noise. He noted that staff hosted a meeting between the neighbors and Simon Delivers on October 19, 2004 to discuss the noise issue. Simon Delivers agreed to modify aspects of their operations to address the noise; a discussion of the specific changes is outlined in the letters from Simon Delivers dated December 22 and October 26, 2004. He pointed out that there are no conditions related to noise from the facility in the CUP resolution that was adopted by Council on September 8, 2003 and to staff's knowledge, Simon Delivers is in compliance with the CUP conditions.

Mayor Tourville asked if there was anyone present who wished to speak.

Mike Wolff, 6340 – 64th Court East, explained the loading docks for this operation are within 50 yards of his bedroom window and that the first semi-trucks arrive at 2:00 a.m. He noted that all storage is outside in the semi-trucks and the forklifts move the product back and forth on pallets between 2:00 a.m. and 10:00 p.m. Sunday through Friday. He advised that he does not get a full night's sleep because his windows rattle and he has replaced the windows in his home. He has asked for the docks to be moved, enclosed or a sound fence be installed. He advised he did get a petition signed by the neighbors outlining their concerns.

Rick Schoumacher, 6360 East 64th Street, stated he is disappointed that he was not notified of this meeting or the meeting with Simon Delivers. He noted that none of the neighbors concerns have been addressed over the last two months. He explained the company leaves the refrigeration trucks running and there is a constant smell of diesel fuel; he stated he cannot leave his windows open in the summer months due to the noise. He stated that Simon Delivers needs to address the concerns of the neighbors in a timelier manner.

Keith Morgan, 6280 Carleda Way, agreed that he cannot open his windows during the summer months due to the noise. He explained the "beeping" noise when the trucks back-up is extremely annoying. He noted that the fence is not solid and does not block the noise. He also stated he was not notified of the meeting this evening.

Councilmember Klein asked if Simon Delivers was notified of the meeting and complaint. Mr. Link responded yes.

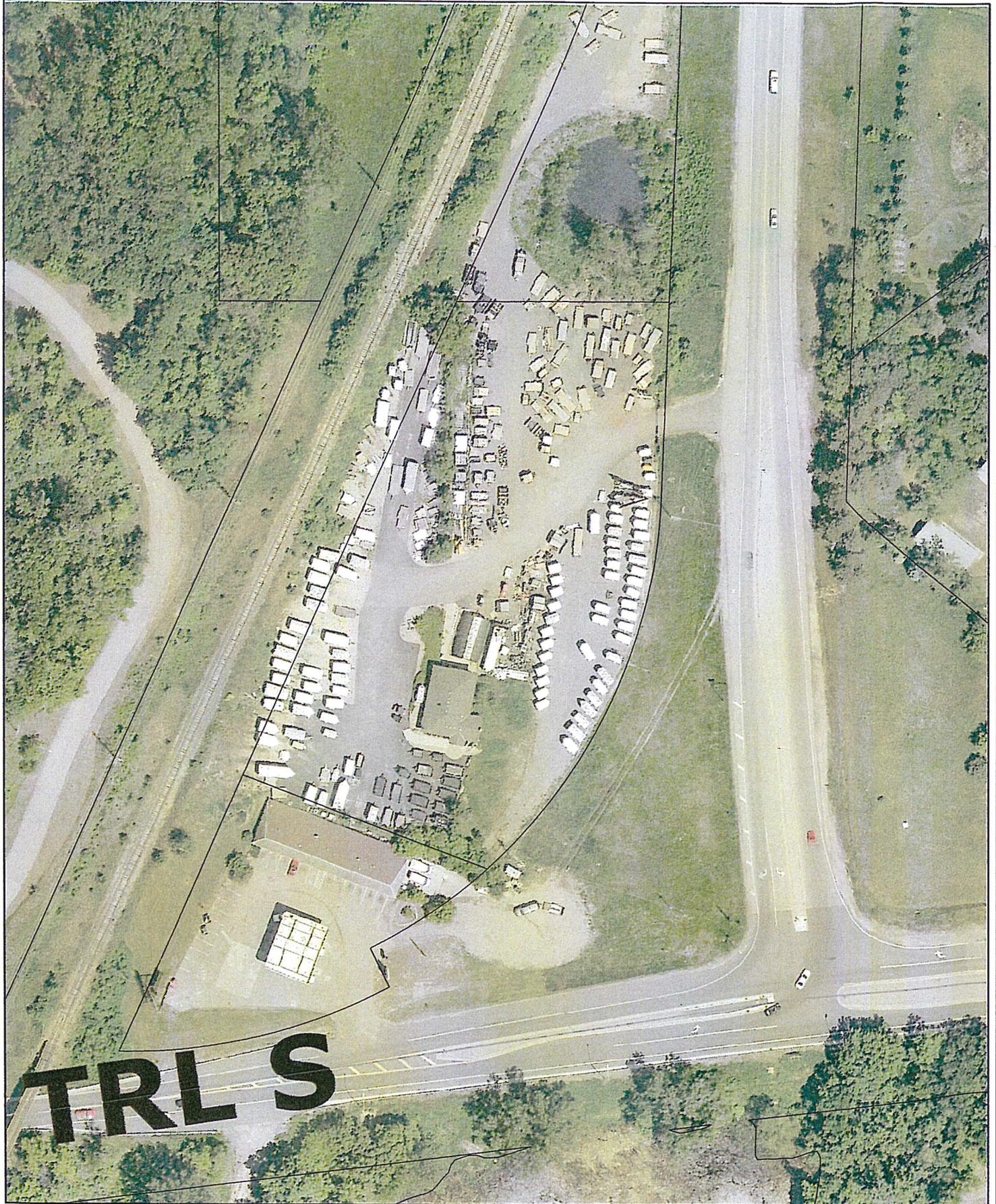
Chris Servais was present to represent Simon Delivers. He explained that he has been before Planning Commission and Council when the CUP application was reviewed. He noted that the he presented the operations of the company as it operates today and that the items listed in the letter have been addressed in a timely manner. He noted the start time was shifted to one hour late and he reduced the number of trailers from three to two that during the early hour shift. He explained that the refrigeration trucks are shut off upon arrival during the winter months. He noted that the company begins deliveries at 7:00 a.m. and therefore, needs to begin operations at 4:00 a.m. He further noted that there is no traffic during the evening hours between 10:30 a.m. and 2:30 a.m.

Mayor Tourville stated that installation of a fence was one of the conditions of approval, but apparently the structure does not reduce the noise.

Councilmember Madden asked how close the fence is to the adjacent property and what is the length of the fence. Mr. Servais stated it is 130 feet from the neighbor's property and it is approximately 50-60 yards long. He suggested a sound barrier wall or a berm might eliminate some noise.



Current Trailer Sales Location 9601 Jefferson Tr. (Hwy 149)



TRLS