



## **PLANNING COMMISSION**

January 9, 2018, Council Chambers, 6:30 pm  
201 West Ash Street, Mason, MI

### **AGENDA**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENT**
- 4. PRESENTATION** – Michigan Economic Development Corporation (MEDC)/Redevelopment Ready Communities (RRC)
- 5. APPROVAL OF MINUTES** (September 12, 2017 and September 28, 2017)
- 6. PUBLIC HEARING**
  - A. James Giguere of Giguere Homes is Requesting a Recommendation from the Planning Commission to City Council for Approval of a Preliminary Plat to Create 16 Residential Lots as Part of Phase 4 of the Existing Rayner Ponds Estates Development
- 7. UNFINISHED BUSINESS**
  - A. Laylin Park Improvements – Public Comment Period Ends January 15, 2018
  - B. Development Updates
- 8. NEW BUSINESS**
  - A. 2018 Workplan Discussion
    - 1) Mid-February: Capital Improvement Plan – Review/Join workshop with Council
    - 2) Parks and Recreation Plan
    - 3) Zoning Ordinance Updates - Discussion
      - Ch. 58 Signs
      - Ch. 94 Art. XI – Zoning Board of Appeals
        - a) Revised Ordinance Language
        - b) Consolidation of Building, Sign and Zoning Board of Appeals
      - Office District in Downtown – Add residential
    - 4) Community Engagement Events – General Information
  - B. Elect Officers for 2018
- 9. LIAISON REPORT**
- 10. ADJOURN**



**CITY OF MASON  
PLANNING COMMISSION MEETING  
MINUTES OF SEPTEMBER 12, 2017**

Chairman Reeser called the meeting to order at 6:30 p.m. in the Council Chambers at 201 West Ash Street, Mason, Michigan.

Commissioner(s) Present: Barna, Droscha, Feintuch, Hagle, Howe, Reeser, Sabbadin, Waxman

Commissioner(s) Absent: None

Also present: Deb Stuart, City Administrator  
Jack Ripstra – Klavon's  
Chad Rogers – Klavon's  
Matt Nelson – Studio Intrigue

**PUBLIC COMMENT**

None.

**APPROVAL OF MINUTES**

Motion to approve August 15, 2017 minutes was made by Waxman, second by Droscha.

**MOTION APPROVED UNANIMOUSLY**

**UNFINISHED BUSINESS**

Waxman reported there is no action on the parking update.

**NEW BUSINESS**

**Resolution 2017-06 – Approval of Final Site Plan, with Contingencies, to Construct a New 9,035 Square Foot Restaurant on Property Located at 318 West Kipp Road**

Stuart introduced the project and Hude went over details of the technical review.

MOTION by Waxman, second by Sabbadin,  
to approve Resolution 2017-06: Approval of Final Site Plan, With Contingencies, to Construct a New 9,035 Square Foot Restaurant on Property Located at 318 West Kipp Road

It was noticed that the actual square footage was 10,199.

MOTION by Droscha, second by Waxman,  
to amend Resolution 2017-06 to read Approval of Final Site Plan, With Contingencies, to Construct a new 10,199 Square Foot Restaurant on Property Located at 318 West Kipp Road.

**MOTION APPROVED UNANIMOUSLY**

**Resolution 2017-07 – Approval of the Final Site Plan, With Contingencies, to Construct a New 4,174 Square Foot New Addition on Property Located at 132 South Cedar Street (M-36)**

Stuart introduced the project and Hude outlined details of the technical review.  
Droscha inquired about the end use of the property. Nelson replied there would be a restaurant in addition to the existing medical office.



MOTION by Sabbadin, second by Droscha,  
to approve Resolution 2017-07: Approval of Final Site Plan, With Contingencies, to  
Construct a New 4,174 Square Foot Addition on Property Located at 132 South  
Cedar Street (M-36)

MOTION APPROVED UNANIMOUSLY

**LIAISON REPORTS**

Droscha reported on City business. Hude gave a Director's report, updating the Commission on Community Development projects. Sabbadin reminded members about the upcoming pancake breakfast presented by the Mason Firefighter's Association.

**ADJOURN**

The meeting adjourned at 6:59 p.m.

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Seth Waxman, Secretary



**CITY OF MASON**  
**SPECIAL MEETING**  
**PLANNING COMMISSION MEETING**  
**MINUTES OF SEPTEMBER 28, 2017**

Droscha called the meeting to order at 6:30 pm in the Council Chambers at 201 W. Ash Street, Mason, Michigan.

Present: Commissioners: Barna, Droscha, Feintuch, Hagle, Howe  
Absent: Councilmember: Reeser, Sabbadin, Waxman  
Also present: Elizabeth Hude, Community Development Director  
Deborah S. Stuart, City Administrator

**NEW BUSINESS**

Approve of Final Site Plan to Construct a New 10,199 Square Foot Restaurant and a Special Use Permit to Operate a Drive-thru Window Located at 318 West Kipp Road

There was a great deal of discussion around the approval of a final site plan for the new restaurant and special use permit for a drive-thru window at 318 West Kipp Road. Harold Doss, 108 Harwell Terrace, raised several questions about hours of operation (11 a.m. – 11 p.m.), lighting, gaps in the fencing, drainage, trees, 24-hour lights in the parking lot, and an adequate retention pond (building's sump pump, liner, inflow into soil, and possible mosquito breeding). Barna agreed these are valid concerns but commented that the site is currently developed and the levels of storm water on the site will not be different from what they are today.

MOTION by Howe, second by Hagle,  
to approve final site plan to construct a new 10,199 square foot restaurant and a special use permit to operate a drive-thru window located at 318 West Kipp Road.

**MOTION PASSED**

Yes – Barna, Droscha, Feintuch, Hagle, Howe

No – 0

Absent – Reeser, Sabbadin, Waxman

Vacant – 1

**ADJOURN**

The meeting adjourned at approximately 7:00 p.m.

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Seth Waxman, Secretary





## City of Mason Planning Commission

*Staff Report*

TO: Planning Commission

FROM: Elizabeth A. Hude, AICP, Community Development Director

SUBJECT: Preliminary Plat – Rayner Ponds Estates No. 4

DATE: January 5, 2018

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### PROJECT DESCRIPTION

James Giguere of Giguere Homes is requesting preliminary plat approval to create 16 residential lots as part of Phase 4 of the existing Rayner Ponds Estates development to be located on the following described property in the City of Mason:

A parcel of land in the Southeast 1 / 4 of Section 4, T2N, R 1 W, City of Mason, Ingham County, Michigan; the surveyed boundary of said parcel being described as commencing at the South 1/4 Corner of Section 4, T2N, R1 W, Michigan Meridian; thence 589°14'20" E, along the South Section line, 1456.14 feet; thence N00°29'00" E, 660.00 feet to the Southeast Corner of Lot 64, Rayner Ponds Estates No. 2, recorded in Uber 44 of Plats, Pages 41 and 42, Ingham County Records and the POINT OF BEGINNING; thence N00°29'00" E, along the Easterly line of Rayner Ponds Estates No. 2, 125.00 feet; thence N89°14'20"W, along the Northerly line of Rayner Ponds Estates No. 2, 415.28 feet to the Northwest Corner of Lot 68, Rayner Ponds Estates No. 2 and the Southeast Corner of Lot 80, Rayner Ponds Estates No. 3, recorded in Uber 50 of Plats, Pages 35, 36 and 37, Ingham County Records; thence N00°29'00" E, along the Easterly line of Rayner Ponds Estates No. 3, 390.99 feet; thence 589°14'20" E, along the easterly line of Rayner Ponds Estates No. 3, 69.00 feet to a point on an intermediate traverse line of an unnamed Pond, said point being N89°14'00"W, 9 feet from the water's edge; thence along said intermediate traverse line the following six courses, S29°39'28"E, 49.01 feet; thence S70°00'00"E, 115.30 feet; thence N87°27'55"E, 48.02 feet; thence N25°06'53"E, 143.49 feet; thence S55°00'00"E, 293.62 feet; thence S89°14'20"E, 361.15 feet to a point on said intermediate traverse line being S55°00'00"E, 70 feet from the water's edge; thence S00°45'40"W, 171.01 feet; thence 519°18'29" E, 70.27 feet; thence S00°29'37"W, 171.00 feet; thence N89°14'20"W, 329.99 feet; thence S00°29'37"W, 19.00 feet to the Northeast Corner of Lot 63, Rayner Ponds Estates, recorded in Uber 36 of Plats, Pages 50 and 51, Ingham County Records; thence along the Northerly boundary of Rayner Ponds Estates the following three courses; N89°14'20"W, 127.47 feet; thence N00°29'00"E, 19.00 feet; thence N89°14'20"W, 66.00 feet the point of beginning; said parcel contains 9.0 acres.

TIN: 33-19-10-04-1476-011

### APPLICABLE REQUIREMENTS

Preliminary Plat approval is subject to the requirements as follows:  
State of Michigan Land Division Act (LDA) – Act 288 of 1967



City of Mason Master Plan and Capital Improvement Plan  
City of Mason Development Standards for Streets and Utilities  
City of Mason Ordinances:

- Ch. 58 Signs
- Ch. 70, Art. II Excavations and Curb Cuts
- Ch. 74 Subdivisions and Other Divisions of Land

City of Mason Zoning Ordinances:

- Ch. 94 Zoning
- Ch. 100 Reference Tables and Figures

### **TIMELINE FOR ACTION BY PLANNING COMMISSION**

The application was received on November 3, 2017. Per City of Mason Ordinance Sec. 74-78(c)(3), within 63 days (January 4, 2018) the Planning Commission shall forward to the City Council its recommendation for approval, approval with conditions, or disapproval of the plat. The applicant granted a five-day extension beyond the 63 days to 68 days (January 9, 2018). The City Council must consider the recommendation of the Planning Commission within 30 days of the Planning Commission meeting, except that the entire review process must conclude within 90 days from date of submittal (January 29, 2017).

The applicant will then pursue approval of the tentative preliminary plat from outside agencies, return to the City of Mason with a Final Preliminary Plat and again for a Final Plat per the LDA- Act 288 of 1967 and City of Mason Ordinances Ch. 74.

### **CONSTRUCTION SCHEDULE**

The applicant has provided a construction schedule for the right of way indicating that the project will start in May 2018. This schedule is subject to change based on the required approvals of a final preliminary plat and a final plat as described in LDA-Act 288 of 1967 and City of Mason Ordinances Ch. 74. Individual building permits will be required for construction of buildings on each lot following the satisfactory completion of the right of way.

### **FEES**

In accordance with the City of Mason Directory of Fees, the application fee is as follows:

Tentative Preliminary Plat \$800.00 + \$10/lot

\$800

\$160 (16 lots X \$10/lot)

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\$960 – Subdivision Application Fee – PAID IN FULL

\$200 – Received on 11/3/17

\$760 – Received on 1/4/18

### **PUBLIC NOTIFICATION**

The public hearing notice appeared in the December 24, 2017 edition of the Community News, was posted at City Hall, and mailed to property owners and occupants within 300 feet of the parcel. In addition, the notice was sent to the Mason School Board and the Preliminary Plat was displayed on the second floor of City Hall.



## MASTER PLAN – Meets Requirements

The parcel is zoned RS-2 (Single Family Residential) and surrounded by the land uses as follows:

	Current Land Use	Zoning	Future Land Use
North	Undeveloped	RS-2 (Single Family Residential District)	Residential
East	Undeveloped	RS-2 (Single Family Residential District)	Residential
South	Residential	RS-2 (Single Family Residential District)	Residential
West	Residential	RS-2 (Single Family Residential District)	Residential

The proposed preliminary plat appears to be consistent with the Future Land Use Plan in the City of Mason Master Plan.

Sidewalks are generally indicated on the proposed preliminary plat in the Typical Road Section and appear to be consistent with the requirement for sidewalks in **§74-157(b)** and as discussed in the City of Mason Master Plan sections:

- Community Character, Historic Preservation and the Environment, p. 2-3
- Transportation, Streets, and Circulation, p. 2-7

Sidewalks are important for supporting pedestrian activity as noted in the community's goal to preserve the character of Mason, page 2-3, and maintaining a transportation network throughout the community that includes pedestrian travel, p. 2-7.

The subdivision entrance to the lots at Eaton and Stratford measures within one-half mile (10- minute walk) to Mason Middle School, two parks – Laylin and Rayner, the County Fairgrounds, and various medical and professional services. Within one-mile (20-minute walk), residents have access to Downtown Mason, the Hayhoe Rivertrail, and CATA Route #46.

(Source: Google Earth)

## DESIGN STANDARDS – Meets Requirements

The proposed preliminary plat appears to meet the requirements of **Ch. 74 Division 3 Design Standards**, **Ch. 74 Division 4 Required Improvements** and the **City of Mason Utility and Street Installation Standards**

The need for a Performance Guarantee will be determined in accordance with **§74-163 Guarantee of completion of required improvements** as part of the Final Plat submittal.

## CITY ORDINANCES – Meets most requirements.

### §74-77 Data Required

(1) through (4) Meets requirement

(5) Easements and street right-of-way on land within 200 feet of the proposed plat is required but not provided.

(6) A master grading plan showing a contour map with the final proposed revised ground surface and street grades will be required with Construction Plans after the Final Preliminary Plat is approved. Future



building permits for each lot will need to provide grading plans that are coordinated with the final approved master grading plan.

(7) Appears to meet requirement.

(8) Appears to meet requirement. One parcel in the subdivision is noted as a 'Common Area'; Staff has been informed that this will be omitted on the Final Preliminary Plat and the land assigned to the adjacent properties. On Dec. 18, 2018 staff met with the applicant and discussed the need for connecting roads in future phases to provide for reasonable means of emergency vehicle access and a second point of egress to future phases as required in §94-176(d)(5) which suggests that no more than 25 dwellings shall be served by a single access point.

(9)-(10) Appears to meet requirement. Previous comments from the City Engineer (memo dated 11-29-17)

(11) Does not appear to meet requirement and will be required for the Final Preliminary Plat. According to the [State of Michigan Department of Licensing and Regulatory Affairs \(LARA\) database for Subdivision Plats](#), there appears to be no record of an approved plat consistent with the delineation of lots on the surrounding vacant parcels as shown on the City of Mason Zoning Map. Ownership of adjacent vacant parcels is not noted on the plan. It is not clear if this parcel is independently owned or if it is intended to be a phase within a larger plat involving adjacent vacant parcels.

**§74-157(b)** Appears to meet requirement that concrete sidewalks shall be constructed along both sides of every street shown on the plat. Sidewalks shall not be less than four feet wide, four inches thick except over driveways, which shall be six inches thick, and shall be placed one foot off property lines.

**§70-36(3)** The extension of Stratford Drive and Martells Lane appear to be proposed as public roads. They will be built as private roads until the city accepts them\*. The proposed curb cut is intended to be permanent and greater than 24 feet wide to serve as a private right of way created to serve the necessary zoning requirements for frontage on an approved public or private road. Therefore, special permission of City Council is required as the existing roads, Eaton and Stratford, are both public right of ways. The proposed preliminary plat serves as the opportunity for City Council to review and provide special permission as required.

\*Acceptance of both the Stratford extension and Martells Lane as public roads are subject to the requirements on the Public Acceptance Checklist as part of the City of Mason Utility and Street Installation Standards.

Driveways are not indicated on the preliminary plat. Future driveways will need to meet the requirements of this section prior to the issuance of a building permit.

## **ZONING ORDINANCES – Meets most requirements.**

### **§94-121(c) – General Development Standards**

- (1) The Preliminary Plat appears to meet the Dimensional regulations with the exception of lots 126 and 127 as noted previously under Data Required §74-77(7). Before approval, it is recommended that the applicant clarify the intended use within the Common Area to verify it is an allowable use, and to specify how it will be maintained as a private common facility. On Dec. 18, 2018 staff met with the applicant and discussed the need for ensuring lots were sufficiently sized to allow for the placement of principal and accessory structures (garages) in accordance with the requirements of our zoning ordinances. Currently, garages, attached or detached, are not permitted in front of the principal structure.
- (2) Site plan review – Information will be required on construction plans following the Final Preliminary Plat.



- (3) No subdivision signage is proposed. Proper traffic control signage will be required as part of the Final Plat.
- (4) Parking in the required front yard is not to exceed the width of a driveway accommodating the minimum required parking of two vehicles (**Ch.70 and §94-292(j)(1)**).
- (5) The Preliminary Plat appears to meet the requirements listed in **§94-176 Supplemental access regulations**. There are currently no City of Mason road improvement plans or corridor plans that would impact the proposed new access points. The Preliminary Plat does not appear to trigger the need for a Traffic impact study in accordance with **§94-176(g). §94-176(o)-(r)** are addressed as noted above under **Design Standards**.

## DEPARTMENTS

Comments from the remaining departments are attached and summarized below. Comments from outside agencies will be sought separately by the applicant following City Council's action and incorporated into the Final Preliminary Plat in accordance with LDA Act 288 of 1967:

FIRE	No concerns at this time.
POLICE	No concerns at this time.
ENGINEERING	See comments noted in the staff report above and attached memo dated 11-29-17. Note – Comments have been addressed on the revised plan.
PUBLIC WORKS	Supports comments from City Engineer.

## ACTION

The Planning Commission has the following options:

- 1.Recommend approval
  - a. The Planning Commission finds that all standards under the Land Division Act, 1967 PA 288, the City of Mason design standards, city and zoning ordinances, and the applicable elements of the master plan are met and all conditions have been satisfied.
  - b. The chairman or secretary of the Planning Commission shall make a notation on each of ten (10) copies.
- 2.Recommend approval with conditions
  - a. Conditions must be consistent with requirements of the Land Division Act, 1967 PA 288, the City of Mason design standards, city and zoning ordinances, and the applicable elements of the master plan.
  - b. Approval with conditions will deem this a Tentative Preliminary Plat and require the applicant to submit a revised Final Preliminary Plat in accordance with the Land Division Act, Act 288 of 1967, and
- 3.Recommend rejection
  - a. The Planning Commission shall list its reasons to be recorded in the minutes and forwarded, along with all copies of the preliminary plat, to City Council.



Staff offers the following motion for consideration:

**MOTION:**

The Planning Commission recommends approval of the Preliminary Plat to create 16 residential lots as part of phase 4 of the existing Rayner Ponds Estates Development submitted by James Giguere of Giguere Homes dated October 9, 2017 and revised January 3, 2018 with the following conditions:

- 1) The Final Preliminary Plat will be revised to provide information required in City Ordinances:
  - a. **§74-77 (5)** Expand information to include layout of streets, including proposed names, rights-of-way widths, and connections to adjoining platted streets, and easements, public walkways, lot lines, within the plat; and easements and street rights-of-way on land within 200 feet of the proposed plat.
  - b. **§74-77 (11)** Confirm if Rayner Ponds Phase 4 is part of a larger area to be developed and what method subsequent plats will be submitted.
- 2) Following approval of the Final Preliminary Plat, Construction Plans will be submitted that satisfy the requirements of City and Zoning Ordinances:
  - a. **§74-77 (6)** A master grading plan showing a contour map with the final proposed revised ground surface and street grades.
  - b. **§94-121(c)(2)** Site Plan Review Requirements

**Attachments:**

1. Application
2. City Engineer Memo dated 11-29-17
3. Preliminary Plat Plan dated October 9, 2017 and revised January 3, 2018.
4. Flow Chart – Land Division Act, Act 288 of 1967





# APPLICATION – SITE PLAN REVIEW/SPECIAL USE PERMIT

## City of Mason

Planning Department • 201 W. Ash Street • Mason, MI 48854

Phone: 517/676-9155 • Fax: 517/676-1330

www.mason.mi.us

### Applicant– Please check one of the following:

<input checked="" type="checkbox"/>	Preliminary Site Plan Review
<input type="checkbox"/>	Final Site Plan Review
<input type="checkbox"/>	Special Use Permit*
<input type="checkbox"/>	Administrative Review
* includes Preliminary Site Plan Review	

### PLANNING DEPARTMENT USE ONLY

Application Received: 11.3.17

Tax ID: \_\_\_\_\_

Fee: \$200 -

Receipt #: 10021525



## I. APPLICANT INFORMATION

Name James Giguere

Organization Giguere Homes

Address 6200 Pine Hollow Drive, Ste.100, East Lansing, MI 48823

Telephone Number 1-517-339-3600 Facsimile Number 1-517-339-7201

Interest in Property (owner, tenant, option, etc.) In process of purchasing property

**Note: If applicant is anyone other than owner, request must be accompanied by a signed letter of authorization from the owner.**

## II. PROPERTY INFORMATION

Owner Homestead Acceptance Corporation Telephone Number 1-586-939-2211

Property Address \_\_\_\_\_

Legal Description: If in a Subdivision: Subdivision Name \_\_\_\_\_ Lot Number \_\_\_\_\_

If Metes and Bounds (can be provided on separate sheet): See attached

### APPLICANT CERTIFICATION

By execution of this application, the person signing represents that the information provided and the accompanying documentation is, to the best of his/her knowledge, true and accurate. In addition, the person signing represents that he or she is authorized and does hereby grant a right of entry to City officials for the purpose of inspecting the premises and uses thereon to verify compliance with the terms and conditions of any Special Use Permit and/or Site Plan approval issued as a result of this application.

Signature \_\_\_\_\_ Date 11/3/17



### III. REQUEST DESCRIPTION

- A. Written Description – Please use this section to describe the use or uses proposed. Attach additional pages, if necessary.

Develop property to create 16 residential lots. This development will be Phase 4 of the existing Rayner Ponds development

#### B. Available Services

Public Water ☒ YES ☐ NO  
Public Sanitary Sewer ☒ YES ☐ NO

Paved Road (Asphalt or Concrete) ☒ YES ☐ NO  
Public Storm Sewer ☒ YES ☐ NO

#### C. Estimate the Following

Traffic Generated 80

Total Employees N/A Shifts       

Population Increase 64

Employees in Peak Shift N/A

Hours of Operation N/A AM to        PM  
       day through        day

Total Bldg. Area Proposed N/A

Parking Spaces Provided N/A

#### D. Project Phasing

This project will be completed in: ☒ One Phase ☐ Multiple Phases – Total No. of Phases:       

**Note: The phases of construction for multi-phase projects must be shown on the site plan**

### IV. APPLICATION MATERIALS

The following are checklists of items that generally must be submitted with applications for Preliminary Site Plan Review, Final Site Plan Review, and Special Use Permits. Applicants should review Articles VI and VII of Chapter 94 of the Mason Code for a complete listing of application requirements. All site plan drawings must comply with the requirements of Section 94-226(d) of the Zoning Ordinance. Incomplete applications will not be processed.

- ☒ Completed application form
- ☒ 20 copies of site plan drawings is larger than 11" x 17" (30 copies for Special Use Permits)
- ☒ 1 – 11" x 17" copy of the site plan
- ☒ Plans submitted on CD (Commercial only)
- ☒ Legal description
- ☒ Proof of ownership/owner authorization
- ☒ Construction schedule for proposed project
- ☒ Construction calculations for utilities
- ☒ Fee (see below)
- ☒ Any other information deemed necessary

**Application Fee** – all requests must be accompanied by a fee, as established by the City Council. The fee schedule for Preliminary Site Plan Reviews, Final Site Plan Reviews, and Special Use Permits is as follows (As of October 16, 2006):

<u>Administrative Reviews</u>	\$70.00
<u>Preliminary Site Plan Reviews</u>	\$200.00
<u>Final Site Plan Review</u>	\$100.00
<u>Special Use Permits</u> (includes preliminary site plan review)	\$275.00
<u>Engineering Review</u>	\$220.00*

\*Two-hour minimum fee for projects increasing demand on public utilities. Actual fees incurred are billed to applicant upon completion of review.



November 1, 2017

City of Mason  
Planning Department  
201 W. Ash Street  
Mason, MI 48854

To whom it may concern:

I hereby authorize Giguere Homes to pursue approval from the Planning Department for the development of the parcel #33-19-10-04-476-011 described in legal description below. I understand that Giguere Homes is seeking approval to develop this parcel into a subdivision containing 16 residential lots. See attached Exhibit 'A'

Sincerely,



David Belcovson  
Homestead Acceptance Corporation

#### LEGAL DESCRIPTION

A parcel of land in the Southeast 1 / 4 of Section 4, T2N, R 1 W, City of Mason, Ingham County, Michigan; the surveyed boundary of said parcel being described as commencing at the South 1/4 Corner of Section 4, T2N, R1W, Michigan Meridian; thence S89°14'20" E, along the South Section line, 1456.14 feet; thence N00°29'00" E, 660.00 feet to the Southeast Corner of Lot 64, Rayner Ponds Estates No. 2, recorded in Uber 44 of Plats, Pages 41 and 42, Ingham County Records and the POINT OF BEGINNING; thence N00°02'29'00" E, along the Easterly line of Rayner Ponds Estates No. 2, 125.00 feet; thence N89°14'20"W, along the Northerly line of Rayner Ponds Estates No. 2, 415.28 feet to the Northwest Corner of Lot 68, Rayner Ponds Estates No. 2 and the Southeast Corner of Lot 80, Rayner Ponds Estates No. 3, recorded in Uber 50 of Plats, Pages 35, 36 and 37, Ingham County Records; thence N00°29'00" E, along the Easterly line of Rayner Ponds Estates No. 3, 390.99 feet; thence S89°14'20" E, along the easterly line of Rayner Ponds Estates No. 3, 69.00 feet to a point on an intermediate traverse line of an unnamed Pond, said point being N89°14'00"W, 9 feet from the water's edge; thence along said intermediate traverse line the following six courses, S29°39'28"E, 49.01 feet; thence S70°00'00"E, 115.30 feet; thence N87°27'55"E, 48.02 feet; thence N25°06'53"E, 143.49 feet; thence S55°56'23"E, 293.62 feet; thence S89°14'20"E, 361.15 feet to a point on said intermediate traverse line being S55°00'00"E, 70 feet from the water's edge; thence S00°45'40"W, 171.01 feet; thence S19°18'29" E, 70.27 feet; thence S00°29'37"W, 171.00 feet; thence N89°14'20"W, 329.99 feet; thence S00°29'37"W, 19.00 feet to the Northeast Corner of Lot 63, Rayner Ponds Estates, recorded in Uber 36 of Plats, Pages 50 and 51, Ingham County Records; thence along the Northerly boundary of Rayner Ponds Estates the following three courses; N89°14'20"W, 127.47 feet; thence N00°29'00"E, 19.00 feet; thence N89°14'20"W, 66.00 feet the point of beginning; said parcel contains 9.0 acres.

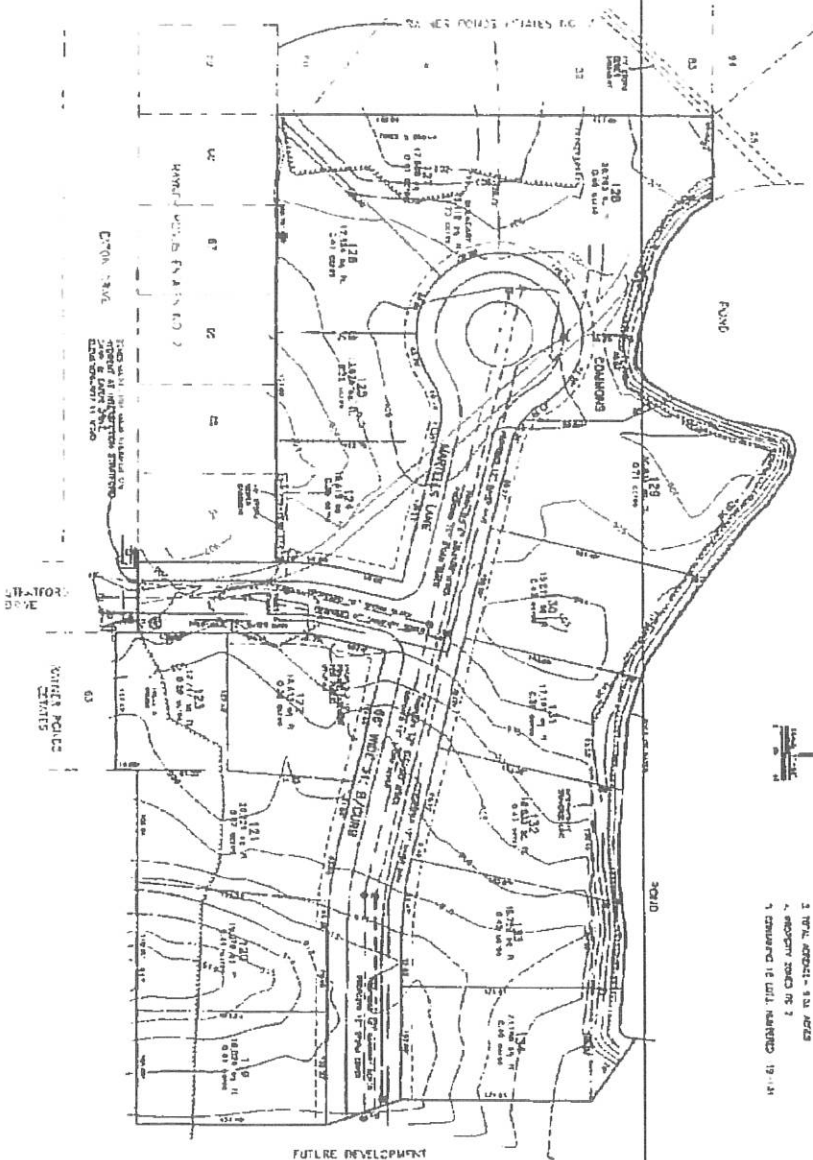


EXHIBIT A

PRELIMINARY PLAT  
OF

RAYNER PONDS ESTATES NO. 4  
A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 (1/4) SECTION 4,  
T2N, R1W, CITY OF MASON, INDIAN COUNTY, MICHIGAN

LEGEND	
1	OWNER
2	ADJACENT LAND
3	ADJACENT ROAD
4	ADJACENT RAILROAD
5	ADJACENT WATERWAY
6	ADJACENT AIRPORT
7	ADJACENT PARK
8	ADJACENT SCHOOL
9	ADJACENT CHURCH
10	ADJACENT HOSPITAL
11	ADJACENT GOVERNMENT BUILDING
12	ADJACENT INDUSTRIAL BUILDING
13	ADJACENT RESIDENTIAL BUILDING
14	ADJACENT COMMERCIAL BUILDING
15	ADJACENT PUBLIC UTILITY
16	ADJACENT PRIVATE UTILITY
17	ADJACENT FENCE
18	ADJACENT FENCE
19	ADJACENT FENCE
20	ADJACENT FENCE



- 1. OWNER
- 2. ADJACENT LAND
- 3. ADJACENT ROAD
- 4. ADJACENT RAILROAD
- 5. ADJACENT WATERWAY
- 6. ADJACENT AIRPORT
- 7. ADJACENT PARK
- 8. ADJACENT SCHOOL
- 9. ADJACENT CHURCH
- 10. ADJACENT HOSPITAL
- 11. ADJACENT GOVERNMENT BUILDING
- 12. ADJACENT INDUSTRIAL BUILDING
- 13. ADJACENT RESIDENTIAL BUILDING
- 14. ADJACENT COMMERCIAL BUILDING
- 15. ADJACENT PUBLIC UTILITY
- 16. ADJACENT PRIVATE UTILITY
- 17. ADJACENT FENCE
- 18. ADJACENT FENCE
- 19. ADJACENT FENCE
- 20. ADJACENT FENCE

FUTURE DEVELOPMENT

LOCATION MAP



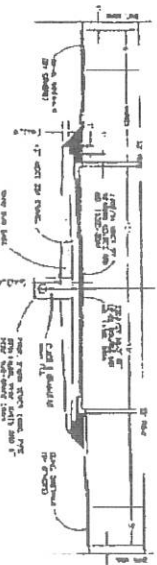
LEGAL DESCRIPTION

A portion of the Southeast 1/4 of Section 4, T2N, R1W, City of Mason, Indian County, Michigan, being the 2.00 acre parcel of land more or less, bounded on the north by the 1/4 section line, on the east by the 1/4 section line, on the south by the 1/4 section line, and on the west by the 1/4 section line, and containing 2.00 acres, more or less, of land, being the same as the land described in the plat of the Rayner Ponds Estates No. 4, recorded in the public records of Indian County, Michigan, and the same is being subdivided into 10 lots, more or less, as follows:

1. A portion of the Southeast 1/4 of Section 4, T2N, R1W, City of Mason, Indian County, Michigan, being the 2.00 acre parcel of land more or less, bounded on the north by the 1/4 section line, on the east by the 1/4 section line, on the south by the 1/4 section line, and on the west by the 1/4 section line, and containing 2.00 acres, more or less, of land, being the same as the land described in the plat of the Rayner Ponds Estates No. 4, recorded in the public records of Indian County, Michigan, and the same is being subdivided into 10 lots, more or less, as follows:

1. A portion of the Southeast 1/4 of Section 4, T2N, R1W, City of Mason, Indian County, Michigan, being the 2.00 acre parcel of land more or less, bounded on the north by the 1/4 section line, on the east by the 1/4 section line, on the south by the 1/4 section line, and on the west by the 1/4 section line, and containing 2.00 acres, more or less, of land, being the same as the land described in the plat of the Rayner Ponds Estates No. 4, recorded in the public records of Indian County, Michigan, and the same is being subdivided into 10 lots, more or less, as follows:

TYPICAL ROAD CROSS SECTION



WJ

PRELIMINARY PLAT

RAYNER PONDS ESTATES NO. 4

DEVELOPER: THE GILSON CORPORATION, 1ST FLOOR, 1000 N. 1ST AVE., MASON, INDIAN COUNTY, MICHIGAN 46756

PLAT DATE: OCTOBER 2, 2012

WJ

WJ



## Rayner Ponds 4

### LEGAL DESCRIPTION

A parcel of land in the Southeast 1 / 4 of Section 4, T2N, R 1 W, City of Mason, Ingham County, Michigan; the surveyed boundary of said parcel being described as commencing at the South 1/4 Corner of Section 4, T2N, R1W, Michigan Meridian; thence S89°14'20" E, along the South Section line, 1456.14 feet; thence N00°29'00" E, 660.00 feet to the Southeast Corner of Lot 64, Rayner Ponds Estates No. 2, recorded in Uber 44 of Plats, Pages 41 and 42, Ingham County Records and the POINT OF BEGINNING; thence N00°29'00" E, along the Easterly line of Rayner Ponds Estates No. 2, 125.00 feet; thence N89°14'20"W, along the Northerly line of Rayner Ponds Estates No. 2, 415.28 feet to the Northwest Corner of Lot 68, Rayner Ponds Estates No. 2 and the Southeast Corner of Lot 80, Rayner Ponds Estates No. 3, recorded in Uber 50 of Plats, Pages 35, 36 and 37, Ingham County Records; thence N00°29'00" E, along the Easterly line of Rayner Ponds Estates No. 3, 390.99 feet; thence S89°14'20" E, along the easterly line of Rayner Ponds Estates No. 3, 69.00 feet to a point on an intermediate traverse line of an unnamed Pond, said point being N89°14'00"W, 9 feet from the water's edge; thence along said intermediate traverse line the following six courses, S29°39'28"E, 49.01 feet; thence S70°00'00"E, 115.30 feet; thence N87°27'55"E, 48.02 feet; thence N25°06'53"E, 143.49 feet; thence S55°56'23"E, 293.62 feet; thence S89°14'20"E, 361.15 feet to a point on said intermediate traverse line being S55°00'00"E, 70 feet from the water's edge; thence S00°45'40"W, 171.01 feet; thence S19°18'29" E, 70.27 feet; thence S00°29'37"W, 171.00 feet; thence N89°14'20"W, 329.99 feet; thence S00°29'37"W, 19.00 feet to the Northeast Corner of Lot 63, Rayner Ponds Estates, recorded in Uber 36 of Plats, Pages 50 and 51, Ingham County Records; thence along the Northerly boundary of Rayner Ponds Estates the following three courses; N89°14'20"W, 127.47 feet; thence N00°29'00"E, 19.00 feet; thence N89°14'20"W, 66.00 feet the point of beginning; said parcel contains 9.0 acres.









## Memorandum

**To:** Elizabeth Hude, AICP  
**From:** Donald B. Heck, P.E.  
**Subject:** Rayner Ponds No. 4  
**Date:** November 29, 2017

Pursuant to your request we have reviewed the application package for Rayner Ponds No. 4. Please note, our review was done as a Preliminary Plat and not as a site plan; therefore, we focused on the requirements set forth in Chapter 74 of the City of Mason Ordinances.

The property is zoned RS-2 with a minimum lot size of 9,600 square feet and a minimum lot width of 75 feet at the building set back line (Figure 100-102). The preliminary plat as presented appears to be in conformance with these requirements. It is recommended that the minimum lot width be verified for Lot 126 and 127.

Section 74-77 enumerates the data requirements for a preliminary plat. The data noted in Items 5, 6 and 7 do not appear to be included on the preliminary plat as submitted.

The data required for utilities is limited to an indication of the system proposed for sewage disposal and an indication of the storm drainage proposed. Both items are provided on the submitted document. It is our recommendation that the watermain to the west in Martells be revised to an 8 inch and consideration be given to the looping this into Charrington.

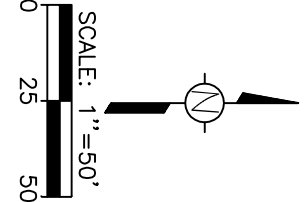
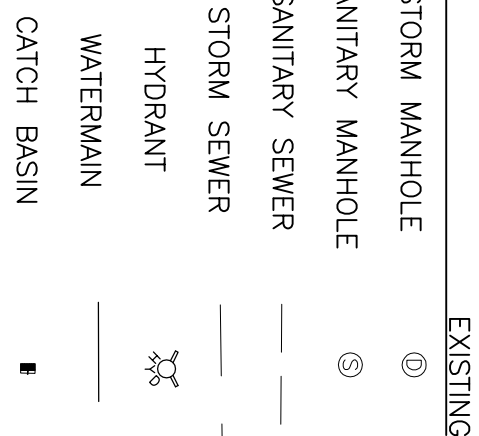
The City of Mason current standard for the road is a total of five (5) inches of 13A hot-mix asphalt (HMA) placed in two lifts. A revised detail can be provided.

Finally we would recommend the review of the plans for any misspellings.

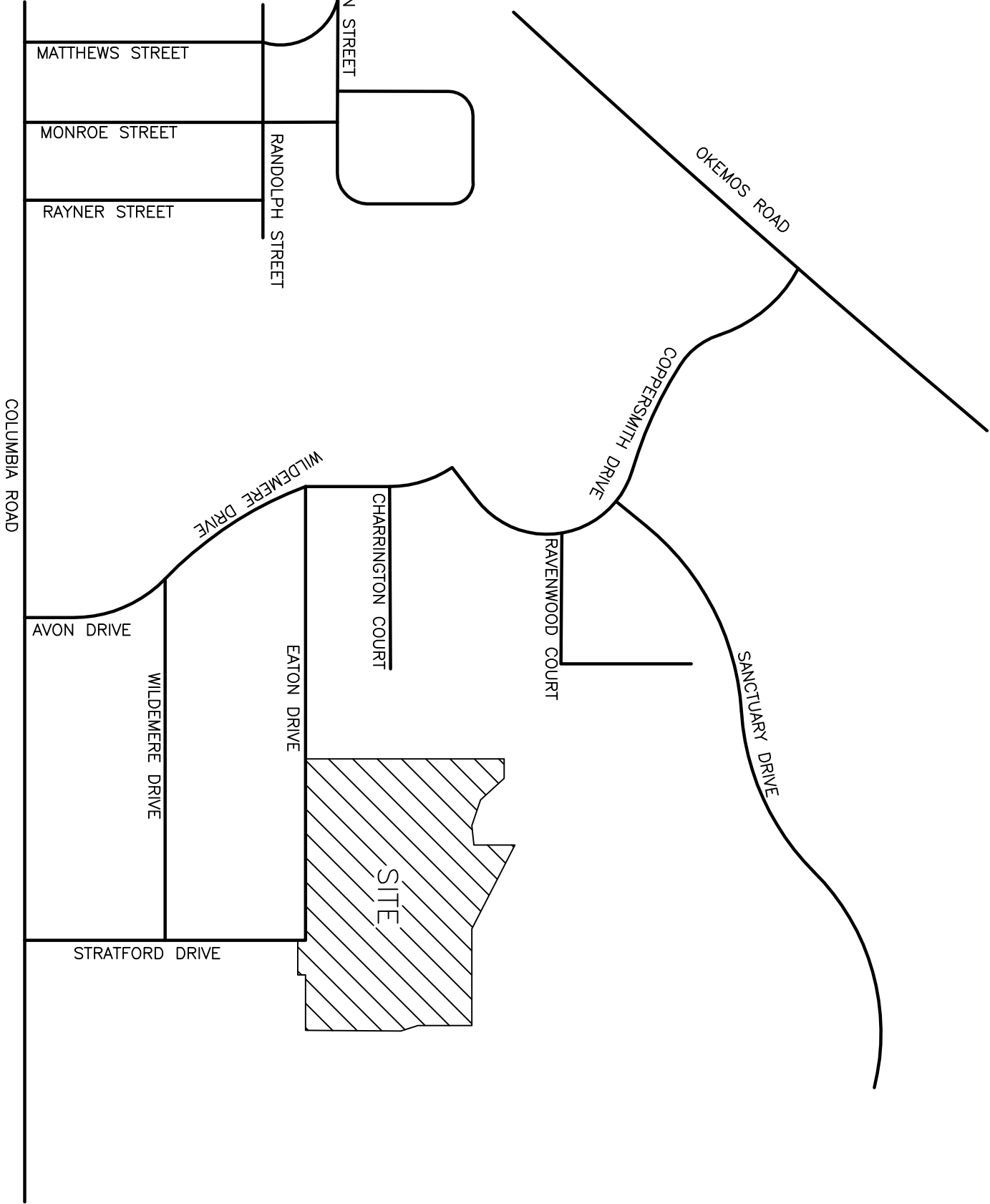
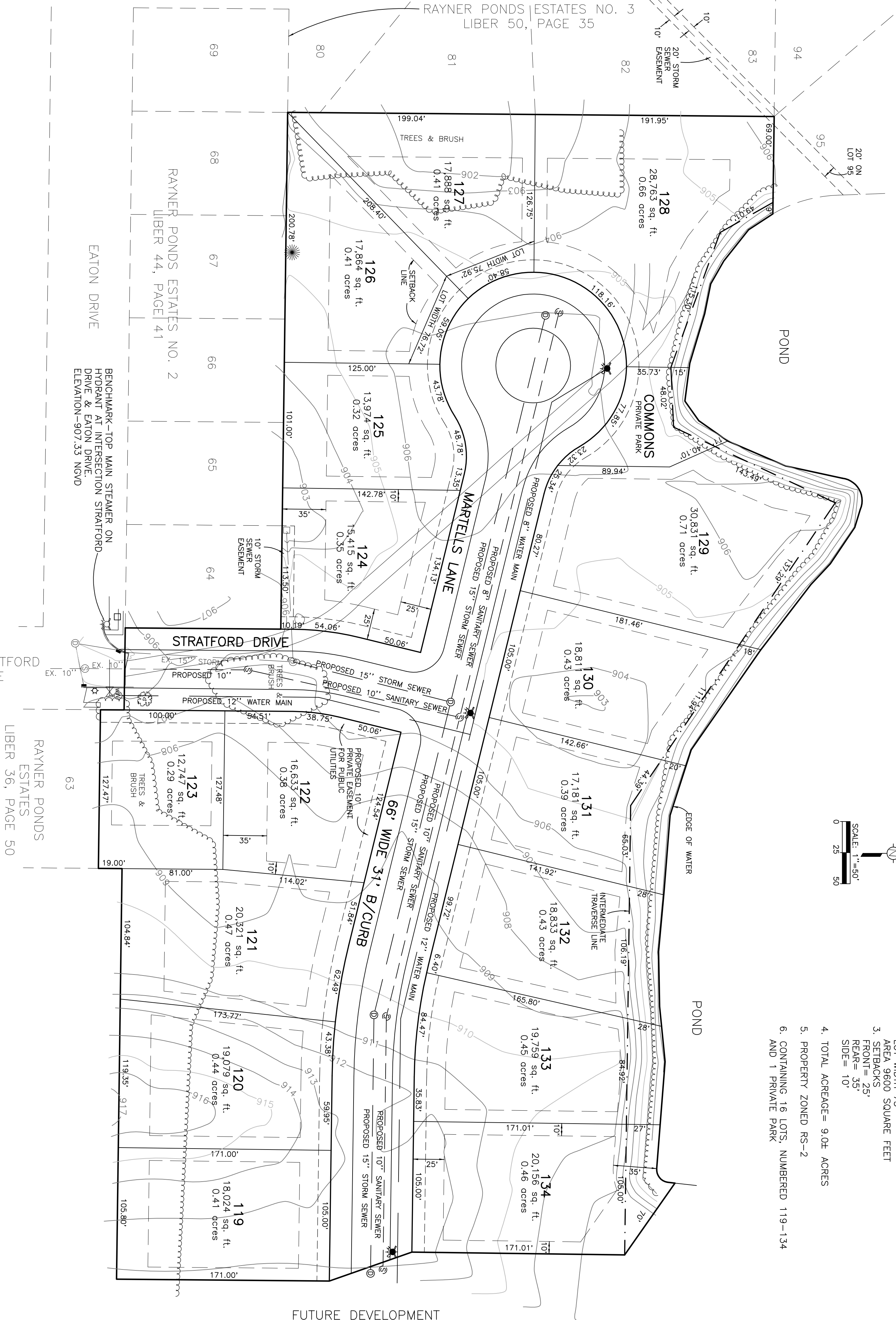


## No. 4

BDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 4,  
T2N, R1W, CITY OF MASON, INGHAM COUNTY, MICHIGAN

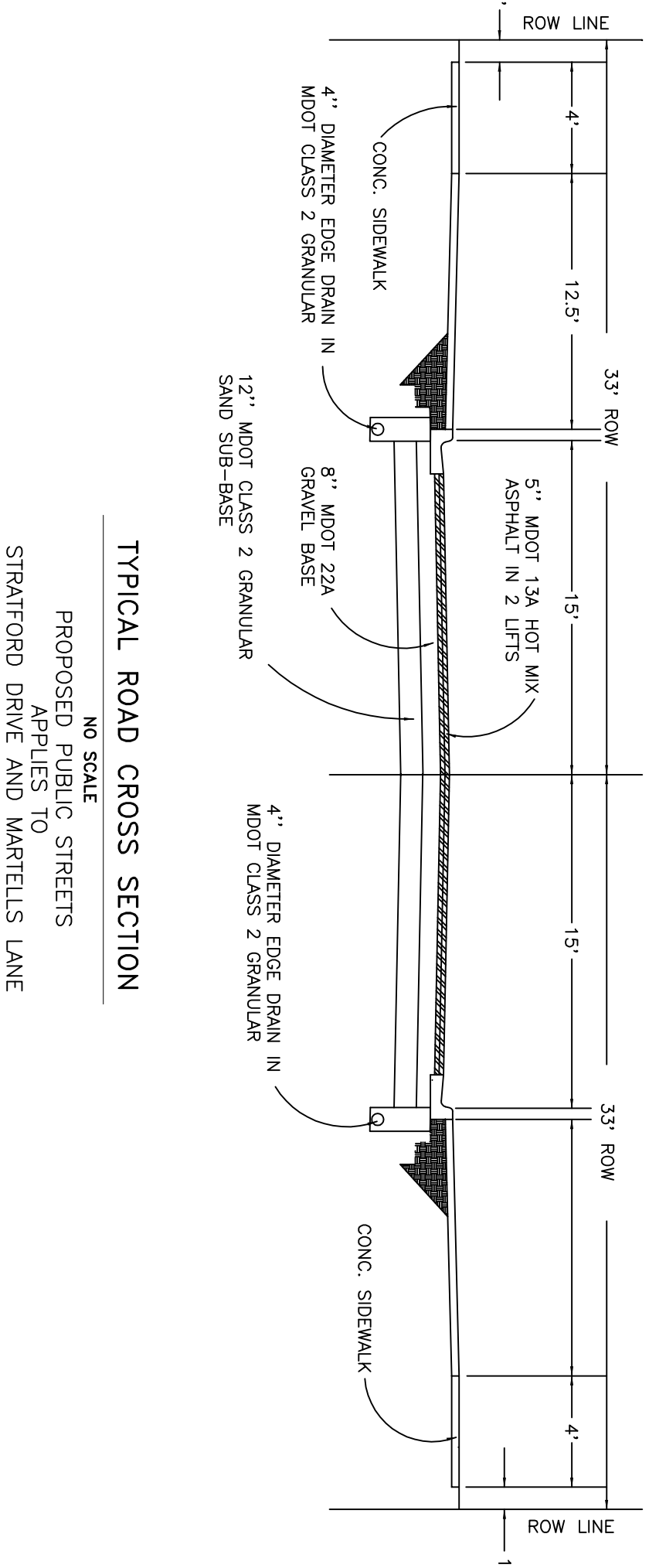


1. ALL LOTS TO BE SERVED WITH PUBLIC SANITARY SEWER, PUBLIC WATER AND PUBLIC STORM SEWER.
2. MINIMUM LOT SIZE
- LOT WIDTH 75'
- AREA 9600 SQUARE FEET
3. SETBACKS
- FRONT= 25'
- REAR= 35'
- SIDE = 10'
4. TOTAL ACREAGE = 9.0+ ACRES
5. PROPERTY ZONED RS-2
6. CONTAINING 16 LOTS, NUMBERED 119-134 AND 1 PRIVATE PARK

LOCATION MAP  
NO SCALE

LEGAL DESCRIPTION -

a parcel of land in the northeast 1/4 of section 4, T2N-R1W, City of Mason, Ingham County, Michigan; the survey boundary of said parcel being described as commencing at the South 1/4 Corner of Section 4, T2N, R1W, Michigan Meridian; thence S89°14'20"E, along the South Section line, 1456.14 feet; thence N0°29'00"E, 66.00 foot, to the Northeast Corner of lot 64, Royner Ponds Estates No. 2, recorded in Liber 44 of Plats Pages 41 and 42, Ingham County Records; thence S72°00'E, along the East Section line, 1456.14 feet; thence N0°29'00"E, along the Eastern line of Royner Ponds Estates No. 2, 125.00 feet; thence N89°14'20"E, along the Northernly line of Royner Ponds Estates No. 2, 415.28 feet to the Northeast Corner of lot 68, Royner Ponds Estates No. 2 and the Southwest Corner of Lot 80, Royner Ponds Estates No. 3, recorded in Liber 50 of Plots, Pages 35, 36 and 37, Ingham County Records; thence N00°29'00"E, along the Easterly line of Royner Ponds Estates No. 3, 330.93 feet; thence S89°14'20"E, along the easterly line of Royner Ponds Estates No. 3, 63.00 feet to a point on an intermediate traverse line of an unnamed Pond, said point being N89°14'20"E, 9 feet from the water's edge; thence along said intermediate traverse line the following six courses: S53°38'28"E, 49.01 feet; thence S70°00'00"E, 115.30 feet; thence N87°21'55"E, 48.02 feet; thence N26°06'35"E, 154.39 feet; thence S55°56'23"E, 293.52 feet; thence S89°14'20"E, 361.15 feet to a point on said intermediate traverse line being S55°00'00"E, 9 feet from the water's edge; thence S00°45'40"W, 171.01 feet; thence S19°18'29"E, 70.27 feet; thence S00°29'37"W, 171.00 feet; thence N89°14'20"W, 329.93 feet; thence S00°29'37"W, 191.00 foot, to the Northeast Corner of Lot 63, Royner Ponds Estates, recorded in Liber 36 of Plots, Pages 50 and 51, Ingham County Records; thence along the Northernly Boundary of Royner Ponds Estates the following three courses: N89°14'20"W, 127.47 feet; thence N00°29'00"E, 19.00 feet; thence N89°14'20"W, 66.00 feet the point of beginning; thence N00°29'00"E, 9.00 acres.



DATE	REVISIONS
07/03/18	ADD SETBACKS AND REVISE CROSS SECTION

\_\_\_\_\_

SE JOB# 33-3119 Preliminary Platdwg

ENGINEERING & ENGINEERING  
 850 N. CEDAR PO BOX 87  
 MASON ILLICHUAN 48854-0087  
 517-676-6656  
 FAX 517-676-6675

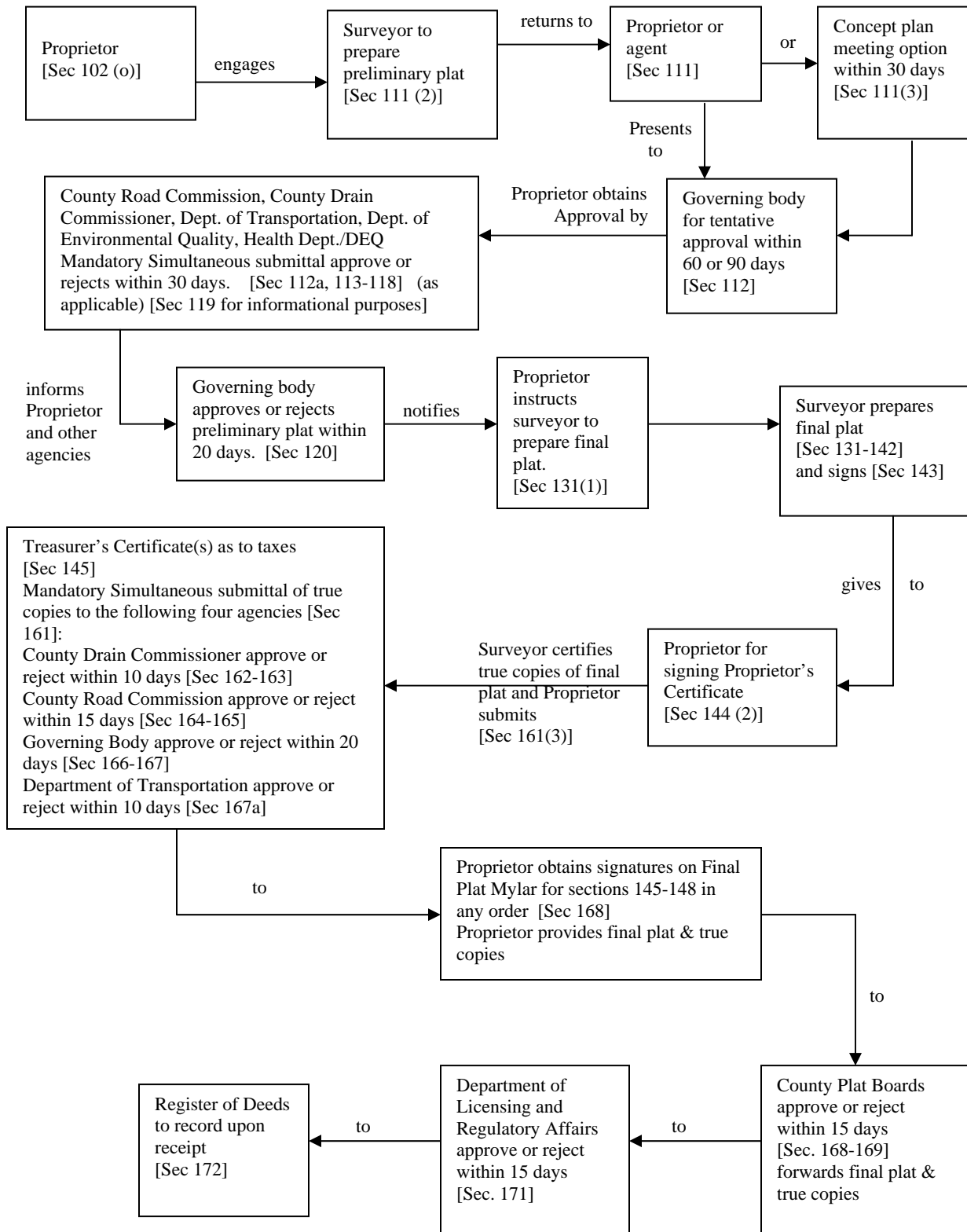
PRELIMINARY PLAT  
RAYNER PONDS ESTATES NO. 4  
DEVELOPER: CIGURE HOMES  
6200 PINE HOLLOW DRIVE, SITE 100  
EAST LAKEWING, WI 48823

HORZ SCALE: 1" = 50'

SHEET 1 OF 1



# FLOW CHART – LAND DIVISION ACT ACT 288 OF 1967







## CITY ADMINISTRATOR REPORT

City Council Meeting: 1.8.18

Agenda Item: 9

### Status: Active Private Projects

Project Name	Status
106 E. Ash	Certificate of Occupancy issued
Dollar Tree	Building permit active and under construction
132 S. Cedar (former Felpausch)	Building permit active and under construction for new addition and interior alterations in vacant portion of existing building
Klavon's	Building permit issued, demo started
Maple Street Mall	Building permit issued for façade work on-going as weather permits
Benedict Auto	Building permit under review for expansion, waiting for information from owner
402 S. Jefferson (former Baja Grill)	MEDC issuing letter of intent for CDBG funding as gap financing, City Council action will be required
Rayner Ponds Phase #4	Preliminary Plat for 16 new lots will be considered by Planning Commission January 9, City Council action will be required
260 W. Ash (Kelsey's)	DDA Façade Application under review for existing building; Historic District Commission will consider on Jan 11; DDA will consider on Jan 10
201 W. Ash	Staff reviewing proposal from T-Mobile to co-locate on radio tower behind City Hall

### Operations and Community Relations

- Staff has created an outdoor ice rink at Rayner Park – hours are 10 am to dark, weather permitting
- Patrol officers are converting to a 12-hour schedule
- Reserve Officers Jacob Mick and Michael Perkins have begun their Field Training Program (FTO); Nick Toodzio has completed his 40-hour FTO which is required before a reserve officer can assume authorized duties
- Community can report icy locations to Customer Service Desk at 676.9155
- One-stop Customer Service will be fully operational next week including taking payments
- Anticipate transitioning to monthly water billing by July 2018
- Laylin Park Improvements – Public comment period still open until January 15
- Jan 15: staff in-service and City Hall offices will be closed

### Staffing Changes

- Bo Moore from DPW has accepted a position at City of East Lansing – last day of work is Jan 19
- Dillon Allen begins as DPW laborer on January 8
- Jordan Schnipke has been hired as the part-time custodian for City Hall, taking over the responsibilities of the previously contracted company at no additional cost
- Jim Wolfe retired at the end of December after serving for 21 years as a mechanic in DPW

### Upcoming Items for City Council

- Sign Ordinance Amendments
- Committee/Board Ordinance Amendments: Appointments will be delayed until finalized
- T-1 Sewer Agreement Amendment
- CIP Workshop with Planning Commission
- Brown, Ferris, Stuart, Waltz, Whipple registered for MACC 2018 Awards Dinner February 8
- Ferris, Stuart, Whipple attending MML Capital Conference March 20-21



**Date:** November 21, 2017

**To:** Elizabeth Hude, AICP, City of Mason Community Development Director

**From:** Mark A. Eidelson, AICP

**Re:** *Sign Regulations / Chapter 58 – General Review*

The purpose of this correspondence is to highlight my more substantive concerns with the City's current sign regulations, as presented in Chapter 58 of the City Code. These concerns are as follows:

1. Chapter 58 is not particularly user-friendly and the overall formatting encourages confusion and oversights. The abundant definitions specific to signs are located outside of Chapter 58 and require the reader to constantly flip-flop back and forth from one chapter to another. Though many of the regulations are suitable for tabular form, all of the regulations are in text format and this makes the provisions unnecessarily lengthy and more difficult to examine and understand.
2. Chapter 58 relies on the term "zoning official" throughout yet Chapter 58 is not part of the Zoning Code. This opens the door for someone to argue that Chapter 58 is really a zoning ordinance rather than a separate police power sign ordinance, and this may lead to unnecessary legal challenges or instances of variable interpretation regarding hearings, amendments, and enforcement. The Sec. 58-1 purpose statement is void of important elements in support of free speech and the reasonable needs of entities to exhibit signage.
3. Chapter 58 is silent on a number of matters that officials may find beneficial to address such as more expanded provisions addressing the measurement of sign setbacks, measurement of sign areas, maintenance requirements, and illumination restrictions.
4. There are numerous instances where the Chapter 58 regulations will not likely withstand a legal challenge in response to the 2015 U.S. Supreme Court decision in *Reed v. Gilbert*. This case is summarized on the following page but in a nutshell, the take-away from the decision is that if an official has to read a sign to determine if the sign complies with local sign regulations, then the regulations are presumed to be unconstitutional – sign regulations must be content-neutral, sign regulations cannot regulate the content of the signs.

Some of the instances where Chapter 58 likely conflicts with *Reed v Gilbert* are'

- Sec. 58-3 exemption of certain signs based on their content such as memorial signs, warning signs and "open" signs.
  - Sec. 58-126 requirement that signs no longer applicable must be removed.
  - Sec. 58-127 content-based sign regulations (home occupations, farm enterprises, etc.).
  - Sec. 58-129 provisions addressing signs advertizing off-premises activities.
  - The Sec. 58-130 regulations regarding political signs.
  - The Sec. 58-132 prohibition of signs no longer current with the use of the property.
5. The Sec. 58-89(c) variance approval standards are very generic rather than being specific to the issue of signage, with the matter of visibility and nonconformities being the primary practical difficulty issues that surface.

page 1 of 2



6. Sec. 58-127 presents numerous standards, by district, that address such matters as permitted sign types, sign heights, sign areas, and the number of permitted signs. In recognition that a community's sense of "identity" and "place" is a key part of a vibrant desirable community and impacts how both young and old perceive the desirability of a community as a place of residence and business, officials may want to reconsider some of the standards that may be viewed as excessive. Some of the current standards that should perhaps be considered include:
  - Permissible 20' high freestanding signs in the C-1 District.
  - Absence of any maximum limitation on sign areas in the C-2 District.
  - Absence of any special setback standards for commercial/office/industrial district free-standing signs where the adjacent lot is in a residential district.
  - Absence of any standards to encourage sign foundation planting beds.
  - Comparatively limited permitted wall sign areas in association with larger buildings, both in regard to total sign area and permissible number of signs.
7. Sec. 58-127(c) exempts C-2 District signs from the Sec. 58-128 design and placement standards, including those pertaining to clear vision areas, materials and illumination. The basis and benefit of this exemption is unclear.
8. Sec. 58-130, addressing temporary/portable signs, is vague. Are the listed signs the only permitted temporary signs or merely the only temporary signs subject to special standards? Does this Section prohibit a resident from erecting a temporary sign in their front yard in support of the local high school? Is the erection of a "feather" banner/sign at the entrance to a business's parking lot prohibited and, if not, how many can he/she display? Can a temporary "\$5 Pizza" sign be erected along the street in front of a pizza shop/convenience store? In a related matter, the entire Article is vague regarding whether the freestanding signs and wall signs authorized in the various districts (Sec. 58-127) are limited to signs of a permanent nature or may temporary signs be used wherever freestanding/wall signs are referenced?

To comment further on the 2015 Supreme Court decision in *Reed v Gilbert*, the Town of Gilbert's (Arizona) sign regulations exempted various categories of signs from permitting requirements and it applied different standards to each separate category. A local church rented space for congregational services in various community facilities throughout the town and erected temporary signs notifying persons of the location of its upcoming services. The signs were erected approximately 24 hours before each service. The church was cited for violating the town's sign ordinance on the basis that the church's signs were posted for a longer period of time than allowed for temporary directional signs. The church sued Gilbert, claiming that the town's sign regulations violated free speech and free exercise clauses of the First Amendment to the U.S. Constitution. The church argued that, in part, the town applied different sets of standards for different types of temporary signs, such as those of a religious nature, political nature, garage sale signs, construction signs, etc. Such sign regulations are content-based in that they are based on the message or content of the sign.

Up until this decision, most federal courts ruled that communities could enforce content-based regulations on signs provided such regulations were not intended to restrict speech. In *Reed v Gilbert*, the Supreme Court ruled that if a sign has to be read in order to determine if a certain regulation applies to such sign, then that regulation is content-based and presumed to be unconstitutional. While all justices agreed that the town's sign ordinance was unconstitutional, there were varying views as to why they felt the ordinance was unconstitutional. Based on the Court's decision, content-specific regulations will likely not survive a strong legal challenge. However, the Court did uphold the long understood authority of a municipality to regulate other aspects of signs not involving content, such as sign area, height and setbacks.

I recommend legal counsel be contacted as well regarding *Reed v Gilbert*. There are varying opinions as to how far the decision reaches, such as its impact on off-premises signs regulation.

Please do not hesitate to contact me if you have any questions or would like to discuss this further.



**Date:** November 22, 2017

**To:** Elizabeth Hude, AICP, City of Mason Community Development Director

**From:** Mark A. Eidelson, AICP

**Re:** ***Zoning Ordinance Amendment – Article XI, Zoning Board of Appeals (ZBA)***

The following presents an initial draft of a new Article XI of the Zoning Ordinance, addressing the Zoning Board of Appeals (ZBA). The overall intent of this updated Article is to provide City/ZBA officials, applicants and the general public with a clearer set of ZBA procedures and standards of review, and to address important matters about which the current Article XI is silent. An effort has been made to make the provisions more concise where practical and to expand the provisions where deemed beneficial. Draft Sections 94-365, 94-366 and 94-367 address, in a consistent and systematic manner and format, the authority, procedures and standards for the consideration of appeals of administrative decisions, interpretations, and variances – the three principal duties of the ZBA.

Please note the following:

- 1) In all relevant subsections of this updated Article, the draft provisions require the submittal of a minimum of ten copies of an application except where the Community Development Director permits a lesser number. The current Article XI is silent on this matter.
- 2) Draft Sec. 94-361 presents a purpose statement for the Article, something that is recommended for all major sections of a zoning ordinance but which the current Zoning Ordinance does on a sporadic basis. The current Article XI is void of a purpose statement.
- 3) Draft Sec. 94-362 and Sec. 94-363 incorporate the Michigan Zoning Enabling Act's (MZEA) requirements regarding ZBA membership, meetings, conflict of interest, alternate members and other general matters. The provisions carry forward the current sitting ZBA. The provisions are substantively similar to the current Sections 94-361 and Sec. 94-362 except as follows:
  - The substance of current Sec. 94-361(4), regarding participation by dual members, has been relocated to draft Sec. 94-365(c)(5), which addresses administrative appeals specifically. This dual participation matter is specific to administrative appeals and it is for this reason that these provisions have been placed in draft Sec. 94-365(c)(5).
  - Draft Sec. 94-363(a) requires that the ZBA adopt rules of procedures (bylaws). The MZEA implies that such rules may be adopted but does not require so. The draft provisions make it mandatory because of the importance of having an official set of procedures to ensure consistency in operations including meetings, hearings, addressing conflicts of interest, and related matters.
  - Draft Sec. 94-363(a) requires that ZBA to annually elect a chairperson, vice-chairperson, and secretary, a matter about which the current ZBA provisions are silent. The MZEA implies that a chairperson will be selected but makes no specific requirements for the election of any officers. It is recommended to elect a chairperson, vice-chairperson, and secretary.

page 1 of 9



- Draft Sec. 94-363(b) requires that ZBA meetings comply with the Open Meetings Act, a matter about which the current ZBA provisions are silent.
  - Draft Sec. 94-363(e) does not require that the record of a case include an affidavit of publication of a hearing notice as this is no longer required by the MZEA. The city is free to continue this practice but it may not want to make it mandatory under the Article as it currently does.
  - Draft Sec. 94-363(g) requires that the ZBA must act on a complete application within 60 days. The current provisions merely provide that action shall occur “*within a reasonable time*.” The proposed text is clearer, not open to variable interpretations, and better ensures reasonable due process.
- 4) Draft Sec. 94-365 addresses administrative appeals. These provisions are substantively similar to the current Section 94-364 except as follows:
- Draft Sec. 94-365(a) specifies certain minimum information that must be submitted as part of an application, a matter about which the current Article XI is silent.
  - Draft Sec. 94-365(b) presents standards by which an administrative appeal is to be evaluated. The current provisions are silent on the matter of standards. The standards are based on case law.
  - Draft Sec. 94-365(c)(3)(a) prohibits the ZBA from considering new information which had not been presented to the administrative official or body that made the decision subject to the appeal, except only after the ZBA first remands the matter back to the body that made the original administrative decision. The current Article XI is silent on this matter.
- 5) Draft Sec. 94-366 addresses ZBA interpretations, a matter about which the current Article XI is largely silent despite interpretations being one of the primary responsibilities of the ZBA.
- 6) Draft Sec. 94-367 addresses variances. These provisions are substantively similar to the current Section 94-365 except as follows:
- The variance approval standards are more developed in the draft Sec. 94-367(b). This includes more descriptive text in the case of some of the standards as well as the introduction of two new standards – a variance shall apply only to the property described in the application and that, without the requested variance, the owner would be prohibited from using the property for a permitted purpose.
  - Draft Sec. 94-367(c) specifies certain minimum information that must be submitted as part of an application, a matter about which the current Article XI is silent. The draft provisions also emphasize the applicant’s responsibility to submit information in support of the application.
  - Draft Sec. 94-367(c)(3) specifies the minimum requirements for the content of a motion on the variance application.
  - Draft Sec. 94-367(c)(3) provides a more comprehensive set of provisions regarding the placement of conditions on an approval of a variance as compared to the current Sec. 94-365(d)(1). These provisions are largely excerpts from the MZEA.
  - Draft Sec. 94-367(d) provides that a variance shall become null and void unless the construction authorized by such variance has been commenced within 180 days after the granting of the variance, and there is a continuous good faith intention to continue construction to completion. The current Article XI is silent on this matter.
  - Draft Sec. 94-367(e) prohibits the resubmittal of a variance application following the initial denial for a minimum period on one year. The current provisions are silent on this matter.



- 7) Draft Sec. 94-368 is an excerpt from the MZEA and is included to highlight the significance of the ZBA's actions and the circuit court's responsibility when reviewing a ZBA decision. The current Article XI does not address this matter nor is it required to do so. The draft provisions apply irrespective of whether the Ordinance includes the provisions because the provisions are dictated by the MZEA.

I am available to meet with you and/or other city officials to review this material and respond to any questions and/or otherwise address revision issues.

## **Article XI**

### **ZONING BOARD of APPEALS (ZBA)**

#### **Sec. 94-361. Purpose.**

The purpose of this Article is to establish a Zoning Board of Appeals (ZBA) pursuant to Public Act 110 of 2006, as amended, including its responsibilities, procedures, and standards of review, to ensure that the objectives of this Ordinance are fully and equitably achieved.

#### **Sec. 94-362. Creation and Membership.**

(a) *Establishment and Appointment of Members:* The ZBA previously created under the City of Mason Zoning Ordinance, Ord. 152 of 2006, as amended, shall continue to function under this Ordinance, and each member shall remain in office until such time that the member is not reappointed or otherwise no longer eligible to serve. The ZBA is retained in accordance with Public Act 110 of 2006 as amended. The ZBA shall consist of seven (7) members, appointed by the City Council by majority vote. One (1) of the members shall be a member of the Planning Commission. One (1) regular or alternate member of a ZBA may be a member of the City Council but shall not serve as the chairperson. The remaining regular members, and any alternate members, shall be selected from the electors of the City residing within. The members selected shall be representative of the population distribution and of the various interests present in the City. An employee or contractor of the City Council may not serve as a member of the ZBA.

(b) *Alternate Members:* The City Council may appoint not more than two (2) alternate members to the ZBA. The alternate members shall be called on a rotating basis to sit as regular members of the ZBA in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings of the ZBA. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member shall serve on a case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the ZBA.

(c) *Terms of Appointment:* ZBA members, including alternate members, shall be appointed for three (3) year terms except in the case of a Planning Commission and/or City Council member serving on the ZBA, whose terms on the ZBA shall be limited to the time they are members of the Planning Commission or City Council. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired.

(d) *Removal from Office / Conflict of Interest:* A member of the ZBA may be removed by the City Council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from deliberations and a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from deliberations and a vote in which the member has a conflict of interest constitutes malfeasance in office.



## **Sec. 94–363. Organization and General Procedures.**

- (a) *Rules of Procedure and Officers:* The ZBA shall adopt rules of procedure for the conduct of its meetings and the implementation of its duties. The ZBA shall annually elect from its members a chairperson, vice-chairperson, and secretary.
- (b) *Meetings and Quorum:* Meetings of the ZBA shall be held at the call of the chairperson and at such other times as the ZBA in its rules of procedure may specify. A majority of the regular membership of the ZBA shall comprise a quorum, being four (4) members, which may include an alternate member(s) sitting in for a regular member(s). The ZBA shall not conduct official business unless a quorum is present. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act, Public Act 267 of 1976, as amended.
- (c) *Oaths and Witnesses:* The chairperson may administer oaths and compel the attendance of witnesses.
- (d) *Minutes:* Minutes of all meetings shall be recorded and made available in accordance with the Michigan Open Meetings Act (MCL 15.261 et seq.) and shall contain the grounds of every determination made by the ZBA including all evidence and data considered, all findings of fact and conclusions drawn, the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the city clerk and shall be available to the public.
- (e) *Records:* The ZBA shall maintain a record of its proceedings which shall be filed in the office of the City Clerk, and shall be a public record according to the Freedom of Information Act. The record of proceedings for the ZBA shall contain the following information as applicable:
- (1) Minutes for all meetings during which an application is considered and a record of testimony heard and evidence or documents presented including any reports, plans, surveys and photos. See Sec. 94-363(d) regarding required content of minutes.
  - (2) The completed application for an appeal, variance, or interpretation.
  - (3) Notice of the public hearing.
  - (4) Letter from the zoning official granting or denying the application or referring it to the zoning board of appeals and all other relevant records related to the case.
  - (5) A copy of relevant sections of the zoning ordinance that may be in question.
  - (6) Briefs, correspondence or other communications made to the zoning board of appeals.
  - (7) A copy of correspondences to the appellant regarding the request.
- (f) *Legal Counsel:* The city attorney shall provide legal counsel to the ZBA when requested. The ZBA may retain other specialized legal counsel as it may deem necessary following approval by the city council.
- (g) *Timely Decisions and Effective Date:* The ZBA shall take action on an application within sixty (60) days of the receipt of a complete application except where the applicant and ZBA mutually agree to an extended time period, such as in the case of the need for additional information from the applicant. A decision of the ZBA shall not become final until the expiration of five days from the date of the decision unless the ZBA shall find the immediate effect of the decision is necessary to adequately preserve public health, safety and/or welfare, including the applicant specifically.
- (h) *Deferment of Decision:* When considering an appeal pursuant to subsection 94-365 or a variance pursuant to subsection 94-367, the ZBA shall defer all proceedings upon the request of the applicant when less than six members of the ZBA are present for consideration of and voting on said appeal or variance. The right of deferment shall be considered waived by the applicant if deferment is not requested immediately upon the opening of the hearing on the matter. When deferment is requested as required, the ZBA shall, at that time, determine the date of a future regular or special meeting for the continuation of the hearing and consideration of the matter. Notice of the rescheduled meeting and hearing made available during the initial meeting at which action is deferred shall constitute notice of the future hearing date with no further notice required except as may be otherwise required by the Open Meetings Act.



## **Sec. 94–364. Jurisdiction.**

The ZBA shall act upon questions as they arise in the administration of this Ordinance and take other actions as specified in this Ordinance. The ZBA shall perform its duties and exercise its powers as provided in Public Act 110 of 2006, as amended. The ZBA shall not have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but shall have the power to act on those matters so specified in this Ordinance including Ordinance interpretations, variances, and the review of an order, requirement, decision, or determination made by an administrative official or body charged with the administration or enforcement of this Ordinance.

## **Sec. 94–365. Appeals for Administrative Reviews**

(a) *Authority:* The ZBA shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, or decision by the Zoning Administrator or by any other body or official in administering or enforcing the provisions of this Ordinance. Within this capacity the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of such body or official. The ZBA shall have all the powers of the body or official that made the decision subject to the appeal. This authority shall not extend to decisions on Special Land Use applications and ordinance amendment petitions.

(b) *Standards:* The ZBA shall reverse or otherwise modify the decision of such body or official from whom the appeal is taken only if it finds that the action or decision appealed meets one (1) or more of the following:

- (1) Was arbitrary or capricious.
- (2) Was based upon an erroneous finding of a material fact.
- (3) Constituted an abuse of discretion.
- (4) Was based upon erroneous interpretation of the Zoning Ordinance or zoning law.
- (5) Did not follow required procedures.

(c) *Procedures:*

(1) *Application Requirements:*

a. *Processing:* A written application for an appeal shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The application shall be submitted within twenty-one (21) days after the date of the meeting during which the meeting minutes addressing the decision being appealed was approved. The Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, the Community Development Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application's deficiency. The Community Development Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for an administrative review shall specify, at a minimum, the name, address, and phone number of the applicant; the decision being appealed; the basis for the appeal; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

(2) *Stay:* An appeal of an administrative decision shall stay all proceedings in furtherance of the action appealed unless the officer or body from whom the appeal is taken certifies to the ZBA, after the notice of appeal is filed, that by reason of facts stated in the certification, a stay would, in the opinion of the officer or body, cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the ZBA or by the circuit court, on application, on satisfactory demonstration of due cause.

(3) *Record of Facts / Transmission of Record:* Upon receipt of an application for administrative review, the Community Development Director shall transmit to the ZBA all papers constituting the record associated with the decision being appealed. In hearing and deciding administrative appeals, the ZBA's



review shall be based upon the record of the administrative decision being appealed.

a. The ZBA shall not consider new information which had not been presented to the administrative official or body that made the decision subject to the appeal except where the ZBA first remands the matter back to the body that made the original administrative decision with an order to consider the new information and affirm or modify its original decision.

(4) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney. See subsection (5) regarding participation at the hearing by a member of the ZBA who is also a member of the Planning Commission or the City Council.

(5) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to reverse or otherwise modify the action subject to the appeal. A member of the ZBA who is also a member of the Planning Commission or the City Council shall not participate in a public hearing, deliberation, or vote, on the same matter that the member voted on as a member of the Planning Commission or the City Council. However, the member may consider and vote on other unrelated matters involving the same property.

#### **Sec. 94-366. Interpretations**

(a) *Authority:* The ZBA shall hear and decide upon requests to interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning, including the determination of the precise location of the boundary lines between zoning districts, application of off-street parking requirements for a specific use, and whether a particular use is authorized in a particular district.

(b) *Standards:* In deciding on an interpretation, the ZBA shall be guided by the following:

(1) All interpretations shall take into account any relevant interpretations previously issued by the ZBA and any relevant past ordinance administration practices.

(2) Prior to deciding a request for an interpretation, the ZBA may confer with City staff and consultants to gain insight into the provision subject to interpretation and any consequences that may result from differing decisions.

(3) An interpretation shall be consistent with the intent and purpose of the Ordinance and the specific Article in which the language in question is contained.

(4) A text interpretation shall apply to the specific provision for which the interpretation is requested, and shall not extend to matters beyond such specific provision.

(5) A zoning district boundary interpretation shall be guided by the following:

a. Boundaries indicated as approximately following roads or highway shall be construed as following the center lines of said roads or highways.

b. Boundaries indicated as approximately following section lines, quarter section lines, quarter-quarter section lines, or lot lines shall be construed as following such lines.

c. Boundaries indicated as approximately following City boundary lines shall be construed as following such boundary lines.

d. Boundaries indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance there from as indicated on the Official Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Official Zoning Map.

e. Boundaries following the shoreline of a stream, lake, or other body of water shall be construed to follow such shorelines. In the event of change in the shoreline, the boundary shall be construed as



moving with the actual shoreline. Boundaries indicated as approximately following the centerlines of streams, canals, or other water courses shall be construed to follow such centerlines.

f. Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two (2) districts, the subject land area shall be construed to be located in the “more restrictive district” and the regulations of such district shall govern. The “more restrictive district” shall be the district that places greater restrictions on development based on such factors as the scope of authorized uses, setbacks, lot coverage, and related development standards.

(c) Procedures:

(1) *Application Requirements:*

a. *Processing:* A written application for an interpretation shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The Community Development Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application’s deficiency. The Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for an interpretation shall specify, at a minimum, the name, address, and phone number of the applicant; the standard, regulation or provision requiring an interpretation; a plot plan, site plan, or similar drawing illustrating the application or relevance of such interpretation; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

(2) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney.

(3) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA, and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to make an interpretation. A decision providing an interpretation may be accompanied by a recommendation to the Planning Commission for consideration of an amendment of the Ordinance to address what the ZBA may find is a problematic aspect of the Ordinance.

**Sec. 94–367. Variances**

(a) *Authority:* The ZBA shall have the power to authorize specific variances from specific site development standards of this Ordinance, such as lot area and width requirements, building height and setback requirements, yard width and depth requirements, lot depth to width ratio requirements, off-street parking and loading space requirements, and sign requirements. The ZBA shall not have the power to authorize variances pertaining to permitted uses of land in a District.

(b) *Standards:* The ZBA shall have the power to authorize variances from specific site development requirements provided that all of the standards listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion.

(1) That there are practical difficulties that prevent carrying out the strict letter of this Ordinance due to unique circumstances specific to the property such as its narrowness, shallowness, shape, or topography, that do not generally apply to other property or uses in the same district, and shall not be recurrent in nature. These difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular property.

(2) That the practical difficulty or special circumstance is not a result of the actions of the applicant.



- (3) That the variance will relate only to property described in the variance application.
- (4) That the variance will be in harmony with the purpose of this Ordinance and the intent of the District, including the protection of public health, safety and welfare in general and vehicular and pedestrian circulation specifically.
- (5) That the variance will not cause a substantial adverse effect upon surrounding property including property values and the development, use and enjoyment of property in the neighborhood or District.
- (6) That strict compliance with the site development requirement in question would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
- (7) That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

(c) *Procedures*

(1) *Application Requirements:*

a. *Processing:* A written application for a variance shall be filed with the Community Development Director on a form established for such purpose, along with a fee as established by resolution of the city council. The Community Development Director shall determine, pursuant to this Article, if the application is sufficiently complete including the required data and fee. If the application is determined to be incomplete, the Director shall return the application and fee to the applicant within seven days of receipt of the application, along with a written explanation of the application's deficiency. The Director shall forward complete applications to the ZBA.

b. *Content and Copies:* Application for a variance shall specify, at a minimum, the name, address, and phone number of the applicant; the legal description for the lot subject to the variance; a specification of the Ordinance's standards for which a variance is sought and the specific variance being requested; and a plot plan, site plan, elevation drawing or similar drawing prepared by a registered land surveyor or registered engineer that clearly illustrates property lines, property line bearings and dimensions, existing buildings and structures; the proposed improvements to the lot for which the variance is requested; and any additional information as may be required on the application form. A minimum of ten copies of the application shall be submitted unless the Community Development Director approves a lesser number.

c. *Applicant's Responsibility:* It shall be the responsibility of the applicant to provide any information the applicant may find beneficial in demonstrating conformance with the standards of subsection 94-367(b).

(2) *Hearing:* Upon receipt of an application, the chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with Sec. 94-101. Upon the hearing, any party may appear in person or by agent or attorney.

(3) *Decision:* The ZBA shall render a decision in the form of a motion containing a full record of the findings and determination of the ZBA, and basis for such determination, and shall be made part of the meeting minutes. The concurring vote of a majority of the members of the ZBA shall be necessary to grant a variance.

a. *Conditions:* In granting a variance, the ZBA may prescribe appropriate conditions the conditions may be intended to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. All conditions shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the ZBA and the applicant. The ZBA shall maintain a record of conditions that are changed. Conditions imposed shall meet all of the following requirements:



1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

b. *Performance Guarantee:* The ZBA may require that a performance guarantee be furnished as a condition of approval in granting a variance, in accordance with section 94-100.

(d) *Time Restriction/Voidance:* A variance shall become null and void unless the construction authorized by such variance has been commenced within one-hundred eighty (180) days after the granting of the variance, and there is a continuous good faith intention to continue construction to completion. The ZBA may extend this time limit upon its finding that no substantial changes have occurred to ordinance regulations, abutting properties, or other conditions that undermine the basis for the original issuance of the variance.

(e) *Resubmittal:* No application for a variance that has been acted upon shall be resubmitted for a period of one (1) year from the date of denial, except on the grounds of newly-discovered evidence or proof of changed conditions having bearing on the basis for the original denial, in the discretion of the ZBA.

#### **Section 94-368 Review by Circuit Court**

(a) *Circuit Court Review:* The decision of the ZBA shall be final. However, any party aggrieved by an order, determination or decision of the ZBA may obtain a review thereof in the Circuit Court provided that application is made to the Court within thirty (30) days after the ZBA issues its decision in writing signed by the chairperson, or within twenty-one (21) days after the ZBA approves the minutes of its decision. The Circuit Court shall review the record and decision of the ZBA to insure that the decision:

- (1) Complies with the constitution and laws of the State.
- (2) Is based upon proper procedure.
- (3) Is supported by competent, material, and substantial evidence on the record.
- (4) Represents the reasonable exercise of discretion granted by law to the ZBA.