City of Carroll

627 N. Adams Street Carroll, Iowa 51401 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Honorable Mayor and City Council Members MSPW

FROM: Mike Pogge-Weaver, City Manager

DATE: August 5, 2021

SUBJECT: Vacation of Lots 1, 2, and 3 of Wittrock's First Minor Subdivision

The City of Carroll has received a request from Mike Schulte, representing Vernell as the Trustee of the Earl Wittrock Revocable Trust, to vacate Lots 1, 2, and 3 of Wittrock's First Minor Subdivision. The legal description of the property to be vacated is Lots 1, 2, and 3 of the Northwest Fractional ¼ of Wittrock's First Minor Subdivision of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa. The applicant has verbally indicated to the City that the property owner wished to reconfigure the lots which they plan to do with a survey once the vacation is completed.

Attached for information are:

1. Lots 1, 2, and 3 of the Northwest Fractional ¼ of Wittrock's First Minor Subdivision of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa
2. Petition of Owners
3. Auditor's Certificate
4. A copy of Iowa Code - Chapter 354.22 – Vacation of Official Plats

Public Input:
As required by Iowa Code 354.22.1, notice was published in the Carroll Times Herald on July 23, 2021 and August 3, 2021 notifying the public of the requested vacation. As of the date of this memo, no comments have been received by the City.

Alternatives:
At the close of the public hearing to permit objections or recommendations from the public, the City Council shall approve or deny the vacation request. The following options exist for the Council:

1. Approve the vacation request;
2. Deny the vacation request;
3. Table pending additional comment/feedback.

PLANNING AND ZONING COMMISSION RECOMMENDATION: The Planning and Zoning Commission reviewed the vacation request at their July 14, 2021 meeting. The Commission voted to recommend that the City Council approve the proposed vacation.

STAFF RECOMMENDATION:
That the City Council consider approving the Vacation of Lots 1, 2, and 3 of Wittrock's First Minor Subdivision.

City of Carroll 627 N Adams St Carroll, Iowa 51401 712/792-1000

RESOLUTION NO. _____

WHEREAS, Vernell Wittrock as Trustee of the Earl Wittrock Revocable Trust dated February 14, 1997 and as Trustee of the Vernell Wittrock Revocable Trust of February 14, 1997 owner of certain real estate described in a certain plat filed by them with the City Clerk of the City of Carroll, Iowa, known as Plat of Wittrock's First Minor Subdivision, Lots 1, 2, and 3 of the Northwest Fractional ¼ of Wittrock's First Minor Subdivision of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa; and,

WHEREAS, on August 9, 2021, the City Council of Carroll, Iowa, after public hearing, granted a request by the owners to vacate Lots 1, 2, and 3 of the Northwest Fractional ¼ of Wittrock's First Minor Subdivision of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa;

WHEREAS, the City of Carroll, Iowa has no objection to the vacation and consents thereto.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa that the vacation of plats executed by the owner Vernell Wittrock is hereby approved as it applies to the following said plats:

1. Plat of Wittrock's First Minor Subdivision, Lots 1, 2, and 3 of the Northwest Fractional ¼ of Wittrock's First Minor Subdivision of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa.

2. After vacation of survey, parcel shall be now known as: Part of the Fractional Northwest ¼ of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa.

3. This Resolution shall be fully binding upon the owners, their assigns, purchasers or successors in interest.

4. The Mayor and City Clerk of the City of Carroll, Iowa, are hereby directed to certify this Resolution and cause the same to be affixed to the said plat as provided by law.

Adopted and passed by the Carroll City Council this 9th day of August, 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

STATE OF IOWA
County of Carroll

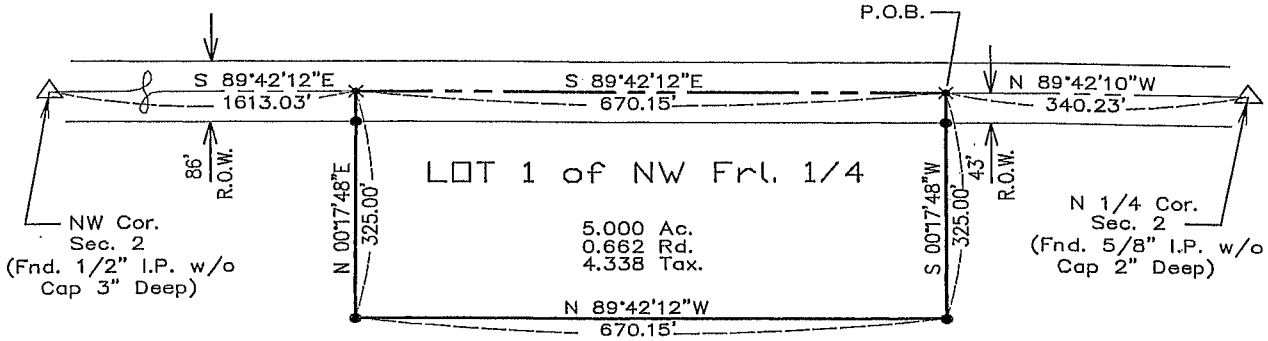
As Inst. No. 2009-1082
Filed for record on March 13, 2009
at 10:30 o'clock A M and recorded in
Book 13 Page 201
Fee $ 77.00 Marilyn Doyle Co. Recorder

15 pages

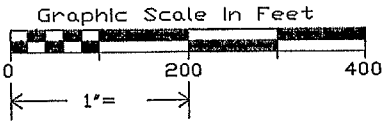
@ 1-21-09
fs 1-19-09
SS 3-12-09

This document prepared by: Semke & Associates — 712-792-2276
Micheal G. Semke, L.S.#10318 — 716 N. Crawford — Carroll, Iowa

PLAT of WITTROCK'S FIRST MINOR SUBDIVISION
LOT 1 of NW Frl. 1/4
SEC. 2 - T83N - R35W
CARROLL CO., IOWA



Graphic Scale in Feet



Note: The N. line of the NW 1/4 is assumed to bear as shown from I.D.O.T. Survey.

LEGEND

- △ = Section Corner
- ○ = Corner Found (1/2" Rerod unless noted otherwise)
- ● = Iron Pin Set (1/2" x 24" Rerod w/Yellow Cap No. 10318)
- ✕ = Spike Set (80-d Spike w/ Washer #10318)
- R. = Record Dimension
- F. M. = Actual Field Measure

Carroll City Council
Approved 2-23-09

by James Pedelty
James Pedelty, Mayor

Owner of Record
Earl & Vernall Wittrock Revocable Trust
20226 220th Street
Carroll, Iowa 51401

LICENSED LAND SURVEYOR
Micheal G. Semke
10318
IOWA

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a licensed Land Surveyor under the laws of the State of Iowa.

Micheal G. Semke 8/14/8
Signature Date of Survey

Micheal G. Semke, L.S. No. 10318
Printed or Typed Name

Pages or sheets covered by this seal: THIS PAGE My license renewal date is December 31, 2009.

This document prepared by: Semke & Associates — 712—792—2276
Micheal G. Semke, L.S.#10318 — 716 N. Crawford — Carroll, Iowa

PLAT of WITTROCK'S FIRST MINOR SUBDIVISION
LOT 1 of NW Frl. 1/4
SEC. 2 - T83N - R35W
CARROLL CO., IOWA
Page 2 of 2

DESCRIPTION:

Commencing at the North Quarter Corner of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa; thence North 89° 42' 12" West along the North line of the Northwest Fractional Quarter of said Section 2, 340.23 feet to the POINT OF BEGINNING; thence South 00° 17' 48" West, 325.00 feet; thence North 89° 42' 12" West, 670.15 feet; thence North 00° 17' 48" East, 325.00 feet to said North line; thence South 89° 42' 12" East along said line, 670.15 feet to the POINT OF BEGINNING containing 5.000 acres inclusive of the County Road Right—of—way on the North side thereof and subject to easements apparent or of record.

The above described parcel shall hereafter be known as Lot 1 of the Northwest Fractional Quarter of said Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa.

LICENSED LAND SURVEYOR
Micheal G. Semke
10318
IOWA

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a licensed Land Surveyor under the laws of the State of Iowa.

Signature — Date of Survey: 8/14/18

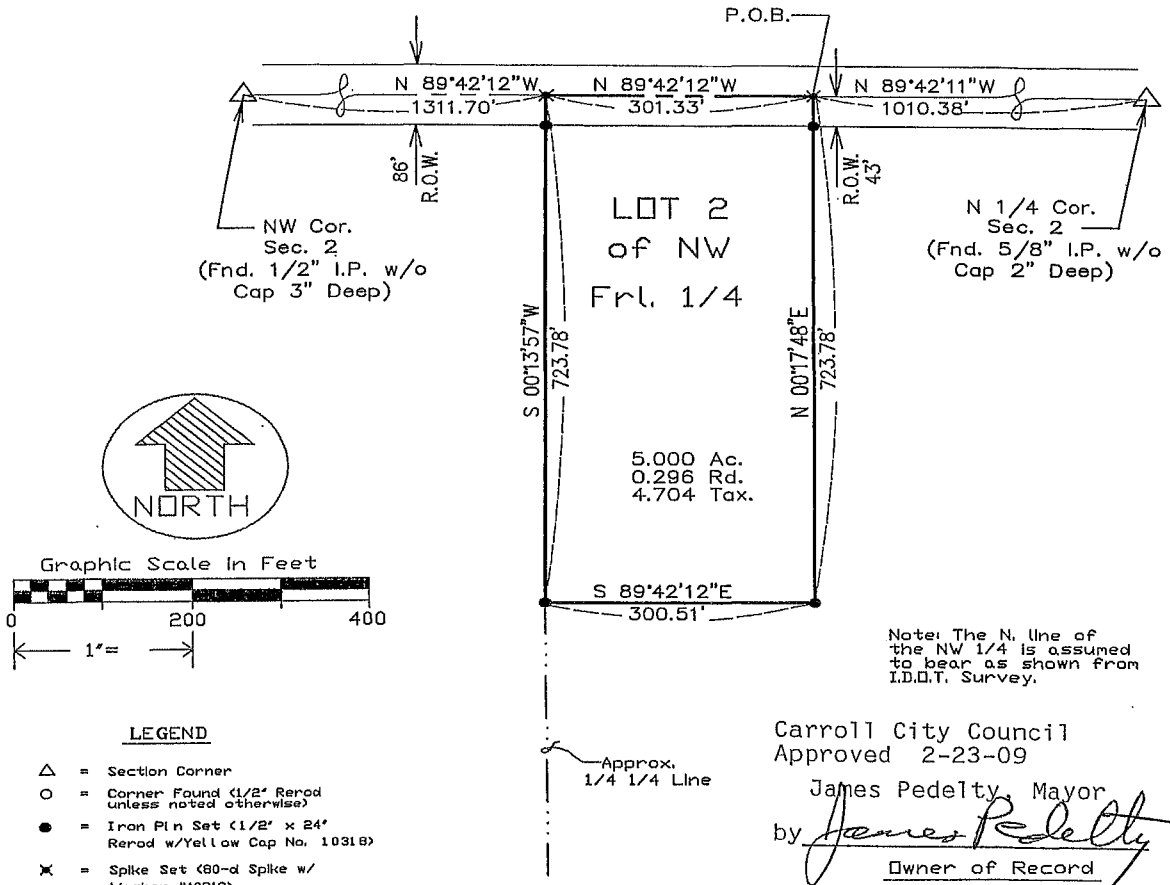
Micheal G. Semke, L.S. No. 10318
Printed or Typed Name

Pages or sheets covered by this seal: THIS PAGE My license renewal date is December 31, 2009.

1-21-09
1-19-09
3-12-09

This document prepared by: Semke & Associates – 712–792–2276
Micheal G. Semke, L.S.#10318 – 716 N. Crawford – Carroll, Iowa

PLAT of WITTROCK'S FIRST MINOR SUBDIVISION
LOT 2 of NW Frl. 1/4
SEC. 2 - T83N - R35W
CARROLL CO., IOWA



Note: The N. line of the NW 1/4 is assumed to bear as shown from I.D.O.T. Survey.

LEGEND

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- ○ = Corner Found (1/2" Rerod unless noted otherwise)
- ● = Iron Pin Set (1/2" x 24" Rerod w/Yellow Cap No. 10318)
- ✕ = Spike Set (60-d Spike w/ Washer #10318)
- R. = Record Dimension
- F. M. = Actual Field Measure

Carroll City Council
Approved 2-23-09
James Pedelty, Mayor
by James Pedelty

Owner of Record
Earl & Vernall Wittrock Revocable Trust
20226 220th Street
Carroll, Iowa 51401

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Signature Date of Survey

Micheal G. Semke, L.S. No. 10318
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This document prepared by: Semke & Associates — 712-792-2276
Micheal G. Semke, L.S.#10318 — 716 N. Crawford — Carroll, Iowa

PLAT of WITTROCK'S FIRST MINOR SUBDIVISION
LOT 2 of NW Frl. 1/4
SEC. 2 - T83N - R35W
CARROLL CO., IOWA

DESCRIPTION:

Commencing at the North Quarter Corner of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa; thence North 89° 42' 12" West along the North line of the Northwest Fractional Quarter of said Section 2, 1010.38 feet to the POINT OF BEGINNING; thence North 89° 42' 12" West, 301.33 feet; thence South 00° 13' 57" West, 723.78 feet; thence South 89° 42' 12" East, 300.51 feet; thence North 00° 17' 48" East, 723.78 feet to the POINT OF BEGINNING containing 5.000 acres inclusive of the County Road Right-of-way on the North side thereof and subject to easements apparent or of record.

The above described parcel shall hereafter be known as Lot 2 of the Northwest Fractional Quarter of said Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa.

LICENSED LAND SURVEYOR
Micheal G. Semke
10318
IOWA

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Micheal G. Semke 8/14/8

Signature — Date of Survey

Micheal G. Semke, L.S. No. 10318

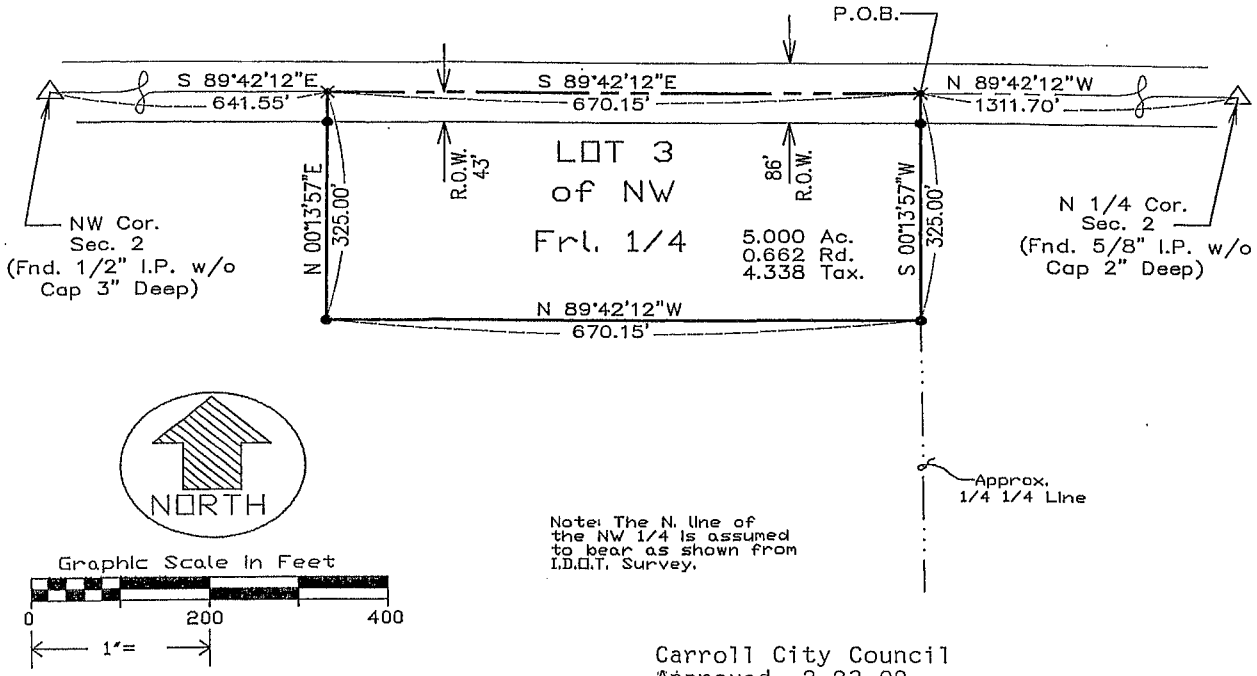
Printed or Typed Name

Pages or sheets covered by this seal: THIS PAGE My license renewal date is December 31, 2009.

1-21-09
1-19-09
3-12-09

This document prepared by: Semke & Associates — 712-792-2276
Micheal G. Semke, L.S.#10318 — 716 N. Crawford — Carroll, Iowa

PLAT of WITTROCK'S FIRST MINOR SUBDIVISION
LOT 3 of NW Frl. 1/4
SEC. 2 - T83N - R35W
CARROLL CO., IOWA



Graphic Scale in Feet

0 200 400

1"=

Note: The N. line of the NW 1/4 is assumed to bear as shown from I.D.O.T. Survey.

Carroll City Council
Approved 2-23-09

by James Pedelty
James Pedelty, Mayor

Owner of Record
Earl & Vernell Wittrock Revocable Trust
20226 220th Street
Carroll, Iowa 51401

LEGEND

△ = Section Corner
○ = Corner Found (1/2" Rerod unless noted otherwise)
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LICENSED LAND SURVEYOR
Micheal G. Semke
10318
IOWA

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Micheal G Semke 8/14/8
Signature Date of Survey

Micheal G. Semke, L.S. No. 10318
Printed or Typed Name

Pages or sheets covered by this seal: THIS PAGE My license renewal date is December 31, 2009.

This document prepared by: Semke & Associates – 712–792–2276
Micheal G. Semke, L.S.#10318 – 716 N. Crawford – Carroll, Iowa

PLAT of WITTROCK'S FIRST MINOR SUBDIVISION
LOT 3 of NW Frl. 1/4
SEC. 2 – T83N – R35W
CARROLL CO., IOWA

DESCRIPTION:

Commencing at the North Quarter Corner of Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa; thence North 89° 42' 12" West along the North line of the Northwest Fractional Quarter of said Section 2, 1311.70 feet to the POINT OF BEGINNING; thence South 00° 13' 57" West, 325.00 feet; thence North 89° 42' 12" West, 670.15 feet; thence North 00° 13' 57" East, 325.00 feet to said North line; thence South 89° 42' 12" East along said line, 670.15 feet to the POINT OF BEGINNING containing 5.000 acres inclusive of the County Road Right–of–way on the North side thereof and subject to easements apparent or of record.

The above described parcel shall hereafter be known as Lot 3 of the Northwest Fractional Quarter of said Section 2, Township 83 North, Range 35 West of the 5th P.M., Carroll County, Iowa.

LICENSED LAND SURVEYOR
Micheal G. Semke
10318
IOWA

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a licensed Land Surveyor under the laws of the State of Iowa.

Signature — Date of Survey: 8/14/18

Micheal G. Semke, L.S. No. 10318
Printed or Typed Name

Pages or sheets covered by this seal: THIS PAGE — My license renewal date is December 31, 2009.

CARROLL COUNTY AUDITOR

PETITION TO VACATE SURVEY

Vernell Wittrock as Trustee of the Earl Wittrock Revocable Trust dated February 14, 1997 and as Trustee of the Vernell Wittrock Revocable Trust of February 14, 1997 being the record title holder of: Lots 1, 2, and 3 of the Northwest Fractional ¼ of Wittrock's First Minor Subdivision of Section 2, Township 83 North, Range 35 West of the 5th, P.M., Carroll County, Iowa, hereby petitions the Carroll County, Iowa Auditor to vacate said lots 1, 2, and 3 filed in Instrument 2009-1082, in the office of the Carroll County Iowa's Recorder on March 13, 2009.

This petition has been subscribed by Mike Schulte, Land Surveyor, and hereby consents to these parcels being vacated.

It is requested that the Auditor enter a Certificate Vacating said Parcels in the form attached hereto.

Dated: 4-27-2021

Vernell Wittrock

Vernell Wittrock

Mike Schulte, L.S. No. 17979

The above-described parcels and, adjoining parcel is owned by the same Trust and there are no lenders.

STATE OF IOWA)

)ss:

County of Carroll)

I, Vernell Wittrock, being first duly sworn, do upon oath depose and state that I am the duly appointed, qualified and acting petitioner in the above action; that I have read the foregoing Petition and that the statements and allegations therein made are true as I verily believe.

Vernell Wittrock

Vernell Wittrock

STATE OF IOWA, COUNTY OF CARROLL, SS:

On this 27 day of April, 2021, this instrument was acknowledged before me, the undersigned, a Notary Public in and for the State of Iowa personally appeared Vernell Wittrock.

NOTARIAL SEAL IOWA

PAIGE GROSSMAN
Commission Number 822840
MY COMMISSION EXPIRES
DECEMBER 20, 2022

Paige Grossman

Notary Public, State of Iowa

My commission expires: 12/20/22

Preparer Information: A. Eric Neu, 721 N Main St, Carroll, IA 51401, Phone: 7127923508
Taxpayer Information: NA
Return Document To: A. Eric Neu, 721 N Main St, Carroll, IA 51401

INDIVIDUAL TRUSTEE'S AFFIDAVIT

RE: Lots 1, 2, and 3 of the Northwest Fractional ¼ of Wittrock's First Minor Subdivision of Section 2, Township 83 North, Range 35 West of the 5th, P.M., Carroll County, Iowa.

STATE OF IOWA, COUNTY OF CARROLL, ss:

I, Vernell Wittrock, being first duly sworn (or affirmed) under oath, state of my personal knowledge that:

1. I am the trustee under both the Earl Wittrock Revocable Trust dated February 14, 1997 and the Vernell Wittrock Revocable Trust of February 14, 1997 trust dated February 14, 1997, to which the above-described real estate was conveyed, in equal shares, to the trustee by Earl Wittrock and Vernell Wittrock, pursuant to an instrument recorded February 18, 1997, in the office of the Carroll County Recorder in Book 181, Page 115.

2. The Trusts are in existence and I am the presently existing trustee under the Trusts, and I am authorized to execute documents concerning the real estate without any limitation or qualification whatsoever.

Vernell Wittrock
Vernell Wittrock, Affiant

Signed and sworn to (or affirmed) before me on April 27, 2021 by Vernell Wittrock.

Paige Grossman
Signature of Notary Public

PAIGE GROSSMAN
Commission Number 822840
MY COMMISSION EXPIRES
DECEMBER 20, 2022

STATE OF IOWA)

)ss:

County of Carroll)

I, Mike Schulte, being first duly sworn, do upon oath depose and state that I am the duly appointed, qualified and acting petitioner in the above action; that I have read the foregoing Petition and that the statements and allegations therein made are true as I verily believe.

Mike Schulte, L.S. No. 17979

STATE OF IOWA, COUNTY OF CARROLL, SS:

On this 27 day of April, 2021, this instrument was acknowledged before me, the undersigned, a Notary Public in and for the State of Iowa personally appeared Mike Schulte.

NOTARIAL SEAL IOWA

PAIGE GROSSMAN
Commission Number 822840
MY COMMISSION EXPIRES
DECEMBER 20, 2022

Notary Public, State of Iowa

My commission expires: 12/20/22

After vacation of Survey, parcel shall be now known as:

Part of the Fractional Northwest ¼ of section 2, Township 83 North, Range 35 West of the 5th, P.M., Carroll County, Iowa.

Mike Schulte, L.S. No. 17979

On this 22 day of JUNE, 2021, I Kourtney Irlbeck, the Auditor of Carroll County, Iowa do hereby certify that that part of the real estate covered by the vacated Survey above, will be adequately described for assessment and taxation purposes without reference to the vacated survey.

Kourtney Irlbeck, Auditor of Carroll County

354.22 Vacation of official plats.

1. The proprietors of lots within an official plat who wish to vacate any portion of the official plat shall file a petition for vacation with the governing body which would have jurisdiction to approve the plat at the time the petition is filed. After the petition has been filed, the governing body shall fix the time and place for public hearing on the petition. Written notice of the proposed vacation shall be served in the manner of original notices as provided in Iowa rules of civil procedure and be served upon proprietors and mortgagees within the official plat that are within three hundred feet of the area to be vacated. If a portion of the official plat adjoins a river or state-owned lake, the Iowa department of natural resources shall be served written notice of the proposed vacation. Notice of the proposed vacation shall be published twice, with fourteen days between publications, stating the date, time, and place of the hearing.

2. The official plat or portion of the official plat shall be vacated upon recording of all of the following documents:

a. An instrument signed, executed, and acknowledged by all the proprietors and mortgagees within the area of the official plat to be vacated, declaring the plat to be vacated. The instrument shall state the existing lot description for each proprietor along with an accurate description to be used to describe the land after the lots are vacated.

b. A resolution by the governing body approving the vacation and providing for the conveyance of those areas included in the vacation which were previously set aside or dedicated for public use.

c. A certificate of the auditor that the vacated part of the plat can be adequately described for assessment and taxation purposes without reference to the vacated lots.

3. No part of this section authorizes the closing or obstructing of public highways.

4. The vacation of a portion of an official plat shall not remove or otherwise affect a recorded restrictive covenant, protective covenant, building restriction, or use restriction. Recorded restrictions on the use of property within an official plat shall be modified or revoked by recording a consent to the modification or removal, signed and acknowledged by the proprietors and mortgagees within the official plat.

90 Acts, ch 1236, §36
C91, §409A.22
92 Acts, ch 1055, §1
C93, §354.22
2010 Acts, ch 1061, §180
Referred to in §354.23