

PLANNING COMMISSION

JANUARY 8, 2018

6:30 O'CLOCK P.M.

AGENDA

1. Call to Order
2. Minutes of the Previous Meetings – December 11, 2017
3. Preliminary Plat – Hack's 2nd Subdivision – please bring information from last month
4. Public Hearing - Conditional Use Permit – Jason Wilker
5. Other Business
6. ADJOURN

MINUTES OF PLANNING COMMISSION MEETING

December 11, 2017

Pursuant to due call and notice thereof, a regular Planning Commission meeting was held at City Hall on the 11th day of December, 2017 at 6:30 PM

THE FOLLOWING MEMBERS WERE PRESENT: Commissioner Ferris, Commissioner Sannes, Commissioner Tinsley and Commissioner Zelinske, Commissioner Borgstrom and Commissioner Burton.

THE FOLLOWING WERE ABSENT: Commissioner Torkelson

THE FOLLOWING WERE ALSO PRESENT: City Administrator Coleman, City Clerk Rappe, City Engineer Theobald, David Martin, Bruce Kruger, Harlan, Colleen and Steve Jacobson and two other citizens representing Images.

CALL TO ORDER: Commissioner Ferris called the meeting to order at 6:30 PM.

MINUTES OF PREVIOUS PLANNING COMMISSION MEETING: Motion to Approve the November 13, 2017 minutes made by Commissioner Sannes, second by Commissioner Burton with all voting Aye.

PUBLIC HEARING FOR PRELIMINARY PLAT – HACK’S 2ND SUBDIVISION –

Administrator Coleman stated that the information from the Staff is in the packet. Commissioner Zelinske stated that there needs to be clarification on the subdivision dimensions.

Public hearing opened

David Martin, Massey Land Surveying, representing Richard Massey – Mr. Martin stated that they are in receipt of staff planning review letter. Mr. Martin would like to ask if the wac and sac and park land fees and sidewalk requirement are still required for a replat. Administrator Coleman stated that there is not documentation of wac and sac and parkland fees being paid when the original subdivision was platted. Coleman also stated that this is increasing the density. Mr. Martin feels a shared drive encumbers the lots and there is no privacy and feels that driveways crossing bike path is no different than driveways crossing sidewalks. City Engineer Theobald asked if it is appropriate to have access across a busy school trail on 5th Ave NE. Commissioner Zelinske stated that may be too limiting for the developer to limit accesses on 5th and 16th. Commissioner Zelinske asked about the trail easement on the west side of Hack’s Addition. Administrator Coleman stated that right now there is a worn path in that area that the kids are using. Commissioner Zelinske thinks that a bike path on each side of this subdivision is redundant. Mr. Martin is also against the trail on the west side.

Public Hearing closed

Discussion

Commissioner Sannes – agrees that the second bike path is not a good idea. Is in favor of the additional access to 5th Ave and 16th St NE.

Commissioner Burton – stated that sometimes the more drives you have the safer it is and is ok with accesses on 5th Ave and 16th St. We should consider amending/addressing wac and sac fees in the zoning ordinance during our rewrite and agrees that the trail easement on the west side is not needed. Administrator Coleman stated that the minor subdivision when done created 3 lots from 2 lots and now this creates more lots and cannot find in the zoning ordinance where this is allowed.

Commissioner Burton would like a legal opinion as to whether we can do a plat over a minor subdivision. Mr. Martin stated that the language is ambiguous. Administrator Coleman stated that there were other options than a minor subdivision when Mr. Massey chose that. Commissioner Borgstrom stated that the minor subdivision is done and now he could replat two of the lots the minor

subdivision created. Commissioners Burton and Zelinske stated that there is a large lot development in the community and will this open the gates for them to replat or minor subdivide.

Engineer Theobald stated that the minor subdivision language is not to restrict the lots to a certain number and it is kicking us into the platting process and the question is whether we are allowed to plat over a minor subdivision and the recommendation to the Council should be to get the legal opinion.

Motion to Table for a Legal Opinion and this will come to January meeting made by Commissioner Zelinske, second by Commissioner Burton Ayes: Burton, Tinsley, Ferris, Zelinske and Sannes. Nays: Borgstrom.

PUBLIC HEARING - VARIANCE – IMAGES

Public hearing opened

Harlan Jacobson, owner of Images on Metal, they would like a variance to expand the Images building on 5th St SE, the Images building on Mantorville Ave has been sold and they will be combining their facilities into one building. Mr. Jacobson explained why and how they are expanding the building in this manner with a layout of the machinery and flow. They will be hiring 5 people right away who will be skilled workers. This would be a variance to the rear and side setbacks. Commissioner Borgstrom asked if the lot coverage is being met since there are no dimensions on the map. Commissioner Sannes asked if the parking requirements are being met. Mr. Jacobson stated that they are not touching the parking. Commissioner Tinsley stated that he will not be voting on this since his company has submitted a proposal for architect on this project. Mr. Jacobson stated that this is a huge positive change for their business.

Public hearing closed

Discussion

Commissioner Burton – the consolidation of services into one building is aligned with the discussion that has taken place over the last few months, this takes us a little into the direction of redevelopment of the downtown.

Commissioner Borgstrom stated that the zoning code has a list of 5 criteria that this has to meet to be approved. Administrator Coleman gave them information from the League of MN Cities of three tests. Commissioner Borgstrom doesn't think this meets the uniqueness of the property, this is not created by the property but is being created by the landowner. Administrator Coleman stated that she had a conversation with Steve Jacobson and adding onto the building in the front would cut off their loading dock area.

Commissioner Sannes – stated that the design that works best is unique to the property and believes that each situation is unique. And disagrees that we do not have to adhere to the 5 criteria and this design is unique.

Commissioner Borgstrom read through the 5 criteria. Borgstrom does not believe that this meets #1, Borgstrom believes #2 fits because other properties in the area, Borgstrom believes that #3 works, #4 does not believe that the zoning code in this area is not recurrent, #5 Borgstrom does not believe this qualifies.

Commissioner Zelinske stated that this is not a detriment to surrounding property and he has no issue with this variance.

Administrator Coleman stated that this lot is encumbered by large utility easements. Commissioner Borgstrom stated that to overlook one or two of the criteria would be a legal nightmare.

Chairman Ferris stated is this something the opportunities in front of him created, or a problem he created. Commissioner Borgstrom stated that the lot did not create this and that this is a land issue not a business issue.

Steve Jacobson stated that they have a detriment of moving people and products back and forth between facilities and that's why they need to expand this building and would be better for the

business and better for the people at the business. Harlan Jacobson stated that the building did create this. Commissioner Burton suggested changes to the Jacobson's plan to accommodate the setbacks. Bruce Kruger asked where the ordinance comes from. Mr. Kruger was informed that this comes from state statutes. Administrator Coleman stated that if the Jacobson's are turned down they could appeal to the City Council.

Motion to Recommend to Deny the Variance made by Commissioner Burton with findings of fact based that it doesn't not meet the 5 required criteria, second by Commissioner Zelinske Ayes; Burton, Ferris, Zelinske, Borgstrom Nays: Sannes Abstain: Tinsley

Chicken Ordinance – Request for increased number of chickens – Bruce Kruger 603 4th Ave NW – Mr. Kruger would like to propose a change to Ordinance 864. It is currently 6 chickens per residence and he would like it changed to so many chickens per lot or square footage of properties. And if this is changed then the size of coop and run would have to be bigger. Mr. Kruger stated that he has a two acre city lot. Mr. Kruger stated that he was assessed for three buildable lots during the last street reconstruction. He would like meat birds and the eggs. Chairman Ferris asked if Mr. Kruger realized that the ordinance prohibits the slaughter of the chickens within city limits. Commissioner Tinsley asked what ratio Mr. Kruger proposes. Mr. Kruger would like 18-24 chickens and he has approximately 75,000-80,000 square feet so approximately 6 per 10,000 square feet. The Commission discussed the size of coop and runs that one would need to house 24 chickens. Commissioner Burton is concerned with cleanliness, odor, noise, upkeep, etc. Commissioner Tinsley asked if other cities ordinance chickens by parcel size. Commissioner Zelinske asked Mr. Kruger to find another city that allows more than six chickens per residence or allows them by lot size. Commissioner Tinsley asked if there were others wanting more chickens than six. Staff stated that there are three permits in the City now and no one has asked for more than six.

OTHER BUSINESS – Commission Sannes' term is expiring at the end of the year. Commissioner Sannes will think about it and let the Commission know if he intends on continuing.

ADJOURN 8:03PM

ATTEST:

Linda Rappe
City Clerk

Theresa Coleman
Zoning Administrator/City Administrator



WEBER, LETH & WOESSNER, PLC
Attorneys

Melanie J. Leth
Timothy A. Woessner
Brian L. Weber, of Counsel
Attorneys

Lindsay C. Saxton
Nicole J. Frey
Paralegals

January 5, 2018

City of Kasson
Theresa Coleman
Interim Zoning Administrator
401 5th Street SE
Kasson, MN 55944

RE: Request for preliminary and final plat for Hacks Second Addition
City of Kasson, Minnesota
Developer - Massey Properties LLC

Ms. Coleman:

I have been asked to give a legal opinion with regards to the above-referenced request.

Background

Developer Massey Properties, LLC owns property in the City of Kasson located at the corner of 16th Street NE and 5th Avenue NE. The property was previously platted as Lots 1 and 2, Block 1, Hacks Addition. A single family residential dwelling exists upon Lot 2, Block 1, the address of which is 504 16th Street NE.

In early 2017, the Developer submitted an application for a minor subdivision with a Certificate of Survey of part of Lot 2, Block 1, Hacks Addition, legally described as the East 108 feet of the North 152 feet of Lot, 2 Block 1, Hacks Addition. The effect was the splitting off of the parcel containing the residential dwelling. This minor subdivision was approved by City resolution dated April 26, 2017.

The Developer has now submitted an application for Hacks Second Addition preliminary and final plat containing the rest of Hacks Addition (less the minor subdivided parcel). The matter comes before the Planning and Zoning Commission on January 8, 2018.

Opinion

City Ordinance §152.011 defines RE-PLAT as "a change in a recorded subdivision if the change affects any street layout, affects any area reserved for public use or diminishes the size of any lot." Since the Developer's request will diminish the size of Lot 1, Block 1, Hacks Addition, its request is for a re-plat of the property.

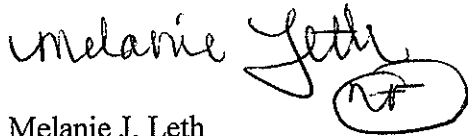
Because it is a re-plat, I recommend the name of the final plat reflect same. Re-platting as "Hacks Addition Re-plat" or "Re-plat of Hacks Addition" will help to avoid confusion for future examiners of title to the property.¹ For the same reason, I further recommend that the Developer re-plat all of the property previously known as Hacks Addition, including that portion that was minor subdivided in early 2017.

Since the City's ordinances are silent as to the procedure for such a re-plat, the Developer's request should be treated as though it is an entirely new plat, including but not limited to meeting all statutory regulations and design standards, and all other City requirements for easements, lots, walkways, trails, parkland dedication, etc. If the Developer complies with all of these requirements, then the City must approve the Developer's request.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

WEBER, LETH & WOESSNER, PLC

A handwritten signature in cursive script that reads "Melanie Leth". The signature is written in dark ink and is positioned above the printed name.

Melanie J. Leth

¹ For example, if Hacks Second Addition is platted over Hacks Addition, part of the legal description for the property that was minor subdivided will no longer exist (Lot 2, Block 1, Hacks Addition). This may create confusion when an attempt is made to sell or otherwise convey title to that property, potentially becoming a cloud on the title.

12-18-17

PER PHONE CONVERSATION
WITH JASON WILKER:

fee \$250

MODIFICATION / REVISION OF CONDITIONAL
APPLICATION FOR ~~MINOR SUBDIVISION~~ APPROVAL USE PERMIT.

Due at least 30 days prior to the Planning and Zoning Commission Meeting

PROPOSED NAME Wilker Retaining Walls

OWNER(S) Jason Wilker

ADDRESS 1103 8th Ave NW

Kasson, MN 55944

PHONE 507 208-1819

DEVELOPER(S) Jason Wilker

ADDRESS _____

PHONE _____

ENGINEER/SURVEYOR Massey Land Surveying

LEGAL DESCRIPTION _____

NORTH-SOUTH STREET _____

EAST-WEST STREET East 8th Ave

FEE PAID 250⁰⁰ Date 12-18-17

MAPS INCLUDED (4) _____

ONE (1) ELECTRONIC COPY

• I DID ADVISE HIM THAT THE CITY ATTORNEY WOULD PROVIDE
A LEGAL OPINION THAT THE C.U.P. SHOULD NOT BE
REVISED TO ALLOW FOR EXPANSION.

J.

A 187403

Certified filed and or recorded on
6/15/10 10:50 AM
Office of the County Recorder
Dodge County, Minnesota
Sue Alberts, County Recorder

Return to: TITLE SERVICES,
INC.

Receipt #: 46887

Sue A. Alberts
Dodge County Recorder
by LRS, Deputy



187403



6/15/2010

Warranty Deed
Limited Liability Company to Individual(s)

WARRANTY DEED

No delinquent taxes and transfer
entered; Certificate of Real Estate
Value (✓) filed () not required

Certificate of Real Estate
Value No. 5111
June 15, 2010

by Wendy S. Peterson County Auditor
Deputy Auditor/Treasurer

DATE 6/16/2010
DEED TAX HEREON OF \$ 495.00 PAID
RECEIPT NO. 7243
Deborah J. B. O'Connor Dep.
County Auditor/Treasurer

STATE DEED TAX DUE
HEREON: \$495.00
Date: June 3, 2010

FOR VALUABLE CONSIDERATION, Bigelow-Voigt Development LLC, a Limited
Liability Company under the laws of Minnesota, Grantor(s), hereby convey(s) and
warrant(s) to Jason Wilker, Grantee(s), real property in Dodge County, Minnesota,
described as follows:

Lengthy - see attached

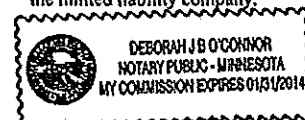
together with all hereditaments and appurtenances belonging thereto, subject to the
following exceptions:
Subject to covenants, easements and restrictions of record.
Sellers certify that they do not know of any wells on the subject property.

Bigelow-Voigt Development LLC

By: Joel Bigelow
Joel Bigelow, Managing Governor Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF DODGE)

Manager The foregoing instrument was acknowledged before me this 3rd day of June, 2010 by Joel Bigelow, Managing Chief
Governor of Bigelow-Voigt Development LLC, a limited liability company under the laws of Minnesota, on behalf of
the limited liability company.



This instrument drafted by:
Atypical Title, Inc.
16 N. Mantorville Avenue
Kasson, MN 55944

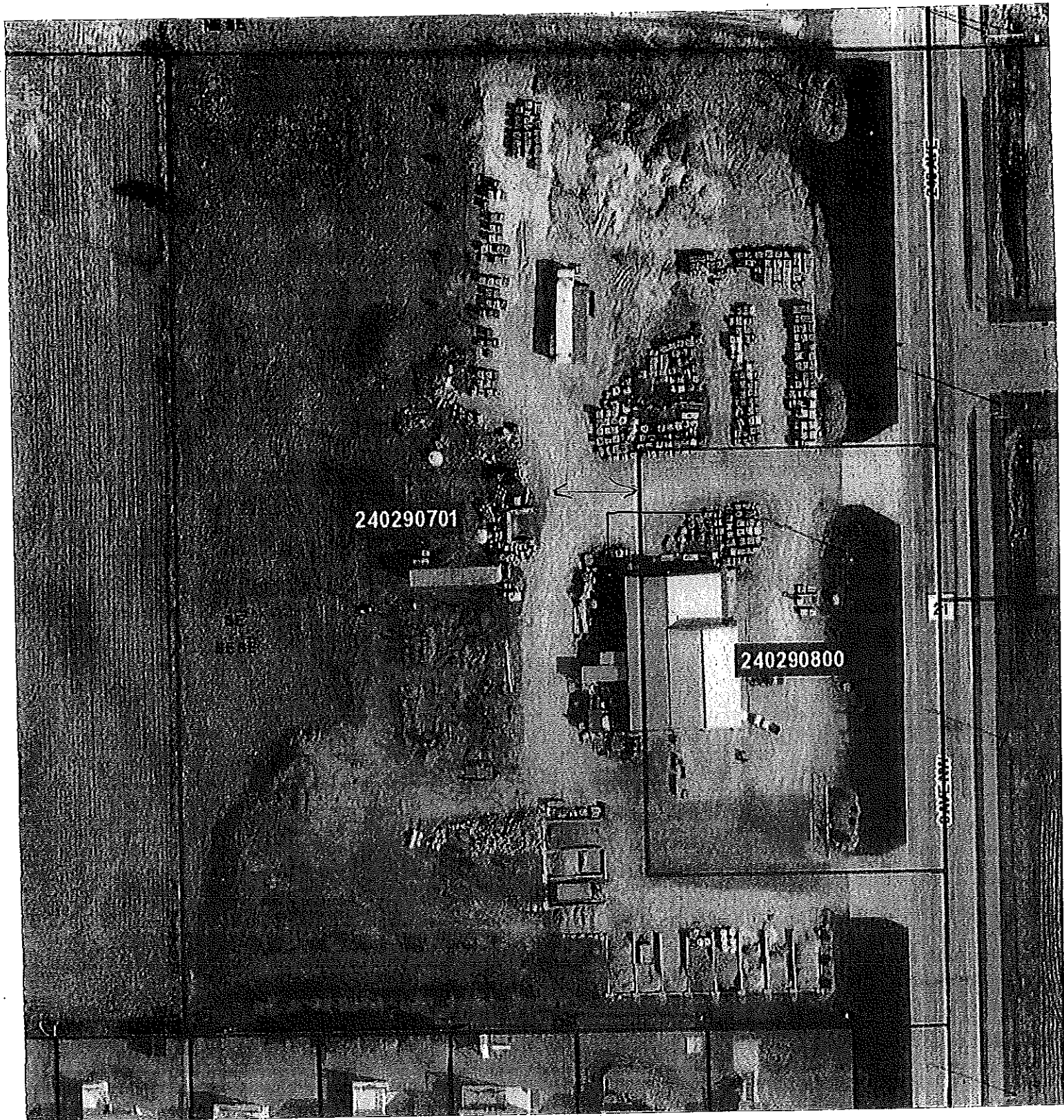
Deborah J. B. O'Connor
Notary Public

Tax Statements for the real property
described herein shall be sent to:
Jason Wilker
308 10th Street NW
Byron MN 55920

24022.0711
24022.0800

EXHIBIT A

The SE 1/4 of Section 29, Township 107, Range 16, Dodge County, Minnesota described as follows:
Commencing at the Southeast corner of said SE 1/4, thence on an assumed bearing of North along the East line of said SE 1/4 a distance of 810.00 feet for a point of beginning of the tract to be described; thence West at right angles to said East line 410.00 feet; thence North parallel with said East line 510.00 feet, more or less, to the north line of the SE 1/4 SE 1/4; thence East along said North line 410.00 feet to the East line of said SE 1/4; thence South along said East line 510.00 feet to the point of beginning.



Hi Chris,

I wonder if Mr. Wilker should be required to bring his business site into compliance with his conditional use permit which he agreed to in 2010 before any additional conditional use permit is issued. It seems he has started construction on his addition prematurely.

Conditions included in his current conditional use permit which seem non-compliant include; That no overnight, outside storage of equipment will be permitted on the property. Also, that outside storage and/or display of landscaping materials shall be allowed only north of the existing structure.

There has been an increasing amount of storage trailers, tanks and assorted excess material (junk) accumulating on his site.

Since 2012 there have been several bins of landscaping material stored/displayed south of the buildings.

You can view the progression of the accumulation on the county GIS Parcel Viewer for years 2010, 2012 and 2016 here. <https://maps.co.goodhue.mn.us/Dodge%20County%20TPV/>

Maybe the adjacent property owners aren't concerned. But perhaps they are not aware of the conditions of his current conditional use permit. If I lived there, I sure would be concerned.

I feel it should be the City that is the policing authority for these issues and not have property owners feeling guilty about "turning in" neighbors.

The condition of the site was a concern at the original conditional use permit hearing/meeting. Previously it was a construction business site and was generally in the same condition as it has become now which is why the conditions were put in place.

The permit was partially justified under the "nurseries" classification. Look at Houston's nursery and compare Mr. Wilker's site to theirs which, in my opinion, would fit in very nicely to a residential neighborhood. I believe Mr. Wilker's site is a blight on the neighborhood.

Perhaps Mr. Wilker can use this time to bring his site into compliance before proceeding with his application for an additional conditional use permit.

I am not against Mr. Wilker's business but I believe he has taken advantage of Kasson and not lived up to his promise. After all he doesn't live here...we do.

Thank you,

Jerry Berg

PUBLIC HEARING NOTICE

On Monday, January 8, 2018 at 6:30 pm in the City Council Chambers, the Planning and Zoning Commission of the City of Kasson will hold a Public Hearing.

Jason Wilker, Wilker Nursery and Landscaping, has requested a Minor Subdivision to combine two parcels into one. The parcels are located at 1103 8th Ave NW, Kasson, MN also described as:

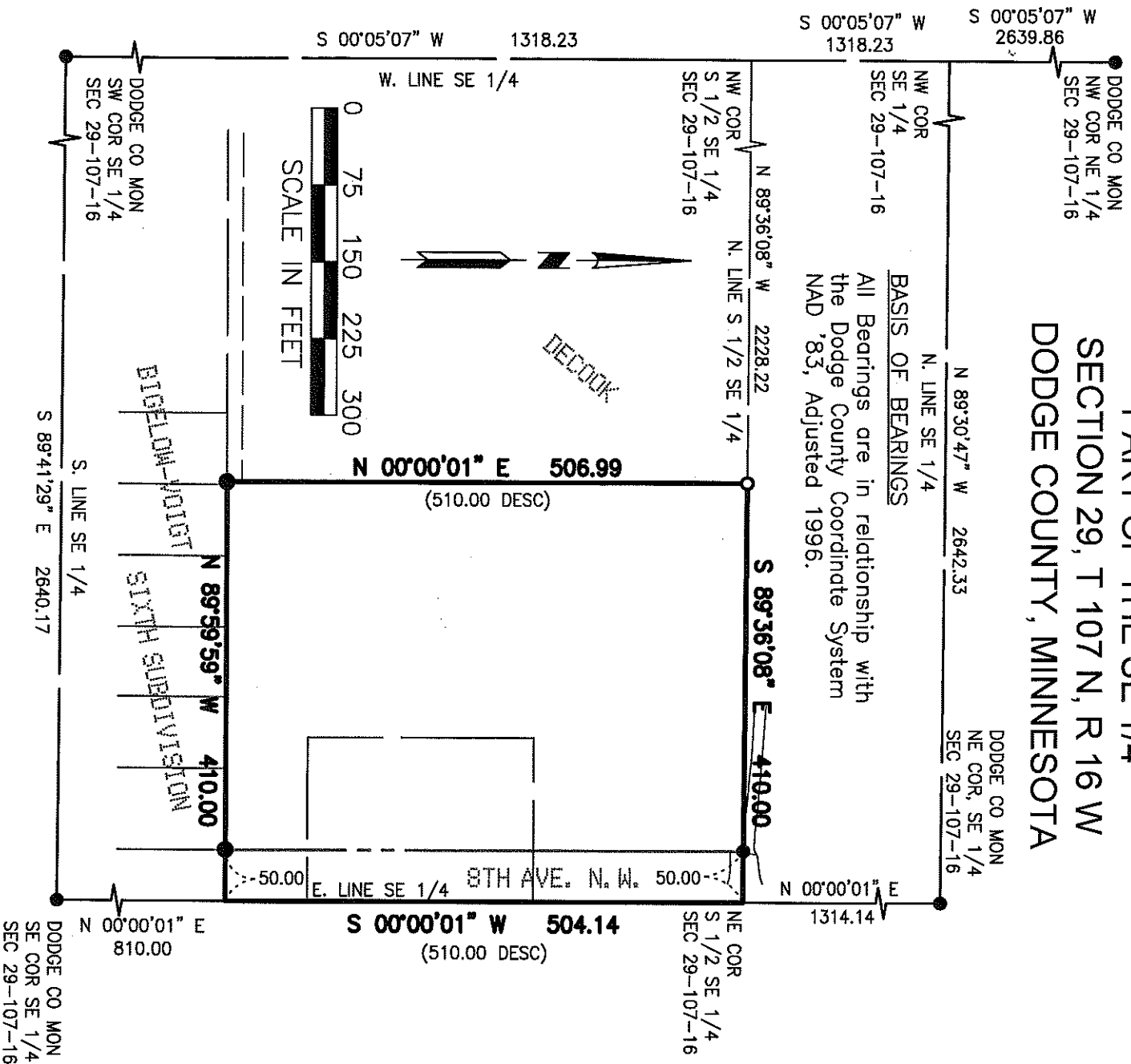
.81 ACRES -COM AT THE SECOR OFSE1/4 N890FT TO BEG W160FT N220FT E160FT S220FT and

4.00 ACRES - COMM SECOR SE1/4 N810FT TO BEG W410FT N510FT E410FT S510FT TO BEG EX COMM

Written or electronic comments can be made to Theresa Coleman, City Administrator at 634-7071 or Cityadministrator@cityofkasson.com .

Linda Rappe
City Clerk

CERTIFICATE OF SURVEY
PART OF THE SE 1/4
SECTION 29, T 107 N, R 16 W
DODGE COUNTY, MINNESOTA



That part of the Southeast Quarter of Section 29, Township 107 North, Range 16 West, Dodge County, Minnesota described as follows:

DESCRIPTION OF RECORD

Commencing at the Southeast corner of said Southeast Quarter, thence on an assumed bearing of North along the East line of said Southeast Quarter a distance of 810.00 feet for a point of beginning of the tract to be described; thence West at right angles to said East line, 410.00 feet; thence North parallel with said East line, 510.00 feet more or less to the north line of the Southeast Quarter of the Southeast Quarter; thence East along said North line, 410.00 feet to the East line of said Southeast Quarter; thence South along said East line, 510.00 feet to the point of beginning.

Said parcel contains 4.76 acres, more or less including the 8th Avenue NW right-of-way.
Said parcel is subject to the 8th Avenue NW right-of-way over the Easterly boundary thereof and is subject to any other easements or encumbrances of record.

PROPERTY LOCATION MAP

T. 107 N.	R. 16 W.
N.W. 1/4	N.E. 1/4
29	S.E. 1/4
S.W. 1/4	*
No Scale	

MT & SNEY
LAND SURVEYING & ENGINEERING
P.O. BOX 100, KASSON, MN 55944
PH. NO. 507-634-4505, FAX NO. 507-634-6560



THIS SURVEY AND DRAWING
WAS PREPARED FOR THE
EXCLUSIVE USE OF:
JASON WILKER
KASSON, MN

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 12-18-17
Richard J. Massey

LIC. NO.: 41814

MONUMENTS
● FOUND (5/8" PIPE UNLESS
NOTED OTHERWISE)
○ SET (5/8" PIPE UNLESS
NOTED OTHERWISE)

DATE: 12/22/2017
DWG NO. 2802SC01 JOB NO. 2802
DRAWN BY: D.A.L. SHEET 1 OF 1

January 2, 2018

City of Kasson
Interim Zoning Administrator
401 5th Street SE
Kasson, MN 55944

RE: Wilker building permit for 62847 240th Avenue, Kasson
Part of the SE 1/4, Section 29, Township 107 North, Range 16 West
Dodge County, Minnesota

Ms. Coleman:

I have been asked to give a legal opinion with regards to Jason Wilker's request to expand a currently existing structure on the above-referenced property.

Background

Mr. Wilker owns property in the City of Kasson located at 62847 240th Avenue. He purchased the property via Warranty Deed from Bigelow-Voigt Development LLC, dated June 3, 2010. At some point prior to Wilker's purchase, two separate parcels of property were combined to create the property purchased by Wilker. The property was annexed into the City at the time of Wilker's purchase and is zoned R-1, Single Family Residential District.

A few months before Wilker's purchase, on January 11, 2010, Bigelow-Voigt Development, LLC, as the owner of the property, applied for a Conditional Use Permit on Wilker's behalf to allow him to operate a nursery and landscaping business on the property. It appears that the Conditional Use Permit was granted¹ to allow the operation of the nursery and landscaping business on the property and in the existing structure, subject to a number of conditions including the following:

- 1) that no additional commercial structures be allowed on the property;

¹ The Conditional Use Permit was never recorded. However, the failure to record a Conditional Use Permit has no effect upon its validity or enforceability pursuant to Minn. Stat. §462.36.

- 2) that 60% of the entire lot be planted and maintained in trees, shrubs, or other plants; and
- 3) that the operator have a valid nursery license prior to beginning operations.

Wilker now desires to expand the existing structure located on the property by constructing a 32 foot x 54 foot addition thereon. On December 13, 2017, Wilker requested the City Council approve a building permit to allow him to proceed with such expansion. The matter was referred to the Planning and Zoning Commission for recommendation.

Opinion

First, it is unclear whether Wilker has properly applied for a building permit. Pursuant to City Ordinance §150.05(B), application for a building permit shall be made to the City Administrator, accompanied by a plan, drawn to scale, showing the dimensions of the building to be erected. To my knowledge, no such application has been submitted. Furthermore, the City's Building Official, not the City Council, would be the appropriate entity to issue the building permit, if the application were approved.

Second, before granting such a building permit, the City should determine whether Wilker is complying with the conditions imposed upon him by his Conditional Use Permit. The first condition listed on the permit is "that no additional commercial structures will be allowed on the property." In my opinion, expanding the footprint of the existing building, especially by such a significant area (more than 1,700 square feet), constitutes allowing "an additional commercial structure" on the property, and would therefore directly conflict with this condition of his Conditional Use Permit.

It would also be important to determine whether Wilker is complying with the other conditions of his Conditional Use Permit. The next condition listed is "that 60% of the entire lot be planted and maintained in trees, shrubs, or other plants," and the last condition listed on the permit is "that the operator have a valid nursery license prior to beginning operations." The City had the authority to grant Wilker a Conditional Use Permit in 2010 because his non-conforming use of the residentially-zoned property as a nursery was an allowed conditional use of the property in the R-1 district pursuant to City Ordinance §154.147(H). However, if Wilker is not actually operating as a nursery, Wilker's use of the property may no longer be an allowed conditional use of the property pursuant to the ordinance, and Wilker's conditional use permit could be revoked.

In conclusion, Wilker's request for the building permit directly conflicts with a condition set forth in his conditional use permit and therefore should be denied. To pursue the matter further, Wilker would need to request a new conditional use permit pursuant to City Ordinance §154.029 since the ordinances do not outline any procedure for amending a Conditional Use Permit.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

WEBER, LETH & WOESSNER, PLC

Melanie J. Leth