

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Agenda

September 4, 2018

6:30 PM

City Council

*Bruce Jarvis – President
Mike Walker – Vice President
Jill Amos
Will Bennett
Bob Clark
Mike Coolman
Patrick Lynch*

- A. Call To Order
- B. Roll Call
- C. Purpose of Public Hearing

[APL-18-001](#)

Notice Of Appeal Regarding The Denial Of Variance Application VA-18-009 By Planning And Zoning Commission To Approve The Keeping Of Chickens On A Residentially Zoned Property Under One (1) Acre At 42 Elizabeth Street

[Variance Appeal Email, VA-18-009 Staff Report, VA-18-009 Application, Findings of Fact and Conclusions of Law](#)

- D. Staff Report
- E. Public Comments - Five Minute Limit Per Person
- F. Council Discussion and Recommendation
- G. Adjournment

From: Evelyn Wolfe
To: [Amanda Jackson](#)
Subject: [EXTERNAL] Variance Appeal
Date: Tuesday, July 17, 2018 5:38:57 PM

Dear Commission,

This letter is to inform you of a wish to appeal from Mr. and Mrs. David Gilham, of 42 Elizabeth Street, entered on this 17th day of July, 2018 regarding the denial of variance application #VA-18-009.

The variance was to approve keeping chickens on a residentially zoned property under one (1) acre, which is regulated by section 1181.06(b) (1) of the Zoning Code, which states: "Minimum Acres Required." The minimum acreage on which chickens, ducks, and rabbits may be kept shall be one (1) acre.

At the July 9th, 2018 meeting, the commission suggested an amendment to allow three chickens on our property. Following the discussion, the commission passed a motion to deny the variance.

Sincerely,

David M. Gilham (614) 625-2431

Evelyn E. Gilham (614) 203-0342

[This message is from an EXTERNAL SOURCE. Use caution when opening links or attachments.]

**Variance #VA-18-009
42 Elizabeth Street**

Owner: David & Evelyn Gilham
Applicant: David Gilham
Location: 42 Elizabeth Street
Existing Zoning: R3 (Low Density Residential)
Request: Variance to Section 1181.06(b)(1) to keep chickens on a residentially zoned property under one (1) acre.

Location and Surrounding Land Uses

The subject property is zoned R3 (Low Density Residential) and consists of two lots (10 & 11) of the Dye's Addition to the Village of Canal Winchester, encompassing approximately 0.38 acres on the west side of Elizabeth Street. All properties surrounding the subject property are zoned R-3 and consist of single family homes.

Analysis

A complaint was filed on 6/1/2018 with the city that the property at 42 Elizabeth Street had a chicken coop behind the residential home. City staff contacted the applicant on 6/4/2018 and notified him that there is a permit process to apply for chickens to be kept on residential property over one (1) acre. The applicant asked if there was any process that would allow him to keep the chickens on his property that is 0.38 acres in size. Staff indicated he could apply for a variance from that code section.

The applicant has indicated that the chicken coop is approximately 15.5 sq. ft. (2.3' x 6.6') and is located completely to the rear of the residential property and 10 feet away from the rear property line. The entire rear yard of the subject property is enclosed by a solid 6 foot privacy fence. The applicant is requesting that a variance be granted to allow him to keep his six (6) chickens on his 0.38 acres of property.

Section 1181.06 (b)(1) of the Zoning Code, which regulates chickens, ducks, and rabbits on residential property, states: "Minimum Acres Required. The minimum acreage on which chickens, ducks, and rabbits may be kept shall be one (1) acre."

(a) Keeping of Chickens, Ducks, and Rabbits. Chickens, Ducks, or Rabbits may be kept in single family residential districts provided that:

- (1) Minimum Acres Required. The minimum acreage on which chickens, ducks, and rabbits may be kept shall be one (1) acre.
- (2) Number Limited Based on Acreage Available. There shall not be more than six (6) chickens, ducks, or rabbits per one (1) acre of land.
- (3) Prohibited Animals. Nothing in this Section shall be construed or interpreted to permit the keeping of roosters, geese, peafowl, or turkeys, except as otherwise done in conformance with the Zoning Code.

- (A) No Commercial Use: Chickens, ducks, or rabbits shall be kept only for the personal use of persons residing in the principal structure on the lot where the chickens, ducks, or rabbits are kept.
 - (B) This section does not permit the slaughter of chickens, ducks, or rabbits in residential districts of the City.
- (4) Fencing Required. Such land shall be fenced so as to securely confine said animals. Such fencing shall not be located closer to any public right-of-way or private street than the minimum setback in the district. Such fence shall be at least six (6) feet tall and opaque such that it screens the sheltering structure and animal area from view of adjacent properties and public right-of-way.
- (5) No Storage of Manure. No storage of manure or dust producing substances shall be permitted.
- (6) Control of Odors Required. No odors may be detectable beyond the property on which such use exists.
- (7) Building Setback Requirements. Any building used in connection with the keeping of chickens, ducks, or rabbits shall be located completely to the rear of the principal structure and shall be located to meet the rear and side yard setback requirements of the applicable residential zoning district. These structures shall not be located within a recorded easement.
- (8) Use Permit Required. A use permit shall be issued by the Planning and Zoning Administrator to any applicant meeting the requirements of this section prior to the commencement of the keeping of chickens, ducks, or rabbits and shall include the following information:
- (A) Address where the chickens, ducks, or rabbits will be kept;
 - (B) Name of the owner;
 - (C) Phone number for the owner;
 - (D) Email Address for the owner;
 - (E) A description of the type and number of animals to be kept;
 - (F) A diagram of the property, drawn to scale, showing the proposed location and configuration of the structures housing the chickens, ducks, or rabbits as well as the relation of these structures to adjacent properties;
 - (G) A diagram of the proposed coop or shelter;
 - (H) A description of the feed storage containers and their locations;
 - (I) A certificate, transcript, or receipt showing that the applicant has completed a class on keeping backyard chickens, ducks, or rabbits from the Ohio State University Extension Office or other source approved by the Planning and Zoning Administrator;
 - (J) If the applicant is a tenant on the property, written permission from the property owner;
 - (K) Written consent from the applicant, valid for the duration of the permit, for a representative of the City, or of the county health department, to enter the

- applicant's property for purposes of inspecting the premises for compliance with health, sanitation, and zoning laws and ordinances;
- (L) Such other information as the Planning and Zoning Administrator determines is necessary to evaluate the suitability of the applicant or property.

Criteria For Approval

- (a) That special circumstances or conditions exist which are not applicable to other lands or structures in the same zoning district.
- (b) That a literal interpretation of the provisions of this Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the provisions of this Zoning Code.
- (c) That the special conditions and circumstances do not result from the actions of the applicant..
- (d) That the granting of the variance will not confer on the applicant any undue privilege that is denied by this Zoning Code to other lands or structures in the same zoning district.
- (e) That the granting of the variance will in no other manner adversely affect the public health, safety, convenience, comfort, prosperity, and general welfare.
- (f) That the granting of the variance is not solely based upon the showing that the property could be put to better economic use than presently permitted by zoning regulations.
- (g) That the granting of the variance will not permit a use that is otherwise not permitted within the respective zoning district.

Staff Recommendation

A variance from Chapter 1181.06 Keeping of Agricultural Animals in Non-Agricultural Districts should be analyzed carefully and be site and application specific. A variance from this code section does not set a 'precedent' for future applicants based on the unique nature of this chapter.

Staff recommends that if Planning and Zoning Commission grants the variance for the property owner to have six (6) chickens on 0.38 acres, that the rest of the requirements #2 - 8 be followed as written.



City of Canal Winchester

36 South High Street
Canal Winchester, Ohio 43110
Development Department
Phone (614) 837-7501 Fax (614) 837-0145

VARIANCE APPLICATION

rev. 09/24/2013

PROPERTY OWNER

Name David & Evelyn Gilham

Address 42 Elizabeth St

Daytime Phone 614-625-2431

Email dgilham 0401@gmail.com

APPLICANT

Name David Gilham

Address 42 Elizabeth St

Daytime Phone 614-625-2431

Email dgilham 0401@gmail.com

Address of Subject Property 42 Elizabeth St

Current Zoning R-3

Variance Request to Section 1181.06(b)(1)

Requested Variance To be under the 1 acre minimum

Attach a legal description and current survey (within 2 years) of the subject property and all supporting materials as required by Section 1147.02(c) (see attachment). Additional information may be required by the Planning and Zoning Administrator or the Planning and Zoning Commission.

I certify that the information provided with this application is correct and accurate to the best of my ability.

[Signature]

Property Owner's or Authorize Agent' Signature

6/18/18

Date

DO NOT WRITE BELOW THIS LINE

Date Received: 6/18/18

Fee: \$ 200⁰⁰
Paid

Historic District: Yes No

Preservation District: Yes No

Date of Action: / /

Application No

Expiration Date: / /

Approved: Yes

Yes, with conditions

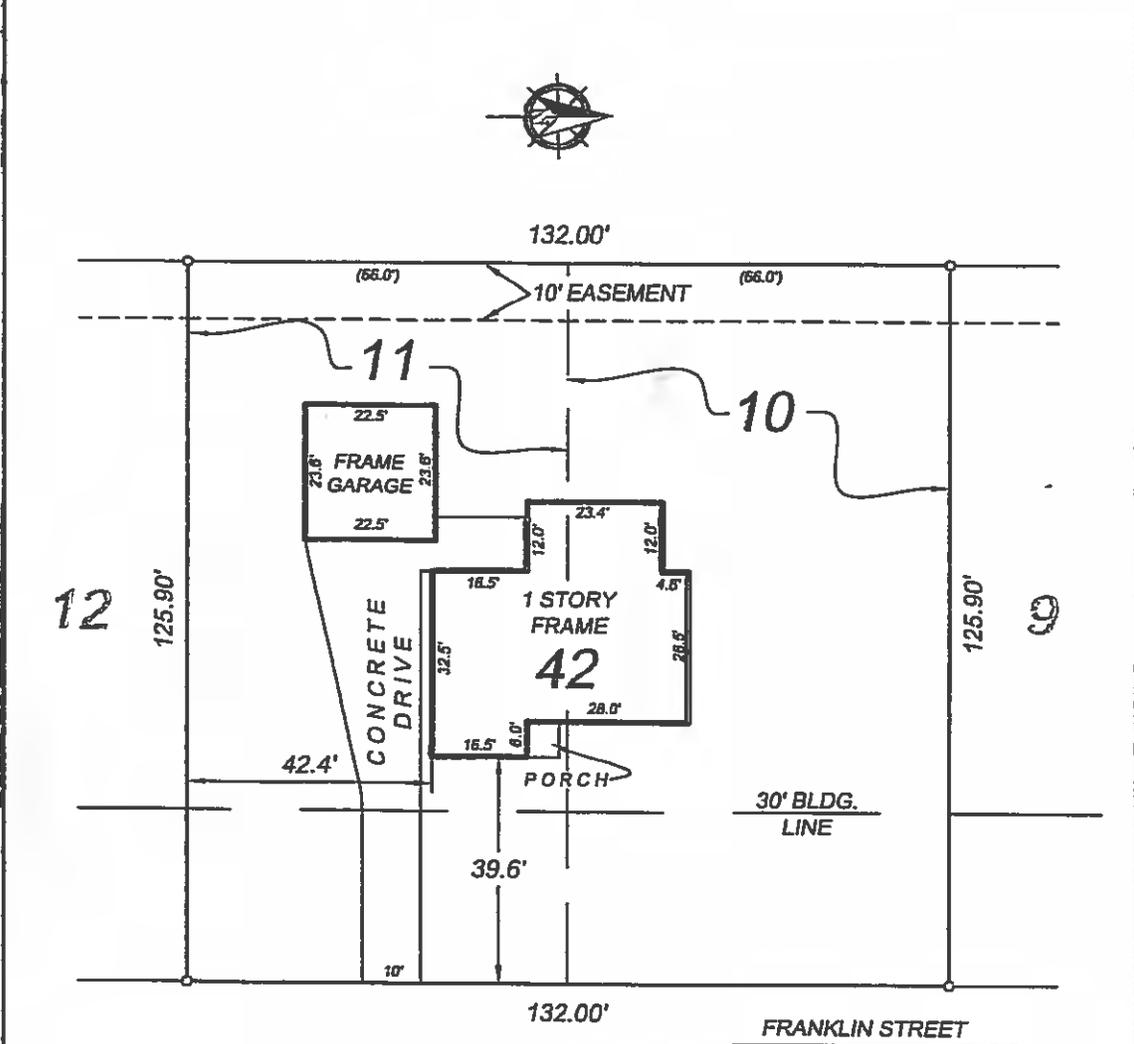
Tracking Number: VA - 18-009

HOY LAND SURVEYING
 39 Village Green Drive
 Westerville, Ohio 43082
 Phone: 614-679-1186



JOB NUMBER #: 926-2018 S DATE OF DRAWING 3-29-18

TITLE AGENCY GREAT AMERICAN TITLE LENDER FAIRWAY INDEPENDENT MTG. BUYER GILHAM
 LEGAL DESC. LOT 10 & 11 - DYE ADDITION P.B. 24 PG. 3 COUNTY FRANKLIN
 CITY/TWP. CANAL WINCHESTER DRN. SJH CK. SS DRAWING SCALE 1" = 25'
 FEMA INFORMATION: FLOOD ZONE X MAP PANEL INFO 39049C 0458K MAP DATE 6-17-08



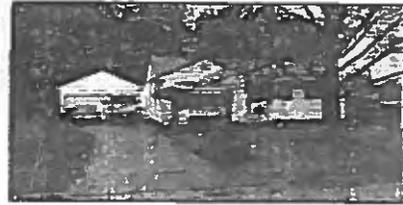
ELIZABETH STREET 40'

We hereby certify that the foregoing MORTGAGE LOCATION SURVEY was prepared in accordance with Chapter 4733-38, Ohio Administrative Code, and is not a Boundary Survey pursuant to Chapter 4733-37, Ohio Administrative Code. This plat is prepared for mortgage loan and title purposes only and is not to be construed as having been prepared for the owner and is not to be used to erect fences or other structures. Easements shown on this plat were taken from the subdivision plat of record. Additional easements affecting this property may exist.

ENCROACHMENT INFORMATION
NONE NOTED

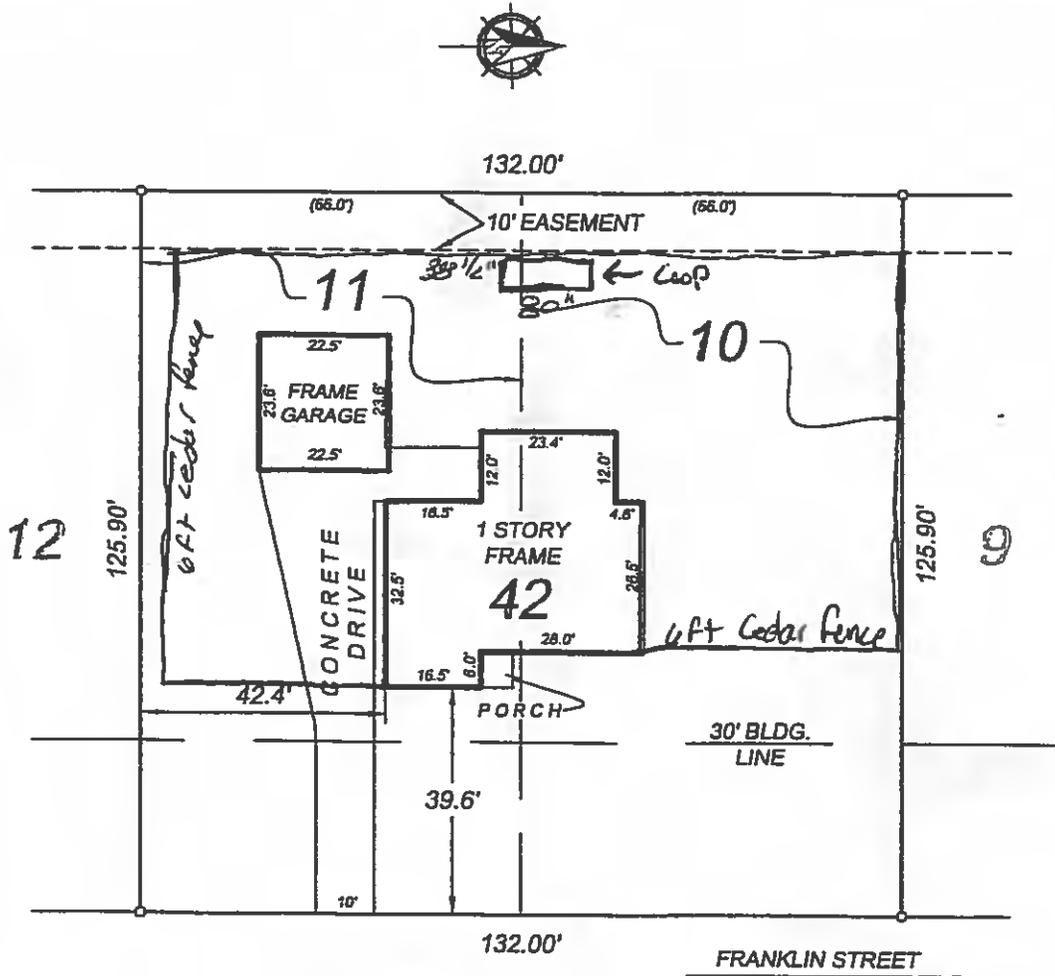
Bv  

HOY LAND SURVEYING
 39 Village Green Drive
 Westerville, Ohio 43082
 Phone: 614-679-1186



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ENCROACHMENT INFORMATION
NONE NOTED

Bv *Steven J. Hoy*



Property Owners in Relation to 42 Elizabeth St

24 Elizabeth St
Bolin Lowel T

68 Elizabeth St
McGuffey Raymond P

41 Elizabeth St
Bennett Ann

55 Elizabeth St
Blais Rita

259 Woodview Dr
Casagrande Chelsie

251 Woodview Dr
Staufer Jerold A

Statement

A statement pertaining to and explaining the relation of the variance(s) requested to the following criteria for approval as listed under Section 1147.03:

A. That special circumstances or conditions exist which are not applicable to other lands or structures in the same zoning district.

We have the largest lot on the street, .38 acres and were misinformed as to the zoning usage for having chickens in a residential neighborhood. We have completely fenced in the back yard with 311ft of 6ft cedar full privacy fencing.

B. That a literal interpretation of the provisions of this Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the provisions of this Zoning Code.

I do not know if other variances have been granted or not pertaining to the keeping of chickens in a residential neighborhood.

C. That the special conditions and circumstances do not result from the actions of the applicant.

We have not done anything to change our property with the exception of putting up a privacy fence for our dogs.

D. That the granting of the variance will not confer on the applicant any undue privilege that is denied by this Zoning Code to other lands or structures in the same zoning district.

I do not believe it would grant us any privileges that any other home owner could also apply for if they so wished.

E. That the granting of the variance will in no other manner adversely affect the public health, safety convenience, comfort, prosperity, and general welfare.

Granting of the variance would not affect in these manners any surrounding neighbors or the general public. All chickens will be kept in a coop and run area within the fenced in back yard. Coop is cleaned daily and all waste sealed for disposal and not left in the yard.

F. That the granting of the variance is not solely based upon showing that the property could be put to better economic use than presently permitted by zoning regulations.

This variance has no economic implications.

G. That the granting of the variance will not permit a use that is otherwise not permitted within the respective zoning district.

I do not believe this to be the case as other residents could apply for and potentially receive the same variance.













**BEFORE THE PLANNING AND ZONING COMMISSION OF THE CITY OF CANAL
WINCHESTER**

In re Application of David Gilham
For a Variance to Section 1181.06(b)(1)
To keep chickens on a residentially
zoned property under one (1) acre.

This application is before the Commission on David Gilham's application for a variance to Canal Winchester Code Section 1181.06(b)(1) to permit applicant to keep chickens on a residentially zoned property under one (1) acre within a R3 (low density residential) district. The Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On June 18, 2018, David Gilham submitted an Application for a Variance to Code Section 1181.06(b)(1) to keep chickens on a residentially zoned property under one (1) acre. The subject property consists of two lots, encompassing approximately 0.38 acres, located on the west side of Elizabeth Street. The property is zoned R3 (low density residential). All properties surrounding the subject property are also zoned R-3 and consist of single family homes.

2. On June 1, 2018, a complaint was filed with the City by the applicant's neighbor stating that the subject property at 42 Elizabeth Street had a chicken coop behind the residential home. City staff contacted the applicant on June 4, 2018 and notified him that there is a permit process to apply for chickens to be kept on residential property over one (1) acre. The applicant asked if there was a process that would allow him to keep the chickens on his 0.38 property and staff indicated he could apply for a variance.

3. On July 9, 2018, the Planning and Zoning Commission held a public hearing on Mr. Gilham's variance request. The Planning and Zoning Commission reviewed the materials

submitted with the application and testimony from the applicant and the applicant's neighbors. The Planning and Zoning Commission voted on the variance. The variance was denied.

II. CONCLUSIONS OF LAW

1. Under Codified Ordinance 1147.03, the following criteria shall be considered by the Commission in reaching its determination:

(a) That special circumstances or conditions exist which are not applicable to other lands or structures in the same zoning district.

(b) That a literal interpretation of the provisions of this Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the provisions of this Zoning Code.

(c) That the special conditions and circumstances do not result from the actions of the applicant.

(d) That the granting of the variance will not confer on the applicant any undue privilege that is denied by this Zoning Code to other lands or structures in the same zoning district.

(e) That the granting of the variance will in no other manner adversely affect the public health, safety, convenience, comfort, prosperity, and general welfare.

(f) That the granting of the variance is not solely based upon the showing that the property could be put to better economic use than presently permitted by zoning regulations.

(g) That the granting of the variance will not permit a use that is otherwise not permitted within the respective zoning district.

2. A zoning board's authorization or denial of a variance is presumed to be valid and the burden of showing the claimed invalidity lies with the party contesting the determination. *Consol. Mgt., Inc. v. City of Cleveland*, 6 Ohio St.3d 238, 452 N.E.2d 1287 (1983).

3. Section 1181.06(b)(1) of the Codified Ordinances permits chickens, ducks, or rabbits to be kept in single family residential districts provided that the minimum acreage on which the chickens, ducks, or rabbits are kept is one (1) acre.

4. There are no special circumstances or conditions that exist which are not applicable to other lands or structures in the same zoning district. The City recently enacted the law permitting chickens within residential zoning districts. The Planning and Zoning Commission wanted to ensure the chickens are located on property large enough to avoid interference with the neighbor's use and enjoyment of their property. Both the Planning and Zoning Commission and City Council contemplated different minimum acre requirements and determined a minimum of one (1) acre of land was appropriate. The applicant has indicated that he did not have knowledge of the limitations on chickens on residential property and that he would be able to comply with all other provisions of Section 1181.06, however, the applicant did not present the Planning and Zoning Commission with any special circumstances or conditions which are not applicable to other property in the R3 zoning district and would merit chickens on less than one-half of the acreage requirement.

5. A literal interpretation of the provisions of this Zoning Code would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the provisions of this Zoning Code. There are no other residents with properties under one (1) acre who have chickens. The City has not issued any permits since the law came into effect and no resident is legally keeping chickens in Canal Winchester at this time.

6. There are no special conditions and circumstances resulting from the actions of the applicant.

7. Granting of the variance would confer on the applicant an undue privilege that is denied by this Zoning Code to other lands or structures in the same zoning district. Other properties that are less than one acre in the same single family residential zoning district are not permitted to keep chickens on their land.

8. The granting of the variance may adversely affect the public health, safety, convenience, comfort, prosperity, or general welfare. The presence of the chickens on the applicant's property has the potential to disrupt the comfort and welfare of the surrounding neighbors. The close proximity of the chickens to the neighboring property may result in odors and other nuisances.

9. The variance determination is not related to the economic use of the property. The chickens are utilized as pets and sources of eggs. Section 1181.06(b)(3)(A) prohibits the commercial use of chickens on residential property.

10. The granting of the variance would not permit a use that is otherwise not permitted within the respective zoning district.

11. Therefore, the Planning and Zoning Commission denies the variance to permit applicant to keep chickens on his residentially zoned property, located at 42 Elizabeth Street, which is under one (1) acre within a R3 district.

DATE



BILL CHRISTENSEN

Concur Dissent Abstain



JOE DONAHUE

Concur Dissent Abstain

BRAD RICHEY

Concur Dissent Abstain



JUNE KONOLD

Concur Dissent Abstain



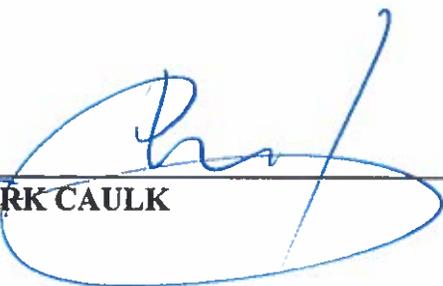
MICHAEL VASKO

Concur Dissent Abstain



JOE WILDENTHALER

Concur Dissent Abstain



MARK CAULK

Concur Dissent Abstain