

TO: Mayor and City Council
FROM: Zach Logelin, License Permit Technician
SUBJECT: APPLICATION FOR DR. MOLENAAR, PRELIMINARY PLAT AND VARIANCES FOR PID #52.510.0290, #52.510.0300, and #52.510.0130
DATE: August 1st, 2023

BACKGROUND

A public hearing was held by Planning Commission on July 10th, 2023, to consider a request for a Preliminary Plat and Variances for PID #52.510.0290, PID # 52.510.0300 and PID #52.510.0130. *This property is currently zoned UR, Urban Reserve.*

PROJECT DETAILS

Daniel Molenaar is requesting approval for the Molenaar Addition Preliminary plat and two related Variances. The first Variance request is to allow for the development of single-family residential homes at a density of less than one dwelling per 10 acres on lots 3 and 4. The second Variance request is requesting approval to waive the requirement that all lots have frontage on a public street.

The following exhibits are enclosed to further describe the proposal:

1. Copy of Development Application
2. Dr. Molenaar supporting memo
3. UR Zoning Ordinance §152.460
4. Application analysis
5. Cover letter from Daniel Molenaar
6. GIS depiction of site
7. Survey

REQUESTED COUNCIL ACTION

City Council is being asked adopt Resolution 2691 Denying the Development Application for the Molenaar Property. Planning Commission voted unanimously to recommend denial of the application.



DEVELOPMENT APPLICATION

918 River Road
Cannon Falls, MN 55009
507-263-9312

SUBJECT TO STAFF REVIEW

Street Location of Property: XXX Highway 20, Cannon Falls, MN and XXX 5th Street North, Cannon Falls, MN

Legal Description of Property: Government Lots 1, 2, 5 and 6, Section 7, Township 112, Range 17

Owner of Record: Name: Daniel Karl Molenaar as Trustee of the Robert E. Molenaar Revocable Trust, dated August 11, 1998,

Daytime Phone: 612-716-7962

Address: 6300 296th Street East

Cannon Falls, MN 55009

Applicant (if other than owner)

Name: _____ Notary Stamp

Daytime Phone: _____

Address: _____

E-Mail Address: _____

Nature of Legal or Equitable Interest of Applicant (Documentation must be attached :)

- | | | | | |
|----------|-------------------------------------|------------------------|-------------------------------------|-----------------------------------|
| Request: | <input type="checkbox"/> | Conditional Use Permit | <input type="checkbox"/> | Rezoning/Ordinance Text Amendment |
| | <input checked="" type="checkbox"/> | Subdivision | <input checked="" type="checkbox"/> | Variance |
| | <input checked="" type="checkbox"/> | Concept | <input type="checkbox"/> | Interim Use Permit |
| | <input checked="" type="checkbox"/> | Preliminary Plat | <input type="checkbox"/> | Amendment |
| | <input type="checkbox"/> | Final Plat | <input type="checkbox"/> | CUP/PUD |
| | <input type="checkbox"/> | Administrative | <input type="checkbox"/> | Site Plan Review |
| | <input type="checkbox"/> | Administrative Permit | <input type="checkbox"/> | Special Home Occupation |
| | <input type="checkbox"/> | Vacation | <input type="checkbox"/> | Annexation Petition |
| | <input type="checkbox"/> | Comp Plan Amendment | <input type="checkbox"/> | Appeal |
| | <input type="checkbox"/> | Other | | |

Note: Each requested approval may require a separate fee and/or escrow amount, even where they apply to the same project.

Date Application Received: _____

Date Submission Deemed to be Complete: _____

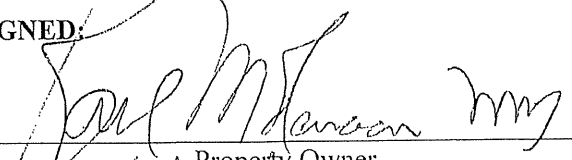
Give detailed description of project and reason for conditional use or variance, if applicable:

Please see attached memo.

SUPPORTING DOCUMENTATION: Applicant must submit with the application all documentation required by the Zoning or Subdivision Ordinance relating to the requested approval. Applicant will be advised of the completeness. Only when it has been determined that an application is complete will it be placed on a Planning Commission agenda for consideration. Applications that do not include the proper plans and/or documentation may be delayed from formal review. **FAILURE ON THE PART OF THE APPLICANT TO SUPPLY ALL NECESSARY SUPPORTIVE INFORMATION MAY BE GROUNDS FOR DENIAL OF THE REQUEST.**

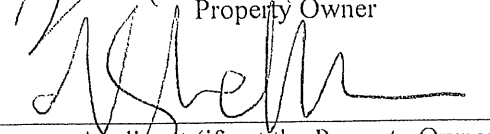
APPLICANT RESPONSIBILITY FOR PAYMENT OF ALL CITY FEES AND COSTS IN PROCESSING APPLICATION: Applicant acknowledges that she/he understands that before this request can be considered and/or approved, all fees, including the basic application fee and any escrow processing deposits must be paid to the city and that, if additional fees are required to cover costs incurred by the City, the City Clerk has a right to require additional escrow amounts and payment. These fees include all actual costs including, but not limited to, planning, engineering, public notification, and legal costs. All processing of an application will be halted if payments are not made within 30 days of receipt of a monthly statement from the City, in the event any escrow account established is insufficient to cover the costs.

SIGNED:



Property Owner

Date: 5/15/23



Applicant (if not the Property Owner)

Date: 5/15/23

To: City of Cannon Falls
From: Dr. Karl Molenaar
Re: Molenaar Addition to the City of Cannon Falls
Date: May 4, 2023

To whom it may concern:

Dr. Karl Molenaar is providing this memo in support of the Development Application for the Molenaar Addition to the City of Cannon Falls. This application involves the following tax parcels: 52.510.0290, 52.510.0300, and 52.510.0130. The proposed plat consists of one block and four lots.

Block 1, Lot 1

Lot 1 consists of 36 acres of wooded bluff land. This lot is intended to remain as unimproved woodlands. The lot has direct access from Highway 20. This lot is expected to be sold to Dwayne Myrvold. This lot will remain in the Urban Reserve zone.

Block 1, Lot 2

Lot 2 consists of 18 acres with approximately 16 tillable acres. This lot is intended to remain as unimproved agricultural land. This lot is under contract to be sold to Robert Widman. Access to this lot is via a private easement granted in a deed dated July 2, 1973, and recorded September 4, 1973, in Document No. 235105 in the Office of the Goodhue County Recorder. A copy of that deed is attached. That easement extends from the intersection of 5th Street North and the northern edge of St. Clair's Terra Haute Addition to Cannon Falls to Highway 20. The easement is currently used by the City of Cannon Falls to access the pumphouse. Mr. Widman intends to use the southern portion of the easement to access the property from 5th Street North. This lot will remain in the Urban Reserve zone.

Blocks 1, Lots 3 and 4

Lots 3 and 4 consist of approximately 4.5 and 3.8 acres respectively. These lots are intended to be residential lots with a single-family dwelling on each.

Access to these lots is via the same private easement as Lot 2. As part of the plat application, the applicant will also request a variance for the following:

1. Waiving the requirement that all lots zoned as Urban Reserve be at least 10 acres. These lots will be the only buildable lots in the overall 62 platted acres. Allowing two houses on this large area will not cause any undue burden on neighboring landowners and will not substantially increase the traffic in the area. Due to the physical features of the platted land as a whole, there is little land area suitable for similar residential development.

2. Waive the requirement that all lots have frontage on a public street. Lots 3 and 4 have access via a private easement that will be shared with the City. The easement is already used and

maintained like a public road by the City for its access to the pumphouse. Any anticipated buyers would be able to negotiate maintenance needs with the City. Additionally, any potential buyers could be required to add at least a bituminous layer to the portion of the easement that borders on their property.

FOR CITY USE ONLY

Date Application Filed: _____

Basic Fees: _____

Received By: _____

Escrow Deposit: _____

Evidence of Ownership Submitted: ☐ Yes

☐ No

☐ Required

Certified Lot Survey: ☐ Yes

☐ No

☐ Required

Legal Description Adequate: ☐ Yes

☐ No

☐ Required

Date of Planning Commission Meeting: _____

Recommendation of Planning Commission on: _____ ☐ Approve ☐ Deny

Recommendation of City Council on: _____ ☐ Approve ☐ Deny

Subject to following conditions: _____

Notice of Public Hearing

Notice is hereby given that the Planning Commission of the City of Cannon Falls, Minnesota will meet on Monday, July 10, 2023 beginning at 6:30 p.m. (or as soon thereafter as the matter may be heard) in the City Council Chambers at City Hall, 918 River Road, to conduct a public hearing to consider the application of Daniel Karl Molenaar as the Trustee of the Robert E. Molenaar Revocable Trust, dated August 11, 1998 for approval of a preliminary plat and related variances for the property legally described as Government Lots 1, 2, 5 and 6, Section 7, Township 112, Range 17, PID # 52100290, 52100300, 52100130, and located at Highway 20 and 5th St. Cannon Falls, MN.

Any other applicable zoning requirements that affect the application will be considered at this time.

More detailed information relating to the application is available for public inspection at the office of the City Administrator, 918 River Road, Cannon Falls, MN 55009

Neil Jensen
City Administrator
507-263-9304

TO: PLANNING COMMISSION

FROM: NEIL JENSEN

SUBJECT: MOLENAAR ADDITION PRELIMINARY PLAT AND VARIANCES

MEETING DATE: JULY 10, 2023

PROJECT INFORMATION

On or about May 4, 2023, Dr. Karl Molenaar (on behalf of Daniel Karl Molenaar as Trustee of the Robert E. Molenaar Revocable Trust, dated August 11, 1998) (the “Applicant”) submitted a development application for the property identified as PID 52.510.0290, 52.510.0300 and 52.510.0130 and legally described as Government Lots 1, 2, 5 and 6, Section 7, Township 112, Range 17 (the “Property”). The parcels contain approximately 11.40 AC, 25.12 AC, and 26.31 AC, respectively, for a total of 62.83 AC.

The Property is zoned UR, Urban Reserve. “The purpose of the UR, Urban Reserve District is to preserve a low density, rural environment in a manner conducive to future urbanization. The district is intended to function as a ‘holding zone’ for future urban development, preventing subdivisions of an urban density until a time as suitable infrastructure can be provided.” City Code § 152.460. Subject to City Code requirements, permitted uses in the UR zone include “farms, farmsteads, farming and agricultural related buildings and structures” and “single-family detached dwellings at a density of not more than one dwelling unit per ten acres of land.” Id. at § 152.461(A, F). City Code § 152.466 prescribes the following lot requirements and setbacks in the UR, Urban Reserve zone:

Lot area	10 acres
Lot depth	None
Lot width	250 feet
Setbacks	
Front yards	30 feet
Rear yards	30 feet
Side yards	20 feet on each side or 30 feet on the side yard abutting a public right-of-way

Applicant’s preliminary plat consists of one block and four lots, as follows:

Block 1, Lot 1

- 36 acres of wooded bluff
- Zoned UR, Urban Reserve
- Proposed use – unimproved woodlands
- Proposed direct access from Highway 20

Block 1, Lot 2

- 18 acres with approximately 16 tillable acres
- Zoned UR, Urban Reserve
- Proposed use – unimproved agricultural land
- Proposed access over private easement to 5th Street N

Block 1, Lot 3

- 4.5 acres
- Zoned UR, Urban Reserve
- Proposed use – residential with a single-family dwelling
- Proposed access over private easement to 5th Street N

Block 1, Lot 4

- 3.8 Acres
- Zoned UR, Urban Reserve
- Proposed use – residential with a single-family dwelling
- Proposed access over private easement to 5th Street

The Applicant seeks preliminary plat approval and two variances relating to its proposed residential use of Block 1, Lots 3 and 4. The Applicant requests that the City waive the 10-acre minimum lot size requirement in the UR, Urban Reserve District. The Applicant also requests that the City waive the requirement that all lots have frontage on a public street. By its request, the Applicant concedes that the private easement to 5th Street is not a public street.¹ The Applicant is not requesting rezoning or a comprehensive plan amendment, both of which would be necessary to implement the Applicant's proposed residential use of the Property. The Applicant submitted the following information in support of its application:

- Development Application dated May 15, 2023
- Molenaar Addition Preliminary Plat dated April 19, 2023
- Letter from Dr. Karl Molenaar to the City of Cannon Falls dated May 4, 2023 re: Molenaar Addition to the City of Cannon Falls
- Letter from Dr. Karl Molenaar to the City of Cannon Falls and City Council Members dated June 1, 2023

¹ Prior to submitting the current application, the Applicant submitted several deeds purportedly creating an easement for purposes of accessing Lots 2, 3 and 4. The easement is shown on the attached Exhibit A ("Easement Map"). The City lacks sufficient information from the Applicant to determine the extent to which current and future Property owners are authorized to use the easement to access the Property. Even so, the City's right to use the private easement arises from its status as an owner of property burdened by the easement, rather than as the regulatory authority having jurisdiction over a public street. The Applicant concedes in its application, variance request, and June 1, 2023 letter that the easement is private and is not, and has never been, a public street.

ANALYSIS

PRELIMINARY PLAT

City Code Chapter 151 governs subdivisions. The Applicant's proposed subdivision is premature and does not satisfy several of the design standards prescribed by City Code.

I. Premature Subdivision. The City Council shall deny a preliminary plat deemed premature pursuant to certain criteria. City Code § 151.028. The Applicant bears the burden of showing that the proposed subdivision is not premature. Id. at § 151.028(B). Based on the materials submitted by the Applicant, the proposed subdivision is premature because it (i) is inconsistent with the City Comprehensive Plan, (ii) is inconsistent with the City's growth policies, and (iii) lacks adequate streets to serve the subdivision.² Id. at § 151.028(A)(1-3).

(i) **Inconsistent with City Comprehensive Plan dated November 6, 2003 (the "Plan").** The proposed subdivision contradicts Chapters 2 and 8 of the Plan, as follows:

- **Chapter 2 Growth Management.**

GOAL. Growth at a pace that preserves the city's small town atmosphere and does not overtax city infrastructure. Comp. Plan p. 2.1.

Objective. Growth at a pace that is not too fast. Id. at p. 2.2.

Relevant Policies.

GM 2 The city's priority areas for housing and commercial growth are also shown on Map 7.

These priority areas have one or more of the following characteristics. They are in or adjacent to the city boundaries, near or adjacent to existing city utilities, near the proposed Hwy. 52 interchange with Hwy. 24, contain relatively large parcels, or have owners who have expressed some form of interest in developing the parcel.

GM 3 New subdivisions will be approved only when there is sewer and water capacity to accommodate the new units.

GM 4 The city will limit growth to the number of housing units, commercial, and industrial developments that can be accommodated by the school, transportation, sewer and water systems.

² The City cannot determine whether the proposed subdivision is premature under criteria requiring sufficient and/or adequate water supply, waste disposal systems, and drainage because the Applicant does not address these issues in the materials submitted with the application.

GM 7 The city will assure that infrastructure is in place to serve developments. Id.

The Property is located within a priority area for housing and commercial growth as shown on Map 7. There is adequate sewer and water capacity to serve the site, but sewer and water services must be extended to the Property at the Applicant's cost and expense. Further, the Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4. There is no public street connecting the Property to the City's transportation system and the Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4. Thus, the proposed subdivision is inconsistent with the City's growth management goal and policies set forth in Chapter 2 of the Plan.

- **Chapter 8 Land Use Plan.**

GOAL. Development of appropriately located and compatible land uses that allow and encourage the achievement of the policies in the other chapters of the comprehensive plan. Comp. Plan p. 8.1.

Objective (Urban Reserve Uses). Preservation of land for future urbanization. Id. at p. 8.3.

Relevant Policies.

LU 5. These areas are expected to be next in line for development of greater densities when all of the low-density areas are developed.

LU 6. Buildings should be located on parcels in such a way that these properties can be more densely developed in the future. Id.

Land Use Plan. Urban Reserve.

Implementation Directions/Actions. The city needs to check its zoning codes to see that they implement the policies in the plan. If there are problems, the zoning code should be amended. There should also be consistency between the plan's land use designations and the zoning districts. The district boundaries also need to be changed if they are found to be inconsistent with the plan. Finally, the planning commission should follow the guidance of the comprehensive plan when providing recommendations to the city council on development proposals. All staff reports should contain a statement as to whether or not a proposal is consistent with the city's comprehensive plan.

The Applicant's proposed subdivision is inconsistent with the Plan. There are low-density areas in the City waiting to be developed. The Applicant has not indicated where the single-family homes would be located on Lots 3 and 4; thus, whether the placement of a home on these lots would allow denser development in the future cannot be determined. As explained above, the proposed subdivision is inconsistent

with Chapter 2 of the Plan. The Applicant's proposed development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the City's Plan guiding the Property UR, Urban Reserve. To the extent the proposal requires rezoning Lots 3 and 4, it contradicts the Land Use Plan and implementation direction that the Plan take precedence over zoning.

(ii) **Inconsistent with the City's growth policies.** *Id.* at § 151.028(A)(2). A proposed urban subdivision shall meet the city's infill policies.

(a) The urban subdivision must be located within the staged growth area as established by the Comprehensive Plan. **The proposed subdivision is located within a priority area for housing and commercial growth according to Map 7 in the Plan.**

(b) The cost of utilities and street extensions must be covered by one or more of the following and approved by the City Council:

1. An immediate assessment to the proposed subdivision;
2. One hundred percent of the street and utility costs are privately financed by the developer;
3. The cost of regional and/or oversized trunk utility lines can be financed with available city trunk funds; and
4. The cost of timing of the expenditure of city funds are consistent with the city's capital improvement funds.

The Applicant has not provided any information on the cost of extending utilities to the proposed subdivision. The Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4. The Applicant proposes that the City negotiate maintenance of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. The Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4 as required by City Code § 151.028(A)(2)(b)(1-4).

(c) The developer payments will offset additional costs of utility installation or future operation and maintenance. **The Applicant proposes that the City negotiate maintenance of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. The Applicant is not proposing to pay any costs relating to additional costs of utility installation or future operation and maintenance of a public street to provide access to Lots 2, 3 and 4.**

(iii) **Lacks adequate streets to serve the subdivision.** Id. at § 151.028(A)(3). A proposed subdivision shall have adequate streets or highways when:

(a) Traffic generated by a proposed subdivision will not degrade the level of service outside of the proposed subdivision to a level worse than the existing level of service;

(b) The existing level of service shall be “C” (as determined by the State Highway Capacity Manual) or better for any street providing access to the subdivision. If the existing level of service is “D,” “E,” or “F,” the subdivision developer must provide, as part of the proposed project, improvements needed to ensure a level of service “C” or better;

(c) Existing roads providing access to the subdivision have the structural capacity to accommodate projected traffic from the proposed subdivision or the developer agrees to pay for any structural deficiency corrections; and

(d) The traffic generated from a proposed subdivision shall not require city street improvements that are inconsistent with the City Capital Improvement Plan/Comprehensive Development Study or the developer agrees to pay for any structural deficiency corrections.

There is no public street to serve the proposed subdivision and therefore no existing level of service. The Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4, which constitutes a private driveway rather than a required public street (see below under Mandatory Design Standards). The Applicant proposes that the City negotiate maintenance of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. However, the proposed subdivision requires construction of a public street and the Applicant’s submissions do not address how such street would be connected to the City’s existing street infrastructure to the east. Finally, the Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4. For these reasons, the proposed subdivision lacks adequate streets according to City Code § 151.028(A)(3)(a-d).

II. Mandatory Design Standards. The City Code prescribes design standards applicable to all subdivisions in the City. Based on the Applicant’s submission, the proposed subdivision does not satisfy the standards requiring conformity with the City’s Plan and zoning regulations and imposing lot and street requirements. City Code §§ 151.105, 151.108, 151.109.³

³ The Applicant provided insufficient information to determine whether the proposed subdivision complies with all mandatory design standards.

(i) **Conformity with the Comprehensive Plan and Zoning Regulations.** A proposed subdivision shall conform to the Comprehensive Plan, to related policies adopted by the city, and to the city zoning regulations, as may be amended. *Id.* at § 151.105. **As explained above, the proposed subdivision is inconsistent with Chapters 2 and 8 of the Plan. Additionally, the Property is guided UR, Urban Reserve in the Plan and zoned UR, Urban Reserve. The Applicant's proposed development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the Plan and existing zoning regulations.**

(ii) **Lots.**

- (A) *Area.* The minimum lot area, width and depth shall not be less than that established by the city zoning regulations in effect at the time of adoption of the final plat, except that those final plats adopted within two years of the date of preliminary plat approval shall be subject to the minimum lot requirements in effect at the time of preliminary plat approval. City Code § 151.108(A). The minimum lot area for property zoned UR, Urban Reserve is 10 AC. **Lots 3 and 4 of the proposed subdivision contain approximately 4.5 and 3.8 AC, respectively, and do not satisfy the minimum lot area requirement.**
- (D) *Width.* Every lot must have the minimum width measured at the minimum front yard setback. *Id.* at § 151.108(D). The minimum width for lots in the UR, Urban Reserve zone is 250 measured at the 30-foot front yard setback. **Lots 2 and 3 do not appear to satisfy the minimum lot width requirement.**
- (E) *Lot frontage.* All lots shall have frontage on a public street that provides the required lot width at the minimum front yard setback. Flag lots are prohibited. City Code § 151.108(E). A “street” is defined as a “right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets. City streets shall be categorized by functional classification, as defined by the City Comprehensive Plan.” *Id.* at § 151.011. A “lot, flag” is defined as a “lot whose public right-of-way does not meet the minimum required width. Access is provided by a narrow strip of land or private right-of-way.” *Id.* **Lots 2, 3 and 4 do not have frontage on a public street and constitute prohibited flag lots.**
- (G) *Single- and two-family lot access.* All new single- and two-family urban lots shall be designed to receive access from a local street. City Code § 151.108(G). A “street” is defined as a “right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets. City streets shall be categorized by functional classification, as

defined by the City Comprehensive Plan.” **Lots 3 and 4 do not receive access from a local street and do not satisfy this standard.**

(iii) **Streets and Alleys.**

- (A) *Generally.* The arrangement, character, extension, width, grade and location of all streets shall conform to the City Engineering Standards and Comprehensive Plan. Streets and alleys shall be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographical conditions, to run-off of stormwater, to public convenience and safety and in relation to proposed uses of land served by the streets. City Code § 151.109(A). **The Applicant’s proposed use of a private easement to access Lots 2, 3 and 4 does not conform to City Engineering Standards for a public street required to serve the proposed subdivision.**

- (B) *Streets.*

(17) *Private Streets.* Except as may be allowed through planned unit development, private streets shall not be approved, nor shall public improvements be approved for any private streets. City Code § 151.109(B)(17). A “street, private” is defined as “[o]ne which is not maintained by the city and for which the city is not under obligation to carry out repairs, even though it may be a named street and serve a number of properties.” *Id.* at § 151.011. **The private easement is not a dedicated public street. The City maintains the private easement only to the extent that it enables the City to access City-owned property. The City is not obligated to maintain or repair the private easement. The Applicant proposes to use the private easement to access Lots 2, 3 and 4, which creates a prohibited private street.**

(24) *Dedication.* All proposed streets shown on the plat shall be in conformity to city, county and state plans and standards and be offered for dedication as public streets unless otherwise determined by the council. City Code § 151.109(B)(24). **The private easement shown on the preliminary plat does not conform to the City’s public street requirements. The Applicant is not offering to construct and pay the costs of extending a street to Lots 2, 3 and 4 that may be dedicated for public use.**

(27) *Base and surfacing.* All streets shall be improved with a concrete or bituminous surface. Streets to be paved shall be surfaced for a seven-ton axle weight capacity using current State Highway Department design standards and in accordance with city standard design detail plates. Except in the case of model homes, as may be approved by the city, no building permit shall be issued for any lot or parcel in a subdivision prior to the installation of the base course of bituminous. The wear course of bituminous shall be placed following the construction season or, if so designated by the City Council, up to two years from

the date of final plat approval. Exceptions to this provision may be granted by the City Council at their discretion as part of a development contract. **The private easement on the preliminary plat does not conform to the City's public street requirements. The Applicant's proposal that prospective buyers be responsible for adding at least a bituminous layer to the portion of the easement that borders on their property contradicts this standard.**

III. Recommendation.

The Planning Commission may recommend denial and the City Council may deny an application for preliminary plat approval if it makes any of the following findings:

* * *

(I) The City Council deems the subdivision to be premature.

(J) the design of the subdivision does not conform to minimum city development standards.

* * *

City Code § 151.029. Based on the foregoing, the Planning Commission has legal and factual basis to recommend denying the Applicant's preliminary plat because it is premature and fails to conform to several of the City's minimum design standards.

VARIANCES

The Applicant seeks variances from the minimum lot area requirement in City Code § 151.108(A) and the lot frontage requirement in City Code § 151.108 (E). The City's subdivision regulations do not provide a procedure for varying the lot frontage requirement and the Applicant's variance request must be denied. Moreover, the Applicant's request to vary the minimum lot area requirement does not satisfy the applicable variance standards.

I. Lot Frontage Variance

Under Minnesota law, subdivisions are governed by Minn. Stat. § 462.358. A city's "subdivision regulations may provide for a procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations." Minn. Stat. § 462.358, subd. 6. The City's subdivision regulations, City Code ch. 151, do not provide a variance procedure. Thus, the Applicant's request for a variance from the lot frontage requirement should be denied because it is not permitted by the City Code.

II. Minimum Lot Area Requirement

City Code § 151.108 generally provides that the minimum lot area shall not be less than that established by the zoning regulations. The Applicant is not seeking to vary this subdivision requirement, but the underlying zoning regulation establishing the 10-acre minimum lot size

applicable to property zoned UR, Urban Reserve. See City Code § 152.466. Thus, the Applicant's request for this variance is not barred by law (as opposed to the street frontage variance) and may be evaluated against the state and City variance standards.

To obtain a variance from a zoning regulation, the Applicant must satisfy the three-factor test for practical difficulties set forth in Minn. Stat. § 462.357, subd. 6 as follows:

(a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance.

(b) The plight of the landowner is due to circumstances unique to the property not created by the landowner.

(c) The variance, if granted, will not alter the essential character of the locality.

In Krummenacher v. City of Minnetonka, 783 N.W.2d 721 (Minn. 2010), the Minnesota Supreme Court restored municipal variance authority. In 2022, the Minnesota legislature renamed the municipal variance standard from "undue hardship" to "practical difficulties," but otherwise retained the above three-factor test of reasonableness, uniqueness, and essential character. Minn. Stat. § 462.357, subd. 6. Other considerations in addition to the three-factor test include:

(1) Harmony with other land use controls. "Variances shall only be permitted when they 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." Minn. Stat. § 462.357, subd. 6. **The Applicant's request for a variance allowing development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the Plan.**

(2) Economic factors such as landowners incurring a substantial cost or not receiving expected revenue without a variance.

(3) Neighborhood opinion. N/A

However, neither (2) nor (3) alone are a valid basis for granting or denying a variance. Id.

Finally, City Code § 152.103 states that a variance may not be granted unless the City finds that all of the following criteria, as applicable, are satisfied:

(A) Because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

(B) The conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

(C) The purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.

(D) The alleged difficulty or hardship is caused by this chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship. **The Applicant caused the alleged difficulty or hardship due to the manner in which it proposes to subdivide the Property.**

(E) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located. **Granting the variance will be detrimental to the public welfare because it increases traffic and use of the private easement.**

(F) The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets or increase the danger of fire or endanger the public safety. **The proposed variance endangers the public safety by increasing use of a private easement.**

(G) The variance is the minimum action required to eliminate the hardship.

(H) The variance does not involve a use that is not allowed within the respective zoning district. **Single-family detached dwellings at a density of less than one dwelling unit per ten acres of land is not a permitted use in the UR, Urban Reserve zone. Thus, this criteria has not been met.**

Based on the foregoing, the Planning Commission has legal and factual basis to recommend denying the Applicant's variance requests.

Staff recommends adopting the attached resolution denying the Applicant's application in its entirety.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION 2023-04

**MOLENAAR ADDITION PRELIMINARY PLAT
AND VARIANCES**

WHEREAS, Daniel Karl Molenaar as Trustee of the Robert E. Molenaar Revocable Trust, dated August 11, 1998 (the “**Applicant**”) is the fee owner of a parcel or parcels of land lying within the City and legally described on the attached **Exhibit A** (the “**Property**”); and

WHEREAS, on or about May 15, 2023, the Applicant submitted the Development Application and related materials attached hereto as **Exhibit B** seeking preliminary plat approval and two variances for the Molenaar Addition development (the “**Application**”); and

WHEREAS, on or about June 1, 2023, the Applicant submitted a supplemental letter supporting the Application, a copy of which is attached hereto as **Exhibit C**; and

WHEREAS, on July 10, 2023, the Planning Commission held a public hearing to accept testimony relating to the Application; and

WHEREAS, the City staff studied the matter, made a report, and provided other information to the Planning Commission; and

WHEREAS, based upon the PUD Plans, public testimony, and all project information presented and considered, the Planning Commission hereby finds:

FINDINGS

A. The Property consists of PID #'s 52.510.0290, 52.510.0300 and 52.510.0130 and is legally described as Government Lots 1, 2, 5 and 6, Section 7, Township 112, Range 17. The parcels contain approximately 11.40 AC, 25.12 AC, and 26.31 AC, respectively, for a total of 62.83 AC.

B. The Property is zoned UR, Urban Reserve. City Code § 152.460 states:

The purpose of the UR, Urban Reserve District is to preserve a low density, rural environment in a manner conducive to future urbanization. The district is intended to function as a ‘holding zone’ for future urban development, preventing subdivisions of an urban density until a time as suitable infrastructure can be provided.

C. Under City Code § 152.461(A, F) and subject to City Code requirements, permitted uses in the UR, Urban Reserve zone include “farms, farmsteads, farming and agricultural related

buildings and structures” and “single-family detached dwellings at a density of not more than one dwelling unit per ten acres of land

D. City Code § 152.466 prescribes the following lot requirements and setbacks in the UR, Urban Reserve zone:

Lot area	10 acres
Lot depth	None
Lot width	250 feet
Setbacks	
Front yards	30 feet
Rear yards	30 feet
Side yards	20 feet on each side or 30 feet on the side yard abutting a public right-of-way

E. Applicant’s preliminary plat consists of one block and four lots, as follows:

Block 1, Lot 1

- 36 acres of wooded bluff
- Zoned UR, Urban Reserve
- Proposed use – unimproved woodlands
- Proposed direct access from Highway 20

Block 1, Lot 2

- 18 acres with approximately 16 tillable acres
- Zoned UR, Urban Reserve
- Proposed use – unimproved agricultural land
- Proposed access over private easement to 5th Street N

Block 1, Lot 3

- 4.5 acres
- Zoned UR, Urban Reserve
- Proposed use – residential with a single-family dwelling
- Proposed access over private easement to 5th Street N

Block 1, Lot 4

- 3.8 Acres
- Zoned UR, Urban Reserve
- Proposed use – residential with a single-family dwelling
- Proposed access over private easement to 5th Street

F. The Applicant seeks approval of the Molenaar Additional Preliminary Plat.

G. The Applicant also requests two variances relating to its proposed residential use of Block 1, Lots 3 and 4, as follows:

Variance (1) – the Applicant requests that the City waive the 10-acre minimum lot size requirement in the UR, Urban Reserve District.

Variance (2) – the Applicant also requests that the City waive the requirement that all lots have frontage on a public street.

H. The Applicant proposes to access Lots 2, 3 and 4 over a private easement to 5th Street N shown on the attached **Exhibit D** (the “**Easement**”). The City lacks sufficient information from the Applicant to determine the extent to which current and future Property owners are authorized to use the Easement to access the Property. The City’s right to use the Easement arises from its status as an owner of property burdened by the Easement, rather than as the regulatory authority having jurisdiction over a public street. By requesting Variance (2), the Applicant acknowledges and agrees that the Easement is private and is not a public street. There is no existing public street to provide access to the Property.

I. The Applicant is not requesting rezoning or a comprehensive plan amendment, both of which would be necessary to implement the Applicant’s proposed residential use of the Property.

J. Minn. Stat. 462.358 grants to the City the authority to regulate subdivisions, as follows in relevant part:

To protect and promote the public health, safety, and general welfare, to provide for the orderly, economic, and safe development of land, to preserve agricultural lands, to promote the availability of housing affordable to persons and families of all income levels, and to facilitate adequate provision for transportation, water, sewage, storm drainage, schools, parks, playgrounds, and other public services and facilities, a municipality may by ordinance adopt subdivision regulations establishing standards, requirements, and procedures for the review and approval or disapproval of subdivisions. The regulations may contain varied provisions respecting, and be made applicable only to, certain classes or kinds of subdivisions. The regulations shall be uniform for each class or kind of subdivision.

K. City Code Chapter 151 governs subdivisions in the City. City Code § 151.002(B) states:

In order that new subdivisions will contribute toward an attractive, orderly, stable and wholesome community environment, adequate municipal services and efficient movement of traffic, all subdivisions platted within the jurisdiction of the city after the adoption of this chapter shall, in all respects, fully comply with the regulations set forth in this chapter.

L. Under City Code § 151.004, the City Council serves as the City platting authority in accordance with Minn. Stat. § 462.358. The Council has ordered that all subdivisions hereafter planned within the limits of the city shall, in all respects, fully comply with the regulations set forth in City Code Chapter 151.

M. City Code § 151.008 sets forth the City's policies for subdivisions, as follows:

(A) It is hereby declared to be the policy of the city to consider the subdivision of land and the subsequent development of the plat as subject to the control of the city pursuant to the City Comprehensive Plan for the orderly, planned, efficient and economical development of the city.

(B) Land to be subdivided shall be of the character that it can be used safely for building purposes without danger to health from fire, flood or other menace. Land shall not be subdivided unless proper provisions have been made for drainage, stormwater management, wetland protection, potable water, domestic wastewater, streets and capital improvements such as parks, trails, sidewalks, recreation facilities, transportation facilities, stormwater improvements and any other necessary improvements.

(C) The existing and proposed public improvements shall conform to and be properly related to the Comprehensive Plan, Comprehensive Sanitary Sewer Plan, Comprehensive Water Plan, Stormwater Management Plan, Comprehensive Parks and Trail Plan and Capital Improvement Plan.

(D) The provisions of this chapter are in addition to and not in replacement of provisions of all Building Codes and the zoning regulations. Any provision of the Building Code and zoning regulations shall remain in full force and effect except as may be contradictory to the provisions hereof. Where any provision conflicts with other provision, the most restrictive provision shall be applied.

N. Under City Code § 151.028, the City Council shall deny a preliminary plat deemed premature pursuant to certain criteria. The Applicant bears the burden of showing that the proposed subdivision is not premature. Id. at § 151.028(B). A preliminary plat may be premature if it (i) is inconsistent with the City Comprehensive Plan, (ii) is inconsistent with the City's growth policies, or (iii) lacks adequate streets to serve the subdivision. Id. at § 151.028(A)(1-3).

O. The preliminary plat is inconsistent with the City's Comprehensive Plan dated November 6, 2003 because it contradicts Chapters 2 and 8, as follows:

1. The City's growth management goal under Chapter 2 of the Plan is Growth at a pace that preserves the city's small town atmosphere and does not overtax city infrastructure. Comp. Plan p. 2.1.

2. The City's goal is growth at a pace that is not too fast. Id. at p. 2.2.
3. The City's growth policies include the following, in relevant part:

GM 2 The city's priority areas for housing and commercial growth are also shown on Map 7.

These priority areas have one or more of the following characteristics. They are in or adjacent to the city boundaries, near or adjacent to existing city utilities, near the proposed Hwy. 52 interchange with Hwy. 24, contain relatively large parcels, or have owners who have expressed some form of interest in developing the parcel.

GM 3 New subdivisions will be approved only when there is sewer and water capacity to accommodate the new units.

GM 4 The city will limit growth to the number of housing units, commercial, and industrial developments that can be accommodated by the school, transportation, sewer and water systems.

GM 7 The city will assure that infrastructure is in place to serve developments. Id.

4. **The Property is located within a priority area for housing and commercial growth as shown on Map 7. There is adequate sewer and water capacity to serve the site, but sewer and water services must be extended to the Property at the Applicant's cost and expense. Further, the Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4. There is no public street connecting the Property to the City's transportation system and the Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4. Thus, the proposed subdivision is inconsistent with the City's growth management goal and policies set forth in Chapter 2 of the Plan.**

5. The City's land use goal under Chapter 8 of the Plan is development of appropriately located and compatible land uses that allow and encourage the achievement of the policies in the other chapters of the comprehensive plan. Comp. Plan p. 8.1.

6. The City's objective for urban reserve uses is preservation of land for future urbanization. Id. at p. 8.3.

7. The Property is guided UR, Urban Reserve in the City's Land Use Plan (the "Plan"). The City's land use policies include the following, in relevant part:

LU 5. These areas are expected to be next in line for development of greater densities when all of the low-density areas are developed.

LU 6. Buildings should be located on parcels in such a way that these properties can be more densely developed in the future. Id.

8. The City's land use implementation directions/actions include checking its zoning codes to see that they implement the policies in the plan. If there are problems, the zoning code should be amended. There should also be consistency between the plan's land use designations and the zoning districts. The district boundaries also need to be changed if they are found to be inconsistent with the plan. Finally, the planning commission should follow the guidance of the comprehensive plan when providing recommendations to the city council on development proposals. All staff reports should contain a statement as to whether or not a proposal is consistent with the city's comprehensive plan. Id.

9. **The Applicant's proposed subdivision is inconsistent with the Plan. There are low-density areas in the City waiting to be developed. The Applicant has not indicated where the single-family homes would be located on Lots 3 and 4; thus, whether the placement of a home on these lots would allow denser development in the future cannot be determined. As explained above, the proposed subdivision is inconsistent with Chapter 2 of the Plan. The Applicant's proposed development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the City's Plan guiding the Property UR, Urban Reserve. To the extent the proposal requires rezoning Lots 3 and 4, it contradicts the Land Use Plan and implementation direction that the Plan take precedence over zoning.**

P. The preliminary plat is inconsistent with the City's growth policies under City Code § 151.028(A)(2) because it does not meet the City's infill policies, as follows:

1. The urban subdivision must be located within the staged growth area as established by the Comprehensive Plan. **The proposed subdivision is located within a priority area for housing and commercial growth according to Map 7 in the Plan.**

2. The cost of utilities and street extensions must be covered by one or more of the following and approved by the City Council:

- a. An immediate assessment to the proposed subdivision;
- b. One hundred percent of the street and utility costs are privately financed by the developer;
- c. The cost of regional and/or oversized trunk utility lines can be financed with available city trunk funds; and
- d. The cost of timing of the expenditure of city funds are consistent with the city's capital improvement funds.

The Applicant has not provided any information on the cost of extending utilities to the proposed subdivision. The Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4. The Applicant proposes that the City negotiate maintenance of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. The Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4 as required by City Code § 151.028(A)(2)(b)(1-4).

3. The developer payments will offset additional costs of utility installation or future operation and maintenance. **The Applicant proposes that the City negotiate maintenance of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. The Applicant is not proposing to pay any costs relating to additional costs of utility installation or future operation and maintenance of a public street to provide access to Lots 2, 3 and 4.**

Q. The preliminary plat lacks adequate streets to serve the subdivision. Under City Code § 151.028(A)(3), a proposed subdivision shall have adequate streets or highways when:

1. Traffic generated by a proposed subdivision will not degrade the level of service outside of the proposed subdivision to a level worse than the existing level of service;

2. The existing level of service shall be “C” (as determined by the State Highway Capacity Manual) or better for any street providing access to the subdivision. If the existing level of service is “D,” “E,” or “F,” the subdivision developer must provide, as part of the proposed project, improvements needed to ensure a level of service “C” or better;

3. Existing roads providing access to the subdivision have the structural capacity to accommodate projected traffic from the proposed subdivision or the developer agrees to pay for any structural deficiency corrections; and

4. The traffic generated from a proposed subdivision shall not require city street improvements that are inconsistent with the City Capital Improvement Plan/Comprehensive Development Study or the developer agrees to pay for any structural deficiency corrections.

There is no public street to serve the proposed subdivision and therefore no existing level of service. The Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4, which constitutes a private driveway rather than a required public street (see below under Mandatory Design Standards). The Applicant proposes that the City negotiate maintenance of the easement with anticipated

buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. However, the proposed subdivision requires construction of a public street and the Applicant's submissions do not address how such street would be connected to the City's existing street infrastructure to the east. Finally, the Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4. For these reasons, the proposed subdivision lacks adequate streets according to City Code § 151.028(A)(3)(a-d).

R. The preliminary plat is premature under City Code § 151.028(A)(1-3) because it is (i) is inconsistent with the City Comprehensive Plan, (ii) is inconsistent with the City's growth policies, or (iii) lacks adequate streets to serve the subdivision.

S. The City Code prescribes design standards applicable to all subdivisions in the City, including standards requiring conformity with the City's Plan and zoning regulations and imposing lot and street requirements. City Code §§ 151.105, 151.108, 151.109.

T. Under City Code § 151.105, a proposed subdivision shall conform to the Comprehensive Plan, to related policies adopted by the city, and to the city zoning regulations, as may be amended. **The preliminary plat does not meet this standard because, as explained above, the proposed subdivision is inconsistent with Chapters 2 and 8 of the Plan. Additionally, the Property is guided UR, Urban Reserve in the Plan and zoned UR, Urban Reserve. The Applicant's proposed development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the Plan and existing zoning regulations.**

U. Under City Code § 151.189, a proposed subdivision shall meet certain lot requirements, as follows in relevant part:

1. (A) *Area*. The minimum lot area, width and depth shall not be less than that established by the city zoning regulations in effect at the time of adoption of the final plat, except that those final plats adopted within two years of the date of preliminary plat approval shall be subject to the minimum lot requirements in effect at the time of preliminary plat approval. City Code § 151.108(A). The minimum lot area for property zoned UR, Urban Reserve is 10 AC. **Lots 3 and 4 of the proposed subdivision contain approximately 4.5 and 3.8 AC, respectively, and do not satisfy the minimum lot area requirement.**

2. (D) *Width*. Every lot must have the minimum width measured at the minimum front yard setback. *Id.* at § 151.108(D). The minimum width for lots in the UR, Urban Reserve zone is 250 measured at the 30-foot front yard setback. **Lots 2 and 3 do not appear to satisfy the minimum lot width requirement.**

3. (E) *Lot frontage*. All lots shall have frontage on a public street that provides the required lot width at the minimum front yard setback. Flag lots are prohibited. City

Code § 151.108(E). A “street” is defined as a “right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets. City streets shall be categorized by functional classification, as defined by the City Comprehensive Plan.” *Id.* at § 151.011. A “lot, flag” is defined as a “lot whose public right-of-way does not meet the minimum required width. Access is provided by a narrow strip of land or private right-of-way.” *Id.* **Lots 2, 3 and 4 do not have frontage on a public street and constitute prohibited flag lots.**

4. (G) *Single- and two-family lot access.* All new single- and two-family urban lots shall be designed to receive access from a local street. City Code § 151.108(G). A “street” is defined as a “right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets. City streets shall be categorized by functional classification, as defined by the City Comprehensive Plan.” **Lots 3 and 4 do not receive access from a local street and do not satisfy this standard.**

V. Under City Code § 151.109, a preliminary plat must meet certain street and alley requirements as follows, in relevant part:

1. (A) *Generally.* The arrangement, character, extension, width, grade and location of all streets shall conform to the City Engineering Standards and Comprehensive Plan. Streets and alleys shall be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographical conditions, to run-off of stormwater, to public convenience and safety and in relation to proposed uses of land served by the streets. City Code § 151.109(A). **The Applicant’s proposed use of a private easement to access Lots 2, 3 and 4 does not conform to City Engineering Standards for a public street required to serve the proposed subdivision.**

2. (B) *Streets.*

a. (17) *Private Streets.* Except as may be allowed through planned unit development, private streets shall not be approved, nor shall public improvements be approved for any private streets. City Code § 151.109(B)(17). A “street, private” is defined as “[o]ne which is not maintained by the city and for which the city is not under obligation to carry out repairs, even though it may be a named street and serve a number of properties.” *Id.* at § 151.011. **The private easement is not a dedicated public street. The City maintains the private easement only to the extent that it enables the City to access City-owned property. The City is not obligated to maintain or repair the private easement. The Applicant proposes to use the private easement to access Lots 2, 3 and 4, which creates a prohibited private street.**

b. (24) *Dedication*. All proposed streets shown on the plat shall be in conformity to city, county and state plans and standards and be offered for dedication as public streets unless otherwise determined by the council. City Code § 151.109(B)(24). **The private easement shown on the preliminary plat does not conform to the City's public street requirements. The Applicant is not offering to construct and pay the costs of extending a street to Lots 2, 3 and 4 that may be dedicated for public use.**

c. (27) *Base and surfacing*. All streets shall be improved with a concrete or bituminous surface. Streets to be paved shall be surfaced for a seven-ton axle weight capacity using current State Highway Department design standards and in accordance with city standard design detail plates. Except in the case of model homes, as may be approved by the city, no building permit shall be issued for any lot or parcel in a subdivision prior to the installation of the base course of bituminous. The wear course of bituminous shall be placed following the construction season or, if so designated by the City Council, up to two years from the date of final plat approval. Exceptions to this provision may be granted by the City Council at their discretion as part of a development contract. **The private easement on the preliminary plat does not conform to the City's public street requirements. The Applicant's proposal that prospective buyers be responsible for adding at least a bituminous layer to the portion of the easement that borders on their property contradicts this standard.**

W. The preliminary plat does not meet the design standards requiring conformity with the City's Plan and zoning regulations and imposing lot and street requirements under City Code §§ 151.105, 151.108, 151.109.

X. Minn. Stat. § 462.358, subd. 6 states that a city's "subdivision regulations may provide for a procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations."

Y. The City's subdivision regulations, City Code ch. 151, do not provide a variance procedure. The Applicant's request for this Variance (2) from the lot frontage requirement is therefore not allowed under the City Code. Further, granting a variance from a City subdivision requirement in contrary the requirement in City Code §§ 151.002(B) and 151.004 prescribing that all subdivisions shall, in all respects, fully comply with the regulations set forth in Chapter 151.

Z. Minn. Stat. § 462.357 grants to the City, for the purpose of promoting the public health, safety, morals and general welfare, the authority to regulate use of land within the City through zoning regulations.

AA. City Code § 151.108 generally provides that the minimum lot area shall not be less than that established by the zoning regulations. The Applicant is not seeking to vary this subdivision requirement, but the underlying zoning regulation in City Code § 152.466 establishing

the 10-acre minimum lot size applicable to property zoned UR, Urban Reserve. Thus, the Applicant's request for this Variance (1) is not barred by law (as opposed to the street frontage variance) and may be evaluated against the state and City variance standards.

BB. Minn. Stat. § 462.357, subd. 6 states, in relevant part:

Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

CC. The Applicant's request for Variance (1) allowing development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the Plan.

DD. City Code § 152.103 states that a variance may not be granted unless the City finds that all of the following criteria, as applicable, are satisfied:

(1) Because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

(2) The conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

(3) The purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.

(4) The alleged difficulty or hardship is caused by this chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.

(5) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

(6) The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets or increase the danger of fire or endanger the public safety.

(7) The variance is the minimum action required to eliminate the hardship.

(8) The variance does not involve a use that is not allowed within the respective zoning district.

EE. The Applicant's request for Variance (1) allowing development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 does not satisfy criteria (4) because the Applicant caused the alleged difficulty or hardship due to the manner in which it proposes to subdivide the Property, criteria (5) because the proposed variance endangers the public safety by increasing use of a private easement, and criteria (8) because single-family detached dwellings at a density of less than one dwelling unit per ten acres of land is not a permitted use in the UR, Urban Reserve zone.

DECISION

NOW, THEREFORE BE IT RESOLVED that the Cannon Falls Planning Commission hereby recommends to the Cannon Falls City Council that, based upon the findings cited herein:

1. The Applicant's request for preliminary plat approval of the Molenaar Addition be denied.

2. The Applicant's request for Variance (1) allowing development of single-family residential homes at a density of less than one dwelling per 10 acres of land on Lots 3 and 4 be denied.

3. The Applicant's request for Variance (2) waiving the requirement that all lots have frontage on a public street be denied.

ADOPTED by the Planning Commission of the City of Cannon Falls this 10th day of July 2023.

CITY OF CANNON FALLS PLANNING COMMISSION

Chair

ATTEST: _____
Neil Jensen
City Administrator

2905 South Broadway
Rochester, MN 55904-5515
Phone: 507.288.3923
Fax: 507.288.2675
Email: rochester@whks.com
Website: www.whks.com



July 6, 2023

Mr. Neil Jensen
City Administrator
City of Cannon Falls
918 River Road
Cannon Falls, MN 55009

RE: Cannon Falls, MN
Molenaar Addition
Review of Preliminary Plat

Dear Neil:

We have reviewed the preliminary plat, as requested. We offer the following comments on the submitted plat.

1. City Code Chapter 151.076, "Information Required for Preliminary Plat" governs subdivisions and the items that are subject to engineering review. Most of the items listed in the City Code were not submitted. The applicant did not submit the following:
 - Resource Inventory
 - Many of the items required for the preliminary plat listed in 151.076 D.
 - Preliminary grading, drainage and erosion control plan
 - Preliminary utility plan
2. The applicant is proposing to provide access to the development via a private easement. City Code requires a public street to serve the development. The City Attorney will provide an opinion on this item. No engineering review was completed.

We recommend denial of the proposed plat based on the insufficient information submitted.

Please contact us if you have any questions.

Sincerely,

WHKS & co.

A handwritten signature in black ink, appearing to read 'William Angerman', is written over a horizontal line.

William Angerman, P.E.
Cannon Falls Consulting City Engineer

Cc: Shelley Ryan, City Attorney
Daren Sikkink, WHKS

JUNE 1ST, 2023

Dear City Council Members and City of Cannon Falls

By way of introduction, I am Dr. Karl Molenaar, lifelong resident of Cannon Falls and primary trustee of my father's estate, The Robert E. Molenaar Family Trust, whose remaining holdings are roughly 62 acres on the northern end of Cannon Falls. Since my father's death 5/2020 I have been engaging with interested buyers as well as the City to close out my father's trust and distribute the monetary assets to the heirs. There have been numerous hurdles to jump over and hopefully with the City Council's approval I can sell the properties to said interested buyers for their intended purpose.

Though there are some concessions (variances) that the City needs to consider I believe that there are only positive results and no negatives in granting them and in the words of both the City's Administrator and City's Mayor variances are granted all the time as long as it allows for positive results and no negative consequences in either the short or long term.

Since you do not grant variances to an impersonal "trust", but you grant them to the trustee it is important for you, the council as well as the City's administrator to know the trustee which in this case is myself.

Both my father and myself were and have been long term residents of Cannon Falls. In 1960 my father moved his family to the north part of Cannon Falls at 1915 Highway 20 North. At that time, we occupied the only house on the gravel road in front of our house except for the farmhouse (at the end of the gravel road known then as the McKinley House). Around the early 1970's my father bought this house along with the 160-acre farmstead and long forgotten in the records an easement was granted (see information provided by attorney Beth Kriesler) to ensure that this road remain usable to all landowners whose property bordered this gravel road. Who originally built this road is not known but it has never actually been a city street, just a gravel road. In the early 1980's the City of Cannon Falls approached my father to get permission to construct the City's

JUNE 1ST, 2023

water tower on top of the hill along with the pump house which sits next to the gravel road and has access to the road. At this time another easement (see information provided by attorney Beth Kriesler) was entered into the records to Again, grant an easement to all landowners abutting this gravel road to have equal access to use of this road. In addition, an easement was granted to the City to have access to the top of the hill to periodically service their new water storage tank. This easement ran across the adjoining farmland thus preventing further development along this easement into the future as long as this easement exists. This did not seem like much at the time but had consequences in the future as it decreased the potential value as this portion could not be developed. My father's payment for all of this was one free sewer and water hookup which at the time was less than \$1000.

During the 80 plus years that this gravel road has been in existence it has been used by all landowners bordering the property, it has been used by the City for their maintenance vehicles, fire trucks, police cars, ambulances have all used this road. When my father was a practicing physician in the community the City would plow this road to make sure that it was open for him to use if needed in an emergency. Up until recently employees of Gemini have used this road as an exit to get to highway 20 and unfortunately this road has been used all too often by party goers regardless of age. Only recently has there been concerns expressed over the use of this road.

Roughly ten years ago I asked Dave Maroney on several occasions what the history of this road was and was it actually "5th street" as it was called on maps? His comments to me, and I will paraphrase, "you don't want to go there". In the last couple of years, I asked this same question to Diane who answered similarly. Since I was not getting any answers from the City and since I did not know about the previous easements (neither did the City for that matter) I needed legal

JUNE 1st, 2023

advice which discovered the easements as discussed. So, to summarize, the City does not own the road as ALL bordering landowners have been granted legal access to use this road as it is. The City does maintain part of this gravel road to have access to their pump house.

My proposal to the City is in three parts. . .

FIRST, selling out lot 1, out lot 2, and part of out lot 4 roughly 36+ acres to Angie and Dwyane Myrvold. This should be straight forward as their land directly abuts the land they wish to acquire and no change in use is being asked for at this time.

SECOND, selling out lot 3 which is roughly 18+ acres to Bob Widman. This should be straight forward as there is direct access to the gravel road which we have presented evidence that the previously granted easements permit him to have access to this acreage. His intention is to farm it which has been done for probably > 100 years so no change in usage is being requested. Farmers for all of these years have gained access to this farmland via this gravel road. Without this access these 18 acres would have no value as it would then be landlocked. Again, we are asking for no variances just continued use and access as has been done for the last 100 years. As previously mentioned, since the City has an easement directly through these 18 acres this decreases the value of this property for any future development.

THIRD, the Hanson's daughter's, Megan and Mackenzie and their respective spouses, wish to purchase roughly 8 acres which they have divided into two plats so that each may build their homes. The City has previously stated in meetings that I have been at that they could build two homes there but no more than two. The City has made requests that they comply with to get their permits, which they have agreed to. The VARIANCE that needs to be granted is to allow them to

connect their driveway with the current tarred driveway going from Hwy 20 to the Myrvold's and the Hanson's home which is not to City codes.

JUNE 1st, 2023

Again, in the words of both the City Administrator (on record) and the City's Mayor variances are granted ALL OF THE TIME if it benefits both parties with no short or long-term problems. . .

The POSITIVES, which are many include . . .

Allowing two young productive local couples with families to build their dream homes.

Property taxes most likely amounting to > \$20,000 per year for both homes that otherwise would not possible.

Water and sewer hookup and yearly fees.

No expenses that the City would be responsible for as they will do all the costs and maintenance on their part of the sewer and water lines.

The NEGATIVES are in my mind only that you, the City Council, need to grant a variance which is what Cities do all the time when it makes sense for both parties.

You might argue that since the road leading to their home is not to City standards that it would be more difficult to gain access via emergency vehicles. However, this road has never been to City standards, and this has never been in question before and the City ambulance had no problems when my father needed their services first for his heart attack and later for his fall that caused a hip fracture.

I respectfully ask this City Council to approve my requests and to move forward on the proposals as presented.

Sincerely,

Dr. Karl Molenaar

280060701

0050

RTHERN
JRAL GAS
MPANY

HIGHWAY

0230
MISTONE
ODUCTS
MPANY

525100231
2124
HIGHWAY
20 N

525100201
RYAN BOESE
2233
HIGHWAY 20

2123 STEVEN RAO
HIGHWAY 525100292
20 N

525100260

280071501

525100130

ROBT E & MARY C
MOENABR TRSTS

1701 5TH ST N

525100140

1 DAVO
BLYSTAD

525100133

GEMINI TRC

525100131

WENSING

1705
HIGHWAY
20 N

HIGHWAY 20 N

DONALDSON

ST W 20

6TH ST N

1413
5TH ST N

15 PENDELTON ST

W

KATES
PL

N

JOSIE K HAYES

280070100

525100450

MBW
REALTY
CORP

525100311

GREENSMITH
BUILDERS LLC

300
CARLSON RD

MCKINZIE
CIR

VINEYARD

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Evergreen Park

EVERGREEN
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VIKING AVE

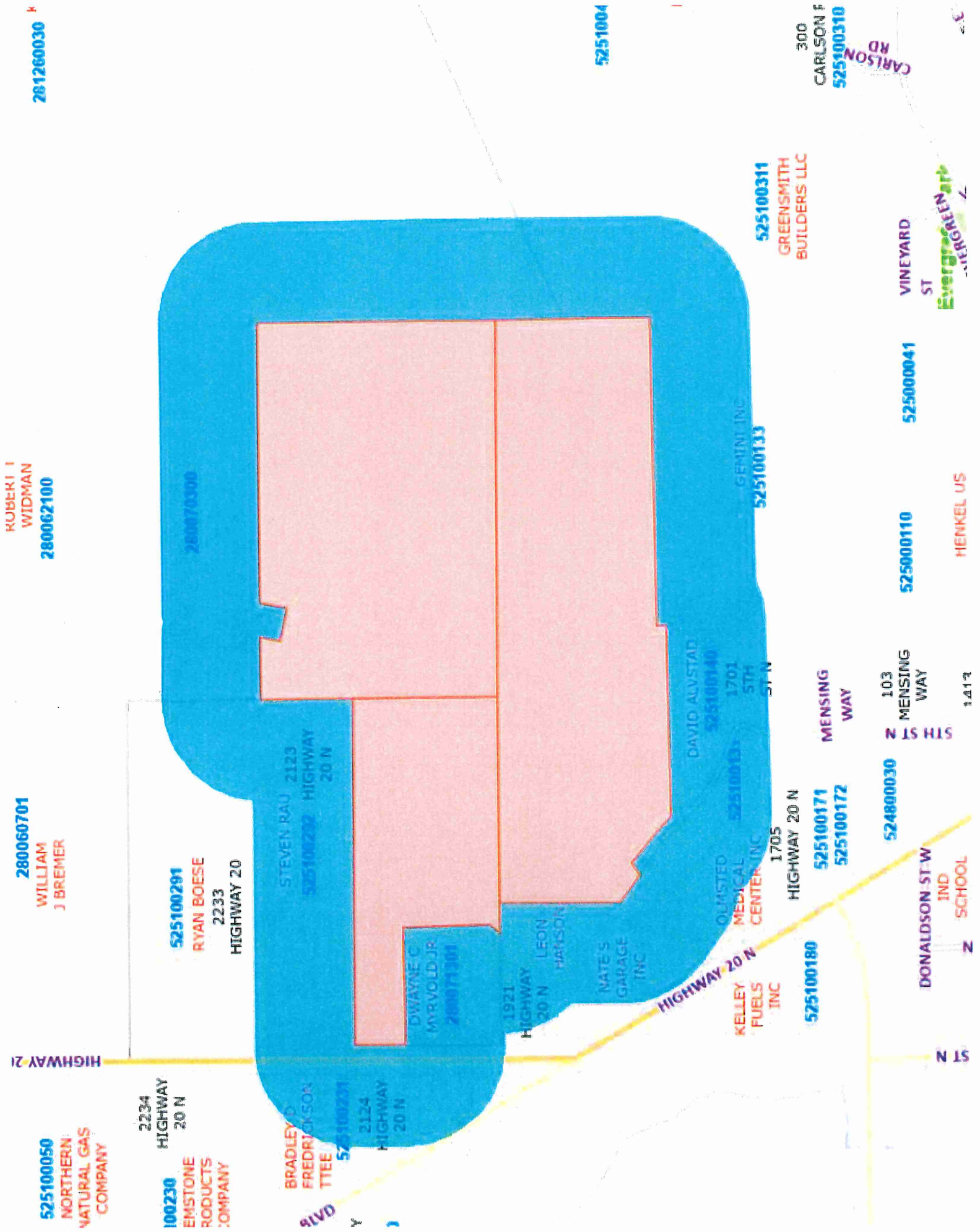
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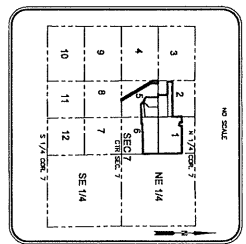
WOODRIDGE DR

JOHN
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523970100



MOLENAAR ADDITION



LEGEND

0 200 400
SCALE IN FEET

BEARINGS SHOWN HEREON ARE ORIENTED, TOWARD THE GOODHUE COUNTY COORDINATE SYSTEM, NAD 83, 1996 ADJUSTMENT (HARN).

JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING
1320 MAIN STREET, FIELD WYOM., WY 80408
(303) 544-1100

PAGE 1 OF 2 SHEETS

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2691

**RESOLUTION DENYING DEVELOPMENT APPLICATION
FOR THE MOLENAAR PROPERTY**

WHEREAS, Daniel Karl Molenaar as Trustee of the Robert E. Molenaar Revocable Trust, dated August 11, 1998 (the “**Applicant**”) is the fee owner of a parcel or parcels of land lying within the City and legally described on the attached **Exhibit A** (the “**Property**”);

WHEREAS, on or about May 15, 2023, the Applicant submitted the Development Application and related materials attached hereto as **Exhibit B** seeking preliminary plat approval and two variances for the Molenaar Addition development (the “**Application**”);

WHEREAS, on or about June 1, 2023, the Applicant submitted a supplemental letter supporting the Application, a copy of which is attached hereto as **Exhibit C**;

WHEREAS, City staff studied the Application, made a report, and provided other information to the Planning Commission;

WHEREAS, on July 10, 2023, the Planning Commission held a public hearing, considered the Application, and adopted Resolution No. 2023-04 recommending that the City Council deny the Application; and

WHEREAS, based upon the public testimony, recommendation from the Planning Commission, staff report, and all project information presented and considered, the City Council hereby finds:

FINDINGS

A. The Property consists of PID #'s 52.510.0290, 52.510.0300 and 52.510.0130 and is legally described as Government Lots 1, 2, 5 and 6, Section 7, Township 112, Range 17. The parcels contain approximately 11.40 AC, 25.12 AC, and 26.31 AC, respectively, for a total of 62.83 AC.

B. The Property is zoned UR, Urban Reserve. City Code § 152.460 states:

The purpose of the UR, Urban Reserve District is to preserve a low density, rural environment in a manner conducive to future urbanization. The district is intended to function as a ‘holding zone’ for future urban development, preventing subdivisions of an urban density until a time as suitable infrastructure can be provided.

C. Under City Code § 152.461(A, F) and subject to City Code requirements, permitted uses in the UR, Urban Reserve zone include “farms, farmsteads, farming and agricultural related buildings and structures” and “single-family detached dwellings at a density of not more than one dwelling unit per ten acres of land

D. City Code § 152.466 prescribes the following lot requirements and setbacks in the UR, Urban Reserve zone:

Lot area	10 acres
Lot depth	None
Lot width	250 feet
Setbacks	
Front yards	30 feet
Rear yards	30 feet
Side yards	20 feet on each side or 30 feet on the side yard abutting a public right-of-way

E. Applicant’s preliminary plat consists of one block and four lots, as follows:

Block 1, Lot 1

- 36 acres of wooded bluff
- Zoned UR, Urban Reserve
- Proposed use – unimproved woodlands
- Proposed direct access from Highway 20

Block 1, Lot 2

- 18 acres with approximately 16 tillable acres
- Zoned UR, Urban Reserve
- Proposed use – unimproved agricultural land
- Proposed access over private easement to 5th Street N

Block 1, Lot 3

- 4.5 acres
- Zoned UR, Urban Reserve
- Proposed use – residential with a single-family dwelling
- Proposed access over private easement to 5th Street N

Block 1, Lot 4

- 3.8 Acres
- Zoned UR, Urban Reserve
- Proposed use – residential with a single-family dwelling
- Proposed access over private easement to 5th Street

F. The Applicant seeks approval of the Molenaar Additional Preliminary Plat.

G. The Applicant also requests two variances relating to its proposed residential use of Block 1, Lots 3 and 4, as follows:

Variance (1) – the Applicant requests that the City waive the 10-acre minimum lot size requirement in the UR, Urban Reserve District.

Variance (2) – the Applicant also requests that the City waive the requirement that all lots have frontage on a public street.

H. The Applicant proposes to access Lots 2, 3 and 4 over a private easement to 5th Street N shown on the attached **Exhibit D** (the “**Easement**”). The City lacks sufficient information from the Applicant to determine the extent to which current and future Property owners are authorized to use the Easement to access the Property. The City’s right to use the Easement arises from its status as an owner of property burdened by the Easement, rather than as the regulatory authority having jurisdiction over a public street. By requesting Variance (2), the Applicant acknowledges and agrees that the Easement is private and is not a public street. There is no existing public street to provide access to the Property.

I. The Applicant is not requesting rezoning or a comprehensive plan amendment, both of which would be necessary to implement the Applicant’s proposed residential use of the Property.

J. Minn. Stat. 462.358 grants to the City the authority to regulate subdivisions, as follows in relevant part:

To protect and promote the public health, safety, and general welfare, to provide for the orderly, economic, and safe development of land, to preserve agricultural lands, to promote the availability of housing affordable to persons and families of all income levels, and to facilitate adequate provision for transportation, water, sewage, storm drainage, schools, parks, playgrounds, and other public services and facilities, a municipality may by ordinance adopt subdivision regulations establishing standards, requirements, and procedures for the review and approval or disapproval of subdivisions. The regulations may contain varied provisions respecting, and be made applicable only to, certain classes or kinds of subdivisions. The regulations shall be uniform for each class or kind of subdivision.

K. City Code Chapter 151 governs subdivisions in the City. City Code § 151.002(B) states:

In order that new subdivisions will contribute toward an attractive, orderly, stable and wholesome community environment, adequate municipal services and efficient movement of traffic, all subdivisions platted within the jurisdiction of the city after the adoption of this chapter shall, in all respects, fully comply with the regulations set forth in this chapter.

L. Under City Code § 151.004, the City Council serves as the City platting authority in accordance with Minn. Stat. § 462.358. The Council has ordered that all subdivisions hereafter planned within the limits of the city shall, in all respects, fully comply with the regulations set forth in City Code Chapter 151.

M. City Code § 151.008 sets forth the City's policies for subdivisions, as follows:

(A) It is hereby declared to be the policy of the city to consider the subdivision of land and the subsequent development of the plat as subject to the control of the city pursuant to the City Comprehensive Plan for the orderly, planned, efficient and economical development of the city.

(B) Land to be subdivided shall be of the character that it can be used safely for building purposes without danger to health from fire, flood or other menace. Land shall not be subdivided unless proper provisions have been made for drainage, stormwater management, wetland protection, potable water, domestic wastewater, streets and capital improvements such as parks, trails, sidewalks, recreation facilities, transportation facilities, stormwater improvements and any other necessary improvements.

(C) The existing and proposed public improvements shall conform to and be properly related to the Comprehensive Plan, Comprehensive Sanitary Sewer Plan, Comprehensive Water Plan, Stormwater Management Plan, Comprehensive Parks and Trail Plan and Capital Improvement Plan.

(D) The provisions of this chapter are in addition to and not in replacement of provisions of all Building Codes and the zoning regulations. Any provision of the Building Code and zoning regulations shall remain in full force and effect except as may be contradictory to the provisions hereof. Where any provision conflicts with other provision, the most restrictive provision shall be applied.

N. Under City Code § 151.028, the City Council shall deny a preliminary plat deemed premature pursuant to certain criteria. The Applicant bears the burden of showing that the proposed subdivision is not premature. Id. at § 151.028(B). A preliminary plat may be premature if it (i) is inconsistent with the City Comprehensive Plan, (ii) is inconsistent with the City's growth policies, or (iii) lacks adequate streets to serve the subdivision. Id. at § 151.028(A)(1-3).

O. The preliminary plat is inconsistent with the City's Comprehensive Plan dated November 6, 2003 because it contradicts Chapters 2 and 8, as follows:

1. The City's growth management goal under Chapter 2 of the Plan is Growth at a pace that preserves the city's small town atmosphere and does not overtax city infrastructure. Comp. Plan p. 2.1.

2. The City's goal is growth at a pace that is not too fast. Id. at p. 2.2.

3. The City's growth policies include the following, in relevant part:

GM 2 The city's priority areas for housing and commercial growth are also shown on Map 7.

These priority areas have one or more of the following characteristics. They are in or adjacent to the city boundaries, near or adjacent to existing city utilities, near the proposed Hwy. 52 interchange with Hwy. 24, contain relatively large parcels, or have owners who have expressed some form of interest in developing the parcel.

GM 3 New subdivisions will be approved only when there is sewer and water capacity to accommodate the new units.

GM 4 The city will limit growth to the number of housing units, commercial, and industrial developments that can be accommodated by the school, transportation, sewer and water systems.

GM 7 The city will assure that infrastructure is in place to serve developments. Id.

4. **The Property is located within a priority area for housing and commercial growth as shown on Map 7. There is adequate sewer and water capacity to serve the site, but sewer and water services must be extended to the Property at the Applicant's cost and expense. Further, the Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4. There is no public street connecting the Property to the City's transportation system and the Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4. Thus, the proposed subdivision is inconsistent with the City's growth management goal and policies set forth in Chapter 2 of the Plan.**

5. The City's land use goal under Chapter 8 of the Plan is development of appropriately located and compatible land uses that allow and encourage the achievement of the policies in the other chapters of the comprehensive plan. Comp. Plan p. 8.1.

6. The City's objective for urban reserve uses is preservation of land for future urbanization. Id. at p. 8.3.

7. The Property is guided UR, Urban Reserve in the City's Land Use Plan (the "Plan"). The City's land use policies include the following, in relevant part:

LU 5. These areas are expected to be next in line for development of greater densities when all of the low-density areas are developed.

LU 6. Buildings should be located on parcels in such a way that these properties can be more densely developed in the future. Id.

8. The City's land use implementation directions/actions include checking its zoning codes to see that they implement the policies in the plan. If there are problems, the zoning code should be amended. There should also be consistency between the plan's land use designations and the zoning districts. The district boundaries also need to be changed if they are found to be inconsistent with the plan. Finally, the planning commission should follow the guidance of the comprehensive plan when providing recommendations to the city council on development proposals. All staff reports should contain a statement as to whether or not a proposal is consistent with the city's comprehensive plan. Id.

9. **The Applicant's proposed subdivision is inconsistent with the Plan. There are low-density areas in the City waiting to be developed. The Applicant has not indicated where the single-family homes would be located on Lots 3 and 4; thus, whether the placement of a home on these lots would allow denser development in the future cannot be determined. As explained above, the proposed subdivision is inconsistent with Chapter 2 of the Plan. The Applicant's proposed development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the City's Plan guiding the Property UR, Urban Reserve. To the extent the proposal requires rezoning Lots 3 and 4, it contradicts the Land Use Plan and implementation direction that the Plan take precedence over zoning.**

P. The preliminary plat is inconsistent with the City's growth policies under City Code § 151.028(A)(2) because it does not meet the City's infill policies, as follows:

1. The urban subdivision must be located within the staged growth area as established by the Comprehensive Plan. **The proposed subdivision is located within a priority area for housing and commercial growth according to Map 7 in the Plan.**

2. The cost of utilities and street extensions must be covered by one or more of the following and approved by the City Council:

a. An immediate assessment to the proposed subdivision;

b. One hundred percent of the street and utility costs are privately financed by the developer;

c. The cost of regional and/or oversized trunk utility lines can be financed with available city trunk funds; and

d. The cost of timing of the expenditure of city funds are consistent with the city's capital improvement funds.

The Applicant has not provided any information on the cost of extending utilities to the proposed subdivision. The Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4. The Applicant proposes that the City negotiate maintenance

of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. The Applicant is not proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4 as required by City Code § 151.028(A)(2)(b)(1-4).

3. The developer payments will offset additional costs of utility installation or future operation and maintenance. **The Applicant proposes that the City negotiate maintenance of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. The Applicant is not proposing to pay any costs relating to additional costs of utility installation or future operation and maintenance of a public street to provide access to Lots 2, 3 and 4.**

Q. The preliminary plat lacks adequate streets to serve the subdivision. Under City Code § 151.028(A)(3), a proposed subdivision shall have adequate streets or highways when:

1. Traffic generated by a proposed subdivision will not degrade the level of service outside of the proposed subdivision to a level worse than the existing level of service;

2. The existing level of service shall be “C” (as determined by the State Highway Capacity Manual) or better for any street providing access to the subdivision. If the existing level of service is “D,” “E,” or “F,” the subdivision developer must provide, as part of the proposed project, improvements needed to ensure a level of service “C” or better;

3. Existing roads providing access to the subdivision have the structural capacity to accommodate projected traffic from the proposed subdivision or the developer agrees to pay for any structural deficiency corrections; and

4. The traffic generated from a proposed subdivision shall not require city street improvements that are inconsistent with the City Capital Improvement Plan/Comprehensive Development Study or the developer agrees to pay for any structural deficiency corrections.

There is no public street to serve the proposed subdivision and therefore no existing level of service. The Applicant is relying solely on a private easement in its existing condition to provide access from 5th Street to Lots 2, 3 and 4, which constitutes a private driveway rather than a required public street (see below under Mandatory Design Standards). The Applicant proposes that the City negotiate maintenance of the easement with anticipated buyers and require such buyers to add at least a bituminous layer to the portion of the easement that borders on their lot. However, the proposed subdivision requires construction of a public street and the Applicant’s submissions do not address how such street would be connected to the City’s existing street infrastructure to the east. Finally, the Applicant is not

proposing to construct and pay the costs of extending a public street to Lots 2, 3 and 4. For these reasons, the proposed subdivision lacks adequate streets according to City Code § 151.028(A)(3)(a-d).

R. The preliminary plat is premature under City Code § 151.028(A)(1-3) because it is (i) is inconsistent with the City Comprehensive Plan, (ii) is inconsistent with the City's growth policies, or (iii) lacks adequate streets to serve the subdivision.

S. The City Code prescribes design standards applicable to all subdivisions in the City, including standards requiring conformity with the City's Plan and zoning regulations and imposing lot and street requirements. City Code §§ 151.105, 151.108, 151.109.

T. Under City Code § 151.105, a proposed subdivision shall conform to the Comprehensive Plan, to related policies adopted by the city, and to the city zoning regulations, as may be amended. **The preliminary plat does not meet this standard because, as explained above, the proposed subdivision is inconsistent with Chapters 2 and 8 of the Plan. Additionally, the Property is guided UR, Urban Reserve in the Plan and zoned UR, Urban Reserve. The Applicant's proposed development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the Plan and existing zoning regulations.**

U. Under City Code § 151.189, a proposed subdivision shall meet certain lot requirements, as follows in relevant part:

1. (A) *Area*. The minimum lot area, width and depth shall not be less than that established by the city zoning regulations in effect at the time of adoption of the final plat, except that those final plats adopted within two years of the date of preliminary plat approval shall be subject to the minimum lot requirements in effect at the time of preliminary plat approval. City Code § 151.108(A). The minimum lot area for property zoned UR, Urban Reserve is 10 AC. **Lots 3 and 4 of the proposed subdivision contain approximately 4.5 and 3.8 AC, respectively, and do not satisfy the minimum lot area requirement.**

2. (D) *Width*. Every lot must have the minimum width measured at the minimum front yard setback. *Id.* at § 151.108(D). The minimum width for lots in the UR, Urban Reserve zone is 250 measured at the 30-foot front yard setback. **Lots 2 and 3 do not appear to satisfy the minimum lot width requirement.**

3. (E) *Lot frontage*. All lots shall have frontage on a public street that provides the required lot width at the minimum front yard setback. Flag lots are prohibited. City Code § 151.108(E). A "street" is defined as a "right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets. City streets shall be categorized by functional classification, as defined by the City Comprehensive Plan." *Id.* at § 151.011. A "lot, flag" is defined as a "lot whose public right-

of-way does not meet the minimum required width. Access is provided by a narrow strip of land or private right-of-way.” *Id.* **Lots 2, 3 and 4 do not have frontage on a public street and constitute prohibited flag lots.**

4. (G) *Single- and two-family lot access.* All new single- and two-family urban lots shall be designed to receive access from a local street. City Code § 151.108(G). A “street” is defined as a “right-of-way affording primary access by pedestrians and vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, court, way, trail or however otherwise designated. Private, ingress and egress easements shall not be considered streets. City streets shall be categorized by functional classification, as defined by the City Comprehensive Plan.” **Lots 3 and 4 do not receive access from a local street and do not satisfy this standard.**

V. Under City Code § 151.109, a preliminary plat must meet certain street and alley requirements as follows, in relevant part:

1. (A) *Generally.* The arrangement, character, extension, width, grade and location of all streets shall conform to the City Engineering Standards and Comprehensive Plan. Streets and alleys shall be considered in their relation to existing and planned streets, to reasonable circulation of traffic, to topographical conditions, to run-off of stormwater, to public convenience and safety and in relation to proposed uses of land served by the streets. City Code § 151.109(A). **The Applicant’s proposed use of a private easement to access Lots 2, 3 and 4 does not conform to City Engineering Standards for a public street required to serve the proposed subdivision.**

2. (B) *Streets.*

a. (17) *Private Streets.* Except as may be allowed through planned unit development, private streets shall not be approved, nor shall public improvements be approved for any private streets. City Code § 151.109(B)(17). A “street, private” is defined as “[o]ne which is not maintained by the city and for which the city is not under obligation to carry out repairs, even though it may be a named street and serve a number of properties.” *Id.* at § 151.011. **The private easement is not a dedicated public street. The City maintains the private easement only to the extent that it enables the City to access City-owned property. The City is not obligated to maintain or repair the private easement. The Applicant proposes to use the private easement to access Lots 2, 3 and 4, which creates a prohibited private street.**

b. (24) *Dedication.* All proposed streets shown on the plat shall be in conformity to city, county and state plans and standards and be offered for dedication as public streets unless otherwise determined by the council. City Code § 151.109(B)(24). **The private easement shown on the preliminary plat does not conform to the City’s public street requirements. The Applicant is not offering to construct and pay the costs of extending a street to Lots 2, 3 and 4 that may be dedicated for public use.**

c. (27) *Base and surfacing.* All streets shall be improved with a concrete or bituminous surface. Streets to be paved shall be surfaced for a seven-ton axle weight capacity using current State Highway Department design standards and in accordance with city standard design detail plates. Except in the case of model homes, as may be approved by the city, no building permit shall be issued for any lot or parcel in a subdivision prior to the installation of the base course of bituminous. The wear course of bituminous shall be placed following the construction season or, if so designated by the City Council, up to two years from the date of final plat approval. Exceptions to this provision may be granted by the City Council at their discretion as part of a development contract. **The private easement on the preliminary plat does not conform to the City's public street requirements. The Applicant's proposal that prospective buyers be responsible for adding at least a bituminous layer to the portion of the easement that borders on their property contradicts this standard.**

W. The preliminary plat does not meet the design standards requiring conformity with the City's Plan and zoning regulations and imposing lot and street requirements under City Code §§ 151.105, 151.108, 151.109.

X. Minn. Stat. § 462.358, subd. 6 states that a city's "subdivision regulations may provide for a procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations."

Y. The City's subdivision regulations, City Code ch. 151, do not provide a variance procedure. The Applicant's request for this Variance (2) from the lot frontage requirement is therefore not allowed under the City Code. Further, granting a variance from a City subdivision requirement in contrary the requirement in City Code §§ 151.002(B) and 151.004 prescribing that all subdivisions shall, in all respects, fully comply with the regulations set forth in Chapter 151.

Z. Minn. Stat. § 462.357 grants to the City, for the purpose of promoting the public health, safety, morals and general welfare, the authority to regulate use of land within the City through zoning regulations.

AA. City Code § 151.108 generally provides that the minimum lot area shall not be less than that established by the zoning regulations. The Applicant is not seeking to vary this subdivision requirement, but the underlying zoning regulation in City Code § 152.466 establishing the 10-acre minimum lot size applicable to property zoned UR, Urban Reserve. Thus, the Applicant's request for this Variance (1) is not barred by law (as opposed to the street frontage variance) and may be evaluated against the state and City variance standards.

BB. Minn. Stat. § 462.357, subd. 6 states, in relevant part:

Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the

comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

CC. The Applicant's request for Variance (1) allowing development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 is inconsistent with the Plan.

DD. City Code § 152.103 states that a variance may not be granted unless the City finds that all of the following criteria, as applicable, are satisfied:

(1) Because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

(2) The conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

(3) The purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.

(4) The alleged difficulty or hardship is caused by this chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.

(5) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

(6) The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets or increase the danger of fire or endanger the public safety.

(7) The variance is the minimum action required to eliminate the hardship.

(8) The variance does not involve a use that is not allowed within the respective zoning district.

EE. The Applicant's request for Variance (1) allowing development of single-family residential homes at a density less than one dwelling per 10 acres of land on Lots 3 and 4 does not satisfy criteria (4) because the Applicant caused the alleged difficulty or hardship due to the manner in which it proposes to subdivide the Property, criteria (5) because the proposed variance endangers the public safety by increasing use of a private easement, and criteria (8) because single-family detached dwellings at a density of less than one dwelling unit per ten acres of land is not a permitted use in the UR, Urban Reserve zone.

FF. On July 10, 2023, the Planning Commission (i) held a public hearing pursuant to City Code §§ 151.077(I), 152.101, and 152.037(G) to accept testimony relating to the Applicant's Application and (ii) adopted Resolution No. 2023-04 recommending that the City Council deny the Application.

DECISION

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cannon Falls that, based upon the findings cited herein:

1. The Applicant's request for preliminary plat approval of the Molenaar Addition is denied.
2. The Applicant's request for Variance (1) allowing development of single-family residential homes at a density of less than one dwelling per 10 acres of land on Lots 3 and 4 is denied.
3. The Applicant's request for Variance (2) waiving the requirement that all lots have frontage on a public street is denied.

ADOPTED by the City Council this 1st day of August 2023.

Matt Montgomery, Mayor

ATTEST:

Neil L. Jensen, City Administrator

EXHIBIT A

Property Legal Description

Government Lots 1, 2, 5 and 6, Section 7, Township 112, Range 17

EXHIBIT B

Development Application

EXHIBIT C

Applicant's June 1, 2023 Letter

EXHIBIT D

Private Easement