Attachment 'C'

July 31, 2024

Hutcheson Trust
Jeffrey and Cynthia Hutcheson, Trustees
210 Mount Vernon Street
Council Bluffs, Iowa 51503-1325
402-981-4633

AND

Charles Lowell Richey
241 Warren Street
Council Bluffs, Iowa 51503

RE: Case #ZC-24-006

Mr. Moises Monrroy, Planner,

We are writing this letter in response to your letter of July 25, 2024. We have numerous concerns regarding the rezoning change requested by the applicant, Nyles Lehnen.

1) This application is essentially a request for Spot Zoning. The State of Iowa addresses Spot Zoning and considers such action as "not appropriate if it is for the financial benefit of an individual property owner but detrimental to the surrounding area." Further, the State maintains "Spot zoning for the sole benefit of the landowner and contrary to the comprehensive plan is unreasonable." Both conditions exist in this case.

2) How is it possible for an individual to request a zoning change for property they do not own? In the application, Mr. Lehnen's request includes the vacated portion of Warren Street. However, this property is still owned by the City, not the applicant.

3) Per the City of Council Bluffs' definition of approved A-2 properties, the intention is to preserve land suited for eventual development. The rezoning of these parcels would prohibit eventual development.

4) Permitted uses for A-2 property, as defined by the City of Council Bluffs, may include crop production. Agricultural guidelines for establishing an apple orchard recommend a minimum of ten acres. The subject property is 2.98 acres and the topography of the property would make establishing a successful apple orchard difficult. Successful production of apple crops requires extensive care and management and extensive use of vehicles and machinery. The small size of the parcel(s) would make practical production difficult. Additionally, established guidelines and crop management practices suggest an apple orchard should be protected from deer by a fence. Another concern is if any excavating/grading is undertaken to establish an orchard, there may be water run-off issues.

Part of this site sits above adjoining property owners and control of run-off is important to the properties at a lower elevation. Other permitted A-2 uses include "Sanitary landfill" and "Rubble dump". Neither of these uses would be desirable in this case. Also permitted use for A-2 property is the construction of a single-family dwelling. However, the minimum lot size requirement per Council Bluffs Zoning Ordinance (Chapter 15.05 -A-a) is three acres and this site falls short of that requirement.

5) Currently, the only access to the property is the unimproved continuation of Mount Vernon Street. The applicant has been using this rock road as his only access since purchase and at one point placed a locked, steel gate on City property to restrict access. The gate was removed and relocated at the City's insistence but not without some pushback by the applicant. This road likely exceeds the 10% grade restriction adopted by the City of Council Bluffs.

6) In the application, the intended purpose of the rezoning would be to create an apple orchard and a private year-round deer hunting area.

    a. The A-2 designation would potentially reduce the property taxes on the site and possibly increase the traffic on the existing unimproved road. Additional traffic on either Harrison or Mount Vernon resulting from a rezoning could prove detrimental to portions of both streets. Both streets in the affected area are already in need of repair and a reduction of property taxes and an increase in traffic may place a financial burden on abutting property owners.

    b. Per current City of Council Bluffs Urban Deer Management Rules, a bowhunter is subject to the same bowhunting seasons as set by Iowa DNR and currently year-round deer hunting is not permitted in the State. Therefore, the application should be denied since one of the intended uses is illegal.

We have included several attachments with this letter supporting the above statements. Needless to say, we are opposed to the request for a change in zoning for the property.

Respectfully submitted,

Jeffrey and Cynthia Hutcheson, Trustees

Cynthia R. Hutcheson Jeffrey R. Hutcheson

Charles Lowell Richey

Charles Lowell Richey

Chapter 15.05 - A-2/PARKS, ESTATES AND AGRICULTURAL DISTRICT

15.05.010 Statement Of Intent
15.05.020 Principal Uses
15.05.030 Conditional Uses
15.05.040 Accessory Uses
15.05.050 Site Development Regulations
15.05.060 Additional Regulations
15.05.070 Signs

15.05.010 Statement Of Intent

This district is intended to preserve lands best suited for agricultural, recreational and large-parcel residential uses. It is also intended to preserve land suited for eventual development pending proper timing for economical and practical provisions of streets, utilities, schools and other facilities so that reasonably compact development will occur.

Commented [JH1]: A-2 Zoning is intended to preserve land suited for eventual development. We see no practical reason to make a Zoning change for this parcel.

(Ord. 5285 § 1 (part), 1996)

15.05.020 Principal Uses

The following principal uses shall be permitted outright in an A-2 district:

1. Animal production.
2. Cemetery.
3. Dwelling, single-family detached.
4. Family home.
5. Government maintenance facility.
6. Horticulture and crop production.
7. Local utility services.
8. Park and recreation services.
9. Public campground.
10. Public safety services.
11. Religious assembly.
12. Secondary airports and private light plane landing strips, when laid out and operated in accordance with all applicable regulations of the Federal Aviation Administration (FAA) and when situated on a site containing not less than thirty (30) acres.
13. Animal shelter (non-profit).

Commented [JH2]: Is the intent of the apple orchard to market the product, and, if so, how will potential consumers access the property? Per agriculture standards, the minimum recommended size of an apple orchard is 10 acres. Supporting documentation is attached.

(Ord. No. 6055, § 1, 3-8-2010; Ord. No. 6081, § 1, 5-24-2010)

Editor's note— Ord. No. 6055, § 1, adopted Mar. 8, 2010, repealed the former section and enacted a new section as set out herein. The former section pertained to similar subject matter and derived from Ord. No. 5523, § 1, 2000.

15.05.030 Conditional Uses

The following conditional uses shall be permitted in an A-2 district in accordance with the requirements set forth in CBMC 15.02:

1. Agricultural sales and service;
2. Commercial recreation (indoor and outdoor);
3. Day care services;
4. Extraction activity;
5. Funeral service in conjunction with a cemetery;
6. Outdoor firing range;
7. Private campground;
8. Sanitary landfill;
9. Rubble dump;
10. Greenhouse, commercial; and
11. Solar energy conversion systems.

Commented [JH3]: Will the applicant be pursuing a future use of the property as a landfill or rubble dump?

(Ord. No. 6055, § 2, 3-8-2010; Ord. No. 6372, § 1, 12-17-2018)

Editor's note— Ord. No. 6055, § 2, adopted Mar. 8, 2010, repealed the former section and enacted a new section as set out herein. The former section pertained to similar subject matter and derived from Ord. No. 5523, § 2, 2000.

HISTORY
Amended by Ord. 6393 on 8/12/2019
Amended by Ord. 6443 on 3/8/2021

15.05.040 Accessory Uses

Accessory uses shall include uses of land or structures customarily incidental and subordinate to one of the principal uses, unless otherwise excluded. In an A-2 district only, an accessory structure may exceed the ground floor coverage of the principal structure.

(Ord. 5285 § 1 (part), 1996)

15.05.050 Site Development Regulations

Minimum Lot Size

Commented [JH4]: Based upon the legal description the intended parcel does not meet the minimum lot size requirement of 3 acres.

Lot area:	3 acres
Lot width:	150 feet
Lot depth:	200 feet

Minimum Setbacks	Principal Structure	Accessory Structure
Front yard:	50 feet	50 feet
Street side yard:	20 feet	20 feet
Side yard:	10% of lot width or 10 feet whichever is greater	10% of lot width or 10 feet whichever is greater
Rear yard:	20 feet	20 feet
Maximum height:	35 feet	25 feet
Lot coverage:	10% maximum	

(Ord. 5285 § 1 (part), 1996)

HISTORY
Amended by Ord. 6393 on 8/12/2019

15.05.060 Additional Regulations

1. Reserved.

(Ord. 5285 § 1 (part), 1996)

15.05.070 Signs

Signage in this district shall comply with CBMC 15.33, "Signs."

(Ord. 5285 § 1 (part), 1996)

Council Bluffs Urban Deer/Turkey Management Program

Bow Hunting Guidelines and Rules For The 2024-2025 Season

(Deer Season - September 21, 2024– January 19, 2025)
(Turkey Season – Double Season – 1st Season - October 1 – December 6, 2024;
2nd Season – December 23, 2024 – January 10, 2025)

1. All bow hunters must have a current I-DNR hunting license and reside in Iowa to be part of this program. In addition, all hunters shall be required to take I-DNR's online bow hunting safety course or equivalent training as determined by the Chief Animal Control Officer. There are two parts to getting your Iowa Bowhunter Certificate. The first is the online classroom portion, the second is the field training portion. The online portion can be accessed at: www.bowhunter-ed.com/iowa/. There is a $30 online fee for the online classroom portion. All hunters that have previously taken the Iowa online bow hunters course will not have to repeat that class to become certified for the Council Bluffs Urban Deer/Turkey Management Program. You will have to prove, with Certification Number, that you took and passed the test. **. Since there are no field classes in this area, the online classroom portion is the only portion that *will be mandatory for 2024-2025 season.***

2. All hunters must pass an archery proficiency test. This test is a demonstration of skill. Hunters must place 5 out of 5 arrows in the kill zone of a 3-D deer target at 20 yards. Proficiency tests must be renewed every year with the exception of those hunters that took ten (10) or more deer in the 2023/2024 season.

3. All hunters must have written permission from the owner or owners of the property upon which they hunt. Permission forms must be carried with the hunter at all times along with the Urban Deer /Turkey Management Certificate and I-DNR hunting license. The permission form must also be on the hunter when transporting a deer/turkey or any other hunt related activity. The following areas are permitted for bow hunting within the corporate limits of Council Bluffs: all A1 and A2 zoned areas as well as R1, R2, and R3 zoned areas of one acre or more.

4. All hunters must obtain a Council Bluffs Urban Deer Management Certificate from the Council Bluffs Animal Control Division prior to being allowed to obtain a City antlerless tag from Woods Sporting Goods, 531 Veterans Memorial Rd. In order to obtain his/her Certificate, the hunter must complete and show proof of completing a hunters safety course; proof of proficiency test certification. (A hunter will be limited to purchasing no more than (5) tags at a time. Once the five tags are filled, a hunter can again purchase (5) five additional tags. There are a total of 300 tags available this year. 1st tag $28.50; 2nd tag and all additional- $15.00.

Bow hunters wanting to purchase turkey tags shall be limited to two (2) tags for the year. The cost is $28.50/tag. (Reminder: Only female turkeys should be taken within the Council Bluffs Urban Turkey Management Program.)

Bow hunting is allowed for both deer and turkey from ½ hour before sunrise to ½ hour after sunset.

5. There shall be no driving or stalking of deer or turkey.

6. Shooting shall be from an elevated position - at least 6' above ground level with all shots in a downward trajectory. All hunting stands, hunting positions or stand locations must be approved by the landowner.

7. Hunters cannot carry an uncased bow within 150 feet from all city improved trails, roads, buildings and at least 500 feet from any residence.

Commented [JH1]: Based upon the owner's past practice, he is regularly in violation of this section. His past practice is to park on the unimproved portion of Mount Vernon Street west of Harrison. Parking in this area and uncasing his bow puts him on city property and well within 5oo feet of several residences.

8. Know your effective shooting range and do not shoot beyond that range. Recommended shots are 20 yards or less.

9. Be sure to identify your target as an antlerless deer. Does will count towards incentive programs developed and approved by the City of Council Bluffs and the Iowa DNR. However, button bucks will not be eligible for inclusion into incentive this fashion programs. Harvesting of antlered animals is prohibited except within the scope of incentive programs approved by the City of Council Bluffs and the Iowa DNR. Harvesting of antlered animals may subject the hunter to all appropriate legal penalties and may result in the suspension of the hunter's Council Bluffs Urban Deer Certificate .

10. Take only high percentage shots-avoid wounding deer.

11. Be sure of what is down range of your hunting position and make every effort to retrieve arrows. If an arrow is lost, the landowner should be informed that the arrow has not been retrieved.

12. The hunter shall report to the Chief Animal Control Officer, Galen Barrett at gbarrett@councilbuffs-ia.gov within 12 hours after a deer has been harvested. Verifying your deer this year shall consist of the following: 1. Taking a picture of the doe's head. 2. Picture of the attached tag. 3. I-DNR Tag Number 4. Date when doe was harvested. 5. Location of where doe was taken. 6. Hunter shall identify him/herself by name. Send this information to the abovementioned email. The same procedure shall be followed for those bow hunters taking turkey.

    I-DNR requires that the Transportation Tag, with the date of harvest properly recorded, demonstrates proof of possession and must be attached within 15 minutes of harvest or before the animal is removed, which ever come first. The Transportation Tag must be attached to the deer leg if antlerless and also to the leg of a turkey. .

All successful hunters who harvest a deer or turkey must report the harvest to I-DNR by midnight on the day after it is tagged, or before taking it to a locker or taxidermist, or before processing it for consumption. Report by Phone: 1-800-771-4692 or ***Online*** at www.iowadnr.gov, available 24 hours a day, 7 days a week. **Failure to report or reporting falsely may result in a misdemeanor citation.**

13. The hunter shall report to the Chief Animal Control Officer by phone (712-328-4656) within 12 hours if they are unable to locate a wounded deer or turkey and provide information and assistance to the Chief Animal Control Officer to assist in the tracking and recovery of the animal.

14. Remember, additional tags can be purchased from Woods Sporting Goods, 531 Veterans Memorial Rd. (Limit of 5 tags at a time.) The number of tags issued will not exceed the 300 issued by the I-DNR.

15. Use proper field dressing techniques. Cooperate with the landowner regarding the location or disposition of entrails. All deer or turkey must be covered or enclosed during transport.

16. Remove yourself from any harassment situation and immediately report the incident to the Chief Animal Control Officer and DNR officer.

17. Report violators to the DNR Conservation Officers or the Chief Animal Control Officer.

18. To be eligible to receive a Council Bluffs Urban Deer Management Certificate applicants may not have any fish or game violations in the past three years according to the DNR.

19. All hunters shall have in their possession at all times during the hunt and the transporting of a deer/turkey: a valid Iowa hunting license, habitat stamp, proper deer or turkey tag, a signed and completed landowner permission form, and a Council Bluffs Urban Deer Management Certificate.

20. The Council Bluffs Urban Deer Management Bow Hunting Season will run continuously during the state archery deer season . The Council Bluffs Urban Turkey Management Bow Hunting Season will follow I-DNR's Fall Turkey Season exactly. All hunters shall observe all state rules and regulations with exceptions for this special program within the city limits. Boundaries are anywhere within the Council Bluffs city limits that are zoned R1, R2, R3, A1 and A2 and only on private property with exception of Fairmont Park, Sternhill Parks and the City Cemetery which have hunters already selected to hunt these areas.

Commented [JH2]: The Iowa DNR does not permit year-round deer hunting, therefore, permitting a landowner to hunt outside of DNR rules would place the hunter in violation of DNR rules, thereby violating the City of Council Bluffs rules, making the hunter ineligible for a City deer hunting permit.

21. ***INCENTIVE PROGRAM***
All hunters participating in the 2024/25 urban deer hunt are eligible to participate in an incentive program for the chance of obtaining one of (10) ten buck tags. At the conclusion of the 2024-25 season, all hunters harvesting at least 4 does during the season will have their name placed in a drawing for an incentive buck tag. The incentive buck tag will be valid for the 2025/26 season. The ten bow hunters shall be notified by phone. *There are no incentive programs for turkey at this time.*

22. ***QUALIFYING FOR 2024/2025 PROGRAM***
This year, all qualified hunters from last year will be eligible to requalify this year.

Council Bluffs Animal Control – 1020 Railroad Ave., Suite B, Council Bluffs, IA 51503
Phone (712) 328-4656

Spot Zoning

Fact Sheet

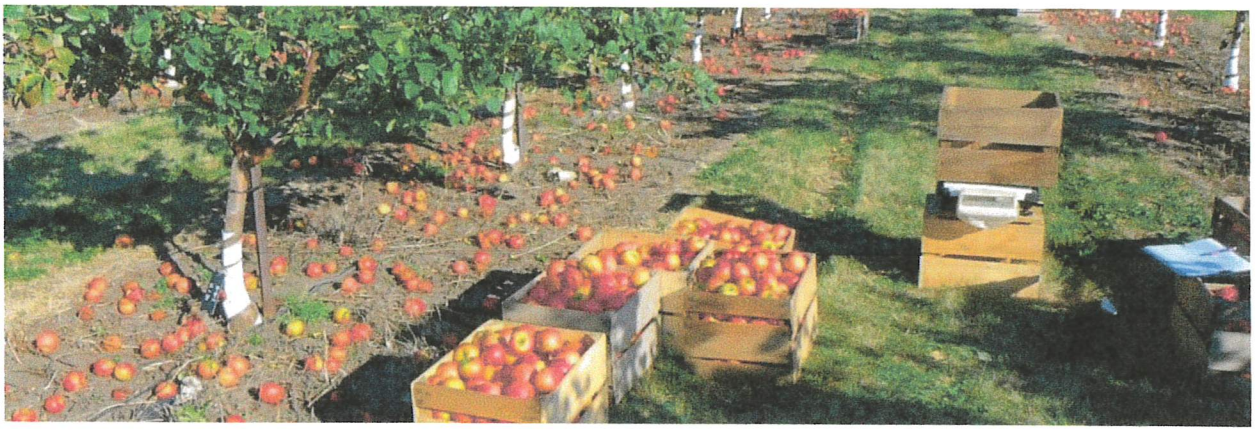
Spot zoning is when a rezoning decision results in a single parcel, or small island of property, with restrictions on its use different from those imposed on the surrounding property. Spot zoning can be valid if there is a reasonable basis to treat the spot-zoned property differently from the surrounding property. For example, a parcel or two designated as neighborhood commercial in a residential area is perfectly appropriate if it provides needed retail services to residents. However, zoning is not appropriate if it is for the financial benefit of an individual property owner but detrimental to the surrounding area. According to the Iowa courts, the factor of primary importance is whether the rezoned tract has a peculiar adaptability to the new classification as compared to the surrounding property. Spot zoning for the sole benefit of the landowner and contrary to the comprehensive plan is unreasonable.

The case for creating these "spot zones" is best made through the comprehensive planning process, where the community can explain the benefits that such differential treatment brings to the area.

Before you start an apple orchard

May 1, 2018

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By

Emily Tepe, Emily Hoover

Are you thinking about starting an apple orchard to grow and sell apples? That's a big and exciting undertaking! It's great that you're looking around for tips before gettings started, because there are some important things to know about the business of producing and selling apples before investing your time, energy, and money. Here are some things to consider if you are thinking about starting or purchasing an orchard.

Experience

If you have had no previous experience in orchard management, the best way to know what you're getting into is to work for a successful orchardist for a year or more. Attend grower meetings to learn from the experts and meet other growers. Meetings and conferences are usually held during the winter, but even more fun are the field days which are held throughout the season. Get involved in grower associations to find out when various events are held. Check on our events list too.

Orchard Size

Apple production requires a lot of labor, and will take a lot of your time. You'll probably also need additional seasonal help for harvesting and packing the fruit. Although every farm system is unique, 10 acres could be considered a minimum size for a commercial apple-growing business. A 10-acre operation is large enough to use equipment efficiently and implement a continuous orchard renovation program, yet small enough that one person can take care of most of the work. Larger orchards can make more efficient use of machinery and equipment, but will require more hired labor, and more management skill.

MAGAZINE GROWING



Before You Start an Apple Orchard

September 1, 2018 by Growing Magazine

Every year orchards are purchased or planted by people who have no experience in growing apples. For some, an orchard will be a challenge and a source of personal satisfaction and profit. For others, it may be a source of frustration and a bad investment. It's important to become familiar with the business of producing and selling apples before investing your time, energy and money. Here are points to consider if you are thinking about starting or purchasing an orchard.

Experience

If you have had no previous experience in orchard management, consider working for a successful orchardist for at least a year to learn about the operation. If that's not possible, be certain that a competent manager or qualified consultant can be employed before you decide to purchase an orchard.

Orchard size

Apple production requires a lot of labor. A permanent labor supply for spraying, pruning and general maintenance must be available. Additional seasonal labor will also be needed for harvesting and packing the fruit. Although every farm system is unique, 10 acres could be considered a minimum size for a commercial apple-growing enterprise. A 10-acre operation is large enough to use equipment efficiently and implement a continuous orchard renovation program, yet small enough that one person can take care of most of the work. Larger orchards can make more efficient use of machinery and equipment, but more hired labor, and thus more management skill, will be required.

Management

Apple growing is an enterprise that requires a great deal of knowledge on the part of the orchard owner or manager. Making a profit growing apples in Minnesota (or anywhere else) can be done only with intense management, from variety selection through planting, training, controlling pests, thinning fruit, harvesting, handling and marketing. If you are considering orcharding as a career or a business opportunity, you must be willing to learn about and keep up-to-date with production practices.

Start-up costs

Apple growing requires a very substantial capital investment. Many potentially successful orchards have failed simply due to lack of sufficient operating capital. Be sure you have the capital to purchase and operate an orchard before signing any agreement or sale contract. From the year of planting until the year that crop returns equal or exceeds annual costs, the apple grower will make a large investment. Dwarf trees may begin bearing a small crop their third year in the ground; these trees will not reach full productivity until the sixth or seventh year after planting.

Establishment costs per acre

Penn State has several worksheets in their 2012-2013 Pennsylvania Tree Fruit Production guide (*http://extension.psu.edu/plants/tree-fruit/tfpg*) that can be used to help estimate costs for the following:

- Land preparation
- Orchard planting
- Maintaining a productive apple orchard

The Penn State worksheets assume slightly lower tree densities than is probably optimal. If dwarf trees are planted at 8-foot by 14-foot spacing, there will be 388 to the acre.

These cost estimate sheets do not include costs for tree stakes. A permanent stake should be provided for each dwarf tree, so this cost should be added to your planting budget. Planting year costs include trees, tree guards, stakes, labor to plant and train trees, fertilizer and pesticides (herbicides, insecticides, fungicides, rodenticides and/or bactericides).

Nonbearing year costs include pesticides and the labor for pruning, training, mowing, and pest control. Remember, after the fifth year, production costs will increase while yields and income are also increasing. As the trees get larger, they will require more pest control chemicals to achieve good coverage, and more pruning, and it will be more time-consuming to harvest the fruit. Expect costs of $4,000 to $5,000 per acre.

Hiring honeybee hives and thinning fruit are additional costs in bearing years. Advertising and packing costs will vary depending on how the fruit is to be marketed. A pick-your-own orchard will not have high harvest costs, but will pay workers to do things that other orchards don't, such as drive the customers on wagons around the orchard, or entertain crowds to attract them to the orchard. This kind of orchard is also likely to have higher insurance costs.

Deer fencing

One site preparation expense not included in these worksheets is that of fencing the orchard to keep deer out. Fencing costs vary considerably, depending on type of fence chosen, materials used, size and layout of orchard. The Minnesota Department of Natural

Resources can help you design a deer fence (*http://www.dnr.state.mn.us/livingwith_wildlife/fences/index.html*) for your orchard. Deer fencing should be considered essential to successful apple production in Minnesota. Young trees in particular are attractive to deer, and can be killed in a single season of heavy browsing. Hanging bars of soap, human hair, or other repellants in the trees might be effective, but you can't always count on repellants.

One alternative to deer fencing could be keeping guard dogs in the orchard; however, there will be additional costs associated with this method of pest control. Do not plan to simply shoot the deer "as needed." Special permits for killing animals harming your crop are available from the DNR; however, no matter how many deer you kill or have killed, more will soon replace them, and continue to damage your trees.

Income potential

You could expect to have income from the trees after the fifth year. Yields from dwarf trees planted at a density of 300 to 400 trees per acre in Minnesota range from about 300 bushels per acre to 500 or more bushels per acre. Figuring that a bushel of apples weighs about 40 pounds, an acre of trees at this density should produce at least 16,000 pounds of fruit, and on a good site, with favorable climatic conditions and excellent management, as much as 20,000 pounds.

Not all of the production will be saleable; figure about 60 percent packout when you make income projections, and somewhat less for pick-your-own, since customers will not be as thorough pickers as hired harvesters, and they may eat a significant amount of fruit without purchasing it.

Prices for fruit will depend on how it is marketed: pick-your-own, pre-picked on-farm sales, farmers' market sales, or wholesale in bulk to a packer. At some pick-your-own orchards in Minnesota, many varieties sell for about $1 per pound; pre-picked fruit costs about $1.25. The same fruit, wholesaled to a packer, might be worth only 10 cents per pound.

Some varieties command a higher price than others, prices will vary from year to year, and yields will also vary. Don't assume that planting lots of Honeycrisp and no lower-value apples will allow you to beat the average. The only way most Minnesota orchard businesses make money is by retailing the fruit, and by having a diverse business that includes a bakery, a cider pressing operation, entertainment, or all of the above. Some orchardists grow other fruits and/or vegetables as well as apples. Many of these profit-

generating activities were not part of the original plan for the orchard, but grew out of necessity.

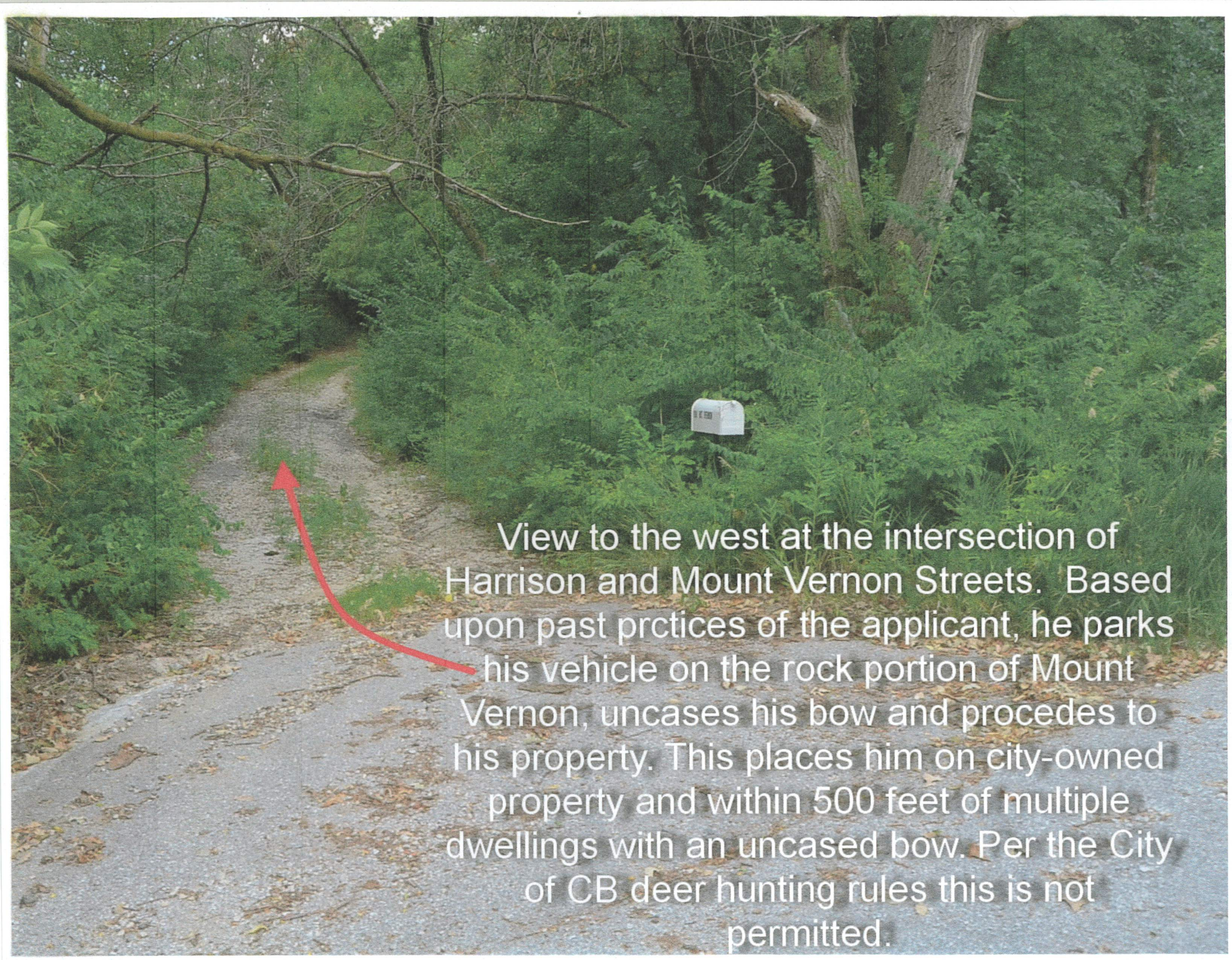
It makes good business sense to draw up a marketing plan with assistance from a consultant before you plant the first tree. Figure out who will buy your apples and how you will sell them. Decide what will define your orchard and make people want to come to your farm or farmers market stand rather than going to someone else's or going to a grocery store.

As you pencil out the financial outlook for your planned orchard, you may wish to consult the Small Business Administration (*https://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business*) for assistance in formulating a business plan. SBA staff can work with you to estimate costs for buildings, land, equipment and insurance, and the staff can help you figure out when you can expect to break even. The SBA website offers online courses, videos, chat sessions and other resources to help you through the process of creating a successful business.

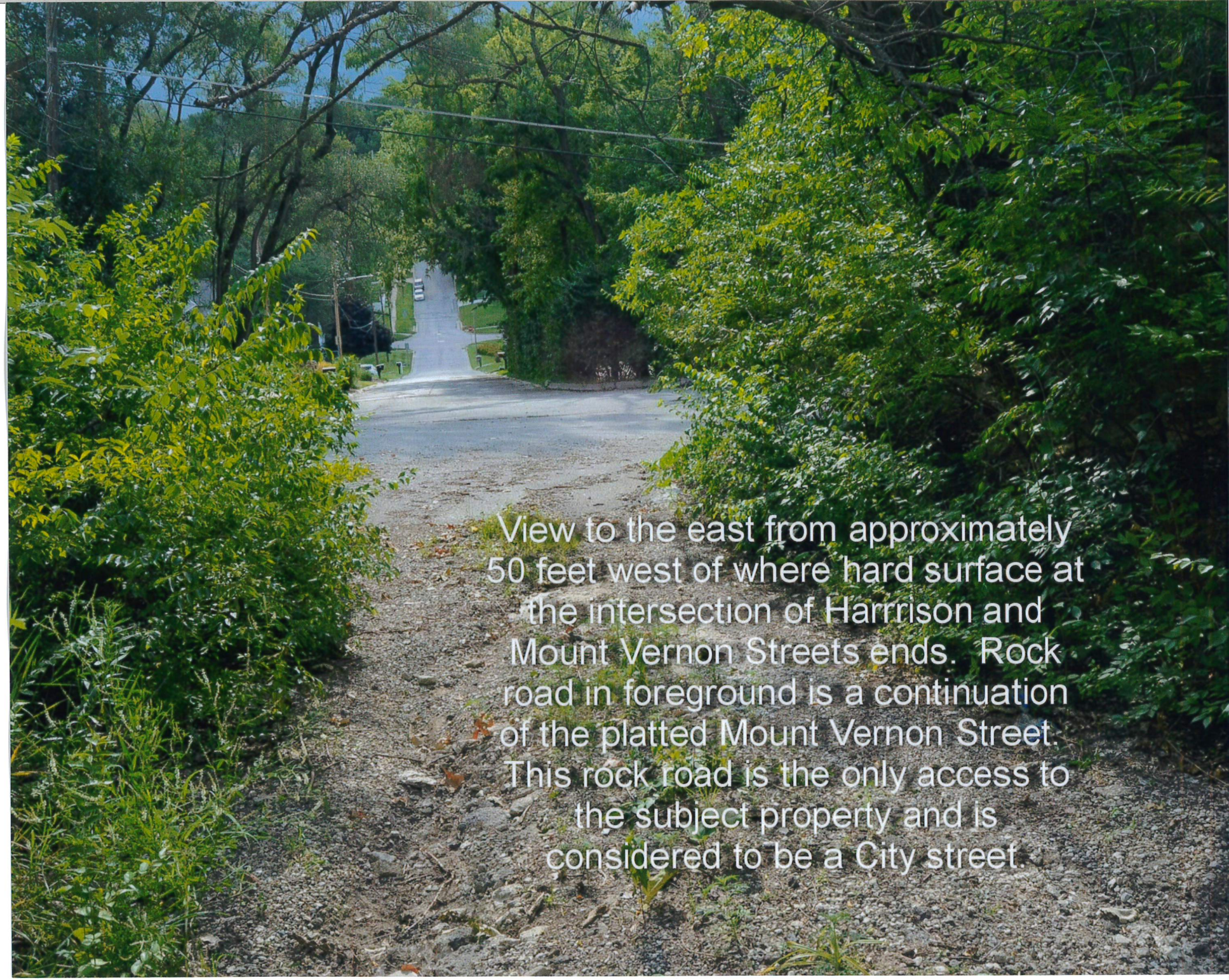
Editor's note: This column was used with permission granted from the University of Minnesota Extension. The material is available at http://fruit.cfans.umn.edu/apples/beforeyoustart/.

Fruits
apple, Before You Start an Apple Orchard, orchard
‹ Weeds in Squash
› Battling Pigweed

Search ...


View to the west at the intersection of Harrison and Mount Vernon Streets. Based upon past prctices of the applicant, he parks his vehicle on the rock portion of Mount Vernon, uncases his bow and procedes to his property. This places him on city-owned property and within 500 feet of multiple dwellings with an uncased bow. Per the City of CB deer hunting rules this is not permitted.


View towards the west from 210 Mount Vernon. Rock road in background is the only access to the subject properety. This is platted as a continuation of Mount Vernon Street.


View to the east from approximately
50 feet west of where hard surface at
the intersection of Harrrison and
Mount Vernon Streets ends. Rock
road in foreground is a continuation
of the platted Mount Vernon Street.
This rock road is the only access to
the subject property and is
considered to be a City street.