



# CITY OF BAYPORT

294 NORTH 3<sup>RD</sup> STREET  
BAYPORT, MN 55003

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## PLANNING COMMISSION MEETING

City Hall - Council Chambers

July 19, 2010 – 6:00 p.m.

### A. CALL TO ORDER

### B. APPROVAL OF MINUTES

- June 21, 2010 regular meeting

### C. PUBLIC HEARINGS

- Application 2010-04

Consider rezoning existing parcels of St. Michael's Cemetery to R-2 Single-family Urban, located on 6<sup>th</sup> Street North

### D. OLD BUSINESS

### E. NEW BUSINESS

### F. GENERAL INFORMATION

### G. OPEN FORUM

### H. ADJOURNMENT

**CITY OF BAYPORT  
PLANNING COMMISSION MEETING MINUTES  
CITY COUNCIL CHAMBERS  
JUNE 21, 2010  
6:00 P.M.**

**CALL TO ORDER**

Pursuant to due call and notice thereof, Chairperson Goldston called the regular Bayport Planning Commission meeting of June 21, 2010 to order at 6:00 p.m.

**ROLL CALL**

Commissioners Present: Dan Goldston, Pam Hoye, David Levy, Tom Mabie and Jennifer Schneider

Commissioners Absent: None

City Staff Present: Council Liaison Judy Seeberger, Assistant City Administrator/Planner Sara Taylor and City Attorney Nick Vivian

**APPROVAL OF MINUTES**

It was moved by Commissioner Levy and seconded by Commissioner Mabie to approve the May 17, 2010 meeting minutes as presented. Motion carried.

**PUBLIC HEARINGS**

Application 2010-02 (amended): Consider a zoning ordinance amendment to Section 3 – Definitions, a zoning ordinance amendment to Section 6 – B-1 Limited Business, and a request for a conditional use permit (CUP) to allow a limited transit vehicle storage facility with light, routine maintenance as an accessory use at 204 2<sup>nd</sup> Avenue South (portions of this application were heard at the May 17, 2010 Planning Commission meeting): Assistant City Administrator/Planner Taylor noted that the applicant withdrew his original application as it did not accurately detail the proposed long-term use of the property, and therefore a new application would be submitted. She noted no action was required at this time.

Application 2010-03: Consider a conditional use permit (CUP) to allow automotive sales and open lot outdoor display at 174 3<sup>rd</sup> Street South: Assistant City Administrator/Planner Taylor stated that in November 2008, the property owner was granted variances to construct a new office/retail building on the property; however, he was unable to construct the building due to the economic market. She explained that property owner Jeff Hause is developing a long-term business plan for the site, which he hopes will include a new building in this B-2 Central Business zoning district. In the interim, he would like to remodel the existing building and lease it for use as a retail sales office and indoor showroom for automobile and recreational vehicle sales. The applicant is also requesting outdoor display of automobiles, which requires a CUP. Additionally, the applicant is requesting outdoor display of small recreational vehicles, such as snowmobiles, ATV's and jet skis. The proposed site plan, outdoor sales lot specifications, business hours and proposed site improvements were reviewed. Planner Taylor stated that the applicant is requesting that major required site improvements be deferred for one year, as the long-term business plan may not include automotive sales/display. Notice of the public hearing was published in the Stillwater Gazette and mailed to all property owners within 350 feet of the property. One comment was received from an adjacent property owner regarding installation of an 8-foot privacy fence, and Planner Taylor stated this was one of the improvements that would be completed immediately, upon approval of the application.

Staff is recommending approval of the CUP to allow the outdoor display of automobiles, limited outdoor display of motorcycles, and deferral of the major required site improvements for one year. Planner Taylor stated that the applicant is also seeking outdoor display of small recreational vehicles, i.e. snowmobiles, ATV's, and jet skis. However, to keep with the intent of the ordinance, which specifies "automotive sales", staff feels that outdoor display of the above mentioned recreational vehicles is a stretch. These recreational vehicles are not considered "street legal" and therefore do not really meet the interpretation of automotive sales. Planner Taylor also stated that it is difficult to keep small recreational vehicles displayed neat and orderly on an outdoor sales lot and these vehicles are often a target for vandalism or theft. For these reasons, staff's interpretation is that these vehicles are better suited for display indoors.

Commissioner Levy had concerns with traffic entering and exiting the location, and Planner Taylor indicated that one of the conditions of approval was securing a permit from the Minnesota Department of Transportation (MnDOT) for the access location into the parking lot and the left turn lane pavement marking and striping on Highway 95, if applicable. Applicants Jeff Hause and Richard Swanson answered questions regarding parking lot access, outdoor lot security, projected timeline, routes for test drives, and online and retail sales options. Applicant Swanson stressed the importance of his request for outdoor seasonal display of recreational vehicles, including boats. Planner Taylor stated that city code allows only enclosed boat, trailer, and marine sales as a permitted conditional use in the B-2 Central Business zoning district. Attorney Vivian explained that the current city code does not address the sale of recreational vehicles, and stated that staff felt that the best interpretation of code for this site was to conditionally allow automobile sales, including trucks and possibly motorcycles.

Chairperson Goldston opened the public hearing and no comment was heard.

It was moved by Commissioner Schneider and seconded by Commissioner Levy to close the public hearing. Motion carried.

The general consensus of the Planning Commissioners was to recommend the proposed use and support the outdoor display of smaller recreational vehicles. Discussion followed on the number of recreational vehicles that would be allowed and whether a restriction was necessary. Commissioner Levy reiterated his concern with vehicles being able to safely enter and exit the parking lot and stated he would like the improvements to be made on a timely basis. Planner Taylor indicated that one of the conditions of approval requires that all building and site improvements be completed prior to the business opening.

Attorney Vivian stated that if the Planning Commission felt that small recreational vehicles should be classified under the interpretation of automotive sales, their motion on the application should clearly specify this intent and the types of recreational vehicles to be allowed. Discussion followed on options for securing recreational vehicles after hours, including whether it was necessary to require security chains at the property's entrance/exit. Planner Taylor indicated the CUP would be reviewed in one year and any issues that arise could be addressed at that time.

It was moved by Commissioner Schneider and seconded by Commissioner Hoyer to recommend to the City Council to approve a conditional use permit to allow automotive sales and open lot outdoor display at 174 3<sup>rd</sup> Street South, including snowmobiles, ATV's, and jet ski recreational vehicles, and other conditions recommended by staff. Motion carried.

**OLD BUSINESS** – None

**NEW BUSINESS** – None

**GENERAL INFORMATION** – None

**OPEN FORUM**

Commissioner Mabie requested that staff check on the legality of temporary outdoor storage structures, which are unsightly and susceptible to wind damage. Staff stated that neither city code nor the building code currently regulate these structures, but that staff would look into the matter and report back at an upcoming meeting.

**ADJOURN**

It was moved by Commissioner Mabie and seconded by Commissioner Schneider to adjourn the meeting at 6:50 p.m. Motion carried.

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# MEMORANDUM

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**DATE:** July 7, 2010

**TO:** Planning Commission (July 19<sup>th</sup> meeting)  
Mitch Berg, City Administrator

**FROM:** Sara Taylor, Assistant City Administrator/Planner

**SUBJECT:** Public hearing to consider rezoning existing parcels of St. Michael's Cemetery to R-2 Single-family Urban, located on 6<sup>th</sup> Street North

## *A. BACKGROUND*

The property is located on 6<sup>th</sup> Street North, adjacent to Hazelwood Cemetery and the Minnesota Correctional Facility (see attachment for complete legal description) with a total area of approximately 17 acres. St. Michael's Cemetery was originally established in 1873 and is currently owned by the St. Charles Catholic Church in Bayport. The original cemetery consisted of two parcels, but was later expanded by purchasing a third parcel from the Minnesota Correctional Facility in 1929. Because the cemetery was in operation prior to the city's zoning code, it is considered a legally non-conforming use.

The existing cemetery property currently has three separate zoning designations, B-1 Limited Business, R-2 Single-family Urban, and R-3 Multiple Family. The property is surrounded by a variety of zoning districts and land uses, including the correctional facility, the city's cemetery, and residential units. A majority of the property is occupied by existing gravesites, with the exception of some open space on the west and south portions of the property, which are designated for future burial areas.

Due to the limited number of remaining grave plots in the north portion of the cemetery, and increasing demand, the church would like to offer additional gravesites for both cremains and casket burials on the southeast portion of the property. However, before the church pursued further development of grave plots, the city felt it was appropriate to combine and properly designate these parcels for their intended use, to avoid further zoning inconsistency and discrepancy associated with permitted uses and setbacks. As such, the city and church are in agreement that the most appropriate zoning designation would be R-2 Single-family Urban. Although cemeteries are a conditional use in the R-2 district, because the use was in effect prior to the zoning, it may continue as a legally non-conforming use without a conditional use permit.

It should be noted that the church is currently in the process of working with the state to rectify a property boundary discrepancy on the west side of the cemetery. Although the deed held by the church references ownership of a portion of this land and graves exist in this location, legal counsel has advised the church that it would be a good time to clarify this discrepancy and request that the city also rezone this land to be consistent with the rest of the cemetery property. In conjunction with the rezoning, the church is also requesting the vacation of certain platted public rights-of-way located throughout the cemetery, primarily

because they are currently occupied with existing graves or are unimproved for public use. A separate public hearing will be held by the City Council to consider the requested vacations at the August 2, 2010 meeting.

Notice of the Planning Commission's public hearing was mailed to all property owners within 350' of the subject property and published in the Stillwater Gazette on July 1, 2010. The following informational items are attached:

- narrative by the property owner
- legal descriptions of the existing property and proposed boundary adjustment
- location and zoning map of the cemetery property
- proposed landscaping and grave plan for the southeast portion of the cemetery property

**B. STAFF COMMENTS**

The cemetery use has been in operation for approximately the past 140 years. Staff is unsure why portions of the cemetery are zoned differently, since all were purchased and have been used for cemetery purposes prior to adoption of the zoning code. At some point, perhaps, the city thought there may be an opportunity for some sort of development other than a cemetery on these parcels, and therefore zoned them accordingly. Regardless, it is staff's opinion that because the cemetery was in existence prior to adoption of the zoning code, all of the parcels are currently being used for cemetery purposes, and the intent of the church is to continue this use long-term, it would be appropriate to rezone these parcels for consistency and to recognize the property for cemetery use.

As stated, portions of the cemetery are currently zoned B-1 Limited Business, R-2 Single-family Urban, and R-3 Multiple Family. Cemeteries are a conditional use in all three of these zoning districts, which means that this type of use is only permitted with a conditional use permit, unless the use was in operation prior to adoption of the zoning code, as is the case with this use. Therefore, St. Michael's Cemetery is considered a legally non-conforming use, which means it may continue, provided the use remains consistent. Staff feels that based on the use, the most appropriate zoning classification would be R-2 Single-family Urban, as it is the most restrictive district with regard to setbacks, landscaping, and impervious coverage and most comparable to residential use, as opposed to business use.

Assuming the rezoning is approved, the church would like to move forward with their plan to offer additional gravesites for both cremains and casket burials on the southeast portion of the property. The area would ultimately contain a circular drive off of 6<sup>th</sup> Avenue North, to access the graves. A fence and substantial landscaping are proposed along the west, south, and east property lines, to establish a buffer from adjacent properties, as well as create a peaceful and inviting area. Grave plots would be setback 30 feet from the property lines, to ensure adequate separation from the residential property to the south and public rights-of way.

**C. SUGGESTED FINDINGS OF FACT AND CONDITIONS OF APPROVAL**

Because there will not be a change in use, the existing use is compatible with the neighborhood, and the rezoning is consistent with the comprehensive plan, staff feels the

rezoning will have a positive impact by eliminating further inconsistency and discrepancy associated with the cemetery use and property boundaries. For this reason, staff recommends approval of the rezoning, with the following conditions:

- A revised legal description of all existing cemetery property and any right-of-way vacations shall be prepared and deeds recorded with Washington County prior to the sale of any new grave plots within the southeast portion of the cemetery
- The rezoning of the proposed boundary adjustment area from B-1 Limited Business to R-2 Single-family Urban will not become effective until the church provides a revised legal description for the boundary adjustment area and proof of ownership to the city, and the deed is recorded with Washington County
- The proposed boundary fence, landscape buffer, and circular access drive shall be implemented when deemed appropriate, as grave plots are developed in the southeast portion of the property, to provide a buffer and access to grave plots (see attached site plan for detail)
- Any future access drives installed within the cemetery must be paved with bituminous or concrete
- Any paving improvements to public streets approved in conjunction with the rezoning, located within the cemetery, shall consist of bituminous or concrete
- No new structures shall be constructed on the cemetery property without first obtaining a conditional use permit (CUP)

**D. RECOMMENDATION**

Staff recommends approval to rezone the existing parcels of St. Michael's Cemetery to R-2 Single-family Urban, located on 6<sup>th</sup> Street North, including the west portion of the property to be clarified with the proposed property boundary adjustment. Suggested findings of fact and conditions of approval are stated in the staff report. The Planning Commission is asked to make a recommendation on the request for City Council consideration. The City Council will consider the rezoning request, as well as the street vacation requests at its meeting on August 2, 2010.

## St. Michael's Cemetery

St. Michael's Cemetery was established in 1873 by the St. Paul and Minneapolis Catholic Archdiocese. The land is owned by St. Charles Catholic Church in Bayport and the cemetery is operated in cooperation with St. Michael's and St. Mary's Catholic Churches in Stillwater.

Because of the limited number of remaining available grave plots and the projected increase in demand it has become necessary to expand into a currently unused portion of the property. At the same time the cemetery wishes to address the unresolved zoning, and street vacation issues pertaining to the entire cemetery.

St. Michael's Cemetery is requesting the City of Bayport to address the following items.

- 1). Approval to expand the grave plots into unused cemetery property. The unused property is Block 6 (Except Lot 11) of SECREST & PERRA'S ADDITION to BAYTOWN located in the northwest corner of 6<sup>th</sup> Street North (CSAH 28) and 5<sup>th</sup> Avenue North (CSAH 14).
- 2). Rezone the entire cemetery property R-2. The cemetery property currently falls into 3 separate zoning categories.
- 3). St. Michael's Cemetery is currently working with the Minnesota Department of Corrections to resolve the boundary discrepancies in the northwest parcels to incorporate existing gravesites into the cemetery.
- 4). Vacate the following street right of way within the cemetery.

Plumb Street as platted in SECREST & PERRA'S ADDITION to BAYTOWN west of the CSAH 28 right of way (6<sup>TH</sup> Street North). This right of way is entirely occupied with existing graves.

Fourth Street (Oak Street) as platted in the SECREST & PERRA'S ADDITION to BAYTOWN west of the CSAH 28 right of way (6<sup>th</sup> Street North). This right of way is also entirely occupied with existing graves and a paved access lane.

Fifth Street as platted in the SECREST & PERRA'S ADDITION to BAYTOWN west of the CSAH right of way (6<sup>th</sup> Street North). This right of way is mostly occupied with existing graves and a paved access lane.

The east one half of Fourth Street as platted in the SECREST & PERRA'S ADDITION to BAYTOWN directly adjacent to Block 6 of SECREST & PERRA'S ADDITION to BAYTOWN. The west half was vacated for the Hazelwood Cemetery (Document #551193). St. Michael's private water line runs north and south through the east half.

The south 10.00 feet of 6<sup>th</sup> Avenue North (Platted as Oak Street) from the west line of the CSAH 28 right of way (6<sup>th</sup> Street North) east to the centerline of the Fourth Street right of way. This will make the south line of the 6th Avenue North street right of way consistent (line up east and west) with the previously vacated portion adjacent to the Hazelwood Cemetery.

**St. Michael's Cemetery  
Legal Descriptions**

**Existing:**

All that part of the south half of the southeast quarter of section 3, township 29 north, range 20 west; beginning at a point on the north line of Plumb Street in Secrest and Perra's Addition to Baytown, 35 feet east of the northwest corner of said addition; thence north 8.44 chains; thence east 3.28 chains; thence south 45 degrees east 4.30 chains to the north side of a large rock; thence running on same course, in all, 9 chains, thence south 2.29 chains; thence north 88 degrees 45 minutes west 9.63 chains to the place of beginning; containing 6.21 acres according to the United States Government Survey thereof.

All of blocks 3 and 4; and lots 1 to 10 inclusive and lot 12 in block 6 of Secrest and Perra's Addition to Baytown, in accordance with the plat thereof on file and of record in the office of the Register of Deeds in and for Washington County, Minnesota.

All that part of the south half of the southwest quarter of section 3, township 29 north, range 20 west, described as follows: beginning at a point 30 feet west of the southwest corner of block no. 4 of Secrest and Perra's Addition to Baytown, at the southwest corner of what is known as St. Michael's Cemetery; thence westerly 300 feet upon the prolongation of the southerly boundary line of said St. Michael's Cemetery; thence north at right angles 600 feet to a point, thence east at right angles 300 feet, more or less, to the westerly line of said St. Michael's Cemetery; thence south along said westerly line of St. Michael's Cemetery to the place of beginning, all lying and being in the County of Washington and State of Minnesota.

Note: The above description for parcel 3 describes what the State of Minnesota quit claimed to the Church of St. Michael of Stillwater and was taken from document number 96784, book 115, pages 340-341, filed for record on July 3, 1929. On June 30, 1931 another quit claim deed, document number 101585, book 118, page 533, was filed in which the State of Minnesota appears to have intended to convey the same land to the Church of St. Michael as recorded in document number 96784, book 115, pages 340-341. The description on the 1931 deed does not contain the phrase: "Beginning at a point 30 feet west of the southwest corner of block no. 4 of Secrest and Perra's Addition to Baytown..." Without that phrase, the point of beginning changes, and consequently the land to be conveyed.

**Proposed boundary adjustment:**

Commencing at the southwest corner of Block 4 of Secrest and Perra's Addition to Baytown; thence, south 89 degrees 57 minutes 39 seconds west on the westerly extension of the south line of said Block 4 a distance of 30.00 feet to the west line of Fifth Street as platted in said addition and the POINT OF BEGINNING of the proposed boundary line to be described; thence continue, south 89 degrees 57 minutes 39 seconds west on said westerly extension 300.00 feet; thence, north 00 degrees 02 minutes 21 seconds west 600.00 feet; thence, north 89 degrees 57 minutes 39 seconds west 120.00 feet; thence, north 00 degrees 29 minutes 37 seconds west 15.00 feet; thence, north 89 degrees 57 minutes 39 seconds west 200.00 feet; thence, north 00 degrees 29 minutes 37 seconds west 302 feet more or less to a point 20.00 feet south of the north line of the southwest quarter of the southeast quarter of section 3, township 29 north, range 20 west; thence, north 89 degrees 47 minutes 15 seconds east and parallel to said north line 220 feet more or less to the west right of way line of C.S.A.H Number 28 and there terminating.

Note: The above described proposed line is preliminary and subject to minor mathematical adjustments as well as approval by the Minnesota Department of Corrections.

E 1/2 OF SEC 3  
SUBJECT TO SEWER EASEMENT  
PER BK 88 DEEDS, PG 161  
(UNSPECIFIED LOCATION)

THIS DRAWING IS THE RESULT OF A COMPILATION AND REPRODUCTION OF  
EXISTING RECORD MAPS AND SURVEYS ON FILE IN THE OFFICES  
WASHINGTON COUNTY IS NOT RESPONSIBLE FOR ANY INACCURACIES  
PROPERTY LINES AS SHOWN ARE FOR REFERENCE PURPOSES AND MAY NOT  
REPRESENT ACTUAL LOCATIONS  
MAP LAST UPDATED: JULY 31, 2008  
NO ADDITIONAL CHANGES HAVE BEEN REPORTED TO DATE  
DATE OF CONTIGUOUS: APR. 2000 DATE OF PHOTOGRAPHY: None

PROPERTY IDENTIFICATION NUMBER (PIN) TABLE

SECTION	TOWNSHIP	RANGE	PIN
14	11 N	11 E	(0001)
15	11 N	11 E	(0002)
16	11 N	11 E	(0003)
17	11 N	11 E	(0004)
18	11 N	11 E	(0005)
19	11 N	11 E	(0006)
20	11 N	11 E	(0007)
21	11 N	11 E	(0008)
22	11 N	11 E	(0009)

SECTION VICINITY MAP

COUNTY VICINITY MAP

SECTION/TOWNSHIP/RANGE INDEX

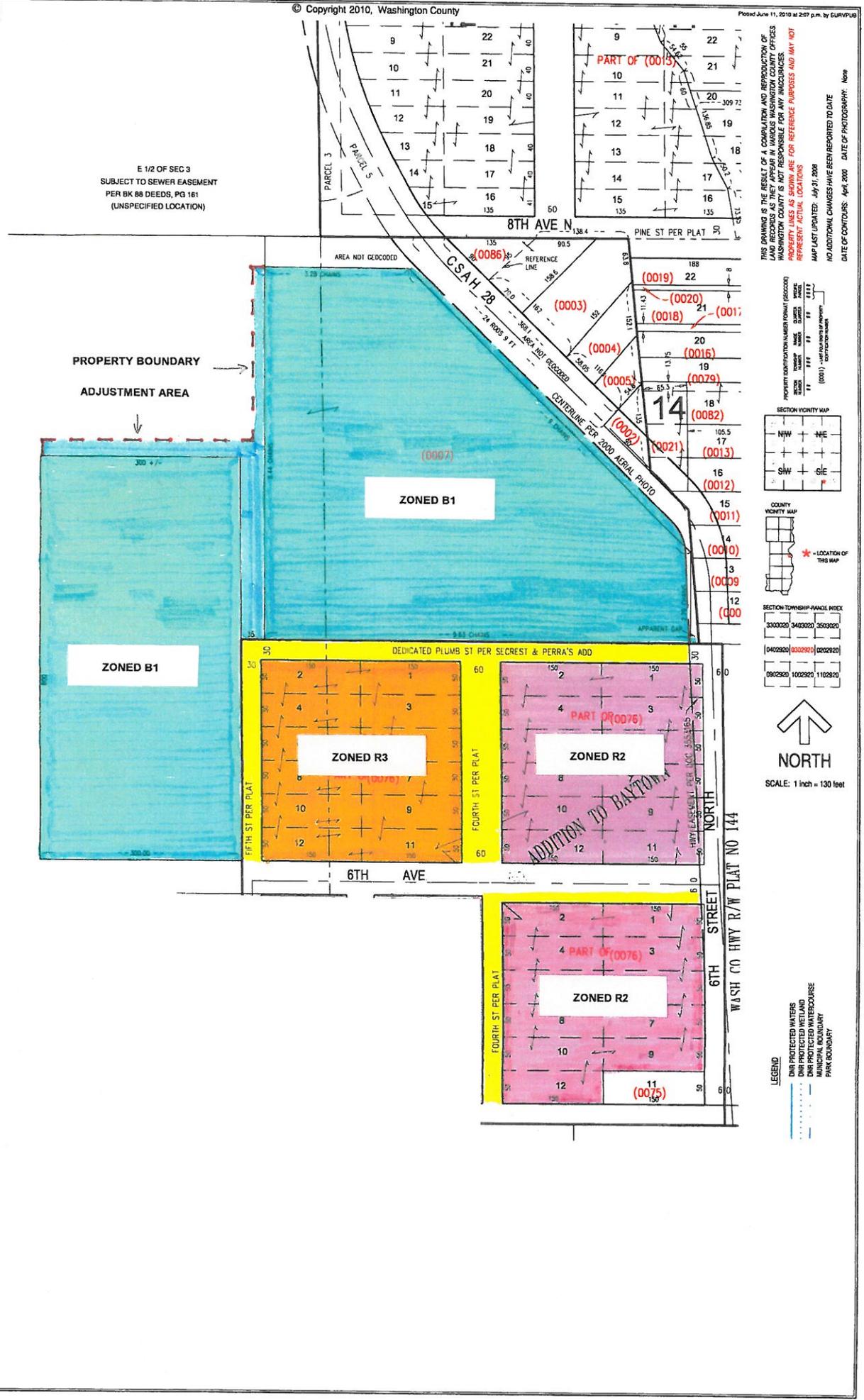
3300020	3400020	3500020
0402920	0302920	0202920
0902920	1002920	1102920

NORTH

SCALE: 1 inch = 130 feet

LEGEND

- DNR PROTECTED WATERS
- DNR PROTECTED WETLAND
- DNR PROTECTED WATERCOURSE
- PARCEL BOUNDARY
- PLAT BOUNDARY



4	3	4	3
5	2	5	2
6	1	6	1
B	A	B	A

4	3	4	3
5	2	5	2
6	1	6	1
B	A	B	A

4	3	4	3
5	2	5	2
6	1	6	1
B	A	B	A

4	3	4	3
5	2	5	2
6	1	6	1
B	A	B	A

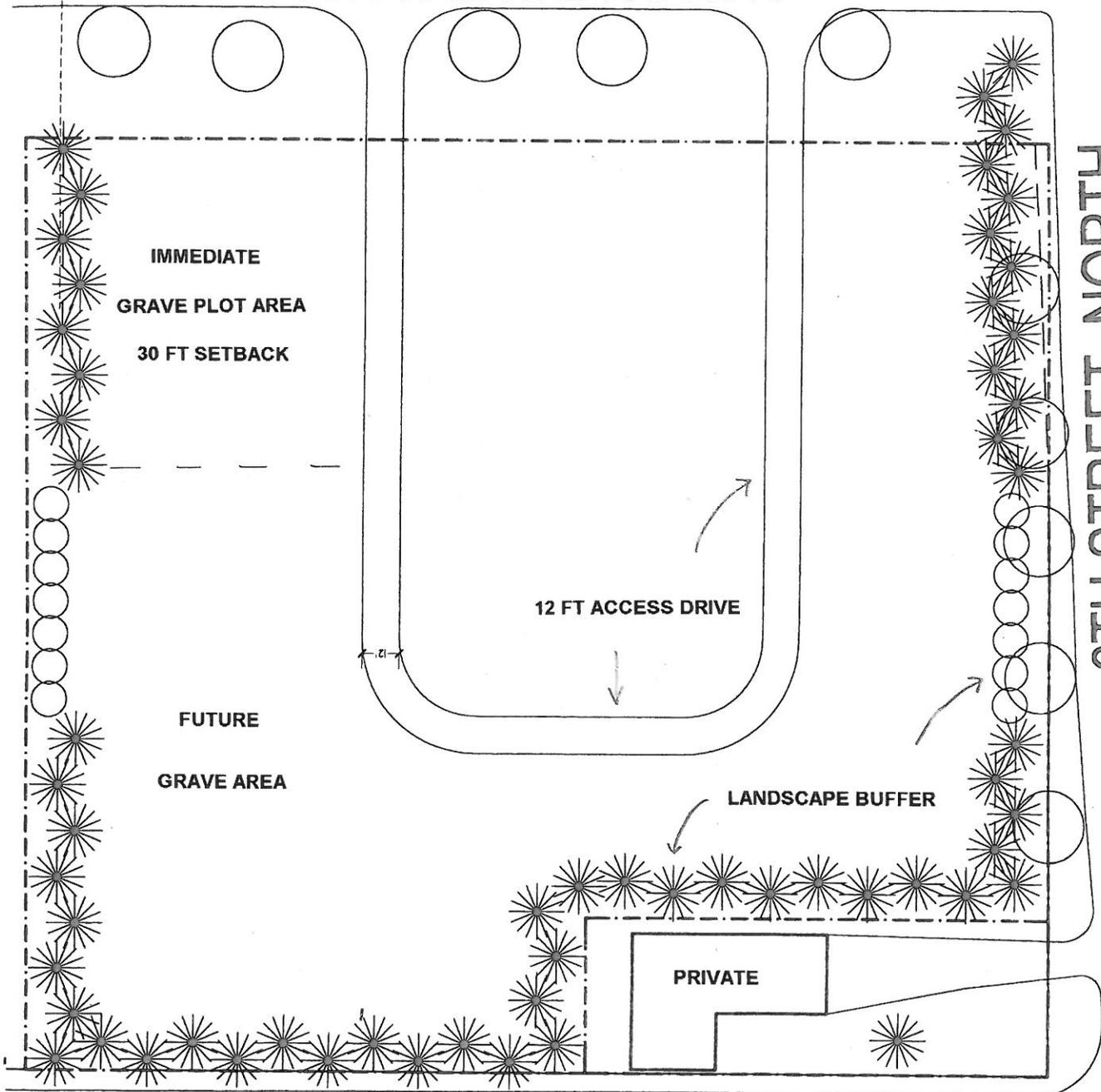
4	3	4	3
5	2	5	2
6	1	6	1
B	A	B	A

4	3	4	3
5	2	5	2
6	1	6	1
B	A	B	A

4	3	4	3
5	2	5	2
6	1	6	1
B	A	B	A

3	2	3	2
4	1	4	1
B	A	B	A

6TH AVENUE NORTH



6TH STREET NORTH

5TH AVENUE NORTH