

For:
Lee Hunt
Councilmembers:
Steve DeLapp
Susan Dunn
Dean Johnston
Wyn John

Lake Elmo City Council
Wednesday,
August 4, 2004
(The Council meeting has been rescheduled from August 3, 2004 because of National Night Out)

3800 Laverne Avenue No.
Lake Elmo, MN 55042
777-5510 777-9615 (fax)

Please read:

Since the City Council does not have time to discuss every point presented, it may appear that decisions are preconceived. However, staff provides background information to the City Council on each agenda item in advance; and decisions are based on this information and experience. In addition, some items may have been discussed at previous council meetings.

If you are aware of information that has not been discussed, please fill out a "Request to Appear Before the City Council" form; or, if you came late, raise your hand to be recognized. Comments that are pertinent are appreciated. Items may be continued to a future meeting if additional time is needed before a decision can be made.

Agenda

City Council Meeting Convenes 7:00 PM

Pledge of Allegiance

1. Agenda

2. Minutes

August 4, 2004

3. PUBLIC INQUIRIES/INFORMATIONAL:

Public Inquiries/Informational is an opportunity for citizens to bring the Council's attention any items not currently on the agenda. In addressing the Council, please state your name and address for the record, and a brief summary of the specific item being addressed to the Council. To allow adequate time for each person wishing to address the Council, we ask that individuals limit their comments to three (3) minutes. Written documents may be distributed to the Council prior to the meeting or as bench copies, to allow a more timely presentation.

4. CONSENT AGENDA

- A. Resolution No. 2004-061 Approving Claims**
- B. Request for Meehan Family for an Extension of Time to Record Final Plat**
- C. Ordinance No. 97- Amending Definition for Building Height (Postponed to 8/17)**
- D. Resolution No. 2004-062:Appointing Election Judges for Primary and General Election**
- E.. Resolution No. 2004-063:Designating Polling Places for the Primary and General Election**

Those items listed under the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion under a Consent Calendar format. There will be no separate discussion of these items unless a Council member so requests, in which event, the item will be removed from the general order of business and considered separately in its normal sequence on the agenda.

5. FINANCE

A Schedule Meeting Date for Bond Resolution and Amend CIP

Tom Bouthilet

6. NEW BUSINESS

<p>7. <u>MAINTENANCE/PARK/FIRE/BUILDING:</u> A Update on Fire Department Activities:Fire Chief Malmquist</p>	
<p>8. <u>CITY ENGINEER'S REPORT:</u> A. Landscape Security Release -Eagle Point Business Park</p>	<p>Tom Prew</p>
<p>9. <u>PLANNING, LAND USE & ZONING:</u> A. Resolution No. 2004-064 :Request to MnDOT for Irish Avenue Street Sign B. Fence Ordinance C. Fence Moratorium Request at 55th Street North:Ordinance No. 97-137 D. Limited Business Zoning District – Add Family Entertainment Center:Ordinance Nos. 97-138 and 97-139 E. Resolution No. 2004-065:Final Plat, OP Plan & Development Agreement-Whistling Valley Second Addition</p>	<p>C. Dillerud</p>
<p>10. <u>CITY ATTORNEY'S REPORT:</u> A.</p>	<p>J. Filla</p>
<p>11. <u>CITY ADMINISTRATOR'S REPORT:</u> A. New Public Facilities: City Hall, Public Work Facilities and Possible Fire Station</p>	<p>M.Rafferty</p>
<p>12. <u>CITY COUNCIL REPORTS:</u> A. Mayor Hunt:Smoking Ban B. Council Member DeLapp C. Council Member Dunn D. Council Member Johnston E. Council Member John</p>	
<p><u>Council Committee Meetings:</u> August 10, 5:30 p.m. Public Works August 11, 5:30 p.m. Public Health and Safety; 6:15 p.m. Finance, Legal, Legislative, personnel</p>	<p>Environmental Commission Meeting:Wednesday, August 18, 7 p.m.</p>

LAKE ELMO CITY COUNCIL MNUTES

JULY 20, 2004

1. AGENDA
2. MINUTES: JULY 6, 2004
3. PUBLIC INQUIRIES/INFORMATIONAL:
 - A. Public Informational
4. CONSENT AGENDA:
 - A. Resolution No. 2004-058:Approve Claims
 - B. Finance Specialist
 - C. Oakdale Water:Resolution No. 2004-060
5. FINANCE:
 - A. Monthly Operations Report: Informational
6. NEW BUSINESS:
7. MAINTENANCE/PARK/FIRE/BUILDING:
 - A. Update on Building Dept. Activities:Building Official
8. CITY ENGINEER'S REPORT:
 - A. Carriage Station Grading: (Verbal)
9. PLANNING, LAND USE & ZONING:
 - A. Resolution No. 2004-059:Shoreland Zoning Variance, 2225 Legion Lane, Olsen
 - B. Appeal of Administrative Determination: Anderson-Sorenson
 - C. Amended Fence Ordinance
 - D. Fence Moratorium Exemption Request at 55th Street North:
Ordinance No. 97-137
 - E. Limited Business Zoning District – Add Family Entertainment
Center:Ordinance 97-138 and 97-139
10. CITY ATTORNEY'S REPORT:
11. CITY ADMINISTRATOR'S REPORT:
 - A. Meeting Time of Council Committees
12. CITY COUNCIL REPORTS:
 - A. Mayor Hunt
 - (1) Update on Met Council Meeting
 - (2) National Night Out
 - (3) Smoking Ban

Mayor Hunt called the Council meeting to order at 7 p.m. in the Council chambers.
PRESENT: John, Hunt, Johnston, DeLapp, City Engineer Prew, Attorney John Miller,
City Planner Dillerud, Building Official McNamara, and Administrator Rafferty.
ABSENT: Council Member Dunn

1. AGENDA

POSTPONE: 9B until August 2nd meeting, ADD: Resolution No. 2004-060 Approving
claim 15943 in the amount of \$7,079.54, MOVE: 12A. (2) National Night Out under
Public Informational

M/S/P John/Johnston - to approve the July 20, 2004 City Council agenda, as amended. (Motion passed 4-0).

2. **MINUTES:** JULY 6, 2004

M/S/P John/Johnston - to approve the July 6, 2004 City Council Minutes, as amended. (Motion passed 4-0).

3. **PUBLIC INQUIRIES/INFORMATIONAL:**

A. **Public Informational**

Paul Ryberg, Friends of Lake Elmo Library, thanked the Council for its support of library and for rental of a booth at the Washington County Fair. Ryberg asked for volunteers, 16 are needed, to help man the booth and anyone interested can call Friends of the Lake Elmo Library. Administrator Rafferty reported that depending on the options for a new City Hall Facility the Council chooses, he can present the choice and timeline in two weeks. Mr. Ryberg stated he would be interested if the decision would require a temporary location for a library.

4. **CONSENT AGENDA:**

A. **Resolution No. 2004-058: Approve Claims**

M/S/P Johnston/John - to adopt Resolution No. 2004-058, A Resolution Approving Claim Numbers 208, 209 DD192 through DD202, 25856, which were used for Staff/Fire payroll dated July 8, 2004, Claim Numbers 210, 25890 through 25930 dated July 20, 2004 in the total amount of \$215,376.36. (Motion passed 4-0).

In response to Council member Johnston question for the accumulative legal expense for fighting the Met Council, the Finance Director reported \$330,322.

B. **Finance Specialist - Informational**

The process of recruiting, reviewing, interviewing and selecting the Finance Specialist has concluded. The City Administrator and Finance Director have selected the most qualified person for the position. The individual selected, Hristo Galiov, has accepted the position for the compensation as budgeted and as planned for in the 2004 budget.

C. **Oakdale Water: Resolution No. 2004-060**

M/S/P Johnston/John - to adopt Resolution No. 2004-060, A Resolution approving claim number 25943 dated July 20, 2004 in the total amount of \$7,079.54 payable to the City of Oakdale for water. (Motion passed 4-0).

5. **FINANCE:**

A. **Monthly Operations Report:** Informational

6. **NEW BUSINESS:**

7. MAINTENANCE/PARK/FIRE/BUILDING:

A. Update on Building Dept. Activities: Building Official

The Building Official reported there were two new building permits issued for new residential and two new permits for commercial buildings in the month of June, 2004. He explained there have been demolitions of movillas in the Cimarron Park that are dilapidated and uninhabitable and should be completed in 30 days.

Council member DeLapp asked if the problem with a second building on 32nd street has been resolved. The Building Official responded that the City Attorney has been working on several of these on-going violations. DeLapp asked how we keep track of driveways being installed according to code. The Building Official answered that with new homes we have an escrow that we can hold until the resident makes the corrections.

8. CITY ENGINEER'S REPORT:

A. Carriage Station Grading: (Verbal)

Tom Prew reported he attended the Public Works Council Committee meeting where the committee asked him to look at a different solution. Instead of an open channel, he will leave the south yards in tack; and install a 4' rock lined channel to carry the water. The channel would be 2' wide on both property lines and also have a 6" pipe for drainage. Prew noted the residents thought this would be a reasonable solution at a cost of \$13,000. Dillerud added that the City has \$8,000 and could file a claim against the developer. Prew will prepare agreements for the residents to sign.

9. PLANNING, LAND USE & ZONING:

A. Resolution No. 2004-059: Shoreland Zoning Variance, 2225 Legion Lane, Olsen

The City Planner reported Thomas and Jeneal Olsen have applied for a variance for a shoreland overlay district variance to reconstruct a pre-existing deck with the Shoreland Ordinary High Water setback of Downs Lake. He reported that a 1970's vintage deck that was located 48 feet from the OHW has been removed by the applicant due to deterioration. The Planner indicated that that the Planning Commission has reported Findings that no reasonable alternative deck location was available to the homeowner; the variance circumstances are not totally the result of the owners actions (pre-existing the Shoreland standards); and, that the new deck will reduce the extent of setback nonconformity. The Planning Commission has recommended approval of the variance based on those Findings.

M/S/P DeLapp/Johnston - to adopt Resolution No. 2004-059, A Resolution approving a variance to permit reconstruction of a pre-existing deck within the Shore land OHW of Downs Lake at 2225 Legion Lane per plans staff dated July 8, 2004, and based on the recommendation of the Planning Commission. (Motion passed 4-0).

B. Appeal of Administrative Determination: Anderson-Sorenson

The City Planner reported that the home builders in the Whistling Valley OP have appealed determination by the Building Official regarding the application of the definition of Building Height in Section 150 of the City Code. With an architectural feature such as proposed for the roof of this home, the issue is whether the mean height of the gable roof is to be measured from the first roof level or the second upper roof level.

He reported that the appellant contends that the measurement of gable roof mid point should be taken from the eaves and the top most ridge (the top of the second roof in this case). With that interpretation this home would meet the 35 foot max height. With the Building Official's more conservative interpretation, the calculated building height of this home would be 38 feet.

Phil Anderson, Anderson-Sorenson stated that the first home built in Whistling Valley is the same height as the one in question. Anderson said he felt the interpretation the builder proposes meets the intent of the Code. He said he was looking for a solid definition to guide their house design process.

Council member Johnston asked if this will start a precedent and come back to haunt the City. Attorney Miller responded the section of the code should be amended for better clarity.

Mayor Hunt suggested the Council approach the issue as we work on the performance zoning.

Administrator Rafferty noted it is important in the short term to adjust the code to reflect any City Council interpretations made as the result of an appeal.

M/S/P Johnston/John - to adopt a Board of Adjustment and Appeals Order directing the Building Official to interpret the definition of Building Height for a hip or gable roof to use the upper most ridge line of any structure as the upper point from which to measure the average height of a structure with a hip or gable roof and multiple ridge lines. (Motion passed 4-0).

M/S/P DeLapp/John - to direct the staff to adjust the code to preclude the first definition of Building Height and include this interpretation in the new (second) definition. (Motion passed 4-0).

Council member DeLapp asked about fire sprinkling in homes. The Building Official explained the differentiation in commercial versus one or two family dwellings is when you start to serve the public.

M/DeLapp/No Second – to direct the Planning Commission to consider an amendment to the zoning ordinance on building height that considers the effect of overall building size; and, to consider fire sprinkling of single family residential properties under certain conditions.

Council member DeLapp said he would let the Fire Dept to take the next step as to fire sprinkling of single family residential buildings.

C. Amended Fence Ordinance

The City Planner reported the Planning Commission held a public hearing on June 28 to include two separate versions of the draft fence regulations:

1. A version developed by the Planning Commission over several meetings earlier this year, and;
2. A version responsive to the guidance provided by the City Council as to fence standards, following the Workshop on May 10.

He noted that both versions assume that fence standards now found in Section 1360 of the City Code would be repealed entirely.

The Council received a letter from Charles Dennis opposing the Council's version of a new fence ordinance.

Council member Johnston said he has a problem with the Council version involving the Ag exemption on parcels as small as 10 acres. He stated that he also does not believe that fencing requirements on Shoreland property is fully developed in the draft ordinance. He noted the need to go ahead with Council version, and get specific Council questions and suggestions as to modifications to that version to the City Planner to address at the next Council meeting.

M/S/P John/Johnston – to direct the staff to proceed with the City Council directed version of the new fence ordinance. (Motion passed 4-0).

D. Fence Moratorium Exemption Request at 55th Street North: Ordinance No. 97-137 (Postponed until the next Council meeting.)

E. Limited Business Zoning District – Add Family Entertainment Center: Ordinance 97-138 and 97-139

The City Planner reported that the on June 28 the Planning Commission conducted a Public Hearing to consider amending the Zoning Ordinance to include Family Entertainment Centers as a Conditional Use in the Limited Business zone. He reported that the Commission also considered a new definition for the use to be added to Section 150 of the City Code. Finally, he reported that the Commission recommends the City Council adopt no amendment to the Zoning Ordinance or Section 150 of the City Code

regarding the Family Entertainment Center use. He explained that the Commission did not necessarily believe that the Family Entertainment use was inappropriate in the Limited Business zone, but that the proposal to allow a maximum of 50,000 square feet of floor area for that use when all other Limited Business Conditional Uses were now limited to 20,000 square feet suggested an inappropriate scale of use.

Dave Larson, prospective purchaser of the Dolan Marine site explained the Dolan Marine site, 9200 Hudson Blvd., currently includes two buildings, one that is just less than 33,000 square feet and one that is 14,000 square feet. He said that the larger building would be remodeled to include indoor miniature golf, a small child play area, a small retail area, snack bar/kitchen, arcade games, birthday party rooms and indoor soccer/field hockey arena and indoor batting cages; and, that the smaller building could be used for indoor paintball. He suggested that the back six acres would be left as open space with a small fenced-in area to be used for outdoor boat storage.

Sabrina Dolan stated they have been looking to sell the business for some time and when they were approached by Doug Larson about the possibility of turning the location into a family entertainment center, they felt the idea would be a good fit for the City. She said she didn't know why there is an issue with the size, since the project would be using the existing buildings which are grandfathered in. Dolan added that, if the Council is thinking of turning them down, it will have a large impact on their family.

John Bellows, Attorney for Dolan Marine, stated the property could be divided into three separate uses, and pointed out the buildings was grandfathered in, and leaves options.

Council member DeLapp asked what about issues of advertising, lights, noise, traffic, landscaping, parking, and sprinklers. What is the traffic count being proposed? Do we intend to entertain Oakdale and Woodbury customers?

Tom Kendall, Broker for Dolan Marine, asked the City Council to look at what the buyers are trying to do: non alcoholic, no smoking, purely family entertainment, something for the family to do in a safe environment in the winter. He said that the prospective buyers have a vision, and are not asking to raze the bldgs, but to remodel existing facilities and improve the value of property which creates higher tax revenue for the City. He noted that only the approval of the use is what is on the Council's agenda now; and that conditions would be added to the resulting Conditional Use Permit that address Council member DeLapp's concerns.

Jeff Lyman, prospective purchaser of the Dolan site, explained that he uses they would propose are low intensity and not like a big box grocery store. He said they are planning on sprinkling the property.

The Council consensus appeared to be that the idea of family entertainment centers would be appropriate for the City and had no objections to paintball. There was concern expressed, however, as to the scale of the use now proposed as to whether that scale would be used in the future to argue precedent for a "big box" retail type of use of similar

scale. The Council appeared concerned that if the City allowed one type of business to have up to 50,000 sq.ft. of space in Limited Business, other business would demand the same scale.

Planner Dillerud stated that the City Council has to address the 50,000 maximum of square feet building area. He suggested that the balance of issues raised regarding the Family Entertainment Center can be dealt with the CUP process. Dillerud suggested that the Council might want to ask the City Attorney for an opinion as to what manner of precedent regarding other uses might result from the 50,000 square foot maximum building area allowance for Family Entertainment Centers.

Council Member Johnston indicated he would approve the Family Entertainment Center Zoning Ordinance amendment if the City Attorney could say it would not affect other sites in the future.

Council Member John said he would favor 50,000 sq.ft. of maximum building area for the use.

M/S/P DeLapp/Johnston - to postpone a decision to add Family Entertainment Centers as an acceptable use in Limited Business areas for two weeks to obtain the City Attorney's opinion on setting precedent; and, staff comments on how this could be accomplished without setting precedent. (Motion passed 4-0)

10. CITY ATTORNEY'S REPORT:

11. CITY ADMINISTRATOR'S REPORT:

A. Meeting Time of Council Committees

Administrator Rafferty reported there will be a change from 7 p.m. to 5:30 p.m. meeting time, the second Tuesday and Wednesday of the month for the Council Committees. The Public Works Council Committee will meet on Tuesday, August 10 at 5:30 p.m. On Wednesday, August 11, the Public Health will meet at 5:30 p.m. and the Finance Council Committee will meet at 6:15 p.m.

The Environmental Commission and City Council will tour the Waste Management Facility on July 21, 7 p.m.

12. CITY COUNCIL REPORTS:

A. Mayor Hunt

(1) Update on Met Council Meeting

Mayor Hunt reported State Senator Brian LeClair, and mayors/council members from the Grant, Afton, St. Croix Beach, Dayton, Baytown Township, and West Lakeland Township joined Council Member Dunn, Mayor Hunt, Administrator Rafferty and Planner Dillerud at a meeting with the Governor's Chief of Staff Dan McElroy, METC

Chair Bell and METC Regional Administrator Weaver early in July top discuss local concerns regarding METC planning mandates to local governments.

Hunt reported that Chair Bell said he heard a collective voice of the support from the communities to have the local planning authority they always had, but that Bell also stated that no government has the absolute right of land use control.

Mayor Hunt would like to sign up more cities in support of local control and ask the support of the League of Minnesota Cities and the Association of Metropolitan Municipalities. Mayor Hunt will meet with the City Administrator as to the strategy in that regard, and report to the Council the last meeting in August.

Council Member DeLapp noted that Council member Dunn deserves a strong commendation from the City Council for arranging the meeting in the Governor's Office. DeLapp also suggested the minutes of the meeting with the Met Council should be sent out to City Council members in other cities and townships.

(2) National Night Out

National Night Out occurs on August 3rd, the same night of the City Council meeting. M/S/P John/Johnston – to move the August 3rd Council meeting to Monday, August 2, 2004. (Motion passed 4-0).

(3) Smoking Ban

Mayor Hunt received a letter from the City of Saint Paul and Minneapolis outlining various approaches taken by other communities in Minnesota and throughout the county on implementing smoking ordinances. This subject will be discussed at the next Council meeting.

Council member Johnston alerted the City of a potential Dutch Elm disease problem which needs to be addressed with the Council support. He noted the City of Oakdale just hired a tree inspector to address this problem. Staff will proceed with a plan of action.

The Council adjourn the meeting at 9:45 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

Resolution No. 2004-058 Approve Claims
Resolution No. 2004-059 Shoreland Variance, Olsen 2225 Legion Lane
Resolution No. 2004-060 Approve Claim Oakdale Water
Ordinance No. 97-137 Postponed
Ordinance No. 97-138 Postponed
Ordinance No. 97-139 Postponed

MINUTES APPROVED: July 20, 2004
LAKE ELMO CITY COUNCIL MINUTES

JULY 6, 2004

1. AGENDA
2. MINUTES: June 15, 2004 Postponed
3. PUBLIC INQUIRIES/INFORMATIONAL:
 - A. Public Inquiries
 - B. Huff'N Puff Liquor License
 - C. Vivian Perry, Washington County Library-Summer Reading Program
4. CONSENT AGENDA:
 - A. Resolution No. 2004-050: Approve Claims
 - B. Finance Specialist - POSTPONED
 - C. Final Payment to Tower Asphalt: Street Overlay Project:Resolution No. 2004-051
 - D. Partial Payment to Schifsky:Hill Trail Reconstruction Project:Resolution No. 2004-052
 - E. Liquidation of Equipment
5. FINANCE:
6. NEW BUSINESS:
7. MAINTENANCE/PARK/FIRE/BUILDING:
 - A. Update on Fire Dept. Activities: Chief Malmquist: (Not In Attendance)
8. CITY ENGINEER'S REPORT:
 - A. Effectiveness of Storm Water Drains on Hill Trail N.
9. PLANNING, LAND USE & ZONING:
 - A. Zoning Ordinance Amendment – Uses in Limited Business Zone (LB): Ordinance 97-134 and 97-135
 - B. Comprehensive Plan Amendment & Rezoning – Olinger:Resolution No. 2004-053 and Ordinance 97-136
 - C. Zoning Variance – 8061 Hill Trail North/Abrahamson:Resoluiton No. 2004-054
 - D. OP Concept Plan – Deer Glen (Lakewood Church):Resolution No. 2004-055
 - E. Front Yard Garage Waiver:William Deeb, 2333 Legion Avenue:Resolution No. 2004-056
 - F. Front Yard Garage Waiver:Link Lavey, 8510 Hidden Bay Trail:Resolution No. 2004-057
10. CITY ATTORNEY'S REPORT:
11. CITY ADMINISTRATOR'S REPORT:
 - A. Alternative City Hall Sites
 - B. Met Council Meeting
12. CITY COUNCIL REPORTS:
 - A. Mayor Hunt – Champion of Industry

Mayor Hunt called the Council meeting to order at 7:00 p.m. in the Council Chambers. PRESENT: John, Dunn, Hunt, Johnston, DeLapp, City Engineer Prew, City Attorney Filla, Finance Director Tom Bouthilet, City Planner Dillerud, and City Administrator Rafferty.

1. AGENDA

ADD:8A. Storm Drain on Hill Trail, 11A. Authority to proceed with alternatives for public facilities, DELETE: 4B. Finance Specialist

M/S/P John/Johnston – to approve the July 6, 2004 City Council agenda, as amended. (Motion passed 5-0).

2. **MINUTES:** June 15, 2004 (Postpone until July 20, 2004)

3. PUBLIC INQUIRIES/INFORMATIONAL:

A. PUBLIC INQUIRIES

Tom McCormick, 12276 Marquess Way N., (Carriage Station), asked for consideration for a fence permit exception from the fence moratorium for himself and two neighbors. He borders 55th Street and looks across a commercial area.

M/S/P Dunn/John - to accept and pass on the request from Tom McCormick for an exception from the fence moratorium for a fence permit to the Legislative Council Committee meeting on July 14th for a possible recommendation. (Motion passed 5-0).

Rod Reimanns stated he and Mr. Sobczaks have issues concerning the drainage easement on the back of the lot and have a less intrusive remedy than is being proposed. He said Tom Prew had recommended a retaining wall and there are five residents in favor of this resolution and one against. Administrator Rafferty said this request would go to the Public Works Council Committee on Tuesday, 7 p.m. Council member DeLapp brought up his concern with loosing the Tamarack swamp.

Margaret Carlson, Environmental Commission Chair., was in attendance for Single Sort Recycling. She said the ordinance amending the Solid Waste ordinance permitting bi-weekly single sort recycling pickup was made without input from the Environmental Commission. She said a 14-month study showed single sort recycling had less participation than the two-stream. At the Council Committee meeting it was recommended to rescind the motion subject to the review by the city attorney. A joint workshop of the Council and Environmental Commission will be scheduled for July 21 to tour the single sort operation of Waste Management and waste haulers/ recyclers will be invited to participate in the discussion after the tour.

B. Huff 'N Puff Liquor License

MAYOR HUNT PROCLAIMED AUGUST 12-15, 2004 AS HUFF'N PUFF DAYS. M/S/P DeLapp/Dunn – to proclaim August 12-15, 2004 as Huff'N Puff Days, to approve an on-sale non-intoxicating malt liquor license for this annual festival and to waive the fees for the liquor license and for all the ball field lights. (Motion passed 5-0).

C. Washington County Library – Summer Reading Program

Pat Conley, Washington County Library, indicated the Library is looking for sponsors for a 5-week summer reading program: The Communities & Libraries in Partnership: Make Every Child a Reader project will provide materials and support needed to help keep children develop their literacy skills during the summer months, Council member DeLapp suggested contacting the Tubman Family Alliance. Council member John will bring this program up to the Friends of the Library at Friday's (July 8) meeting.

4. CONSENT AGENDA:

A. Resolution No. 2004-050 Approve claims

M/S/P DeLapp/Johnston – to adopt Resolution No. 2004-050, approving claim numbers DD183 through DD191, 25783 through 25797 that were used for staff payroll dated June 24, 2004, claim numbers 25798 through 25855 dated July 6, 2004 in the total amount of \$184,489.96. (Motion passed 5-0).

B. Finance Specialist:- Postponed until the July 20, 2004 Council Meeting

C. Final Payment to Tower Asphalt: Street Overlay Project Resolution No. 2004-051

Tom Prew reported in his memo dated July 1, 2004 that the 2004 Overlay Project is \$6,300.00 over the bid price due to more patching than was estimated and for additional catch basin reconstruction work. He recommended approval of Compensating Change Order Number No. 1 in the amount of \$6,279.55 and approval of Final Payment to Tower Asphalt in the amount of \$69,079.55.

M/S/P DeLapp/Johnston – to adopt Resolution No. 2004-051, A Resolution Approving Change Order No.1 in the amount of \$6,300.00 and Final Payment of \$69,079.55 to Tower Asphalt for the 2004 Overlay Project, as recommended by the City Engineer in his memo dated July 1, 2004. (Motion passed 5-0).

D. Partial Payment to Schifsky: Hill Trail Reconstruction Project: Resolution No. 2004-052

Tom Prew reported in his memo dated July 1, 2004 that T.A. Schifsky and Sons has completed the wear course paving and turf establishment. Prew met with the contractor

on the remaining punch list items. He recommended approval of Partial Payment No. 3 to T.A. Schifsky and Sons in the amount of \$62,278.41.

M/S/P Johnston/Dunn – A Resolution Approving Partial Payment No. 3 in the amount of \$62,278.41 to T.A. Schifsky and Sons for the Hill Trail North and 50th Street N., Street Reconstruction, as recommended by the City Engineer in his memo dated July 1, 2004. (Motion passed 4-0-1: Council member DeLapp stepped out of the meeting for this vote.)

E. Liquidation of Equipment

The Finance Director recommended the street sweeper, Grass Rig and the 1995 Ford Crown Victoria be advertised for sale through the seal bid process with a minimum price.

5. FINANCE:

6. NEW BUSINESS:

7. MAINTENANCE/PARK/ZFIRE/BUILDING:

A. Update on Fire Dept.: Chief Malmquist – NOT IN ATTENDANCE

8. CITY ENGINEER'S REPORT:

A. Effectiveness of storm water drains on Hill Trail North:

Council member Johnston stated the three storm water drains are not taking water. Tom Prew responded these water drains were not constructed correctly, and he would be meeting the contractor on Wednesday, July 7th.

9. PLANNING, LAND USE & ZONING:

A. Zoning Ordinance Amendment – Uses in Limited Business Zone (LB): Ordinance 97-134 and 97-135

The City Planner reported a prospective Lake Elmo business has inquired regarding the ability to locate a Beauty Salon/Day Spa in the Limited Business zoning district. The business owner was notified that neither the proposed use is defined by the City Code nor listed as either permitted or Conditional in the LB zone.

On June 28, 2004, the Planning Commission recommended approval of the staff prepared drafts of amendments to the LB zoning district list of Allowable Uses to include Beauty Salons as a Conditional use and Day Spas as an Accessory Use only to Beauty Salons. The Commission recommended adding the definitions of "Beauty Salon" and "Day Spa" to Section 150 of the City Code.

Council member DeLapp encouraged the Council to hold off until the Old Village Plan was completed because the Comp Plan has laid out the criteria for uses that should only be located in the Old Village commercial area. Other council members said they were willing to support the additional use since prospective businesses would still have to obtain a conditional use permit from the City before they could open in a Limited Business district.

M/S/P John/Johnston – to adopt Ordinance No. 97-134, An Ordinance adding “Beauty Salon” as an allowed Conditional Use in the Limited Business Zone; and adding “Day Spa” as an allowed Accessory Use in the Limited Business Zone, as recommended by the Planning Commission. (Motion passed 4-1: DeLapp couldn’t see that a beauty salon belongs in a residential area and didn’t think the City should be continually adding more uses to LB.)

M/S/P John/Johnston - Ordinance No. 97-135, An Ordinance amending Section 150 of the City Code (Definitions) to include a definition for “Beauty Salon” and a definition for “Day Spa”, as recommended by the Planning Commission. (Motion passed 5-0).

Council member DeLapp questioned why motorcycle sales were included as an acceptable business in a Limited Business area. Planner Dillerud responded this item was added because it apparently already existed at some point when the LB district uses were initially adopted.

B. Comprehensive Plan Amendment & Rezoning – Olinger:
Resolution No. 2004-053 and Ordinance 97-136

The City Planner reported that the Planning Commission recommended to amend the Comprehensive Plan Land Use Map from RAD to SRD; and, to rezone from RR to R-1 a 4.5 acre portion of a 14.5 acre site that is proposed by Jean and Dan Olinger for those Plan and Zoning Map actions in total. He stated that the majority of the Commission determined that the 10 acre remainder of the applicant’s site should continue to be classified as RAD and zoned as RR. The Planner noted that there was an application years ago for platting of this area into multiple R1 lots. The history was unclear as to why this parcel is guided and was zoned RAD.

Tim Freeman, Land Surveyor and Land Planer with FFE, stated Jean and Dan Olinger wanted to keep this parcel open and accommodate the Olinger’s short term plan to accommodate a parcel for their daughter to build a house. Freeman noted that the applicant did agree with what the Planning Commission recommended. Council member Dunn voiced concern with the close proximity of the landfill. Council member DeLapp asked for consideration of rezoning to OP. Dillerud responded he didn’t sense the applicant wanted to do this.

M/S/P Johnston/John - to table until Mayor Hunt returns. Lee Hunt left the meeting at 8:27 p.m. (This agenda item requires 4 votes to pass.) (Motion passed 4-0).

M/S/P Johnston/John – to take off the table the agenda item for discussion now that Mayor Hunt had returned. (Motion passed 5-0).

M/S/P Johnston/John - to adopt Resolution No. 2004-053, A Resolution amending the Comprehensive Plan to reclassify a portion of the Jean and Dan Olinger property in Section 10 from RAD to SRD based on the recommendation of the Planning Commission (Motion passed 4-1: DeLapp)

M/S/P John/Johnston - to adopt Ordinance No. 97-136, an ordinance rezoning a portion of the Olinger property in Section 10 from RR to R-1 based on the recommendation of the Planning Commission. (Motion passed 4-1: DeLapp's recommendation is to go with OP along the lake and have open space in the back which would be more compatible.)

C. Zoning Variance – 8061 Hill Trail North/
Abrahamson:Resolution No. 2004-054

The City Planner reported that the Planning Commission recommended approval of a zoning variance at 8061 Hill Trail N. to allow an existing Tool Shed of approximately 210 square feet to be retained. The Zoning Ordinance provides that Tool Sheds may not exceed 160 square feet of building area. Structures in excess of 160 square feet are considered Accessory Structures. Only a single accessory structure is permitted in the R-1 zoning district. The screen porch now under construction on this property would become a second accessory structure if the existing 210 square feet structure remains on site without a variance from the 160 square foot maximum "Tool Shed" area requirement.

M/S/P Johnston/Dunn - to approve Resolution No. 2004-054, A Resolution approving a variance from Section 300.13 Subd 3.A.1. of the City Code for Carl Abrahamson, 8061 Hill Trail to permit a "Tool Shed" of 210 square feet where the Zoning Ordinance specifies a 160 square foot maximum area for tool sheds, based on the recommendation of the Planning Commission. (Motion passed 5-0).

D. OP Concept Plan- Deer Glen (Lakewood Church):Resolution
No. 2004-055

The City Planner reported the Planning Commission held a public hearing on June 14 regarding this application to develop a 48 acre site (a portion of the applicants' 108 acre site) as an OP development of 18 single family detached lots and 25 acres of Preserved Open Space. The property is located at the southwest corner of Highway 36 and Keats Avenue.

Council member Dunn noted the City is very sensitive about the water that goes into Goetschel pond. Dillerud said the City relies on both the City Engineer and the Valley Branch Watershed District to be our advisories regarding flood plain. John Hanson (VBWD) had stated a concern about flood plain mitigation that would be required by the Concept, but had recently conceded that the applicant's mitigation would likely meet District Policy. That determination would be subject to actual grading plans and a Valley Branch Permit.

Council member Johnston said that the Concept Plan is not consistent with the Lake Elmo Comprehensive Plan or the Open Space Preservation Ordinance due to the proposal to significantly alter the natural grades of the site to overcome natural drainage features to create home sites.

M/S/P DeLapp/John - to adopt Resolution No. 2004-055, A Resolution Denying the Open Space Concept plan, dated June 23, 2004, for Deer Glen (Lakewood Evangelical Free Church), as presented based on the following findings:

1. The Concept Plan is inconsistent with the Lake Elmo Comprehensive Plan Environmental Protection policies regarding residential developments conforming to the limitations presented by natural features, including natural drainage systems, by proposing significant modifications of natural grades and existing flood plain on the site.
2. The Concept Plan is inconsistent with the purpose of the Lake Elmo Open Space Preservation Ordinance by proposing to significantly alter the natural drainage features of the site.

(Motion passed 4-0: Mayor Hunt was absent for the vote.)

Grant Nelson, representative of the Lakewood Church, explained he had extensive discussion with the staff, who tried their best to put together a plan that responded to the city's open space values. He said he was a bit baffled that the Plan was not in compliance. Nelson stated it was their desire to keep the north 40 acres of the church's 108 acre site open as it is their front yard.

E. Front Yard Garage Waiver: William Deeb, 2333 Legion Avenue: Resolution No. 2004-056

The Planner reported that William Deeb, 2333 Legion Avenue North, has requested approval to place a 26 foot by 34 foot detached garage structure nearer the front property line than the principal structure, in accordance with sketch plan staff dated July 1, 2004. The proposed garage would be situated above Legion Lane and somewhat screened from the street by existing trees. The property is located on Downs Lake, but the Planner reported that it does not appear that the proposed garage would be visible from Downs Lake. Staff recommended approval of this waiver due to the lake front location of this property and the substantial set back of the proposed garage from the front property line.

M/S/P Johnston/DeLapp- to adopt Resolution No. 2004-056, A Resolution approving the location of a 26 foot by 34 foot detached garage structure nearer the front property line than the principal structure for William Deeb at 2333 Legion Lane, per sketch plan staff dated July 1, 2004. (Motion passed 5-0).

F. Front Yard Garage Waiver: Link Lavey, 8510 Hidden Bay Trail, Resolution No. 2004-057

The Planner reported Link Lavey, 8510 Hidden Bay Trail, has applied for a waiver by Resolution to locate a 31 foot by 32 foot garage structure nearer the front lot line than the principal structure (house) on the lot. The garage would be located 10 feet from the north property line (side) and must be 30 feet from the front property line (right-of-way line of Hidden Bay Trail). He reported that the proposed garage would be situated such that existing trees would screen it from Hidden Bay Trail and Lake Demontreville.

Due to the lake front location of this property and the substantial mature tree coverage between the proposed structure location on Hidden Bay Trail, staff recommended adoption of the Resolution to approve the garage location. The City Planner noted since the applicant's sketch appears to identify the proposed location to be 30 feet from the approved surface of Hidden Bay Trail rather than the right-of-way property line. He recommended a condition of approval that specifies that the front property line be located in the field, and the structure be no less than 30 feet from that line. The Planner stated that based on aerial photos, it appeared that the street surface of Hidden Bay Trail was skewed to the north edge of the right of way, so the garage location should not change more than a few feet from that depicted by the sketch to meet the proper 30 foot set back.

M/S/P Johnston/DeLapp - to adopt Resolution No. 2004-057, A Resolution Approving the location of a 31 foot by 32 foot detached garage structure nearer the front property line than the principal structure for Link Lavey at 8510 Hidden Bay Trail, per sketch plan staff dated July 1, 2004, subject to the following conditions.

1. The property line and right-of-way line for Hidden Bay Trail must be located and staked. A building permit shall not be issued until the Building Official verifies that the garage will be located 30 feet from the front property line as identified.
2. No trees or vegetation shall be removed within the 30 foot street set back area to Hidden Bay Trail.
3. Prior to issuance of a building permit for the garage structure, the property owner shall submit a scaled drawing depicting the exact location of the proposed garage structure in relation to the Hidden Bay Trail right-of-way line and any other structures on the site. The drawing shall also provide the location, approximate size and types of foliage and trees existing within 30 feet of the proposed garage structure, together with an indication of which trees and foliage will be removed during garage construction. (Motion passed 5-0)

9. CITY ATTORNEY'S REPORT:

10. CITY ADMINISTRATOR'S REPORT

A. Alternative City Hall Sites

Administrator Rafferty reported negotiations will continue with the owners of the Brookfield II building, but asked the Council to give him the permission to authorize professional services to pursue two other potential options.

M/S/P DeLapp/Dunn – to direct the City Administrator to continue developing the proposal for alternative sites for new facilities. (Motion passed 5-0.)

B. Met Council Meeting

Administrator Rafferty reported he, Planner Dillerud, Council member John met with Regional Administrator Tom Weaver, Metro Council Chair Peter Bell and METC Environmental Services Director Bill Moore to review the background of the Lake

Elmo/Met Council Comprehensive Plan issue; and, to determine if the Met Council had actually proposed any other potential settlement – as had been reported to the City by third parties.

Administrator Rafferty reported that the majority of the meeting involved reviewing the June, 2003 proposal for settlement that had been suggested by Chair Bell, and thereafter found to be unacceptable to the City Council. He also noted that Council Member John then briefed Bell and Weaver as to the history of the Regional Sewer discussions during the late 1990's.

He then reported that Council Member John advised the METC representatives that he distinctly recalled the Lake Elmo Council telling METC representatives at a meeting in the Lake Elmo City Hall that the City would only consider a small WONE interceptor capacity increase to support Business Park service as far west as Keats Avenue. The Met Council engineers had said that such a capacity increase could be accomplished by a short stretch of parallel piping at a cost of around \$400,000. John continued that the \$10 million dollar Lake Elmo Interceptor was never discussed with the City before appearing in the Met Council amended Sewer Plans in 2000.

Administrator Rafferty summarized the Met Council position regarding Lake Elmo's Comprehensive Plan as unchanged, with no new Met Council proposals "on the table", and no compromise proposal so far forthcoming from Lake Elmo.

The City Planner then reminded the Council of his June 18, 2003 Memo to them which quantitatively described the "Bell Proposal" as less of a departure from the adopted Lake Elmo Plan, but which would still result in double the housing units and population in the City by 2003 than the Lake Elmo Plans specifies – most of which would be located in the area of the City between 10th Street and I-94.

11. CITY COUNCIL REPORTS:

A. Mayor Hunt – Champion of Industry

Mayor Hunt reported the City could use its annual donation from the Lake Elmo Jaycees to help defray the costs, and he has been talking with local businesses to see if they would be willing to help cover some of the costs. About 45 percent of the costs are covered. Mayor Hunt and Council Member John indicated they wanted to talk about the City's good planning and thought this was a tremendous way to have the City come together.

Council member Johnston stated that people like Lake Elmo being a well kept secret and it was a terrible waste of money. He questioned the validity and usefulness of the award that was given to cities that paid the \$28,000 fee.

M/S/F Hunt/DeLapp – to proceed ahead with accepting the Champions of Industry 300 award for "best small town" from Pat Summerall Productions. (Motion failed:Dunn:The remaining funding was too high for the City, Johnston:He could come up with a dozen

projects that would be better use of the City's money, DeLapp:His heart said yes, but his pocketbook said no.)

Council member DeLapp asked staff to deal with the Buberl CUP because of the numerous violations. He said the County and Planners haven't given up on this. DeLapp noted there was a monster garage, painted yellow and did not match the color of the house, which was built in his neighborhood that could fit two truck tractors.

Council adjourned the meeting at 9:50 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

Resolution No. 2004-050 Approve Claims

Resolution No. 2004-051 Final Payment to Tower Asphalt for Street Overlay Project

Resolution No. 2004-52 Partial Payment to Schifsky & Sons for Hill Trail Reconstruction

Resolution No. 2004-053 Comprehensive Plan Amendment for Dan & Jean Olinger

Resolution No. 2004-054 Zoning Variance for 8061 Hill Trail N. Abrahamson

Resolution No. 2004-055 Deny OP Concept Plan Deer Glen (Lakewood Church)

Resolution No. 2004-056 Front yard Garage Waiver, William Deeb, 2333 Legion Ave.

Resolution No. 2004-057 Front yard Garage Waiver, Link Lavey, 810 Hidden Bay Trail

Ordinance No. 97-134 & Ordinance 97-135 Zoning Ordinance Amendment -- Uses in Limited Business Zone for Beauty Salons and Day Spas

Ordinance No. 97-136 Rezoning for Dan and Jean Olinger

4A.

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

**RESOLUTION NO. 2004-61
RESOLUTION APPROVING CLAIMS**

BE IT RESOLVED THAT Claim Numbers DD203 through DD210
25931 through 25947, were used for Staff payroll dated July 22, 2004,
Claim Numbers 25948 through 25988 dated August 03, 2004 in the total amount
of \$245,233.95 are hereby approved.

ADOPTED, by the Lake Elmo City Council on the 4th day of August, 2004.

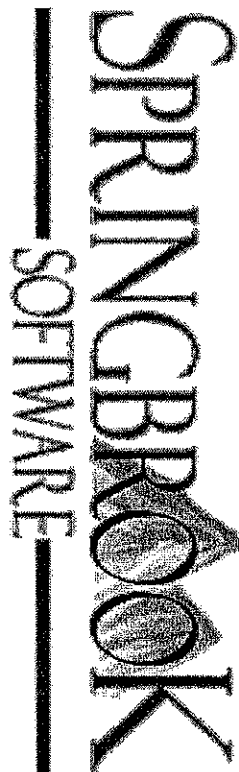
Lee Hunt
Mayor

ATTEST:

Martin J. Rafferty
City Administrator

Accounts Payable Computer Check Proof List

User: administrator
Printed: 07/30/2004 - 8:27 AM



Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Vendor: ACTON 141164	Action Rental Air Hammer Rental-Parks Check Total:	30.89 30.89	08/03/2004	101-450-5200-44030	ACH Enabled: No
Vendor: ALEXAIR 6991	Alex Air Apparatus, Inc SBCA Brackets-Fire Dept. Check Total:	468.80 468.80	08/03/2004	101-420-2220-42400	ACH Enabled: No
Vendor: AmeriMar 10518	AmeriMark Direct Supplies for Recycling -Promotions Check Total:	946.00 946.00	08/03/2004	101-430-3200-44300	ACH Enabled: No
Vendor: ARAM 629-5510361	Aramark Linen City Hall Check Total:	43.18 43.18	08/03/2004	101-410-1940-44010	ACH Enabled: No
Vendor: ASPENMI 56310	Aspen Mills, Inc. Uniform-Fire Dept. Check Total:	145.66 145.66	08/03/2004	101-420-2220-44170	ACH Enabled: No
Vendor: ATTWI 2750230	AT&T Wireless Floater Phone-Fire Dept. Check Total:	20.47 20.47	08/03/2004	101-420-2220-43210	ACH Enabled: No
Vendor: AVAYA 2718935575	AVAYA Inc. Maint. Telephone-City Hall Check Total:	150.36 150.36	08/03/2004	101-410-1940-44040	ACH Enabled: No

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
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Vendor: CARQUEST D347650	Car Quest Oil Filters Check Total:	48.53 48.53	08/03/2004	Check Sequence: 8 101-430-3100-42210	ACH Enabled: No
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Vendor: CENTPOW 289291	Century Power Equipment Helmet System-Fire Dept. Check Total:	42.55 42.55	08/03/2004	Check Sequence: 9 101-420-2220-42400	ACH Enabled: No
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Vendor: EMERGAPP 18595 18873 18874 18890	Emergency Apparatus Maint Repairs Unit 3183-Fire Dept. Repairs Unit 3173-Fire Dept. Repairs Unit 3176-Fire Dept. Repairs Unit 3183-Fire Dept. Check Total:	2,122.79 181.37 222.44 111.98 2,638.58	08/03/2004	Check Sequence: 10 101-420-2220-44040 101-420-2220-44040 101-420-2220-44040 101-420-2220-44040	ACH Enabled: No
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Vendor: FOUR 23-036904	Four Seasons Service Supplies-City Hall Check Total:	21.42 21.42	08/03/2004	Check Sequence: 11 101-410-1940-44300	ACH Enabled: No
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Vendor: FXL	FXL, Inc. Assessing Services-August 2004 Check Total:	1,700.00 1,700.00	08/03/2004	Check Sequence: 12 101-410-1550-43100	ACH Enabled: No
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Vendor: GENESIS IVC00032 IVC00032 IVC00032	Next Genesis Productions Software-Admin Repairs- Bldg & Fire Dept Monitor-Admin Check Total:	450.00 519.36 499.00 1,468.36	08/03/2004	Check Sequence: 13 101-410-1520-43190 101-410-1520-43180 101-410-1520-43185	ACH Enabled: No
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Vendor: HERITAGE 13177	Heritage Printing Business Cards-Fire Dept. Check Total:	330.74 330.74	08/03/2004	Check Sequence: 14 101-420-2220-42000	ACH Enabled: No
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Vendor: HUMANE	Humane Society Companion Animal Impound Fees April-June Check Total:	3,624.20 3,624.20	08/03/2004	Check Sequence: 15 101-420-2700-43160	ACH Enabled: No
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Vendor: HUNT Permit 3191	Huntington Homes LTD 11730 Little Bluestem Ct	1,000.00	08/03/2004	Check Sequence: 16 803-000-0000-22900	ACH Enabled: No
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Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Permit 3192	11720 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3354	11740 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3355	11750 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3489	11800 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3490	11810 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3525	11840 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3526	11850 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3596	11830 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3597	11820 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3644	11780 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3645	11790 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3695	11760 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
Permit 3696	11770 Little Bluestem Ct	1,000.00	08/03/2004	803-000-0000-22900	
	Check Total:	14,000.00			
Vendor: Johnson	Johnson Construction				
	Storage Rental-August Fire Dept.	90.00	08/03/2004	101-420-2220-44120	ACH Enabled: No
	Check Total:	90.00			
Vendor: LAKEBESOD	LAKE ELMO SOD FARMS LLC				
494020	Sod	27.16	08/03/2004	101-430-3100-42250	ACH Enabled: No
494025	Sod	6.39	08/03/2004	101-430-3100-42250	
	Check Total:	33.55			
Vendor: LINDVENN	Lindquist & Yennun				
285849-0840	Legal Comp Plan Appeal	9,780.08	08/03/2004	101-410-1940-43020	ACH Enabled: No
	Check Total:	9,780.08			
Vendor: MARONEYYS	Maroney's Sanitation, Inc				
054738	Refuse City Hall	95.89	08/03/2004	101-410-1940-43840	ACH Enabled: No
054738	Refuse Public Works	95.89	08/03/2004	101-430-3100-43840	
054738	Refuse Parks	183.96	08/03/2004	101-450-5200-43840	
	Check Total:	375.74			
Vendor: MENARDSO	Menards - Oakdale				
41754	Misc. Supplies-Fire	41.16	08/03/2004	101-420-2220-42230	ACH Enabled: No
43128	Cleaning Supplies-Fire Dept	3.66	08/03/2004	101-420-2220-44300	
	Check Total:	44.82			

Invoice No Description Amount Payment Date Acct Number Reference

Vendor: MENARDST
 1643 Menards - Stillwater 123.31 08/03/2004 Check Sequence: 22 ACH Enabled: No
 3116 Cleaning Supplies-Brooms,Trash Cans Fire 12.51 08/03/2004 101-420-2220-42230
 764 Masonary Bit & Scraper - Fire Dept. 43.59 08/03/2004 101-420-2220-42400
 Misc. Supplies-Cleaner Paint-Public Work 179.41 08/03/2004 101-430-3100-42230
 Check Total: 179.41

Vendor: METROCA
 01678116 Metrocall Inc. 83.21 08/03/2004 Check Sequence: 23 ACH Enabled: No
 Pagers-Fire Dept. 83.21 08/03/2004 101-420-2220-43210
 Check Total: 83.21

Vendor: MINNOCHEM
 287560 MINNESOTA CHEMICAL CO. 126.93 08/03/2004 Check Sequence: 24 ACH Enabled: No
 Detergent-Fire Dept. 126.93 08/03/2004 101-420-2220-44300
 Check Total: 126.93

Vendor: MOBILE
 10888 Mobile Home Improvement Serv. 10,035.00 08/03/2004 Check Sequence: 25 ACH Enabled: No
 Gas Line Inspections-(Reimbursement) 10,035.00 08/03/2004 101-410-1910-43013
 Check Total: 10,035.00

Vendor: Natl Wat
 1486699 National Waterworks 259.86 08/03/2004 Check Sequence: 26 ACH Enabled: No
 Meters-Reimbursable 259.86 08/03/2004 601-494-9400-42300
 Check Total: 259.86

Vendor: NEXTEL
 761950227-016 Nextel Communications 87.46 08/03/2004 Check Sequence: 27 ACH Enabled: No
 Cell Phones-Building Dept. 87.46 08/03/2004 101-420-2400-43210
 761950227-016 Cell Phones-Public Works Dept. 77.32 08/03/2004 101-430-3100-43210
 761950227-016 Cell Phones-Parks Works Dept. 50.99 08/03/2004 101-450-5200-43210
 761950227-016 Cell Phones-Admin Works Dept. 41.97 08/03/2004 101-410-1940-43210
 Check Total: 257.74

Vendor: NORTHTOO
 0562019108 Northern Tool & EquipmentRetail Services- 92.17 08/03/2004 Check Sequence: 28 ACH Enabled: No
 Portable Power Pack 92.17 08/03/2004 101-430-3100-42400
 Check Total: 92.17

Vendor: POLFUS
 011068605 Polfus Implement, Inc 47.89 08/03/2004 Check Sequence: 29 ACH Enabled: No
 Part for Mower-Parks Dept. 47.89 08/03/2004 101-450-5200-42210
 Check Total: 47.89

Vendor: PRESS
 StevenPress 40.00 08/03/2004 Check Sequence: 30 ACH Enabled: No
 Cable Operator 40.00 08/03/2004 101-410-1320-44300

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
	Check Total:	40.00			
Vendor: QWEST 6517142209456	Qwest Alarm-Hudson Lift Station Check Total:	36.05 36.05	08/03/2004	Check Sequence: 31 602-495-9450-43210	ACH Enabled: No
Vendor: ROSEFLOR 172152	Rose Floral & Greenhouse Vase Arrangement-Employees Check Total:	90.47 90.47	08/03/2004	Check Sequence: 32 101-410-1110-44300	ACH Enabled: No
Vendor: RUD	Diane Prince-Rud Cleaning-City Hall Cleaning-Fire Hall Cleaning Supplies Check Total:	240.00 240.00 13.58 493.58	08/03/2004 08/03/2004 08/03/2004	Check Sequence: 33 101-410-1940-44010 101-420-2220-44010 101-410-1940-42110	ACH Enabled: No
Vendor: SATELLITE 24180611	Satellite Shelters, Inc. Office Rental-Bldg Dept Check Total:	319.50 319.50	08/03/2004	Check Sequence: 34 101-420-2400-44120	ACH Enabled: No
Vendor: SMOKE	SMOKE EATER Subscriptions-Fire Dept Check Total:	143.00 143.00	08/03/2004	Check Sequence: 35 101-420-2220-44330	ACH Enabled: No
Vendor: STILLGAZ 000003621 000003622	Stillwater Gazette Legal Notice-Ord. Publication Legal Notice-Ord. Publication Check Total:	37.80 113.40 151.20	08/03/2004 08/03/2004	Check Sequence: 36 101-410-1320-43510 101-410-1320-43510	ACH Enabled: No
Vendor: TASCH 33552	T. A. Schifsky & Sons Sand-Public Works Check Total:	117.81 117.81	08/03/2004	Check Sequence: 37 101-430-3100-42240	ACH Enabled: No
Vendor: United	United Properties Investments Basement Billing 1/2 Annual-2004 Check Total:	136.00 136.00	08/03/2004	Check Sequence: 38 601-494-9400-44030	ACH Enabled: No

Invoice No	Description	Amount	Payment Date	Acct Number	Reference
Vendor: WAS-SHER 41583	Washington County Law-Enforcement Services Jan-June 04 Check Total:	160,926.48 160,926.48	08/03/2004	Check Sequence: 39 101-420-2100-43150	ACH Enabled: No
Vendor: WORKWELL 057919	Workwell Occupational Health Physical-Fire Dept Check Total:	176.00 176.00	08/03/2004	Check Sequence: 40 101-420-2220-43050	ACH Enabled: No
Vendor: XCEL 0073736544201	Xcel Energy Check Total:	22.88 22.88	08/03/2004	Check Sequence: 41 101-430-3160-43810	ACH Enabled: No
Total for Check Run:		209,739.11			
Total Number of Checks:		41			

Lake Elmo City Council August 4, 2004	Agenda Section: CONSENT AGENDA	<u>No 4B.</u>
<u>Agenda Item:</u> Request for Meehan Family for an Extension of Time to Record Final Plat		
<p>Torre Pines was given preliminary plat approval July 1998, and final plat approval for all but three lots in September 1998. The City was informed at that time that Mr. Meehan would continue to live in the existing home on the 10 acres, and that the final plat for these four lots would not be done at this time. The Meehans are requesting another one-year extension. Our code allows for this extension, but requires Council approval on a yearly basis.</p> <p>The staff has no concern with this request and supports the following action.</p>		
<u>Action Items:</u> Motion: _____, Second _____, to grant the Meehan's a one-year extension of the Final Plat of Torre Pines, specifically the parcel now shown as Lot 15.	<u>Person responsible:</u> S. Lumby	
<u>Attachments:</u> Letter from Meehan Family	<u>Time Allocated:</u>	

surface water mgmt.
pdr 7/21/04
ck# 5148
acct# 2419

740 Marshall Avenue
St. Paul, Mn 55104
June 15, 2004

RECEIVED
JUL 21 2004

Mary Kueffner
City Administrator
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

Dear Ms. Kueffner,

I am writing again on behalf of my siblings to request our annual extension of our final plat for the James Meehan property in Lake Elmo.

Nicholas, Susan's son, continues to live at our parents' place acting as the grounds-keeper. Last fall Susan and I conceded our battle with the Burdock. Tim, our brother who runs the nursery, took the Burdock on. He weed-killed, graded and re-seeded. It displaced a lot of Burdock, but we are still cutting and spraying the ones determined to keep on growing. I do not remember having this much of this noxious weed to contend with while our parents were alive.

Until next year and our annual Burdock report,

Patricia Meehan
Patricia Meehan

P.S. I went into the hospital unexpectedly just before I mailed this. Everything stayed exactly as I left it till I returned. I'm so sooo sorry for the delay.

PAM

Lake Elmo City Council August 4, 2004	Agenda Section: CONSENT AGENDA	<u>No 4D & E.</u>
<u>Agenda Item:</u> D. Resolution No. 2004-062:Appointing Election Judges for the Primary & General Election E. Resolution No. 2004-063: Designating Polling Places for the Primary and General Election Notice of Filing (Informational)		
<u>Background Information for August 4, 2004:</u> According to State Statutes, a list of Election Judges must be submitted to the City Council for approval by Council resolution and designation of polling places is required.		
<u>Action Items:</u> Motion to adopt Resolution No. 2004-062: Appointing Election Judges for the Primary & General Election Motion to adopt Resolution No. 2004-063: Designating Polling Places for the Primary and General Election	<u>Person responsible:</u> S.Lumby	
<u>Attachments:</u> Resolution Nos. 2004-062, 2004-063		

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

RESOLUTION NO. 2004-062

**A RESOLUTION APPOINTING ELECTION JUDGES
FOR STATE PRIMARY ELECTION OF SEPTEMBER 14, 2004
AND GENERAL ELECTION OF NOVEMBER 2, 2004**

WHEREAS, according to State Statute, a list of Election Judges must be submitted to the City Council for approval by Council resolution; and

WHEREAS, Election Judges shall perform all statutory duties pertaining to opening of polling place, ballot preparation, assisting voters, counting of ballots, and delivery of summary statements; and

BE IT FURTHER RESOLVED, that the attached listing of residents are hereby appointed as the Election Judges to serve during the State Primary Election on September 14, 2004 and General Election on November 2, 2004, and set the wages for their services at \$10.00/Hour to the Head Judges, \$9.00/Hour Assistant Judges and \$8.50/Hour to all other judges.

ADOPTED, this 4th day of August, 2004 by the City Council of the City of Lake Elmo, Washington County, Minnesota.

Lee Hunt, Mayor

ATTEST:

Martin J. Rafferty, City Administrator

CITY OF LAKE ELMO
ELECTION JUDGES FOR THE PRIMARY ELECTION, SEPTEMBER 14, 2004
AND THE GENERAL ELECTION, NOVEMBER 2, 2004

PRECINCT 1

Joyce Mehsikomer, Head Judge
11015 32nd St. N.
P.O. Box 47

Violet Wagoner, Assistant Judge
6375 St. Croix Trail N.
Oak Park Heights

Diane Allen
1115 Layton Avenue N.

Jim Allen
1115 Layton Avenue N.

Jim Beers
3234 Lake Elmo Avenue N.
P.O. Box 64

Florence Bergloff
1020 Leeward Avenue N.

Carol Crimmins
11090 32nd St.N.

Betty Herzfeld
716 Victoria Ct.
Stillwater

Gloria Knoblauch
9181 31st Street N.

Jan Krueger
694 Jewel Avenue N.

Don Meyer
3112 Layton Court N.

Audrey Olsen
3124 Layton Court N.

PRECINCT 2

Nancy Hansen, Head Judge
8024 Hill Trail N.

Eloise Evenson, Assistant Judge
8449 DeMontreville Trail

Keith Bogut
11828 44th Street

June Brogren
4769 Olson Lake Trail

Joe Dardis
4880 Jerone Avenue N.

Bob Gibson
8784 Lake Jane Trail

Suzanne Haugen
5770 Hytrail Avenue N.

Wil Hirsch
4689 Birchbark Trail

Barb Holm
4497 Olson Lake Trail N.

Myrtle John
8883 Jane Road N.

Loren Johnson
8460 Deerpond Trail

Barb Kiesling
4111 Isle Avenue N.

PRECINCT 1

James Roth
2655 Innsdale Avenue N.

Paul Ryberg
11326 30th Street

Budd Schneider
3326 Lake Elmo Avenue N.

Carl Tacke
11306 31st St. N.

Linda Wagner
3286 Lampert Avenue N.

Tom Walker
11047 12th St. N.

Michelle Deziel
2783 Legion Avenue N.

PRECINCT 2

Kathy Lohmer
8199 Hill Trail N.

Wendy Loos
3567 Kelvin Avenue N.

Don Mehsikomer
11015 32nd Street N.

Judy Moris
9759 45th Street N.

Pat O'Donnell
8909 37th Street N.

Ruth Pallmeyer
8989 Lake Jane Trail

Phyllis Paulson
3533 Kelvin Avenue N.

Jackie Pierre
8780 42nd Street N.

**STATE OF MINNESOTA
CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

RESOLUTION NO. 2004-063

**DESIGNATING PRECINCTS AND POLLING LOCATIONS
FOR 2004 ELECTIONS**

WHEREAS, the State Primary Election is September 14, 2004 and the State General Election is November 2, 2004; and

WHEREAS, Minnesota Statutes 204B.16 requires the City Council, by ordinance or resolution, to designate the polling places for the City for these elections.

NOW, THEREFORE, BE IT RESOLVED, that the Lake Elmo City Council hereby designates the following precincts and polling places as illustrated on the attached Exhibit "A":

PRECINCT 1: (South of Highway 5) Lake Elmo Fire Station
3510 Laverne Avenue N.
Lake Elmo, MN 55042

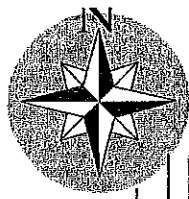
PRECINCT 2: (North of Highway 5) Lake Elmo City Hall
3800 Laverne Avenue N.
Lake Elmo, MN 55042

ADOPTED, by the City Council this 4th day of August, 2004.

Lee Hunt, Mayor

ATTEST:

Martin J. Rafferty, City Administrator



Detail of Area CITY OF LAKE ELMO

EXHIBIT A

17

39th St. N

CITY HALL
3800 Laverne Avenue N.



PRECINCT

#2

Stillwater Blvd N (Highway 5)

FIRE HALL
3510 Laverne Avenue N.



Lions Park

PRECINCT

#1

33rd St. N

32nd St. N

17

VOTE



**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

NOTICE OF FILING

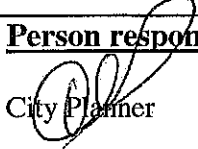
**FILING FOR LAKE ELMO CITY OFFICES OPENS
TUESDAY, AUGUST 24, 2004 AND CLOSSES
SEPTEMBER 7, 2004 AT 5:00 P.M. FOR**


**MAYOR (2-YEAR TERM)
TWO (4-YEAR TERM) CITY COUNCIL MEMBERS**

**ANYONE WHO HAS BEEN A RESIDENT OF
LAKE ELMO FOR AT LEAST 30 DAYS BEFORE THE
GENERAL ELECTION, IS 21 YEARS OF AGE OR
MORE, AND PAYS A \$2.00 FILING FEE MAY FILE AT
THE LAKE ELMO CITY OFFICE, 3800 LAVERNE
AVENUE N., LAKE ELMO, DURING REGULAR
BUSINESS HOURS OF 8:00 A.M. TO 4:30 P.M.
MONDAY THROUGH FRIDAY.**

**ELECTION FOR THE ABOVE OFFICES WILL BE
HELD TUESDAY, NOVEMBER 2, 2004.**

**Sharon Lumby
City Clerk**

Lake Elmo City Council August 4, 2004	Agenda Section: City Engineer's Report	<u>No.</u> 8A
<u>Agenda Item:</u> Landscape Security Release – Eagle Point Business Park		
<u>Background Information for August 4, 2004:</u> Two growing seasons have been completed for the landscape improvements at the Eagle Point Business Park (office condos on Eagle Point Blvd.). Mike Bouthilet has inspected the landscaping, and reported the landscaping complies with the approved landscape plan for the site. He noted a handful of trees that had not survived – which have now been replaced by the project developer. Staff recommends release of the \$89,900 Letter of Credit securing the landscape plan for this site.		
<u>Action items:</u> Motion to approved release of M&I Bank Letter of Credit #SB 6244 securing the landscape improvements of the Eagle Point Business Park based on the Finding that the landscape improvements are complete per approved plans and the landscape materials have survived two growing seasons.	<u>Person responsible:</u>  City Planner	
<u>Attachments:</u> 1. None	<u>Time Allocated:</u>	

<p>Lake Elmo City Council August 4, 2004</p>	<p>Agenda Section: Planning, Land Use & Zoning</p>	<p><u>No.</u> 9A</p>
<p><u>Agenda Item:</u> Street Signs – Irish Avenue (Wildflower Shores)</p>		
<p><u>Background Information for August 4, 2004:</u></p> <p>The Wildflower Shores HOA has requested installation of the large MnDOT street signs on State Highway 5 identifying the Irish Avenue intersection. These would be the same signs that now identify several other streets that intersect State Highway 5. Staff concurs that even the enlarged City street signs are not adequate to assist motorists on a 55 MPH highway in finding neighborhoods that are not permitted to have private neighborhood monument signs.</p> <p>MnDOT has requested a Resolution of the City Council specifically requesting such signage – probably a fall-out from a sign dispute in recent years a couple of miles further east on Highway 5. A proposed Resolution is attached to that end.</p>		
<p><u>Action items:</u></p> <p>Motion to adopt Resolution #2004 - ⁰⁶⁴, requesting MnDOT to install street signs for Irish Avenue serving the Wildflower Shores neighborhood.</p>	<p><u>Person responsible:</u></p> <p> City Planner</p>	
<p><u>Attachments:</u></p> <p>1. Draft Resolution</p>	<p><u>Time Allocated:</u></p>	

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2004-064

A RESOLUTION REQUESTING THE MINNESOTA DEPARTMENT OF
TRANSPORTATION TO ERECT IRISH AVENUE NORTH SIGNS
ON STATE HIGHWAY 5

WHEREAS, the City of Lake Elmo has received a request to erect new Irish Avenue North Street signs facing westbound traffic and eastbound traffic on State Highway 5;

WHEREAS, at its meeting of August 4, 2004, the Council reviewed the request for the new Irish Avenue North street signs on the basis these signs will alert motorists of the entrance to the Wildflower Shore's residential development in a 55 MPH speed zone on a State Highway.

NOW, THEREFORE, BE IT RESOLVED, that the Lake Elmo City Council requests MnDOT to erect two large Irish Avenue North street signs; one sign facing westbound traffic on State Highway 5 and the other facing eastbound traffic on State Highway 5.

Lee Hunt, Mayor

ATTEST:

Martin J. Rafferty, City Administrator

Lake Elmo City Council August 4 , 2004	Agenda Section: Planning, Land Use & Zoning	<u>No.</u> 9B
---	--	----------------------

Agenda Item: Fence Ordinance

Background Information for August 4, 2004:


On July 20 the Council tabled the proposed new fence ordinance to enable staff to consider incorporating any additional items that Council Members would communicate to staff in writing. As of the August 4 Agenda close staff had received written comments only from Council Member Johnston. We have added language to the draft ordinance that addresses most of the his issues.

Perhaps the most significant suggestion has been to include “screening” standards in the fence ordinance as well. Screening is addressed in several Code locations as a requirement for several types of uses and circumstances. We do not, however, find any clear quantitative standards for such screening, except that it must be “not less than 5 feet in height” (in one case). While we do not see the need to repeal any of the screening language we have found in the Code (and there could be even more screening language – as is always the case with our Code is seems), we do believe what we have added to the fence ordinance draft provides needed clarification.

We have not addressed one change to the fence standards suggested by Council Member Johnston – the allowable color of vinyl/composite fencing. On May 10 the Council specifically directed that “white” fencing of this type be prohibited. Council Member Johnston has suggested that the Council reconsider that prohibition. We have left the prohibition in the draft ordinance pending specific Council direction.

At the suggestion of Administrator Rafferty we have also modified the ordinance standard regarding fencing within any street set back area. The previous draft would have permitted such fencing as solid to a maximum of 42 inches. The ordinance now permits fencing in the street set back up to 42 inches, but also at least 50% open to air and light. Traffic safety is the primary concern leading to this proposal.

The draft ordinance is attached with the modifications since July 20 highlighted.

<p><u>Action items:</u></p> <p>Motion to adopt Ordinance #97 - . (as drafted or as further modified)</p>	<p><u>Person responsible:</u></p> <p> City Planner</p>
<p><u>Attachments:</u></p> <ol style="list-style-type: none"> 1. Draft Ordinance #97 2. Council member Johnston’s suggestions 	<p><u>Time Allocated:</u></p>

ORDINANCE NO. 97-

AN ORDINANCE RELATING TO THE REGULATION OF FENCES AND
SCREENING IN THE CITY OF LAKE ELMO

Section 1. Amendment: Section 302 Fence Regulations is hereby added to the Lake Elmo Municipal Code, to wit:

302 – Regulation of Fences

302.01 Fence Height

Subd. 1 - Fence Height in Street Setbacks

No fence shall be constructed exceeding 42 inches in height measured from grade within any front, side, or rear street setback. *Fences constructed within the prescribed street set back areas shall be at least 50% open to air and light. (See Figure 302.1)*

Subd. 2 – Fence Height in Interior Yards

No fence shall be constructed exceeding 72 inches in height measured from grade in interior yards; and, any portion of such fence above 42 inches measured from grade shall be open to light and air over 75% of the surface area. (See Figure 302.1)

Subd. 3 – Grade Defined

The grade from which *fence height measurements are calculated shall only be from either natural grade or grade modified responsive to a grading plan approved by the City; and, shall not include* the height of berms or introduced increases in ground elevation that would raise the effective fence height over that which would be otherwise permitted by this Section, except that a combination of raised grade and fence that would exceed in sum the fence height permitted by this section may be specifically approved by the City Council as an element of a subdivision plat or commercial site plan approval *establishing specific property grading and topography.*

302.02 Fence Materials

Subd. 1 – Permitted Fence Materials

Permitted fence materials shall be limited to brick, stone, wood planks, split rail, wrought iron, and as regulated by Section 302.04. Vinyl or composite material fences shall also be permitted other than those white in color.

Subd. 2 – Finished Face of Fence

That side of the fence considered to be the face (finished side as opposed to structural supports and frame) shall face abutting property and Public Streets.

Subd. 3 – Chain Link or Cyclone Fences

Chain Link, and wire mesh fences are permitted to a maximum height of 72 inches measured from grade; and shall be black or green in color. No chain link,

cyclone or wire mesh fence shall be permitted in any front, side, or rear setback. (See Figure 302.2)

302.03 – Fences in the Shoreland Overlay District

No fence shall be permitted in the OHW setback of any parcel located in Shoreland, as defined by Section 150 of the City Code.

302.04 Temporary Fences

Subd. 1 – Defined

For the purposes of this ordinance Temporary Fences are those that are installed and removed on a seasonal basis, such as snow fences and garden fences. Temporary Fences shall be open to light and air over not less than 50% of the fence surface area.

Subd. 2 – Duration and Limitation

Permits for Temporary Fences may be issued for periods not to exceed 6 months. No permit for a temporary fence shall be issued by the City until at least 6 months following expiration of any prior permit for a temporary fence on the same parcel of land. No snow fence shall or posts therefore shall be installed prior to November 1, and must be removed prior to April 15.

Subd. 3 – Height and Location

Temporary Fences shall comply with the fence and fence location standards of Section 302.01, except that snow fences shall be set back at least 50 feet from any south or east property line, or such additional distance as may be required to prevent the accumulation of snow on public streets or adjoining property, as determined by the Building Official.

302.05 Agricultural Exemption

Fences constructed on parcels in excess of 5 acres for the keeping of horses; and fences constructed on parcels in excess of 10 acres for the keeping of other livestock, as defined by Section 150 the City Code, are specifically exempted from the provisions of this section. Any such agricultural fencing shall be at least 75 % open to air and light.

302.06 Fences as Screening and Security as Required by This Code

The Lake Elmo City Code and Zoning Ordinance include prescribed physical circumstances of a site where screening of uses, equipment, and outside storage is required. In those prescribed circumstances, fence not to exceed 72 inches in height measured from grade may be installed, subject to the following standards:

- 1. Required fences for screening and security purposes in Agricultural and Residential zoning districts shall be set back from all property lines equal*

to the required structure set back of the zoning district in which they are located.

- 2. The provisions of Section 302.01, Subd. 3 of this Chapter regarding fence height measurement from grade shall apply. No combination of earthen berm and fence may exceed the 72 inch maximum height for screening.*

306.07 Fence Permits Required

Except as noted herein, installation of all fences require a fence permit issued by the City of Lake Elmo. Said permit shall be applied for on such forms, include such documentation, and include such fees to the City for processing as may be prescribed from time-to-time by the City Council. Fences exempt from requiring an installation permit are limited to the following:

- 1. Fences of any type installed for the sole purpose of the keeping of Domestic Farm Animals, as defined by Section 150 of the City Code, and regulated by Section 300.13, Subdivision 15E of the City Code. **All such fences shall be removed by the property owner within 6 months of the termination of the keeping of Domestic Farm animals.***
- 2. Fences of any type installed by Municipal, County or State governments and Public Utilities for facility security or the delineation and/or protection of Public Rights-of-Way.*

Failure to obtain a City Fence Permit prior to the installation of any fence subject to this regulation shall result in an automatic double permit fee, in addition to any corrective measures to bring said fence into compliance with the standards for fences prescribed by the Lake Elmo Zoning Ordinance.

306.08 - Fences as Non-conforming/Hazardous Structures

Fences shall be considered to be structures for the purposes of applying the terms of the Non-conforming structure provisions of the Zoning Ordinance, and the Hazardous Structures provisions of City Code and State Statute.

306.09– Other Provisions of Code

To the extent that provisions of this Section may conflict with other provisions of the City Code regarding the regulation of fences and screening, the provisions of this Section only shall apply.

Section 2 – Amending Section 150 Definition of Fence

The Section 150 definition of “Fence” is hereby amended to add the following: “...not to include any roof or covering.”

Section 3. Repealer

Section 1360, of the City Code is hereby repealed in its entirety.

Section 4. Effective Date: This ordinance shall become effective upon its passage and publication according to law.

ADOPTED by the Lake Elmo City Council this day of 2004.

Lee Hunt, Mayor

ATTEST:

Martin Rafferty, City Administrator

Figure 302.1
HEIGHT OF FENCING

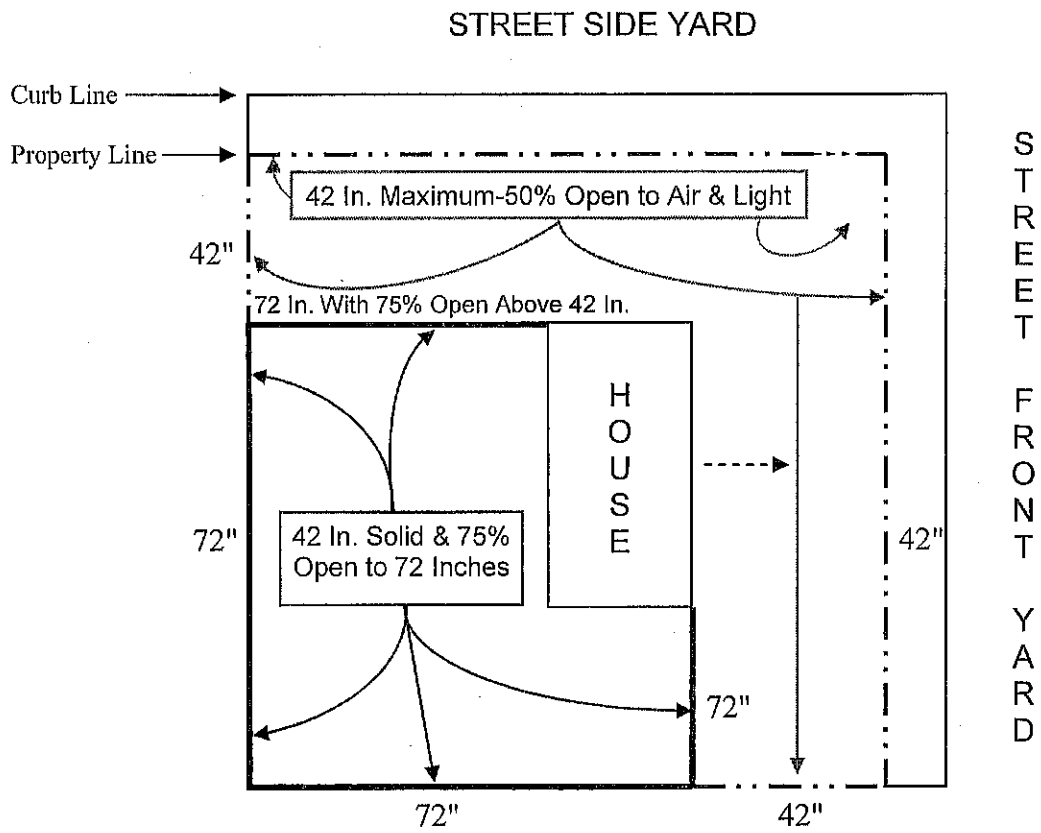
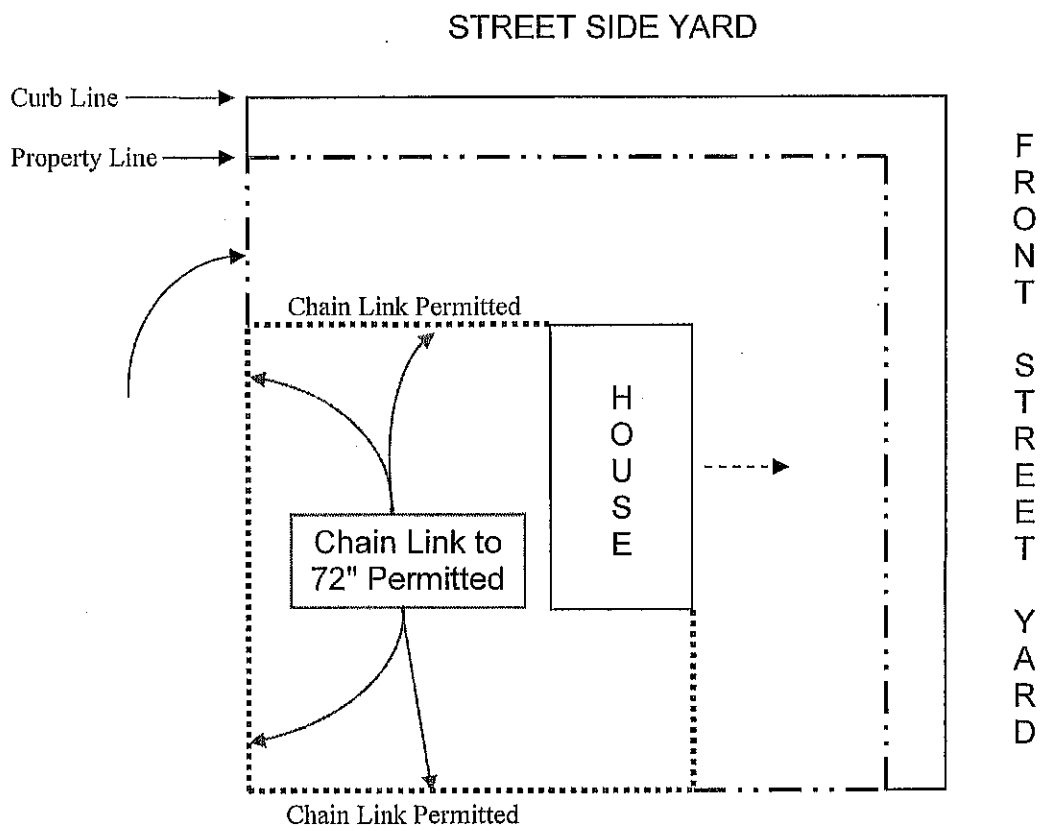


Figure 302.2
CYCLONE/CHAIN LINK FENCING



Chain Link in Black or Green Only

Chuck Dillerud


From: DeanJohnston [DeanJohnston@comcast.net]
Sent: Sunday, July 25, 2004 10:10 PM
To: Rafferty, Martin
Cc: John, Wyn; Lee Hunt; Sue Dunn; Steve DeLapp; Chuck Dillerud
Subject: Input on fencing and screening

Marty,

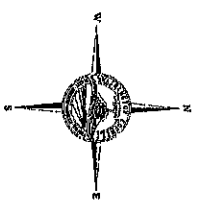
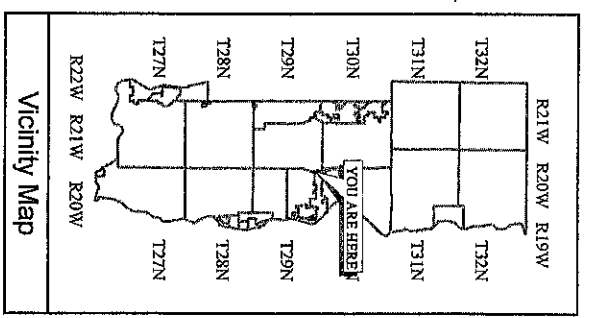
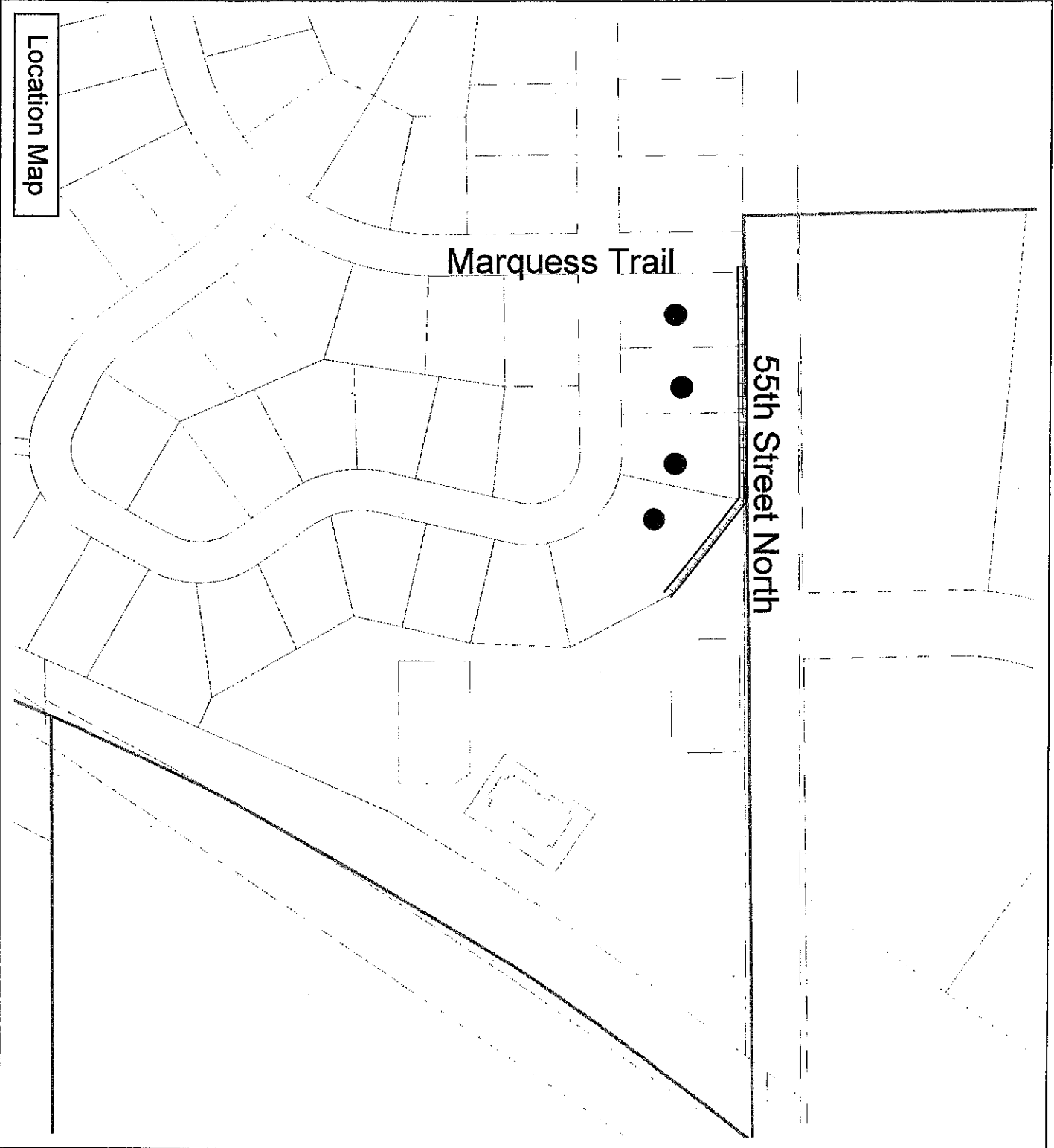
Here is my list of suggestions for further discussion regarding fences and screening.

1. It is my understanding that for lakeshore lots the "front" yard is the yard between the home and the lake. This needs to be included.
2. Residential and Commercial screening should have different standards. Present commercial standard is OK.
3. Residential screening up to six feet in height may be allowed within the building setbacks. May want to consider limiting the total screen to 50 feet total (except for swimming pools.)
4. If fences and berms are used in combination, the total height may not exceed six feet. Berms may not change drainage to neighboring property.
5. The "Agricultural Exemption" in the council proposed code effectively allows a homeowner with 10.000001 acres or more to buy a chicken and be exempt from the fence code. He is then able to build whatever he wants, then dine on the chicken with the result that he has a legal but nonconforming fence. This needs to be corrected.
6. Agriculture may be permitted to choose from a specified list of traditional agricultural fence materials.
7. I would like for the Council to reconsider the restriction on plastic materials prohibiting "white."
8. Screening and fencing should be held to the same material requirements (agriculture fences may be constructed from an additional list of agricultural fence materials).
8. Neither screens nor fences are permitted to have roofs. This may sound stupid but it reflects the degree to which some people will go to get around the code.
9. Fence Permit Exemptions
 - A. Fences permits for fences of any type installed for the sole purpose of keeping Domestic Farm
Animals are not required on **properties larger than 40 acres**. (Intent is for hobby farms to get permits, working farms are to be excepted - we may want to discuss the size.)
 - B. City, County, or State governments for security or on right of way.....

Dean Johnston
777-4444
7/26/2004

Lake Elmo City Council Aug. 4, 2004	Agenda Section: Planning, Land Use & Zoning	No. 9 C
Agenda Item: Fence Moratorium Exemption Request – 55 th Street		
<p><u>Background Information for July 20, 2004:</u></p> <p>By a letter of July 6, 2004 four residents of Carriage Station whose homes back to 55th Street North have requested removal of their properties from the Fence Moratorium to allow construction of fencing along their combined north property lines (also the south right of way line of 55th Street North). The fence proposed would mirror that which exists on the property at the southwest corner of Marquess Trail and 55th Street North – 6 feet in height of a picket design.</p> <p>The Moratorium provides for amendment to remove specific properties, "...if proposed fences will comply with anticipated new regulations...". Review of the both of the proposed fence ordinance amendment drafts finds the fence proposed by these property owners would not comply with either "anticipated" ordinance. By both ordinance drafts the 55th Street side of these properties is a "rear street yard". Fences in rear street yards are permitted (up to six feet solid) by the Planning Commission draft, "...only if specified in the landscaping plan and final plat in subdivisions...". Not the case here. In the City Council version, no fence may exceed 42 inches in height (regardless of percentage open to air/light) in a rear street yard. The property owners specify 72 inches.</p> <p>While we have attached a draft ordinance to remove these properties from the Moratorium, it does not appear that the terms of the Moratorium would permit the adoption of the removal ordinance based on either of the "anticipated" ordinance drafts.</p>		
<p><u>Action items:</u> 97-137</p> <p>Motion regarding adoption of an ordinance to remove 4 properties along 55th Street North from the Fence Moratorium</p>	<p><u>Person responsible:</u></p> <p>City Planner </p>	
<p><u>Attachments:</u></p> <ol style="list-style-type: none"> 1. Draft Ordinance to Remove Properties 2. Location Map 3. Applicant's Letter of July 6, 2004 4. Adopted Fence Moratorium Ordinance 	<p><u>Time Allocated:</u></p>	

Location Map



This drawing is the result of a compilation and reproduction of land records as they appear in various Washington County offices. The drawing should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

Source: Washington County Surveyor's Office
Phone (651) 430-6875
Parcel data based on AS400 information

July 6, 2004

Dear Lake Elmo City Council:

We have all spoken with Tom McCormick regarding a six-foot tall fence that will line the north end of our properties, along 55th street and we have authorized Tom to pursue a fence permit for the project even though we know there is a temporary moratorium on fences.

Our intention is to have a fence built that is identical to Eric Hayes' fence at 12260 Marquess Way N. The Hayes fence is NOT a solid wall fence, is constructed of cedar posts and 3 inch, dog-eared vertical boards with a two-inch split between boards. Hayes' property and fence is adjacent to McCormick's property on the west side of his lot and the fence was built by Midwest Fence, a South St. Paul company that has been an upstanding member of the Better Business Bureau since 1976. We have obtained a quote from Midwest and would like to pursue using them to build this fence also. The east side of the fence would end where the NE corner of Mark Larson's property meets the Carriage Station Business Park.


Our objective is to obtain some separation and privacy from the traffic on 55th street, including the post office annex that resides on the other side of the street. As a secondary objective, we realize our four lots control the look of the development for the traffic that travels down 55th to enter the development through the back entrance and we felt it was important for our fences to have a consistent look.

We ask that the city council reviews our request and the properties, if they wish, during the next two weeks. At the next city council meeting, we would like to be an included agenda item, as consideration for an exception to the moratorium, and to be granted a fence permit. Midwest Fence is already scheduled out for the next four weeks and our fear is that the new fence ordinance might not be in place in time for us to have our project completed this summer.

Sincerely,



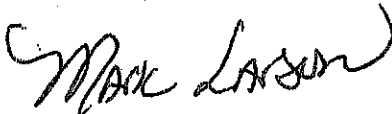
Eric Hayes
12260 Marquess Way N



Tom McCormick
12276 Marquess Way N



Terry Shuman
12288 Marquess Way N



Mark Larson
12300 Marquess Way N

CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA

ORDINANCE NO. 97-129

AN ORDINANCE ADOPTING A DEVELOPMENT MORATORIUM
RELATING TO THE CONSTRUCTION OF FENCES

The Lake Elmo City Council hereby ordains that Section 1360.07 and its subdivisions shall be added to the Lake Elmo Municipal Code to read as follows:

"Section 1360.07

- A. Recently the City has become aware that its current fence regulations have required an unusual amount of interpretation. The City has undertaken a study to determine whether new fence regulations should be adopted.
- B. The Lake Elmo City Council has requested its Planner and Planning Commission to review current fence regulations and propose revisions. New regulations have been drafted and are being reviewed.
- C. Pending the completion of the review process, the Lake Elmo City Council has determined that it would be in the public's interest to impose a development moratorium on the issuance of new fence permits.
- D. In order to achieve the above objective, a development moratorium is hereby imposed prohibiting the construction of all fences on property within the City of Lake Elmo, except for those fences required by the State Building Code for safety purposes.
- E. This moratorium shall be in effect for six (6) months from the date of publication of this Ordinance, unless terminated by prior action of the Lake Elmo City Council.
- F. The Lake Elmo City Council may, by amendment to this Ordinance, remove specific parcels from the moratorium if proposed fences will comply with anticipated new regulations, or repeal the moratorium in its entirety.

ADOPTION DATE: Passed by the Lake Elmo City Council on the 18th day of May, 2004.

EFFECTIVE DATE: This Ordinance shall be effective the day following its publication.

Dated: 5-18-, 2004

Lee Hunt, Mayor

ATTEST:

Martin J. Rafferty, City Administrator

PUBLICATION DATE: Published on the 2nd day of June, 2004.

Lake Elmo City Council August 4, 2004	Agenda Section: Planning, Land Use & Zoning	No. 9D
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Agenda Item: Zoning Ordinance Amendment -- Family Entertainment Center

Background Information for August 4, 2004:

As requested July 20 the City Attorney has prepared an Opinion regarding the amendment proposal now before the City Council, which is attached. I believe the most significant statement in that Opinion is the last sentence of the third paragraph. Given the extensive testimony by present and prospective owners and their attorneys, and real estate brokers regarding this specific use on this specific site at the Planning Commission Hearing – repeated and expanded upon at the July 20 City Council meeting – it would appear that parties might conclude that, by setting the maximum square foot building area at 50,000 square feet where other Conditional uses in the LB use are limited to 20,000 square feet, the City is crafting zoning for “a particular piece of property”.

Should the Council not concur in the foregoing observation, and desire to proceed with the amendment utilizing the 50,000 (adjusted from 47,000) square foot building area maximum under the locational conditions specified, the attached ordinances #97-138 and #139 should be adopted. Four affirmative votes are required to adopt Ordinance #138.

The discussion of this issue on July 20 was wide-ranging, with numerous ideas presented, including the following:

1. Enhanced specificity regarding site and structure characteristic prerequisites to qualify as a Conditional Use.
2. Elimination of the “in-door paint ball” use example in the 139 definition.
3. Detailed performance standards

We have not modified the draft ordinance to address those ideas since the Council direction appears to only address the use scale Legal Opinion. In fact, most of those ideas could be incorporated into any future discussion of a specific Conditional Use Permit application.

As of this writing it appears that the Council’s options regarding this proposal (and the ordinances related to it) are as follow:

1. Adoption of #138 and #139 as written
2. Adoption of #138 with a 20,000 square foot maximum building area, thus reflecting the Council’s generally favorable position regarding Family Entertainment Centers.
3. Adopt the Planning Commission recommendation, and take no action to amend the Code at all.

Action items:

Motions consistent with one of the options provided, or direction to Staff for further work on the ordinances.

Person responsible:

City Planner 

Attachments:

1. Draft Ordinance #138
2. Draft ordinance #139
3. Draft City Council Minutes of July 20
4. City Attorney Letter of July 30, 2004

Time Allocated:

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

ORDINANCE 97 –

**AN ORDINANCE AMENDING SECTION 307.07 SUBDIVISION 4.K.3. AND 4.
RELATING TO CONDITIONAL USES IN THE LIMITED BUSINESS
ZONING DISTRICT**

Section 1. Amendment: Section 307.07, Subdivision 4.K.3. and 4. of the Lake Elmo Municipal Code is hereby amended to read as follow, to wit:

3. Conditional Uses.

Limited Business	
Art Sale and Gallery	20,000 Square Feet Maximum Floor Area
Bicycle Sales	20,000 Square Feet Maximum Floor Area
Boats and Fishing Equipment Sales and Service	20,000 Square Feet Maximum Floor Area
Business Services	Uses normally associated with Office Developments (photocopy and printing shops, travel agencies.) and containing limited retail activity. 20,000 Square Feet Maximum Floor Area
<u>Family Entertainment Center</u>	<u>20,000 Square Feet Maximum Floor. 50,000 Square Feet Maximum Floor Area Where Site Fronts Hudson Blvd</u>
Furniture, Home Furnishings and Related Equipment	20,000 Square Feet Maximum Floor Area
Greenhouses and Nurseries	20,000 Square Feet Maximum Floor Area
Landscaping Services; flowers and floral accessories.	20,000 Square Feet Maximum Floor Area
Licensed Dependent Care Centers	20,000 Square Feet Maximum Floor Area
-	-
-	-
Limited Retail Uses clearly accessory to the permitted principal use of the land	- 20,000 Square Feet Maximum Floor Area
Medical, Dental and Research Laboratories	20,000 Square Feet Maximum Floor Area
Motorcycle Sales	20,000 Square Feet Maximum Floor Area
Pre- School Facilities	20,000 Square Feet Maximum Floor Area
Beauty Salons	20,000 Square Feet Maximum Floor Area
Skiing Equipment	20,000 Square Feet Maximum Floor Area
Snowmobile Sales and Service	20,000 Square Feet Maximum Floor Area
Sporting Goods	20,000 Square Feet Maximum Floor Area
Transmission Facilities for Teleconferencing	Are not free-standing and do not extend more than 20 feet above the building to which they are attached. 20,000 Square Feet Maximum Floor Area

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

ORDINANCE NO. 97-

AN ORDINANCE AMENDING SECTION 150
OF THE LAKE ELMO MUNICIPAL CODE
TO INCLUDE A DEFINITION OF A FAMILY ENTERTAINMENT CENTER

Section 1. Amendment: Section 150 "Definitions" of the Lake Elmo Municipal Code is hereby amended to include the definition of Family Entertainment Center, to wit:

Family Entertainment Center

Amusement facilities that may include indoor miniature golf, child play areas, arcade games, batting cages, indoor paint ball, birthday party and family celebration rooms, indoor soccer/field hockey, children's adventure play gardens and laser tag. Also typically included are a small food and beverage area and a small retail area. All facilities are non-alcoholic and smoke free.

Section 2. Effective Date: This ordinance shall become effective upon its passage and publication according to law.

ADOPTED by the Lake Elmo City Council this day of 2004.

Lee Hunt, Mayor

ATTEST:

Martin Rafferty, City Administrator

Veterinary Clinics	No crematorium, outdoor kennels or storage. 20,000 Square Feet Maximum Floor Area
Vineyard and Winery Produce and Sales	20,000 Square Feet Maximum Floor Area
-	

Section 2. Effective Date: This ordinance shall become effective upon its passage and publication according to law.

ADOPTED by the Lake Elmo City Council this day of 2004.

Lee Hunt, Mayor

ATTEST:

Martin Rafferty, City Administrator

M/DeLapp/No Second – to direct the Planning Commission to consider an amendment to the zoning ordinance on building height that considers the effect of overall building size; and, to consider fire sprinkling of single family residential properties under certain conditions.

Council member DeLapp said he would let the Fire Dept to take the next step as to fire sprinkling of single family residential buildings.

C. Amended Fence Ordinance

The City Planner reported the Planning Commission held a public hearing on June 28 to include two separate versions of the draft fence regulations:

1. A version developed by the Planning Commission over several meetings earlier this year, and;
2. A version responsive to the guidance provided by the City Council as to fence standards, following the Workshop on May 10.

He noted that both versions assume that fence standards now found in Section 1360 of the City Code would be repealed entirely.

The Council received a letter from Charles Dennis opposing the Council's version of a new fence ordinance.

Council member Johnston said he has a problem with the Council version involving the Ag exemption on parcels as small as 10 acres. He stated that he also does not believe that fencing requirements on Shoreland property is fully developed in the draft ordinance. He noted the need to go ahead with Council version, and get specific Council questions and suggestions as to modifications to that version to the City Planner to address at the next Council meeting.

M/S/P John/Johnston -- to direct the staff to proceed with the City Council directed version of the new fence ordinance. (Motion passed 4-0).

D. Fence Moratorium Exemption Request at 55th Street North: Ordinance No. 97-137 (Postponed until the next Council meeting.)

E. Limited Business Zoning District – Add Family Entertainment Center: Ordinance 97-138 and 97-139

The City Planner reported that the on June 28 the Planning Commission conducted a Public Hearing to consider amending the Zoning Ordinance to include Family Entertainment Centers as a Conditional Use in the Limited Business zone. He reported that the Commission also considered a new definition for the use to be added to Section 150 of the City Code. Finally, he reported that the Commission recommends the City Council adopt no amendment to the Zoning Ordinance or Section 150 of the City Code

regarding the Family Entertainment Center use. He explained that the Commission did not necessarily believe that the Family Entertainment use was inappropriate in the Limited Business zone, but that the proposal to allow a maximum of 50,000 square feet of floor area for that use when all other Limited Business Conditional Uses were now limited to 20,000 square feet suggested an inappropriate scale of use.

Dave Larson, prospective purchaser of the Dolan Marine site explained the Dolan Marine site, 9200 Hudson Blvd., currently includes two buildings, one that is just less than 33,000 square feet and one that is 14,000 square feet. He said that the larger building would be remodeled to include indoor miniature golf, a small child play area, a small retail area, snack bar/kitchen, arcade games, birthday party rooms and indoor soccer/field hockey arena and indoor batting cages; and, that the smaller building could be used for indoor paintball. He suggested that the back six acres would be left as open space with a small fenced-in area to be used for outdoor boat storage.

Sabrina Dolan stated they have been looking to sell the business for some time and when they were approached by Doug Larson about the possibility of turning the location into a family entertainment center, they felt the idea would be a good fit for the City. She said she didn't know why there is an issue with the size, since the project would be using the existing buildings which are grandfathered in. Dolan added that, if the Council is thinking of turning them down, it will have a large impact on their family.

John Bellows, Attorney for Dolan Marine. stated the property could be divided into three separate uses, and pointed out the buildings was grandfathered in, and leaves options.

Council member DeLapp asked what about issues of advertising, lights, noise, traffic, landscaping, parking, and sprinklers. What is the traffic count being proposed? Do we intend to entertain Oakdale and Woodbury customers?

Tom Kendall, Broker for Dolan Marine, asked the City Council to look at what the buyers are trying to do: non alcoholic, no smoking, purely family entertainment, something for the family to do in a safe environment in the winter. He said that the prospective buyers have a vision, and are not asking to raze the bldgs, but to remodel existing facilities and improve the value of property which creates higher tax revenue for the City. He noted that only the approval of the use is what is on the Council's agenda now; and that conditions would be added to the resulting Conditional Use Permit that address Council member DeLapp's concerns.

Jeff Lyman, prospective purchaser of the Dolan site, explained that he uses they would propose are low intensity and not like a big box grocery store. He said they are planning on sprinkling the property.

The Council consensus appeared to be that the idea of family entertainment centers would be appropriate for the City and had no objections to paintball. There was concern expressed, however, as to the scale of the use now proposed as to whether that scale would be used in the future to argue precedent for a "big box" retail type of use of similar

scale. The Council appeared concerned that if the City allowed one type of business to have up to 50,000 sq.ft. of space in Limited Business, other business would demand the same scale.

Planner Dillerud stated that the City Council has to address the 50,000 maximum of square feet building area. He suggested that the balance of issues raised regarding the Family Entertainment Center can be dealt with the CUP process. Dillerud suggested that the Council might want to ask the City Attorney for an opinion as to what manner of precedent regarding other uses might result from the 50,000 square foot maximum building area allowance for Family Entertainment Centers.

Council Member Johnston indicated he would approve the Family Entertainment Center Zoning Ordinance amendment if the City Attorney could say it would not affect other sites in the future.

Council Member John said he would favor 50,000 sq.ft. of maximum building area for the use.

M/S/P DeLapp/Johnston - to postpone a decision to add Family Entertainment Centers as an acceptable use in Limited Business areas for two weeks to obtain the City Attorney's opinion on setting precedent; and, staff comments on how this could be accomplished without setting precedent. (Motion passed 4-0).

10. CITY ATTORNEY'S REPORT:

11. CITY ADMINISTRATOR'S REPORT:

A. Meeting Time of Council Committees

Administrator Rafferty reported there will be a change from 7 p.m. to 5:30 p.m. meeting time, the second Tuesday and Wednesday of the month for the Council Committees. The Public Works Council Committee will meet on Tuesday, August 10 at 5:30 p.m. On Wednesday, August 11, the Public Health will meet at 5:30 p.m. and the Finance Council Committee will meet at 6:15 p.m.

The Environmental Commission and City Council will tour the Waste Management Facility on July 21, 7 p.m.

12. CITY COUNCIL REPORTS:

A. Mayor Hunt

(1) Update on Met Council Meeting

Mayor Hunt reported State Senator Brian LeClair, and mayors/council members from the Grant, Afton, St. Croix Beach, Dayton, Baytown Township, and West Lakeland Township joined Council Member Dunn, Mayor Hunt, Administrator Rafferty and Planner Dillerud at a meeting with the Governor's Chief of Staff Dan McElroy, METC

Peterson, Fram & Bergman, P.A.
50 East Fifth Street, Suite 300
St. Paul, Minnesota 55101

651-290-6907

July 30, 2004

Mr. Charles Dillerud
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, Minnesota 55042

Re: Family Entertainment Center

Dear Chuck:

Subject to the provisions of the Municipal and Metropolitan Land Planning Acts, the City Council has the authority to adopt and amend zoning regulations as it deems appropriate. The City Council can adopt ordinances which define a family entertainment center and allow its use in a particular zoning district.

The definition should be clear, precise, and hopefully not subject to interpretation. The proposed definition of family entertainment center references a non-inclusive list of allowed activities. The use of the phrase "may include" as opposed to "shall be limited to" will, in all likelihood, require future interpretation of this particular definition.

The City Council could determine that a family entertainment center use should be allowed in a limited business zone by conditional use permit. Generally, the City Council would review the policies of its comprehensive plan and the purposes of its limited business zoning district to determine if this is the proper zoning for this particular type of conditional use. The City Council should also determine if there is any rational basis for treating this particular conditional use substantially different (maximum square footage allowed) from other conditional uses in the limited business zone. Regulations which are crafted to resolve circumstances on a particular piece of property can create the perception that the City is acting in an arbitrary manner, and if carried to the extreme, could expose the City to a spot zoning argument.

If the proposed regulations are adopted, any person who owns property in the limited business zone along Hudson Boulevard could apply for a family entertainment center conditional use permit. All such applications would need to be reviewed and acted upon in a non-arbitrary manner. If the applicant satisfied the standards contained in the regulations, it would be legally difficult to deny the applicant's requested permit.

If you have any questions, please contact me.

Very truly yours,

/s/ JPF

Jerome P. Filla

F:\users\Janice\Jerry\LB\Family Entertainment Letter.doc


Lake Elmo City Council August 4, 2004	Agenda Section: Planning, Land Use & Zoning	<u>No.</u> 9E
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Agenda Item: Final Plat, OP Plan and Development Agreement – Whistling Valley Second Add.

Background Information for August 4, 2004:

Bald Eagle Development has applied for Final Plat approval of the 18 lot Second Addition for Whistling Valley in the Northwest Quadrant of Keats Avenue and 10th Street North. The Final Plat proposed is responsive to the approved Preliminary Plat, and the conditions to that approval (no direct trail access is proposed to the Regional Park). The City Attorney has prepared the attached Development Agreement covering the responsibilities and financial requirements of the developer. The Final landscape plan includes forestation exceeding the requirements of both the OP Ordinance and the Subdivision Code.

Staff recommends adoption of the attached Resolution approving the Final Plat, Final OP Plan and Development Agreement.

<p><u>Action items:</u></p> <p>Motion to approve Resolution #2004 - ⁰⁶⁵, approving the Final Plat, Final Plan, and Development Agreement of Whistling Valley 2nd Addition per plans staff-dated July 29, 2004.</p>	<p><u>Person responsible:</u></p> <p> City Planner</p>
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<p><u>Attachments:</u></p> <ol style="list-style-type: none"> 1. Draft Resolution #2004 - ⁰⁶⁵, Approving Plat 2. Location Map 3. Draft Development Agreement 4. Resolution #2004-033 Preliminary Plat 5. Approved Preliminary Plat 6. Final Plat Graphics 	<p><u>Time Allocated:</u></p>
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CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

RESOLUTION NO. 2004-065

A RESOLUTION APPROVING THE FINAL PLAT AND DEVELOPMENT
AGREEMENT OF WHISTLING VALLEY SECOND ADDITION

WHEREAS, the Lake Elmo Planning Commission reviewed the preliminary plat of WHISTLING VALLEY SECOND ADDITION on April 12, 2004, and recommended approval to the City Council, and

WHEREAS, the Lake Elmo City Council considered and approved the preliminary plat of WHISTLING VALLEY SECOND ADDITION on April 20, 2004 and;

WHEREAS, the Final Plat, OP Final Plan and Development Agreement of WHISTLING VALLEY SECOND ADDITION presented to the City Council conforms to the standards of Section 300 and Section 400 of the City Code.

NOW, THEREFORE, BE IT RESOLVED, that the Lake Elmo City Council does hereby approve and accept the Final Plat, OP Plan and Development Agreement of WHISTLING VALLEY SECOND ADDITION, per plans staff-dated July 29, 2004 as on file with the City Administrator subject to the following conditions:

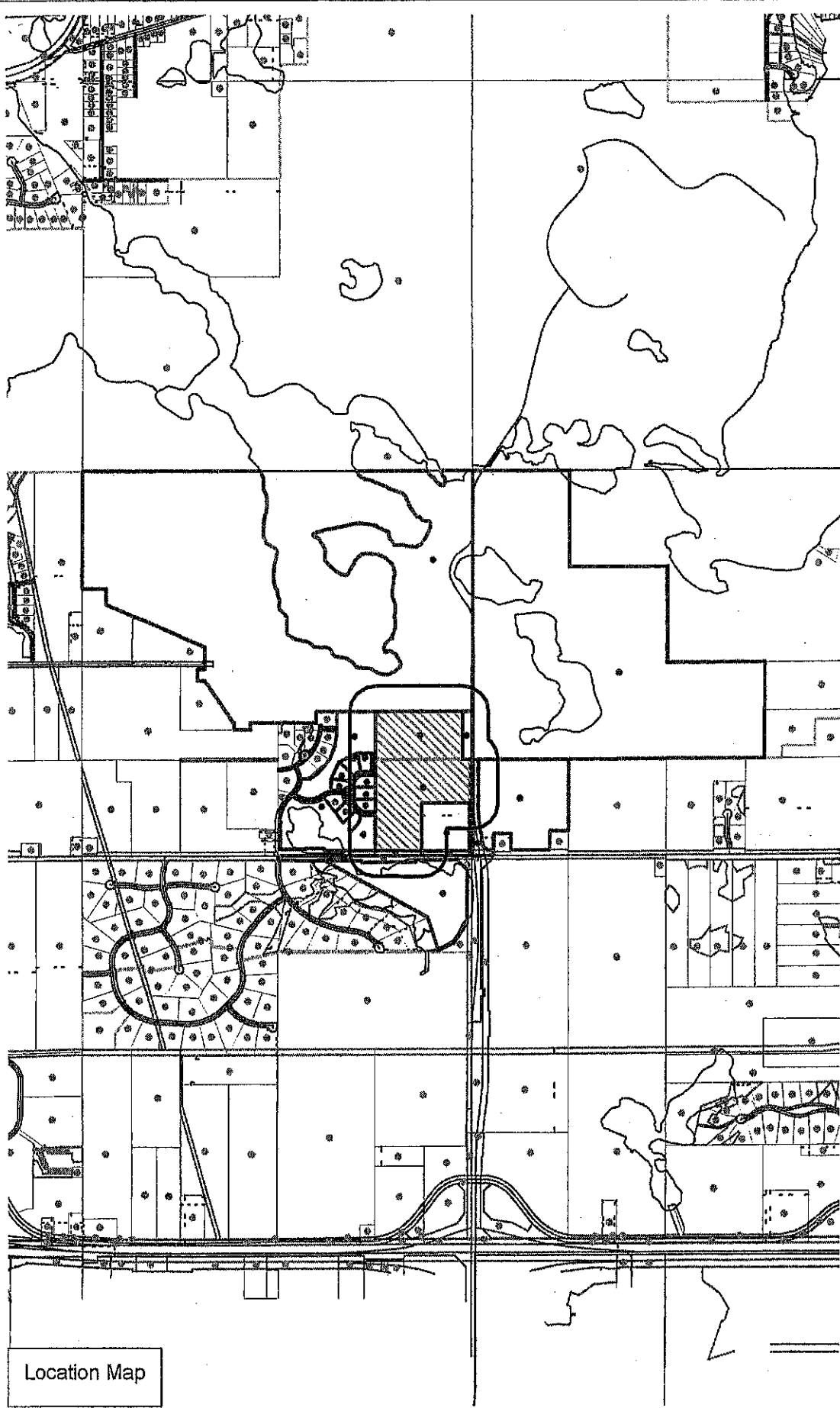
1. Compliance with the requirements of the City Engineer.

ADOPTED, by the Lake Elmo City Council this 4th day of August, 2004.

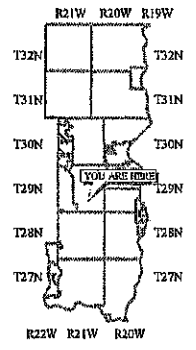
Lee Hunt, Mayor

ATTEST:

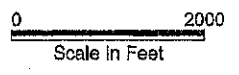
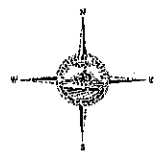
Martin J. Rafferty, City Administrator



Location Map



Vicinity Map



This drawing is the result of a compilation and reproduction of land records as they appear in various Washington County offices. The drawings should be used for reference purposes only. Washington County is not responsible for any inaccuracies.

Source: Washington County Surveyor's Office. Plans 1651, 132, 6972.

Parcel data based on A8-000 information current through November 30, 2003. Map printed: January 12, 2004.

**DEVELOPMENT AGREEMENT
CITY OF LAKE ELMO
WHISTLING VALLEY SECOND ADDITION**

- 1.00 Parties. This Agreement is dated the ___ day of _____, 2004, and is entered into by and between City of Lake Elmo, a Minnesota municipal corporation (herein "**City**"); and Bald Eagle Development, LLC, a Minnesota limited liability company (herein "**Developer**").
- 2.00 Property Description. The Developer represents that it is the record fee owner of property described on **Exhibit A**, attached and incorporated herein, which will be platted as Whistling Valley Second Addition.
- 3.00 Final Plat Approval. On the ___ day of _____, 2004, the City Council approved the final plat of Whistling Valley Second Addition, which is attached and incorporated as **Exhibit B**. The City's approval was conditioned upon the Developer entering into this Development Contract.
- 4.00 Terms and Conditions. NOW, THEREFORE, in reliance upon the representations contained herein; in compliance with the City's Zoning and Subdivision Regulations; and in consideration of the mutual undertakings herein expressed, the parties agree as follows:
- 4.01 Developer Improvements. The Developer shall construct the following improvements in compliance with plans and specifications which have been reviewed and approved by the City's Consulting Engineer, which are attached and incorporated herein as **Exhibit C**:
- A. Site Grading and Turf Restoration. Site grading improvements shall include common excavation, subgrade correction, embankment and pond excavation. Turf restoration shall include seeding, mulching and erosion control.
 - 1. Site Grading Improvements shall be completed on or before the 1st day of November, 2004.
 - 2. Turf restoration improvements shall be completed on or before the 31st day of July, 2005.
 - B. Landscaping. Developer shall complete all landscaping improvements on or before the 31st day of July, 2005.
 - C. Storm Sewer. Storm sewer improvements include all necessary storm sewers, catch basins, culverts, and other apparatus. Storm sewer improvements shall be completed by the 1st day of December, 2004.
 - D. Street Improvements. Street improvements include subgrade preparation, gravel base, bituminous surfacing and bituminous curb.
 - 1. Unusable material within the roadway shall be removed by the Developer.

- 2. All subgrade excavation and filling shall be completed by the Developer in accordance with MNDOT's specifications. The City reserves the right to test as necessary, at the Developer's expense, all grading work. A test roll of the street subgrade shall be passed prior to acceptance of the subgrade by the City.
- 3. Subgrade and the initial course of street improvements shall be completed by the 30th day of November, 2004. The final wear course of the street shall be completed by the 1st day of November, 2006.

E. Waste Water Treatment System. The waste water treatment system comprised of a series of pipes, septic tanks, treatment ponds and appurtenances shall be completed prior to the issuance of any certificates of occupancy.

F. Street Signs. The City will order and install street signs. The Developer shall pay for all costs incurred by the City.

4.02 Estimated Cost of Developer Secured Improvements. The estimated costs of Developer constructed improvements are as follows:

<u>Improvement</u>	<u>Estimated Cost</u>
Site Grading/Turf Restoration	\$ 346,500.00
Landscaping	\$ 150,000.00
Storm Sewer	\$ 120,500.00
Street Improvements	\$ 212,800.00
Waste Water Treatment System	\$ 205,500.00
Street Signs	<u>\$ 1,000.00</u>
Subtotal	\$1,036,300.00
Total Security Required (125% of Improvements)	\$1,295,375.00

4.03 Improvement Security. Prior to the City's endorsement of approval on the final plat, the Developer shall deposit security with the City Administrator in an amount equal to 125% of the City Engineer's estimate of the cost of constructing the Developer secured improvements which have not been completed and accepted by the City prior to final plat approval. The security may be in the form of a cash escrow fund, a performance bond, or a letter of credit. The form of security shall be approved by the City Attorney.

4.04 Reduction of Security. Upon completion of required improvements for the Property and acceptance by the City, the City Council shall reduce the amount of security for the completed improvements provided that in no case shall the total remaining security be equal to less than 125% of the estimated costs of the incomplete improvements.

4.05 Administrative Fees. Developer agrees to pay an administrative fee to the City in an amount equal to 2% of the Developer's secured improvements. The administrative fee for this project equals \$20,726.00.

- 4.06 Utility Company Improvements. The utility improvements include underground gas, electric, and telephone service as installed by the appropriate utility company at the direction of the Developer. The Developer shall arrange for the installation of underground gas, electric, telephone and cable television after the first lift of asphalt is complete but before the final lift is started. Utility improvements shall be completed by the 1st day of December, 2004.
- 4.07 Recording Requirements. Prior to the conveyance of any of the lots in Whistling Valley Second Addition, and except as hereinafter provided, prior to the issuance of any development permits, the Developer shall provide the City with evidence that the following documents have been recorded.
- A. Plat.
 - B. A Declaration of Covenants in a form approved by the City's Attorney. The Declaration of Covenants shall include the following provisions:
 - 1. Require the Homeowner Association to be responsible for the Developer's obligations as contained in the appropriate Conservation or Open Space Easement.
 - 2. Require the Homeowner Association to maintain and operate the waste water treatment system.
 - 3. Require the Homeowner Association to maintain the landscaped areas of Outlots A and F.
 - 4. Provide that, in the event of a failure by the Homeowner Association to satisfy the obligations defined in Section 4.07B and its subdivisions of this Development Agreement, as determined by the City's Consulting Engineer, the City may undertake such obligations and assess all costs incurred to the Homeowner Association.
 - 5. Provide that any provisions in the Covenants relating to the obligations defined in Section 4.07B and its subdivisions of this Development Agreement may not be repealed or amended without consent of the City.
 - C. Homeowner Association Articles of Incorporation.
 - D. A Conservation Easement over Outlots A, B, E and F, Whistling Valley, Washington County, Minnesota to the Minnesota Land Trust, in a form approved by the City Attorney.
 - E. A Conservation Easement over Outlots A, B, C, E, F and G, Whistling Valley 2nd Addition, Washington County, Minnesota to the Minnesota Land Trust in a form approved by the City Attorney.
- 4.08 Public Use Dedication. The Developer agrees to pay a public use dedication fee in the amount of \$55,720.00.

- 4.09 Inspection. Developer, through its Engineer, shall provide for competent full time inspection during underground pipe construction and street construction. The City Engineer shall make periodic visits to the site to insure that the Developer and its contractor are in compliance with the terms of this Agreement. The City Engineer shall be provided a minimum of 24 hours notice prior to the commencement of underground pipe laying; and prior to subgrade, gravel base, and bituminous surface construction. Developer's failure to comply with the terms of this section shall permit the City Engineer to issue a stop work order which may result in rejection of the work and which shall obligate the Developer to take all reasonable steps, as directed by the City's Engineer, to insure that the improvements are constructed and inspected pursuant to the terms of this Agreement; and shall further result in the assessment of a penalty in an amount equal to 1%, per occurrence, of the amount of security required in section 4.03 of this Agreement.
- 4.10 Prior Land Occupancy. No Certificate of Occupancy shall be issued for any homes until the first wear course of a public street is completed and approved by the City Engineer. If homes are occupied prior to completion of street improvements and acceptance by the City, Developer shall provide all maintenance necessary for such streets including snowplowing, until final acceptance by the City.
- 4.11 Binding Effect. The terms and provisions of this agreement shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto and shall be binding upon all future owners of all or any part of the Property. This Agreement, at the option of the City, shall be placed of record so as to give notice thereto to any subsequent purchasers and encumbrancers of all or any part of the Property and all recording fees, if any, shall be paid by the Developer.
- 4.12 Notices. Whenever in this Agreement notice is required to be given by one party to the other, such notice shall be delivered personally or shall be sent by certified mail, return receipt requested to the following addressees. Such notice shall be deemed timely given when delivered personally or when deposited in the mail in accordance with this section.

If to the City:

Mr. Martin Rafferty
City Administrator
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

If to the Developer:

Mr. David Sorenson
Bald Eagle Development, LLC
4505 White Bear Parkway, Suite 1400
White Bear Lake, Minnesota 55110

- 4.13 Incorporation by Reference. All plans, special provisions, proposals, specifications and contracts for the improvements furnished and let pursuant to this Agreement shall be and hereby are made a part of this Agreement by reference as if fully set out herein.
- 4.14 Default. The occurrence of any of the following shall be considered an "event of default" in the terms and conditions contained in this Agreement:
- A. Failure of the Developer to comply with any of the terms and conditions contained in this Agreement.
 - B. The failure of the Developer to comply with any applicable ordinance or statute with respect to the development of the Property.
- 4.15 Remedies. Upon the occurrence of any event of default, the City, in addition to any other remedy which may be available to it, shall be permitted to do any of the following:
- A. City may make advances or take other steps to cure the default, and, where necessary, enter the Property for that purpose. The Developer shall pay all sums so advanced or expenses incurred by the City, upon demand, with interest from the dates of such advances or expenses at the rate of 10% per annum. No action taken by the City pursuant to this section shall be deemed to relieve the Developer from curing any such default to the extent that it is not cured by the City or from any other default hereunder. The City shall not be obligated, by virtue of the existence or exercise of this right, to perform any such act or cure any such default. The Developer shall save, indemnify, and hold harmless, including reasonable attorney fees, the City from any liability or other damages which may be incurred as a result of the exercise of the City's rights pursuant to this section.
 - B. Obtain an Order from a Court of competent jurisdiction requiring the Developer to specifically perform its obligations pursuant to the terms and provisions of this Agreement.
 - C. Exercise any other remedies which may be available to it including an action for damages.
 - D. Withhold the issuance of any or all building permits and/or prohibit the occupancy of all building(s) for which permits have been issued.
 - E. In addition to the remedies and amounts payable as set forth herein, upon the occurrence of an event of default, the Developer shall pay to the City all fees and expenses, including reasonable attorney, engineering and consulting fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed as of the date and year first above written.

**CITY OF LAKE ELMO,
a Minnesota statutory city**

Lee Hunt, Mayor

ATTEST:

Martin Rafferty City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2004, before me, a notary public within and for said county, personally appeared Lee Hunt and Martin Rafferty, to me known to be respectively the Mayor and City Administrator of the City of Lake Elmo, and they executed the foregoing instrument and acknowledged that they executed the same by authority of and on behalf of City of Lake Elmo.

Notary Public

**[SIGNATURES CONTINUED ON FOLLOWING PAGE
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

BALD EAGLE DEVELOPMENT, LLC

By: _____
David W. Sorenson
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2004, before me, a notary public within and for said county, personally appeared David W. Sorenson, to me known to be the Chief Manager of Bald Eagle Development, LLC, a Minnesota limited liability company, and he executed the foregoing instrument and acknowledged that he executed the same by authority of and on behalf of the company.

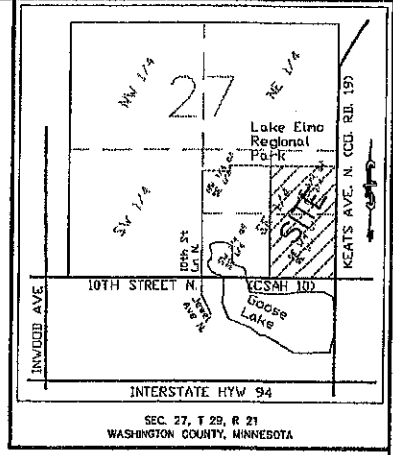
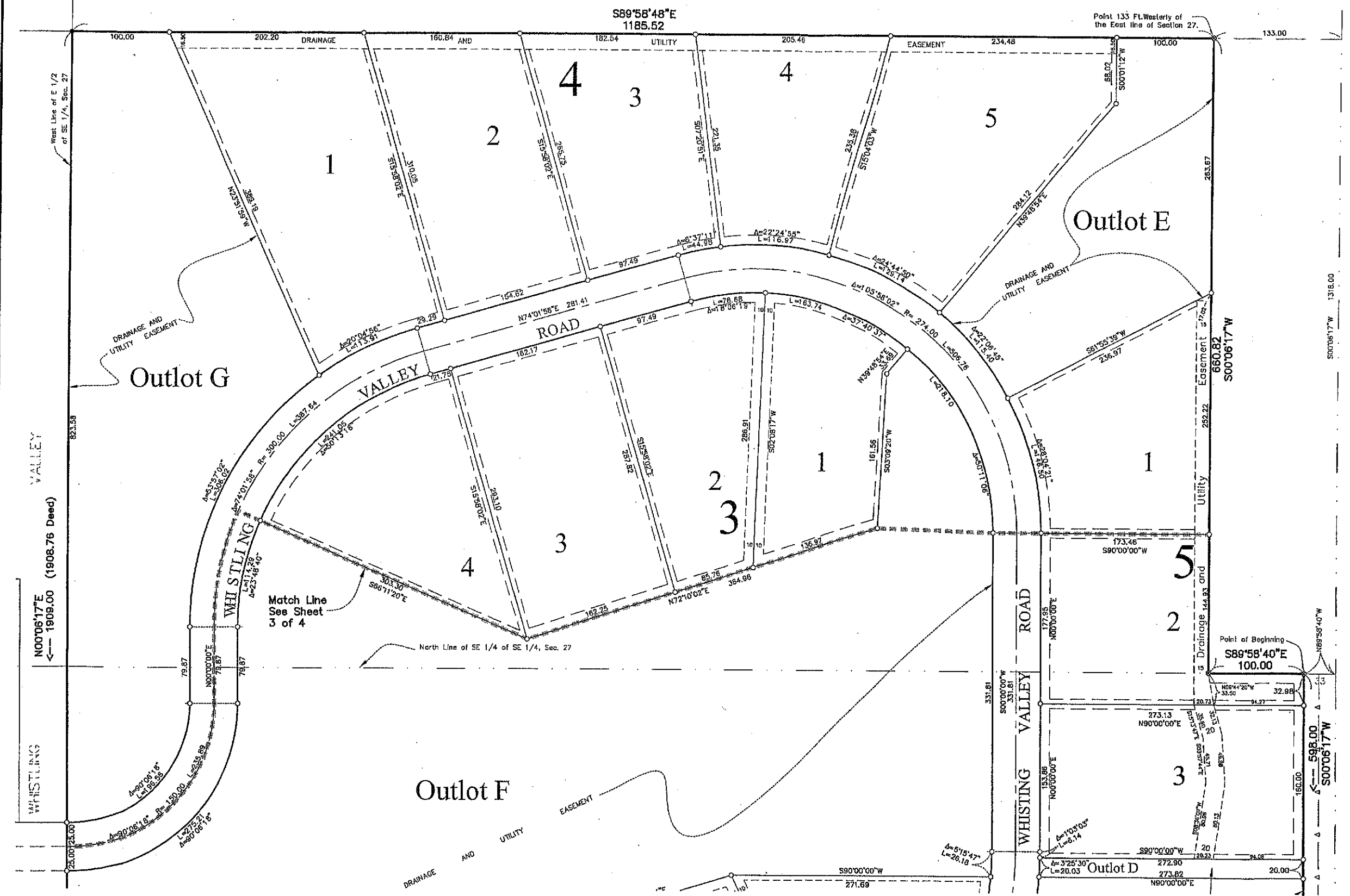
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
PETERSON, FRAM & BERGMAN, P.A. (JPF)
50 East Fifth St., #300
St. Paul, MN 55101
(651) 291-8955

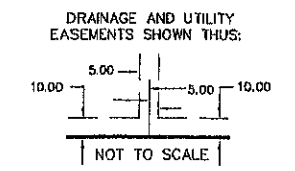
[SIGNATURES PAGE TO DEVELOPMENT AGREEMENT – PHASE II]

WHISTLING VALLEY 2ND ADDITION

LAKE ELMO REGIONAL PARK

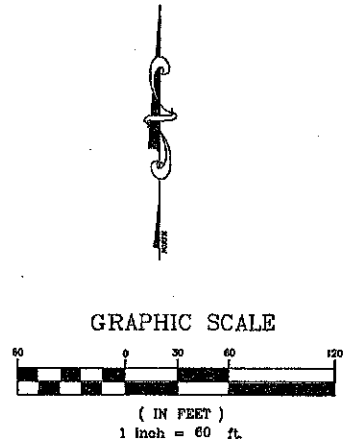


VICINITY MAP
NO SCALE



DRAINAGE AND UTILITY EASEMENTS SHOWN THUS:
BEING 5 FEET IN WIDTH AND ADJOINING SIDE LOT LINES, AND 10 FEET IN WIDTH AND ADJOINING STREET LINES AND REAR LOT LINES, UNLESS OTHERWISE SHOWN ON THIS PLAT.

RECEIVED
JUL 27 2004



THE ORIENTATION OF THIS BEARING SYSTEM IS BASED UPON THE WASHINGTON COUNTY COORDINATE SYSTEM, NAD 83.

⊙ DENOTES A FOUND 7/8 INCH DIAMETER REBAR WITH AN ALUMINUM CAP INSCRIBED "WASH CO SURVEYOR RIGHT OF WAY MON" AND STAMPED "RLS 12279"

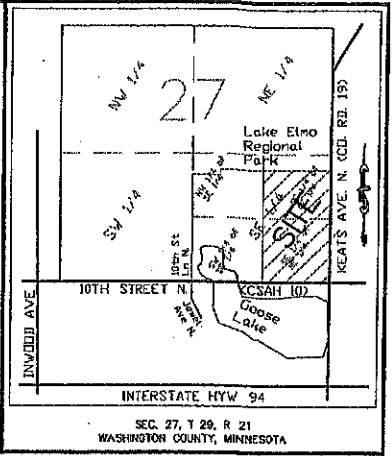
△ DENOTES DEDICATED ACCESS CONTROL.
● DENOTES FOUND IRON PIPE.

○ DENOTES A 1/2 INCH BY 14 INCH IRON PIPE MONUMENT MARKED R.L.S. NO. 18213 THAT WILL BE SET WITHIN ONE YEAR OF THE RECORDING OF THIS PLAT.

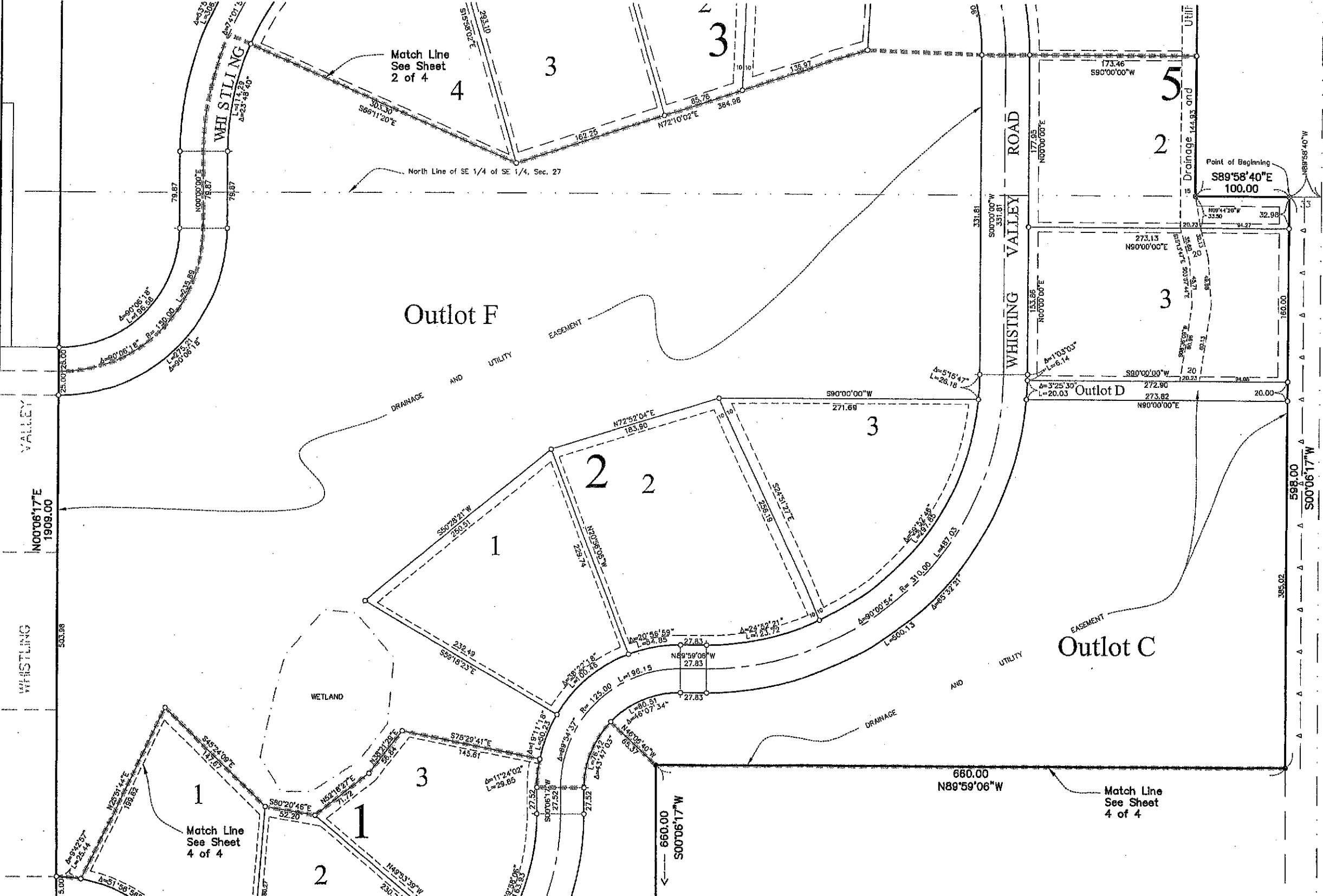
WETLANDS DELINEATED BY POLARIS GROUP INC.



WHISTLING VALLEY 2ND ADDITION



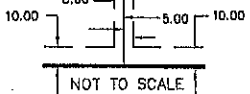
VICINITY MAP
NO SCALE



THE ORIENTATION OF THIS BEARING SYSTEM IS BASED UPON THE WASHINGTON COUNTY COORDINATE SYSTEM, NAD 83.

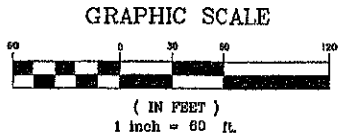
WETLANDS DELINEATED BY POLARIS GROUP INC.

DRAINAGE AND UTILITY EASEMENTS SHOWN THUS:

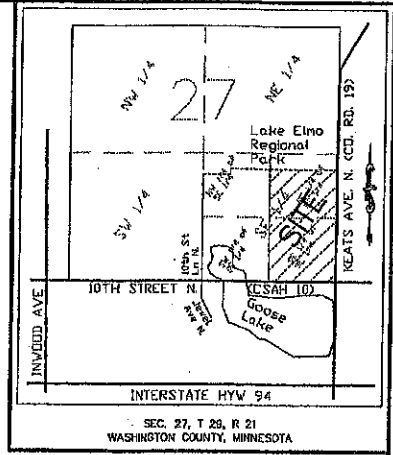
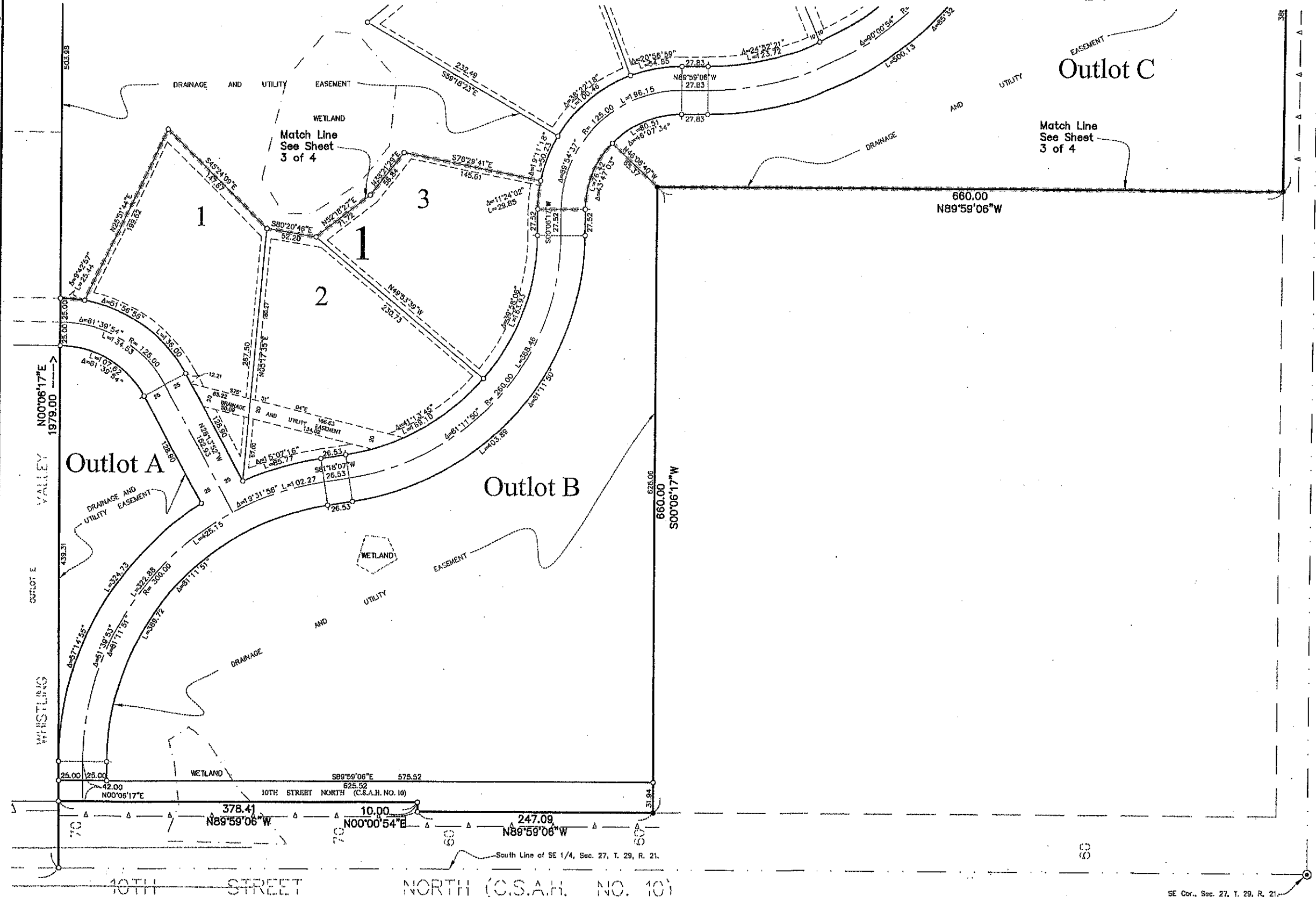


BEING 5 FEET IN WIDTH AND ADJOINING SIDE LOT LINES, AND 10 FEET IN WIDTH AND ADJOINING STREET LINES AND REAR LOT LINES, UNLESS OTHERWISE SHOWN ON THIS PLAT.

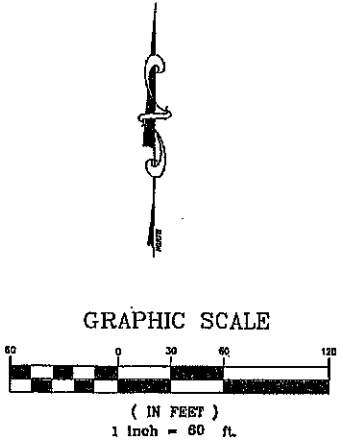
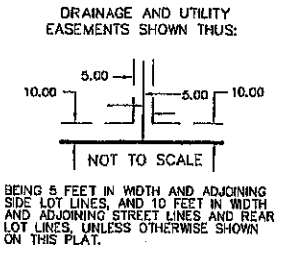
- DENOTES FOUND IRON PIPE.
- DENOTES A 1/2 INCH BY 14 INCH IRON PIPE MONUMENT MARKED R.L.S. NO. 18213 THAT WILL BE SET WITHIN ONE YEAR OF THE RECORDING OF THIS PLAT.
- (DEED) DENOTES DEED DIMENSIONS PER DOC. NO. 338329



WHISTLING VALLEY 2ND ADDITION



VICINITY MAP
NO SCALE



THE ORIENTATION OF THIS BEARING SYSTEM IS BASED UPON THE WASHINGTON COUNTY COORDINATE SYSTEM, NAD 83.

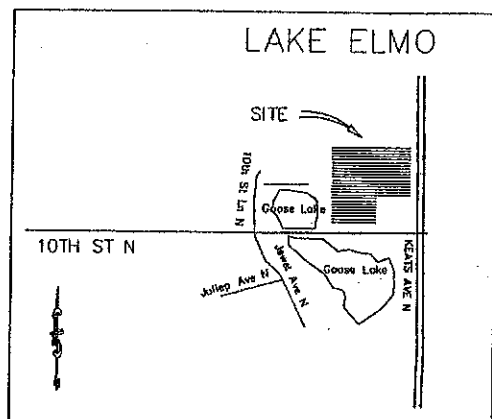
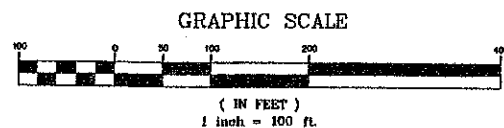
WETLANDS DELINEATED BY POLARIS GROUP INC.

- ⊙ DENOTES WASHINGTON COUNTY CAST IRON MONUMENT.
- DENOTES FOUND IRON PIPE.
- DENOTES A 1/2 INCH BY 14 INCH IRON PIPE MONUMENT MARKED R.L.S. NO. 18213 THAT WILL BE SET WITHIN ONE YEAR OF THE RECORDING OF THIS PLAT.
- Δ — DENOTES DEDICATED ACCESS CONTROL.



FINAL CONSTRUCTION DRAWINGS FOR WHISTLING VALLEY 2ND ADDITION

WHISTLING VALLEY

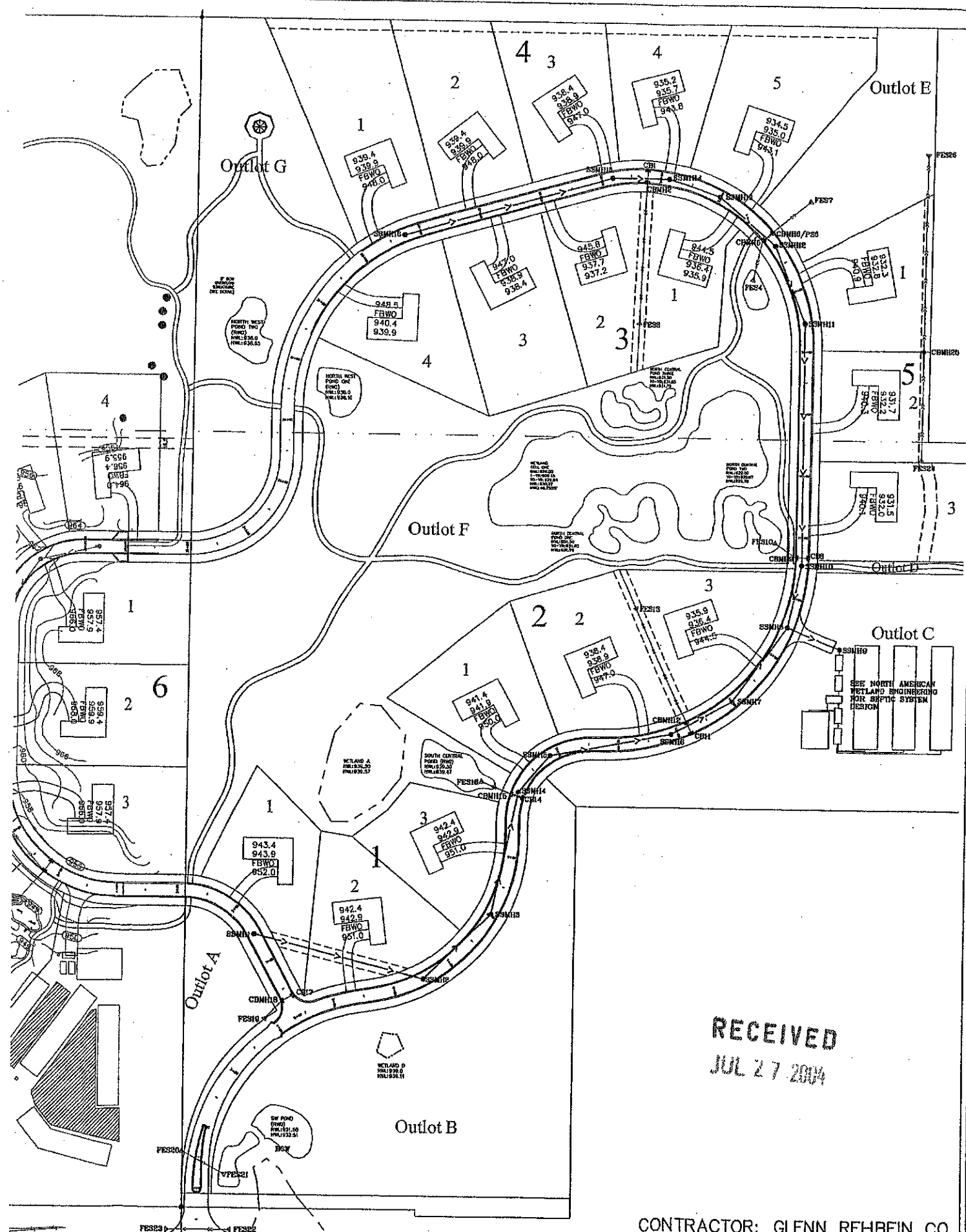


SHEET INDEX

- SHEET 1 TITLE SHEET
- SHEET 2 SANITARY SEWER PLAN & PROFILE FOR WHISTLING VALLEY ROAD
- SHEET 3 SANITARY SEWER PLAN & PROFILE FOR WHISTLING VALLEY ROAD
- SHEET 4 STORM SEWER AND STREET PLAN & PROFILE FOR WHISTLING VALLEY ROAD
- SHEET 5 STORM SEWER AND STREET PLAN & PROFILE FOR WHISTLING VALLEY ROAD
- SHEET 6 STORM SEWER AND STREET PLAN & PROFILE FOR WHISTLING VALLEY ROAD
- SHEET 7 STORM SEWER PLAN & PROFILE
- SHEET 8 STORM SEWER PLAN & PROFILE
- SHEET 9 STREET PLAN
- SHEET 10 STREET INTERSECTION AND TURN LANE PLAN
- SHEET 11 DETAIL SHEET
- SHEET 12 DETAIL SHEET

UTILITY LEGEND

- PROPOSED SANITARY SEWER
- PROPOSED SANITARY SEWER STRUCTURE
- PROPOSED STORM SEWER
- PROPOSED STORM SEWER CB DENOTED BY CB#
- PROPOSED STORM SEWER CBMH DENOTED BY CBMH#



REVISIONS	BY

I HEREBY CERTIFY THAT THIS PLAN OR SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

W.A.T. McCULLY
DATE: _____ REG. NO. 23138

REHBEIN
COMPANIES

GLENN

8851 NAPLES ST. N.E. BLAINE, MN 55449-6724
WWW.REHBEIN.COM
TEL: (763) 784-0657
FAX: (763) 784-8001

TITLE SHEET
WHISTLING VALLEY 2ND ADDITION
ANDERSON-SORENSEN HOMES, INC.
LAKE ELMO, MINNESOTA

RECEIVED
JUL 27 2004

DRAWN	DRL
CHECKED	WATM
DATE	07/23/04
VERTICAL SCALE	HORIZ. N.A.
JOB NO.	03520
BOOK	PAGE
SHEET	1
OF	12 SHEETS

CONTRACTOR: GLENN REHBEIN CO.
PROJECT#: 04025

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

RESOLUTION NO. 2004-033

**A RESOLUTION APPROVING THE OP DEVELOPMENT STAGE PLAN,
CONDITONAL USE PERMIT, AND PRELIMINARY PLAT OF
WHISTLING VALLEY 2ND ADDITION**

WHEREAS, Dave Sorenson of Bald Eagle Development and Elizabeth Minor have made application for a Preliminary Plat to create eighteen residential building lots and three outlots on a parcel of 45.03 acres. The property is generally located northwesterly of Keats Avenue and 10th Street, southerly and adjacent to Lake Elmo Park Reserve, and easterly of WHISTLING VALLEY, and is legally described as follows:

That part of the East One-half of the Southeast Quarter of Section 27, Township 29, Range 21, Washington County, Minnesota, being further described as follows:
Commencing at the East Quarter corner of said Section 27, thence South 0 degrees 42 minutes 48 seconds East (basis of bearings is the Washington County Coordinate System, South Zone) along the East line of said Section 27 a distance of 1318.00 feet; thence South 89 degrees 11 minutes 43 seconds West 33.00 feet to the point of beginning; thence South 0 degrees 42 minutes 48 seconds East parallel with said East Line 598.00 feet; thence South 89 degrees 11 minutes 49 seconds West 660.00 feet; thence South 0 degrees 42 minutes 48 seconds East 660.00 feet, more or less, to a point distant 60 feet northerly of the South line of said Section 27; thence South 89 degrees 11 minutes 49 seconds West along a line 60.00 feet northerly of and parallel with the South line of said Section 27 a distance of 247.09 feet; thence North 0 degrees 48 minutes 11 seconds West 10.00 feet; thence South 89 degrees 11 minutes 49 seconds West along a line 70.00 feet Northerly of and parallel with said South line a distance of 378.33 feet to its intersection with the West line of the said East One-half of the Southeast Quarter of Section 27; thence along said West line North 0 degrees 42 minutes 43 seconds West 1908.76 feet; thence North 89 degrees 11 minutes 40 seconds East 1185.33 feet, more or less, to a point 133 feet Westerly of the East line of said Section 27; thence South 0 degrees 42 minutes 48 seconds East along a line of 133.00 feet Westerly of and parallel with said East line a distance of 660.82 feet; thence North 89 degrees 11 minutes 43 seconds East 100.00 feet, more or less, to the point of beginning.

WHEREAS, at its April 12, 2004 meeting, the Planning Commission reviewed and unanimously recommended approval of this application to plat a 45.03 acre parcel as a residential development of 18 building lots and three outlots.

WHEREAS, the Preliminary Plat of WHISTLING VALLEY 2ND ADDITION was presented to the City Council at its April 20, 2004 City Council Meeting where the following Findings were made:


1. The OP Development Stage Plan is consistent with the Lake Elmo Comprehensive Plan and the approved OP Concept Plan.

2. The OP Development Stage Plan complies with the documentation requirements and standards of the OP Ordinance, except as noted.
3. The Preliminary Plat complies with the documentation requirements and standards of Section 400 of the City Code (Subdivision).

NOW, THEREFORE, BE IT RESOLVED, that the City Council for the City of Lake Elmo does hereby approve and accept the Preliminary Plat of WHISTLING VALLEY 2ND ADDITION, per plans that staff dated April 15, 2004, and April 6, 2004, as the same on file with the City Administrator, based on the following Conditions:


1. The Plat/Plan shall be modified to increase the area of Lot 3, Block 1 to not less than .75 acres.
2. Compliance with the recommendations of the City Engineer, City Attorney, and those of the Valley Branch Watershed District and Washington County that are found by the City to be reasonable and proper.
3. The applicant shall secure agreement from Washington County regarding any private trail access to County right-of-way, prior to submission of the Final Plat.
4. The Applicant shall include a clause in the Covenants for this project notifying prospective purchasers that Conditional Use permits (CUP) exist in the vicinity of Whistling Valley 2nd addition, including, but not limited to Hammes Mining, Linder's Greenhouse, Oakdale Gun Club, and an airstrip for small aircraft.

ADOPTED, by the Lake Elmo City Council on the 20th day of April 2004.



Lee Hunt, Mayor

ATTEST:



Charles E. Dillerud, Acting City Administrator

Lake Elmo
City Council
August 4, 2004

Agenda Section: CITY ADMINISTRATOR'S REPORT

No. 11. A

Agenda Item: New Public Facilities: City Hall, Public Works Facilities and Possible Fire Station

Background Information for August 4, 2004:

Responding to experienced and expected future growth, the City of Lake Elmo has contracted for, developed and completed planning studies for public facility needs, staffing needs and overall property city land development. Planning work completed supports the existing character of Lake Elmo and anticipates desired development maintain the character of the community into the future.

At the Council meeting a presentation for a new City Hall, Public Works and potential Fire facility will be discussed. A number of options have been evaluated over the last year, by the Facilities Committee and the City Staff.

Two options have been identified and selected. Enclosed for your review for your review and consideration is supporting documentation for the options. The identified options anticipate public facility space needs for today and the future and include costing for each of the options. As shown in the financial analysis attached, the Park Site location provides a savings of approximately \$1,000,000 over the Brookfield location. Adding the new Fire Station component on at that location as proposed will add an approximate \$800,000 to the Park Site location.

The Park Site location also anticipates, incorporates and encourages the planning work completed for the "Old Village Area". Focusing the anticipated public investment for the needed public facilities at the Park Site location will facilitate implementation of the "Old Village Plan".

Action Items:

Motion endorsing Council selected option.

Person responsible:

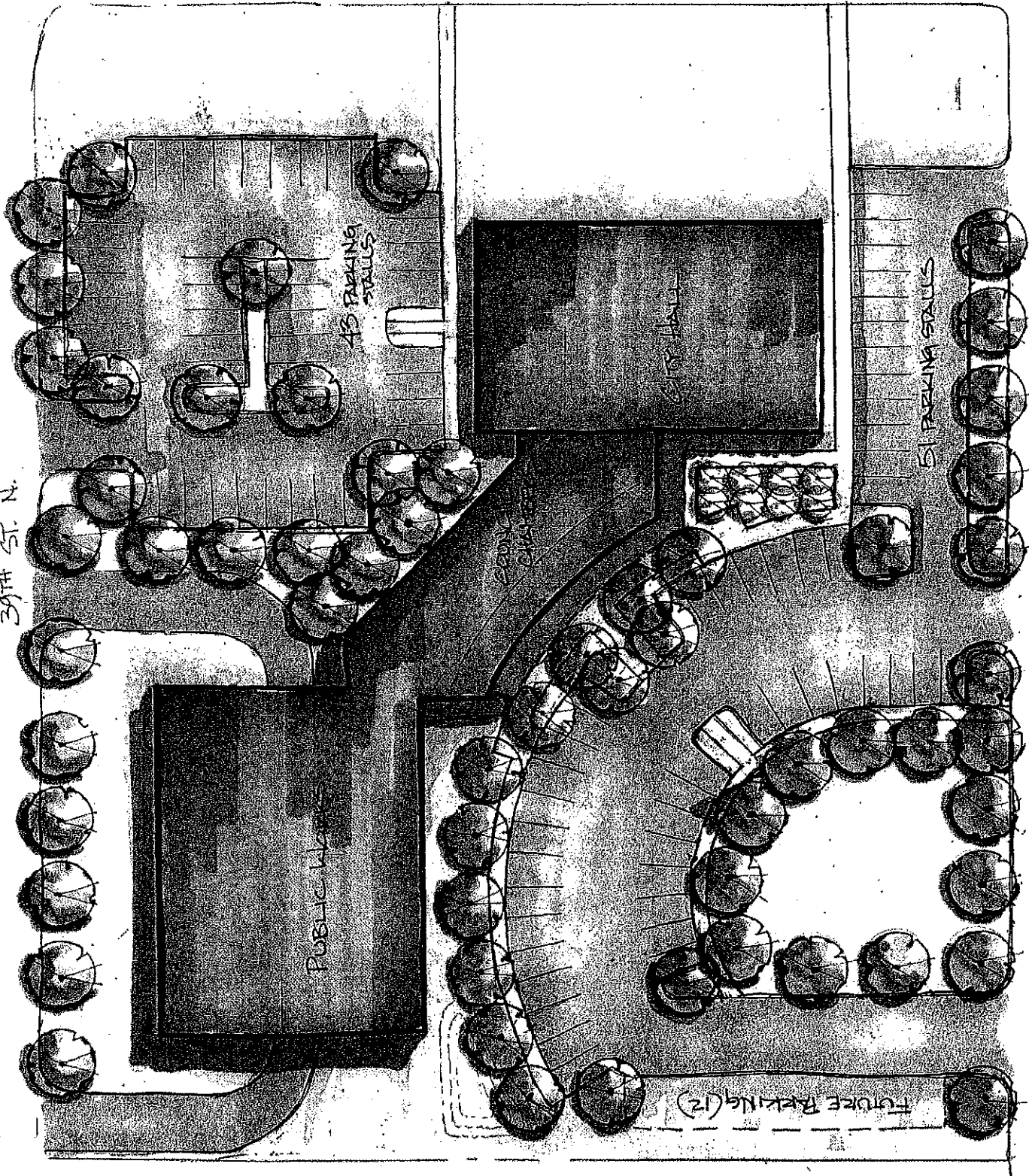
Martin Rafferty

Attachments:

Sites Plans for the Brookfield Site and the Park Site.
Financial comparisons of presented options.

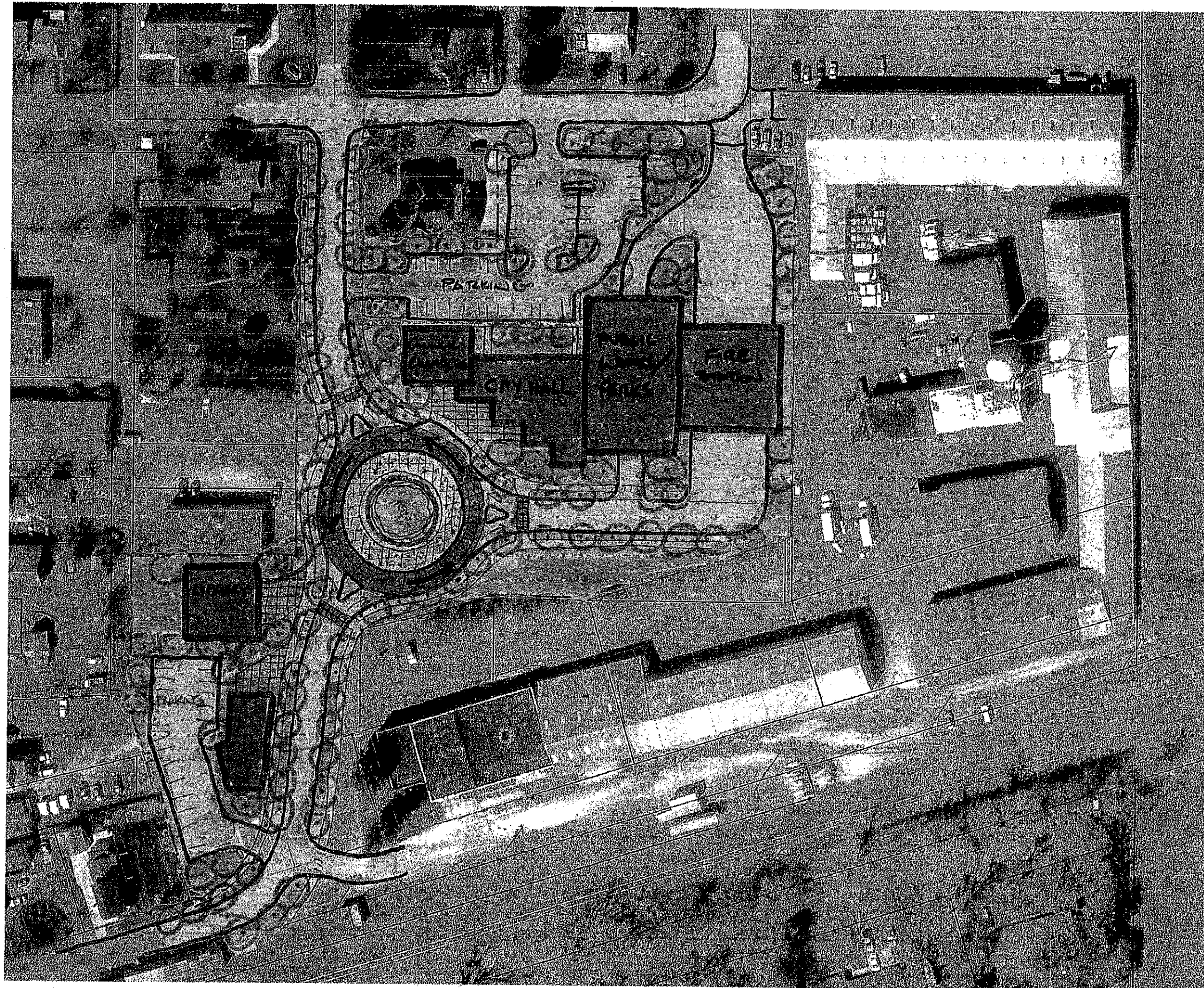
39TH ST. N.

LAVENUE AVE. N.

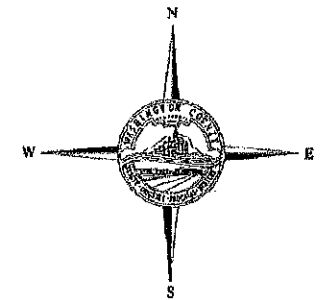


EXISTING ACCESS ROAD





- EXISTING BASEBALL DIAMOND AND PARK SITE CENTRAL TO LAKE ELMO.
- PROPERTY ALREADY OWNED BY THE CITY OF LAKE ELMO.
- CITY HALL/PUBLIC WORKS CAMPUS IN THE HEART OF THE OLD VILLAGE.
- SITE WITHIN WALKING DISTANCE TO RETAIL AND RESIDENTIAL NEIGHBORHOOD.
- OPPORTUNITY FOR A TOWN SQUARE CITY CAMPUS CENTER IMAGE.
- OPPORTUNITY TO CONNECT TO LARGER DRAINFIELD OFF SITE NEARBY.
- OPPORTUNITY TO SHARE RAINWATER RUNOFF COLLECTION WITH LARGER AREA.
- OPTION TO INCLUDE NEW FIRE STATION AS PART OF THIS CAMPUS.
- POSSIBLE FUNDING ASSISTANCE FROM STATE ON STREET RECONSTRUCTION.
- OPPORTUNITY TO CONVERT CURRENT FIRE STATION INTO LIBRARY WITH PARKING.



**LAKE ELMO CITY HALL
CAMPUS MASTER PLAN
EXISTING PARK SITE**

July 27, 2004



TKDA
ENGINEERS • ARCHITECTS • PLANNERS



CITY OF SAINT PAUL

12A.
minneapolis
city of lakes

July 12, 2004

Dear Colleagues:

Over the past several years we have all come to learn a great deal more about the public health dangers of second-hand smoke. This accumulated body of scientific knowledge certainly justifies us revisiting our smoking policies on a local, regional, and statewide basis.

In fact, within the last few years and in the face of this mounting evidence regarding the harm from second-hand smoke, a handful of Minnesota local governments have considered and implemented smoking ordinances. More recently, a statewide smoking ban was considered at the State Legislature and many of our own colleagues in surrounding communities have engaged in discussions about the best way to impose local restrictions on smoking.

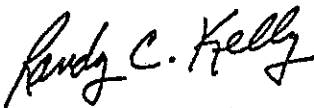
Last week a group of local elected officials met to discuss the value of a regional, coordinated effort to restrict smoking. Our meeting brought agreement to share information about various approaches with local officials in the seven-county area. Our meeting also brought agreement that a regional approach to regulating smoking makes sense from both a public health and an economic standpoint. With a regional approach, we can set aside the false choice of health versus economics that is presented when one local jurisdiction tries to regulate commerce on its own. The people of our region deserve no less.

To that end, we have enclosed for your review some background materials outlining the various approaches taken by other communities here in Minnesota and throughout the country. We have also enclosed a few specific ordinances for your use in discussion in your own communities.

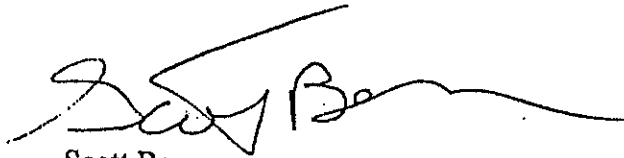
Whether you are just beginning to wade into this issue, or have already begun deliberations, we ask that you share your thoughts and ideas with us. In addition to the work taking place locally and statewide, we truly believe a regional network and implementation structure will help make this effort a success for everyone.

Please do not hesitate to contact one of us if you have a question, or want to participate in a regional discussion. For our residents, visitors, business owners and employees in our communities, we will continue to work to find the best solution to this problem.

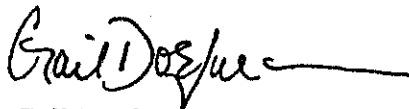
Sincerely,



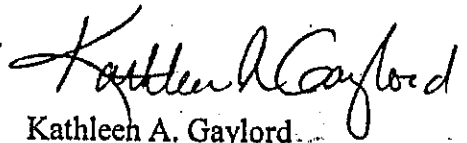
Randy C. Kelly
Mayor of Saint Paul
15 West Kellogg Boulevard
390 City Hall
St. Paul, MN 55102
651-266-8510 (Office)
Email -- randy.kelly@ci.stpaul.mn.us



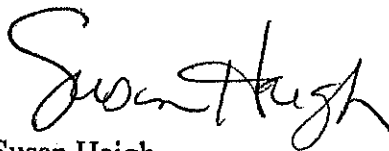
Scott Benson
Minneapolis Councilmember
350 South Fifth Street
307 City Hall
Minneapolis, MN 55415
612-673-2211 (Office)
Email -- scott.benson@ci.minneapolis.mn.us



Gail Dorfman
Hennepin County Commissioner
A-2400 Government Center
Minneapolis, MN 55487-0240
612-348-7883 (Office)
Email: gail.dorfman@co.hennepin.mn.us



Kathleen A. Gaylord
Dakota County Commissioner
1590 HWY 55
Hastings, MN 55033
651-438-4428 (Office)
Email -- kathleen.gaylord@co.dakota.mn.us



Susan Haigh
Ramsey County Commissioner
Room 220 Court House
15 W. Kellogg Blvd.
St. Paul, MN 55102
651-266-8364 (Office)
Email: Susan.M.Haigh@co.ramsey.mn.us

Sampling of Smoking Ban Ordinances

	Summary of Ban	Enforcement Agency	Time Frame to inform Establishments	Regular Inspections/ Complaints	Fine/Penalty Civil/Criminal Establishments/People	# of Complaints/ # of Establishments
<p>Duluth Source: City Administrator and Police Lieutenant in charge of enforcement</p>	<p>The current ordinance prohibits smoking in restaurants and most public spaces. Bars, defined as any facility with a liquor license and limited menu, allow smoking. Bars that are physically separated from an attached restaurant by walls and with separate ventilation systems can have smoking. The ordinance is currently under review and most likely will be amended to a total smoking ban, no exceptions.</p>	<p>Police Department – 1 Police Officer (Licensing Officer)</p>	<p>30 days</p>	<p>Complaints only.</p>	<p>Up to \$700 Civil Fine Establishments only</p>	<p>20 complaints, 6 tickets, 14 warnings Unknown.</p>
<p>Olmsted County Source: Director, Olmsted County Environmental Health</p>	<p>Effective January 1, 2002. Ban follows a 50/50 formula – any establishment (this includes bowling alleys, private clubs, etc) with liquor sales over 50% is considered a “bar” and allows smoking, any establishment with liquor sales under 50% is considered a “restaurant” and is non-smoking. Restaurants with bars must be physically separated and have a separate ventilation system to allow smoking. Restaurant bars then given a separate license with charge of \$196. 86% of establishments are smoke free. There are 44 establishments where smoking is allowed.</p> <p>Smoking ban in kitchen and dining areas only of multi-purpose facilities. Gives the Rochester City Council authority to grant smoking exemptions to convention center for events. No current plans to amend ordinance.</p>	<p>Environmental Health. Distributed among 3 FTE's on top of current work load. Environmental Health in Olmsted County licenses bars and restaurants. These inspectors are responsible for smoking enforcement.</p>	<p>30 days, although the County spent one year with 30 public hearings developing the ordinance</p> <p>Each restaurant and bar were visited before ban for education.</p>	<p>Complaints only.</p>	<p>Petty Misdemeanor according to state law Civil Fine Establishments and People – establishments are subject to penalty if they do not take action to discourage smoking (ashtrays, failing to ask smokers to stop, etc). People are subject to “disorderly conduct” fines if caught smoking.</p>	<p>3 Complaints in 2003 272 Establishments The County has never issued a fine due to this ordinance.</p>
<p>Madison, WI Source: Director, Madison Health Department</p>	<p>Currently, no smoking in bars and restaurants that have alcohol sales of 50% and less. A separately ventilated area (solid walls that totally separate a smoking area) in a restaurant or bar is an exception to this ban. Can smoke in facilities with alcohol sales over 51%. There are 122 establishments where smoking is allowed. This will change on July 1, 2005 when a total no smoking ban will take effect. Madison already had a smoking ban in the work place and many other common public areas.</p>	<p>Health Department. Distributed among 8 FTE's with 1 FTE dedicated full time to enforcement.</p>	<p>Current ban was effective immediately upon passage. Total ban, which will be in effect as of July 1, 2005, has been publicized for over a year.</p>	<p>Complaints and annual inspections for no smoking signage, ashtrays and other smoking-related items.</p>	<p>\$125 first offense, \$500 second and subsequent offenses. Citations issued after 3rd complaint. Civil Fine Establishments, although effective July 1, 2005 people can also be fined.</p>	<p>Average 16 per week (832 annual), includes not just people caught smoking but, also, improper signage, ashtrays, etc. 800 Establishments</p>

<p>St. Paul (proposed) Source: License Director.</p>	<p>The proposed ordinance prohibits smoking in all restaurants, pool halls, bowling centers, and all licensed liquor establishments, and</p> <ul style="list-style-type: none"> • Establishments must post "no smoking" signage in conformance with the MN Clean Indoor Air Act Rules • Proprietors must ensure that ashtrays, lighters, and matchbooks are not provided • Establishment must inform any smoker of the prohibition, and then eject that person from the premises if the smoker refuses to comply. 	<p>Anticipated that the Police Department will enforce although the PD has not yet committed to this.</p> <p>The Inspections and Environmental Protection (LIEP) department rejected enforcement responsibilities citing overtime budgetary issues.</p>	<p>Unknown</p>	<p>Complaints only.</p>	<p>\$300 for the first violation, and a \$1,000 fine for each day of violation thereafter</p> <p>Civil Fine</p> <p>Establishments only</p>	<p>Undetermined at this time.</p>
<p>New York City Source: Supervisor, Health Department</p>	<p>The current ordinance prohibits smoking in most public spaces. They have a waiver process but the Administrator stated that process was cumbersome and confusing.</p>	<p>Center for Environmental Health</p>	<p>6 - 8 month education period</p>	<p>Complaints only.</p>	<p>\$100-\$1000</p> <p>Civil Fine</p> <p>Establishments only</p> <p>Larger fine given if establishment is "participating" in smoking (i.e. bartender or waiter smoking on premises).</p>	<p>Exact Numbers not available.</p> <p>Complaints high the first two months then tapered off.</p>
<p>Boston, MA Source: Supervisor, Public Health Commission</p>	<p>The current ordinance prohibits smoking in all businesses that have employees. This is a total ban with no waivers or exceptions. Campaign: "Clean Air Works."</p>	<p>Public Health Commission</p> <p>Hired 4 part-time temporary staff for 6 months for 3 months education and 3 months enforcement.</p>	<p>6 months for education with a \$92,000 education budget</p>	<p>Regular Inspections and Complaints.</p> <p>Each restaurant and bar were visited before ban for education.</p>	<p>\$100-\$1000</p> <p>Civil Fine</p> <p>Establishments only</p>	<p>First month 50 than an average of 15 each month after (180 annually).</p> <p>1,900 locations</p>

Olmsted County Smoke-Free Restaurant

Resolution No. 01-102

WHEREAS, non-smoking sections in buildings do not eliminate non-smokers' exposure to second-hand smoke (U.S. Environmental Protection Agency Office of Air and Radiation IARC Scientific Publications 81:25-41, 1987); and

WHEREAS, carcinogens found in Environmental Tobacco Smoke (ETS) are causally related to cancer. It is estimated that every year 3,000 non-smokers in the U.S. die of lung cancer related to ETS (60 deaths in MN). To date, over 50 substances in second-hand smoke have been identified as carcinogens. (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, annually between 35,000 and 62,000 non-smokers die in the U.S. (700 to 1,240 deaths in MN) from Ischemic heart disease related to ETS (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, each year 9,700 to 18,600 low birth weight babies born in the U.S. (190 to 370 in MN) are causally related to ETS (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, annually between 1,900 and 2,700 deaths from Sudden Infant Death Syndrome (SIDS) occur in the U.S. (30 to 50 deaths in MN) related to ETS (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, irritants in ETS cause 150,000 cases annually of bronchitis and pneumonia (3,000 cases in MN). Irritants also cause 700,000 cases annually of middle ear infections in children in the U.S (14,000 in MN) (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, a review of 2000 children in Olmsted County has shown an average of 17.3% having asthma, which is 2.5 times the national average (study conducted by Dr. Barbara Yawn, Olmsted Medical Center researcher). Asthma that becomes worse due to ETS occurs in 400,000 children annually in the U.S. (8,000 children in MN) (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, ETS rapidly diffuses throughout a room. Using indoor air quality standards, ventilation rates would have to be increased more than a thousand-fold to reduce cancer risk associated with ETS. Such ventilation rate would result in a virtual windstorm indoors (Repace, J. "Risk Management and Passive Smoking at Work and at Home," St. Louis University Public Law Review, 13(2): 763-785, 1994); and

WHEREAS, the U.S. Department of Health and Human Services Healthy People 2010 has as one of its objectives to cut exposure to ETS by non-smokers from 65% in 1994 to 45% in 2010 (U.S. Department of Health and Human Services Healthy People 2010, Washington D.C., U.S. Department of Health Human Services 2000); and

WHEREAS, sitting in a smoke-free section of a restaurant for two hours is like smoking 1½ cigarettes (Presentation by Katherine Hammond, PhD, University of California School of Public Health); and

WHEREAS, nine out of ten non-smokers are exposed to ETS at least once every 2 to 3 days (Journal of the American Medical Association, January 1998); and

WHEREAS, Minnesota Statute § 145A.04 establishes the powers and duties of a Board of Health to enforce ordinances related to public health for the territory within its jurisdiction; and

WHEREAS, Minnesota Statute § 145A.05 authorizes a County Board to adopt ordinances to regulate actual or potential threats to the public health and to define public health nuisances and to provide for their prevention; and

WHEREAS, after due public notice a hearing was held on November 13, 2001, by the Olmsted County Board of Commissioners, pursuant to Minnesota Statute 375.51.

NOW, THEREFORE BE IT RESOLVED, that the Olmsted County Board of Commissioners as the Public Health Board for Olmsted County adopts the "Olmsted County Smoke-free Restaurant Ordinance", as on file in the County Administrator's office, on this 13th day, of November, 2001

Dated: November 13, 2001

BOARD OF COUNTY COMMISSIONERS

Jean Michaels, Chairperson

ATTEST:

Richard G. Devlin, Clerk-Administrator

RESOLUTION NO. 01-102

The County Board of the County of Olmsted, Minnesota, ordains:

SECTION A. Title:

This ordinance shall be known and referenced as the Olmsted County Smoke-free Restaurant Ordinance.

SECTION B. Jurisdiction:

Subd. 1. As provided in MN Statute §145A.05, this ordinance applies throughout all of Olmsted County, including the municipalities therein.

Subd. 2. As provided in MN Statute §145A.04, the Community Health Board is authorized to enforce laws, regulations, and ordinances within its jurisdictional area.

Subd. 3. Nothing in this ordinance shall prevent other local levels of government, within Olmsted County, from adopting more restrictive measures to protect citizens from second-hand smoke.

SECTION C. Definitions:

Subd. 1. Definitions in this ordinance pertain only to this ordinance.

Subd. 2. Bar. "Bar" shall mean any establishment that a) has an on-sale 3.2 percent malt liquor license issued pursuant to Minn. Statute § Section 340A.403; or an on-sale intoxicating liquor license issued pursuant to Minn. Statute § Section 340A.404; and b) whose sales of beer, malt liquor, and intoxicating liquor is projected for an initial licensee to be - or is demonstrated for an existing licensee to be - more than 50 % (percent) of the total of net sales of food and beverages, after taxes that are served in the bar. These are the sales reported to Federal and/or State Revenue Authorities from the most recent liquor licensing year. However, sales for service to customers in a separately licensed business shall not be included as part of the total net sales for an establishment seeking this "bar" classification.

Subd. 3. Establishment. "Establishment" means the portion of a building, including the infrastructure, that is typically reviewed, assessed, inspected, and included as part of the plan review, licensing, and monitoring processes of food and/or beverage facilities by the applicable public health licensing authorities. It also includes, in the case of multi-purpose buildings and rooms and for the purposes of this ordinance, those portions of the building that are being used for food and/or beverage services during an event.

Subd. 4. Other Person in Charge. "Other Person In Charge" means the agent of the proprietor authorized to perform administrative direction to, and general supervision of, the activities within a public place at any given time.

Subd. 5. Private Club. "Private Club" shall mean an incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes; for intellectual improvement, for promotion of sports, or for a congressionally chartered veterans' organization, which:

- a. a. has more than 50 members; and
- b. b. has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; and
- c. c. is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wage fixed and voted upon each year by the governing body; and
- d. d. does not restrict its membership on the basis of race, color, creed, religion or national origin.

Any private club's exemption from the smoke-free provisions of this ordinance does not apply when such organization is established to avoid compliance with this Ordinance.

Subd. 6. Proprietor. "Proprietor" shall mean the party, regardless of whether or not the party is owner or lessee of the public place, who ultimately controls, governs, or directs the activities within the public place. The term does not mean the owner of the property, unless the owner ultimately controls, governs, or directs the activities within the public place. The term "proprietor" may apply to a corporation as well as to an individual.

Subd. 7. Restaurant. "Restaurant" shall have the meaning specified in Minn. Stat. Section 157.15, Subd.12. "Restaurant" includes those portions of a multi-purpose building that is being used for food and/or beverage services during an event. The term "restaurant" does not include a "bar," as defined in this ordinance.

Subd. 8. Smoking. "Smoking" shall mean inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, other plant substances or other lighted smoking equipment in any manner or in any form.

SECTION D. Smoking Prohibited in Restaurants:

Subd. 1. Smoking Prohibited. Except as provided in Subd. 2, smoking is prohibited in all indoor areas of any restaurant and its indoor entrance areas, commonly referred to as vestibules, alcoves, and foyers.

Subd. 2 Exemptions. The prohibitions of subd.1 do not apply to the following places or situations:

- a. a. Bars, including those that are immediately adjacent to a restaurant, provided that the following separations are maintained:

- 1) 1) The bar is separated from the restaurant on all sides by continuous floor-to-ceiling walls, which are interrupted only by closeable doors, that

- are continuously closed, except when a person is actively entering or exiting the bar; and
- 2) 2) The bar ventilation systems are totally separated from the restaurant, with the bar maintaining a negative air pressure in relation to the adjacent restaurant; and
 - 3) 3) Whose revenues from the sale of food in this portion of the restaurant are consistent with the definition in this ordinance; and
 - 4) 4) Consistent with Minnesota Statute § 340A.503, Subd. 4. (b), the bar does not permit entrance or employment of minors at any time; and
 - 5) 5) The bar has a Food and/or Beverage License, that is separate from the restaurant, issued by the appropriate licensing agency.
- b. b. Restaurants, that are closed to the public while being used for a private function.
- c. c. Private clubs, except when they are open to serve food or drink to the public that are not members of the club. Guests accompanied by members are considered the same as members.
- d. d. An event that includes licensed food and/or beverage service in any municipal owned and managed building, when the municipal governing body has declared specific portions of the building to be exempt for the event.

Subd. 3. Proprietor's Right to Prohibit Smoking. Nothing in this ordinance prevents the proprietor or other person in charge from prohibiting smoking in their establishment.

Subd. 4. Compliance with Minnesota Clean Indoor Air Act. Irrespective of any exceptions granted under authority of this ordinance, compliance must be maintained with the Minnesota Clean Indoor Air Act, as may be amended from time to time.

Subd. 5. Exceptions Based on False Information. Exceptions and/or variances based on false information shall render any exception or variance null and void.

SECTION E. Responsibilities of Proprietors:

Subd. 1. Records required for exemption

- a. Applicants for food and/or beverage establishments claiming exemption allowed under Section D, Subd. 2 of this ordinance, shall annually provide, in conjunction with their public health administered Food and Beverage License renewal, a copy of the annual report of food and liquor sales records as provided to State Revenue Authorities from the most recent liquor licensing year. The report shall be submitted with a form supplied by Olmsted County Public Health and the information shall be provided under oath and penalty of perjury. The report and accompanying form shall be the basis for demonstrating whether or not the establishment continues to be eligible for the exemption from the smoke-free requirements of Section D.

- b. Prospective licensees of food and/or beverage establishments seeking to open such an establishment, with an exemption from the smoke-free requirements of Section D in this ordinance, shall provide a notarized affidavit and agreement in conjunction with their application for initial Food and Beverage License administered by Public Health. The affidavit and agreement shall show that their business plan projections indicate that they are eligible for such exemption and that they will convert to a smoke-free status if their records indicate, after six calendar months of operation, that the business is not eligible for continued exemption from the smoke-free requirements of this Ordinance.

Subd. 2. Signage.

- a. a. Where smoking is allowed in a bar, private club, or a facility in which private functions are conducted, the proprietor, or other person in charge, shall conspicuously post a sign at all entrances to that area or facility stating one of the following:
 - 1) 1) "This entire establishment is a designated smoking area" or
 - 2) 2) "Warning -This area contains tobacco smoke, which causes cancer, heart disease, lung disease, and can harm you, your unborn baby, and children"
- b. b. If a bar, private club, or a facility in which private functions are conducted has both smoke-free areas and a designated smoking area, the proprietor or other person in charge shall conspicuously post, in addition to those messages required by the Minnesota Clean Indoor Air Act, signs at all initial entry points clearly stating "Warning -This area contains tobacco smoke."
- c. c. The proprietor shall also clearly indicate those areas inside the establishment where smoking is permitted and those that are smoke-free, through the use of signs required in this Subd. 2.
- d. The proprietor or other person in charge of a restaurant shall conspicuously post a sign at all entrances to the restaurant stating: "This entire establishment is smoke-free." The sign shall include the universal "no smoking" symbol.
- e. The placement and size of lettering for all signs and symbols required under this Ordinance shall be consistent with the Minnesota Clean Indoor Air Act, Minn. Stat. Sections 144.411 to 144.417, and the Minnesota Clean Indoor Air Act Rules, Minnesota Rules, Part 4620.0100 to 4620.1450.

Subd. 3. The proprietor or other person in charge shall ensure that ashtrays, lighters, and matchbooks are not provided in areas where smoking is prohibited.

Subd. 4. The proprietor, or other person in charge, shall ask any person who smokes in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, shall ask the person to leave. If the offending party refuses to leave, the operator shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.

Subd. 5. Compliance After Adoption:

- a. a. The proprietor or other person in charge shall be provided up to 30 (thirty) days after this ordinance is adopted to meet ordinance requirements.
- b. b. The Public Health Director is authorized to extend the time for completion, after considering a proprietor's written request for extension - that includes a detailed explanation of need - that the Public Health Director finds to be reasonable.
- c. c. Such extension, made at the Director's discretion, shall be limited to no more than 90 (ninety) days. Extensions beyond that authorized in this subdivision shall be according to the authorized appeals process.

SECTION F. No Retaliation:

No person shall discharge, refuse to hire, refuse to serve or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer makes a report or files a complaint alleging a violation of this ordinance.

SECTION G. Violations:

Consistent with Minn. Stat. Sections 375.53 and 609.02, violations of this ordinance shall be a petty misdemeanor.

SECTION H. Exceptions, Appeals, and Resolution of Violations:

Administration of this ordinance, including guidance for, challenges to, and penalties shall be according to the authorities provided in Minnesota Statute Chapter 145A, other applicable Minnesota law, and the Olmsted County Environmental Services Administrative Ordinance.

SECTION I. Severability and Savings Clause:

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation, or affect the validity or enforceability of any other section or provision of this ordinance.

SECTION J. Effective Date:

This ordinance shall be in full force and effect January 1, 2002 pursuant to Minnesota law.

Dated this 13th day of November, 2001.

BOARD OF COUNTY COMMISSIONERS

Jean Michaels, Chairperson

ATTEST:

Richard G. Devlin, Clerk-Administrator

Duluth

Article VII. Smoking in Public Places.

Sec. 28-62. Findings of fact and statement of purpose.

- (a) The Duluth City Council finds the following facts to exist:
- (1) Tobacco smoke is a major contributor to indoor air pollution, and breathing second hand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Many of these individuals cannot go into public places with second hand smoke due to their respiratory or allergenic handicap; and
 - (2) Health hazards induced by breathing second hand smoke include, but are not limited to, lung cancer, heart disease, respiratory infection and decreased respiratory function; and
 - (3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke for which there is no known safe level of exposure. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-63. Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings given them in this Section.

- (a) **Bar.** Bar means an establishment that has an onsale 3.2 percent malt liquor license issued pursuant to Minnesota Statutes Sec. 340A.403, as amended from time to time, or an onsale intoxicating liquor license issued pursuant to Minnesota Statutes Sec. 340A.404, as amended from time to time, which does not serve food or which has a limited food menu selection as defined by Minnesota Statutes Sec. 157.16, subd. 3(d)(1), as amended from time to time;
- (b) **Bar/restaurant.** Bar/restaurant means an establishment that has an onsale 3.2 percent malt liquor license issued pursuant to Minnesota Statutes Sec. 340A.403, as amended from time to time, or an onsale intoxicating liquor license issued pursuant to Minnesota Statutes Sec. 340A.404, as amended from time to time, and that holds a small, medium or large establishment food license as defined by Minnesota Statutes Sec. 157.16, subd. 3(d)(2)-(4), as amended from time to time;
- (c) **Office.** Office means any building, structure or area used by the general public or serving as a place of work at which the principal activities consist of professional, clerical or administrative services. An office includes professional offices, offices in financial institutions, business offices, telemarketing offices and government offices;
- (d) **Other person in charge.** Other person in charge has the meaning specified in the Minnesota Clean Indoor Air Act Rules, Minnesota Rules Part 4620.0100, Subpart 10, as amended from time to time;
- (e) **Proprietor.** Proprietor has the meaning specified by the Minnesota Clean Indoor Air Act Rules, Minnesota Rules Part 4620.0100, Subpart 13, as amended from time to time;
- (f) **Public conveyance.** Public conveyance means any air, land or water vehicle used for the transportation of persons for compensation, including but not limited to airplanes, trains, buses, boats and taxis;
- (g) **Public place.** Public place means any enclosed, indoor area used by the general public, including, but not limited to, restaurants, retail stores, offices and other commercial establishments, public conveyances, bars, hospitals, auditoriums, arenas, meeting rooms and common areas of hotels and motels, but excluding bowling alleys and pool halls until April 1, 2003, and excluding private, enclosed offices occupied exclusively by smokers even though such offices may be visited by nonsmokers;
- (h) **Restaurant.** Restaurant means any building, structure or area used as, maintained as, advertised as or held out to the public for food service as defined in Minnesota Rules Part 4625.2401, Subpart 15, which requires licensure under Minnesota Statutes, Chapter 157;
- (i) **Retail store.** Retail store means that portion of a commercial occupancy used for the transaction of business or the rendering of a service directly to the public, including shops, retail food stores, laundries or laundromats and department stores;
- (j) **Room.** Room means any indoor area bordered on all sides by a floor to ceiling wall. The sides must be continuous and solid except for closeable doors for entry and exit;

(k) Smoking. Smoking includes possessing or carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-64. Smoking prohibited in public places; exception.

No person shall smoke in any public place except:

(a) Restaurants that have a currently existing designated smoking area in a separate room, separately ventilated to the outside and constituting not more than 30 percent of the seating floor space and persons under the age of 18 are not permitted to enter or remain, provided that this exception shall cease to be in effect after April 1, 2003;

(b) Bars;

(c) The bar area of a bar/restaurant, if:

(1) The bar area is separately enclosed on all sides by continuous floor-to-ceiling walls, interrupted only by closeable doors; and

(2) The bar area is separately ventilated, with negative air pressure in relation to areas of the bar/restaurant where smoking is not permitted; and

(3) Minors are not permitted in the bar area at any time;

(d) A civic organization, service club, fraternal or patriotic organization or similar private membership organization, when admission to the organization is limited to members and members' guests, provided that this exception shall not apply to any organization established to avoid compliance with this ordinance [Article];

(e) The use of tobacco as part of a recognized religious ritual or activity. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9475, 12-21-2000, § 1; Ord. No. 9490, 5-29-2001, § 1; Ord. No. 9638, 12-15-2003, § 1.)

Sec. 28-65. Responsibilities of proprietors.

The proprietor or other person in charge of a restaurant subject to Chapter 28, Article VII, shall:

(a) Post no smoking signs that comply with the Minnesota Clean Indoor Air Act Rules, Minnesota Rules Part 4620.0500, as amended from time to time;

(b) Ensure that ashtrays, lighters and matchbooks are not provided in areas where smoking is prohibited;

(c) Ask any person who smokes in areas where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, ask the person to leave. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-66. Previous exemptions.

All previous exemptions are withdrawn effective April 1, 2003. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-67. Employees not required to enter bar area.

At public places that include both a restaurant and a bar, the owner shall not require nonsmoking employees to enter the bar area as part of the employee's duties without the employee's consent. (Ord. No. 9448, 6-12-2000, § 1.)

Sec. 28-68. Retaliation prohibited.

No person or employer shall discharge, refuse to hire, penalize, discriminate against or in any manner retaliate against, any employee, applicant for employment or customer because the employee, applicant or customer exercises any right to a smoke free environment afforded by this ordinance [Article] or other law. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-69. Other applicable laws.

This ordinance *[Article]* is intended to complement the Minnesota Clean Indoor Air Act, Minnesota Statute Sec. 144.411 to 144.417, as amended from time to time. Nothing in this ordinance *[Article]* authorizes smoking in any location where smoking is restricted by other applicable laws. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28.70. Violation and penalties.

(a) Smoking where prohibited. It is a violation of this Article for any person to smoke in an area where smoking is prohibited by this Article;

(b) Proprietors. It is a violation of this Article for the proprietor or other person in charge of any premises subject to this Article to fail to comply with the requirements of Chapter 28, Article VII, or to retaliate against an employee, applicant for employment or customer, as prohibited by Section 28-68;

(c) Private right of action. In addition to the penalties provided in Section 28-70(c), any person injured by a repeated or continuing violation of the Article may bring a civil action against the proprietor or other person in charge of a public place to enjoin further violations. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1; Ord. No. 9611, 7-28-2003, § 28.)

Sec. 28-71. Severability.

If any portion of this ordinance *[Article]*, or its application to any circumstances, is held invalid, the remaining provisions shall be considered severable, and shall be given effect to the maximum extent possible. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9475, 12-21-2000, § 2; Ord. No. 9490, 5-29-2001, § 1.)

Moorhead

ORDINANCE NO. 2004-13

AN ORDINANCE ENACTING TITLE 3, CHAPTER 6 RELATING TO SMOKING IN PUBLIC INDOOR WORKPLACES

BE IT ORDAINED by the City Council of the City of Moorhead as follows:

SECTION 1. Chapter 6 of Title 3 of the Moorhead City Code is hereby created and enacted to read as follows:

CHAPTER 6

SECTION:

6-1-1 Smoking in Public Indoor Workplaces Prohibited

6-1-2 Definition

6-1-3 Penalties For Violation

6-1-1 SMOKING IN PUBLIC INDOOR WORKPLACE PROHIBITED:

- A. No person shall smoke, possess or carry a lighted cigarette, cigar, pipe or other tobacco products in a public indoor workplace.
- B. The owner or other person in charge of a public indoor workplace subject to the provisions of this section must (i) post signs indicating "no smoking" or containing the international no smoking symbol; (ii) ensure that ash trays, lighters and matchbooks are not provided in areas where smoking is prohibited; and (iii) ask any person violating this section to refrain from smoking, possessing or carrying a lighted cigarette cigar, pipe or other tobacco products on the premises, and if the person does not so refrain after being asked to do so, ask the person to leave the premises immediately.

DEFINITION: "Indoor Public Workplace" means any enclosed, indoor facility, business or establishment used by the general public, or used as a place of work, including, but not limited to, restaurants, retail stores, offices and other commercial establishments, public conveyances, bars, hospitals, auditoriums, arenas, meeting rooms and common areas of hotels and motels. .

6-1-3 PENALTIES FOR VIOLATION: Violation of the provisions of this section is an infraction and the penalty imposed for a first offense of this section shall be a fine of \$100.00, for a second offense a fine of \$200.00 dollars, and for a third or subsequent offense a fine of \$500.00.

SECTION 2. This Ordinance shall take effect on September 1, 2004.

PASSED by the City Council of the City of Moorhead the 21st day of June 2004.

APPROVED:

MARK VOXLAND, Mayor

ATTEST:

KAYE BUCHHOLZ, City Clerk

First Consideration: May 3, 2004
Second Consideration: May 17, 2004
Third Consideration: June 21, 2004
Date of Publication:



Bloomington City Council to Hear Smoke-Free Ordinance

For Immediate Release

Tuesday, June 29, 2004

Contact: Karen Zeleznak
Health Administrator
City of Bloomington
(952) 563-8900
kzeleznak@ci.bloomington.mn.us

BLOOMINGTON CITY COUNCIL TO CONSIDER ORDINANCE EXPANDING SMOKE-FREE AREAS IN PUBLIC PLACES AND PLACES OF WORK

On Monday, June 28 the Bloomington Advisory Board of Health (ABH) presented a study on smoke-free workplaces to the Bloomington City Council. In February the City Council had requested the ABH to study the issue of smoke-free restaurants and bars and other work places, and provide recommendations to the Council. The ABH study is available on the City's web site at:

<http://www.ci.bloomington.mn.us/cityhall/dept/commserv/publheal/topics/sfstudyrecomm.htm>.

Following the ABH presentation and discussion, the City Council, on a 4-3 vote, directed staff to publish a notice for a public hearing on July 19, 2004 for Council consideration of an ordinance expanding smoke-free areas in public places and work places beyond the requirements of the 1975 Minnesota Clean Indoor Air Act.

The Minnesota Clean Indoor Air Act permits designated smoking areas within public places and places of work and does not regulate outdoor areas.

The proposed ordinance prohibits smoking in all defined indoor public places and places of work, with the following exceptions: (1) private residences, (2) motor vehicles, (3) designated hotel-motel sleeping rooms, and (4) Indian spiritual and cultural ceremonies (which are also exempt under the Minnesota Clean Indoor Air Act). Smoking would also be prohibited in outdoor bar and restaurant areas and within 25 feet of entrances, exits, open windows and ventilation intakes of public places and work places. The restriction does not extend to other outdoor sites beyond the existing prohibition of smoking in Bloomington's parks near youth sports activities.

The proposed ordinance will be available on the City's web site at www.ci.bloomington.mn.us by July 2.

Prior to the formal public hearing on the proposed ordinance, an administrative hearing will be held by City staff and the Advisory Health Board on July 12 at 6 p.m. in the City Council Chambers. The purpose of the administrative hearing is to answer questions and take comments.

The formal public hearing before the Bloomington City Council is scheduled for July 19 at 7:15 p.m. in the City Council Chambers. The City Council will take testimony on the proposed ordinance at that time. If adopted as proposed, the ordinance would become effective on September 1, 2004.

Comments regarding the proposed ordinance may be submitted by e-mail to council@ci.bloomington.mn.us or via U.S. mail to: Mayor and City Council, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431.

For more information, contact Karen Zeleznak, Health Administrator, 952-563-8900, or kzeleznak@ci.bloomington.mn.us.

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ORDINANCE NO. 2004 - _____

AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES
AND PLACES OF WORK

The City Council of the City of Bloomington hereby ordains:

Section 1. That Chapter 12 of the City Code is hereby amended to read as follows:

CHAPTER 12

PUBLIC PEACE AND SAFETY

ARTICLE II. PROHIBITED CONDUCT

Division O. Smoking Prohibited

SEC. 12.79. [RESERVED] FINDINGS OF FACT AND PURPOSE.

The City Council finds that:

- (a) Tobacco smoke is a leading cause of disease in nonsmokers and a major source of indoor air pollution. Secondhand smoke causes heart disease, lung cancer, respiratory infections, decreased respiratory function, reproductive problems and other health problems. Secondhand smoke kills an estimated 35,000 to 62,000 Americans each year from heart disease. Secondhand smoke also causes an estimated 3,000 lung cancer deaths in America each year.
- (b) These adverse health effects are well documented and numerous medical and scientific authorities, including the American Medical Association, the Surgeon General, the National Institute on Occupational Safety and Health, the National Cancer Institute, the Environmental Protection Agency, the National Academy of Sciences, the National Toxicology Program and the World Health Organization have recognized the deadly effects of exposure to secondhand smoke.
- (c) There is no safe level of exposure to tobacco smoke. Neither the separation of smokers and nonsmokers, nor the introduction of new ventilation systems, can eliminate the health hazards caused by secondhand smoke.
- (d) Employees in smoky workplaces are at special risk. One study has estimated that working in a smoky setting for eight hours is equivalent to smoking 16 cigarettes. Also at special risk are children, elderly people, and those with cardiovascular disease or impaired respiratory function, including people with asthma and those with obstructive airway disease.
- (e) Objective evidence does not bear out the fear that elimination of public smoking will harm a community's economy or result in a net loss of jobs in restaurants and bars. On the contrary, many independent economic studies have shown that the elimination of smoking has no material economic impact on a community. These studies are drawn from the experience of hundreds of communities that have successfully eliminated smoking in workplaces and public places. The states of California, Connecticut, Delaware, Maine, Massachusetts, and New York have adopted laws ending all smoking in bars, restaurants, and other public places, as have the nations of Ireland, New Zealand and Norway.
- (f) By reducing the exposure of young people to adult smoking and unhealthy role modeling, elimination of smoking in public places furthers Minnesota's goal of reducing youth smoking.
- (g) There is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to toxic chemicals, whether in tobacco smoke or otherwise. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.

Therefore, the City Council declares that the purpose of this ordinance is to:

- (1) Protect the public health, safety and welfare by better insuring the ability of citizens to breathe safe and uncontaminated air;
- (2) Affirm that the right to breathe has priority over the desire to smoke; and
- (3) Protect vulnerable populations including employees, children, the elderly and those with chronic health conditions.

SEC. 12.80. [RESERVED] DEFINITIONS.

The following words and terms, when used in this Division, shall have the following meanings unless the context clearly indicates otherwise:

Bar – a portion of an establishment where a person can purchase and consume alcoholic beverages.

Office – a building, structure or area used by the general public or serving as a place of work at which principal activities consist of professional, clerical or administrative services. An office includes, but is not limited to, professional offices, offices in financial institutions, business offices, telemarketing offices and governmental offices.

Other Person in Charge – the agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within a place of work and public place at any given time.

Place of Work – any enclosed, indoor location at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship, including but not limited to an employment relationship with or for a private corporation, partnership, individual, or government agency. This term includes any location where two or more individuals gratuitously perform services for which individuals are ordinarily paid. Examples of a place of work include enclosed, indoor areas of an office, a public conveyance, a factory, a warehouse, a hotel or motel, and other locations where services are performed under an employment relationship. Enclosed, indoor areas of private clubs, and rooms used for private meetings or social functions, are "places of work" if two or more persons acting under an employment relationship provide cleaning, catering, food or beverage service, maintenance or other support services in the location.

Proprietor – the party, regardless of whether the party is the owner or lessee of the place of work or public place, who ultimately controls, governs or directs the activities within the place of work or public place. The term "proprietor" may apply to a corporation as well as an individual.

Public Place – any enclosed, indoor area used by the general public or serving as a place of work, including, but not limited to, restaurants, retail stores, offices and other commercial establishments, public conveyances, auditoriums, arenas, meeting rooms, common areas of rental apartment buildings, and educational facilities other than public schools.

Restaurant – a food and beverage service establishment, whether the establishment serves alcoholic or nonalcoholic beverages.

Smoking – the inhaling, exhaling or combustion of any cigarette, cigar, pipe or any other lighted smoking equipment. Smoking includes carrying a lighted cigarette, cigar, pipe or any other lighted smoking equipment.

SEC. 12.81. [RESERVED] PROHIBITIONS.

- (a) Except as provided in subsection (c), no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants.
- (b) To ensure that tobacco smoke does not enter public places and places of work and that persons entering such places are not exposed involuntarily to tobacco smoke, smoking is prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work.
- (c) The prohibitions of this Section do not apply to:
 - (1) Private residences.
 - (2) Motor vehicles.
 - (3) The use of tobacco as part of a traditional Indian spiritual or cultural ceremony.
 - (4) Sleeping rooms of hotels and motels which are rented to guests.

SEC. 12.82. [RESERVED] RESPONSIBILITIES OF PROPRIETORS.

The proprietor or other person in charge of a public place or place of work where smoking is prohibited shall:

- (a) Post "nonsmoking" signs that comply with the Minnesota Clean Indoor Air Act Rules, Minnesota Rules Part 4620.0500;
- (b) Ensure that ashtrays, lighters and matchbooks are not provided in areas where smoking is prohibited; and
- (c) Ask any person who smokes in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, ask the person to leave or use any other means which may be appropriate to obtain compliance.

SEC. 12.83. [RESERVED] RETALIATION PROHIBITED.

No person or employer shall discharge, refuse to hire, penalize, discriminate against or in any manner retaliate against any employer, applicant for employment or customer because the employee, applicant or customer exercises any right to a smoke-free environment provided by this ordinance or other law.

SEC. 12.84. [RESERVED] PRIVATE PROHIBITIONS.

Nothing in this Division prevents the proprietor or other person in charge of any place, including, without limitation, any residence, motor vehicle or outdoor space, from prohibiting smoking in any such place.

SEC. 12.85. [RESERVED] OTHER LAWS.

This Division is intended to complement the Minnesota Clean Indoor Air Act, Minn. Stat., §§114.411 to 144.17, as amended from time to time. Nothing in this Division authorizes smoking in any location where smoking is prohibited or restricted by other laws.

SEC. 12.86. PENALTY.

Violation of any provision of this Division shall be a petty misdemeanor.

SEC. 12.87. SEVERABILITY.

If any portion of this Division is held invalid, the remaining provisions shall be considered severable and shall be given effect to the maximum extent possible.

SEC. 12.88. EFFECTIVE DATE.

This Division shall become effective on September 1, 2004.

Passed and adopted this _____ day of _____, 2004.

ATTEST:

Mayor

Secretary to the Council

APPROVED:

City Attorney