

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: IV. J.

From: Wayne D. Houle P.E., Director of Engineering

Action

Discussion

Information

Date: August 5, 2013

Subject: Encroachment Agreement for 6443 McCauley Terrace

Action Requested:

Authorize City Manager and Mayor to sign attached encroachment agreement for 6443 McCauley Terrace.

Information / Background:

Attached is an encroachment agreement drafted by our City Attorney at the request of the contractor to allow a retaining wall to be placed within an existing drainage and utility easement. Staff has reviewed the request and has determined that the retaining wall will not affect the existing surface drainage of the easement. The retaining wall will also not affect the sanitary sewer that runs within this easement.

Attachments:

Encroachment Agreement for 6443 McCauley Terrace
Proposal Survey for 6443 McCauley Terrace

(reserved for recording information)

ENCROACHMENT AGREEMENT

AGREEMENT made this _____ day of _____, 2013, by and between the **CITY OF EDINA**, a Minnesota municipal corporation (“City”), and **CROWN BANK**, a Minnesota banking corporation (“Owner”).

1. BACKGROUND. Owner is the fee owner of certain real property located in the City of Edina, County of Hennepin, State of Minnesota, legally described as follows:

Parcel ID No. 06-116-21-22-0057

Lot 1, Block 1, McCauley Heights 5th Addition, according to the recorded plat thereof, Hennepin County, Minnesota
(*Abstract Property*)

having a street address of 6443 McCauley Terrace, Edina, Minnesota (“Subject Property”). The City owns easements for drainage and utility purposes over portions of the Subject Property. Owner has requested the construction of a retaining wall on the Subject Property which encroaches on the City’s easement area.

2. ENCROACHMENT AUTHORIZATION. The City hereby approves the encroachment for the construction of a retaining wall over that portion of the City’s drainage and utility easement legally described on the attached Exhibit “A” and depicted on the attached Exhibit

“B” (the “Encroachment Area”). As a condition of this approval, Owner shall be responsible for maintaining the retaining wall located within the City’s easement.

3. HOLD HARMLESS AND INDEMNITY. In consideration of being allowed to encroach in the Encroachment Area, Owner, for itself, its successors and assigns, hereby agrees to indemnify and hold the City harmless from any damage caused to the Subject Property or the retaining wall located within the Encroachment Area, caused in whole or in part by the encroachment onto the Encroachment Area. Further, Owner hereby agrees to defend and indemnify the City for any damage or injury incurred by Owner, its employees, agents, contractors or assigns in connection with the construction, repair or maintenance of the retaining wall within the Encroachment Area.

4. TERMINATION OF AGREEMENT. The City may, at its sole discretion, terminate this Agreement at any time by giving the Owner of the Subject Property thirty (30) days advance written notice, except that no notice period will be required in the case of an emergency condition as determined solely by the City and the Agreement may then be terminated immediately. The Owner shall, at its own expense, remove the retaining wall to the effective date of the termination of this Agreement. If the Owner fails to remove the retaining wall, the City may do so and the Owner agrees to promptly reimburse the City for any costs the City incurs.

5. RECORDING. This Agreement shall run with the land and shall be recorded against the title to the Subject Property.

6. BINDING AFFECT. This Agreement is binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, this Agreement was executed by the parties the day and year first above written.

CITY OF EDINA

By: _____
James B. Hovland, Mayor

And: _____
Scott Neal, City Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by James B. Hovland and by Scott Neal, respectively the Mayor and City Manager of the City of Edina, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

**PROPERTY OWNER:
CROWN BANK**

By: _____
Its: _____

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____ the _____ of Crown Bank, a Minnesota banking corporation, on behalf of said corporation.

Notary Public

DRAFTED BY:
CAMPBELL KNUTSON
Professional Association
1380 Corporate Center Curve, Suite #317
Eagan, Minnesota 55121
Telephone: 651-452-5000
cjh

EXHIBIT "A"
TO
ENCROACHMENT AGREEMENT

A 15.00 foot wide strip lying over, under, and across Lot 1, Block 1, MCCAULEY HEIGHTS 5TH ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, said strip lying 15.00 feet to the right of the following described line:

Commencing at the most northerly corner of said Lot 1; thence South 53 degrees 02 minutes 00 seconds East, assumed bearing, along a northerly line of said Lot 1, a distance of 67.00 feet to the point of beginning of the line to be described; thence continuing South 53 degrees 02 minutes 00 seconds East, along said northerly line, 8.07 feet to an angle point in the northerly line of said Lot 1; thence South 85 degrees 02 minutes 00 seconds East, along said northerly line of Lot 1, a distance of 61.00 feet and said line there terminating.

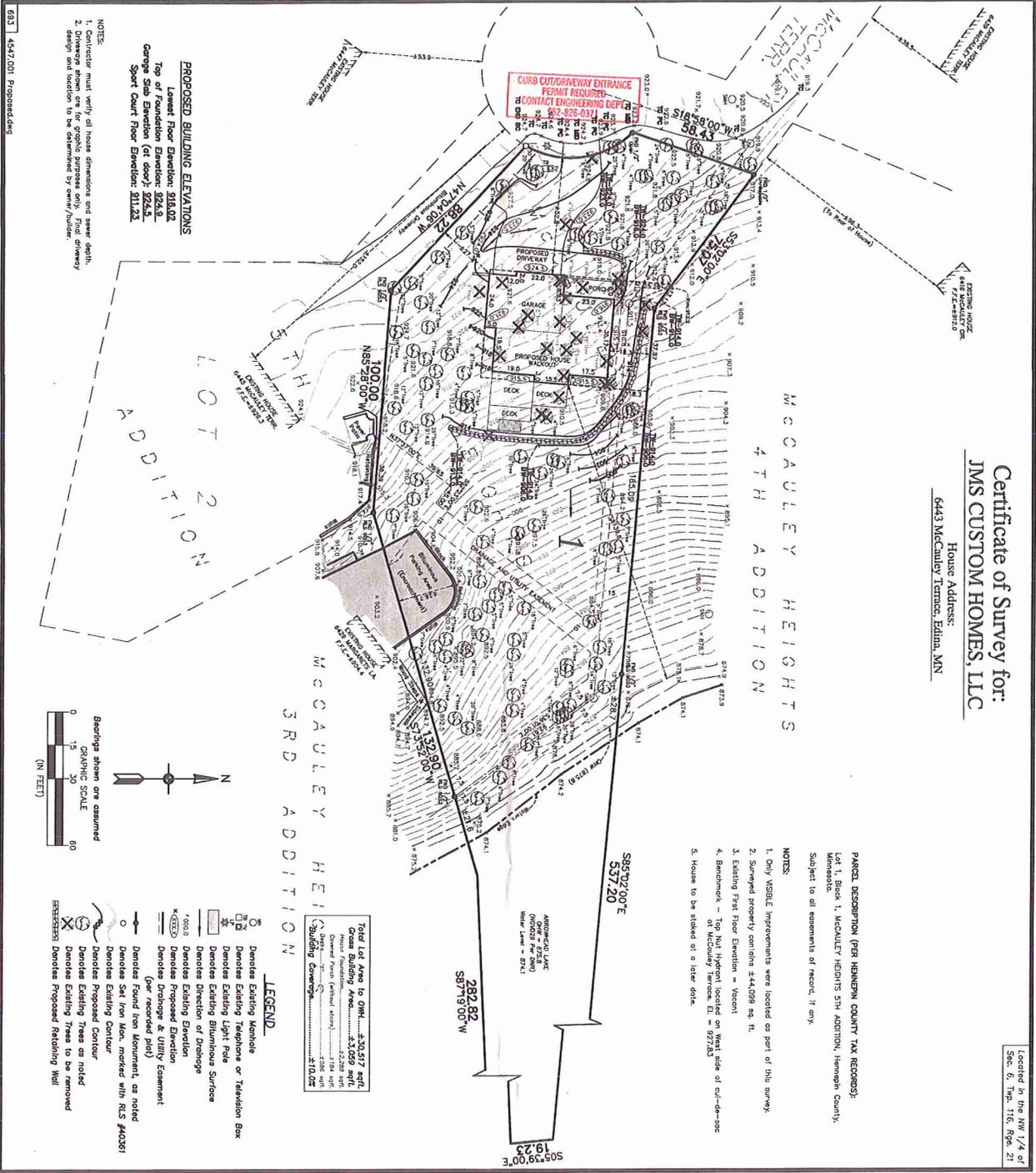
Said strip area contains $\pm 1,101$ sq. ft.

EXHIBIT "B"

Certificate of Survey for:
JMS CUSTOM HOMES, LLC

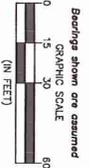
House Address:
 6443 McCauley Terrace, Edina, MN

Located in the NW 1/4 of
 Sec. 6, Twp. 116, Rge. 21



NOTES:
 1. Contractor must verify all house dimensions and sewer depth.
 2. Drawings shown are for graphic purposes only. Final driveway design and location to be determined by owner/contractor.

PROPOSED BUILDING ELEVATIONS
 Lowest Floor Elevation: 818.02
 Top of Foundation Elevation: 824.9
 Garage Slab Elevation (at door): 824.5
 Sport Court Floor Elevation: 817.24



- LEGEND**
- Denotes Existing Manhole
 - Denotes Existing Telephone or Television Box
 - Denotes Existing Light Pole
 - Denotes Existing Blumhouse Surface
 - Denotes Direction of Driveway
 - Denotes Existing Elevation
 - Denotes Proposed Elevation
 - Denotes Driveway & Utility Easement (per recorded plat)
 - Denotes Set from Monument, as noted
 - Denotes Existing Contour
 - Denotes Existing Trees to be removed
 - Denotes Proposed Retaining Wall

Field 1st Hand to DMK... 438.67 sgt
 Gen. Building... 430.69 sgt
 House Foundation... 422.86 sgt
 Chained from (vertical string)... 418.44 sgt
 Building Elevation... 410.02

- NOTES:**
1. Only MSBL improvements were located on part of this survey.
 2. Surveyed property contains 44,009 sq. ft.
 3. Existing First Floor Elevation = 802'1"
 4. Benchmark - top NGS monument located on West side of cut-off-ditch at McCauley Terrace E.L. = 827.263
 5. Houses to be sited at a later date.

INTENSIONS

Not to be used for any other purpose than that intended by the surveyor under the laws of the State of Minnesota.
 Dated this 24th day of May, 2013.

Thomas R. Bell, L.S. Reg. No. 42351

1 of 1

CERTIFICATE OF SURVEY
 for:
JMS CUSTOM HOMES, LLC

HOUSE ADDRESS:
 6443 McCauley Terrace, Edina, MN

Carlson McCain
 ENVIRONMENTAL • ENGINEERING • SURVEYING

248 Apollo Dr, Suite 100, Lino Lakes, MN 55014
 Phone: 763-489-7900 Fax: 763-489-7959

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