



STAFF REPORT

DATE: 4/18/2017

CONSENT

ITEM #: 15

MOTION

TO: City Council
FROM: Emily Becker, City Planner
AGENDA ITEM: Bremer Bank Service Center Easement Vacations – 8555 Eagle Point Blvd N
REVIEWED BY: Stephen Wensman, Planning Director
Planning Commission

BACKGROUND:

The City has received requests from Bremer Bank, National Association for two easement vacations over a portion of the property located at 8555 Eagle Point Blvd N:

- To vacate an existing easement for stormwater management purposes to be relocated to allow for the expansion of the existing building.
- To vacate an existing drainage and utility easement to be relocated to accommodate the combination of the three parcels requested to be combined.

ISSUE BEFORE COUNCIL:

The Council is being asked to consider a request for the vacation of two public easements.

PROPOSAL DETAILS/ANALYSIS:

Further Detail and Analysis. The attached Planning Commission Staff Report dated 4/10/17 provides further detail on the reason for the request.

PUBLIC HEARING AND PLANNING COMMISSION COMMENTS:

A public hearing on the request was held at the April 10, 2017 Planning Commission meeting. The public hearing notice was published in the City's official newspaper, and notices were sent to property owners within 350 feet of the subject property.

No one from the public spoke at the public hearing. One inquiry was received prior to the meeting, but no objection. The Planning Commission recommended approval of the requested easement vacations subject to one condition of approval with an affirmative vote of 7-0.

FISCAL IMPACT:

It is a recommended condition of approval that the easements to be vacated be replaced, as approved by the City Engineer. This will allow for expansion of the service center's parking lot, which will accommodate expansion of the building. Therefore, it is anticipated that the easement vacations will have no fiscal impact.

OPTIONS:

The Council may:

- Approve proposed Easement Vacations with recommended condition of approval.
- Approve proposed Easement Vacations with amended condition of approval.
- Approve only one of the proposed Easement Vacations with recommended or amended condition of approval.
- Recommend denial of both proposed Easement Vacations, citing findings of fact as to why the proposal should be denied.

RECOMMENDED CONDITIONS OF APPROVAL:

Staff recommends that the Planning Commission recommend the following condition of approval:

1. The Applicant shall grant the City replacement easements, as approved by the City Engineer, and record said easements with Washington County.

RECOMMENDATION:

Staff and the Planning Commission recommend that the Council approve, as part of tonight's Consent Agenda, the proposed drainage and utility easement vacations as described in Resolution 2017- . If removed from the Consent Agenda, the Council may approve the easement vacations as recommended with the following motion:

“Move to approve Resolution 2017-036 approving the vacation of the easements described as the south 5.00 feet Lot 1 Block 1, Eagle Point Business Park 3rd Addition (Exception) and vacation of the easement as described in Doc. No. 1208614, subject to replacement easements, as approved by the City Engineer, being provided to the City and recorded.”

ATTACHMENTS:

- Easement Vacation and Replacement Exhibits
- Application
- Planning Commission Report dated 4/10/2017
- Planning Commission 4/10/2017 Meeting Minutes
- Resolution 2017- Approving Proposed Easement Vacations

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

RESOLUTION NO. 2017-036

*A RESOLUTION VACATING TWO EASEMENTS OVER A PORTION OF LOT 1 BLOCK 1
EAGLE POINT BUSINESS PARK 3RD ADDITION*

WHEREAS, the City of Lake Elmo (City) is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City has received application for a Lot Line Adjustment, which will combine PID#s 330.292.141.0050 and 330.292.141.0051 with Lot 1 Block 1 of Eagle Point Business Park 3rd Addition, as well as parking lot and building expansion permits; and

WHEREAS, the drainage and utility easement legally described as the south 5.00 feet Lot 1 Block 1 of Eagle Point Business Park 3rd Addition will need to be relocated in order to accommodate the aforementioned Lot Line Adjustment; and

WHEREAS, the proposed building expansion will encroach in to the drainage and utility easement, as shown in Doc. No. 1208614 as recorded by Washington County; and

WHEREAS, the Lot is owned by Bremer Financial Services, 8555 Eagle Point Boulevard North, Lake Elmo, MN (Owner); and

WHEREAS, the aforementioned easements will be replaced to accommodate the aforementioned Lot Line Adjustment and building and parking lot expansions, approved by the City Engineer and recorded; and

WHEREAS, a request has been made to the City Council pursuant to Minnesota Statute §412.851 to vacate two easements: the drainage and utility easement legally described as the south 5.00 feet Lot 1 Block 1 of Eagle Point Business Park 3rd Addition (Exception) and the drainage and utility easement as shown in Doc. 1208614 as recorded on September 20, 2011 over a portion of Lot 1 Block 1 of Eagle Point Business Park 3rd Addition legally described, respectively, as follows:

1. The south 5.00 feet Lot 1, Block 1, Eagle Point Business Park 3rd Addition Except the west 10.00 feet of the south 5.00 feet and the east 5.00 feet of the south 5.00 feet of said Lot 1.
2. That part of Lot 1, Block 1, Eagle Point Business Park 3rd Addition, according to the plat thereof filed of record in the office of Registrar of Titles in and for Washington County, Minnesota said easement is described as commencing at the northeast corner of said Lot 1; thence South 00 degrees 00 minutes 40 seconds East, assumed bearing

along the east line of said Lot 1, a distance of 237.89 feet; thence South 89 degrees 59 minutes 20 seconds West 72.72 feet to the point of beginning; thence South 00 degrees 47 minutes 35 seconds East 184.63 feet; thence South 45 degrees 35 minutes 11 seconds West 60.46 feet; thence North 45 degrees 22 minutes 37 seconds West 166.18; thence North 44 degrees 09 minutes 09 seconds East 148.41 feet; thence North 45 degrees 08 minutes 24 seconds West 166.29 feet; thence South 89 degrees 38 minutes 12 seconds West 620.32 feet; thence South 44 degrees 54 minutes 38 seconds West 83.51 feet to the westerly line of said Lot 1; thence northwesternly 96.03 feet along said westerly line being a non-tangential curve concave of the southwest having a radius 320.42 feet a central angle of 17 degrees 10 minutes 16 seconds and a chord which bears North 55 degrees 08 minutes 14 seconds West; thence North 00 degrees 22 minutes 57 seconds West 98.84 feet; thence North 89 degrees 37 minutes 03 seconds East 122.54 feet; thence South 01 degrees 21 minutes 51 seconds East 25.49 feet; thence North 89 degrees 37 minutes 03 seconds East 624.25 feet; thence South 45 degrees 08 minutes 24 seconds East 260.21 feet to the point of beginning.

WHEREAS, the City Clerk reviewed and examined the signatures on said request and determined that such signatures constituted all of the landowners abutting upon the portion of easement to be vacated and rededicated; and

WHEREAS, a public hearing to consider the vacation of the two aforementioned easements was held on the 10th day of April 2017 before the Planning Commission in the Lake Elmo City Hall located at 3800 Laverne Avenue North at 7:00 p.m. or shortly thereafter after due published and posted notice had been given, as well as personal mailed notice to all property owners within 350 feet of the Lot by the City Clerk on the 29th day of March 2017 and all interested and affected persons were given an opportunity to voice their concerns and be heard; and

WHEREAS, the Planning Commission in its discretion has determined that the vacation will benefit the public interest because:

- 1) Replacement easements, as approved by the City Engineer, will be recorded against the property with Washington County.

WHEREAS, the Council, at its meeting on the 18th day of April 2017, considered the recommendation of the Planning Commission.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, COUNTY OF WASHINGTON MINNESOTA, that such request for vacation two existing drainage and utility easements is hereby granted in accordance with the property descriptions provided above, subject to the following conditions.

1. The Applicant shall grant the City replacement easements, as approved by the City Engineer, and record said easements with Washington County.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to sign all documents necessary to effectuate the intent of this resolution.

Adopted by the Council this 18th day of April 2017.

Effective Date: _____

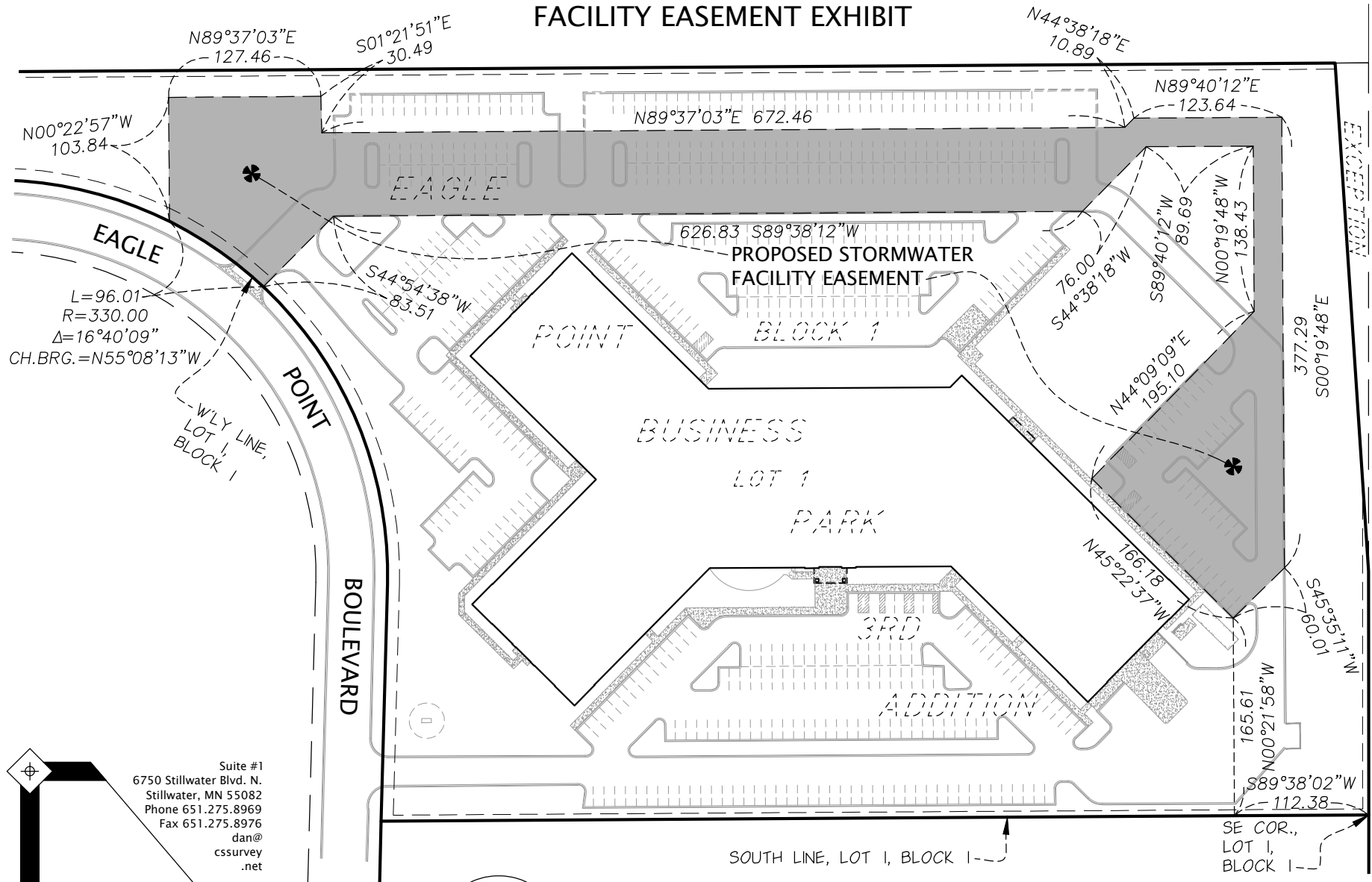
Approved:

Mike Pearson, Mayor

Attested by:

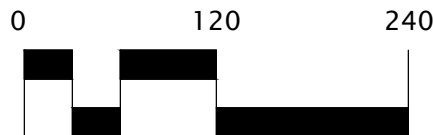
Julie Johnson, City Clerk

NORTHERLY STORMWATER FACILITY EASEMENT EXHIBIT



Suite #1
6750 Stillwater Blvd. N.
Stillwater, MN 55082
Phone 651.275.8969
Fax 651.275.8976
dan@
cssurvey
.net

CORNERSTONE
LAND SURVEYING, INC



■ DENOTES PROPOSED
STORMWATER FACILITY
EASEMENT

LEGAL DESCRIPTION:

Lot One (1), Block One (1), EAGLE POINT BUSINESS PARK 3RD ADDITION,
EXCEPT


That part Beginning at the Northeast corner of said Lot 1, Block 1; thence South 89 degrees 38 minutes 02 seconds West, assumed bearing, along the North line of said Lot 1 a distance of 28.08 feet, thence South 03 degrees 47 minutes 08 seconds East a distance of 426.49 feet to the East line of said Lot 1; thence North 00 degrees 00 minutes 40 seconds West along said East line of Lot 1 a distance of 425.74 feet to the point of beginning.
(Torrens property, Certificate of Title No. 73198)

DESCRIPTION OF PROPOSED EASEMENT:

A stormwater facility easement over, under, and across that portion of Lot 1, Block 1, EAGLE POINT BUSINESS PARK 3RD ADDITION, described as follows:

COMMENCING at the southeast corner of said Lot 1, Block 1; thence on an assumed bearing of South 89 degrees 38 minutes 02 seconds West along the south line of said Lot 1 a distance of 112.38 feet; thence North 00 degrees 21 minutes 58 seconds West a distance of 165.61 feet to the POINT OF BEGINNING; thence North 45 degrees 22 minutes 37 seconds West a distance of 166.18 feet; thence North 44 degrees 09 minutes 09 seconds East a distance of 195.10 feet; thence North 00 degrees 19 minutes 48 seconds West a distance of 138.43 feet; thence South 89 degrees 40 minutes 12 seconds West a distance of 89.69 feet; thence South 44 degrees 38 minutes 18 seconds West a distance of 76.00 feet; thence South 89 degrees 38 minutes 12 seconds West a distance of 626.83 feet; thence South 44 degrees 54 minutes 38 seconds West a distance of 83.51 feet to the westerly line of said Lot 1; thence northwesterly along said westerly line a distance of 96.01 feet along a non-tangential curve concave to the southwest having a radius of 330.00 feet a central angle of 16 degrees 40 minutes 09 seconds and a chord which bears North 55 degrees 08 minutes 13 seconds West; thence North 00 degrees 22 minutes 57 seconds West, not tangent to last described curve, a distance of 103.84 feet; thence North 89 degrees 37 minutes 03 seconds East a distance of 127.46 feet; thence South 01 degrees 21 minutes 51 seconds East a distance of 30.49 feet; thence North 89 degrees 37 minutes 03 seconds East a distance of 672.46 feet; thence North 44 degrees 38 minutes 18 seconds East a distance of 10.89 feet; thence North 89 degrees 40 minutes 12 seconds East a distance of 123.64 feet; thence South 00 degrees 19 minutes 48 seconds East a distance of 377.29 feet; thence South 45 degrees 35 minutes 11 seconds West a distance of 60.01 feet to the POINT OF BEGINNING.





Suite #1
6750 Stillwater Blvd. N.
Stillwater, MN 55082
Phone 651.275.8969
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dan@
cssurvey
.net

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LEGAL DESCRIPTION:

The northerly 261.00 feet of Outlot A, EAGLE POINT BUSINESS PARK 3RD ADDITION, according to the plat thereof on file and of record in the office of the Registrar of Titles, Washington County, Minnesota.
(Torrens property, Certificate of Title No. 72855)

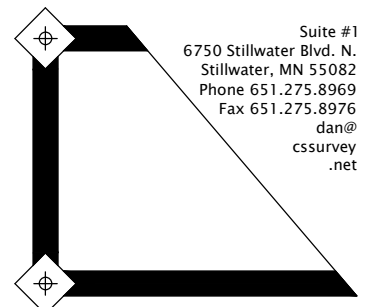
AND

That part of Outlot A, EAGLE POINT BUSINESS PARK 3RD ADDITION, lying southerly of the northerly 261.00 feet, according to the recorded plat thereof, Washington County, Minnesota.
(Torrens property, Certificate of Title No. 74304)

DESCRIPTION OF PROPOSED EASEMENT:

A drainage and utility easement over, under, and across that portion of Outlot A, EAGLE POINT BUSINESS PARK 3RD ADDITION, described as follows:

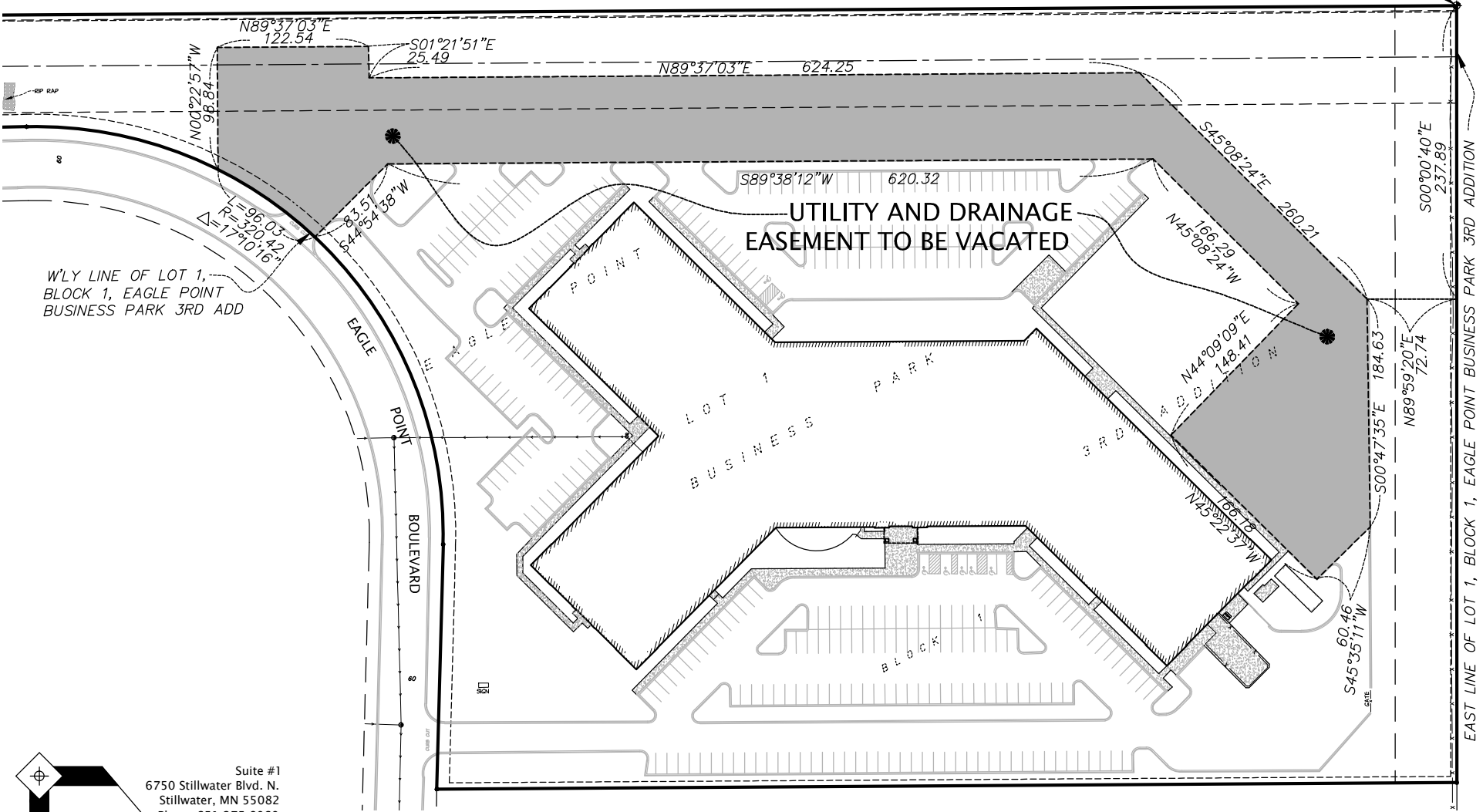
The westerly 10.00 feet, the southwesterly 5.00 feet, the south 5.00 feet, and the east 5.00 feet; all of said Outlot A

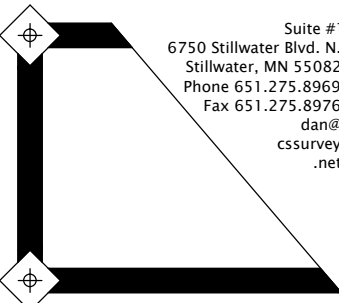


CORNERSTONE
LAND SURVEYING, INC
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EASEMENT VACATION EXHIBIT

NE CORNER OF LOT 1, BLOCK 1, EAGLE
POINT BUSINESS PARK 3RD ADDITION





Suite #1
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CORNERSTONE
LAND SURVEYING, INC



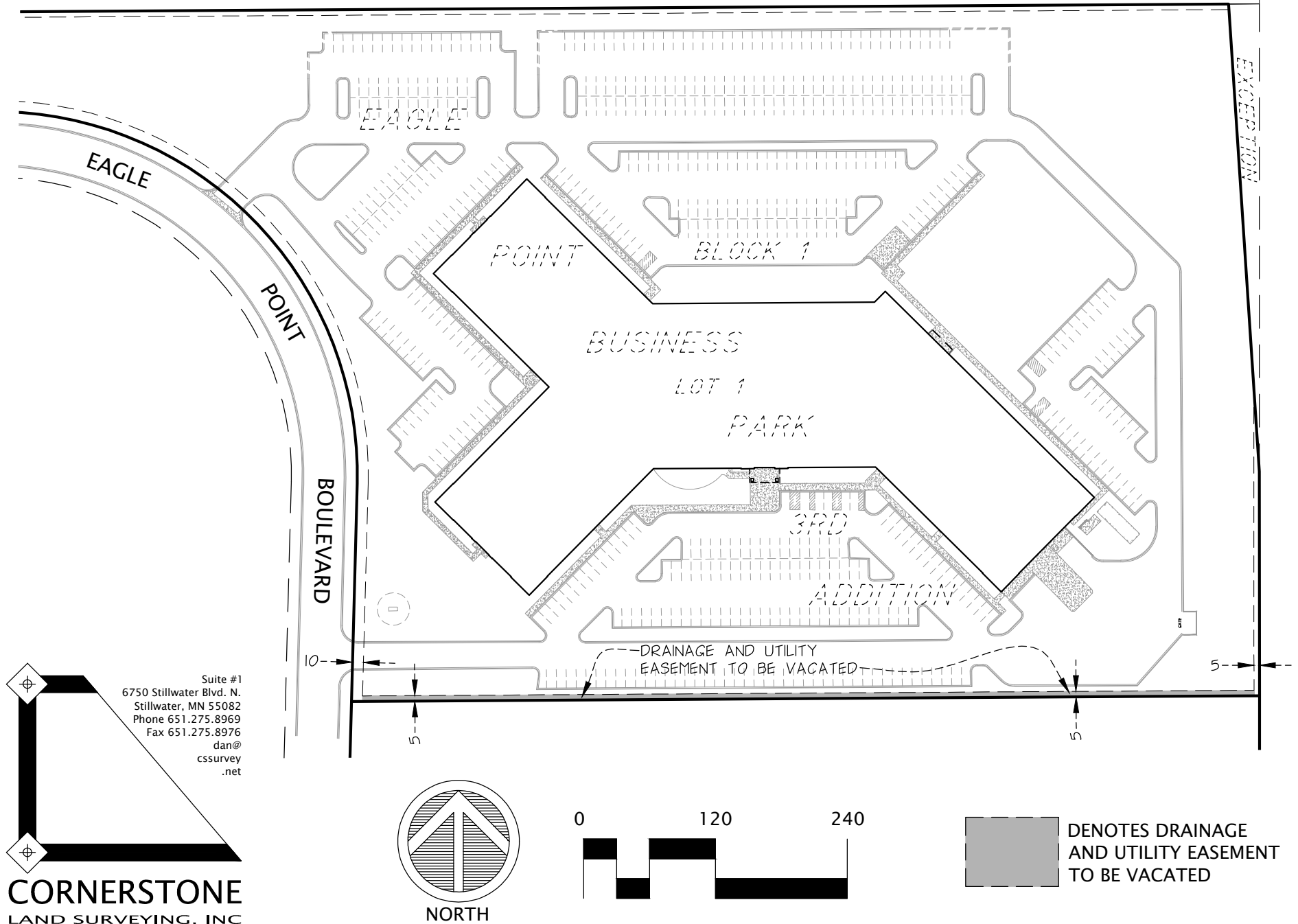
UTILITY AND DRAINAGE EASEMENT TO BE VACATED

An easement for drainage and utility purposes over that part of the following described property:

That part of Lot 1, Block 1, EAGLE POINT BUSINESS PARK 3RD ADDITION, according to the plat thereof filed of record in the office of the Registrar of Titles in and for Washington County, Minnesota said easement is described as commencing at the northeast corner of said Lot 1; thence South 00 degrees 00 minutes 40 seconds East, assumed bearing along the east line of said Lot 1, a distance of 237.89 feet; thence South 89 degrees 59 minutes 20 seconds West 72.74 feet to the point of beginning; thence South 00 degrees 47 minutes 35 seconds East 184.63 feet; thence South 45 degrees 35 minutes 11 seconds West 60.46 feet; thence North 45 degrees 22 minutes 37 seconds West 166.18 feet; thence North 44 degrees 09 minutes 09 seconds East 148.41 feet; thence North 45 degrees 08 minutes 24 seconds West 166.29 feet; thence South 89 degrees 38 minutes 12 seconds West 620.32 feet; thence South 44 degrees 54 minutes 38 seconds West 83.51 feet to the westerly line of said Lot 1; thence northwesterly 96.03 feet along said westerly line being a non-tangential curve concave to the southwest having a radius of 320.42 feet a central angle of 17 degrees 10 minutes 16 seconds and a chord which bears North 55 degrees 08 minutes 14 seconds West; thence North 00 degrees 22 minutes 57 seconds West 98.84 feet; thence North 89 degrees 37 minutes 03 seconds East 122.54 feet; thence South 01 degrees 21 minutes 51 seconds East 25.49 feet; thence North 89 degrees 37 minutes 03 seconds East 624.25 feet; thence South 45 degrees 08 minutes 24 seconds East 260.21 feet to the point of beginning.

NOTE: EASEMENT IS AS SHOWN IN DOC. NO. 1208614

EASEMENT VACATION EXHIBIT



LEGAL DESCRIPTION:

Lot One (1), Block One (1), EAGLE POINT BUSINESS PARK 3RD ADDITION,
EXCEPT

That part Beginning at the Northeast corner of said Lot 1, Block 1; thence South 89 degrees 38 minutes 02 seconds West, assumed bearing, along the North line of said Lot 1 a distance of 28.08 feet, thence South 03 degrees 47 minutes 08 seconds East a distance of 426.49 feet to the East line of said Lot 1; thence North 00 degrees 00 minutes 40 seconds West along said East line of Lot 1 a distance of 425.74 feet to the point of beginning.
(Torrens property, Certificate of Title No. 73198)

DESCRIPTION OF EASEMENT TO BE VACATED:

The south 5.00 feet Lot 1, Block 1, EAGLE POINT BUSINESS PARK 3RD ADDITION

EXCEPT

The west 10.00 feet of the south 5.00 feet and the east 5.00 feet of the south 5.00 feet of said Lot 1



Date Received: _____
Received By: _____
Permit #: _____



651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

LAND USE APPLICATION

- ☐ Comprehensive Plan ☐ Zoning District Amend ☐ Zoning Text Amend ☐ Variance*(see below) ☐ Zoning Appeal
- ☐ Conditional Use Permit (C.U.P.) ☐ Flood Plain C.U.P. ☐ Interim Use Permit (I.U.P.) ☐ Excavating/Grading
- ☐ Lot Line Adjustment ☐ Minor Subdivision ☐ Residential Subdivision Sketch/Concept Plan
- ☐ PUD Concept Plan ☐ PUD Preliminary Plan ☐ PUD Final Plan ☐ Wireless Communications ☒ Easement Vacation

Applicant: Bremer Bank, National Association c/o Josh Meyer

Address: 8555 Eagle Point Blvd., Lake Elmo, MN 55042

Phone # 651-734-4510

Email Address: JPMeyer@Bremer.com

Fee Owner: Bremer Bank, National Association

Address: 8555 Eagle Point Blvd., Lake Elmo, MN 55042

Phone # 651-734-4510

Email Address: JPMeyer@Bremer.com

Property Location (Address): 8555 Eagle Point Blvd., Lake Elmo, MN 55042

(Complete (long) Legal Description: Lot 1, Block 1 and Outlot A, Eagle Point Business Park 3rd Addition, Washington County, Minnesota Except That Part of Lot 1, Block 1 as described as follows:

PID#: 33.029.21.41.0053, 33.029.21.41.0050, and 33.029.21.41.0051

Detailed Reason for Request: To vacate an existing stormwater facility easement in order to relocate it to allow for expansion of the existing building on site. Also, to vacate an existing drainage and utility easement to allow for efficient development of an overall parcel being combined to allow for efficient parking and land use.

*Variance Requests: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows:
Not applicable

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning ordinance and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Signature of applicant: _____

Date: 3-6-17

Signature of fee owner: _____

Date: 3-6-17

Beginning at the northeast corner of said Lot 1, Block 1; thence South 89 degrees 38 minutes 02 seconds West, assumed bearing, along the north line of said Lot 1 a distance of 28.08 feet; thence South 03 degrees 47 minutes 08 seconds East a distance of 426.49 feet to the east line of said Lot 1; thence North 00 degrees 00 minutes 40 seconds West along said east line of Lot 1 a distance of 425.74 feet to the point of beginning.



PAID MAR 08 2017

PUBLIC WORKS DEPARTMENT
SURVEY & LAND MANAGEMENT
DIVISION

Donald J. Theisen, P.E.
Director

Michael J. Welling, P.L.S.
County Surveyor/Division Manager

Washington County Government Center • 14949 62nd Street North • P.O. Box 6 • Stillwater, MN 55082
Phone 651-430-6875 • Fax 651-430-6888 • TTY 651-430-6246

Date of request 3-8-17

Parcel Search File No. 17017

REQUEST FOR SURROUNDING PROPERTY OWNERS AND ADDRESSES

Requested by: Name Bremer Bank, National Association c/o Josh Meyer
Business Bremer Bank, National Association c/o Josh Meyer
Street address 8555 Eagle Point Blvd.
City/State/Zip code Lake Elmo, MN 55042

Daytime Phone (651) 734-4510

List of owner names and addresses for parcels located within 350 feet of:

Parcel ID (if known) 33.029.21.41.0053, 33.029.21.41.0050, and 33.029.21.41.0051
Owner's Name Bremer Bank, National Association c/o Josh Meyer
Street address of subject parcel 8555 Eagle Point Blvd.
City or Township Lake Elmo, MN 55042

Date needed: As Soon As Possible
Mailing labels: Yes X No
of sets of labels: 1

Mail report Pick up report X

PARCEL SEARCH FEES

1st 25 parcels, including subject parcel (\$50.00)	\$ <u>50.00</u>
1 sheet of 30 labels (\$1.00/set)	<u>1.00</u>
Postage, if parcel search is mailed (\$2.00)	<u> </u>
Fee, if parcel search is faxed (\$2.00)	<u> </u>

Completion date 3-8-17
Service Rep ah
Total # of parcels 100
Total # of labels 31

of additional parcels 35 x .50 = \$ 17.50
of add'l sheets of labels x 1.00 =

Amount due: \$ 118.50
Visa/MC X Check/Cash Invoice
Payment date 3-8-17 Payment received by ah

THIS INFORMATION WAS COMPILED FROM WASHINGTON COUNTY SURVEYOR MAPS AND COUNTY ASSESSOR DATA FILES. THE SURVEYOR'S OFFICE IS NOT RESPONSIBLE FOR ANY INACCURACIES IN THE INFORMATION RELIED UPON IN THIS PARCEL SEARCH.

Parcel Search: March 8, 2017 at 9:36 a.m. by SURVPUB
350 feet surrounding multiple parcels. 60 parcels, 31 labels.

3302921110005	3402921330009
3302921130017	3402921330010
3302921140029	3402921330011
3302921410050	3402921330012
3302921410051	3402921330013
3302921410052	3402921330014
3302921410053	3402921330015
3302921420007	3402921330025
3302921420017	
3302921420018	
3302921420019	
3302921440009	
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3402921320039	



**City of Lake Elmo
Planning Commission Meeting
Minutes of April 10, 2017**

Chairman Kreimer called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.

COMMISSIONERS PRESENT: Dorschner, Fields, Kreimer, Dodson, Emerson, Williams, Lundquist and Hartley

COMMISSIONERS ABSENT: Larson

STAFF PRESENT: Planning Director Wensman, City Planner Becker and City Engineer Griffin

Approve Agenda:

M/S/P: Williams/Lundquist, move to approve the agenda as amended, adding a 5c for a condition for buckthorn management for Royal Golf, ***Vote: 7-0, motion carried, unanimously.***

Approve Minutes: March 27, 2017

M/S/P: Williams/Lundquist, move to approve the March 27, 2017 minutes as amended, ***Vote: 4-0, motion carried unanimously.***

Public Hearing – Easement Vacation – Bremer Bank 8555 Eagle Point Blvd

Becker started her presentation regarding the request for a vacation for two public easements. The first request is to vacate an existing D & U for stormwater facility easement to be relocated to allow for expansion of existing building. The second easement to be vacated is along the property line (to be replaced) to allow for combination of three parcels. The City Attorney and the County have been consulted and it is ok to combine a platted lot with outlots. There is one condition being recommended that the applicant shall record replacement easements as approved by the City Engineer.

Dorschner asked if this approval secures the other necessary easements. Becker stated that it does through the condition of approval.

Public Hearing opened at 7:10 pm

There were no written comments and no one spoke

Public Hearing closed at 7:10 pm

Dodson is wondering why there are 2 separate motions being recommended. Becker stated that there would not need to be 2 separate motions, but it makes it more clear what is being vacated.

M/S/P: Dodson/Williams, move to recommend the approval of the vacation of the easement described as south 5.00 feet Lot 1 Block 1, Eagle Point Business Park 3rd Addition and also the easement as shown in Doc. No. 1208614, subject to replacement easements, as approved by the City Engineer being recorded, **Vote: 7-0, motion carried unanimously.**

Public Hearing – Zoning Text Amendment – VMX Zoning District

Becker started her presentation by talking about some of the updates from the last meeting. The Commission wanted to add a definition for Mixed Use. Staff does not recommend adding. It does not fit broadly into code and should only be in this district. There were additional density standards added using the language from the Comprehensive Plan for senior congregate care facilities up to 16 units per acre with CUP. The garage setback of 25 feet was added to the table rather than the text. Standards for V-MDR were not added. The LDR zoning district can be used for areas guided as V-MDR. Setbacks for properties abutting County roads were added.

The issue of single family homes needs to be resolved. Existing single family homes either need to be non-conforming, or if they are permitted uses, the City would need to allow new single family homes in this district. The current Comprehensive Plan language does not mention detached single family homes as allowed uses in VMX district. The minimum lot size for single family homes in VMX is currently 5000 sf, but staff is proposing to change that to 9000 sf to prevent an influx of subdivision. The minimum lot width is proposed to change from 50 ft to 70 ft to mirror V-LDR standards.

There was a discussion at the last meeting regarding conditional and permitted uses in the VMX district. The Commission should specifically outline which uses are of concern and discuss. New housing type mixture requirement was added from MDR standards for Multi-family and two family dwelling units. Staff is recommending striking this. There was concern at the last meeting regarding veterinary services, so language was added to limit services to small domestic pets.

Lundquist asked about the single family housing not being in the Comprehensive Plan. Becker stated that the Comprehensive Plan can be addressed with the amendment currently being worked on. Williams thinks that single family should be included as a permitted use in the table for VMX. Wensman stated that he believes this is the right