

POTTAWATTAMIE COUNTY
PLANNING AND ZONING COMMISSION
REGULAR MEETING AGENDA

MONDAY, DECEMBER 20, 2021
5:30 P.M. – Meeting

SUPERVISORS' HEARING ROOM-COUNTY COURTHOUSE
227 SOUTH 6TH STREET, COUNCIL BLUFFS, IOWA

1. **CALL TO ORDER**

The meeting was called to order by Chairman B. Larson at ____ P.M.

2. **ROLL CALL**

Members Present: Leaders R.Larson B.Larson Wede Silkworth
Members Absent: Leaders R.Larson B.Larson Wede Silkworth
Staff Present: Kalstrup Wyant

3. **MINUTES**

Motion #1: to approve the Minutes of the November 17, 2020 Meeting.
Motion by: Leaders R.Larson B.Larson Wede Silkworth
Second by: Leaders R.Larson B.Larson Wede Silkworth

Vote: _____

4. **PUBLIC HEARINGS**

The Chairman read a statement advising the audience that the public hearing would be conducted in accordance with the Commission's Rules of Procedure.

CASE #SUB-2021-03

PROPERTY OWNER: Daniel – Emily Huneke
REQUEST: Preliminary Plat Approval of Huneke Sub
TOWNSHIP: Norwalk
STREET: Magnolia Rd
LEGAL DESCRIPTION: 24-76-42 NW NW N OF ABAND RR EXC W173'

CASE #SUB-2021-04

PROPERTY OWNER: Rachael – Blake Schmidt
REQUEST: Preliminary Plat Approval of Schmidt's Creek Phase 1 and Phase 2
TOWNSHIP: Hazel Dell
STREET: Badger Ave
LEGAL DESCRIPTION: Parcel 21267 NW SW NW N OF RD 29-76-43 and 30-76-43-NE NE N OF RD LT 2

CASE #SUB-2021-05

PROPERTY OWNER: Matriarch Manor LLC (Doreen Blakely)
REQUEST: Preliminary Plat Approval of Matriarch Manor East
TOWNSHIP: Garner
STREET: 205th St
LEGAL DESCRIPTION: 4-75-43 PT NE SE COMM SW COR TH N1322.08' E21.67' TO C/L RD SELY1422.31' W502.73' TO POB

5. **OTHER BUSINESS:**

6. **ADJOURNMENT**

Motion # ____: to adjourn.
Motion by: Leaders R.Larson B.Larson Wede Silkworth
Second by: Leaders R.Larson B.Larson Wede Silkworth

Vote: _____

The meeting was adjourned at approximately ____ P.M.

**POTTAWATTAMIE COUNTY
PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
MONDAY, NOVEMBER 17, 2021
SUPERVISORS' HEARING ROOM-COUNTY COURTHOUSE
227 SOUTH 6TH STREET, COUNCIL BLUFFS, IOWA**

1. CALL TO ORDER

The meeting was called to order by Chairman B. Larson at 5:30 P.M.

2. ROLL CALL

Members Present: B. Larson, Wede, Leaders, R. Larson, Silkworth
Staff Present: Kalstrup

3. MINUTES

Motion #1: to approve the Minutes of October 18, 2021 meeting.
Motion by: Wede.
Second by: R. Larson.
Vote: Unanimous vote. Motion carried.

4. PUBLIC HEARING

The Chairman read a statement advising the audience that the public hearing would be conducted in accordance with the Commission's Rules of Procedure.

CASE #ZMA-2021-04

PROPERTY OWNER: Bertelsen Land LLC
REQUEST: Zoning map amendment to reclassify approximately 5 acres from a Class A-2 (Agricultural Production) District to a Class I-2 (General Industrial) District.
TOWNSHIP: Boomer
STREET: Road L-34
LEGAL DESCRIPTION: 25-77-43 SW SW & 26-77-43 SE SE LYING E & NE OF RDS

Motion #2: to open the public hearing on Case #ZMA-2021-04
Motion by: Leaders
Second by: Wede
Vote: Unanimous Vote. Motion Carried.

Motion #3: to close the public hearing on Case #ZMA-2021-04.
Motion by: Larson
Second by: Wede
Vote: Unanimous Vote. Motion Carried.

Motion #4: to recommend that the request of Bertelsen Land LLC for a zoning map amendment to reclassify approximately 5 acres from a Class A-2 (Agricultural Production) District to a Class I-2 (General Industrial) District, as filed under Case #ZMA-2021-04, be **approved by the Board of Supervisors**, subject to the following conditions:

1. Only the area of land that will be utilized for proposed use shall be reclassified as I-2 (approximately 5 acres TBD by a survey and sketch plat application).
2. There shall be a reversionary clause that should the proposed use not materialize, the property shall be reclassified back to A-2.

Motion by: Silkworth
Second by: Wede
Vote: Ayes –B. Larson, Leaders, Wede, R. Larson, Silkworth. Motion Carried.

5. OTHER BUSINESS:

6. ADJOURNMENT

Motion #5: to adjourn.
Motion by: Leaders
Second by: R. Larson
Vote: Unanimous. Motion carried.

The meeting was adjourned at approximately 6:17 P.M.

Brett Larson, Chairman

Date

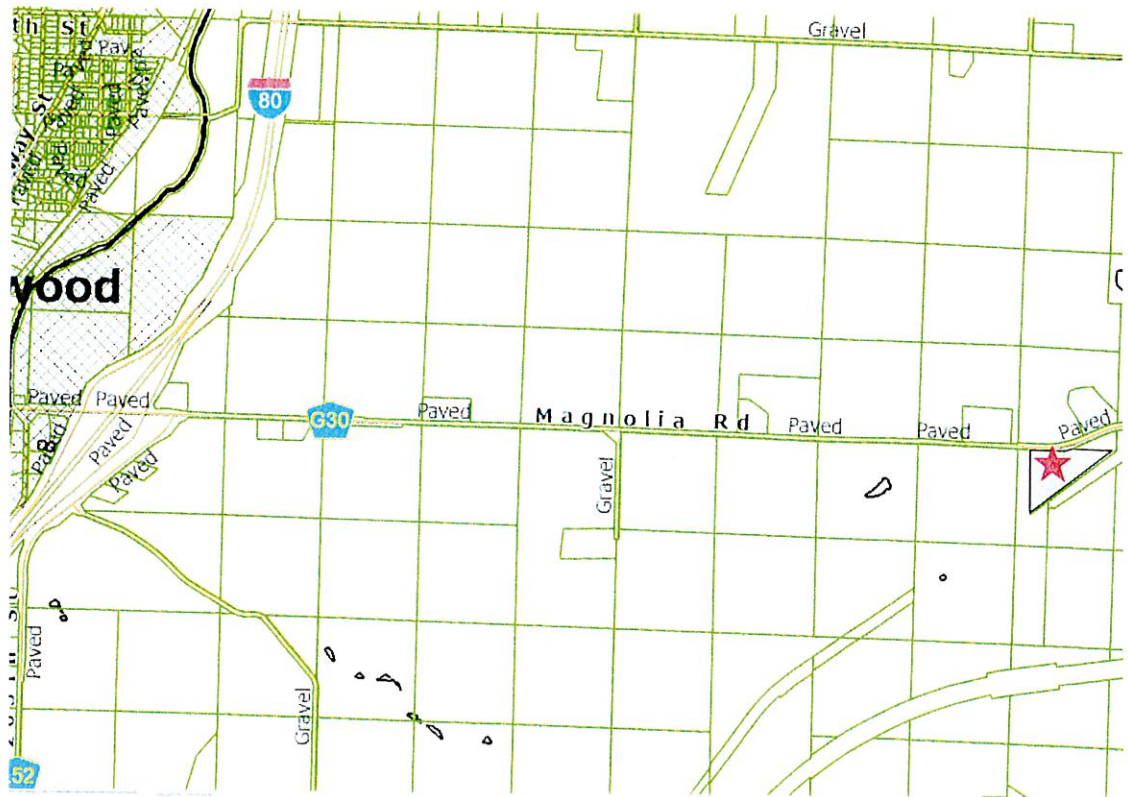
ATTEST: _____

Matt Wyant, County Planning Director

Date

TO: Planning and Zoning Commission
FROM: Pam Kalstrup
DATE: December 10, 2021
RE: Case #SUB-2021-03
REQUEST: Preliminary plat approval of Huneke Subdivision
LOCATION: Norwalk Township
LEGAL DESCRIPTION: 24-76-42 NW NW N OF ABAND RR EXC W173'

The subject property is located approximately 2 1/4 miles to the east of the city limits of Underwood on Magnolia Rd.



PROPERTY OWNER: Daniel – Emily Huneke
SURVEYOR: Land Surveying Services Inc
GENERAL INFORMATION: The applicants have made this request in order to allow them to split their property into two lots, creating one new building site. SEE ATTACHMENT 1.

SITE REVIEW:

The parcel consists of 11.18 acres. There is currently one home, a well, a septic system, a detached garage and a bin on the property.



AREA REVIEW:

The subject property is located immediately adjacent to Magnolia Road, a paved County Road. The current Iowa Department of Transportation Traffic Flow Map indicated an average traffic flow of 790 vehicles per day.

The properties in the immediate area are a mixture of rural residential acreages, timber and agricultural ground.



ZONING:

The subject property is currently located in a Class R-1 (Ag-Urban Transitional) District.

8.015.010 INTENT: The R-1 District is intended to provide the opportunity for the continued development of non-farm dwellings and rural subdivisions in the rural unincorporated areas. (Ordinance #2007-01/03-09-07)

Subsection 8.015.020.05 of the Pottawattamie County, Iowa, Code, lists "Platted minor subdivisions for single-family dwellings, when located on a hard surfaced street or an official bituminous road", as a permitted principal use in the Class R-1 District.

The minimum standards for the R-1 District with individual septic systems and wells are as follows:

| | Minimum |
|-----------|-----------|
| Lot Size | 2.0 Acres |
| Lot Width | 175' |
| Lot Depth | 300' |

It appears that the proposed lot sizes, lot widths and lot depths conform to the minimums.

**SUBDIVISION
ORDINANCE:**

Subsection 9.01.065.03 states:

.01 A minor subdivision plat may be prepared for an existing parcel being divided into two lots where the tract of record has previously been divided into more than four (4) parcels if all of the following are met:

- A. Zoning requirements for minimum size and access can be met.
- B. Adjoins buildable platted property (not outlots) on rear and sides or property has double frontage.
- C. Existing parcel is more than four times the minimum parcel size in respective zoning district.
- D. Does not cause conflict with future access or development to subject parcel and/or adjacent parcels.

**SEWAGE
DISPOSAL:**

Where an adequate public or common sanitary sewer system is not reasonably accessible or not required, onsite wastewater treatment and disposal systems may be used for the purpose of providing a private means of sewage disposal for each lot in the subdivision.

- A. The developer shall submit, with the preliminary plat, acceptable evidence of the suitability of the soil for onsite wastewater treatment and disposal systems on the site. The developer may be required to make one (1) or more soil boring tests and/or preliminary percolation tests within the boundaries of the subdivision if the evidence is deemed unacceptable by the County Board. Each test hole shall be numbered and its location and results shown on the final construction plans. All tests shall be performed in accordance with the Pottawattamie County, Iowa, Onsite Wastewater Treatment and Disposal System Ordinance.
- B. Lots where onsite wastewater treatment and disposal systems are proposed shall provide adequate space for two (2) such systems. The area dedicated for the second system is provided as a back up when the first system fails.

C. Onsite wastewater treatment and disposal systems, if approved, may be installed at the expense of the developer, or at the expense of a subsequent lot owner at the time development of the lot takes place.

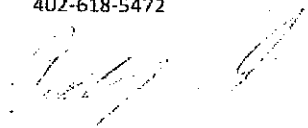
It is the applicant's intent to serve the lots with onsite wastewater treatment and disposal systems.

To whom it may concern:

The property of Cody Hildreth at the address of 2103 Sycamore Rd, Underwood, IA has been evaluated for the purpose of future developments requiring septic system installs. It is my opinion that the soil on/around this property is suitable for future septic systems installed by a professional.

Any further questions in regard to this matter can contact as needed.

Thank you,
Cody Hildreth
Western Iowa Utilities
402-618-5472



WATER SUPPLY: It is the applicant's intent to share the existing well with the new home.

OTHER AGENICES COMMENTS: A copy of the preliminary plat has been forwarded to the following agencies.

- Pottawattamie County Engineer (no comment received)
- Underwood School District (no comment received)
- Underwood Township Fire Department (no comment received)
- Pottawattamie County Sheriff (no comment)

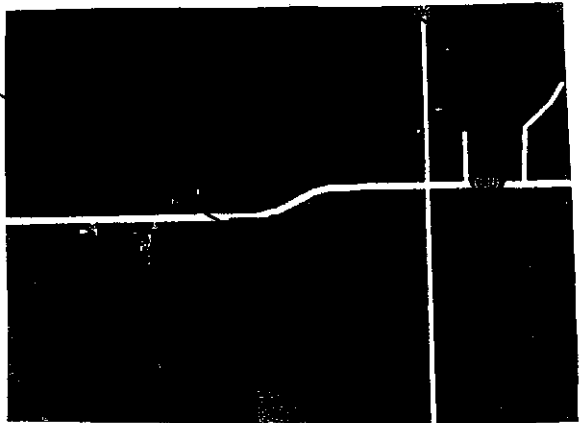
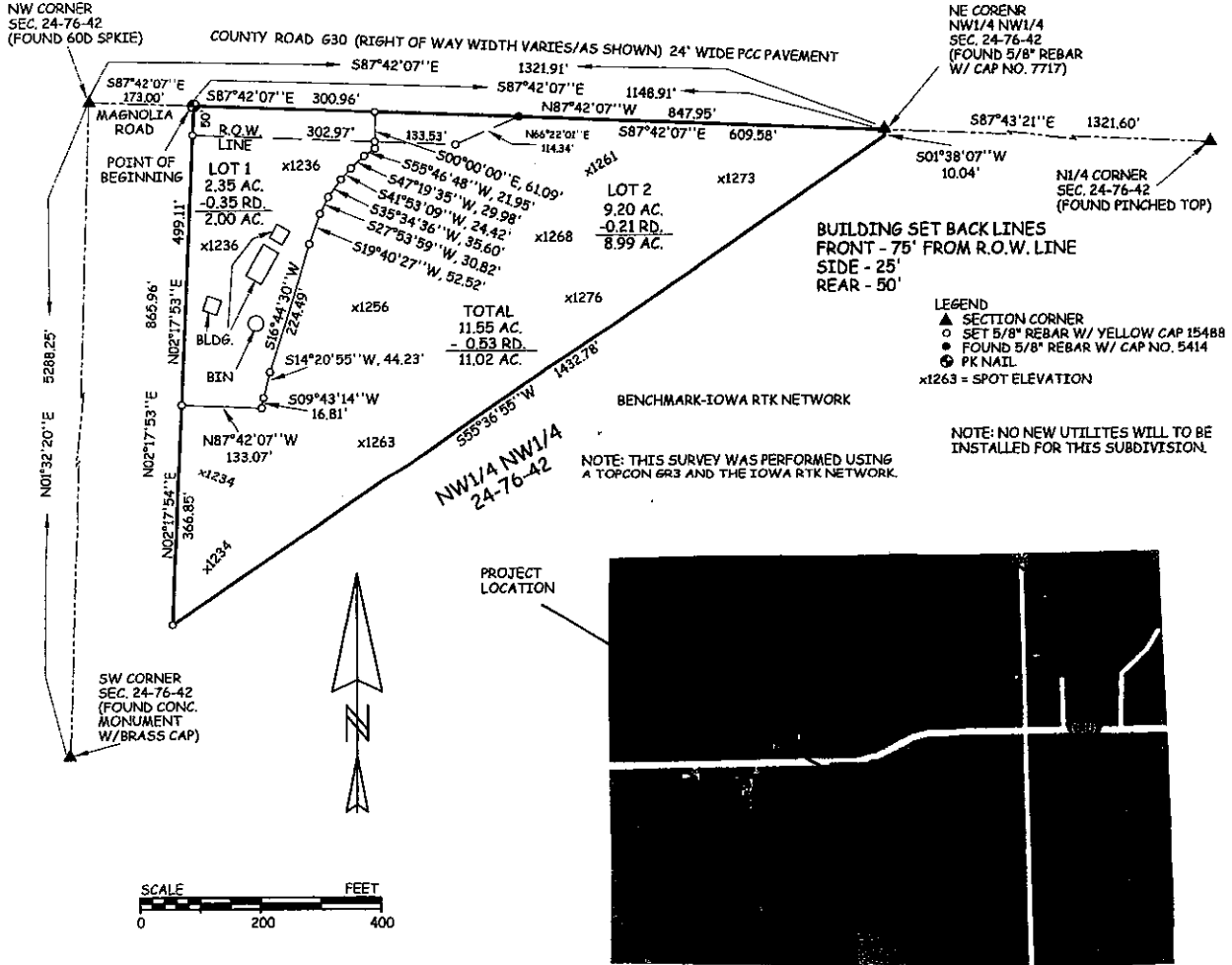
EXTERIOR ROAD: The existing developed lot has direct access onto Magnolia Road, a paved County Road. The proposed building lot will also have direct access onto Magnolia via an existing separate entrance. An entrance permit has been secured with the Secondary Roads Department. The County Subdivision regulations require that all subdivisions be in areas in which the property lies immediately adjacent to and has access to a hardsurfaced street. This proposed subdivision, as previously noted, meets this requirement. The Iowa Department of Transportation Traffic Flow Map indicated an average traffic flow of 790 vehicles per day.

LAND USE PLAN: In 2015 the County Comprehensive Plan 2030 was adopted. That Plan designates the Future Land Use of the subject property as Ag -Urban Transitional Area.

FLOOD HAZARD: The Flood Insurance Study prepared by the Federal Emergency Management Agency for the County designates in the Flood Insurance Rate Maps that the majority of the property as being in a Zone X-Areas of minimum flooding.

RECORDER'S INDEX:
COUNTY: POTTAWATTAMIE
SECTION: 24/ TOWNSHIP: 76/ RANGE: 42
ALIQUOT PART: NW1/4 NW1/4
PROPRIETOR: HUNEKE, DANIEL W-EMILY
REQUESTED BY: EMILY HUNEKE
PREPARED BY: LAND SURVEYING SERVICES, INC.
SURVEYOR: LONNIE R. MAYBERRY
COMPANY: LAND SURVEYING SERVICES, INC.
12 NORTH WALNUT ST. GLENWOOD, IA. 51534
712-527-3509

MINOR SUBDIVISION
PREPARED BY: LAND SURVEYING SERVICES, INC. 12 NORTH WALNUT STREET GLENWOOD, IOWA. 51534 (712)-527-3509
PRELIMINARY PLAT - HUNEKE SUBDIVISION
OWNER & SUBDIVIDER: HUNEKE, DANIEL-EMILY.
29055 MAGNOLIA ROAD UNDERWOOD, IA. 51576



VICINITY MAP

Legal Description:
A parcel of land located in part of the NW 1/4 NW 1/4 of Section 24, Township 76 North, Range 42 West of the 5th Principal Meridian, Pottawattamie County, Iowa, said parcel being more fully described as follows:
Commencing at the Northwest Corner of said Section 24; thence 587°42'07"E along the North line of said NW 1/4 NW 1/4 a distance of 173.00 feet to the Point of Beginning; thence continuing 587°42'07"E along said North line a distance of 1148.91 feet to the Northeast Corner of said NW 1/4 NW 1/4; thence 501°38'07"W a distance of 10.04 feet to the Northerly line of the abandoned Chicago and North Western Railway Company right of way; thence 595°36'55"W along said right of way a distance of 1432.78 feet; thence N02°17'53"E a distance of 865.96 feet to the Point of Beginning. Said parcel contains 11.55 acres, more or less, including presently established road right of way (0.53 ac.), and is subject to all easements of record.
Note: The North line of the NW 1/4 NW 1/4 of said Section 24 is assumed to bear 587°42'07"E for this description.

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.



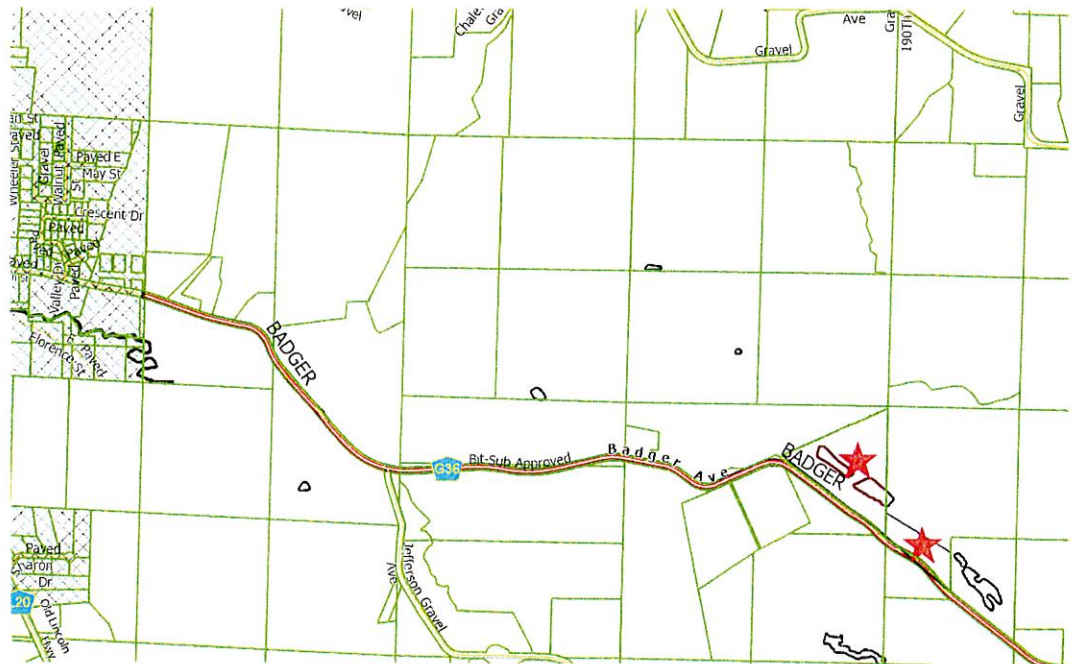
Lonnie R. Mayberry
Date 11/23/2021

License Number 15488
My license renewal date is December 31, 2021.
Sheets covered by this seal: Sheet 1 of 1.
Date of Field Survey: October, 2021.

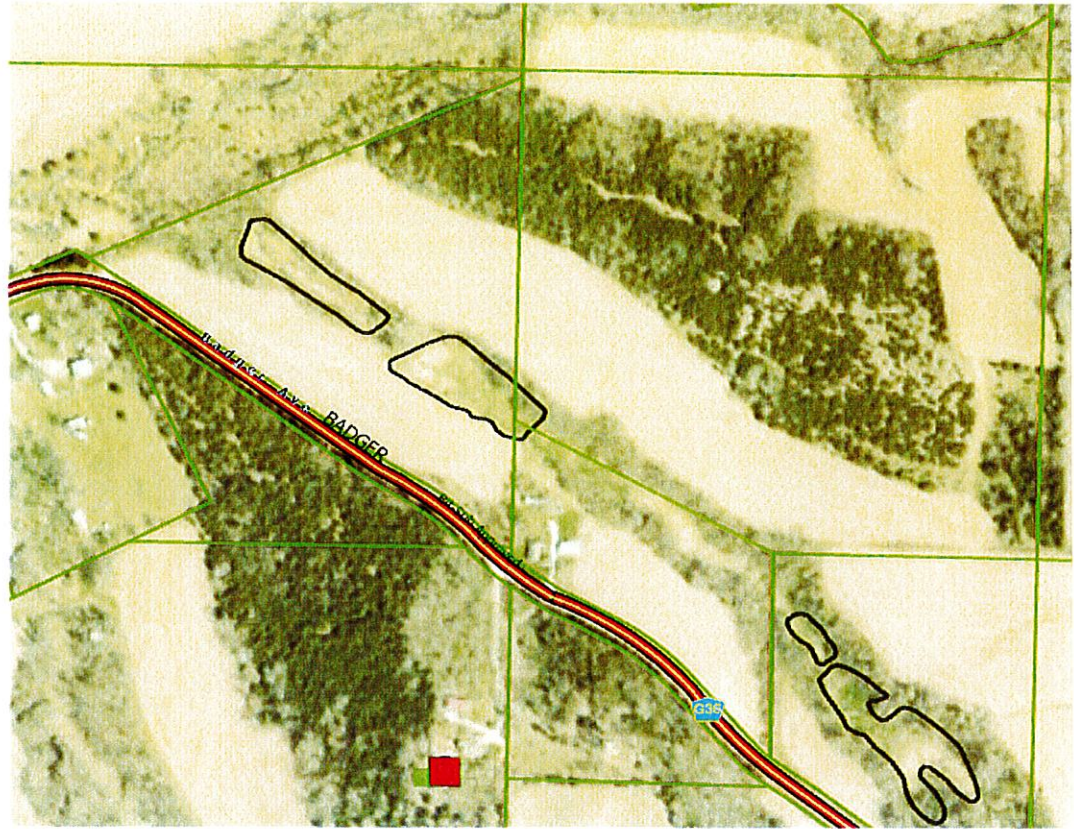
PRELIMINARY PLAT - PART OF THE NW 1/4 NW 1/4
SECTION 24-76-42
POTTAWATTAMIE COUNTY, IOWA.
SCALE: 1"=200' DATE: NOV. 2021 DRAWN BY: RSF
REQUESTED BY: EMILY HUNEKE
29055 MAGNOLIA ROAD UNDERWOOD, IA 51576
DRAWING NO. HUNEKE.ZAK

TO: Planning and Zoning Commission
FROM: Pam Kalstrup
DATE: December 10, 2021
RE: Case #SUB-2021-04
REQUEST: Preliminary plat approval of Schmidt's Creek Phase and Phase 2
LOCATION: Hazel Dell Township
LEGAL DESCRIPTION: Parcel 21267 NW SW NW N OF RD 29-76-43 and 30-76-43-NE NE N OF RD LT 2

The subject property is located approximately 1 ½ miles to the east of the city limits of Crescent on Badger Avenue.



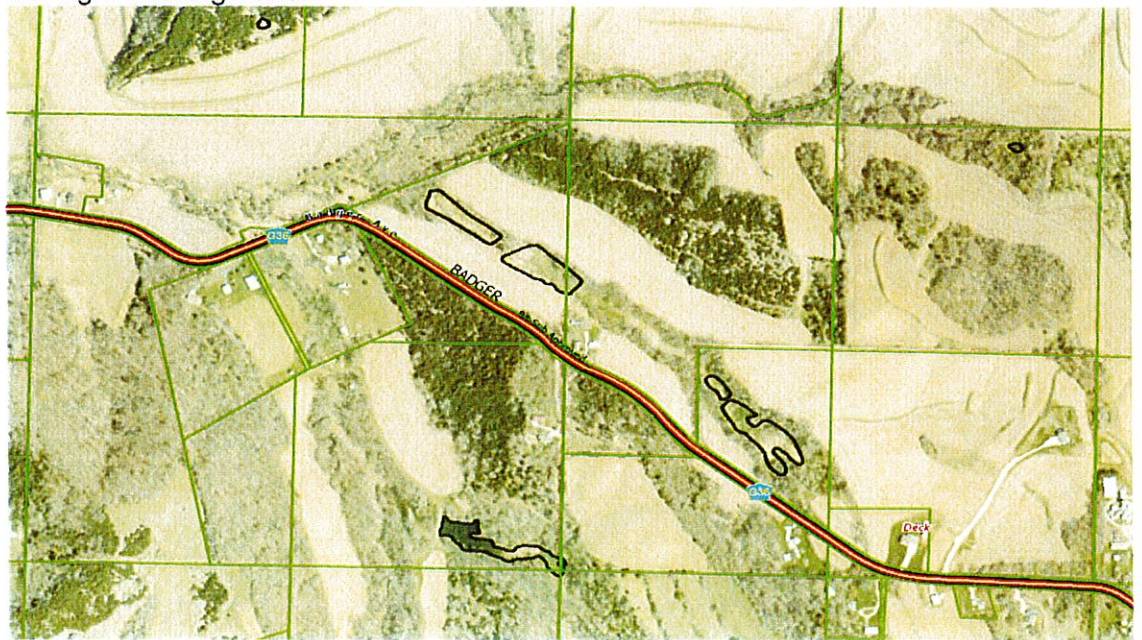
PROPERTY OWNER: Blake – Rachael Schmidt
SURVEYOR: Husker Surveying LLC
GENERAL INFORMATION: The applicants have made this request in order to allow them to split their property into two minor subdivisions. Phase 1 will consist of 2 buildable lots (one that the property owners will build on and one that they will sell). Phase 2 will consist of 3 lots – one with an existing home and 2 buildable lots. SEE ATTACHMENT 1. *will provide @ meeting*
SITE REVIEW: The parcels consist of 15.8 acres and 6.646 acres. Other than the lot with the existing home, septic, well and several outbuildings; the parcels are undeveloped.



AREA REVIEW:

The subject property is located immediately adjacent to Badger Avenue, an Official Bituminous County Road. The current Iowa Department of Transportation Traffic Flow Map indicated an average traffic flow of 710 vehicles per day.

The properties in the immediate area are a mixture of rural residential acreages, timber and agricultural ground.



ZONING:

The subject property is currently located in a Class A-4 (Loess Hills) District.

8.014.010 INTENT: The Class A-4 District is intended to preserve the unique natural and environment characteristics of the Loess Hills' rare soils and topographic region of western Pottawattamie County, Iowa and at the same time allow for appropriate types and scales of development. Primary uses of these lands has historically been grasslands with significant regions cultivated for farming, as well as many farm dwellings and non-farm households adjacent or having access to hard surfaced street. (Ordinance #2015-05/12-18-2015)

Subsection 8.014.020.04 of the Pottawattamie County, Iowa, Code, lists "Platted minor subdivisions for single-family dwellings, when located on a hard surfaced street or an official bituminous road", as a permitted principal use in the Class A-4 District.

The minimum standards for the A-4 District with individual septic systems and municipal common water are as follows:

| | <u>Minimum</u> |
|-----------|----------------|
| Lot Size | 2.0 Acres |
| Lot Width | 175' |
| Lot Depth | 300' |

It appears that the proposed lot sizes, lot widths and lot depths conform to the minimums.

**SUBDIVISION
ORDINANCE:**

Subsection 9.01.065 states:

.01 A minor subdivision plat may be prepared for an existing parcel being divided into two lots where the tract of record has previously been divided into more than four (4) parcels if all of the following are met:

- A. Zoning requirements for minimum size and access can be met.
- B. Adjoins buildable platted property (not outlots) on rear and sides or property has double frontage.
- C. Existing parcel is more than four times the minimum parcel size in respective zoning district.
- D. Does not cause conflict with future access or development to subject parcel and/or adjacent parcels.

.03 A minor subdivision plat may also be prepared for an existing parcel that lies within a Quarter - Quarter section that is divided by a public road. There shall be a maximum of four (4) parcels on both sides of said road.

**SEWAGE
DISPOSAL:**

Where an adequate public or common sanitary sewer system is not reasonably accessible or not required, onsite wastewater treatment and disposal systems may be used for the purpose of providing a private means of sewage disposal for each lot in the subdivision.

- A. The developer shall submit, with the preliminary plat, acceptable evidence of the suitability of the soil for onsite wastewater treatment and disposal systems on the site. The developer may be required to make one (1) or more soil boring tests and/or preliminary percolation tests within the boundaries of the subdivision if the evidence is deemed unacceptable by the County Board. Each test hole shall be numbered and its location and results shown on the final construction plans. All tests shall be

performed in accordance with the Pottawattamie County, Iowa, Onsite Wastewater Treatment and Disposal System Ordinance.

- B. Lots where onsite wastewater treatment and disposal systems are proposed shall provide adequate space for two (2) such systems. The area dedicated for the second system is provided as a back up when the first system fails.
- C. Onsite wastewater treatment and disposal systems, if approved, may be installed at the expense of the developer, or at the expense of a subsequent lot owner at the time development of the lot takes place.

It is the applicant's intent to serve the lots with onsite wastewater treatment and disposal systems.



November 24, 2021

Pottawattamie County Planning & Development
223 S 6th St #4
Council Bluffs, IA 51501

RE Schmidt Property-Mini Subdivision Development

To Whom It May Concern:

Larson Backhoe Service is a licensed septic system installer within the State of Iowa. We have reviewed and studied the proposed lots on the Schmidt Property located at or near 19012 Badger Avenue, Crescent, Iowa. It has been determined that all proposed lots are suitable to meet the State of Iowa requirements regarding septic system placements.

Thank You,

Larry Larson
Glen Vanderpool

Larry Larson and Glen Vanderpool
Larson Backhoe Service

WATER SUPPLY: It is the applicants' intent that the new building lots will be serviced by wells.

[Faint, illegible text, likely a signature or stamp area]

COVENANTS: The applicant's proposed covenants are shown in Attachment #2.

OTHER AGENICES COMMENTS: A copy of the preliminary plat has been forwarded to the following agencies.

Pottawattamie County Engineer (no comment received)
Crescent School District (no comment received)
Crescent Fire Department (no comment received)
Pottawattamie County Sheriff (no comment)

EXTERIOR ROAD: The proposed building lots will have direct shared access onto Badger Ave. Entrance permits have been secured with the Secondary Roads Department. The County Subdivision regulations require that all subdivisions be in areas in which the property lies immediately adjacent to and has access to a hardsurfaced street. This proposed subdivision, as previously noted, meets this requirement. The Iowa Department of Transportation Traffic Flow Map indicated an average traffic flow of 710 vehicles per day.

LAND USE PLAN: In 2015 the County Comprehensive Plan 2030 was adopted. That Plan designates the Future Land Use of the subject property as Loess Hills.

FLOOD HAZARD: The Flood Insurance Study prepared by the Federal Emergency Management Agency for the County designates in the Flood Insurance Rate Maps that the majority of the property as being in a Zone X-Areas of minimum flooding.

Preparer: Rachael Schmidt, 4421 North 174th Ave, Omaha, NE 68116, Phone: (402) 750-2128
Return to: Rachael Schmidt, 4421 North 174th Ave, Omaha, NE 68116

**DECLARATION OF RESTRICTIONS AND COVENANTS
SCHMIDT'S CREEK SUBDIVISION**

WHEREAS, Blake Schmidt and Rachael Schmidt, husband and wife (hereinafter referred to as the "Developer"), is the owner of Lots 1 through 4, Schmidt's Creek Subdivision to the Town of Crescent, Pottawattamie County, Iowa (hereinafter collectively referred to as the "Property"); and

WHEREAS, the Developer desires to establish a uniform plan for the residential development of the Property.

NOW, THEREFORE, the Developer does hereby create, establish, and adopt the following covenants and restrictions against and upon the Property, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title, or interest in the Property or any part thereof:

1. DEFINITIONS:

- (A) The term "City" shall be deemed to mean the City of Crescent, Pottawattamie County, Iowa.
- (B) The term "Lot" or "Lots" shall be deemed to mean all single-family Lots now or hereafter located on the Property, which are shown on any Final Plat of all or any portion of the Property; provided that said Final Plat has been filed in the office of the Recorder of Pottawattamie County, Iowa.
- (C) The term "Lot Owner" shall be deemed to mean the owner or owners of record of any Lot.
- (D) The term "Developer" shall be deemed to mean Blake and Rachael Schmidt.
- (E) The term "Property" shall be deemed to mean Lots 1 through 4, Schmidt's Creek Subdivision to the Town of Crescent, Pottawattamie County, Iowa.

2. PROPERTY AND ROADS:

- (A) The Property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Crescent, Pottawattamie County, Iowa and is more particularly described in Paragraph 1(E) above.

(B) No additional driveways can be created in order to comply with Pottawattamie County regulations.

3. No Lot or any dwelling hereafter placed or constructed on any Lot shall be used other than for single-family residential purposes. No more than one outbuilding may be constructed on any single Lot, excluding the residence, and shall be constructed of compatible and similar materials and design as the residence. The design and size of all buildings constructed upon a Lot must be approved by the Developer in accordance with below for the construction of the initial dwelling on the Lot. In addition, any dwelling or outbuilding must be constructed in conformance with the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations.

All buildings or structures erected upon the Lot shall be of new construction, built upon a slab and constructed to equivalent standards and of a like method to the residence on said Lot. No buildings of any type, accessory structures or structures of any type shall be moved from other locations onto the Lot. No structures of a temporary character, house trailer, trailer, mobile home, modular home, tent, shack, garage, barn, or other outbuildings shall at any time be used as a residence, temporarily or permanently.

4. No Lot, nor any building erected thereon shall at any time be used for the purpose of any trade, business, manufacturing, or for public amusements, excluding home based businesses approved by the Town of Crescent. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the subdivision.
5. The Lot Owner shall commence construction of a residence on its Lot within twenty-four (24) months from closing on the purchase of the Lot by the original Lot Owner from the Developer. The residence constructed on the Lot shall be completed within twelve (12) months after the commencement of construction. The period of twenty-four (24) months within which construction must be commenced shall be binding upon subsequent purchasers of any Lot and shall run from the initial conveyance from the Developer to a Lot Owner and shall not be extended without the written consent of Developer, which Developer may choose to extend at its complete and absolute discretion. In the event the Lot Owner does not commence construction of a residence on a Lot within twenty-four (24) months from the closing on the purchase of the Lot by the original Lot Owner from the Developer, then Developer shall have the right, at its option, to repurchase the Lot from the Lot Owner (including any subsequent Lot Owner acquiring the Lot from the original Lot Owner) for the price the original Lot Owner paid to Developer for the original purchase, less ten percent (10%) of the total original purchase price. Developer may exercise this option at any time after the expiration of twenty-four (24) months from the date of the initial conveyance of title from the Developer, so long as construction has not been commenced. Additionally, Developer shall have the first right of refusal to purchase any Lot if the Lot Owner desires to sell such Lot within twenty-four (24) months following the initial conveyance from Developer to a Lot Owner. During this period, Lot Owner shall give Developer immediate written notice of any accepted offer to purchase the Lot, and Developer shall have thirty (30) days after the date of the notice to

exercise its first right of refusal hereunder, by tendering its offer to purchase to Lot Owner on substantially the same terms and conditions of the prior accepted offer. If Developer does not exercise this first right of refusal to purchase within the thirty (30) day period, this right shall terminate, and Lot Owner may proceed to sell the Lot pursuant to the prior accepted offer. All options and first rights of refusal hereunder shall terminate upon completion of construction of the residence on the Lot.

6. The Developer reserves to itself and its assigns, the exclusive right to establish all grades and slopes upon all Lots and to fix the grade at which any dwelling shall be placed or constructed upon any Lot in conformity with the general plan for the development of the Property, and the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations. Once such grades, slopes, and/or contours have been established by the Developer, they shall not be changed in connection with the construction of any building or other improvement on a Lot without written permission from the Developer, but in no event will any such lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots. Notwithstanding the foregoing, any dwelling placed or constructed upon a Lot by a Lot Owner shall comply with the "Lowest Allowable Building Opening Elevation" set forth on the Final Plat approving such Lot and shall be constructed in conformance with the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations. All rights under this paragraph shall be binding upon subsequent purchasers of the Lot and shall run from the initial conveyance from the Developer.

7. MAINTENANCE AND REPAIR RESPONSIBILITIES

- (A) Each Lot Owner shall be responsible for implementing and maintaining adequate erosion control measures on its Lot. The adequacy of erosion control measures on a Lot shall be subject to continual review during constructions and until all sod has been established on the Lot. Each Lot Owner shall be responsible for the enforcement and monitoring of these obligations for all contractors and suppliers performing work upon its Lot. Developer shall have the right to require any Lot Owner to maintain silt fences, straw bales, or other additional measures if soil is observed to be eroding onto abutting Lots, sidewalk, or into any street or storm sewer swale. In the event any Lot Owner fails or refuses to perform any required implementation or maintenance of erosion control measures, the Developer after twenty-four (24) hours' notice to the Lot Owner in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the Lot Owner who is or was the Lot Owner failing to perform its obligations, shall bear interest at the rate of fourteen percent (14%) per annum, shall be a lien upon the Lot assessed, and the Developer incurring such cost shall be entitled to file a lien with the office of the Recorder of Pottawattamie County, Iowa regarding the same until such costs are fully paid by the Lot Owner.

(B) Each Owner of a Lot shall be responsible for all interior and exterior maintenance, painting, repair and upkeep on such Owner's Lot and the improvements thereon. Each Owner shall also be responsible for the upkeep and maintenance of the individual yard, landscaping, driveways, and for maintaining all side and rear yard swales.

(C) No fence shall be allowed in the front yard of any Lot. If an approved fence is located on a property line between two Lots, it shall be maintained and repaired jointly by the Owners of both Lots. There shall be an access gate upon each of said approved fences for the purpose of allowing utility personnel and other public employee's access to the Lots in the performance of their respective public duties.

8. ARCHITECTURAL CONTROL - The following general standards of initial development shall guide the Developer in the review of any plans for dwelling structures submitted for approval. These standards shall not be relied upon, interpreted, or applied as absolute requirements for plan approvals.

Plans for the initial dwelling to be placed or constructed upon any Lot shall show the size, exterior material and exterior color, design, and plot plan for the building. One set of such plans shall be left on permanent file with the Developer. The construction of the initial dwelling or other structure on any Lot shall not be commenced unless and until written approval of the plans for the building has first been obtained from the Developer. Written approval or disapproval of such plans shall be given by the Developer within thirty (30) days from and after the receipt thereof. Approval of such plans shall not be unreasonably withheld. In the event of the disapproval of such plans, a written statement of the grounds for such disapproval shall be given. The Developer, however, reserves to itself and its assigns the exclusive right to approve or disapprove any such plans, if in its sole opinion either the size, material, or exterior plan do not conform to the general design standard, and overall development characteristics of the Property.

However, notwithstanding the foregoing, the Developer's ability to allow for the reduction to the "Minimum Floor Area" set forth below shall not exceed ten percent (10%) of the "Minimum Floor Area" set forth below.

(A) Minimum Floor Area. The minimum floor area for any dwelling exclusive of basements, garages, porches, patios, decks, or enclosed decks shall be as follows:

- a. Single Story Ranch Style: 1,500 sq. ft.
- b. Two Story or Story and 1/2: 2,000 sq. ft.

(B) Exterior Finish.

- a. Approval. The exterior finish materials and colors shall be approved by the Developer.
- b. Front Elevation. The front elevation shall be covered with at least 20% brick, stone, stucco or board and batten siding. There shall be no exposed foundation on the front elevation of any dwelling.

- c. Exposed Foundation. Exposed foundation walls other than the front elevation shall not exceed 24 inches and shall be painted or sided to match the exterior color scheme of the dwelling.
- d. Roof and Roofing Materials. All dwellings shall be roofed in a gable or hip style and shall include an overhang of at least twelve inches (12"). Roofing materials shall be metal or equal to or better than an architectural grade shingle which provide as an appearance of depth and has a thirty (30) year life expectancy or more.

(C) Attached Garage. All dwellings shall have at least a full size, two stall attached garage which shall not exceed the height of the dwelling.

(D) Solar Panels. Any active solar panels shall be flush with the roof or side wall of a dwelling and shall not be located in any required yard or upon any accessory structure.

All dwellings and outbuildings located on any Lot shall be constructed in conformity with the requirements of the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations.

9. No partially completed dwelling or temporary building and no tent or shack on any Lot located on the Property shall be used as either a temporary or permanent residence; except that the Developer or any builder constructing homes on the Property may use temporary buildings for storage of any tools and materials used in constructing homes and the general development of the subdivision.
10. No wires, antennas, or other equipment for electric power or electronic shall be permitted on any Lot, except underground or within a building; provided a satellite dish up to eighteen inches (18") in circumference shall be permitted.
11. No noxious or offensive activity shall be carried on or permitted upon any Lot; nor shall anything be done thereon which is or may become an annoyance or nuisance to the adjoining Lots or endanger the health or unreasonably disturb the quiet of the owners or occupants of adjoining Lots. Lot Owners shall not be allowed to discharge firearms on the Lots; however, a Lot Owner shall be allowed to bow hunt on his or her Lot so long as bow hunting does not otherwise violate any local law. This Paragraph does not grant an easement for any Lot Owner to bow hunt on another Lot without the other Lot Owner's permission.
12. No advertising signs, billboards, or other advertising device shall be erected, placed, or permitted on any Lot, provided however, that the Developer may place signs advertising Lots for sale, and provided further, that a sign advertising a Lot for sale may be placed upon such Lot by the Lot Owner.
13. No reptiles, horses, livestock, or swine of any kind shall be raised, bred or kept on any of the Lots, except a Lot Owner may maintain chickens on a Lot through the use of a

chicken coop. Dogs, cats or other household pets (exclusive of any reptiles or animals mentioned in the immediately preceding sentence) may be kept on the Lots provided they are not kept, bred or maintained for any commercial purpose as regulated by Town ordinance. All household pets shall be confined within homes or fenced areas or restrained by leash at all times. The Pottawattamie County Code and the City's Municipal Code shall be used in determining the number of animals that are allowed per Lot.

14. No recreational vehicle shall be parked or stored on or in front yard of any Lot, except within an enclosed structure; provided, however, that recreational vehicles may be temporarily parked on or in front of a Lot for a period of time not to exceed twenty-one (21) days per year. For purposes of this paragraph, "recreational vehicle" shall mean a vehicular unit not exceeding forty feet (40') in overall length, eight feet (8') in depth, or twelve feet (12') in overall height, primarily designed as temporary living quarters for recreational camping or travel use having either its own motive power or designed to be mounted on or drawn by an automotive vehicle. Recreational vehicle includes motor home, truck camper, travel trailer, camping trailer, and fifth wheel. It shall also include a boat mounted on a trailer, together not exceeding forty feet (40') in body length, eight feet (8') in width, or twelve feet (12') in overall height. Lawn tractors may be kept and used for property maintenance but must be stored out of view of other Lots.
15. All pools shall be in compliance with all applicable regulations, ordinances, safety codes and requirements. No aboveground or portable pools shall be allowed on the Lot.
16. Fencing and types of fencing shall require approval from the Developer prior to commencement of construction. No fences shall be allowed in the front yard of any Lot. All fences placed on a Lot shall be black chain-link or black wrought iron fencing and shall never exceed six feet (6') in height. No fences shall be constructed in any drainage way or easement noted on any Final Plat of the Property or any other relevant documents. All fencing must comply with and be constructed in conformance with the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations.
17. In the event the Lot Owners determine it would be in the best interests of the Lot Owners to form an Iowa nonprofit corporation at a later date after the Developer has terminated its rights, the Lot Owners shall have the right to do so if two-thirds (2/3) or more of the Lot Owners vote in favor of creating an Iowa nonprofit corporation to serve as a homeowners' association (the "Future Association") for the Property. In the event a Future Association is created, each Lot Owner shall be a member of such Future Association; however, the foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure or upon another proceeding in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of each Lot. Each Lot shall have one (1) vote on all matters relating to the Future Association and no more than one (1) vote shall be cast with respect to any Lot even if such Lot has more than one (1) owner.

18. In the event a Future Association is created, such Future Association shall have all powers conferred upon nonprofit corporations by the Iowa Nonprofit Corporation Act, and all powers necessary and appropriate to enforce these covenants and restrictions. Such powers shall specifically include the power to fix, levy, collect, abate, and enforce charges, dues, and assessments against the Lot Owners as deemed necessary by the Future Association to properly manage such Future Association. All charges, dues, and assessments shall be levied equally against all Lot Owners. Any charge, due, and/or assessment shall be payable in full by the Lot Owner within thirty (30) days of the Future Association providing written notice of such charge, due, and/or assessment to the Lot Owner. Any charge, due, and/or assessment not paid within such time frame by the Lot Owner shall accrue interest at a rate of fourteen percent (14%) per annum against the Lot Owner. All collection costs (including reasonable attorney fees) incurred by the Future Association to collect such charges, dues, and assessments, shall be a charge against the Lot Owner. Any unpaid charge, due, assessment, interest, and/or collection cost (including reasonable attorney fees) shall be a lien against the Lot and a personal obligation of the Lot Owner (with joint and several liability if there are more than one owner of a Lot). The Future Association shall have the right to file a lien against such Lot if the Lot Owner fails to pay the charge, due, assessment, interest, and/or collection cost (including reasonable attorney fees). The lien of any such charge, due, and/or assessment by a Lot Owner shall be subordinate to the first mortgage lien and also to any other mortgage placed of record prior to the filing of the lien for the unpaid charge, due, assessment, interest, or collection cost.
19. All Lot Owners agree to abide by all rules and regulations, if any, promulgated by a Future Association and to any other mortgage placed of record prior to the filing of the lien for the unpaid charge, due, assessment, interest, or collection cost.
20. The Developer may, at any time prior to the termination of its rights hereof, add contiguous similarly developed real estate to the Property without the consent or approval of the Lot Owners, subject to all zoning and subdivision requirements of the City. Such additions shall be made by the Developer's recordation of an addendum adding the legal description of such additional real estate to the definition of "Property" contained in these covenants and restrictions at the office of the Recorder of Pottawattamie County, Iowa, thereby subjecting the additional real estate to the covenants and restrictions set forth herein or as amended or restated.
21. Developer's rights and obligations hereunder shall terminate by Developer filing a notice of termination of rights hereunder with the office of the Recorder of Pottawattamie County, Iowa. Upon such termination, the Developer shall be deemed to assign all its rights and obligations hereunder to a Future Association, if a Future Association is ever created.
22. These covenants and restrictions shall run with the Property and shall be binding upon and enforceable against the Developer, Future Association, all members of a potential Future Association, Lot Owners, and all their respective heirs, executors, administrators, successors and assigns.

23. These covenants and restrictions can be amended, restated, and/or terminated after the Developer's rights hereunder are terminated by the affirmative vote of at least two-thirds (2/3) of the Lots. Until the Developer's rights hereunder are terminated, the Developer reserves the right to amend these covenants unilaterally without the consent or permission of any Lot Owners. Any amendment, restatement, or termination shall be in writing and filed with the office of the Recorder of Pottawattamie County, Iowa.
24. Pursuant to Iowa Code §614.24, these covenants and restrictions are valid and binding for a period of twenty-one (21) years from the date they are recorded with the office of the Recorder of Pottawattamie County, Iowa. These covenants and restrictions do not automatically renew. These covenants and restrictions may be extended pursuant to Iowa Code §614.24 by filing a verified claim with the office of the Recorder of Pottawattamie County, Iowa prior to their expiration.
25. The enforcement of these restrictions and covenants shall be by proceedings at law or in equity against any Lot Owner violating or attempting to violate any provisions hereof. Such proceedings may be to restrain such violation or to recover damages. Additionally, such proceeding may be commenced by the Future Association to enforce the payment of any charges, dues, assessments, interest, and/or collection costs. If any action is brought in any court to enforce the terms or provisions of any of these covenants and restrictions, or to collect any unpaid charge, due, assessment, interest, or collection costs, against any Lot Owner, then the Developer, Lot Owner, or Future Association instituting such proceeding shall be entitled to an award of all costs and fees (including reasonable attorney fees) incurred in connection with such proceeding against the Lot Owner violating these covenants and restrictions, if the party instituting the proceeding is successful.
26. Failure of the of Developer, Future Association, or any Lot Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.
27. The invalidation of any one of the covenants or restrictions shall not affect the validity of the remaining provisions hereof which shall remain in full force and effect.

Prepared by: Blake and Rachael Schmidt
12/9/2021

Case # SUB-2021-04
Attachment #2

**DECLARATION OF RESTRICTIONS AND COVENANTS
SCHMIDT'S CREEK SUBDIVISION**

WHEREAS, Blake and Rachael Schmidt, (hereinafter referred to as the "Developer"), is the owner of Lots 1 through 4, Schmidt's Creek Subdivision to the Town of Crescent, Pottawattamie County, Iowa (hereinafter collectively referred to as the "Property"); and

WHEREAS, the Developer desires to establish a uniform plan for the residential development of the Property.

NOW, THEREFORE, the Developer does hereby create, establish, and adopt the following covenants and restrictions against and upon the Property, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title, or interest in the Property or any part thereof:

1. DEFINITIONS:

- (A) The term "City" shall be deemed to mean the City of Crescent, Pottawattamie County, Iowa.
- (B) The term "Lot" or "Lots" shall be deemed to mean all single-family Lots now or hereafter located on the Property, which are shown on any Final Plat of all or any portion of the Property; provided that said Final Plat has been filed in the office of the Recorder of Pottawattamie County, Iowa.
- (C) The term "Lot Owner" shall be deemed to mean the owner or owners of record of any Lot.
- (D) The term "Developer" shall be deemed to mean Blake and Rachael Schmidt.
- (E) The term "Property" shall be deemed to mean Lots 1 through 4, Schmidt's Creek Subdivision to the Town of Crescent, Pottawattamie County, Iowa.

2. PROPERTY AND ROADS:

- (A) The Property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Crescent, Pottawattamie County, Tennessee and is more particularly described in Exhibit "A" attached hereto and made a part hereof.
- (B) No additional driveways can be created in order to comply with Pottawattamie County regulations.

3. No Lot or any dwelling hereafter placed or constructed on any Lot shall be used other than for single-family residential purposes. No more than one outbuilding may be constructed on any single Lot, excluding the residence, and shall be constructed of compatible and similar materials and design as the residence. The design and size of all buildings constructed upon a Lot must be approved by the Developer in accordance with below for the construction of the initial dwelling on the Lot. In addition, any dwelling or outbuilding must be constructed in conformance with the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations.

All buildings or structures erected upon the Lot shall be of new construction, built upon a slab and constructed to equivalent standards and of a like method to the residence on said Lot. No buildings of any type, accessory structures or structures of any type shall be moved from other locations onto the Lot. No structures of a temporary character, house trailer, trailer, mobile home, modular home, tent, shack, garage, barn, or other outbuildings shall at any time be used as a residence, temporarily or permanently.

4. No Lot, nor any building erected thereon shall at any time be used for the purpose of any trade, business, manufacturing, or for public amusements, excluding home based businesses approved by the Town of Crescent. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the subdivision.
5. The Lot Owner shall commence construction of a residence on its Lot within twenty-four (24) months from closing on the purchase of the Lot by the original Lot Owner from the Developer. The residence constructed on the Lot shall be completed within twelve (12) months after the commencement of construction. The period of twenty-four (24) months within which construction must be commenced shall be binding upon subsequent purchasers of any Lot and shall run from the initial conveyance from the Developer to a Lot Owner and shall not be extended without the written consent of Developer, which Developer may choose to extend at its complete and absolute discretion. In the event the Lot Owner does not commence construction of a residence on a Lot within twenty-four (24) months from the closing on the purchase of the Lot by the original Lot Owner from the Developer, then Developer shall have the right, at its option, to repurchase the Lot from the Lot Owner (including any subsequent Lot Owner acquiring the Lot from the original Lot Owner) for the price the original Lot Owner paid to Developer for the original purchase, less ten percent (10%) of the total original purchase price. Developer may exercise this option at any time after the expiration of twenty-four (24) months from the date of the initial conveyance of title from the Developer, so long as construction has not been commenced. Additionally, Developer shall have the first right of refusal to purchase any Lot if the Lot Owner desires to sell such Lot within twenty-four (24) months following the initial conveyance from Developer to a Lot Owner. During this period, Lot Owner shall give Developer immediate written notice of any accepted offer to purchase the Lot, and Developer shall have thirty (30) days after the date of the notice to exercise its first right of refusal hereunder, by tendering its offer to purchase to Lot Owner on substantially the same terms and conditions of the prior accepted offer. If Developer does not exercise this first right of refusal to purchase within the thirty (30) day period, this right shall terminate, and Lot Owner may proceed to sell the Lot pursuant to the prior accepted offer. All options and first rights of refusal hereunder shall terminate upon completion of construction of the residence on the Lot.
6. The Developer reserves to itself and its assigns, the exclusive right to establish all grades and slopes upon all Lots and to fix the grade at which any dwelling shall be placed or constructed upon any Lot in conformity with the general plan for the development of the Property, and the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations. Once such grades, slopes, and/or contours have

been established by the Developer, they shall not be changed in connection with the construction of any building or other improvement on a Lot without written permission from the Developer, but in no event will any such lot be graded or sloped so as to change the flow of surface waters to or from adjoining Lots. Notwithstanding the foregoing, any dwelling placed or constructed upon a Lot by a Lot Owner shall comply with the "Lowest Allowable Building Opening Elevation" set forth on the Final Plat approving such Lot and shall be constructed in conformance with the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations. All rights under this paragraph shall be binding upon subsequent purchasers of the Lot and shall run from the initial conveyance from the Developer.

7. MAINTENANCE AND REPAIR RESPONSIBILITIES

- (A) Each Lot Owner shall be responsible for implementing and maintaining adequate erosion control measures on its Lot. The adequacy of erosion control measures on a Lot shall be subject to continual review during constructions and until all sod has been established on the Lot. Each Lot Owner shall be responsible for the enforcement and monitoring of these obligations for all contractors and suppliers performing work upon its Lot. Developer shall have the right to require any Lot Owner to maintain silt fences, straw bales, or other additional measures if soil is observed to be eroding onto abutting Lots, sidewalk, or into any street or storm sewer swale. In the event any Lot Owner fails or refuses to perform any required implementation or maintenance of erosion control measures, the Developer after twenty-four (24) hours' notice to the Lot Owner in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance, together with a ten percent (10%) administrative fee, shall be the personal obligation of the Lot Owner who is or was the Lot Owner failing to perform its obligations, shall bear interest at the rate of fourteen percent (14%) per annum, shall be a lien upon the Lot assessed, and the Developer incurring such cost shall be entitled to file a lien with the office of the Recorder of Pottawattamie County, Iowa regarding the same until such costs are fully paid by the Lot Owner.
- (B) Each Owner of a Lot shall be responsible for all interior and exterior maintenance, painting, repair and upkeep on such Owner's Lot and the improvements thereon. Each Owner shall also be responsible for the upkeep and maintenance of the individual yard, landscaping, driveways, and for maintaining all side and rear yard swales.
- (C) No fence shall be allowed in the front yard of any Lot. If an approved fence is located on a property line between two Lots, it shall be maintained and repaired jointly by the Owners of both Lots. There shall be an access gate upon each of said approved fences for the purpose of allowing utility personnel and other public employee's access to the Lots in the performance of their respective public duties.

8. **ARCHITECTURAL CONTROL** - The following general standards of initial development shall guide the Developer in the review of any plans for dwelling structures submitted for approval. These standards shall not be relied upon, interpreted, or applied as absolute requirements for plan approvals.

Plans for the initial dwelling to be placed or constructed upon any Lot shall show the size, exterior material and exterior color, design, and plot plan for the building. One set of such plans shall be left on permanent file with the Developer. The construction of the initial dwelling or other structure on any Lot shall not be commenced unless and until written approval of the plans for the building has first been obtained from the Developer. Written approval or disapproval of such plans shall be given by the Developer within thirty (30) days from and after the receipt thereof. Approval of such plans shall not be unreasonably withheld. In the event of the disapproval of such plans, a written statement of the grounds for such disapproval shall be given. The Developer, however, reserves to itself and its assigns the exclusive right to approve or disapprove any such plans, if in its sole opinion either the size, material, or exterior plan do not conform to the general design standard, and overall development characteristics of the Property.

However, notwithstanding the foregoing, the Developer's ability to allow for the reduction to the "Minimum Floor Area" set forth below shall not exceed ten percent (10%) of the "Minimum Floor Area" set forth below.

- (A) Minimum Floor Area. The minimum floor area for any dwelling exclusive of basements, garages, porches, patios, decks, or enclosed decks shall be as follows:
- a. Single Story Ranch Style: 1,500 sq. ft.
 - b. Two Story or Story and 1/2: 2,000 sq. ft.

(B) Exterior Finish.

- a. Approval. The exterior finish materials and colors shall be approved by the Developer.
- b. Front Elevation: The front elevation shall be covered with at least 20% brick, stone, stucco or board and batten siding. There shall be no exposed foundation on the front elevation of any dwelling.
- c. Exposed Foundation. Exposed foundation walls other than the front elevation shall not exceed 24 inches and shall be painted or sided to match the exterior color scheme of the dwelling.
- d. Roof and Roofing Materials. All dwellings shall be roofed in a gable or hip style and shall include an overhang of at least twelve inches (12"). Roofing materials shall be metal or equal to or better than an architectural grade shingle which provide as an appearance of depth and has a thirty (30) year life expectancy or more.

- (C) Attached Garage. All dwellings shall have at least a full size, two stall attached garage which shall not exceed the height of the dwelling.

(D) Solar Panels. Any active solar panels shall be flush with the roof or side wall of a dwelling and shall not be located in any required yard or upon any accessory structure.

All dwellings and outbuildings located on any Lot shall be constructed in conformity with the requirements of the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations.

9. No partially completed dwelling or temporary building and no tent or shack on any Lot located on the Property shall be used as either a temporary or permanent residence; except that the Developer or any builder constructing homes on the Property may use temporary buildings for storage of any tools and materials used in constructing homes and the general development of the subdivision.
10. No wires, antennas, or other equipment for electric power or electronic shall be permitted on any Lot, except underground or within a building; provided a satellite dish up to eighteen inches (18") in circumference shall be permitted.
11. No noxious or offensive activity shall be carried on or permitted upon any Lot including but not limited to discharging firearms on the Lot; nor shall anything be done thereon which is or may become an annoyance or nuisance to the adjoining Lots or endanger the health or unreasonably disturb the quiet of the owners or occupants of adjoining Lots. Bow hunting is permitted on Lot, however no trespassing for hunting beyond Lot Owner's property line.
12. No advertising signs, billboards, or other advertising device shall be erected, placed, or permitted on any Lot, provided however, that the Developer may place signs advertising Lots for sale, and provided further, that a sign advertising a Lot for sale may be placed upon such Lot by the Lot Owner.
13. No reptiles, horses, livestock, or swine of any kind shall be raised, bred or kept on any of the Lots. Dogs, cats, other household pets (exclusive of any reptiles or animals mentioned in the immediately preceding sentence) and chickens with a chicken coop may be kept on the Lots provided they are not kept, bred or maintained for any commercial purpose as regulated by Town ordinance. All household pets shall be confined within homes or fenced areas or restrained by leash at all times. The Pottawattamie County Code and the City's Municipal Code shall be used in determining the number of animals that are allowed per Lot.
14. No recreational vehicle shall be parked or stored on or in front yard of any Lot, except within an enclosed structure; provided, however, that recreational vehicles may be temporarily parked on or in front of a Lot for a period of time not to exceed twenty-one (21) days per year. For purposes of this paragraph, "recreational vehicle" shall mean a vehicular unit not exceeding forty feet (40') in overall length, eight feet (8') in depth, or twelve feet (12') in overall height, primarily designed as temporary living quarters for recreational camping or travel use having either its own motive power or designed to be

mounted on or drawn by an automotive vehicle. Recreational vehicle includes motor home, truck camper, travel trailer, camping trailer, and fifth wheel. It shall also include a boat mounted on a trailer, together not exceeding forty feet (40') in body length, eight feet (8') in width, or twelve feet (12') in overall height. Lawn tractors may be kept and used for property maintenance but must be stored out of view of other Lots.

15. All pools shall be in compliance with all applicable regulations, ordinances, safety codes and requirements. No aboveground or portable pools shall be allowed on the Lot.
16. Fencing and types of fencing shall require approval from the Developer prior to commencement of construction. No fences shall be allowed in the front yard of any Lot. All fences placed on a Lot shall be black chain-link or black wrought iron fencing and shall never exceed six feet (6') in height. No fences shall be constructed in any drainage way or easement noted on any Final Plat of the Property or any other relevant documents. All fencing must comply with and be constructed in conformance with the City's Municipal Code including, but not limited to, its zoning, subdivision, and building regulations.
17. The Property does include creek as a common area. The Developer maintains control of decisions regarding improvements to the creek including but not limited to dredging, tree removal, and enhancements for stream functionality and habitat. Lot Owner must obtain approval by Developer for any removal of trees near or in the creek.
18. In the event the Lot Owners determine it would be in the best interests of the Lot Owners to form an Iowa nonprofit corporation at a later date after the Developer has terminated its rights, the Lot Owners shall have the right to do so if two-thirds (2/3) or more of the Lot Owners vote in favor of creating an Iowa nonprofit corporation to serve as a homeowners' association (the "Future Association") for the Property. In the event a Future Association is created, each Lot Owner shall be a member of such Future Association; however, the foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure or upon another proceeding in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of each Lot. Each Lot shall have one (1) vote on all matters relating to the Future Association and no more than one (1) vote shall be cast with respect to any Lot even if such Lot has more than one (1) owner.
19. In the event a Future Association is created, such Future Association shall have all powers conferred upon nonprofit corporations by the Iowa Nonprofit Corporation Act, and all powers necessary and appropriate to enforce these covenants and restrictions. Such powers shall specifically include the power to fix, levy, collect, abate, and enforce charges, dues, and assessments against the Lot Owners as deemed necessary by the Future Association to properly manage such Future Association. All charges, dues, and assessments shall be levied equally against all Lot Owners. Any charge, due, and/or assessment shall be payable in full by the Lot Owner within thirty (30) days of the Future Association providing written notice of such charge, due, and/or assessment to the Lot

Owner. Any charge, due, and/or assessment not paid within such time frame by the Lot Owner shall accrue interest at a rate of fourteen percent (14%) per annum against the Lot Owner. All collections costs (including reasonable attorney fees) incurred by the Future Association to collect such charges, dues, and assessments, shall be a charge against the Lot Owner. Any unpaid charge, due, assessment, interest, and/or collection cost (including reasonable attorney fees) shall be a lien against the Lot and a personal obligation the Lot Owner (with joint and several liability if there are more than one owner of a Lot). The Future Association shall have the right to file a lien against such Lot if the Lot Owner fails to pay the charge, due, assessment, interest, and/or collection cost (including reasonable attorney fees). The lien of any such charge, due, and/or assessment by a Lot Owner shall be subordinate to the first mortgage lien and also to any other mortgage placed of record prior to the filing the lien for the unpaid charge, due, assessment, interest, or collection cost.

20. All Lot Owners agree to abide by all rules and regulations, if any, promulgated by a Future Association and to any other mortgage placed of record prior to the filing the lien for the unpaid charge, due, assessment, interest, or collection cost.
21. The Developer may, at any time prior to the termination of its rights hereof, add contiguous similarly developed real estate to the Property without the consent or approval of the Lot Owners, subject to all zoning and subdivision requirements of the City. Such additions shall be made by the Developer's recordation of an addendum adding the legal description of such additional real estate to the definition of "Property" contained in these covenants and restrictions at the office of the Recorder of Pottawattamie County, Iowa, thereby subjecting the additional real estate to the covenants and restrictions set forth herein or as amended or restated.
22. Developer's rights and obligations hereunder shall terminate by Developer filing a notice of termination of rights hereunder with the office of the Recorder of Pottawattamie County, Iowa. Upon such termination, the Developer shall be deemed to assign all its rights and obligations hereunder to a Future Association, if a Future Association is ever created.
23. These covenants and restrictions shall run with the Property and shall be binding upon and enforceable against the Developer, Future Association, all members of a potential Future Association, Lot Owners, and all their respective heirs, executors, administrators, successors and assigns.
24. These covenants and restrictions can be amended, restated, and/or terminated after the Developer's rights hereunder are terminated by the affirmative vote of at least two-thirds (2/3) of the Lots. Any amendment, restatement, or termination shall be in writing and filed with the office of the Recorder of Pottawattamie County, Iowa.
25. Pursuant to Iowa Code §614.24, these covenants and restrictions are valid and binding for a period of twenty-one (21) years from the date they are recorded with the office of the Recorder of Pottawattamie County, Iowa. These covenants and restrictions do not

automatically renew. These covenants and restrictions may be extended pursuant to Iowa Code §614.24 by filing a verified claim with the office of the Recorder of Pottawattamie County, Iowa prior to their expiration.

26. The enforcement of these restrictions and covenants shall be by proceedings at law or in equity against any Lot Owner violating or attempting to violate any provisions hereof. Such proceedings may be to restrain such violation or to recover damages. Additionally, such proceeding may be commenced by the Future Association to enforce the payment of any charges, dues, assessments, interest, and/or collection costs. If any action is brought in any court to enforce the terms or provisions of any of these covenants and restrictions, or to collect any unpaid charge, due, assessment, interest, or collection costs, against any Lot Owner, then the Developer, Lot Owner, or Future Association instituting such proceeding shall be entitled to an award of all costs and fees (including reasonable attorney fees) incurred in connection with such proceeding against the Lot Owner violating these covenants and restrictions, if the party instituting the proceeding is successful.
27. Failure of the of Developer, Future Association, or any Lot Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.
28. The invalidation of any one of the covenants or restrictions shall not affect the validity of the remaining provisions hereof which shall remain in full force and effect.

Dated: 12/3/2021

By: Blake and Rachael Schmidt