

Marshall County Planning & Zoning
STAFF REPORT
November 22, 2022
Issue: Variance for Lot Size

OWNER/APPLICANT: Janet & Jody Birchem

PROPERTY DESCRIPTION: Proposed lots 5C and 5D from the proposed Plat of Lots 5C and 5D of Lot 3A of Lake Dumarce Seventh Subdivision in Section 24, T127N, R54W of the 5th P.M., Marshall County, South Dakota (Proposed plat drawing available in the office of Zoning Administrator).

CURRENT ZONING: Agricultural (Ag)

SURROUNDING ZONING: Lake Front Residential (R-3) and Agricultural (Ag)

REQUEST: Janet & Jody Birchem have requested a variance to lot size to create Lot 5C with a depth of 151.79 feet and Lot 5D with depths of 100.12 and 83.23 feet instead of the 200 and 150-foot requirements, respectively, per the Marshall County Zoning Ordinance.

HISTORY/ISSUE(S):

1. The Lots in question are a part of a plat that will be going through in the coming weeks.
2. The proposed lots are intended to be split between family members to create a lakefront lot (5C) and a back lot (5D).
3. As the proposed Lots are currently drawn, Lot 5C has an average depth of 184.73 feet and an average width of 128.9 feet. Lot 5D has an average depth of 91.68 feet and an average width of 143.82 feet.
4. Lot 5C does not meet the 200-foot depth requirement on the North property line and 5D does not meet the 150-foot depth requirements on both the North and South property lines.
5. Marshall County Ordinance requires that each lot shall have a depth of not less than two hundred (200) feet and shall have a shoreline frontage width of not less than one hundred (100) feet. The minimum lot road frontage shall not be less than one hundred (100) feet in width. All lots without shoreline frontage shall have a minimum width of seventy-five (75) feet and a minimum depth of one hundred fifty (150) feet.
6. Staff Recommendation – **48.21’ variance to the lot size depth requirement for Lot 5C, a 49.88’ (North) and 66.77’ (South) variance to the lot size depth requirements for Lot 5D.**
7. The Board could table, deny or approve the request. If the Board chooses to approve the variance, it could use the following findings, similar to those used in previous approvals of setback requirements in R-3 District.
 - a. The Board has granted similar Lot Size variances to lake lots in the past, when the neighbors had no objections.
 - i. Similar lot size variances allowed – 18/25/11 for R. Westby 11/22, 34.38/33.31 for H. Mairs 6/17 and 9 Lots for S. Bull 12/19 (see file).
 - b. The Board would consider approving other similar requests meeting the unique circumstances.

If the Board chooses to deny the variance, it could use the following findings, similar to those used in previous denials of setback variances.

- a. The lot and situation are not so unique to necessitate the relaxation for the setback requirement.
- b. The granting of this variance would confer upon the applicant special privilege denied to others in the R-3 District.

Action Item – 48.21’ variance to the lot size depth requirement for Lot 5C, a 49.88’ (North) and 66.77’ (South) variance to the lot size depth requirements for Lot 5D.

NOTICE OF HEARING – APPLICATION FOR VARIANCE

Notice is hereby given that the Marshall County Planning & Zoning Board will meet on November 22, 2022 at 9:00 a.m. at the Marshall County Courthouse Commissioners Chambers, concerning the following application for variance from the Marshall County Zoning Ordinance.

Janet & Jody Birchem have requested a variance to lot size for proposed lots 5C and 5D from the proposed Plat of Lots 5C and 5D of Lot 3A of Lake Dumarce Seventh Subdivision in Section 24, T127N, R54W of the 5th P.M., Marshall County, South Dakota (Proposed plat drawing available in the office of Zoning Administrator). The petitioner is asking to create Lot 5C with a depth of 151.79 feet and Lot 5D with depths of 100.12 and 83.23 feet instead of the 200 and 150-foot requirements, respectively, per the Marshall County Zoning Ordinance.

Erin Collins-Miles
Planning & Zoning Administrator

Published once at the approximate cost of

For publication: November 9, 2022

**IT (Nov 9)
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(Continued on p10)

Public Notices

(Continued from p5)

P.M., Marshall County, South Dakota (Proposed plat drawing available in the office of Zoning Administrator). The petitioner is asking to create Lot 5C with a depth of 151.79 feet and Lot 5D with depths of 100.12 and 83.23 feet instead of the 200 and 150-foot requirements, respectively, per the Marshall County Zoning Ordinance.

Erin Collins-Miles, Planning & Zoning Administrator

Published at an approximate cost of \$9.28 and can be viewed free of charge at www.sdpublicnotices.com.

MARSHALL COUNTY PLANNING & ZONING COMMISSION
P.O.BOX 9
BRITTON, SOUTH DAKOTA 57430
605.448.7540

November 8, 2022

Dear Property Owner,

Notice is hereby given that the Marshall County Planning & Zoning Board will meet on November 22, 2022 at 9:00 a.m. at the Marshall County Courthouse Commissioners Chambers, concerning the following application for variance from the Marshall County Zoning Ordinance.

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As an adjacent landowner, you are being notified of the hearing. If you have any questions, please contact my office. Any comments or concerns should be stated in writing and forwarded to my office or expressed at the scheduled hearing.

Sincerely,

Erin Collins-Miles

Erin Collins-Miles
Planning and Zoning Administrator

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As an adjacent landowner, you are being notified of the hearing. If you have any questions, please contact my office. Any comments or concerns should be stated in writing and forwarded to my office or expressed at the scheduled hearing.

Sincerely,

Erin Collins-Miles

Erin Collins-Miles
Planning and Zoning Administrator

Sent to the following adjacent landowners on 11/8/22:

1. Robert Tchida – 44201 Dumarce Rd Veblen, SD 57270
2. Helen & Ritchie Mairs – 7706 130th Ave. Lisbon, ND 58054

MARSHALL COUNTY APPLICATION FOR VARIANCE

DATE: 10-28-2022

To: Marshall County Planning and Zoning Commission
PO Box 9
Britton, SD 57430

The undersigned do hereby request a variance from the Marshall County Zoning Ordinance to ~~build (or set)~~ Lot Size within N/A of a (circle applicable): Twp Rd, County Rd, Federal or State Hwy, Other Rd, Lot Line or High Water Mark.

Structure would be located on (legal description): Proposed Plat of Lots 5C +

Reason: James P Wirtz of Fairmount North Dakota is going to take Lot 5D we call it the back lot. Janet and Jody Birchem are going to take the front is the water lot at 5C that's why we are breaking the lot up. Thank you

Applicant Name: ^{Janet and} Jody Birchem Phone: 701-680-0330
Address: 11806 79th SE Stirum ND 58069

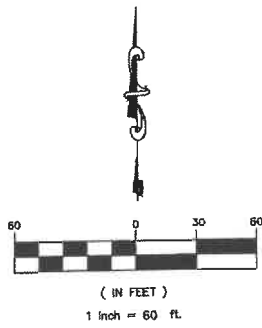
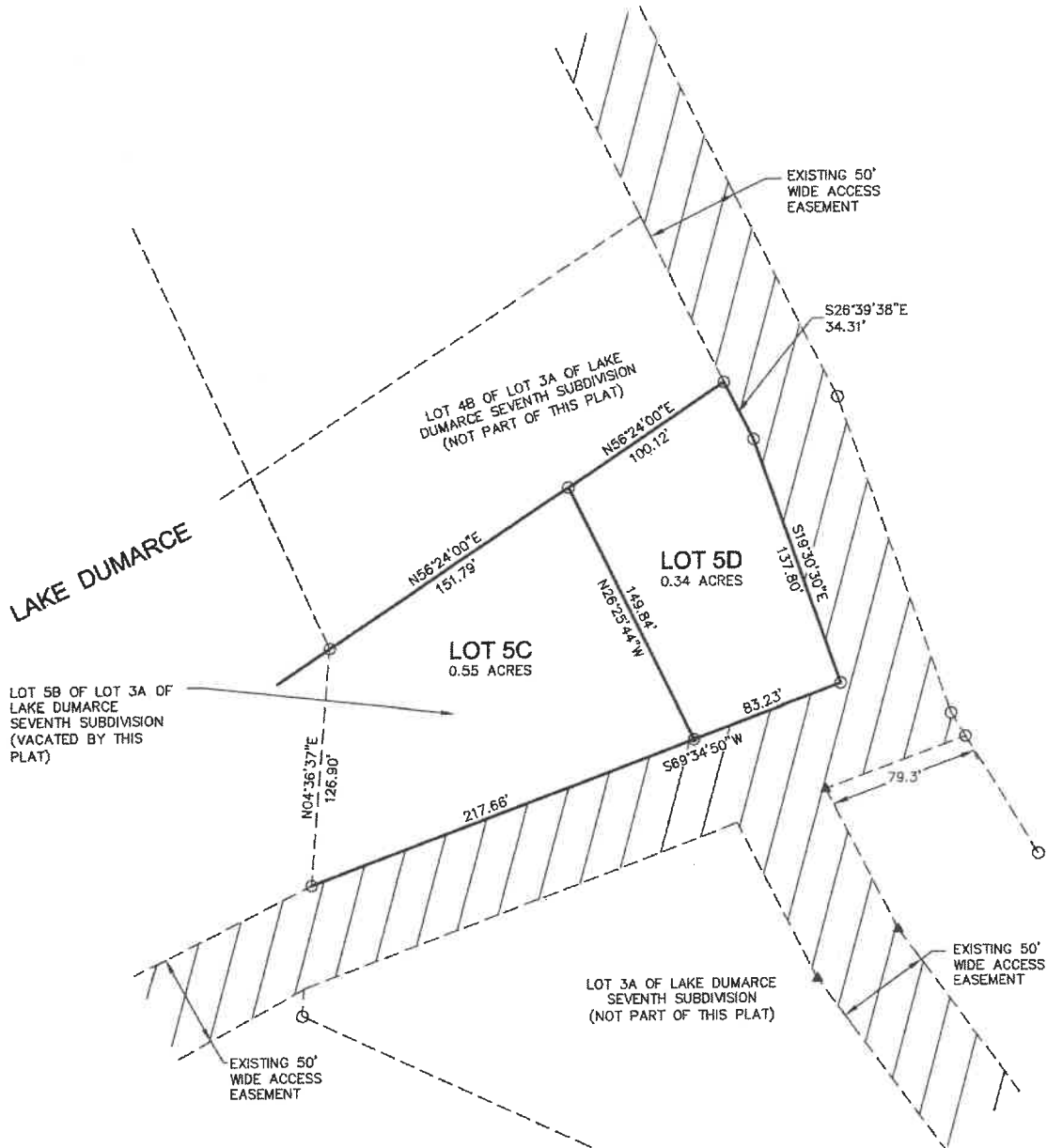
Applicant Signature: Jody Birchem Janet Birchem
Owner Signature (if different than applicant): _____

For Internal Office Use Only:

Date Received: 11/3/22 Fees (non-refundable): \$150.00 Paid: YES NO
Inspection Report: See staff report

Date of Hearing by Planning and Zoning Commission: November 22, 2022
Action taken by Planning and Zoning Commission: _____

PLAT OF LOTS 5C AND 5D OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24-T127N-R54W OF THE 5th P.M., MARSHALL COUNTY, SOUTH DAKOTA



LEGEND

- FOUND PROPERTY CORNER
- ⊙ SET 5/8" X 18" REBAR WITH SURVEY CAP STAMPED KIESO RLS 9214
- ▲ CALCULATED POSITION
- ▨ EXISTING ACCESS EASEMENT

BASIS OF BEARINGS
GPS OBSERVATION



Helm Associates
CIVIL ENGINEERS & LAND SURVEYORS

416 PRODUCTION STREET N.
P.O. Box 111
Aberdeen, S.D. 57401
Phone: 605.225.1212
Fax: 605.225.3189

DWG. 8986-LS BY: BKK SHEET 1 OF 3

PLAT OF
LOTS 5C AND 5D OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION
IN SECTION 24-T127N-R54W OF THE 5th P.M.,
MARSHALL COUNTY, SOUTH DAKOTA

OWNER'S CERTIFICATE

WE, JAMES P. WIRTZ (UNDIVIDED ONE-HALF INTEREST) AND JODY BIRCHEM AND JANET BIRCHEM, HUSBAND AND WIFE, AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON (UNDIVIDED ONE-HALF INTEREST) DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF LOT 5B OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24 T127N R54W OF THE 5TH P.M., MARSHALL COUNTY, SOUTH DAKOTA, AND THAT WE HAVE CAUSED THE SAME TO BE SURVEYED AND PLATTED AS SHOWN ON THE ATTACHED PLAT WHICH SHALL BE HEREAFTER KNOWN AND DESCRIBED AS; LOTS 5C AND 5D OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24-T127N-R54W OF THE 5TH P.M., MARSHALL COUNTY, SOUTH DAKOTA, AS SHOWN BY THIS PLAT, AND THAT DEVELOPMENT OF THIS LAND SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION AND SEDIMENT CONTROL REGULATIONS.

BY THIS PLAT, WE DO HEREBY VACATE LOT 5B OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24 T127N R54W OF THE 5TH P.M., MARSHALL COUNTY, SOUTH DAKOTA, AS FILED FOR RECORD ON SEPTEMBER 5, 2017 AND DULY RECORDED IN PLAT BOOK NO. 5 PAGE 158, IN THE MARSHALL COUNTY REGISTER OF DEEDS OFFICE.

UNDIVIDED ONE-HALF INTEREST

UNDIVIDED ONE-HALF INTEREST

JAMES P. WIRTZ

Signed this _____ day of _____, 20____

JODY BIRCHEM

Signed this _____ day of _____, 20____

JANET BIRCHEM

Signed this _____ day of _____, 20____

ACKNOWLEDGMENT

STATE OF)
COUNTY OF)SS

ON THIS THE _____ DAY OF _____, 20____, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED JAMES P. WIRTZ KNOWN TO ME OR SATISFACTORILY PROVEN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF)
COUNTY OF)SS

ON THIS THE _____ DAY OF _____, 20____, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED JODY BIRCHEM AND JANET BIRCHEM KNOWN TO ME OR SATISFACTORILY PROVEN TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC

SURVEYOR'S CERTIFICATE

I, ROBERT K. KIESO, A REGISTERED LAND SURVEYOR OF ABERDEEN, SOUTH DAKOTA, DO HEREBY CERTIFY THAT AT THE REQUEST OF THE OWNERS, I HAVE SURVEYED AND PLATTED "LOTS 5C AND 5D OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24-T127N-R54W OF THE 5TH P.M., MARSHALL COUNTY" AS SHOWN ON THE ATTACHED PLAT, THAT I HAVE FOUND AND/OR SET IRON PINS AS INDICATED THEREON. I FURTHER CERTIFY THAT THE WITHIN AND FOREGOING PLAT IS IN ALL RESPECTS TRUE AND CORRECT.

DATED THIS _____ DAY OF _____, 20____

ROBERT K. KIESO

RLS #9214

DWG. 8986-LS BY: BKK SHEET 2 OF 3

PLAT OF
LOTS 5C AND 5D OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION
IN SECTION 24-T127N-R54W OF THE 5th P.M.,
MARSHALL COUNTY, SOUTH DAKOTA

COUNTY PLANNING COMMISSION CERTIFICATION

I HEREBY CERTIFY THAT THE FOLLOWING IS A CORRECT COPY OF THE RESOLUTION DULY PASSED BY THE COUNTY PLANNING COMMISSION OF MARSHALL COUNTY, SOUTH DAKOTA AT A MEETING HELD ON THE ____ DAY OF _____, 20____.

"BE IT RESOLVED BY THE COUNTY PLANNING COMMISSION OF MARSHALL COUNTY, SOUTH DAKOTA, THAT THE PLAT SHOWING LOTS 5C AND 5D OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24-T127N-R54W OF THE 5TH P.M., MARSHALL COUNTY HAVING BEEN EXAMINED, IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL 11-2-2, AND ANY AMENDMENTS THEREOF."

SECRETARY OF MARSHALL COUNTY PLANNING COMMISSION, SOUTH DAKOTA

APPROVAL BY COUNTY

I HEREBY CERTIFY THAT THE FOLLOWING IS A CORRECT COPY OF THE RESOLUTION DULY PASSED BY THE BOARD OF COMMISSIONERS OF MARSHALL COUNTY, SOUTH DAKOTA AT A MEETING HELD ON THE ____ DAY OF _____, 20____.

"BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MARSHALL COUNTY, SOUTH DAKOTA, THAT THE PLAT SHOWING LOTS 5C AND 5D OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24-T127N-R54W OF THE 5TH P.M., MARSHALL COUNTY, HAVING BEEN EXAMINED, IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL 11-3, AND ANY AMENDMENTS THEREOF."

COUNTY AUDITOR, MARSHALL COUNTY, SOUTH DAKOTA

HIGHWAY AUTHORITY CERTIFICATE

THE LOCATION OF THE PROPOSED PROPERTY LINES ABUTTING THE COUNTY OR STATE HIGHWAY, OR THE COUNTY ROAD AS SHOWN HEREON, IS HEREBY APPROVED ANY CHANGE IN THE LOCATION OF THE EXISTING ACCESS OR ANY NEW ACCESS SHALL REQUIRE ADDITIONAL APPROVAL.

BY: _____
HIGHWAY AUTHORITY

TITLE: _____

DIRECTOR OF EQUALIZATION'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE RECEIVED A COPY OF THIS PLAT ON THIS ____ DAY OF _____, 20____.

DIRECTOR OF EQUALIZATION, MARSHALL COUNTY, SOUTH DAKOTA

TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT ALL TAXES WHICH ARE LIENS UPON ANY OF THE LANDS INCLUDED IN THE ABOVE PLAT ARE SHOWN BY THE RECORDS OF MY OFFICE TO BE FULLY PAID. SIGNED THIS ____ DAY OF _____, 20____.

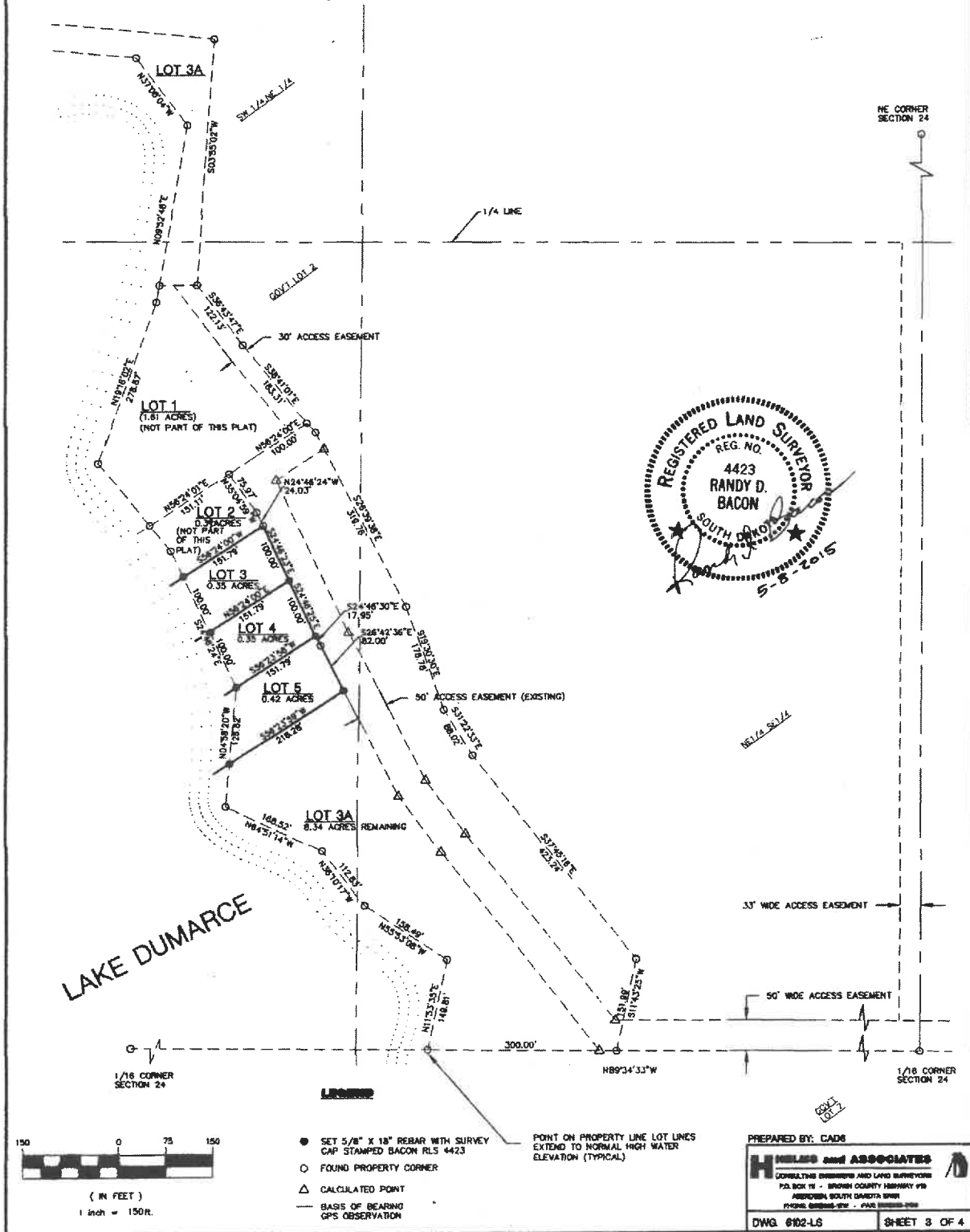
COUNTY TREASURER, MARSHALL COUNTY, SOUTH DAKOTA

REGISTER OF DEEDS CERTIFICATE

FILED FOR RECORD THIS _____ DAY OF _____, 20____ AT _____ O'CLOCK _____, AND DULY RECORDED IN HANGING PLATS NO. _____.

REGISTER OF DEEDS, MARSHALL COUNTY, SOUTH DAKOTA

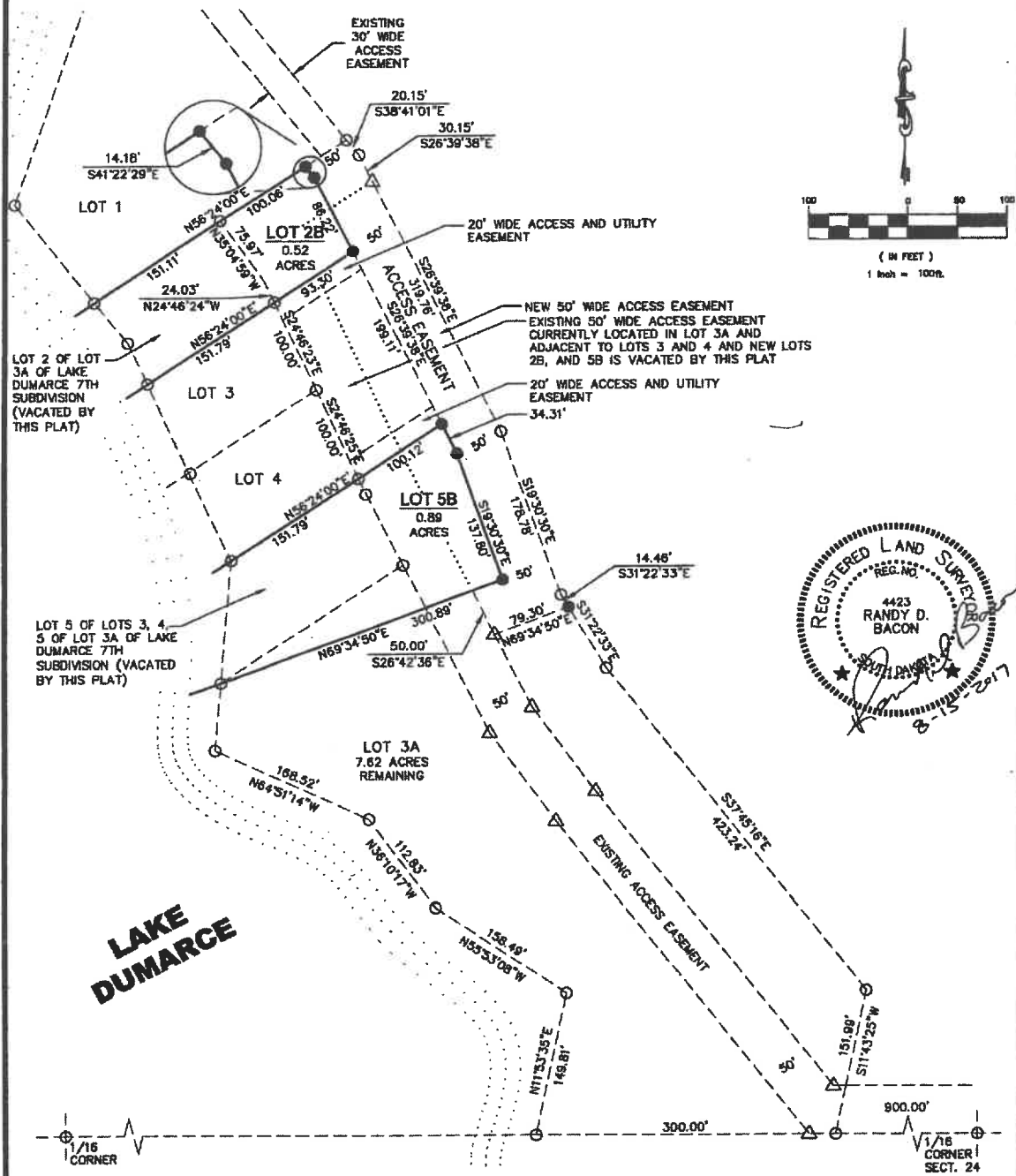
PLAT OF LOTS 3, 4, AND 5 OF LOT 3A OF LAKE DUMARCE SEVENTH SUBDIVISION IN SECTION 24 T127N-R54W OF THE 5TH P.M., MARSHALL COUNTY, SOUTH DAKOTA



5-124 Slide 148

**PLAT OF
 LOTS 2B AND 5B OF LOT 3A OF LAKE DUMARCE SEVENTH
 SUBDIVISION IN SECTION 24 T127N-R54W OF THE
 5TH P.M., MARSHALL COUNTY, SOUTH DAKOTA**

A-6102-2017



- LEGEND**
- SET 5/8" X 18" REBAR WITH SURVEY CAP STAMPED BACON RLS 4423
 - FOUND PROPERTY CORNER (RLS 4423)
 - △ CALCULATED POINT
 - BASIS OF BEARING
 - GPS OBSERVATION

Helm & Associates
 CIVIL ENGINEERS & LAND SURVEYORS

221 Brown County Highway 29
 P.O. Box 111
 Aberdeen, S.D. 57404
 Phone 605.225.2113
 Fax 605.225.2100

DWG. 6102LS-2017 BY: TMO SHEET 1 OF 3

5-158 Slide 151

Web AppBuilder for ArcGIS



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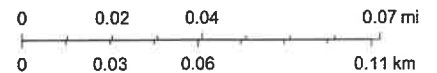
- Agricultural District
- Lake Front Residential District

PLAT

LAKE DUMARCE 7TH SUBDIVISION

- LAKE DUMARCE EAST ISLAND 2ND SUBDIVISION
- LAKE DUMARCE EAST ISLAND SUBDIVISION
- TOWNSHIPS
- SECTIONS
- PARCELS

1:2,257



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Web AppBuilder for ArcGIS

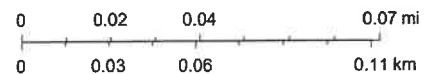


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PLAT

- LAKE DUMARCE 7TH SUBDIVISION
- LAKE DUMARCE EAST ISLAND 2ND SUBDIVISION
- LAKE DUMARCE EAST ISLAND SUBDIVISION
- TOWNSHIPS
- SECTIONS
- PARCELS

1:2,257



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