Board of Adjustment
June 25, 2026
VAR-26-013

POPECOUNTY MINNESOTA

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STAFF REPORT

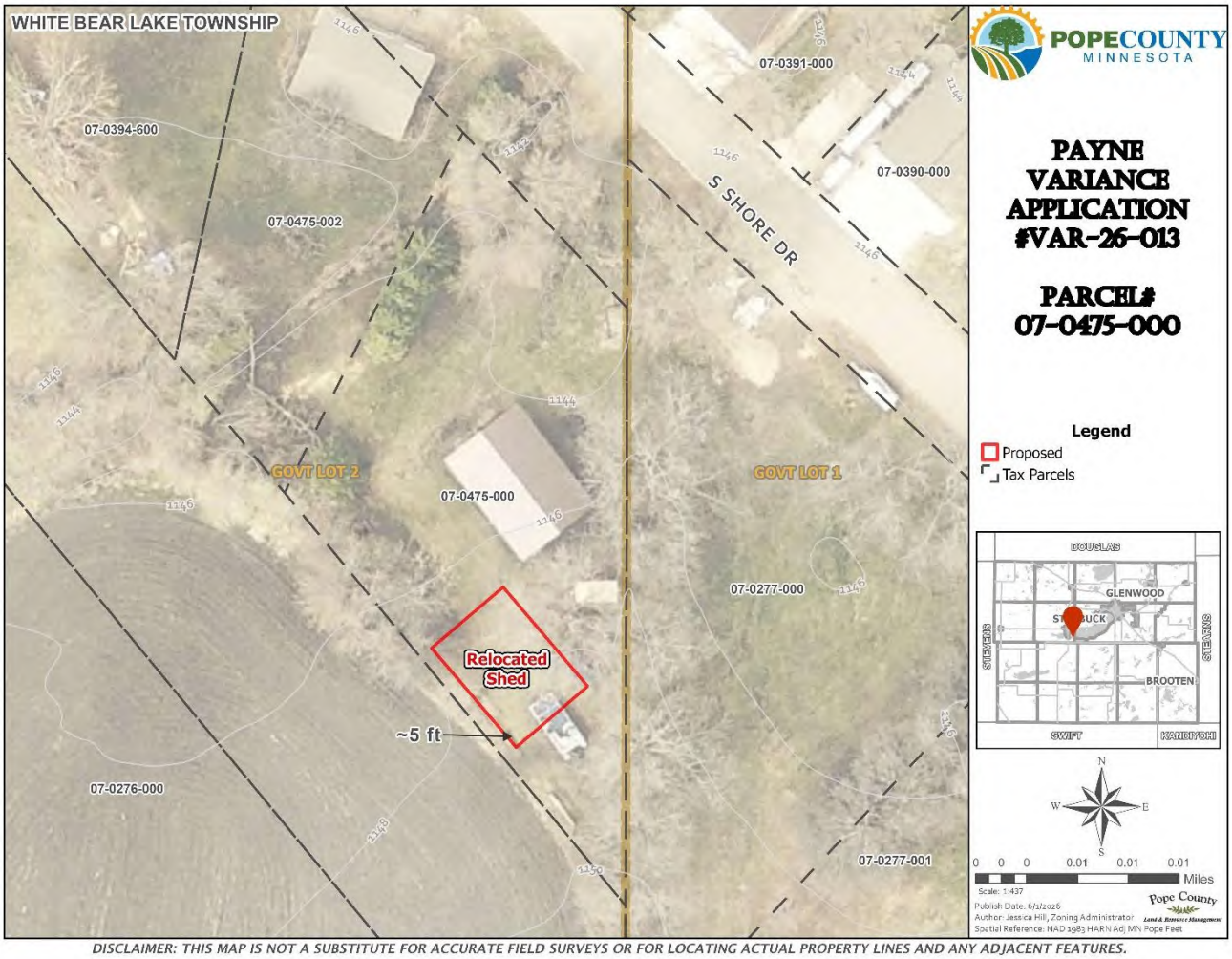
Applicant Information

Applicant: Daniel & Gayle Payne

Application: Variance (VAR-26-013)

Zoning: Shoreland-General Development (S-GD)

Location: Part of Lot 42, Plat of Suckstorff's First Subdivision, Section 36, Township 125 (White Bear Lake), Range 39, Pope County, Minnesota.



DISCLAIMER: THIS MAP IS NOT A SUBSTITUTE FOR ACCURATE FIELD SURVEYS OR FOR LOCATING ACTUAL PROPERTY LINES AND ANY ADJACENT FEATURES.

Background

The applicant would like to move an existing accessory structure to higher ground on his parcel to avoid stormwater flooding, located in the Shoreland-General Development zoning district. The parcel is a non-riparian parcel on South Shore Drive. The existing garage is approximately ten (10) feet from the side yard property line on the east side of the parcel and over forty (40) feet from the side yard property line on the south side of the property. The owner proposes to move the existing structure south and east of the current shed location, to be located at approximately five (5) feet from the side yard property line on the south side of the property. The accessory structure would be placed to meet the ten (10) foot setback to the east property line. Therefore, a five (5) foot encroachment into the side yard setback on the south side of the property is requested.

Applicable Statutes

Local Ordinance

- Pope County Land Use Controls Ordinance
  - Section 4.2 Shoreland-General Development District (S-GD)
    - 4.2.4 Setbacks:

      D. Side Yard Setback: 10 feet
  - Section 4.6 Shoreland District Regulations
    - 4.6.5 Placement, Height, and Design of Structures

      A. **Placement of Structures and Subsurface Sewage Treatment Systems on Lots**

      When more than one setback applies to a site, structures and facilities must be located to meet all setbacks, and comply with the following provisions:

3. **Additional structure setbacks:** Structures must also meet the following setbacks, regardless of the waterbody classification:

Setback from:	Setback (feet)
Top of Bluff	30
Side Yard	10
Unplatted cemetery	50
Right-of-way line of federal, state, or county highway	50
Right-of-way line of town road, public street, other legal roads or streets not classified	40

- Section 11.6 Variance from Standards

State Statute/Rule

- MN Statute Chapter 394 Planning, Development, Zoning *(enabling legislation)*
  - 394.27 Subd 7 *Variances; practical difficulties*
- MN Administrative Rules Chapter 6120, *Shoreland and Floodplain Management*
  - 6120.3300 Zoning Provisions
  - 6120.3900 Subp. 3 Variances: *Variances may only be granted in accordance with Minnesota Statutes, chapters 394 or 462, as applicable. They may not circumvent the general purposes and intent of the official controls. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of variances to ensure compliance and to protect adjacent properties and the public interest. In considering variance requests, boards of adjustment must also consider whether property owners have reasonable use of the lands without the variances, whether existing sewage treatment systems on the properties need upgrading before additional development is approved, whether the properties are used seasonally or year-round, whether variances are being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.*

Staff Comments

Staff offers the following comments for consideration:

The existing shed structure is located in conformance with the current zoning (setback) standards and was permitted and inspected in 1992, LUP-92-57.

Neighborhood Analysis

Note: *The below comparisons are provided for context; variance decisions must be based on statutory criteria rather than neighborhood averages.*

A review of structures within 500 feet, on non-riparian parcels, similar to the subject parcel indicates the following averages:

- Average setback, on non-riparian parcels: 4.5 feet

For context only, the proposed setback is generally consistent with nearby development patterns and is not offered as a basis for granting the variance. One accessory structure along South Shore Drive (Parcel 09-0462-000) is located approximately 5 feet from the side yard property line.

Table 1: Structures on Non-Riparian side of South Shore Drive, within 500 ft of Proposed Structure

Parcel	Structure Type	Distance to Side Yard Setback (ft)
07-0277-105	None	-
07-0277-001	Accessory	0
07-0475-002	Accessory	0
07-0394-600	Accessory	19
07-0474-000	None	-
07-0473-000	Accessory	10
07-0471-000	None	-
07-0470-000	Accessory	1
07-0469-000	Accessory	11
07-0468-000	Accessory	4
07-0467-600	Accessory	0
07-0465-600	Accessory	0
07-0464-000	Accessory	0
07-0463-000	Accessory	3
07-0462-000	Accessory	5
07-0461-000	Accessory	6
	Average:	**4.5**

Comprehensive Plan Consistency

Based on Minnesota Statute 394.27 Subd. 7: A variance may be granted if it is in harmony with the general purposes and intent of the official control and when the variance is consistent with the comprehensive plan. The Comprehensive Plan emphasizes protection of shoreland resources.

Staff Analysis

Reducing setbacks from the side yard property line may affect neighboring properties, and established development patterns; however, the Board must evaluate whether the requested variance remains in harmony with the purposes and intent of the ordinance based on the specific facts of the property.

Practical Difficulty Analysis

Based on Minnesota Statute 394.27 subd. 7: A variance may be granted if enforcement of the zoning ordinance as applied to a particular piece of property would cause the landowner "practical difficulties." All three statutory criteria must be met; failure to meet any one requires denial.

1. **Reasonableness**

   The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean the land cannot be put to any reasonable use whatsoever without the variance. For example, this variance application is for the relocation of an existing accessory structure which would result in not meeting a minimum specified setback standard. The question to be considered is: whether locating the accessory structure as proposed is reasonable or can it be located within the ordinance standards.

   Staff Analysis

   The property currently supports the existing accessory structure, which is approximately 10 feet from the east side yard property line. The relocation of the accessory structure to higher ground to avoid seasonal flooding, may constitute a reasonable use of the property.

2. **Uniqueness**

The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner. When considering the variance for a structure to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as an irregular parcel shape or sloping topography or other natural features like wetlands or trees that prevent the structure from being located in compliance.

Staff Analysis

According to the applicant and comments received during review, the existing accessory structure is located within a low area that experiences periodic flooding during certain storm events. Relocating the structure to higher ground may reduce the potential for flood-related impacts to the structure. The Board may find that the property's topography and low-lying area where the existing accessory structure is located create site-specific constraints affecting relocation of the structure in full compliance with setback requirements.

3. **Essential Character**

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area. For example, when thinking about this variance for the relocating this accessory structure, how will the proposed structure and its location look when compared to others in the neighborhood, and if that fits in with the character of the area.

Staff Analysis

The proposed relocation would maintain an accessory structure use consistent with surrounding residential development. The proposed location is further from South Shore Drive and is not expected to materially alter the character of the locality.

Staff Recommendation

Having reviewed and considered the application, local ordinances, state statutes, and all comments received, staff finds that the Board must determine whether the statutory practical difficulties criteria have been sufficiently established based upon the evidence presented in the record:

- The property contains an existing accessory structure, and the relocation of said structure to avoid stormwater/seasonal flooding, may constitute a reasonable use of the property.
- The existing topography of the lot causes a challenge in placement of the existing accessory structure in conformance with the ordinance.

Therefore, the Board should evaluate whether the practical difficulties criteria and comprehensive plan consistency requirements have been sufficiently satisfied to justify approval of the requested variance.

The Board may consider whether the requested variance represents the minimum relief necessary to allow relocation of the existing accessory structure to higher ground while maintaining reasonable use of the property.

However, the public hearing as well as the applicant may offer additional facts that are not yet evident for the Board of Adjustment to consider. If the Board of Adjustment chooses to approve the variance despite the above findings, Staff recommends that the following conditions be considered:

1. The existing accessory structure, including all overhangs, shall not be located closer than five (5) feet to the south side-yard property line and shall otherwise conform to the approved site plan.
2. That prior to any construction activities, all necessary permits are secured from Township, County and State Agencies.
3. That County staff may enter onto the property at reasonable times and in a reasonable manner to ensure the variance holder is in compliance with the conditions and all other applicable statutes, rules and ordinances.

Staff Findings

The Staff proposes the following findings of fact for consideration by the Board of Adjustment:

1. **Variance request consistent with purposes and intent of the official controls and the comprehensive plan:**

   Findings: The Minnesota DNR Shoreland Rules Ch 6120 as well as the Pope County Land Use Controls Ordinance regulate the location of structures in shoreland designated areas. The purpose of the required setback for structures from side yard property lines is to preserve the neighborhood character and aesthetics.

   The Board must evaluate whether the requested variance remains sufficiently consistent with the purposes and intent of the Pope County Land Use Controls Ordinance and Minnesota Shoreland Rules based on the specific physical characteristics and development context of the property.

2. **Use of property/structure is a reasonable use:**

   Findings: The property currently supports an accessory structure. The applicant proposes to relocate said accessory structure to avoid stormwater and seasonal flooding. Due to the onsite topography, the requested relocation may not be feasible in strict conformity with the applicable setback standard.

3. **Character of locality and detriment to neighboring properties:**

   Findings: The proposed relocation would maintain an accessory structure use consistent with surrounding residential development and is not expected to materially alter the character of the locality.

4. **Plight of the landowner is due to circumstances unique to the property and not self-created:**

   Findings: The record indicates that the existing accessory structure is located within a low area subject to periodic flooding. The Board may find that the site's topography and the location of the existing structure create circumstances unique to the property that affect relocation options while maintaining compliance with applicable setback requirements.

REPORT APPENDIX

- **Routing Sheet** *(Comments, concerns and conditions)*
- **Public Notice**
- **Supplemental Information**
  - **Attachment 1:** *Variance Application (Daniel & Gayle Payne, 12 May 2026)*
  - **Attachment 2:** *Submitted Site Plan (Daniel & Gayle Payne, 5 May 2026)*
  - **Attachment 3:** *Surveys (Nyberg Surveying, 22 December 2025 & Richard Gasser, County Surveyor, 18 July 1992)*
  - **Attachment 4:** *Site Visit Photos (L&RM Staff, 15 June 2026)*

Routing Sheet

Comments, Concerns and Conditions

Agency

MN DNR	No comment received.

County Department

Attorney	No comment received.
WCA Officer	*COMMENTS: According to NWI, there are no wetlands on the property in question, and I am not aware of any delineation having been done. There is low ground in the vicinity that often gets flooded, and I would not be surprised if some low areas in the neighborhood might meet the criteria for being considered wetland. I believe this request, if granted, would actually improve the situation from a wetland protection standpoint, since the building would be moved to higher ground. I have no concerns about the variance from a WCA standpoint.* *PROPOSED CONDITIONS:* *- Limit excavation and fill as much as possible outside new building footprint* *- Revegetate old building footprint as soon as possible*

Township

White Bear Lake	No comment received.

Other Comments Received

No comment received.

Public Notice

POPE COUNTY LAND & RESOURCE MANAGEMENT
POPE COUNTY COURTHOUSE
130 E. MINNESOTA AVENUE
GLENWOOD, MINNESOTA 56334
(320) 634-7791

POPE COUNTY BOARD OF ADJUSTMENT
NOTICE OF PUBLIC HEARING FOR
VARIANCE REQUEST

Notice is hereby given that a Public Hearing will take place in conjunction with the Board of Adjustment meeting to be held at 6:00 pm or shortly thereafter on Thursday, June 25th, 2026 in the Pope County Courthouse, 3rd Floor Board Room, to consider the following variance request.

Description of Request: Variance hearing on the application by Daniel & Gayle Payne (VAR-26-013, Parcel#07-0475-000), if granted would allow applicants relief from the side yard setback standard in a Shoreland-General Development (S-GD) zoning district per section 4.2.4.D and 4.6.5.A.3 of the Pope County Land Use Controls Ordinance.

Legal Description/Site Location: Part of Lot 42, Plat of Suckstorff's First Subdivision, Section 36, Township 125 (White Bear Lake), Range 39, Pope County, Minnesota.

Public participation will include an opportunity to:

1) submit written concerns and comment prior to the scheduled meeting. All such communications will be shared with the Board of Adjustment prior to or during the meeting;
2) submit concerns and comments via Pope County's Public Comment web map, go to https://www.popecountymn.gov, at the top of the page hover over Government, then under Board of Adjustment/Planning Advisory Commission, select Submit a Public Comment or type in the following link to access the Public Comment web map: (https://popecounty.maps.arcgis.com/apps/webappviewer/index.html?id=22a203912a864a77b4cdabe672e35e3f)
3) opportunity to review the staff prepared report via Pope County website;
4) observe and/or participate by providing verbal comments in the Public Hearing portion of the Board of Adjustment meeting.

Interested parties and citizens may contact the Land and Resource Management office for further information as to how to participate in the meeting. ***Notices of Decision*** *will be posted* ***online*** *shortly after decision making at the following Pope County webpage:*

- *https://www.popecountymn.gov/land-resource-management/boa-pac-notices-of-decision/*

Thank you for your patience and consideration in this matter.

Dated: June 5, 2026
By: Jessica Hill, Zoning Administrator, Land & Resource Management

Supplemental Information

Supplemental Information Attachment 1:

Variance Application (Daniel & Gayle Payne, 12 May 2026)

VAR-26-013

POPE COUNTY MINNESOTA

VARIANCE APPLICATION

L&RM FORM 18

S:\0. ADMIN\1. Forms\Form 18. Variance Application\L&RM Form 18 Variance Application.docx

15 days - 5/30/26
60 days - 7/14/26

RECEIVED
MAY 12 2026
BY: [signature]

VARIANCE APPLICATION

A variance allows a modification or variation of the provisions of the Pope County Land Use Controls Ordinance where it is determined that, by reason of exceptional circumstances, the strict enforcement of any provision of the ordinance would cause the landowner "practical difficulty" (see Practical Difficulty Test on the following page).

Variances from official zoning controls are defined under Minnesota Statute 394.27 and require the landowner to prove the property could not otherwise be used or enjoyed in the proposed way by complying with the Pope County Land Use Controls Ordinance and there will be no negative impact on surrounding properties.

Prior to submission of this application, please discuss your variance request with the Land and Resource Management department.

Applicant Information

Applicant Names	Daniel & Gayle Payne
[redacted]	

Property Description

Property Address	XXXX S Shore Dr.		City	Starbuck	State	MN	Zip 56381
Township Name	White Bear Lake		Section	36	Twp	125	Range 39
Parcel No.	07 - 0475 - 000		Associated Parcel No.	07 - 0343 - 000			

Project Narrative

What is the variance application for?	The need for a 5 foot setback for shed

Provide written justification for request including discussion of how any potential conflicts with existing nearby land uses will be minimized:

The need for 5ft. setback would allow for placement and make use of the high ground on my property, for moving my shed.
Where my shed is now was fine for years, but last 12-14 years has flooded numbers of times a year making use of shed difficult getting 5" of water or more into my shed. The variance on your side would allow for normal set back off corner of angled lot.

Pope County Land & Resource Management
130 East Minnesota Ave. | Glenwood, Minnesota 56334 |
Phone: (320) 634-7791 | Email: pub.lrm@popecountymn.gov
Website: https://www.popecountymn.gov/land-resource-management/

Practical Difficulty Test

A variance may be granted if enforcement of the zoning ordinance as applied to a particular piece of property would cause the landowner "practical difficulties." There is a three factor test for establishing practical difficulties. If the applicant does not satisfy all three factors of the test, then the variance should not be granted.

1. *Reasonableness*

The first factor is that the property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance.

2. *Uniqueness*

The second factor is that the landowner's problem is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner.

3. *Essential Character*

The third factor is that the variance, if granted, will not alter the essential character of the locality. Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

Questions	Yes/No
Does your project satisfy all three factors of the Practical Difficulty Test?	Yes
Please state how your project satisfies all three factors in the space provided below:	

(1) I will continue to use shed as I have in past but on higher ground would make normal use of the shed without fear of shed being flooded from a 3 inch rain.

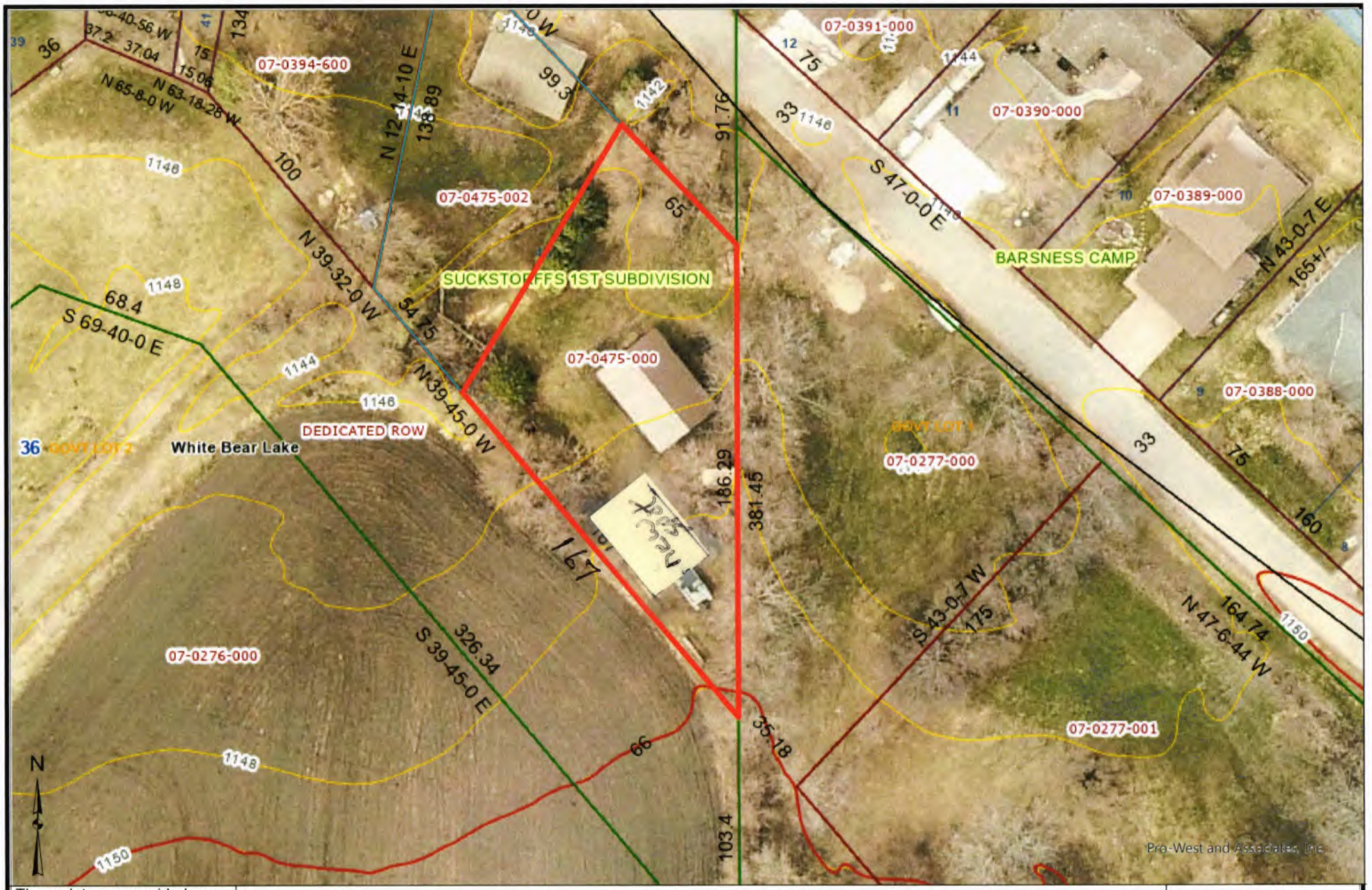
(2) When we first built shed we had know flooding problem. Last 12 or so years nothing but flooding problems. Like to move shed to high ground part of property.

(3) The character of the locality will remain the same and the new spot for shed will fit into surrounding area nicely.

Pope County Land & Resource Management
130 East Minnesota Ave. | Glenwood, Minnesota 56334 |
Phone: (320) 634-7791 | Email: pub.lrm@popecountymn.gov
Website: https://www.popecountymn.gov/land-resource-management/

Supplemental Information Attachment 2:

Submitted Site Plan
(Daniel & Gayle Payne, 5 May 2026)



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Payne VAR

1:845

Date: 5/5/2026

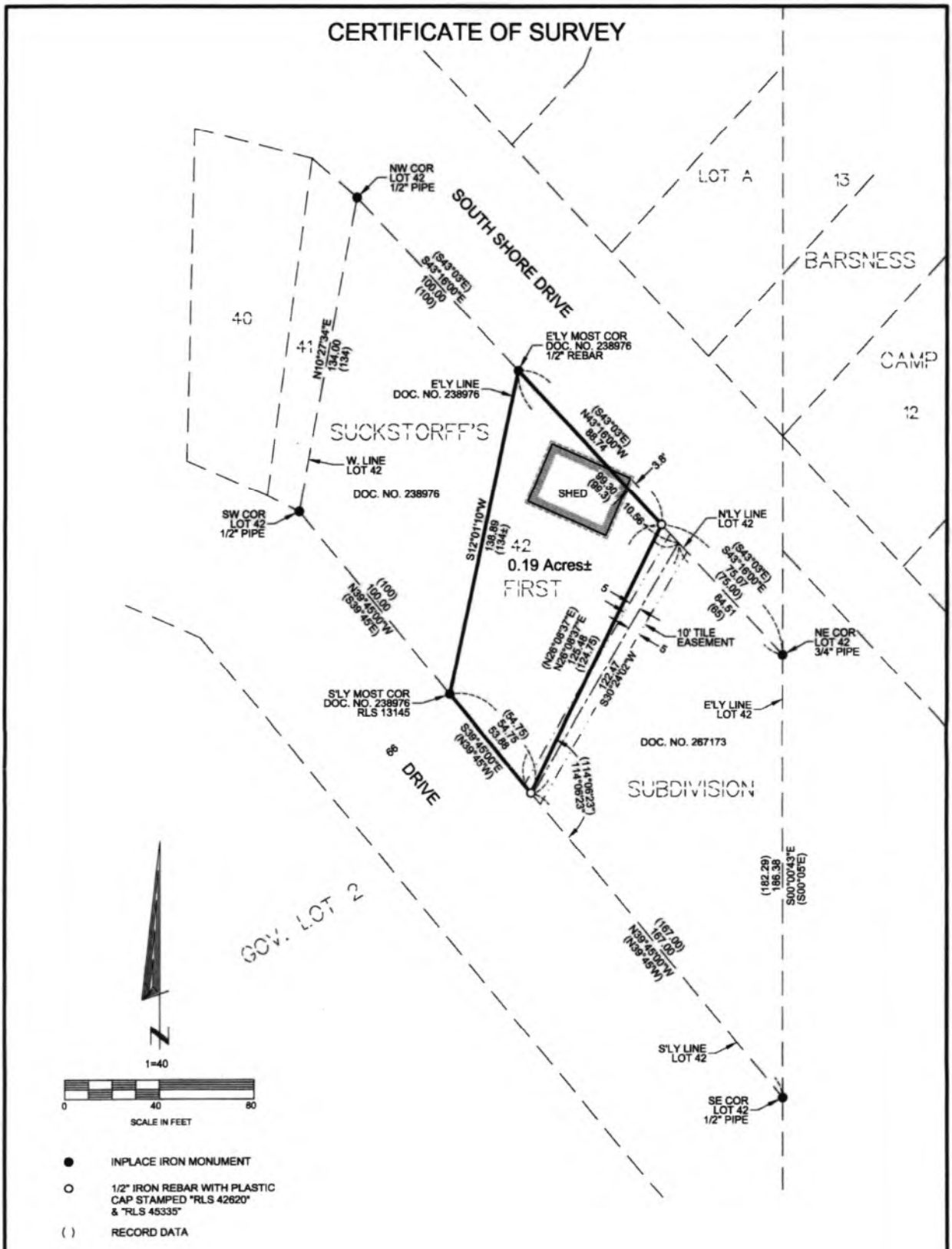
This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

POPE COUNTY MINNESOTA

Supplemental Information Attachment 3:

Surveys
(Nyberg Surveying, 22 December 2025 & Richard Gasser, County Surveyor, 18 July 1992)

CERTIFICATE OF SURVEY



- ● INPLACE IRON MONUMENT
- O 1/2" IRON REBAR WITH PLASTIC CAP STAMPED "RLS 42620" & "RLS 45335"
- ( ) RECORD DATA

SEC. 36 T 125 N R 39 W

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

Brad M. Nyberg

Date December 22nd, 2025 License No. 42620

DATE: 12/22/2025 • DRAWN BY: JSM • CHECKED: BMN • JOB NO. 12706

REQUESTED BY: MARK KITTELSON

Nyberg SURVEYING
509 22ND AVE. EAST, SUITE 101
ALEXANDRIA, MINNESOTA 56308
PH. (320) 762-4111
www.nybergsurveying.com

OFFICE OF THE COUNTY SURVEYOR

RICHARD D. GASSER, POPE COUNTY SURVEYOR, GLENWOOD MN.

I HEREBY CERTIFY THAT THIS SURVEY, PLAN, DESCRIPTION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM THE DULY ELECTED POPE COUNTY SURVEYOR

Richard D Gasser — DATE 7/18/92 — FILE NO. 800

RICHARD D. GASSER, POPE COUNTY SURVEYOR

1" = 20'

- ● DENOTES IRONS FOUND
- ○ DENOTES IRONS SET
- ⊛ DENOTES GOV. COR. OF RECORD
- ◑ DENOTES P. K. NAIL

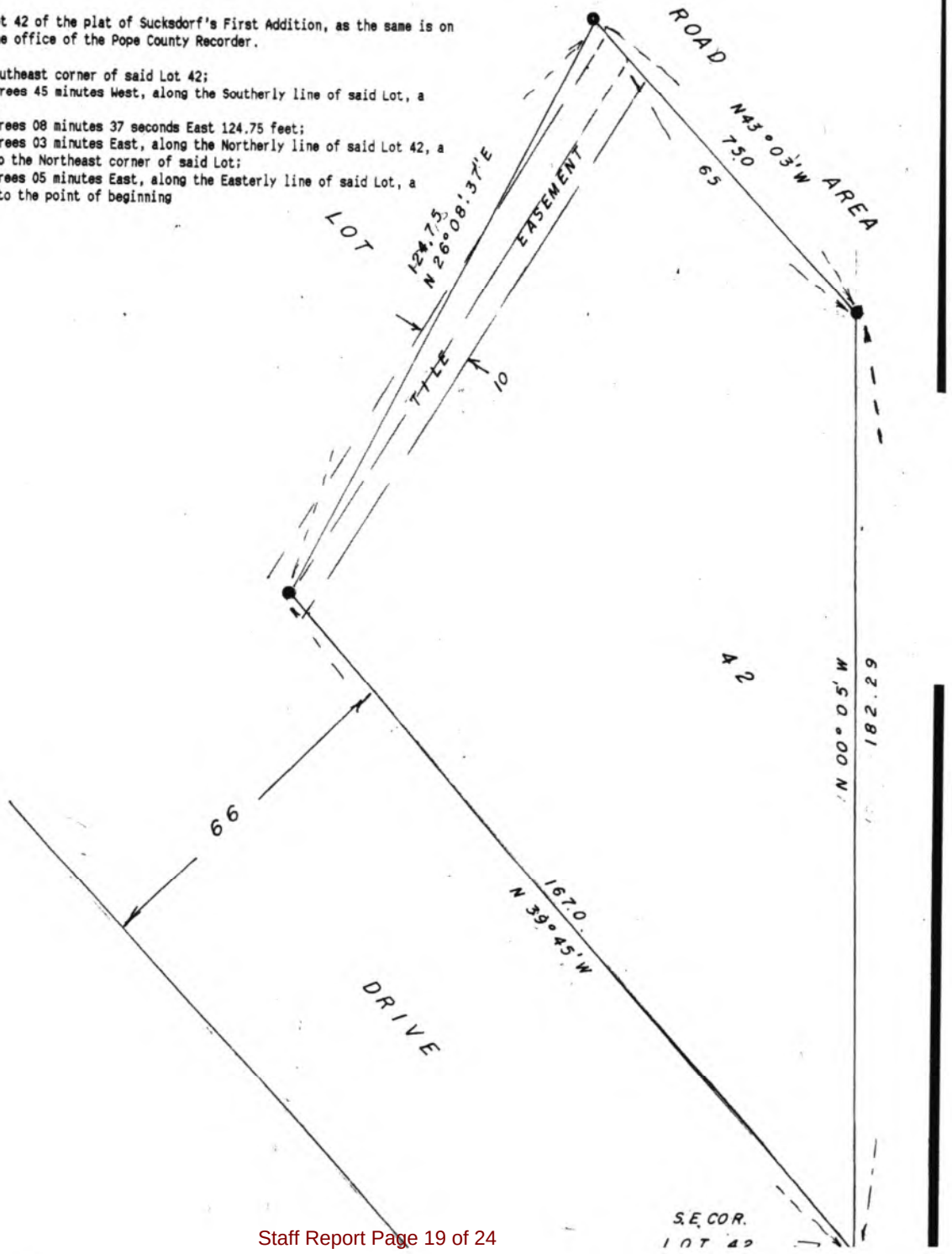
BEARINGS BASED ON REC. PLAT

SURVEY FOR JIM JOHNSTON

BEING A PART OF LOT 42 SUCKSTORFF'S 1ST. ADD.

All that part of Lot 42 of the plat of Sucksdorf's First Addition, as the same is on file and of record in the office of the Pope County Recorder.

Beginning at the Southeast corner of said Lot 42;
Thence North 39 degrees 45 minutes West, along the Southerly line of said Lot, a distance of 167.00 feet;
Thence North 26 degrees 08 minutes 37 seconds East 124.75 feet;
Thence South 43 degrees 03 minutes East, along the Northerly line of said Lot 42, a distance of 75.00 feet to the Northeast corner of said Lot;
Thence South 00 degrees 05 minutes East, along the Easterly line of said Lot, a distance of 182.29 feet to the point of beginning



Supplemental Information Attachment 4:

Site Visit Photos
(L&RM Staff, 15 June 2026)