PLANNING COMMISSION

MAY 18, 2020

6:30 O'CLOCK P.M.

- 1. Call to Order
- 2. Minutes of the Previous Meeting April 13, 2020
- 3. Public Hearing Heaser Variance Request
- 4. Zoning Ordinance Rewrite
- 5. Other
- 6. Adjourn

1 2 3	MINUTES OF PLANNING COMMISSION MEETING April 20, 2020
4 5 6	Pursuant to due call and notice thereof, a regular Planning Commission meeting was held at City Hall on the 20th day of April, 2020 at 6:30 PM
7 8 9 10	THE FOLLOWING MEMBERS WERE PRESENT : Commissioner Ferris, Commissioner Zelinske, Commissioner Thompson, Commissioner Burton, Commissioner Tinsley and Commissioner Fitch.
11 12	THE FOLLOWING WERE ABSENT: Commissioner Torkelson
13 14	THE FOLLOWING WERE ALSO PRESENT : City Administrator Tim Ibisch, City Clerk Rappe, Laura Chamberlain, Julie Nagorski and Jason Wilker.
15 16	CALL TO ORDER AT 6:30PM
17 18 19	MINUTES OF THE PREVIOUS MEETING MARCH 9, 2020 - <u>Motion made to Approve the March 9,</u> 2020 Meeting Minutes made by Commissioner Tinsley, second by Commissioner Zelinske with All <u>Voting Aye.</u>
 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 	 WILKER CONDITIONAL USE PERMIT – Administrator Ibisch reviewed the information from previous meetings and referred to the staff report and suggested conditions for the conditional use permit. Chairman Ferris directed the Commission to page 12 of Laura Chamberlain's report; 1. The Applicant shall submit to the City an Updated Development Plan – has been submitted 2. Landscaping and screening plan – has been submitted 3. The City will need a copy of the Nursery Stock Dealer Certificate 4. Nursery stock – Commissioner Burton stated that according to Forrester Ron Unger there 32 trees as stock now so he is figuring Wilker needs 75 more trees, 15 in the 5 categories to start as a basis and maintain as a minimum standard. Commissioner Zelinske stated that what was agreed in a previous meeting that 150 trees to be planted in the growing area of 50 trees each year for a three year timeframe of sapling size or greater to be planted on or about October 1 each year. The nursery stock is difficult to put numbers on since the product is coming in and going out. 5. Administrator Ibisch stated that the hardcover can be a fluid process with a nursery and can be checked each year to make sure it is in compliance. 6. remove entirely 7. take out "fully" screened and just have it appropriately screened 8. shall have appropriate screening or buffer planting9. one per employee as required by city code the City will not require painted parking spaces 10. Commissioners are ok with wording 11. Commissioners are ok with wording 12. Commissioners are ok with wording

43	13. Commissioners are ok with wording (the current expansion is noted on the current plan a
44	building permit is required.) If anything changes with the plan included an amendment to the
45	CUP would be required.
46	14. Commissioners are ok with wording
47	15. Commissioner Burton suggested adding Landscaping and material storage from
48	Administrator Ibisch's memo in the packet, and include the north side retaining wall stock not
49	in bunkers is allowed on the north side but must be maintained.
50	
51	Motion to Forward A Positive Recommendation with the Conditions as Stated to the City
52	Council made by Commissioner Thompson, second by Commissioner Burton with All Voting
53	<u>Aye.</u>
54	
55	ZONING ORDINANCE REWRITE - Laura Chamberlain, HKgi, took the Planning Commission
56	through a presentation on Planning Commissioner Training.
57	
58	Ms. Chamberlain then went through the proposed 154 Article 01 and Article 02. Clerk Rappe
59	had a question on whether we want to keep provision 154.01.18, payment of taxes,
60	Administrator Ibisch agreed. Ms. Chamberlain will look into that provision closer. Ms.
61	Chamberlain stated that if any of the Commissioners had any other questions or comments that
62	they could contact her directly.
63	
64	Other - Administrator Ibisch stated that next month there will be a variance hearing and
65	explained the situation to the Commissioners.
66	
67	Adjourn 8:26PM
68	Respectfully Submitted,
69	Respectivity Submitted,
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71	
72	
73	
74	Linda Rappe, City Clerk
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, ,	



To: Planning Commission From: Zoning Administrator Re: Heaser Variance/Vacation Hearing

Date: 05/14/20

In reference to the Heaser Application for a variance/vacation of the drainage easement on the southside of 903 12th Ave NW, they are requesting approximately 2.5 ft. I have reviewed the issue and the Board after review should plan on making a recommendation regarding whether they feel a vacation of the property is appropriate, if an encroachment variance is appropriate, or if an encroachment agreement of some sort would be prudent. Additionally, this issue has been published and the public will have the opportunity to provide input.

During the review of the application, I noticed the tenor was rather critical and I think that the applicant has attempted to shift some of the issues they have with their property onto the City Council. It seems clear that the communication between the applicant and the previous owner was not entirely clear. This however does not obligate the Planning Commission to take any specific actions in this case. The City Attorney has requested that the emails previously forwarded to the Commission be included in tonight's packet. I have done so.

Finally, as a reminder a variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner "practical difficulties." For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan. **"Practical difficulties**," as used in connection with the granting of a variance, means:

- i. that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance;
- ii. the plight of the landowner is due to circumstances unique to the property not created by the landowner; and
- iii. the variance, if granted, will not alter the essential character of the locality.
- iv. Economic considerations alone do not constitute practical difficulties.

Action Requested: It seems clear that this request would not meet that standard. Therefore, vacation of this property or a particular agreement with the requesting individual or rejection of the application are the most sensible courses of action. Staff, as you can see in the packet are endorsing rejection and disagreed with the findings that the applicant has included in their formal application.

Linda Rappe

From:	Weber, Leth & Woessner, PLC <mleth@kmtel.com></mleth@kmtel.com>
Sent:	Wednesday, April 29, 2020 5:03 PM
To:	cityadministrator; Linda Rappe
Cc:	anthony.heaser@dot.gov; aaron@thedesignconnection.net; btheobald;
Subject: Attachments:	collin@armonarch.com; burton duane; kassonfirechief@kmtel.com; councilpersonzelinske; stonebystone@kmtel.com; ralphf@globaldairysolutions.com Planning Commission Meeting Email from Atypical Title dated 7.3.18.pdf

Good afternoon all,

I am in receipt of the below email from Mr. Heaser, and I would like to address his allegations that a mistake was made at the July 11, 2018 council meeting, and that I mislead the council.

First, I never represented to the council that I had spoken either to Mr. Heaser or to his attorney. I indicated that "the title company for the individuals who are going to be buying this property" were concerned about the encroachment. I further indicated that city staff recommended proceeding with an encroachment agreement to preserve the City's right to its easement should the garage be removed or destroyed in the future, instead of vacating the portion of the easement upon which the garage encroaches. Upon receipt of a request from Atypical Title (a copy of which I have attached hereto), I drafted the encroachment agreement as requested, forwarded it to Atypical Title, and requested the council approve it at its next meeting on July 11, 2018.

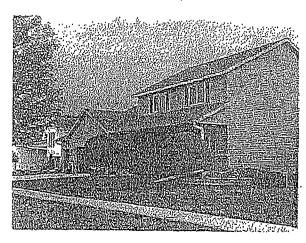
What Mr. Heaser "wanted" at that point in time was irrelevant to the council's discussion (because he did not have any ownership interest in the property at that time) and irrelevant to the encroachment agreement (because he was not a party to the encroachment agreement). Mr. Heaser had no ownership interest in the property until he closed on the property, which occurred after the council meeting and after the Sellers had signed the encroachment agreement.

Mr. Heaser should have been provided a copy of the signed encroachment agreement by his own title company/attorney prior to the closing so that he could have made an informed decision about whether to proceed with the closing in light of the encroachment. I understand that his title company/attorney failed to do so. While unfortunate, this is clearly not the City's mistake.

Should you have any questions or concerns, please do not hesitate to contact me. However to avoid possible open meeting violations, please do not "reply all" to this email.

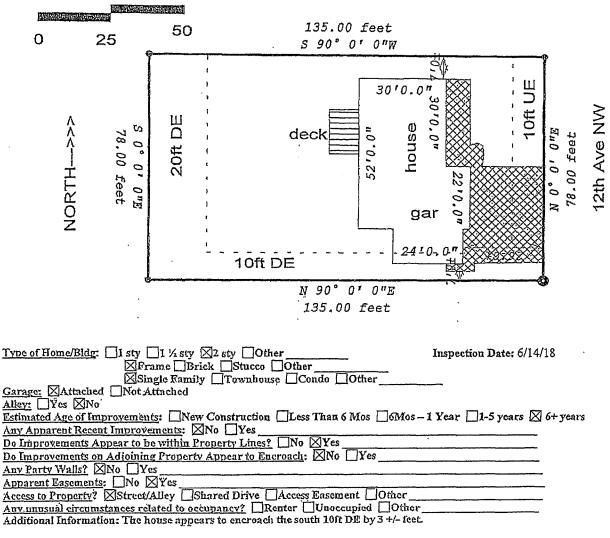
Melanie J. Leth Weber, Leth & Woessner, PLC 38 West Main Street Dodge Center, MN 55927 (507) 374-6355 mleth@kmtel.com

NOTICE: The information in this email is intended for the use of the individual or entity to which it is addressed, and is subject to the attorney-client confidentiality. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of, or reliance upon the contents of this email is prohibited. If you have received this email in error, please notify me immediately by replying to the sending email address, and please delete this email from your computer.



<u>Kyle's Plat Service, LLC</u> 507-951-4605 / kylesplatservice@gmail.com Property Inspection Request – File #: 17404P Date needed by: 07/02/2018 Requested By: Georgine Property Address: 903 12th Avenue NW, Kasson, MN 55944 County: Dodge PID: 24.121.4004 Legal Description: Lot Four (4), Block Four (4), Bigelow-Voigt Sixth Subdivision, in the City of Kasson, Dodge Center, Minnesota

Current Owner's Name: Kenneth J. Murry and Karin L. Murry New Buyer's Name: Anthony R. Heaser



This diagram is based on a visual and taped inspection, and is charted to approximate locations and therefore is not a survey. The property dimensions shown are platted or described dimensions and were not field verified. Do not use for the establishment of any fence, building, or other improvement lines.

ENCROACHMENT AGREEMENT PERMITTING ENCROACHMENT OF GARAGE

THIS AGREEMENT is made this <u>11</u> day of July, 2018, by and between the City of Kasson, a municipal corporation under the laws of the State of Minnesota, herein referred to as ("City"), and Kenneth J. Murry and Karin L. Murry, of the City of Kasson, County of Dodge, State of Minnesota, herein referred to as ("Landowners").

RECITALS

1. Landowners are the fee owners of real property located at 903 12th Avenue NW, Kasson, Minnesota, and legally described as follows:

Lot Four (4), Block Four (4), Bigelow-Voigt Sixth Subdivision, in the City of Kasson, Dodge County, Minnesota

herein referred to as ("the Property"),

2. The City currently has Drainage and Utility Easements ("Easements") over, under and across a portion of the Property as set forth on the Plat known as "Bigelow-Voigt Sixth Subdivision" recorded in the Office of the County. Recorder, Dodge County, Minnesota, which Easements are shown on the plat drawing attached hereto as Exhibit "A".

3. There is now erected on the property, a house with an attached garage, the south wall of which encroaches approximately 2.5 feet into the City's Drainage Easement located along the south boundary of the Property. Landowners seek permission from the City to permit such encroachment upon the City's Drainage Easement subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The City hereby approves an encroachment by Landowners on and over the Drainage Basement for the purpose of using and maintaining Landowners' currently existing garage, to the same extent and manner as the garage now encroaches upon said easement. Landowners shall be responsible for all costs relating to the maintenance and repair of the

17404P Page 1 of 4

garage.

2. So long as the encroaching garage remains standing, Landowners shall be permitted to have the garage overlap and extend into the easement to the same extent and manner as the garage now encroaches upon said easement. This provision shall operate as a covenant running with the Property and shall bind both parties hereto and their respective heirs, successors, and assigns. 7

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3. Should the garage or any essential part thereof be totally destroyed by fire or other casualty, this agreement shall immediately terminate. In the case of partial destruction, this agreement may be terminated by either party giving written notice to the other party specifying the date of termination. Such notice to be given within ninety (90) days following said partial destruction and not less than thirty (30) days prior to the termination date therein specified.

4. This agreement shall remain in force and effect only so long as the present south wall of Landowners' garage shall remain standing. Upon the removal or destruction thereof, all rights of Landowners, their heirs, successors and assigns, shall automatically cease. On any termination of this agreement, Landowners shall remove at their expense all property remaining upon the City's easement.

5. Landowners and their successors and assigns do hereby agree to defend, indemnify, and hold the City harmless from all costs, expenses, claims and liability, including attorney's fees, relating to or arising from the use of the area encroached upon by the garage, and shall hold the City harmless from any claim or damages to person or premises resulting from the use, occupancy, and possession thereof by Landowners, including third party claims against flooding issues that may occur due to interference with the easement.

6. Nothing in this Agreement shall be deemed a waiver or abandonment of the City's rights under the Easements.

7. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed via certified mail,

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return receipt requested, to the following:

City_of Kasson:_ City Administrator 401 Fifth Street SE Kasson, MN 55944

Landowners: Kenneth J. and Karin L. Murry 903 12th Avenue NW Kasson, MN 55944

or to any heirs, successors or assigns of the City or Landowners, or any future address of the City or Landowners, if the City or Landowners give the other party notice of said change of address as provided pursuant to the provision for notice herein,

IN WITNESS WHEREOF, the parties executed this Agreement the date and year first above written.

CITY OF KASSON

BY: Its Mayor

ΒŠ Its City Administrator

STATE OF MINNESOTA) 88. COUNTY OF DODGE

<u>, 1</u> <u>,</u> 2018 DATED

12,2018 DATED:

The foregoing instrument was acknowledged before me this 6th day of July, 2018, by Chris McKern and Theresa Coleman, the Mayor and City Administrator of the City of Kasson, a municipal corporation under the laws of Mingesota, on behalf of the corporation.

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	LINDA M RAPPE	ł
	NOTARY PUBLIC MINNEGOTA	Į.
	MY COMMISSION EXPIRES JAN 11, 2020	ţ
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Signature of Notary Public

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LANDOWNERS

Kenneth J. Murry

Karin L. Murry

DATED: ,2018

DATED: 7-13 18, 2018

STATE OF MINNESOTA)) 85. COUNTY OF DODGE)

The foregoing instrument was acknowledged before me this $\frac{1}{2}$ day of July, 2018, by Kenneth J. Murry and Karin L. Murry.

FAULL KILTINEN NUTATIN POULS, MINRESOLA NY LONGSTONDY COMPLEX ANY 31 YOR

Signature of Notary Public

This Document was Drafted By: Melanie J. Leth Weber, Leth & Woessner, PLC P.O. Box 130 Dodge Center, MN 55927 (507) 374-6355

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401 FIFTH STREET SE Kasson, Minnnesota 55944-2204 Phone: (507) 634-7071 FAX: (507) 634-4737

3-

October 31, 2018

James M Hansen, Attorney at Law Hansen Title & Legal Services, LLC 2518 Superior Drive NW, Suite 100 Rochester, MN 55901

IY OF

Dear Mr. Hansen,

I am in receipt of an email that you sent to Council Member Zelinske dated October 22, 2018 requesting the vacation of a platted drainage easement.

Drainage easements are established to provide for the free flow of storm water. In the best interest of your client, their neighbors and the City as a whole, the drainage easement will remain as platted.

Since

(Theresa Coleman City Administrator



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May 8, 2020

Mr. Tim Ibisch City of Kasson 401 5th St. SE Kasson, MN 55944

RE: 903 12th Avenue, Kasson, MN - Heasers Property Easement vacation/reduction

Tim,

I'm following up regarding the Heaser property vacation.

We are in receipt of the Engineering report prepared by Tom Wiener, PE, for the Heaser property at 903 12th Av NW. In October of last year, we recommended against reducing the easement and after additional discussion with City staff and the City Engineer, and for numerous reasons the findings of our review are that we oppose an easement modification, nor would we recommend an easement vacation.

The City operates and maintains a storm sewer in the easement. Myself and Charlie (Public Works Director) continue to not recommend any vacation or variance of the proposed easement due to addition risk and costs to the City.

Please contact us if you have any questions.

Sincerely,

WHKS & CO.

In Shall

Brandon W. Theobald, P.E.

Cc: Charlie Bradford, Public Works Director Linda Rappe, City Clerk

FINDINGS OF FACT FOR HEASER VARIANCE/VACATION

- 1. Exceptional or extraordinary circumstances or conditions apply to the property in question as to the intended use of the property that do not apply generally to other properties in the same Zoning District.
- 2. The proposed Variance/Vacation is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same Districts and in the same vicinity. The possibility of increased financial return shall not, in itself, be deemed to warrant a variance.
- 3. Approving the proposed Variance/Vacation will not be of detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public interest.
- 4. The condition or situation of the specific piece of property for which the Variance/Vacation is sought is not of so general or recurrent in nature as to make a reasonably practicable the formulation of a general regulation for such conditions or situation.
- 5. The literal interpretation of the provision of this Ordinance would cause undue hardship to the property owner. Economic conditions alone shall not be considered a hardship.

Approve Deny

Recommended this 18th day of May, 2020 by the City of Kasson, MN Planning Commission.

By: Chairperson

Attest: Zoning Administrator

APPLICATION FOR VARIANCE

.

	Fee Paid \$				
	Date Filed				
Street Address of Property: <u>903</u> 12 th Avenue NW, Kasso	on, MN 55944				
Legal Description of Property: Lot Four (4), Block Four (4), Bigelow-Voigt Sixth Subdivision, in the City of Kasson, Dodge County, Minnesota					
Owner's Name: Anthony Heaser	Phone (507) 269-3021				
Address: 903 12th Avenue NW, Kasson, MN	55944				
Description of Request: <u>The homeowner requests that 2.5 feet of the drainage easement on the south side of the property be vacated from the front (of the standing garage) to the back of proposed addition to the home currently located on the property.</u>					
Reason(s) for Request: See attached.					
PresentZoningClassification: Residential					
Existing Use of Property: Single family home					
Signature of Applicant	Date				
FOR OFFICE U RecommendedDenied					
ApprovedDenied					
If approved, the following conditions were prescribed: 1. 2. 3. 4.					
If denied, denial was for the following reason(s):					

PROCEDURES.

The procedure for obtaining a variance from the regulations of the Zoning Ordinance are as follows:

- 1. The property owner or his agent shall meet with the Zoning Administrator to explain his situation, learn the procedures and obtain an application.
- 2. The applicant shall file the completed application form together with required exhibits with the Zoning Administrator and shall pay a filing fee as established by the Council.
- 3. The Zoning Administrator shall review the application and within ten (10) business days after receiving the application shall notify the applicant in writing if the application is not complete and what additional information is required.
- 4. The City shall take action to approve or deny the application within sixty (60) days of receiving a completed application. If the City cannot take action to approve or deny the application within sixty (60) days of receiving the completed application, the City may extend the timeline for taking action before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notification shall state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant in writing.
- 5. When the Zoning Administrator determines the application to be complete, the Zoning Administrator shall set the date for a public hearing and shall have notice of such hearing published at least once in the legal newspaper, not less than ten (10) days nor more than thirty (30) days prior to the hearing.
- 6. The Zoning Administrator shall transmit the application to the Planning Commission for review and shall notify all property owners within 350 feet of the outer boundaries of the property in question; however, failure of any property owner to receive such notification shall not invalidate the proceedings.
- 7. The Planning Commission shall hold the public hearing, and may table the application for further investigation if necessaly, or the Commission shall recommend to the Council one of the three actions, approval, conditional approval or denial.
- 8. The City Council shall act upon the application within thirty (30) days after receiving the recommendation from the Planning Commission.
- 9. No application for a variance shall be considered by the City within a one year period following a denial of such request, except that the Zoning Administrator may permit a new application if new evidence or a change in circumstances warrant it.

<u>CRITERIA FOR GRANTING A VARIANCE.</u> The City shall not consider as a variance any use that is not permitted for the property in the district where the affected person's land is located. No variance from the provisions or requirements of this ordinance shall be authorized by the City Council unless it finds evidence that all the following facts and conditions exist:

- I. Exceptional or extraordinary circumstances or conditions apply to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.
- 2. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same district and in the same vicinity. The possibility of increased financial return shall not in itself be deemed sufficient to warrant a variance.
- 3. That the authorizing of such variance will not be of detriment to adjacent property and will not materially impair the intent and purpose of this ordinance or the public interest.
- 4. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.
- 5. The literal interpretation of the provisions of this ordinance would cause undue hardship to the property owner. Economic conditions alone shall not be considered a hardship.

REQUIRED EXHIBITS FOR VARIANCES



I. A completed application form.

The following exhibits shall be required:

- 2. An accurate boundary description of the property.
- 3. Evidence of ownership or enforceable option on the property.
- 4. An accurate drawing, at scale, showing property lines, locations of existing buildings and proposed project.

NOTE: SUBMITTAL OF THE REQUIRED INFORMATION DOES NOT GUARANTEE THE ISSUANCE OF A VARIANCE. ADDITIONAL INFORMATION MAY BE NEEDED OR CONDITIONS MAY EXIST THAT WOULD PREVENT THE ACTUAL GRANTING OF A VARIANCE.

Heaser Reasons for Approval of Variance

Factual Background

When the home was built in 2005, the City issued a building permit that approved an approximate 2.5 foot encroachment into the drainage easement on the property's south side. The approval by the City Building Inspector allowed a 3-car garage to be built for the home. The home was built with the 3-car garage, which encroaches into the easement approximately 2.5 feet as approved by the City Building Inspector. The City Planner signed off on the permit application on May 27, 2005, and the building permit was approved by the City Building Inspector on June 2, 2005. (Exhibit 1). The Certificate of Occupancy issued on September 19, 2005 provided that the property was "constructed in substantial compliance with the Minnesota State Building Code and is hereby certified ready for occupancy." (Exhibit 2).

The home was purchased by the Heasers from the original owners in July 2018. In preparation for the closing, a plat drawing was completed by Kyle's Plat Service, which identified the encroachment of the garage into the drainage easement. (Exhibit 3). Jay Hansen, counsel for the Heasers, noted the issue and advised the seller's counsel, Paul Kiltinen, that the sellers would need to obtain a variance from the City to allow the encroachment to exist or the City would need to agree to vacate the part of the easement that was encroached upon prior to the closing. This was a routine request necessary to make a public record that the encroachment would not affect fee title ownership or prevent the owner from obtaining financing for the property.

The closing on the sale of the property on July 13, 2018. At the City Council meeting on July 11, 2018, the City Council was asked to approve an "Encroachment Agreement Permitting Encroachment of Garage" ("Encroachment Agreement") between the sellers of the property and the City. (Exhibit 4). The Encroachment Agreement was prepared by the City Attorney, and although neither the Heasers nor their counsel saw or had input into the terms of the Encroachment Agreement, the representation was made to the City Council that the buyers wanted "this agreement from the City." That statement, while perhaps well intentioned, was not accurate. Counsel for the Heasers had no input into the Encroachment Agreement's terms and did not see or review the terms of the Encroachment Agreement until after the closing on July 13, 2018. The Encroachment Agreement in fact was delivered to the title company with the other documents executed by the sellers post-closing.

The terms of the Encroachment Agreement create significant problems for the Heasers with respect to their home. Specifically, the Encroachment Agreement provides

that the Heasers or a subsequent owner cannot rebuild the garage in the same location if the garage is destroyed or damaged in any essential part, despite the fact that the original construction and encroachment was approved by the City. This restriction on the rights of the property owner did not exist until the City and the former owners entered into the Encroachment Agreement on the date of the closing with the Heasers.

In addition to preventing the Heasers from rebuilding a similar garage if it is damaged, the restriction on the property is a cloud on the property's title that will likely significantly impact the value of the property if the Heasers want to sell the home in the future. The restriction may in fact make the property unsaleable in its current state. This specific concern that the owner of the home would not be able to rebuild a similar garage if it was damaged was raised by a Council member at the July 11, 2018 meeting, but the Council approved entering into the agreement, likely because they were advised that the buyers wanted this agreement.

In considering this application, it is suggested that the commission review the video of the July 11, 2018 Council meeting. The discussion of the issue begins at approximately 57:23 of the video. An additional noteworthy point that can be learned from the video is that the City Engineer reportedly indicated prior to the council meeting that a 16-foot easement, including the 10 feet on the adjacent property, would be sufficient for the City's maintenance and repair purposes if the home and garage now owned by the Heaser encroached within the drainage easement.

The Encroachment Agreement and the easement create an additional problem for the Heasers because they purchased the home with the aim of building an addition on the home to accommodate their newly blended family of 5 boys. Since they were not aware that the utility easement created any restrictions on the property, the Heasers purchased the home with the plan to expand the basement into the backyard of the property after they moved in. With that plan in mind, the Heasers obtained a construction plan from a building contractor for an addition to the home that expanded the basement by 22 feet from the back of the garage. (Exhibit 5). The Heasers also obtained input from a concrete contractor/[civil engineer] for specialized concrete work for the foundation of the new addition due to the issues created by the elevation of the back of the garage and the original basement. With the plans in hand, the Heasers intended to apply for a building permit for the addition, but those plans had to be abandoned when the Heasers became aware of the problems caused by the Encroachment Agreement.

Variance Criteria

1. Exceptional or extraordinary circumstances of conditions apply to the property in question as to the intended use of the property that do not apply generally to other properties in the zoning district.

Unless the City has a general practice of issuing building permits to builders who have built residences that encroached into drainage easements, the condition at the Heaser residence is a unique circumstance that causes them a unique hardship. The circumstances caused by the Encroachment Agreement – Heasers could not rebuild the same 3-car garage if it were damages – seems extraordinary by definition.

2. That such variance is necessary for the preservation and enjoyment of at substantial property right similar to that possessed by other properties in the same district and in the same vicinity. The possibility of increased financial return shall not in itself be deemed sufficient to warrant a variance.

Because of the City's last minute and undisclosed agreement with the seller, the Heasers were deprived of significant property rights, including a right to rebuild their home in a similar fashion if it is damaged and a title to their property that does not otherwise include a substantial defect that could make the home unsaleable. Given that the footprint of the home was originally approved by the City, a homeowner would also reasonably expect that he/she would have the capability of expanding a home along the same footprint.

3. That the authorizing of such variance will not be a detriment to adjacent property and will not materially impair the intent and purpose of this ordinance or the public interest.

At the July 11, 2018 City Council meeting, it was reported to the Council that the City Engineer believed that a 16-foot drainage easement, which is available between the Heaser home with the current encroachment and the adjacent property was sufficient for the City's expected maintenance and repair needs. The proposed addition to the Heaser home is planned along the same line as the existing 3-car garage. As a result, an addition along the same line will not impact the City's maintenance or repair capabilities. To confirm that the planned addition will not materially change the City's position from a risk or repair standpoint, an Engineering Opinion based on a feasibility study by WSE Engineering Services in Plainview. A copy of the WSE Opinion is included with this application as Exhibit 6.

The opinion from WSE concluded:

It is WSE's opinion that the 20-foot drainage easement in question can be reduced to a 15-foot easement without affecting future construction operations to the 15-inch HDPE drainage pipe located on, or near, the southern property line of 903 12th Ave, Kasson, MN, 55944.

4. That the condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make a reasonably practicable the formulation of a general regulation for such conditions or situation.

The condition of the property with the limitations created by the City's approval of the encroachment in 2005 and the subsequent unique limitations placed on the property with the Encroachment Agreement may well be singularly unique. The requested variance, accordingly, should not impact the City's ability to formulate general regulations for other homes in Kasson.

5. The literal interpretation of the provisions of this ordinance would cause undue hardship to the property owner. Economic conditions alone shall not be considered a hardship.

As detailed above, the condition of the property created by the City's original approval of the encroachment and the subsequent restrictions placed on the home by the Encroachment Agreement has imposed an undue hardship and has deprived the Heasers of significant rights to their property that a homeowner would reasonably expect to have in purchasing a home in Kasson.

Paramet # KAO5-74 Due Received 5/30/05/cms Date Paid Picked-up_ APPLICATION FOR BUILDING PERMIT CITY OF KASSON, MINNESOTA Marro Ha: 2-69-3386 KADDER Applicant Proposed Use SFO box 391 Pare No: 269-3386 M / const State License No. Z0203436 Building Site Lacation New Address 90.3 Rth AUC TYPE OF CONSTRUCTION Deck Addition/Alteration New _____ Single Family _____ Multi-Family ____ Planabing Mechanical Commercial/Industrial More Sign Carrentity Zoned: Proposed User 5-5D Dieplon Upig to Legal Description of Property, 24 4 Scor of Lotor Parcel: 78x 135 Water Service Line Sare: inc Building Size: 3, 102 (og B.) Total og ft. og all accessory buildings & hard surface (driveway, etc.) R. Rear Property Line SET BACKS Builting Line 25 2 State Line Side Life 22 ÷. WATER Z ELECTRA SEWER STILLINES REQUIRED. A SECTOR DRAWN TO SCALE SHOWING ALL DESIZATIONS AND DISTANCES FROM LOT LINES MUSIL BE ATTACHED ALONG WITH TWO (D.COPIES OF FLANS General devices that I am the Owner, or authorized agent of the owner, of the above described property and I where the construct the building or task termin described in accordance with the regulations and ordanaces that wearing and super-ventext within the City of Kasson and that the foregoing information contained on this permit is time and contact summitten of my intentions supres by Applicante Alfre dansek 5-26 05 A REPORT OF THE VALUATION'S 198,000 CO BE COMPLETED BY CATY Surcharge \$ 99.00 Colores Denni For & 462,17 Pan Cacci For & 300, 40 ~2-05 DATE 6 R. ILTING PERMIT APPROVED BY 5 296.-Veret Connect For 1 35a - Water Tap For S Water Meter Feel 50. Samp Pump For the Consultor 1750 - Seven Lip Parts Acting Manar Party 5 57.25 Curb Top Part 5 Other Fees 1 25-Mechanical Invent Country Street S 240. - Plumbers 25.-DATE: 5/27/05 TONING APTROVED BY Gauil J. C. none? Building from there & Chill 57 Zoning Teers & 1749. 5 Fatter Amount Dur: S. Z. 611.82 A COLORED BUILDING PARTIES AND DESCRIPTION

Exhibit 1

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TTAL North Broadway TTAL North Broadway Traductor, MA ESSO

CERTIFICATE OF OCCUPANCY

ONG

PERMIT NO: 05-74

DATE CERTIFICATE ISSUED: 9-19-05

DWELLING LOCATED AT:

903 TWELFTH AVENUE NORTHWEST

LEGAL DESCRIPTION:

LOT 4, BLOCK 4, BIGELOW-VOIGT SIXTH SUBDIVISION

IN THE CITY OF <u>KASSON</u>, HAS BEEN CONSTRUCTED IN SUBSTANTIAL COMPLIANCE WITH THE MINNESOTA STATE BUILDING CODE AND IS HEREBY CERTIFIED READY FOR OCCUPANCY.

Bousi Opeonunity Employee

DEAN GANSEN BUILDING OFFICIAL MIN2585

(E-lots (2005 constant stants 34)

Exhibit 2

PAGE 03

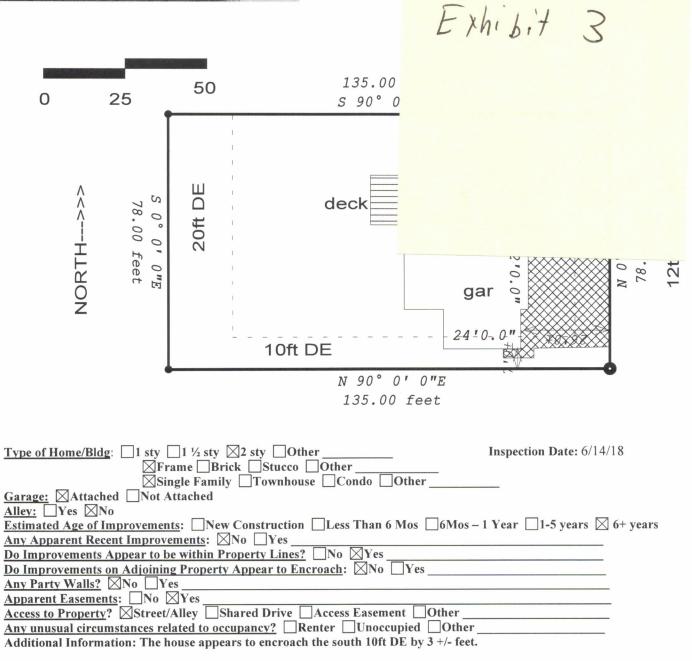


Kyle's Plat Service, LLC

507-951-4605 / kylesplatservice@gmail.com **Property Inspection Request** –

File #: 17404P Date needed by: 07/02/2018 Requested By: Georgine Property Address: 903 12th Avenue NW, Kasson, MN 55944 County: Dodge PID: 24.121.4004 Legal Description: Lot Four (4), Block Four (4), Bigelow-Voigt Sixth Subdivision, in the City of Kasson, Dodge Center, Minnesota

Current Owner's Name: Kenneth J. Murry and Karin L. Murry **New Buyer's Name:** Anthony R. Heaser



This diagram is based on a visual and taped inspection, and is charted to approximate locations and therefore is not a survey. The property dimensions shown are platted or described dimensions and were not field verified. Do not use for the establishment of any fence, building, or other improvement lines.



A 225673

Certified filed and or recorded on 7/16/18 3:00 PM Office of the County Recorder Dodge County, Minnesota Ryan B DeCook, County Recorder

Return to: Hansen Title

71622018 Receipt #: 74085

Ryan B DeCook, Dodge County Recorder by BH, Deputy

Exhibit 4

DO NOT REMOVE This cover sheet is now a permanent part of the recorded document.

ENCROACHMENT AGREEMENT PERMITTING ENCROACHMENT OF GARAGE

THIS AGREEMENT is made this <u>11</u> day of July, 2018, by and between the City of Kasson, a municipal corporation under the laws of the State of Minnesota, herein referred to as ("City"), and Kenneth J. Murry and Karin L. Murry, of the City of Kasson, County of Dodge, State of Minnesota, herein referred to as ("Landowners").

RECITALS

1. Landowners are the fee owners of real property located at 903 12th Avenue NW, Kasson, Minnesota, and legally described as follows:

> Lot Four (4), Block Four (4), Bigelow-Voigt Sixth Subdivision, in the City of Kasson, Dodge County, Minnesota

herein referred to as ("the Property").

2. The City currently has Drainage and Utility Easements ("Easements") over, under and across a portion of the Property as set forth on the Plat known as "Bigelow-Voigt Sixth Subdivision" recorded in the Office of the County Recorder, Dodge County, Minnesota, which Easements are shown on the plat drawing attached hereto as Exhibit "A".

3. There is now erected on the property, a house with an attached garage, the south wall of which encroaches approximately 2.5 feet into the City's Drainage Easement located along the south boundary of the Property. Landowners seek permission from the City to permit such encroachment upon the City's Drainage Easement subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The City hereby approves an encroachment by Landowners on and over the Drainage Easement for the purpose of using and maintaining Landowners' currently existing garage, to the same extent and manner as the garage now encroaches upon said easement. Landowners shall be responsible for all costs relating to the maintenance and repair of the

17404P Pagel of 4

garage.

2. So long as the encroaching garage remains standing, Landowners shall be permitted to have the garage overlap and extend into the easement to the same extent and manner as the garage now encroaches upon said easement. This provision shall operate as a covenant running with the Property and shall bind both parties hereto and their respective heirs, successors, and assigns.

3. Should the garage or any essential part thereof be totally destroyed by fire or other casualty, this agreement shall immediately terminate. In the case of partial destruction, this agreement may be terminated by either party giving written notice to the other party specifying the date of termination. Such notice to be given within ninety (90) days following said partial destruction and not less than thirty (30) days prior to the termination date therein specified.

4. This agreement shall remain in force and effect only so long as the present south wall of Landowners' garage shall remain standing. Upon the removal or destruction thereof, all rights of Landowners, their heirs, successors and assigns, shall automatically cease. On any termination of this agreement, Landowners shall remove at their expense all property remaining upon the City's easement.

5. Landowners and their successors and assigns do hereby agree to defend, indemnify, and hold the City harmless from all costs, expenses, claims and liability, including attorney's fees, relating to or arising from the use of the area encroached upon by the garage, and shall hold the City harmless from any claim or damages to person or premises resulting from the use, occupancy, and possession thereof by Landowners, including third party claims against flooding issues that may occur due to interference with the easement.

6. Nothing in this Agreement shall be deemed a waiver or abandonment of the City's rights under the Easements.

7. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed via certified mail,

Page 2 of 4

return receipt requested, to the following:

City of Kasson: City Administrator 401 Fifth Street SE Kasson, MN 55944

Landowners:

Kenneth J. and Karin L. Murry 903 12th Avenue NW Kasson, MN 55944

or to any heirs, successors or assigns of the City or Landowners, or any future address of the City or Landowners, if the City or Landowners give the other party notice of said change of address as provided pursuant to the provision for notice herein.

IN WITNESS WHEREOF, the parties executed this Agreement the date and year first above written.

CITY OF KASSON

BY: **Its Mayor**

BY Its City Administrator

DATED

July 12,2018 DATED

STATE OF MINNESOTA)) ss. COUNTY OF DODGE)

The foregoing instrument was acknowledged before me this 2th day of July, 2018, by Chris McKern and Theresa Coleman, the Mayor and City Administrator of the City of Kasson, a municipal corporation under the laws of Mingesota, on behalf of the corporation.

LINDA M RAPPE NOTARY PUBLIC MINNESOTA Y COMMISSION EXPIRES JAN \$1, 2020

22Cla Signature of Notary Public

Page 3 of 4

LANDOWNERS

Kenneth J. Murry

Karin L. Murry

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DATED:	7-13	, 2018
	- from the second second	

DATED: 7-13-18, 2018

STATE OF MINNESOTA)) ss. COUNTY OF DODGE)

The foregoing instrument was acknowledged before me this 2 day of July, 2018, by Kenneth J. Murry and Karin L. Murry.

PAUL J KILTINEN NUTARY PUBLIC MINNESOTA AY COMMISSION EXPIRES JAN 31, 2020

Signature of Notary Public

This Document was Drafted By: Melanie J. Leth Weber, Leth & Woessner, PLC P.O. Box 130 Dodge Center, MN 55927 (507) 374-6355

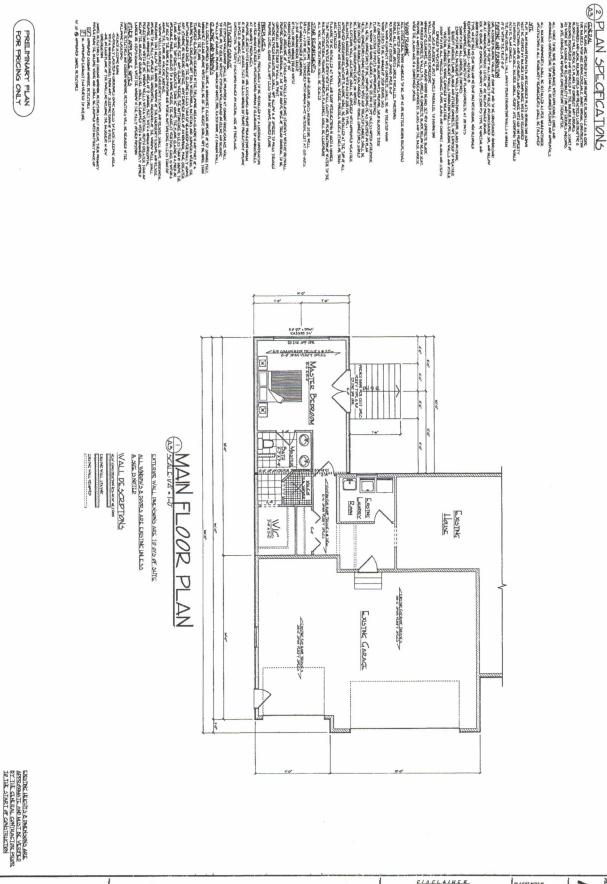
Page 4 of 4

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A DESIGN LLC

LMH

(507) 269-9408 luke horsman@live.com 1009 1st Ave Gredhoe, MN 53027

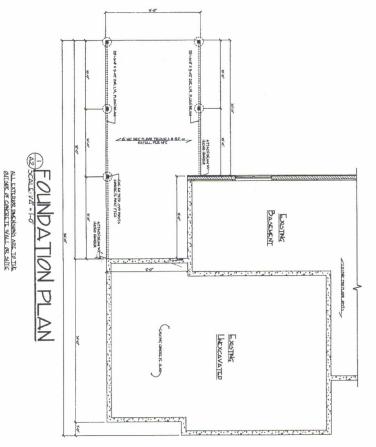
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Exhibit C: Heaser Email Correspondence with Contractors

WSE Engineering Services, LTD We put the Service into Engineering!

ENGINEERING OPINION FEASIBILITY STUDY FOR EASE



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ervices

KASSON, MN



I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly licensed professional engineer under the laws of Minnesota. License Number <u>46367</u>

Tom Wiener, PE (MN) CEO/President WSE Engineering Services, Ltd

320 West Broadway, Ste. 3 Plainview, MN 55964



WSE Engineering Services, LTD We put the Service into Engineering! (507) 405-0430 www.wse.engineering



Engineering Opinion Easement Reduction 903 12th Ave, Kasson, MN, 55944

Executive Summary

WSE Engineering Services, Ltd. (WSE) offers the following engineering opinion.

It is WSE's opinion that the 20-foot drainage easement in question can be reduced to a 15-foot easement without affecting future construction operations to the 15-inch HDPE drainage pipe located on, or near, the southern property line of 903 12th Ave, Kasson, MN, 55944

Tom Wiener, PE (MN) CEO/President WSE Engineering Services, Ltd

WSE Engineering Services, LTD We put the Service into Engineering!



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Introduction	4
Methods	5
Discussion	7
Conclusions	7
Exhibit A: Massey Survey Drawing 3-07-19	8
Exhibit B: Proposed Improvements	9
Exhibit C: Heaser Email Correspondence with Contractors1	0

WSE Engineering Services, LTD <u>W</u>e put the <u>S</u>ervice into <u>Engineering</u>!



Introduction

WSE Engineering Services, Ltd. (WSE) was engaged by the Lommen Abdo Law Firm to offer an engineering opinion regarding the impact of reducing the size of an existing drainage easement (also known as vacating an easement). The summary page provides our professional opinion and the remainder of this document provides the basis of our opinion.

The northern half of the easement lies on a property owned by the Heasers. The current drainage easement is 20 feet wide and centered on the southern property line of the Lot 4, Bigelow-Voight Sixth Subdivision, more commonly referred to as 903 12 Ave. NW, Kasson, MN. Both this property and the adjacent property to the south have structures that encroach into the easement ranging approximately 2.0 - 2.3 feet. This drainage easement encompasses a 15" HDPE drainage pipe that is approximately centered in the easement and ranges approximately 5-8 feet below grade.

It is our understanding the current owners of the above mentioned properties desire to improve (add structure(s) to) this property which would extend along the same southernly line as the existing garage; and therefore, would also encroach into the drainage easement. A possible solution would be to vacate 2.5 feet on either side of the easement, thereby reducing the easement from 20 feet to 15 feet, and thereby allowing the existing garage and the proposed improvements to not encroach into the drainage easement.

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Methods

A survey, and corresponding drawing, was completed by Massey Land Surveying & Engineering prior to our site visit on August 9th, 2019. The purpose of the site visit was to confirm the survey drawing, visualize the site and meet with the homeowner, Anthony Heaser, and Barry O'Neil of the Lommen Abdo Law Firm. Following the site visit, an office review was performed as well. WSE received a total of 4 documents from the Lommen Abdo law firm which are attached to this report as Exhibits.

Survey and Proposed Improvement Drawings

A survey, and corresponding drawing dated March 7th, 2019, is attached to this report as "Exhibit A." This drawing depicts the locations, dimensions and elevations of the current improvements relative to the easement. This drawing also describes a portion of the easement that would need to be vacated to remove the garage from encroaching into the easement. However, vacating the portion of the easement indicated in "Exhibit A" would not allow for proposed improvements to be built without encroaching into this same easement.

The proposed improvements are attached to this report as "Exhibit B." It is our understanding that these plans generally show the desired improvements, but WSE was made aware of some desired changes via email correspondence between the Heasers and their contractors. The email correspondence indicated that the Heasers are contemplating a full basement. The email correspondence is attached to this report in "Exhibit C."

If a full basement is constructed, WSE advises that engineering is needed to protect the existing garage footings. Engineering would be needed regardless of the current or proposed easement width. However, what is relative to this report is the location of the proposed improvements which are shown "on the same line" as the existing garage; would therefore also be encroaching into the easement.

Engineering Office Review

Due to the easement being listed as a drainage easement, WSE assumes the easement can only be used for drainage purposes, therefore our opinion is relative to the easement only being able to be used for drainage purposes only.

WSE considered common construction operations such as:

- 1) <u>Open cut excavation</u>, which are usually the most feasibly and economically viable due to not only a greater number of contractors who perform that operation, but also the general nature of the operation is considered less complicated. This is performed by simply excavating with appropriate equipment down to the pipe. The excavation is either placed adjacent to the excavation or is temporarily hauled away.
- 2) <u>"Jack and Bore"</u>, which is a method where the pipe is tunneled underground by digging a pit and auguring in pipe from that pit.

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3) <u>Line and/or repair</u>, which is commonly used when a pipe has reached the end of its useful lifecycle or was damaged. The operation reduces the capacity of the pipe because it is reducing the inside diameter of the pipe.

Results

Following an engineering analysis of common construction practices such as those listed in the Methods section, it is the opinion of WSE that any of these common construction operations would not be adversely impacted by reducing the easement from 20 feet to as narrow as 15 feet.

The construction operation that has the highest potential for being impacted by a reduced easement is an open cut operation. However, on this site, the Occupational Safety and Health Administration (OSHA) requirements for either a 20' or 15' easement would require a trench box and protective measures to the adjacent footings when excavating down to the existing 15" HDPE drainage pipe (approximately 5-8' below grade).

In either the 20' or 15' easement scenario, there is not enough room to store all excavations within the easement, thereby requiring most of the excavation to be temporarily stored off the easement anyway. One potential negative consequence of reducing the 20' easement to 15' is that it could add approximately 3.5 yds of additional earth to be temporarily moved out of the easement; as compared to the approximately 70 yds of earth for the entire excavation.* It should be noted that the reduction in easement may not save that 3.5 yds since many contractors who comply with OSHA practices would choose to not place any excavations next to an open cut, and would temporarily store all excavation outside the easement anyway.

*(This is an order of magnitude estimate intended to demonstrate relativity and not exact quantities).

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Discussion

HDPE drainage pipe has long service life of approximately 100 years, and it is also likely that future lining maintenance could extend the service life an additional 100 years. Therefore, a high probability exists that an open cut excavation would not be a risk factor for another 100-200 years from now.

It should also be noted that the neighboring property to the south has encroaching elements in the easement approximately the same dimensions as this property. For this reason alone, it is our opinion that 2.5' should be vacated from both sides since it would largely be an administrative process to remove the encroachments from the adjacent neighbor's property. This would require a licensed surveyor to prepare a similar drawing as seen in Exhibit A for the adjacent property. However, from an engineering and construction standpoint it would make no difference if the easement was only vacated from the 2.5 feet on the Heaser property.

Conclusion

Although a 20' easement is a common dimension for a drainage easement, upon analyzing this specific easement and the depth of the drainage pipe, WSE concludes there are no adverse impacts to neighbors or the owner of the easement, if a portion of the easement was vacated. Therefore, it is WSE's opinion that 2.5' can be vacated on either or both sides of the existing drainage easement.

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Exhibit A: Massey Survey Drawing 3-07-19

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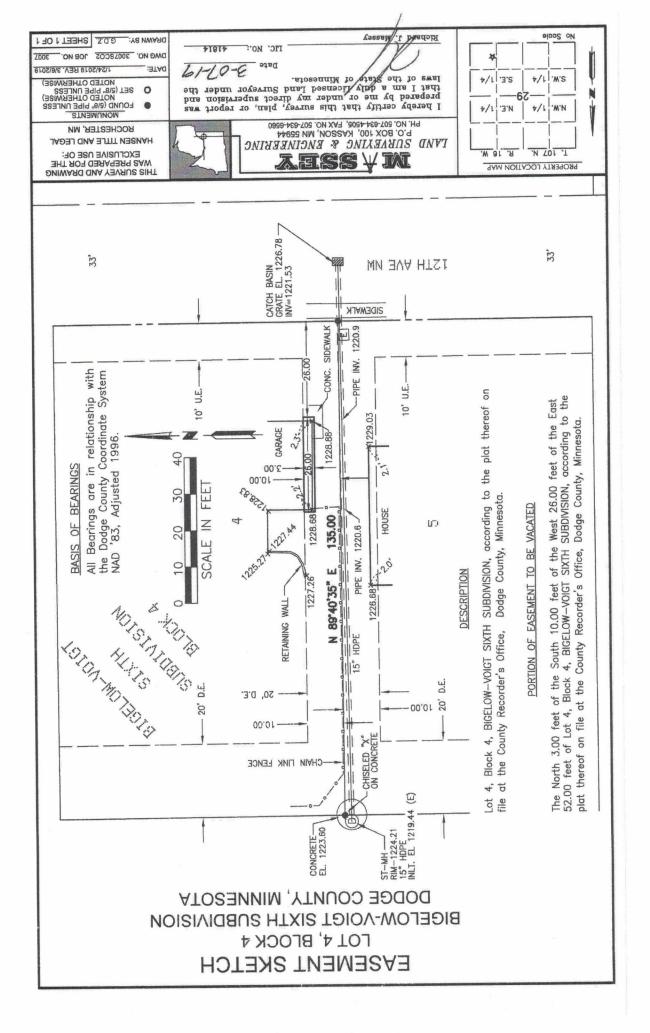
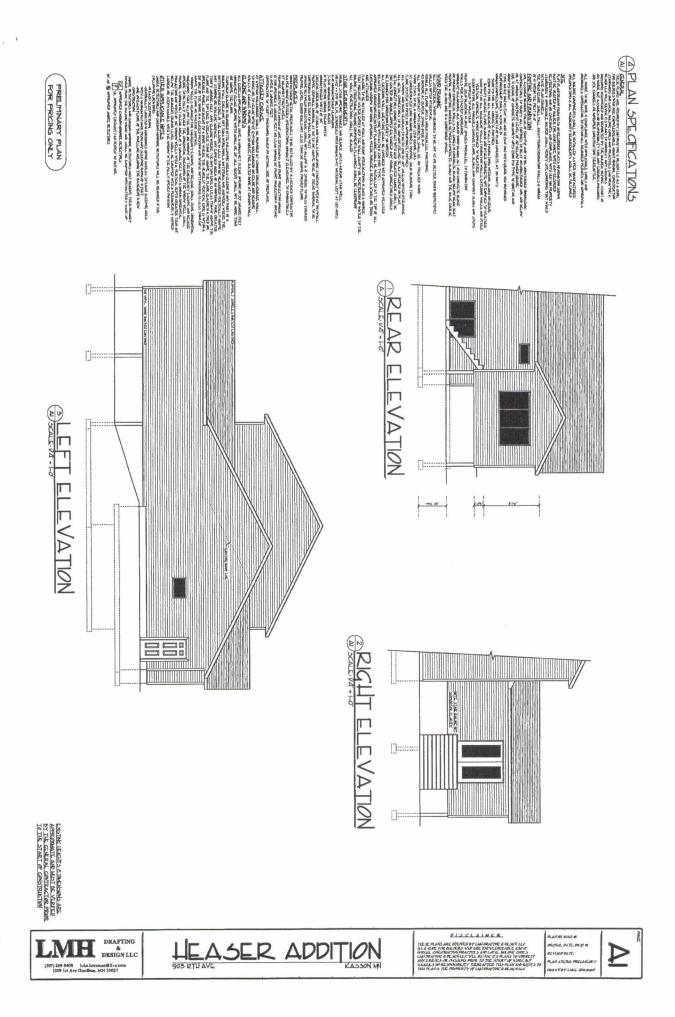


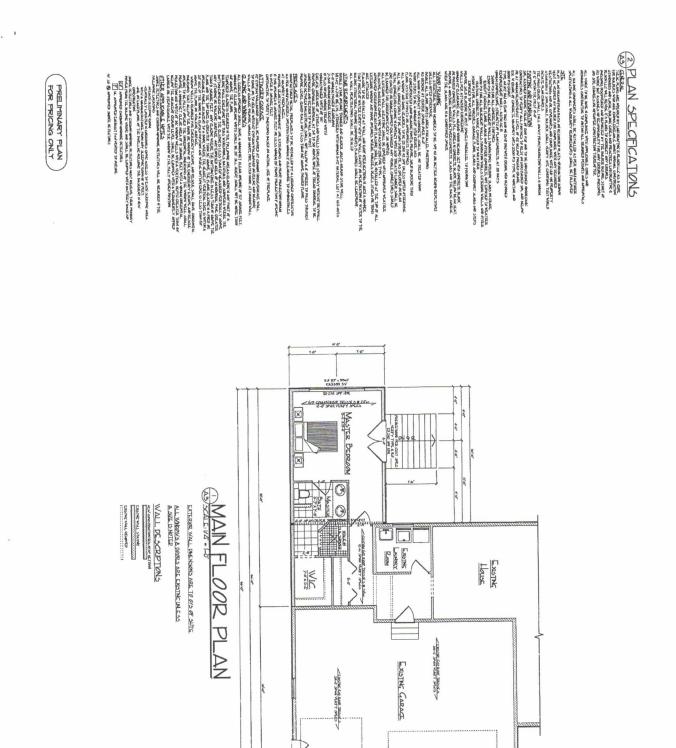


Exhibit B: Proposed Improvements

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(507) 405-0430 www.wse.engineering





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LMH

(507) 269-9408 luke.horsman@live.co 1009 1st Ave Goodhue. MN 55027

DRAFTING & DESIGN LLC

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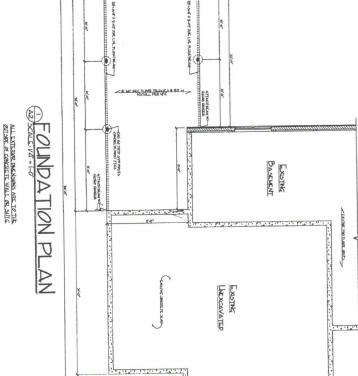
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Amanda Heaser

From: Sent: To: Subject: Amanda Heaser <amandarae82@hotmail.com> Monday, July 22, 2019 10:31 AM Amanda Heaser Fwd: Addition

CAUTION: This email originated from outside of the organization. **Do not** click links or open attachments unless you recognize the sender and know the content is safe.

Amanda Heaser

Begin forwarded message:

From: Tony Heaser <<u>tonyheaser@yahoo.com</u>> Date: August 29, 2018 at 8:00:28 AM CDT To: <u>amandarae82@hotmail.com</u> Subject: Fwd: Addition

Sent from my iPhone

Begin forwarded message:

From: Kristofor Johnson <<u>kjohnsonbuilders@gmail.com</u>> Date: August 29, 2018 at 7:57:41 AM CDT To: <u>tonyheaser@yahoo.com</u> Subject: Addition

Hey Tony. I went through your project and came up with a total of \$79,900. This is based on what we discussed and does include a foundation.

This number includes: mas. bath vanity, basement concrete, drywall & finishing of drywall, wiring, excavation, carpet for mas. bedroom, ceramic tile shower for the master bath, block foundation & footings, framing labor, HVAC, roofing labor, insulation, painting,

1

plumbing, trim materials, gutters, siding materials, roof trusses and framing materials. These numbers make up the majority of the project. This number does not include finishing the lower level addition room - only finishing the upstairs portion.

If you choose to move forward I will create a specifications sheet with more detail but I at least wanted to give you a good idea of what to expect.

Thanks and have a good day.

Kristofor Johnson Counselor Realty Johnson Builders LLC

Amanda Heaser

From: Sent: To: Subject: Amanda Heaser <amandarae82@hotmail.com> Monday, July 22, 2019 10:31 AM Amanda Heaser Fwd: Addition

CAUTION: This email originated from outside of the organization. **Do not click** links or open attachments unless you recognize the sender and know the content is safe.

Amanda Heaser

Begin forwarded message:

From: Tony Heaser <<u>tonyheaser@yahoo.com</u>> Date: September 29, 2018 at 10:57:59 AM CDT To: Brent Vatland <<u>Brent@DeCookExcavating.com</u>> Cc: <u>amandarae82@hotmail.com</u> Subject: Re: Addition

I spoke with the inspector and we have come up with a plan as far as the exposed footing. I will have a plumber do the drain pipes. Jed Deno is coming over this afternoon to bid out the block and the garage footing issue. Let me know when you get an estimate worked up. I appreciate the heads up on that footing, I didn't even think of that ! Thanks again—-Tony

Sent from my iPhone

On Sep 27, 2018, at 7:35 AM, Brent Vatland <<u>Brent@DeCookExcavating.com</u>> wrote:

Tony,

I was working on your estimate for the addition we talked to you about last week. I see a problem you're going to have. If you dig out a full basement under the addition, you will be exposing the footings on the backside of the garage. Your basement floor would be about 4' below the footing of the garage and you will lose all integrity of that footing. Would neve pass inspections. I think you're going to want to get an engineer/draftsman involved and get an actual plan drawn up. Also, the sewer line coming under the garage floor would have to be done by a plumber as we are only licensed to run it to the building foundation. Do some digging into this and let me know what you come up with. Thanks.

Brent Vatland, Estimator DeCook Excavating, Inc. DeCook Landscaping 821 Country Club Rd SE PO Box 69 Byron, MN 55920 Ph (507)361-4870 Fax (507)361-2536

www.decookexcavating.com * www.decooklandscaping.com

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LMH DRAFTING & DESIGN LLC

INVOICE

1009 1st Ave Goodhue, MN 55027 Phone: 507-269-9408

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BILL TO

Tony Heaser 903 12th Ave NW Kasson, MN

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	LMH Drafting & Design LLC

If you have any questions about this invoice, please contact me at 507-269-9408. **Thank You For Your Business!**

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LOMMEN & ABDO & P.A. 1000 INTERNATIONAL CENTRE & 920 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402

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OF

401 FIFTH STREET SE KASSON, MN 55944

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EXECUTIVE SUMMARY – UPDATES TO KASSON ORDINANCES

Below is a summary of major changes to Chapters 150 – 154 of the Kasson City Code. For details on these changes, please see the redlined draft or clean draft of the ordinances.

CHAPTER 150 DEFINITIONS

This is a new chapter – previous updates to the code had tried to compile all definitions into one section, however, it sat as a section within the Building Regulations; Construction chapter. Now, as its own chapter, these definitions can stand on their own, and apply across the title (chapters 150-154).

- Outdated definitions have been updated with modern language
- Definitions for new uses and other new terms have been added
- Definitions no longer used have been deleted

CHAPTER 151 BUILDING REGULATIONS; CONSTRUCTION

This Chapter's contents have not changed, except for a few minor referenced. The Chapter number has updated to 151, as the new chapter 150, definitions, precedes it.

CHAPTER 152 MANUFACTURED HOMES

This Chapter's contents have not changed, except for the updating of the term "mobile home" to "manufactured home," as is the term used by Minnesota Statute. The Chapter number has updated to 152.

CHAPTER 153 SUBDIVISIONS

The changes to this Chapter were made with the intention of making processes and requirements clearer. Numbering throughout has updated to match new numbering function, as well to reflect the updated chapter number, 153.

ARTICLE 01 GENERAL PROVISIONS

PART 1 INTRODUCTORY PROVISIONS

There have been no changes to the first three sections of this article: Purpose, Authority, Administration, and Amendments

PART 2 COMMON PROCEDURES AND REQUIREMENTS

The sections within this Part are essentially all new, except for 153.01.23, Fees. These sections are established so that they may be referenced again for specific procedures. For example, the elements of a pre-application meeting are described here, rather than having descriptions for every procedure in the chapter.

PART 3 SUBDIVISION APPROVAL REQUIRED

The sections within this Part are entirely new. They specifically detail what is needed for a Development Agreement, Financial Guarantee, Basic Infrastructure, Warranty/Maintenance Guarantee, and Insurance. This part will need particular review by the City Attorney prior to adoption.

ARTICLE 02 REVIEW PROCESS

The changes within this article have been to make all of the different subdivision procedures formatted in the same way, so they could be easily compared and understood. Existing procedures have not been significantly changed, but the details and descriptions of each procedure have been expanded and standardized. Review Criteria have been added and clarified for each procedure; these criteria should be considered for each application, and used to develop the "findings of fact" for any decision taken by the City Council.

PART 1 MINOR SUBDIVISIONS

No major changes to the intent of Minor Subdivisions; however, wording was majorly updated. In general, minor subdivisions enable areas that have already been platted to be further subdivided, as long as they do not create more than two new lots (three lots in total). This process allows for the applicant to only submit a Certificate of Survey for the new lots, rather than an entire new Plat document. The process does not require a public hearing, but still goes before the Planning and Zoning Commission for recommendation, and the City Council for approval.

PART 2 CONCEPT PLAN

The procedure of "Concept Plan" has replaced the "General Development Plan" in the existing ordinance. The term "General Development Plan" was confusing, as it's commonly used with Planned Unit Developments, not subdivisions in general. The term "Concept Plan" helps clarify the intention of this procedure: to provide developers a low-cost early opportunity to show City Staff, the Planning and Zoning Commission, and City Council what they are thinking for future development and for those entities to give feedback, in particular if the concept achieves zoning and subdivision intent. This process does not require a public hearing. There is also no "action" on

the part of the Planning and Zoning Commission or City Council; no Concept Plan is "approved," and does not entitle developers to develop that concept.

PART 3 PRELIMINARY PLAT

Again, this procedure has not had any major changes, but the wording and format of the sections have changed significantly. Preliminary Plats are the most important part of the subdivision process, as its approval entitles developers to develop their property in compliance with the preliminary plat. With that in mind, the specific elements of submittal have been expanded and clarified, to ensure that the City gets full applications with all required elements to make an informed decision. A Preliminary Plat requires a public hearing with the Planning and Zoning Commission, and approval by the City Council.

PART 4 FINAL PLAT

The Final Plat procedure has not changed significantly. The Final Plat is intended to be a more complete, finalized version of the Preliminary Plat, and as long as it substantially complies with the Preliminary Plat and meets the Preliminary Plat conditions, the developer is entitled to the Final Plat's approval. The Final Plat does not have a public hearing, nor does it require Planning and Zoning review; instead, it just goes before City Council for review and approval once staff have determined it to be complete. The approval of the Final Plat, and its recording is also the time that the City Attorney and applicant finalize and record the Development Agreement for the subdivision.

PART 5 VARIANCES

The procedure of subdivision variances has not changed significantly, but the sections have been expanded to fit the format of other procedures.

ARTICLE 03 SUBDIVISION DESIGN STANDARDS

The various design standards within this Article are a combination of existing standards and additional standards that help achieve the City's goals. For the most part, existing standards have just been reorganized and supplemented with additional standards to help clarify the city's standards.

PART 1 GENERAL STANDARDS

These sections have generally been added, to provide further information to applicants as a best practice.

PART 2 BLOCKS AND LOTS

No changes to these sections

PART 3 EASEMENTS & UTILITIES

Existing language for Easements is supplemented with standards of the water supply and sanitary sewer utilities.

PART 4 STREET DESIGN

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These sections have mostly been reorganized to make the standards easier to understand. One element that still needs to be addressed are the design standards for Walkways Sec. 153.03.43 (B); the existing code refers to standards established in Chapter 94 of the City Code, however, these standards do not provide standards for multi-use trail design. These standards are needed from the City Engineer or Public Works and should be established either in Chapter 94, or in the Subdivision Ordinance.

PART 5 STORMWATER, SURFACE WATER, DRAINAGE, WATER QUALITY, AND EROSION CONTROL

The sections within this part are a combination of existing standards and additional standards. Issues of stormwater management, especially during the subdivision process, was highlighted at the beginning of this project as a priority for the City. Additions to the Stormwater section still need review by the City Engineer to ensure they meet the intended goal. The remaining sections are generally the same as the existing code.

ARTICLE 04 LAND DEDICATION

PART 1 GENERAL STANDARDS

The sections regarding Land Dedication have been moved to their own Article, as they do not really fit under any of the other Articles. Few changes were made to this section.

CHAPTER 154 ZONING

The Zoning Chapter of the code saw significant changes throughout the Chapter. The intention of these changes was to:

- 1. Establish clear procedures that would be easy for staff to administer and for the public to understand
- 2. Create tables to easily compare uses, lot dimensional standards, and site dimensional standards across districts
- 3. Provide development and performance standards that apply across uses and districts, as well as use-specific standards that apply across districts

ARTICLE 01 GENERAL PROVISIONS

In general, not many changes were made to this Article. More specific language regarding abrogation and severability were added under Part 1: Title and Authority. The Nonconformities section was also moved to Part 2: Interpretation.

ARTICLE 02 ADMINISTRATION AND ENFORCEMENT

This article has some significant changes that will have an impact on how the City Staff and the Planning and Zoning Commission will administer the zoning ordinance.

- In general, each procedure has been updated to include the same structure; this will make it easier to compare procedures and should make it easier for applicants to understand.
- Criteria for a complete application and criteria for review have been separated out for each application type
 - Criteria for a complete application are the application materials needed.
 - Criteria for review include the considerations and the findings of fact that should direct the Planning and Zoning Commission on their recommendation and the City Council on their decision.

PART 1 ADMINISTRATION

No major changes have been made to this Part, the roles and responsibilities of each level of Administration remains relatively the same, but wording has been updated to further clarify roles.

• Enforcement Sections have been added and expanded in order to protect the City in the administration of the ordinance..

PART 2 PROCEDURES

The sections within this part have been updated significantly.

- General provisions, that can apply to many different procedures, such as a description of a public hearing, have been moved here rather than repeated across procedures
- Two new procedures have been added
 - Minor Site Review this is for anything other than a building permit that may need zoning review for one-unit and two-unit residential uses; such as fence placement, impervious surface/driveway expansion, etc. It is reviewed and approved by the Zoning Administrator.
 - Major Site Review this procedure is for any site alteration, construction, or change in use for properties that have three or more residential units or are non-residential. This is the process that will be used for uses labeled as "permitted with standards." It is reviewed and approved by the Zoning Administrator.
- Procedures for PUD have been added here
 - PUDs are changing from a Conditional Use Permit (quasi-judicial) to a Rezoning (legislative action) – more details on that when we review Special Zoning Districts.
- Procedures for Comprehensive Plan Amendment have been added here
 - \circ $\;$ Need City Attorney review to determine if this addition is necessary.

PART 3 ENFORCEMENT

Enforcement Sections have been added and expanded in order to protect the City in the administration of the ordinance

ARTICLE 03 ZONING ESTABLISHED

The sections within this article have moved within the code, but most of the features remain the same. The existing Agriculture district has been changed to "Development Holding District," with more information in the following article. PUDs have also been moved to Special Districts

ARTICLE 04 BASE DISTRICTS

This Article provides a new approach to how Zoning Districts will be organized within the Code. Rather than have each zoning district list uses and lot standards, these elements have been combined into easy-to-read tables, so that staff and applicants can compare across districts easily.

PART 1 GENERAL PROVISIONS

The purpose statements for each base zoning district have been moved here. As mentioned above, the Agriculture District has been replaced with the Development Holding District (DH). The DH District will allow for existing uses that come in under annexation to continue on the property, but new uses are not allowed until the property is rezoned in compliance with the Comprehensive Plan and possibly subdivided.

PART 2 USES

Changes to the organization of the Base Zoning Districts continue, with all uses now put into an easy-to-read table, comparing across zoning districts. A new type of use has been added to the code: "permitted with standards" – these uses are administratively reviewed and approved, but have additional standards beyond just the zoning district standards and the development standards. These are called, "use-specific standards" and are listed in Article 06; conditional use permits also have use-specific standards, but are held to a higher degree of review, as they require a public hearing and approval by the City Council.

Finally, as no uses but existing uses are allowed to continue within the Development Holding District, special provisions specifically for this district are established within this Part.

PART 3 LOT AND SITE DIMENSION STANDARDS

All district-specific lot dimensional standards (lot area, lot width) and site dimensional standards (yard setbacks, impervious surfaces, etc.) have been compiled and moved to these sections. In general, few dimensions have changed from the existing standards, however, some have been modernized or filled in where there were blanks.

ARTICLE 05 SPECIAL DISTRICTS

This Article contains the zoning districts that may still have a base zoning, but have additional provisions tied to them as well.

PART 1 FLOODPLAIN MANAGEMENT DISTRICTS

This part was moved from the existing Chapter 153 in its entirety. The scope of this project was not to make any changes to these standards, as the County and DNR are working on updating the Floodplain maps and may have new standards to apply to them then. In general, the administrative section of this Part should likely be removed or combined with Article 02

Administration and Enforcement, but that can be addressed at the time of the new floodplain maps.

PART 2 PLANNED UNIT DEVELOPMENTS

One of the significant changes of this ordinance update is moving PUDs from a Conditional Use Permit to processing them as rezonings. Rezonings, which are considered amendments to the zoning ordinance, are a legislative action, while CUPs are a quasi-judicial action. Processing PUDs as a rezoning will allow for the specifics of the PUD (whether it's different setbacks, additional uses, etc.) to be established and then adopted as part of the zoning ordinance.

All existing PUDs will remain as they are, with their conditions of approval still in place – they will, however, be rezoned to the "Planned Unit Development Fixed District," which allows them to continue as is. All new PUDs will be adopted as their own individual PUD ordinance (PUD-1, PUD-2, etc.) and added as a new section at the end of this Part. The City Attorney still needs to give special attention to the review of this Part, as the transition from CUP to rezoning may be a tricky one.

ARTICLE 06 USE-SPECIFIC STANDARDS

All uses established in Article 04, Part 2, that are permitted with standards or a conditional use permit, will have use-specific standards addressed in this Article. These standards apply to the use, across zoning district. Many were standards already established within the ordinance, the other have been filled in, where needed.

ARTICLE 07 DEVELOPMENT STANDARDS

Development standards are zoning standards that apply despite the use or the zoning district. These are where we address things like noise, glare, landscaping, buffers, fences, and off-street parking.

ARTICLE 08 SIGN REGULATIONS

The regulations regarding signs have not changed from the existing ordinance. The provisions, however, have been moved to their own Article, as Signs have specific regulations to them outside of uses and development standards.