

Goodhue County Planning Commission Government Center - Board Room 509 West 5th St, Red Wing MN 55066

Virtual Meeting Notice

Virtual Meeting Notice: The Goodhue County Planning Advisory Commission will be conducting a meeting on October 19, 2020 at 6:00 p.m. Due to concerns surrounding the spread of COVID-19, the meeting and all public hearings will be conducted by telephone or other electronic means.

The public may monitor the meeting from a remote site by logging into https://global.gotomeeting.com/join/261873725 or calling 1 866 899 4679 beginning at 5:50 PM or any time during the meeting. Access Code: 261–873–725

Public Comments: Interested persons must submit comments by phone, in writing, or via email by noon on Monday, October 19, 2020. To submit your comments please email them to samantha.pierret@co.goodhue.mn.us or mail them to the Land Use Management Department at 509 West 5th Street, Red Wing, MN 55066. Comments received by this deadline will be read into the record during the public hearing for that item, including name and address.

#### Approval Of Current Agenda

Approval Of Previous Month's Meeting Minutes

1. September 2020 Planning Commission Meeting Minutes

Documents:

#### MINUTES\_SEPTEMBER2020\_PAC\_DRAFT.PDF

Conflict/Disclosure Of Interests

**Public Hearings:** 

1. PUBLIC HEARING: Conservation Subdivision Plat

Request, submitted by Paul Novak (Owner), for Preliminary and Final Plat approval of the proposed "Novak Addition" to rezone 46.21 acres and create a one lot Conservation Subdivision District on property currently zoned A2 (General Agriculture District). Parcel 37.018.1500. TBD Shady Lane Trail, Cannon Falls, MN 55009. The N ½ of the SE ¼ of Section 18 TWP 111 Range 17 in Leon Township. A-2 Zoned District.

Documents:

#### PACPACKET\_NOVAK\_REDACTED.PDF

Other-Discussion

Adjourn

Anyone interested is invited to attend. Agenda items may be subject to change.

# **Goodhue County Land Use Management**

Goodhue County Government Center \* 509 West Fifth Street \* Red Wing \* Minnesota \* 55066 \*
 Building \* Planning \* Zoning \* Telephone: 651/385-3104 \* Fax: 651/385-3106 \*

# PLANNING COMMISSION GOODHUE COUNTY, MN September 21, 2020 MEETING MINUTES DRAFT

The meeting of the Goodhue County Planning Advisory Commission was called to order at 6:00 PM by Chair Tom Gale in the Basement IT Conference Room at the Government Center in Red Wing.

# Roll Call

Commissioners Present virtually via GoToMeeting: Tom Gale, Barney Nesseth, Richard Miller, Darwin Fox, Tom Drazkowski, Richard Nystuen and Howard Stenerson

Commissioners Absent: Sarah Pettit and Marc Huneke

Staff Present: Land Use Director Lisa Hanni (virtually), Zoning Administrator Ryan Bechel, and Zoning Assistant Samantha Pierret

# 1. Approval of Agenda

Bechel noted that the agenda sent to the Commissioners has been amended to remove Public Hearing items one (Koenig Home Occupation) and three (Novak Conservation Subdivision) after the Applicants withdrew their items prior to the Public Hearings.

<sup>1</sup>Motion by Commissioner Miller; seconded by Commissioner Fox to approve the meeting agenda.

# Motion carried 7:0.

# 2. Approval of Minutes

<sup>2</sup>Motion by Commissioner Fox; seconded by Commissioner Drazkowski to approve the previous month's meeting minutes.

# Motion carried 7:0.

# 3. Conflict/Disclosure of Interest

There were no reported conflicts/disclosures of interest.

# 4. Public Hearings

# PUBLIC HEARING: CUP Request for Bed and Breakfast Inn

Request for CUP, submitted by Anthony Verch (Owner), to operate a three-unit Bed and Breakfast Inn within an existing six-unit apartment building. Parcel 46.028.1500. 26370 County 7 BLVD, Welch, MN 55089. Part of the NE <sup>1</sup>/<sub>4</sub> of Section 28 TWP 113 Range 16 in Welch Township, MXH Zoned District.

Pierret presented the staff report and attachments.

Commissioner Nesseth questioned whether kitchen equipment would be installed in the Bed and Breakfast units.

Rierret stated that each unit has its own kitchen facilities much like an apartment unit. Guests would provide their own food for the duration of their stay.

Commissioner Fox discussed Welch Township considerations and actions. He concurred with what Zoning Assistant Pierret stated regarding the kitchen facilities.

Commissioner Gale questioned how guests would check-in to the facility.

# PLANNING COMMISSION GOODHUE COUNTY, MN September 21, 2020 MEETING MINUTES DRAFT

Commissioner Fox stated the Applicant has an app that can check-in and check-out guests. He noted that the Applicant and his business partners stated they live within a short distance (10 minutes) of the building in case of any issues.

# Chair Gale opened the Public Hearing.

No one spoke for or against the request.

<sup>3</sup>After Chair Gale called three times for comments it was moved by Commissioner Drazkowski and seconded by Commissioner Nystuen to close the Public Hearing

# Motion carried 7:0

Commissioner Stenerson questioned the proposed occupancy numbers on the application (24 people) versus the proposed occupancy numbers in the staff report (15 people).

Anthony Verch (Applicant) stated that the occupancy for the Bed and Breakfast operation is 15 guests while the occupancy for the entire building, including the long-term apartment units, is 24 people.

Commissioner Stenerson questioned whether the Planning Commission was licensing all of the units in the building or just the Bed and Breakfast units.

Bechel stated that the Planning Commission was only considering the three Bed and Breakfast units as the apartment units are an existing use.

Commissioner Stenerson commented that the location in the Village of Welch for the Bed and Breakfast is a preferred location as it will not interfere with any surrounding agricultural operations.

<sup>4</sup>It was moved by Commissioner Stenerson and seconded by Commissioner Miller for the Planning Advisory Commission to:

- 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

Recommend that the County Board of Commissioners **APPROVE** the request submitted by Anthony Verch (BLVD 7, LLC/owner) for a CUP to establish a three-unit Bed and Breakfast facility with a proposed maximum occupancy of 15 guests. Subject to the following conditions:

1. Activities shall be conducted according to submitted plans, specifications, and narrative unless modified by a condition of this CUP;

2. Maximum occupancy shall be limited to 15 guests per night;

3. On-street parking, loading or off-loading shall be prohibited;

- 4. Applicant shall obtain Building Permit approval from the Goodhue County Building Permits Department prior to performing renovations;
- 5. Compliance with Goodhue County Zoning Ordinance including, but not limited to, Article 11, Section 13 (Bed and Breakfast Inns); and Article 26 (MXH, Mixed Use Hamlet District);
- 6. Compliance with all necessary State and Federal registrations, permits, licensing and regulations.

# PLANNING COMMISSION GOODHUE COUNTY, MN September 21, 2020 MEETING MINUTES DRAFT

#### Motion carried 7:0.

### **Other-Discussion**

# **DISCUSSION: "Businesses Primarily Intended to Serve the Agricultural** <u>Community"</u>

Planning Advisory Commission discussion on Businesses Primarily Intended to Serve the Agricultural Community. Topics to include Zoning Ordinance definitions and review of taxation and building permit procedures.

Bechel presented the staff report and attachments. He noted that the Zoning Subcommittee met to discuss this topic and another meeting of the Subcommittee will be needed prior to bringing any action items to the Planning Commission.

Commissioner Fox agreed with Bechel's comments and agreed that another Subcommittee meeting should be held to discuss the topic.

Commissioner Stenerson questioned whether the two items that were on the agenda for this meeting would be coming back for Public Hearings in the near future.

Bechel commented that the Koenig Home Occupation item was removed because Featherstone Township does not allow Home Occupations at the size the Applicants were proposing. He noted that the Applicants scaled down their operation and were granted an administrative Tier-2 Home Occupation permit instead. Bechel stated that the Conservation Subdivision request by Paul Novak will be coming to the Planning Commission for consideration in the near future.

# <sup>5</sup>ADJOURN: Motion by Commissioner Stenerson and seconded by Commissioner Miller to adjourn the Planning Commission Meeting at 6:30 PM.

#### Motion carried 7:0

Respectfully Submitted,

Samantha Pierret; Zoning Assistant

 <sup>1</sup> APPROVE the PAC meeting agenda. Motion carried 7:0.
 <sup>2</sup> APPROVE the previous month's meeting minutes. Motion carried 7:0.
 3 Motion to close the Public Hearing Motion carried 7:0
 4 Recommend the County Board of Commissioners APPROVE the request for a three-unit Bed and Breakfast facility Motion carried 7:0
 5 ADJOURN. Motion to adjourn the meeting. Motion carried 7:0

# **Goodhue County Land Use Management**

Goodhue County Government Center | 509 West Fifth Street | Red Wing, Minnesota 55066

Lisa M. Hanni, L.S. Director

Building | Planning | Zoning Telephone: 651.385.3104 Fax: 651.385.3106



County Surveyor / Recorder

Environmental Health | Land Surveying | GIS Telephone: 651.385.3223 Fax: 651.385.3098

To:Planning Advisory CommissionFrom:Land Use ManagementMeeting Date:October 19, 2020Report date:October 9, 2020

# **PUBLIC HEARING: Conservation Subdivision Plat – Novak**

Request, submitted by Paul Novak (Owner), for Preliminary and Final Plat approval of the proposed "Novak Addition" to rezone 46.21 acres and create a one lot Conservation Subdivision District on property currently zoned A2 (General Agriculture District).

# **Application Information:**

<u>Applicant</u>: Paul Novak (Owner) <u>Address of zoning request</u>: TBD Shady Lane Trail, Cannon Falls, MN 55009 <u>Parcel</u>: 37.018.1500 <u>Legal Description</u>: Part of the N <sup>1</sup>⁄<sub>2</sub> of the SE <sup>1</sup>⁄<sub>4</sub> of Section 18 TWP 111 Range 17 in Leon Township <u>Zoning District</u>: A2 (General Agriculture District)

# Attachments and links:

Application, Plat, and submitted project summary Attorney Letter Applicant Letter Proposed Conservation Easement CS District (Article 35) MN Statute Chapter 84C Site Map(s) Goodhue County Zoning Ordinance (GCZO): http://www.co.goodhue.mn.us/DocumentCenter/View/2428

# **Overview:**

The Applicant (Paul Novak) is requesting Preliminary and Final Plat approval for the proposed "Novak Addition" as a Conservation Subdivision in Leon Township. The proposal is to plat 46.21acres of land into a single-lot Conservation Subdivision to allow Mr. Novak to construct a home on the property. The property is located in section 18 of Leon Township which is zoned A2 (General Agriculture District) allowing a maximum of 12 dwellings in the section. The section currently has 18 dwellings therefore there is no density remaining to establish any more dwellings at this time.

In 2017 Goodhue County amended the zoning ordinance adding language requiring requests for increased dwelling density to be pursued through the change of zone process and not through the variance process. The Conservation Subdivision (CS) District was approved by the County Board in August 2019 as a new option for increasing density in the rural areas with a focus on conservation and natural resource preservation. The CS District requires a potential Applicant to Plat the property in conformance with the Goodhue County Subdivision Controls Ordinance and place a minimum of 50% of the total acreage under a permanent Conservation Easement conforming to Minnesota Statute Chapter 84C. The CS District is a separate zone that would replace the existing A2 zoning designation. The allowable building density within the Conservation Subdivision is determined through the review process (maximum of 6).

It should be noted the dwelling density within a CS District does not count against the overall section density for A1 or A2 districts.

#### <u>Project Summary:</u> Property Information:

- The subject property consists of a single 50.25-acre (approximate) parcel that was purchased by the Applicant in September 2018.
- The parcel and all adjacent properties are zoned A2 (General Agriculture District). Surrounding land uses are a mix of undeveloped woodlands, wetlands, and shoreland among row-crop agriculture and low-density residential uses.
- An unnamed creek traverses the western edge of the property. The creek is a "public water" and the lands within 300 feet of the creek are subject to Goodhue County Shoreland Regulations. A second intermittent stream travels along the south half of the property and empties into the unnamed creek. This intermittent stream is not a public water and therefore not subject to Shoreland regulations.
- The property has a wide range of topography including some steeper (12%-20%) slopes. There are no Blufflands (>30% slopes) identified on the parcel.
- Wetlands are present on a large portion of the property primarily adjacent to the unnamed creek and intermittent stream in the lowlands. Goodhue County Wetlands Coordinator Beau Kennedy has reviewed the site and Mr. Novak's proposal. Mr. Kennedy has provided a desktop identification of wetland areas based on hydric soil mapping of the property.

Given the proposed location of the driveway and dwelling on the high ground at the south end of the property, Mr. Kennedy noted that the areas to be developed appear far enough in distance and elevation from wetlands that a formal wetland delineation is not required at this time to ensure protected wetland features are not disturbed. Any potential future building or grading and filling activities north of the proposed home site, and especially near the unnamed creek or intermittent stream would necessitate a formal wetland delineation.

# **Existing/Proposed Uses:**

• The Applicant proposes to plat the property into a single lot. The lot would comprise 46.21-acres after accounting for public dedication of Right-Of-Way easement along Shady Lane Trail.

The minimum lot size for lots served by an individual Subsurface Sewage Treatment System (SSTS) is 3 acres in the CS District. A minimum of 40 contiguous acres is required for a CS District.

• Section density for one additional primary dwelling site would be created by the plat. The Applicant is proposing to locate the dwelling in the high ground in the south-central portion of the property.

No additional buildable lots (dwelling density) could be created in the future without being reviewed through the formal platting process.

The Applicant would need to obtain a Building Permit from the Goodhue County Building Permits Department before commencing construction of any structures.

• The remainder of the property consists of undeveloped woodlands and fields that have historically been used for row-crop agricultural uses. The Applicant intends to farm the tillable portions of the property and the majority of the undeveloped woodlands and stream areas would remain in the current state.

# Access/Traffic:

- Primary property access is currently located off Shady Lane Trail in the southwest corner of the
  property. Mr. Novak has received a Land Alteration Permit from the LUM Department to
  establish a new access drive immediately east of the unnamed creek bridge crossing for Shady
  Lane Trail. The access drive area has been reviewed by Beau Kennedy and was found to be
  outside of wetland features. The access drive is within Shoreland and erosion control and
  prevention measures have been required to prevent sediment erosion along the streambank
  during the construction.
- No new public roadway is proposed within the plat. The plat does dedicate existing Township

Right-of-Way easement to the public along Shady Lane Trail.

- The Applicant will need to work with Leon Township to obtain any necessary approvals prior to establishing the new access drive.
- Shady Lane Trail is an aggregate surface road. The half-mile (approximate) stretch of the road heading south after the bridge crossing is a "minimum maintenance" roadway with a narrow driving surface, steep grade, and tight turns.
- The proposed plat is not anticipated to generate traffic uncharacteristic to the area. Given the plat would create only one additional development site, the potential additional traffic volume is not anticipated to exceed the capacity of the existing road infrastructure or substantially impact existing traffic circulation or safety.

Leon Township has approved a variance to Mr. Novak allowing the establishment of one dwelling on the property.

# **Utilities:**

• The proposed dwelling would be served by an individual well and septic system upon development. There are no existing wells or septics on the property.

The parcel was evaluated by a licensed septic professional and Goodhue County Sanitarian Benjamin Hoyt to confirm the parcel could support two (initial and replacement) septic systems. Mr. Hoyt offered the following comments regarding the proposal:

I was at the parcel on May 21st, 2020 to verify the evaluation of the soil for a septic system. The soil was very wet, but it was acceptable for a Type 1 mound soil treatment system. A Type 1 system is a typical system for adequate treatment of septic effluent from residential sources.

# Drainage/Landscaping:

• Stormwater drainage is directed downslope and collected by the existing creek and stream channels which then flow north eventually emptying into the Little Cannon River a mile northwest of the property.

The Applicant is not proposing to change the existing site grades. Some grading of the property is anticipated as a result of the proposed future development of a homestead, however, the limited scale of development is not likely to produce on-going erosion and sediment control issues off-site provided construction Best Management Practices and erosion control devices are implemented as necessary during the construction phase.

# Leon Township:

• Leon Township (clerk Sandy Hanson) confirmed acknowledgment of the request. Staff understands Leon Township has not adopted the Conservation Subdivision provisions locally but granted a Township density variance to Mr. Novak in April 2020 allowing him to establish one dwelling on the property.

Townships are a required signatore of Plats in the State of Minnesota. The Township has verbally acknowledged they would not object to signing Mr. Novak's plat if approved by Goodhue County.

• LUM staff discussed the bridge crossing the unnamed creek with the Township. The township noted the bridge has been recently improved with a new box culvert and the crossing should be adequate to support construction traffic and septic maintenance vehicles.

# **Open Space/Conservation Easement:**

- The CS District requires a minimum of 50% of the total acreage in the Conservation Subdivision be designated as Open Space which shall identify a "conservation theme" that guides the location and use of the designated Open Space.
- A permanent Conservation Easement, governed by Minnesota Statute 84C.01-84C.05 encompassing the entirety of the Open Space is required to be recorded prior to, or at the time of platting.
- Mr. Novak has provided an Open Space Conservation Easement for PAC consideration. The easement encompasses 23.28-acres and identifies the protection of the natural, scenic, aesthetic,

and agricultural values that provide habitat and food and for wildlife as well as conserving farmland that provides local and safe food sources as the "theme". The easement states the protected property will be "retained forever substantially unchanged from its present condition as natural open space, to protect water quality and farmland to prevent any use that will significantly impair or interfere with the Conservation Values of the protected property".

Use of the designated conservation easement area for industrial, commercial, and residential uses or development is exclusively prohibited. The easement does provide for continued agricultural use of the Open Space consistent with the stated conservation values. Improvement such as utility services and septic systems, roads, parking areas, paths, and trails or like improvements are permissible within the conserved area so long as they are installed consistent with the purpose of the easement.

The agreement also includes customary provisions for annual inspection access and rights of enforcement for any violations of the agreement by the easement holder (trustee) and appears generally in conformance with the requirements of the CS District Regulations and the requirements of Minnesota Statute 84C.

# LUM Staff Conservation Easement Comments:

• LUM Staff have evaluated Mr. Novak's proposed Conservation Subdivision plat in accordance with the associated performance standards and purpose and intent of the CS District. Staff agrees that Mr. Novak's proposal to establish one additional dwelling on the property is both a reasonable use of the property and largely aligns with the purpose and intent of the CS District.

As the first Applicant for a Conservation Subdivision District following the Ordinance Amendment, Mr. Novak has worked hard with staff to modify his proposal to meet the standards provided. Mr. Novak has provided a letter noting the challenges he encountered in obtaining a third party or non-profit organization to hold his easement. LUM Staff brought the issue before the Planning Advisory Commission at the July 20, 2020 meeting to discuss whether the Commission was interested in having Staff allocate time to develop a county easement option for the CS District. The Planning Commission strongly felt the easement should be held by a third party charity or trust and should not become a financial liability or responsibility of Goodhue County.

Mr. Novak has worked with his attorney (Craig Empey, Empey Law Office, PLLC) to create a Minnesota Statute Chapter 501B Charitable Trust to hold his easement. The "Shady Lane Open Spaces Trust" is proposed to be the designated holder of Mr. Novak's conservation easement. The "Trustee" has not yet been designated, however, Mr. Empey has noted he and Mr. Novak have identified a few potential options and they anticipate having a suitable Trustee soon. Mr. Empey further noted the Trustee will be an independent third party and will not be the landowner, nor the landowner's family. Charitable trusts are identified as a qualifying easement holder by MN Statute 84C.

• Staff conveyed concerns to Mr. Novak regarding his initial proposed conservation easement boundaries as they did not appear adjacent to nor contiguous with any natural boundaries or corridors such as shoreland and wetland features which is required by ordinance wherever "practical" (Article 35 Section 5 Subd. 6.B). Following this feedback, Mr. Novak has worked with his surveyor (Dave Rapp) to modify the easement boundary to improve contiguity with the shoreland, wetland, and farmland of the property.

Please note, the "dashed" conservation easement boundary shown on the provided "Novak Addition" plat is no longer applicable. The surveyor was unable to update the Plat to show the modified conservation easement boundary in time for print. A survey depicting the easement has been provided and staff will provide the Planning Commission with the revised Plat once it becomes available.

• The proposed conservation easement agreement was provided to the Goodhue County Attorneys Office (Stephen O'keefe) for review and comment. Staff will update the Planning Commission during the public hearing with any feedback we receive from the County Attorney.

# Staff Recommendation:

LUM Staff recommends the Planning Advisory Commission

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

recommend the County Board of Commissioners **APPROVE** the request submitted by Paul Novak (Owner), for Preliminary and Final Plat approval of the proposed "Novak Addition" to rezone 46.21 acres and create a one lot Conservation Subdivision District on property currently zoned A2 (General Agriculture District).

Subject to the following conditions:

- 1. The change of zone shall not occur until the Conservation Easement and Plat have been recorded with the Goodhue County Recorder's Office.
- 2. The designated trustee of the "Shady Lande Open Spaces Trust" shall be an appropriate thirdparty entity suited to oversee the Conservation Values of the Open Space Conservation Easement and shall not be the landowner or the landowner's heirs, successors, or assigns.
- 3. The "Novak Addition" Plat shall be revised to depict the modified Open Spaces Conservation Easement boundary provided on David Rapp's survey dated October 9, 2020.



# Exhibit A

\_, 20\_\_\_. Rebecca J. Novak County, Minnesota \_\_\_\_, 20\_\_\_\_, by David G. Rapp, Land Surveyor. \_, 20\_\_\_. Chairperson \_, 20\_\_\_. , Deputy \_, 20\_\_\_. \_\_\_\_\_S Date \_\_\_\_, 20\_\_\_, RAPP LAND SURVEYING, INC. 45967 HIGHWAY 56 BLVD

KNOW ALL PERSONS BY THESE PRESENTS: That Paul R. Novak and Rebecca J. Novak, husband and wife, owners of the following described property situated in the County of Goodhue, State of Minnesota to wit: The North Half of the Southeast Quarter of Section 18, Township 111 North, Range 17 West, Goodhue County, Minnesota. EXCEPT the West 55 rods thereof. Also EXCEPT that part of the Northwest Quarter of the Southeast Quarter of Section 18, Township 111 North, Range 17 West, Goodhue County, Minnesota, described as follows: Beginning at the southeast corner of the West 55 rods of said Northwest Quarter of the Southeast Quarter; thence North 01 degree 01 minute 52 seconds West (assumed bearing) along the east line of said West 55 rods of the Northwest Quarter of the Southeast Quarter, a distance of 1284.76 feet to the northeast corner of said West 55 rods of the Northwest Quarter of the Southeast Quarter; thence North 89 degrees 36 minutes 53 seconds East, along the north line of said Northwest Quarter of the Southeast Quarter, 8.84 feet; thence South 10 degrees 35 minutes 02 seconds East, 45.21 feet; thence South 09 degrees 01 minute 37 seconds East, 420.66 feet; thence South 08 degrees 23 minutes 38 seconds East, 173.94 feet; thence South 02 degrees 56 minutes 26 seconds East, 77.39 feet; thence South 00 degrees 50 minutes 52 seconds West, 159.55 feet; thence South 01 degree 46 minutes 25 seconds East, 416.75 feet to the south line of said Northwest Quarter of the Southeast Quarter; thence North 89 degrees 35 minutes 35 seconds West, along said south line, 99.92 feet to the point of beginning. Have caused the same to be surveyed and platted as NOVAK ADDITION and do hereby dedicate to the public for public use the public way as created by this plat. In witness whereof said Paul R. Novak and Rebecca J. Novak, husband and wife, have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_ Paul R. Novak State of Minnesota County of The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by Paul R. Novak and Rebecca J. Novak. Notary Public, My Commission Expires I hereby certify that I have surveyed or directly supervised the survey of the property described on this plat; that I prepared or directly supervised the preparation of this plat as WAGNER ADDITION; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on the plat; that all monuments depicted on the plat have been correctly set; that as of the date of this certificate, all water boundaries and wetlands, as defined in Minnesota Statutes 505.01, Subd.3, are shown and labeled on the plat; and that all public ways are shown and labeled on the plat. David G. Rapp, Land Surveyor Minnesota License Number 22044 STATE OF MINNESOTA COUNTY OF GOODHUE The foregoing Surveyor's Certificate was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ Notary Public, Goodhue County, Minnesota My Commission expires Approved by the Leon Township Board, this \_\_\_\_\_ day of \_ Signed Taxes payable in the year 20\_\_\_\_ on the land herein described have been paid, there are no delinquent taxes and transfer has been entered this \_\_\_\_\_ day of \_\_\_\_\_ Goodhue County Auditor/Treasurer Pursuant to Chapter 389.09, laws of Minnesota, and Goodhue County Ordinance No. 2-78, this plat has been approved this \_\_\_\_\_ day of Goodhue County Surveyor I hereby certify that proper evidence of title has been presented to and examined by me and I hereby approve this plat as to form and execution. Attorney for Goodhue County I hereby certify that the within instrument was filed in this office for record this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_ M. and was duly recorded as document number \_\_\_\_\_ Goodhue County Recorder

KENYON, MN 55946

(612) 532–1263

# Exhibit A-1



• DENOTES SET 1/2 INCH X 15 INCH IRON REBAR MONUMENT WITH PLASTIC CAP MARKED RLS 22044

UNLESS OTHERWISE INDICATED

DENOTES FOUND IRON MONUMENT

⊗ DENOTES SET MAGHUB IN ROAD

DENOTES APPROXIMATE WETLAND LOCATION PER BEAU KENNEDY, WATER PLANNER, GOODHUE COUNTY SOIL AND WATER CONSERVATION DISTRICT

DENOTES 2 FOOT CONTOUR PER ALAN LAUMEYER GOODHUE COUNTY GIS SPECIALIST

EAST LINE OF WEST 55.00 RODS OF NW 1/4 OF SE 1/4 OF SEC. 18-T111N-R17W ASSUMES A BEARING OF N 01°01'52" W







That part of North Half of the Southeast Quarter of Section 18, Township 111 North, Range 17 West, Goodhue County, Minnesota, described as follows: Commencing at northeast corner of the West 55 rods of the Northwest Quarter of the Southeast Quarter of said Section 18; thence North 89 degrees 36 minutes 53 seconds (assumed bearing) along the north line of said North Half of the Southeast Quarter 41.85 feet to the easterly right of way line of Shady Lane Trail and the point of beginning; thence continuing North 89 degrees 36 minutes 53 seconds East along said north line 835.00 feet; thence South 00 degrees 23 minutes 07 seconds East 815.00 feet; thence North 89 degrees 36 minutes 53 seconds East 570.00 feet; thence South 00 degrees 23 minutes 07 seconds East 253.00 feet; thence South 89 degrees 36 minutes 53 seconds West 978.01 feet; thence South 20 degrees 31 minutes 23 seconds West 237.35 feet to the northerly right of way line of Shady Lane; thence westerly and northerly along the northerly and easterly right of way line of Shady Lane Trail to the point of beginning. Containing 23.28 acres, more or less.

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

OCTOBER 9, 2020

Dated:

David J. Rapp

David G. Rapp Minnesota Registration No. 22044

RAPP LA	AND SURVE 5967 HIGHWAY 56 E KENYON, MN 5594 612–532–1263	IN 55946		
DRAWN BY:	DATE:	PROJECT NO.		
DGR	10-9-20	D18182CE		
SCALE:	SHEET	BOOK/PAGE		
1 "=200'	1 of 1 sheet	42/61		

# MAP 01: PROPERTY OVERVIEW



# **PLANNING COMMISSION**

Public Hearing October 19, 2020

Paul Novak (Owner) A2 Zoned District

The N 1/2 of the SE 1/4 of Section 18 TWP 111 Range 17 in Leon Township

Request for Preliminary and Final Plat approval of proposed "Novak Addition" to rezone 46.21 acres and create a one lot Conservation Subdivision District.



DATA DISCLAIMER: Goodhue County assumes NO liability for the accuracy or completeness of this map OR responsibility for any associated direct, indirect, or consequential damages that may result from its use or misuse. Goodhue County Copyright 2020. N

2018 Aerial Imagery Map Created October, 2020 by LUM

# MAP 02: VICINITY MAP



# **PLANNING COMMISSION**

Public Hearing October 19, 2020

Paul Novak (Owner) A2 Zoned District

The N 1/2 of the SE 1/4 of Section 18 TWP 111 Range 17 in Leon Township

Request for Preliminary and Final Plat approval of proposed "Novak Addition" to rezone 46.21 acres and create a one lot Conservation Subdivision District.



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2018 Aerial Imagery Map Created October, 2020 by LUM

# MAP 03: ELEVATIONS



# PLANNING COMMISSION

Public Hearing October 19, 2020

Paul Novak (Owner) A2 Zoned District

The N 1/2 of the SE 1/4 of Section 18 TWP 111 Range 17 in Leon Township

Request for Preliminary and Final Plat approval of proposed "Novak Addition" to rezone 46.21 acres and create a one lot Conservation Subdivision District.



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2018 Aerial Imagery Map Created October, 2020 by LUM

# September 23, 2020

Goodhue County Board Goodhue County Planning Commission 509 W. 5<sup>th</sup> St. Red Wing, MN 55066

# Subject: Application for Conversation Subdivision District Change of Zoning Request – Paul Novak and Rebecca Novak (collectively, "<u>Applicant</u>") - Goodhue County Parcel 37.015.1500 ("<u>Property</u>")

Dear Respective County Representatives;

We, the Applicant, are submitting this letter to request that Goodhue County ("<u>County</u>") changes the Property's current A-2 zoning to be characterized as a Conservation Subdivision District ("<u>District</u>") pursuant to Article 35 of the County's zoning ordinances ("<u>Article 35</u>").

A copy of Article 35 and Article 10 "Open Space" zoning sections are attached as Exhibit A.

Please find a copy of the Applicant's plat attached as <u>Exhibit B</u> ("<u>Plat</u>").

The Article 35 requirements are itemized below, and are followed by why the Applicants satisfy its conditions:

1. District must be at least 40 contiguous acres (section 5 subd. (1)).

The Property consists of 46.21 acres.

See Plat.

2. <u>50% of the District must be "Open Space" (as defined in County zoning ordinance section 10).</u>

Here, the Open Space is 23.25 acres, as outlined in the Plat.

3. <u>The Open Space ownership and management must be through a permanent</u> <u>conservation easement and include the following (section 6, subd. (2) (B))(1-7):</u>

A draft of the conservation easement is attached as <u>Exhibit C</u> ("<u>Easement</u>").

1. Entity to maintain the Open Space.

The Easement's grantee is The Goodhue Open Spaces Charitable Trust (see Easement).

2. <u>Purposes of the conservation easement</u>.

The Easement's purpose is to promote conservation and an open space environment, and farm land to provide for food safety and security.

See part D of the Easement.

3. Legal description of the land within the easement.

See the Easement's Exhibit A.

4. <u>Restrictions on use of the land.</u>

No industrial, commercial, or residential uses are permitted.

See Part I, section 1 of Easement.

5. <u>Restriction from future dwelling development of the easement.</u>

No industrial, commercial, or residential uses are permitted.

See Part I, section 1 of Easement.

6. The standards under which the Open Space will be maintained.

The Easement provides that customary Minnesota standards for open spaces and consistent with Easement's "Conservation Values" (Part K, section 1, and part E).

7. <u>Who will have access to the Open Space.</u>

No public access is permitted.

See part K of Easement.

Accordingly, since the Applicant meets all the County's District zoning requirements, the Applicant is requesting that you designate the Property as Conservation Subdivision District upon the condition that the Applicant timely delivers you an executed and recorded Easement.

Very Truly Yours,

Paul Novak and Rebecca Novak 1443 Hague Ave. St. Paul, MN 55104 651-587-0894 paulnovak651@gmail.com

# **EXHIBIT A**

- F. Temporary camping (subject to State of Minnesota Department of Public Health Standards for Recreation Camping)
- G. Wedding ceremonies or receptions
- H. Wine and catered food events
- I. Reunions
- J. Concerts
- K. Social gatherings or similar types of events.

**NON-CONFORMING LOT OF RECORD.** Any legal lot of record that at the time it was recorded fully complied with all applicable laws and ordinances but which does not fully comply with the lot requirements of this Zoning Ordinance concerning minimum area or minimum lot width.

**NON-CONFORMING STRUCTURE.** A structure the size, dimensions or location of which was lawful prior to the adoption of this Zoning Ordinance, but which fails by reason of such adoption, or subsequent revisions or amendment, to conform to the present requirements of the zoning district.

NON-PREVAILING WIND. See Article 18 (WECS)

**NORMAL WATER LEVEL.** The level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.

**OBSTRUCTION.** Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel, modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

**ODOR.** The odor of growing vegetation, domestic fertilizers, animal manures, insecticides, and other agricultural odors shall not be considered objectionable.

**OPEN SPACE.** Land that is permanently protected from future dwelling development. Land that is designated as Open Space may be used for such purposes as agricultural, forest, recreational uses, or demonstrate the use is protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of the real property.

**OPERATOR.** See Article 14 (Mineral Extraction)

**ORDINARY HIGH WATER LEVEL.** The boundary of public waters and wetlands and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

**OWNER.** Any individual, firm, association, syndicate, partnership, corporation, trust or any other legal entity having a proprietary interest in the land.

**PARCEL.** A unit of real property that has been given a tax identification number maintained by the County.

**PARKING SPACE.** An area of not less than two hundred (200) square feet, exclusive of drives or aisles giving access thereto, accessible from streets or alleys or

# CONSERVATION EASEMENT

This is a CONSERVATION EASEMENT granted by PAUL R. NOVAK AND REBECCA NOVAK, husband and wife, ("<u>Grantor</u>") to the \_\_\_\_\_\_, as trustee of THE SHADY LANE OPEN SPACES TRUST ("<u>GRANTEE</u>").

- A. <u>GRANTOR</u>. The Grantor is the current owner of approximately 46.21 acres of real property ("<u>Real Property</u>") located in Goodhue County, Minnesota whereby this conservation easement shall be granted on 23.25 acres of such Real Property ("<u>Protected Property</u>").
- B. <u>GRANTEE</u>. The Shady Lane Open Spaces Trust is a Minnesota charitable trust created pursuant to Minnesota Statutes Chapter 501B for the purposes of holding this easement's real property interests.
- C. <u>REAL PROPERTY AND PROTECTED PROPERTY AREAS</u>. The Real Property's and Protected Property's respective legal descriptions are provided in the attached preliminary plat as <u>Exhibit A</u>.
- D. <u>PROTECTED PROPERTY DESCRIPTION AND PURPOSE</u>. The Protected Property consists of open fields, forests, wetlands, and two small bridges, and is currently used for hunting purposes.

The Protected Property is important as such promotes conservation and an open environment, and farm land to provide food safety and security.

E. <u>CONSERVATION VALUES</u>. The Protected Property, as outlined above, has significant natural, scenic, aesthetic, and agricultural values (individually and collectively, "<u>Conservation Values</u>"), that provides habitat and food for wildlife. Additionally the use of the property as farmland serves to provide local and safe food sources for residents and animals.

These Conservation Values are not likely to be significantly impaired by the continued use of the Protected Property as described above or as authorized in this Easement; or by

the use, maintenance of any structures and improvements that presently exist on the Protected Property; or that are authorized below. Preservation and protection of these Conservation Values will provide significant benefit to the public. Grantor and Grantee are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity for the benefit of this and future generations. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current landowner and all future owners of the Protected Property.

- F. <u>CONSERVATION POLICY AND INTENT</u>. Protection of the Conservation Values of the Protected Property is consistent with and will further governmental policies, including those established by the following:
  - 1. Minnesota Statutes Chapter 103A, which promotes protection of the state's waters and their adjacent lands and Section.103A.206, in particular, which recognizes the economic and environmental importance of maintaining and enhancing the soil and water resources of the state and the role of private lands in these conservation efforts, to among other reasons, preserve natural resources, protect water quality, preserve wildlife, and protect public lands and waters.
  - 2. Minnesota Statutes Section 103A.201, which specifically promotes the protection of wetlands and Minnesota Statutes Section 103A.202, which specifically declares that it is in the public interest to preserve wetlands of the state in order to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved sub-surface soil moisture and enhance the natural beauty of the landscape.
  - 3. Minnesota Statues Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational or open space use, protecting natural resources and maintaining or enhancing air or water quality.
  - 4. Goodhue County has adopted a comprehensive and long-term land conservation vision and implementation programs to protect and improve natural areas; productive farmland; shoreland along all rivers, streams and undeveloped lakeshore; regional parks; and multi-purpose regional greenways throughout the County.
  - 5. Grantor and Grantee are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity for the benefit of this and future generations. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current landowner and all future owners of the Protected Property.

# G. GRANT OF CONSERVATION EASEMENT.

Pursuant to the laws of the State of Minnesota, and in particular Minnesota Statutes Chapter 84C, and in consideration of the facts recited above and the mutual covenants contained herein, for \$500 or less of consideration, the Grantor hereby conveys and warrants to the Grantee and its successors and assigns a perpetual conservation easement ("<u>Easement</u>") over the Protected Property subject to building and zoning laws, federal, state, and local laws, and encumbrances, easements, or like of records, if any.

# H. EASEMENT PURPOSE.

It is the purpose of this Easement to ensure that the Protected Property will be retained forever substantially unchanged from its present condition as natural open space, to protect water quality and farmland to prevent any use that will significantly impair or interfere with the Conservation Values of the Protected Property. Grantor intends that this Easement will confine the use of the Protected Property to activities that are consistent with the purpose of this Easement.

# I. COVENANTS AND RESTRICTIONS.

All activities on or uses of the Protected Property must be consistent with the purpose of this Easement. The following activities and uses are expressly prohibited.

1. <u>Prohibited Uses</u>. No industrial, commercial, residential use or developments are permitted.

Agriculture or like uses are permissible.

2. Building, Structures, and Improvements.

Utility services and septic systems, roads, parking areas, paths and trails, or like improvements are permissible so long as such improvements are consistent with the Easement's Conservation Values.

- J. <u>GRANTOR'S RESERVED RIGHTS</u>. Grantor reserves for itself, its heirs, successors and assigns *any and all rights* to use the Protected Property for all purposes that are not expressly restricted or prohibited herein and are not inconsistent with this Easement's Conservation Values.
- K. <u>PUBLIC ACCESS</u>. Although the public benefits from this Easement through the preservation and protection of the Conservation Values of the Protected Property, nothing in this Easement gives the public a right to enter upon or use the Protected Property where no such right existed prior to the conveyance of this Easement.

The Owner retains the right to permit any public use of the Protected Property consistent with the preservation and protection of the Conservation Values of the Protected Property.

# L. <u>MISCELLANEOUS PROVISIONS</u>.

- 1. <u>Easement Standards</u>. The Grantee is to maintain the Protected Property with the customary standards for open spaces in Minnesota and consistent with the Conservation Values.
- 2. <u>Real Estate Taxes</u>. Grantor agrees to pay any and all real estate taxes due and payable for the Protected Property in the year 2020, for all prior years and thereafter so long as the Grantor is the fee owner of the Protected Property and will pay all assessments levied by competent authority on the Protected Property.
- 3. <u>Costs and Liabilities</u>. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantee shall have no duty or responsibility to manage or maintain the Protected Property. If, however, the Protected Property is damaged by causes beyond Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons, Grantor and Grantee will meet and seek to arrive at an equitable solution to restore the Protected Property.
- 4. <u>Grantee Access To Ensure Compliance</u>. Grantee shall have access to the Protected Property at least annually to ensure that Grantor is acting consistent with this easement's terms.
- 5. <u>Grantee's Enforcement's Rights</u>. Grantee shall have all the rights at law or equity to enforce its property rights granted to it via this easement.
- 6. <u>Easement Runs With The Land</u>. This easement's terms shall run with the land and be binding on the grantor's and grantee's successors.

(remainder of this page is left intentionally blank)

**IN WITNESS WHEREOF**, the undersigned has caused this instrument to be duly executed the \_\_\_\_\_\_ day of \_\_\_\_\_\_ 2020.

Paul R. Novak

Rebecca Novak

State of Minnesota, County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, by PAUL R. NOVAK AND REBECCA NOVAK, husband and wife.

(Stamp)

(signature of notarial officer)

Title (and Rank):

My commission expires: \_\_\_\_\_

(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY: Empey Law Office, PLLC Craig A. Empey (license #0349902) 7760 France Ave. S. #1100 Edina, MN 55435

# **SECTION 1. PURPOSE**

The Conservation Subdivision (CS) District is intended to provide a residential development option that supports the rural character and residential development goals of Goodhue County, while permanently preserving open space, agriculture, and natural resource areas, beyond planned future extension of urban services.

# Section 2. PERMITTED USES

All permitted uses are subject to zoning and building permits. Permitted uses allowed in the CS Zoning District shall be as shown in Article 20, Section 7, "Table of Uses".

# Section 3. CONDITIONAL USES AND INTERIM USES

All conditional uses and interim uses are subject to zoning and building permits. Conditional and interim uses allowed in the CS Zoning District shall be as shown in Article 20, Section 7, "Table of Uses."

# Section 4. ACCESSORY STRUCTURES AND USES

Accessory buildings in the CS district may be permitted when located on the same parcel as the principal building and shall comply with the following standards:

- Subd. 1. No accessory buildings shall be permitted on a parcel prior to the establishment of the principal building.
- Subd. 2. Detached accessory buildings shall be limited in size to 7,200 square feet in area.
- Subd. 3. Greenhouses, conservatories, swimming pools, tennis courts or similar noncommercial recreational facilities for the private enjoyment and convenience of the residents of the principal use and their guests shall be allowed.
- Subd. 4. Livestock shall be permissible as an accessory use provided no parcel exceeds 9 Animal Units.
- Subd. 5. Any temporary buildings for uses incidental to construction work, which shall be removed upon completion or abandonment of such construction work.

# Section 5. DIMENSIONAL REQUIREMENTS

- Subd. 1Minimum Subdivision Size. The minimum area required for a Conservation<br/>Subdivision shall be 40 contiguous acres.
- Subd 2.Density. The maximum density of Conservation Subdivisions without a shared<br/>SSTS shall be 4 dwellings. The maximum density of Conservation Subdivisions<br/>with a shared SSTS shall be 6 dwellings.

- Subd. 3 Lot Size. Any lot on which a single-family dwelling unit is to be erected shall contain a minimum of 3 acres of Buildable Area. Lots with a shared SSTS shall be a minimum of 2 acres of Buildable Area.
- Subd. 4 Yard Requirements. Every building shall meet the following Yard requirements:
  - A. Front Yard.

1. There shall be a minimum setback of 40 feet from the right-of-way line of any public road or highway.

2. There shall be a minimum setback of 25 feet from the right-of-way line any private road.

- B. Side and Rear Yards. Every building shall have a minimum setback of 40 feet.
- C. Buffer zones. All dwellings and accessory structures shall have a minimum setback of 100 feet from surrounding agricultural uses.
- Subd. 5 Height Requirements. Every building shall have a maximum height of 35 feet.
- Subd. 6Open Space Requirements. Conservation Subdivisions shall identify a<br/>conservation theme. Conservation themes may include, but are not limited to,<br/>forest, water quality, farmland, or view-shed preservation. The conservation<br/>theme shall guide the location and use of the designated Open Space.
  - A. A minimum of 50% of the total acreage in the Conservation Subdivision shall be designated as Open Space.
  - B. Where practical, designated Open Space shall be contiguous with adjacent agriculture, wildlife corridors, forestry, natural habitats, preserves, or trails.

# SECTION 6. GENERAL DISTRICT REGULATIONS

- Subd. 1 A proposed Minnesota Statute 505 plat shall accompany all Conservation Subdivision change of zone requests and shall be considered part of the application. The plat must obtain the approval of the Township in which it is located in order to be recorded. No buildings or development may occur on the site until the plat is recorded.
- Subd. 2 Open Space Ownership and Management. All lands and improvements in designated Open Spaces shall be established, managed and maintained in accordance with the following:
  - A. Conservation Easement. A permanent Conservation Easement that encompasses the entire Open Space area must be recorded prior to, or at the time of platting.
  - B. Conservation Easements shall be governed by Minnesota Statute 84C.01-84C.05, and include:
    - 1. The entity to maintain the designated Open Space;
    - 2. The purposes of the Conservation Easement;

- 3. The legal description of the land within the easement;
- 4. The restrictions on the use of the land;
- 5. A restriction from future dwelling development of the easement;
- 6. The standards under which the Open Space will be maintained; and
- 7. Who will have access to the Open Space.
- C. All structures located within the designated Open Space must obtain appropriate permits. As part of the permit application, structures must demonstrate they are in harmony with the associated Open Space theme. Shared SSTS and shared wells within the Conservation Subdivision may be located within the Open Space designated parcels if allowed by the Conservation Easement restrictions.
- Subd. 3. Public Road Frontage or Road Access Easements Standards:
  - A. Each Parcel shall include a minimum 33 feet of frontage on a public road rightof-way line extending to the building line. As an alternative, a single parcel that does not front on a public road may be permitted upon the recording (with the Goodhue County Recorder) of a driveway access easement that is a minimum of 33 feet in width and has been determined to be acceptable by the Goodhue County Land Use Management Department.
  - B. Two parcels that do not front on a public road may be permitted upon the recording (with the Goodhue County Recorder) of a shared driveway access easement that is a minimum of 66 feet in width and has been determined to be acceptable by the Goodhue County Land Use Management.
  - C. Access for 3 or more parcels shall meet the standards for public roads in the Goodhue County Subdivision Ordinance.

#### **MINNESOTA STATUTES 2019**

# **CHAPTER 84C**

# **CONSERVATION EASEMENTS**

84C.01	DEFINITIONS.	84C.03	JUDICIAL ACTIONS.
84C.02	CREATION, CONVEYANCE, ACCEPTANCE, AND DURATION	84C.04	VALIDITY.
	DORAHON.	84C.05	APPLICABILITY.

#### 84C.01 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means:

(i) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(ii) a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

History: 1985 c 232 s 1

#### 84C.02 CREATION, CONVEYANCE, ACCEPTANCE, AND DURATION.

(a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in section 84C.03, clause (b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

**History:** *1985 c 232 s 2* 

# 84C.03

#### 84C.03 JUDICIAL ACTIONS.

(a) An action affecting a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

History: 1985 c 232 s 3

#### 84C.04 VALIDITY.

A conservation easement is valid even though:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to another holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

History: 1985 c 232 s 4

# 84C.05 APPLICABILITY.

(a) This chapter applies to any interest created after August 1, 1985, which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before August 1, 1985, if it would have been enforceable had it been created after August 1, 1985, unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

History: 1985 c 232 s 5



# 505 Plat Application

A. A Minnesota Statue Chapter 505 plat\* is required under the following circumstances:

□ 1) The creation of three or more tax parcels from one tax parcel, except when the tax parcels created can be described by an aliquot part of the Public Land Survey. The minimum division shall be a Quarter Quarter of the Section (i.e. SE ¼ of the NW ¼ ). Non-contiguous land must be separate tax parcels. The parcels shown on the plat provide for road access for each new division or reconfiguration of land;

2) If a subdivision of a platted lot or outlot can result in one or more potential dwelling sites, the subdivision must be platted.

\*Requires approval and public hearings from the Planning Commission and County Board

		Landowner Informati	on			
Landowner Name	Paul	Novak	Ema	ail		
Mailing Address					95 95	
Daytime Phone						
	Applicar	nt Information (if differen	nt tha	n above)		
Applicant Name	SAME		Ema	Email		
Mailing Address						
Daytime Phone						
Township Information						
Township position			Date	e		
Signature						
Carl and a start of the		County Use		10.00		
Application Fee	\$350	Receipt Number 17339		Received Date	6-26-2020	
Initial Reviewed by	Ryan Bechel					
Plat Name	Name Novak Addition					
Request complies with	Goodhue Co	unty Zoning and Subdivision			-	
this day		the Goodhue Cour	nty Pla	nner/Zonii	ng Administrator on	

# RECEIVED

JUN 2 6 2020

Land Use Management

To whom it may concern,

Attached is an easement between Paul and Rebecca Novak with the County of Goodhue.

Every effort has been made to find a third-party easement holder however none such exist. This is due in part to the property being relatively small and in an area of the state where funding is either limited or non-existent. There is an assumption that most charities would take an easement for free but this couldn't be further from the truth. The following is an email from the Minnesota Land Trust, which was the only organization even willing to entertain the idea of an easement with us.

#### "Paul,

I was able to talk through your property with some other staff members. Frankly speaking, your options of pursuing an easement though our organization are limited, and I'm not certain you'll find them feasible given what you'd like to do with the land long-term.

Your first potential option would be to pursue an easement with us by applying through our easement program for SEMN. That is a competitive process where we rank projects and then pursue easements based on the rankings. Our funding for that program also dictates limited ag use within the easement area, no more than 10% of the easement area can be in some form of agricultural production and buffers need to be in place between ag lands and any waterbody. Under this scenario, 1) you'd have to submit an application and rank out high enough, and 2) you'd be limited to ag uses on 2.3 acres of the easement area.

The second potential option is bypassing the SEMN easement program and paying for all easement project development costs (including staff time and the stewardship contribution) which can range from \$24,000 to \$50,000 depending on scope of the project. Even with that option I cannot guarantee we'd necessarily take on the project-it would have to go through a more thorough review internally, and most likely if approved it would be an elongated timeline as we have grant project priorities that would take precedent.

I realize these are not the most favorable options to you. I wish we could be more helpful, however we're constrained by both our grant funding and capacity to complete easement projects at this time. There are other national organizations, such as the American Farmland Trust, that can hold ag easements. Or better yet at your local level in the Goodhue NRCS office there is a federal easement program, ACEP, that you might be able to take advantage. I would contact Beau Kennedy at Goodhue SWCD to have him put you in contact with the correct NRCS person in their office. The office number is 651-923-5286. Please feel free to give me a call if you'd like to talk about these options or anything else I outlined here. I'm happy to talk through any of this.

With regards,

--Nick Bancks Program Manager Minnesota Land Trust 2356 University Ave W., Suite 240 St. Paul, MN 55114 "

The Minnesota Land Trust was further dissuaded from granting me an easement because I want to continue to use portions of my property for farming.

They were not the only entity which wants to limit my ability to farm my land. Some offices of Goodhue County also want to limit my use of the preserved portions of my property to "hobby farming". I see issues with this. First, how do we define "hobby farming". And more importantly, is this what the County wants? I would argue that it's not. From the June 17th 2019 Goodhue County Land Use Management Office public hearing letter.

"The Conservation Subdivision district is intended to provide a new "tool" for low-density rural residential development with a focus on preservation of **recreational and agricultural resources**."

## Additionally;

"the proposed district is intended to provide a residential development option that supports the rural character and residential development goals of Goodhue County, while permanently preserving open space, **agriculture**, and natural resource areas."

Furthermore, from the zoning ordinance itself, Article 35. Section 1.

"The Conservation Subdivision (CS) District is intended to provide a residential development option that supports the rural character and residential development goals of Goodhue County, while permanently preserving open space, agriculture, and natural resource areas, beyond planned future extension of urban services."

Lastly, and I believe most importantly, from Article 1. Section 2 of the Goodhue County Zoning Ordinance.

#### **ARTICLE 1. SECTION 2. PURPOSE**

The purpose of this Ordinance is to promote and protect the public health, safety and general welfare of the people of Goodhue County. This Ordinance will protect and **preserve prime agricultural land** by limiting the density of residential development in these areas. This Ordinance will assist in the economic

growth of the County by providing a basis for reasonable and orderly residential, commercial and industrial development. At the same time, this **Ordinance shall encourage farmers**, residents and businesses **to protect the land from erosion**, **loss of wetlands**, **loss of water quality**, **and loss of woodlands**.

So, my proposal is effectively everything laid out above. Preservation of agricultural land, reasonable and orderly residential development, protection from erosion, loss of wetland, loss of water quality and loss of woodlands.

What is agricultural land? Per Article 10. Section 2 of Goodhue County Zoning ordinance. AGRICULTURAL LAND. Land that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was set aside to receive price support or other payments under United States Code, Title 7, Sections 1421 to 1469, six of the last ten years prior to January 1, 1991.

The following are aerial photographs from 1981- 1990 of my property.





1981

1982













What is depicted is land which was in crop rotation. The margins of the farmland have receded somewhat and have been overtaken by box elders, but non- the- less cropland. This is not a "rice field" as one county official once told me. In fact, I have had two truck farmers approach me wanting to farm my land because they are aware of the deep rich soil present in the area.

Next, I'd like to address the construction of buildings. It has been suggested that I forego all rights to build any structure of any kind within the preserved portions of my property. However, this is not what is described in the ordinance.

Section 6. Subdivision2. (C)

C. All structures located within the designated Open Space must obtain appropriate permits. As part of the permit application, structures must demonstrate they are in harmony with the associated Open Space theme. Shared SSTS and shared wells within the Conservation Subdivision may be located within the Open Space designated parcels if allowed by the Conservation Easement restrictions.

If the intent of the County was to not allow any structures within the open space, then it should have stated that.

Sincerely,

Paul Novak

From:	Kennedy, Beau
То:	Paul Novak; Bechel, Ryan
Subject:	RE: Novak Home location
Date:	Friday, June 12, 2020 10:57:05 AM

#### Paul

I do not think a delineation is necessary if your home is located where you identified in the attachment. That location is several feet higher in elevation than the wetland to the north.

If future plans with the conservation subdivision identify roads, grading, homes, etc, then a delineation should be completed to properly identify the wetland areas on the parcel(s).

Take care

В

# Beau Kennedy

Goodhue SWCD

From: Paul Novak Sent: Wednesday, June 3, 2020 9:05 AM To: Bechel, Ryan <ryan.bechel@co.goodhue.mn.us>; Kennedy, Beau <bkennedy@goodhueswcd.org> Subject: Novak Home location

External Email - Use caution opening links or attachments!

Hi Ryan and Beau,

I've attached a rough drawing of the proposed driveway and home location. The brown rectangle is where the septic system will be located. This has been verified in the field by Ben Hoyt.

The issue in question is if I need a wetland delineation. Obviously I'm hoping to avoid that cost but will do whatever is requested.

Thanks