



STAFF REPORT

DATE: 4/13/2020

TO: Planning Commission
FROM: Ben Prchal, City Planner
ITEM: Whippletree Farm - Interim Use Permit and Variances
REVIEWED BY: Ken Roberts, Planning Director

BACKGROUND:

Whippletree Farm, LLC has submitted an application to obtain an Interim Use Permit (IUP) for the property at 9130 55th St N. to operate an Agricultural Entertainment Business. In order for the City to approve the IUP, it must also receive City approval of a variance because the means of access to the property is not on a collector or arterial street. Whippletree Farm also is requesting a variance from the City's parking lot surface requirements for the parking lot that will be located on the property.

ISSUE BEFORE THE PLANNING COMMISSION:

The Planning Commission is being asked to provide a recommendation to the City Council regarding the requests for an IUP and variances.

DETAILS/ANALYSIS:

- *Property Owner:* Peter and Madeline Kastler and Linda Dornfeld
- *Applicant:* Whippletree Farm, LLC
- *Location:* 9130 55th Street North, Lake Elmo MN 55042
- *Current Site Area:* 36.22 acres
- *Land Use Guidance:* Rural Area Development (RAD)
- *Zoning:* RR (Indicated as Rural Residential on the zoning map) and RS (rural single-family)
- *Surrounding Land Use Guidance:* RAD or Rural Single Family (RSF)
- *Applicable Regulations:* 154.107: Interim Use Permits; Article XI; 154.401: Permitted, Conditional, and Interim Uses [within the Rural Districts]; 154.913: Agricultural Sales Businesses

History.

The history for the property has been provided by the applicant through its submitted narrative. Staff has no reason to believe it is misleading.

To summarize the narrative the farm has been owned and operated by the same family for the last 150 years, which has been in continuous agricultural production to varying degrees, and continues today. The current focus is on small-scale production of specialty crops, including eggs laid by free-range, organic-fed chickens; honey, and organic hops. Several acres are dedicated field crops and orchard crops. A small herd of goats are used for sustainably and cleanly managing buckthorn. There also is a wayside stand which is used to sell honey and eggs. *(Agricultural Production and Wayside Stands are a permitted use in the RR District)*

Proposed Use by the Applicant.

The below section is a greatly summarized version of what the applicant submitted as a narrative. City Staff recommends reviewing the submitted narrative. Essentially the applicant would like to expand its business to include what the City calls Agricultural Entertainment.

The applicant would like to allow groups access to the property by a fee-based reservation. The groups will be able to have access to self-guided trails and open space. The existing buildings also would be available for meeting spaces. Classes that are relevant to farming may also be offered. Given the environment of the farm, the targeted demographic will be non-profits, scout troops, employer retreats, and family reunions. The maximum number of visitors/group size would be limited to 40 individuals.

LAKE ELMO CITY CODE - AGRICULTURAL ENTERTAINMENT.

Below is an explanation of the code as it pertains to an Agricultural Entertainment Business and then the Interim Use Permit Code language.

City Code Section 154.012 B. Use Types and Classifications.

9. Agricultural and Related Uses:

Agricultural Entertainment Business. An agricultural sales business that combines the elements and characteristics of agriculture and tourism, which is not necessarily located in an existing building. Examples of agricultural entertainment include: corn mazes, hay rides, sleigh rides, petting farms, on-farm tours, agricultural related museums, demonstrations of farming practices, techniques and methods, fee-based fishing and hunting, horseback riding, nature trails, haunted barns, and similar activities which are related to agriculture.

Based off of the applicant's narrative, City Staff believes all of the proposed activities in the request fall within the Agricultural Entertainment Business use in the Code (see the underlined provisions above). An Agricultural Entertainment Business use is an interim use in this zoning district that requires approval of an interim use permit.

City Code Section 154.914 Agricultural Entertainment Businesses.

Agricultural entertainment businesses shall be allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for rural agricultural density or future sewered development in accordance with the Comprehensive Plan. Agricultural entertainment businesses shall be subject to the following performance standards:

A. An agricultural entertainment business shall adhere to all performance standards as outlined in § 154.913 for an agricultural sales business;

The reference to Section 154.913 of the City Code refers to performance standards which is for an Agricultural Sales Business. The list of standards for this "activity" is quite lengthy and will come after the review of A-D.

B. The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the Comprehensive Plan;

Unfortunately, the property is not located on a road that the City has classified as a collector or an arterial street. Because of this, the applicant also is seeking a variance from this requirement. City Staff's review of the variance will come after the full review of the IUP in this report.

C. Discharge of firearms, including blanks, shall not be allowed on the property;

Although the definition for Agricultural Entertainment Businesses outlines hunting as being an allowed activity, the applicant is not proposing to incorporate firearms into their business.

D. The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons.

The applicant has provided a trail map (in the narrative) which will provide information throughout the walking tour. Hopefully this will keep visitors on the property and not on the adjacent properties. However, the City may apply a condition to the IUP requiring the property owner to ensure visitors are made aware of the property lines and that trespassing onto neighboring parcels is prohibited.

City Code Section 154.913 Agricultural Sales Businesses. (Ag. Ent. Business must follow these standards as well.)

Agricultural sales businesses shall be allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for rural agricultural density or future sewered development in accordance with the Comprehensive Plan. Agricultural sales businesses shall be subject to the following performance standards:

A. Activities shall be limited to those listed within the definition for Agricultural Sales Business. *City Staff does not see this requirement as being applicable.*

B. The agricultural sales business shall be located on land owned or leased by the producer or the operator of the business, and not within or on any public right-of-ways or easements. *Although not a sales business, the business is owned/operated by the applicant.*

C. The operator must be able to demonstrate at all times to the city that there is sufficient access, parking and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.

Staff believes there is sufficient access, maneuvering space, and that the approach is sufficient. Using the provided site plan as a reference, the parking area is far enough away from the roadway that it would not cause a safety concern. However, the City Engineer stated in his review memo that he would like to review the site further to ensure access to and from the site would be safe.



D. All waste materials shall be enclosed in containers provided on the site and shall not generate any nuisance impacts on adjacent properties. *Waste will be stored and disposed of in 20 gallon galvanized waste containers.*

E. All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.

The applicant states that there will be no dust because the driveway is asphalt and the proposed parking area will be mowed grass. A possible condition that could be added to the IUP to address dust would be to require all non-hard surfaces to be sprayed with water or dust controlling agent during dry seasons to keep the dust down.

F. The maximum gross floor area that can be devoted to sales activities is limited to 20,000 square feet.

The applicant states that only 16 square feet is dedicated to sales related activities. Adding up the floor area of all the buildings shown on the survey still falls short of the 20,000 sq. ft. sales area limit.

G. Parking shall be provided in accordance with the parking requirements for other commercial uses, as per § 154.051(C). All parking must occur on-site, be on a primary surface such as class 5 gravel or pavement: and must be set back at least 30 feet from all property lines.

Section 154.051 is not an identifiable section in the City Code. However, City Staff would infer that this reference was intended for the City parking regulations, which is Section 154.210 of the Code. There are no minimum required parking standards for this use and it would be impractical to enforce some of the design requirements, should the lot be gravel. With that said, the provision requiring the lot to be either gravel or pavement would still be applicable, unless special approval (a variance) removing this requirement is provided. The applicant is requesting a variance so they do not have to comply with this requirement. City Staff does not believe a variance is appropriate, which is explained in the variance review section of this report.

H. The minimum lot size shall be 40 acres for any agricultural sales business.

Although the business isn't an Agricultural Sales Business, City Staff will still address this requirement. The property is less than 40 acres however, the Code does allow for 10% deviation from the 40-acre requirement. The referenced Code section below is mentioned as a note to Table 9-2 and is intended to address land that may have been taken due to road ROW. "b. Nominal 40 acres: a 40-acre parcel not reduced by more than 10% due to road rights-of-way and survey variations." With road rights-of-way being taken into account, the property would be allowed to be as small as 36 acres in size. It is 37.7 acres in size, so it meets this requirement. With that said, the applicant owns multiple properties, which are contiguous to each other and are being treated as one parcel for purposes of meeting this requirement. City Staff is recommending that the IUP contain a condition that all parcels be combined into a single parcel.

I. On-site wastewater handling system shall be planned and designed by a licensed professional and approved by the city or its designated responsible authority. Usable primary and alternate well and septic sites sized for the maximum anticipated usage of the property shall be identified on the property. Alternate sites shall be protected in the site plan design, and will only need to be used upon failure of a primary site.

Being that the City defers septic regulation to Washington County, City Staff will not comment on whether the property meets this requirement. The IUP will need to have a condition that Washington County must approve a plan for wastewater handling on the site and the applicant must provide the City with evidence of the County's approval prior to operation of the business on the property.

J. Any structures constructed for the agricultural sales business shall be consistent on design and appearance with other agricultural buildings in the area.

New structures are not proposed at this time.

K. Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The daily trip generation is established at 360 vehicle trips per day for 40 acres.

Assuming that the maximum number of attendants (maximum number set in narrative) all arrive separately and leave separately the site would generate 160 trips per day, which 200 trips below the allowed level.

L. The maximum impervious coverage for the buildings, parking areas and other uses devoted to the agricultural sales business shall not exceed 40,000 square feet and the remainder shall be suitably landscaped.

The property is measured to have 23,283 square feet of impervious surface, which falls below the maximum impervious surface that is allowed.

M. Any activities that are defined as an agricultural entertainment business shall require a separate interim use permit.

To specifically follow this section as it is written would be terribly inefficient. The property should be issued one interim use permit to address all activities.

N. Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with §§ 150.001 through § 150.003 of this code.

This section of code was repealed, the reference should be 154.407. With that said, a condition to that Section 154.407 of the City Code must be adhered to can be added to the IUP.

O. There shall be a minimum buffer of 100 feet between any sales areas or sales buildings and any adjacent residential property lines.

All buildings where sales would be conducted are more than 100 feet from the property lines.

P. Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).

There is no roof mounted mechanical equipment.

Q. Trash containers must be located inside or screened in an acceptable manner.

Trash containers will be screened and or kept inside, which will be a condition of approval.

R. The operator shall adhere to the general review criteria applicable to all interim use permit applications.

City Staff believes that this would be assumed but they shall also follow all conditions of approval.

S. No activities or structures beyond those specified in the interim use permit shall be added before review by the city to determine compliance with this section.

No new buildings are proposed at this time.

RE-ZONING

With two of the farm parcels being zoned as RR and the other two zoned RS, if the City approves the IUP, it also would be appropriate to rezone all parcels to RR (rural residential). This zoning map change would work with the recommended condition of approval to combine all of the parcels for tax and identification purposes. The Comprehensive Plan guides all of the properties as a rural property with the minimum density being the same.

Agreement.

As part of the Interim Use Permit application requirements, the Applicant is required to consent to an agreement as outlined below.

- a. A signed consent agreement, subject to review and approval by the City Council documenting:
 - i. That the applicant, owner, operator, tenant and/or user has no entitlement to future approval or re-approval of the interim use permit;
 - ii. That the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future; and
 - iii. That the applicant, owner, operator, tenant and/or user will abide by conditions of approval that the City Council attaches to the interim use permit.

A draft of the agreement is attached to this report.

Termination and Renewal Dates.

The City is allowed to set an expiration date for interim use permits and the City Code has partially outlined what some of the triggers will be for interim use permits in the City. As the permit begins to move closer to a date of expiration, the applicant is allowed to request a renewal, however, an explanation of this process is not necessarily relevant at this time.

Termination. An interim use shall terminate on the happening of any of the following events, whichever occurs first:

1. The date or event stated in the permit;
City Staff would recommend a termination date of December 31, 2030. A ten year life is what has been granted in the past for recent IUPs.
2. Upon violation of conditions under which the permit was issued;
This condition is consistent with conditional use permits as well.
3. Upon a change in the City's zoning regulations which renders the use nonconforming;
City Staff has no comment.
4. The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective zoning district.

City Staff also suggests that a conveyance of the property to a third party also should be grounds for termination of the IUP.

Required Findings. The City may only grant Interim Use Permits if the City Council makes the following findings. City Staff recommends the following findings in regard to the proposed Interim Use Permit.

1. The use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations.
 - *Agricultural entertainment businesses are an allowed use within the RR zoning district with an Interim Use Permit. Section 154.913 of the City Code lists the conditions which the proposed use is subject to.*
2. The use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community.
 - *City Staff believes that the property is capable of meeting all of the requirements of this provision, with the exception of the impact that traffic may pose due to the property's access*

not being on an arterial or collector street as is required by the Code for agricultural entertainment businesses.

3. The use will not adversely impact implementation of the Comprehensive Plan.
 - *The applicant is requesting to focus the use of the property on agricultural related activities. The Comprehensive Plan states that the zoning district for the property is to be used for agricultural activities which can be a working farm or alternative agricultural uses as defined by the City Code. The request does not appear to conflict with the intent of the district as outlined by the Comprehensive Plan.*
4. The user agrees to all conditions that the City Council deems appropriate to establish the interim use. This may include the requirement of appropriate financial surety such as a letter of credit or other security acceptable to the City to cover the cost of removing the interim use and any interim structures not currently existing on the site, upon the termination of the interim use permit.
 - *Per the Consent Agreement, the applicant must adhere to all conditions laid out by the interim use permit. The City will not be collecting or holding a financial deposit.*
5. There are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel.
 - *There are no delinquent property taxes, no levied assessments, no pending assessments, and the site does not connect to City utilities so there are no outstanding utility bills.*
6. The date or event terminating the interim use shall be set by the City Council at the time of approval.
 - *Assuming none of the other scenarios below cause termination of the permit, City Staff recommends that the termination date be set for December 31, 2030.*
7. Termination of the IUP shall occur upon the earlier of:
 - December 31, 2030;
 - Sale or transfer of the property or the business to a third party;
 - The property is reduced below the existing acreage of 37.7 acres;
 - A violation of the conditions of the consent agreement or the interim use permit and subsequent revocation of the interim use permit by the City Council; or
 - The redevelopment of the Property for a permitted or conditional use as allowed by the City's zoning regulations.

Recommended Conditions of Approval. If the City approves the proposed interim use permit, Staff recommends the following conditions of approval for the proposed Interim Use Permit:

1. The applicant signs the attached consent agreement with the City. The signing of this document by the applicant also assumes its adherence to the items below:
 - a. The applicant, owner, operator, tenant and/or user has no entitlement to future approval, extension, or reapproval of the interim use permit;
 - b. That the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future; and
 - c. That the applicant, owner, operator, tenant and/ or user will abide by conditions of approval that the City Council attaches to the interim use permit.
2. The use of the property must follow the plan as it has been laid out in the applicant's narrative and addendum.
3. The applicant must be able to demonstrate at all times that there is sufficient access, parking, and maneuvering space, suitable and safe access for motorists and pedestrians, and that parking is away from the travel way and within close proximity to the agricultural sales business. Also all sidewalks, roadways, and parking areas shall be maintained properly to eliminate dust as a nuisance to adjacent properties.
4. All waste materials shall be enclosed in containers provided on the site and properly screened or stored within a building, and shall not generate any nuisance impacts on adjacent properties.
5. The property shall not exceed 180 vehicles per day for every 40 acres.

6. Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited. The site shall comply with all requirements of Section 154.407 of the City Code.
7. The applicant must apply to the City for a parking lot permit.
8. Parking must not occur along the driveway and access to the buildings on the property must be maintained at all times.
9. The use of the site as an Agricultural Sales Business must comply with the performance standards listed in Exhibit A.
10. The IUP also shall be subject to the approval of the Building Official and Fire Chief.
11. All of the parcels affiliated with the IUP must be re-zoned to RR and combined into a single parcel prior to the operation of the business on the property.
12. Washington County must provide approval of the septic plan for the site.
13. The Interim Use Permit as well as the Consent Agreement shall expire on the scenario which occurs first:
 - a. *December 31, 2030*;
 - b. Sale or transfer of the property or the business to a third party;
 - c. The property is reduced below the existing acreage of 37.7 acres;
 - d. A violation of the conditions of the consent agreement or the interim use permit and subsequent revocation of the interim use permit by the City Council; or
 - e. The redevelopment of the property for a permitted or conditional use as allowed by the City's zoning regulations.

PROPOSED VARIANCE REQUESTS

The applicant is in need of one variance approval from the City and would like City-approval of another. The first variance that is needed is about the IUP requirement that requires the property have access to a collector or arterial street. The second variance the applicant is requesting is the City requirement that the parking lot on the property be paved or class 5 gravel. The applicant would like to leave the parking lot as grass.

Access Requirement.

City Code Section 154.914 Agricultural Entertainment Businesses.

B. The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the Comprehensive Plan;

Example of Collector Streets (*Generally local jurisdiction*) – 50th St between Lake Elmo Ave and Stillwater Blvd. Hudson Blvd., Keats Ave.

Examples of Arterial Streets (*Generally County or State jurisdiction*) – Highway 36, I-94, Stillwater Blvd. (*County Rd. 14*), 10th St. (*County Rd 10*).

The property does not have direct access onto a Collector or Arterial street as identified by the 2040 Comprehensive Plan. However, the applicant does state that the property does have access onto Highway 36 which is an arterial street. However, at this time this is an unsupported claim as no proof has been provided. Even if there was legal access to Highway 36 from the property, the applicant would need a variance from the definition of “*direct access*” because it is unlikely that visitors to the property would be able to use this access as the primary access. The property does have direct access to 55th Street. As it is stated today, the Comprehensive Plan lists 55th Street as a Neighborhood Street and not a Collector Street or Arterial Street. Therefore, the applicant is seeking a variance from the requirement in Section 154.914 of the City Code that its IUP business have direct access to a Collector or Arterial street.

Parking Lot Requirements.

Performance Standard G of Section 154.210 of the City Code requires the parking surface to either be “...class 5 gravel or pavement...” Section 154.210 Off-Street Parking (D)(3)(b) states that “*In all residential,*

commercial and mixed use districts, all areas intended to be utilized for parking space for five (5) or more vehicles and associated driveways shall be paved with a durable surface including, but not limited to, hot asphalt, bituminous or concrete.”

City Staff believes there are two approaches to address the parking lot issue. Staff believes that by applying the most ridged review, Section 154.210 of the City Code would take precedence. However, City Staff also believes that the performance standards in Section 154.913 of the City Code were established to address the specific use. With that said, City Staff’s interpretation of the code would lead to suggest that either gravel or asphalt will be required for the parking lot, allowing the applicant to choose its preferred surface. The applicant is requesting the City to grant a variance from the parking surface requirement of asphalt or gravel. The applicant believes that a grass parking surface would be sufficient for the proposed IUP.

REQUIRED/RECOMMENDED VARIANCE FINDINGS

An applicant must establish and demonstrate compliance with the variance criteria set forth in Section 154.017 of the City Code before a variance may be granted by the City. These criteria are listed below, along with comments from City Staff regarding applicability of these criteria to the applicant’s request.

- 1) **Practical Difficulties.** A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. Definition of practical difficulties:

“Practical difficulties” as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

FINDINGS:

- **Variance for Access Requirement:** *With respect to the proposed variance from the access requirement in the Code, strict enforcement of the City’s zoning regulations will cause practical difficulties to the applicant. The applicant does not have direct access to a collector or arterial street. Even if the applicant can establish that the property has access to Highway 36 which is an arterial street, requiring it to utilize this access is misguided for an agricultural operation which is intended to be rural by nature as this Highway has one of the busiest roadway classifications. This access also would not be feasible because it would not be safe. The applicant is proposing to use the property in a reasonable manner as an agricultural entertainment business is an interim use in this zoning district. Furthermore, the traffic of the business operation would be limited to 80 vehicles per day as their maximum group is 40 and half day events are available for use, as stated by the applicant’s narrative. The request is reasonable and the criterion is met.*
 - **Variance for Parking Surface:** *With respect to the proposed variance for the parking surface, strict enforcement of the City’s zoning regulations will not cause practical difficulties for the applicant. There is no established reason why the applicant would not be able to construct the parking surface on the property using gravel or asphalt (for example that the topography of the property would not allow for these types of materials or the equipment used to spread these materials to be brought in). Therefore, the criterion is not met.*
- 2) **Unique Circumstances.** The problem for the landowner/applicant which the proposed variance is intended to correct must be due to circumstances that are unique to the property in question and that were not created by the land owner/applicant.

FINDINGS:

- **Variance for the Access Requirement:** *With respect to the proposed variance with respect to the access requirement, the plight of the property is not unique and has been caused by the applicant. The existing 2040 Comprehensive Plan lists 55th St. as a neighborhood street, which is an appropriate classification for the area. Knowing that, the applicant stated in its narrative that it removed access to the property onto Highway 36. Since the property owner is the one who removed the access necessary to have this type of use on the property, the access issue was created by the property owner. Furthermore, the property does not appear to have direct access to the necessary roadways. Therefore, this criterion is not met.*
- **Variance for Parking Surface:** *With respect to the proposed variance for the size of the parking surface, there is nothing unique about the property that would prohibit the applicant from meeting this requirement (i.e. topography, drainage, etc.). The request for a grass parking lot simply comes off as a request out of ease or economics. Therefore, this criterion is not met.*

3) Character of Locality. The proposed variance will not alter the essential character of the locality in which the property in question is located.

FINDINGS:

- **Variance for the Access Requirement:** *With respect to the proposed variance with respect to the access requirement, the proposed variance will alter the essential character of the locality. Staff speculates that the intent of the Code requiring a higher road classification for the type of use being proposed by the applicant is to limit the impact of vehicular traffic on neighborhood streets by requiring the traffic be directed to an arterial or collector street. However, with 55th Street being a neighborhood street primarily being used for neighborhood traffic, the additional traffic will be noticeable and therefore will alter the essential character of the locality. Therefore, this criterion is not met.*
- **Variance for Parking Surface:** *With respect to the proposed variance for the area of the parking surface, the proposed variance will not alter the essential character of the locality. Staff does not believe that a grass parking area in a rural and farm setting will have much of an impact on the character of the locality. Therefore, this criterion has been met.*

4) Adjacent Properties and Traffic. The proposed variance will not impair an adequate supply of light and air to properties adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.

FINDINGS:

- **Variance for the Access Requirement:** *With respect to the proposed variance for the access requirement, the proposed variance will not impair an adequate supply of light and air to the adjacent properties. However, given that the traffic would be directed onto a neighborhood street instead of an arterial or collector street, the variance could substantially increase the congestion of the public streets which could potentially substantially diminish or impair property values within the neighborhood. Therefore, this criterion is not met.*
- **Variance for Parking Surface:** *With respect to the proposed variance for the parking surface, the proposed variance will not impair an adequate supply of light and air to the adjacent properties or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. Therefore, this criterion is met.*

Recommendation:

Because the applicant is unable to meet all of the required criteria for variance approval for the access requirement and the parking lot surface, City Staff is recommending denial of the variance requests. *This recommendation of denial of the variance for the access requirement subsequently requires City Staff to also recommend denial of the Interim Use Permit due to the fact that the property does not have access to an arterial or collector street which is a City requirement for the Interim Use Permit.*

ADDITIONAL REVIEW

Agency Review:

The City Engineer has provided a memo regarding the request and has provided recommendations for additional conditions of approval. If the request is approved, City Staff is inclined to incorporate the City Engineer’s recommended conditions. The memo is attached for review.

At this time no other agencies or departments have submitted comments pertaining to the use of the property or the existing/proposed facilities.

Neighboring Comments:

The property owner at 9400 55th St. has provided the City with a five page response to the applicant’s proposal. The attachments outlines their history in the neighborhood as well as some concerns. Staff would recommend the Commissioners read through the submitted material.

Darrell Hanson, property owner at 9109 provided a positive email in support of the IUP request stating: “As the owner and decedent of the Schaefer farm, located north bordering the Whipple Tree Farm. I support the application asking for an agricultural entertainment business. I appreciate the creative thinking of Peter Kaslter to preserve his family property and sharing his heritage and culture with us. I think that his concept offers us hope and retreat to nature in these confined and uncertain times.”

OPTIONS:

The Planning Commission has the following options:

- A) Amend the findings to recommend approval of the Interim Use Permit and variance requests with recommended findings of fact and conditions.
- B) Recommend denial of the Interim Use Permit and Variances.
- C) Recommend denial of the parking surface variance but recommend approval of the Interim Use Permit and the access requirement variance.

RECOMMENDATION:

Staff does not recommend approval of the proposed Interim Use Permit request or variances, based on the recommended findings and conditions of approval. As such, staff is recommending the Planning Commission make the following motions:

“Move to recommend to the City Council denial of the variance request to allow the proposed IUP to access 55th Street (which is not a collector or arterial street) and the variance from the parking lot surface requirement, based on the Staff provided findings of fact.”

“Move to recommend to the City Council denial of the IUP based on the Staff provided findings of fact.”

- 1. Application/Narrative

ATTACHMENTS:

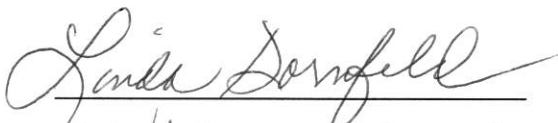
- 2. Property showing Site Plan
- 3. City Code Section 154.913-154.914
- 4. 9400 55th St. Comment Letter

February 2, 2020

Affirmation of Authorization

We hereby affirm that we are the title owners of the below-described property. We hereby grant authorization to Whippletree Farm, LLC to apply for an Interim Use Permit and to operate an "agricultural entertainment business" at the owner's property at 9130 55th Street North, Lake Elmo 55042, comprised of Property Identification Numbers:

03.029.21.23.0012,
03.029.21.22.0003
03.029.21.32.0021
03.029.21.32.0001



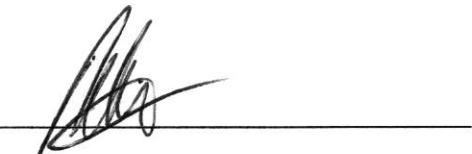
LINDA DORNFELD

Owner



Madeline Kastler

Owner



Peter Kastler

Owner

Legal Descriptions
Interim Use Permit Application
Whippletree Farm / 9130 55th Street North

03.029.21.23.0012

THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 29 NORTH, RANGE 21 WEST, WASHINGTON COUNTY, MINNESOTA LYING SOUTHERLY OF THE NORTH 100.00 FEET THEREOF AND LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89 DEGREES 00 MINUTES 16 SECONDS WEST, ASSUMED BEARING, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER A DISTANCE OF 693.00 FEET TO THE POINT OF BEGINNING OF THE LINE TO DESCRIBED; THENCE NORTH 02 DEGREES 44 MINUTES 10 SECONDS WEST 1212.85 FEET TO THE SOUTH LINE OF SAID NORTH 100.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND SAID LINE THERE TERMINATE. ALSO, THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3 LYING NORTHEASTERLY OF THE NORTH LINE OF 55TH STREET NORTH AS DEDICATED ON FOX FIRE ESTATES, ACCORDING TO THE PLAT ON FILE IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA; TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER ALL IN SAID SECTION 3 DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE NORTH 100.00 FEET OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 01 DEGREE 31 MINUTES 51 SECONDS WEST, ASSUMED BEARING, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER A DISTANCE OF 100.01 FEET TO THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89 DEGREES 01 MINUTE 06 SECONDS WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER A DISTANCE OF 33.00 FEET (2 RODS); THENCE NORTH 04 DEGREES 07 MINUTES 49 SECONDS WEST ALONG A LINE THAT INTERSECTS THE NORTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER DISTANT 99.00 FEET (6 RODS) WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, AS (CONTINUED BELOW) MEASURED ALONG SAID NORTH LINE, A DISTANCE OF 405.30 FEET TO THE SOUTHWEST CORNER OF THE TRACT DESCRIBED IN DOCUMENT NO. 366476, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA; THENCE NORTH 88 DEGREES 56 MINUTES 29 SECONDS EAST ALONG THE SOUTH LINE OF SAID TRACT 51.38 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 04 DEGREES 55 MINUTES 48 SECONDS EAST 505.96 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTH 100.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER DISTANT 30.00 FEET EASTERLY OF SOUTHWEST CORNER OF THE NORTH 100.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 89 DEGREES 01 MINUTE 06 SECONDS WEST ALONG SAID SOUTH LINE 30.00 FEET TO THE POINT OF BEGINNING. EXCEPT THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 3, TOWNSHIP 29 NORTH, RANGE 21 WEST, CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 89 DEGREES 50 MINUTES 05 SECONDS EAST, BEARINGS ORIENTED TO THE WASHINGTON COUNTY COORDINATE SYSTEM, NAD83, 1986 ADJUSTMENT, ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 660.21 FEET; THENCE SOUTH 23 DEGREES 40 MINUTES 51 SECONDS WEST, A DISTANCE OF 1220.40 FEET TO THE NORTH LINE OF 55TH STREET NORTH AS DEDICATED ON FOX FIRE ESTATES, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA; THENCE NORTHWESTERLY

ALONG SAID NORTH LINE OF 55TH STREET NORTH, ON A NON-TANGENTIAL CURVE, CONCAVE TO THE NORTH, CHORD BEARING NORTH 11 DEGREES 20 MINUTES 50 SECONDS WEST, RADIUS 370.00 FEET, CENTRAL ANGLE 11 DEGREES 20 MINUTES 50 SECONDS, 73.28 FEET; THENCE NORTH 27 DEGREES 58 MINUTES 20 SECONDS WEST ALONG SAID NORTH LINE OF 55TH STREET NORTH, A DISTANCE OF 55.10 FEET; THENCE NORTHWESTERLY ALONG A TANGENTIAL CURVE, CONCAVE TO THE SOUTHWEST, CHORD BEARING, NORTH 36 DEGREES 24 MINUTES 40 SECONDS WEST, RADIUS 530.00 FEET, CENTRAL ANGLE 16 DEGREES 52 MINUTES 41 SECONDS, 156.13 FEET, ALONG SAID NORTH LINE OF 55TH STREET NORTH TO THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 44 MINUTES 12 SECONDS WEST, ALONG SAID WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 881.06 FEET TO THE POINT OF BEGINNING. ALSO EXCEPT THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 3, TOWNSHIP 29 NORTH, RANGE 21 WEST, CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA DESCRIBED AS FOLLOWS: COMMENCING THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH 89 DEGREES 50 MINUTES 05 SECONDS EAST, BEARINGS ORIENTED TO THE WASHINGTON COUNTY COORDINATE SYSTEM, NAD83, 1986 ADJUSTMENT, ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER A DISTANCE OF 660.21 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89 DEGREES 50 MINUTES 05 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 373.45 FEET; THENCE SOUTH 24 DEGREES 40 MINUTES 26 SECONDS WEST, A DISTANCE OF 1380.29 FEET TO THE NORTH LINE OF 55TH STREET NORTH AS DEDICATED ON FOX FIRE ESTATES, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA; THENCE NORTHWESTERLY ALONG SAID NORTH LINE OF 55TH STREET NORTH, ON A NON-TANGENTIAL CURVE, CONCAVE TO THE NORTH, CHORD BEARING NORTH 64 DEGREES 44 MINUTES 58 SECONDS WEST, RADIUS 370.00 FEET, CENTRAL ANGLE 50 DEGREES 51 MINUTES 38 SECONDS, 328.44 FEET TO THE INTERSECTION WITH A LINE BEARING SOUTH 23 DEGREES 40 MINUTES 51 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 23 DEGREES 40 MINUTES 51 SECONDS EAST, A DISTANCE OF 1220.40 FEET TO THE POINT OF BEGINNING SECTION 3 TOWNSHIP 29 RANGE 21

03.029.21.32.0001

PT NW1/4-SW1/4 DESC AS FOLLOWS: COMMENCING AT THE NE CORNER OF SD1/4-1/4 THENCE S89DEG00'16"W ASSUMED BEARING ALONG THE N LINE OF SD1/4-1/4 A DISTANCE OF 148.51 FT TO THE POINT OF BEGINNING THENCE S1DEG30'47"E PARALLEL WITH & DISTANCE 148.50 FT WEST OF THE E LINE OF SD1/4-1/4 A DISTANCE OF 99 FT THENCE N89DEG00'16"E PARALLEL WITH SD N LINE A DISTANCE OF 114.98 FT THENCE S44DEG12'08"W 152.58 FT THENCE N45DEG47'52"W 217.45 FT THENCE NWLY ALONG A TANGENTIAL CURVE CONCAVE TO THE SW HAVING A RADIUS OF 380 FT & A CENTRAL ANGLE OF 12DEG33'39" A DISTANCE OF 83.31 FT TO A POINT ON THE N LINE OF SD1/4-1/4 WHICH IS 958.69 FT EAST OF THE NW CORNER OF SD1/4-1/4 AS MEASURED ALONG SD N LINE THENCE N89DEG00'16"E ALONG SD N LINE 210.31 FT MEASURED TO THE POINT OF BEGINNING SECTION 03 TOWNSHIP 029 RANGE 021

03.029.21.32.0021

THAT POINT N66 FT OF NE1/4-SW1/4 LYING WESTLY OF NWLY LINE OF 55TH ST N AS DEDICATED ON PLAT OF FOX FIRE ESTATES & ALSO THE N 66 FT (4 RODS) OF E 148.50 FT (9 RODS) OF NW1/4-SW1/4 SD SEC3 AND: POINT NW1/4-SW1/4 S03T29R21 BEING THE S 2 RODS OF N 6 RODS OF E 9 RODS SD1/4-1/4 EXCEPT POINT PLATTED AS FOX FIRE ESTATES SECTION 03 TOWNSHIP 029 RANGE 021

03.029.21.22.0003

POINT NW1/4-NW1/4 A 66 FT WIDE STRIP OVER THAT POINT OF NW1/4 WHICH LIES SOUTHWESTLY OF SOUTH LINE OF TRACT OF LAND DESCRIBED IN BOOK 217 OF DEED PAGE 43 & ADJACENT LYING WESTLY OF FOLLOWING DESCRIBED LINE BEGINS AT POINT ON N LINE OF SD NW1/4-NW1/4 DISTANCE 99 FT (6 RODS) WEST OF NE CORNER OF SD1/4 AS MEASURED ALONG SD NORTH LINE THENCE SOUTHWESTLY TO POINT ON SOUTH LINE OF SD 1/4 DISTANCE 33 FT (2 RODS) WESTLY OF SE CORNER OF NW1/4 NW1/4 AS MEASURED ALONG SD SOUTH LINE & SD LINE THERE TERMINATE SECTION 03 TOWNSHIP 029 RANGE 021

**Narrative Statement
Interim Use Permit Application
Whippletree Farm / 9130 55th Street North**

Introduction

The owners of the farm located at 9130 55th Street North, known as Whippletree Farm (aka “the Kleis Farm”) are applying for an Interim Use Permit for an “agricultural entertainment business” as defined by Lake Elmo City Code. This use is allowed in the rural residential zone where the farm is situated. It is in alignment with the Comprehensive Plan and enhances the neighborhood community by maintaining its rural character and natural open space. We are looking forward to working with the City of Lake Elmo and our neighbors in making this proposed use a success.

Past and Present Use

This farm has been owned and operated by the same family for the last 150 years. The site has been in continuous agricultural production during this time, and continues today. The current focus is on small-scale production of specialty crops, including eggs laid by free-range, organic-fed chickens; fresh, pure honey and organic hops. Several acres are dedicated to alfalfa for hay. Orchard crops, including apples, pears, raspberries, aronia and highbush cranberry have been planted in the last several years. A small herd of goats are used for sustainably and cleanly managing buckthorn.

We have a 3ft x 2ft wayside stand for seasonally-available honey and eggs that neighbors and visitors purchase on a self-serve basis. Most of the eggs that are produced on the farm are sold at Len’s Family Foods in Stillwater. Our eggs are handled, cleaned and packed according to state and USDA regulations, and our farm is registered with the Minnesota Department of Agriculture.¹

A review of our associations will give a good idea of where our priorities are: we are members of the “Minnesota Grown” program, which advertises and promotes locally grown Minnesota foods, members of the Land Stewardship Project, a non-profit dedicated to stewardship for farmland and promotion of sustainable agriculture, and we are designated as a Minnesota “Century Farm,” which honors Minnesota families that have owned their farms for at least 100 years.

The current scale of production would be considered by many a hobby farm. While production of speciality crops is increasing on the farm, it will always be small-scale, both in recognition of the neighbors and physical space of the property, as well as business plan considerations. Scale aside, the property will continue to be a working, food-producing farm for the foreseeable future.

The farm buildings are still used for agricultural purposes, but uses need to be expanded. Specifically, the barn is an historic landmark with a beautiful interior that needs to be maintained. The structure should be used to its fullest potential. To accomplish this, it needs to

¹ Permit 4495

have multiple uses. This is not a unique problem for barns in the midwest, or even in Lake Elmo, where barns have historic value and add to rural charm, but slowly deteriorate unless maintained. There are opportunities to use these barns in ways that are community-oriented and preservation-minded. These uses maintain Lake Elmo's unique character and are wholly consistent with the City's Comprehensive Plan.

Due to these factors, and combined with costs associated with a large parcel, our family is seeking other ways to generate income using the unique qualities of our property. Therefore, in addition to continuing agricultural production, we are seeking to preserve the open space while using this Lake Elmo historic site as a place of retreat, to connect with nature and to learn about agriculture and food.²

Proposed Use

We are proposing to allow seasonal (generally May through October) access to this private natural space by fee-based reservation. Families or groups will be able to reserve the self-guided trail and open space for half-day or day use. The west-side hay barn will be available for small meetings or gatherings and seasonally we may offer agricultural-related classes, such as backyard chicken flock management.

Regardless of size, agricultural businesses need to diversify, and allowing on-farm visits is increasingly a way to do that.³ Arguably, this proposed use is simply an extension of already-allowed agricultural use activities. Many consumers want to know where their food comes from, and connecting people with farms is the perfect educational opportunity to do this.⁴

Our target customers are individuals that want to retreat to a natural, rustic environment and have an experience grounded in history and agriculture. Recreation will be low-impact, such as walking the nature trail, learning about farm processes, or simply feeding chickens. Visitors will be seeking relaxation and connection over "entertainment." Examples of visitors may include non-profit boards, scout troops, employee retreats, and family reunion groups.

Given this intended use, by design the number of visitors will be intentionally limited. Multiple groups will not be able to reserve the space at the same time. The maximum number of people at any one time would be forty (40), though we anticipate the average would be between eighteen and twenty-four (18-24) people per reservation.⁵

² We believe "entertainment" as used in the normal definition of the word only slightly defines the proposed-use activities, and we just as easily fit within the Lake Elmo definition of "Parks and Open Areas" which includes "uses of land focusing on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation . . . Examples include parks . . . recreational trails . . . nature preserves." There almost certainly is room in Lake Elmo Code for a defined use of "Agritourism Activities." We would be willing to work with the City to draft language for future applicants for this sort of use.

³ [Agritourism Allows Farms To Diversify . . .](#) USDA Economic Research Service. November 4, 2019.

⁴ Ford, Beth, Land O Lakes CEO. Address to the Economic Club of Minnesota. February 5, 2020.

⁵ See "Attachment 4" for more information relating to traffic impact and numbers of weekly reservations.

The owners will always be present and available when the space is rented. There will be no staffed retail space or store.

The nature trail is self-guided with information provided throughout, including information about the natural terrain and wildlife, agricultural production past and present, and history of native peoples.⁶

Visitors can expect to visit a working farm. They will see and learn about egg-laying chicken flocks, find and learn about beneficial insects or perhaps pet a goat. There will be opportunities to reminisce about past farm connections and potentially spot a variety of wildlife in its natural environment. In a growing agritourism market, many people seek and value the opportunity to visit farms that provide a window to history, build a relationship with those that provide their food and provide a chance to connect with nature.

Alignment with Comprehensive Plan and Neighborhood Impact

The proposed property use is an extension of our family's past and our current commitment to the preservation and enhancement of the open space. Our current environmentally-centered land management practices demonstrate this commitment.

We have planted approximately two (2) acres of buffer strips and plots of native prairie wildflowers and grasses that are both environmentally beneficial and visually pleasing.⁷ We have planted over twenty (20) species of trees and bushes that are native and environmentally beneficial, almost exclusively purchased from the Washington County Conservation District. We have increased nesting boxes for ducks, birds and bats. We have worked hard to remove invasive plant species (chiefly buckthorn and swamp willow) in an environmentally sensitive manner.

Agricultural operations are no-spray, with very little to no pesticide or herbicide use. The conventional crop grown (alfalfa) is a perennial plant, and therefore requires less tilling (generating less dust), helps maintain topsoil, and improves soil through nitrogen fixing.

The farm is kept clean, with no unusable, abandoned implements or farm vehicles anywhere on the property. Actively used farm implements are hidden from general view. The farm buildings, while old and not entirely pleasing to look at, are functional, maintained and safe. We have worked diligently the last several years to clean, repair and beautify the buildings and grounds in anticipation of the proposed use.

⁶ See Attachment 6 "Whipple Tree Trail" printout of web-based interactive trail map, online at: <https://drive.google.com/open?id=1YcfytwkGukj3vU0pj1FQ1MHZZJLtY-0l&usp=sharing>

⁷ See attached "Native Plantings" for a map of the prairie grass plantings, as well as tree and shrub plantings.

Additionally, we have manicured the previously-mentioned nature trail for interacting with the natural environment, and maintain a safe and clean environment in which neighborhood visitors stop by to buy eggs or say “hello” to the goats.

All of these practices are done in consideration of land stewardship and our neighbors, as both are a high priority for us. We have a keen awareness and understanding that this historic agricultural property is now situated in a modern neighborhood and there is a need to operate with balance and in partnership. We will continue to operate this way with the proposed use, and certainly will not operate in a manner that is a nuisance to the neighborhood or community. The attached documents thoroughly address waste, noise, safety, traffic and other concerns, and we have every intention and ability to follow through with making sure they are properly addressed.⁸

Additionally, the proposed use is entirely consistent with the vision and goals of the Lake Elmo Comprehensive Plan. Indeed, the proposed use is in alignment with every aspect of the City’s vision statement, including being a “retreat,” providing access to “open space or trail” to a community that “embraces local businesses . . . [that] are a part of our . . . distinctive neighborhoods”:

“Our community, neighborhoods and homes are our retreat. We live in a place with diverse neighborhood patterns and housing options - but every resident has access to a great park, open space or trail. Our community embraces local businesses and services, and they are a part of our neighborhoods. We are a collection of distinctive neighborhoods, that together share a commitment to making the City an exceptional place to live, work, and recreate.”⁹

Summary

In close, the property owners of 9130 55th Street North intend to utilize this historic site as an open natural space for farm visits, as allowed by City Code. This will be small-scale, operated by private reservation only, and done in strict accordance with the stated vision, values and ordinances of our community. We look forward to the City’s support.

⁸ Liability concerns are an important consideration for us, and we do, and will have proper insurance coverage. As a relevant side note, Minnesota does have a robust “agritourism law” that significantly limits liability to operations such as this. See [MN §604A.40](#) for the full text. Additionally, we will have a user agreement and liability waiver for every reservation group.

⁹ *City of Lake Elmo Comprehensive Plan 2040*. <http://www.lakeelmo.org/Full2040CompPlan.pdf>

Written Responses
Interim Use Permit Application
Whippletree Farm / 9130 55th Street North

1. Land Use Application Form: see attached cover sheet
2. Written statements:
 - a. Primary Contact, owner: Peter Kastler, 612-382-9385, peter.kastler@gmail.com
Owner: Madeline Kastler, 612-237-6322
Owner: Linda Dornfeld, 612-636-8212
Applicant: Whippletree Farm, LLC (members Peter & Madeline Kastler)
9130 55th Street North, Lake Elmo MN 55042
 - b. 9130 55th Street North, Lake Elmo MN 55042
 - i. Zoned Rural Residential (Lake Elmo); Agricultural (County)
 - ii. 37.7 Acres or 1,642,212 Square Feet
 - iii. 03.029.21.23.0012, 03.029.21.32.0001, 03.029.21.32.0021, 03.029.21.22.0003, contiguous
 - iv. See "Attachment 2" for legal descriptions
 - c. Abridged narrative history: Since 1869, this farm property has been owned by the same family and has been in continuous agricultural production since its inception. The original 40 acres were purchased by David and Catherine Kleis over 150 years ago; eleven years after Minnesota became a state. Originally a subsistence farm, then a dairy and commodity farm for many decades, the history of this agricultural property, along with the other area community farms, is central to the story of Lake Elmo. The farm is currently utilized for small scale agricultural production and valued by neighboring residents for its open space. The fifth generation descendants of David and Catherine currently reside on the farm. The neighborhood houses in the immediate area are built on the farm's former cropland, with namesake Kleis Park located two blocks away.

Applicant Peter Kastler has had discussions about proposed uses with the Planning Director prior to submitting this application.
 - d. Proposed Use: "Agricultural Entertainment Business"
 - i. The owners are planning on allowing private (by reservation only) access to the farm for use of the natural open space as a pleasant retreat in an agricultural atmosphere. Use includes a nature trail on the meadow (non-tillable) portion of the land, agricultural education opportunities and space for small-scale gatherings or meetings. This will be seasonal,

roughly from May through October. The proposed use may operate several days a week, though we anticipate once or twice a week will be much more likely. City planning staff have informed us that this is an “agricultural entertainment business” under City Code that requires City approval of a use permit. Agricultural activities will continue, chiefly with the production of hay, hops, honey, eggs and orchard crops. There will be no employee-staffed retail store, only a walk-up 2ftx4ft wayside stand that the neighbors use to buy eggs, which has been available on the farm for several years. The specific event that would terminate the interim use would be the sale of the property to a non-immediate family member. See Attachment 3 for additional narrative about the proposal.

- ii. The applicant consents and agrees that:
 - 1. the applicant has no entitlement to future approval or reapproval of the interim use permit; and
 - 2. the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future; and
 - 3. the applicant will abide by conditions of approval that the City Council attaches to the interim use permit.

e. Justification:

- i. This is a permitted use for Rural Residential properties under the Lake Elmo Zoning Code, specifically as a “*Agricultural Entertainment Business*” under §154.914¹. The use conforms to the following performance standards:
 - A. We will adhere to all applicable performance standards in Lake Elmo Code §154.913:
 - a. *Does not apply*
 - b. The proposed use will be located on the property we own and not within any public right-of-ways or easements.
 - c. All parking will be on-site, and will conform with parking lot dimensions requirements for accessibility, maneuverability and safety as follows: 60ft wide by 72ft long, with sixteen

¹ We also believe it meets the definition of a “*Park and Open Area*” as defined in §154.012(C)

(16) ninety-degree parking spaces, including one (1) accessible parking space.²

- i. The lot will have landscape screening as shown on the map on “Attachment 9.”
 - ii. The set back is approximately 175 ft which is significantly beyond the required thirty (30) feet from property lines.
 - iii. The parking area will be sectioned off with pendant flagging and rope made of nylon in the style common for event parking. It will be hung on event days only.³
 - iv. Due to the intentional rustic nature, seasonality and low number of trips generated for the proposed use, we are requesting a waiver of the requirement for pavement or class 5 gravel. We propose a mowed grass parking area.
- d. Waste material will not generate any nuisance impact on the adjacent properties. Separate twenty (20) gallon galvanized and lidded waste containers will be provided for compostables, recyclables and trash. These containers will be stored away from street view and adjacent properties, and emptied after each event.
 - e. There will be no dust nuisance impact on adjacent properties. The farm driveway is asphalt, and generates negligible dust. The parking will be mowed grass, also generating negligible dust.
 - f. We have sixteen (16) square feet dedicated to our wayside stand, well under the stated limit of 20,000 square feet maximum that can be devoted to sales activities.
 - g. We will meet parking requirements; see specifics above under item “c” and “Attachment 9” map.
 - h. *Does not apply*; we are not operating an agricultural sales business. Nevertheless, the property is 37.7 acres, which meets the required size of 40 acres, as City Code dimensions are required to be a “nominal 40 acres”

² This is in conformance with *2010 American with Disabilities Act Standards for Design Section 202.8.*

³ The term “event” in this application means any reservation occurrence.

meaning “reduced by not more than 10%” which would be 36 acres. If for some reason this is regarded as insufficient, we are requesting a waiver of this requirement.

- i. Generated wastewater will be minimal, limited to “graywater” from handwashing, which will be contained in a portable tank and disposed of at a local dump station. The compost toilet is a high-capacity self-contained unit, has no wastewater (liquid evaporates through use of composting, which is aided by heating element and fan), and can accommodate use for twenty-one (21) adults for one day use on a weekly basis.⁴ Larger groups will require portable toilet and/or wash station rental, which will hold any wastewater and be removed at the end of the event. Any day-use portable toilets will be screened from neighborhood properties and roadways.
- j. *Does not apply*; no structures will be constructed
- k. The average daily trip generation is calculated to be a *maximum* of nineteen (19) trips per event.⁵ This is well below the allowed 170 average daily trips, or maximum amount of 340 per day for our acreage, per the city requirement.
- l. The impervious coverage for all buildings and asphalt on the entire property is 23,283 square feet. However, the portion devoted to the proposed use is 7,967 square feet, or 3,647 square feet if the waiver of the parking lot paving for performance standard “c” (above) is granted. Using any calculation, we are well below the 40,000 square foot maximum for impervious coverage.
- m. We are seeking an interim use permit for a “agricultural entertainment business” not a “sales business.”
- n. The only exterior storage of equipment will be for equipment currently in use, and if stored outside, will be kept out of vision of adjacent properties whenever

⁴ See https://sun-mar.com/prod_self_exce.html

⁵ The U.S. Department of Transportation’s [2017 Summary of Travel Trends](#) puts the average vehicle occupancy for “social & recreational” trip purposes at 2.10 occupants. We intend on keeping events under forty (40) and therefore 40 divided by 2.1 equals 19. However, we anticipate in reality that the average group size will not be that large.

possible. The owners of this property have demonstrated this tidiness practice consistently through the decades.

- o. The wayside sales stand is more than 100 feet from the nearest adjacent property line. Though not a stated performance standard, the meeting room is 105 feet from the nearest adjacent property line.
 - p. *Does not apply*; we have no roof top or outside building mechanical equipment for the proposed use, and do not intend to.
 - q. Trash containers will be screened in an appropriate manner; please see performance standard “d” above and the map on “Attachment 9.”
 - r. We agree to adhere to all applicable general review criteria.
 - s. No activities or structures beyond those specified in the interim use permit shall be added before review by the city.
- 2. The property has direct access to arterial street, as identified in the Comprehensive Plan, though we prefer not to utilize it for this use and are requesting a variance. See Attachment 11.
 - 3. This agricultural entertainment business will not allow the discharge of firearms, including blanks.
 - 4. We have taken reasonable steps to prevent trespassing on adjacent properties with existing farm fencing, hedging and natural buffer strips, and will continue to do so.
- ii. The use will not adversely impact nearby properties through nuisance, noise, traffic, dust or unsightliness or otherwise negatively impact health, safety and welfare impact on nearby properties or the subject property:
 - 1. Use will intentionally kept to small scale for consideration of low impact on the subject property, and no impact on neighboring properties. We are anticipating average group sizes of eighteen (18) to twenty-four (24) people, with a maximum group size of forty (40). It is important to recognize that the owners also *live* on the property and have significant incentive to not create or allow nuisances.
 - 2. Traffic is on a rural road (55th Street North), and the parking area will have sightlines blocked from view by use of already-planted

landscape screening of native Serviceberry and Wild Plum hedging. We plan to add more Sandcherry bush (*Prunus pumila*) hedging. The parking area is designed to city spacing code (see 2(e)(i)(A)(c) above for more information). An accessibility space and a bike rack will be provided. No bus parking will be allowed. No parking will be allowed on the road or on the driveway.

3. Use will be limited to “Daytime” from 7:00am to 10:00pm, as defined by the State of Minnesota.⁶ In practice, however, we will seek to operate until no later than sunset, which is *always* earlier than 10:00pm.
4. Hedging and fencing are used to create barriers between property lines.
5. One (1) sign for property identification will be used. It has already been erected by using the City permitting process and is in compliance with City Code. See “Attachment 5” for photo.
6. Current septic systems will not be used or be impacted. A high-capacity self-contained composting toilet will be utilized in a safe and sanitary manner. This is Sun Mar brand toilet, which is the industry leader in composting toilets, and this electric unit is a certified composting unit under NSF/ANSI Standard 41. Any day use over the capacity of the toilet will require the use of a self-contained, temporary portable toilet. With events occurring by reservation only, and because we will know in advance the number of people that will be on-site, we will know in advance if an additional toilet will be needed.
7. Noise levels will be kept under Minnesota Pollution Control Agency requirements, as mandated by Lake Elmo City Code §96.01. Meeting or group noise, if any, projects towards the field and “into” the subject property. Motorized activities, such as ATV use, and amplified sound activities that are above residential standards will not be allowed.
8. We will not be hosting large parties, such as receptions. No alcohol will be served or allowed to be brought in, with the exception of a *de minimus* amount to facilitate a toast or other ceremonial tradition.

⁶ This definition is in the context of nuisance abatement under Minnesota Administrative Rule 7030.0020

9. Unsightliness will not be an issue, as keeping the property clean, uncluttered and in good repair will be an active priority, as it is now. This is an integral part of the property's appeal.
 10. The meeting space and toilet are accessible by ramp and have spacing in compliance with ADA requirements.
 11. No open flames (including but not limited to flame candles, cigarettes and bonfires) or smoking will be allowed by visitors. Use of an enclosed grill in an designated area *may* be allowed. The barn, hay barn, quonset and blacksmith shop each have multi-class ABC fire extinguishers hung in conspicuous, unobstructed locations near the entrances. The hay barn (meeting space) has a commercial grade ANSI Type III Class B first aid kit. The barn has three ground-level exits for egress, all accessible from any location of the interior without using a corridor or hallway.
 12. Adequate liability coverage is currently in place, and we currently are in underwriter review to determine additional need based on the proposed use. Every reservation group will be required to complete a user agreement and liability waiver.
- iii. The use will not adversely impact implementation of the Comprehensive Plan. To the contrary, this use will be in alignment with the plan's land use goals by preserving and protecting open space and rural character that is intrinsic to the community. Furthermore, it supports many neighbors' stated desire for this property to remain open and undeveloped. The desired use is a positive for the property, neighborhood and city.
 - iv. We agree to all conditions that the City Council deems appropriate to establish the interim use.
 - v. There are no delinquent property taxes, special assessments, interest or City utility fees due upon the subject parcel.
 - vi. The date or event terminating the interim use shall be set by the City Council at the time of approval. We are seeking a termination date to occur at sale of the property to a buyer that is not an immediate family member, or if an actual date is required, a minimum of twenty (20) years.
3. Verification of ownership: see the seven (7) pages of Recorded Deeds of "Attachment 10"
 4. Address labels Enclosed: Obtained from the Washington County Surveyor's Office
 5. Ten (10) copies of to-scale site plan: see maps on "Attachment 8 " and "Attachment 9."

6. Landscape plan: See "Attachment 9"
7. Architectural Plans: does not apply; submitted photos of existing structures instead on "Attachment 5."
8. Utilities & Services Plan: see current utilities on "Attachment 8" and "Attachment 9."
9. Electronic files: submitted on enclosed disk

**Photos of Property
Interim Use Permit
Whippletree Farm / 9130 55th Street North**



Historic barn (left) & hay barn addition (right). The wayside stand is on the deck.



North side of historic barn, built in the late 1890s or early 1900s, with sliding door entrance. The milkhouse (small building on the left) will be painted this spring.



Summer view of the property from the north entrance of the barn. This picture shows the norm for tidiness on the farm.



Inside of the hay barn addition, ready for meetings. Currently tables and chairs accommodate room for twenty (20) people. A screen is available for presentations.



The inside of the historic barn is clean, open and beautiful, with old timber and mortise and tenon construction. The plan is to keep this available to tour, and most likely to set up a history display relating to the farm, but not use this regularly as a meeting space.



Summer view of the fields, as well as the quonset and granary buildings. Facing northwest.



The farm sign (constructed of repurposed farm metal and wood) during the winter months.



The farm's wayside stand is a temperature controlled stainless container for neighbors to walk up and purchase eggs. Eggs are typically stocked a day after being laid. Chickens are fed organic feed.



We pasture our chickens for three seasons of the year. The fence is not electrified.



Our second portable coop is the farm's 1920s corn crib, repurposed on a trailer. Facing east.



Summer view of the trailhead, goat pen & outhouse, which is well screened by vegetation.



Spring view of newly planted hops, as viewed facing north from the top of a trellis pole.



View of the meadow on a summer morning, facing southeast.



Same view as above, with new spring growth, and previous year's growth is still visible.



Autumn view of the nature trail. The goldenrod (*Solidago rigida*) has peaked.



Late autumn view of the nature trail, after first dusting of snow, facing south.

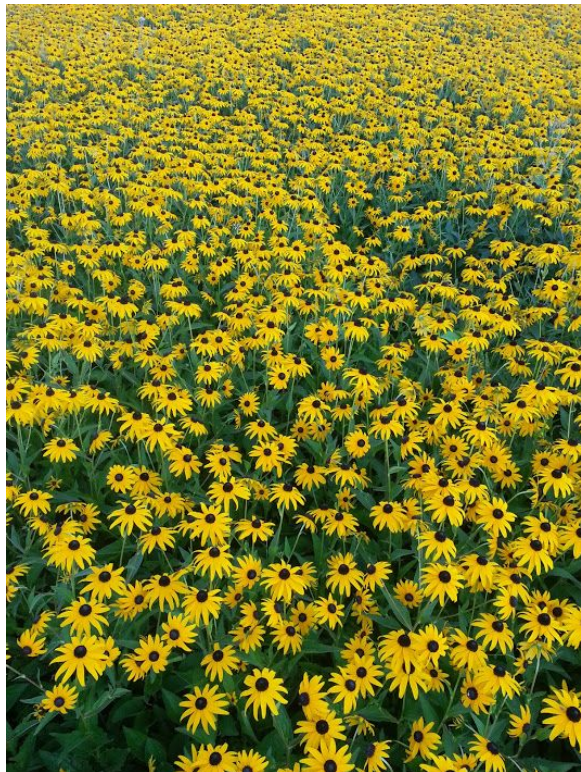
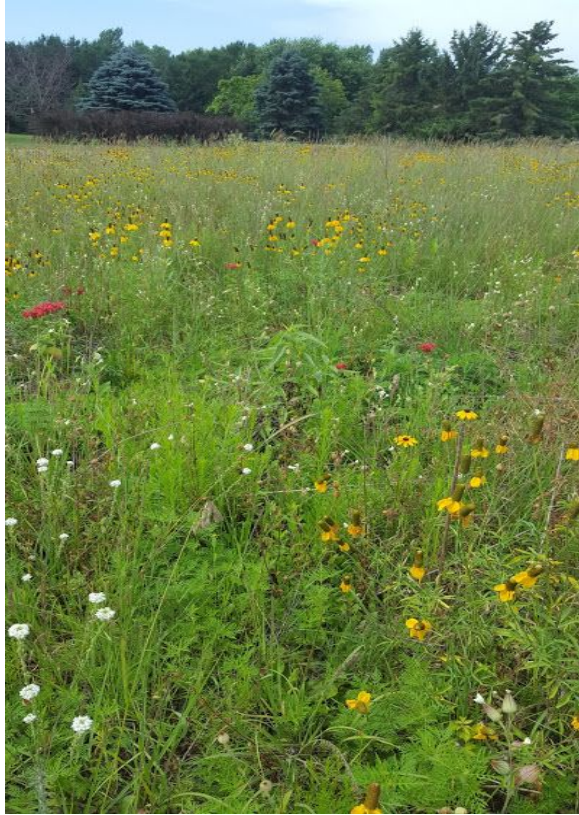


Buckthorn crew, eating new shoots of the invasive species on the native oak savanna. This is portable fencing that we move around the farm. We would not use this on event days.




Autumn view on the nature trail, facing northwest with view of the farmhouse in the background.

On the next page: (A) a view of the native prairie grass and forb planting on the buffer strip, (B) an explosion of native black-eyed susans (*Rudbeckia hirta*), (C) checking one of our bee hives and (D) seasonal honey for sale at our wayside stand. The bees are essential for pollination of both the native flowers and the orchard plantings, and produce awesomely flavorful honey! This spring 2020 we will post a highly visible sign to notify people of the hives, and may eventually enclose them in fencing.



NOTICE

There are inherent risks to visiting or participating in activities on this farm. These dangers or conditions include, but are not limited to natural hazards and conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming operations. Minors shall be accompanied by a responsible adult at all times.



Per MN Statute 604A.40, operators of this farm are not liable for injury, damage, or death of a participant resulting from the inherent risks of agritourism activities.

THIS IS A COMPOSTING TOILET!

(and it's easy to use)

- Do your business (in the toilet please).
- Dump half of a scoop of peat moss in. It's in the metal container on the floor.
- Optional: if you are so inclined, pull out the handle (located in the front right below the seat) and turn it clockwise  a few times. Rotate until the top is open again for the next user.
- Please don't put items in the toilet unless a) it is the toilet paper provided or b) you've consumed it first!



This 10"x10" laminate aluminum "Notice" sign alerts visitors to the inherent risks associated with activities on the farm, and is a reminder to be alert to one's surroundings. This sign is posted in two highly visible areas of the farm, as required by state law (top left).

We understand that many people are not familiar with a composting toilet, so we've posted this 10"x10" laminate aluminum sign inside the outhouse as a quick tutorial (top right).

BEE ALERT!

HONEY BEES ARE ACTIVE & AT WORK

YOU ARE WELCOME TO CONTINUE AS LONG AS YOU STAY ON THE TRAIL, REMAIN QUIET AND USE CAUTION.



OUR FARMS, FOOD AND FLOWERS DEPEND ON BEES & OTHER INSECTS PLEASE RESPECT THEM

This is a draft of the sign that will be posted on the trail before entering the beehive area. It will be in the same style as the other two signs, and made of the same 10"x10" laminate aluminum.

Whippletree Farm & Nature Trail

Whippletree_Nature_Trail.gpx



Start of Whippletree Nature Trail



End of Whippletree Nature Trail



Whippletree Nature Trail



Trail addition (spring 2020)

Visitor Facilities



Restroom (Yellow Door)



Parking



Water



First Aid Kit

Farm & Agricultural Landmarks



All items

Fauna



All items

Flora

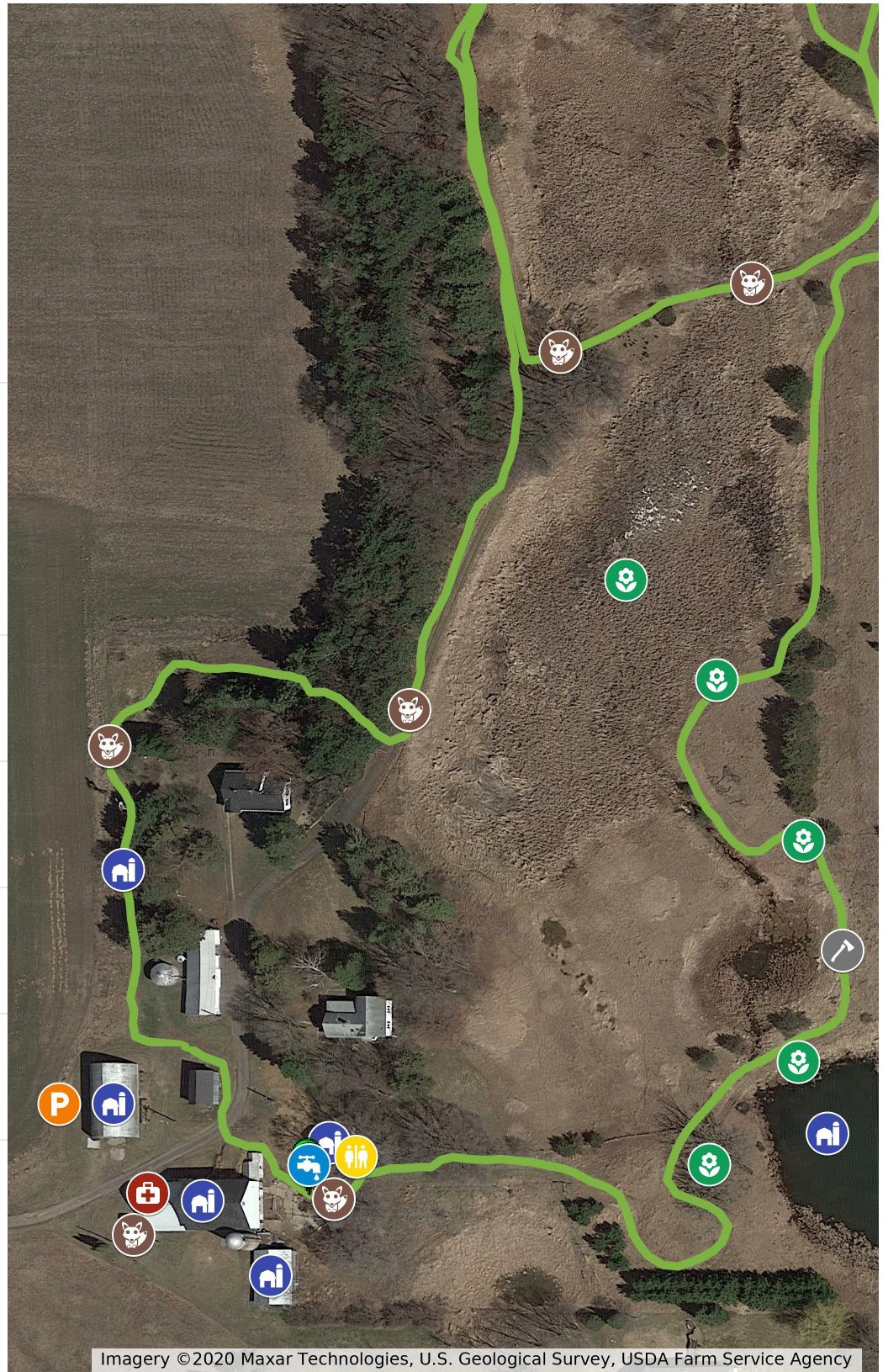


All items

Extras



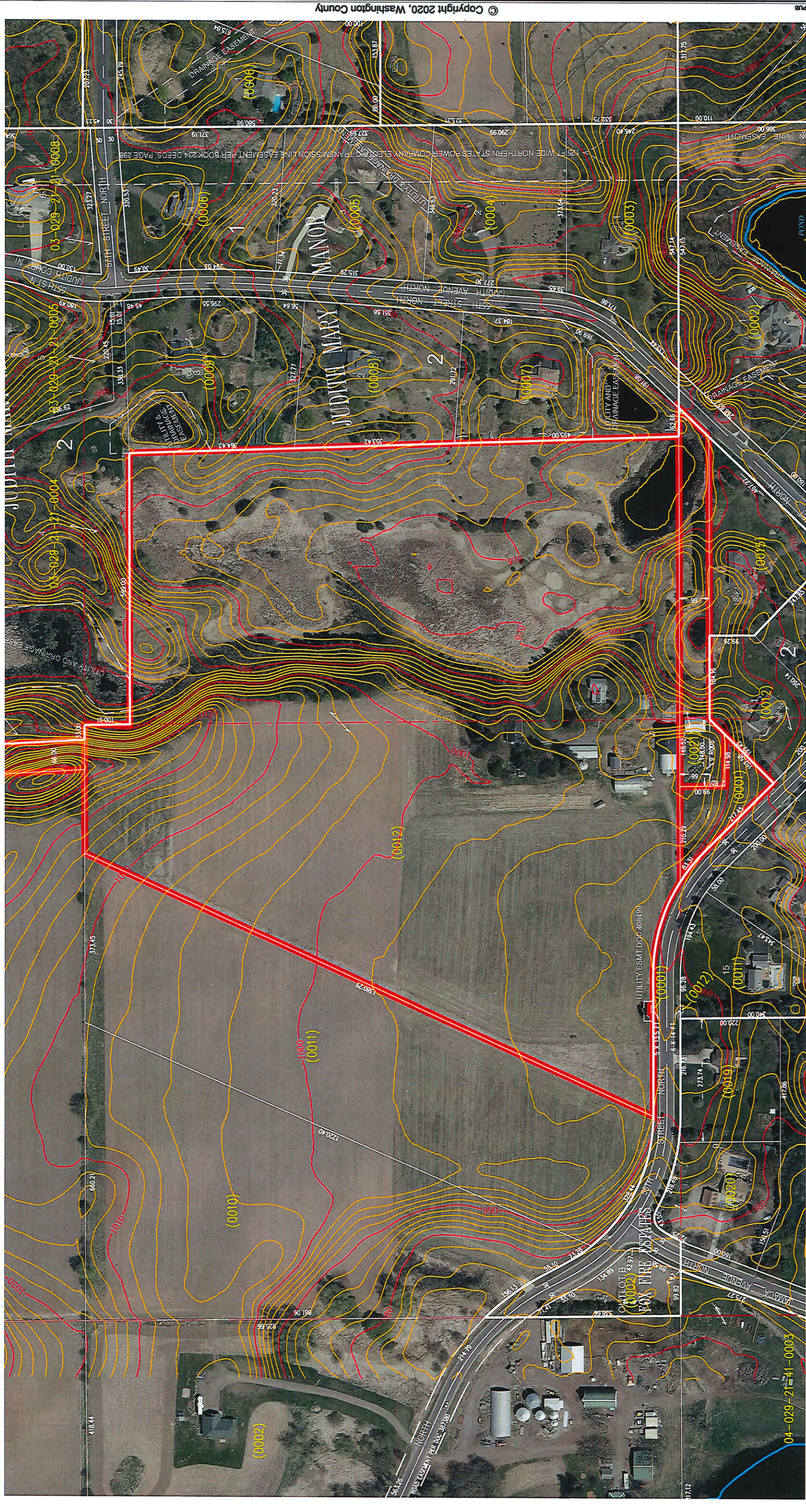
Arrowhead



Imagery © 2020 Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency



\$17.00



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Washington County
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SURVEY DIVISION
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CONTOUR LEGEND
 10 FOOT INTERVAL CONTOUR
 2 FOOT INTERVAL CONTOUR

LEGEND
 DNR PROTECTED WATERS
 DNR PROTECTED WETLAND
 DNR PROTECTED WATERCOURSE
 MUNICIPAL BOUNDARY
 PARK BOUNDARY

SECTION VICINITY MAP

| | | | |
|----|----|----|----|
| 22 | 21 | 12 | 11 |
| NW | NE | SE | SW |
| 23 | 24 | 13 | 14 |
| 32 | 31 | 42 | 41 |
| 33 | 34 | 43 | 44 |

 * - LOCATION OF THIS MAP

COUNTY VICINITY MAP

SECTION-TOWNSHIP-RANGE INDEX

| | | |
|---------|---------|---------|
| 3303021 | 3403021 | 3503021 |
| 0402921 | 0302921 | 0202921 |
| 0902921 | 1002921 | 1102921 |

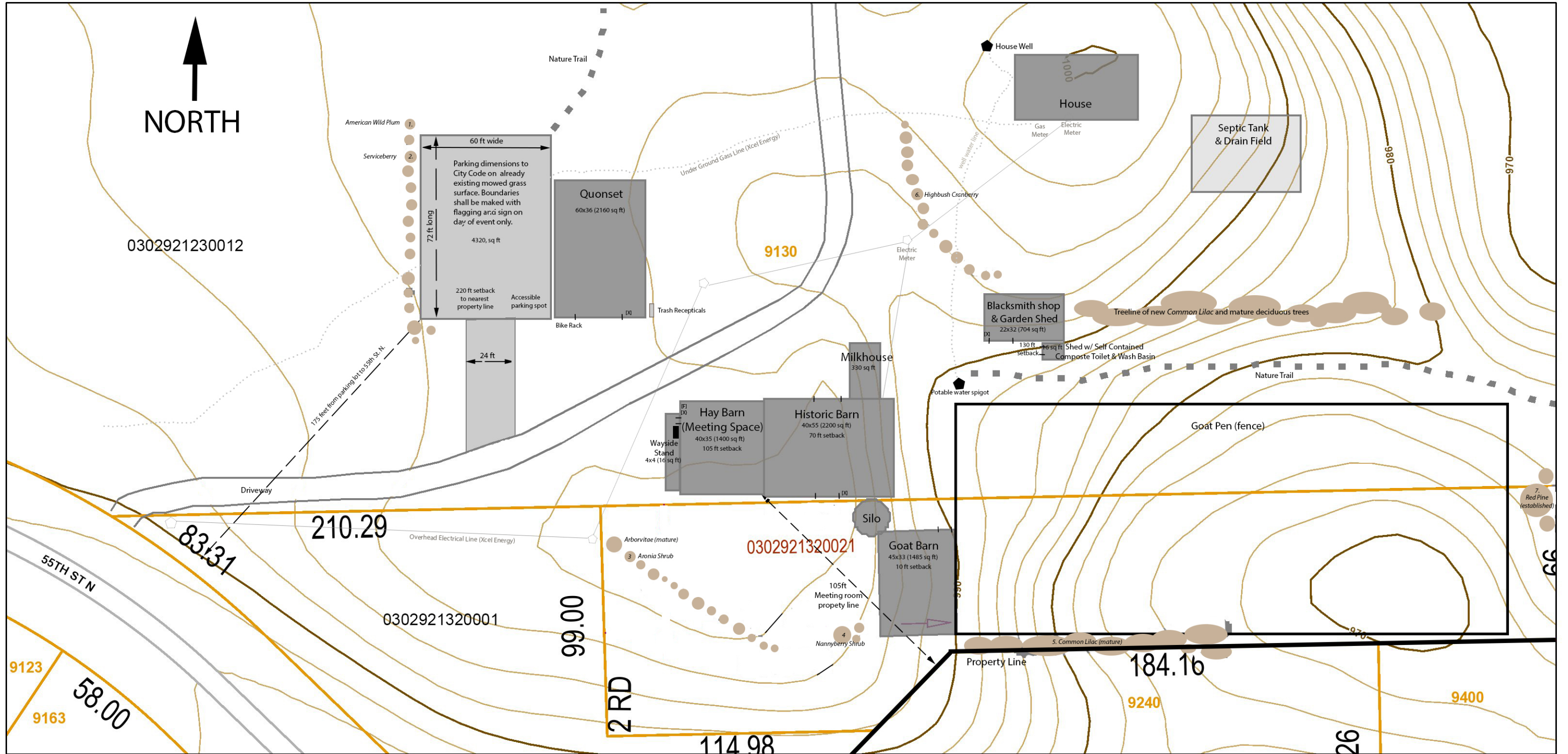
PROPERTY IDENTIFICATION NUMBER FORMAT (SECTION)
 SECTION TOWNSHIP RANGE QUARTER QUARTER QUARTER
 ## ## ## ## ## ## ## ## ## ## ## ##
 (0001) - Last four digits of property identification number

MAP LAST UPDATED: May 13, 2019
NO ADDITIONAL CHANGES HAVE BEEN REPORTED TO DATE
DATE OF CONTOURS: November, 2011 **DATE OF PHOTOGRAPHY:** April, 2019

THIS DRAWING IS THE RESULT OF A COMPILATION AND REPRODUCTION OF LAND RECORDS AS THEY APPEAR IN VARIOUS WASHINGTON COUNTY OFFICES. WASHINGTON COUNTY IS NOT RESPONSIBLE FOR ANY INACCURACIES. PROPERTY LINES AS SHOWN ARE FOR REFERENCE PURPOSES AND MAY NOT REPRESENT ACTUAL LOCATIONS.

SCALE: 1 inch = 210 feet

NORTH



January 29, 2020

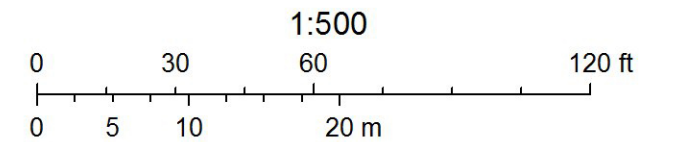
Landscape Plants

All species chosen for zone hardiness, high wildlife value & screening ability:

1. American Wild Plum (*Prunus americana*), currently 24"-36" (18'-24' at maturity)
2. Serviceberry (*Amelanchier alnifolia* 'Obelisk'), currently 24"-36" (12'-15' at maturity)
3. Aronia (*Aronia melanocarpa*), currently 24"-36" (4'-5' at maturity)
4. Nannyberry (*Viburnum lentago*), currently 12"-18" (14'-18' at maturity)
5. Common Lilac (*Syringa vulgaris*), currently 10'-14" (mature)
6. Highbush Cranberry (*Viburnum trilobum* 'Bailey Compact'), 24"-36" (5' at maturity)
7. Red Pine (*Pinus resinosa*), currently 12-16' (established)

Legend

- ■ ■ **Nature trail.** This self-guided walking trail is approximately 1.5 miles long running generally north to south through the natural meadow, available for use by reservation only. See application attachments for entire map.
- **Parking area.** Designed to required Code specifications, and marked with flags and signs on event days only.
- **Farm buildings.** All buildings already exist, are historic in nature and are currently in use. No plans exist for future building.
- [X] **Fire Extinguishers Locations**
- [F] **First Aid Kit Location**



Property Info: 37.7 acres / 1,642,212 square feet.
Zoned Rural Residential

Prepared by Peter Kastler
with Washington County Surveyor Maps

**Variance Request
Interim Use Permit Application
Whippletree Farm / 9130 55th Street North**

The following is a request for waiver, or variance exception, to performance standard “B” of Lake Elmo City Ordinance §154.914 “*Agricultural Entertainment Businesses*.”¹ This property *does* have legal access and “direct access to a collector or arterial street” as the performance standard requires. However, we recognize the intent of the standard, and therefore acknowledge that we will not (for now) be utilizing that arterial roadway, but instead will be utilizing a safer access road. Without waiving fact that we do meet the performance standard requirement, we are submitting a request for variance in the interest of clarity, transparency and partnership.

The property has legal access to principal arterial Interstate Highway 36, connected by driveway. The property also has legal access to connector street 55th Street North, connected by driveway. There are legitimate practical difficulties that are unique to this property which necessitates, or more accurately makes it more appropriate, to utilize 55th Street North instead of Interstate Highway 36 (IH36).

We propose to use the property in a reasonable manner not permitted by an official control. The applicants submit that:

The proposed use is reasonable. The application documents demonstrate and provide clear justification that the proposed use for an “agricultural entertainment business” is reasonable. This is an allowed use in the zoning location of the property, and the use is in alignment with the Comprehensive Plan. The proposed use, while fits in the definition of “agricultural entertainment,” is by design low-impact, small and will not be intrusive. We will operate more akin to a park than an entertainment venue.

The requested variance is also reasonable. The presumed intention of the arterial/collector road performance standard is to make sure the roadway can accommodate the traffic that the use generates in a safe and unobtrusive manner. The traffic load estimated that this use will generate is a *maximum* of nineteen (19) trips per day, a few times a week for six months of the year. While it is identified as a “connector” street, it does not look or function as a typical neighborhood street. It is much more open and rural. The road was resurfaced in 2017, and the applicants were assessed twice as much as neighboring properties (\$12,800 instead of \$6400) due to length of the property’s frontage along the road. Using 55th Street North is reasonable.

Four unique circumstances exist for this particular property. First, the property has legal access to Interstate Highway 36. This is the original driveway for the farm. It has been in

¹ It is worth noting that the ordinance language for “Agricultural Sales Businesses” and “Agricultural Entertainment Businesses” is inconsistent and is probably worth revising: sales businesses don’t require a specific roadway type, while entertainment businesses do. There likely isn’t a logical reason for this.

existence in some form since the inception of the farm in 1869 when IH36 was a wagon trail. It is a much more scenic and pleasing way to enter the farm. However, due to circumstances not created by the property owner/applicant (i.e. incessant, high-speed traffic on IH36) this driveway is no longer the primary access to the farm. It is mainly used now for farm activities and maintenance. The farm did not have a driveway on 55th Street North until entry onto IH 36 became unsafe due to increased traffic, more trucks and increased speeds with no frontage road to access the property. Due to circumstances not created by the applicant, a new access point was created on 55th Street North.

Second, the property location and access is unique in that “the City has obtained federal grant assistance and is currently completing the development of a concept plan for a south frontage road system from DeMontreville Trail to Lake Elmo Avenue to maintain better access to TH36 for Lake Elmo properties.”² This would allow for future safe access to the farm from the north side again via frontage road. While a final plan has not been approved, acknowledgment from the City that this situation does need to be addressed adds to the unique circumstances of this property.

Third, the proposed use for the property will produce trips exceedingly below the performance standard requirements for generated trips allowed per City Code. Per the standard, for this use the property is allowed 170 average daily base trips. By design, we will generate a fraction (no more than nineteen) of that. In short, the need for this particular performance standard does not apply due to the unique elements of the proposed use for this property.

Fourth, the property has unique circumstances due to the characteristics of the connector street it accesses. The road is in rural residential zoning and has a much more rural-road appearance and function. The City’s principal engineer for this road indicated that due to its location and function 55th Street N. “does serve to some extent as a minor neighborhood collector.”³

Properties with direct access on 55th Street N. from the west leading up to the applicant’s property are spread out, with only nine properties within the half mile leading up to the farm. Of the nine (9), six (6) of them are between four (4) and forty (40) acres. Due to zoning and already-established development, this is unlikely to change. On the half-mile stretch of the road, one traffic control point exists (an intersection with a stop sign on Jamaca Avenue). This is an open, rural road which makes it well-suited to safely accommodate additional traffic. This factor adds to the unique circumstances of the connector roadway and unique characteristics of the property.

The proposed variance will not impact the essential character of locality. In fact, much of the character of this locality is defined by the farm itself. The barn is a neighborhood landmark,

² “Lake Elmo 2040 Comprehensive Plan,” Transportation Section, page 7-20

³ Applicant email correspondence dated March 4, 2020 with John W. Griffin, with Focus Engineering, Inc.

and the open space fields are an amenity that the neighbors value. Additionally, the proposed use is built around the character of the farm, and will succeed due to maintaining its character, not altering it. Therefore, all considerations are being made and will continue to be made to maintain the character of the locality.

The proposed variance would not make the property out of place. Nor would it be inconsistent with the surrounding area, as an outdoor recreational business already operates on 55th Avenue North.

This proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood. We recognize traffic load and safety is a consideration. The use, by design, will be limited. First, the use will be for private events only, so we can control the volume of traffic. Second, the traffic load is very minimal -- a maximum of nineteen (19) trips per day intermittently throughout the week on a seasonal basis. This is exceedingly below the performance standard required by ordinance which allows for 170 average daily trips for the property.

Adjacent properties that would be impacted by the minimal traffic increase are spread out along 55th Street North. There would be no increased traffic for the vast majority of the year. When there is, there is not an objective reason why adding nineteen vehicles or less would negatively impact the adjacent properties. Conversely, granting the variance and permitting the use helps keep this property open and undeveloped. It adds light and air to the adjacent properties in comparison to development alternatives. Our neighbors have expressed a great appreciation for the space remaining open and undeveloped.

In summary, we have demonstrated that the plan is reasonable, there are unique circumstances to the property not created by us, and that the use will not alter the essential character of the neighborhood. We also recognize the purpose of the performance standard to make sure traffic does not overwhelm or make the roadway unsafe, or negatively impact adjacent properties. We recognize this as a responsibility to our neighbors regardless of the ordinance language. We believe we are in harmony with this intent and purpose. Last, this variance request and the proposed use are in alignment with the City's numerous stated goals in the Comprehensive Plan regarding endorsing, maintaining, encouraging and enhancing natural areas and open spaces throughout the City.⁴ We look forward to working with the City and our neighbors to help fulfill these goals.

⁴One of the primary themes of the 2040 Comprehensive Plan is valuing natural and open spaces, and our farm certainly embodies this. [Lake Elmo 2040 Comprehensive Plan](#).

**Addendum 2: South Screening & Trail Adjustment
Interim Use Permit Application
Whippletree Farm / 9130 55th Street North**

The following is an addendum to the Whippletree Farm Interim Use Permit describing a) additional screening that will be added along the south end of the trail and b) changing the trail location in one specific location so that it is at least 100 feet from the property line. The intent of this is to increase the visual screening and trail distance between the farm and one property to the south, based on one neighbor's specific feedback to our application. See Addendum 1 for the specific location of the screening and trail adjustment.

Trail Route Change

Originally the trail went on the top of the hill to overlook the pond on the south end of the property – one of the most scenic spots on the farm – but also went within 40 feet of the property line. We've adjusted this route to be at least 100 feet from the property line. This distance is consistent with City setback standards for other uses such as community and educational recreation areas and commercial kennels and stable exercise areas. Due to this, we have unfortunately lost the scenic overlook of the farm pond that we own.

Main Screening: White Cedar

We will be adding six to eight White Cedar trees in a strategic location to create natural landscape screening. These are being planted to directly address a neighbor's stated concern of having people see them when visitors walk the trail. White cedar is a native and extremely hardy evergreen that is recommended for hedging and screening. It also prefers wet soil conditions and will tolerate some standing water, which will be true of where we are planting. The cedars are represented as circles on the addendum map.



We'll plant 6' to 7' container plants (left), which will eventually mature to large (up to 50') trees with a 15' spread (right).

Complimentary Screening: American Cranberry Shrubs

We'll also plant American Cranberry shrubs among the cedar to fill in the screening.

This is a very hardy native deciduous shrub with an upright spreading growth habit that is good for hedges and screening. It grows to 10 feet tall with a spread of the same (bottom picture), and prefers average to moist conditions, which are the conditions where we will be planting.

We will plant four or five container plants (left) intermittently with the White Cedar to help fill in the screening. These are represented as small squares on the Addendum 1 map.

We will also plant 8 of these strategically along the north side of the goat fence (see Addendum 1) for additional screening as people walk on the path. These are represented as triangles on the map.



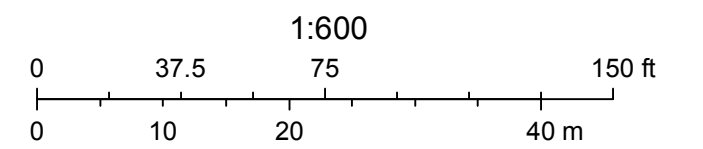
We will use Wentworth American Cranberrybush and Redwing American Cranberry bush. These additions will add screening and privacy for the neighbor in a reasonable and prudent manner.



Addendum 1: Additional Screening / Trail Modification (IUP Whippetree)



March 19, 2020

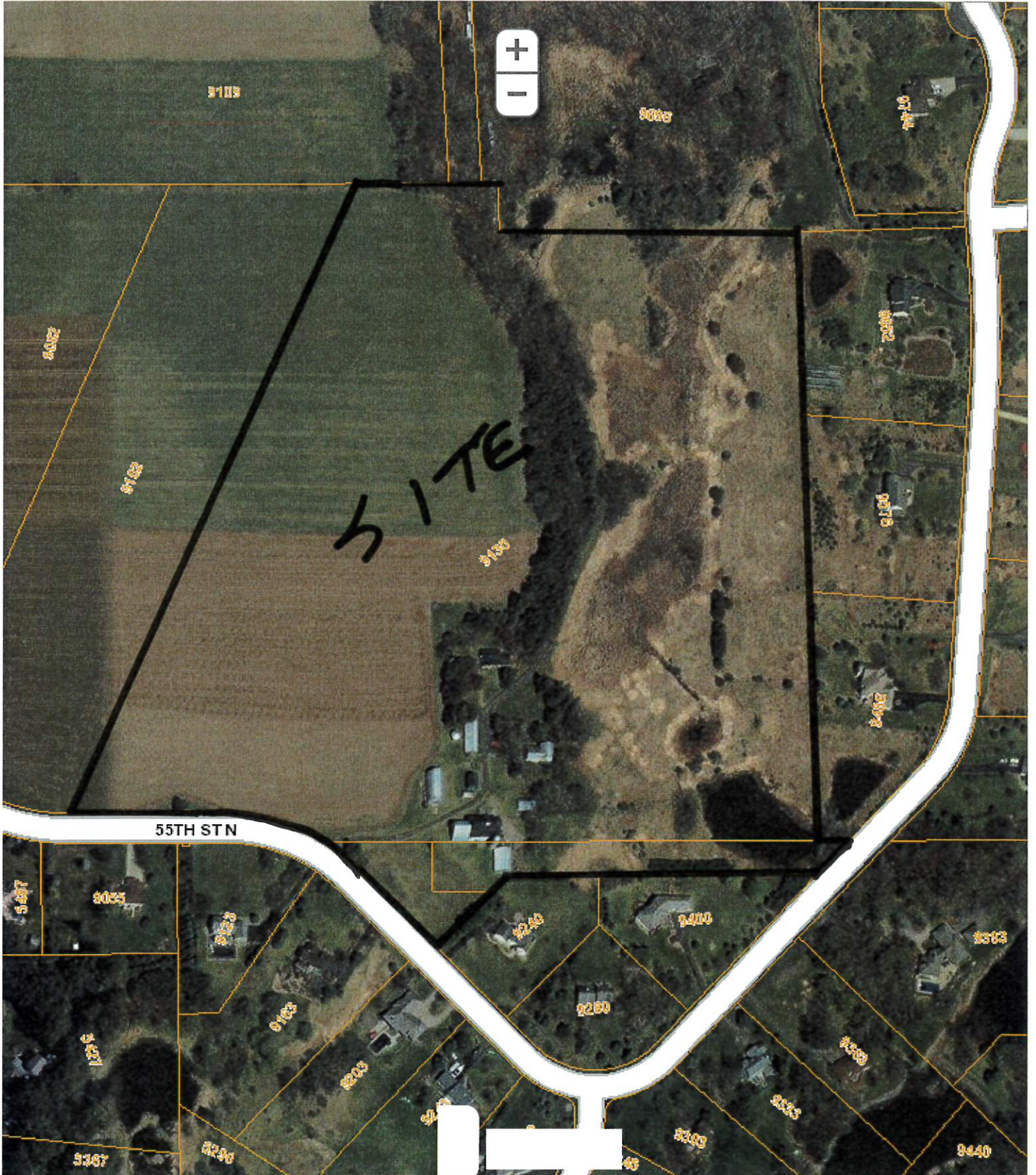


- The four circles represent the White Cedar screening (this just signifies the location, not the plant count. There will be seven or eight trees).
- The rectangles and triangles represent American Cranberry shrub screening.
- The trail has been moved at least 100 feet from the property line.

Whippetree Farm Interim Use Permit Application



Property Viewer



Minnesota Department of Health, except that in primitive tent camping areas, only toilet facilities shall be required as per the Minnesota Department of Health.

22. Outdoor cooking or burning shall be confined to fireplaces, pits, grills, or stoves, which shall be permanently affixed to a designated location on each lot as per the site plan. Each permanent cooking or burning facility shall be placed on the lot so as to minimize the fire hazards and smoke nuisance.
23. Incineration of refuse, garbage, or other wastes shall not be permitted within any recreational vehicle camping area.
24. All centralized refuse collection and equipment, and area maintenance equipment shall be stored in a screened and fenced service yard within the camping area.

(1997 Code, § 300.13 Sub. 19)

§ 154.913 AGRICULTURAL SALES BUSINESSES.

Agricultural sales businesses shall be allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for rural agricultural density or future sewered development in accordance with the Comprehensive Plan. Agricultural sales businesses shall be subject to the following performance standards:

- A. Activities shall be limited to those listed within the definition for Agricultural Sales Business.
- B. The agricultural sales business shall be located on land owned or leased by the producer or the operator of the business, and not within or on any public right-of-ways or easements.
- C. The operator must be able to demonstrate at all times to the city that there is sufficient access, parking and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
- D. All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.
- E. All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.
- F. The maximum gross floor area that can be devoted to sales activities is limited to 20,000 square feet.
- G. Parking shall be provided in accordance with the parking requirements for other commercial uses, as per § 154.051(C). All parking must occur on-site, be on a primary surface such as class 5 gravel or pavement: and must be set back at least 30 feet from all property lines.
- H. The minimum lot size shall be 40 acres for any agricultural sales business.
- I. On-site wastewater handling system shall be planned and designed by a licensed professional and approved by the city or its designated responsible authority. Usable primary and alternate well and septic sites sized for the maximum anticipated usage of

the property shall be identified on the property. Alternate sites shall be protected in the site plan design, and will only need to be used upon failure of a primary site.

- J. Any structures constructed for the agricultural sales business shall be consistent on design and appearance with other agricultural buildings in the area.
- K. Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for even 40 acres.
- L. The maximum impervious coverage for the buildings, parking areas and other uses devoted to the agricultural sales business shall not exceed 40,000 square feet and the remainder shall be suitably landscaped.
- M. Any activities that are defined as an agricultural entertainment business shall require a separate interim use permit.
- N. Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with §§ 150.001 through § 150.003 of this code.
- O. There shall be a minimum buffer of 100 feet between any sales areas or sales buildings and any adjacent residential property lines.
- P. Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).
- Q. Trash containers must be located inside or screened in an acceptable manner.
- R. The operator shall adhere to the general review criteria applicable to all interim use permit applications.
- S. No activities or structures beyond those specified in the interim use permit shall be added before review by the city to determine compliance with this section.

(Ord. 08-006, passed 6-17-2008; Am. Ord. 08-031-A, passed 10-5-2010)

§ 154.914 AGRICULTURAL ENTERTAINMENT BUSINESSES.

Agricultural entertainment businesses shall be allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for rural agricultural density or future sewered development in accordance with the Comprehensive Plan. Agricultural entertainment businesses shall be subject to the following performance standards:

- A. An agricultural entertainment business shall adhere to all performance standards as outlined in § 154.913 for an agricultural sales business;
- B. The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the Comprehensive Plan;
- C. Discharge of firearms, including blanks, shall not be allowed on the property;

- D. The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons.

(Ord. 08-031-A, passed 10-5-2010)

(Ord. 08-198, passed 2-7-2018)

§ 154.915 ENFORCEMENT.

- A. *Application to City Personnel.* The failure of any officer or employee of the city to perform any official duty imposed by this chapter shall not subject the officer or employee to a penalty imposed for violation unless a penalty is specifically provided for such failure.
- B. *Equitable Relief.* In the event of a violation or the threatened violation of any provision of this chapter, or any provision or condition of a permit issued pursuant to this chapter, the city in addition to other remedies may institute appropriate actions or proceedings to prevent, restrain, correct, or abate the violation or threatened violation.

(1997 Code, § 300.14) (Am. Ord. 08-006, passed 6-17-2008)

§ 154.999 PENALTY.

- A. Any person who violates any provision of this chapter for which no penalty is provided shall be subject to the terms of § 10.99.
- B. The violation of any provision of this chapter, except for §§ 154.120 through 154.128, or the violation of the conditions or provisions of any permit issued pursuant to this chapter shall be a misdemeanor and, upon conviction, shall be subject to the penalties set forth in § 10.99.

(1997 Code, § 300.14)

MEMORANDUM

FOCUS ENGINEERING, inc.

| | |
|---------------------|--------------|
| Cara Geheren, P.E. | 651.300.4261 |
| Jack Griffin, P.E. | 651.300.4264 |
| Ryan Stempski, P.E. | 651.300.4267 |
| Chad Isakson, P.E. | 651.300.4285 |

Date: March 24, 2020

| | |
|---|-----------------------------------|
| To: Ken Roberts, Planning Director | Re: 9130 55th Street North |
| Cc: Chad Isakson, PE, Assistant City Engineer | Whippletree Farm IUP and Variance |
| From: Jack Griffin, PE, City Engineer | |

An engineering review has been completed for the Whippletree Farm Interim Use Permit and Variance application located at 9130 55th Street North. The application was received by engineering on March 10, 2020 consisting of the following documentation:

- Narrative Statement for Interim Use Permit Application, undated.
- Narrative Statement for Interim Use Permit Application, undated.
- Narrative Statement for Variance Request, undated.
- Site Location Map.

Engineering has the following review comments:

1. Public Roadway Access. Agricultural Entertainment use properties must be located with direct access to a collector or arterial street as identified in the Comprehensive Plan. The applicant is proposing direct access to 55th Street North.
 - 55th Street North is not a collector or arterial street as identified in the Comprehensive Plan. 55th Street North is part of the city's local roadway network and provides access to rural residential properties and several agricultural properties.
 - The applicant has estimated the traffic demands for the proposed facility to be 19 trips per event which equates to roughly the traffic generated by two residential properties if there is one event per day. There is no means by which to verify these traffic demands nor to limit/monitor traffic once the IUP is approved.
 - If approved, the preferred routing of traffic is to/from the west of the facility to/from Demontreville Trail and TH36. Directional signage should be employed to direct traffic along this preferred routing.
 - Even with directional signage there is no means by which all traffic can be guaranteed to follow preferred routing.
 - To the west of the applicant's property, 55th Street North is a 24-foot wide rural section roadway that connects to DeMontreville Trail after passing 4 residential properties and 6 vacant or agricultural properties. DeMontreville Trail is classified as a major collector and is on the city municipal state aid street network.
 - To the east and south of the applicant's property, 55th Street North connects to a long meandering network of 32-foot wide urban section roadways fully developed as rural residential properties. All traffic should be discouraged from these routes.

2. Site Entrance. Section 154.913.C. of the city code requires operators to be able to demonstrate at all times to the city that there is sufficient access, parking and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the agricultural sales business.
 - If the IUP is approved, the approval should be contingent upon an engineering review of the site entrance as it connects to the city street; and improvements to the site entrance be required as recommended by city staff from this review. No plans were submitted as part of the application.
 - The site entrance should connect to the city street at a 90-degree angle to optimize sight lines for the entranceway. The driveway should not deviate from 90-degrees until past the right-of-way.
 - The site entrance should be at least 20-feet in width to allow for vehicles to simultaneously enter and leave the site. It is recommended that the 20-foot width be maintained for the length of driveway between the street and the designated parking area.

3. Parking Improvements. Section 154.913.G of the city code requires parking to be provided in accordance with the parking requirements for other commercial uses, as per § 154.051(C). All parking must occur on-site, be on a primary surface such as class 5 gravel or pavement: and must be set back at least 30 feet from all property lines. The applicant is requesting a variance to accommodate parking over a mowed grass area.
 - It is recommended that parking be provided consistent with the city code.

4. Municipal Sanitary Sewer. No city sewer is available or planned for this property. The IUP application proposes a high-capacity self-contained composting toilet and use of temporary portable toilets during peak use events. The application also proposes a portable tank for graywater generation from handwashing. City code requires *“All applicants for a use or building permit in any district not served by public sanitary sewer must demonstrate that an on-site sewage treatment system (Primary and Secondary Location) as approved by Washington County can be installed in accordance with Washington County Subsurface Sewage Treatment System Regulations.”*
 - It is recommended that an on-site wastewater system be provided in accordance with Washington County Subsurface Sewage Treatment System Regulations.

5. Municipal Water. The IUP application does not address a source of water supply and does not provide projected water use and demands.

6. Storm Water Management. The property resides within the jurisdiction of the Valley Branch Watershed. Stormwater Management facilities will be required for new impervious surfaces exceeding 6,000 sf. The IUP application proposes a mowed grass parking area (approx. 4,500 sf) and no other improvements. Given the recommendations for improved driveway access, maneuverability and parking, storm water management BMPs will likely be needed. Detailed site plans should be required for city review and approval for any site improvements required through the IUP permit approval.

April 8, 2020

To Whom It May Concern,

RE: Response to the Whippletree Farm Request for an Interim Use Permit (IUP) for an Agricultural Entertainment Business

We are the owners of the property located at 9400 55th Street North that borders the south east side of the Whippletree Farm located at 9130 55th Street North. We purchased the property in 1997, twenty-three years ago, directly from the farm owner at the time, Florence Kleis. The following year, we built a home on the site, and have enjoyed raising our children in the beautiful and quiet surroundings. As we transition into retirement, we look forward to the same quiet neighboring surroundings.

Over the past seven years, we have watched the current farm owners grow their working hobby farm to include goats, chickens, and honeybees. They have done a nice job maintaining and making improvements to the farm buildings and land. It has been a positive experience from our perspective.

In mid-March, 2020, we met with the owners, Peter and Madeline Kastler, to learn more about their business plan, to tour the barn and nature trail, and discuss our concerns with the IUP. The tour concluded with a view from our backyard and patio area to help them understand the impact that we would experience relative to our privacy with their proposed business plan (See Attachment 1). Peter and Madeline acknowledged our concerns which included privacy concerns due to the proximity of the nature trail near our property border and home, the pond flooding (see #1 storm water retention pond concern below), and the lack of our ability to plant trees for privacy screening because of the pond flooding. At the end of our discussion, the owners shared they would submit an addendum to the IUP application to address some of our concerns to include adding trees and shrubs for privacy screening near the pond and buffer between our property line and the nature trail.

Below are concerns which we would like the city to take under consideration when evaluating the IUP application.

1. The storm water retention pond - The south end of the farm property (see IUP Application submitted, Attachment 8, Washington County Survey Map, legal land description 0021) has flooded our property annually for the past ten years.

In March, 2019, the water levels rose three feet within an 8 hour period, and we were required to pump nearly 50,000 total gallons of water east into the wetlands on two occasions. This was necessary to prevent flood water reaching our home (See Attachment 2).

As a result of this incident, we contacted John Hanson of the Valley Branch Watershed District (VBWD) to discuss how to resolve this problem as we recognize these are protected wetlands. He agrees there is a problem relative to the farm storm water runoff and the retention pond relative to flooding our property. Mr. Hanson said the VBWD would conduct an engineering study of the farm retention pond in 2020 and provide a resolution to the problem. He said it would most likely include installing an overflow drain system northeast of the pond into the large wetland area. Further, he made it clear that the property owners should not make changes to try to resolve without the VBWD involvement.

As part of the Whippletree Interim Use Permit (IUP) evaluation, we request that Mr. Hanson and VBWD be provided a copy to review the impact of current enhancements and/or future changes (i.e., parking surfaces and any changes to building and structures). We want to ensure that the Whippletree business plans will not negatively impact the retention pond, thus exacerbating the flooding issue prior to the VBWD working with the property owners to resolve the issue.

2. Vehicle Traffic and Parking -There has been a significant increase in vehicle traffic on our neighborhood streets especially on 55th Street over the past few years with the changes made on Highway 36. There is also another farm business, Green Acres, utilizing 55th St N.

On the Interim Use Permit Application, Attachment 4, Justification paragraph, Section K, the applicant states their intention is to have an average daily trip generation nineteen (19) trips per event. It further states it is well below the allowed 170 average daily trips, or maximum amount of 340 per day for our acreage, per the city requirement.

If the Interim Use Permit is approved, would it allow for the business to operate on its intent of 19 trips per day or on the higher end (170 average daily trips / 340 per day)? The latter would have a detrimental impact to vehicle traffic on 55th St N as well as cause increased traffic noise and traffic safety concerns in a residential neighborhood setting.

3. Consider a 3 to 5-year term for the IUP with re-approval versus a 20-year term.
4. Will the Interim Use Permit be valid May through October as stated in the application, or year-round?

We are concerned that the current proposed Application for the Interim Use Permit for an Agricultural Entertainment Business could adversely impact our property and the surrounding community, especially if the permit allows up to 170 average trips/day and the business grows beyond the intent stated for number of people (i.e., increased noise, traffic, etc.).

We are not sure if the Interim Use Permit, if approved, limits the permit holder to operate the business based on their intent of the application (small gatherings and 19 vehicles) or does the IUP allow the business to grow overtime and to hold very large gatherings on a regular basis? A clarification would be appreciated because these are two different venues on such a small acreage farm in a residential neighborhood.

The storm water run-off from the farm building and land is a current issue and will be addressed whether the Interim Use Permit is approved or not. We would simply request John Hanson (VBWD) review before a decision is made on the permit to see if he has input regarding impact. Changes made to the farm in the last few years and potentially in the future with this Interim Use Permit and Entertainment business may/may not increase the capacity of the retention pond and flooding.

Owner/Resident
9400 55th Street North
Lake Elmo, MN 55042



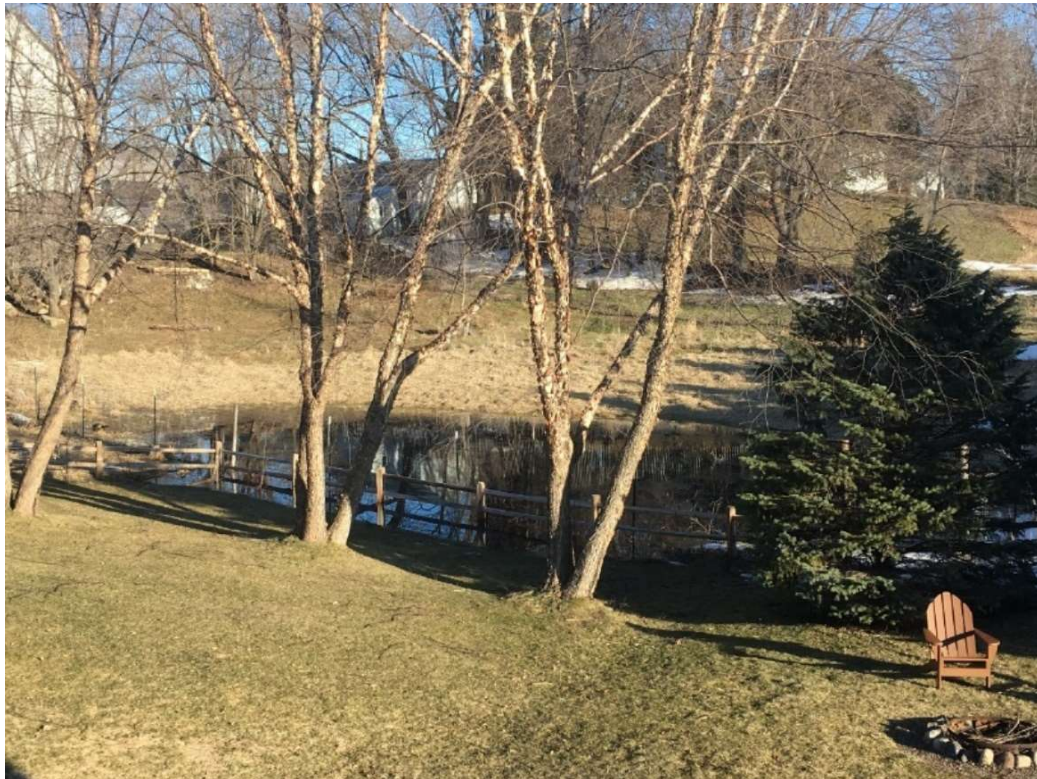
Nature Trail would start on other side of pond before heading into a wetland area (depicted as red dashed line in photo).



Photo shows homes surrounding entire farm property. Our home on the left, another home on the far side of our property, and the farm property on the right (barn visible). The pond that floods property is along split rail fence in back of evergreen tree on right.



This photo shows the farm land and barn on the left and our home on the right separated by the pond (Nature Trail depicted as red dashed line and continues alongside our home behind evergreen trees bordering property).



Pond water level at high conditions. This photo also depicts the lack of privacy screening between properties that will have a negative impact with an IUP and Recreational Business and “gatherings”. Photo taken from our home patio.



Pond level at flood stage. The water line had reached the top the 3-foot-high split rail fence.