



STAFF REPORT

DATE: 4/20/2021

CONSENT

TO: City Council

FROM: Ken Roberts, Planning Director

AGENDA ITEM: **Property Conveyance – 2798 Jamley Avenue North**

REVIEWED BY: Ben Prchal, City Planner
Sarah Sonsalla, City Attorney

BACKGROUND:

The City has received a request from the representatives of James Palecek and Vivian Palecek Irrevocable Trust to clear and correct the title to the Trust Property located at 2798 Jamley Avenue North. Please see the attached location and property line maps of their site.

In 1989 the Trust requested that the Trust Property (which was part of a larger parcel at the time) be subdivided to create a total of two residential lots including the Trust Property. The Trust Property along with adjacent property were surveyed as part of the subdivision request. The City approved the subdivision by City Council Resolution No. 89-39. The City's approval of the subdivision was conditioned on the subdividers conveying to the City certain drainage, roadway and utility easements as shown on the survey (conditions numbers 3 and 4 in the Resolution). Unfortunately, it appears the conveyances to the City were either never completed or just never recorded as nothing appears in the County property records meaning the subdivision conditions were never met. This problem was recently discovered by representatives of the Trust as they were trying to record a new deed transferring the property to a newly created trust.

In addition, in 1946, the Trust's predecessor in title to the Trust Property conveyed to the City's predecessor, the Town of Oakdale, the east 16.5 feet of the Trust Property "for use as a public roadway". This property is currently being used by the City for right-of-way for Jamely Avenue North. Even though the City typically acquires right-of-way by easement, the quit claim deed is vague and does not use the term "easement." The survey that was done as part of the 1989 subdivision request appears to show the right-of-way as an easement and the corresponding City Council resolution appears to present the same intent. However, the County has interpreted the deed to convey fee title to the Jamely Avenue North right-of-way to the City. The Trust has requested that the City provide it with a quit claim deed for the east 16.5 feet of the Trust Property that is encumbered by the Jamely Avenue North right-of-way. In return, the Trust will provide the City with a right-of-way easement over the property being deeded by the City. Then this portion of the Jamely Avenue North right-of-way will be owned in fee by the Trust subject to the City's right-of-way easement as was previously intended by the parties.

ISSUE BEFORE CITY COUNCIL:

The City Council is being asked to review and approve Resolution 2021 – XXX. This resolution authorizes the Mayor and City Clerk to execute all appropriate documents to convey the City property to the Trust subject to the City first receiving the properly executed drainage, roadway and utility easements.

Reason for Request. The reason for this request is to clear and correct the title to the Trust Property located at 2798 Jamley Avenue North.

REVIEW AND ANALYSIS

As noted above, this request is to clear and correct the title for the property located 2798 Jamley Avenue North while also completing the conditions of approval for the 1989 subdivision. There would be no new lots or building sites created with this request and there would be no visible change to the site or to the street by the City approving this request.

FISCAL IMPACT:

Staff has not found that the proposal will have any fiscal impact to the City.

OPTIONS:

The City Council may:

- Approve the proposed requests.
- Approve the proposed request with conditions.
- Deny the proposed request, citing findings of fact for denial.

RECOMMENDATION:

Staff is recommending that the City Council approve, *as part of the Consent Agenda*, approval of the request from the James Palecek and Vivian Palecek Irrevocable Trust to clear and correct the title to the Trust Property located at 2798 Jamley Avenue North while also completing the Subdivision Conditions. If removed from the consent agenda, the recommended motion for the action is as follows:

***“Move adoption of Resolution 2021 – 047 approving the request from representatives of the James Palecek and Vivian Palecek Irrevocable Trust to clear and correct the title of the Trust Property located at 2798 Jamley Avenue North by conveying City property to the Trust subject to the Trust providing the City properly executed drainage, roadway and utility easements.*”**

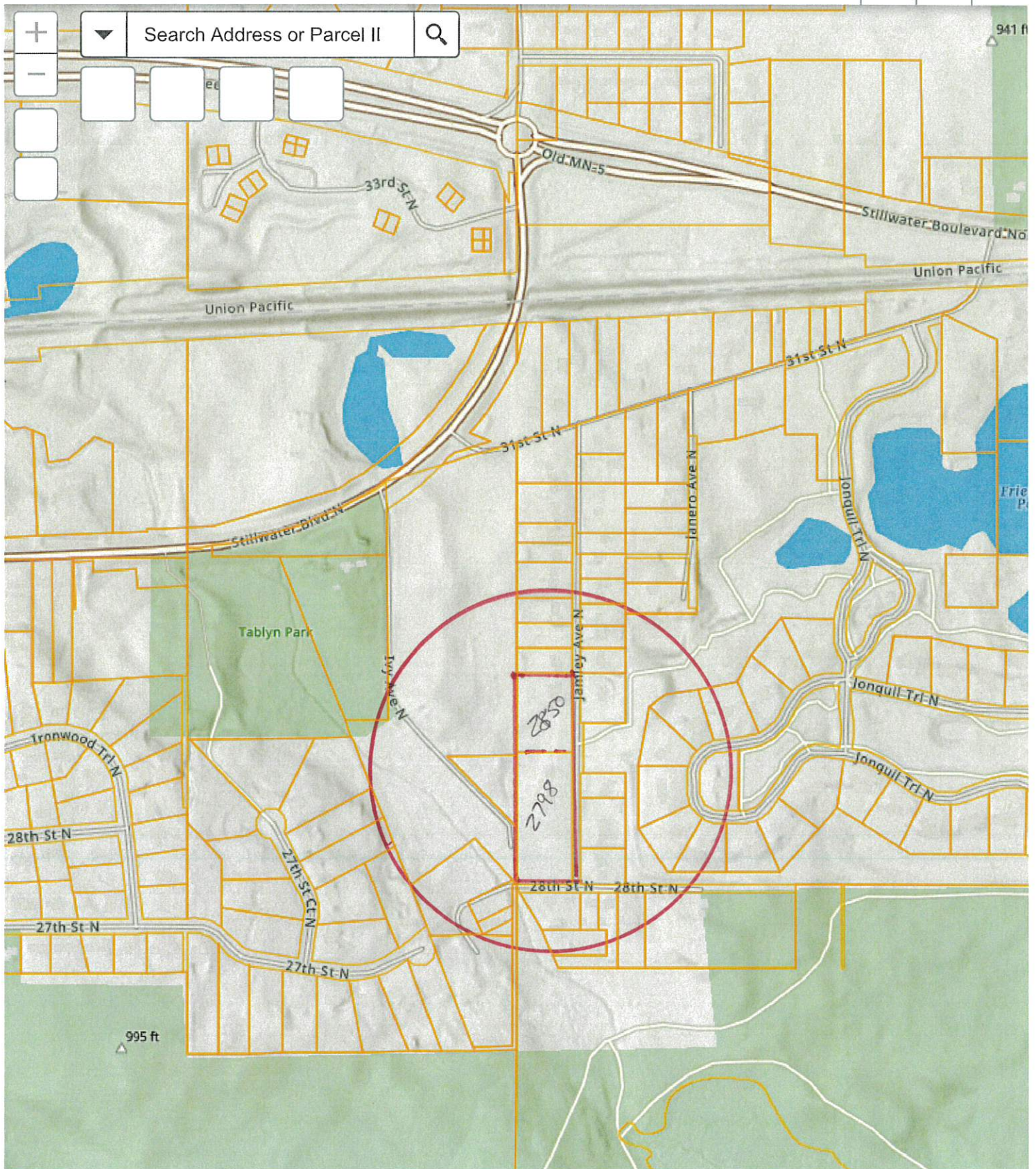
ATTACHMENTS:

- 1) Location Map
- 2) Property Line Map
- 3) Property Survey
- 4) Resolution 89-39 – Subdivision approval resolution
- 5) Resolution 2021 – 047
- 6) Quit Claim Deed
- 7) Roadway and Utility Easement
- 8) Drainage and Utility Easement

Parcel Viewer - Quick Access

Beta

Washington Co.,

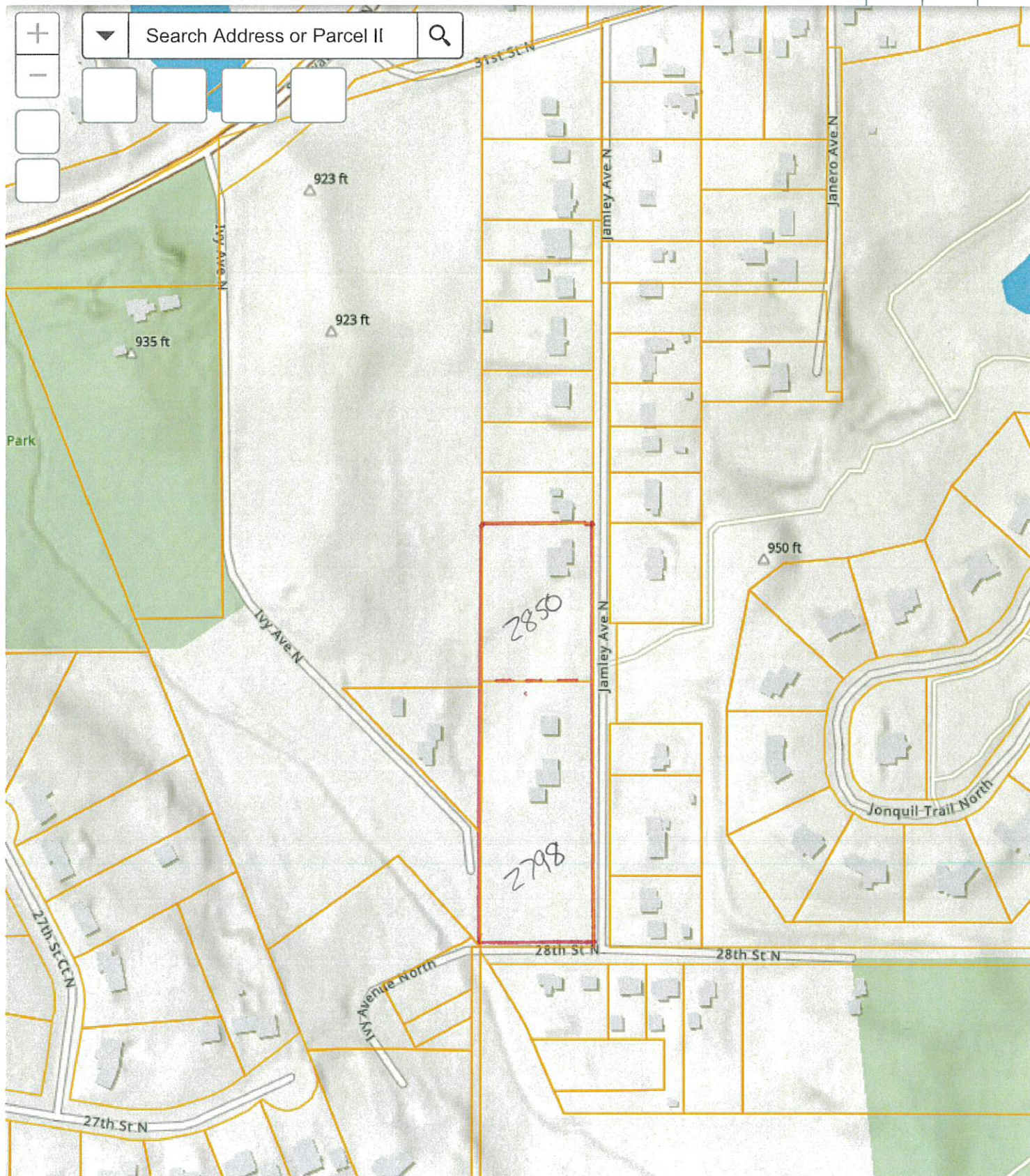


LOCATION MAP

Parcel Viewer - Quick Access

Beta

Washington Co.



300ft

-92 908 44 994 Degrees

PROPERTY LINE MAP



NW COR. NW 1/4 SEC. 22

50. LINE NO. 475 FEET

240'±

PARCEL 1
1.74 AC.±
SUBJ. TO R/W

PROPOSED DRAINAGE EASEMENT

1.52 AC.± TO ROAD R/W

110 210 240 100 30

PROPOSED HOUSE LOC. 58'±

PROPOSED WELL LOC.

IND. P. POLE (TYP)

No.

AVE.

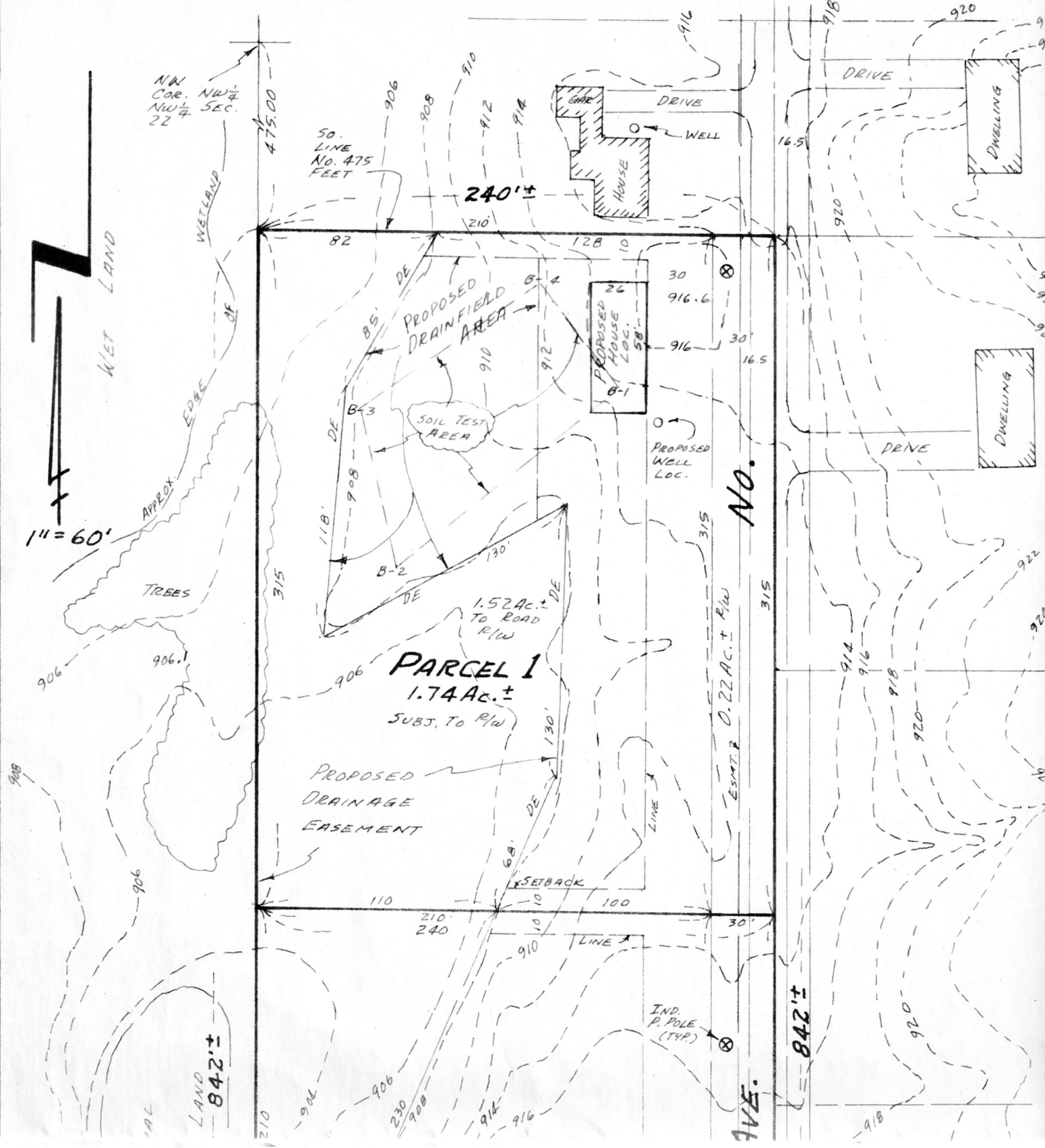
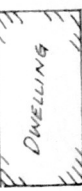
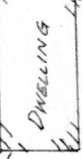
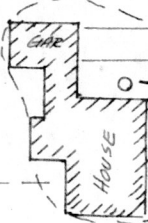
842'±

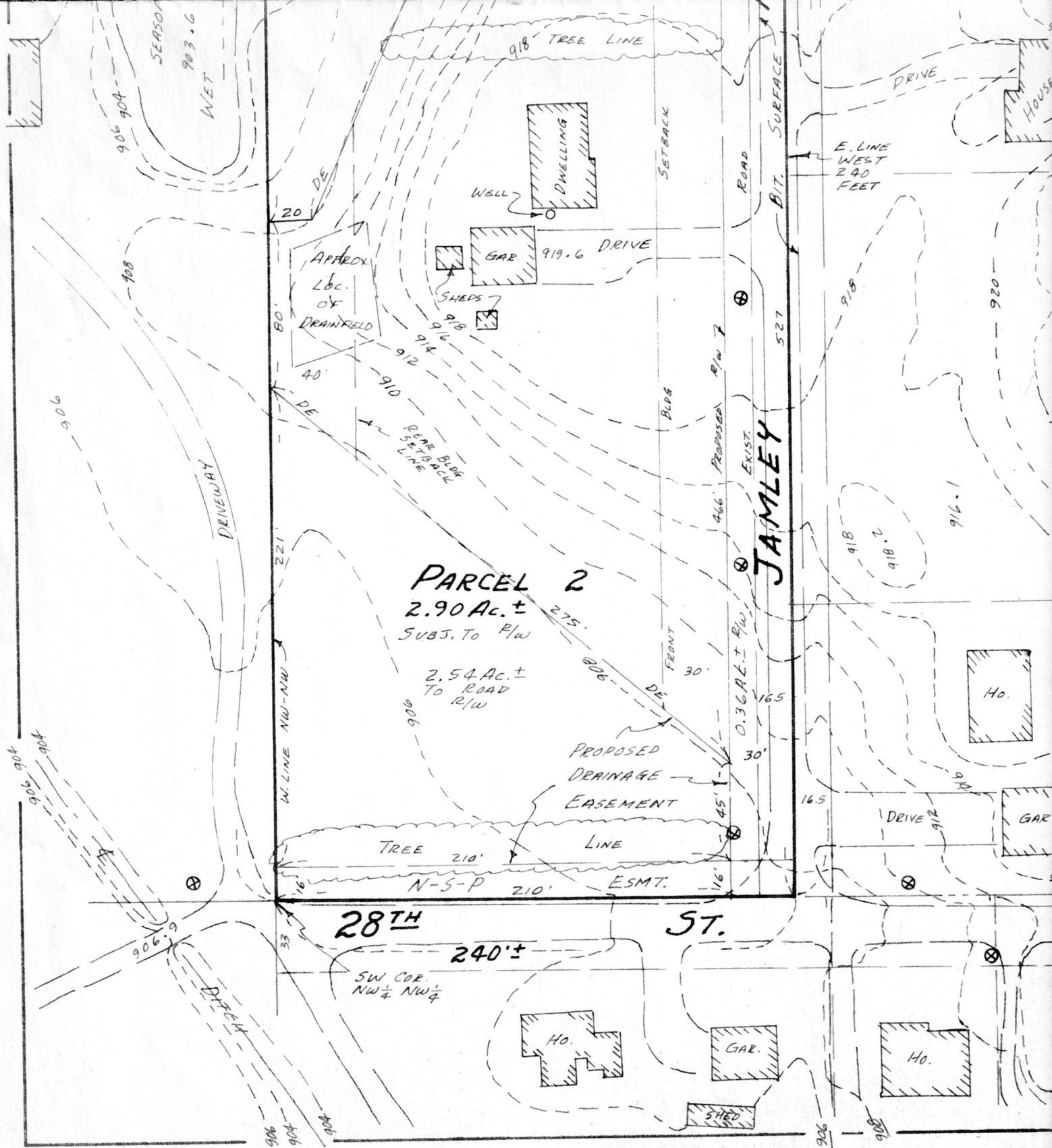
WET LAND

APPROX. EDGE OF

TREES

LAND 842'±





PRELIM. PLAT:

tel: (612) 777-8607

Parcel Description: That part of the Northwest Quarter of the Northwest Quarter of Section 22, Township 29 North, Range 21 West, City of Lake Elmo, Wash. Co., Minnesota, described as follows:

The West 240 feet of the Northwest Quarter of the Northwest Quarter of Section 22, Township 29 North, Range 21 West, Wash. Co., Minnesota, EXCEPT the North 475 feet thereof.

Subject to a 16.5 foot road easement along the East side of this description, and subject to a 16 foot easement along the South side of this description to Northern States Power Company.

Containing 4.65 acres, more or less.

Surveyor: Stack Land Surveying, 9090 No. Fairy Falls Road,
Stillwater, MN. 55082 tel: (612) 439-5630

Existing Zoning: R-1 Setbacks: Front = 30 feet
Side = 10 feet
Rear = 40 feet

Min. Frontage = 125 feet

Lot dimensions and areas shown are approximate and subject to verification by field survey.

Existing r/w of Jamley Ave. No. is 16.5 feet. An additional 13.5 feet of r/w is proposed to be dedicated to the City creating a total of 30 feet of utility and roadway easement r/w.

Topographic data shown hereon was obtained from the City Engineer and was not field checked by Stack Land Surveying.

Soil Test for the area shown hereon as "Soil Test Area" has been submitted to the City of Lake Elmo for review and approval.

Proposed Water Supply: By private on site wells.

Proposed sewage disposal: By private on site systems.

Drainage Easements: To be dedicated to the City as directed by Barr Engineering. Proposed drainage easements are indicated on the plan by the letters "DE". The limits of these easements are scaled from existing topog. maps and are subject to verification by field survey.

Proposed Lot Use: Parcel 1: Single Family Residential.
Parcel 2: Existing Single Family Residential.

I hereby Certify that this survey, plan
or report was prepared by me or under my
direct supervision and that I am a duly
Registered Land Surveyor under the Laws
of the State of Minnesota.

Barnett M. Stack

Date: Aug. 17, 1989 Reg. No. 13774

STACK LAND SURVEYING
9090 NORTH FAIRY FALLS ROAD
STILLWATER, MINNESOTA 55082
tel: (612) 439-5630

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2021-047

*A RESOLUTION AUTHORIZING THE CONVEYANCE OF CERTAIN
PROPERTY LOCATED AT 2798 JAMLEY AVENUE NORTH IN THE CITY OF LAKE ELMO
TO THE JAMES PALECEK AND VIVIAN PALECEK IRREVOCABLE TRUST*

WHEREAS, the James Palecek And Vivian Palecek Irrevocable Trust is the owner of the that certain real property located at 2798 Jamley Avenue North in the City of Lake Elmo and as legally described on the attached Exhibit A (the “Trust Property”); and

WHEREAS, the City of Lake Elmo (the “City”) is the record fee owner of a portion of the Trust Property, which is legally described on the attached Exhibit B (the “City Property”); and

WHEREAS, the City Property contains a portion of the Jamley Avenue North right-of-way; and

WHEREAS, in 1989 the Trust requested that the Trust Property (which was part of a larger parcel at the time) be subdivided to create a total of two residential lots including the Trust Property; and

WHEREAS, the Trust Property was surveyed along with the adjacent parcel, and the subdivision was subsequently approved by the City by City Council Resolution No. 89-39; and

WHEREAS, the City’s approval of the subdivision was conditioned on the subdividers conveying to the City those certain drainage, roadway and utility easements as shown on the survey (the “Subdivision Conditions”); and

WHEREAS, the Subdivision Conditions were never met and the Trust Property is unencumbered by the requisite City easements needed to maintain the right-of-way containing Jamley Avenue North and the City instead owns a portion of Jamley Avenue North in fee; and

WHEREAS, the Owners and the City now wish to clear and correct title to the Trust Property while also completing the Subdivision Conditions; and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The recitals set forth herein are incorporated into and made a part hereof.
2. The conveyance of the Property by the City to the Trust is hereby approved.
3. The Mayor and the City Clerk are hereby authorized and directed to execute all appropriate documents, including but not limited to a quit claim deed, to effectuate the conveyance

of the City Property to the Trust; provided, however, that the City first receives the properly executed drainage, roadway, and utility easements.

4. The Mayor and the City Clerk and consultants are hereby authorized and directed to take any and all additional steps and actions necessary or convenient in order to accomplish the intent hereof.

Passed and duly adopted this ____ day of _____, 2021 by the City Council of the City of Lake Elmo, Minnesota.

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk

EXHIBIT A
Legal Description of the Trust Property

All that part of the West 240.00 feet of the Northwest Quarter of the Northwest Quarter of Section 22, Township 29, North, Range 21 West, Washington County, Minnesota, lying southerly of the North 790.00 feet thereof. Subject to an easement to Northern States Power Company across the South 16.00 feet thereof.

PID: 2202921220004
Abstract

EXHIBIT B
Legal Description of the City Property

A strip of land Sixteen and One-half (16 ½) feet in width lying along and adjoining the West side of the following described line:

Commencing at a point located Two Hundred Forty (240) feet East of the West line of Section Fifteen (15), Township Twenty-nine (29) North, Range Twenty-one (21) West and One Hundred Twenty-five (125) feet North of the South line of said Section Fifteen (15); thence said line running South and parallel to said West line of said Section Fifteen to the South line of said Section Fifteen (15).

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED

eCRV number: _____

DEED TAX DUE: \$1.65*

DATE: _____, 2021

FOR VALUABLE CONSIDERATION, the City of Lake Elmo, a municipal corporation under the laws of Minnesota ("**Grantor**"), hereby conveys and quit claims to James P. Palecek and Vivian L. Palecek, as trustees under the James Palecek and Vivian Palecek Irrevocable Trust dated March 9, 1992, ("**Grantee**"), that certain real property in Washington County, Minnesota, and as legally described on the attached **Exhibit A**.

*The consideration for this transfer is less than \$500.

Check here if all or part of the described real property is Registered (Torrens) ☐

together with all hereditaments and appurtenances belonging thereto.

Check applicable box:

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor
CITY OF LAKE ELMO

By: _____

Charles Cadenhead

Its: Mayor

By: _____

Julie Johnson

Its: City Clerk

State of Minnesota, County of Washington

This instrument was acknowledged before me on _____, 2021, by Charles Cadenhead and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation on behalf of the City, Grantor.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:

Kennedy & Graven, Chartered
150 South 5th Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

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

James P. Palecek and Vivan L. Palecek
2798 Jamley Ave N.
Lake Elmo, MN 55042

EXHIBIT A
Legal Description of the Property

A strip of land Sixteen and One-half (16 ½) feet in width lying along and adjoining the West side of the following described line:

Commencing at a point located Two Hundred Forty (240) feet East of the West line of Section Fifteen (15), Township Twenty-nine (29) North, Range Twenty-one (21) West and One Hundred Twenty-five (125) feet North of the South line of said Section Fifteen (15); thence said line running South and parallel to said West line of said Section Fifteen to the South line of said Section Fifteen (15).

ROADWAY AND UTILITY EASEMENT

THIS INSTRUMENT is made by James P. Palecek and Vivian L. Palecek, as trustees under the James Palecek and Vivian Palecek Irrevocable Trust dated March 9, 1992, Grantor, in favor of the City of Lake Elmo, Minnesota, a municipal corporation under the laws of the State of Minnesota, Grantee (the "City").

Recitals

A. Grantor is the fee owner of that certain real property located in Washington County, Minnesota, legally described on the attached Exhibit A (the "Property").

B. Grantor desires to grant to the City a non-exclusive permanent roadway and utility easement, according to the terms and conditions contained herein.

Terms of Easement

1. Grant of Easement. For good and valuable consideration, receipt of which is hereby acknowledged by Grantor, Grantor grants and conveys to the City a permanent, nonexclusive roadway and utility easement for public purposes over, under, across, and through that part of the Property legally described on Exhibit B and shown on the map attached as Exhibit C (the "Easement Area").

2. Scope of Easement. The above-described permanent roadway and utility easement includes the right of the City, its contractors, agents, and employees to do whatever is necessary for enjoyment of the rights granted herein to use the Easement Area for a public road, drainage and utilities and related purposes including the right to enter the Easement Area for purposes of constructing, operating, maintaining, altering, grading, repairing, replacing, or removing a road, sanitary sewer, storm sewer, watermain or other public improvements, including but not limited to, the right itself, or to allow public or private utility companies, to place, maintain, improve, repair, replace, and remove utilities and related facilities within the Easement Area, and the rights to cut, trim, or remove trees, shrubs, or other vegetation existing within the Easement Area, and to prohibit obstructions and grading alterations now or in the future as in City's judgment unreasonably interfere with the use or maintenance of the Easement Area.

3. Warranty of Title. Grantor warrants that Grantor is the fee owner of the Property and has the right, title, and capacity to convey to the City the easement herein.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorney's fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or the Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on Grantor and Grantor's heirs, successors, and assigns.

STATE DEED TAX DUE HEREON: NONE

Dated this _____ day of _____, 2021.

GRANTOR:

The James Palecek and Vivian Palecek Irrevocable
Trust dated March 9, 1992

By: _____
James P. Palecek, Trustee

By: _____
Vivian L. Palecek, Trustee

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2021, by James P. Palecek and Vivian L. Palecek, as trustees under the James Palecek and Vivian Palecek Irrevocable Trust dated March 9, 1992, on behalf of the Trust, Grantor.

Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT DRAFTED BY AND SHOULD BE RETURNED TO:
Kennedy & Graven, Chartered (SJS)
Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Legal Description of the Property

All that part of the West 240.00 feet of the Northwest Quarter of the Northwest Quarter of Section 22, Township 29, North, Range 21 West, Washington County, Minnesota, lying southerly of the North 790.00 feet thereof. Subject to an easement to Northern States Power Company across the South 16.00 feet thereof. Subject to the right-of way of Jamley Avenue North over, under and across East 30.00 feet thereof. Subject to Drainage Easements of record. Subject to and together with any other valid easements, reservations or restrictions.

PID: 2202921220004

Abstract

EXHIBIT B

Legal Description of the Easement Area

A 30.00-foot-wide permanent roadway and utility easement over, under, across, and through the East 30.00 feet of the West 240.00 feet of the Northwest Quarter of the Northwest Quarter of Section 22, Township 29, North, Range 21 West, Washington County, Minnesota, lying southerly of the North 790.00 feet thereof.

EXHIBIT C

Map of the Easement Area

DRAINAGE AND UTILITY EASEMENT

THIS INSTRUMENT is made by James P. Palecek and Vivian L. Palecek, as trustees under the James Palecek and Vivian Palecek Irrevocable Trust dated March 9, 1992, Grantor, in favor of the City of Lake Elmo, Minnesota, a municipal corporation under the laws of the State of Minnesota, Grantee (the "City").

Recitals

- A. Grantor is the fee owner of that certain real property located in Washington County, Minnesota and as legally described on the attached Exhibit A (the "Property"); and
- B. Grantor desires to grant to the City an easement, according to the terms and conditions contained herein.

Terms of Easement

1. Grant of Easement. For good and valuable consideration, receipt of which is acknowledged by Grantor, Grantor grants and conveys to the City a perpetual, non-exclusive drainage and utility easement over, under, and across the portion of the Property described on Exhibit B and depicted on Exhibit C attached hereto.

2. Scope of Easement. The perpetual, non-exclusive drainage and utility easement granted herein includes the right of the City, its contractors, agents, and employees to enter the premises at all reasonable times for the purpose of locating, constructing, reconstructing, operating, maintaining, inspecting, altering and repairing the utilities, drainage ways and stormwater facilities in the described easement area.

The easement granted herein also includes the right to cut, trim, or remove from the easement area such improvements, trees, shrubs, or other vegetation, and to prohibit obstructions and grading alterations as in the City's judgment unreasonably interfere with the easement or the function of the facilities located therein.

3. Warranty of Title. Grantor warrants it is the fee owner of the Property and has the right, title, and capacity to convey to the City the easement herein.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the easement area or the Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Grantor, its heirs, successors, and assigns.

Dated this ____ day of _____, 2021.

GRANTOR:

The James Palecek and Vivian Palecek Irrevocable
Trust dated March 9, 1992

By: _____
James P. Palecek, Trustee

By: _____
Vivian L. Palecek, Trustee

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____,
2021, by James P. Palecek and Vivian L. Palecek, as trustees under the James Palecek and Vivian
Palecek Irrevocable Trust dated March 9, 1992, on behalf of the Trust, Grantor.

Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT DRAFTED BY:

Kennedy & Graven, Chartered (SJS)
Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

**EXHIBIT A TO
DRAINAGE AND UTILITY EASEMENT**

Legal Description of the Property

All that part of the West 240.00 feet of the Northwest Quarter of the Northwest Quarter of Section 22, Township 29, North, Range 21 West, Washington County, Minnesota, lying southerly of the North 790.00 feet thereof.

PID: 2202921220004

Abstract

EXHIBIT B
TO DRAINAGE AND UTILITY EASEMENT

Legal Description of the Easement Area

An easement for drainage and utility purposes, over, under, across, and through all that part of the Northwest Quarter of the Northwest Quarter of Section 22, Township 29 North, Range 21 West, Washington County, Minnesota, being a strip of land 15.00 feet in width and 7.50 feet on either side of the following described centerline:

Commencing at the northwest corner of said Northwest Quarter of the Northwest Quarter, thence southerly along the westerly line thereof 475.00 feet; thence easterly parallel with the northerly line of said Northwest Quarter of the Northwest Quarter 210.00 feet; thence southerly parallel with said westerly line 215.00 feet to the point of beginning of the centerline description of the 15.00 wide storm water drainage easement; thence westerly parallel with said northerly line and along said centerline 75.00 feet to the end of the centerline being described.

EXHIBIT C
Depiction of the Easement Area

