

Docket Number: 21/9935 & 21/9936

Appellant: Sondra K. Feldstein Revocable Trust / Sondra Feldstein (property owner), 9095 NE 72nd Street, Bondurant, IA 50035, represented by Steve Troskey with CGA Consultants, 16 E. Main Street, Marshalltown, IA 50158

Appeal: The appellant requests a Variance to reduce the required landscaping by 50%, and requests a Variance to increase the allowable floor area ratio (FAR) from 4.40% to 4.93%, for an existing commercial stable use.

Background:

The subject property is approximately 18.34 acres in size, and is legally described as the South ½ of the SW¼ of the SW¼ of Section 2 of Township 80 North, Range 23 West of the 5th P.M. (Douglas Township). The property is zoned “AG” Agricultural District, and is located approximately two (2) miles southeast of the City of Elkhart, and approximately three (3) miles northwest of the City of Bondurant. The property is located at the northeast corner of NE 56th Street and NE 110th Avenue, with frontage onto both public roadways. Surrounding properties are zoned “AG” Agricultural District and primarily utilized in agricultural production row crops. There are also a few nearby residences, including adjacent to the north and south of the subject property. Southwest of the subject property is the State-owned Errington Marsh, a wetlands preserve and passive recreation area. See *Attachment A* at the end of this report for a vicinity map of the subject property and surrounding area.

Property History

On June 15, 2015 the Polk County Board of Adjustment approved a Conditional Use Permit request for the subject property made by the current owner and appellant, Sondra Feldstein, to allow certain Special Events within a future commercial stable building. The events include team roping, mounted shooting, ranch horse, 4-H shows, saddle club shows, horse clinics and camps, horse therapy programs, cattle and lamb jackpot shows, dog agility shows and other related events. At that same June 2015 meeting the Board of Adjustment also approved two (2) variances related to the use. The first increased the number of days per year that Special Events are allowed at the subject property from the Ordinance permitted 21 days per year up to a maximum of 80 days per year. The second variance approved an increase in the allowable floor area ratio for the subject property from 4.0% to 4.4% to allow the proposed 140' x 250' Commercial Stable building.

In accordance with the Conditional Use Permit and Polk County Zoning Ordinance requirements, the appellant completed an engineered site plan for the new building and site improvements in August of 2015. Following completion of the new building in 2016 planning staff followed up to check the remainder of the required site improvements. At that time, staff and the owner had extensive communication regarding the required landscaping to be planted along the street frontages of NE 56th Street and NE 110th Avenue adjacent to the developed portions of the property. Eventually, these conversations led to the owner requesting landscaping variances from the Board of Adjustment. On June 20, 2016 the Board of Adjustment approved a requested variance to reduce the installation height of proposed evergreen plantings to be less than six (6) feet tall, but denied a requested variance to reduce the required plantings to zero (0) for a portion of the western street buffer yard adjacent to NE 56th Street and for the entire southern street

buffer yard adjacent to NE 110th Avenue.

Following denial of the landscaping variance in June of 2016, staff continued to follow up with the owner regarding the outstanding site improvements, including landscaping. Staff has detailed correspondence with the owner attempting to find alternative solutions to meet the County's landscaping requirements. Staff has allowed the use to continue without a final certificate of occupancy to-date. Staff also recently allowed the appellant to obtain a Commercial Building Permit to install a permanent restroom inside the building, even though the final occupancy permit remains outstanding.

Among the conditions of approval of the original 2015 Conditional Use Permit were that the use shall be reviewed and reheard in five years by the Polk County Board of Adjustment to assess its status and impact on the subject property and surrounding area. This rehearing occurred on August 17, 2020. In accordance with staff's recommendation, the Board of Adjustment approved the Conditional Use Permit, effectively reapproving the use of the property as a commercial stable, with conditions. Given the ongoing non-compliance of the site and lack of certificate of occupancy, staff recommended, and the Board of Adjustment approved, an additional condition requiring the appellant to gain approval of an updated engineered site plan by March 1, 2021, and to complete all update site plan improvements by November 1, 2021. The Board of Adjustment will hold another public hearing to consider revocation of the property's Conditional Use Permit if these deadlines are not met. In response, the appellant has been working with CGA Consultants on an updated site plan, including a revised landscaping plan to reduce the overall plantings required by 50%.

Summary of Request:

The Polk County Zoning Ordinance, *Article 10 Landscaping*, establishes landscaping standards for all non-residential uses. The existing site plan for the commercial stable establishes the landscaping plantings required, including the light street buffers along the developed frontages parallel to NE 56th Street and NE 110th Avenue. Additionally, due to the single-family residence located on the property directly adjacent to the north, the Ordinance requires a medium peripheral buffer along the developed portion of the northern property line. To-date these required plantings have not been installed, and the appellant is requesting a Variance to reduce all required plantings by 50%.

Additionally, *Article 5 District Performance Standards, Division 4, Section 4(E), Table 5.2* sets a maximum floor area ratio (FAR) of 4% for non-residential uses within the "AG" Agricultural District. The appellant was granted a variance in 2015 to increase the allowable FAR to 4.40% for the now existing commercial stable building on the property. The appellant recently constructed a 4,228 square foot open-sided stable structure without a building permit or updated site plan. The appeal to increase the FAR from 4.40% to 4.93% is requested in order to accommodate this new structure. *Attachment B* contains the written appeals as well as the draft updated site layout and landscaping plans. The site plan shows the building and structure sizes, and the landscaping plan contains updated calculations and plant schedule for the proposed 50% reduction in planting materials.

Public Testimony / Site Inspections

Staff mailed seven (7) notices to surrounding property owners within the required 250-foot notification boundary, including the appeals requested as well as the date, time and information for attending the public hearing. To-date staff has received one (1) response in opposition to the request. That piece of opposition testimony can be found as *Attachment C* at the end of this report. Staff performed site visits on June 5, 2020 as well as February 3, 2021 in advance of the most recent public hearings on this property. Based on these site inspections the required landscaping has not been installed.

Natural Resources / Environmental

The property is not located within a mapped floodplain, nor does it contain other mapped environmental hazards or features. The property does contain wetland soils located in the south central and southeastern portions of the site. While there are no mapped wetlands, there is a depression area that appears to be continually wet located in the southeast portion of the property. Apart from this shallow depression area, the site topography is relatively flat with no significant changes in elevation. There are a few volunteer trees and shrubs located along the shared property line with the property to the north at 11127 NE 56th Street. The non-developed portions of the site remain in open space and agricultural production.

Roads / Utilities

The subject property is located at the northeast corner of NE 56th Street and NE 110th Avenue, both local roadways maintained by Polk County. NE 56th Street is paved while NE 110th Avenue is gravel surfaced adjacent to the subject property. Access to the site is currently taken from NE 56th Street. Water service is provided by Des Moines Water Works. Potable water and portable toilets are required for individual special events. The owner recently completed the installation of a permanent restroom facility inside the building, including a new onsite wastewater treatment system.

Recommendation

Variance Appeal #1 (21/9935): Variance to reduce the required landscaping by 50%

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. While the property is utilized for commercial purposes, it is limited in operation to no more than 80 days per year. Installation of 50% of the required landscaping will provide adequate screening and aesthetics for the site.

- 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 use of a commercial stable has been previously approved by the Board of Adjustment, with conditions. Furthermore, 50% of the required landscaping

must be installed no later than November 2021, including use of the required plant installation sizes (minimum 1½” caliper for canopy trees, minimum 1¼” for understory trees, and minimum 6’ high for shrubs).

- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

Yes. The remaining landscaping required is compatible with the nature of the use as a commercial horse stable and the rural nature of surrounding land uses.

- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

No. The development of the property as a commercial horse stable was requested by the appellant. Furthermore, the appellant agreed to all conditions of the original approval of the use as well as consented to completion of the required landscaping improvements. Staff has continually made exceptions to this requirement and allowed the use to operate without a final certificate of occupancy.

- 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. These sections of the Ordinance will not be impacted by this request.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. While item 4 was not affirmed, and the nature of this request is largely self-created, staff is recommending approval of the requested variance in an effort to move this project forward, to ensure the partial installation of the required landscaping, and so that a final occupancy certificate may be issued as soon as possible. Furthermore, given review of the appeal and affirmative answer to the other 4 items above, staff is confident approval of the request will not negatively impact adjoining properties. Approval is subject to the following condition:

1. Per condition #2 from the August 17, 2020 Conditional Use Permit rehearing approval, the appellant is required to complete an updated site plan by March 1, 2021, and complete all remaining improvements and receive a final certificate of occupancy by November 1, 2021. This existing condition includes identifying the updated landscaping calculations and plant schedule, as well as installing the landscaping prior to issuance of the final certificate of occupancy.

Variance Appeal #2 (21/9936): Variance to increase the allowable floor area ratio (FAR) from 4.40% to 4.93%

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 subject property is substantially smaller than the standard "AG" District minimum lot size of 35 acres upon which the non-residential performance standards are based. Furthermore, the property is able to provide the minimum required 90% open space. The nature of the commercial stable use does not require significant off-street parking or other impervious areas, and therefore the maximum floor area ratio is somewhat overly restrictive as applied to the subject property.

- 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 existing buildings and structures are permitted under the existing Conditional Use Permit for the property, and this Variance will allow the open-sided stable structure to remain. Furthermore, the same buildings and structures for a private stable on a similar sized property would be permitted, and not subject to the floor area ratio requirement.

- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

Yes. The stable structure is located east of the main stable building, being largely shielded from public view. It is also much smaller in scale.

- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. While the structure was built without required permits and approvals, staff would have been supportive if the FAR Variance had been requested prior to construction of the stable.

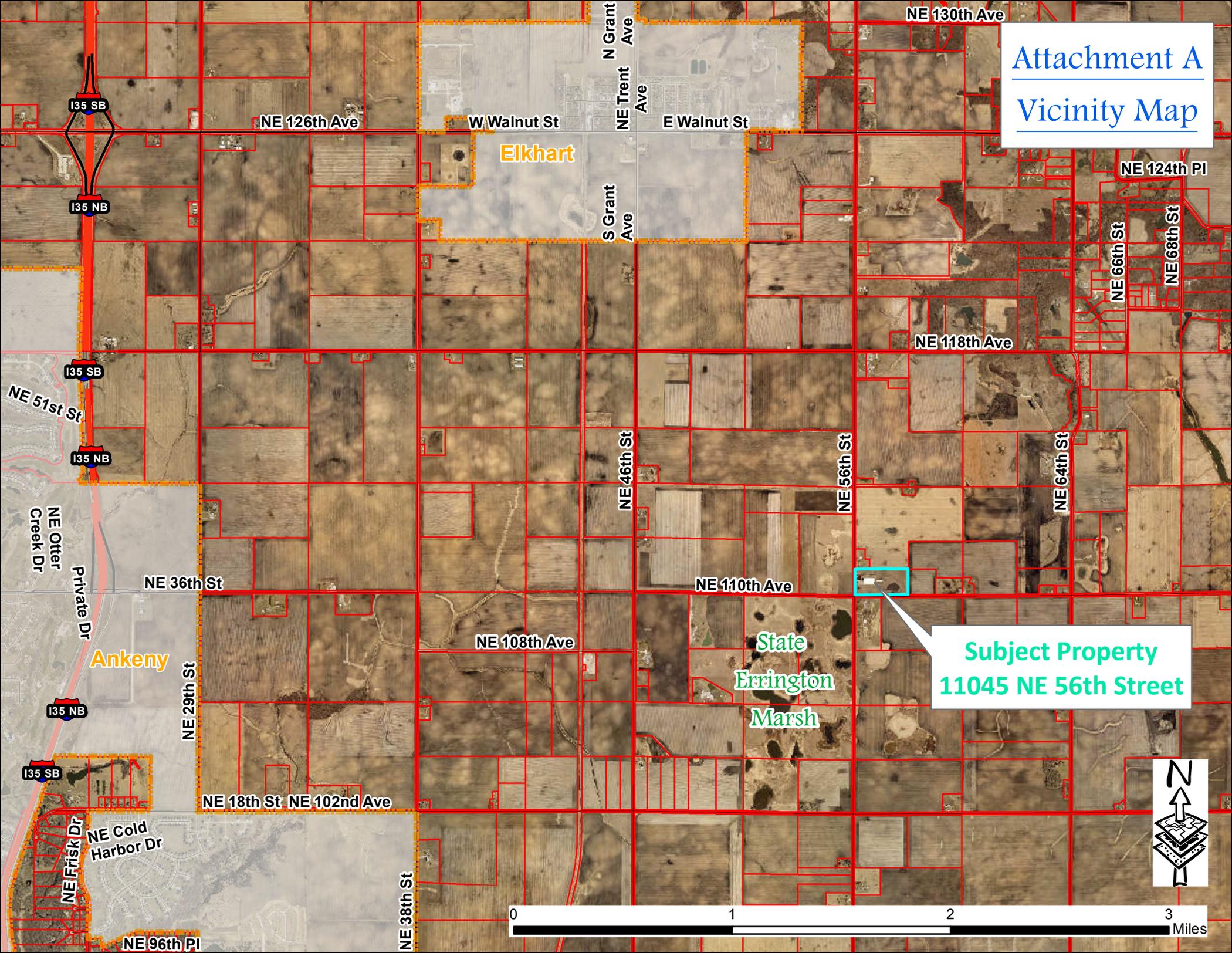
- 5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. These sections of the Ordinance will not be impacted by this request.

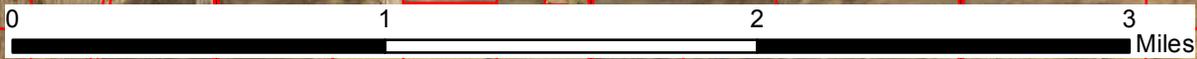
The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the requested variance, subject to the following condition:

1. Per condition #2 from the August 17, 2020 Conditional Use Permit rehearing approval, the appellant is required to complete an updated site plan by March 1, 2021, and complete all remaining improvements and receive a final certificate of occupancy by November 1, 2021. This existing condition includes identifying the open-sided stable structure and new floor area ratio (FAR) on the updated site plan, as well as obtaining a retroactive building permit and receiving passing inspections prior to issuance of the final certificate of occupancy.

Attachment A Vicinity Map



Subject Property
11045 NE 56th Street



Attachment B

Landscaping Variance

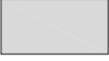
In June 2016 the Board of Adjustment granted a landscaping variance to allow for evergreen plantings under 6 feet in height. The current variance request is to allow for a 50% reduction of landscaping points throughout the site which will include a mixture of trees and shrubs. A full list of quantities is provided on the site plan. The owner requests this variance due to the rural setting of the facility.

Floor Area Ratio Variance

In June 2015 the Board of Adjustment granted a FAR variance from 4% to 4.4%. Since that time, there has been placement of an open-sided stable. This current variance request is for the existing arena building and open-sided stable which will bring the FAR to 4.93%.

A future horse pen is shown on the site plan but it will not have a roof and not impact the FAR calculations.



-  ORIGINALLY PLANNED STRUCTURE
(35,000 SF)
-  STRUCTURE CONSTRUCTED LATER
(4,228 SF)
-  FUTURE HORSE PEN
(6,564 SF)

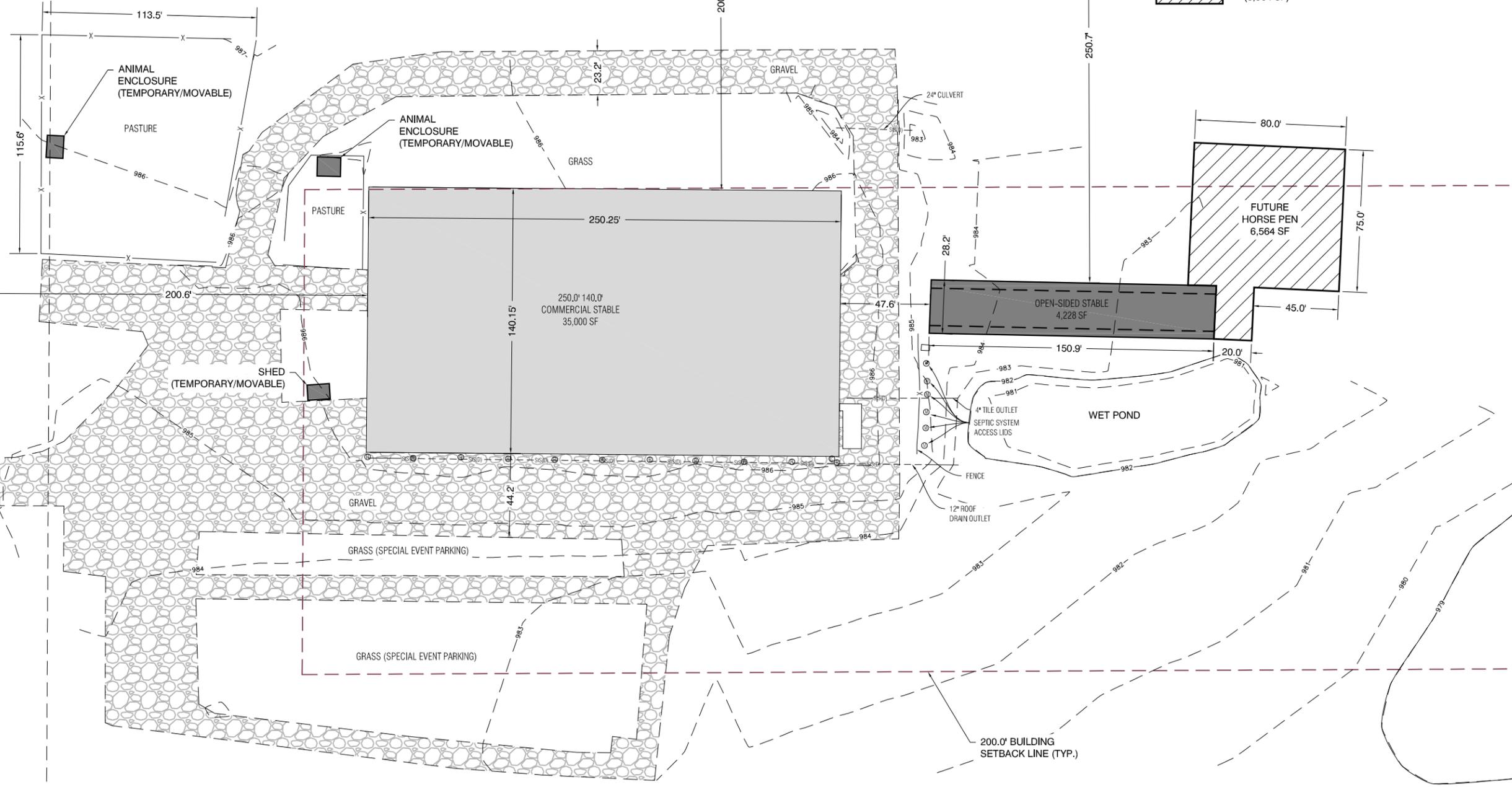
NE 56TH STREET

ASPHALT

66.0' ROADWAY EASEMENT

33.0'

32.0' WATER MAIN EASEMENT



NO.	REVISION	BY	DATE	NO.	REVISION	BY	DATE

CGA Clapsaddle-Garber Associates, Inc.
16 East Main Street
Marshalltown, Iowa 50158
Ph 641-752-6701
www.cgaconsultants.com

DESIGNED: ### DATE: ###
 DRAWN: ### DATE: ###
 CHECKED: ### DATE: ###
 APPROVED: ### DATE: ###

FELDSTEIN COMMERCIAL STABLES
POLK COUNTY, IOWA

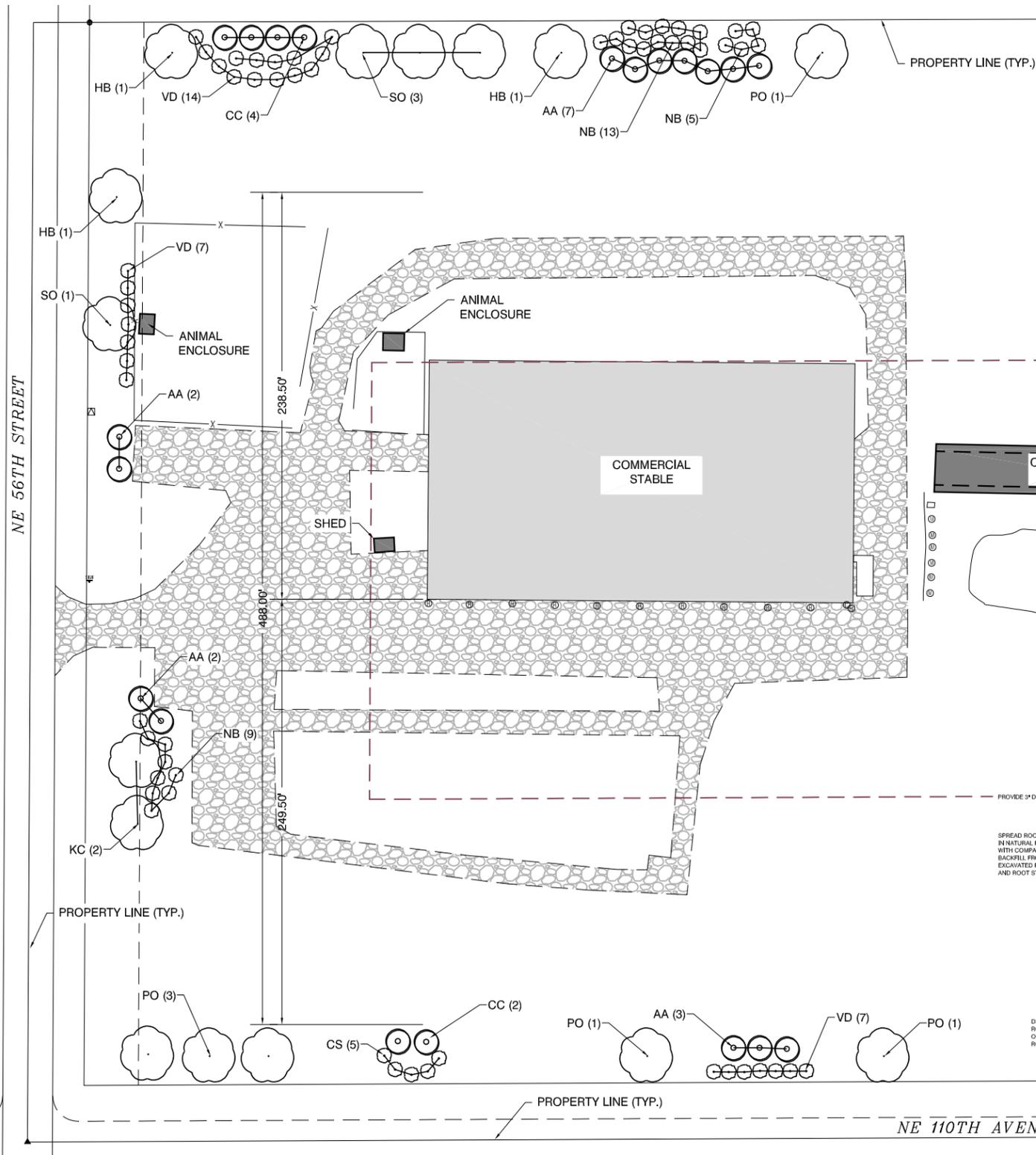
SITE PLAN

PROJECT NO.
5806
SHEET NO.
2

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NE 56TH STREET

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PLANT SCHEDULE

KEY	BOTANICAL NAME	COMMON NAME	QTY.
OVERSTORY			
HB	Celtis occidentalis	Hackberry	3
KC	Acer saccharum	Sugar Maple	2
PO	Platanus occidentalis	Sycamore	6
SO	Quercus bicolor	Swamp White Oak	4
UNDERSTORY			
AA	Amelanchier arborea	Serviceberry	14
CC	Cercis canadensis	Redbud	6
SHRUBS			
CS	Cornus sericia	Red Osier Dogwood	5
NB	Physocarpus opulifolius	Ninesbark	27
VD	Viburnum dentatum	Arrowwood Viburnum	28

LANDSCAPE REQUIREMENTS:

Parking Lot:
Landscape improvements not required

Street Bufferyard Requirements:
Light Street Buffer (15% Opaque) is required along NE 56th Street (488 LF with varying bufferyard widths) Utilize Alternative "A" size plant material.
238.5 lf with a minimum bufferyard width of 60'
238.5lf/100 lf per PU x 1 (Buffer yard Modifier) = 2.39 PU's
Total Points Required = 2.39 x 3 (7.17 Points)
50% provided = 3.59 Points

Using Plant Option #1 @ 50%
(1.2) Canopy Trees Required (2 Provided / 2 Points Provided)
(2.4) Understory Required (2 Provided / 1.0 Points Provided)
(8.4) Shrubs Required (7 Provided / 1.05 Points Provided)
Total Points Provided = 4.05 Points

Light Street Buffer (15% Opaque) is required along NE 110th Avenue (474 LF)
Utilize Alternative "A" Plant Material
Minimum Buffer yard width 30'
474 lf/100 LF Per PU x 1.2 Buffer yard Modifier) = 5.69 Plant Units (PU)
Points Required = 5.69 x 3 (17.06 Points)
50% Provided = 8.53 Points

LANDSCAPE NOTES:

- PLANT QUANTITIES ARE FOR INFORMATION ONLY; DRAWING SHALL PREVAIL IF CONFLICT OCCURS. CONTRACTOR IS RESPONSIBLE FOR CALCULATING OWN QUANTITIES AND BASING BID ACCORDINGLY.
- THE CONTRACTOR SHALL REPORT SUBSURFACE SOIL OR DRAINAGE PROBLEMS TO THE ENGINEER.
- THE CONTRACTOR SHALL SHOW PROOF OF PROCUREMENT, SOURCES, QUANTITIES AND VARIETIES FOR ALL SHRUBS, PERENNIALS, ORNAMENTAL GRASSES WITHIN 21 DAYS FOLLOWING THE AWARD OF CONTRACT. TIMELY PROCUREMENT OF ALL PLANT MATERIAL IS ESSENTIAL TO THE SUCCESSFUL COMPLETION AND INITIAL ACCEPTANCE OF THE PROJECT.
- SUBSTITUTIONS SHALL ONLY BE ALLOWED WHEN THE CONTRACTOR HAS EXHAUSTED ALL SOURCES FOR THE SPECIFIED MATERIAL, AND HAS PROVEN THAT THE SPECIFIED MATERIAL IS NOT AVAILABLE. THE CONTRACTOR MUST PROVIDE NAME AND VARIETY OF SUBSTITUTION TO THE ENGINEER FOR APPROVAL PRIOR TO TAGGING OR PLANTING. SUBSTITUTIONS SHALL BE NEAREST EQUIVALENT SIZE OF VARIETY OF PLANT HAVING SAME ESSENTIAL CHARACTERISTICS.
- ALL PLANT MATERIAL SHALL BE NURSERY GROWN, SOUND, HEALTHY, VIGOROUS AND FREE FROM INSECTS, DISEASE AND INJURIES, WITH HABIT OF GROWTH THAT IS NORMAL FOR THE SPECIES. SIZES SHALL BE EQUAL TO OR EXCEEDING SIZES INDICATED ON THE PLANT SCHEDULE. THE CONTRACTOR SHALL SUPPLY PLANTS IN QUANTITY AS SHOWN ON DRAWINGS.
- STAKE OR PLACE ALL PLANTS IN FIELD AS INDICATED ON THE DRAWINGS OR AS DIRECTED BY THE ENGINEER FOR APPROVAL BY THE OWNER PRIOR TO PLANTING.

Using Plant Option #1 @ 50%
(1.25) Canopy Trees Required (2 Provided / 2 Points Provided)
(2.5) Understory Required (2 Provided / 1 Point Provided)
(8.75) Shrubs Required (9 Provided / 1.35 Points Provided)

Total 9.3 Points Provided

Peripheral Buffer Yard Requirements:
Only 50% of baseline plantings of the easterly 121 LF are required due to adjacent parcel being vacant

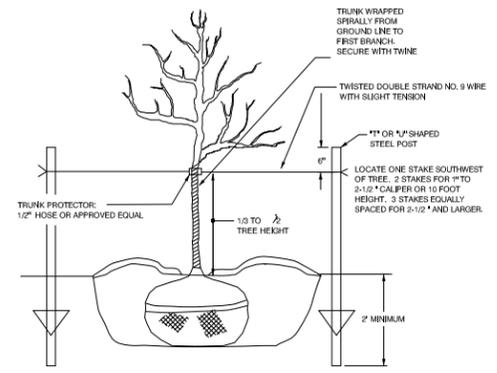
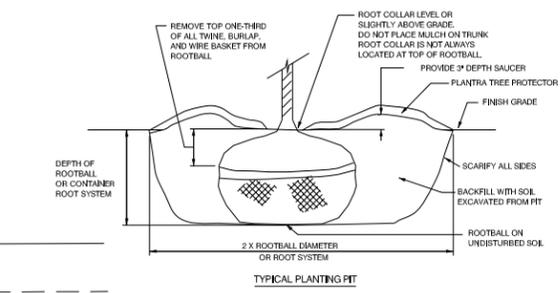
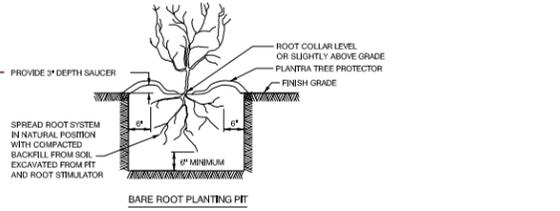
Peripheral Buffer (40% Opaque) is required along north property line of adjacent residential zoning for 345 LF
Utilize Alternative "A" size plant material
Minimum buffer yard with 100'
345/100lf per PU x 2.6 (Buffer Yard Modifier) = 8.97 Plant Units (PU's)
Points Required = 8.97 x3 (26.91 Points)
50% Provided = 13.46 Points

Using Plant Option #1 @ 50%
(4.49) Canopy Trees Required (5 Provided / 5 Points Provided)
(8.98) Understory Required (9 Provided / 4.5 Points Provided)
(31.43) Shrubs Required (27 provided / 4.05 Points Provided)
Total Points Provided = 13.55 Points

Peripheral Buffer (40% Opaque) is required along north property line of adjacent lot for 121 LF
Utilize Alternative "A" size plant material
Minimum buffer yard with 100'
121/100 lf per PU x 2.6 (Buffer Yard Modifier) = 1.57 Plant Units (PU's)
Points Required = 1.57 x3 (4.71 Points)
50% Provided = 2.36 Points

Using Plant Option #1 @ 50%
(0.79) Canopy Trees Required (1 Provided / 1 Points Provided)
(1.58) Understory Required (2 Provided / 1 Points Provided)
(5.53) Shrubs Required (5 provided / .75 Points Provided)

Total Points Provided = 2.75 Points



NO.	REVISION	BY	DATE	NO.	REVISION	BY	DATE

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FELDSTEIN COMMERCIAL STABLES
POLK COUNTY, IOWA

LANDSCAPE PLAN

PROJECT NO. 5806
SHEET NO. 3

Attachment C

From: rlickt@aol.com
To: [Brian McDonough](#)
Subject: Case #2021-09935 and 2021-09936
Date: Tuesday, February 2, 2021 8:33:37 AM

From: Robert Lickteig
Dated: Feb, 2 2021
Address: Property West of subject property

To: Brian, put me down as opposition to.

About 5 years ago I supported and welcomed this project. Knowing and trusted the rules set by Polk county and the owner to be responsible.

I see no landscaping has started in the last 5 years. I see also another structure has been built without permits. Due to the lack of compliance in the last 5 years it is hard believe anything will change. It is important to completed 100% of the landscaping as that will improve the value of the subject property and the neighboring properties.

No variance should be given until 100% of the landscaping is competed by September 1, 2021.

Thanks,
Robert Lickteig