

City of East Bethel
Planning Commission Agenda
7:00 PM
Tuesday, September 23, 2014



Agenda

	<u>Item</u>
7:00 PM	1.0 Call to Order
7:02 PM	2.0 Adopt Agenda
7:03 PM	3.0 Variance interpretation requests – 553 Lakeshore Dr NE; PID # 363323210266; Zoning R1 – Single Family Residential
7:30 PM	4.0 Discussion of MPCA landfill and potential zoning changes
7:40 PM	5.0 Approval of Meeting Minutes - August 26, 2014 – Regular Meeting
7:45 PM	6.0 Other Business/Council Reports
8:00 PM	7.0 Adjournment



City of East Bethel Planning Commission Agenda Information

Date:

September 23, 2014

Agenda Item Number:

3.0

Agenda Item:

Variance Interpretation Request-553 Lakeshore Drive

Requested Action:

The Planning Commission is requested to examine the petition of the Owners of 553 Lakeshore Drive to determine if their issue has merit for an application for a Variance Hearing.

Background Information:

Heidi Moegerle and Gary Otremba, hereinafter referenced as “Owner”, purchased 553 Lakeshore Drive, PIN 36-33-23-21-0266 on February 11, 2013. This property was zoned R-1at the time of the purchase and still retains that zoning designation. This property is in a Shoreland Overlay District and is 7,126 square feet in size.

At the time of purchase, the property was a non-conforming lot of record and the structure was non-conforming.

The purchasers of the property applied for and received a demolition permit on February 21, 2013. The demolition permit indicated that the work to be completed would be the removal of the entire portion of the structure used for habitation with only the garage portion of the structure to remain. Prior to the issuance of the demolition permit, the Owners met with Colleen Winter to discuss the use of this property. Ms. Winter provided a letter to the owners (Attachment 1) that addressed the issue of lot combination and the use of 553 Lakeshore for storage use. There were no objections filed by the Owners relative to this letter.

Periods of demolition of the inside of the structure occurred between February 21, 2013 and April 2014. The Owners requested an extension and modification of the demolition permit on April 21, 2014. This request was to limit the permit to only the removal of the 1940’s cabin section of the structure. This request was granted based on the Owner’s previous statements concerning the use of the property and on a pending amendment to City Code that would permit an increase in accessory structure size on lots less than 0.99 acres to 960 square feet. The removal of only the “cabin section” would meet this requirement and leave the remaining structure at 960 SF or less and was approved.

The City requested a letter of intent from the owners as to the demolition timetable at the time this permit was extended. The letter of intent submitted by the Owner (See Attachment 2) provided notice, for the first time, to the City that the owner intended to utilize the remaining structure in a manner that was inconsistent with previous statements as to the described use of

the property. The Owner at a City Council Meeting on November 12, 2012 and Local Board of Appeals and Equalization meetings on April 17, 2013 and April 24, 2014, an e-mail to the City Assessor and an e-mail from the County Assessor's Office provide statements that the structure at 553 Lakeshore is uninhabitable and can only be used for "green space" and storage. On and after April 30, 2014, the Owner's reversed their statement of intended use of the property as an accessory structure to that of a principle structure and served notice that compliance with City Code that mandates the combination of contiguous non-conforming lots would not occur.

The demolition on the structure that occurred between February 21, 2013 and April 21, 2014 was internal and consisted of the removal of and not limited to the kitchen, bathroom, plumbing and wall coverings. The Minnesota State Building Code, R306, requires the presence of working plumbing fixtures and a compliant sewage disposal system for a structure to be habitable. The septic system for this property was deemed non-compliant on October 13, 2011.

In the case where these facilities do not or no longer functionally exist, the facility is deemed uninhabitable. As it is no longer habitable based on this definition and prior statements to this affect made by the owners, it loses its status as a principal structure and any "grandfather protection, it may have had, from requirements and regulations of City Code. .

This interpretation was presented to the Owners in early May 2014 and reviewed personally with the owners at a meeting on May 20, 2014. At the meeting the City presented their interpretation of the land use issues and actions necessary for compliance with City Code. The Owners were notified of the City's position on this matter on June 11, 2014 (Attachment 3)

Subsequent correspondence and meetings on this matter continued through August 20, 2014 to attempt to resolve the issues in question. On August 20, 2014, the City sent an update (Attachment 4) to the June 11th memo that stated the City's final position and an option for appeal.

Attachments

City Attachments

- Location Map
- Site Plan
- Attachment 1---February 18, 2013 Letter
- Attachment 2---Letter of Intent
- Attachment 3---Memo, 553 Lakeshore Drive
- Attachment 4---Final Memo, 553 Lakeshore Drive
- Attachment 4 A---Lot Merger, Legal Opinion

Owner Attachments

- Attachment 5---Memo to Commission Members
- Attachment 6---Relevant Law
- Attachment 7---Structural Requirements
- Attachment 8---Timeline *

* The owner submitted a timeline of events and comments for 553 Lakeshore Drive. The contents of this attachment are the opinion of the owner and are in no way supported or accepted by the City.

Fiscal Impact:

To be determined

Recommendation(s):

It is the City's position that the change in use, by creation of the owner, from a non-conforming residential structure that existed prior to the demolition has resulted in following:

- 553 Lakeshore is currently occupied by an uninhabitable accessory structure with no principle structure on the lot; and
- 553 Lakeshore has, therefore, lost the “grandfather” protection afforded by its prior non-conforming use, structure and lot of record status and is now subject to all the requirements and regulations of the City Code.

It is the opinion of the City Attorney that even absent the facts as stated above, that the parcel is non-conforming and must be merged due to the adjacent ownership and lot size (Attachment 4.A). In addition, the DNR has provided an e-mail to the Owner that outlines the requirements for lot merger and 553 Lakeshore satisfies none of the requirements for exemption.

Staff is requesting the owner’s requests for this matter be denied on the basis that:

- The change in use created by owner removes the “grandfather” protection of the non-conformities and subjects the property to all other requirements of City Code;
- There are no “hardships” unique to the property and that any “hardships” that may be presented for discussion are by creation of the owner; and
- The mere non-conformity of the parcel related to the conditions of adjacent ownership and lot size require the merging of the two properties;
- Approval of the variance would be inconsistent with the Zoning Ordinance’s requirements for Principal/Accessory Structures and therefore inconsistent with the Comprehensive Plan; and
- The proposed use of the property as continuation of a residential use that does meet setback, impervious surface, intersection visibility, septic system, lot size and square footage building footprint requirements would be an unreasonable action on the part of the City.

Planning Commission Action

Motion by:_____

Second by:_____

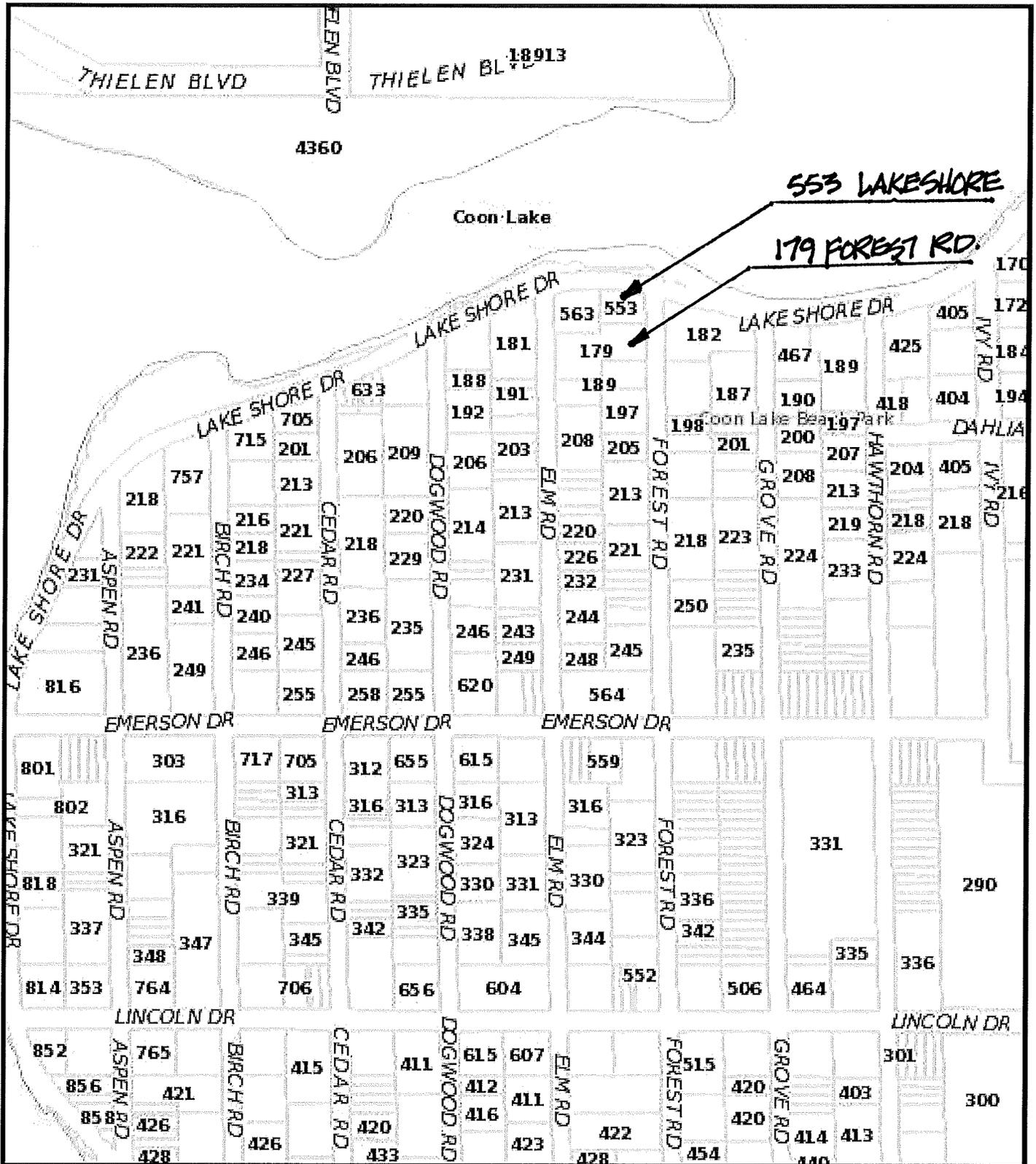
Vote Yes:_____

Vote No:_____

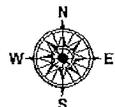
No Action Required:_____

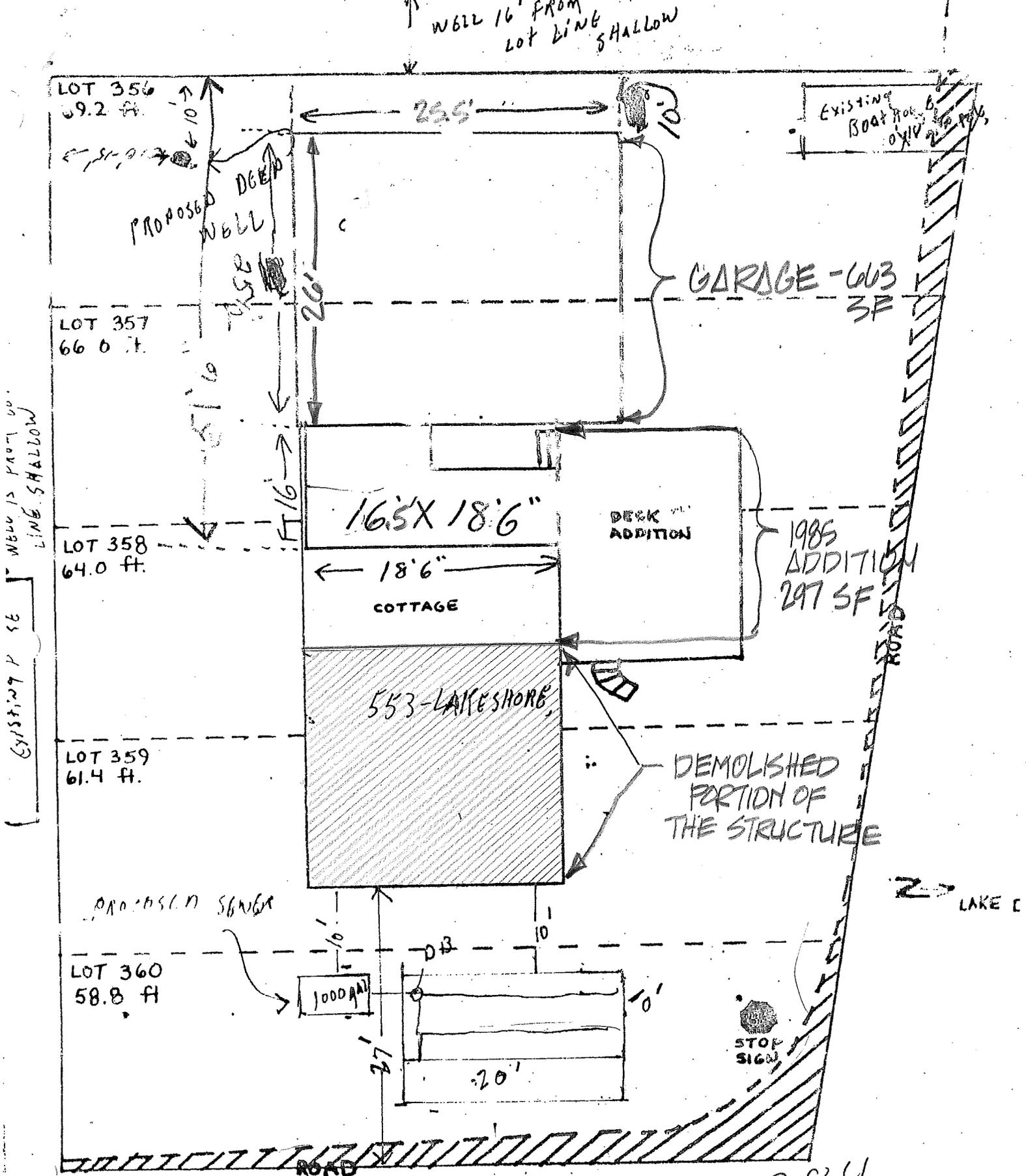


LOCATION Map



Disclaimer: Maps and documents made available to the public by the City of East Bethel are not legally recorded maps or surveys and are not intended to be used as such. The maps and documents are created as part of the Geographic Information System (GIS) that compiles records, information, and data from various city, county, state and federal resources.
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SCALE
 1" = 9'-0"

PROPERTY COVERED BY THE EXISTING ROAD.

Diagram 1984

553 LAKESHORE DR.



Date: February 18, 2013

To: Heidi Moegerle

From: Colleen Winter, Community Development Director

Re: Property located at 553 Lakeshore Drive NE, East Bethel, MN

You stopped in to get a permit to demolish the house that is located on the property as noted above. In our conversation we also discussed the following:

- Your interest in demolishing the home, but leaving that portion which is a garage, and is currently part of the home structure
- Your intent to cap the well and abandon the septic system
- Your interest in removal of an existing retaining wall and regrading the property to address runoff in a way that is environmentally friendly
- Your interest in making improvements to an existing boathouse to make it safe for storage purposes.

As we discussed, this property currently has an existing agreement that was recorded at Anoka County on Nov. 21, 1986 (see attached). This agreement is null and void if the current septic disposal system is non-compliant, therefore, both removal of the retaining wall, well and septic system is allowed. Please note that as part of this file, there was another agreement regarding the sharing of a deep well with what appears to be your existing property. Just please give me a note in writing stating that you do not share a well.

A grading permit is required for removal of the retaining wall and the landscaping that will be necessary to mitigate runoff onto the city street. I have attached a grading permit for you to fill out, along with the applicable sections of the city code. If you are planning on grading more than 1,000 cubic yards of dirt, you will be required to go through an Interim Use Permit process.

The boathouse can be improved so that it is a safe structure, however, it cannot be made any larger. A separate permit will need to be obtained for improvements to the boathouse (attached).

Please contact Nick Schmitz, our Building Official, at 763-367-7860 and speak to him to obtain specific information about what you will need to do to cap the well and abandon the septic system.

Heidi Moegerle
Page Two
February 20, 2013

Another question is the demolition of the existing house, but leaving the garage portion of it. Our ordinance does not permit the *construction* of an Accessory Structure on a lot without a Principal Structure. Technically this is not construction, but a legal nonconforming use in the district. You would not be able to alter the garage or rebuild it unless you adjoin it to your existing property at 179 Forest Road NE, and then it would need to meet the requirements for impervious surface runoff. According to our Shoreland Management Ordinance, impervious surface coverage of lots shall not exceed 25 percent of the lot area defined as the part or percent of the lot occupied by buildings, including accessory buildings, and other impervious surface. This definition includes, but is not limited to, driveways, patios, and structures.

Accessory structures in the Shoreland Management District shall meet the normal structure setbacks and comply with the following provisions:

- (1) The structure or facility must be treated or screened so as to be minimally visible from public waters and adjacent shorelands. Treatment techniques include, but are not limited to, use of vegetation, topography, increased setbacks or color, assuming summer leaf-on conditions;
- (2) The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities.

If you have any questions, please feel free to call me. Have a great rest of the day.

TO: Jack Davis, Nick Schmitz and Colleen Winter

FROM: Gary Otremba and Heidi Moegerle

DATE: April 30, 2014

RE: Letter of Intent, 553 Lakeshore Drive

LONG TERM GOALS:

1. Use the below grade "boathouse" to store kayaks and related equipment.
2. We understand that the "boathouse" is an accessory structure, which requires a "principle" structure. Therefore, we intend to maintain the large building as a "principle" structure and use it as storage and work space for our hobbies.
3. We intend to naturalize the green space primarily with wildflowers, shrubs and small trees.
4. For the foreseeable future, we will NOT add the 553 Lakeshore property to the 179 Forest Road property. We will take all action legally necessary to prevent that from occurring.

IDEALS (which currently seem to be impossible under current EG ordinances)

1. Reduce the footprint of the principle structure (take off 1940 section and increase permeable area) and replace the siding (beautify/update exterior.)
2. Remove the below grade driveway.
3. Remove the retaining wall and re-grade the area (fill in the driveway area.)
4. Corner of Lakeshore/Forest used as rain garden to filter run-off from Forest Road (this might encroach on the City easement.)

The ability to achieve our ideals depend on the answers to the following questions:

1. What effect, if any, does reducing the footprint of the principle structure (increasing permeable surface area) have on our ability to retain the boathouse?
2. What effect, if any, does the contract between Roger Schorr and the City have on 553 Lakeshore today? (Incidentally, this document was not identified in the line of title.)
3. What interest, if any, does the City have in removing the encroaching finger system from the City easement?
4. What interest, if any, does the City have in reducing the height of the Lakeshore/Forest Road intersection to comply with the no more than a two foot height above the road for 30 feet along each road. (City Ordinance_____.)

June 11, 2014

To: Heidi Moegerle and Gary Otremba

From: Jack Davis, City Administrator

Subject: 553 Lakeshore Drive.

The Minnesota State Building Code requires the presence of working plumbing fixtures and a compliant sewage disposal system for a structure to be habitable. In the case where these facilities do not or no longer exist, the facility is uninhabitable and loses its status as a principal structure and any "grandfather" protection, it may have had, from requirements of non-conforming uses.

Additionally, as the structure appears to have been abandoned or unoccupied for at least one year, it also appears to have lost its "grandfather" status per Minn. Stat 462.357 Subd 1e(1) relative to the application of the Shoreland Overlay and other applicable Zoning Code sections.

As to the current residential structure upon which demolition is ongoing, the same will not be allowed to be utilized as an occupied space for human habitation given the lack of a compliant septic system and the plumbing issues as noted above. At a minimum the existing cabin section must be removed and demolished. Any remaining uses of the site will have to be compliant with the City Zoning Code.

Based our discussion of May 20, 2014 and per the easement agreement for the septic system, the retaining wall and any material on City right of way that was used as fill, must be removed at the owner's expense. The following, along with all necessary permits, will be required to meet City Code in regards to 553 Lakeshore Drive:

- All demolition and grading work must be completed in 6 months from the issuance of an extension of a demolition permit.
- the garage and the 1985 addition to the cabin can remain as an accessory structure provided that the square footage of these structures does not exceed 960 square feet , the remaining portions of the building are structurally sound and meet City/State Building Codes and compliance is maintained with all other sections of the City Code
- The "boathouse" can remain as an existing shed if it is less than 120 square feet
- The lots comprising, 553 Lakeshore Drive and 179 Forest Road, will have to be combined as prescribed in Appendix A, Zoning, Section 57, 14 A. 3) and be required as a condition for the issuance of any building/demolition permits for these activities
- The retaining wall and fill on City right of way will have to be removed at the owners expense and all grading activities will have to comply with the specifications in Appendix A, Zoning- Shoreland Overlay District, Section 57. The septic system must be removed per City Code/MPCA requirements



August 20, 2014

To: Heidi Moegerle and Gary Otremba

From: Jack Davis, City Administrator

Subject: 553 Lakeshore Drive.

Update of Memorandum dated June 11, 2014

The Minnesota State Building Code, R306, requires the presence of working plumbing fixtures and a compliant sewage disposal system for a structure to be habitable. In the case where these facilities do not or no longer exist, the facility is deemed uninhabitable. As it is no longer habitable, it loses its status as a principal structure and any "grandfather protection, it may have had, from requirements of non-conforming uses of City Code.

Additionally, as the structure has been abandoned or unoccupied for at least one year, it has also lost its "grandfather" status per Minn. Stat 462.357 Subd 1e(1) relative to the application of the Shoreland Overlay and other applicable Zoning Code sections.

As to the current residential structure upon which demolition is ongoing, the same will not be allowed to be utilized as an occupied space for human habitation given the lack of a compliant septic system and the plumbing issues as noted above. At a minimum the existing cabin section must be removed and demolished. Any remaining uses of the site will have to be compliant with the City Zoning Code.

Based our meeting of May 20, 2014 and per the easement agreement for the septic system, the retaining wall, that is a component of the septic system and as is regulated by Appendix A, Section 15 and Section 62-72 of the City Code, must be removed and any material in this area that is necessary to comply with these portions of the Code and the Shoreland Overlay requirements of the City Code must be moved at the owner's expense. The following, along with all necessary permits, will be required to meet City Code in regards to 553 Lakeshore Drive:

- All demolition must be completed in 6 months from the issuance of an extension of a demolition permit. The extended demolition permit was issued on April 21, 2014. As a condition of the demolition permit, documentation for the abandonment of the septic system was required by May 21, 2014. Please submit the required documentation by September 2, 2014 to Nick Schmitz.
- The garage and a part of the 1985 addition to the cabin can remain as an accessory structure provided that the square footage of these structures does not exceed 960 square feet, the remaining portions of the building are structurally sound and meet City/State Building Codes and compliance is maintained with all other sections of the City Code, including any lot merger that may be required.

- The “boathouse” can remain as an existing shed if it is less than 120 square feet, proves to be structurally sound, is the only shed on the property and is equipped with doors that meet Building Code requirements.
- The lots comprising, 553 Lakeshore Drive and 179 Forest Road, will have to be combined as prescribed in Appendix A, Zoning, Section 57, 14 A. 3).
- The retaining wall and fill that is a component of the septic system on the property will have to be removed or moved and all grading activities will have to comply with the specifications in Appendix A, Zoning- Shoreland Overlay District, Section 57 and as referenced in paragraph 4 of this Memorandum.
- The septic system must be removed per City Code/MPCA requirements. A grading permit will be required for the movement of more than 10 cubic yards of material as required by Section 57, E, Topographic Alterations/Grading and Filling and as indicated by e-mail communication on July 23, 2014 and our meeting on July on July 28, 2014.

Staff has made reasonable efforts to resolve the Code issues regarding this property. As this has been a matter that has been on-going for over a year, please complete all the items as listed by October 21, 2014.

Should you disagree with interpretation and application of City Code as it applies to this situation, I would recommend that you apply for a variance and present your request to the Planning Commission.



ECKBERG
LAMMERS
ATTORNEYS AT LAW

www.eckbergammers.com

Writer's Direct Dial:
(651) 351-2118

Writer's E-mail:
mvierling@eckbergammers.com

Reply to Stillwater

September 2, 2014

Jack Davis
City Administrator
2241 - 221st Avenue NE
East Bethel, MN 55011

Re: *City of East Bethel - 553 Lakeshore Drive & 179 Forest Road E.*
Heidi Moegerle and Gary Otremba
Our File No.: 23746-25353

Dear Mr. Davis,

Thank you for forwarding me correspondence from Heidi Moegerle dated August 27, 2014. Since this is part of a series of ongoing exchanges that have occurred between Ms. Moegerle and the city staff and since the correspondence requests a confirmation of the city's position I am taking this opportunity to outline our review of the issue relative to the required combination of the tax parcels involved.

Initially and for reference I appended to this correspondence a copy of your correspondence directed to Ms. Moegerle and Gary Otremba dated August 20, 2014. Within that correspondence you outline the statutory, ordinance and building code violations relative to the properties in issue. You further identify six bullet points of required performance items for the owners to perform to bring the properties into compliance. As to your interpretation of the building code, statutory and ordinance impacts we concur based on the facts displayed.

As to the issue raised by the August 27 2014 correspondence one of those items provides:

“the lots comprising 553 Lakeshore Drive and 179 Forest Road will have to be combined as prescribed in Appendix A, Zoning, Section 57, 14 A.3”

It is to this point that Ms. Moegerle's August 27th correspondence is arguably directed. The ordinance section referenced deals with nonconforming parcels and the effect of their adjoining proximity to another parcel which is owned in common. In this particular instance City Staff has taken the position that Ms. Moegerle and Mr. Otremba are the effective owners of both parcels in issue thus

Stillwater Office
1809 Northwestern Avenue
Stillwater, MN 55082
Phone: 651-439-2878
Fax: 651-439-2923

Hudson Office
430 Second Street
Hudson, WI 54016
Phone: 715-386-3733
Fax: 715-386-6456

requiring that both parcels be considered as joined for sale and development purposes. Ms. Moegerle and Mr. Otremba however take issue with that position by claiming the following:

1. The property at 179 Forest Blvd. serves as their homestead parcel and is contained within Anoka County Tax ID number 36.33.23.21.0316. It is comprised of nine lots acquired from two transactions. Lots 399- 402 were acquired by a quit claim deed in which Gary Otremba was the grantor and Heidi L Moegerle, the Grantee. The second transaction was on May 19, 2008 where both Moegerle and Otremba as joint tenants acquired ownership of lots 362-366. Based upon the manner in which these lots were acquired Ms. Moegerle claims there is no common ownership relative to both tax parcels.

Of interest, we note that on January 24, 2014 Otremba and Moegerle jointly executed a modification of mortgage in favor of Frandsen Bank and Trust where they placed all of 9 lots in issue under one mortgage.

More importantly, on July 24, 2008 Ms. Moegerle executed a signed request to Anoka County to join all of the effective lots into a single tax parcel ID number. The effect of that request combined all of the lots and made them all collectively eligible for homestead status but also precludes any attempt to sell or divide them in less than the entire grouping of lots unless subdivision approval is first obtained from the local government unit. In essence, by operation of law, they have been joined for tax classification, development and sale purposes.

Finally, we are advised that the Anoka County office of taxation/property records has linked the two parcels in issue as a result of the non-conformity and ownership issues.

1. Ms. Moegerle claims that any unity or common ownership of title between the two properties were severed when she and Mr. Otremba conveyed the property at 553 Lakeshore Dr. from themselves back to themselves and Ms. K. Darlene Moegerle on May 29, 2014.

To begin with, the original acquisition of the property at 553 Lakeshore was February 13, 2014. In that transaction the Buyers (Grantees) were Ms. Moegerle and Mr. Otremba. The fact of the merger of all of their parcels at 179 Forest Blvd was already an accomplished fact as of July 24, 2008. Under the ordinance at the moment of their acquisition of the property at 553 Lakeshore Dr. the provisions of the Ordinance immediately took effect. No subsequent transaction to add new owners or divest any portion of their ownership would be legally effective to defeat the ordinance's application.

The Ordinance in effect for all of 2013 and 2014 provides:

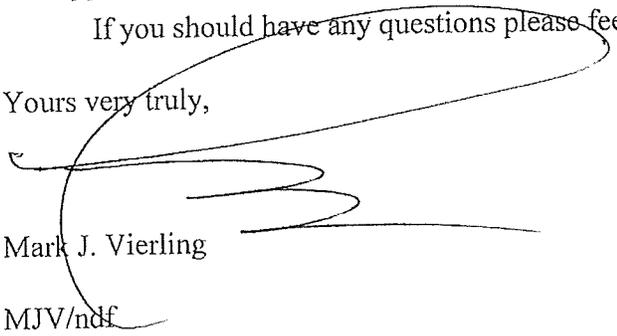
“If in the case of two or more contiguous lots or parcels of land under single ownership, any individual lot or parcel does not meet the minimum requirements of this ordinance, **such individual lot or parcel shall not be considered as a separate parcel of land for purposes of sale or development**, but must be combined with adjacent lots so the combination of lots will equal one or more parcels of land meeting the full requirements of this section or the provisions of the zoning district in which the property is located, whichever is more restrictive. In no circumstances will there be approval of any proposal for multiple lot developments based upon lots of record that do not conform to the provisions of the existing zoning district.”

The property at 553 Lakeshore Dr. is now, and was at the time, a non-conforming lot/parcel of record. Sale or transfer of same, apart from the property at 179 Forest Blvd., was prohibited by the Ordinance. Moreover, Ms. Moegerle was actively engaged with the City Staff at that time over issues of use and development of that property as well as issue of tax classification and assessed valuation of the property and had stated in an April 30, 2014 communication to the City Staff that she and Mr. Otremba refused to combine the parcels and thus were well aware of the issue.

Aside from the ineffective nature of the attempted transfer to add an additional owner by the May 29th 2014 conveyance, the action itself has the appearance of being initiated as an effort to circumvent the application of the ordinance.

If you should have any questions please feel free to contact me.

Yours very truly,



Mark J. Vierling

MJV/ndf

Rec ID 2130004

Doc # 59693



Stored Doc. No. 59693

DIVISION / COMBINATION REQUEST FORM

Date: 7-24-08

Division Municipality East Bethel

Combination For taxes payable in 2009

Fee Owner: Heidi L. Moegerle + Gary OTremba

Contract Purchaser: _____

Taxpayer name: Heidi L. Moegerle + Gary OTremba
Address: 179 Forest Rd NE
East Bethel, MN 55092

Pin/s	Legal Description
36-33-23-21-0304	Lots 362-thru-365 / Coon Lake Beach
36-33-23-21-0100	Lot 366 / Coon Lake Beach
36-33-23-21-0314	Lot 399-thru-402 / Coon Lake Beach

Note: If this is a request for a division of a tax parcel, the legal descriptions of the new parcels must be attached and stamped with city approval.

Daytime Phone: 651-325-5884

X Heidi L. Moegerle
 Fee Owner
 Contract Purchaser

Note: If the request is by a contract Purchaser, the applicant must already appear as the contract purchaser in the county tax records or a copy of the contract for deed must be attached.

OFFICE USE ONLY:

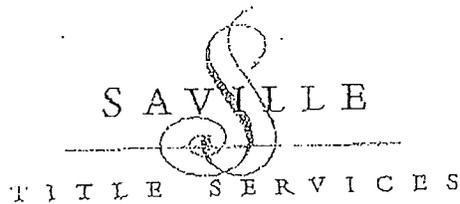
Checked for delinquent taxes by: RMH

Date: 7-24-08

A

8/6/08

OC



ATTORNEY'S OPINION OF TITLE

January 16, 2014

File Number: 4762

Client: Frandsen Bank & Trust
2001 West Broadway
Forest Lake, MN 55025

Purpose: This Attorney's Opinion of Title is not a commitment for Title Insurance, or any insurance, and the liability of Saville Title Services, Inc., is limited to a refund of the amount paid for this Attorney's Opinion of Title. It is merely informational to show Frandsen Bank & Trust the identity of the current fee owner(s), and what liens, if any, are currently unsatisfied of record against the subject property described herein. Based upon my examination of the documents on file, and of record, with the County Recorder of Anoka County, and other sources, for the below described real property, my Attorney's Opinion of Title is as follows:

Fee owners: Gary C. Otremba and Heidi L. Moegerle, husband and wife (as further delineated in the Notes below)

NOTES:

1. On January 12, 1998, Gary C. Otremba, a single person, purchased Lots 399, 400, 401, and 402, Block 6 "Coon Lake Beach", Anoka County, Minnesota from Eliguis Otremba, a single person. Then on July 18, 2003, Gary C. Otremba, a married man, conveyed his fee interest to Heidi L. Moegerle, by Quit Claim Deed. Now, Gary C. Otremba only has a marital interest in these lots and Heidi L. Moegerle has the fee interest. It is unclear from the record if this was the intent of the parties. The Quit Claim Deed was drafted by Heidi L. Moegerle. If the intent was to add her to the fee, in addition to Gary C. Otremba's fee interest, the Quit Claim Deed was drafted incorrectly and did not accomplish that purpose.
2. As to the Lots 362, 363, 364, 365, and 366, Block 6, Coon Lake Beach, Anoka County, Minnesota, both Heidi L. Moegerle and Gary Otremba have a joint tenancy fee interest in these lots, having received them in a Limited Warranty Deed from JPMorgan Chase Bank, N.A., dated May 19, 2008 and recorded May 30, 2008, as Recorded Document Number: 2000927.003.
3. All of Lots 362, 363, 364, 365, and 366, Block 6, Coon Lake Beach, Anoka County, Minnesota, AND Lots 399, 400, 401, and 402, Block 6 "Coon Lake Beach", Anoka County, Minnesota, have the same Parcel Identification Number (PIN).

Property address: 179 Forest Road Northeast, East Bethel, MN 55092
 Effective date: January 9, 2014 at 08:00 AM
 Legal Description: Lots 362, 363, 364, 365, and 366, Block 6, Coon Lake Beach, Anoka County, Minnesota, and Lots 399, 400, 401, and 402, Block 6 "Coon Lake Beach", Anoka County, Minnesota

Abstract property

Open Liens: Mortgage
 Dated: May 9, 2008
 Recorded: May 15, 2008
 Document No.: 2000663.006
 From: Gary C. Otremba and Heidi L. Moegerle, husband and wife as joint tenants
 To: Frandsen Bank & Trust
 Principal Amount of: \$150,000.00
 Legal Description: Lots 399, 400, 401, and 402, Block 6 "Coon Lake Beach", Anoka County, Minnesota

NOTE: Above-referenced mortgage covers less property than this report, or the present PIN.

Real Estate Taxes: Real Estate taxes due and payable for the year 2013 in the amount of \$2,991.75 are paid in full.

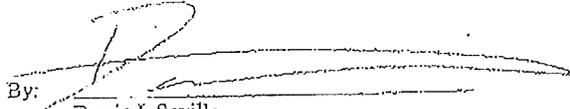
Parcel ID No: 36-33-23-21-0316 (covers all nine lots, inclusive)

Homestead Status: Property is: Homestead

Additional Information and Disclaimers:

- A special assessment search was not requested by Frandsen Bank & Trust; therefore no statement is made herein as to whether or not the property is subject to any levied or pending special assessments.
- Further, no request was made for a plat drawing; therefore no statement is made herein as to whether or not any structures on the subject property encroach onto neighboring lot(s), or whether or not any structures on neighboring lot(s) encroach onto the subject property.
- No statement is made herein as to whether or not the subject property currently complies with the existing zoning regulations or building restrictions.
- There are no Mechanic's Liens of record but Frandsen Bank & Trust should satisfy itself as to whether any improvements or materials have been delivered to the subject property within the past 120 days which might give rise to a Mechanic's Lien right of others.

Reliance Upon: This Attorney's Opinion of Title is prepared for the exclusive use and purposes stated herein of Frandsen Bank & Trust. No representations, express or implied, are made to any other individual or party, without regard to whether or not the expense of this Attorney's Opinion of Title is passed along to the fee owner of record, any other individual or party.

By: 

Dennis J. Saville
Attorney at Law / President
Saville Title Services, Inc.
Attorney License No.: 0222161

Handwritten signature

[this space for recording information]

Property Tax ID#: 36 33 23 21 0266

LIMITED WARRANTY DEED **AO**

State Deed Tax Due: \$ 19.80

MADE this 11 day of FEB, 2013, by and between Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., FKA Norwest Bank, Minnesota, N.A., solely as trustee for Structured Asset Mortgage Investments II, Inc. Bear Stearns Mortgage Funding Trust 2007-AR4, Mortgage Pass-Through Certificates, Series 2007-AR4 who aquired title as Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR4 Mortgage Pass-Through Certificates, Series 2007-AR4, whose post office address is 7301 Baymeadows Way, Jacksonville, FL 32256, hereinafter called Grantor, and Heidi Moegerle and Gary Otremba, a married couple, as joint tenants whose post office address is 179 Forest Road NE, East Bethel, MN 55092, hereinafter called Grantee:

WITNESSETH, That said Grantor, for and in consideration of the sum of Six Thousand and 00/100 dollars(\$ 6,000.00), and other good and valuable considerations in hand paid by Grantee, the receipt whereof is hereby acknowledged, hereby conveys and quitclaims to Grantee real property located in Anoka County, Minnesota as further described in Exhibit "A" attached hereto and made part hereof together with all together with all hereditaments and appurtenances belonging thereto, subject however, to all matters set forth on Exhibit "B" attached hereto and made part hereof.

This Deed conveys after-acquired title. Grantor warrants that Grantor has not done or suffered anything to encumber the property, EXCEPT:

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property
- A well disclosure certificate accompanies this document or has been electronically filed. (if electronically filed, insert WDC number:)

() I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

IN WITNESS WHEREOF, first party has hereunto set his/her hand and seal the day and year first written above.

GRANTOR:

Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., FKA Norwest Bank, Minnesota, N.A., solely as trustee for Structured Asset Mortgage Investments II, Inc. Bear Stearns Mortgage Funding Trust 2007-AR4, Mortgage Pass-Through Certificates, Series 2007-AR4 who acquired title as Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR4 Mortgage Pass-Through Certificates, Series 2007-AR4 by JPMorgan Chase Bank, National Association, attorney in fact

By: [Signature] 2/11/13
Name: Alissa Owens
Title: Vice President

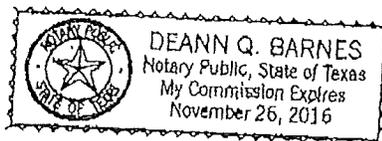
STATE OF TEXAS
COUNTY OF DENTON

BEFORE ME, on this 11 day of FEB, 2013, the undersigned authority, personally appeared ALISSA OWENS, who is the VP of JPMorgan Chase Bank, National Association, attorney in fact for Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Minnesota, N.A., FKA Norwest Bank, Minnesota, N.A., solely as trustee for Structured Asset Mortgage Investments II, Inc. Bear Stearns Mortgage Funding Trust 2007-AR4, Mortgage Pass-Through Certificates, Series 2007-AR4 who acquired title as Wells Fargo Bank, National Association as Trustee for the Certificateholders of Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR4 Mortgage Pass-Through Certificates, Series 2007-AR4 appearing on behalf of said corporation with full authority to act for said corporation in this transaction, who is known to me or has shown [Signature] as identification, who after being by me first duly sworn, deposes and says that he/she has the full legal authority to sign this deed on behalf of the aforementioned corporation.

[Signature]
NOTARY PUBLIC:

My Commission Expires: 11/26/16

DB 1/ 67229503.2



THIS INSTRUMENT WAS DRAFTED BY:

First American Title
14551 County Rd. 11 #120
Burnsville, MN 55337

AO

TAX STATEMENTS FOR THE REAL
PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:

Heidi Moegerle and Gary Otremba
~~555 Latchova Drive~~
~~East Bethel, MN 55002~~

179 Forest Rd
East Bethel, MN 55092

Exhibit "A" 

Lots 356, 357, 358, 359 and 360, all in Block 6, Coon Lake Beach

Tax/Parcel ID: 36 33 23 23 0266

Exhibit "B"

AO

Permitted Encumbrances

1. The lien of taxes and assessments for the current year and subsequent years,
2. Matters that would be shown by an accurate survey and inspection of the property:
3. All covenants, restrictions, conditions, easements, reservations, rights-of-way, and other matters of record, to the extent valid, subsisting and enforceable;
4. Zoning requirements, statutes, rules, orders, restrictions, regulations and ordinances of governmental agencies or their instrumentalities relating to the property, the buildings located thereon, their construction and uses, in force on the date hereof (if any such exist);
5. All roads and legal highways;
6. Rights of parties in possession (if any); and
7. Any licenses, permits, authorizations or similar items (if any) in connection with the conduct of any activity upon the property

TO: PLANNING COMMISSION
FROM: GARY OTREMB AND HEIDI MOEGERLE
DATE: September 16, 2014
RE: APPEAL FROM BUILDING OFFICIAL DEMAND/REQUIRMENTS - 553 LAKESHORE DRIVE

Commission members:

This appeal is being initiated pursuant to Appendix A, Zoning, Section 2, Subsection 6 of East Bethel's City Code to appeal determinations of the Building Official. The City Administrator has asked that we begin to exhaust our remedies under this section.

However, by initiating this appeal, we are not waiving our appeal rights under City Code Chapter 2, 2-590 or under Chapter 14, 14-23, Local Board of Appeals, which state law requires that we exhaust before seeking remedies in equity at Court.

The main issue relates to a specific set of lots at Coon Lake Beach, in the Shoreland Overlay District with non-conformities and whether repair, replacement, restoration, maintenance and improvement of an existing structure will be allowed pursuant to MN Statute 462.357(1)(a) and (h).

Due to repairable/replaceable structural issues, part of the dwelling at 553 Lakeshore, walls and floor area had to be temporarily removed in order to be repaired/replaced safely, economically, efficiently and timely.

The City has refused to allow us to obtain a permit to "repair/replace" the removed walls and floor of the structure ON THE FOOT PRINT OF THE STRUCTURE, WITH A NET REDUCTION IN OVERALL AREA OF THE DWELLING.

The City has refused to allow us to obtain a permit for a holding tank to replace the septic system that it wrongfully demanded that we crush in place, as condition of the partial demolition permit and which is required to bring the dwelling into compliance with building Code.

The bigger issue is that many of the dwellings at Coon Lake Beach were built in the 1940's or have a portion of the dwelling that was built in 1940's, when the building codes, if any, were substantially less stringent than today. Residents, like us, that want to preserve the lakeside cabin living experience of Coon Lake Beach for the future, are challenged by the building official's demands when they attempt to bring their homes up to code.

For your convenience, is a time line of relevant events that effect the disposition of this matter. We believe this time line to be accurate within a day or two and that the facts are undisputed.

1. The dwelling on 553 Lakeshore Drive is non-conforming. However, the law allows non-conformities..any non-conformities...to exist as long as they are not expanded:

Minn. Statute 462.357(1)(a):

(a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, **may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion....**

Our goal was always to repair the structure, to the extent economically feasible, to allow for its future use as full-time residence in the future. This statute allows that to occur. Because our plan was always to remove area from the dwelling, it would also reduce the non-conformity of the impervious ratio.

2. Same or Common Ownership of Lots. Without conceding our disagreement with the City that there is "same " ownership of abutting parcels EB Zoning Code Section 57, Chapter 14(A)(3) (Moegerle owns 179 Forest Road outright since April 2003 and Otremba/Moegerle purchased 553 Lakeshore in February 2013¹), Minn Statute 462.357 trumps the local zoning ordinance :

(h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

3. The dwelling on 179 Forest Road lots was our primary residence, habitable and with a code compliant septic system.

So the question is raised, was the dwelling at 553 Lakeshore Drive a "habitable residential dwelling" and were the lots "suitable for" a sewage treatment system.

¹ What matters is the ownership at the time the ownership interest is obtained. **So a "snapshot" of ownership as of February 2013 is relevant...by law...and nothing else.** Our subsequent quit claim of an interest to Moegerle's mother was for the purpose of effectuating our desire to transfer the property to succeeding generations to enjoy, in the case of our untimely demise. In short, the effect of the quit claim deed is merely a poor man's will.

Furthermore, a title insurance attorney's opinion and the deed of 553 confirm this information and have been provided to the City to prove the ownership interests as of February 2013.

The answer to both is yes.

In February 2013, the dwelling at 553 Lakeshore Drive had been vacant for approximately 10 months. The resident homeowner had been evicted for failure to pay his mortgage. The property had not been “red-tagged” by the City. In fact, the property was connected to all utilities, had appliances and plumbing fixtures. It was weather tight. The interior was unattractive, if not downright filthy. The floor of the east end of the cabin was warped and rolled because there was no foundation of the house. The studs in the floor, walls and roof were 2’ on center and grandfathered into acceptability, even though current standards are 16” on center.

Nonetheless, it was habitable, as intended by Minn Statute 462.357(1)(h).

Second, although the septic system for the property was non-compliant because of a lack of a three foot separation of soils and had been since the Fall of 2011, the City had not red-tagged the house or the system. The tank, according to the report of the pumping service gave the tank, itself, high marks.

A septic tank can be separated from its drain field and sealed and operate as a holding tank. That could have been done with this system. In addition, a holding tank could be installed in its place, as is being done for Coon Lake Beach residents under the terms of the CDBG grant.

On the day Otreмба/Moegerle purchased the 553 Lakeshore property, it met the requirements of 462.357(1)(h).

Therefore, the lots could not, by law be combined. The dwelling had to remain as a dwelling, as it was the sole structure on the lots (discounting the 120sf “boathouse.”)

Nonetheless, it is the City’s position that, contrary to state law, the abutting lots must joined and the 553 Lakeshore dwelling must become an accessory structure.

4. Otreмба/Moegerle approached the problems of 553 Lakeshore systematically and kept the City informed of their progress, their discovery of issues and their thinking on resolution of the problems as well as research into their options according to City Code and Minnesota Statutes. As of July 28, 2014, that was:
 1. The far east end of the living area (far east end of the 1940 cabin section) had a warped and rolled floor because there was no foundation under the walls of the cabin. The warping and rolling was caused by the joint with the 1985 addition with a full foundation. That joint was a point of stress.

The floor joists, wall studs and roof beams were inadequate to current standards. They had to be brought up to code. Footings and foundations had to be installed under the walls.

- a. Preserving a minimum of 1,000 sf of the structure, a portion of the cabin would be removed.
- b. Preserving the structural components of the cabin as much as possible, the footings would be poured and foundations would be built on the foot print of the cabin.
- c. Walls would be completely replaced and connected to the roof.
- d. Repair of the structural issues, with the east end of the cabin, in place, was needlessly difficult, expensive and dangerous. The backhoe could be used to expose the areas of repair and create a safe pit for the footing and foundation work, that otherwise would have had to been dug manually with less than 3' headroom.

We knew that demolition by backhoe could cause or disclose additional damage such that a back-up plan of using the structure as an accessory structure was possible, but strongly disfavored.

5. Ultimately, the walls, without a footing and foundation, and with water damage were not strong enough to remain in place during repair...particularly after the backhoe removed the soil to make room for the footings and foundations.

The roof was structural, after the weak and unsupported walls were removed, and braced with timbers.

6. The Building Official has denied Otremba/Moegerle the right to repair/replace/restore/maintain and improve the structure by installing the footings and foundations for the walls...exactly on the footprint of the cabin.

Due to the City's misunderstanding of MN Statute 462.357(1)(h) it wrongfully demanded that we crush the existing septic tank in place, even though it could serve as holding tank, as a condition of the partial demolition permit...and has further refused to consider a septic system permit application from us, placing us in violation of the requirement that a dwelling have a sewage treatment system.

We respectfully request that the Planning Commission reverse the determination of the City and allow us to proceed to get the permits necessary to bring our little house into compliance with East Bethel City Code.

See Also, MN Existing Building Code

MN Statute: Municipal Planning: Zoning Ordinance 462.357(1)

Subd. 1e. Nonconformities.

(a) Except as otherwise provided by law, **any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion**, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

(d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A municipality shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).

(e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

(f) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(j) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

1311.0411 SECTION 411, STRUCTURAL REQUIREMENTS.

STRUCTURAL REQUIREMENTS

411.1 Structural safety. The minimum design loads for the structure shall be the loads applicable at the time the building was constructed, provided that no dangerous condition is created. The building official may require that structural members exposed during construction be evaluated by a registered design professional. Structural members that are found to be unsound or dangerous shall comply with the applicable requirements of the Minnesota State Building Code for new construction.

411.2 A building, structure, or an individual structural member that has any of the conditions or defects described below, as determined by a registered design professional, shall be replaced or strengthened when:

1. The stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half the working stress or stresses allowed in the Minnesota State Building Code for new buildings of similar structure, purpose, or location.

2. Any portion of the building, structure, or member has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that its structural strength or stability is materially less than it was before the catastrophe and is less than the minimum requirements of the Minnesota State Building Code for new buildings of similar structure, purpose, or location.

3. Any portion of the building, structure, or member has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

4. The building or structure, or any portion of it, is likely to partially or completely collapse because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay, or inadequacy of its foundation; or (v) any other cause.

5. The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

6. The building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls, or coverings.

7. Any building or structure, which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member, or portion less than 50 percent, or in any

supporting part, member, or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of newly constructed building or like area, height, and occupancy in the same location.
Statutory Authority:

MS s 16B.59; 16B.61; 16B.64; 326B.101; 326B.106; 326B.13
History: 27 SR 1479; L 2007 c 140 art 4 s 61; art 13 s 4
Published Electronically: February 23, 2009

TIMELINE – 553 LAKESHORE PROPERTY

DATE	ACTION	LEGAL EFFECT on Property
~1940	Cabin Built on Property on floating Concrete Blocks 22' Setback from Southern Property Line Established	Dwelling Use Established
1985	Roger Schoer is Owner Garage and Living Space Added w/Foundation to cabin. No Foundation across building width at structure joint. 15' Setback from West (side yard) 22' Setback from Southern Property Line Maintained Contract drafted by City Attorney requiring Schoer to build a retaining wall.	BUILDING CODE VIOLATION CREATED AND APPROVED BY CITY Habitation Maintained DOES NOT APPEAR TO HAVE BEEN RECORDED IN THE CHAIN OF TITLE.
~ 1990	Mike McClain purchases property City Contract not disclosed to McClain	Dwelling Use Maintained
~ 2000	Lakeshore Drive is paved; encroaching on 553 Property. McClain states he was not paid for the encroachment (2011/2012)	City encroaches on Property without permission or payment.
05/05/2010	EB adopts Shoreland Overlay District Established. "Non-conformities" defined by MN Stat. 394.	Lot is non-conforming. Structure is non-conforming. Use as Habitation is conforming.
~ 2010	Septic system believed by City to be non-compliant or failed. No action taken by City to enforce requirement to pump septic system regularly	City waives enforcement of septic system standards
2011	Property listed for sale Fall. Septic Tank is intact. No emergency issue of contamination. No 3 foot separation of soils. Recommendation replace drain field. No Action taken by City to require remediation of drain field by Mr. McClain.	City waives enforcement of drain field standards against McClain and bank. City waives right to require McClain to remove retaining wall.
~04/1/2012	Mike McClain evicted and leaves property permanently.	Dwelling use is ended.
04/12 – 01/13	Bank owns property. Structure is sound. Lot suitable for a holding tank, by Rule 7080.	City waives right to require bank to repair drain field. City waives right to require bank to remove retaining wall.
February 2013	Otreмба/Moegerle closes on purchase of Property and	Dwelling use resumed.

<p>~02/11/2013 CODE VIOLATIONS identified upon taking possession</p>	<p>move possessions into garage and house. Begin using house for hobbies, meals, tv/movies etc.</p> <p>Cabin portion of house has no foundation, causing warping and rolling of floor at east end of building.</p> <p>Floor, wall and roof studs are 2' on center. Code is 16' on Center.</p> <p>No foundation support across width of house at living addition/cabin joint. Structural weakness results.</p> <p>Cheap replacement door and windows with evidence of water damage. Extent unknown.</p> <p>A Project is planned to repair/rehabilitation/ remediate building code violation by installing foundation under walls of cabin; remediate impervious ratio by partial demolition of structure followed by remediation of septic system issue. The point is to retain enough of building to allow future use as full-time residence...1000sf if economically feasible.</p> <p>Otreмба/Moegerle purchase demolition permit (partial demolition only) to remediate Building Code Violation.</p>	<p>Minn. Stat. 462.357(1)(h) ...contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.</p>
<p>02/21/2013</p>	<p>City expresses understanding of plan of repair and partial demolition and that flexibility is needed with regard to HOW the goal was achieved. No requirement on sequence of work demanded.</p> <p>City has no "repair" permit.</p> <p>City voices no objection or problems with Project plan or continued use of the house and garage.</p> <p>Internal demolition begun; appliances recycled, materials stored for potential recycling.</p> <p>Filthy disgusting faucets and toilets removed, effectively</p>	<p>Non-conforming use, if any, continued during life of repair/rehabilitation.</p> <p>MN Statute 462.357(1)a ... any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion</p> <p>Repair of Habitation and reduction of non-conformities initiated.</p> <p>Septic system rendered</p>

	isolating non-compliant/failed septic system and preventing expansion of septic system pollution/environmental impairment.	dormant, but still connected to house.
Summer/Fall 2013	Internal demolition continues. Bedrooms filled with debris, doors and drywall. Meals, movies and hobby use continued.	City verbally agrees that well does not need to be abandoned. Nothing in writing on this until Summer 2014. Dwelling use continues
08/20/2013	Trees dropped (above septic system) to allow machinery to get in to crush septic system. First treatment of stumps to kill tree roots, ineffective.	Dwelling use continues
Fall 2013	Branches, limbs and trunks of trees cut into burnable size to make room for rolloffs, soil and machinery for demolition. September – October wood burned in recreational fires. Ongoing verbal updates with Building Official/CA on status of demolition.	
04/2014	Otremba/Moegerle demolition permit renewed. City demands well abandonment and crushing of septic as part of demolition permit, despite stated plan of keeping 1000sf. Otremba/Moegerle object and point out relevant law	
Spring/Summer 2014	Contractor not available and/or soil/weather conditions not appropriate for regarding project.	Law does not support City's ex post facto requirements. Dwelling use continues.
07/28/2014	Otremba/Moegerle meet with Davis. They re-state goal of keeping/repairing 1000sf of structure. Otremba/Moegerle state footing/foundations can't be put under cabin walls with walls in place (pre-removal of surplus cabin structure.) Otremba/Moegerle state that damage around doors and windows is unknown and won't be known until they are removed just prior to demolition. Otremba/Moegerle ask if permit needed to install original	City will research this as "highest priority" before [electing filing complete.] No info received before 08/20/14 "memo." City will allow footing and foundation repair on cabin footprint without a permit...no such permit exists. City will allow repair of walls as needed. Ok to install old door and

	<p>door and windows into repaired structure.</p> <p>Ongoing discussions to avoid crushing septic system and abandonment of well.</p>	<p>windows into structure with no permit.</p> <p>City will research.</p>
08/11/2014	<p>Contractor available for demolition/regarding project (provided weather and soil conditions are appropriate...and issues with City resolved and in writing.</p> <p>Roof of cabin portion is sound, but supported by studs 2' on center....as opposed to 16" on center.</p> <p>Door and windows removed in anticipation of demolition. Extensive water damage around door and windows to floor level. Wood is rotted.</p> <p>Footing and foundation will be needed on footprint of cabin walls to support walls and bring it up to code.</p> <p>After north window and door are removed, at 20' only the siding holds the half wall to the structure. It wobbles due to no foundation. Wall is not repairable in place.</p> <p>After south window is removed, water damage is exposed. Roof out to 20' can't support wall due to lack of footing and foundation.</p> <p>Cabin floor is water damaged and supported 2' on center, which is not code. Floor is not structural.</p> <p>Temporary gable end wall built across width of structure, to support structure and secure possessions in dwelling are from damage during final demolition. Wall will be moved across floor to final position after footings and foundation are in place.</p>	
08/17/2014	<p>Based upon and relying on representations by City that damaged structure can be repaired/replaced on footprint of original cabin, 20' (from garage) of roof is retained.</p> <p>Walls separated from roof 16.5' to 20'.</p> <p>Walls separated from structure at 16.5'.</p> <p>Floor separated from structure at 16.5'.</p>	
08/18/2014	<p>8:05 – 8:10 am. Contractor pulls cabin away from structure. End of building is secured by temporary wall, with a 3.5' overhang extending to end of repaired building.</p> <p>Contractor crushes septic tank as (wrongfully) demanded by City under threat of sanctions.</p>	<p>City has not replied on "highest priority" requests re:</p>

	Balance of work is loading debris and removing it as roll offs come available.	septic tank.
08/19/2014.	Approx. 10:10 a.m. City approves and says project "looks great". Soil seeded before bulldozer leaves site.	
08/23/2014	Otreмба/Moegerle receive memo in mail from Mr. Davis dated 08/20/14, post marked 08/22/14 making new demands.	
08/23 – 28/14	Otreмба/Moegerle build footing forms. Footing 1, was between the sidewalls, at the joint of the 1985 addition and the 1940 cabin. Footings 2 and 3 were on the footprint of the original cabin to replace the sidewalls out to 20' from the garage...a total of 42".	City approves Footing forms. Allows Foundation to be built. City demands footing forms be removed.



City of East Bethel Planning Commission Agenda Information

Date:

September 23, 2014

Agenda Item Number:

4.0

Agenda Item:

MPCA Proposed Land Use changes

Requested Action:

For information only – Public Hearing to be scheduled

Background Information:

The City has been working with the MPCA regarding the closed East Bethel Landfill. MPCA is asking us to consider designating a zoning classification for a Land Management Area. From a planning perspective it really does not change anything as this area is already part of the Sandhill Crane Natural Area. There is one private property owner Thomas Kurak that has land in this area.

Attachments

MPCA maps

Sandhill Crane Natural Area: East Bethel Landfill



Minnesota Pollution Control Agency

Site Contacts

Land Manager: Jean Hanson

Engineer: Peter Tiffany

Hydrogeologist: Joe Julik



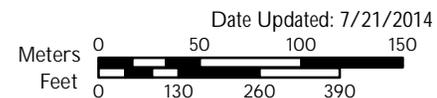
Site Features

-  Sandhill Crane Natural Area
-  Land Management Area
-  *Designates the property that is under the responsibility and control of the MPCA.*



DISCLAIMER: The State of Minnesota makes no representations or warranties to the user as to the accuracy, currency, suitability or reliability of this data for any purpose. This map depicts a reasonable approximation of impacts from the landfill only and makes no inference about impacts from other potential sources.

1:3,704



Closed Landfill Management Use: East Bethel Landfill



Minnesota Pollution Control Agency

Site Contacts

Land Manager: Jean Hanson

Engineer: Peter Tiffany

Hydrogeologist: Joe Julik



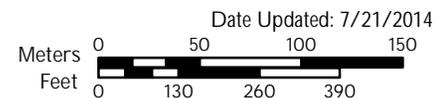
Site Features

-  Closed Landfill Management Land Management Area
-  Designates the property that is under the responsibility and control of the MPCA.



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1:3,704



CLP GW Area of Concern: East Bethel Landfill



Minnesota Pollution Control Agency

Site Contacts

Land Manager: Jean Hanson

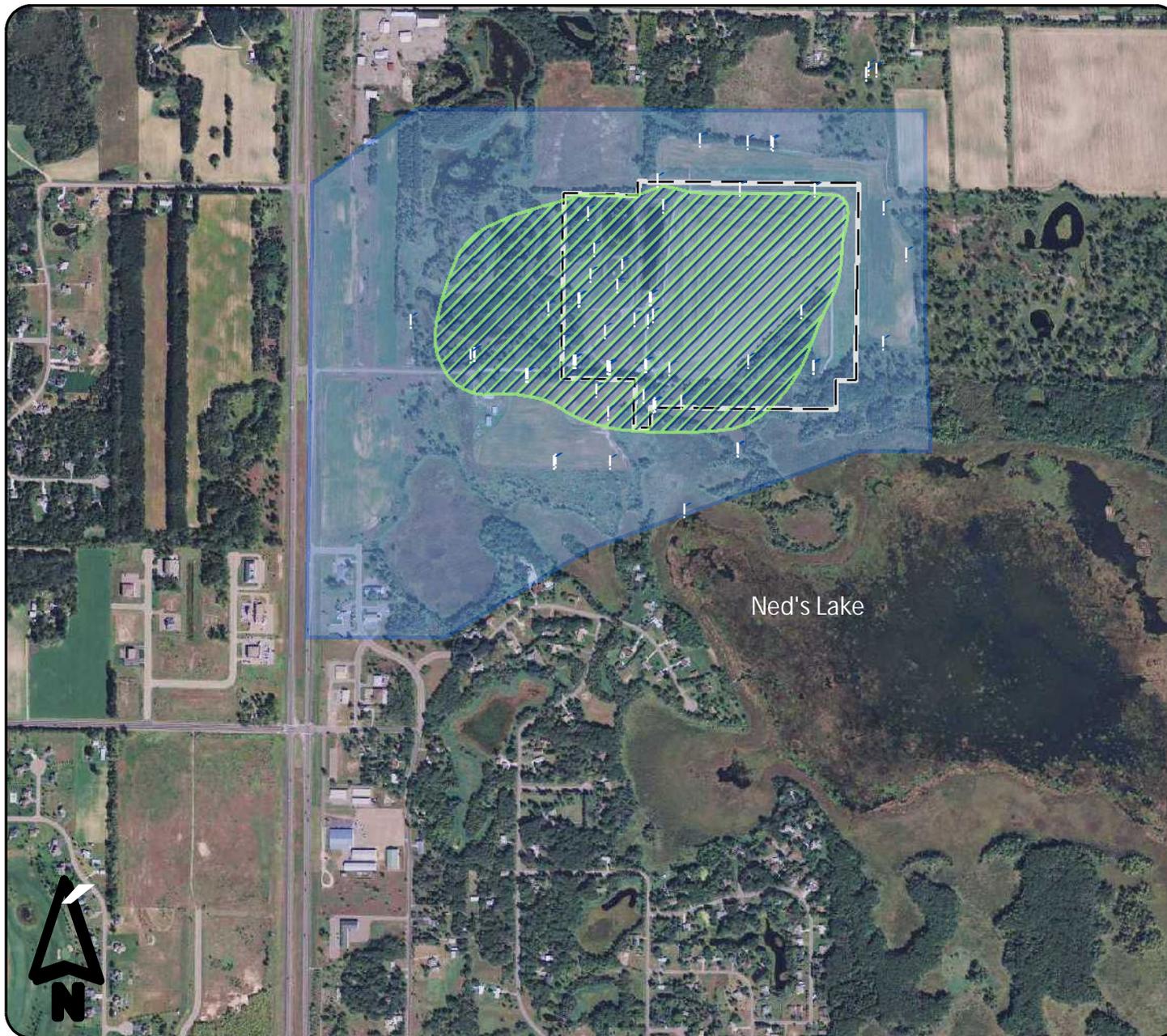
Engineer: Peter Tiffany

Hydrogeologist: Joe Julik

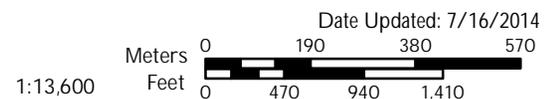
Site Features

Monitoring Well Status

-  Active
-  Groundwater Plume
Approximate area of the subterranean contaminated groundwater plume.
-  Land Management Area
Designates the property that is under the responsibility and control of the MPCA.
-  Groundwater Area of Concern
An area where the groundwater may be affected by landfill contamination.



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CLP Methane Area of Concern: East Bethel Landfill



Site Contacts
Land Manager: Jean Hanson
Engineer: Peter Tiffany
Hydrogeologist: Joe Julik

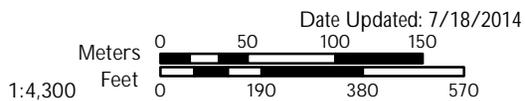


Site Features

- W** Gas Probe
- Waste Footprint
- Land Management Area
Designates the property that is under the responsibility and control of the MPCA.
- Methane Area of Concern
Area surrounding the landfill that may be impacted by subsurface migration of methane gas.



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Explanation of a Methane Gas Area of Concern (MGAOC)

The MGAOC is defined as the area of land surrounding a mixed municipal solid waste (MSW) landfill waste footprint where the presence of certain activities, such as construction of enclosed structures, may be impacted or precluded by subsurface migration of methane gas. Methane gas is an odorless gas produced when MSW decomposes, and can be explosive in confined spaces such as basements when mixed in air. The MGAOC is used to inform the public about the risks to current and future land owners regarding certain uses they may want to consider. Any questions about developing land within the MCAOC should be addressed to the MPCA Closed Landfill Program (CLP) staff assigned to that particular landfill.

Methane Gas Area of Concern around East Bethel Landfill

Soils in the vicinity of the East Bethel Landfill are generally coarse sands. Depth to the groundwater table is approximately zero to 10 feet below ground surface. The landfill waste footprint is about 27 acres and contains approximately 1,200,000 cubic yards of waste. A low permeability cover system is in place. An on-site storage building that also contains the groundwater pump out system motor control center is approximately 175 feet from the waste footprint. The nearest residence is located approximately 1,300 feet southwest of the waste footprint.

A low permeability cover system was installed in 2006. An active gas extraction system with 34 vertical gas extraction wells connected to an enclosed blower/flare unit was installed at the same time. All 8 gas monitoring probes located around the landfill perimeter have had zero percent methane measured in them for more than 4 years, indicating that there likely is no gas migrating off the property.

Based on the highly permeable soils in the area, the high water table, the potential for an extended shutdown of the gas extraction system due to unforeseen circumstances, and recognizing the potential for gas to migrate under seasonal low permeable (frozen) conditions, the MGAOC extends 200 feet beyond the waste footprint.

Existing Land Use Controls

Local ordinances may exist and should be checked for applicability to control the building of structures within the MGAOC.

No Drinking Water Wells Area: East Bethel Landfill



Minnesota Pollution Control Agency

Site Contacts

Land Manager: Jean Hanson

Engineer: Peter Tiffany

Hydrogeologist: Joe Julik



Site Features

- No Drinking Water Wells
- Land Management Area
- Designates the property that is under the responsibility and control of the MPCA.



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Declaration of Restrictive Covenant: East Bethel Landfill



Minnesota Pollution Control Agency

Site Contacts

Land Manager: Jean Hanson

Engineer: Peter Tiffany

Hydrogeologist: Joe Julik



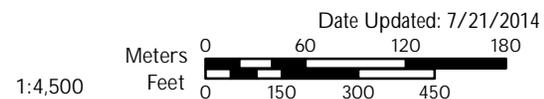
Site Features

- Restrictive Covenant
- Land Management Area

Designates the property that is under the responsibility and control of the MPCA.



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EAST BETHEL PLANNING COMMISSION MEETING

August 26, 2014

The East Bethel Planning Commission met on August 26, 2014 at 7:00 P.M for their regular meeting at City Hall.

MEMBERS PRESENT: Tanner Balfany Eldon Holmes Lorraine Bonin Glenn Terry
Brian Mundle, Jr. Lou Cornicelli Randy Plaisance

ALSO PRESENT: Colleen Winter, Community Development Director
Ron Koller, City Council Member

Call to Order & Adopt Agenda Terry motioned to adopt the August 26, 2013 agenda. Tanner seconded; all in favor, motion carries unanimously.

**Public Hearing –
Preliminary Plat –
Classic Commercial
Park 3rd Addition
3.0**

Winter presented the preliminary plat for Classic Commercial Park 3rd Addition as follows:

Acreage – 8.97 acres
Current Use of Property – Vacant Land
Current Zoning – B3 – Highway Commercial
Proposed Zoning – I1 (Light Industrial)

This is a continuation of the platting of vacant property in the Classic Commercial Park. CD Properties North, LLC has an opportunity to sell the property as noted on the attachments and is asking for plat approval. This plat is very straight forward as the street and utility improvements have already been completed.

Attachments:

1. Location Map
2. Public hearing notice
3. Preliminary Plat
4. Certificate of Survey

Public hearing was opened at 7:02 p.m.

Mr. Jake McCarty of 18915 Fillmore Street North East expressed his concerns regarding tree removal, traffic, and location of plat. Winter addressed Mr. McCarty concerns with exact location of plat, traffic control, and explained that it is an industrial area in which most likely that would be the type of business plan for that location.

Public hearing was closed at 7:10 p.m.

Motion Terry; To approve the Preliminary Plat for Classic Commercial Park 3rd Addition, Seconded Cornicelli; all in favor, motion carries unanimously

Discussion of Resident Guide and Website Items 4.0 and 5.0

Winter stated over the last few months, Amy Norling (Intern) has been working on several key marketing projects for the City, one is the resident guide which is attached, and the other is several changes to the website.

The Planning Commission Members had comments regarding placement, adding, and changing items. Winter stated all adjustments will be looked at and corrected.

Approval of Meeting Minutes 6.0

Motion Balfany, Second Terry to Approve the July 22, 2014 meeting minutes; motion carried.

Other Business/Council Reports 7.0

Councilmember Koller reported that the Council has had discussions regarding changing the language in the Zoning Ordinance regarding chickens and after many meetings has decided to leave the ordinance the way it is.

Winter reported that there are 3 people running for Mayor; and 3 people running for City Council (2 open seats). She also reported that there will be Meet the Candidate Forums held prior to the election. The first one will be on October 2, 2014 in the City Council Chambers. Look for upcoming announcements on the City website.

Commission member Bonin quoted an article out of the Minneapolis Star and Tribune, "When you're the first out, you need to do it right, you need to do it big." She stated that the quote was talking about the new light rail system, but it is very applicable to our situation in East Bethel and how critical it is to get development right.

Adjournment 8.0

Holmes motioned for adjournment. Balfany seconded; all in favor, motion carries.

Submitted by:

Colleen Winter
Community Development Director