



## CITY of NOVI CITY COUNCIL

**Agenda Item N**  
**March 27, 2017**

**SUBJECT:** Approval of a request from Robert D'Angelo for a variance from Section 11-256(f) of the Design and Construction Standards and Chapter 7 of the Engineering Design Manual to install stamped concrete sidewalk along the street frontage of a home at 21213 Equestrian Trail (parcel 22-32-401-079).

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division GDM

**CITY MANAGER APPROVAL:** 

### **BACKGROUND INFORMATION:**

The property owner at 21213 Equestrian Trail in Maybury Park Estates is requesting a variance from the Design and Construction Standards and subsequent Engineering Design Manual related to the material of sidewalk along Equestrian Trail. The Applicant's driveway and private walkways are currently stamped concrete. The sidewalk that parallels Equestrian Trail along their frontage has been replaced with poured concrete in order to comply with the City's standards. The applicant is seeking relief from the standards to reinstall stamped concrete sidewalk for aesthetic and subsequent land-value purposes.

The ordinance defines the required material of sidewalks to be Portland cement concrete. The proposed stamped concrete will be constructed from Portland Cement. However, the strict interpretation by the Engineering Division has excluded stamped concrete in order for a smoother surface to be provided on an ADA compliant route as compared to stamped concrete.

The Design and Construction Standards Request for Variance states that reinstalling the stamped concrete sidewalk would be less costly to the applicant than would installing a new driveway and private walkways to match the existing sidewalk, for aesthetic purposes. The Applicant's contractor has submitted documentation asserting that the stamped concrete to be installed meets ADA Standards. Consistent with the Application for a variance, the City is unaware of any incidences of impeded access over other existing stamped concrete sidewalks within the subdivision that were installed prior to the adoption of the current Design and Construction Standards. The Applicant has provided a Hold Harmless Agreement accepting responsibility for any liability arising out of the installation of a stamped concrete sidewalk. The City will not be responsible for replacement of stamped concrete in the event that the concrete is removed or damaged while the City accesses underlying sanitary sewer facilities within the City's Ordinance. Additionally, the Hold Harmless Agreement prohibits seal-coating of the sidewalk area, which will ensure a more stable surface during rain events. The Hold Harmless will apply in perpetuity to subsequent property owners, unless and until the stamped concrete is removed and replaced with standard Portland Cement.

**RECOMMENDED ACTION:**

Approval of the request from Robert D'Angelo for a variance from Section 11-256(f) and subsequent Engineering Design Manual, which requires sidewalks to be constructed in compliance with the applicable rules and regulations for private development under the Americans with Disability Act to allow the applicant to install stamped concrete sidewalk along the street frontage of a home at 21213 Equestrian Trail (parcel 22-32-401-079) subject to recording of the enclosed, executed Hold Harmless with Oakland County Records.



**Location Map**  
21213 Equestrian Trail



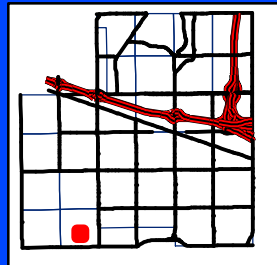
**21213 Equestrian Trail**

Map Author: Theresa Bridges  
Date: March 17, 2017  
Project:  
Version #:

Amended By:  
Date:  
Department:

**MAP INTERPRETATION NOTICE**

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



**City of Novi**  
Engineering Division  
Department of Public Services  
26300 Lee BeGole Drive  
Novi, MI 48375  
cityofnovi.org



1 inch = 125 feet







## Request for Variance Design and Construction Standards

### Applicant Information

Name: Robert D'Angelo

Address: 21213 Equestrian Trail  
Novi, Michigan 48167

Phone No: \_\_\_\_\_

### Engineer Information

Name: N/A

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_

### Applicant Status (please check one):

- Property Owner       Developer       Developer / Owner Representative  
 Other \_\_\_\_\_

Project Name \_\_\_\_\_

Project Address/Location 21213 Equestrian Trail/Sidewalk

Variance Request Installation of stamped concrete sidewalk.

Justification (attach additional pages if necessary)

[see attached]

### INTERNAL USE

Date Submitted: \_\_\_\_\_

Code Section from which variance is sought: \_\_\_\_\_

Submittal Checklist:     One (1) copy of plan on 8.5 x 11 size paper  
                                   \$100 Filing Fee (No fee for driveway width variance requests)

Request Status:         APPROVED       DENIED

Authorized By: \_\_\_\_\_

Authorization Date: \_\_\_\_\_

The D'Angelo's request a variance pursuant to Section 1-12 of the Novi City Ordinance (the "Ordinance") permitting them to replace the sidewalk with stamped concrete flags to match their existing stamped concrete driveway and private walkways. Section 11-256 of the Ordinance and Section 7 of the Engineering Design Manual for the City of Novi, Oakland County, Michigan ("Design Manual") apply to the request and the relevant sections are attached.

The variance requested by the D'Angelo's should be granted because it satisfies all three criteria of Ordinance Section 1-12(c)(1)(2)(3).

1. A literal application of the substantive requirement would result in exceptional, practical difficulty to the D'Angelo's. Ordinance Section 1-12(c)(1). When the D'Angelo's built their home their building design called for uniformity of the private walks, driveway and sidewalk. The D'Angelo's originally installed a stamped concrete driveway and private walkway which continued through the sidewalk. At the time of installation, the D'Angelo's had a building permit and received no notice from the City that installing stamped concrete on the sidewalk was outside of the City's design standards. After installing the stamped concrete throughout the driveway, private walks and sidewalk, the City advised the D'Angelo's they were out of compliance as a result of the recently amended Design Manual. The City required the D'Angelo's to remove the stamped concrete from the sidewalk and install poured concrete.

The D'Angelo's complied, thereby compromising the aesthetics of their property, the uniformity of the pathways and curbside appeal of their home. This aesthetic hardship to the D'Angelo's should not be underestimated. The lack of continuity mars the look of the property and undermines its value. Had the D'Angelo's known that a stamped concrete sidewalk was not permitted under the Design Manual, even though the material is identical to poured concrete, the D'Angelo's could have taken steps initially to install a uniform acceptable surface throughout the driveway, walkways and sidewalk. Now, to reestablish that uniformity and the aesthetic appeal of their property, the D'Angelo's are compelled to remove the entire driveway, private walkways and sidewalk to reinstall an approved surface. Such a result imposes an exceptional hardship on the D'Angelo's, whereas granting the sidewalk variance is more practical, less costly, and substantially conforms to the standards provided in the Design Manual.

2. The alternative proposal by the D'Angelo's is adequate for the intended use and does not substantially deviate from the performance that would be obtained by strict enforcement of the standards. Ordinance Section 1-12(c)(2). The stamped concrete the D'Angelo's want to extend through the sidewalk to match their stamped concrete driveway and private walkway strictly conforms to the standards set forth in Section 7.4.2(D) of the Design Manual, and meets the general requirements for "off-road non-motorized facilities." Section 7.4.2(M). The proposed stamped concrete for the sidewalk is constructed of Portland cement. The existing configuration of the pathway conforms to the minimum standard in Figure 7.4-1 and the substitution of stamped for poured concrete conforms to the requirements of 7.4(D)(E)(F)(G) and (M). The only variance is the substitution of stamped instead of poured concrete. Like poured concrete, stamped concrete provides a stable, no slip surface, unchanged by contaminants or applied force. The installation of a stamped concrete sidewalk is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Design Manual

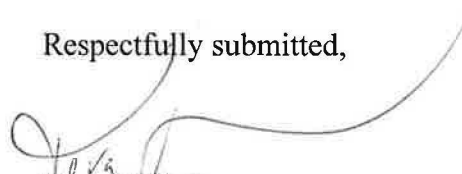
Section 7.4(M). There is nothing in either the Design Manual or the American with Disabilities Act which specifically prohibits the use of stamped concrete in a sidewalk or which distinguishes between stamped and poured concrete. In fact there are several homeowners who currently have alternative sidewalks, and who have been allowed to maintain those sidewalks because they were installed prior to the changes in the Design Manual.

3. Granting the variance will not be detrimental to the public health, safety or welfare or injurious to a joining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question. Ordinance Section 1-12(c)(3).

- The installation of stamped concrete will not compromise the public's health, safety or welfare. The stamped concrete is made with the same durable material as poured concrete. It is a stable, nonslip surface and can support individuals using walkers and/or wheelchairs.
- Homeowners whose stamped concrete sidewalks were installed prior to the revised design standards have not caused any health or safety problems for the general public or people with disabilities.
- Access to and from the proposed stamped concrete sidewalk crossing the D'Angelo's property will continue to provide unobstructed and unfettered access to the public space, including unobstructed and unfettered access to individuals with disabilities.
- The installation of the stamped concrete sidewalk will not be injurious to a joining or neighboring property. The D'Angelo's neighbors did not object to the stamped sidewalk in the first instance and there is no reason to believe they would object to the requested variance and installation of a stamped concrete driveway at this time. Further, the enhancement of the curb appeal of the D'Angelo's home as a result of the stamped concrete installation will serve to enhance the value of the adjoining properties.
- The overall purpose and goals of the Ordinance and Design Manual will be satisfied by granting the variance because the only difference evident between stamped concrete is the slight change in surface texture compared to poured concrete.

The Ordinance dictates the criteria the D'Angelo's must meet to obtain a variance. Based on the foregoing, the D'Angelo's have satisfied all 3 criteria and therefore, their variance should be allowed.

Respectfully submitted,



Tova Shaban

## **HOLD HARMLESS AGREEMENT**

This Agreement is between the City of Novi, a municipal corporation ("the City"), whose address is 45175 Ten Mile Road, Novi, Michigan 48375, and Robert and Laura D'Angelo, husband and wife, ("Property Owners") whose address is 21213 Equestrian Way, Northville, Michigan 48167 (the "Property").

### R E C I T A L S:

- A. The Property Owners of Unit 71 of the Maybury Park Estates Condominium, as described in the attached and incorporated Exhibit A, requested a variance from the City of Novi, Design and Construction Standards related to the installation of a stamped concrete sidewalk along Equestrian Trail, at the location set forth in the attached and incorporated Exhibit B ("Sidewalk Area").
- B. The City has been granted ajo water and sanitary sewer easement in the Property, which includes an easement over the sidewalk ("Easement") attached as Exhibit C.
- C. The City of Novi, Engineering Design Standards, as incorporated into the Design and Construction Standards (collectively, the "Standards"), sets forth the standards for sidewalks, including compliance with the Americans with Disabilities Act ("ADA"). The City's current Design and Construction Standard do not permit pavers and/or stamped concrete sidewalks.
- D. The City has granted the Property Owner's a variance to permit the installation of stamped concrete over the Sidewalk Area contiguous to their Property subject to the conditions set forth in this Agreement.

### ***The parties agree as follows:***

1. The Recitals are incorporated by reference as if fully set forth herein.
2. The homeowner shall not sealcoat the stamped concrete sidewalk because the gloss/sheen created by the seal coat may cause a hazardous condition increasing the likelihood of pedestrian to slip and fall.
3. In the event the City exercises its Easement rights to repair, replace and/or maintain the water and sanitary sewer lines and the Sidewalk Area, or any other stamped concrete within the City's Easement shown in Exhibit C, is damaged or parts or all of it are removed by the City, the City will only replace the Sidewalk Area in accordance with the Standards in effect at the time of the replacement or repair, and will not be obligated to replace/repair the Sidewalk Area with stamped



concrete. The Property Owners, in their sole discretion, may accept the cost the City would otherwise expend to repair or replace the Sidewalk Area in lieu of the City making the repair or replacement. In such case, the Property Owners shall be entitled to reinstall the stamped concrete Sidewalk Area.

4. The Property Owners and their successors, assigns, and transferees shall be responsible to the City for any and all liabilities incurred by the City, arising out of, or incident to, granting the variance for a stamped concrete Sidewalk Area, and the installation and maintenance of the Sidewalk Area. The Property Owners shall hold harmless and indemnify the City and the City's, elected officials, agents and employees, from any and all costs, claims, suits, actions, losses, damages, injuries or demands, relating in any way to the sidewalk slope, including, but not limited to damages and injuries relating to application of the ADA standards, with respect to the Sidewalk Area including court costs and attorneys' fees.,

5. Property Owners shall maintain insurance, including contractual liability coverage, at their sole cost and expense, with respect to injuries and damages arising out of the construction, operation and maintenance of the Sidewalk Area in a form acceptable to the City. Such policies shall name the City, its elected officials, agents and employees, as additional insureds and shall provide the City with a certificate of insurance or other written evidence of its coverage, including an endorsement which states that such insurance may not be cancelled except upon ten (10) days prior written notice to the City.

6. This Agreement and the rights and responsibilities set forth herein are intended to bind the parties, their heirs, successors and assigns, and shall run with the land and succeeding interests therein, and shall be recorded with the Oakland County Register of Deeds. This Agreement shall automatically terminate and be of no force and effect without further action, if at any time the Sidewalk Area is replaced with poured concrete.

**THE CITY**

The City of Novi, a Michigan municipal corporation

By: Victor Cardenas, Its Acting Public Services Director

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )


The foregoing instrument was acknowledged before me \_\_\_\_day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of a Michigan \_\_\_\_\_ on its behalf.

\_\_\_\_\_  
Notary Public  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_



**PROPERTY OWNERS**


  
\_\_\_\_\_  
Robert D'Angelo

  
\_\_\_\_\_  
Laura D'Angelo

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )

The foregoing instrument was acknowledged before me 21<sup>ST</sup> day of March, 2017 by Robert D'Angelo and Laura D'Angelo, husband and wife.

**CYNTHIA J. MININNI**  
Notary Public, State of Michigan  
County of Monroe  
My Commission Expires **06-05-2019**  
Acting in the County of Oakland

  
\_\_\_\_\_  
Notary Public  
Acting in Oakland County, Michigan  
My commission expires: 06-05-2019

Drafted By:  
Tova Shaban, Esq.  
Seyburn Kahn, P.C.  
2000 Town Center, Suite 1500  
Southfield, MI 48075

When recorded, return to:

Tova Shaban, Esq.  
Seyburn Kahn, P.C.  
2000 Town Center, Suite 1500  
Southfield, MI 48075

EXHIBIT A  
OWNERS PROPERTY

Land in the City of Novi, Oakland County, State of Michigan

Unit 71, Maybury Park Estates, a Condominium, according to the Master Deed recorded in Liber 32412, Pages 650 through 726, inclusive, as amended, and designated as Oakland County Condominium Plan No. 1609, together with rights in general common elements and the limited common elements as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

Tax item: 50-22-32-401-079

Commonly known as: 21213 Equestrian Trail, Northville, MI 48167



LOT 71

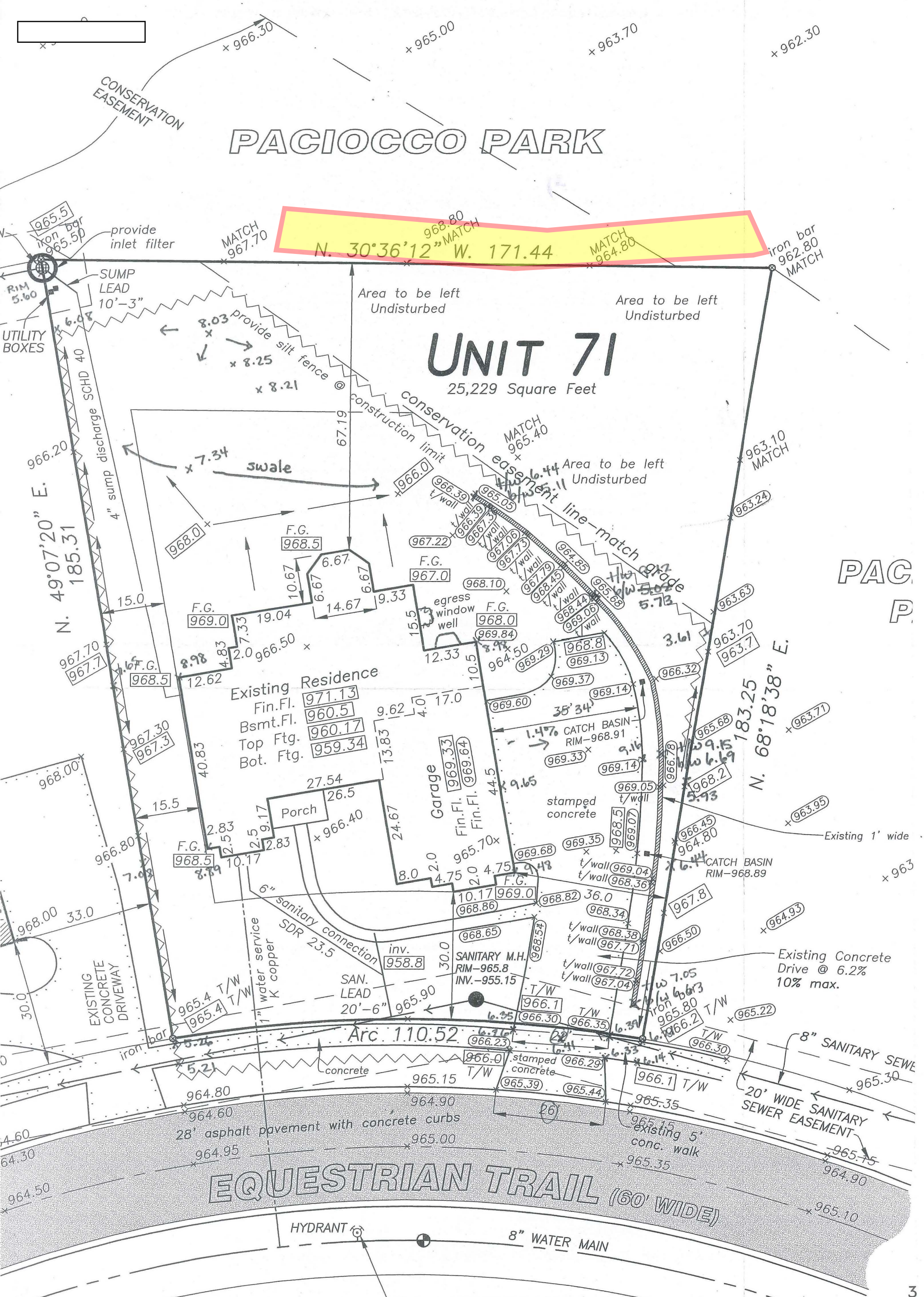
21213 Equestrian

# PACIOCCO PARK

## UNIT 71

25,229 Square Feet

N. 30°36'12" W. 171.44



NOTE:  
Water lead not depicted on engineering plan—could not

NAVD88 BENCH MARK  
ARROW ON HYDRANT  
ELEVATION - 967.70