

**Regular Planning Commission**

5. 2.

**Meeting Date:** 07/06/2017**Submitted For:** Len Linton, Engineering/Public Works**By:** Len Linton, Engineering/Public Works

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**Information****Title:**

PUBLIC HEARING: Consider a Request for a Variance for a Fence Installation at 7214 167th Terrace NW; Case of Brandon Sis

**Purpose/Background:**

The resident at 7214 167th Terrace NW (the "Subject Property") submitted a fence permit application in 2016. Staff rejected the application on the grounds that most of the back yard is encumbered with drainage and utility easement and is part of the stormwater ponding system for the development. The City does not allow fences through stormwater ponds.

**Notification:**

Staff attempted to notify all Property Owners within a 350 foot radius of the Subject Property of the Public Hearing via Standard US Mail. The Public Hearing was also published in the City's official newsletter, the Anoka County Union Herald.

**Observations/Alternatives:**

As noted above, a large portion of the Subject Property is encumbered with drainage and utility easement due to the presence of wetland and stormwater pond. While fencing is oftentimes permitted within drainage and utility easements, they are generally not permitted within stormwater ponds or stormwater management areas. The proposed fence would be located in an area that, at least at one time, was considered a wetland. As part of the overall stormwater management system for Brookfield, this wetland area was to serve as additional drainage capacity for a 100-year event, thus making it a part of a stormwater management area.

The Applicant submitted a 3 page letter outlining the reasoning for the proposed fence, which focus primarily on safety for his young children and demarking the property boundary to prevent trespassing. The proposed fence is a four (4) foot tall black, chain link fence. The Applicant did note that this style fence generally would allow water to pass through without obstruction yet would still accomplish his primary goals.

Staff has prepared a 2 page review memo outlining the history of the property and the findings when preparing this case for a variance.

Staff has requested a review of the wetland on the property by the Anoka Conservation District (ACD) and a representative from the Board of Water and Soil Resources (BWSR) to determine its status. At the time of writing this case, that site visit has not yet occurred. The input from that visit will help formulate Staff's final recommendation. This case will be updated the week of July 3 with final determinations.

**Funding Source:**

The Applicant is responsible for all costs associated with this request.

**Recommendation:**

Staff recommendation will be dependent on the determination of the wetland status by ACD and BWSR staff. Staff is hopeful that feedback from ACD and/or BWSR staff will be available for a verbal update at the meeting.

If the wetland is still partially functioning then staff recommends denying the variance to allow placing a fence around most of the perimeter of the back yard. Staff would support placing a fence along the northerly line of the property to define the property boundaries and address the trespassing concerns the applicant has raised. Staff would also support placing a closed fence near the house to separate the children and pets from the pond.

If the wetland is nonfunctioning and does not need wetland protection, then Staff would support the variance request to place the fence around the entire perimeter of the back yard as proposed.

**Action:**

Motion to approve/deny Resolution #17-07-166 granting a Variance for the installation of a fence in the stormwater management area on the Subject Property.

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**Attachments**

Site Location Map

Applicant Submittal

Staff Memo

Resolution #17-07-166: Findings and Variance

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**Form Review**

**Inbox**

Chris Anderson

Tim Gladhill

Form Started By: Len Linton

Final Approval Date: 06/30/2017

**Reviewed By**

Chris Anderson

Tim Gladhill

**Date**

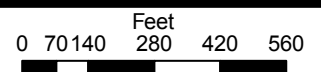
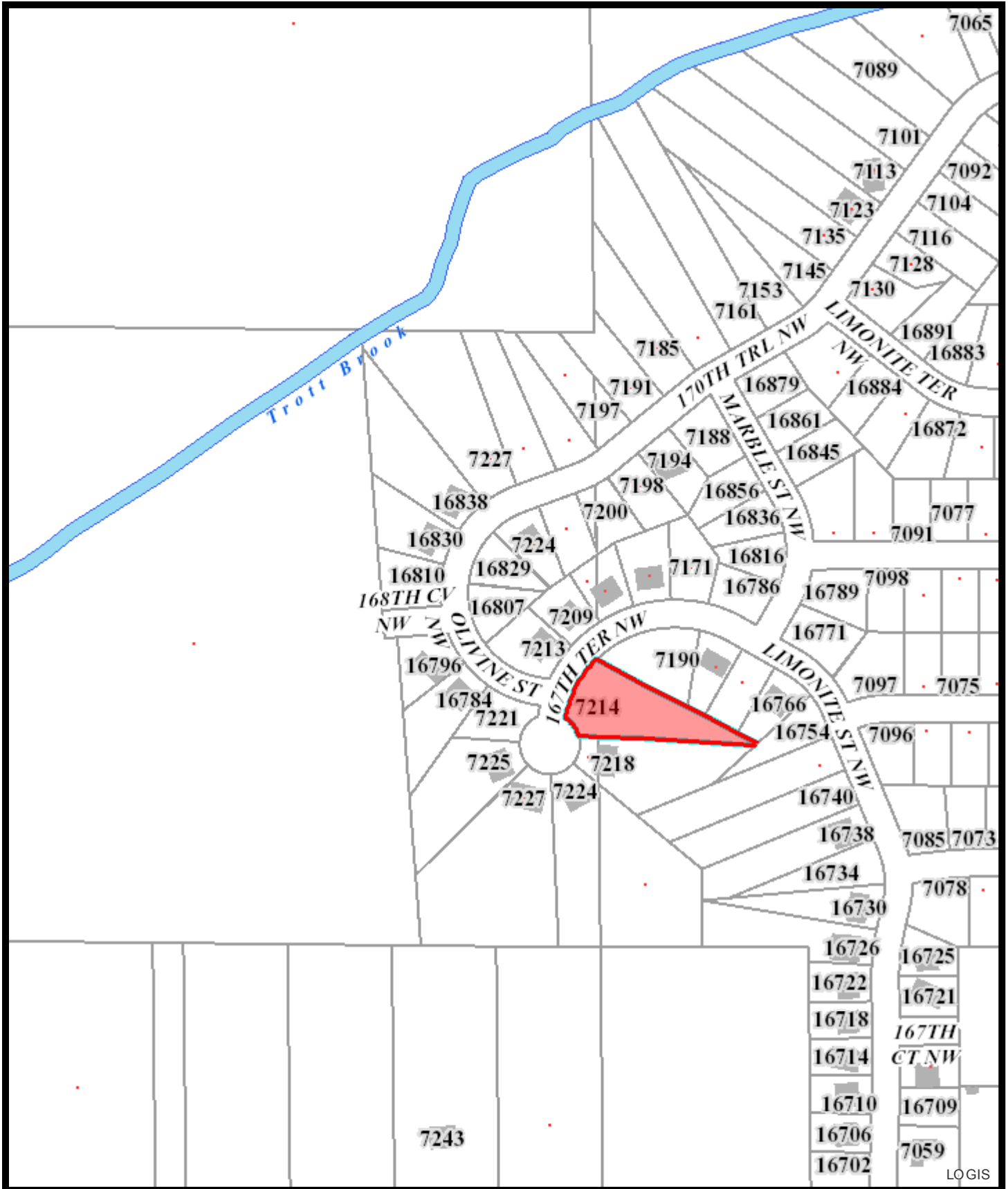
06/30/2017 02:26 PM

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Started On: 06/30/2017 11:11 AM

# Site Location Map

Brandon Sis - Variance



To Whom It May Concern,

For the past 2 years, I have been in discussions with the City of Ramsey in regards to placing a fence around a portion of my back yard located at 7214 167<sup>th</sup> Terrace NW. I believe a fence to be for the common good of the city, neighbors, and my family. I have included a diagram of the proposed route below.

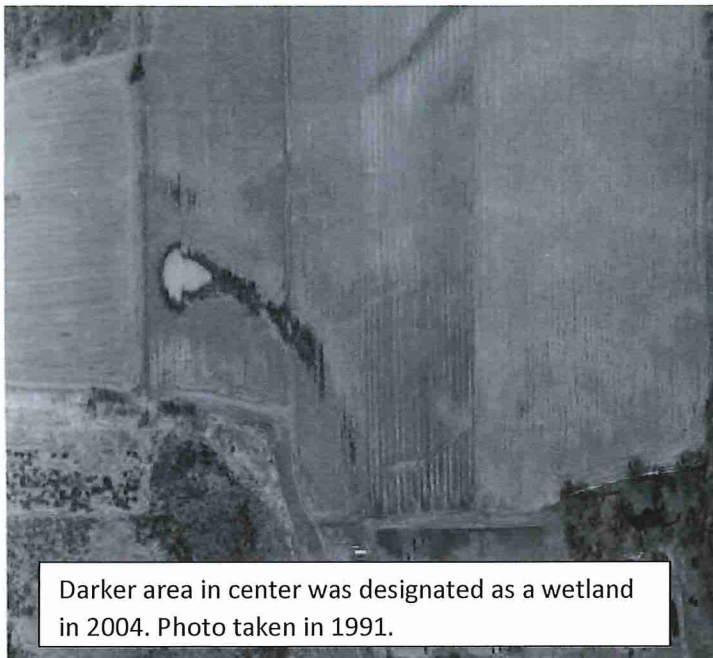


I am hoping to construct a 4' tall black chain link fence along this route to accomplish several purposes, the first of which is Safety. My wife and I have 2 young boys, ages 3.5 years and 8 months. It has been sobering each time a news story comes out about a child that enters a body of water and drowns because they are curious about the water. Providing some sort of barrier that encloses a safe play area is our foremost reason for wanting a fence. A fence along this route also provides for the safety of other kids in the neighborhood. As the pond freezes and thaws in the fall and spring each year, I see neighbor kids drawn to the water's edge, and sometimes out on the ice, without parental supervision. While their parents may have sanctioned their adventures, I, as the property owner would likely be partially liable for not having made an effort to stop these adventures. This liability piece is a main driver in how this fence layout was designed.

I realize the city's need to possibly access the pond with machinery. I am open to suggestions of gate size and placement that would make this feasible. Due to the extreme slope of the hill on the south side of our garage, I imagine that would not be the preferred route for machinery if deemed necessary. Another point of disagreement is the fact that the area is designated as wetland. Back when our development was a field, this wetland area was a natural collection point for surface water for the entire field. Now that the development has occurred, this area only takes surface water from our yard and a handful of neighboring yards and is only wet for a day or two following a large rain event. This wetland was in production while part of the field as evidenced by old aerial photos which indicates to me that

the wetland designation was not meant to preserve any fragile ecosystem like so many wetlands do. With the dredging of the pond in such close proximity, the water absorptive capacity of this wetland area is not relied upon on a regular basis.

This wetland really looks so much like regular yard that contractors and residents frequently fail to recognize it as such. While houses were being built, this area was driven across by large trucks, yards were established, and other fences built within the wetland boundary.



Darker area in center was designated as a wetland in 2004. Photo taken in 1991.



Silt Fence in place as of 11/20/2006 with field remnants throughout the wetland area.



Photo 5/5/2008 showing construction traffic having driven through and changing the wetland composition inside the silt fence.



Silt Fence removed as of 4/19/2011 and yards established within wetland boundary



All surrounding houses built and other fences built in the wetland area. Photo 5/5/2014



I appreciate the ability to present my case on this matter. We moved to Ramsey in 2013 because we understood it to be a great place to raise a family with connections to nature and room to run around and play. We chose this lot because the field area towards the back of the lot provides ample room for sports and other activities. I believe that our choice in fencing of chain link represents the desire to let water and wind move where they may while having a minimal impact on the soils where the posts stand. A fence is a great way to keep our kids safe and our dog contained but with plenty of room to run and play.

Thank You for your consideration,

Brandon Sis  
7214 167<sup>th</sup> Terrace NW  
Ramsey, MN 55303

**CITY OF RAMSEY LAND USE APPLICATION  
TECHNICAL REVIEW FILE**

<b>DATE</b>	JUNE 30, 2017	<b>PROJECT ADDRESS</b>	7214 167 <sup>TH</sup> TERRACE
<b>PROJECT. TITLE</b>	7214 167 <sup>TH</sup> TERRACE VARIANCE REQUEST		
<b>ESCROW #</b>			
<b>DEPARTMENT:</b>	Engineering		
<b>TECHNICAL REVIEWER:</b>	Name: Leonard Linton Phone: 763 433-9834 Email: llinton@ci.ramsey.mn.us		

We have received an application for a variance request to place a fence in a drainage and utility easement, crossing between a pond and the overflow area. The project is located in the Brookfield Addition Development.

**History**

The Brookfield Addition is a 179 acre residential development located in the north central part of the City. The land was in agricultural production prior to development. Several wetlands were delineated on the site including the one on this property. The development plans proposed leaving the wetland in place, with homes on the northeast and northwest sides of the wetland and constructing a stormwater pond on the southwest side of the wetland. The grading plan indicated that water from the pond would flow into the wetland during the 100 year event.

The lot in question is triangular shaped and encompassed the southern half of this wetland. The wetland is covered by drainage and utility easements on all of the lots.

Staff received a fence application in June 2016, requesting to place a fence along the perimeter of the lot. This would have placed a barrier across the overflow from the pond to the wetland. The City does not allow placement of barriers in storm water management areas. Fences have been allowed in drainage and utility easements adjacent to ponds when the base of the fence is above the 100 year high water level of the pond. This fence would have been below the 100 year high water level so the application was denied. Staff reviewed the project file prior to denying this request. The approved grading plan indicated that the normal water level of the wetland was 871.0, with the 100 year elevation of the wetland and pond at 872.56. Staff had phone conversations and discussions with the applicant at the building department counter several times after denying the application. Staff did offer an option to place a fence on the lot closer to the house, keeping the fence above the 100 year water elevation but the applicant rejected this option.

### **Observations**

Staff reviewed all of the available data after the variance request was received. Sources reviewed included the 2003 aerial photographs and point data commissioned by the City, the Anoka County GIS website which has aerial photos from 2005, 2008, 2011, 2014 and 2016, and Google Earth which has aerial photographs dating back to 1991. We also looked at the CAD files provided by the developer.

All of the photos viewed prior to development showed row crops were planted through this area. There were some years where the water level appeared to be higher, and some where the water level appeared to be lower. The wetland vegetation mostly disappeared after the site was graded, especially after homes were built adjacent to the wetland.

The plans stated the normal water level of this wetland was 871.0. The lowest elevation we found from the 2003 aerial information was 871.5, the CAD files showed an elevation of 872.0.

Becky Wozney from the Anoka Conservation District visited the site last summer at the request of the applicant. She observed that there was some wetland vegetation; however, the area was not a functioning wetland. Staff has requested another site visit with Becky Wozney and a representative from the Board of Water and Soil Resources to determine the status of the wetland. The visit had not happened when the agenda was published.

### **Recommendation**

Staff recommendation will be dependent on the determination of the wetland status.

If the wetland is still partially functioning then staff recommends denying the variance to allow placing a fence around most of the perimeter of the back yard. Staff would support placing a fence along the northerly line of the property to define the property boundaries and address the trespassing concerns the applicant has raised. Staff would also support placing a closed fence near the house to separate the children and pets from the pond.

If the wetland is nonfunctioning and does not need wetland protection then staff would support the variance request to place the fence around the entire perimeter of the back yard.

Commissioner \_\_\_\_\_ introduced the following resolution and moved for its adoption:

**RESOLUTION #17-07-166**

**A RESOLUTION APPROVING A VARIANCE TO CONSTRUCT A FENCE WITHIN A STORMWATER POND AND DECLARING TERMS OF SAME.**

**RECITALS**

1. Brandon Sis (the “Permittee”) has properly applied for a Variance to construct a fence within a stormwater pond on the property legally described as:  
  
Lot 8, Block 3, Brookfield 2<sup>nd</sup> Addition, Anoka County, Minnesota  
  
(the “Subject Property”); and
2. The City of Ramsey received an application for a Variance on June 1, 2017.
3. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-53 (Variances) of the Ramsey City Code on July 6, 2017, and that said public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated by reference.
4. That the Subject Property is currently located in the R-1 Residential (MUSA) zoning district.
5. That the surrounding parcels are also zoned R-1 Residential (MUSA).
6. That the Subject Property is approximately 0.84 acres in size.
7. That the surrounding parcels range in size from approximately 0.27 acres to 0.90 acres.
8. That a large portion of the Subject Property has consists of a stormwater pond and overflow area (wetland) for the management of stormwater runoff.
9. That the Applicant applied for a Zoning Permit for the installation of a fence on the Subject Property in 2016.
10. That the Applicant has applied for a Variance to allow the placement of four (4) foot tall, black chain link fence around portions of the Subject Property.
11. That the City has requested a site visit by the Anoka Conservation District (ACD) Wetland Specialist and a representative from the Board of Water and Soil Resources (BWSR) to review and provide a determination on the status of the wetland.

## FINDINGS OF FACT

1. That the fence installation will/will not be unduly dangerous or detrimental to persons residing or working in the vicinity of the use, or to the public welfare.
2. That the fence installation will/will not substantially adversely impair the use, enjoyment or market value of any of the surrounding properties.
3. That the fence installation will/will not be maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will/will not change the essential character of the area.
4. That the fence installation will/will not be hazardous to existing or future neighboring uses.
5. That the fence installation will/will not impact essential public facilities and services, such as highways, streets, police and fire protection.
6. That the fence installation will/will not create excessive additional requirements at public cost for public facilities and services and will/will not be detrimental to the economic welfare of the community.
7. That the fence installation will/will not involve uses, activities and equipment that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

**NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA,** as follows:

That the Ramsey Planning Commission hereby grants a variance (the “Variance”) to allow the installation of a four (4) foot tall, chain link fence on the Subject Property with the following conditions:

## CONDITIONS

1. That this **Variance** shall be perpetual in its duration so long as the conditions imposed herein are complied with.
2. That the **Variance** shall allow the installation of a four (4) foot tall chain link fence on the **Subject Property** as shown in Exhibit A.
3. That the **Permittee** shall install gates in the fence with direction from the **City** to ensure access to the stormwater management area.
4. That the **Permittee** shall apply for and obtain a Zoning Permit for the fence installation and shall comply with all other applicable codes.

5. That this **Variance** shall be considered null and void if the use is not commenced by July 6, 2018 and issuance of a Zoning Permit shall constitute commencement.
6. That the **Permittee** shall be responsible for all City of Ramsey (the “City”) costs incurred in administering and enforcing this **Permit**.
7. The **City** shall have the right to inspect the premises for compliance and safety purposes annually or at any time, upon reasonable request. In the event the **Permittee** is determined to be in violation of any of the conditions set forth herein, the **City** shall give the **Permittee** written notice of the violation. The **Permittee** shall be given 30 days to correct the violation and submit a written response to the notice.

The motion for the adoption of the foregoing resolution as duly seconded by Commissioner \_\_\_\_\_, 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 Planning Commission this the 6<sup>th</sup> day of July, 2017.





Exhibit A



— Fence boundary