
TO: Board of Adjustment
FROM: Land Use Management
MEETING DATE: September 23, 2024
REPORT DATE: September 13, 2024

PUBLIC HEARING: Request for Variance, submitted by Kyle Ayres (Owner) to access drive standards to use a driveway to a principal structure (dwelling) that is over 14% grade.

Application Information:

Applicant(s): Kyle Ayres (Owner)
Address of zoning request: 38629 53rd Avenue Way Dennison, MN 55018
Parcel: 45.026.0200
Abbreviated Legal Description: Part of the S ½ of the NE ¼ of Section 26 TWP 111 Range 18 in Warsaw Township.
Zoning District: A-2 (Agricultural District)

Attachments:

Application
Site Map(s)
SWCD Maps and Comments
Article 11 Section 6 (Access Drives and Access)

Background:

Kyle Ayres (Owner), has applied for a variance to Article 11 Section 6 Access Drives and Access standards to utilize a driveway to a new dwelling that is over 14% grade in some spots. Driveway construction has already been substantially completed with permission from the Zoning Administrator and Goodhue SWCD.

Variance Standards:

Variations shall only be permitted when they are in harmony with the general purposes and intent of the Goodhue County Zoning Ordinance and when consistent with the adopted comprehensive plan. Variations may be granted when the applicant establishes “practical difficulties” exist in complying with the existing official controls. Practical difficulties mean the applicant proposes to use the property in a reasonable manner not permitted by an official control, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Draft Findings of Fact:

1) Harmony with the general purposes and intent of the official control:

- Access drive maximum grade standards are intended to provide for safe access to principal uses, particularly during months when snow and ice may be present. These standards have been included in the County Zoning Ordinance since 1993.
- Maximum grade standards also serve to discourage the establishment of new driveways or access roads over steep bluffs to preserve and protect these sensitive features.
- The property is located in an A-2 zoned section where a maximum of 12 dwellings are allowed, one per original ¼ ¼ section. The Applicant's property is located within an open ¼ ¼ section and is considered buildable as an Abandoned Dwelling site. Aerial images from the 1950s through the 1970s show a farmstead on the property. Plat books from the 1960s through the 1990s show a dwelling site on the property.
- The property is surrounded by A-2 zoned properties on all sides. All of the adjoining ¼ ¼ sections are occupied by dwellings. Surrounding uses include medium-density residential among forested bluffs, Shoreland, and Floodplain of an unnamed creek across 53rd AVE Way.
- Driveway construction has already begun on the property. The Zoning Administrator and Ben Dvorak, Natural Resource Specialist with the Goodhue Soil and Water Conservation District, performed a site visit during construction to ensure the driveway could meet minimum width and grade standards while avoiding impacts to bluffs. The driveway is located within the footprint of a former access that is visible in aerial imagery from the 1960s. The Zoning Administrator and SWCD staff determined that driveway installation within an area that has been previously impacted is not impacting bluffs.
 - Minimum driving width of 14 feet has been achieved without impacting bluffs.
 - Mr. Dvorak's review of the grade shows areas towards the top of the driveway that are over 14% grade (map attached to this report). A 63-foot segment has a 16.1% slope and a 61-foot segment has an 18.2% slope.
 - The SWCD has also recommended that culverts and rock checks be installed to slow water coming down the driveway. The Applicant should work with Mr. Dvorak and SWCD staff to install culverts and rock checks prior to occupying the dwelling. The Applicant has indicated these tasks will be completed after construction of the dwelling to avoid culvert damage by heavy equipment.
 - The Applicant's excavator and contractor have proposed additional measures to divert water away from the driveway via the use of berms at the top of the driveway. These should also be checked by the SWCD for efficacy and proper construction.

- The use of culverts, rock checks, berms, and other best management practices should prevent negative impacts of runoff or erosion downslope towards neighboring dwellings, 53rd AVE Way, and the unnamed creek classified as shoreland and floodplain.
- Staff would note that based upon on-site conditions it does not appear the ability of emergency services to access the site will be impaired due to the grade of the driveway.
- This request appears in harmony with the purpose and intent of the official control.

2) **The variance request is consistent with the adopted Comprehensive Plan:**

- The Goodhue County Comprehensive Plan supports providing housing choices and working with Townships to designate suitable residential sites that minimize conflicts with agricultural and rural uses.
- The Comprehensive Plan also prioritizes the preservation of blufflands and natural features and protecting these areas from extensive excavation and grading.

The proposed use appears consistent with the Goodhue County Comprehensive Plan.

3) **There are “practical difficulties” in complying with the official control (the applicant proposes to use the property in a reasonable manner not permitted by an official control, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality):**

- The Applicant’s request to construct a single-family dwelling on an A-2 zoned parcel that qualifies as an Abandoned Dwelling site is a reasonable request.
- The access drive has existed since at least the 1950s. The area the driveway is located in does not meet the County’s definition of a bluff (an area with 30% grade or greater over 25 feet of rise).
- The Applicant is restricted on the location of the new dwelling by Warsaw Township’s 1,000-foot spacing requirement between dwellings. The new dwelling cannot be built at the toe of the bluff near 53rd AVE Way due to these distance rules.
- The variance to exceed 14% grade would only apply to the 124 feet identified by the SWCD on the attached map. The rest of the driveway will meet the 14% maximum grade requirement.
- The request appears unlikely to alter the essential character of the locality because the property has been buildable since the original farmstead was abandoned and the dwelling will be located on top of the bluff away from neighboring dwelling units.

4) **No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.**

-
- Single-family dwellings and associated accesses are permitted uses in the A-2 Zoning District, this does not constitute a use variance.

Township: Warsaw Township is aware of the request. The Township approved a zoning permit for the new dwelling at their September 9th, 2024 meeting and did not have concerns with the proposed driveway grade.

The draft Findings of Fact shall be amended to reflect concerns conveyed at the Board of Adjustment meeting and public hearing.

The Board should specify the facts and reasons that are the basis of the Board’s determination. In granting a variance, the Board of Adjustment may impose conditions directly related to, and bearing a rough proportionality with, the impact(s) created by the variance.

Staff Recommendation:

Staff Recommends the BOA:

- adopt the staff report into the record;
- adopt the findings of fact;
- accept the application, testimony, exhibits, and other evidence presented into the record; and

APPROVE the request for a variance, submitted by Kyle Ayres to access drive standards to allow the use of a driveway with a 63-foot segment no greater than 16.1% slope and a 61-foot segment no greater than 18.2% slope. Subject to the following conditions:

1. Applicant shall work with the Goodhue SWCD to install culverts, rock checks, and berms; and
2. The Goodhue SWCD and Zoning Administrator shall verify driveway grades prior to the issuance of a Certificate of Occupancy for the new dwelling.



Variance

Permit #	Z24-0044
\$400 Receipt #	DATE: ONLINE 9-5-24

For Staff Use Only

SITE ADDRESS, CITY, AND STATE	ZIP CODE
3862953rd Ave way, Dennison MN	55018

LEGAL DESCRIPTION:
 SECT.26 TWP.111 RANGE.018 37.81 AC DOC#691851 PT.OF SW1/4 OF NE1/4 & SE1/4 OF NE1/4 SEC 26-111-18 COM AT NW COR OF SW1/4 OF NE1/4, S ALNG W LINE 1314.89FT TO SW COR & POB: N 61°40'50"E 1102.35FT, N38°04'35"E 113.91FT, N70°24'32"E 85.10FT, S68°19'24"E 131.37FT, N76°24'48"E 202.17FT TO E LINE SW1/4 OF NE1/4, N ALNG E LINE 523.71FT TO NW COR SE1/4 OF NE1/4, E ALNG N LINE 1323.91FT TO NE COR, S ALNG E LINE 1247.30FT TO CL TWP RD, WLY ALNG CL TO S LINE, W ALNG S LINE 1480.89FT TO POB EX PT OF S1/2 OF NE1/4 BEG AT SE COR, E ALNG S LINE 1480.89FT, NELY ALNG CRV 161.66FT, N59°33'10"E 53.00FT, N00°23'36"120.50FT, N67°00'53"W 990.15FT, S51°40'50"W 966.93FT TO POB (D# 45-0000-30400 (PT), -31700 (PT))

Attached

PID#:	ZONING DISTRICT	LOT AREA (SF/ACRES):	LOT DIMENSIONS:	STRUCTURE DIMENSIONS (if applicable):
450260200	Section 26	37.81		N/A

APPLICANT OR AUTHORIZED AGENT'S NAME

Kyle Ayres

APPLICANT'S ADDRESS:

4416 Fox Creek Trail, Crystal Lake, IL 60012

PROPERTY OWNER'S NAME:
 Kyle Ayres

Same as Above

PROPERTY OWNER'S ADDRESS:

4416 Fox Creek Trail, Crystal Lake, IL 60012

CONTACT FOR PROJECT INFORMATION:

Same as Above

VARIANCE REQUESTED TO: (check all that apply) <input type="checkbox"/> Road Right-Of-Way Setbacks <input type="checkbox"/> % Lot Coverage <input type="checkbox"/> Property Line Setbacks <input type="checkbox"/> Bluff Setbacks <input type="checkbox"/> Height Limits <input type="checkbox"/> Shoreland Setbacks <input type="checkbox"/> Lot Width &/or Area <input checked="" type="checkbox"/> Other (specify): Grade of Driveway above 14%. <input type="checkbox"/> Subdivision Regulations	CURRENT OR PREVIOUS USE:	
	Existing access point to lot	
	PROPOSED USE:	
	Continued access point to lot	
	BUILDING APPLICATION PERMIT NO.: (if filed)	DATE FILED:
TBD – Board meeting 9/9/24	TBD - Board meeting 9/9/24	

TOWNSHIP SIGNATURE:		
By signing this form, the Township acknowledges they are aware of the Applicant's variance request. In no way does signing this application indicate the Township's position on the variance request.		Attached <input type="checkbox"/>
TOWNSHIP OFFICIAL'S SIGNATURE	TOWNSHIP OFFICIAL'S PRINTED NAME AND TITLE	DATE

By signing below, the applicant acknowledges:

1. The undersigned is the owner or authorized agent of the owner of this property.
2. The information presented is true and correct to the best of my knowledge.
3. If I am unable to be present at the hearing where my request is acted upon, I agree to accept the Notice of Decision via mail.
4. Additional information or applications may be required.

Applicant's Signature:

Kyle Ayres

Date: 9/5/24

REQUEST SUMMARY

Please cite the Ordinance Article(s) and Section(s) you are requesting a variance from:

Article: Section: Name: ACCESS DRIVES AND ACCESS Section 6

SUPPORTING INFORMATION & JUSTIFICATION

You, or your agent, bear the burden of providing information to convince the Board to rule in your favor. Please provide answers to the following questions in the spaces below or in an attached document. You may also attach any additional supporting documentation you desire the board to review.

Discuss your current use of the property and the reason for your variance request:

The property is currently a vacant lot previously used for agriculture and the intended use is to construct our full-time, primary residence where we plan to remain for the next several decades with our young family.

This driveway has been a functional access route for over 60 years and its long-standing use demonstrates that the existing grade, which exceeds 14%, has not posed significant risks for residential access or general vehicular use. Rather than create a new path or perform extensive modifications to the natural landscape, we are seeking to upgrade the current one to better accommodate the needs of the future residence and align with current best practices for residential driveways and accessibility requirements to ensure its longevity, stability, and safety for the future.

Describe the effects on the property if the variance is not granted:

If the variance is not granted, the property will face several challenges that would adversely impact its effective development and usability including:

1. **No Access and Functionality:** Without the variance, on paper, the driveway would not allow access to the new primary residence, leading to clear access issues and dramatically diminishing the value of the property.
2. **Construction and Development Delays:** The inability to upgrade the existing access would lead to delays in the construction process. The property would face increased challenges in requiring additional modifications, which would complicate and prolong the development timeline. Modifications would unmistakably disturb the existing natural beauty of the landscape.
3. **Additional Costs:** In line with above, delays or additional modifications would put a sharp burden on us to accommodate financially.

Describe any unique physical limitations that exist on your property, not generally found on others, which prevent you from complying with the provisions of the current ordinance:

The property in question presents several unique physical limitations that significantly affect our ability to comply with the current ordinance:

- **Topographical Constraints:** The property is characterized by a natural slope that may not be typically found on other properties within the township. These features pose challenges for establishing a driveway that meets the standard requirements, as they would necessitate additional grading and structural considerations without the variance being granted.
- **Existing Infrastructure:** As noted above, the property has an existing access point that has been in use since the 1960s. This pre-existing infrastructure and proximity to the existing mature forestry, which should remain as untouched as possible, limits configuration options to bring the driveway into compliance with standard regulations.

Discuss alternatives you considered that comply with existing standards. If compliant alternatives exist, provide your reasoning for rejecting them:

In our efforts to comply with existing standards, we have thoroughly evaluated other alternative approaches to address the driveway requirements. Here is a summary of the alternatives considered and the rationale for their rejection:

1. **Alternative 1: Redesign of Existing Driveway Layout**
 - **Description:** This alternative involves redesigning the existing driveway layout to align with current standards.
 - **Reason for Rejection:** A redesign would require extensive grading and significant alterations to the surrounding environment, leading to onerous high costs and a negative impact on the property's natural beauty. Estimated costs to address the grading exceed \$10,000.
2. **Alternative 2: Creation of a New Driveway Access**
 - **Description:** Establishing a new driveway access point elsewhere on the property.
 - **Reason for Rejection:** The existing access point is there and has been used since the 1960's for a reason – There's no other options to access the property due to the landscape's unique physical constraints, making it impractical to develop a new access point without substantial disruption and environmental impact. Furthermore, creating

a new access would require extensive additional costs and may not be feasible given the site's limitations. The chosen approach of enhancing the existing access point with a variance is deemed the most viable solution, given the constraints and challenges associated with the alternatives. It allows for necessary improvements while preserving the property, addressing both safety and functionality concerns effectively.

Discuss alternatives you considered that would require a lesser variance. If you rejected such alternatives, provide your reasoning:

Please see above. The preferred approach involves seeking a variance that allows for a comprehensive enhancement of the existing access point. This solution addresses both safety and functionality effectively, providing a long-term resolution that fully accommodates the needs of the property.

In your opinion, do you think the granting of your variance request would alter the "essential character" of the neighborhood/area?:

No - Granting the variance request would not in any way alter the essential character of the neighborhood or area because the proposed variance involves enhancing an existing access point rather than creating a new one and, as such, would preserve the existing beauty of the land and blend with the surrounding area. Our goal for these improvements is to upgrade this long-standing access point and to modernize and improve functionality and safety without altering the historical and visual continuity of the area. The project will not affect neighboring properties in any way and would be consistent with the neighborhood's existing use and appearance.



38629 53RD AVENUE WAY X Q
Show search results for 38629 53RD ...

1964 Imagery

450261300
MARY E MURRY

Sec 26
T111N R18W

450260200
38629
KYLE AYRES

RYAN BLAKE 450260201
38823

450261700 38700 PHILIP E

53RD AVE WAY

100ft

Basemap Gallery



2024 Imagery



Basemap



Elevation
Hillshade 2011



Elevation
Hillshade 2020



Imagery 1929



Imagery 1937-38



Imagery 1949



Imagery 1951



Imagery 1953



Imagery 1964-65



Imagery 1971



Imagery 1980



Imagery 1991



Imagery 1997
Red Wing

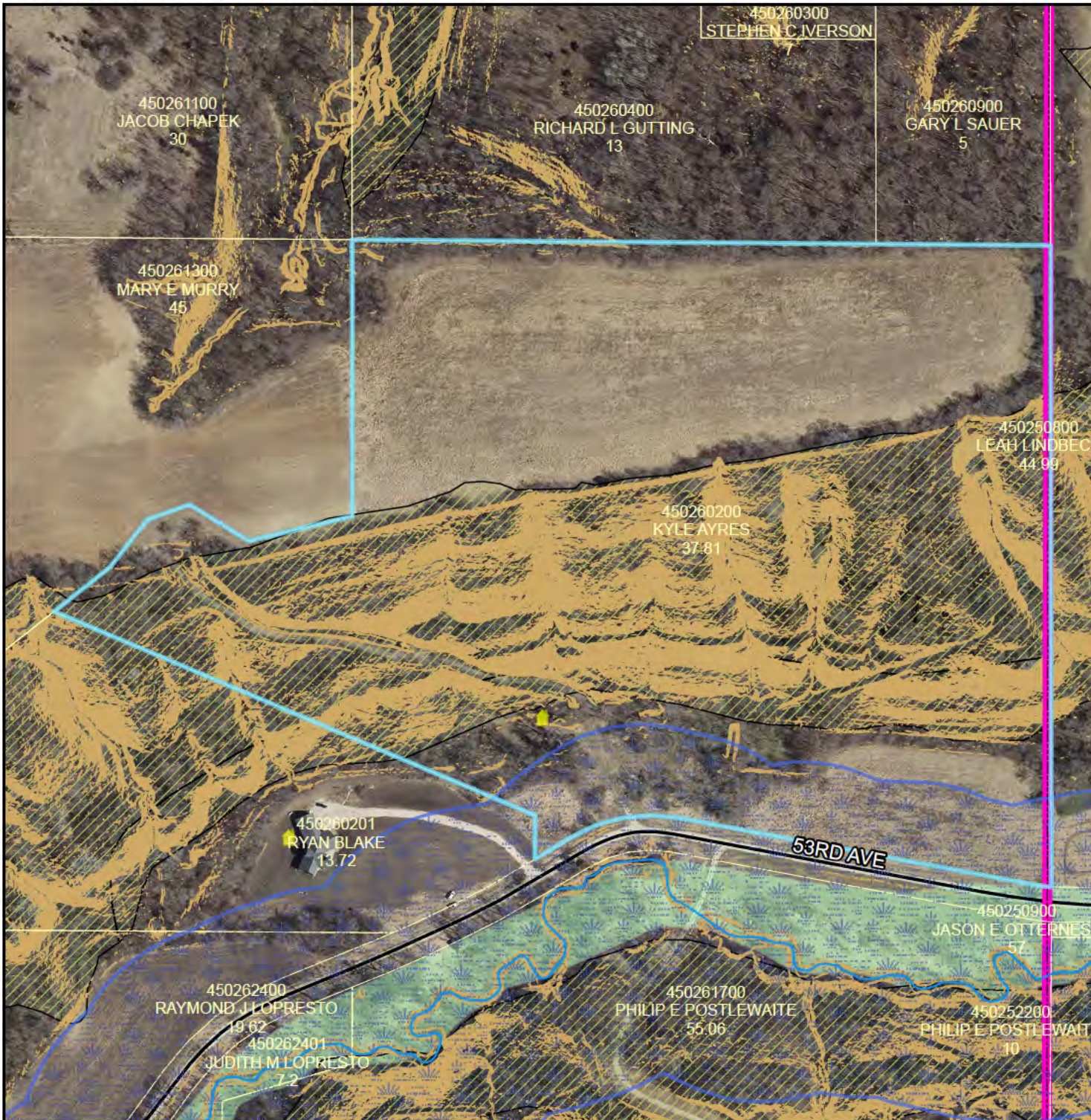


Imagery 2002



Imagery 2005

MAP 01: PROPERTY OVERVIEW



PLANNING COMMISSION

BOA Meeting
September 23, 2024

Kyle Ayres (Owner)

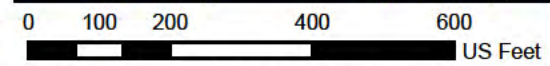
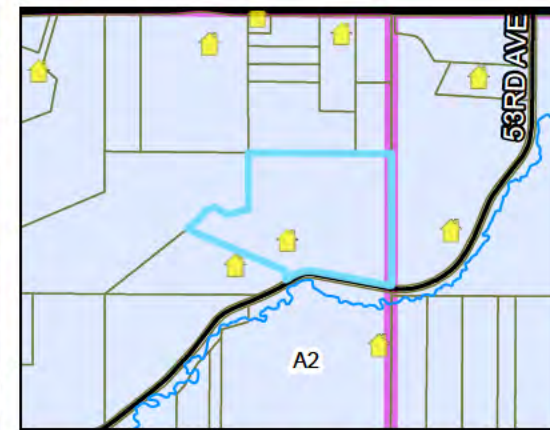
A2 Zoned District

Part of the S 1/2 of the NE 1/4 of
Section 26 TWP 111 Range 18 in
Warsaw Township

Request for variance to allow a driveway to a
principal structure (dwelling) to be
constructed at over 14% grade

Legend

Intermittent Streams	Blufflands
Protected Streams	30% Slope or Greater
Lakes & Other Water Bodies	Bluffland Protected Soils
Shoreland	FEMA Flood Zones
Historic Districts	2% Annual Chance
Parcels	A
Registered Feedlots	AE
Dwellings	AO
Municipalities	X

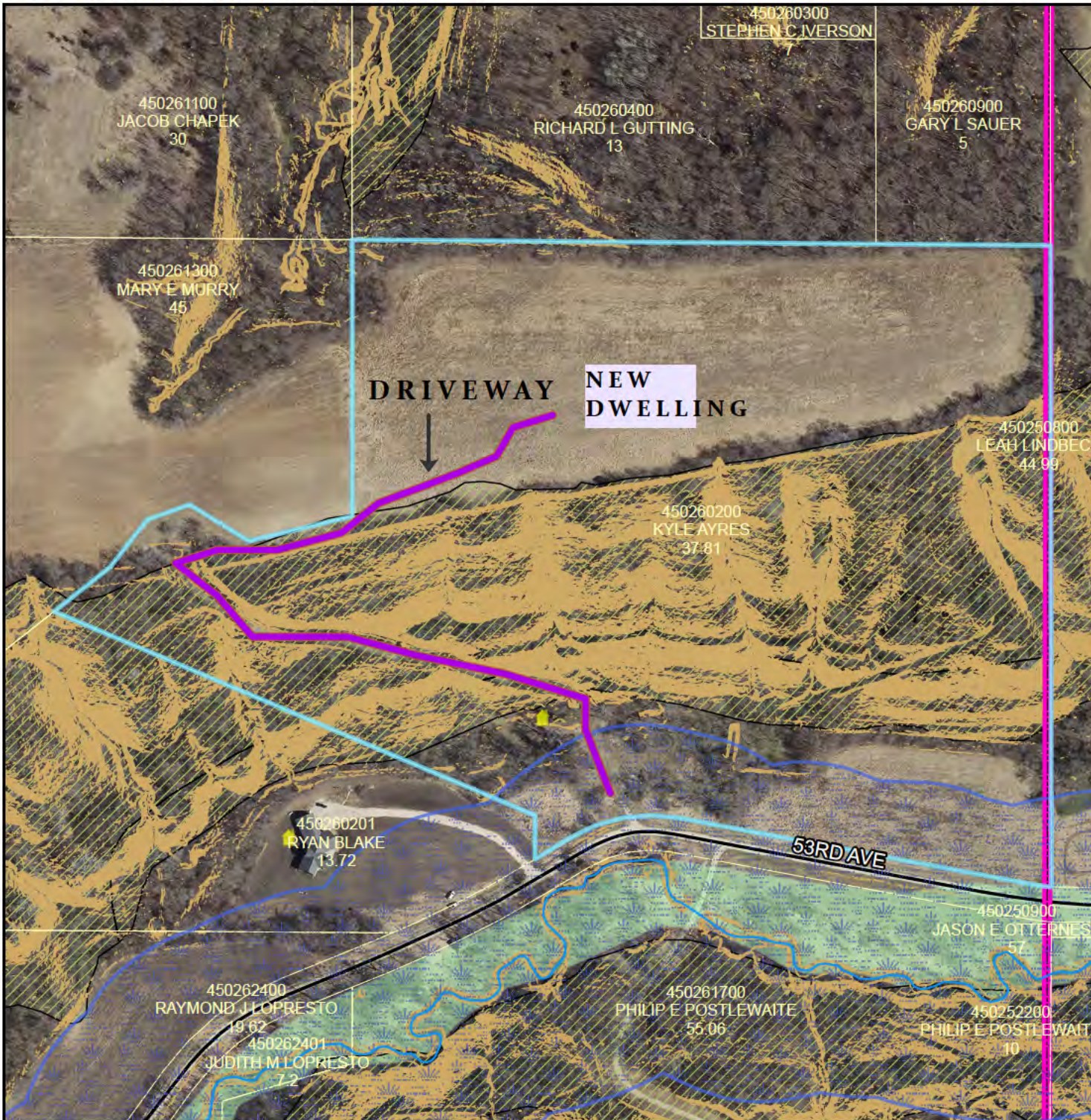


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2024 Aerial Imagery
Map Created September, 2024 by LUM



MAP 01: PROPERTY OVERVIEW



PLANNING COMMISSION

BOA Meeting
September 23, 2024

Kyle Ayres (Owner)

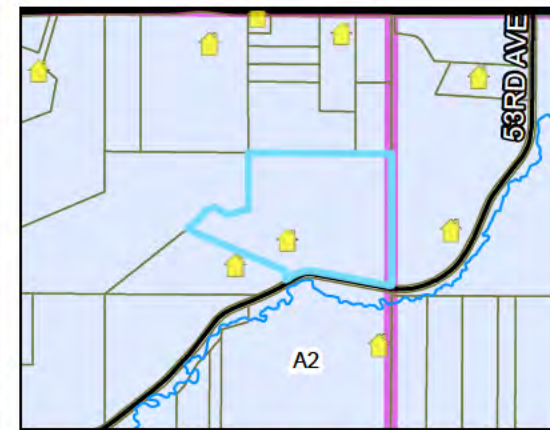
A2 Zoned District

Part of the S 1/2 of the NE 1/4 of
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Warsaw Township

Request for variance to allow a driveway to a
principal structure (dwelling) to be
constructed at over 14% grade

Legend

	Intermittent Streams		Blufflands
	Protected Streams		30% Slope or Greater
	Lakes & Other Water Bodies		Bluffland Protected Soils
	Shoreland		FEMA Flood Zones
	Historic Districts		2% Annual Chance
	Parcels		A
	Registered Feedlots		AE
	Dwellings		AO
	Municipalities		X



0 100 200 400 600 US Feet

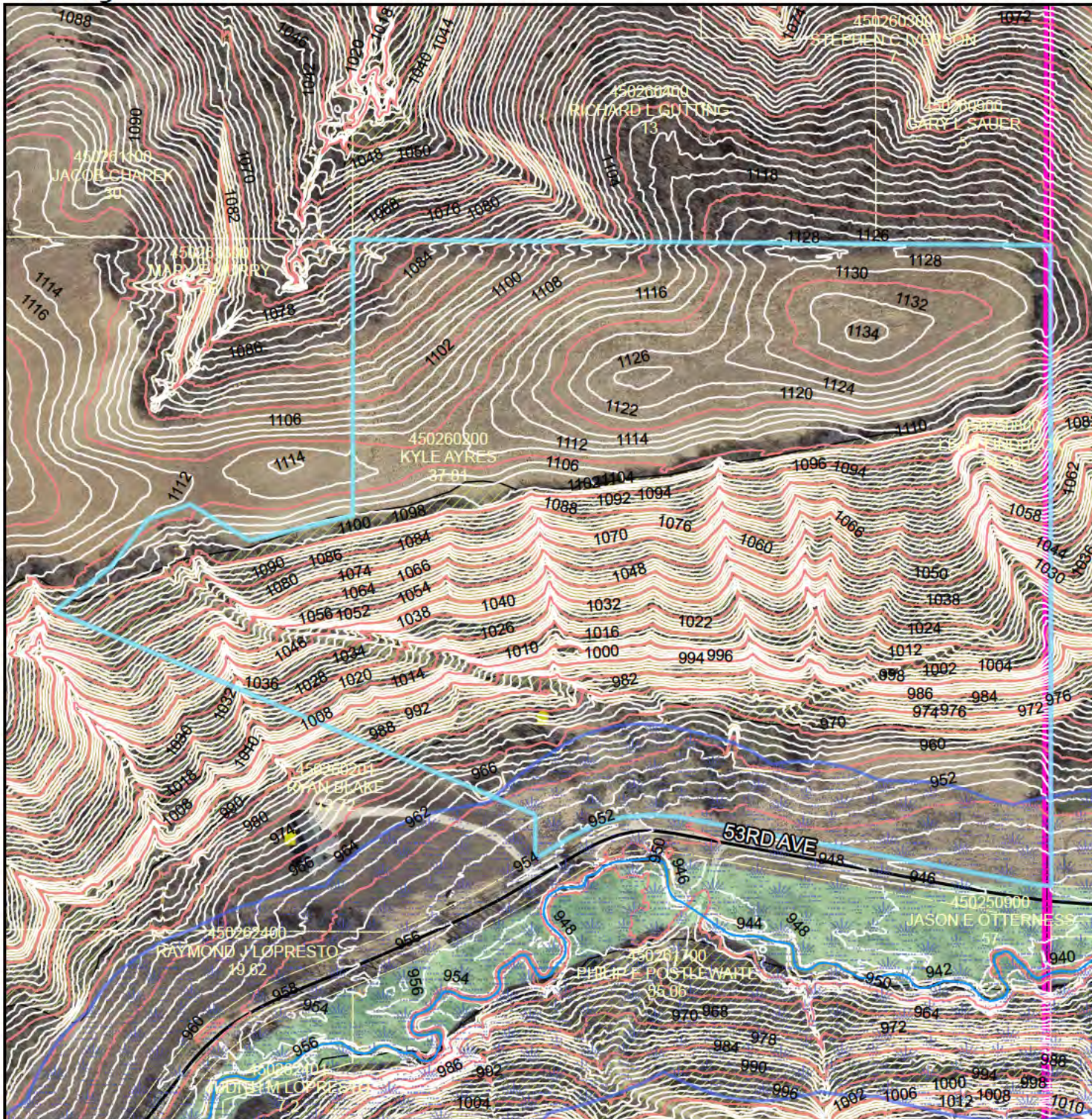
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MAP 03: ELEVATIONS



PLANNING COMMISSION

BOA Meeting
September 23, 2024

Kyle Ayres (Owner)

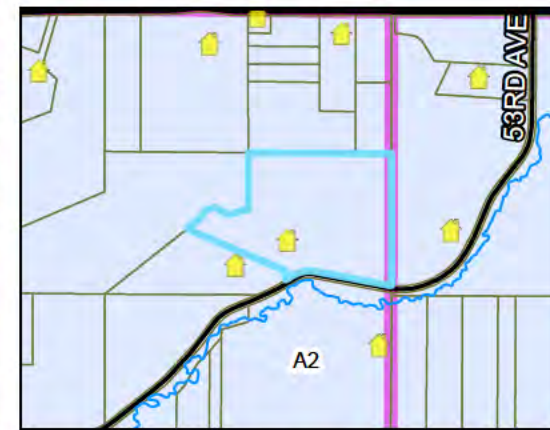
A2 Zoned District

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Warsaw Township

Request for variance to allow a driveway to
a principal structure (dwelling) to be
constructed at over 14% grade

Legend

- | | |
|----------------------------|---------------------------|
| Intermittent Streams | Blufflands |
| Protected Streams | 30% Slope or Greater |
| Lakes & Other Water Bodies | Bluffland Protected Soils |
| Shoreland | FEMA Flood Zones |
| Historic Districts | 2% Annual Chance |
| Parcels | A |
| Registered Feedlots | AE |
| Dwellings | AO |
| Municipalities | X |



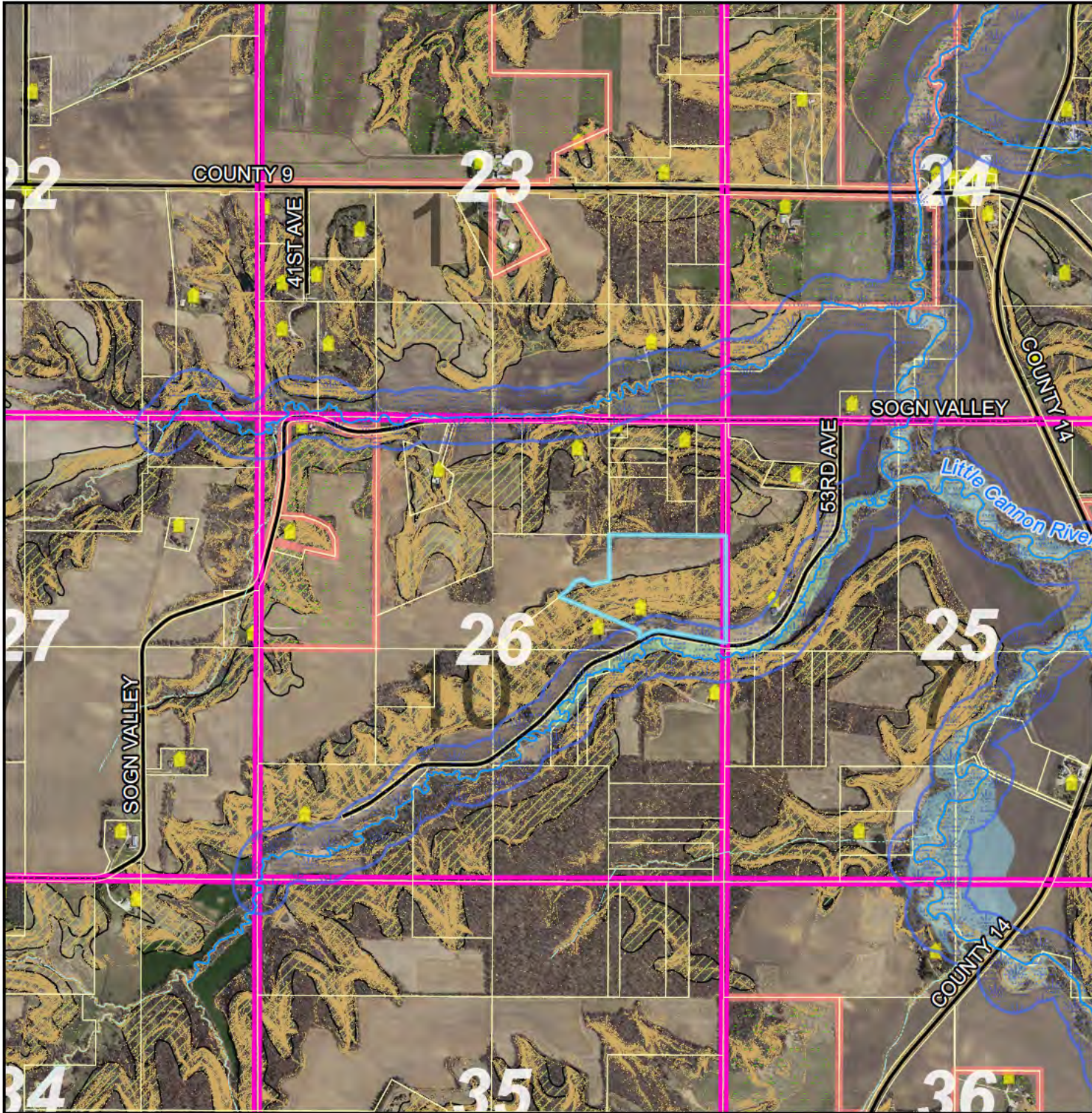
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MAP 02: VICINITY MAP



PLANNING COMMISSION

BOA Meeting
September 23, 2024

Kyle Ayres (Owner)

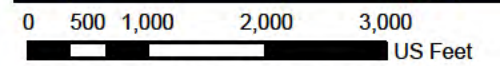
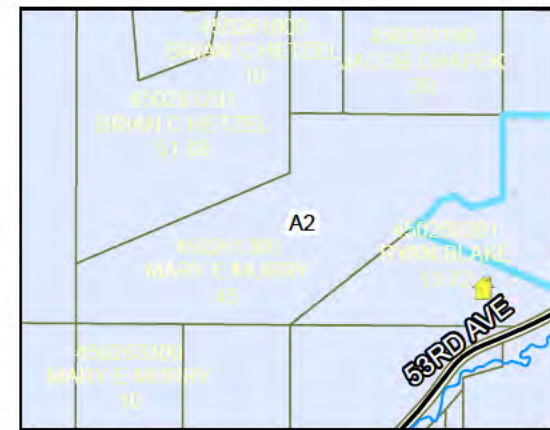
A2 Zoned District

Part of the S 1/2 of the NE 1/4 of
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Warsaw Township

Request for variance to allow a driveway to a
principal structure (dwelling) to be
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Legend

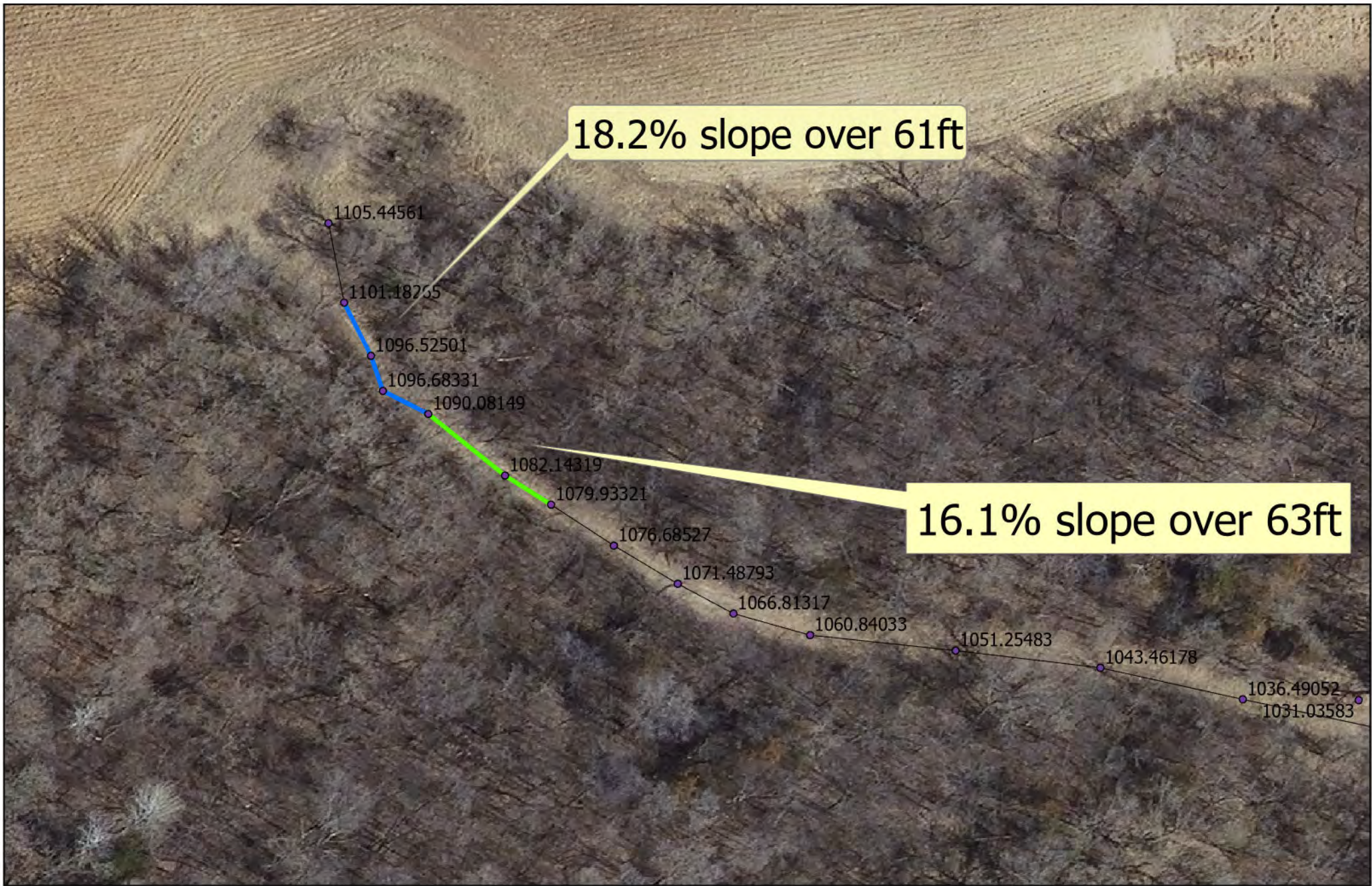
- | | | | |
|--|----------------------------|--|---------------------------|
| | Intermittent Streams | | Blufflands |
| | Protected Streams | | 30% Slope or Greater |
| | Lakes & Other Water Bodies | | Bluffland Protected Soils |
| | Shoreland | | FEMA Flood Zones |
| | Historic Districts | | 2% Annual Chance |
| | Parcels | | A |
| | Registered Feedlots | | AE |
| | Dwellings | | AO |
| | Municipalities | | X |



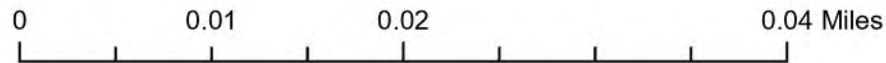
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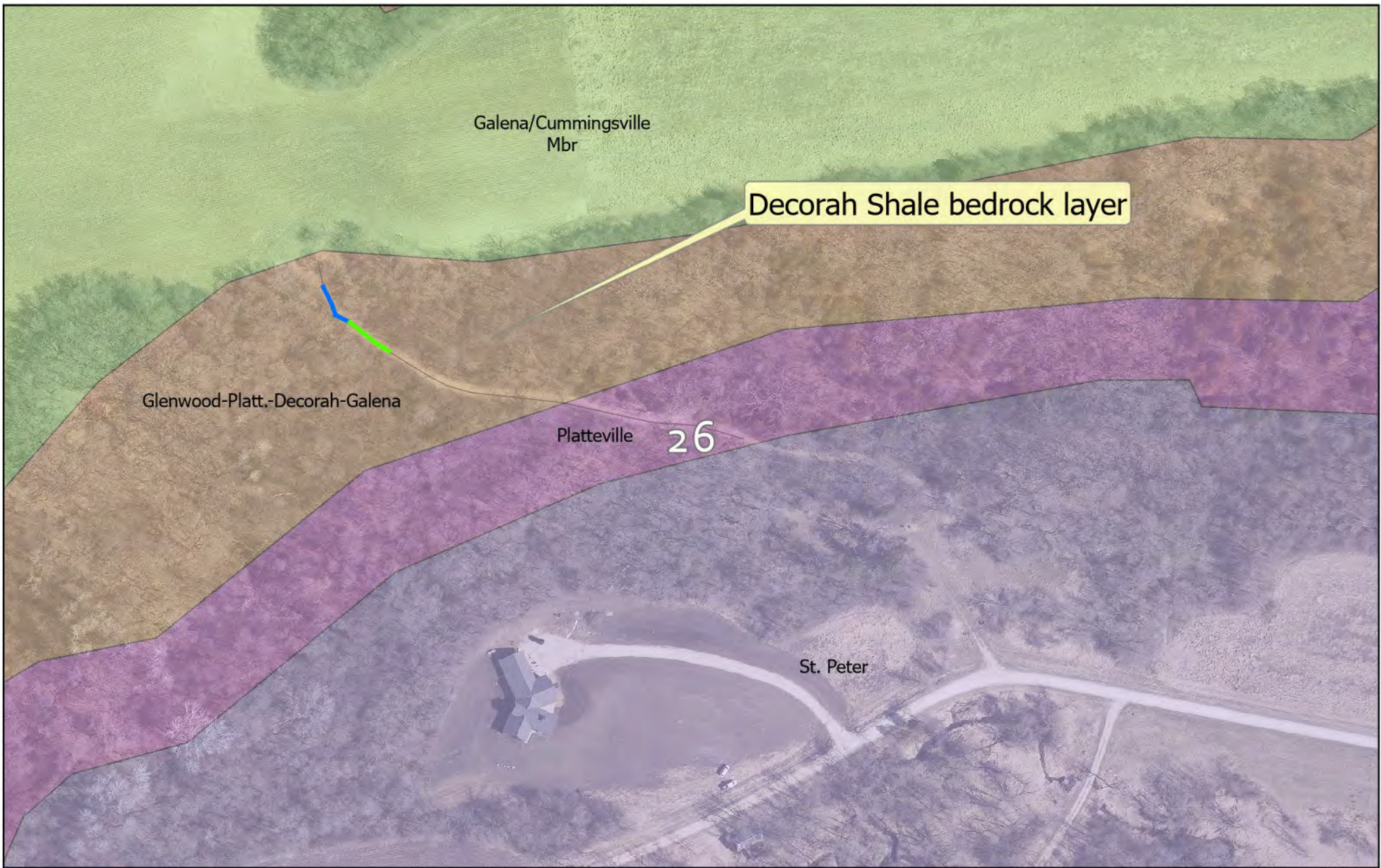
Parcel: 450260200



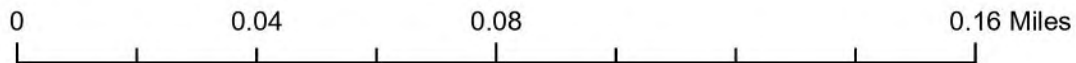
- 18.2%
- Elevation(ft)
- 16.1%

08/22/2024





Bedrock layers on parcel 450260200



Parcel: 450260200

- Spots near the top of the driveway are over 14% slope, they are marked on attached map
- Erosion control measures should be implemented. Culverts are recommended as well as rock checks in the ditch to slow water coming down driveway
- There are spots along the upside of the driveway where the soil is considerably wet. Near the top of the driveway the bedrock is Decorah shale, which is prone to seepage of water. This could create wet spots along the driveway which should be taken into consideration. A map showing that bedrock layer is attached

In Suburban Residential Districts (R-1), a detached accessory building, which is accessory to a residential use, shall be limited in size to one thousand five hundred (1,500) square feet in area on lots twelve thousand (12,000) square feet to one (1) acre and two thousand one hundred (2,100) square feet on lots in excess of one (1) acre.

In the A-1, A-2 and A-3 Districts, detached accessory building(s) which are accessory to a residential use, shall be limited in total cumulative square footage to seven thousand two hundred (7200) square feet. Requests to construct an accessory building or buildings in excess of 7200 square feet may be permitted by conditional or interim use permit. Any conditional use or interim use permit application for an accessory building or buildings proposed to exceed the cumulative limit of 7200 square feet shall be evaluated based on demonstrated need for larger square footage for the proposed residential accessory use, availability of sufficient buildable site area and compatibility with surrounding land uses.

Freestanding accessory structures, including but not limited to, communication towers or antennas shall be limited to a height of ten (10) feet less than distance to the nearest property line or shall be designed and engineered to collapse progressively within the distance between the tower and the property line.

SECTION 6. ACCESS DRIVES AND ACCESS

Access drives onto County roads shall require a review and a permit from the County Engineer. The County Engineer shall determine the appropriate location, size and design of such access in the interest of public safety and efficient traffic flow. Access onto township roads shall be approved by the appropriate township board.

Access driveways to principal structures shall be constructed and maintained to a minimum ten (10) foot width and base material depth sufficient to support access by emergency vehicles.

Access driveways two hundred (200) feet in length or more shall be constructed with a driving surface of at least fourteen (14) feet in width.

Access drives cannot exceed fourteen (14) percent grade over any portion of the drive.

Access drives cannot be located on any slope exceeding thirty (30) percent.

Access driveways shall have a twenty (20) foot long flat grade directly adjacent to the road that driveway accesses.

All driveways shall be limited to a minimum fifty (50) foot radius curve if one is necessary.

SECTION 7. VEGETATIVE, TREE, & WOODLAND ALTERATIONS

The standards herein are intended to ensure that all vegetative alterations carried out in the County will be completed using sound and sustainable forest management practices, prevent watershed damage due to unwise logging operations, minimize the amount of woodland debris occurring in streams and waterways, and ensure that depleted forested areas are properly restocked with trees. These provisions are meant to conserve the forested acres of Goodhue County and emphasize the importance of the environmental, social and economic benefits they provide to our area and to encourage proper management of forest resources in environmentally sensitive areas.

- Subd. 1. Forest Management Activities.
 - A. Vegetative Cutting