

Councilmember _____ introduced the following resolution and moved for its adoption:

RESOLUTION #15-04-097

A RESOLUTION APPROVING AN ENCROACHMENT AGREEMENT FOR AN EXISTING DECK AND SEPTIC SYSTEM WITHIN A DRAINAGE AND UTILITY EASEMENT AND DECLARING TERMS OF SAME.

WHEREAS, Michael L. Swanson and Diana J. Swanson (the “Landowner”) are the fee owners of the real property located at 8077 155th Lane NW, Ramsey, Minnesota and legally described as follows:

Lot 2, Block 2, The North Forty 3rd Addition, according to the recorded plat thereof, Anoka County, Minnesota.

(“Property”); and

WHEREAS, the City of Ramsey (the “City”), currently has Drainage and Utility Easements (“Easements”) over, under and across a portion of the Property, as dedicated to the public pursuant to the Plat known as “The North Forty 3rd Addition” recorded in the Office of the County Recorder, Anoka County, Minnesota; and

WHEREAS, Landowner seeks permission from the City to encroach upon the Easements by using and maintaining an existing septic system and deck (dimensions of upper deck are sixteen feet by twenty-five feet [16’ x 25’] and dimensions of lower deck are eight feet by nineteen feet [8’ x 19’], including the stairway). The upper and lower decks (the “Deck”) are located approximately 110 feet from the most North line of the Property, sixty-seven (67) feet from the most West line of the Property and 285 feet from the East most line of the Property, all as shown on Exhibit “A” and the septic system (the “Septic System”) is located on the Property as shown on Exhibit “B”; and

WHEREAS, the City issued permits for both the Deck and the Septic System in 1991 and 1998 respectively.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The City hereby approves an encroachment on and over the Easements by Landowner for the purposes of using the existing Deck and Septic System over that part of the Easements as shown in Exhibits “A” and “B” subject to the terms of this Agreement. Landowner shall not expand the Deck in width, depth, or height unless approved in writing by the City. If the Deck is demolished or destroyed, any replacement deck shall not encroach upon the Easements without written consent of the City. If the Septic System fails or is otherwise replaced, the replacement system shall not encroach upon the Easements without written consent of the City.

2. Nothing in this Agreement shall be deemed a waiver or abandonment of the City’s rights under the Easements.

3. The Landowner shall be responsible for all costs relating to use, maintenance and repair of the Deck and Septic System.

4. Landowner agrees that if the City, during its normal construction, reconstruction, maintenance and/or repair of the public utilities of the City located within the Easements including, but not limited to, watermain, sanitary sewer and/or storm sewer systems, deems it necessary and expedient to excavate within the Easements, Landowner shall be responsible for removing, reconstructing and/or repairing the Deck and/or Septic System and the City's only obligation shall be to fill the excavated area and level the same to the grade that it was prior to the City's excavation. Notwithstanding the above, in the event the City finds it is necessary to completely and totally restore easement area, the landowner agrees to remove the Deck and/or Septic System that has been placed in the Easements. Landowner will promptly comply with said removal request at their expense and will remove the Deck and/or Septic System within sixty (60) days of the written request by the City.

5. In the event that Landowner fails to take any action required in this Agreement and the City is required to repair, reconstruct or take other actions to maintain the City's utilities, as a result of the Landowner's use and maintenance of the Deck and/or Septic System, the City may take any and all actions permitted by law to collect the costs of those repairs and the City may further levy an assessment against the Property for all costs incurred by the City. Landowner waives any and all rights to challenge or appeal the assessment.

6. Landowner and his successors and assigns do hereby agree to defend, indemnify, and hold the City harmless from any and all costs and expenses, all claims and liability, including attorney's fees, relating to or arising from granting the Landowner permission to encroach on the Easements for the maintenance, use, and operation of the Deck and/or Septic System, including third party claims against flooding issues that may occur due to filling within the drainage easement.

7. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following:

TO CITY: Jo Thieling, City Clerk
City of Ramsey
7550 Sunwood Drive NW
Ramsey, MN 55303

TO LANDOWNER: Michael L. and Diana J. Swanson
8077 155th Lane NW
Ramsey, MN 55303

or to any successors or assigns of the Landowner or City, or any future address of the Landowner or City, if Landowner or City gives the other party notice of said change of address as provided pursuant to the provision for notice herein.

8. This Agreement shall be recorded against the title to the Property.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the 14th day of April, 2015.

CITY OF RAMSEY

By: _____
Sarah Strommen, Mayor

By: _____
Jo Thieling, City Clerk

LANDOWNER

By: _____
Michael L. Swanson

By: _____
Diana J. Swanson

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Sarah Strommen and Jo Thieling, respectively the Mayor and City Clerk of the City of Ramsey, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Michael L. and Diana J. Swanson.

Notary Public

Drafted by:
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

Reviewed by:
Ratwik, Roszak & Maloney, P.A.
730 Second Ave. S., Suite 300
Minneapolis, MN 55402

EXHIBIT "A"
Area of Encroachment of Deck

285 feet from the east line of the Property, 110 feet from the north line of the Property, and sixty-seven (67) feet from the west line of the Property.

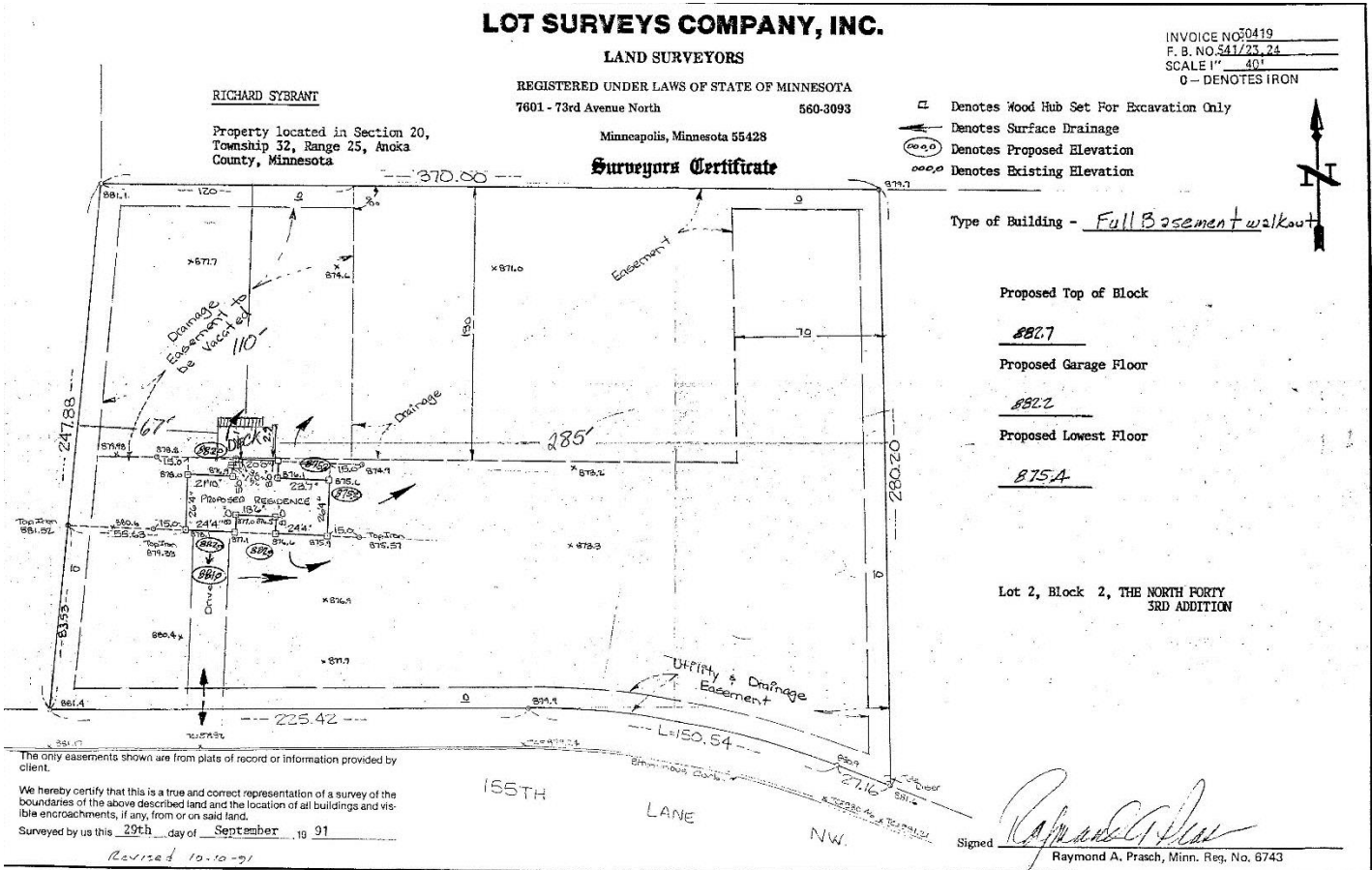


EXHIBIT "B"

Area of Encroachment of Septic System

