CITY OF DULUTH
Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197
Phone: 218/730.5580 Fax: 218/723-3559

STAFF REPORT

File Number	PL 14-007		**Contact**	Steven Robertson, (218) 730-5295	
Application Type	Shoreland Variance		**Planning Commission Date**	February 11, 2014	
Deadline for Action	**Application Date**	February 4, 2014	**60 Days**	April 5, 2014	
	Date Extension Letter Mailed	February 18, 2014	**120 Days**	June 4, 2014	
Location of Subject	418 Lakeview Ave				
Applicant	Greg Yetter		**Contact**	gyetter@jrjensen.com	
Agent			**Contact**		
Legal Description	010-0090-00130, Lot 13 Auditors Plat Lester Park Garden Tracts Duluth				
Site Visit Date	March 3, 2014		**Sign Notice Date**	February 24, 2014	
Neighbor Letter Date	February 18, 2014		**Number of Letters Sent**	28	

Proposal

Applicant is seeking a variance from the Coldwater River shoreland structure setback. The applicant wishes to construct a new single family home and attached garage 110 feet from the ordinary high watermark, instead of the 150 feet as required.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Residential	Traditional Neighborhood
North	R-1	Undeveloped	Traditional Neighborhood
South	R-1	Residential	Traditional Neighborhood
East	R-1	Residential	Traditional Neighborhood/Preservation
West	R-1	Residential	Traditional Neighborhood

Summary of Code Requirements (reference section with a brief description):

50-18.1 Natural Resources Overlay: maintain 150 ft. setback for structures.

Sec. 50-37.9. B - Variances. Procedures. "The Planning Commission shall . . . make a decision on the application based on the criteria in subsections 50-37.9.C through M . . . .

Sec. 50-37.9.C. - General Variance Criteria (paraphrased here): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant's property, enforcement of the ordinance would cause the landowner practical difficulties or undue hardship. The Planning Commission must find the following for a variance to be granted: a) That they are proposing to use the property in a reasonable manner, b) that the need for relief from the normal regulations is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and the Comprehensive Plan.

Sec. 50-37.9.L Standards for Variances in Shorelands. No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas.

F-1

Comprehensive Plan Findings (Governing Principle and/or Policies) and Current History (if applicable):

Traditional Neighborhood Future Land Use. Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

MN Statute 6264.0050 lists Amity Creek as a trout stream. The shoreland setbacks of Amity Creek also apply to its tributaries.

Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):

Staff finds that:
1) Applicant is seeking a variance from the Coldwater River shoreland structure setback. The applicant wishes to construct a new single family home and attached garage 110 feet from the ordinary high watermark, instead of the 150 feet as required.
2) The applicant has a long term plan of subdividing the property into two separate lots, and building a second single family home. At this time, the applicant is seeking one variance to construct one single family home on the lot as it exists today.
3) The lot is approximately 130 by 350. It is not developed. It is zoned R-1 which requires (for single family homes) a minimum lot size of 4,000 square feet and 40 feet of lot frontage.
4) The proposal, if granted, will not alter the essential character of the surrounding area. The proposed single family home allows the property to be used in a reasonable manner, and continued use of this property as a single-family home is consistent with the Comprehensive Land Use Plan. In addition, if the variance was granted, would not likely compromise the general purposes or intent of Section 50-18.1.D or result in adverse consequences to the environment.
6) The applicant has expressed wishes to build on the SE corner of the lot (which would require a shoreland variance), but can make reasonable use of the property without the need of a variance (either by building in the NE corner of the lot, or by building in the SE site but choosing to build further back from the front lot line).
7)The city is obligated to treat this tributary to Amity Creek the same as Amity Creek itself. In the event that this tributary is no longer active/functional due to construction on North 52nd Avenue (and subsequent rerouting of stormwater treatment), the City could innate a rezoning action to remove a portion of the Amity Creek tributary from the stormwater map. But engineering staff would not be able to verify this until later this spring/summer, and until/unless that happens, the shoreland regulations are active and enforceable.
8) The applicant has submitted a comprehensive and thorough application, but staff believe that there is a reasonable use of this property available to the property owner without the need of a shoreland variance.
9) As referenced in the letter from Michael Sondag in exhibit H (the engineer on the housing project), the applicant paid for two separate utility connections at the time the development was constructed. The applicant can still make use of both connections, but it would require a longer driveway in order to be outside the structure setback.
10) No comments were received concerning this proposed variance.
11) Per UDC Sec. 50-37.1.N, approved variances lapse if the project or activity authorized by the permit or variance is not begun within 1 year of the permit date.

Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

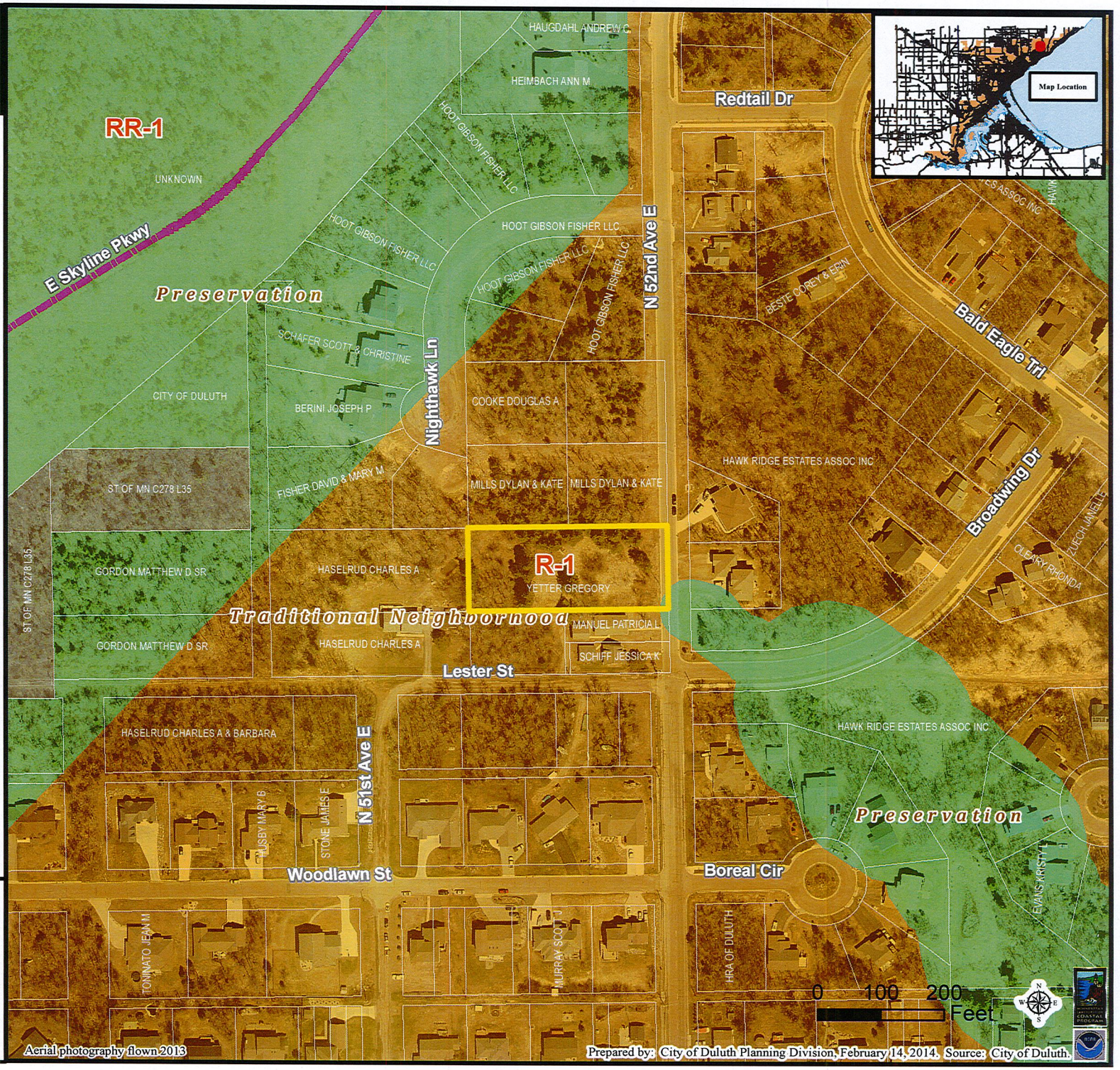
Based on the above findings, Staff finds that the requested variance does not meet the criteria established in 50-37.9 and that the applicant can make a reasonable use of the property without the need of a shoreland variance. The application does not meet the standards for a variance and therefore staff recommends denial.

F-2

Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)

City Planning

PL 14-007
Shoreland Variance
52nd Avenue E



Legend

Zoning Boundaries

Future Land Use

- Preservation
- Recreation
- Rural Residential
- Low-density Neighborhood
- Traditional Neighborhood
- Urban Residential
- Neighborhood Commercial
- Neighborhood Mixed Use
- General Mixed Use
- Central Business Secondary
- Central Business Primary
- Auto Oriented Commercial
- Large-scale Commercial
- Business Park
- Tourism/Entertainment District
- Medical District
- Institutional
- Commercial Waterfront
- Industrial Waterfront
- Light Industrial
- General Industrial
- Transportation and Utilities

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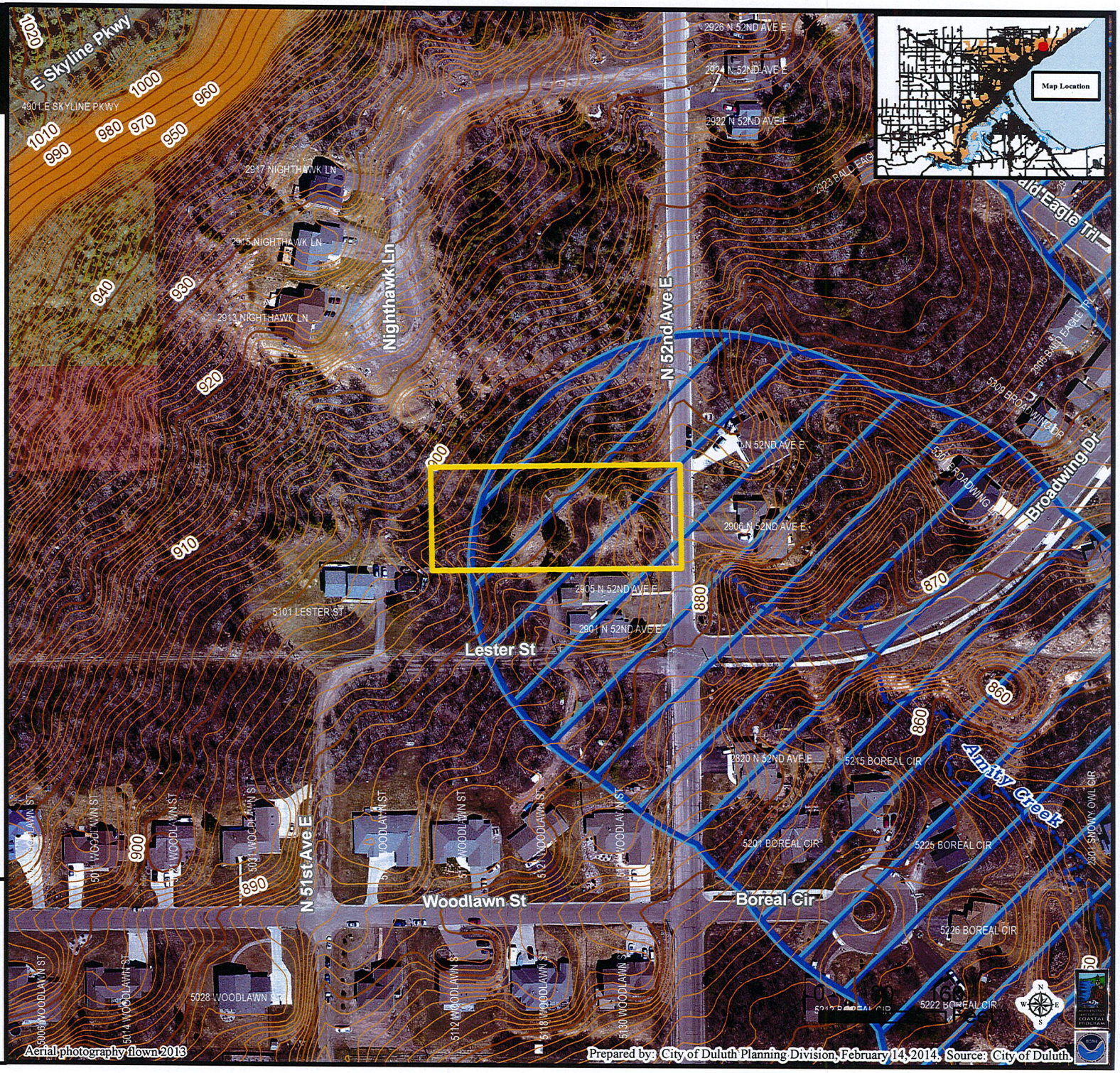
City Planning

PL 14-007
Shoreland Variance
52nd Avenue E



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Contours 1 Ft

Index_

- Intermediate
- Index

Stream Type

- Trout Stream (GPS)
- Other Stream (GPS)

Shoreland Overlay Zone

- Cold Water
- Natural Environment
- General Development

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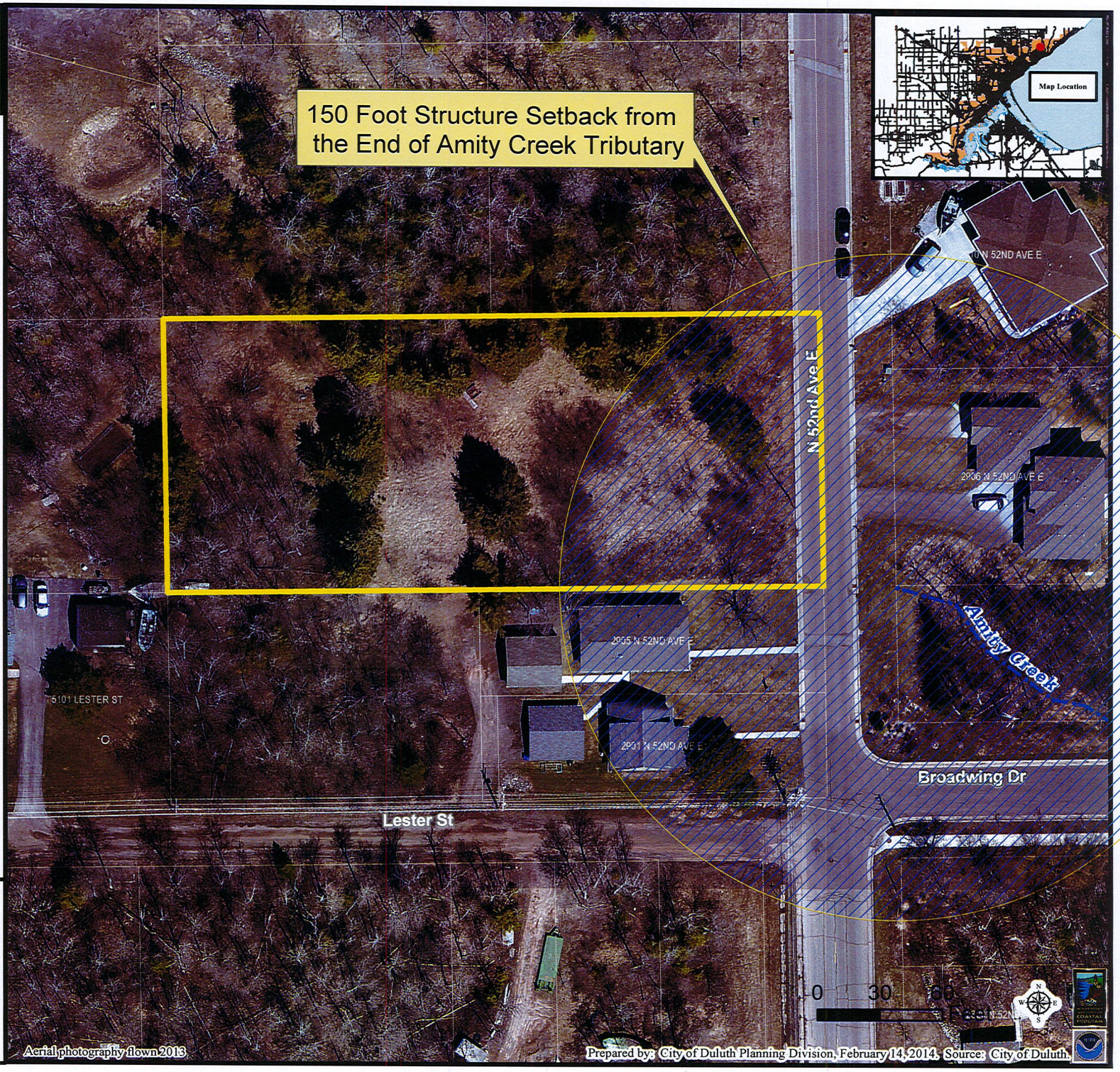
City Planning
PL 14-007
Shoreland Variance
52nd Avenue E



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Stream Type

- Trout Stream (GPS)
- Other Stream (GPS)

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F-5

Greg and Kelly Yetter
418 Lakeview Ave.
Duluth, MN 55812
218-481-

Feb. 3, 2014

City of Duluth
Planning and Construction Services
411 West 1st St., Room 21
Duluth, MN 55802-1194

Legal Description: Lester Park Garden Tract, Lot 13.
Property I.D.: 010-0090-00130

Dear Planning and Construction Services Department,

We are submitting a request for variance to the shore land setback requirements for our new home project at the property listed above. The variance would allow us to develop the property responsibly with respect to the surrounding neighbors, the existing trees, the existing topography, energy efficiency, and the intent of the existing shore land regulations.

Our long term project is planned to be completed in two phases. Phase 1 consists of constructing a single family home on the south side of lot 13 starting in May of this year. Phase 2 consists of dividing the parcel into two building sites and constructing a 2nd home in a couple of years on the north side of the property. The property is zoned R-1 and meets all of city zoning requirements to construct two homes. The property is rectangular in shape, 132 feet of frontage on 52nd Ave. E, and 282 feet deep starting from 66 foot right of way for 52nd E. (see exhibit A).The phase 1 home will be a single level structure approximately 2400sf including the double attached garage. The home is being designed to be very energy efficient (spray foam insulation in all external walls and some roofs), passive solar with the main living spaces located on the south side, large energy efficient windows and 3 foot overhangs to prevent overheating in summer. I am working with well known and respected architect Bill Moser to develop the property responsibly with the following goals:

- Respect the surrounding properties through proper structure placement, sightlines, window sizing and placement, and garage door placement.
- Minimize ground disturbance by constructing slab on grade, by running utilities in the same area as the new driveway, and by setting the floor elevations to work with the existing grades.
- Minimize impact on natural site drainage by properly locating new driveway, by setting floor elevations to work with the existing

topography, and by pushing the house back as far as possible without removing the beautiful old growth evergreen trees located about 130 feet back on the property.

- Maximize southern exposure for both Phase 1 and 2, lay out windows and overhangs to take advantage of the available passive solar energy to minimize fossil fuel consumption for both heating and cooling.

Since the property is long and narrow, it is critical to locate the phase 1 and 2 structures properly to meet all of the goals listed above. To accomplish these goals I am requesting a variance from the 150 feet shore land setback requirement currently in place for the Amity Creek tributary for the phase 1 structure and driveway (see exhibit B site plan). Exhibit A plan locates the front southwest corner of the garage approximately 110 feet from the end of the tributary as indicated on the NR overlay map (exhibit C). The actual end of the tributary is not defined so this measurement is being taken from the east side of the 66 foot right of way in line with my south property line. This location allows us to push the structure back as far as possible without having to remove two very large evergreen trees in the back yard which is one of our goals and one of the goals of the shore land regulations (see exhibit D). This location also allows us to put in a shorter driveway which minimizes the impervious services within the shore land zone which is a goal of the regulations. By curving the driveway, following the existing topography, and adding some stone rip rap we are able to protect the natural lowland vegetation, grasses, and trees on the east side of the property. Using the principals of form based architecture, Mr. Moser has placed the structures and laid out windows, living spaces, garage door locations, and privacy screens to be respectful of the neighboring properties. It is critical that the designs in phase 1 work with the phase 2 design to meet the goals listed previously. Therefore, I have included a draft copy of our phase 2 site plan to show how both phases work together. See phase 2 site plan and sketches (exhibit E, E1, E2). The phase 2 structure will be staggered back slightly from phase 1 to maximize natural day lighting and solar gain, but will stop short of the existing large evergreen tree line shown on the site plan to minimize tree removal. The driveway and utilities are proposed to be installed with minimal tree removal by taking advantage of a natural break in the trees at the north east corner of the property.

According to the current NR overlay about 80% of my property is located within the 300 foot shore land zone. This zone is measured from a point on the east side of the 52nd Ave E. right of way. Prior to the development of the Hawk Ridge Estates, 52nd Ave E. was a narrow gravel road with ditches along both sides and culverts running under the road that allowed water to flow from the west side of 52nd to the east side and into the various tributaries that eventually fed into Amity Creek. This drainage pattern was modified when 52nd Ave E. was rebuilt for the new development. 52nd Ave. E is now a paved street with curb and gutter, catch basins, and storm drains that capture 100 % of the run off from the west side of 52nd above Lester Street. All of the utilities were designed for 100 % development of the available building sites in the area. I have attached an updated drawing from the city of Duluth Engineering Dept. that supports these claims (see exhibit F). I have also discussed this issue with Mike Sondag, the engineer of record for SEH

Engineering that designed the site plan/storm water plan for the Hawks Ridge Estates and the 52nd Ave. E upgrade project (see exhibit G). The current storm water system insures that run off from our property will have no detrimental effect on the quality or temperature of the water in the Amity Tributary. See supporting letter from Mr. Sondag (exhibit H). The storm water that previously flowed through a culvert under the old gravel road and into the start of the Amity tributary indicated on the east side of 52nd Ave E no longer exists. 100% of this storm water has been diverted into a storm drain that bypasses the tributary from the east side of 52nd all the way to the south side of Broadwing where it empties into the surge/settling ponds that are designed to protect the water quality in the tributary. Since all of the water that previously fed the upper end of the tributary has been diverted, the actual start of the tributary is south of Broadwing where it exits the culvert which is more than 300ft from our property.

We purchased this property twenty five years ago with the intent to someday develop it. We have paid the taxes on this property, worked cooperatively with city planners to support the surrounding development and paid to have two sets of utilities installed prior to the addition of the current N R shore land overlay. The new shore land restrictions were not in place when I started the process of developing this property. This property is also somewhat unique in that it is the only undeveloped lot within the 150 foot setback from the plotted end of the tributary. All of the other buildable properties are developed and all of them have structures within the 150 foot zone (see exhibit I).

As a project manager for a well respected local general contractor, I have been exposed to many examples of good and bad property development. I also worked as a hydrologist for the DNR Shore Land Division in St. Paul. This work experience combined with my educational background (BS Degree in Biology from UMD and BS Degree in Civil Engineering with environmental emphasis from U of M) provide me with a good background to make environmentally sound decisions when it comes to projects that I am involved in. I care about the environment that I am passing on to my kids. I have constructed numerous quality custom homes for clients in this area, Colorado, and Florida and am now taking the opportunity to build a quality home for my family. Both phases of this project have been well planned out by professional consultants and myself and are consistent with the comprehensive land use plans for the city of Duluth. A variance will allow me to develop the property in such a way that it enhances the neighborhood and in no way causes harm to the Amity Tributary, the natural environment, or the neighboring properties. Both phases are going to be well built high quality homes using high quality materials inside and out. I am confident we will have a positive impact on the surrounding properties.

For all of the reasons listed above, I would ask that you grant us the requested variance.

Thank you for your time and feel free to contact me if you have any questions.

Sincerely,

Greg Yetter

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MINNESOTA'S LAKE SUPERIOR COASTAL PROGRAM

SAINT LOUIS

SITE MAP
Building Safety

N

0 10 20 40 Feet

1 inch = 20 feet

EXHIBIT "A"

Printed: 10/30/2013

Map Creat
9-28-201

F-9

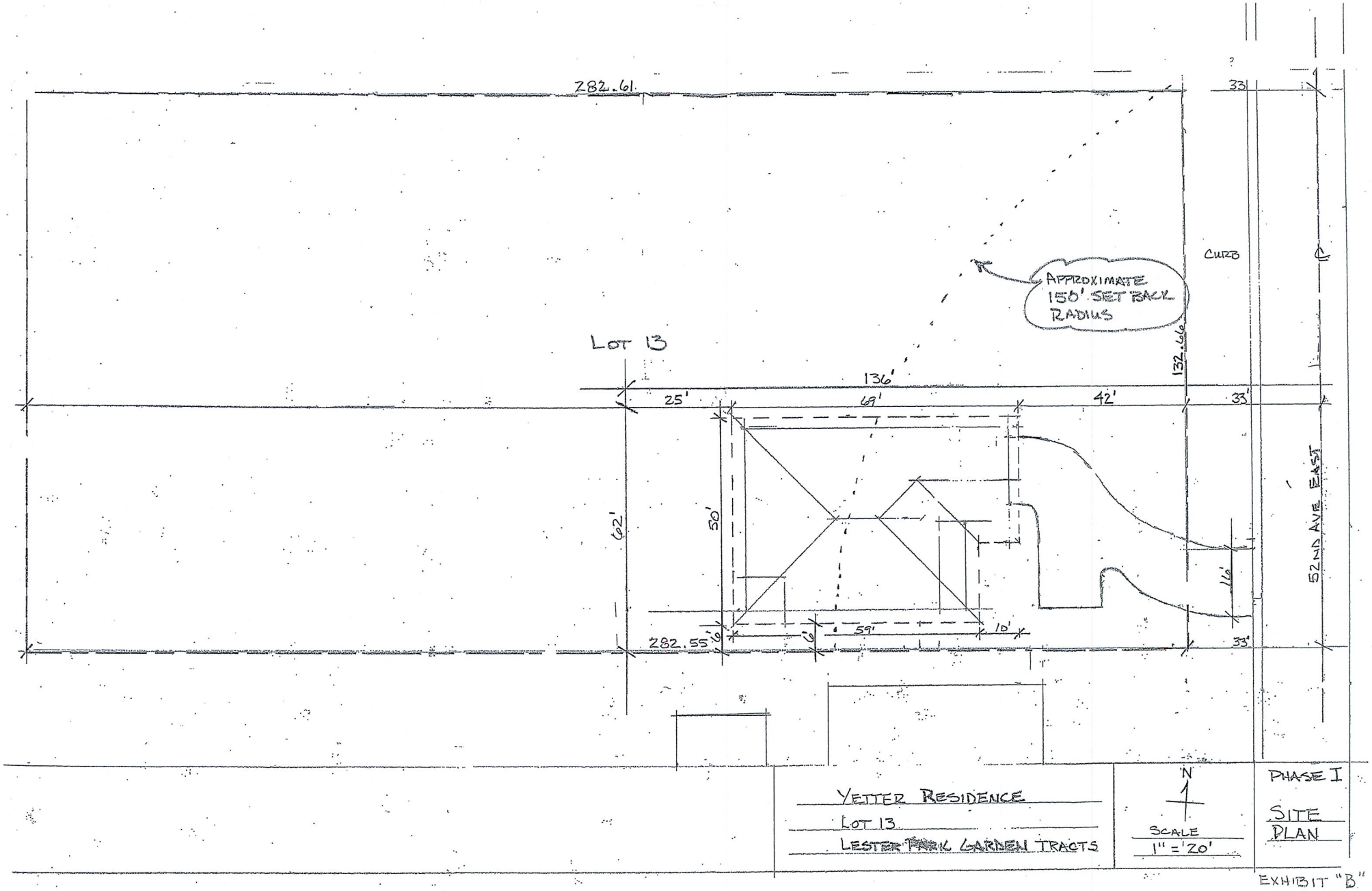

EXHIBIT "B"

F-10

City Planning

52nd Avenue E
Pre-App Map

Legend

Zoning Boundaries

Stream Type
- Trout Stream (GPS)
- Other Stream (GPS)

Water Distribution System
- 30 - 60" Water Pipe
- 16 - 24" Water Pipe
- 4 - 6" Water Pipe

Sanitary Sewer Collection System
- Sanitary Sewer Collector
- Sanitary Sewer Interceptor
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station

Gas Distribution Main
- 8" - 16" Gas Pipes
- 4" - 6" Gas Pipes
- 0" - 4" Gas Pipes

Storm Sewer Collection System
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Discharge_Points

Right-of-Way Type
- Road or Alley ROW
- Vacated ROW

Easement Type
- Utility Easement
- Other Easement

Shoreland Overlay Zone
- Cold Water
- Natural Environment
- General Development

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F-11

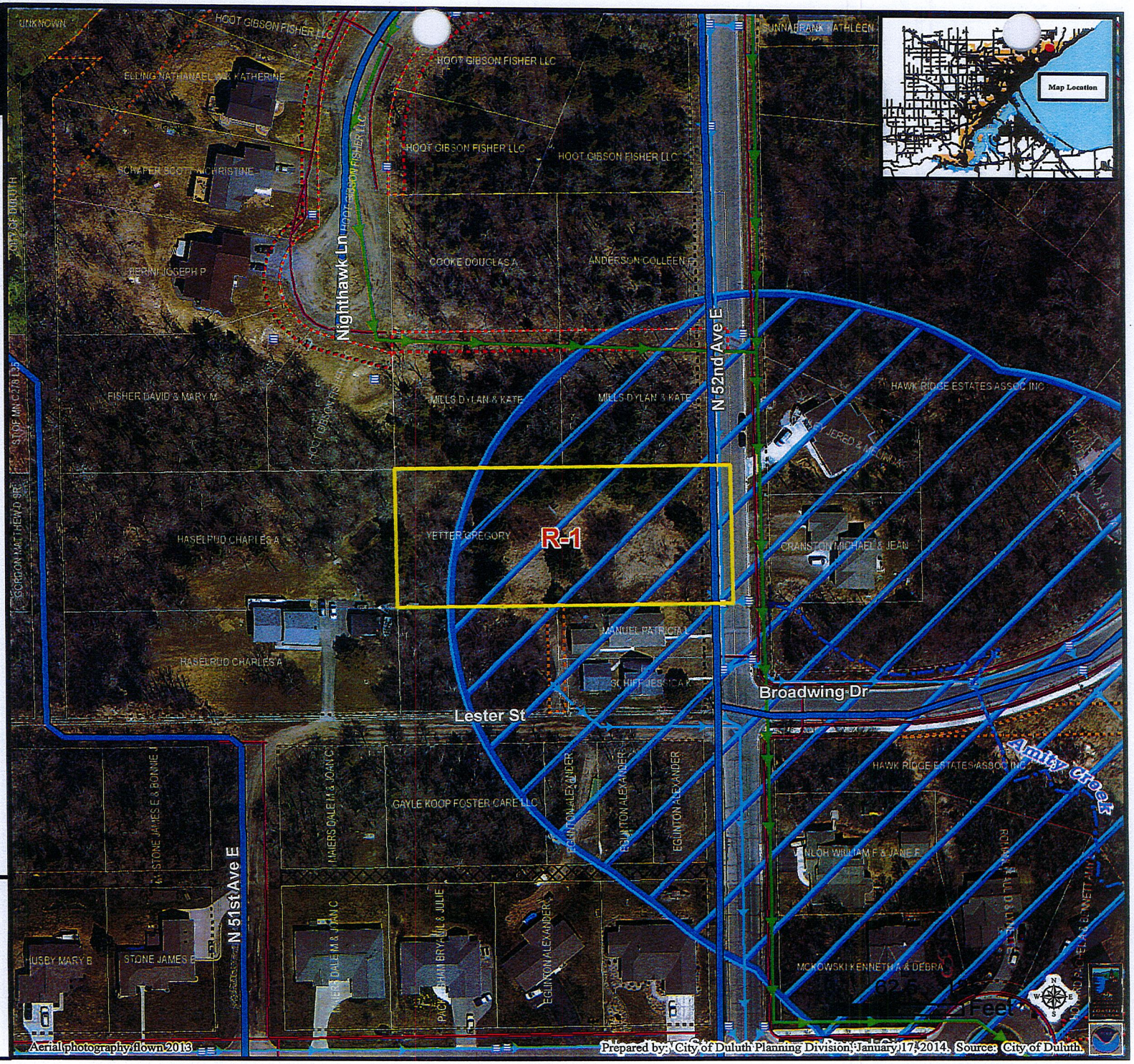
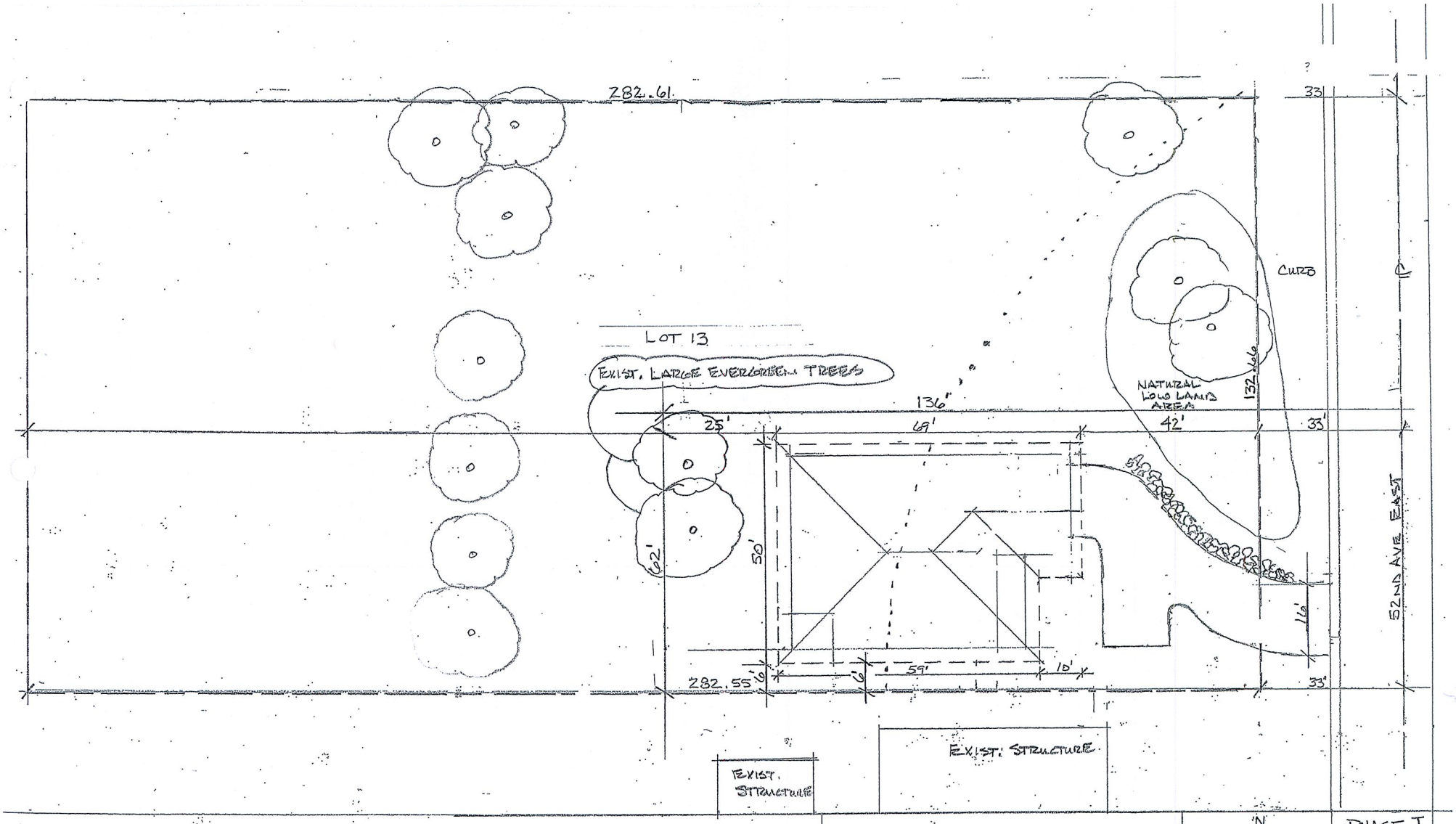


EXHIBIT "C"



YETTER RESIDENCE
LOT 13
LESTER PARK GARDEN TRACTS

N

SCALE
1" = 20'

PHASE I
SITE PLAN
EXIST. TREES

EXHIBIT "D"

F-12

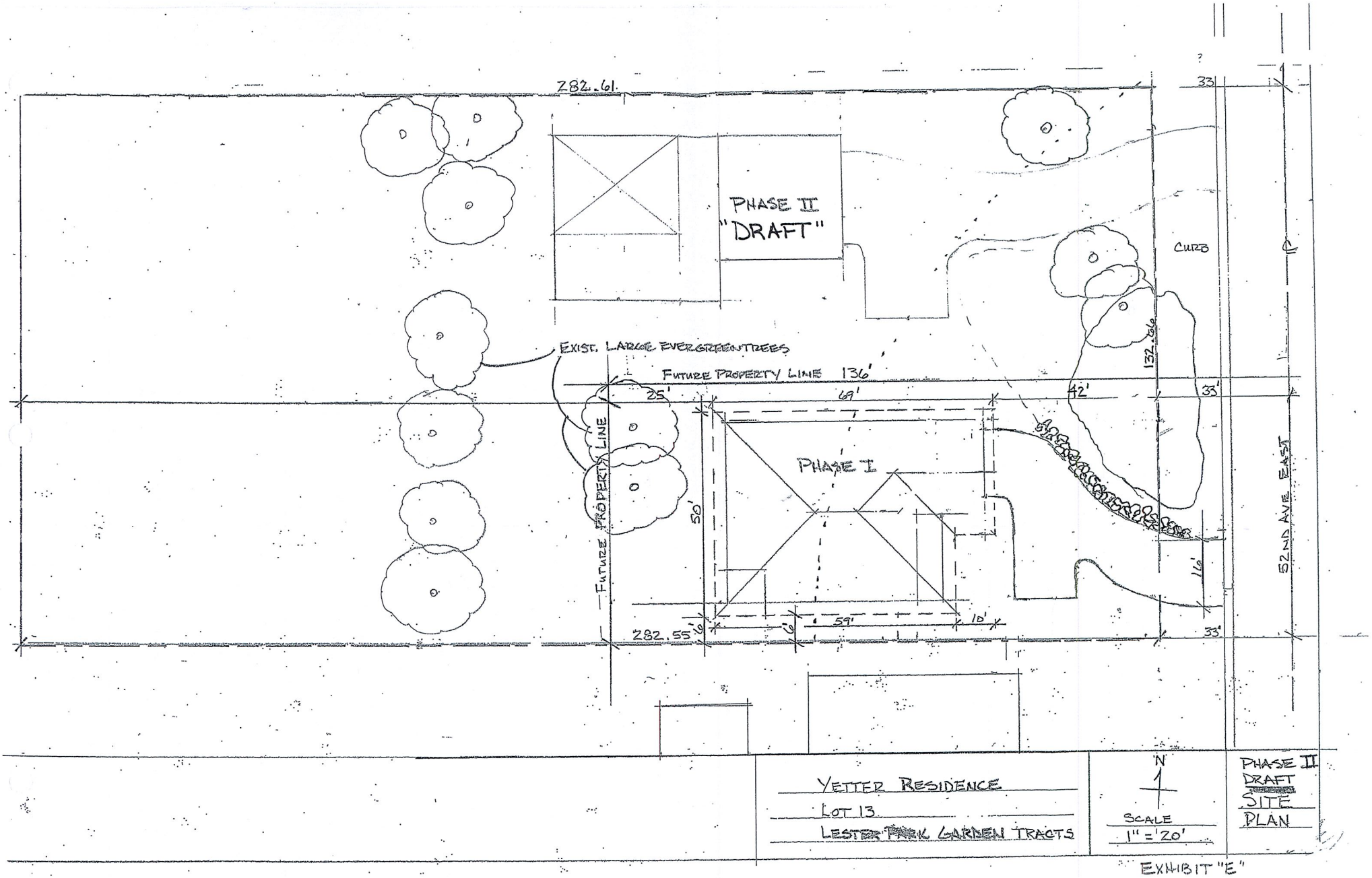
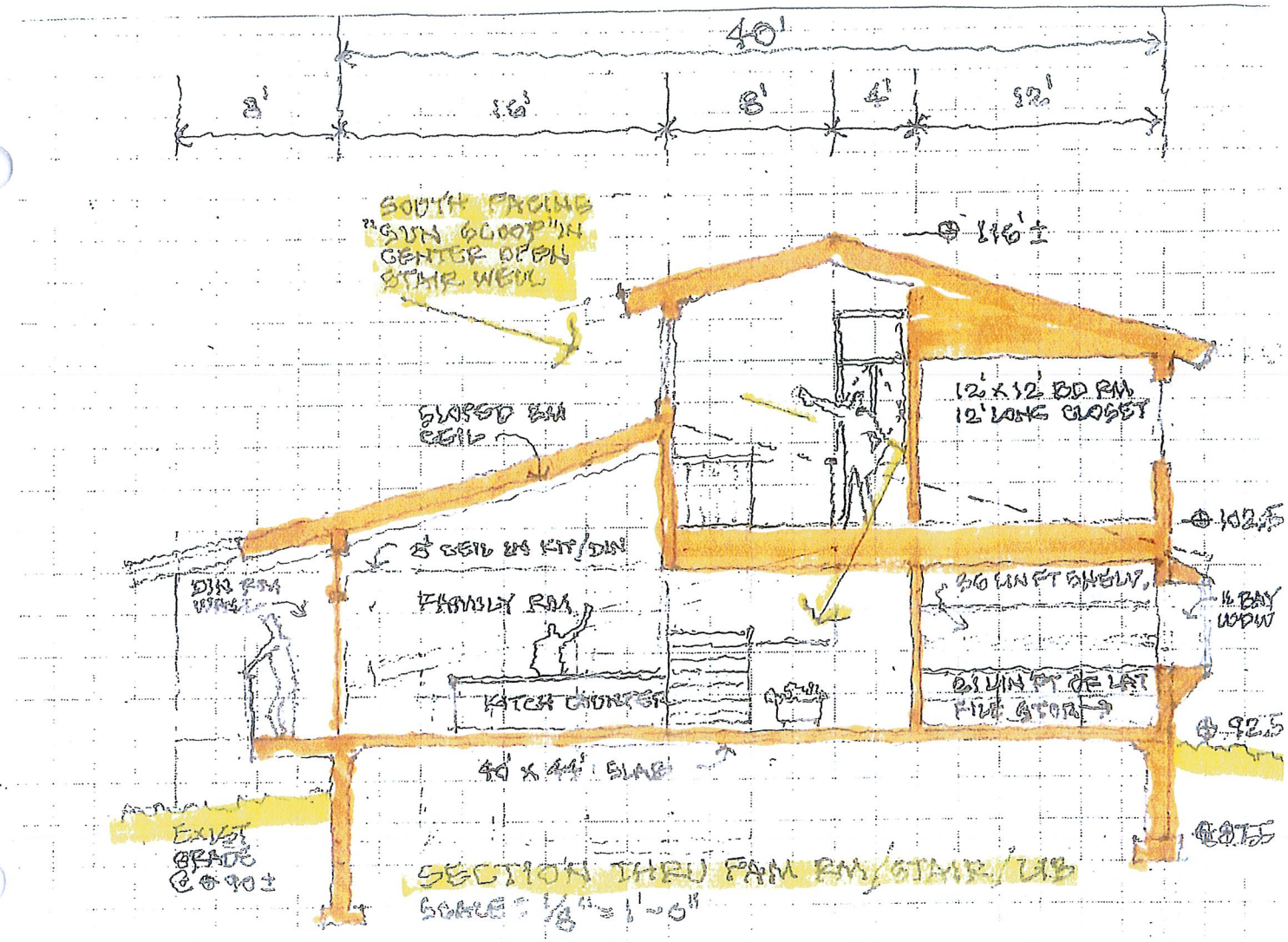
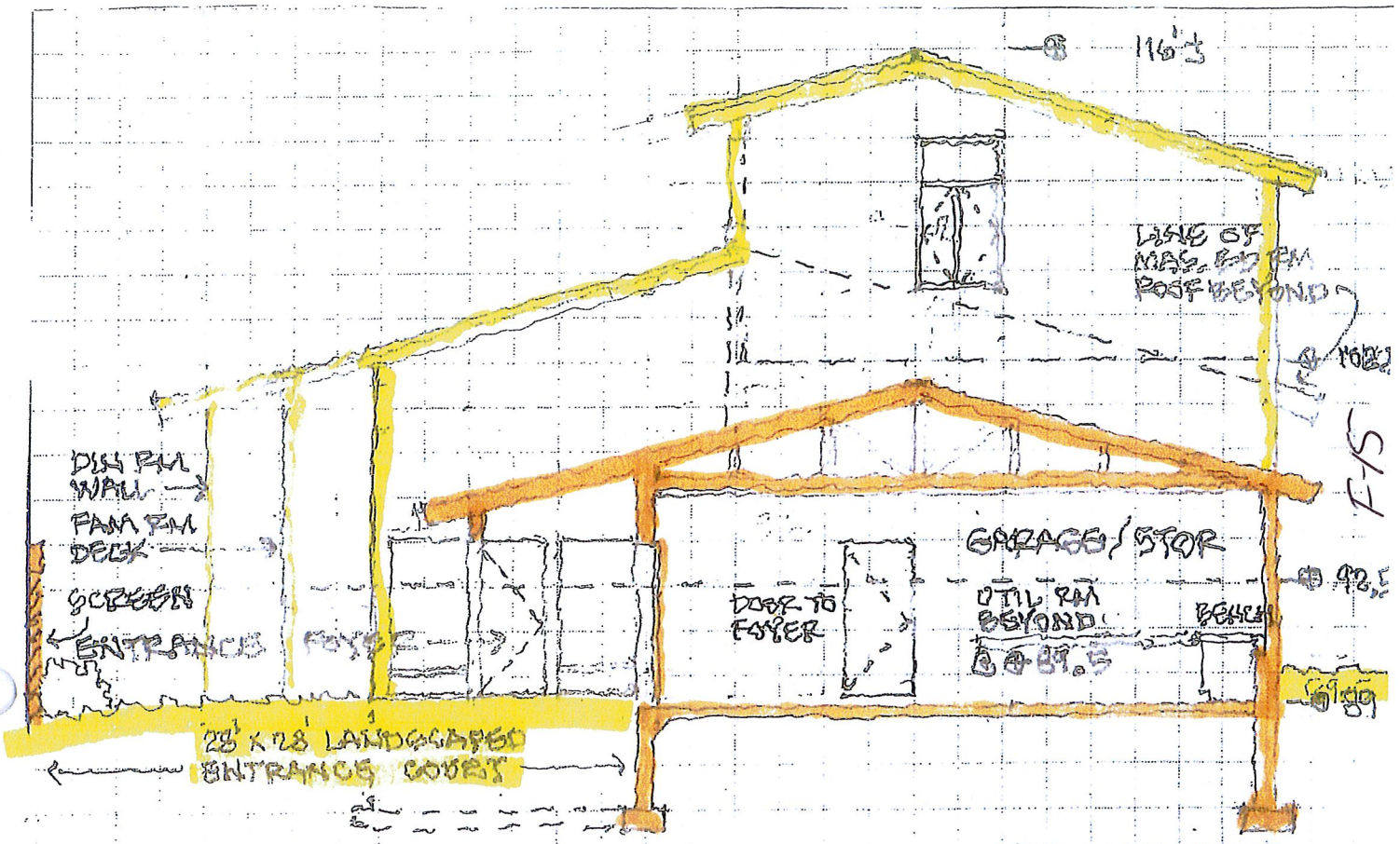


EXHIBIT "E"

F-13

PHASE II
DRAFT
EXHIBIT "E.1"
F-14





F-5

PHASE II DRAFT
EXHIBIT "E-2"

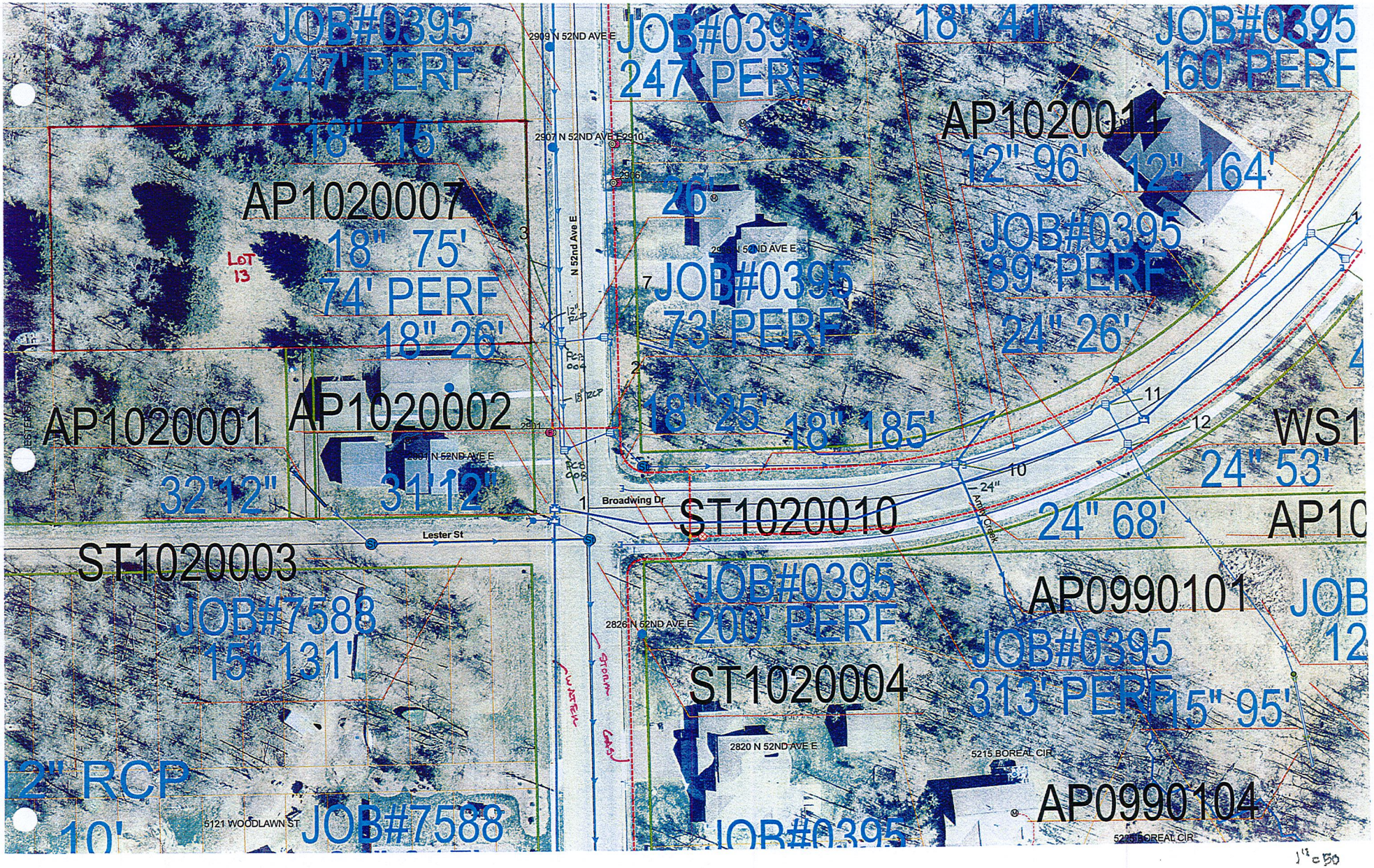
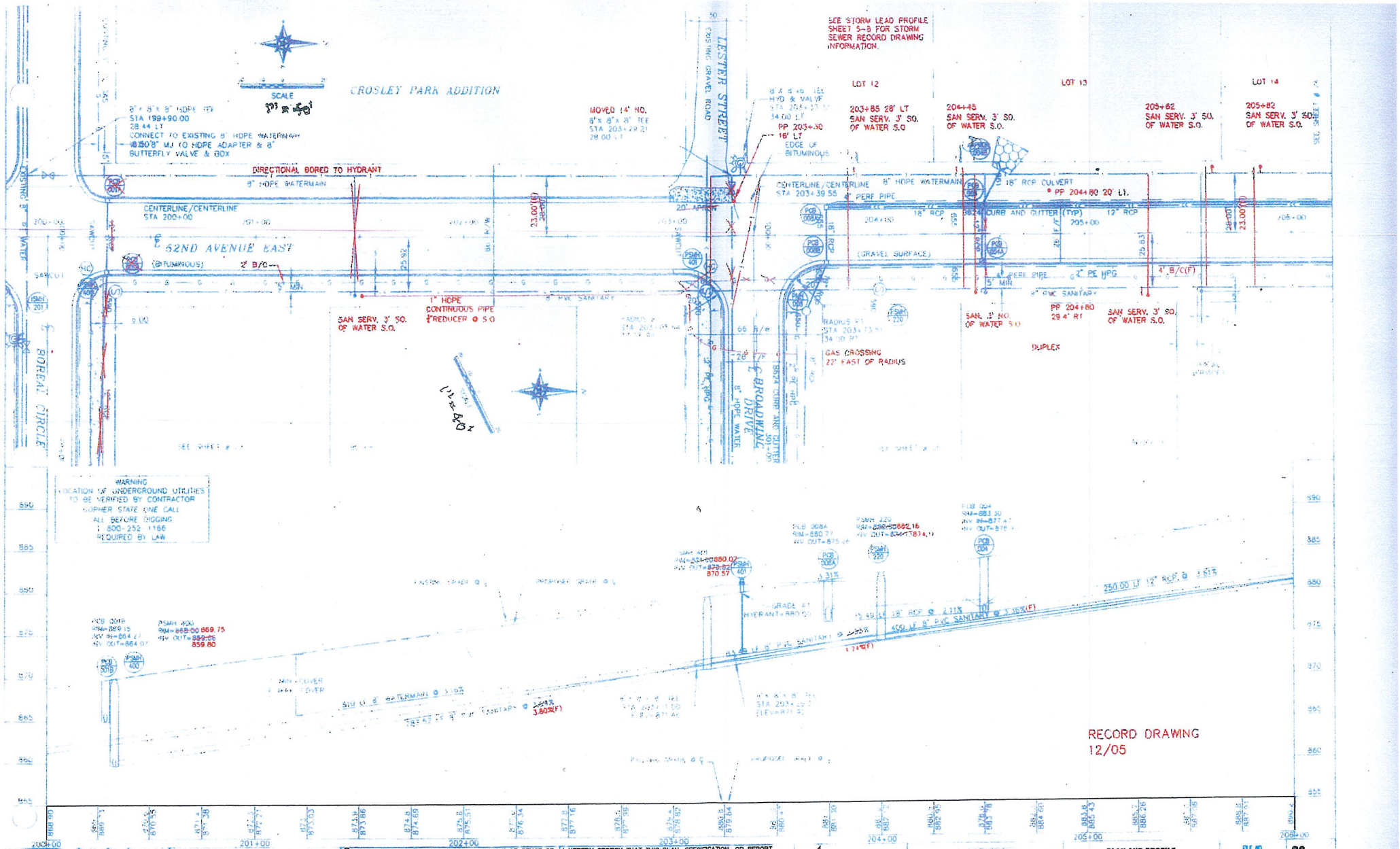


EXHIBIT "F"

F-16



DESIGN TEAM
DRAWN BY: JDS/JAN
DESIGNER: FAH
CHECKED BY: FAH

NO.	BY	DATE	REVISIONS
1			
2			
3			
4			

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I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

Signature
Printed Name MICHAEL S. SONDRO
Date
Reg. No. 41274

SEH
218 722 0541
811 E. 2nd Street
Duluth, MN 55805-2103

CITY OF DULUTH
CITY PROJECT #0395TR
HAWK RIDGE ESTATES

PLAN AND PROFILE
52ND AVENUE EAST
STA 200+00 TO 206+00

FILE NO.
DATE

23

52

F-17

City of Duluth
411 W 1st Street
Duluth, MN 55802

January 31, 2014

Re: Yetter Property Shoreland Variance, Parcel 010-0090-00130

Dear Planning Commission,

Greg Yetter is requesting a variance from the Cold Water Shoreland 75' driveway (impervious area) and 150' structure setbacks to develop his property on the west side of 52nd Avenue East just north of Lester Street. I am currently working with Mr. Yetter to follow storm water and other Best Management Practices consistent with City of Duluth and Minnesota DNR guidelines.

I am the Engineer of Record for the Hawk Ridge Estates development and 52nd Avenue East street improvements adjacent to his property. While I am aware that the Natural Resources Overlay map indicates the presence of a tributary to Amity Creek within 300' of Mr. Yetter's property it is important to note that storm sewer improvements on 52nd Avenue ensure that any overland flow from green spaces, rooftops, and impervious areas on his property are collected by catch basins. Storm water flow travels approximately 600 feet through storm sewers, vegetated swales, and a storm water pond before entering the tributary.

Storm water flow from the Yetter property is directed into the storm sewer and heads south along the west side of 52nd Avenue E until it crosses 52nd Avenue and goes east along Broadwing Drive. It then heads south to a storm water pond constructed as part of the Hawk Ridge Estates development. This storm water pond was designed to provide surge capacity from developed properties within the Hawk Ridge Estates development and along 52nd Avenue East and also allows for sediment to be deposited in the pond instead of allowing it to reach Amity Creek, thereby protecting the creek's water quality. Since Mr. Yetter paid for the construction of two separate sets of utility services (water, sanitary sewer, and gas) to his property the storm water system was designed assuming he would one day construct two homes on this property as allowed by R-1 development guidelines. These improvements were constructed before the current Cold Water Shoreland requirements were adopted.

The Hawk Ridge Estates and 52nd Avenue improvements were designed and constructed to protect Amity Creek and its tributaries while allowing for residential development to move forward. I do not have any reason to believe Mr. Yetter's proposed property development will have a negative impact on water quality should the City elect to grant him a variance from the Cold Water Shoreland setbacks.

Respectfully,

Michael Sondag

Michael Sondag, PE
Registered Professional Civil Engineer
Minnesota #41974

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EXHIBIT "H"

EXHIBIT "F"

F-19