



GOODHUE COUNTY MINNESOTA

TO EFFECTIVELY PROMOTE THE SAFETY, HEALTH, AND WELL-BEING OF OUR RESIDENTS

Goodhue County Board of Adjustment
Government Center- Board Room
509 West 5th St, Red Wing MN 55066

Monday, October 24, 2016
5:30 PM

Approval Of Minutes From Previous Meeting

Documents:

[MINUTES_SEPTEMBE_26-2016_BOA_FINAL_DRAFT.PDF](#)

Call Meeting To Order

Approval Of Current Agenda

Conflic/Disclosure Of Interests

PUBLIC HEARING AGENDA ITEM: Knudsen

PUBLIC HEARING: Noah Knudsen - Variance request from the MN Rules 7080 Front Yard setback requirement of 10 feet from the property line, to place a septic system up to the lot line at 29013 Westervelt Ave. Frontenac in Florence Township.

Documents:

[KNUDSEN PACKET FINAL_REDACTED.PDF](#)

PUBLIC HEARING AGENDA ITEM: Webster

PUBLIC HEARING: Judy Webster – Variance request from the MN Rules 7080 required 20 setback from the house to place a septic system within 10 feet of the home at 34778 Sumner St. Frontenac in Florence Township.

Documents:

[WEBSTER PACKET.PDF](#)

PUBLIC HEARING AGENDA ITEM: Anderson

PUBLIC HEARING: Gary Anderson – Variance request from the Bluff Impact Protection's General Regulations 30' set back from the top of the bluff for an addition onto a dwelling that is currently encroaching into the 30'setback at 31701 Lakeview Ave. in Wacouta Township.

Documents:

[ANDERSON_PACKET.PDF](#)

PUBLIC HEARING AGENDA ITEM: Associated Bank

PUBLIC HEARING: Associated Bank – Variance request from the A2 Agricultural District's General District Regulations' public road frontage requirement of a 33' wide driveway access easement for a single lot at 2720 144th Ave. Way in Vasa Township.

Documents:

[AXELSON-ASSOCIATED PACKET.PDF](#)

Old Business

Anyone interested is invited to attend. Agenda items may be subject to change.

Goodhue County Land Use Management

◆ Goodhue County Government Center ◆ 509 West Fifth Street ◆ Red Wing ◆ Minnesota ◆ 55066 ◆
◆ Building ◆ Planning ◆ Zoning ◆ Telephone: 651/385-3104 ◆ Fax: 651/385-3106 ◆

**BOARD OF ADJUSTMENT
GOODHUE COUNTY, MN
September 26, 2016 MEETING MINUTES
DRAFT**

The meeting of the Goodhue County Board of Adjustment was called to order at 5:30 pm on September 26, 2016 by Chair Bob Benson in the Goodhue County Board room in Red Wing, Minnesota.

1. Roll Call

Commissioners Present: Robert Benson, Richard Ellingsberg, Mike Hinsch, and Howard Stenerson, Richard Mallan

Commissioners Absent: Brandon Schafer

Staff Present: Planner/Zoning Administrator Wozniak, and Zoning Assistant Casey MacCallum

2. Approval of Agenda

¹Motion by Commissioner Stenerson and seconded by Commissioner Mallan to approve the agenda for the September 26, 2016 meeting; but moved O'Flaherty and Witte before Nibbe: the new agenda is O'Flaherty, Witte, Nibbe, Clemens, and then Bye. Motion carried 5:0.

3. Approval of Minutes

²Motion by Commissioner Hinsch and seconded by Commissioner Mallan to approve the August 22, 2016 minutes. Motion carried 5:0.

4. Conflict/Disclosure of Interest

None of the Board members declared a conflict of interest.

PUBLIC HEARING AGENDA ITEM: O'Flaherty – Variance request from the A-2 Agricultural District's General District Regulations Lot Size requirement, to subdivide a lot less than 2 acres (7,000 square feet) for a septic system; and from the MN Rules 7080 Septic System Front Yard setback at 33073 Lake View Drive. Part of the N ½ of the SW ¼ of Sec. 30, T112N, R12W, SW of the centerline of Lakeview Drive, Except the plats of Lakeview Heights and Lakeview Heights 2nd Add; in Florence Township.

Zoning Administrator Mike Wozniak presented the staff report and attachments. Well and Septic Inspector Pam Holst detailed the reasons for the variance request.

The O'Flaherty's were present and available to answer questions regarding their request.

Chair Benson opened the public hearing: no one commented.

³Chair Benson asked three times for comments. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Ellingsberg to close the public hearing.

Motion carried 5:0

Commissioner Stenerson asked about future sale of the property and if there is a need to stipulate that both parcels are sold together. Zoning Administrator Wozniak explained that the proposed 7,000 square foot parcel would not meet the minimum lot size requirement (in the A2 Zone District) required to build any structures and that under the terms of the variance may only be used for the new wastewater system that will serve the O'Flaherty's dwelling site.

⁴Motion Commissioner Stenerson, second by Commissioner Mallan, that the

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Board of Adjustment

- **adopt the staff report into the record (dated September 16, 2016);**
- **adopt the findings of fact; and**
- **based on the application, testimony, exhibits, and other evidence presented,**

APPROVE the variance request of Richard and Barbara O'Flaherty from the A-2 Agricultural District's General District Regulations Lot Size requirement, to subdivide a lot less than 2 acres (7,000 square feet) for a septic system; and from the MN Rules 7080 Septic System Front Yard setback

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated August 25, 2016,
2. Conformance with all applicable requirements set forth in the Goodhue County Septic Ordinance and State of Minnesota Rules: Chapter 7080 (Individual Sub-surface Sewage Treatment Systems).

at 33073 Lake View Drive. Part of the N 1/2 of the SW 1/4 of Sec. 30, T112N, R12W, SW of the centerline of Lakeview Drive, Except the plats of Lakeview Heights and Lakeview Heights 2nd Add; in Florence Township.

PUBLIC HEARING: Tonya Witte - Variance request from the MN Rules 7080.2150 Septic System Drain Field Medium, to use a non-registered septic product for a replacement dwelling at 7005 County 9 Blvd; west 10 acres of the SW 1/4 of the SW 1/4 of Section 20, T111, R17 in Leon Township.

Zoning Administrator Mike Wozniak and Environmental Health Inspector Pam Holst presented the staff report and attachments.

Commissioner Mallan asked Pam Holst to clarify some points of the variance requirement.

Commissioner Stenerson clarified that the Board approval is for the continued use of the system, and denial would require a new system.

Stenerson also asked about the conditions that were recommended to be applied to the variance. Zoning Administrator Wozniak described the rules.

The Witte's were present. *The Applicant informed the Board that they purchased the property knowing the house was uninhabitable, but they did not know that the existing septic system would not be compliant for a new dwelling. The Witte's acknowledged that a failure would require a new system.*

Chair Benson opened the public hearing: no one commented.

Chair Benson asked three times for comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Hinsch to close the public hearing.

Motion carried 5:0

6Motion Commissioner Stenerson, second by Commissioner Ellingsberg, that the

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Board of Adjustment

- **adopt the staff report into the record (dated September 16, 2016);**
- **adopt the findings of fact; and**
- **based on the application, testimony, exhibits, and other evidence presented,**

APPROVE the variance request of Paul and Tonya Witte from the MN Rules 7080.2150 Septic System Drain Field Medium, to use a non-registered septic product for a replacement dwelling at 7005 County 9 Blvd; West 10 acres of the SW ¼ of the SW ¼ of Section 20, T111, R17 in Leon Township.

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated August 26, 2016,
2. Compliance with all necessary State and Federal permits and licensing,

PUBLIC HEARING: Daniel Lubahn – Appeal of Zoning Administrator’s denial of a replacement dwelling request at 19000 Block of 360th Street, Goodhue, MN; E ½ of the NE ¼ of Section 17, Township 111, Range 15 in Goodhue Township.

Zoning Administrator Mike Wozniak presented the staff report and attachments.

Daniel and Chelsea Lubahn were present. *The Applicant Chelsea informed the Board that they plan to build a home. Currently actively farming the land and the farm has been in the family for more than a Century. The commute from the farm to home has presented a challenge for Daniel to coordinate his day job, farm work and family responsibilities.*

Commissioner Stenerson asked about the continuation of milking. The Applicant is planning to transition to raising of beef cattle. Commissioner Stenerson asked if the Applicant moves to their proposed replacement dwelling site could Mr. Nibbe continue longer with the farm, which the Applicant affirmed.

Chair Benson opened the public hearing: no one commented.

7 Chair Benson asked three times for comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Hinsch to close the public hearing.

Motion carried 5:0

Commissioner Stenerson visited the site and told the Board that there is no evidence of a dwelling, but observation showed that there was certainly a dwelling there at some point. The Applicant could apply for a second farm dwelling but there is not enough room within the existing farm yard for another home. The Applicant could also apply for a mobile home for medical purposes because of their family member's condition.

9 Motion Commissioner Stenerson, second by Commissioner Ellingsberg, that the Board of Adjustment:

Approve the appeal of Chelsea and Daniel Lubahn to determine that property located at 19809 360th Street, Goodhue Township (E ½ of the NE ¼ of Section 17, Township 111, and Range 15 in

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Goodhue Township) qualifies as “Replacement Dwelling Site”, based upon the following evidence:

1. **The Applicant has provided an aerial from 1938 that illustrate a more defined farm yard.**
2. **The Applicant has provided a letter from the owner that states the owner’s father talked about a barn on the property; and provided pictures of a well.**
3. **The Applicant has provided pictures of a cement well and pictures of a foundation that could be determined to be a foundation of a dwelling.**
4. **The Applicant has supplied a note (confirmed by LUM staff) that Richard Nibbe (the Applicant’s Uncle) worked on and knew of people living on the property.**

Motion carried 5:0

PUBLIC HEARING AGENDA ITEM: Deloris Clemens - Variance request from the A2 Agricultural District, General District Regulations, Density Requirements, which limits each Section to 12 dwellings (currently there are 15 dwellings) and limits development to one dwelling per ¼ ¼ section (currently there is 1 dwelling); to build a residence at 13489 Sunset Trail; part of the E ½ of the NW ¼ of Section 5, T112, R16 in Vasa Township.

Mike Wozniak presented the staff report and attachments

Deloris Clemens was present, but did not have anything to add before the Public Hearing.

Commissioner Mallan said the findings are the same and that the County may see other requests for variances to Section and/or ¼ ¼ density standard and this might be the best way to manage it.

Chair Benson opened the public hearing:

Daryl Peters at 1350 Sunset Trail (neighbor) informed the Board that he was aware of denial of a previous variance request (to allow a second farm dwelling outside of a farmyard) proposed for the site. Mr. Peters opposed the Variance because of the proximity to his home, and the amount of hazards on the property.

Jackie Peters at 1350 Sunset Trail informed the Board that the area is very beautiful and that approval would be setting a precedent. She described the land and the neighborhood, and that the Applicants property has three campers and a fishing shack. She stated the area would end up more like a camp ground if approved.

Chair Benson asked three times for further comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Ellingsberg to close the public hearing.

Motion carried 5:0

Commissioner Mallan said that the neighbor's testimony changed his opinion. Zoning Administrator Wozniak explained County zoning and building permit requirements to construct a new dwelling.

Commissioner Stenerson said it was difficult that this Variance came just one month after another density variance request in the same Section; and that the Board needs criteria for

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evaluating these density variances. Commissioner Stenerson noted that they should table the item until the Board can meet with the Planning Advisory Commission. He asked the Applicant if she would like build right away or if they were planning to wait. The Applicant said they would like to start building right away...

Commissioner Benson and Zoning Administrator Wozniak informed that Applicant that if she was not willing to accept having the item tabled for up to 3 months to allow time for a joint meeting of the BOA and PAC, and then her request may be denied. The Applicant (Deloris Clemens) agreed to accept having consideration of her variance request tabled for up to 3 months.

Commissioner Stenerson said the Board should have a joint meeting with the PAC in October or November; and then make a determination on the following regular meeting of the Board of Adjustment.

¹⁰Motion Commissioner Stenerson, second by Commissioner Hinsch, that the Board of Adjustment

Table the variance request from the A2 Agricultural District, General District Regulations, Density Requirements, which limits each Section to 12 dwellings (currently there are 15 dwellings) and limits development to one dwelling per ¼ ¼ section (currently there is 1 dwelling); to build a residence at 13482 Sunset Trail. Part of E ½ of the NW ¼ of Section 5 in Vasa Township; for up to 3 months until the regular Board of Adjustment to be held in December, 2016.

Motion carried 5:0

PUBLIC HEARING: David Bye - Variance request from Goodhue County Zoning Ordinance, Article 13 (Confined Feedlot Regulations), Section 7 (Required Setbacks for New Facilities), Subd. 6: "New feedlots shall not be located within 1,000 feet from any existing dwelling (other than those designated as an accessory to a feedlot or the feedlot operator's dwelling)". The request is to build a feedlot at 50130 158th Avenue (on the west side 158th Avenue - NW ¼ of the NE ¼, Section 27) in Roscoe Township.

Zoning Administrator Mike Wozniak presented the staff report and attachments.

Commissioner Hinsch asked Zoning Administrator Wozniak if there were other locations for the feed lot on the Applicants property. The Zoning Administrator informed the Board that there were other places for the feed lot to be placed, but that it is up to the Applicant to justify the request.

Commissioner Stenerson asked for clarification on the owner's house and the feed lot outside of the farm yard. The Zoning Administrator informed the Board that the owner's house has no setback from his feedlot.

David Bye was present. The Applicant informed the Board of his practical difficulty: the house that was allowed a density variance by the BOA in an agricultural district; he thought the rules would protect his future plans to expand to the western field; the proposed location is on the cow path that has been used for generations; and that the variance process is unacceptable for a farmer and his family to go through in a district designed for agricultural.

Commissioner Stenerson asked for clarification on the Applicant's future plans. The Applicant described his plans to expand to his western field.

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Cory Weis read a letter to the BOA from Mr. Bye's son requesting the approval of the variance because he wanted to continue the family tradition of farming, the Peterman house should not have been allowed, and the area has historically been agricultural and the district is designed to preserve agricultural.

Chair Benson opened the public hearing:

David's wife informed the BOA that their timing has been short, and they have nothing against the Vogel's. She said that she has felt threatened and their place has been vandalized. She told the Board that her daughters have married and moved away, and one of her son's has a disability and that they have been planning to leave the farm to her other son so they can both succeed. She said the new feed lot will allow the flexibility their sons will need for future farming.

Melinda Vogel noted that she has no problem with the Bye family and the expansion of the feed lot for cattle, but did express concerns about hogs being raised on the proposed sit. She noted that she grown up on a farm. She asked the Board why the variance to the 1,000 foot would be acceptable because it is there to protect her family; the builder and their family did not intend to encroach on the 1,000 foot setback from the Bye's feedlot; they changed their planes to accommodate the 1,000 foot setback by moving their access; the request does not meet the practical difficulty because the feedlot can be placed elsewhere on the property that would meet the setback; the animal units can have a significant impact on the area; and she asked that if the variance were approved then conditions should be applied that limited the number and type of animals in the feed lot.

Carol Peterman told the Board that she nor her family have harassed the Bye family. Carol said that the Bye family works hard and have not been a disturbance to the neighborhood and that she regrets all of the hostility.

Mr. Peterman told the Board that he did not threaten the County with a lawsuit and he only wanted to sell a dwelling site for his family.

David Bye reiterated that the proposed location of the feed lot is the most suitable because of the proximity to water supply and access to electricity, proximity to the cow path and the topography. He noted that approval would give back what he feels was taken from him with the granting of the Peterman variance to allow the Vogel dwelling.

Commissioner Stenerson asked the Applicant about the creek and potential for animal waste to enter the watershed. The Applicant informed the Board that the proposed new feedlot would keep the animals away from the creek. Commissioner Stenerson asked about the water source.

Chair Benson asked three times for comment. After hearing none, it was moved by Commissioner Stenerson and seconded by Commissioner Mallan to close the public hearing.

Motion carried 5:0

Commissioner Ellingsberg asked about the 962 foot distance from the Vogel's house to the Bye's feed lot. Zoning Administrator Wozniak noted that the surveys for the Vogel's house and the Bye's feedlot were completed by Mr. Rapp. Staff does not have an answer for the discrepancy.

Commissioner Stenerson asked the Applicant if 90 animal units are enough. The Applicant informed the commission that 90 animal units was the total amount of the final phase for their plan.

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Commissioner Stenerson voiced frustration that the Feedlot Officer was not present to discuss the odor offset.

Both Commissioner Hinsch and Stenerson supported approval based on Soil and Water Conservation District Officer Beau Kennedy's support the placement of the feed lot because it would be the least detrimental.

¹²Motion Commissioner Stenerson, second by Commissioner Hinsch, that the Board of Adjustment to

- **adopt the staff report into the record (dated September 16, 2016);**
- **adopt the findings of fact; and**
- **based on the application, testimony, exhibits, and other evidence presented,**

APPROVE the variance request of David Bye from Goodhue County Zoning Ordinance, Article 13 (Confined Feedlot Regulations), Section 7 (Required Setbacks for New Facilities), Subd. 6: "New feedlots shall not be located within 1,000 feet from any existing dwelling (other than those designated as an accessory to a feedlot or the feedlot operator's dwelling)". The request is to build a feedlot at 50130 158th Avenue (on the west side 158th Avenue - NW ¼ of the NE ¼, Section 27) in Roscoe Township to a minimum setback of 650' from the nearest dwelling (not occupied by the Feedlot Owner and/or Operator).

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated August 30, 2016; and
2. Compliance with all necessary state and federal permits and licensing.

Motion carried 4:1 (Commissioner Ellingsberg dissenting).

5. Staff Updates

The 2016 Goodhue Comprehensive Plan was distributed to all of the Commissioners.

6. Other Business

Chair Benson discussed the details of a joint meeting over the next few months.

Commissioner Stenerson said that he appreciates LUM staff, Ben Hoyt and Pam Holst work and support for the Commissioner; and voiced again how upset he was at the Feedlot Officer's lack of involvement.

Tod Gresser spoke to the Board.

¹³Adjourn: Moved by Commissioner Hinsch, second by Commissioner Stenerson, to adjourn the September 26, 2016 Board of Adjustment meeting at 8:24 p.m.

Motion carried 5:0.

Respectfully Submitted,

Casey MacCallum
Zoning Assistant

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MOTIONS

- ¹ APPROVE the BOA meeting agenda. Motion carried 5:0.
- ² APPROVE the August, 2016 minutes. Motion carried 5:0.
- ³ CLOSE the Public Hearing. Motion carried 5:0.
- ⁴ Motion to Approve O'Flaherty Variance. Motion carried 5:0.
- ⁵ CLOSE the Public Hearing. Motion carried 5:0.
- ⁶ Motion to Approve Witte Variance. Motion carried 5:0.
- ⁷ CLOSE the Public Hearing. Motion carried 5:0.
- ⁸ Motion to appeal and overturn the Zoning Administrators decision. Motion carried 5:0.
- ⁹ CLOSE the Public Hearing. Motion carried 5:0.
- ¹⁰ Motion to table the Clemens Variance. Motion carried 5:0.
- ¹¹ CLOSE the Public Hearing. Motion carried 5:0.
- ¹² Motion to Approve the Bye Variance. Motion carried 4:1.
- ¹³ ADJOURN the September 26, 2016 Board of Adjustment meeting. Motion carried 5:0.

Unofficial until approved by the BOA

Goodhue County Land Use Management

Goodhue County Government Center | 509 West Fifth Street | Red Wing, Minnesota 55066



Building | Planning | Zoning
Telephone: 651.385.3104
Fax: 651.385.3106

Environmental Health | Land Surveying | GIS
Telephone: 651.385.3223
Fax: 651.385.3098

To: Board of Adjustment
From: Land Use Management
Report Date: October 14, 2016
Meeting Date: October 24, 2016

Application Information:

Applicant: Noah Knudsen
Address of Zoning request: 29013 Westervelt Ave., Frontenac MN 55026
Zoning district: R1
Township Information: the Township has not signed the application and has no comments.

Attachments:

Site Map
Applicant Statement
Goodhue County Zoning Ordinance: MN Rules 7080
Applicant note
Drawn site map

Notice: Variance request from the MN Rules 7080 Front Yard setback requirement of 10 feet from the property line, to place a septic system up to the lot line at 29013 Westervelt Ave.; Lot 1 Block 69 & Northerly 25 feet of lot 2 Town of Frontenac in Florence Township.

Background: The purpose of this variance is to allow the replacement of the septic system on parcel 32.130.2020. Parcels under MN Rules 7080 are required to maintain a 10 foot minimum setback from the lot line. The Applicant is requesting to go up to the rear and side lot lines to place the drain field.

Well and Septic Inspector comments: Environmental Health supports the variance pending approval of the septic design.

Findings of Fact:

Before any such variance may be granted, the Board of Adjustment shall specify in their findings, the facts in each case. Variances shall only be permitted when:

- 1) They are in harmony with the general purposes and intent of the official control;
The intent of the MN Rules 7080 is to protect the Applicant's and neighboring dwellings' from being compromised by the septic drain field. Allowing the variance for the septic to be place as shown on the attached deign will protect the Applicant's and the neighbors' because

this placement keeps the drain field away from the Applicant's home and the neighboring homes are far enough away to the proposed site.

- 2) The variances are consistent with the comprehensive plan;
The proposed variance that would allow the applicant to conform with State and County Wastewater Treatment Rules would be consistent with the intent of the 2016 Comprehensive Plan.
- 3) There are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner, not permitted by an official control. Economic considerations alone do not constitute practical difficulties.
The intent of the provision is to allow the safe construction and placement of septic systems within the properties Goodhue County. A denial of the variance would result in the loss of occupancy for the Applicant's dwelling or requiring a financially infeasible septic design.
- 4) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
The Applicant purchased a normal lot typical of the Old Frontenac neighborhood in Florence Township and the existing septic system is at the end of its natural usage. Many lots Old Frontenac are substandard and improvements to bring existing wastewater treatment system into compliance may require encroachment into the MN Rule 7080 side and rear yard setbacks.
- 5) The variance, if granted, will not alter the essential character of the locality.
The surrounding neighborhood's character will not change. There will only be minor disruption to the soils.
- 6) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
There is no use change.
- 7) The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
If the variance is approved than, in accordance with this provision, the Board of Adjustment will include five conditions to ensure implementation of the proposed variance is completed consistent with the Board's action and other applicable rules and regulations.

The following should be edited to reflect any concerns raised at the October 24, 2016 BOA meeting and public hearing:

Staff Recommendation:

Staff recommends the Board of Adjustment

- Adopt the staff report into the record (dated October 14, 2016);
- Adopt the findings of fact; and
- Based on the application, testimony, exhibits, and other evidence presented:

APPROVE the variance request Noah Knudsen from the MN Rules 7080 Front Yard setback requirement of 10 feet from the property line, to place a septic system up to the lot line at 29013 Westervelt Ave.; Lot 1 Block 69 & Northerly 25 feet of lot 2 Town of Frontenac in Florence Township;

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated September 14, 2016,
2. Compliance with all necessary State and Federal permits and licensing,
3. Compliance with the Environmental Health Inspectors expectations for a septic system site design
4. To encroach on the rear and side yard lot lines as least as possible
5. Retaining the service of a Registered Land Surveyor to stake the corners of the lot so not to cross over the lot line onto the neighbor's yard

APPLICATION FOR

Variance



VARIANCE NUMBER:
For Staff Use only

\$350 RECEIPT# 15537 DATE 9/14/2016

1. Owner/Applicant Information

PROPERTY OWNER'S NAME:

Noah Knudsen

PROPERTY OWNER'S ADDRESS:

29013 Westervelt Ave.
Frontenac, MN 55026

TELEPHONE:

EMAIL:

APPLICANT OR AUTHORIZED AGENT'S NAME:

Same as Above

APPLICANT'S ADDRESS:

TELEPHONE:

()

EMAIL:

CONTACT FOR PROJECT INFORMATION:

Same as Above

ADDRESS:

TELEPHONE:

()

EMAIL:

2. Location and Classification

STREET ADDRESS OF PROJECT:

SAME AS ABOVE

ZIP CODE:

LEGAL DESCRIPTION:

Attached

PID#: _____ IF YOU ARE NOT SURE OF THE EVENTUAL SIZE OF THE FINAL PROJECT, PROVIDE THE MAXIMUM ESTIMATES
ZONING DISTRICT _____ LOT AREA (SQ FT): _____ LOT DIMENSIONS _____ STRUCTURE DIMENSIONS (if applicable): _____

(Please check all that apply)

ADDITIONS TO BUILDING:

PRESENT OR PREVIOUS USE:

- New Building on vacant land
- New Addition to existing building
- Animal Building
- Storage building
- Rear
- Front
- Side
- Other Please clarify

PROPOSED USE:

BUILDING APPLICATION PERMIT NO.: (if filed)

DATE FILED:

TOWNSHIP:

By signing this form, the Township acknowledges being made aware of the request stated above. In no way does signing this application indicate the Township's official approval or denial of the variance request.

Attached

TOWNSHIP OFFICAL'S PRINTED NAME AND TITLE

TOWNSHIP OFFICAL'S SIGNATURE

DATE

3. Applicant's Affidavit

Under penalty of perjury the following declarations are made:

1. The undersigned is the owner or authorized agent of the owner of this property.
2. The information presented is true and correct to the best of my knowledge.
3. If I am unable to be present at the meeting where my request is decided, I agree to accept the Notice of Decision by certified USPS.
4. Other information or applications may be required.

Signature: _____

Date: 9-14-16

Print name: Noah Knudsen

owner or authorized agent (circle one)

Project Summary (Attach a separate sheet if more space is needed)

Please state which section(s) of the Ordinance from which you are requesting a variance.

setback for Drainfield

Variance Findings

Pursuant to Goodhue County Zoning Ordinance Article 5, before approving a variance application, the Board of Adjustment needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding. The Board of Adjustment may grant a variance only if the variance request complies with each and every one of these findings in full. The responsibility for completing the variance questionnaire rests solely with the applicant. If the description of how the project meets all of the criteria are not fully supported with written information and appropriate drawings or pictures, the Board may find the information insufficient and the criteria are not satisfied.

Please state how the project is consistent or inconsistent with each policy. Each statement should refer to specific circumstances or conditions applicable to the property. Each policy must have a response. IF A GIVEN POLICY DOES NOT APPLY TO YOUR PROJECT, EXPLAIN WHY IT DOES NOT.

1. What are the special circumstances of the proposal site which distinguish it from nearby properties with the same zoning? (relating to size, shape, topography, location, surroundings and features of the subject property).

Small lot size with very little room to install drain field on margin ground.

2. Who or What created the circumstances?

failed system

3. What is the character of the area (ie- rural, residential, agricultural, commercial, etc.) and how is the request consistent with this character?

Residential

4. Describe how the rules in the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning district.

extra room needed

5. Indicate why the requested variance will not result in your receiving any special privileges that are denied by the zoning ordinance to others in the same zoning district.

others in old frontenac have same issues / small lot

6. Is the proposed variance the minimum amount necessary to allow a reasonable use of the property? Please, explain.

0' setback on property line

7. Is the sole reason for the proposed variance based on a desire of the owner, occupant, or applicant for increased financial gain or reduced financial hardship? Please explain.

no financial reason, just space needed for drain field

Dear Board of Adjustment,

We are writing to share with you the details of our current situation in order to request that you would grant a variance to reduce the property line setback to zero feet for our proposed new septic drain field. Our home is in Old Frontenac. We have a small lot, as is common in our village. Currently, the failed drain field runs through the center of our backyard. Approving a zero property line setback for the new drain field would allow us to run the new system in an L shape around the exterior of the yard, therefore avoiding disruption of the old drain field. The new system would be placed between the property line and the failed drain field as seen in the attached design drawing of our current/proposed layout. If you have any further questions feel free to contact Noah via mobile phone at [REDACTED] Thank you for your consideration!

Noah & Stephanie Knudsen and family
29013 Westervelt Ave. Way W.
Old Frontenac, MN 55026



INDIVIDUAL SEWAGE TREATMENT SYSTEM

Goodhue County Environmental Health Department

509 W 5th Street - Red Wing, MN 55066
(651) 385-6132

LOCATION:

Owner's Name: Noah Knudsen Phone: [REDACTED]

Mailing Address: 29013 Westerveltway City: Frontenac Zip: 55026

Siteloation: same

PARCEL#: 321302020 Is this property a split: Yes No

Construction Proposed:

New Construction Replacement System Repair
 House Other _____ *Number of Bedrooms 3

*See Minnesota Rules Chapter 7080.110 Subpart 9.

Washing Machine Garbage Disposal* Whirlpool Tub
 Water Softener Dishwasher Self Cleaning Humidifier

*If garbage disposal is installed a two compartment septic tank or two septic tanks must be used

Tank And Treatment System:

The capacity of each septic tank is 1000 and _____ Lift Tank: 750

Type of Treatment System Used (check the system & the type):

Trench Mound Holding Tank only Other Establishment
 Chamber Bed Other New Technology

Total square footage to be installed: _____ Attach worksheets.

Rock under pipe: 6 inches. Lineal feet of 3' wide trenches _____

SITE INFORMATION:

Date of Site Evaluation: 8-29-16

Slope % 1 Vegetation Type: lawn Landscape Position: _____

Depth of Restricting Layer: 48 Maximum Depth of Soil Penetration: 12

Disturbed or Compacted? Yes No Access for Tank Maintenance Provided: Yes No

Flood Plain? Yes No Shoreland? Yes No

Soil Type:

Coarse Sand Fine Sand 1.67 Loam 1.67 Clay Loam 2.20
 Sand 0.83 Sandy Loam 1.27 Silt Loam 2.00

Well Information:

New Well: _____ Existing Well: _____ Distance to Tank & Drainfield: 50+

Water test submitted yes No (Existing Dwelling only)

*Attach all worksheets, drawings and soil boring logs

Notice and Signature:

This information will be used to determine conformity to adopted construction requirements and to facilitate storage and retrieval of records. Failure to provide all requested information may result in the denial of a permit. All information submitted as part of this application is deemed public information and is available to anyone upon request.

Pipe Layer Certification Number: [REDACTED]

Installer's Name: Trenton Witmer MPCA# C9510 Phone #: [REDACTED]

Address: 39523 240th ave City: Goodhue MN Zip: 55027

Designer's Name: Trenton Witmer MPCA# C9510 Date: 9-6-16

FOR OFFICE USE ONLY

ISTS Permit # _____

Approved by: _____

**Date: _____

Receipt # _____ Amount \$ _____

Comments: _____

Variance? Yes No

** permit is valid for 1 year from date of issue.
**this permit is non-transferable.

Soils Verified Yes No

Water Usage Per Day

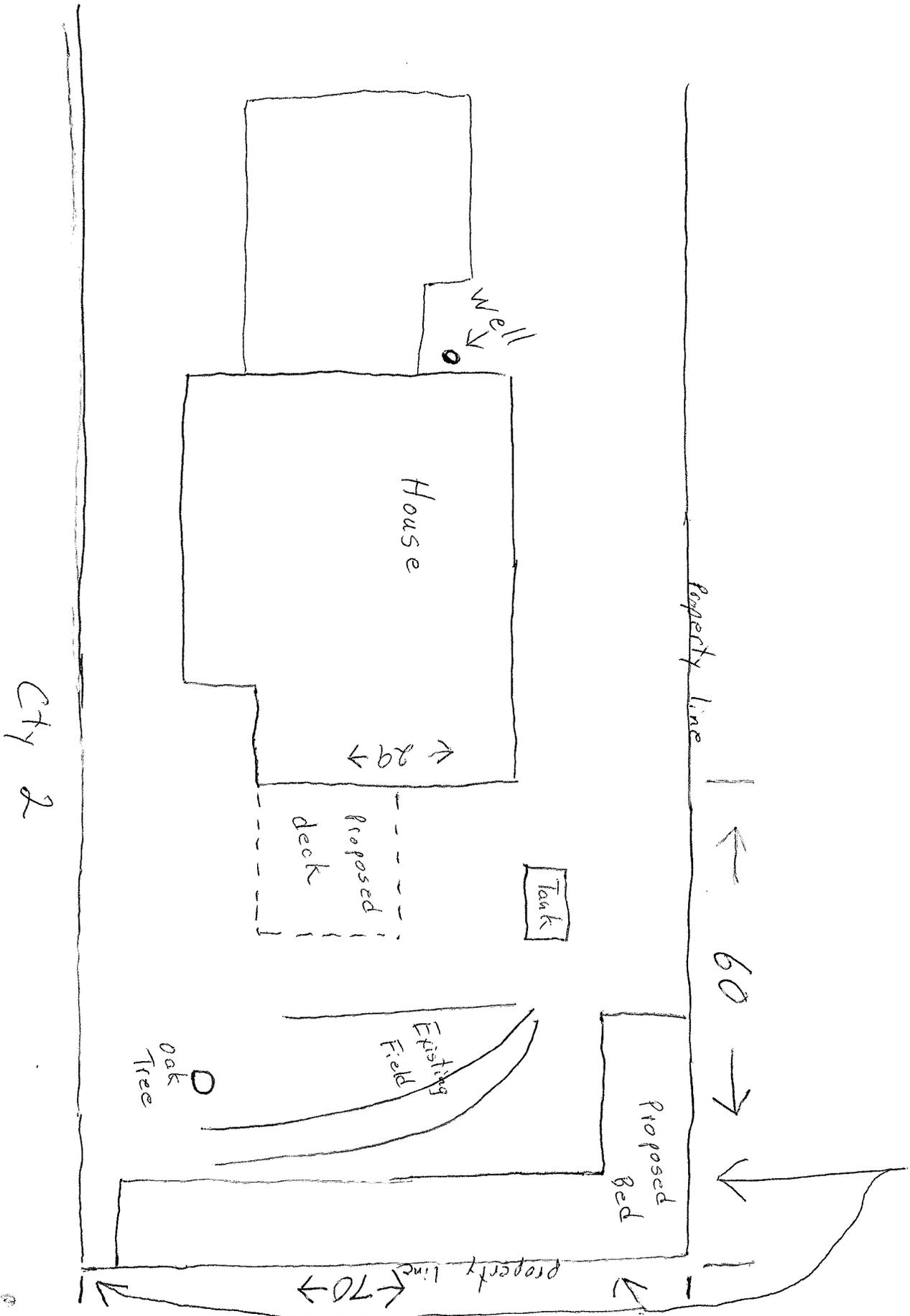
Number of Bedrooms	I	II
2	300	225
3	450	300
4	600	375
5	750	450
6	900	525

White - Office Copy

Yellow - Contractor Copy

Pink - Homeowner

Variance Requested:
for the 10' from property
line set back to be
reduced to 0'



City 2

perforations for dwellings. The minimum average head must be 2.0 feet for other establishments with 3/16- to 1/4-inch perforations and 5.0 feet of head for 1/8-inch perforations. Perforation discharge is determined by the following formula:

$$Q = 19.65 cd^2h^{1/2}$$

where: Q = discharge in gallons per minute

c = 0.60 = coefficient of discharge

d = perforation diameter in inches

h = head in feet.

- C. The pump discharge head must be at least five feet greater than the head required to overcome pipe friction losses and the elevation difference between the pump and the distribution device.
- D. The quantity of effluent delivered for each pump cycle must be no greater than 25 percent of the design flow and at least four times the volume of the distribution pipes plus the volume of the supply pipe.

7080.2150 Final Treatment and Dispersal.

Subpart 1. **General.** Treatment and dispersal of all sewage for new construction or replacement ISTS must be in compliance with this part and parts 7080.2200 to 7080.2400 as adopted into local ordinances.

Subp. 2. **General technical requirements for all systems.** All new construction or replacement ISTS must be designed to meet or exceed the provisions in items A to F.

- A. All treatment and dispersal methods must be designed to conform to all applicable federal, state, and local regulations.
- B. Treatment and dispersal processes must prevent sewage or sewage effluent contact with humans, insects, or vermin.
- C. Treatment and dispersal of sewage or sewage effluent must be in a safe manner that adequately protects from physical injury or harm.
- D. An unsaturated zone in the soil must be maintained between the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock during loading of effluent.
- E. Soil treatment and dispersal systems must not be designed in floodways. Soil treatment and dispersal systems installed in

flood fringes must meet the requirements in part 7080.2270. All soil treatment systems located in areas subject to excessive run-on must have a diversion constructed upslope from the system.

- F. ISTS components must be set back in accordance with Table VII.

Table VII: Minimum setback distances (feet)

Feature	Sewage tank, holding tank, or sealed privy	Absorption area or unsealed privy	Building sewer or supply pipes
Water supply wells	*	*	*
Buried water lines	*	*	*
Structures	10	20	
Property lines***	10	10	
Ordinary high water level of public waters	***	***	

* Setbacks from buried water lines and water supply wells are governed by chapters 4715 and 4725, respectively.

** Infringement on property line setbacks must be made through accepted local procedures

*** Setbacks from lakes, rivers, and streams are governed by chapters 6105 and 6120.

Subp. 3. **Other technical requirements for systems.** Items A to M are required for specific designs as determined in parts 7080.2200 to 7080.2400.

- A. Employ components registered under parts 7083.4070 and 7083.4080 that are installed, used, and operated according to the conditions placed on registration.
- B. Employ structural components and joint sealants that meet or exceed the system's expected design life.
- C. For acceptable treatment of septic tank effluent by soil,

PUBLIC HEARING: Noah Knudsen -
 Variance request from the MN Rules 7080
 Front Yard setback requirement of 10 feet
 from the property line, to place a septic
 system up to the lot line at 29013 Westervelt
 Ave. Frontinac in Florence Township.



Legend

- Subgrid Boundary
- Parcel
- Setback Line
- Cliff Impact
- % Slope
 - 0
 - 10
 - 20
- To Parcel
- Structure
- Special Flood Hazard Area
 - FUD ZONE
 - 0.5 FT ANNUAL CHANCE FLOOD HAZARD
 - A
 - AE
 - CO
 - X

0 50 100 200 300 Feet

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Goodhue County Land Use Management

Goodhue County Government Center | 509 West Fifth Street | Red Wing, Minnesota 55066



Building | Planning | Zoning
Telephone: 651.385.3104
Fax: 651.385.3106

Environmental Health | Land Surveying | GIS
Telephone: 651.385.3223
Fax: 651.385.3098

To: Board of Adjustment
From: Land Use Management
Report Date: October 14, 2016
Meeting Date: October 24, 2016

Application Information:

Applicant: Judy Webster
Address of Zoning request: 9071 E. Mississippi Ave.
Zoning district: R1
Township Information: Florence Township has not signed the application.

Attachments:

Application with Applicant Statement
Site Map
Sewer design plan
Goodhue County Zoning Ordinance: MN Rules 7080

Notice: Judy Webster Variance request from the MN Rules 7080 required 20 foot setback from the dwelling to place a septic system within 10 feet of the dwelling at 34778 Sumner Street; Lots 4, 5 & 6 Block 36 Town of Frontenac in Florence Township.

Background: The purpose of this variance is to place a replacement septic system within the 20 foot setback from the dwelling on parcel 32.130.1570. Parcels under MN Rules 7080 are required to maintain a 20 foot setback from the dwelling when installing a septic system. The Applicant's proposed design is within 10 feet of the dwelling.

Goodhue County Well and Septic Inspector: Supports the variance so long as a complete design is provided with the application for a septic system.

Findings of Fact:

Before any such variance may be granted, the Board of Adjustment shall specify in their findings, the facts in each case. Variances shall only be permitted when:

- 1) They are in harmony with the general purposes and intent of the official control; **The intent of the official controls under MN Rules 7080 that require a 20 foot setback from the dwelling is to decrease the likelihood of drain field matter entering and contaminating the dwelling. Goodhue County Well and Septic Inspectors have reviewed the site (including test holes) and determined that the drain field matter would not enter nor contaminate the building because the storm water runoff and site specific elements would not compromise the drain field.**

- 2) The variances are consistent with the comprehensive plan;
The variance request does not conflict with any objectives or implementation measures found in the 2016 Comprehensive Plan.
- 3) There are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner, not permitted by an official control. Economic considerations alone do not constitute practical difficulties.
The intent of the provision is to allow the safe instillation and use of septic systems within the Goodhue County and Minnesota; specifically the continued use of the system without impacting the users or neighbors use of the land.

The lots within the Towns of Frontenac Plat were platted smaller than today's standards would allow. Many lots within the neighborhood have little if any area to replace or improve septic systems after taking into account setback requirements from existing structures, driveways, wells, and lot lines.

The homeowner/Applicant desires to continue to use the property as a dwelling site. Denial of the septic variance may restrict the ability of the owner to continue to use the property as a dwelling site.

- 4) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
The Applicant purchased a normal size lot for the Town of Frontenac Plat and did not cause the system to fail. The need comes from the small lot size and requires encroachment within the dwelling setback requirement.
- 5) The variance, if granted, will not alter the essential character of the locality.
The surrounding neighborhood's character will not change.
- 6) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
There is no use change.
- 7) The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
If the variance is approved than, in accordance with this provision, the Board will include conditions to ensure implementation of the variance is consistent with the variance request and in conformance with other applicable rules and regulations.

The following should be edited to reflect any concerns raised at the October 24, 2016 BOA meeting and public hearing:

Staff Recommendation:

Staff recommends the Board of Adjustment:

- Adopt the staff report into the record (dated October 14, 2016);
- Adopt the findings of fact; and
- Based on the application, testimony, exhibits, and other evidence presented:

APPROVE the variance request of Judy Webster from the MN Rules 7080 required 20 foot setback from the dwelling to place a septic system within 10 feet of the dwelling at 34778 Sumner Street; Lots 4, 5 & 6 Block 36 Town of Frontenac in Florence Township.

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated September 15, 2016,
2. Compliance with all necessary State and Federal permits and licensing,
3. Compliance with the Environmental Health Inspectors expectations for a septic system site design
4. To encroach on the dwelling setback as least as possible

APPLICATION FOR

Variance

Application # 16-0077
 15575

1. Owner/Applicant Information

PROPERTY OWNER'S NAME

Judy Webster

PROPERTY OWNER'S ADDRESS

9011 E. Mississippi Ave
 # 27B
 Denver CO 80247

[Redacted]

EMAIL

[Redacted]

APPLICANT'S ADDRESS

TELEPHONE

()

EMAIL

CONTACT FOR PROJECT INFORMATION

Tom Johnson

ADDRESS

29219 Garrard Ave.
 Fratenac mn. 55026.

TELEPHONE

[Redacted]

EMAIL

2. Location and Classification

STREET ADDRESS OF PROJECT

34778 Summer St. Fratenac 55026
 #32.130.1570

LEGAL DESCRIPTION

#32.130.1570

IF YOU ARE NOT SURE OF THE EXACT LOCATION OF THE FINAL PROJECT, PROVIDE THE MAXIMUM ESTIMATES
 ZONING DISTRICT LOT AREA (SQ FT) LOT DIMENSIONS STRUCTURE DIMENSIONS (if applicable)

- ADDITIONS TO BUILDING
- New Building on vacant land Rear
 - New Addition to existing building Front
 - Animal Building Side
 - Storage building Other (specify)

PARENT OR PREVIOUS USE

PROPOSED USE

BUILDING APPLICATION PERMIT TAG (if used) DATE FILED

By signing this form, the Township acknowledges being made aware of the request stated above. In no way does signing this application indicate the Township's official approval or denial of the variance request.

TOWNSHIP OFFICIAL'S PRINTED NAME AND TITLE TOWNSHIP OFFICIAL'S SIGNATURE DATE

3. Applicant's Affidavit

- Under penalty of perjury, the following declarations are made:
- The undersigned is the owner or authorized agent of the owner of this property.
 - The information presented is true and correct to the best of my knowledge.
 - If I am unable to be present at the meeting where my request is decided, I agree to accept the Notice of Decision by certified USPS.
 - Other information or applications may be required.

Signature: Judy Webster Date: 9-15-16

Print name: Judy Webster owner or authorized agent (circle one)

VARIANCE NUMBER
City of Goodhue, Ga.

Project Summary (this information should have already appeared on the application form)

Please state which section(s) of the Ordinance from which you are requesting a variance

Variance Findings

Pursuant to Goodhue County Zoning Ordinance Article 5, before approving a variance application, the Board of Adjustment needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding. The Board of Adjustment may grant a variance only if the variance request complies with each and every one of these findings in full. The responsibility for completing the variance questionnaire rests solely with the applicant. If the description of how the project meets all of the criteria are not fully supported with written information and appropriate drawings or pictures, the Board may find the information insufficient and the criteria are not satisfied.

Please state how the project is consistent or inconsistent with each policy. Each statement should refer to specific circumstances or conditions applicable to the property. Each policy must have a response. IF A GIVEN POLICY DOES NOT APPLY TO YOUR PROJECT, EXPLAIN WHY IT DOES NOT

1. What are the special circumstances of the proposal site which distinguish it from nearby properties with the same zoning? (relating to size, shape, topography, location, surroundings and features of the subject property).
A replacement septic system is necessary. The lot size requires that the drainfield be left as the house rather than the required 20 ft.

2. Who or What created the circumstances?
Setback requirement create the circumstances

3. What is the character of the area (i.e. rural, residential, agricultural, commercial, etc.) and how is the request consistent with this character?
This home is located in a residential area. No neighboring properties were affected.

4. Describe how the rules in the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning district.
Small lot with a private well. Setback requirement do not allow replacement system.

5. Indicate why the requested variance will not result in your receiving any special privileges that are denied by the zoning ordinance to others in the same zoning district.
There are no other options for a replacement septic system.

6. Is the proposed variance the minimum amount necessary to allow a reasonable use of the property? Please, explain.
Yes. This system is the smallest available for this home.

7. Is the sole reason for the proposed variance based on a desire of the owner, occupant, or applicant for increased financial gain or reduced financial hardship? Please explain.
No. The only reason is to allow a replacement septic system.

PID #32-130-1570
 Zoning District: R1 and Historic

The following information is required for a Site Plan:

1. Location, size and shape of any structures and proposed; Clearly distinguish between existing and proposed;
2. Distances from structures to property lines;
3. Distances between structures, porches and decks;
4. All wells and sanitary sewer systems (including any abandoned) and the distance to nearby structures
5. The existing and intended use of the property;
6. All landscape, screening, and fencing plans;

Upon review, projects may require other information

Stream Center Line
 STATUS

Proposed

Zoning Temp

Tax Parcel

Section Line

Road

2014 Parcel Data

Municipal Boundaries

Welling Point

% Slope

20

30

Shoreline

Special Flood Hazard Area
 FLD_ZONE

02 POTENTIAL CHANGE FLOOD HAZARD

A

AE

AO

X

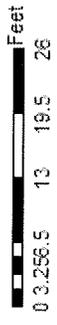
Goodhue_Co_2016.sid

RGB

Red Band_1

Green Band_2

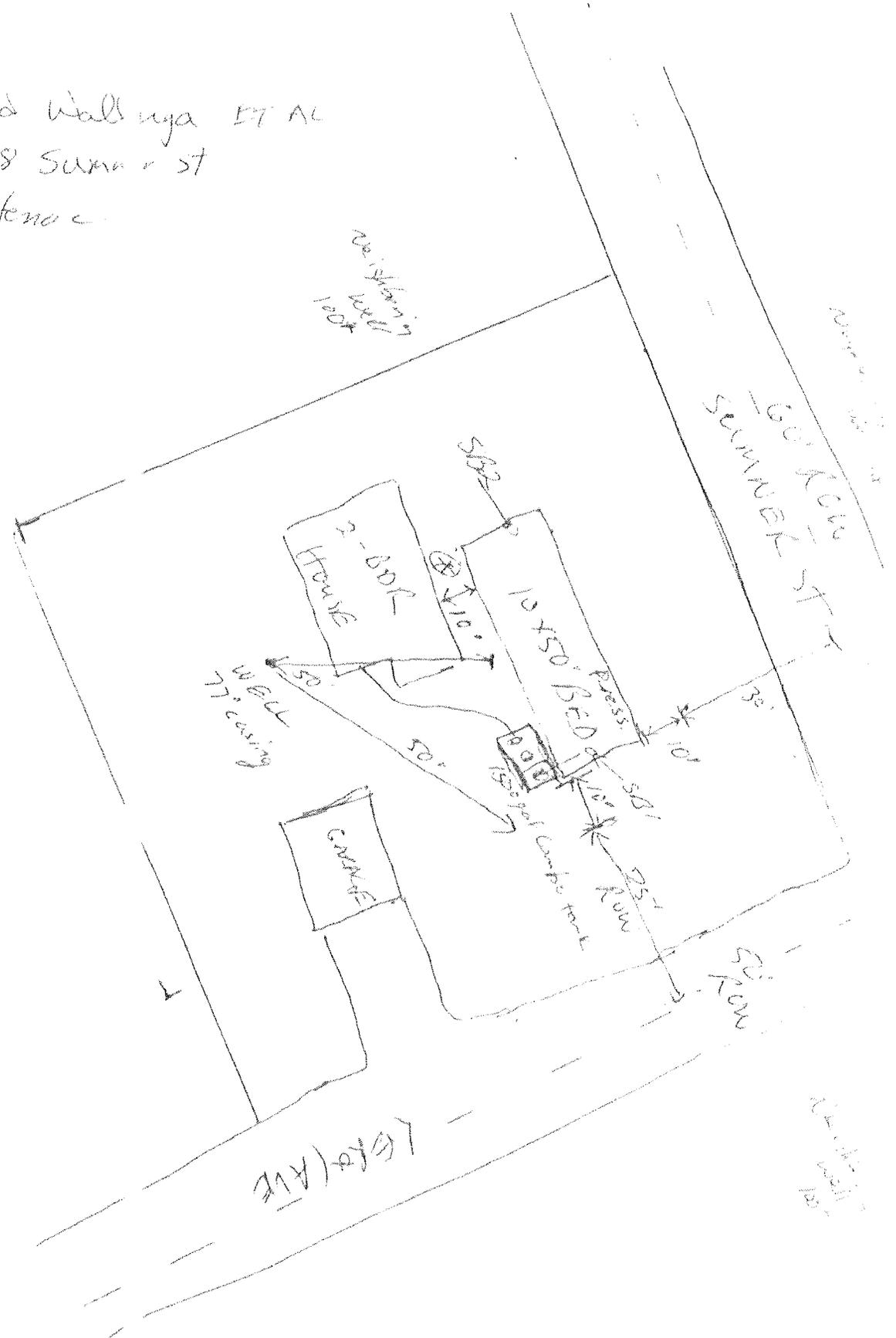
Blue Band_3



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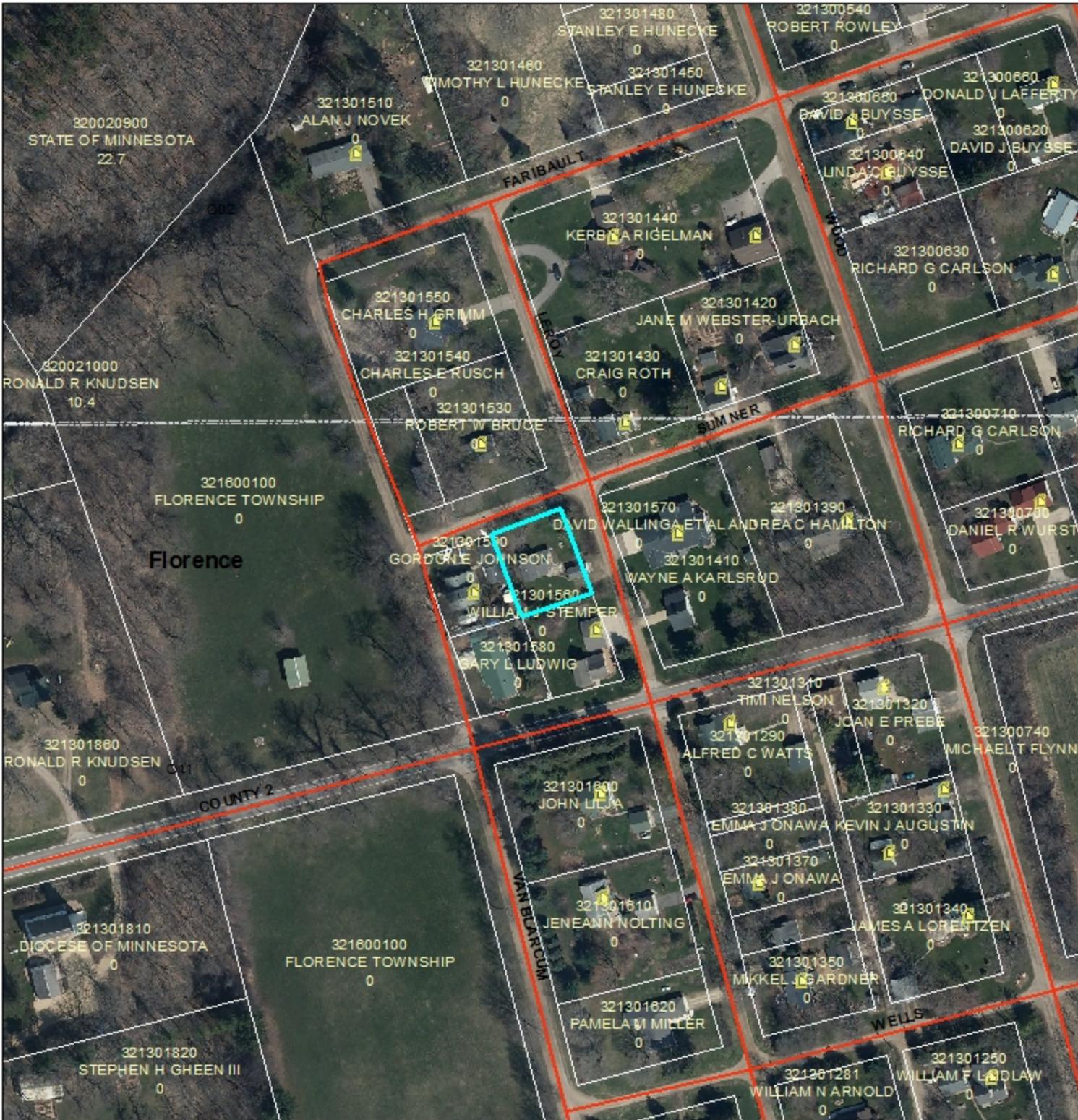


David Wallinga ET AL
 34778 SUMNER ST
 Frontenac



* A variance is required to allow the drainfield to be installed 10' to house. Rules require 20'

PUBLIC HEARING: Judy Webster –
 Variance request from the MN Rules 7080
 required 20 foot setback from the dwelling to
 place a septic system within 10 feet of the
 dwelling at 34778 Sumner Street, Frontenac
 in Florence Township.



- Legend**
- Municipal Boundaries
 - Road
 - Section Line
 - Parcel
 - Dwelling Point
- 2016 Aerial Imagery**
- RGB
- Red: Band_1
 - Green: Band_2
 - Blue: Band_3



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Goodhue County Land Use Management

Goodhue County Government Center | 509 West Fifth Street | Red Wing, Minnesota 55066



Building | Planning | Zoning
Telephone: 651.385.3104
Fax: 651.385.3106

Environmental Health | Land Surveying | GIS
Telephone: 651.385.3223
Fax: 651.385.3098

To: Board of Adjustment
From: Land Use Management
Report Date: October 14, 2016
Meeting Date: October 24, 2016

Application Information:

Applicant: Gary Anderson
Address of Zoning request: 31701 Lakeview Ave., Red Wing, MN 55066
Zoning district: R1
Township Information: Wacouta Township has signed the application and has no comments.

Attachments:

Application
Applicant Statement
Proposed building expansion
Beau Kennedy's Comments
Site Map
Goodhue County Zoning Ordinance: Articles 12, Section 4, Subdivision 2

Notice: Gary Anderson Variance request from the Bluff Impact Protection's General Regulations 30' set back from the top of the bluff for an addition onto a dwelling that is currently encroaching into the 30' setback at 31701 Lakeview Ave.; Lot 1 Block 1 of Kann's Lakeview Subdivision in Wacouta Township.

Background: The purpose of this variance is to construct an expansion to the dwelling on parcel 43.350.0010. Parcels under Article 12 Bluff Land Protection, Section 4 General Regulation, Subdivision 2 are required to maintain a setback from the top of the bluff to any structure in any district no less than thirty (30) feet. The Applicant's home currently encroaches about half way into the 30 foot bluff impact zone, and the proposed addition would encroach no further. Mr. Anderson's dwelling was constructed in 1991 and was legally permitted.

Soil and Water Conservation District Office Beau Kennedy

I visited with Gary Anderson in Wacouta this morning regarding a bluff setback issue. Mr. Anderson would like to put an addition on the east side of his home (garage). The slope to the north does meet the definition of a bluff; has a rise of ~35 feet and the average slope is more than 30%. I flagged the top of the bluff and a 30' setback from the top for his information. The house and garage currently sits within the bluff impact zone as shown in one of the attached photos. Pink flags are on top of the bluff; yellow is the

30' setback. Like many homes on Lakeview, the homes were built prior to the shoreland/bluffland zoning ordinances were adopted.

Mr. Anderson is limited to where he can build an addition due to the size constraints of the lot. The proposal is to build on the east side of the existing garage, and the plans that I saw on site showed no further encroachment on the bluff to the north (just extending the wall to the east).

Like other projects this close to a bluff, we'd like to see special attention be placed on temporary erosion control measures as well as proper control of storm runoff on the north side of the home. Preventing concentrated flow from flowing over the bluff will help keep the bluff stabilized.

I directed Mr. Anderson to start the conversation with your office to determine if an administrative permit or a variance would be possible for his project.

Findings of Fact:

Before any such variance may be granted, the Board of Adjustment shall specify in their findings, the facts in each case. Variances shall only be permitted when:

- 1) They are in harmony with the general purposes and intent of the official control; **The intent of the Bluff Land Protection Ordinance is to “recognize the historic and economic values of the bluffs that line the many rivers and valleys of the County. These standards set out to protect and preserve the sensitive physical features of the bluffs by regulating development, preventing erosion and controlling the cutting of timber on the slopes and tops of the bluffs.”**

Beau Kennedy’s statement supports the expansion so long as special attention is placed on temporary erosion control measures as well as proper control of storm water runoff on the north side of the home. These measures should keep the bluff stabilized and meet the intent of the provisions.

- 2) The variances are consistent with the comprehensive plan; **The 2016 Comprehensive Plan supports the preservation of the natural resources of the bluffs and the development of private property. With the control measures identified by Beau Kennedy, the expansion will be consistent with the 2016 Comprehensive Plan.**
- 3) There are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner, not permitted by an official control. Economic considerations alone do not constitute practical difficulties. **The intent of the provisions is to protect the natural and historic resources of the bluffs. The property was platted before the provisions were established and became legal non-conforming upon adoption.**

- 4) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
The Applicant is requesting the variance due to the location of the bluff and existing dwelling that were platted and built before the provisions were put into place.
- 5) The variance, if granted, will not alter the essential character of the locality.
The surrounding neighborhood's character will not change.
- 6) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
There is no use change.
- 7) The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
If the variance is approved, the Board of Adjustment may include conditions recognizing that the variance is being granted to allow the specific addition being proposed by Mr. Anderson at this time and that the variance would be subject to compliance with other applicable regulatory requirements.

The following should be edited to reflect any concerns raised at the October 23, 2016 BOA meeting and public hearing:

Staff Recommendation:

Staff recommends the Board of Adjustment:

- Adopt the staff report into the record (dated October 14, 2016);
- Adopt the findings of fact; and
- Based on the application, testimony, exhibits, and other evidence presented:

APPROVE the variance request of Gary Anderson from the Bluff Impact Protection's General Regulations 30' set back from the top of the bluff for an addition onto a dwelling that is currently encroaching into the 30' setback at 31701 Lakeview Ave.; Lot 1 Block 1 of Kann's Lakeview Subdivision in Wacouta Township;

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated September 15, 2016,
2. Compliance with all necessary state and federal permits and licensing,

variance

VARIANCE NUMBER: 216-0071
 For Staff Use only
 \$350 RECEIPT# 15539 DATE 9/15/16

1. Owner/Applicant Information

PROPERTY OWNER'S NAME: Gary Anderson	
PROPERTY OWNER'S ADDRESS: 31701 LAKEVIEW AVE RED WING, MN 55066	TELEPHONE: [REDACTED]
	EMAIL: [REDACTED]

APPLICANT OR AUTHORIZED AGENT'S NAME: <div style="text-align: right;">Same as Above <input checked="" type="checkbox"/></div>	
APPLICANT'S ADDRESS:	TELEPHONE: ()
	EMAIL:

CONTACT FOR PROJECT INFORMATION: <div style="text-align: right;">Same as Above <input checked="" type="checkbox"/></div>	
ADDRESS:	TELEPHONE: ()
	EMAIL:

2. Location and Classification

STREET ADDRESS OF PROJECT: 31701 Lakeview Ave, Red Wing, MN	ZIP CODE: 55066
LEGAL DESCRIPTION: KANN'S LAKEVIEW SUB, LOT 1 BLK 1 DOC #13343	Attached <input type="checkbox"/>

IF YOU ARE NOT SURE OF THE EVENTUAL SIZE OF THE FINAL PROJECT, PROVIDE THE MAXIMUM ESTIMATES			
PID#: <u>R43.350.0010</u>	ZONING DISTRICT	LOT AREA (SQ FT): <u>39000sq'</u>	LOT DIMENSIONS: <u>227' x 173'</u>
			STRUCTURE DIMENSIONS (if applicable): <u>37' x 71' (42' x 90' PROPOSED)</u>
(Please check all that apply)		PRESENT OR PREVIOUS USE: <u>RESIDENTIAL</u>	
ADDITIONS TO BUILDING:		PROPOSED USE: <u>Storage RESIDENTIAL WITH ADDITIONAL STORAGE</u>	
<input type="checkbox"/> New Building on vacant land	<input type="checkbox"/> Rear	BUILDING APPLICATION PERMIT NO. (if filed)	
<input checked="" type="checkbox"/> New Addition to existing building	<input type="checkbox"/> Front	DATE FILED:	
<input type="checkbox"/> Animal Building	<input checked="" type="checkbox"/> Side		
<input type="checkbox"/> Storage building	<input type="checkbox"/> Other Please clarify		

TOWNSHIP: By signing this form, the Township acknowledges being made aware of the request stated above. In no way does signing this application indicate the Township's official approval or denial of the variance request.			Attached <input type="checkbox"/>
TOWNSHIP OFFICAL'S PRINTED NAME AND TITLE: <u>Douglas J McLean / Township Supervisor</u>	TOWNSHIP OFFICAL'S SIGNATURE: 	DATE: <u>9-12-16</u>	

3. Applicant's Affidavit

Under penalty of perjury the following declarations are made:

1. The undersigned is the owner or authorized agent of the owner of this property.
2. The information presented is true and correct to the best of my knowledge.
3. If I am unable to be present at the meeting where my request is decided, I agree to accept the Notice of Decision by certified USPS.
4. Other information or applications may be required.

Signature: Date: 9/12/16
GARY A ANDERSON

Project Summary (Attach a separate sheet if more space is needed)

Please state which section(s) of the Ordinance from which you are requesting a variance.

Bluff Impact – Article 12 Section 4 Subdivision 2

Variance Findings

Pursuant to Goodhue County Zoning Ordinance Article 5, before approving a variance application, the Board of Adjustment needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding. The Board of Adjustment may grant a variance only if the variance request complies with each and every one of these findings in full. The responsibility for completing the variance questionnaire rests solely with the applicant. If the description of how the project meets all of the criteria are not fully supported with written information and appropriate drawings or pictures, the Board may find the information insufficient and the criteria are not satisfied.

Please state how the project is consistent or inconsistent with each policy. Each statement should refer to specific circumstances or conditions applicable to the property. Each policy must have a response. IF A GIVEN POLICY DOES NOT APPLY TO YOUR PROJECT, EXPLAIN WHY IT DOES NOT.

1. What are the special circumstances of the proposal site which distinguish it from nearby properties with the same zoning? (relating to size, shape, topography, location, surroundings and features of the subject property).
This property has bluff where others aren't influenced by the new bluffland zoning ordinances.
The bluff on this property does not include any water frontage.
2. Who or What created the circumstances?
Desire for additional storage for normal residential uses. The existing structure does not conform to the current standards related Bluff Impact zone.
3. What is the character of the area (ie- rural, residential, agricultural, commercial, etc.) and how is the request consistent with this character?
Sparse residential with bluffs and heavily wooded. The intended addition is consistent with residential uses.
4. Describe how the rules in the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning district.
The Bluff Impact standards have been enacted since the original structure was built.
Others are not impacted by the new Bluff Impact regulations.
5. Indicate why the requested variance will not result in your receiving any special privileges that are denied by the zoning ordinance to others in the same zoning district.
The proposed location is the only reasonably accessible area for the addition and this will impact the bluff. New zoning standards have been enacted since the existing structure was built.
6. Is the proposed variance the minimum amount necessary to allow a reasonable use of the property? Please, explain.
Yes. The proposed addition has been designed for minimal impact to property, bluff and foliage. Alternatives would require excusive removal of trees negatively impacting the bluff region.
Currently the natural drainage goes over the bluff. With the proposed addition the drainage will be controlled away from the bluff area.
7. Is the sole reason for the proposed variance based on a desire of the owner, occupant, or applicant for increased financial gain or reduced financial hardship? Please explain.
No financial gain is expected.

Subject: Anderson Bluff _ Wacouta

Date: Monday, September 12, 2016 at 9:43:55 AM Central Daylight Time

From: Kennedy, Beau

To: MacCallum, Casey

CC: [REDACTED]

Casey

I visited with Gary Anderson in Wacouta this morning regarding a bluff setbacks. Mr Anderson would like to put an addition on the east side of his home (garage). The slope to the north does meet the definition of a bluff; has a rise of ~35 feet and the average slope if more than 30%. I flagged the top of the bluff and a 30' setback from the top for his information. The house and garage currently sits within the bluff impact zone as shown in one of the attached photos. Pink flags are top of bluff, yellow is the 30' setback. Like many homes on Lakeview, the homes were built prior to the shoreland/bluffland zoning ordinances were adopted. Mr Anderson is limited to where he can build an addition due to the size constraints of the lot. The proposal is to build on the east side of the existing garage, and the plans that I saw on site showed no further encroachment on the bluff to the north (just extending the wall to the east).

Like other projects this close to a bluff, we'd like to see special attention be placed on temporary erosion control measures as well as proper control of storm runoff on the north side of the home. Preventing concentrated flow from flowing over the bluff will help keep the bluff stabilized.

I directed Mr. Anderson to start the conversation with your office to determine if an administrative permit or a variance would be possible for his project.

I put the files in our shared drive under \County Permit Reviews\G_anderson_bluff

Let me know if you have any questions.

b

Beau Kennedy

Goodhue SWCD

651-923-5286

bkennedy@goodhueswcd.org

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SIGHTSEER



JEROME E
JABLONSKI

GARY A
ANDERSON

GARY A
ANDERSON

STATE
OF MINNESOTA

Legend

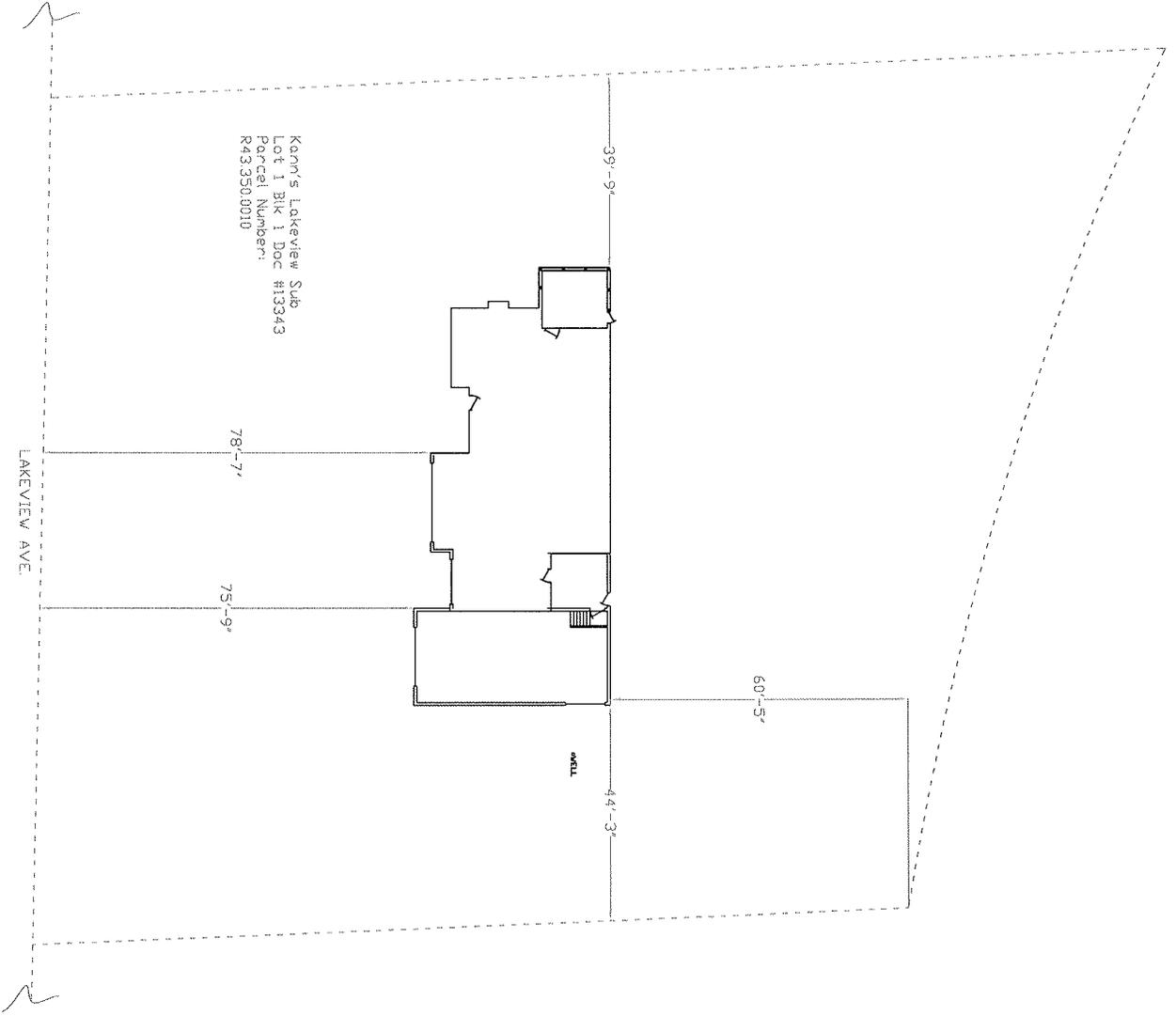
Anderson GPS Points

- ⊙ 30' offset
- ⊕ top bluff
- ⊗ well
- ▭ Parcels
- Contours

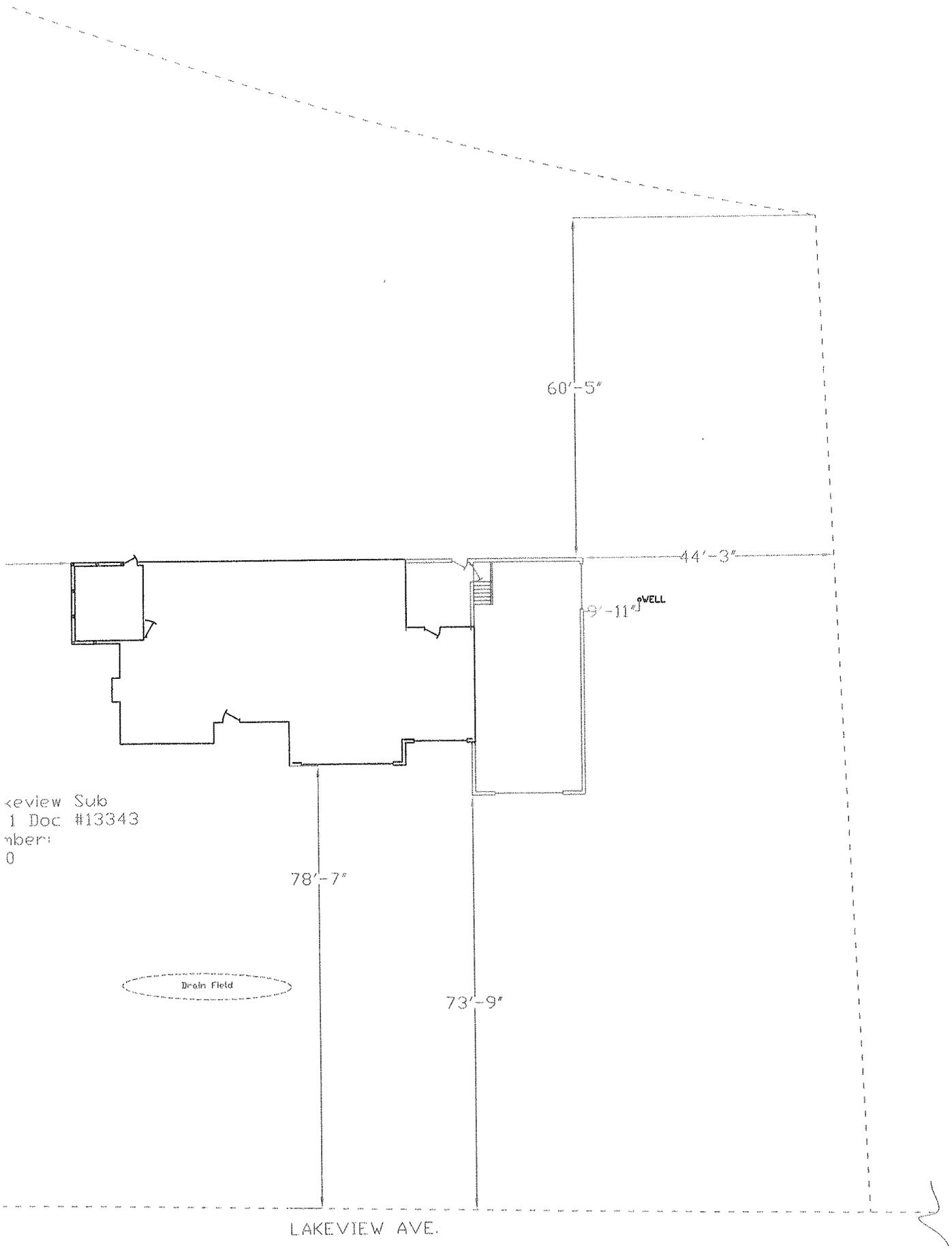
Gary Anderson - Sec. 32 Wacouta TWP
Bluff Review



Goodhue SWCD



Karr's Lakeview Sub
Lot 1 Blk 1 Doc #13343
Parcel Number:
R433508010

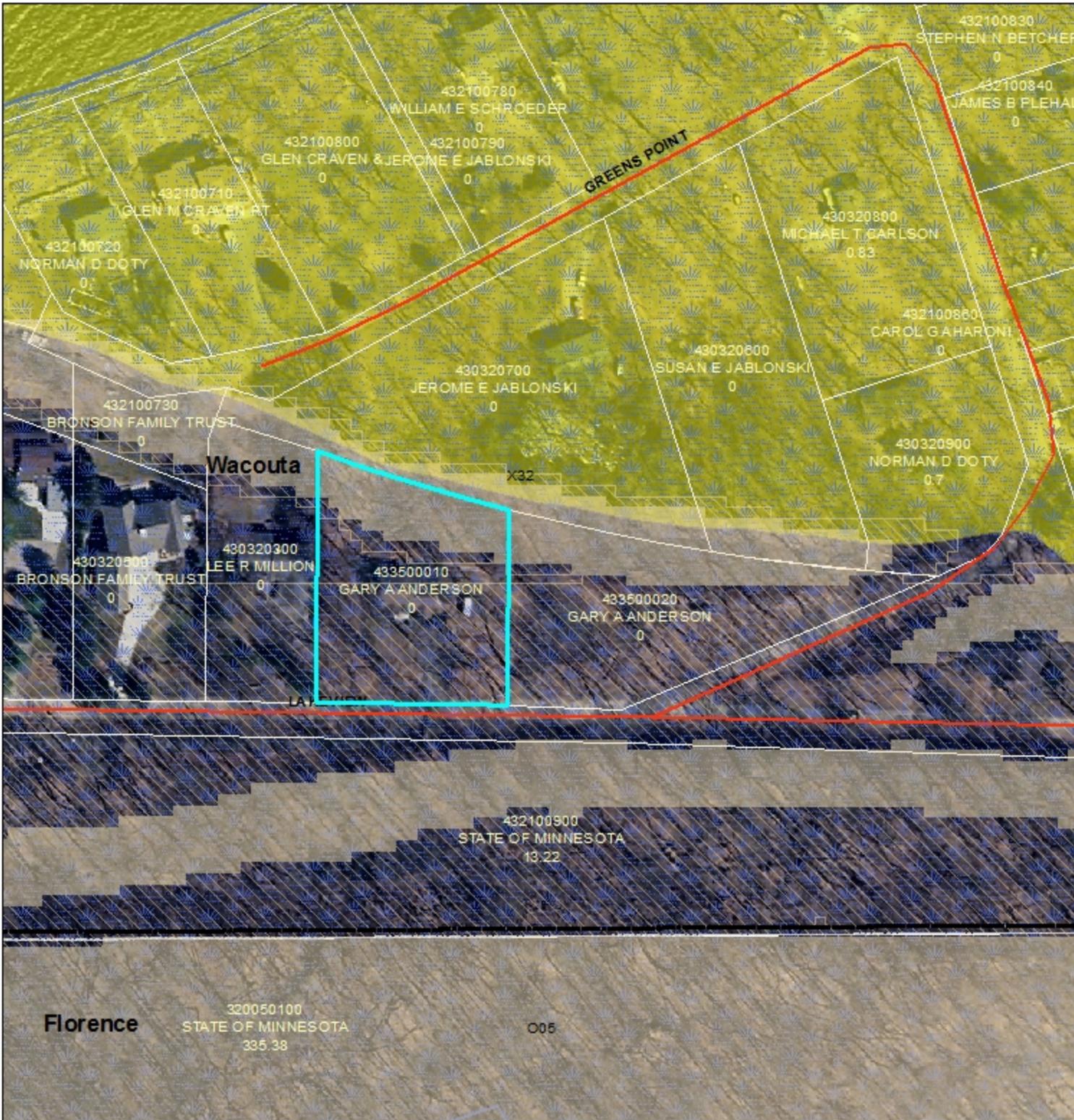


Review Sub
1 Doc #13343
Number:
0

Drain Field

WELL

LAKEVIEW AVE.



PUBLIC HEARING: Gary Anderson –
 Variance request from the Bluff Impact Protection's General Regulations 30' setback from the top of the bluff for an addition onto a dwelling that is currently encroaching into the 30' setback at 31701 Lakeview Ave. in Wacouta Township.

- Legend**
- Setback
 - Bluff Line
 - Bluff Impact
 - % Slope
 - Flood Zone
 - Special Flood Hazard Area
 - FLD_ZONE
 - 0.5 FT ANNUAL CHANCE FLOOD HAZARD
 - A
 - AE
 - CO
 - X



DATA DISCLAIMER: Goodhue County assumes NO liability for the accuracy or completeness of this map OR responsibility for any associated direct, indirect, or consequential damages that may result from its use or misuse. Goodhue County Copyright 2015.

2014 Aerial Imagery
 Map Created 2016 Kate Eiynek

Goodhue County Land Use Management

Goodhue County Government Center | 509 West Fifth Street | Red Wing, Minnesota 55066



Building | Planning | Zoning
Telephone: 651.385.3104
Fax: 651.385.3106

Environmental Health | Land Surveying | GIS
Telephone: 651.385.3223
Fax: 651.385.3098

To: Board of Adjustment
From: Land Use Management
Report Date: October 14, 2016
Meeting Date: October 24, 2016

Application Information:

Applicant: Associated Bank
Address of Zoning request: 27202 144th Ave. Way, Welch
Zoning district: A2
Township Information: Vasa Township has signed the application and has no comments.

Attachments:

Application
Applicant letter
Applicant Statement of Findings of Fact
Exhibit A: Area Map
Exhibit B: Site Map
Exhibit C: Parcel Map
Exhibit D: Survey
Exhibit E: Summary Judgment
Exhibit F: Letter from Goodhue County Attorney
Exhibit G: Site photo
1938 Aerial
1991 Aerial
2005 Aerial
2010 Aerial
2014 Aerial
Goodhue County Zoning Ordinance: Relevant Articles

Notice: Associated Bank Variance request from the A2 Agricultural District's General District Regulations' public road frontage requirement of a 33' wide driveway access easement for a single lot at 27202 144th Ave. Way; Part of the W 1/2 of NW 1/4 of Sec 33 T 113, R16 in Vasa Township. In addition the variance request involves a request for a variance to the County's driveway standard requiring a minimum 14' wide surface for a driveway exceeding 200' in length.

Background: The purpose of this variance is to allow the parcel 42.133.0050 a narrow access easement. Parcels under Article 22 the A2 Agricultural District, Section 5 General District Regulations, Subdivision 4A Public Road Frontage or Road Access Easements standards are required to include a driveway access easement that is a minimum of 33

feet in width and has been determined to be acceptable by the Goodhue County Land Use Management Department. The Applicant is requesting 9.5 foot easement that would cover the width of the road.

Findings of Fact:

Before any such variance may be granted, the Board of Adjustment shall specify in their findings, the facts in each case. Variances shall only be permitted when:

- 1) They are in harmony with the general purposes and intent of the official control;
The intent of the request variances to the driveway easement width and driveway width standards is provide for a legal means of access to the dwelling site located at 27202 144th Avenue Way. Any future development of currently vacant land accessible from the driveway/road would be subject to all applicable access standards.
- 2) The variances are consistent with the comprehensive plan;
The 2016 Comprehensive Plan does not have any implementation strategies or objectives that would be incongruent with this variance.
- 3) There are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner, not permitted by an official control. Economic considerations alone do not constitute practical difficulties.
The intent of the requested variance is to maintain access for the dwelling site located at 27202 144th Avenue Way. The Applicant's practical difficulties include the fact that the neighbors also served by the driveway/road are requesting that the easement be no greater than the width of the road (9 ½ feet); and that denial would prohibit access to the Dwelling site.
- 4) The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
The Applicant did not cause the need or issues with the easement.
- 5) The variance, if granted, will not alter the essential character of the locality.
The surrounding neighborhood's character will not change.
- 6) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.
There is no use change.
- 7) The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

The following should be edited to reflect any concerns raised at the October 24, 2016 BOA meeting and public hearing:

Staff Recommendation:

Staff recommends the Board of Adjustment:

- Adopt the staff report into the record (dated October 14, 2016);
- Adopt the findings of fact; and
- Based on the application, testimony, exhibits, and other evidence presented:

APPROVE the variance request of Associated Bank from the A2 Agricultural District's General District Regulations' public road frontage requirement of a 33' wide driveway access easement for a single lot at 27202 144th Ave. Way; Part of the W 1/2 of NW 1/4 of Sec 33 T 113, R16 in Vasa Township; and from the County's Performance Standards for Driveways in the A2 Zone requiring a minimum 14' wide surface for a driveway longer than 200'.

Subject to the following conditions:

1. Conformance with the application submitted to Goodhue County Land Use Management Office dated September 23, 2016,
2. Compliance with all necessary State and Federal permits and licensing,

APPLICATION FOR

Variance

RECEIVED

SEP 23 2016



VARIANCE NUMBER For Staff Use only	Z16-0075	
\$350 RECEIPT#	15554	DATE 9/23/16

Land Use Management

1. Owner/Applicant Information

PROPERTY OWNER'S NAME:

Cory T. Axelson

PROPERTY OWNER'S ADDRESS:

27202 144th Avenue Way
Welch, MN 55089

TELEPHONE:

()

EMAIL:

APPLICANT OR AUTHORIZED AGENT'S NAME:

Associated Bank

Same as Above

APPLICANT'S ADDRESS:

1305 Main Street
Stevens Point, WI 55481

TELEPHONE:

()

EMAIL:

CONTACT FOR PROJECT INFORMATION:

Mary L. Cox, Esq.

Same as Above

ADDRESS:

332 Minnesota Street, Suite W-1650
St. Paul, MN 55101

TELEPHONE:

EMAIL:

2. Location and Classification

STREET ADDRESS OF PROJECT:

27202 144th Avenue Way, Welch, MN

ZIP CODE:

55089

LEGAL DESCRIPTION:

The West Half (W1/2) of the Northwest Quarter (NW1/4) of Section 33, Township 113 North, Range 16
West, Goodhue County, MN.

Attached

IF YOU ARE NOT SURE OF THE EVENTUAL SIZE OF THE FINAL PROJECT, PROVIDE THE MAXIMUM ESTIMATES

PID#:	ZONING DISTRICT	LOT AREA (SQ FT):	LOT DIMENSIONS:	STRUCTURE DIMENSIONS (if applicable):
-------	-----------------	-------------------	-----------------	---------------------------------------

42-133-0050

A2

80 acres

N/A

(Please check all that apply)

ADDITIONS TO BUILDING:

PRESENT OR PREVIOUS USE:

See attached

New Building on vacant land

Rear

PROPOSED USE:

See attached

New Addition to existing building

Front

Animal Building

Side

BUILDING APPLICATION PERMIT NO. (if filed)

DATE FILED:

Storage building Other Please clarify See attached

N/A

TOWNSHIP:

By signing this form, the Township acknowledges being made aware of the request stated above. In no way does signing this application indicate the Township's official approval or denial of the variance request. Attached

TOWNSHIP OFFICIAL'S PRINTED NAME AND TITLE

TOWNSHIP OFFICIAL'S SIGNATURE

DATE

3. Applicant's Affidavit

Under penalty of perjury the following declarations are made:

1. The undersigned is the owner or authorized agent of the owner of this property.
2. The information presented is true and correct to the best of my knowledge.
3. If I am unable to be present at the meeting where my request is decided, I agree to accept the Notice of Decision by certified USPS.
4. Other information or applications may be required.

Signature: Mary L. Cox

Date: 9.23.16

Print name: Mary L. Cox owner of authorized agent (circle one)

VARIANCE NUMBER:
For Staff Use only

Project Summary (Attach a separate sheet if more space is needed)

Please state which section(s) of the Ordinance from which you are requesting a variance.

Article 22 (A-2) Section 5 Subd 4A requiring a 33 foot wide driveway access easement for a single lot that does not front a public road

Variance Findings

Pursuant to Goodhue County Zoning Ordinance Article 5, before approving a variance application, the Board of Adjustment needs to find that the facts presented are such to establish the findings stated below. In the space below and on separate paper, if necessary, please present facts sufficient to establish each finding. The Board of Adjustment may grant a variance only if the variance request complies with each and every one of these findings in full. The responsibility for completing the variance questionnaire rests solely with the applicant. If the description of how the project meets all of the criteria are not fully supported with written information and appropriate drawings or pictures, the Board may find the information insufficient and the criteria are not satisfied.

Please state how the project is consistent or inconsistent with each policy. Each statement should refer to specific circumstances or conditions applicable to the property. Each policy must have a response. IF A GIVEN POLICY DOES NOT APPLY TO YOUR PROJECT, EXPLAIN WHY IT DOES NOT.

- 1. What are the special circumstances of the proposal site which distinguish it from nearby properties with the same zoning? (relating to size, shape, topography, location, surroundings and features of the subject property).

See attached

- 2. Who or What created the circumstances?

See attached

- 3. What is the character of the area (ie- rural, residential, agricultural, commercial, etc.) and how is the request consistent with this character?

See attached

- 4. Describe how the rules in the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning district.

See attached

- 5. Indicate why the requested variance will not result in your receiving any special privileges that are denied by the zoning ordinance to others in the same zoning district.

See attached

- 6. Is the proposed variance the minimum amount necessary to allow a reasonable use of the property? Please, explain.

See attached

- 7. Is the sole reason for the proposed variance based on a desire of the owner, occupant, or applicant for increased financial gain or reduced financial hardship? Please explain.

See attached

STATEMENT OF VARIANCE REQUEST

Subject Property: 27202 144th Avenue Way, Welch, Minnesota
Applicant: Associated Bank
Property Owner: Cory T. Axelson

Associated Bank, holder of a mortgage on the Subject Property, is seeking a variance of Article 22 (A-2), Section 5, Subd 4A that requires a 33 foot wide driveway access easement for a single lot that does not front a public road.

The Subject Property does not front a public road.

The only access from the Subject Property to a public dedicated road is via a roadway (“Roadway”) in the extreme northwest corner of the Subject Property adjacent to the single family residence on the Subject Property. *(See **Exhibit A** attached to the Application, which is a copy of an aerial photograph from the County website showing the Subject Property and **Exhibit B** attached to the Application which is a copy of a portion of the same aerial photograph from the County website of the Subject Property enlarged to show the detail of the extreme northwest corner of the Subject Property.)*

The Roadway is not a public dedicated road, but connects with the public road 144th Avenue Way after traversing four properties: the Subject Property; Parcel No. 421-28-0280 (the “Other Axelson Property”); Parcel No. 42-128-0260 (the “Mills Property”); and Parcel No. 42-128-0170 (the “Kane-Lynn Property”). *(See **Exhibit C** attached to the Application which is a copy of a map from the County website showing the Roadway (designated on the map as 144th Avenue Way) going across all of the properties.)*

The only access from the Subject Property to a public dedicated road is via the Roadway. Absent access by the Roadway, the subject Property has no access to a public dedicated road. The Roadway is not 33 feet wide.

Applicant makes this application for the purpose of establishing that the use of the Roadway as access to the public road 144th Avenue Way complies with the Ordinance, as modified by the requested variance. Applicant is not seeking to change the use or condition of the Roadway and is not seeking a variance to accommodate a proposed change. Instead, Applicant is merely seeking to continue the same use of the Roadway and in the same condition as it has been for decades, and to legalize that use by obtaining the requested variance. In effect, Applicant is seeking a variance decades after the construction and use of the Roadway by the predecessor owners of the Subject Property.

The special circumstances of the Subject Property that that are unique to the Subject Property and not to other properties in the area are: (1) the Subject Property does not front a public road; (2) the only access that the Subject Property has to a public road is a

private roadway that crosses four properties before it connects with a public road; (3) the private roadway is not 33 feet wide; and (4) the current use of the roadway for access to Subject Property, which violates the Ordinance's requirement for a 33 foot wide driveway, has existed for decades. Applicant is seeking the variance to make the use of the private roadway as access to the Subject Property legal after attempts to obtain other solutions have failed. Applicant proposes to use the property in a reasonable manner, namely the same manner of use that has been in place for decades, but such use is not permitted by the Ordinance.

Nearby properties have access to public dedicated roads. The Mills Property has access to the public dedicated road Mount Hill Road. The Kane-Lynn Property has access to the public dedicated road 144th Avenue Way (144th Avenue Way stops just to the west of their driveway). The Subject Property does not have access to a public dedicated road other than the Roadway.

Applicant has attempted to obtain a 33 foot wide driveway easement along the route of the Roadway but has encountered significant problems. The problems include: opposition by the adjoining landowners Mills, Kane and Lynn, both to attempts at negotiation and to a lawsuit commenced by Applicant seeking an easement; possible encroachment onto County property, i.e. the Cannon Valley Trail; and property and improvement configuration making constructing a 33 foot wide driveway along the route of the Roadway impractical if not impossible. (*See Application for elaboration.*)

Applicant and Kane and Lynn have reached an agreement in principal for an easement grant along the Roadway and in the width of the Roadway over the Kane-Lynn Property, subject to certain conditions, including obtaining this requested variance. Applicant and Mills are currently attempting to negotiate a similar agreement.

According to historical pictures, the Roadway has existed since at least 1949 (*see Exhibit E to Application, District Court Order, page 3, paragraph 10*). Further, the Roadway has existed in its present location and width for many years (*see Exhibit F to Application, page one of a memo from Goodhue County Land Use Management to Goodhue County Attorney which is an enclosure to the Goodhue County Attorney letter*). Because the Roadway has existed in its present condition and location since before 1986 and because the Roadway has been the only access to a public way before 1986, it was a predecessor owner that created the circumstances, not the present Property Owner or the Applicant.

The request for the variance is based on multiple reasons including: (a) encroaching as little as possible on the rights of Mills, Kane and Lynn, the neighbors owning the adjoining properties, by avoiding expanding the easement from the present width to the significantly greater width of 33 feet required by the Ordinance; (b) avoiding encroachment onto County property (i.e. the Cannon Valley Trail); (c) settling litigation by enabling Applicant to negotiate, enter into and consummate amicable easement agreements with Mills, Kane and Lynn; and (d) making the decades-long use of the Roadway legal and in compliance with the Ordinance as modified by the requested variance.

Application for Variance

Property: 27202 144th Avenue Way, Welch, Minnesota
Applicant: Associated Bank

Variance Findings

- 1. What are the special circumstances of the proposal site which distinguish it from nearby properties with the same zoning? (relating to size, shape, topography, location, surroundings and features of the subject property).**

The special circumstances of the property that is the subject of this application (“Subject Property”) that are unique to the Subject Property and not to other properties in the area are: (1) the Subject Property does not front a public road; (2) the only access that the Subject Property has to a public road is a private roadway that crosses four properties before it connects with a public road; (3) the private roadway is not 33 feet wide; and (4) the current use of the roadway for access to Subject Property, which violates the Ordinance’s requirement for a 33 foot wide driveway, has existed for decades. Applicant is seeking the variance to make the use of the private roadway as access to the Subject Property legal after attempts to obtain other solutions have failed. Applicant proposes to use the property in a reasonable manner, namely the same manner of use that has been in place for decades, but such use is not permitted by the Ordinance.

General Background

The Subject Property is a single family residence on 80 acres of land owned by Cory Axelson (“Property Owner”) in a rural area and classified as Agricultural Homestead. The Subject Property does not front a public road.

The only roadway that crosses the Subject Property is a roadway (“Roadway”) in the extreme northwest corner of the Subject Property. *(See a copy of an aerial photograph from the County website attached to this Application as **Exhibit A**.)* The single family residence on the Subject Property is located in the extreme northwest corner of the Subject Property. *(See **Exhibit B** attached to this Application which is a copy of a portion of the same aerial photograph from the County website enlarged to show the detail of the extreme northwest corner of the Subject Property.)* This roadway in the northwest corner is not a public dedicated road.

As noted on Exhibit B, the single family residence is adjacent to the Roadway. The Roadway traverses four properties before it reaches a public dedicated road: the Subject Property; Parcel No. 421-28-0280 (the “Other Axelson Property”); Parcel No. 42-128-0260 (the “Mills Property”); and Parcel No. 42-128-0170 (the “Kane-Lynn Property”). (See Exhibit C attached to this Application which is a copy of a map from the County website showing the Roadway (designated on the map as 144th Avenue Way) going across all of the properties.) After travelling over these four properties, the Roadway connects with the public road 144th Avenue Way.

As stated above, the Subject Property does not front a public road. The only access from the Subject Property to a public dedicated road is via the Roadway. Absent access by the Roadway, the subject Property has no access to a public dedicated road.

The Roadway is not 33 feet wide. As indicated in the survey of the Roadway over the Kane-Lynn Property, the Roadway, at least as to that portion that travels over the Kane-Lynn Property, varies in width and the width of the Roadway is less than 33 feet. (See Exhibit D attached to this Application which is a copy of a survey performed for Kane and Lynn showing the Kane-Lynn Property and the Roadway.) Applicant has requested a survey of the entire length of the Roadway over the Axelson Other Property, the Mills Property and the Kane-Lynn Property, but said survey will not be available until sometime in October; a copy will be provided to supplement this Application upon receipt of same from the surveyor.

Variance Requested

Applicant seeks a variance to the requirement of Article 22 (A-2) Section 5 Subdivision 4(A) which states: “. . . a single lot that does not front on a public road may be permitted upon recording (with the Goodhue County Recorder) of a driveway access easement that is a minimum of 33 feet in width and has been determined to be acceptable by the Goodhue County Land Use Management Department.”

Applicant makes this application for the purpose of establishing that the use of the Roadway as access to the public road 144th Avenue Way complies with the Ordinance, as modified by the requested variance. Applicant is not changing the use or condition of the Roadway and seeking a variance of the Ordinance to accommodate that change. Instead, Applicant is merely seeking to continue the same use of the Roadway and in the same condition as it has been for decades, and to legalize that use by obtaining the requested variance. In effect, Applicant is seeking a variance decades after the construction and use of the Roadway by the predecessor owners of the Subject Property.

Status of Applicant as Authorized Representative of Property Owner.

The Applicant has an interest in the Subject Property by way of a mortgage on the Subject Property. Applicant is in the process of foreclosing its mortgage by judicial action, Court File No. 25-CV-14-2381 ("Pending Lawsuit"). Plaintiff's motion for summary judgment to obtain a judgment in foreclosure is scheduled to be heard by the Goodhue District Court on October 25, 2016. If the Court grants a judgment in foreclosure, the Applicant will then schedule a sheriff's sale, publish notice of same for 6 weeks and have the sale conducted. The Subject Property is subject to a 12 month redemption period. If there is no reinstatement of the mortgage prior to the sheriff's sale and if the redemption period expires without redemption, and assuming Applicant is the successful bidder at the sheriff's sale, Applicant will then become owner of the Subject Property. Once Applicant owns the Subject Property, Applicant will seek to sell the Property to a third party. To be able to sell the Subject Property to a third party, Applicant will need to be able to convey marketable title. Without legal access to a public dedicated road, Applicant will not be able to convey marketable title. Further, if Applicant obtains resolution of the access issue now, successor owners will not have to deal with the matter. Applicant's mortgage authorizes the Bank to take actions on behalf of the property owner to take action to protect the value of the Subject Property and the Applicant's rights in the Subject Property.

Attempts to Address the Special Circumstances of the Subject Property

As noted above, the Subject Property does not front a public road, the only access that the Subject Property has to a public road is the Roadway, the Roadway is not 33 feet wide; and the current use of the Roadway has existed for decades. The Property Owner has used the Roadway for ingress and egress to the Subject Property since 1986.

Nearby properties have access to public dedicated roads. The Mills Property has access to the public dedicated road Mount Hill Road. The Kane-Lynn Property has access to the public dedicated road 144th Avenue Way (144th Avenue Way stops just to the west of their driveway). The Subject Property does not have access to a public dedicated road other than the Roadway.

Applicant has attempted to obtain a 33 foot wide driveway easement along the route of the Roadway but has encountered significant problems. The problems include: opposition by the adjoining landowners Mills, Kane and Lynn; possible encroachment onto County property, i.e. the Cannon Valley Trail; and property and improvement configuration making constructing a 33 foot wide driveway along the route of the Roadway impractical if not impossible.

Applicant did successfully obtain a District Court Order in the Pending Lawsuit granting an easement in favor of Plaintiff over the Other Axelson Property along the route of the Roadway, subject to confirmation of a description of the

easement. A copy of the Order granting partial summary judgment is attached to this application as **Exhibit E**.

As to the Mills Property and the Kane-Lynn Property, the Plaintiff first attempted to negotiate a grant by Mills, Kane and Lynn of a 33 foot wide easement along the route of the Roadway, but was unsuccessful. Plaintiff then sought a court-ordered 33 foot wide easement along the Roadway by joining Mills, Kane and Lynn to the Pending Lawsuit. Mills, Kane and Lynn filed answers opposing the requested 33 foot wide easement. That litigation has not yet been resolved.

After obtaining a survey of the proposed 33 foot wide easement along the route of the Roadway, Plaintiff learned that a 33 foot wide easement along the route of the Roadway encroached on County property in at least one place. Plaintiff recently received a letter from the County Attorney's office stating that the County would have to be joined to the Pending Lawsuit and that money grants for the Cannon Valley Trail prohibit use of the property for anything other than the proposed use that was presented in the grant applications. A copy of the letter from the County Attorney, with enclosures, is attached to this application as **Exhibit F**.

Seeking an easement for a driveway 33 feet wide along the route of the Roadway is not a good option because of the location of the Roadway in relation to the location of the improvements to the Kane-Lynn Property. According to the deposition testimony of Virginia Lynn, the Roadway is very close to their house. Attached as **Exhibit G** is a photograph taken by Virginia Lynn (as testified to in her deposition) showing the proximity of the road to their house. The proximity of the house is also shown on the survey of the Kane-Lynn Property in Exhibit D.

Applicant and Kane and Lynn have reached an agreement in principal for an easement grant along the Roadway and in the width of the Roadway, subject to certain conditions, including obtaining this requested variance. Applicant and Mills are currently negotiating a similar agreement.

2. Who or what created the circumstances?

It is unknown who or what created the circumstances of the Subject Property having no access to a public dedicated road and the Roadway being narrower than the width required by the Ordinance.

According to historical pictures, the Roadway has existed for many years, since at least 1949 (*see Exhibit E, District Court Order, page 3, paragraph 10*). Further, the Roadway has existed in its present location and width for many years (*see Exhibit F, page one of a memo from Goodhue County Land Use Management to Goodhue County Attorney which is an enclosure to the Goodhue County Attorney letter*).

Because the Roadway has existed in its present condition and location since before 1986, it was a predecessor owner that created the circumstances, not the present Property Owner or the Applicant.

3. What is the character of the area (ie – rural, residential, agricultural, commercial, etc.) and how is the request consistent with this character?

The character of the area is rural. The Roadway is a dirt road that is consistent with the rural character of the area. Applicant is not seeking to change the character of the area, the Roadway or its use. The Roadway has existed for decades and has been in its present location, width, condition and use for many years (*see answer to Question No. 2*). Applicant is seeking a variance so that the continued and identical use of the Roadway as a driveway access to a public dedicated road is legal and complies with the Ordinance as modified by the requested variance. The character of the proposed continued use of the Roadway is consistent with the character of the area because the proposed continued use is the same use as been in place for decades. The variance, if granted, will not alter the essential character of the area.

4. Describe how the rules in the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning district.

If enforced, the rules of Article 22 (2A) Subdivision 4 requiring a 33 foot wide driveway would result in depriving the Subject Property of access to a public dedicated road. Other properties in the same area enjoy access to a public dedicated road. The variance is necessary to preserve the right of access to a public road.

5. Indicate why the requested variance will not result in your receiving any special privileges that are denied by the zoning ordinance to others in the same zoning district.

Obtaining the requested variance will not result in special privileges that are denied to others in the area. As stated above, owners of properties in the area have access to a public dedicated road; the Subject Property does not. To the best of Applicant's knowledge, no other property owners in the area have been denied access to a public road because the driveway easement was less than 33 feet wide.

6. Is the proposed variance the minimum amount necessary to allow a reasonable use of the property? Please explain.

The proposed variance to make the decades-long use of the Roadway legal and compliant with the Ordinance as modified by the requested variance, is the minimum amount necessary to allow reasonable use of the Subject Property. The Subject Property needs access to a public road. The Roadway has existed and been used for decades as the access to the public road 144th Avenue Way. Continued use of the Roadway as access to the public road is reasonable. Granting the variance is consistent with the general purpose and intent of the Ordinance to enable property owners to obtain access to a public road. Granting the variance will not injure the public welfare or the property and improvements in the area. Because the variance merely seeks to continue the present use of the Roadway as access to the Property, the variance will not increase the potential for injury to the public welfare. Further, the proposed variance seeks to limit injury to the rights of property owners in the area by seeking to obtain county approval of the current width of the Roadway rather than seeking to expand the width of the easement.

Because this request for a variance is not tied to any anticipated construction, this variance should not expire or be considered null and void one year after the date of the decision to grant the variance. Applicant asks that the Board of Adjustment's final decision so state.

7. Is the sole reason for the proposed variance based on a desire of the owner, occupant or applicant for increased financial gain or reduced financial hardship? Please explain.

The reason for the proposed variance is not based on the applicant's desire for increased financial gain or reduced financial hardship. The request for the variance is based on multiple reasons including: (a) encroaching as little as possible on the rights of Mills, Kane and Lynn, the neighbors owning the adjoining properties by avoiding expanding the easement from the present width to the significantly greater width of 33 feet required by the Ordinance; (b) avoiding encroachment onto County property (i.e. the Cannon Valley Trail); (c) settling litigation by enabling Applicant to negotiate, enter into and consummate amicable easement agreements with Mills, Kane and Lynn; and (d) making the decades-long use of the Roadway legal and in compliance with the Ordinance as modified by the requested variance.

ArcGIS WebMap



September 22, 2016

Search Results: Search by Parcel

- █ Override 1
- Imagery Mask

Roads 9,600

Township or Other Roads

Major Roads 4,800

- US Highway
- State Highway

County Roads 4,800

- County Roads - Gravel
- County Roads - Paved

Roads 4,800

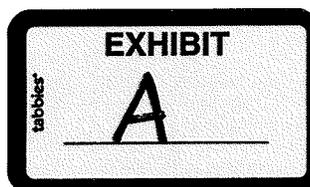
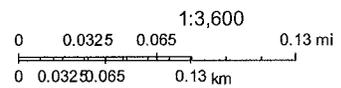
Township or Other Roads

Roads 4,800

- Township or Other Roads

ESRI Major Roads

Parcels



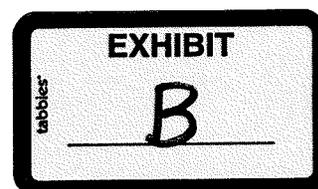
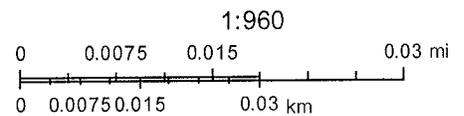
ArcGIS WebMap



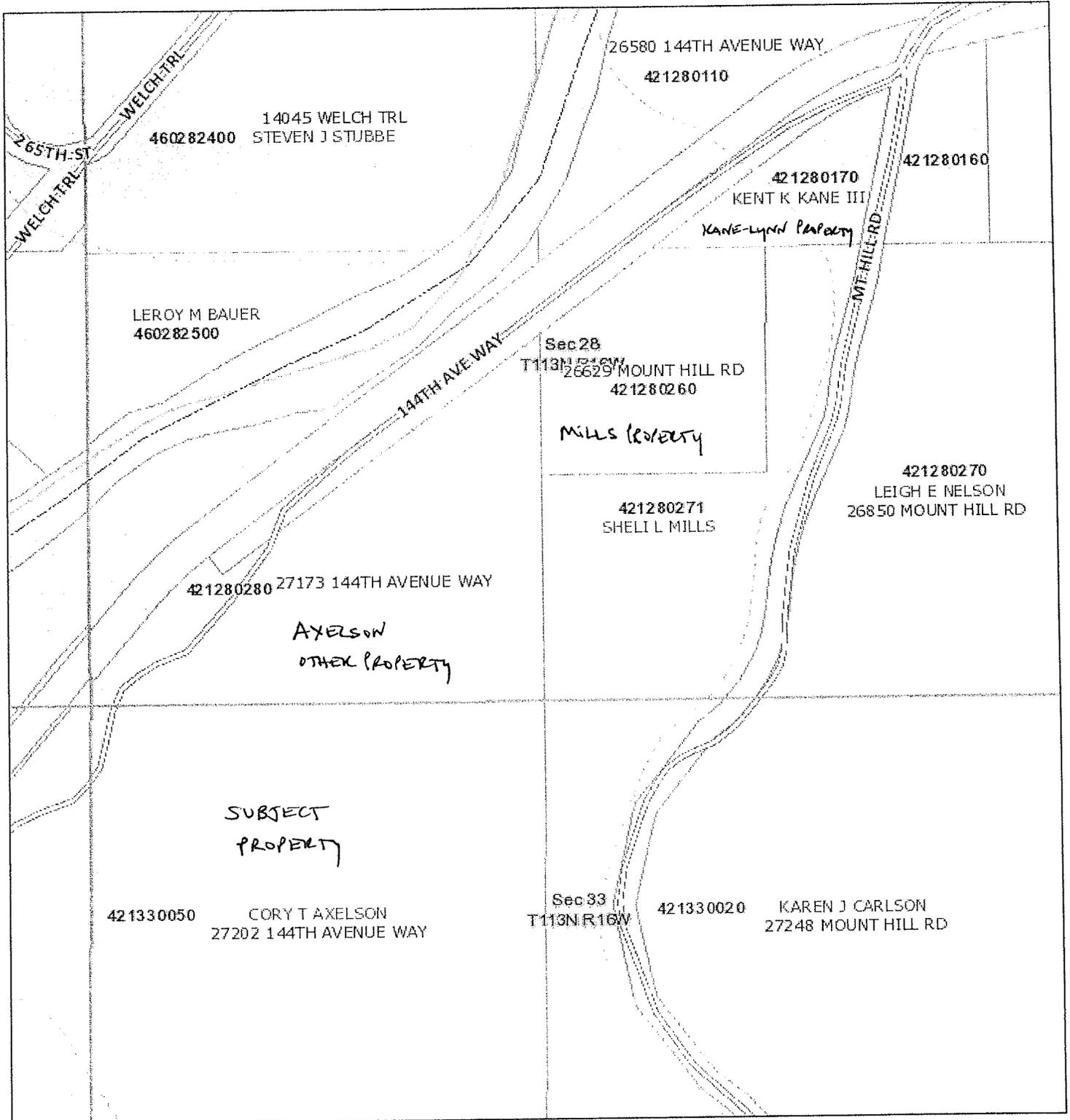
September 22, 2016

Search Results: Search by Parcel Major Roads 1,200

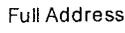
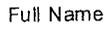
- | | |
|--|---|
|  Override 1 |  US Highway |
|  Imagery Mask |  State Highway |
| Roads 9.600 | County Roads 1,200 |
|  Township or Other Roads |  County Roads - Gravel |
| |  County Roads - Paved |

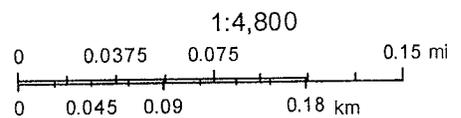


ArcGIS WebMap

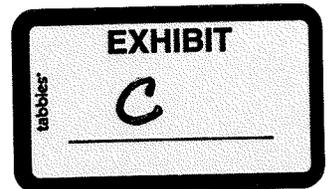


September 22, 2016

-  Municipal Boundary
- Roads 9.600**
 -  Township or Other Roads
 -  Full Address
 -  PIN
 -  Full Name
 -  GoodhueCo_PLSS
- Major Roads 4,800**
 -  US Highway
 -  State Highway
 - County Roads 4,800**
 -  County Roads - Gravel
 -  County Roads - Paved



Goodhue County





David G. Rapp
 Registered Land Surveyor
 Kenyon, MN 55946 507-789-5366
 45967 Hwy. 56 Blvd.

Bk: 37/17
 D16117

SURVEYOR'S CERTIFICATE

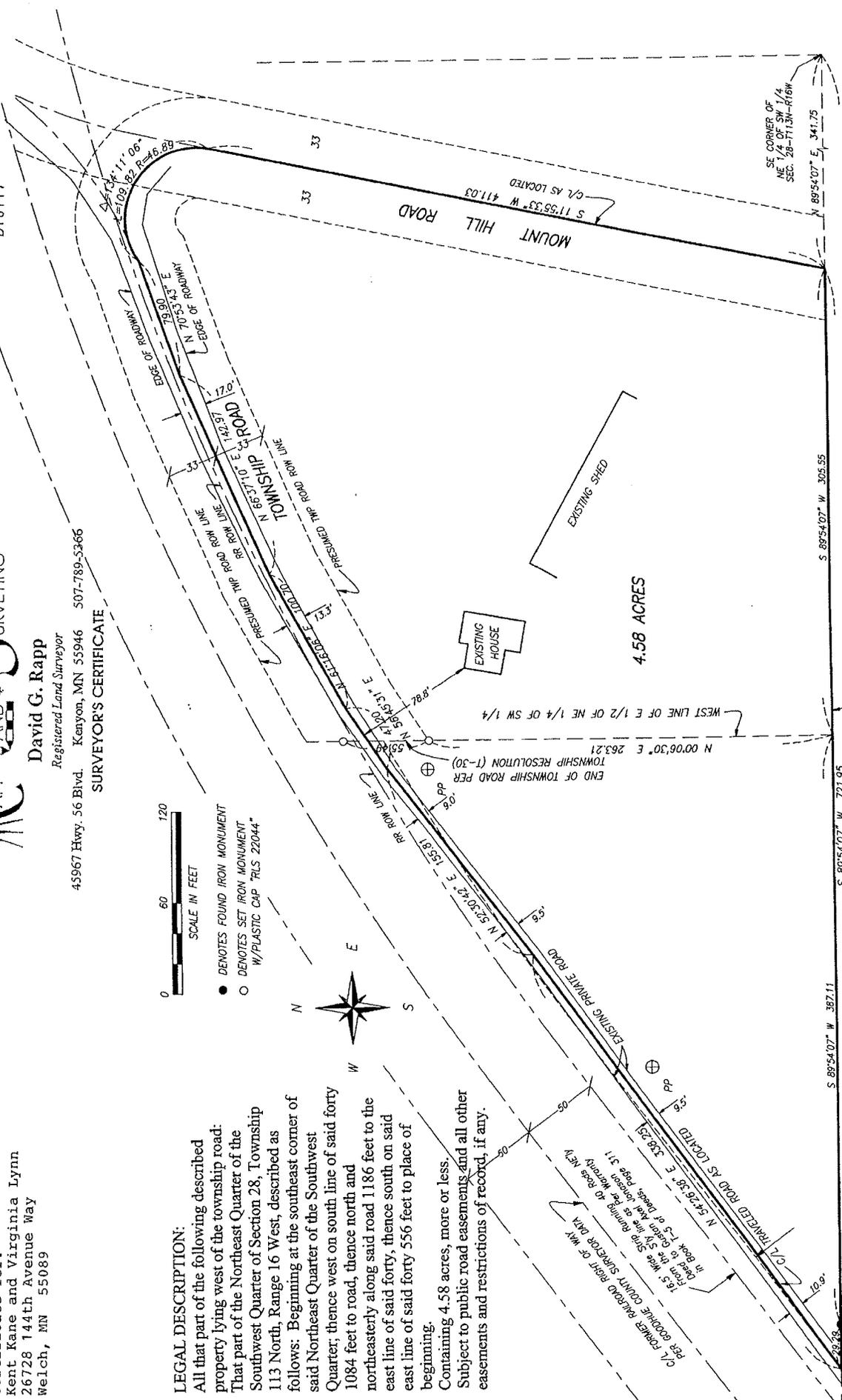


- DENOTES FOUND IRON MONUMENT
- DENOTES SET IRON MONUMENT
- W/PLASTIC CAP TRLS 22044"

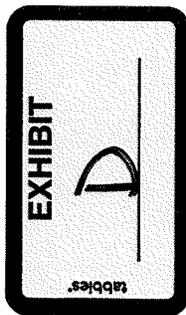


LEGAL DESCRIPTION:
 All that part of the following described property lying west of the township road: That part of the Northeast Quarter of the Southwest Quarter of Section 28, Township 113 North, Range 16 West, described as follows: Beginning at the southeast corner of said Northeast Quarter of the Southwest Quarter; thence west on south line of said forty 1084 feet to road, thence north and northeasterly along said road 1186 feet to the east line of said forty, thence south on said east line of said forty 556 feet to place of beginning.
 Containing 4.58 acres, more or less.
 Subject to public road easements and all other easements and restrictions of record, if any.

Certificate for:
 Kent Kane and Virginia Lynn
 26728 144th Avenue Way
 Welch, MN 55089



I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly registered Land Surveyor under the laws of the State of Minnesota.
 Dated September 14, 2016



David G. Rapp
 David G. Rapp
 Minnesota Registration No. 22044

STATE OF MINNESOTA
COUNTY OF GOODHUE

DISTRICT COURT
FIRST JUDICIAL DISTRICT
(Case Type: Other- Mortgage Foreclosure)

Riverside Finance, Inc.,

Court File No [REDACTED]

Plaintiff,

v.

Cory T. Axelson,
DB Enterprises Inc., *as successor-in-interest to
McGhie & Betts, Inc.*,
Paul M. Zeig,
MTC Legal, PLLC, *as assignee of Mansfield Tanick
& Cohen, P.A.*,
State of Minnesota,
J. Doe I-V and XYZ Co. I-V,

Defendants.

**STATEMENT OF UNDISPUTED
FACTS, CONCLUSIONS OF LAW,
ORDER FOR JUDGMENT AND
PARTIAL SUMMARY JUDGMENT**

Filed in the First Judicial District
Goodhue County, MN
[REDACTED]

This matter came before the Court for hearing on [REDACTED] on the Plaintiff's
Motion for Partial Summary Judgment and to Amend the Scheduling Order.

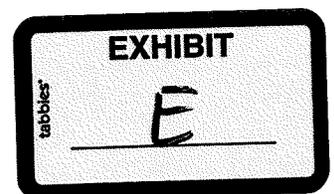
Truman Schabillon, Esq. appeared for the Plaintiff. Other appearances, if any,
were noted on the record. Based on the file, the proceedings, and the record herein, the Court
makes the following:

STATEMENT OF UNDISPUTED FACTS

1. Defendant Cory T. Axelson acquired the following properties, among others,
pursuant to a Warranty Deed dated [REDACTED]:

*The West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 33, Township
113 North, Range 16 West, Goodhue County, Minnesota. (herein, the "Mortgaged
Property")*

*All of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section
Twenty-eight (28), in Township One Hundred Thirteen (113) North, of Range
Sixteen (16) West lying South of the Cannon River, Goodhue County, Minnesota.
(herein, the "Servient Property")*



2. Axelson executed and delivered to Plaintiff a promissory note (the "Note") dated [REDACTED] in the amount of [REDACTED].

3. To secure payment pursuant to the Note, Axelson executed and delivered to Plaintiff a mortgage dated [REDACTED], and recorded in the Office of the County Recorder, Goodhue County, on [REDACTED], as document number [REDACTED] (the "Mortgage"), which conveyed and mortgaged the Mortgaged Property, commonly known as 27202 144th Avenue Way, Welch, Minnesota, 55089.

4. Axelson has defaulted under the Note and Mortgage for reasons which include, but are not limited to, failure to make the loan payments due September 12, 2013, and each month thereafter. As a result, Plaintiff accelerated the balance due under the Note.

5. The amount due is [REDACTED], inclusive of principal, interest, and loan charges as of [REDACTED]. Interest accrues thereafter at [REDACTED] per day.

6. Pursuant to the Note and Mortgage, Plaintiff is entitled to recover its costs for any actions taken to protect the value of the Mortgaged Property and Plaintiff's rights in the Mortgaged Property.

7. Pursuant to the 1986 Deed, in addition to the Mortgaged Property, Axelson is the owner of the Servient Property.

8. The Servient Property is situate to the immediate north of the Mortgaged Property, as shown in the sketch attached as Exhibit A to this Order.

9. A visible roadway (the "Roadway"), traverses the Mortgaged Property and Servient Property, which Roadway then crosses two other parcels of private property before it connects with the public road known as 144th Avenue Way.

10. The affidavit of Plaintiff's attorney includes aerial photographs of the Roadway dated [REDACTED] showing that the Roadway has been in long and continuous use.

11. The only access to the Mortgaged Property is via the Roadway. Absent access by the Roadway, the Mortgaged Property is landlocked.

12. Axelson has used the Roadway for ingress and egress to the Mortgaged Property since 1986.

CONCLUSIONS OF LAW

13. An easement in favor of Plaintiff is necessary for reasonable enjoyment of the Mortgaged Property.

14. Use of the Roadway by Axelson for ingress and egress to the Mortgaged Property is so long continued and apparent as to indicate it was intended to be permanent.

15. There are no genuine issues of material fact and Plaintiff is entitled partial summary judgment as a matter of law regarding Count 2 of the Second Amended Complaint, granting its claim for an implied easement by necessity for ingress and egress to the Mortgaged Property (the "Easement").

16. The costs of Plaintiff's protection of the value of the Mortgaged Property, including attorneys' fees, are recoverable from Axelson pursuant to the terms of the Note.

17. There are no genuine issues of material facts and Plaintiff is entitled to summary judgment with respect to Axelson's counterclaims, if any.

ORDER FOR JUDGMENT

18. The Plaintiff's Motion for Partial Summary Judgment against Defendants is GRANTED.

19. The Plaintiff's Motion for Summary Judgment as to Axelson's counterclaims, if any, is GRANTED, and any such counterclaim is denied.

20. Axelson shall grant Plaintiff, its agents, or employees immediate, unrestrained and unfettered access to the Mortgaged Property and the Servient Property as reasonably necessary to permit a survey of the Roadway in order to prepare a legal description describing the Easement.

21. In the event that any Axelson fails or refuses to grant Plaintiff access to the Property as required by the preceding paragraphs of this Order, this Court will issue an Order to Show Cause why Axelson should not be held in contempt of court.

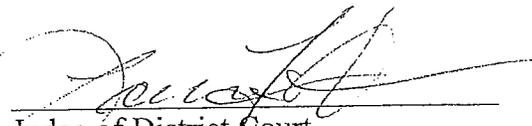
22. After Plaintiff obtains a description of the Easement, Plaintiff may seek further order of this Court, together with its remaining claims in this action, confirming the Easement and authorizing Plaintiff to record the Easement with the Office of the County Recorder, Goodhue County.

23. Plaintiff is entitled to an award of costs and attorneys' fees from Axelson at any time subsequent to the entry of judgment upon motion and with notice to Axelson.

24. The Scheduling Order filed December 17, 2014, is stricken pending further order of this Court.

THERE BEING NO JUST REASON FOR DELAY LET JUDGMENT ENTER ACCORDINGLY.

Dated: 


Judge of District Court

Lawrence F. Clark

PARTIAL SUMMARY JUDGMENT

The above Order hereby constitutes the Judgment of the Court.

DATED  BY THE COURT:

Court Administrator

By B. Gehlens Deputy



Telephone (651) 267-4950
FAX (651) 267-4972

STEPHEN N. BETCHER

Goodhue County Attorney

ASSISTANT COUNTY ATTORNEYS

CAROL K. LEE

STEPHEN F. O'KEEFE

ERIN L. KUESTER

CHRISTOPHER J. SCHRADER

WILLIAM L. CHRISTIANSON

ELIZABETH M. S. BREZA

DAVID J. GROVE

ANGELA R. STEIN



Mr. Truman W. Schabilion
Stein & Moore, P.A.



Re: Riverside Finance Inc. v. Cory T. Axelson, et al
Court File No. [REDACTED]

Dear Mr. Schabilion:

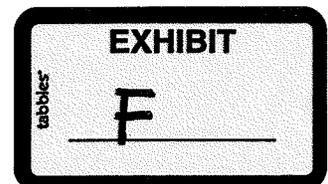
We have learned of your above-noted action in Goodhue County District Court. We note that the current court calendar lists a Motion Hearing on September 27, 2016, a Summary Judgment Motion on October 25, 2016, and a Court Trial on March 20, 2017.

Please be advised that Johnson and Scofield Surveying and Engineering prepared a legal description for a 33 foot driveway and utility easement agreement which is across properties owned by Kent Kane, Sheli Mills, Cory Axelson, and Goodhue County. The survey notes in two places that the proposed easement is within County property, which is also the Cannon Valley Trail.

I have enclosed some materials from our Surveyor's office for your review.

Consequently, we believe that Goodhue County should have been served as a defendant/party in this action.

We would appreciate it if you would amend your Complaint to include Goodhue County as a defendant/party. In the event that such amendment has not been initiated by Motion or Stipulation by [REDACTED], the County would find it necessary to make a motion to intervene. The County, in the interim, will monitor filings with the District Court.



Thank you for your attention to this matter. I will be out of the office this week, returning on [REDACTED], if you wish to contact me to discuss.

Very truly yours,

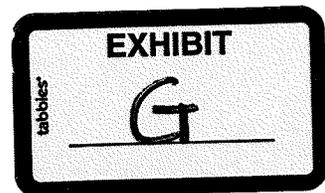
GOODHUE COUNTY ATTORNEY'S OFFICE



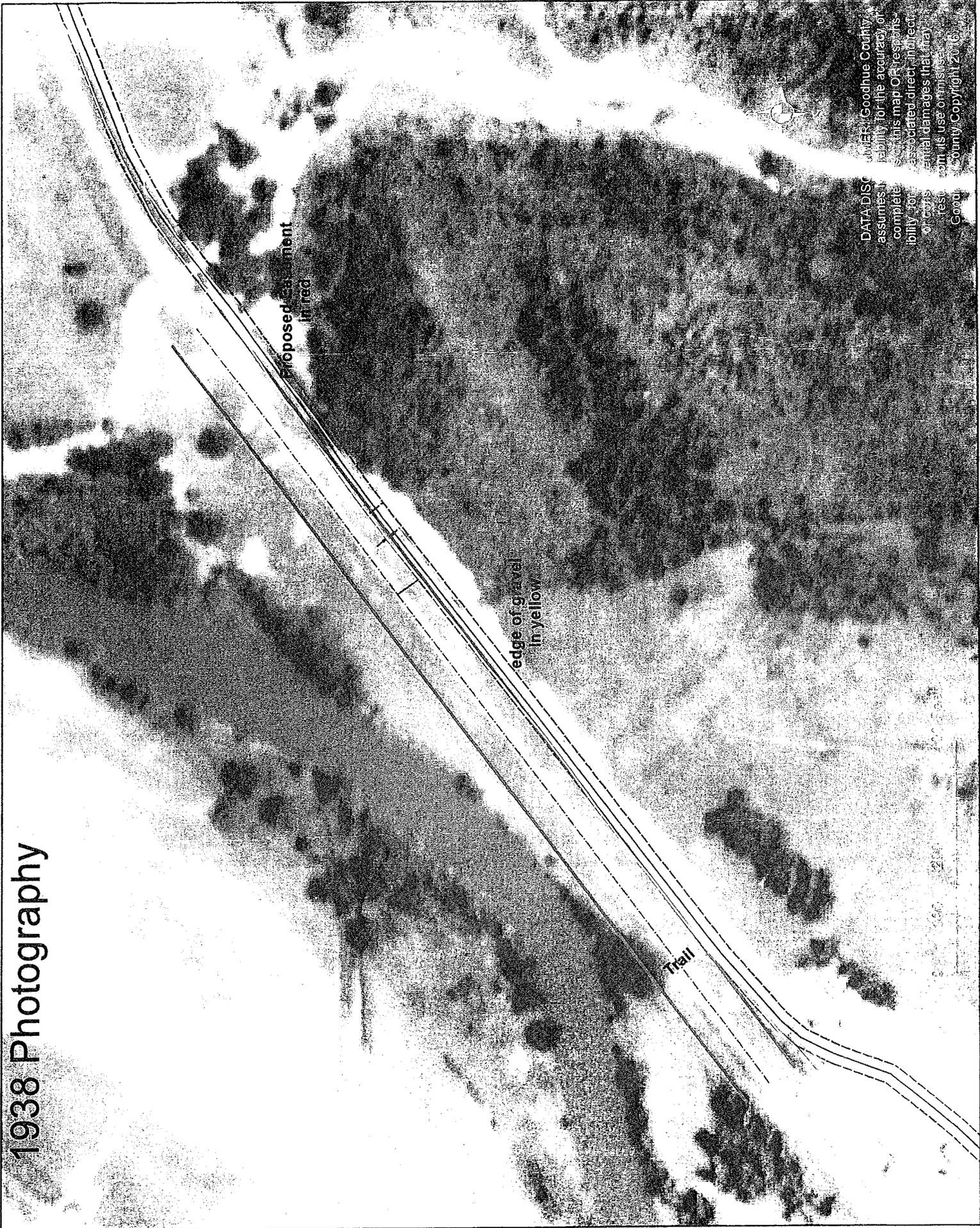
Carol K. Lee
Assistant County Attorney

CKL/jk
Enclosure

cc: Lisa Hanni, Surveyor
Charles Richardson, Cannon Valley Trail Board



1938 Photography



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Goodhue County, Copyright 2016

1993 Photography

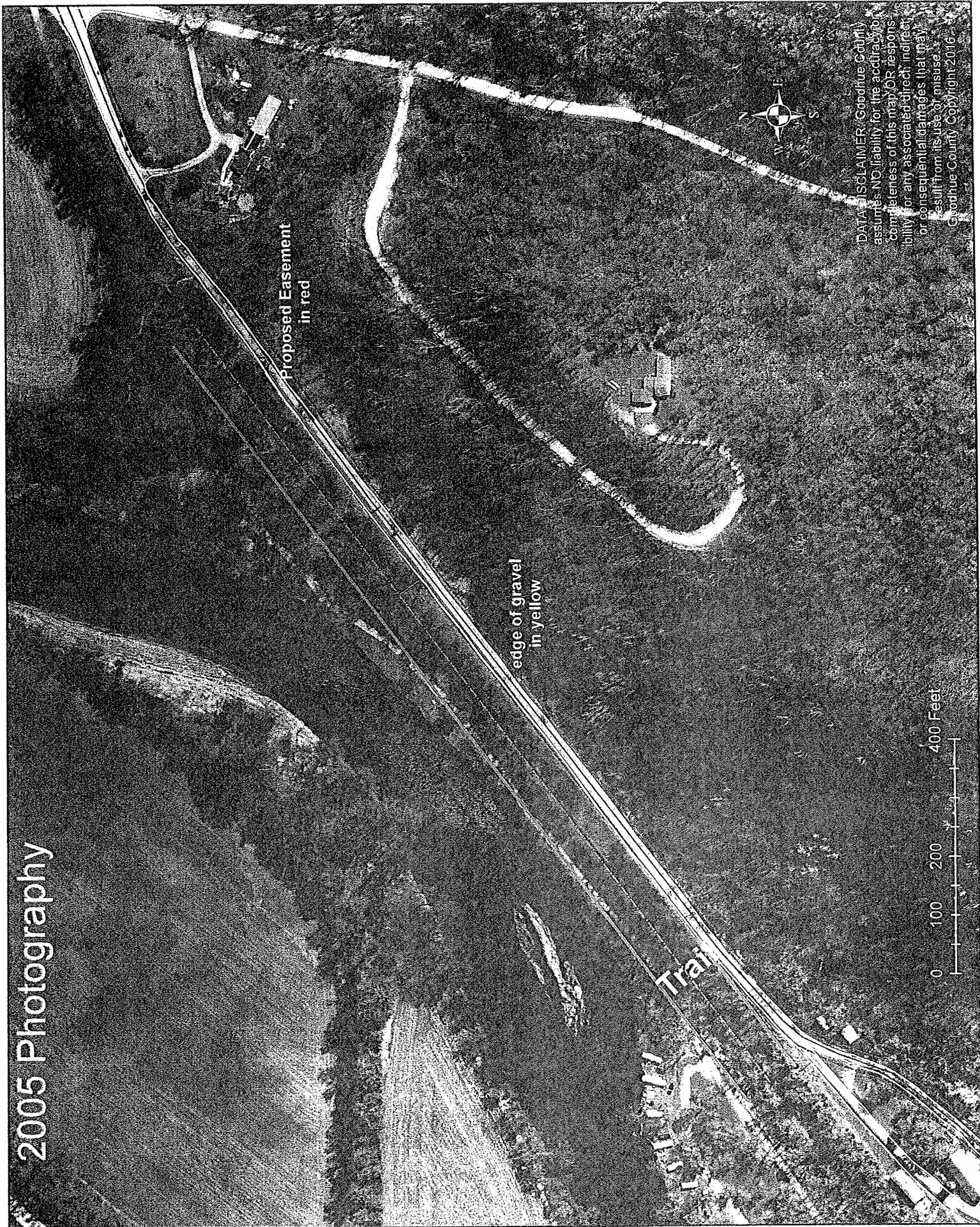
Proposed Easement
in red

Edge of gravel
in yellow



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2005 Photography



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2010 Photography

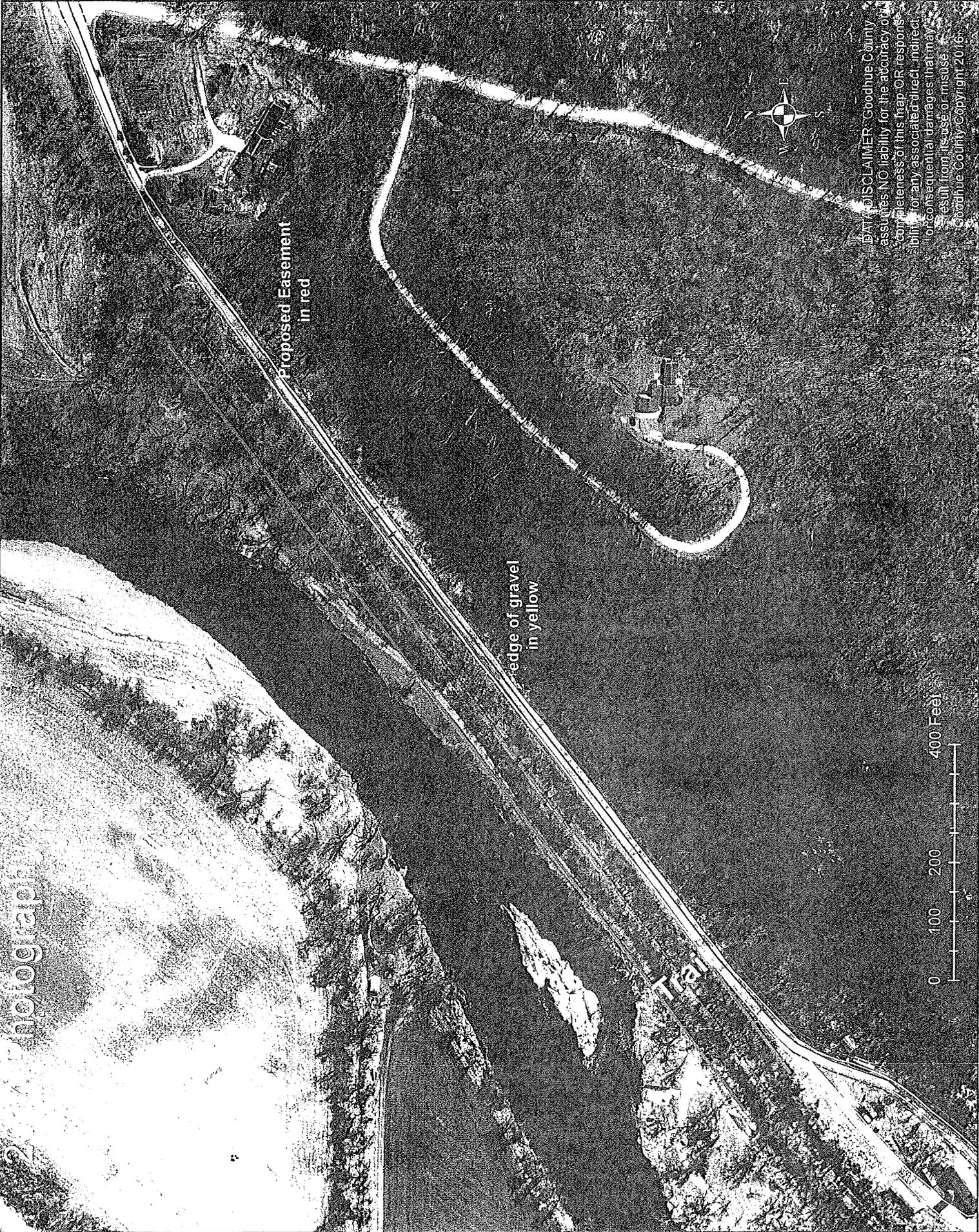
Proposed Easement
in red

edge of gravel
in yellow

Trail



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2014 Aerial Photograph

Proposed Easement
in red

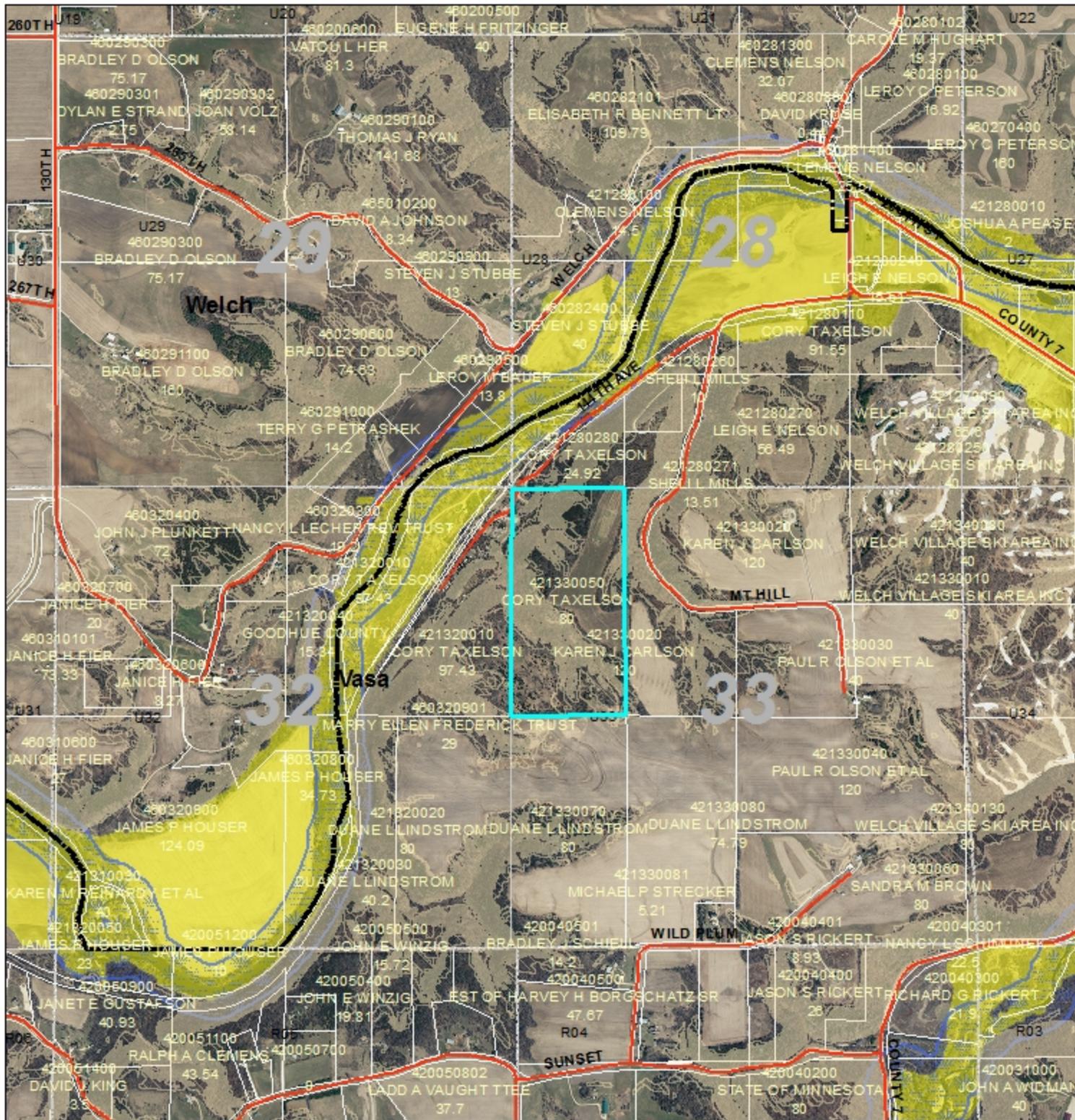
edge of gravel
in yellow

Trail



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or consequential damages that may
result from its use or misuse
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PUBLIC HEARING: Cory Axelson –
 Variance request from the A2 Agricultural District's General District Regulations' public road frontage requirement of a 33' wide driveway access easement for a single lot at 2720 144th Ave. Way in Vasa Township.



Legend

- Municipal Boundaries
- Road
- Section Line
- Bluff Impact**
- % Slope 20
- % Slope 30
- 1/4" Parcel
- Shoreland
- Special Flood Hazard Area**
- FLD_ZONE**
- 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
- A
- AG
- AO
- X



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2014 Aerial Imagery
 Map Created 2016 Kate Eiynek