

**Brookens Administrative
Center**
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Urbana, Illinois 61802

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CASE 863-V-16

SUPPLEMENTAL MEMORANDUM #2
July 6, 2017

Petitioners: Scott Blakeney, Derek Wagner, and Tyler Wakefield

Request: Authorize the following Variance in the R-1 Single Family Residence Zoning District for an existing residence and existing garage and a proposed patio and a proposed detached shed and unauthorized earth fill, all located in an existing storm water drainage easement:

Part A. Authorize a variance from Section 4.2.2D. of the Champaign County Zoning Ordinance that no use shall be established, construction undertaken, nor fill placed in any recorded drainage or utility easement.

Part B. Authorize the following Variance from the Champaign County Storm Water Management and Erosion Control Ordinance:

- 1. Authorize a variance from Section 6.1 A. requiring that no fill shall be placed nor grade altered in such a manner to create a nuisance.**
- 2. Authorize a variance from Section 6.3 G. prohibiting the destruction or obstruction of the operation of a storm water drainage system or storm water storage area.**
- 3. Authorize a variance from Section 9.1 E. for a freeboard of 0 feet in lieu of a freeboard of one foot.**
- 4. Authorize a variance from Section 9.1 C.1. for a release rate for the 50-year precipitation event far in excess of the maximum otherwise allowed that would be no greater than the rate of discharge from a 5-year return period precipitation event and an assumed row crop agricultural land cover.**
- 5. Authorize a variance from Section 9.1 C.2. for a release rate for frequent storm events that exceeds the maximum otherwise allowed that would be no greater than the rate of discharge from 1-year, 2-year, and 5-year return period precipitation events and an assumed row crop agricultural land cover.**

Subject Property: Lot 100 in Rolling Hills Estates V Subdivision in Section 12, Township 20 North, Range 7 East of the Third Principal Meridian in Mahomet Township, and commonly known as the residence at 2312 Pheasant Ridge Road, Mahomet.

Site Area: 16,280 square feet (0.37 acre)

Time Schedule for Development: Existing and in use

Prepared by: Susan Burgstrom
Senior Planner

John Hall
Zoning Administrator

STATUS

At the April 27, 2017, ZBA meeting, the hearing for Case 863-V-16 was continued to the July 13, 2017, ZBA meeting.

An email from neighbors Kevin and Mary Schwenk was received on April 28, 2017 (see attachment). Mr. and Mrs. Schwenk are opposed to the variances requested for the subject property.

On May 1, 2017, Zoning Administrator John Hall sent an email to the State's Attorney's Office requesting an opinion about whether the ZBA had authority regarding Case 863-V-16. On May 9, 2017, P&Z Staff sent the petitioner a memorandum from Mr. Hall stating that according to the State's Attorney's Office, and pursuant to Zoning Ordinance Section 13.2.1 C.2., the Champaign County Zoning Board of Appeals has authority in Case 863-V-16.

On July 5, 2017, John Hall and Susan Burgstrom met with Mr. Blakeney's engineering consultant, Phoenix Consulting Engineers. Tom Overmyer and Michael Nickrent of Phoenix Consulting Engineers showed what work had been done since the last ZBA meeting, and discussed next steps. More information can be found below under "Proposed Regrading."

ESTABLISHING THE AUTHORITY OF THE ZONING BOARD OF APPEALS

Case 863-V-16 opened at the April 27, 2017, meeting of the Zoning Board of Appeals (ZBA). The ZBA continued the case to allow time for an interpretation regarding whether the ZBA had authority because of the violation of the *Nuisance Ordinance*. The ZBA's concerns were based on Section 9.1.9B.5. of the *Zoning Ordinance*, which prohibits a variance for any use or construction prohibited by Section 13.2.1. of the *Zoning Ordinance*.

Section 13.2.1.C.2. of the *Zoning Ordinance* Gives the ZBA Authority if the Nuisance is Corrected

Section 13.2.1 of the *Zoning Ordinance* requires that, among other requirements, no Zoning Use Permit or Variance shall be granted for construction that violates other relevant ordinances including the *Champaign County Public Nuisance Ordinance*.

However, Section 13.2.1 C.2. of the *Zoning Ordinance* authorizes the ZBA to approve a variance when there is an outstanding violation of the *Zoning Ordinance* or any other relevant ordinance or regulation when "the BOARD finds that granting a VARIANCE or SPECIAL USE Permit will facilitate correction of any non-*Zoning Ordinance* violations." Thus, any approval of the requested variance must facilitate correction of the relevant violation of the *Champaign County Public Nuisance Ordinance*.

As documented in the First Notice for Enforcement Case ZN-16-20/13, the subject variance involves a violation of Section 3.2M. of the *Champaign County Public Nuisance Ordinance* that states that the following is a public nuisance:

- M. Destruction or obstruction, by act or omission, of the operation of the following, when they are indicated on the approved engineering drawings for any recorded subdivision plat or other approved site plan:
 - 1. any drainage structure or feature that drains an area of more than five acres; or
 - 2. any stormwater detention facility.

Therefore, correcting the *Nuisance Ordinance* violation in Enforcement Case ZN-16-20/13 will require modification of the fill that was placed in the stormwater detention facility for Rolling Hills V Subdivision such that the operation of the stormwater detention facility will no longer be obstructed (or destructed).

Correcting the Nuisance Ordinance Violation

Section 4.0 of the *Champaign County Public Nuisance Ordinance* vests enforcement of that *Ordinance* in the Champaign County Zoning Administrator and the Champaign County Sheriff (to extent deemed warranted by the Sheriff) including the authority to render interpretations of the *Nuisance Ordinance*.

The *Champaign County Nuisance Ordinance* grants no authority to the Champaign County Zoning Board of Appeals.

In this instance, the Zoning Administrator has the authority to determine when the *Nuisance Ordinance* violation has been corrected.

In order to “no longer obstruct the operation of the stormwater detention facility,” the fill and other changes will have to be removed or modified so that the Rolling Hills Estates V Subdivision stormwater detention facility is brought back into compliance (or proposed to be brought back into compliance) with the original County Board approval, which is the detention basin requirement in the *Champaign County Storm Water Management and Erosion Control Ordinance*. The Zoning Administrator’s decision regarding correction of the *Nuisance Ordinance* violation will be documented in writing at the appropriate time.

At the current time, the *Nuisance Ordinance* violation has not been corrected and the original proposed variance will not facilitate correction of that violation.

Additional Finding of Fact Required for Approval by the ZBA

As stated above, the ZBA cannot approve the original proposed variance because the original proposal does not correct the violation of the *Nuisance Ordinance*.

The ZBA cannot approve a revised variance request until the Zoning Administrator has determined and documented in writing that the revised request will actually correct the violation of the *Nuisance Ordinance*.

Any approval by the ZBA of a revised variance request must include the following additional Finding of Fact in addition to the other Findings required by Section 9.1.9 D. of the Zoning Ordinance:

“The requested variance {SUBJECT TO THE PROPOSED CONDITIONS} WILL facilitate correction of the related violation of the *Champaign County Nuisance Ordinance* in related Case ZN-20/16-13 because:”

PROPOSED REGRADING

Tom Overmyer and Mike Nickrent of Phoenix Consulting Engineers presented a draft map of proposed revisions to the detention basin under two scenarios: 1) A Proposed Regrading to Mr. Blakeney's property (Lot 100); and 2) a Complete Detention Basin Regrading that included improvements to adjacent properties that also contain the detention basin (Lots 100, 89, 90, and 99) – see attached. The Proposed Regrading improvements would increase the storm water storage volume from the existing 0.10 acre-feet to 0.34 acre-feet at a water surface elevation of ± 726.5 feet, with the original detention basin designed to hold 0.4 acre-feet at an elevation of ± 726 feet. The Complete Detention Basin Regrading would increase basin storage volume from 0.10 acre-feet to 0.38 acre-feet, still below design volume.

A complicating factor is that the emergency overflow is on Lot 89, not Lot 100 (Blakeney property). Some of the complaints that have been received about flooding are from before Mr. Blakeney purchased his property. The engineers said they could create an exhibit showing what other areas of the basin would need to be regraded in order to prevent outflows from heading through the emergency overflow up to the 50-year event.

Phoenix Consulting questions if Mr. Blakeney should be held responsible for what has happened on other lots. Phoenix Consulting recommends establishing 2008 topography as the basis for determining the changes made by Mr. Blakeney instead of the 1993 Approved Plans. Phoenix Consulting believes that the Draft Revised Variance improvements would probably achieve 2008 conditions. It should be noted that proposed improvements would not change the output in cubic feet per second (cfs); rather, it would just re-establish the basin as much as possible.

Staff recommended that Phoenix Engineering provide the following analyses as soon as possible:

- Original design model run, using newly-provided cross-section information;
- 2008 conditions model run
- 2017 conditions model run
- Proposed Regrading model run (improvements to Blakeney property only)
- Complete Detention Basin Regrading model run (improvements to Blakeney property and adjacent properties)

Mr. Hall asked that with each model run that the engineers determine if each basin would accommodate the 50-year rainfall event without overflow, which is a requirement established in the Champaign County *Storm Water Management and Erosion Control Ordinance*. Phoenix Consulting agreed that if the analyses could not be provided in time for the July 13, 2017, public hearing, then the ZBA could decide to continue the hearing to another date.

ATTACHMENTS

- A Email from neighbors Kevin and Mary Schwenk received on April 28, 2017, with photos
- B Existing Conditions (Current Basin 50 Year Event) created by Phoenix Consulting Engineers, received July 6, 2017
- C Proposed Lot 100 Regrade created by Phoenix Consulting Engineers, received July 6, 2017
- D Proposed Complete Detention Basin Regrade created by Phoenix Consulting Engineers, received July 6, 2017

Susan Burgstrom

From: Kevin Schwenk <kevin@deansblueprint.com>
Sent: Friday, April 28, 2017 11:00 AM
To: John Hall; Susan Burgstrom
Subject: Re: Mahomet Drainage
Attachments: Photos of 2312 Pheasant Ridge.pdf

RECEIVED
APR 28 2017
CHAMPAIGN CO. P & Z DEPARTMENT

John & Susan,

Mary Schwenk here—as you know, Kevin is out of town, but I am sending this from his e-mail in order to keep the thread going.

I was disappointed at the deferment last night at the Zoning Appeals meeting; I kind of understand why, but I would like to stress that this situation continues to put all of our properties and homes in harms way and we really need an expeditious resolution.

I had a letter and pictures from the neighbor at 2311 Pheasant Ridge, Ashlee Vercler, showing and explaining her experience, which I was going to present. Attached are the pictures. Basically, after Blakeney filled in the retention basin and covered the lot with additional fill, first time it rained, the cul-de-sac flooded. Ashlee would not have been able to leave in her car if she wanted to. Blakeney arrived home before the rain stopped, and couldn't even get into his own driveway due to the amount of water! Shortly thereafter, someone shows up with a digger and begins moving the dirt. Immediately, the water begins to drain. Note that she has never experienced water issues before.

Another rain, and she does not discover the damage as she was not at home at the time, the water flooded her crawl space, shorting out her sump pump, thereby creating a mess. As she is in the process of selling her home, coming forward is detrimental to Ashlee, but she feels the need to make known the adverse affect he is creating in the neighborhood.

As a side-note, Mr. Williams, who lives out of state, owner of 2310 Pheasant Ridge, recently sold his property after two years of renting it out. So I'd say his support of Blakeney in the variance petition would be null and void. Guess Blakeney has been mowing the yard for him, so he won't have to do that any longer.

Considering this has festered for almost a year, we cringe every time there is a rain-fall. Anything you might be able to do in order for our case to be put on the top of the pile of someone's desk would certainly be appreciated.

Thank you.

Mary Schwenk

Kevin D. Schwenk, Pres.
Dean's Superior Blueprint, Inc.
404 E. University Ave.
Champaign, IL 61820

These first two photos are of the front of 2312 after one of the massive hauls of dirt and just prior to the biggest flooding. (My house is the property to the right as you are facing their home.)



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The next three images are from my front window after the rain stopped and it was clear the flooding was not going down. It did not appear to be receding at all...certainly not quickly enough to facilitate safely leaving my driveway (in my low to the ground Hyundai Sonata).



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These next three images were taken by me after the deep digging that was done to allow for draining of the cul de sac. I'm not at all sure how this is designed, but I had always been fascinated at how the rains drained all the years that I've been here. It seems it is right through this property.



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This is photo and the next one were taken by me after a lot of dirt hauling and leveling was done in the back yard behind 2312. I was not sure how or if this would affect me down the road, but I was afraid that it might.



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This last images are to illustrate the lines dilineated by the surveyor I had come help me. The orange flag is approximately just inside one of the bushes they planted.



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Looking straight back, it is possible to see the other orange flag that shows the back of my property.



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Finally, in this image, it is easiest to tell where the landscaping done by the Blakeney's impedes on my property. The entire front bush and half of the second bush back are on "my property". Of course, and as I understand it, technically, about ten feet in from the street is considered something called "right of way" and belongs to the village... You can tell throughout the neighborhood that no one else has built up any landscaping or other fencing all the way up to the street.



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DRAFT

Phoenix Consulting Engineers, Ltd.
 Professional Design Firm No. 184-005835
 421 E. Main Street • Mahomet, IL 61853
 Ph 217-586-1803 • Fax 217-586-6757



EXISTING CONDITIONS
 LOT 100
 ROLLING HILLS ESTATES V SUBDIVISION
 MAHOMET, CHAMPAIGN COUNTY, ILLINOIS

DRAWN BY: JMW DATE: 6/30/17
 DESIGNED BY: MGN DATE: 6/30/17
 APPROVED BY: TLD DATE: 6/30/17

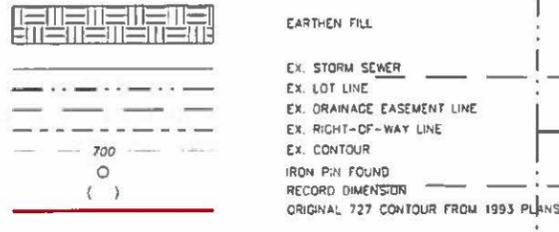
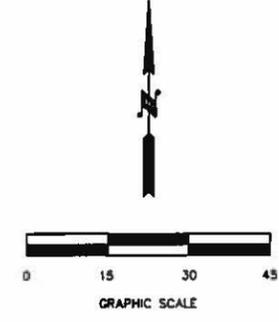
NO.	DATE	BY	DESCRIPTION

PROJECT NO.
 16SUR074

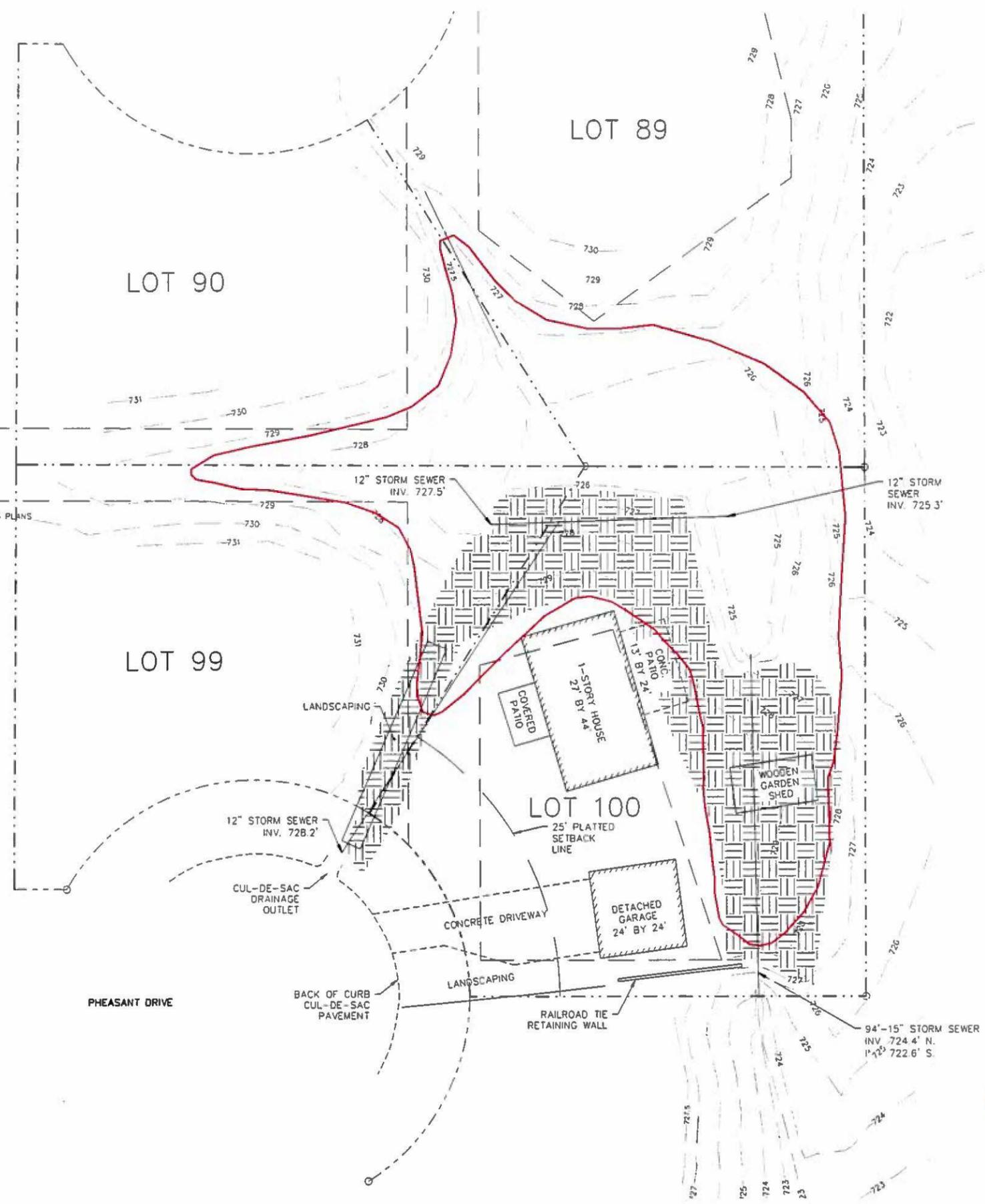
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 SHEET 1 OF 1

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 JUL 06 2017

CHAMPAIGN CO. F & Z DEPARTMENT



NOTES
 RIGHT-OF-WAY AND PROPERTY LINES SHOWN ARE APPROXIMATE AND NOT BASED ON A BOUNDARY SURVEY.
 ELEVATIONS ARE BASED UPON NAVD 88.
 CONTOURS SHOWN ARE BASED UPON FIELD SURVEY COMPLETED IN JUNE 2016.
 TOTAL AREA OF LOT 100 = 16,280 SQUARE FEET ±



Current Basin - 50 Year Event	
Storage Volume	0.10 acre-ft
Maximum Discharge (outlet pipe)	7.10 cfs
Maximum Discharge (overflow)	15.15 cfs
Hydraulic Grade (Max.)	726.53 ft

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JUL 06 2017

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Phoenix Consulting Engineers, Ltd.
Professional Design Firm No. 184-005835
421 E. Main Street • Mahomet, IL 61853
Ph 217-586-1803 • Fax 217-586-6757



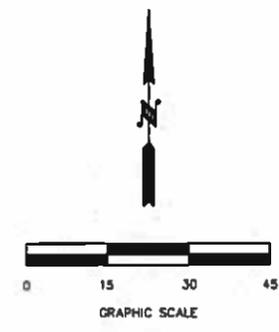
LOT 100 REGRADE
LOT 100
ROLLING HILLS ESTATES V SUBDIVISION
MAHOMET, CHAMPAIGN COUNTY, ILLINOIS

DRAWN BY: JOW DATE: 6/30/17
DESIGN BY: MLN DATE: 6/30/17
APPROV BY: TLD DATE: 6/30/17

NO.	DATE	BY	DESCRIPTION

PROJECT NO.
16SUR074

1
SHEET 1 OF 1



- EARTHEN FILL
- PROP. STORM SEWER
- EX. STORM SEWER
- EX. LOT LINE
- EX. DRAINAGE EASEMENT LINE
- ORIGINAL 727 CONTOUR FROM 1993 PLANS
- EX. RIGHT-OF-WAY LINE
- EX. CONTOUR
- IRON PIN FOUND
- RECORD DIMENSION

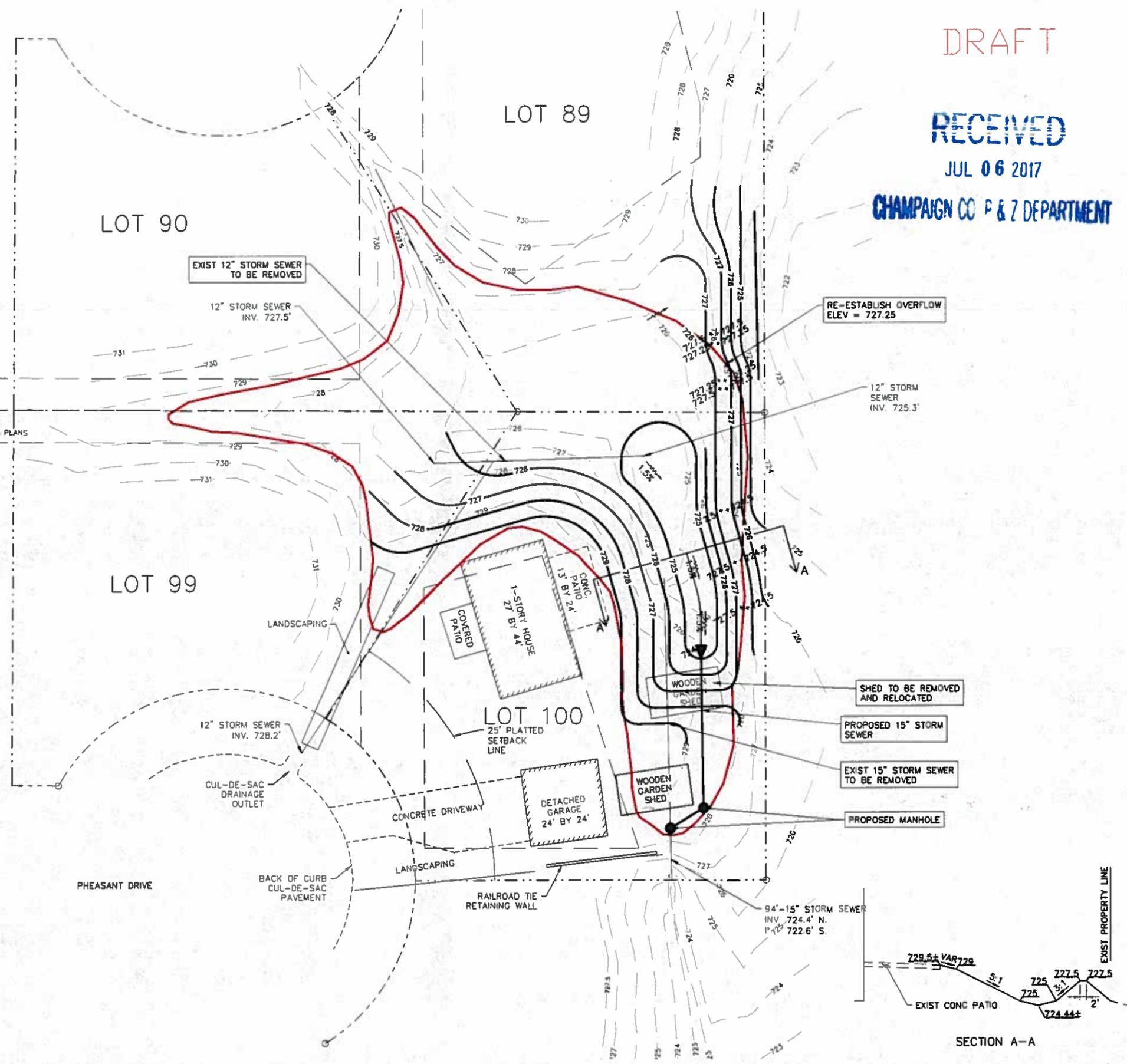
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CONTOURS SHOWN ARE BASED UPON FIELD SURVEY COMPLETED IN JUNE 2016.

TOTAL AREA OF LOT 100 = 16,280 SQUARE FEET ±



Lot 100 Regrade - Proposed Basin - 50 Year Event	
Storage Volume	0.34 acre-ft
Maximum Discharge (outlet pipe)	9.59 cfs
Maximum Discharge (overflow)	5.36 cfs
Hydraulic Grade (Max.)	727.51 ft

