

**10-02-2023**

**Planning Commission  
Meeting**

**Revised Second  
Supplemental Packet**

**To:** City of Afton Planning Commission  
**CC:** Ron Moose, City Administrator  
**From:** Claire Michelson, Planning Consultant  
**Date:** September 27<sup>th</sup>, 2023  
**Re:** Variance Application for Accessory Building at 16530 Swede Hill Drive S Afton MN 55001  
PID 35.028.20.12.0009



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### Summary of Request and Review

Request to allow a 1300 square foot detached garage at approximately 100.7 feet from the ordinary high-water mark and 50 feet from the bluff. Section 12-675 requires that structures be 200 feet from the ordinary high-water line and 100 feet from the bluffline. The property is 3.7 acres and in the Rural Residential Zoning District. Due to the typography of the lot and setbacks from other bluffs on the property this appears to be the only feasible location for the detached garage.

The elevations of the proposed detached garage reflect two levels of spaces in the garage. The garage will need to meet the City's zoning requirements that prohibit two-story accessory buildings.

The property has an existing very substandard deck that projects out over the water. Any work related to this deck, other than minor repairs, would require a variance application. The DNR has indicated that the preferred solution is the removal of the deck at such time as it deteriorates to the point that it becomes unsafe and/or unusable.

### Staff Recommendation

Staff is recommending that the City of Afton:

- Adopt the staff report into the record;
- Accept the application, testimony, exhibits, and other evidence presented into the record; and
- Recommend the Planning Commission Recommend APPROVAL of the request for a variance, submitted by Herreid (Owners) to Rural Residential Zoning District standards to construct an accessory structure no closer than 100 feet from the ordinary high-water mark of the St Croix River and 50 feet from the bluff with conditions.

### Conditions

*The following are conditions of approval of the variance application.*

1. The proposed structure may be 1,300 square feet contingent on the approval of the variance and subdivision/ lot line rearrangement request to increase the size of the lot to 5 acres, otherwise it must be a maximum of 720 square feet.
2. The elevations of the proposed detached garage reflect two levels of spaces in the garage. The garage will need to meet the City's zoning requirements that prohibit two-story accessory buildings.

### Additional Alternatives

- The Planning Commission could recommend denial of the variance request and change the findings of fact; or

- The Planning Commission could table the application and request additional information.

### **Background**

The applicant applied for a 100-foot variance to the 200-foot ordinary high water mark setback and 50 foot variance from the bluff in order to build a 1,300 square foot accessory structure next to the principle structure.

The proposed size of the accessory structure is 1,300 square feet, this request is pending the minor subdivision and variance request from the applicant to create a 5 acre lot. If the variance request for the 5-acre lot is not approved, then the applicant would be required to resubmit the site plan with a 720 square foot building.

### **Lower St. Croix River Bluffland and Shoreland Management Variance Standards:**

Sec. 12-835. Variances.322

A. Variances shall only be granted where there are practical difficulties which make the strict enforcement of this article impractical, and only when such variances are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the Comprehensive Plan. "Practical difficulties" as used in connection with the granting of a variance includes a three-factor test, all three of which must be met in order for a variance to be granted.

- A. Reasonableness: The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.
- B. Uniqueness: The plight of the landowners is due to circumstances unique to the property not created by the landowner.
- C. Essential Character: The variance, if granted, will not alter the essential character of the locality.

B. Economic considerations alone shall not constitute a practical difficulty if a reasonable use of the property and associated structures exists under the conditions allowed by this article. In addition, no variance shall be granted that would permit any use that is prohibited in this article in which the subject property is located. Conditions may be imposed in the granting of a variance to insure compliance and to protect adjacent properties and the public interest, especially in regard to the view from the river.

C. The formal public hearing for a variance shall be held by the Planning Commission as set forth in the zoning ordinance, article II of this chapter.

### **Draft Findings of Fact**

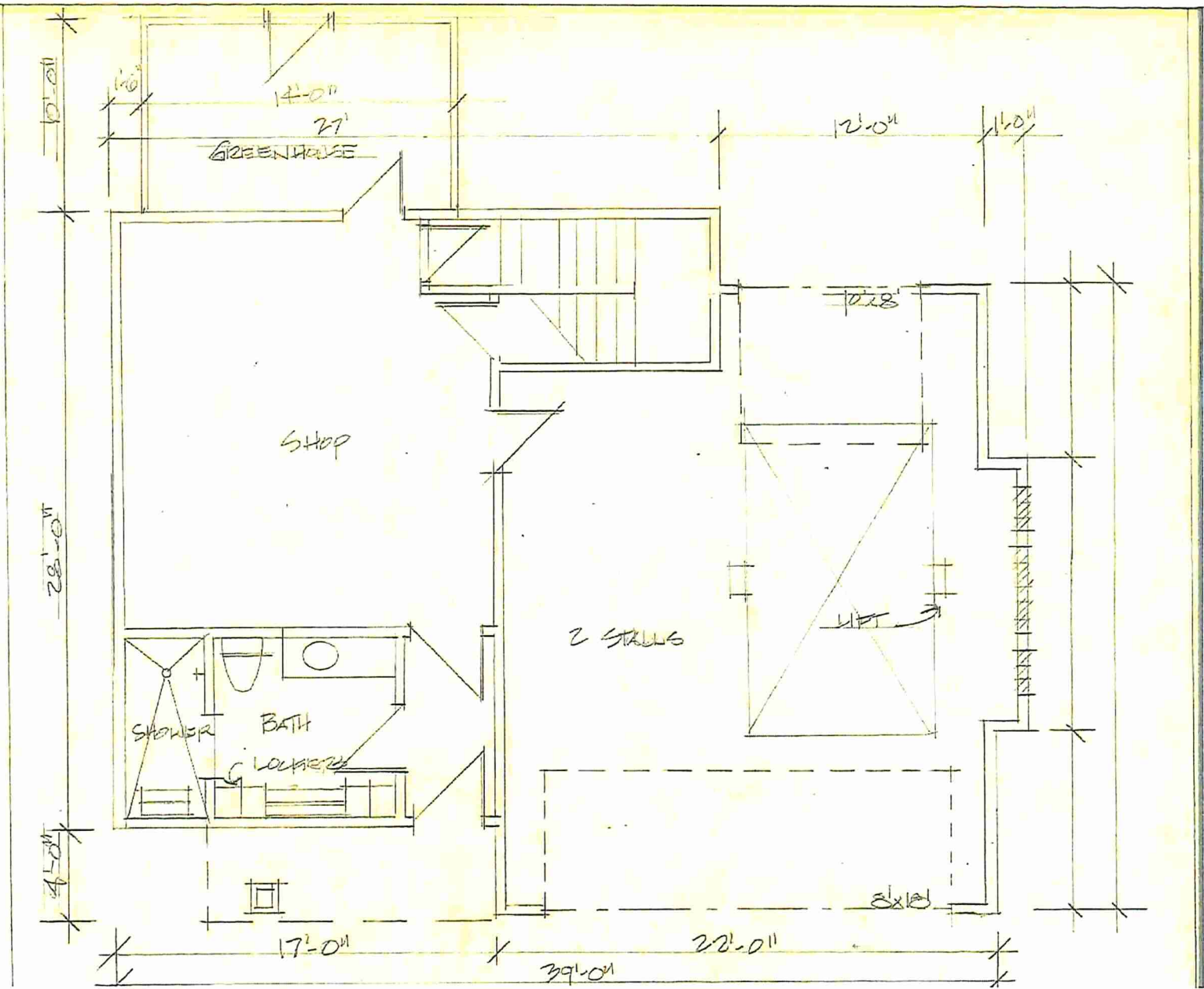
*The draft Findings of Fact shall be amended to reflect concerns conveyed at the meeting and public hearing and should specify the facts and reasons that are the basis of the determination. In granting a variance, the City of Afton may impose conditions directly related to, and bearing a rough proportionality with, the impact(s) created by the variance.*

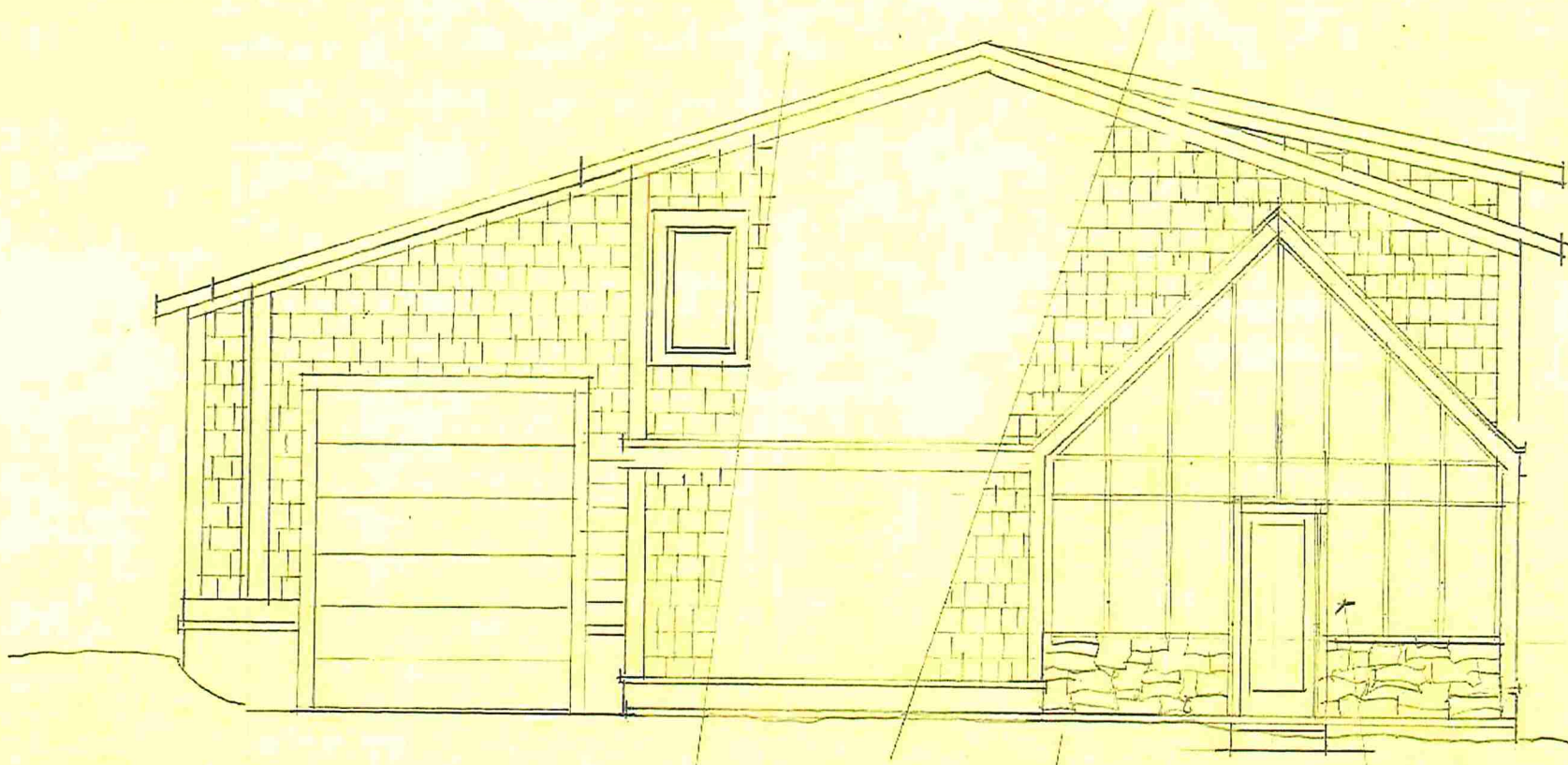
1. Afton's 2040 Comprehensive Plan does not directly address the applicant's situation, but it appears that the proposed addition will not interrupt the rural residential character of the area, which is supported by the Comprehensive Plan.

2. The parcel is located in the Rural Residential district. The purpose of RR is primarily to accommodate non-farming and residential uses due to the area's soil conditions, rock formation, and other physical features. The proposed accessory structure would allow for the property to be a further utilized residence within this zone.
3. The proposed accessory building appears to match the appearance and materiality of the existing structure, preventing interruption to the character of the property and surrounding properties.
4. The proposed addition within the ordinary high water mark setback does not appear injurious to the use and enjoyment of properties in the immediate vicinity for uses already permitted, nor would it substantially diminish and impair property values in the immediate vicinity. The use appears harmonious with the established uses in the vicinity.
5. The establishment of the proposed addition within the ordinary high water mark setback is not anticipated to impede the normal and orderly development and improvement of surrounding property for uses predominant to the area. The proposed project will not impact public welfare or safety.
6. The proposed accessory structure appears to meet all development standards of the City of Afton pending other applications and does not appear incompatible with adjacent land uses.
7. The proposed accessory structure does not impair an adequate supply of light and air to adjacent properties, increase the congestion in the public rights-of-way, increase the danger of fire or endanger the public safety, cause an unreasonable strain upon existing City facilities and services, have a negative direct and indirect fiscal impact on the City, County, or School District.
8. It has been demonstrated that the granting on the variance will be keeping with the spirit and intent of the Zoning Ordinance and is consistent with the Comprehensive Plan. The proposal meets the intent of the Zoning Ordinance.

### **Attachments**

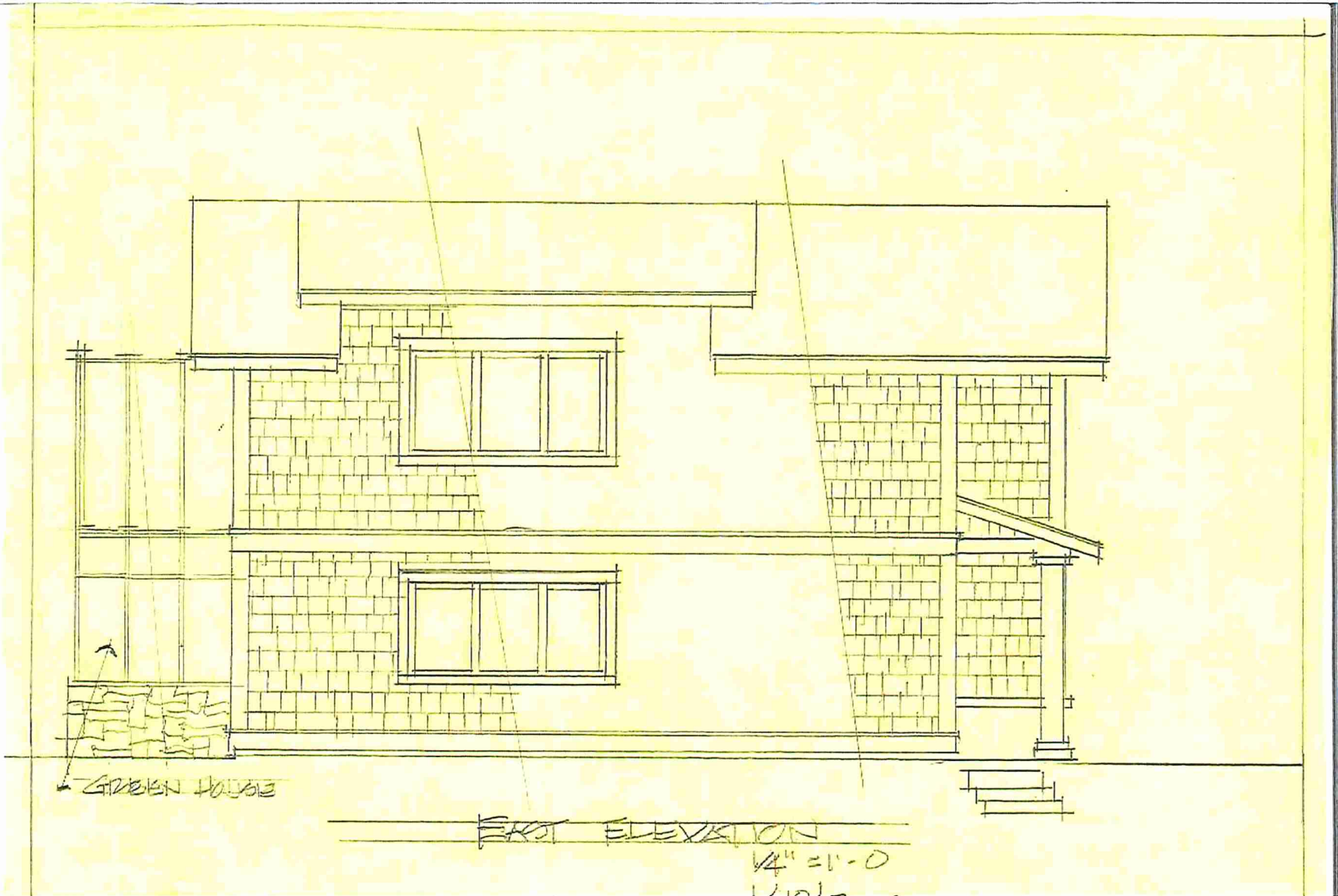
1. Site Plan of Existing Structure and Proposed Accessory Structure Location with Setbacks
2. Proposed Accessory Structure Location Drawing





SOUTH ELEVATION  
1/4" = 1'-0"  
1/10/2023

GREENHOUSE



GREEN HOUSE

EAST ELEVATION

1/4" = 1'-0"

1/10/15

**VACANT LAND  
PURCHASE AGREEMENT**

1. **PARTIES.** This Purchase Agreement is made on the 7 day of 8/2023, 2023, by Karen Herreid, a single person, (SELLER), and David Herreid, (BUYER).

2. **OFFER/ACCEPTANCE.** Buyer offers to purchase and Seller agrees to sell real property (the "Property") is located in the County of Washington, State of Minnesota, legally described as follows:

**See Exhibit A attached hereto and incorporated herein by reference.**

3. **PRICE AND TERMS.** Purchaser shall pay to Seller at a location designated by Seller the sum of [REDACTED], as and for the purchase price (the "Purchase Price") for the Property, payable as follows:

a. [REDACTED] earnest money, the receipt of which is hereby acknowledged by Seller; and

b. [REDACTED] on the Closing Date.

4. **DATE OF CLOSING.** The closing shall be occur on or before October 31, 2023, (the "Closing Date") at a mutually agreed upon time and place.

5. **DEED.** On the Closing Date the Seller shall execute and deliver a Warranty Deed conveying title to the Buyer.

6. **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Seller shall be responsible for real estate taxes and assessments (if any) due and payable in years prior to 2023. Taxes payable in 2023 shall be pr-rated between the Seller and the Buyer as of the Closing Date. Buyer shall pay real estate taxes and assessments (if any) due and payable in the year 2023 and thereafter. Seller makes no representation as to the tax valuation, classification, or any other matter relating to future taxes on said property.

7. **CONDITION OF PROPERTY.** Seller is selling the Property "as is".

8. **POSSESSION.** Seller shall deliver possession of the property to the Buyer not later than the Closing Date.

9. **EXAMINATION OF TITLE.** Within five (5) days after acceptance of this Agreement, Buyer shall obtain a commitment for an owner's policy of title insurance (the Commitment). The Commitment shall commit to insure marketable title in Buyer, free and clear of all mechanic's liens, questions of survey, unrecorded interests, rights of parties in possession or other exceptions. Buyer will, within five (5) days after receipt of the Commitment, make objections to the marketability of the title to the Property based upon examination of the Commitment, said objections to be made by written notice or to be deemed waived. If any objections are so made to the marketability of the title to the Property, Seller shall



immediately commence and diligently endeavor to complete all actions necessary to cure such objections and shall be allowed 90 days after receipt of Buyer's objections to cure such objections and make the title to the Property good and marketable of record in Seller and to permit Buyer to obtain appropriate endorsements to the Commitment indicating that any such objections have been cured. Pending the correction of the title, the Closing Date and the payments hereunder required shall be postponed, but upon correction of the title and within 15 days after written notice of such correction given by Seller to Buyer, Seller and Buyer shall close and perform this Agreement according to its terms.

If the title to the Property, as evidenced by the Commitment, together with any appropriate endorsements, is not good and marketable of record in Seller and is not made so within said 90 days, or is not good and marketable of record in Seller at the Closing Date, Buyer shall have the following options:

- a. Buyer may terminate this Agreement by giving written notice to Seller in which event this Agreement shall become null and void, all Earnest Money shall be returned immediately to Buyer and neither party shall have any further right or obligation hereunder; or
- b. Buyer may elect to accept the title to the Property in its unmarketable condition by giving written notice to Seller.

**10. MINNESOTA LAW.** This contract shall be governed by the laws of the State of Minnesota.

**11. NOTICES.** All notices required herein shall be in writing and delivered personally or mailed via certified mail, postage prepaid, directed to addressee at their respective address set forth below. If mailed, notice is effective as of the date of mailing.

To Buyer:

David Herreid  
1697 Stanford Avenue  
St. Paul, MN 55105

To Seller:

Karen Herreid  
1402 - 27<sup>th</sup> Street NW  
Austin, MN 55912

**12. SUCCESSORS AND ASSIGNS.** All terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, transferees, successors and assigns.

**13. COMPLETE AGREEMENT.** This is a final Agreement between the parties and contains their entire agreement and supersedes all previous understandings and agreements, oral or written, relative to the subject matter of this Agreement.

14. **TIME OF THE ESSENCE.** Time is of the essence in the performance of his Agreement.

15. **STATE DEED TAX.** Seller shall pay the cost of any state deed tax stamps required to be attached to the warranty deed.

We agree to sell the property for the price and terms and conditions set forth above.

I agree to buy the property for the price and terms and conditions set forth above.

**SELLER**

*Karen Herreid*

\_\_\_\_\_  
Karen Herreid

Dated: 07/31/2023

**BUYER**

*David Herreid*

\_\_\_\_\_  
David Herreid

Dated: 08/01/2023

## EXHIBIT A

### PROPOSED DESCRIPTION OF PARCEL A

That part of Government Lot 1, Section 35, Township 28 North, Range 20 West, City of Afton, Washington County, Minnesota, described as follows:

Commencing at the northwest corner of said Section 35; thence North 88 degrees 02 minutes 38 seconds East, assumed bearing, along the north line of said Section 35, a distance of 2634.25 feet to the North Quarter Section corner of said Section 35; thence South 28 degrees 00 minutes 35 seconds East, a distance of 702.02 feet to JUDICIAL LANDMARK NO. 3; thence South 74 degrees 46 minutes 02 seconds East, a distance of 285.21 feet to JUDICIAL LANDMARK NO. 2; thence South 89 degrees 41 minutes 16 seconds East, a distance of 78.38 feet to JUDICIAL LANDMARK NO. 1 and the POINT OF BEGINNING of this description; thence North 89 degrees 41 minutes 16 seconds West, a distance of 78.38 feet to JUDICIAL LANDMARK NO. 2; thence North 74 degrees 46 minutes 02 seconds West, a distance of 285.21 feet to JUDICIAL LANDMARK NO. 3; thence North 09 degrees 24 minutes 45 seconds West, a distance of 233.50 feet to JUDICIAL LANDMARK NO. 4; thence North 72 degrees 11 minutes 36 seconds East, a distance of 116.76 feet to JUDICIAL LANDMARK NO. 5; thence South 17 degrees 30 minutes 24 seconds East, a distance of 9.80 feet to JUDICIAL LANDMARK NO. 6; thence North 72 degrees 12 minutes 50 seconds East, a distance of 182.00 feet to JUDICIAL LANDMARK NO. 7; thence continuing North 72 degrees 12 minutes 50 seconds East, a distance of 33 feet, more or less, to the shore of Lake St. Croix; thence southerly, along said shore of Lake St. Croix, a distance of 420 feet, more or less, to its intersection with a line that bears South 89 degrees 41 minutes 16 seconds East from the point of beginning; thence North 89 degrees 41 minutes 16 seconds West, a distance of 54 feet, more or less, to JUDICIAL LANDMARK NO. 1, and to the POINT OF BEGINNING.

Which lies westerly of a line drawn from a point on the line drawn from JUDICIAL LANDMARK NO. 2 to JUDICIAL LANDMARK NO. 3 a distance of 231.38 feet easterly of said JUDICIAL LANDMARK NO. 3 to a point on the line drawn from JUDICIAL LANDMARK NO. 6 to JUDICIAL LANDMARK NO. 7 a distance of 94.34 feet easterly of said JUDICIAL LANDMARK NO. 6.