

Special Meeting

July 30, 2012

Mayor Tammy Konz opened the Variance Hearing for Kim-Built Propane at 7:00pm

Pledge of Allegiance recited

Council members present: Tammy Konz, Paula Capes, Joe Krippner and Eric Loewen; Nate Osmundson absent

Others present: Scott Qualle, Tom Jovanovich, Jason Mehr, Jim Frilstad, Shawn Huiuko, Lynne Orbeck, Dustin Orbeck, Paul DeGree, Derek Orbeck, Ken Schmidt, DuWayne Orbeck, Tim Ellis, David Unterberger, John Steinmetz, Jeff Orbeck, Jody Orbeck and Donn Driver

Dustin Orbeck spoke on behalf of the applicant, Kim-Built Propane, Inc. Mr. Orbeck discussed other variances provided within the City. Mr. Orbeck also questioned why the building permit was being denied when the City Council had approved the tanks pursuant to the conditional use permit. Mr. Orbeck failed to mention that the conditional use permit placed a condition on the grant of the CUP that the proposed plans meet the Minnesota State Building and Fire Code and the Minnesota State Fire Marshal for the construction, installation, and maintenance of the above-ground fuel storage tanks.

No information was supplied by the applicant which addressed the issue as to why the variance request was in substantial compliance with the State Fire Code or why the safety of the public and building occupants would not be jeopardized. The applicant did not provide any information which would support the circumstances needed to justify a variance under the Kimball Zoning Code, Section 1020.01.

Scott Qualle from MNSPECT also addressed the Council. Mr. Qualle pointed out that the application for the variance is for consumer use and not bulk storage. He explained that the conditional use permit was granted subject to compliance with the State Fire Code and State Fire Marshal's Office. He explained that the conditional use permit was based on land use considerations and there was no review of the plan based on the Fire Code. The CUP required the final design be conditioned upon meeting the State Fire Code. He explained that Kim-Built Propane, Inc. proceeded with the project without a design professional designing the project so it would meet the State Fire Code. He explained that Kim-Built Propane, Inc. started the project without first applying for all the appropriate permits. He stated that the burden was on the applicant that the applicant has met all provisions of the Fire Code. He stated that there is no evidence to show that the applicant has met the Fire Code. He explained that there have been three stop orders issued to the applicant. In spite of the stop orders, the applicant has continued with the project. He explained that the applicant has submitted no design alternatives or options which show that it meets the State Fire Code. He stated that there is a safety problem and substantial non-compliance with the Fire Code. Under the current plans, the public would be dispensing fuel from the tanks. Additionally, the tanks are 2½ times the amount of fuel allowed for such use.

City Attorney Tom Jovanovich introduced Exhibits A – G into the record (attached).

Mayor Konz opened the public comment period and read aloud a letter in support of the variance from Dennis Libbesmeier (Exhibit G). The following individuals spoke at the public hearing in support of the variance: Jeff Orbeck, Jody Orbeck, DuWayne Orbeck, Paul Degree and Derek Orbeck. The comments were wide ranging and were critical of the City Council for not supporting businesses within the City and comments that denial of the variance would not create jobs. The Council was accused of stupidity. The comments by the public did not provide any information as to why the variance request was in substantial compliance with the Fire Code or why the safety of the public and building occupants would not be jeopardized. The comments did not provide any information which would support the circumstances needed to justify a variance under the Kimball Zoning Code, Section 1020.01.

Mayor Konz closed the public comment period at 7:50pm.

Councilmembers discussed the variance request.

Motion made by Joe Krippner and seconded by Paula Capes that the request for the variance is hereby referred to the State Fire Marshal for consideration as to whether to grant or deny the variance; motion carried

Those voting in favor: Tammy Konz, Paula Capes, Joe Krippner and Eric Loewen

Those voting against: none

Those absent: Nate Osmundson

Motion made by Eric Loewen and seconded by Paula Capes to adjourn at 8:06pm; motion carried
Councilmember Nate Osmundson absent

Respectfully submitted by Nicole Pilarski

16
R.B.B.

EXHIBIT

A

OFFICE OF COUNTY RECORDER
STEARNS COUNTY, MINNESOTA

Document: A1360377

Certified, Filed, and/or Recorded on

January 23, 2012 10:12 AM

DIANE GRUNDHOEFER
STEARNS COUNTY RECORDER



CONDITIONAL USE PERMIT NO. 01172012

State of Minnesota
County of Stearns
City of Kimball

Date of Document: January 17, 2012

WHEREAS, the City of Kimball has received application for a Conditional Use Permit from **Kim-Built Propane**, the owner of real property legally described as: **Lot 3, Block 001, Subdivision Maus Addition PID# 60.34433.0000**

Accompanied by a certificate from Stearns County Auditor showing all names and addresses of property owners' within 350 feet of the outer boundaries of property in question, a boundary survey and preliminary building and site plan development plan prepared by a registered land surveyor, and the appropriate fee; and

WHEREAS, said real property lies within the City of Kimball, is subject to the Kimball Zoning Ordinance, and lies in a district zoned Highway Commercial B-1; and

WHEREAS, notice of the application for Conditional Use Permit and of the public hearing thereon was mailed by the Zoning Administrator to all property owners listed on the certificate from Stearns County Auditor; and

WHEREAS, notice of the public hearing was published in the Tri-County News at least once, not less than 10 days nor more than 30 days prior to public hearing; and

WHEREAS, the City Council has reviewed the application and accompanying materials, and held a public hearing to receive public comment on the proposed Conditional Use Permit, on Tuesday, January 17, 2012 at 7:00 PM; and

WHEREAS, the City Council finds that:

- (1) The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area.
- (2) The use will be sufficiently compatible with, or sufficiently separated by distance or screening from, adjacent residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
- (3) The structure and site will have an appearance that will not have an adverse effect upon adjacent residential properties.

1/17/12 to add exhibit

SEP 1 10 2

(4) The use, in the opinion of the City Council, is reasonably related to the overall needs of the City and to the existing land use.

(5) The use is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the applicant intends to locate the proposed use.

(6) The use is not in conflict with the Comprehensive Plan of the City, nor with any other law or ordinance.

(7) The use will not cause traffic hazards or congestion.

(8) Adequate utilities, access roads, drainage and necessary facilities have been or will be provided.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KIMBALL AS FOLLOWS:

1. A Conditional Use Permit is granted to KIM-BUILT PROPANE of Kimball, Minnesota.
2. This Conditional Use permit applies to real property legally described as:
Lot #3, Block 001, Subdivision: Maus Addition - PID #60.34433.0000
3. The conditional use which is permitted upon the above described real estate is limited to the following uses:
Construction, installation & maintenance of 8 above ground bulk fuel storage tanks sizes: (4) 20,000, (3) 12,000, (1) 6,000.
4. No expansion or change of the existing use or of any permitted conditional use shall occur without the prior expressed written consent of the Kimball City Council. A violation of this provision shall be considered grounds for immediate revocation of the Conditional Use Permit.
5. This Conditional Use Permit is subject to revocation upon any of the following occurrences:
 - A. At the end of 6 months from the date of issuance, if no work on the above described conditional use commences within 6 months of the date of issuance;
 - B. The violation by the applicant or any subsequent owner of the above-described real property of any of the conditions of the Conditional Use Permit as described herein; or
 - C. At the expiration of the duration of this Conditional Use Permit, if an expiration date is provided herein.
6. This Conditional Use Permit is granted subject to the following additional conditions, violation of any of which should be considered grounds for immediate revocation of the permit:
7.
 - A. Must follow all provisions of the Minnesota Pollution Control Agency, Minnesota State Building & Fire Code, Minnesota Department of Labor and Industry and the Minnesota State Fire Marshall for the construction, installation, and maintenance of the above ground fuel storage tanks.



Neslee Arnold
ZONING ADMINISTRATOR
Nicole Kilanski
CITY CLERK
1/20/2012
DATE

EXHIBIT

B

February 22, 2012

Jeff Orbeck
Kim-Built Propane
P.O. Box 53
Kimball, MN 55353

Hi Jeff,

I'm trying to clarify exactly what we're dealing with so, I've written up what I believe to be an accurate synopsis of the proposed project. Take a look and feel free to correct anything I've got wrong.

Re: Proposed installation of Flammable / Combustible Liquid Above Ground Storage Tanks (AST's); secondary containment for AST's; and piping to proposed dispenser (pump) locations.

The project as I currently understand it:

The applicant; Jeff Orbeck, Kim-Built Propane is proposing a business expansion including the dispensing of liquid fuel to the public through dispensers (pumps) to be located on his property. Proposed bulk liquid fuel storage for these pumps is to be in 9 above ground, single wall, UL 142 listed, unprotected steel tanks. The proposed capacity of these tanks being:

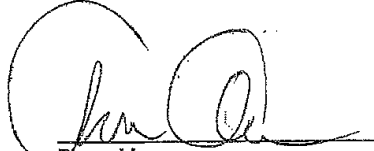
- 4 tanks @ 20,000 gallon ea.
- 4 tanks @ 12,000 gallon ea.
- 1 tank @ 6,000 gallon
- Aggregate capacity of all tanks = 134,000 gallons

The tanks are proposed to be installed inside a single, non-separated, concrete containment dike located 30 feet from 135th street and an unknown distance (from sketch, appears to be around 30 feet) to two 30,000 gallon liquefied petroleum vessels. The containment area is calculated to contain approximately 46,884 gallons. The proposed location of the LPG dispenser for the two 30,000 gallon vessels is to be (again, with no dimension on the sketch) approximately 3-4 feet from the containment dike wall.

Piping to the fuel dispensing islands will be underground.

You have contacted and received documented approval from the Minnesota Pollution Control Agency and from the local Fire Chief, John Gohmann.

I hope I've caught everything. If this is an accurate description of the storage tank project, please sign and fax this back to me and I will use this as the scope of work for reviewing the project and hopefully get this back on track.



Dean Mau

Jeff Orbeck

EXHIBIT

CITY OF KIMBALL

1 MAIN STREET N.
P. O. BOX 238
KIMBALL, MN. 55353
Phone: 320-398-2725
Fax: 320-398-2720
cityofkimball@metel.net

March 5, 2012

Jeff Orbeck
Kim-Built Propane
P.O. Box 53
Kimball, MN 55353

Re: Flammable / Combustible Liquid Above Ground Storage Tanks

Dear Jeff;

The information on the plans is sketchy at best. I am therefore, going to specify exactly what is required by code, for what I perceive to be the project. This review is for the installation of the above ground flammable and combustible liquids storage tanks only.

For the purposes of clarification; the following are definitions as related to this project:

- Gasoline: Class IB Flammable Liquid
- Ethanol: Class IB Flammable Liquid
- Diesel Fuel: Class II Combustible Liquid
- Bio-diesel: Class II Combustible Liquid (assumed)
- Fuel Oil (heating fuel): Class II/IIIA Combustible Liquid

The following is a list of correspondence which has led to my perception of the scope of your project:

1. 2/16/2012: Telephone conversation with Jeff.
2. 2/17/2012: Telephone conversation with Jeff.
3. 2/21/2012: Telephone conversation with Jeff.
4. 2/21/2012: Fax from Jeff; letter from Petroleum Equipment Company dated 2/17/2012
5. 2/21/2012: Fax from Jeff; letter of approval by Kimball Fire Chief, John Gohmann, no date.
6. 2/22/2012: Sent (faxed) Jeff a letter regarding trying to clarify scope of project. Asked Jeff to sign the letter (as a scope of work) and fax it back.
7. 2/22/2012: Jeff faxed a four line response to my request for a signed scope of work. The four lines stated the following:
 - "Bulk fuel plant piping and containment dike \$20,000.00
 - Pump island footings and piping \$50,000.00
 - The 2-30,000 gallon LP tanks are 16+ feet from the containment pit wall.
 - Two of the 12,000 gallon fuel tanks have not yet been purchased.
8. 2/22/2012: Faxed it back to Jeff and said I needed a signed scope.
9. 3/1/2012: Called Jeff, told him I had not received a signed scope yet.
10. 3/1/2012: Received signed letter (scope) back from Jeff.

Scope of the project:

The applicant; Jeff Orbeck, Kim-Built Propane is proposing a business expansion including the dispensing of liquid fuel to the public through dispensers (pumps) to be located on his property. Proposed bulk liquid fuel storage for these pumps is to be:

1. In 9 above ground
 - a. Single wall, UL 142 listed; unprotected steel tanks.
2. The proposed capacity of these tanks being:
 - a. 4 tanks @ 20,000 gallon ea.
 - b. 4 tanks @ 12,000 gallon ea.
 - c. 1 tank @ 6,000 gallon
 - d. Aggregate capacity of all tanks = 134,000 gallons
3. The tanks are proposed to be installed inside a single, non-separated, concrete containment dike
 - a. located 30 feet from 135th street and
 - b. "16+ feet" from two 30,000 gallon liquefied petroleum vessels.
 - c. The containment area is calculated to contain approximately 46,884 gallons.
4. The proposed location of the LPG dispenser for the two 30,000 gallon vessels is to be approximately 4 feet from the containment dike wall.

Code comments:

The following comments related to and referencing the numbers and letters above, are based on current (2007) Minnesota State Fire Code (MSFC); NFPA 30 and NFPA 58 as referenced by current state code; Conditional Use Permit (CUP) No. 01172012 as granted by the City Of Kimball; a letter from City Attorney Thomas G. Jovanovich dated 2/23/1012; and the Minnesota State Fire Marshal, "Above Ground Storage Tank Plan Review Information Sheet." (AST plan review sheet).

1. "In 9 above ground...": CUP No. 01172012, dated January 17, 2012 allows for only 8 tanks: 4 – 20,000 gallon, 3 – 12,000 gallon, and 1 – 6,000 gallon tank. (City attorney letter)
 1. a. "... single wall, UL 142 listed; unprotected steel tanks: *"UL Standard 142 is a plain single-wall steel tank."* (AST plan review sheet, section 2.1)

2. The proposed capacity of these tanks being:

- a. 4 tanks @ 20,000 gallon ea.
- b. 4 tanks @ 12,000 gallon ea.
- c. 1 tank @ 6,000 gallon
- d. Aggregate capacity of all tanks = 134,000 gallons

"Tanks containing fuels (Class I, II, or IIIA liquid motor fuels) shall not exceed 12,000 gallons in individual capacity or 48,000 gallons in aggregate capacity." (MSFC section 2206.2.3 [3])

3. The tanks are proposed to be installed inside a single, non-separated, concrete containment dike.

"Installations with the maximum allowable aggregate capacity (48,000 gallons) shall be separated from other such installations by not less than 100 feet." (MSFC section 2206.2.3 [3])

3.a. located 30 feet from 135th street and

Tank location: "..... minimum distance from nearest side of a public way..... 50 feet. (MSFC table 2206.2.3)

3.b. "16+ feet" from two 30,000 gallon liquefied petroleum vessels.

"The minimum horizontal separation distance between an LP gas container and a class I, II, or IIIA liquid storage tank shall be 20 feet"

"..... LP gas containers shall be outside the diked area and at least 10 feet away from the centerline of the wall of the diked area." (MSFC section 3404.2.9.5.3)

3.c. The containment area is calculated to contain approximately 46,884 gallons

"Secondary containment shall be designed to contain a spill from the largest individual vessel." (MSFC section 2704.2.2.4)

4. The proposed location of the LPG dispenser for the two 30,000 gallon vessels is to be approximately 4 feet from the containment dike wall.

Dispensing devices for conventional LP gas systems "shall be at least 10 feet from any dispensing device for class I liquids" (NFPA 58, section 6.24.4.3 [1])

This section addresses only dispensing devices for class I liquids, not the storage tanks.

Additional information that may be helpful:

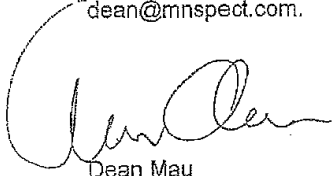
1. Minimum distance from nearest important building on the same property:
50 feet (MSFC table 2206.2.3)
2. Minimum distance from nearest fuel dispenser:
50 feet (MSFC table 2206.2.3)
3. Minimum distance from lot line.....
100 feet (MSFC table 2206.2.3)
4. Minimum distance between tanks:
3 feet (MSFC table 2206.2.3)
5. Overfill protection:
Required (MSFC sections 2206.6.2.3, 3404.2.7.5.8 and 3404.2.9.6.6)
6. Siphon prevention:
Required (MSFC section 2206.6.2.4)
7. Third party engineer inspection:
Please provide documentation of "third party engineer" inspection of the tanks.

Compliance with the above listed provisions will be required prior to issuance of a "Certificate of Occupancy" as required by Minnesota Rules, section 1300.0220, and "compliance with orders and notices" pursuant to Minnesota Rules Chapter 7511 (Minnesota State Fire Code) section 109.2.2.

The proposed motor vehicle refueling station cannot be permitted or operated under the currently proposed plan.

You have the right to appeal the findings of this review to the Minnesota State Fire Marshall per MSFC section 108.1.

If you have questions regarding this letter, I can be reached at (952)442-7520 or at dean@mnspect.com.



Dean Mau
Fire and Commercial Plans Examiner

cc: City file

EXHIBIT

CITY OF KIMBALL

PO BOX 238 - 1 Main Street N Kimball, MN 55353

Application for Conditional Use Permit or Variance

TYPE OF REQUEST CONDITIONAL USE PERMIT VARIANCE

Date Received: 7/11/12

Date: 7-11-12

Address of Subject Property: 221 Maws Dr Kimball MN 55353

Name of Business: Kim-Built Propane Inc.

Legal Description of Property: Lot: 003 Block: 001 Plat #: _____

PID#: 60.34433.0000 Subdivision: 60004

Owner:

Name: Jeff Orbeck Address: 10472 State Highway 55

City: Kimball State: MN Zip: 55353

Phone: 320-398-7872 Cell: 320-980-4237

Description of Request: See Attached Page

Effects of Proposed Use: List impacts the proposed use will have on property in the vicinity, including but not limited to traffic, noise, light, smoke/odor, parking, and describe the steps taken to mitigate or eliminate impacts: See Attached Page

Required Exhibits with application. The following exhibits shall be required and submitted with application unless waived by the Planning Commission.

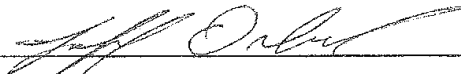
- (1) A certificate prepared by the Stearns County Auditor or by a registered Abstractor showing all property owners' names and addresses within three hundred fifty feet of the outer boundaries of the property in question, and
- (2) A boundary survey and preliminary building and site development plan prepared by a Registered Land Surveyor.

Fees:

Conditional Use Permit & Variance Filing Fee: \$150 (per hearing)

Stearns County Recording Fee: \$46 - make check payable to Stearns County Recorder

The board of Zoning Appeals may revoke a granted conditional use permit or variance if any conditions established by the board as part of granting the request are violated.

Signature of Applicant(s): 

Date: 7-11-12

Office Use Only

Date Received: 7/11/12
Filing Fee: \$ 150 Check/Receipt # 7074
County Recording Fee: \$ 40 Check/Receipt # 7075

Required Exhibits Collected:

- List of property owners with in 350 ft. of property in question collected from Stearns County Auditor
- Boundary survey & preliminary building and site development plan prepared by a registered Land Surveyor

Date of Hearing: _____

Date of Hearing Published: _____

Date of Noticed mailed to property owners: _____

Conditional Use Permit: _____ Approval _____ Denied Date: _____

Variance: _____ Approval _____ Denied Date: _____

Conditions:

Kim-Built Propane Inc.
221 Maus DR
PO Box 53
Kimball MN 55353

Description of request:

We were given CUP # 01172012 for 4-20,000 gallon tanks, 3-12,000 gallon tanks, and 1-6,000 gallon tank. The fire code reads you cannot exceed 12,000 gallons for any individual container so we are in need of a variance for an additional 8,000 gallons of storage per container for our 4- 20,000 gallon tanks.

135th Street is located on the North side of are property which 15.5 feet of the black top of the road is our property which we gave the city an easement for and we are 14 feet short of making the 50' set back. So we are in need of a variance to be 36 feet from the edge of the road.

48,000 gallon aggregate storage capacity is the maximum allowable storage capacity after we had received CUP # 01172012 which was allowed to have 4-20,000 gallon tanks, 3-12,000 gallon tanks, and 1-6,000 gallon tank which would be 122,000 gallon aggregate capacity which goes over what you are now allowing us to have. So we would need a variance to allow us to store an additional 74,000 gallons of storage. But we would be willing to go without 1-12,000 gallon tank dropping the variance down to 62,000 gallons extra aggregate capacity bringing the total up to 110,000 aggregate gallons.

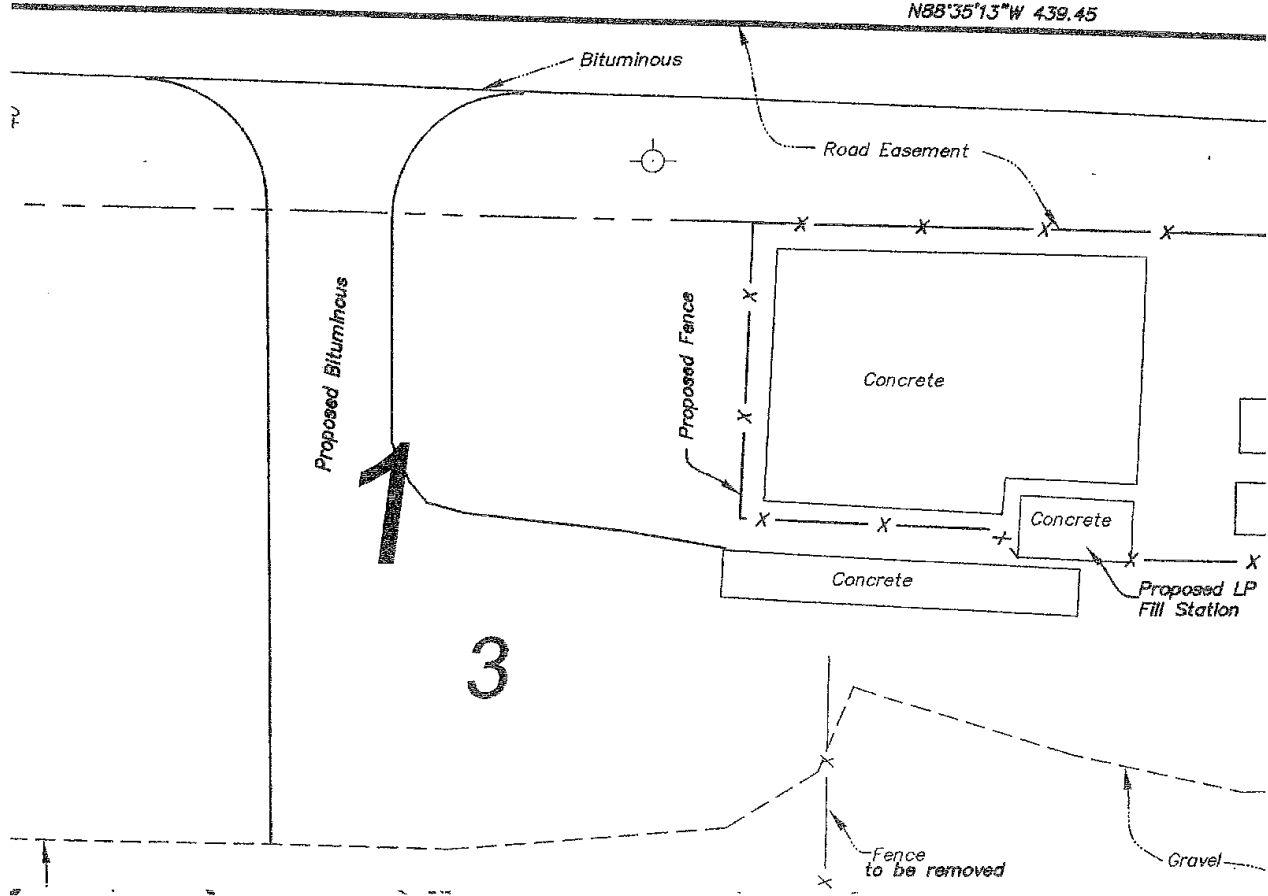
Effects of Proposed use:

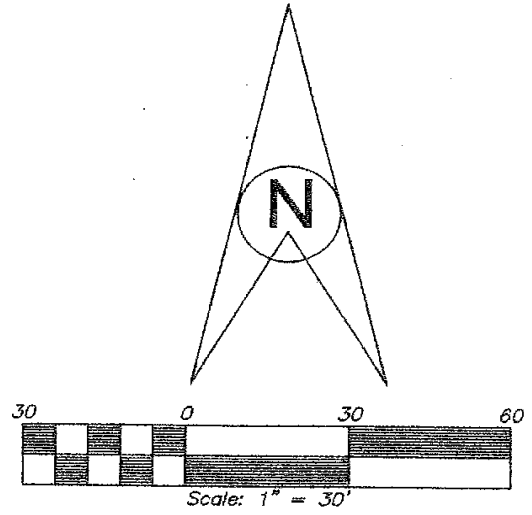
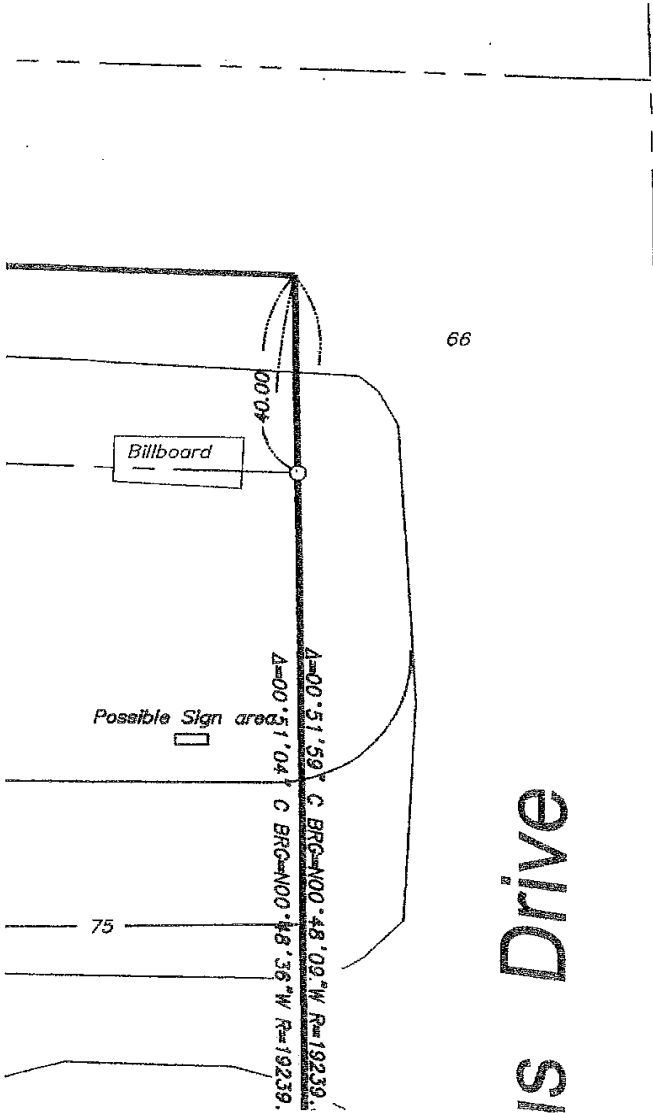
One effect this could have is if a car went in the ditch towards the tanks could be a hazard. So to eliminate the possibility of a car or truck to reach the tanks we put a 4' tall and 11" thick concrete wall with rebar every 2' vertically and 1' horizontally which the code reads 1' high and 6" thick concrete wall to contain the spill but we went above and beyond to take every precaution possible to insure safety to life and property surrounding Kim-Built Propane Inc. Another effect is if there was a leak can we contain it. The code reads it has to contain the largest tank and we could hold 46,884 gallons so we could hold 2 of our largest tanks.

Site Plan

135th Street

$N88^{\circ}35'13''W$ 439.45

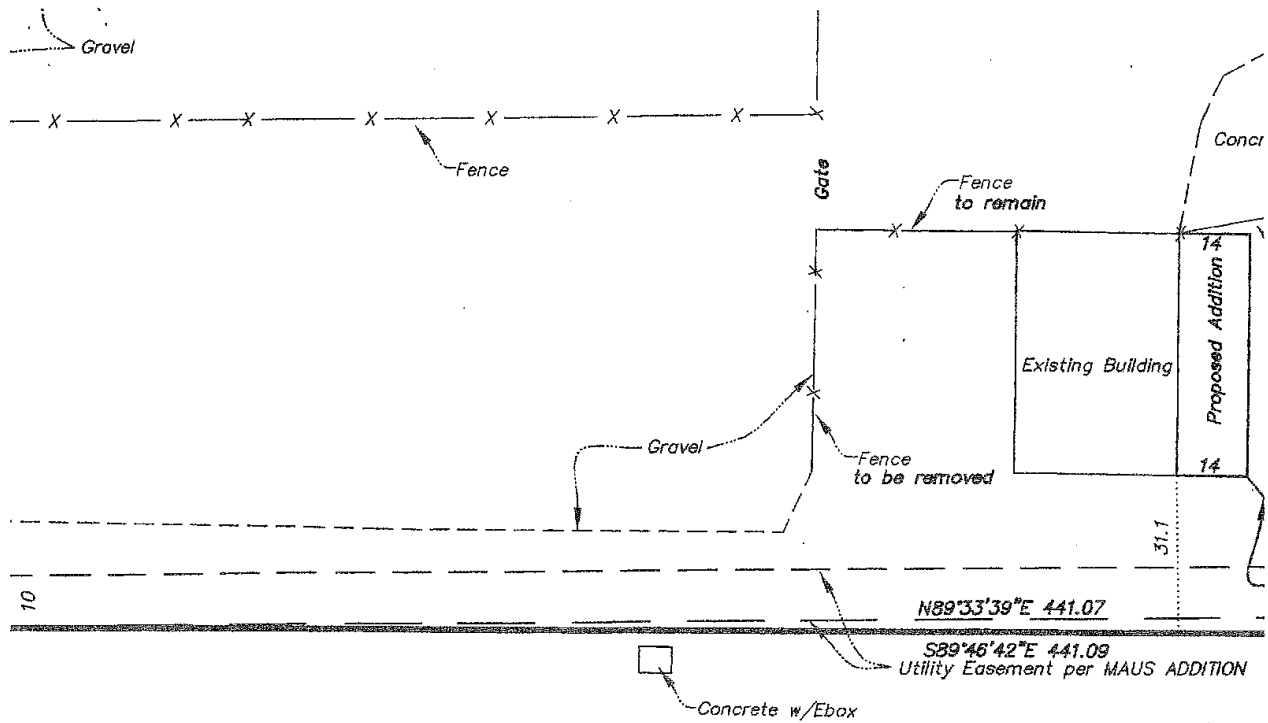




AREA = 2.99 Acres

IS Drive

Highway No 15



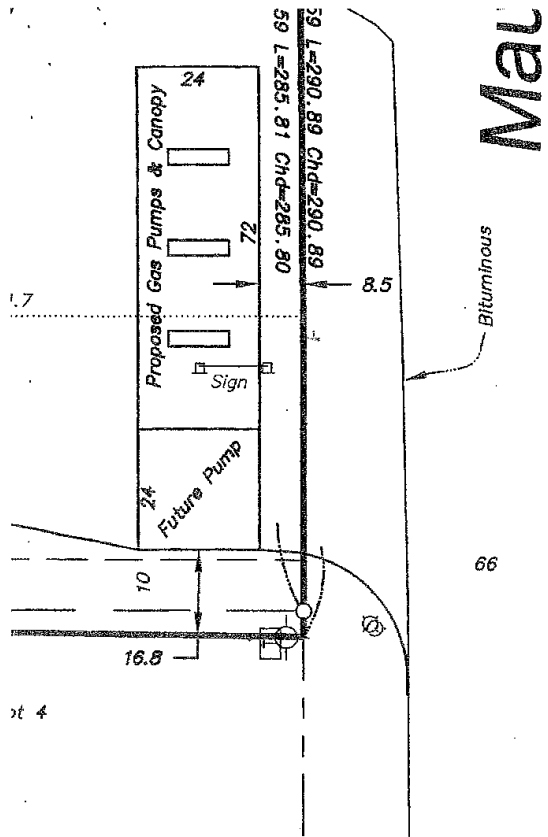
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PROPERTY DESCRIPTION:

Lot 3, Block 1, MAUS ADDITION, Stearns County, Minnesota, according to the recorded plat the
 AND
 That part of Lot 4, Block 1, MAUS ADDITION, Stearns County, Minnesota, according to the record
 thereof that lies North of a line described as follows:
 Beginning at the Northwest corner of said Lot 4, thence on a bearing of South 89°46'42" East
 the North Line of said Lot 4 bears South 89°33'39" East to the east line of said Lot 4 and s
 terminating.

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+

rd 343 362 e	Site Plan on Lot 3, Block 1, MAUS ADDITION, Stearns County, Minnesota	Requested By:		
		<h1>Jeff Olbec</h1>		
		Date:	Drawn By:	Scale:
		12/20/11	PEO	1" =

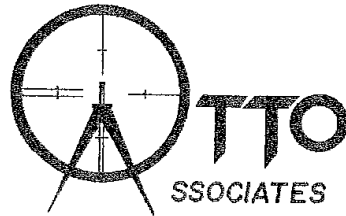


-  denotes Hydrant
-  denotes Telephone box
-  denotes power pole
-  denotes light pole

that this survey,
 was prepared by me
 under direct supervision and
 control of a duly Licensed Land
 Surveyor in the laws of the
 State of Minnesota.

Otto

License # 40062



Engineers & Land Surveyors, Inc.

www.ottoassociates.com

9 West Division Street
 Buffalo, MN 55313
 (763)682-4727
 Fax: (763)682-3522

Revised:

Job No.

1-11-0265

Certificate

135th Street

$N88^{\circ}35'13''W$ 439.45

Bituminous

Road Easement

Concrete

Concrete

Concrete

Fence

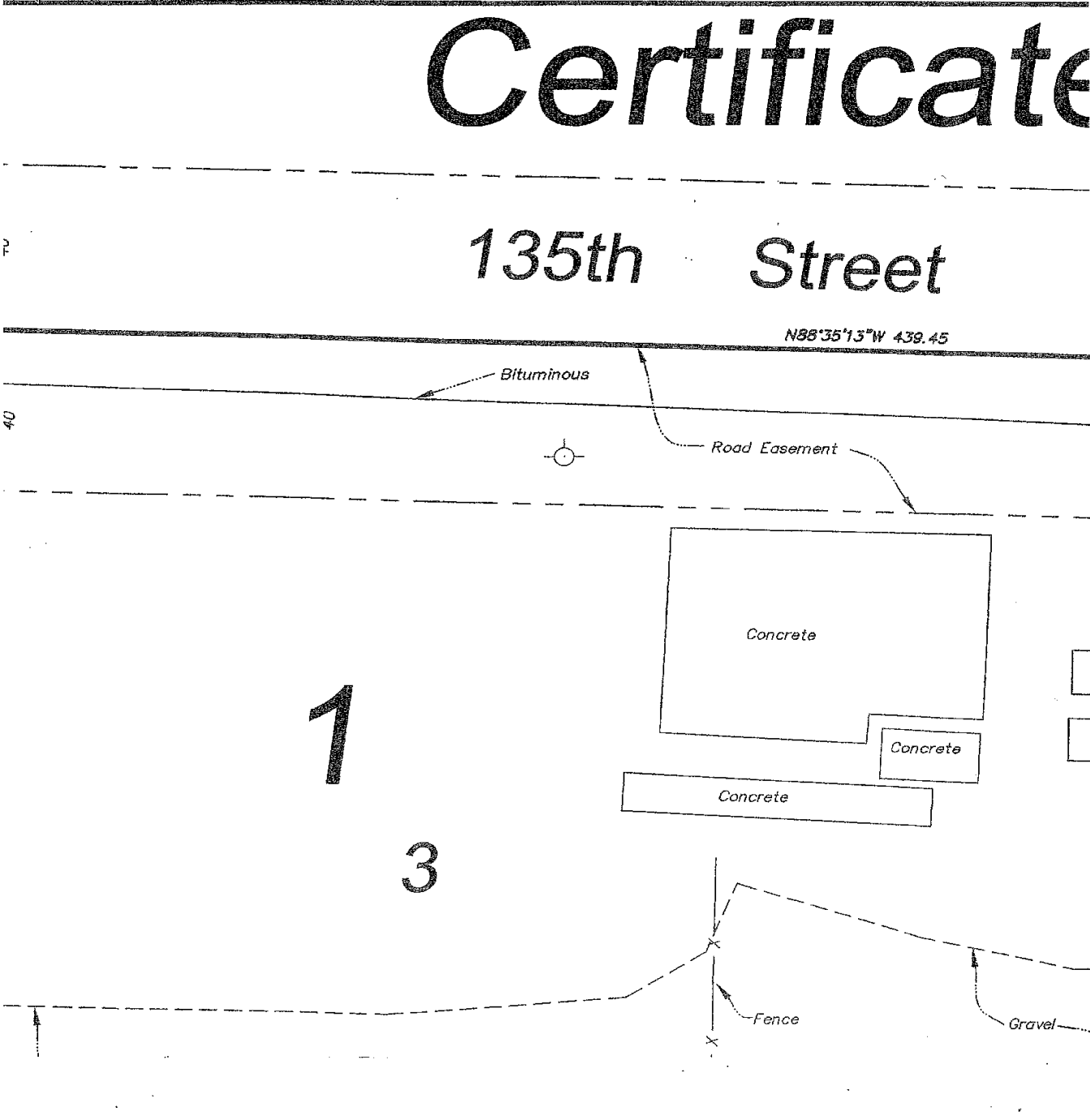
Gravel

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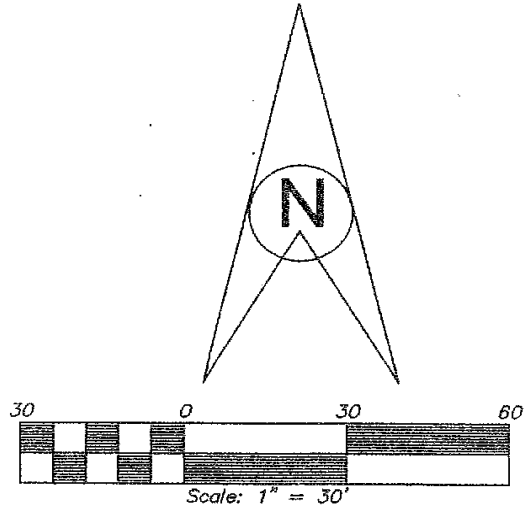
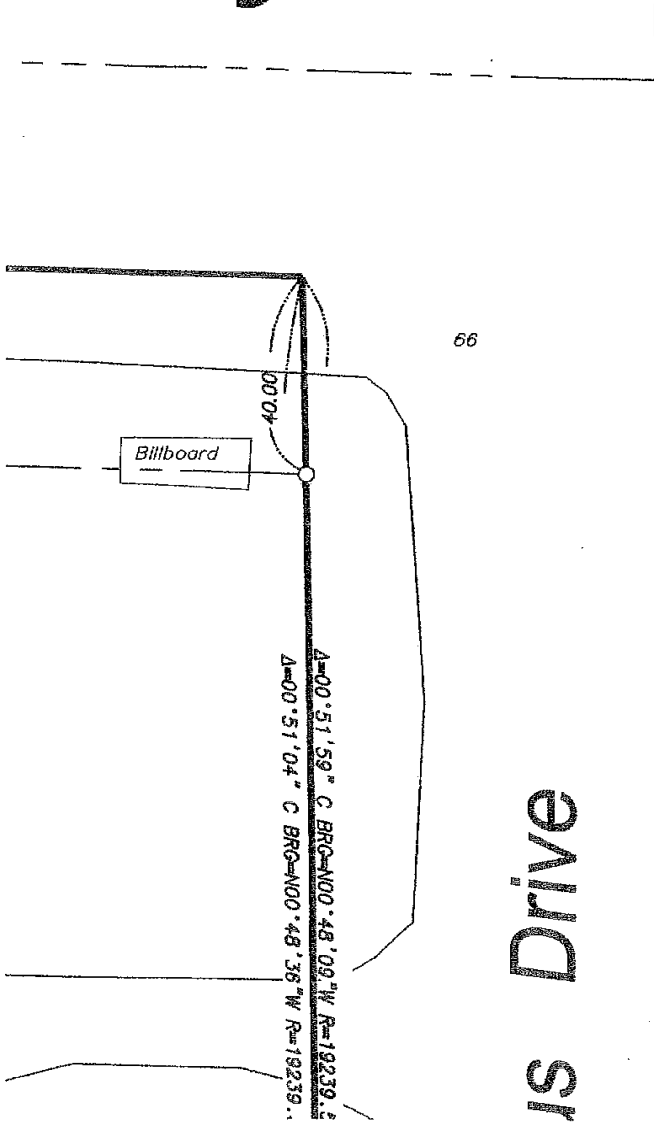
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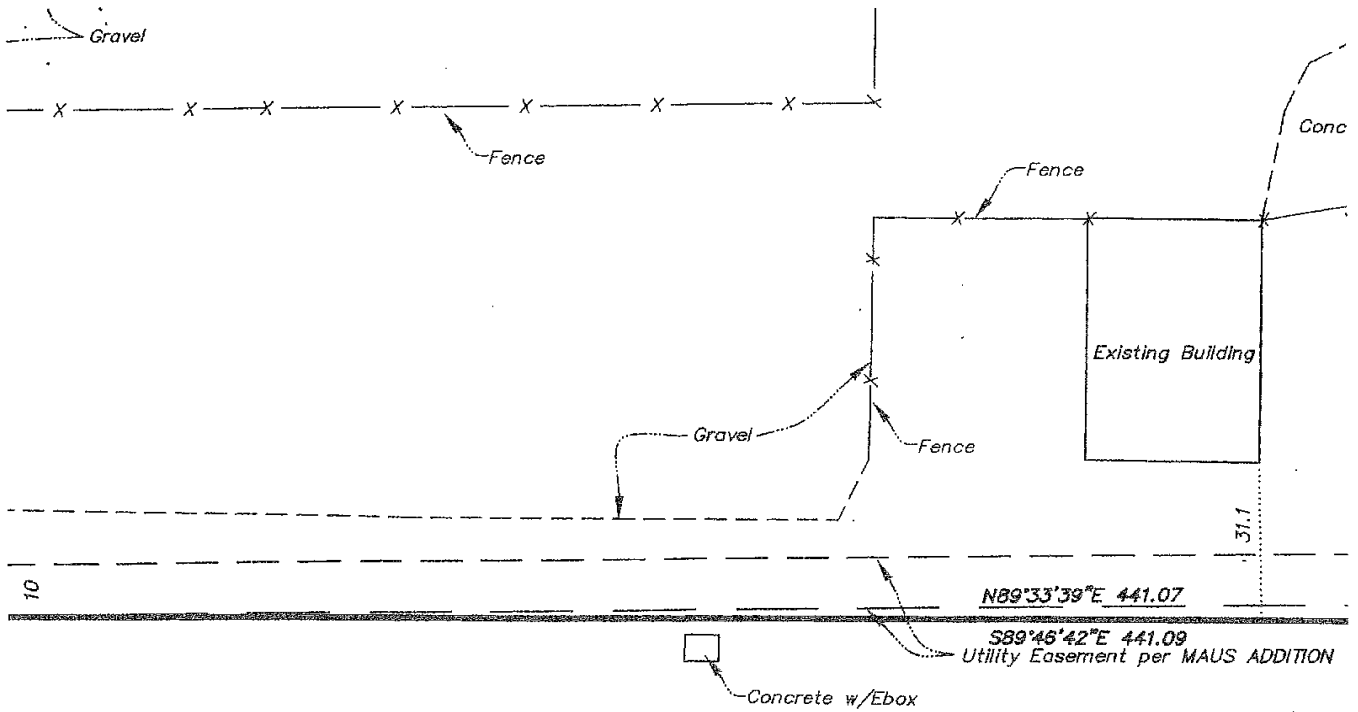


vey



AREA = 2.99 Acres

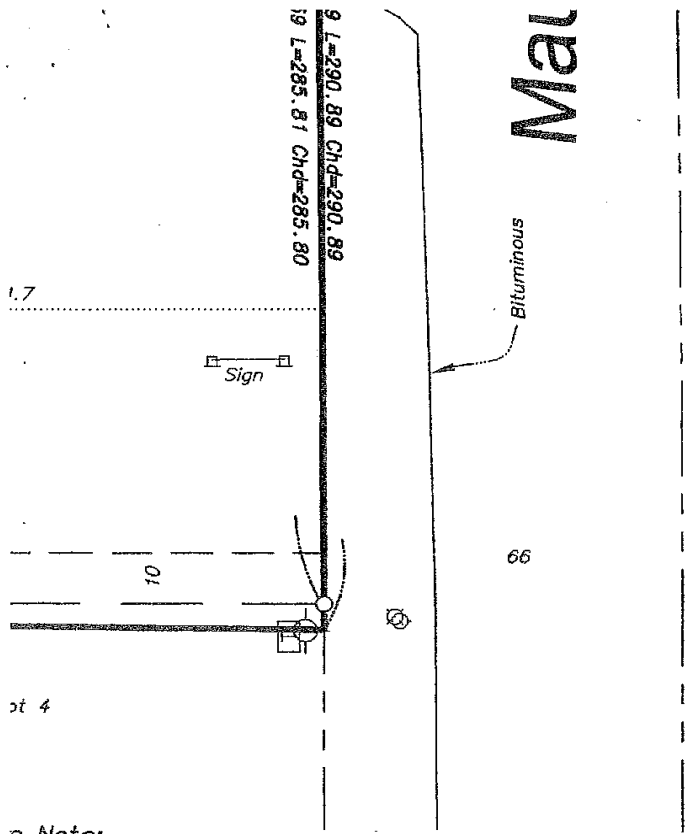
Highway No 15



ce **PROPERTY DESCRIPTION:**





Lot 3, Block 1, MAUS ADDITION, Stearns County, Minnesota, according to the recorded plat thereof AND That part of Lot 4, Block 1, MAUS ADDITION, Stearns County, Minnesota, according to the recorded thereof that lies North of a line described as follows:
 Beginning at the Northwest corner of said Lot 4, thence on a bearing of South 89°46'42" East a the North Line of said Lot 4 bears South 89°33'39" East to the east line of said Lot 4 and said terminating.

nd 343 062 e	Certificate of Survey on Lot 3, Block 1, MAUS ADDITION, Stearns County, Minnesota	Requested By:		
		Jeff Orbeck		
		Date:	Drawn By:	Scale:
		12/12/11	PEO	1" =



Notes:

Property description on this survey depicts the location of the boundary line based upon the recollection of the owners of adjoining properties. A deed will need to be filed to show the location of record.

-  denotes Hydrant
-  denotes Telephone box
-  denotes power pole
-  denotes light pole


<p>that this survey, was prepared by me in direct supervision and I am a Licensed Land Surveyor under the laws of the State of Minnesota.</p> <p></p> <p>License # 40062</p>	<div style="text-align: center;">  <p>OTTO ASSOCIATES</p> </div> <p>www.ottoassociates.com</p> <p>9 West Division Street Buffalo, MN 55313 (763)682-4727 Fax: (763)682-3522</p> <p>Engineers & Land Surveyors, Inc.</p>	<p>Revised:</p> <hr/> <p>Job No.</p> <p style="text-align: center; font-size: 1.2em;">1-11-0265</p>
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EXHIBIT

E

MNSPECT, LLC

Memo

To: Kimball City Council
From: Scott Qualle, Building Official 
CC: Tom Jovanovich
Date: 7/27/2012
Re: Mr. Orbeck's Appeal Request

Summary and Code Assessment

The Fire Code exists "for the safeguarding to a reasonable degree of life and property from the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials, and devices and from conditions hazardous to life or property in the use or occupancy of buildings or premises."

The Fire Code allows for an appeals or variance process. Because the request is based on a local official's order, MN Statute 299F.011, subdivision 5 indicates that the order is to be heard by the local appeals board or governing body.

Regarding your ability to make a decision that is not grounded in the code, the statute gives us the following guidance:

MN Statute 299F.011, Subd. 5b. **Variance considerations.**

When considering appeals for variances from the fire code, the local appeal board or governing body, the state fire marshal, a state administrative law judge, and a court shall take into consideration the benefit to be obtained by complying with the fire marshal's orders and the effect on affordable housing, provided that the spirit of the code is complied with and public safety secured.

The Fire Code deals with specific numbers (48,000 gallons) regarding the maximum aggregate storage within an individual containment area. The variance request is not to allow 50,000 or 55,000 gallons, but over 122,000 gallons of gas, ethanol, diesel, and other fuels. The applicant is requesting a variance of over 150% more than the maximum amount allowed by Code. In addition, the code limits to 12,000 gallons, the maximum capacity of an individual above ground storage tank (requested 20,000 gallons). The applicant is requesting a variance of 67% over the maximum size allowed by code. This request is neither substantial compliance with the Code, nor compliance with the spirit of the Code.

Because of the technical nature of the issues involved, and the significant consequence of a wrong decision, I **recommend that you either deny the variance requests, or defer them to the State Fire Marshal's office for their review and determination.**

There are a number of additional issues to resolve, including site issues, final tank placement, pump island placement issues, and working without permits, to name a few.

Background Information

I have reviewed the request for appeal that was submitted by Mr. Orbeck and/or his representative (Appendix 0). Pursuant to MN Statute 299F.011, subdivision 5, there is a requirement in the appeal process that the appellant must demonstrate that "There is substantial compliance with the provisions of the Fire Code."

In these tanks, it is proposed to store the following:

Gasoline & Ethanol	Class 1B Flammable Liquid
Diesel fuel	Class 2 Combustible Liquid
Fuel Oil	Class 2 or 3A Combustible Liquid

- Chapter 22 of the Fire Code deals with fuel dispensing facilities and repair garages.
- Section 2206 speaks specifically to "Flammable and combustible liquid motor fuel-dispensing facilities."

TANKS

The tanks issue has evolved over time. We have received the following requests/information:

With the building permit application, we received a drawing from the applicant (Appendix 1) indicating 110,000 gallons aggregate capacity as follows:

Tank Capacity	Tank Quantity	Aggregate capacity
20,000 Gallons	4	80,000 Gallons
12,000 Gallons	2	24,000 Gallons
6,000 Gallons	1	<u>6,000 Gallons</u>
TOTAL CAPACITY		110,000 Gallons

This is how the tanks are currently installed.

The CUP that was granted by the City as follows:

Tank Capacity	Tank Quantity	Aggregate capacity
20,000 Gallons	4	80,000 Gallons
12,000 Gallons	3	36,000 Gallons
6,000 Gallons	1	<u>6,000 Gallons</u>
TOTAL CAPACITY		122,000 Gallons

On January 23, 2012, we received additional submittal documents from B&H Petroleum (Appendix 2) indicating that tanks totaling 150,000 gallons of aggregate capacity were on order, as follows:

Tank Capacity	Tank Quantity	Aggregate capacity
24,000 Gallons	4	96,000 Gallons
12,000 Gallons	4	48,000 Gallons
6,000 Gallons	1	<u>6,000 Gallons</u>
TOTAL CAPACITY		150,000 Gallons

Our plan reviewer requested a signed document from the applicant (which was received 03/01/2012) stating the scope of work (Appendix 3). It includes 134,000 gallons of aggregate capacity, as follows:

Tank Capacity	Tank Quantity	Aggregate capacity
20,000 Gallons	4	80,000 Gallons
12,000 Gallons	4	48,000 Gallons
6,000 Gallons	1	<u>6,000 Gallons</u>
TOTAL CAPACITY		134,000 Gallons

If this were a bulk fuel storage plant, there would be no issues with the current configuration, as Chapter 34 would apply, and not Chapter 22. However, the application and signed scope of work (**Appendix 3**) has designated this site as a motor vehicle fuel-dispensing facility, and chapter 22 takes precedence.

Section 2206.2.3 **Above-ground tanks located outside, above grade** states: *Above ground tanks shall not be used for the storage of Class 1, 2, or 3A liquid motor fuels except as provided by this section.*

- 1 *Above-ground tanks used for outside, above-grade storage of Class 1 liquids shall be listed and labeled as protected above-ground tanks and be in accordance with Chapter 34. Such tanks shall be located in accordance with table 2206.2.3.*

Exceptions:

When approved by the fire chief, other above ground tanks that comply with Chapter 34 are allowed to be used for outside, above-grade storage and dispensing of Class 1 liquids, provided the tanks are located in accordance with table 2206.2.3

The applicant has indicated that they intend to install unprotected tanks. (The above exception would be an example where the local Fire Chief has the ability to deviate from the code, based on his/her expertise and knowledge of equipment, staff, and tactical approach to fighting a theoretical fire at a given location or circumstance. Based on previous correspondence, we have made the assumption that this has been approved by the Fire Chief). This will be confirmed in writing prior to permit issuance.

- 3 *Tanks containing fuels shall not exceed 12,000 gallons in individual capacity or 48,000 gallons in aggregate capacity. Installations with the maximum allowable aggregate capacity shall be separated from other such installations by not less than 100 feet.*

This capacity constraint applies regardless of whether the tanks are protected or unprotected and is the most significant violation of the code. What has been proposed is between double and triple the amount allowed by Code. This is the first and third item in the request for variance.

Recommendation

Because of the technical nature of the request and the importance of the code issues involved, I recommend that you defer the request regarding the individual tank size and aggregate tank capacity to the State Fire Marshal's office for evaluation & determination.

SETBACKS

The issue of setbacks is outlined in table 2206.2.3 of the code. Because the proposed installation is for unprotected tanks, only the bottom row of the table is applicable. That portion of the table reads as follows:

Tank Type	Individual Tank Capacity (gallons)	Minimum Distance from Nearest Important Building on Same Property (feet)	Minimum Distance from Nearest Fuel Dispenser (feet)	Minimum Distance from Lot Line that is or can be Built Upon, including the Opposite Side of a Public Way (feet)	Minimum Distance from Nearest Side of any Public Way (feet)	Minimum Distance Between Tanks (feet)
Other Tanks	All	50	50	100	50	3

Issues	None	None Known	None Known	Possible	35' to tanks	None Known
--------	------	------------	------------	----------	--------------	------------

The survey supplied (**Appendix 4**) does not specify the distances from the tanks to the nearest side of the public way, or to the opposite side of the public way. Other setbacks appear to be ok. This does not address the zoning issues raised regarding curbs, proposed distance of pumps from the road, impervious surface, or other issues. A new survey should be provided by the applicant to address this issue. It is the burden of the applicant to demonstrate how they have achieved substantial compliance with the fire code. They have not provided a document that accomplishes that requirement.

Recommendation

Based on the information provided, I recommend that you either deny or defer this issue to the State Fire Marshal's office for evaluation & determination.

Finally, I would like to point out that MN Rules Chapter 1300.0120 PERMITS, subpart 8 (Action on Application) states: . . . If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject the application and notify he applicant of the reasons.

This information has been provided to the applicant in the form of a plan review letter dated March 5, 2012 (**Appendix 5**). This response is our obligation under the building code as a formal response to a request for a permit. It is the applicant's responsibility to meet the requirements of the code, and to supply whatever information is required to satisfactorily complete the code review prior to commencing any construction activities.

Appendix 0

Kim-Built Propane Inc.
221 Maus DR
PO Box 53
Kimball MN 55353

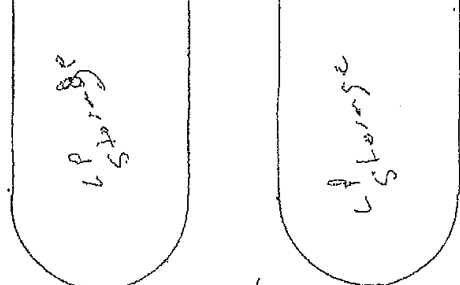
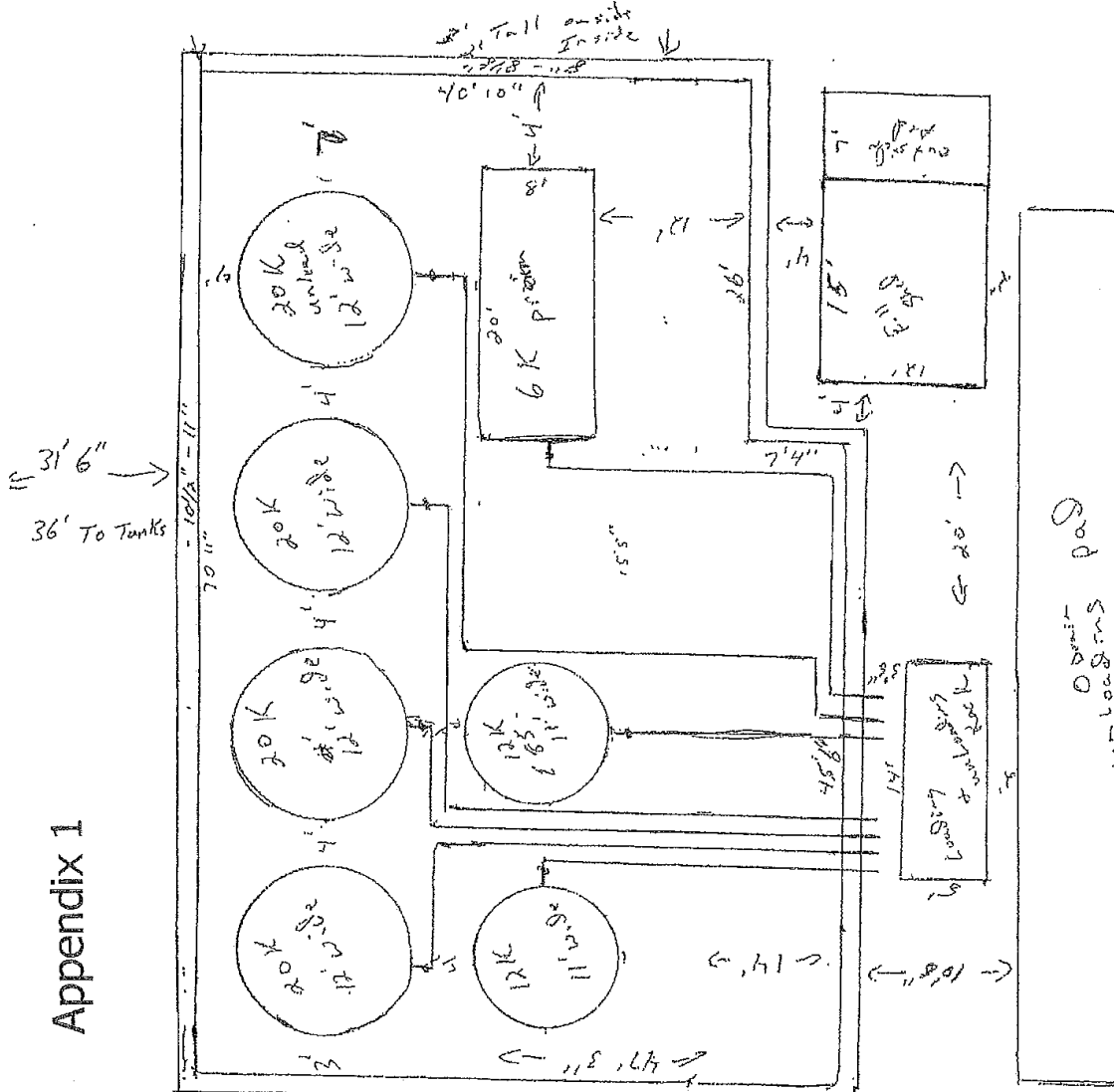
Looking to receive a variance for the following:

We were given CUP # 01172012 for 4-20,000 gallon tanks, 3-12,000 gallon tanks, and 1-6,000 gallon tank and now you come with these regulations that we can only put a 12,000 gallon tank as a maximum storage container after we purchased these tanks that we had a permit for. So we are in need of a variance for an additional 8,000 gallons of storage per container for our 3- 20,000 gallon tanks.

135th Street is located on the North side of are property which 15.5 feet of the black top of the road is our property and we are 14 feet short of making the 50' set back. So we are in need of a variance to be 36 feet from the road.

48,000 gallon aggregate storage capacity is the maximum allowable storage capacity after we had received CUP # 01172012 which was allowed to have 4-20,000 gallon tanks, 3-12,000 gallon tanks, and 1-6,000 gallon tank which would be 122,000 gallon aggregate capacity which goes over what you are now allowing us to have. So we would like to receive a variance to put an additional 74,000 gallons aggregate capacity of storage in our secondary containment.

Appendix 1



KIM-BUILT PROPANE INC.
221 Maus Drive
PO Box 53
Kimball, MN 55353

Handwritten signature

6-21-2012

**Service & Sales**

19932 State Hwy 22 Mankato, MN 56001.

TEL: (507) 387 6629 www.bhpetroleum.com

Fax : (507) 345 4945

Building Permit

Appendix 2**Attachments by Item #**

- 1) See attached site survey and Diagram
- 2) Contractor: B & H Petroleum -
19932 Hwy 22
Mankato MN 56001
Dan Halbmaier cell 952-807-1045
- 3) Not Applicable Tanks are ground set.
- 4) Not Applicable Tanks are ground set
- 5) Not Applicable Tanks are ground set
- 6) Not Applicable Tanks are ground set
- 7) All tanks are Single Wall AST's UL142 specifications
- 8) Tank 1 24,000 gallon vertical Diesel #2
Tank 2 24,000 gallon vertical Diesel #1
Tank 3 24,000 gallon vertical Diesel #2 Red
Tank 4 24,000 gallon vertical Unleaded
Tank 5 12,000 gallon vertical Premium
Tank 6 12,000 gallon vertical E-85
Tank 7 6,000 gallon horizontal Bio-Diesel
Tank 8 12,000 gallon vertical TBD
Tank 9 12,000 gallon Vertical TBD

Specializing in Petroleum Equipment, Sales, Construction, Service and Installation

1. 2012 9:00AM MNSPECT

No. 5174 P. 2

Appendix 3



February 22, 2012

Jeff Orbeck
Kim-Built Propane
P.O. Box 53
Kimball, MN 55353

Hi Jeff,

I'm trying to clarify exactly what we're dealing with so, I've written up what I believe to be an accurate synopsis of the proposed project. Take a look and feel free to correct anything I've got wrong.

Re: Proposed installation of Flammable / Combustible Liquid Above Ground Storage Tanks (AST's); secondary containment for AST's; and piping to proposed dispenser (pump) locations.

The project as I currently understand it:

The applicant, Jeff Orbeck, Kim-Built Propane is proposing a business expansion including the dispensing of liquid fuel to the public through dispensers (pumps) to be located on his property. Proposed bulk liquid fuel storage for these pumps is to be in 9 above ground, single wall, UL 142 listed, unprotected steel tanks. The proposed capacity of these tanks being:

- 4 tanks @ 20,000 gallon ea.
- 4 tanks @ 12,000 gallon ea.
- 1 tank @ 6,000 gallon
- Aggregate capacity of all tanks = 134,000 gallons

The tanks are proposed to be installed inside a single, non-separated, concrete containment dike located 30 feet from 135th street and an unknown distance (from sketch, appears to be around 30 feet) to two 30,000 gallon liquefied petroleum vessels. The containment area is calculated to contain approximately 48,884 gallons. The proposed location of the LPG dispenser for the two 30,000 gallon vessels is to be (again, with no dimension on the sketch) approximately 3-4 feet from the containment dike wall.

Mar. 1. 2012 9:01AM MNSPECT

No. 5174 P. 3

Piping to the fuel dispensing islands will be underground.

You have contacted and received documented approval from the Minnesota Pollution Control Agency and from the local Fire Chief, John Gohmann.

I hope I've caught everything. If this is an accurate description of the storage tank project, please sign and fax this back to me and I will use this as the scope of work for reviewing the project and hopefully get this back on track.



Dean Mau



Jeff Orbeck



Kim-Built Propane Inc.
221 Maus DR.
PO BOX 53
Kimball, MN 55353
Phone: (320)398-3420
Fax: (320)398-3421

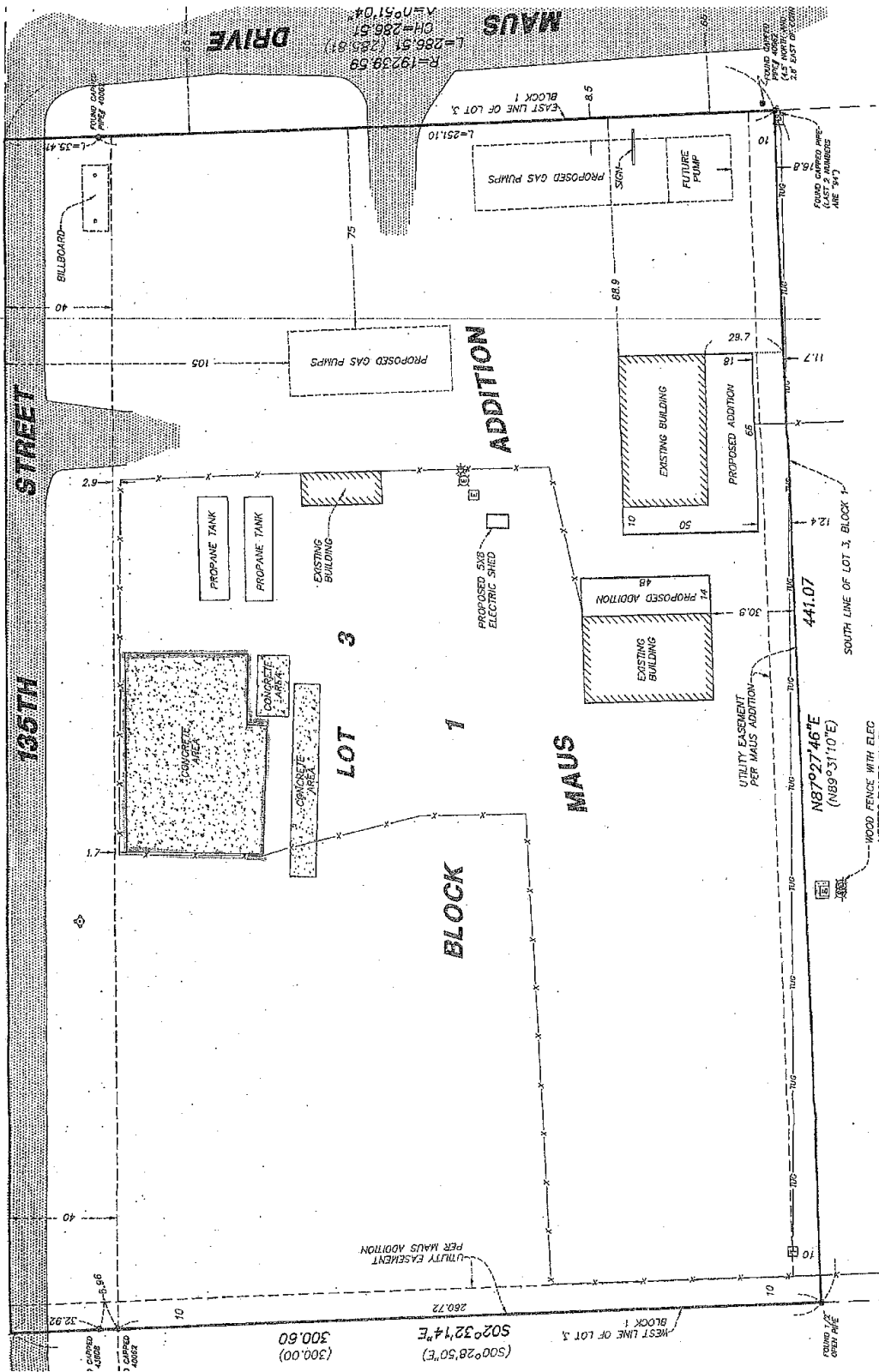
Bulk Fuel Plant piping and containment dike \$20,000.00
Pump island footings and piping \$50,000.00
The 2-30,000 gallon LP tanks are 16+ feet from the containment pit wall.
Two of the 12,000 gallon fuel tanks have not yet been purchased.

ATTN: ~~Aaron~~
JEFF

SIGN THE LETTER I SENT AND FAX
IT BACK TO ME -

I NEED A SCOPE OF WORK

Appendix 4



Appendix 5

CITY OF KIMBALL

1 MAIN STREET N.
P. O. BOX 238
KIMBALL, MN. 55353
Phone: 320-398-2725
Fax: 320-398-2720
cityofkimball@metel.net

March 5, 2012

Jeff Orbeck
Kim-Built Propane
P.O. Box 53
Kimball, MN 55353

Re: Flammable / Combustible Liquid Above Ground Storage Tanks

Dear Jeff;

The information on the plans is sketchy at best. I am therefore, going to specify exactly what is required by code, for what I perceive to be the project. This review is for the installation of the above ground flammable and combustible liquids storage tanks only.

For the purposes of clarification; the following are definitions as related to this project:

- **Gasoline:** Class IB Flammable Liquid
- **Ethanol:** Class IB Flammable Liquid
- **Diesel Fuel:** Class II Combustible Liquid
- **Bio-diesel:** Class II Combustible Liquid (assumed)
- **Fuel Oil (heating fuel):** Class II/IIIA Combustible Liquid

The following is a list of correspondence which has led to my perception of the scope of your project:

1. 2/16/2012: Telephone conversation with Jeff.
2. 2/17/2012: Telephone conversation with Jeff.
3. 2/21/2012: Telephone conversation with Jeff.
4. 2/21/2012: Fax from Jeff; letter from Petroleum Equipment Company dated 2/17/2012
5. 2/21/2012: Fax from Jeff; letter of approval by Kimball Fire Chief, John Gohmann, no date.
6. 2/22/2012: Sent (faxed) Jeff a letter regarding trying to clarify scope of project. Asked Jeff to sign the letter (as a scope of work) and fax it back.
7. 2/22/2012: Jeff faxed a four line response to my request for a signed scope of work. The four lines stated the following:
 - Bulk fuel plant piping and containment dike \$20,000.00
 - Pump island footings and piping \$50,000.00
 - The 2-30,000 gallon LP tanks are 16+ feet from the containment pit wall.
 - Two of the 12,000 gallon fuel tanks have not yet been purchased.
8. 2/22/2012: Faxed it back to Jeff and said I needed a signed scope.
9. 3/1/2012: Called Jeff, told him I had not received a signed scope yet.
10. 3/1/2012: Received signed letter (scope) back from Jeff.

Scope of the project:

The applicant; Jeff Orbeck, Kim-Built Propane is proposing a business expansion including the dispensing of liquid fuel to the public through dispensers (pumps) to be located on his property. Proposed bulk liquid fuel storage for these pumps is to be:

1. In 9 above ground
 - a. Single wall, UL 142 listed; unprotected steel tanks.

2. The proposed capacity of these tanks being:
 - a. 4 tanks @ 20,000 gallon ea.
 - b. 4 tanks @ 12,000 gallon ea.
 - c. 1 tank @ 6,000 gallon
 - d. Aggregate capacity of all tanks = 134,000 gallons
3. The tanks are proposed to be installed inside a single, non-separated, concrete containment dike
 - a. located 30 feet from 135th street and
 - b. "16+ feet" from two 30,000 gallon liquefied petroleum vessels.
 - c. The containment area is calculated to contain approximately 46,884 gallons.
4. The proposed location of the LPG dispenser for the two 30,000 gallon vessels is to be approximately 4 feet from the containment dike wall.

Code comments:

The following comments related to and referencing the numbers and letters above, are based on current (2007) Minnesota State Fire Code (MSFC); NFPA 30 and NFPA 58 as referenced by current state code; Conditional Use Permit (CUP) No. 01172012 as granted by the City Of Kimball; a letter from City Attorney Thomas G. Jovanovich dated 2/23/1012; and the Minnesota State Fire Marshal, "Above Ground Storage Tank Plan Review Information Sheet." (AST plan review sheet).

1. "In 9 above ground...": CUP No. 01172012, dated January 17, 2012 allows for only 8 tanks: 4 – 20,000 gallon, 3 – 12,000 gallon, and 1 – 6,000 gallon tank. (City attorney letter)
 1. a. "... single wall, UL 142 listed; unprotected steel tanks: *"UL Standard 142 is a plain single-wall steel tank."* (AST plan review sheet, section 2.1)

2. The proposed capacity of these tanks being:
- a. 4 tanks @ 20,000 gallon ea.
 - b. 4 tanks @ 12,000 gallon ea.
 - c. 1 tank @ 6,000 gallon
 - d. Aggregate capacity of all tanks = 134,000 gallons

"Tanks containing fuels (Class I, II, or IIIA liquid motor fuels) shall not exceed 12,000 gallons in individual capacity or 48,000 gallons in aggregate capacity." (MSFC section 2206.2.3 [3])

3. The tanks are proposed to be installed inside a single, non-separated, concrete containment dike.

"Installations with the maximum allowable aggregate capacity (48,000 gallons) shall be separated from other such installations by not less than 100 feet." (MSFC section 2206.2.3 [3])

- 3.a. located 30 feet from 135th street and

Tank location: "..... minimum distance from nearest side of a public way..... 50 feet. (MSFC table 2206.2.3)

- 3.b. "16+ feet" from two 30,000 gallon liquefied petroleum vessels.

"The minimum horizontal separation distance between an LP gas container and a class I, II, or IIIA liquid storage tank shall be 20 feet"

".... LP gas containers shall be outside the diked area and at least 10 feet away from the centerline of the wall of the diked area." (MSFC section 3404.2.9.5.3)

- 3.c. The containment area is calculated to contain approximately 46,884 gallons

"Secondary containment shall be designed to contain a spill from the largest individual vessel." (MSFC section 2704.2.2.4)

4. The proposed location of the LPG dispenser for the two 30,000 gallon vessels is to be approximately 4 feet from the containment dike wall.

Dispensing devices for conventional LP gas systems "shall be at least 10 feet from any dispensing device for class I liquids" (NFPA 58, section 6.24.4.3 [1])

This section addresses only dispensing devices for class I liquids, not the storage tanks.

Additional information that may be helpful:

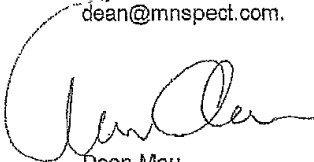
1. **Minimum distance from nearest important building on the same property:**
50 feet (MSFC table 2206.2.3)
2. **Minimum distance from nearest fuel dispenser:**
50 feet (MSFC table 2206.2.3)
3. **Minimum distance from lot line.....**
100 feet (MSFC table 2206.2.3)
4. **Minimum distance between tanks:**
3 feet (MSFC table 2206.2.3)
5. **Overfill protection:**
Required (MSFC sections 2206.6.2.3, 3404.2.7.5.8 and 3404.2.9.6.6)
6. **Siphon prevention:**
Required (MSFC section 2206.6.2.4)
7. **Third party engineer inspection:**
Please provide documentation of "third party engineer" inspection of the tanks.

Compliance with the above listed provisions will be required prior to issuance of a "Certificate of Occupancy" as required by Minnesota Rules, section 1300.0220, and "compliance with orders and notices" pursuant to Minnesota Rules Chapter 7511 (Minnesota State Fire Code) section 109.2.2.

The proposed motor vehicle refueling station cannot be permitted or operated under the currently proposed plan.

You have the right to appeal the findings of this review to the Minnesota State Fire Marshall per MSFC section 108.1.

If you have questions regarding this letter, I can be reached at (952)442-7520 or at dean@mnspect.com.



Dean Mau
Fire and Commercial Plans Examiner

cc: City file

EXHIBIT

F



STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
STATE FIRE MARSHAL DIVISION
444 Cedar Street, Suite 145 * St. Paul, MN 55101-5145
Phone: 651/201-7200 * Fax: 651/215-0525 * TTY: 651/282-6555



INSTRUCTIONS

REQUEST FOR VARIANCE / TIME EXTENSION

REQUEST FOR FIRE CODE VARIANCE:

The procedures for fire code variance requests are established under Minn. Stat. § 299F.011, Subdivision 5.

When considering a variance the following must be met. The requesting party should show that:

- A. There is substantial compliance with the provisions of the fire code.
- B. The safety of the public and building occupants will not be jeopardized.
- C. Undue hardship will result to the requesting party unless the variance is granted.

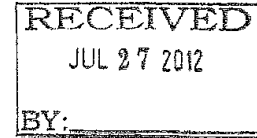
The following steps must be taken to apply for a variance:

1. Submit the following items as a package directly to the State Fire Marshal in St. Paul (address above):
 - A completed variance request form. All blanks must be complete. Please be thorough. The panel will be making decisions based on the information you provide.
Remember: you must supply all the information to be considered.
 - Supplemental information such as floor plans, diagrams, contractor bids or estimates, and photographs are encouraged as they assist in making a determination relating to your request.
2. If the variance request involves an order from a municipal or local fire official (such as a fire chief, fire marshal, or fire inspector), Minn. Stat. § 299F.011, subd. 5 requires local governing body action. The local governing body would be the city council, county board, board of supervisors, board of appeals, or town board in the area where the orders were issued.
 - The local governing body may move to endorse the variance, deny or modify the variance, or defer the matter to the State Fire Marshal.
 - **REMEMBER**, it is up to YOU to present your case to the local governing body.
 - If the variance involves an order from the State Fire Marshal, no local governing body action is required.
3. Once a complete variance package has been received, your request will be placed on the Fire Marshal's Code Advisory Panel agenda for their consideration. It is recommended, but not required, that you appear before the panel to present your information and answer any questions. The Panel may also solicit comments and information from the involved inspector, and/or the local Fire Chief. After a thorough evaluation of the issue, a recommendation will be made by the panel to the State Fire Marshal.
4. The State Fire Marshal will issue a decision approving, modifying, or rejecting the variance. You will be notified in writing after the Fire Marshal has made his/her decision (typically within ten (10) working days after the panel recommendation).
5. If the request is not granted, you may proceed before the Fire Marshal as with a contested case in accordance with the Administrative Procedure Act. This consists of a hearing that is similar to a court trial. This request must be made in writing to the State Fire Marshal at the address above. It is suggested that you consult legal counsel prior to commencing a contested case hearing.

EXHIBIT

G

Dennis Libbesmeier
13603 Balsam Road
Watkins, MN 55389
July 26, 2012



Zoning Administrator
Kimball City Hall
P.O. Box 238
Kimball, MN 55353

Dear Zoning Administrator/Kimball City Council:

I am writing to ask you to support the request submitted to you by Kim-Built Propane. I support all parts of this request including: increase the individual capacity per fuel tank from 12,000 gallons to 20,000 gallons, to decrease the setback on their north property line from 50 feet to 36 feet, and to increase the aggregate fuel storage capacity from 48,000 gallons to 122,00 gallons.

A monopoly is defined as exclusive control of a commodity or service in a particular market. Monopolies often have high prices. By not allowing Kim-Built Propane to do the above you are creating a monopoly in the city of Kimball.

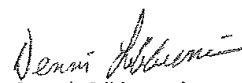
Numerous people will not purchase fuel from the other company in town do to a variety of reasons. Some reasons include pricing and deciding to sell propane (of which the City of Kimball did not try to stop even though Kim-Built was already selling propane). This means that people are choosing to do business outside of the city of Kimball. To me it only makes sense to allow Kim-Built Propane a fair chance to enter the market with a huge possibility of bringing business back into the city of Kimball.

As a small town, should we not be interested in keeping business local and supporting our own community members and businesses? The city of Kimball does not exist without its residents or businesses. By not allowing Kim-Built Propane to enter the market you are risking people not wanting to even attempt starting a business in town because they see you won't support them. These businesses pay taxes to the city.

Kim-Built Propane has reasonable requests. By honoring these requests it will in no way harm the City of Kimball. I am asking that you honor these requests and support our city, its businesses and its lifelong residents as well as new/future residents.

Thank you for your support.

Sincerely,


Dennis Libbesmeier

CC: Kim-Built Propane