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Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

David P. Schneider - Schneider Land Surveying & Planning, Inc. P.O. Box 128 Farley, Iowa 52046 Ph# 563-744-3631

AFFIDAVIT

State of Iowa)
) ss:
Dubuque County)

I, David P. Schneider, being duly sworn under oath do depose and state as follows:

1. That I am a duly licensed land surveyor under the laws of the State of Iowa.

2. That I prepared a Plat of Survey of **PARCEL 2017-66 OF PART OF PARCEL 2016-02 IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 89 NORTH, RANGE 3 WEST OF THE 5th P.M., CITY OF DYERSVILLE, DELAWARE COUNTY, IOWA, AND PARCEL 2017-67 OF PART OF PARCEL 2016-02 IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 89 NORTH, RANGE 3 WEST OF THE 5th P.M., CITY OF DYERSVILLE, DELAWARE COUNTY, IOWA.**

3. That the Plat of Survey was filed for record on August 25, 2017 in Book 2017 at Page 2349 in the Office of the Recorder of Delaware County, Iowa.

4. That the Plat of Survey was filed without going through the City of Dyersville review process, even though the property was within the two-mile jurisdictional review area.

5. That the Plat of Survey was reviewed by the City of Dyersville Planning and Zoning Commission on October 9, 2017 with a motion to deny. The motion to deny was voted on and the motion carried. See attached Planning and Zoning Commission Meeting 2nd Item on **Exhibit A**.

6. That the Plat of Survey of **PARCEL 2017-66 AND PARCEL 2017-67** filed for record on August 25, 2017 in Book 2017 at Page 2349 in the Office of the Recorder of Delaware County, Iowa, should not be used to transfer real estate and should be considered null and void.

7. That the property should be transfer as illustrated on the plat of survey of **PARCEL 2016-02 IN PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER IN SECTION 36, TOWNSHIP 89 NORTH, RANGE 3 WEST OF THE 5th P.M., CITY OF DYERSVILLE, DELAWARE COUNTY, IOWA**, filed for record on February 26, 2016 in Book 2016 at Page 450 in the Office of the Recorder of Delaware County, Iowa.

Dated at Farley, Iowa, this 19 day of December 2017.

LICENSED LAND SURVEYOR
DAVID P. SCHNEIDER
14417
IOWA

David P. Schneider, P.L.S.
Registration No. 14417

Subscribed and sworn to before me by David P. Schneider this 19 day of December 2017.

NOTARIAL SEAL IOWA
ROSE M. SCHNEIDER
Commission Number 712891
My Comm. Exp. OCT 4, 2019

Notary Public in and for the State of Iowa
My commission expires Oct. 4, 2019

EXHIBIT A

PLANNING & ZONING COMMISSION MEETING

CITY OF DYERSVILLE

October 9, 2017

Meeting called to order by Chairman Olberding at 6:30 P.M.

Roll Call: Present: Commission Members: Roger Gibbs, Mike Murphy, Dan Olberding, Wayne Stelken, Matt Tauke, Bec Willenborg
Absent: Ryan Cahill

1st Item: Approve Minutes of the September 11, 2017 Meeting

Chairman Olberding asked for questions or comments and there were none.

Willenborg made a motion to approve the September 11, 2017 Minutes. Motion seconded by Murphy.

Roll Call Vote: **Ayes:** Roger Gibbs, Mike Murphy, Dan Olberding, Wayne Stelken, Matt Tauke, Bec Willenborg
Nays:

Motion Carried

2nd Item: Approve Plat of Survey Parcel 2017-66 of Part of Parcel 2016-02 in the Southwest Quarter of the Northeast Quarter of Section 36, Township 89 North, Range 3 West of the 5th P.M., City of Dyersville, Delaware County, Iowa, and Parcel 2017-67 of Part of Parcel 2016-02 in the Southwest Quarter of the Northeast Quarter of Section 36, Township 89 North, Range 3 West of the 5th P.M., City of Dyersville, Delaware County, Iowa. Plat submitted by Jerry Koch.

Jerry Koch and Dave Schneider, the surveyor, were not present.

City Administrator, Mick Michel, advised a 25' strip from property line to property line is being carved off. He said the plat seems self-explanatory. He does have some issues but would like to give those in the audience an opportunity to voice their opinions.

Ben Schroeder with Bard Materials was present. He advised Bard still owns both parcels but Jerry Koch is the potential buyer of the 25' strip. Schroeder advised he was told Koch wants to purchase the strip because it lines up with his development plans and 12th Street. Schroeder advised he has no idea what those plans are or what they look like. He could not get Koch to attend the meeting. He asked that if the Committee had any issue they not deny the plat but table it until Koch could be present to answer their questions. Murphy questioned if the committee did something on this a while back. He seems to remember something. He was told It was splitting the current parcel off from the other Bard property. The committee questioned what property Bard owns and what Koch owns. Schroeder approached the committee and showed them what he owns.

Bill Hermsen, 2104 332nd Avenue, was present and advised he is opposed to this plat. He read this an easement and does not want an easement going into the pond. He feels Koch plans to

use this parcel to drain runoff into the pond and he doesn't want that to happen. Hermsen was advised there is no easement. Michel advised he understands what Hermsen is saying. In theory, Koch can re-channel the existing drainage ditch into the pond. Hermsen asked if the 25' strip lines up with the current drainage ditch; it does line up with the existing drainage ditch. Michel advised this is indicated on the aerial view map in their packet.

Mark Tegeler, 2100 332nd Avenue, gave some history on this area. There used to be 3 water ways from the south that drained into the Bear Creek. As Bard mined the sand it breached the water ways. A few years ago, when we had all the rain, it raised the pond about 4 inches. All that water came from the south. The drainage ditch was built to help divert the water from the pond. Since then there hasn't been enough rain to prove whether it works or not. The problem was not only with the water but with all the debris that also flowed in that created a big mess. Koch has been trying to get the water back into the pond ever since he started plans on developing the area. It appears he wants to sell lots right up along the lake and jeopardize those on the other side. Tegeler advised he and Milbert have walkout basements and there is the potential of water in their basements if everything is directed to the pond.

Tegeler had questions for Michel. He stated when he talked to Michel about selling the other side of the lake, Michel talked about the 100 year flood. Tegeler asked if he put fill in would he be able to build. Michel advised he could but the council would probably not approve a permit. Tegeler wants to know if Koch will be able to build? Michel advised Tegeler he could apply for a flood plain development permit but some of his property was in the floodway which is different than the flood plain. Michel advised Koch's property is not in the floodplain. There is a small part that is in the flood fringe area. There is a two-step process for building in the floodway and a permit is very difficult to get. Tegeler advised he has seen more water where Koch wants to build than on the other side of the lake. Michel advised the city initiated a storm water analysis study on the south side of the pond and the city has not received it yet. Tegeler asked what the city opinion is on channeling the water to the lake versus Bear Creek. Michel advised the city does not have one until the study comes in, there may be other ways to handle the water. Olberding asked when the study will be ready and Michel advised in about 3-6 months. Tegeler stated that it seems the concern for most everyone at the meeting is what is going to happen to the runoff.

Michel stated the runoff issue is for another time. At this time, the commission is considering the parcel itself. Michel agrees it does offer the developer a way to channel runoff into the pond without the cities permission. Michel's concern is the parcel, the width, and if this is the appropriate way to handle it. Should the spit be a separate parcel or should it be combined with the adjoining. The board will need to determine that.

Murphy wanted clarification on current ownership and what the plans are. He was advised Bard wants to divide a 25' strip from the larger parcel and sell the strip to Koch. Schroeder stated he does not have the answers regarding the development. Schroeder asked if Koch could just start development of if he would need to get approval. Michel advised he would need to go through the subdividing process and drainage questions would be answered at time of development.

Wayne Wessels, lives in Manchester and represents Tegeler Sand, he stated he is opposed to the 25' strip. He feels it is designed to dump water into the pond. Wessels has a 14" outlet on his property. Bard also has outlets but those are so high that if the water would reach them, Mark Tegeler would have water in his basement. Olberding explained what property Wessels owned so everyone was clear on that matter.

With no further comment from the audience, Olberding asked Michel to provide the city's opinion. Michel advised the overall continuity of this plat and how it is split is an issue. It has no home or any value to it. If the parcel is meant to go with the parcel to the east, it should be put with that parcel. This parcel is not conforming to Chapter 166 or the zoning laws. Michel would like to see more. If it is meant to go with parcel 2016-01 then it should be combined into one parcel. He recommends it to be denied until another plat is submitted that conforms to Chapter 166.

Olberding asked Schroeder if Koch will come to the next meeting if this is tabled. Schroeder didn't know, he advised he tried to get him to come to this one. Michel advised the city position would not change even if the item was tabled.

After no further discussion, Olberding made a motion to deny the Plat of Survey Parcel 2017-66 and Parcel 2017-67. Motion seconded by Willenborg.

Roll Call Vote: **Ayes:** Roger Gibbs, Mike Murphy, Dan Olberding, Wayne Stelken, Matt Tauke, Bec Willenborg
Nays:

Motion Carried

3rd Item: Approve Ordinance No. 809 An Ordinance Amending Chapter 165, Zoning Regulations, of the Code of Ordinances of Dyersville, Iowa. (Retail Sale of Fireworks).

City Administrator, Mick Michel, advised the city council proposed an ordinance change and is presenting this to the commission for a positive or negative report. If the report is positive the ordinance will go back to the council for a majority vote to pass. If a negative report is given, the ordinance goes back to the council but an affirmative vote by all members would be needed to pass. Even though Chapter 165 currently does not allow for the sale of fireworks, the Iowa code does. The city passed a moratorium and had a work session on where sales should be. They decided on a restricted C-2 use with a special use permit. Those interested in selling fireworks would need to present their case to the Board of Adjustment. The council will provide the Board with a set of criteria to consider when making their decision. The council liked the restricted use because the public could provide input, they like restricting it to C-2 because it prohibits anyone anywhere from selling fireworks. They did not want to over restrict and liked the idea of each request being on a case by case basis for the C-2 area.

Murphy asked what if the commission gives no report at all. Michel advised the commission has 30 days to provide a report. If there is no report by the commission, it is considered a favorable report. Michel would like to see them provide something back to the council. Michel advised the Board of Adjustment meets the 3rd Wednesday of the month and a notice is required to be published. Olberding asked about the email from the city attorney that was in the packet. Michel advised the city attorney agrees this is the best way to deal with the sale of fireworks. The city cannot regulate the selling of fireworks only where they can be sold. The commission asked where the C-2 districts were and Michel advised it is not downtown but around Theisen's, Fareway, Shopko and Randy's Market. If sales were to be restricted to Industrial areas that would be the Hwy 20 Industrial park, ethanol plant and Northwest industrial park.

Murphy asked what if the committee disagrees with the ordinance. Michel advised it does not change the ordinance only the council voting requirements. The Iowa code remains silent on

where fireworks can be sold. Other communities seem to be selling in commercial and industrial areas. The council did not choose A1 because that includes residential areas.

Gibbs asked who requested to sell fireworks in the last year. Michel advised there were only 2 – one was in the Fareway parking lot and the other was Theisen's. Gibbs asked if the Fareway parking lot would have been outside sales, Michel advised it would have been. That is why the council is putting extra protection in place by issuing the special use permit and letting the public give their input. The commission asked what the county had for regulations, Michel advised they cannot ban the sale and does not know if they have any other regulations. Murphy asked if the council picked C-2 for convenience of sales or for safety issues. Michel feels they would like to see it sold in commercial areas and to ensure the safety of the public. Making them go through the Board of Adjustment process will help to ensure things are the way they should be.

Murphy feels fireworks are a destination purchase. If someone wants to buy them they will drive to the location where they are being sold. He doesn't feel the ease to get them is an issue. Michel advised there is a difference between purchasing, possessing and lighting fireworks. You can possess according to state law and you can sell them based on state code. However, it does not state where you can sell them. It remains up to communities on who can fire them. From a zoning and safety perspective Michel would rather see them sold at a higher restriction than allowing them to be sold in residential or agricultural areas. Allowing that would open up sales in homes. Murphy states that most of the people selling these will be people coming in, setting up shop and then leaving again taking the money out of the community. He repeated he thinks it is a destination purchase. Buyers are going there to purchase only that and it doesn't matter where the sales are allowed. The industrial areas are well marked and fireworks could be sold from there. Olberding states fireworks sales will not be allowed in Industrial areas. Murphy feels that if the committee turns it down the council may change the ordinance to allow sales somewhere else. Michel states he feels this is better than having nothing in the zoning ordinance. There was some more discussion on the options of the commission and council.

After no further discussion, Gibbs made a motion to approve Ordinance 809. Motion seconded by Tauke.

Roll Call Vote: **Ayes:** Roger Gibbs, Dan Olberding,
Wayne Stelken, Matt Tauke, Bec Willenborg
Nays: Mike Murphy
Motion Carried

The meeting adjourned at 7:09 PM on a motion by Willenborg, seconded by Murphy.

Lori A Panton

Lori A. Panton – Recording Secretary

10/9/17
Date