

**Appeal:** The appellant requests a side yard setback variance for an existing residential accessory building.

### **Background**

The subject property is located at 10564 NE 46<sup>th</sup> Avenue, Mitchellville, and is legally described as Part of the SW¼ of Section 14, Township 79 North, Range 22 West of the 5<sup>th</sup> P.M. (Beaver Township). The property is approximately 83.70 acres in size and is zoned “AG” Agricultural District. The subject property is located approximately one and one-half (1½) miles southwest of the City of Mitchellville. The property is located on the north side of NE 64<sup>th</sup> Avenue, lying directly north of Thomas Mitchell Park, and directly west of Camp Creek. The surrounding area is zoned and utilized for agricultural purposes, with a few nearby residences at low densities. Thomas Mitchell Park is owned and operated by Polk County Conservation, and is zoned “OS” Open Space District.

The subject property contains an existing single-family dwelling as well as a number of accessory structures. The current dwelling was completed in 2019-2020. The previous house on the property was demolished in 2018 prior to construction of the new dwelling. The appellant is in the process of subdividing the property in order to create two (2) smaller single-family lots and a large outlot. Proposed Lots 1 and 2 would be located in the southeast corner of the property. Lot 1 will contain the newly constructed dwelling as well as the existing accessory structure which is part of this variance request. Lot 2 creates a development right for an additional single-family dwelling. The remaining area of the property will be contained on a separate, unbuildable outlot (Outlot X). In addition to the accessory building in question, there are also existing agricultural accessory buildings located further to the northwest which will remain tied to the new outlot. See *Attachment A* at the end of this report for a copy of the Preliminary Plat of Tollari Subdivision. The platting process is set to move forward, pending approval of this variance.

The existing accessory building in question is approximately 1,248 square feet (24’ x 52’) in size and located approximately 37 feet northwest of the newly constructed dwelling on the property. The new subdivision layout shifts the existing western property line in the southeastern corner of the subject property, formed by the adjacent flag-shaped lot at 10562 NE 46<sup>th</sup> Avenue, approximately 42 feet to the east to allow for the creation of proposed Lot 2. This new configuration creates a nonconforming side yard setback of approximately 7.73 feet for this existing accessory structure that will be located on the new Lot 1.

### **Summary of Request**

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6 Accessory Regulations, Section 1(G.2)* requires an accessory building with a gross floor area of more than 720 feet be located at least ten (10) feet from side or rear property lines. The future subdivision of the property will create a nonconforming side yard setback of approximately 7.73 feet for an existing approximately 1,248 square feet (24’ x 54’) accessory structure in the southeast corner of the subject property. The appellant requests a side yard setback variance to allow the accessory structure to remain at approximately 7.73 feet from the new, western side lot line, in lieu of the

minimum required ten (10) feet of side yard setback. See *Attachment A* at the end of this report for a copy of the proposed preliminary plat, including the location and setback for the existing accessory structure.

Staff mailed out six (6) 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 one (1) response in support and zero (0) responses in opposition to this Appeal.

### **Natural Resources**

The subject property contains a small portion of mapped floodplain along portions of the north and east property lines where Camp Creek meanders along the property. There is also a mapped freshwater forested/shrub wetland located in the northeast portion of the property adjacent to the west of Camp Creek. Additionally, there is a mapped freshwater pond and adjacent freshwater forested/shrub wetlands located in the southwest corner of the property. These floodplain and wetlands areas will be contained entirely on the new outlot following approval of the subdivision plat. There is also an area of mature woodlands located in the northern portion of proposed Lot 2 and along the eastern boundary within the northern half of the property. The majority of these woodlands will be contained on the new outlot, with a small portion contained within a protection easement on the future Lot 2. The woodlands must be protected at a minimum of 75%, and they will not be impacted by this proposal. The property contains relatively steep slopes, ranging from a high elevation of 950 feet to a low elevation of 870 feet along Camp Creek. The site topography is less steep in the area surrounding the existing dwelling and accessory structure. The steepest slopes are located in the northern half of future Lot 2 where the property elevation drops sharply approaching Camp Creek. This area will not be impacted by this proposal.

### **Roads & Utilities**

The property has significant frontage to the south onto NE 46<sup>th</sup> Avenue, a two-lane paved roadway maintained by Polk County. East of the subject property NE 46<sup>th</sup> Avenue connects to NE 116<sup>th</sup> Street which provides access north to the City of Mitchellville. Moving west, NE 46<sup>th</sup> Avenue provides access to the City of Altoona and eventually to the Highway 65 Bypass and the City of Des Moines. The subject property is served by a private onsite septic system which was installed in 2019 at the same time as the new dwelling. The system is located east of the dwelling opposite the accessory building. Water service is provided by Des Moines Water Works. The latest available data shows there is a four-inch (4") PVC water main located to the south along the frontage of NE 46<sup>th</sup> Avenue.

### **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 future lot configuration, namely the flag-shaped configuration of proposed Lot 2, is a function of the topographical restrictions of the property which limits

frontage and access to NE 46<sup>th</sup> Avenue, and therefore necessitates a variance for the existing accessory structure.

- 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. Residential accessory structures are permitted within the “AG” Agricultural District.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?  
Yes. Surrounding properties are primarily agricultural in nature, with some single-family residential uses at low densities. The existing accessory structure will not impact access or traffic visibility for existing or future properties/dwellings.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?  
Yes. The accessory building was constructed prior to the appellant’s purchase of the property. The topographical constraints are also an existing site condition.
- 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. The appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. Due to the fact that the structure in question is existing, there will be no impact upon environmentally sensitive areas of the property due to this proposal. The future subdivision plat is required to comply with applicable Natural Resource Protection requirements as well.

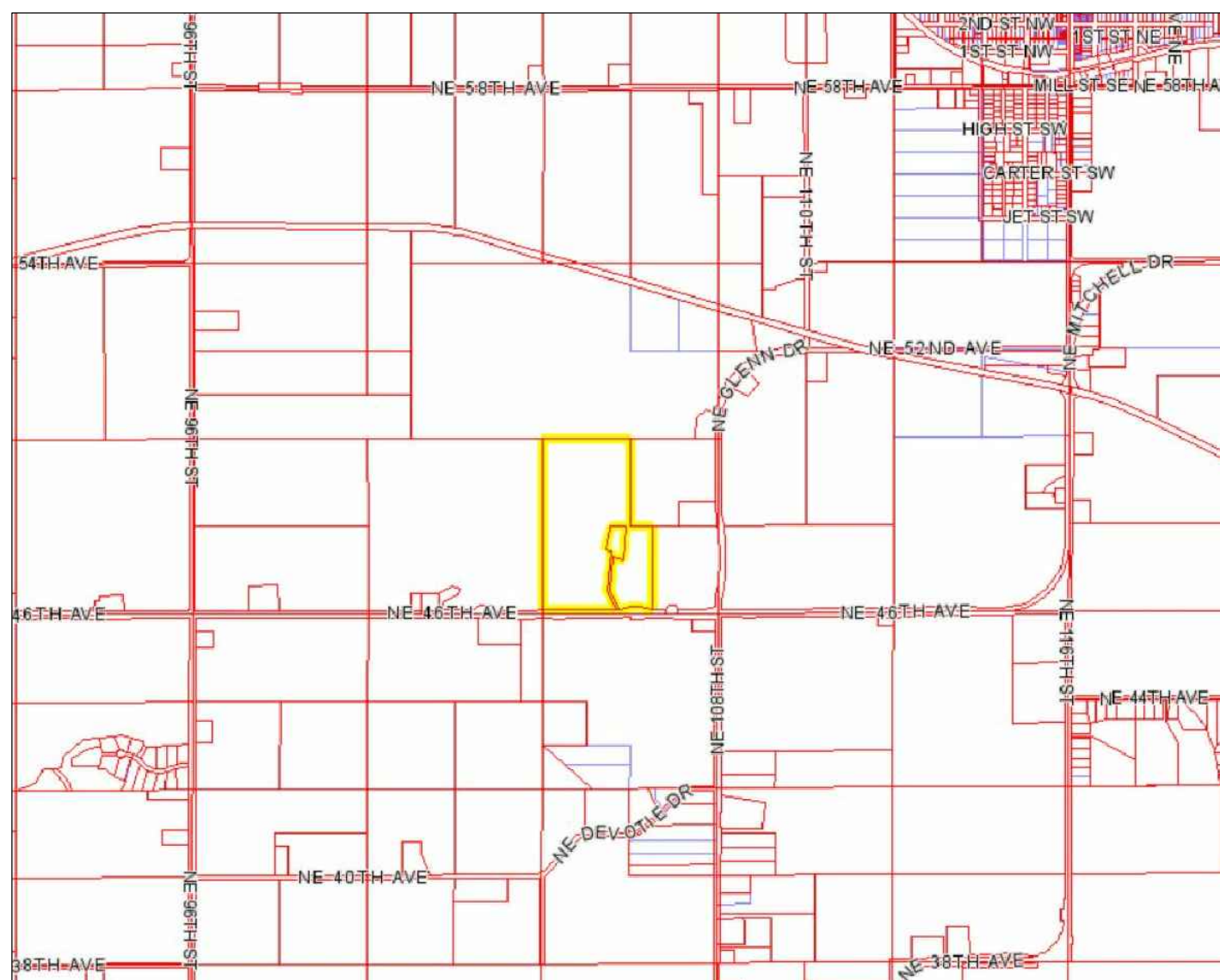
The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance with the following condition:

1. This approval applies only to a reduction of the side yard setback to 7.73 feet for the existing 1,248 square feet (24’ x 52’) accessory structure located on proposed Lot 1 of the future subdivision plat known as Tollari Subdivision; all as shown on *Attachment A* to this report.



# Attachment A

## TOLLARI SUBDIVISION MAJOR PRELIMINARY PLAT



PREPARED FOR:  
JOSEPH R TOLLARI  
3517 HUBBELL AVE NE  
DES MOINES, IOWA 50317

VICINITY MAP  
SCALE: NOT TO SCALE

OWNER:  
JOSEPH A TOLLARI,  
JOSEPH R TOLLARI  
3517 HUBBELL AVE NE  
DES MOINES, IOWA 50317

PREPARED BY:  
BISHOP ENGINEERING  
3501 104TH ST  
URBANDALE, IA 50322  
SURVEYOR: LARRY HYLER PLS

PRIMARY ADDRESS  
10564 NE 46TH AVENUE

### PROPERTY DESCRIPTION:

WARRANTY DEED BOOK 16789 PAGE 764  
PARCEL "D" DESCRIBED ON PLAT OF SURVEY FILED NOVEMBER 20, 1988, RECORDED IN BOOK 8066, PAGE 629,  
BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 79 NORTH, RANGE 22 WEST OF THE  
5TH P.M., POLK COUNTY, IOWA.  
SAID TRACT OF LAND BEING SUBJECT TO AND TOGETHER WITH ANY AND ALL EASEMENTS OF RECORD.  
SAID TRACT OF LAND CONTAINS 83.66 ACRES.

### NOTES:

- ADJACENT PROPERTY OWNER INFORMATION OBTAINED FROM POLK COUNTY ASSESSORS WEB PAGE
- PARENTHESES DENOTES PREVIOUSLY RECORDED DIMENSIONS
- MAILBOXES WITHIN THE ROAD RIGHT OF WAY SHALL BE OF A BREAK AWAY DESIGN.
- ANY SUBSURFACE DRAINAGE FACILITIES THAT ARE DISTURBED MUST BE RESTORED OR REROUTED BY THE PROPERTY OWNER.
- SERVICES TO ALL UTILITIES LOCATED ON THE OPPOSITE SIDE OF THE ROADWAY MUST BE BORED UNDER THE ROADWAY AT THE LOT OWNER'S EXPENSE.
- POST DEVELOPMENT RUNOFF WILL NOT ADVERSELY AFFECT DOWNSTREAM DRAINAGE FACILITIES OR PROPERTY OWNERS.
- WASTE WATER TREATMENT FOR LOTS 1 AND 2 WILL BE PROVIDED BY AN ON-SITE WASTE WATER TREATMENT SYSTEM;
- DUE TO SOIL TYPES, LIMITATIONS, AND DISTURBANCE, ALTERNATIVE SEPTIC SYSTEMS MAY BE REQUIRED. INDIVIDUAL WASTEWATER TREATMENT SYSTEMS SHALL BE DESIGNED BY AN ENGINEER.
- WATER SERVICE TO THE SUBDIVISION IS PROVIDED BY DES MOINES WATER WORKS.
- NO MORE THAN TWO (2) RESIDENCES ARE PERMITTED TO SHARE A COMMON DRIVEWAY AND ACCESS POINT.
- RESEARCH FOUND NO WATER MAIN EASEMENTS OF RECORD ON THE PROPERTY. EASEMENTS WILL BE CREATED FOR THIS PLAT AND IF ANY WATER MAIN EASEMENTS ARE RECOVERED IN THE FUTURE THEY ARE TO BE CONSIDERED VACATED AND REPLACED WITH THE PROPOSED WATER MAIN EASEMENT SHOWN ON THE PLAT.
- EACH LOT OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE MATURE WOODLANDS PROTECTION EASEMENT AND FOR THE PROTECTION OF 75% OF THE WOODLANDS FOR THEIR RESPECTIVE LOT.
- EASEMENTS ARE BEING WRITTEN AND WILL BE GRANTED TO MID AMERICAN ENERGY FOR ELECTRIC LINES THAT ARE EXISTING AND PROPOSED.

### CLUSTER DEVELOPMENT NOTE:

THIS SITE HAS A TOTAL AREA OF 83.66 ACRES.  
95% MUST REMAIN AS OPEN SPACE WHICH IS 79.47 ACRES.  
5% BUILDABLE SPACE REMAINING IS 4.19 ACRES.  
ALL OF OUTLOT X LESS THE TWO EXISTING AGRICULTURE BUILDINGS IS RESERVED AS OPEN SPACE. = 69.38 ACRES  
LOT 1 WILL RESERVE 4.75 ACRES  
LOT 2 WILL RESERVE 5.47 ACRES.

### ZONING:

AG - AGRICULTURAL DISTRICT  
CLUSTER DEVELOPMENT OPTION  
FRONT SETBACK = 50'  
SIDE SETBACK = 15'  
REAR SETBACK = 50'  
MAXIMUM BUILDING HEIGHT = 35'  
MAXIMUM BUILDING COVERAGE = 15%

BENCHMARK:  
IOWA STATE PLANE SOUTH

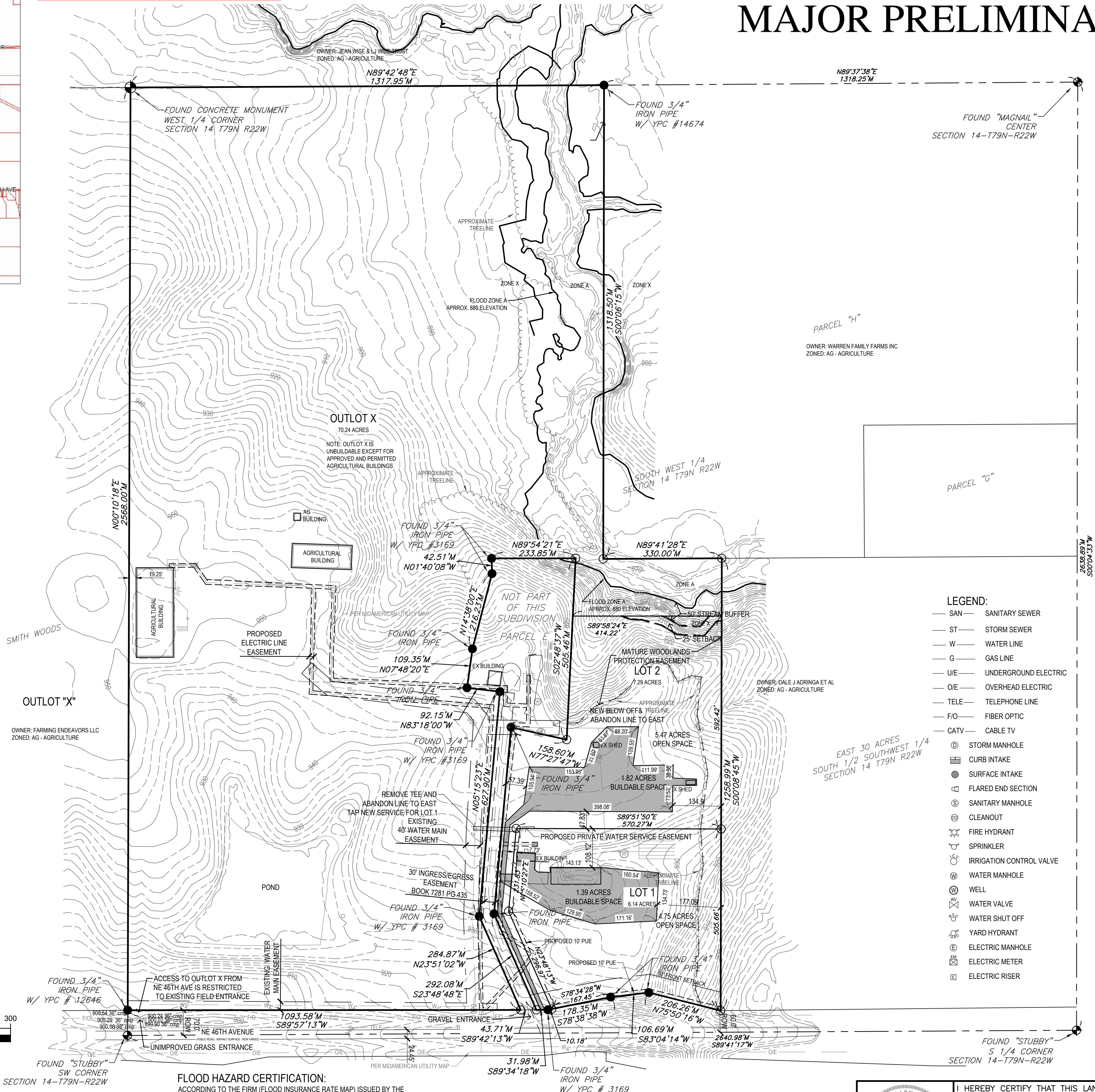
### UTILITY MAPS PROVIDED BY:

- ELECTRIC (MIDAMERICAN / 515-252-6632)
- WATER (DES MOINES WATER WORKS / 515-283-8729)
- COMMUNICATION (CENTURYLINK / 720578-8090)
- FIBER OPTIC (AUREON / 515-830-0445)



### UTILITY NOTE:

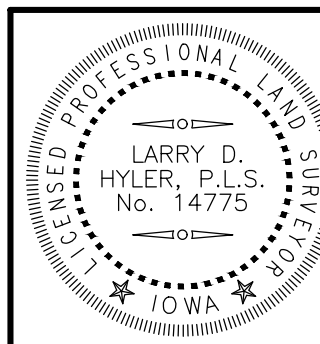
THE LOCATION OF THE UTILITIES INDICATED ON THE PLANS HAVE BEEN TAKEN FROM THE FIELD SURVEY, EXISTING PUBLIC RECORDS, AND PLANS PROVIDED BY OTHERS. SURFACE UTILITY LOCATIONS HAVE BEEN FIELD LOCATED BY BISHOP ENGINEERING, UNLESS OTHERWISE NOTED. ALL UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE LOCATIONS ONLY. BISHOP ENGINEERING DOES NOT GUARANTEE THE UNDERGROUND LOCATION OF ANY UTILITIES SHOWN. IT SHALL BE THE DUTY OF THE CONTRACTOR TO DETERMINE THE LOCATION AND DEPTH OF ANY UNDERGROUND UTILITIES SHOWN AND IF ANY ADDITIONAL UTILITIES, OTHER THAN THOSE SHOWN ON THE PLANS, MAY BE PRESENT. A REQUEST WAS MADE TO IOWA ONE CALL FOR UTILITY PROVIDERS TO VERIFY, LOCATE, AND MARK THEIR UTILITIES IN THE FIELD.



### FLOOD HAZARD CERTIFICATION:

ACCORDING TO THE FIRM (FLOOD INSURANCE RATE MAP) ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ON FLOOD INSURANCE RATE MAP 19153C0245F, WITH AN EFFECTIVE DATE OF FEBRUARY 1, 2019, LOTS 1 and 2 ARE LOCATED IN A ZONE "X", AN AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN. THIS CERTIFICATION IS BASED ON THE LATEST KNOWN MAP FOR THIS PARCEL.

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I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

SIGNED: LARRY D. HYLER, P.L.S. 14775  
DATE: DEC. 31, 2020

PAGES OR SHEETS COVERED BY THIS SEAL:

### ABBREVIATIONS:

AC ACRES  
ASPH ASPHALT  
BK BOOK  
CONC CONCRETE  
D DEEDED DISTANCE  
EX EXISTING  
ENCL ENCLOSURE  
FF FINISHED FLOOR  
FL FLOW LINE  
FRAC FRACTIONAL  
M MEASURED DISTANCE  
MH MANHOLE  
OPC ORANGE PLASTIC CAP  
P PLATTED DISTANCE  
PG PAGE  
POB POINT OF BEGINNING  
POC POINT OF COMMENCEMENT  
PRA PREVIOUSLY RECORDED AS  
PUE PUBLIC UTILITY EASEMENT  
ROW RIGHT OF WAY  
RPC RED PLASTIC CAP  
SF SQUARE FEET  
SAN SANITARY  
TYP TYPICAL  
YPC YELLOW PLASTIC CAP  
N NORTH  
S SOUTH  
E EAST  
W WEST

### LEGEND:

- SAN — SANITARY SEWER
- ST — STORM SEWER
- W — WATER LINE
- G — GAS LINE
- U/E — UNDERGROUND ELECTRIC
- O/E — OVERHEAD ELECTRIC
- TELE — TELEPHONE LINE
- F/O — FIBER OPTIC
- CATV — CABLE TV
- ⊙ STORM MANHOLE
- ⊞ CURB INTAKE
- ⊞ SURFACE INTAKE
- ⊞ FLARED END SECTION
- ⊞ SANITARY MANHOLE
- ⊞ CLEANOUT
- ⊞ FIRE HYDRANT
- ⊞ SPRINKLER
- ⊞ IRRIGATION CONTROL VALVE
- ⊞ WATER MANHOLE
- ⊞ WELL
- ⊞ WATER VALVE
- ⊞ WATER SHUT OFF
- ⊞ YARD HYDRANT
- ⊞ ELECTRIC MANHOLE
- ⊞ ELECTRIC METER
- ⊞ ELECTRIC RISER

- ⊞ ELECTRIC VAULT
- ⊞ POWER POLE
- ⊞ TRANSFORMER POLE
- ⊞ LIGHT POLE
- ⊞ ELECTRIC JUNCTION BOX
- ⊞ ELECTRIC PANEL
- ⊞ TRANSFORMER
- ⊞ GROUND LIGHT
- ⊞ GUY WIRE
- ⊞ ELECTRIC HANDHOLE
- ⊞ GAS METER
- ⊞ GAS VALVE
- ⊞ AIR CONDITIONING UNIT
- ⊞ TELEPHONE RISER
- ⊞ TELEPHONE VAULT
- ⊞ TELEPHONE MANHOLE
- ⊞ TRAFFIC SIGNAL MANHOLE
- ⊞ FIBER OPTIC RISER
- ⊞ FIBER OPTIC FAULT
- ⊞ CABLE TV RISER
- ⊞ SIGN
- ⊞ DENOTES NUMBER OF PARKING STALLS
- PROPERTY CORNER - FOUND AS NOTED
- ⊙ SECTION CORNER - FOUND AS NOTED
- ALL SIDE YARD SETBACKS ARE INTENDED TO BE USED TO CONVEY STORM WATER FROM THE SUBJECT LOT AND ANY ADJACENT LOTS

5TH COUNTY SUBMITTAL: 2-11-20  
4TH COUNTY SUBMITTAL: 10-15-19  
3RD COUNTY SUBMITTAL: 8-16-19  
2ND COUNTY SUBMITTAL: 6-12-19  
1ST COUNTY SUBMITTAL: 5-31-19

TOLLARI SUBDIVISION  
POLK COUNTY, IOWA

REFERENCE NUMBER:  
98-48 LARGE

DRAWN BY:  
LM

CHECKED BY:  
LH

REVISION DATE:

PROJECT NUMBER:  
180439

SHEET NUMBER:

1 OF 2

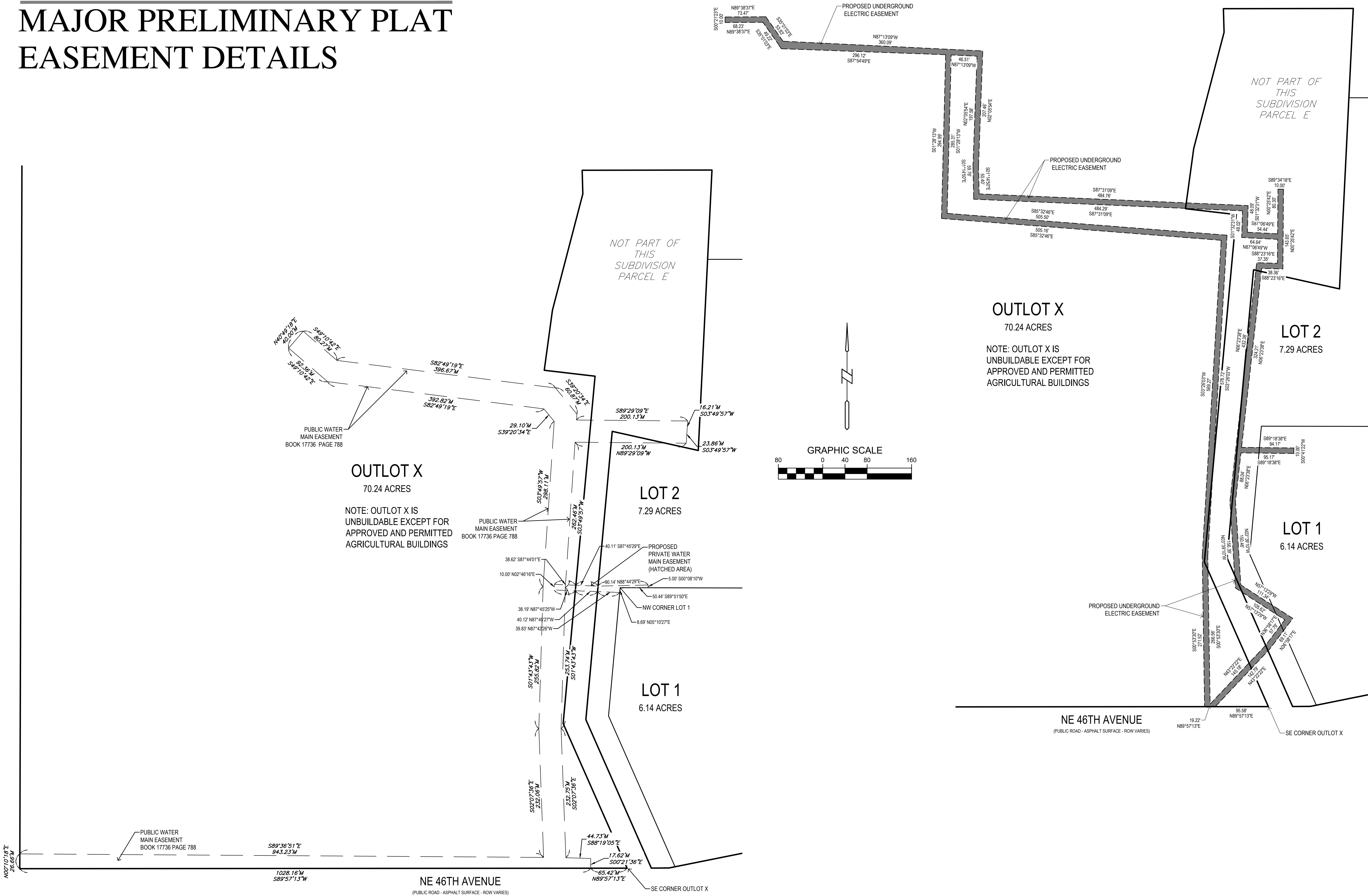
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"Planning Your Successful Development"

3501 104th Street  
Des Moines, Iowa 50322-3825  
Phone: (515)276-0467 Fax: (515)276-0217  
Civil Engineering & Land Surveying  
Established 1959

PRELIMINARY PLAT



TOLLARI SUBDIVISION  
MAJOR PRELIMINARY PLAT  
EASEMENT DETAILS



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TOLLARI SUBDIVISION  
POLK COUNTY, IOWA

PRELIMINARY PLAT

REFERENCE NUMBER: 98-48 LARGE
DRAWN BY: LM
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REVISION DATE:
PROJECT NUMBER: 180439
SHEET NUMBER: 2 OF 2