



Request for Council Action

TO: Mayor and City Council

THROUGH: Tim Murray, City Administrator
Deanna Kuennen, C&ED Director

FROM: Peter Waldock, AICP Planning Coordinator

MEETING DATE: August 13, 2019

SUBJECT: Approve an Easement Agreement with Superior Poultry Enterprises LLC at 904 Lyndale Avenue N.

Background:

The property owners at 904 Lyndale Avenue N. (MN Hwy 21) have requested to retain an existing business sign that encroaches into a public right-of-way easement for access to White Sands Park south of the subject site. As a follow up to the encroachment agreement approved by the City Council at its last meeting, Staff has drafted an easement agreement to expand the City access easement further west into the owner's property to allow the sign to remain in place.

Rice County is in process of considering the encroachment agreement at this time. They have not reported any concerns regarding this matter. The MN DNR has no objections to the encroachment agreement or expanded easement area.

Recommendation:

Approve the Easement Agreement Superior Poultry Enterprises Inc. to expand the public access easement to White Sands Park that crosses 904 Lyndale Avenue N and Authorize the Mayor and City Administrator to take the necessary actions to enlarge the easement and execute the agreement.

Attachments:

- Easement Agreement
- Easement Expansion Plan
- White Sands Access Plan

EASEMENT AGREEMENT

Between the City of Faribault and Superior Poultry Enterprises LLC.

Regarding: 904 Lyndale Avenue N

PID # 1825426003

PERMANENT ACCESS EASEMENT

**Superior Poultry Enterprises LLC
904 Lyndale Avenue N / PID # 1825426003**

Whereas, Superior Poultry Enterprises, Inc. a Minnesota Corporation, (hereinafter the “GRANTOR”) is the owner of property located at 904 Lyndale Avenue N (PID # 1825426003) as described in Exhibit A (the “Subject Property”); and

Whereas, the City of Faribault, a public body corporate and politic, organized and existing under the laws of the State of Minnesota (hereinafter the “CITY”) has an existing right of way easement for access over and across the Subject Property as provided in Ordinance 99-17, Document No. 505516 as filed in the Office of the Rice County Recorder on November 15, 2002 and attached hereto as Exhibit B (the “Existing Easement”); and

Whereas, the GRANTOR has a business sign that encroaches into the Existing Easement that they wish to keep in place as is and use for the business occupants of the Subject Property; and

Whereas, the CITY has agreed to allow the business sign to encroach into its Existing Easement subject to provisions of an encroachment agreement approved by the CITY on July 23, 2019 and approved by Rice County on _____, 2019 attached hereto as Exhibit C; and

Whereas, in consideration of the mutual benefits accruing to both parties, the GRANTOR hereby grants to the CITY, an additional easement for construction, operation and maintenance of park access for the public over, under, and across the GRANTORS property as depicted and described on Certificate of Survey prepared by Timothy S. Peterson License No 45332, revision date June 27, 2019 attached hereto as Exhibit D as the proposed additional easement to the City of Faribault, Rice County, Minnesota. (hereinafter the “Additional Easement”).

This easement shall be granted subject to the following conditions:

1. The Additional Easement shall remain subject to sale or lease; such sale or lease shall not serve to revoke this easement.
2. The CITY shall comply with all applicable local, state, and federal laws, rules, or regulations affecting said Premises.
3. The CITY and the GRANTORS agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for acts of any others and the results thereof.
4. This Additional Easement shall be permanent and run with the land unless otherwise vacated by the majority vote of the City Council for the City of Faribault.

IN TESTIMONY WHEREOF, the City of Faribault, a body politic and corporate under the laws of Minnesota, have caused this easement to be executed, and the GRANTORS manifest their acceptance of these terms and conditions by their signature.

Exhibit A
Legal Description

EXISTING EASEMENT DESCRIPTION:

A right-of-way easement for access over and across property in Block 2, LYNDAL ADDITION, Faribault, Rice County, Minnesota, as follows:

The Easterly 25 feet of Lot 3; Lot 7; and the Easterly 25 feet of Lot 1.

PROPOSED EASEMENT DESCRIPTION:

A right-of-way easement for access over and across property in Block 2, LYNDAL ADDITION, Faribault, Rice County, Minnesota, as follows:

The Easterly 25 feet of Lot 3; Lot 7; and the Easterly 25 feet of Lot 1. AND ALSO; That part of Lots 2 and 3 in said Block 2, LYNDAL ADDITION described as follows, Commencing at the Northeast corner of said Lot 3; thence North 90°00'00" West along the north line of said Lot 3 a distance of 25 feet to the point of beginning; thence continuing North 90°00'00" West along the north line of said Lot 3 a distance of 20 feet; thence South 00° 48'00" West a distance of 91.24 feet; thence South 21°38'50" East a distance of 52.37 feet to a point in the east line of said Lot 2; thence North 00° 48'00" East along the east line of said Lot 2, a distance of 139.92 feet and there terminating.
Containing 8,938 square feet more or less.

Exhibit B

(Attach copy of Ord. 99-17, Document No. 505516)

Exhibit C
(Attach Encroachment Agreement)

Exhibit D
(Depiction and Description of the Additional Easement)

ENCROACHMENT AGREEMENT

In consideration of the location and presence of an Encroachment in a public right-of-way easement for access in favor of the CITY OF FARIBAULT (the "CITY") and Encroachment into an easement for trail purposes in favor of Rice County (the "COUNTY"), Superior Poultry Enterprises, Inc. a Minnesota Corporation, (the "OWNER"), shall indemnify and hold harmless the CITY and the COUNTY, their agents, representatives, and employees from any and all losses, claims, actions, costs and expenses (including but not limited to, court costs and attorney's fees), judgments subrogations or other damages of every kind whatsoever resulting from any injury to person or to property, arising out of the presence of materials, equipment, or any kind of improvement whatsoever installed within the CITY's and COUNTY's easements over a portion of the subject property with the Parcel Identification Number (PID) # 1825426003, more commonly known as 904 Lyndale Avenue, legally described in Exhibit A attached hereto.

Such improvements, equipment and materials include, but are not limited to the following: An existing freestanding pylon sign for identification of the business or businesses operated from the subject premises. Said sign is approximately 30' tall and has an internally illuminated sign cabinet of 140 square feet in area; the sign foundation is concrete (hereinafter the "Encroachment").

OWNER shall be responsible for maintaining the aforementioned Encroachment in a safe condition at all times, and otherwise shall assume and be responsible for any and all risks, costs and expenses in any way connected to or arising out of the Encroachment. The OWNER, at OWNER's sole expense, also agrees that any damage to the land or property of the CITY or the COUNTY caused by the construction, maintenance, presence or removal of the Encroachment will be corrected and such damaged land or property of the CITY or the COUNTY repaired and restored to the condition substantially equal to that existing at the time just prior to the time such damages occurred. If it is determined that the Encroachment has not been maintained or creates a public nuisance or safety hazard, the CITY or the COUNTY may require the removal of the Encroachment in its entirety at the OWNER'S expense.

Further, the CITY and the COUNTY reserves the right to require the removal of the Encroachment or to remove or cause the Encroachment to be removed if the CITY or the COUNTY determines at any time the removal to be in the best interest of the public, including but not limited to at any time the CITY or COUNTY determines the Encroachment is not maintained, creates a public nuisance or safety hazard, or that the Encroachment impedes the CITY's or the COUNTY's general use and maintenance of the public access way and the associated driveway improvements, or the

Encroachment impedes the installation, restoration, and/or maintenance of any public improvement including, but not limited to sewer systems, storm drainage systems, water systems, gas systems and or any other utilities.

The OWNER shall maintain the Encroachment in good condition and repair, at OWNER's expense, and the OWNER shall indemnify and hold harmless the City with respect to all claims made by any third party relating to the Encroachment or arising from the use of the Encroachment.

This Agreement shall be recorded among the land records of Rice County, Minnesota. The provisions of this Agreement shall run with the property and be binding upon the OWNER and their assigns or successors in interest. Notwithstanding the foregoing, no conveyance of the Property or any part thereof shall relieve the OWNER or their successors and assigns of their liability for full performance of this Agreement unless the CITY and the COUNTY expressly so releases the OWNER in writing.

ADDITIONAL PROVISIONS:

1. The Encroachment (freestanding sign including its foundation) must be removed and the site restored with top soil and grass or other approved ground cover, upon change of use or discontinuance of the current businesses use of the property for 90 days unless otherwise approved by the CITY.
2. Sign permit applications for re-facing the current sign must be submitted within 14 business days from the date of approval of this agreement and the sign must be refaced in accordance with the approved permit and the terms of this agreement within 60 calendar days of this agreement unless extended by the CITY.
3. The OWNER acknowledges the presence of an improved access drive in and adjacent to the Encroachment, located within duly dedicated right-of-way and access easements, and will not allow any activities, including equipment storage, vehicle parking, snow plowing, etc. to impede upon the free movement of persons and vehicles using said access drive to access the City-owned property located immediately to the south. Any damage to the access drive caused by the OWNER or other parties using or accessing the OWNER'S property shall be repaired at the OWNER'S expense.
4. This agreement provides no other allowances beyond those described herein. All CITY ordinances must be followed as applicable to the use of the subject site.

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CERTIFICATE OF SURVEY FOR: SEAN FRANCIS

904 LYNDALE AVENUE NORTH, FARIBAULT, MN 55021

LEGEND

- IRON MONUMENT FOUND
- IRON PIPE MONUMENT SET
- 281.26 * EXISTING SPOT ELEVATION

EXISTING EASEMENT DESCRIPTION:

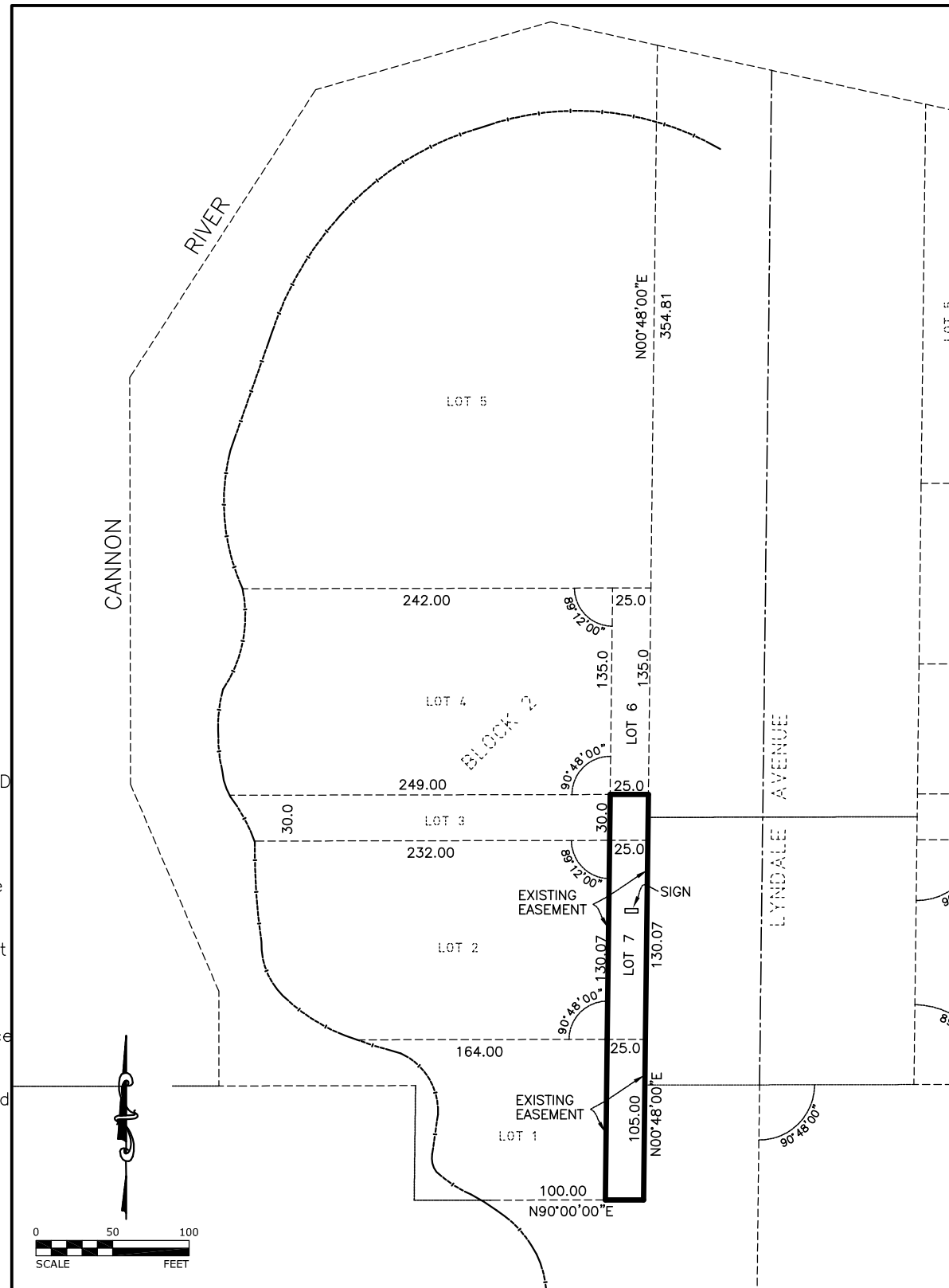
A right-of-way easement for access over and across property in Block 2, LYNDALE ADDITION, Faribault, Rice County, Minnesota, as follows:

The Easterly 25 feet of Lot 3; Lot 7; and the Easterly 25 feet of Lot 1.

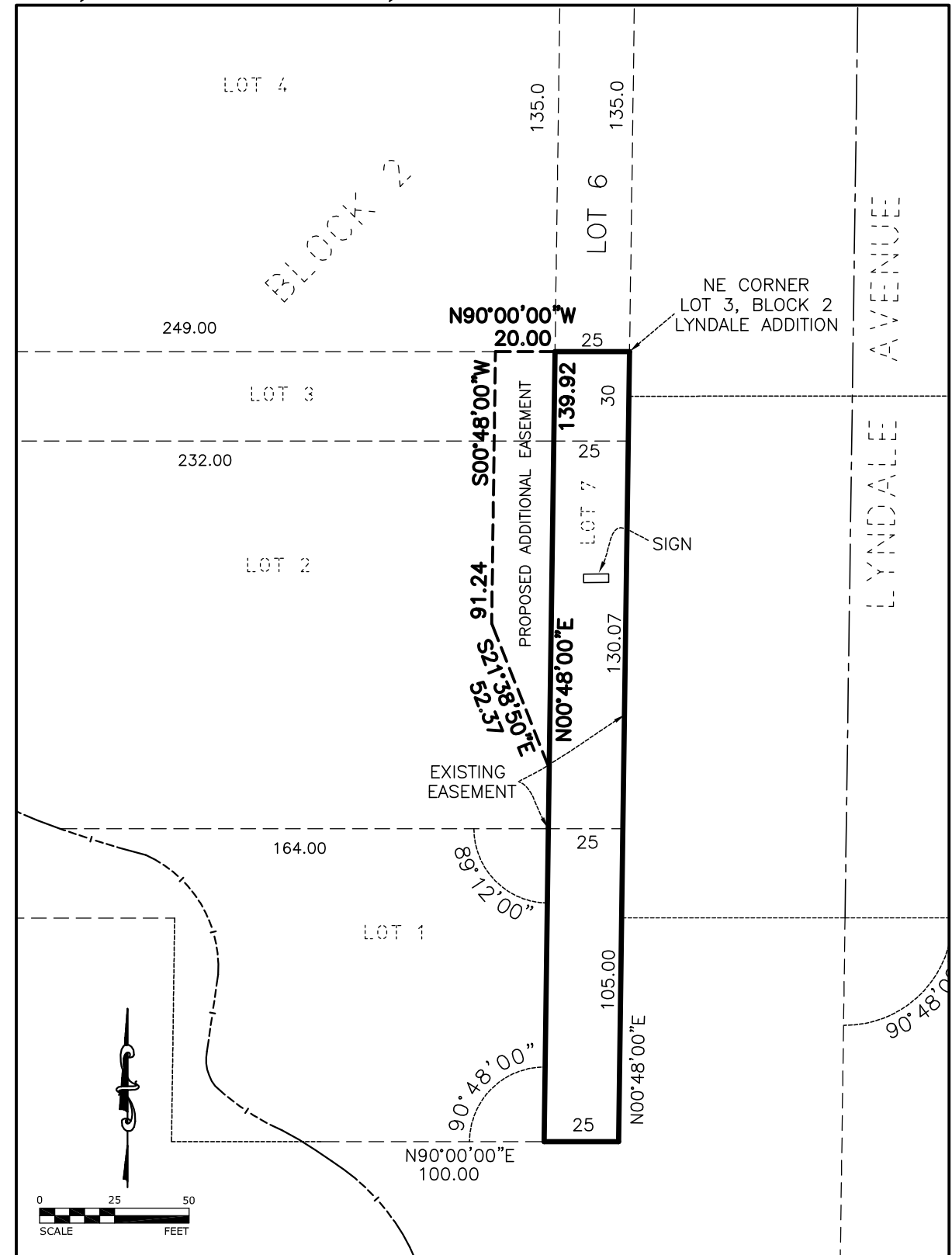
PROPOSED EASEMENT DESCRIPTION:

A right-of-way easement for access over and across property in Block 2, LYNDALE ADDITION, Faribault, Rice County, Minnesota, as follows:

The Easterly 25 feet of Lot 3; Lot 7; and the Easterly 25 feet of Lot 1. AND ALSO; That part of Lots 2 and 3 in said Block 2, LYNDALE ADDITION described as follows, Commencing at the Northeast corner of said Lot 3; thence North 90°00'00" West along the north line of said Lot 3 a distance of 25 feet to the point of beginning; thence continuing North 90°00'00" West along the north line of said Lot 3 a distance of 20 feet; thence South 00°48'00" West a distance of 91.24 feet; thence South 21°38'50" East a distance of 52.37 feet to a point in the east line of said Lot 2; thence North 00°48'00" East along the east line of said Lot 2, a distance of 139.92 feet and there terminating. Containing 8,938 square feet more or less.



EXISTING CONDITIONS



PROPOSED CONDITIONS

FILE: PTS 19060_32

PLOT DATE: 04-15-19

REV. NO.	DATE	BY	CHK	DESCRIPTION
1	6-27-19	TSP	TSP	EASEMENT AREA AND DESCRIPTION



I HEREBY CERTIFY THAT THIS SURVEY, PLAN, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

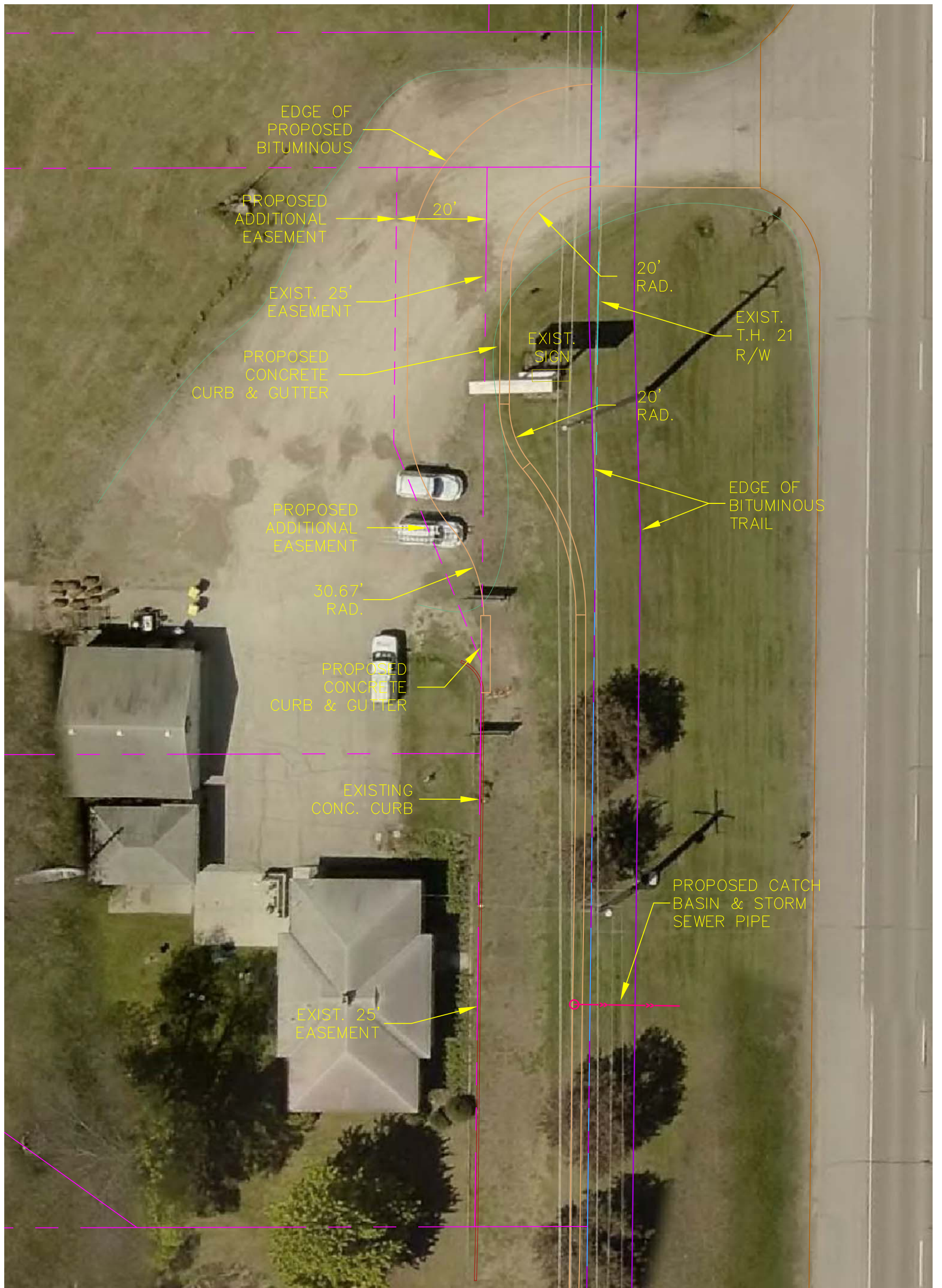
NAME Timothy S. Peterson LIC. NO. 45332 DATE 04-15-2019

DESIGNED
TSP
DRAWN
TSP
CHECKED
TSP

PTS LAND SERVICES, INC.
COMPLETE LAND SURVEYING SERVICES

CERTIFICATE OF SURVEY
LYNDALE ADDITION
FARIBAULT, RICE COUNTY, MN

SHEET
1
OF
1



EDGE OF PROPOSED BITUMINOUS

PROPOSED ADDITIONAL EASEMENT

20'

EXIST. 25' EASEMENT

PROPOSED CONCRETE CURB & GUTTER

EXIST. SIGN

20' RAD.

EXIST. T.H. 21 R/W

20' RAD.

PROPOSED ADDITIONAL EASEMENT

EDGE OF BITUMINOUS TRAIL

30.67' RAD.

PROPOSED CONCRETE CURB & GUTTER

EXISTING CONC. CURB

PROPOSED CATCH BASIN & STORM SEWER PIPE

EXIST. 25' EASEMENT

RL + Abst
City of Folt
Y-20.00 | Y-20.00

31583

505516

#7995, 27-159

Document No.
031583

OFFICE OF REGISTRAR OF TITLES
RICE COUNTY, MINN

Document No.
505516

OFFICE OF COUNTY RECORDER
RICE COUNTY, MINN



No. of Pages 6



No. of Pages 6

I hereby certify that the within instrument was filed in this office
for record on 11-15-2002 at 09:00 AM PM

I hereby certify that the within instrument was filed in this office
for record on 11-15-2002 at 09:00 AM PM

11152002

Pam Melchert, Registrar

11152002

Pam Melchert, County Recorder



P. Melchert
Deputy



P. Melchert
Deputy

(Reserved for Recording)

ORDINANCE 99-17

AN ORDINANCE GRANTING
A SEWER EASEMENT ACROSS
THE WHITE SANDS PROPERTY

Abst
S

RL
J

WHEREAS, Harvey L. Bursch and Sharon L. Bursch are the owners of property in Block 2 Lyndale Addition as described in Exhibit B, which is not served by sanitary sewer; and

WHEREAS, the City owns the White Sands property as described in Exhibit A, which adjoins the Bursch property on the south and construction of a private line across the City's property would allow connection to a sewer main;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The City grants an easement for the purpose of constructing and maintaining a sanitary sewer line over and across the White Sands property to Harvey L. Bursch and Sandra L. Bursch, Grantees, as joint tenants. The easement shall be as described in Exhibit C.

Section 2. Grantees, their successors and assigns shall own, construct and maintain the sewer line at their expense.

Section 3. The plans for the line shall be approved by the City Engineer prior to construction.

Section 4. In consideration for this easement the Bursch's have agreed to grant the City an access easement to the White Sands property, as described in Exhibit D.

Section 5. City staff are authorized to execute and record the necessary documents to give effect to this ordinance.

First Reading: 09/28/99

Second Reading: 10-12-99

Attest: Lorri Smul

David Miller
David Miller, Mayor Pro Tem

Timothy Madigan
Timothy Madigan, Administrator

EXHIBIT A

WHITE SANDS PROPERTY

Abst

All that part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 25, Township 110 North, Range 21 West of the Fifth Principal Meridian, in the City of Faribault, Rice County, Minnesota, described as follows, to-wit: Beginning at a point on the center line of Hulet Avenue, 1182.72 feet North of the South line of the said Southeast Quarter (SE $\frac{1}{4}$) of Section 25; thence West, parallel with the said South line of the Southeast Quarter (SE $\frac{1}{4}$) of Section 25, 419.80 feet to a point on the Westerly boundary of State Trunk Highway No. 165 which is 608.88 feet East of the West line of the said Southeast Quarter (SE $\frac{1}{4}$) of section 25; thence South 0°48' West, along the Westerly boundary of said Highway, 75 feet to the point of beginning of the tract of land herein described, to-wit: Thence West, parallel with the said South line of the Southeast Quarter (SE $\frac{1}{4}$) of Section 25, 150 feet to a point 458.52 feet East of the said West line of the Southeast Quarter (SE $\frac{1}{4}$) of Section 25; thence North, 0°48' East, parallel with the Westerly boundary of said highway, 75 feet; thence West, parallel with the said South line of the Southeast Quarter (SE $\frac{1}{4}$) of Section 25, 458.88 feet to the West line of the said Southeast Quarter (SE $\frac{1}{4}$) of Section 25; thence South, along the said West line of the Southeast Quarter (SE $\frac{1}{4}$) of Section 25, 621.06 feet to a point 561.66 feet North of the Southwest (SW) Corner (cor) of the said Southeast Quarter (SE $\frac{1}{4}$) of Section 25; thence East, about 608.88 feet more or less to the Westerly boundary of said State Trunk Highway No. 165; thence Northerly along the said Westerly boundary of said State Trunk Highway No. 165 about 546.06 feet to the point of beginning; containing about 8.52 acres, more or less, inclusive of the channel of Cannon River and Crocker's Creek; including all riparian rights thereto; subject, however, to flowage of Cannon River and Crocker's Creek; and subject to the right of way of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company over and across the Southeasterly corner thereof; also, subject to channel change of Crocker's Creek and abpe easement over and across said premises in favor of the State of Minnesota, which expires December 1st, 1956. Also, subject to an easement to the City of Faribault, Rice County, Minnesota, bearing date of May 10th, 1963 and filed for record in the office of the Register of Deeds in and for Rice County, Minnesota on May 22nd, 1963 at 1:30 P.M. and recorded in book 14 of M.R. on pages 91 and 92. "State Trunk Highway No. 165 is now known as United States Trunk Highway No. 65."

EXHIBIT B

RL
LOTS 1,2,3,4,5,6, AND 7 IN BLOCK 2 IN LYNDALD ADDITION,
FARIBAULT, RICE COUNTY, MINNESOTA, SUBJECT TO THE PROOVISIONS OF
AN EASEMENT TO THE STATE OF MINNESOTA , PROHIBITING ACCESS TO AND
FROM TRUNK HIGHWAY 165 (NOW NO. 65) AS SET FORTH IN BOOK V.M.R.
ON PAGES 604-605; AND SUBJECT TO A FLOWAGE EASEMENT TO THE
FARIBAULT WOOLEN MILL COMPANY, AS SET FORTH IN BOOK 87 OF DEEDS
ON PAGE 25.

49

EXHIBIT C

EASEMENT DESCRIPTION
City of Faribault
to
Lyndale Motel

An easement for the construction and maintenance of a sanitary sewer line over, under and across a strip of land in the Southeast Quarter of Section 25, Township 110 North, Range 21 West of the Fifth Principal Meridian, in the City of Faribault, Rice County, Minnesota, being 30.00 feet in width, 15.00 feet on both sides of the following described center line: Commencing at the Southeast corner of Lot 1, Block 2, LYNDALe ADDITION, FARIBAULT, RICE COUNTY, MINNESOTA, said point being also in the westerly right of way line of Minnesota Trunk Highway 21 (formerly State Trunk Highway No. 165); thence South 0°48'00" West along said westerly right of way line (for purposes of this description bearings are assumed and based on the East line of said Block 2 and said westerly right of way line being South 0°48'00" West), a distance of 508.44 feet to the point of beginning of the easement center line to be herein described; thence South 83°43'28" West, 107.70 feet; thence North 65°44'22" West, 22.39 feet; thence North 42°58'38" West, 41.53 feet; thence North 6°22'40" West, 363.70 feet; thence North 41°01'48" East, 71.22 feet; thence North 58°34'08" East, 16.32 feet; thence North 17°56'23" East, 57.03 feet to a point in the South line of said Lot 1, Block 2 and there terminating; the side lines of said easement to be shortened or lengthened to meet at angle points, to begin in said westerly right of way line and to terminate in said South line of Lot 1, Block 2.

Prepared by:
The Thomas Taylor Co.
September 8, 1999

EXHIBIT D

A right-of-way easement for access over and across property in Block 2, Lyndale Addition, Faribault, Rice County, Minnesota, as follows:

The easterly 25 feet of Lot 3; Lot 7; and the easterly 25 feet of Lot 1.