

Docket Number: 23/13149

Appellants: True Holdings, LLC (Property Owner), 1618 NE Vicksburg Court, Ankeny, IA 50021, represented by Francisco Trujillo, being represented by Seth Sunderman with Bishop Engineering, 3501 104th Street, Urbandale, IA 50322

Appeal: Variance to allow portions of a private driveway and access point to be located at less than the required one (1) foot above the 1% Annual Chance flood elevation, or Base Flood Elevation, of 839 feet.

Background

The subject property is located at 5501 NE Berwick Drive, Berwick, and is legally described as all of Lots 12, 13 and 14 of Bauer Heights Plat 3, an Official Plat, and part of Lot 2 of Bauer Heights Plat 3 as created by Parcel A recorded in Book 9401, Page 229 in the Office of the Polk County Recorder, all being within the SE ¼ of the SE ¼ of Section 8, Township 79 North, Range 23 West of the 5th P.M. (Delaware Township). The subject property is approximately 2.27 acres in size and is zoned “ER” Estate Residential District. The subject property is located within the unincorporated village of Berwick, which lies approximately one (1) mile east of Ankeny, one (1) mile west of Altoona and just north of Interstate 80 and the corporate limits of the City of Des Moines. Surrounding properties are primarily zoned residential within the County and contain a mix of existing single-family residences and open space. Properties in direct proximity to the north and south are also zoned Estate Residential and contain existing single-family homes. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is a flag-shaped parcel having approximately 57 feet of frontage onto NE Berwick Drive via a flag stem that is between 200 and 240 feet in length. After this flag stem the parcel widens out to the east creating a relatively sizable buildable area. The subject property is comprised of lots that were created by the subdivision plat of Bauer Heights Plat 3, which was recorded in 1989. This subdivision created a total of 14 single-family lots. Lots 1 thru 6 have frontage onto NE Berwick Drive, while the remaining lots were to be accessed via a future street extension of NE 36th Court to the east. This street extension was never completed, and is now located entirely within a mapped floodplain. A majority of the subject property, including its buildable area, is comprised of Lots 12, 13 and 14 which were to be accessed by this street extension. A plat of survey was completed in 2002 which separated off a part of the adjacent Lot 2 of Bauer Heights Plat 3 to create legal frontage and access to NE Berwick Drive to make this property buildable. The subject property is considered a legal nonconforming parcel within the “ER” Estate Residential District, as it is less than the current minimum lot size of three (3) acres. However, the property is considered buildable for one (1) single-family residence.

Summary of Request

The Polk County Zoning Ordinance, *Article 7: Natural Resource Protection, Division 4: Natural Resources, Section 1: Floodplains, subsection J.3*, states that “Vehicular access to any principal structure, by public roads, shall be elevated to a level which is one (1) foot above the 1% Annual Chance flood elevation and by private roads and driveways, it shall be elevated to a level which is one (1) foot above the 1% Annual Chance flood elevation, in order to ensure emergency and fire protection access during flood events.” The appellants are proposing to construct a new

principal single-family residence on the property, including a private driveway and access point onto NE Berwick Drive, which crosses portions of mapped 1% Annual Chance floodplain. A variance is requested to allow portions of this future vehicular access to be located at less than the required one (1) foot above the 1% Annual Chance flood elevation of 839 feet. The proposed access point and portions of the driveway are within the mapped floodplain, with elevations below the required 840 feet, ranging between approximately 837 feet to 839 feet. See *Attachment B* for a copy of the Variance Appeal Application. See *Attachment C* for a copy of the proposed property layout, including future driveway, residence and proposed grades. *Attachment D* shows the current mapped floodplain in relation to the property and surrounding area.

Staff mailed out a total of seven (7) notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff has received no responses in regards to this Appeal.

Staff has also notified the Iowa Department of Natural Resources, Floodplain Management Division, regarding this request. While Polk County is a delegated community of the State-managed National Flood Insurance Program and administers floodplain permitting locally, the Iowa DNR must review and consent to any variance request to the County's floodplain regulations. At this time the DNR has reviewed this request and concurs with Polk County's recommendation for approval. Staff will provide the DNR with documentation of the final decision by the Board of Adjustment on this case.

Natural Resources

The subject property is currently open space, including grass and some mature trees. There is a portion of a ravine/drainageway along the southern edge of the flag stem, but is primarily located on the adjacent property to the south. Review of historical aerial photos indicates this ravine previously extended across the subject property as well as the property adjacent to the north, but appears to have been filled in and a culvert extended by a previous property owner(s). The site contains considerable areas of mapped 1% Annual Chance, or 100-year, floodplain of Four Mile Creek. These areas are mapped as Zone AE, with a base flood elevation determined as 839 feet. See *Attachment D* for a clear view of the areas of mapped floodplain on the subject property.

There is adequate buildable area in the southeastern part of the property for a future residence to be located outside of the floodplain. However, the driveway, including entrance onto NE Berwick Drive, would have to cross through an area of mapped floodplain. The elevation of the property ranges from a low point of approximately 836 to 837 feet within the floodplain areas along NE Berwick Drive and along the eastern, rear boundary of the property, to a high point of approximately 854 feet within the far southeastern corner. Available wetland mapping resources also indicate the property may have wetlands present. However, the appellants have provided a detailed wetland study which substantiates there are not wetlands present.

Roads & Utilities

The subject property has frontage and access to the west onto NE Berwick Drive, which is a paved, two-lane rural cross section collector roadway maintained by Polk County. The site has a quasi-

existing driveway entrance which would have to be permitted by Polk County and upgraded to County standards at the time of any future development. Water service is available through Des Moines Water Works. Available mapping indicates there is an existing 6" water main located along the west side of NE Berwick Drive. The appellants should contact Des Moines Water Works to verify capacity, cost and process for a future service. Any future residence on the property is required to be served by public water. A private well for potable water is not permitted. A future residence would need to be served by a private onsite wastewater treatment system, to be designed and permitted at time of future home construction.

Recommendation

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
 - Yes. The adjacent public roadway of NE Berwick Drive is approximately 2-3 feet below the Base Flood Elevation of 839 feet, making the property effectively inaccessible during flood events. The driveway elevation standard is intended to ensure occupants and emergency services can access properties during a flood event. However, the standard in this instance is impractical and burdensome since the adjacent public roadway providing access is below the Base Flood Elevation.

- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
 - Yes. The variance supports a private access and driveway to serve a future single-family residence on the property, which is a permitted use.

- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
 - Yes. There will be limited impact on adjacent properties. Approval of the variance would create less of an impact to adjoining properties as additional grading and filling work to raise the driveway will not be required. Since the adjacent public roadway providing access to the subject property is below the Base Flood Elevation, approval of the variance will not further reduce the ability to access the property during a flood event.

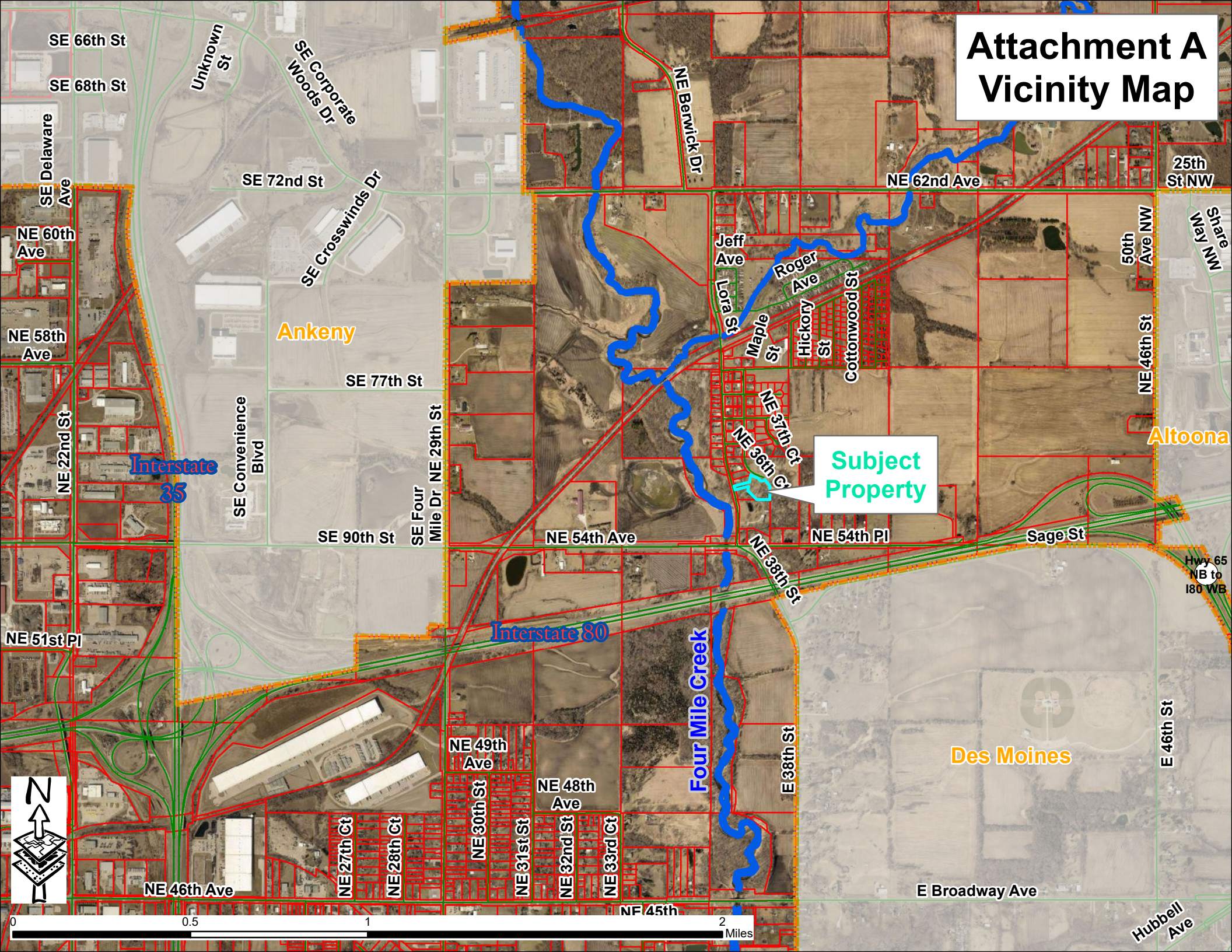
Additionally, in communications with the appellants staff understands the owner intends to operate a construction company from the future residence and property. Staff has discussed the nature of the business with the owner, and made him aware that it would not be permitted based on the County's Zoning Ordinance and Home Occupation standards. In order to reiterate this issue, staff is recommending a condition of approval regarding Home Occupations.

- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
- Yes. The mapped floodplain and elevations of the property and adjacent public roadway are natural conditions of the property and surrounding area, not resulting from actions of the appellants.
- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?
- Yes. Due to the elevation of NE Berwick Drive, being 2-3 feet below the Base Flood Elevation, approval of the variance will not further reduce the ability to access the property during a flood event.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance, subject to the following conditions:

1. This approval only permits a future driveway and access point to be constructed below 1-foot above the Base Flood Elevation. Any future work on the property or within the floodplain, including the future residence and any accessory structures, requires a Floodplain Development Permit, compliance with the floodplain regulations, as well as other applicable plans and approvals from Polk County.
2. The subject property is zoned and platted for a principal single-family residence and residential accessory structures/uses. Prior to the operation of any Home Occupation or home-based business, the property owner must first receive approval of a valid Home Occupation Permit from Public County Public Works.

Attachment A Vicinity Map

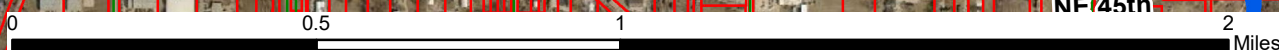


Ankeny

Altoona

Des Moines

Subject Property



Variance Appeal Application



Board of Adjustment Authority

The Polk County Board of Adjustment is empowered by Iowa law and by the Zoning Ordinance of Polk County to hear requests and to make decisions on variance appeals to the Zoning Ordinance for individual properties where provisions of the Ordinance impose a unique and unnecessary hardship on the property owner and where the granting of a variance is not contrary to the intent of the Zoning Ordinance or to the public interest.

Each variance appeal is only a request to have a hearing before the Board of Adjustment. Notice of the hearing will be provided to all property owners located within 250 feet from the subject property. The Board of Adjustment will make a determination at a public hearing whether or not to approve or deny the request based on a staff report, applicant presentation, as well as public input. All appeals that are denied shall not come back to the Board of Adjustment for one year. Refunds will not be made once notice has been sent out to adjacent property owners.

Please complete the entire application and review the Variance Regulations on page 3.

1. The undersigned applicant requests that the Board of Adjustment consider this application for a variance appeal for the following general purpose. (Describe briefly the request)

The owner seeks a variance for the property Vehicular Access to allow the drive to be constructed below the base flood elevation of 839'.
Zoning Ordinance, Floodplain, Article 7, Section 1.J.3

(time stamp)
Official Use Only

2. Subject Property Address: 5501 NE Berwick Drive Berwick, IA 50032

3. Subject Property Zoning District: ER (Estate Residential District)

4. District and Parcel Number:

5. Subject Property Legal Description (attach if necessary):

Lot 12, 13 & 14 in Bauer Heights Plat 3, an official plat; and parcel "A", on plat of survey filed October 23, 2002 in book 9401, page 229, being a portion of Lot 2, Bauer Heights Plat 3, an official plat in Polk County LKA 5501 NE Berwick Drive, Berwick, Iowa 50032

6. Filing Fee: \$353.00 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Francisco Trujillo
Applicant (Print Name) Signature 8/24/2023 date

Owner francisco@trueconstructiondsm.com
Interest in Property (owner, renter, prospective buyer, etc.) Email

1618 NE Vicksburg Ct Ankeny, IA 50021 515-771-1377
Address, City, State and Zip Phone Fax

8. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below

Seth Sunderman Bishop Engineering
Applicant Representative (Print Name) Firm or Business Name

3501 104th Street Urbandale, IA 50322
Address, City, State and Zip

ssunderman@bishopengr.com 515-276-0467
Email Phone Fax

9. Property Owner Consent

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (if additional signatures are needed please attach)

Francisco Trujillo _____ 8/24/2023
 (Print Name) _____ Signature _____ date _____

 (Print Name) _____ Signature _____ date _____

 (Print Name) _____ Signature _____ date _____

 (Print Name) _____ Signature _____ date _____

10. State the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance. Specifically explain the nature of the appeal.

The owner seeks a variance for the property Vehicular Access. The base flood elevation is 839' with the existing property grades range between 836' to 842' with NE Berwick Drive being approximately 3' below the base flood elevation of 839'. The house on the north adjacent lot has a finish floor elevation of approximately of 843.49. There appears to be an overflow route for the water way to the east of the existing house. The overflow route crosses the existing drive at elevation of approximately 840.5'. The grade transition needed from NE Berwick Drive to raise the proposed drive to to a minimum elevation of 840' to accommodate the 1' above the base flood elevation is excessive in relation to the surrounding grades. The building site and parking areas are above the base flood elevation and as NE Berwick Drive would be underwater and inaccessible during a 1% Annual Chance Flood Event the owner request that the proposed drive elevations follow close to the existing grades.

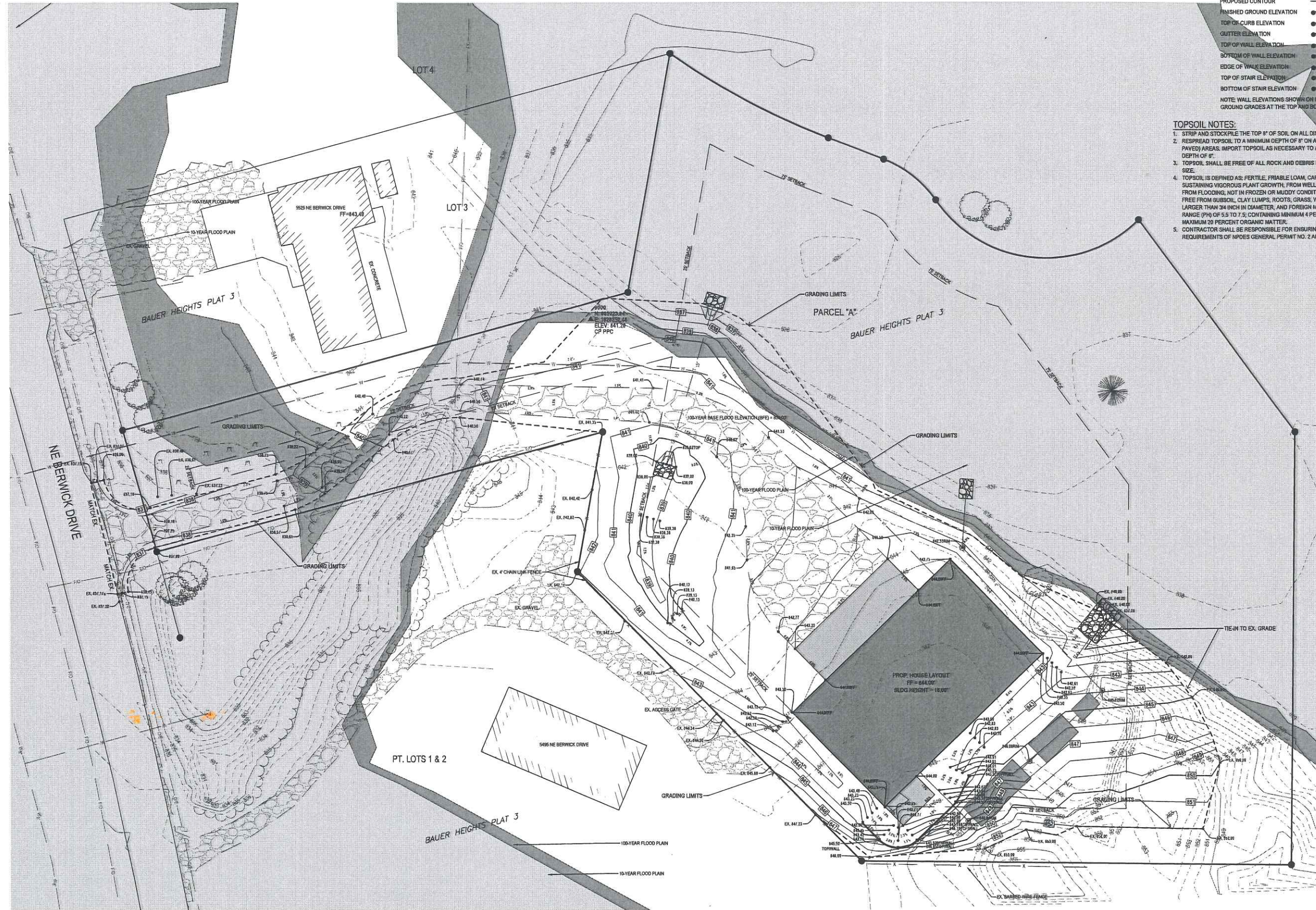
A completed application with site drawing and filing fee are required for a submittal. Incomplete submittals will not be processed and returned to the Applicant.

Return completed forms to: Polk County Public Works, Planning Division 5885 NE 14th Street, Des Moines, IA 50313
 Phone (515) 286-3705 ▪ Fax (515) 286-3437 Email: PublicWorks@polkcountyiowa.gov
 Forms available online <http://www.polkcountyiowa.gov/PublicWorks/> BOA Calendar CALENDAR

OFFICIAL USE ONLY			
Received by		Docket Number	
Date Received		Reviewed by	
BOA meeting date		BOA Approved	Y / N

PRELIMINARY - NOT FOR CONSTRUCTION

Attachment C



GRADING LEGEND:

EXISTING CONTOUR	---
PROPOSED CONTOUR	—
FINISHED GROUND ELEVATION	150.50
TOP OF CURB ELEVATION	150.50TC
GUTTER ELEVATION	150.50G
TOP OF WALL ELEVATION	150.50TW
BOTTOM OF WALL ELEVATION	150.50BW
EDGE OF WALK ELEVATION	150.50EW
TOP OF STAIR ELEVATION	150.50TS
BOTTOM OF STAIR ELEVATION	150.50BS

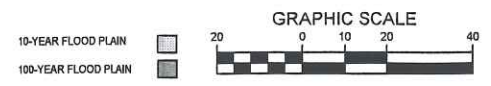
NOTE: WALL ELEVATIONS SHOWN ON PLAN ARE FINISHED GROUND GRADES AT THE TOP AND BOTTOM OF THE WALL.

- TOPSOIL NOTES:**
1. STRIP AND STOCKPILE THE TOP 8" OF SOIL ON ALL DISTURBED AREAS.
 2. RESPREAD TOPSOIL TO A MINIMUM DEPTH OF 8" ON ALL GREEN (NON PAVED) AREAS. IMPORT TOPSOIL AS NECESSARY TO ACHIEVE A MINIMUM DEPTH OF 8".
 3. TOPSOIL SHALL BE FREE OF ALL ROCK AND DEBRIS LARGER THAN 3/4" IN SIZE.
 4. TOPSOIL IS DEFINED AS: FERTILE, FRIABLE LOAM, CAPABLE OF SUSTAINING VIGOROUS PLANT GROWTH, FROM WELL DRAINED SITE FREE FROM FLOODING, NOT IN FROZEN OR MUDDY CONDITIONS, REASONABLE FREE FROM SUBSOIL, CLAY LUMPS, ROOTS, GRASS, WEEDS, STONES LARGER THAN 3/4 INCH IN DIAMETER, AND FOREIGN MATTER; ACIDITY RANGE (PH) OF 5.5 TO 7.5; CONTAINING MINIMUM 4 PERCENT AND MAXIMUM 20 PERCENT ORGANIC MATTER.
 5. CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING ALL TOPSOIL REQUIREMENTS OF NPDES GENERAL PERMIT NO. 2 ARE MET.

Bishop Engineering
 "Planning Your Successful Development"
 3501 104th Street
 Des Moines, Iowa 50322-3825
 Phone: (515) 276-6467 Fax: (515) 276-0217
 Established 1959
 Civil Engineering & Land Surveying

5501 NE BERWICK DRIVE
 BERWICK, IA
GRADING PLAN

REFERENCE NUMBER:	
DRAWN BY:	LCR
CHECKED BY:	SVS
REVISION DATE:	
PROJECT NUMBER:	230227
SHEET NUMBER:	C3.1



06/24/2023 3:35:48 PM L:\LAND PROJECTS\2023\230227 LOT 2 BAUER HEIGHTS PLAT 3\DWG\C3.1 GRADING.DWG

Attachment D Floodplain

Legend

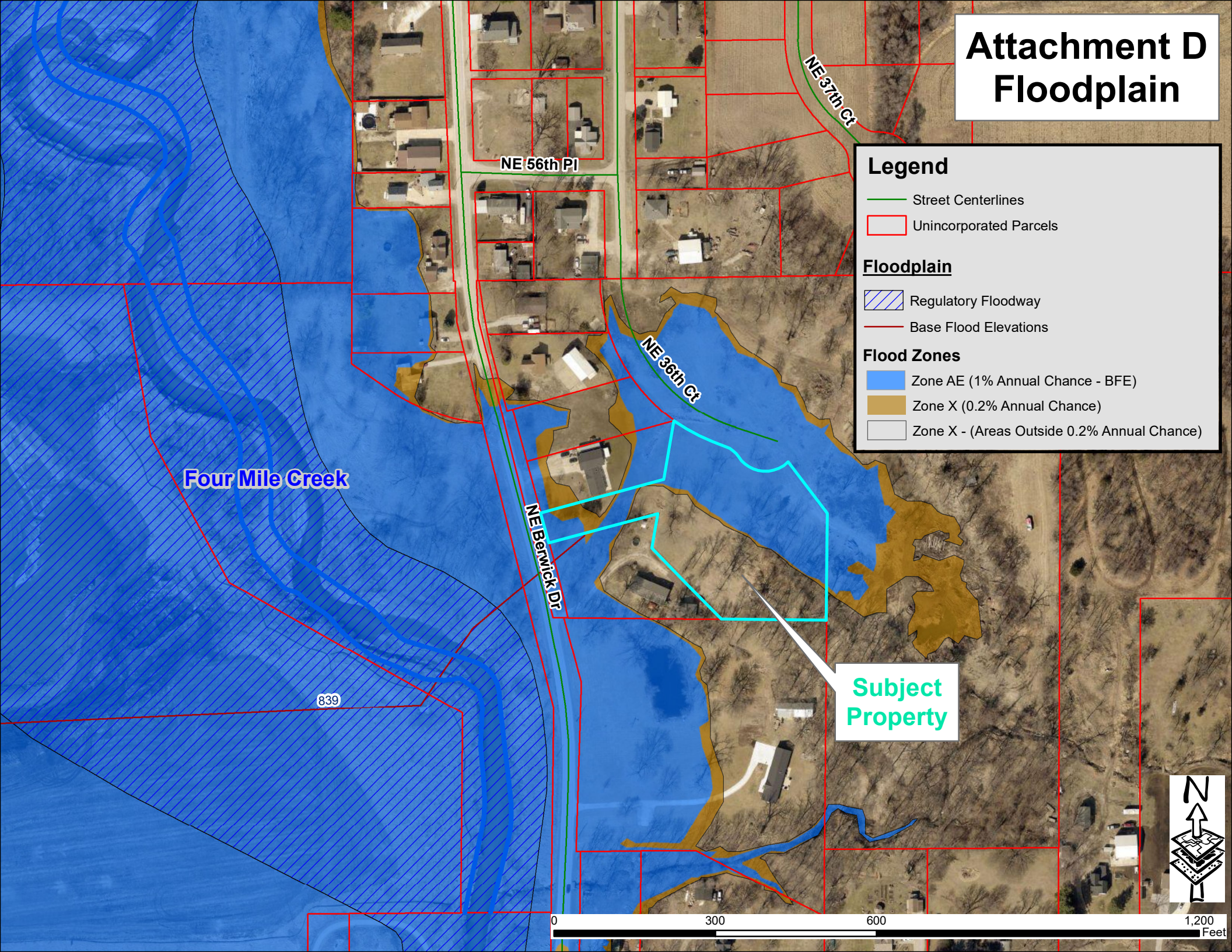
- Street Centerlines
- Unincorporated Parcels

Floodplain

- Regulatory Floodway
- Base Flood Elevations

Flood Zones

- Zone AE (1% Annual Chance - BFE)
- Zone X (0.2% Annual Chance)
- Zone X - (Areas Outside 0.2% Annual Chance)



Four Mile Creek

NE 56th Pl

NE 37th Ct

NE 36th Ct

NE Berwick Dr

839

Subject Property

0 300 600 1,200 Feet

