



Date February 28, 2011

RESOLUTION CLOSING HEARING ON PROPOSED AMENDMENT TO THE PEARL LAKE PUD CONCEPTUAL PLAN FOR THE LAND NOW PLATTED AS CARMAN ESTATES PLATS 1, 2, 3 AND 4; DENYING THE PROPOSED AMENDMENT; AND, DIRECTING THE COMMUNITY DEVELOPMENT DIRECTOR TO SEEK RESOLUTION CONSISTENT WITH THE STAFF RECOMMENDATION

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held January 20, 2011, the members voted 7-4 in support of a motion to recommend **DENIAL** of a request from Heather Carpenter-Hutchcroft, et al, (owners) for review and approval of an amendment to the Pearl Lake PUD Conceptual Plan on property located at 2421 through 2458 East Porter Avenue, in order to allow removal of a 30-foot wide conservation easement to enable structures and fences to be located within portions of the rear yard area currently restricted by the easement.

The Pear Lake Conceptual Plan encompasses the land now platted as Carman Estates Plats 1, 2, 3, 4 and 5, all being Official Plats now included in and forming a part of the City of Des Moines, Polk County, Iowa, and containing 107.65 acres more or less.

WHEREAS, on February 14, 2011 by Roll Call No. 11-0212, the City Council duly resolved to consider the proposed amendment to the PUD Conceptual Development Plan at a public hearing to be held at 5:00 p.m. on February 28, 2011 in Council Chambers at City Hall in Des Moines; and

WHEREAS, notice of the hearing was published according to law in the Des Moines Register on February 17, 2011, setting forth the time and place for hearing on the proposed amendment to the PUD Conceptual Development Plan; and

WHEREAS, in accordance with the notice, those interested in the proposed amendment, both for and against, have been given the opportunity to be heard and have presented their views to the City Council.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed amendment to the Pearl Lake PUD Conceptual Plan are hereby affirmed and the hearing is closed.

(continued)

Date February 28, 2011

2. The proposed amendment to the Pearl Lake PUD Conceptual Plan is hereby DENIED for the reasons set forth in the accompanying letter from the Planning Administrator dated January 27, 2011.
3. The Community Development Director is hereby authorized and directed to seek resolution of the encroachments into the conservation easement upon the properties located at 2421 through 2458 E. Porter Avenue in accordance with the recommendations set forth in the accompanying Council Communication.

(Council Communication No. 11- 140)

MOVED by _____ to adopt.

FORM APPROVED:

Roger K Brown

Roger K. Brown
 Assistant City Attorney
 G:\SHARED\LEGAL\BROWN\REZONING\Carpenter-Hutchcroft - Denial.docx

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

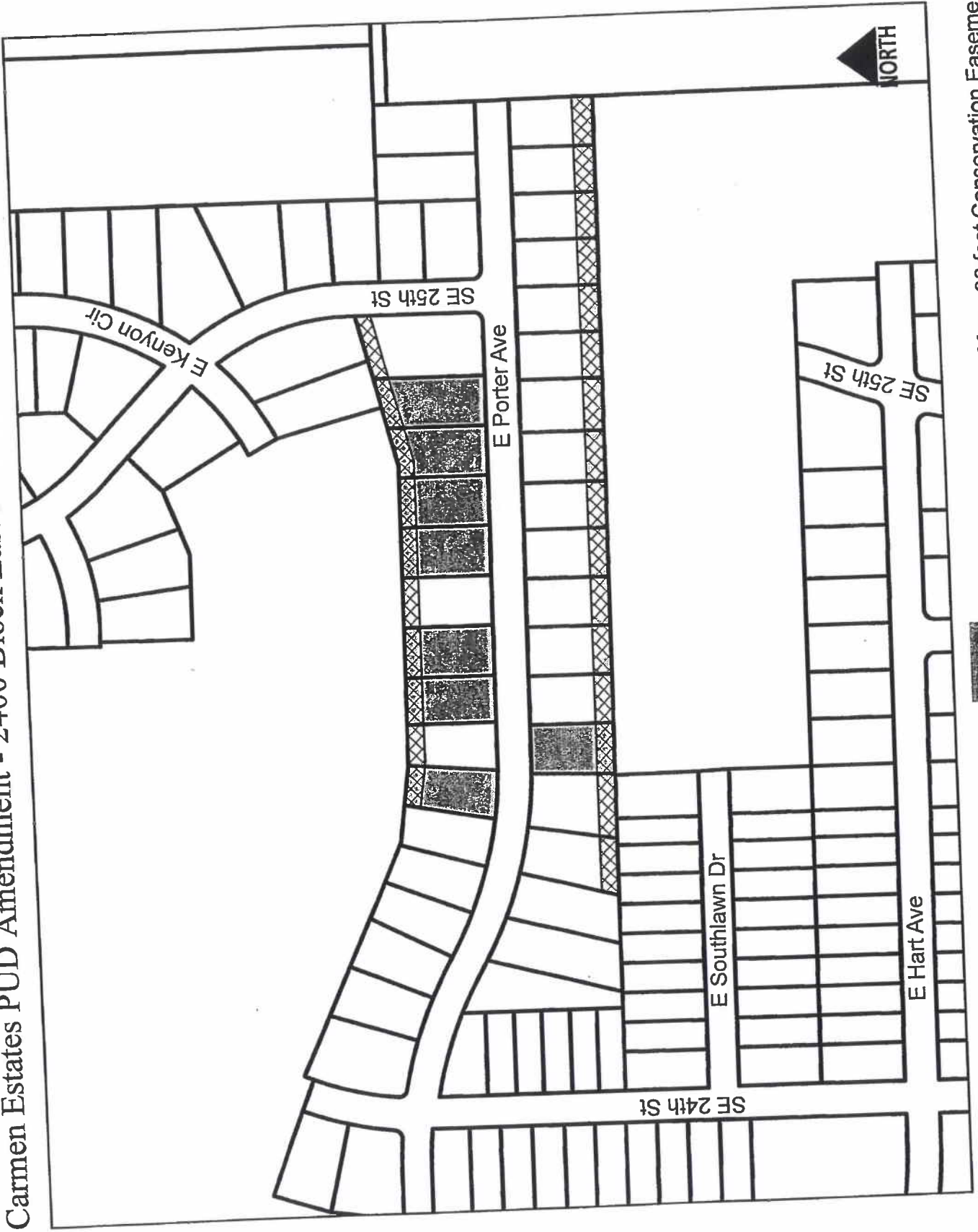
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 Mayor

 City Clerk

ZON2010-00225

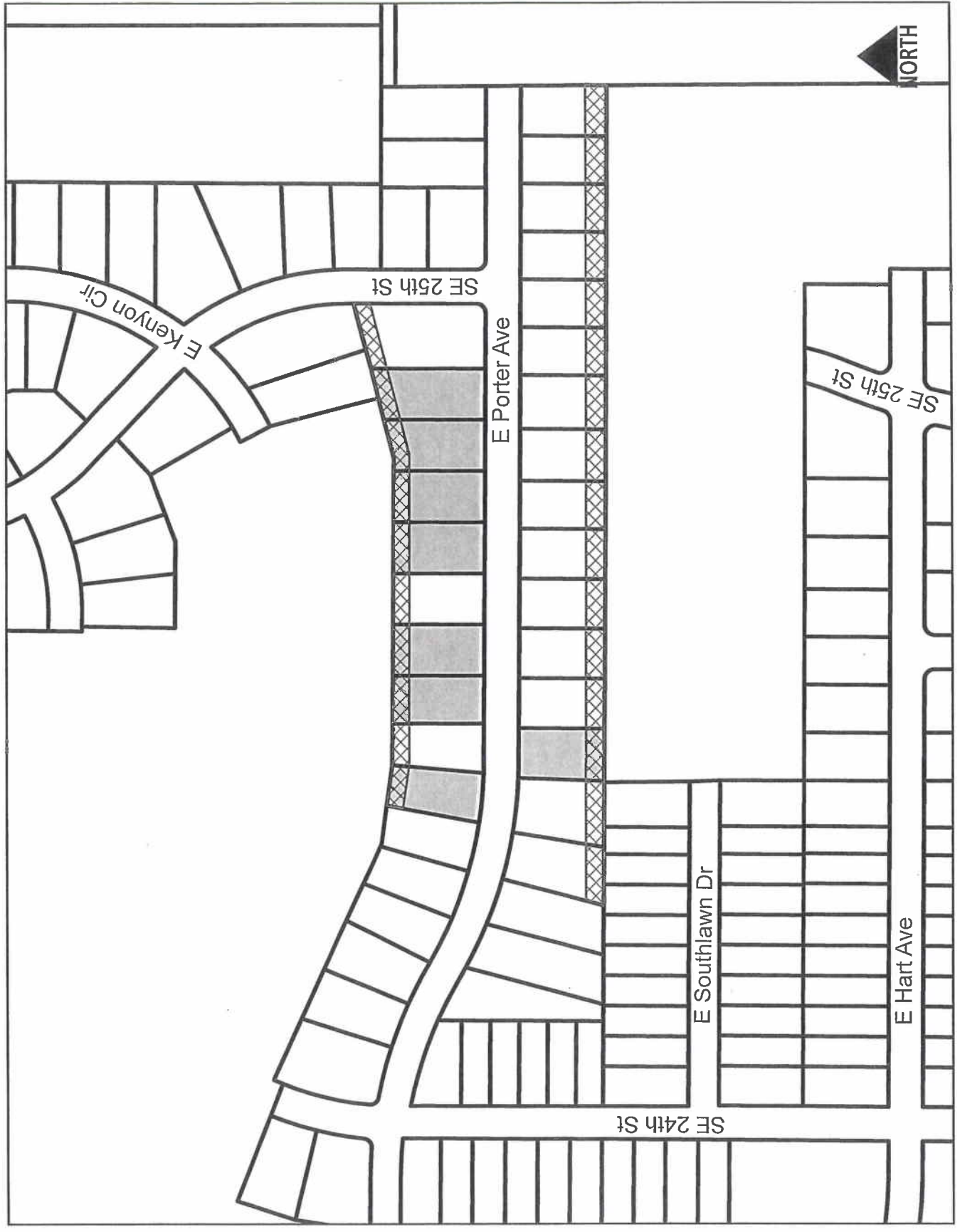
Carmen Estates PUD Amendment - 2400 Block East Porter Avenue



30 foot Conservation Easement Areas

Properties asking for relief from 30 foot Conservation Easement

57



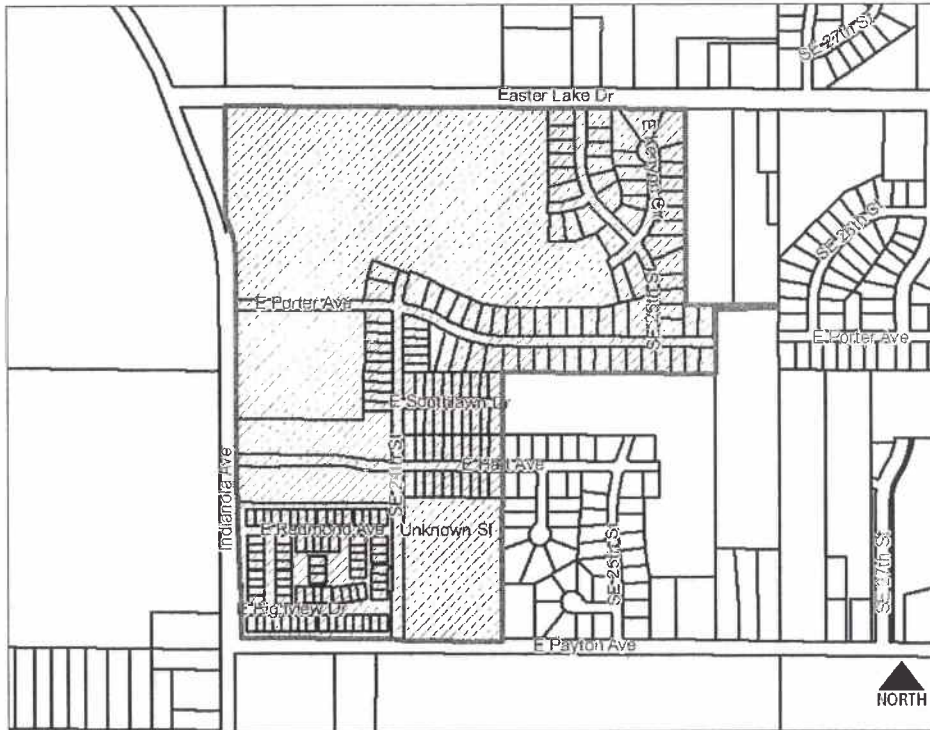
30 foot Conservation Easement Areas



Properties asking for relief from 30 foot Conservation Easement

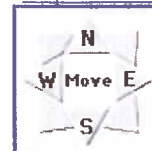
Request from Heather Carpenter-Hutchcroft, et al, (owners) for an amendment to the Carman Estates PUD Conceptual Plan on property located at 2436 through 2458 East Porter Avenue, to allow removal of a 30-foot wide conservation easement allowing structures and fences to be located within portions of the rear yard area currently restricted by the easement.				File # ZON2010-00225	
Description of Action	Review and approval for an amendment to the Carman Estates PUD Conceptual Plan				
2020 Community Character Plan	Easter Lake New Town Plan: Low-Density Residential, Low/Medium Density Residential, Medium-Density Residential, Park/Open Space-Private				
Horizon 2035 Transportation Plan	Indianola Avenue from Southeast 14 th Street to East Army Post Road to widen from 2 lanes undivided to 4 lanes undivided				
Current Zoning District	"PUD" Planned Unit Development District				
Proposed Zoning District	"PUD" Planned Unit Development District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	13	11			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	
	Denial	4-7		No	

Carmen Estates PUD Amendment - 2400 Block East Porter Avenue ZON2010-00225





Explanation



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Get Listing

Aerial 2000

Redraw

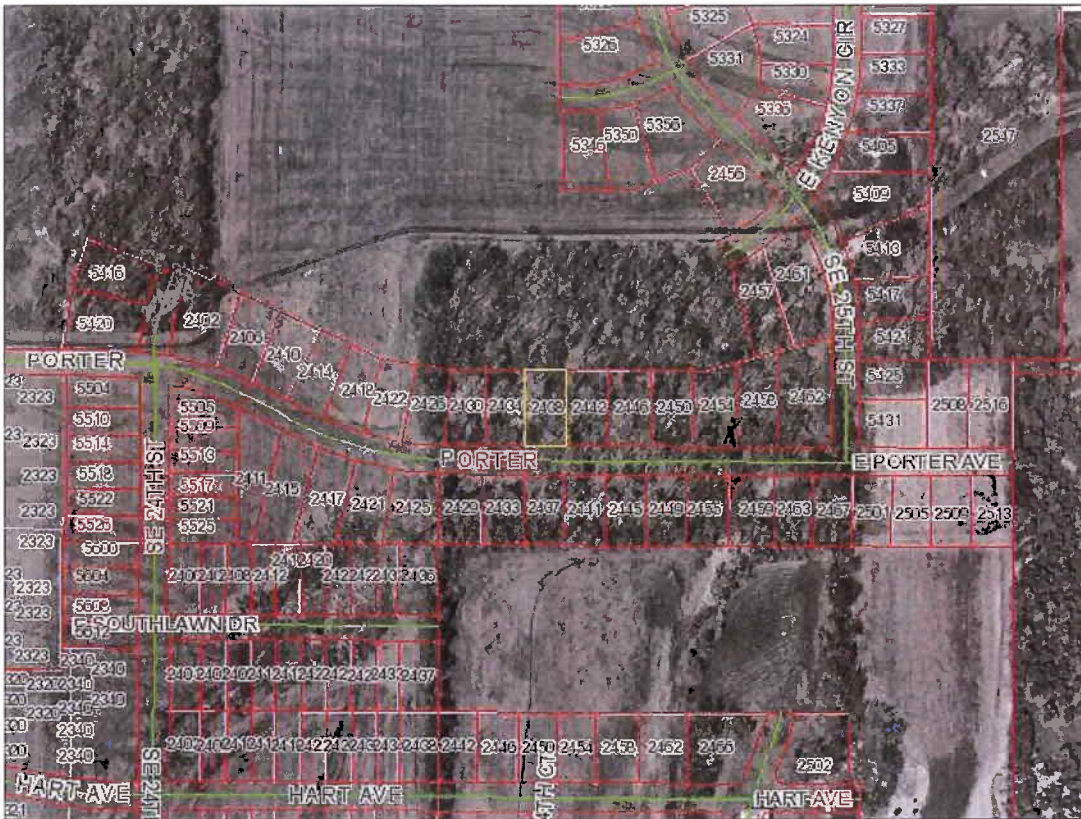
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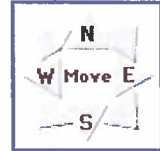
[Printable Version](#)

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Courtesy of Polk County Auditor Jamie Fitzgerald
1920' x 1440' -- Click to center and select a parcel



Explanation



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Zoom Out

Get Listing

Aerial 2002

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S 89°E 435'

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Explanation



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Aerial 2003

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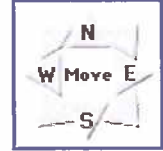
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Explanation



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Aerial 2004

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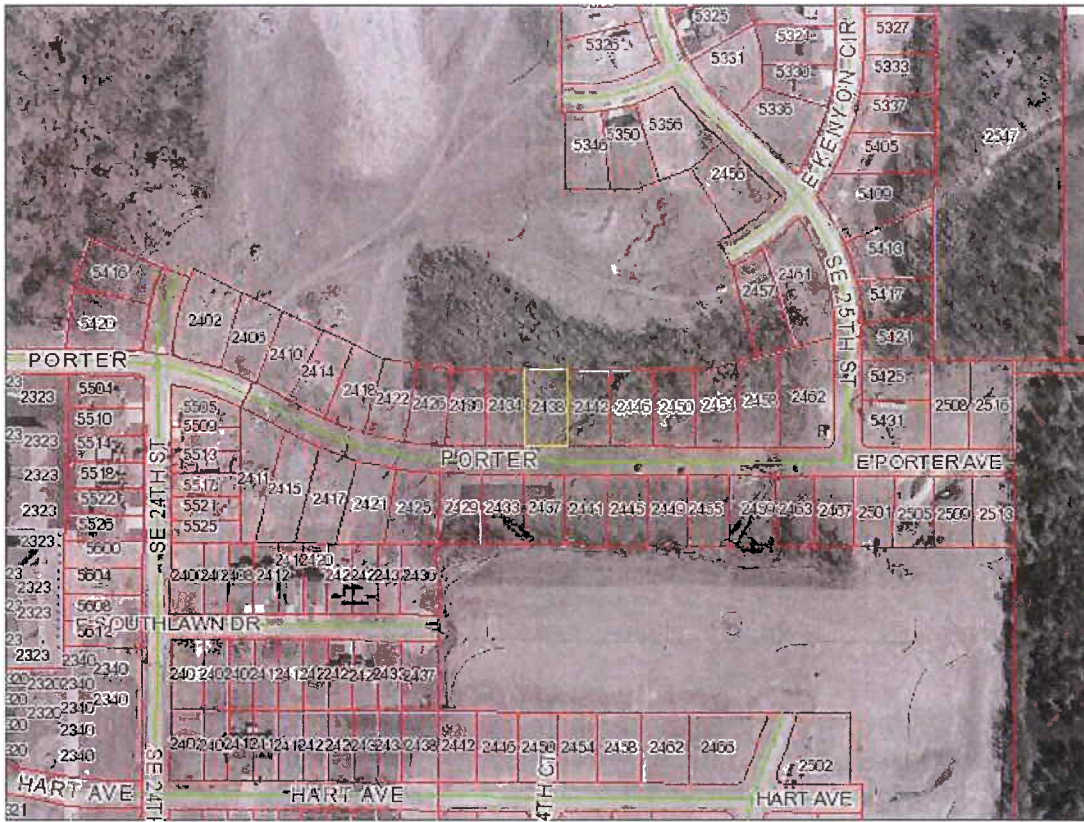
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Explanation



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Get Listing

Aerial 2005

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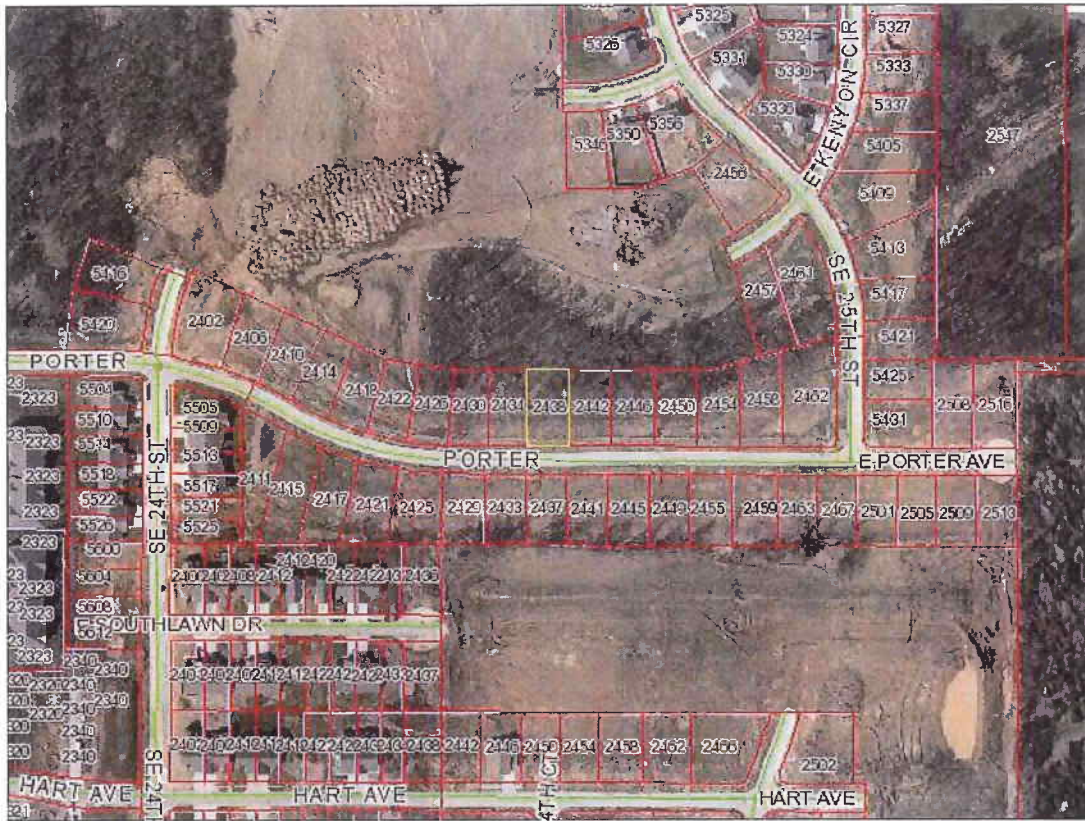
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Explanation



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Get Listing

Aerial 2006

S 87°E 156'

640x480

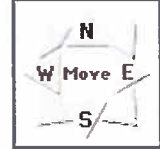
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Explanation



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Get Listing

Aerial 2007

Redraw

S 86°E 168'

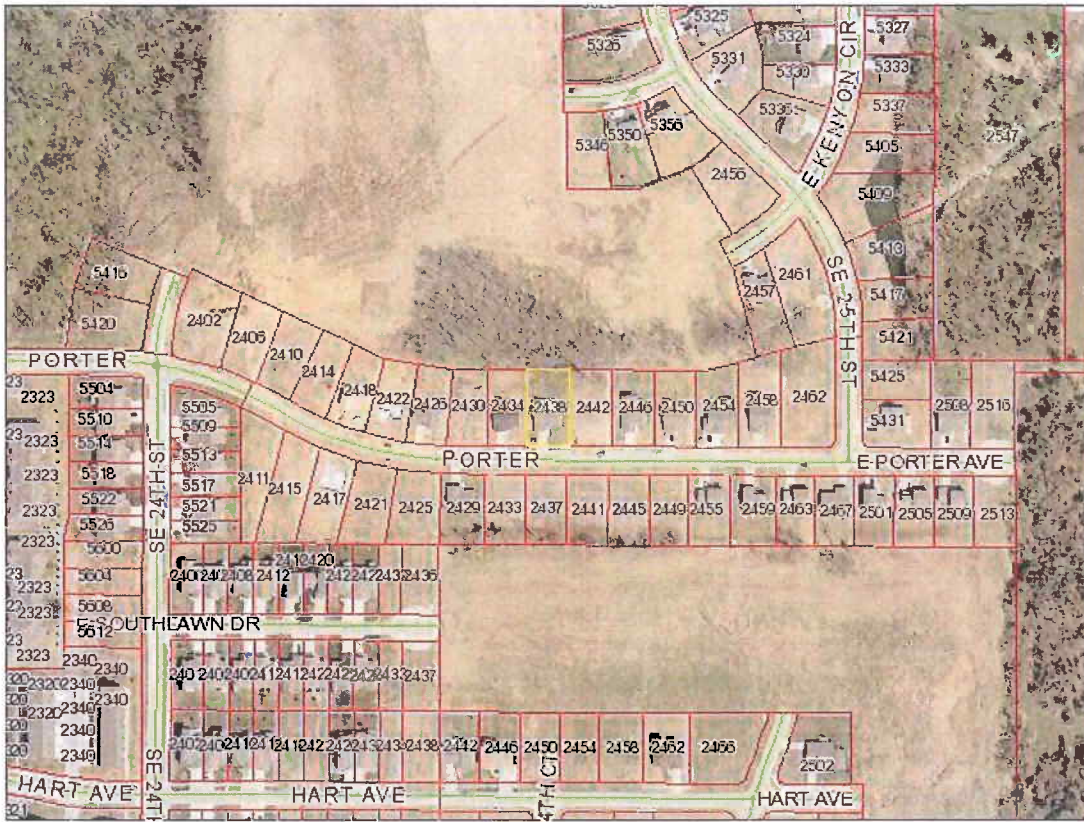
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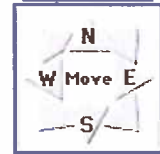
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1920' x 1440' -- Click to center and select a parcel

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Explanation



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Get Listing

Aerial 2009

Redraw

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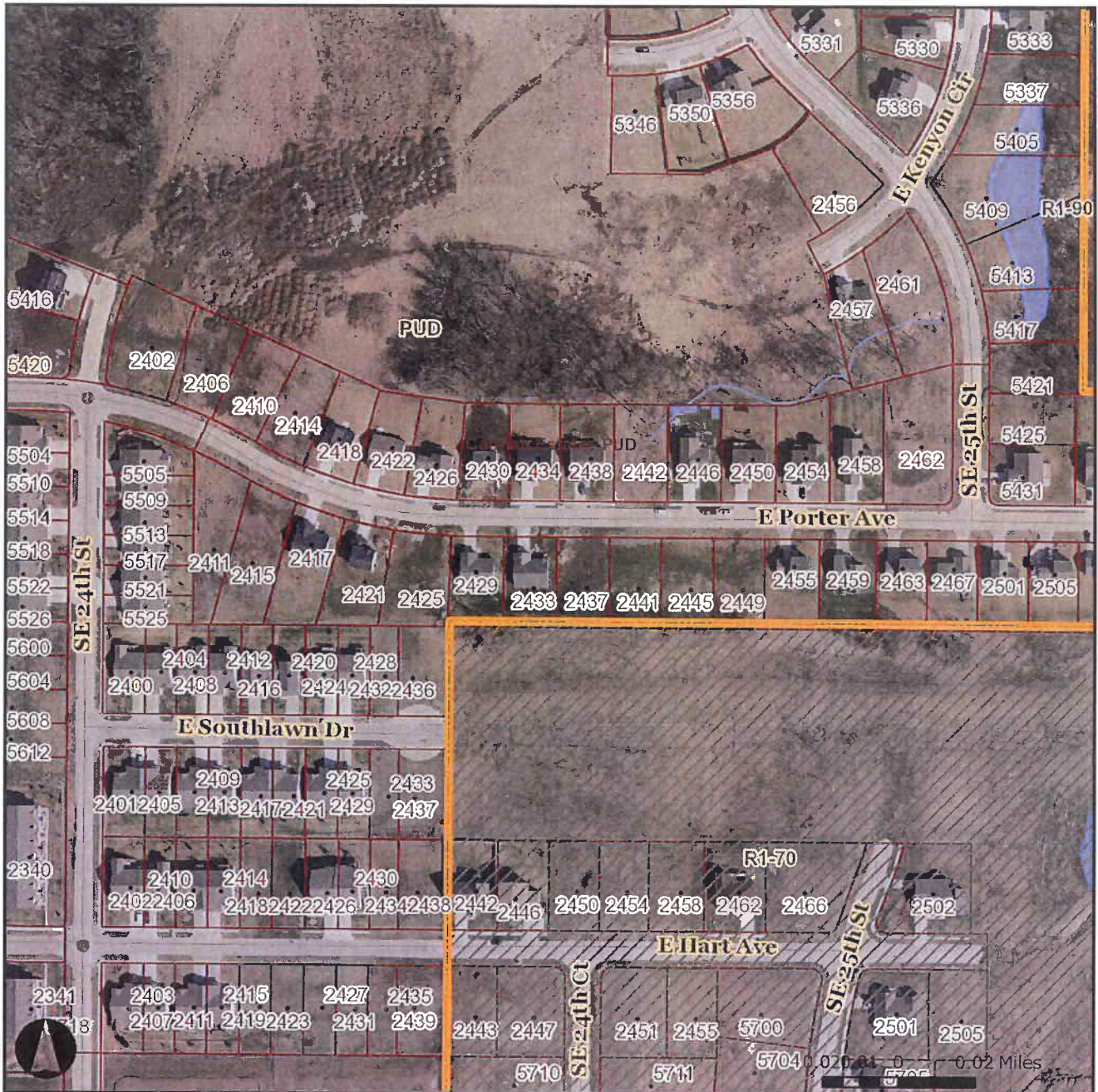
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1920' x 1440' -- Click to center and select a parcel

Zoning Map



Zoning District Label	Zoning PUD	ParcelCondo	County
Conditional Zone	Airport	Lake	Cities
			Other Cities
Zoning Overlay District	Parcel	River	Des Moines
			Polk Co. Aerial Photo 2010
			Red:Band_1
			Green:Band_2

4TH AMENDMENT TO, CARMAN ESTATES CONCEPT PLAN OWNER/DEVELOPER

SIGNAGE
The proposed signage shall be in accordance with the signage regulations of the City of Cary, NC. The signage shall be located on the exterior of the building and shall be clearly visible from the street.

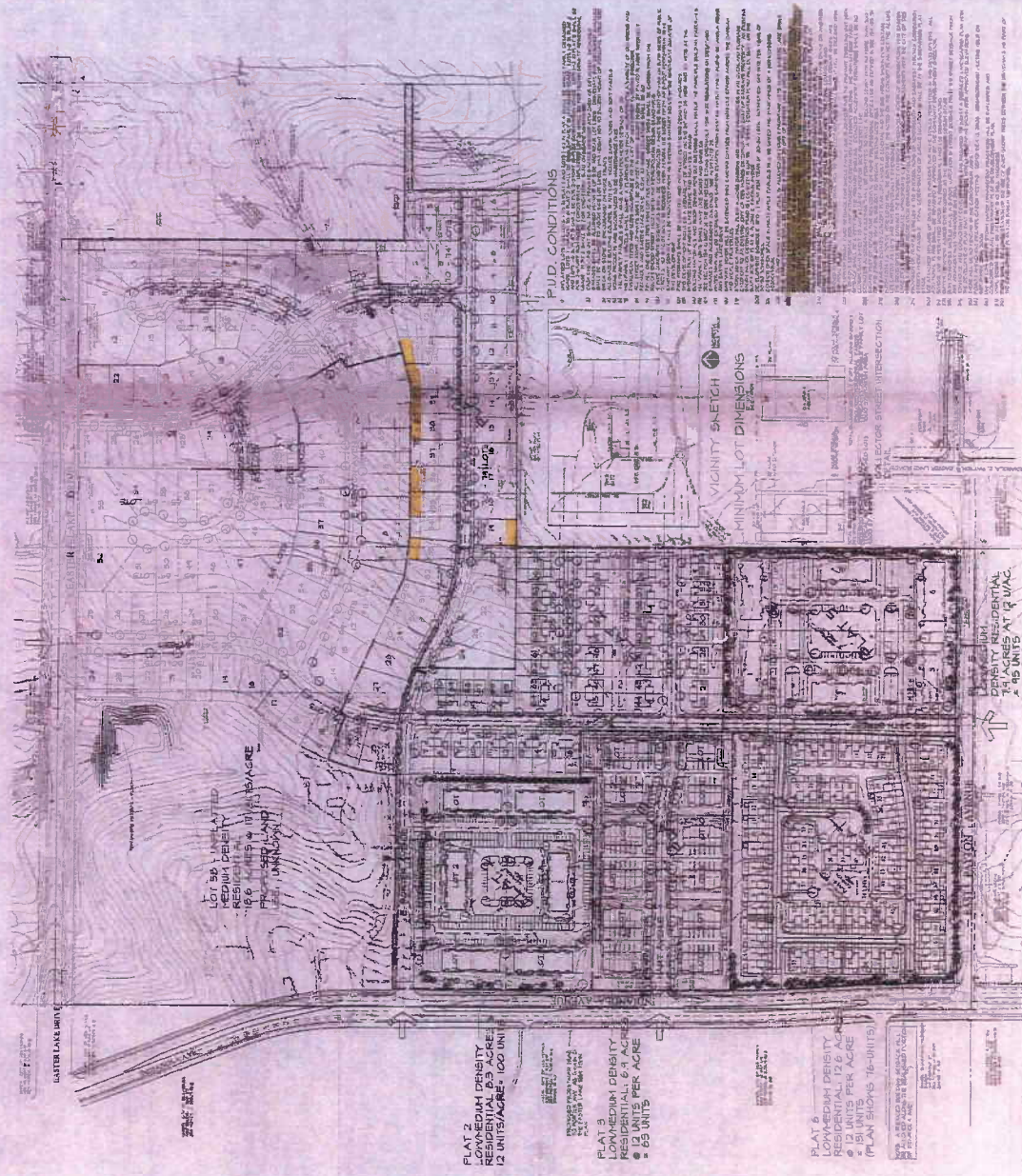
LEGAL DESCRIPTION
The subject property is located in the Carman Estates, a subdivision of land in the County of Wake, State of North Carolina. The legal description of the property is as follows: [Detailed legal description text]

ZONING CERTIFICATION
This project is in compliance with the zoning regulations of the City of Cary, NC. The project is located in the R-10 zoning district and the proposed use is consistent with the zoning regulations. The project is also in compliance with the subdivision regulations of the City of Cary, NC.

4TH AMENDMENT APPROVAL
APPROVED BY COUNCIL: [Signature]
APPROVED BY COMMISSION: [Signature]
DATE: [Date]



LEGEND
1. Proposed Building Footprint
2. Proposed Driveway
3. Proposed Parking Area
4. Proposed Walkway
5. Proposed Utility Lines
6. Proposed Stormwater Management
7. Proposed Landscaping
8. Proposed Fencing
9. Proposed Signage
10. Proposed Accessory Building



PLAT 2
LOW-MEDIUM DENSITY
RESIDENTIAL 0.5 ACRE
12 UNITS/ACRE - 100 UNIT

PLAT 3
LOW-MEDIUM DENSITY
RESIDENTIAL 0.4 ACRE
18 UNITS PER ACRE
103 UNITS

PLAT 6
LOW-MEDIUM DENSITY
RESIDENTIAL 12.6 ACRE
18 UNITS PER ACRE
(PLAN SHOWS 76 UNITS)

DENSITY RESIDENTIAL
1.4 ACRES AT 12 U/A.C.
168 UNITS

17
u

Doc ID: 018129920003 Type: GEN
 Recorded: 02/23/2006 at 11:36:35 AM
 Fee Amt: \$17.00 Page 1 of 3
 Revenue Tax: \$0.00
 Polk County Iowa
 TIMOTHY J. BRIEN RECORDER
 File# 2006-00080942
 BK 11534 PG 434-436

RETURN TO:

Prepared by: David C. Pulliam, Wasker, Dorr, Wimmer & Marcouiller PC, 4201 Westown Parkway, Suite 250, West Des Moines, Iowa 50266-6720 (515-283-1801) (19,685REG)

AFTER RECORDING RETURN TO: David C. Pulliam, Wasker, Dorr, Wimmer & Marcouiller PC, 4201 Westown Parkway, Suite 250, West Des Moines, Iowa 50266-6720

PERMANENT CONSERVATION EASEMENT

protecting trees over 4" caliper
(Dedication Incident to Platting)

Silver Oak Enterprises, L.L.C. (hereinafter referred to as the "Grantor"), in consideration of the approval by the City of Des Moines, Iowa, of the subdivision plat for Carman Estates Plat 4, an Official Plat (hereinafter referred to as the "Subdivision"), does/do hereby convey unto the City of Des Moines, Iowa, a municipal corporation (hereinafter referred to as the "City"), a Permanent Conservation Easement upon, over, through and across the following described property:

Easement Areas j, k, l and m in Carman Estates Plat 4, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

(hereinafter called the "Easement Area") for the purposes of protecting the Easement Area from grading and the placement of structures, and to protect the existing large trees, all as more specifically provided below:

1. **ERECTION OF STRUCTURES PROHIBITED.** Grantor shall not excavate within or erect, place or maintain any structure, including but not limited to garages, accessory buildings or fences, on the Easement Area without obtaining the prior written consent of the Community Development Director of City.
2. **CHANGE OF GRADE PROHIBITED.** Grantor shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the Community Development Director of City.
3. **PROTECTION OF TREES.** No tree within the Easement Area larger than four inches in diameter measured 1.5 feet above the base, and no tree planted in replacement of any such tree, shall be removed or materially pruned without the prior written consent of the City Forester of City. Upon the removal of any such tree, regardless of the cause, Grantor shall cause such tree to be replaced in close proximity within the Easement Area with a tree of an overstory species approved by City for placement within the public rights-of-way of at least 2.0 inch diameter measured 1.5 feet above the base.
4. **RIGHT OF ACCESS.** City shall have the right of access to the Easement Area and have all rights

Permanent Conservation Easement
Page 2 of 2

of ingress and egress reasonably necessary for the inspection of the Easement Area and the enforcement of this easement.

- 5. **EASEMENT RUNS WITH THE LAND.** This Easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.
- 6. **APPROVAL BY CITY COUNCIL.** This Easement shall not be binding until it has received the final approval and acceptance by the Des Moines City Council by Resolution which approval and acceptance shall be noted on this Easement by the City Clerk. This easement may be amended by the homeowners association for the lots within the Subdivision or by the owners of a majority of the numbered lots within the Subdivision, with the written consent of the City of Des Moines.

Grantor does hereby covenant with the City that Grantor holds said real estate described in this Easement by Title In Fee Simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 27 day of Jan, 2006.

SILVER OAK ENTERPRISES, L.L.C.

By Gerald D. Grubb
Gerald D. Grubb, Its Managing Member

State of Iowa)
)ss:
County of Polk)

On this 27 day of January, 2006, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Gerald D. Grubb, to me personally known, who being by me duly sworn, did say that he is the Managing Member of said limited liability company by authority of its Board of Directors; and that the said Gerald D. Grubb as such Managing Member acknowledges the execution of said instrument to be the voluntary act and deed of said limited liability company, by it and by him voluntarily executed.


Brent Kouba
Notary Public in and for said State



Permanent Conservation Easement
Page 3 of 3

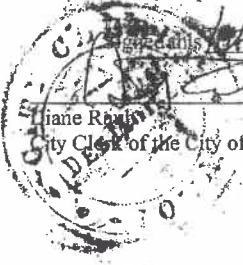
ACCEPTANCE:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Des Moines by Resolution and Roll Call No. 06-148, passed on the 23rd day of January, 2006, and this certificate is made pursuant to authority contained in said Resolution.



Diane Rauh
City Clerk of the City of Des Moines, Iowa

day of February, 2006.



CARMAN ESTATES CONSERVATION EASEMENTS

<u>Address</u>	<u>Replacement Trees Needed</u>	<u>Other Notes</u>
5416 SE 24 th St		
5420 SE 24 th St		
2421 East Porter Ave	2	
2425 East Porter Ave		
2429 East Porter Ave		
2433 East Porter Ave		
2437 East Porter Ave		
2441 East Porter Ave		
2445 East Porter Ave		
2449 East Porter Ave		
2455 East Porter Ave	2	
2459 East Porter Ave		
2463 East Porter Ave		
2467 East Porter Ave		
2501 East Porter Ave	2	
2505 East Porter Ave	2	
2509 East Porter Ave	2	
2513 East Porter Ave	2	
2426 East Porter Ave	2	
2430 East Porter Ave	2	
2434 East Porter Ave	2	five-foot chainlink fence and above ground pool installed in violation of permit
2438 East Porter Ave		opaque fence installed with permit issued in error
2442 East Porter Ave		
2446 East Porter Ave	2	four-foot chainlink fence installed and shed partially constructed in easement
2450 East Porter Ave	1	
2454 East Porter Ave		four-foot chainlink fence installed within easement
2458 East Porter Ave		
2462 East Porter Ave	2	
2508 East Porter Ave	2	four-foot chainlink fence installed within easement
2516 East Porter Ave		
5313 Kenyon Cir		
5317 Kenyon Cir		
5323 Kenyon Cir		
5327 Kenyon Cir		
5333 Kenyon Cir		
5337 Kenyon Cir		
5405 Kenyon Cir		
5409 SE 25 th St		
5413 SE 25 th St		
5417 SE 25 th St		
5421 SE 25 th St		
5425 SE 25 th St		
2457 Kenyon Avenue		
2461 Kenyon Avenue		

January 27, 2011

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held January 20, 2011, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 4-7 as follows:



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano		X		
Shirley Daniels		X		
Jacqueline Easley		X		
Dann Flaherty		X		
John "Jack" Hilmes	X			
Joel Huston				X
Ted Irvine	X			
Greg Jones	X			
Jim Martin				X
Brian Millard		X		
William Page		X		
Mike Simonson	X			
Kent Sovern		X		

DENIAL of request from Heather Carpenter-Hutchcroft, et al, (owners) for an amendment to the Carman Estates PUD Conceptual Plan on property located at 2421 through 2458 East Porter Avenue, to allow removal of a 30-foot wide conservation easement allowing structures and fences to be located within portions of the rear yard area currently restricted by the easement. ZON2010-00225

By separate motion Commissioners recommended 7-4 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	X			
John "Jack" Hilmes		X		
Joel Huston	X			
Ted Irvine		X		
Greg Jones		X		
Jim Martin	X			
Brian Millard	X			
William Page	X			

Mike Simonson
Kent Sovern

X X

APPROVAL to recommend to City Council that staff review the erection of any facilities, any improvements within the stated conservation easement and that those improvements that were, through no fault of the homeowner, placed properly with permit be allowed to stay. That no further encroachment into the conservation easement area be allowed in this development.

Written Responses

- 13 In Favor
- 11 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends denial of the requested amendment. Staff recommends that the Commission consider a recommendation to the City Council that would direct the Community Development Director to consider encroachments of fencing and slight encroachments of other structures no greater than five (5) feet when the property owner plants two (2) or more trees of an approved overstory species within the easement area.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The requesting property owners of 2426, 2429, 2434, 2438, 2446, 2450, 2456, and 2458 East Porter Avenue are seeking to have removal of a Conservation Easement within the rear 30 feet of their properties. This would allow existing encroachments and future development of fences and other accessory structures within the area.
2. **Size of Site:** Affected easement areas total 44,400 square feet or 1.02 acres. The Carman Estates PUD is an approximate total of 107 acres.
3. **Existing Zoning (site):** "PUD" Planned Unit Development.
4. **Existing Land Use (site):** Single-family residential and vacant single-family residential lots.
5. **Adjacent Land Use and Zoning:**

North – "PUD", Carman Estates single-family dwellings and unplatted land approved for single-family use.

South – "R1-80", Uses are agricultural land approved for single-family development and single-family dwellings.

East – "PUD", Carman Estates single-family dwellings.

West – "PUD", Carman Estates single-family dwellings.

6. **General Neighborhood/Area Land Uses:** Carman Estates is located in a mixed density residential community located along Indianola Avenue south of Easter Lake Drive within the Easter Lake New Town area.
7. **Applicable Recognized Neighborhood(s):** Easter Lake Area Neighborhood.
8. **Relevant Zoning History:** The property was rezoned to “PUD” Planned Unit Development as part of the Carman Estates Conceptual Plan on June 18, 2001. The subject property of this amendment has remained unchanged in the “PUD” Conceptual Plan since the original approval. Although the Conceptual Plan has been amended several time on other portions.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential and Park/Open Space – Private.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning boundaries or regulations within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in 414.3 of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

The application, accompanying evidence and conceptual plan shall be considered by the Plan and Zoning commission at a public hearing. The Commission shall review the conformity of the proposed development with the standards of this division and with recognized principles of civic design, land use planning, and landscape architecture. At the conclusion of the hearing, the Commission may vote to recommend either approval or disapproval of the conceptual plan and request for rezoning as submitted, or to recommend that the developer amend the plan or request to preserve the intent and purpose of this chapter to promote public health, safety, morals and general welfare. The recommendations of the commission shall be referred to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

The Conceptual Plan was originally approved with the intent to protect groves of vegetation and trees within the development. Thirty-foot easements were required by the plan at the rear of the subject property lots. The language of the plan reads:

“Conservation Easements are intended to protect and preserve trees to the extent possible during construction of the subdivision. Tree protection measures including fencing around trees larger than 4-inches in diameter, 1-½ feet above the base. Home builders may remove trees where necessary for house site construction, and remove inappropriate damaged trees, but the intent is that is that trees shall be saved as reasonable. Multiple-family development plans or preliminary plats shall include a tree survey and mitigation protection plan.”

The final plat for the subject properties Carman Estates Plat 4 places permanent conservation easements in the rear 30 feet of the subject properties. Based on the requirement of the Conceptual Plan, the preliminary plat established tree protection during

subdivision grading. Aerial photography from 2006 and 2007 indicates that areas with conservation easements were protected during subdivision development and lot grading. However, the aerials in 2009 revealed much of the area within the easement for lots on the north side of East Porter Avenue had been cleared, with some homes being constructed. It is not clear whether the area was disturbed during construction or by private property owners or both. Aerial photography for 2008 was not obtained by the City due to quality of the product as a result of flyover conditions.

The language of the recorded conservation easement prohibits grading of the area, removal of healthy trees, and placement of structures, including fences, within the easement area without expressed permission of the Community Development Director. At this time four of the subject properties have been served notice of violation for having fences or other structures within the easement area. One property owner has previously sought administrative relief to allow a fence and other structures, but was denied by the Community Development Director. The request before the Commission is the next remedy available to these property owners and has stayed the enforcement for the present time.

The applicants' request indicates that their properties were already cleared within the easement areas upon taking ownership and that most were unaware of the easement restriction even if it was disclosed as part of the sale. Because the area does not have trees and vegetation to protect any longer, the applicants believes that they should be permitted to treat the area as any other portion of their rear yard.

The applicants' have indicated that it appears that trees might have been cleared as a result of minor drainage system improvements. Storm Water staff in the Public Works Department have indicated that any such improvements were not part of any public effort to modify the drainage. There is no evidence that the developer or builders sought permission to improve drainage within the conservation easement area.

III. STAFF RATIONALE

Staff believes that there is still merit to the intent of the original PUD Conceptual Plan. Completely removing the easements would be contrary to the private open space intent of the comprehensive plan and conceivably could be interpreted to require an amendment. Any property south of East Porter Avenue should not be revised as the trees and vegetation are still in place to protect.

There are still substantial trees and vegetation that must be conserved immediately north of the subject properties on the north side of East Porter Avenue on land that has not been final platted. In order to prevent further degradation of the vegetated areas staff believes the easements should be kept in place to further prevent additional areas from being cleared. Also drip lines of trees on adjoining property to the north could be affected if structures are placed within the easement.

Because the trees have essentially been removed from these areas there is some room for a compromise to attempt to restore the intent for these areas. Fences do not have the impact that a foundation of a shed or other structure to a tree dripline. The Community Development Director has discretion to allow such structures under the terms of the easement. In this instance staff believes that at the direction of the Commission and City Council to the Community Development Director, it may be appropriate to allow fencing and very minimal encroachments (four or five feet) of a shed or pool, within the cleared

easement areas on the north side of East Porter Avenue. This should only be permitted subject to those encroachments being mitigated by planting and maintaining at least two overstory trees from the City's approved landscape species within the easement area.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

JoAnne Corigliano stated that she is in favor of retaining this easement and agrees that a lot of folks moved out that way because of the wooded area. With the lake and the way the drainage is, trees area needed in that area.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the applicant's request

Steve Ragan 2434 SE Porter Avenue, Lot 35 stated there are no trees and the ones that are there are rotten and should have been taken out. His concerns are making the residents pay for tree replacement when they had no hand in the tree removal and they are being penalized for not being informed by Jerry's Homes about the easement.

Brian Millard asked if the replacement of trees by the resident a big concern.

Steve Ragan stated his biggest concern is that the property owners cannot use over 30% of their property because of the easement.

Mike Ludwig clarified that when the subdivision plats are approved by the City those are recorded documents and those easements show up on a title search when you buy a property. That does not mean each person buying property reads that information or recognizes that information. The easement will show up on a title search during any transfer of property.

Brian Millard stated it is sad that people making the most important purchase of their life, do not hire an attorney for themselves. They rely on the real estate agent and maybe the bank looking at it. Real estate agents and banks have no consideration of what happens to you.

Michael Johnstone 2429 E. Porter disagrees with the staff recommendation. If the Council favors the recommendation, then the property taxes should be adjusted to a proper plat size taking that 30 foot by the width of the lot out because on a .25 acre that does not leave much property beyond the back of the deck. He pointed out that the 5 year tax abatement is slowly increasing. His lot has trees which are half decade, old like most of the trees in the area. The drainage issue was noted to him when he first bought his house in 2006. He does agree having the trees for an aesthetic value. However, he does not think it impacts someone putting up a chain link fence or something like that to keep their dog contained. He is in favor of the requested action which is to get rid of the easement or to adjust the taxes to a proper plat size.

Brian Millard asked if the applicant opposed the requirement to plant two overstory trees.

Michael Johnstone stated if it was not at the homeowner's expense, no.

Brian Millard asked who should pay for the trees.

Michael Johnstone stated he would have the developer (Jerry's Homes) pay for the trees.

John "Jack" Hilmes asked if there is a homeowners association that governs what the fences look like.

Michael Johnstone stated to his knowledge there is no homeowners association, which is one of the reasons he moved from Ankeny to Des Moines, but now he is considering moving back to Ankeny.

Heather Hutchcroft 2438 E. Porter stated that she was told at the time of purchase that there was an easement but she was told by Jerry's Homes that it did not preclude the building of fences. She inquired with the City's permit office as to whether or not she could build a fence, explaining about the easement and was told that it would not be a concern and she could a fence. She obtained a permit for the fence and built a fence. In December she received a letter telling her she had thirty days to remove the fence and if not she would be fined \$750.00 a day. (Keeping in mind that the ground is frozen). She did not intentionally break any rules she feels that the City misled her.

The staff recommendation did not indicate that she and her neighbors received permits for the fence they built – this is important to know to show that they thought they were acting in good faith. Also, her request was misstated and should say that they are allowed to keep their existing structures. Her intent was not that they lose the easement in its entirety but that it be modified in some way. If she has to move the fence it would be a great expense to her. To address the paragraph in the staff recommendation that indicates that there was no evidence that the drainage system was installed by Jerry's Homes, this resulted in the removal of several trees. However, she has lived in her home prior to the system being installed so she knows that the drainage system was installed and did result in the removal of much of the vegetation that had been there prior to the construction. She was told by Jerry's Homes that this was necessary for the water to run away properly and they had also consulted with the City and it was approved. She is fine with staff recommendation to amend the existing easement restrictions that it is allowable to build certain structures and she is fine with planting two trees.

Kent Sovern asked if she would be pleased if the action of this board was to affirm that any structure that had received approval by the City would be able to remain in place.

Heather Hutchcroft stated that she believes it is only fair. She paid for a permit. She was then told by the City that the permit was issued erroneously but that it was her responsibility to know that.

Brian Millard asked when was the drainage system installed by Jerry's Homes resulting in the removal of the trees.

Heather Hutchcroft stated approximately 2008.

Brian Millard asked if Jerry's Homes got grading permits.

Heather Hutchcroft stated that she could not be sure, but her understanding was that they did have permits because she inquired about it since she considered the trees and shrubbery that was removed as part of the value of her home.

Brian Millard asked if there was any confusion by the City about what happened would she be glad to tell them.

Heather Hutchcroft stated absolutely, the City can even interview her and look in her yard to see where the drainage system runs.

Will Page asked if her neighbor Steve Ragan also had a permit to build his fence.

Heather Hutchcroft stated yes, that is what she understands to be true.

John "Jack" Hilmes asked if the tree removal improved drainage flow along the north property line.

Heather Hutchcroft stated she could not speak to that, but thinks that it did not affect her property as much as it affected properties further east of her.

John "Jack" Hilmes asked if she thinks that there was a betterment to some of these properties as a result of the trees being removed.

Heather Hutchcroft stated she believes that there was or Jerry's Homes wanted to present a more appealing yard to potential buyers in an economy that is not very good for home sales.

Lo Chang 2454 E. Porter stated that he was upset when he discovered the easement. He hired a company to put up his fence and he was told by them that they took out a permit. He would not buy any property without a backyard. Please allow it to stay the way it is.

John Stodgel 2446 E. Porter stated he has a black chain link fence and asked if he could build a shed.

Mike Ludwig stated that under the staff recommendation he would need to submit a request to the City for his shed and would be required to plant two trees. Each individual request is considered on a case by case basis.

John Stodgel stated that in these new houses with garage, there is only room for two cars so if you have a regular size pickup it has to stay out in the snow, so a shed is needed for lawn mowers and other stuff.

The following spoke in opposition of the applicant's request

Dana Lower 2508 E. Porter stated the Conservation Easement created by the City Plan and Zoning Commission is an essential regulation for the Carmen Estates Neighborhood. It provides many benefits that unfortunately have been overlooked. The Conservation Easement preserves and protects old growth trees in the back 30 feet of every property in the neighborhood. The importance of these trees is immeasurable as they provide wind block and create shade, produce oxygen, and maintain a natural habitat for hawks which battle the rodent population, birds which battle the insect population, deer and many

numerous other animals. The Conservation Easement also prohibits structures from being built in the back 30 feet of each lot. This is an important regulation because it prevents individuals from constructing buildings that could potentially be unsightly and unattractive. There by lowering the aesthetic value of the neighborhood and in turn lowering the overall property value. Carmen Estates should be considered an extension of Easter Lake and Ewing Parks. It is necessary to protect and preserve the trees in order to maintain the natural beauty of the neighborhood. If the easement is abolished, individuals would be allowed clear cut their properties, ruin the natural beauty and lower the overall property value of the neighborhood. If an amendment is allowed for the 2400 block of E. Porter it will create precedence for change. The City Planning and Zoning Commission created the conservation easement in order to preserve the original trees in our neighborhood and prevent the construction of structures that could potentially be unappealing. These consequences would reflect poorly on the entire neighborhood. If the rules are changed because a few individuals decided not to follow them we lose the sense of order. By allowing a portion of our neighborhood to bend the rules, we lose solidarity. It is necessary for the residents of Carmen Estates to remain united in order to maintain our natural and aesthetic beauty which will keep the property values from declining. She also stated that before she moved in she knew about the easement, she was informed about it and it was on the plat map. She came to this neighborhood because of the easement to preserve the trees and she did not want a shed in her back yard. The trees in her backyard are healthy and provide shelter and shade.

Mike Ludwig stated that there are no restrictions on the PUD that regulate the design of the sheds. The easement was intended to preserve the vegetation that was there and the benefits of that. The City can review the design of sheds if the City is granting latitude for construction within the easement.

Dana Lower stated that if the easement is amended and sheds are allowed then she strongly recommends that the standard for other neighborhoods are followed. The shed should be sided to match the house and have an aesthetically pleasing look.

Kathryn Cardamon 2442 E. Porter stated that she was aware of the easement by her realtor and then a representative of Jerry's Homes also told her. The big part of her decision was the easement and the trees being there because she likes the aesthetic value it puts on her home and that it is a conservation area. She was told that it would be protected and could not be changed, and then six months later there is a petition to have it removed. It would be unfair to have it removed totally because of her investment in her property and it adds value to the property. She hopes that the easement is not removed.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Brian Millard asked staff what the Commission's options are other than approve or deny. He thinks there should be another option because the homeowners are being burdened for something that someone else did under the City's watchful eye.

Mike Ludwig stated from staff research, it is not clear whether there were approvals to be doing the grading that resulted in tree removal. Staff is very concerned with just granting a waiver of the easement. It just encourages the next group to go and remove trees and come in and ask for an easement to be waived. Staff has tried to present an alternative to the Commission which would keep the easements but allow a case by case review for encroachment and mitigation for tree removals.

The staff recommendation tries to strike a balance, keeping the emphasis on the value of those easements and requiring new plantings back to replace what was taken out. The current owner is the owner of record of the property. If they individually want to pursue reimbursement from Jerry's Homes for whatever, that is a private matter. Staff has to deal with the current ownership of the property. As far as the enforcement action that was sited, the enforcement of the \$750.00 fine must be a court ordered action. Enforcement will be stayed while this is proceeding so there is no daily fine adding up on these properties. There will be quite a bit of latitude on staff's part to allow existing fences to remain provided that two trees were planted in those easements per lots. Staff would review those requests on a case by case basis.

Brian Millard believes the mitigation's burdening the individual homeowner. Possibly providing a larger conservation easement on the property that Jerry's Homes currently owns to the north is also a reasonable thing for the Commission to consider. The City has heard what some of the property owners have said he thinks the City should go after Jerry's Homes.

Dann Flaherty stated there is an adage in the law that says that we cannot bind future boards. He is concerned if the Commission is going to permit the director to allow fences and out buildings there needs to be some guidelines for the director to take. He asked that whoever makes the motion request some guidelines for what the director can and cannot do with respect to granting those additional encroachments.

Mike Ludwig suggested that some of the items that would be recommended as individual cases are being reviewed could include 1) Demonstrating that a permit was obtained, and complied with. The preference for new applications for fences would be black vinyl clad chain link as required in almost every new PUD in the last five years. If a storage shed was allowed we would ask that it have siding to match the principle structure on the property. Finally, two trees would be required within the easement on each lot.

Kent Sovern stated for the structures that currently exist that were properly permitted, the only option should be that they are legal structures and should stay. However, the Conservation Easement was there for a good reason and should be maintained. Therefore, he would be resistant to new structures going into the conservation easement, whether there are trees in that easement or not. He would resist the motion that provides staff the ability to approve new structures in the existing conservation easement. The Commission should be in the position to say what is there is there, what harm that has been done is done but no additional harm, no additional encroachment into the conservation easement should be allowed. That is a motion that he could support.

COMMISSION ACTION:

Mike Simonson moved staff recommendation to deny the requested amendment and to consider a recommendation to the City Council that would direct the Community Development Director to consider encroachments of fencing and slight encroachments of other structures no greater than five (5) feet when the property owner plants two (2) or more trees of an approved overstory species within the easement area.

Motion failed 4-7 (Greg Jones, Mike Simonson, John "Jack" Hilmes, Ted Irvine voted in favor and JoAnne Corigliano, Kent Sovern, Dann Flaherty, Will Page, Shirley Daniels, Jacqueline Easley, and Brian Millard voted in opposition)

Kent Sovern moved to recommend to City Council that staff review the erection of any facilities, any improvements within the stated conservation easement and that those improvements that were, through no fault of the homeowner, placed properly with permit be allowed to stay. That no further encroachment into the conservation easement area be allowed in this development.

Motion passed 7-4 (JoAnne Corigliano, Kent Sovern, Dann Flaherty, Will Page, Shirley Daniels, Jacqueline Easley and Brian Millard voted in favor and Greg Jones, Mike Simonson, John "Jack" Hilmes, and Ted Irvine voted in opposition)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Ludwig".

Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item 2010 00225 Date 1-13-11 57

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT
JAN 18 2011

Print Name Todd Madden

Signature R. Todd Madden

Address _____

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 01/13/11

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT
JAN 18 2011

Print Name Doug Pierson

Signature [Signature]

Address 2417 E Pitzer Ave DSM

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 1-14-11

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

JAN 19 2011

DEPARTMENT

Print Name Serry's Homes Inc

Signature Ronald R. Muller Pres

Address 3301 106th Cir Urbandale

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 1-14-11

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

JAN 18 2011

DEPARTMENT

Name Dwyan G. Farlow

Signature Dwyan G. Farlow

Address 3430 Hart Ave.

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 1-15-2011

I (am) (am not) in favor of the request.

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

JAN 19 2011

DEPARTMENT

Print Name LO CHANG

Signature [Signature]

Address 2454 E. PORTER AVE
DES MOINES, 50320

Reason for opposing or approving this request may be listed below:

I would like the City re-consider and allowed my fence set the way it is now beside I don't see or have anything to save or protecting all I see it is plain and empty space and I can't see any reason why I can't have my fence on my own property.

Item 2010 00225 Date 1-14-11

I (am) (am not) in favor of the request.

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

JAN 19 2011

DEPARTMENT

Print Name JOHN H STODGEL

Signature [Signature]

Address 2446 E PORTER AVE

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 1/14/11

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name JAMES WALTRIP

Signature James E. Waltrip Jr.

Address 2415 HART AVE
DSM 50320

JAN 18 2011

Reason for opposing or approving this request may be listed below:

DEPARTMENT
I SEE NO HARM IF THE HOMEOWNERS ASSOCIATION ASSUMES RESPONSIBILITY FOR MAINTENANCE AND REPAIR. IF SO, I AM IN FAVOR. IF NOT, I AM AGAINST.

Item 2010 00225 Date 1-17-11

(am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

Print Name ANTHONY R ANDREWS

Signature Anthony R. Andrews

Address 2459 E PORTER AVE

JAN 19 2011

DEPARTMENT

Reason for opposing or approving this request may be listed below:

PERMITS WERE AQUIRED + FENCES WERE BUILT + OK'D. BETTER DUE DILIGENCE ABOUT EASEMENTS FOR CONSERVATION SHOULD HAVE BEEN DONE.

Item 2010 00225 Date 01/14/2010

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
JAN 21 2011

Print Name

Romeo Kumedju 278

Signature

Romeok

DEPARTMENT

Address

2509 E PORTER, DSM

Reason for opposing or approving this request may be listed below:

I THINK IS A VERY GOOD IDEA
THANK FOR BRINGING IT UP

Item 2010 00325 Date 1-18-11

(am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT
JAN 21 2011

Print Name

STEVEN RAGAN 206
Paula Krole

Signature

Paula Krole Steve Ragan

DEPARTMENT

Address

2434 E Porter Ave
Des Moines IA 50320

Reason for opposing or approving this request may be listed below:

Item 2010 00325 Date 1/15/11

I (am) (am not) in favor of the request.

81

RECEIVED
COMMUNITY DEVELOPMENT DEPARTMENT

(Circle One)

Name Darlene J. Ashlin

Signature Darlene J. Ashlin

JAN 21 2011

Address 2408 E. Southlawn Dr.

DEPARTMENT

Reason for opposing or approving this request may be listed below:

If you own the property, you should be
able to build on it and fence it if you
want to do that.

Item 2010 00325 Date 1-20-11

I (am) (am not) in favor of the request.

214

(Circle One)

Print Name Marisone Douglas

Signature [Signature]

Address 2446 Hart Ave 50320

Reason for opposing or approving this request may be listed below:

I would like easement to remove. I put up 6'
fences last summer, no trees on backyard.
get permit from city to put up ~~perimeter~~ fences.

Item 2010 00225 Date JAN 20, 2011

I (am) (am not) in favor of the request.

(Circle One)

Print Name Michael Johnstone

Signature [Signature]

Address 2429 E PORTER

Reason for opposing or approving this request may be listed below:

I disagree with STAFF Rationale + recommendation.
IF council favors then Property taxes should be
adjusted to a proper PLAT size. 30 Ft x width of
property is substantial on lots less than .25 in
size. Therefore tax relief is in order.
Noted Developer removed trees, Homeowners Pay Now.

Item 2010 00225 Date 1-17-2011

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT
DEPARTMENT
JAN 21 2011

Print Name JOE & JUDY SHEPARD

Signature [Signature]

Address 5513 SE 24th ST, DM

Reason for opposing or approving this request may be listed below:

Easements are added to building sites for a purpose. The
natural watershed of this area should not be disrupted
The homeowners knew this property contained the
easement when they purchased their home. Too many
trees & shrubs have already been removed from the watershed.

Item 2010 00225 Date 1-17-11

I (am) (am not) in favor of the request.

(Circle One) **RECEIVED** Print Name Judy Prettyman
COMMUNITY DEVELOPMENT Signature Judy Prettyman
JAN 21 2011 Address 2407 Hart Ave

DEPARTMENT

Reason for opposing or approving this request may be listed below:

Generally a conservation easement is for water management and filtration. This easement runs downhill. It could cause flooding to those below at sometime. Also the tree roots hold the easment soil to keep erosion from occurring. I understand some trees have already been removed. Not good idea.

Item 2010 00225 Date 1-14-10

I (am) (am not) in favor of the request.

(Circle One) **RECEIVED** Print Name Ron Buch
COMMUNITY DEVELOPMENT Signature Ronald J. Buch
JAN 21 2011 Address 2320 Hart Ave # 3

DEPARTMENT

Reason for opposing or approving this request may be listed below:

Breaking the covenant now will make it easier next time for more serious change.

Item 2010 00225 Date 01/14/2011

I (am) (am not) in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

120

JAN 21 2011

Print Name Gilbert Birech

Signature Gilbert Birech

DEPARTMENT

Address 2321 Hart Ave #3

Reason for opposing or approving this request may be listed below:

I do not fully understand the reason to allow the Conservation
easement to be removed. What impact will the easement
removal have on my property? Who will pay for the removal of
the easement? Why not have a discussion with the Associations
first to see what they have to say about this. Thank you.

Item 2010 00225 Date 1/17/11

I (am) (am not) in favor of the request.

87

RECEIVED
COMMUNITY DEVELOPMENT

JAN 21 2011

Name Debbie Schuster

Signature DSchuster

DEPARTMENT

Address 2321 Hart #2

DSM IA 50320

Reason for opposing or approving this request may be listed below:

Item 2010 00225 Date 1/16/2011

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name LINDA Hendricks

Signature Linda Hendricks

JAN 21 2011

Address 5605 S.E. 24th St

DEPARTMENT

Reason for opposing or approving this request may be listed below:

I would like to see the area
remain wooded for wildlife
movement.

Item 2010 00225 Date 1.13.11

I (am) (am not) in favor of the request.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Kathryn A Cardamon

Signature Kathryn A Cardamon

JAN 18 2011

Address 2442 E Porter Ave

DEPARTMENT

Reason for opposing or approving this request may be listed below:

Having the easement there was a major part of my
decision in purchasing + building on this property. My value
of investment in this property will diminish because aesthetic
benefits will be diminished if removed. I don't feel I should be responsible
for lack of responsibility of the surrounding owners. I was told by builder more
would ever be able to remove the easement, (comes later it is in question).

Item 2010 00225 Date 1-14-11

I (am) am not in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

Print Name SCOTT SAILOR

JAN 19 2011

Signature Scott Sailor

DEPARTMENT

Address 2201 E HART 7

Reason for opposing or approving this request may be listed below:

HOUSING DENSITY IN THE PROPOSAL
IS NOT APPROPRIATE FOR THE AREA.

Item 2010 00225 Date 1-14-2011

I (am) am not in favor of the request.

RECEIVED
COMMUNITY DEVELOPMENT

Print Name JAMES LOONIS

JAN 19 2011

Signature James Loonis

DEPARTMENT

Address 2460 EASTER LAKE DR

Reason for opposing or approving this request may be listed below:

Item 2010 00225

Date SAT. 1/15/11
JUST RECEIVED TODAY, 12:15 p.m.

I (am) (am not) in favor of the request.

a7

(Circle one)
RECEIVED
COMMUNITY DEVELOPMENT

Name EDITH M. GRAY (TRUSTEE)

JAN 21 2011

Signature Edith M. Gray, Trustee

DEPARTMENT

Address 3727 ANGELES RD., SANTA MARIA, CA
93455-2949

Reason for opposing or approving this request may be listed below:

IT WOULD SET A PRECEDENT FOR CHANGES THAT
COULD LEAD TO PROBLEMS WITH WATERWAY DRAINAGE,
AND CHANGE ESTHETIC ATMOSPHERE AND DESIRABILITY
OF LIVING CONDITIONS IN THE WHOLE DEVELOPMENT.

Item 2010 00225

Date 1/17/11

I (am) (am not) in favor of the request.

RECEIVED
JAN 20 2011
CITY OF DES MOINES
PERMIT AND DEVELOPMENT CENTER

Print Name Dana + Joe Lower

Signature Dana Lower

Address 2508 E Porter Ave

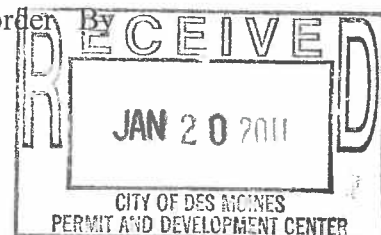
Reason for opposing or approving this request may be listed below:

2508 E. Porter Ave.

The conservation easement created by the City Planning and Zoning Commission is an essential regulation for the Carmen Estates neighborhood. It provides many benefits that, unfortunately, have been overlooked. The conservation easement preserves and protects old growth trees in the back 30 feet of every property in the neighborhood. The importance of these trees is immeasurable as they provide wind block and create shade, produce oxygen, and maintain a natural habitat for hawks, which battle the rodent population, birds, which battle the insect population, deer and numerous other animals. The conservation easement also prohibits structures from being built in the back 30 feet of each lot. This is an important regulation because it prevents individuals from constructing buildings that will raise individual property taxes. Each structure could potentially be unsightly and unattractive, thereby, lowering the aesthetic value of the neighborhood, and in turn lowering the overall property value.

Carmen Estates should be considered an extension of Easter Lake and Ewing Parks. It is necessary to protect and preserve the trees in order to maintain the natural beauty of the neighborhood. If the easement is abolished individuals would be allowed to clear cut their properties, ruining the natural beauty and lowering the overall property value of the neighborhood.

If an amendment is allowed for the 2400 block of East Porter Avenue it will create precedence for change. The City Planning and Zoning Commission created the conservation easement in order to preserve the original trees in our neighborhood and prevent the construction of structures that could potentially be unappealing. These consequences would reflect poorly on the entire neighborhood. If we change the rules because a few individuals decided not to follow them we lose a sense of order



allowing a portion of our neighborhood to bend the rules we lose solidarity. It is necessary for the residents of Carmen Estates to remain united in order to maintain our natural and aesthetic beauty, which will keep our property values from declining.

A handwritten signature in cursive script that reads "Dana Lower".

Dana Lower
2508 East Porter Ave
515-306-5566

