

**City Council Agenda Item #12A
Meeting of August 6, 2007**

Brief Description: Ordinance increasing the electric franchise fees.

Recommended Action: Introduce the ordinance.

Background

At the April 16, 2007 study session, the council discussed several items related to the city's franchise agreement with Xcel Energy. The primary issue was that the costs for overhead utility burial projects have been rapidly escalating in recent years as a result of growing material costs and equipment shortages due to Hurricane Katrina. Xcel has indicated that these cost pressures are likely to continue and has suggested that the city adjust estimated future budget costs.

At the session, council indicated that they agreed with the staff recommendation to increase the franchise fees to a responsible level, but requested that the fees only be increased to raise enough revenue to cover the costs of the high priority projects. As a result, staff modified its original fee proposal to reflect council's position, and the 2008-12 Capital Improvement Program that was approved by council on May 7, 2007, incorporated the revised increases.

The current franchise fee is \$2.00 per month for all customers, regardless of use. To meet the costs of high priority projects, the proposed amendments to the ordinance would increase the residential rate to \$2.50 per month, and the commercial rate for all businesses to \$4.50 per month. A higher rate for commercial customers is justified by the higher costs of burying overhead lines in and around commercial areas. The new rates remain well below the statutory maximum.

Xcel Energy has been given 60 days notice of the proposed changes as required under the franchise agreement. Council must now modify the city's ordinance. The revised ordinance would become effective 30 days after publication or 60 days after written notice to the company of the ordinance adoption.

Recommendation

Introduce the attached ordinance to increase the electric franchise fee.

Submitted through:
John Gunyou, City Manager

Originated by:
Merrill King, Finance Director
Lee Gustafson, City Engineer

ORDINANCE NO. 2007-

**AN ORDINANCE INCREASING THE
ELECTRIC FRANCHISE FEE**

The City of Minnetonka Ordains:

Section 1. On August 10, 1998, the Minnetonka City Council adopted Ordinance No. 1998-15 ("Franchise Ordinance"), granting an electric franchise to Northern States Power Company ("Company"). Subsequently, the Company changed its name to Xcel Energy.

Section 2. The Franchise Ordinance allows the City of Minnetonka to impose a franchise fee in the form of a fee per metered service.

Section 3. The City of Minnetonka established a franchise fee for the electric franchise granted to the Company on February 14, 2005. The city council now wishes to increase the amount of that fee. The amount of the fee will be the following monthly charge per meter at each and every customer location:

<u>Customer Classification</u>	<u>Amount per Month</u>
Residential	\$2.50
Small C&I and Municipal With No Demand Charge	\$4.50
Small C&I and Municipal With Demand Charge	\$4.50
Large C&I	\$4.50

Section 4. This franchise fee will be used for no purpose other than betterment of the electric facilities owned by the Company, including such things as placing the electric facilities underground or installing decorative lighting above ground, and is subject to the provisions of Section 9.6 of the Franchise Ordinance.

Section 5. This ordinance is effective 30 days after publication or 60 days after written notice to the Company of the ordinance adoption, whichever is later.

Adopted by the city council of the City of Minnetonka, Minnesota, on.

Janis A. Callison, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction:

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on.

David E. Maeda, City Clerk

Date: _____

City Council Agenda Item #12B
Meeting of August 6, 2007

Brief Description: Ordinances correcting the non-conforming use ordinance and the sign ordinance.

Recommended Action: Introduce the ordinances and refer to the planning commission.

Background

On May 7, 2007, the city council adopted an ordinance containing some fine-tuning of the city code sections regulating non-conforming uses. On June 25, 2007, the city council adopted an ordinance regulating dynamic signs. Staff has subsequently discovered some small unintended consequences from those ordinances that should be corrected.

Non-conforming use ordinance

Section 300.29, Subd. 3(a) prohibits the expansion of non-conforming uses but allows the expansion of conforming elements of a non-conforming use, such as an expansion of a building on the sides that meet setback requirements, even though one side does not. This provision existed before the amendments adopted in May. Those amendments divided non-conforming uses into two categories: non-conforming land uses, which are uses not allowed in a district, and non-conforming developments, which are uses that don't meet a certain district standard such as setbacks. The amendments should have given the right to expand under Subd. 3(a) only to non-conforming developments, not to all non-conforming uses. Attached is a proposed ordinance making that correction, as noted below:

- a) There may be no expansion, enlargement, or intensification of any use or any site element of any non-conforming use except to make it a permitted use. Normal building maintenance and repair are allowed. Expansion, enlargement or intensification of conforming aspects of a non-conforming use/development are excepted from this requirement. For example, if a structure has a non-conforming front setback, it may be expanded on the sides that do meet setback requirements as long as the expansion itself meets ordinance requirements.

Without this correction, any non-conforming land use that meets all setbacks would be allowed to expand, which was not the intention of the ordinance amendments.

Sign ordinance

The dynamic sign ordinance deleted an ordinance provision that regulated the percentage of a sign that could have changing messages. A new ordinance provision was adopted limiting changing messages to 35% of the sign face. This provision applies only to dynamic signs, which have changing messages by any non-manual means. That

means that there is no longer any limit on the size of messages changed by manual means. This gap should be corrected and should be made consistent with the dynamic sign section.

Additionally, the dynamic sign ordinance adopted minimum font size requirements. Again, these do not apply to other types of signs. It appears appropriate to apply those same requirements to all signs, since these are recommended by the sign industry itself for readability (see Issue 51 (2007) of *Signline*, a publication of the International Sign Association).

Attached is a proposed ordinance that incorporates both changes.

Recommendation

Staff recommends that the council introduce the ordinances and refer them to the planning commission.

Submitted through:
John Gunyou, City Manager

Originated by:
Desyl Peterson, City Attorney

ORDINANCE NO. 2007-

**AN ORDINANCE AMENDING CITY CODE §300.29, SUBD. 3
REGARDING NON-CONFORMING USES**

The City of Minnetonka Ordains:

Section 1. City code §300.29, Subd. 3(a) is amended as follows:

- a) There may be no expansion, enlargement, or intensification of any use or any site element of any non-conforming use except to make it a permitted use. Normal building maintenance and repair are allowed. Expansion, enlargement or intensification of conforming aspects of a non-conforming use-development are excepted from this requirement. For example, if a structure has a non-conforming front setback, it may be expanded on the sides that do meet setback requirements as long as the expansion itself meets ordinance requirements.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 3. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on

Janis A. Callison, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction:

Date of adoption:

The ~~stricken~~ language is deleted; the underlined language is inserted.

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

David E. Maeda, City Clerk

ORDINANCE NO. 2007-

AN ORDINANCE AMENDING CITY CODE §300.30, SUBD. 9
REGARDING SIGN REGULATIONS

The City of Minnetonka Ordains:

Section 1. City code §300.30, Subd. 9 is amended by the addition of new clauses (m) and (n) to read as follows:

m) Changeable messages: a message that is not permanently attached to the sign face but that is not a dynamic display may occupy no more than 35 percent of the actual copy and graphic area. The remainder of the sign must not have the capability to change messages even if not used.

n) Font size: every line of copy and graphics in a sign must be at least seven inches in height on a road with a speed limit of 25 to 34 miles per hour, nine inches on a road with a speed limit of 35 to 44 miles per hour, 12 inches on a road with a speed limit of 45 to 54 miles per hour, and 15 inches on a road with a speed limit of 55 miles per hour or more.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 3. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on

Janis A. Callison, Mayor

ATTEST:

David E. Maeda, City Clerk

The ~~stricken~~ language is deleted; the underlined language is inserted.

ACTION ON THIS ORDINANCE:

Date of introduction:

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

David E. Maeda, City Clerk

City Council Agenda Item #13A
Meeting of August 6, 2007

Brief Description: Public hearing to consider a resolution vacating a public drainage and utility easement at 1904 and 1910 Linner Road for David Gartzke.

Recommended Action: Hold the public hearing and adopt the resolution.

Introduction

Applicant: David Gartzke

Location: 1904 and 1910 Linner Road (See the map on page A1.)

Proposal: The applicant is requesting that the city vacate a public drainage and utility easement along the common lot line between the properties at 1904 and 1910 Linner Road. (See pages A2–A4.)

Comments

The properties at 1904 and 1910 Linner Road are located in the Linner Woods subdivision, which was approved by the city council in 2005. Since approval, a house has been constructed on the northerly of the two lots; the southerly lot remains vacant. (See pages A2–A3.) The applicant has purchased both properties with the intent of combining the lots and constructing a pool south of the existing home. The proposal requires vacation of the standard drainage and utility easement that was platted along the common property line. (See page A4.)

There are no public or private utilities currently located in the easement.

Staff Recommendation

Hold the public hearing and adopt the resolution on pages A5–A7. This resolution vacates the drainage and utility easement. Approval is subject to the following conditions:

- 1) Prior to release of this vacation resolution submit proof that appropriate documents have been filed with Hennepin County for combination of the properties at 1904 and 1910 Linner Road.
- 2) This resolution does not approve location of pool any where on the subject property. Appropriate building permit applications must be submitted for staff review and approval.

Submitted through:

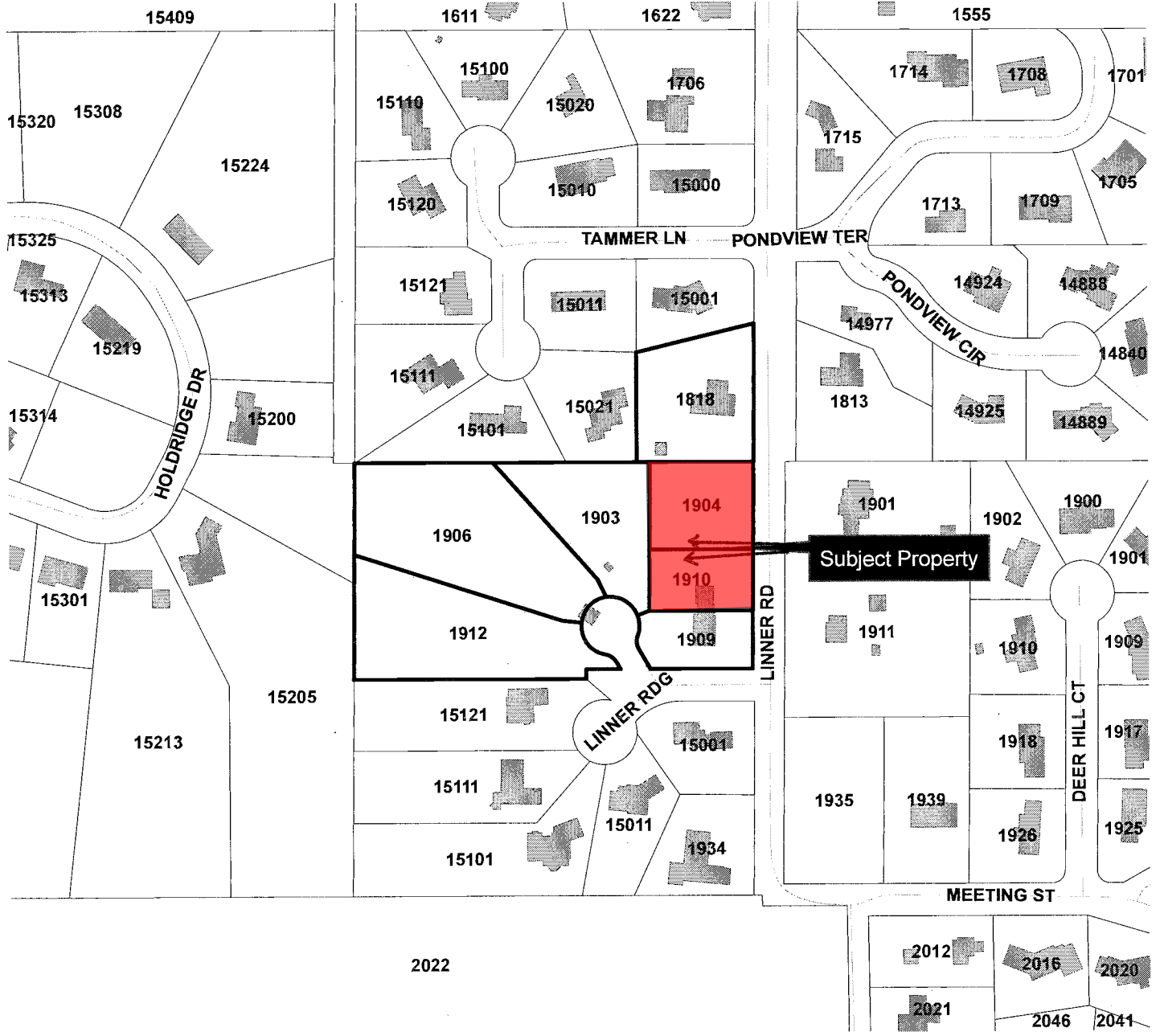
John Gunyou, City Manager

Ron Rankin, Community Development Director

Julie Wischnak – AICP, City Planner

Originated by:

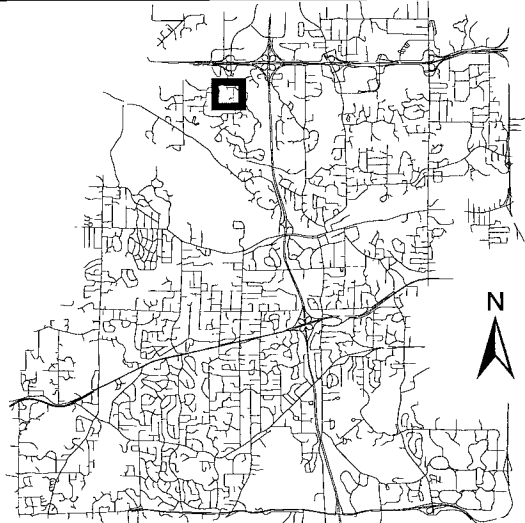
Susan Thomas, Principal Planner



LOCATION MAP

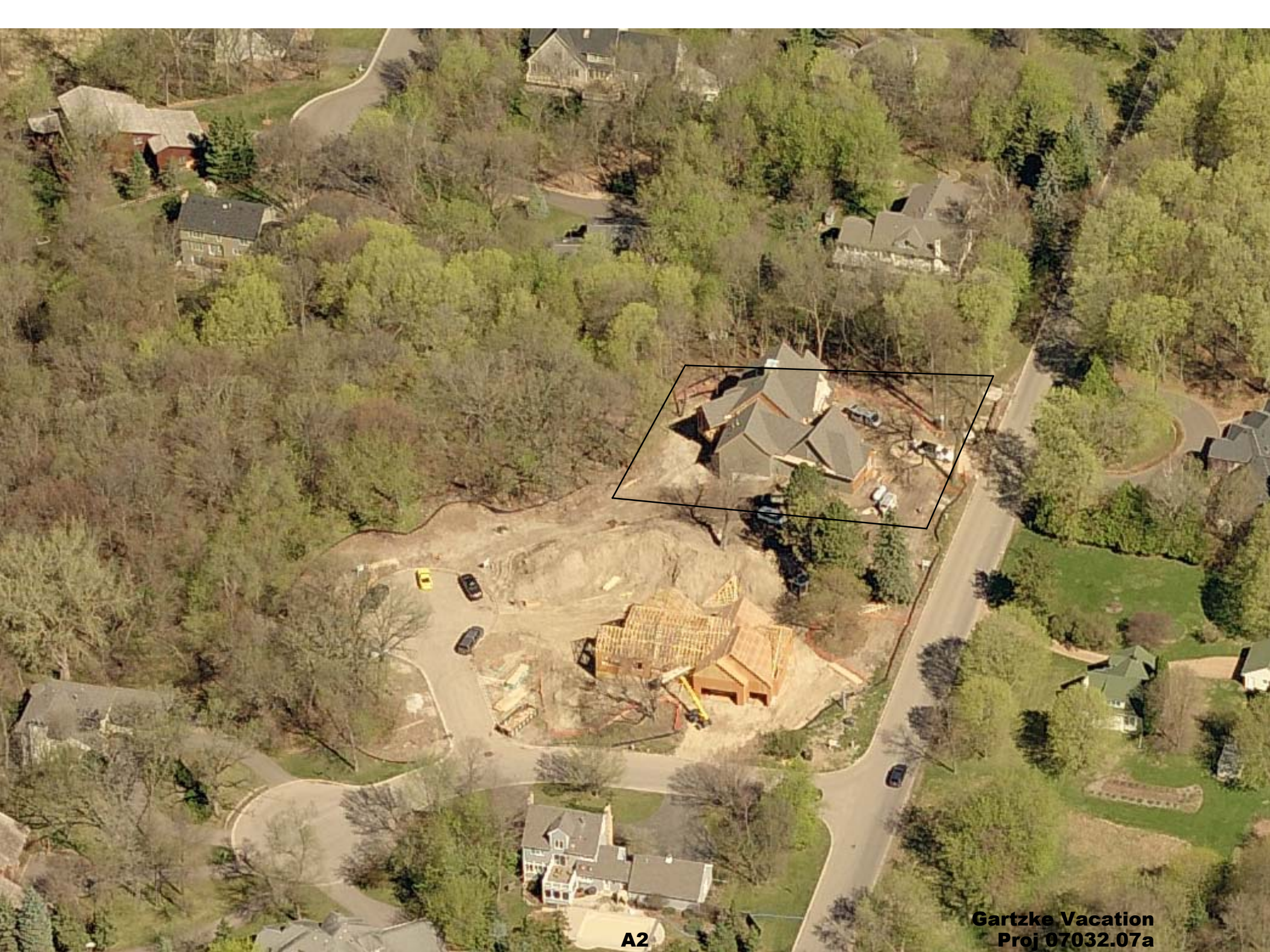
Project and Applicant: David Gartzke

Address: 1904 and 1910 Linner Road
(07037.07a)



This map is for illustrative purposes only.

**Gartzke Vacation
Proj 07032.07a**



A2

**Gartzke Vacation
Proj 07032.07a**

described property situated in the County of Hennepin, State of Minnesota to wit:

North Half of Southwest Quarter of the Southwest Quarter of the Southeast Quarter of Section 4, Township 117, Range 22.

Have caused the same to be surveyed and platted as LINNER WOODS 2ND ADDITION and do hereby donate and dedicate to the public for public use forever the Road, Ridge and Court and the easements for drainage and utility purposes only as shown on this plat.

In witness whereof said Copar Development, LLC, has caused these presents to be signed by its proper officer this 16th day of June, 2005.

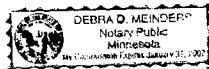
SIGNED: Copar Development, LLC

By: *[Signature]*

STATE OF MINNESOTA
COUNTY OF DAKOTA

The foregoing instrument was acknowledged before me this 16th day of June, 2005, by J.D. Hansen, as President of Copar Development, LLC, a Minnesota limited liability company, on behalf of the company.

Debra D. Meinders
Notary Public, Dakota County, Minnesota
My Commission Expires January 31, 2007



In witness whereof said Lakeland Construction Finance, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this 16th day of June, 2005.

SIGNED: Lakeland Construction Finance, LLC

By: *[Signature]*, as Chief Operating Officer

STATE OF MINNESOTA
COUNTY OF DAKOTA

This instrument was acknowledged before me this 16th day of June, 2005, by Robert J. Machacek, as C.O.O. of Lakeland Construction Finance, LLC, a Minnesota limited liability company, on behalf of the company.

Debra D. Meinders
Notary Public, Dakota County, Minnesota
My Commission Expires Jan. 31, 2007



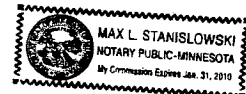
I hereby certify that I have surveyed and platted the property described on this plat as LINNER WOODS 2ND ADDITION; that this plat is a correct representation of said survey; that all distances are correctly shown in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown; that the outside boundary lines are correctly designated on said plat; and there are no wetlands as defined in MS 505.02, Subd. 1 to be designated on the plat.

Henry D. Nelson
Henry D. Nelson, Land Surveyor, Minn. Lic. No. 17255

STATE OF MINNESOTA
COUNTY OF ANOKA

The foregoing Surveyor's Certificate was acknowledged before me this 15th day of June, 2005, by Henry D. Nelson, Land Surveyor.

Max L. Stanislawski
Notary Public, Anoka County, Minnesota
My Commission Expires January 31, 2010



MINNETONKA, MINNESOTA

This plat of LINNER WOODS 2ND ADDITION was approved and accepted by the City Council of Minnetonka, Minnesota, at a regular meeting thereof held this day of June, 2005. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30-day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 505.03, Subd. 2.

CITY COUNCIL OF MINNETONKA, MINNESOTA

Karen J. Anderson
Mayor

Kathleen A. Magraw
Clerk

TAXPAYER SERVICES DEPARTMENT, HENNEPIN COUNTY, MINNESOTA

I hereby certify that taxes payable in _____ and prior years have been paid for land described on this plat. Dated this _____ day of _____, 2005.

PATRICK H. O'CONNOR, HENNEPIN COUNTY AUDITOR

By: _____ Deputy

SURVEY DIVISION, HENNEPIN COUNTY, MINNESOTA

Pursuant to MINN. STAT. SEC. 383B.565 (1969), this plat has been approved this _____ day of _____, 2005.

WILLIAM P. BROWN, HENNEPIN COUNTY SURVEYOR

By: _____

REGISTRAR OF TITLES, HENNEPIN COUNTY, MINNESOTA

I hereby certify that the within plat of LINNER WOODS 2ND ADDITION was filed in this office this _____ day of _____, 2005 at _____ o'clock _____ M.

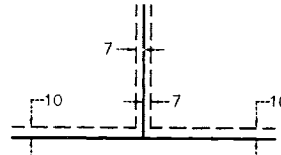
MICHAEL H. CUNIFF, HENNEPIN COUNTY REGISTRAR OF TITLES

By: _____ Deputy

LINNER WOODS 2ND ADDITION

R.T. DOC. NO.

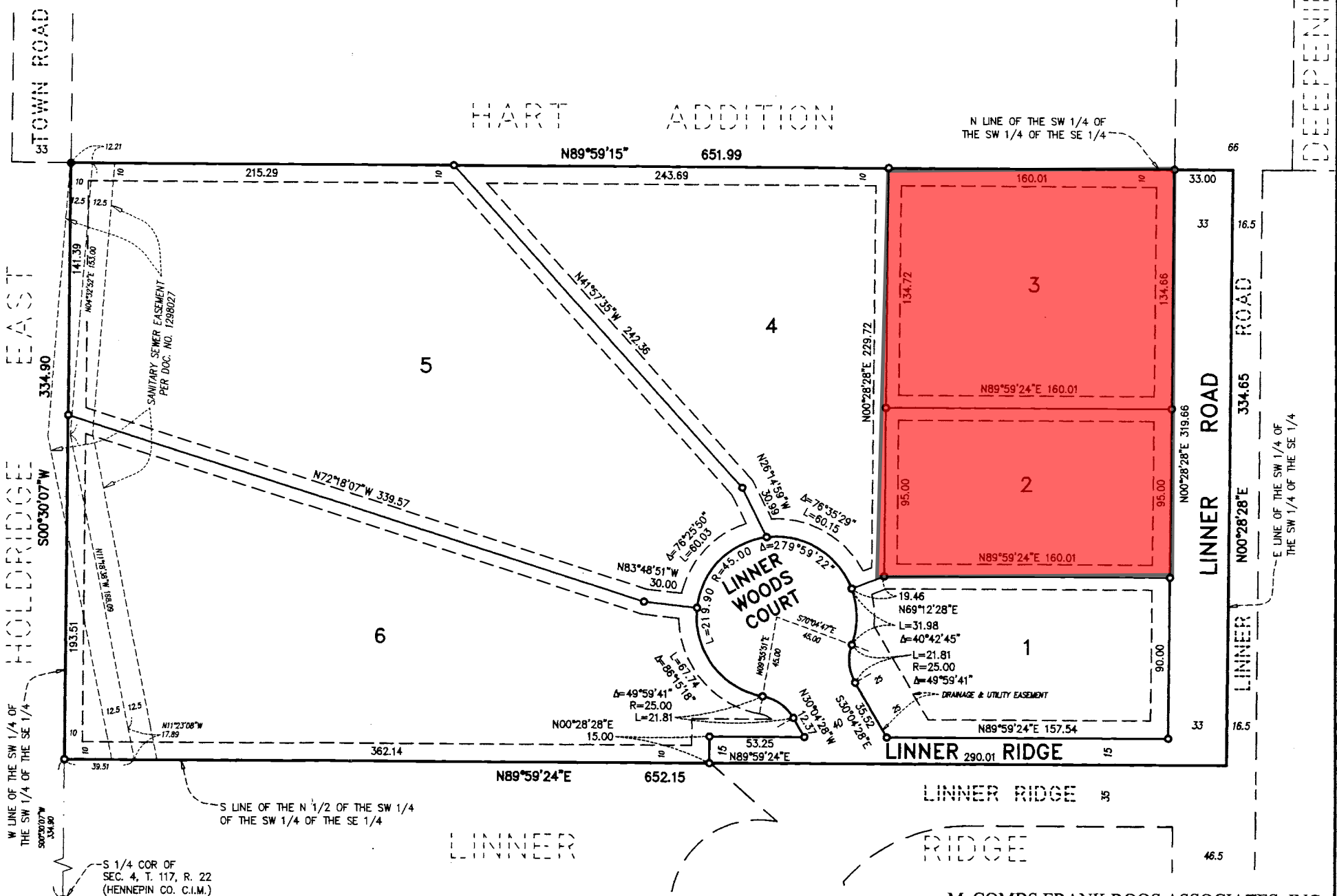
DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:
(NOT TO SCALE)



- DENOTES 1/2 INCH BY 14 INCH IRON MONUMENT SET AND MARKED BY LICENSE NO. 17255.
- DENOTES 1/2 INCH IRON MONUMENT FOUND.

BEARINGS SYSTEM SHOWN IS ASSUMED

BEING 7 FEET IN WIDTH, UNLESS OTHERWISE INDICATED, AND ADJOINING LOT LINES, AND 10 FEET IN WIDTH, UNLESS OTHERWISE INDICATED, AND ADJOINING RIGHT-OF-WAY LINES, AS SHOWN ON THE PLAT.



McCOMBS FRANK ROOS ASSOCIATES, INC.
ENGINEERS AND SURVEYORS

Garzke Vacation
Proj 07032.07a

N 89°59' 19" W 160.01

RECEIVED
JUN 22 2007
OFFICE OF SURVEYOR

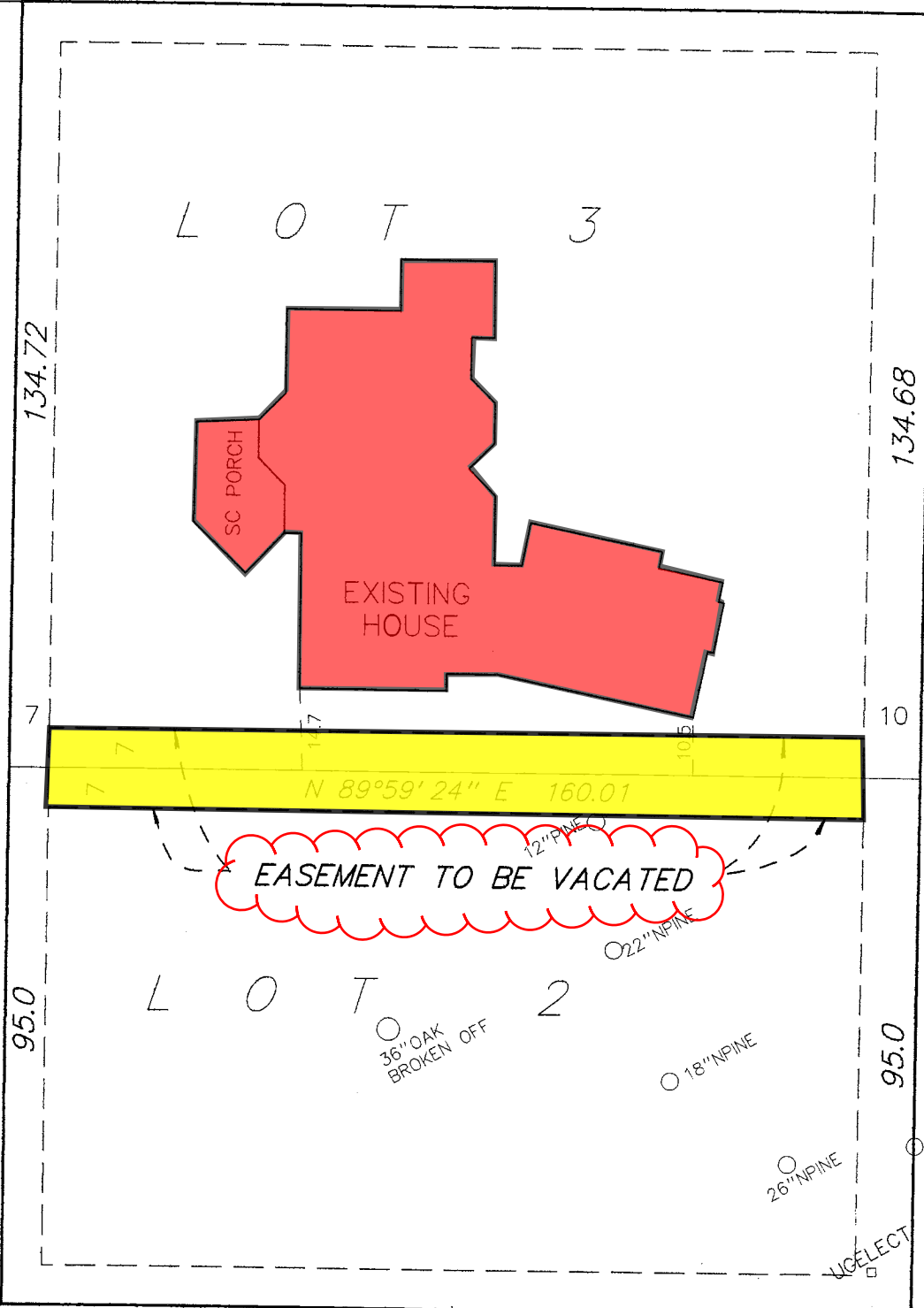
LEGAL DESCRIPTION:
LOT 3, BLOCK 1, LINNER WOODS
2ND ADDITION, HENNEPIN COUNTY, MN.

ADDRESS 1904 LINNER ROAD
PID# 04-117-22-43-0056

EASEMENT TO BE VACATED
THAT PART OF THE DRAINAGE AND UTILITY
EASEMENT OVER THE SOUTH 7 FEET OF
LOT 3 LYING EAST OF THE WEST 7 FEET
AND WEST OF THE EAST 10 FEET

Land
Surveyor
Frank R. Cardarelli
6440 FLYING CLOUD DRIVE
EDEN PRAIRIE, MN 55344
952-941-3031

N 00°28' 28" E 229.72



N 00°28' 28" E 229.68

LINNER ROAD

BENCHMARK TNH
ELEV = 969.4

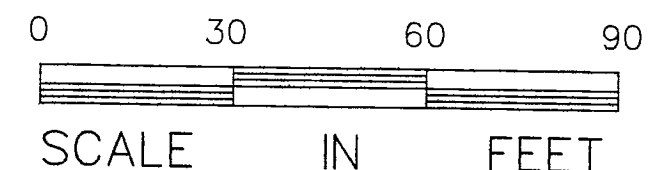
LEGAL DESCRIPTION:
LOT 2, BLOCK 1, LINNER WOODS
2ND ADDITION, HENNEPIN COUNTY, MN.

ADDRESS 1910 LINNER ROAD
PID# 04-117-22-43-0055

EASEMENT TO BE VACATED
THAT PART OF THE DRAINAGE AND UTILITY
EASEMENT OVER THE NORTH 7 FEET OF
LOT 2 LYING EAST OF THE WEST 7 FEET
AND WEST OF THE EAST 10 FEET

LINNER
WOODS
COURT

N 89°59' 24" E 160.01



PROPOSED EASEMENT
VACATION SKETCH

for
GARTZKE RESIDENCE

PROJECT NO.
DATE
JUNE 20, 2007

BOOK
PAGE
REVISIONS
I HEREBY CERTIFY THAT THIS SURVEY 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.
FRANK R. CARDARELLI REG. NO. 6508

Gartzke Vacation
Proj 07032-07a

RESOLUTION NO. 2007-

**RESOLUTION VACATING DRAINAGE AND UTILITY EASEMENTS
BETWEEN THE PROPERTIES AT 1904 AND 1910 LINNER ROAD**

BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. BACKGROUND.

- 1.01 David Gartzke has petitioned the Minnetonka City Council to vacate the following portions of a public drainage and utility easement legally described as follows, to-wit:

That part of the drainage and utility easement originally shown on and dedicated in the plan known as LINNER WOODS 2ND ADDITION, over the North 7 feet and Lot 2 and over the South 7 feet of Lot 3, Block 1, LINNER WOODS 2ND ADDITION, lying east of the West 7 feet and lying west of the East 10 feet of said Lots 2 and 3.

- 1.02 As required by law, a hearing notice on said petition was published in the City of Minnetonka's official newspaper.
- 1.03 On August 6, 2007, the City Council held a hearing on such petition, at which time all persons for and against the granting of said petition were heard.

Section 2. STANDARDS

- 2.01 Section 12.06 of the City Charter states that "No vacation shall be made unless it appears in the interest of the public to do so..."

Section 3. FINDINGS.

- 3.01 The Minnetonka City Council makes the following findings:

- a. The petitioner is owner of the land abutting said easement, and therefore is a proper petitioner.
- b. The City no longer needs said easement.
- c. Vacating said easement is in the public interest.

Section 4. CITY COUNCIL ACTION.

4.01 The City Council vacates the above-described public drainage and utility easement.

Adopted by the Minnetonka City Council on August 6, 2007.

Janis A. Callison, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 6, 2007.

David E. Maeda, City Clerk

G:\WORD\Ordinances and Resolutions 2007\Resolutions\07037vac.04a.doc