

FILE

City of Lake Elmo  
3800 Laverne Avenue North

June 2, 2009

7:00 p.m.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE:
- C. ATTENDANCE: \_\_\_ Johnston \_\_\_ DeLapp \_\_\_ Emmons \_\_\_ Park \_\_\_ Smith
- D. APPROVAL OF AGENDA: (The approved agenda is the order in which the City Council will do its business.)
- E. ORDER OF BUSINESS: (This is the way that the City Council runs its meetings so everyone attending the meeting or watching the meeting understands how the City Council does its public business.)
- F. GROUND RULES: (These are the rules of behavior that the City Council adopted for doing its public business.)
- G. APPROVE MINUTES:
  - 1. Consider approval of May 19, 2009 minutes – POSTPONED to June 16, 2009
- H. PUBLIC COMMENTS/INQUIRIES: In order to be sure that anyone wishing to speak to the City Council is treated the same way, meeting attendees wishing to address the City Council on any items NOT on the regular agenda may speak for up to three minutes.
- I. CONSENT AGENDA: (Items are placed on the consent agenda by city staff and the Mayor because they are not anticipated to generate discussion. Items may be removed at City Council's request.)
  - 2. Approve payment of disbursements and payroll
  - 3. Approval of employment status change for Firefighter Chris Klein
  - 4. Presentation of service award to Firefighter John Eder
- J. REGULAR AGENDA:
  - 5. Public Meeting: Annual Report for 2008 Municipal Separate Storm Sewer (MS4s) Systems Permit
  - 6. County Road 13 (Inwood Avenue)/15<sup>th</sup> Street N. Intersection Proposal; Resolution No. 2009-024

7. Consider a revised plan for a variance application from Mr. & Mrs. Huges, 2931 Jonquil Trail N., Resolution No. 2009-022
8. 2009 Street Improvements: Approval of plans and specs and ordering advertisement for bids; Resolution No 2009-023
9. Roseville Accounting Services

K. REPORTS AND ANNOUNCEMENTS:

(These are verbal updates and do not have to be formally added to the agenda.)

- Mayor and City Council
- Administrator
- Planning Director

L. Adjourn

UPCOMING EVENTS:

May 30 –Tree Planting & Arbor Day Celebration, Fields 2<sup>nd</sup> Addn-Little Bluestem Trail  
June 6 – Clean Up Day, Public Works Building, 8 a.m.-Noon

City Council  
6/2/2009  
CONSENT  
Item: 2

ITEM: Approve disbursements in the amount of \$ 129,447.04

SUBMITTED BY: Tom Bouthilet, Finance Director

---

<u>Claim #</u>	<u>Amount</u>	<u>Description</u>
ACH	\$ 7,309.14	Payroll Taxes to IRS 05/21/09
ACH	\$ 1,228.42	Payroll Taxes to Mn Dept.of Revenue 05/21/09
DD2206 - DD2219	\$ 18,087.71	Payroll Dated 05/21/2009 (Direct Deposit)
34246 - 34254	\$ 8,803.31	Payroll Dated 05/21/2009 (Payroll & Benefits)
34255 - 34292	\$ 94,018.46	Accounts Payable Dated 05/19/2009

**Total: \$ 129,447.04**

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve disbursements in the total amount of \$129,447.04

# Accounts Payable

## Checks for Approval

User: julie

Printed: 05/28/2009 - 11:00 AM

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34290	06/02/2009	General Fund	Engineering Services	TKDA, Inc.	631.87
34290	06/02/2009	General Fund	Engineering Services	TKDA, Inc.	6,360.46
34290	06/02/2009	General Fund	Engineering Services	TKDA, Inc.	560.35
34290	06/02/2009	Infrastructure Reserve	Engineering Services	TKDA, Inc.	3,524.81
34290	06/02/2009	Surface Water Utility	Engineering Services	TKDA, Inc.	3,986.18
34290	06/02/2009	Water	Engineering Services	TKDA, Inc.	2,123.36
34290	06/02/2009	Sewer	Engineering Services	TKDA, Inc.	115.71
34290	06/02/2009	Water	Engineering Services	TKDA, Inc.	3,587.12
34290	06/02/2009	Water	Engineering Services	TKDA, Inc.	3,554.26
34290	06/02/2009	Development Fund	Engineering Services	TKDA, Inc.	547.10
34290	06/02/2009	Development Fund	Engineering Services	TKDA, Inc.	46.28
34290	06/02/2009	Development Fund	Engineering Services	TKDA, Inc.	962.73
34290	06/02/2009	Development Fund	Engineering Services	TKDA, Inc.	138.85
34290	06/02/2009	Development Fund	Engineering Services	TKDA, Inc.	2,189.02
34290	06/02/2009	Development Fund	Engineering Services	TKDA, Inc.	138.85
34290	06/02/2009	Village	Engineering Services	TKDA, Inc.	274.46
34290	06/02/2009	Surface Water Utility	Engineering Services	TKDA, Inc.	3,378.17
34290	06/02/2009	Infrastructure Reserve	Engineering Services	TKDA, Inc.	8,126.20
34290	06/02/2009	Infrastructure Reserve	Engineering Services	TKDA, Inc.	756.90
34290	06/02/2009	Infrastructure Reserve	Engineering Services	TKDA, Inc.	9,553.11
34261	06/02/2009	General Fund	Contract Services	City of Roseville	937.50
34281	06/02/2009	General Fund	Postage	Pitney Bowes Reserve Account	1,500.00
34280	06/02/2009	General Fund	Miscellaneous	Michael Reinhardt	40.00
34279	06/02/2009	General Fund	Cable Operation Expense	Steven Press	62.71
34279	06/02/2009	General Fund	Use Tax Payable	Steven Press	-3.83
34275	06/02/2009	General Fund	Cable Operation Expense	Nicholas Anderson	58.58
34275	06/02/2009	General Fund	Use Tax Payable	Nicholas Anderson	-3.58
34269	06/02/2009	General Fund	Repairs/Maint Bldg	Greg Malmquist	374.67
34279	06/02/2009	General Fund	Cable Operation Expense	Steven Press	62.71
34279	06/02/2009	General Fund	Miscellaneous	Steven Press	47.03
34279	06/02/2009	General Fund	Use Tax Payable	Steven Press	-6.70
34284	06/02/2009	General Fund	Repairs/Maint Contractual Bldg	Diane Rud	340.80
34284	06/02/2009	General Fund	Repairs/Maint Bldg	Diane Rud	255.60

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34284	06/02/2009	General Fund	Use Tax Payable	Diane Rud	-36.40
34262	06/02/2009	General Fund	Radio	City of Woodbury	260.00
34260	06/02/2009	Water	Water Utility	City of Oakdale	4,924.20
34277	06/02/2009	General Fund	Legal Services	Peterson Fram & Bergman Corp	1,584.00
34277	06/02/2009	General Fund	Attorney Criminal	Peterson Fram & Bergman Corp	4,299.05
34287	06/02/2009	General Fund	Physicals	Stillwater Medical Group	75.00
34282	06/02/2009	General Fund	Fuel, Oil and Fluids	River Country Cooperative	130.20
34283	06/02/2009	General Fund	Miscellaneous	Rogers Printing Services, Corp	351.45
34270	06/02/2009	General Fund	Conferences & Training	Metropolitah Area Manager Asocation	25.00
34271	06/02/2009	General Fund	Refuse	Maroney's Sanitation, Inc	103.66
34271	06/02/2009	General Fund	Refuse	Maroney's Sanitation, Inc	45.62
34271	06/02/2009	General Fund	Refuse	Maroney's Sanitation, Inc	103.66
34271	06/02/2009	General Fund	Refuse	Maroney's Sanitation, Inc	198.87
34259	06/02/2009	General Fund	Conferances & Training	Century College	2,880.00
34291	06/02/2009	General Fund	Miscellaneous	Valley Trophy Inc.	150.70
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	1,040.00
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	1,040.00
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	893.00
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	980.00
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	237.00
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	237.00
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	893.00
34264	06/02/2009	General Fund	Repairs/Maint Eqpt	Emergency Apparatus Maint. INC	245.00
34288	06/02/2009	General Fund	Street Maintenance Materials	T.A. Schifsky & Sons Inc	192.25
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	117.68
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	31.50
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	30.47
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	34.50
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	31.50
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	46.30
34266	06/02/2009	General Fund	Small Tools & Equipment	Lake Elmo Oil, Inc.	46.00
34286	06/02/2009	General Fund	Contract Services	HSBC Business Solutions	57.56
34285	06/02/2009	General Fund	Repairs/Maint Bldg	St. Croix Tree Service	4,370.00
34285	06/02/2009	General Fund	Miscellaneous	Sam's Club	11.85
34285	06/02/2009	General Fund	Miscellaneous	Sam's Club	53.59
34265	06/02/2009	General Fund	Assessing Services	Sam's Club	32.94
34257	06/02/2009	General Fund	Uniforms	FXL, Inc.	2,000.00
34257	06/02/2009	General Fund	Repairs/Maint Contractual Bldg	Aramark, Inc.	36.14
34292	06/02/2009	General Fund	Radio	Aramark, Inc.	75.96
34272	06/02/2009	General Fund	Contract Services	WASHINGTON COUNTY	1,066.88
34289	06/02/2009	General Fund	Telephone	McCombs Frank Reos Assoc Inc.	2,586.60
34289	06/02/2009	General Fund	Telephone	TDS METROCOM - LLC	162.23
34289	06/02/2009	Sewer	Telephone	TDS METROCOM - LLC	154.44
34289	06/02/2009	Water	Telephone	TDS METROCOM - LLC	103.29
				TDS METROCOM - LLC	41.72

Check Number	Check Date	Fund Name	Account Name	Vendor Name	Amount
34273	06/02/2009	General Fund	Equipment Parts	MTI Distributing Inc.	19.44
34255	06/02/2009	General Fund	Information Technology/Web	American Legal Publishing Corp	262.50
34274	06/02/2009	General Fund	Telephone	Nextel Communications	101.08
34274	06/02/2009	General Fund	Telephone	Nextel Communications	115.23
34274	06/02/2009	General Fund	Telephone	Nextel Communications	35.85
34274	06/02/2009	General Fund	Telephone	Nextel Communications	58.59
34274	06/02/2009	General Fund	Telephone	Nextel Communications	17.16
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	43.75
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	20.00
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	42.60
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	28.34
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	55.00
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	28.05
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	28.60
34268	06/02/2009	General Fund	Fuel, Oil and Fluids	Lake Elmo Oil, Inc.	40.70
34258	06/02/2009	Capital Aquisitions	Other Equipment	Aspen Mills, Inc.	194.03
34258	06/02/2009	General Fund	Uniforms	Aspen Mills, Inc.	185.75
34258	06/02/2009	General Fund	Uniforms	Aspen Mills, Inc.	169.95
34258	06/02/2009	General Fund	Uniforms	Aspen Mills, Inc.	53.90
34258	06/02/2009	General Fund	Uniforms	Aspen Mills, Inc.	60.50
34256	06/02/2009	Capital Aquisitions	Other Equipment	ANCOM COMMUNICATIONS, INC.	2,222.12
34256	06/02/2009	General Fund	Radio	ANCOM COMMUNICATIONS, INC.	105.12
34267	06/02/2009	General Fund	Contract Services	Kern DeWenter Viere Ltd	2,592.00
34278	06/02/2009	General Fund	Contract Services	PLANT HEALTH ASSOCIATES, INC	1,248.00
34263	06/02/2009	General Fund	Mileage	Craig Dawson	43.10
34276	06/02/2009	Water	Water Meters & Supplies	Northern Water Works Supply IN	82.41

Total for this Date: 94,018.46

Report Total: 94,018.46

City Council  
Date: June 2, 2009  
Consent  
Action Required: Motion

ITEM: Approval of employment status change for Firefighter  
SUBMITTED BY: Chief Malmquist  
REVIEWED BY: Craig Dawson, City Administrator  
Tom Bouthilet, Personnel Director

---

SUMMARY AND ACTION REQUESTED: Move Chris Klein from Probationary Status to Regular Firefighter Status.

ADDITIONAL INFORMATION:

- Chris has met all the probationary requirements. He has successfully completed Firefighter I & II, HazMat Awareness and Operations, First Responder and CPR as well as maintained his call percentages.

RECOMMENDATION and SUGGESTED MOTION:

Motion to move Chris Klein from probationary to regular Firefighter status.



ITEM: Annual Report for 2008 Municipal Separate Storm Sewer Systems (MS4s) Permit

SUBMITTED BY: Ryan Stempiski, Assistant City Engineer

REVIEWED BY: Craig Dawson, Interim City Administrator  
Jack Griffin, City Engineer  
Mike Bouthilet, Public Works  
Carol Kriegler, Project Assistant

---

SUMMARY AND ACTION REQUESTED: The City Council is being asked to accept the Municipal Separate Storm Sewer System (MS4) Annual Report for 2008, and authorize staff to submit this report to the MPCA by June 30, 2009.

The City is required to conduct a Public Meeting on the City's Storm Water Pollution Prevention Program (SWPPP) to encourage public discussion and participation regarding its storm water quality and the steps that the City is taking to address the six minimum control measures.

Both the public meeting and the submittal of the Annual Report are required by the City's NPDES permit.

ADDITIONAL INFORMATION:

A 1987 Amendment to the Federal Clean Water Act required implementation of a two-phase comprehensive national program to reduce pollution from storm water runoff. A National Pollutant Discharge Elimination System (NPDES) permit from the Minnesota Pollution Control Agency (MPCA) is required as part of this program. The permit identifies a number of measures that must be met or implemented by each community. The six minimum measures are:

- Public Education and Outreach
- Public Involvement and Participation
- Illicit Discharge Detection and Elimination
- Construction Site Storm Water Controls
- Post-Construction Storm Water Management for development and redevelopment
- Pollution Prevention/Good Housekeeping for Municipal Operations

In addition to these minimum measures, the City of Lake Elmo must address any impaired waters as identified by the USEPA list and review whether changes may be warranted in the City's SWPPP. Also, the City of Lake Elmo does ultimately discharge to outstanding resource value water (ORVW) (the St. Croix River) and must work to identify all discharges to the ORVW.

The City's Storm Water Pollution Prevention Program (SWPPP) specifies best management practices intended to satisfy the permit requirements for each of the minimum measures. As part of this program, the City is required to hold an annual meeting to encourage public discussion and participation regarding its storm water quality and steps it is taking to address the six minimum control measures. A copy of the SWPPP is available by contacting the City Engineer. An annual report for 2008 MS4s must be submitted to the MPCA by June 30, 2009. The minutes



of the annual public meeting will be incorporated into the City's annual report. The meeting will be held as part of the regular City Council meeting at City Hall. The agenda for this meeting will include:

- 1) A Presentation about implementation of the City's Surface Water Pollution Prevention Program in 2008,
- 2) Affording interested persons an opportunity to make oral statements concerning the Storm Water Pollution Prevention Program,
- 3) Consideration of relevant written materials that interested persons submit concerning the Storm Water Pollution Prevention Program; and,
- 4) Consideration of public input in making adjustments to the 2009 implementation plan for the Storm Water Pollution Prevention Program.

#### RECOMMENDATION

After the Council conducts a Public Meeting and receives Public comment;

*Suggested motion for consideration:*

*Staff recommends a motion to accept the Municipal Separate Storm Sewer System (MS4) Annual Report for 2008, and authorize staff to submit this report to the MPCA by June 30, 2009.*

#### SUGGESTED ORDER OF BUSINESS:

Introduction	City Administrator
Staff report	Ryan Stempski, Assistant City Engineer
Questions from council to staff	Mayor facilitates
Receive public comment (Public Meeting)	Mayor facilitates
Discussion	Mayor and Councilmembers
Action on motion	City Council

#### ATTACHMENTS:

1. MS4 Annual Report for 2008

# ANNUAL REPORT for 2008

## MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)

Reporting period January 1, 2008 to December 31, 2008

Due June 30, 2009

**USE OF THIS FORM IS MANDATORY** By completing this Annual Report form, you are providing the Minnesota Pollution Control Agency (MPCA) with a summary of your status of compliance with permit conditions, including an assessment of the appropriateness of your identified best management practices (BMPs) and progress towards achieving your identified measurable goals for each of the minimum control measures as required by the MS4 Permit. If an MS4 determines that program status or compliance with the permit can not be adequately reflected within the structure of this form additional explanation and/or information may be referenced in an attachment. This form has significant limitations and provides only a snap shot of MS4 compliance with the conditions in the Permit. After reviewing the information MPCA staff may need to contact the MS4 to clarify or seek additional information. MPCA enforcement policy is to provide the opportunity to respond to any alleged violations before any enforcement action is taken.

**Submit your annual report by June 30, 2009 to:**

Minnesota Pollution Control Agency  
Municipal Division  
520 Lafayette Road North  
St. Paul, MN 55155-4194

This Annual Report may be submitted electronically via email to the MPCA MS4 Program mailbox: [ms4permit@pca.state.mn.us](mailto:ms4permit@pca.state.mn.us). If submitting electronically, this form must be sent via email from the person that is duly authorized to sign this form under the Owner/Operator Certification section. A confirmation email will be sent in response to electronic submissions. If you would like to obtain an electronic copy of the MS4 Annual Report for 2008 form, please visit: [www.pca.state.mn.us/water/stormwater/stormwater-ms4.html](http://www.pca.state.mn.us/water/stormwater/stormwater-ms4.html).

If you have further questions, please contact one of these MPCA staff members (call toll-free 800-657-3864). Note new numbers effective November 2008:

- Keith Cherryholmes 651-757-2270
- Joyce Cieluch 218-846-7387
- Scott Fox 651-757-2368
- Amy Garcia 651-757-2377

### Minimum Control Measure 1: Public Education and Outreach [V.G.1]

City of Lake Elmo

Name of MS4

Craig Dawson, City Administrator

Name of Contact Person

(651) 233-5401

[cdawson@lakeelmo.org](mailto:cdawson@lakeelmo.org)

Telephone (including area code)

Email Address

3800 Laverne Avenue North

Mailing Address

Lake Elmo

Minnesota

55042

City

State

ZIP code

- A.** The permit requires each MS4 to implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and steps that the public can take to reduce pollutants in stormwater runoff. [Part V.G.1.a] **NOTE:** Please indicate which of the following distribution methods you used during the 2008 calendar year. Indicate the number distributed in the spaces provided (enter "0" if the method was not used or "NA" if the data does not exist)::

Media type	Number of media	Number of times published	Circulation/Audience
<i>Example: Brochures:</i>	<i>3 different brochures</i>	<i>published 5 times</i>	<i>about 10,000</i>
Brochures:	Multiple brochures and flyers (Blue Thumb brochures, list of local Blue Thumb retailers and resources, map of watersheds and grant info, native plants lists, buckthorn brochure, Rain barrel info and where to buy, Washington County impaired waters map, buffer brochure, Blue Thumb Guide to Raingardens book)	Distributed at events and year-round at the Lake Elmo Library and City Hall	Washington County Fair (500 flyers), Library kiosk (200 brochures and 30 raingarden manuals), WCD tree sale (50 brochures), Lake Elmo Park hike (30 brochures)
Newsletter:	Washington County newsletter, Washington Conservation District newsletter, Lake Elmo city newsletter	WashCo newsletter (4 times yearly), WCD newsletter (3 times yearly), Lake Elmo newsletter (4 times yearly)	Wash Co newsletter (7966 in LE), WCD newsletter (312 in LE), city newsletter (7966)
Posters:	0	0	0
Newspaper articles:	Pioneer Press; Stillwater Gazette, Oakdale – Lake Elmo Review	Pioneer Press (5 articles yearly); Gazette and Review (52 articles yearly)	Pioneer Press (79,000 in Washington Co.), Stillwater Gazette (20,993), Oakdale-Lake Elmo Review (11,066)
Utility bill inserts:	0	0	0
Radio ads:	1 through Clean Water MN media campaign	26 radio ads on MN Public Radio; 60 radio ads during MN Twins baseball games	MPR - 544,000 impressions; WCCN - 1.3 million impressions (statewide)
Television ads:	2 through Clean Water MN media campaign	200 ads on prime time cable TV, multiple channels	7.2 million impressions (statewide)
Cable Access Channel:	0	0	0
Other:	Billboards	16 Streets to streams – cleanwatermn.org billboards throughout the metro area; 16 Blue Thumb – Planting for Clean Water billboards throughout the metro area	292,000 impressions per day for one month

If you use a stormwater Web site as a tool to distribute stormwater educational materials:

What is the URL: [www.lakeelmo.org](http://www.lakeelmo.org), [www.cleanwatermn.org](http://www.cleanwatermn.org), and [www.bluethumb.org](http://www.bluethumb.org)

How many hits to the stormwater page during 2008: unknown

Did you hold stormwater related events, presentations to schools or other such activities  Yes  No

If yes, please describe:

- a. Training workshop for 40 master gardeners (Blue Thumb)
- b. 2 training workshops for landscape professionals (137 attendees)
- c. City council presentation on conservation development
- d. Presentation to McDonald Lake Association (30 people)
- e. 2 training workshops for public works staff (3-4 staff from Lake Elmo attended)
- f. Spring Seminar "Landscaping for Wildlife" (25 people)

g. Highway 5 landscaping project (20 people)

h. Buckthorn Bustling at Pebble Park - education and active participation (unknown)

I. 2 Raingarden design workshops at Mahtomedi (unknown)

**B.** What stage of development would you assign to each area of your stormwater education program? (If there are multiple components for a Minimum Control Measure (MCM) check the one box that most accurately reflects the overall stage for that MCM). You may include an attachment if further explanation is desired.

- MCM 1:**  Not started  Research  Development  Early Implementation  Program in place  
**MCM 2:**  Not started  Research  Development  Early Implementation  Program in place  
**MCM 3:**  Not started  Research  Development  Early Implementation  Program in place  
**MCM 4:**  Not started  Research  Development  Early Implementation  Program in place  
**MCM 5:**  Not started  Research  Development  Early Implementation  Program in place  
**MCM 6:**  Not started  Research  Development  Early Implementation  Program in place

**C.** Have you developed partnerships with other MS4s, watershed districts, local or state governments, educational institutions, etc. to assist you in fulfilling the requirements for Minimum Control Measure 1?  Yes  No

**D.** List those entities with which you have a partnership to meet the requirements of this MCM and describe the nature of the agreement(s) (list if level of effort exceeded 10 hours): Lake Elmo is a member of the East Metro Water Resource Education Program (EMWREP) and contributes \$2000 per year to the program. EMWREP is a partnership formed to develop a comprehensive water resource education and outreach program for the east metro area of St. Paul, MN. Members of EMWREP include Brown's Creek, Comfort Lake - Forest Lake, Rice Creek, Ramsey-Washington Metro, South Washington, and Valley Branch Watershed Districts, Lower and Middle St. Croix Watershed Management Organizations, the cities of Cottage Grove, Dellwood, Forest Lake, Lake Elmo, Stillwater, West Lakeland Twp and Willernie, Washington County and the Washington Conservation District. The EMWREP region covers all of Washington County as well as a small portion of Ramsey and Anoka Counties. The goal of EMWREP is to reduce non-point source water pollution from storm water runoff and illicit discharges by educating citizens, municipal staff and officials, developers and businesses. Lake Elmo attends two annual meetings per year to help guide the direction of the EMWREP program (5 hours total) and also corresponds via e-mail and phone throughout the year. The EMWREP 2008 Annual Report is attached for reference.

**Minimum Control Measure 2: Public Participation/Involvement [V.G.2]**

**A.** Did you hold a public meeting to present accomplishments for calendar year 2008 and to discuss your Stormwater Pollution Prevention Program (SWPPP)? [Part V.G.1.e] If no, explain: N/A  Yes  No

**B.** What was the date of the public meeting? June 2, 2009

**C.** How many citizens attended specifically for stormwater (excluding board/council members and staff/hired consultants)? \_\_\_\_\_

**D.** Was the public meeting a stand-alone meeting for stormwater or was it combined with some other function such as a City Council meeting?  Stand-alone  Combined

**E.** Each MS4 must receive and consider input from the public prior to submittal of your annual report. Did you receive written and/or oral input on your SWPPP? [Part V.G.2.b.1-3].  Yes  No

**F.** Have you revised your SWPPP in response to comments received from the public in calendar year 2008 or early 2009 (if meeting held in 2009)? [Part V.G.2.c] If yes, describe. Attach a separate sheet if necessary: \_\_\_\_\_  Yes  No

**Minimum Control Measure 3: Illicit Discharge Detection and Elimination [V.G.3]**

The permit requires MS4s to develop, implement and enforce a program to detect and eliminate illicit discharges as

defined in 40 CFR 122.26(b)(2) in your SWPPP. You must also select and implement a program of appropriate BMPs and measurable goals for this minimum control measure.

<p><b>A.</b> Have you completed a storm sewer system map in accordance with the requirements of the permit? (MPCA assumes that completed maps will still need updates and corrections as changes occur). If yes, describe the form in which the map is available: <input type="checkbox"/> Hardcopy only <input checked="" type="checkbox"/> GIS system <input type="checkbox"/> CAD <input type="checkbox"/> Other system: _____ If no, please explain: _____ <b>NOTE:</b> The storm sewer system map was to be completed by June 30, 2008. [Part V.G.3.a]</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---

<p><b>B.</b> Has an ordinance or other regulatory mechanism been adopted to prohibit illicit discharges or other non-stormwater discharges from entering your system? Provide the date for the most relevant part of the regulatory mechanism that was adopted or estimated date of adoption: <u>December 31, 2009</u></p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
--	---

<p><b>C.</b> Have you completed the tasks associated with the schedule listed on BMP Summary Sheet 3c-1 in your program for illicit discharge detection and elimination? (attach additional information if needed) Indicate the status of development for tasks associated with BMP Summary Sheet 3c-1: <input type="checkbox"/> Not started <input type="checkbox"/> Research <input checked="" type="checkbox"/> Development <input type="checkbox"/> Implementation <input type="checkbox"/> Program in place</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
--	---

<p><b>D.</b> Have you completed the tasks associated with the schedule listed on BMP Summary Sheet 3d-1 for your Public and Employee Illicit Discharge Information Program? Indicate the status of development for tasks associated with BMP Summary Sheet 3d-1: <input type="checkbox"/> Not started <input type="checkbox"/> Research <input checked="" type="checkbox"/> Development <input type="checkbox"/> Implementation <input type="checkbox"/> Program in place</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	---

**Minimum Control Measure 4: Construction Site Stormwater Runoff Control [V.G.4]**

The permit requires that each MS4 **develop, implement, and enforce a program** to reduce pollutants in any stormwater runoff to your small MS4 from construction activities within your jurisdiction that result in a land disturbance of equal to or greater than one acre, including the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres (include if your MS4 established a smaller site size). [Part V.G.4.]

<p><b>A.</b> Have you adopted an ordinance or other regulatory mechanism that regulates stormwater runoff from construction activities that results in a land disturbance of greater than or equal to one acre and/or less than one acre that is part of a common plan of development or sale that will ultimately disturb one acre or more? <b>NOTE:</b> Your regulatory mechanism must be fully developed and implemented within six months from the extension of permit coverage.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---

<p><b>B.</b> A complete copy of your erosion and sediment control ordinance or other regulatory mechanism addressing the requirements of Part V.G.4 of the Permit must be submitted with this Annual Report. This documentation may be submitted in hard copy, as a separate electronic file, or electronically attached to this Annual Report. Have you submitted a copy of your erosion and sediment control ordinance or other regulatory mechanism? Check here if you have <b>No Regulatory Authority</b> <input type="checkbox"/></p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---

<p><b>C.</b> The following are among the criteria used to evaluate the effectiveness of this program. Which of the following BMP components and pollution prevention management measures have been incorporated into your regulatory mechanism? Check all that apply and include a citation for each checked measure outlining specifically where it can be located in the documents submitted with this Annual Report. If you are utilizing the "Other Regulatory Mechanism" option, please respond in the same manner and follow the above submittal procedures.</p>
--

<p><b>BMP Component/P2 Measure</b></p>	<p><b>Citation</b> (Ordinance, Rule, Statute, Code, MOU, or other official agreement, page #, paragraph, line item, or other</p>
--	--

	reference)
<input checked="" type="checkbox"/> Temporary erosion controls	Chapter X - Storm Water and Erosion and Sediment Control Ordinance (Adopted 6/16/2009).
<input type="checkbox"/> Record keeping for rainfall and inspections	_____
<input checked="" type="checkbox"/> Permanent erosion controls	Chapter X
<input type="checkbox"/> Waste controls for hazardous waste	_____
<input checked="" type="checkbox"/> Waste controls for solid waste	Chapter X
<input checked="" type="checkbox"/> Dewatering and basin draining	Chapter X
<input checked="" type="checkbox"/> Regular inspections by site operators	Chapter X
<input checked="" type="checkbox"/> Site plan submittal including erosion and sediment control BMPs	Chapter X
<input checked="" type="checkbox"/> BMP maintenance	Chapter X
<input checked="" type="checkbox"/> Site plan review and approval prior to activity on site	Chapter X
<input checked="" type="checkbox"/> Permanent stormwater management facility approval	Chapter X
<input type="checkbox"/> Other: _____	_____

D. Your ordinance or regulatory mechanism must include sanctions to ensure compliance and contain enforcement mechanisms. Which of the following enforcement mechanisms are contained in your ordinance or regulatory mechanism? Check all existing and added sanctions for 2008. Include with each checked measure a citation outlining where each mechanism can be located in the documents submitted with this Annual Report.

Enforcement Mechanism	Citation (Ordinance, Rule, Statute, Code, MOU, or other official agreement, page #, paragraph, line item, or other reference)
<input checked="" type="checkbox"/> Verbal warnings	Chapter X
<input checked="" type="checkbox"/> Written warnings	Chapter X
<input type="checkbox"/> Stop-work orders	_____
<input type="checkbox"/> Fines	_____
<input checked="" type="checkbox"/> Forfeit of security bond money	Chapter X
<input type="checkbox"/> Withholding of certificate of occupancy	_____
<input type="checkbox"/> Other: _____	_____

E. Identify which of the following types of enforcement actions you used for construction activities during the reporting period, indicate the number of actions or note those for which you do not have authority:

	Number of actions	No Authority <input type="checkbox"/>
<input checked="" type="checkbox"/> Yes Notice of violation	#5	<input type="checkbox"/>
<input type="checkbox"/> Yes Administrative fines	#0	<input type="checkbox"/>
<input checked="" type="checkbox"/> Yes Stop Work Orders	#5	<input type="checkbox"/>
<input type="checkbox"/> Yes Civil penalties	#0	<input type="checkbox"/>
<input type="checkbox"/> Yes Criminal actions	#0	<input type="checkbox"/>
<input type="checkbox"/> Yes Administrative orders	#0	<input type="checkbox"/>

<p>F. Does your regulatory mechanism address the regulation of construction sites which disturb less than one acre? If yes please cite where this is addressed in the documents submitted with the Annual Report</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____
<p>G. How many construction sites were inspected for compliance with your erosion and sediment control regulatory mechanism during the 2008 calendar year</p>	<p>20</p>
<p>H. On average, how many times each, or with what frequency, are construction sites inspected (e.g., weekly, monthly, etc.)?</p>	<p>1 per week</p>
<p>I. Do you prioritize certain construction sites for more frequent inspections? If yes, based on what criteria? <u>Depending on size of disturbance and proximity to receiving water bodies.</u></p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**Minimum Control Measure 5: Post-construction Stormwater Management in New Development and Redevelopment [V.G.5]**

The permit requires each MS4 to develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects within your jurisdiction that disturb an area greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or reduce water quality impacts. You must also select and implement a program of appropriate BMPs and measurable goals for this minimum control measure. **NOTE:** The MS4 permit requirements associated with this minimum control measure were required to be fully developed and implemented by June 30, 2008.

<p>A. Have you developed and implemented strategies which include requirements for a combination of structural and/or non-structural BMPs appropriate for your community?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>B. Is an ordinance or other regulatory mechanism currently in place to address post-construction runoff from new development and redevelopment projects to the extent allowable under law? Provide the date the regulatory mechanism was adopted or estimated date of adoption: <u>June 2009.</u></p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>C. Is a plan in place to ensure adequate long-term operation and maintenance of BMPs installed as a result of these requirements?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>D. How are you funding the long-term operation and maintenance of your stormwater management system? (Check all that apply)</p> <p><input type="checkbox"/> Grants</p> <p><input checked="" type="checkbox"/> Stormwater utility fee</p> <p><input type="checkbox"/> Taxes</p> <p><input type="checkbox"/> Other:</p>	

**Minimum Control Measure 6: Pollution Prevention/Good Housekeeping for Municipal Operations [V.G.6]**

The permit requires each MS4 to develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Your program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

<p>A. Is your MS4 current on development of all the BMPs listed in the BMP Summary Sheets for MCM 6 as indicated in the timeline/implementation schedules? If no, explain:</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>B. Indicate the total number of structural pollution control devices (for example-grit chambers, sumps, floatable skimmers, etc) within your MS4, how many were inspected, and calculate the percent inspected. Enter "0" if your MS4 does not</p>	



contain structural pollution control devices or "NA" if the data does not exist:

	Total Number	Number Inspected	Percentage
<b>Structural Pollution Control Devices:</b>	0	N/A	N/A

C. Did you repair, replace, or maintain any structural pollution control devices?  Yes  No

D. For each BMP below, indicate the total number within your MS4, how many of each BMP type were inspected, and calculate the percent inspected:

Structure/Facility Type	Total Number	Number Inspected	Percentage
Outfalls to receiving waters	32	10	31%
Sediment basins/ponds	69	13	19%
<i>TOTAL</i>	101	23	23%

### Section 7: Impaired Waters Review

The permit requires that any MS4 that discharges to a Water of the State which appears on the current U.S. EPA approved list of impaired waters under Section 303(d) of the Clean Water Act review whether changes to your SWPPP may be warranted to reduce the impact of your discharge [Part IV.D]

A. MPCA has provided an MS4 Mapping tool which provides information for compliance with the permit and water quality rules. It can also help MS4 staff and stakeholders view relationships between an MS4 and various other water features in the layers including impaired waters. Please go to the MS4 Mapping tool located at <http://www.pca.state.mn.us/water/stormwater/stormwater-ms4.html> by clicking on "MS4 mapping tool" under "Maps of MS4s" and rate this web mapping tool for its usefulness in helping you identify impaired waterbodies your MS4 may discharge to, including impaired waters as defined on the 303d listing (This request is optional) :

Not Useful at all  Somewhat Useful  Useful  Very Useful  Other: \_\_\_\_\_

Check here if your MS4 has no impaired waters:

Additional Comments on the MS4 Mapping Tool can be emailed to: [paul.legard@pca.state.mn.us](mailto:paul.legard@pca.state.mn.us)

### Section 8: Additional SWPPP Issues

A. Did you make a change to any identified BMPs or measurable goals in your SWPPP since your last report? [Part V.H.] If yes, explain: \_\_\_\_\_  Yes  No

B. Briefly list the BMPs using their unique SWPPP identification numbers you have changed in your SWPPP or any measurable goals that will be changed in your updated SWPPP, and why they have changed: (Attach a separate sheet if necessary) N/A

C. Did you rely on any other entities (MS4s, consultants or contractors) to implement any portion of your SWPPP? If yes, please identify them and list activities they assisted with: Lake Elmo is a member of the East Metro Water Resource Education Program (EMWREP) and contributes \$2,000 per year to the program. EMWREP is a partnership formed to develop a comprehensive water resource education and outreach program for the east metro area of St. Paul, MN. The City also has a consulting City Engineer and contracted Building Inspector who assist with the SWPPP Implementation.  Yes  No

**Owner or Operator Certification**

The person with overall administrative responsibility for SWPPP implementation must sign the annual report. This person must be duly authorized and should be the person who signed the MS4 permit application or a successor.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete (Minn. R. 7001.0070). I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment (Minn. R. 7001.0540).

**X**

Authorized Signature (This person must be duly authorized to sign the annual report for the MS4. Electronic submissions must be sent from this person's email address to qualify for Authorized Signature status) \_\_\_\_\_ Date \_\_\_\_\_

Dawson	Craig	City Administrator
Last Name	First Name	Title
3800 Laverne Avenue		
Mailing Address		
Lake Elmo	Minnesota	55042
City	State	ZIP code
(651) 233-5401	cdawson@lakeelmo.org	
Telephone (include area code)	E-mail Address	

City Council  
Date: June 2, 2009  
REGULAR  
Item: 6  
Motion

ITEM: County Road 13 (Inwood Avenue) / 15<sup>th</sup> Street North Intersection Proposal  
SUBMITTED BY: Craig W. Dawson, Interim City Administrator

---

**SUMMARY AND ACTION REQUESTED:** On April 21, 2009, the City Council adopted Resolution 2009-015, giving municipal consent to Washington County's proposal to add left-turn lanes on County Road 13 (Inwood Avenue) at its intersection with 15<sup>th</sup> Street North. This approval was conditioned "upon the final project providing for safe bicycle traffic through the intersection." Washington County believes that the plan as presented *is* safe for cyclists, and wishes to address the Council on this matter. If the Council decides to approve the plans as the County proposes, it would be appropriate to adopt a resolution amending Resolution 2009-015.

**ADDITIONAL INFORMATION:** Washington County staff will make a presentation at the Council meeting; it has not provided any materials in advance of the meeting. It will explain how safety is properly addressed in the plans considered by the Council in April. The direction of the Council's discussion was that there be additional paved shoulder width to accommodate bicyclists' need for safety. While it may be deemed that the plans originally presented *do* provide for safe bicycle traffic, it would be clearer and less confusing if the Council adopted an amending resolution to this effect. This proposed resolution has been prepared for Council's consideration.

**RECOMMENDATION:** If Council takes no action, Resolution 2009-015 remains in effect with the condition of municipal consent to providing safe bicycle passage through the intersection. If the Council were to agree with the County's position as presented at this Council meeting, staff recommends the Council adopt the resolution amending Resolution 2009-015

**SUGGESTED MOTION FOR CONSIDERATION**

If Council agrees with the County's position as presented tonight, *Move to adopt the resolution amending Resolution 2009-015.*

**ATTACHMENTS:**

- Resolution No. 2009-015
- Proposed resolution to amend Resolution No. 2009-015

**ORDER OF BUSINESS:**

- Introduction  
Craig Dawson
- Report by staff and presenter  
Jack Griffin  
Washington County staff
- Questions from City Council members to the presenter  
Mayor facilitates
- Questions/comments from the public to the City Council  
Mayor facilitates
- Action on motion  
City Council

CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA

RESOLUTION NO. 2009-015

A RESOLUTION APPROVING COUNTY PROJECT  
WITHIN MUNICIPAL CORPORATE LIMITS

WHEREAS, Washington County has completed the design and plans, dated February 26, 2009, for Project No. SAP 82-613-27, showing proposed excavation, grading, alignment, cross-sections and bituminous paving for the improvement of County State Aid Highway (CSAH) No. 13 (Inwood Avenue), and

WHEREAS, the plans have been reviewed by City Staff and presented to the City Council, and

WHEREAS, the project is necessary to improve safety along CSAH 13 at the intersection of 15<sup>th</sup> Street by adding a left turn lane in each direction.

NOW, THEREFORE, BE IT RESOLVED,

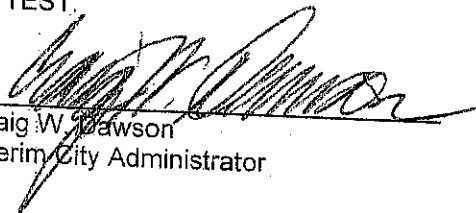
1. The City hereby approves said final plans for the improvements of CSAH 13 within the corporate limits, contingent upon the final project providing for safe bicycle traffic through the intersection.
2. The City Engineer is hereby authorized to sign the County Construction Plans on the City's behalf.

Date: April 21, 2009      CITY OF LAKE ELMO

By: 

Dean A. Johnston  
Mayor

ATTEST:

  
Craig W. Dawson  
Interim City Administrator

CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA

A RESOLUTION AMENDING RESOLUTION NO. 2009-015  
APPROVING COUNTY PROJECT  
WITHIN MUNICIPAL CORPORATE LIMITS

WHEREAS, Washington County has completed the design and plans, dated February 26, 2009, for Project No. SAP 82-613-27, showing proposed excavation, grading, alignment, cross-sections and bituminous paving for the improvement of County State Aid Highway (CSAH) No. 13 (Inwood Avenue), and

WHEREAS, the plans have been reviewed by City Staff and presented to the City Council, and

WHEREAS, the project is necessary to improve safety along CSAH 13 at the intersection of 15<sup>th</sup> Street by adding a left turn lane in each direction, and

WHEREAS, the City Council adopted Resolution No. 2009-015, approving the project "contingent upon the final project providing for safe bicycle traffic through the intersection", and

WHEREAS, the City Council received a presentation from Washington County on June 2, 2009, and determined that the project should proceed without the contingency stated in the whereas clause immediately above,

NOW, THEREFORE, BE IT RESOLVED,

1. The City hereby approves said final plans for the improvements of CSAH 13 within the corporate limits.
2. The City Engineer is hereby authorized to sign the County Construction Plans on the City's behalf.

Date: June 2, 2009      CITY OF LAKE ELMO

By: \_\_\_\_\_  
Dean Johnston  
Mayor

ATTEST:

\_\_\_\_\_  
Craig Dawson  
Interim City Administrator



Washington  
 County

**Inwood Avenue N & 15<sup>th</sup> Street N**

**Center Left Turn Lane**

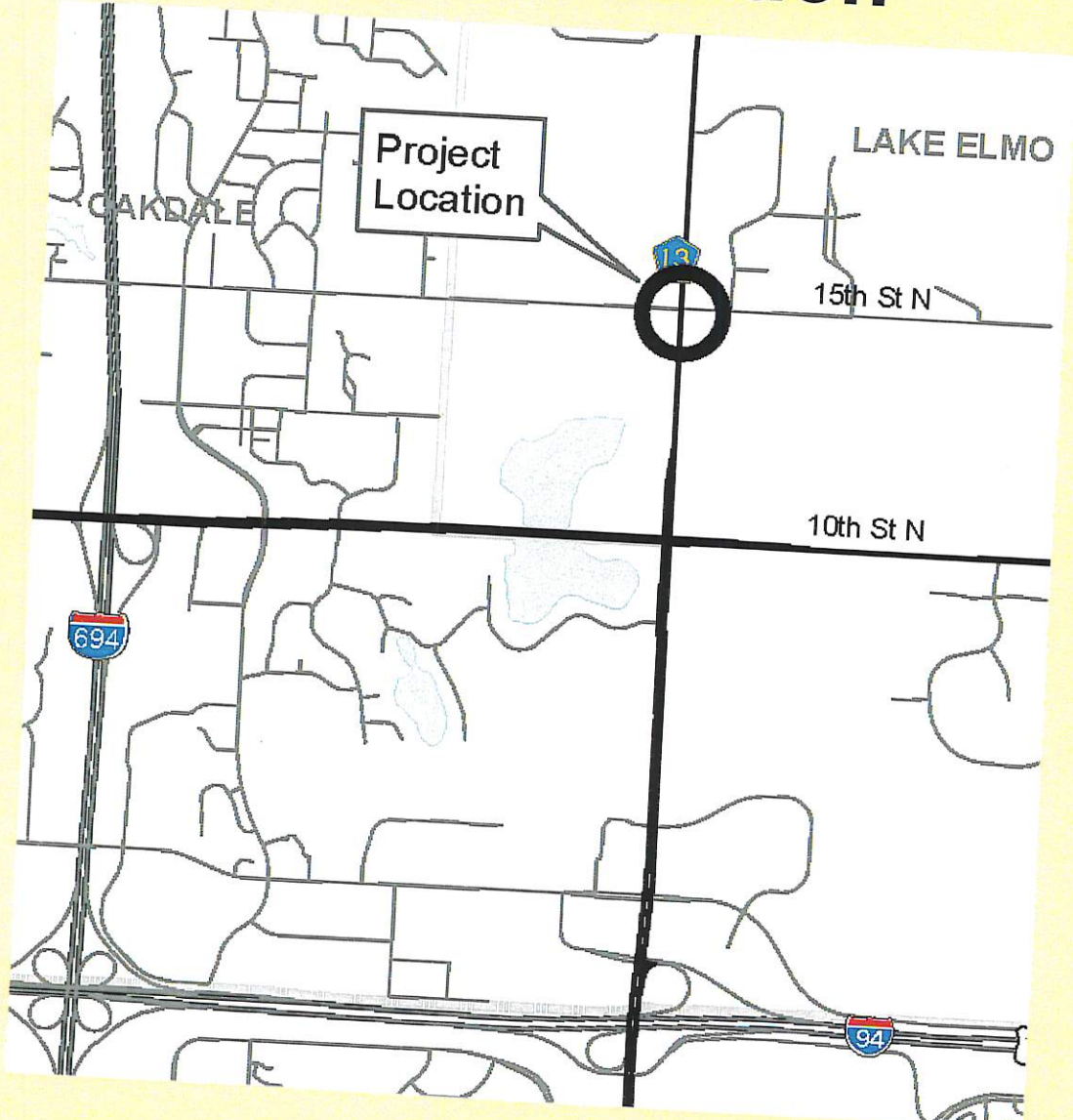
**Jacob Gave**

**Public Works**

**June 2, 2009**

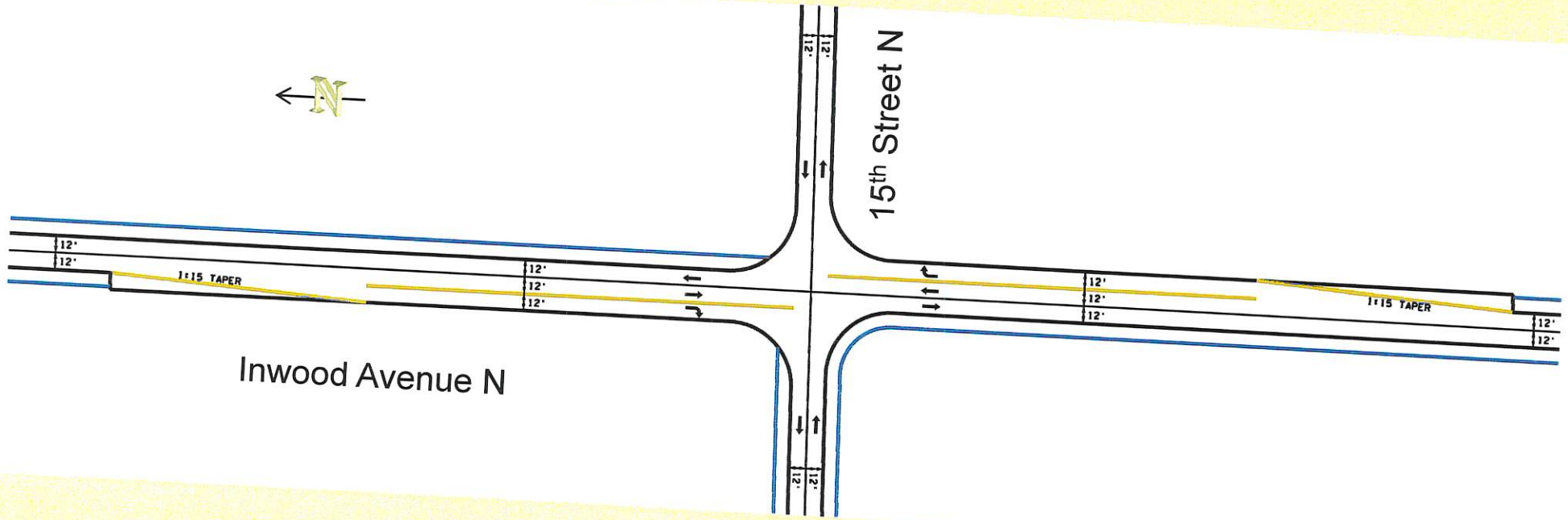


# Project Location

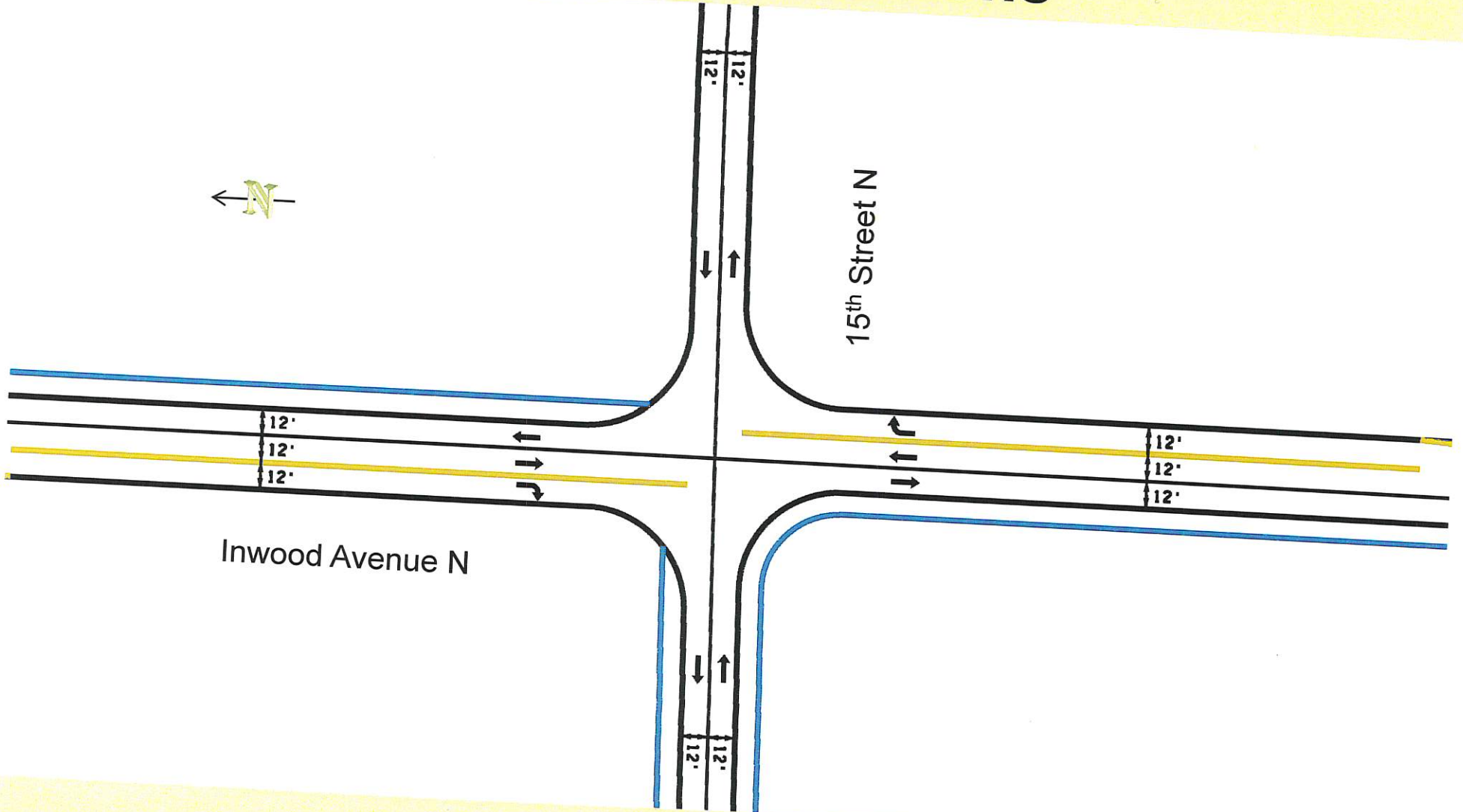




# Existing Conditions



# Existing Conditions



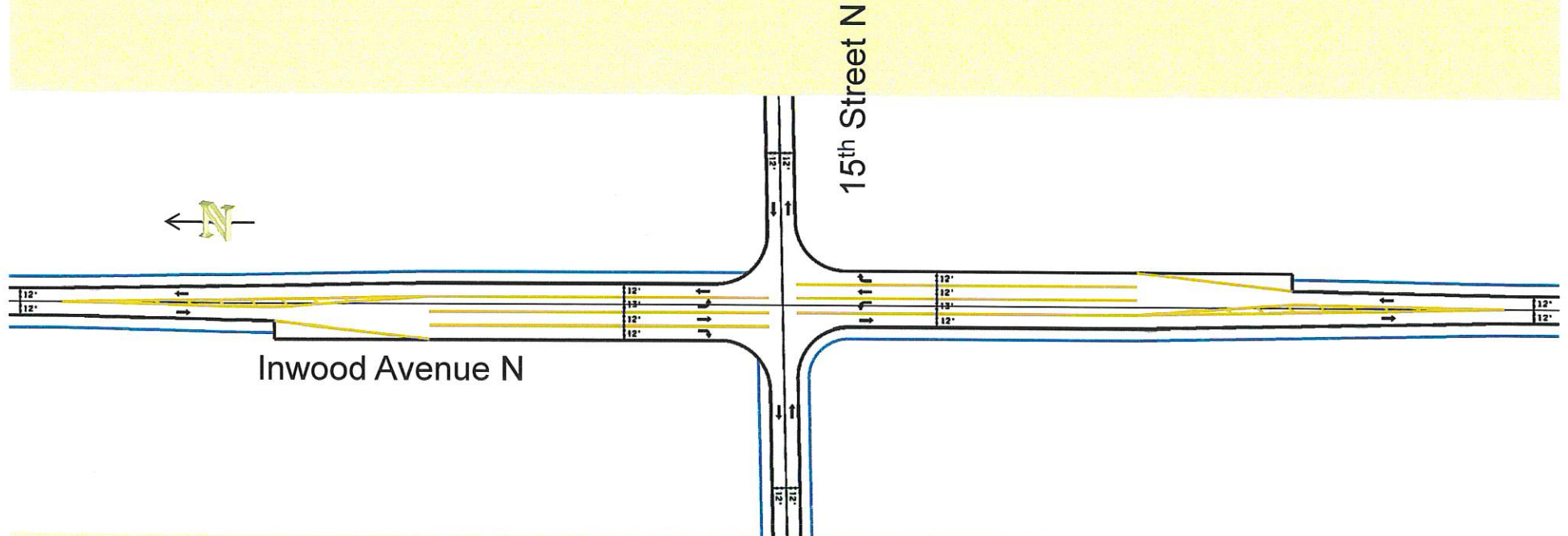




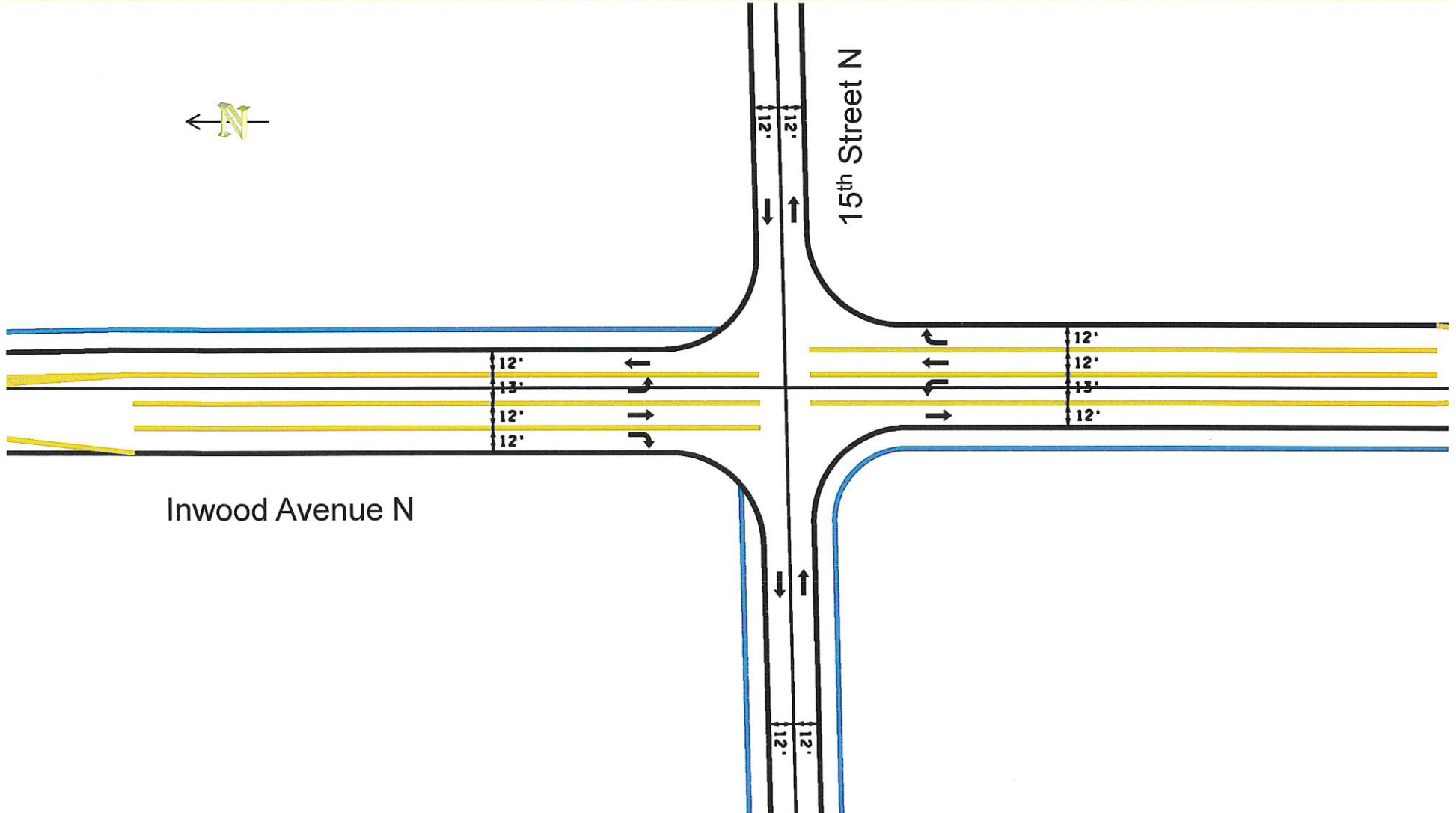
Washington  
County



# Center Left Turn Lanes



# Center Left Turn Lanes





## Additional Pavement?

- Unconventional design
- User confusion
- Right-of-way impacts
- Conflict/legality
  - Who has the right of way?
- Separated trail
  - Redesign
  - Right-of-way impacts
  - Construction schedule



# Additional Pavement/Separated Trail

- Would require redesign
- Would require addition right-of-way
- Construction would not be this year



# Schedule

- Funding for 2009
- Six weeks to construct
- Start in August
- Completed in September



# Summary

- Illegal passing on the right
  - Travelling at full speed
- Proposed design improves safety
  - No illegal passing
  - Right turns are decreasing speed
  - No right-of-way impacts
- Additional Pavement
  - Unconventional
    - Separated trail
  - Redesign
  - Right-of-way impacts



**Thank you!**

Any questions?

City Council  
Date: 6/2/09  
Regular  
Resolution 2009-022  
Item:

ITEM: Consider a revised plan for a variance application from Mr. and Mrs. Hugel to allow construction of a pool and spa within the required 100 foot buffer setback in Open Space Preservation (OP) developments at 2931 Jonquil Trail North – A zoning - PID 22-029-21-21-0024.

SUBMITTED BY: Kelli Matzek, City Planner

REVIEWED BY: Craig Dawson, Interim City Administrator  
Dave Snyder, City Attorney  
Kyle Klatt, Planning Director

---

#### SUMMARY AND ACTION REQUESTED

The City Council is being asked to consider a variance request from Vladimir and Silvia Hugel to allow the construction of a spa and in-ground pool within the required 100 foot buffer setback from the edge of an Open Space Preservation (OP) development at 2931 Jonquil Trail North. The City Council previously reviewed this application on March 17, 2009 and tabled and continued the request to this time. The applicants have since submitted a revised site plan (Option D) and alternative (Option E) that is consistent with the plan reviewed by the Planning Commission and addresses the Commission's recommendation that a fireplace and pergola be moved to different locations on the site.

With both options being presented to the Council, the applicants have revised the site plan to remove the pergola and fireplace and have reconfigured the pool shape into a more traditional rectangle. The applicants are proposing Option D which proposes to keep the pool and spa the same distance into the setback as the original application, or Option E which moves the proposed spa outside of the setback completely for consideration by the Council.

The Huges' property is located in the Farms of Lake Elmo development which was approved as an OP development in 2005. The Lake Elmo OP development requirements include a provision for a buffer setback from the edge of the development for any structure or driving surface. At the time of the review for the Farms of Lake Elmo development, the required buffer setbacks were addressed. The City Council at that time had approved a reduction from a 200 foot buffer setback to 100 foot buffer setback from the West, South, and East edges of the development because the neighborhood was adjacent to the Lake Elmo Regional Park Reserve to the south and east and would not be developed.

Although the Huges' property does not abut the edge of the development and is buffered from the southern edge of the development by sixty feet of Outlot A of the development, the buffer setback still extends into their rear yard by forty feet.

For variance applications, the burden is on the applicant to demonstrate why this situation is unique and necessitates flexibility to Code requirements. To make this case, a variance can only be granted by the City when strict enforcement of the code would cause undue hardship on a property owner. "Hardship" is broken down into the following three components:



- a. *The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;*
- b. *The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and*
- c. *The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.*

In reviewing the request against the three criteria listed above, staff determined all criteria were NOT met, as explained in the staff report dated March 17<sup>th</sup> and presented by staff at that meeting.

ADDITIONAL INFORMATION:

- The property currently has a home, garage, deck, and screened porch on the property which conform to the setback requirements.
- The Planning Commission held a public hearing at its March 9<sup>th</sup> meeting. The Commission voted 5:3 with 1 abstention to recommend approval of the variance application subject to the conditions outlined in the staff report and discussed at the meeting. However, its recommendation was conditional on the applicant moving the proposed pergola and fireplace to be no further into the setback than the proposed pool and spa.
- One of the commissioners who voted against the application suggested that the City Council may review the ordinance to ensure that its implementation meets the intent of the regulation.
- The proposed hardcover is over the allotted 20%; therefore, the applicant is seeking ways to mitigate the extra allowed impervious surface through rain gardens. This calculation will be reviewed with the City Engineer through the building permit process should the variance be approved. (It falls within the allowed amount provided mitigation is done)
- The DNR and Valley Branch Watershed District did not submit any comments concerning the application.
- The Washington County Parks and Planning Department submitted a letter with some concerns regarding the view of the proposed pergola and fireplace from the park. This concern is no longer in effect as the applicants have removed those structures from their site plan.
- The Minnesota Land Trust, which co-holds a conservation easement over Outlot A with the City, submitted a letter stating its only concern would be the storage of material during construction on the adjacent outlot. It expressed no concerns regarding the proposed structure locations.

RECOMMENDATION:

As mentioned, by majority the Planning Commission recommended approval of the variance application subject to conditions and provided that the pergola and fireplace would be located no further into the setback than the proposed pool and spa. This condition has been accommodated or is less intrusive in both Option D and E. Consequently, neither option would need to be considered again by the Planning Commission.

RECOMMENDED ACTION:

Although this application does provide some substantive arguments for approval of the variances requested, in following a strict review of the variance criteria outlined in City Code, staff is recommending that the City Council deny the proposed variances for Vladimir and Silvia Hucec to allow construction of a pool and spa within the 100 foot buffer setback in OP developments at 2931 Jonquil Trail North.

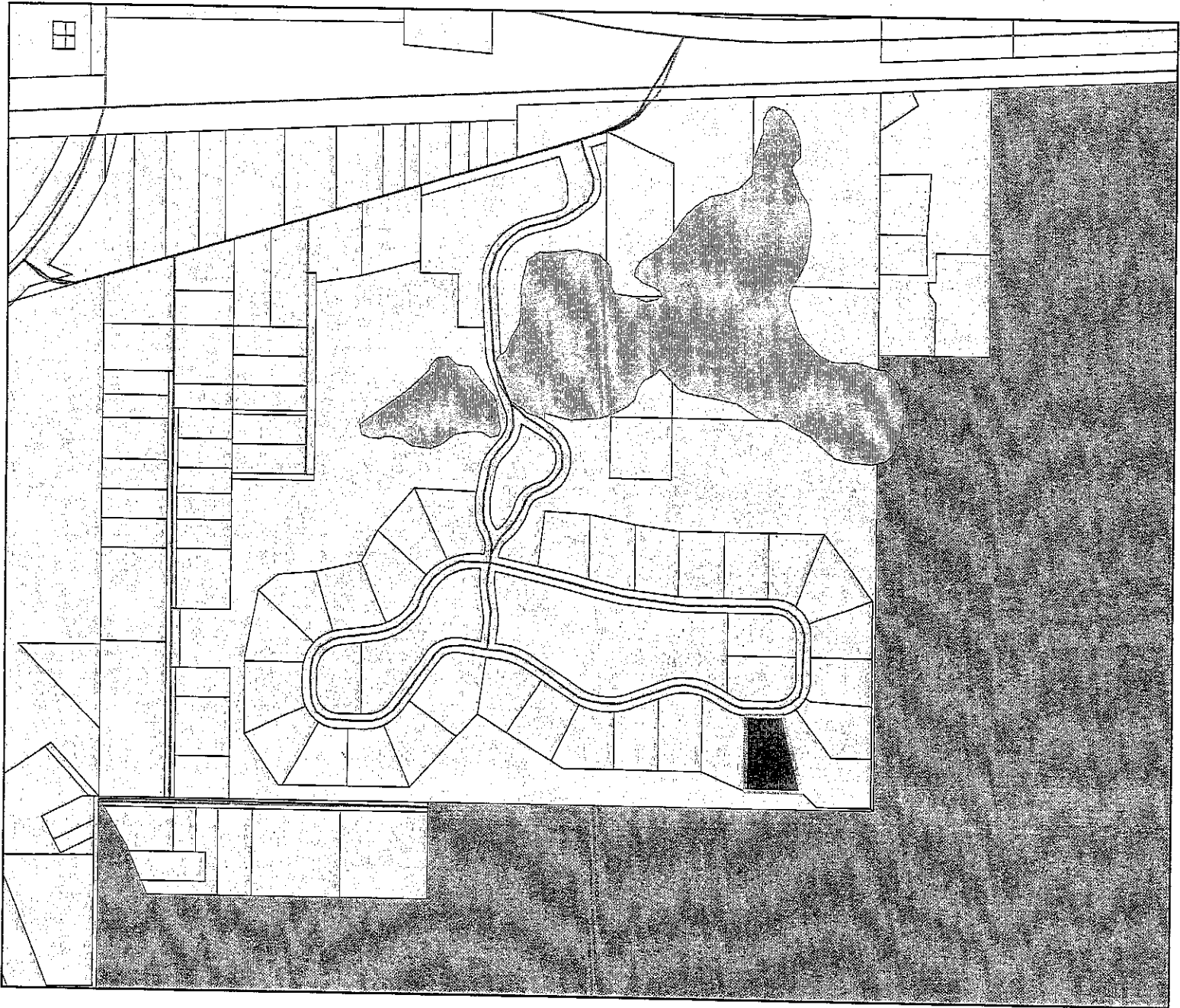
A resolution of approval is provided should the Council choose to approve the application following the Planning Commission's recommendation. A resolution of denial is also provided for consideration. Either resolution may be approved by a simple majority of the Council.

**ORDER OF BUSINESS:**

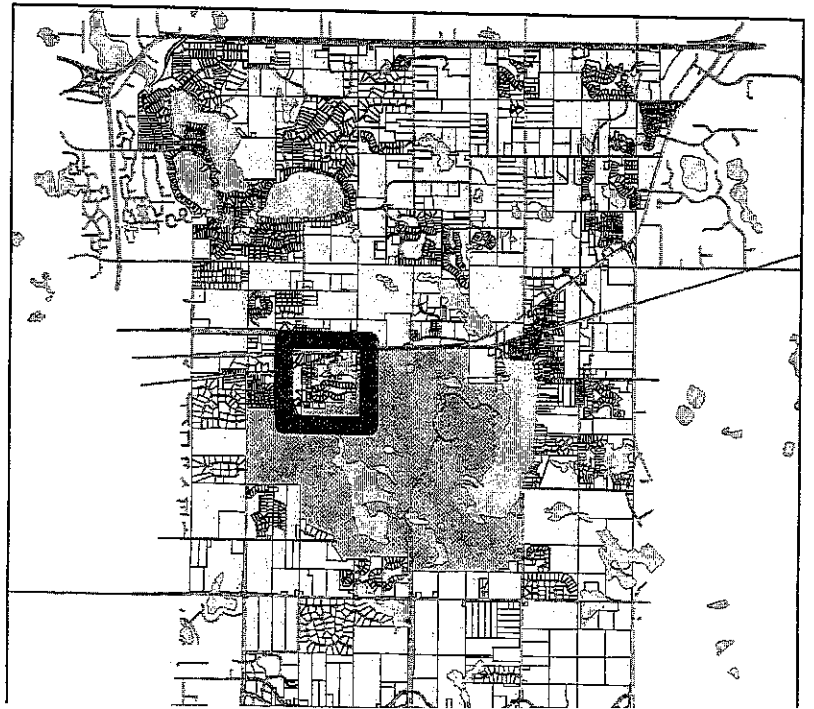
- Introduction ..... Craig Dawson, City Administrator
- Report by staff ..... Kelli Matzek, Planner
- Questions from the Council ..... Mayor & Council Members
- Questions/Comments from the applicant ..... Mayor facilitates
- Questions/Comments from the public ..... Mayor facilitates
- Call for a Motion  
(required for further discussion; does not  
imply approval of the motion ..... Mayor facilitates
- Discussion ..... Mayor facilitates
- Action on motion ..... Council

**ATTACHMENTS (9):**

1. Area Map
2. Aerial Photo
3. Revised Site Plan: Option D
4. Revised Site Plan: Option E
5. Letter from Applicant's Attorney dated 5-22-09
6. Letter from Mr. Randall of Randall Pool & Spa dated 5-26-09
7. Draft Resolution of Approval
8. Alternative Draft Resolution of Denial
9. March 17<sup>th</sup> Staff Report

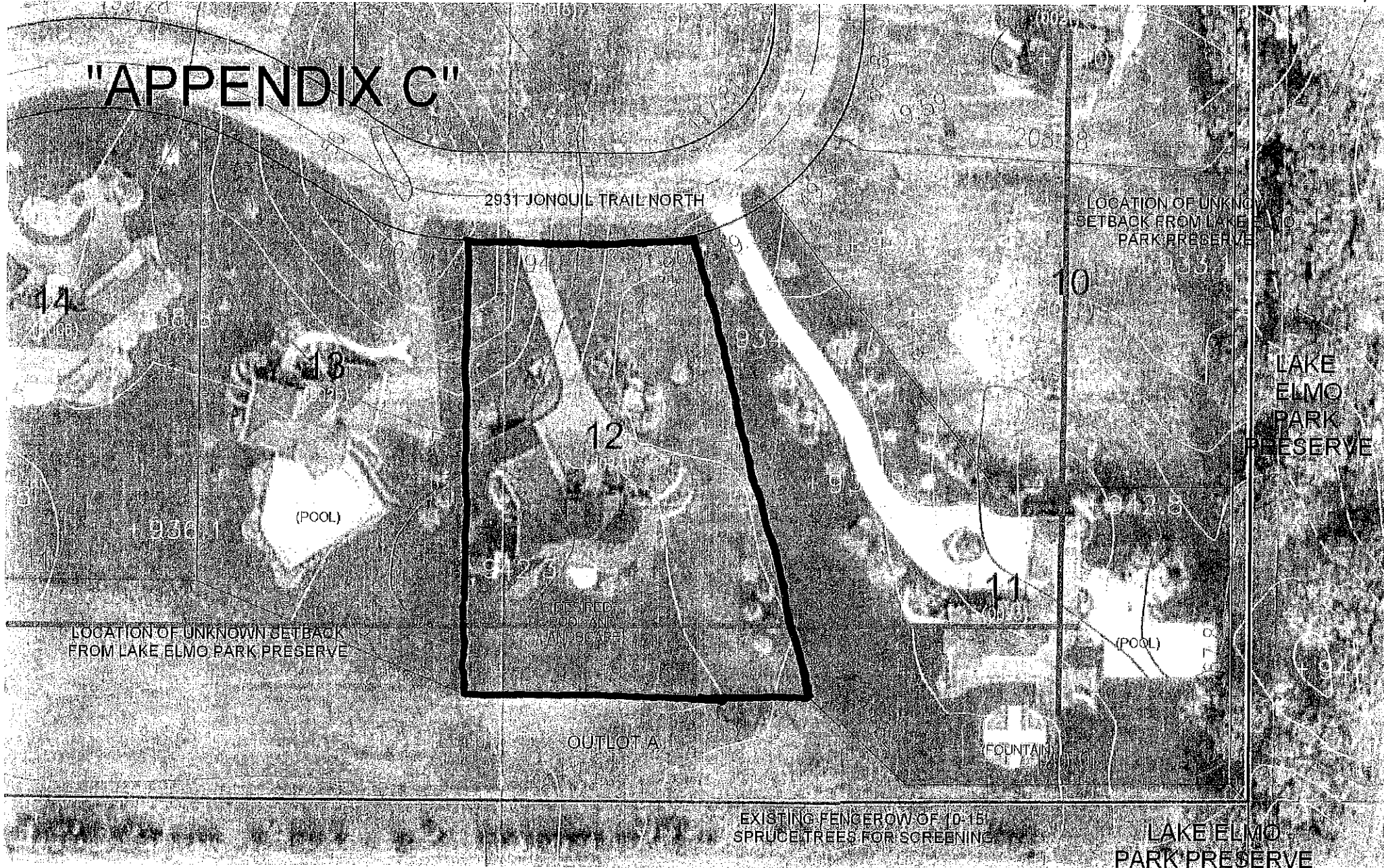


2931 Jonquil Trail North  
Lake Elmo, MN





# "APPENDIX C"



**LEGEND**

- DNR PROTECTED WATERS
- DNR PROTECTED WETLAND
- DNR PROTECTED WATERCOURSE
- MUNICIPAL BOUNDARY
- PARK BOUNDARY

**CONTOUR LEGEND**

- 10 FOOT INTERVAL CONTOUR
- 2 FOOT INTERVAL CONTOUR
- DEPRESSION
- DASHED CONTOURS INDICATE QUESTIONABLE ACCURACY DUE TO GROUND VEGETATION



**SECTION/TOWNSHIP/RANGE INDEX**

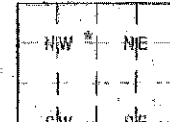
10R22021	15R22021	14R22021
21R22021	23R22021	23R22021

**COUNTY VICTORY MAP**



\* LOCATION OF THIS MAP

**SECTION VICTORY MAP**



**PROPERTY IDENTIFICATION NUMBER FORMAT USED**

SECTION	TOWNSHIP	RANGE	DEGREE	QUARTER	PLAT
08	23R	23	08	08	08

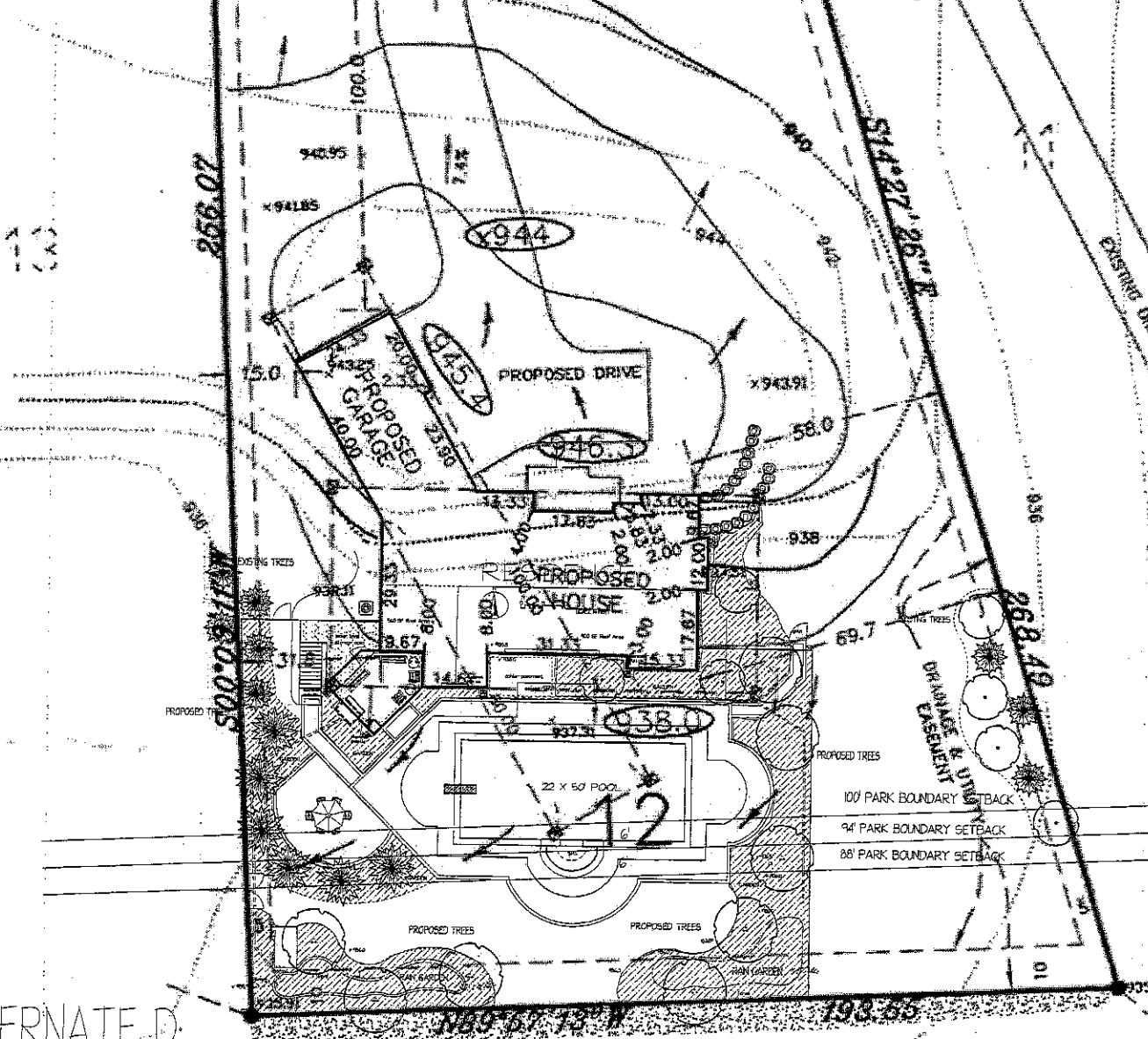
(0001) = PARTIAL BOUNDS OF PLAT ONLY IDENTIFICATION NUMBER

# JONQUIL TRAIL NORTH

HUGE POOL LANDSCAPE  
VERSION 3

DESIGNED BY DAVID SONKA, MNLA CLP  
2-04-08  
651-485-153

Dr. Vladimir "Vlad" and Silvia Huga  
2931 Jonquil Tr. N  
Lake Elmo, MN 55042  
651-777-3333  
vshugec@gmail.com



ALTERNATE D:

22 X 50' POOL WITH 12' MAXIMUM ENCROACHMENT

OUTLOT A

## Option D

(NOTE: LAKE ELMO IS INDICATED)

LAKE ELMO PARK RESERVE



\*BUILDER TO VERIFY HSE DIMENSIONS, SEWER DEPTH AND FOUNDATION

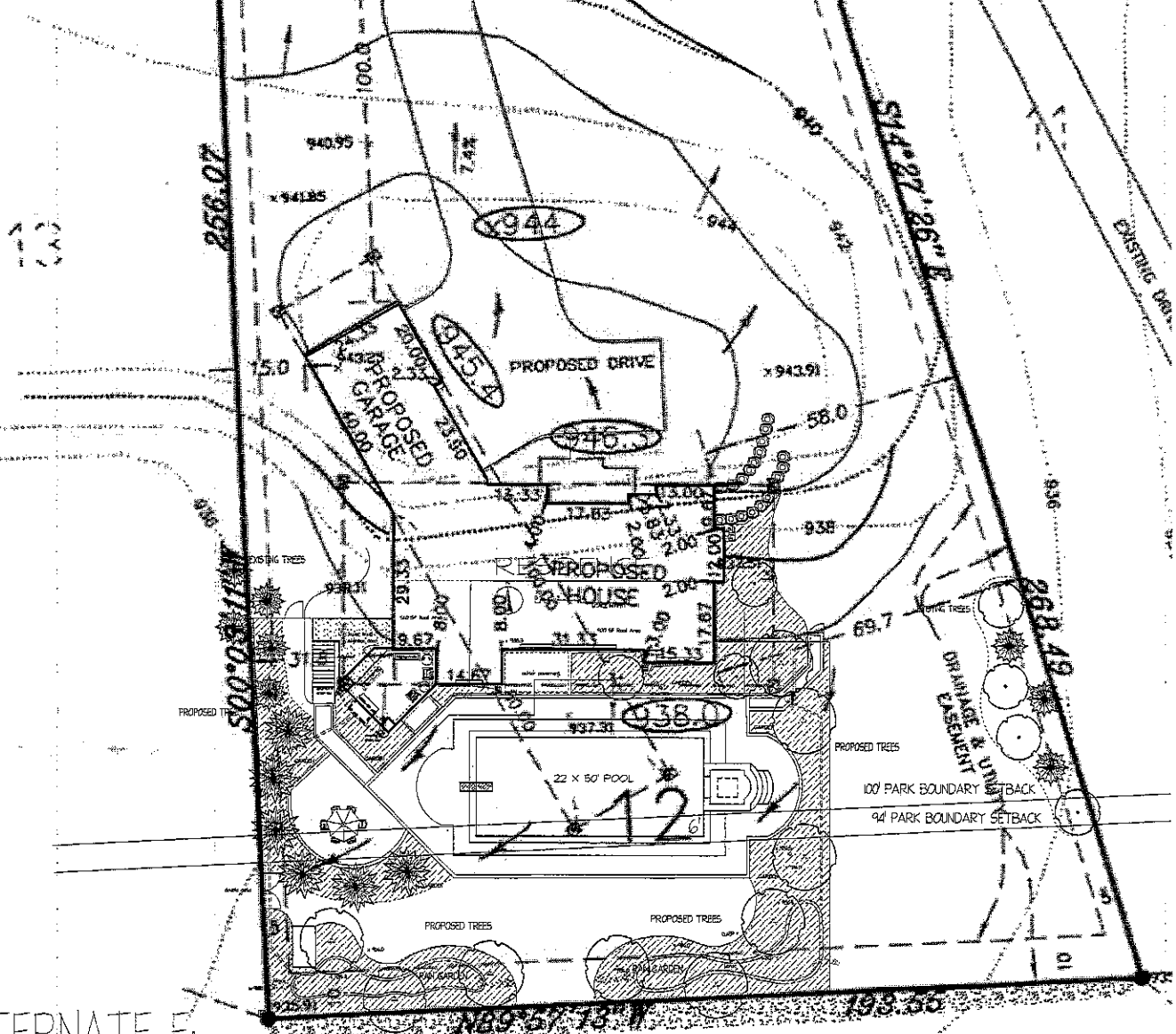
HOUSE DIA  
(9 FT)

# JONQUIL TRAIL NORTH

## HUGE POOL LANDSCAPE

DESIGNED BY DAVID SONKA, MNLA CLP  
2-04-08 651-485-153

Dr. Vladimir "Vad", and Silvia Huga  
2931 Jonquil TR N  
Lake Elmo, MN 55042  
651-777-3333  
vshugec@gmail.com



ALTERNATE E:

22 X 50' POOL WITH 6' MAXIMUM ENCROACHMENT

OUTLOT A

# Option E

(NOTE: LAKE ELI IS INDICA

LAKE ELMO PARK RESERVE

\*BUILDER TO VERIFY HSE DIMENSIONS, SEWER DEPTH AND FOUND

HOUSE DIA  
19 FT

# MALKERSON GILLILAND MARTIN LLP

1900 U.S. BANK PLAZA SOUTH TOWER  
220 SOUTH SIXTH STREET  
MINNEAPOLIS, MINNESOTA 55402  
TELEPHONE 612-344-1111  
FACSIMILE 612-344-1414

May 22, 2009

Dean Johnston  
Mayor  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042-9629

Steve DeLapp  
Councilmember  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042-9629

Liz Johnson  
Councilmember  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042-9629

Nicole Park  
Councilmember  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042-9629

Anne Smith  
Councilmember  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042-9629

RE: Application for Permit and Variance by Dr. Vladimir and Dr. Silvia Hucec To Be  
Heard on June 2, 2009

Dear Mayor Johnston and Councilmembers of the City of Lake Elmo:

## I. INTRODUCTION

This letter is offered on behalf of my clients Dr. Vladimir and Dr. Silvia Hucec ("Hucecs") who reside at 2931 Jonquil Trail North, Lake Elmo, Minnesota (the Property).

As you may recall, the Hucecs appeared before the Planning Commission on March 9, 2009. The application at that time included a proposal (Plan A) for an in-ground irregular shaped pool, spa, pergola, and fireplace. As presented to the Planning Commission, Plan A proposed using 30 feet of the Hucecs' property that is located within the 100 foot buffer setback from Lake Elmo Park Reserve. The Planning Commission voted to approve the Plan A proposal by a vote of five in favor, three opposed and one abstention subject to the conditions stated in the minutes "that the pergola and the fireplace be placed to the side or outside the setback so as to not further encroach on the setback."

The Hugecs modified their application in response to the input from the Planning Commission to remove the pergola and fireplace (Alternate B), or to move the pergola and fireplace from 30 feet within the setback to 20 feet within the setback, with additional tree plantings to buffer the pergola and fireplace from Lake Elmo Park Reserve (Alternate C).

The Hugecs later appeared before the City Council on April 7, 2009, at which time a motion to adopt "Resolution No. 2009-014 as amended, incorporating Alternate C and variances pertaining in Alternate C to allow construction of the same irregular shaped pool, pergola, fireplace and spa," failed on a 2-3 vote. The City Council then voted 5-0 "to continue the variance application and extend the variance review period for consideration to the June 2nd, 2009 City Council meeting" and City Council and staff recommended that the applicants work with City Staff "during the extended review period to reconfigure the layout of the pool, spa, pergola on this property."

In response to input from the City Council on April 7, 2009, the Hugecs have again modified the variance request as follows:

- Proposal for Alternate D which removes the pergola and fireplace from the application, and proposes a 22 x 50-foot rectangular in-ground pool with an adjacent spa located along the east side of the pool. Alternate D proposal will not include structures of height within the setback, only the in-ground pool and spa. The encroachment into the 100 foot buffer setback from Lake Elmo Park Reserve will be limited to 8 feet for the in-ground pool and an additional 8 feet for the spa (a total of 16 feet into the setback for the spa).
- In the alternative, if the Council does not find Alternate D above acceptable, the Hugecs offer which removes the pergola and fireplace from the application, and proposes a 22 x 50-foot rectangular in-ground pool with an adjacent spa located along the width of the pool at the northerly end of the pool. Alternate E proposal will not include structures of height within the setback, only the in-ground pool. The encroachment into the 100 foot buffer setback from Lake Elmo Park Reserve will be limited only to 8 feet of the in-ground pool.

## II. REASONS WHY THE HUGECS NEED A VARIANCE.

The reasons for a variance are the same for Plan A, Alternate B, Alternate C, Alternate D and Alternate E.

The Hugecs are now only asking the City Council to grant the variance for Alternate D (pool and spa), and failing that, to approve the variance for Alternate E (pool only).

The City Staff report to the City Council for the April 7, 2009, Council meeting stated:

The applicant has stated that the variance is justified due to the following:

- a. They bought the existing home with the intention of building a pool in the back yard for their children to practice for competitive swimming. The back yard was chosen as the windows at the back of the home allow viewing the pool for safety purposes.
- b. They were not aware of the 100 foot buffer setback from the time they purchased the home in 2007 to the time of the initial designs of the pool, spa, pergola, and fireplace in 2009.
- c. Sixty feet of Outlot A exists between their property and the Lake Elmo Regional Park Reserve and effectively serves as a preserved, undisturbed space. The land slopes uphill approximately 2' to 6' over a 60' distance to the park boundary.
- d. The neighbor directly to the east was allowed to build their home and pool within the 100 foot buffer setbacks from both the south and eastern borders of the development. The Property has a much smaller outlot between the property and the Park Reserve.
- e. The placement of the home to the east pushed the building of their home further back on the lot to be in line with the neighboring property, thereby reducing the amount of buildable area in their rear yard.
- f. The neighbor directly to their west also has a pool.
- g. The proposed pool would be completely obscured from view of the street and greatly obscured from many adjacent properties with existing trees. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.
- h. No other location on the Property is free from both restrictions and undesirable conditions that prohibit a pool. Due to the 30 feet between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, the pool and landscape would be impossible.

Additional reasons that a variance is needed include:

- i. Property value at 2391 Jonquil Trail has declined by almost 15% since the Huges purchased the home in 2007. Enforcement of this setback also means that they are restricted from adding any significant value back into their property with a new swimming pool. This greatly restricts them from investing in their property and results in a reduced tax base for the City, the County and the School District.



- j. Existing landscaping and mature trees and shrubs along the backside of the house will need to be destroyed and removed to build a standard sized pool.
- k. There would be insufficient space to walk and sit between the pool and the house, even after destroying the trees and shrubs next to the house. This would be a safety concern for young children if the pool is located within only 6-8 feet from the back door of the house.
- l. Property values might otherwise decrease if the pool is disproportionately close to the house or forced to be poorly designed, in a way such that future buyers will find the pool a detriment to the house.
- m. The pool excavation would otherwise come dangerously close to the foundation of the house, creating an unnecessary and avoidable risk of damage during construction
- n. Runoff along the pool deck, drainage along the foundation of the house, and water discharged from local downspouts along the back of the house will also cause unnecessary risk to the basement level of the house.
- o. The property at 2391 Jonquil Trail was purchased as a model home and located on the lot pursuant to the conditions established by the builder. The house is existing and can not be remodeled or moved in order to provide a deeper backyard that would allow a reasonable size pool and spa to be compliant with the rear yard setback.

**III. THE APPLICATION FOR THE VARIANCES AS PREVIOUSLY PRESENTED (TO THE PLANNING COMMISSION ON MARCH 9, 2009, AS PLAN A, AND TO THE CITY COUNCIL ON APRIL 7, 2009, AS PLAN A, ALTERNATE B, AND ALTERNATE C) AND AS NOW MODIFIED IN ALTERNATE D AND ALTERNATE E COMPLIES WITH THE STATE AND CITY STANDARD FOR APPROVAL OF THE VARIANCE.**

At this time, the Huges are asking the City Council to approve Alternate D, and if the Council will not do so, then to approve Alternate E.

- A. The City Has Ample Discretion To Grant The Requested Modified Variances for Alternate D or Alternate E.

A state statute gives cities broad authority to grant variances from zoning requirements. Minn. Stat. § 462.357, subd. 6, provides in relevant part that cities have the authority:

“ . . . to hear requests for variances from the literal provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of

circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. "Undue hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance ... ."

The City of Lake Elmo must follow the above statutory standards. The variance provisions in most city ordinances are identical to the above mandatory provisions. The City of Lake Elmo's ordinance provisions relating to variances state as follows:

As outlined in the City Staff report to the City Council, "Hardship" is broken down into the following three components:

- a. The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;
- b. The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and
- c. The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations."

As can be seen from the above language, City's specific standards for a variance are similar to the state standards, but also provide additional considerations. I do not believe that a City can legally adopt standards that are different from the State standards adopted by the Minnesota Legislature. When the Legislature has wanted to allow cities to adopt different and/or more stringent standards, it has so stated. For example, as to variances in a subdivision ordinance, Minn. Stat. § 462.358, subd. 6, states:

**"Variances.** Subdivision regulations may provide for a procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations. Unusual hardship includes, but is not limited to, inadequate access to direct sunlight for solar energy systems." (emphasis added)

Moreover, municipalities have no authority to establish criteria for variance approval that are inconsistent with or exceed the scope of the criteria established by Minn. Stat. § 462.357,



subd. 6. *Kismet Investors v. County of Benton*, 617 N.W.2d 85, 90 (Minn. Ct. App. 2000) (Confirm). For this reason, I could limit my analysis to the criteria set forth in Minn. Stat. § 462.357 without a detailed discussion of the particular provisions of the City's Zoning Ordinance.

Nevertheless, for purposes of this letter, I will assume that the City's ordinance is enforceable in the case of the variances requested by the Huges. As stated previously, those City standards in relevant part are as follows:

As outlined in the City Staff report to the City Council, "Hardship" is broken down into the following three components:

- a. The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;
- b. The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and
- c. The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations."

Minnesota cities have broad discretion to grant variances. *Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 490 (Minn. App. 1995) (a court "will not invalidate a city's zoning variance decision if the city acted in good faith and within the broad discretion accorded it by statutes and ordinances"). Minnesota courts rarely disturb the variance decisions of approval of city councils. Until the Rowell case was decided in 1989, most city attorneys, planners, planning commission members and council members erroneously believed that it was very difficult under the statute and, therefore, under the ordinances adopted pursuant thereto to grant variances, except in the most extreme cases. Such situations typically were, for example, when because of the ravine on a preexisting lot, a house could not have been built unless a variance from a setback were granted, etc. Also variances were granted, when, if a setback variance were not granted as to, for example, numerous lovely old trees would have to be removed.

However, many attorneys and planners had always understood that the strict application of phrases, such as "undue hardship", "reasonable use", "circumstances unique to the property not created by the landowner", etc. were not tests to be as strictly applied as was typically happening in the municipalities throughout the State. In fact, many planners previously thought (erroneously) the tests in the statute should be so strictly construed, that if a city found that it was granting variances, that the city should amend its ordinance so that variances were not necessary in the future. That, however, is not required by State law and, in fact, as a review of recent case

decisions will show, the Courts have found that the Legislature never intended to so restrict the flexibility of the cities.

Quite frankly, in this matter I believe the City Staff erroneously believed that the City did not have the flexibility to grant the previously requested variances. In any event, as outlined above the Huges have substantially reduced the requested variances in response to input by the Planning Commission and Council, so I hope that the City Staff will acknowledge that the City Council can legally grant the variances if it chooses to do so.

**B. STRICT ENFORCEMENT OF THE 100 FOOT SETBACK WOULD CAUSE UNDE HARDSHIP UNDER THE STATUTORY TESTS BECAUSE OF CIRCUMSTANCES UNIQUE TO THE PROPERTY.**

Variances are available where a zoning provision will cause undue hardship. Regarding the request for a variance to allow a 92-foot setback to allow the pool, and a 84 foot setback to allow the spa, instead of the required 100-foot buffer setback, the City clearly may and should grant the requested variances. Three statutory factors are considered in evaluating whether there is undue hardship. Other factors also must be addressed. Each of those factors applies in this case and each is considered below.

1. The Property Cannot Be Put To A Reasonable Use Without A Rear Yard Setback Variances. As Requested for Alternate D or Alternate E

Based upon a Minnesota Court of Appeals decision, Rowell v. City of Moorhead, 446 N.W.2d 917 (Minn. App. 1989) the Huges do not need to show that there is no other reasonable use in order to meet the standards for a variance. The Court in Rowell approved a setback variance for the expansion of a church. The Court noted that where there is no reasonable use of property without a variance, the constitutional requirement prohibiting takings of property without compensation requires the grant of the variance. Rowell, 446 N.W. 2d at 922. See also Lucas v. South Carolina Coastal Council, 112S.Ct. 2886, 2895 (1992) (zoning requirement constitutes a taking if it denies a landowner "all economically viable or beneficial use of the property"); Wheeler v. City of Wayzata, 511 N.W.2d 39, 41-42 (Minn. App. 1994). That was not the situation in Rowell or present in this case. In Rowell the Court found that in enacting the statute authorizing cities to grant variances that the Minnesota Legislature intended to give cities greater discretion to grant variances than they would have in any event under the provisions of the Constitution addressing takings. Rowell 446 N.W.2d at 922. Thus, the Rowell Court concluded that the Legislature did not intend to authorize variances only when there was no reasonable use without a variance. *Id.* Instead, according to the Court, the statute authorizes variances whenever the property owner intended to use the property in a reasonable way:

"The statute is clearly intended to allow cities the flexibility to grant variances in cases where the Constitution does not compel it. Thus, we read the first part of the definition

of "undue hardship" as requiring a showing that the property owner would like to use the property in a reasonable manner that is prohibited by the ordinance." Rowell, 446 N.W. 2d at 922.

The principles established in Rowell were restated and affirmed in the case of Nolan v. City of Eden Prairie, 610 N.W. 2d 697 (Minn. App. 2000). In Nolan, the Court emphasized that statutory undue hardship "does not mean that the property owner must show that the land cannot be put to any reasonable use without the variance but that the focus should be on the reasonableness of the intended use." *Id* at 701.

Thus, the question in addressing the first part of the definition of undue hardship is a simple one: Is the Huges' request for a variance of 8 feet to allow a standard size pool and a variance of 16 feet to allow a spa as requested a reasonable one? The answer is "yes" for all of the reasons set forth in Section II of this letter.

2. The Variance Is Needed Because Of Circumstances Unique To The Property, Which Were Not Created By The Landowner.

Please see findings set forth in Section II above.

3. The Requested Variance Will Not Alter the Essential Character of the Locality.

There are numerous examples of pools being permitted as an accessory structure and numerous buildings, even houses, adjacent to and within the 100-foot setback in this development and other Open Space Developments bordering the Lake Elmo Park Reserve (see prior information submitted by applicants).

Moreover, given the location of the Huges' home on one side of the pool, homes on each side of the pool, and the gradual incline up to the east, it will be difficult if not impossible for anyone not on the Huges' property to realize that the pool has extended 8 feet and the spa 16 feet into the 100 foot setback.

4. The Requested Variance Is Fully Consistent With The Statute's Provisions On Economic Considerations.

Minn. Stat. § 462.357 provides that:

" . . . Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance." (emphasis added) . . .

The requested variance is fully consistent with this provision. First, the variance request is not premised alone on economic considerations, though the strict enforcement of this setback does create economic consideration that the Huges are restricted from adding value back into their property with a new swimming pool and spa, as the property value has been dropping due to overall market conditions. Nor are they in a position to put their home on the market to sell so that they can relocate to a property where a variance is not needed for a standard size swimming pool and spa.

As outlined in Section II above, there are numerous non-economic factors to support this variance request. The Huges purchased the property in a desirable new development with the intention of being able to build an in-ground pool (and spa) in the backyard for their family and friends, just as their neighbors to the east have done. They were never aware of a 100-foot setback from Lake Elmo Park Reserve that extends 40 feet onto their property, leaving 24 feet along a staggered portion of the house which is too small to build a pool of any reasonable shape or size. Any such pool without a variance and thus "shoe horned" into this location will destroy the existing landscape, create the unsafe situation of a pool 6 to 8 feet from a door on the house, impose the risk of damage to the foundation of the house, and create drainage issues with stormwater runoff along the back of the house. The space between the Huges' residence and the 100-foot setback clearly cannot be put to reasonable use for a standard size swimming pool and spa without a variance.

5. Issuance Of The Variance Is Fully Consistent With The Spirit And Intent Of The Zoning Ordinance For The Reasons Discussed Herein.

In order to determine the spirit and intent of the zoning ordinance it is important to look at sections of the zoning ordinance for the Use District in which the Huges' property is located. The Property is located in the Farms of Lake Elmo Development, an Open Space Preservation Development.

Section 150.175 of the City's zoning ordinance states:

"(A) The purpose of the Open Space Preservation Development is to maintain the rural character of Lake Elmo by preserving the agricultural land, woodlands, corridors, and other significant natural features while allowing residential development consistent with the goals and objectives of the city's Comprehensive Plan. This type of development will allow an alternative to large lot, single-family housing and will reduce the cost of constructing and maintaining public facilities and infrastructure.

(B) Protected open space will enhance and preserve the natural character of the community and create distinctive neighborhoods."

Nothing in the Huges' request for variances interferes or is inconsistent with the purposes of the ordinance. Quite frankly, if the lots had been larger in size, there would have been ample room to the rear for a pool and spa without the need for a variance, however, such larger lots would not have preserved the common open space as is the case in this development. The resulting smaller lots limit the area behind the homes for uses commonly found with homes of this size and quality.

**C. CITY REQUIREMENTS**

City Standard:

- "a. The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;"

Response:

Alternate D and Alternate E meet this test for reasons outlined in Section II of this letter. The most relevant reasons are that: the Huges purchased the property in a desirable new development with the intention of being able to build an in-ground pool in the backyard for their family and friends, just as their neighbors to the east have done so in response to the Park Reserve that extends 40 feet onto their property and leaves 24 feet along a staggered portion of the house, which is too small to build a pool of any reasonable shape or size; any such pool "shoe horned" into this location will destroy the existing landscapes; it will create the unsafe condition to construct a pool 6 to 8 feet from the house and a patio door; it will impose the risk of damage to the foundation of the house during construction; it will create a drainage concern of stormwater runoff from the pool deck and from the rain gutters on the house; the space between the Huges' residence and the 100-foot setback can not be put to reasonable use for a swimming pool.

City Standard:

- "b. The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and"

Response:



Alternates D and E satisfy this test for reasons outlined in Section II of this letter. The most relevant reasons are that the Farms of Lake Elmo Development was approved with the design of development as it exists today; the property at 2391 Jonquil Trail was purchased as a model home, placed on the lot in the conditions established by the builder; the location of the homes on the adjacent properties, especially with the location of the home on the southeast corner lot, caused the builder to align the home in a unique way where 2/3 of the back yard is deemed unbuildable for a swimming pool in the back yard, while both neighbors have been allowed to have swimming pools; the home is existing and can not be remodeled or moved in order to be compliant with the code.

City Standard:

"c. The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations."

Response:

Alternate D and Alternate E meet this test for reasons outlined in Section II of this letter. As to the prior Plan A which involved more intrusion into the 100 foot setback, the City Planner opined that:

"The applicants bought the property after the existing home, deck, and screen porch was built in the summer of 2006. The home was built further back on the lot to be more in line with the home directly to the east, which was built in the rear yard of the property. Therefore, staff finds this criteria is met." I agree. Alternates D and E are less intrusive so we assume City Staff will again agree this standard is met.

**D. THE MORE RECENT SAGSTETTER AND NOLAN DECISIONS FULLY SUPPORTS THE GRANTING OF THE VARIANCE FOR ALTERNATIVE D OR ALTERNATIVE E.**

The Court's statements in Rowell were endorsed again and expanded upon in the 1995 Sagstetter decision and affirmed in the 2000 Nolan decision cited previously. A thorough review of the regarding cases is very instructive and supports granting the variance application for Alternative D or Alternative E. In Sagstetter:

1. The City owned a parcel of land with nine softballs fields, which certainly was an existing reasonable use of the parcel.

2. The City wanted, however, to build a dome over a softball field, which would be 90 feet high at the peak. The ordinance allowed for only 30 feet without a variance. The City also needed a 20-foot side yard setback variance.
3. The parcel was immediately surrounded by residential development. The proposed dome was only 49 feet from the garages of an apartment building. The adjacent property owners objected and introduced uncontroverted expert testimony that a 90-foot high dome would adversely affect their property values. (There is no evidence to suggest that your construction of Alternative D or Alternative E will adversely affect property values.)
4. The Board of Zoning Appeals approved the variances. The Council denied the variances based on the testimony. The Council, at a later meeting, reversed itself and approved the variances even though no additional testimony had been provided. The District Court upheld the grant of the variances.

In affirming the grant of the variances, the Minnesota Court of Appeals showed again that the variance tests should not be narrowly applied to limit flexibility.

As to "Reasonable Use," the Court stated:

Appellants construe the statute and ordinances sections, which state that the property "cannot be put to a reasonable use" under the strict provisions of the code, to mean that if the property can be put to any reasonable use, then granting a variance is unreasonable. This Court has previously construed this language to mean that the landowner would like to put the land to a reasonable use, but that the proposed reasonable use is prohibited under the strict provisions of the code.

Here, the city wants to put the land to a reasonable use: placing a dome over the field to enable year-round use. The design of the entire park results from the city's desire to ameliorate local problems by adding parking spaces, concession facilities, and public restrooms. These are reasonable responses to valid concerns. *Id.*

As to "Unique Circumstances," the Court stated at 492:

Evidence was presented that soil conditions and a sewer main prohibited excavation that would allow the field to comply with the 30-foot height limitation in the ordinance. The plan alleviated parking problems, and if a different design were used, the plan would not provide as many parking spaces. The evidence supports the city council's determination that unique conditions justify a variance in this situation.

(There was no evidence that the dome could not have been erected over one of the other fields.)

As to "Spirit and Intent of the Zoning Code," the Court stated:

Appellants argue the neighborhood petitions show that the domed field is not in keeping with the spirit of the code or consistent with health, safety, comfort, morals and welfare of the inhabitants of the City of St. Paul. The dome would allow local residents to take part in year-round activities such as playing softball on lighted fields, and a golf driving range. These factors show the city councils' determination was reasonable.

As to "Increase of Value or Income Potential," the Court stated:

Although increased revenues likely played a role in the city council's decision, it also considered other factors supporting the decisions. The plan responds to several valid concerns. We conclude the city council's decision was reasonable.

*Id. at 492-93*

Based upon the above analysis of the facts and law, it is clear that the City would be acting well within the requirements of Minnesota Statutes and case law to grant the variance requested to allow the pool and spa as shown in Alternate D or Alternate E (pool only).

**IV. THE GRANTING OF A VARIANCE TO THE REAR YARD SETBACK FOR ALTERNATE D OR ALTERNATE E WOULD NOT CREATE A PRECEDENT THAT WOULD LIMIT THE CITY'S DISCRETION IN THE FUTURE.**

Municipalities sometimes believe that the granting of a variance, interim use permit, conditional use permit or amending the zoning ordinance will set some sort of adverse precedent that will force the municipality to grant some future variance, interim use permit, conditional use permit or requested zoning ordinance amendment for some other party. Minnesota courts have

concluded that land use decisions do not create a precedent that a municipality is compelled to follow when considering subsequent applications for a variance because every application involves facts, circumstances and time periods different from prior situations where variances may have been granted. For example, in *Stotts v. Wright County*, 478 N.W. 2d 802 (Minn. App. 1991), the Minnesota Court of Appeals refused to consider a property owner's argument that a county zoning board was required to grant him a setback variance because the zoning board had granted his neighbor a similar setback variance. *Id.* at 806, citing *In re Johnson*, 404 N.W.2d 298, 301 (Minn. Ct. App. 1987), rev'd on other grounds 562 N.W.2d 21 (Minn. Ct. App. 1997). It is worthwhile to note that both the *Stotts* and *In re Johnson* cases cited above arose from local government decisions related to zoning variances. For the above reasons, the City should also have no reason to fear that the approving Huges's request as outlined above will create a precedent that will limit the City's discretion to act on future land use applications from other property owners in the City.

#### V. KNOWLEDGE OF EXISTENCE OF THE SETBACK ORDINANCE

Finally, it should be noted that the fact that the City's requirements in the zoning ordinance regarding the 200 foot rear yard setback as previously modified by the Council to be 100 feet could have been ascertained prior to acquisition of the property by the Huges is irrelevant in determining if a variance should be granted to the Huges. In *Myron v. City of Plymouth*, 562 NW2d 21, 23 (Minn. App. 1997), the Court stated:

"One of those prerequisites is that the need for the variance not be "created by the landowner." If that includes mere purchase with knowledge, a municipality would, in effect, be *prohibited* from granting a variance to every subsequent owner who purchased with knowledge that a variance would be required for development. This blanket bar to granting variances is not in accordance with the legislature's general intent to give municipalities broad discretion in the land development area."

Thus, the fact that the 100 foot rear yard setback restriction may have been in place at the time the Huges purchased their home in 2007 is irrelevant. Moreover, in any event, my clients did not know of the 200 or 100 rear yard setback when they purchased their home and based upon development patterns in the neighborhood, they had good reasons to believe they could build a pool and spa in the back yard as they later proposed to the City.

#### VI. CONCLUSION

For Alternate D or Alternate E, the City of Lake Elmo has ample authority to grant the variances as requested for the rear yard setback if the City Council wants to do so. This is a de minimis request with no potential for adverse or visual impacts by others. Moreover, the City should grant the variances for the legal and factual reasons set forth above. My clients believe



Mayor and City Council  
May 22, 2009  
Page 15

they have addressed the concerns previously expressed by the City Council. In order to obtain approval, they are willing to consent to virtually any conditions as to additional screening, etc., that the Council may decide to impose. Instead of possibly voting "No" as to the variances, my clients respectfully request that the Council approve the variances for Alternative D, or failing that to approve, Alternative E, with any conditions necessary in order to obtain a majority vote to approve the variances.

If you have any questions please call the undersigned at 612/518-6075 or Dr. Vladimir Hucec at 612/581-7167 or Dr. Silvia Hucec at 651/777-3333. The Hucecs have caused a surveyor to locate their rear lot line and their landscaping contractor has outlined on the ground the 100 foot setback line and the perimeter of the proposed pool and spa. Please inspect the property with or without prior notice to the Hucecs.

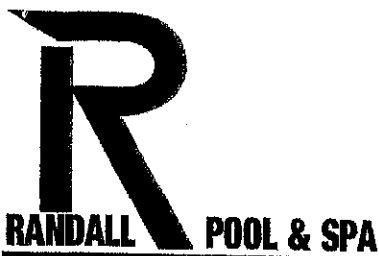
I apologize for the length of this letter, but by setting forth the facts and law hopefully there will be less time needed at the Council meeting to discuss this matter.

Very truly yours,

*Bruce D. Malkerson*

Bruce D. Malkerson

cc: Craig Dawson, Interim City Administrator  
Kelli Matzek, City Planner  
David Snyder, City Attorney  
Dr. Vladimir Hucec  
Dr. Silvia Hucec  
David Sonka, Landscape Designer for the Hucecs



725 TOWER DR. • P.O. BOX 145 • HAMEL, MN 55340  
(763) 478-9557 • FAX (763) 478-6910  
randallpools@aol.com

5-26-2009

To whom it may concern,

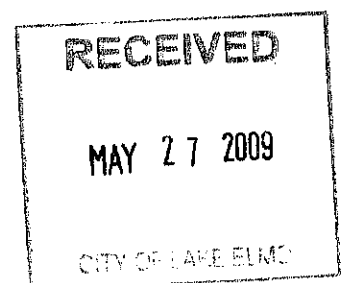
Vladimir and Silvia Hucec are pursuing having a swimming pool installed in their backyard. They would like it to be a diving pool. In order for the pool to conform to the latest industry safety standards, the pools deep end needs to be 8.5 feet deep and the distance from the back wall to the 5 foot mark (water depth) should be no less than 28'. This would leave a shallow swimming area of 22'. The shallow area would also have steps leading into pool down to 4' depth (thus taking up more room). It is not unusual for a diving pool to be 50' long for safety and swim ability.

The customer would like the pool to be useable for three lanes of lap swimming, and is also considering having a water park quality slide installed. The minimum width for safety is 22' from the end of the slide. This is the reason for a pool to be of at least 22' of width.

In my twenty-five years experience of building pools in Minnesota, the size of pool that the Hucecs are pursuing is very typical for the use they hope to gain from it. Both of the neighbors on each side have pools of almost identical size. This is a common sized pool.

Regards,

Mike Randall  
President  
Randall Pool & Spa



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

**RESOLUTION NO. 2009-022**

*A RESOLUTION APPROVING VARIANCES FROM THE 100 FOOT BUFFER SETBACK  
REQUIRED FROM THE EDGE OF AN OPEN SPACE PRESERVATION DISTRICT TO  
ALLOW THE CONSTRUCTION OF AN IN-GROUND POOL AND SPA AT 2931 JONQUIL  
TRAIL NORTH.*

**WHEREAS**, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, Vladimir and Silvia Hucec, 2931 Jonquil Trail North (the "Applicants"), have submitted an application to the City of Lake Elmo (the "City") for a twelve foot variance from the 100 foot buffer setback from the edge of an Open Space Preservation development at 2931 Jonquil Trail North to allow the construction of an in-ground pool and spa, a copy of which is on file with the City; and

**WHEREAS**, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

**WHEREAS**, the Lake Elmo Planning Commission held a public hearing on said matter on March 9, 2009; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its recommendation to the City Council as part of a Staff Memorandum dated March 17, 2009; and

**WHEREAS**, the City Council discussed the application on March 17<sup>th</sup> and reconsidered said matter at its June 2, 2009 meeting.

**NOW, THEREFORE**, based on the testimony elicited and information received, the Board of Adjustment makes the following:

**FINDINGS**

- 1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.017.
- 2) That all the submission requirements of said 154.017 have been met by the Applicant.

- 3) That the proposed setback variance of twelve feet is to allow the construction of an in-ground pool and spa at 2931 Jonquil Trail North.
- 4) That the Variance will be located on property legally described as Lot 12, Block 1, Farms of Lake Elmo, Washington Co., Minnesota.
- 5) The proposed structures would be in keeping with the neighborhood as the two adjacent properties currently have in-ground swimming pools and other accessory structures in their rear yards.
- 6) The home directly to the east currently encroaches further into the 100 foot buffer setback than the applicant is proposing. The home and pool are closer to the Lake Elmo Park Reserve than the applicant is proposing to place the structures.
- 7) The rear yard of the property abuts Outlot A which is restricted by a conservation easement and intended to be utilized for open space. The Lake Elmo Regional Park Reserve is located directly to the south of Outlot A.
- 8) Existing and proposed vegetation, the slope of the rear yard, and the location of the proposed structures in the rear yard reduce, or in some cases, eliminate the visual impact to others.
- 9) Outlot A serves as a sixty-foot open space buffer and undisturbed area between the Hucec's property and the Lake Elmo Regional Park Reserve which meets the intent of the buffer setback outlined in the Open Space Preservation development regulations.
- 10) The proposed in-ground swimming pool and spa cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists. *The applicant's bought the existing home in its existing location with the intention of building a swimming pool in the rear yard. The applicable setback requirements outlined in the Open Space Preservation regulations and swimming pool requirements leave little area in the rear yard of the property to be built upon.*
- 11) The plight of the landowner is due to the physical conditions unique to the land and are not applicable to other lands, structures, or buildings in the same zoning district. *The existing home was built further back on the lot to be in line with the permitted non-conforming home to the east thereby reducing the amount of buildable area in the rear yard of the property. Although the lot abuts Outlot A which functions as preserved open space within the development, approximately forty feet of the buffer setback encroaches on the rear yard of the applicant's property. The forty foot encroachment is an unbuildable area.*
- 12) The variance will not change the essential character of the neighborhood. *The proposed pool and spa are similar to the structures in the neighbor's yards. Approval of the variance would not change the character of the neighborhood.*



**WITH THE FOLLOWING CONDITIONS:**

1. A revised landscape plan approved by the Planning Director prior to issuance of a building permit.
2. Outlot A must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.

**CONCLUSIONS AND DECISION**

Based on the foregoing, the Applicants' application for a Variance is approved.

Passed and duly adopted this 2<sup>nd</sup> day of June 2009 by the City Council of the City of Lake Elmo, Minnesota.

ATTEST:

\_\_\_\_\_  
Dean A. Johnston, Mayor

\_\_\_\_\_  
Craig Dawson, Interim City Administrator

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

**RESOLUTION NO. 2009-022**

*A RESOLUTION DENYING VARIANCES FROM THE 100 FOOT BUFFER SETBACK  
REQUIRED FROM THE EDGE OF AN OPEN SPACE PRESERVATION DISTRICT TO  
ALLOW THE CONSTRUCTION OF AN IN-GROUND POOL AND SPA AT 2931 JONQUIL  
TRAIL NORTH.*

**WHEREAS**, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, Vladimir and Silvia Hucec, 2931 Jonquil Trail North (the "Applicants"), have submitted an application to the City of Lake Elmo (the "City") for a twelve foot variance from the 100 foot buffer setback from the edge of Open Space Preservation developments at 2931 Jonquil Trail North to allow the construction of an in-ground pool and spa, a copy of which is on file with the City; and

**WHEREAS**, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.017; and

**WHEREAS**, the Lake Elmo Planning Commission held a public hearing on said matter on March 9, 2009; and

**WHEREAS**, the Lake Elmo Planning Commission has submitted its recommendation to the City Council as part of a Staff Memorandum dated March 17, 2009; and

**WHEREAS**, the City Council discussed the application on March 17<sup>th</sup> and reconsidered said matter at its June 2, 2009 meeting.

**NOW, THEREFORE**, based on the testimony elicited and information received, the Board of Adjustment makes the following:

**FINDINGS**

- 1) That the procedures for obtaining said Variance are found in the Lake Elmo Zoning Ordinance, Section 154.017.
- 2) That all the submission requirements of said 154.017 have been met by the Applicant.

- 3) That the proposed setback variance of twelve feet is to allow the construction of an in-ground pool and spa at 2931 Jonquil Trail North.
- 4) That the Variance will be located on property legally described as Lot 12, Block 1, Farms of Lake Elmo, Washington Co., Minnesota.
- 5) The proposed in-ground swimming pool and spa can be established under the conditions allowed by the city's zoning regulations and reasonable alternatives exist. *The applicant has reasonable use of the property as it is currently used for residential purposes. Given the setback and location requirements set forth in the Open Space Preservation development and swimming pool regulations, there remains area available for a building or structure, though not in the size or configuration proposed by the applicant.*
- 6) The plight of the landowner is not due to the physical conditions unique to the land and are applicable to other lands, structures, or buildings in the same zoning district. *Thirteen lots within the Farms of Lake Elmo development are subject to the 100 foot buffer setback. Ten lots within the same development have a shorter distance between the edge of the development (from which the setback applies) to their front property line. Therefore these ten properties have the 100 foot setback affect more of their rear yard than the applicant's property.*
- 7) The variance will not change the essential character of the neighborhood. *The proposed pool and spa are similar to the structures in the neighbor's yards. Approval of the variance would not change the character of the neighborhood.*

### CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for a Variance is denied.

Passed and duly adopted this 2<sup>nd</sup> day of June 2009 by the City Council of the City of Lake Elmo, Minnesota.

ATTEST:

\_\_\_\_\_  
Dean A. Johnston, Mayor

\_\_\_\_\_  
Craig Dawson, Interim City Administrator

City of Lake Elmo Planning Department  
**Variance Review**

---

**To:** City Council  
**From:** Kelli Matzek, City Planner  
**Meeting Date:** 3-17-09  
**Applicant:** Vladimir and Silvia Hucec  
**Location:** 2931 Jonquil Trail North  
**Current Zoning:** A – Agricultural (Open Space Preservation Development)

***Introductory Information***

---

***Request:*** The applicant is seeking approval of a variance from the required 100 foot buffer setback from the edge of the Open Space Preservation development to allow the construction of a pergola, pool, fireplace and spa at 2931 Jonquil Trail North. Specifically, the pergola and fireplace would be located 31 feet within the setback, the spa would be 12 feet, and the in-ground pool would be 6 feet.

***Background:*** *Farms of Lake Elmo Development*  
The applicant's property is Lot 12, Block 1 within the Farms of Lake Elmo development which was approved on October 18, 2005 as an Open Space Preservation (OP) development. OP developments are allowed by code as a Conditional Use Permit (CUP) in the Agricultural, Rural Residential, and Residential Estate zoning districts.

*Application*  
The applicants have provided a description of their request for a variance as a part of the application materials submitted to the City. The existing house, garage, and screen porch at 2931 Jonquil Trail North was built in 2006 with an approved building permit from the city.

*Outlot A Adjacent to the Rear Yard of the Property*  
The property at 2931 Jonquil Trail North has a rear yard that abuts Outlot A of the development which is restricted by a Conservation Easement. The easement is co-held by the City of Lake Elmo and the Minnesota Land Trust. In that area, Outlot A is approximately sixty feet wide and serves as a contiguous open space buffer to the Lake Elmo Regional Park Reserve.

***Applicable Codes:*** § 150.175 ***PURPOSE.***

(A) The purpose of open space preservation (OP) is to maintain the rural character



(cont.) of Lake Elmo by preserving agricultural land, woodlands, corridors, and other significant natural features while allowing residential development consistent with the goals and objectives of the city's Comprehensive Plan. This type of development will allow an alternative to large lot, single-family housing and will reduce the cost of constructing and maintaining public facilities and infrastructure.

(B Protected open space will enhance and preserve the natural character of the community and create distinct neighborhoods.

**§ 150.180 DEVELOPMENT STANDARDS.**

(B) (1) *Land area.* Applications for a residential development in the OP District shall meet all the following criteria.

(c) Dwelling units shall be grouped so that at least 50% of the buildable land area of the proposed development remains preserved open space. The preserved open space shall consist of agricultural lands, natural habitat, pedestrian corridors, or neighborhood or community recreational areas.

(2) *Open space easement required.*

(a) *Preserved open space standards.*

1. All preserved open space shall be subject to a conservation easement and used for the purposes as defined by §§ 150.175 *et seq.* ....

(d) *Buffer zones.* Where a proposed OP development abuts an existing residential development or a parcel of land not eligible for future development under the OP ordinance due to insufficient parcel area, a 200 foot setback shall be provided between the property line of the abutting parcel and any structure or driving surface within the OP development. Driving surfaces that cross the setback area at a 90 degree angle shall be the only exception. Where a proposed OP development abuts an existing OP development, or a land parcel eligible for future development under the OP ordinance, a 100 foot setback from any structure within the proposed OP development and the property line of the abutting parcel may be substituted. The setback substitution shall only be approved when there is existing mature vegetation and/or changes in topography occurring on the site proposed for development; and/or where the OP site developer introduces the physical features that provide an effective year round buffer of the structures proposed for the OP site from existing residences or development. The determination of the buffering effectiveness of existing or introduced physical features that qualify a site for a 100 foot buffer shall be at the sole discretion of the City Council.

(h) *Minimum district requirements.* The requirement states that a side yard setback for a single-family home is 15 feet or 10% of lot width, whichever is greater.

(cont.) **§ 151.085 SWIMMING POOLS; GENERALLY.**

(C) *Application for permit.*

(3) Pools shall not be located within 20 feet of any septic tank/drainfield nor within 6 feet of any principal structure or frost footing. Pools shall not be located within any required front or side yard setbacks.

(K) *Location.*

All Swimming pools or appurtenances to swimming pools shall be located in the rear yard and meet the setback requirements of the district in which it is located....

**Findings & General Site Overview**

**Site Data:** Existing Zoning – A (Agricultural); OP use with a CUP

Land Use Guidance – RAD – 0.45 DU/Acre (Rural Agricultural Density)

Parcel size – 0.94 acres

Property Identification Number (PID): 22-029-21-21-0024

**Application Review:**

**Applicable Code** § 11.01 DEFINITIONS.

**Definitions:** **ACCESSORY STRUCTURE.** A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

**BUILDING SETBACK LINE.** A line within a lot parallel to a public right-of-way line, a side or rear lot line, a bluff line, or a high water mark or line, behind which buildings or structures must be placed.

**BUILDING.** Any structure, either temporary or permanent, having a roof and used or built for the shelter or enclosure of any person, animal, or movable property of any kind. When any portion of a building is completely separated from every other part of a building by area separation, each portion of the building shall be deemed as a separate building.

**HARDSHIP.** The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists; that the plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district; and that these unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.

**SETBACK.** The minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top

(cont.)

of a bluff, road, highway, property line, or other facility. Distances are to be measured perpendicularly from the property line to the most outwardly extended portion of the structure at ground level.

**STRUCTURE.** Anything constructed or erected on the ground or attached to the ground or on-site utilities, including, but not limited to, buildings, factories, sheds, detached garages, cabins, manufactured homes, signs, and other similar items.

**SWIMMING POOL, PRIVATE OR RESIDENTIAL.** Any pool which is used, or intended to be used, as a swimming pool in connection with a single-family residence, and which is available only to the family of the household and private guests.

**USE, ACCESSORY.** A use subordinate to and serving the principal use or structure on the same lot and customarily incidental to the principal use.

**VARIANCE.** A modification of a specific permitted development standard required to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a hardship as defined in the zoning code. Economic considerations alone shall not constitute a hardship.

**Variance  
Review:**

The applicants are proposing to build an in-ground pool, spa, pergola, and fireplace within the required 100 foot buffer setback from the edge of the development.

*Farms of Lake Elmo Development Review History*

The city staff report for the Farms of Lake Elmo development identified early on in the development review process that the lots in the west, east, and south side of the proposed development would not be buildable with the 200 foot buffer setback required from the edge of the development.

In the March 28, 2005 staff report, the planner noted:

“It appears that several of the proposed lots along the east and south peripheries of the Concept would also fail to meet the 200 foot buffer requirements once house pads are identified. In both cases the lots will back onto the Lake Elmo Regional Park Reserve. In a recent similar situation lots of the Tapestry OP backed onto the City’s Sunfish Park. In that case staff found that the Intent and Purposes of the OP ordinance would be complied with without a buffer to a major natural park environment.”

The City Council approved a 4/5 waiver of the requirement (as outlined in the city code). The City Council minutes from April 5, 2005:

“M/SP Conlin/Johnson – to waive the 200 foot buffer requirement and require the 100 foot buffering setback standards to the west, south and east based on the findings of the size of lots, adjoins the majority of the Regional Park, trees are planted on the top and the elevation difference.

(cont.)

(Motion passed 4-0." [Sic]

Therefore, the City Council reduced the setback from the edge of the Farms of Lake Elmo development and Lake Elmo Regional Park Reserve border from 200 feet to 100 feet.

*Purpose of the 100 foot buffer setback*

In reading through section 150.180 B 2 D regarding buffer zones in OP developments, the implied intent of the buffer area is to provide a physical and visual buffer of structures from existing residences of development.

This property and others on the southeast side of the development abut an open space outlot and the regional park, which will not be used for residences or development now or in the future. However, as mentioned previously, the City Council was made aware of this situation and made the decision at that time to require a 100 foot buffer setback.

*Other homes in the Farms Neighborhood*

Of the twelve properties in the neighborhood currently with homes, two were built within the buffer setback. Five properties subject to the same 100 foot buffer setback were built on and currently meet that requirement. The remaining five homes were built on lots that were outside 100 feet (or 200 feet from the north) of the development borders.

*Vacant Lots to be Affected in the Future*

Staff has identified an additional nine lots in this development that are impacted to any degree by the 100 foot buffer setbacks from the west, south, or east edge of the development or by the 200 foot buffer setback from the north edge of the development. Although staff has not conducted a full analysis at the time of this report, it is possible that some of those lots may have limited building area which may result in future variance requests.

*Additional Information*

Outlot A as mentioned before is restricted by a conservation easement co-held by the Minnesota Land Trust and the City of Lake Elmo. Within the easement document, it outlines as one of the Conservation Values that "The Protected Property provides continuity with nearby Lake Elmo Regional Park Preserve, which preserves wildlife habitat within the wetlands and open space in this region of rapidly developing residential communities." The applicant is not proposing to add any improvements within the outlot, nor are they proposing any improvements within 9 feet of the outlot. However, it is important to establish that the rear yard abuts the outlot and the intent of the MN Land Trust's easement on the outlot.



(cont.) *Application Submittal*

The applicant has stated that the variance is justified due to the following:

- They bought the existing home with the intention of building a pool in the back yard for their children to practice for competitive swimming. The back yard was chosen as the windows at the back of the home allow viewing the pool for safety purposes.
- They were not aware of the 100 foot buffer setback at the time of the initial design of the pool, spa, pergola, and fire pit.
- Sixty feet of Outlot A exists between their property and the Lake Elmo Regional Park Reserve and effectively serves as a preserved, undisturbed space. The land slopes uphill approximately 2' to 6' over a 60' distance to the park boundary.
- The neighbor directly to the east was allowed to build their home and pool within the 100 foot buffer setbacks from both the south and eastern borders of the development. This property has a much smaller outlot between the property and the Park Reserve.
- The placement of the home to the east pushed the building of their home further back on the lot to be in line with that home, thereby reducing the amount of buildable area in their rear yard.
- The neighbor directly to their west also has a pool.
- The proposed pool would be completely obscured from view of the street and greatly obscured from many adjacent properties with existing trees. Additional trees that would further reduce any visibility are being proposed in the new pool landscape as well.
- No other location on the property is free from both restrictions and undesirable conditions that prohibit a pool. The 30 feet between the house and setback line, which given the shape of the floor plan of the house, the setbacks needed, and the proper drainage needed from the house, the pool and landscape would be impossible.

*Criteria Review*

A review of the City's variance criteria follows, focusing on the information submitted by the applicants. By code, a variance can only be granted where the city finds the request can successfully address all three criteria as outlined below for the proposed structures.

1. *The proposed use of the property and associated structures in question cannot be established under the conditions allowed by the city's zoning regulations and no other reasonable alternative use exists;*

The property is currently used for residential purposes by the Hugel family; therefore the applicants are allowed a reasonable use of the property.

(cont.)

The design and location of the proposed pool, spa, fireplace and pergola was established by a professional landscaper. At the time of his design, the contractor was not made aware of the 100 foot setback from the edge of the OP development.

However, although the proposed pool, spa, fireplace and pergola are unable to be built in a conforming location on the lot in its current configuration, there is a small conforming location in which at least the in-ground pool could potentially be constructed. The city's pool ordinance calls for a six foot setback from a building or frost footing. The result is approximately 24 feet between the existing home and the 100 foot setback line. Without consideration to aesthetics and pending conformance with other requirements (impervious surface, building/structure separation, grading, etc.), and if revisions to the size, design and location were redesigned, a pool, spa, fireplace and pergola may be placed in a conforming location on the site. It should be noted that an alternate site plan was not designed by staff and this alternative located is based on the knowledge that a typical rectangular in-ground pool is often 20 feet by 40 feet in size.

The property is currently allowed a reasonable use and other locations on the site could be an option so **this criteria is not met**.

2. *The plight of the landowner is due to the physical conditions unique to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district;*

The applicants' property is not unique. Ten other properties within the Farms of Lake Elmo development have a shorter distance between the edge of the development (from which the setback applies) to their front property line. Therefore these ten properties have the 100 foot setback affect more of their rear yard than the applicant's property. All ten properties are similar in shape to the applicant's property and all ten are smaller in lot size, providing additional challenges.

Three of these ten properties are built on, one of which currently has a structure that encroaches into this 100 foot buffer setback. [An additional property adjacent to the Hugec's was also built within the buffer setback, but was not included in this calculation due to the lot's size and shape.] However, although the setback was not enforced on previous properties in this development and most likely other developments, this is not considered a hardship as defined in the city code. City staff must enforce the city code requirements as they exist.

Twelve lots in the development are not impacted to any degree by a buffer setback.

As mentioned on page 4, this development was reviewed in a similar manner to the Tapestry at Charlotte's Grove OP development which abuts a City Park. The 200 foot buffer setback was reduced by the City Council to 100 feet to acknowledge the adjacent preserved open space.

Recent applications made by other property owners in the OP developments have been required to comply with this regulation.

(cont.)

**Therefore, this criteria is not met.**

3. *The unique conditions of the site were not caused or accepted by the landowner after the effective date of the city's zoning regulations.*

The applicants bought the property after the existing home, deck, and screen porch was built in the summer of 2006. The home was built further back on the lot to be more in line with the home directly to the east, which was built in the 100 foot buffer setback. This reduced the area available for a structure to be built in the rear yard of the property.

**Therefore, staff finds this criteria is met.**

**Variance  
Conclusions:**

Based on our analysis of the review criteria in City Code and because all three criteria are not met, staff recommends **denial of the variance requests** for 2931 Jonquil Trail North.

**Resident  
Concerns:**

The city has received no objection of the proposal by any neighbor within the Farms of Lake Elmo. The applicant submitted as part of their application a letter signed by three neighbors in support of their application.

**Additional  
Information:**

- The Department of Natural Resources and the Valley Branch Watershed District did not provide any comments on the application.
- The Minnesota Land Trust has reviewed the application and has no specific comments or concerns with the variance being requested. Staff has added as a condition of approval, per the Land Trust's written submittal, that the easement area must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.
- The Washington County Parks manager submitted a written statement with concern regarding the intensity of the proposed uses and the potential visual impact of the pergola and outdoor fire place structure as viewed from the Lake Elmo Park Reserve boundary. They suggest placing the pergola and fireplace structure outside the required setbacks to minimize the visual impact from the park. Additional screening with fencing, berms and coniferous trees may also lessen the visual impact of the pool facility.
- The City Engineer has submitted a review with comments regarding the application. The items outlined can be addressed at the building permit stage if the variance is approved and is thus not added as a condition of approval.

## Conclusion

The applicant is seeking approval of a variance from the required 100 foot buffer setback from the edge of the Open Space Preservation development to allow the construction of a pergola, pool, fireplace and spa at 2931 Jonquil Trail North. Specifically, the pergola and fireplace would be located 31 feet within the setback, the spa would be 12 feet, and the in-ground pool would be 6 feet.

**Commission Rec.:** The Planning Commission reviewed the variance application and held a public hearing at the March 9<sup>th</sup> meeting. The commission recommended by a 5:3 vote, with one abstention, to approve the variances with the conditions outlined in the staff report and with the additional condition that the applicant move the proposed pergola and fireplace to a location which would not be located any further into the 100 foot buffer setback than the proposed pool and spa.

One commissioner who voted against the application suggested that the Council has the ability to alter the regulations by a 4/5 vote (as outlined in the OP regulations) and may want to consider that option.

**Council Options:** The City Council must examine the proposed variances to determine whether it meets all conditions of approval outlined by city code. The City Council should consider the following options:

- A) Approve the requested variances based on the applicants' submission and findings of fact.
- B) Approve the requested variances based on the applicant's submission and findings of fact with the conditions outlined in the staff report and recommended by the Planning Commission
- C) Deny the requested variances based on the applicants' submission and findings of fact.
- D) Table the request and ask for additional information.

The deadline for a Council decision on this item is April 10, 2009 which can be extended an additional 60-days if needed.

**Recommended Action:** **Staff recommended option C:** Denial of the requested variance with the following findings of fact:

- 1) The applicant has reasonable use of the property as it is currently used for residential purposes.
- 2) A swimming pool, spa, pergola and fireplace of a different configuration and



(cont.)

size could potentially be located on the lot in a conforming location.

- 3) Thirteen lots within the Farms of Lake Elmo development are subject to the 100 foot buffer setback. Therefore, this property is not unique.
- 4) Although two homes within the Farms of Lake Elmo development were permitted to be built within the 100 foot buffer setback, this does not constitute a hardship as the city staff must enforce the existing regulations.

**Should the City Council choose to approve the requested variances, the following findings of fact may be used in addition to any found by the council at the meeting.**

- 1) The proposed variances would be in keeping with the neighborhood as the two adjacent properties currently have in-ground swimming pools and other accessory structures in their rear yards.
- 2) The home directly to the east currently encroaches further into the 100 foot buffer setback than the applicant is proposing. The home and pool are closer to the Lake Elmo Park Reserve than the applicant is proposing to place the structures.
- 3) The rear yard of the property abuts Outlot A which is restricted by a conservation easement intended to be utilized for open space. The county park is on the other side of Outlot A.
- 4) Existing and proposed vegetation, the slope of the rear yard, and the location of the structures in the rear yard reduce or in some cases eliminate the visual impact to others.
- 5) Outlot A serves as a sixty foot open space buffer and undisturbed area between the Hugel's property and the Lake Elmo Regional Park Reserve which meets the intent of the buffer setback.
- 6) The home on the property was built further back on the property to be in keeping with the property to the east, thereby reducing the buildable area in the rear yard.
- 7) The home at 2931 Jonquil Trail North was built to match adjoining setbacks and is thus located further back on the lot than required.
- 8) The applicable setbacks from the edge of the development, from existing structures, and from the property lines leave limited room in the back yard of the property for the proposed structures. By city code, swimming pools are required to be located in the rear yard of a property, further reducing the potential conforming locations on the property.

**Denial Motion  
Template (as  
recommended  
by staff):**

To deny the requested variances as recommended by staff, you may use the following motion as a guide:

**Move to deny the variance application for 2931 Jonquil Trail North based on the findings provided in the staff report:** (or cite your own findings)

**Approval  
Motion  
Template:**

To approve the requested variances, you may use the following motion as a guide:

**Move to approve the variances with the additional condition that the proposed pergola and fireplace be located so as not to encroach further on the 100 foot setback than the proposed pool and spa for 2931 Jonquil Trail North based on the findings listed in the staff report and as articulated tonight, subject to the conditions recommended by staff.** (*use staff's findings provided above or cite your own*)

with the following conditions:

1. A building permit must be received from the city prior to any work taking place. A certified survey in addition to any information requested by the City Engineer, City Planner, and Building Official must be provided before a building permit is issued.
2. The City Engineer must review and approve mitigation measures for the increase of impervious coverage beyond 20% prior to issuance of a building permit.
3. A revised landscape plan approved by the Planning Director prior to issuance of a building permit.
4. Outlot A must not be used for material storage, vehicle travel, or other activities that would be in violation of the conservation easement during the construction process.
5. All structures must be located outside the drainage and utility easement.

cc: Vladimir and Silvia Hugec, 2931 Jonquil Trail North  
David Sonka, Applicant's Contractor

City Council  
Date: June 2, 2009  
REGULAR  
Motion

ITEM: 2009 Street Improvements – Approval of Plans and Specifications and Ordering Advertisement for Bids

SUBMITTED BY: Jack Griffin, City Engineer

REVIEWED BY: Craig Dawson, Interim City Administrator  
Ryan Stempski, Assistant City Engineer  
Mike Bouthilet, Public Works  
Tom Bouthilet, Finance Director

---

SUMMARY AND ACTION REQUESTED: The City Council is being asked to approve the Plans and Specifications for the 2009 Street Improvements and order advertisement for bids.

TKDA has completed the Plans and Specifications for the 2009 Street Improvements including the residential streets in the Myron Ellman, Eden Park, Eden Park 2nd, and The Forest subdivisions. TKDA will present to the City Council the final Plans together with an updated estimate of project cost. The detailed Plans and Specifications are available for review at City Hall. Staff is seeking approval to advertise the project for competitive bids, with a bid date set for July 6, 2009. The tabulated Bids will be presented to Council for award on July 7, 2009.

Additionally, TKDA has completed the design and included the reconstruction plans for the Tablyn Park Entrance and Parking Lot within this Plan set to be bid and constructed by the same contractor. The improvement of the Tablyn Park Entrance and Parking Lot was included in the Park Capital Improvement Plan for the past few years. With the opportunity to complete the 2009 Street Improvements, TKDA was approached by Staff to include this area in the 2009 Street Improvements Project. The project costs associated with the Tablyn Park Entrance and Parking Lot will be funded from the park fund.

#### ADDITIONAL INFORMATION:

At the April 7th City Council Meeting, Council authorized the preparation of plans and specifications for the 2009 Street improvements, and further directed TKDA to work with interested residents and look for opportunities to potentially install rain gardens as part of these improvements. TKDA has identified 7-11 potential sites where rain gardens could be accommodated and have contacted residents in these areas to determine resident interest.

Staff is looking to utilize cooperative resources and has contacted the VBWD to discuss design, coordination, funding opportunities, and implementation. The VBWD has expressed an interest to participate and is willing to discuss assistance on the rain garden program, as it provides water quality improvements to the watershed. A meeting has been scheduled with VBWD Staff on Tuesday, June 2nd. Staff will provide an update on the rain gardens, the extent of resident interest received to date and will discuss the next steps for rain garden implementation.

#### RECOMMENDATION:

Staff recommends that the City Council approve Plans and Specifications and order the advertisement for bids for the project.

*SUGGESTED MOTION FOR CONSIDERATION*

*Move to approve Resolution No. 09-023 Approving the Plans and Specifications for the 2009 Street Improvements and Ordering the Advertisement for Bids.*

ATTACHMENTS:

1. Resolution No. 09-023

ORDER OF BUSINESS:

- |   |  |
|---|--|
| • Introduction  | Craig Dawson, Interim City Administrator |
| • Report by staff or other presenter  | Ryan Stempski, Asst. City Engineer       |
| • Questions from city council members to the presenter  | Mayor and council members                |
| • Questions/comments from the public to the city council<br>(a maximum of three minutes per question/statement) | Mayor facilitates                        |
| • Action on motion  | City Council                             |

CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA

RESOLUTION NO. 2009-023

A RESOLUTION APPROVING PLANS AND SPECIFICATIONS  
AND ORDERING ADVERTISEMENT FOR BIDS FOR THE  
2009 STREET IMPROVEMENTS

WHEREAS, pursuant to resolutions passed by the council, TKDA, Inc. was directed to prepare plans and specifications for the 2009 Street Improvements in accordance with the 2009 Street Improvements feasibility report approved April 7, 2009;

WHEREAS, TKDA, Inc. has completed the plans and specifications for these improvements and has presented them to the to the City Council for approval on June 2, 2009;

NOW, THEREFORE, BE IT RESOLVED,

1. Such plans and specifications, a copy of which is on file at Lake Elmo City Hall and made a part hereof, are hereby approved.
2. The City Clerk shall prepare and cause to be inserted in the official paper and in the Construction Bulletin an advertisement for bids upon the making of such improvements under such approved plans and specifications. The advertisement shall be published for at least 21 days, shall specify the work to be done, and shall state that sealed bids provided to the City Clerk prior to the specified bid date and time and accompanied by a bid bond or cashier's check made payable to the City of Lake Elmo in an amount not less than 5% of the amount of such bid will considered.

Date: June 2, 2009

CITY OF LAKE ELMO

By: \_\_\_\_\_  
Dean A. Johnston  
Mayor

ATTEST:

\_\_\_\_\_  
Craig W. Dawson  
City Administrator



City Council  
Date: 06/02/09  
REGULAR  
Item:  
MOTION:

ITEM: Roseville Accounting Services  
SUBMITTED BY: Tom Bouthilet, Finance Director  
REVIEWED BY: Craig Dawson, Interim City Administrator  
Joe Rigdon, KDV

---

**SUMMARY AND ACTION REQUESTED:** The City Council is being asked to re-evaluate the accounting service agreement with the City of Roseville, consider terminating the contract and authorizing the addition of a part-time position to perform these duties.

**BACKGROUND:** In February of 2008, the Finance Department was reorganized which included the elimination of a full-time accounting position. In order to accommodate some of those duties, Staff recommended contracting accounting services to the City of Roseville. During the July 15, 2008 City Council meeting, The City approved an Agreement for Accounting Services with the City of Roseville through end of 2008 with the understanding that the efficiencies and value of contracting for this service would be evaluated as part of the 2009 budgeting process. The City budgeted \$ 10,000 from the General Fund and \$ 10,000 from the Enterprise Fund in 2009 for this service. All accounting services performed are charged on an hourly basis ranging from \$50.00-\$ 80.00/Hr.

**ADDITIONAL INFORMATION:** Due to the limited time between the start of the agreement and the completion of the Budget, the City did not have the opportunity to evaluate the efficiencies and value of this service. Sufficient time has now past to review this service and have come to some basic conclusions.

1) Material Delivery The then City Administrator lived in the vicinity of Roseville which facilitated delivery and pick-up of documents and eliminated carrier expenses. The Administrator has since left the City resulting in additional time, travel and expense associated with delivery.

2) Schedule Roseville's staffing schedule and associated deadlines can cause delay in timely payments resulting in potential late fees or additional time to dispute late fees with the vendor.

3) Overall Efficiency Efficiencies or savings of time have not materialized and have not been as expected. Considerable time is required to prepare invoices and materials so that Roseville is able to process them with accuracy and efficiency. This is actually an inefficient process as additional preparation time is necessary on things that City Staff is already familiar with. There is also additional Staff time required due to increased vendor inquiries regarding payments.

4) Flexibility Finance has been limited to responding to special or last minute requests by City Staff.

5) The Auditors have reduced or eliminated the "segregation of duties" clause in the 2008 Audit. It is anticipated that the addition of a part-time accounting position will maintain this status.

**RECOMMENDATION:** Since the start of the Agreement the City has paid \$8419 or a monthly average of \$ 1403. The expenditure covers services for Accounts Payable and Payroll only and does not cover other services such as Utility Billing called for in the agreement. Staff recommends termination of the Roseville Accounting Services Agreement and hiring a part-time accounting clerk, at a suggested rate of pay up to \$20.00 per hour without health, vacation and other City benefits. This rate of pay including taxes etc. \$22.90 per hour for maximum average of 18 hrs per week = \$412.20 or an annual cost would be \$20,610. Roseville's agreement requires a 30-day notice of termination. City staff suggests that we begin search of the accounting clerk with a hire date that coincides with actual termination date of services.

**MOTION FOR CONSIDERATION:** Move to approve termination of Agreement for Accounting Services with the City of Roseville and hire part-time Accounting Clerk at a maximum annual wage of \$18,720.00

**ATTACHMENT:** Minutes from Council Meeting dated July 15, 2008  
Agreement for Accounting Services with the City of Roseville

*MOTION: Council Member Smith moved to extend the City Council meeting 15 minutes. Council Member Johnson seconded the motion. The motion passed unanimously,*

Consider approving contracting for routine account processing services

Susan Hoyt, City Administrator, asked the City Council to enter into an agreement with the city of Roseville for routine account processing services for: accounts payable, payroll, utility billing, reconciliation of accounts, routine monthly and quarterly financial reports and data input into the budget to be charged on an hourly basis.

*MOTION: Council Member Johnson moved to authorize into an agreement with the city of Roseville for accounting processing services for an estimated \$10,000 to be funded through the general fund and utility funds through the end of 2008 with the intent to evaluate the efficiencies and value of contracting for this service as part of the city's 2009 budgeting process. Council Member Smith seconded the motion. The motion passed unanimously.*

Review the timeline for the 2009 Budget Process

Susan Hoyt, City Administrator, provided a timeline for the 2009 budget process. Finance manager, Joe Rigdon, of KDV will lead the city staff and City Council on the budget initiative.

**REPORT AND ANNOUNCEMENTS:**

Mayor Johnston attended the monthly meeting of the Regional Council of Mayors. One of the groups there is working on best practices recommendations to aid cities in using the principles of "Green Development." The best practices should be available in the next few months.

The Mayor adjourned the meeting at 8:50 p.m.

Respectfully submitted by Sharon Lumby, City Clerk

Resolution no. 2008-032 approve claims

Resolution no. 2008-033 Accept developer-installed public infrastructure improvements for the H.O.A. 2<sup>nd</sup> Addition (Eagle Point Circle) Development

City of Lake Elmo  
Agreement for Accounting Services  
with the City of Roseville

**COPY**

The agreement for accounting services between the city of Lake Elmo and the city of Roseville for accounting services to include:

- Accounts payable (twice monthly)
- Payroll (twice monthly for regular employees, once monthly for firefighters)
  - Answer payroll related questions from the city of Lake Elmo employees.
- Utility billing for water, sewer and surface water (quarterly for water and sewer and annually for surface water)
- Managing the updates to the utility billing data base
- Month end reconciliations
- Monthly revenue and expenditure reports to the city administrator
- Quarterly revenue and expenditure summary reports for the city administrator to distribute to the city council
- Input into the budget document (as needed from August through December)
- Recommendations on financial accounting software and efficiency improvements in the financial accounting systems( as needed) including the chart of accounts and report formats

The city of Lake Elmo will:

- provide the required information to the accountant to process these tasks and update the systems in a timely way so the accounts can be processed on schedule.
- provide accurately coded accounts payable
- provide data to update the utility billing accounts
- provide access to the city of Lake Elmo's accounting systems on an on-going basis so there is no delay
- answer calls and questions related to accounts payable and utility billing
- provide the budget document format and the budget information to be input into the budget document
- provide work space, a computer, a copier, and other routine office supplies at the city of Lake Elmo, when required to provide these services by the city of Roseville staff
- provide access to the city administrator and finance team in a timely fashion to answer questions and give direction as needed

The city of Roseville will charge an hourly rate as identified in Appendix 1.

- Appendix 1 is annually subject to change based upon a change in costs for providing this service by the city of Roseville that is mutually agreed upon by the two parties.
- Additional charges may include: 1) travel time, 2) copies, 3) postage, 4) other miscellaneous out of pocket expenses that the city of Lake Elmo would typically cover as part of these processes.
- Payment will be made monthly.

City of Lake Elmo  
Agreement for Accounting Services  
with the City of Roseville

The accounting work will be assigned to accounting personnel by the city of Roseville in consultation with the city of Lake Elmo administrator and finance team.

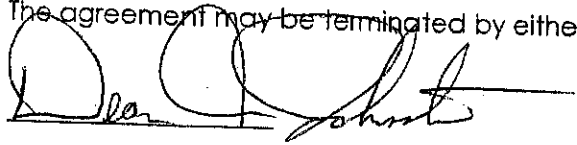
The city of Roseville is responsible for the quality and accuracy of work performed through this contract.

All personnel providing this service from the city of Roseville are city of Roseville employees and are not employees of the city of Lake Elmo.

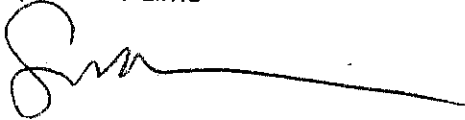
The city of Roseville is not responsible for errors and omissions that the city of Lake Elmo makes in providing information or in its accounting software.

The city of Roseville is not responsible for policies related to the payments, payroll, fees and charges made by the city of Lake Elmo.

The agreement may be terminated by either party with a 30 day written notice.



City of Lake Elmo



---

City of Roseville



City of Lake Elmo  
Agreement for Accounting Services  
with the City of Roseville

APPENDIX 1

Assistant Finance Director Services	\$80/hour
Accountant	\$50/hour
Mileage	rate as required