Nicollet County Board of Adjustment and Appeals

May 17, 2021
7:00 PM

Doors Open at 6:45 PM
County Board Room, Nicollet County Government Center, 501 South Minnesota Avenue, Saint Peter MN 56082

Due to the COVID-19 (coronavirus) pandemic and resulting state and federal emergency declarations and guidance about limiting unnecessary person-to-person contact, the Board of Adjustment and Appeals meetings will be conducted under Minnesota Statute 13D.021 – Meetings by Telephone or Other Electronic Means. Some members may participate by telephone or other electronic means.

Due to the current health pandemic, only a limited number of persons will be allowed in the meeting room at one time. Persons in attendance must maintain proper social distancing at all times while in the building.

Copies of the meeting agenda and packet are available on the Nicollet County website at: https://mn-nicolletcounty.civicplus.com/AgendaCenter

Questions or comments regarding the meeting can be directed to Mandy Landkamer, Property Services Director, at 507-934-7074, or mandy.landkamer@co.nicollet.mn.us.

1. Call to Order
2. Roll Call
3. Review of Cancellations and Additions
4. Approval of Minutes: April 19, 2021
5. Approval of Findings of Fact: April 19, 2021
    - PLN21-06: Meurer / Truebenbach
    - PLN21-08: Benco Electric / Olson
    - PLN21-09: Zimmerman
    - PLN21-14: Herrley

6. **PUBLIC HEARING PLN21-18**
Applicants/Property Owner: Thomas and Patricia Bittner
Request: Reduce the minimum front yard setback and to allow an accessory building on a property with no principal building, for the purpose of constructing a storage shed/shop in the R-1 District
Location: Block 1, Lot 7 Nob Hill Replat Subdivision, Oshawa Township
Parcel Number: 10.662.0070

7. **PUBLIC HEARING PLN21-21**
Applicant/Property Owner: Brian Mock
Request: After-the-fact variance to allow more than one person to be employed by a home occupation, to allow more than 25% of the gross floor area to be used for a home occupation, and to allow the outside appearance of the property to have visible evidence of a home occupation in the R-1 District
Location: Lot 2, Block 1 Mattes Subdivision, Belgrade Township
Parcel Number: 01.643.0020

8. **PUBLIC HEARING PLN21-19**
Applicant/Property Owner: Patrick and Shana Gieseke
Request: Applicants appeal the decision of the Director dated April 8, 2021, that requires the applicants "to submit verification concerning offsite earth movement... to ensure the proper placement of the fill per county standards and to ensure protection of the environment" and that "the location of the material moved offsite and who moved the material offsite" must be resolved. Applicants also appeal each and every decision made by the Director after the date of this Notice of Appeal i) which presents an impediment to proceeding with a hearing before the Board on the after the fact variance application, ii) which concludes that the application for an after the fact variance is incomplete, iii) which requires submission of the amounts already submitted as payment of the after the fact variance and recording fees of $1,046 paid and submitted on March 19, 2021, iv) which denies the applicants request because an official application has not be completed by the Director, and v) which require additional "precise elements" be listed and identified on the application.
Location: Part of Government Lot 2, and Part of the Southeast 1/4 of the Southeast 1/4, of Section 35-111-31, in West Newton Township
Parcel Number: 13.035.1000

9. Old Business

10. Other Business

11. Communications

12. Adjourn

Board of Adjustment & Appeals

MINUTES APRIL 19, 2021 7:00 PM NICOLLET COUNTY BOARD ROOM

BOARD MEMBERS	David Wendinger ☒ ***Chair***	David Hermanson ☒ ***Vice Chair***	Justin Laven ☒	Ron Regenscheid ☒	Dave Ubel ☒
ABSENT EXCUSED	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	Justin Lav n ☐	Ron Regenscheid ☐	Dave Ubel ☐
ABSENT	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	ustin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☐
STAFF PRESENT	Property and Public Services Director Mandy andk mer ☒				
	Deputy Zoning Administrator (DZA) Jon Hammel ☒				
	Assistant County Attorney (ACA) M gan E. dette Coryell ☒				
	Other Staff: ☐				

REVIEW OF CANCELLATIONS & ADDITION	Non				
MOTION TO APPROVE MINUTES OF FEBRUARY 22, 2021	APPROVE ☒			APPROVE WITH REVISIONS ☐	
1ST	Davi Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	Justin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☒
2ND	David Wend ge ☐ ***Chair***	David Hermanson ☒ ***Vice Chair***	Justin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☐
VOTE TO APPROVE MINUTES	PASS ☒	FAIL ☐	VOTE: 5-0		
MOTION TO APPROVE FINDINGS OF FACT FOR PLN21-03, BRIAN AND MARY DUEHRING	APPROVE ☒			APPROVE WITH REVISIONS ☐	
1ST	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	Justin Laven ☐	Ron Regenscheid ☒	Dave Ubel ☐
2ND	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	Justin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☒
VOTE TO APPROVE MINUTES	PASS ☒	FAIL ☐	VOTE: 5-0		
MOTION TO APPROVE FINDINGS OF FACT FOR PLN21-04, JAMIE FRANTA	APPROVE ☒			APPROVE WITH REVISIONS ☐	

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1ST	David Wendinger ☐ *Chair*	David Hermanson ☐ *Vice Chair*	Justin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☒
2ND	David Wendinger ☐ *Chair*	David Hermanson ☐ *Vice Chair*	Justin Laven ☐	Ron Regenscheid ☒	Dave Ubel ☐
VOTE TO APPROVE MINUTES		PASS ☒	FAIL ☐	VOTE: 5-0	

PUBLIC HEARINGS:

APPLICANT: MEUER FAMILY, LLC, AND KEVIN & PAMELA TRUENBACH
FILE #: PLN21-06
DESCRIPTION: REDUCE THE MINIMUM LOT SIZE IN THE SHORELAND ZONING DISTRICT FOR THE PURPOSE OF CREATING NEW LOTS

APPLICANT COMMENT	Kevin Truebenbach was present. He noted the existing property line went through his hog barn. The request would allow him to square up his property.				
PUBLIC COMMENT	None.				
PUBLIC TESTIMONY	None.				
PUBLIC PARTICIPATION	Mary Milbrath, Supervisor with Belgrade Township, noted that Belgrade Township was open to the annexation alternative.				
MOTION	APPROVE WITH CONDITIONS ☒		DENY ☐		
1ST	David Wendinger ☐ *Chair*	David Hermanson ☐ *Vice Cha*	J tin Laven ☒	Ron Regenscheid ☐	Dave Ubel ☐
2ND	David Wendinger ☐ *Chair*	David Herm nson ☒ *V ce Chair*	Justin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☐
BOARD MEMBER DISCUSSION	Laven asked when he lots ere desig ed. Truebenbach said when he bought the property he believed the property line as furthe outh, and did not run through his hog barn.				
VOTE		ASS ☒	FAIL ☐	VOTE: 5-0	

APPLICANT: BENCO ELECTRIC
FILE #: PLN21-08
DESCRIPTION: REDUCE MINIMUM LOT SIZE IN THE AG ZONING DISTRICT FOR THE PURPOSE OF CONSTRUCTING AN ELECTRICAL SUBSTATION

APPLICANT COMMENT	Tim Braulic wi Benco Electric, was present. He stated the project was a capacity upgrade for safety reasons. He so stated two acres is more than enough room for the substation and that a 3.5 acre lot would be too much space.				
PUBLIC COMMENT	New Sweden Township called staff and stated that they support the project.				
PUBLIC TESTIMONY	None.				
PUBLIC PARTICIPATION	None.				
MOTION	APPROVE WITH CONDITIONS ☒		DENY ☐		
1ST	David Wendinger ☐ *Chair*	David Hermanson ☐ *Vice Chair*	Justin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☒
2ND	David Wendinger ☐ *Chair*	David Hermanson ☐ *Vice Chair*	Justin Laven ☐	Ron Regenscheid ☒	Dave Ubel ☐
BOARD MEMBER DISCUSSION	None.				

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VOTE	PASS ☒	FAIL ☐	VOTE: 5-0

APPLICANT: DAVID ZIMMERMAN
FILE #: PLN21-09
DESCRIPTION: REDUCE MINIMUM LOT SIZE FOR AN EXISTING LOT AND REDUCE THE PROPERTY LINE SETTBACK FOR THE PURPOSE OF CONSTRUCTING A GRAIN BIN

APPLICANT COMMENT	David Zimmerman was present. He stated the proposed bin would replace an existing corn crib. The proposed location for the replacement bin was chosen because of its proximity to the applicants' existing grain bin setup.				
PUBLIC COMMENT	None.				
PUBLIC TESTIMONY	None.				
PUBLIC PARTICIPATION	None.				
MOTION	APPROVE WITH CONDITIONS ☒		DENY ☐		
1ST	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	Justin La n ☐	Ron Regenscheid ☒	Dave Ubel ☐
2ND	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	ustin Laven ☒	Ron Regenscheid ☐	Dave Ubel ☐
BOARD MEMBER DISCUSSION	None.				
VOTE	PASS ☒		F IL ☐	VOTE: 5-0	

APPLICANT: JOHN AND LEANN HERRLEY
FILE #: PLN21-14
DESCRIPTION: AFTER-THE-FACT VARIANCE T RED CE THE RONT YARD SETBACK FOR A POLE SHED

APPLICANT COMMENT	John and Leann Herrley we present He stated that somewhere between R. Henry marking where the shed was to be ocated, a Cleary Bu ldings placing the shed on the property, an error was made and the shed was acc ntly laced pa ly within the setback.				
PUBLIC COMMENT	Staff received one ph e call about the request prior to the hearing from adjacent landowner Steven Burnet Mr. B ett di ot object to the request.				
PUBLIC TESTIMONY	Che yl Michels, w Belgr de Township, testified. She stated the Township feels placement of the shed in e setback was tentional. She said the location of the shed will create a hardship with the grading of th road, especia in the winter. Laven as d Ch yl Michels if the one-foot distance will make a difference with snow drifting in the winter. Mic l eplied yes, the Township felt it would make a difference due to the size of the shed. Mary Milbrath, with Belgrade Township, testified. She said she had discussed the issue with their road maintenance person. Drifting has been a problem on the road already. She stated rules are meant to be followed.				
PUBLIC PARTICIPATION	None.				
MOTION	APPROVE WITH CONDITIONS ☒		DENY ☐		
1ST	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	Justin Laven ☒	Ron Regenscheid ☐	Dave Ubel ☐
2ND	David Wendinger ☐ ***Chair***	David Hermanson ☒ ***Vice Chair***	Justin Laven ☐	Ron Regenscheid ☐	Dave Ubel ☐
BOARD MEMBER DISCUSSION	Regenscheid asked if the practical difficulty included more than economic considerations alone. Mr. Herrley responded yes, the difficulty lies in physically relocating the shed to meet the setback. The shed would have to be disassembled to be moved.				

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	Regenscheid asked if the shed was permitted with the house. Mr. Herrley stated yes, they were permitted at the same time. Ubel asked how the error occurred. Mr. Herrley stated he did not know precisely what happened. He said both R. Henry and Cleary Buildings denied any wrongdoing. Ubel asked who was responsible for identifying a right-of-way line. Landkamer responded that staff suggests people contact the local road authority. If an exact location is needed, a surveyor will need to identify it. Alternatively, some landowners may be able to find property pins, if pins were placed onsite. Hermanson asked if a snow fence would help with drifting. Mr. Herrley responded no, he felt a snow fence would make matters worse.

VOTE		PASS ☒	FAIL ☐	VOTE: 5-0	
OLD BUSINESS		None.			
OTHER BUSINESS		None.			
REVIEW OF ADMINISTRATIVE VARIANCES		None.			
COMMUNICATIONS		None.			
MOTION TO ADJOURN		8:18 P.M.			
1ST	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	ustin Laven ☒	Ron Regenscheid ☐	Dave Ubel ☐
2ND	David Wendinger ☐ ***Chair***	David Hermanson ☐ ***Vice Chair***	Ju n Laven ☐	Ron Regenscheid ☐	Dave Ubel ☒
VOTE TO ADJOURN		PASS ☒	FA ☐	VOTE: 5-0	

DAVID WENDINGER, CHAIR		**DATE**	

JON HAMMEL, DEPUTY ZONING ADMINISTRATO / PLANNER		**DATE**	

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NICOLLET COUNTY BOARD OF ADJUSTMENTS AND APPEALS
CRITERIA FOR GRANTING A VARIANCE

Name of Applicant:	Meurer Family, LLC.	**Date:**	April 19, 2021
Property Owner:	Meurer Family, LLC. and Kevin and Pamela Truebenbach	**File #:**	PLN21-06
Variance Requested:	Reduce minimum lot size in the Shoreland zoning district for the purpose of creating two new lots		

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court, Minnesota Statute 394.27, subdivision 7, and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The minimum lot size standard is intended to ensure properties contain enough room for development. When the lots were made, they were not made to county standards. By reducing the lot size more land can stay agricultural.

2. The variance is consistent with the intent of the Comprehensive Plan.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The proposal is to square up the properties so the structures are on the applicants' land. It does not appear the proposal will increase the potential for land use conflict. The plan seeks to preserve natural resources in the county, including agricultural lands. No new structures are proposed.

3. The variance establishes a practical difficulty in complying with the official controls.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The plight is due to the location of the property in relation to the boundary of Belgrade and Nicollet townships. The essential character of the area will remain agricultural.

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The plight is due to the location of the property in relation to the boundary of Belgrade and Nicollet townships and the location of existing buildings.

5. The variance will not alter the essential character of the locality.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The proposal does not include any new structures. The proposal is to square up the lots. The property and area will remain agricultural.

6. The practical difficulty includes more than economic considerations alone.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The request is based on the applicants' intention to sell the least amount of land to square up the existing properties.

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS:
(☒ APPROVES) (☐ DENIES) THE REQUESTED VARIANCE

This decision is based on:
- ☒ Application
- ☒ Staff Report
- ☒ Pictures
- ☒ Information received at public hearing

Viewed by Members of Board:
- ☐ Wendinger
- ☐ Hermanson
- ☐ Laven
- ☐ Regenscheid
- ☐ Ubel

Facts supporting the answer to each question above are hereby certified as the Findings of the Nicollet County Board of Adjustments and Appeals.

Date: _____ Chair: _____

NICOLLET COUNTY BOARD OF ADJUSTMENTS AND APPEALS
CRITERIA FOR GRANTING A VARIANCE

Name of Applicant:	BENCO Electric	**Date:**	April 19, 2021
Property Owner:	Lavonne Olson	**File #:**	PLN21-08
Variance Requested:	Reduce minimum lot size in the AG zoning district for the purpose of constructing a electrical substation		

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court, Minnesota Statute 394.27, subdivision 7, and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The proposal meets all other standards and setbacks. By reducing the lot size more of the land will remain agricultural. The two acres provides enough room for the substation.

2. The variance is consistent with the intent of the Comprehensive Plan.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
There is an existing substation southwest of the existing site. The majority of the remaining property will remain agricultural. The project is for a replacement substation.

3. The variance establishes a practical difficulty in complying with the official controls.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The two acre lot has adequate space/size for the proposed replacement substation. The essential character of the area will remain agricultural.

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
Benco was mistakenly provided wrong information by staff.

5. The variance will not alter the essential character of the locality.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The essential character of the locality would remain agricultural.

6. The practical difficulty includes more than economic considerations alone.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The difficulty is based on the background of the property and the applicant's desire to use as little land as necessary. The applicant was provided the wrong information.

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS:
(☒ APPROVES) (☐ DENIES) THE REQUESTED VARIANCE

This decision is based on:
- ☒ Application
- ☒ Staff Report
- ☒ Pictures
- ☒ Information received at public hearing

Viewed by Members of Board:
- ☐ Wendinger
- ☐ Hermanson
- ☐ Laven
- ☐ Regenscheid
- ☐ Ubel

Facts supporting the answer to each question above are hereby certified as the Findings of the Nicollet County Board of Adjustments and Appeals.

Date: _____ Chair: _____

NICOLLET COUNTY BOARD OF ADJUSTMENTS AND APPEALS
CRITERIA FOR GRANTING A VARIANCE

Name of Applicant:	David Zimmerman	**Date:**	April 19, 2021
Property Owner:	Dale, David, and Lance Zimmerman	**File #:**	PLN21-09
Variance Requested:	Reduce the minimum lot size and reduce the property line setback, for the purpose of constructing a grain bin		

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court, Minnesota Statute 394.27, subdivision 7, and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☒	☐	☐	☐	The minimum lot size standard is intended to ensure enough room for future development. The design of the land makes it hard to meet the setbacks.
David Hermanson	☒	☐	☐	☐	
Justin Laven	☒	☐	☐	☐	
Ron Regenscheid	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

2. The variance is consistent with the intent of the Comprehensive Plan.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☒	☐	☐	☐	The lot will be functionally part of an existing building site. The proposal does not increase the potential for land use conflict.
David Hermanson	☒	☐	☐	☐	
Justin Laven	☒	☐	☐	☐	
Ron Regenscheid	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

3. The variance establishes a practical difficulty in complying with the official controls.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☒	☐	☐	☐	The proposal involves an existing building site and does not involve the development of agricultural lands. There are other grain bins close on the site.
David Hermanson	☒	☐	☐	☐	
Justin Laven	☒	☐	☐	☐	
Ron Regenscheid	☒	☐	☐	☐	
Dave Ubel	☒	☐	☐	☐	

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The plight is due to the location of the existing buildings and the lot lines. The applicant did not draw the existing lot lines.

5. The variance will not alter the essential character of the locality.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The essential character of the locality would remain agricultural and natural environment.

6. The practical difficulty includes more than economic considerations alone.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
Request is based on the existing property's size and shape, and the location of the existing bins onsite.

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS:
(☒ APPROVES) (☐ DENIES) THE REQUESTED VARIANCE

This decision is based on:
- ☒ Application
- ☒ Staff Report
- ☒ Pictures
- ☒ Information received at public hearing

Viewed by Members of Board:
- ☐ Wendinger
- ☐ Hermanson
- ☐ Laven
- ☐ Regenscheid
- ☐ Ubel

Facts supporting the answer to each question above are hereby certified as the Findings of the Nicollet County Board of Adjustments and Appeals.

Date: _____ Chair: _____

NICOLLET COUNTY BOARD OF ADJUSTMENTS AND APPEALS
CRITERIA FOR GRANTING AN AFTER-THE-FACT VARIANCE

Name of Applicant: John & Leann Herrley **Date:** April 19, 2021
Property Owner: R. Henry Investments, LLC. **File #:** PLN21-14

Variance Requested: After-the-fact variance to reduce front yard setback for a pole shed.

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court, Minnesota Statute 394.27, subdivision 7, and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The request would result in a 3% reduction of the Zoning Ordinance standard. The front yard setback provides a buffer between transportation and residential land uses.

2. The variance is consistent with the intent of the Comprehensive Plan.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The property would remain residential in nature.

3. The variance establishes a practical difficulty in complying with the official controls.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The request would result in a 3% reduction of the setback. While the site plan submitted for the zoning permit identified an appropriate location for the shed on the property, the request is the result of the shed being located in the wrong location. The shed was improperly located on the property.

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The shed was located on the property in a manner that failed to adhere to the site plan for the zoning permit and the applicable 35-foot front yard setback

5. The variance will not alter the essential character of the locality.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The character of the area would remain agricultural.

6. The practical difficulty includes more than economic considerations alone.

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☐	☒	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
Yes, the applicant has stated there were emotional considerations with moving the shed. The applicant stated taking the time and energy to move the building would be difficult.
No, the applicant does not want to move the shed because of the cost.

Additional After-the-Fact Criteria for use ONLY when the first six criteria are met.

7. Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
A zoning permit was issued for the shed prior to construction.

8. In relation to the subject variance, are there similar structures in the area?

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
There are other pole sheds in the area.

9. Does the burden of compliance on the applicant outweigh the benefit to the County?

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The burden on the applicant is relocating the shed, while the benefit to the county would lie in the strict application of the front yard setback standard.

10. Was the act of the violation by the applicant unintentional?

	YES	NO	ABSTAINED	ABSENT
David Wendinger	☒	☐	☐	☐
David Hermanson	☒	☐	☐	☐
Justin Laven	☒	☐	☐	☐
Ron Regenscheid	☒	☐	☐	☐
Dave Ubel	☒	☐	☐	☐

WHY:
The applicant has stated the violation was unintentional.

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS: (☒ APPROVES) (☐ DENIES) THE REQUESTED VARIANCE

This decision is based on:

- ☒ Application
- ☒ Staff Report
- ☒ Pictures
- ☒ Information received at public hearing

Viewed by Members of Board:

- ☐ Wendinger
- ☐ Hermanson
- ☒ Laven
- ☐ Regenscheid
- ☐ Ubel

Facts supporting the answer to each question above are hereby certified as the Findings of the Nicollet County Board of Adjustments and Appeals.

Date: _____ Chair: _____

NICOLLET
EST. COUNTY 1853

VARIANCE

REDUCE MINIMUM FRONT YARD SETBACK, AND ALLOW ACCESSORY BUILDING ON PROPERTY WITH NO PRINCIPAL BUILDING FOR PURPOSE OF CONSTRUCTING A SHED

THOMAS & PATRICIA BITTNER

PLN21-18

NICOLLET COUNTY
BOARD OF ADJUSTMENT & APPEALS

SUBJECT:	PLN21-18, Variance
APPLICANT/LANDOWNER:	Thomas and Patricia Bittner
LOCATION:	Block 1 of Lot 7 of Nob Hill Replat Subdivision in Oshawa Township
PARCEL NO:	10.662.0070
EXISTING ZONING:	R-1, Urban/Rural Residential
HEARING DATE:	May 17, 2021

REQUEST

The applicant has submitted a variance request to reduce the front yard setback from 85 feet to 42 feet, and to allow an accessory building to be constructed on a property with no principal building. Section 604.4(2.A) of the Zoning Ordinance requires an 85-foot front yard setback along state roads. Section 703.4(1) of the Zoning Ordinance states that no accessory building be allowed on a property without a principal building, such as a dwelling.

Standard	Required	Proposed	Difference
Front Yard Setback (State Road)	85'	42'	51%

The purpose of the request is to allow the applicant to construct a shed. The proposed building would be 36' x 60' or 2,160 square feet in size. The applicant intends to use the shed to store recreational equipment and as a hobby shop for metal and woodworking. The building would have electrical service, but no water service.

The proposed building would be no taller than the applicant's dwelling. The color of the proposed building will match the color of the applicant's dwelling. The applicant's dwelling is located on an adjacent lot, just west of the property.

The applicant has stated the location of the building (see Attachment F.1) was chosen due to the topography and drainage of the property. The area north of the proposed location is hillside with a slope of approximately 17%.

Existing Land Use:
The property is part of the Nob-Hill Replat subdivision. At one point in time the property contained a dwelling, which was destroyed in a 1998 tornado. However, the dwelling no longer exists and the lot is bare land. The lot lies directly adjacent to the applicant's other property, which contains the applicants' dwelling and garage.

Surrounding Land Use:
The surrounding land use is primarily residential. The property is approximately 790 feet west of the City of Saint Peter.

NEIGHBOR NOTIFICATION

Property owners were notified of the request per the standards of Section 503 of the Zoning Ordinance and Minnesota State Statute 394.26.

VARIANCE CRITERIA

NOTE: According to Minnesota State Statute 394.27 Subd.7 "*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; **and** the plight of the landowner is due to circumstances unique to the property and not created by the landowner; **and** the variance will not alter the essential character of the locality.

*ALL SIX of the variance criteria **must** be answered "**True**" in order for the variance to be granted.*

1. **The variance is in harmony with the general purposes and intent of the official control:**

   - The front yard standard is intended to provide a buffer between land uses (e.g. transportation and residential).
   - The proposed variance decreasing the required front yard setback would result in a 51% reduction of the standard.
   - The standard requiring a principal building prior to construction of any accessory building is intended to reduce the opportunity for isolated buildings to become the victims of vandalism or theft.
   - The property is directly adjacent to the site of the applicants' dwelling and is part of a developed subdivision with other dwellings.

2. **The variance is consistent with the intent of the comprehensive plan:**

   - The county will ensure that land is used in an appropriate manner by minimizing conflicts between land uses.
   - The property is presently vacant land.
   - The applicants' residence is located on the adjacent property.
   - The proposal is to use the property for an accessory residential structure.
   - The plan promotes the conservation of agricultural land. The request does not involve the further development of agricultural land.

3. **The variance establishes a practical difficulty in complying with the official controls:**

    - The request does appear to establish a practical difficulty.
    - The proposed location is within an existing developed subdivision and is adjacent to the applicants' dwelling.
    - The proposal does not appear to increase the potential for land use conflict.
    - The proposed shed would be colored to match the applicants' dwelling.
    - The request will not alter the essential character of the locality; the locality will remain residential in nature.
    - With or without the variance, the applicant is not denied reasonable use of the property; the applicant could continue to use the vacant lot as open space.

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

    - The plight appears to be the result of the location of the existing lot and the lot's proximity to State Highway 99.
    - The applicant chose to construct the proposed shed in a manner which requires a variance. However, the location of the property makes it difficult to locate an accessory structure in a manner that meets all applicable setbacks.

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

    - The essential character of the locality would remain residential regardless of whether the variance is granted.
    - There are two other sheds in the subdivision. However, these sheds are located on properties with a principal building/dwelling. The existing sheds are slightly larger than the proposed structure.

6. **The practical difficulty includes more than economic considerations alone:**

    - The applicant has not submitted any financial information.
    - However, the request appears to include more than economic considerations alone.
    - The request is based on the existing property's location and topography.

RECOMMENDATIONS

If the request is approved, staff recommends the following conditions be attached:

1. The applicant undertakes the project according to the plans and specifications submitted to the county with the application.

2. The county may enter onto the premises at reasonable times and in a reasonable manner to ensure the variance holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.

3. The applicant must obtain the appropriate zoning permits prior to construction, including any earthwork or site preparation.

4. The zoning permit is invalid if the variance holder has not substantially completed the structure within the period of time allowed on the zoning permit connected with this variance.

Parcel No: 10.662.0070
Map No: 1419481007

Applicant/Landowner:
Thomas and Patricia Bittner

PLN21-18

ATTACHMENT A **Application**

ATTACHMENT B **Variance Criteria**

ATTACHMENT C **Location Map**

ATTACHMENT D **Aerials**

ATTACHMENT E **Neighbor Notification List**

ATTACHMENT F **Documents Submitted by Applicant**

F.1 Survey

F.2 Exhibit Sketch

F.3 Applicant Questionnaires

F.4 Shed Plans

F.5 Neighbor Comment

F.6 Nob Hill Easement Exhibit

F.7 Photos

NICOLLET COUNTY EST. 1853

PROPERTY SERVICES DIVISION
501 SOUTH MINNESOTA AVENUE, SAINT PETER MN 56082
507-934-7070

BOARD OF ADJUSTMENT & APPEALS APPLICATION

Total Fees: $446.00

Map#: 1419481007
Parcel# 106620070
Permit#: PLN21-00018
Date: April 09, 2021

Applicant: BITTNER THOMAS C & PATRICIA L BITTNER, , 36129 BOYD DR, SAINT PETER MN 56082
Phone:
Owner: BITTNER THOMAS C & PATRICIA L BITTNER, 36129 BOYD DR, SAINT PETER MN 56082
Property Address: 0,
Abbreviated Legal Description: Block 1 Lot 7 SubdivisionCd 10662 SubdivisionName NOB HILL REPLAT
Township: Oshawa Township

Record Type: Variance
Category: Front Yard
Project Description: Variance request to reduce the front yard setback from 85 feet to 42 feet, and to allow an accessory building on a property with no principal building, for the purpose of constructing a shop/pole building. Ref: 503, 604.4(2.A), 703.4(1).
Hearing Date: 05/17/2021

APPLICANT SIGNATURE

4-9-21
DATE

ATTACHMENT A
Application

NICOLLET COUNTY BOARD OF ADJUSTMENTS AND APPEALS
CRITERIA FOR GRANTING A VARIANCE

Name of Applicant/ Property Owner: Thomas and Patricia Bittner

Date: May 17, 2021

File #: PLN21-18

Variance Requested: Reduce the minimum front yard setback, and to allow an accessory building on a property with no principal building, for the purpose of constructing a storage shed/shop

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

2. The variance is consistent with the intent of the Comprehensive Plan.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

3. The variance establishes a practical difficulty in complying with the official controls.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

ATTACHMENT B
Variance Criteria

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

5. The variance will not alter the essential character of the locality.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

6. The practical difficulty includes more than economic considerations alone.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS:
(☐ APPROVES) (☐ DENIES) THE REQUESTED VARIANCE

This decision is based on:

- ☐ Application
- ☐ Staff Report
- ☐ Pictures
- ☐ Information received at public hearing

Viewed by Members of Board:

- ☐ Wendinger
- ☐ Hermanson
- ☐ Laven
- ☐ Regenscheid
- ☐ Ubel

Facts supporting the answer to each question above are hereby certified as the Findings of the Nicollet County Board of Adjustments and Appeals.

Date: _____ Chair: _____

ATTACHMENT C
Location Map



Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of this data for any purpose. The Property Services Division of Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.

N
W E
S

1:24,000 1 inch = 2,000 feet

0 1,000 2,000 Feet

ATTACHMENT D
Aerials



Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of this data for any purpose. The Property Services Division of Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.

1:600 1 inch = 50 feet

N W E S

0 25 50 Feet

JEFFREY & SHEILA ANDERSON
1507 ROCKBEND PKY
SAINT PETER MN 56082

JAMES ANDRESEN
PO BOX 186
SAINT PETER MN 56082-0186

THOMAS & PATRICIA BITTNER
36129 BOYD DR
SAINT PETER MN 56082

ELIZABETH BOATMAN
36158 BOYD DR
SAINT PETER MN 56082

CHARLES & TERESA BURGESS
1217 W MENK DR
SAINT PETER MN 56082

KENNETH & ELAINE DEZEEUW
43631 361ST LN
SAINT PETER MN 56082

FIRST LUTHERAN CHURCH ST PETER &
RESURRECTION CEMETERY
1114 W TRAVERSE RD
SAINT PETER MN 56082

TIMOTHY & KELLI FISCHER
1512 ROCKBEND PKY
SAINT PETER MN 56082

LORENE GARDNER
36306 436TH ST
SAINT PETER MN 56082

SHAWN & ALECIA GUIDA
1204 W MENK DR
SAINT PETER MN 56082

HERMEL FARMS LLC
PO BOX 2960
ALPINE WY 83128

LEONARD HUMMEL & MARCIA BUNGE
1510 ROCKBEND PKY
SAINT PETER MN 56082-1347

RAYMOND & ELIZABETH JACOBSON
1514 ROCKBEND PKY
SAINT PETER MN 56082

TOD & LORI KLOTZ
1131 W MENK DR
SAINT PETER MN 56082

JOHN & SHARON MALM
1132 W MENK DR
SAINT PETER MN 56082

RICHARD & KRISTEN MARLOW
1506 ROCKBEND PKY
SAINT PETER MN 56082

CATHERINE MARTENS
36201 BOYD DR
SAINT PETER MN 56082

KURT & CANDI MOELTER
1139 W MENK DR
SAINT PETER MN 56082

DENNIS & ANGELA MOTT
43950 MEYER AVE
SAINT PETER MN 56082

AMY & CARL NIELSEN
36113 BOYD DR
SAINT PETER MN 56082

PATRICIA NIELSEN
36180 BOYD DR
SAINT PETER MN 56082

PETER & JENNIFER OTTERNESS
1135 W MENK DR
SAINT PETER MN 56082

CHAD & ROXANNE PORTNER
43868 COLE LN
SAINT PETER MN 56082

SCOTT REED & KAMMY HASLIP
36159 BOYD DR
SAINT PETER MN 56082

ROGER & BARBARA RODNING
43773 361ST LN
SAINT PETER MN 56082

JEFFREY & MEGAN RUBLE
1509 ROCKBEND PKY
SAINT PETER MN 56082

CARLIN & COURTNEY SHOEMAKER
1128 W MENK DR
SAINT PETER MN 56082

KYLE & KAREN SNAY
1200 W MENK DR
SAINT PETER MN 56082

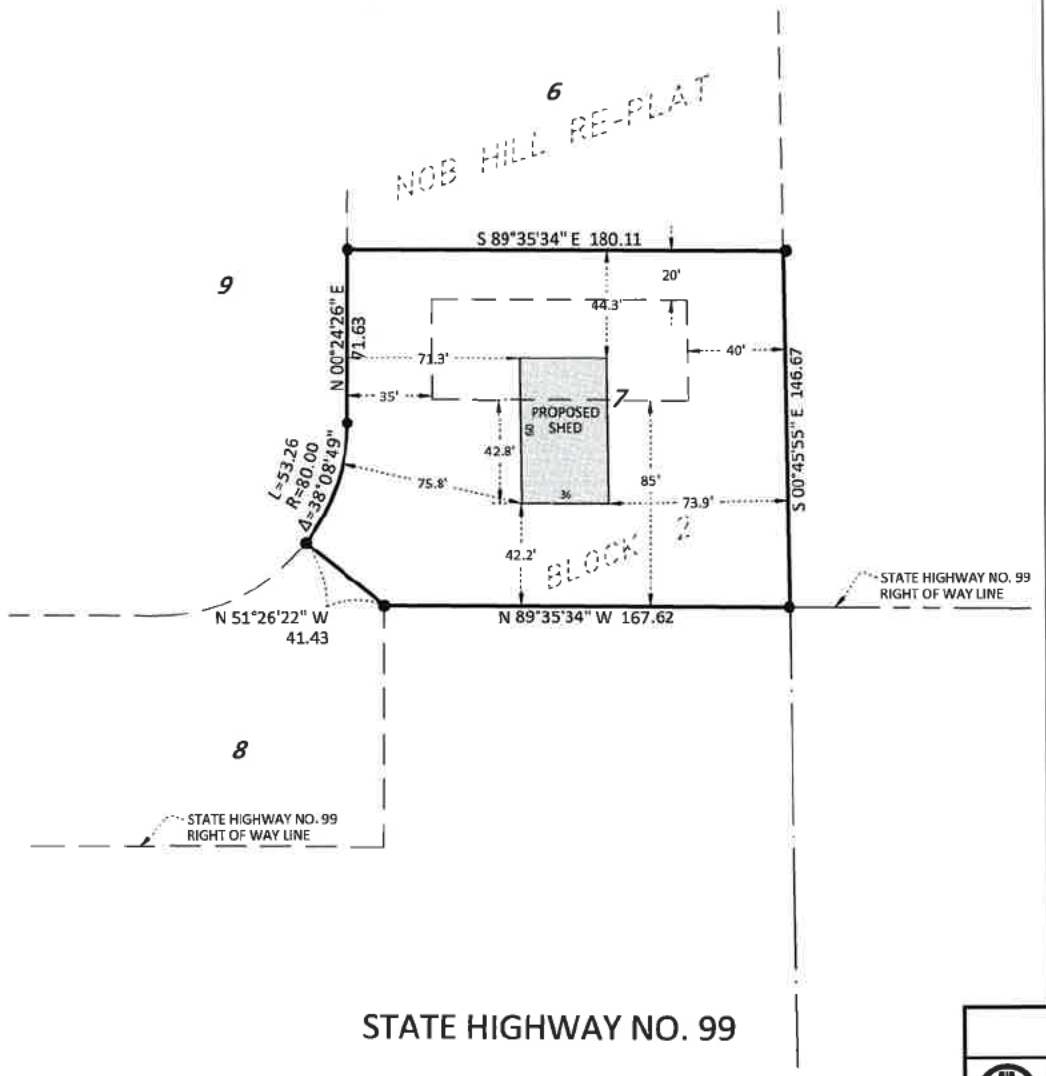
RONALD & DEBRA VEITH
43764 361ST LN
SAINT PETER MN 56082

CHRISTOPHER & KRISTINE VOELTZ
1511 ROCKBEND PKY
SAINT PETER MN 56082

ATTACHMENT E
Neighbor Notification List

RUSS WILLE, CITY OF SAINT PETER
227 SOUTH FRONT STREET
SAINT PETER MN 56082

OSHAWA TOWNSHIP
36601 450TH LN
SAINT PETER MN 56082



PID 10.662.0070

SITE ADDRESS
36129 BOYD DRIVE
SAINT PETER, MN 56082

OWNER ADDRESS
THOMAS & PATRICIA BITTNER
36129 BOYD DRIVE
SAINT PETER, MN 56082

URBAN-RURAL RESIDENTIAL (R-1)
A district within the County to allow limited urban growth or rural clusters of dwellings not associated with farming. After July 1981, development is required to be located immediately adjacent to cities with sanitary sewer services
Minimum lot size - 1½ acres
SETBACKS

Front	85' State R/W
	50' County R/W
	35' Township R/W
Side	20' principal building
	10' septic system
	10' detached accessory building
Rear	40' principal building
	10' detached accessory building
Bluff line	30' from 12% slope
Ditch	100'

ACCESSORY STRUCTURES
Maximum sq. ft. no greater than ground floor sq. ft. of principal building
No higher than principal building
No closer to front property line than principal building

N

0 50 100
SCALE IN FEET

SURVEYOR'S CERTIFICATION
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Michael M. Eichers
License Number 46564

04/01/2021
Date

CERTIFICATE OF SURVEY
NICOLLET COUNTY, MINNESOTA

LOT 7, BLOCK 1, NOB HILL RE-PLAT, NICOLLET COUNTY, MINNESOTA

BOLTON & MENK
1960 PREMIER DRIVE
MANKATO, MINNESOTA 56001
(507) 625-4171

FOR: TOM BITTNER

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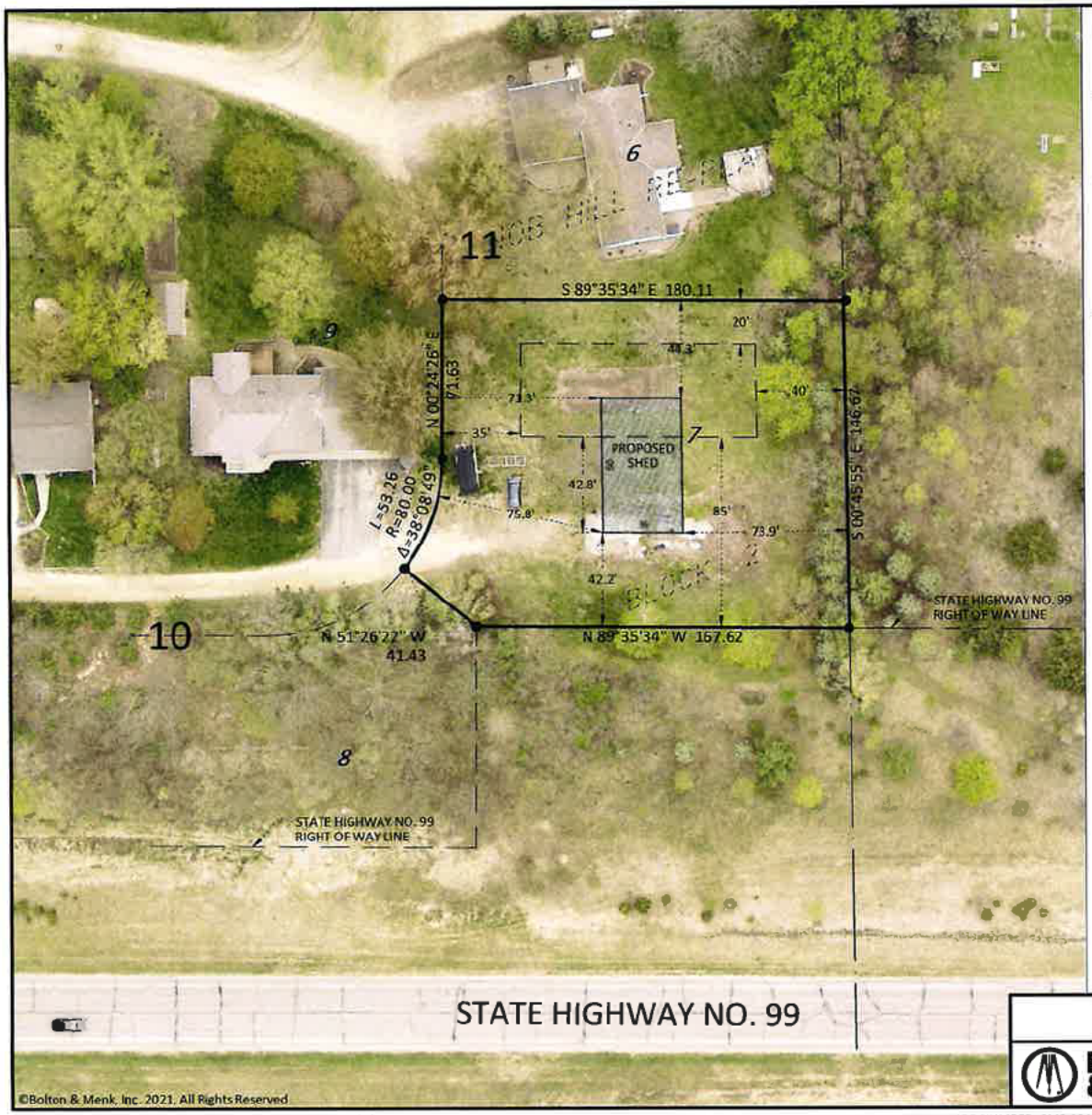
ATTACHMENT F.1
Survey



PID 10.662.0070

SITE ADDRESS
36129 BOYD DRIVE
SAINT PETER, MN 56082

OWNER ADDRESS
THOMAS & PATRICIA BITTNER
36129 BOYD DRIVE
SAINT PETER, MN 56082

URBAN-RURAL RESIDENTIAL (R-1)
A district within the County to allow limited urban growth or rural clusters of dwellings not associated with farming. After July 1981, development is required to be located immediately adjacent to cities with sanitary sewer services
Minimum lot size - 1½ acres
SETBACKS

Front	85' State R/W
	50' County R/W
	35' Township R/W
Side	20' principal building
	10' septic system
	10' detached accessory building
Rear	40' principal building
	10' detached accessory building
Bluff line	30' from 12% slope
Ditch	100'

ACCESSORY STRUCTURES
Maximum sq. ft. no greater than ground floor sq. ft. of principal building
No higher than principal building
No closer to front property line than principal building

N

0 50 100
SCALE IN FEET

EXHIBIT SKETCH
NICOLLET COUNTY, MINNESOTA

BOLTON & MENK
1960 PREMIER DRIVE
MANKATO, MINNESOTA 56001
(507) 625-4171

LOT 7, BLOCK 1, NOB HILL RE-PLAT, NICOLLET COUNTY, MINNESOTA

FOR: TOM BITTNER

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ATTACHMENT F.2
Exhibit Sketch

NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: Thomas C. Bittner and Patricia L. Bittner Date: _____

Please describe the specific details related to your request, including but not limited to:

- why you feel the project is a *need* rather than a *want*;
- what alternatives you explored and the reasons they were not reasonable for you; and
- what use, or uses, the project will provide for you;

If your request is approved, you will be **held** to the plans and specifications submitted to the County with your application.

Applicant Thomas C. Bittner is nearing retirement. His hope for retirement is to have a practical shop within which he can store recreation equipment, such as the family pontoon boat. He also hopes to have a shop within which he can pursue hobbies, such as metal work and wood working in a manner that will not disturb the neighboring property owners as well as affording the applicant reasonable privacy. A building that can protect the applicant from the weather in Minnesota's harsh seasons is critical to fulfilling these retirement hopes and dreams.

The request for being 42.2 feet back from the roadway right of way is to allow for water run off to be channeled by proper excavation. The 85 feet setback location is on a hillside. The 42.2 feet setback is still on flat land. This flat area can be managed much easier than a hillside to mitigate the problem. Our neighbors home is downhill from our property. We have discussed with Scott and Kammy Reed the importance of this matter. They already experience water in their sump and anything further than what they have will be problematic.

Utilities to the structure will be just electricity. There will be no toilets, drains or running water.

The height of the structure is not taller than our home.

The color of the structure will match the color of our home.

ATTACHMENT F.3
Applicant Questionnaires

NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE

Name of Applicant: Thomas C. Bittner and Patricia L. Bittner Date: _____

Request: Reduce Setback from Right of Way

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. The variance is in harmony with the general purposes and intent of the official control.

The construction of a pole building 65 feet from the Highway 99 Row, versus 85 feet as prescribed does not materially impact the purpose of official control due to the elevation, topography and proposed location of the pole building.

2. The variance is consistent with the intent of the Comprehensive Plan.

There is no Comprehensive Plan of record related to this property.

3. The variance establishes a practical difficulty in complying with the official controls.

Complying with the setback requirement would not allow for proper positioning of the proposed pole building within the lot and in proximity with the applicants home.

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

The plat of this lot positioned this lot close to Highway 99 so as to make the lot largely non-usable if setback requirements are strictly applied.

(Continued onto back)

5. The variance will not alter the essential character of the locality.

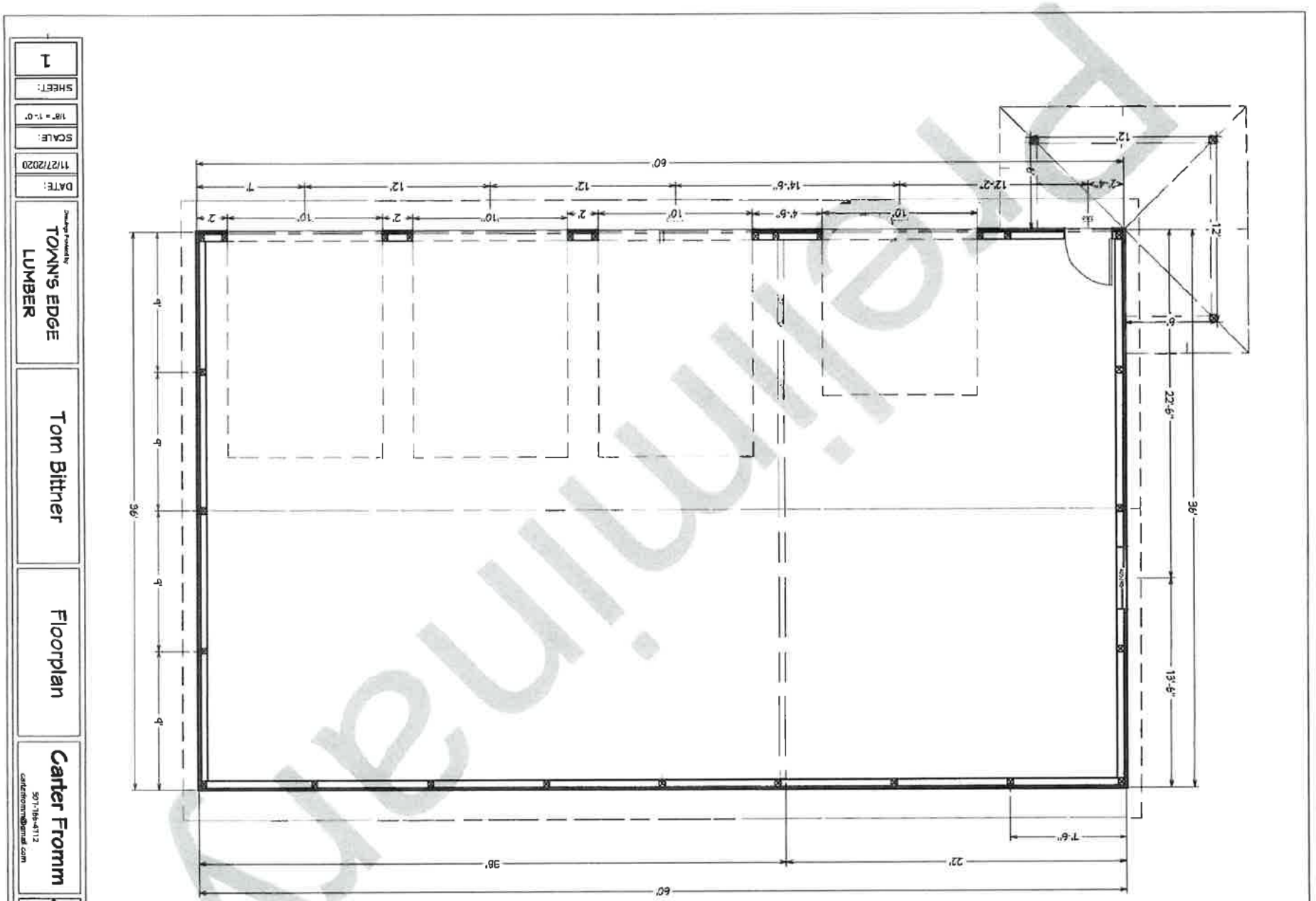
Building a pole building in the location proposed will not alter the character of the locality. Other pole buildings have been built upon lots in this subdivision.

6. The practical difficulty includes more than economic considerations alone.

Applicants have investigated other options and configurations of buildings for this lot. The present plans are the most useful and practical that we can conceive.

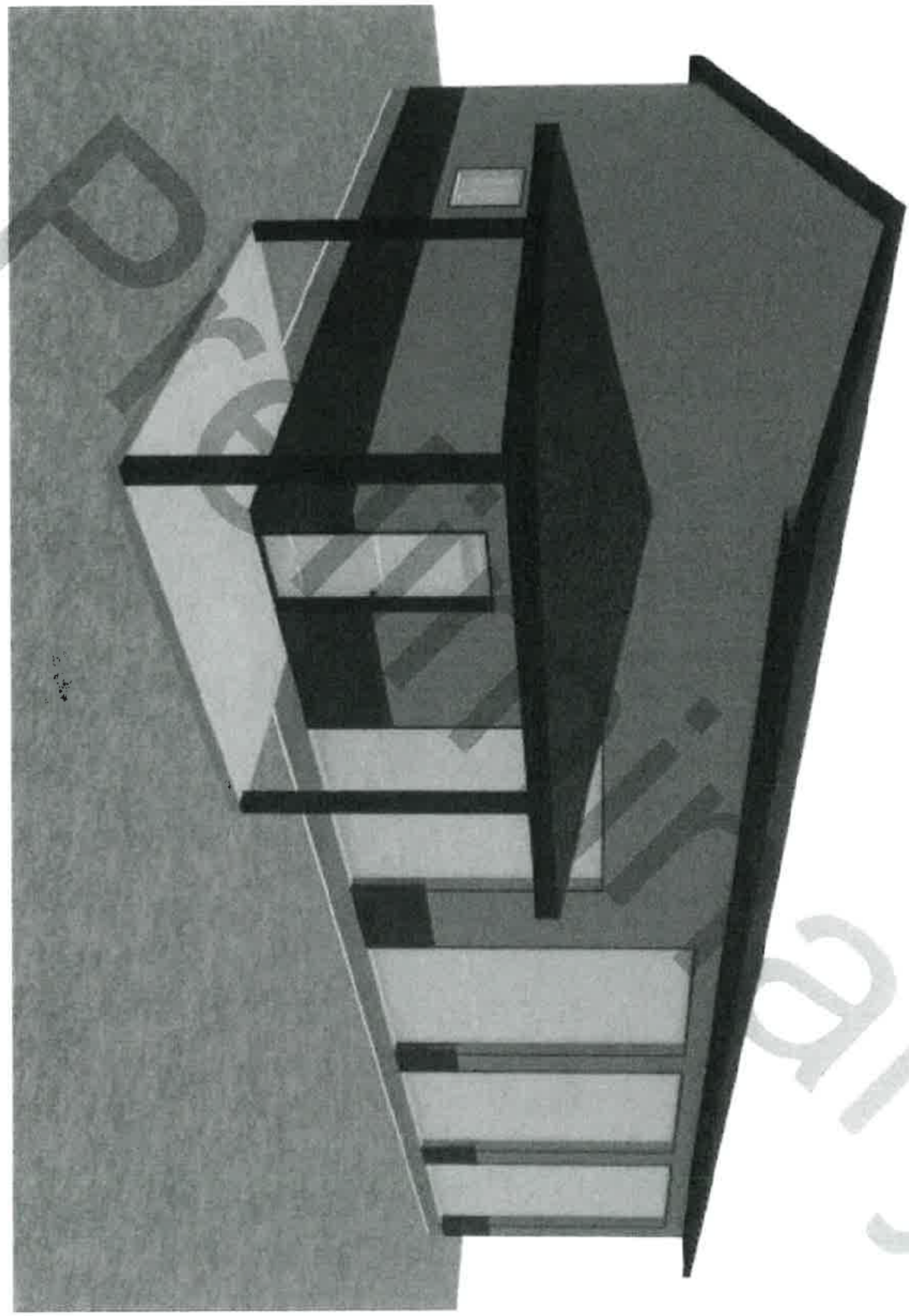
7. Additional Information. The lot upon which Thomas and Patricia Bittner would like to build their pole building was previously the site of a home. The foundation/slab remains on the lot. This foundation/slab is located withing 65 feet of the Highway Right of Way.

ALL SIX VARIANCE CRITERIA <u>MUST</u> BE MET IN ORDER FOR THE REQUEST TO BE APPROVED.



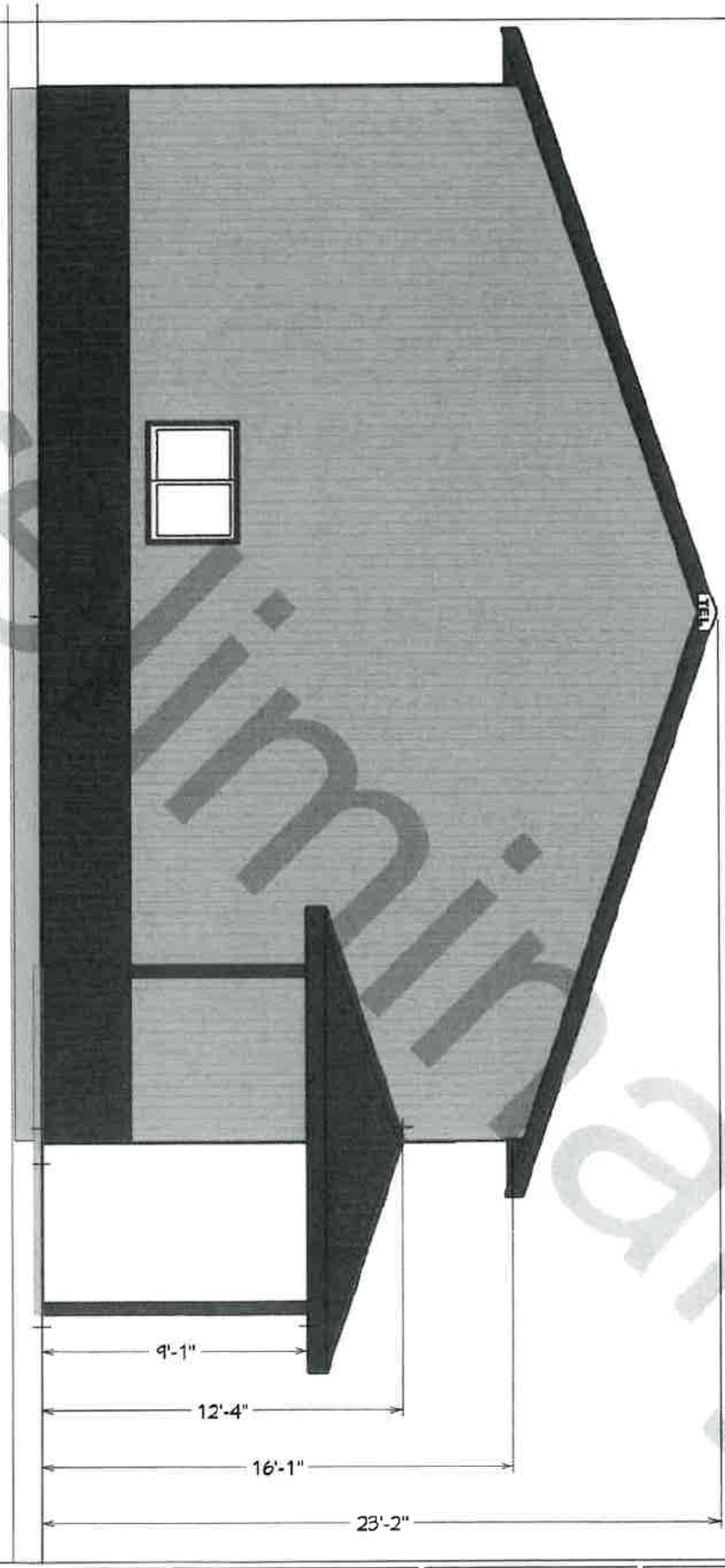
Preliminary

ATTACHMENT F.4
Shed Plans



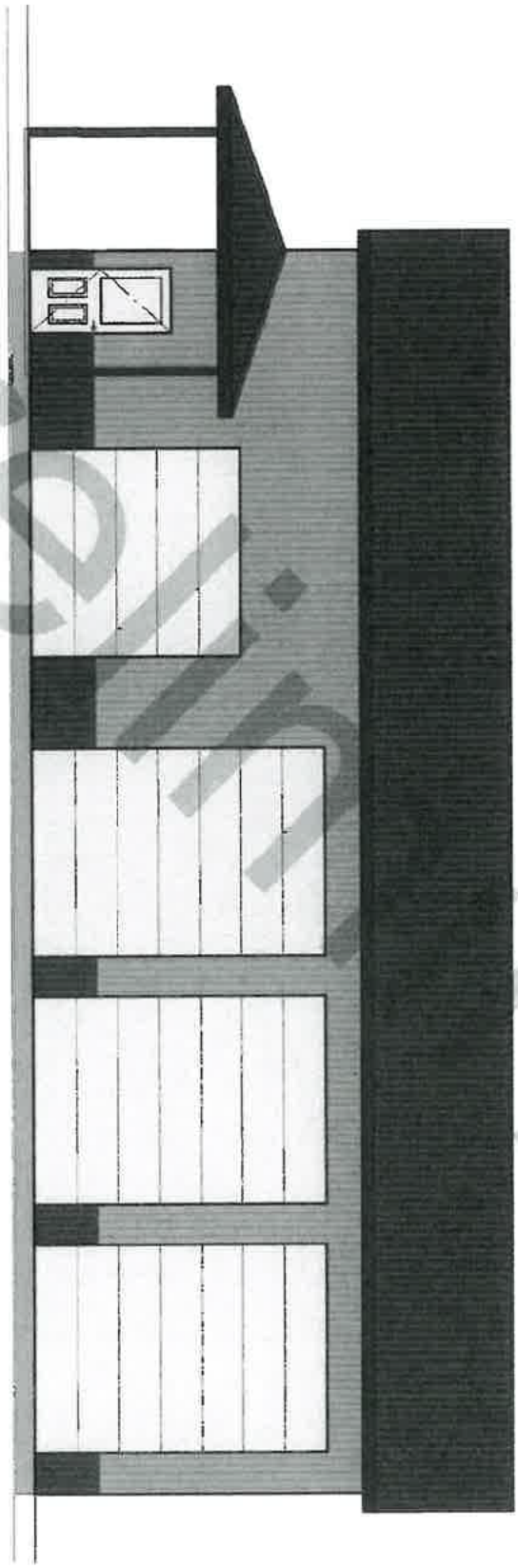
Preliminary

SHEET:	SCALE:	DATE:	Drawings Provided by:			
2		11/27/2020	TOWN'S EDGE LUMBER	Tom Bittner	Building Elevation 1	Carter Fromm 501-766-4712 carterfromm@gmail.com



Preliminary

SHEET: 3	SCALE: 3/16" = 1'-0"	DATE: 11/27/2020	Drawings Provided by TOWN'S EDGE LUMBER	Tom Bittner	Side Elevation	Carter Fromm 501-766-4712 carterfromm@gmail.com TEL



Preliminary

SHEET: 4	SCALE: 1/8" = 1'-0"	DATE: 11/27/2020	Drawings Provided By: TOWN'S EDGE LUMBER	Tom Bittner	Front Elevation

Carter Fromm
507-766-4112
carterfromm@gmail.com
TEL

December 4, 2020

To Whom it may concern:

This letter is acknowledgement that Scott and Kammy Reed consent to the building of a structure for storage purposes by our neighbors, Tom and Patty Bittner.

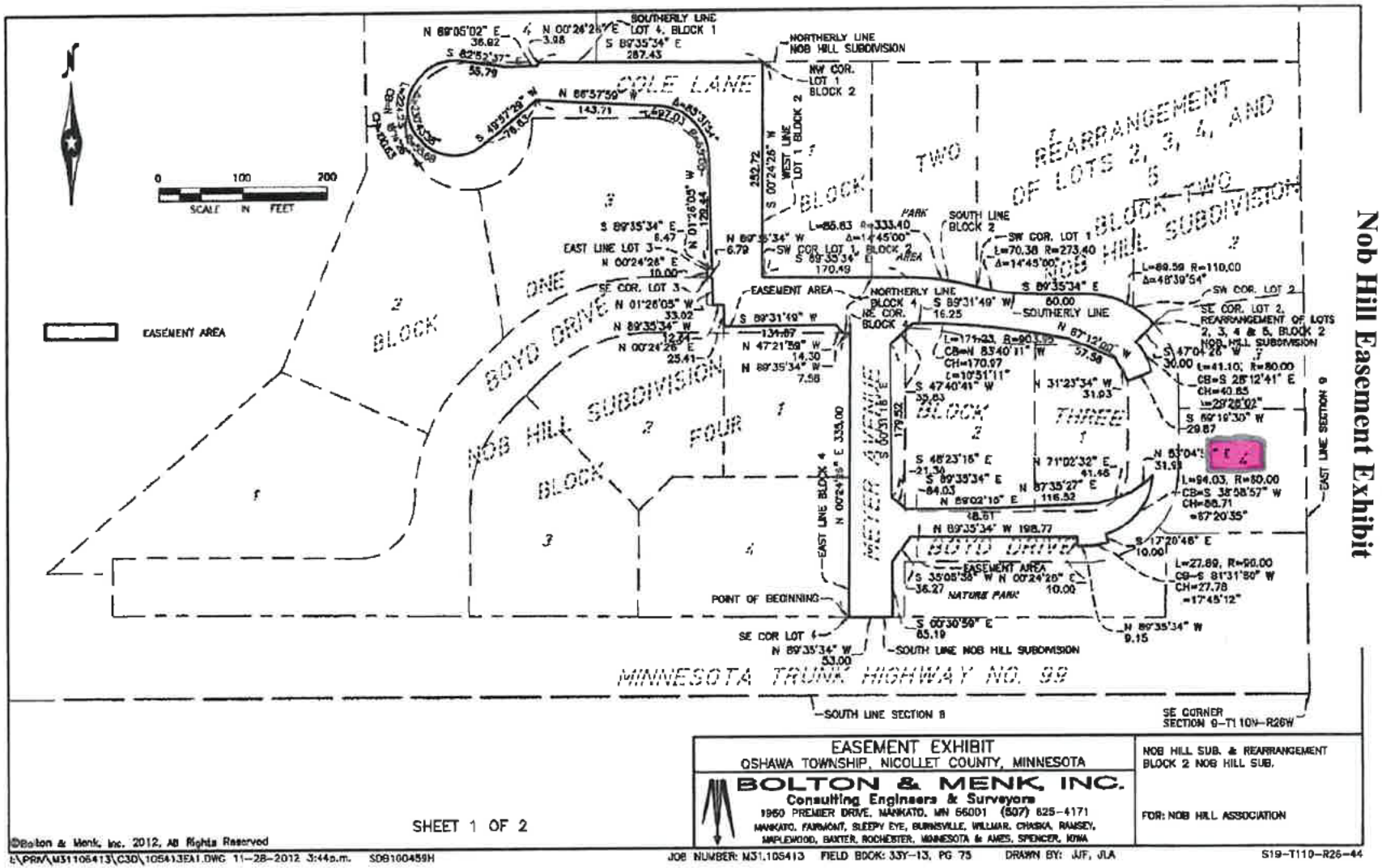
We understand that the proper measures will be taken to ensure that there would not be any water run-off into our property, as a proper water shed would be built to ensure this.

Thank you

Scott Reed

Kammy Reed

ATTACHMENT F.5
Neighbor Comment



ATTACHMENT F.6
Nob Hill Easement Exhibit

ATTACHMENT H

ATTACHMENT F.7
Photos



NICOLLET
EST. COUNTY 1853

AFTER-THE-FACT VARIANCE

ALLOW MORE THAN ONE PERSON TO BE EMPLOYED, ALLOW MORE THAN 25% OF FLOOR AREA, ALLOW THE OUTSIDE APPEARANCE TO HAVE VISIBLE EVIDENCE, FOR A HOME OCCUPATION IN THE R-1 DISTRICT

BRIAN MOCK

PLN21-21

NICOLLET COUNTY
BOARD OF ADJUSTMENT & APPEALS

SUBJECT:	PLN21-21, After-the-Fact Variance
APPLICANT/LANDOWNER:	Brian Mock
LOCATION:	Lot 2 of Block 1 of Mattes Subdivision in Belgrade Township
PARCEL NO:	01.643.0020
EXISTING ZONING:	R-1, Urban/Rural Residential
HEARING DATE:	May 17, 2021

REQUEST

The applicant has submitted an after-the-fact variance request concerning a currently unpermitted level 2 home occupation business. The applicant intends to apply for an after the fact conditional use permit for a level 2 home occupation permit if the variance is granted. The business is known as Icabod Productions, LLC and has been operating onsite for 22 years. Property Services has no history of a complaint against the property during this time. The business is a stage, sound, and lighting equipment supplier for bands and concerts.

The after the fact variance request includes:

- Allowing more than one person, other than the permanent occupants of the dwelling, to be employed in conjunction with a home occupation. [Zoning Ordinance, Section 718.5(1)] In a normal year (pre-Covid-19 pandemic), the applicant employed 2 part-time workers.

- Allowing more than 25% of the gross floor area of the dwelling to be used for the conduct of a home occupation. [Zoning Ordinance, Section 718.5(3)] The business utilizes 3,987 square feet of floor use area. This includes 2,080 square feet of exterior truck and trailer parking and 1,907 square feet of interior space used for storage and as a workshop. There is no area in the dwelling which is utilized solely for the business.

- Allowing a change in the outside appearance of the premises or other visible evidence of the conduct of the home occupation. [Zoning Ordinance, Section 718.5(4)] The applicant uses 2,080 square feet of exterior space for truck and trailer parking. The exterior area is partially screened by existing vegetation and buildings.

The alternative to a variance would be to cease business operations on the site. If the request is approved as proposed, the applicant will still have to apply for an after-the-fact conditional use permit for a level 2 home occupation. The request exceeds the standards for a level 1 home occupation.

Existing Land Use:
The existing land use is residential. The property contains the applicant's dwelling and a pole shed. The property contains 1.32 acres and is zoned R-1, Urban/Rural Residential.

Surrounding Land Use:
The surrounding land use is agricultural, residential, and natural environment.

NEIGHBOR NOTIFICATION

Property owners were notified of the request per the standards of Section 503 of the Zoning Ordinance and Minnesota State Statute 394.26.

VARIANCE CRITERIA

NOTE: According to Minnesota State Statute 394.27 Subd.7 "*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; **and** the plight of the landowner is due to circumstances unique to the property and not created by the landowner; **and** the variance will not alter the essential character of the locality.

*ALL SIX of the variance criteria **must** be answered "**True**" in order for the variance to be granted.*

1. The variance is in harmony with the general purposes and intent of the official control:

- Home occupations are a conditional use in the R-1 Urban/Rural Residential zone.
- Section 718.5 of the Zoning Ordinance contains limitations on home occupations within residential zoning districts. These limitations are intended to maintain the residential character of the districts.
- The property is located within Mattes Subdivision, which is zoned R-1, Urban/Rural Residential. However, Mattes Subdivision includes only three lots and is surrounded by land zoned Agricultural Preservation and Conservancy.
- There is no history of complaints against the business/property.

2. The variance is consistent with the intent of the comprehensive plan:

- The county will ensure that land is used in an appropriate manner by minimizing conflicts between land uses.
- The property is presently vacant and is located in a residential zone. If approved, the property use would be accessory residential.
- The proposal does not involve the development of any agricultural lands or sensitive natural features.

3. **The variance establishes a practical difficulty in complying with the official controls:**

    - The request does appear to establish a practical difficulty.
        - The request involves an existing building site.
        - The proposal does not appear to increase the potential for land use conflict. The proposed location is already functionally part of an existing building site and the applicant has operated on the property for 22 years.
        - The request will not alter the essential character of the locality; the locality will remain agricultural, residential, and natural environment in nature.

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

    - The plight does appear to be unique to the property.
    - The plight appears to be the result of the history of the property being used for the business. The applicant has operated the business on the property for 22 years.
    - The applicant decided to seek an after the fact variance rather than relocate or terminate the business.

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

    - The essential character of the locality would remain agricultural, natural environment, and residential regardless of whether the variance is granted.
    - The applicant intends to maintain the existing vegetative screening.

6. **The practical difficulty includes more than economic considerations alone:**

    - The request includes more than economic considerations alone.
    - The request is based on the history of the property being used for the business; applicant has been operating the business on the property for 22 years.

RECOMMENDATIONS

If the request is approved, staff recommends the following conditions be attached:

1. The applicant undertakes the project according to the plans and specifications submitted to the county with the application.

2. The county may enter onto the premises at reasonable times and in a reasonable manner to ensure the variance holder is in compliance with the conditions and all other applicable statutes, rules, and ordinances.

3. The applicant must apply for an after the fact conditional use permit for a level 2 home occupation.

4. Prior to issuance of this variance, a compliance inspection of the onsite septic system must be submitted to Property Services. The inspection must be conducted by a State of Minnesota licensed septic inspector.

Parcel No: 01.643.0020
Map No: 2104301002

Applicant/Landowner:
Brian Mock

PLN21-21

ATTACHMENT A **Application**

ATTACHMENT B **Variance Criteria**

ATTACHMENT C **Location Map**

ATTACHMENT D **Aerial**

ATTACHMENT E **Neighbor Notification List**

ATTACHMENT F **Documents Submitted by Applicant**

F.1 Written Proposal

F.2 Site Plan

F.3 Screening Plan

NICOLLET COUNTY EST. 1853

PROPERTY SERVICES DIVISION
501 SOUTH MINNESOTA AVENUE, SAINT PETER MN 56082
507-934-7070

BOARD OF ADJUSTMENT & APPEALS APPLICATION

Total Fees: $1,046.00

Map#: 2104301002
Parcel# 016430020
Permit#: PLN21-00021
Date: April 22, 2021

Applicant: MOCK BRIAN D, , 52678 409TH AVE, NORTH MANKATO MN 56003
Phone:
Owner: MOCK BRIAN D, 52678 409TH AVE, NORTH MANKATO MN 56003
Property Address: 52678 409TH AVE, N MANKATO MN 56003
Abbreviated Legal Description: SubdivisionName MATTES SUBDIVISION SubdivisionCd 01643 LOT 2 BLK 1 (CONTAINING 1.32AC WITHOUT RD)
Township: Belgrade Township

Record Type: Variance
Category: Performance Standard
Project Description: After-the-fact variance to allow more than one person other than the permanent occupants of the dwelling to be employed in conjunction with the home occupation; to allow more than 25% of the gross floor area to be used for the home occupation in the R-1 district; and to allow the outside appearance of the property to have visible evidence of the home occupation. Ref: 503, 718.5(1), 718.5(3), 718.5(4).
Hearing Date: 05/17/2021

4/22/21

APPLICANT SIGNATURE **DATE**

ATTACHMENT A
Application

NICOLLET COUNTY BOARD OF ADJUSTMENTS AND APPEALS
CRITERIA FOR GRANTING A VARIANCE

Name of Applicant/ Property Owner: Brian Mock

Date: May 17, 2021

File #: PLN21-21

Variance Requested: After the fact variance to allow more than one person to be employed by a home occupation, to allow more than 25% of the gross floor area to be used for a home occupation, and to allow the outside appearance of the property to have visible evidence of a home occupation in the R1 district

FINDINGS OF FACT

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a **practical difficulty**. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

1. The variance is in harmony with the general purpose and intent of the official control.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

2. The variance is consistent with the intent of the Comprehensive Plan.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

3. The variance establishes a practical difficulty in complying with the official controls.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

ATTACHMENT B
Variance Criteria

4. The plight of the landowner is due to circumstances unique to the property and not created by the landowner.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

5. The variance will not alter the essential character of the locality.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

6. The practical difficulty includes more than economic considerations alone.

	YES	NO	ABSTAINED	ABSENT	WHY:
David Wendinger	☐	☐	☐	☐	
David Hermanson	☐	☐	☐	☐	
Justin Laven	☐	☐	☐	☐	
Ron Regenscheid	☐	☐	☐	☐	
Dave Ubel	☐	☐	☐	☐	

SPECIAL CONDITIONS ARE LISTED ON THE RECORDED VARIANCE AND IN THE RECORD

THE NICOLLET COUNTY BOARD OF ADJUSTMENT AND APPEALS:
(☐ APPROVES) (☐ DENIES) THE REQUESTED VARIANCE

This decision is based on:

- ☐ Application
- ☐ Staff Report
- ☐ Pictures
- ☐ Information received at public hearing

Viewed by Members of Board:

- ☐ Wendinger
- ☐ Hermanson
- ☐ Laven
- ☐ Regenscheid
- ☐ Ubel

Facts supporting the answer to each question above are hereby certified as the Findings of the Nicollet County Board of Adjustments and Appeals.

Date: _____ Chair: _____



Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of this data for any purpose. The Property Services Division of Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.

N
W E
S

1:24,000 1 inch = 2,000 feet

0 1,000 2,000 Feet

ATTACHMENT C
Location Map



Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of this data for any purpose. The Property Services Division of Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.

1:600 1 inch = 50 feet

N W E S

0 25 50 Feet

ATTACHMENT D
Aerial

ALBRECHT FAMILY TRUST
502 MOUNT CURVE BLVD
SAINT PAUL MN 55116

DONNA APPEL
40683 PURRIER CT
NORTH MANKATO MN 56003

CHAD & MICHELLE BERGER
52547 RAVINE RD
NORTH MANKATO MN 56003

ROGER BRUNS
43093 US HIGHWAY 14
NORTH MANKATO MN 56003

JOYCE CURRIE
40797 PURRIER CT
NORTH MANKATO MN 56003

THORVALD DAHLE & COLLEEN GEFFE-DAHLE
52584 RAVINE RD
NORTH MANKATO MN 56003

LARRY & ROBIN EPPARD
52556 RAVINE RD
NORTH MANKATO MN 56003

FREDERICK LIVING TRUST
38305 490TH ST
SAINT PETER MN 56082

CONNIE HENDRICKSON
6501 116TH AVE N
CHAMPLIN MN 55316

JOHN AND MARY DEPUYDT LLC
41183 520TH ST
NORTH MANKATO MN 56003

JOSHUA KIRBY
52765 409TH AVE
NORTH MANKATO MN 56003

JASON & KARI LOE
52825 409TH AVE
NORTH MANKATO MN 56003

MOLLY LOE
117 GOLDFINCH CT
MANKATO MN 56001

WILLIAM & JANET LOWE
52429 409TH AVE
NORTH MANKATO MN 56003

WILLIAM & NANCY MATTES
52702 409TH AVE
NORTH MANKATO MN 56003

BRIAN MOCK
52678 409TH AVE
NORTH MANKATO MN 56003

DAVID & PATRICIA NEUBERT
52632 409TH AVE
NORTH MANKATO MN 56003

CRAIG & KAREN SMITH
41296 JUDSON BOTTOM RD
NORTH MANKATO MN 56003

GERALD & SHARON STOFFREGEN
52682 409TH AVE
NORTH MANKATO MN 56003

RAYMOND & DONNA VEROEVEN
52618 409TH AVE
NORTH MANKATO MN 56003

PETER & LISA WEBER
52598 RAVINE RD
NORTH MANKATO MN 56003

WALTER & LINDA WOLFF REV TRUST
61403 KNIGHT OWL LN
MADISON LAKE MN 56063

GERALD YETTER
40859 PURRIER CT
NORTH MANKATO MN 56003

BELGRADE TOWNSHIP
38310 490TH ST
SAINT PETER MN 56082

BELGRADE TOWNSHIP
53491 409 AVE
NORTH MANKATO MN 56003

ATTACHMENT E
Neighbor Notification List

RECEIVED
FEB -2 2021
NICOLLET COUNTY
PROPERTY SERVICES

Hi Jon,

Here are the answers to the home occupational business form you gave me. If you need anything else, please call or email anytime. As I mentioned, I have been here for 22years and have never had a complaint.

Thanks
Brian

#1, Brian Mock
Icabod Productions LLC
52678 409th Ave.
N. Mankato, MN 56003

507-380-5771
icabodproductions@gmail.com

#2 I am a stage, sound and lighting equipment supplier for bands and concerts. I do not manufacture or sell equipment.

#3 3,000 sq.ft of indoor storage, 2,500 sq.ft of outdoor parking. The outdoor area is mainly for the truck and trailer parking. The main activity of my business is taking the equipment in a truck to another location to be used at that location. The indoor space is for storage and maintenance of equipment.

#4 At this time because of covid I am pretty much shut down. I am the only worker until we can get back to work. In a normal year, I have 2 part time workers besides myself. I live in the house on the property.

#5 usually 2-3 traffic trips per day. This can vary in the winter, as we are slow and a lot of days it's just myself and I may not leave the property at all.

#6 I have minimal nuisance. 95percent of our work is done inside the shop which is insulated. The only thing outside is driving a truck in or out of the property. We don't leave trucks idling and they all have mufflers.

#7 I keep the outside grounds kept up. Grass mowed, trees trimmed. As I stated, the outside is for parking the trucks. I live on the property and don't want it to look like a junk yard. No signs will be put up. I don't like advertising where my equipment is stored.

#8 NO hazardous materials.

#9 I recycle everything I can and deposit it at the N. Mankato recycling center. I have a 2yard dumpster for everyday garbage, and is dumped once per month. The dumpster services the house and the shop.

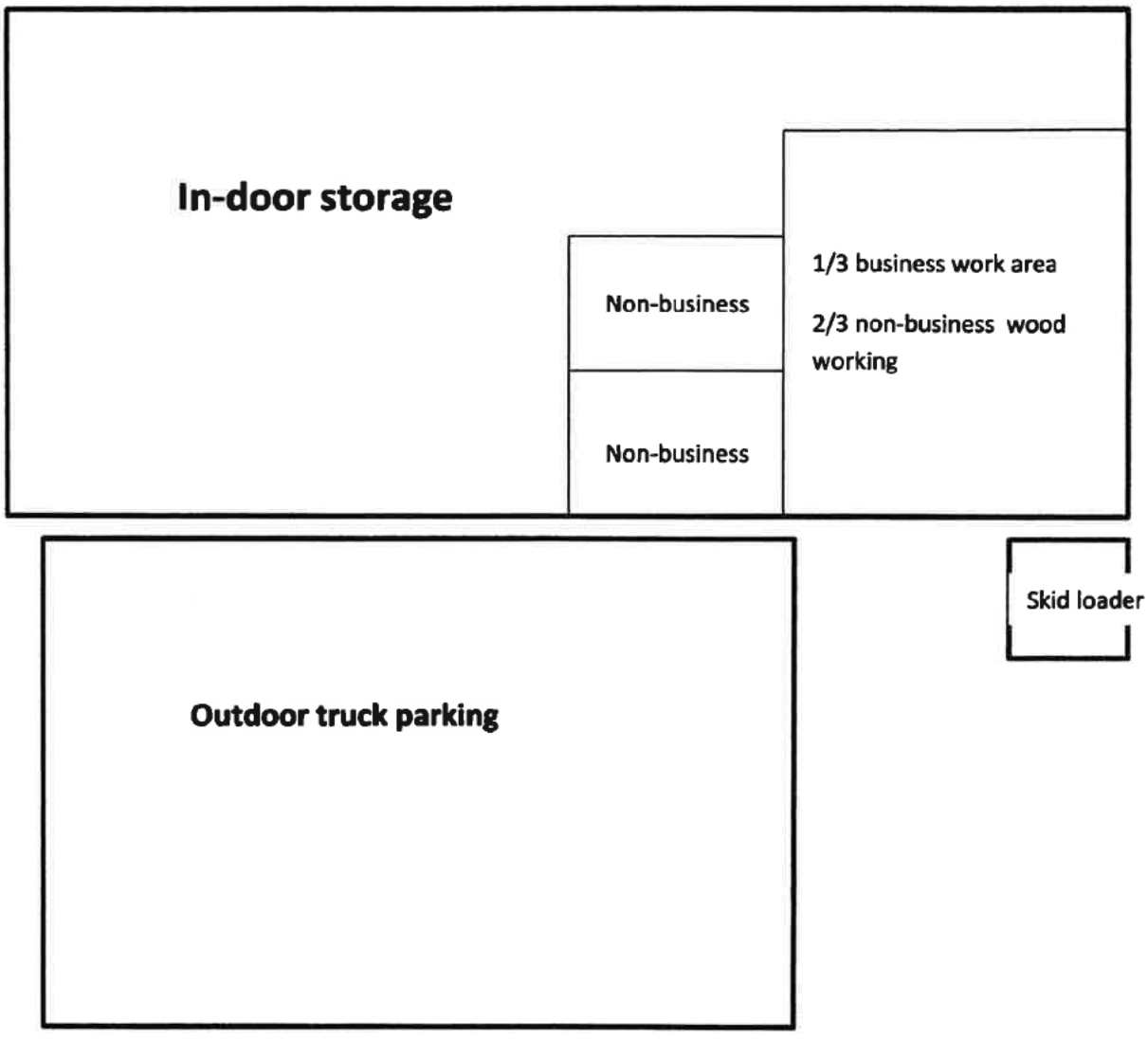
ATTACHMENT F.1
Written Proposal

RECEIVED
MAR 9 2021
NICOLLET COUNTY
PROPERTY SERVICES

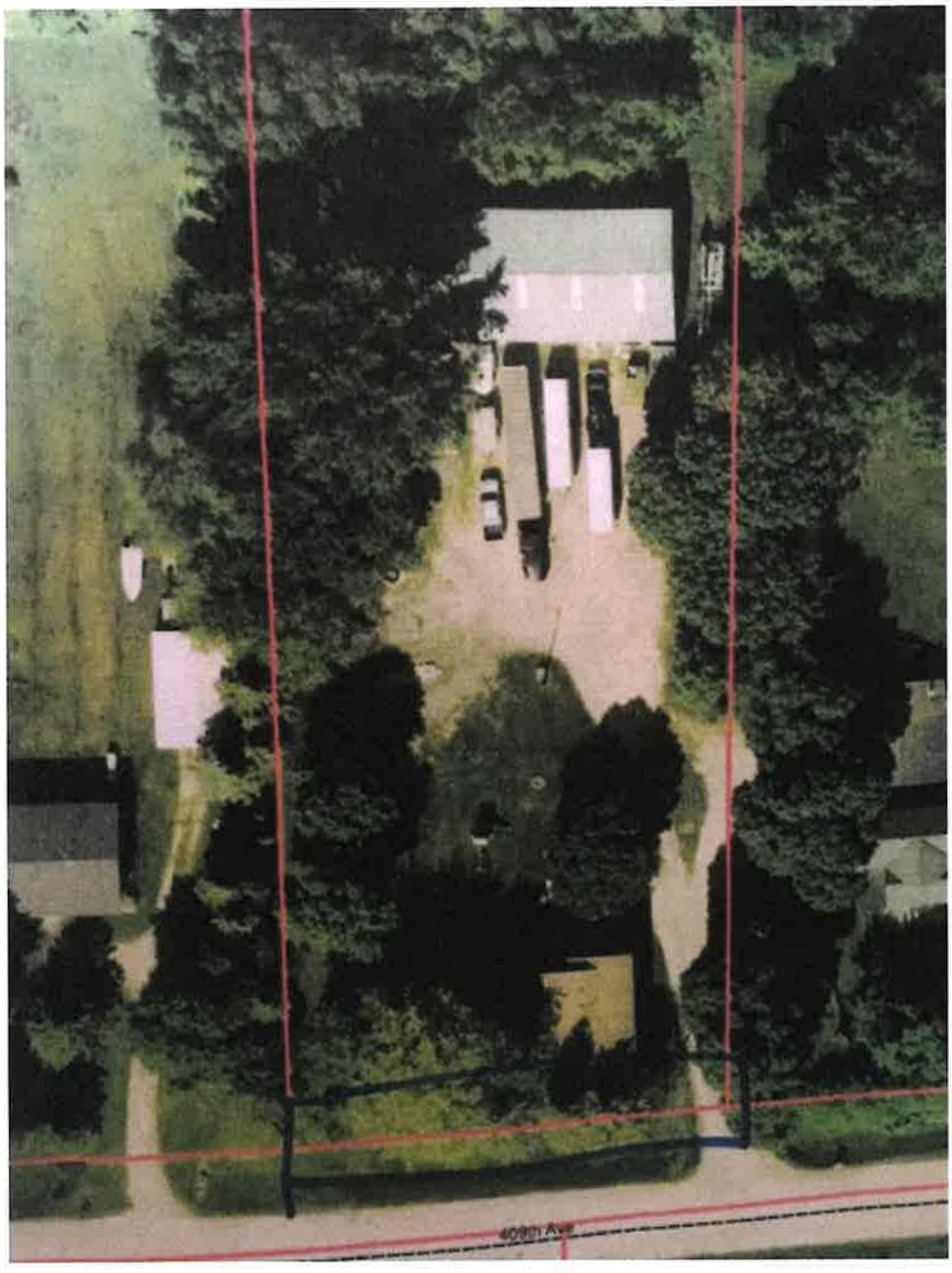
Business storage and work area =1907 square feet.

Truck and trailer parking = 2080 square feet.

Total Business area = 3,987 square feet.



ATTACHMENT F.2
Site Plan


40th Ave

Jon Hammel

From: Brian Mock <icabodproductions@gmail.com>
Sent: Wednesday, March 24, 2021 10:20 AM
To: Jon Hammel
Subject: Re: Sight of business

Hi Jon.

Yes, I'm keeping all vegetation and I maintain it. Besides hiding my assets for security. It also helps with the dust being my house is so close to the road. Anytime a tree has fallen during a storm I've replaced it. I also pay to have dust control sprayed on the road.

Brian.

Sent from my iBrain

On Mar 24, 2021, at 9:09 AM, Jon Hammel <Jon.Hammel@co.nicollet.mn.us> wrote:

> Hi Brian,
>
> Do you intend to maintain the vegetation screening your property?
>
> Jon
>
> ---
>
> **From:** Brian Mock [mailto:icabodproductions@gmail.com]
> **Sent:** Friday, March 19, 2021 10:02 PM
> **To:** Jon Hammel
> **Subject:** Sight of business
>
> Hi John.
>
> This picture you sent me shows all of my property have trees and bushes surrounding it, plus my house that I live in is on the road side of the property. The driveway is really the only place you can see into the yard.
>
> Please let me know if you need anymore info.
> Thanks
> Brian.

ATTACHMENT F.3
Screening Plan

Total Control Panel Login

To: jon.hammel@co.nicollet.mn.us Remove this sender from my allow list
From: icabodproductions@gmail.com

You received this message because the sender is on your allow list.

NOTICE:
Unless restricted by law, email correspondence to and from Nicollet County government offices may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties.
This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please destroy it and notify the sender immediately.

NICOLLET
EST. COUNTY 1853

ADMINISTRATIVE APPEAL

A. **The applicants appeal the decision of the Director that requires "the Giesekes to submit verification concerning offsite earth movement… to ensure the proper placement of the fill per county standards and to ensure protection of the environment" and that "the location of the material moved offsite and who moved the material offsite" must be resolved.**

B. **Applicants also appeal each and every decision made by the Director after the date of this Notice of Appeal (dated April 14, 2021):**

   i. **Which presents an impediment to proceeding with a hearing before the Board on the after the fact variance application.**

   ii. **Which concludes that the application for an after the fact variance is incomplete.**

   iii. **Which requires submission of the amounts already submitted as payment of the after the fact variance and recording fees of $1,046 paid and submitted on March 19, 2021 (and previously on September 15, 2021).**

   iv. **Which denies applicants request because an official application has not been completed by the Director.**

   v. **Which require additional "precise elements" be listed and identified on the application.**

PATRICK & SHANA GIESEKE

PLN21-19

NICOLLET COUNTY
BOARD OF ADJUSTMENT & APPEALS

SUBJECT:	PLN21-19, Administrative Appeal
APPLICANT/LANDOWNER:	Patrick and Shana Gieseke
LOCATION:	Part of Government Lot 2, and Part of the Southeast 1/4 of the Southeast 1/4, of Section 35-111-31, in West Newton Township
PARCEL NO:	13.035.1000
EXISTING ZONING:	Conservancy
HEARING DATE:	May 17, 2021

REQUEST

Appeal Authority

Section 502 of the Zoning Ordinance states that the Board of Adjustment and Appeals (hereinafter "Board") shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing the Ordinance. Such appeal may be made by any person, firm or corporation aggrieved or by any officer, department, board of or bureau of a town, municipality, county, or state. The Board has the authority to reverse, affirm, or modify the decision or determination being appealed. The reasons for the Board's decision shall be stated in writing. This authority comes from Minnesota Statutes Section 394.27, subdivision 5.

Request for Appeal

The applicants have submitted a request for an administrative appeal from a decision or determination made by the Deputy Zoning Administrator (hereinafter "DZA") and Director (hereinafter "Director") of Nicollet County Property and Public Services (hereinafter "NCPPS") pertaining to the status of the applicants' application for an after-the-fact variance. Specifically, they are requesting an administrative appeal from NCPPS's determination that the applicants' application for an after-the-fact variance dated April 8, 2021 was incomplete.

After-the-fact Variance Components:

1. Expanding a nonconforming structure,
2. Reducing the bluff setback for the dwelling addition,
3. The alteration of protected bluff areas,
4. Reducing the front yard setback for the dwelling addition,
5. Reducing the front yard setback for a replacement septic system, and
6. Allowing fill to be placed in a protected bluff area.

The after-the-fact variance request involves the applicants' unpermitted dwelling addition project that was started in the summer of 2020. The project included:

- Remodeling the original dwelling,
- Replacing the original garage, and
- Adding onto the dwelling itself.

The applicants' existing dwelling was built in 1890 and is considered pre-existing nonconforming because it was located within the front yard and bluff setbacks.

- The front yard setback along a county road is 50 feet. The front yard setback is intended to provide a buffer between land uses (e.g. transportation and residential).
- The bluff setback is 30 feet from the point at which slope begins to exceed 12%. The bluff setback is intended to protect bluff areas as a sensitive natural feature.

The majority of the property is bluff. Cutting and filling in bluff areas increases the potential for slope instability and erosion. The soil type for the majority of the property is 960F Belview-Omsrud in which building site development is classified as "severe" – soil properties and site features are so unfavorable or so difficult to overcome that special design, significant increases in construction costs, and possibly increased maintenance are required. A portion of the dwelling addition lies within the original position of the bluff. According to the applicants' survey, a total of approximately 1,000 cubic yards of bluff material was removed from the bluff as part of the project. Of this total, 315 cubic yards were hauled offsite and 685 cubic yards were relocated onsite.

Specifically, the administrative appeal was worded as follows:

A. *The applicants appeal the decision of the Director that requires "the Giesekes to submit verification concerning offsite earth movement... to ensure the proper placement of the fill per county standards and to ensure protection of the environment" and that "the location of the material moved offsite and who moved the material offsite" must be resolved.*
B. *Applicants also appeal each and every decision made by the Director after the date of this Notice of Appeal (dated April 14, 2021):*
    i. *Which presents an impediment to proceeding with a hearing before the Board on the after the fact variance application.*
    ii. *Which concludes that the application for an after the fact variance is incomplete.*
    iii. *Which requires submission of the amounts already submitted as payment of the after the fact variance and recording fees of $1,046 paid and submitted on March 19, 2021 (and previously on September 15, 2021).*
    iv. *Which denies applicants request because an official application has not been completed by the Director.*

v. *Which require additional "precise elements" be listed and identified on the application.*

The applicants' complete administrative appeal submission is attached as Attachment E.

Existing Land Use:
The existing 11.64 acre property was created in August of 2017, when the applicants purchased the property. At that time, the property was split from a larger 155.3 acre property. The existing land use is primarily natural environment. The property is zoned Conservancy.

Surrounding Land Use:
The surrounding land use is primarily natural environment, residential, and agricultural.

BACKGROUND

The following is a summary of events concerning the Appeal request.

May 1, 2020: The applicants sent NCPPS an email stating Ms. Gieseke believed she needed to obtain a building permit and inquired if that could be done online. (Attachment F.1). NCPPS responded the same day and informed the applicants of the process for obtaining a zoning permit. The email also contained an attachment with the district setbacks and stated the property was located in the Conservancy zoning district.

June 18, 2020: NCPPS took photographs from the public road of the structure on the property. The violation was noticed by staff who were on an unrelated site visit. These photographs depict excavation of the bluff, as well as alteration of the structure. (Attachment F.2).

July 13, 2020: NCPPS issued a Cease and Desist Order to the applicants. The Cease and Desist Order required that development on the property cease immediately. (Attachment F.3).

July 21, 2020: NCPPS conducted a site visit of the property. Present at the site visit were Director Landkamer, DZA Hammel, and Patrick Gieseke. The photographs taken during the site visit depict:

- Fresh excavation of the bluff,
- Expansion and alternation of the original structure,
- Commencement of construction on the property, and
- That the ditch along County Road 21 appeared recently cleaned out and that there was dirt on the pavement.

(Attachment F.4).

July 23, 2020: NCPPS obtained photographs from www.realtor.com. (Attachment F.5). These photographs depicted the structure when the applicants purchased the property. They show the interior and exterior photographs of the dwelling and photographs of the garage prior to the remodel/addition.

August 13, 2020: NCPPS sent the applicants a letter as follow up to the site visit of the property on July 21, 2020. (Attachment F.6). This letter stated the violations on the property in detail and provided the applicants with options to resolve those violations. This letter stated that development could only recommence once all violations had been officially resolved.

August 19, 2020: NCPPS took photographs of the structure on the property from the public road. (Attachment F.7). The photographs depict further alteration of the structure. The applicants did not cease development on the property following the Cease and Desist Order.

August 21, 2020: The applicants stated via email to NCPPS that they understood that no further construction would occur until the violation has been resolved. (Attachment F.8).

August 21, 2020 and August 27, 2020: The applicants submitted an application for an after-the-fact variance to NCPPS. (Attachment F.9). The information submitted included:

- Letter to Nicollet County.
- A floor plan for the dwelling addition.
- A cost estimate for the project.
- Contractor information.
- A compliance inspection of the onsite septic system.

September 1, 2020: NCPPS took photographs of the structure on the property from the public road. (Attachment F.10). These photographs depict that further alteration of the structure had occurred. These photographs also depict that at some point between the time the Cease and Desist Order was issued on July 13, 2020, and the site visit on August 19, 2020, the applicants had shingled the roof of the expanded structure, in violation of the Cease and Desist Order.

September 2, 2020: NCPPS advised the applicants their August 21 and 27, 2020 application was incomplete and provided the reasons for this determination. (Attachment F.11). The letter advised that additional information and revisions to the application were required, including:

- A survey.
- A complete set of floor plans. The floor plan previously submitted was only for the addition.
- A secondary/alternative septic system location.
- The precise location of the relocated earthen material.
- The amount of material moved in cubic yards.

September 2, 2020: The applicants submitted a construction proposal to NCPPS. (Attachment F.12). The applicants proposed to continue a limited amount of construction on the structure, including Ty-Vek, windows, doors, and soffit.

September 14, 2020: The applicants submitted additional information regarding their application for an after-the-fact variance. (Attachment F.13). The additional information included:

- A complete set of floor plans.
- A map of the locations where the cut material was placed onsite.

September 15, 2020: NCPPS administratively denied the applicants' construction proposal. (Attachment F.14).

September 18, 2020: NCPPS conducted a site visit of the property. Based upon observations during the site visit, the applicants had not ceased development on the property. In addition, the applicants indicated they would continue construction on the property, despite the Cease and Desist Order. Photographs taken during the site visit depict further alteration of the structure and fresh earthen material in the ravine located on the property. (Attachment F.15). A site evaluation for a replacement septic system was also completed on September 18, 2020.

September 21, 2020: The Nicollet County Attorney's Office sent the applicants a letter advising them that if they did not immediately cease any and all work on the property, NCPPS would seek immediate injunctive relief and/or a temporary restraining order. (Attachment F.16)

September 24, 2020: The applicants' attorney, Steven Franta, confirmed via email that the applicants had assured him that all construction work had ceased. (Attachment F.17).

October 2, 2020: NCPPS advised the applicants their September 14, 2020 application was incomplete and provided the reasons for this determination. (Attachment F.18). The letter advised that additional information and revisions to the application were required. The additional information required included:

- A survey.
- An erosion and sediment control plan.
- A complete set of floor plans.
- A secondary/alternative septic system location.

October 9, 2020: The applicants submitted additional information regarding their application for an after-the-fact variance. (Attachment F.19). The submitted information included:

- A survey.
- An erosion and sediment control plan.
- Floor plans.
- A secondary/alternative septic system location.
- Onsite and offsite earth movement.

October 27, 2020: NCPPS advised the applicants via letter that their October 9, 2020 application was incomplete and provided the reasons for this determination. The letter specified that additional information and revisions were needed. (Attachment F.20). The additional information required included:

- An amended survey.
- A revised erosion and sediment control plan.
- A complete set of floor plans.
- The location of off-site earth movement.

November 23 and 24, 2020: The applicants submitted additional information regarding their application for an after-the-fact variance. (Attachment F.21). The additional information provided included:

- An amended survey.
- A revised erosion and sediment control plan.
- Revised floor plans.

December 7, 2020: NCPPS advised the applicants that their November 23 and 24, 2020 application was incomplete and provided the reasons for this determination. The letter specified that additional information and revisions were needed. (Attachment F.22). The additional information required included:

- A comprehensive erosion and sediment control plan.
- The location of off-site earth movement.

December 7, 2020: NCPPS took photographs from the public road of the structure on the property. (Attachment F.23). These photographs, as compared with the photographs taken on August 19, 2020, demonstrate that since the time NCPPS issued the Cease and Desist Order, the applicants had continued to undertake development on the property, in violation of the Ordinance and the Cease and Desist Order. The photographs depict that the applicants had installed two new windows and a patio door, despite these items being specifically addressed in the September 15, 2020 letter administratively denying the applicants' request for continued limited construction.

December 10, 2020: NCPPS filed a Summons and Complaint in the District Court, along with a motion for a temporary restraining order, a memorandum of law, an affidavit, and supporting exhibits. (Attachments F.24 through F.29).

December 17, 2020: The applicants submitted additional information regarding their application for an after-the-fact variance. (Attachment F.30). The additional information submitted included:

- A comprehensive erosion and sediment control plan.

December 17, 2020: The applicants submit the Affidavit of Shana E. Gieseke. (Attachment F.31).

December 18, 2020: The District Court conducted a hearing concerning the motion for a temporary restraining order.

December 22, 2020: NCPPS responds to the Affidavit of Shana E. Gieseke. (Attachment F.32)

January 6, 2021: NCPPS advised the applicants that their December 17, 2020 application was incomplete and provided the reasons for this determination. The letter specified that additional information and revisions were needed. (Attachment F.33). The additional information required included:

- The location of off-site earth movement.
- The precise elements to be listed on the official application.

January 14, 2021: The motion for a temporary restraining order was granted by the Court (Attachment F.34). The Court Order temporarily restrained, enjoined, and prohibited the applicants from undertaking any further construction activities on the structure and from any excavation and/or alteration of the land.

January 20, 2021: The applicants submitted additional information regarding their application for an after-the-fact variance. (Attachment F.35). The additional information included:

- Letter addressing off-site earth movement statement. The letter states the applicants are unable to obtain additional information pertaining to who received the cut material and where it was ultimately placed.

February 5, 2021: NCPPS advised the applicants that their January 20, 2021 application was incomplete and provided the reasons for this determination. The letter specified that additional information and revisions were needed. (Attachment F.36). The additional information required included:

- The location of off-site earth movement and who moved the material off-site.
- The precise elements to be listed on the official application.

February 19, 2021: Mr. Franta emailed NCPPS a series of questions concerning what information was outstanding for the applicants' application for an after-the-fact variance. (Attachment F.37).

March 5, 2021: NCPPS responded to the questions and advised the applicants what specified additional information and revisions were needed. (Attachment F.38). The additional information required included:

- The location of off-site earth movement and who moved the material off-site.
- The precise elements to be listed on the official application.

March 19, 2021: The applicants submitted additional information regarding their application for an after-the-fact variance and their application for an administrative appeal. (Attachment F.39). The additional information included:

- The precise elements to be listed on the official application.
- Signed un-official application for an after-the-fact variance.

April 8, 2021: NCPPS advised the applicants that their March 19, 2021 applications were incomplete and provided the reasons for this determination. NCPPS responded and advised the applicants what additional information and revisions were needed for both their application for an after-the-fact variance and their application for an administrative appeal. (Attachment F.40).

April 14, 2021: The applicants submitted additional information regarding their application for an after-the-fact variance and their application for an administrative appeal (Attachment F.41 and E). The additional information included:

- The precise elements to be listed on the official application.

April 21, 2021: The applicants submitted a complete application for an administrative appeal and the request was scheduled for the May 17, 2021 Board meeting. (Attachment A).

May 4, 2021: NCPPS advised the applicants that their April 14, 2021 application for an after-the-fact variance was incomplete and provided the reasons for this determination. NCPPS responded via letter, and advised the applicants what specified additional information and revisions were needed for their application for an after-the-fact variance. (Attachment F.42) The required additional information included:

- The location of off-site earth movement and who moved the material off-site.
- The precise elements to be listed on the official application.

May 7, 2021: The applicants submitted additional information regarding their application for an after-the-fact variance. (Attachment F.43). The additional information included:

- The precise elements to be listed on the official application.
- Completed applicant questionnaires.

OUTSTANDING ITEMS

For the applicants' application for an after-the-fact variance to be considered complete, the applicants must:

1. Provide **verification** concerning the location of the offsite earth movement. The materials provided by the applicants are not sufficient to ensure the proper placement of the fill per county standards and ensure protection of the environment. It is important to ensure the fill was not placed within a protected bluff area, floodplain, wetland or other sensitive natural area. Additionally, the removal of the cut material may require an after-

the-fact conditional use permit, for filling more than 50 cubic yards of material. The applicants have provided inconsistent and contradictory information regarding the location of the onsite and offsite earth movement and who removed the earthen material offsite.

- July 21, 2020: During a site visit Mr. Gieseke stated the cut material was placed on his father's crop fields and in a wash-out area of the applicants' property.

- August 21, 2020: In a letter from the applicants to NCPPS, the applicants stated the cut material was loaded into the applicants' dump trailer with their bobcat and relocated to another location on the property. There is no mention of the off-site earth movement.

- September 14, 2020: The applicants submitted a map depicting five locations on the property where cut material had been placed.

- September 18, 2020: During a site visit, Mr. Gieseke told staff the material moved offsite was taken by two farmers, one of whom was named Tom. He said he did not know where they took the material or for what purpose.

- October 9, 2020: In a letter from the applicants to NCPPS, the applicants stated they have no idea who removed the cut material from the property. They stated an unknown older gentleman stopped by the house and asked if he and his brother could have the material. Over the course of the next couple days, the man loaded the material and hauled it away from the property.

- November 24, 2020: The applicants submitted a revised survey depicting seven locations onsite where cut material had been placed. The amount of cut material was lower on the revised survey than on the original survey; the applicants disagreed with the amount of material stated on the original survey.

2. **Payment** of the after-the-fact variance and recording fees. These fees are due at the time the official application is signed.

3. **Signing** an **official application** to be provided by NCPPS. NCPPS will prepare the official application once the applicants inform NCPPS of the **precise elements** to be listed on the after-the-fact variance they are requesting. The applicants have been provided guidance regarding the precise elements.

   Of the six variance components listed above, two have been satisfactorily identified, including:

   - Reducing the front yard setback for the dwelling addition. Reduce the setback from 50 feet to 32.7 feet.

- Reducing the front yard setback for the replacement septic system. Reduce the setback from 50 feet to 6.9 feet.

The following four components remain outstanding:

- Expanding a nonconforming structure (front yard and bluff setbacks);
- Reducing the bluff setback for the dwelling addition;
- The alteration of protected bluff areas (bluff setback); and
- Allowing fill to be placed in a protected bluff area (bluff setback).

NEIGHBOR NOTIFICATION

Property owners were notified of the request per the standards of the Zoning Ordinance and Minnesota Statutes Section 394.26.

BOARD DECISION

The applicants are administratively appealing from NCPPS's April 8, 2021 determination that their March 19, 2021 application for an after-the-fact is incomplete. The Board has the authority to affirm, reverse, or modify the specific determination being administratively appealed. The reasons for the Board's decision shall be stated in writing.

Options:

1. **Affirm** NCPPS' determination that the applicants' March 19, 2021 application is incomplete.
2. **Reverse** NCPPS's determination that the applicants' March 19, 2021 application for an after-the-fact variance is incomplete.
3. **Modify** NCPPS' determination that the applicants' March 19, 2021 application for an after-the-fact variance is incomplete.

Parcel No: 13.035.1000
Map No: 0335400003

Applicant/Landowner:
Patrick and Shana Gieseke

PLN21-19

ATTACHMENT A **Application**

ATTACHMENT B **Location Map**

ATTACHMENT C **Aerials**

ATTACHMENT D **Neighbor Notification List**

ATTACHMENT E **Documents Submitted by Applicant**

ATTACHMENT F **Property Services Documents**

F.1	May 1, 2020	Emails
F.2	June 18, 2020	Photos
F.3	July 13, 2020	Cease and Desist Letter and Order
F.4	July 21, 2020	Photos
F.5	July 23, 2020	Realtor.com Photos
F.6	August 13, 2020	NCPPS Letter
F.7	August 19, 2020	Photos
F.8	August 21, 2020	Email
F.9	August 21 and 27, 2020	Application Materials Submitted
F.10	September 1, 2020	Photos
F.11	September 2. 2020	NCPPS Incomplete Application Letter
F.12	September 2, 2020	Construction Proposal
F.13	September 14, 2020	Application Materials Submitted
F.14	September 15, 2020	Construction Proposal Denied Letter
F.15	September 18, 2020	Photos
F.16	September 21, 2020	Nicollet County Attorney Letter
F.17	September 24, 2020	Email
F.18	October 2, 2020 NCPPS	NCPPS Incomplete Application Letter
F.19	October 9, 2020	Application Materials Submitted
F.20	October 27, 2020	NCPPS Incomplete Application Letter
F.21	November 23 and 24, 2020	Application Materials Submitted
F.22	December 7, 2020	NCPPS Incomplete Application Letter

F.23	December 7, 2020	Photos
F.24	December 9, 2020	Summons
F.25	December 9, 2020	Complaint
F.26	December 10, 2020	Notice of Motion
F.27	December 10, 2020	Memorandum of Law
F.28	December 10, 2020	Affidavit of Mandelein Landkamer
F.29	December 10, 2020	Exhibits
F.30	December 17, 2020	Application Materials Submitted
F.31	December 17, 2020	Affidavit of Shana E. Gieseke
F.32	December 22, 2020	Response to Affidavit of Shana E. Gieseke
F.33	January 6, 2021	NCPPS Incomplete Application Letter
F.34	January 14, 2021	Temporary Restraining Order
F.35	January 20, 2021	Application Materials Submitted
F.36	February 5, 2021	NCPPS Incomplete Application Letter
F.37	February 19, 2021	Email from Steven Franta
F.38	March 5, 2021	NCPPS Response to Steven Franta
F.39	March 19, 2021	Application Materials Submitted
F.40	April 8, 2021	NCPPS Incomplete Application Letter
F.41	April 14, 2021	Application Materials Submitted
F.42	May 4, 2021	NCPPS Incomplete Application Letter
F.43	May 7, 2021	Application Materials Submitted

NICOLLET COUNTY EST. 1853

PROPERTY SERVICES DIVISION
501 SOUTH MINNESOTA AVENUE, SAINT PETER MN 56082
507-934-7070

BOARD OF ADJUSTMENT & APPEALS APPLICATION

Total Fees: $446.00

Map#: 0335400003
Parcel# 130351000
Permit#: PLN21-00019
Date: April 21, 2021

Applicant: GIESEKE PATRICK E & SHANA E GIESEKE, , 62208 COUNTY RD 21, NEW ULM MN 56073
Phone:
Owner: GIESEKE PATRICK E & SHANA E GIESEKE, 62208 COUNTY RD 21, NEW ULM MN 56073
Property Address: 62208 COUNTY ROAD 21, NEW ULM MN 56073
Abbreviated Legal Description: Comm SE cor, N 122.49' to Beg, NW 739.87', NW 537.33', NW 538.45', NW 216.2', NE 46.61', E 578.87', SE 179.17', SE 1176.04', S 370.06' to POB = 11.64 Ac
Township: West Newton Township

Record Type: Appeal
Category:
Project Description: Applicants appeal the decision of the Director dated April 8, 2021, that requires the applicants "to submit verification concerning offsite earth movement... to ensure the proper placement of the fill per county standards and to ensure protection of the environment" and that "the location of the material moved offsite and who moved the material offsite" must be resolved. Applicants also appeal each and every decision made by the Director after the date of this Notice of Appeal i) which presents an impediment to proceeding with a hearing before the Board on the after the fact variance application, ii) which concludes that the application for an after the fact variance is incomplete, iii) which requires submission of the amounts already submitted as payment of the after the fact variance and recording fees of $1,046 paid and submitted on March 19, 2021, iv) which denies the applicants request because an official application has not be completed by the Director, and v) which require additional "precise elements" be listed and identified on the application.
Hearing Date:

Shana Gieseke Patrick Gieseke — 04/21/2021

APPLICANT SIGNATURE **DATE**

ATTACHMENT A
APPLICATION



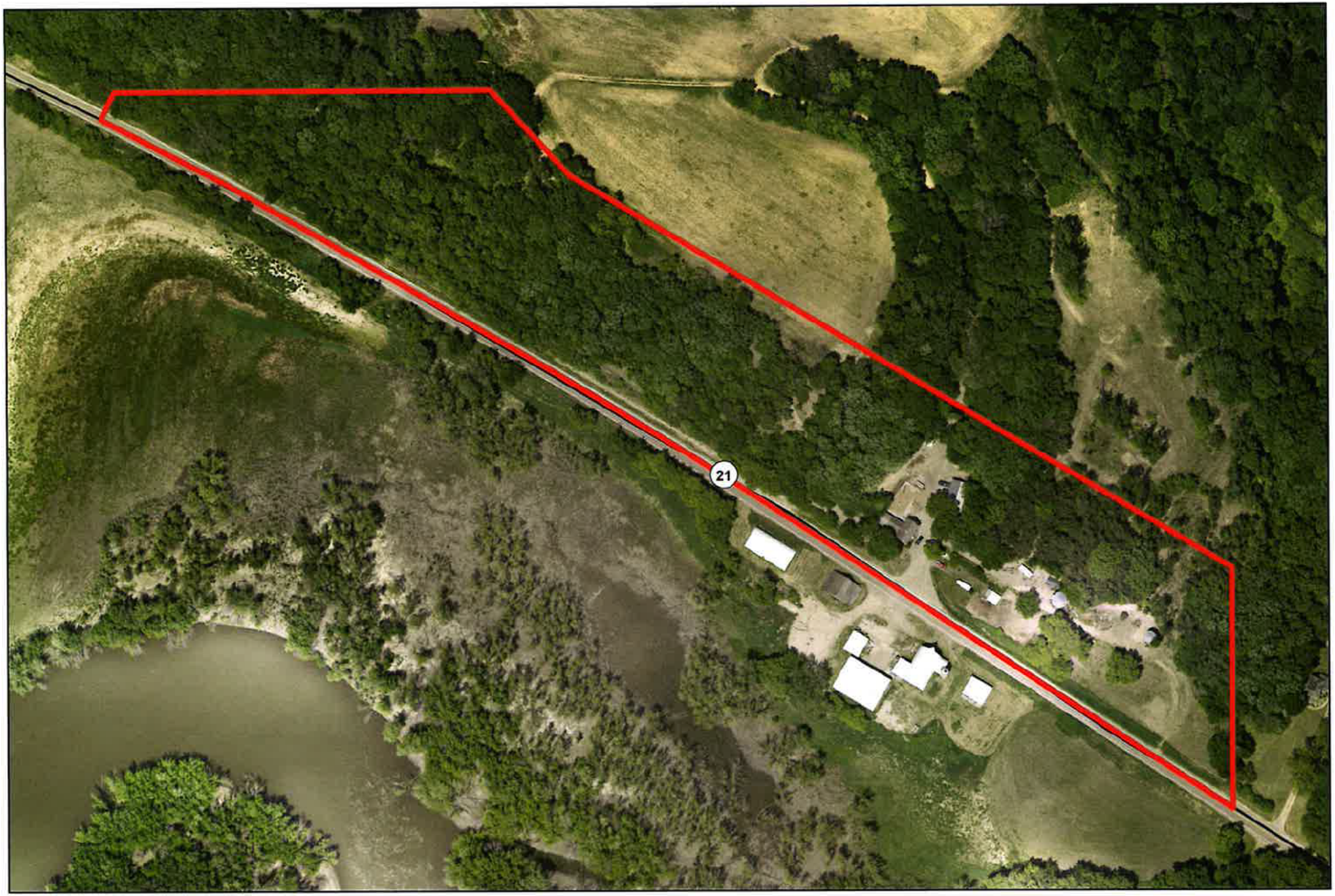
Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of this data for any purpose. The Property Services Division of Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.

N
W E
S

1:36,000 1 inch = 3,000 feet

0 1,550 3,100 Feet

ATTACHMENT B
LOCATION MAP



Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of this data for any purpose. The Property Services Division of Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.

1:2,400 1 inch = 200 feet

N W E S

0 105 210 Feet

ATTACHMENT C
AERIAL LARGE



Disclaimer: The information herein is intended to be a true representation of available records. However, there is no guarantee to the user as to the accuracy, suitability, or reliability of this data for any purpose. The Property Services Division of Nicollet County assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data.

1:600 1 inch = 50 feet

N W E S

0 25 50 Feet

ATTACHMENT C
AERIAL SMALL

JEREMY & NANCY BLANKENHAGEN
61940 400TH LN
NEW ULM MN 56073

GLENN & LOIS BODE
24 WOODLAND DR
NEW ULM MN 56073

BRUCE & LISA COMPTON
61936 ZEMPEL DR
NEW ULM MN 56073

RONNY & SUSAN CORDES
62664 COUNTY ROAD 21
NEW ULM MN 56073

RAMONA CURRENT
62000 400TH LN
NEW ULM MN 56073

JOHN DAVIS & CHRISSY BENDIX
62026 400TH LN
NEW ULM MN 56073

MICHAEL FISCHER
1587 LAMAR DR
NORTH MANKATO MN 56003

FRANK & ARLENE MATTER
61935 ZEMPEL DR
NEW ULM MN 56073

PATRICK & SHANA GIESEKE
62208 COUNTY RD 21
NEW ULM MN 56073

ROBERTA GROSAM
62122 COUNTY ROAD 21
NEW ULM MN 56073

PAUL, GARY & BRUCE MEYER
49 JONATHON DR
NEW ULM MN 56073

MICHEL EDLINE
6061 SHAKERWOOD CIR E 105
FORT LAUDERDALE FL 33319

ROBERT & LORI PIETZ
61851 ZEMPLE DR
NEW ULM MN 56073

RENATE RAABE
925 N PAYNE
NEW ULM MN 56073

SCHLUMPBERGER FAMILY TRUST
1118 S FRANKLIN
NEW ULM MN 56073

CAROL TANLEY & MARYLOU DAVIS
62048 400TH LN
NEW ULM MN 56073

PAUL & JOLEEN WENDINGER TRUST
39600 615TH AVE
NEW ULM MN 56073

EUGENE ZEMPEL ATTN TREAS W
NEWTON RD FUND
33237 350TH ST
MORGAN MN 56266

WEST NEWTOWN TOWNSHIP
63152 388TH LN
NEW ULM MN 56073

ATTACHMENT D
NEIGHBOR NOTIFICATION LIST

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

April 14, 2021

VIA EMAIL AND U.S. MAIL
Megan.Coryell@co.nicollet.mn.us

APR 15 2021

Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Administrative Appeal by Patrick E. Gieseke and Shana E. Gieseke
Our File: 20-075

Dear Megan:

Enclosed are:

1. Notice of Appeal Pursuant to Nicollet County Ordinance 502 (2016) and Minn. Stat. § 394.27; and

2. A check for $446.00 for the fees.

Resubmitted pursuant to your letters dated March 30 and April 1, 2021 and Jon Hammel's letter dated April 8, 2021 requesting to be scheduled for a hearing on May 17 before the Board of Adjustment and Appeals.

Very truly yours,

Steven J. Franta
SJF:tcl
Encl.

CC: Patrick and Shana Gieseke

ATTACHMENT E
DOCUMENTS SUBMITTED BY APPLICANT

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Eliana J. Davis

Since
1896

STATE OF MINNESOTA

COUNTY OF NICOLLET

BOARD OF ADJUSTMENT AND APPEALS

In re the Matter of the Application of Patrick E. Gieseke and Shana E. Giesekes' After the Fact Variance

NOTICE OF APPEAL PURSUANT TO NICOLLET COUNTY ORDINANCE 502 (2016) AND MINN. STAT. § 394.27

Patrick E. Gieseke and Shana E. Gieseke (hereinafter referred to as "Applicants") have been making extraordinary efforts to apply for an after-the-fact variance. They have been denied processing of their Application. Consequently the Application has been held up from being placed on the schedule for a public hearing before the Nicollet County Board of Adjustment and Appeals (hereinafter the "Board"). Applicants appeal herein from requirements, decisions, and determinations of John Hammel, Nicollet County Zoning Administrator, and Mandelein Landkamer, Director of Nicollet County Property and Public Services (hereinafter collectively referred to as "Director").

I.
DECISIONS APPEALED

A. Applicants appeal the decision of the Director that require "Giesekes to submit verification concerning **offsite earth movement** . . . to ensure the proper placement of the fill per county standards and to ensure protection of the environment" (stated in the letter from the Director dated January 6, 2021 Paragraph 1 on page 2) and that "the **location** of the material moved offsite and **who** moved the material offsite" must be resolved. (stated in the letter from the Director dated February 5, 2021 Paragraph 1 on page 1).

B. Applicants also appeal each and every decision made by the Director after the date of this Notice of Appeal:

i. which presents an impediment to proceeding with a hearing before the Board on the after-the-fact variance Application.

ii. which concludes that the Application for an after-the-fact variance is incomplete.

iii. which requires submission of the amounts already submitted as payment of the after-the-fact variance and recording fees of $1,046 paid and submitted on March 19, 2021 (and previously on September 15, 2021).

iv. which denies Applicants request because an official Application has not been completed by the Director.

v. which require additional "precise elements" be listed and identified on the Application.

II.
STATEMENT OF FACTS

Attached is an Application signed by the Applicants submitted to the Director for an after-the-fact variance in an official format (save and except County logo). **(Exhibit 1)** The variance requested is to: (1) Extend garage and remodel a nonconforming structure; (2) Reduce bluff setback from 30 to 15 feet (it was previously less than 5 feet); alter bluff area and place fill in bluff washout to protect, preserve and conserve bluff; (3) Reduce front yard setback from 50 to 32.7 feet for an extension of "old addition south side wall" (32.7 feet is current actual setback) and from 50 to 6.9 feet for the secondary/alternative septic system location.

Applicants bought property in 2017 **(Exhibits 2-13).** They began some excavating in 2018 and 2019 to fill in a washout in bluff area **(Exhibit 14)** and with the intention to remodel

and extend the garage replacement to the north side of the house. In 2020, Applicants began the remodel. **(Exhibits 15-21)**

Exhibit 2	www.realtor.com home and attached garage 2017 Photographs
Exhibit 3	Legal description
Exhibits 4-9	Beacon Aerials
Exhibits 10-13	Existing (old) Floor Plans
Exhibit 14	Washout on Bluff
Exhibit 15	Project Floor Plan
Exhibit 16-21	Construction Photos

After Applicants realized in July 2020 they were in violation of the permitting required they then and ever since have been working with the Director and have had numerous, repeated, extensive, and ongoing communications with the Director to complete the Application for an after-the-fact variance: Applicants request for a variance is to allow them to:

1. Move the south wall on the old addition to the west side of the house.
2. Allow excavation on the west side of the house to create a greater setback and to extend garage to the north.
3. Extend garage
4. Place fill in washout on bluff area to prevent further erosion

Since July 2020 there have been a multitude of emails and letters; 7+ submissions **(Exhibits 22-28)** and 8+ denials and determinations by the Director. **(Exhibits 29-36).** See **Exhibit 37** for a Chronology of 2020-2021. The Application has on an ongoing basis been deemed by the Director to be incomplete and has not moved forward to a hearing before the Board. Numerous exhibits are also attached showing the specifics of what has been presented to the Director:

Exhibit 22-28	Applicants' submission letters of 9/24, 10/9, 11/23, 12/17, 1/20, 2/19, and 3/19
Exhibits 29-36	Director's denials of 9/2, 9/24/, 10/2, 10/27, 12/7, 1/6/, 2/5/ and 3/5
Exhibit 37	2020-2021 Chronology
Exhibits 38	Erosion and Sediment Control Plan

Exhibit 39	Septic System Compliance
Exhibit 40	Offsite Earth Movement
Exhibit 41	Survey
Exhibits 42	Applicant Questionnaire
Exhibit 43	Variance Applicant Questionnaire Project Description

Applicants wish to resolve the matter and therefore bring this appeal as they have seemingly been left with little other alternative.

III.
ANALYSIS

At the time of the submission of this appeal, Applicants understand that there is only one item that the Director requires in order to complete an official Application for an after-the-fact variance. That item is the requirement that the Applicants provide information that is impossible to obtain. They are asked to provide the information as to who removed fill from their property and where the fill was placed offsite. Applicants have repeatedly informed the Director that they do not know; that they had a passer-by stop in their yard to ask what they were going to do with this pile of fill on the property and whether they could have it. Applicants agreed to have the passer- remove the pile of fill. Applicants never inquired or knew who they were and what they were doing with it. It is impractical and unreasonable to continue to require Applicants to meet this impossibility. There is no benefit to the County nor is there a detriment to the County if this information is not available.

Nicollet County Ordinance 404 Non-Conforming Uses and Structures states that: "Any structure or use existing . . . and which does not conform to the provisions of the Ordinance may be continued . . . :" however in addition it goes on to state that "A. No such use or structure shall be expanded, changed, altered or enlarged except in conformity with the provisions of this Ordinance, nor shall such expansion, change, alteration or enlargement increase the non-

conformity of use." and "D. Normal maintenance of a dwelling or other structure containing or related to a lawful non-conforming use is permitted, including necessary repairs and incidental alterations which do not extend or intensify the non-conforming use. Nothing Applicants request will increase the nonconformity. In fact the proposed project work to be completed if the variance is granted will in fact decrease the nonconformity and will provide greater protection for and to the public.

This matter of the variance should be brought to the Board for a hearing. Nicollet County Ordinance 501 requires the Director to "receive, file, and forward all applications for appeals, variances, conditional uses, or other matters to the designated official bodies . . . ." Applicants present an official variance Application attached as **Exhibit 1**. It has been completed with the Director insofar as all issues and matters related to it have been presented to the Director. Nicollet County Ordinance 503.3 Procedures requires "an official variance application" completed with the Zoning Administrator . . . will be heard at the next available Board of Adjustment and Appeals meeting. . . . The Zoning Administrator shall refer the application to the Board for review."

The Board has authority to act upon and hear this matter. Nicollet County Ordinance 502 mandates that "The Board shall act upon all questions as they may arise in the administration of this Ordinance, . . . , and it shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official" . . . The Board shall also have the power to grant variances to provisions of this Ordinance under certain conditions. Those conditions are set forth in 501.3 and 501.2.

Nicollet County Ordinance 503.1 Criteria for Granting Variances states: "A variance to a provision of the Zoning Ordinance may be issued to provide relief to the landowner in those zones where the intent of the official control creates practical difficulties for the property owner in the use of their land. . . ." **See attached Exhibits 42-43.** This Exhibit is the Director's Form

that was provided by the Director.

Nicollet County Ordinance 503.2 Criteria for Granting After-The-Fact Variances states: "In consideration of an after-the-fact variance request, and in addition to the criteria listed in Section 503.1, the Board shall take into consideration" **See attached Exhibit 42-43.** This Exhibit is the Director's Form that was provided by the Director.

IV.
CONCLUSION

Applicants request the Board to first remove the Director's requirement that the Applicants do the impossible to hunt down and investigate offsite fill placement; and second, to hold a hearing on the after-the-fact variance on April 19, 2021.

If the Board deems appropriate to impose conditions on the variance, Applicants request the Board allow Applicants to timely fulfill such conditions or to reconvene the hearing at the May meeting of the Board.

SOMSEN, MUELLER & FRANTA

Dated: March 26, 2021

Steven J. Franta
Attorney ID No. 0228679
106 ½ N Minnesota St
New Ulm, MN 56073
steve@thelegalprofessionals.com
Telephone: (507)354-2161
Facsimile: (507)354-2160
ATTORNEY FOR:
PATRICK AND SHANA GIESEKE

BOARD OF ADJUSTMENT & APPEALS
APPLICATION

Total Fees: $1,046.00

Map#: 033540003
Parcel # 13.035.1000
Permit#: _____
Date: March19, 2021

Applicant: GIESEKE, PATRICK E & SHANA E, 62208 COUNTY ROAD 21, NEW ULM, MN 56073
Phone: 507-217-9392
Owner: GIESEKE, PATRICK E & SHANA E, 62208 COUNTY ROAD 21, NEW ULM, MN
Property Address: 0,
Abbreviated Legal Description: Part of the SE1/4 of the SE1/4, and part of Govt Lot 2, 35-111-31
Township: West Newton

Record Type: Variance
Category: Bluff / setbacks
Project Description: After-the-fact variance to reduce the bluff setback from 30 feet to 15 feet; to reduce the front yard setback from 50 feet to 32.7 feet; to reduce the setback for a replacement septic system from 50 feet to 6.9 feet; and expanding a nonconforming structure; and alteration of bluff area.
Hearing Date: 04/19/2021

APPLICANT SIGNATURE — DATE: 3-19-21

APPLICANT SIGNATURE — DATE: 3/14/2021

EXHIBIT 1

EXHIBIT C





EXHIBIT
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2

EXHIBIT A

EXHIBIT "A"
LEGAL DESCRIPTION

Part of the Southeast Quarter of Section 35, Township 111, Range 31, Nicollet County, Minnesota, described as follows: Commencing at the southeast corner of said Section 35; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter 122.49 feet to the point of beginning of the tract to be described; thence North 56 degrees 29 minutes 34 seconds West 739.87 feet; thence northwesterly along a tangential curve the is concave to the southwest, said curve having a central angel of 03 degrees 00 minutes 30 seconds, a radius length of 10234.05 feet, an arc length of 537.33 feet; thence North 60 degrees 00 minutes 15 seconds West, not tangent to last described curve, 538.45 feet; thence North 62 degrees 39 minutes 32 seconds West 216.20 feet; thence North 25 degrees 54 minutes 32 seconds East 46.61 feet; thence North 89 degrees 54 minutes 16 seconds East 578.87 feet; thence South 42 degrees 51 minutes 50 seconds East 179.17 feet; thence South 59 degrees 08 minutes 44 seconds East 1176.04 feet to the East line of said Southeast Quarter; thence South 00 degrees 00 minutes 00 seconds West along said East line 370.06 feet to the point of beginning. This tract contains 11.64 acres of land and is subject to any and all easements of record, together with a 20.00 foot wide easement for driveway purposes and the right of ingress and egress, over, under and across part of the Southeast Quarter of Section 35, Township 111, Range 31, Nicollet County, Minnesota, the centerline of said easement being described as follows: Commencing at the southeast corner of said Section 35; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter 122.49 feet; thence North 56 degrees 29 minutes 34 seconds West 576.19 feet to the point of beginning of said centerline to be described, thence North 07 degrees 02 minutes 14 seconds East 218.68 feet; thence North 21 degrees 25 minutes 24 seconds East 92.21 feet and said centerline there terminating.

EXHIBIT
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Beacon™ Nicollet County, MN

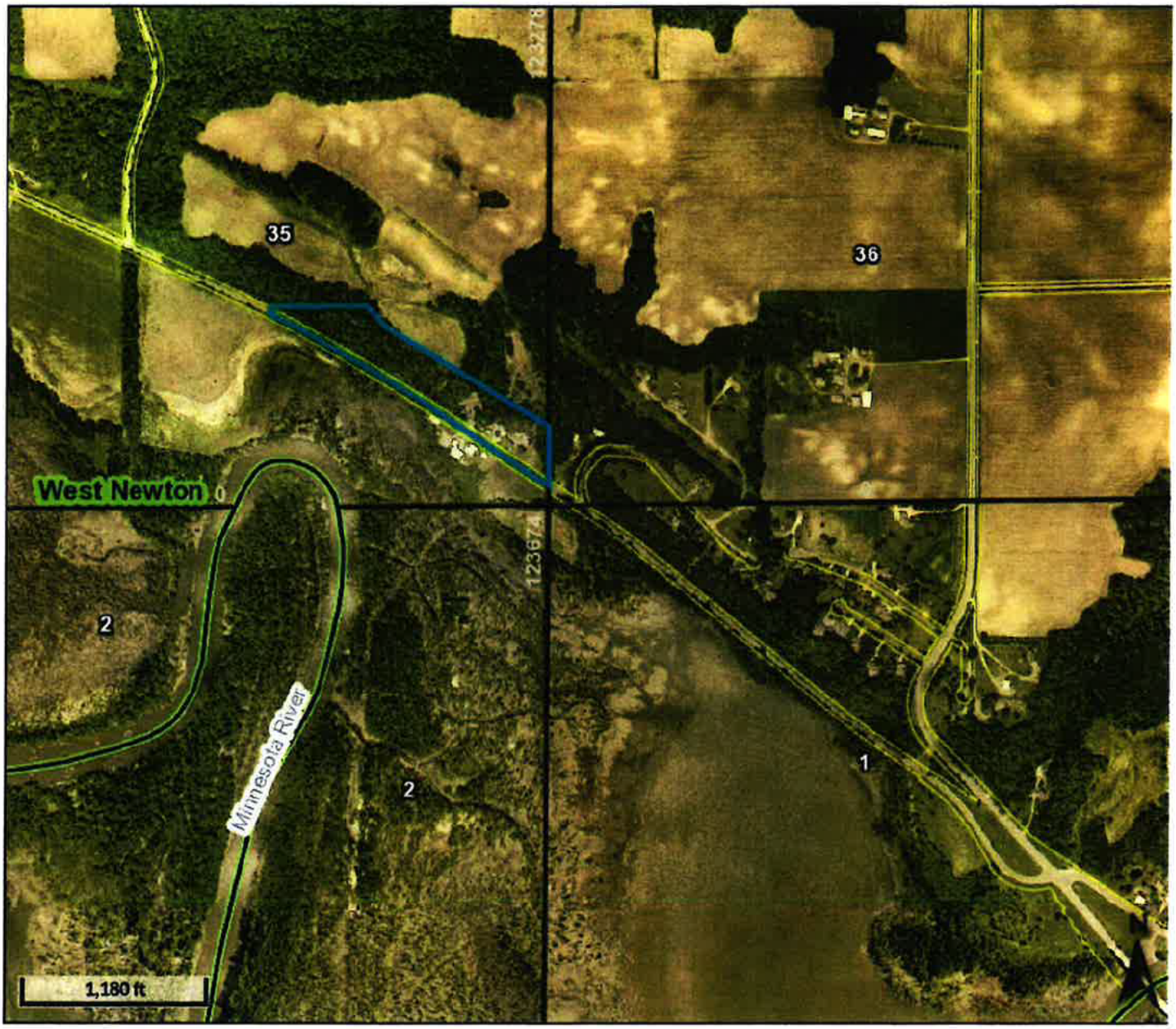
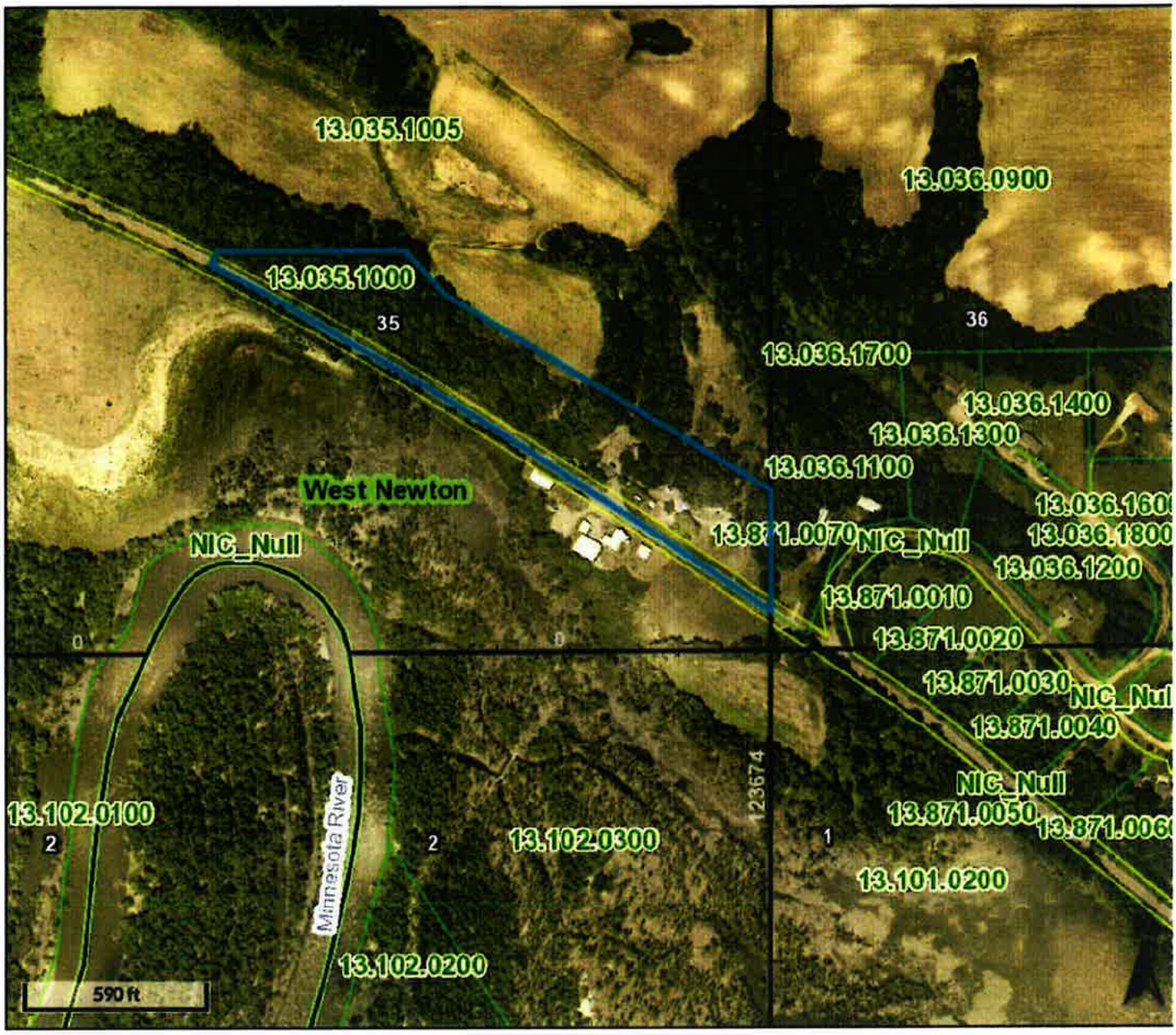


EXHIBIT
4

Parcel ID 130351000 **Alternate ID** 0335400003 **Owner Address** PA

Beacon™ Nicollet County, MN



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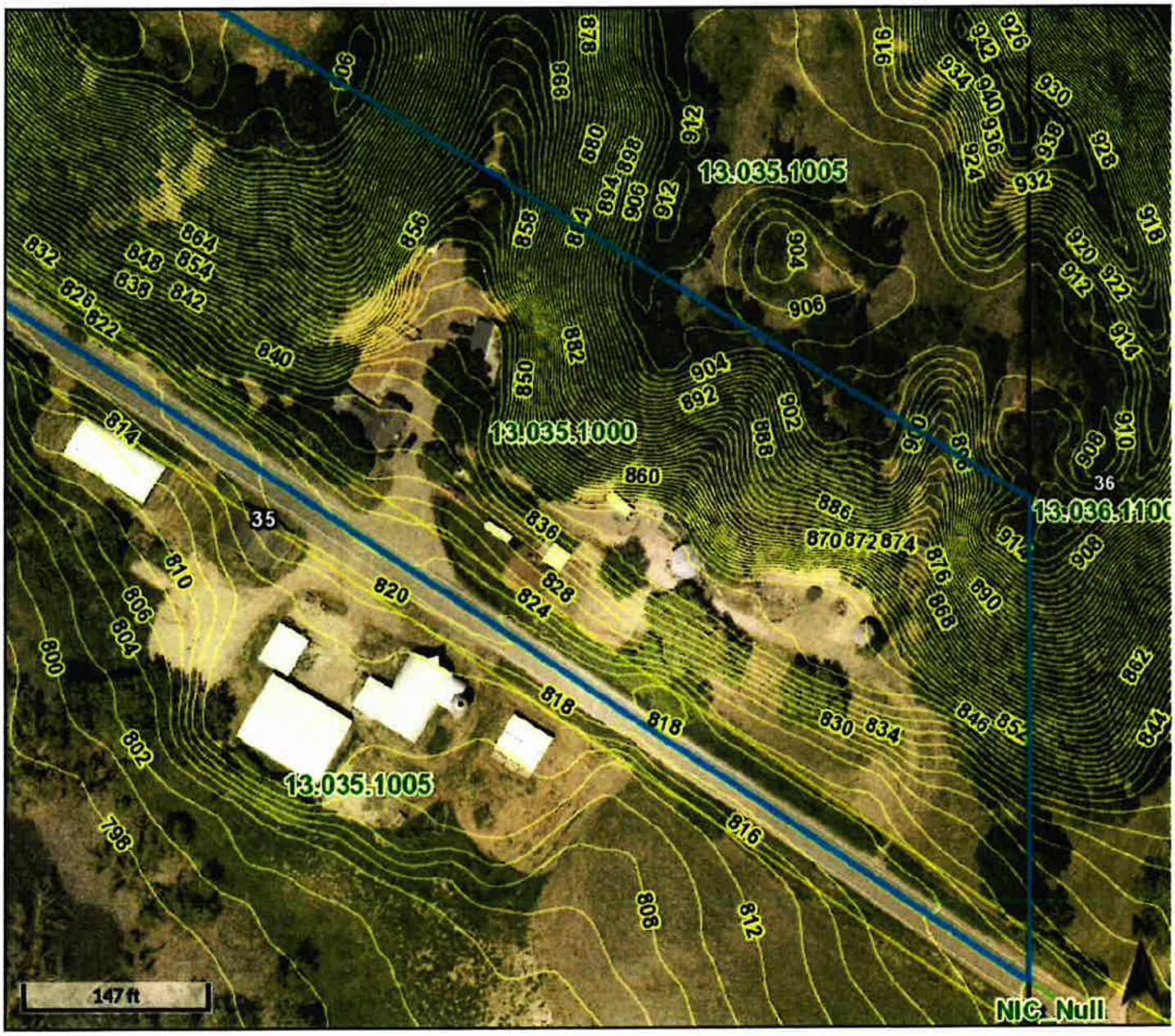
Beacon™ Nicollet County, MN



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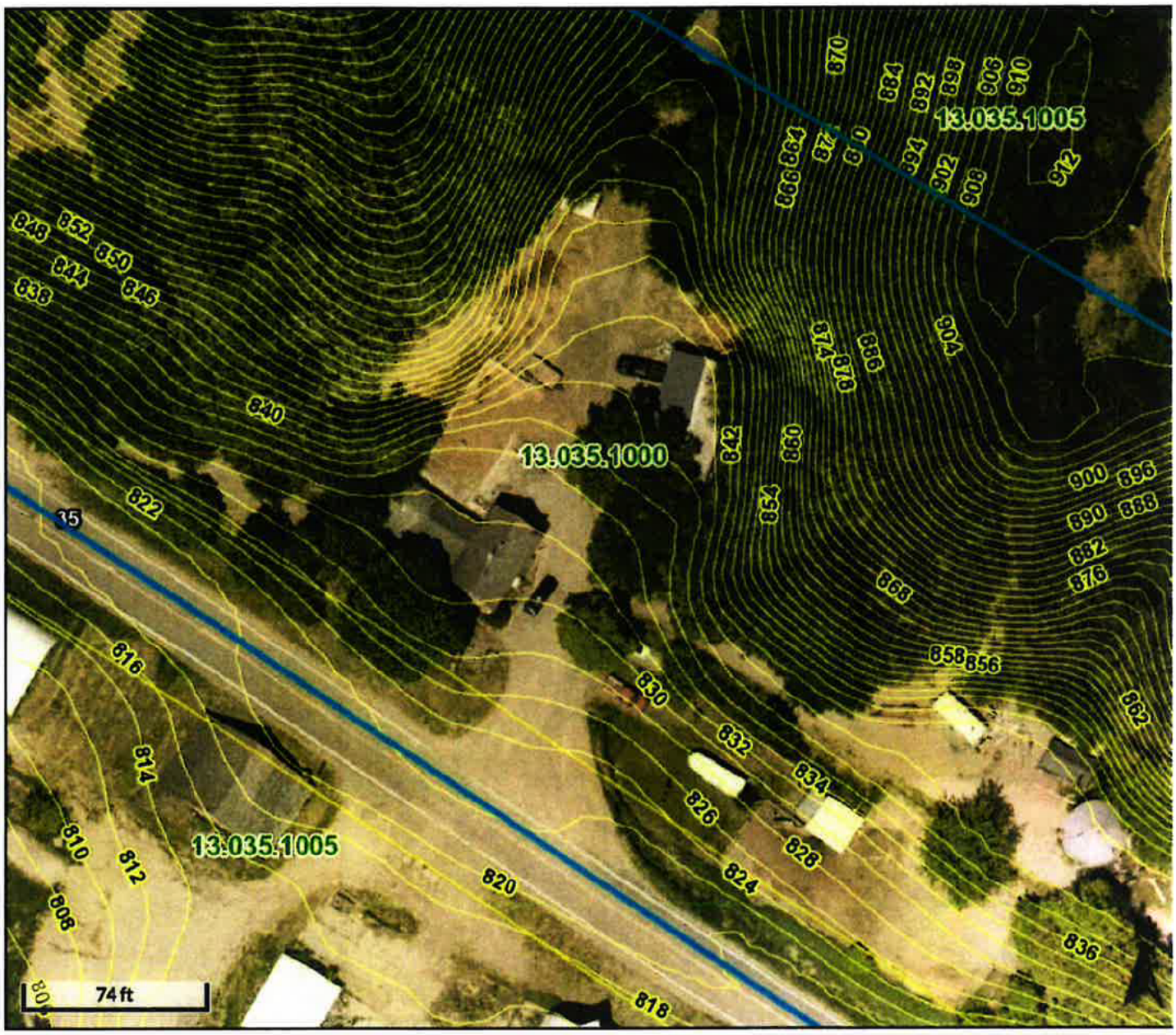
Beacon™ Nicollet County, MN



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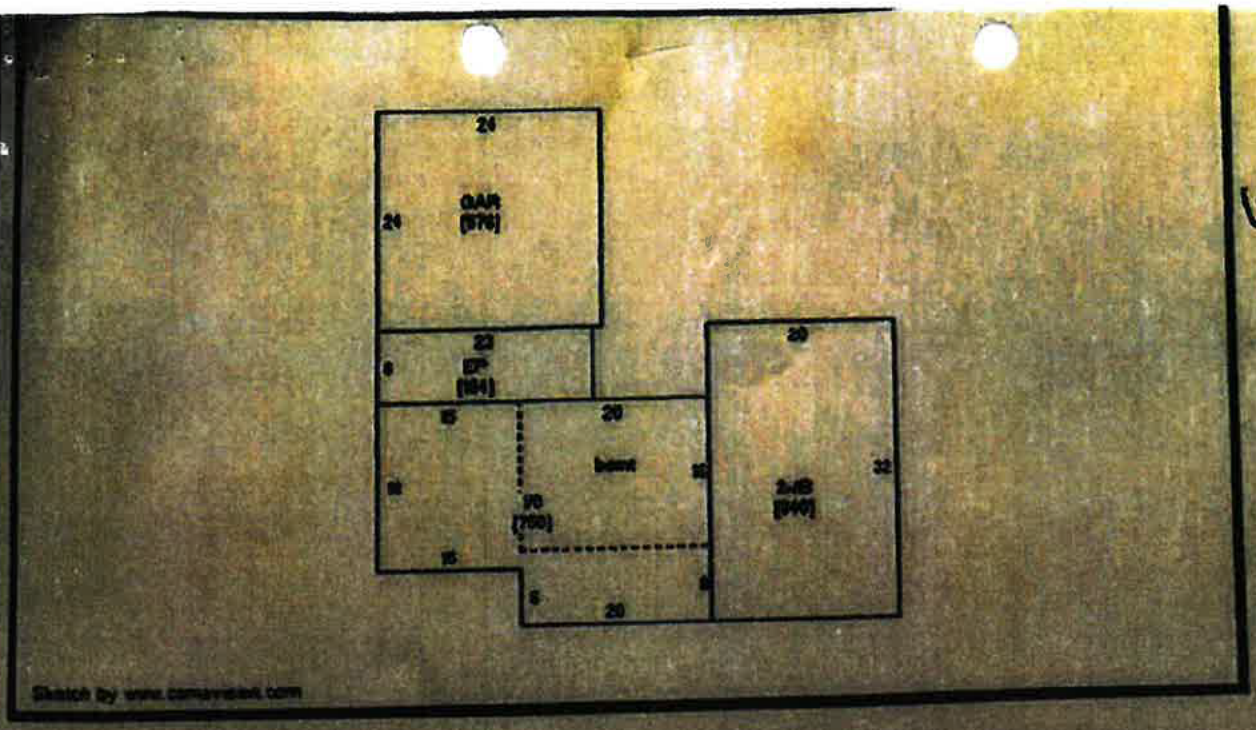

N
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Existing

Printed from Beacon - Nicollet County MN 10/04/2020

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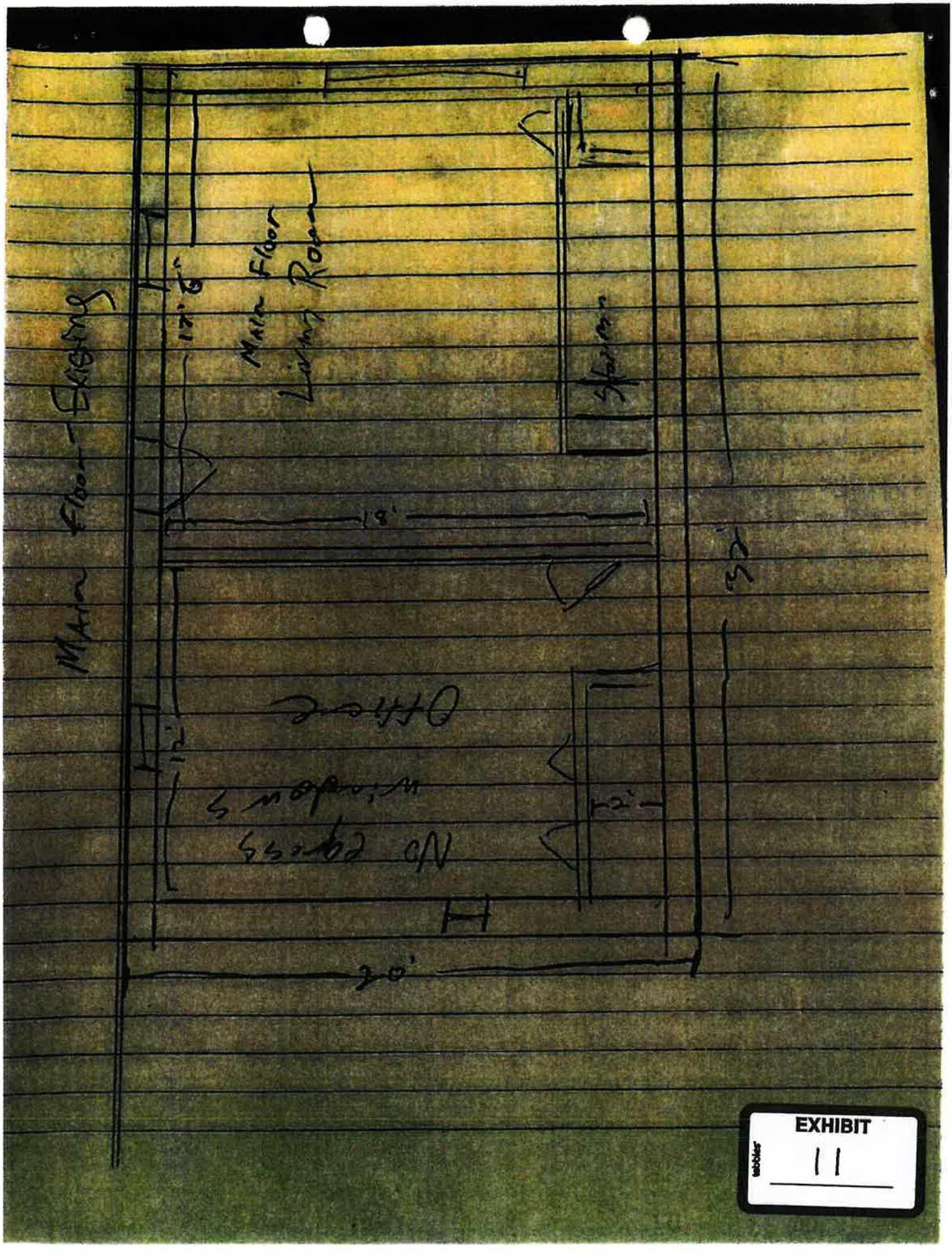

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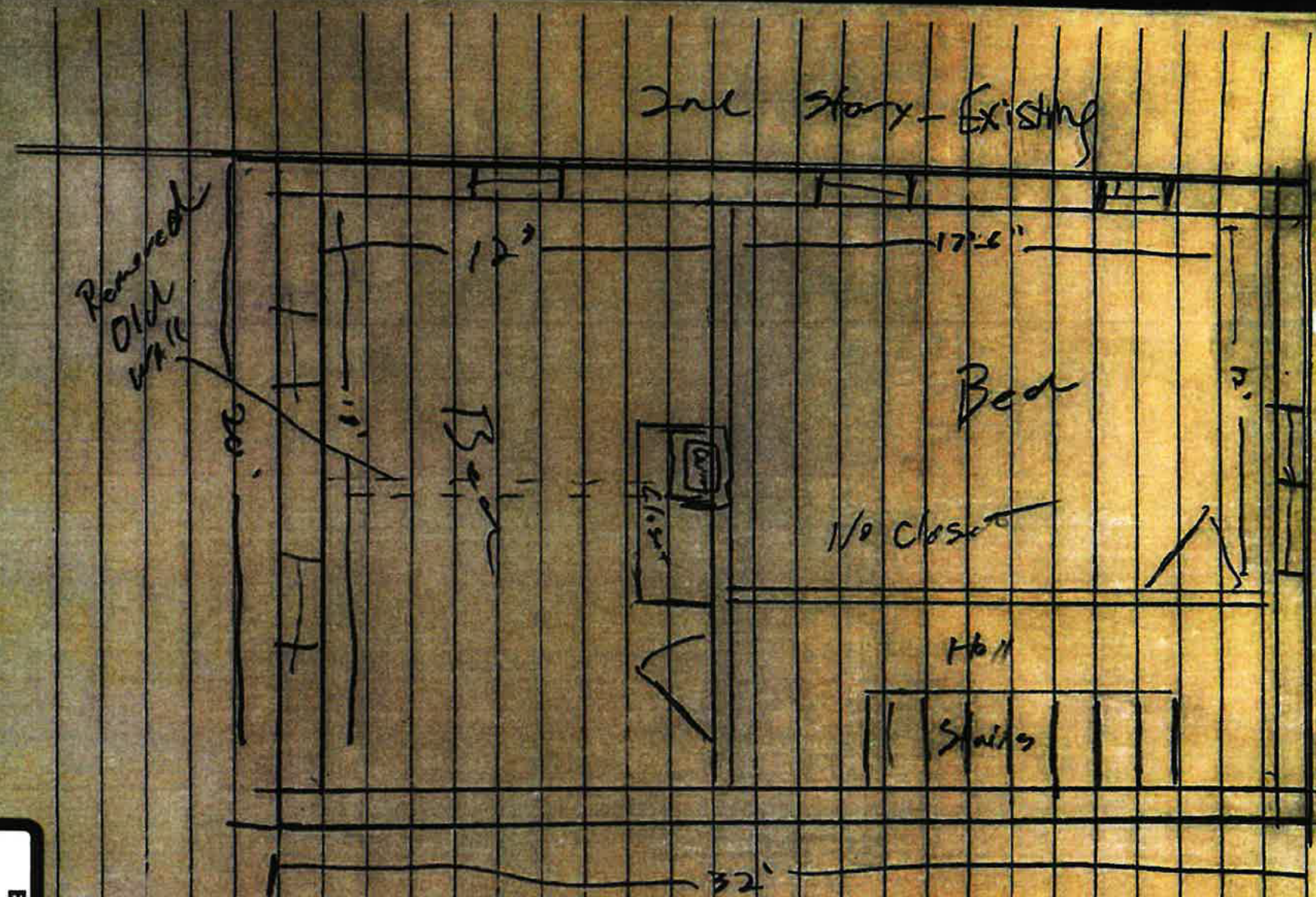
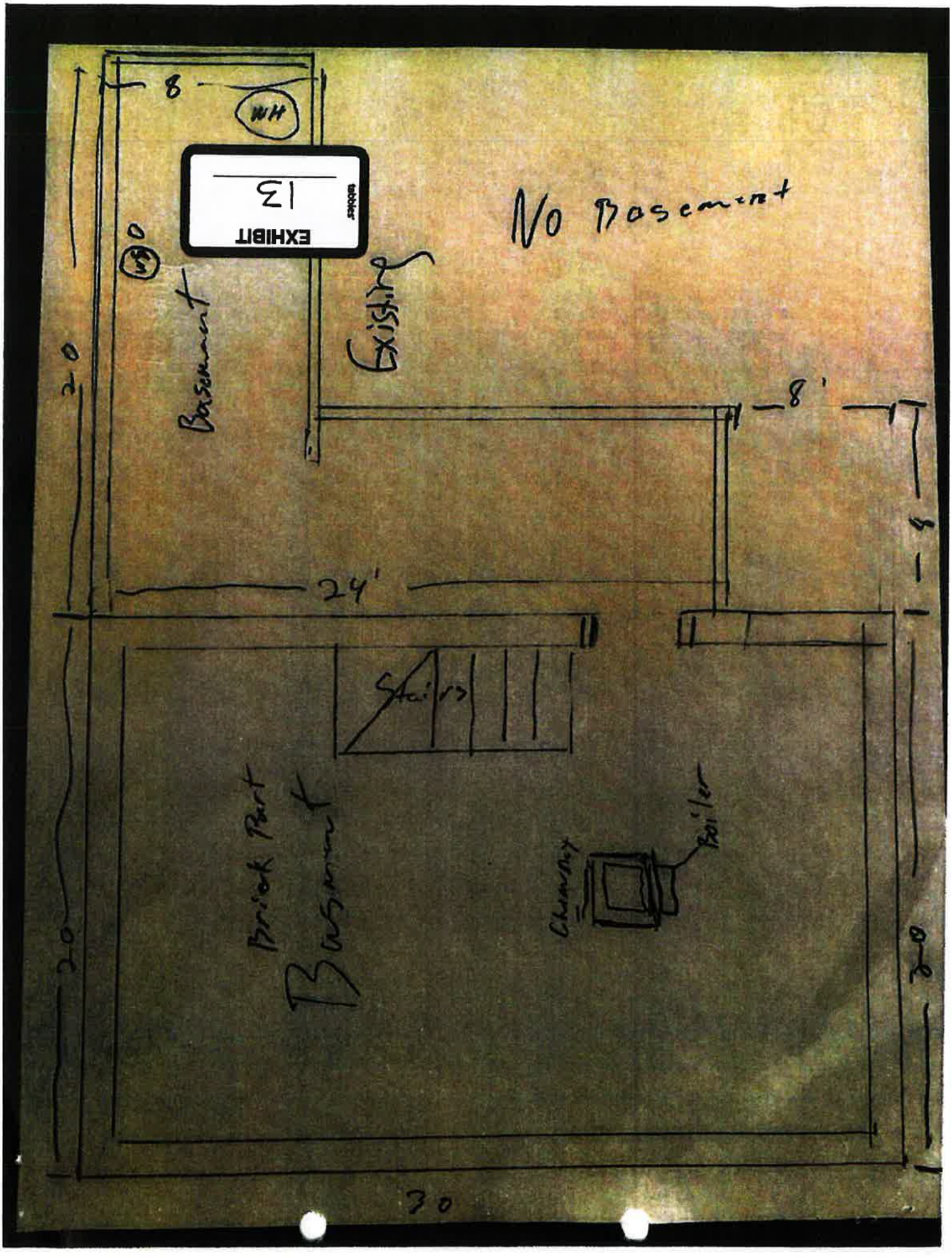

2nd Story - Existing
Removed Old Wall
12'
17'-6"
Bed
No Closet
Hall
Stairs
32'

EXHIBIT
12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WH
EXHIBIT
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No Basement
Existing
Basement
20
8'
4'
24'
Stairs
Brick Part
Basement
Chimney
Boiler
20
20
30


EXHIBIT 14
09 18 2020
EXHIBIT
14

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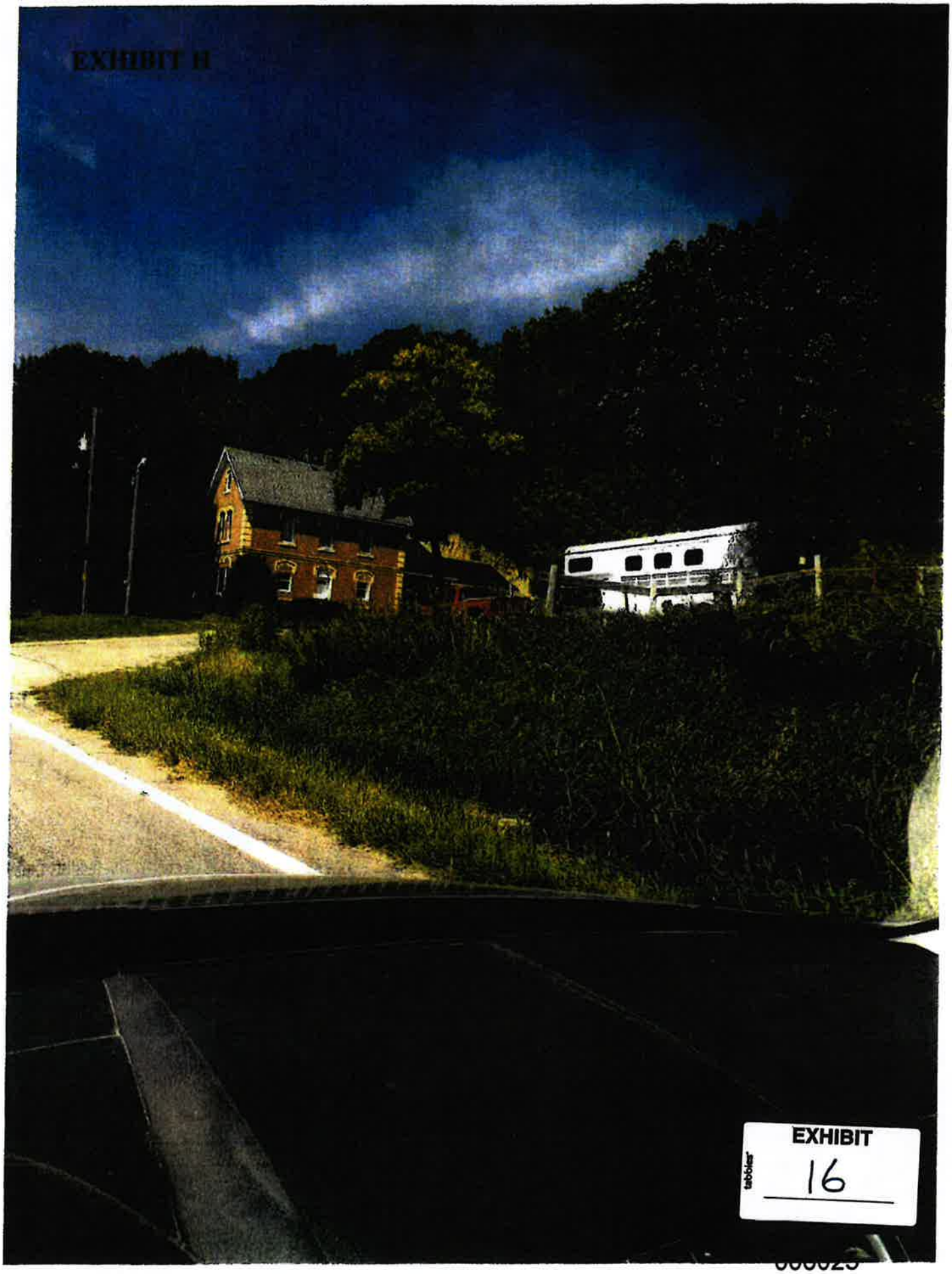
EXHIBIT

15

EXHIBIT H



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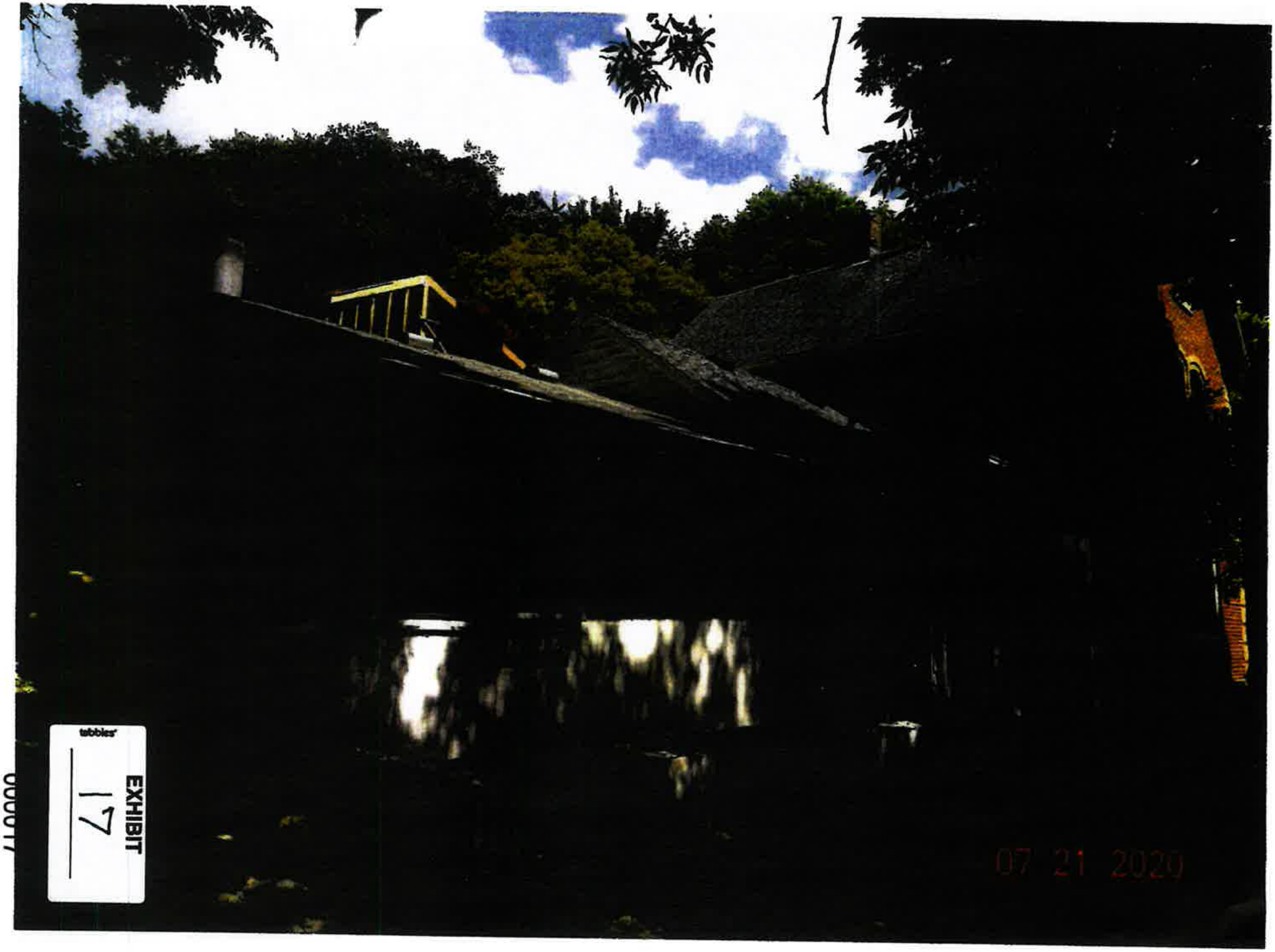
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EXHIBIT

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EXHIBIT

20

EXHIBIT
21
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Steven J. Franta

From: Steven J. Franta
Sent: Thursday, September 24, 2020 7:55 AM
To: Megan Coryell
Cc: Mandy Landkamer; Debra Strandlie; Jon Hammel
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thank you for your follow up. If a call is not possible this morning could we possibly expect an email reply this morning to my questions (highlighted in yellow) in my email of earlier this morning in the string below?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 7:43 AM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Good morning,

I will follow up with PPS and get back to you. The soonest a call could be scheduled with Mandy, Jon, and myself is Tuesday. It appears that there would be time available at 11am.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:21 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thought I should follow up on my earlier email this morning to clarify/specify.

I am available for a call this morning. Can we set it up for either 9 or 10 to work for you and Jon (or Mandy)?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Steven J. Franta
Sent: Thursday, September 24, 2020 6:05 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thank you for your responses to our inquiry.

I understand that the letters dated September 2 and 15 from Jon Hammel are the latest communication addressing the outstanding requirements to complete the application for a after the fact variance and that Pat and Shana have since provided

1. Survey via 9/4 email (also previous sent by 8/28 email
2. Floor plans via 9/14 email
3. On site visit on9/18 with Pete Otterness and Lafayette Excavating who are now compiling the secondary/alternative septic system location paperwork required.
4. Location of relocated earthen material via 9/14 email
5. Cubic yards of material moved disclosed in survey via 9/4 email (also previous sent by 8/28 email)
6. Payment of the variance and recording fees

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by county workers without Pat or Shana's knowledge or presences?

I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Debra Strandlie
Sent: Wednesday, September 23, 2020 1:47 PM
To: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Good Afternoon Jon,

Thank you for sending the documents.

I will be in touch if we need additional information.

Warm regards,

Debra Strandlie
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debras@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

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From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Wednesday, September 23, 2020 1:38 PM
To: Debra Strandlie <debras@thelegalprofessionals.com>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: Pat & Shana Gieseke Application Requirements

Hi Debra,

Megan asked I send you the attached letters and emails concerning the application requirements for Mr. and Mrs. Gieseke. The first letter, dated August 13th was sent by mail, so that is why there is no attached email for it. Please let me know if you have any questions, or if I may be of any other service. Have a pleasant day.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment.

Sincerely,

https://mn-nicolletcounty.civicplus.com/" style='position:absolute;margin-left:-1.9pt;margin-top:0;width:85.1pt;height:78.75pt;z-index:-251657216;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:text;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:button="t">
Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

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Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

COPY

October 9, 2020

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated October 2, 2020, enclosed (and attached) are:

1. **Survey:** After-the-fact Variance Sketch signed by Jesse Zeig of Bolton & Menk, Inc. dated October 5, 2020.
2. **Erosion and Sediment Control Plan:** "Erosion and Sediment Control Plan" with highlighted sketch showing placement of the control measures.
3. **Floor Plans:** Basement/Main/2nd Story Floor Plans; Nicollet County Beacon Floor Plan; and Puhlmann Lumber Floor Plan.
4. **Secondary/Alternative Septic System Location:** We are in daily communication with Lafayette Excavating. Hopefully, the septic designer will complete the site plan soon.
5. **Onsite and Offsite Earth Movement:** "Onsite Earth Movement" and "Offsite Earth Movement"

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. Other than the above mentioned #4, is any further information required before the Giesekes can expect an official application from you for signature, so the after-the-fact variance and recording fees can be submitted? We also request that we be placed on the October 19, 2020 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djs
Enclosures
CC: Patrick and Shana Gieseke

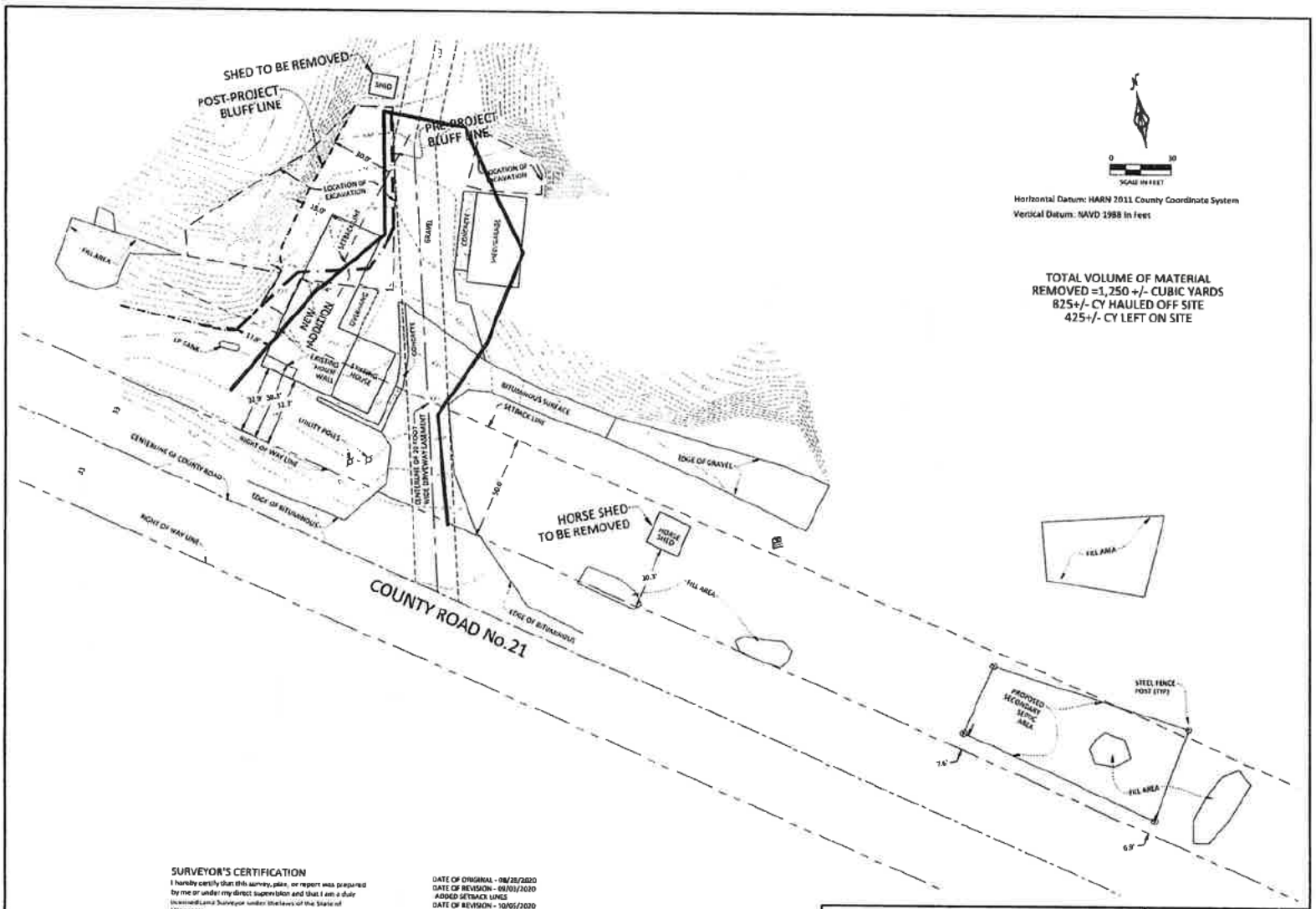
Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Strandlie
Ashley A. St. Sauver
Tina C. Losleben

Since
1896

EXHIBIT
23



SURVEYOR'S CERTIFICATION

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

Jesse D. Zeig 10/05/2020
Jesse D. Zeig Date
License Number 44996

DATE OF ORIGINAL - 08/28/2020
DATE OF REVISION - 09/01/2020
-ADDED SETBACK LINES
DATE OF REVISION - 10/05/2020
-ADDED FILL AREAS

Surveyor's Note:
-The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP., NICOLLET COUNTY, MN

BOLTON & MENK
1243 CEDAR STREET NE
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

PART OF THE SE 1/4, SECTION 35-113-31

FOR: PAT AND SHANA GIESZEL

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H:\GIESEKPS_PR\511122571\CAD\C3D\122571V701.DGN 10/5/2020 10:40 AM

JOB NUMBER: 511.122571 FIELD BOOK: DRAWN BY: RKJ/DZ SEC 35-113-31(40)

Erosion and Sediment Control Plan

62208 County Road 21

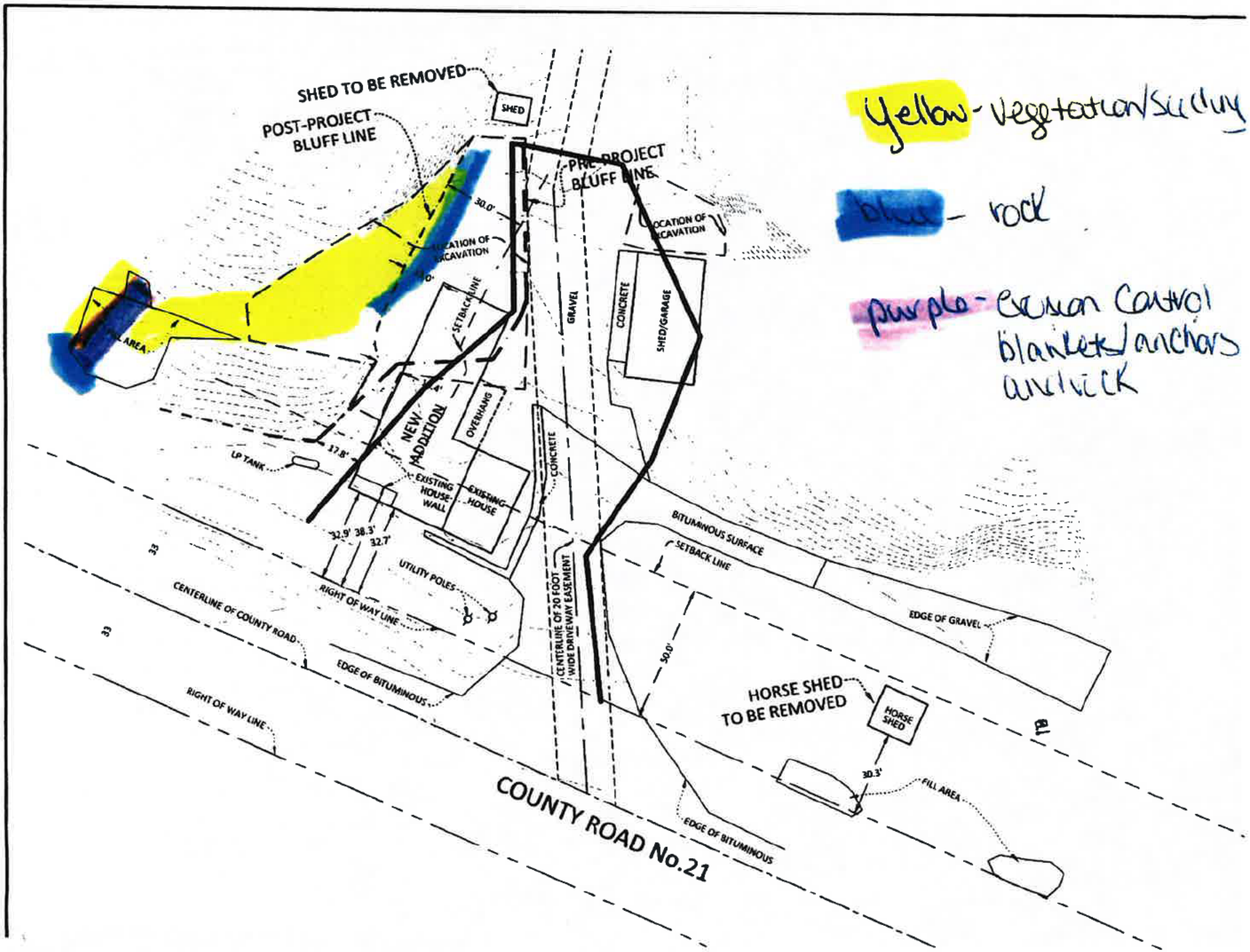
New Ulm, MN 56073

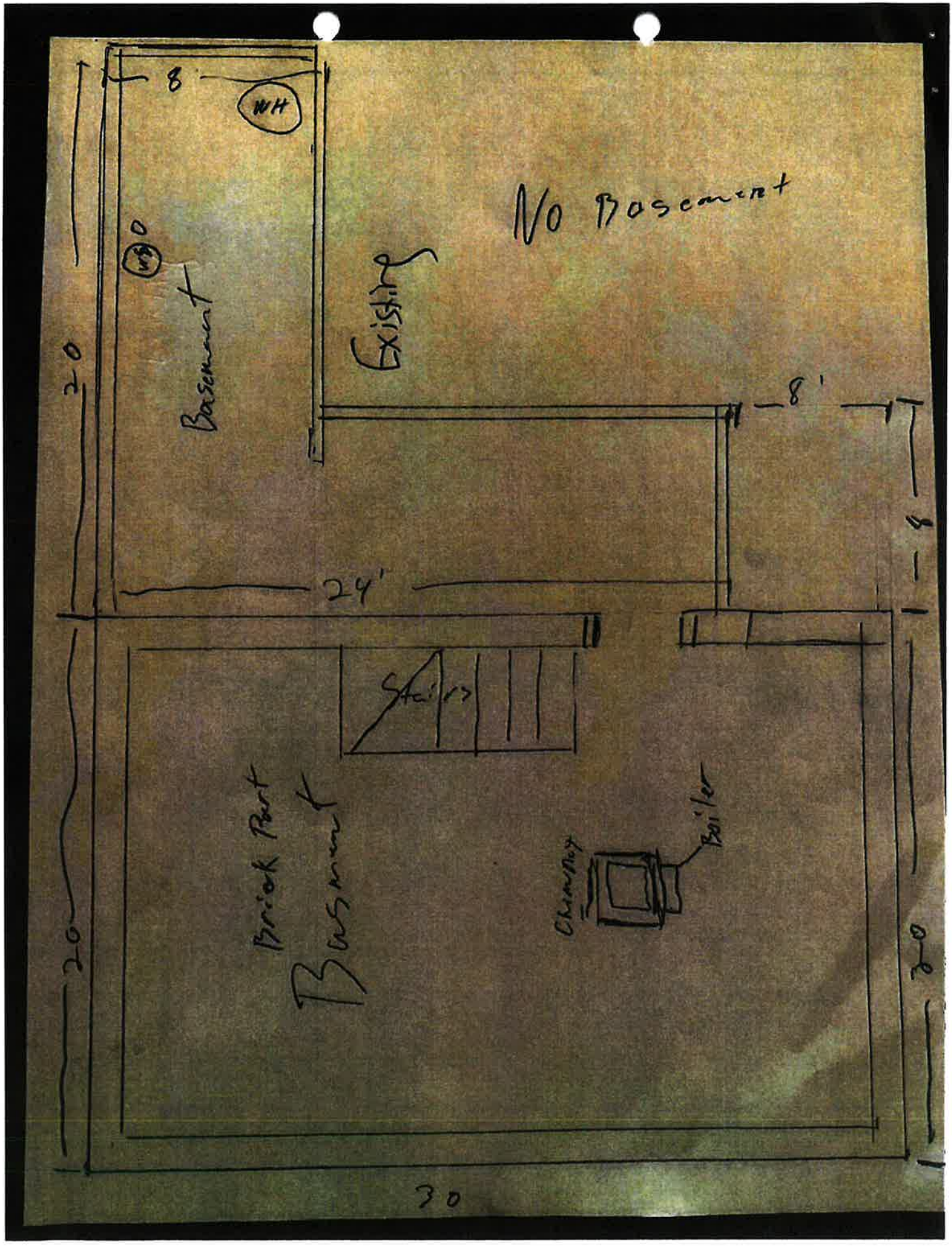
- **An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.**

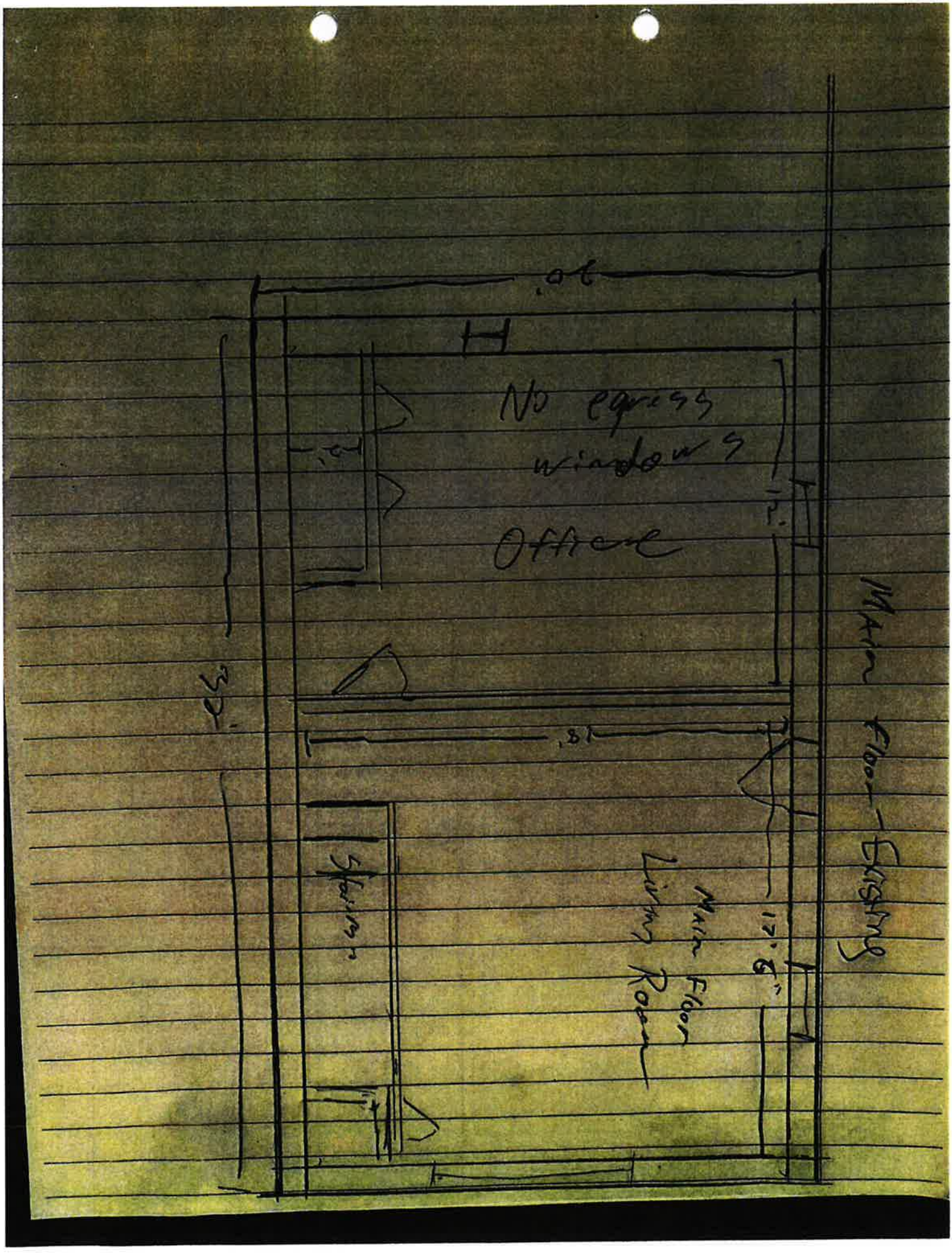
- Identify the practices and methods to be used to mitigate erosion and sedimentation –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock

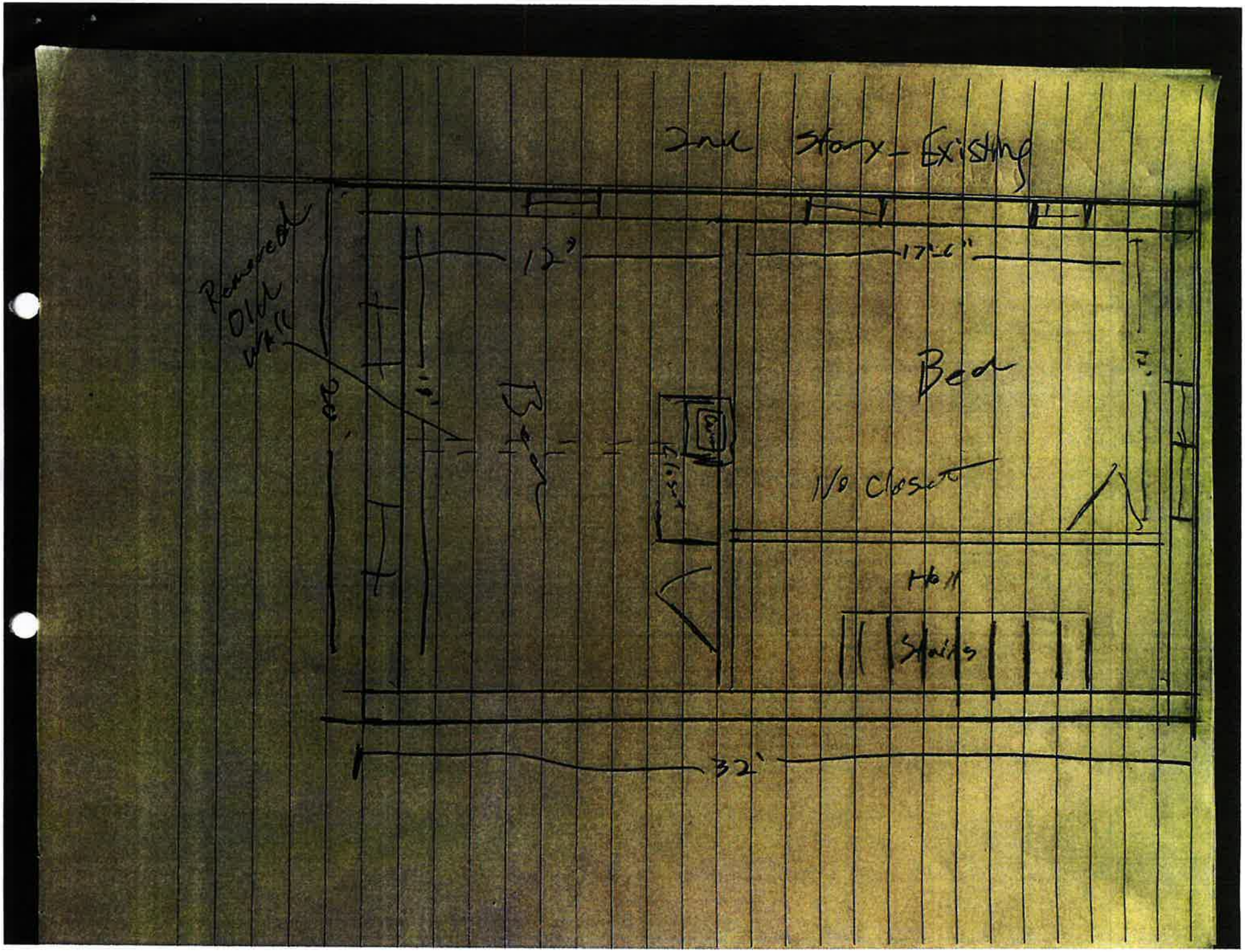
- Note what is currently being done to control erosion –
  - Unfortunately, Nicollet County Property and Public Services Cease and Desist order has prevented any work to be undertaken since July 2020, and we have been advised that a restraining order would be sought if we would proceed with any work. We have not been able to do anything since July 2020

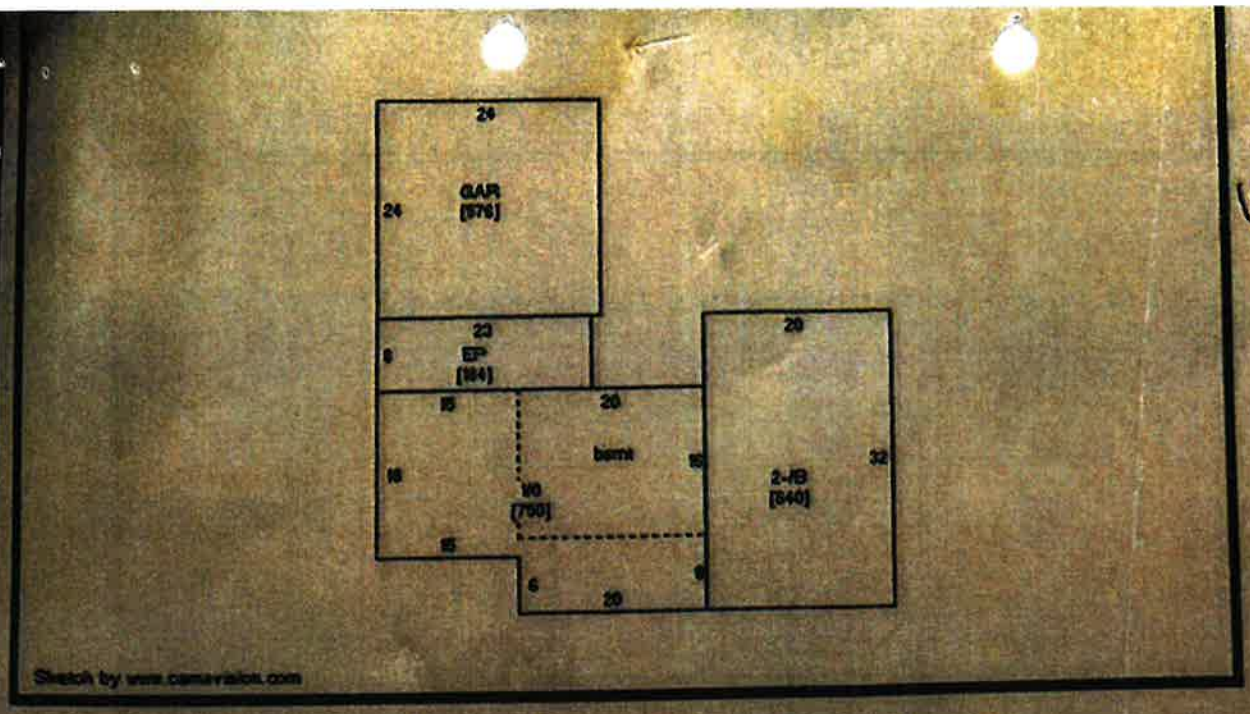
- What you are planning for future erosion control on your property –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock


SHED TO BE REMOVED
SHED
POST-PROJECT BLUFF LINE
PRE-PROJECT BLUFF LINE
30.0'
LOCATION OF EXCAVATION
SETBACK LINE
GRAVEL
CONCRETE
SHED/GARAGE
NEW ADDITION
OVERHANG
LP TANK
17.8'
EXISTING HOUSE-WALL
EXISTING HOUSE
CONCRETE
32.9'
38.3'
32.7'
UTILITY POLES
RIGHT OF WAY LINE
CENTERLINE OF COUNTY ROAD
EDGE OF BITUMINOUS
CENTERLINE OF 20 FOOT WIDE DRIVEWAY EASEMENT
BITUMINOUS SURFACE
SETBACK LINE
EDGE OF GRAVEL
50.0'
HORSE SHED TO BE REMOVED
HORSE SHED
30.3'
FILL AREA
EDGE OF BITUMINOUS
COUNTY ROAD No.21
Yellow - vegetation/seeding
blue - rock
purple - Erosion Control blanket/anchors and rock


8'
WH
No Basement
Existing
Basement
20
8'
8'
24'
Stairs
Brick Part
Basement
Chimney
Boiler
20
30


No egress windows
Office
Stairs
Main Floor Existing
Main Floor Living Room

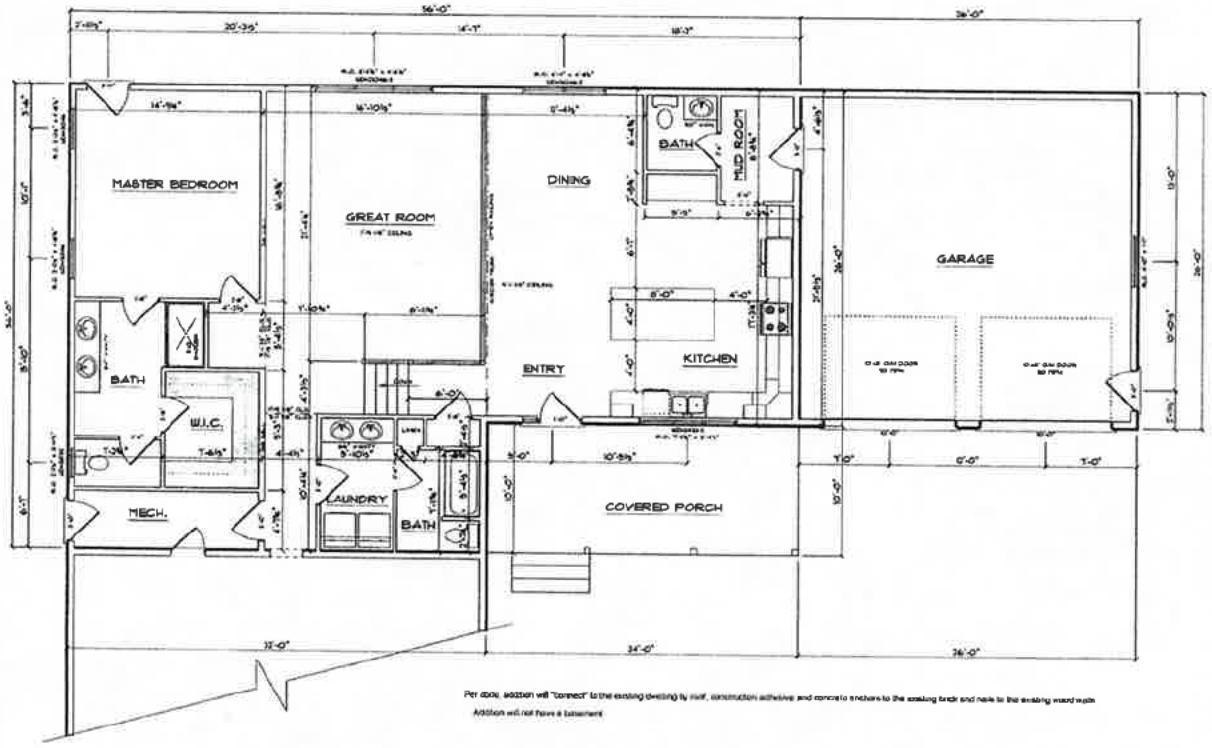

2nd Story - Existing
Removed Old Wall
12'
17'-6"
Bed
No Closet
Hall
Stairs
32'



N
W E
S

Existing

Printed from Beacon - Nicollet County MN 10/04/2020



Per code, addition will "connect" to the existing dwelling by roof, construction adhesive and concrete anchors to the existing brick and nails to the existing wood walls

Addition will not have a basement

MAIN FLOOR

CEILING HEIGHT:

SCALE: 1/4" = 1'-0"

SQUARE FOOTAGE:

PRELIMINARY DATE
8.22.19

REVISION DATE

REVISION DATE

REVISION DATE

PUHLMANN LUMBER & DESIGN
301 1st STREET S. NEW ULM, MN
PH (507) 354-4914
FAX (507) 354-3105

GIESEKE ADDITION

02208 COUNTY ROAD 21 NEW ULM, MN

PUHLMANN LUMBER

Onsite Earth Movement

62208 County Road 21
New Ulm, MN 56073

Onsite Earth Movement
According to your discussions with NCPPS staff, the site visit with NCPPS staff, and your survey (i.e. "gully fill area"), it appears that at least one of the five fill locations is within a protected bluff area on your property. In your August 21, 2020 letter to NCPPS, you note the fill was placed to fill in a

washout that was forming on your property. It appears this material is now eroding downslope, along with the natural erosion from the washout, into the ditch on the northern side of County Road 21.

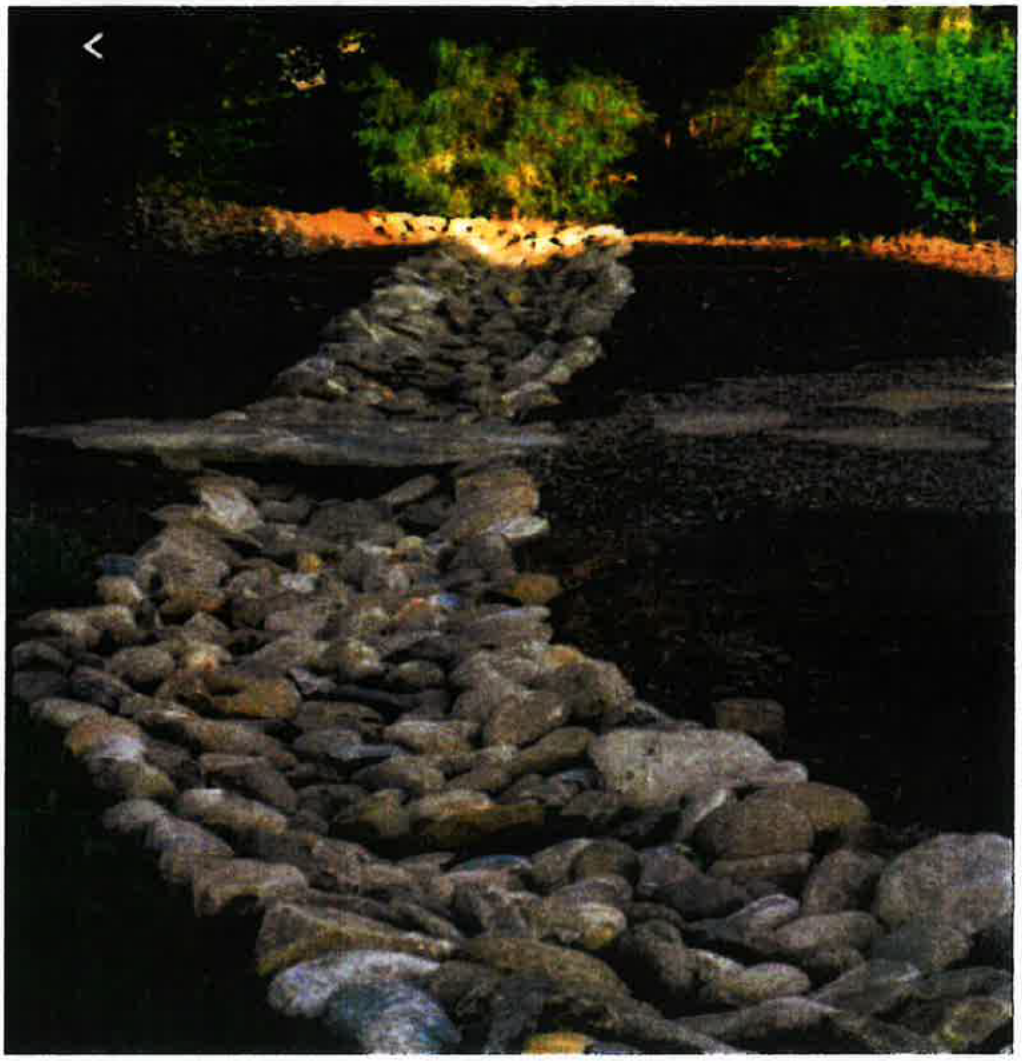
The highlighted statement above is false.

This google earth picture of the washout we filled—referred to above—was taken prior to our purchase of the property in 2017:



In July or August 2020, a Nicollet County/Highway Department employee dug out the ditch and destroyed vegetation with an excavator all the way down County Road 21. This can be confirmed by either Nicollet County or the Highway Dept records and is clearly visible when traveling down the entire length of County Road 21. What "appears" to be "eroding downslope, into the ditch" is from this digging and excavation. It is not from the fill we added to the washout at the TOP of our property.

If a cease and desist order had not been in place (with the threat of a restraining order), we could have completed the fill in the washout per our plans below:



Offsite Earth Movement

62208 County Road 21

New Ulm, MN 56073

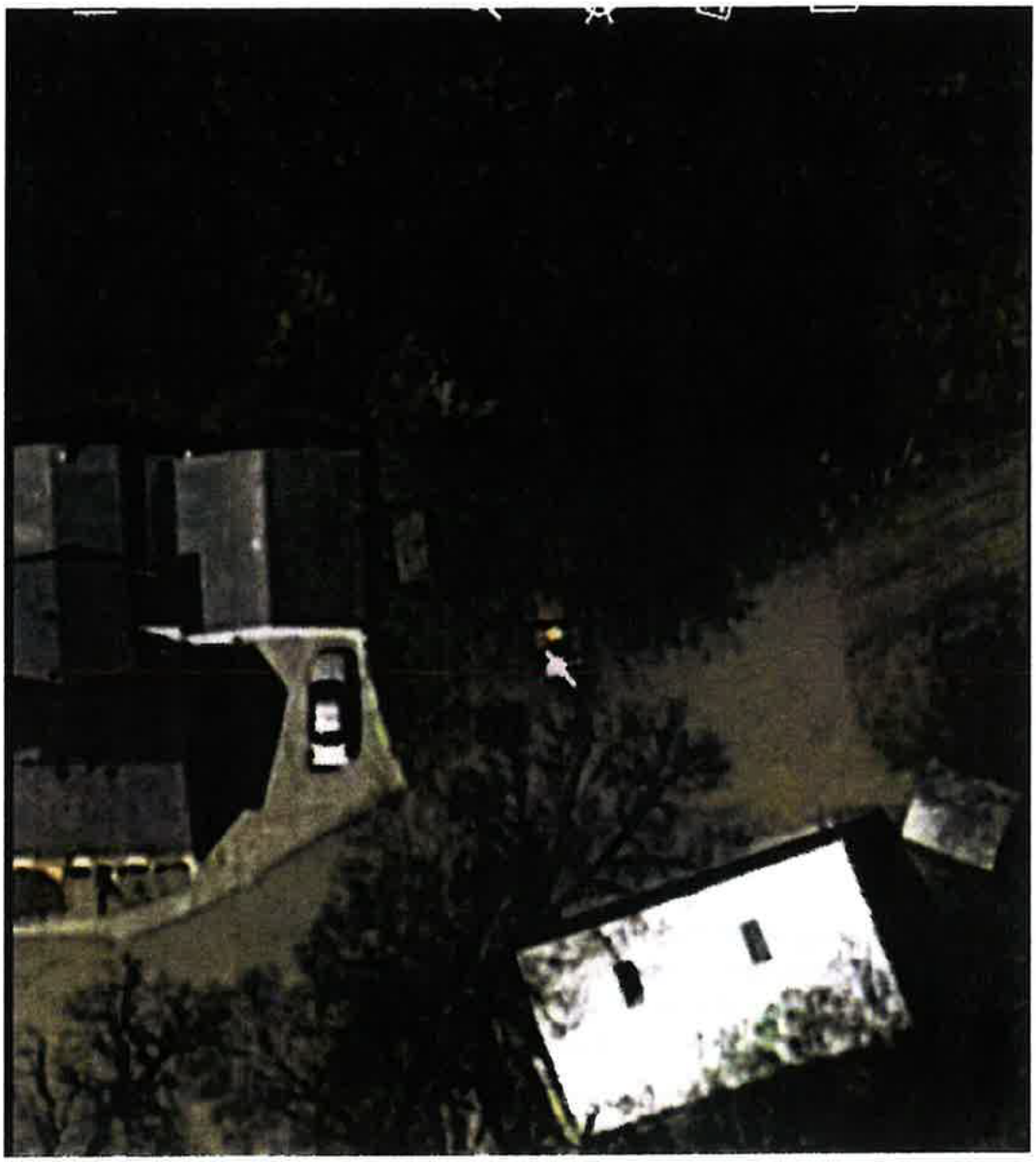
We have previously and repeatedly stated, we have no idea who removed the dirt from our property. Randomly, one day an older gentleman stopped by and talked with Pat. He said he travels our road frequently and noticed we were removing dirt. He asked what our plans were for the removed dirt and when Pat told him we didn't have plans he stated that him and his brother could use it. If we didn't mind, they would come, load it and haul it away at no expense to us. We all agreed.

One evening, upon arriving home from work there was a skidsteer / loader at our home. Over the course of the next couple of days this man came, loaded the dirt and hauled it away from our property while we were at work.

There has been no more communication with this man and we have not seen him since.

We do, however, disagree with the amount of dirt the surveyor "estimates" as being removed. The data the surveyor used for his "pre-project" calculations is from 2010. On the sketch the surveyor shows the "pre-project" bluffline going directly through the garage that was existing. In the google earth picture below, you can clearly see the garage, a truck parked and bluffline that is not accurate on the sketch.

The fill moved cannot be entirely determined and is likely significantly less than 825 cubic yards because the survey shows the "pre-project bluff line" is from the MN LiDAR project from 2010. Jesse Zeig at Bolton & Menk, Inc. does not have any pre-construction elevations besides the LiDAR contours and he stated "they may not be the best but they are all [he has] to work with." His sketch clearly shows the "pre-project bluffline" going thru a building which existed when we purchased the property in 2017.



Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

November 23, 2020

COPY

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated October 27, 2020, enclosed (and attached) are:

1. **Amended Survey:** After-the-fact Variance Sketch dated November 18, 2020 Revision/Added Quantification.

2. **Revised Erosion and Sediment Control Plan:** Recommendations from NSWCD signed by Blake Honetschlager of Nicollet SWCD will be followed and incorporated into the proposed Erosion and Sediment Control Plan.

3. **Revised Floor Plans:** Plans indicate the existing and proposed floor plan, and depicts how the addition will connect to the existing dwelling.

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. We also request that we be placed on the December 21, 2020 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djh
Enclosures
CC: Patrick and Shana Gieseke

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben

Since
1896

EXHIBIT
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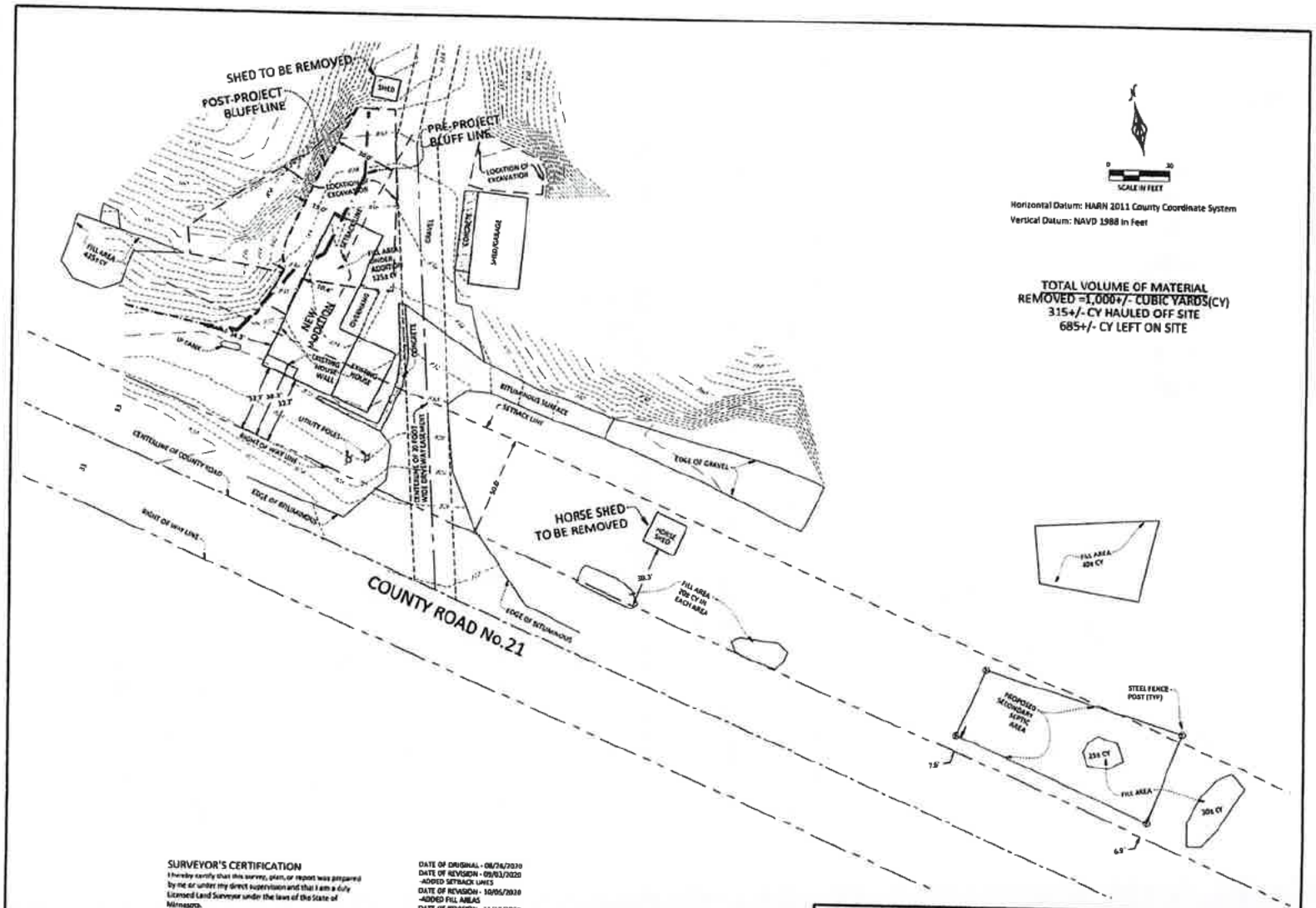
24



SURVEYOR'S CERTIFICATION

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

Jesse D. Zelg
License Number 44956

13/18/2020
Date

DATE OF ORIGINAL - 08/26/2020
DATE OF REVISION - 09/03/2020
-ADDED SETBACK LINES
DATE OF REVISION - 10/06/2020
-ADDED FILL AREAS
DATE OF REVISION - 11/18/2020
-REVISION/ADDED QUANTITIES

Surveyor's Note:
-The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP., NICOLLET COUNTY, MN

BOLTON & MENK
1240 CEDAR STREET NE
SLEEPY EYE, MINNESOTA 56085
(507) 796-5541

PART OF THE SE 1/4,
SECTION 35-111-31

FOR: PAT AND SHANA GIESEKE

JOB NUMBER: 511.122571 FIELD BOOK: DRAWN BY: RK/JDZ

SEC 35-111-31(40)

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H:\GIESEKPS_PR\511122571\CAD\C3D\122571V701-IDI.dwg 11/18/2020 3:17 PM

GIESEKE PROPERTY
62208 COUNTY RD 21
NEW ULM MN 56073

The following are recommendations from Nicollet Soil & Water Conservation District to control potential erosion from the Gieseke property, located at 62208 County Road 21 in Nicollet County.

1. Control bluff cut behind garage by installing a retaining wall feature. Wall should run along the entire length of disturbed side hill and be installed far enough away from the bluff cut to allow for back fill of black dirt. Dirt fill will aid in plant establishment. A climbing vine plant can be planted on the bluff face. Creeping Juniper or other hardy perennial along the top of the retaining wall will aid in erosion control.

2. Grade area between garage and bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

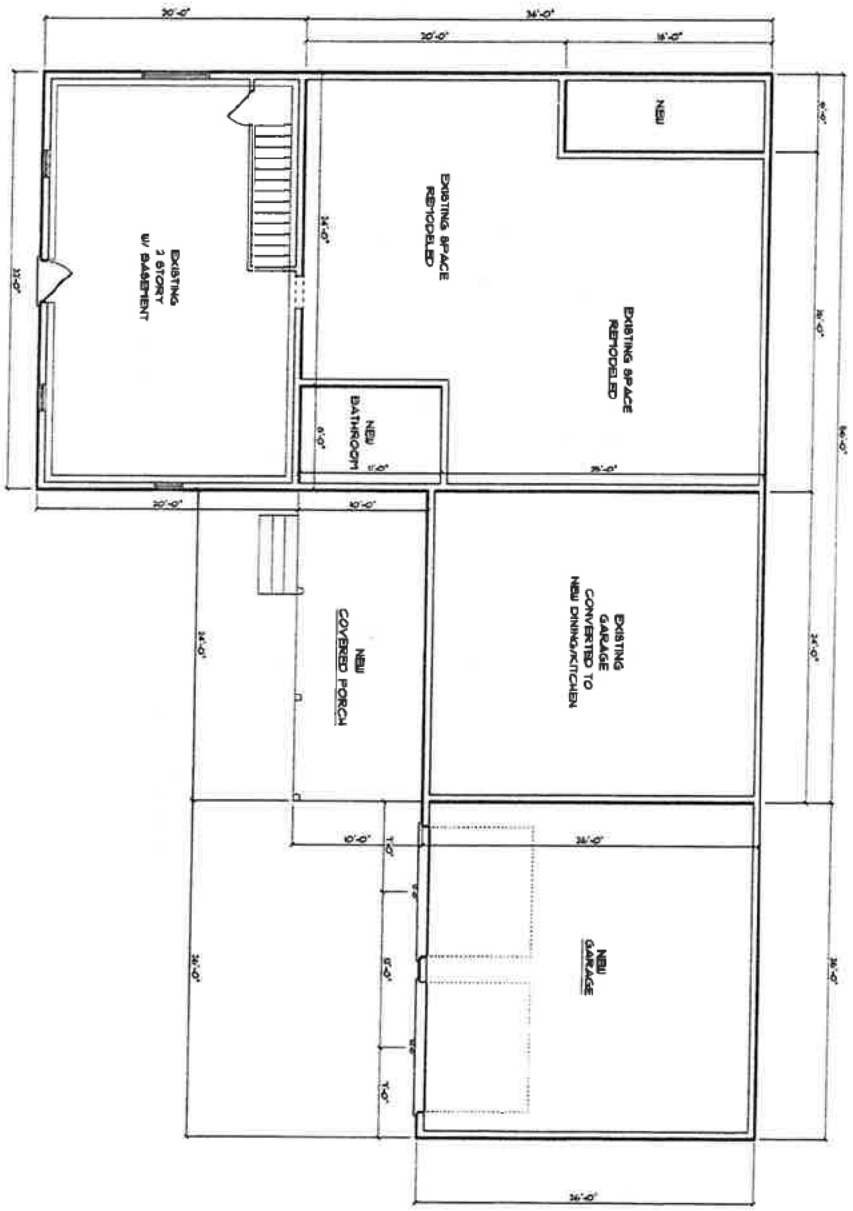
3. Fill can be left in place in the ravine gully to the west of the residence. Removing the fill will disturb the area further causing potential erosion into the road ditch, and damage of septic system. This area should be graded evenly and planted with a shade tolerant grass/plant mix. Once planted, erosion control blanket should be installed on all exposed and seeded surfaces.
   a. Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberry, Leadplant, Big Blue Steam Grass, Little Blue Steam Grass Swamp Milkweed, Common Boneset, Wild Bergamot.
   b. Contact Seed distributer (Albert Lea Seed House, etc.) to get their recommendation on a mix suited for shade, part sun.

4. To stabilize ravine erosion at the gully, near the filled area, Nicollet SWCD recommends minimal grading to allow the placement of Geo Erosion fabric and the placement of rock. Rock should be large Limestone or Quarts, or field stone. The field at the top of this gully is enrolled into the CRP program, allowing for reduced peak flows.



Blake Honetschlager
District Technician
Nicollet SWCD


3&4
1
2
13.035.1000
13.035.1005



GIESEKE ADDITION

62205 COUNTY ROAD 23- NEW ULM, MN

PUHLMANN LUMBER & DESIGN

301 1st STREET S. NEW ULM, MN
PH: (507) 354-4194
FAX: (507) 354-5100

PRELIMINARY SET	4.8.2020
REVISIONS	
REVISIONS	5.14.2020
REVISIONS	5.8.2020
REVISIONS	
REVISIONS	5.13.2020

EXISTING W/ NEW ADDITIONS

MAIN FLOOR

SCALE: 1/4" = 1'-0"

PRELIMINARY DATE
4.8.2020

REVISION DATE
7.14.2020

REVISION DATE
11.6.2020

REVISION DATE

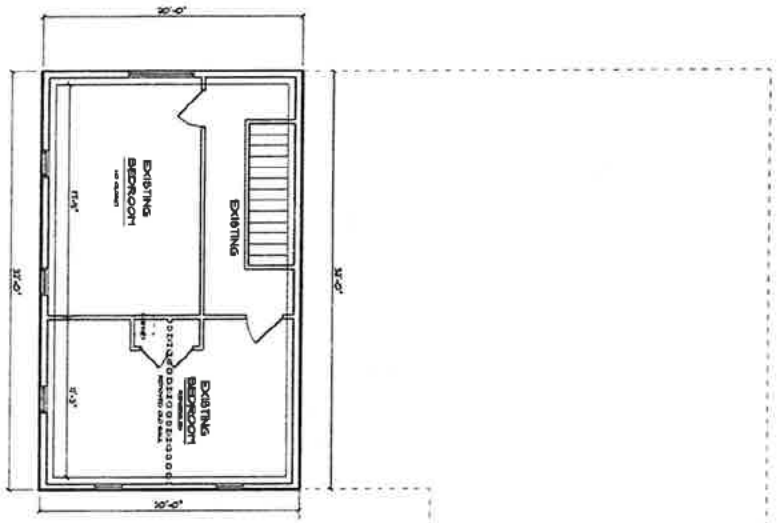
PUHLMANN LUMBER
ADDITION

301 1st STREET S. NEW ULM, MN
PH (507) 354-4174
FAX (507) 354-3100

GIESEKE ADDITION

42066 COUNTY ROAD 23 - NEW ULM, MN

PUHLMANN LUMBER



PUHLMANN LUMBER

GIESEKE ADDITION

62208 COUNTY ROAD 21- NEW ULM, MN

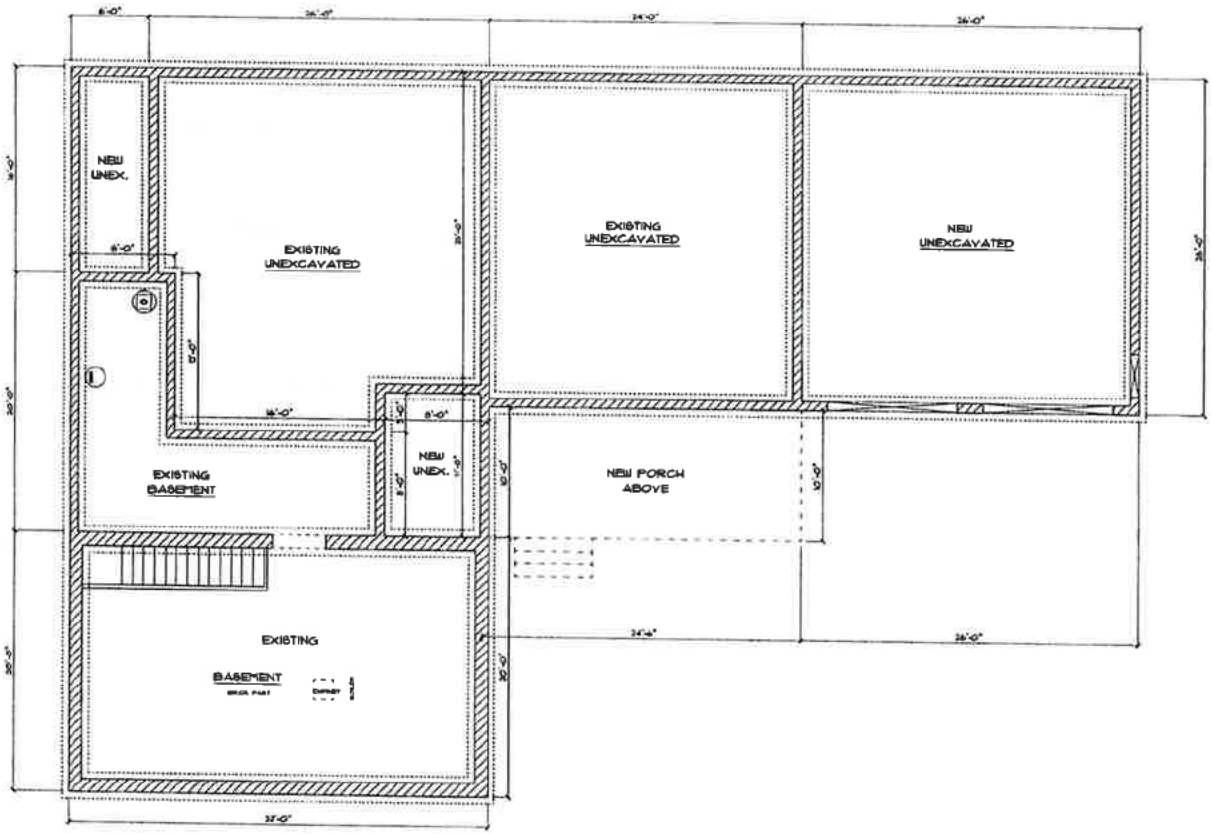
PUHLMANN LUMBER & DESIGN

301 1st STREET S, NEW ULM, MN
PH: (507) 354-4194
FAX: (507) 354-3105

PRELIMINARY DATE	4.4.2025
REVISION DATE	7.14.2025
REVISION DATE	8.8.2025
REVISION DATE	8.18.2025

UPSTAIRS

SCALE: 1/4" = 1'-0"



FOUNDATION

SCALE: 1/4" = 1'-0"

PRELIMINARY DATE 4.8.2020

REVISION DATE 7.14.2020

REVISION DATE 11.6.2020

REVISION DATE 11.12.2020

PUHLMANN LUMBER DESIGN

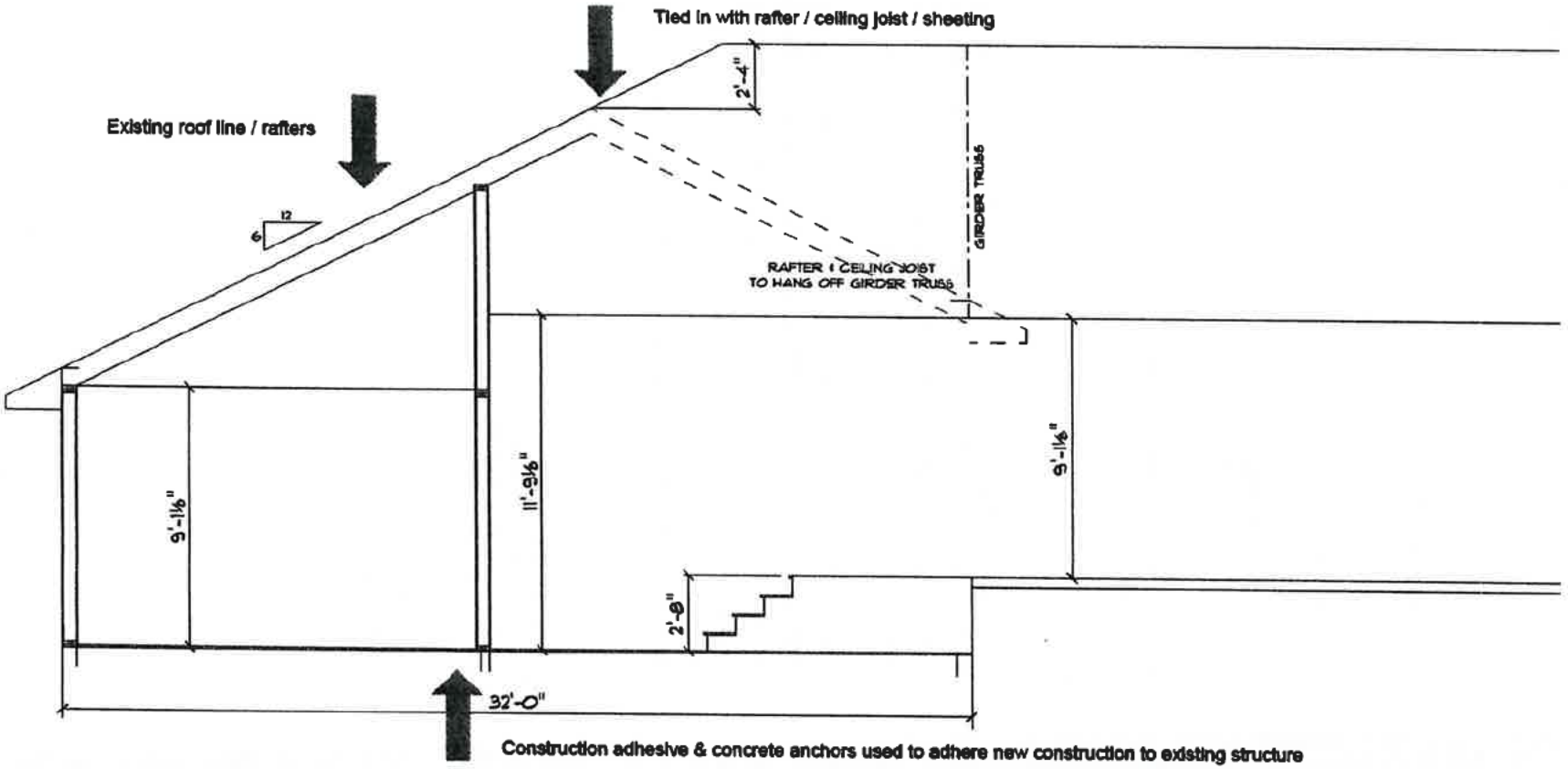
301 1st STREET S, NEW ULM, MN
PH: (507) 354-4194
FAX: (507) 354-5905

GIESEKE ADDITION

62208 COUNTY ROAD 21- NEW ULM, MN

PUHLMANN LUMBER

NOTE: The new addition is already attached to the existing as the existing already has tied it together but for raising the roof line over the existing garage and the existing rafters of the new remodeled great room.



Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

December 17, 2020

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated December 7, 2020, for which the application remains on hold until received, enclosed (and attached) is the revised Erosion and Sediment Control plan which clarifies and incorporates the recommendations from NSWCD.

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. We also request that we be placed on the January 18, 2021 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djh
Enclosures
CC: Patrick and Shana Gieseke

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Elissa J. Davis

Since
1896

EXHIBIT
tabbies 25

Erosion and Sediment Control Plan

62208 County Road 21

New Ulm, MN 56073

- **An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.**

- Identify the practices and methods to be used to mitigate erosion and sedimentation – Bluff
  - Retaining wall
  - Black dirt back fill
  - Climbing vine plant
  - Creeping Juniper and/or other hardy perennial
  - Grade area between garage & bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

- Identify the practices and methods to be used to mitigate erosion and sedimentation – ravine gully (washout)
  - Grade area evenly & plant with shade tolerant grass/plant mix
  - Once planted, erosion control blanket installed on all exposed & seeded surfaces.
    - Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberrry, Leadplant, Big Blue Stream Grass, Little Blue Steam Grass Swamp Milkweed, common Boneset, Wild Bergamot.

- Note what is currently being done to control erosion –
  - Unfortunately, nothing as Nicollet County Property and Public Services have served us with a Cease and Desist order and threatened us with a restraining order if we proceed with anything. We have not been able to do anything since July 2020

- What you are planning for future erosion control on your property –
  - See above as well as submitted Recommendations from Nicollet SWCD

Revised 12/08/2020

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

January 20, 2021

VIA EMAIL
Megan.Coryell@co.nicollet.mn.us

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated January 6, 2021, Giesekes submit the following:

1. With respect to the requirement to submit verification concerning the location of the offsite earth movement and your finding that the materials we have provided are not sufficient, Giesekes are unable, and it is impossible, to obtain additional information from unknown parties and unknown destinations of the offsite earth movement.

   In addition, as to the statement that Giesekes have provided inconsistent and contradictory information, please draw attention to the most recent information provided as an update from the surveyor indicating and providing clarification that the previous information given was based upon erroneous contours used from outdated and the last known public data/information. Previous erroneous information was replaced with the surveyor's reliance upon the as is conditions prior to Gieseke's excavations.

   Consequently, these two aforementioned items pose an impossibility to estimate or guess or speculate what more information or materials can now yet be provided. Therefore, Giesekes ask whether there is any way you will provide them with a more specific and detailed description of exactly what it is they can and should provide in order to obtain a complete application. The answer to this inquiry would be greatly appreciated. Without such they are at a loss to speculate what exactly they could possibly provide.

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Eliana J. Davis

Since
1896

EXHIBIT tabbies 26

2. With respect to the onsite earth movement violation, Giesekes intend to resolve this by choosing option b. as stated in your letter. They will apply for an after the fact variance by adding as a sixth component as you suggest under the first paragraph of your letter. Upon a ruling on the after the fact variance application determining whether it shall be either denied or granted Giesekes understand as you note in your letter that an application for a conditional use permit shall be pursued as is necessary to address additional requirements after the fact. Now in the dead of winter there is no activity possible. Going forward there is no further or additional activity planned or anticipated to be needed. Since there is no additional activity required and the only purpose would be then to address previous activity, Giesekes shall make such application as required once the after the fact variance is heard and ruled upon.

3. Is there a possibility these last items may be resolved with an in-person assessment and discussion? If so we request your consideration to affording the Giesekes such an opportunity.

Please contact me with any questions or concerns. We look forward to your further communications and reply.

Very truly yours,



Steven J. Franta
SJF:tcl

CC: Patrick and Shana Gieseke

Steven J. Franta

From:	Steven J. Franta
Sent:	Friday, February 19, 2021 2:07 PM
To:	Megan Gaudette Coryell
Cc:	Jon Hammel; Mandy Landkamer
Subject:	RE: Response Letter

Jon/Megan

Specifically:

1. Is #2 of the January 6th letter completely fulfilled?
2. What are the "precise elements to be listed" which are referred to in #4 of the January 6th letter?
    a. Have they not yet been identified?
    b. Do you have a form that identifies these required elements?
    c. What elements you are looking for that we have not yet informed you of or have otherwise not yet been provided?
    d. How are these elements different from the paragraph 2 listed components?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

e.

From: Megan Gaudette Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, February 18, 2021 9:15 AM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: RE: Response Letter

Mr. Franta,

If you refer to the letters from NCPPS dated January 6, 2021, and February 5, 2021, the requirements that need to be fulfilled are clearly outlined. An in-person assessment or telephone call is not necessary to fulfill the remaining requirements. If you have a specific question regarding the remaining requirements outlined in the letters, please send your specific question.

As stated previously, NCPPS cannot provide legal advice regarding resolving these ongoing issues.

Thank you,

EXHIBIT tabbies 27

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Monday, February 15, 2021 1:22 PM
To: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Cc: Megan Gaudette Coryell <Megan.Coryell@co.nicollet.mn.us>
Subject: RE: Response Letter

Jon/Megan

We ask that the in-person assessment and discussion focus specifically on the current unsatisfied requirements to get the application off hold. Perhaps a telephone call now is all that is needed if you are able to get on the phone with me/us to give us direction what is needed and expected to be submitted to meet the "four steps outlined in the January 6, 2021 letter" that ids referenced in the most recent letter from you?

Thank you for your consideration to this request

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, February 5, 2021 3:12 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Megan Gaudette Coryell <Megan.Coryell@co.nicollet.mn.us>
Subject: Response Letter

Good afternoon Mr. Franta,

Please see the attached letter from Nicollet County. This is in response to your letter dated January 20, 2021, concerning Mr. and Mrs. Gieseke.

Thank you.

Please submit documents to niccopermitapps@co.nicollet.mn.us. The Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office visits and site visits will be limited to those absolutely necessary by appointment.

Sincerely,

https://mn-nicolletcounty.civicplus.com/" style='position:absolute;margin-left:-1.9pt;margin-top:0;width:85.1pt;height:78.75pt;z-index:-251657216;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:text;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:button="t">
Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

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Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

March 19, 2021

VIA EMAIL AND U.S. MAIL
Megan.Coryell@co.nicollet.mn.us

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In follow up to your letter dated March 5, 2021, Giesekes submit:

1. The following are the required "precise elements to be listed" as you have identified in Paragraph 2 of said March 5th letter i.e. "the distances the setbacks are to be reduced by" for each of the components:

   i. Expanding a nonconforming structure;
   There are no applicable setbacks and therefore none are required to be reduced for this component.

   ii. Reducing the bluff setback for the dwelling addition;
   Reduce the setback from 30 feet to 15 feet.

   iii. The alteration of protected bluff areas;
   There are no applicable setbacks and therefore none are required to be reduced for this component.

   iv. Reducing the front yard setback for the dwelling addition; **the**
   Reduce the setback from 50 feet to 32.7 feet.

   v. Reducing the front yard setback for a replacement septic system;
   Reduce the setback from 50 feet to 6.9 feet.

   vi. Allowing fill to be placed in a protected bluff area.
   There are no applicable setbacks and therefore none are required to be reduced for this component.

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Elianna J. Davis

Since
1896

EXHIBIT
tabbies 28

Does this information provided in this paragraph above completely satisfy the requirement "to inform NCPPS of the precise elements to be listed on the after-the-fact variance"?

2. Step #3 outlined in the January 6, 2021 letter we understand is to be fulfilled by the submission of $1,046.00 for payment for the after-the-fact variance and recording fees. Is this Correct? Enclosed is our said $1,046.00 payment.

3. Attached is our signature on and to the application in the form of the official application of the Nicollet County Property Services Division (without its official letterhead).

Please contact me with any questions or concerns. We look forward to your further communications and reply.

Very truly yours,



Steven J. Eranta
SJF:tcl

CC: Patrick and Shana Gieseke

BOARD OF ADJUSTMENT & APPEALS
APPLICATION

Total Fees: $1,046.00

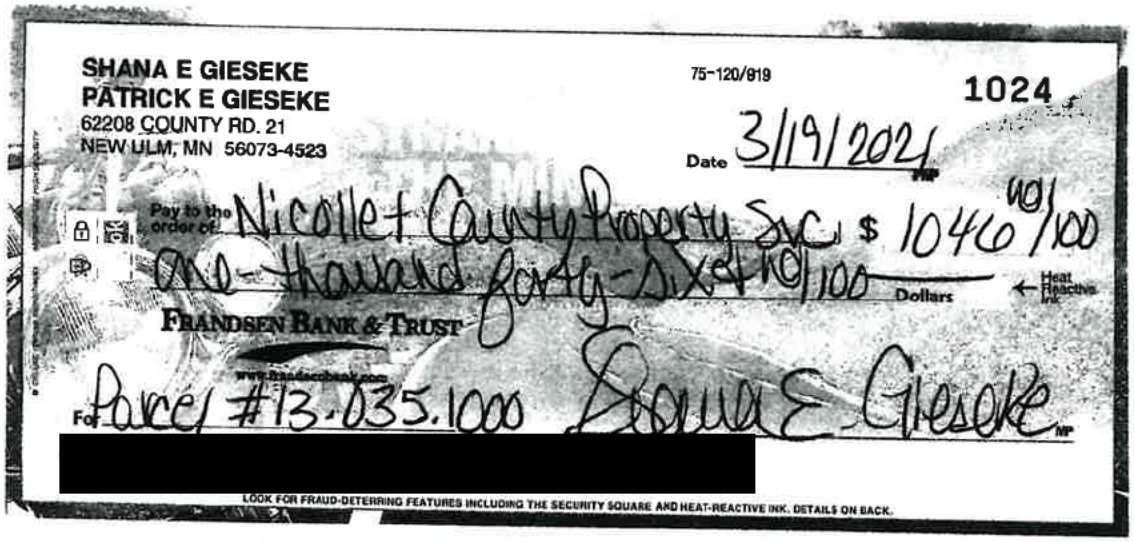
Map#: 033540003
Parcel # 13.035.1000
Permit#: _____
Date: March19, 2021

Applicant: GIESEKE, PATRICK E & SHANA E, 62208 COUNTY ROAD 21, NEW ULM, MN 56073
Phone: 507-217-9392
Owner: GIESEKE, PATRICK E & SHANA E, 62208 COUNTY ROAD 21, NEW ULM, MN
Property Address: 0,
Abbreviated Legal Description: Part of the SE1/4 of the SE1/4, and part of Govt Lot 2, 35-111-31
Township: West Newton

Record Type: Variance
Category: Bluff / setbacks
Project Description: After-the-fact variance to reduce the bluff setback from 30 feet to 15 feet; to reduce the front yard setback from 50 feet to 32.7 feet; to reduce the setback for a replacement septic system from 50 feet to 6.9 feet; and expanding a nonconforming structure; and alteration of bluff area.
Hearing Date: 04/19/2021

APPLICANT SIGNATURE — DATE: 3-19-21

Shana E Gieseke
APPLICANT SIGNATURE — DATE: 3/19/2021



SHANA E GIESEKE
PATRICK E GIESEKE
62208 COUNTY RD. 21
NEW ULM, MN 56073-4523

75-120/919

1024

Date 3/19/2024

Pay to the order of Nicollet County Property Svc $ 1046 00/100

One-thousand forty-six and 00/100 Dollars

Heat Reactive Ink

FRANDSEN BANK & TRUST

www.frandsenbank.com

For Parcel #13.035.1000 [redacted] Shana E. Gieseke

LOOK FOR FRAUD-DETERRING FEATURES INCLUDING THE SECURITY SQUARE AND HEAT-REACTIVE INK. DETAILS ON BACK.

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

September 2, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

The purpose of this letter is to respond to the documents you submitted via email on August 21, 2020 and August 27, 2020. The documents involve your application for an after-the-fact variance to expand a nonconforming structure, to reduce the front yard setback, to reduce the bluff setback, and for the alteration of protected bluff areas, for the purpose of constructing a dwelling addition. Our office understands that based on the documents you submitted on August 21, 2020, that you will be removing the small shed and horse shed.

The request involves your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. This matter has been the subject of a July 13, 2020 Cease and Desist Order and an August 13, 2020 letter to you from our office.

The documents you submitted via email on August 21, 2020 included:

- Letter to Nicollet County.
- Floor plan for the dwelling addition.
- A cost estimate for construction.
- Contractor information.

The document you submitted via email on August 27, 2020 was:

- A septic compliance inspection, prepared by Lafayette Excavating, Inc.

Please be aware, per Minnesota Statutes Section 15.99, Subd. 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. Our office has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

EXHIBIT
tabbies 29

Additional Information / Revisions

Your application will remain **on-hold** until the following additional information and revisions are submitted to Nicollet County Property Services.

- A survey prepared by a licensed surveyor. The survey must contain all the elements necessary for your variance request, such as the bluff setback, the front yard setback, etc.
  Provided by Surveyor via email 9/14 - See attached #1
- A complete set of floor-plans for the house and addition. The floor plan submitted was the addition only. The plans must include the entire house, including room use, egress windows, and closets.
  Provided via email 9/14 - See attached #2
- The identification of a secondary/alternative septic system location.
  On Site visit w/Pete O. of Lafayette Excavating 9/18

These items were identified and explained in the August 13, 2020 letter to you from our office

In your August 21, 2020 Letter to Nicollet County, you state the earth removed from the bluff to make space for the house addition was relocated to a washout on your property. During a July 21, 2020 site inspection, Mr. Gieseke stated the removed material was relocated offsite. You will need to submit additional information, including:

- The precise location of the relocated earthen material.
  Provided via email 9/14 - see attached #2 & #3
- The amount of material moved in cubic yards.
  - already submitted w/survey 8/28 and again 9/04

Please be aware, Section 721 of the Zoning Ordinance contains standards for the preservation and of land and natural drainageways. These standards may apply to your placement of fill in a washout.
See attached

Official Application

Your application will remain incomplete and **on-hold** until the above items are provided to Property Services. Once these items have been received and approved by our office, you may move forward with:

- Payment of the after-the-fact variance and recording fees.
- Signing the official application form prepared by staff.
  nothing received as of 9/22

Second Site Visit

You will need to contact our office no later than Tuesday **September 15, 2020** to schedule another site visit. The purpose of a second site visit will be to view the location of the fill and washout. Please know, additional corrective actions or after-the-fact permitting may be required to address this issue.

- The request may require an after-the-fact conditional use permit for the movement of the earthen material cut from the bluff.

Conclusion
The general information provided above is based on present standards in relation to your proposal. If there has been any misunderstanding regarding your proposal, if you have any additional questions, or if we may be of any further service to you, please do not hesitate to contact our office.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

Steven J. Franta

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 1:45 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Mr. Franta,

In regards to numbers 1-6:

1. There are remaining question on the survey. A follow up letter on this should be going out early to mid-next week.
2. There are remaining issues with the floor plans. This will be included in the follow up letter referenced in #1.
3. NCPPS has not received the septic paperwork. It is still with Lafayette Excavating.
4. Based upon the amount of earthen material moved, Mr. Gieseke and Ms. Gieseke will need an After-The-Fact Conditional Use Permit. In addition, Mr. Gieseke and Ms. Gieseke have not identified specifically where the earthen material was moved to. The survey identified +/- 425 cubic yards of earthen material left onsite. The site of the remaining +/- 825 cubic yards hauled offsite has not been identified. This will also be addressed in the follow up letter referenced in #1.
5. Please see #4.
6. Correct, payment of the variance and recording fees have been received. However, as referenced in #3 and #4, an After-The-Fact Conditional Use Permit will need to be applied for regarding the movement of the earthen material.

Regarding your other questions, Nicollet County's responses are in RED.

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

No. No application has been submitted. Further, additional requirements have been identified in these responses, and further information will be provided in the follow up letter referenced in #1. Further information on the application process will also be included in the follow up letter.

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

Can you please clarify your question?

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by county workers without Pat or Shana's knowledge or presences?

NCPPS is not aware of any visits by NCPPS staff without Mr. Gieseke and/or Ms. Gieseke's presence. NCPPS does not go on property without the prior consent of the landowner.

EXHIBIT
tabbies 30

I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

This should be answered by the responses above.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:55 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thank you for your follow up. If a call is not possible this morning could we possibly expect an email reply this morning to my questions (highlighted in yellow) in my email of earlier this morning in the string below?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 7:43 AM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Good morning,

I will follow up with PPS and get back to you. The soonest a call could be scheduled with Mandy, Jon, and myself is Tuesday. It appears that there would be time available at 11am.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:21 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thought I should follow up on my earlier email this morning to clarify/specify.

I am available for a call this morning. Can we set it up for either 9 or 10 to work for you and Jon (or Mandy)?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Steven J. Franta
Sent: Thursday, September 24, 2020 6:05 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thank you for your responses to our inquiry.

I understand that the letters dated September 2 and 15 from Jon Hammel are the latest communication addressing the outstanding requirements to complete the application for a after the fact variance and that Pat and Shana have since provided

1. Survey via 9/4 email (also previous sent by 8/28 email
2. Floor plans via 9/14 email
3. On site visit on9/18 with Pete Otterness and Lafayette Excavating who are now compiling the secondary/alternative septic system location paperwork required.
4. Location of relocated earthen material via 9/14 email
5. Cubic yards of material moved disclosed in survey via 9/4 email (also previous sent by 8/28 email)
6. Payment of the variance and recording fees

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by county workers without Pat or Shana's knowledge or presences?

I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Debra Strandlie
Sent: Wednesday, September 23, 2020 1:47 PM
To: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Good Afternoon Jon,

Thank you for sending the documents.

I will be in touch if we need additional information.

Warm regards,

Debra Strandlie
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debras@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

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From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Wednesday, September 23, 2020 1:38 PM
To: Debra Strandlie <debras@thelegalprofessionals.com>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: Pat & Shana Gieseke Application Requirements

Hi Debra,

Megan asked I send you the attached letters and emails concerning the application requirements for Mr. and Mrs. Gieseke. The first letter, dated August 13th was sent by mail, so that is why there is no attached email for it. Please let me know if you have any questions, or if I may be of any other service. Have a pleasant day.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment.

Sincerely,

https://mn-nicolletcounty.civicplus.com/" style='position:absolute;margin-left:-1.9pt;margin-top:0;width:85.1pt;height:78.75pt;z-index:-251657216;visibility:visible;mso-wrap-style:square;mso-width-

percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:text;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:button="t"> Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

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NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

October 2, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is fourfold:

1. To respond to the most recent documents you submitted concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property;

2. To address the cutting/filling of over 50 cubic yards of material on your property;

3. To respond to a series of emails between your lawyer, Steven Franta, and Nicollet County on September 24, 2020. The emails concerned violations of the Nicollet County Zoning Ordinance on your property. These violations have been the subject of a July 13, 2020 Cease and Desist Order and three previous letters to you from our office, dated August 13, 2020; September 2, 2020; and September 15, 2020; and

4. To follow up on the September 18, 2020 site visit by staff to your property. The purpose of the site visit was to view the fill placed in the washout, and to determine a secondary/alternative septic system location on your property. Present at the site visit were Patrick Gieseke, Kevin and Dan Reinhart from Lafayette Excavating, Nicollet County Sr. Sanitarian Pete Otterness, and Nicollet County Property and Public Services Director Mandy Landkamer.

September 14, 2020 Documents

The documents you submitted to Nicollet County Property and Public Services ("NCPPS") on September 14, 2020 were received via email. These documents included:

- Existing House Floor Plans
- Relocated Earthen Material (Map)

The documents relate to your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request has four components:

1. Expanding a nonconforming structure;
2. Reducing the front yard setback;
3. Reducing the bluff setback; and
4. The alteration of protected bluff areas.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Information/Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to NCPPS:

- A survey prepared by a licensed surveyor. The survey must contain:
  - The precise placement of the 425 cubic yards of the relocated earthen material onsite (amount noted on existing survey). The survey must depict each location where fill was placed on your property. The map you emailed to NCPPS on September 14, 2014 depicts five locations that received fill material.
  - The location of the proposed alternative/secondary septic system location;
  - The location of the right of way; and
  - The distance between the proposed alternative/secondary septic system location and the right of way.
- An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.
  - **NOTE:** As you are aware, the soil type on your property (960F, Storden-Clarion) is considered highly erosive and is severely limited as it relates to development. You may wish to contact the Nicollet County Soil and Water Conservation District concerning methods to properly address erosion from runoff. They may be contacted at 507-232-2550.

- A complete set of floor plans for the house and addition on your property. The floor plans submitted are considered incomplete for the following reasons:
    - The plans did not include the basement.
    - The plans did not contain dimensions.
    - The plans did not identify the main floor vs. the upstairs floor.
    - The plans did not indicate whether they were for the existing dwelling (pre-remodel) or for the proposed dwelling (post-remodel).
    - The plans did not indicate how the addition will connect to the existing dwelling.
- The identification of a secondary/alternative septic system location on your property.
    - The September 18, 2020 site visit with Lafayette Excavating identified an area for a secondary/alternative, and possibly a tertiary, location for the septic system on your property. The septic designer must identify what type (trench, bed, at-grade, or mound) of soil treatment area(s) will be installed in this area. The dimensions of the soil treatment area(s) need to be identified on a site plan. Additionally, the location of the proposed tank(s) to serve this secondary/alternative system must be included on the site plan. As the location is closer than the required 50 feet to the right of way, the site plan needs to show the distance between of all components planned and the road right of way, as marked by the Nicollet County Highway Department. Based upon current information, it appears the location does not meet the 50-foot setback distance requiring by the Zoning Ordinance. If this distance is not met, you will need to make application for a second variance to reduce this setback.

Official After the Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Your check (#1012, in the amount of $1,046.00) is being ***returned*** with this letter. Payment is due when the official application is signed.
- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, your request will be added to the next available hearing date. This process was outlined in a previous letter to you dated August 13, 2020.

Onsite Earth Movement

According to your discussions with NCPPS staff, the site visit with NCPPS staff, and your survey (i.e. "gully fill area"), it appears that at least one of the five fill locations is within a protected bluff area on your property. In your August 21, 2020 letter to NCPPS, you note the fill was placed to fill in a

washout that was forming on your property. It appears this material is now eroding downslope, along with the natural erosion from the washout, into the ditch on the northern side of County Road 21.

Please be aware, Section 721.1 of the Zoning Ordinance states that:

- All development must conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
- Slopes over 12% in grade must not be developed.
- Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
- Whenever possible, natural vegetation shall be retained and protected.

The fill placed in the bluff will need to be removed and the bluff restored per the standards of Section 721. The alternative to removing the fill would be to seek an after the fact variance to the applicable standards.

Offsite Earth Movement

The survey you submitted notes that approximately 825 cubic yards of earthen material was moved offsite from your property. Section 6 of the Zoning Ordinance, Zoning Districts and District Provisions, identifies the cutting and filling of 50 cubic yards or more of material as a conditional use, regardless of the zoning district, and an after the fact zoning permit is required. If the earthen material was relocated within Nicollet County, the owners of the land where the fill was placed may be required to apply for an after the fact conditional use permit. This process is summarized below. If the material was moved to a location outside of Nicollet County, you will need to provide verification supporting this.

- <u>After the Fact Conditional Use Permit</u>:
  The first step will be to identify any and all of the offsite fill locations. This will include identifying the property, or properties, and the location of the fill on the site(s). At a minimum, this will require a site plan for each property involved. Confirmation from the owner(s) of the property may be required.

  The next step is to complete an official application and pay the application fee. A legal description for the property where the fill is located is required at the time of application. Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, NCPPS must determine the application to be complete. If the application is determined to be incomplete, NCPPS will issue an incomplete application notice. You must then revise the application and resubmit it. NCPPS has 15 business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines, and applicants are encouraged to factor this into their planning.

The request would then be added to the agenda for the next available Nicollet County Planning and Zoning Advisory Commission hearing date. The request would be heard during a public hearing. You or your representative must be present at the public hearing to respond to any questions the Commission may have regarding the proposal. The Commission would then make a recommendation to the Nicollet County Board of Commissioners. The County Board then makes the final decision regarding the request.

NOTE: The placement of the fill **must adhere** to standards and requirements of the Zoning Ordinance. If the placement of the fill does not adhere to these standards, then the fill would need to be relocated in a manner which does adhere to the standards. Relocation would require the necessary permitting. The alternative to meeting the standards would be to seek relief through an after the fact variance.

Construction Activity Ceased

Per a September 24, 2020 email from Steven Franta NCPPS understands that any and all construction activity (including both interior and exterior work) on your property has ceased. Construction may only recommence once the Cease and Desist Order has been lifted by Nicollet County.

Conclusion

I have included a list of hearing dates and a fee schedule with this letter. The process takes roughly four to six weeks to complete. No guarantee can be made that staff would recommend approval of the request. Additionally, staff can make no guarantee your request would be approved by the Commission or the County Board. Fees are non-refundable once the legal notice of the public hearing has been submitted for publishing.

The general information provided above is based on present standards and information. If there has been any misunderstanding, if you have any additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: Returned Check #1012 in the amount of $1,046
After-the-Fact Variance Handouts
Conditional Use Permit Criteria
2020 Hearing and Fee Schedules

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000 / Map No: 0335400003

NICOLLET COUNTY EST. 1853

APPLICANT QUESTIONNAIRE
AFTER-THE-FACT VARIANCE

Name of Applicant: _____ Date: _____

Request: _____

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. The variance is in harmony with the general purposes and intent of the official control.

_____
_____
_____
_____

2. The variance is consistent with the intent of the Comprehensive Plan.

_____
_____
_____
_____

3. The variance establishes a practical difficulty in complying with the official controls.

_____
_____
_____
_____

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

_____
_____
_____
_____

5. The variance will not alter the essential character of the locality.

_____
_____
_____
_____

(Continued onto back)

6. The practical difficulty includes more than economic considerations alone.

Additional After-the-Fact Criteria for use ONLY when first six criteria are met.

7. Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?

8. In relation to the subject variance, are there similar structures in the area?

9. Does the burden on the applicant of compliance outweigh the benefit to the County?

10. Was the act of the violation by the applicant unintentional?

NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: _____ Date: _____

Please describe the specific details related to your request, including but not limited to:

- why you feel the project is a *need* rather than a *want*;
- what alternatives you explored and the reasons they were not reasonable for you; and
- what use, or uses, the project will provide for you;

If your request is approved, you will be **held** to the plans and specifications submitted to the County with your application.

NICOLLET COUNTY EST. 1853

CUP APPLICANT FINDINGS OF FACT CRITERIA

Name of Applicant: _____ Date: _____

Request: _____

In granting a conditional use permit, the County Board shall consider the advice and recommendation of the Planning Commission and the effect of the proposed use upon the health, safety, morals, and general welfare of the community. Among other things, the County Board shall make the following findings where applicable.

Why do you feel the request meets the following criteria?

1. Given the nature of the land, the requested use is compatible with public health, safety, and general welfare.

_____

_____

_____

_____

2. The requested use will not create an unreasonably excessive burden on the existing roads or other utilities.

_____

_____

_____

_____

3. The requested use is compatible with the surrounding area and will not significantly depreciate nearby properties.

_____

_____

_____

_____

4. The structure and the use shall have an appearance that will not have an unreasonably adverse effect on nearby properties.

_____

_____

_____

_____

5. The requested use is consistent with the County Zoning Ordinance.

_____

_____

_____

_____

(Continued onto back)

6. The requested use is not in conflict with the County Comprehensive Plan.

7. The requested use will not create an unreasonably adverse effect because of noise, odor, glare, or general unsightliness, for nearby property owners.

8. The requested use is reasonably related to the existing land use and environment.

9. There are no apparent unreasonable health risks posed to neighbors or the public in general.

10. The requested use will/will not have an adverse effect upon public health, safety, and welfare due to the following other factors.

A MAJORITY OF THE CUP CRITERIA <u>MUST</u> BE MET IN ORDER FOR THE REQUEST TO BE APPROVED.

NICOLLET COUNTY
PROPERTY
SERVICES
GOVERNMENT CENTER
501 SOUTH MINNESOTA AVE
ST PETER MN 56082
DIRECT (507) 934-7070; FAX (507) 934-7079

2020 HEARING DATES

APPLICANT'S DEADLINE	P & Z / BAA	BOARD OF COMMISSIONERS	FEEDLOT PERMITS
January 3	January 27	February 11	February 14
January 31	February 24	March 10	March 13
February 21	March 16	March 24	April 2
March 27	April 20	April 28	May 7
April 24	May 18	May 26	June 5
May 22	June 15	June 23	July 2
June 26	July 20	July 28	August 6
July 24	August 17	August 25	September 3
August 28	September 21	October 13	October 8
September 25	October 19	October 27	November 6
October 23	November 16	November 24	December 8
November 25	December 21	January 5	January 12

Applications for Any Hearing are **ONLY** Taken
BEFORE 3:30 p.m. on the Deadline Date

PERMITS REQUIRED FOR:

'ortable Structures
:rection
ration

political and real estate)

al System/
sposal Operation

s
g in excess of 50 cu. yds.
sting
ioreland vegetation
tion

on

tion or Relocation of
Facilities

ads

Along Public Road

s

ces Along Public Roads

Questions?

Additional information and standards may be required by the Nicollet County Zoning Ordinance. This information can be found on our website.

Contact Us!

If you have further questions, please feel free to contact us or make an appointment to stop into the Property Services office, located at:

Nicollet County Government Center
501 South Minnesota Ave
St Peter, MN, 56082

Phone: (507) 934-7070

Fax: (507) 934-7079

Web: www.co.nicollet.mn.us

Monday-Friday from 8:00 a.m.—4:30 p.m.

NICOLLET
EST. COUNTY 1853

Providing efficient services

with innovation and accountability.

Revised January 7, 2020

NICOLLET
COUNTY EST. 1853

NICOLLET CO
PROPERTY SEF
DEPARTME

FEE SCHED

It is recommended that applicants call t
appointment prior to visiting our office in o
appropriate staff is available to as

STRUCTURES

d Attached Additions	<120 sq ft	$ 25.00
	121 sq ft and over	$ .25 sq ft
		$ 50.00 min.
tached)	<120 sq ft	$ 25.00
	121 sq ft to 1000 sq ft.	$ 50.00
	1001 sq ft and over	$ .05 sq ft
	<120 sq ft.	$ 25.00
	121 sq ft to 500 sq ft.	$ 50.00
	501 sq ft and over	$ .10 sq ft
		$ 50.00
ets, power station sheds		$ .25 sq ft
		$ 50.00 min.
		$ 250.00

AND ALTERATIONS

ng borrow pits, walled feed pads, , timber harvesting	$ 50.00

ABLE ENERGY SYSTEMS

	$ 50.00
al	$ 250.00
	$ 500.00
Small	$ 250.00
Large	$ 500.00

SEPTIC SYSTEM

g Permit	$ 25.00/yr.
Tank/Privy	$ 100.00
	$ 225.00
V	$ 450.00

SIGNS

	$ 25.00
remises	$ 50.00

11 ADDRESS SIGNS

and post	$ 257.00
	$ 159.00

SOLID WASTE

ication	$ 100.00
nse	$ 100.00

FEEDLOTS

	$ 100.00
(Valid)	$ 50.00

WETLAND PERMITS

Wetland Decision—Exemption	$ 50.00
Wetland Decision—No Loss	$ 50.00
Wetland Delineation Review	
Under 1 acre	$ 100.00
1 to 4.99 acres	$ 200.00
5 to 10 acres	$ 300.00
Greater than 10 acres	$ 400.00
Wetland Replacement Plan Review	
Under 1 acre	$ 200.00
1 to 4.99 acres	$ 300.00
5 to 10 acres	$ 500.00
Greater than 10 acres	$ 700.00
Wetland Banking Plan Review	
Under 1 acre	$ 200.00
1 to 4.99 acres	$ 400.00
5 to 10 acres	$ 800.00
Greater than 10 acres	$1000.00
Annual Monitoring report review	$ 50.00/yr.
Wetland Certificate of Completion	
Under 1 acre	$ 50.00
1 to 4.99 acres	$ 100.00
5 to 10 acres	$ 200.00
Greater than 10 acres	$ 300.00
After-the-Fact Wetland Review	**Double the fee**

HEARINGS

Conditional Use Permit/3 year Gravel Pit Renewals	$ 400.00
Variance	$ 400.00
Rezoning	$ 400.00
Appeal	$ 400.00
Recording fee	$ 46.00

OTHER FEES

Zoning Ordinance	$ 50.00
After-the-Fact Zoning Permit	$ 250.00
(Double the fee, whichever is greater)	
After-the-Fact Variance/CUP	$1000.00
Special Scheduled Hearing (at applicant's request)	$1000.00
Large Format Scanning	$ 20.00
Burning to CD or DVD	$ 10.00
Copies—Single sided	$ .25
Double sided	$ .50

PLATTING

Plat Book	
Replat	
Platting of Existing Metes and Bounds	
New Subdivision Plat	

GIS FEES

11" x 17" or smaller	
Large Format Printing	Up to 24"
	25" x 36"
Custom Printing (+ .50 per additional inch)	
Labor Rate	

GIS DIGITAL DATA

(provided in ESRI Shape... Fo

Parcels	
- Per Parcel	
- Entire County	
Road Centerline (includes road ranging)	
Address Point Layers	
Other Data Layers	

REQUIRED PRIOR TO ISSUANCE OF

- **An approved septic design**
- **Location of alternate septic s**
- **Access permit**
- **Contractor License #**

NOTE: ALL STRUCTURES require a S

Condensed list of information neede

Property owner/Name of applicant
Square footage of structure
Cost/value of requested structure
Estimated completion date
Section and township of requested permit
Description of request
Distances from road right-of-way, property lin
Contractors: General, Electric, Heating, Plun

*** Additional information may be required and may be applicable per the Nicollet County Z

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

October 27, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on October 8, 9, and 12, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

October 8, 2020
The document submitted to Nicollet County Property and Public Services ("NCPPS") on October 8, 2020, was received via email from your surveyor, Jesse Zeig at Bolton and Menk. The document was a revised draft of the survey dated October 5, 2020. The revision included the removal of an unidentified thick black line. Mr. Zeig noted the line was placed on the survey in error.

October 9, 2020 Document Packet
The documents submitted to NCPPS by Debra Strandlie (on behalf of your attorney Steven Franta) on October 9, 2020, were received via email. These documents included:

- Cover letter (page 1 of packet)
- Survey dated October 5, 2020 (unrevised version, page 2)

- Erosion and sediment control plan (pages 3-4)
- Basement floor plan – existing (page 5)
- Main floor plan – existing (page 6)
- Second story floor plan – existing (page 7)
- Nicollet County Beacon sketch – existing (page 8)
- Addition floor plan dated August 22, 2019 (page 9)
- Onsite Earth Movement (pages 10-11)
- Offsite Earth Movement (pages 12-13)

October 12, 2020 Document
The document submitted to NCPPS by your septic contractor Lafayette Excavating, Inc., on October 12, 2020, was received via email. This document included:

- Replacement/alternative septic system location site plan.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on October 8, 9, and 12, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to NCPPS:

- An amended survey prepared by a licensed surveyor.
  - Under "Offsite Earth Movement" (page 12 of packet), you state you disagree with elements of the survey, including:
    - Amount of earth moved.
    - Location of pre-project bluff line in relation to an attached garage, built in 1968.

    The survey will need to be revised to accurately depict these two elements. The survey and written materials must align and not contain any discrepancies.

- The survey does not note that fill was used for the addition, as indicated in your September 14, 2020, Relocated Earthen Material Map. This will need to be accurately noted on the survey, along with the amount of fill used for the addition. State whether or not this material is included in the 1,250 cubic yard total noted on the existing survey.

- The survey will need to accurately note the amount of fill placed in the ravine/washout.

- Lastly, the survey depicts one unidentified element:

  - Please identify the unknown symbol located south of the gravel surface and east of the horse shed.

➢ A revised erosion and sediment control plan. The plan you submitted does not go into detail concerning the incorporation of and specific placement of erosion control elements (silt fences, mats, anchors, etc.). Additionally, the plan does not include the proposed seeding mix. The seeding mix must be appropriate for bluff stabilization.

- You may want to contact Nicollet County Soil and Water Conservation District Staff to review and comment as to whether your proposed plan will aid in bluff stabilization.

- Rock, concrete, and/or asphalt may not be placed in a drainage way. This element of the plan must be revised.

➢ A complete set of floor plans for the house and addition on your property. The floor plans you submitted are considered incomplete for the following reasons:

- The documents you submitted were a mix of existing and proposed floor plans. A complete set of existing and proposed floor plans is required. The proposed plans must clearly depict how the addition will connect to the existing dwelling.

Official After-The-Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

➢ Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

➢ Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation

The placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options:

1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,250 cubic yards of materials noted on the survey (dated October 5, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process is summarized below.

The first step is to complete an official application and pay the application fees. A legal description for the property is required at the time of application.

Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, the application must be determined to be complete. If the application is determined to be incomplete, NCPPS will issue an incomplete application notice. You must then revise the application and resubmit. Staff has fifteen (15) business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines and applicants are encouraged to factor this into their planning.

Then the request would be added to the agenda for the next available hearing date. The request is heard during a public hearing held by the Nicollet County Planning and Zoning Advisory Commission ("Commission"). You or your representative must be present at the hearing to respond to any questions the Commission may have regarding the proposal. The Commission then makes a recommendation to the Nicollet County Board of Commissioners ("County Board"), who then makes the final decision regarding the request.

The process takes roughly four to six weeks to complete. ***No guarantee*** can be made that Staff would recommend approval of the request. Additionally, Staff can make ***no guarantee*** your request would be approved by the Commission or County Board. Fees are non-refundable once the legal notice of the hearing has been submitted for publishing.

Offsite Earth Movement
You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020 are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion
The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: 2020 Hearing Schedule

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003

NICOLLET COUNTY
PROPERTY
SERVICES
GOVERNMENT CENTER
501 SOUTH MINNESOTA AVE
ST PETER MN 56082
DIRECT (507) 934-7070; FAX (507) 934-7079

2020 HEARING DATES

APPLICANT'S DEADLINE	P & Z / BAA	BOARD OF COMMISSIONERS	FEEDLOT PERMITS
January 3	January 27	February 11	February 14
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August 28	September 21	October 13	October 8
September 25	October 19	October 27	November 6
October 23	November 16	November 24	December 8
November 25	December 21	January 5	January 12

Applications for Any Hearing are **ONLY** Taken
BEFORE 3:30 p.m. on the Deadline Date

December 7, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on November 23, 2020 and November 24, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request currently has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

November 23, 2020
The documents submitted to Nicollet County Property and Public Services ("NCPPS") by Debra Hatcher (on behalf of your attorney Steven Franta) on November 23, 2020, were received via email. These documents included:

- Cover Letter
- After the Fact Variance Sketch (unsigned, dated November 18, 2020)
- NSWCD (Nicollet Soil & Water Conservation District) Recommendations
- Revised Floor Plans

November 24, 2020
The document submitted to NCPPS by Debra Hatcher (on behalf of your attorney Steven Franta) on November 24, 2020, was received via email. The document was a signed copy of the After the Fact Variance Sketch (dated November 23, 2020).

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on November 23, 2020 and November 24, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions
Your application will remain **on-hold** until the following additional information/revisions are submitted to NCPPS:

- A comprehensive erosion and sediment control plan. The November 23, 2020 cover letter states the NSWCD recommendations are to be incorporated into the proposed plan submitted on October 9, 2020. However, it does not identify how specifically they are to be incorporated. You need to submit a comprehensive plan that clarifies how the recommendations are to be incorporated with the proposed plan.

Official After-The-Fact Variance Application
Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation
As you are aware, the placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options, listed below. You will need to identify which option you are going to pursue.

1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,000 cubic yards of materials noted on the survey (dated November 23, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process was summarized in a letter to you from our office dated October 27, 2020.

Offsite Earth Movement

You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, and November 24, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

January 6, 2021

Sent via email to: steve@thelegalprofessionals.com

RECEIVED

JAN 07 2021

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Incomplete Application

Dear Mr. Franta,

This letter concerns the property of Mr. and Ms. Gieseke, located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on December 17, 2020, concerning the application for an after-the-fact variance for the purpose of constructing a dwelling addition on the property. The request currently has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

December 17, 2020 Document

The document submitted to Nicollet County Property and Public Services (hereinafter "NCPPS") by Debra Hatcher (on behalf of attorney Steven Franta) on December 17, 2020, was received via email. The document was a revised erosion and sediment control plan.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of the application on December 17, 2020. NCPPS has reviewed the application and has determined it to be **incomplete** for the reasons listed below.

After-The-Fact Variance Application

The application will remain **on-hold** until the following steps are taken:

1. Mr. and Ms. Gieseke will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, November 24, 2020, and December 17, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment. Mr. and Ms. Gieseke have provided inconsistent and contradictory information regarding the location of the offsite earth movement, and who removed the earthen material offsite.

2. Identify how Mr. and Ms. Gieseke intend to resolve the onsite earth movement violation. As you are aware, the placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Nicollet County Zoning Ordinance. Regarding the fill placed in the bluff, Mr. and Ms. Gieseke have two options, listed below.

    a. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

    b. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

    NOTE: Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than fifty (50) cubic yards of material not in connection with another permitted use requires a conditional use permit (hereinafter "CUP"). At this point, because a variance has not been granted for the cutting/filling of the 1,000 cubic yards of materials noted on the survey (dated November 23, 2020), a CUP would be required for the activity. The after-the-fact CUP process was summarized in a letter to Mr. and Ms. Gieseke from NCPPS dated October 27, 2020.

3. Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

4. Signing the official application, to be provided by NCPPS. Before NCPPS can draft the official application, Mr. and Ms. Gieseke will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance they are requesting. Once the application is signed and complete, the request will then be added to the next available hearing date.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

February 5, 2021

Sent via email to: steve@thelegalprofessionals.com

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Property Violations

Dear Mr. Franta,

The purpose of this letter is to respond to your letter to Nicollet County Property and Public Services ("NCPPS") dated January 20, 2021. Your letter regards Patrick and Shana Gieseke's application for an after-the-fact variance concerning their property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The after-the-fact variance concerns violations of the Nicollet County Zoning Ordinance on their property. This matter has been the subject of numerous previous letters from NCPPS to the Giesekes and your office. The most recent letter to you was dated January 6, 2021.

Your January 20, 2021 letter addressed three topics. These topics are discussed below:

1. The January 6, 2021 letter from NCPPS required the Giesekes to submit verification concerning ***offsite earth movement***. The amount of material that was moved offsite is not questioned. It is the **location** of the material moved offsite and **who** moved the material offsite that remains to be resolved. The Giesekes have previously provided inconsistent and contradictory information regarding the location of the offsite earth movement and who moved the earthen material offsite. The information previously provided is not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

2. Your January 20, 2021 letter states the Giesekes intend to resolve the ***onsite earth movement*** by adding it to the five original components of their after-the-fact variance application. The after-the-fact variance will now include a total of six components:

    1.1 Expanding a nonconforming structure;

    1.2 Reducing the bluff setback for the dwelling addition;

    1.3 The alteration of protected bluff areas;

    1.4 Reducing the front yard setback for the dwelling addition;

1.5 Reducing the front yard setback for a replacement septic system; and

1.6 Placement of fill within a bluff area.

If we have misunderstood your intentions for resolving the onsite earth movement violation please inform us of the Giesekes' correct intention.

3. Your January 20, 2021 letter asks if an ***In-person assessment and discussion*** may be possible. Please provide NCPPS with the specific points that would be the focus of any potential discussion.

Incomplete Application
The Giesekes' application will remain on hold until **all** four of the steps outlined in the January 6, 2021 letter are completed.

Conclusion
The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals, the requirements may be subject to change. If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

March 5, 2021

Sent via email to: steve@thelegalprofessionals.com

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Property Violations

Dear Mr. Franta,

The purpose of this letter is to respond to your February 19, 2021 email to Nicollet County Property and Public Services ("NCPPS"). Your email regards Patrick and Shana Gieseke's application for an after-the-fact variance concerning their property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35-111-31, in West Newtown Township. The after-the-fact variance concerns violations of the Nicollet County Zoning Ordinance on their property. This matter has been the subject of numerous previous letters from NCPPS to the Giesekes and your office. The most recent letter to you was dated February 5, 2021.

The February 19, 2021 email contained five questions concerning the Giesekes' after-the-fact variance request:

1. Is #2 of the January 6th letter completely fulfilled? Yes, number two of the January 6th letter is fulfilled. The variance components presently include:

    i. Expanding a nonconforming structure;
    ii. Reducing the bluff setback for the dwelling addition;
    iii. The alteration of protected bluff areas;
    iv. Reducing the front yard setback for the dwelling addition;
    v. Reducing the front yard setback for a replacement septic system; and
    vi. Allowing fill to be placed in a protected bluff area.

2. What are the "precise elements to be listed" which are referred to in #4 of the January 6th letter? The precise elements are the distances the setbacks are to be reduced by.

    a. Have they not yet been identified? No, they have not been identified in a formal written statement.

b. Do you have a form that identifies these required elements? I have attached a copy of the Zoning Permit Fact Sheet to this letter. The required setback distances are listed on the fact sheet. You may review previous requests heard by the Board of Adjustment and Appeals by accessing them online at:

https://www.co.nicollet.mn.us/344/Board-of-Adjustment-Appeals

You can access the Zoning Ordinance online at:

https://www.co.nicollet.mn.us/341/Planning-Zoning

c. What elements you are looking for that we have not yet informed you of or have otherwise not yet been provided? A written statement identifying the precise elements to be used on the official variance application form.

d. How are these elements different from the paragraph 2 listed components? Please see "b."

Incomplete Application

The Giesekes' application will remain on hold until **all** four of the steps outlined in the January 6, 2021 letter are completed. Step 2 has been completed. Steps 1, 3, and 4 have not been completed.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals, the requirements may be subject to change. If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc. Zoning Permit Fact Sheet

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

2020-2021 CHRONOLOGY

July 16: NCPPSD acknowledged Shana's letter apologizing for four months of Covid, 60 hour work weeks, kids home from school, spouse busy with seasonal ramp up in work schedule and essentially overwhelmed with circumstances.

July 17: NCPPSD asks if construction has ceased "for now", what project is, informs that site visit and research are next; Shana informs NCPPSD project is a remodel of footprint moving living space into garage and extending garage and that had ceased.

July 21: NCPPSD sight visit viewed bluff and washout but no question or viewing of the home addition.

August 13: NCPPSD letter cites violations and options for resolution after the fact variance, zoning permits and require plan to resolve within a week.

August 18: Shana emails and calls NCPPSD in response.

NCPPSD advises that

1. "realistically looking at October" hearing on application completion
2. dependent on "how soon" Pat & Shana wish to "resume construction"
3. state specifically winter coming, best to "move quickly" and the "earlier the better";
4. states "honestly you did this the right way because after the fact variance is much easier to obtain"
5. "as long as you work with us we will work with you" but we will stop helping you if you do not cooperate

August 21: Pat & Shana submit cost estimate, contractor information, letter, and plans by NCPPSD deadline.

NCPPSD confirms letter meets their requirements, advises that "upon resolution, we will issue letter stating construction may recommence"

August 25: Pat & Shana discovered NCPPSD trespassed without their knowledge or presence; mistakenly leave two documents on workbench inside shop on premises.

NCPPSD advises they will work Pat and Shana to prepare a variance first; upon approved may then apply for zoning permit which "should be a smooth process"

Pat & Shana requested a solution to close up addition, to keep weathertight, and to keep wildlife and trespassers out.

August 26: Shana & Pat engaged surveyor.

August 27: Shana & Pat submitted septic compliance inspection and ask NCPPSD to confirm last requirement is survey Surveyor checks with NCPPSD to assure survey includes all things required to meet next day deadline for September hearing. NCPPSD advises Shana & Pat to submit a proposal to close up the addition.

August 28: Survey submitted to NCPPSD.

September 2: NCPPSD **letter** of "**incomplete** application" requires second site visit by September 15; survey must contain "all elements necessary for variance request" and; must provide a secondary/alternative septic system location and construction proposal.

September 4: Shana & Pat arrange for requested site visit and alternative septic location; Surveyor asks NCPPSD if anything additional is needed.

Shana & Pat submit proposal to protect and enclose addition for protection from weather, wildlife, and trespassers.

September 10: Shana & Pat ask NCPPSD for update on follow up. to September 2 letter requirements for site visit, survey, septic, construction proposal.

NCPPSD advises they are working on follow up.

September 15: Pat & Shana request NCPPSD reply to third request without response from NCPPSD to meet September 15 deadline; 13 days without a response; check for $1,046 submitted to NCPPSD for application fee.



NCPPSD states working on draft of response.

Necessity required roof installation to avoid damage to exposed ceiling of the residence, condemnation, mold, rot and uninhabitability.

NCPPSD denies Pat & Shana's proposal to protect their home; scheduled site visit for September 18; give non-specific response to request to advise of aspects needed to add to proposal.

September 18: NCPPSD site visit

1. NCPPSD falsely states Pat's assertion that he will continue construction when he in fact said he will finish the TyVek
2. NCPPSD replied "You can" and mumbled something inaudible.

September 24: attorneys first communicate on follow up to requirements and clarifications requested. NCPPSD states in email NCPPSD does not go on property without prior consent of landowner.

September 24 Surveyor states no contact from NCPPSD since September 4.

October 2: NCPPSD **letter** listing additional requirement/revisions required stating submissions **incomplete**.

October 9: Shana & Pat **reply**.

October 27: NCPPSD **letter** listing additional requirements/revisions required stating submissions **incomplete**.

November 23: Shana & Pat **reply**.

December 7: NCPPSD **letter** listing additional requirements/revisions required stating submissions **incomplete**.

December 17: Shana & Pat **reply**.

January 6, 2021: NCPPSD **letter** listing additional requirements/revisions required stating submissions **incomplete.**

January 20, 2021: Shana & Pat **reply.**

February 5, 2021: NCPPSD **letter** listing additional requirements/revisions required stating submissions **incomplete.**

February 19, 2021: Shana & Pat **reply.**

March 5, 2021: NCPPSD **letter** listing additional requirements/revisions required stating submissions **incomplete.**

March 19, 2021: Shana & Pat **reply**.

Erosion and Sediment Control Plan

62208 County Road 21

New Ulm, MN 56073

➢ An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.

- Identify the practices and methods to be used to mitigate erosion and sedimentation – Bluff
  - Retaining wall
  - Black dirt back fill
  - Climbing vine plant
  - Creeping Juniper and/or other hardy perennial
  - Grade area between garage & bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

- Identify the practices and methods to be used to mitigate erosion and sedimentation – ravine gully (washout)
  - Grade area evenly & plant with shade tolerant grass/plant mix
  - Once planted, erosion control blanket installed on all exposed & seeded surfaces.
    - Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberrry, Leadplant, Big Blue Stream Grass, Little Blue Steam Grass Swamp Milkweed, common Boneset, Wild Bergamot.

- Note what is currently being done to control erosion –
  - Unfortunately, nothing as Nicollet County Property and Public Services have served us with a Cease and Desist order and threatened us with a restraining order if we proceed with anything. We have not been able to do anything since July 2020

- What you are planning for future erosion control on your property –
  - See above as well as submitted Recommendations from Nicollet SWCD

Revised 12/08/2020

EXHIBIT
tabbies 38

GIESEKE PROPERTY
62208 COUNTY RD 21
NEW ULM MN 56073

The following are recommendations from Nicollet Soil & Water Conservation District to control potential erosion from the Gieseke property, located at 62208 County Road 21 in Nicollet County.

1. Control bluff cut behind garage by installing a retaining wall feature. Wall should run along the entire length of disturbed side hill and be installed far enough away from the bluff cut to allow for back fill of black dirt. Dirt fill will aid in plant establishment. A climbing vine plant can be planted on the bluff face. Creeping Juniper or other hardy perennial along the top of the retaining wall will aid in erosion control.

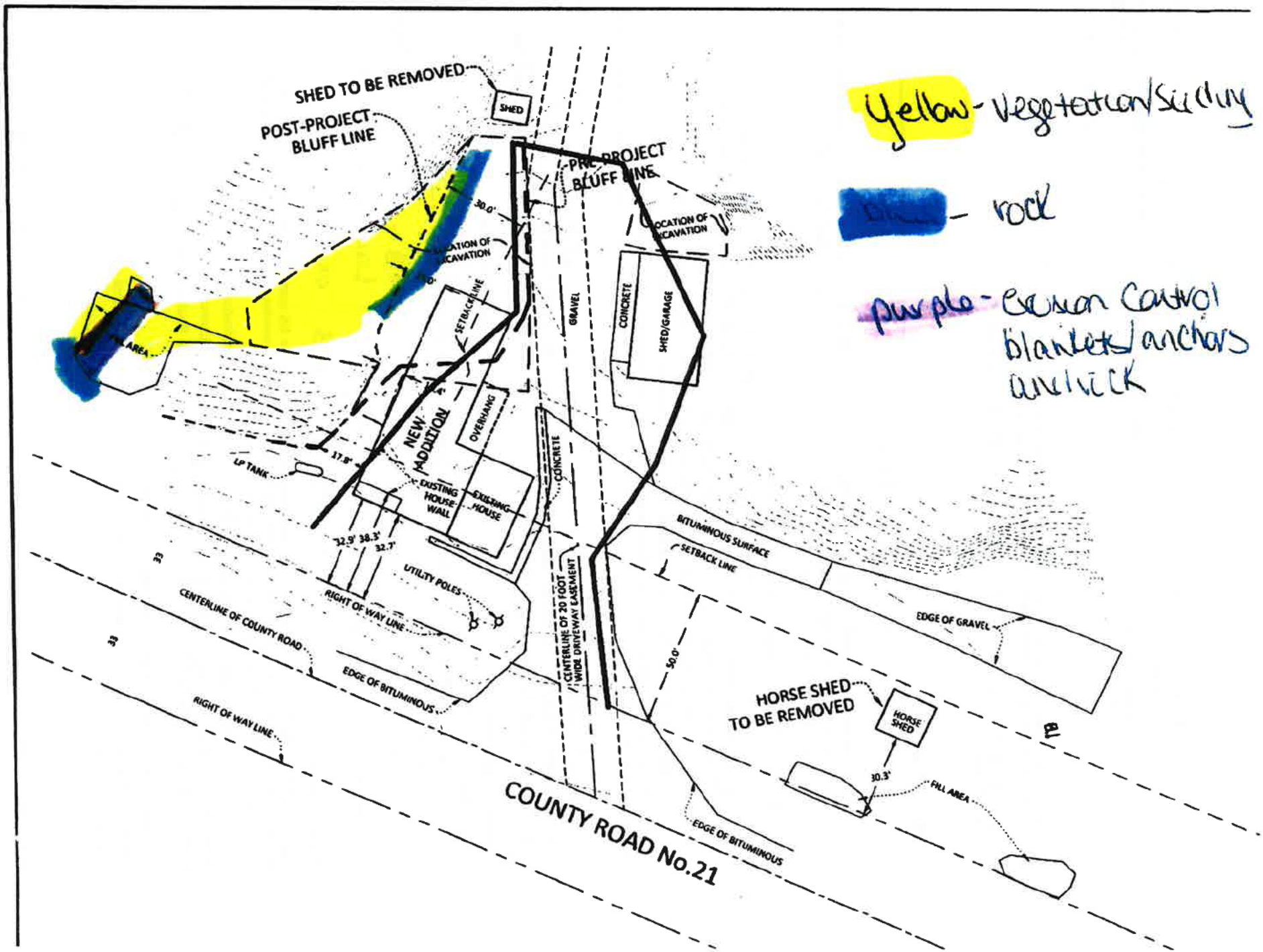
2. Grade area between garage and bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

3. Fill can be left in place in the ravine gully to the west of the residence. Removing the fill will disturb the area further causing potential erosion into the road ditch, and damage of septic system. This area should be graded evenly and planted with a shade tolerant grass/plant mix. Once planted, erosion control blanket should be installed on all exposed and seeded surfaces.
   a. Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberry, Leadplant, Big Blue Steam Grass, Little Blue Steam Grass Swamp Milkweed, Common Boneset, Wild Bergamot.
   b. Contact Seed distributer (Albert Lea Seed House, etc.) to get their recommendation on a mix suited for shade, part sun.

4. To stabilize ravine erosion at the gully, near the filled area, Nicollet SWCD recommends minimal grading to allow the placement of Geo Erosion fabric and the placement of rock. Rock should be large Limestone or Quarts, or field stone. The field at the top of this gully is enrolled into the CRP program, allowing for reduced peak flows.



Blake Honetschlager
District Technician
Nicollet SWCD


SHED TO BE REMOVED
SHED
POST-PROJECT BLUFF LINE
PRE-PROJECT BLUFF LINE
30.0'
LOCATION OF EXCAVATION
FILL AREA
SETBACK LINE
GRAVEL
CONCRETE
SHED/GARAGE
NEW ADDITION
OVERHANG
17.8'
LP TANK
EXISTING HOUSE WALL
EXISTING HOUSE
CONCRETE
32.9'
38.3'
32.7'
UTILITY POLES
RIGHT OF WAY LINE
CENTERLINE OF COUNTY ROAD
EDGE OF BITUMINOUS
RIGHT OF WAY LINE
33
33
CENTERLINE OF 20 FOOT WIDE DRIVEWAY EASEMENT
BITUMINOUS SURFACE
SETBACK LINE
EDGE OF GRAVEL
50.0'
HORSE SHED TO BE REMOVED
HORSE SHED
30.3'
FILL AREA
EDGE OF BITUMINOUS
COUNTY ROAD No.21
Yellow - Vegetation/Seeding
rock
purple - Erosion Control blankets/anchors and rock

Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Compliance Inspection Form

Existing Subsurface Sewage Treatment Systems (SSTS)

Doc Type: Compliance and Enforcement

Instructions: Inspection results based on Minnesota Pollution Control Agency (MPCA) requirements and attached forms – additional local requirements may also apply.

Submit completed form to Local Unit of Government (LUG) and system owner within 15 days

For local tracking purposes:

System Status

System status on date (mm/dd/yyyy): 8-27-20

☒ **Compliant – Certificate of Compliance**
(Valid for 3 years from report date, unless shorter time frame outlined in Local Ordinance.)

☐ **Noncompliant – Notice of Noncompliance**
(See Upgrade Requirements on page 3)

Reason(s) for noncompliance *(check all applicable)*

- ☐ Impact on Public Health *(Compliance Component #1) – Imminent threat to public health and safety*
- ☐ Other Compliance Conditions *(Compliance Component #3) – Imminent threat to public health and safety*
- ☐ Tank Integrity *(Compliance Component #2) – Failing to protect groundwater*
- ☐ Other Compliance Conditions *(Compliance Component #3) – Failing to protect groundwater*
- ☐ Soil Separation *(Compliance Component #4) – Failing to protect groundwater*
- ☐ Operating permit/monitoring plan requirements *(Compliance Component #5) – Noncompliant*

Property Information

Parcel ID# or Sec/Twp/Range: 111N - 31W - 35

Property address: 62208 CORD 21 New Ulm MN 56073
Reason for inspection: Bld Permit
Property owner: Dat + Shana Giesecke
Owner's phone: [redacted]-507-217-9392
or
Owner's representative:
Representative phone:
Local regulatory authority:
Regulatory authority phone:
Brief system description: Septic tank Pump tank Drainfield
Comments or recommendations:
system is in compliant for Design of 3 Bedroom House 20' short of Design for lack of Room County okeyed on Asbuilt

Certification

I hereby certify that all the necessary information has been gathered to determine the compliance status of this system. No determination of future system performance has been nor can be made due to unknown conditions during system construction, possible abuse of the system, inadequate maintenance, or future water usage.

Inspector name: Harold Reinhart JR
Certification number: 195
Business name: Lafayette Excavating, Inc
License number: 195
Inspector signature: Harold Reinhart
Phone number: 507-228-8802

Necessary or Locally Required Attachments

☒ Soil boring logs ☒ System/As-built drawing ☐ Forms per local ordinance
☐ Other information (list):

EXHIBIT 39

56

HAR

Property address: 12208 Co Rd 21 New Ulm MN 56073 Inspector initials/Date: HAR 8-27-20

1. Impact on Public Health – Compliance component #1 of 5

Compliance criteria:	
System discharge sewage to the ground surface.	☐ Yes ☒ No
System discharge sewage to drain tile or surface waters.	☐ Yes ☒ No
System cause sewage backup into dwelling or establishment.	☐ Yes ☒ No

Any "yes" answer above indicates the system is an Imminent Threat to Public Health and Safety.

Verification method(s):

- ☒ Searched for surface outlet
- ☐ Searched for seeping in yard/backup in home
- ☐ Excessive ponding in soil system/D-boxes
- ☐ Homeowner testimony *(See Comments/Explanation)*
- ☐ "Black soil" above soil dispersal system
- ☐ System requires "emergency" pumping
- ☐ Performed dye test
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other methods not listed *(See Comments/Explanation)*

Comments/Explanation:

2. Tank Integrity – Compliance component #2 of 5

Compliance criteria:	
System consists of a seepage pit, cesspool, drywell, or leaching pit. *Seepage pits meeting 7080.2550 may be compliant if allowed in local ordinance.*	☐ Yes ☒ No
Sewage tank(s) leak below their designed operating depth.	☐ Yes ☒ No
If yes, which sewage tank(s) leaks:	

Any "yes" answer above indicates the system is Failing to Protect Groundwater.

Verification method(s):

- ☐ Probed tank(s) bottom
- ☐ Examined construction records
- ☐ Examined Tank Integrity Form *(Attach)*
- ☐ Observed liquid level below operating depth
- ☐ Examined empty (pumped) tanks(s)
- ☐ Probed outside tank(s) for "black soil"
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other methods not listed *(See Comments/Explanation)*

Comments/Explanation:

See Attached Pumpers certificate

3. Other Compliance Conditions – Compliance component #3 of 5

a. Maintenance hole covers are damaged, cracked, unsecured, or appear to structurally unsound. ☐ Yes* ☒ No ☐ Unknown

b. Other issues *(electrical hazards, etc.)* to immediately and adversely impact public health or safety. ☐ Yes* ☒ No ☐ Unknown
System is an imminent threat to public health and safety

Explain:

c. System is non-protective of ground water for other conditions as determined by inspector ☐ Yes* ☒ No
System is failing to protect groundwater

Explain:

Property address: 42208 co Rd 21 New Ulm mn 56073 Inspector Initials/Date: HAR 8-25-20

4. Soil Separation – Compliance component #4 of 5

Date of installation: 9-11-97 ☐ Unknown

Shoreland/Wellhead protection/Food Beverage Lodging? ☐ Yes ☐ No

Compliance criteria:

For systems built prior to April 1, 1996, and not located in Shoreland or Wellhead Protection Area or not serving a food, beverage or lodging establishment: Drainfield has at least a two-foot vertical separation distance from periodically saturated soil or bedrock.	☐ Yes ☐ No
Non-performance systems built April 1, 1996, or later or for non-performance systems located in Shoreland or Wellhead Protection Areas or serving a food, beverage, or lodging establishment: Drainfield has a three-foot vertical separation distance from periodically saturated soil or bedrock.*	☒ Yes ☐ No
"Experimental", "Other", or "Performance" systems built under pre-2008 Rules; Type IV or V systems built under 2008 Rules (7080.2350 or 7080.2400 (Advanced Inspector License required) Drainfield meets the designed vertical separation distance from periodically saturated soil or bedrock.	☐ Yes ☐ No

Any "no" answer above indicates the system is Failing to Protect Groundwater.

Verification method(s):

Soil observation does not expire. Previous soil observations by two independent parties are sufficient, unless site conditions have been altered or local requirements differ.

- ☒ Conducted soil observation(s) *(Attach boring logs)*
- ☒ Two previous verifications *(Attach boring logs)*
- ☐ Not applicable *(Holding tank(s), no drainfield)*
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other *(See Comments/Explanation)*

Comments/Explanation:

Indicate depths of elevations

A. Bottom of distribution media	36"
B. Periodically saturated soil/bedrock	72"
C. System separation	36"
D. Required compliance separation*	36"

*May be reduced up to 15 percent if allowed by Local Ordinance.

5. Operating Permit and Nitrogen BMP* – Compliance component #5 of 5 ☐ Not applicable

Is the system operated under an Operating Permit? ☐ Yes ☐ No **If "yes", A below is required**

Is the system required to employ a Nitrogen BMP? ☐ Yes ☐ No **If "yes", B below is required**

BMP=Best Management Practice(s) specified in the system design

If the answer to both questions is "no", this section does not need to be completed.

Compliance criteria

a. Operating Permit number: _____ Have the Operating Permit requirements been met?	☐ Yes ☐ No
b. Is the required nitrogen BMP in place and properly functioning?	☐ Yes ☐ No

Any "no" answer indicates Noncompliance.

Upgrade Requirements *(Minn. Stat. § 115.55) An imminent threat to public health and safety (ITPHS) must be upgraded, replaced, or its use discontinued within ten months of receipt of this notice or within a shorter period if required by local ordinance. If the system is failing to protect ground water, the system must be upgraded, replaced, or its use discontinued within the time required by local ordinance. If an existing system is not failing as defined in law, and has at least two feet of design soil separation, then the system need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more strict. This provision does not apply to systems in shoreland areas, Wellhead Protection Areas, or those used in connection with food, beverage, and lodging establishments as defined in law.*

Boring # 1 BORING LOGS			Boring # BORING LOGS			Boring # BORING LOGS		
Depth in Inches	USDA Soil Texture	Munsell Color	Depth in Inches	USDA Soil Texture	Munsell Color	Depth in Inches	USDA Soil Texture	Munsell Color
0-5	Loam	10YR 3/2			Y /			Y /
5-20	Loam	25Y 5/4			Y /			Y /
20-73	Loam	25Y 5/4			Y /			Y /
73+	Lime	25Y 8/2			Y /			Y /
		Y /			Y /			Y /

See Attached As Built

NOTES:

ISTS SITE EVALUATION AND DESIGN FORM

As Built 9-11-97

PROPERTY INFORMATION

67208 CO Rd 21

Owner Jim Schlumpberger Mobile 507-276-6543
Address RR3 Box 22
City, State, Zip New Ulm, MN 56073 Phone 507-359-9063
ID # _____ Permit # _____
Township _____ Section _____
Subdivision _____ Lot _____ Block _____

SOILS:

N.R.C.S. Map Unit Symbol _____
Landscape Position convex concave plane
Vegetation Type Grass, Brush
Depth to Restricting Layer 72 inches
Soil Sizing Factor (SSF) 1.67

DESIGN CRITERIA:

New/Upgrade/Replacement
Number Bedrooms 3 Type (I) (II) (III) (IV)
Type of Water Using Appliances Washing machine

Design Flow 450 gpd

Tanks Size		Material
Septic	1500 gal	Cement
Aerobic	gal	
Pump Tank	gal	
Holding Tank	gal	

Manufacturer Name Belle Plaine
Depth of Cover Over Tank 48 inches
Trench System: Rock 6" 12" 18" 24" Graveless 8" (10")
Land Slope 20 %
Lineal Feet of Trench 250 ft
Trench Depth Below Natural Grade 24 to 30 inches
Depth of Soil over Laterals 12 to 24 inches

Mound System:
Land Slope _____ %
Rockbed Dimensions _____ ft x _____ ft
Absorption Width _____ ft
Berm Width: Upslope _____ ft Downslope _____ ft
Final Mound Dimensions _____ ft x _____ ft

Atgrade System:
Land Slope _____ %
Linear Loading Rate _____ gpd/ft 8 6 4 3 2
Rockbed Dimensions _____ ft x _____ ft
Absorption Width _____ ft
Berm Width: Upslope _____ ft Downslope _____ ft

Pressure Distribution System
Size of Perforated Laterals 1.25" 1.5" 2.0"
Size of Perforations 1/4" 7/32" @ _____ inch spacings
Required Flow Rate _____ gpm

Pump Information
Pump Capacity 20 gpm Total Head 41 ft

BORING LOGS

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
0-5	Loam	10YR 3/2
5-21	Loam	2.5Y 5/4
21-72	Loam	2.5Y 5/4
	Lime	2.5Y 8/2
		Y /

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
		Y /
		Y /
		Y /
		Y /
		Y /

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
		Y /
		Y /
		Y /
		Y /
		Y /

CONTRACTOR INFORMATION

LAFAYETTE EXCAVATING, INC.
P.O. BOX 204
LAFAYETTE, MN 56054
PHONE # 507-228-8902

Company _____ License # 195
Signature _____ Date 7/25/97
Reviewed By _____ Date _____

☐ Approved ☐ Additional Information Needed ☐ Design Worksheets Required

Form 1997

60

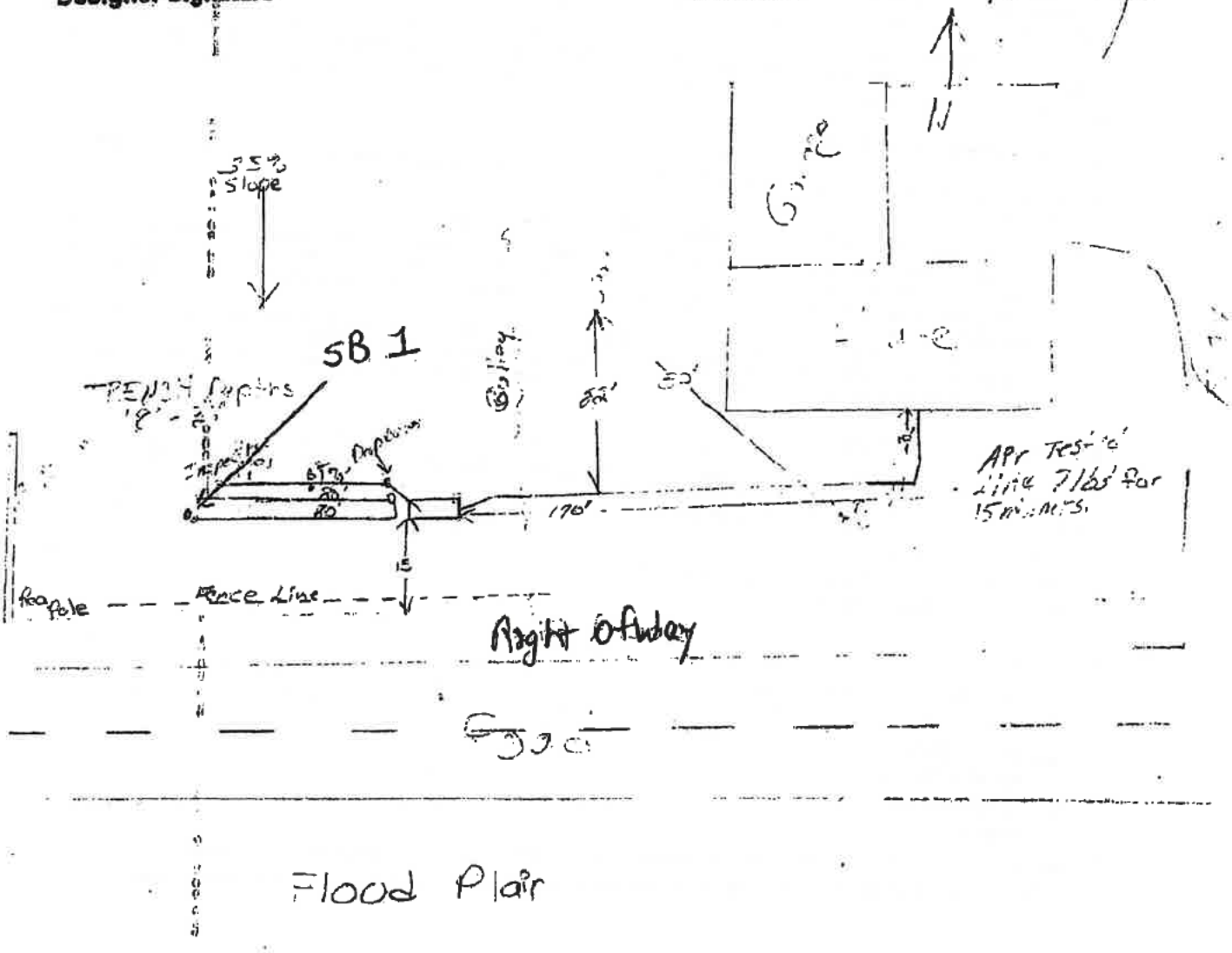
SOIL TREATMENT SYSTEM SITE PLAN DRAWING / REQUIRED INFORM

ck box if completed:

- ☐ North arrow
- ☐ Designated soil treatment area
- ☐ Alternate soil treatment area
- ☑ Soil borings & perc test locations with horizontal & vertical reference point
- ☐ Wells within 100 feet
- ☐ Sewer lines within 50 feet of wells
- ☑ Percent & Direction of slope(s)
- ☑ Existing & proposed waterlines within 50'
- ☑ Lakes, rivers, streams, wetlands
- ☐ Ordinary high water level of public waters
- ☐ Ten year flood elevation
- ☐ Flooding potential areas
- ☐ Location of disturbed or compacted areas
- ☐ Location of run-on potential areas
- ☐ Elevation of bottom of soil tr... area
- ☐ Access route for tank maintenan...
- ☐ Road right-of-way (s)
- ☑ Lot/property lines
- ☑ Lot dimensions
- ☑ Lot easements
- ☑ Setbacks from buildings
- ☐ Proposed & existing buildings

SCALE: 1 Inch = No Scale

Designer Signature | License # 195 | Date 7/22/97



CERTIFICATION STATEMENT/AS-BUILT

I hereby certify as a State of Minnesota Licensed Installer that the individual sewage treatment system diagramed above was installed in accordance with all applicable requirements of Minnesota Rules Chapter 7080. The diagram of the installation is accurate as of the date at the bottom of this form for the site identified on the reverse side of this form. No determination of future hydraulic performance can be made due to future water usage over the life of the system.

Installer Signature | License # 195 | Date 9/11/97

Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Sewage Tank Maintenance Reporting Form

Subsurface Sewage Treatment Systems (SSTS) Program

Purpose: Management and maintenance of Subsurface Sewage Treatment Systems (SSTS) are important to ensure resource protection and long-term and cost-effective sewage treatment. Completion of this form complies with the sewage tank maintenance requirements under Minn. R. 7080.2450 and 7082.0600. This form may be used to certify the compliance status of the sewage tank components of the SSTS. **This form is not a complete SSTS inspection report and may only certify sewage tank compliance status when entirely completed and signed on page 3 by a qualified professional.**

Instructions: A copy of this information must be submitted to the system owner within 30 days of the maintenance date and be maintained by the licensed SSTS maintainer business for a period of five (5) years from the maintenance date. Maintenance reporting to the local unit of government may be required by local ordinance. Check with your local SSTS program for maintenance reporting protocol.

Secure maintenance hole covers

All maintenance hole covers must be returned to service in a sound and durable condition and be capable of withstanding the anticipated load.

Covers must be re-secured in accordance with Minn. R. 7080.2450, subp. 3, items C or D:

a) Covers installed under local ordinances adopted after February 4, 2008 must be locked, bolted or screwed or must be 95 pounds in weight. They must be made of material suitable for outdoor use, resistant to ultraviolet degradation and leaks, and not susceptible to being slid or tipped. They must have a label warning of hazardous conditions inside the tank. All screw openings must be refastened.

b) Covers installed under local ordinances adopted before February 4, 2008 must either be buried with at least 12 inches of soil cover or be secured according to the local ordinance in effect before February 4, 2008.

c) Covers must meet item 'a' above when raised to the ground surface or less than 12 inches from the ground surface.

Reporting information

Date of maintenance (mm/dd/yyyy): 08/26/2020 **Reason for maintenance:** Tank Inspection

Property address: 62208 Cty Rd 21 **Parcel ID:**

City: New Ulm **State:** MN **Zip code:** 56073

Property owner's name: Pat Gieseke

Property-owner's address *if different*:

City: **State:** **Zip code:**

Phone number: **Email address:**

1. **Did you measure the accumulation of scum and sludge?** ☐ Yes ☒ No (tank(s) pumped without measuring)

Tank (check if present)	Scum	Sludge	Operating depth	Percent full
☐ Septic/holding tank #1				
☐ Septic/holding tank #2				
☐ Pretreatment tank				
☐ Pump tank				

2. **Access used to remove septage:** ☒ Maintenance hole ☒ Other (Unless a holding tank, go to #4 below) Main Tank
3. **If the maintenance hole was used, were all covers secured in place?** ☒ Yes ☐ No **If no, *please explain below:***

4. **If the owner refuses to allow a Subsurface Sewage Treatment System (SSTS) to be pumped through the maintenance hole, have them complete and sign the following statement.**

I, _____ *(Print owner's name)*, refuse to allow the removal of the solids and liquids through the maintenance hole. I understand that removal of solids and liquids through other access points is not considered a compliant method of solids removal and does not fulfill the solids removal requirements of Minn. R. 7080.2450 and 7082.0600.

Owner's signature: _____ **Date (mm/dd/yyyy):** _____

Property address: 62208 Cty Rd 21 Parcel ID:

City: New Ulm State: MN Zip code: 56073

5. **Is the tank designed as a leaky tank?** *(Example: seepage pit, cesspool, drywell, leaching pit)*

Tank #1: ☐ Yes ☒ No Verification method used: Holds Water

Tank #2: ☐ Yes ☒ No Verification method used: " "

6. **Is there evidence of the following?**

Tank (check if present)	Tank leaks below the designed operating depth	Tank leaks above the designed operating depth	Maintenance hole cover is damaged, cracked, unsecured, or appears to be structurally unsound
☐ Septic/holding Tank #1	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No
☐ Septic/holding Tank #2	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
☐ Pretreatment Tank	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
☐ Pump Tank	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No
Describe detail for any "Yes"			

7. **How many gallons of septage were removed?**

Tank #1: 1000 Tank #2: Pretreatment Tank: Pump Tank: 500

8. **Where was the septage taken?** ☒ Wastewater treatment facility ☐ Land application ☐ Other

Explanation (Facility name/Site #): 1911 S. Valley St. New Ulm

9. **Did you identify any operational issues or unsafe conditions while assessing the sewage tanks in this system?**

☐ Yes ☒ No If yes, identify tank and explain:

☐ Evidence of non-domestic waste ☐ Baffle(s) condition ☐ Effluent screen condition

☐ Maintenance hole and extensions condition ☐ Other conditions (e.g. structural integrity of tank or lid, electrical hazard, etc.)

Explanation:

10. **List any troubleshooting and minor repairs completed or declined by owner:**

☐ Troubleshooting and repairs conducted:	☐ Repairs declined by owner:

Additional comments or suggestions for owner's consideration: The End Baffle inspection Riser is Tipped Slightly I suggest to Dig around it & Straighten it before it gets worse

Pumping record

I personally conducted the work described above on behalf of a Minnesota-licensed SSTS Maintenance Business, in compliance with Minnesota Rules Chapters 7080 – 7083:

☐ As a noncertified individual who has received proper training, daily work review, and periodic observation, or

☐ As a designated certified individual of the business listed below.

Company information

Company name: Schultz Plumbing

Business license number: L3477

Email: schultzplumbing@comcast.net

Employee's signature:

Employee information

Print name: Philip Kirschstein

Certification number: (if applicable): C9219

Phone number: 507-354-6178

Date (mm/dd/yyyy): 08/26/2020

Property address: 62208 cty Rd 21 Parcel ID: _____

City: Akeley State: MN Zip code: _____

Optional section: Sewage Tank Compliance Certification

This form does not represent a complete system inspection report and only certifies sewage tank compliance status.

Instructions: This section of the form may be completed and signed by a Designated Certified Individual (DCI) of a licensed SSTS Maintenance Business who personally conducts the necessary procedures to assess the compliance status of each sewage tank in the system.

When this section of the form is signed by a qualified certified professional, it becomes *necessary supporting documentation* to an Existing System Compliance Inspection Report. Compliance inspection form - Existing system (wq-wwists4-31b). This form can be found on the MPCA website at https://www.pca.state.mn.us/water/ssts-and-msts-technical-and-compliance-criteria.

The information and certified statement on this form is required when existing septic tank compliance status is determined by an individual other than the SSTS inspector that submits the inspection report. It represents a third party assessment of SSTS component compliance and is allowable under Minn. R. 7082.0700, subp. 4 item (B) subitem (1). This form is valid for a period of three years beyond the signature date on this form unless a new evaluation is requested by the owner or owner's agent or is required according to local regulations. Additional Administrative Rule references for this activity can be found at Minn. R. 7082.0700, subp. 4 items B, C, and D; 7083.0730 item C.

☒ **Certificate of sewage tank compliance**

Affirm all three statements:

- ☒ The SSTS does not contain a seepage pit, cesspool, drywell, leaching pit, or other pit.
- ☒ It does not contain a sewage tank that was designed to be watertight, but subsequently leaks below the designed operating depth.
- ☒ It does not represent an imminent safety threat by reason of unsecured, damaged, or weak maintenance hole cover(s) or other unsafe condition.

☐ **Notice of sewage tank non-compliance**

Select all that apply:

- ☐ The SSTS has a seepage pit, cesspool, drywell, leaching pit, or other pit.
- ☐ It has a sewage tank that was designed to be watertight, but subsequently leaks below the designed operating depth.
- ☐ It presents a threat to public safety by reason of unsecured, damaged, or weak maintenance hole cover(s) or other unsafe condition.

Company information

Company name: Schultz Plumbing

Business license number: L3477

Designated Certified Individual (DCI) information

Print name: Philip Kirschstein

Certification number: C9219

I personally conducted the work described above as a Designated Certified Individual of a Minnesota-licensed SSTS Maintenance Business. I personally conducted the necessary procedures to assess the compliance status of each sewage tank in this SSTS:

Designated Certified Individual's signature: [signature] Date (mm/dd/yyyy): 08/26/2020

Offsite Earth Movement

62208 County Road 21

New Ulm, MN 56073

We have previously and repeatedly stated, we have no idea who removed the dirt from our property. Randomly, one day an older gentleman stopped by and talked with Pat. He said he travels our road frequently and noticed we were removing dirt. He asked what our plans were for the removed dirt and when Pat told him we didn't have plans he stated that him and his brother could use it. If we didn't mind, they would come, load it and haul it away at no expense to us. We all agreed.

One evening, upon arriving home from work there was a skidsteer / loader at our home. Over the course of the next couple of days this man came, loaded the dirt and hauled it away from our property while we were at work.

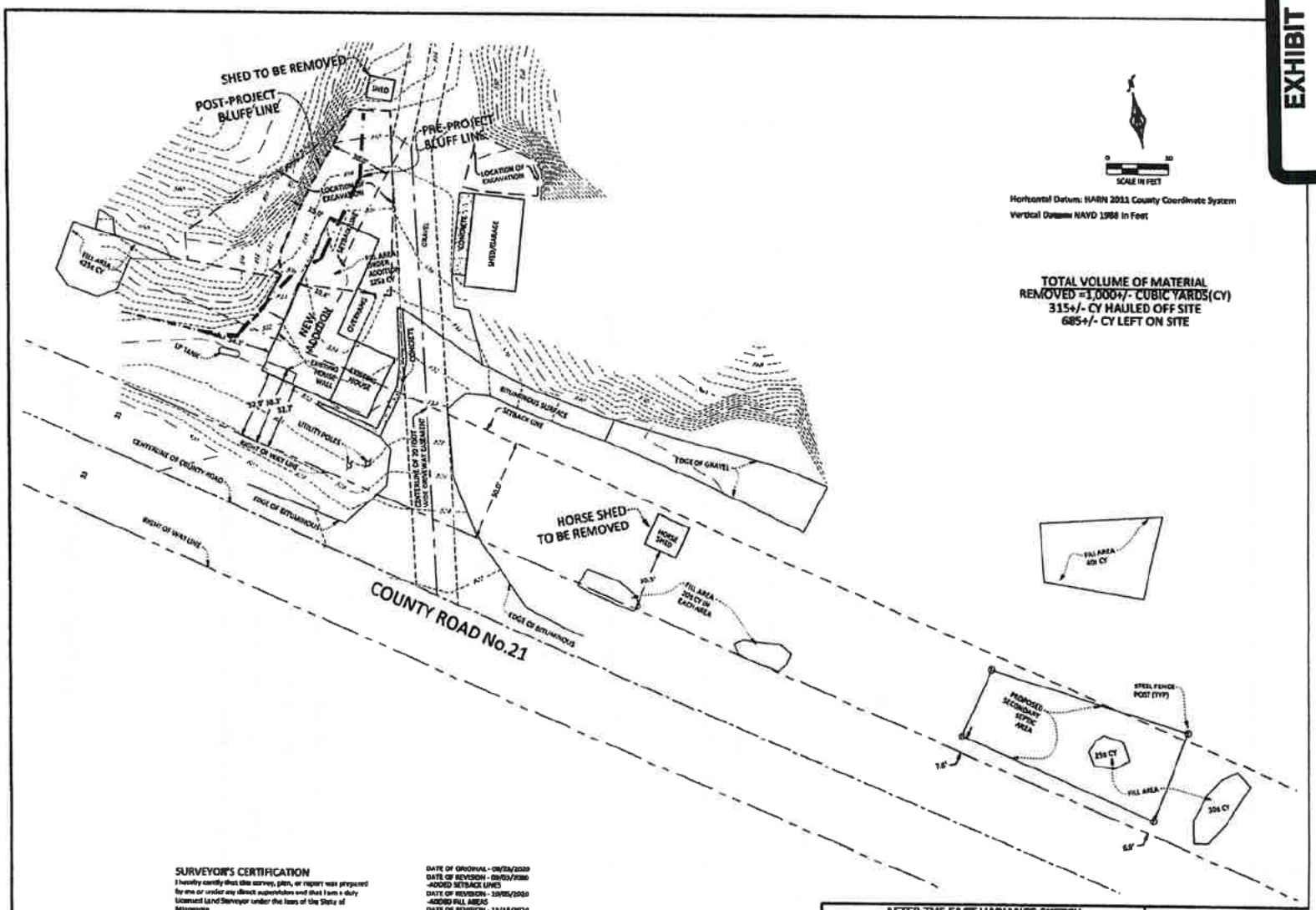
There has been no more communication with this man and we have not seen him since.

We do, however, disagree with the amount of dirt the surveyor "estimates" as being removed. The data the surveyor used for his "pre-project" calculations is from 2010. On the sketch the surveyor shows the "pre-project" bluffline going directly through the garage that was existing. In the google earth picture below, you can clearly see the garage, a truck parked and bluffline that is not accurate on the sketch.

The fill moved cannot be entirely determined and is likely significantly less than 825 cubic yards because the survey shows the "pre-project bluff line" is from the MN LiDAR project from 2010. Jesse Zeig at Bolton & Menk, Inc. does not have any pre-construction elevations besides the LiDAR contours and he stated "they may not be the best but they are all [he has] to work with." His sketch clearly shows the "pre-project bluffline" going thru a building which existed when we purchased the property in 2017.

EXHIBIT
tabbies
40

EXHIBIT 41



TOTAL VOLUME OF MATERIAL REMOVED =1,000+/- CUBIC YARDS(CY)
315+/- CY HAULED OFF SITE
685+/- CY LEFT ON SITE

SURVEYOR'S CERTIFICATION

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

Jesse D. Zelg
License Number 44996
11/18/2020
Date

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DATE OF ORIGINAL - 09/23/2020
DATE OF REVISION - 09/03/2020
-ADDED SETBACK LINES
DATE OF REVISION - 10/05/2020
-ADDED FILL AREAS
DATE OF REVISION - 11/18/2020
-REVISION/ADDED QUANTITIES

Surveyor's Note:

The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP., MCCOLLET COUNTY, MN

BOLTON & MENK
1243 CEDAR STREET SE
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

PART OF THE SE 1/4, SECTION 35-113-31

FOR: PAT AND SHANA GRESEKE

JOB NUMBER: 511.122571 FIELD BOOK: DRAWN BY: RA/JDE

SEC 35-113-31(W)

NICOLLET COUNTY EST. 1853

APPLICANT QUESTIONNAIRE
AFTER-THE-FACT VARIANCE

Name of Applicant: Patrick E. Gieseke and Shana E. Gieseke Date: March 26, 2021

Request: _____

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. The variance is in harmony with the general purposes and intent of the official control.
The purpose of the bluff setback is to provide a buffer between land uses (residential and natural environment) and to protect the bluff as a sensitive natural feature. The variance requested would result in a greater set back then prior actual setback and would not provide any less protection or any greater vulnerability to damage then prior to the variance.

2. The variance is consistent with the intent of the Comprehensive Plan.
The comprehensive plan aims to preserve, protect and conserve resources in the County and specifically bluff areas. The variance will in all respects do exactly what the Plan aims to preserve, protect and conserve.

3. The variance establishes a practical difficulty in complying with the official controls.
The request does establish a practical difficulty. The owner does propose to use the property in a reasonable manner. The property already had a non-conforming circumstance to the bluff setback. The plight is unique to the property. The work requested by the variance will not change the essential character of the locality, which will remain residential and natural environment.

4. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
The plight is unique to the property. It was declared nonconforming decades ago after the building site was established. The subject of this variance is to move south wall on the old addition; allow excavation; extend garage; and place fill in washout on bluff area.

5. The variance will not alter the essential character of the locality.
The essential character of the locality will remain residential and natural environment regardless of whether the variance is granted. It is reasonable to construct a garage attached to a dwelling in a residentially zoned district; to fill in a washout; and to remodel.

(Continued onto back)

EXHIBIT tabbies 42

6. The practical difficulty includes more than economic considerations alone.
The request includes more than economic considerations alone.
The request is based on the location, topography, and history of the property.

Additional After-the-Fact Criteria for use ONLY when first six criteria are met.

7. Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?
Yes, the applicant has been making an extraordinarily good faith effort to obtain a permit prior to the completion of construction.

8. In relation to the subject variance, are there similar structures in the area?
Yes, the project is an addition to the existing house & garage on the property.
There are numerous other similarly situated structures and attached garages on like properties along the road in the neighborhood.

9. Does the burden on the applicant of compliance outweigh the benefit to the County?
Yes, the burden of the applicant would lie in the undoing rescission & restoration to the prior condition. There is neither a benefit to the County to deny the variance nor a determent to the County to grant the variance.

10. Was the act of the violation by the applicant unintentional?
Yes, the applicant has repeatedly told the county staff the violation was unintentional.

NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: Patrick E. Gieseke and Shana E. Gieseke Date: March 26, 2021

Please describe the specific details related to your request, including but not limited to:

- **why you feel the project is a *need* rather than a *want*;**
- **what alternatives you explored and the reasons they were not reasonable for you; and**
- **what use, or uses, the project will provide for you;**

If your request is approved, you will be <u>held</u> to the plans and specifications submitted to the County with your application.

NEED: The condition of the home and the property requires needed updates. It is currently not in compliance with the electrical code or the fire code including no egress; the boiler to heat the home needs replacement; the exterior siding of the old addition is rotting and the home is in desperate need of insulation. A washout on the bluff is eroding the bluff in an area that will eventually get deeper and wider and threaten damage to the septic system.

ALTERNATIVES: After exploring the circumstances and conditions of the property and structure We have concluded that there is no other alternative that is practical or reasonable to explore. The option to allow the property to continue to be in disrepair noncompliant and deteriorating is not an option. Neither is it an option to vacate and abandon the property.

USE: Safe, efficient, healthy, residential use is what the project will provide.

EXHIBIT tabbies 43

Jon Hammel

From: Mandy Landkamer
Sent: Friday, May 1, 2020 3:25 PM
To: 'Shana Gieseke'
Cc: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN
Attachments: District Setbacks.pdf; 2020 Fee Schedule.pdf; Site_Plan_Res_Example.pdf

Hi Shana-

Property Services is processing zoning permits at this time. The county does not have online access for residents to apply for a permit, although staff will email or mail the completed permit for signature, if the required information has been submitted and in compliance with the applicable setbacks and standards. Payment must be received prior to emailing or mailing of the permit. Payment can be made by check, cash, or credit card which requires a convenience fee. The permit must be returned to staff with signature to complete the process.

I have attached the fee schedule, the district setbacks, and an example of a site plan for your consideration. Your property is located within the Conservancy zoning district.

Please let me know if you have additional questions.

Thanks,
Mandy

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, May 01, 2020 12:11 PM
To: Mandy Landkamer
Cc: Jon Hammel
Subject: Building Permit - 62208 County Road 21, New Ulm, MN

Hi Mandy!

I believe we need to obtain a building permit; can this be done on-line?

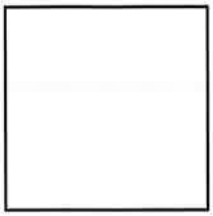
Thanks!

Pat & Shana Gieseke
62208 County Road 21
New Ulm, MN 56073

Shana Gieseke | Mortgage Document Specialist I
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

ATTACHMENT F.1
EMAILS



This message contains confidential information and is intended only for the individual(s) addressed in the message. If you are not the named addressee, you should not disseminate, distribute, or copy this e-mail. If you are not the intended recipient, you are notified that disclosing, distributing, or copying this e-mail is strictly prohibited.

SECURITY NOTICE: Frandsen Bank & Trust will never ask you to send non-public private information through e-mail, such as your PIN, Social Security numbers, or account numbers. Please do not respond to any e-mail requesting this type of information.

Total Control Panel Login

To: mandy.landkamer@co.nicollet.mn.us
From: sgieseke@frandsenbank.com

Message Score: 64
My Spam Blocking Level: Medium

Block this sender
Block frandsenbank.com

High (60): Fail
Medium (75): Pass
Low (90): Pass

This message was delivered because the content filter score did not exceed your filter level.

NOTICE:
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This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please destroy it and notify the sender immediately.



ATTACHMENT F.2
PHOTOS













NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

July 13, 2020

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

RE: Cease and Desist Order, Parcel No. 13.035.1000

Mr. and Mrs. Gieseke:

This letter is a "CEASE AND DESIST" notice for unpermitted development occurring on your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township.

Nicollet County Property Services has sufficient information to indicate violations of the following Zoning Ordinance provisions:

NATURE OF THE VIOLATIONS

- **Minnesota State Statute Chapter 394.36, Subdivision 4, Nonconformities:**
  - "... Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. ..."
- **Section 404.1 Nonconforming Uses and Structures:** Any structure or use existing upon the effective date of the adoption of the Zoning Ordinance, and which does not conform to the provisions of the Ordinance, may be continued for a certain period of time subject to the following conditions:
  - (A) No such use or structure shall be expanded, changed, altered or enlarged except in conformity with the provisions of this Ordinance, nor shall such expansion, change, alteration or enlargement increase the non-conformity of use.
  - (C) If a non-conforming structure is destroyed by any cause, to an extent exceeding fifty (50) percent of its fair market value as indicated by the records of the County Assessor, a future structure on the site shall conform to this Ordinance.

ATTACHMENT F.3
CEASE & DESIST LETTER & ORDER

- **Section 507.1(1) Zoning Permits:** A zoning permit shall be required of all persons prior to:
    - Erection, structural alteration, or relocation of permanent or portable structures.
- **Section 603.4(5.A) Conservancy Zoning District:** Required bluffline setback:
    - For any structure, or excavation for a structure, thirty (30) feet.
- **Section 721 Land Preservation:**
    - **721.1(1):** All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
    - **721.1(2):** Slopes over twelve (12) percent in grade shall not be developed.
    - **721.1(4):** Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
    - **721.1(7):** Whenever possible, natural vegetation shall be retained and protected.

DEVELOPMENT MUST CEASE IMMEDIATELY.

You need to call our office no later than **July 20, 2020** to schedule a site visit with staff. Following the site visit, you may be required to submit additional information and take corrective actions, including, but not limited to, the following:

- Once the property is determined to be in compliance with all applicable County standards and requirements, you will need to apply for any required permits. This may include, but is not limited to, conditional use permits, zoning permits, and variances. Any such permits will now be after-the-fact.

It is your responsibility to notify this office in writing or by phone call when development activity has ceased. If not contacted by **July 20, 2020**, this office will act upon the basis that the violation has not ceased.

Be aware, Section 801 of the Nicollet County Zoning Ordinance states:

"The violation of any provision of this ordinance or the violation of the conditions or provisions of any permit issued pursuant to this ordinance shall be a misdemeanor, and upon conviction thereof, the violator shall be subjected to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense".

Nicollet County Government Center • 501 South Minnesota Avenue • St. Peter MN 56082 www.co.nicollet.mn.us

If you have any questions regarding this letter or the enclosed Cease and Desist Order, please contact our office.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071

Enc: Cease and Desist Order

Cc: John Luepke, Commissioner 5th District
Ryan Krosch, County Administrator
Megan E. Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

CEASE AND DESIST ORDER

Date: July 13, 2020

NICOLLET COUNTY
PROPERTY SERVICES

Land Owner:

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Legal Description:

Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township, Nicollet County Minnesota.

DEVELOPMENT MUST CEASE IMMEDIATELY

You are hereby ordered to cease development immediately. Development includes any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any excavation or land disturbance; or any extension of the use of land.

You are notified that the properties described above of which you are the owner, operator, or other person responsible, is in violation of the Nicollet County Zoning Ordinance. The violations and supporting evidence are identified and listed below.

VIOLATIONS

- **Minnesota State Statute Chapter 394.36, Subdivision 4, Nonconformities:**
    - "... Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. ..."
- **Section 404.1 Nonconforming Uses and Structures:** Any structure or use existing upon the effective date of the adoption of the Zoning Ordinance, and which does not conform to the provisions of the Ordinance, may be continued for a certain period of time subject to the following conditions:
    - (A) No such use or structure shall be expanded, changed, altered or enlarged except in conformity with the provisions of this Ordinance, nor shall such expansion, change, alteration or enlargement increase the non-conformity of use.
    - (C) If a non-conforming structure is destroyed by any cause, to an extent exceeding fifty (50) percent of its fair market value as indicated by the records of the County Assessor, a future structure on the site shall conform to this Ordinance.
- **Section 507.1(1) Zoning Permits:** A zoning permit shall be required of all persons prior to:
    - Erection, structural alteration, or relocation of permanent or portable structures.

- **Section 603.4(5.A) Conservancy Zoning District:** Required bluffline setback:
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- **Section 721 Land Preservation:**
    - **721.1(1):** All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
    - **721.1(2):** Slopes over twelve (12) percent in grade shall not be developed.
    - **721.1(4):** Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
    - **721.1(7):** Whenever possible, natural vegetation shall be retained and protected.

You need to call our office no later than **July 20, 2020** to schedule a site visit with staff. Following the site visit, you may be required to submit additional information and take corrective actions, including, but not limited to, the following:

- Once the property is determined to be in compliance with all applicable County standards and requirements, you will need to apply for any required permits. This may include, but is not limited to, conditional use permits, zoning permits, and variances. Any such permits will now be **after-the-fact**.

The Nicollet County Zoning Ordinance Section 801 states: "The violation of any provision of this ordinance or the violation of the conditions or provisions of any permit issued pursuant to this ordinance shall be a misdemeanor, and upon conviction thereof, the violator shall be subjected to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense."

The Nicollet County Zoning Ordinance Section 806 states: "The Zoning Administrator may issue cease and desist orders to halt the progress of any on-going violation(s). When work has been stopped for any reason, it shall not be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted. Any costs incurred by the County in the enforcement of the cease and desist order or the remedies therein shall be assessed to the landowner."

IT IS YOUR RESPONSIBILITY TO NOTIFY THIS OFFICE IN WRITING OR BY PHONE CALL WHEN DEVELOPMENT ACTIVITY HAS CEASED. IF NOT CONTACTED BY **JULY 20, 2020**, THIS OFFICE WILL ACT UPON THE BASIS THAT THE VIOLATION HAS NOT CEASED.

FAILURE TO COMPLY WITH THIS ORDER WILL RESULT IN THE MATTER BEING TURNED OVER TO THE NICOLLET COUNTY ATTORNEY'S OFFICE FOR ENFORCEMENT

Nicollet County Property Services
501 South Minnesota Avenue
Saint Peter MN 56082
507-934-7071





ATTACHMENT F.4
PHOTOS


07 21 2020


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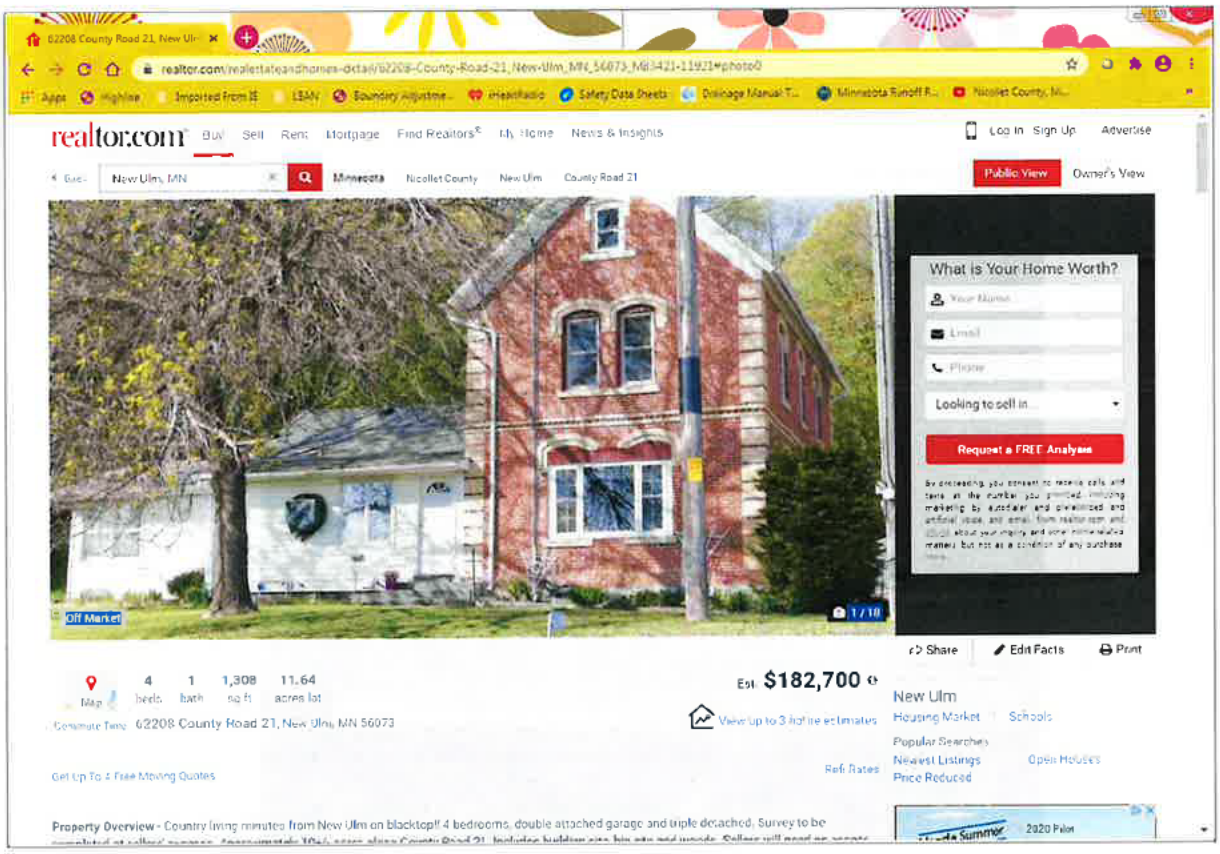
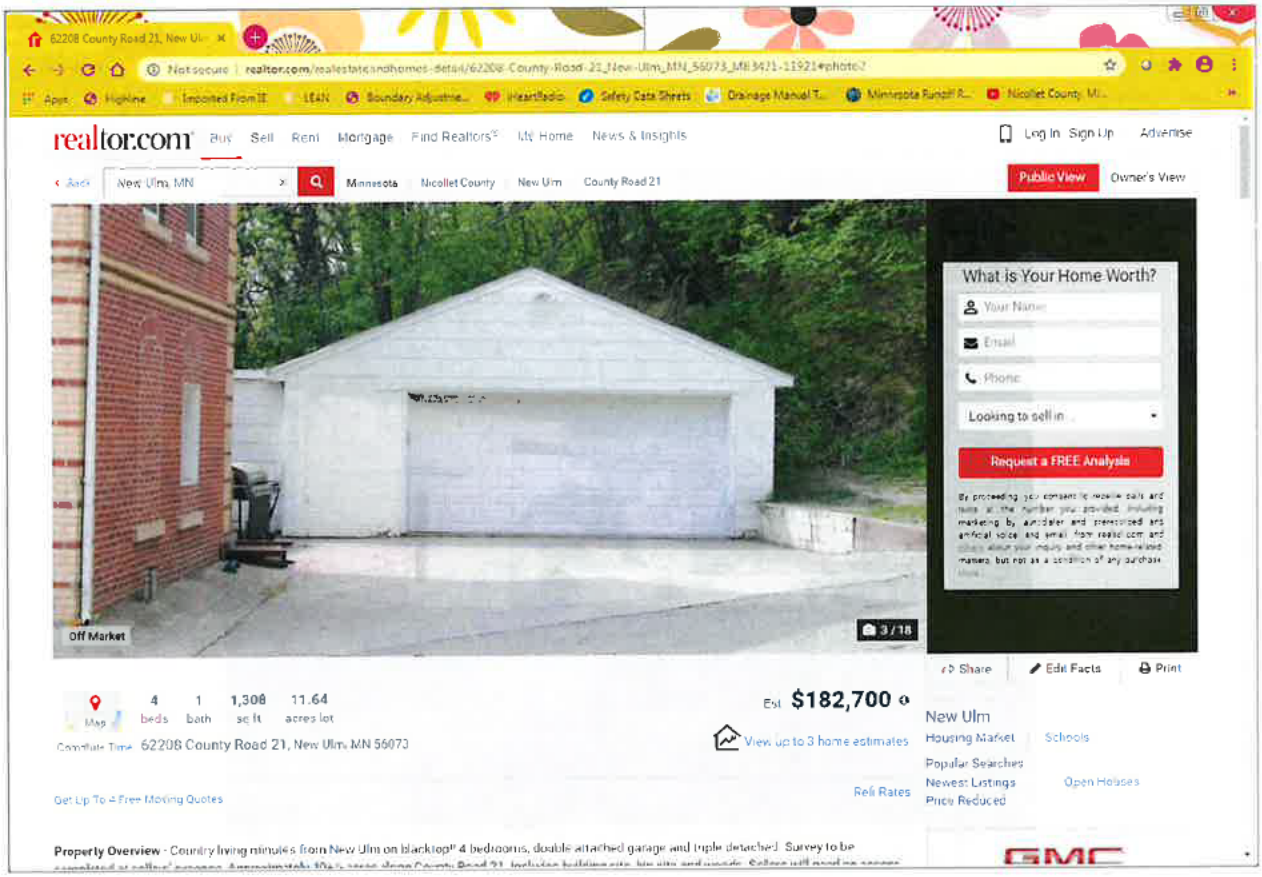
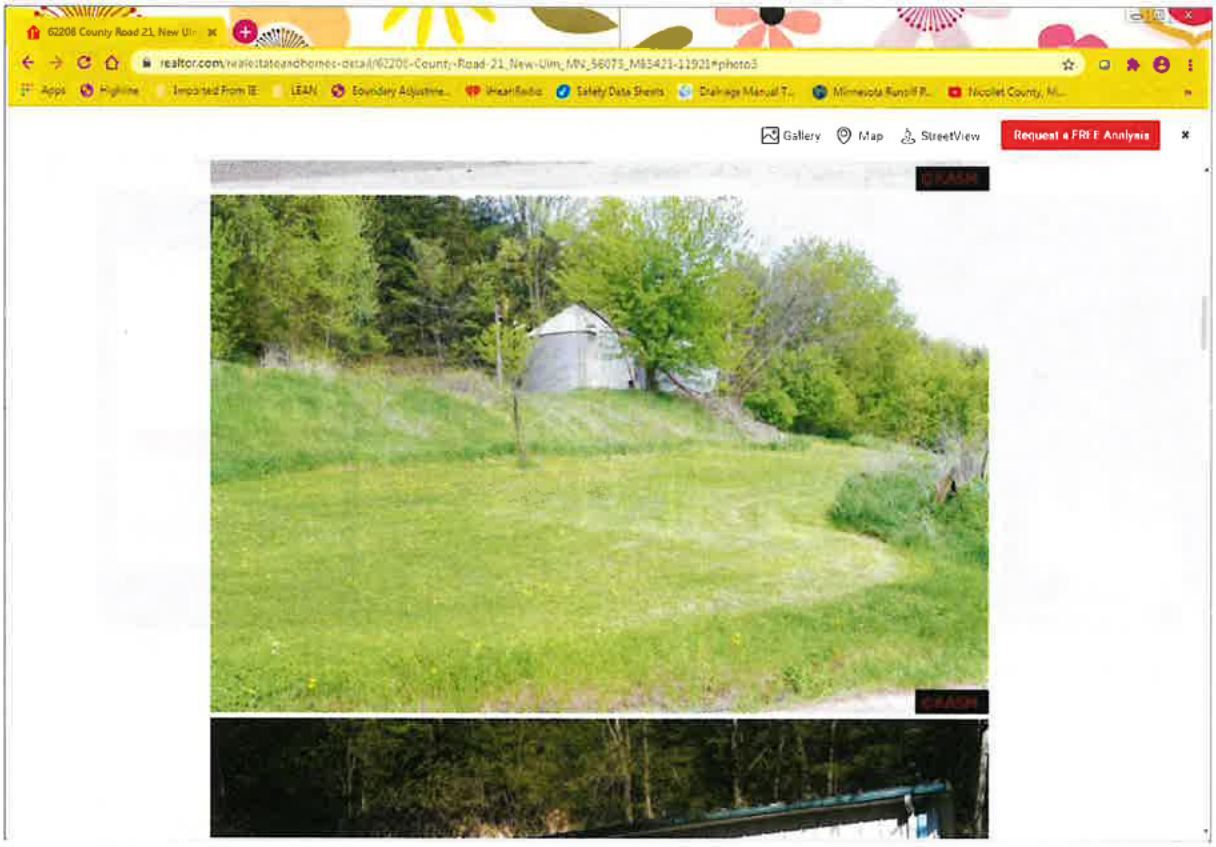




ATTACHMENT F.5
REALTOR.COM PHOTOS


62208 County Road 21, New Ul
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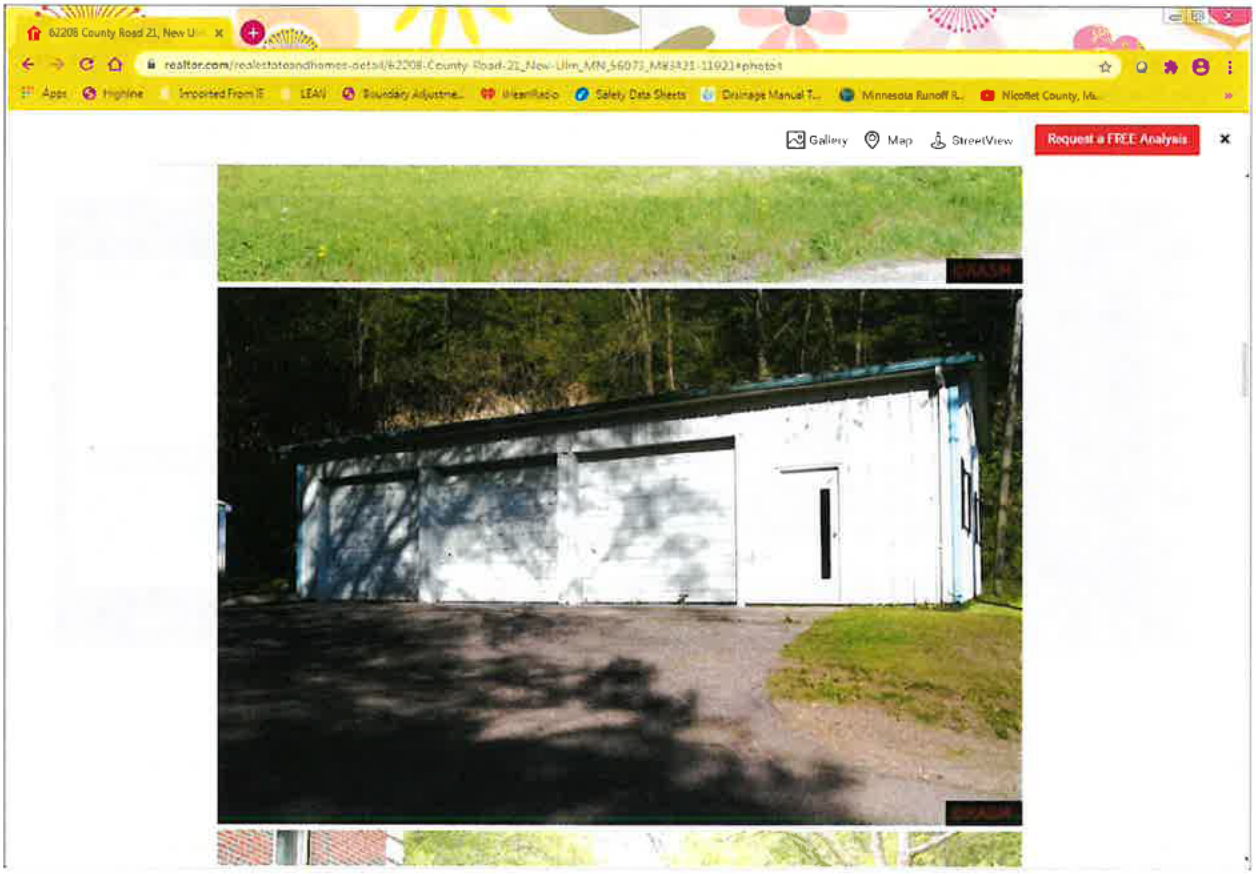
Apps
Highline
Imported From IE
LEAN
Boundary Adjustme...
iHeartRadio
Safety Data Sheets
Drainage Manual T...
Minnesota Runoff R...
Nicollet County, Mi...
Gallery
Map
StreetView
Request a FREE Analysis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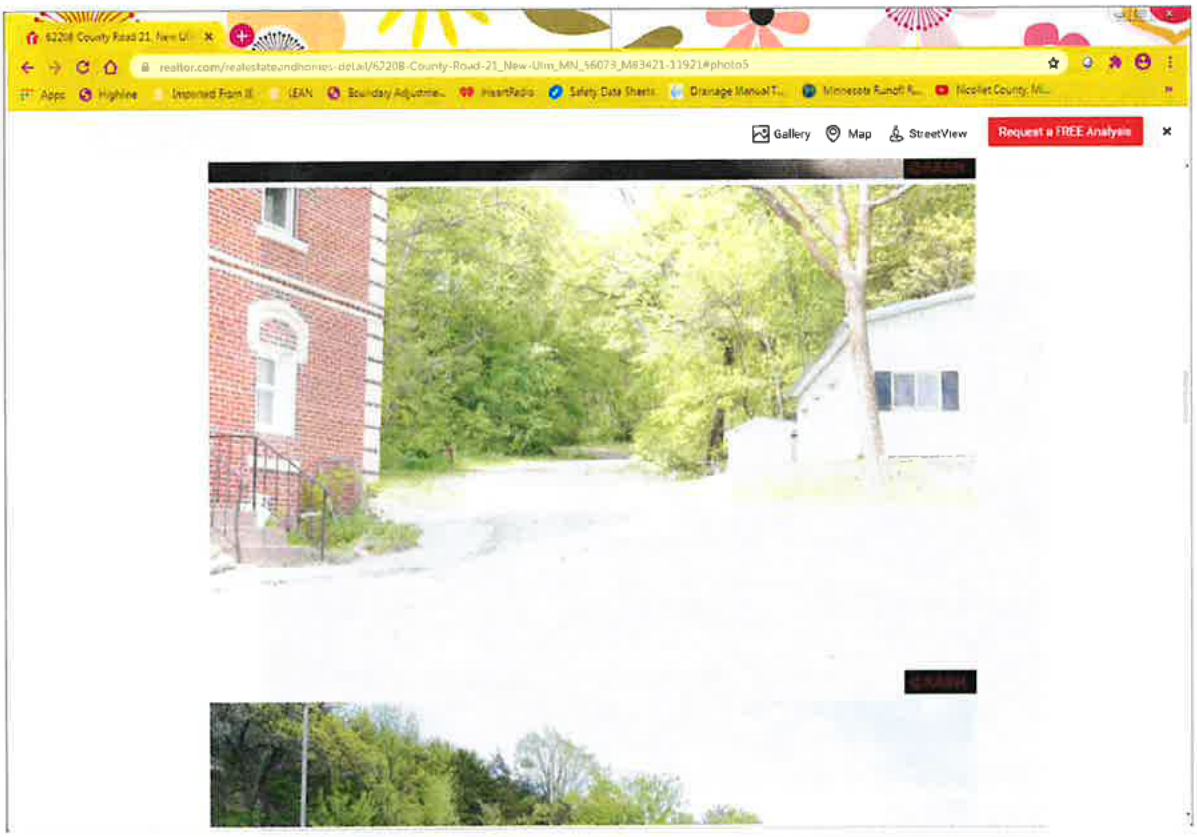
Request a FREE Analysis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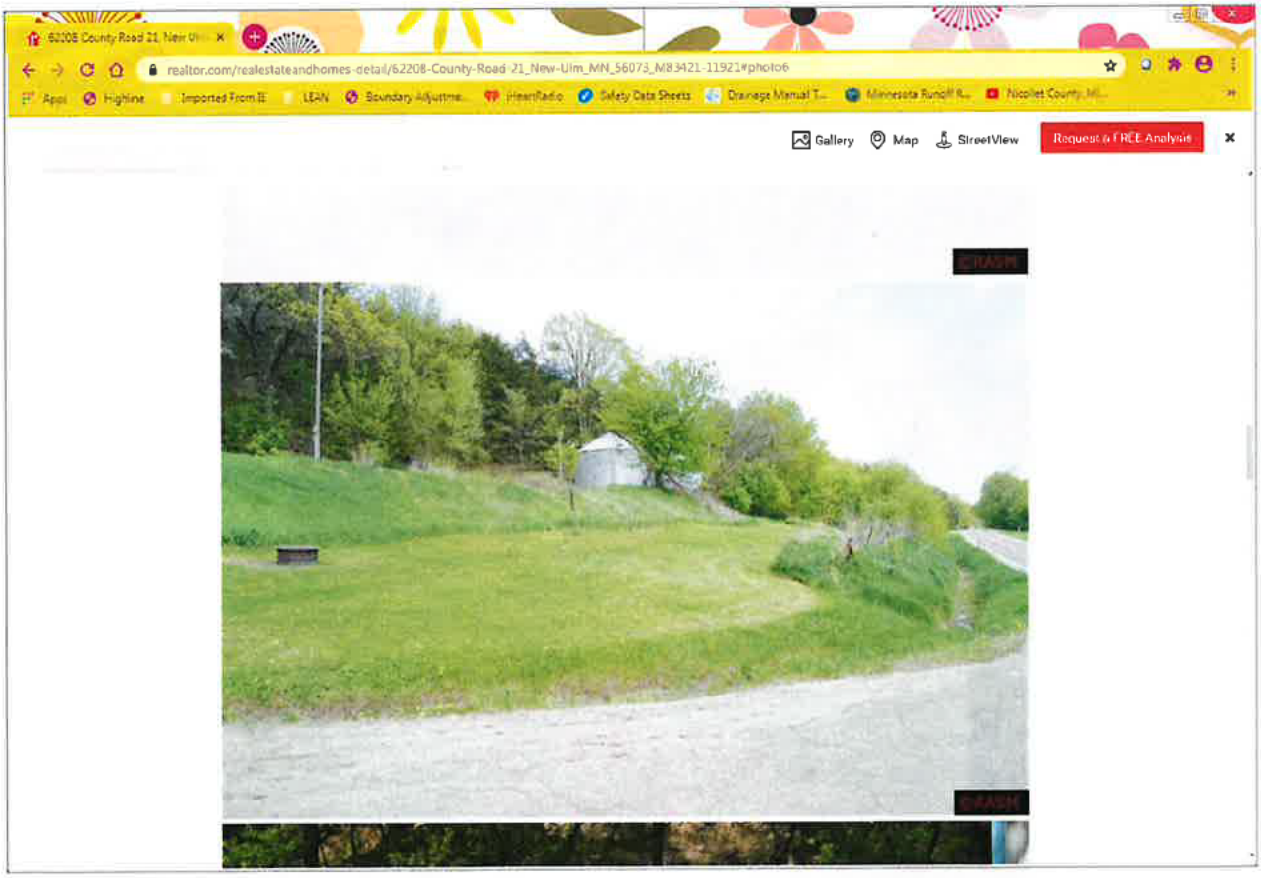
Request a FREE Analysis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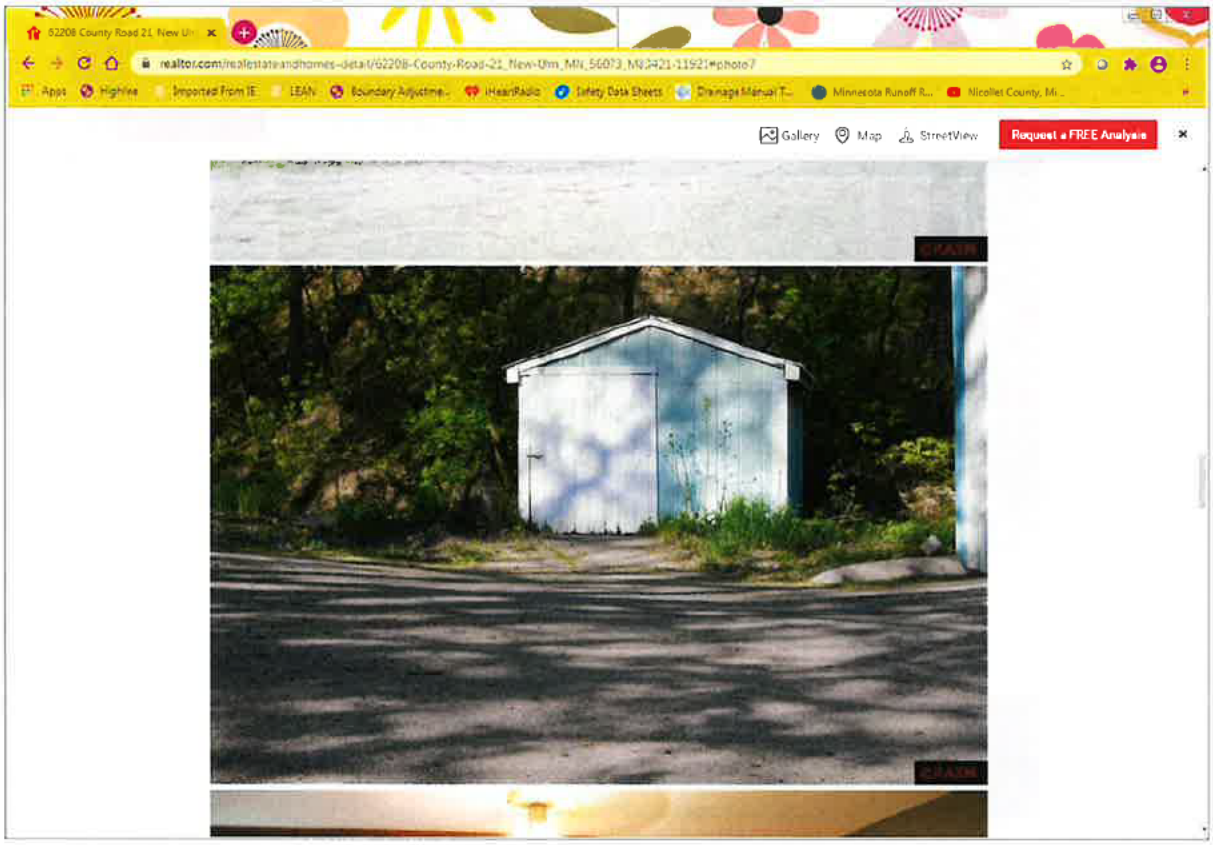
Gallery
Map
StreetView
Request a FREE Analysis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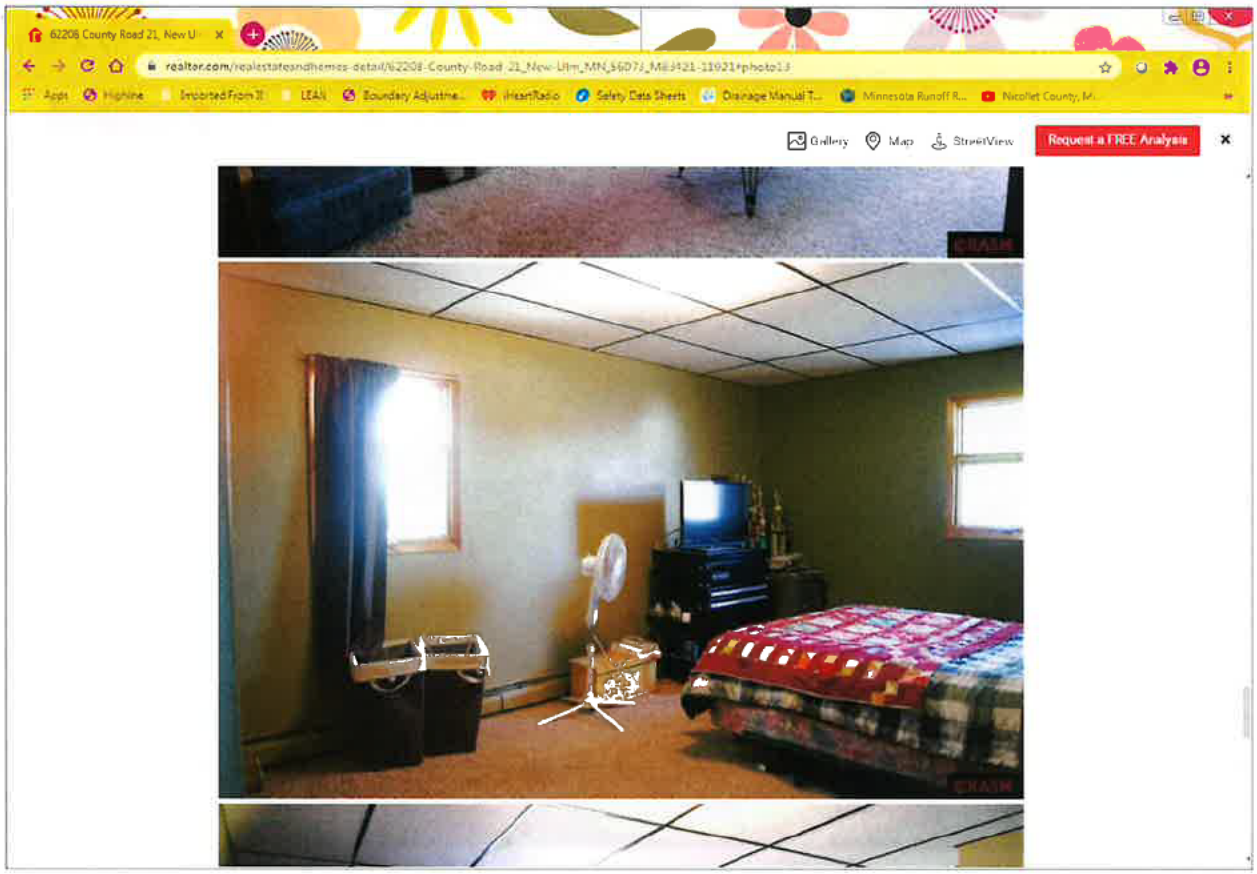
Gallery
Map
StreetView
Request a FREE Analysis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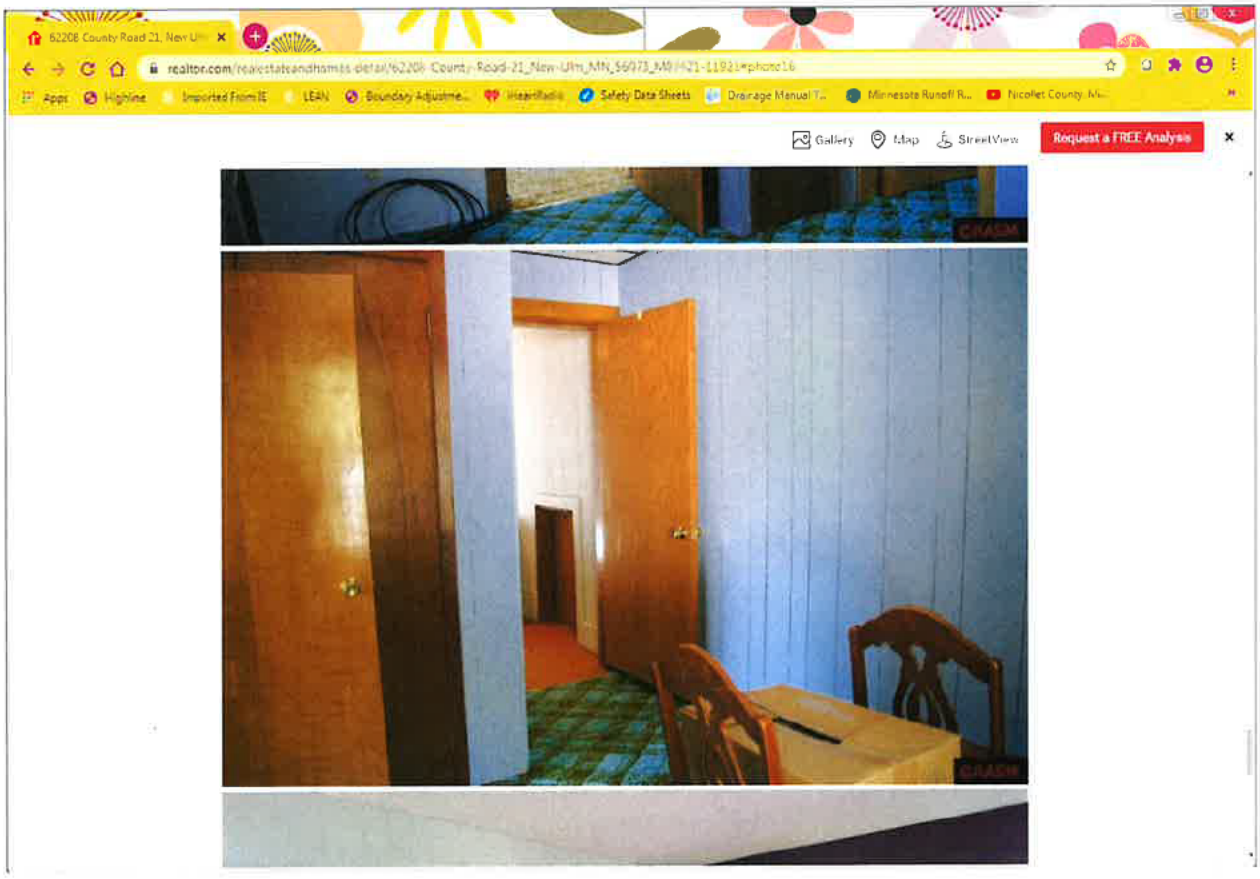
Gallery
Map
StreetView
Request a FREE Analysis


62208 County Road 21, New Ulm
Gallery
Map
StreetView
Request a FREE Analysis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Gallery
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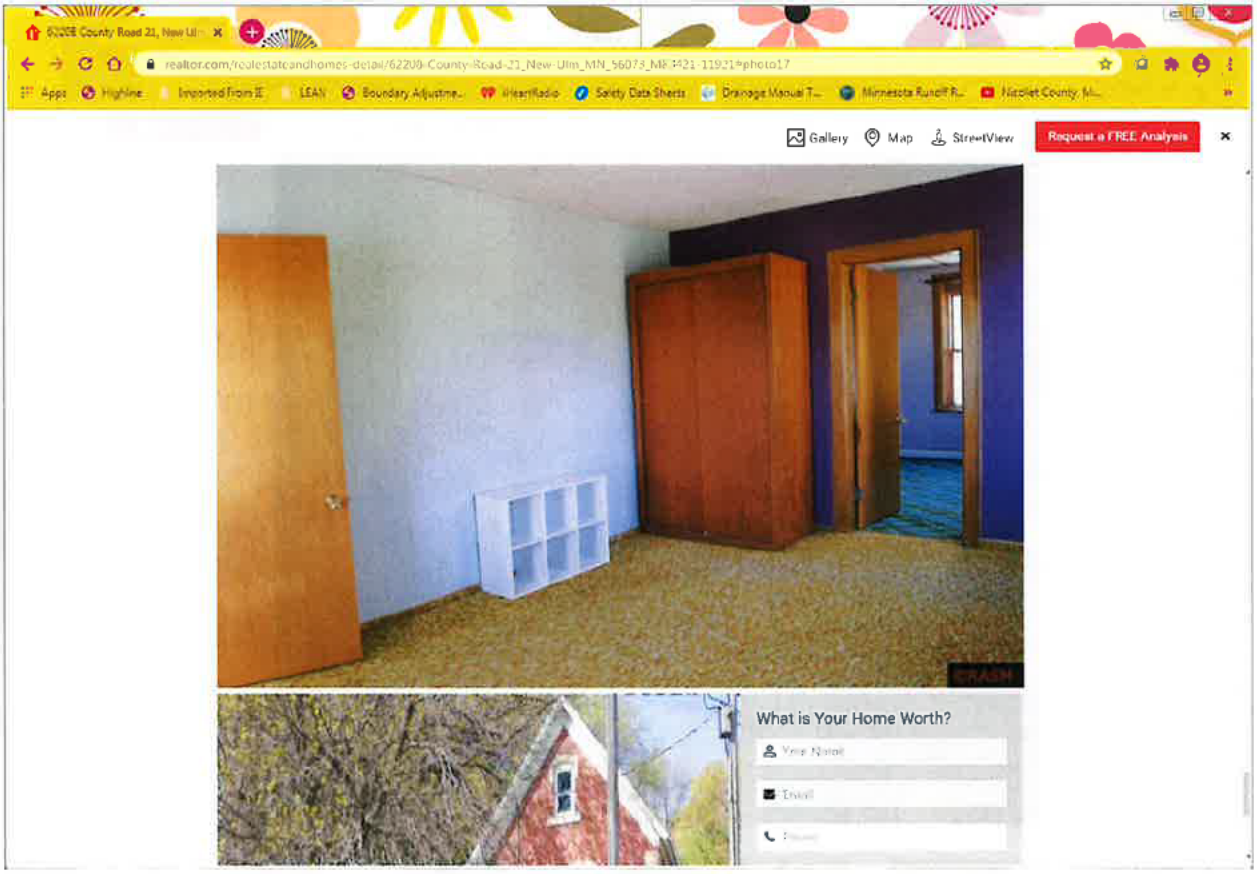
StreetView
Request a FREE Analysis


Gallery
Map
StreetView
Request a FREE Analysis
What is Your Home Worth?

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

August 13, 2020

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

RE: Property Violations

Dear Mr. and Mrs. Gieseke,

This letter concerns violations of the Nicollet County Zoning Ordinance on your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The property contains approximately 12 acres and is zoned Conservancy. The violations were the subject of a July 13, 2020 Cease and Desist Order, and a July 21, 2020 site inspection. Present at the site inspection were Patrick Gieseke, Property and Public Services Director Mandy Landkamer, and myself.

ATTACHMENT F.6
NCPPS LETTER

Violations
The violations were listed in the Cease and Desist Order. To summarize, the violations include:

- The unpermitted construction of a dwelling/attached garage addition, and the relocation of an existing shed (approximately 10' x 12') onsite without a zoning permit. Section 507.1(1) of the Zoning Ordinance requires a zoning permit prior to the erection, structural alteration, or relocation of permanent or portable structures. Additionally, our office has no record of a zoning permit being issued for the horse shed located southeast of the house. The shed appears to be located within the 50-foot right-of-way setback along County Road 21.

- Expansion of a nonconforming structure. The original house was considered nonconforming due to its location in relation to the bluff/bluff setback and the right-of-way of County Road 21. Section 404.1(A) of the Zoning Ordinance states that a nonconforming structure cannot be expanded, changed, altered or enlarged except in conformity with the provisions of the Zoning Ordinance. Nor shall such expansion, change, alteration, or enlargement increase the non-conformity of use.

- Development within the bluff and bluff setback. Section 721.1 of the Zoning Ordinance states that slopes over 12% in grade shall not be developed. Additionally, Section 603.4(5.A) requires a 30-foot setback from the bluffline. The bluffline is the point at which slope begins to exceed 12%. The disturbance to the bluff/bluff setback includes both the cutting and filling of earthen material. There appeared to be multiple areas where the bluff had been impacted on your property, including:

- West of the existing dwelling and partially constructed addition, including the terraces and paths cut into the bluff.
- North of the 24' x 45' pole shed/garage.
- North of the horse shed.

Staff is aware the bluff to the west of the house and original garage was cut previously, prior to this instance. However, that does not mean further disturbance is allowed. According to the Nicollet County Soil Survey, the soils on your property are classified as 960F, Storden-Clarion. This soil type is severely limited when it comes to building site development and sanitary facilities (i.e. septic drainfields). They typically have a slope of 18% to 50% and have rapid surface water runoff. Disturbance or development of bluff areas with such soils can cause serious erosion and sediment control problems. For this reason bluff areas are protected by the Zoning Ordinance as a sensitive natural feature.

Since development has already begun, and the bluff has already been disturbed, any permitting will now be after-the-fact.

Options
At this point, you have a couple of options for each of the issues you are dealing with:

1. Dwelling/Garage Addition
    a. Remove the addition.
    b. Apply for an after-the-fact variance and after-the-fact zoning permit. (These processes are described in more detail below.)
2. Bluff Development
    a. Restore the bluff. This option requires a restoration plan prepared by a third party, such as an engineering firm.
    b. Apply for an after-the-fact variance.
3. Small Shed (10' x 12')
    a. Remove the small shed.
    b. Apply for a zoning permit to relocate the small shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met.
    c. Apply for an after-the-fact variance and after-the-fact zoning permit.

4. Horse Shed

   a. Remove the horse shed.

   b. Apply for a zoning permit to relocate the horse shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met.

   c. Apply for an after-the-fact variance and after-the-fact zoning permit.

NOTE: One after-the-fact variance request can contain multiple elements. For example, you could request a variance for the dwelling/garage addition and the bluff disturbance together.

After-the-Fact Variance

The first steps are to state the type of variance you are requesting, to complete an official application and to pay the application fees. A legal description for the property and a survey prepared by a surveyor licensed in the State of Minnesota are required at the time of application. The survey needs to depict the variance(s) being requested. For example:

- The location of the pre-project bluffline and post-project bluffline of the disturbed bluff areas.
- The location of the existing house and addition, small shed, and/or horse shed.
- The distance between the bluffline and the existing house and addition, small shed, and/or horse shed.
- The location of the right-of-way line of County Road 21 and the location of the existing house and/or horse shed.
- The distance between the right-of-way line and existing house and/or horse shed.
- The survey will also need to identify how much material (ex. cubic yards) was moved onsite, and how much material was removed from the site to an offsite location. The location of the removed material must also be identified.

Your application must include a complete set of proposed floor plans for the house and addition. The plans must identify the use of each area, as well as egress windows and closets. This will be used to verify the number of bedrooms in the structure.

Lastly, you will need to submit a compliance inspection of the existing septic system and verify the system has the capacity to serve the number of bedrooms planned in the house. A compliance inspection is required for issuance of a variance and for dwelling additions. The compliance inspection must be performed by a licensed septic inspector. As part of the compliance inspection, you will have to identify a secondary, or alternative septic system location. If you have any questions concerning compliance inspections or septic systems, please contact Nicollet County Sr. Sanitarian Peter Otterness at 507-934-7076.

Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, the application must be determined to be complete. If the application is determined to be incomplete, Property Services will issue an incomplete application notice. You must then revise the application and resubmit. Staff has 15 business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines and applicants are encouraged to factor this into their planning.

Once the application has been determined to be complete, the request will be added to the agenda for the next available hearing date. The request is heard during a public hearing held by the Nicollet County Board of Adjustment and Appeals. You or your representative must be present at the hearing to respond to any questions the Board may have regarding the proposal. I have included a list of hearing dates and a fee schedule with this letter.

The process takes roughly four to six weeks to complete. ***No guarantee*** can be made that staff would recommend approval of the request. Additionally, staff can make ***no guarantee*** your request would be approved by the Board. Fees are non-refundable once the legal notice of the hearing has been submitted for publishing.

Please be aware, the request will be evaluated according to the criteria found in the Zoning Ordinance and State Statute. In order for the request to be granted, variance criteria one through six must be met. I have included copies of our variance questionnaire handouts. The criteria are listed on the handout. Unless criteria one through six are met the request will be denied. If the request is denied, you may not submit a similar variance request for six months.

Zoning Permits (After-the-Fact)

Zoning permits are required prior to the erection, structural alteration, or relocation of permanent or portable structures – including single family dwellings, decks, and porches; and also detached accessory structures, such as garages or sheds. This type of permit is issued administratively by our office. Zoning permits are valid for one year from their date of issuance. You must have your zoning permit in-hand prior to the start of any construction, including any site prep or earthwork. Verification the proposal meets all applicable setbacks and standards will be required. At a minimum this generally includes, but may not be limited to, the following:

- A site plan indicating the applicable setback distances.
- A complete set of floor plans.
- The total square footage of the structure, including any attached garages, decks or porches. The permit fee is based on the size of the structure footprint.
- The license number and contact information for your general contractor, and the information for any subcontractors.
- A cost estimate for construction of the structure.

Resolution

You must submit your plan for resolving the violations, in writing, to our office no later than Friday **August 21, 2020**. The plan must include your proposed time frame for resolution and it must include all of the aforementioned violations. Development can only recommence once all violations have been officially resolved.

Be aware, the violation of any provision of the Zoning Ordinance is a misdemeanor, and upon conviction thereof, the violator shall be subject to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense.

Please do not hesitate to contact our office if you have any questions concerning this letter.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: Hearing and Fee Schedules
After-the-fact Variance Handouts

Cc: John Luepke, Commissioner 5th District
Ryan Krosch, County Administrator
Megan E. Gaudette Coryell, Assistant County Attorney
Pete Otterness, County Sr. Sanitarian

Parcel No: 13.035.1000
Map No: 0335400003

NICOLLET COUNTY
PROPERTY
SERVICES
GOVERNMENT CENTER
501 SOUTH MINNESOTA AVE
ST PETER MN 56082
DIRECT (507) 934-7070; FAX (507) 934-7079

2020 HEARING DATES

APPLICANT'S DEADLINE	P & Z / BAA	BOARD OF COMMISSIONERS	FEEDLOT PERMITS
January 3	January 27	February 11	February 14
January 31	February 24	March 10	March 13
February 21	March 16	March 24	April 2
March 27	April 20	April 28	May 7
April 24	May 18	May 26	June 5
May 22	June 15	June 23	July 2
June 26	July 20	July 28	August 6
July 24	August 17	August 25	September 3
August 28	September 21	October 13	October 8
September 25	October 19	October 27	November 6
October 23	November 16	November 24	December 8
November 25	December 21	January 5	January 12

Applications for Any Hearing are **ONLY** Taken
BEFORE 3:30 p.m. on the Deadline Date

ZONING PERMITS REQUIRED FOR:

Permanent or Portable Structures

- Construction/Erection
- Structural alteration
- Relocation
- Signs (except political and real estate)

Sewage Disposal System/Solid Waste Disposal Operation

- Installation
- Alteration
- Repair
- Extension

Land Alterations

- Cutting or filling in excess of 50 cu. yds.
- Timber Harvesting
- Removal of Shoreland vegetation
- Mineral extraction
- Landfills
- Land excavation

Erection, Alteration or Relocation of Permanent AG Facilities

- Silos
- Grain bins
- Basins
- Walled feed pads
- Holding ponds
- Slurry system

Greater than 2' Along Public Road

- Fences
- Retaining walls
- Berms
- Landscaping

Essential Services Along Public Roads

Towers

Office Hours:

8:00 a.m. to 4:30 p.m.
Monday through Friday (except holidays)

Providing efficient services with innovation and accountability.

NICOLLET EST. COUNTY 1853

PROPERTY SERVICES
501 SOUTH MINNESOTA AVE
ST. PETER, MN 56082
Direct (507) 934-7070
Fax (507) 934-7079

Revised January 7, 2020

NICOLLET COUNTY EST. 1853

NICOLLET COUNTY PROPERTY SERVICES DEPARTMENT

FEE SCHEDULE

It is recommended that applicants call to schedule an appointment prior to visiting our office in order to ensure the appropriate staff is available to assist you.

STRUCTURES

Residential Dwellings and Attached Additions	<120 sq ft	$ 25.00
	121 sq ft and over	$ .25 sq ft $ 50.00 min.
Accessory Structures (detached)	<120 sq ft	$ 25.00
	121 sq ft to 1000 sq ft.	$ 50.00
	1001 sq ft and over	$ .05 sq ft
AG Animal Structures	<120 sq ft.	$ 25.00
	121 sq ft to 500 sq ft.	$ 50.00
	501 sq ft and over	$ .10 sq ft
Grain Bins/Silos		$ 50.00
Commercial Structures		
e.g. utility cabinets, power station sheds		$ .25 sq ft $ 50.00 min.
Towers (cell, etc.)		$ 250.00

LAND ALTERATIONS

Land Alterations including borrow pits, walled feed pads, basins, timber harvesting	$ 50.00

RENEWABLE ENERGY SYSTEMS

WECS – Micro	$ 50.00
Non Commercial	$ 250.00
Commercial	$ 500.00
Solar Energy Systems—Small	$ 250.00
Solar Energy Systems—Large	$ 500.00

SEPTIC SYSTEM

Septic System - Operating Permit	$ 25.00/yr.
- Holding Tank/Privy	$ 100.00
- Type I-III	$ 225.00
- Type IV-V	$ 450.00

SIGNS

On Premises	$ 25.00
Commercial and/or Off-Premises	$ 50.00

911 ADDRESS SIGNS

Mailbox support, 911 sign and post	$ 257.00
911 sign and post	$ 159.00

SOLID WASTE

Solid Waste Facility Application	$ 100.00
Solid Waste Haulers License	$ 100.00

FEEDLOTS

Feedlot Permit - New	$ 100.00
- Existing (Valid)	$ 50.00

WETLAND PERMITS

Wetland Decision—Exemption	$ 50.00
Wetland Decision—No Loss	$ 50.00
Wetland Delineation Review	
Under 1 acre	$ 100.00
1 to 4.99 acres	$ 200.00
5 to 10 acres	$ 300.00
Greater than 10 acres	$ 400.00
Wetland Replacement Plan Review	
Under 1 acre	$ 200.00
1 to 4.99 acres	$ 300.00
5 to 10 acres	$ 500.00
Greater than 10 acres	$ 700.00
Wetland Banking Plan Review	
Under 1 acre	$ 200.00
1 to 4.99 acres	$ 400.00
5 to 10 acres	$ 800.00
Greater than 10 acres	$1000.00
Annual Monitoring report review	$ 50.00/yr.
Wetland Certificate of Completion	
Under 1 acre	$ 50.00
1 to 4.99 acres	$ 100.00
5 to 10 acres	$ 200.00
Greater than 10 acres	$ 300.00
After-the-Fact Wetland Review	**Double the fee**

HEARINGS

Conditional Use Permit/3 year Gravel Pit Renewals	$ 400.00
Variance	$ 400.00
Rezoning	$ 400.00
Appeal	$ 400.00
Recording fee	$ 46.00

OTHER FEES

Zoning Ordinance	$ 50.00
After-the-Fact Zoning Permit	$ 250.00
(Double the fee, whichever is greater)	
After-the-Fact Variance/CUP	$1000.00
Special Scheduled Hearing (at applicant's request)	$1000.00
Large Format Scanning	$ 20.00
Burning to CD or DVD	$ 10.00
Copies—Single sided	$ .25
Double sided	$ .50

PLATTING

Plat Book	$ 5.00
Replat	$ 350.00
Platting of Existing Metes and Bounds	$ 250.00
New Subdivision Plat	$ 500.00

GIS FEES

11" x 17" or smaller		$ 5.00
Large Format Printing	Up to 24"	$ 10.00
	25" x 36"	$ 15.00
Custom Printing (+ .50 per additional inch)		$ 15.00
Labor Rate		$ 50.00 hour

GIS DIGITAL DATA
(provided in ESRI Shapefile Format)

Parcels	
- Per Parcel	$ .05($5 min)
- Entire County	$ 500.00
Road Centerline (includes road ranging)	$ 325.00
Address Point Layers	$ 325.00
Other Data Layers	$ 25.00

REQUIRED PRIOR TO ISSUANCE OF HOUSE PERMIT

- **An approved septic design**
- **Location of alternate septic site**
- **Access permit**
- **Contractor License #**

NOTE: ALL STRUCTURES require a SITE PLAN

Condensed list of information needed for permit:

Property owner/Name of applicant
Square footage of structure
Cost/value of requested structure
Estimated completion date
Section and township of requested permit
Description of request
Distances from road right-of-way, property lines, bluff, and ditch
Contractors: General, Electric, Heating, Plumbing, Septic System

*** Additional information may be required and additional standards may be applicable per the Nicollet County Zoning Ordinance .

NICOLLET COUNTY EST. 1853

APPLICANT QUESTIONNAIRE
AFTER-THE-FACT VARIANCE

Name of Applicant: _____ Date: _____

Request: _____

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. The variance is in harmony with the general purposes and intent of the official control.

_____
_____
_____
_____

2. The variance is consistent with the intent of the Comprehensive Plan.

_____
_____
_____
_____

3. The variance establishes a practical difficulty in complying with the official controls.

_____
_____
_____
_____

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

_____
_____
_____
_____

5. The variance will not alter the essential character of the locality.

_____
_____
_____
_____

(Continued onto back)

6. The practical difficulty includes more than economic considerations alone.

Additional After-the-Fact Criteria for use ONLY when first six criteria are met.

7. Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?

8. In relation to the subject variance, are there similar structures in the area?

9. Does the burden on the applicant of compliance outweigh the benefit to the County?

10. Was the act of the violation by the applicant unintentional?

NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: _____ Date: _____

Please describe the specific details related to your request, including but not limited to:

- why you feel the project is a *need* rather than a *want*;
- what alternatives you explored and the reasons they were not reasonable for you; and
- what use, or uses, the project will provide for you;

If your request is approved, you will be **held** to the plans and specifications submitted to the County with your application.





ATTACHMENT F.7
PHOTOS



Jon Hammel

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Friday, August 21, 2020 12:55 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

Jon,

Yes, I understand no further construction will occur until the violation has been resolved.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, August 21, 2020 12:53 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Hi Shana,

I am acknowledging receipt of your email and attachments. I have read your letter and feel is meets what was asked of you for today's deadline.

However, one more thing I would ask of you, is that you reply to this email stating you understand no further construction will occur until the violation has been resolved. Upon resolution, we will issue you a letter stating construction may recommence.

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, August 21, 2020 12:02 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: Gieseke - 62208 County Road 21, New Ulm, MN
Importance: High

Good afternoon Jon.

ATTACHMENT F.8
EMAIL

Please review and confirm receipt of this email and the attachments.

- Cost Estimate
- Contractor Information
- Letter to Nicollet County dated 8-21-2020
- Plans

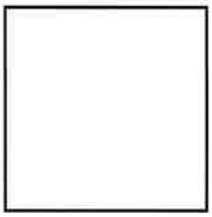
Please let me know if further information is needed.

Thank you and please enjoy your day.

Shana

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"



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Real people. Real results.

Star Tribune TOP 150 WORKPLACES 2020

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Total Control Panel Login

To: jon.hammel@co.nicollet.mn.us Remove this sender from my allow list
From: sgieseke@frandsenbank.com

You received this message because the sender is on your allow list.

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August 21, 2020

Nicollet County Government Center
501 South Minnesota Avenue
St Peter, Mn 56082

Re: Property Violations 62208 County Road 21
Parcel No: 13.035.1000

To whom it may concern:

My husband, Pat and I have been Nicollet County residents since 2014. My husband has been a Nicollet County resident most of his life, growing up on the Fort Road.

In 2014 we purchased a lot in Courtland, MN and built a new 5-bedroom home. We always new that our Courtland home would not be our forever home as we had a dream of owning a home in the country. In 2017 the Schlumpberger home on County Road 21 (aka bottom road) came up for sale. Although the home was not slightly desirable to us, the location, 11+ acres, proximity to New Ulm, wildlife, scenic byway and the nearby Minnesota River were huge positives for us. My husband is a self-employed carpenter. We discussed at length as to what we could do to the property, the home, etc. to make our dream of owning a country home a reality. Our decision to sell our brand-new home in Courtland and move to this home was not taken lightly or made quickly.

Moving to the country was not only our dream, but also the dream of our [redacted] love the outdoors and are avid hunters, our [redacted] has always dreamed of owning [redacted] own horse. Our two oldest children have been hunting with their grandfather on land he owns directly on Swan Lake since they were three years old; over 20 years! Our family has a deep appreciation of our environment, nature and the world we live in. We strive daily to make the world we live in a better place that can be appreciated for years to come.

Upon purchasing this property, our [redacted] was anxious to find [redacted] horse. We put up a temporary horse shelter and [redacted] brought [redacted] horse home. This shelter was never a permanent shelter or located in a permanent location. The shelter was placed inside of an existing "cow yard" where a barn was previously.

Additionally, there was a small 10x12 shed located directly by the bluff on the east side of our property. My husband picked up this 10x12 with his bobcat forks and moved it to the west side of our property by the bluff on the west side of the property. We moved this so that he could park his work trailer next to the existing shop to make unloading and loading tools and cabinets easier for his business. We did not know that we needed to obtain a permit to do any of this or that in doing so we would be in violation of any zoning ordinances.

ATTACHMENT F.9
APPLICATION MATERIALS SUBMITTED

We have lived at 62208 County Road 21 for over three years. We have been carefully planning the remodel of our home with the intention of this being our "forever home" and constructing it to be everything we have always dreamed of. We finally completed our plans and excitedly began construction the spring of 2020.

Our plans included demolition of the existing attached garage, breezeway/porch addition as well as the kitchen/family room addition that were built prior to our purchase. Our intent was to retain the existing original home that is brick. In the exact location of the existing garage, breezeway/porch addition as well as the kitchen/family room addition we would build a new addition to include a master suite, laundry room, living room and kitchen. The only "new" or "changed" item would be the attached garage that would be extended further to the north of our property.

The home we purchased was listed and advertised as a 4-bedroom home. When our construction is complete our home will be a 3-bedroom home. One of the current bedrooms will be renovated into an office for my husband's business, Gieseke Homes, LLC

In preparation of the location for the new attached garage we rented a mini excavator one weekend and removed some of the dirt on the west side of our property. We did not know that we needed to obtain a permit to do so or that in doing so we would be in violation of any zoning ordinances.

The soil that was removed, was loaded into my husbands dump trailer with our bobcat and relocated to another location on our property. This soil was used to "fill-in" a washout on our property that prior to us filling in would naturally carry debris down hill in heavy rains resulting in debris being deposited into the ditch and onto County Road 21. By us doing this, we succeeded in making way for our new garage in addition to saving Nicollet County money by filling in the washout. Again, we did not know that we needed to obtain a permit to do so or that in doing so we would be in violation of any zoning ordinances.

July 13, 2020, we became aware of our alleged violations and ceased further construction per the Cease and Desist Order. Upon this notification we contacted Jon Hammel and scheduled a site visit which took place on July 21, 2020. Following the site visit, we were under the assumption that construction could proceed but no further dirt removal could be done until an after the fact variance was granted. This was not an issue for us because our dirt relocation was complete.

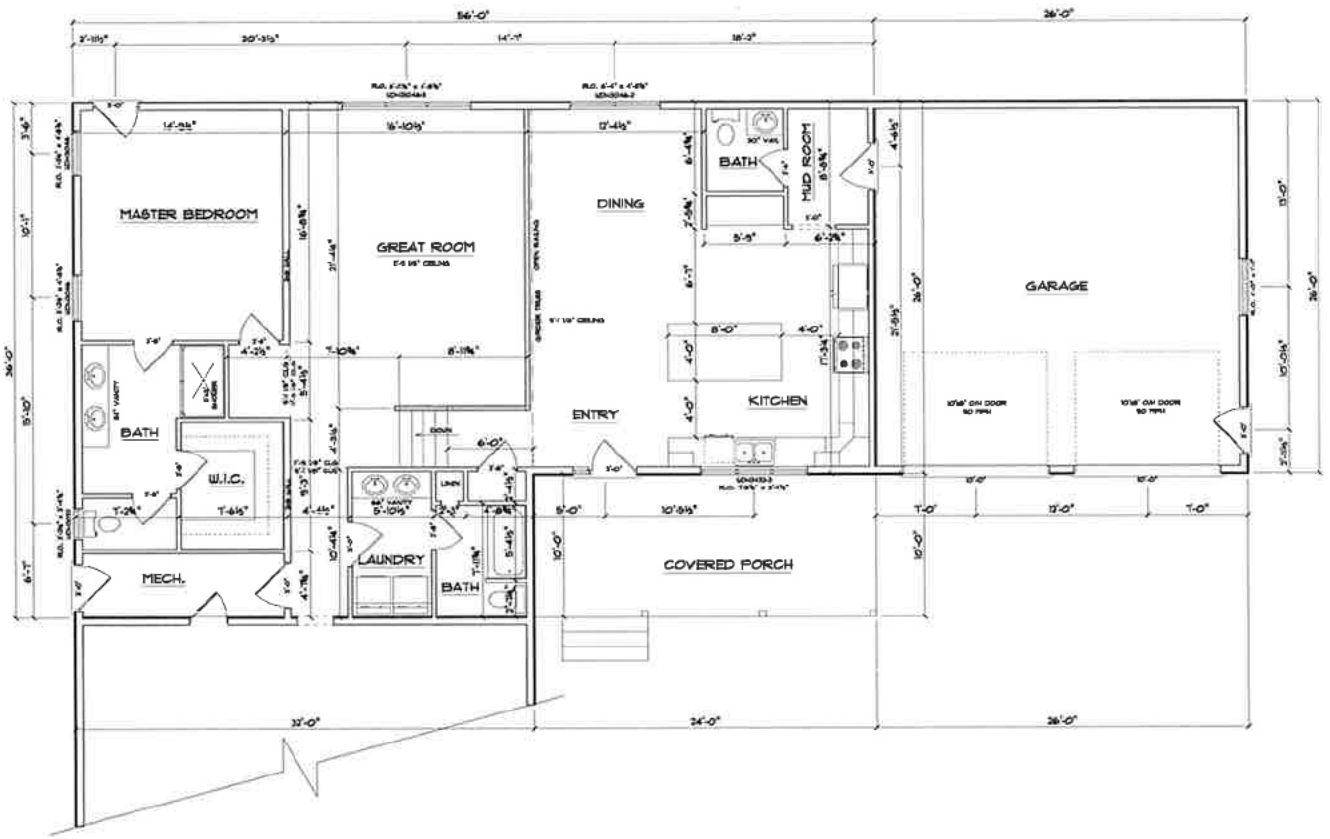
The purpose of this letter is to lay out our plan to apply for an after-the- fact variance and after-the-fact zoning permit.

1. Dwelling/Garage Addition
    a. Apply for an after-the-fact variance and after-the-fact zoning permit
        - Lafayette Excavating is scheduled to complete a compliance inspection of the existing septic system and to identify a secondary, or alternative septic system location.
        - Sibley Surveyors, Inc. completed the survey prior to our purchase in 2017 has been contacted and will be scheduled to complete the required survey per your letter dated August 13, 2020.
2. Bluff Development
    a. Apply for an after-the-fact variance
3. Small Shed (10'x12')
    a. Remove the shed in 2021
4. Horse Shed
    a. Remove the horse shed in 2021

Sincerely,

Pat and Shana Gieseke

Enclosures: PDF of construction plans
Contractor information
Estimated cost of construction



MAIN FLOOR

CEILING HEIGHT:

SCALE: 1/4" = 1'-0"

SQUARE FOOTAGE:

PRELIMINARY DATE
8.22.19

REVISION DATE

REVISION DATE

REVISION DATE

PUHLMANN LUMBER & DESIGN
301 1st STREET S. NEW ULM, MN
PH: (507) 354-4914
FAX: (507) 354-5105

GIESEKE ADDITION

62208 COUNTY ROAD 21- NEW ULM, MN

PUHLMANN LUMBER

ESTIMATE

Shana Gieseke

Gieseke Homes LLC
62208 County Road 21
New Ulm, MN 56073
Phone: (507) 404-0116
Email: ghomes@comcast.net

Estimate #	000124
Date	01/26/2020
Business / Tax #	BC688814

Description	Total
Materials	$62,000.00
Plumbing	$7,200.00
Electrical	$8,000.00
HVAC	$18,000.00
Flooring	$4,900.00
Concrete	$12,000.00
Cabinets	$8,000.00
Painting	$2,000.00
Labor	$15,000.00

Subtotal	$137,100.00
Total	**$137,100.00**

Shana Gieseke

Gieseke Homes, LLC

62208 County Road 21

New Ulm, MN 56073

Patrick E. Gieseke; Owner/General Contractor

LIC# BC688814



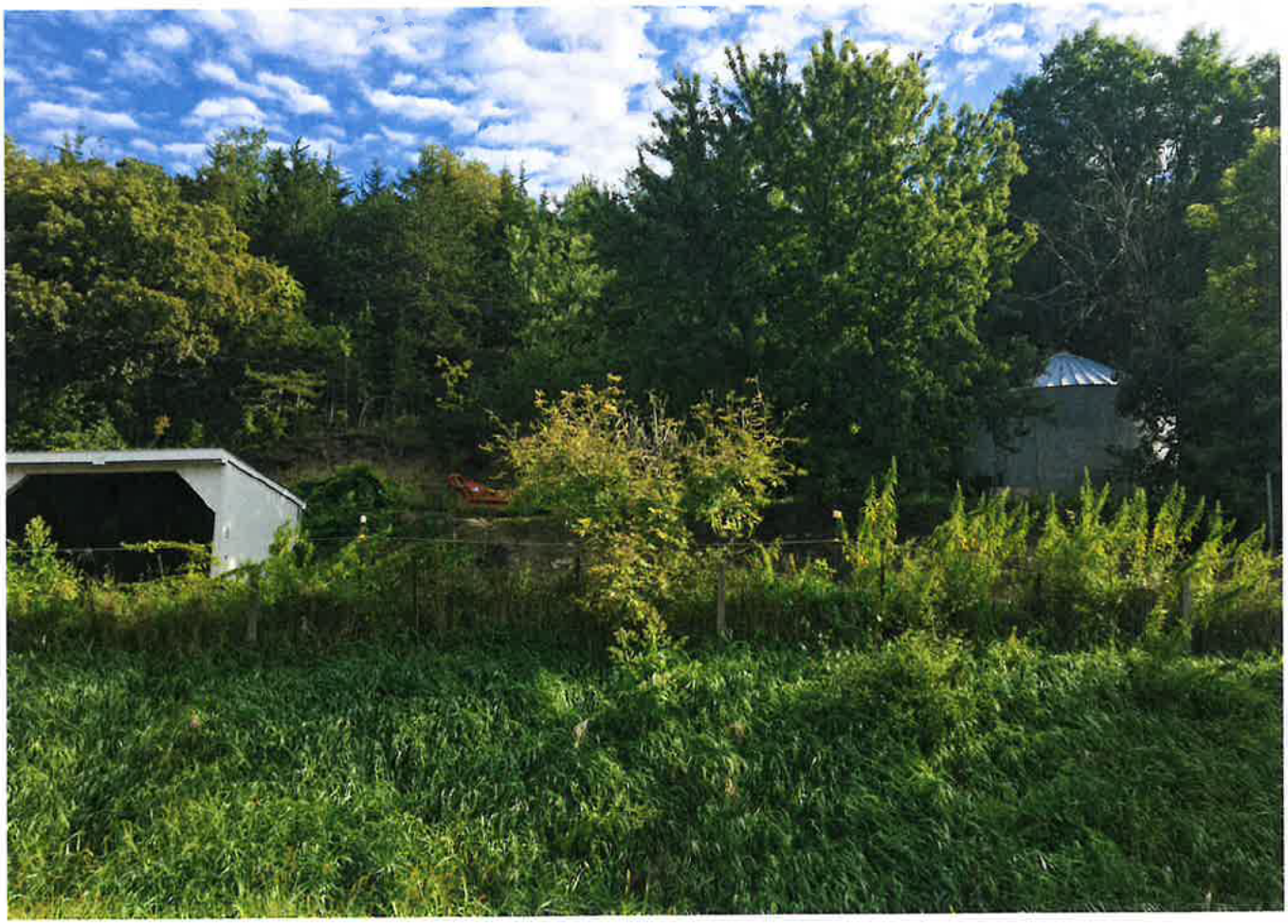


ATTACHMENT F.10
PHOTOS









NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

September 2, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

The purpose of this letter is to respond to the documents you submitted via email on August 21, 2020 and August 27, 2020. The documents involve your application for an after-the-fact variance to expand a nonconforming structure, to reduce the front yard setback, to reduce the bluff setback, and for the alteration of protected bluff areas, for the purpose of constructing a dwelling addition. Our office understands that based on the documents you submitted on August 21, 2020, that you will be removing the small shed and horse shed.

The request involves your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. This matter has been the subject of a July 13, 2020 Cease and Desist Order and an August 13, 2020 letter to you from our office.

The documents you submitted via email on August 21, 2020 included:

- Letter to Nicollet County.
- Floor plan for the dwelling addition.
- A cost estimate for construction.
- Contractor information.

The document you submitted via email on August 27, 2020 was:

- A septic compliance inspection, prepared by Lafayette Excavating, Inc.

Please be aware, per Minnesota Statutes Section 15.99, Subd. 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. Our office has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

ATTACHMENT F.11
INCOMPLETE APPLICATION LETTER

Additional Information / Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to Nicollet County Property Services.

- A survey prepared by a licensed surveyor. The survey must contain all the elements necessary for your variance request, such as the bluff setback, the front yard setback, etc.

- A complete set of floor plans for the house and addition. The floor plan submitted was the addition only. The plans must include the entire house, including room use, egress windows, and closets.

- The identification of a secondary/alternative septic system location.

These items were identified and explained in the August 13, 2020 letter to you from our office

In your August 21, 2020 Letter to Nicollet County, you state the earth removed from the bluff to make space for the house addition was relocated to a washout on your property. During a July 21, 2020 site inspection, Mr. Gieseke stated the removed material was relocated offsite. You will need to submit additional information, including:

- The precise location of the relocated earthen material.

- The amount of material moved in cubic yards.

Please be aware, Section 721 of the Zoning Ordinance contains standards for the preservation and of land and natural drainageways. These standards may apply to your placement of fill in a washout.

Official Application
Your application will remain incomplete and **on-hold** until the above items are provided to Property Services. Once these items have been received and approved by our office, you may move forward with:

- Payment of the after-the-fact variance and recording fees.

- Signing the official application form prepared by staff.

Second Site Visit
You will need to contact our office no later than Tuesday **September 15, 2020** to schedule another site visit. The purpose of a second site visit will be to view the location of the fill and washout. Please know, additional corrective actions or after-the-fact permitting may be required to address this issue.

- The request may require an after-the-fact conditional use permit for the movement of the earthen material cut from the bluff.

Conclusion
The general information provided above is based on present standards in relation to your proposal. If there has been any misunderstanding regarding your proposal, if you have any additional questions, or if we may be of any further service to you, please do not hesitate to contact our office.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

GIESEKE CONSTRUCTION PROPOSAL

62208 COUNTY ROAD 21

NEW ULM MN 56073

PARCEL NO: 13.035.1000

Date of Submission: September 2, 2020

Proposal Submitted to: Jon Hammel – jon.hammel@co.nicollet.mn.us

Mandy Landkamer - Mandy.Landkamer@co.nicollet.mn.us

We propose the following to protect our investment from the elements of weather, wildlife and **unauthorized trespassers**.

- Ty-Vek
- Windows
- Doors
- Soffit

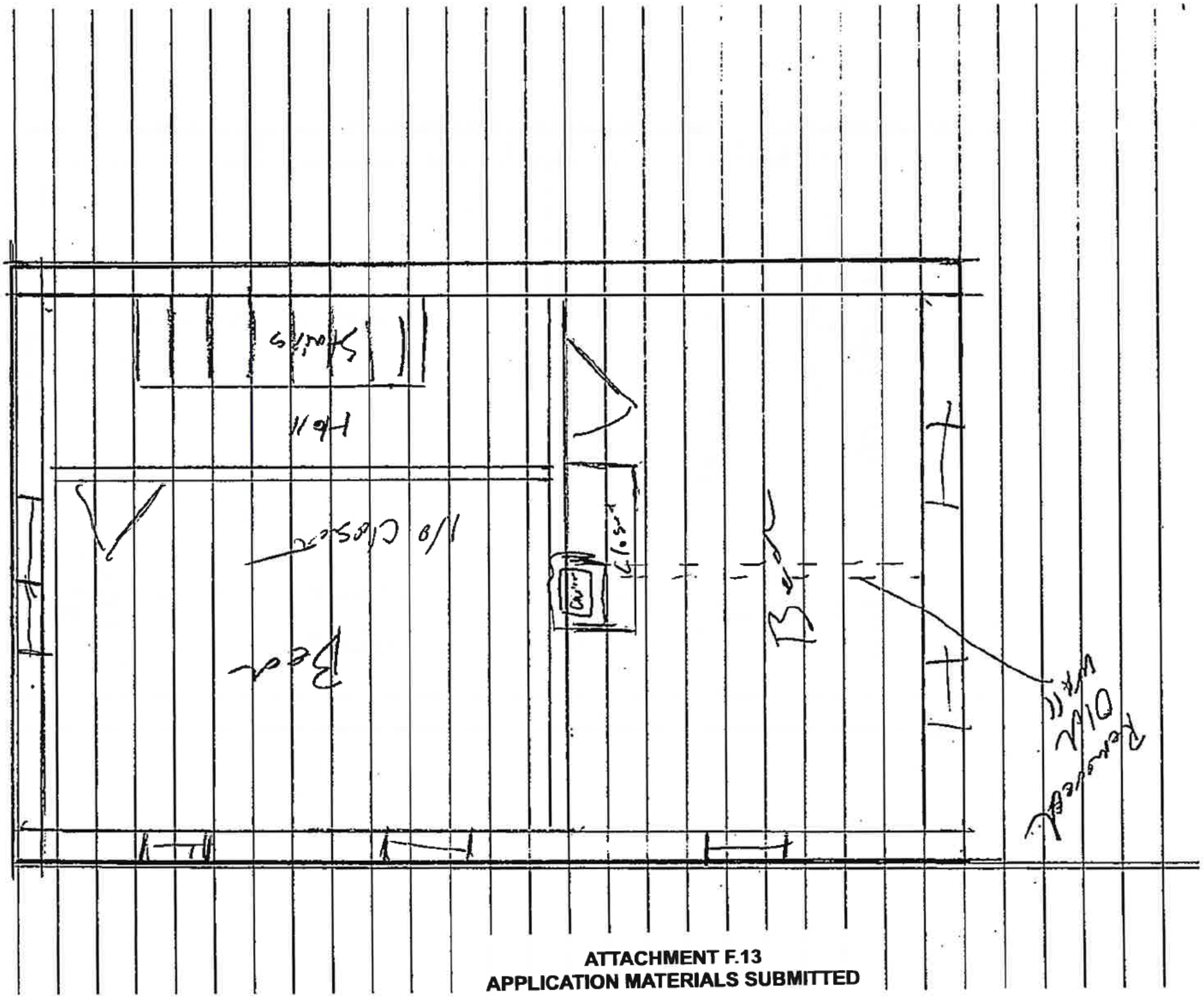
Pat & Shana Gieseke

62208 County Road 21

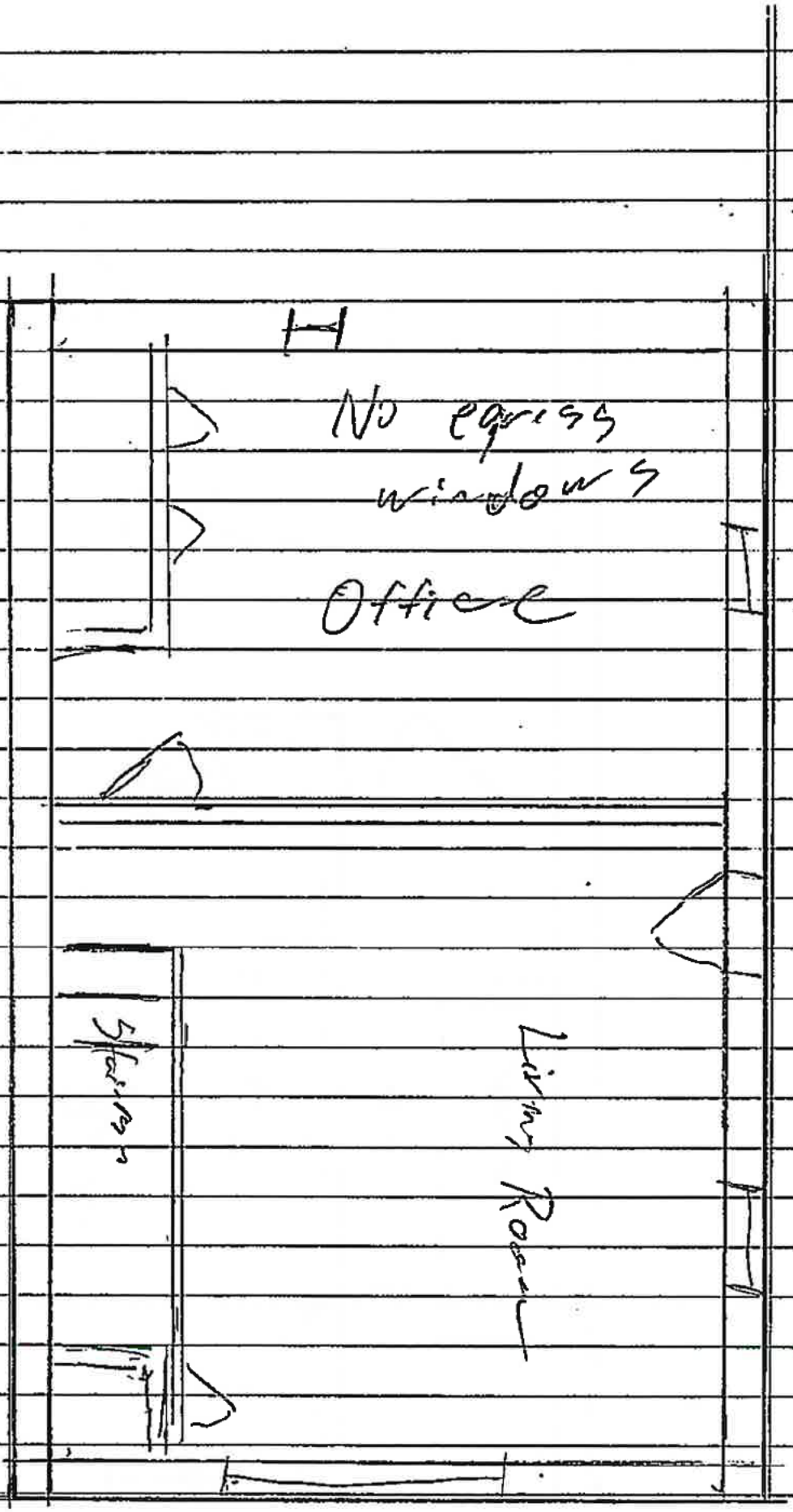
New Ulm, MN, 56073

pat-shana@comcast.net

ATTACHMENT F.12
CONSTRUCTION PROPOSAL



ATTACHMENT F.13
APPLICATION MATERIALS SUBMITTED


H
No egress windows
Office
Stairs
Living Room

3D
(44°22'16"N 94°30'50"W) 1,929 ft
Google

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

September 15, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Construction Proposal / Inquiry

Dear Mr. and Mrs. Gieseke,

This letter is in response to your construction proposal submitted on September 2, 2020, and an email inquiry submitted September 10, 2020. The proposal and inquiry were sent via email from you to our office. They both involved an unpermitted addition to your existing dwelling located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township.

Construction Proposal

A July 13, 2020 cease and desist order required you to cease construction on the unpermitted addition. Construction then continued in violation of the order until August 21, 2020, when you confirmed all construction had ceased. The document submitted on September 2, 2020 included your proposal to protect your investment from the elements of weather, wildlife, and unauthorized trespassers. You proposed to continue a limited amount of construction, including the installation of:

- Ty-Vek
- Windows
- Doors
- Soffit

Please know, your proposal has been administratively denied by our office. Moving forward, you may submit a revised proposal for consideration.

ATTACHMENT F.14
CONSTRUCTION PROPOSAL DENIED

Email Inquiry

The September 10, 2020, email included several questions. Each will be addressed below.

1. *What is the status of the site visit for the septic?*

   The site visit is up to the scheduling of your septic contractor. As of today, County Sanitarian Sr. Pete Otterness confirmed that your contractor has not yet scheduled a visit.

2. *What is the status of the site visit for the second viewing of the washout?*

   Per the September 9, 2020 incomplete application letter, you have until September 15, 2020 to schedule a site visit to view the earthen material placed to address the washout.

3. *What is the status of the items for the "incomplete application" such as the survey?*

   A revised survey was submitted to our office via email by Jesse Zeig of Bolton and Menk on September 4, 2020. The survey included the setback lines as identified in the September 9, 2020 incomplete application letter. Our office has yet to receive:

   - A secondary/alternative septic system location.
   - The precise location of the relocated earthen material, including the material moved offsite.

4. *What is the status of approval for our construction proposal? SECOND REQUEST IS ATTACHED*

   This question was addressed in this letter, above, under "Construction Proposal".

5. *What is the EXACT cost total for our variance requests?*

   The total cost for an after-the-fact variance is $1,046. This includes a $1,000 after-the-fact hearing fee, and a $46 recording fee.

6. *Where do I mail the check to for the variance requests and whom is it payable to?*

   The check can be made out to Nicollet County Property Services, and can be mailed to:

   Property Services
   Attn: Jon Hammel
   501 S. Minnesota Ave.
   St. Peter MN 56082

If you have any questions concerning this letter please do not hesitate to contact our office.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney
Pete Otterness, County Sanitarian, Sr.

Parcel No: 13.035.1000
Map No: 0335400003





ATTACHMENT F.15
PHOTOS


09 18 2020


09 18 2020


09 18 2020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09 18 2020

OFFICE OF THE NICOLLET COUNTY ATTORNEY

Michelle M. Zehnder Fischer
County Attorney

EXHIBIT N

James P. Dunn, Chief Deputy County Attorney
Megan E. Gaudette Coryell, Assistant County Attorney
Shannon Ness, Assistant County Attorney
Daniel R. Green, Assistant County Attorney
Bonnie Petersen, Victim/Witness Coordinator

September 21, 2020

Sent via email to sgieseke@frandsenbank.com
and via Certified Mail

Patrick E. and Shana E. Gieseke
62208 County Road 21
New Ulm, MN 56073

Re: Cease and Desist Order

Dear Mr. and Ms. Gieseke:

This letter concerns the Cease and Desist Order issued to you by Nicollet County Property and Public Services ("NCPPS") on July 13, 2020, that requires you to cease construction on the unpermitted addition.

Based upon information received since that time, as well as observations of NCPPS while on site, you have failed to comply with the Order, and construction has continued. In addition, on September 18, 2020, you indicated to Mandy Landkamer, NCPPS Director, that you would continue construction on the property, despite the Cease and Desist Order.

Please be advised that if you do not **immediately cease** any and all work on the property, NCPPS will seek immediate injunctive relief and/or a temporary restraining order from the Court. Section 806 of the Nicollet County Zoning Ordinance provides that "[a]ny costs incurred by the County in the enforcement of the cease and desist order or the remedies therein shall be assessed to the landowner."

Sincerely,

Megan E. Gaudette Coryell

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney

MEGC/lms
cc: Mandy Landkamer, Nicollet County Property and Public Services

Nicollet County Government Center
501 South Minnesota Avenue, St. Peter, MN 56082
Telephone: 507-934-7890 Fax: 507-934-1216

ATTACHMENT F.16
NICOLLET COUNTY ATTORNEY LETTER

Jon Hammel

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 3:39 PM
To: Megan Coryell
Cc: Mandy Landkamer; Debra Strandlie; Jon Hammel
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

I can confirm that Pat and Shana have assured me that all construction work has ceased.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

ATTACHMENT F:17
EMAIL

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 1:45 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Mr. Franta,

Please confirm by 4:30 p.m. today whether any and all construction activity on the property, including inside the structure, has ceased. Should unauthorized construction activities continue and/or resume, NCPPS will seek immediate injunctive relief and/or a temporary restraining order from the Court.

In regards to numbers 1-6:

1. There are remaining question on the survey. A follow up letter on this should be going out early to mid-next week.
2. There are remaining issues with the floor plans. This will be included in the follow up letter referenced in #1.
3. NCPPS has not received the septic paperwork. It is still with Lafayette Excavating.
4. Based upon the amount of earthen material moved, Mr. Gieseke and Ms. Gieseke will need an After-The-Fact Conditional Use Permit. In addition, Mr. Gieseke and Ms. Gieseke have not identified specifically where the earthen material was moved to. The survey identified +/- 425 cubic yards of earthen material left onsite. The site of the remaining +/- 825 cubic yards hauled offsite has not been identified. This will also be addressed in the follow up letter referenced in #1.
5. Please see #4.

6. Correct, payment of the variance and recording fees have been received. However, as referenced in #3 and #4, an After-The-Fact Conditional Use Permit will need to be applied for regarding the movement of the earthen material.

Regarding your other questions, Nicollet County's responses are in RED.

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

No. No application has been submitted. Further, additional requirements have been identified in these responses, and further information will be provided in the follow up letter referenced in #1. Further information on the application process will also be included in the follow up letter.

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

Can you please clarify your question?

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by county workers without Pat or Shana's knowledge or presences?

NCPPS is not aware of any visits by NCPPS staff without Mr. Gieseke and/or Ms. Gieseke's presence. NCPPS does not go on property without the prior consent of the landowner.

I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

This should be answered by the responses above.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:55 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thank you for your follow up. If a call is not possible this morning could we possibly expect an email reply this morning to my questions (highlighted in yellow) in my email of earlier this morning in the string below?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 7:43 AM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Good morning,

I will follow up with PPS and get back to you. The soonest a call could be scheduled with Mandy, Jon, and myself is Tuesday. It appears that there would be time available at 11am.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:21 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thought I should follow up on my earlier email this morning to clarify/specify.

I am available for a call this morning. Can we set it up for either 9 or 10 to work for you and Jon (or Mandy)?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Steven J. Franta
Sent: Thursday, September 24, 2020 6:05 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thank you for your responses to our inquiry.

I understand that the letters dated September 2 and 15 from Jon Hammel are the latest communication addressing the outstanding requirements to complete the application for a after the fact variance and that Pat and Shana have since provided

1. Survey via 9/4 email (also previous sent by 8/28 email
2. Floor plans via 9/14 email
3. On site visit on9/18 with Pete Otterness and Lafayette Excavating who are now compiling the secondary/alternative septic system location paperwork required.
4. Location of relocated earthen material via 9/14 email
5. Cubic yards of material moved disclosed in survey via 9/4 email (also previous sent by 8/28 email)
6. Payment of the variance and recording fees

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by county workers without Pat or Shana's knowledge or presences?

I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

Sincere regards,

Steven J. Franta

Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Debra Strandlie
Sent: Wednesday, September 23, 2020 1:47 PM
To: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Good Afternoon Jon,

Thank you for sending the documents.

I will be in touch if we need additional information.

Warm regards,

Debra Strandlie
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debras@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

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From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Wednesday, September 23, 2020 1:38 PM
To: Debra Strandlie <debras@thelegalprofessionals.com>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: Pat & Shana Gieseke Application Requirements

Hi Debra,

Megan asked I send you the attached letters and emails concerning the application requirements for Mr. and Mrs. Gieseke. The first letter, dated August 13th was sent by mail, so that is why there is no attached email for it. Please let me know if you have any questions, or if I may be of any other service. Have a pleasant day.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment.

Sincerely,

https://mn-nicolletcounty.civicplus.com/" style='position:absolute;margin-left:-1.9pt;margin-top:0;width:85.1pt;height:78.75pt;z-index:-251657216;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:text;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:button="t">
Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

NOTICE:
Unless restricted by law, email correspondence to and from Nicollet County government offices may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties.
This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please destroy it and notify the sender immediately.

Total Control Panel Login

To: jon.hammel@co.nicollet.mn.us Remove this sender from my allow list
From: steve@thelegalprofessionals.com

You received this message because the sender is on your allow list.

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

October 2, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is fourfold:

1. To respond to the most recent documents you submitted concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property;

2. To address the cutting/filling of over 50 cubic yards of material on your property;

3. To respond to a series of emails between your lawyer, Steven Franta, and Nicollet County on September 24, 2020. The emails concerned violations of the Nicollet County Zoning Ordinance on your property. These violations have been the subject of a July 13, 2020 Cease and Desist Order and three previous letters to you from our office, dated August 13, 2020; September 2, 2020; and September 15, 2020; and

4. To follow up on the September 18, 2020 site visit by staff to your property. The purpose of the site visit was to view the fill placed in the washout, and to determine a secondary/alternative septic system location on your property. Present at the site visit were Patrick Gieseke, Kevin and Dan Reinhart from Lafayette Excavating, Nicollet County Sr. Sanitarian Pete Otterness, and Nicollet County Property and Public Services Director Mandy Landkamer.

September 14, 2020 Documents

The documents you submitted to Nicollet County Property and Public Services ("NCPPS") on September 14, 2020 were received via email. These documents included:

- Existing House Floor Plans
- Relocated Earthen Material (Map)

ATTACHMENT F.18
INCOMPLETE APPLICATION LETTER

The documents relate to your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request has four components:

1. Expanding a nonconforming structure;
2. Reducing the front yard setback;
3. Reducing the bluff setback; and
4. The alteration of protected bluff areas.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Information/Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to NCPPS:

- A survey prepared by a licensed surveyor. The survey must contain:
  - The precise placement of the 425 cubic yards of the relocated earthen material onsite (amount noted on existing survey). The survey must depict each location where fill was placed on your property. The map you emailed to NCPPS on September 14, 2014 depicts five locations that received fill material.
  - The location of the proposed alternative/secondary septic system location;
  - The location of the right of way; and
  - The distance between the proposed alternative/secondary septic system location and the right of way.
- An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.
  - **NOTE:** As you are aware, the soil type on your property (960F, Storden-Clarion) is considered highly erosive and is severely limited as it relates to development. You may wish to contact the Nicollet County Soil and Water Conservation District concerning methods to properly address erosion from runoff. They may be contacted at 507-232-2550.

- A complete set of floor plans for the house and addition on your property. The floor plans submitted are considered incomplete for the following reasons:
  - The plans did not include the basement.
  - The plans did not contain dimensions.
  - The plans did not identify the main floor vs. the upstairs floor.
  - The plans did not indicate whether they were for the existing dwelling (pre-remodel) or for the proposed dwelling (post-remodel).
  - The plans did not indicate how the addition will connect to the existing dwelling.
- The identification of a secondary/alternative septic system location on your property.
  - The September 18, 2020 site visit with Lafayette Excavating identified an area for a secondary/alternative, and possibly a tertiary, location for the septic system on your property. The septic designer must identify what type (trench, bed, at-grade, or mound) of soil treatment area(s) will be installed in this area. The dimensions of the soil treatment area(s) need to be identified on a site plan. Additionally, the location of the proposed tank(s) to serve this secondary/alternative system must be included on the site plan. As the location is closer than the required 50 feet to the right of way, the site plan needs to show the distance between of all components planned and the road right of way, as marked by the Nicollet County Highway Department. Based upon current information, it appears the location does not meet the 50-foot setback distance requiring by the Zoning Ordinance. If this distance is not met, you will need to make application for a second variance to reduce this setback.

Official After the Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Your check (#1012, in the amount of $1,046.00) is being ***returned*** with this letter. Payment is due when the official application is signed.
- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, your request will be added to the next available hearing date. This process was outlined in a previous letter to you dated August 13, 2020.

Onsite Earth Movement

According to your discussions with NCPPS staff, the site visit with NCPPS staff, and your survey (i.e. "gully fill area"), it appears that at least one of the five fill locations is within a protected bluff area on your property. In your August 21, 2020 letter to NCPPS, you note the fill was placed to fill in a

washout that was forming on your property. It appears this material is now eroding downslope, along with the natural erosion from the washout, into the ditch on the northern side of County Road 21.

Please be aware, Section 721.1 of the Zoning Ordinance states that:

- All development must conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
- Slopes over 12% in grade must not be developed.
- Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
- Whenever possible, natural vegetation shall be retained and protected.

The fill placed in the bluff will need to be removed and the bluff restored per the standards of Section 721. The alternative to removing the fill would be to seek an after the fact variance to the applicable standards.

Offsite Earth Movement

The survey you submitted notes that approximately 825 cubic yards of earthen material was moved offsite from your property. Section 6 of the Zoning Ordinance, Zoning Districts and District Provisions, identifies the cutting and filling of 50 cubic yards or more of material as a conditional use, regardless of the zoning district, and an after the fact zoning permit is required. If the earthen material was relocated within Nicollet County, the owners of the land where the fill was placed may be required to apply for an after the fact conditional use permit. This process is summarized below. If the material was moved to a location outside of Nicollet County, you will need to provide verification supporting this.

- <u>After the Fact Conditional Use Permit</u>:
  The first step will be to identify any and all of the offsite fill locations. This will include identifying the property, or properties, and the location of the fill on the site(s). At a minimum, this will require a site plan for each property involved. Confirmation from the owner(s) of the property may be required.

  The next step is to complete an official application and pay the application fee. A legal description for the property where the fill is located is required at the time of application. Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, NCPPS must determine the application to be complete. If the application is determined to be incomplete, NCPPS will issue an incomplete application notice. You must then revise the application and resubmit it. NCPPS has 15 business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines, and applicants are encouraged to factor this into their planning.

The request would then be added to the agenda for the next available Nicollet County Planning and Zoning Advisory Commission hearing date. The request would be heard during a public hearing. You or your representative must be present at the public hearing to respond to any questions the Commission may have regarding the proposal. The Commission would then make a recommendation to the Nicollet County Board of Commissioners. The County Board then makes the final decision regarding the request.

NOTE: The placement of the fill **must adhere** to standards and requirements of the Zoning Ordinance. If the placement of the fill does not adhere to these standards, then the fill would need to be relocated in a manner which does adhere to the standards. Relocation would require the necessary permitting. The alternative to meeting the standards would be to seek relief through an after the fact variance.

Construction Activity Ceased

Per a September 24, 2020 email from Steven Franta NCPPS understands that any and all construction activity (including both interior and exterior work) on your property has ceased. Construction may only recommence once the Cease and Desist Order has been lifted by Nicollet County.

Conclusion

I have included a list of hearing dates and a fee schedule with this letter. The process takes roughly four to six weeks to complete. No guarantee can be made that staff would recommend approval of the request. Additionally, staff can make no guarantee your request would be approved by the Commission or the County Board. Fees are non-refundable once the legal notice of the public hearing has been submitted for publishing.

The general information provided above is based on present standards and information. If there has been any misunderstanding, if you have any additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: Returned Check #1012 in the amount of $1,046
After-the-Fact Variance Handouts
Conditional Use Permit Criteria
2020 Hearing and Fee Schedules

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000 / Map No: 0335400003

NICOLLET COUNTY EST. 1853

APPLICANT QUESTIONNAIRE
AFTER-THE-FACT VARIANCE

Name of Applicant: _____ Date: _____

Request: _____

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. The variance is in harmony with the general purposes and intent of the official control.

_____
_____
_____
_____

2. The variance is consistent with the intent of the Comprehensive Plan.

_____
_____
_____
_____

3. The variance establishes a practical difficulty in complying with the official controls.

_____
_____
_____
_____

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

_____
_____
_____
_____

5. The variance will not alter the essential character of the locality.

_____
_____
_____
_____

(Continued onto back)

6. The practical difficulty includes more than economic considerations alone.

Additional After-the-Fact Criteria for use ONLY when first six criteria are met.

7. Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?

8. In relation to the subject variance, are there similar structures in the area?

9. Does the burden on the applicant of compliance outweigh the benefit to the County?

10. Was the act of the violation by the applicant unintentional?

NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: _____ Date: _____

Please describe the specific details related to your request, including but not limited to:

- why you feel the project is a *need* rather than a *want*;
- what alternatives you explored and the reasons they were not reasonable for you; and
- what use, or uses, the project will provide for you;

If your request is approved, you will be **held** to the plans and specifications submitted to the County with your application.

NICOLLET COUNTY EST. 1853

CUP APPLICANT FINDINGS OF FACT CRITERIA

Name of Applicant: _____ Date: _____

Request: _____

In granting a conditional use permit, the County Board shall consider the advice and recommendation of the Planning Commission and the effect of the proposed use upon the health, safety, morals, and general welfare of the community. Among other things, the County Board shall make the following findings where applicable.

Why do you feel the request meets the following criteria?

1. Given the nature of the land, the requested use is compatible with public health, safety, and general welfare.

_____

_____

_____

_____

2. The requested use will not create an unreasonably excessive burden on the existing roads or other utilities.

_____

_____

_____

_____

3. The requested use is compatible with the surrounding area and will not significantly depreciate nearby properties.

_____

_____

_____

_____

4. The structure and the use shall have an appearance that will not have an unreasonably adverse effect on nearby properties.

_____

_____

_____

_____

5. The requested use is consistent with the County Zoning Ordinance.

_____

_____

_____

_____

(Continued onto back)

6. The requested use is not in conflict with the County Comprehensive Plan.

7. The requested use will not create an unreasonably adverse effect because of noise, odor, glare, or general unsightliness, for nearby property owners.

8. The requested use is reasonably related to the existing land use and environment.

9. There are no apparent unreasonable health risks posed to neighbors or the public in general.

10. The requested use will/will not have an adverse effect upon public health, safety, and welfare due to the following other factors.

A MAJORITY OF THE CUP CRITERIA <u>MUST</u> BE MET IN ORDER FOR THE REQUEST TO BE APPROVED.

NICOLLET COUNTY
PROPERTY
SERVICES
GOVERNMENT CENTER
501 SOUTH MINNESOTA AVE
ST PETER MN 56082
DIRECT (507) 934-7070; FAX (507) 934-7079

2020 HEARING DATES

APPLICANT'S DEADLINE	P & Z / BAA	BOARD OF COMMISSIONERS	FEEDLOT PERMITS
January 3	January 27	February 11	February 14
January 31	February 24	March 10	March 13
February 21	March 16	March 24	April 2
March 27	April 20	April 28	May 7
April 24	May 18	May 26	June 5
May 22	June 15	June 23	July 2
June 26	July 20	July 28	August 6
July 24	August 17	August 25	September 3
August 28	September 21	October 13	October 8
September 25	October 19	October 27	November 6
October 23	November 16	November 24	December 8
November 25	December 21	January 5	January 12

Applications for Any Hearing are **ONLY** Taken
BEFORE 3:30 p.m. on the Deadline Date

ZONING PERMITS REQUIRED FOR:

Permanent or Portable Structures

- Construction/Erection
- Structural alteration
- Relocation
- Signs (except political and real estate)

Sewage Disposal System/ Solid Waste Disposal Operation

- Installation
- Alteration
- Repair
- Extension

Land Alterations

- Cutting or filling in excess of 50 cu. yds.
- Timber Harvesting
- Removal of Shoreland vegetation
- Mineral extraction
- Landfills
- Land excavation

Erection, Alteration or Relocation of Permanent AG Facilities

- Silos
- Grain bins
- Basins
- Walled feed pads
- Holding ponds
- Slurry system

Greater than 2' Along Public Road

- Fences
- Retaining walls
- Berms
- Landscaping

Essential Services Along Public Roads

Towers

Questions?

Additional information and standards may be required by the Nicollet County Zoning Ordinance. This information can be found on our website.

Contact Us!

If you have further questions, please feel free to contact us or make an appointment to stop into the Property Services office, located at:

Nicollet County Government Center
501 South Minnesota Ave
St Peter, MN, 56082

Phone: (507) 934-7070

Fax: (507) 934-7079

Web: www.co.nicollet.mn.us

Monday-Friday from 8:00 a.m.—4:30 p.m.

NICOLLET
EST. COUNTY 1853

Providing efficient services

with innovation and accountability.

Revised January 7, 2020

NICOLLET COUNTY EST. 1853

NICOLLET COUNTY PROPERTY SERVICES DEPARTMENT

FEE SCHEDULE

It is recommended that applicants call to schedule an appointment prior to visiting our office in order to ensure the appropriate staff is available to assist you.

STRUCTURES

Residential Dwellings and Attached Additions	<120 sq ft	$ 25.00
	121 sq ft and over	$ .25 sq ft $ 50.00 min.
Accessory Structures (detached)	<120 sq ft	$ 25.00
	121 sq ft to 1000 sq ft.	$ 50.00
	1001 sq ft and over	$ .05 sq ft
AG Animal Structures	<120 sq ft.	$ 25.00
	121 sq ft to 500 sq ft.	$ 50.00
	501 sq ft and over	$ .10 sq ft
Grain Bins/Silos		$ 50.00
Commercial Structures e.g. utility cabinets, power station sheds		$ .25 sq ft $ 50.00 min.
Towers (cell, etc.)		$ 250.00

LAND ALTERATIONS

Land Alterations including borrow pits, walled feed pads, basins, timber harvesting	$ 50.00

RENEWABLE ENERGY SYSTEMS

WECS – Micro	$ 50.00
Non Commercial	$ 250.00
Commercial	$ 500.00
Solar Energy Systems—Small	$ 250.00
Solar Energy Systems—Large	$ 500.00

SEPTIC SYSTEM

Septic System - Operating Permit	$ 25.00/yr.
- Holding Tank/Privy	$ 100.00
- Type I-III	$ 225.00
- Type IV-V	$ 450.00

SIGNS

On Premises	$ 25.00
Commercial and/or Off-Premises	$ 50.00

911 ADDRESS SIGNS

Mailbox support, 911 sign and post	$ 257.00
911 sign and post	$ 159.00

SOLID WASTE

Solid Waste Facility Application	$ 100.00
Solid Waste Haulers License	$ 100.00

FEEDLOTS

Feedlot Permit - New	$ 100.00
- Existing (Valid)	$ 50.00

WETLAND PERMITS

Wetland Decision—Exemption	$ 50.00
Wetland Decision—No Loss	$ 50.00
Wetland Delineation Review	
Under 1 acre	$ 100.00
1 to 4.99 acres	$ 200.00
5 to 10 acres	$ 300.00
Greater than 10 acres	$ 400.00
Wetland Replacement Plan Review	
Under 1 acre	$ 200.00
1 to 4.99 acres	$ 300.00
5 to 10 acres	$ 500.00
Greater than 10 acres	$ 700.00
Wetland Banking Plan Review	
Under 1 acre	$ 200.00
1 to 4.99 acres	$ 400.00
5 to 10 acres	$ 800.00
Greater than 10 acres	$1000.00
Annual Monitoring report review	$ 50.00/yr.
Wetland Certificate of Completion	
Under 1 acre	$ 50.00
1 to 4.99 acres	$ 100.00
5 to 10 acres	$ 200.00
Greater than 10 acres	$ 300.00
After-the-Fact Wetland Review	**Double the fee**

HEARINGS

Conditional Use Permit/3 year Gravel Pit Renewals	$ 400.00
Variance	$ 400.00
Rezoning	$ 400.00
Appeal	$ 400.00
Recording fee	$ 46.00

OTHER FEES

Zoning Ordinance	$ 50.00
After-the-Fact Zoning Permit (Double the fee, whichever is greater)	$ 250.00
After-the-Fact Variance/CUP	$1000.00
Special Scheduled Hearing (at applicant's request)	$1000.00
Large Format Scanning	$ 20.00
Burning to CD or DVD	$ 10.00
Copies—Single sided	$ .25
Double sided	$ .50

PLATTING

Plat Book	$ 5.00
Replat	$ 350.00
Platting of Existing Metes and Bounds	$ 250.00
New Subdivision Plat	$ 500.00

GIS FEES

11" x 17" or smaller		$ 5.00
Large Format Printing	Up to 24"	$ 10.00
	25" x 36"	$ 15.00
Custom Printing (+ .50 per additional inch)		$ 15.00
Labor Rate		$ 50.00 hour

GIS DIGITAL DATA

(provided in ESRI Shapefile Format)

Parcels	
- Per Parcel	$ .05($5 min)
- Entire County	$ 500.00
Road Centerline (includes road ranging)	$ 325.00
Address Point Layers	$ 325.00
Other Data Layers	$ 25.00

REQUIRED PRIOR TO ISSUANCE OF HOUSE PERMIT

- **An approved septic design**
- **Location of alternate septic site**
- **Access permit**
- **Contractor License #**

NOTE: ALL STRUCTURES require a SITE PLAN

Condensed list of information needed for permit:

Property owner/Name of applicant
Square footage of structure
Cost/value of requested structure
Estimated completion date
Section and township of requested permit
Description of request
Distances from road right-of-way, property lines, bluff, and ditch
Contractors: General, Electric, Heating, Plumbing, Septic System

*** Additional information may be required and additional standards may be applicable per the Nicollet County Zoning Ordinance .

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

October 9, 2020

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated October 2, 2020, enclosed (and attached) are:

1. **Survey:** After-the-fact Variance Sketch signed by Jesse Zeig of Bolton & Menk, Inc. dated October 5, 2020.
2. **Erosion and Sediment Control Plan:** "Erosion and Sediment Control Plan" with highlighted sketch showing placement of the control measures.
3. **Floor Plans:** Basement/Main/2nd Story Floor Plans; Nicollet County Beacon Floor Plan; and Puhlmann Lumber Floor Plan.
4. **Secondary/Alternative Septic System Location:** We are in daily communication with Lafayette Excavating. Hopefully, the septic designer will complete the site plan soon.
5. **Onsite and Offsite Earth Movement:** "Onsite Earth Movement" and "Offsite Earth Movement"

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. Other than the above mentioned #4, is any further information required before the Giesekes can expect an official application from you for signature, so the after-the-fact variance and recording fees can be submitted? We also request that we be placed on the October 19, 2020 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djs
Enclosures
CC: Patrick and Shana Gieseke

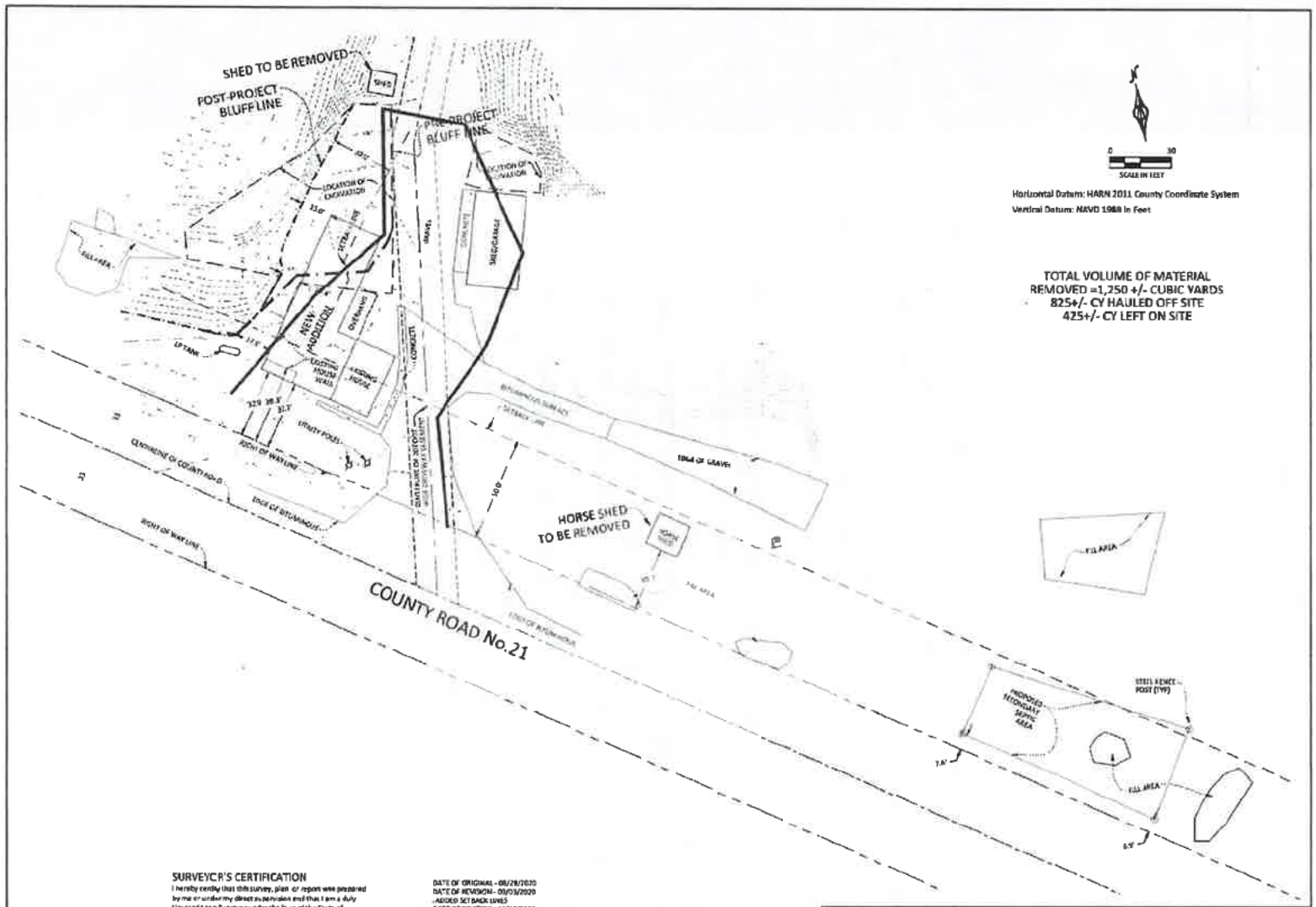
ATTACHMENT F.19
APPLICATION MATERIALS SUBMITTED

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Strandlie
Ashley A. St. Sauver
Tina C. Losleben

Since
1896



Horizontal Datum: HARN 2011 County Coordinate System
Vertical Datum: NAVD 1988 in Feet

TOTAL VOLUME OF MATERIAL REMOVED =1,250 +/- CUBIC YARDS
825+/- CY HAULED OFF SITE
425+/- CY LEFT ON SITE

SURVEYOR'S CERTIFICATION

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

Jesse D. Zeig — 10/05/2020
Jesse D. Zeig, License Number 44306 — Date

DATE OF ORIGINAL - 08/28/2020
DATE OF REVISION - 09/03/2020
-ADDED SET BACK LINES
DATE OF REVISION - 10/05/2020
-ADDED FILL AREAS

Surveyor's Note:
-The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP. MCCLEOD COUNTY, MN

BOLTON & MENK
1243 CEDAR STREET N.E.
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

PART OF THE SE 1/4, SECTION 36-111-31

FOR: PAT AND SHANNON GUSTAFSON

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H:\MESAGS_PKP\511\2571\CAD\C3D\127571V101-107.dwg 10/5/2020 10:40 AM

JOB NUMBER: 511.112571 FIELD BOOK: DRAWN BY: RRWEE

LOC 36-111-31(40)

Erosion and Sediment Control Plan

62208 County Road 21

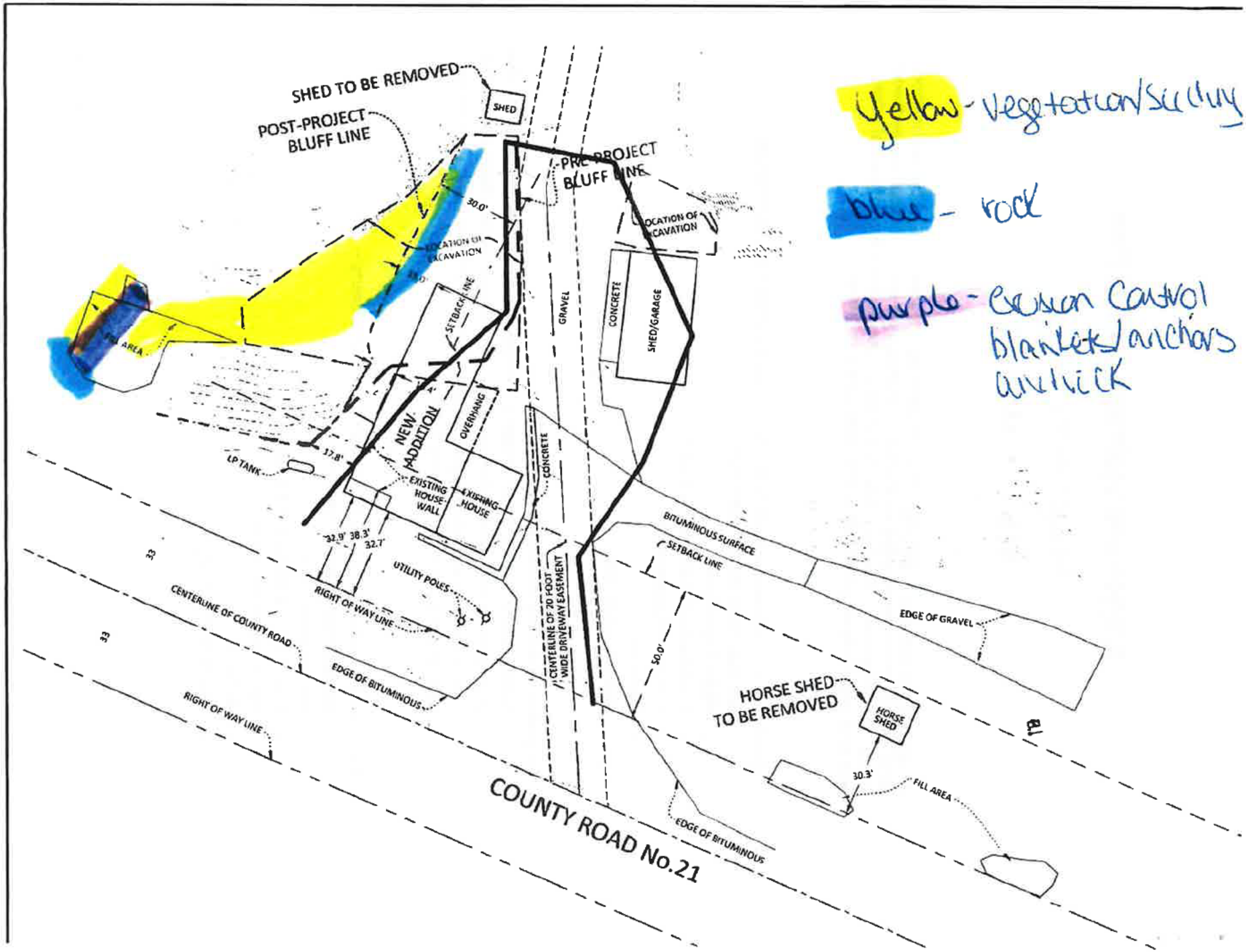
New Ulm, MN 56073

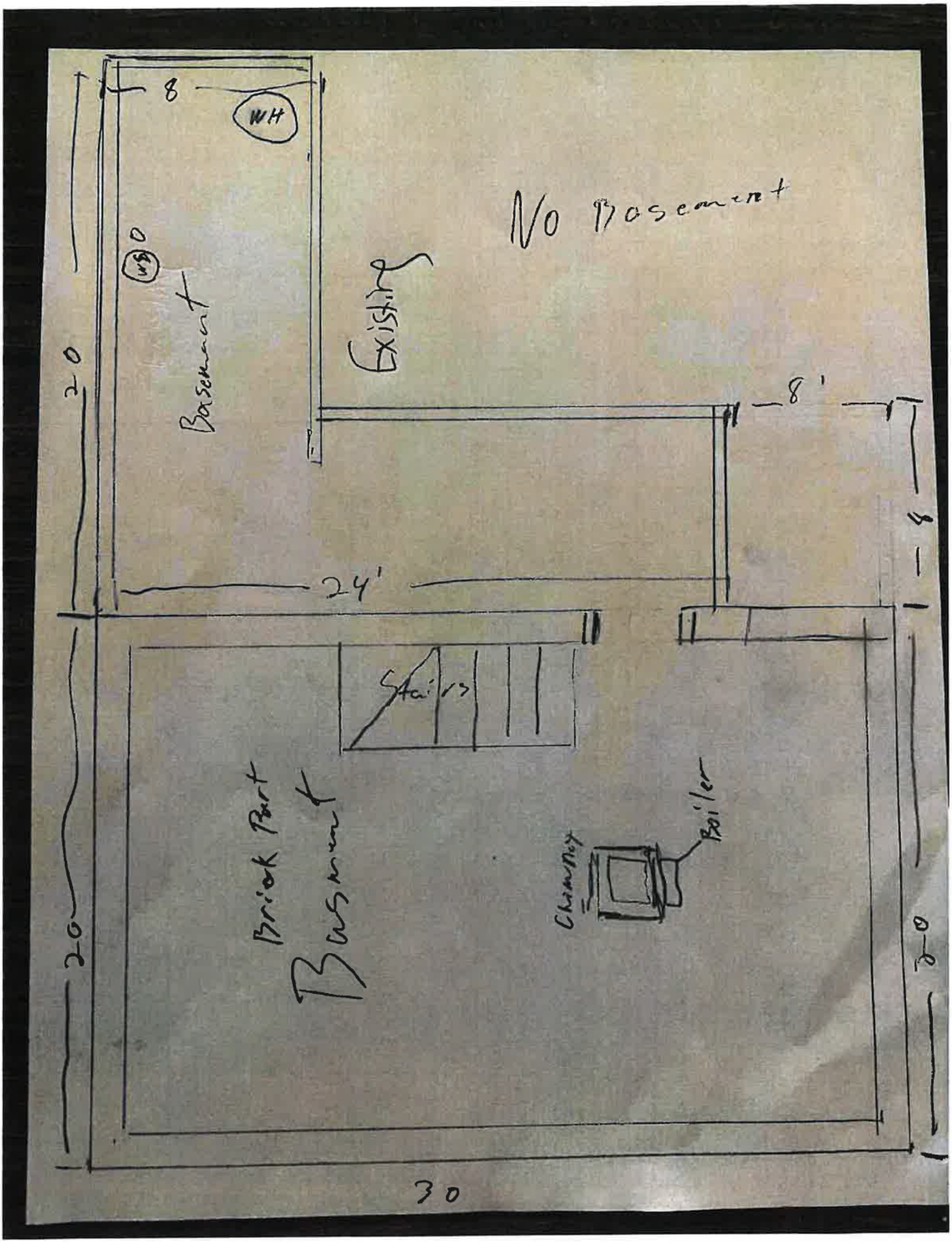
- An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.

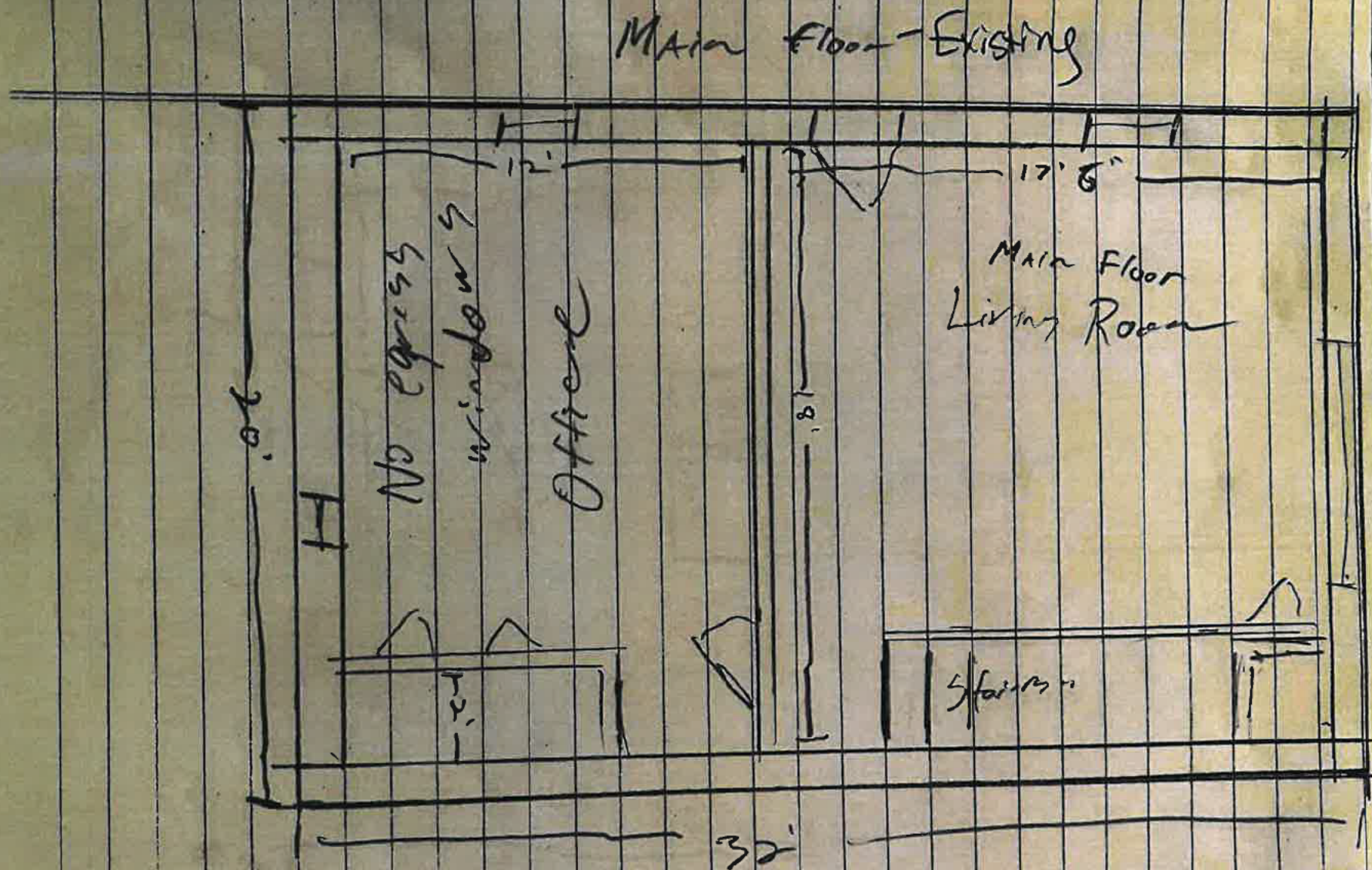
- Identify the practices and methods to be used to mitigate erosion and sedimentation –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock

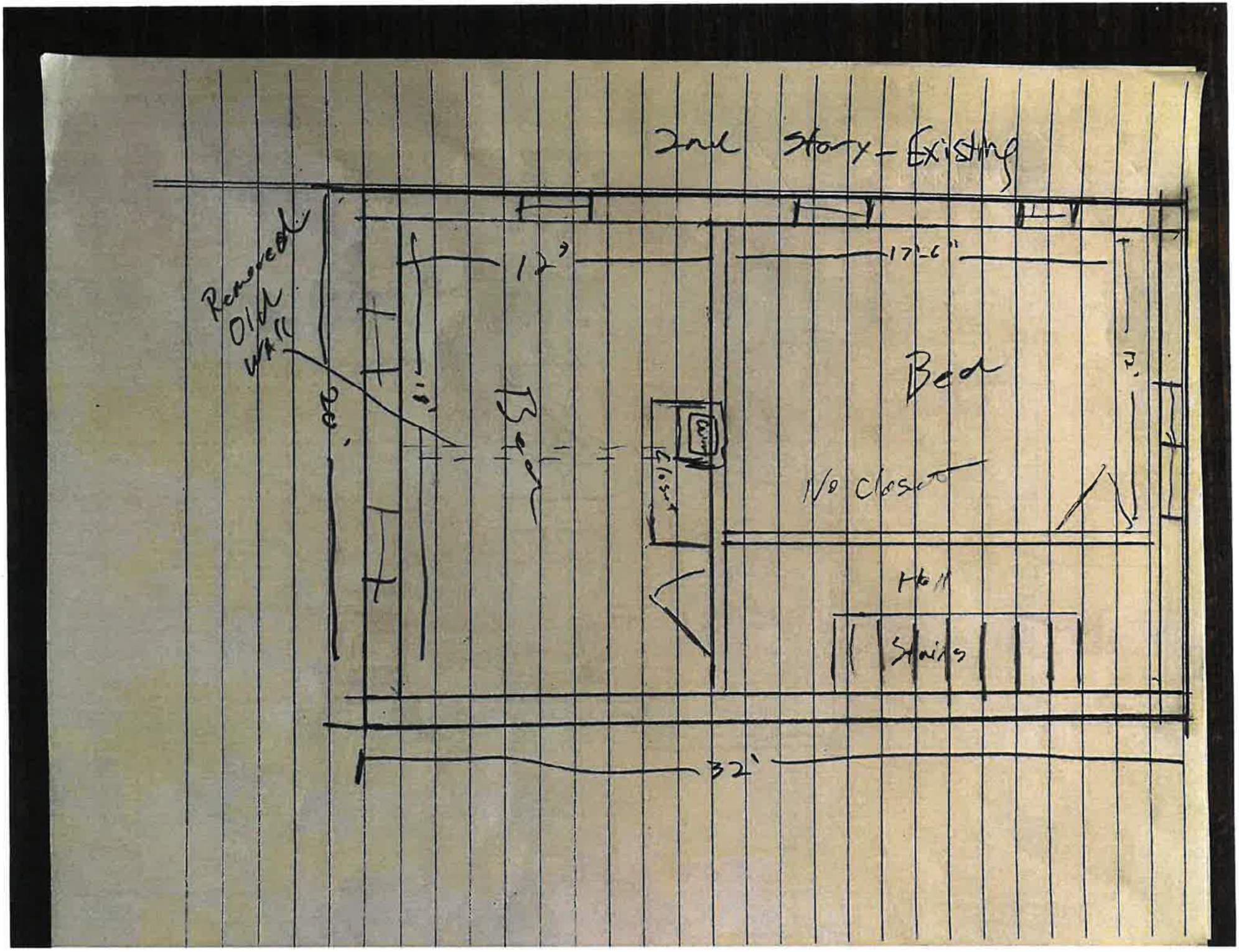
- Note what is currently being done to control erosion –
  - Unfortunately, Nicollet County Property and Public Services Cease and Desist order has prevented any work to be undertaken since July 2020, and we have been advised that a restraining order would be sought if we would proceed with any work. We have not been able to do anything since July 2020

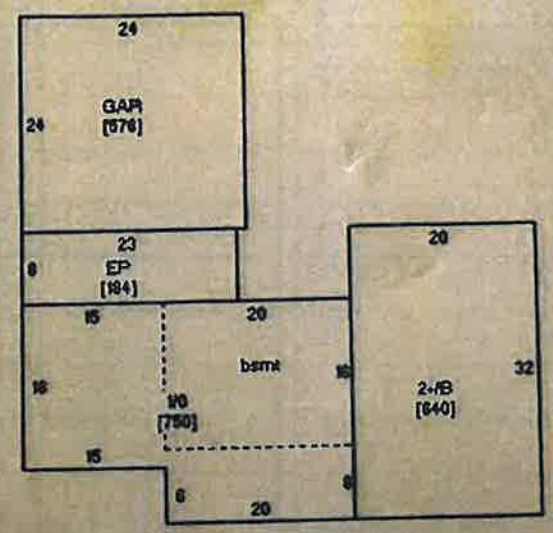
- What you are planning for future erosion control on your property –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock


SHED TO BE REMOVED
SHED
POST-PROJECT BLUFF LINE
PRE-PROJECT BLUFF LINE
30.0'
LOCATION OF EXCAVATION
LOCATION OF EXCAVATION
FILL AREA
SETBACK LINE
GRAVEL
CONCRETE
SHED/GARAGE
NEW ADDITION
OVERHANG
17.8'
LP TANK
EXISTING HOUSE WALL
EXISTING HOUSE
CONCRETE
32.9'
38.3'
32.7'
UTILITY POLES
RIGHT OF WAY LINE
CENTERLINE OF COUNTY ROAD
EDGE OF BITUMINOUS
RIGHT OF WAY LINE
33
33
CENTERLINE OF 20 FOOT WIDE DRIVEWAY EASEMENT
BITUMINOUS SURFACE
SETBACK LINE
EDGE OF GRAVEL
50.0'
HORSE SHED TO BE REMOVED
HORSE SHED
30.3'
FILL AREA
EDGE OF BITUMINOUS
COUNTY ROAD No.21
Yellow - vegetation/succulents
blue - rock
purple - erosion control blankets/anchors or rock


8
WH
WD
Basement
No Basement
Existing
20
8'
8'
24'
Stairs
Brick Part
Basement
Chimney
Boiler
20
30
30


Main Floor - Existing
12'
17' 6"
Main Floor
Living Room
No egress
windows
Office
20'
18'
12'
Stairs
32'


2nd Story - Existing
Removed Old Wall
12'
17'-6"
Bed
Bath
W/D Closet
Hall
Stairs
32'

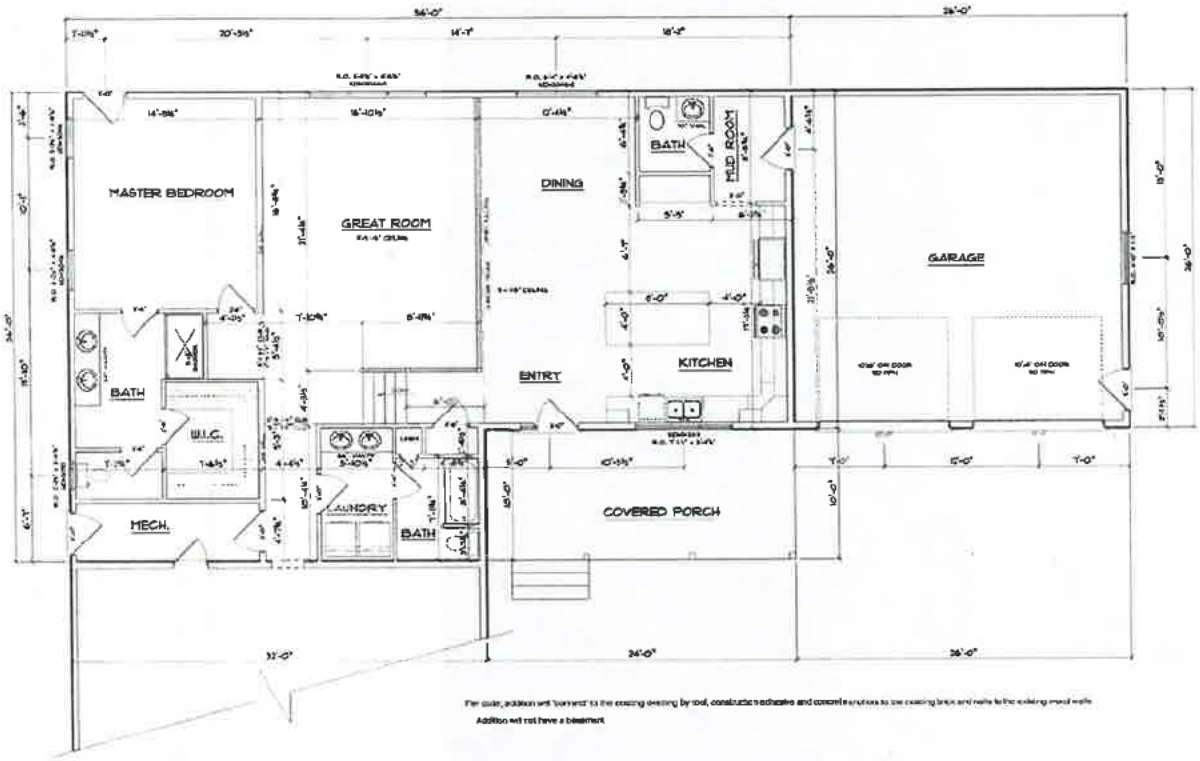


Sketch by www.camavision.com

N
W E
S

existing

Printed from Beacon - Nicollet County MN 10/04/2020



For code, addition will "connect" to the existing dwelling by roof, construction adhesive and concrete anchors to the existing brick and walls to the existing wood walls

Addition will not have a basement

MAIN FLOOR

COLUMN HEIGHT:

SCALE: 1/4" = 1'-0"

SQUARE FOOT AGE:

PRELIMINARY DATE
8.22.19

REVISION DATE

REVISION DATE

REVISION DATE

PUHLMANN LUMBER & DESIGN

301 1st STREET S. NEW ULM, MN
PH: (507) 354-4914
FAX: (507) 354-5105

GIESEKE ADDITION

62208 COUNTY ROAD 21 - NEW ULM, MN

PUHLMANN LUMBER

Onsite Earth Movement

62208 County Road 21
New Ulm, MN 56073

Onsite Earth Movement
According to your discussions with NCPPS staff, the site visit with NCPPS staff, and your survey (i.e. "gully fill area"), it appears that at least one of the five fill locations is within a protected bluff area on your property. In your August 21, 2020 letter to NCPPS, you note the fill was placed to fill in a

washout that was forming on your property. It appears this material is now eroding downslope, along with the natural erosion from the washout, into the ditch on the northern side of County Road 21.

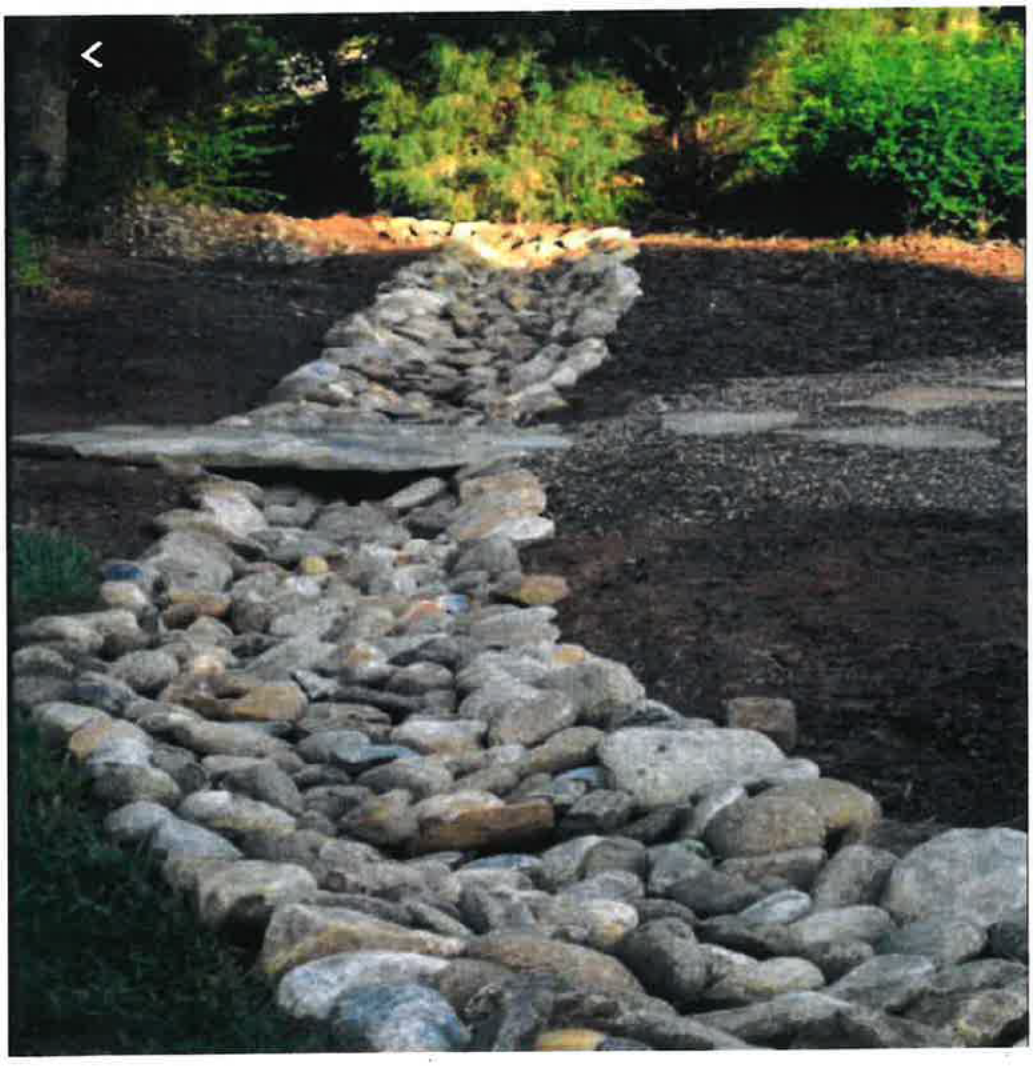
The highlighted statement above is false.

This google earth picture of the washout we filled—referred to above—was taken prior to our purchase of the property in 2017:



In July or August 2020, a Nicollet County/Highway Department employee dug out the ditch and destroyed vegetation with an excavator all the way down County Road 21. This can be confirmed by either Nicollet County or the Highway Dept records and is clearly visible when traveling down the entire length of County Road 21. What "appears" to be "eroding downslope, into the ditch" is from this digging and excavation. It is not from the fill we added to the washout at the TOP of our property.

If a cease and desist order had not been in place (with the threat of a restraining order), we could have completed the fill in the washout per our plans below:



Offsite Earth Movement

62208 County Road 21

New Ulm, MN 56073

We have previously and repeatedly stated, we have no idea who removed the dirt from our property. Randomly, one day an older gentleman stopped by and talked with Pat. He said he travels our road frequently and noticed we were removing dirt. He asked what our plans were for the removed dirt and when Pat told him we didn't have plans he stated that him and his brother could use it. If we didn't mind, they would come, load it and haul it away at no expense to us. We all agreed.

One evening, upon arriving home from work there was a skidsteer / loader at our home. Over the course of the next couple of days this man came, loaded the dirt and hauled it away from our property while we were at work.

There has been no more communication with this man and we have not seen him since.

We do, however, disagree with the amount of dirt the surveyor "estimates" as being removed. The data the surveyor used for his "pre-project" calculations is from 2010. On the sketch the surveyor shows the "pre-project" bluffline going directly through the garage that was existing. In the google earth picture below, you can clearly see the garage, a truck parked and bluffline that is not accurate on the sketch.

The fill moved cannot be entirely determined and is likely significantly less than 825 cubic yards because the survey shows the "pre-project bluff line" is from the MN LiDAR project from 2010. Jesse Zeig at Bolton & Menk, Inc. does not have any pre-construction elevations besides the LiDAR contours and he stated "they may not be the best but they are all [he has] to work with." His sketch clearly shows the "pre-project bluffline" going thru a building which existed when we purchased the property in 2017.

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

October 27, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on October 8, 9, and 12, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

October 8, 2020
The document submitted to Nicollet County Property and Public Services ("NCPPS") on October 8, 2020, was received via email from your surveyor, Jesse Zeig at Bolton and Menk. The document was a revised draft of the survey dated October 5, 2020. The revision included the removal of an unidentified thick black line. Mr. Zeig noted the line was placed on the survey in error.

October 9, 2020 Document Packet
The documents submitted to NCPPS by Debra Strandlie (on behalf of your attorney Steven Franta) on October 9, 2020, were received via email. These documents included:

- Cover letter (page 1 of packet)
- Survey dated October 5, 2020 (unrevised version, page 2)

ATTACHMENT F.20
INCOMPLETE APPLICATION LETTER

- ❖ Erosion and sediment control plan (pages 3-4)
- ❖ Basement floor plan – existing (page 5)
- ❖ Main floor plan – existing (page 6)
- ❖ Second story floor plan – existing (page 7)
- ❖ Nicollet County Beacon sketch – existing (page 8)
- ❖ Addition floor plan dated August 22, 2019 (page 9)
- ❖ Onsite Earth Movement (pages 10-11)
- ❖ Offsite Earth Movement (pages 12-13)

October 12, 2020 Document
The document submitted to NCPPS by your septic contractor Lafayette Excavating, Inc., on October 12, 2020, was received via email. This document included:

- ❖ Replacement/alternative septic system location site plan.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on October 8, 9, and 12, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to NCPPS:

- ➢ An amended survey prepared by a licensed surveyor.
  - o Under "Offsite Earth Movement" (page 12 of packet), you state you disagree with elements of the survey, including:
    - Amount of earth moved.
    - Location of pre-project bluff line in relation to an attached garage, built in 1968.

    The survey will need to be revised to accurately depict these two elements. The survey and written materials must align and not contain any discrepancies.

- The survey does not note that fill was used for the addition, as indicated in your September 14, 2020, Relocated Earthen Material Map. This will need to be accurately noted on the survey, along with the amount of fill used for the addition. State whether or not this material is included in the 1,250 cubic yard total noted on the existing survey.

- The survey will need to accurately note the amount of fill placed in the ravine/washout.

- Lastly, the survey depicts one unidentified element:

  - Please identify the unknown symbol located south of the gravel surface and east of the horse shed.

➢ A revised erosion and sediment control plan. The plan you submitted does not go into detail concerning the incorporation of and specific placement of erosion control elements (silt fences, mats, anchors, etc.). Additionally, the plan does not include the proposed seeding mix. The seeding mix must be appropriate for bluff stabilization.

- You may want to contact Nicollet County Soil and Water Conservation District Staff to review and comment as to whether your proposed plan will aid in bluff stabilization.

- Rock, concrete, and/or asphalt may not be placed in a drainage way. This element of the plan must be revised.

➢ A complete set of floor plans for the house and addition on your property. The floor plans you submitted are considered incomplete for the following reasons:

- The documents you submitted were a mix of existing and proposed floor plans. A complete set of existing and proposed floor plans is required. The proposed plans must clearly depict how the addition will connect to the existing dwelling.

Official After-The-Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

➢ Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

➢ Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation

The placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options:

1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,250 cubic yards of materials noted on the survey (dated October 5, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process is summarized below.

The first step is to complete an official application and pay the application fees. A legal description for the property is required at the time of application.

Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, the application must be determined to be complete. If the application is determined to be incomplete, NCPPS will issue an incomplete application notice. You must then revise the application and resubmit. Staff has fifteen (15) business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines and applicants are encouraged to factor this into their planning.

Then the request would be added to the agenda for the next available hearing date. The request is heard during a public hearing held by the Nicollet County Planning and Zoning Advisory Commission ("Commission"). You or your representative must be present at the hearing to respond to any questions the Commission may have regarding the proposal. The Commission then makes a recommendation to the Nicollet County Board of Commissioners ("County Board"), who then makes the final decision regarding the request.

The process takes roughly four to six weeks to complete. ***No guarantee*** can be made that Staff would recommend approval of the request. Additionally, Staff can make ***no guarantee*** your request would be approved by the Commission or County Board. Fees are non-refundable once the legal notice of the hearing has been submitted for publishing.

Offsite Earth Movement

You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020 are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: 2020 Hearing Schedule

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003

NICOLLET COUNTY
PROPERTY
SERVICES
GOVERNMENT CENTER
501 SOUTH MINNESOTA AVE
ST PETER MN 56082
DIRECT (507) 934-7070; FAX (507) 934-7079

2020 HEARING DATES

APPLICANT'S DEADLINE	P & Z / BAA	BOARD OF COMMISSIONERS	FEEDLOT PERMITS
January 3	January 27	February 11	February 14
January 31	February 24	March 10	March 13
February 21	March 16	March 24	April 2
March 27	April 20	April 28	May 7
April 24	May 18	May 26	June 5
May 22	June 15	June 23	July 2
June 26	July 20	July 28	August 6
July 24	August 17	August 25	September 3
August 28	September 21	October 13	October 8
September 25	October 19	October 27	November 6
October 23	November 16	November 24	December 8
November 25	December 21	January 5	January 12

Applications for Any Hearing are **ONLY** Taken
BEFORE 3:30 p.m. on the Deadline Date

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

November 23, 2020

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated October 27, 2020, enclosed (and attached) are:

1. **Amended Survey:** After-the-fact Variance Sketch dated November 18, 2020 Revision/Added Quantification.

2. **Revised Erosion and Sediment Control Plan:** Recommendations from NSWCD signed by Blake Honetschlager of Nicollet SWCD will be followed and incorporated into the proposed Erosion and Sediment Control Plan.

3. **Revised Floor Plans:** Plans indicate the existing and proposed floor plan, and depicts how the addition will connect to the existing dwelling.

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. We also request that we be placed on the December 21, 2020 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djh
Enclosures
CC: Patrick and Shana Gieseke

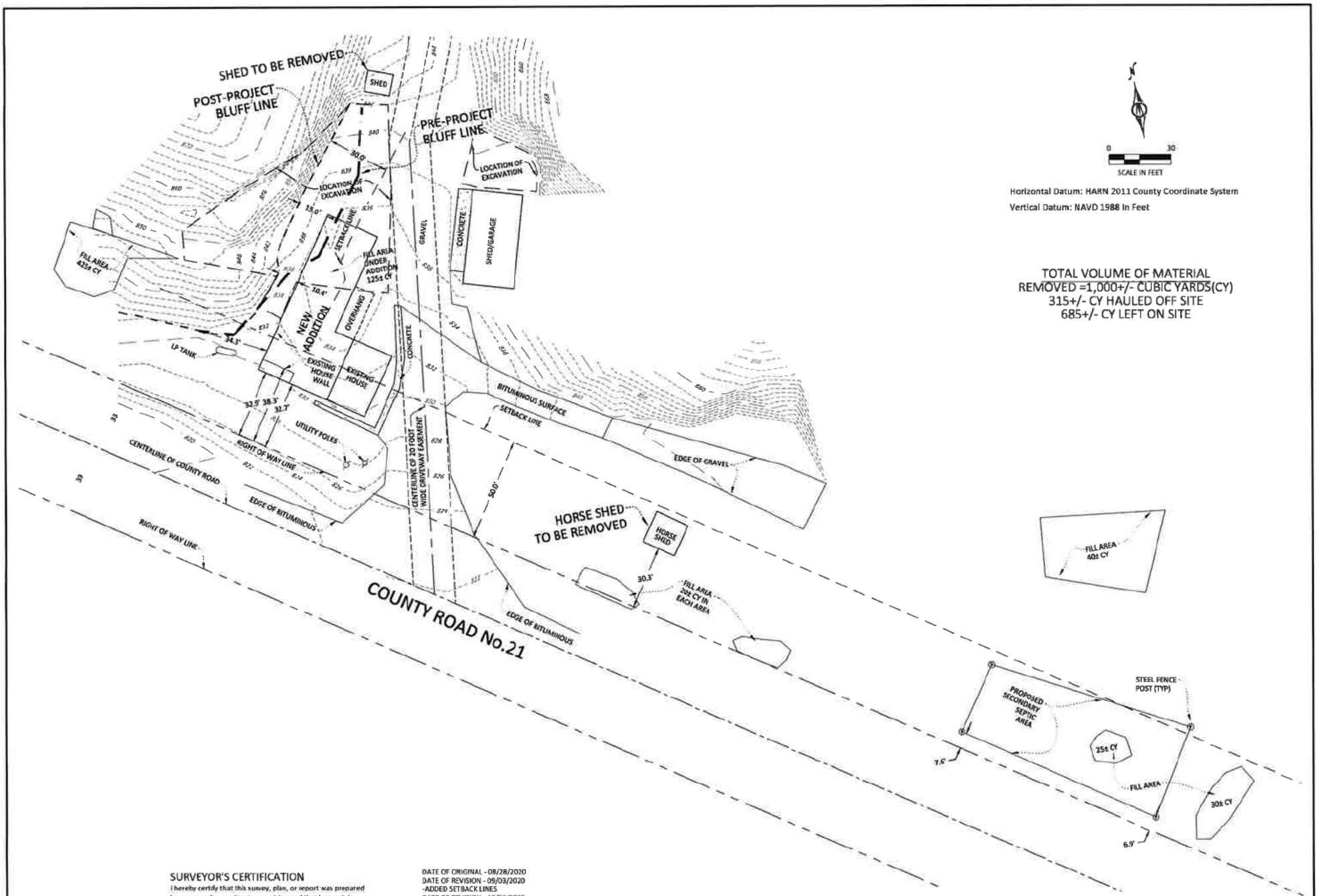
ATTACHMENT F.21
APPLICATION MATERIALS SUBMITTED

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben

Since
1896



TOTAL VOLUME OF MATERIAL REMOVED =1,000+/- CUBIC YARDS(CY)
315+/- CY HAULED OFF SITE
685+/- CY LEFT ON SITE

SURVEYOR'S CERTIFICATION

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

Jesse D. Zeig — 11/23/2020
Jesse D. Zeig — Date
License Number 44996

DATE OF ORIGINAL - 08/28/2020
DATE OF REVISION - 09/03/2020
-ADDED SETBACK LINES
DATE OF REVISION - 10/05/2020
-ADDED FILL AREAS
DATE OF REVISION - 11/23/2020
-REVISION/ADDED QUANTITIES

Surveyor's Note:
-The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

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AFTER THE FACT VARIANCE SKETCH

WEST NEWTON TWP., NICOLLET COUNTY, MN

PART OF THE SE 1/4, SECTION 35-111-31

BOLTON & MENK
1243 CEDARSTREET NE
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

FOR: PAT AND SHANA GIESEKE

GIESEKE PROPERTY
62208 COUNTY RD 21
NEW ULM MN 56073

The following are recommendations from Nicollet Soil & Water Conservation District to control potential erosion from the Gieseke property, located at 62208 County Road 21 in Nicollet County.

1. Control bluff cut behind garage by installing a retaining wall feature. Wall should run along the entire length of disturbed side hill and be installed far enough away from the bluff cut to allow for back fill of black dirt. Dirt fill will aid in plant establishment. A climbing vine plant can be planted on the bluff face. Creeping Juniper or other hardy perennial along the top of the retaining wall will aid in erosion control.

2. Grade area between garage and bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

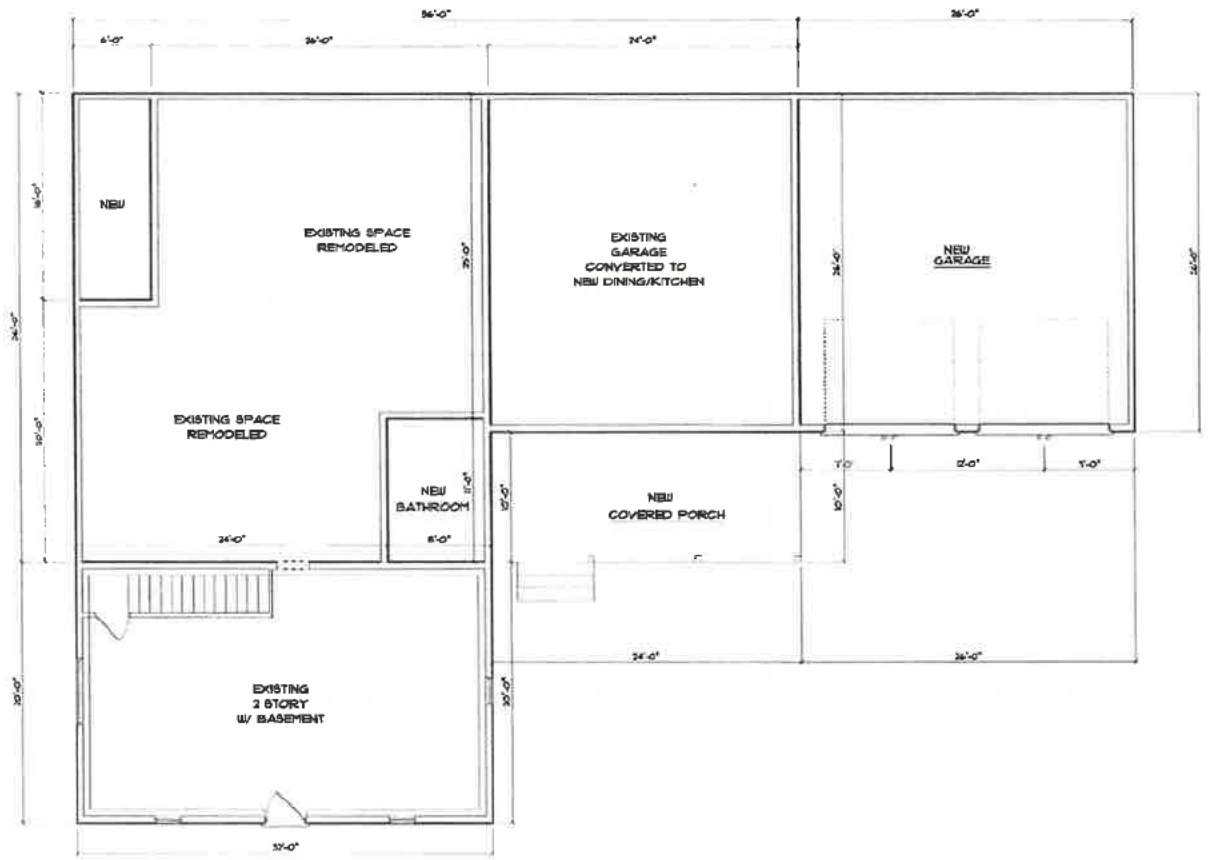
3. Fill can be left in place in the ravine gully to the west of the residence. Removing the fill will disturb the area further causing potential erosion into the road ditch, and damage of septic system. This area should be graded evenly and planted with a shade tolerant grass/plant mix. Once planted, erosion control blanket should be installed on all exposed and seeded surfaces.
   a. Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberry, Leadplant, Big Blue Steam Grass, Little Blue Steam Grass Swamp Milkweed, Common Boneset, Wild Bergamot.
   b. Contact Seed distributer (Albert Lea Seed House, etc.) to get their recommendation on a mix suited for shade, part sun.

4. To stabilize ravine erosion at the gully, near the filled area, Nicollet SWCD recommends minimal grading to allow the placement of Geo Erosion fabric and the placement of rock. Rock should be large Limestone or Quarts, or field stone. The field at the top of this gully is enrolled into the CRP program, allowing for reduced peak flows.



Blake Honetschlager
District Technician
Nicollet SWCD


384
1
2
13.035.1000
13.035.1005



EXISTING W/ NEW ADDITIONS

SCALE: 1/4" = 1'-0"

PRELIMINARY DATE
4.8.2020

REVISION DATE
7.14.2020

REVISION DATE
7.8.2020

REVISION DATE
11.12.2020

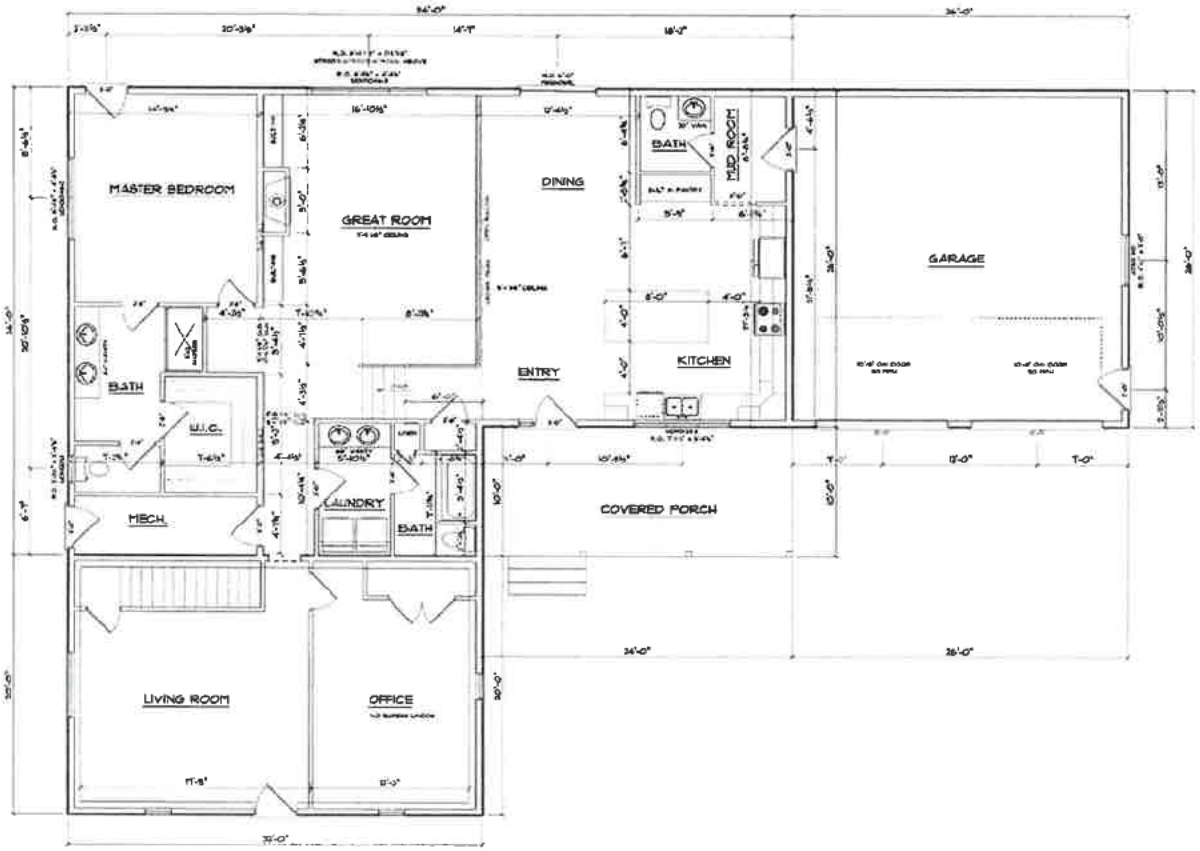
PUHLMANN LUMBER & DESIGN

301 1st STREET S. NEW ULM, MN
PH (507) 354-4914
FAX (507) 354-5105

GIESEKE ADDITION

62238 COUNTY ROAD 21 NEW ULM, MN

PUHLMANN LUMBER



MAIN FLOOR

PRELIMINARY DATE
4.8.2020

REVISION DATE
1.14.2020

REVISION DATE
11.6.2020

REVISION DATE

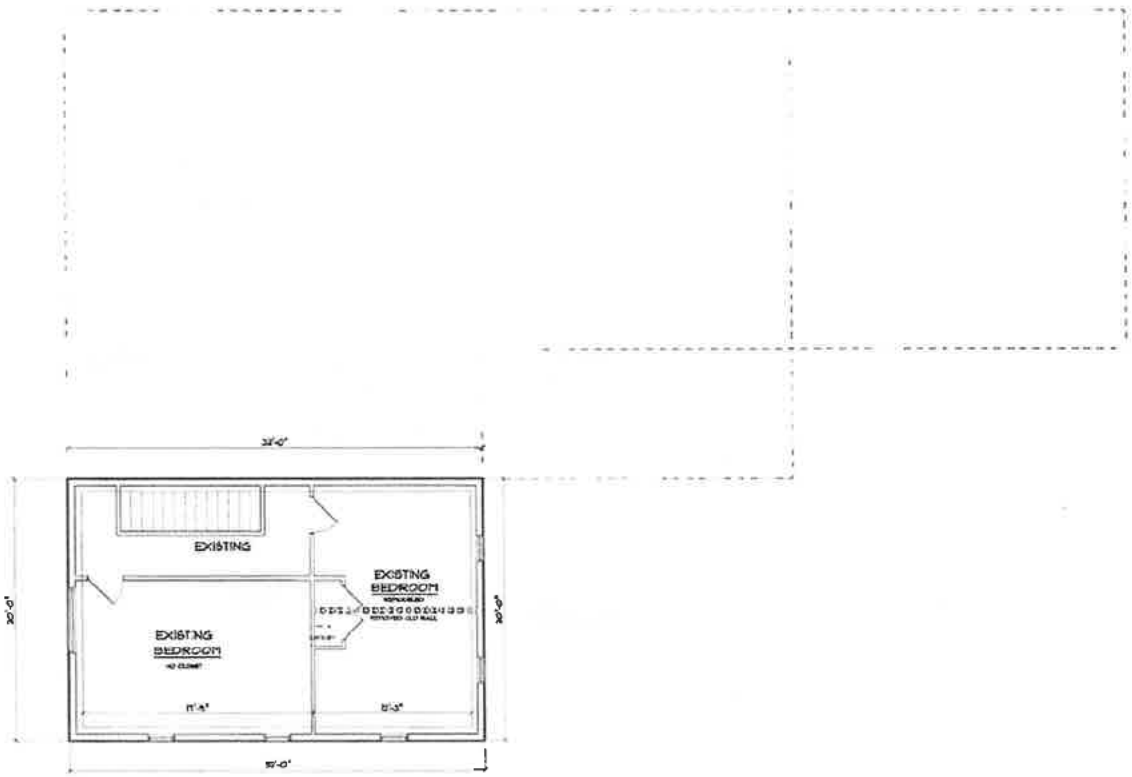
PUHLMANN LUMBER & DESIGN

301 1st STREET S, NEW ULM, MN
PH (507) 354-4974
FAX (507) 354-5105

GIESEKE ADDITION

62208 COUNTY ROAD 21- NEW ULM, MN

PUHLMANN LUMBER



UPSTAIRS

SCALE: 1/4" = 1'-0"

PRELIMINARY DATE
4.8.2020

REVISION DATE
1.14.2020

REVISION DATE
1.8.2020

REVISION DATE
1.12.2020

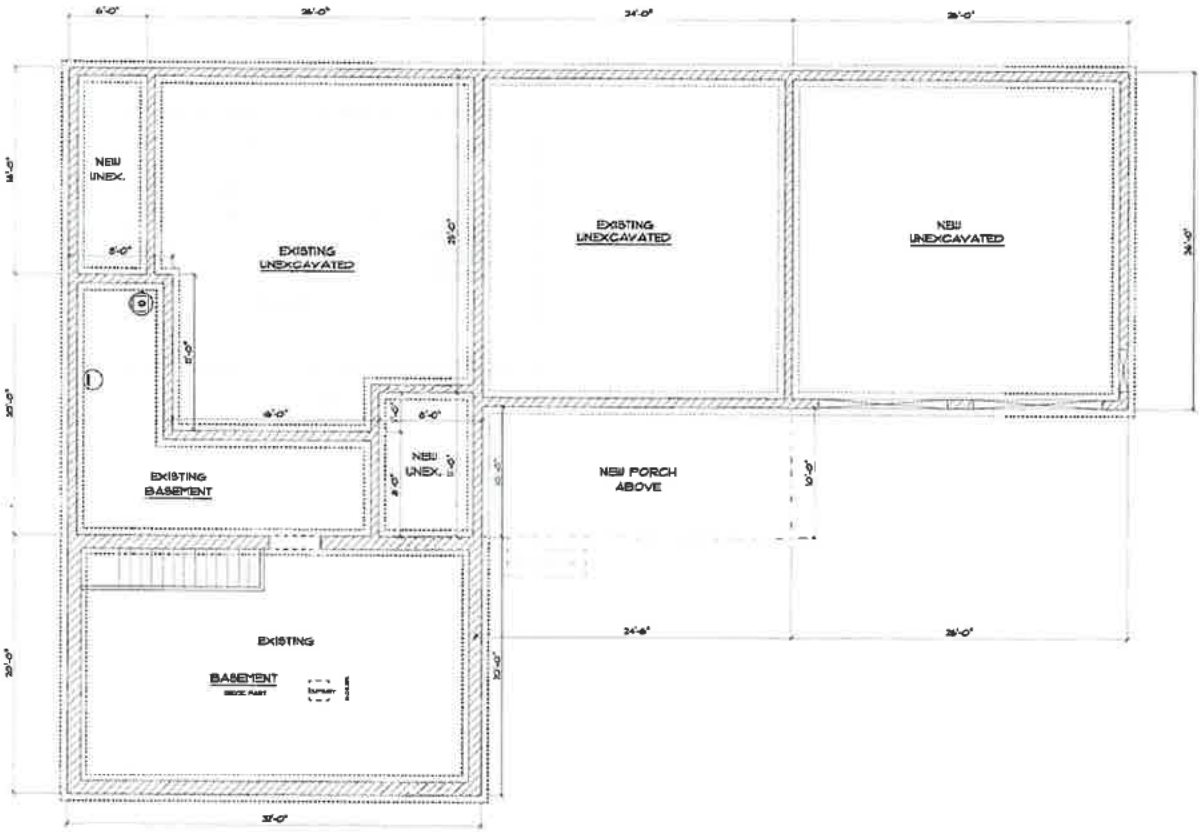
PUHLMANN LUMBER & DESIGN

301 1st STREET S. NEW ULM, MN
PH: (507) 354-4594
FAX: (507) 354-5025

GIESEKE ADDITION

62206 COUNTY ROAD 21 - NEW ULM, MN

PUHLMANN LUMBER



FOUNDATION

SCALE: 1/4" = 1'-0"

PRELIMINARY DATE
4.8.2020

REVISION DATE
7.14.2020

REVISION DATE
11.6.2020

REVISION DATE
11.12.2020

PUHLMANN LUMBER & DESIGN

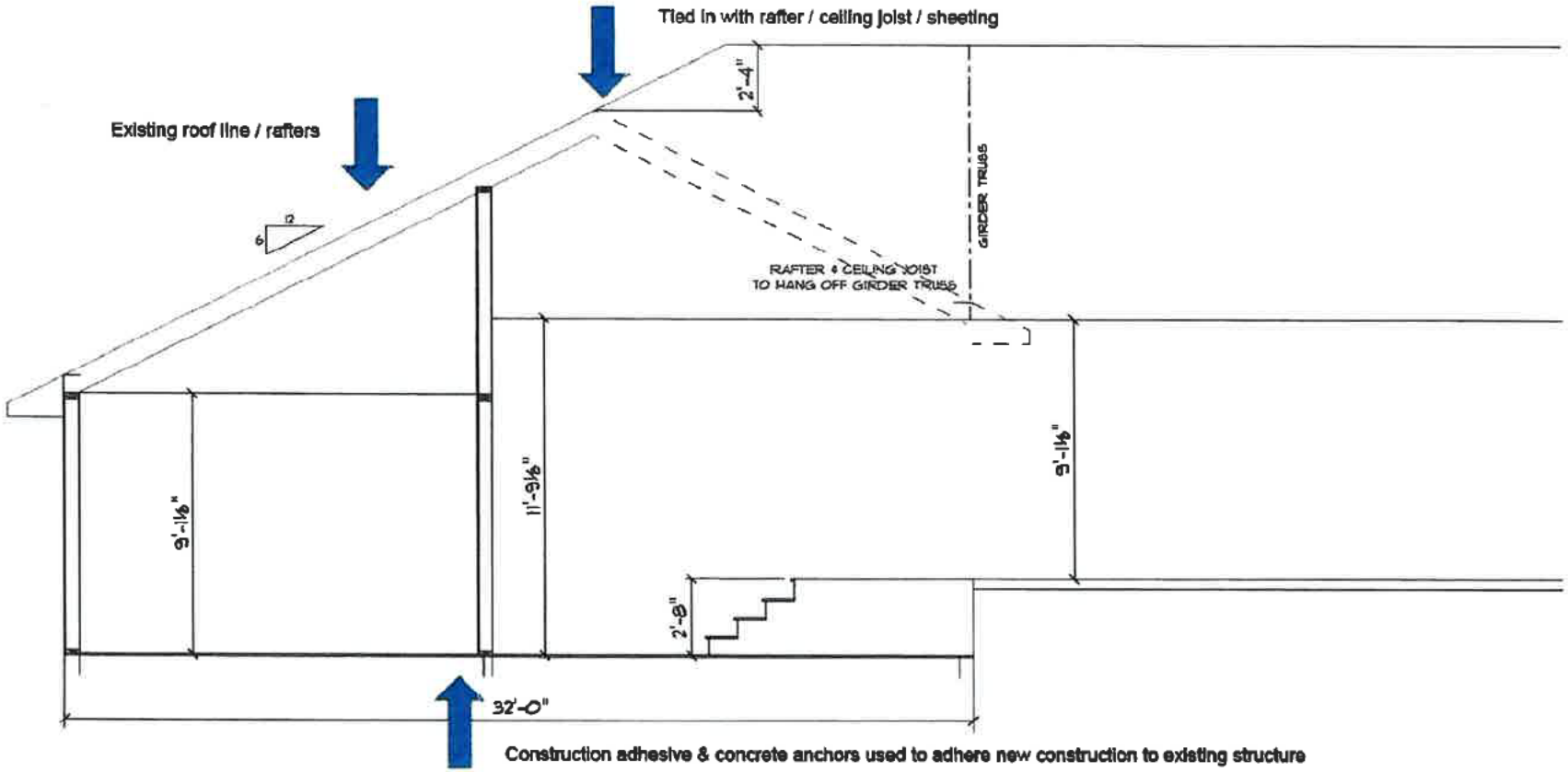
301 1ST STREET S. NEW ULM, MN
PH: (507) 354-4194
FAX: (507) 354-5205

GIESEKE ADDITION

63205 COUNTY ROAD 21 NEW ULM, MN

PUHLMANN LUMBER

NOTE: The new addition is already attached to the existing as the existing already has tied it together but for raising the roof line over the existing garage and the existing rafters of the new remodeled great room.



NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

December 7, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on November 23, 2020 and November 24, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request currently has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

November 23, 2020

The documents submitted to Nicollet County Property and Public Services ("NCPPS") by Debra Hatcher (on behalf of your attorney Steven Franta) on November 23, 2020, were received via email. These documents included:

- Cover Letter
- After the Fact Variance Sketch (unsigned, dated November 18, 2020)
- NSWCD (Nicollet Soil & Water Conservation District) Recommendations
- Revised Floor Plans

ATTACHMENT F.22
INCOMPLETE APPLICATION LETTER

November 24, 2020
The document submitted to NCPPS by Debra Hatcher (on behalf of your attorney Steven Franta) on November 24, 2020, was received via email. The document was a signed copy of the After the Fact Variance Sketch (dated November 23, 2020).

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on November 23, 2020 and November 24, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions
Your application will remain **on-hold** until the following additional information/revisions are submitted to NCPPS:

- A comprehensive erosion and sediment control plan. The November 23, 2020 cover letter states the NSWCD recommendations are to be incorporated into the proposed plan submitted on October 9, 2020. However, it does not identify how specifically they are to be incorporated. You need to submit a comprehensive plan that clarifies how the recommendations are to be incorporated with the proposed plan.

Official After-The-Fact Variance Application
Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation
As you are aware, the placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options, listed below. You will need to identify which option you are going to pursue.

1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,000 cubic yards of materials noted on the survey (dated November 23, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process was summarized in a letter to you from our office dated October 27, 2020.

Offsite Earth Movement

You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, and November 24, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003





ATTACHMENT F.23
PHOTOS


12 07 2020


12 07 2020


12 07 2020


12 07 2020

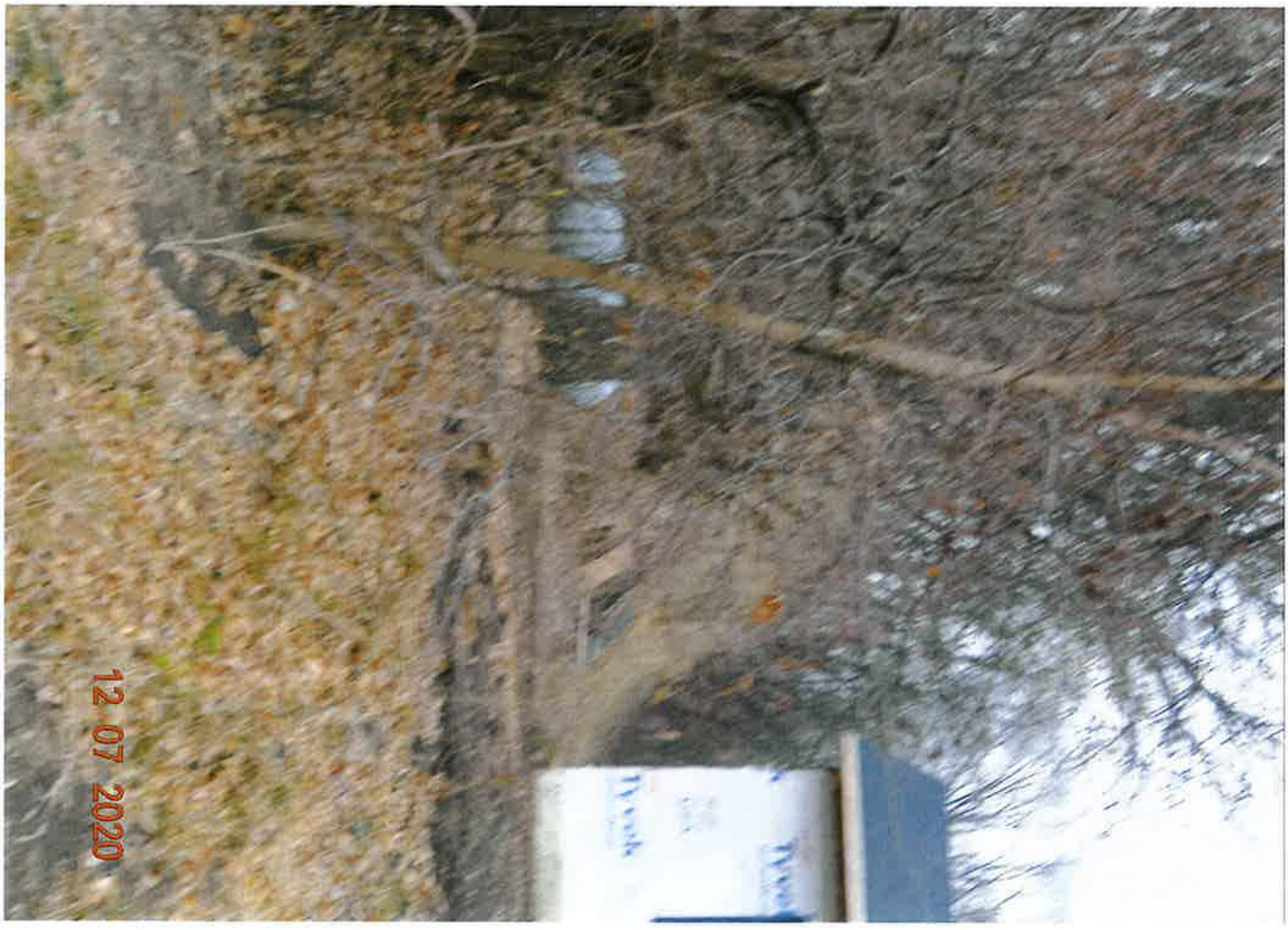

622208
12 07 2020


12 07 2020


12 07 2020


12 07 2020


Tyvek
HomeWrap
Made in the USA
12 07 2020


12 07 2020


12 07 2020


12 07 2020

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF NICOLLET FIFTH JUDICIAL DISTRICT

The County of Nicollet, a political subdivision of the State of Minnesota, Court File No. _____

Plaintiff,

vs. **SUMMONS**

Patrick E. Gieseke and Shana E. Gieseke,

Defendant.

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED:

1. **YOU ARE BEING SUED**. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN TWENTY (20) DAYS TO PROTECT YOUR RIGHTS**. You must give or mail to the Nicollet County Attorney's Office **a written response** called an Answer within twenty (20) days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

   Nicollet County Attorney's Office
   Nicollet County Government Center
   501 South Minnesota Avenue
   Saint Peter, MN 56082

3. **YOU MUST RESPOND TO EACH CLAIM**. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN REPSONSE TO THE COMPLAINT TO THE NICOLLET COUNTY ATTORNEY'S OFFICE**. If you do not Answer within twenty (20) days, you will lose

ATTACHMENT F.24
Summons

your case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can be entered against you for the relief requested in the Complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. **ALTERNATIVE DISPUTE RESLOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving the dispute.

Dated: December 9, 2020

MICHELLE M. ZEHNDER FISCHER
NICOLLET COUNTY ATTORNEY

By: 

Megan E. Gaudette Coryell, #0391831
Assistant Nicollet County Attorney
501 South Minnesota Avenue
St. Peter, MN 56082
(507) 934-7890
megan.coryell@co.nicollet.mn.us

Attorney for Plaintiff

STATE OF MINNESOTA | IN DISTRICT COURT

COUNTY OF NICOLLET | FIFTH JUDICIAL DISTRICT

The County of Nicollet, a political subdivision of the State of Minnesota,

Plaintiff,

vs.

Patrick E. Gieseke and Shana E. Gieseke,

Defendants.

Court File No. _____

COMPLAINT

The County of Nicollet [hereinafter "Plaintiff"], makes this Complaint against Patrick E. Gieseke and Shana E. Gieseke [hereinafter collectively "Defendants"]. Plaintiff states and alleges the following:

1. Plaintiff is a political subdivision of the State of Minnesota.
2. The Defendants are now, and have been at all times relevant herein, residents of the State of Minnesota, owning property at 62208 County Road 21, New Ulm, MN 56073, located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township, Nicollet County [hereinafter "the Property"]. The Property is located in the Conservancy zoning district. A Property Summary is attached hereto as Exhibit A.
3. By the authority granted to it by the State of Minnesota and in accordance with Minnesota Statutes Chapter 394 (Planning, Development, Zoning), the Nicollet County Board of Commissioners adopted the Nicollet County Zoning Ordinance [hereinafter "Ordinance"]. Section 404 of the Ordinance governs Nonconforming Uses and Structures. Section 507.1 governs Zoning Permits. Section 8 governs Enforcement.

ATTACHMENT F.25
Complaint

4. Section 404.1 of the Ordinance provides that a nonconforming structure shall not be expanded, changed, altered, or enlarged, except in conformity with the provisions of the Ordinance, nor shall such expansion, change, alteration, or enlargement increase the non-conformity of use.
5. Section 507.1(1) of the Ordinance provides that a zoning permit shall be required of all persons prior to erection, structural alteration, or relocation of permanent or portable structures.
6. Section 603.4(5.A) of the Ordinance provides that the required bluffline setback for any structure, or excavation or a structure, in the Conservancy Zoning District is thirty (30) feet.
7. Section 8 of the Ordinance states that the Zoning Administrator and Local Government may use injunctions in responding to suspected Ordinance violations. Section 804 of the Ordinance permits NCPPSD to institute appropriate actions or proceedings to prevent, restrain, correct, or abate violations or threatened violations of the Ordinance.
8. The original house on the Property is considered a pre-existing nonconforming structure, due to its location in relation to the bluff/bluff setback, and the right-of-way of County Road 21, and the Defendants would require a variance to expand, change, alter, or enlarge the structure. The structure on the Property is located within the required thirty (30) foot bluff setback. The Defendants expansion and alteration of the nonconforming structure has cut into the bluff. The Defendants did not obtain a variance or a Zoning Permit before undertaking development on the Property.
9. On May 1, 2020, NCPPSD received an email from the Defendants, stating they believed they needed to obtain a building permit, and inquired whether that could be done online. NCPPSD responded the same day, informing the Defendants of the process for obtaining a

Zoning Permit. The email from NCPPSD to the Defendants also contained an attachment with the district setbacks, and stated that the Property is located within the Conservancy zoning district. A copy of the May 1, 2020 email exchange is attached hereto as Exhibit B.

10. Photographs obtained from www.realtor.com on or about July 23, 2020 depict the structure when the Defendants purchased the Property. Copies of the photographs are attached hereto as Exhibit C.

11. On June 18, 2020, NCPPSD took photographs of the structure on the Property. These photographs depict excavation of the bluff, as well as alteration of the structure. Copies of the photographs are attached hereto as Exhibit D.

12. The Defendants have undertaken development on the above-described in violation of the Ordinance. The Defendants have continued said development, in violation of a Cease and Desist Order.

13. NCPPSD issued a Cease and Desist Order to the Defendants on July 13, 2020. A copy of the Cease and Desist Letter and Order is attached hereto as Exhibit E.

14. On July 21, 2020, NCPPSD conducted a site visit of the Property. The photographs taken during the site visit depict fresh excavation of the bluff, that the original structure was expanded and altered, that construction had commenced, and that the ditch along County Road 21 appeared recently cleaned out and there was dirt on the pavement. Copies of the photographs are attached hereto as Exhibit F.

15. On August 13, 2020, NCPPSD sent the Defendants a letter, following a site inspection of the Property on July 21, 2020. This letter stated the violations on the Property in detail, and provided the Defendants with options to resolve the issues. This letter stated that

development could only recommence once all violations on the Property have been officially resolved. A copy of the August 13, 2020 letter is attached hereto as Exhibit G.

16. The Defendants did not cease development on the Property. On August 19, 2020, photographs of the structure on the Property were taken. The photographs depict further alteration of the structure. Copies of the photographs are attached hereto as Exhibit H.

17. By email dated August 21, 2020, the Defendants stated they understood that no further construction would occur until the violation has been resolved. A copy of the August 21, 2020 email is attached hereto as Exhibit I.

18. On September 1, 2020, NCPPSD took photographs of the structure on the Property. These photographs depict that further alteration of the structure had occurred. These photographs also depict that at some point between the time the Cease and Desist Order was issued on July 13, 2020, and the site inspection on August 19, 2020, the Defendants had shingled the roof of the expanded structure, in violation of the Cease and Desist Order. Copies of the photographs are attached hereto as Exhibit J.

19. On August 21, 2020 and August 27, 2020, the Defendants submitted an application for an after-the-fact variance to NCPPSD. By letter dated September 2, 2020, NCPPSD advised the Defendants their application was incomplete. The letter advised that additional information and revisions to the application were required. A copy of the September 2, 2020 letter is attached hereto as Exhibit K.

20. On September 2, 2020, the Defendants submitted a construction proposal to NCPPSD. The Defendants had proposed to continue a limited amount of construction on the structure, including Ty-Vek, windows, doors, and soffit. By letter dated September 15, 2020, NCPPSD

denied the Defendant's construction proposal. A copy of the September 15, 2020 letter is attached hereto as Exhibit L.

21. NCPPSD conducted a site visit of the Property on September 18, 2020. Based upon observations during the site visit, the Defendants had not ceased continued development on the Property. In addition, the Defendants indicated they would continue construction on the Property, despite the Cease and Desist Order. Photographs taken during the site visit depict further alteration of the structure, and fresh earthen material in the ravine located on the Property. Copies of the photographs are attached hereto as Exhibit M.

22. On September 21, 2020, the Nicollet County Attorney's Office sent the Defendants a letter, advising the Defendants that if they did not immediately cease any and all work on the Property, that NCPPSD would seek immediate injunctive relief and/or a temporary restraining order. A copy of the September 21, 2020 is attached hereto as Exhibit N.

23. By email dated September 24, 2020, the Defendants' attorney, Steven J. Franta, confirmed that the Defendants assured him that all construction work had ceased. A copy of the September 24, 2020 email is attached hereto as Exhibit O.

24. On October 9, 2020, the Defendants submitted additional information regarding their application for an after-the-fact variance. The survey submitted by the Defendants depicts the "pre-project bluff line" and the "post-project bluff line." The bluff line was drastically moved by the Defendants. A copy of the survey (after the fact variance sketch) is attached hereto as Exhibit P.

25. By letter dated October 27, 2020, NCPPSD advised the Defendants that their application was incomplete, and specified additional information and revisions that were required. A copy of the October 27, 2020 letter is attached hereto as Exhibit Q.

26. On November 23, 2020 and November 24, 2020, the Defendants submitted additional information regarding the application for an after-the-fact variance. By letter dated December 7, 2020, NCPPSD advised the Defendants that their application incomplete, and specified additional information and revisions that were required. A copy of the December 7, 2020 letter is attached hereto as Exhibit R.

27. On December 7, 2020, NCPPSD took photographs of the structure on the Property. These photographs, as compared with the photographs taken on August 19, 2020, demonstrate that since the time NCPPSD issued the Cease and Desist Order, the Defendants have continued to undertake development on the Property, in direct violation of the Ordinance. The photographs depict that the Defendants have installed two new windows and a patio door, despite these items being specifically addressed in the September 15, 2020 letter denying the Defendant's request for continued limited construction on the structure (Exhibit L). Copies of those photographs are attached hereto as Exhibit S.

28. The requirements imposed on the Defendants are the same as the requirements NCPPSD has imposed on all similarly situated landowners.

29. The imposition of a criminal penalty will not prevent environmental damage because such penalty will not ensure that Defendant will comply with the Ordinance.

30. Plaintiff does not have an adequate remedy in a civil action for monetary damages because, while Defendant's actions threaten the health and safety of the residents of Nicollet County, it is not possible to quantify such damages at this time.

31. The environment may suffer irreparable harm, damage and injury unless the complained of conduct is enjoined by this Court.

WHEREFORE, Plaintiff respectfully requests the following relief:

1. A preliminary injunction, in the form of a temporary restraining order, be issued enjoining the Defendants, Patrick E. Gieseke and Shana E. Gieseke, their agents, servants, employees, and assigns from commencing or continuing construction activities on the Property in violation of the Nicollet County Zoning Ordinance during the pendency of this action.
2. On a final hearing, that the Defendants, their agents, servants, employees, and assigns be permanently enjoined from commencing or continuing construction activities on the Property in violation of the Nicollet County Zoning Ordinance until all violations have been officially resolved.
3. An Order of this Court requiring the Defendants to abate the violations of the Nicollet County Zoning Ordinance:
    a. Dwelling/Garage Addition
        i. Remove the addition; or
        ii. Apply for and obtain an after-the-fact variance and after-the-fact zoning permit. There is no guarantee the request for an-after-the-fact variance would be approved by the Nicollet County Board of Adjustment and Appeals.
    b. Bluff Development
        i. Restore the bluff. This option requires a restoration plan prepared by a third party, such as an engineering firm; or
        ii. Apply for and obtain an after-the-fact variance. There is no guarantee the request for an-after-the-fact variance would be approved by the Nicollet County Board of Adjustment and Appeals.

c. Small Shed (10' x 12')

i. Remove the small shed; or

ii. Apply for a zoning permit to relocate the small shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met; or

d. Horse Shed

i. Remove the horse shed; or

ii. Apply for a zoning permit to relocate the horse shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met; or

iii. Apply for and obtain an after-the-fact variance and after-the-fact zoning permit. There is no guarantee the request for an-after-the-fact variance would be approved by the Nicollet County Board of Adjustment and Appeals.

4. In accordance with Nicollet County Zoning Ordinance Section 8, Plaintiff requests that the Court order the Defendants to pay all costs associated with coming into compliance with Nicollet County Zoning Ordinance, regarding all violations pled above.

5. Any other and further relief as the Court determines to be just and reasonable.

Respectfully submitted,

Dated: December 9, 2020

MICHELLE M. ZEHNDER FISCHER
NICOLLET COUNTY ATTORNEY

By: Megan E. Gaudette Coryell

Megan E. Gaudette Coryell, #0391831
Assistant Nicollet County Attorney
Attorney for Plaintiff
501 South Minnesota Avenue
St. Peter, MN 56082
(507) 934-7890
megan.coryell@co.nicollet.mn.us

ACKNOWLEDGEMENT

The party on whose behalf the attached document is served acknowledges through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: December 9, 2020

Megan E. Gaudette Coryell, #0391831
Assistant Nicollet County Attorney
Attorney for Plaintiff
501 South Minnesota Avenue
St. Peter, MN 56082
(507) 934-7890
megan.coryell@co.nicollet.mn.us

VERIFICATION OF COMPLAINT

Mandelein Landkamer, Director of Nicollet County Property and Public Services, being first duly sworn and under oath, hereby deposes and states that she has reviewed the foregoing Complaint in its entirety and hereby verifies that the facts alleged therein are true and correct to the best of her knowledge.

Mandelein Landkamer

STATE OF MINNESOTA)
) ss.
COUNTY OF NICOLLET)

The foregoing instrument was subscribed and sworn before me on December 9th, 2020, by Mandelein Landkamer, Director of Nicollet County Property and Public Services.

MOLLY LYN KLINGERMAN
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/2021

Notary Public

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF NICOLLET

FIFTH JUDICIAL DISTRICT
CIVIL DIVISION
Court File No. 52-CV-20-625___

The County of Nicollet, a political subdivision, of the State of Minnesota,

Plaintiff,

vs.

Patrick E. Gieseke and Shana E. Gieseke,

Defendants.

COUNTY OF NICOLLET'S NOTICE OF MOTION AND MOTION FOR TEMPORARY RESTRAINING ORDER

TO: Patrick E. Gieseke and Shana E. Gieseke, 62208 County Road 21, New Ulm, MN 56073

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned, an Assistant County Attorney for the County of Nicollet [hereinafter "Plaintiff"], in the above-entitled matter, will bring the following motion and all proceedings in said matter on for hearing before the Honorable Todd W. Westphal, Judge of District Court, at the Nicollet County Government Center, St. Peter, Minnesota, on the **18th day of December, 2020, at 10:00 a.m.**, or as soon thereafter as counsel can be heard.

MOTION

1. A preliminary injunction, in the form of a temporary restraining order, be issued, enjoining the Defendants, Patrick E. Gieseke and Shana E. Gieseke, their agents, servants, employees, and assigns from commencing or continuing construction activities on the Property in violation of Minnesota Statutes and the Nicollet County Zoning Ordinance during the pendency of this action.

ATTACHMENT F.26
Notice of Motion

2. For an Order of the Court requiring the Defendants to pay all costs associated with coming into compliance with Nicollet County Zoning Ordinance

3. For an Order of the Court for such other and further relief as to the Court appears to be just and appropriate.

This Motion is based upon all of the files, records, and proceedings herein and upon the memoranda, affidavits, and arguments of counsel.

Dated: December 10, 2020

MICHELLE M. ZEHNDER FISCHER
NICOLLET COUNTY ATTORNEY



Megan E. Gaudette Coryell #0391831
Assistant Nicollet County Attorney
Attorney for Plaintiff
501 South Minnesota Avenue
St. Peter, MN 56082
Phone: (507) 934-7890
megan.coryell@co.nicollet.mn.us

STATE OF MINNESOTA

COUNTY OF NICOLLET

DISTRICT COURT

FIFTH JUDICIAL DISTRICT
CIVIL DIVISION

Court File No. 52-CV-20-625

The County of Nicollet, a political subdivision, of the State of Minnesota,

Plaintiff,

vs.

Patrick E. Gieseke and Shana E. Gieseke,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF COUNTY OF NICOLLET'S MOTION FOR TEMPORARY RESTRAINING ORDER

ATTACHMENT F-27
Memorandum of Law

INTRODUCTION

Plaintiff County of Nicollet respectfully submits this Memorandum of Law in support of its Motion for Temporary Restraining Order in this matter.

STATEMENT OF THE RECORD

1. Affidavit of Mandelein Landkamer ["Landkamer Aff."] dated December 10, 2020, and exhibits attached thereto.

INTRODUCTION

One of the intended purposes of the Nicollet County Zoning Ordinance [hereinafter "Ordinance"] is to conserve natural resources in Nicollet County. The Ordinance protects bluff areas as a sensitive natural feature. In order to protect and preserve these natural features, Nicollet County has adopted regulations regarding the development of bluff/bluffline areas.

The Property at issue in this matter is located in the Conservancy zoning district. The purpose of the Conservancy zoning district is to protect natural resources areas that are not suitable for agricultural or urban use, including steep slopes. Section 603.4(5.A) of the Ordinance requires a thirty (30) foot setback from the bluffline for any structure, or excavation for a structure.

FACTUAL BACKGROUND

The Defendants, Patrick E. Gieseke and Shana E. Gieseke, [hereinafter collectively "Defendants"] are now, and has been at all times relevant, a resident of the State of Minnesota, owning property at 62208 County Road 21, New Ulm, MN 56073, located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township, Nicollet County [hereinafter "the Property"]. The Property is located in the Conservancy zoning district. A Property Summary is attached hereto as Landkamer Aff. Ex. A. The original house on the Property is considered a pre-existing nonconforming structure, due to its location in relation to the bluff/bluff setback, and to the right-of-way of County Road 21, and would require a variance to expand. [Landkamer Aff. ¶ 10]. The structure on the Property is located within the required thirty (30) foot bluff setback. *Id.* The Defendants have expanded their structure further into the bluff, in violation of the Ordinance. [Landkamer Aff. ¶ 14]. The Defendants did not obtain a variance to the Ordnance requirements or a Zoning Permit before undergoing development on the Property. [Landkamer Aff. ¶ 15].

On May 1, 2020, the Defendants sent Nicollet County Property and Public Services [hereinafter "NCPPSD"] an email, stating they believed they needed to obtain a building permit, and inquired whether that could be done online. [Landkamer Aff. ¶ 16]. NCPPSD responded the same day, informing the Defendants of the process for obtaining a Zoning Permit. *Id.* The email from NCPPSD to the Defendants also contained an attachment with the district setbacks, and stated

that the Property is located within the Conservancy zoning district. *Id.* A copy of the email exchange is attached hereto as Landkamer Aff. Ex. B.

On or about July 23, 2020, NCPPSD obtained photographs from www.realtor.com. [Landkamer Aff. ¶ 17]. These photographs depict the structure when the Defendants purchased the property. *Id.* Copies of the photographs are attached hereto as Landkamer Aff. C. On June 18, 2020, NCPPSD took photographs of the structure on the Property. [Landkamer Aff. ¶ 18]. These photographs depict excavation of the bluff, as well as alteration of the structure. *Id.* Copies of the photographs are attached hereto as Landkamer Aff. Ex. D.

On July 13, 2020, NCPPSD issued a Cease and Desist Order to the Defendants. [Landkamer Aff. ¶ 19]. A copy of the Cease and Desist Letter and Order is attached hereto as Landkamer Aff. Ex. E. The Cease and Desist Order required that development on the Property cease immediately. (Landkamer Aff. Ex. E).

NCPPSD conducted a site visit of the Property on July 21, 2020. [Landkamer Aff. ¶ 20]. The photographs taken during the site visit depict fresh excavation of the bluff, that the original structure was expanded and altered, that construction on the Property had commenced, and that the ditch along County Road 21 appeared recently cleaned out and there was dirt on the pavement. [Landkamer Aff. ¶ 20]. Copies of the photographs are attached hereto as Landkamer Aff. Ex. F.

On August 13, 2020, NCPPSD sent the Defendants a letter, as follow up to the site visit of the Property on July 21, 2020. [Landkamer Aff. ¶ 21]. This letter stated the violations on the Property in detail, and provided the Defendants with options to resolve the violations. *Id.* This letter stated that development could only recommence once all violations have been officially resolved. *Id.* A copy of the August 13, 2020 letter is attached hereto as Landkamer Aff. Ex. G.

The Defendants did not cease development on the Property. [Landkamer Aff. ¶ 22]. On August 19, 2020, photographs of the structure on the Property were taken. *Id.* The photographs depict further alteration of the structure. *Id.* Copies of the photographs are attached hereto as Landkamer Aff. Ex. H.

By email dated August 21, 2020, the Defendants stated they understood that no further construction would occur until the violation has been resolved. [Landkamer Aff. ¶ 23]. A copy of the August 21, 2020 email is attached hereto as Landkamer Aff. Ex. I.

On September 1, 2020, NCPPSD took photographs of the structure on the Property. [Landkamer Aff. ¶ 24]. These photographs depict that even further alteration of the structure had occurred. *Id.* These photographs also depict that at some point between the time the Cease and Desist Order was issued on July 13, 2020, and the site inspection on August 19, 2020, the Defendants had shingled the roof of the expanded structure, in violation of the Cease and Desist Order. *Id.* Copies of the photographs are attached hereto as Landkamer Aff. Ex. J.

On August 21, 2020 and August 27, 2020, the Defendants submitted an application for an after-the-fact variance to NCPPSD. [Landkamer Aff. ¶ 25]. By letter dated September 2, 2020, NCPPSD advised the Defendants their application was incomplete. *Id.* The letter advised that additional information and revisions to the application were required. *Id.* A copy of the September 2, 2020 letter is attached hereto as Landkamer Aff. Ex. K.

On September 2, 2020, the Defendants submitted a construction proposal to NCPPSD. [Landkamer Aff. ¶ 26]. The Defendants proposed to continue a limited amount of construction on the structure, including Ty-Vek, windows, doors, and soffit. *Id.* By letter dated September 15, 2020, NCPPSD denied the Defendant's construction proposal. *Id.* A copy of the September 15, 2020 letter is attached hereto as Landkamer Aff. Ex. L.

NCPPSD conducted a site visit of the Property on September 18, 2020. [Landkamer Aff. ¶ 27]. Based upon observations during the site visit, the Defendants had not ceased development on the Property. *Id.* In addition, the Defendants indicated they would continue construction on the Property, despite the Cease and Desist Order. *Id.* Photographs taken during the site visit depict further alteration of the structure, and fresh earthen material in the ravine located on the Property. *Id.* Copies of the photographs are attached hereto as Landkamer Aff. Ex. M.

On September 21, 2020, the Nicollet County Attorney's Office sent the Defendants a letter, advising the Defendants that if they did not immediately cease any and all work on the Property, that NCPPSD would seek immediate injunctive relief and/or a temporary restraining order. [Landkamer Aff. ¶ 28]. A copy of the September 21, 2020 is attached hereto as Landkamer Aff. Ex. N.

By email dated September 24, 2020, the Defendants' attorney, Steven J. Franta, confirmed that the Defendants assured him that all construction work had ceased. [Landkamer Aff. ¶ 29]. A copy of the September 24, 2020 email is attached hereto as Landkamer Aff. Ex. O.

On October 9, 2020, the Defendants submitted additional information regarding the application for an after-the-fact variance. [Landkamer Aff. ¶ 30]. The survey submitted by the Defendants depicts the "pre-project bluff line" and the "post-project bluff line." *Id.* The bluff line was drastically moved by the Defendants. *Id.* A copy of the survey (after the fact variance sketch) is attached hereto as Landkamer Aff. Ex. P.

By letter dated October 27, 2020, NCPPSD advised the Defendants that their application was incomplete, and specified additional information and revisions that were needed. [Landkamer Aff. ¶ 31]. A copy of the October 27, 2020 letter is attached hereto as Landkamer Aff. Ex. Q.

On November 23, 2020 and November 24, 2020, the Defendants submitted additional information regarding their application for an after-the-fact variance. [Landkamer Aff. ¶ 32]. By letter dated December 7, 2020, NCPPSD advised the Defendants that their application incomplete, and specified additional information and revisions that were needed. *Id.* A copy of the December 7, 2020 letter is attached hereto as Landkamer Aff. Ex. R.

On December 7, 2020, photographs of the structure on the Property were taken. [Landkamer Aff. ¶ 33]. These photographs, as compared with the photographs taken on August 19, 2020, demonstrate that since the time NCPPSD issued the Cease and Desist Order, the Defendants have continued to undertake development on the Property, in violation of the Ordinance and the Cease and Desist Order. *Id.* The photographs depict that the Defendants have installed two new windows and a patio door, despite these items being specifically addressed in the September 15, 2020 letter denying the Defendant's request for continued limited construction (Exhibit L). *Id.* Copies of those photographs are attached hereto as Landkamer Aff. Ex. S.

The requirements imposed on the Defendants are the same requirements NCPPSD has imposed on all similarly situated landowners. [Landkamer Aff. ¶ 34]. Section 8 of the Ordinance permits Plaintiff to enforcement the provisions of the Ordiance through civil remedy. Plaintiff seeks a preliminary injunction, in the form of a temporary restraining order, enjoining the Defendants, Patrick E. Gieseke and Shana E. Gieseke, their agents, servants, employees, and assigns from commencing or continuing construction activities on the Property in violation of Minnesota Statutes and the Nicollet County Zoning Ordinance during the pendency of this action. Further, Plaintiff seeks an Order requiring the Defendants to pay all costs associated with coming into compliance with the Ordinance.

The Defendants have not ceased development on the Property, in violation of the Ordinance. The Defendants have continued to defy the Cease and Desist Order. The Complaint in this matter and this Motion followed.

ARGUMENT

PLAINTIFF HAS ESTABLISHED THAT SUFFICIENT GROUNDS EXIST FOR THIS COURT TO GRANT PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION.

A. Standard For Temporary Injunction.

Rule 65.02(b) of the Minnesota Rules of Civil Procedure states that "[a] temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor." In determining whether to grant a temporary restraining order, the District Court considers five factors:

1. The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
2. The harm to be suffered by the Plaintiff if the request for temporary restraining order is denied, as compared to the harm inflicted on the Defendants if the injunction issues pending final resolution.
3. The likelihood that one party or the other will prevail on the merits when the situation is viewed in light of establishing precedents fixing the limits of equitable relief.
4. The aspects of the situation, if any, which permit or require consideration of public policy expressed in State and Federal statutes.
5. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321-22 (Minn. 1965). "A temporary injunction may be granted in the discretion of the court when the impending conduct threatens real, substantial, and irreparable injury to a party's rights which are the subject of the action and such injury would tend to make a judgment in his favor ineffectual." *Cramond v. Am. Fed'n of Labor and Congress of Indus. Orgs.*, 126 N.W.2d 252, 256 (Minn. 1964) (citing Minn. Stat. § 585.02; *Seward v. Schrieber*, 62 N.W.2d 48 (Minn. 1953)).

B. All Five *Dahlberg* Factors Favor The Issuance Of The Requested Temporary Restraining Order.

a. The Nature And Background Of The Relationship Between The Parties.

The Defendants received numerous correspondence from Plaintiff, as demonstrated by the exhibits attached to Ms. Landkamer's affidavit. This correspondence clearly directed the Defendants to cease development on the property, and provided the authority for Plaintiff's request. The Defendants were fully aware of the reasons why Plaintiff issued a Cease and Desist Order. The Defendants were also fully aware of the violations on their Property. The Defendants knew the development they commenced, and continued even after affirming (twice) they had ceased, was prohibited by the Ordinance. The relationship between Plaintiff and the Defendants is one in which the Plaintiff has attempted to work with the Defendants to come into compliance with the Ordinance, and the Defendants refuse to do so. This factor favors granting the temporary restraining order.

b. The Balance Of Harms Suffered By The Parties.

Balancing the relative hardships of the parties, if the temporary restraining order is granted, the Defendants would be enjoined from commencing and continuing work which they were not permitted to do in the first place, including work which they affirmed, twice, they had ceased. (Landkamer Aff. Exs. I and O). If, however, the Defendants are allowed to continue development in direct violation of the Ordinance, Plaintiff's ability to protect natural resources and regulate under the Ordinance will be irreparably damaged. The Defendants' continuing violation of the Ordinance and the Cease and Desist Order constitutes irreparable harm, and there is no adequate remedy at law. [*See* Landkamer Aff. ¶ 37]. Plaintiff does not have an adequate remedy in a civil action for monetary damages because, while Defendant's actions threaten the health and safety of the residents of Nicollet County, it is not possible to quantify such damages at this time.

[Landkamer Aff. ¶ 36]. The Defendants knowingly and intentionally commenced development without a variance or a Zoning Permit in violation of the Ordinance. In addition, the Defendants' development expanded a nonconforming structure, also in violation of the Ordinance. Further, the Defendants' development cut directly into the bluff, also in violation of the Ordinance. The Defendants knowingly acted in violation of the Ordinance, despite being advised of the violations and of the Ordinance requirements.

Photographs taken by NCPPSD on December 7, 2020, as compared with the photographs taken on August 19, 2020, demonstrate that since the time NCPPSD issued the Cease and Desist Order, the Defendants have continued to undertake development on the Property, in violation of the Ordinance. [Landkamer Aff. ¶ 33]. For example, the photographs depict that the Defendants have installed two new windows and a patio door, despite these items being specifically denied in the September 15, 2020 letter denying the Defendant's request for continued limited construction (Exhibit L). *Id.*; Landkamer Aff. Ex. S.

The Defendants have made attempts to complete an application for an after-the-fact variance. However, their application remains incomplete. (Landkamer Aff. Ex. R). The Defendants have been informed of the requirements to apply for an after-the-fact variance. (Landkamer Aff. Exs. E, G, K, Q, and R). NCPPSD has corresponded numerous times with the Defendants, identifying the incomplete information, and identifying revisions that needed to be made to the Defendants' application. (Landkamer Aff. Exs. K, Q, and R). Despite these attempts, to date, the Defendants have failed to submit a complete application for an after-the-fact variance. (Landkamer Aff. Ex. R).

Plaintiff has attempted to work with the Defendants to address the violations and to come into compliance with the Ordinance, including site visits, and identifying further information the

Defendants need to complete their application for an after-the-fact variance. Plaintiff has also attempted a Cease and Desist Order, ordering the Defendants to cease further development of the Property. The Defendants have not been cooperative or forthright. Plaintiff has no other adequate, immediate remedy. This balancing of relative hardships weighs heavily in favor of granting the temporary restraining order. *See Dahlberg*, 137 N.W.2d at 322-23.

c. The Likelihood That The Party Seeking The Injunction Will Prevail On The Merits.

Minnesota law has recognized that ordinances are presumed to be valid, and the burden of proving an ordinance is not valid lies with the party asserting a challenge to the ordinance. *See State v. Perry*, 130 N.W.2d 343, 345 (Minn. 1964). In enacting the Ordinance, the Nicollet County Board of Commissioners acted within the authority granted to it by Minnesota Statutes Chapter 394. Minnesota law provides counties the authority to enact land use regulations within each county. Minn. Stat. Ch. 394. Therefore, the Ordinance is presumed valid, and the burden would be on the Defendants to prove otherwise.

The Defendants own information demonstrates their violations of the requirements of Ordinance. (*See, e.g.*, Landkamer Aff. Ex. P). The Ordinance requires a thirty (30) foot setback for structures in the Conservancy zoning district. (Ordinance § 603.4(5.A)). The survey submitted by the Defendants depicts the "pre-project bluff line" and the "post-project bluff line. (Landkamer Aff. Ex. P). The bluff line was drastically moved by the Defendants. [Landkamer Aff. ¶ 30]. The survey, in effect, depicts a "new" bluffline, because the Defendants cut directly into a bluff area, thereby reducing the bluff setback for their structure to zero feet.

While the Defendants may argue they have invested time and money into their project, the Defendants have no vested right in the expansion and alterations they undertook to the existing structure. The Defendants knowingly expanded a nonconforming structure, directly into a bluff,

in direct violation of the Ordinance. Then, the Defendants continued work despite the Cease and Desist Order, and despite repeated communication from NCPPSD. The Defendants' affirmations that they ceased work proved to be false, as depicted by the photographs taken of their structure. Therefore any continued investment into the structure, the Defendants brought upon themselves. The Defendants were clearly directed to cease any and all development.

Plaintiff is likely to prevail in any enforcements actions taken pursuant to the Ordinance. The record before the Court demonstrates that the Defendants are acting in direct violation of the Ordinance. Section 805 of the Ordinance enables Plaintiff to pursue a civil remedy to enforce the provisions of the Ordinance. Plaintiff is seeking a civil remedy because the imposition of a criminal penalty will not prevent environmental damage because a criminal penalty will not ensure that Defendant will comply with the Ordinance. [Landkamer Aff. ¶ 35]. The environment may suffer irreparable harm, damage, and injury unless Defendant is enjoined from continuing development on the Property in violation of the Ordinance. [Landkamer Aff. ¶ 37].

The record is clear that the Defendants continue to violate the Ordinance, despite their assurances that all construction work had ceased. Photographs taken December 7, 2020 depict that the Defendants have continued construction and alteration of the structure, including the installation of two windows and a patio door, despite NCPPSD specifically denying the Defendant's request to install these items, by letter dated September 15, 2020. The Defendants have repeatedly demonstrated that they will not comply with the Ordinance or the Cease and Desist Order. Enjoining the Defendants from commencing or continuing construction activities on the Property will preserve the stated goals of the Ordinance. This factor favors granting the temporary restraining order.

d. **Public Policy Considerations As Expressed In Statute.**

Minnesota Statutes Section 394.21, subdivision 1, authorizes Plaintiff to carry on county planning and zoning activities, for the purpose of promoting the health, safety, morals, and general welfare of the county. In order to protect and preserve these natural features, Nicollet County has adopted regulations regarding the development of bluff/bluffline areas. While the Ordinance protects bluff areas as a sensitive natural feature, the Defendants sole interest is expanding the use of their own property, ignoring the potential damage to other nearby property owners, in the form of increased erosion, encroachment into the right-of-way, and increased sloughing of the bluff. This factor favors granting the temporary restraining order.

e. **The Administrative Burdens That May Be Involved In Judicial Supervision And Enforcement Of The Injunction.**

There would be no extraordinary judicial supervision necessary in this matter. Plaintiff, as the regulatory authority, would continue efforts to enforce the Ordinance if the temporary restraining order is issued. A temporary restraining order would preserve the status quo until the adjudication of this matter on the merits. *See Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. Ct. App.), *rev. denied* (Minn. 2003).

CONCLUSION

Under the facts of this case, Plaintiff County of Nicollet is entitled to a temporary restraining order, enjoining the Defendants, Patrick E. Gieseke and Shana E. Gieseke, their agents, servants, employees, and assigns from commencing or continuing construction activities on the Property in violation of the Ordinance during the pendency of this action. Plaintiff issued a Cease and Desist Order. Since that time, Plaintiff has informed the Defendants of the prohibition against continuing development and construction on the Property until all violations have been resolved. Plaintiff has repeatedly attempted to work with the Defendants to address the violations and to come

into the compliance with the Ordinance. Despite the number and clarity of communications regarding this matter, the Defendants continue to act in violation of the Ordinance and the Cease and Desist Order. Plaintiff has no other adequate, immediate remedy. Plaintiff has established that a temporary restraining order is necessary to prevent irreparable injury.

Section 8 of the Ordinance enables Plaintiff to pursue a civil remedy to enforce the provisions of the Ordinance. Granting Plaintiff's Motion for Temporary Injunction will preserve the stated goals of the Ordinance, and will prevent further, irreparable harm. For the reasons stated above, Plaintiff respectfully requests this Court grant its Motion for Temporary Injunction, granting the following relief:

1. A preliminary injunction, in the form of a temporary restraining order, be issued, enjoining the Defendants, Patrick E. Gieseke and Shana E. Gieseke, their agents, servants, employees, and assigns from commencing or continuing construction activities on the Property in violation of Minnesota Statutes and the Nicollet County Zoning Ordinance during the pendency of this action.

2. For an Order of the Court requiring the Defendants to pay all costs associated with coming into compliance with Nicollet County Zoning Ordinance

3. For an Order of the Court for such other and further relief as to the Court appears to be just and appropriate.

Dated this 10 day of December, 2020.

MICHELLE M. ZEHNDER FISCHER
NICOLLET COUNTY ATTORNEY



Megan E. Gaudette Coryell, #0391831
Assistant Nicollet County Attorney
501 S. Minnesota Avenue
St. Peter, MN 56082
(507) 934-7890
megan.coryell@co.nicollet.mn.us

STATE OF MINNESOTA | DISTRICT COURT

NICOLLET COUNTY | FIFTH JUDICIAL DISTRICT

The County of Nicollet, a political subdivision of the State of Minnesota,

Plaintiff,

vs.

Patrick E. Gieseke and Shana E. Gieseke,

Defendant.

AFFIDAVIT OF MANDELEIN LANDKAMER

Court File No.: 52-CV-20-__

STATE OF MINNESOTA)
) SS.
COUNTY OF NICOLLET)

Mandelein Landkamer, first duly sworn upon oath, deposes and states as follows:

1. Your Affiant is the Director of the Nicollet County Property and Public Services Department [hereinafter "NCPPSD"].
2. I have been the Director of NCPPSD since July 1, 2015.
3. I obtained a Bachelor of Science, in Political Science, from Minnesota State University, Mankato.
4. From 2000 until 2007, I was the Nicollet County Deputy Zoning Administrator.
5. From 2007 until 2008, I was a Blue Earth County Land Use Planner.
6. From 2008 until 2015, I was the Director of Nicollet County Environmental Services.
7. My job responsibilities include the overall leadership and direction for NCPPSD. I direct, manage and oversee the various Nicollet County Property and Public Services Departments,

ATTACHMENT F.28
Affidavit of Mandelein Landkamer

which includes property/environmental services, public services, the Assessor's Office, and the Recorder's Office.

8. The property at issue in this matter is owned by Defendants, Patrick E. Gieseke and Shana E. Gieseke [hereinafter collectively "Defendants"], and is located at 62208 County Road 21, New Ulm, MN 56073, located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township, Nicollet County [hereinafter "the Property"]. The Property is located in the Conservancy zoning district. A Property Summary is attached hereto as Exhibit A.
9. This action involves the non-compliance of Defendants with the Nicollet County Zoning Ordinance [hereinafter "Ordinance"], specifically the Defendants undertook unpermitted development on the Property, as well as said development disturbing the bluff, in violation of the Ordinance.
10. The structure located on the Property is considered a pre-existing nonconforming structure, and would require a variance to expand. The structure on the Property is located within the required thirty (30) foot bluff setback.
11. Section 404 of the Ordinance governs Nonconforming Uses and Structures. Section 507.1 governs Zoning Permits. Section 8 governs Enforcement.
12. Section 603.4(5.A) of the Ordinance governs the Conservancy Zoning District. The required bluffline setback for any structure, or excavation for a structure, shall be thirty (30) feet.
13. Section 721 of the Ordinance governs land preservation. Limitations contained therein include that slopes over twelve (12) percent in grade shall not be developed.
14. The Defendants have expanded their structure further into the bluff, in violation of the Ordinance.

15. The original structure on the Property is considered a pre-existing nonconforming structure, due to its location in relation to the bluff/bluff setback and the right-of-way of County Road 21. The Defendants expansion of the pre-existing nonconforming structure has cut into the bluff. The Defendants did not obtain a variance to the Ordinance requirements or a Zoning Permit before undertaking development on the Property.

16. On May 1, 2020, NCPPSD received an email from the Defendants, stating they believed they needed to obtain a building permit, and inquired whether that could be done online. NCPPSD responded the same day, informing the Defendants of the process for obtaining a Zoning Permit. The email from NCPPSD to the Defendants also contained an attachment with the district setbacks, and stated that the Property is located within the Conservancy zoning district. A copy of the May 1, 2020 email exchange is attached hereto as Exhibit B.

17. Photographs obtained from www.realtor.com on or about July 23, 2020 depict the structure when the Defendants purchased the Property. Copies of the photographs are attached hereto as Exhibit C.

18. On June 18, 2020, NCPPSD took photographs of the structure on the Property. These photographs depict excavation of the bluff, as well as alteration of the structure. Copies of the photographs are attached hereto as Exhibit D.

19. NCPPSD issued a Cease and Desist Order to the Defendants on July 13, 2020. A copy of the Cease and Desist Letter and Order is attached hereto as Exhibit E.

20. On July 21, 2020, NCPPSD conducted a site visit of the Property. The photographs taken during the site visit depict fresh excavation of the bluff, that the original structure was expanded and altered, that construction had commenced, and that the ditch along County

Road 21 appeared recently cleaned out and there was dirt on the pavement. Copies of the photographs are attached hereto as Exhibit F.

21. On August 13, 2020, NCPPSD sent the Defendants a letter, as follow up to the site visit of the Property on July 21, 2020. This letter stated the violations in detail, and provided the Defendants with options to resolve the issues. This letter stated that development could only recommence once all violations have been officially resolved. A copy of the August 13, 2020 letter is attached hereto as Exhibit G.

22. The Defendants did not cease development on the Property. On August 19, 2020, photographs of the structure on the Property were taken. The photographs depict further alteration of the structure. Copies of the photographs are attached hereto as Exhibit H.

23. By email dated August 21, 2020, the Defendants stated they understood that no further construction would occur until the violation has been resolved. A copy of the August 21, 2020 email is attached hereto as Exhibit I.

24. On September 1, 2020, NCPPSD took photographs of the structure on the Property. These photographs depict that further alteration of the structure had occurred. These photographs also depict that at some point between the time the Cease and Desist Order was issued on July 13, 2020, and the site inspection on August 19, 2020, the Defendants had shingled the roof of the expanded structure, in violation of the Cease and Desist Order. Copies of the photographs are attached hereto as Exhibit J.

25. On August 21, 2020 and August 27, 2020, the Defendants submitted an application for an after-the-fact variance to NCPPSD. By letter dated September 2, 2020, NCPPSD advised the Defendants their application was incomplete. The letter advised that additional information

and revisions to the application were required. A copy of the September 2, 2020 letter is attached hereto as Exhibit K.

26. On September 2, 2020, the Defendants submitted a construction proposal to NCPPSD. The Defendants had proposed to continue a limited amount of construction on the structure, including Ty-Vek, windows, doors, and soffit. By letter dated September 15, 2020, NCPPSD denied the Defendant's construction proposal. A copy of the September 15, 2020 letter is attached hereto as Exhibit L.

27. NCPPSD conducted a site visit of the Property on September 18, 2020. Based upon observations during the site visit, the Defendants had not ceased development on the Property. In addition, the Defendants indicated they would continue construction on the Property, despite the Cease and Desist Order. Photographs taken during the site visit depict further alteration of the structure, and fresh earthen material in the ravine located on the Property. Copies of the photographs are attached hereto as Exhibit M.

28. On September 21, 2020, the Nicollet County Attorney's Office sent the Defendants a letter, advising the Defendants that if they did not immediately cease any and all work on the Property, that NCPPSD would seek immediate injunctive relief and/or a temporary restraining order. A copy of the September 21, 2020 is attached hereto as Exhibit N.

29. By email dated September 24, 2020, the Defendants attorney', Steven J. Franta, confirmed that the Defendants assured him that all construction work had ceased. A copy of the September 24, 2020 email is attached hereto as Exhibit O.

30. On October 9, 2020, the Defendants submitted additional information regarding the application for an after-the-fact variance. The survey submitted by the Defendants depicts the "pre-project bluff line" and the "post-project bluff line." The bluff line was drastically

moved by the Defendants. A copy of the survey (after the fact variance sketch) is attached hereto as Exhibit P.

31. By letter dated October 27, 2020, NCPPSD advised the Defendants that their application was incomplete, and specified additional information and revisions that were needed. A copy of the October 27, 2020 letter is attached hereto as Exhibit Q.

32. On November 23, 2020 and November 24, 2020, the Defendants submitted additional information regarding the application for an after-the-fact variance. By letter dated December 7, 2020, NCPPSD advised the Defendants that their application incomplete, and specified additional information and revisions that were needed. A copy of the December 7, 2020 letter is attached hereto as Exhibit R.

33. On December 7, 2020, photographs of the structure on the Property were taken. These photographs, as compared with the photographs taken on August 19, 2020, demonstrate that since the time NCPPSD issued the Cease and Desist Order, the Defendants have continued to undertake development on the Property, in violation of the Ordinance. The photographs depict that the Defendants have installed two new windows and a patio door, despite these items being specifically denied in the September 15, 2020 letter denying the Defendant's request for continued limited construction (Exhibit L). Copies of those photographs are attached hereto as Exhibit S.

34. The requirements imposed on the Defendants are the same as the requirements NCPPSD has imposed on all similarly situated landowners.

35. The imposition of a criminal penalty will not prevent environmental damage because such penalty will not ensure that Defendant will comply with the Nicollet County Zoning Ordinance.

36. Plaintiff does not have an adequate remedy in a civil action for monetary damages because, while Defendant's actions threaten the health and safety of the residents of Nicollet County, it is not possible to quantify such damages at this time.

37. The environment may suffer irreparable harm, damage, and injury unless the complained of conduct is enjoined by this Court.

38. Pursuant to Ordinance Section 804, NCSSPD is seeking a Temporary Restraining Order, restraining and prohibiting the Defendants from commencing or continuing construction activities on the Property in violation of Minnesota Statutes and the Nicollet County Zoning Ordinance.

Further, your Affiant sayeth not.

Mandelein Landkamer
Director, Nicollet County Property and Public Services

Subscribed and sworn to before me
this 10 day of December, 2020.

Notary Public

MOLLY LYN KLINGERMAN
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/2021

EXHIBIT A

EXHIBIT "A"
LEGAL DESCRIPTION

Part of the Southeast Quarter of Section 35, Township 111, Range 31, Nicollet County, Minnesota, described as follows: Commencing at the southeast corner of said Section 35; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter 122.49 feet to the point of beginning of the tract to be described; thence North 56 degrees 29 minutes 34 seconds West 739.87 feet; thence northwesterly along a tangential curve the is concave to the southwest, said curve having a central angel of 03 degrees 00 minutes 30 seconds, a radius length of 10234.05 feet, an arc length of 537.33 feet; thence North 60 degrees 00 minutes 15 seconds West, not tangent to last described curve, 538.45 feet; thence North 62 degrees 39 minutes 32 seconds West 216.20 feet; thence North 25 degrees 54 minutes 32 seconds East 46.61 feet; thence North 89 degrees 54 minutes 16 seconds East 578.87 feet; thence South 42 degrees 51 minutes 50 seconds East 179.17 feet; thence South 59 degrees 08 minutes 44 seconds East 1176.04 feet to the East line of said Southeast Quarter; thence South 00 degrees 00 minutes 00 seconds West along said East line 370.06 feet to the point of beginning. This tract contains 11.64 acres of land and is subject to any and all easements of record, together with a 20.00 foot wide easement for driveway purposes and the right of ingress and egress, over, under and across part of the Southeast Quarter of Section 35, Township 111, Range 31, Nicollet County, Minnesota, the centerline of said easement being described as follows: Commencing at the southeast corner of said Section 35; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the East line of said Southeast Quarter 122.49 feet; thence North 56 degrees 29 minutes 34 seconds West 576.19 feet to the point of beginning of said centerline to be described, thence North 07 degrees 02 minutes 14 seconds East 218.68 feet; thence North 21 degrees 25 minutes 24 seconds East 92.21 feet and said centerline there terminating.

ATTACHMENT F.29
Exhibits

EXHIBIT B

Jon Hammel

From:	Mandy Landkamer
Sent:	Friday, May 01, 2020 3:25 PM
To:	'Shana Gieseke'
Cc:	Jon Hammel
Subject:	RE: Building Permit - 62208 County Road 21, New Ulm, MN
Attachments:	District Setbacks.pdf; 2020 Fee Schedule.pdf; Site_Plan_Res_Example.pdf

Hi Shana-

Property Services is processing zoning permits at this time. The county does not have online access for residents to apply for a permit, although staff will email or mail the completed permit for signature, if the required information has been submitted and in compliance with the applicable setbacks and standards. Payment must be received prior to emailing or mailing of the permit. Payment can be made by check, cash, or credit card which requires a convenience fee. The permit must be returned to staff with signature to complete the process.

I have attached the fee schedule, the district setbacks, and an example of a site plan for your consideration. Your property is located within the Conservancy zoning district.

Please let me know if you have additional questions.

Thanks,
Mandy

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, May 01, 2020 12:11 PM
To: Mandy Landkamer
Cc: Jon Hammel
Subject: Building Permit - 62208 County Road 21, New Ulm, MN

Hi Mandy!

I believe we need to obtain a building permit; can this be done on-line?

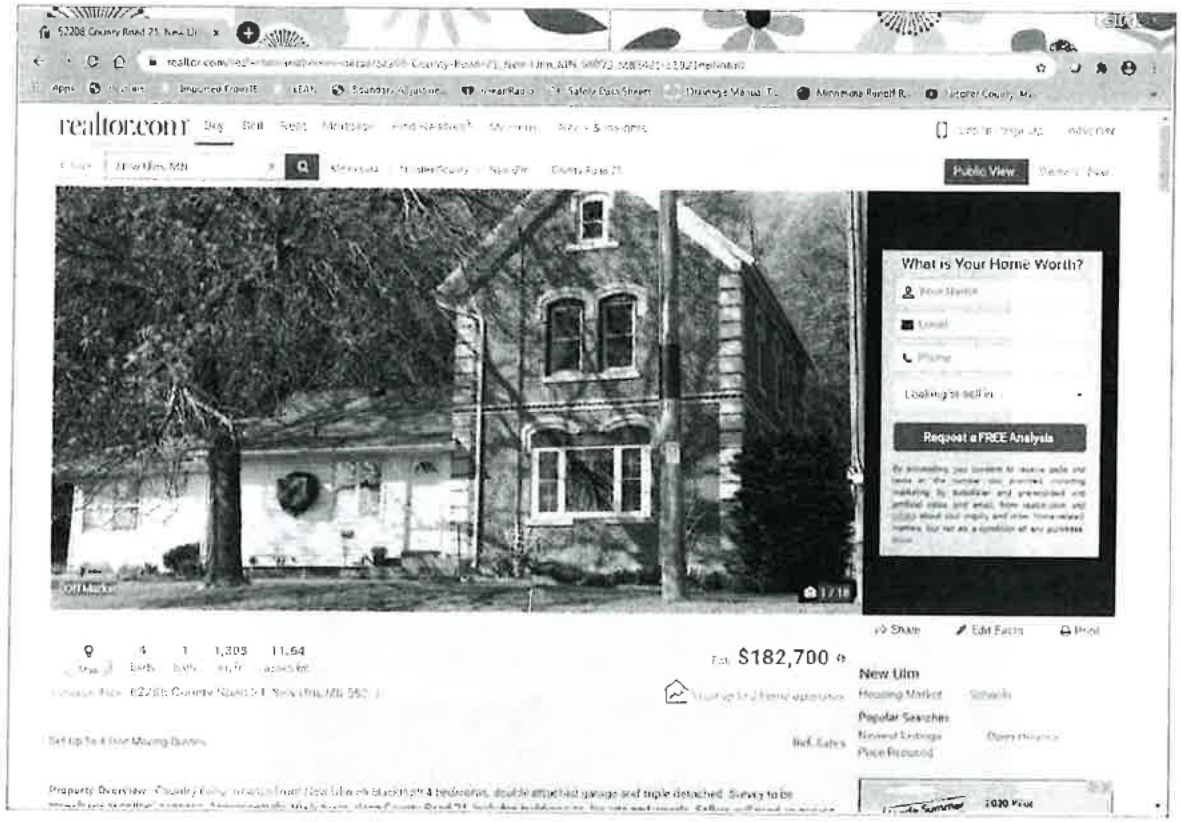
Thanks!

Pat & Shana Gieseke
62208 County Road 21
New Ulm, MN 56073

Shana Gieseke | Mortgage Document Specialist I
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

EXHIBIT C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Public View
What is Your Home Worth?
Request a FREE Analysis
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Public View
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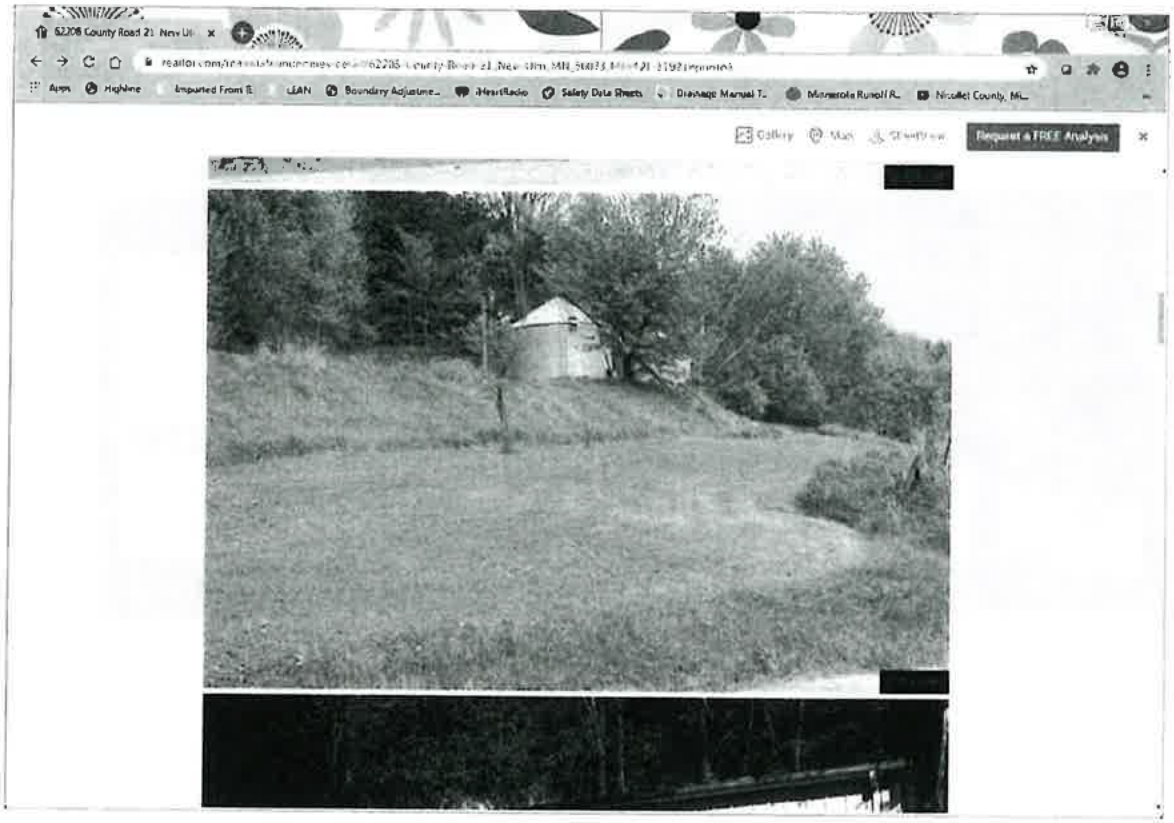
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Request a FREE Analysis


62208 County Road 21 New Ul
Request a FREE Analysis


Gallery
Map
StreetView
Request a FREE Analysis


Gallery
Map
StreetView
Request a FREE Analysis

EXHIBIT D

000006

000007

EXHIBIT E

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

July 13, 2020

JUL 15 2020

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

RE: Cease and Desist Order, Parcel No. 13.035.1000

Mr. and Mrs. Gieseke:

This letter is a "CEASE AND DESIST" notice for unpermitted development occurring on your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township.

Nicollet County Property Services has sufficient information to indicate violations of the following Zoning Ordinance provisions:

NATURE OF THE VIOLATIONS

- **Minnesota State Statute Chapter 394.36, Subdivision 4, Nonconformities:**
    - "... Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. ..."
- **Section 404.1 Nonconforming Uses and Structures:** Any structure or use existing upon the effective date of the adoption of the Zoning Ordinance, and which does not conform to the provisions of the Ordinance, may be continued for a certain period of time subject to the following conditions:
    - (A) No such use or structure shall be expanded, changed, altered or enlarged except in conformity with the provisions of this Ordinance, nor shall such expansion, change, alteration or enlargement increase the non-conformity of use.
    - (C) If a non-conforming structure is destroyed by any cause, to an extent exceeding fifty (50) percent of its fair market value as indicated by the records of the County Assessor, a future structure on the site shall conform to this Ordinance.

- **Section 507.1(1) Zoning Permits:** A zoning permit shall be required of all persons prior to:
    - Erection, structural alteration, or relocation of permanent or portable structures.
- **Section 603.4(5.A) Conservancy Zoning District:** Required bluffline setback:
    - For any structure, or excavation for a structure, thirty (30) feet.
- **Section 721 Land Preservation:**
    - **721.1(1):** All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
    - **721.1(2):** Slopes over twelve (12) percent in grade shall not be developed.
    - **721.1(4):** Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
    - **721.1(7):** Whenever possible, natural vegetation shall be retained and protected.

DEVELOPMENT MUST CEASE IMMEDIATELY.

You need to call our office no later than **July 20, 2020** to schedule a site visit with staff. Following the site visit, you may be required to submit additional information and take corrective actions, including, but not limited to, the following:

- Once the property is determined to be in compliance with all applicable County standards and requirements, you will need to apply for any required permits. This may include, but is not limited to, conditional use permits, zoning permits, and variances. Any such permits will now be after-the-fact.

It is your responsibility to notify this office in writing or by phone call when development activity has ceased. If not contacted by **July 20, 2020**, this office will act upon the basis that the violation has not ceased.

Be aware, Section 801 of the Nicollet County Zoning Ordinance states:

"The violation of any provision of this ordinance or the violation of the conditions or provisions of any permit issued pursuant to this ordinance shall be a misdemeanor, and upon conviction thereof, the violator shall be subjected to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense".

If you have any questions regarding this letter or the enclosed Cease and Desist Order, please contact our office.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071

Enc: Cease and Desist Order

Cc: John Luepke, Commissioner 5th District
Ryan Krosch, County Administrator
Megan E. Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

CEASE AND DESIST ORDER

Date: July 13, 2020

NICOLLET COUNTY
PROPERTY SERVICES

Land Owner:

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Legal Description:

Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township, Nicollet County Minnesota.

DEVELOPMENT MUST CEASE IMMEDIATELY

You are hereby ordered to cease development immediately. Development includes any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any excavation or land disturbance; or any extension of the use of land.

You are notified that the properties described above of which you are the owner, operator, or other person responsible, is in violation of the Nicollet County Zoning Ordinance. The violations and supporting evidence are identified and listed below.

VIOLATIONS

- **Minnesota State Statute Chapter 394.36, Subdivision 4, Nonconformities:**
    - "... Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. ..."
- **Section 404.1 Nonconforming Uses and Structures:** Any structure or use existing upon the effective date of the adoption of the Zoning Ordinance, and which does not conform to the provisions of the Ordinance, may be continued for a certain period of time subject to the following conditions:
    - (A) No such use or structure shall be expanded, changed, altered or enlarged except in conformity with the provisions of this Ordinance, nor shall such expansion, change, alteration or enlargement increase the non-conformity of use.
    - (C) If a non-conforming structure is destroyed by any cause, to an extent exceeding fifty (50) percent of its fair market value as indicated by the records of the County Assessor, a future structure on the site shall conform to this Ordinance.
- **Section 507.1(1) Zoning Permits:** A zoning permit shall be required of all persons prior to:
    - Erection, structural alteration, or relocation of permanent or portable structures.

- **Section 603.4(5.A) Conservancy Zoning District:** Required bluffline setback:
    - For any structure, or excavation for a structure, thirty (30) feet.
- **Section 721 Land Preservation:**
    - **721.1(1):** All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
    - **721.1(2):** Slopes over twelve (12) percent in grade shall not be developed.
    - **721.1(4):** Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
    - **721.1(7):** Whenever possible, natural vegetation shall be retained and protected.

You need to call our office no later than **July 20, 2020** to schedule a site visit with staff. Following the site visit, you may be required to submit additional information and take corrective actions, including, but not limited to, the following:

- Once the property is determined to be in compliance with all applicable County standards and requirements, you will need to apply for any required permits. This may include, but is not limited to, conditional use permits, zoning permits, and variances. Any such permits will now be **after-the-fact**.

The Nicollet County Zoning Ordinance Section 801 states: "The violation of any provision of this ordinance or the violation of the conditions or provisions of any permit issued pursuant to this ordinance shall be a misdemeanor, and upon conviction thereof, the violator shall be subjected to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense."

The Nicollet County Zoning Ordinance Section 806 states: "The Zoning Administrator may issue cease and desist orders to halt the progress of any on-going violation(s). When work has been stopped for any reason, it shall not be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted. Any costs incurred by the County in the enforcement of the cease and desist order or the remedies therein shall be assessed to the landowner."

IT IS YOUR RESPONSIBILITY TO NOTIFY THIS OFFICE IN WRITING OR BY PHONE CALL WHEN DEVELOPMENT ACTIVITY HAS CEASED. IF NOT CONTACTED BY **JULY 20, 2020**, THIS OFFICE WILL ACT UPON THE BASIS THAT THE VIOLATION HAS NOT CEASED.

FAILURE TO COMPLY WITH THIS ORDER WILL RESULT IN THE MATTER BEING TURNED OVER TO THE NICOLLET COUNTY ATTORNEY'S OFFICE FOR ENFORCEMENT

Nicollet County Property Services
501 South Minnesota Avenue
Saint Peter MN 56082
507-934-7071

EXHIBIT F

000014



000015



000016


07 21 2020


07 21 2020


07 21 2020

EXHIBIT G

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

August 13, 2020

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

RE: Property Violations

Dear Mr. and Mrs. Gieseke,

This letter concerns violations of the Nicollet County Zoning Ordinance on your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The property contains approximately 12 acres and is zoned Conservancy. The violations were the subject of a July 13, 2020 Cease and Desist Order, and a July 21, 2020 site inspection. Present at the site inspection were Patrick Gieseke, Property and Public Services Director Mandy Landkamer, and myself.

Violations
The violations were listed in the Cease and Desist Order. To summarize, the violations include:

- The unpermitted construction of a dwelling/attached garage addition, and the relocation of an existing shed (approximately 10' x 12') onsite without a zoning permit. Section 507.1(1) of the Zoning Ordinance requires a zoning permit prior to the erection, structural alteration, or relocation of permanent or portable structures. Additionally, our office has no record of a zoning permit being issued for the horse shed located southeast of the house. The shed appears to be located within the 50-foot right-of-way setback along County Road 21.

- Expansion of a nonconforming structure. The original house was considered nonconforming due to its location in relation to the bluff/bluff setback and the right-of-way of County Road 21. Section 404.1(A) of the Zoning Ordinance states that a nonconforming structure cannot be expanded, changed, altered or enlarged except in conformity with the provisions of the Zoning Ordinance. Nor shall such expansion, change, alteration, or enlargement increase the non-conformity of use.

- Development within the bluff and bluff setback. Section 721.1 of the Zoning Ordinance states that slopes over 12% in grade shall not be developed. Additionally, Section 603.4(5.A) requires a 30-foot setback from the bluffline. The bluffline is the point at which slope begins to exceed 12%. The disturbance to the bluff/bluff setback includes both the cutting and filling of earthen material. There appeared to be multiple areas where the bluff had been impacted on your property, including:

- West of the existing dwelling and partially constructed addition, including the terraces and paths cut into the bluff.
- North of the 24' x 45' pole shed/garage.
- North of the horse shed.

Staff is aware the bluff to the west of the house and original garage was cut previously, prior to this instance. However, that does not mean further disturbance is allowed. According to the Nicollet County Soil Survey, the soils on your property are classified as 960F, Storden-Clarion. This soil type is severely limited when it comes to building site development and sanitary facilities (i.e. septic drainfields). They typically have a slope of 18% to 50% and have rapid surface water runoff. Disturbance or development of bluff areas with such soils can cause serious erosion and sediment control problems. For this reason bluff areas are protected by the Zoning Ordinance as a sensitive natural feature.

Since development has already begun, and the bluff has already been disturbed, any permitting will now be after-the-fact.

Options
At this point, you have a couple of options for each of the issues you are dealing with:

1. Dwelling/Garage Addition
    a. Remove the addition.
    b. Apply for an after-the-fact variance and after-the-fact zoning permit. (These processes are described in more detail below.)
2. Bluff Development
    a. Restore the bluff. This option requires a restoration plan prepared by a third party, such as an engineering firm.
    b. Apply for an after-the-fact variance.
3. Small Shed (10' x 12')
    a. Remove the small shed.
    b. Apply for a zoning permit to relocate the small shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met.
    c. Apply for an after-the-fact variance and after-the-fact zoning permit.

4. Horse Shed

    a. Remove the horse shed.

    b. Apply for a zoning permit to relocate the horse shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met.

    c. Apply for an after-the-fact variance and after-the-fact zoning permit.

NOTE: One after-the-fact variance request can contain multiple elements. For example, you could request a variance for the dwelling/garage addition and the bluff disturbance together.

After-the-Fact Variance

The first steps are to state the type of variance you are requesting, to complete an official application and to pay the application fees. A legal description for the property and a survey prepared by a surveyor licensed in the State of Minnesota are required at the time of application. The survey needs to depict the variance(s) being requested. For example:

- The location of the pre-project bluffline and post-project bluffline of the disturbed bluff areas.
- The location of the existing house and addition, small shed, and/or horse shed.
- The distance between the bluffline and the existing house and addition, small shed, and/or horse shed.
- The location of the right-of-way line of County Road 21 and the location of the existing house and/or horse shed.
- The distance between the right-of-way line and existing house and/or horse shed.
- The survey will also need to identify how much material (ex. cubic yards) was moved onsite, and how much material was removed from the site to an offsite location. The location of the removed material must also be identified.

Your application must include a complete set of proposed floor plans for the house and addition. The plans must identify the use of each area, as well as egress windows and closets. This will be used to verify the number of bedrooms in the structure.

Lastly, you will need to submit a compliance inspection of the existing septic system and verify the system has the capacity to serve the number of bedrooms planned in the house. A compliance inspection is required for issuance of a variance and for dwelling additions. The compliance inspection must be performed by a licensed septic inspector. As part of the compliance inspection, you will have to identify a secondary, or alternative septic system location. If you have any questions concerning compliance inspections or septic systems, please contact Nicollet County Sr. Sanitarian Peter Otterness at 507-934-7076.

Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, the application must be determined to be complete. If the application is determined to be incomplete, Property Services will issue an incomplete application notice. You must then revise the application and resubmit. Staff has 15 business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines and applicants are encouraged to factor this into their planning.

Once the application has been determined to be complete, the request will be added to the agenda for the next available hearing date. The request is heard during a public hearing held by the Nicollet County Board of Adjustment and Appeals. You or your representative must be present at the hearing to respond to any questions the Board may have regarding the proposal. I have included a list of hearing dates and a fee schedule with this letter.

The process takes roughly four to six weeks to complete. ***No guarantee*** can be made that staff would recommend approval of the request. Additionally, staff can make ***no guarantee*** your request would be approved by the Board. Fees are non-refundable once the legal notice of the hearing has been submitted for publishing.

Please be aware, the request will be evaluated according to the criteria found in the Zoning Ordinance and State Statute. In order for the request to be granted, variance criteria one through six must be met. I have included copies of our variance questionnaire handouts. The criteria are listed on the handout. Unless criteria one through six are met the request will be denied. If the request is denied, you may not submit a similar variance request for six months.

Zoning Permits (After-the-Fact)
Zoning permits are required prior to the erection, structural alteration, or relocation of permanent or portable structures – including single family dwellings, decks, and porches; and also detached accessory structures, such as garages or sheds. This type of permit is issued administratively by our office. Zoning permits are valid for one year from their date of issuance. You must have your zoning permit in-hand prior to the start of any construction, including any site prep or earthwork. Verification the proposal meets all applicable setbacks and standards will be required. At a minimum this generally includes, but may not be limited to, the following:

- A site plan indicating the applicable setback distances.
- A complete set of floor plans.
- The total square footage of the structure, including any attached garages, decks or porches. The permit fee is based on the size of the structure footprint.
- The license number and contact information for your general contractor, and the information for any subcontractors.
- A cost estimate for construction of the structure.

Resolution

You must submit your plan for resolving the violations, in writing, to our office no later than Friday **August 21, 2020**. The plan must include your proposed time frame for resolution and it must include all of the aforementioned violations. Development can only recommence once all violations have been officially resolved.

Be aware, the violation of any provision of the Zoning Ordinance is a misdemeanor, and upon conviction thereof, the violator shall be subject to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense.

Please do not hesitate to contact our office if you have any questions concerning this letter.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: Hearing and Fee Schedules
After-the-fact Variance Handouts

Cc: John Luepke, Commissioner 5th District
Ryan Krosch, County Administrator
Megan E. Gaudette Coryell, Assistant County Attorney
Pete Otterness, County Sr. Sanitarian

Parcel No: 13.035.1000
Map No: 0335400003

EXHIBIT H







000027

EXHIBIT I

Jon Hammel

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Friday, August 21, 2020 12:57 PM
To: Jon Hammel
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

Thank you Jon.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, August 21, 2020 12:56 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Perfect. Thank you Shana. I will review your attachments and let you know where we stand.

Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, August 21, 2020 12:55 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

Jon,

Yes, I understand no further construction will occur until the violation has been resolved.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, August 21, 2020 12:53 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>

Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Hi Shana,

I am acknowledging receipt of your email and attachments. I have read your letter and feel is meets what was asked of you for today's deadline.

However, one more thing I would ask of you, is that you reply to this email stating you understand no further construction will occur until the violation has been resolved. Upon resolution, we will issue you a letter stating construction may recommence.

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, August 21, 2020 12:02 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: Gieseke - 62208 County Road 21, New Ulm, MN
Importance: High

Good afternoon Jon.

Please review and confirm receipt of this email and the attachments.

- Cost Estimate
- Contractor Information
- Letter to Nicollet County dated 8-21-2020
- Plans

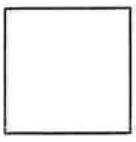
Please let me know if further information is needed.

Thank you and please enjoy your day.

Shana

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street | P.O. Box 189 | New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"



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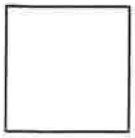

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Total Control Panel Login

To: jon.hammelg@co.nicollet.mn.us Remove this sender from my allow list
From: sgieseke@frandsenbank.com

You received this message because the sender is on your allow list.

NOTICE:
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EXHIBIT J

000031



EXHIBIT K

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

September 2, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

The purpose of this letter is to respond to the documents you submitted via email on August 21, 2020 and August 27, 2020. The documents involve your application for an after-the-fact variance to expand a nonconforming structure, to reduce the front yard setback, to reduce the bluff setback, and for the alteration of protected bluff areas, for the purpose of constructing a dwelling addition. Our office understands that based on the documents you submitted on August 21, 2020, that you will be removing the small shed and horse shed.

The request involves your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. This matter has been the subject of a July 13, 2020 Cease and Desist Order and an August 13, 2020 letter to you from our office.

The documents you submitted via email on August 21, 2020 included:

- Letter to Nicollet County.
- Floor plan for the dwelling addition.
- A cost estimate for construction.
- Contractor information.

The document you submitted via email on August 27, 2020 was:

- A septic compliance inspection, prepared by Lafayette Excavating, Inc.

Please be aware, per Minnesota Statutes Section 15.99, Subd. 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. Our office has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Information / Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to Nicollet County Property Services.

- A survey prepared by a licensed surveyor. The survey must contain all the elements necessary for your variance request, such as the bluff setback, the front yard setback, etc.
- A complete set of floor plans for the house and addition. The floor plan submitted was the addition only. The plans must include the entire house, including room use, egress windows, and closets.
- The identification of a secondary/alternative septic system location.

These items were identified and explained in the August 13, 2020 letter to you from our office

In your August 21, 2020 Letter to Nicollet County, you state the earth removed from the bluff to make space for the house addition was relocated to a washout on your property. During a July 21, 2020 site inspection, Mr. Gieseke stated the removed material was relocated offsite. You will need to submit additional information, including:

- The precise location of the relocated earthen material.
- The amount of material moved in cubic yards.

Please be aware, Section 721 of the Zoning Ordinance contains standards for the preservation and of land and natural drainageways. These standards may apply to your placement of fill in a washout.

Official Application
Your application will remain incomplete and **on-hold** until the above items are provided to Property Services. Once these items have been received and approved by our office, you may move forward with:

- Payment of the after-the-fact variance and recording fees.
- Signing the official application form prepared by staff.

Second Site Visit
You will need to contact our office no later than Tuesday **September 15, 2020** to schedule another site visit. The purpose of a second site visit will be to view the location of the fill and washout. Please know, additional corrective actions or after-the-fact permitting may be required to address this issue.

- The request may require an after-the-fact conditional use permit for the movement of the earthen material cut from the bluff.

Conclusion
The general information provided above is based on present standards in relation to your proposal. If there has been any misunderstanding regarding your proposal, if you have any additional questions, or if we may be of any further service to you, please do not hesitate to contact our office.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

EXHIBIT L

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

September 15, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Construction Proposal / Inquiry

Dear Mr. and Mrs. Gieseke,

This letter is in response to your construction proposal submitted on September 2, 2020, and an email inquiry submitted September 10, 2020. The proposal and inquiry were sent via email from you to our office. They both involved an unpermitted addition to your existing dwelling located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township.

Construction Proposal

A July 13, 2020 cease and desist order required you to cease construction on the unpermitted addition. Construction then continued in violation of the order until August 21, 2020, when you confirmed all construction had ceased. The document submitted on September 2, 2020 included your proposal to protect your investment from the elements of weather, wildlife, and unauthorized trespassers. You proposed to continue a limited amount of construction, including the installation of:

- Ty-Vek
- Windows
- Doors
- Soffit

Please know, your proposal has been administratively denied by our office. Moving forward, you may submit a revised proposal for consideration.

Email Inquiry

The September 10, 2020, email included several questions. Each will be addressed below.

1. *What is the status of the site visit for the septic?*

   The site visit is up to the scheduling of your septic contractor. As of today, County Sanitarian Sr. Pete Otterness confirmed that your contractor has not yet scheduled a visit.

2. *What is the status of the site visit for the second viewing of the washout?*

   Per the September 9, 2020 incomplete application letter, you have until September 15, 2020 to schedule a site visit to view the earthen material placed to address the washout.

3. *What is the status of the items for the "incomplete application" such as the survey?*

   A revised survey was submitted to our office via email by Jesse Zeig of Bolton and Menk on September 4, 2020. The survey included the setback lines as identified in the September 9, 2020 incomplete application letter. Our office has yet to receive:

   - A secondary/alternative septic system location.
   - The precise location of the relocated earthen material, including the material moved offsite.

4. *What is the status of approval for our construction proposal? SECOND REQUEST IS ATTACHED*

   This question was addressed in this letter, above, under "Construction Proposal".

5. *What is the EXACT cost total for our variance requests?*

   The total cost for an after-the-fact variance is $1,046. This includes a $1,000 after-the-fact hearing fee, and a $46 recording fee.

6. *Where do I mail the check to for the variance requests and whom is it payable to?*

   The check can be made out to Nicollet County Property Services, and can be mailed to:

   Property Services
   Attn: Jon Hammel
   501 S. Minnesota Ave.
   St. Peter MN 56082

If you have any questions concerning this letter please do not hesitate to contact our office.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney
Pete Otterness, County Sanitarian, Sr.

Parcel No: 13.035.1000
Map No: 0335400003

EXHIBIT M




09 18 2020



000041

OFFICE OF THE NICOLLET COUNTY ATTORNEY
Michelle M. Zehnder Fischer
County Attorney

EXHIBIT N

James P. Dunn, Chief Deputy County Attorney
Megan E. Gaudette Coryell, Assistant County Attorney
Shannon Ness, Assistant County Attorney
Daniel R. Green, Assistant County Attorney
Bonnie Petersen, Victim/Witness Coordinator

September 21, 2020

Sent via email to sgieseke@frandsenbank.com
and via Certified Mail

Patrick E. and Shana E. Gieseke
62208 County Road 21
New Ulm, MN 56073

Re: Cease and Desist Order

Dear Mr. and Ms. Gieseke:

This letter concerns the Cease and Desist Order issued to you by Nicollet County Property and Public Services ("NCPPS") on July 13, 2020, that requires you to cease construction on the unpermitted addition.

Based upon information received since that time, as well as observations of NCPPS while on site, you have failed to comply with the Order, and construction has continued. In addition, on September 18, 2020, you indicated to Mandy Landkamer, NCPPS Director, that you would continue construction on the property, despite the Cease and Desist Order.

Please be advised that if you do not **immediately cease** any and all work on the property, NCPPS will seek immediate injunctive relief and/or a temporary restraining order from the Court. Section 806 of the Nicollet County Zoning Ordinance provides that "[a]ny costs incurred by the County in the enforcement of the cease and desist order or the remedies therein shall be assessed to the landowner."

Sincerely,

Megan E. Gaudette Coryell

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney

MEGC/lms
cc: Mandy Landkamer, Nicollet County Property and Public Services

Nicollet County Government Center
501 South Minnesota Avenue, St. Peter, MN 56082
Telephone: 507-934-7890 Fax: 507-934-1216

EXHIBIT O

Megan Coryell

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 3:39 PM
To: Megan Coryell
Cc: Mandy Landkamer; Debra Strandlie; Jon Hammel
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

I can confirm that Pat and Shana have assured me that all construction work has ceased.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

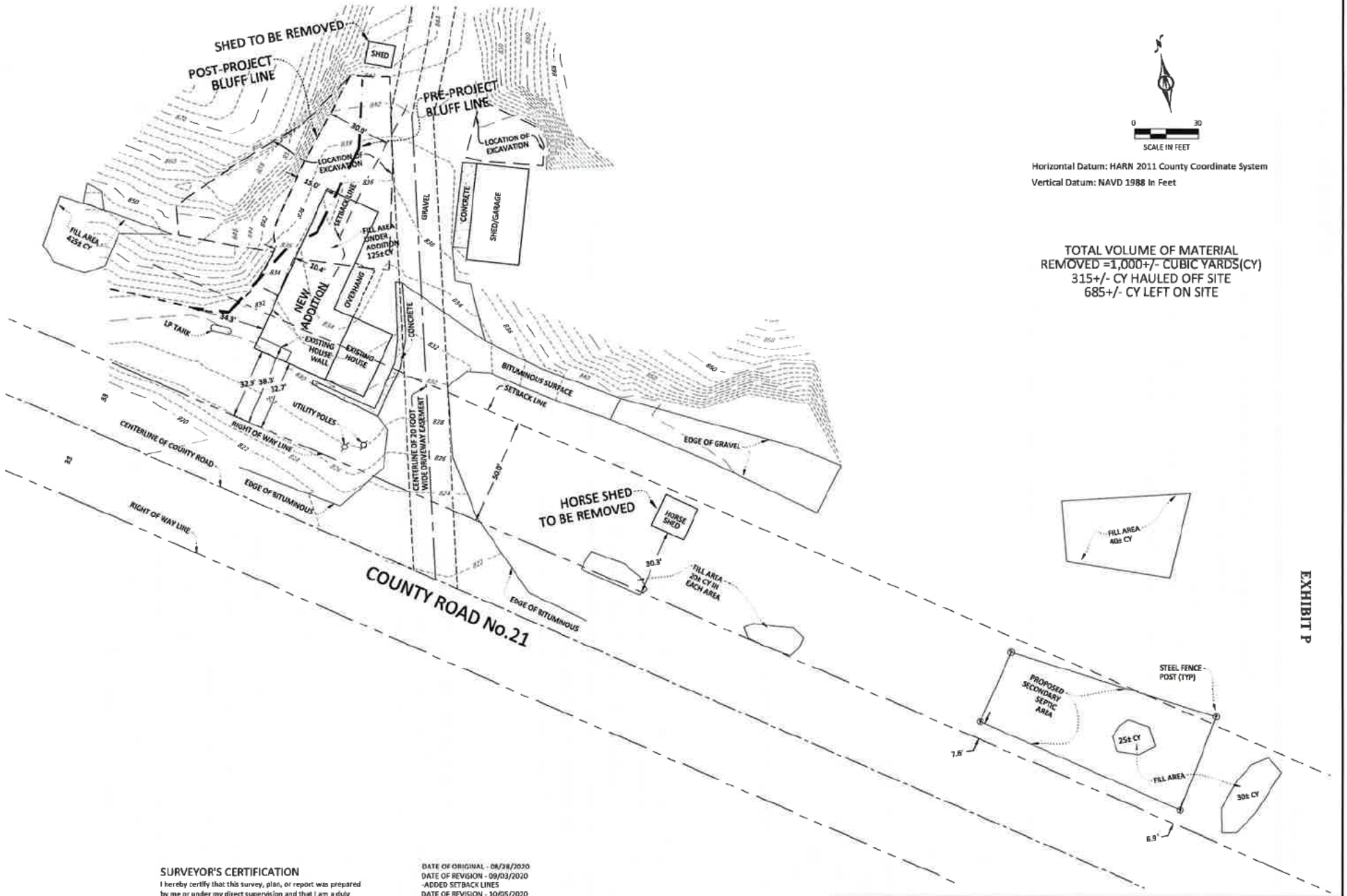
From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 1:45 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Mr. Franta,

Please confirm by 4:30 p.m. today whether any and all construction activity on the property, including inside the structure, has ceased. Should unauthorized construction activities continue and/or resume, NCPPS will seek immediate injunctive relief and/or a temporary restraining order from the Court.

In regards to numbers 1-6:

1. There are remaining question on the survey. A follow up letter on this should be going out early to mid-next week.
2. There are remaining issues with the floor plans. This will be included in the follow up letter referenced in #1.
3. NCPPS has not received the septic paperwork. It is still with Lafayette Excavating.
4. Based upon the amount of earthen material moved, Mr. Gieseke and Ms. Gieseke will need an After-The-Fact Conditional Use Permit. In addition, Mr. Gieseke and Ms. Gieseke have not identified specifically where the earthen material was moved to. The survey identified +/- 425 cubic yards of earthen material left onsite. The site of the remaining +/- 825 cubic yards hauled offsite has not been identified. This will also be addressed in the follow up letter referenced in #1.
5. Please see #4.



SURVEYOR'S CERTIFICATION

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

Jesse D. Zeig 11/23/2020

Jesse D. Zeig
License Number 44996

Date

DATE OF ORIGINAL - 08/28/2020
DATE OF REVISION - 09/03/2020
-ADDED SETBACK LINES
DATE OF REVISION - 10/05/2020
-ADDED FILL AREAS
DATE OF REVISION - 11/23/2020
-REVISION/ADDED QUANTITIES

Surveyor's Note:
-The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP., NICOLLET COUNTY, MN

PART OF THE SE 1/4, SECTION 35-111-31

BOLTON & MENK
1243 CEDAR STREET NE
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

FOR: PAT AND SHANA GIESEKE

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H:\GIESEKPS_PR\S11122571\CAD\C3D\122571V701-JDZ.dwg 11/23/2020 2:38 PM

JOB NUMBER: S11.122571 FIELD BOOK: DRAWN BY: RK/JDZ SEC 35-111-31(40)

000044

EXHIBIT Q

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

October 27, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on October 8, 9, and 12, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

October 8, 2020
The document submitted to Nicollet County Property and Public Services ("NCPPS") on October 8, 2020, was received via email from your surveyor, Jesse Zeig at Bolton and Menk. The document was a revised draft of the survey dated October 5, 2020. The revision included the removal of an unidentified thick black line. Mr. Zeig noted the line was placed on the survey in error.

October 9, 2020 Document Packet
The documents submitted to NCPPS by Debra Strandlie (on behalf of your attorney Steven Franta) on October 9, 2020, were received via email. These documents included:

- Cover letter (page 1 of packet)
- Survey dated October 5, 2020 (unrevised version, page 2)

- ❖ Erosion and sediment control plan (pages 3-4)
- ❖ Basement floor plan – existing (page 5)
- ❖ Main floor plan – existing (page 6)
- ❖ Second story floor plan – existing (page 7)
- ❖ Nicollet County Beacon sketch – existing (page 8)
- ❖ Addition floor plan dated August 22, 2019 (page 9)
- ❖ Onsite Earth Movement (pages 10-11)
- ❖ Offsite Earth Movement (pages 12-13)

October 12, 2020 Document
The document submitted to NCPPS by your septic contractor Lafayette Excavating, Inc., on October 12, 2020, was received via email. This document included:

- ❖ Replacement/alternative septic system location site plan.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on October 8, 9, and 12, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to NCPPS:

- ➢ An amended survey prepared by a licensed surveyor.
    - o Under "Offsite Earth Movement" (page 12 of packet), you state you disagree with elements of the survey, including:
        - ▪ Amount of earth moved.
        - ▪ Location of pre-project bluff line in relation to an attached garage, built in 1968.

      The survey will need to be revised to accurately depict these two elements. The survey and written materials must align and not contain any discrepancies.

- The survey does not note that fill was used for the addition, as indicated in your September 14, 2020, Relocated Earthen Material Map. This will need to be accurately noted on the survey, along with the amount of fill used for the addition. State whether or not this material is included in the 1,250 cubic yard total noted on the existing survey.

- The survey will need to accurately note the amount of fill placed in the ravine/washout.

- Lastly, the survey depicts one unidentified element:

  - Please identify the unknown symbol located south of the gravel surface and east of the horse shed.

- A revised erosion and sediment control plan. The plan you submitted does not go into detail concerning the incorporation of and specific placement of erosion control elements (silt fences, mats, anchors, etc.). Additionally, the plan does not include the proposed seeding mix. The seeding mix must be appropriate for bluff stabilization.

  - You may want to contact Nicollet County Soil and Water Conservation District Staff to review and comment as to whether your proposed plan will aid in bluff stabilization.

  - Rock, concrete, and/or asphalt may not be placed in a drainage way. This element of the plan must be revised.

- A complete set of floor plans for the house and addition on your property. The floor plans you submitted are considered incomplete for the following reasons:

  - The documents you submitted were a mix of existing and proposed floor plans. A complete set of existing and proposed floor plans is required. The proposed plans must clearly depict how the addition will connect to the existing dwelling.

Official After-The-Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation

The placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options:

1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,250 cubic yards of materials noted on the survey (dated October 5, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process is summarized below.

The first step is to complete an official application and pay the application fees. A legal description for the property is required at the time of application.

Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, the application must be determined to be complete. If the application is determined to be incomplete, NCPPS will issue an incomplete application notice. You must then revise the application and resubmit. Staff has fifteen (15) business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines and applicants are encouraged to factor this into their planning.

Then the request would be added to the agenda for the next available hearing date. The request is heard during a public hearing held by the Nicollet County Planning and Zoning Advisory Commission ("Commission"). You or your representative must be present at the hearing to respond to any questions the Commission may have regarding the proposal. The Commission then makes a recommendation to the Nicollet County Board of Commissioners ("County Board"), who then makes the final decision regarding the request.

The process takes roughly four to six weeks to complete. ***No guarantee*** can be made that Staff would recommend approval of the request. Additionally, Staff can make ***no guarantee*** your request would be approved by the Commission or County Board. Fees are non-refundable once the legal notice of the hearing has been submitted for publishing.

Offsite Earth Movement
You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020 are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion
The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: 2020 Hearing Schedule

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003

EXHIBIT R

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

December 7, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on November 23, 2020 and November 24, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request currently has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

November 23, 2020

The documents submitted to Nicollet County Property and Public Services ("NCPPS") by Debra Hatcher (on behalf of your attorney Steven Franta) on November 23, 2020, were received via email. These documents included:

- Cover Letter
- After the Fact Variance Sketch (unsigned, dated November 18, 2020)
- NSWCD (Nicollet Soil & Water Conservation District) Recommendations
- Revised Floor Plans

November 24, 2020
The document submitted to NCPPS by Debra Hatcher (on behalf of your attorney Steven Franta) on November 24, 2020, was received via email. The document was a signed copy of the After the Fact Variance Sketch (dated November 23, 2020).

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on November 23, 2020 and November 24, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions
Your application will remain **on-hold** until the following additional information/revisions are submitted to NCPPS:

- A comprehensive erosion and sediment control plan. The November 23, 2020 cover letter states the NSWCD recommendations are to be incorporated into the proposed plan submitted on October 9, 2020. However, it does not identify how specifically they are to be incorporated. You need to submit a comprehensive plan that clarifies how the recommendations are to be incorporated with the proposed plan.

Official After-The-Fact Variance Application
Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation
As you are aware, the placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options, listed below. You will need to identify which option you are going to pursue.

1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,000 cubic yards of materials noted on the survey (dated November 23, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process was summarized in a letter to you from our office dated October 27, 2020.

Offsite Earth Movement

You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, and November 24, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003

EXHIBIT S

000053


12 07 2020


12 07 2020



000036

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

December 17, 2020

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated December 7, 2020, for which the application remains on hold until received, enclosed (and attached) is the revised Erosion and Sediment Control plan which clarifies and incorporates the recommendations from NSWCD.

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. We also request that we be placed on the January 18, 2021 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djh
Enclosures
CC: Patrick and Shana Gieseke

ATTACHMENT F.30
Application Materials Submitted

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Loslehen
Ehata J. Davis

Since
1896

EXHIBIT
tabbies
25

Erosion and Sediment Control Plan

62208 County Road 21

New Ulm, MN 56073

- **An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.**

- Identify the practices and methods to be used to mitigate erosion and sedimentation – Bluff
  - Retaining wall
  - Black dirt back fill
  - Climbing vine plant
  - Creeping Juniper and/or other hardy perennial
  - Grade area between garage & bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

- Identify the practices and methods to be used to mitigate erosion and sedimentation – ravine gully (washout)
  - Grade area evenly & plant with shade tolerant grass/plant mix
  - Once planted, erosion control blanket installed on all exposed & seeded surfaces.
    - Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberrry, Leadplant, Big Blue Stream Grass, Little Blue Steam Grass Swamp Milkweed, common Boneset, Wild Bergamot.

- Note what is currently being done to control erosion –
  - Unfortunately, nothing as Nicollet County Property and Public Services have served us with a Cease and Desist order and threatened us with a restraining order if we proceed with anything. We have not been able to do anything since July 2020

- What you are planning for future erosion control on your property –
  - See above as well as submitted Recommendations from Nicollet SWCD

Revised 12/08/2020

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

STATE OF MINNESOTA

NICOLLET COUNTY

DISTRICT COURT
FIFTH JUDICIAL DISTRICT

The County of Nicollet, a political subdivision of the State of Minnesota,

Plaintiff,

and

Patrick E. Gieseke and Shana E. Gieseke,

Defendant.

AFFIDAVIT OF SHANA E. GIESEKE

Court File No. 52-CV-20-625

STATE OF MINNESOTA)
) ss.
COUNTY OF BROWN)

Shana E. Gieseke, being first duly sworn on oath, states and alleges:

1. I am the defendant in the above captioned matter.

2. Attached hereto as Exhibit AA is a timeline of actions taken that I have compiled as a true, correct, and accurate synopsis of the facts with respect to this matter.

3. Attached hereto as Exhibit BB is a copy of correspondence by US Mail and/or email and the attachments to the correspondence between the parties and other persons assisting or otherwise involved with the parties in this matter.

4. Attached hereto as Exhibit CC is a true, correct, and accurate copy of an email and a letter dated November 23, 2020 sent to the NCPPSD.

5. Attached hereto as Exhibit DD is a true, correct, and accurate copy of an email and a letter dated December 17, 2020 sent to the NCPPSD.

FURTHER YOUR AFFIANT SAITH NOT.

Dated: December 17, 2020

Shana E. Gieseke

Subscribed and sworn to before
me this 17th day of December, 2020.

DARCY A. SCHMIDT
Notary Public-Minnesota
My Commission Expires Jan 31, 2025

ATTACHMENT F.31
Affidavit of Shana E. Gieseke

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Exhibit AA

May 1: Shana inquired to obtain permit. (Exhibit BB pp. 1-2)

June 18: NCPPSD trespassed and took photos.

July 13: NCPPSD cease and desist order. (Exhibit BB pp. 3-7)

July 16: NCPPSD acknowledged Shana's letter apologizing for four months of Covid, 60 hour work weeks, kids home from school, spouse busy with seasonal ramp up in work schedule and essentially overwhelmed with circumstances. (Exhibit BB pp. 2 and 9)

July 17: NCPPSD asks if construction has ceased "for now", what project is, informs that site visit and research are next; Shana informs NCPPSD project is a remodel of footprint moving living space into garage and extending garage and that had ceased. (Exhibit BB pp. 10)

July 21: NCPPSD site visit viewed bluff and washout but no question or viewing of the home addition. (Exhibit BB pp. 14)

August 13: NCPPSD letter cites violations and options for resolution after the fact variance, zoning permits and require plan to resolve within a week. (Exhibit BB pp. 15-19)

August 14: NCPPSD trespassed and took photos.

August 18: Shana emails and calls NCPPSD in response. (Exhibit BB pp. 20-23)

NCPPSD advises that

1. "realistically looking at October" hearing on application completion
2. dependent on "how soon" Pat & Shana wish to "resume construction"
3. state specifically winter coming, best to "move quickly" and the "earlier the better";
4. states "honestly you did this the right way because after the fact variance is much easier to obtain"
5. "as long as you work with us we will work with you" but we will stop helping you if you do not cooperate

August 21: Pat & Shana submit cost estimate, contractor information, letter, and plans by NCPPSD deadline. (Exhibit BB pp. 24-31)

NCPPSD confirms letter meets their requirements, advises that "upon resolution, we will issue letter stating construction may recommence"

August 25: Pat & Shana discovered NCPPSD trespassed, again, without their knowledge or presence; mistakenly leaving two documents on workbench inside Gieseke Homes LLC shop on premises.

NCPPSD advises they will work Pat and Shana to prepare a variance first; upon approved may then apply for zoning permit which "should be a smooth process"

Pat & Shana requested a solution to close up addition, to keep weathertight, and to keep wildlife and trespassers out. (Exhibit BB pp. 32 and 38-40)

August 26: Shana & Pat engaged surveyor. (Exhibit BB pp. 33-37)

August 27: Shana & Pat submitted septic compliance inspection and ask NCPPSD to confirm last requirement is survey Surveyor checks with NCPPSD to assure survey includes all things required to meet next day deadline for September hearing. NCPPSD advises Shana & Pat to submit a proposal to close up the addition. (Exhibit BB pp. 41-65)

August 28: Survey submitted to NCPPSD. (Exhibit BB pp. 66-69)

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

September 1: NCPPSD trespassed and took photos.

September 2: NCPPSD letter of "incomplete application" requires second site visit by September 15; survey must contain "all elements necessary for variance request" and; must provide a secondary/alternative septic system location and construction proposal. (Exhibit BB pp. 70-73)

September 4: Shana & Pat arrange for requested site visit and alternative septic location; Surveyor asks NCPPSD if anything additional is needed.

Shana & Pat submit proposal to protect and enclose addition for protection from weather, wildlife, and trespassers. (Exhibit BB pp. 74-79)

September 10: Shana & Pat ask NCPPSD for update on follow up. to September 2 letter requirements for site visit, survey, septic, construction proposal.

NCPPSD advises they are working on follow up. (Exhibit BB pp. 80)

September 15: Pat & Shana request NCPPSD reply to third request without response from NCPPSD to meet September 15 deadline; 13 days without a response; check for $1,046 submitted to NCPPSD for application fee.

NCPPSD states working on draft of response.

Necessity required roof installation to avoid damage to exposed ceiling of the residence, condemnation, mold, rot and uninhabitability.

NCPPSD denies Pat & Shana's proposal to protect their home; scheduled site visit for September 18; give non-specific response to request to advise of aspects needed to add to proposal. (Exhibit BB pp. 81-98)

September 18: NCPPSD site visit

1. NCPPSD falsely states Pat's assertion that he will continue construction when he in fact said he will finish the TyVek
2. NCPPSD replied "You can" and mumbled something inaudible.

(Exhibit BB pp. 98 and 101-102)

September 23: NCPPSD trespassing and harassed [redacted] (Exhibit BB pp. 114-115)

September 24: attorneys first communicate on follow up to requirements and clarifications requested. NCPPSD states in email NCPPSD does not go on property without prior consent of landowner. (Exhibit BB pp. 106-113,117)

September 24 Surveyor states no contact from NCPPSD since September 4. (Exhibit BB pp. 103)

October 2: NCPPSD letter listing additional requirement/revisions required stating submissions incomplete. (Exhibit BB pp. 119-123)

October 9: Shana & Pat reply. (Exhibit BB pp. 124-143 and 144-157)

October 27: NCPPSD letter listing additional requirements/revisions required stating submissions incomplete. (Exhibit BB pp. 161-167)

November 23: Shana & Pat reply. (Exhibit CC)

December 7: NCPPSD letter listing additional requirements/revisions required stating submissions incomplete.

December 17: Shana & Pat reply. (Exhibit DD)

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Exhibit BB

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Mandy

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, May 01, 2020 12:11 PM
To: Mandy Landkamer
Cc: Jon Hammel
Subject: Building Permit - 62208 County Road 21, New Ulm, MN

Hi Mandy!

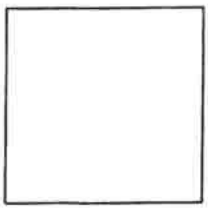
I believe we need to obtain a building permit; can this be done on-line?

Thanks!

Pat & Shana Gieseke
62208 County Road 21
New Ulm, MN 56073

Shana Gieseke | Mortgage Document Specialist I
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"



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12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Thursday, July 16, 2020 8:10 AM
To: Mandy Landkamer
Cc: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Good morning Mandy and Jon.

My husband and I received your letter in the mail yesterday and thus I am emailing both of you.

Our sincere apologies for not following up on this email sooner. With COVID the past 4+ months have been a blur, I have been working 60+ hour weeks, kids have been home, summer is my husband's busy time, etc. Life just got away from us and I never followed up.

What do you need from us today?

Thank you and again, we do apologize.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Sent: Friday, May 1, 2020 3:25 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Hi Shana-

Property Services is processing zoning permits at this time. The county does not have online access for residents to apply for a permit, although staff will email or mail the completed permit for signature, if the required information has been submitted and in compliance with the applicable setbacks and standards. Payment must be received prior to emailing or mailing of the permit. Payment can be made by check, cash, or credit card which requires a convenience fee. The permit must be returned to staff with signature to complete the process.

I have attached the fee schedule, the district setbacks, and an example of a site plan for your consideration. Your property is located within the Conservancy zoning district.

Please let me know if you have additional questions.

Thanks,

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12/17/2020 4:59 PM

CEASE AND DESIST ORDER

Date: July 13, 2020

NICOLLET COUNTY
PROPERTY SERVICES

Land Owner:

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Legal Description:

Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township, Nicollet County Minnesota.

DEVELOPMENT MUST CEASE IMMEDIATELY

You are hereby ordered to cease development immediately. Development includes any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any excavation or land disturbance; or any extension of the use of land.

You are notified that the properties described above of which you are the owner, operator, or other person responsible, is in violation of the Nicollet County Zoning Ordinance. The violations and supporting evidence are identified and listed below.

VIOLATIONS

- **Minnesota State Statute Chapter 394.36, Subdivision 4, Nonconformities:**
  - "... Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. ..."
- **Section 404.1 Nonconforming Uses and Structures:** Any structure or use existing upon the effective date of the adoption of the Zoning Ordinance, and which does not conform to the provisions of the Ordinance, may be continued for a certain period of time subject to the following conditions:
  - (A) No such use or structure shall be expanded, changed, altered or enlarged except in conformity with the provisions of this Ordinance, nor shall such expansion, change, alteration or enlargement increase the non-conformity of use.
  - (C) If a non-conforming structure is destroyed by any cause, to an extent exceeding fifty (50) percent of its fair market value as indicated by the records of the County Assessor, a future structure on the site shall conform to this Ordinance.
- **Section 507.1(1) Zoning Permits:** A zoning permit shall be required of all persons prior to:
  - Erection, structural alteration, or relocation of permanent or portable structures.

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- **Section 603.4(5.A) Conservancy Zoning District:** Required bluffline setback:
    - For any structure, or excavation for a structure, thirty (30) feet.
- **Section 721 Land Preservation:**
    - **721.1(1):** All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
    - **721.1(2):** Slopes over twelve (12) percent in grade shall not be developed.
    - **721.1(4):** Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
    - **721.1(7):** Whenever possible, natural vegetation shall be retained and protected.

You need to call our office no later than **July 20, 2020** to schedule a site visit with staff. Following the site visit, you may be required to submit additional information and take corrective actions, including, but not limited to, the following:

- Once the property is determined to be in compliance with all applicable County standards and requirements, you will need to apply for any required permits. This may include, but is not limited to, conditional use permits, zoning permits, and variances. Any such permits will now be **after-the-fact**.

The Nicollet County Zoning Ordinance Section 801 states: "The violation of any provision of this ordinance or the violation of the conditions or provisions of any permit issued pursuant to this ordinance shall be a misdemeanor, and upon conviction thereof, the violator shall be subjected to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense."

The Nicollet County Zoning Ordinance Section 806 states: "The Zoning Administrator may issue cease and desist orders to halt the progress of any on-going violation(s). When work has been stopped for any reason, it shall not be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted. Any costs incurred by the County in the enforcement of the cease and desist order or the remedies therein shall be assessed to the landowner."

IT IS YOUR RESPONSIBILITY TO NOTIFY THIS OFFICE IN WRITING OR BY PHONE CALL WHEN DEVELOPMENT ACTIVITY HAS CEASED. IF NOT CONTACTED BY **JULY 20, 2020**, THIS OFFICE WILL ACT UPON THE BASIS THAT THE VIOLATION HAS NOT CEASED.

FAILURE TO COMPLY WITH THIS ORDER WILL RESULT IN THE MATTER BEING TURNED OVER TO THE NICOLLET COUNTY ATTORNEY'S OFFICE FOR ENFORCEMENT

Nicollet County Property Services
501 South Minnesota Avenue
Saint Peter MN 56082
507-934-7071

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State of Minnesota
12/17/2020 4:59 PM

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

July 13, 2020

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

RE: Cease and Desist Order, Parcel No. 13.035.1000

Mr. and Mrs. Gieseke:

This letter is a "CEASE AND DESIST" notice for unpermitted development occurring on your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township.

Nicollet County Property Services has sufficient information to indicate violations of the following Zoning Ordinance provisions:

NATURE OF THE VIOLATIONS

- **Minnesota State Statute Chapter 394.36, Subdivision 4, Nonconformities:**
  - "... Except as otherwise provided by law, a nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion. ..."
- **Section 404.1 Nonconforming Uses and Structures:** Any structure or use existing upon the effective date of the adoption of the Zoning Ordinance, and which does not conform to the provisions of the Ordinance, may be continued for a certain period of time subject to the following conditions:
  - (A) No such use or structure shall be expanded, changed, altered or enlarged except in conformity with the provisions of this Ordinance, nor shall such expansion, change, alteration or enlargement increase the non-conformity of use.
  - (C) If a non-conforming structure is destroyed by any cause, to an extent exceeding fifty (50) percent of its fair market value as indicated by the records of the County Assessor, a future structure on the site shall conform to this Ordinance.

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- **Section 507.1(1) Zoning Permits:** A zoning permit shall be required of all persons prior to:
    - Erection, structural alteration, or relocation of permanent or portable structures.
- **Section 603.4(5.A) Conservancy Zoning District:** Required bluffline setback:
    - For any structure, or excavation for a structure, thirty (30) feet.
- **Section 721 Land Preservation:**
    - **721.1(1):** All development shall conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
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    - **721.1(4):** Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
    - **721.1(7):** Whenever possible, natural vegetation shall be retained and protected.

DEVELOPMENT MUST CEASE IMMEDIATELY.

You need to call our office no later than **July 20, 2020** to schedule a site visit with staff. Following the site visit, you may be required to submit additional information and take corrective actions, including, but not limited to, the following:

- Once the property is determined to be in compliance with all applicable County standards and requirements, you will need to apply for any required permits. This may include, but is not limited to, conditional use permits, zoning permits, and variances. Any such permits will now be after-the-fact.

It is your responsibility to notify this office in writing or by phone call when development activity has ceased. If not contacted by **July 20, 2020**, this office will act upon the basis that the violation has not ceased.

Be aware, Section 801 of the Nicollet County Zoning Ordinance states:

"The violation of any provision of this ordinance or the violation of the conditions or provisions of any permit issued pursuant to this ordinance shall be a misdemeanor, and upon conviction thereof, the violator shall be subjected to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense".

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If you have any questions regarding this letter or the enclosed Cease and Desist Order, please contact our office.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071

Enc: Cease and Desist Order

Cc: John Luepke, Commissioner 5th District
Ryan Krosch, County Administrator
Megan E. Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

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State of Minnesota
12/17/2020 4:59 PM

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State of Minnesota
12/17/2020 4:59 PM

Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Thursday, July 16, 2020 8:10 AM
To: Mandy Landkamer
Cc: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Good morning Mandy and Jon.

My husband and I received your letter in the mail yesterday and thus I am emailing both of you.

Our sincere apologies for not following up on this email sooner. With COVID the past 4+ months have been a blur, I have been working 60+ hour weeks, kids have been home, summer is my husband's busy time, etc. Life just got away from us and I never followed up.

What do you need from us today?

Thank you and again, we do apologize.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Sent: Friday, May 1, 2020 3:25 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Hi Shana-

Property Services is processing zoning permits at this time. The county does not have online access for residents to apply for a permit, although staff will email or mail the completed permit for signature, if the required information has been submitted and in compliance with the applicable setbacks and standards. Payment must be received prior to emailing or mailing of the permit. Payment can be made by check, cash, or credit card which requires a convenience fee. The permit must be returned to staff with signature to complete the process.

I have attached the fee schedule, the district setbacks, and an example of a site plan for your consideration. Your property is located within the Conservancy zoning district.

Please let me know if you have additional questions.

Thanks,
Mandy

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[EXTERNAL EMAIL]

Hi Shana,

I was out most of this week, unexpectedly. Did you get a chance to talk with Director Landkamer or no?

Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 1:53 PM
To: Jon Hammel
Cc: Mandy Landkamer
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Jon,

Yes, at the moment it has.

Thanks,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 1:49 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Hi Shana,

Has construction ceased for now?

"Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment. All Documents can be submitted to the department at: niccopermitapps@co.nicollet.mn.us"

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082

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Thanks,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 2:25 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Hi Shana,

Ok. So, first thing was letting us know construction has ceased. I will make a note in the property record and save a copy of this email chain to show you made contact with us prior to the deadline.

Next, we'll need to know what the project is. I see you had contact with Director Landkamer earlier this year, but I don't see a description of the project in the file.

What is the project exactly?

Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 2:17 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

I'm sorry to hear that and hope everything is okay.

No, we received the letter on Wednesday evening and I emailed right away Thursday morning.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 2:08 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

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From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 3:17 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Next Monday is out for us (we have a Planning Commission meeting that evening). But it looks like Tuesday and Wednesday afternoon are open as of right now...

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 3:08 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Sounds good, would Monday, mid to late morning work?

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 3:01 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Ok. Usually what we do next is conduct a site visit, we'll then do some research and follow up with a letter outlining your options.

Are there certain times or dates that work better for you than others?

Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 2:37 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Jon,

Basically a remodel, the foot print is essentially staying the same. The old garage location will become living space and the new garage location is further to the north.

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Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 3:46 PM
To: Shana Gieseke
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Thanks Shana, you too.

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 3:45 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Perfect, thank you Jon. Enjoy your weekend.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 3:45 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

How about 2pm?

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 3:22 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Tuesday afternoon will work Jon, just let me know a time.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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Tuesday, July 21, 2020

Nicollet County Site Visit

- Pat Gieseke
- Mandy Landkammer
- Jon Hammel

Viewed bluffline and washout where fill was placed – no questions about the addition, no viewing of the addition, no comments about the addition.

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NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

August 13, 2020

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

RE: Property Violations

Dear Mr. and Mrs. Gieseke,

This letter concerns violations of the Nicollet County Zoning Ordinance on your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The property contains approximately 12 acres and is zoned Conservancy. The violations were the subject of a July 13, 2020 Cease and Desist Order, and a July 21, 2020 site inspection. Present at the site inspection were Patrick Gieseke, Property and Public Services Director Mandy Landkamer, and myself.

Violations
The violations were listed in the Cease and Desist Order. To summarize, the violations include:

- The unpermitted construction of a dwelling/attached garage addition, and the relocation of an existing shed (approximately 10' x 12') onsite without a zoning permit. Section 507.1(1) of the Zoning Ordinance requires a zoning permit prior to the erection, structural alteration, or relocation of permanent or portable structures. Additionally, our office has no record of a zoning permit being issued for the horse shed located southeast of the house. The shed appears to be located within the 50-foot right-of-way setback along County Road 21.

- Expansion of a nonconforming structure. The original house was considered nonconforming due to its location in relation to the bluff/bluff setback and the right-of-way of County Road 21. Section 404.1(A) of the Zoning Ordinance states that a nonconforming structure cannot be expanded, changed, altered or enlarged except in conformity with the provisions of the Zoning Ordinance. Nor shall such expansion, change, alteration, or enlargement increase the non-conformity of use.

- Development within the bluff and bluff setback. Section 721.1 of the Zoning Ordinance states that slopes over 12% in grade shall not be developed. Additionally, Section 603.4(5.A) requires a 30-foot setback from the bluffline. The bluffline is the point at which slope begins to exceed 12%. The disturbance to the bluff/bluff setback includes both the cutting and filling of earthen material. There appeared to be multiple areas where the bluff had been impacted on your property, including:

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- West of the existing dwelling and partially constructed addition, including the terraces and paths cut into the bluff.
- North of the 24' x 45' pole shed/garage.
- North of the horse shed.

Staff is aware the bluff to the west of the house and original garage was cut previously, prior to this instance. However, that does not mean further disturbance is allowed. According to the Nicollet County Soil Survey, the soils on your property are classified as 960F, Storden-Clarion. This soil type is severely limited when it comes to building site development and sanitary facilities (i.e. septic drainfields). They typically have a slope of 18% to 50% and have rapid surface water runoff. Disturbance or development of bluff areas with such soils can cause serious erosion and sediment control problems. For this reason bluff areas are protected by the Zoning Ordinance as a sensitive natural feature.

Since development has already begun, and the bluff has already been disturbed, any permitting will now be after-the-fact.

Options

At this point, you have a couple of options for each of the issues you are dealing with:

1. Dwelling/Garage Addition
   a. Remove the addition.
   b. Apply for an after-the-fact variance and after-the-fact zoning permit. (These processes are described in more detail below.)
2. Bluff Development
   a. Restore the bluff. This option requires a restoration plan prepared by a third party, such as an engineering firm.
   b. Apply for an after-the-fact variance.
3. Small Shed (10' x 12')
   a. Remove the small shed.
   b. Apply for a zoning permit to relocate the small shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met.
   c. Apply for an after-the-fact variance and after-the-fact zoning permit.

Not a permanent structure - No foundation
Located on one side of the driveway & purchased picked up w/ bobcat & moved to other side of the driveway

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4. Horse Shed

-Not a permanent structure - No foundation

   a. Remove the horse shed.

   b. Apply for a zoning permit to relocate the horse shed to an area where the applicable setbacks (e.g. bluff, right-of-way, etc.) can be met.

   c. Apply for an after-the-fact variance and after-the-fact zoning permit.

NOTE: One after-the-fact variance request can contain multiple elements. For example, you could request a variance for the dwelling/garage addition and the bluff disturbance together.

After-the-Fact Variance

The first steps are to state the type of variance you are requesting, to complete an official application and to pay the application fees. A legal description for the property and a survey prepared by a surveyor licensed in the State of Minnesota are required at the time of application. The survey needs to depict the variance(s) being requested. For example:

- The location of the pre-project bluffline and post-project bluffline of the disturbed bluff areas.
- The location of the existing house and addition, small shed, and/or horse shed.
- The distance between the bluffline and the existing house and addition, small shed, and/or horse shed.
- The location of the right-of-way line of County Road 21 and the location of the existing house and/or horse shed.
- The distance between the right-of-way line and existing house and/or horse shed.
- The survey will also need to identify how much material (ex. cubic yards) was moved onsite, and how much material was removed from the site to an offsite location. The location of the removed material must also be identified.

Your application must include a complete set of proposed floor plans for the house and addition. The plans must identify the use of each area, as well as egress windows and closets. This will be used to verify the number of bedrooms in the structure.

Lastly, you will need to submit a compliance inspection of the existing septic system and verify the system has the capacity to serve the number of bedrooms planned in the house. A compliance inspection is required for issuance of a variance and for dwelling additions. The compliance inspection must be performed by a licensed septic inspector. As part of the compliance inspection, you will have to identify a secondary, or alternative septic system location. If you have any questions concerning compliance inspections or septic systems, please contact Nicollet County Sr. Sanitarian Peter Otterness at 507-934-7076. last one was April 12th 2019 by Lafayette excavating

• Lafayette excavating or Lakies well drilling

Pete states in '97 septic built for 3 bedrooms.

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Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, the application must be determined to be complete. If the application is determined to be incomplete, Property Services will issue an incomplete application notice. You must then revise the application and resubmit. Staff has 15 business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines and applicants are encouraged to factor this into their planning.

Once the application has been determined to be complete, the request will be added to the agenda for the next available hearing date. The request is heard during a public hearing held by the Nicollet County Board of Adjustment and Appeals. You or your representative must be present at the hearing to respond to any questions the Board may have regarding the proposal. I have included a list of hearing dates and a fee schedule with this letter.

The process takes roughly four to six weeks to complete. ***No guarantee*** can be made that staff would recommend approval of the request. Additionally, staff can make ***no guarantee*** your request would be approved by the Board. Fees are non-refundable once the legal notice of the hearing has been submitted for publishing.

Please be aware, the request will be evaluated according to the criteria found in the Zoning Ordinance and State Statute. In order for the request to be granted, variance criteria one through six must be met. I have included copies of our variance questionnaire handouts. The criteria are listed on the handout. Unless criteria one through six are met the request will be denied. If the request is denied, you may not submit a similar variance request for six months.

Zoning Permits (After-the-Fact)

Zoning permits are required prior to the erection, structural alteration, or relocation of permanent or portable structures – including single family dwellings, decks, and porches; and also detached accessory structures, such as garages or sheds. This type of permit is issued administratively by our office. Zoning permits are valid for one year from their date of issuance. You must have your zoning permit in-hand prior to the start of any construction, including any site prep or earthwork. Verification the proposal meets all applicable setbacks and standards will be required. At a minimum this generally includes, but may not be limited to, the following:

- A site plan indicating the applicable setback distances.
- A complete set of floor plans.
- The total square footage of the structure, including any attached garages, decks or porches. The permit fee is based on the size of the structure footprint.
- The license number and contact information for your general contractor, and the information for any subcontractors.
- A cost estimate for construction of the structure.

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State of Minnesota
12/17/2020 4:59 PM

Resolution

You must submit your plan for resolving the violations, in writing, to our office no later than Friday **August 21, 2020**. The plan must include your proposed time frame for resolution and it must include all of the aforementioned violations. Development can only recommence once all violations have been officially resolved.

Be aware, the violation of any provision of the Zoning Ordinance is a misdemeanor, and upon conviction thereof, the violator shall be subject to a fine or imprisonment or both as defined by law. Each day of violation may be considered a separate offense.

Please do not hesitate to contact our office if you have any questions concerning this letter.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: Hearing and Fee Schedules
After-the-fact Variance Handouts

Cc: John Luepke, Commissioner 5th District
Ryan Krosch, County Administrator
Megan E. Gaudette Coryell, Assistant County Attorney
Pete Otterness, County Sr. Sanitarian

Parcel No: 13.035.1000
Map No: 0335400003

Pete - 507-934-7076
already variance
- undersized
- right of way

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Tuesday, August 18, 2020 2:47 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

#3

Thank you Jon, I can be available today between 3-4. If that still works for you, can you call me at 507.233.4714?

Otherwise tomorrow afternoon works for me as well.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, August 18, 2020 11:58 AM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

#2

[EXTERNAL EMAIL]

Hi Shana,

I know it can be confusing. Do you have time today to talk through some of this on the phone? I'm free from 1pm to 2:30pm or 3pm to 4pm. Do those timeframes work for you today? If not, we can look at tomorrow.

And no, you don't have to get everything in by Friday. There is a meeting every month. Realistically, we're probably looking at an October hearing. It really depends on how fast you can get a complete application and how quickly you want to resume construction. With winter coming, I'd say the earlier the better.

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Tuesday, August 18, 2020 11:45 AM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN
Importance: High

#1

Hi Jon, we received the after the fact variance in the mail.

This paperwork is extremely confusing and I have no idea where to even start with it. Can you please supply me with some guidance on completing it?

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Also, we just received this information on Monday....am I reading it correctly that it is all due to you by this Friday? And we are supposed to have a survey completed by then?

Thanks,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 3:46 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

Thanks Shana, you too.

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 3:45 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Perfect, thank you Jon. Enjoy your weekend.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, July 17, 2020 3:45 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

[EXTERNAL EMAIL]

How about 2pm?

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, July 17, 2020 3:22 PM
To: Jon Hammel
Subject: RE: Building Permit - 62208 County Road 21, New Ulm, MN

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

NICOLLET COUNTY
PROPERTY
SERVICES
GOVERNMENT CENTER
501 SOUTH MINNESOTA AVE
ST PETER MN 56082
DIRECT (507) 934-7070; FAX (507) 934-7079

2020 HEARING DATES

APPLICANT'S DEADLINE	P & Z / BAA	BOARD OF COMMISSIONERS	FEEDLOT PERMITS
January 3	January 27	February 11	February 14
January 31	February 24	March 10	March 13
February 21	March 16	March 24	April 2
March 27	April 20	April 28	May 7
April 24	May 18	May 26	June 5
May 22	June 15	June 23	July 2
June 26	July 20	July 28	August 6
July 24	August 17	August 25	September 3
August 28	September 21	October 13	October 8
September 25	October 19	October 27	November 6
October 23	November 16	November 24	December 8
November 25	December 21	January 5	January 12

Applications for Any Hearing are **ONLY** Taken
BEFORE 3:30 p.m. on the Deadline Date

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Tuesday, August 18, 2020

Jon Hammel called me at 507.233.4714 and we talked over the phone.

It is during this conversation that Mr. Hammel said to me, "honestly, you did this the right way because an after-the-fact variance is MUCH easier to obtain than a before-the fact variance".

Mr. Hammel, almost in an arrogant bragging tone proceeded to verbally tell me that the had a gun range apply for a permit and it went back and forth 70 times before the county granted them a complete application.

Mr. Hammel also said during this verbal conversation, "as long as you work with us, we will work with you, but the second you say *"screw you"* we will be done helping you".

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, August 21, 2020 12:02 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: Gieseke - 62208 County Road 21, New Ulm, MN
Importance: High

Good afternoon Jon.

Please review and confirm receipt of this email and the attachments.

- Cost Estimate
- Contractor Information
- Letter to Nicollet County dated 8-21-2020
- Plans

Please let me know if further information is needed.

Thank you and please enjoy your day.

Shana

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, August 21, 2020 12:56 PM
To: Shana Gieseke
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

#4

[EXTERNAL EMAIL]

Perfect. Thank you Shana. I will review your attachments and let you know where we stand.

Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, August 21, 2020 12:55 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

#3

Jon,

Yes, I understand no further construction will occur until the violation has been resolved.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, August 21, 2020 12:53 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN

#2

[EXTERNAL EMAIL]

Hi Shana,

I am acknowledging receipt of your email and attachments. I have read your letter and feel is meets what was asked of you for today's deadline.

However, one more thing I would ask of you, is that you reply to this email stating you understand no further construction will occur until the violation has been resolved. Upon resolution, we will issue you a letter stating construction may recommence.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

August 21, 2020

Nicollet County Government Center
501 South Minnesota Avenue
St Peter, Mn 56082

Re: Property Violations 62208 County Road 21
Parcel No: 13.035.1000

To whom it may concern:

My husband, Pat and I have been Nicollet County residents since 2014. My husband has been a Nicollet County resident most of his life, growing up on the Fort Road.

In 2014 we purchased a lot in Courtland, MN and built a new 5-bedroom home. We always new that our Courtland home would not be our forever home as we had a dream of owning a home in the country. In 2017 the Schlumpberger home on County Road 21 (aka bottom road) came up for sale. Although the home was not slightly desirable to us, the location, 11+ acres, proximity to New Ulm, wildlife, scenic byway and the nearby Minnesota River were huge positives for us. My husband is a self-employed carpenter. We discussed at length as to what we could do to the property, the home, etc. to make our dream of owning a country home a reality. Our decision to sell our brand-new home in Courtland and move to this home was not taken lightly or made quickly.

Moving to the country was not only our dream, but also the dream of our [redacted], [redacted] love the outdoors and are avid hunters, our [redacted] has always dreamed of owning [redacted] own horse. Our two oldest children have been hunting with their grandfather on land he owns directly on Swan Lake since they were three years old; over 20 years! Our family has a deep appreciation of our environment, nature and the world we live in. We strive daily to make the world we live in a better place that can be appreciated for years to come.

Upon purchasing this property, our [redacted] was anxious to find [redacted] horse. We put up a temporary horse shelter and [redacted] brought [redacted] horse home. This shelter was never a permanent shelter or located in a permanent location. The shelter was placed inside of an existing "cow yard" where a barn was previously.

Additionally, there was a small 10x12 shed located directly by the bluff on the east side of our property. My husband picked up this 10x12 with his bobcat forks and moved it to the west side of our property by the bluff on the west side of the property. We moved this so that he could park his work trailer next to the existing shop to make unloading and loading tools and cabinets easier for his business. We did not know that we needed to obtain a permit to do any of this or that in doing so we would be in violation of any zoning ordinances.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

We have lived at 62208 County Road 21 for over three years. We have been carefully planning the remodel of our home with the intention of this being our "forever home" and constructing it to be everything we have always dreamed of. We finally completed our plans and excitedly began construction the spring of 2020.

Our plans included demolition of the existing attached garage, breezeway/porch addition as well as the kitchen/family room addition that were built prior to our purchase. Our intent was to retain the existing original home that is brick. In the exact location of the existing garage, breezeway/porch addition as well as the kitchen/family room addition we would build a new addition to include a master suite, laundry room, living room and kitchen. The only "new" or "changed" item would be the attached garage that would be extended further to the north of our property.

The home we purchased was listed and advertised as a 4-bedroom home. When our construction is complete our home will be a 3-bedroom home. One of the current bedrooms will be renovated into an office for my husband's business, Gieseke Homes, LLC

In preparation of the location for the new attached garage we rented a mini excavator one weekend and removed some of the dirt on the west side of our property. We did not know that we needed to obtain a permit to do so or that in doing so we would be in violation of any zoning ordinances.

The soil that was removed, was loaded into my husbands dump trailer with our bobcat and relocated to another location on our property. This soil was used to "fill-in" a washout on our property that prior to us filling in would naturally carry debris down hill in heavy rains resulting in debris being deposited into the ditch and onto County Road 21. By us doing this, we succeeded in making way for our new garage in addition to saving Nicollet County money by filling in the washout. Again, we did not know that we needed to obtain a permit to do so or that in doing so we would be in violation of any zoning ordinances.

July 13, 2020, we became aware of our alleged violations and ceased further construction per the Cease and Desist Order. Upon this notification we contacted Jon Hammel and scheduled a site visit which took place on July 21, 2020. Following the site visit, we were under the assumption that construction could proceed but no further dirt removal could be done until an after the fact variance was granted. This was not an issue for us because our dirt relocation was complete.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

The purpose of this letter is to lay out our plan to apply for an after-the- fact variance and after-the-fact zoning permit.

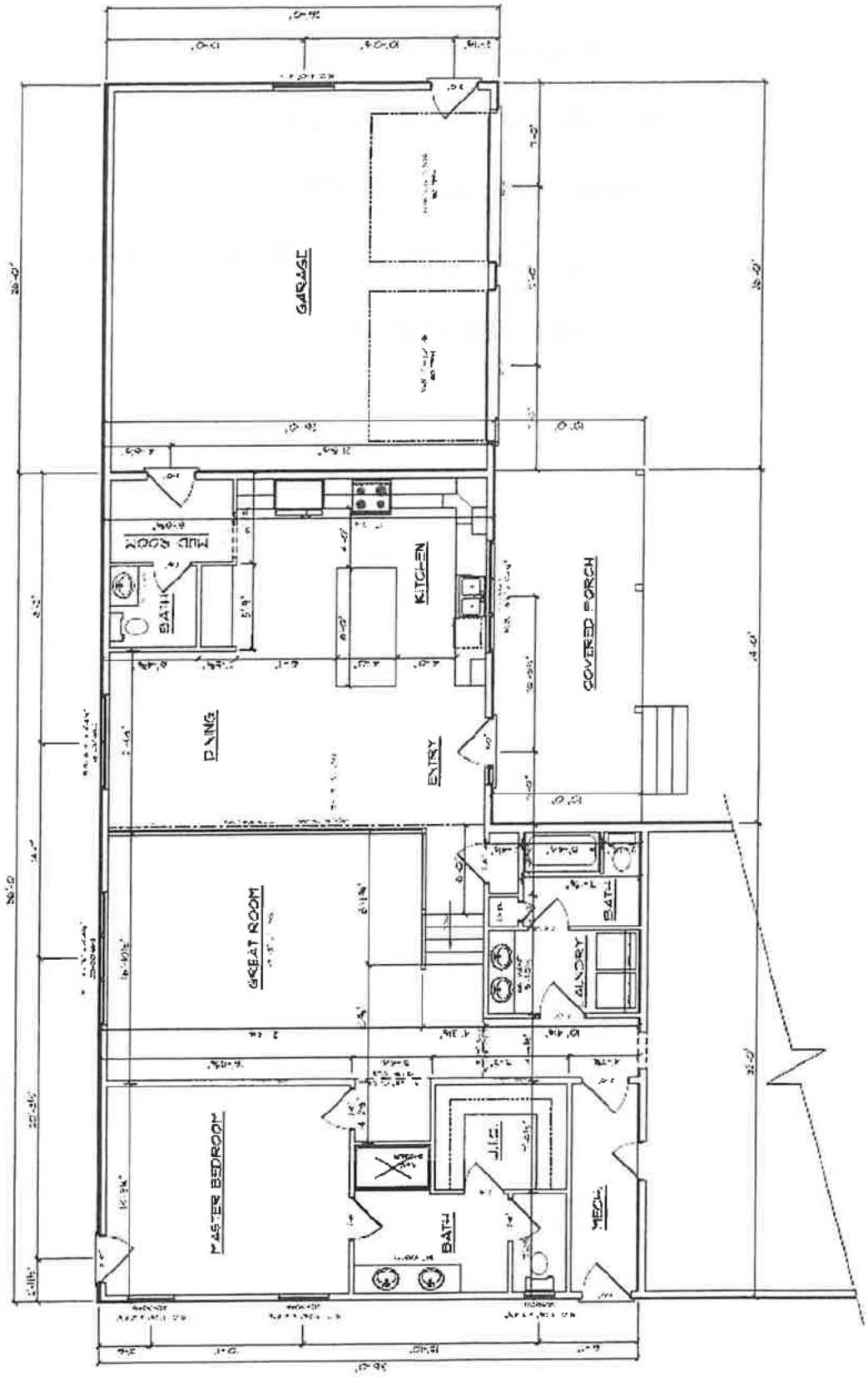
1. Dwelling/Garage Addition
    a. Apply for an after-the-fact variance and after-the-fact zoning permit
        - Lafayette Excavating is scheduled to complete a compliance inspection of the existing septic system and to identify a secondary, or alternative septic system location.
        - Sibley Surveyors, Inc. completed the survey prior to our purchase in 2017 has been contacted and will be scheduled to complete the required survey per your letter dated August 13, 2020.
2. Bluff Development
    a. Apply for an after-the-fact variance
3. Small Shed (10'x12')
    a. Remove the shed in 2021
4. Horse Shed
    a. Remove the horse shed in 2021

Sincerely,

Pat and Shana Gieseke

Enclosures: PDF of construction plans
Contractor information
Estimated cost of construction

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM



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State of Minnesota
12/17/2020 4:59 PM

Gieseke Homes, LLC

62208 County Road 21

New Ulm, MN 56073

Patrick E. Gieseke; Owner/General Contractor

LIC# BC688814

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

Gieseke Homes LLC
62208 County Road 21
New Ulm, MN 56073
Phone: (507) 404-0116
Email: ghomes@comcast.net

Estimate #	000124
Date	01/26/2020
Business / Tax #	BC688814

Description	Total
Materials	$62,000.00
Plumbing	$7,200.00
Electrical	$8,000.00
HVAC	$18,000.00
Flooring	$4,900.00
Concrete	$12,000.00
Cabinets	$8,000.00
Painting	$2,000.00
Labor	$15,000.00

Subtotal	$137,100.00
Total	**$137,100.00**

Shana Gieseke

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Tuesday, August 25, 2020 3:53 PM
To: jesse.zeig@bolton-menk.com
Cc: pat-shana@comcast.net
Subject: Gieseke - 62208 County Road 21, New Ulm, MN
Attachments: Ltr from Nicollet County.pdf; Letter to Nicollet County 8-21-2020.pdf; Gieseke - Cost Estimate.pdf; Gieseke Homes - Contractor Information.pdf; PLANS - addition.pdf

Importance: High

Jesse,

Thank you for your prompt reply. I tried sending from my personal email but I don't think it sent.

Attached is the letter we have received from Nicollet County as well as a letter that we sent to Nicollet County.

Please note requirements on page 3 of the letter from Nicollet County:

> ***After-the-Fact Variance***
> The first steps are to state the type of variance you are requesting, to complete an official application and to pay the application fees. A legal description for the property and a survey prepared by a surveyor licensed in the State of Minnesota are required at the time of application. The survey needs to depict the variance(s) being requested. For example:
>
> - The location of the pre-project bluffline and post-project bluffline of the disturbed bluff areas.
> - The location of the existing house and addition, small shed, and/or horse shed.
> - The distance between the bluffline and the existing house and addition, small shed, and/or horse shed.
> - The location of the right-of-way line of County Road 21 and the location of the existing house and/or horse shed.
> - The distance between the right-of-way line and existing house and/or horse shed.
> - The survey will also need to identify how much material (ex. cubic yards) was moved onsite, and how much material was removed from the site to an offsite location. The location of the removed material must also be identified.

Additionally, I am attaching the cost estimate, contractor information and plans that were sent to Nicollet County 8/21/2020.

I realize this is very short notice but if at all possible we would like to be able to submit our application and documentation to Nicollet County by the deadline of 8/28 in order to be on the next available commissioner hearing date of 9/21/2020. Our construction has been halted due to this, therefore we have a very expensive addition that is not closed in or weather tight and are running out of time before winter starts.

Please reply and let me know if this is something that you can assist us with.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Wednesday, August 26, 2020 1:05 PM
To: Shana Gieseke
Subject: RE: Gieseke - 62208 County Road 21 New Ulm MN

#4

[EXTERNAL EMAIL]

I get it. This can be very confusing. Most people only go through something like this once, or maybe twice in their lifetime.

So, if you want to try to have a September hearing date, you'll need to get us the supporting application materials, payment, and sign the application all by 3:30pm this Friday. Often there are revisions required to various elements of the supporting materials. That's why when we spoke the other day I mentioned an October hearing date would probably be a more realistic timeframe.

Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Wednesday, August 26, 2020 12:21 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21 New Ulm MN

#3

Ok, so basically by Friday morning, 8/28, I need to have the supporting application materials to you. You will prepare the application and submit it by 3:30. Nothing needs to be paid at this point, we wait for the next hearing date. Correct? Sorry, just don't want to mess this up.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Wednesday, August 26, 2020 11:59 AM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21 New Ulm MN

#2

[EXTERNAL EMAIL]

Hi Shana,

So, the way it'll work is you will submit your supporting application materials for the after the fact variance (site plan, survey, floor plans, etc.). Once the supporting materials have been reviewed and approved, I use a piece of software here in the office to draft the application. The last steps are for you to pay the fees and sign the paper application.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

The variance will come first. If that is approved and issued, you may then apply for your after the fact zoning permit. That should be a smooth process as we'll have most of the supporting materials already from the variance hearing.

The fees for the after the fact variance include a hearing fee of $1,000 and a recording fee of $46. You can submit one check or credit card payment to cover both. Again, this will be the second to last step in the process.

You can submit items to me via email. That is perfectly acceptable and typically much easier than trying to do it by mail or in person.

The deadline for the 9-21-20 hearing is 3:30pm this Friday, 8-28-20.

The deadline for the 10-19-20 hearing is 3:30pm on Friday 9-25-20.

I'll forward the last question on to our Director Mandy Landkamer. Oddly enough, I've never been asked that question before.

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Wednesday, August 26, 2020 11:45 AM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: Gieseke - 62208 County Road 21 New Ulm MN

#1

Good morning Jon.

I have a few questions:

- Where do I obtain the application for the After-the-Fact Variance
- Where do I obtain the application for the After-the-Fact Zoning Permit
- What is the exact total amount of fees we are to pay when we submit the application? The brochure sent is extremely confusing.
- Do I submit the applications, survey, septic compliance, and secondary/alternative septic system location in person or are emailed PDF's acceptable? If in person, is that at 501 S MN Ave, St Peter?
- Please clarify the hearing date that we will attend if we have everything submitted by the 3:30pm deadline 8/28 (P&Z/BAA 9/21/2020 or Board of Commissioners 10/13) as the sheet sent to us is also confusing.

Lastly, please provide a solution to us in the meantime as to what we are allowed to do to our addition to keep it closed up, weather tight, to keep wildlife out and most importantly to keep *unauthorized trespassers* out.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Wednesday, August 26, 2020 8:46 AM
To: Jesse Zeig
Subject: RE: Gieseke

Yes Jesse, please proceed. #3

Thank you SO much!

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Wednesday, August 26, 2020 8:36 AM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Gieseke

#2

[EXTERNAL EMAIL]

Shana, there is a little bit of a premium added for the rush. I did have to push back another job to get to yours today.

Please verify that you want me to go ahead with the survey. Thank you.

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Bolton-Menk.com

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Wednesday, August 26, 2020 7:55 AM
To: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Subject: Gieseke

#1

Jesse,

My husband just text me and told me that you spoke and cost was going to be $3,500.

Is that because of the rush or are those normal fees?

Thanks,

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

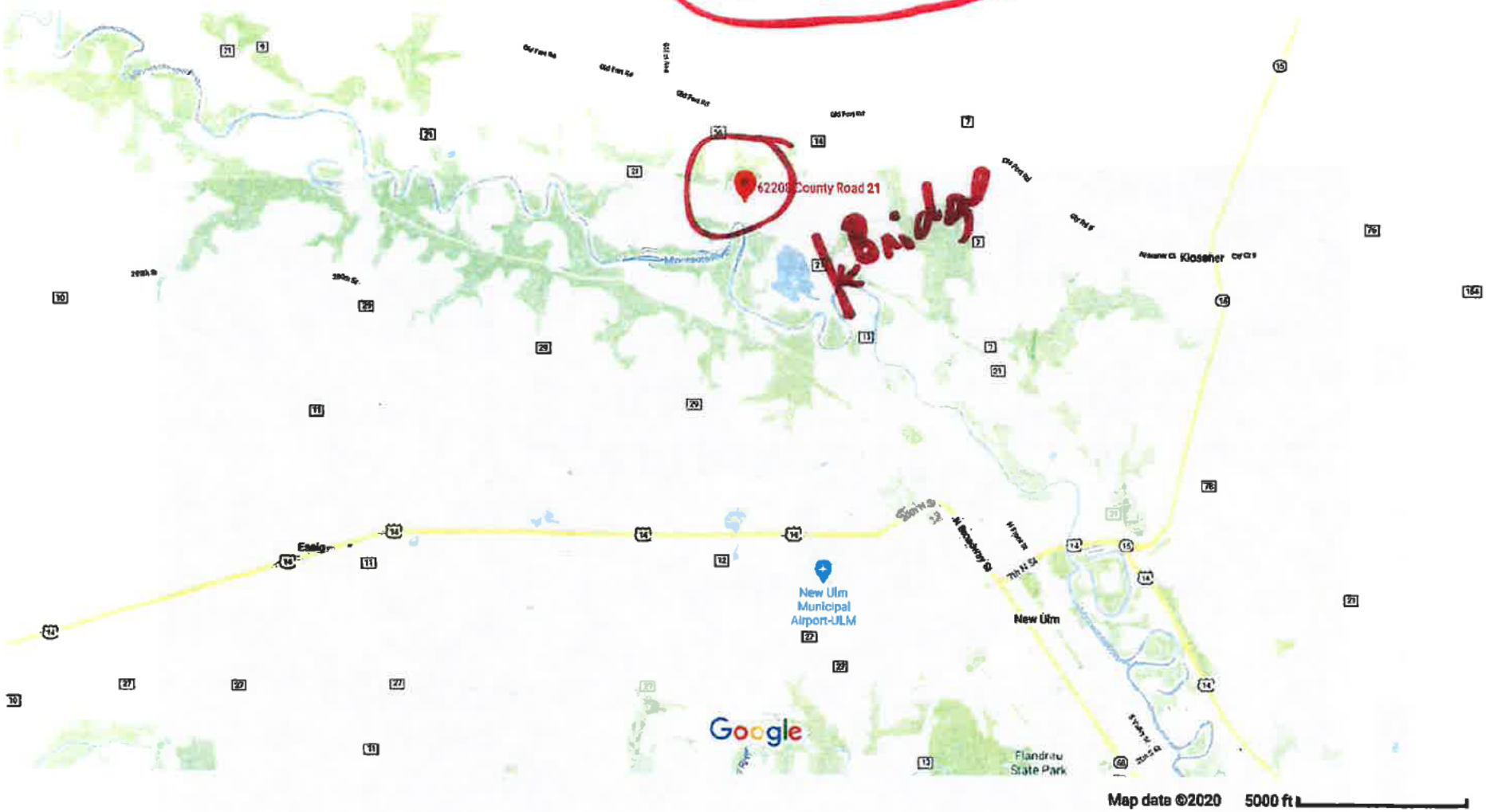
Tuesday, August 25, 2020

We found the attached evidence left behind from Nicollet County after this department committed trespassing on our property and into our business, Gieseke Homes, LLC, located at 62208 County Road 21, New Ulm, MN 56073 while we were not home. These documents were found left on one of Pat Gieseke's work benches inside of the building.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

#356

Google Maps 62208 Co Rd 21



39

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Pictometry



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Shana Gieseke

From: Shana Gieseke
Sent: Thursday, August 27, 2020 1:38 PM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: Gieseke - Compliance Inspection Form.pdf
Attachments: Gieseke - Compliance Inspection Form.pdf

Importance: High

Jon,

Attached is the septic compliance inspection form.

I am being told by Lafayette Excavating Inc. that there is not an alternative septic system location and that Pete O. at Nicollet County is fully aware of that.

The only thing we are waiting for then is the survey which I should have by tomorrow morning.

Please begin working on the application so that we can sign and submit by the 3:30 deadline Friday, August 28th.

Additionally, please let me know if we are missing anything other than the survey for the applications so that I can continue to work on that today.

Thank you,

Shana Gieseke

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Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Compliance Inspection Form

Existing Subsurface Sewage Treatment Systems (SSTS)

Doc Type: Compliance and Enforcement

Instructions: Inspection results based on Minnesota Pollution Control Agency (MPCA) requirements and attached forms --additional local requirements may also apply.

Submit completed form to Local Unit of Government (LUG) and system owner within 15 days

For local tracking purposes:

System Status

System status on date (mm/dd/yyyy): 8-27-20

☒ **Compliant – Certificate of Compliance**
(Valid for 3 years from report date, unless shorter time frame outlined in Local Ordinance.)

☐ **Noncompliant – Notice of Noncompliance**
(See Upgrade Requirements on page 3)

Reason(s) for noncompliance *(check all applicable)*

- ☐ Impact on Public Health *(Compliance Component #1) – Imminent threat to public health and safety*
- ☐ Other Compliance Conditions *(Compliance Component #3) – Imminent threat to public health and safety*
- ☐ Tank Integrity *(Compliance Component #2) – Failing to protect groundwater*
- ☐ Other Compliance Conditions *(Compliance Component #3) – Failing to protect groundwater*
- ☐ Soil Separation *(Compliance Component #4) – Failing to protect groundwater*
- ☐ Operating permit/monitoring plan requirements *(Compliance Component #5) – Noncompliant*

Property Information

Parcel ID# or Sec/Twp/Range: 111N - 31W - 35

Property address: 62208 CORD 21 New Ulm MN 56073 Reason for inspection: Bld Permit

Property owner: Pat + Shana Gieseke Owner's phone: [redacted]-507-217-9392

or

Owner's representative: Representative phone:

Local regulatory authority: Regulatory authority phone:

Brief system description: Septic tank Pump tank Drainfield

Comments or recommendations:

system is in compliant for Design of 3 Bedroom House 20' short of Design for Lack of Room County okeyed on Asbuilt

Certification

I hereby certify that all the necessary information has been gathered to determine the compliance status of this system. No determination of future system performance has been nor can be made due to unknown conditions during system construction, possible abuse of the system, inadequate maintenance, or future water usage.

Inspector name: Harold Reinhart JR Certification number: 195

Business name: Lafayette Excavating, Inc License number: 195

Inspector signature: Harold Reinhart Phone number: 507-228-8802

Necessary or Locally Required Attachments

☒ Soil boring logs ☒ System/As-built drawing ☐ Forms per local ordinance

☐ Other information (list):

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HAR

Property address: 62208 Co Rd 21 New Ulm MN 56073 Inspector initials/Date: 8-27-20

1. Impact on Public Health – Compliance component #1 of 5

Compliance criteria:	
System discharge sewage to the ground surface.	☐ Yes ☒ No
System discharge sewage to drain tile or surface waters.	☐ Yes ☒ No
System cause sewage backup into dwelling or establishment.	☐ Yes ☒ No

Any "yes" answer above indicates the system is an Imminent Threat to Public Health and Safety.

Verification method(s):

- ☒ Searched for surface outlet
- ☐ Searched for seeping in yard/backup in home
- ☐ Excessive ponding in soil system/D-boxes
- ☐ Homeowner testimony *(See Comments/Explanation)*
- ☐ "Black soil" above soil dispersal system
- ☐ System requires "emergency" pumping
- ☐ Performed dye test
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other methods not listed *(See Comments/Explanation)*

Comments/Explanation:

2. Tank Integrity – Compliance component #2 of 5

Compliance criteria:	
System consists of a seepage pit, cesspool, drywell, or leaching pit. *Seepage pits meeting 7080.2550 may be compliant if allowed in local ordinance.*	☐ Yes ☒ No
Sewage tank(s) leak below their designed operating depth.	☐ Yes ☒ No
If yes, which sewage tank(s) leaks:	

Any "yes" answer above indicates the system is Failing to Protect Groundwater.

Verification method(s):

- ☐ Probed tank(s) bottom
- ☐ Examined construction records
- ☐ Examined Tank Integrity Form *(Attach)*
- ☐ Observed liquid level below operating depth
- ☐ Examined empty (pumped) tanks(s)
- ☐ Probed outside tank(s) for "black soil"
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other methods not listed *(See Comments/Explanation)*

Comments/Explanation:

See Attached Pumpers certificate

3. Other Compliance Conditions – Compliance component #3 of 5

a. Maintenance hole covers are damaged, cracked, unsecured, or appear to structurally unsound. ☐ Yes* ☒ No ☐ Unknown

b. Other issues *(electrical hazards, etc.)* to immediately and adversely impact public health or safety. ☐ Yes* ☒ No ☐ Unknown
System is an imminent threat to public health and safety

Explain:

c. System is non-protective of ground water for other conditions as determined by inspector ☐ Yes* ☒ No
System is failing to protect groundwater

Explain:

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Property address: 62208 co Rd 21 New Ulm mn 56073 Inspector initials/Date: HAR 8-25-20

4. Soil Separation – Compliance component #4 of 5

Date of installation: 9-11-97 ☐ Unknown

Shoreland/Wellhead protection/Food Beverage Lodging? ☐ Yes ☐ No

Compliance criteria:

For systems built prior to April 1, 1996, and not located in Shoreland or Wellhead Protection Area or not serving a food, beverage or lodging establishment: Drainfield has at least a two-foot vertical separation distance from periodically saturated soil or bedrock.	☐ Yes ☐ No
Non-performance systems built April 1, 1996, or later or for non-performance systems located in Shoreland or Wellhead Protection Areas or serving a food, beverage, or lodging establishment: Drainfield has a three-foot vertical separation distance from periodically saturated soil or bedrock.*	☒ Yes ☐ No
"Experimental", "Other", or "Performance" systems built under pre-2008 Rules; Type IV or V systems built under 2008 Rules (7080. 2350 or 7080.2400 (Advanced Inspector License required) Drainfield meets the designed vertical separation distance from periodically saturated soil or bedrock.	☐ Yes ☐ No

Any "no" answer above indicates the system is Failing to Protect Groundwater.

Verification method(s):

Soil observation does not expire. Previous soil observations by two independent parties are sufficient, unless site conditions have been altered or local requirements differ.

- ☒ Conducted soil observation(s) *(Attach boring logs)*
- ☒ Two previous verifications *(Attach boring logs)*
- ☐ Not applicable *(Holding tank(s), no drainfield)*
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other *(See Comments/Explanation)*

Comments/Explanation:

Indicate depths of elevations

A. Bottom of distribution media	36"
B. Periodically saturated soil/bedrock	72"
C. System separation	36"
D. Required compliance separation*	36"

*May be reduced up to 15 percent if allowed by Local Ordinance.

5. Operating Permit and Nitrogen BMP* – Compliance component #5 of 5 ☐ Not applicable

Is the system operated under an Operating Permit? ☐ Yes ☐ No **If "yes", A below is required**

Is the system required to employ a Nitrogen BMP? ☐ Yes ☐ No **If "yes", B below is required**

BMP=Best Management Practice(s) specified in the system design

If the answer to both questions is "no", this section does not need to be completed.

Compliance criteria

a. Operating Permit number: Have the Operating Permit requirements been met?	☐ Yes ☐ No
b. Is the required nitrogen BMP in place and properly functioning?	☐ Yes ☐ No

Any "no" answer indicates Noncompliance.

Upgrade Requirements *(Minn. Stat. § 115.55) An imminent threat to public health and safety (ITPHS) must be upgraded, replaced, or its use discontinued within ten months of receipt of this notice or within a shorter period if required by local ordinance. If the system is failing to protect ground water, the system must be upgraded, replaced, or its use discontinued within the time required by local ordinance. If an existing system is not failing as defined in law, and has at least two feet of design soil separation, then the system need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more strict. This provision does not apply to systems in shoreland areas, Wellhead Protection Areas, or those used in connection with food, beverage, and lodging establishments as defined in law.*

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Boring # 1 BORING LOGS			Boring # BORING LOGS			Boring # BORING LOGS		
Depth in Inches	USDA Soil Texture	Munsell Color	Depth in Inches	USDA Soil Texture	Munsell Color	Depth in Inches	USDA Soil Texture	Munsell Color
0-5	Loam	10YR 3/2			Y /			Y /
5-20	Loam	2.5Y 5/4			Y /			Y /
20-73	Loam	2.5Y 5/4			Y /			Y /
73+	Lime	2.5Y 8/2			Y /			Y /
		Y /			Y /			Y /

See Attached As Built

NOTES:

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ISTS SITE EVALUATION AND DESIGN FORM

As Built 9-11-97

PROPERTY INFORMATION

63208 Co Rd 21

Owner Tim Schlumpberger Mgr 507-276-6543
Address RR3 Box 22
City, State, Zip New Ulm, MN 56073 Phone 507-359-9063
ID # _____ Permit # _____
Township _____ Section _____
Subdivision _____ Lot _____ Block _____

SOILS:

N.R.C.S. Map Unit Symbol _____
Landscape Position convex concave plane
Vegetation Type Grass Crop
Depth to Restricting Layer 72 inches
Soil Sizing Factor (SSF) 1.67

Boring #	BORING LOGS	
Depth in Inches	USDA Soil Texture	Munsell Color
0-5	Loam	10YR 3/2
5-21	Loam	2.5Y 5/4
21-72	Loam	2.5Y 5/4
	Lime	2.5Y 8/2
		Y /

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
		Y /
		Y /
		Y /
		Y /
		Y /

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
		Y /
		Y /
		Y /
		Y /
		Y /

DESIGN CRITERIA:

New/Upgrade/Replacement
Number Bedrooms 3 Type (I) (II) (III) (IV)
Type of Water Using Appliances Washing machine

Design Flow 450 gpd

Tanks Size		Material
Septic	1500-2 gal	Precast
Aerobic	_____ gal	_____
Pump Tank	_____ gal	_____
Holding Tank	_____ gal	_____

Manufacturer Name Helle Plans
Depth of Cover Over Tank 24 inches
Trench System: Rock 6" 12" 18" 24" Graveless 8" (10")
Land Slope 2-3 %
Lineal Feet of Trench 250 ft
Trench Depth Below Natural Grade 24"-30" inches
Depth of Soil over Laterals 12-24" inches

Mound System:
Land Slope _____ %
Rockbed Dimensions _____ ft x _____ ft
Absorption Width _____ ft
Berm Width: Upslope _____ ft Downslope _____ ft
Final Mound Dimensions _____ ft x _____ ft

Atgrade System:
Land Slope _____ %
Linear Loading Rate _____ gpd/ft 8 6 4 3 2
Rockbed Dimensions _____ ft x _____ ft
Absorption Width _____ ft
Berm Width: Upslope _____ ft Downslope _____ ft

Pressure Distribution System
Size of Perforated Laterals 1.25" 1.5" 2.0"
Size of Perforations 1/4" 7/32" @ _____ inch spacings
Required Flow Rate _____ gpm

Pump Information
Pump Capacity _____ gpm Total Head _____ ft

CONTRACTOR INFORMATION

LAFAYETTE EXCAVATING, INC.
P.O. BOX 204
LAFAYETTE, MN 56054
PHONE # 507-228-8902

Company _____ License # 195
Signature _____ Date 9-23-97
Reviewed By _____ Date _____

☐ Approved ☐ Additional Information Needed ☐ Design Worksheets Required

April 6 1997

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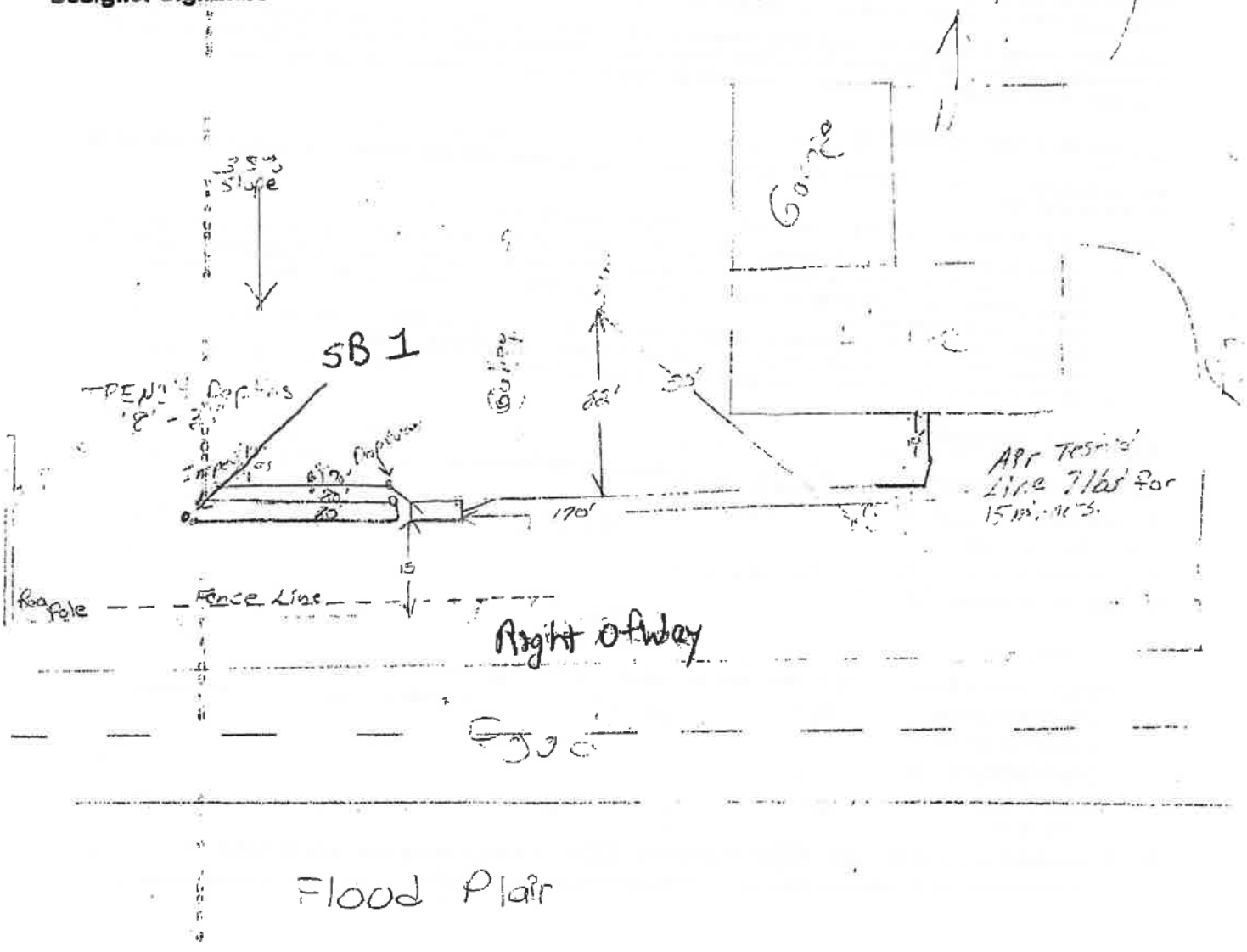
SOIL TREATMENT SYSTEM SITE PLAN DRAWING / REQUIRED INFORM

ack box if completed:

- North arrow
- Designated soil treatment area
- ☑ Alternate soil treatment area
- ☑ Soil borings & perc test locations with horizontal & vertical reference point
- ☑ Wells within 100 feet
- ☑ Sewer lines within 50 feet of wells
- ☑ Percent & Direction of slope(s)
- ☑ Existing & proposed waterlines - within 50'
- ☑ Lakes, rivers, streams, wetlands
- ☑ Ordinary high water level of public waters
- ☑ Ten year flood elevation
- ☑ Flooding potential areas
- ☑ Location of disturbed or compacted areas
- ☑ Location of run-on potential areas
- ☑ Elevation of bottom of soil tre area
- ☑ Access route for tank maintenan
- ☑ Road right-of-way (s)
- ☑ Lot/property lines
- ☑ Lot dimensions
- ☑ Lot easements
- ☑ Setbacks from buildings
- ☑ Proposed & existing buildings

SCALE: 1 inch = No Scale

Designer Signature	License #	Date
[signature]	195	7/23/97



CERTIFICATION STATEMENT/AS-BUILT

I hereby certify as a State of Minnesota Licensed Installer that the individual sewage treatment system diagramed above was installed in accordance with all applicable requirements of Minnesota Rules Chapter 7080. The diagram of the installation is accurate as of the date at the bottom of this form for the site identified on the reverse side of this form. No determination of future hydraulic performance can be made due to future water usage over the life of the system.

Installer Signature	License #	Date
[signature]	[illegible]	9/1/97

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12/17/2020 4:59 PM

Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Sewage Tank Maintenance Reporting Form

Subsurface Sewage Treatment Systems (SSTS) Program

Purpose: Management and maintenance of Subsurface Sewage Treatment Systems (SSTS) are important to ensure resource protection and long-term and cost-effective sewage treatment. Completion of this form complies with the sewage tank maintenance requirements under Minn. R. 7080.2450 and 7082.0600. This form may be used to certify the compliance status of the sewage tank components of the SSTS. **This form is not a complete SSTS inspection report and may only certify sewage tank compliance status when entirely completed and signed on page 3 by a qualified professional.**

Instructions: A copy of this information must be submitted to the system owner within 30 days of the maintenance date and be maintained by the licensed SSTS maintainer business for a period of five (5) years from the maintenance date. Maintenance reporting to the local unit of government may be required by local ordinance. Check with your local SSTS program for maintenance reporting protocol.

Secure maintenance hole covers

All maintenance hole covers must be returned to service in a sound and durable condition and be capable of withstanding the anticipated load.

Covers must be re-secured in accordance with Minn. R. 7080.2450, subp. 3, items C or D:

a) Covers installed under local ordinances adopted after February 4, 2008 must be locked, bolted or screwed or must be 95 pounds in weight. They must be made of material suitable for outdoor use, resistant to ultraviolet degradation and leaks, and not susceptible to being slid or flipped. They must have a label warning of hazardous conditions inside the tank. All screw openings must be refastened.

b) Covers installed under local ordinances adopted before February 4, 2008 must either be buried with at least 12 inches of soil cover or be secured according to the local ordinance in effect before February 4, 2008.

c) Covers must meet item 'a' above when raised to the ground surface or less than 12 inches from the ground surface.

Reporting information

Date of maintenance (mm/dd/yyyy): 08/26/2020 **Reason for maintenance:** Tank Inspection

Property address: 62208 Cty Rd 21 Parcel ID:

City: New Ulm State: MN Zip code: 56073

Property owner's name: Pat Cieselke

Property-owner's address *if different*:

City: State: Zip code:

Phone number: Email address:

1. **Did you measure the accumulation of scum and sludge?** ☐ Yes ☒ No (tank(s) pumped without measuring)

Tank (check if present)	Scum	Sludge	Operating depth	Percent full
☐ Septic/holding tank #1				
☐ Septic/holding tank #2				
☐ Pretreatment tank				
☐ Pump tank				

2. **Access used to remove septage:** ☒ Maintenance hole ☒ Other (Unless a holding tank, go to #4 below) Main Tank
3. **If the maintenance hole was used, were all covers secured in place?** ☒ Yes ☐ No If no, *please explain below:*

4. **If the owner refuses to allow a Subsurface Sewage Treatment System (SSTS) to be pumped through the maintenance hole, have them complete and sign the following statement.**

I, _____ , refuse to allow the removal of the solids and liquids through the maintenance hole. I understand that removal of solids and liquids through other access points is not considered a compliant method of solids removal and does not fulfill the solids removal requirements of Minn. R. 7080.2450 and 7082.0600.

(Print owner's name)

Owner's signature: _____ Date (mm/dd/yyyy): _____

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Property address: 62208 Cty Rd 21 Parcel ID:
City: New Ulm State: MN Zip code: 56073

5. **Is the tank designed as a leaky tank?** *(Example: seepage pit, cesspool, drywell, leaching pit)*
   Tank #1: ☐ Yes ☒ No Verification method used: Holds water
   Tank #2: ☐ Yes ☒ No Verification method used: " "

6. **Is there evidence of the following?**

Tank (check if present)	Tank leaks below the designed operating depth	Tank leaks above the designed operating depth	Maintenance hole cover is damaged, cracked, unsecured, or appears to be structurally unsound
☐ Septic/holding Tank #1	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No
☐ Septic/holding Tank #2	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
☐ Pretreatment Tank	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
☐ Pump Tank	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No
Describe detail for any "Yes"			

7. **How many gallons of septage were removed?**
   Tank #1: 1000 Tank #2: Pretreatment Tank: Pump Tank: 500

8. **Where was the septage taken?** ☒ Wastewater treatment facility ☐ Land application ☐ Other
   Explanation (Facility name/Site #): 1911 S. Valley St. New Ulm

9. **Did you identify any operational issues or unsafe conditions while assessing the sewage tanks in this system?**
   ☐ Yes ☒ No If yes, identify tank and explain:
   ☐ Evidence of non-domestic waste ☐ Baffle(s) condition ☐ Effluent screen condition
   ☐ Maintenance hole and extensions condition ☐ Other conditions (e.g. structural integrity of tank or lid, electrical hazard, etc.)
   Explanation:

10. **List any troubleshooting and minor repairs completed or declined by owner:**

☐ Troubleshooting and repairs conducted:	☐ Repairs declined by owner:

Additional comments or suggestions for owner's consideration: The End Baffle inspection Riser Is Tipped Slightly I suggest to Dig around it & Straighten it before it gets worse

Pumping record

I personally conducted the work described above on behalf of a Minnesota-licensed SSTS Maintenance Business, in compliance with Minnesota Rules Chapters 7080 – 7083:

☐ As a noncertified individual who has received proper training, daily work review, and periodic observation, or
☐ As a designated certified individual of the business listed below.

Company information

Company name: Schultz Plumbing
Business license number: L3477
Email: schultzplumbing@comcast.net
Employee's signature:

Employee information

Print name: Philip Kirschstein
Certification number: (if applicable): C9219
Phone number: 507-354-6178
Date (mm/dd/yyyy): 08/26/2020

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12/17/2020 4:59 PM

Property address: 62208 cty Rd 21 Parcel ID: _____
City: Aken Elm State: MN Zip code: _____

Optional section: Sewage Tank Compliance Certification

This form does not represent a complete system inspection report and only certifies sewage tank compliance status.

Instructions: This section of the form may be completed and signed by a Designated Certified Individual (DCI) of a licensed SSTS Maintenance Business who personally conducts the necessary procedures to assess the compliance status of each sewage tank in the system.

When this section of the form is signed by a qualified certified professional, it becomes *necessary supporting documentation* to an Existing System Compliance Inspection Report: Compliance inspection form - Existing system (wq-wwists4-31b). This form can be found on the MPCA website at https://www.pca.state.mn.us/water/ssts-and-msts-technical-and-compliance-criteria.

The information and certified statement on this form is **required** when existing septic tank compliance status is determined by an individual other than the SSTS Inspector that submits the inspection report. It represents a third party assessment of SSTS component compliance and is allowable under Minn. R. 7082.0700, subp. 4 Item (B) subItem (1). This form is valid for a period of three years beyond the signature date on this form unless a new evaluation is requested by the owner or owner's agent or is required according to local regulations. Additional Administrative Rule references for this activity can be found at Minn. R. 7082.0700, subp. 4 Items B, C, and D; 7083.0730 Item C.

☒ **Certificate of sewage tank compliance**

Affirm all three statements:

- ☒ The SSTS does not contain a seepage pit, cesspool, drywell, leaching pit, or other pit.
- ☒ It does not contain a sewage tank that was designed to be watertight, but subsequently leaks below the designed operating depth.
- ☒ It does not represent an imminent safety threat by reason of unsecured, damaged, or weak maintenance hole cover(s) or other unsafe condition.

☐ **Notice of sewage tank non-compliance**

Select all that apply:

- ☐ The SSTS has a seepage pit, cesspool, drywell, leaching pit, or other pit.
- ☐ It has a sewage tank that was designed to be watertight, but subsequently leaks below the designed operating depth.
- ☐ It presents a threat to public safety by reason of unsecured, damaged, or weak maintenance hole cover(s) or other unsafe condition.

Company information

Company name: Schultz Plumbing

Business license number: L3977

Designated Certified Individual (DCI) information

Print name: Philip Kirschstein

Certification number: C9219

I personally conducted the work described above as a Designated Certified Individual of a Minnesota-licensed SSTS Maintenance Business. I personally conducted the necessary procedures to assess the compliance status of each sewage tank in this SSTS:

Designated Certified Individual's signature: Philip Kirschstein Date (mm/dd/yyyy): 08/26/2020

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12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Thursday, August 27, 2020 1:56 PM
To: Jesse Zeig
Subject: RE: Gieseke

Absolutely! I have been working with Jon Hammel.

Thank you!

#3

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

*Jesse submitted directly to Jon Hammel

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Thursday, August 27, 2020 1:54 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Gieseke

#2

[EXTERNAL EMAIL]

Shana, we are currently working on this. We will have this ready for you in the morning. I would like to review this with the county to make sure we have what we need on the survey, are you ok with me doing this?

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Bolton-Menk.com

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Thursday, August 27, 2020 12:24 PM
To: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Cc: pat-shana@comcast.net
Subject: RE: Gieseke

#1

Hi Jesse! I paid this in full this morning and am checking in to be sure we are on track for the survey to be delivered to me no later than first thing tomorrow morning.

Thanks!

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Thursday, August 27, 2020 3:56 PM
To: Shana Gieseke
Cc: pat-shana@comcast.net
Subject: RE: Gieseke - 62208 County Road 21 New Ulm MN

[EXTERNAL EMAIL]

Hi Shana,

I had a chance to speak with our Department Director Mandy Landkamer regarding the last of your questions below. So, you will need to submit a proposal for what you feel would need to be done to keep the addition closed up, weather tight, and to keep wildlife and trespassers out.

Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Wednesday, August 26, 2020 11:45 AM
To: Jon Hammel
Cc: pat-shana@comcast.net
Subject: Gieseke - 62208 County Road 21 New Ulm MN

Good morning Jon.

I have a few questions:

- Where do I obtain the application for the After-the-Fact Variance
- Where do I obtain the application for the After-the-Fact Zoning Permit
- What is the exact total amount of fees we are to pay when we submit the application? The brochure sent is extremely confusing.
- Do I submit the applications, survey, septic compliance, and secondary/alternative septic system location in person or are emailed PDF's acceptable? If in person, is that at 501 S MN Ave, St Peter?
- Please clarify the hearing date that we will attend if we have everything submitted by the 3:30pm deadline 8/28 (P&Z/BAA 9/21/2020 or Board of Commissioners 10/13) as the sheet sent to us is also confusing.

Lastly, please provide a solution to us in the meantime as to what we are allowed to do to our addition to keep it closed up, weather tight, to keep wildlife out and most importantly to keep *unauthorized trespassers* out.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Thursday, August 27, 2020 10:26 PM
To: Shana Gieseke
Cc: pat-shana@comcast.net
Subject: RE: Gieseke
Attachments: Gieseke Variance.pdf

Not attached

[EXTERNAL EMAIL]

Shana, attached is the latest plot I have. We still have a few things to iron out with Jon in the morning. Can you and Pat take a look and let me know what you think. The big thing for me is the volume. I am using LIDAR contours from the State done in 2010, this is the only thing I have to base pre construction on. I believe Pat told me a much small number but I am not sure how he came up with that. What I need to know is a percent of what you think went off site and what stayed on site.

I will be in touch in the morning. Thanks,

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Bolton-Menk.com

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Thursday, August 27, 2020 12:24 PM
To: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Cc: pat-shana@comcast.net
Subject: RE: Gieseke

Hi Jesse! I paid this in full this morning and am checking in to be sure we are on track for the survey to be delivered to me no later than first thing tomorrow morning.

Thanks!

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Wednesday, August 26, 2020 10:55 AM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: pat-shana@comcast.net
Subject: Re: Gieseke

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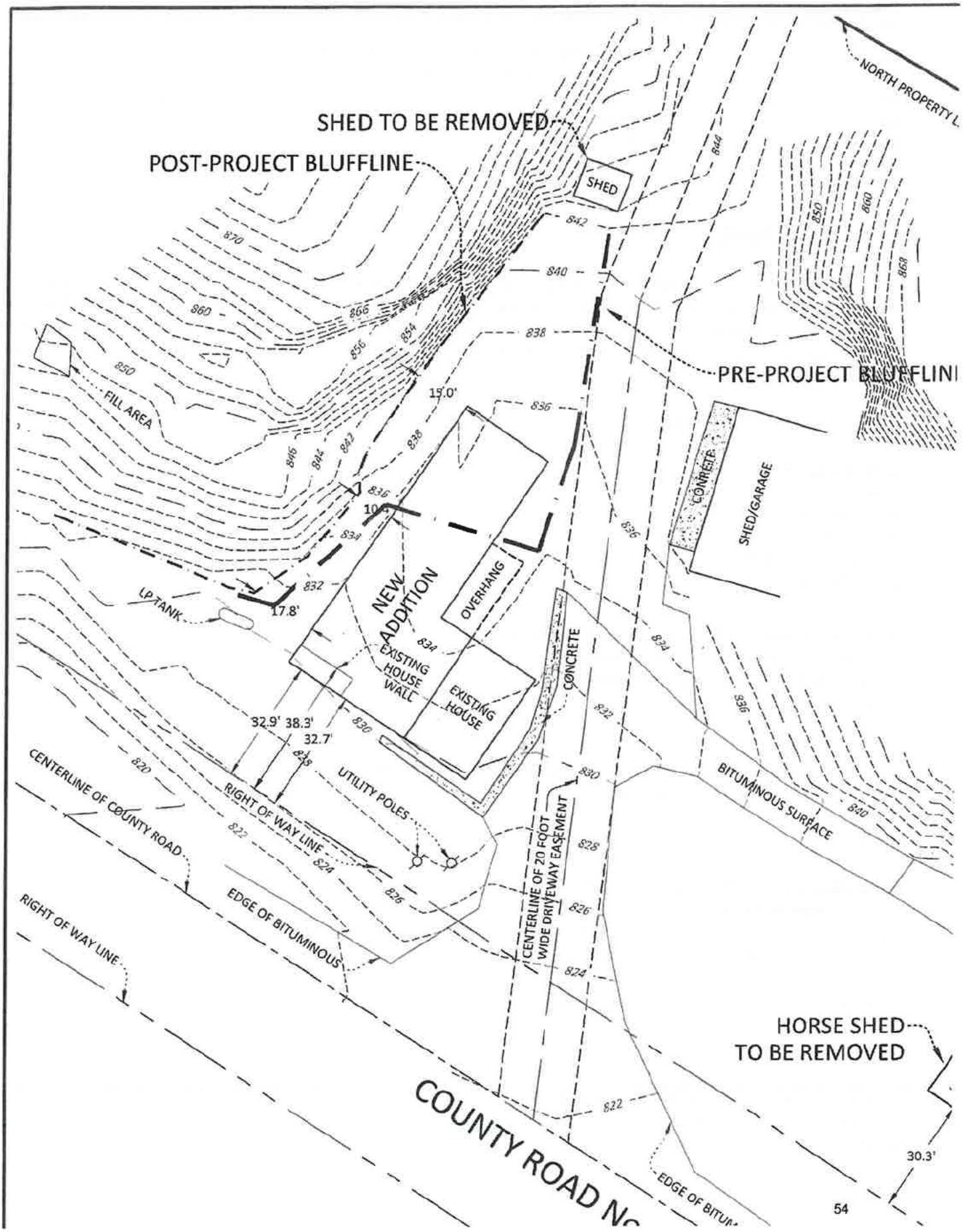
12/17/2020 4:59 PM



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12/17/2020 4:59 PM

Shana Gieseke

From: Shana and Pat <pat-shana@comcast.net>
Sent: Thursday, September 3, 2020 1:08 PM
To: Shana Gieseke
Subject: Fwd: Compliance Inspection-Pat & Shana Gieseke
Attachments: Pat & Shana Gieseke Compliance Inspection.pdf

[EXTERNAL EMAIL]

Sent from Xfinity Connect App

------ Original Message ------

From: Nancy Reinhart
To: Pete Otterness, pat-shana@comcast.net
Sent: August 27, 2020 at 1:16 PM
Subject: Compliance Inspection-Pat & Shana Gieseke

Pete & Shana, Here's the papers for the compliance inspection. Shana I've also included a copy of the invoice. Thanks, Nancy

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Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Compliance Inspection Form

Existing Subsurface Sewage Treatment Systems (SSTS)

Doc Type: Compliance and Enforcement

Instructions: Inspection results based on Minnesota Pollution Control Agency (MPCA) requirements and attached forms – additional local requirements may also apply.

Submit completed form to Local Unit of Government (LUG) and system owner within 15 days

For local tracking purposes:

System Status

System status on date (mm/dd/yyyy): 8-27-20

☒ **Compliant – Certificate of Compliance**
(Valid for 3 years from report date, unless shorter time frame outlined in Local Ordinance.)

☐ **Noncompliant – Notice of Noncompliance**
(See Upgrade Requirements on page 3)

Reason(s) for noncompliance ***(check all applicable)***

- ☐ Impact on Public Health *(Compliance Component #1) – Imminent threat to public health and safety*
- ☐ Other Compliance Conditions *(Compliance Component #3) – Imminent threat to public health and safety*
- ☐ Tank Integrity *(Compliance Component #2) – Failing to protect groundwater*
- ☐ Other Compliance Conditions *(Compliance Component #3) – Failing to protect groundwater*
- ☐ Soil Separation *(Compliance Component #4) – Failing to protect groundwater*
- ☐ Operating permit/monitoring plan requirements *(Compliance Component #5) – Noncompliant*

Property Information

Parcel ID# or Sec/Twp/Range: 111 N - 31 W - 35

Property address: 65208 COR021 Nowlin MN 56073

Reason for inspection: Bld Permit

Property owner: Pat + Shana Griesche

Owner's phone: [redacted]-507-217-9392

or

Owner's representative: _____

Representative phone: _____

Local regulatory authority: _____

Regulatory authority phone: _____

Brief system description: Septic tank Pump tank Drainfield

Comments or recommendations:

System is in compliant for Design of 3 Bedroom House 20' short of Design for Lack of Room County Okayed on Asbuilt

Certification

I hereby certify that all the necessary information has been gathered to determine the compliance status of this system. No determination of future system performance has been nor can be made due to unknown conditions during system construction, possible abuse of the system, inadequate maintenance, or future water usage.

Inspector name: Harold Reinhart JR

Certification number: 195

Business name: Lafayette Excavating, Inc

License number: 195

Inspector signature: Harold Reinhart

Phone number: 507-228-8802

Necessary or Locally Required Attachments

☒ Soil boring logs ☒ System/As-built drawing ☐ Forms per local ordinance

☐ Other information (list): _____

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HAR

Property address: 62208 Co Rd 21 New Ulm MN 56073 Inspector initials/Date: 8-27-20

1. Impact on Public Health – Compliance component #1 of 5

Compliance criteria:	
System discharge sewage to the ground surface.	☐ Yes ☒ No
System discharge sewage to drain tile or surface waters.	☐ Yes ☒ No
System cause sewage backup into dwelling or establishment.	☐ Yes ☒ No

Any "yes" answer above indicates the system is an Imminent Threat to Public Health and Safety.

Verification method(s):

- ☒ Searched for surface outlet
- ☐ Searched for seeping in yard/backup in home
- ☐ Excessive ponding in soil system/D-boxes
- ☐ Homeowner testimony *(See Comments/Explanation)*
- ☐ "Black soil" above soil dispersal system
- ☐ System requires "emergency" pumping
- ☐ Performed dye test
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other methods not listed *(See Comments/Explanation)*

Comments/Explanation:

2. Tank Integrity – Compliance component #2 of 5

Compliance criteria:	
System consists of a seepage pit, cesspool, drywell, or leaching pit. *Seepage pits meeting 7080.2550 may be compliant if allowed in local ordinance.*	☐ Yes ☒ No
Sewage tank(s) leak below their designed operating depth.	☐ Yes ☒ No
If yes, which sewage tank(s) leaks:	

Any "yes" answer above indicates the system is Failing to Protect Groundwater.

Verification method(s):

- ☐ Probed tank(s) bottom
- ☐ Examined construction records
- ☐ Examined Tank Integrity Form *(Attach)*
- ☐ Observed liquid level below operating depth
- ☐ Examined empty (pumped) tanks(s)
- ☐ Probed outside tank(s) for "black soil"
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other methods not listed *(See Comments/Explanation)*

Comments/Explanation:

See Attached Pumpers certificate

3. Other Compliance Conditions – Compliance component #3 of 5

a. Maintenance hole covers are damaged, cracked, unsecured, or appear to structurally unsound. ☐ Yes* ☒ No ☐ Unknown

b. Other issues *(electrical hazards, etc.)* to immediately and adversely impact public health or safety. ☐ Yes* ☒ No ☐ Unknown
System is an imminent threat to public health and safety

Explain:

c. System is non-protective of ground water for other conditions as determined by inspector ☐ Yes* ☒ No
System is failing to protect groundwater

Explain:

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Property address: 62208 co Rd 21 New Ulm mn 56073 Inspector initials/Date: HAR 8-26-20

4. Soil Separation – Compliance component #4 of 5

Date of installation: 9-11-97 ☐ Unknown

Shoreland/Wellhead protection/Food Beverage Lodging? ☐ Yes ☐ No

Compliance criteria:

For systems built prior to April 1, 1996, and not located in Shoreland or Wellhead Protection Area or not serving a food, beverage or lodging establishment: Drainfield has at least a two-foot vertical separation distance from periodically saturated soil or bedrock.	☐ Yes ☐ No
Non-performance systems built April 1, 1996, or later or for non-performance systems located in Shoreland or Wellhead Protection Areas or serving a food, beverage, or lodging establishment: Drainfield has a three-foot vertical separation distance from periodically saturated soil or bedrock.*	☒ Yes ☐ No
"Experimental", "Other", or "Performance" systems built under pre-2008 Rules; Type IV or V systems built under 2008 Rules (7080.2350 or 7080.2400 (Advanced Inspector License required) Drainfield meets the designed vertical separation distance from periodically saturated soil or bedrock.	☐ Yes ☐ No

Any "no" answer above indicates the system is Failing to Protect Groundwater.

Verification method(s):

Soil observation does not expire. Previous soil observations by two independent parties are sufficient, unless site conditions have been altered or local requirements differ.

- ☒ Conducted soil observation(s) *(Attach boring logs)*
- ☒ Two previous verifications *(Attach boring logs)*
- ☐ Not applicable *(Holding tank(s), no drainfield)*
- ☐ Unable to verify *(See Comments/Explanation)*
- ☐ Other *(See Comments/Explanation)*

Comments/Explanation:

Indicate depths of elevations

A. Bottom of distribution media	36"
B. Periodically saturated soil/bedrock	72"
C. System separation	36"
D. Required compliance separation*	36"

*May be reduced up to 15 percent if allowed by Local Ordinance.

5. Operating Permit and Nitrogen BMP* – Compliance component #5 of 5 ☐ Not applicable

Is the system operated under an Operating Permit? ☐ Yes ☐ No **If "yes", A below is required**

Is the system required to employ a Nitrogen BMP? ☐ Yes ☐ No **If "yes", B below is required**

BMP=Best Management Practice(s) specified in the system design

If the answer to both questions is "no", this section does not need to be completed.

Compliance criteria

a. Operating Permit number: _____ Have the Operating Permit requirements been met?	☐ Yes ☐ No
b. Is the required nitrogen BMP in place and properly functioning?	☐ Yes ☐ No

Any "no" answer indicates Noncompliance.

Upgrade Requirements *(Minn. Stat. § 115.55) An imminent threat to public health and safety (ITPHS) must be upgraded, replaced, or its use discontinued within ten months of receipt of this notice or within a shorter period if required by local ordinance. If the system is failing to protect ground water, the system must be upgraded, replaced, or its use discontinued within the time required by local ordinance. If an existing system is not failing as defined in law, and has at least two feet of design soil separation, then the system need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more strict. This provision does not apply to systems in shoreland areas, Wellhead Protection Areas, or those used in connection with food, beverage, and lodging establishments as defined in law.*

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12/17/2020 4:59 PM

Boring # 1 BORING LOGS			Boring # BORING LOGS			Boring # BORING LOGS		
Depth in Inches	USDA Soil Texture	Munsell Color	Depth in Inches	USDA Soil Texture	Munsell Color	Depth in Inches	USDA Soil Texture	Munsell Color
0-5	Loam	10YR 3/2			Y /			Y /
5-20	Loam	2.5Y 5/4			Y /			Y /
20-73	Loam	2.5Y 5/4			Y /			Y /
73+	Lime	2.5Y 8/2			Y /			Y /
		Y /			Y /			Y /

See Attached As Built

NOTES:

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12/17/2020 4:59 PM

ISTS SITE EVALUATION AND DESIGN FORM

As Built 9-11-97

PROPERTY INFORMATION

67208 CO Rd 21

Owner Tim Schlumpberger Mobile-507-276-6543
Address RR3 Box 22
City, State, Zip New Ulm, MN 56073 Phone 507-359-9063
ID # _____ Permit # _____
Township _____ Section _____
Subdivision _____ Lot _____ Block _____

SOILS:

N.R.C.S. Map Unit Symbol _____
Landscape Position convex concave plane
Vegetation Type Grass + Brush
Depth to Restricting Layer ~72 inches
Soil Sizing Factor (SSF) 1.67

DESIGN CRITERIA:

New/Upgrade/Replacement
Number Bedrooms 3 Type (I) (II) (III) (IV)
Type of Water Using Appliances washing machine

Design Flow 450 gpd

Tanks	Size	Material
Septic	1500 -2 gal	Precast
Aerobic	_____ gal	_____
Pump Tank	_____ gal	_____
Holding Tank	_____ gal	_____

Manufacturer Name Delle Plaine
Depth of Cover Over Tank 48 inches
Trench System: Rock 6" 12" 18" 24" Graveless 8" (10")
Land Slope 0 %
Lineal Feet of Trench 250 ft
Trench Depth Below Natural Grade 24 to 30 inches
Depth of Soil over Laterals 12 to 24 inches

Mound System:
Land Slope _____ %
Rockbed Dimensions _____ ft x _____ ft
Absorption Width _____ ft
Berm Width: Upslope _____ ft Downslope _____ ft
Final Mound Dimensions _____ ft x _____ ft

Atgrade System:
Land Slope _____ %
Linear Loading Rate _____ gpd/ft 8 6 4 3 2
Rockbed Dimensions _____ ft x _____ ft
Absorption Width _____ ft
Berm Width: Upslope _____ ft Downslope _____ ft

Pressure Distribution System
Size of Perforated Laterals 1.25" 1.5" 2.0"
Size of Perforations 1/4" 7/32" @ _____ inch spacings
Required Flow Rate _____ gpm

Pump Information
Pump Capacity 30 gpm Total Head 11 ft

BORING LOGS

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
0-5	Loam	10YR 3/2
5-21	Loam	2.5Y 5/4
21-72	Loam	5Y 5/4
	Lime	2.5Y 8/2
		Y /

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
		Y /
		Y /
		Y /
		Y /
		Y /

Boring #		
Depth in Inches	USDA Soil Texture	Munsell Color
		Y /
		Y /
		Y /
		Y /
		Y /

CONTRACTOR INFORMATION

LAFAYETTE EXCAVATING, INC.
P.O. BOX 204
LAFAYETTE, MN 56054
PHONE # 507-228-8902

Company _____ License # 195
Signature _____ Date 9/25/97
Reviewed By _____ Date _____

☐ Approved ☐ Additional Information Needed ☐ Design Worksheets Required

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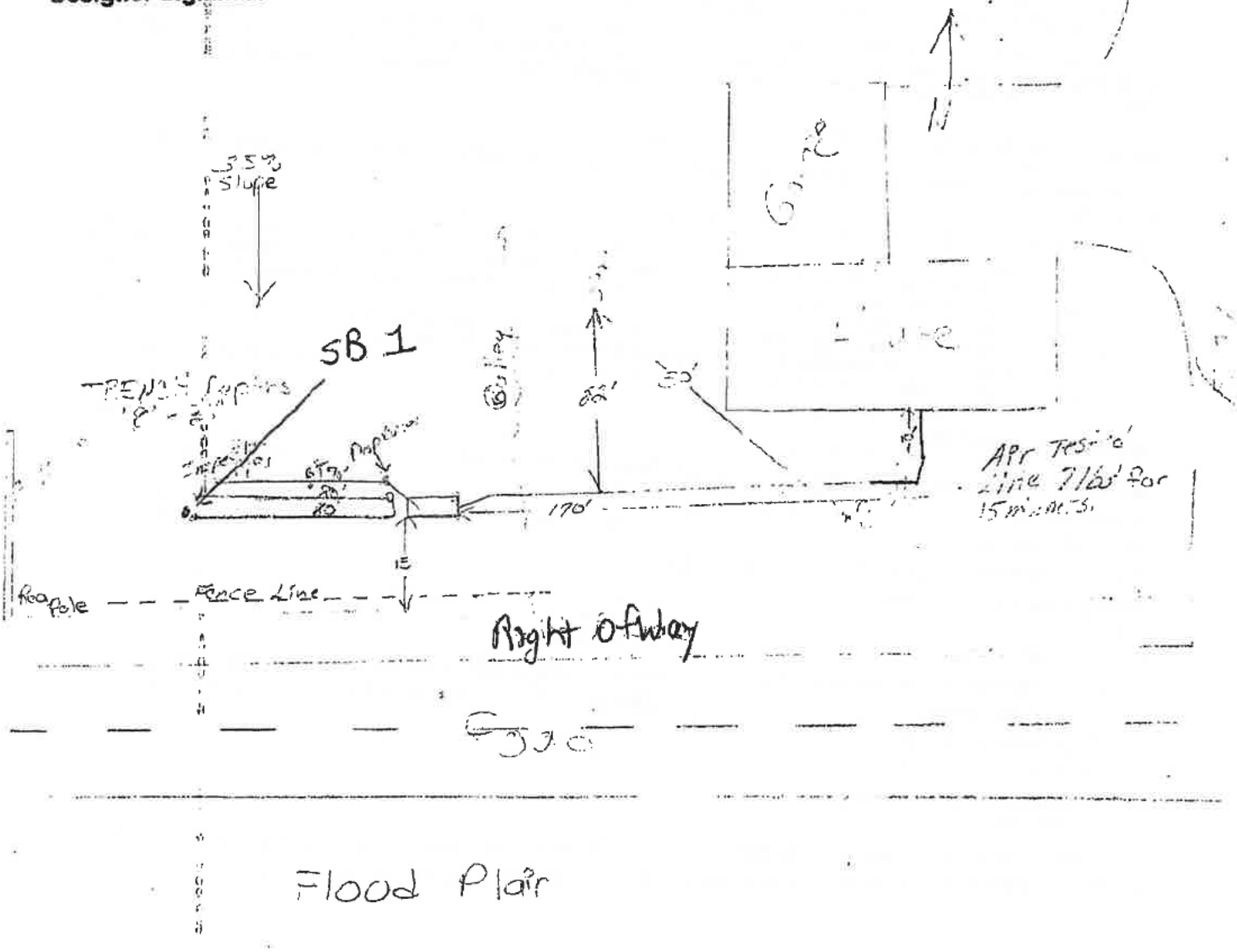
SOIL TREATMENT SYSTEM SITE PLAN DRAWING / REQUIRED INFORM

Check box if completed:

- ☐ North arrow
- ☐ Designated soil treatment area
- ☐ Alternate soil treatment area
- ☑ Soil borings & perc test locations with horizontal & vertical reference point
- ☑ Wells within 100 feet
- ☑ Sewer lines within 50 feet of walls
- ☑ Percent & Direction of slope(s)
- ☑ Existing & proposed waterlines - within 50'
- ☑ Lakes, rivers, streams, wetlands
- ☐ Ordinary high water level of public waters
- ☐ Ten year flood elevation
- ☐ Flooding potential areas
- ☐ Location of disturbed or compacted areas
- ☐ Location of run-on potential areas
- ☑ Elevation of bottom of soil tr... area
- ☐ Access route for tank maintenan...
- ☐ Road right-of-way (s)
- ☐ Lot/property lines
- ☑ Lot dimensions
- ☑ Lot easements
- ☑ Setbacks from buildings
- ☐ Proposed & existing buildings

SCALE: 1 inch = 10 Feet

Designer Signature | License # 195 | Date 7/23/97



CERTIFICATION STATEMENT/AS-BUILT

I hereby certify as a State of Minnesota Licensed Installer that the individual sewage treatment system diagramed above was installed in accordance with all applicable requirements of Minnesota Rules Chapter 7080. The diagram of the installation is accurate as of the date at the bottom of this form for the site identified on the reverse side of this form. No determination of future hydraulic performance can be made due to future water usage over the life of the system.

Installer Signature | License # | Date 9/11/97

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12/17/2020 4:59 PM

Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Sewage Tank Maintenance Reporting Form

Subsurface Sewage Treatment Systems (SSTS) Program

Purpose: Management and maintenance of Subsurface Sewage Treatment Systems (SSTS) are important to ensure resource protection and long-term and cost-effective sewage treatment. Completion of this form complies with the sewage tank maintenance requirements under Minn. R. 7080.2450 and 7082.0600. This form may be used to certify the compliance status of the sewage tank components of the SSTS. **This form is not a complete SSTS inspection report and may only certify sewage tank compliance status when entirely completed and signed on page 3 by a qualified professional.**

Instructions: A copy of this information must be submitted to the system owner within 30 days of the maintenance date and be maintained by the licensed SSTS maintainer business for a period of five (5) years from the maintenance date. Maintenance reporting to the local unit of government may be required by local ordinance. Check with your local SSTS program for maintenance reporting protocol.

Secure maintenance hole covers

All maintenance hole covers must be returned to service in a sound and durable condition and be capable of withstanding the anticipated load.

Covers must be re-secured in accordance with Minn. R. 7080.2450, subp. 3, items C or D:

a) Covers installed under local ordinances adopted after February 4, 2008 must be locked, bolted or screwed or must be 95 pounds in weight. They must be made of material suitable for outdoor use, resistant to ultraviolet degradation and leaks, and not susceptible to being slid or flipped. They must have a label warning of hazardous conditions inside the tank. All screw openings must be refastened.

b) Covers installed under local ordinances adopted before February 4, 2008 must either be buried with at least 12 inches of soil cover or be secured according to the local ordinance in effect before February 4, 2008.

c) Covers must meet item 'a' above when raised to the ground surface or less than 12 inches from the ground surface.

Reporting information

Date of maintenance (mm/dd/yyyy): 08/26/2020 **Reason for maintenance:** Tank Inspection

Property address: 62208 Cty Rd 21 **Parcel ID:**

City: New Ulm State: MN Zip code: 56073

Property owner's name: Pat Griesche

Property-owner's address *if different*:

City: State: Zip code:

Phone number: Email address:

1. **Did you measure the accumulation of scum and sludge?** ☐ Yes ☒ No (tank(s) pumped without measuring)

Tank (check if present)	Scum	Sludge	Operating depth	Percent full
☐ Septic/holding tank #1				
☐ Septic/holding tank #2				
☐ Pretreatment tank				
☐ Pump tank				

2. **Access used to remove septage:** ☒ Maintenance hole ☒ Other (Unless a holding tank, go to #4 below) Main Tank
3. **If the maintenance hole was used, were all covers secured in place?** ☒ Yes ☐ No If no, *please explain below:*

4. **If the owner refuses to allow a Subsurface Sewage Treatment System (SSTS) to be pumped through the maintenance hole, have them complete and sign the following statement.**

I, _____ , refuse to allow the removal of the solids and liquids through the maintenance
(Print owner's name)
hole. I understand that removal of solids and liquids through other access points is not considered a compliant method of solids removal and does not fulfill the solids removal requirements of Minn. R. 7080.2450 and 7082.0600.

Owner's signature: _____ Date (mm/dd/yyyy): _____

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Property address: 62208 Cty Rd 21 Parcel ID:
City: New Ulm State: MN Zip code: 56073

5. **Is the tank designed as a leaky tank?** *(Example: seepage pit, cesspool, drywell, leaching pit)*
   Tank #1: ☐ Yes ☒ No Verification method used: Holds Water
   Tank #2: ☐ Yes ☒ No Verification method used: " "

6. **Is there evidence of the following?**

Tank (check if present)	Tank leaks below the designed operating depth	Tank leaks above the designed operating depth	Maintenance hole cover is damaged, cracked, unsecured, or appears to be structurally unsound
☐ Septic/holding Tank #1	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No
☐ Septic/holding Tank #2	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
☐ Pretreatment Tank	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
☐ Pump Tank	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No
Describe detail for any "Yes"			

7. **How many gallons of septage were removed?**
   Tank #1: 1000 Tank #2: Pretreatment Tank: Pump Tank: 500

8. **Where was the septage taken?** ☒ Wastewater treatment facility ☐ Land application ☐ Other
   Explanation (Facility name/Site #): 1911 S. Valley St. New Ulm

9. **Did you identify any operational issues or unsafe conditions while assessing the sewage tanks in this system?**
   ☐ Yes ☒ No If yes, identify tank and explain:
   ☐ Evidence of non-domestic waste ☐ Baffle(s) condition ☐ Effluent screen condition
   ☐ Maintenance hole and extensions condition ☐ Other conditions (e.g. structural integrity of tank or lid, electrical hazard, etc.)
   Explanation:

10. **List any troubleshooting and minor repairs completed or declined by owner:**

☐ Troubleshooting and repairs conducted:	☐ Repairs declined by owner:

Additional comments or suggestions for owner's consideration: The End Baffle inspection Riser Is Tipped Slightly I suggest to Dig around it & Straighten it before it gets worse

Pumping record

I personally conducted the work described above on behalf of a Minnesota-licensed SSTS Maintenance Business, in compliance with Minnesota Rules Chapters 7080 – 7083:

☐ As a noncertified individual who has received proper training, daily work review, and periodic observation, or
☐ As a designated certified individual of the business listed below.

Company Information

Company name: Schultz Plumbing
Business license number: L3477
Email: schultzplumbing@comcast.net
Employee's signature:

Employee information

Print name: Philip Kirschstein
Certification number: (if applicable): C9219
Phone number: 507-354-6178
Date (mm/dd/yyyy): 08/26/2020

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Property address: 62208 Cty Rd 21 Parcel ID: _____
City: Akeley State: MN Zip code: _____

Optional section: Sewage Tank Compliance Certification

This form does not represent a complete system inspection report and only certifies sewage tank compliance status.

Instructions: This section of the form may be completed and signed by a Designated Certified Individual (DCI) of a licensed SSTS Maintenance Business who personally conducts the necessary procedures to assess the compliance status of each sewage tank in the system.

When this section of the form is signed by a qualified certified professional, it becomes *necessary supporting documentation* to an Existing System Compliance Inspection Report: Compliance inspection form - Existing system (wq-wwists4-31b). This form can be found on the MPCA website at https://www.pca.state.mn.us/water/ssts-and-msts-technical-and-compliance-criteria.

The information and certified statement on this form is **required** when existing septic tank compliance status is determined by an individual other than the SSTS Inspector that submits the inspection report. It represents a third party assessment of SSTS component compliance and is allowable under Minn. R. 7082.0700, subp. 4 Item (B) subitem (1). This form is valid for a period of three years beyond the signature date on this form unless a new evaluation is requested by the owner or owner's agent or is required according to local regulations. Additional Administrative Rule references for this activity can be found at Minn. R. 7082.0700, subp. 4 items B, C, and D; 7083.0730 Item C.

☒ **Certificate of sewage tank compliance**

Affirm all three statements:

- ☒ The SSTS does not contain a seepage pit, cesspool, drywell, leaching pit, or other pit.
- ☒ It does not contain a sewage tank that was designed to be watertight, but subsequently leaks below the designed operating depth.
- ☒ It does not represent an imminent safety threat by reason of unsecured, damaged, or weak maintenance hole cover(s) or other unsafe condition.

☐ **Notice of sewage tank non-compliance**

Select all that apply:

- ☐ The SSTS has a seepage pit, cesspool, dryweli, leaching pit, or other pit.
- ☐ It has a sewage tank that was designed to be watertight, but subsequently leaks below the designed operating depth.
- ☐ It presents a threat to public safety by reason of unsecured, damaged, or weak maintenance hole cover(s) or other unsafe condition.

Company information

Company name: Schultz Plumbing

Business license number: L3477

Designated Certified Individual (DCI) Information

Print name: Philip Kirschstein

Certification number: C9219

I personally conducted the work described above as a Designated Certified Individual of a Minnesota-licensed SSTS Maintenance Business. I personally conducted the necessary procedures to assess the compliance status of each sewage tank in this SSTS:

Designated Certified Individual's signature: Philip Kirschstein Date (mm/dd/yyyy): 08/26/2020

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State of Minnesota
12/17/2020 4:59 PM

Invoice

Lafayette Excavating, Inc.
"Quality Work at a Competitive Price"
PO Box 204
411 8th Street
Lafayette, MN 56054
Phone # 507-228-8902 Fax # 507-228-8092

Invoice #
24948

Bill To
Pat Gieseke Gieseke Homes, LLC 62208 Co. RD. 21 New Ulm, MN. 56073

Date	Qty / Hours	Description	Rate	Amount
8/26/2020		8-26-20 Septic system Compliance Inspection of existing system @ 62208 Co. Rd. 21 New Ulm	200.00	200.00

Thank you for your business.

Total $200.00

Accounts not paid within 30 days will be charged a 1 1/2 % per month FINANCE CHARGE which is an ANNUAL PERCENTAGE RATE of 18%

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Friday, August 28, 2020 9:41 AM
To: Jon Hammel
Cc: Shana Gieseke; pat-shana@comcast.net
Subject: Gieseke Variance
Attachments: Draft Sketch W- AERIAL.pdf; Draft Sketch.pdf

[EXTERNAL EMAIL]

Jon, attached is the latest drawing for Pat and Shane Gieseke. Please review and let me know what your thoughts are. I have included on with and aerial as well.

Thanks,

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
1243 Cedar Street NE
Sleepy Eye, MN 56085
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Jesse.zeig@bolton-menk.com
Bolton-Menk.com

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Horizontal Datum: NAD 1983 County Coordinate System
Vertical Datum: NAVD 1988 in Feet

TOTAL VOLUME OF MATERIAL REMOVED =1,250 CUBIC YARDS

SURVEYOR'S CERTIFICATION

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

Date

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP., NICOLLET COUNTY, MN

BOLTON & MENK

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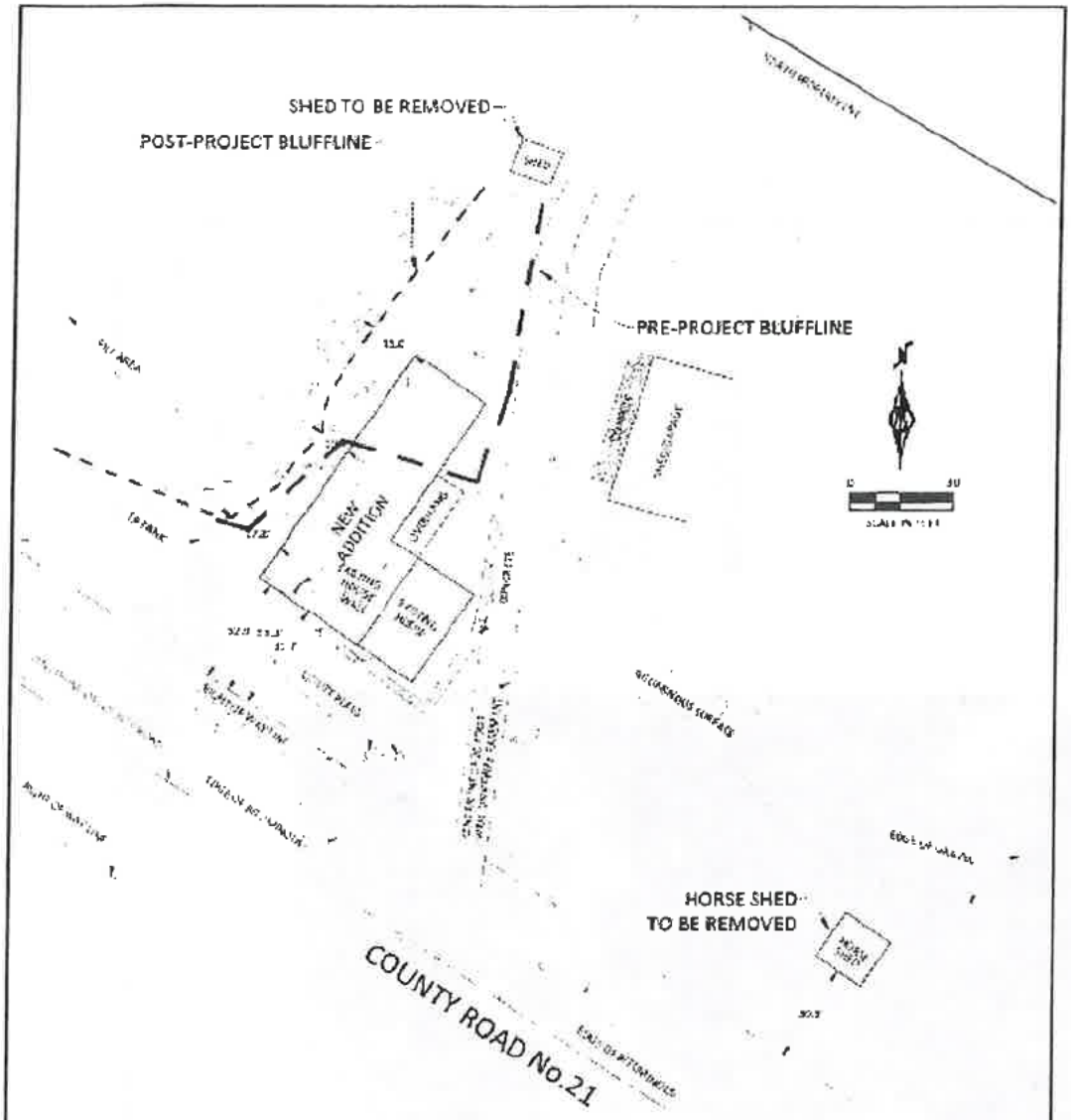

TOTAL AREA OF MATERIAL
REMOVED =1500 CUBIC YARDS

SURVEYOR'S CERTIFICATION

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

Jason D. Berg
License Number 44934

Date

AFTER-THE-FACT VARIANCE
WEST NEWTON TOWNSHIP, NICOLLET COUNTY, MN

BOLTON & MENK
1743 CEDAR STREET NE
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

PART OF THE SE 1/4
SECTION 35-111-31

FOR: PAT & DIANA GIESEKE

©Bolton & Menk, Inc. 2020. All Rights Reserved

H:\C\152.095...\X\S\152095-X01\CAD\SURV\152095-X01.dwg 8/27/2020 12:17 PM JOB NUMBER: 152095.71 FIELD BOOK: DRAWN BY: JK SEC. 35-111-31 (MU)

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, August 28, 2020 12:32 PM
To: 'Jesse Zeig'
Cc: Shana Gieseke; pat-shana@comcast.net
Subject: RE: Gieseke Variance

[EXTERNAL EMAIL]

Hi Jesse,

I have started the review of their application materials. I still have to run everything by Director Landkamer to make sure we agree on the status of their application. I'll let you and Mr. and Mrs. Gieseke know the outcome as soon as possible.

Sincerely,
Jon

From: Jesse Zeig [mailto:Jesse.Zeig@bolton-menk.com]
Sent: Friday, August 28, 2020 9:41 AM
To: Jon Hammel
Cc: Shana Gieseke; pat-shana@comcast.net
Subject: Gieseke Variance

Jon, attached is the latest drawing for Pat and Shane Gieseke. Please review and let me know what your thoughts are. I have included on with and aerial as well.

Thanks,

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
1243 Cedar Street NE
Sleepy Eye, MN 56085
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Jesse.zeig@bolton-menk.com
Bolton-Menk.com

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Wednesday, September 2, 2020 12:48 PM
To: Shana Gieseke
Cc: Megan Coryell
Subject: Incomplete Application Notice
Attachments: 0335400003_Gieseke_2020-09-02_Incomplete_application.pdf

[EXTERNAL EMAIL]

Hi Shana,

Attached is an incomplete application notice concerning your after-the-fact variance request. Please let me know if you have any questions.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment.

Sincerely,

NICOLLET COUNTY

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

NOTICE:
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State of Minnesota
12/17/2020 4:59 PM

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

September 2, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

The purpose of this letter is to respond to the documents you submitted via email on August 21, 2020 and August 27, 2020. The documents involve your application for an after-the-fact variance to expand a nonconforming structure, to reduce the front yard setback, to reduce the bluff setback, and for the alteration of protected bluff areas, for the purpose of constructing a dwelling addition. Our office understands that based on the documents you submitted on August 21, 2020, that you will be removing the small shed and horse shed.

The request involves your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. This matter has been the subject of a July 13, 2020 Cease and Desist Order and an August 13, 2020 letter to you from our office.

The documents you submitted via email on August 21, 2020 included:

- Letter to Nicollet County.
- Floor plan for the dwelling addition.
- A cost estimate for construction.
- Contractor information.

The document you submitted via email on August 27, 2020 was:

- A septic compliance inspection, prepared by Lafayette Excavating, Inc.

Please be aware, per Minnesota Statutes Section 15.99, Subd. 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. Our office has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

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State of Minnesota
12/17/2020 4:59 PM

Additional Information / Revisions

Your application will remain **on-hold** until the following additional information and revisions are submitted to Nicollet County Property Services.

- A survey prepared by a licensed surveyor. The survey must contain all the elements necessary for your variance request, such as the bluff setback, the front yard setback, etc.

- A complete set of floor plans for the house and addition. The floor plan submitted was the addition only. The plans must include the entire house, including room use, egress windows, and closets.

- The identification of a secondary/alternative septic system location.

These items were identified and explained in the August 13, 2020 letter to you from our office

In your August 21, 2020 Letter to Nicollet County, you state the earth removed from the bluff to make space for the house addition was relocated to a washout on your property. During a July 21, 2020 site inspection, Mr. Gieseke stated the removed material was relocated offsite. You will need to submit additional information, including:

- The precise location of the relocated earthen material.

- The amount of material moved in cubic yards.

Please be aware, Section 721 of the Zoning Ordinance contains standards for the preservation and of land and natural drainageways. These standards may apply to your placement of fill in a washout.

Official Application

Your application will remain incomplete and **on-hold** until the above items are provided to Property Services. Once these items have been received and approved by our office, you may move forward with:

- Payment of the after-the-fact variance and recording fees.

- Signing the official application form prepared by staff.

Second Site Visit

You will need to contact our office no later than Tuesday **September 15, 2020** to schedule another site visit. The purpose of a second site visit will be to view the location of the fill and washout. Please know, additional corrective actions or after-the-fact permitting may be required to address this issue.

- The request may require an after-the-fact conditional use permit for the movement of the earthen material cut from the bluff.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Conclusion
The general information provided above is based on present standards in relation to your proposal. If there has been any misunderstanding regarding your proposal, if you have any additional questions, or if we may be of any further service to you, please do not hesitate to contact our office.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Wednesday, September 2, 2020 3:19 PM
To: Shana Gieseke
Subject: RE: Gieseke Survey

[EXTERNAL EMAIL]

Shana I can update and resend this afternoon.

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Bolton-Menk.com

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Wednesday, September 2, 2020 2:49 PM
To: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Subject: Gieseke Survey

Just received this from the county:

- A survey prepared by a licensed surveyor. The survey must contain all the elements necessary for your variance request, such as the bluff setback, the front yard setback, etc.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Thursday, September 3, 2020 1:21 PM
To: lafayetteexcavating@hotmail.com
Cc: pat-shana@comcast.net
Subject: Compliance Inspection-Pat & Shana Gieseke
Attachments: Pat & Shana Gieseke Compliance Inspection.pdf

Importance: High

Nancy,

We received another letter from Nicollet County.

They will not move forward with our variance request until we provide to them "The identification of a secondary/alternative septic system location".

Can you please have Jr. call Pat ASAP to discuss and get this completed?

Pat's number is 507-404-0116.

Please reply back to this email so that I know you received it.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, September 4, 2020 8:36 AM
To: Shana Gieseke
Cc: Pete Otterness; Mandy Landkamer; Megan Coryell
Subject: RE: Site Visit

#2

[EXTERNAL EMAIL]

Hi Shana,

Kevin would likely be meeting with Sr. Sanitarian Pete Otterness for the alternate site. Mandy and I could potentially meet at the same time, provided our schedules all align. If they don't align, we'll need to find a separate date for Mandy and I to conduct our visit. Please let me know when Kevin will be onsite. I'll speak to Pete about it when he gets back into the office later today.

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Friday, September 04, 2020 8:20 AM
To: Jon Hammel
Subject: Site Visit

#1

Kevin from Lafayette Excavating is going to be calling to schedule a site visit to discuss the alternative septic location. Will this visit include you? Will this suffice as the site visit to look at the washout **again**, if you recall you and Mandy looked at the washout at the last scheduled visit.

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, September 4, 2020 9:18 AM
To: 'Jesse Zeig'
Cc: Shana Gieseke
Subject: RE: Gieseke Survey

#4

[EXTERNAL EMAIL]

Hi Jesse,

This looks better to me. Mandy is out of the office today, but I'll run this by her on Tuesday, and see what we come up with.

Thanks,
Jon

From: Jesse Zeig [mailto:Jesse.Zeig@bolton-menk.com]
Sent: Friday, September 04, 2020 9:15 AM
To: Jon Hammel
Cc: Shana Gieseke
Subject: RE: Gieseke Survey

#3

Jon, attached is a revised survey with the setbacks added.

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Bolton-Menk.com

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, September 4, 2020 9:07 AM
To: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Subject: RE: Gieseke Survey

#2

Hi Jesse,

Yes, the setbacks need to be added where missing. We will be doing a second site visit to view the area where the earthen hillside material was relocated to. We were previously told it was moved offsite; now they're telling us it was kept onsite and used to fill a drainway. There very well may be additional information added after the second visit. Just a heads up.

Sincerely,
Jon

From: Jesse Zeig [mailto:Jesse.Zeig@bolton-menk.com]
Sent: Thursday, September 03, 2020 8:01 AM

#1

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

To: Jon Hammel
Subject: FW: Gieseke Survey

I received this email from Shana Gieseke yesterday. Are the setback line all you need added?

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Bolton-Menk.com

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Wednesday, September 2, 2020 2:49 PM
To: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Subject: Gieseke Survey

Just received this from the county:

- A survey prepared by a licensed surveyor. The survey must co necessary for your variance request, such as the bluff setback, the front

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

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State of Minnesota
12/17/2020 4:59 PM

GIESEKE CONSTRUCTION PROPOSAL

62208 COUNTY ROAD 21

NEW ULM MN 56073

PARCEL NO: 13.035.1000

Date of Submission: September 2, 2020

Proposal Submitted to: Jon Hammel – jon.hammel@co.nicollet.mn.us

Mandy Landkamer - Mandy.Landkamer@co.nicollet.mn.us

We propose the following to protect our investment from the elements of weather, wildlife and **unauthorized trespassers**.

- Ty-Vek
- Windows
- Doors
- Soffit

No reply or Correspondence from Nicollet County until email 9/10 9 days later

Pat & Shana Gieseke

62208 County Road 21

New Ulm, MN, 56073

pat-shana@comcast.net

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Thursday, September 10, 2020 2:24 PM
To: Shana Gieseke
Subject: RE: SECOND EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

[EXTERNAL EMAIL]

Hi Shana,

I just wanted to let you know we received your email and we're working on a response. Thank you for your patience.

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Thursday, September 10, 2020 9:40 AM
To: Jon Hammel
Cc: Mandy Landkamer
Subject: SECOND EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020
Importance: High

Please provide answers to the following:

- What is the status of the site visit for the septic?
- What is the status of the site visit for the second viewing of the washout?
- What is the status of the items for the "incomplete application" such as the survey?
- What is the status of approval for our construction proposal? SECOND REQUEST IS ATTACHED
- What is the EXACT cost total for our variance requests?
- Where do I mail the check to for the variance requests and whom is it payable to?

#1 Regarding 2nd email about proposal that was sent 9/02

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 8:23 AM
To: Shana Gieseke
Cc: Pete Otterness
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

[EXTERNAL EMAIL]

Hi Shana,

I was out of the office yesterday. I have a response drafted. I'm waiting for review and approval to send it out. My apologies for the delay. Regarding the site visit, when works for you? Also, my understanding is that Pete is waiting to hear from Lafayette Excavating on a day and time for their visit.

Sincerely,
Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Monday, September 14, 2020 1:40 PM
To: Jon Hammel
Cc: Mandy Landkamer; Megan Coryell
Subject: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020
Importance: High

Per your incomplete application notice we are to have the site visit scheduled by 9/15; which is tomorrow. Why is this continuing to be held up?

It is our understanding that your office is also holding up the onsite visit for the identification of a secondary/alternative septic system location to take place with Lafayette Excavating.

Additionally, I am attaching the existing house floor plans and a photo with location of relocated earthen material on our property circled in blue. The remainder of the relocated earthen material is anyones guess, as two brothers stopped over a year ago and asked if they could have some of the earthen material, they loaded and hauled off of our property to a location unknown to us.

Your request for revisions to the survey conducted by Bolton and Menk were provided to you via email 9/04/2020.

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Thursday, September 10, 2020 2:24 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: SECOND EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

[EXTERNAL EMAIL]

Hi Shana,

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Tuesday, September 15, 2020 10:23 AM
To: Nancy Reinhart
Cc: pat-shana@comcast.net
Subject: GIESEKE

Importance: High

Nancy,

Please see below, can you have JR. contact Pete Otterness and Pat to get this scheduled ASAP?

Thanks,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 8:23 AM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Pete Otterness <Pete.Otterness@co.nicollet.mn.us>
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

[EXTERNAL EMAIL]

Hi Shana,

I was out of the office yesterday. I have a response drafted. I'm waiting for review and approval to send it out. My apologies for the delay. Regarding the site visit, when works for you? Also, my understanding is that Pete is waiting to hear from Lafayette Excavating on a day and time for their visit.

Sincerely,
Jon

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 12:15 PM
To: Shana Gieseke
Cc: Megan Coryell; Pete Otterness
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020
Attachments: 0335400003_Gieseke_2020-09-15_Reponse_to_Proposal.pdf

[EXTERNAL EMAIL]

Hi Shana,

Please see the attached response letter. Give me a call or shoot me an email and we can set up the site visit to view the earth placement / washout.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment.

Sincerely,

NICOLLET COUNTY EST. 1853

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Monday, September 14, 2020 1:40 PM
To: Jon Hammel
Cc: Mandy Landkamer; Megan Coryell
Subject: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020
Importance: High

Per your incomplete application notice we are to have the site visit scheduled by 9/15; which is tomorrow. Why is this continuing to be held up?

It is our understanding that your office is also holding up the onsite visit for the identification of a secondary/alternative septic system location to take place with Lafayette Excavating.

Additionally, I am attaching the existing house floor plans and a photo with location of relocated earthen material on our property circled in blue. The remainder of the relocated earthen material is anyones guess, as two brothers stopped over a year ago and asked if they could have some of the earthen material, they loaded and hauled off of our property to a location unknown to us.

Your request for revisions to the survey conducted by Bolton and Menk were provided to you via email 9/04/2020.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Date Unknown

Mr. Hammel called me at the office and told me "we have a problem". He stated that one of his coworkers was on our property and took pictures – proving that we had proceeded with construction despite the cease and desist order.

Between July 13, 2020 and August 21, 2020

The only "construction" that continued was to protect our home and our investment from the elements.

We sheeted the addition and added Tyvek to the front of the addition. We sheeted and shingled the addition – which is a good thing for one day during this time frame we received a record 5+ inches of rain. Had this not been done, our addition would be rotting and our existing kitchen, laundry and bathroom would have been a complete loss and inhabitable as the entire roof was open to the addition. Five inches of rain would have caused the entire ceiling to cave in, damaging electrical to all of the existing structure.

Our home would have been condemned and our investment into our addition, a complete loss.

Records prove that we had attempted to get approval from Nicollet County to protect our investment and our home that was completely open, aside from the ceiling sheetrock from the elements. They dragged their feet and denied our requests.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

September 15, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Construction Proposal / Inquiry

Dear Mr. and Mrs. Gieseke,

This letter is in response to your construction proposal submitted on September 2, 2020, and an email inquiry submitted September 10, 2020. The proposal and inquiry were sent via email from you to our office. They both involved an unpermitted addition to your existing dwelling located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township.

Construction Proposal

A July 13, 2020 cease and desist order required you to cease construction on the unpermitted addition. Construction then continued in violation of the order until August 21, 2020, when you confirmed all construction had ceased. The document submitted on September 2, 2020 included your proposal to protect your investment from the elements of weather, wildlife, and unauthorized trespassers. You proposed to continue a limited amount of construction, including the installation of:

- Ty-Vek
- Windows
- Doors
- Soffit

Please know, your proposal has been administratively denied by our office. Moving forward, you may submit a revised proposal for consideration.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Email Inquiry

The September 10, 2020, email included several questions. Each will be addressed below.

1. *What is the status of the site visit for the septic?*

   The site visit is up to the scheduling of your septic contractor. As of today, County Sanitarian Sr. Pete Otterness confirmed that your contractor has not yet scheduled a visit.

2. *What is the status of the site visit for the second viewing of the washout?*

   Per the September 9, 2020 incomplete application letter, you have until September 15, 2020 to schedule a site visit to view the earthen material placed to address the washout.

3. *What is the status of the items for the "incomplete application" such as the survey?*

   A revised survey was submitted to our office via email by Jesse Zeig of Bolton and Menk on September 4, 2020. The survey included the setback lines as identified in the September 9, 2020 incomplete application letter. Our office has yet to receive:

   - A secondary/alternative septic system location.
   - The precise location of the relocated earthen material, including the material moved offsite.

4. *What is the status of approval for our construction proposal? SECOND REQUEST IS ATTACHED*

   This question was addressed in this letter, above, under "Construction Proposal".

5. *What is the EXACT cost total for our variance requests?*

   The total cost for an after-the-fact variance is $1,046. This includes a $1,000 after-the-fact hearing fee, and a $46 recording fee.

6. *Where do I mail the check to for the variance requests and whom is it payable to?*

   The check can be made out to Nicollet County Property Services, and can be mailed to:

   Property Services
   Attn: Jon Hammel
   501 S. Minnesota Ave.
   St. Peter MN 56082

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

If you have any questions concerning this letter please do not hesitate to contact our office.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney
Pete Otterness, County Sanitarian, Sr.

Parcel No: 13.035.1000
Map No: 0335400003

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 12:15 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Pete Otterness <Pete.Otterness@co.nicollet.mn.us>
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

[EXTERNAL EMAIL]

Hi Shana,

Please see the attached response letter. Give me a call or shoot me an email and we can set up the site visit to view the earth placement / washout.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Monday, September 14, 2020 1:40 PM
To: Jon Hammel
Cc: Mandy Landkamer; Megan Coryell
Subject: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020
Importance: High

Per your incomplete application notice we are to have the site visit scheduled by 9/15; which is tomorrow. Why is this continuing to be held up?

It is our understanding that your office is also holding up the onsite visit for the identification of a secondary/alternative septic system location to take place with Lafayette Excavating.

Additionally, I am attaching the existing house floor plans and a photo with location of relocated earthen material on our property circled in blue. The remainder of the relocated earthen material is anyones guess, as two brothers stopped over a year ago and asked if they could have some of the earthen material, they loaded and hauled off of our property to a location unknown to us.

Your request for revisions to the survey conducted by Bolton and Menk were provided to you via email 9/04/2020.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 2:21 PM
To: Shana Gieseke
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

#5

[EXTERNAL EMAIL]

Ok. I'll get you on our schedule. Thanks Shana.

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Tuesday, September 15, 2020 2:20 PM
To: Jon Hammel
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

#4

9:30 on Thursday 9/17/2020 will work.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 2:13 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020
Importance: High

#3

[EXTERNAL EMAIL]

Would 9:30 or 10 AM on Thursday the 17th or Friday the 18th work?

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Tuesday, September 15, 2020 12:24 PM
To: Jon Hammel
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

#2

Pat said he can make first thing in the morning work this week; tomorrow, Wednesday, Thursday or Friday.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 3:24 PM
To: Shana Gieseke
Subject: RE: GIESEKE CONSTRUCTION PROPOSAL QUESTION 9-15-2020

[EXTERNAL EMAIL]

#3

Hi Shana. I did see your email. I've forwarded it on to Mandy to get her opinion. - Jon.

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Tuesday, September 15, 2020 2:23 PM
To: Jon Hammel
Subject: GIESEKE CONSTRUCTION PROPOSAL QUESTION 9-15-2020

With all the emails, I just want to make sure you saw this one so I can get a reply from you. If I have another fee to pay I'd like to know so I can include it in one check/envelope.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

#2

"Real People, Real Results"

From: Shana Gieseke
Sent: Tuesday, September 15, 2020 12:20 PM
To: 'Jon Hammel' <Jon.Hammel@co.nicollet.mn.us>
Cc: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Pete Otterness <Pete.Otterness@co.nicollet.mn.us>
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

So what exactly do you want in a revised proposal to approve this? Permitted?

#1

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 12:15 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Pete Otterness <Pete.Otterness@co.nicollet.mn.us>
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

[EXTERNAL EMAIL]

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Tuesday, September 15, 2020 4:33 PM
To: Jon Hammel
Subject: RE: GIESEKE CONSTRUCTION PROPOSAL QUESTION 9-15-2020

I don't know what more you want...I feel as though we are being sent chasing our tails and that the county is not "working" with us as you told me that you would.

Revised proposal 9/15/2020:

- Ty-Vek the addition
- Install Windows in the addition
- Install Doors in the addition
- Install Soffit on the addition

There, not exactly the same as previously submitted.

#5
No response from Mr. Hammel after this email

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 4:27 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: GIESEKE CONSTRUCTION PROPOSAL QUESTION 9-15-2020

#4

[EXTERNAL EMAIL]

The fees to worry about are the $1,046 for the hearing ($1,000) and recording ($46). That is for the variance.

If your variance is approved, you'd have a fee associated with the addition. That will depend on the total size of the addition. That would be 25 cents per square foot for the footprint of the addition.

Regarding a revised proposal, it's up to you to tell us what you propose to do. It just can't be the same exact proposal you've already submitted.

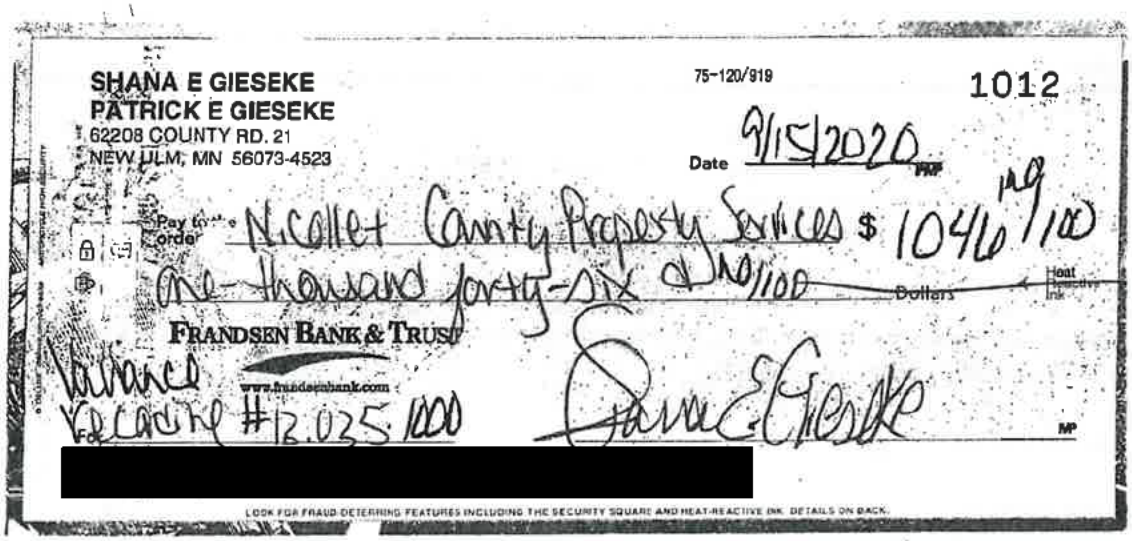
- Jon

From: Shana Gieseke [mailto:SGieseke@frandsenbank.com]
Sent: Tuesday, September 15, 2020 2:23 PM
To: Jon Hammel
Subject: GIESEKE CONSTRUCTION PROPOSAL QUESTION 9-15-2020

With all the emails, I just want to make sure you saw this one so I can get a reply from you. If I have another fee to pay I'd like to know so I can include it in one check/envelope.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM



SHANA E GIESEKE
PATRICK E GIESEKE
62208 COUNTY RD. 21
NEW ULM, MN 56073-4523

75-120/919

1012

Date 9/15/2020

Pay to the Order of N. Collet County Property Services $ 1046.49/100

One-thousand forty-six and 49/100 Dollars

FRANDSEN BANK & TRUST

www.frandsenbank.com

Insurance

For Escrow #12.035.1000

[redacted]

Shana E Gieseke

LOOK FOR FRAUD DETERRING FEATURES INCLUDING THE SECURITY SQUARE AND HEAT-REACTIVE INK. DETAILS ON BACK.

PAY TO THE ORDER OF
NICOLLET COUNTY FINANCE
NICOLLET COUNTY PROPERTY SERVICES

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Tuesday, September 15, 2020 10:23 AM
To: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Cc: pat-shana@comcast.net <pat-shana@comcast.net>
Subject: GIESEKE

#1

Nancy,

Please see below, can you have JR. contact Pete Otterness and Pat to get this scheduled ASAP?

Thanks,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Tuesday, September 15, 2020 8:23 AM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Pete Otterness <Pete.Otterness@co.nicollet.mn.us>
Subject: RE: THIRD EMAIL - GIESEKE CONSTRUCTION PROPOSAL 9-2-2020

[EXTERNAL EMAIL]

Hi Shana,

I was out of the office yesterday. I have a response drafted. I'm waiting for review and approval to send it out. My apologies for the delay. Regarding the site visit, when works for you? Also, my understanding is that Pete is waiting to hear from Lafayette Excavating on a day and time for their visit.

Sincerely,
Jon

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State of Minnesota
12/17/2020 4:59 PM

we will try to make it work on Friday. So far I have 2 that it works for so Pat makes 3 if it works for him. then we just need the answer from one more!! Then pray it's sunny and not raining!! Nancy

---

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Tuesday, September 15, 2020 3:48 PM
To: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Subject: RE: GIESEKE

#4

Nancy,

I am working from home but seen that you called my office phone.

What did you need?

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Shana Gieseke
Sent: Tuesday, September 15, 2020 1:21 PM
To: 'Nancy Reinhart' <lafayetteexcavating@hotmail.com>
Subject: RE: GIESEKE

#3

I completely understand but something needs to be scheduled by today. Today is the deadline to schedule it.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Sent: Tuesday, September 15, 2020 1:20 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: Re: GIESEKE

#2

[EXTERNAL EMAIL]

Shana, I know Kevin talked about this last night and Pete wants Dan to be there too since he did the original design. I will let you know when they can figure out a day that it works. They are trying to get some septics installed this week and have several to go out with Pete to design. We haven't had many sunny days, and for soils it can't be overcast to do the true soil colors. doesn't help with the haze from fires out west. Nancy

---

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Ok, can I ask how much this is all going to cost?

#8

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Sent: Tuesday, September 15, 2020 4:09 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: Re: GIESEKE

#7

[EXTERNAL EMAIL]

Pete said if they need to probe soils at several spots, they need to dig it. Too hard to probe multiple spots if soils aren't right. You don't have a lot of choices for a spot. I will let them know it works for Pat and get back to you with a time as soon as I know. Nancy

---

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Tuesday, September 15, 2020 4:04 PM
To: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Subject: RE: GIESEKE

#6

Friday morning works for Pat! Just let us know a time.

Why an excavator? Ugh.....

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Sent: Tuesday, September 15, 2020 4:03 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: Re: GIESEKE

#5

[EXTERNAL EMAIL]

I was working on a Gopher One Call so we can schedule the soils/design. I have been in contact with Pete. We are looking at Friday morning, but need to coordinate 4 people and a mini excavator, so it is taking awhile. Especially that they have to repand to messages! Can you check with Pat to see if he can make it work for him Friday morning and get back to me. Pete is in contact with Jon from the county on this so he can let him know

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Sent: Tuesday, September 15, 2020 4:40 PM
To: Shana Gieseke
Subject: Re: GIESEKE

#11

[EXTERNAL EMAIL]

He should call Kevin about that. I know Kevin said he would be talking to Pat, so I will stay out of the middle on that part and they can discuss who will get the mini. Nancy

---

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Tuesday, September 15, 2020 4:37 PM
To: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Subject: RE: GIESEKE

#10

No, I am basically asking what this site visit is going to cost us.

Pat can get a mini excavator too so if cheaper for him to get it and have it here, can we do that?

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Sent: Tuesday, September 15, 2020 4:34 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: Re: GIESEKE

#9

[EXTERNAL EMAIL]

The design for a new system is $400. Don't know where Kevin is getting the Mini excavator from so don't know price for that. If you are talking price for a new system, I can't give you a definite amount until they have a Design and price it out. the range is anywhere from $12000 to $19000 depending on # of bedrooms and soils, so that determines the type of system that needs to be installed. If you have any more questions just ask. Nancy

---

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Tuesday, September 15, 2020 4:13 PM
To: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Subject: RE: GIESEKE

#8

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Tuesday, September 15, 2020

Per email from Lafayette Excavating (Nancy) we were informed that now, not only is Nicollet County requiring us to provide them with an alternative septic site location, they are requiring an excavator to be onsite (at our cost) to simply probe samples. It is a well-known fact that soil samples can be probed using a hand-held piece of equipment.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Thursday September 17, 2020

Site visit – Mr. Hammel did not attend.

Pete Otterness, Mandy LandKamer, Pat Gieseke and Lafayette Excavating were in attendance.

According to the incomplete application notice we were supposed to submit an alternative secondary septic location. Before the deadline Lafayette Excavating was in touch with Pete Otterness at Nicollet County and told him that an alternative location wasn't available and complicated – Pete knew that, Jon and Mandy knew that, yet they insisted. So we complied, Peter Otterness and Lafayette Excavating came out 9/17/2020 and located an alternative location. At this visit Pete starts telling Pat that the county will require we put in a brand new septic now. But why? Our septic is compliant and was compliant when we purchased it as a 4 bedroom home in 2017 – with our addition/remodel and some remodeling we have already done – when completed our home will only be a 3 bedroom home.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: LeAnn Sexe <LeAnn.Sexe@co.nicollet.mn.us>
Sent: Monday, September 21, 2020 4:15 PM
To: Shana Gieseke
Subject: Letter regarding Cease and Desist Order
Attachments: Letter to Giesekes.pdf

[EXTERNAL EMAIL]

Please see the attached letter on behalf of Megan E. Gaudette Coryell, Asst. Nicollet County Attorney. Please contract Ms. Gaudette Coryell directly with any questions.

LeAnn Sexe
Office Manager/Paralegal
Nicollet County Attorney's Office
501 S. Minnesota Avenue
St. Peter, MN 56082
Phone: 507-934-7890
Fax: 507-934-1216

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

OFFICE OF THE NICOLLET COUNTY ATTORNEY

Michelle M. Zehnder Fischer
County Attorney

James P. Dunn, Chief Deputy County Attorney
Megan E. Gaudette Coryell, Assistant County Attorney
Shannon Ness, Assistant County Attorney
Daniel R. Green, Assistant County Attorney
Bonnie Petersen, Victim/Witness Coordinator

September 21, 2020

Sent via email to sgieseke@frandsenbank.com
and via Certified Mail

Patrick E. and Shana E. Gieseke
62208 County Road 21
New Ulm, MN 56073

Re: Cease and Desist Order

Dear Mr. and Ms. Gieseke:

This letter concerns the Cease and Desist Order issued to you by Nicollet County Property and Public Services ("NCPPS") on July 13, 2020, that requires you to cease construction on the unpermitted addition.

Based upon information received since that time, as well as observations of NCPPS while on site, you have failed to comply with the Order, and construction has continued. In addition, on September 18, 2020, you indicated to Mandy Landkamer, NCPPS Director, that you would continue construction on the property, despite the Cease and Desist Order.

Please be advised that if you do not **immediately cease** any and all work on the property, NCPPS will seek immediate injunctive relief and/or a temporary restraining order from the Court. Section 806 of the Nicollet County Zoning Ordinance provides that "[a]ny costs incurred by the County in the enforcement of the cease and desist order or the remedies therein shall be assessed to the landowner."

Sincerely,

Megan E. Gaudette Coryell

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney

MEGC/lms
cc: Mandy Landkamer, Nicollet County Property and Public Services

Nicollet County Government Center
501 South Minnesota Avenue, St. Peter, MN 56082
Telephone: 507-934-7890 Fax: 507-934-1216

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

According to the letter from the County Attorney dated Monday, September 21, 2020 my husband told the director that he "would continue construction on the property, despite the sense and desist order" – this is completely false. My husband said to her, **"I am going to finish tyveking my addition"** to which she replied, "you can" then mumbled something as she rudely walked away from him and went inside her vehicle.

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State of Minnesota
12/17/2020 4:59 PM

Tuesday, September 22, 2020

Steven Franta, The Legal Professionals was obtained.

The purpose was to end the bullying from Nicollet County by having an attorney presence in addition to assisting us through this process as every time we provided them what they asked for another letter was received asking for more items. It was a never ending, frustrating circle.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Thursday, September 24, 2020 3:10 PM
To: Shana Gieseke
Subject: RE: Gieseke Survey

[EXTERNAL EMAIL]

I have not heard or done anything on this project since then.

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753
Bolton-Menk.com

20 days
No response

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Thursday, September 24, 2020 3:08 PM
To: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Subject: RE: Gieseke Survey
Importance: High

Jesse,

Have you received any response from him with questions or requesting more revisions since you submitted this 9/04?

Thanks,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Jesse Zeig <Jesse.Zeig@bolton-menk.com>
Sent: Friday, September 4, 2020 9:15 AM
To: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Cc: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Gieseke Survey

[EXTERNAL EMAIL]

Jon, attached is a revised survey with the setbacks added.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Debra Strandlie
Sent: Wednesday, September 23, 2020 11:57 AM
To: megan.coryell@co.nicollet.mn.us
Cc: Steven J. Franta <steve@thelegalprofessionals.com>
Subject: Certificate of Representation

Good Morning Megan,

Attached is a Certificate of Representation indicating our firm represents Patrick and Shana Gieseke regarding the Cease and Desist Order issued by Nicollet County Property and Public Services. Please send those emails (reply-all) with application requirements as indicated in your telephone conference this morning with Steve Franta.

Please let me know if you have any questions or concerns.

Warm regards,

#1

Debra Strandlie
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debras@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Wednesday, September 23, 2020 3:24 PM
To: Shana Gieseke
Subject: FW: Certificate of Representation

[EXTERNAL EMAIL]

fyi

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Wednesday, September 23, 2020 2:11 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Certificate of Representation

#3

Good afternoon,

If you still want to speak with Ms. Landkamer and/or Mr. Hammel after reviewing the correspondence from Mr. Hammel, we can coordinate a time. I would be on that call as well.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Wednesday, September 23, 2020 12:32 PM
To: Debra Strandlie <debras@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Subject: RE: Certificate of Representation

#2

Megan

Lafayette excavating is completing the alternative septic system site location paperwork now and will submit to the County as soon as it is completed. We understand that is the last item needed to complete the application. Are you or Mandy or Jon able to confirm that today for us?

Also, may I be authorized to speak directly with Mandy or Jon today or tomorrow to determine whether we are able to complete the application before Friday to get on the meeting/hearing schedule yet in October?

Sincere regards,

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 2:38 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Debra Strandlie <debras@thelegalprofessionals.com>
Subject: FW: Pat & Shana Gieseke Application Requirements

[EXTERNAL EMAIL]

Shana . . . pleased review below email. I have not yet done so my self except I expect we best confirm with them today . . . I will check back with you in shortly

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 1:45 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

#7

Mr. Franta,

Please confirm by 4:30 p.m. today whether any and all construction activity on the property, including inside the structure, has ceased. Should unauthorized construction activities continue and/or resume, NCPPS will seek immediate injunctive relief and/or a temporary restraining order from the Court.

In regards to numbers 1-6:

1. There are remaining question on the survey. A follow up letter on this should be going out early to mid-next week.
2. There are remaining issues with the floor plans. This will be included in the follow up letter referenced in #1.
3. NCPPS has not received the septic paperwork. It is still with Lafayette Excavating.
4. Based upon the amount of earthen material moved, Mr. Gieseke and Ms. Gieseke will need an After-The-Fact Conditional Use Permit. In addition, Mr. Gieseke and Ms. Gieseke have not identified specifically where the earthen material was moved to. The survey identified +/- 425 cubic yards of earthen material left onsite. The site of the remaining +/- 825 cubic yards hauled offsite has not been identified. This will also be addressed in the follow up letter referenced in #1.
5. Please see #4.
6. Correct, payment of the variance and recording fees have been received. However, as referenced in #3 and #4, an After-The-Fact Conditional Use Permit will need to be applied for regarding the movement of the earthen material.

Regarding your other questions, Nicollet County's responses are in RED.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

No. No application has been submitted. Further, additional requirements have been identified in these responses, and further information will be provided in the follow up letter referenced in #1. Further information on the application process will also be included in the follow up letter.

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

Can you please clarify your question?

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by county workers without Pat or Shana's knowledge or presences?

NCPPS is not aware of any visits by NCPPS staff without Mr. Gieseke and/or Ms. Gieseke's presence. NCPPS does not go on property without the prior consent of the landowner.

I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

This should be answered by the responses above.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:55 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

#6

Megan

Thank you for your follow up. If a call is not possible this morning could we possibly expect an email reply this morning to my questions (highlighted in yellow) in my email of earlier this morning in the string below?

Sincere regards,

Steven J. Franta
Attorney

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 7:43 AM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

#5

Good morning,

I will follow up with PPS and get back to you. The soonest a call could be scheduled with Mandy, Jon, and myself is Tuesday. It appears that there would be time available at 11am.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:21 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

#4

Megan

Thought I should follow up on my earlier email this morning to clarify/specify.

I am available for a call this morning. Can we set it up for either 9 or 10 to work for you and Jon (or Mandy)?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Steven J. Franta
Sent: Thursday, September 24, 2020 6:05 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Thank you for your responses to our inquiry.

I understand that the letters dated September 2 and 15 from Jon Hammel are the latest communication addressing the outstanding requirements to complete the application for a after the fact variance and that Pat and Shana have since provided

1. Survey via 9/4 email (also previous sent by 8/28 email
2. Floor plans via 9/14 email
3. On site visit on9/18 with Pete Otterness and Lafayette Excavating who are now compiling the secondary/alternative septic system location paperwork required.
4. Location of relocated earthen material via 9/14 email
5. Cubic yards of material moved disclosed in survey via 9/4 email (also previous sent by 8/28 email)
6. Payment of the variance and recording fees

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by county workers without Pat or Shana's knowledge or presences?

I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:21 AM
To: Megan Coryell
Cc: Mandy Landkamer; Debra Strandlie; Jon Hammel
Subject: RE: Pat & Shana Gieseke Application Requirements

[EXTERNAL EMAIL]

#4

Megan

Thought I should follow up on my earlier email this morning to clarify/specify.

I am available for a call this morning. Can we set it up for either 9 or 10 to work for you and Jon (or Mandy)?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Steven J. Franta
Sent: Thursday, September 24, 2020 6:05 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

#3

Megan

Thank you for your responses to our inquiry.

I understand that the letters dated September 2 and 15 from Jon Hammel are the latest communication addressing the outstanding requirements to complete the application for a after the fact variance and that Pat and Shana have since provided

1. Survey via 9/4 email (also previous sent by 8/28 email
2. Floor plans via 9/14 email
3. On site visit on9/18 with Pete Otterness and Lafayette Excavating who are now compiling the secondary/alternative septic system location paperwork required.
4. Location of relocated earthen material via 9/14 email
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6. Payment of the variance and recording fees

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Are we correct to understand that once the secondary/alternate septic system location paperwork is complete and submitted the application will be complete and ready to sign and scvhedule

The administrative denial of Pat and Shana's September 2 Construction Proposal does not require any further action unless they wish to secure their property which will require a revised construction proposal. Is that correct?

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I would appreciate if we would be able to schedule a telephone conference call this morning to review and discuss the above issues and what will be needed to progress toward a reasonable and practical resolution.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Debra Strandlie
Sent: Wednesday, September 23, 2020 1:47 PM
To: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Good Afternoon Jon,

Thank you for sending the documents.

I will be in touch if we need additional information.

#2

Warm regards,

Debra Strandlie
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debras@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

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From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Wednesday, September 23, 2020 1:38 PM
To: Debra Strandlie <debras@thelegalprofessionals.com>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Megan Coryell <Megan.Coryell@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: Pat & Shana Gieseke Application Requirements

Hi Debra,

Megan asked I send you the attached letters and emails concerning the application requirements for Mr. and Mrs. Gieseke. The first letter, dated August 13th was sent by mail, so that is why there is no attached email for it. Please let me know if you have any questions, or if I may be of any other service. Have a pleasant day.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office Visits and Site Visits will be limited to those absolutely necessary by appointment.

Sincerely,

https://mn-nicolletcounty.civicplus.com/" style='position:absolute;margin-left:-1.9pt;margin-top:0;width:85.1pt;height:78.75pt;z-index:-251657216;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:text;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:button="t">

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Wednesday, September 23, 2020 4:57 PM
To: Steven J. Franta
Subject: RE: Certificate of Representation

#1

Mr. Franta,

I just came home to a distraught [redacted] [redacted] came home from school around 12p this afternoon on [redacted] open lunch. Upon arriving home there were two Nicollet County trucks parked in the middle of our driveway preventing [redacted] from entering.

When [redacted] got out of [redacted] vehicle, one of the men "yelled at [redacted]" and then laughed at [redacted]

These men were on our private property, in our horse yard, front yard and who knows where else. Our [redacted] said they appeared to be "measuring, and placing stakes on our property". This was done without any notice to us and without our permission. This is trespassing, plain and simple.

There is absolutely no reason for them to be on our property, no need to "measure" anything. They are asking us to present an alternative septic location which is being done by Lafayette Excavating, period.

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Wednesday, September 23, 2020 3:24 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: FW: Certificate of Representation

[EXTERNAL EMAIL]

fyi

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Wednesday, September 23, 2020 2:11 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Certificate of Representation

Good afternoon,

If you still want to speak with Ms. Landkamer and/or Mr. Hammel after reviewing the correspondence from Mr. Hammel, we can coordinate a time. I would be on that call as well.

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Thursday, September 24, 2020 7:48 AM
To: Steven J. Franta
Subject: RE: Certificate of Representation

#3

Good morning.

There were two trucks at the beginning.

When [redacted] got home [redacted] stopped because [redacted] couldn't get through. One of the workers got in one of the trucks and slightly moved forward. [redacted] said [redacted] could get in but barely ([redacted] is a [redacted] that drives a chevy truck so not like it's a compact car). [redacted] got out of [redacted] truck, and he was still in his. He then yelled something to her about a "side pass lane", laughed at [redacted] and left shortly after that, never getting out of his truck again.

Yes, we can do a conference call mid to late this morning. I would like Pat to be in on the call so if you could let me know what time works and which number to call I will make sure that we are together to call.

Thank you,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 7:10 AM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: RE: Certificate of Representation

#2

[EXTERNAL EMAIL]

Shana

Anything additional you can tell me about the County Workers? What did they yell and/or laugh about? ? How long did they continue to block the driveway and prevent [redacted] from getting through? Wasn't Pete just out their on Friday with you and Lafayette Excavating?

Steve

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Wednesday, September 23, 2020 4:57 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Subject: RE: Certificate of Representation

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 3:39 PM
To: Megan Coryell
Cc: Mandy Landkamer; Debra Strandlie; Jon Hammel
Subject: RE: Pat & Shana Gieseke Application Requirements

[EXTERNAL EMAIL]

Megan

I can confirm that Pat and Shana have assured me that all construction work has ceased.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 1:45 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Mr. Franta,

Please confirm by 4:30 p.m. today whether any and all construction activity on the property, including inside the structure, has ceased. Should unauthorized construction activities continue and/or resume, NCPPS will seek immediate injunctive relief and/or a temporary restraining order from the Court.

In regards to numbers 1-6:

1. There are remaining question on the survey. A follow up letter on this should be going out early to mid-next week.
2. There are remaining issues with the floor plans. This will be included in the follow up letter referenced in #1.
3. NCPPS has not received the septic paperwork. It is still with Lafayette Excavating.
4. Based upon the amount of earthen material moved, Mr. Gieseke and Ms. Gieseke will need an After-The-Fact Conditional Use Permit. In addition, Mr. Gieseke and Ms. Gieseke have not identified specifically where the earthen material was moved to. The survey identified +/- 425 cubic yards of earthen material left onsite. The

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Shana Gieseke
Sent: Thursday, September 24, 2020 3:31 PM
To: Steven J. Franta
Cc: Debra Strandlie; ghomes@comcast.net; pat-shana@comcast.net
Subject: RE: Pat & Shana Gieseke Application Requirements

Also, this is a lie:

Finally may we be advised of the purpose and actions taken at the recent unannounced and unscheduled site visits by c

NCPPS is not aware of any visits by NCPPS staff without Mr. Gieseke and/or Ms. Gieseke's presence. NCPPS does not g

Mr. Hammel verbally told me that his "co-worker" was on our property after the first site visit and took pictures that construction had not ceased (shingling to enclose the roof).

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Thursday, September 24, 2020 2:38 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Cc: Debra Strandlie <debras@thelegalprofessionals.com>
Subject: FW: Pat & Shana Gieseke Application Requirements

[EXTERNAL EMAIL]

Shana . . . pleased review below email. I have not yet done so my self except I expect we best confirm with them today . . . I will check back with you in shortly

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, September 24, 2020 1:45 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

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Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Friday, October 2, 2020 9:15 AM
To: Megan Coryell
Cc: Mandy Landkamer; Debra Strandlie; Jon Hammel
Subject: RE: Pat & Shana Gieseke Application Requirements

no reply

[EXTERNAL EMAIL]

Megan

Are you able to advise me of when the letter (referenced in your email of last week Thursday below) was or will be sent?

Thank you for your consideration in this matter.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

no reply

From: Steven J. Franta
Sent: Wednesday, September 30, 2020 8:35 AM
To: 'Megan Coryell' <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Pat & Shana Gieseke Application Requirements

Megan

Good Morning. When the letter reference in your reply email below goes out may I please be copied on it and would it be possible to send it to me by email also?

Thank you for your consideration in this matter.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St

9/24 email started follow up. letter was coming

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

October 2, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is fourfold:

1. To respond to the most recent documents you submitted concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property;

2. To address the cutting/filling of over 50 cubic yards of material on your property;

3. To respond to a series of emails between your lawyer, Steven Franta, and Nicollet County on September 24, 2020. The emails concerned violations of the Nicollet County Zoning Ordinance on your property. These violations have been the subject of a July 13, 2020 Cease and Desist Order and three previous letters to you from our office, dated August 13, 2020; September 2, 2020; and September 15, 2020; and

4. To follow up on the September 18, 2020 site visit by staff to your property. The purpose of the site visit was to view the fill placed in the washout, and to determine a secondary/alternative septic system location on your property. Present at the site visit were Patrick Gieseke, Kevin and Dan Reinhart from Lafayette Excavating, Nicollet County Sr. Sanitarian Pete Otterness, and Nicollet County Property and Public Services Director Mandy Landkamer.

September 14, 2020 Documents

The documents you submitted to Nicollet County Property and Public Services ("NCPPS") on September 14, 2020 were received via email. These documents included:

- Existing House Floor Plans
- Relocated Earthen Material (Map)

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The documents relate to your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request has four components:

1. Expanding a nonconforming structure;
2. Reducing the front yard setback;
3. Reducing the bluff setback; and
4. The alteration of protected bluff areas.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Information/Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to NCPPS:

✓ A survey prepared by a licensed surveyor. The survey must contain:

surveyor emailed to Jon Hammel 10/06/2020

- The precise placement of the 425 cubic yards of the relocated earthen material onsite (amount noted on existing survey). The survey must depict each location where fill was placed on your property. The map you emailed to NCPPS on September 14, 2014 depicts five locations that received fill material.
- The location of the proposed alternative/secondary septic system location;
- The location of the right of way; and
- The distance between the proposed alternative/secondary septic system location and the right of way.

✓ An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.

- **NOTE:** As you are aware, the soil type on your property (960F, Storden-Clarion) is considered highly erosive and is severely limited as it relates to development. You may wish to contact the Nicollet County Soil and Water Conservation District concerning methods to properly address erosion from runoff. They may be contacted at 507-232-2550.

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- A complete set of floor plans for the house and addition on your property. The floor plans submitted are considered incomplete for the following reasons:
  - The plans did not include the basement.
  - The plans did not contain dimensions.
  - The plans did not identify the main floor vs. the upstairs floor.
  - The plans did not indicate whether they were for the existing dwelling (pre-remodel) or for the proposed dwelling (post-remodel).
  - The plans did not indicate how the addition will connect to the existing dwelling.
- The identification of a secondary/alternative septic system location on your property.
  - The September 18, 2020 site visit with Lafayette Excavating identified an area for a secondary/alternative, and possibly a tertiary, location for the septic system on your property. The septic designer must identify what type (trench, bed, at-grade, or mound) of soil treatment area(s) will be installed in this area. The dimensions of the soil treatment area(s) need to be identified on a site plan. Additionally, the location of the proposed tank(s) to serve this secondary/alternative system must be included on the site plan. As the location is closer than the required 50 feet to the right of way, the site plan needs to show the distance between of all components planned and the road right of way, as marked by the Nicollet County Highway Department. Based upon current information, it appears the location does not meet the 50-foot setback distance requiring by the Zoning Ordinance. If this distance is not met, you will need to make application for a second variance to reduce this setback.

Official After the Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Your check (#1012, in the amount of $1,046.00) is being ***returned*** with this letter. Payment is due when the official application is signed.
- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, your request will be added to the next available hearing date. This process was outlined in a previous letter to you dated August 13, 2020.

Onsite Earth Movement

According to your discussions with NCPPS staff, the site visit with NCPPS staff, and your survey (i.e. "gully fill area"), it appears that at least one of the five fill locations is within a protected bluff area on your property. In your August 21, 2020 letter to NCPPS, you note the fill was placed to fill in a

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washout that was forming on your property. It appears this material is now eroding downslope, along with the natural erosion from the washout, into the ditch on the northern side of County Road 21.

Please be aware, Section 721.1 of the Zoning Ordinance states that:

- All development must conform to the natural limitations presented by the topography and soil as to create the best potential for preventing soil erosion.
- Slopes over 12% in grade must not be developed.
- Erosion and siltation control measures shall be coordinated with the different stages of development. Appropriate control measures shall be installed prior to development when necessary to control erosion.
- Whenever possible, natural vegetation shall be retained and protected.

The fill placed in the bluff will need to be removed and the bluff restored per the standards of Section 721. The alternative to removing the fill would be to seek an after the fact variance to the applicable standards.

Offsite Earth Movement

The survey you submitted notes that approximately 825 cubic yards of earthen material was moved offsite from your property. Section 6 of the Zoning Ordinance, Zoning Districts and District Provisions, identifies the cutting and filling of 50 cubic yards or more of material as a conditional use, regardless of the zoning district, and an after the fact zoning permit is required. If the earthen material was relocated within Nicollet County, the owners of the land where the fill was placed may be required to apply for an after the fact conditional use permit. This process is summarized below. If the material was moved to a location outside of Nicollet County, you will need to provide verification supporting this.

- <u>After the Fact Conditional Use Permit</u>:
  The first step will be to identify any and all of the offsite fill locations. This will include identifying the property, or properties, and the location of the fill on the site(s). At a minimum, this will require a site plan for each property involved. Confirmation from the owner(s) of the property may be required.

  The next step is to complete an official application and pay the application fee. A legal description for the property where the fill is located is required at the time of application. Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, NCPPS must determine the application to be complete. If the application is determined to be incomplete, NCPPS will issue an incomplete application notice. You must then revise the application and resubmit it. NCPPS has 15 business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines, and applicants are encouraged to factor this into their planning.

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The request would then be added to the agenda for the next available Nicollet County Planning and Zoning Advisory Commission hearing date. The request would be heard during a public hearing. You or your representative must be present at the public hearing to respond to any questions the Commission may have regarding the proposal. The Commission would then make a recommendation to the Nicollet County Board of Commissioners. The County Board then makes the final decision regarding the request.

NOTE: The placement of the fill **must adhere** to standards and requirements of the Zoning Ordinance. If the placement of the fill does not adhere to these standards, then the fill would need to be relocated in a manner which does adhere to the standards. Relocation would require the necessary permitting. The alternative to meeting the standards would be to seek relief through an after the fact variance.

Construction Activity Ceased

Per a September 24, 2020 email from Steven Franta NCPPS understands that any and all construction activity (including both interior and exterior work) on your property has ceased. Construction may only recommence once the Cease and Desist Order has been lifted by Nicollet County.

Conclusion

I have included a list of hearing dates and a fee schedule with this letter. The process takes roughly four to six weeks to complete. No guarantee can be made that staff would recommend approval of the request. Additionally, staff can make no guarantee your request would be approved by the Commission or the County Board. Fees are non-refundable once the legal notice of the public hearing has been submitted for publishing.

The general information provided above is based on present standards and information. If there has been any misunderstanding, if you have any additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Planner/Deputy Zoning Administrator
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: Returned Check #1012 in the amount of $1,046
After-the-Fact Variance Handouts
Conditional Use Permit Criteria
2020 Hearing and Fee Schedules

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000 / Map No: 0335400003

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Shana Gieseke

From: Shana Gieseke
Sent: Tuesday, October 6, 2020 2:03 PM
To: Steven J. Franta
Subject: FW: Gieseke - alternative septic location

Steve,

Please see below from Lafayette Excavating – we have received nothing further from them and don't know how to get them to move on this. It has been nearly 3 weeks.

Thanks

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

From: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Sent: Monday, October 5, 2020 12:12 PM
To: Shana Gieseke <SGieseke@frandsenbank.com>
Subject: Re: Gieseke - alternative septic location

[EXTERNAL EMAIL]

Shana, I do know Kevin has been in contact with Pete. The HWY Dept. has marked the road right of way. The enclosed info in your email states that it is closer that 50 ft. to where they plan to design the systems. So you would need another variance and the site design would need to include a lot more measurements, along with a much more detailed alternative site design also, "with distances to all components" of the systems.
Just reading this I would think Kevin is going to have to come and do more measurements as he does the design. The design isn't just something he can draw up in one night. I don't think you understand how many pages it consists of and then it has to be approved by Pete before it can be accepted, and given to you. The formula pages need to be completed to determine the size of the system, amount of materials, etc.
So, I just talked to Kevin. He said he will try to get out there sometime this afternoon to do a bunch of measurements, but he is at another job site and will see how long that takes. Nancy

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Monday, October 5, 2020 10:08 AM
To: Nancy Reinhart <lafayetteexcavating@hotmail.com>
Subject: Gieseke - alternative septic location

Good morning Nancy.

This is the latest information we received from Nicollet County and shows everything that must be included:

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- The identification of a secondary/alternative septic system location on your property.
    - The September 18, 2020 site visit with Lafayette Excavating identified an area for a secondary/alternative, and possibly a tertiary, location for the septic system on your property. The septic designer must identify what type (trench, bed, at-grade, or mound) of soil treatment area(s) will be installed in this area. The dimensions of the soil treatment area(s) need to be identified on a site plan. Additionally, the location of the proposed tank(s) to serve this secondary/alternative system must be included on the site plan. As the location is closer than the required 50 feet to the right of way, the site plan needs to show the distance between of all components planned and the road right of way, as marked by the Nicollet County Highway Department. Based upon current information, it appears the location does not meet the 50-foot setback distance requiring by the Zoning Ordinance. If this distance is not met, you will need to make application for a second variance to reduce this setback.

Pat and I met with our attorney late Friday evening.

He asked us to reach out to you with the following questions:

- Have you heard back from the highway dept on the easement that would be needed for the alternative septic location?
- Whether or not you have heard back from the highway dept, can we please get the proposed alternative/secondary septic system location by 8a tomorrow morning?

Mr. Franta, our attorney has told us that he needs to submit something to the county by Tuesday afternoon so we have to submit what we have for now and pay to have it all redrafted if the county denies the easement, unfortunately.

Does that make sense?

Pat and I are very sorry that we need to be such a burden to you, Kevin, Jr. etc. ☹

But we need to be able to have the cease and desist order lifted so that we can get our home enclosed before winter and our attorney needs the information from Lafayette Excavating in order to request this.

Thank you for your time and for understanding.

Shana

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"



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Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Thursday, October 8, 2020 1:03 PM
To: 'Jesse Zeig'
Cc: Shana Gieseke; Shana and Pat Gieseke; Mandy Landkamer; Megan Coryell
Subject: RE: Gieseke After the Fact Variance

[EXTERNAL EMAIL]

Hi Jesse,

I wanted to just quickly acknowledge receipt of your email and survey on behalf of Mr. and Mrs. Gieseke. I have it on the list for staff review. Thank you sir.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office visits and site visits will be limited to those absolutely necessary by appointment.

Sincerely,

NICOLLET COUNTY

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

From: Jesse Zeig [mailto:Jesse.Zeig@bolton-menk.com]
Sent: Tuesday, October 06, 2020 11:30 AM
To: Jon Hammel
Cc: Shana Gieseke; Shana and Pat Gieseke
Subject: Gieseke After the Fact Variance

Jon, attached is the updated survey for the Pat and Shana Gieseke after the fact variance request. Please let me know if you have any questions or need any other information.

Thanks,

Jesse D Zeig L.S.
Land Surveyor
Bolton & Menk, Inc.
1243 Cedar Street NE
Sleepy Eye, MN 56085
Phone: 507-794-5541 ext. 2314
Mobile: 507-317-0753

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Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

October 9, 2020

COPY

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated October 2, 2020, enclosed (and attached) are:

1. **Survey:** After-the-fact Variance Sketch signed by Jesse Zeig of Bolton & Menk, Inc. dated October 5, 2020.
2. **Erosion and Sediment Control Plan:** "Erosion and Sediment Control Plan" with highlighted sketch showing placement of the control measures.
3. **Floor Plans:** Basement/Main/2nd Story Floor Plans; Nicollet County Beacon Floor Plan; and Puhlmann Lumber Floor Plan.
4. **Secondary/Alternative Septic System Location:** We are in daily communication with Lafayette Excavating. Hopefully, the septic designer will complete the site plan soon.
5. **Onsite and Offsite Earth Movement:** "Onsite Earth Movement" and "Offsite Earth Movement"

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. Other than the above mentioned #4, is any further information required before the Giesekes can expect an official application from you for signature, so the after-the-fact variance and recording fees can be submitted? We also request that we be placed on the October 19, 2020 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djs
Enclosures
CC: Patrick and Shana Gieseke

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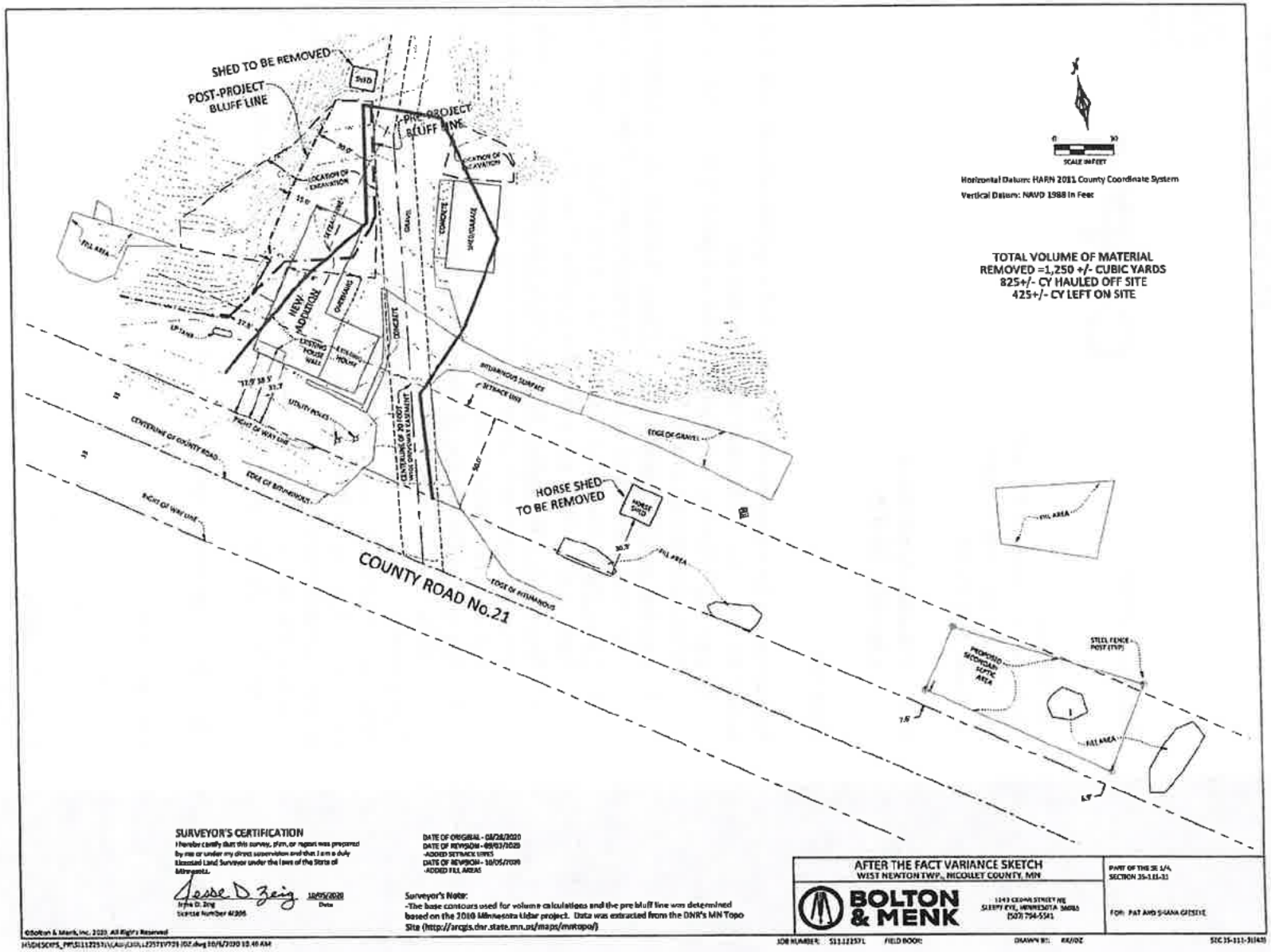

SURVEYOR'S CERTIFICATION

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

Jesse D. Zeig 10/05/2020
Jesse D. Zeig — Date
License Number 41305

DATE OF ORIGINAL - 08/28/2020
DATE OF REVISION - 09/03/2020
-ADDED SETBACK LINES
DATE OF REVISION - 10/05/2020
-ADDED FILL AREAS

Surveyor's Note:
-The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP., NICOLLET COUNTY, MN

PART OF THE SE 1/4, SECTION 35-111-31

BOLTON & MENK
1143 CROMWELL STREET NE
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

FOR: PAT AND SUSANA GIESEKE

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H:\DESIGN_PROJECTS\111225731\CAD\CIVIL\225731V731 ATF.dwg 10/5/2020 10:46 AM

JOB NUMBER: 111225731 FIELD BOOK: DRAWN BY: RK/DZ SEC 35-111-31W

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Erosion and Sediment Control Plan

62208 County Road 21

New Ulm, MN 56073

➢ An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.

- Identify the practices and methods to be used to mitigate erosion and sedimentation –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock

- Note what is currently being done to control erosion –
  - Unfortunately, Nicollet County Property and Public Services Cease and Desist order has prevented any work to be undertaken since July 2020, and we have been advised that a restraining order would be sought if we would proceed with any work. We have not been able to do anything since July 2020

- What you are planning for future erosion control on your property –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock

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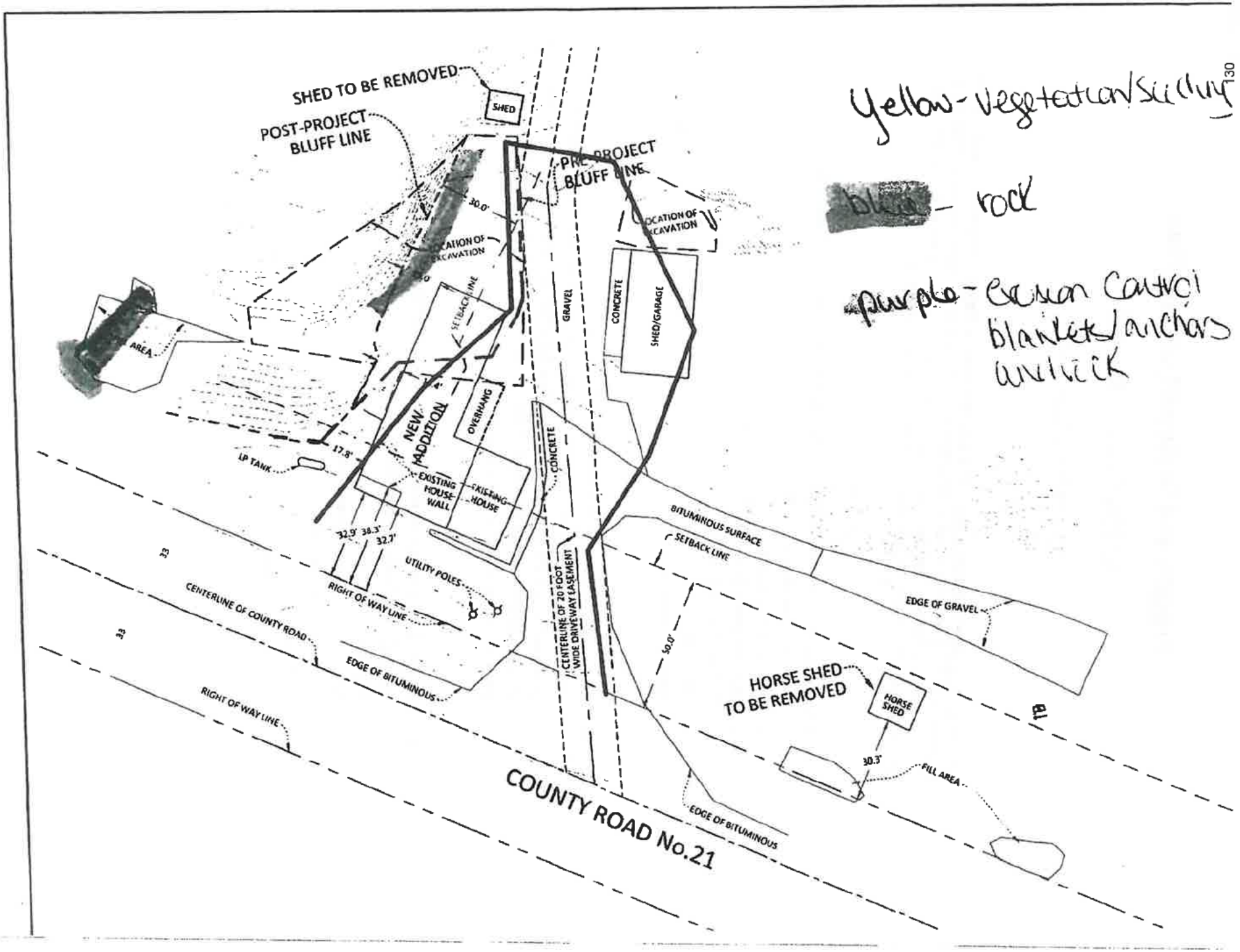

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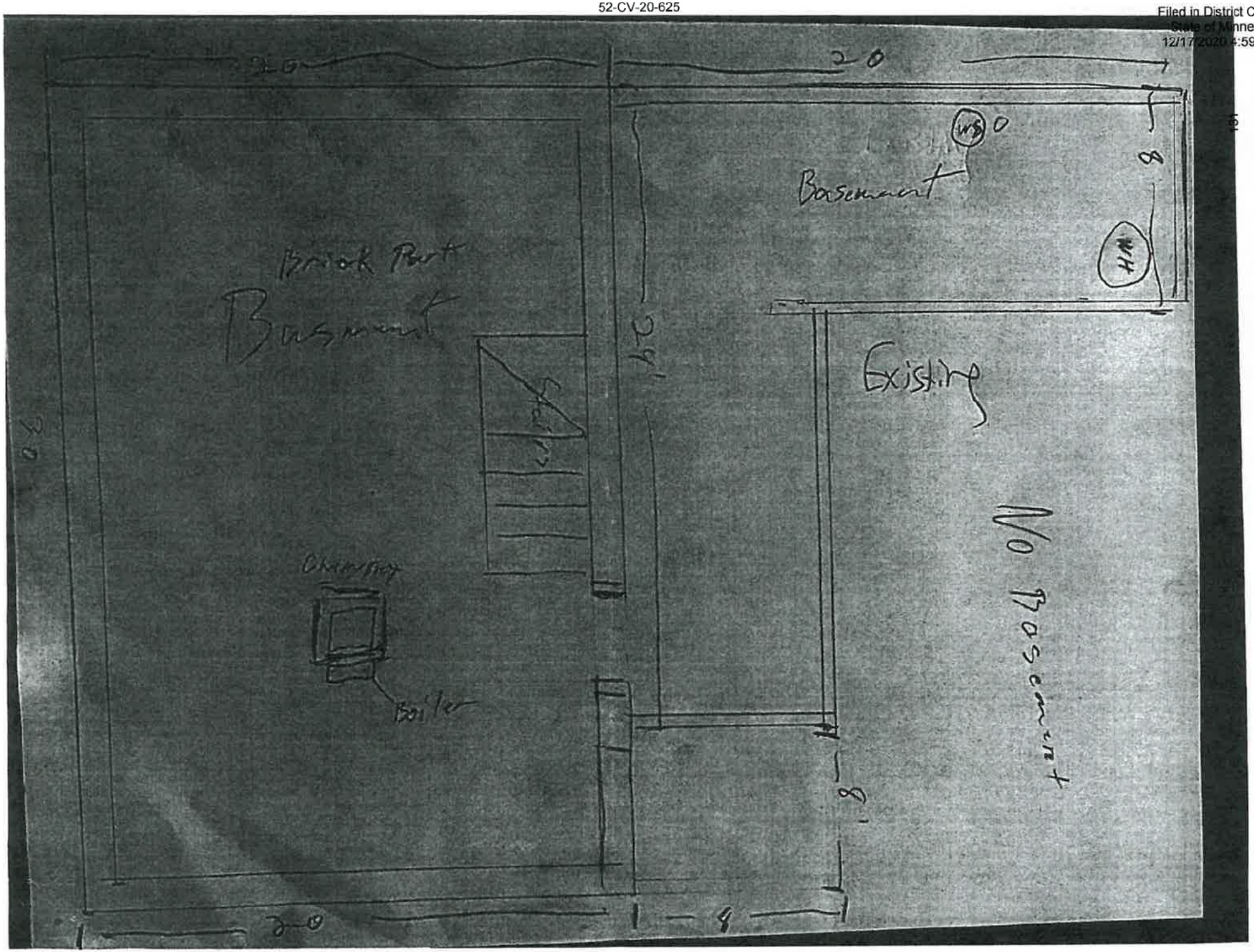

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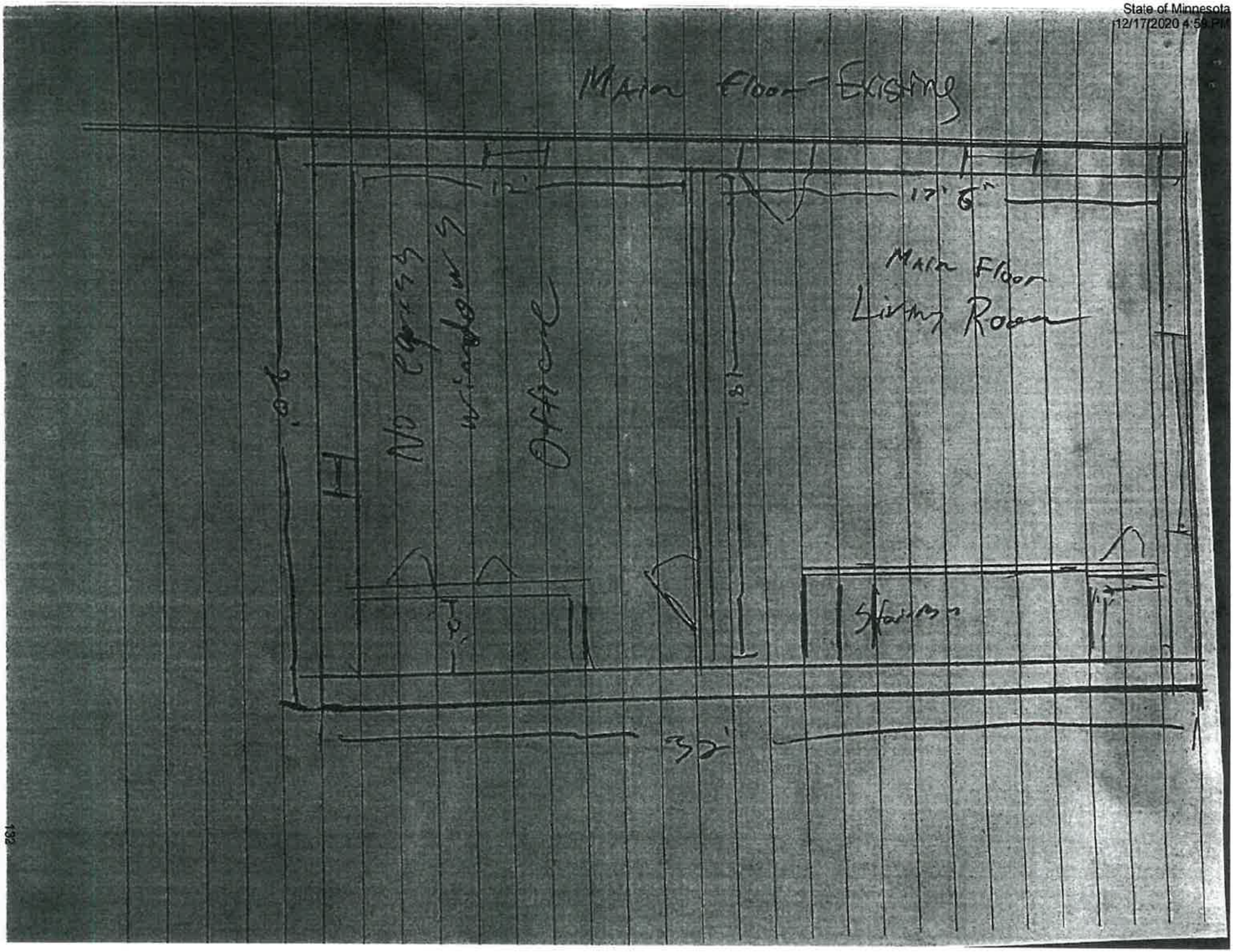

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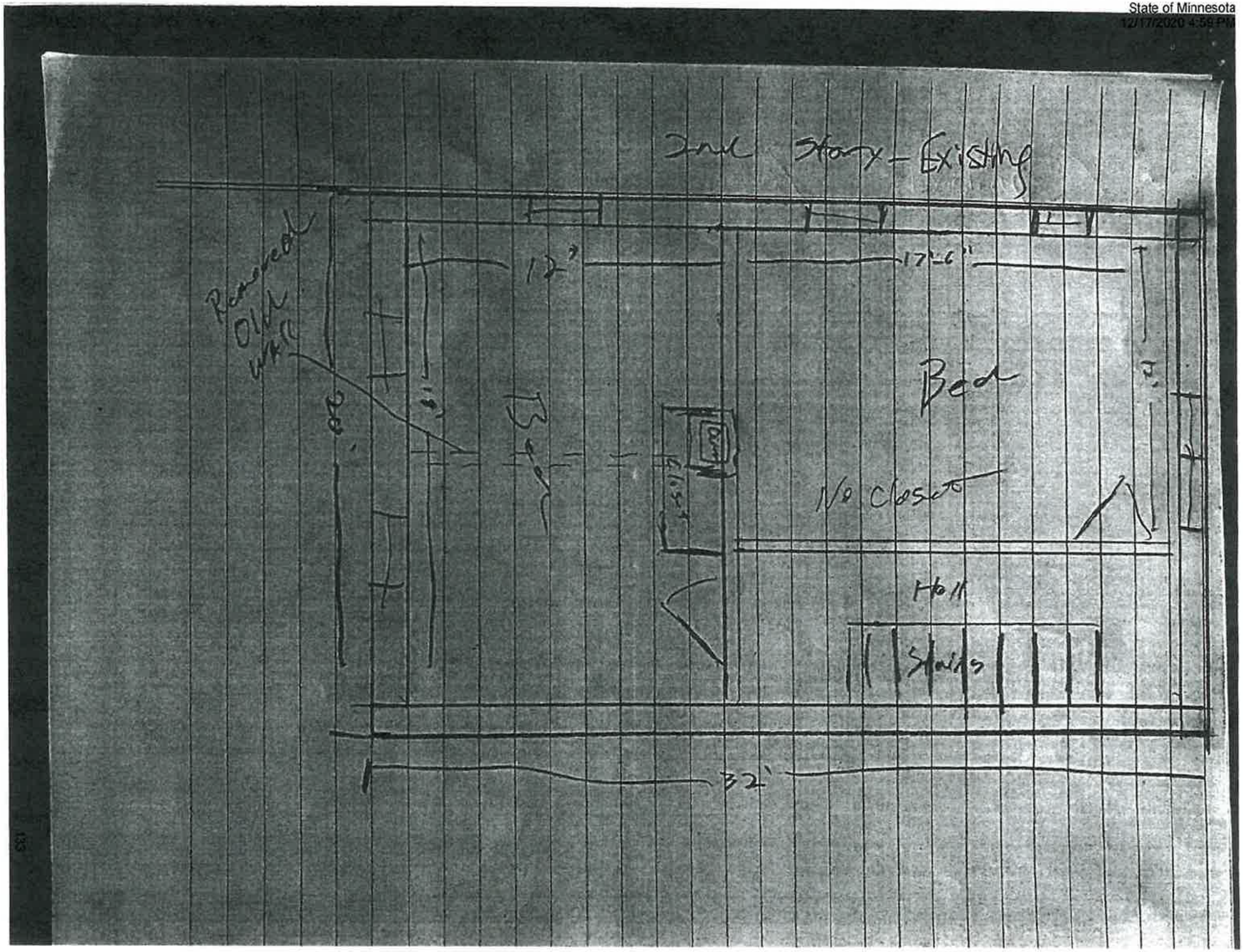

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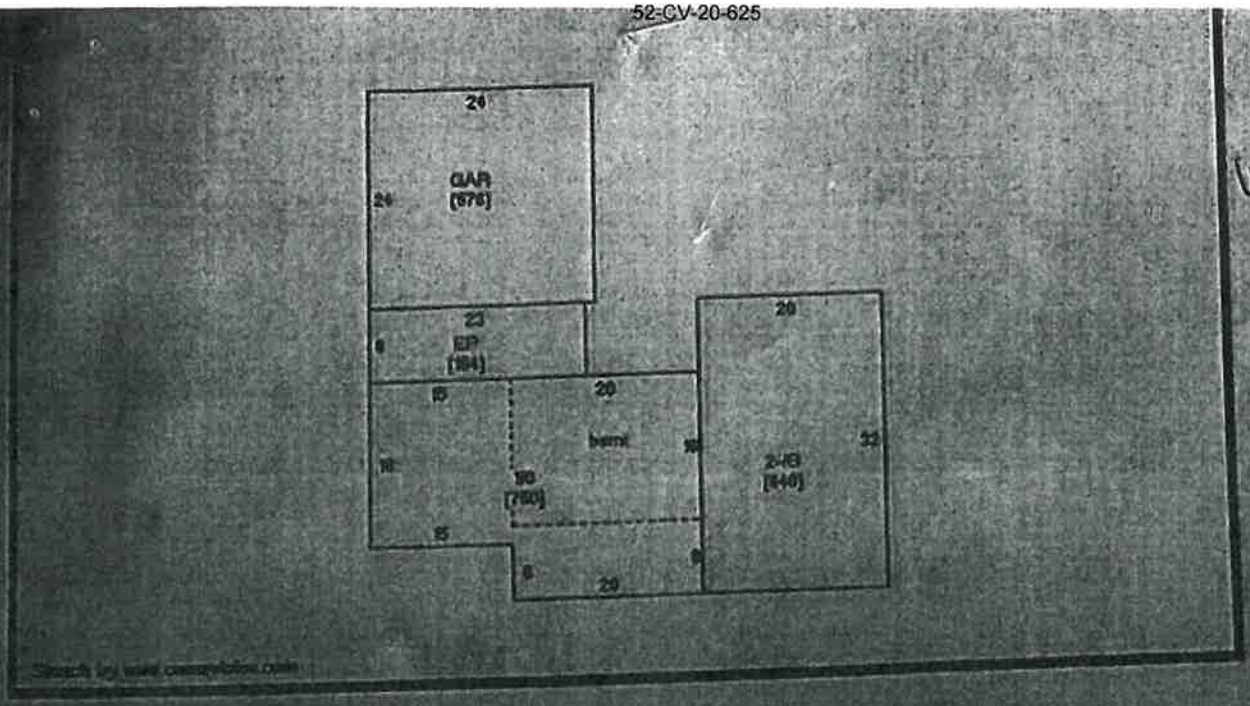

Existing

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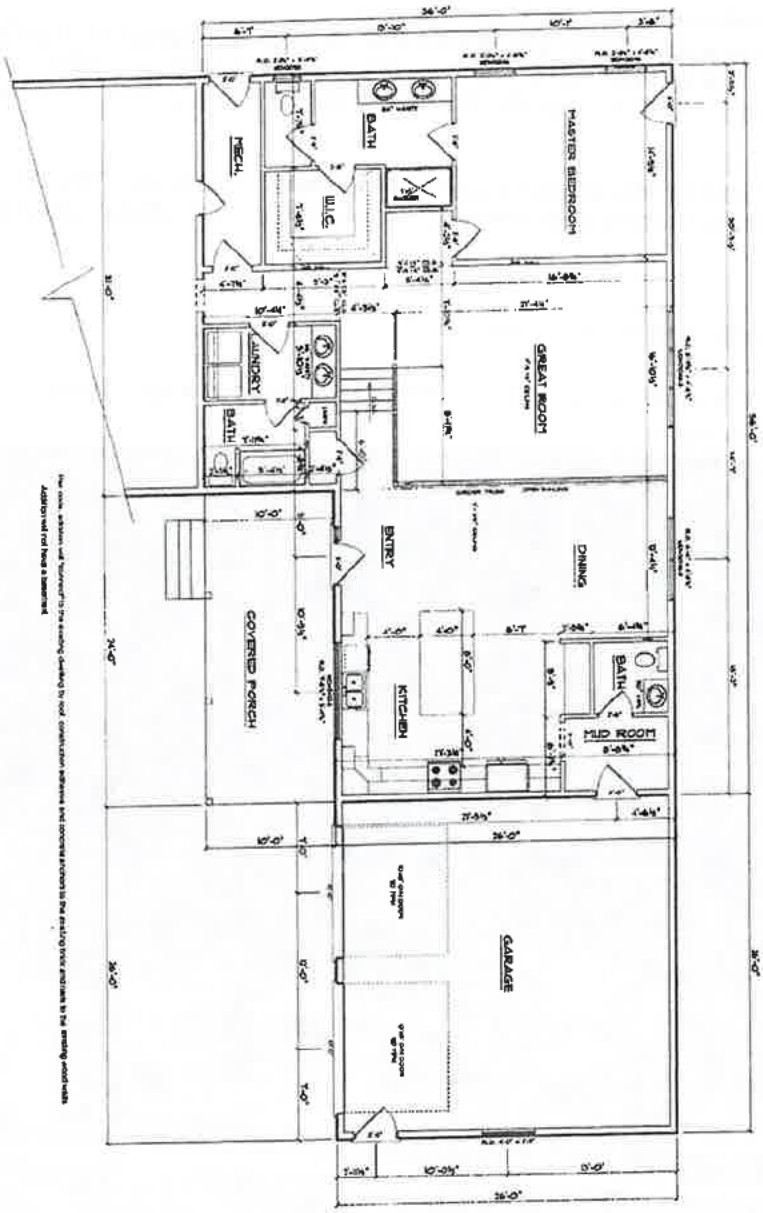

PUHLMANN LUMBER

GIESEKE ADDITION

62205 COUNTY ROAD 21- NEW ULM, MN

PUHLMANN LUMBER & DESIGN

301 1st STREET S NEW ULM, MN
PH: (507) 354-4194
FAX: (507) 354-5105

MAIN FLOOR

SQUARE FOOTAGE:

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Onsite Earth Movement

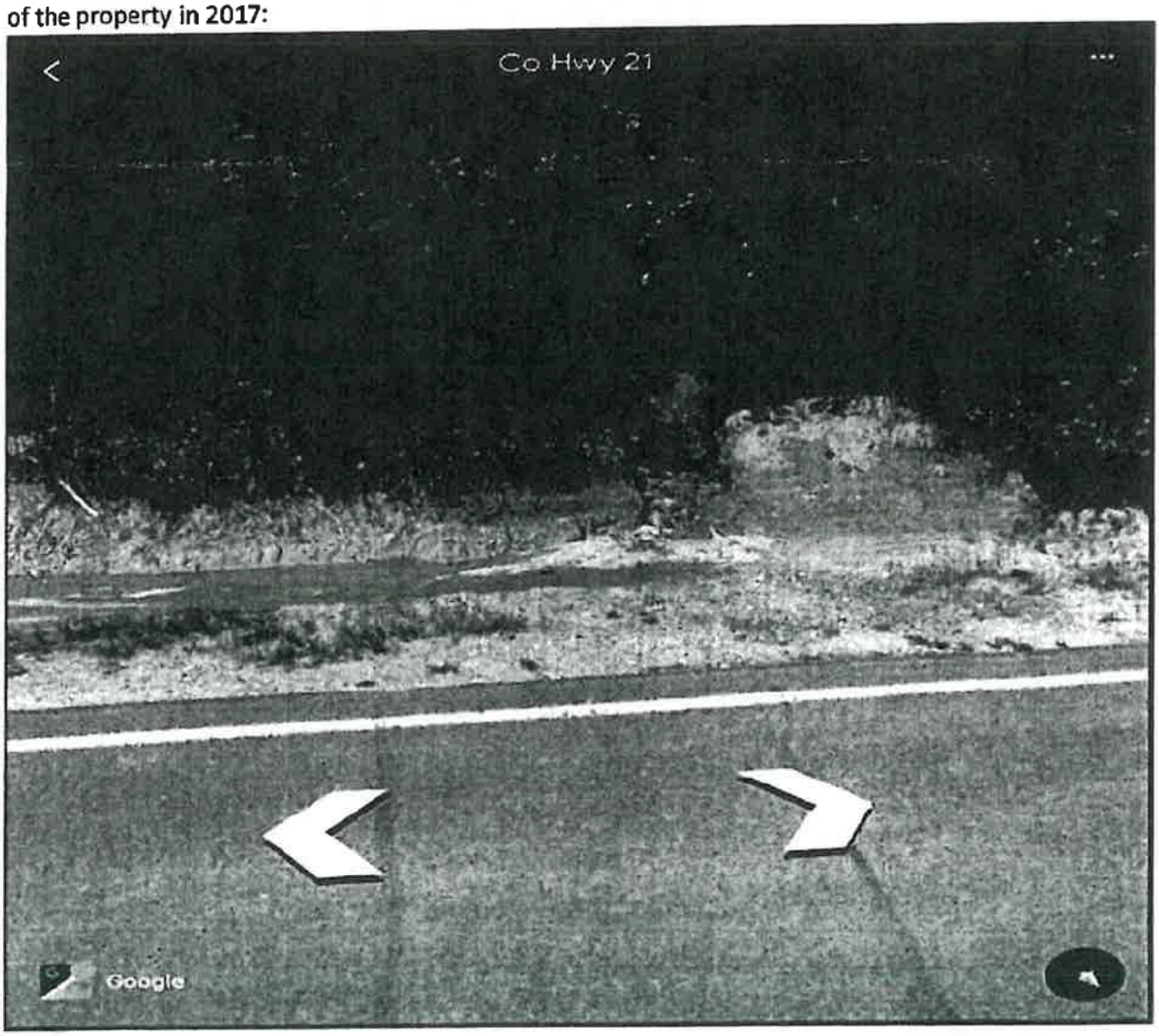
62208 County Road 21
New Ulm, MN 56073

Onsite Earth Movement
According to your discussions with NCPPS staff, the site visit with NCPPS staff, and your survey (i.e. "gully fill area"), it appears that at least one of the five fill locations is within a protected bluff area on your property. In your August 21, 2020 letter to NCPPS, you note the fill was placed to fill in a

washout that was forming on your property. **It appears this material is now eroding downslope, along with the natural erosion from the washout, into the ditch on the northern side of County Road 21.**

The highlighted statement above is false.

This google earth picture of the washout we filled—referred to above—was taken prior to our purchase of the property in 2017:



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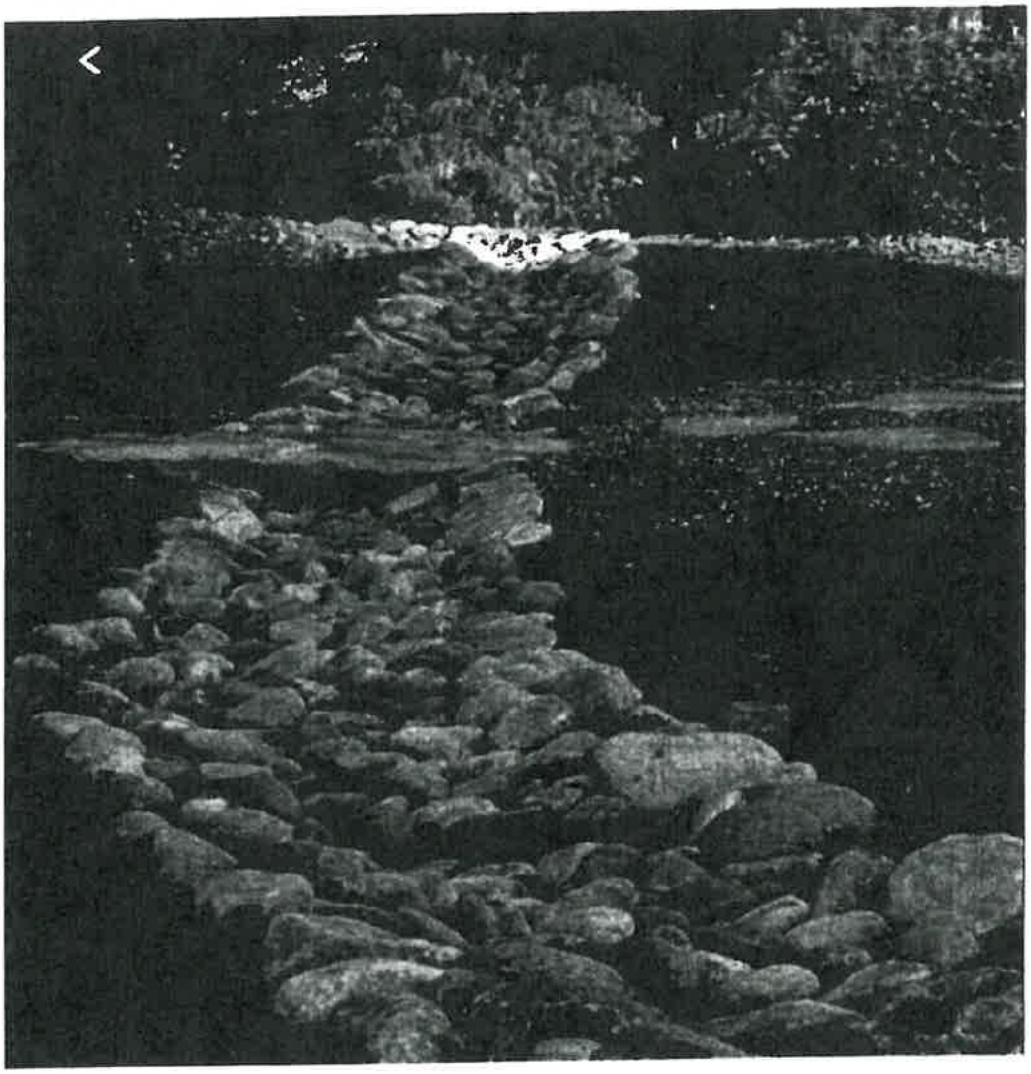
In July or August 2020, a Nicollet County/Highway Department employee dug out the ditch and destroyed vegetation with an excavator all the way down County Road 21. This can be confirmed by either Nicollet County or the Highway Dept records and is clearly visible when traveling down the entire length of County Road 21. What "appears" to be "eroding downslope, into the ditch" is from this digging and excavation. It is not from the fill we added to the washout at the TOP of our property.

If a cease and desist order had not been in place (with the threat of a restraining order), we could have completed the fill in the washout per our plans below:



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Offsite Earth Movement

62208 County Road 21

New Ulm, MN 56073

We have previously and repeatedly stated, we have no idea who removed the dirt from our property. Randomly, one day an older gentleman stopped by and talked with Pat. He said he travels our road frequently and noticed we were removing dirt. He asked what our plans were for the removed dirt and when Pat told him we didn't have plans he stated that him and his brother could use it. If we didn't mind, they would come, load it and haul it away at no expense to us. We all agreed.

One evening, upon arriving home from work there was a skidsteer / loader at our home. Over the course of the next couple of days this man came, loaded the dirt and hauled it away from our property while we were at work.

There has been no more communication with this man and we have not seen him since.

We do, however, disagree with the amount of dirt the surveyor "estimates" as being removed. The data the surveyor used for his "pre-project" calculations is from 2010. On the sketch the surveyor shows the "pre-project" bluffline going directly through the garage that was existing. In the google earth picture below, you can clearly see the garage, a truck parked and bluffline that is not accurate on the sketch.

The fill moved cannot be entirely determined and is likely significantly less than 825 cubic yards because the survey shows the "pre-project bluff line" is from the MN LiDAR project from 2010. Jesse Zeig at Bolton & Menk, Inc. does not have any pre-construction elevations besides the LiDAR contours and he stated "they may not be the best but they are all [he has] to work with." His sketch clearly shows the "pre-project bluffline" going thru a building which existed when we purchased the property in 2017.

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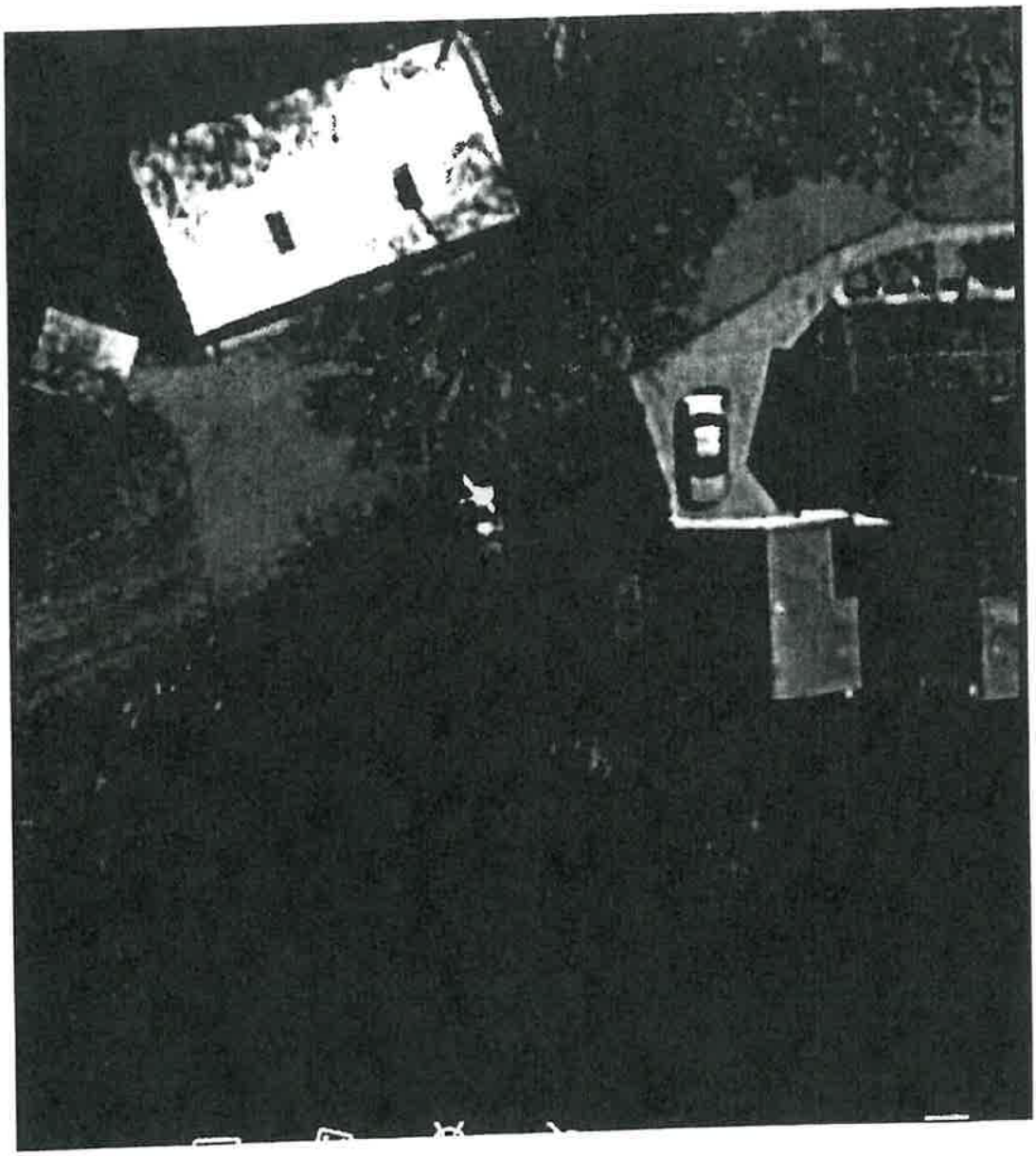

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Shana Gieseke

From: Nancy Reinhart <LafayetteExcavating@hotmail.com>
Sent: Monday, October 12, 2020 6:06 PM
To: Shana Gieseke
Subject: Septic plan & secondary site
Attachments: Pat & Shana Gieseke Site Plan.pdf

[EXTERNAL EMAIL]

Shana, Here's a copy of the site plan and secondary site. It is not the design, which includes all the formula pages etc. Kevin will start working on that, but thought you needed this first. Nancy

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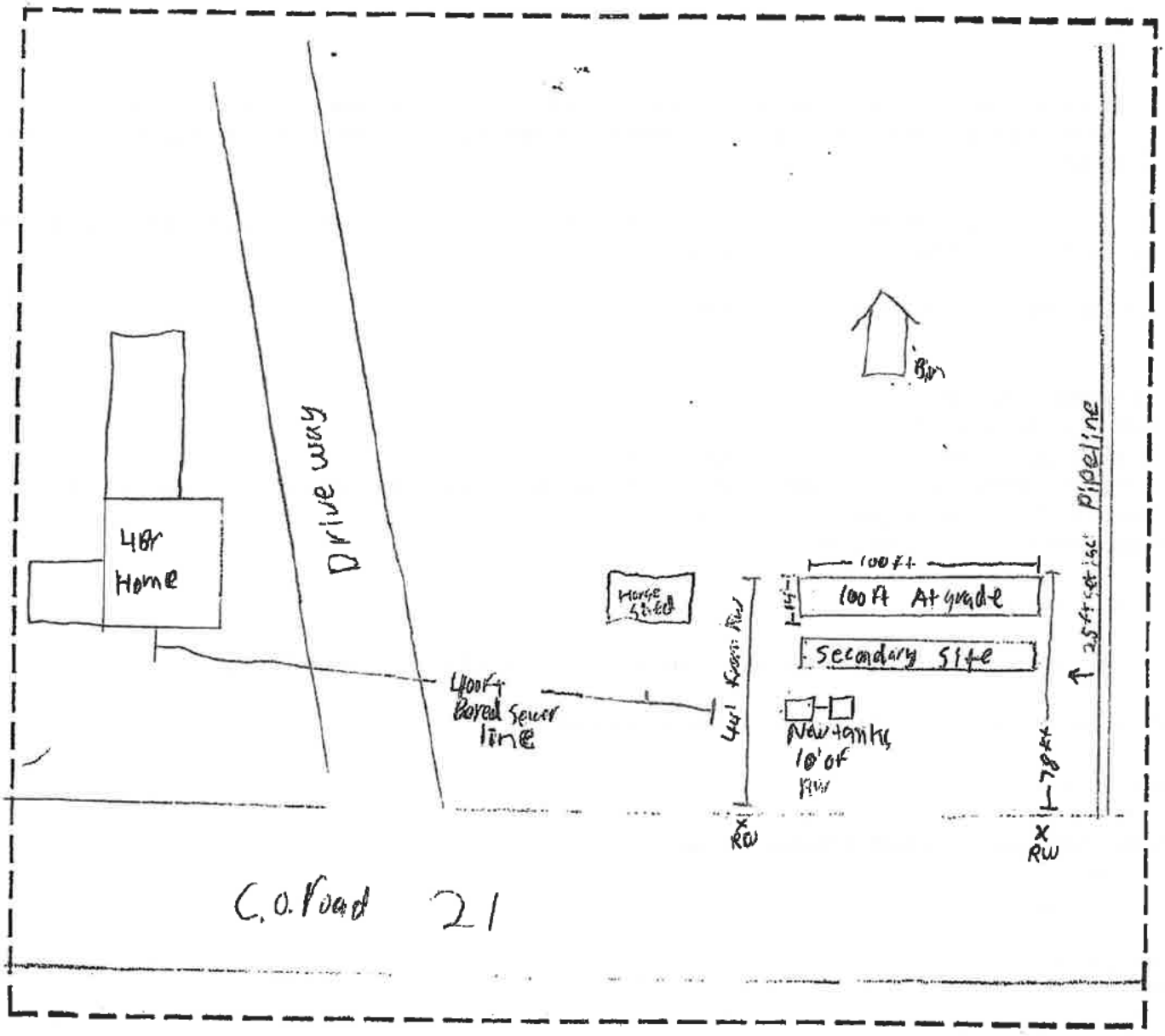
Pat + Shana Greseke
Site Plan

SCALE 1 INCH = NA



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Shana Gieseke

From: Tina Losleben <TinaL@thelegalprofessionals.com>
Sent: Thursday, October 15, 2020 4:48 PM
To: Megan.Coryell@co.nicollet.mn.us
Cc: Steven J. Franta; pat-shana@comcast.net; Shana Gieseke; Mandy Landkamer; 'Jon Hammel'; Debra Strandlie
Subject: Patrick and Shana Gieseke
Attachments: 10.9.20 Letter.pdf

[EXTERNAL EMAIL]

Good Afternoon,

We understand that Lafayette Excavating has submitted and the county has approved a site plan as required by Number 4 in our letter dated October 9, 2020 (which is attached). This should complete the information required for Gieseke's application.

Are you able to provide an official application for signature at this time? When might we be able to get a hearing date with the Planning and Zoning Advisory Commission.

Thank you for your consideration on this matter.

From: Debra Strandlie
Sent: Friday, October 9, 2020 2:47 PM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; 'Jon Hammel' <Jon.Hammel@co.nicollet.mn.us>
Subject: Patrick and Shana Gieseke

Good Afternoon,

Attached is a letter (with enclosures) dated October 9, 2020, which we have mailed today.

Please let me know if you have any questions or concerns.

Warm regards,

Debra Strandlie on behalf of Steven J. Franta
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debras@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

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Tina C. Losleben
Paralegal
Somsen, Mueller & Franta
106 1/2 N. Minnesota St.
PO Box 38
New Ulm, MN 56073
Phone: (507) 233-6363
Email: Tinal@thelegalprofessionals.com

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Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

October 9, 2020

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated October 2, 2020, enclosed (and attached) are:

1. **Survey:** After-the-fact Variance Sketch signed by Jesse Zeig of Bolton & Menk, Inc. dated October 5, 2020.
2. **Erosion and Sediment Control Plan:** "Erosion and Sediment Control Plan" with highlighted sketch showing placement of the control measures.
3. **Floor Plans:** Basement/Main/2nd Story Floor Plans; Nicollet County Beacon Floor Plan; and Puhlmann Lumber Floor Plan.
4. **Secondary/Alternative Septic System Location:** We are in daily communication with Lafayette Excavating. Hopefully, the septic designer will complete the site plan soon.
5. **Onsite and Offsite Earth Movement:** "Onsite Earth Movement" and "Offsite Earth Movement"

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. Other than the above mentioned #4, is any further information required before the Giesekes can expect an official application from you for signature, so the after-the-fact variance and recording fees can be submitted? We also request that we be placed on the October 19, 2020 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djs
Enclosures
CC: Patrick and Shana Gieseke

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Strandlie
Ashley A. St. Sauver
Tina C. Losleben

Since
1896

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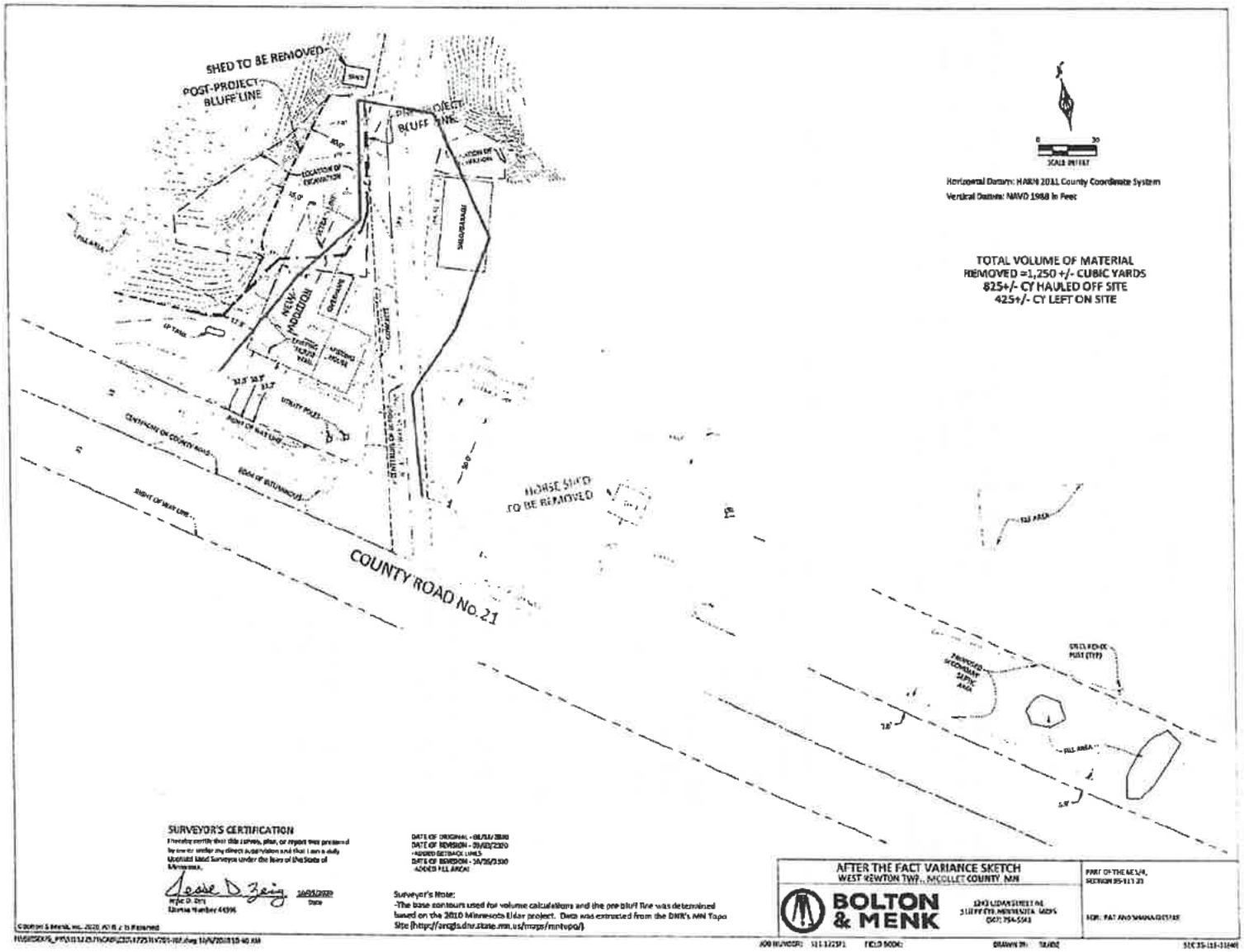
SHED TO BE REMOVED
POST-PROJECT BLUFF LINE
PRE-PROJECT BLUFF LINE
LOCATION OF EXCAVATION
LOCATION OF FILL AREA
NEW ADDITION
EXISTING HOUSE
EXISTING WOOD DECK
EXISTING WOOD DECK
EXISTING GARAGE
EXISTING SHED
EXISTING SHED
EXISTING WOOD DECK
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EXISTING WOOD DECK

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Erosion and Sediment Control Plan

62208 County Road 21

New Ulm, MN 56073

- An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.

- Identify the practices and methods to be used to mitigate erosion and sedimentation –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock

- Note what is currently being done to control erosion –
  - Unfortunately, Nicollet County Property and Public Services Cease and Desist order has prevented any work to be undertaken since July 2020, and we have been advised that a restraining order would be sought if we would proceed with any work. We have not been able to do anything since July 2020

- What you are planning for future erosion control on your property –
  - Seeding / stabilization / vegetation
  - Mulch / hydromulch
  - Erosion control blankets and anchors
  - Turf reinforcement mats
  - Silt fence
  - Railroad ballast rock

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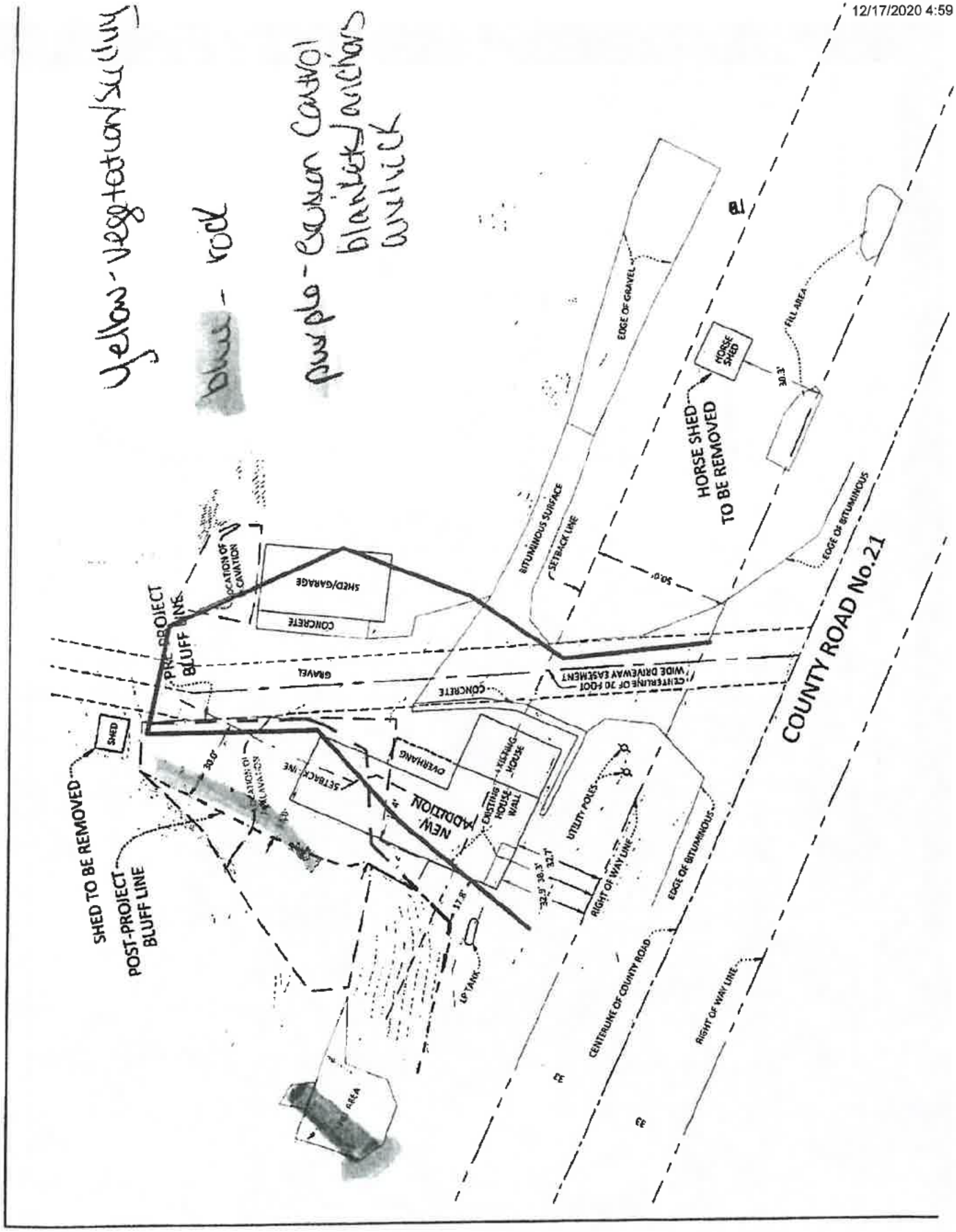

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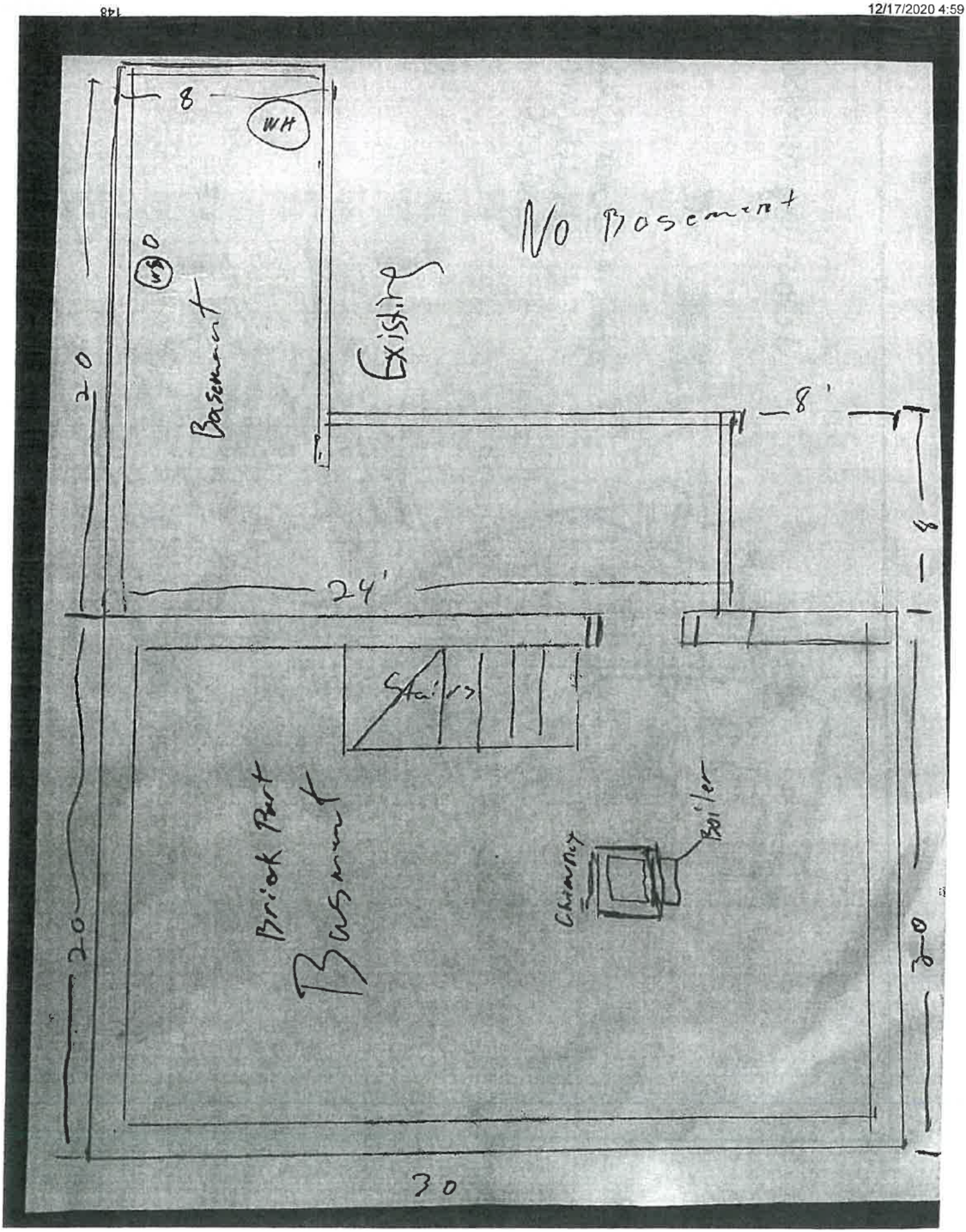

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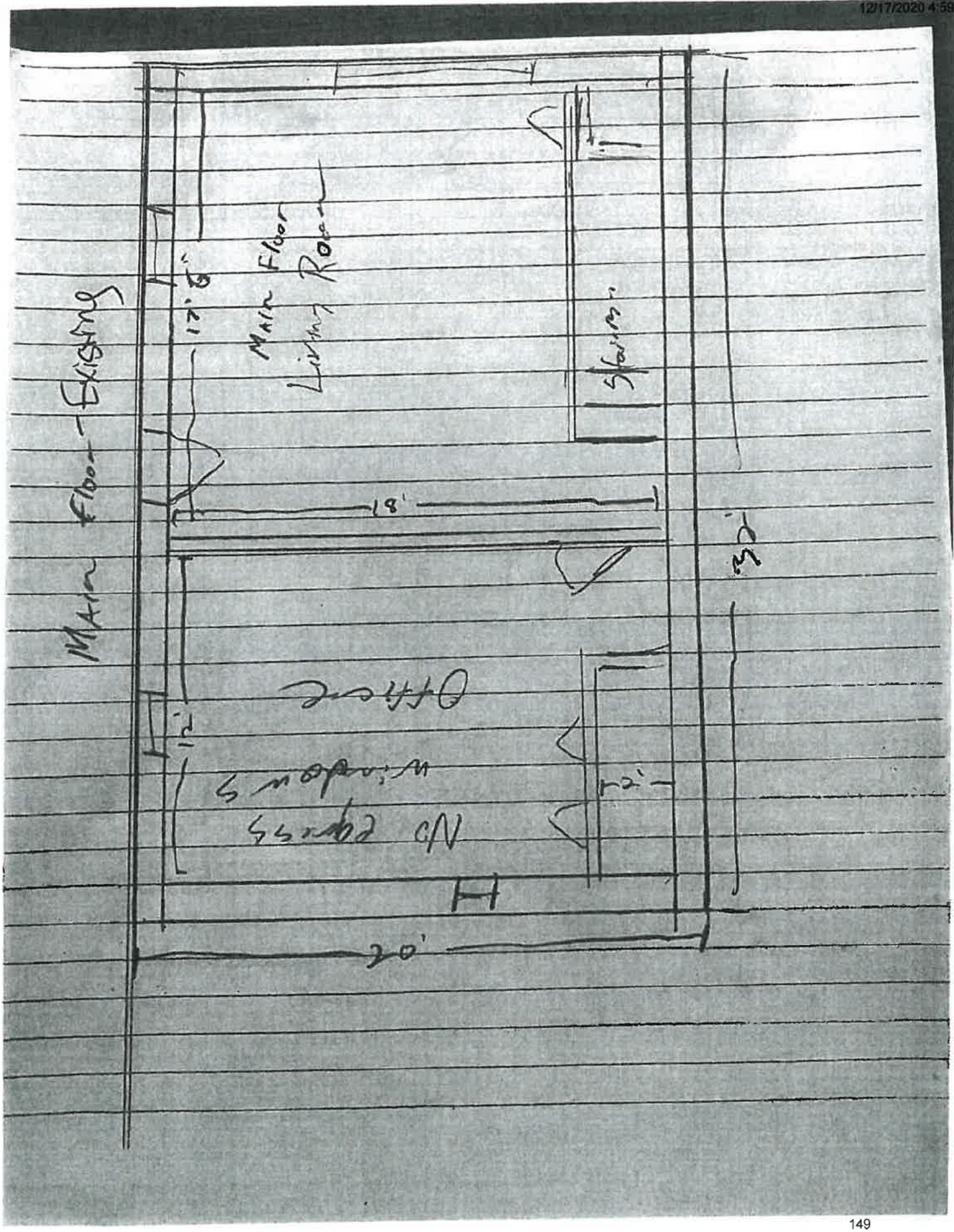

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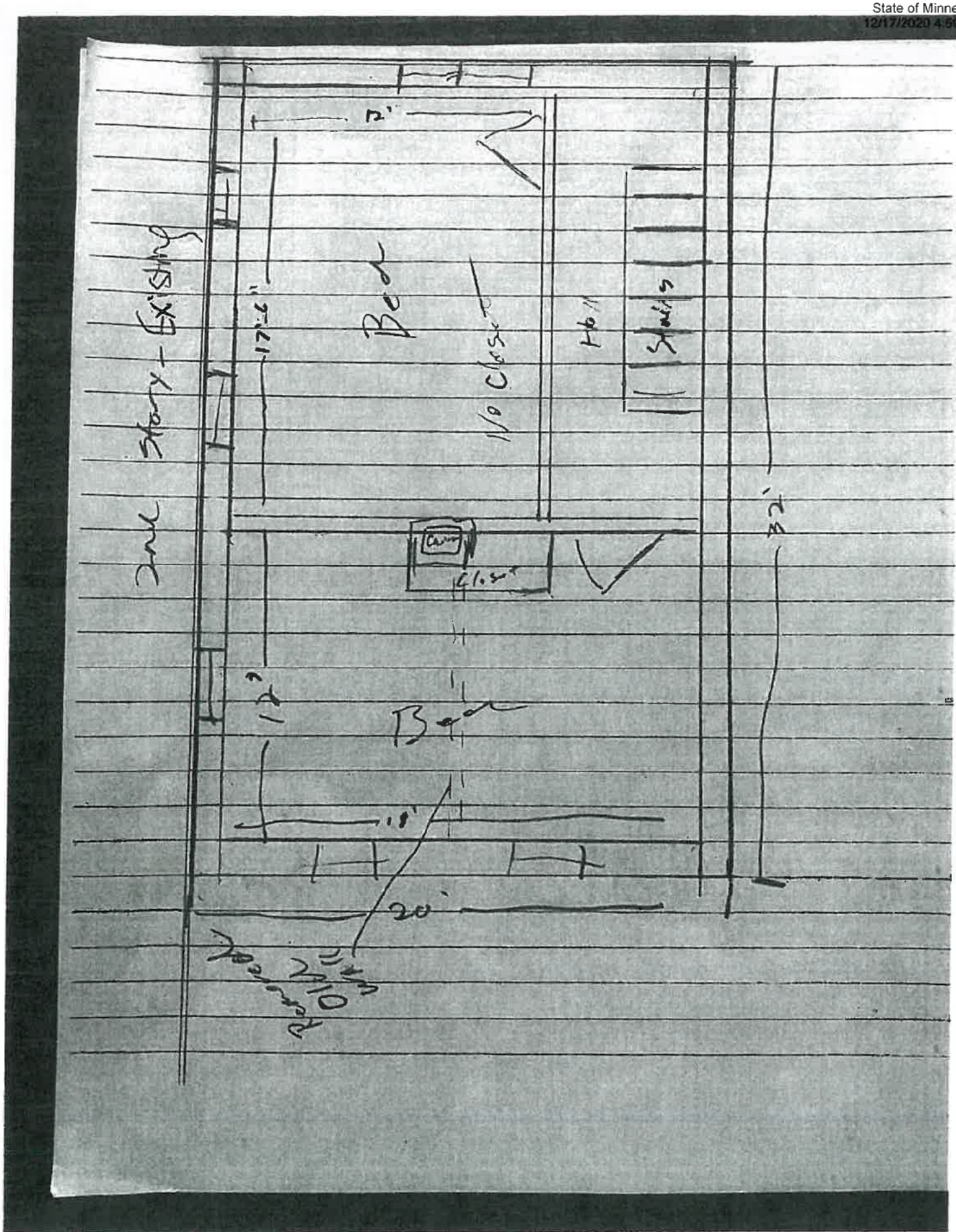

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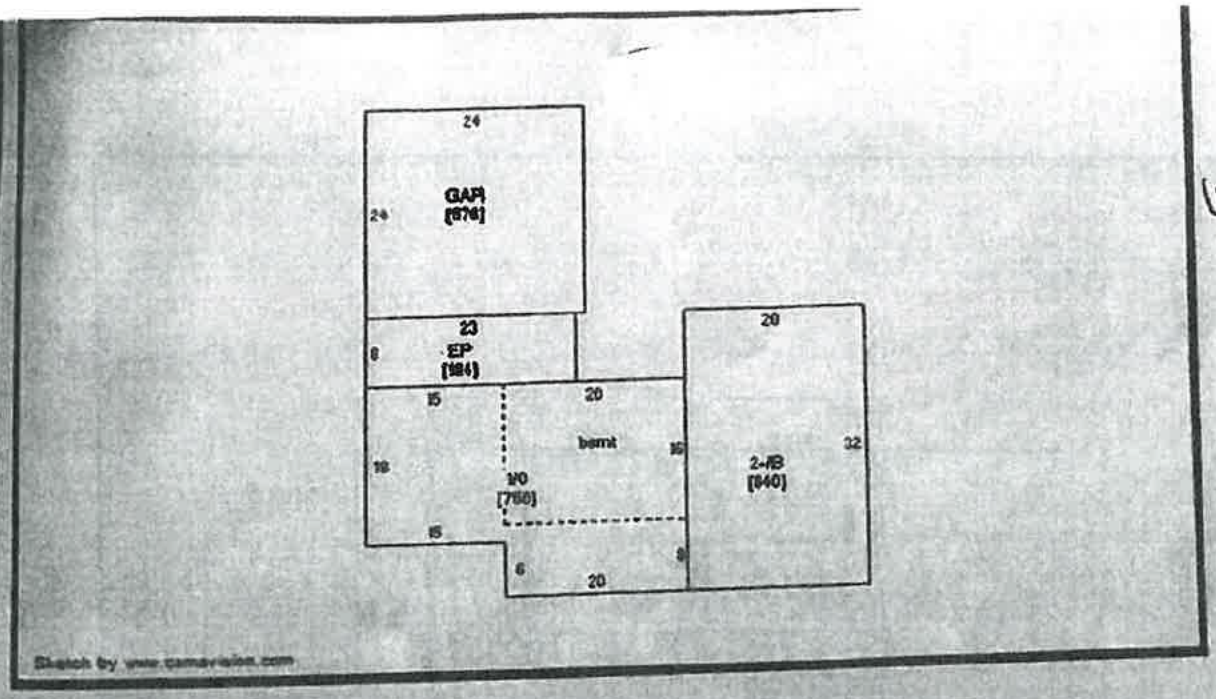

Existing

Printed from Beacon - Nicollet County MN 10/04/2020

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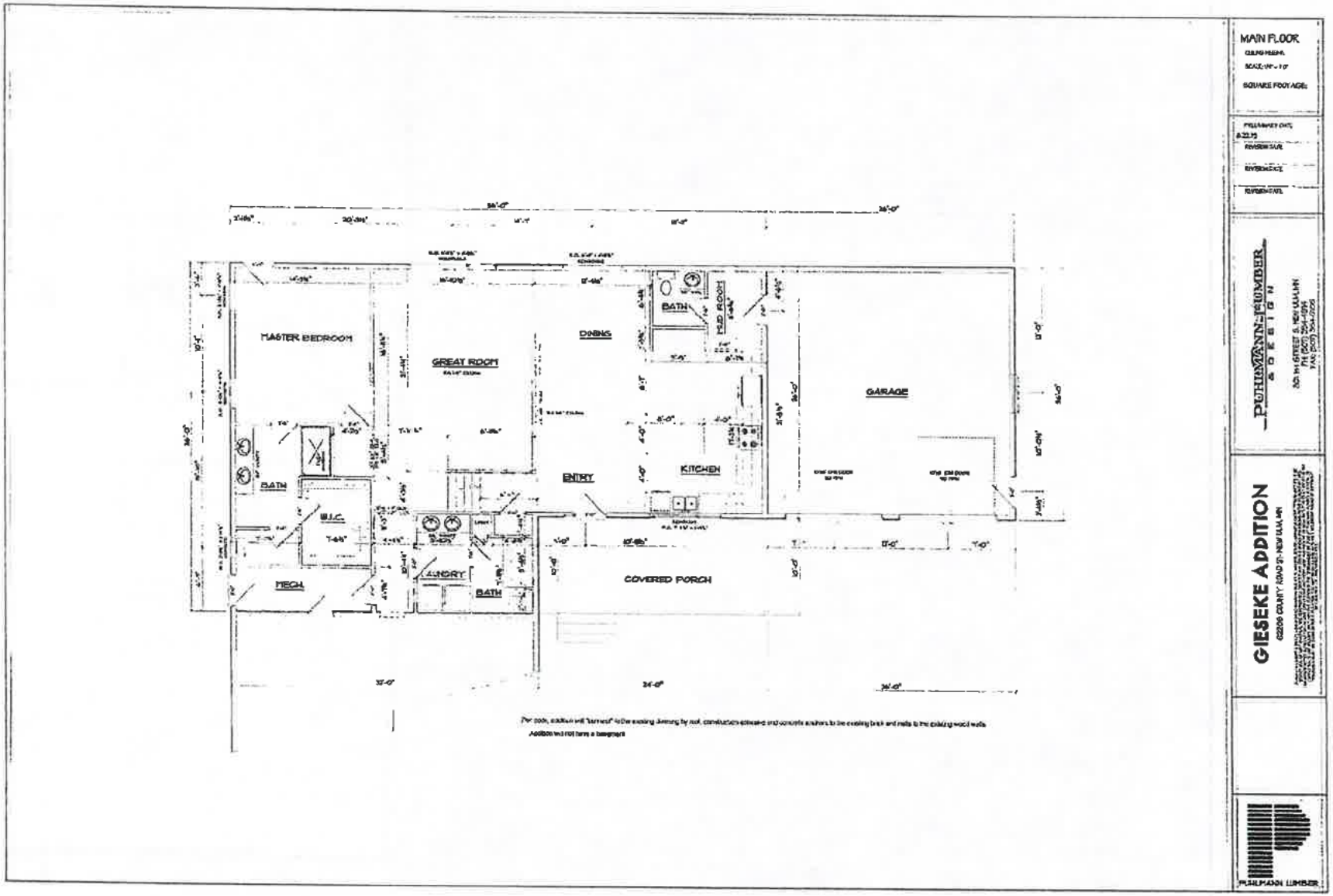

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Onsite Earth Movement

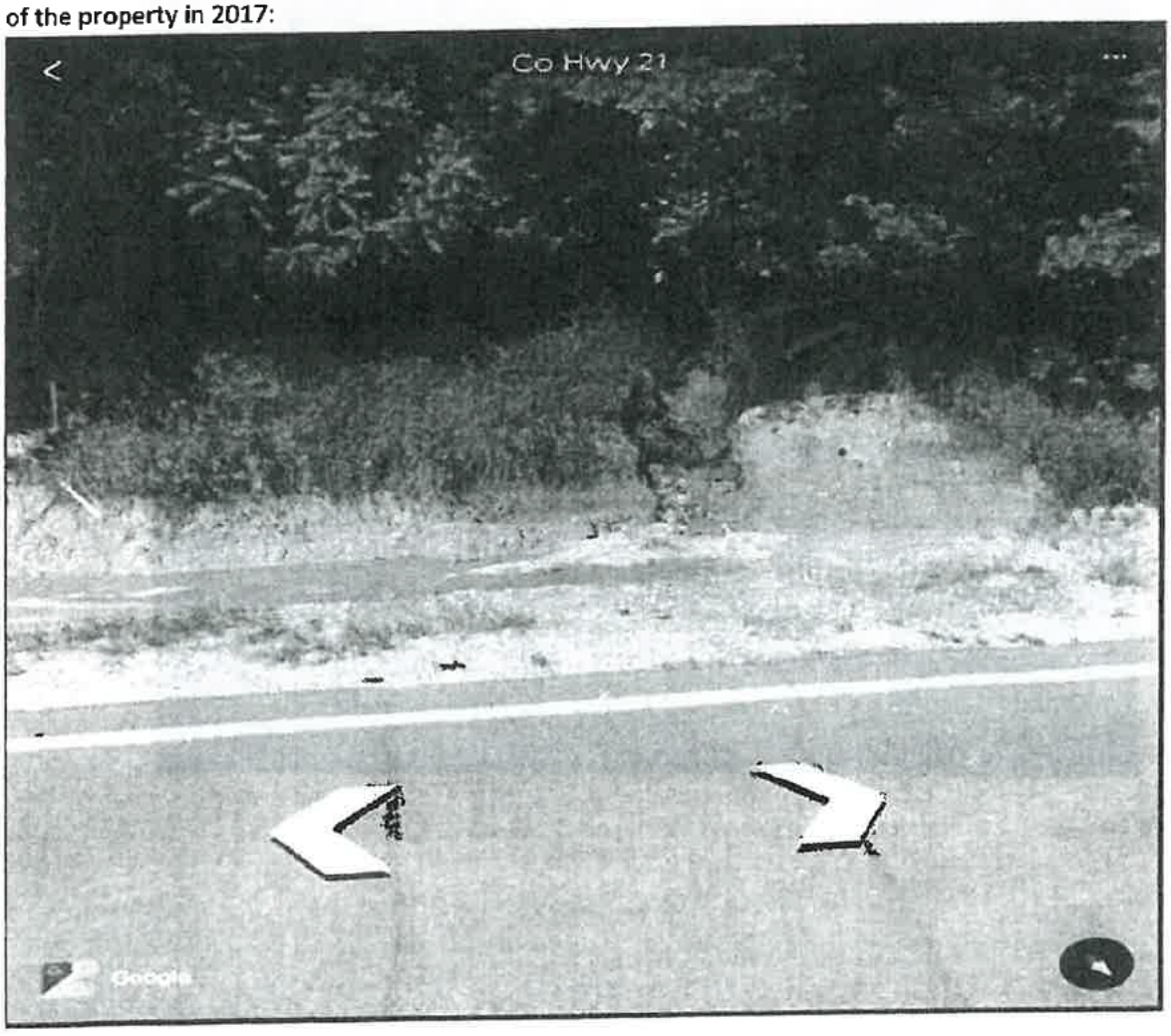
62208 County Road 21
New Ulm, MN 56073

Onsite Earth Movement
According to your discussions with NCPPS staff, the site visit with NCPPS staff, and your survey (i.e. "gully fill area"), it appears that at least one of the five fill locations is within a protected bluff area on your property. In your August 21, 2020 letter to NCPPS, you note the fill was placed to fill in a

washout that was forming on your property. It appears this material is now eroding downslope, along with the natural erosion from the washout, into the ditch on the northern side of County Road 21.

The highlighted statement above is false.

This google earth picture of the washout we filled—referred to above—was taken prior to our purchase of the property in 2017:



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In July or August 2020, a Nicollet County/Highway Department employee dug out the ditch and destroyed vegetation with an excavator all the way down County Road 21. This can be confirmed by either Nicollet County or the Highway Dept records and is clearly visible when traveling down the entire length of County Road 21. What "appears" to be "eroding downslope, into the ditch" is from this digging and excavation. It is not from the fill we added to the washout at the TOP of our property.

If a cease and desist order had not been in place (with the threat of a restraining order), we could have completed the fill in the washout per our plans below:



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Offsite Earth Movement

62208 County Road 21

New Ulm, MN 56073

We have previously and repeatedly stated, we have no idea who removed the dirt from our property. Randomly, one day an older gentleman stopped by and talked with Pat. He said he travels our road frequently and noticed we were removing dirt. He asked what our plans were for the removed dirt and when Pat told him we didn't have plans he stated that him and his brother could use it. If we didn't mind, they would come, load it and haul it away at no expense to us. We all agreed.

One evening, upon arriving home from work there was a skidsteer / loader at our home. Over the course of the next couple of days this man came, loaded the dirt and hauled it away from our property while we were at work.

There has been no more communication with this man and we have not seen him since.

We do, however, disagree with the amount of dirt the surveyor "estimates" as being removed. The data the surveyor used for his "pre-project" calculations is from 2010. On the sketch the surveyor shows the "pre-project" bluffline going directly through the garage that was existing. In the google earth picture below, you can clearly see the garage, a truck parked and bluffline that is not accurate on the sketch.

The fill moved cannot be entirely determined and is likely significantly less than 825 cubic yards because the survey shows the "pre-project bluff line" is from the MN LiDAR project from 2010. Jesse Zeig at Bolton & Menk, Inc. does not have any pre-construction elevations besides the LiDAR contours and he stated "they may not be the best but they are all [he has] to work with." His sketch clearly shows the "pre-project bluffline" going thru a building which existed when we purchased the property in 2017.

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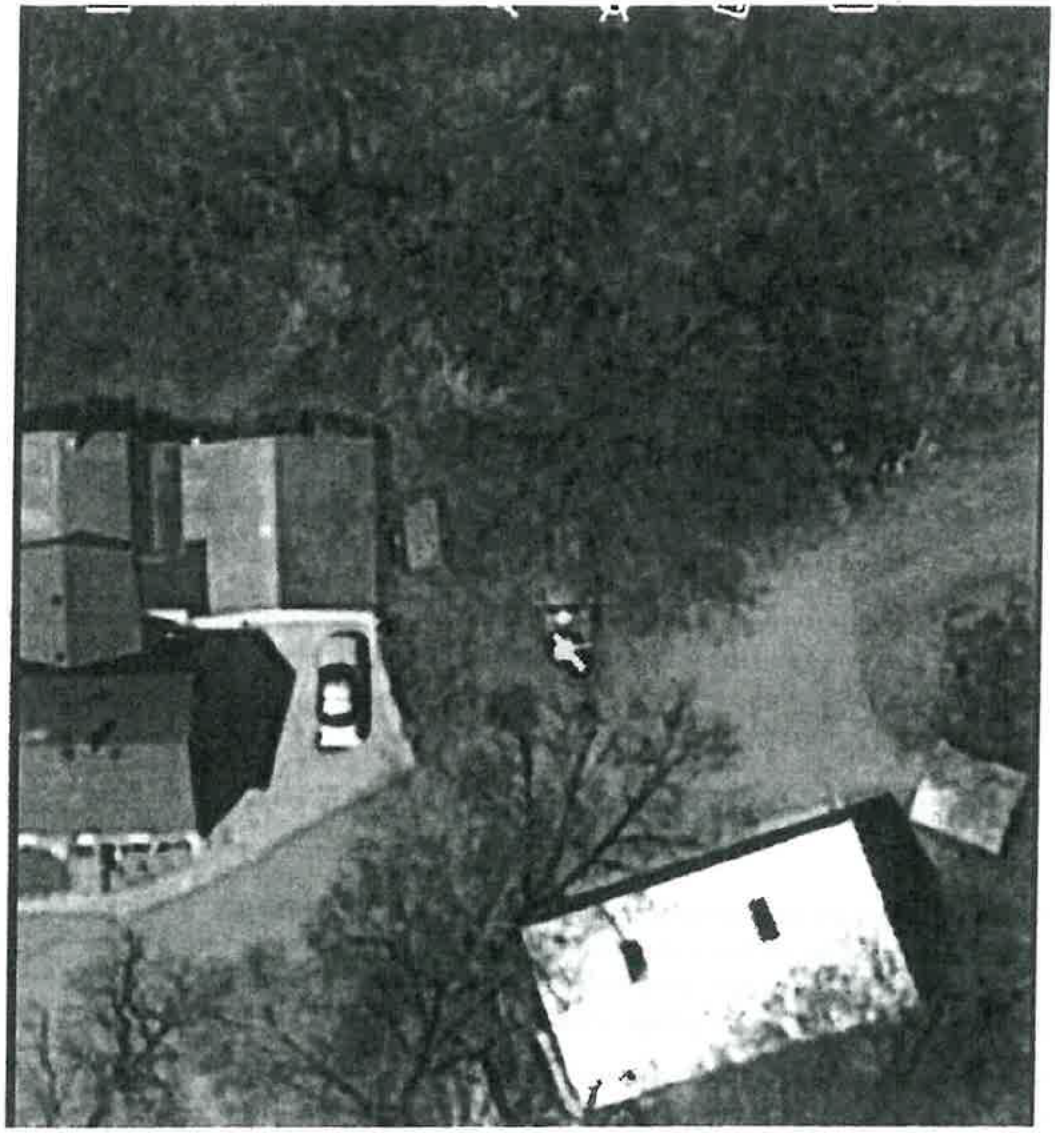

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Shana Gieseke

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Monday, October 26, 2020 7:31 AM
To: Megan Coryell
Cc: Mandy Landkamer; Jon Hammel; Shana Gieseke; pat-shana@comcast.net; Tina Losleben; Debra Strandlie
Subject: RE: Patrick and Shana Gieseke

[EXTERNAL EMAIL]

Megan

Good Morning.

Would it be possible and do you think we can expect a reply today on this matter?

Thank you

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Steven J. Franta
Sent: Friday, October 16, 2020 1:37 PM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>; Shana Gieseke <SGieseke@frandsenbank.com>; pat-shana@comcast.net; Tina Losleben <TinaL@thelegalprofessionals.com>; Debra Strandlie <debras@thelegalprofessionals.com>
Subject: RE: Patrick and Shana Gieseke

Megan

Thank you for your reply today below.

We understand the statute allows 15 days and that there is no statutory obligation to respond sooner. However as a practical matter nonetheless we expect that nearly all of the information and facts relative to this matter have been reviewed and discussed with the County:

1. during the site visits and
2. through previous emails to the County with numerous attachments of documents and
3. with communications
    a. between Bolton and Menk and the County and
    b. between Lafayette Excavating and the County, and

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c. between applicants and the County

Consequently we would ask if we might be granted the courtesy of an expedient response. If there is any item that is clearly not sufficient to find the application complete may we please hear so immediately so we may attempt to get to the tasks needed to, and in fact, complete the application.

Whatever consideration and cooperation is able to be afforded us is greatly appreciated.

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Friday, October 16, 2020 11:31 AM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Subject: RE: Patrick and Shana Gieseke

Mr. Franta,

Nicollet County will have a response to you within 15 business days of submission, per Minn. Stat. § 15.99. Responses do not always take the full 15 days, however, it does take time to review and respond to applications.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

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From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Friday, October 16, 2020 10:55 AM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: pat-shana@comcast.net; Shana Gieseke <SGieseke@frandsenbank.com>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; Jon Hammel <Jon.Hammel@co.nicollet.mn.us>; Debra Strandlie <debras@thelegalprofessionals.com>; Tina Losleben <TinaL@thelegalprofessionals.com>
Subject: RE: Patrick and Shana Gieseke

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Megan

Is it possible we might be able to get a reply today from you or Jon to the letter of last week Friday now that Lafayette Excavating's submitted site plan had been accepted earlier this week?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

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Sent: Thursday, October 15, 2020 4:48 PM
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Subject: Patrick and Shana Gieseke

Good Afternoon,

We understand that Lafayette Excavating has submitted and the county has approved a site plan as required by Number 4 in our letter dated October 9, 2020 (which is attached). This should complete the information required for Gieseke's application.

Are you able to provide an official application for signature at this time? When might we be able to get a hearing date with the Planning and Zoning Advisory Commission.

Thank you for your consideration on this matter.

From: Debra Strandlie
Sent: Friday, October 9, 2020 2:47 PM
To: Megan Coryell <Megan.Coryell@co.nicollet.mn.us>
Cc: Steven J. Franta <steve@thelegalprofessionals.com>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>; 'Jon Hammel' <Jon.Hammel@co.nicollet.mn.us>
Subject: Patrick and Shana Gieseke

Good Afternoon,

Attached is a letter (with enclosures) dated October 9, 2020, which we have mailed today.

Please let me know if you have any questions or concerns.

Warm regards,

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Debra Strandlie on behalf of Steven J. Franta
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
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Paralegal
Somsen, Mueller & Franta
106 1/2 N. Minnesota St.
PO Box 38
New Ulm, MN 56073
Phone: (507) 233-6363
Email: Tinal@thelegalprofessionals.com

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NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mardy Landkamer, Director

October 27, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke.

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on October 8, 9, and 12, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

October 8, 2020
The document submitted to Nicollet County Property and Public Services ("NCPPS") on October 8, 2020, was received via email from your surveyor, Jesse Zeig at Bolton and Menk. The document was a revised draft of the survey dated October 5, 2020. The revision included the removal of an unidentified thick black line. Mr. Zeig noted the line was placed on the survey in error.

October 9, 2020 Document Packet
The documents submitted to NCPPS by Debra Strandlie (on behalf of your attorney Steven Franta) on October 9, 2020, were received via email. These documents included:

- Cover letter (page 1 of packet)
- Survey dated October 5, 2020 (unrevised version, page 2)

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- Erosion and sediment control plan (pages 3-4)
- Basement floor plan – existing (page 5)
- Main floor plan – existing (page 6)
- Second story floor plan – existing (page 7)
- Nicollet County Beacon sketch – existing (page 8)
- Addition floor plan dated August 22, 2019 (page 9)
- Onsite Earth Movement (pages 10-11)
- Offsite Earth Movement (pages 12-13)

October 12, 2020 Document
The document submitted to NCPPS by your septic contractor Lafayette Excavating, Inc., on October 12, 2020, was received via email. This document included:

- Replacement/alternative septic system location site plan.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on October 8, 9, and 12, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions
Your application will remain **on-hold** until the following additional information and revisions are submitted to NCPPS:

- An amended survey prepared by a licensed surveyor.
  - Under "Offsite Earth Movement" (page 12 of packet), you state you disagree with elements of the survey, including:
    - Amount of earth moved.
    - Location of pre-project bluff line in relation to an attached garage, built in 1968.

    The survey will need to be revised to accurately depict these two elements. The survey and written materials must align and not contain any discrepancies.

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- The survey does not note that fill was used for the addition, as indicated in your September 14, 2020, Relocated Earthen Material Map. This will need to be accurately noted on the survey, along with the amount of fill used for the addition. State whether or not this material is included in the 1,250 cubic yard total noted on the existing survey.

- The survey will need to accurately note the amount of fill placed in the ravine/washout.

- Lastly, the survey depicts one unidentified element:

  - Please identify the unknown symbol located south of the gravel surface and east of the horse shed.

➢ A revised erosion and sediment control plan. The plan you submitted does not go into detail concerning the incorporation of and specific placement of erosion control elements (silt fences, mats, anchors, etc.). Additionally, the plan does not include the proposed seeding mix. The seeding mix must be appropriate for bluff stabilization.

- You may want to contact Nicollet County Soil and Water Conservation District Staff to review and comment as to whether your proposed plan will aid in bluff stabilization.

- Rock, concrete, and/or asphalt may not be placed in a drainage way. This element of the plan must be revised.

➢ A complete set of floor plans for the house and addition on your property. The floor plans you submitted are considered incomplete for the following reasons:

- The documents you submitted were a mix of existing and proposed floor plans. A complete set of existing and proposed floor plans is required. The proposed plans must clearly depict how the addition will connect to the existing dwelling.

Official After-The-Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

➢ Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

➢ Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation

The placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options:

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1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,250 cubic yards of materials noted on the survey (dated October 5, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process is summarized below.

The first step is to complete an official application and pay the application fees. A legal description for the property is required at the time of application.

Applicants are encouraged to not wait until the day of the application deadline to submit their application. To move forward, the application must be determined to be complete. If the application is determined to be incomplete, NCPPS will issue an incomplete application notice. You must then revise the application and resubmit. Staff has fifteen (15) business days from the date of submittal to determine whether an application is complete or incomplete. This may impact project timelines and applicants are encouraged to factor this into their planning.

Then the request would be added to the agenda for the next available hearing date. The request is heard during a public hearing held by the Nicollet County Planning and Zoning Advisory Commission ("Commission"). You or your representative must be present at the hearing to respond to any questions the Commission may have regarding the proposal. The Commission then makes a recommendation to the Nicollet County Board of Commissioners ("County Board"), who then makes the final decision regarding the request.

The process takes roughly four to six weeks to complete. ***No guarantee*** can be made that Staff would recommend approval of the request. Additionally, Staff can make ***no guarantee*** your request would be approved by the Commission or County Board. Fees are non-refundable once the legal notice of the hearing has been submitted for publishing.

Offsite Earth Movement
You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020 are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion
The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

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If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: 2020 Hearing Schedule

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003

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12/17/2020 4:59 PM

Shana Gieseke

From: Blake Honetschlager <blake.honetschlager@nicolletswcd.org>
Sent: Thursday, November 19, 2020 4:02 PM
To: Shana Gieseke
Subject: RE: Gieseke - 62208 County Road 21, New Ulm, MN
Attachments: Gieseke.pdf

[EXTERNAL EMAIL]

See attached for the recommendations we discussed on site 11/17/2020.

-Blake

From: Shana Gieseke <SGieseke@frandsenbank.com>
Sent: Thursday, November 05, 2020 1:05 PM
To: Blake Honetschlager <blake.honetschlager@nicolletswcd.org>
Cc: Eric Miller <eric.miller@nicolletswcd.org>; Judy Beetch <judy.beetch@nicolletswcd.org>; April.sullivan@mn.usda.gov; pat-shana@comcast.net
Subject: Gieseke - 62208 County Road 21, New Ulm, MN
Importance: High

Good afternoon.

My husband and I are working with Nicollet County in regards to a variance request.

As noted below, we have been advised to reach out to your department with assistance in completing our erosion and sediment control plan (attached).

- A revised erosion and sediment control plan. The plan you submitted does not go into detail concerning the incorporation of and specific placement of erosion control elements (silt fences, mats, anchors, etc.). Additionally, the plan does not include the proposed seeding mix. The seeding mix must be appropriate for bluff stabilization.
    - You may want to contact Nicollet County Soil and Water Conservation District Staff to review and comment as to whether your proposed plan will aid in bluff stabilization.

Is this something that one of you could assist us with?

Sincerely,

Shana Gieseke | Sr. Mortgage Processor
Frandsen Bank & Trust
100 N Minnesota Street |P.O. Box 189| New Ulm, MN 56073
Office 507-233-4714 | Fax 507-359-2068

"Real People, Real Results"

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GIESEKE PROPERTY
62208 COUNTY RD 21
NEW ULM MN 56073

The following are recommendations from Nicollet Soil & Water Conservation District to control potential erosion from the Gieseke property, located at 62208 County Road 21 in Nicollet County.

1. Control bluff cut behind garage by installing a retaining wall feature. Wall should run along the entire length of disturbed side hill and be installed far enough away from the bluff cut to allow for back fill of black dirt. Dirt fill will aid in plant establishment. A climbing vine plant can be planted on the bluff face. Creeping Juniper or other hardy perennial along the top of the retaining wall will aid in erosion control.

2. Grade area between garage and bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

3. Fill can be left in place in the ravine gully to the west of the residence. Removing the fill will disturb the area further causing potential erosion into the road ditch, and damage of septic system. This area should be graded evenly and planted with a shade tolerant grass/plant mix. Once planted, erosion control blanket should be installed on all exposed and seeded surfaces.
   a. Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberry, Leadplant, Big Blue Steam Grass, Little Blue Steam Grass Swamp Milkweed, Common Boneset, Wild Bergamot.
   b. Contact Seed distributer (Albert Lea Seed House, etc.) to get their recommendation on a mix suited for shade, part sun.

4. To stabilize ravine erosion at the gully, near the filled area, Nicollet SWCD recommends minimal grading to allow the placement of Geo Erosion fabric and the placement of rock. Rock should be large Limestone or Quarts, or field stone. The field at the top of this gully is enrolled into the CRP program, allowing for reduced peak flows.



Blake Honetschlager
District Technician
Nicollet SWCD

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State of Minnesota
12/17/2020 4:59 PM



Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Shana Gieseke

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Monday, December 7, 2020 3:49 PM
To: Shana Gieseke
Cc: 'steve@thelegalprofessionals.com'; Megan Coryell
Subject: Incomplete Application Letter
Attachments: 0335400003_Gieseke_2020-12-07_Incomplete_application.pdf

[EXTERNAL EMAIL]

Hi Shana,

Please see the attached incomplete application letter. I have also placed a hard copy in the mail for you.

Please note, the Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office visits and site visits will be limited to those absolutely necessary by appointment.

Sincerely,

NICOLLET COUNTY

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

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NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

December 7, 2020

Sent via email to: SGieseke@frandsenbank.com

Patrick E and Shana E Gieseke
62208 County Road 21
New Ulm MN 56073

Re: Incomplete Application

Dear Mr. and Mrs. Gieseke,

This letter concerns your property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on November 23, 2020 and November 24, 2020, concerning your application for an after-the-fact variance for the purpose of constructing a dwelling addition on your property. The request currently has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

November 23, 2020
The documents submitted to Nicollet County Property and Public Services ("NCPPS") by Debra Hatcher (on behalf of your attorney Steven Franta) on November 23, 2020, were received via email. These documents included:

- Cover Letter
- After the Fact Variance Sketch (unsigned, dated November 18, 2020)
- NSWCD (Nicollet Soil & Water Conservation District) Recommendations
- Revised Floor Plans

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12/17/2020 4:59 PM

November 24, 2020

The document submitted to NCPPS by Debra Hatcher (on behalf of your attorney Steven Franta) on November 24, 2020, was received via email. The document was a signed copy of the After the Fact Variance Sketch (dated November 23, 2020).

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of your application on November 23, 2020 and November 24, 2020. NCPPS has reviewed your application and has determined it to be **incomplete** for the reasons indicated below.

Additional Requested Information/Revisions

Your application will remain **on-hold** until the following additional information/revisions are submitted to NCPPS:

- A comprehensive erosion and sediment control plan. The November 23, 2020 cover letter states the NSWCD recommendations are to be incorporated into the proposed plan submitted on October 9, 2020. However, it does not identify how specifically they are to be incorporated. You need to submit a comprehensive plan that clarifies how the recommendations are to be incorporated with the proposed plan.

Official After-The-Fact Variance Application

Your application will remain incomplete and **on-hold** until the above items are provided to NCPPS. Once these items have been received and approved by NCPPS, you may move forward with:

- Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

- Signing the official application, to be provided by NCPPS. Once the application has been determined to be complete by NCPPS, you will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance you are requesting. Once the application is signed and complete, your request will then be added to the next available hearing date.

Onsite Earth Movement Violation

As you are aware, the placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Zoning Ordinance. Regarding the fill placed in the bluff, you have two options, listed below. You will need to identify which option you are going to pursue.

1. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

2. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

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12/17/2020 4:59 PM

Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than 50 cubic yards of material not in connection with another permitted use requires a conditional use permit (CUP). At this point, because a variance has not been granted for the cutting/filling of the 1,000 cubic yards of materials noted on the survey (dated November 23, 2020), a conditional use permit is required for the activity. The after the fact conditional use permit process was summarized in a letter to you from our office dated October 27, 2020.

Offsite Earth Movement

You will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, and November 24, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

JH

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney
Steven Franta, Somsen Mueller & Franta, sent via email: steve@thelegalprofessionals.com

Parcel No: 13.035.1000
Map No: 0335400003

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12/17/2020 4:59 PM

Exhibit CC

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State of Minnesota
12/17/2020 4:59 PM

Debra Hatcher

From: Debra Hatcher
Sent: Monday, November 23, 2020 10:17 AM
To: Megan Coryell
Cc: Steven J. Franta; Mandy Landkamer; Jon Hammel
Subject: Gieseke Application
Attachments: 11.23.20 Letter.pdf; After the Fact Variance Sketch.pdf; NSWCD Recommendations.pdf; Revised Floor Plans.pdf

Good Morning,

Attached is a letter (with enclosures) dated November 23, 2020, which we have mailed today.

Please let me know if you have any questions or concerns.

Debra Hatcher on behalf of Steven J. Franta
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debrah@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

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52-CV-20-625
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Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

November 23, 2020

COPY

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated October 27, 2020, enclosed (and attached) are:

1. **Amended Survey:** After-the-fact Variance Sketch dated November 18, 2020 Revision/Added Quantification.

2. **Revised Erosion and Sediment Control Plan:** Recommendations from NSWCD signed by Blake Honetschlager of Nicollet SWCD will be followed and incorporated into the proposed Erosion and Sediment Control Plan.

3. **Revised Floor Plans:** Plans indicate the existing and proposed floor plan, and depicts how the addition will connect to the existing dwelling.

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. We also request that we be placed on the December 21, 2020 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djh
Enclosures
CC: Patrick and Shana Gieseke

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben

Since
1896

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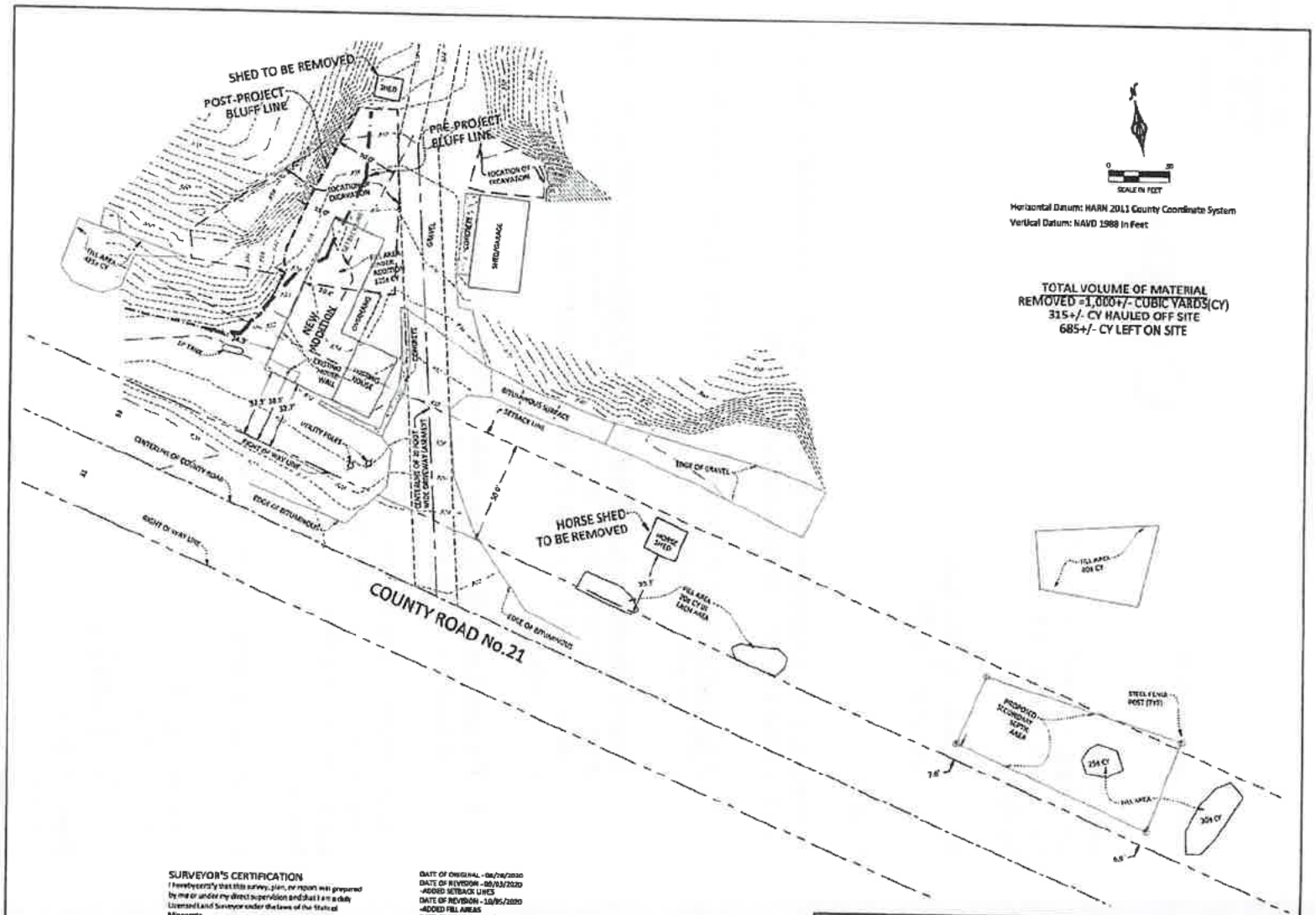

SURVEYOR'S CERTIFICATION

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

Jesse D. Zelg
License Number 44096

10/28/2020
Date

DATE OF ORIGINAL - 08/28/2020
DATE OF REVISION - 09/03/2020
-ADDED SETBACK LINES
DATE OF REVISION - 10/05/2020
-ADDED FILL AREAS
DATE OF REVISION - 11/18/2020
-REVISION/ADDED QUANTITIES

Surveyor's Note:
-The base contours used for volume calculations and the pre bluff line was determined based on the 2010 Minnesota Lidar project. Data was extracted from the DNR's MN Topo Site (http://arcgis.dnr.state.mn.us/maps/mntopo/)

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H:\Projects\511-172571\CAD\C3D\172571V305.DWG 11/18/2020 1:17 PM

AFTER THE FACT VARIANCE SKETCH
WEST NEWTON TWP., NICOLLET COUNTY, MN

PART OF THE SE 1/4, SECTION 35-113-31

BOLTON & MENK
1243 CEDAR STREET NE
SLEEPY EYE, MINNESOTA 56085
(507) 794-5541

FOR: PAT AND SHANA GRESSMC

JOB NUMBER: 511-172571 FIELD BOOK: DRAWN BY: MJ/CC

SEC 35-113-31(40)

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12/17/2020 4:59 PM

GIESEKE PROPERTY
62208 COUNTY RD 21
NEW ULM MN 56073

The following are recommendations from Nicollet Soil & Water Conservation District to control potential erosion from the Gieseke property, located at 62208 County Road 21 in Nicollet County.

1. Control bluff cut behind garage by installing a retaining wall feature. Wall should run along the entire length of disturbed side hill and be installed far enough away from the bluff cut to allow for back fill of black dirt. Dirt fill will aid in plant establishment. A climbing vine plant can be planted on the bluff face. Creeping Juniper or other hardy perennial along the top of the retaining wall will aid in erosion control.

2. Grade area between garage and bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

3. Fill can be left in place in the ravine gully to the west of the residence. Removing the fill will disturb the area further causing potential erosion into the road ditch, and damage of septic system. This area should be graded evenly and planted with a shade tolerant grass/plant mix. Once planted, erosion control blanket should be installed on all exposed and seeded surfaces.
   a. Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberry, Leadplant, Big Blue Steam Grass, Little Blue Steam Grass Swamp Milkweed, Common Boneset, Wild Bergamot.
   b. Contact Seed distributer (Albert Lea Seed House, etc.) to get their recommendation on a mix suited for shade, part sun.

4. To stabilize ravine erosion at the gully, near the filled area, Nicollet SWCD recommends minimal grading to allow the placement of Geo Erosion fabric and the placement of rock. Rock should be large Limestone or Quarts, or field stone. The field at the top of this gully is enrolled into the CRP program, allowing for reduced peak flows.

Blake Honetschlager
District Technician
Nicollet SWCD

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12/17/2020 4:59 PM



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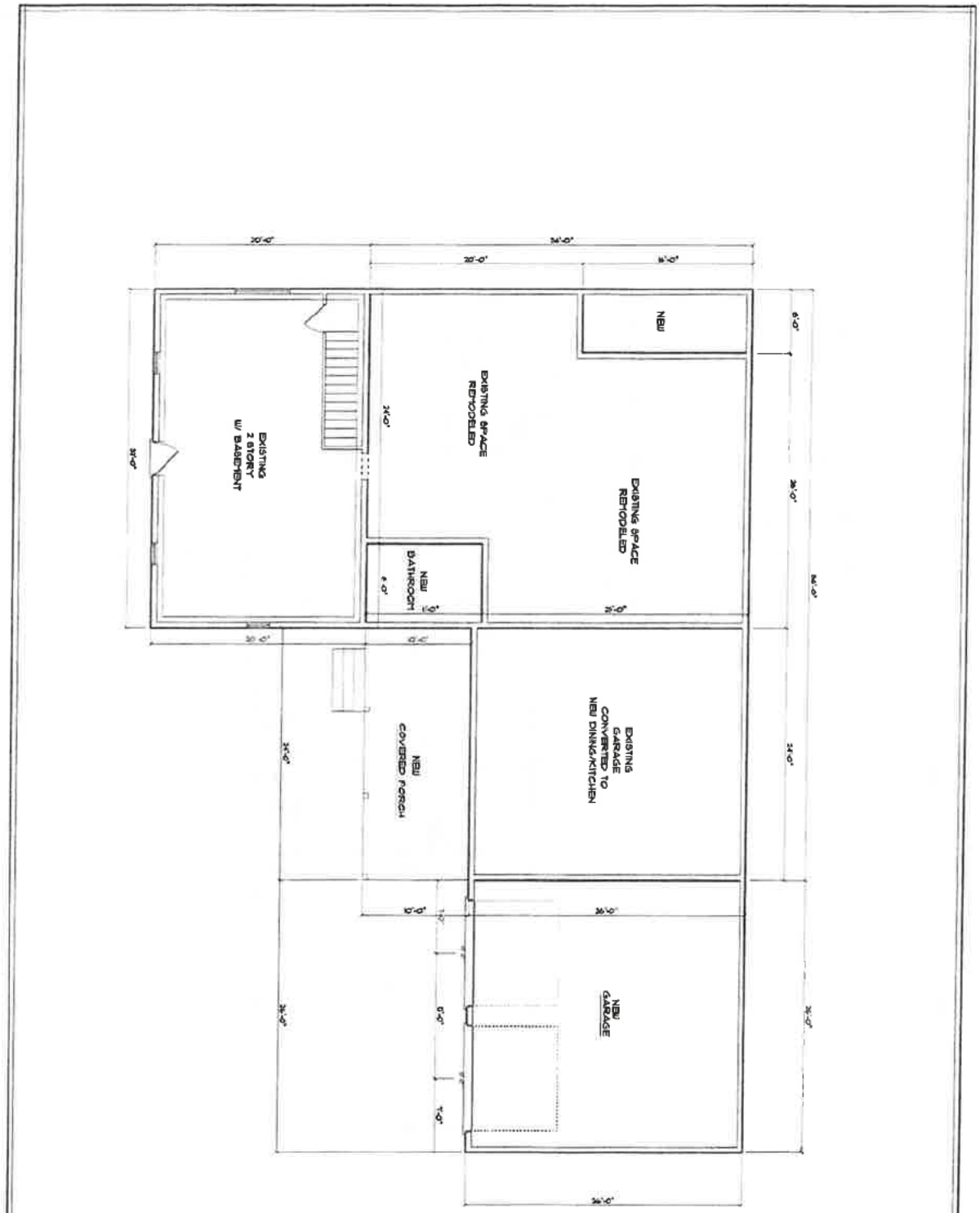
12/17/2020 4:59 PM



PUHLMANN LUMBER

GIESEKE ADDITION

62208 COUNTY ROAD 23- NEW ULM, MN

PUHLMANN LUMBER & DESIGN

301 1st STREET S. NEW ULM, MN
PH: (507) 354-4914
FAX: (507) 354-5905

EXISTING W/ NEW ADDITIONS

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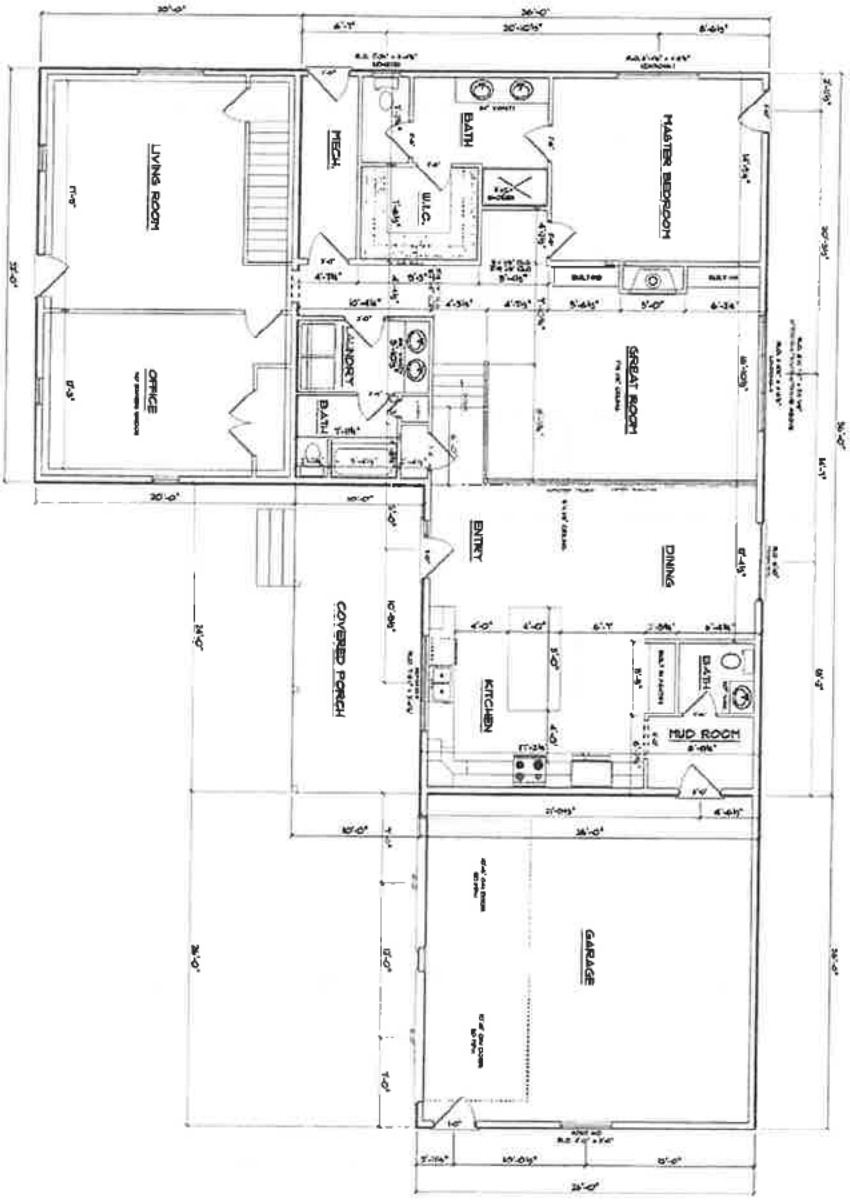

PUHLMANN LUMBER

GIESEKE ADDITION

82205 COUNTY ROAD 21- NEW ULM, MN

PUHLMANN LUMBER
& DESIGN

301 1st STREET S. NEW ULM, MN
PH: (507) 354-4914
FAX: (507) 354-5105

MAIN FLOOR

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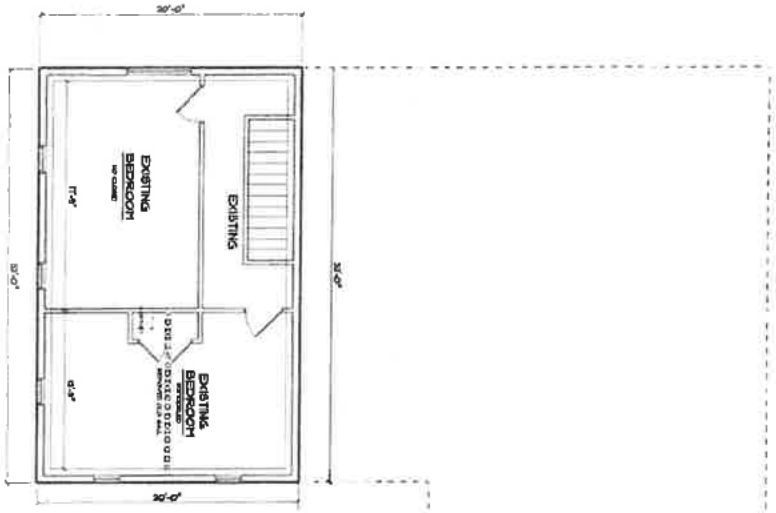

PUHLMANN LUMBER

GIESEKE ADDITION

62208 COUNTY ROAD 21 · NEW ULM, MN

PUHLMANN LUMBER & DESIGN

301 1st STREET S. NEW ULM, MN
PH: (507) 354-4193
FAX: (507) 354-5109

UPSTAIRS

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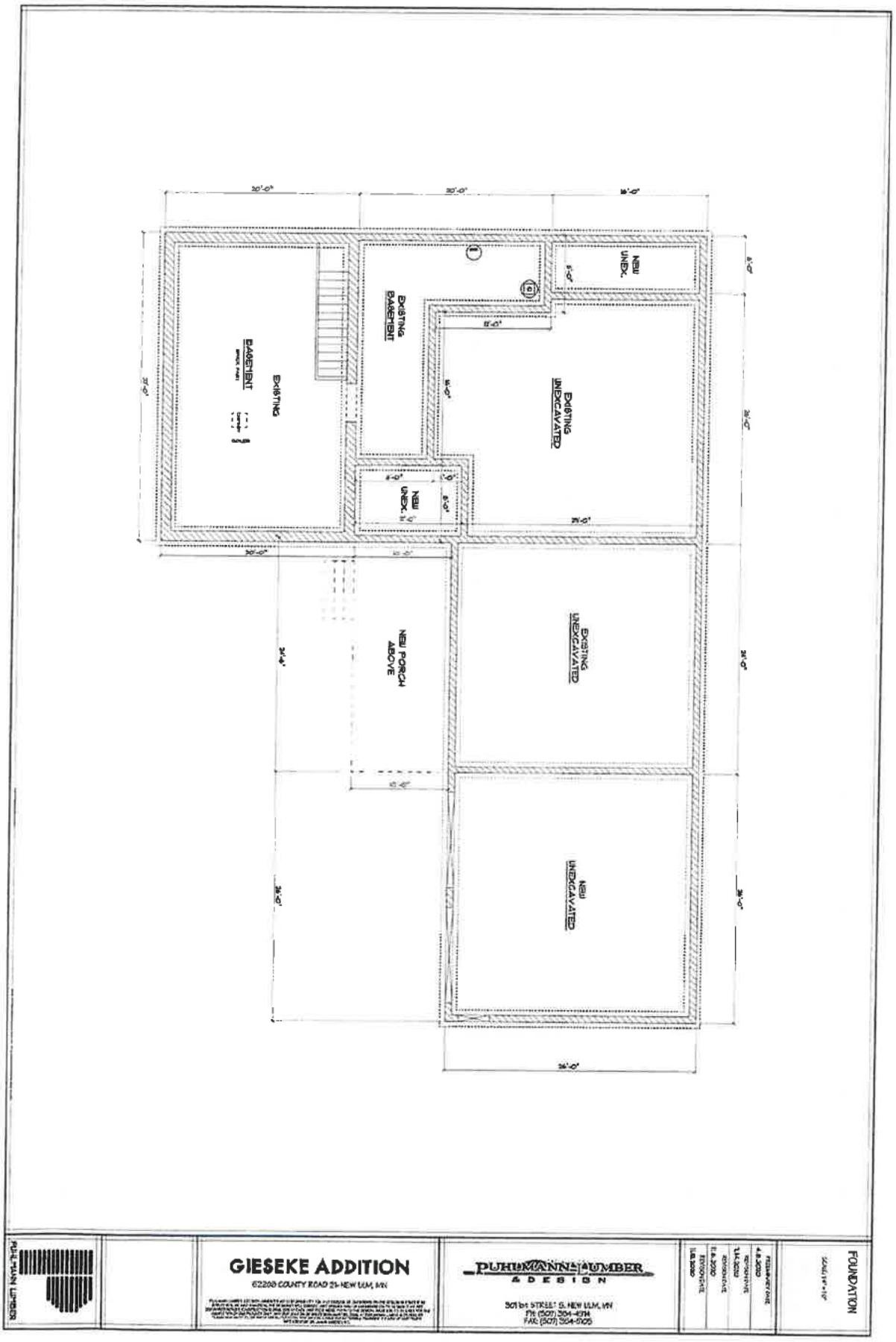

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12/17/2020 4:59 PM

NOTE: The new addition is already attached to the existing as the existing already has tied it together but for raising the roof line over the existing garage and the existing rafters of the new remodeled great room.

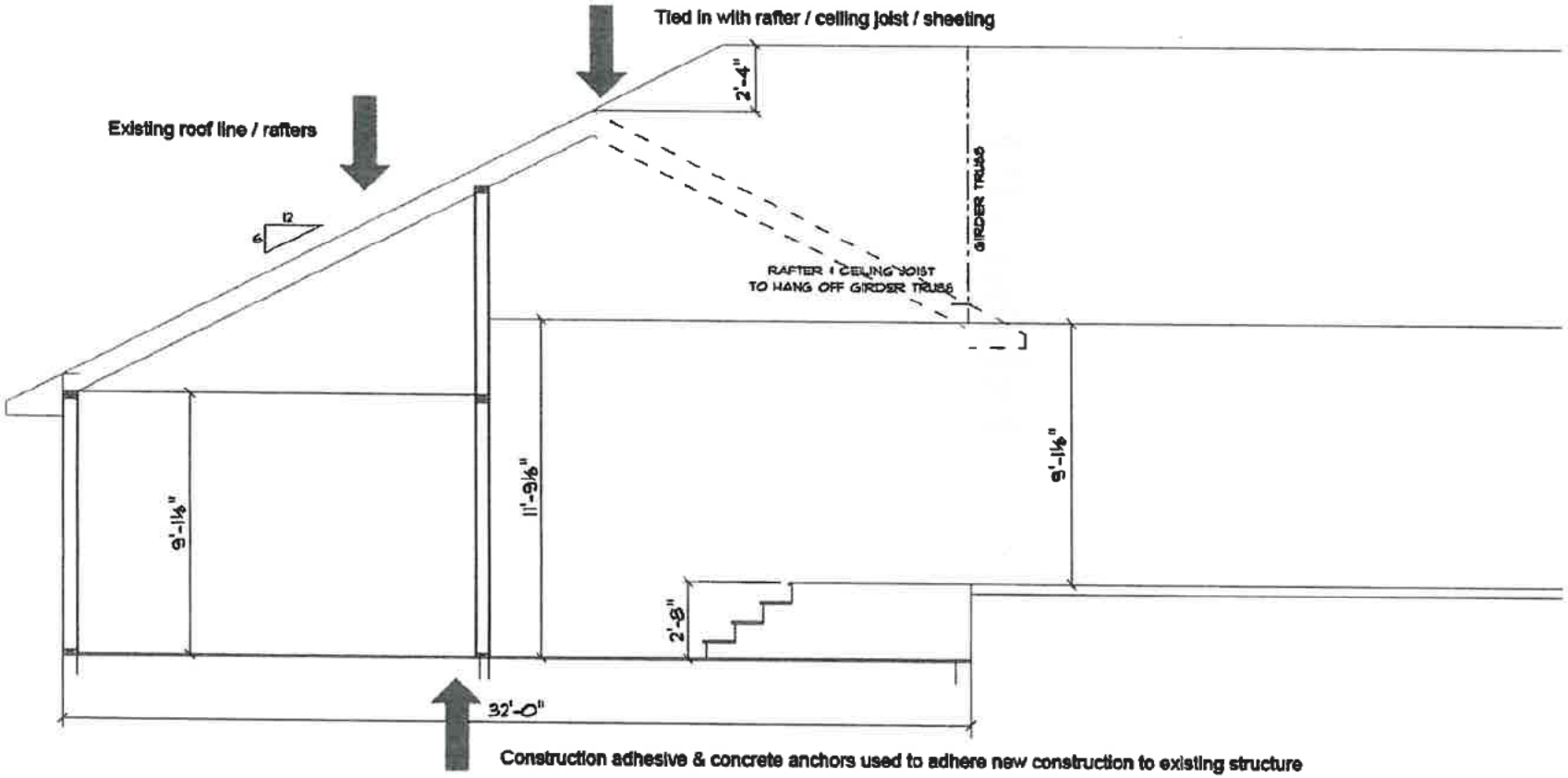

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Exhibit DD

Filed in District Court
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12/17/2020 4:59 PM

Debra Hatcher

From: Debra Hatcher
Sent: Thursday, December 17, 2020 4:40 PM
To: Megan Coryell
Cc: Steven J. Franta; Mandy Landkamer; Jon Hammel
Subject: Gieseke Application
Attachments: Letter to Jon Hammel 12.17.20.pdf

Good Afternoon,

Attached is a letter with an enclosure dated December 17, 2020 which we will mail today.

Please let me know if you have any questions or concerns.

Debra J. Hatcher on behalf of Steven J. Franta
Paralegal
Somsen, Mueller & Franta
106 1/2 N Minnesota St
PO Box 38
New Ulm, MN 56073
PHONE: 507-354-2161
Email: debrah@thelegalprofessionals.com
Website: www.thelegalprofessionals.com

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Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

December 17, 2020

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated December 7, 2020, for which the application remains on hold until received, enclosed (and attached) is the revised Erosion and Sediment Control plan which clarifies and incorporates the recommendations from NSWCD.

Please confirm at your earliest convenience whether your requirements are complete now with the information submitted herein. We also request that we be placed on the January 18, 2021 Planning and Zoning Advisory Commission Hearing.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Steven J. Franta
SJF:djh
Enclosures
CC: Patrick and Shana Gieseke

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Eliana J. Davis

Since
1896

Filed in District Court
State of Minnesota
12/17/2020 4:59 PM

Erosion and Sediment Control Plan

62208 County Road 21

New Ulm, MN 56073

- An erosion and sediment control plan. The plan will need to identify the practices and methods to be used to mitigate erosion and sedimentation resulting from the construction and earthwork onsite on your property. The plan must note what is currently being done to control erosion, and what you are planning for future erosion control on your property.

- Identify the practices and methods to be used to mitigate erosion and sedimentation – Bluff
  - Retaining wall
  - Black dirt back fill
  - Climbing vine plant
  - Creeping Juniper and/or other hardy perennial
  - Grade area between garage & bluff cut to allow placement of 4"-6" of topsoil, plant to grass.

- Identify the practices and methods to be used to mitigate erosion and sedimentation – ravine gully (washout)
  - Grade area evenly & plant with shade tolerant grass/plant mix
  - Once planted, erosion control blanket installed on all exposed & seeded surfaces.
    - Plant species suited for shade, part sun: Indian Grass, Western Braken Fern, Cinnamon Fern, Serviceberrry, Leadplant, Big Blue Stream Grass, Little Blue Steam Grass Swamp Milkweed, common Boneset, Wild Bergamot.

- Note what is currently being done to control erosion –
  - Unfortunately, nothing as Nicollet County Property and Public Services have served us with a Cease and Desist order and threatened us with a restraining order if we proceed with anything. We have not been able to do anything since July 2020

- What you are planning for future erosion control on your property –
  - See above as well as submitted Recommendations from Nicollet SWCD

Revised 12/08/2020

OFFICE OF THE NICOLLET COUNTY ATTORNEY

Michelle M. Zehnder Fischer
County Attorney

James P. Dunn, Chief Deputy County Attorney
Megan E. Gaudette Coryell, Assistant County Attorney
Shannon Ness, Assistant County Attorney
Daniel R. Green, Assistant County Attorney
Bonnie Petersen, Victim/Witness Coordinator

December 22, 2020

Honorable Todd W. Westphal
Judge of District Court
Nicollet County Government Center
501 S. Minnesota Avenue
St. Peter, MN 56082

Re: County of Nicollet, a political subdivision of the State of Minnesota,
vs. Patrick E. Gieseke and Shana E. Gieseke
Court File No. 52-CV-20-625

Dear Judge Westphal:

Please accept this letter as Nicollet County's Response to the Affidavit of Shana Gieseke, and to the requests the Defendants' attorney made during the hearing on Nicollet County's Motion for a Temporary Restraining Order [hereinafter "TRO"].

At the hearing on Nicollet County's Motion for a TRO, the Defendants' attorney made several requests, none of which are properly before the Court. Not only are these requests improperly before the Court, they are premature, and the Defendants have not served any Answer or motion in this matter.

Attorney Franta requested that the Defendants be permitted to continue working on the addition and expansion of the residence on their property; to "deny" the Cease and Desist Order; and to order Nicollet County Property and Public Services [hereinafter "NCPPS"] to place the Defendants' application for an after-the-fact variance on the January Board of Adjustment and Appeals [hereinafter "BAA"] agenda.

I. Defendants' request to continue construction and alteration work on the property.

This request is not properly before the Court. The Defendants have not properly brought any motion, nor have they provided any legal authority for this request. In making this request, the Defendants are essentially requesting that this Court usurp BAA's legal authority. There is a process and procedure provided in the Nicollet County Zoning Ordinance [hereinafter "Ordinance"] to request after-the-fact variances. Once an application has been determined to be

ATTACHMENT F.32
Response to Affidavit of Shana E. Gieseke

complete, based upon the individual requirements of the specific request, the request goes in front of BAA to render a decision. If an aggrieved party disagrees with BAA's decision, that decision would be appealable by the Defendants at that time.

From the outset, the Defendants were aware they needed a permit to commence construction on their property. In addition, Mr. Gieseke is a licensed contractor, who should be well-aware of the requirements, or at least how to ascertain the requirements, for commencing construction and alteration. Despite Ms. Gieseke blaming COVID for the delay and confusion, COVID is not an excuse for continually, repeatedly, and intentionally violating the Ordinance. NCPPS has made accommodations to reduce or eliminate person to person contact due to COVID, as communicated in NCPPS' May 1, 2020 email response to Ms. Gieseke's inquiry. (Ex. B, Bates 2).

Per the Ordinance, the Defendants cannot perform further construction or alteration on either the exterior or interior of the structure. The Defendants have provided no legal authority for their request that the Court order something that is currently prohibited by a duly enacted Ordinance.

As the more recent photographs demonstrate, the residence is not exposed to the elements. The addition/expansion has been enclosed with windows and a door, and, according to the Defendants, the wall of the old addition is still there inside the addition. The Defendants stated they are not residing in the addition. The Defendants stated they want to put in a new boiler. In communications with NCPPS, the Defendants never mentioned concerns about heating their home, or regarding installing a new boiler. (Aff. S. Gieseke, p. 79; Aff. M. Landkamer, Ex. L, Bates 36-38). The motion hearing was the first instance where the Defendants have said anything about a new boiler to NCPPS.

Upon submission of a complete application by the Defendants, BAA must be permitted to decide upon the request before the District Court could take any action on this issue. BAA must be allowed to operate within their legal authority, and make their own, independent decision on the request before the Defendants are permitted to proceed further. "The supreme court has held that courts reviewing decisions of this nature are not to substitute their judgment for that of the decisionmaking body, … and that "[t]he court's authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." *Yeh v. Cnty. of Cass*, 696 N.W.2d 115, 125 (Minn. Ct. App.), *rev. denied* (Minn. Aug. 16, 2005) (citing *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983); *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982)). In this matter, BAA, as the decision-making body, has not even been given the opportunity to act.

The Defendants appear to be operating under the assumption that it is a foregone conclusion that BAA will grant their request for an after-the-fact variance. From the beginning, NCPPS has informed the Defendants that there is no guarantee that BAA would grant their request for an after-the-fact variance. Their statements and actions ignore that BAA may deny their request, and the Defendants would then be required to restore the property to the pre-

violation state. The Defendants' actions are essentially an attempt to force and strong-arm BAA into granting their request for an after-the-fact variance.

The Defendants do not, and cannot, have a vested right or interest in their addition/expansion. The Defendants were well aware they needed a permit before they commenced construction, and were made aware that variance was required. "[I]njunctive relief is a remedy to protect preexisting rights and a court cannot create a right and then enforce it by an injunction." *Cramond v. Am. Fed'n of Labor & Cong. of Indust. Orgs.*, 267 Minn. 229, 233-34 (1964). The Defendants acted in contravention of the Ordinance, and are now improperly requesting this Court to create a right to continue acting in contravention of the Ordinance.

Therefore, the Defendants' request to continue construction and alteration work on the property should be denied.

II. Defendants' request to "deny" the Cease and Desist Order.

This request is also not properly before the Court. The Defendants have not brought a motion, nor have they provided any legal authority for this request. NCPPS issued a Cease and Desist Order to the Defendants on July 13, 2020, under the authority provided to NCPPS in the Ordinance. The Ordinance sets forth a process and procedure to appeal a Cease and Desist Order. *See* Ordinance § 502; *see also* Minn. Stat § 394.27. The Defendants have taken no action to appeal the Cease and Desist Order, therefore the Cease and Desist Order remains valid, and it stands.

Ms. Gieseke's own affidavit makes it apparent that the Defendants are well aware the Cease and Desist would need to be lifted before their residence could be enclosed. ("[W]e need to be able to have the cease and desist order lifted so that we can get our home enclosed before winter…" (Aff. S. Gieseke, p. 125)). The Cease and Desist Order applies to any and all construction and alteration on the property, including within the addition to the residence. By admitting to continuing work, the Defendants have admitted to intentionally violating the Cease and Desist Order.

The Defendants have not taken any action to properly appeal the Cease and Desist Order, therefore they have not properly exhausted their administrative remedies. Therefore, the Defendants' request to "deny" the Cease and Desist Order should be denied.

III. The Defendants' request for a Court order for NCPPSD to place the Defendants' request on the BAA Agenda.

This request is also not properly before the Court. The Defendants have not brought a motion, nor have they provided any legal authority for this request. As the exhibits to Ms. Landkamer's affidavit demonstrate, Nicollet County has repeatedly attempted to work with the Defendants regarding their application for an after-the-fact variance. NCPPS has in no way acted punitively towards the Defendants or hindered their application. NCPPS has applied the

same standards to the Defendants and NCPPS has applied to all other similarly situated landowners. NCPPS has repeatedly informed the Defendants what information was still missing, or what aspects needed clarification. As the Defendants' attorney conceded, NCPPS timely responded to each and every of the Defendant's submissions, within the statutory timelines contained in Minn. Stat. § 15.99. While NCPPS clearly laid out all of the requirements for the Defendants, it is not NCPPS's role to provide legal advice. It is the Defendants' obligation to submit a complete application, and it would be their attorney's role to legally advise them.

The Ordinance provides a process and procedure for appealing decisions and determinations of the Zoning Administrator. If the Defendants disagreed with the Zoning Administrator's determination that their application was incomplete, they could have properly appealed that determination to BAA. The Defendants have not done so, therefore they have not properly exhausted their administrative remedies. This request is another attempt by the Defendants to usurp BAA's legal authority. *See* Ordinance § 502; *see also* Minn. Stat § 394.27.

Therefore, the Court should deny Defendants' request for a Court order for NCPPS to place the Defendants' request on the BAA Agenda.

IV. NCPPS has not trespassed on the property.

The Defendants submitted baseless allegations that NCPPS trespassed on their property and harassed their [redacted] The Defendants have no proof the documents they say were left on their property by NCPPS were in fact left there by NCPPS. The only times NCPPS would have been on the Defendants' property was during pre-arranged site visits, with the knowledge and consent of the Defendants. (Aff. M. Landkamer, ¶¶ 20 and 27). Other photographs were taken from a public road. (Aff. M. Landkamer ¶¶ 18, 22, 24, and 33). NCPPS has not had any interactions with the Defendants' [redacted] and therefore would deny any and all allegations regarding that issue in Ms. Gieseke's affidavit. Ms. Gieseke's affidavit was the first time NCPPS was aware of any allegations regarding the Defendants' [redacted]

V. NCPPS has adequately set forth the harm caused by the Defendants' actions.

The Defendants cutting further and further into the bluff has the potential to cause slope instability, and further erosion.[1] This could cause the slope to fail, and slide into the road, causing harm and danger to the travelling public. The Defendants' actions also have the very

[1] The property is located in the 94B, Terril loam and 960F Belview-Omsrud soils complex. Slopes range from 2% to 6% and 22% to 40% respectively. Building site development within the Belview-Omsrud soil complex is classified as "severe" in which soil properties and site features are so unfavorable or so difficult to overcome that special design, significant increases in construction costs, and possibly increased maintenance are required. Terril loam is classified as "slight" in which soil properties and site features are generally favorable for the indicated use and limitations are minor and easily overcome. (Soil Survey of Nicollet County, U.S. Dep't of Agric. Soil Conservation Serv., issued June 1994; *see also* attached soil maps).

real potential to cause erosion and run-off issues for neighboring properties. The Defendants also dumped earthen material[2] that they removed during construction work onto their property into a ravine on their property, which also has the potential to cause erosion issues for neighboring landowners. The Defendants have not incorporated any erosion or stabilization techniques.

The Defendants not getting what they want, or the answers they want, does not mean the NCPPS is being uncooperative, unreasonable, or unhelpful. The Defendants were aware of the requirements, and proceeded doing whatever they wanted anyway. The Defendants continued and exacerbated their own problems and issues by starting and continuing work on their property.

Despite their assertions, the Defendants have not done "everything they can." They have done whatever they want, despite repeatedly being informed of the legal requirements, and potential ramifications for violations. NCPPS has attempted lower level interventions. Those interventions have proved unsuccessful. The Defendants have twice assured NCPPS in writing they ceased work on the property, which proved to be false. (Ex. I, Bates 28; Ex. O, Bates 43). Further, the Defendants stated at the hearing they have not ceased work, and requested to do even more work. Any unfortunately consequences the Defendants may be experiences are of their own creation.

Nicollet County requests that the Court grant the Motion for a TRO, enjoining further exterior and interior work on the property. The Motion for a TRO is not moot – the Defendants are proposing further violations of the Ordinance. A TRO would maintain the status quo, while preserving Nicollet County's rights and interests. If the TRO is not granted, the Defendants have made clear they would continue construction.

Sincerely,

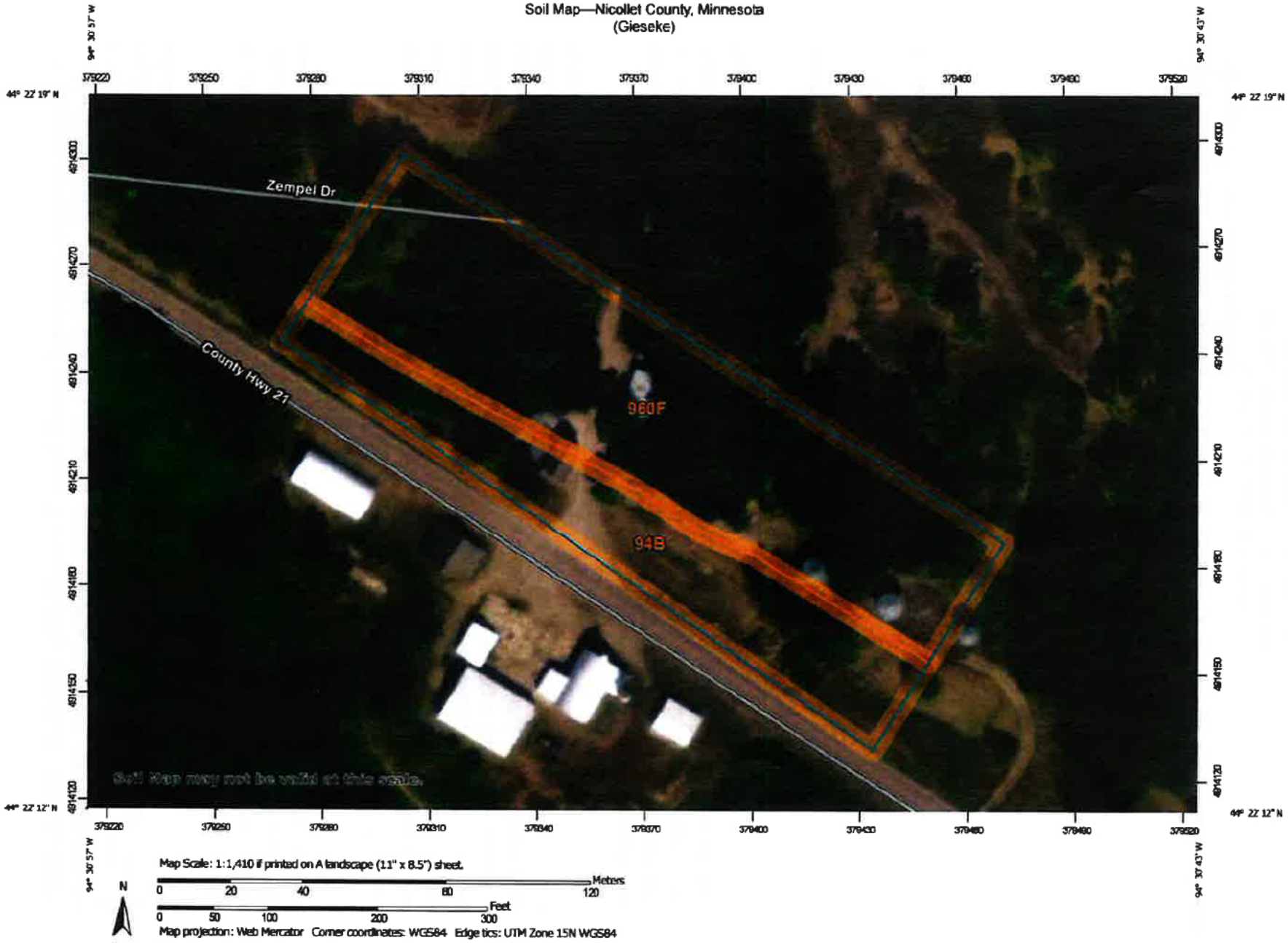
Megan E. Gaudette Coryell

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney

cc: Mandy Landkamer, NCPPS (via email)
Steven Franta, Attorney for the Defendants (via eService)

[2] This material also includes concrete and asphalt, in violation of the Nicollet County Solid Waste Ordinance. (*See* attached photographs).

Soil Map—Nicollet County, Minnesota
(Gieseke)



Map Scale: 1:1,410 if printed on A landscape (11" x 8.5") sheet.

N

Meters
0 20 40 80 120

Feet
0 50 100 200 300

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 15N WGS84

MAP LEGEND

Area of Interest (AOI)
- Area of Interest (AOI)

Soils
- Soil Map Unit Polygons
- Soil Map Unit Lines
- Soil Map Unit Points

Special Point Features
- Blowout
- Borrow Pit
- Clay Spot
- Closed Depression
- Gravel Pit
- Gravelly Spot
- Landfill
- Lava Flow
- Marsh or swamp
- Mine or Quarry
- Miscellaneous Water
- Perennial Water
- Rock Outcrop
- Saline Spot
- Sandy Spot
- Severely Eroded Spot
- Sinkhole
- Slide or Slip
- Sodic Spot
- Spoil Area
- Stony Spot
- Very Stony Spot
- Wet Spot
- Other
- Special Line Features

Water Features
- Streams and Canals

Transportation
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

Background
- Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:20,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Nicollet County, Minnesota
Survey Area Data: Version 16, Jun 10, 2020

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

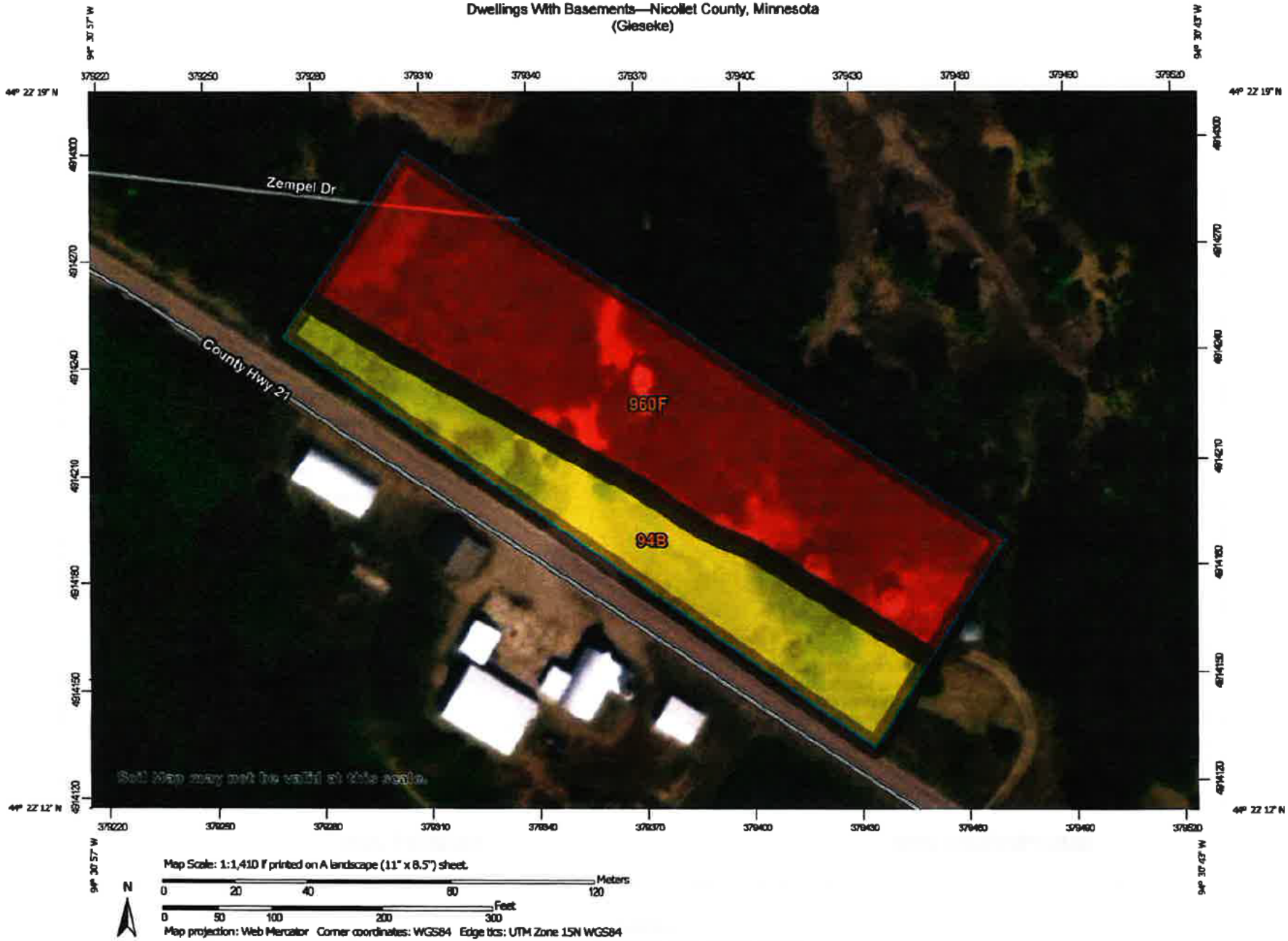
Date(s) aerial images were photographed: May 16, 2010—Oct 16, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
94B	Terril loam, 2 to 6 percent slopes	1.1	32.5%
960F	Belview-Omsrud complex, 22 to 40 percent slopes	2.2	67.5%
Totals for Area of Interest		3.3	100.0%

Dwellings With Basements—Nicollet County, Minnesota
(Gleseke)



Map Scale: 1:1,410 if printed on A landscape (11" x 8.5") sheet.

Meters: 0 20 40 80 120

Feet: 0 50 100 200 300

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 15N WGS84

MAP LEGEND

Area of Interest (AOI)
- Area of Interest (AOI)

Background
- Aerial Photography

Soils

Soil Rating Polygons
- Very limited
- Somewhat limited
- Not limited
- Not rated or not available

Soil Rating Lines
- Very limited
- Somewhat limited
- Not limited
- Not rated or not available

Soil Rating Points
- Very limited
- Somewhat limited
- Not limited
- Not rated or not available

Water Features
- Streams and Canals

Transportation
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:20,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Nicollet County, Minnesota
Survey Area Data: Version 16, Jun 10, 2020

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: May 16, 2010—Oct 16, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Dwellings With Basements

Map unit symbol	Map unit name	Rating	Component name (percent)	Rating reasons (numeric values)	Acres in AOI	Percent of AOI
94B	Terril loam, 2 to 6 percent slopes	Somewhat limited	Terril (60%)	Depth to saturated zone (0.79)	1.1	32.5%
			Storden, moderately eroded (7%)	Depth to saturated zone (0.31)		
			Clarion (5%)	Depth to saturated zone (0.31)		
960F	Belview-Omsrud complex, 22 to 40 percent slopes	Very limited	Belview (50%)	Slope (1.00)	2.2	67.5%
			Omsrud (30%)	Slope (1.00)		
			Delft (10%)	Depth to saturated zone (1.00)		
				Shrink-swell (0.31)		
Totals for Area of Interest					3.3	100.0%

Rating	Acres in AOI	Percent of AOI
Very limited	2.2	67.5%
Somewhat limited	1.1	32.5%
Totals for Area of Interest	3.3	100.0%

Description

Dwellings are single-family houses of three stories or less. For dwellings with basements, the foundation is assumed to consist of spread footings of reinforced concrete built on undisturbed soil at a depth of about 7 feet.

The ratings for dwellings are based on the soil properties that affect the capacity of the soil to support a load without movement and on the properties that affect excavation and construction costs. The properties that affect the load-supporting capacity include depth to a water table, ponding, flooding, subsidence, linear extensibility (shrink-swell potential), and compressibility. Compressibility is inferred from the Unified classification of the soil. The properties that affect the ease and amount of excavation include depth to a water table, ponding, flooding, slope, depth to bedrock or a cemented pan, hardness of bedrock or a cemented pan, and the amount and size of rock fragments.

The ratings are both verbal and numerical. Rating class terms indicate the extent to which the soils are limited by all of the soil features that affect the specified use. "Not limited" indicates that the soil has features that are very favorable for the specified use. Good performance and very low maintenance can be expected. "Somewhat limited" indicates that the soil has features that are moderately favorable for the specified use. The limitations can be overcome or minimized by special planning, design, or installation. Fair performance and moderate maintenance can be expected. "Very limited" indicates that the soil has one or more features that are unfavorable for the specified use. The limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.

Numerical ratings indicate the severity of individual limitations. The ratings are shown as decimal fractions ranging from 0.01 to 1.00. They indicate gradations between the point at which a soil feature has the greatest negative impact on the use (1.00) and the point at which the soil feature is not a limitation (0.00).

The map unit components listed for each map unit in the accompanying Summary by Map Unit table in Web Soil Survey or the Aggregation Report in Soil Data Viewer are determined by the aggregation method chosen. An aggregated rating class is shown for each map unit. The components listed for each map unit are only those that have the same rating class as listed for the map unit. The percent composition of each component in a particular map unit is presented to help the user better understand the percentage of each map unit that has the rating presented.

Other components with different ratings may be present in each map unit. The ratings for all components, regardless of the map unit aggregated rating, can be viewed by generating the equivalent report from the Soil Reports tab in Web Soil Survey or from the Soil Data Mart site. Onsite investigation may be needed to validate these interpretations and to confirm the identity of the soil on a given site.

Rating Options

Aggregation Method: Dominant Condition

Component Percent Cutoff: None Specified

Tie-break Rule: Higher

Nicollet County, Minnesota

94B—Terril loam, 2 to 6 percent slopes

Map Unit Setting

National map unit symbol: 2tsjq
Elevation: 690 to 1,840 feet
Mean annual precipitation: 24 to 37 inches
Mean annual air temperature: 43 to 52 degrees F
Frost-free period: 140 to 180 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Terril and similar soils: 80 percent
Minor components: 20 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Terril

Setting

Landform: Ground moraines
Landform position (two-dimensional): Footslope, toeslope
Landform position (three-dimensional): Dip
Down-slope shape: Concave
Across-slope shape: Linear
Parent material: Colluvium

Typical profile

Ap - 0 to 9 inches: loam
A - 9 to 34 inches: loam
Bw - 34 to 52 inches: loam
C - 52 to 79 inches: loam

Properties and qualities

Slope: 2 to 6 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.20 to 2.00 in/hr)
Depth to water table: About 39 to 51 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum content: 20 percent
Maximum salinity: Nonsaline to very slightly saline (0.0 to 2.0 mmhos/cm)
Available water capacity: High (about 11.0 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B

Ecological site: R103XY011MN - Footslope/Drainageway Prairies
Forage suitability group: Level Swale, Neutral (G103XS001MN)
Other vegetative classification: Level Swale, Neutral (G103XS001MN)
Hydric soil rating: No

Minor Components

Delft
Percent of map unit: 8 percent
Landform: Swales on ground moraines
Down-slope shape: Concave, linear
Across-slope shape: Linear, concave
Ecological site: R103XY001MN - Loamy Wet Prairies
Other vegetative classification: Level Swale, Neutral (G103XS001MN)
Hydric soil rating: Yes

Storden, moderately eroded
Percent of map unit: 7 percent
Landform: Ground moraines
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Rise
Down-slope shape: Convex, linear
Across-slope shape: Convex, linear
Ecological site: R103XY002MN - Calcareous Upland Prairies
Other vegetative classification: Sloping Upland, Calcareous (G103XS010MN)
Hydric soil rating: No

Clarion
Percent of map unit: 5 percent
Landform: Ground moraines
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Rise
Down-slope shape: Convex
Across-slope shape: Linear
Ecological site: R103XY004MN - Loamy Upland Prairies
Other vegetative classification: Level Swale, Low AWC, Neutral (G103XS003MN)
Hydric soil rating: No

Data Source Information

Soil Survey Area: Nicollet County, Minnesota
Survey Area Data: Version 16, Jun 10, 2020

Nicollet County, Minnesota

960F—Belview-Omsrud complex, 22 to 40 percent slopes

Map Unit Setting

National map unit symbol: 2vvg3
Elevation: 690 to 1,840 feet
Mean annual precipitation: 24 to 37 inches
Mean annual air temperature: 43 to 52 degrees F
Frost-free period: 140 to 180 days
Farmland classification: Not prime farmland

Map Unit Composition

Belview and similar soils: 50 percent
Omsrud and similar soils: 30 percent
Minor components: 20 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Belview

Setting

Landform: Moraines
Landform position (two-dimensional): Summit, backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Fine-loamy till

Typical profile

A - 0 to 9 inches: loam
Bk - 9 to 55 inches: loam
C - 55 to 79 inches: loam

Properties and qualities

Slope: 22 to 40 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.20 to 2.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum content: 25 percent
Maximum salinity: Nonsaline to very slightly saline (0.0 to 2.0 mmhos/cm)
Available water capacity: High (about 11.1 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7e
Hydrologic Soil Group: B

Ecological site: R103XY002MN - Calcareous Upland Prairies
Forage suitability group: Not Suited (G103XS024MN)
Other vegetative classification: Not Suited (G103XS024MN)
Hydric soil rating: No

Description of Omsrud

Setting

Landform: Moraines
Landform position (two-dimensional): Shoulder, summit, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Fine-loamy till

Typical profile

A - 0 to 9 inches: loam
Bw - 9 to 24 inches: loam
Bk - 24 to 36 inches: loam
C - 36 to 79 inches: loam

Properties and qualities

Slope: 22 to 40 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.20 to 2.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum content: 25 percent
Maximum salinity: Nonsaline to very slightly saline (0.0 to 2.0 mmhos/cm)
Available water capacity: High (about 11.0 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7e
Hydrologic Soil Group: B
Ecological site: R103XY004MN - Loamy Upland Prairies
Forage suitability group: Not Suited (G103XS024MN)
Other vegetative classification: Not Suited (G103XS024MN)
Hydric soil rating: No

Minor Components

Terril

Percent of map unit: 10 percent
Landform: Moraines
Landform position (two-dimensional): Footslope, toeslope
Landform position (three-dimensional): Base slope
Down-slope shape: Concave
Across-slope shape: Linear
Ecological site: R103XY011MN - Footslope/Drainageway Prairies

Other vegetative classification: Level Swale, Neutral (G103XS001MN)
Hydric soil rating: No

Delft

Percent of map unit: 10 percent
Landform: Moraines on swales
Down-slope shape: Concave
Across-slope shape: Linear
Ecological site: R103XY001MN - Loamy Wet Prairies
Other vegetative classification: Level Swale, Neutral (G103XS001MN)
Hydric soil rating: Yes

Data Source Information

Soil Survey Area: Nicollet County, Minnesota
Survey Area Data: Version 16, Jun 10, 2020


09 18 2020


09 18 2020


09 18 2020

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

January 6, 2021

Sent via email to: steve@thelegalprofessionals.com

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Incomplete Application

Dear Mr. Franta,

This letter concerns the property of Mr. and Ms. Gieseke, located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the most recent documents submitted via email on December 17, 2020, concerning the application for an after-the-fact variance for the purpose of constructing a dwelling addition on the property. The request currently has five components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition; and
5. Reducing the front yard setback for a replacement septic system.

December 17, 2020 Document

The document submitted to Nicollet County Property and Public Services (hereinafter "NCPPS") by Debra Hatcher (on behalf of attorney Steven Franta) on December 17, 2020, was received via email. The document was a revised erosion and sediment control plan.

Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of the application on December 17, 2020. NCPPS has reviewed the application and has determined it to be **incomplete** for the reasons listed below.

ATTACHMENT F.33
Incomplete Application Letter

After-The-Fact Variance Application
The application will remain **on-hold** until the following steps are taken:

1. Mr. and Ms. Gieseke will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, November 24, 2020, and December 17, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment. Mr. and Ms. Gieseke have provided inconsistent and contradictory information regarding the location of the offsite earth movement, and who removed the earthen material offsite.

2. Identify how Mr. and Ms. Gieseke intend to resolve the onsite earth movement violation. As you are aware, the placement of fill within a protected bluff area is a violation of Section 721.1(2) of the Nicollet County Zoning Ordinance. Regarding the fill placed in the bluff, Mr. and Ms. Gieseke have two options, listed below.

    a. Remove the fill placed in the protected bluff area and restore the bluff to pre-project condition; or

    b. Seek an after the fact variance to the applicable standard. This item may be added as a sixth component of the after the fact variance request noted above, under the first paragraph of this letter.

    NOTE: Additionally, Section 603.3(6) of the Zoning Ordinance states that the cutting/filling of more than fifty (50) cubic yards of material not in connection with another permitted use requires a conditional use permit (hereinafter "CUP"). At this point, because a variance has not been granted for the cutting/filling of the 1,000 cubic yards of materials noted on the survey (dated November 23, 2020), a CUP would be required for the activity. The after-the-fact CUP process was summarized in a letter to Mr. and Ms. Gieseke from NCPPS dated October 27, 2020.

3. Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

4. Signing the official application, to be provided by NCPPS. Before NCPPS can draft the official application, Mr. and Ms. Gieseke will need to inform NCPPS of the precise elements to be listed on the after-the-fact variance they are requesting. Once the application is signed and complete, the request will then be added to the next available hearing date.

Conclusion
The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change.

If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

Electronically Served
1/14/2021 10:49 AM
Nicollet County, MN

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF NICOLLET

FIFTH JUDICIAL DISTRICT
File: 52-CV-20-625

The County of Nicollet, a political subdivision of the State of Minnesota,
Plaintiff,

vs.

Patrick E. Gieseke and Shana E. Gieseke,
Defendants.

TEMPORARY RESTRAINING ORDER

The above-entitled matter came on for hearing before the Honorable Todd W. Westphal, Judge of District Court, on December 18, 2020. The hearing was held remotely, via Zoom, given the existing Covid-19 abatement order. Participating in the hearing were:

Megan E. Gaudette Coryell, Assistant Nicollet County Attorney;
Mandy Landkamer, Director of Nicollet County Property and Public Services;
John Hammel, Nicollet County Zoning Administrator;
Patrick E. Gieseke and Shana E. Gieseke, Defendants; and
Steven J. Franta, Attorney for Defendants.

The matter was before the Court upon Plaintiff's motion dated December 10, 2020, seeking a temporary restraining order. The Court heard argument at the hearing, and allowed the record to remain open to receive Plaintiff's response to the affidavit of Shana Gieseke, which affidavit was filed the day before the hearing. Based upon the record before it, the Court makes the following:

ORDER

1. Plaintiff's request for a temporary restraining order (TRO) against Defendants is granted. Defendants are hereby temporarily restrained, enjoined, and prohibited from engaging in any further construction activities on structures located at 62208 County Road 21, New Ulm, Nicollet County, Minnesota (hereinafter "the Property"), and are further restrained, enjoined, and prohibited from engaging in any excavation and/or alteration of the land at that location.

2. In the event Defendants feel any further construction is needed on the structures at the Property to secure it from the weather or other elements, they may file a further motion herein specifically identifying the further construction they wish to perform, the reason such additional construction is needed, and the specific activities involved in their requested construction. This should include providing photographs of the current state or condition of the area where further construction is desired that demonstrate and establish the need for this further construction to occur.

3. The attached Memorandum is incorporated herein by reference.

ATTACHMENT F.34
Temporary Restraining Order

IT IS SO ORDERED.

Westphal, Todd (Judge)
2021.01.13 17:32:51
-06'00'

Todd W. Westphal
Judge of District Court

MEMORANDUM

Overview:

Defendants Patrick and Shana Gieseke purchased the home and real property located at 62208 County Road 21, New Ulm, Nicollet County, Minnesota, in 2017. Defendants found the location to be desirable as the property, which consisted of around 11 acres, was located in the Minnesota River valley. The property included a home, a horse shed, and a 10' x 12' shed. However, after purchasing the property, Defendants apparently desired to make some modifications to the home and other structures. Patrick Gieseke owns and operates a construction business, namely Gieseke Homes, LLC, and was apparently able to perform much of the desired construction himself. However, it appears the home was a nonconforming structure under the zoning ordinance(s) of Nicollet County.[1] Under the zoning ordinance(s) of Nicollet County, a variance was required to expand, change, alter, or enlarge a nonconforming structure. Given Patrick Gieseke's occupation, it is reasonable to assume he was aware of this requirement, or at the very least, was aware of the potential that a zoning issue would exist.

In 2019, Defendants did some excavation work on the property, presumably in preparation for their planned modifications to the home and buildings. As suggested above, under the zoning ordinance(s) in Nicollet County, it appears a variance was required in order to undertake such work. However, Defendants did not obtain a variance prior to doing this work.

On May 1, 2020, Shana Gieseke, sent an email to Mandy Landkammer.[2] Landkammer is Plaintiff's Director of Nicollet County Property and Public Services Department (NCPPSD). The email stated:

I believe we need to obtain a building permit; can this be done on-line?

The email was copied to Jon Hammel, a Nicollet County Zoning Officer. Landkamer responded on May 1, 2020, informing Defendant the county did not have online process, but indicating permits could be emailed out if the required information was submitted and

[1] The Complaint alleges the home was a nonconforming structure due to its location in relation to the bluff/bluff setback, and its location in relation to the right-of-way of Nicollet County Road 21.

[2] Shana Gieseke is employed as a Mortgage Document Specialist at Frandsen Bank and Trust in New Ulm. Considering that employment, it seem reasonable to assume she too may have some knowledge as to the possible application of zoning ordinances on the property, and the possible need to obtain a variance for the work to be done on the home and property.

the applicable "setbacks and standards" were complied with. Landkamer's response also advised Defendants' property was in a "Conservancy zoning district," and it attached information on the district setbacks, fees, and a sample site plan.

Following the email on May 1, 2020, Plaintiff became aware that Defendants had performed some excavation work on the property without obtaining a variance, and on July 13, 2020, issued a Cease and Desist Order.[3] Thereafter, further communication/discussion occurred between Defendants and various NCPPSD agents/employees. Plaintiff asserts that while this was occurring, Defendants continued further construction and alterations on the property. Toward the end of August 2020, Defendants submitted an application for an after-the-fact-variance. In an email dated August 21, 2020, as requested by Hammel, Shana Gieseke informed Hammel:

> *Yes, I understand no further construction will occur until the violation has been resolved.*

Thereafter, additional communication occurred between the parties, primarily regarding the status of the variance request and the deficiencies Plaintiff felt existed in what Defendants' had submitted.

On December 7, 2020, NCPPSD agents again viewed the property and took photos thereof. In comparing the condition of the property at that time with photos taken of the property in August 2020, Plaintiff determined that Defendants continued to undertake development on the property in violation of the zoning ordinance and the Cease and Desist Order they had issued.

Thereafter, on December 11, 2020, Plaintiff commenced this action by serving Defendants with a Summons and Complaint. The Complaint alleges Defendants cites Defendants' violation of the Nicollet County zoning ordinance, and alleges a continuation of construction related activities on the property being committed by Defendants after knowing the actions violate the zoning ordinance and after having been ordered to cease and desist such actions.

In the pending motion, Plaintiff requests a preliminary injunction, in the form of a temporary restraining order, which enjoins Defendants (or others acting at their request) from commencing or continuing construction activities on their property. The Complaint also seeks a permanent injunction after a hearing prohibiting such action. Finally, the Complaint asks the Court to order Defendants to abate the violations that have occurred by taking specific actions relating to the dwelling/garage addition, the bluff, and the two sheds, or in the alternative, to apply for and obtain an after-the-fact variance and permit which allowed the existence of the work performed.

Defendants do not dispute that certain actions they have taken violated the zoning ordinance(s) in question, in that they have performed some work to alter the property and structures without first obtaining a permit or variance. Defendants now assert that their

---

[3] It appears that Plaintiff viewed photos of the property that were available on realtor.com which were taken prior to Defendants' purchase with photos Plaintiff took on June 18, 2020, and from those photos could tell some excavation of the bluff had occurred along with some alteration of one of the structures. It is not clear whether the excavation Plaintiff detected in the photos was the excavation that occurred in 2019, or whether it was more recent activity. At the hearing on the motion, Defendants acknowledged that work had been done in 2019, as well as between May and July 2020.

ability to communicate and work with NCPPSD to resolve the dispute has broken down to the point where the matter needs to be brought to the Nicollet County Planning and Zoning Advisory Commission. Defendants also oppose Plaintiffs' request for a temporary restraining order, citing the need to still perform certain actions to prepare structures for winter and to protect structures from the elements and rodents.

Analysis:

In *Dahlberg Bros. v Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965), the Minnesota Supreme Court set forth the factors the Court is to consider in determining whether to grant temporary injunctive relief. Those factors are:

1. The nature and background of the relationship between the parties prior to the current dispute;

2. The harm to plaintiff if the request is denied versus the harm to defendant if the request is granted;

3. The likelihood of success on the merits;

4. Public policy considerations; and

5. The administrative burden to the court inherent with enforcement.

Id. at 321-221965).

As discussed below, a review of these factors causes the Court to conclude that Plaintiff's request for temporary injunctive relief should be granted.

Nature and Background of the Relationship between the Parties

The relationship of the parties is that of Plaintiff being the governmental entity overseeing and "policing" construction and the development of land and structures in Nicollet County, and of Defendants being residents of Nicollet County who wish to engage in such construction and/or development. The Court does not view anything about the nature and background of the relationship between the parties that weighs in favor or against granting injunctive relief. As such, in the present case, the Court views this factor as essentially being neutral.

Weighing of Relative Harm

Both parties claim harm is likely to occur, the harm to Plaintiff occurring if the restraining order is not granted, and the harm to Defendants occurring if it is. The harm cited by Plaintiff includes the potential for harm to the environment arising from activities such as excavating the hillside. Arguably, an act such as this can compromise the integrity of the entire hillside, in addition to leading to problems such as erosion and the depositing of sediment on the adjacent roadway. However, in addition to harm of this more tangible nature, failing to enjoin such conduct could seemingly give rise to other less tangible harm. This includes the potential of what may be referred to as visual pollution, where construction is able to occur without the approval or disapproval of some governing

organization. Along the same lines, here, one of the reasons the property is considered as nonconforming is the fact that it is locate too close to a county roadway. As such, to an extent, disregarding the legal process for changing or altering a nonconforming structures such as this deprives the governmental authority of its ability to maintain the safety of travel on its roadway by impairing or avoiding its ability to have a say in such changes or alterations. Finally, an additional perceived detriment to Plaintiff is that, in the event Defendants are not enjoined, others may view the fact that Defendants were able disregard doing things "by the book," and get away with it, causing them to do the same. This potential for a general "reverse deterrent effect" must certainly be viewed as a potential harm to Plaintiff.

In regards to harm to Defendants, the primary harm cited appears to be the potential that the work that they have already done (albeit perhaps illegally) may be jeopardized to an extent since it had not yet been completed and portions thereof may be susceptible to damage by nature and the elements. Defendants have also claimed parts of one of more structures have not been fully enclosed, and that as a result, the improvements that have been made, as well as portions of the pre-existing structures, are susceptible to damage by rodents and other vermin. While Defendants could seemingly have merit, that Defendants are largely responsible for the existence of this circumstance must be considered as well.[4] Moreover, the harm cited by Defendants could seemingly be mitigated by allowing Defendants to, by subsequent motion, seek court approval to conduct certain minor abatement or mitigation work to secure the structures at risk.[5]

With the foregoing considerations in mind, the Court concludes consideration of this factor provides strong support for granting Plaintiff's motion.

Merits Prognosis

The likelihood of success on the merits also seemingly weighs strongly in Plaintiff's favor. As noted above, the evidence seemingly suggests that Defendants have violated portions of the zoning ordinance that applies, both before and after being "warned" by Nicollet County. It is at least theoretically possible that Defendants could succeed on the merits in this case by somehow establishing that Nicollet County acted improperly in its treatment of Defendants' after-the-fact variance request and permit application. However, again, at least based on the information presented to date, the Court is unable to reach that conclusion, even on a prima facie basis. At the motion hearing, there was some discussion as to Defendants application being placed on the agenda for the January 18, 2021, meeting

[4] While the evidentiary presentation made is far from complete, based on that partial disclosure, the Court has some difficulty accepting the proposition that Defendants were unaware they needed advance approval of Nicollet County for the improvements they desired to make, especially given their respective occupations. Rather, the circumstances are more suggestive of the axiom "it's better to ask for forgiveness than seek permission."

[5] During the motion hearing, the Court questioned Defendants extensively about the work they felt still needed to be done to "secure" the structures. The Court did this in hopes it would have sufficient information to specify what additional actions could be taken in the event it granted Plaintiff's motion. However, the Court did not find that effort to be fruitful, mainly due to the lack of photos showing the current condition and what needed to be done. If Defendants bring a motion seeking permission to do such work, they should provide adequate information, including photos that are adequate to show the condition of the structure and the work to be done.

of the Nicollet County Planning and Zoning Advisory Commission.[6] However, what is likely to occur as part of that meeting is far from obvious. For the above reasons, the Court views this factor as providing strong support for granting Plaintiffs' motion.

Public Policy Considerations

Both parties cite to significant public policy considerations in support of their respective positions. Plaintiffs obviously point to the need to control development in the county in order to promote the safety, security, and enjoyment of all its residents. Defendants point to the public policy of promoting a land owners use and enjoyment of his or her property to its fullest potential. However, clearly that quite use and enjoyment is subject to regulation by the applicable governmental agency to ensure and promote public safety and wellbeing. Moreover, while promoting use and enjoyment by a landowner is a worthy public policy, the Court notes that the procedure set forth in the zoning ordinance, which allows a process for obtaining a variance, and presumably appealing a denial thereof, seemingly provides a more than adequate method of promoting and protecting the interests of the landowner. In addition, avoidance of a general reverse deterrent effect, which arguably could occur in the event Plaintiff's request is denied could also be viewed as a significant public policy consideration. Accordingly, consideration of this factor seemingly weighs somewhat in favor of granting the motion.

Administrative Burden on the Court

The administrative burden on the Court does not appear to be all that significant (although it may have increased that burden somewhat by permitting Defendants to seek court permission to perform minor maintenance or abatement work to secure the structures from nature and the elements). It seems likely that with this action, the dispute between the parties has "come to a head," and that from this point forward, the Court anticipates there will be an orderly resolution of the dispute, in the event the dispute fails to resolve itself via the permit-variance-appeal process. It is theoretically possible the Court's administrative burden could increase in the event Defendants fail to comply with the injunction, and Plaintiff seeks enforcement of the order by asking to find Defendants in contempt of this order. However, given the amount of work that has already been done and the inclusion in this Order of a provision whereby Defendants can seek further essential work to "secure" the structures, the prospect of contempt proceedings seems somewhat unlikely.[7] Accordingly, the Court does not view this administrative burden as a consideration favoring denial of Plaintiff's motion.

---

[6] At the motion hearing, Defendants asked the Court to order that their case be placed on the agenda for that meeting. The Court has not granted that request as the request was not formally before the Court. Further, as Plaintiff suggested in response, there are notification requirement that must be complied with before doing so. Accordingly, even if the request had been properly formally made, the Court would not grant such a request unless the requisite procedures that ensure such notice could be given had been followed. This would include requirements as to Defendants providing the requisite information to the county officials so that they, the Commission members, and the general public, are adequately informed and can thus make intelligent decisions on the matter, both as to their respective involvement in the proceeding, and as to the ultimate outcome.

[7] From the Court's perspective, a greater potential for contempt exists in the event Defendants are not successful in obtaining a variance, and instead are required to return the property and structures to their prior state. However, such an outcome is completely unrelated to the decision of whether a temporary restraining order should be issued.

Conclusion:

Based on the foregoing analysis, the Court concludes it is appropriate to grant Plaintiff's motion for a temporary restraining order. The Court envisions that with this order, Defendants will cease any further construction or development activities on property and structures, unless such further actions are specifically approved by the Court in the manner provided for in this Order. The Court further expects that the parties will proceed to follow the proper legal channels for resolving this matter, that being following the process for obtaining a permit and variance, and if that is not successful, pursing the appeal process relating to the permit-variance process. There is a reason these rules and laws exist, and if a properly functioning society is to exist, they must be followed. The Court assume that, going forward, that will be done by both parties.

T.W.W.

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

January 20, 2021

VIA EMAIL
Megan.Coryell@co.nicollet.mn.us

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In response to the requirements to complete the application outlined in your letter dated January 6, 2021, Giesekes submit the following:

1. With respect to the requirement to submit verification concerning the location of the offsite earth movement and your finding that the materials we have provided are not sufficient, Giesekes are unable, and it is impossible, to obtain additional information from unknown parties and unknown destinations of the offsite earth movement.

   In addition, as to the statement that Giesekes have provided inconsistent and contradictory information, please draw attention to the most recent information provided as an update from the surveyor indicating and providing clarification that the previous information given was based upon erroneous contours used from outdated and the last known public data/information. Previous erroneous information was replaced with the surveyor's reliance upon the as is conditions prior to Gieseke's excavations.

   Consequently, these two aforementioned items pose an impossibility to estimate or guess or speculate what more information or materials can now yet be provided. Therefore, Giesekes ask whether there is any way you will provide them with a more specific and detailed description of exactly what it is they can and should provide in order to obtain a complete application. The answer to this inquiry would be greatly appreciated. Without such they are at a loss to speculate what exactly they could possibly provide.

ATTACHMENT F:35
Application Materials Submitted

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Eliana J. Davis

Since
1896

2. With respect to the onsite earth movement violation, Giesekes intend to resolve this by choosing option b. as stated in your letter. They will apply for an after the fact variance by adding as a sixth component as you suggest under the first paragraph of your letter. Upon a ruling on the after the fact variance application determining whether it shall be either denied or granted Giesekes understand as you note in your letter that an application for a conditional use permit shall be pursued as is necessary to address additional requirements after the fact. Now in the dead of winter there is no activity possible. Going forward there is no further or additional activity planned or anticipated to be needed. Since there is no additional activity required and the only purpose would be then to address previous activity, Giesekes shall make such application as required once the after the fact variance is heard and ruled upon.

3. Is there a possibility these last items may be resolved with an in-person assessment and discussion? If so we request your consideration to affording the Giesekes such an opportunity.

Please contact me with any questions or concerns. We look forward to your further communications and reply.

Very truly yours,



Steven J. Franta
SJF:tcl

CC: Patrick and Shana Gieseke

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

February 5, 2021

Sent via email to: steve@thelegalprofessionals.com

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Property Violations

Dear Mr. Franta,

The purpose of this letter is to respond to your letter to Nicollet County Property and Public Services ("NCPPS") dated January 20, 2021. Your letter regards Patrick and Shana Gieseke's application for an after-the-fact variance concerning their property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The after-the-fact variance concerns violations of the Nicollet County Zoning Ordinance on their property. This matter has been the subject of numerous previous letters from NCPPS to the Giesekes and your office. The most recent letter to you was dated January 6, 2021.

Your January 20, 2021 letter addressed three topics. These topics are discussed below:

1. The January 6, 2021 letter from NCPPS required the Giesekes to submit verification concerning ***offsite earth movement***. The amount of material that was moved offsite is not questioned. It is the **location** of the material moved offsite and **who** moved the material offsite that remains to be resolved. The Giesekes have previously provided inconsistent and contradictory information regarding the location of the offsite earth movement and who moved the earthen material offsite. The information previously provided is not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment.

2. Your January 20, 2021 letter states the Giesekes intend to resolve the ***onsite earth movement*** by adding it to the five original components of their after-the-fact variance application. The after-the-fact variance will now include a total of six components:

    1.1 Expanding a nonconforming structure;

    1.2 Reducing the bluff setback for the dwelling addition;

    1.3 The alteration of protected bluff areas;

    1.4 Reducing the front yard setback for the dwelling addition;

ATTACHMENT F.36
Incomplete Application Letter

1.5 Reducing the front yard setback for a replacement septic system; and

1.6 Placement of fill within a bluff area.

If we have misunderstood your intentions for resolving the onsite earth movement violation please inform us of the Giesekes' correct intention.

3. Your January 20, 2021 letter asks if an ***in-person assessment and discussion*** may be possible. Please provide NCPPS with the specific points that would be the focus of any potential discussion.

Incomplete Application
The Giesekes' application will remain on hold until **all** four of the steps outlined in the January 6, 2021 letter are completed.

Conclusion
The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals, the requirements may be subject to change. If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

Jon Hammel

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Friday, February 19, 2021 2:07 PM
To: Megan Gaudette Coryell
Cc: Jon Hammel; Mandy Landkamer
Subject: RE: Response Letter

Jon/Megan

Specifically:

1. Is #2 of the January 6th letter completely fulfilled?
2. What are the "precise elements to be listed" which are referred to in #4 of the January 6th letter?
    a. Have they not yet been identified?
    b. Do you have a form that identifies these required elements?
    c. What elements you are looking for that we have not yet informed you of or have otherwise not yet been provided?
    d. How are these elements different from the paragraph 2 listed components?

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

e.

ATTACHMENT F.37
Email from Steven Franta

From: Megan Gaudette Coryell <Megan.Coryell@co.nicollet.mn.us>
Sent: Thursday, February 18, 2021 9:15 AM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>; Mandy Landkamer <Mandy.Landkamer@co.nicollet.mn.us>
Subject: RE: Response Letter

Mr. Franta,

If you refer to the letters from NCPPS dated January 6, 2021, and February 5, 2021, the requirements that need to be fulfilled are clearly outlined. An in-person assessment or telephone call is not necessary to fulfill the remaining requirements. If you have a specific question regarding the remaining requirements outlined in the letters, please send your specific question.

As stated previously, NCPPS cannot provide legal advice regarding resolving these ongoing issues.

Thank you,

Megan E. Gaudette Coryell
Assistant Nicollet County Attorney
501 S. Minnesota Ave.
St. Peter, MN 56082
Phone: 507-934-7890

The information contained in this email message and any attachments is attorney privileged and CONFIDENTIAL information intended for the use of the individual or entity named above. It is exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please reply to the sender or call (507) 934-7890 and delete this message and any attachments. Thank you.

From: Steven J. Franta <steve@thelegalprofessionals.com>
Sent: Monday, February 15, 2021 1:22 PM
To: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Cc: Megan Gaudette Coryell <Megan.Coryell@co.nicollet.mn.us>
Subject: RE: Response Letter

Jon/Megan

We ask that the in-person assessment and discussion focus specifically on the current unsatisfied requirements to get the application off hold. Perhaps a telephone call now is all that is needed if you are able to get on the phone with me/us to give us direction what is needed and expected to be submitted to meet the "four steps outlined in the January 6, 2021 letter" that ids referenced in the most recent letter from you?

Thank you for your consideration to this request

Sincere regards,

Steven J. Franta
Attorney
Somsen, Mueller & Franta
PO Box 38
106½ North Minnesota St
New Ulm, MN 56073
507-354-2161
Email: steve@thelegalprofessionals.com

From: Jon Hammel <Jon.Hammel@co.nicollet.mn.us>
Sent: Friday, February 5, 2021 3:12 PM
To: Steven J. Franta <steve@thelegalprofessionals.com>
Cc: Megan Gaudette Coryell <Megan.Coryell@co.nicollet.mn.us>
Subject: Response Letter

Good afternoon Mr. Franta,

Please see the attached letter from Nicollet County. This is in response to your letter dated January 20, 2021, concerning Mr. and Mrs. Gieseke.

Thank you.

Please submit documents to niccopermitapps@co.nicollet.mn.us. The Nicollet County Government Center is requesting limited access to the public at this time. The majority of communication will take place via phone, email, or mail. Office visits and site visits will be limited to those absolutely necessary by appointment.

Sincerely,

https://mn-nicolletcounty.civicplus.com/" style='position:absolute;margin-left:-1.9pt;margin-top:0;width:85.1pt;height:78.75pt;z-index:-251657216;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:text;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:button="t">

Jon Hammel
Deputy Zoning Administrator/Sr. Planner
Property Services
501 South Minnesota Avenue
St. Peter MN 56082
Phone: 507-934-7071

Mission: Providing efficient services with innovation and accountability.
Core Values: Integrity. Accountability. Innovation. Leadership. Efficiency.

NOTICE:
Unless restricted by law, email correspondence to and from Nicollet County government offices may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties.
This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, please destroy it and notify the sender immediately.

Total Control Panel Login

To: jon.hammel@co.nicollet.mn.us Remove this sender from my allow list
From: steve@thelegalprofessionals.com

You received this message because the sender is on your allow list.

NICOLLET COUNTY EST. 1853

Property & Public Services Department

Property Services

Mandy Landkamer, Director

March 5, 2021

Sent via email to: steve@thelegalprofessionals.com

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Property Violations

Dear Mr. Franta,

The purpose of this letter is to respond to your February 19, 2021 email to Nicollet County Property and Public Services ("NCPPS"). Your email regards Patrick and Shana Gieseke's application for an after-the-fact variance concerning their property located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35-111-31, in West Newtown Township. The after-the-fact variance concerns violations of the Nicollet County Zoning Ordinance on their property. This matter has been the subject of numerous previous letters from NCPPS to the Giesekes and your office. The most recent letter to you was dated February 5, 2021.

The February 19, 2021 email contained five questions concerning the Giesekes' after-the-fact variance request:

1. Is #2 of the January 6th letter completely fulfilled? Yes, number two of the January 6th letter is fulfilled. The variance components presently include:

    i. Expanding a nonconforming structure;
    ii. Reducing the bluff setback for the dwelling addition;
    iii. The alteration of protected bluff areas;
    iv. Reducing the front yard setback for the dwelling addition;
    v. Reducing the front yard setback for a replacement septic system; and
    vi. Allowing fill to be placed in a protected bluff area.

2. What are the "precise elements to be listed" which are referred to in #4 of the January 6th letter? The precise elements are the distances the setbacks are to be reduced by.

    a. Have they not yet been identified? No, they have not been identified in a formal written statement.

ATTACHMENT F.38
Response to Steven Franta

b. Do you have a form that identifies these required elements? I have attached a copy of the Zoning Permit Fact Sheet to this letter. The required setback distances are listed on the fact sheet. You may review previous requests heard by the Board of Adjustment and Appeals by accessing them online at:

https://www.co.nicollet.mn.us/344/Board-of-Adjustment-Appeals

You can access the Zoning Ordinance online at:

https://www.co.nicollet.mn.us/341/Planning-Zoning

c. What elements you are looking for that we have not yet informed you of or have otherwise not yet been provided? A written statement identifying the precise elements to be used on the official variance application form.

d. How are these elements different from the paragraph 2 listed components? Please see "b."

Incomplete Application

The Giesekes' application will remain on hold until **all** four of the steps outlined in the January 6, 2021 letter are completed. Step 2 has been completed. Steps 1, 3, and 4 have not been completed.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals, the requirements may be subject to change. If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc. Zoning Permit Fact Sheet

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

March 19, 2021

VIA EMAIL AND U.S. MAIL
Megan.Coryell@co.nicollet.mn.us

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In follow up to your letter dated March 5, 2021, Giesekes submit:

1. The following are the required "precise elements to be listed" as you have identified in Paragraph 2 of said March 5th letter i.e. "the distances the setbacks are to be reduced by" for each of the components:

   i. Expanding a nonconforming structure;
   There are no applicable setbacks and therefore none are required to be reduced for this component.

   ii. Reducing the bluff setback for the dwelling addition;
   Reduce the setback from 30 feet to 15 feet.

   iii. The alteration of protected bluff areas;
   There are no applicable setbacks and therefore none are required to be reduced for this component.

   iv. Reducing the front yard setback for the dwelling addition; **the**
   Reduce the setback from 50 feet to 32.7 feet.

   v. Reducing the front yard setback for a replacement septic system;
   Reduce the setback from 50 feet to 6.9 feet.

   vi. Allowing fill to be placed in a protected bluff area.
   There are no applicable setbacks and therefore none are required to be reduced for this component.

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Eliana J. Davis

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ATTACHMENT F.39
Application Materials Submitted

Does this information provided in this paragraph above completely satisfy the requirement "to inform NCPPS of the precise elements to be listed on the after-the-fact variance"?

2. Step #3 outlined in the January 6, 2021 letter we understand is to be fulfilled by the submission of $1,046.00 for payment for the after-the-fact variance and recording fees. Is this Correct? Enclosed is our said $1,046.00 payment.

3. Attached is our signature on and to the application in the form of the official application of the Nicollet County Property Services Division (without its official letterhead).

Please contact me with any questions or concerns. We look forward to your further communications and reply.

Very truly yours,



Steven J. Eranta
SJF:tcl

CC: Patrick and Shana Gieseke

BOARD OF ADJUSTMENT & APPEALS
APPLICATION

Total Fees: $1,046.00

Map#: 033540003
Parcel # 13.035.1000
Permit#: _____
Date: March19, 2021

Applicant: GIESEKE, PATRICK E & SHANA E, 62208 COUNTY ROAD 21, NEW ULM, MN 56073
Phone: 507-217-9392
Owner: GIESEKE, PATRICK E & SHANA E, 62208 COUNTY ROAD 21, NEW ULM, MN
Property Address: 0,
Abbreviated Legal Description: Part of the SE1/4 of the SE1/4, and part of Govt Lot 2, 35-111-31
Township: West Newton

Record Type: Variance
Category: Bluff / setbacks
Project Description: After-the-fact variance to reduce the bluff setback from 30 feet to 15 feet; to reduce the front yard setback from 50 feet to 32.7 feet; to reduce the setback for a replacement septic system from 50 feet to 6.9 feet; and expanding a nonconforming structure; and alteration of bluff area.
Hearing Date: 04/19/2021

APPLICANT SIGNATURE — **DATE** 3-19-21

APPLICANT SIGNATURE — **DATE** 3/19/2021

April 8, 2021

Sent via email to: steve@thelegalprofessionals.com

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Incomplete Application

Dear Mr. Franta,

This letter concerns the property of Mr. and Mrs. Gieseke, located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the application submitted via email on March 19, 2021, concerning the application for an after-the-fact variance for the purpose of constructing a dwelling addition on the property. This letter is also to respond to the documents submitted on March 26, 2021, concerning your request for an appeal before the Board of Adjustments and Appeals.

Presently, the after-the-fact variance request has 6 components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition;
5. Reducing the front yard setback for a replacement septic system; and
6. Allowing fill to be placed in a protected bluff area.

Application submitted via email on March 19, 2021
The documents submitted included:

- Letter to Jon Hammel
- Unofficial Application
- Copy of Check

Hard copies of these items were received via mail on March 24, 2021. Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether an application contains all required information. This response is within fifteen (15) business days of the submission of the application on March 19, 2021. NCPPS has reviewed the application and has determined it to be **incomplete** for the reasons listed below.

ATTACHMENT F.40
Incomplete Application Letter

After-The-Fact Variance Application
The application will remain **on-hold** until the following steps are taken:

1. Mr. and Ms. Gieseke will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, November 24, 2020, and December 17, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment. Mr. and Ms. Gieseke have provided inconsistent and contradictory information regarding the location of the offsite earth movement, and who removed the earthen material offsite.

2. Payment of the after-the-fact variance and recording fees. The check, #1024, in the amount of $1,046, is being returned with this letter and is enclosed. Payment is due when the official application is signed.

3. Signing the official application, to be provided by NCPPS. The materials included an application not prepared by NCPPS. NCPPS will prepare the official application once Mr. and Mrs. Gieseke inform NCPPS of the precise elements to be listed on the after-the-fact variance they are requesting. Once the official application is signed and complete, the request will then be added to the next available hearing date.

March 26, 2021 Submission
The document submitted on March 26, 2021 via email included a notice of appeal, along with exhibits. A hard copy of an appeal letter was received via mail on April 2, 2021. The letter included a check, #1025, in the amount of $400. Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has fifteen (15) business days to determine whether application submission contains all required information. This response is within fifteen (15) business days of the submission on March 19, 2021. NCPPS has reviewed the submission and has determined it to be **incomplete** for the reasons listed below.

Appeal Request
As stated in the letter from Assistant County Attorney Megan E. Gaudette Coryell dated April 1, 20201, the appeal submission will remain **on-hold** until the following steps are taken:

1. Payment of the hearing and recording fees. The payment received on April 2, 2021 was not in the correct amount. The check is therefore being returned with this letter. Payment in the amount of $446.00 is due when the official application is signed.

2. Upon payment of the appropriate fee, NCPPS will generate the official application for the appeal to the Board of Adjustment and Appeals for signature, and the request will be put on the schedule for the next available hearing.

After-The-Fact Variance Application
Your request to add the Giesekes' after-the-fact variance to the April 19, 2021 meeting of the Board of Adjustments and Appeals has been **denied**. As noted above, the application is considered to be **incomplete** for the following reasons:

1. Mr. and Ms. Gieseke will need to submit verification concerning the location of the offsite earth movement. The materials provided on October 9, 2020, November 23, 2020, November 24, 2020, and December 17, 2020, are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment. Mr. and Ms. Gieseke have provided inconsistent and contradictory information regarding the location of the offsite earth movement, and who removed the earthen material offsite.

2. Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

3. Signing the official application, to be provided by NCPPS. NCPPS will prepare the official application once Mr. and Mrs. Gieseke inform NCPPS of the precise elements to be listed on the after-the-fact variance they are requesting. Once the official application is signed and complete, the request will then be added to the next available hearing date.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change. If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,



Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc: Check No. 1024
Check No. 1025

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

April 14, 2021



VIA EMAIL & US MAIL
Megan.Coryell@co.nicollet.mn.us

Jon Hammel
c/o Megan E. Gaudette Coryell
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In reply to your letter of April 8th.

Gieseke's Application has been determined to be incomplete on numerous occasions. In the letters from you stating the Application to be incomplete you have referenced the requirement that they provide to you the "precise elements" in a list for the after-the-fact variance requested. In our letter of March 19, 2021 we specifically stated six precise elements. However, in your response to our March 19 letter there is no indication what is lacking or what is incomplete about the list. Therefore, I request if you can assist us in identifying specifically what you require in the identification of such "precise elements."

Following is a list of our "precise elements" from our March 19 letter . . . required "precise elements to be listed" as you have identified in Paragraph 2 of said March 5th letter i.e. "the distances the setbacks are to be reduced by" for each of the components:

i. Expanding a nonconforming structure;
There are no applicable setbacks and therefore none are required to be reduced for this component.

ii. Reducing the bluff setback for the dwelling addition;
Reduce the setback from 30 feet to 15 feet.

iii. The alteration of protected bluff areas;
There are no applicable setbacks and therefore none are required to be reduced for this component.

iv. Reducing the front yard setback for the dwelling addition; **the**
Reduce the setback from 50 feet to 32.7 feet.

v. Reducing the front yard setback for a replacement septic system;
Reduce the setback from 50 feet to 6.9 feet.

ATTACHMENT F.41
Application Materials Submitted

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Eliana J. Davis

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vi. Allowing fill to be placed in a protected bluff area.
There are no applicable setbacks and therefore none are required to be reduced for this component.

In addition are the following "precise elements" listed in the Statement of Facts for the Appeal:

1. Extend garage and remodel a nonconforming structure;
2. Reduce bluff setback from 30 to 15 feet (it was previously less than 5 feet); alter bluff area and place fill in bluff washout to protect, preserve and conserve bluff;
3. Reduce front yard setback from 50 to 32.7 feet for an extension of "old addition south side wall" (32.7 feet is current actual setback) and from 50 to 6.9 feet for the secondary/alternative septic system location.

Which would allow applicant to:

1. Move the south wall on the old addition to the west side of the house.
2. Allow excavation on the west side of the house to create a greater setback and to extend garage to the north.
3. Extend garage.
4. Place fill in washout on bluff area to prevent further erosion

Also attached hereto is Exhibit 42 – Applicant Questionnaire After-The-Fact Variance and Exhibit 43 – Variance Applicant Questionnaire Project Description providing additional "precise elements" information.

Please advise whether there are any additional "precise elements" required and what specific additional "precise elements" must be listed.

Also in the letters from you stating the Application to be incomplete you have referenced the requirement that Giesekes provide verification concerning the location of the offsite earth movement and that the previous information provided has been inconsistent and contradictory. The information provided has been admittedly updated once additional facts were obtained and therefore the most recent submission would not be the same as the previous submissions. In addition, Giesekes have repeatedly stated that the verification requested is unable to be obtained. Under these circumstances what are the requirements for verification that Giesekes are expected to submit? How might they be expected to gather and obtain such verifications?

Very truly yours,

Steven J. Franta
SJF:tcl
CC: Patrick and Shana Gieseke

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APR 15 2021
NICOLLET COUNTY
PROPERTY SERVICES

NICOLLET COUNTY EST. 1853

APPLICANT QUESTIONNAIRE
AFTER-THE-FACT VARIANCE

Name of Applicant: Patrick E. Gieseke and Shana E. Gieseke **Date:** March 26, 2021

Request: _____

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. **The variance is in harmony with the general purposes and intent of the official control.**
The purpose of the bluff setback is to provide a buffer between land uses (residential and natural environment) and to protect the bluff as a sensitive natural feature. The variance requested would result in a greater set back then prior actual setback and would not provide any less protection or any greater vulnerability to damage then prior to the variance.

2. **The variance is consistent with the intent of the Comprehensive Plan.**
The comprehensive plan aims to preserve, protect and conserve resources in the County and specifically bluff areas. The variance will in all respects do exactly what the Plan aims to preserve, protect and conserve.

3. **The variance establishes a practical difficulty in complying with the official controls.**
The request does establish a practical difficulty. The owner does propose to use the property in a reasonable manner. The property already had a non-conforming circumstance to the bluff setback. The plight is unique to the property. The work requested by the variance will not change the essential character of the locality, which will remain residential and natural environment.

4. **The plight of the landowner is due to circumstances unique to the property not created by the landowner.**
The plight is unique to the property. It was declared nonconforming decades ago after the building site was established. The subject of this variance is to move south wall on the old addition; allow excavation; extend garage; and place fill in washout on bluff area.

5. **The variance will not alter the essential character of the locality.**
The essential character of the locality will remain residential and natural environment regardless of whether the variance is granted. It is reasonable to construct a garage attached to a dwelling in a residentially zoned district; to fill in a washout; and to remodel.

(Continued onto back)

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APR 15 2021
NICOLLET COUNTY
PROPERTY SERVICES

EXHIBIT
tabbies
42

6. **The practical difficulty includes more than economic considerations alone.**
The request includes more than economic considerations alone.
The request is based on the location, topography, and history of the property.

Additional After-the-Fact Criteria for use ONLY when first six criteria are met.

7. **Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?**
Yes, the applicant has been making an extraordinarily good faith effort to obtain a permit prior to the completion of construction.

8. **In relation to the subject variance, are there similar structures in the area?**
Yes, the project is an addition to the existing house & garage on the property.
There are numerous other similarly situated structures and attached garages on like properties along the road in the neighborhood.

9. **Does the burden on the applicant of compliance outweigh the benefit to the County?**
Yes, the burden of the applicant would lie in the undoing rescission & restoration to the prior condition. There is neither a benefit to the County to deny the variance nor a determent to the County to grant the variance.

10. **Was the act of the violation by the applicant unintentional?**
Yes, the applicant has repeatedly told the county staff the violation was unintentional.



NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: Patrick E. Gieseke and Shana E. Gieseke **Date:** March 26, 2021

Please describe the specific details related to your request, including but not limited to:

- **why you feel the project is a *need* rather than a *want*;**
- **what alternatives you explored and the reasons they were not reasonable for you; and**
- **what use, or uses, the project will provide for you;**

If your request is approved, you will be held to the plans and specifications submitted to the County with your application.

NEED: The condition of the home and the property requires needed updates. It is currently not in compliance with the electrical code or the fire code including no egress; the boiler to heat the home needs replacement; the exterior siding of the old addition is rotting and the home is in desperate need of insulation. A washout on the bluff is eroding the bluff in an area that will eventually get deeper and wider and threaten damage to the septic system.

ALTERNATIVES: After exploring the circumstances and conditions of the property and structure We have concluded that there is no other alternative that is practical or reasonable to explore. The option to allow the property to continue to be in disrepair noncompliant and deteriorating is not an option. Neither is it an option to vacate and abandon the property.

USE: Safe, efficient, healthy, residential use is what the project will provide.

RECEIVED
APR 15 2021
NICOLLET COUNTY
PROPERTY SERVICES

EXHIBIT
tabbies 43

May 3, 2021

Sent via email to: steve@thelegalprofessionals.com

Patrick E and Shana E Gieseke
c/o Attorney Steven Franta

Re: Property Violations

Dear Mr. Franta,

This letter concerns the property of Mr. and Mrs. Gieseke, located in Part of the Southeast 1/4 of the Southeast 1/4, and Part of Government Lot 2, in Section 35, Township 111, Range 31, in West Newtown Township. The purpose of this letter is to respond to the application submitted to Nicollet County Property and Public Services (NCPPS) via email on April 14, 2021, concerning the application for an after-the-fact variance for the purpose of constructing a dwelling addition on the property.

Presently, the after-the-fact variance request has six components:

1. Expanding a nonconforming structure;
2. Reducing the bluff setback for the dwelling addition;
3. The alteration of protected bluff areas;
4. Reducing the front yard setback for the dwelling addition;
5. Reducing the front yard setback for a replacement septic system; and
6. Allowing fill to be placed in a protected bluff area.

Application submitted via email on April 14, 2021
The documents submitted included:

- Letter to Jon Hammel
- Variance Questionnaires

Hard copies of these items were received via mail on April 15, 2021. Please be aware, per Minnesota Statutes Section 15.99, subdivision 3(a), Nicollet County has 15 business days to determine whether an application contains all required information. This response is within 15 business days of the submission of the application. NCPPS has reviewed the application and has determined it to be **incomplete** for the reasons listed below.

ATTACHMENT F.42
Incomplete Application Letter

After-The-Fact Variance Application
The application will remain **on-hold** until the following steps are taken:

1. Mr. and Ms. Gieseke will need to submit verification concerning the location of the offsite earth movement. The materials provided previously are not sufficient to ensure the proper placement of the fill per county standards and to ensure protection of the environment. Mr. and Ms. Gieseke have provided inconsistent and contradictory information regarding the location of the offsite earth movement, and who removed the earthen material offsite.

2. Payment of the after-the-fact variance and recording fees. Payment is due when the official application is signed.

3. Signing the official application, to be provided by NCPPS. NCPPS will prepare the official application once Mr. and Mrs. Gieseke inform NCPPS of the precise elements to be listed on the after-the-fact variance they are requesting.

   The precise elements must reflect the bluff prior to excavation and post-project conditions. Precise elements encompass more than just setbacks. The precise elements were addressed in your April 14, 2021 application letter. However, several of these were not accurate, including:

   i. "Expanding a nonconforming structure: There are no applicable setbacks and therefore none are required to be reduced for this component." The information submitted does not take into consideration that the structure is nonconforming because of the bluff and front yard setback encroachments. It also does not state the purpose of the requested component.

   ii. "Reducing the bluff setback for the dwelling addition. Reduce the setback from 30 feet to 15 feet." The information submitted does not take into consideration the location of the bluff pre-project.

   iii. "The alteration of protected bluff areas: There are no applicable setbacks and therefore none are required to be reduced for this component." The information submitted does not take into consideration the bluff setback encroachment. It also does not state the purpose of the requested component.

   iv. "Reducing the front yard setback for the dwelling addition: Reduce the setback from 50 feet to 32.7 feet." This statement is complete.

   v. "Reducing the front yard setback for a replacement septic system: Reduce the setback from 50 feet to 6.9 feet." This statement is complete.

   iv. "Allowing fill to be placed in a protected bluff: There are no applicable setbacks and therefore non are required to be reduced for this component." The information submitted does not take into consideration the bluff setback encroachment. It also does not state the purpose of the requested component.

For further information, please refer to the July 13, 2020 cease and desist order.

Conclusion

The general information provided above is based on present standards and information. As more information becomes known, and/or decisions by the Board of Adjustment and Appeals and the County Board are made, the requirements may be subject to change. If there has been any misunderstanding, if you have additional questions, or if NCPPS may be of any further service, please do not hesitate to contact NCPPS.

Sincerely,

Jon Hammel
Deputy Zoning Administrator/Planner
507-934-7071
jon.hammel@co.nicollet.mn.us

Enc. Returned Check #3104 in amount of $46.

Cc: Megan Gaudette Coryell, Assistant County Attorney

Parcel No: 13.035.1000
Map No: 0335400003

Somsen, Mueller & Franta

Attorneys at Law since 1896

106 1/2 N Minnesota Street
PO Box 38
New Ulm, MN 56073
Telephone: (507) 354-2161

May 7, 2021

VIA EMAIL & U.S. MAIL
Jon.Hammel@co.nicollet.mn.us

Jon Hammel
Nicollet County Government Center
501 South Minnesota Avenue
St. Peter, MN 56082

Re: Gieseke Application
Our File: 20-075

Dear Jon:

In reply to your letter of May 3, 2021, Giesekes wish to amend subparagraphs 3i, ii, iii, and iv by adding the following:

i. . . . taking into consideration that the structure is non-conforming because of the bluff setback encroachment of 5-6 feet and the front yard setback of 32.7 feet. (Conforming requirement is 30 feet and 50 feet, respectively). The purpose is to construct a dwelling improvement as set forth in the Variance Applicant Questionnaire. (Please see attached **Exhibit 43**) which states:

> The condition of the home and the property requires needed updates. It is currently not in compliance with the electrical code or the fire code including no egress; the boiler to heat the home needs replacement; the exterior siding of the old addition is rotting and the home is in desperate need of insulation. A washout of the bluff is eroding the bluff in an area that will eventually get deeper and wider and threaten damage to the septic system.
>
> After exploring the circumstances and conditions of the property and structure we have concluded that there is no other alternative that is practical or reasonable to explore. The option to allow the property to continue to be in disrepair noncompliant and deteriorating is not an option. Neither is it an option to vacate and abandon the property.

Attorneys
Steven J. Franta

Henry N. Somsen
Deceased
Alvin R. Mueller
Deceased

Paralegals
Debra J. Hatcher
Ashley A. St. Sauver
Tina C. Losleben
Eliana J. Davis

Since
1896

ATTACHMENT F.43
Application Materials Submitted

A safe, efficient, healthy, residential use is what the project will provide.

Please also see attached Applicant Questionnaire After-the-Fact Variance (Exhibit 42) and other previously submitted materials.

ii. . . . taking into consideration the location of bluff pre-project was 5-6 feet.

iii. . . . taking into consideration the bluff setback encroachment of 5-6 feet while the conforming requirement is 30 feet.

For an explanation of the purposes, please see (i) above and also see previously submitted materials.

iv. . . . taking into consideration the bluff setback encroachment of 5-6 feet while the conforming requirement is 30 feet.

For an explanation of the purposes, please see (i) above and also see previously submitted materials.

Very truly yours,

Steven J. Franta
SJF:tcl
Encl.

CC: Megan E. Gaudette Coryell (via email w/enc.)
Patrick and Shana Gieseke (via email w/enc.)

NICOLLET COUNTY EST. 1853

APPLICANT QUESTIONNAIRE
AFTER-THE-FACT VARIANCE

Name of Applicant: Patrick E. Gieseke and Shana E. Gieseke **Date:** March 26, 2021

Request: _____

A variance may be granted only where the strict enforcement of the Nicollet County zoning controls results in a practical difficulty. A determination that a practical difficulty exists is based upon criteria defined by the Minnesota Supreme Court; Minnesota State Statute §394.27, Subdivision 7; and Nicollet County Zoning Ordinance, Section 503.1.

Why do you feel the request meets the following criteria?

1. **The variance is in harmony with the general purposes and intent of the official control.**
The purpose of the bluff setback is to provide a buffer between land uses (residential and natural environment) and to protect the bluff as a sensitive natural feature. The variance requested would result in a greater set back then prior actual setback and would not provide any less protection or any greater vulnerability to damage then prior to the variance.

2. **The variance is consistent with the intent of the Comprehensive Plan.**
The comprehensive plan aims to preserve, protect and conserve resources in the County and specifically bluff areas. The variance will in all respects do exactly what the Plan aims to preserve, protect and conserve.

3. **The variance establishes a practical difficulty in complying with the official controls.**
The request does establish a practical difficulty. The owner does propose to use the property in a reasonable manner. The property already had a non-conforming circumstance to the bluff setback. The plight is unique to the property. The work requested by the variance will not change the essential character of the locality, which will remain residential and natural environment.

4. **The plight of the landowner is due to circumstances unique to the property not created by the landowner.**
The plight is unique to the property. It was declared nonconforming decades ago after the building site was established. The subject of this variance is to move south wall on the old addition; allow excavation; extend garage; and place fill in washout on bluff area.

5. **The variance will not alter the essential character of the locality.**
The essential character of the locality will remain residential and natural environment regardless of whether the variance is granted. It is reasonable to construct a garage attached to a dwelling in a residentially zoned district; to fill in a washout; and to remodel.

(Continued onto back)

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6. **The practical difficulty includes more than economic considerations alone.**
The request includes more than economic considerations alone.
The request is based on the location, topography, and history of the property.

Additional After-the-Fact Criteria for use ONLY when first six criteria are met.

7. **Did the applicant make a good faith effort to obtain a zoning permit prior to completion of the construction?**
Yes, the applicant has been making an extraordinarily good faith effort to obtain a permit prior to the completion of construction.

8. **In relation to the subject variance, are there similar structures in the area?**
Yes, the project is an addition to the existing house & garage on the property.
There are numerous other similarly situated structures and attached garages on like properties along the road in the neighborhood.

9. **Does the burden on the applicant of compliance outweigh the benefit to the County?**
Yes, the burden of the applicant would lie in the undoing rescission & restoration to the prior condition. There is neither a benefit to the County to deny the variance nor a determent to the County to grant the variance.

10. **Was the act of the violation by the applicant unintentional?**
Yes, the applicant has repeatedly told the county staff the violation was unintentional.

NICOLLET COUNTY EST. 1853

VARIANCE APPLICANT QUESTIONNAIRE
PROJECT DESCRIPTION

Name of Applicant: Patrick E. Gieseke and Shana E. Gieseke **Date:** March 26, 2021

Please describe the specific details related to your request, including but not limited to:

- **why you feel the project is a *need* rather than a *want*;**
- **what alternatives you explored and the reasons they were not reasonable for you; and**
- **what use, or uses, the project will provide for you;**

If your request is approved, you will be held to the plans and specifications submitted to the County with your application.

NEED: The condition of the home and the property requires needed updates. It is currently not in compliance with the electrical code or the fire code including no egress; the boiler to heat the home needs replacement; the exterior siding of the old addition is rotting and the home is in desperate need of insulation. A washout on the bluff is eroding the bluff in an area that will eventually get deeper and wider and threaten damage to the septic system.

ALTERNATIVES: After exploring the circumstances and conditions of the property and structure We have concluded that there is no other alternative that is practical or reasonable to explore. The option to allow the property to continue to be in disrepair noncompliant and deteriorating is not an option. Neither is it an option to vacate and abandon the property.

USE: Safe, efficient, healthy, residential use is what the project will provide.

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