

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
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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:

New Building on vacant land

Rear

See attached

New Addition to existing building

Front

PROPOSED USE:

Animal Building

Side

See attached

Storage building

Other Please clarify

See attached

BUILDING APPLICATION PERMIT NO. (if filed)

DATE FILED:

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

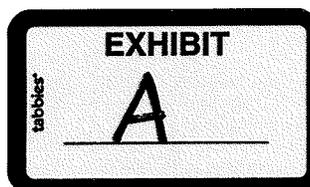
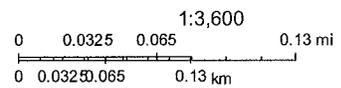
Township or Other Roads

Roads 4,800

-  Township or Other Roads

ESRI Major Roads

Parcels



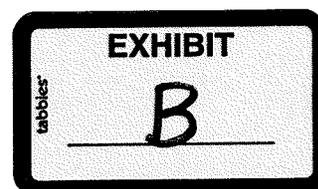
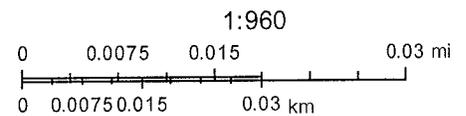
ArcGIS WebMap



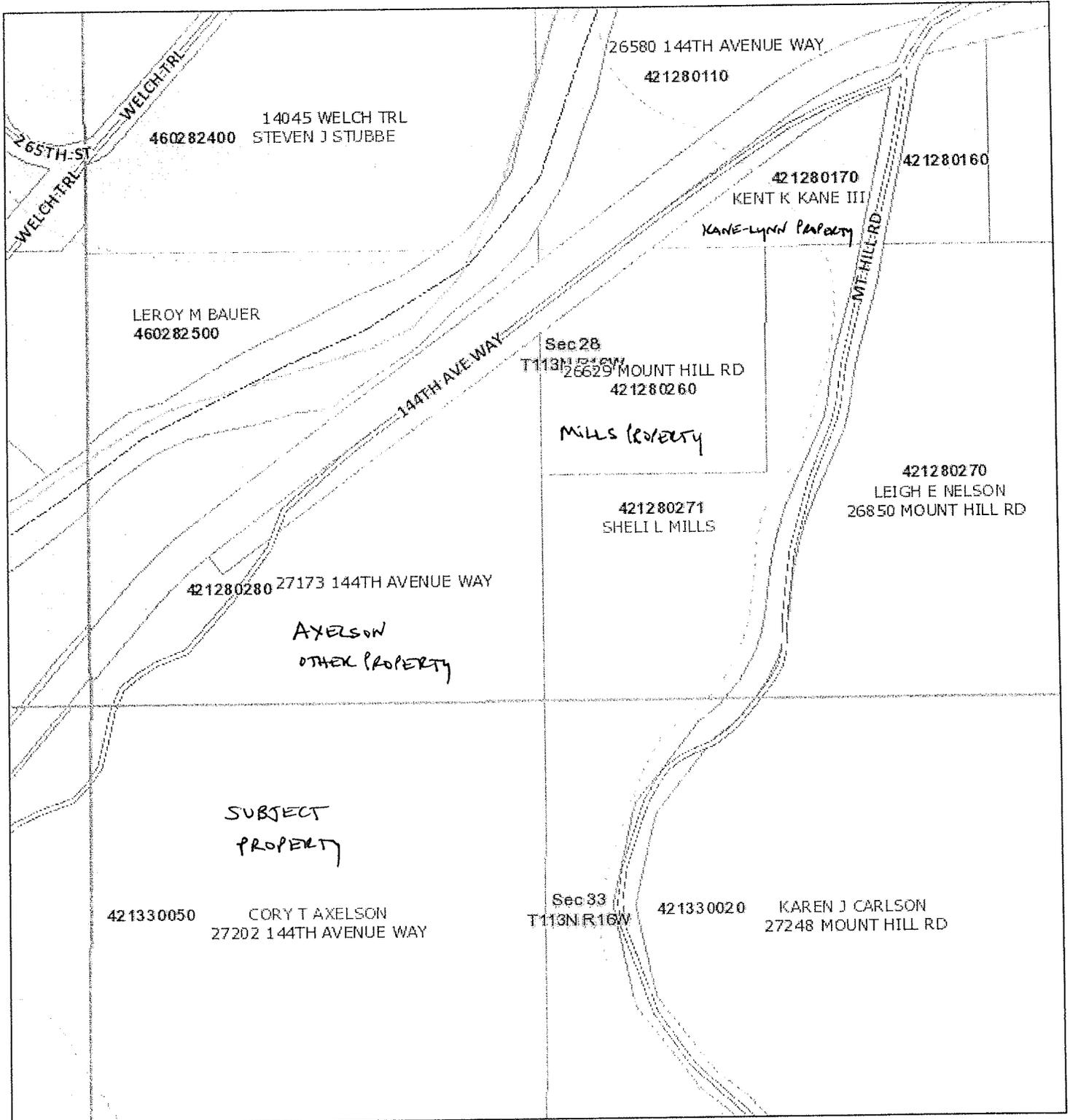
September 22, 2016

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 |

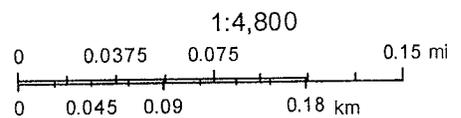


ArcGIS WebMap



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



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.

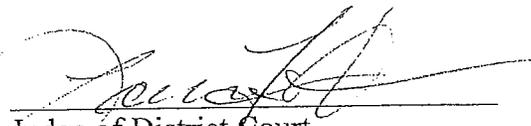
22. After Plaintiff obtains a description of the Easement, Plaintiff may seek further order of this Court, together with its remaining claims in this action, confirming the Easement and authorizing Plaintiff to record the Easement with the Office of the County Recorder, Goodhue County.

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
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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:

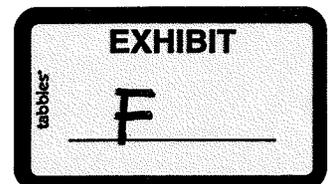
We have learned of your above-noted action in Goodhue County District Court. We note that the current court calendar lists a Motion Hearing on September 27, 2016, a Summary Judgment Motion on October 25, 2016, and a Court Trial on March 20, 2017.

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,

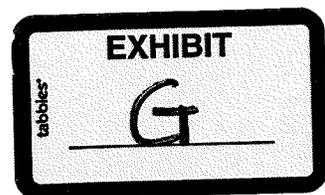
GOODHUE COUNTY ATTORNEY'S OFFICE



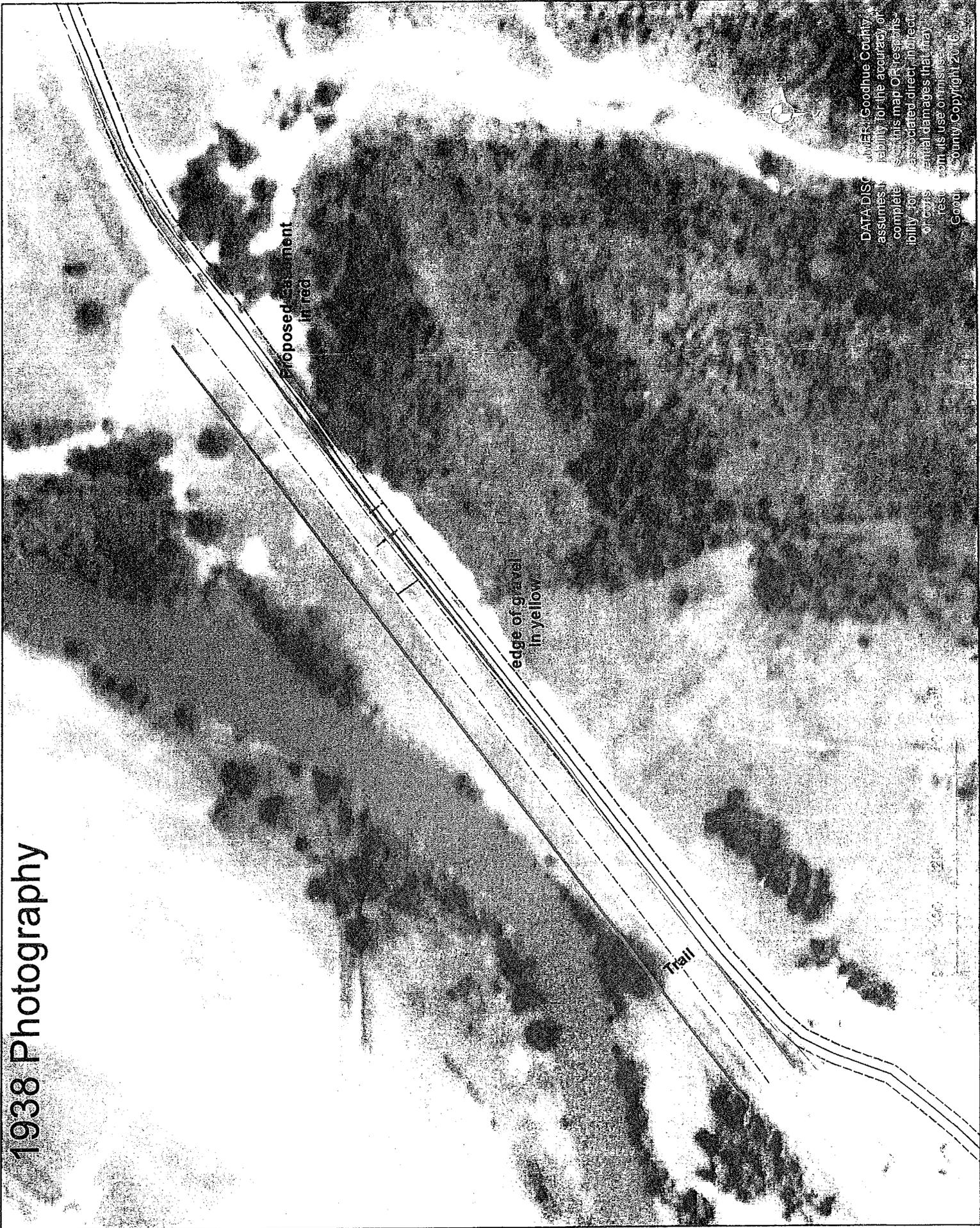
Carol K. Lee
Assistant County Attorney

CKL/jk
Enclosure

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



1938 Photography



Proposed easement
in red

edge of gravel
in yellow

Trail



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1993 Photography

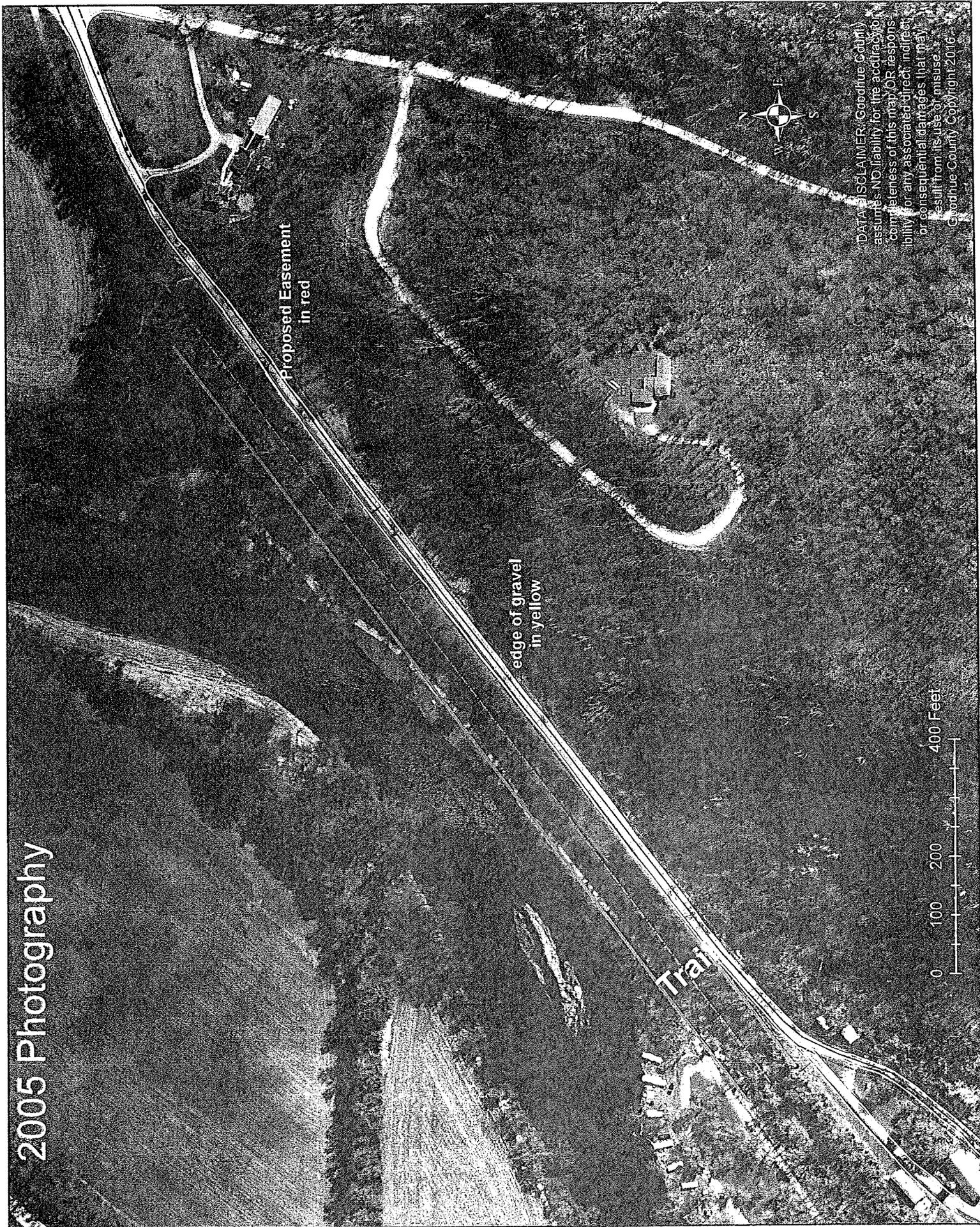
Proposed Easement
in red

Edge of gravel
in yellow



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Costa.

2005 Photography



Proposed Easement
in red

edge of gravel
in yellow

Trail



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2010 Photography

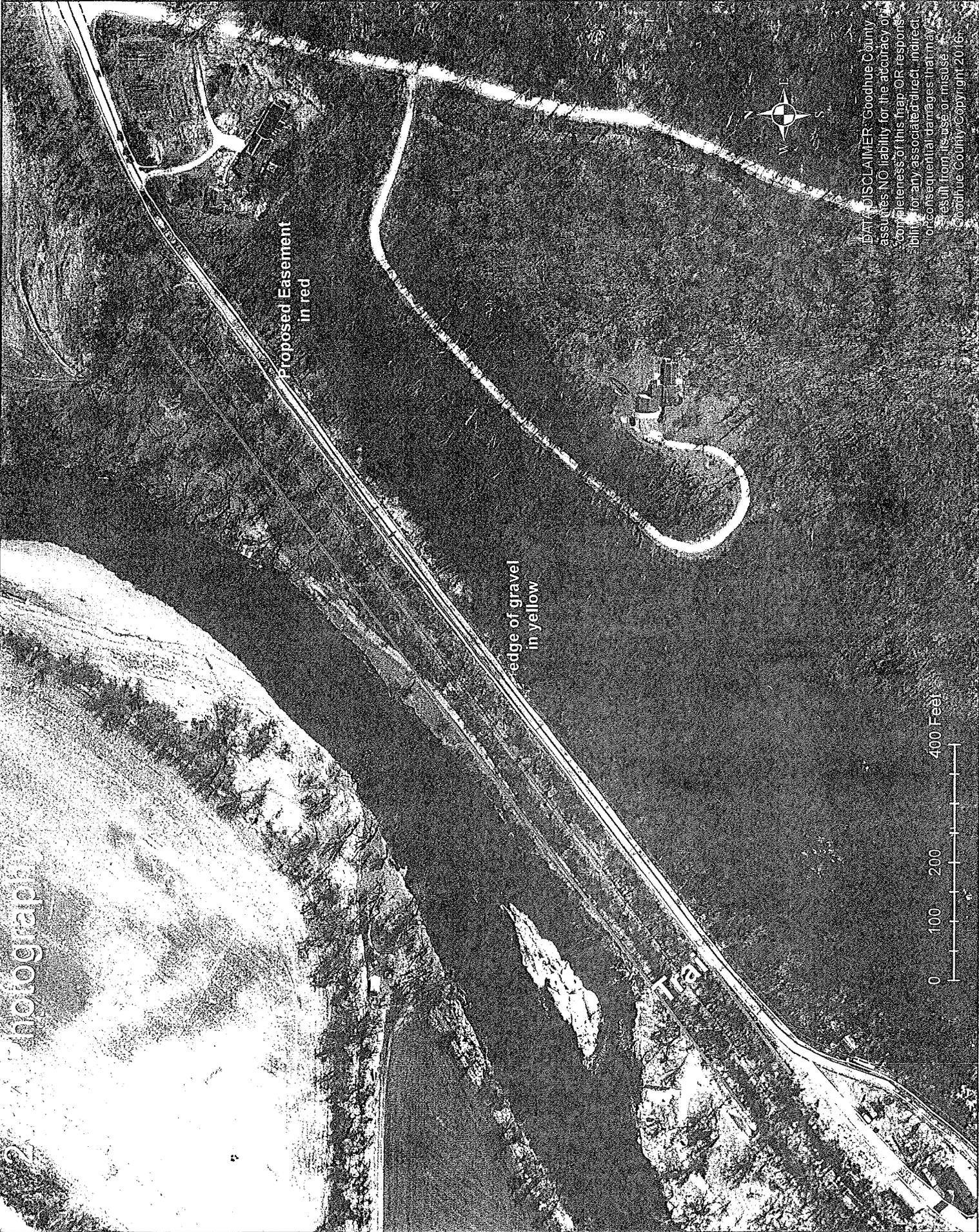
Proposed Easement
in red

edge of gravel
in yellow

Trail



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2014 Aerial Photograph

Proposed Easement
in red

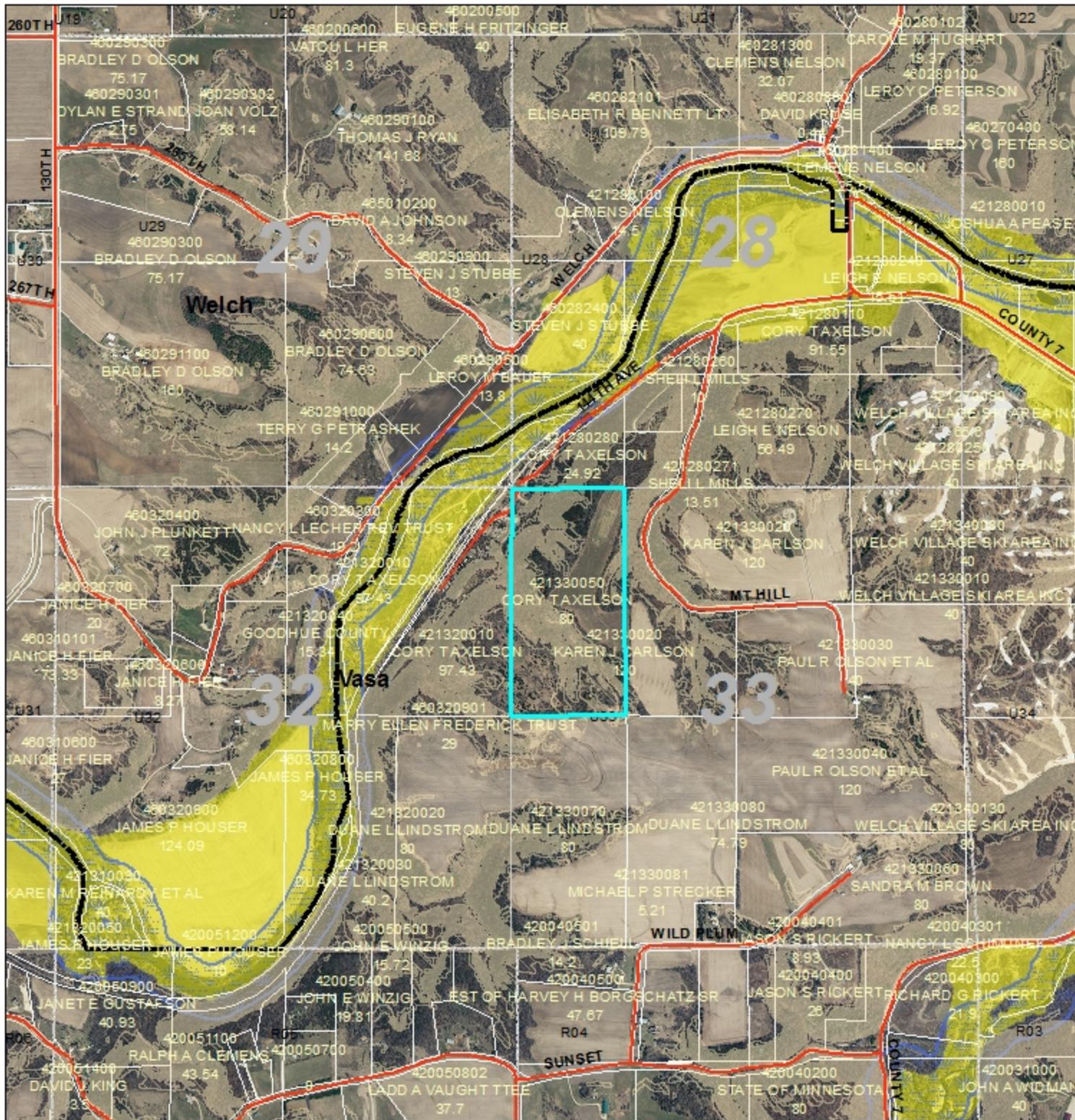
edge of gravel
in yellow

Trail



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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**
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