




FLUEGEL LAW FIRM P.A.

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To: Honorable Mayor and City Council
From: Daniel J. Fluegel, City Attorney 
Date: October 2, 2013
Item: Agreement Regarding Parcel Boundary Line Adjustment, Sewer and Water Service Lines and Waiver of Procedural Irregularity and Assessment Appeal-Riverwood 11th Addition

Council Action Requested.

The City Council is requested to approve the enclosed Agreement Regarding Parcel Boundary Line Adjustment, Sewer and Water Service Lines and Waiver of Procedural Irregularity and Assessment Appeal.

Background Information.

Gregory and Susan Jablonske are the owners of a residential parcel in the recently re-platted South Riverwood 11th Addition located generally at 1051 36th Street West in the City of Hastings. As part of the re-plat, smaller lots were reconfigured into larger lots. The lots were originally platted with the belief that townhomes would be constructed on the parcels but as a result of current housing market demand, the property owners desired to create larger lots on which single family homes would be constructed.

As a condition of the recent plat approval, the property owners were required to cap the unused sewer service line servicing the parcel and to combine the unused water service line with the water service line for one of the resulting parcels. The property owners were also required to enter into an agreement whereby they would agree to undertake any work, at their expense, necessary in the future to repair or modify the unused water and sewer service lines and if they failed to undertake that work at their expense, the City would be able to undertake the work and assess the cost against one of the resulting parcels. The enclosed agreement imposes those obligations on the property owner.

Financial Impact.

There should be no financial impact to the City unless some repair or reconstruction work is required in the future and the property owners refuse to undertake that work, in which case, the City would undertake that work and assess those costs against the property.

Attachments.

Agreement regarding parcel boundary line adjustment, sewer and water service lines and waiver of procedural irregularity and assessment appeal.

DAN/has

**AGREEMENT REGARDING SEWER AND WATER SERVICE LINES,
WAIVER OF PROCEDURAL IRREGULARITY AND ASSESSMENT APPEAL**

THIS AGREEMENT, is made this ___ day of _____, 2013, between the City of Hastings, a Minnesota Municipal Corporation (hereinafter referred to as "City") having a principle address of 101 East 4th Street, Hastings, Minnesota, 55033, and Gregory A. Jablonske and Susan M. Jablonske (hereinafter collectively referred to as "Owner") having a principle address of 3475 Vermillion Street, Hastings, Minnesota 55033.

RECITALS

WHEREAS, Owner is the owner of the real estate located at generally at 1051 36th Street West, Hastings, Minnesota 55033 and legally described on the attached Exhibit A ("Owner's Property").

WHEREAS, Owner recently re-platted Owner's Property, and other land, to reconfigure lots previously platted as smaller lots, and serviced by multiple water and utility service lines, into larger lots for the purpose of constructing one residential structure upon each of the newly platted lots;

WHEREAS, Hastings City Code allows the City to impose reasonable conditions upon approval of a subdivision plat;

WHEREAS, the existing water and sewer utility service lines were designed and installed to service two residential structures on Owner's Property;

WHEREAS, to accommodate Owner's plans for development of Owner's Property and the construction of one, rather than two, residential structures thereon, Owner is required to install water tight caps on the end of the unused sanitary sewer service in the boulevard and Owner will connect and combine the unused water service line with the primary water service line behind the curb valve servicing the residential structure;

WHEREAS, municipal regulations provide that: (1) all owners, platters and developers are responsible for complying with City utility requirements; (2) property owners served by water and sewer utilities are responsible for installation and maintenance of all lateral sewer and water facilities from the water and sewer mains which are owned by the City; and (3) all costs related to connection of sanitary sewer service and water service to the property must be paid by the property owners;

WHEREAS, the process of capping the end of the unused sanitary sewer service line and connecting and combining the unused water service line to the primary water service line behind the curb valve may, potentially, lead to conditions requiring corrective action in the future which may include, but are not limited to, leaking pipes, surface settlement resulting from broken pipes, or interference with other construction projects;

WHEREAS, the City has approved Owner's application for subdivision plat approval subject to certain conditions, including the following:

- (1) Owner's agreement, on behalf of itself, its successors and assigns, to repair, at its cost, any damage to the sanitary sewer and water service lines and any damage caused by the unused sanitary sewer and water service lines and to indemnify and hold harmless the City for any resulting damage or claims, and upon Owner's failure to perform in a timely

manner, Owner's agreement that the City may complete the necessary work and assess the cost of any such work against the parcels, as provided in this agreement; and

WHEREAS, Owner understands that the conditions and potential problems which may result from the unused sanitary sewer and water service lines remaining connected and in place are not certain, and cannot be fully identified or described with certainty, but Owner, on behalf of itself and its successors and assigns, desires to assume all future responsibility and costs of repairing or otherwise correcting such conditions and resulting damage.

NOW THEREFORE IN CONSIDERATION of the City's willingness to approve the Owner's application for subdivision approval, the parties make the following agreement:

1. Owner hereby confirms the new parcel identification number (PIN) assigned by Dakota County to the new tax parcel is 19-64390-03-020.
2. Owner shall cause a water tight cap/plug to be installed on the end of the unused sanitary sewer service in the boulevard and shall connect the unused water service line to the primary water service line which will service the residential structure, behind the curb valve; all as depicted on the attached Exhibit A. All such installation shall be completed in a good and workman like manner approved by the City. Both curb stop valves shall remain in place on the water service lines. The connections between water services shall be on the house side of the curb stops using a City approved and plumbing code compliant 1"x1"x1" fitting. Owner may use Pex or a plumbing code equivalent from the fitting to the residential structure. Prior to backfilling the trench where such work is completed, Owner and its contractor shall provide City an opportunity to inspect and approve the installation.
3. Upon written demand by City identifying repairs to the unused sanitary sewer or the interconnected water service lines deemed necessary, in the sole discretion of the Public Works

Director for the City of Hastings, Owner, or its successors and assigns as to Owner's Property shall at its costs repair the unused sanitary sewer service lines or the water service lines, as the case may be, and after undertaking such work, shall reasonably restore any disturbed areas to their original conditions. If Owner, its successors or assigns as to Owner's Property fail to perform as required herein, City may undertake all work necessary to repair the unused sanitary sewer service lines or the unused water service lines, as the case may be, and Owner, its successors or assigns as to Owner's Property shall immediately reimburse the City for all costs incurred.

4. If Owner, its successors or assigns as to Owner's Property fails to timely reimburse City for all such costs, Owner, for itself, its successors and assigns as to Owner's Property agrees to have Owner's Property assessed for the full amount expended by City to repair the unused sanitary sewer lines or the water service lines, as the case may be, and to restore the area to its original condition. The exact amount of this assessment is unknown at this time but will be determined by the City in its reasonable discretion.

5. If the full amount expended by City to repair the sanitary sewer line or water service line and to restore the area to its original condition is \$10,000.00 or less, any assessments shall be paid over a period of five years but if the amount to be assessed is over \$10,000.00, the assessment shall be paid over a ten year period. In addition, interest shall accrue on the unpaid assessment at a rate equal to the interest rate applied by the City of Hastings for other assessments in the year the work is performed. If no such assessments are certified for other properties in the City of Hastings during that year, the interest rate shall be equal to the interest rate imposed on the most recent assessment certified by the City of Hastings. Owner, for itself, its successors and assigns as to Owner's Property agrees that City can assess an additional \$5.00

per year (\$25.00 for a five year assessment period or \$50.00 for a ten year assessment) which represents the annual assessment fee imposed by Dakota County for this assessment.

6. Owner, for itself, its successors and assigns as to Owner's Property agrees that City can certify this assessment to Dakota County for collection with the real estate taxes without the necessity of the City complying with any of the procedural or notice requirements outlined in Minnesota Statutes Chapter 429, or amendments thereto.
7. In further consideration of City granting subdivision approval, Owner, for itself, its successors and assigns as to Owner's Property, grants to City, a perpetual easement over and across any portion of Owner's Property wherein the unused water and sanitary service lines may be located, and ten (10) feet on either side thereof, for the sole purpose of accessing the unused water and service lines in the event removal, repair or replacement of such lines becomes necessary pursuant to the terms of this agreement.
8. In further consideration of City granting subdivision approval, Owner, for itself, its successors and assigns as to Owner's Property also agrees to waive any right to appeal the amount assessed against Owner's Property for these repair costs, whether the basis for the appeal is that the assessment exceeds the benefits to Owner's Property or on any other basis whatsoever.
9. Where reference is made herein to Owner, reference shall be to Owner, its successors and assigns as to Owner's Property, and the rights and obligations hereunder shall run with the land and shall burden Owner's Property, and all subsequent owners thereof.
10. Owner shall indemnify and hold harmless City for any damages or claims resulting from the unused sanitary sewer lines and the combined water service lines remaining connected and in place pursuant to this agreement.

Dated: _____, 2013.

OWNER:

Gregory A. Jablonske

Susan M. Jablonske

ACKNOWLEDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

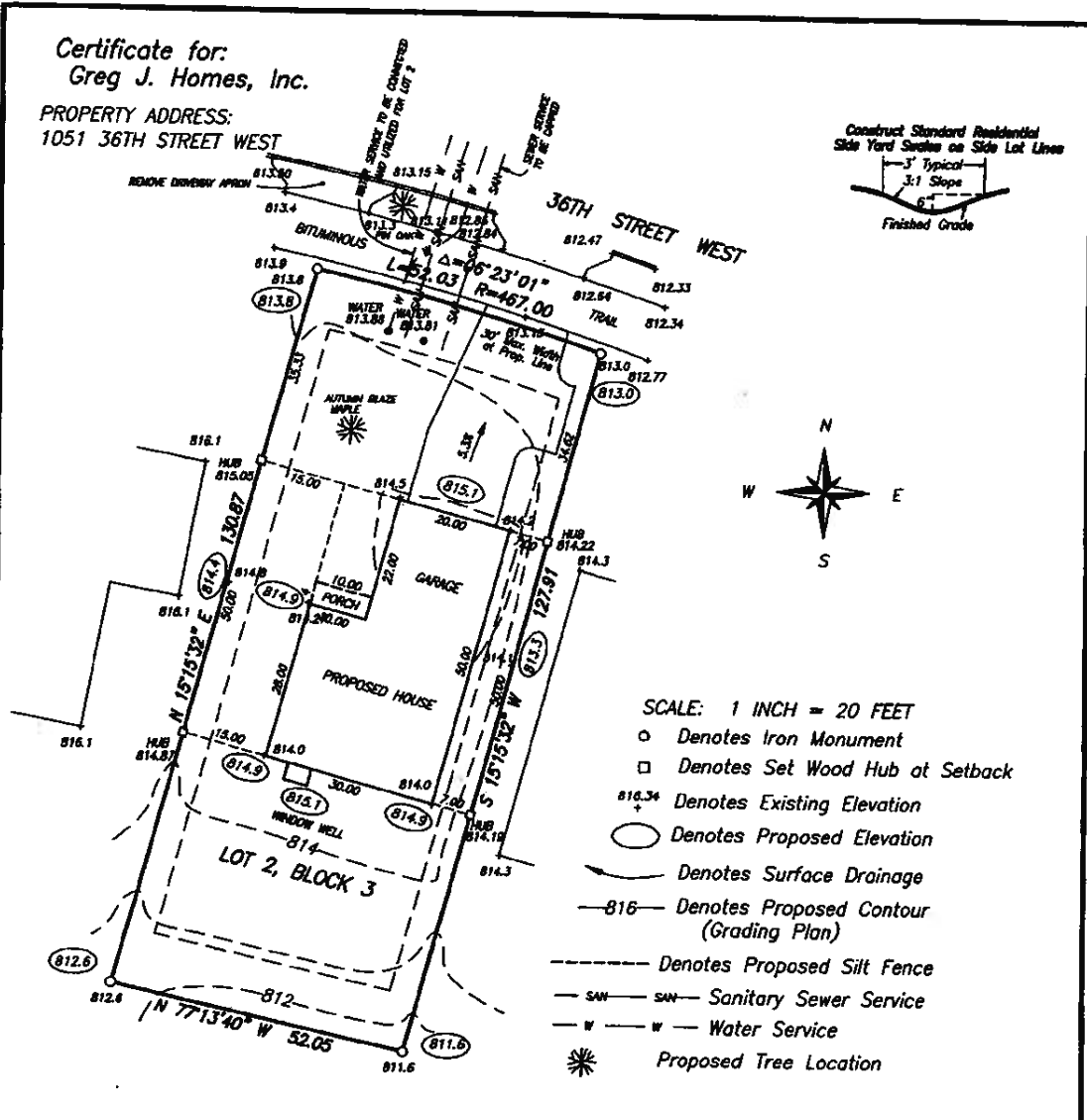
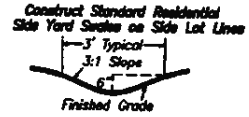
The foregoing instrument was acknowledged before me this ___ day of _____, 2013,
by Gregory A. Jablonske and Susan M. Jablonske, husband and wife.

Notary Public

THIS INSTRUMENT DRAFTED BY AND RETURN TO:
FLUEGEL LAW FIRM P.A.
999 Westview Drive, Suite #1
Hastings, MN 55033
651-438-9777
(DAN/has)

Certificate for:
 Greg J. Homes, Inc.

PROPERTY ADDRESS:
 1051 36TH STREET WEST



- SCALE: 1 INCH = 20 FEET
- Denotes Iron Monument
 - Denotes Set Wood Hub at Setback
 - 816.34 + Denotes Existing Elevation
 - Denotes Proposed Elevation
 - ↗ Denotes Surface Drainage
 - 816- Denotes Proposed Contour (Grading Plan)
 - - - Denotes Proposed Silt Fence
 - SW - Sanitary Sewer Service
 - W - Water Service
 - ✱ Denotes Proposed Tree Location

LEGAL DESCRIPTION:
 Lot 2, Block 3, RIVERWOOD 11TH ADDITION, according to the recorded plat thereof, City of Hastings, Dakota County, Minnesota. Also showing the location of a proposed house thereon.

- 815.1 Proposed Garage Floor Elevation
- 815.4 Proposed Top of Block Elevation
- 807.4 Proposed Lowest Level Elevation
- 810.6 Proposed Lowest Opening

Bench Mark:
 Top Nut of Hydrant
 S. Side of 36th St.
 1st E. of Riverwood Dr.
 Elev. = 817.92

EOF = 809.2

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

October 9, 2013
 Dated.

David G. Rapp
 David G. Rapp
 Minnesota Registration No. 22044

RAPP LAND SURVEYING, INC.
 45967 HIGHWAY 56 BLVD
 KENYON, MN 55946
 (507) 789-5366

DRAWN BY: DGR	DATE: 10-09-13	PROJECT NO. D13112
SCALE: 1" = 20'	SHEET 1 of 1 sheet	BOOK/PAGE 31/44