ST. LOUIS COUNTY BOARD OF ADJUSTMENT STAFF REPORT

Case: 6278

INSPECTION DATE: 8/10/2021 **REPORT DATE: 8/23/2021** **MEETING DATE: 9/9/2021**

APPLICANT INFORMATION

APPLICANT NAME: Nghi Nguyen

APPLICANT ADDRESS: 5083 SW 68th Street, Owatonna, MN 55060

OWNER NAME: N/A
(IF DIFFERENT THAN ABOVE)

SITE ADDRESS: 2793 Wikstad Road, Duluth, MN 55804

LEGAL DESCRIPTION: S ½ OF SW ¼ OF SE ¼ EX PART LYING N AND E OF FRENCH RIVER, S27, T52N, R13W (Normanna).

PARCEL IDENTIFICATION NUMBER (PIN): 485-0010-04565

VARIANCE REQUEST: The applicant is requesting after-the-fact relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.4, to allow an accessory structure (garage) to be located at a reduced shoreline setback.

PROPOSAL DETAILS: The applicant is proposing to keep the after-the-fact accessory structure 125 feet from a designated trout stream where 150 feet is required. Prior to construction of the garage, the applicant made efforts to ensure the proper setback distance was met along with communicating with county staff at the time (2009). The garage was permitted and built in tandem with the dwelling. The dwelling was approved at a reduced setback by variance in 2009. The garage was permitted with a land use permit due to the structure meeting all requirements per the original application. It was discovered when the applicant submitted an application for a deck that the garage was built in a different location than originally permitted thus causing a reduced shoreline setback. The French River runs along the majority of the property and setback needs to be met in multiple locations for all structures on the property.

PARCEL AND SITE INFORMATION

ROAD ACCESS NAME/NUMBER: Wikstad Rd.

ROAD FUNCTIONAL CLASS: Local Rd.

LAKE NAME: N/A

LAKE CLASSIFICATION: N/A

RIVER NAME: French River

RIVER CLASSIFICATION: Trout Stream (TRO)

DESCRIPTION OF DEVELOPMENT ON PARCEL: The parcel currently contains a driveway, dwelling, garage, small shed, well, and a septic system.

ZONE DISTRICT: RES 3

PARCEL ACREAGE: APPROX. 12.27 ACRES

LOT WIDTH: APPROX. 1,420 FEET

FEET OF ROAD FRONTAGE: N/A

FEET OF SHORELINE FRONTAGE: APPROX. 1,420 FEET

PARCEL AND SITE INFORMATION

VEGETATIVE COVER/SCREENING: The parcel is completely vegetated besides at the upland building site. There is good screening from the existing development from the French River and surrounding properties.

TOPOGRAPHY: The building site is located on a ridge. To the west, the parcel slopes down into a large wetland complex. To the east, the parcel slopes down to the French River.

FLOODPLAIN ISSUES: There is floodplain on the parcel. The BFE is 1,211.25 NAVD88. The building site is located at an elevation that is more than one foot above the BFE.

WETLAND ISSUES: The parcel is majority wetland. The existing building site may be the only area on the site that is not wetland.

ADDITIONAL COMMENTS ON PARCEL: Due to topography, stream shape, and existing vegetation, measuring an accurate setback on-site may have been difficult. Today, modern county GIS, data, and tools allow for accurate measurements of setbacks. These tools are used in every situation but are extreme useful in situations like this one where accurate on-site measurements may be difficult.

FACTS AND FINDINGS

A. Official Controls:

1. St. Louis County Zoning Ordinance 62, Article III, Section 3.4, states that designated trout streams have a 150-foot structure setback requirement.
    a. The after-the-fact structure was built 125 feet from the trout stream.
2. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
3. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
4. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted in Minnesota Statue 394.22 Subd. 10.

B. Practical Difficulty:

1. The property contains limited buildable area due to wetland and the trout stream setback of 150 feet. However, there is and was suitable area to meet a conforming setback.
2. An alternative to an after-the-fact variance is to move or reconstruct the garage at a conforming setback, meeting all other Ordinance requirements.

C. Essential Character of the Locality:

1. The applicant is not proposed a new use to the area.
2. The subject parcel was granted a variance in 2009 to construct a dwelling at a reduced shoreline setback.

   a. The current owner also owned the property in 2009 when the variance for the dwelling was granted.
3. There are no other similar variances within the surrounding area of the subject parcel.

D. Other Factor(s):

1. This subject parcel received a variance in 2009 to build the dwelling at a reduced shoreline setback. There was no variance request or need for variance pertaining to the proposed garage in 2009.
2. The garage was originally permitted in February of 2009 with a land use permit at a conforming location, 150 feet from the trout stream, per the application.
   a. Its location now requires variance due to the building being within the 150 foot setback. Due to the current location, the property owner has applied for an after-the-fact variance to allow the structure to remain at a nonconforming location.
3. There is also a small shed that was placed within the shoreline setback. The applicant has stated this will be moved across the driveway to a conforming location.

E. Was the construction completed prior to applying for the variance? If not, what extent of the construction has been completed?

1. The garage was constructed sometime between 2009 and 2013. The current property owner has owned the property since 2009 and was the applicant for both the previous variance and land use permits.
2. The nonconforming river setback was discovered when the applicant submitted a land use permit application for a deck in 2021.
3. The limited buildable area of the site is not a result of the after-the-fact structure. Buildable area on the site is limited due to the trout stream setback and wetland.
4. The applicant submitted a permit application in 2009 with appropriate setbacks listed. Inaccurate setback measurements may have led to the structure being built within the setback.

F. How would the county benefit by enforcement of the ordinance if compliance were required?

1. The county would benefit by enforcement of the Ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.

See attachments: 1. Zoning/location map 2. Air photo 3. Site sketch 4. Project picture (if applicable) 5. Other pertinent pictures or maps

BOARD OF ADJUSTMENT CRITERIA FOR APPROVAL OF A VARIANCE

1. **Is the variance request in harmony with the general purpose and intent of official controls?**
2. **Has a practical difficulty been demonstrated in complying with the official controls?**
3. **Will the variance alter the essential character of the locality?**
4. **What, if any, other factors should be taken into consideration on this case?**

CONDITIONS

Conditions that may mitigate the variance for after-the-fact relief for an accessory structure within a shoreline setback, include but are not limited to:

The following condition(s) shall apply:

1. If the nonconforming structure is ever replaced, it shall be located at a conforming setback and all other Ordinance requirements shall be met.

ST. LOUIS COUNTY, MN
PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

Duluth
Government Services Center

320 West 2nd Street, Suite 301
Duluth, MN 55802
(218) 725-5000

Virginia
Government Services Center
201 South 3rd Avenue West
Virginia, MN 55792
(218) 749-7103

VARIANCE REQUEST PERMIT APPLICATION

General - This application is used to apply for a Land Use Permit. Applicants will need to attach the appropriate worksheet(s) in order to process. Incomplete applications will be returned. Note that the 'clock' does not begin until after payment has been processed for the application. For more information, see our website at: www.stlouiscountymn.gov/BuildingStructures

Enter the Primary PIN and Associated PIN (if applicable) of the property to be reviewed.
PIN is found on your Property Tax Statement. For example, 123-1234-12345. Primary PIN: Parcel where Structure/SSTS are located. Associated PIN: Additional and/or adjacent property that you own or that is related to the project.
County Land Explorer: https://www.stlouiscountymn.gov/explorer
Property Lookup: http://apps.stlouiscountymn.gov/auditor/parcelInfo2005Iframe

Primary PIN	**485-0010-04565**
Associated PINs	

Is this application being submitted for a Rehearing?
If this application is being submitted because a previous Variance Permit application was denied or disapproved, please select Yes.

No

Enter Applicant Information

I am a:	**Landowner**
Applicant Name:	**Nghi Nguyen**
Address Line 1:	**5083 SW 68th Street**
Address Line 2:	**--**
City:	**Owatonna**
State:	**MN**
Zip:	**55060**
Primary Phone:	**(507)456-1091**
Cell Phone:	**--**
Fax:	**--**
Email:	**nguyenstriplets@gmail.com**
Contact Person Name:	**--**
Contact Person Phone:	**--**

Mailing Address Information.
This address can default from the address you selected. If the values defaulted are not correct, please enter the correct information.

Same as Applicant address?	**No**
Name:	**Nghi Nguyen**
Address:	**5083 SW 68th Street**

City:	**Owatonna**
State/Province:	**MN**
Zip:	**55060**
Primary Phone:	**--**
Cell Phone:	**--**
Fax:	**--**
Email:	**nguyenstriplets@gmail.com**

Site Information
If there is no site address, the application will be forwarded to 911/Communications to assign one.

Is there a site address for this property?	**Yes**
Site Address:	**2793 Wikstad Road Duluth, MN**
Is this leased property?	**No**
Leased From?	**--**

US Forest Service	US Forest Service Superior National Forest 8901 Grand Avenue Place Duluth, MN 55808
MN Power	MN Power Shore Land Traditions 30 West Superior Street Duluth, MN 55802
MN DNR, Area Hydrologist	MN DNR, Area Hydrologist 7979 Highway 37 Eveleth, MN 55734
MN DNR Land and Minerals	MN DNR Land and Minerals 1201 East Highway 2 Grand Rapids, MN 55744
St. Louis County - Duluth	St. Louis County - Duluth Government Services Center 320 West 2nd Street, Suite 301 Duluth, MN 55802 (218) 725-5000
St. Louis County - Virginia	St. Louis County - Virginia Land and Minerals 7820 Highway 135 Virginia, MN 55792 (218) 749-7103

Do you have written authorization from the leased property owner?
If Yes, you must attach written authorization form.

--

How is the property accessed?

No

No

Easement

No

No

Enter Project Information.
If you answered 'Yes' to any of the questions below, it is required that you submit a copy of a septic permit to construct or certificate of compliance approval or municipal/sanitary district approval when applying for a land use permit.

Is this project on a parcel less than 2.5 acres?
No

Is this project within 300 feet of a stream/river or 1,000 feet of a lake?
Yes

Is this project adding a bedroom?
Include home, garage, and accessory dwelling.
No

Total # of bedrooms on property after project completion.
0

Does this project include plumbing or pressurized water in proposed structure?
No

If Yes, please explain:
--

Is this project connected to a municipal or sanitary district system?
No

VARIANCE REQUEST WORKSHEET

A variance allows the use of property in a manner otherwise forbidden by a zoning ordinance by varying one or more of the performance standards such as lot size, setbacks, etc. Variances from official zoning controls are defined under Minnesota Statutes 394.27 and require the landowner to prove that the property could not otherwise be used or enjoyed in the proposed way by complying with ordinance requirements and that there will be no negative impact on surrounding properties.
It is advisable that you discuss your request with Planning and Community Development staff prior to submitting the application. Approval or denial of your request is dependent on the justification you provide in answering the questions on this application. For more information, please check our website at: www.stlouiscountymn.gov/VarianceRequired

VARIANCE REQUEST INFORMATION

Complete this form along with the Land Use Permit Application

What kind of variance request is this?
If this is a Variance After the Fact, you must answer additional questions below.
Variance Request

Describe what you are varying from and the situation that makes it difficult to comply with county ordinances.
If your proposal includes a structure, please also list the length, width and height of the structure.
The recent application for the deck revealed the garage is less than 150' from the required set back from French River (exhibit A as given by Mr. Ecklund). This distance was confirmed by planning member on

7/7/2021 that the garage is about 125' from the river. We are requesting for the approval of the variance after the fact to allow the garage to remain in its current location. The garage is a clerestory pole shed with posts imbedded below the frost line. At the time of the construction of the garage, reasonable effort had been made to ensure its distance is within the limited high ground for the property as well as meeting the required set back. Also, exhaustive effort has been made by means of communication and consultation with the then manager Physical Div of St Louis Co . Mr. Scott Smith and other members of the planning committee (as in original variance request-exhibit B: Doc No. 01123823) to ensure its approximate location before the physical building was erected. I have discussed with the closest neighbor-Jake/Sierra Anderson, about the potential impact of this building site as well as the encroachment the garage with less than 150' to the river. They have confirmed of the no impact as in the attached signed letter-exhibit C). Considering all factors, this is the only upland ridge for building site for the single family dwelling without impacting wetland or causing main structure to be less than the approved variance. Note: It was noted also the small shed is within the 150'. I have confirmed with Mr. Ecklund that the shed will be moved to the other side of the driveway. This will not impact any of the current ordinances

Describe the intended/planned use of the property.

This property is designated as residential and the construction of garage and the main structure will be used as main resident when complete.

Describe the current use of your property.

Construction of the main residence is in progress (we are building this ourselves). The garage is complete and the main residence is on progress.

Describe other alternatives, if any.

No other uses of this property beyond the residential/home.

If approved, how will the proposed use, with the variance, fit into the character of the neighborhood/area?

The area is heavily wooded and designated as residential and will not be visible to the public. All structures being built with efforts to ensure minimal to no impact to the wetland/surrounding environment beyond the approved variance and within the limit of the upland area identified by Mr. Scott Smith. This request is for the approval of the garage "as is" with less than the required set back. We have made every effort to maintain excellent vegetative screening area between the garage to the French river. Given the distance to the next neighbor along with the heavily wooded landscape, it will not change or alter the character of the neighborhood (see attached letter from Jake/Sierra Anderson-Exh C). All reasonable efforts and thoughts were being weighed to maintain the natural state of the area. As shown in exhibit D, the nearest neighbor is over 600' to the north and will not be visible given the density of vegetation/plants/trees.

Describe how neighboring properties and the use of those properties will be impacted by the proposed use with the variance.

Exhibit D shows the relative locations of the nearest residents (over 600' away). The location of this property is very remote with limited development and will not be impacting nor will be visible to other residents. Also, the heavily wooded surrounding allows the site to blend in perfectly. This property is at end of the easement low maintenance driveway with no other public access or near main roads. The approval of the "variance after the fact" for the current location of the garage will not impact neighboring properties due to vegetative buffering to the river. The wooded surrounding will help maintain the remoteness of the property to its neighboring properties.

Describe how negative impact to the local environment and landscape will be avoided.

This variance after the fact application is requesting for the garage to remain at its current location. We currently maintain the vegetative/trees buffer to the river since the garage was erected and have no intention of altering it further. Also, the driveway and turn around area in front of the garage is graded to slope away from the river to maintain the integrity area. The remoteness of the property along with density of the wooded surrounding, will not impact local environment.

Describe the expected benefits of a variance to use of this property.

The approval of the variance after the fact will keep the garage at its current location. The limited upland availability of area to relocate the garage could cause unintended impact to the area/environment beyond

the upland ridge as identified by Mr. Scott Smith.

Include additional comments that will clarify your request for the Planning and Community Development staff members and the Board of Adjustment.

The unique land topography with a narrow strip of upland is the only building site where the main residence and the garage are located on. Exhaustive effort has been put forth to ensure compliance with land use requirements without impacting wetland and the surrounding. We have maintained the vegetative/trees buffering from the upland to the river. Efforts have been made to ensure the adjacent properties are not negatively impacted. During the process of placement of building locations including the variance approval and extraordinary effort consulting with the St Louis Co,... demonstrated the intent to comply to all requirements. We have limited access to technology at the time to ensure the exact location of the garage to the closet edge of the river and have resorted to the manual tape measurement method, which may have introduced the error. With the included facts, we are requesting for approval to "variance after the fact" to allow the garage to be at its current location.

IF YOU ARE RESPONDING TO A PERMIT VIOLATION, PLEASE ANSWER THESE ADDITIONAL QUESTIONS

Describe your reasons county zoning ordinance requirements were not followed.

--

Describe your effort to comply with the ordinance and to obtain a land use permit and/or other required permits.

--

Describe any substantial investments, construction and/or repairs made to the property before you discovered you needed a variance.

--

If there was construction or repair, on what date did it begin? What date did it end?

Start Date --

End Date --

Who performed the construction or repair work?

--

Was a survey of your property boundaries obtained?

--

Prior to the construction or repair work, did you speak with anyone from the Planning and Community Development Department?

--

By submitting this application, I certify and agree that I am the owner or the authorized agent of the owner of the above property, and that all uses will conform to the provisions of St. Louis County. I further certify and agree that I will comply with all conditions imposed in connection with the approval of the application. Applicants may be required to submit additional property descriptions, property surveys, site plans, building plans, and other information before the application is accepted or approved. **Intentional or unintentional falsification of this application or any attachments thereto will make the application, any approval of the application and any result invalid.** I authorize St. Louis County staff to inspect the property to review the application and for compliance inspections. Furthermore, by submitting this application, I release St. Louis County and its employees from any and all liability and claims for damages to person or property in any manner or form that may arise from the approval of the application or any related plans, the issuance of any resulting permit or the subsequent location, construction, alteration, repair, extension, operation or maintenance of the subject matter of the application.

If your name, contact information or email address have changed, you should update your contact information in the portal by selecting 'Maintain Contact Information' at the top of this page.

Submitted By:	--
Address:	--
City:	--
State:	--
Postal Code:	--
Email Address:	--

I have read and agree to the statement above.

No

Site Sketch Form

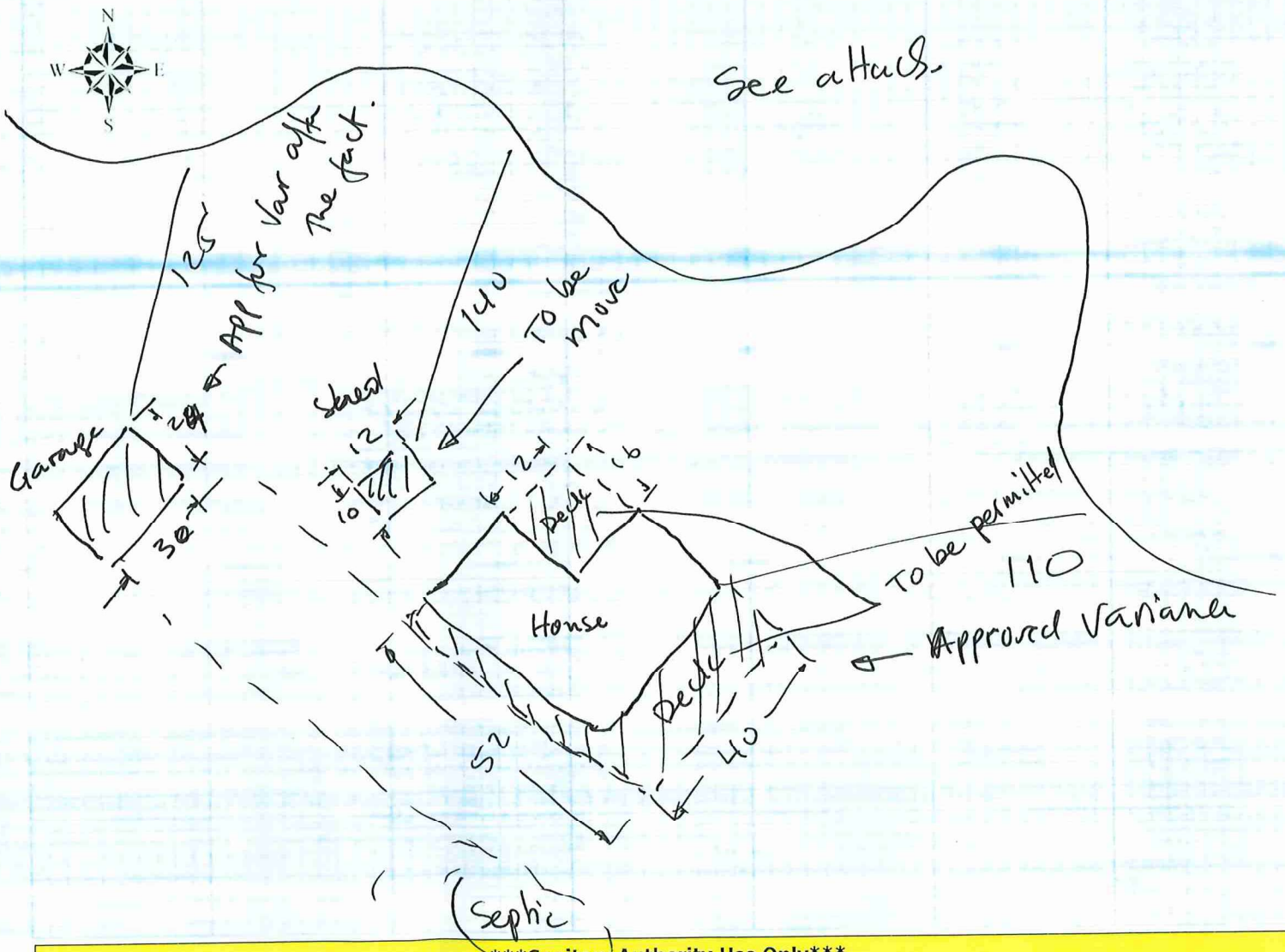
The sketch is to graphically illustrate your proposed project(s)

Draw and Label on Sketch (in feet)

- ☐ ***All** Structures on the Property and Dimensions
- ☐ ***All** Driveways, Access Roads, and Wetlands
- ☐ ***All** Proposed Structures and Dimensions
- ☐ ***Distance** of Proposed Structures to Shoreline (Closest Point)
- ☐ ***Distance** of Proposed Structures to Septic System and Tank
- ☐ ***Distance** of Proposed Structures to Property Lines
- ☐ ***Distance** of Proposed Structures to Road Centerline and Right-of Ways

You may submit your own site sketch **IF it has the required information indicated above.**

***Applicant Name:**
***Site Address:**
***PIN:**



Sanitary Authority Use Only

Sanitary Review: (To be determined by appropriate sanitary authority.)

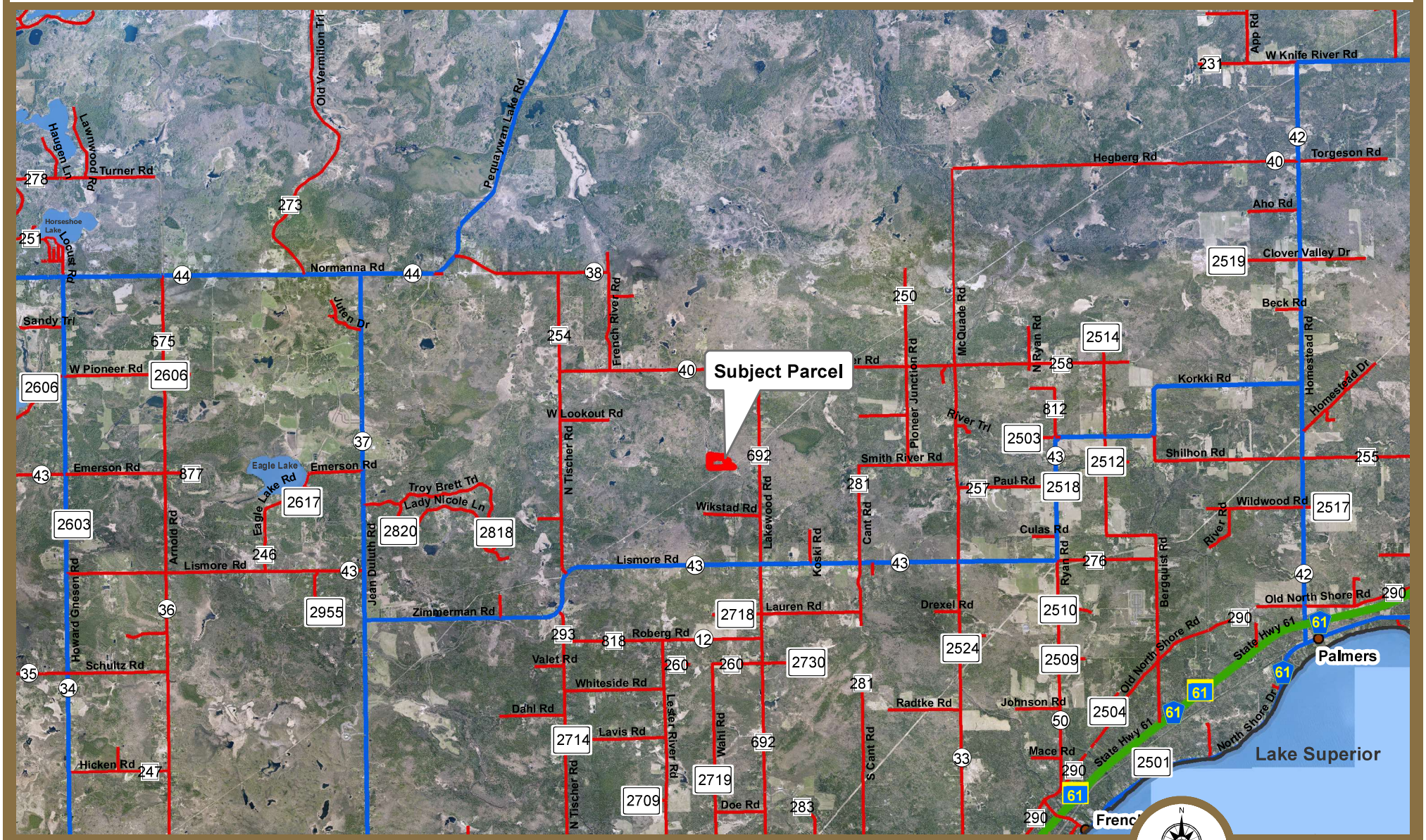
Will the proposal, as shown above, negatively impact the SSTS/sanitary line or replacement area? ☐ Yes ☐ No

Sign off:

Signature _____ Title_____

St. Louis County

September BOA Meeting



Prepared By: **Planning & Community Development**
(218) 725-5000
www.stlouiscountymn.gov

Source: St. Louis County

Map Created: 8/11/2021

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Nghi Nguyen

Location Map

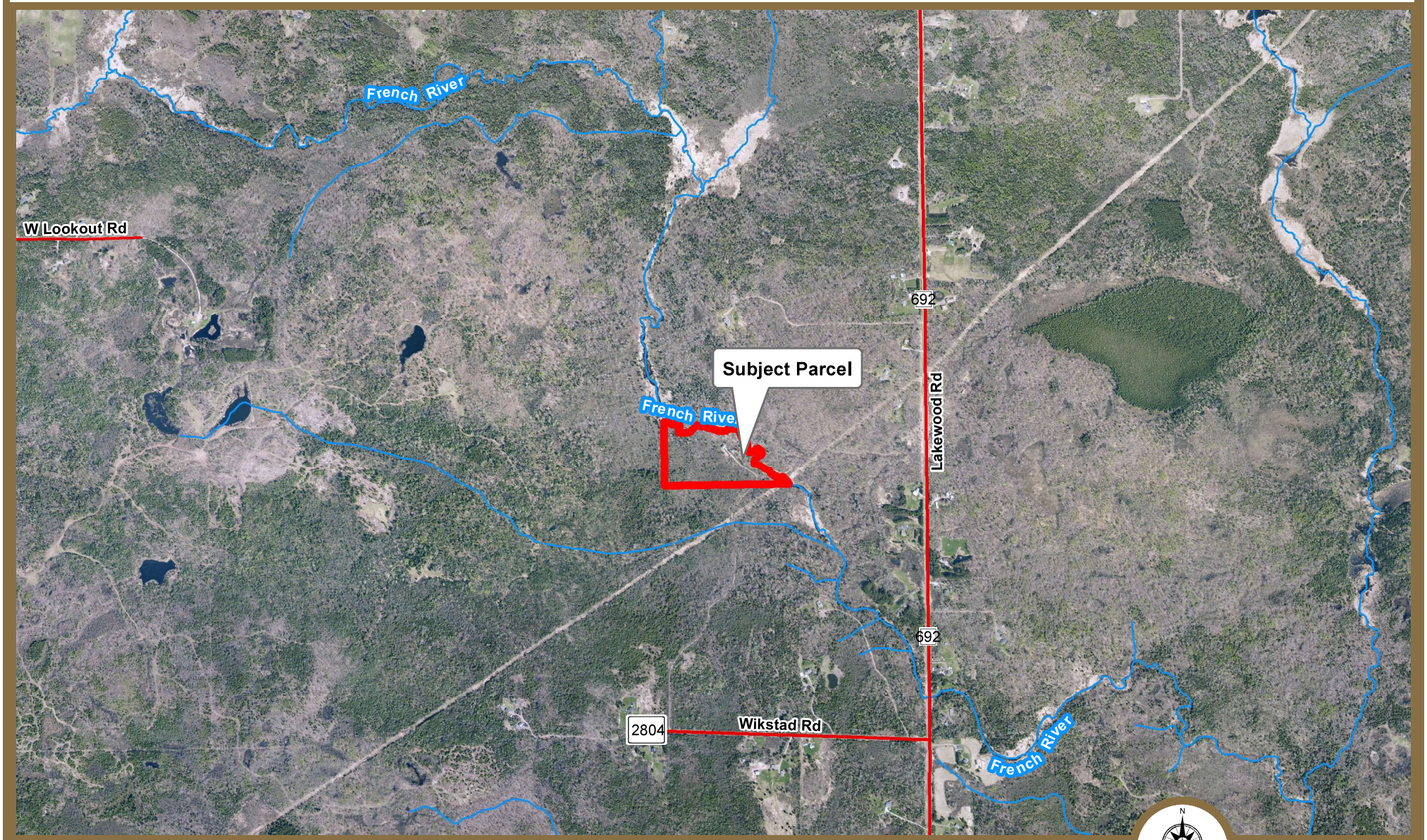
PIN:485-0010-04565

0 0.75 1.5
Miles

St. Louis County MN

St. Louis County

September BOA Meeting



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Nghi Nguyen

Location Map

PIN:485-0010-04565

N

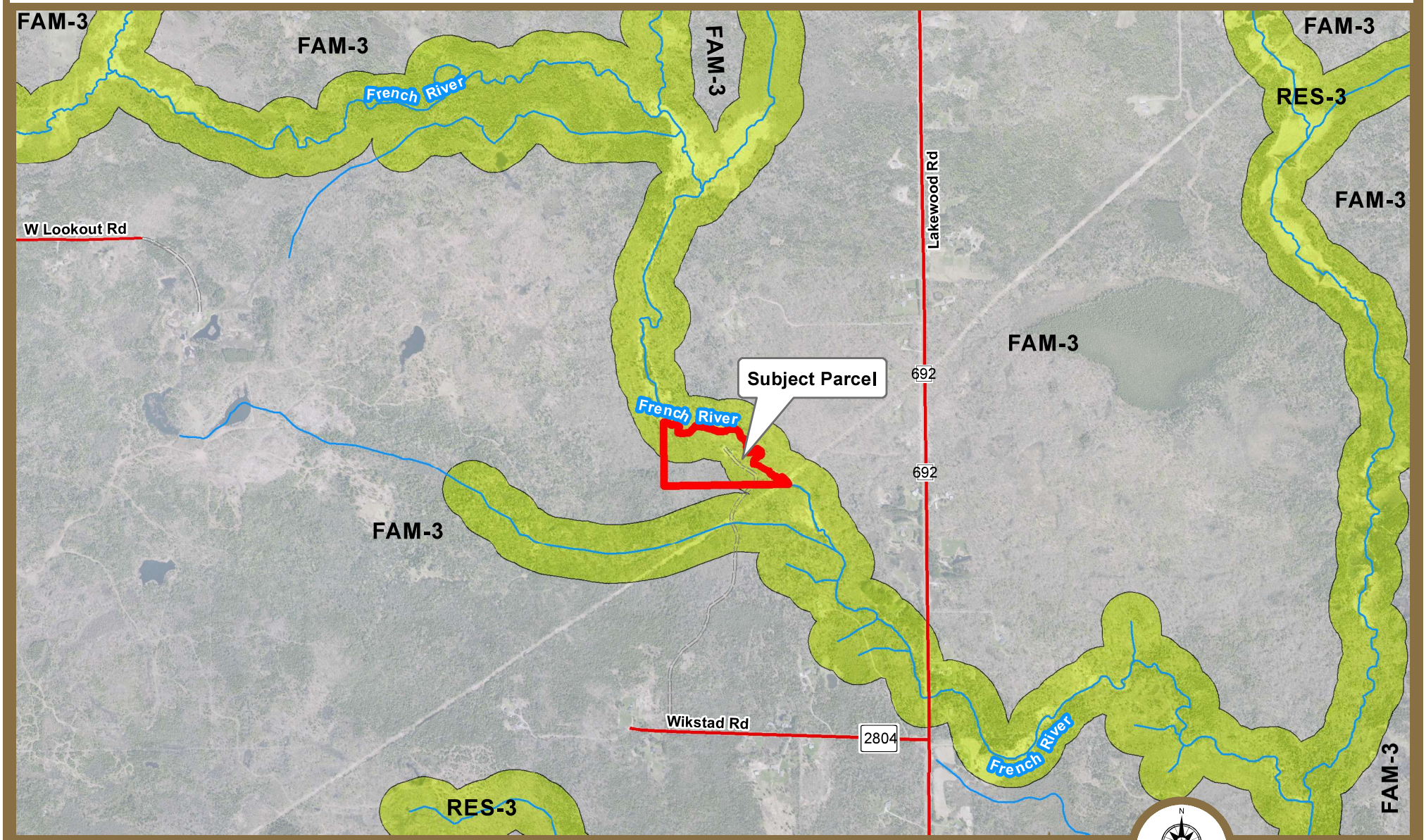
0 600 1,200

Feet

St. Louis County MN

St. Louis County

September BOA Meeting



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Zoning Map

PIN:485-0010-04565

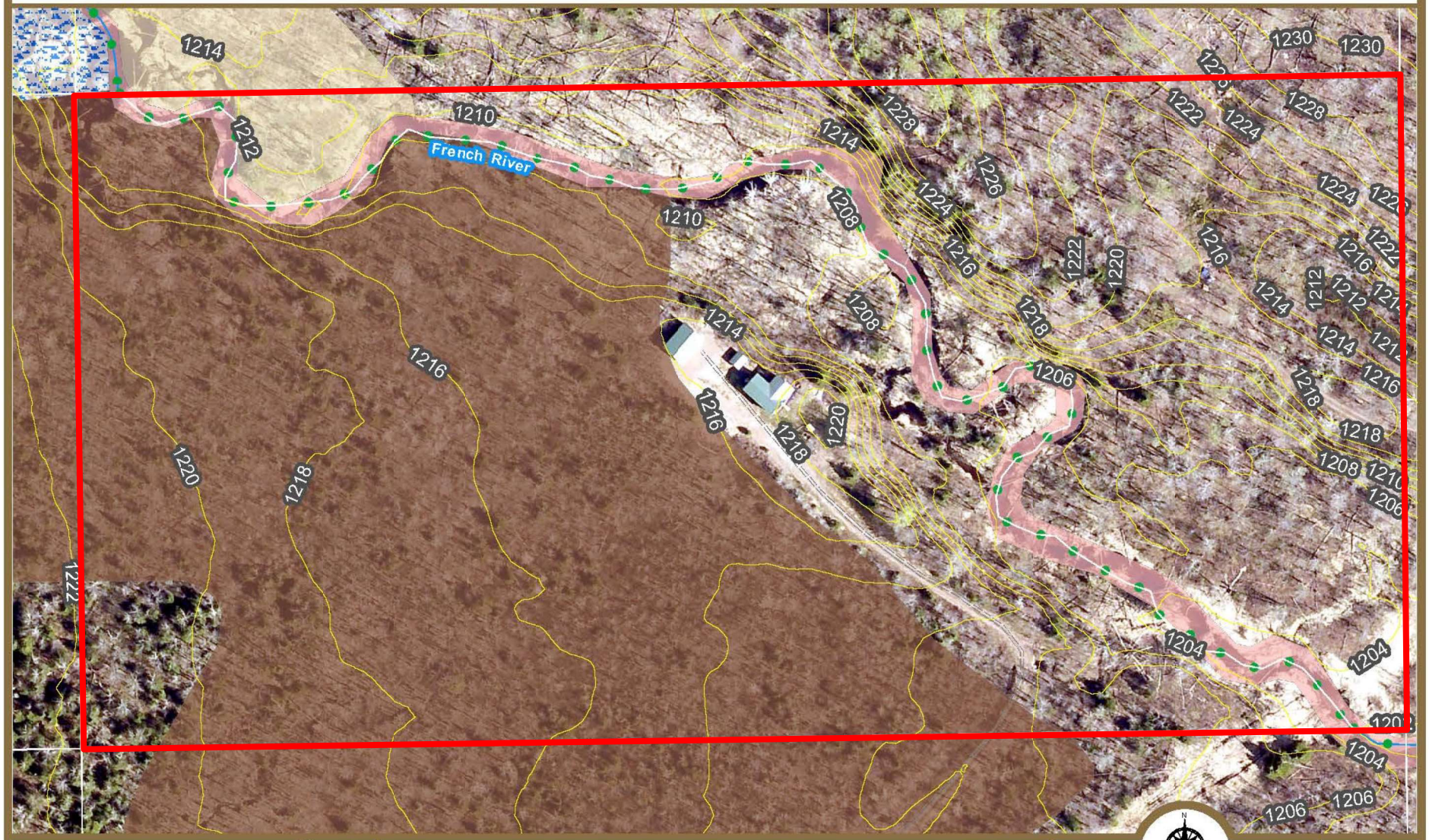
0 600 1,200

Feet

St. Louis County MN

St. Louis County

September BOA Meeting



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Nghi Nguyen

Site/Elevation/Wetland

PIN: 485-0010-04565

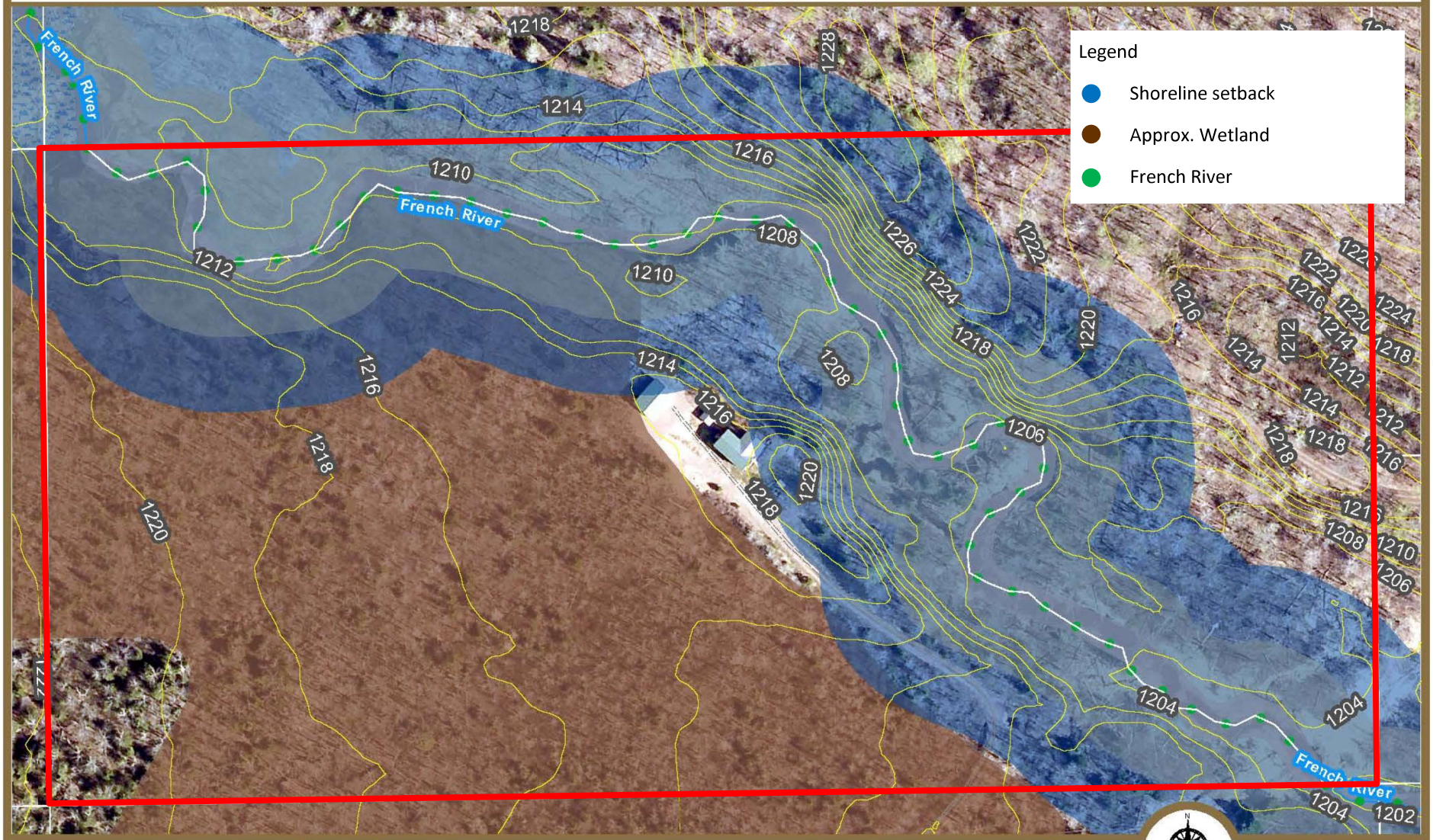
0 50 100 150

Feet

St. Louis County MN

St. Louis County

September BOA Meeting



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Nghi Nguyen

Buildable Area

PIN: 485-0010-04565

0 50 100 150
Feet

St. Louis County MN

After-the-fact garage

Existing dwelling

Shed to be moved

Southeast from garage. Septic shown.

Septic

Septic and ATF garage